

October 8, 1981

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Before the Atomic Safety and Licensing Board

In the Matter of)	
)	
WISCONSIN ELECTRIC POWER COMPANY)	Docket Nos. 50-266
)	50-301
(Point Beach Nuclear Plant,)	(OL Amendment)
Units 1 and 2))	

BRIEF IN SUPPORT OF
LICENSEE'S MOTION FOR SUMMARY DISPOSITION
OF DECADE CONTENTIONS 3 - 6
AS RELATED TO INTERIM OPERATION OF UNIT 1

I. INTRODUCTION

Wisconsin Electric Power Company ("Licensee") submits this brief in support of its motion for summary disposition of proposed Contentions 3 through 6 of Wisconsin's Environmental Decade ("Decade"), ^{1/} as those contentions relate to interim operation of Point Beach Nuclear Plant, Unit 1, following the sleeving demonstration program, with up to six steam generator tubes which exceed the plugging limit sleeved rather than plugged. ^{2/}

^{1/} Licensee and the Staff have opposed the admission of proposed Contentions 1, 2 and 10 on the grounds that they are beyond the scope of this proceeding. Proposed Contentions 8 and 9 are not truly contentions. And proposed Contention 7, by its express terms, relates only to the proposed full-scale sleeving programs. Accordingly, Licensee's motion for summary disposition addresses only proposed Contentions 3 through 6.

^{2/} Much of the information which supports summary disposition (Footnote continued next page)

As shown below, there is no genuine issue to be heard as to any fact material to proposed Contentions 3 through 6, as they relate to the proposed interim operation of Unit 1, and Licensee is entitled to a decision in its favor on those contentions, as they relate to the proposed interim operation. The Affidavit of David K. Porter filed herewith demonstrates the complete absence of any factual basis for Decade's proposed Contentions 3 through 6 as they relate to proposed interim operation.

None of Decade's proposed contentions have as yet been accepted by the Board for adjudication in this proceeding. Nevertheless, this motion must necessarily be filed at this time because the sleeving demonstration program must take place during the refueling outage for Unit 1 which is to occur this month and next. Licensee, in its filing dated October 5, 1981, has opposed the admission of Decade's proposed Contentions 3 - 6. The Board's rejection of those contentions would, of course, obviate the need for a ruling on this motion for summary disposition.

2/ (Footnote continued from page 1)

in Licensee's favor of proposed Contentions 3 through 6 as those contentions relate to the proposed interim operation of Unit 1 necessarily militates in favor of the complete summary disposition (as to Licensee's July 2, 1981, license amendment request) of those contentions. However, because of the severe time constraints on Licensee because of the imminence of the sleeving demonstration program, the instant motion for summary disposition is limited to a request for judgment in Licensee's favor on proposed Contention 3 through 6 only as those contentions relate to the proposed interim operation of Unit 1.

II. STATEMENT OF FACTS AND
PROCEDURAL BACKGROUND

By letter dated July 2, 1981, Licensee filed with the Director of the Office of Nuclear Reactor Regulation Technical Specification Change Request No. 69. In that Request, Licensee seeks amendment of Facility Operating Licenses DPR-24 and DPR-27 (for Point Beach Units 1 and 2, respectively) to allow operation with steam generator tubes which exceed the plugging limit specified in the current Technical Specifications, but which have been sleeved rather than plugged. A petition requesting a hearing on Licensee's Technical Specification Change Request was filed by Decade on July 20, 1981.

In preparation for the proposed full-scale sleeving programs encompassing a significant number of tubes in the Unit 1 and Unit 2 steam generators, Licensee is conducting a sleeving demonstration program at one of the Unit 1 steam generators during the fall 1981 refueling outage. The demonstration program involves sleeving up to 12 tubes, up to six of which will have experienced degradation exceeding the plugging limit.

Anticipating that any hearing on Licensee's July 2 Technical Specification Change Request would not be completed, and a decision issued, prior to the date on which Licensee plans to complete the sleeving demonstration program and close up the steam generators in preparation for return to power, Licensee moved the Board for authorization for Unit 1 to resume power

operation after the outage with up to six tubes which exceeded the plugging limit sleeved rather than plugged, pending the outcome of the hearing on Licensee's July 2 amendment request. See "Licensee's Motion For Authorization For Interim Operation of Unit 1 With Steam Generator Tubes Sleeved Rather Than Plugged" (September 28, 1981). Decade's two-page answer, opposing Licensee's motion, was filed October 1, 1981. Decade's opposition to Licensee's motion for authorization for interim operation is founded on its proposed Contention 3, which alleges generally that the brazing process used to join the sleeve to the original tube will "fatally compromise" the integrity of the original tube. As Licensee has previously pointed out, Decade has failed to provide any factual support for its contention that brazing will "fatally compromise" the sleeved tube. See "Licensee's Response to Petitioner's Statement of Bases For Proposed Contentions 3 - 7" (October 5, 1981). Licensee, on the other hand, has set forth affirmative evidence demonstrating that the differential pressure testing to which the sleeve-to-tube wall joints will be subjected provides assurances that the joint and tube wall boundary will withstand operating and expected accident conditions. See Affidavit of David K. Porter, Attachment 1 to "Licensee's Motion For Authorization For Interim Operation of Unit 1 With Steam Generator Tubes Sleeved Rather Than Plugged," ¶ 7. Accordingly, Decade's Contention 3 is ripe for summary disposition.

Decade has similarly failed to provide factual support for its proposed Contentions 4, 5 and 6. Although Decade does

not rely on those contentions in its opposition to the proposed interim operation of Unit 1, Licensee also addresses those contentions here in the context of summary disposition as to the proposed interim operation, for the sake of completeness.

III. ARGUMENT

The standards governing summary disposition motions in an NRC proceeding are now well established and are quite similar to the standards applied under Rule 56 of the Federal Rules of Civil Procedure. Alabama Power Co. (Joseph M. Farley Nuclear Plant, Units 1 and 2), ALAB-182, 7 A.E.C. 210, 217 (1974); See Tennessee Valley Authority (Hartsville Nuclear Plant, Units 1A, 2A, 1B and 2B), ALAB-554, 10 N.R.C. 15, 20, n.17 (1979). Where, as here, a properly supported motion for summary disposition is made, the party opposing the motion may not simply rely upon the bare allegations of its contention. Rather, it must come forward with substantial facts in the form of admissible evidence establishing that a genuine issue of fact remains to be heard. 10 C.F.R. § 2.749(b); Virginia Electric & Power Co. (North Anna Nuclear Power Station, Units 1 and 2), ALAB-584, 11 N.R.C. 451, 453 (1980).

A party cannot avoid summary disposition on the basis of guesses or suspicions or on the hope that at the hearing the Licensee's evidence may be discredited or that "something may turn up." Gulf States Utilities Co. (River Bend Station, Units

1 and 2), LBP-75-10, 1 N.R.C. 246, 248 (1975). If the party opposing the motion fails to make the proper showing, then summary disposition must be granted. 10 C.F.R. § 2.749(b). As the Appeal Board recently emphasized, "summary disposition procedures provide in reality as well as in theory, an efficacious means of avoiding unnecessary and possibly time-consuming hearings on demonstrably insubstantial issues" Houston Lighting & Power Co. (Allens Creek Nuclear Generating Station, Unit 1), ALAB-590, 11 N.R.C. 542, 550 (1980). Similarly, the Commission itself has recently issued its Statement of Policy on Conduct of Licensing Proceedings, CLI-81-8, directing that "the boards should encourage the parties to invoke the summary disposition procedure on issues where there is no genuine issue of material fact so that evidentiary hearing time is not unnecessarily devoted to such issues." 46 Fed. Reg. 28,535 (May 27, 1981).

Applying the foregoing standards to this case, it is clear that Licensee's motion for summary disposition of proposed Contentions 3 through 6--as those contentions relate to the proposed interim operation of Unit 1--should be granted. A statement of the material facts as to which there is no genuine issue to be heard with respect to Contention 3 through 6, as they relate to the requested interim operation, is found in Licensee's accompanying "Statement of Material Facts." Licensee addresses each contention individually below.

Proposed Contention 3

Decade's proposed Contention 3 alleges:

During sleeving, the braze or weld between the upper rim of the sleeve and the inner surface of the original tube will weaken the integrity of the tube even in laboratory conditions, and, in the field, may fatally compromise its integrity. This may lead to a circumferential rupture of the tube under various operating and/or accident conditions.

Decade, as detailed above, has come forward with no substantive facts to support its contention that the joining process will "fatally compromise" the integrity of the tube. In fact, the only basis which Decade had provided for its proposed Contention 3 is a reference to the testimony of Licensee's affiant, Mr. Porter, before the Public Service Commission of Wisconsin. As even Decade concedes, that testimony notes that any reduction in strength in the area of a joint which might result from the application of the joining process would be insignificant, and within applicable safety bounds. See Letter of Decade to Licensing Board, dated September 24, 1981, at 2-3.

The Affidavit of David K. Porter filed in support of this motion for summary disposition explains that the sleeve-to-tube joining process to be used in sleeving is either both a mechanical and proprietary heating process or a mechanical joining process alone; that any weakening of the tube material due to the heating process is insignificant and within the bounds of the safety analyses; and that the combination of sleeve and tube is stronger

than the tube alone. The affidavit also describes the series of differential pressure tests to which each sleeve will be subjected, following the application of the joining process. As the affidavit explains, those tests ensure that the alleged weakening of a tube leading to a circumferential tube rupture will not occur. These facts contradict Decade's unsubstantiated allegation of an unacceptable weakening of the tube as a result of the joining process and that allegation should therefore not be the subject of an unnecessary and time-consuming hearing as the issue relates to the proposed interim operation of Unit 1.

Proposed Contention 4

Decade's proposed Contention 4 alleges:

The annulus between the original tube and the sleeve may give rise to an unexpectedly corrosive environment where the tube is or may be suffering in the future from a through wall crack and secondary water impurities seep into the narrow space.

The Affidavit of David K. Porter filed in support of this motion establishes that the joining process used in sleeving does not introduce any new chemical impurities which could result in "an unexpectedly corrosive environment." If water were to find its way into the annulus between the sleeve and the tube, it would be unlikely to result in an environment which is any more corrosive than the environment which now exists in the annulus between the tubes and the tubesheet. Moreover, as the affidavit points out, the material from which the sleeves are fabricated has been

thermally treated, and has demonstrated a greater corrosion resistance in steam generator environments than the original tube wall material. And, in any event, should corrosion of the sleeve wall occur, such degradation would be detected during the periodic inservice inspection using eddy current techniques, and the sleeved tube would be repaired or plugged as necessary.

Decade has come forward with no substantive facts to support its contention. The only basis cited by Decade for its Contention 4 is a Staff memorandum in the San Onofre docket. The only statement in that memorandum which is remotely related to Contention 4 is the Staff's notation that its meeting with the San Onofre licensee about the San Onofre sleeving program included a discussion of the "effects of stagnation of secondary water between the sleeve and the tube." Decade has provided no indication that sleeving programs at other reactors have actually created the described "unexpectedly corrosive environment," nor has Decade produced evidence that the material of the sleeves will not actually have adequate resistance to whatever environment exists. In fact, Decade has not even provided an indication that, at the end of the meeting memorialized in the memorandum which Decade cites, the Staff considered its questions on the matter to be unresolved. (The Staff subsequently authorized a full-scale sleeving program at San Onofre).

Under these circumstances, Decade's unsubstantiated allegation that sleeving will create "an unexpectedly corrosive

environment" (and the implicit allegation that such an environment, if created, would lead to a leak due to degradation of the sleeve) do not provide any facts as to which there is a genuine issue to be heard, and cannot therefore be the subject of an unnecessary and time-consuming hearing involving those issues as they relate to the proposed interim operation of Unit 1.

Proposed Contention 5

Decade's proposed Contention 5 alleges:

The presence of the sleeve will make the interpretation of eddy current test results extremely difficult and increase the probability that tubes with incipient failures may go undetected and rupture during a loss of coolant accident.

The Affidavit of David K. Porter filed in support of this motion establishes beyond question that the insertion of a sleeve into a tube does not preclude eddy current inspection of the original tube wall. While the presence of the sleeve may hinder obtaining eddy current information about small defects in the sleeved portion of the original tube wall, the sleeve does not prevent detection of significant flaws in the original tube wall. The inspectability of the unsleeved portion of the tube is not affected.

However, as the affidavit points out, regardless of the extent to which flaws in the sleeved portion of the original tube wall can be detected, once the sleeve has been inserted, joined to the original tube wall, and satisfactorily tested, the sleeve wall becomes the primary-to-secondary boundary. The inspectability

of the sleeve wall is at least equivalent to the inspectability of the original unsleeved tube. Thus, the probability of incipient failures remaining undetected and the probability of rupture or collapse of the sleeve wall during accident conditions is no greater than that for the original tube.

Decade has not come forward with any substantive facts to support its contention. Decade's only reference has been the same Staff memorandum which it cited as a basis for its proposed Contention 4. The only reference in the memorandum on the subject is a notation that the Staff discussed the "inspectability of sleeved tubes" at its meeting with the San Onofre licensee. There is no indication that the Staff made an adverse determination on the topic; and, as noted above, the Staff subsequently authorized full scale sleeving at San Onofre. Nor has Decade provided an indication that sleeving at other reactors has actually resulted in difficulties in inspection of the primary-to-secondary boundary at those plants.

Under these circumstances, Decade's unsubstantiated allegations that eddy current testing of the primary-to-secondary boundary will be impaired by sleeving and that the probability of tube failure will be increased clearly provide no facts as to which there is a genuine issue to be heard, and should not therefore be litigated with respect to the proposed interim operation of Unit 1.

Proposed Contention 6

Decade's proposed Contention 6 alleges:

The insertion of a sleeve with a nominal outer diameter of 3/4 inch tube inside the original 7/8 inch tube will reduce the flow of primary core cooling water and the cooling capacity of the core under various accident scenarios to an extent not bounded in previous safety analyses.

The Affidavit of David K. Porter filed in support of this motion directly contradicts Decade's allegation. The bounds of the applicable safety analyses include a minimum thermal design flow of 178,000 gallons per minute. The maximum possible flow reduction resulting from the demonstration program would have an insignificant effect on the flow rate--less than the flow reduction caused by the plugging of a single tube--and would not reduce reactor coolant flow to less than the required thermal design flow. Thus, the sleeving demonstration program would not reduce the margin of safety, as defined in the basis for any of the Technical Specifications, and would not reduce reactor coolant flow or core cooling capacity under various accident scenarios to an extent not bounded in previous safety analyses.

In fact, the demonstration program is likely to increase the reactor coolant flow, because one or more currently plugged tubes may be unplugged and sleeved. In terms of flow restriction, one plugged tube is approximately equivalent to twenty sleeved tubes.

Again, Decade has failed to come forward with any substantive facts to support its contention. The only basis which

Decade has supplied for its Contention 6 is a vague reference to "the San Onofre Licensee's proposed technical specification revisions." Under these circumstances, there is no genuine issue to be heard as to any material fact related to Decade's unsupported allegations, so far as they relate to the proposed interim operation of Unit 1.

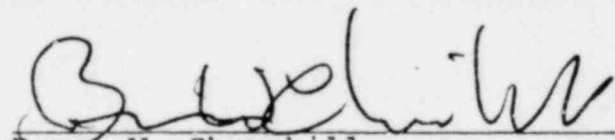
IV. CONCLUSION

For all of the reasons stated above, Licensee requests that its motion for summary disposition of so many of Decade's proposed Contentions 3 - 6, if any, which may be admitted as issues in this proceeding, as those contentions may relate to interim operation of Unit 1 following Licensee's sleeving demonstration program, be granted. Because there are no genuine issues of material fact to be heard in this proceeding with respect to said interim operation, Licensee further requests that its September 28, 1981 motion requesting authorization for said interim operation be summarily granted.

Respectfully submitted,

SHAW, PITTMAN, POTTS & TROWBRIDGE

By



Bruce W. Churchill
Delissa A. Ridgway
Counsel for Licensee

1800 M Street, N.W.
Washington, D.C. 20036
(202) 822-1000

Dated: October 8, 1981