

UNITED STATES OF AMERICA
 NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)	
)	
WISCONSIN ELECTRIC POWER COMPANY)	Docket No. 50-266
)	50-301
(Point Beach Nuclear Plant,)	(Repair to Steam Generator Tubes)
Units 1 & 2))	

NRC STAFF ANSWER IN SUPPORT OF
 LICENSEE'S MOTION FOR SUMMARY DISPOSITION

I. INTRODUCTION

On October 8, 1981, Wisconsin Electric Power Company (Licensee) filed "Licensee's Motion for Summary Disposition of Decade Contentions 3-6 as Related to Interim Operation of Unit 1" (hereafter "Motion"). In its Motion, Licensee moves the Atomic Safety and Licensing Board pursuant to 10 C.F.R. § 2.749 for summary disposition in Licensee's favor of proposed Contentions 3 through 6 of Wisconsin's Environmental Decade (hereafter "Decade"). In its "Memorandum and Order Concerning the Admission of a Party and its Contentions" dated October 13, 1981, the Board admitted Decade as a party intervenor to this proceeding, and also admitted Decade's Contentions 3,4,5 and 7 to be tried within the scope of the single issue formulated by the Board.^{1/}

^{1/} Memorandum and Order Concerning the Admission of a Party and its Contentions (October 13, 1981) at 6. Subsequently, the Board modified the formulation of the single issue to read:

Wisconsin Electric Power Company has not demonstrated that its sleeving program for the Point Beach Nuclear Plant Units 1 and 2 can be conducted without endangering the health and safety of the public, and will be conducted in compliance with the Commission's regulations.

Tr. at 164-166.

It is important to note that Licensee's Motion and its supporting Brief^{2/} and this Answer are limited to Licensee's request for authorization to allow Point Beach Nuclear Plant, Unit 1 to resume operation with up to six steam generator tubes which exceed the plugging limit sleeved rather than plugged as part of its sleeving demonstration program. The Staff's review to date has also been limited to the demonstration program, and at this time the Staff expresses no views as to the full scale sleeving proposal which is the subject of the amendment to the operating licenses of both units of the Point Beach Nuclear Plant.

In support of its Motion, Licensee attaches "Brief in Support Of Licensee's Motion For Summary Disposition Of Decade Contentions 3-6 As Related To Interim Operation Of Unit 1," "Licensee's Statement Of Material Facts As To Which There Is No Genuine Issue To Be Heard With Respect To Decade Contentions 3-6 As Related To Interim Operation Of Unit 1," and "Affidavit Of David K. Porter."

The Staff believes that the attached affidavits,^{3/} together with Licensee's Motion and supporting documents, demonstrates the absence of any genuine issue of material fact with regard to Contentions 3,4 and 5, and that there is not a sufficient factual basis for Decade's contentions. Accordingly, the Board should dismiss these contentions.

^{2/} "Brief In Support OF LICENSEE'S MOTION FOR SUMMARY DISPOSITION OF DECADE CONTENTIONS 3-6 AS RELATED TO INTERIM OPERATION OF UNIT 1" (October 8, 1981) at 1,2 fn. 2.

^{3/} Affidavit of Emmett L. Murphy, (Attachment 1). Affidavit of Bernard Turovlin (Attachment 2).

Section II of this pleading discusses generally the law applicable to motions for summary disposition. Section III of this pleading sets forth the Staff's reasons for concluding that there are no material issues of fact raised by Decade's contentions.

II. GENERAL POINTS OF LAW

Pursuant to 10 C.F.R. § 2.749 of the Commission's Rules of Practice, summary disposition is available to a party in NRC proceedings as to all or any part of the matters involved in the proceeding, as follows:

(d) The presiding officer shall render the decision sought if the filings in the proceeding, depositions, answers to interrogatories, and admissions on file, together with the statements of the parties and the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a decision as a matter of law

The Commission's summary disposition rule is analogous to Rule 56 of the Federal Rules of Civil Procedure, governing motions for summary judgment, and Federal court decisions interpreting Rule 56 may be relied upon in NRC proceedings for the interpretation of 10 C.F.R. § 2.749. See, e.g., Alabama Power Co. (Joseph M. Farley Nuclear Plant, Units 1 and 2) ALAB-182, 7 AEC 210, 217 (1974).

Under both Rule 56 and 10 C.F.R. § 2.749, the party seeking summary judgment has been held to have the burden of proof, viz., the burden of demonstrating the absence of a genuine issue as to any material fact. Cleveland Electric Illuminating Co. (Perry Nuclear Power Plant, Units 1 and 2), ALAB-443, 6 NRC 741, 753 (1977), citing Adickes v. Kress & Co., 398 U.S. 144, 157 (1970). The proponent of the motion for summary disposition must meet its burden of proof even if the party opposing the motion fails to present evidentiary material to the contrary. Perry,

supra, 6 NRC at 754. On the other hand, where a properly supported motion for summary disposition has been made, a party opposing the motion may not rest upon the mere allegations of its contention or answer. 10 C.F.R. § 2.749(b); Virginia Electric and Power Co. (North Anna Nuclear Power Station, Units 1 and 2), ALAB-584, 11 NRC 451, 453 (1980). Rather, pursuant to 10 C.F.R. § 2.749(b), the party opposing summary disposition must present specific material facts showing there is no genuine issue to be heard:

(b) ... When a motion for summary decision is made and supported..., a party opposing the motion may not rest upon the mere allegations or denials of his answer; his answer ... must set forth specific facts showing that there is a genuine issue of fact. If no such answer is filed, the decision sought, if appropriate, shall be rendered.

Finally, in this regard, all material facts set forth in the statement filed by the moving party in support of its motion for summary disposition "will be deemed to be admitted unless controverted by the statement required to be served by the opposing party." 10 C.F.R. § 2.749(a).

In a recent Statement of Policy, the Commission underlined the availability of summary disposition in appropriate cases, as a means of expediting the hearing process. In Statement of Policy on Conduct of Licensing Proceedings, 46 Fed. Reg. 28,533 (May 27, 1981), the Commission stated as follows:

In exercising its authority to regulate the course of a hearing, 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. at 28,535. As was stated previously by the Appeal Board, the summary disposition rule provides "an efficacious means of avoiding

unnecessary and possibly time consuming hearings on demonstrably insubstantial issues." Houston Lighting and Power Co. (Allens Creek Nuclear Generating Station, Unit 1), ALAB-590, 11 NRC 542, 550 (1980). As the Appeal Board noted recently, a hearing on each issue raised "is not inevitable," but "wholly depends upon the ability of the intervenors to demonstrate the existence of a genuine issue of material fact...." Philadelphia Electric Co. (Peach Bottom Atomic Power Station, Units 2 and 3), ALAB-654, 14 NRC ____ (Sept. 11, 1981) (slip op., at 4). A party cannot avoid summary disposition "'on the mere hope that at trial he will be able to discredit movant's evidence,'" nor may a party "'go to trial on the vague supposition that something may turn up.'" Gulf States Utilities Co. (River Bend Station, Units 1 and 2), LBP-75-10, 1 NRC 246, 248 (1975), quoting 6 Moore's Federal Practice § 56.15[3] and [4].

III. STAFF'S ARGUMENT

The Staff has reviewed Licensee's Motion and supporting documents. Our review indicates Licensee's Motion should be granted and the Staff has set forth below its bases for supporting the motion.

Contention 3

Decade's Contention 3 states:

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.

The Staff believes that there is no genuine issue as to any material fact raised by Decade's Contention 3 and supports Licensee's position that summary disposition on this contention should be granted.

The Staff has reviewed the results of tests performed by Westinghouse and submitted by the Licensee in support of its sleeving demonstration program. The Staff has concluded that while laboratory testing has shown a reduction in the ultimate and yield strengths of the sleeve and tube material in the zone local to where the sleeve wall is sealed to the tube wall, the overall strength of the joint meets or exceeds the design minimum strength in the ASME Code. Reasonable assurance against a structural failure, including circumferential rupture of the joint during the interim period of the demonstration sleeving program is provided by mechanical tests completed for San Onofre and the confirmatory testing which has been completed to date for the actual Point Beach joint configuration. (Affidavit of Emmett L. Murphy at paragraphs 3 and 5).

In addition, the Staff has considered the potential for corrosion, and found that there is no plausible corrosion mechanism caused by the heat treatment process that would lead to a circumferential rupture of the tube during normal operation or accident conditions. (Affidavit of Bernard Turovlin at paragraph 5).

Contention 4

Decade's Contention 4 states:

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 Staff believes that there is no genuine issue as to any material fact raised by Decade's Contention 4 and supports Licensee's position that summary disposition on this contention should be granted.

The Staff has reviewed the laboratory results submitted in support of the San Onofre sleeving program and the laboratory program and data available in support of the Licensee's program. The Staff finds that the test results supporting the San Onofre program are directly applicable to the Point Beach sleeving program. Based on its review, the Staff has concluded that if secondary water were to enter between the sleeve and the tube, the materials used in the heat treatment joining process will not lead to a more corrosive environment than the strong caustic already present in the tube/tube sheet crevices.

(Affidavit of Bernard Turovlin at paragraphs 3 and 6).

Contention 5

Decade's Contention 5 states:

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 Staff believes that there is no genuine issue as to any material fact raised by Decade's Contention 3 and supports Licensee's position that summary disposition on this contention should be granted.

The Staff has reviewed the tests performed by Westinghouse and submitted by the Licensee in support of its sleeving program. The eddy current inspectability of the sleeve walls between upper and lower joints will be comparable to that for an unsleeved tube. While geometric discontinuities at the sleeve joints will produce signal interference, the use of non-standard eddy current probe types and multi-frequency techniques should permit adequate inspections of these areas. Even if defects should go undetected and leak, restrictive

limits on allowable primary to secondary leakage which currently exist in the plant's operating license provide assurance that the plant will be shut down in a timely manner for appropriate corrective action. (Affidavit of Emmett L. Murphy at paragraph 6).

IV. CONCLUSION

For the reasons set forth above, the Staff believes that Licensee's Motion for Summary Disposition of Contentions 3, 4 and 5 should be granted.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read 'R. G. Bachmann', with a long horizontal flourish extending to the right.

Richard G. Bachmann
Counsel for NRC Staff

Dated at Bethesda, Maryland
this 26th day of October, 1981.