

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) |) | |

LICENSEE'S MOTION FOR RECONSIDERATION OF
"MEMORANDUM AND ORDER CONCERNING THE ADMISSION OF
A PARTY AND ITS CONTENTIONS"

In its October 13, 1981 "Memorandum and Order Concerning The Admission of A Party and Its Contentions," the Board, inter alia, admitted certain contentions proposed by Wisconsin's Environmental Decade, Inc. ("Decade") -- specifically, Contentions 3, 4, 5 and 7 -- and consolidated those contentions by combining them into the following single issue:

Wisconsin Electric Power Company has not demonstrated that Point Beach Nuclear Plant, Units 1 and 2, will operate as safely with its degraded steam generator tubes sleeved as it would if they were required to be plugged.

We are assuming that the issues to be determined in this proceeding are those contentions which are specifically identified by the Board as matters in controversy, within the purview of the single issue articulated by the Board, and that

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the Board's framing of the single issue does not in and of itself broaden the scope of the hearing beyond Intervenor's admitted contentions, 10 C.F.R. §§2.104(c)(3), 2.714(b), 2.760a; 10 C.F.R. Part 2, App. A, §§V(f)(1), VIII(b). We are concerned, however, that the consolidated issue, as framed by the Board, sets out a standard which is inconsistent with the ultimate findings to be made by the Director of Nuclear Reactor Regulation for issuance of the license amendment.

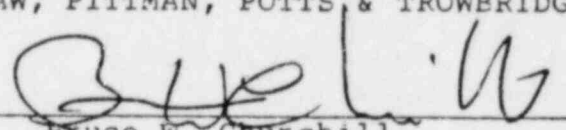
Operation with tubes which are plugged, and therefore taken out of service, cannot meaningfully be compared to operation with tubes which are sleeved so that they may remain in service. This is analagous, for example, to determining whether a plant which is operating is as safe as a plant which is not operating. In any event, the standard stated by the Board conflicts with that set out by the Commission. Commission regulations require, in relevant part, that Licensee demonstrate that there is reasonable assurance that operation of Point Beach with sleeved tubes "can be conducted without endangering the health and safety of the public" and "will be conducted in compliance with the Commission's regulations." See 10 C.F.R. §§ 50.57(a)(3), 50.91. See also 10 C.F.R. Part 2, §VIII(b)(3). Thus, Licensee's responsibility is to demonstrate that operation of Point Beach with sleeved tubes will be safe (i.e., that it meets applicable safety standards), not that Point Beach will operate "as safely" with its steam generator tubes sleeved as it would if they were required to be plugged.

Licensee therefore requests the Board to reconsider its decision to consolidate Decade's contentions into a single issue.

Respectfully submitted,

SHAW, PITTMAN, POTTS & TROWBRIDGE

By



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Dated: October 19, 1981

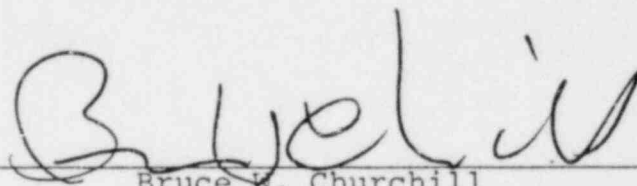
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CERTIFICATE OF SERVICE

This is to certify that copies of the foregoing "Licensee's Motion For Reconsideration of 'Memorandum and Order Concerning The Admission of A Party and Its Contentions'" were this day served, by deposit in the U.S. Mail, first class, postage prepaid, to all those on the attached service list, except that those whose names are marked by asterisks were served by hand, this 19th day of October, 1981.



Bruce W. Churchill

Dated: October 19, 1981

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