

September 25, 1981

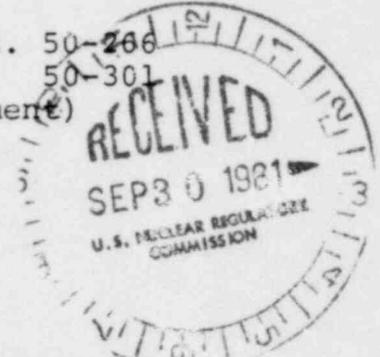
UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION



Before the Atomic Safety and Licensing Board

In the Matter of)
)
WISCONSIN ELECTRIC POWER COMPANY)
)
(Point Beach Nuclear Plant,)
Units 1 and 2))

Docket Nos. 50-266
50-301
(OL Amendment)



LICENSEE'S BRIEF ON PROPOSED
CONTENTIONS 1, 2 and 10

During the telephone conference on September 16, 1981, with the Licensing Board, petitioner Wisconsin's Environmental Decade ("Decade"), the Commission's Regulatory Staff, and Wisconsin Electric Power Company ("Licensee"), the Board directed that briefs be filed by September 25, 1981, on the issue of whether Decade's proposed Contentions 1, 2 and 10 were outside the scope of this proceeding. It is Licensee's view that these three contentions raise issues not within the scope of Licensee's July 2, 1981 amendment request, which is the subject of the proceeding, and are therefore not cognizable by the Board in this proceeding.

Proposed Contentions 1 and 2

The Technical Specifications of Facility Operating Licenses DPR-24 and DPR-27 require Licensee to "plug" any steam generator tubes in Units 1 and 2 of the Point Beach Nuclear Plant which leak or have indications of degradation exceeding 40% of the tube wall thickness. This is known as the "plugging

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limit." Plugging the tube takes it out of service. In its July 2, 1981 amendment request, Licensee has requested that it be allowed to operate the plant when such leaking or degraded tubes have been repaired by "sleeving" as a substitute for plugging.

This proceeding has been commenced, and the Licensing Board has been constituted, pursuant to the Commission's "Notice of Proposed Issuance of Amendment to Facility Operating License, 46 Fed. Reg. 40359 (August 7, 1981), which offered opportunity for hearing "with respect to issuance of the amendment." Thus, the issue before the Board is the narrow question of whether a leaking or degraded tube can be repaired by sleeving, as an alternative for taking the tube out of service by plugging as is now required by the Technical Specifications. The Board does not have before it the broader question of whether operation of the plant should be prohibited because of degradation of steam generator tubes.

Decade's proposed Contentions 1 and 2 are directed only to the latter question, and are therefore outside the limited scope of the amendment request:

(1) Degradation of as few as one to ten steam generator tubes in a pressurized water reactor such as Point Beach could induce essentially uncoolable conditions in the course of loss of coolant accident, according to several independent scientific studies.

(2) Rupture of steam generator tubes in normal operation will release radiation to the environment from the secondary system, and, if the rupture is sufficiently severe, in amounts in excess of maximum permissible doses.

The Point Beach plant is already authorized to operate at full power, with certain surveillance and operating limitations which take into consideration the possibility of corrosive degradation of steam generator tubes. Licensee is not raising the generic question of the acceptability of operation with steam generators, because Licensee already has such authorization. Licensee is here asking only for permission to sleeve--rather than plug--certain tubes. Decade is not entitled, in this proceeding, to challenge the overall operation of the Point Beach units as currently authorized, including the authorizations, limitations and restrictions related to steam generator tube degradation. Decade, at most, is here entitled only to question the effect on plant operation of repair, rather than plugging, of those steam generator tubes which leak or exceed the plugging limit. Contentions 1 and 2, because they do not relate to sleeving, but instead seek to reopen the larger issue of whether the plant should be allowed to operate because of the alleged consequences of steam generator tube rupture, are not relevant to the amendment request which is the subject of this proceeding.

The distinction was succinctly stated by Judge Bloch during the telephone conference:

But the issue that is being raised in the amendment here is not whether it is permissible to operate the steam generator as part of the reactor, but whether sleeving is permissible.

Tr. 32. Decade declined to relate the contentions to sleeving,

referring instead to Decade's proposed Contentions 3 - 7 which, indeed, do relate to sleeving repair.^{1/} Id.

The Commission's rules which exclude from hearings issues which go beyond the subject matter of the requested licensing action are neither unreasonable nor unjust. A party who missed his opportunity to raise a safety issue when the operating license was issued can either raise it when a relevant amendment request is made, or petition the Commission pursuant to 10 C.F.R. § 2.202 to institute a proceeding to modify, suspend, or revoke a license. This, in fact, is exactly what Decade attempted to do when it filed a section 2.206 petition on November 14, 1979, to enjoin the operation of Point Beach Unit 1 and commence a hearing on the potential safety consequences of steam generator tube degradation. The Commission denied Decade's petition, but conducted an extensive safety evaluation of steam generator tube degradation and placed stringent surveillance and operating limitations on Unit 1 relating to steam generator tube degradation.^{2/} Decade should not be allowed to circumvent the previous

^{1/} Decade's proposed Contentions 3 - 7, which are not the subject of this brief, are being opposed by both Licensee and the Staff on the grounds that Decade has provided no basis for the allegations in those contentions.

^{2/} Confirmatory Order, November 30, 1979, as amended January 3, 1980, and April 4, 1980.

determinations of the Commission by using the narrow amendment request now before the Board as an excuse to inscstitute a hearing on "the whole underlying problem of what the applicant is trying to correct," Tr. 33, i.e., a hearing on the broad issue of tube degradation which had previously been denied by the Commission.

Proposed Contention 10

Decade's proposed Contention 10 reads as follows:

(10) The best evidence strongly suggests that the actual cost of the proposed sleeving program will exceed projected costs by more than a magnitude of four.

The Commission's responsibility in reviewing a request for a license amendment is to review and evaluate the potential for harm to the public health and safety or, if applicable, for environmental harm. There are no statutes or regulations which require or authorize the Commission to inquire into the question of whether a Licensee's costs of performing under a requested license amendment will exceed the Licensee's estimates. Indeed, the Licensee has not submitted such an estimate to the Commission, and there is no reason or requirement to do so. While the costs of sleeving may have been germane in an extensive hearing recently concluded by the Public Service Commission of Wisconsin, in which Decade was an active participant, it bears no relevance to this proceeding.

Accordingly, for all of the reasons discussed above, Licensee respectfully submits that the issues raised by Decade's proposed Contentions 1, 2 and 10 are beyond the reasonable

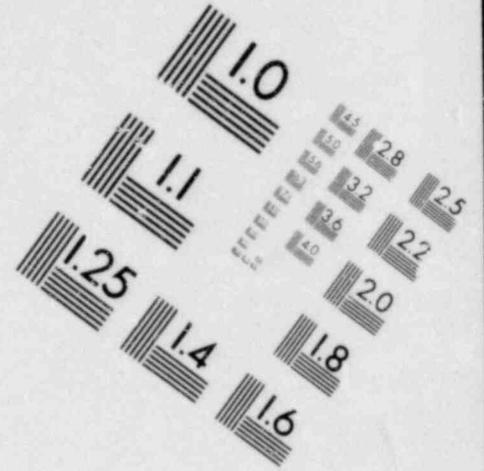
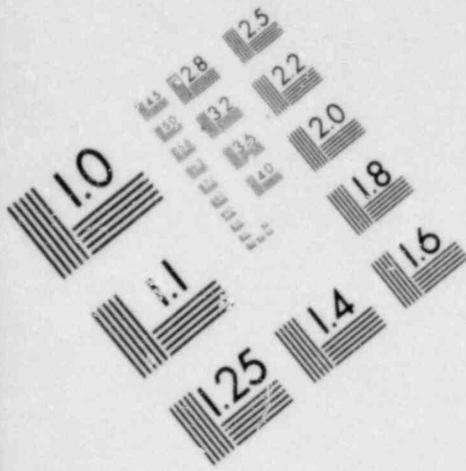
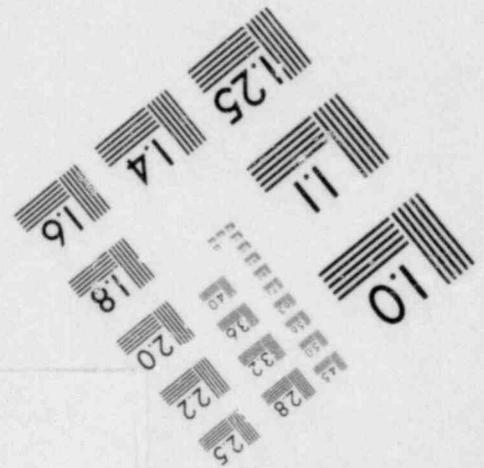
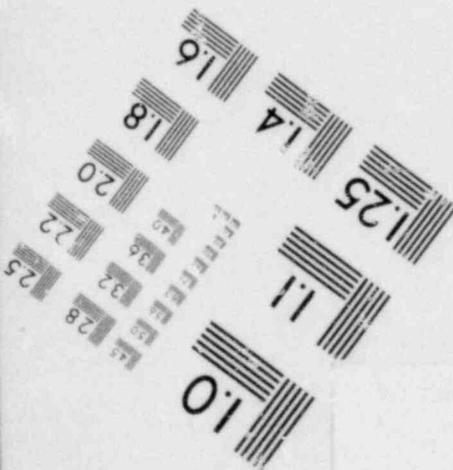
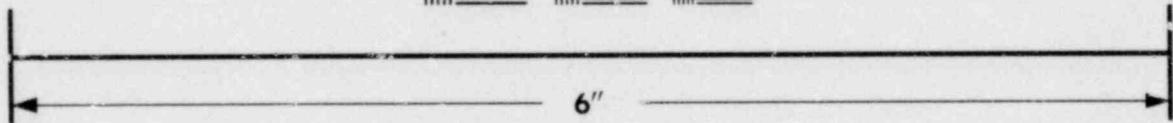
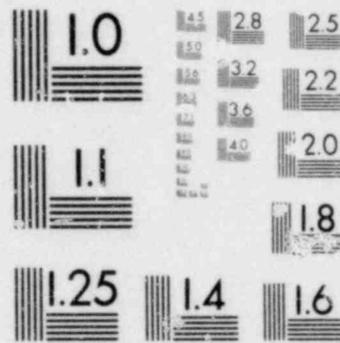
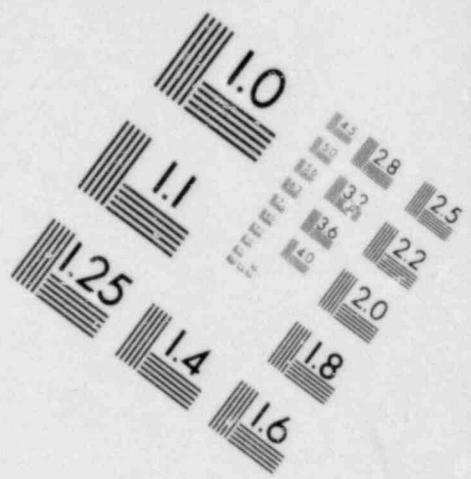
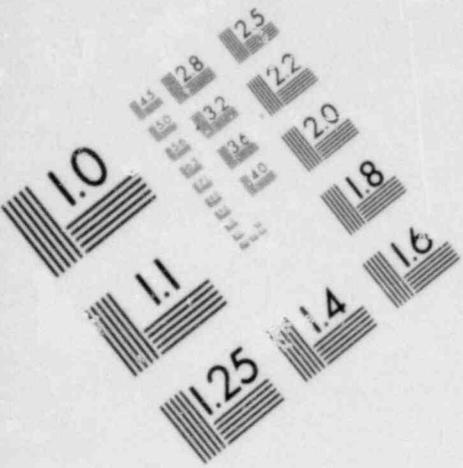
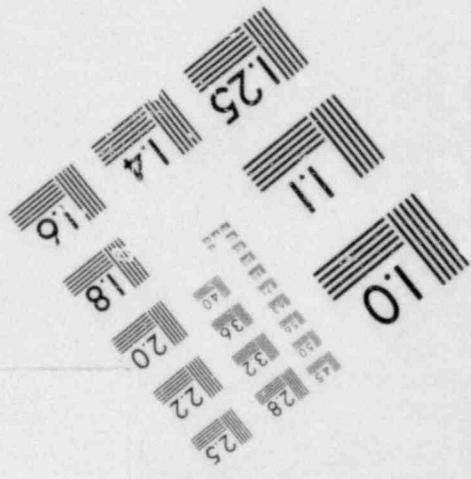
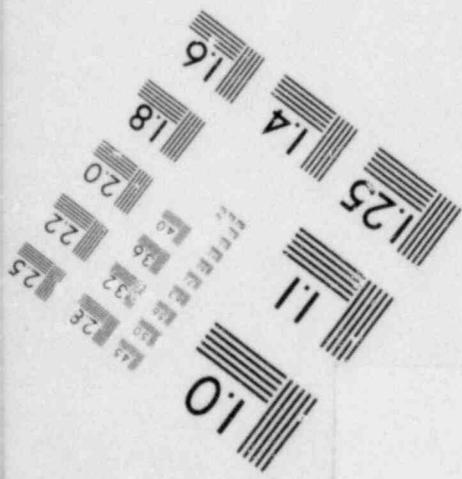
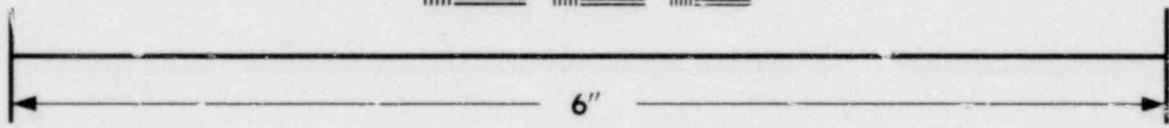
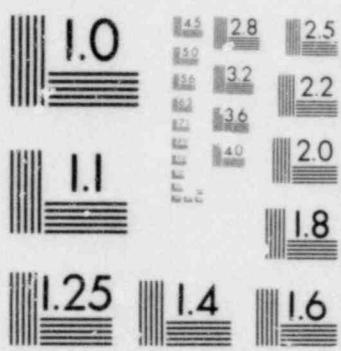


IMAGE EVALUATION
TEST TARGET (MT-3)





**IMAGE EVALUATION
TEST TARGET (MT-3)**



purview of Licensee's amendment request, and therefore are outside the scope of this hearing and beyond the Board's jurisdiction in the conduct of these proceedings.

Respectfully submitted,

SHAW, PITTMAN, POTTS & TROWBRIDGE

By



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Dated: September 25, 1981

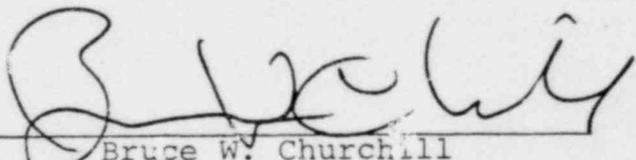
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CERTIFICATE OF SERVICE

This is to certify that copies of "Licensee's Brief on Proposed Contentions 1, 2 and 10," dated September 25, 1981, were served upon those persons on the attached service list by deposit in the United States mail, postage prepaid, this 25th day of September, 1981.



Bruce W. Churchill

Dated: September 25, 1981

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