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February 2, 1982

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 TO FURTHER COMPEL
DECADE'S RESPONSES TO INTERROGATORIES

I. Introduction

"Licensee's First Set of Interrogatories and Request For Production of Documents To Intervenor Decade Relative To Full Scale Sleeving Program" were filed on November 10, 1981. Through those interrogatories and document requests, Licensee sought specific information related to the issues raised by Decade in its Contentions 3, 4, 5 and 7, as well as to any other issues timely raised by Decade, as those issues relate to Licensee's July 2, 1981 operating license amendment request. Most of the interrogatories were carefully framed to elicit the bases for the specific assertions of Decade's contentions.

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"Licensee's Second Set of Interrogatories and Request For Production of Documents To Intervenor Decade Relative To Full Scale Sleeving Program" were filed on Decade on November 20, 1981. Those interrogatories were designed to identify and elicit the bases for any and all issues which Decade proposes for litigation, beyond the issues raised in its Contentions 3, 4, 5 and 7.

"Decade's Answer To Licensee's First Set of Interrogatories Relative To Full Scale Sleeving" was filed on November 25, 1981, and "Decade's Answer To Licensee's Second Set of Interrogatories Relative To Full Scale Sleeving" was filed on December 8, 1981. "Licensee's Motion For Dismissal of Intervenor Wisconsin Environmental Decade, Inc." was filed on December 9, 1981, and amended on December 11, 1981.¹ The grounds for that motion, as amended, included Decade's filing of discovery responses so devoid of substance as to be tantamount to a willful and wholesale failure to respond to Licensee's interrogatories. Decade responded to Licensee's motion to dismiss, as amended, in a two page letter to the Board dated December 22, 1981. The "NRC Staff Answer To Licensee's Motion For Dismissal of Intervenor" was filed December 30, 1981, supporting Licensee's position that Decade's responses to Licensee's interrogatories were insufficient, but

¹ Licensee's motion for the dismissal of Decade was fashioned, in the alternative, as a motion to compel full responses to Licensee's interrogatories.

counseling the Board that "the better practice" would be to compel Decade's responses before imposing a sanction of dismissal.

The Board convened a telephone conference call on January 11, 1982 to hear argument on Licensee's motion. Though the Board declined to dismiss Decade at that juncture, it found that Decade's discovery responses were "incomplete," and ordered that, by January 18, 1982, "Decade answer the outstanding interrogatories in good faith pursuant to the standards * * * [set out by the Board]. The purpose will be to inform the propounders of the interrogatories fully of whatever bases Decade now has that it considers important and that it plans to rely on at a hearing that might be held in this case." Tr. 889.

Over the objection of counsel for Licensee (Tr. 895-99), the Board ruled that Decade need not respond separately to Licensee's interrogatories, but rather could indicate in parentheses next to Decade's answers to the Staff's interrogatories the appropriate citations to Licensee's interrogatories. Tr. 897, 899. However, the Board admonished Decade that if its answers to the Staff's interrogatories "do not fully answer in good faith the interrogatories that were submitted by the Applicant, then there could be negative inferences drawn and [Decade] might thereby lose the right to litigate certain issues at a hearing." Tr. 899.

On January 18, 1982, by letter to counsel for the NRC Staff, Decade responded to the Board's January 11, 1982 order

compelling its further responses to the interrogatories of the Staff and Licensee. That filing does not even purport to respond to 25 of the 32 interrogatories which were the subject of Licensee's initial motion for dismissal of Decade, and makes no reference whatsoever to any of the interrogatories which were the subject of Licensee's amended motion (though Licensee's independent comparison of Decade's January 18 filing with Licensee's amended motion indicated that apparently some of Licensee's latter interrogatories were answered).²

Further, Decade apparently continues to refuse to include in its interrogatory responses reference to any documents or information already of record in this proceeding or in three specified PSCW proceedings. Similarly, Decade has apparently confined its further responses to Licensee's interrogatories to a "re-review of [its] files," and has not provided any knowledge it may have which is not recorded in its files but

2 In other words, Decade's January 18 filing raises issues beyond its Contentions 3, 4, 5 and 7 (issues which would, by definition, be the subject of Licensee's second set of interrogatories), though Decade does not even refer to Licensee's second set of interrogatories in its filing. Licensee notes that the Board has already rejected issues (1) and (2) as separate issues for hearing. See "Memorandum and Order Concerning The Admission of A Party and Its Contentions" (10/13/81)("October 13 Order"), at 7. Further, the Board has twice rejected issue (6), has previously rejected issue (9), and has already ruled that Decade failed to timely raise issue (8). See, respectively, October 13 Order, at 6, and Tr. 733-34; "Memorandum and Order Authorizing Issuance of A License Amendment Permitting Return To Power With Up To Six Degraded Tubes Sleeved Rather Than Plugged" (November 5, 1981)("November 5 Order"), at 12; and November 5 Order, at 12.

which is nonetheless responsive to Licensee's interrogatories. Finally, Decade's passing reference to provision of information "not privileged" suggests that Decade has additional information which is responsive to unspecified interrogatories, but which Decade has failed to even identify to enable the Board and the other parties to independently evaluate any claim of privilege.

The gross infirmities of Decade's January 18 filing render it virtually meaningless. The broad reservations attached to Decade's answers contravene both the letter and the spirit of the Board's January 11 order compelling Decade's response, and flaunt the Board's admonition to Decade that a failure to answer Licensee's interrogatories "in good faith" could result in the loss of "the right to litigate certain issues at a hearing." Tr. 899. Because of the evasiveness of Decade's response to the interrogatories resulting from its broad qualifications and reservations, Licensee cannot determine whether or not Decade has additional knowledge or information responsive to Licensee's interrogatories. Accordingly, Licensee moves that the Board order Decade to respond expeditiously, separately, and fully to each of the interrogatories which was the subject of Licensee's motion and amended motion to dismiss Decade.

II. Discussion

Decade's January 18, 1982 filing references only Interrogatories 3-1, 3-3, 3-6, 3-8, 4-1, 5-1 and 7-1 of Licensee's first set of interrogatories. Decade does not even purport to respond to Interrogatories 3-2, 3-4, 3-5, 3-10, 3-11, 3-12, 3-13, 3-15, 4-2, 4-3, 4-6, 4-7, 4-8, 4-10, 5-3, 5-4, 5-5, 5-6, 5-8, 5-9, 7-3, 7-4, 7-5, 7-6 and 7-8, which were also the subject of Licensee's initial motion for the dismissal of Decade. Thus, Decade's January 18 filing does not even purport to respond to 25 of the 32 of Licensee's initial interrogatories which the Board ordered Decade to answer. Similarly, Decade's January 18 filing makes no reference whatsoever to any of the interrogatories which were the subject of Licensee's amended motion.³

The Board ruled that Decade should identify any of Licensee's interrogatories which it was not answering, Tr. 897, and cautioned Decade that a failure to respond to an interrogatory would constitute an admission that Decade had no information responsive to that interrogatory. Tr. 896-97, 899. However, the broad reservations and conditions attached to Decade's January 18 filing preclude drawing such an inference from Decade's failure to respond, and evidence nothing more than Decade's evasiveness and lack of good faith.

³ Licensee's independent comparison of Decade's January 18 filing with Licensee's amended motion indicates that apparently some of Licensee's latter interrogatories were answered.

For example, at page 3 of its January 18 filing, Decade refuses to "commit [itself] to provide * * * identification * * * of documents from this record which [Decade] may rely upon in the hearings." In the next paragraph, Decade notes:

The re-review of our files, apart from those matters already a part of this record and of the record in PSCW Docket 6630-ER-20, 6630-UI-2 and 6630-ER-10, does not disclose any further material responsive to the Licensee's interrogatories.

Thus, Decade apparently continues to refuse to include in its responses reference to any documents or information of record in this proceeding or in the three specified PSCW proceedings. The Board's order carved out no such exception for docketed materials. Though Decade was not required at this time to comprehensively index its files (Tr. 872), the Board ordered Decade to answer with all information it now has which is responsive to the interrogatories (Tr. 870-72, 889), without reference to whether or not it is "on the record." Tr. 868-72.⁴ Therefore, to the extent that Decade has refused to include in its answers references to information which is on the record in this proceeding or in the specified PSCW proceedings, Decade is in default of the Board's January 11 order.

Further, Decade apparently limited its efforts to further respond to Licensee's interrogatories to a "re-review of [its]

⁴ The parties agreed that excerpts from the record need not be recopied, but could simply be referenced, as long as the references "clearly indicate [the] existing portions of the record [Decade is] relying on." Tr. 872.

files." Again, though the Board did rule that Decade was required to re-review its files, it by no means ruled that such a re-review would, in and of itself, satisfy the Board's order that Decade "fully answer in good faith" Licensee's interrogatories. Tr. 899. By so limiting its further responses, Decade has apparently excluded from its answers any knowledge it has which is not recorded in its files, but which is otherwise responsive to Licensee's interrogatories. This limitation imposed by Decade is particularly egregious with respect to certain of Licensee's interrogatories which, almost by their nature, would be most naturally responded to from Decade's knowledge of the meaning of its contentions (as opposed to responses by reference to documents). See, e.g., Interrogatories 3-2, 3-4, 4-2, 4-7, 7-3, 7-4 and 7-5. Therefore, to the extent that Decade has failed to include in its answers references to knowledge it has which is not recorded but which is otherwise responsive to Licensee's interrogatories, Decade is in default of the Board's January 11 order.

Finally, also on page 3 of its January 18 filing, Decade makes a broad reference, in passing, to the provision of information "not privileged." As Licensee noted at pages 9 and 10 of its original motion (briefing Decade's generalized assertion of privilege in its "Qualification" to its original responses), a party asserting a privilege has the burden of establishing the existence of the privilege to protect specific

information responsive to a posed interrogatory. Through specification of the nature and source of the privilege, the party asserting the privilege must -- by its objection -- give the interrogator sufficient information to enable the interrogator to independently evaluate the claim of privilege in determining whether to challenge it. In the instant case, Licensee still cannot even determine specifically those interrogatories as to which Decade is asserting a privilege. By its failure to timely and properly assert a claim of privilege, Decade waived any privilege it may have had. Its continued, bare recitation of "privilege" flies in the face of the Board's admonition to answer Licensee's interrogatories fully and in good faith. To the extent that Decade now has any further information of any type whatsoever which is responsive to Licensee's interrogatories but which it is withholding as "privileged," Decade is in default of the Board's January 11 order.

Decade's responses to Interrogatories 3-1, 3-2, 3-3, 3-4, 3-5, 3-6, 3-8, 3-10, 3-11, 3-12, 3-13, 3-15, 4-1, 4-2, 4-3, 4-6, 4-7, 4-8, 4-10, 5-1, 5-3, 5-4, 5-5, 5-6, 5-8, 5-9, 7-1, 7-3, 7-4, 7-5, 7-6 and 7-8 of Licensee's first set of interrogatories, and Decade's responses to Interrogatories 2, 3 and 5 of Licensee's second set of interrogatories are thus insufficient, for these reasons and for the reasons stated below.

Contention 3

Decade 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.

Interrogatory 3-1

3-1. State in detail the factual bases for the allegation that the proprietary heating process will weaken the integrity of the original tube in laboratory conditions.

Decade's Response

3-1. See Qualification.

Licensee's 12/9/81 Argument

Decade's response to Interrogatory 3-1, which simply refers to the broad "Qualification" to its responses generally, is a refusal to state the factual bases for its allegation, and is insufficient for the reasons set forth in the general discussion of such responses, above.

In its latest responses to Licensee's interrogatories, Decade provides as its answer to Interrogatory 3-1: "See Re Wisconsin Electric Power Company, PSCW Docket 6630-ER-20, at Transcript 769-770." This is the same reference which Decade supplied in its September 24, 1981 letter to the Board, in response to the Board's directive that Decade file the bases for its contentions. As discussed above, Decade has still failed to indicate any additional bases "already a part of this record and[/or] of the record in PSCW Docket[s] 6630-ER-20,

6630-UI-2 and 6630-ER-10." Nor has Decade indicated any bases of which it has knowledge, but which may not be recorded. Similarly, the nature of Decade's response makes it impossible for Licensee to know whether Decade is asserting a claim of privilege with respect to this interrogatory and, if so, what the nature of that privilege is.

Interrogatory 3-2

3-2. Identify with specificity the precise area in which, and quantify the extent to which, you contend the original tube will be weakened in the laboratory as a result of the proprietary heating process.

Decade's Response

3-2. The area in which we contend that the original tube may be weakened in the laboratory is at the point at which the original tube is bonded to the sleeve.

Licensee's 12/9/81 Argument

Though Decade's response to Interrogatory 3-2 does identify the area of the tube which Decade contends may be weakened in the laboratory as a result of the proprietary heating process, Decade completely failed to either answer or object to that portion of Interrogatory 3-2 which asks Decade to quantify the extent to which the tube may be weakened.

Decade has not purported to answer Interrogatory 3-2 in its latest responses. The portion of the interrogatory at issue asks only that Decade quantify the extent to which the tube may be weakened in the laboratory by the proprietary heating process. Thus, the information sought is an elaboration of Decade's contention -- which Decade should be able to supply from its knowledge. Decade's failure to answer is particularly rendered meaningless by its refusal to include, in

its responses to interrogatories, any information "already a part of this record and[/or] of the record in [specified] PSCW docket[s]", by its refusal to state whether it has knowledge not documented, and by its general reference to privilege.

Interrogatory 3-3

3-3. State in detail the factual bases for the allegation that the proprietary heating process will weaken the integrity of the original tube in the field.

Decade's Response

3-3. See Qualification.

Licensee's 12/9/81 Argument

Decade's response to Interrogatory 3-3, which simply refers to the broad "Qualification" to its responses, is a refusal to provide the bases for its allegation, and is insufficient for the reasons set forth in the general discussion of such responses, above.

In its latest responses to Licensee's interrogatories, Decade provides as its answer to Interrogatory 3-3: "See Re Wisconsin Electric Power Company, PSCW Docket 6630-ER-20, at Transcript 769-770." As noted earlier, this is the same reference which Decade supplied as its initial bases for its Contention 3. Decade still refuses to list any additional bases "already a part of this record and[/or] of the record in [specified] PSCW Docket[s]." Similarly, Decade has failed to indicate any bases of which it has knowledge, but which may not be recorded. Further, the nature of Decade's response makes it impossible for Licensee to tell whether Decade is asserting a claim of privilege with respect to this interrogatory, if so, the nature of the privilege claimed.

Interrogatory 3-4

3-4. Identify with specificity the precise area in which, and quantify the extent to which, you contend the original tube will be weakened in the field as a result of the proprietary heating process.

Decade's Response

3-4. The area in which we contend the original tube may be weakened in the field is at a point at which the original tube is bonded to the sleeve, and in the surrounding area of that bond where the bonding process may affect. See, also, Qualification.

Licensee's 12/9/81 Argument

Though Decade's response to Interrogatory 3-4 does identify the area of the tube which Decade contends may be weakened in the field as a result of the proprietary heating process, Decade completely failed to either answer or object to that portion of Interrogatory 3-4 which asks Decade to quantify the extent to which the tube may be weakened. Further, Decade's reference to the broad "Qualification" to its responses is insufficient for the reasons set forth in the general discussion of such responses, above.

Interrogatory 3-4 asks that Decade quantify the extent to which the tube will be weakened by the proprietary heating process in the field (in contrast to Interrogatory 3-2, which asked for a quantification as to alleged weakening in the laboratory). As in the case of Interrogatory 3-2, Decade has not even purported to answer Interrogatory 3-4 in its latest responses. Thus, for the reasons stated in the discussion of Interrogatory 3-2, supra, Decade should be compelled to respond fully to Interrogatory 3-4.

Interrogatory 3-5

3-5. Do you contend that weakening of the original tube in the field as a result of the proprietary heating process will exceed weakening experienced in the laboratory? If so, state in detail the factual bases for that position.

Decade's Response

3-5. Yes. See Qualification.

Licensee's 12/9/81 Argument

Decade's response to Interrogatory 3-5, which simply refers to the broad "Qualification" to its responses, is a refusal to state the factual bases for its position, and is insufficient for the reasons set forth in the general discussion of such responses, above.

Decade has not purported to answer this interrogatory in its latest responses. This failure could effectively constitute an admission that Decade has no bases for its contention that the alleged weakening of the tube in the field will exceed the alleged weakening in the laboratory. See Tr. 896-97 (Bloch, Churchill discussion re: construction of failure to answer as admission that intervenor has no answer). However, Decade's express refusal to include in its answers any information "already a part of this record" or the specified PSCW records undermines such an interpretation of Decade's failure to respond. Similarly, Decade is silent as to whether it has any knowledge (not recorded) on which it bases its position. Finally, the vague nature of Decade's response makes it impossible for Licensee to discern whether a privilege is being asserted with respect to this interrogatory and, if so, the nature of the privilege claimed.

Interrogatory 3-6

3-6. State in detail the factual bases for the allegation that the proprietary heating process may "fatally compromise" the integrity of the original tube, in the field.

Decade's Response

3-6. See Qualification.

Licensee's 12/9/81 Argument

Decade's response to Interrogatory 3-6, which simply refers to the broad "Qualification" to its responses, is a refusal to state the factual bases for its allegation, and is insufficient for the reasons set forth in the general discussion of such responses, above.

In its latest responses to Licensee's interrogatories, Decade provides as its answer to Interrogatory 3-6: "See Re Wisconsin Electric Power Company, PSCW Docket 6630-ER-20, at Transcript 769-770." As noted above, this is the same reference which Decade provided on September 24, 1981 as its initial bases for Contention 3. Decade still refuses to list any additional bases which are already a part of this record or the PSCW records, and has failed to indicate any bases of which it has knowledge (but which may not be recorded). Similarly, Decade's passing reference to provision of information "not privileged" suggests that Decade may have information which is responsive but which it is not supplying because it claims a privilege; however, Licensee is unable to ascertain whether Decade is asserting a claim of privilege with respect to this interrogatory and, if so, the nature of that privilege.

Interrogatory 3-8

3-8. State in detail the factual bases for the allegation that the proprietary heating process "may lead to a circumferential rupture" of the original tube during "various operating and/or accident conditions."

Decade's Response

3-8. See Qualification.

Licensee's 12/9/81 Argument

Decade's response to Interrogatory 3-8, which simply refers to the broad "Qualification" to its responses, is a refusal to provide the factual bases for its allegation, and is insufficient for the reasons set forth in the general discussion of such responses, above.

In its latest responses to Licensee's interrogatories, Decade provides as its answer to Interrogatory 3-8, "See Re Wisconsin Electric Power Company, PSCW Docket 6630-ER-20, at Transcript 769-770," which is the citation Decade provided as its initial bases for its Contention 3. Decade continues to refuse to identify any bases already a part of this record or of the records in three specified PSCW proceedings. Nor has Decade indicated any bases of it which it has knowledge, but which may not be recorded. Similarly, the nature of Decade's response makes it impossible for Licensee to ascertain whether Decade is asserting a claim of privilege with respect to this interrogatory and, if so, the nature of the privilege claimed.

Interrogatory 3-10

3-10. Identify and quantify the types of forces and stresses to be experienced by the sleeved tubes in each of the "various operating and/or accident conditions" specified in response to Interrogatory 3-9, and explain how those forces and stresses will cause a "circumferential rupture."

Decade's Response

3-10. The forces at work during the conditions described in paragraph 3-9 are the primary to secondary pressure differentials arising from each of those conditions.

Licensee's 12/9/81 Argument

Decade's answer to Interrogatory 3-10 is wholly unresponsive. Decade simply states the obvious, i.e., that tubes are subject to a primary-to-secondary pressure differential. However, Decade neither identified nor quantified the specific types of forces and stresses which Decade contends that sleeved tubes will experience. Similarly, Decade completely failed to answer or object to that portion of Interrogatory 3-10 which asks that Decade explain how Decade contends the specified forces and stresses will cause a "circumferential rupture."

Decade has not purported to answer Interrogatory 3-10 in its latest responses. This failure could effectively constitute an admission that Decade has no idea whatsoever of the types and extents of forces which it contends sleeved tubes will experience and, further, that it has no idea whatsoever how these forces and stresses will cause the alleged "circumferential rupture." See Tr. 896-97. However, Decade's continued refusal to include in its answers any information which is a part of the record in this case or in the specified PSCW proceedings undermines such an interpretation of Decade's failure to respond. Similarly, Decade is silent as to whether it has any knowledge (not recorded) responsive to this interrogatory. Finally, Licensee is unable to determine -- due to the nature of Decade's response -- whether Decade is asserting a claim of privilege with respect to this interrogatory and, if so, the nature of the privilege.

Interrogatory 3-11

3-11. Do you contend that the sleeve/tube combination (the new primary/secondary pressure boundary) will not meet all applicable criteria of the ASME Code? If so, state in detail the factual bases for that position, including a specific identification of each criterion which allegedly will not be

met. If not, explain in detail what you consider to be the practical safety significance of any weakening of the original tube alone.

Decade's Response

3-11. Yes, insofar as field installation is concerned. See Qualification.

Licensee's 12/9/81 Argument

Decade's reference to the broad "Qualification" to its responses is simply a refusal to answer those parts of Interrogatory 3-11 which ask Decade to state the factual bases for its position that the sleeve/tube combination will not meet all applicable code criteria and to identify the specific criteria which it alleges will not be met, and is grossly insufficient for the reasons set forth in the general discussion of such responses, above. If Decade has no factual bases for its position and has no idea whether or not the applicable criteria are met, Decade must so state.

Decade has not purported to answer Interrogatory 3-11 in its latest responses. As noted in Licensee's December 9 argument on this interrogatory (set out above), if Decade has no factual bases for its assertion that the sleeve/tube combination will not meet all applicable criteria of the ASME Code, and cannot identify the specific criteria which allegedly will not be met, Decade must so state. Its failure to answer Interrogatory 3-11 -- which might otherwise be construed as an admission that it cannot support the subject allegations (See Tr. 896-97) -- is rendered meaningless by its blanket refusal to provide in its responses any information already of record in this proceeding or in specified PSCW proceedings, by its silence as to whether it has any knowledge (not recorded) which is responsive to the interrogatories, and by its broad reference to privilege.

Interrogatory 3-12

3-12. Do you contend that the sleeve/tube combination will be weaker than the original tube? If so, state in detail the factual bases for that position. If not, explain in detail what you consider to be the practical safety significance of any weakening of the original tube alone.

Decade's Response

3-12. Yes, insofar as field installation is concerned. See Qualification.

Licensee's 12/9/81 Argument

Decade's reference to the broad "Qualification" to its responses is a refusal to answer those parts of Interrogatory 3-12 which ask Decade to state the factual bases for its position that the sleeve/tube combination will be weaker than the original tube, and is grossly insufficient for the reasons set forth in the general discussion of such responses, above.

Decade has not purported to answer Interrogatory 3-12 in its latest responses. Decade's failure to answer could be construed as an admission that it cannot support its allegation that the sleeve/tube combination will be weaker than the original tube. See Tr. 896-97. However, such an interpretation of Decade's failure is undermined by its blanket refusal to provide in its responses any information already of record in this proceeding or in specified PSCW proceedings, by its silence as to whether it has any knowledge (not recorded) which is responsive to the interrogatories, and by its generalized invocation of privilege.

Interrogatory 3-13

3-13. For each response to Interrogatories 3-1 through 3-6, 3-8, 3-10, 3-11, and 3-12:

(a) Identify all documents, including all relevant page citations, on which you rely to support each of your claims;

(b) State the name, present or last known address, and present or last known employer of each person known to you to have first-hand knowledge of the factual bases for each of your claims; and

(c) State the name of each person you intend to call as a witness to support each claim.

Decade's Response

3-13. (a) See Qualification.

(b) See Qualification.

(c) At this time, we do not have the name of any person whom we intend to call as a witness.

Licensee's 12/9/81 Argument

Decade's reference to the broad "Qualification" to its responses is a refusal to answer to Interrogatories 3-13(a) and 3-13(b) -- which ask Decade to identify, with respect to each of several specified interrogatories, those documents on which it relies to support its claims, and those persons known to it to have knowledge of the factual bases for the specified claims -- and is insufficient for the reasons set forth in the general discussion of such responses, above. Such discovery requests are clearly proper. See 10 C.F.R. § 2.740(b)(1).

Decade has not purported to answer Interrogatory 3-13 in its latest responses. Decade's failure to respond could be construed as an admission that it has no documents to support its claims and, further, knows of no persons who have knowledge of the factual bases for its claims. See Tr. 896-97. However, such an interpretation of its failure to respond is undercut by its express refusal to include in its responses any reference to information of record in this proceeding or the specified PSCW proceedings, by its silence as to whether it has any knowledge (not recorded) which is responsive to the interrogatories, and by its passing invocation of privilege.

Interrogatory 3-15

3-15. Identify all documents in your possession, custody or control (including all relevant page citations) pertaining to the subject matter of Contention 3.

Decade's Response

3-15. See Qualification.

Licensee's 12/9/81 Argument

Decade's response to Interrogatory 3-15, which simply refers to the broad "Qualification" to its responses, is a refusal to identify the requested documents, and is insufficient for the reasons set forth in the general discussion of such responses, above.

Decade has not purported to answer Interrogatory 3-15 in its latest responses. Though Decade's failure to respond could be construed as an admission that it has no documents pertaining to Contention 3, see Tr. 896-97, such an interpretation is undermined by its express broad refusal to include in its responses any reference to the record in this proceeding or the specified PSCW proceedings, and by its generalized reference to privilege.

Contention 4

Decade 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.

Interrogatory 4-1

4-1. State in detail the factual bases for the allegation that the sleeving process will give rise to an "unexpectedly corrosive environment."

Decade's Response

4-1. See Qualification.

Licensee's 12/9/81 Argument

Decade's response to Interrogatory 4-1, which simply refers to the broad "Qualification" to its responses, is a refusal to state the factual bases for its allegations, and is insufficient for the reasons set forth in the general discussion of such responses, above.

In its latest responses to Licensee's interrogatories, Decade references, as its answer to Interrogatory 4-1, the "NRC Staff Memorandum, dated September 22, 1980, re Summary of July 31, 1980 Meeting to Discuss Sleaving of the San Onofre Unit No. 1 Steam Generator Tubes, in NRC Docket 50-206." This is the same citation which Decade supplied as its "preliminary" basis for Contention 4 in its September 24, 1981 letter to the Board. Decade still refuses to identify any additional bases on record in this proceeding or the specified PSCW proceedings. Nor has Decade indicated any bases of which it has knowledge, but which may not be recorded. Similarly, the nature of Decade's response makes it impossible for Licensee to know whether Decade is asserting a claim of privilege with respect to this interrogatory and, if so, the nature of the privilege asserted.

Interrogatory 4-2

4-2. Describe in detail the phenomenon by which you contend an "unexpectedly corrosive environment" will be created in the annulus between the tube and the sleeve.

Decade's Response

4-2. Unexpectedly corrosive environment is defined to mean an environment in the annulus between the sleeve and the original tube in those cases where there is leakage into the

annulus that is corrosive to either the original tube or the sleeve or the bond between the original tube and the sleeve.

Licensee's 12/9/81 Argument

Decade's answer to Interrogatory 4-2 is wholly unresponsive. Rather than detailing the phenomenon -- i.e., the scenario(s) -- by which it contends an "unexpectedly corrosive environment" will be created in the annulus (as the interrogatory requested), Decade has supplied a tautological definition of "unexpectedly corrosive environment" which provides the Board and the parties with no more information about the precise phenomenon with which Decade is concerned than did the original statement of Decade's contention, filed months ago.

Decade does not purport to answer Interrogatory 4-2 in its latest responses. The information sought -- a description of the phenomenon (i.e., the scenarios) by which Decade contends an "unexpectedly corrosive environment" will be created in the annulus -- is an elaboration of Decade's contention, which Decade should be able to supply from its knowledge. Its failure to answer is particularly rendered meaningless by its refusal to include in its answers reference to any information already of record in the proceeding or in the specified PSCW proceedings, and by its passing invocation of privilege.

Interrogatory 4-3

4-3. Describe in detail the nature and extent of the corrosive environment which you contend will be created in the annulus between the tube and the sleeve.

Decade's Response

4-3. The reason that we use the adjective "unexpectedly" is to reflect the fact that it may not be possible to predict the potentially corrosive environment, anymore than the vendor or licensee predicted the new corrosive effects that followed from sludge lancing or from converting to all-volatile treatment.

Licensee's 12/9/81 Argument

Decade's answer to Interrogatory 4-3 is unresponsive. Rather than detailing the nature and extent of the corrosive environment which Decade contends may be created in the annulus (as the interrogatory requested), Decade has explained why it used the term "unexpectedly" in its phrase "unexpectedly corrosive environment." If Decade's response is to be interpreted as an admission that Decade has no idea of the nature and extent of the environment in the annulus, that admission is fatal to its Contention 4. The Commission's regulations do not permit an intervenor to trigger a proceeding on nothing more than a baseless fear that the analyses of the Staff, the licensee, and the vendor may be inaccurate.

Decade has not purported to answer Interrogatory 4-3 in its latest responses. As discussed in Licensee's December 9 argument on this interrogatory (set out above), if Decade's November 25, 1981 response (above), coupled with its recent failure to further respond, is to be interpreted as an admission that Decade has no idea of the nature and extent of the environment in the annulus, that admission is fatal to its Contention 4. However, such an interpretation is undermined by Decade's continued refusal to reference in its answers any information of record in this proceeding or in the specified PSCW proceedings, by its failure to indicate any responsive information of which it has knowledge but which is not recorded, and by its generalized reference to privilege.

Interrogatory 4-6

4-6. Do you contend that the sleeves will be insufficiently resistant to the "unexpectedly corrosive environment" which you contend may be created in the annulus between the tube and the sleeve? If so, state in detail the factual bases for your position.

Decade's Response

4-6. Yes. See Qualification.

Licensee's 12/9/81 Argument

Decade's reference to the broad "Qualification" to its responses is a refusal to state the factual bases for its position and, for the reasons set forth in the general discussion of such responses above, is a grossly insufficient answer to that part of Interrogatory 4-6 which asks that Decade provide the factual bases for its assertion that the sleeves will be insufficiently resistant to the "unexpectedly corrosive environment" which Decade contends may be created in the annulus.

Decade does not purport to answer Interrogatory 4-6 in its latest responses. This failure could effectively constitute an admission that Decade has no bases for its allegation that sleeves will be insufficiently resistant to the "unexpectedly corrosive environment" which Decade contends may be created in the annulus. See Tr. 896-97. However, Decade's continued express refusal to include in its responses any reference to information of record in this proceeding or in the specified PSCW proceedings undermines such an interpretation of Decade's failure to respond. Similarly, Decade is silent as to whether it has any knowledge (not recorded) on which it bases its position. Finally, the vague nature of Decade's response makes it impossible for Licensee to discern whether a privilege is being asserted with respect to this interrogatory and, if so, the nature of the privilege claimed.

Interrogatory 4-7

4-7. Explain in detail what you consider to be the practical safety significance of the "unexpectedly corrosive environment" which you assert will be created in the annulus between the tube and the sleeve.

Decade's Response

4-7. The practical safety significance from the unexpectedly corrosive environment in the annulus occurs when there is secondary-to-primary in-leakage during a loss-of-coolant-accident.

Licensee's 12/9/81 Argument

Decade's answer to Interrogatory 4-7 is completely unresponsive. Decade has not related the "unexpectedly corrosive environment" to "in-leakage" and has not explained how any "in-leakage" caused by sleeving would have safety significance during a LOCA.

Decade does not purport to answer Interrogatory 4-7 in its latest responses. The information sought -- an elaboration of its original unresponsive answer, relating the alleged "unexpectedly corrosive environment" to "in-leakage" and explaining how any "in-leakage" caused by sleeving would have safety significance during a LOCA -- is information which Decade should be able to supply from its knowledge. Its failure to answer is particularly rendered meaningless by its refusal to include in its answers reference to any information already of record in this proceeding or in the specified PSCW proceedings, and by its broad invocation of privilege.

Interrogatory 4-8

4-8. For each response to Interrogatories 4-1 through 4-7:

(a) Identify all documents, including all relevant page citations, on which you rely to support each of your claims;

(b) State the name, present or last known address, and present or last known employer of each person known to you to have first-hand knowledge of the factual bases for each of your claims; and

(c) State the name of each person you intend to call as a witness to support each claim.

Decade's Response

4-8. (a) See Qualification.
(b) See Qualification.
(c) At this time, we do not have the name of any person whom we intend to call as a witness.

Licensee's 12/9/81 Argument

Decade's reference to the broad "Qualification" to its responses is a refusal to answer Interrogatories 4-8(a) and 4-8(b), and is insufficient for the reasons set forth in the general discussion of such responses, above.

Decade has not purported to answer Interrogatory 4-8 in its latest responses. Decade's failure to respond could be construed as an admission that it has no documents to support its claims and, further, knows of no persons who have knowledge of the factual bases for its claims. See Tr. 896-97. However, such an interpretation of its failure to respond is undermined by Decade's explicit refusal to include in its responses any reference to information of record in this proceeding or in the specified PSCW proceedings, by Decade's silence as to whether it has any knowledge (not recorded) which is responsive to the interrogatories, and by Decade's reference to privilege.

Interrogatory 4-10

4-10. Identify all documents in your possession, custody or control (including all relevant page citations) pertaining to the subject matter of Contention 4.

Decade's Response

4-10. See Qualification.

Licensee's 12/9/81 Argument

Decade's reference to the broad "Qualification" to its responses is a refusal to identify the requested documents, and is an insufficient answer to Interrogatory 4-10, for the reasons set forth in the general discussion of such responses, above.

Decade has not purported to answer Interrogatory 4-10 in its latest responses. While Decade's failure to respond could be construed as an admission that it has no documents pertaining to Contention 4, see Tr. 896-97, such an interpretation is undermined by its express refusal to include in its responses any reference to documents and information on the record in this proceeding or in the specified PSCW proceedings, and by its generalized reference to privilege.

Contention 5

Decade 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.

Interrogatory 5-1

5-1. State in detail the factual bases for the allegation that "[t]he presence of the sleeve will make the interpretation of eddy current test results extremely difficult."

Decade's Response

5-1. See Qualification; see also answer to Interrogatory 5-8.

Licensee's 12/9/81 Argument

Decade's reference to the broad "Qualification" to its responses in partial answer to Interrogatory 5-1 is a refusal to provide the factual bases for its allegation, and is insufficient for the reasons set forth in the general discussion of such responses, above. Decade's reference to the answer to Interrogatory 5-8 is also unresponsive. That answer refers again to the "Qualification," and cites a memorandum which has nothing to do with sleeving.

In its latest responses to Licensee's interrogatories, Decade cites, as its answer to Interrogatory 5-1, the "NRC Staff Memorandum, dated September 22, 1980, re Summary of July 31, 1980 Meeting to Discuss Sleeving of the San Onofre Unit No. 1 Steam Generator Tubes, in NRC Docket 50-206." This is the same reference supplied by Decade on September 24, 1981 as its "preliminary" statement of bases for Contention 5. Decade continues to refuse to specify any additional bases which are of record in this proceeding or in the specified PSCW proceedings. Nor has Decade indicated any bases of which it has knowledge, but which may be unrecorded. Similarly, the nature of Decade's response makes it impossible for Licensee to determine whether Decade is asserting a claim of privilege with respect to this interrogatory and, if so, the nature of the privilege.

Interrogatory 5-3

5-3. Do you contend that significant degradation will occur in the areas of the sleeved tube at which you assert there will be decreased sensitivity in detecting degradation by eddy current testing? If so, state in detail the factual bases for your position.

Decade's Response

5-3. Significant degradation may occur. See Qualification.

Licensee's 12/9/81 Argument

Decade's reference to the broad "Qualification" to its responses is a refusal to state the factual bases for its position and, for the reasons set forth in the general discussion of such responses above, is an insufficient answer to that part of Interrogatory 5-3 which asks Decade to state the factual bases for its claim that significant degradation may occur in the areas of the sleeved tube at which Decade asserts there will be decreased sensitivity in detecting degradation by eddy current testing.

Decade has not purported to answer Interrogatory 5-3 in its latest responses. This failure could effectively constitute an admission that Decade has no bases for its contention that significant degradation may occur in the areas of the sleeved tube at which it asserts there will be decreased sensitivity in detecting degradation by eddy current testing. See Tr. 896-97. However, Decade's continued express refusal to include in its answers any information already of record in this proceeding or in the specified PSCW proceedings undermines such an interpretation of Decade's failure to respond. Similarly, Decade is silent as to whether it has any knowledge (not recorded) on which it bases its position. Finally, the vague nature of Decade's response makes it impossible for Licensee to ascertain whether a privilege is being asserted with respect to this interrogatory and, if so, the nature of that privilege.

Interrogatory 5-4

5-4. Do you contend that significant degradation occurring in areas of the sleeved tube at which you assert there will be decreased sensitivity in detecting degradation by eddy current testing will go undetected? If so, state in detail the factual basis for your position.

Decade's Response

5-4. Yes. See Qualification.

Licensee's 12/9/81 Argument

Decade's reference to the broad "Qualification" to its responses is a refusal to state the factual bases for its position and, for the reasons set forth in the general discussion of such responses above, is an insufficient answer to that part of Interrogatory 5-4 which asks Decade to state the factual bases for its claim that significant degradation occurring in specified areas of the sleeved tube will go undetected.

Decade has not purported to answer Interrogatory 5-4 in its latest responses. Decade's failure to respond could be construed as an admission that it has no support for its contention that significant degradation occurring in areas of the sleeved tube at which it asserts there will be decreased sensitivity in eddy current testing will go undetected. See Tr. 896-97. However, such an interpretation is undermined by Decade's continued express refusal to include in its responses any reference to information of record in this proceeding or in the specified PSCW proceedings, by Decade's silence as to whether it has any knowledge (not recorded) which is responsive to the interrogatory, and by Decade's generalized reservation of privilege.

Interrogatory 5-5

5-5. State in detail the factual bases for the allegation that tubes with undetected degradation will "rupture during a loss of coolant accident."

Decade's Response

5-5. See Qualification.

Licensee's 12/9/81 Argument

Decade's reference to the broad "Qualification" to its responses is a refusal to state the factual bases for its allegation, and is an insufficient answer to Interrogatory 5-5, for the reasons set forth in the general discussion of such responses, above.

Decade has not purported to answer Interrogatory 5-5 in its latest responses. While Decade's failure to respond could be construed as an admission that Decade has no support for its allegation that tubes with undetected degradation will "rupture during a loss of coolant accident," see Tr. 896-97, such an interpretation is undermined by Decade's refusal to include in its answers any reference to responsive information of record in this proceeding or in the specified PSCW proceedings, by Decade's silence as to whether it has any knowledge (not recorded) which is responsive to the interrogatory, and by Decade's broad invocation of privilege.

Interrogatory 5-6

5-6. For each response to Interrogatories 5-1 through 5-5:

(a) Identify all documents, including all relevant page citations, on which you rely to support each of your claims;

(b) State the name, present or last known address, and present or last known employer of each person known to you to have first-hand knowledge of the factual bases for each of your claims; and

(c) State the name of each person you intend to call as a witness to support each claim.

Decade's Response

5-6. (a) See Qualification.
(b) See Qualification.
(c) At this time, we do not have the name of any person we intend to call as a witness.

Licensee's 12/9/81 Argument

Decade's reference to the broad "Qualification" to its responses is a refusal to answer Interrogatories 5-6(a) and 5-6(b), and is insufficient for the reasons set forth in the general discussion of such responses, above.

Decade has not purported to answer Interrogatory 5-6 in its latest responses. Decade's failure to respond could be construed as an admission that it has no documents to support its claims and, further, knows of no persons who have knowledge of the factual bases for its claims. Tr. 896-97. However, such an interpretation of its failure to respond is undermined by its blanket refusal to include in its responses any reference to information of record in this proceeding or in the specified PSCW proceedings, by its silence as to whether it has any knowledge (not recorded) which is responsive to the interrogatories, and by its passing reference to privilege.

Interrogatory 5-8

5-8. Identify all documents in your possession, custody or control (including all relevant page citations) pertaining to the subject matter of Contention 5.

Decade's Response

5-8. See Qualification. Also, Memorandum to Files from Peter Anderson, re Point Beach Tube Degradation - Eddy Current Test Effectiveness, dated January 3, 1980.

Licensee's 12/9/81 Argument

Decade's reference to the broad "Qualification" to its responses in partial answer to Interrogatory 5-8 is a refusal to identify the requested documents, and is insufficient for the reasons set forth in the general discussion of such responses, above.

Decade has not purported to answer Interrogatory 5-8 in its latest responses. While Decade's failure to respond could constitute an admission that it has no documents pertaining to Contention 5, see Tr. 896-97, such an interpretation is undercut by Decade's continued refusal to include in its responses any reference to documents and information on the record in this proceeding or in the specified PSCW proceedings, and by its broad reservation of privilege.

Interrogatory 5-9

5-9. Identify all documents (including all relevant page citations) which you intend to offer as exhibits during this proceeding to support Contention 5, or which you intend to use during your cross-examination of witnesses presented by Licensee and/or the Staff on Contention 5.

Decade's Response

5-9. At this time, we have not assembled all documents which we intend to offer as exhibits or use during cross-examination.

Licensee's 12/9/81 Argument

Decade's response to Interrogatory 5-9 differs from its responses to parallel Interrogatories 3-16, 4-11, and 7-9 (in which responses Decade asserts generally that it has not yet determined documents for use as exhibits or in cross-examination on Contentions 3, 4 and 7). To the extent that Decade seeks to evade identifying its exhibits and documents for use in cross-examination on Contention 5 by its assertion that it has not yet assembled all such documents, such evasion is impermissible. Decade is required to identify now those documents which it currently intends to offer or use in cross-examination on Contention 5, regardless of whether it will add to that list in the future.

Decade does not purport to answer Interrogatory 5-9 in its latest responses. Decade's failure to clarify the ambiguity in its earlier response to Interrogatory 5-9 is particularly troubling in light of its recent reaffirmation of its refusal to include in its interrogatory responses any reference to documents and information on the record in this proceeding or in the specified PSCW proceedings, and in light of its broad assertion of privilege.

Contention 7

Decade Contention 7 alleges:

The large number of workers required to perform a full scale sleeving program in the highly radioactive environment of the primary side of the steam generator will exceed the ability of the licensee or vendor to provide from their stable work forces. This will necessitate the employment of untrained and transient "jumpers" to perform the bulk of the work which quality may deteriorate as a consequence.

Interrogatory 7-1

7-1. State in detail the factual bases for the allegation that "untrained and transient 'jumpers'" will be employed as part of the full scale sleeving program "to perform the bulk of the work which quality may deteriorate as a consequence."

Decade's Response

7-1. See Qualification.

Licensee's 12/9/81 Argument

Decade's response to Interrogatory 7-1, which simply refers to the broad "Qualification" to its responses, is a refusal to state the factual bases for its allegations, and is

insufficient for the reasons set forth in the general discussion of such responses, above.

In its latest responses to Licensee's interrogatories, Decade cites as its answer to Interrogatory 7-1: "See 'Shoddy Repairs Alleged at Reactor; 'It's Ready To Blow Up,' Says Witness,' San Diego Union (June 28, 1981). Letter from NRC (A. D. Johnson) to SCE (L. T. Papay), dated September 14, 1981, NRC Docket 50-206." The first reference is the same citation supplied as Decade's "preliminary" statement of bases for its Contention 7. The second reference is a citation to a report which Licensee provided to the Board and the parties at the October 29-30, 1981 hearing. Decade continues to refuse to reference any additional bases which are already on the record in this proceeding or in the specified PSCW proceedings. Nor has Decade identified any bases of which it has knowledge, but which may be unrecorded. Finally, the nature of Decade's response precludes Licensee from determining whether Decade is asserting a claim of privilege with respect to this interrogatory and, if so, the nature of the privilege claimed.

Interrogatory 7-3

7-3. Describe in detail all deficiencies which you assert to exist in the training of channel head workers.

Decade's Response

7-3. We assert deficiencies in motivation, experience and qualifications, not in on-the-job training.

Licensee's 12/9/81 Argument

Decade's response to Interrogatory 7-3 is evasive and incomplete. First, Licensee's interrogatory was not limited to

"on-the-job" training, as Decade's answer suggests. Further, Licensee's interrogatory tracks the precise language of Decade's contention, which expresses Decade's concern that workers will be "untrained." If Decade wished to define "untrained" as lacking in "experience" and "qualifications," Decade was nonetheless obligated to answer the interrogatory in good faith, albeit in that context -- i.e., having chosen to use the word "training" in its contention, Decade was not then free to evade interrogatories on a technicality, by repudiating the word "training" and substituting "experience" and "qualifications."

Decade does not purport to answer Interrogatory 7-3 in its latest responses. The information sought--an elaboration of its original evasive and incomplete answer, describing all deficiencies asserted to exist in motivation, experience, qualifications, and other-than-"on-the-job" training of channel head workers--is information which Decade should be able to supply from its knowledge. Its failure to answer is rendered meaningless by its refusal to include in its answers reference to any information already of record in this proceeding or in the specified PSCW proceedings, and by its broad reference to privilege.

Interrogatory 7-4

7-4. Describe in detail all deficiencies which you assert to exist in the quality assurance program for the full scale sleeving program such that errors or omissions by channel head workers will go undetected.

Decade's Response

7-4. The post-installation inspections may not be performed for the correct tube and may not be adequate to detect improper installation.

Licensee's 12/9/81 Argument

The second part of Decade's response to Interrogatory 7-4 is so non-specific as to be incomplete. In essence, in

response to Licensee's request that Decade detail the inadequacies asserted to exist in the QA program, Decade states simply that inspections may be inadequate to detect improper installation. A proper detailed response (in accordance with Licensee's request) would have included, at a minimum, an explanation of precisely why the inspections "may not be adequate," as well as an elucidation of the precise phase(s) of installation as to which it is alleged errors might go undetected.

Decade does not purport to answer Interrogatory 7-4 in its latest responses. The information sought--an elaboration of its original non-specific, incomplete answer, to include an explanation of precisely why the inspections "may not be adequate," as well as an elucidation of the precise phase(s) of installation as to which it is alleged errors might go undetected--is information which Decade should be able to supply from its knowledge. Its failure to answer is rendered meaningless by its refusal to include in its answers reference to any information already of record in this proceeding or in the specified PSCW proceedings, and by its general reservation of privilege.

Interrogatory 7-5

7-5. Identify with specificity all tasks assigned to channel head workers which you assert may not be performed or may not be correctly performed, including -- but not limited to -- an explanation of each error or omission which you assert may occur, an explanation of why that error or omission will not be detected by quality assurance controls, and an explanation of the safety significance of each such error or omission should it go undetected.

Decade's Response

7-5. The tasks which may not be performed or may be performed incorrectly include decontamination, cleaning, insertion and bonding. The error or omission may not be detected because either the wrong tube will be inspected or the

inspection procedure will not be adequate. The safety significance of such an error or omission occurs when there is secondary-to-primary in-leakage during a loss-of-coolant-accident.

Licensee's 12/9/81 Argument

Decade's response to Interrogatory 7-5 is so non-specific as to be incomplete. Further, Decade's answer to Licensee's request for an explanation of the safety significance of alleged errors and omissions is wholly unresponsive. First, Decade was specifically asked to explain "each error or omission." It did not do so. Second, Decade failed to specify which of the listed tasks it asserts will not be performed and which it asserts will be performed incorrectly. Third, Decade's reference to the task of "cleaning" is overly vague; given the vast record now before Decade, it was obligated to more clearly identify the task to which it was referring (i.e., to state what it alleges may not be cleaned or may be cleaned incorrectly). Fourth, in response to Licensee's request that Decade explain why each alleged error or omission would not be detected by QA, Decade responded glibly that "the inspection procedure will not be adequate." Such a response is nothing more than a paraphrasing of the interrogatory in the affirmative, and is insufficient for reasons set forth in the discussion of Decade's response to Interrogatory 7-4, above. Finally, rather than explaining what the practical safety significance of each alleged undetected error or omission actually is, as the last part of the interrogatory requested, Decade stated its belief as to when the alleged (but still unspecified) safety significance will "occur." Such an answer is unresponsive to the question posed.

Decade does not purport to respond to Interrogatory 7-5 in its latest responses. The information sought--an identification of all tasks assigned to channel head workers which Decade asserts may not be performed or may not be correctly performed, including (but not limited to) an explanation of each error or omission which it is asserted will occur, an explanation of why that error or omission will not be detected by quality assurance controls, and an explanation of the safety significance of each such undetected error--is information which

Decade should be able to provide from its knowledge. Its failure to answer is rendered meaningless by its continued refusal to include in its answers reference to any information of record in this proceeding or the specified PSCW proceedings, and by its broad invocation of privilege.

Interrogatory 7-6

7-6. For each response to Interrogatories 7-1 through 7-5:

(a) Identify all documents, including all relevant page citations, on which you rely to support each of your claims;

(b) State the name, present or last known address, and present or last known employer of each person known to you to have first-hand knowledge of the factual bases for each of your claims; and

(c) State the name of each person you intend to call as a witness to support each claim.

Decade's Response

7-6. (a) See Qualification.

(b) See Qualification.

(c) At this time, we do not have the name of any person whom we intend to call as a witness.

Licensee's 12/9/81 Argument

Decade's reference to the broad "Qualification" to its responses is a refusal to answer Interrogatories 7-6(a) and 7-6(b), and is insufficient for the reasons set forth in the general discussion of such responses, above.

Decade has not purported to answer Interrogatory 7-6 in its latest responses. Decade's failure to respond could be construed as an admission that it has no documents to support its claims and, further, knows of no persons who have knowledge of the factual bases for its claims. Tr. 896-97. However, such an interpretation of its failure to respond is undermined by its continued blanket refusal to include in its responses

any reference to information of record in this proceeding or in the specified PSCW proceedings, by its silence as to whether it has any knowledge (not recorded) which is responsive to the interrogatories, and by its passing reference to privilege.

Interrogatory 7-8

7-8. Identify all documents in your possession, custody or control (including all relevant page citations) pertaining to the subject matter of Contention 7.

Decade's Response

7-8. See Qualification.

Licensee's 12/9/81 Argument

Decade's reference to the broad "Qualification" to its responses is a refusal to identify the requested documents, and is an insufficient answer to Interrogatory 7-8, for the reasons set forth in the general discussion of such responses, above.

Decade has not even purported to answer Interrogatory 7-8 in its latest responses. While Decade's failure to respond could constitute an admission that it has no documents pertaining to Contention 7, see Tr. 896-97, such an interpretation is undercut by Decade's continued refusal to include in its responses any reference to documents and information on the record in this proceeding or in the specified PSCW proceedings, and by its general reservation of privilege.

III. Conclusion

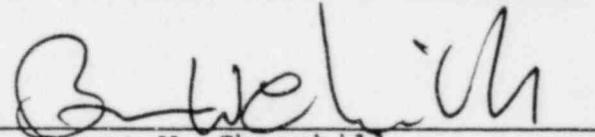
Decade's responses to Interrogatories 3-1, 3-2, 3-3, 3-4, 3-5, 3-6, 3-8, 3-0, 3-11, 3-12, 3-13, 3-15, 4-1, 4-2, 4-3, 4-6, 4-7, 4-8, 4-10, 5-1, 5-3, 5-5, 5-6, 5-8, 5-9, 7-1, 7-3, 7-4,

7-5, 7-6 and 7-8 of Licensee's first set of interrogatories, and Decade's responses to Interrogatories 2, 3 and 5 of Licensee's second set of interrogatories, are grossly insufficient for the reasons stated above and in "Licensee's Motion For Dismissal of Intervenor Wisconsin Environmental Decade, Inc." (December 9, 1981) and the "Amendment To Licensee's Motion For Dismissal of Intervenor Wisconsin's Environmental Decade, Inc." (December 11, 1981). Decade is thus in default of the Board's January 11, 1982 order to "fully answer in good faith" Licensee's interrogatories, though -- due to the vagueness of Decade's January 18 filing and the numerous reservations and conditions attached to it -- Licensee is unable to determine the precise extent of Decade's default. Accordingly, Licensee moves that the Board order Decade to respond expeditiously, separately and fully to each of the above-listed interrogatories.

Respectfully submitted,

SHAW, PITTMAN, POTTS & TROWBRIDGE

By



Bruce W. Churchill
Delissa A. Ridgway

Counsel for Licensee

Dated: February 2, 1982

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

DOCKETED
1/29/82

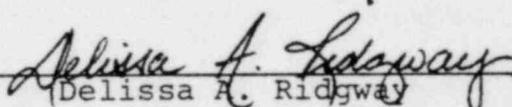
Before the Atomic Safety and Licensing Board, 82 FEB -4 P3:37

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

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

CERTIFICATE OF SERVICE

I hereby certify that copies of "Licensee's Motion To Further Compel Decade's Responses To Interrogatories" dated February 2, 1982, were served, by deposit in the U.S. Mail, first class, postage prepaid to all those on the attached Service List. On February 3, 1982, second copies will be hand-served on the NRC Staff, and delivered to Federal Express for service on Decade on February 4, 1982.


Delissa A. Ridgway

Dated: February 2, 1982

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))

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