



UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges:  
Peter B. Bloch, Chairman  
Jerry R. Kline  
Hugh C. Paxton

DOCKETED  
MAR 19 1982 P2:05

SERVED MAR 19 1982

WISCONSIN ELECTRIC POWER COMPANY

Docket Nos. 50-266-OLA  
50-301-OLA

(Point Beach Nuclear Plant, Units 1 and 2)

March 19, 1982

MEMORANDUM AND ORDER  
(Concerning a Motion to Reconsider)

On February 19, 1982, Wisconsin's Environmental Decade (Decade) requested reconsideration or clarification of one portion of our decision of February 19, 1982.

In the contested portion of its decision, section IV, the Board rescinded its previous policy of permitting Decade to raise new issues freely, without regard to the requirements of 10 CFR §2.714(a)(1). In so acting, the Board explained that its previous policy had been adopted in response to time pressures needed to meet Wisconsin Electric Power Company's (applicant's) operational needs but that the time pressures had been relieved because applicant no longer planned to sleeve Unit 1 this Spring. The Board also ruled that "Decade may properly raise all matters already submitted on the record of this proceeding."

I REQUEST TO RECONSIDER

Decade bases its request to reconsider on assurances provided to it

8203230154 820319  
PDR ADOCK 05000 266  
G PDR

DS02  
5/0/1

in the course of a telephone conference, conducted on January 11, 1982. Decade states that the Board assured it that it would not be necessary to provide a basis for its subcontentions (arguments related to the single contention admitted by the Board) until the proceeding reached the stage of summary disposition. Tr. 866-867; see also, Tr. 770. Decade also states that it:

has been acting in good faith reliance on the Board's representations cited above. Therefore, it would be inappropriate to fundamentally alter previously established procedures in mid stream to the egregious disadvantage of the intervenor.

Motion to Reconsider at 3. The Commission's staff agrees with this argument.

Applicant opposes Decade's motion for reconsideration on the ground that the Board's liberal invitation for new contentions has always exceeded its authority and that, in any event, it is appropriate to decide to apply Commission regulations when there is no reason to continue to waive them. It also argues that Decade has not shown how it would be prejudiced by returning to the full application of the rules. Licensee's Answer (March 10) at 2.

We agree with Applicant and have decided to affirm the contested ruling. The Board initially adopted a series of measures in order to expedite the proceeding to meet Applicant's needs. LBP-81-39 (Slip op., (October 1, 1981) In that order, we stated that the need for expedition had been created by applicant, "which delayed filing its amendment only because of its incorrect assumption that a hearing would not be necessary." Id. at 5. Consequently, we granted some special procedural advantages to Decade in order to help to offset the disadvantages accruing to it from the press of time.

In the same telephone conference on which Decade relies for its argument that we assured it that it need not provide basis for its contentions until a later stage of the proceeding, the following dialogue also took place:

CHAIRMAN BLOCH: Mr Churchill [for applicant], our reason for the continuing leniency on bases [for contentions], if you recall, was that you were asserting that there is a possibility that you might want to go ahead with full-scale sleeving on Unit 1 this spring. Is that still a possibility, or are we now using more lenient standards on contentions than we need to, given the requirements of the case?

MR. CHURCHILL: I can't answer that question; I really don't know. Yes, it is a possibility. It is likely that there will be full-scale sleeving; I don't know the answer to that. . . .

[Emphasis supplied.] Tr. 874. In this dialogue, the Board indicated that the invitation for filing new subcontentions, under the broad contention admitted by the Board, was contingent on the continuing need for expedition in the proceeding. Hence, it should have been no surprise to Decade that when applicant informed the Board that sleeving would not occur in the Spring, thus destroying the rationale for continued leniency regarding contentions, the Board considered it necessary to return to the more ordinary application of the Commission's procedural rules.

Although we felt that our return to the application of ordinary rules was compelled by changed circumstances, we were impressed by staff's argument that Decade should be able to continue relying on the Board's assertions. We would not want to create a situation in which we in any way misled a party into forfeiting its rights. Consequently, we carefully examined Decade's filing to see whether it suffered any prejudice as the result of our assurances. However, we find that Decade has not alleged any

specific prejudice, merely asserting "egregious disadvantage" without explaining any way in which it was disadvantaged. Hence, we believe it is correct to rescind an extraordinary privilege whose rationale disappeared; and we do not believe that the rescision of this privilege has been shown to have damaged Decade in any way. (Should Decade subsequently demonstrate specific prejudice resulting from our procedures, we will consider the nature of the prejudice and whether it has been raised in a timely fashion and will consider whether a remedy is appropriate.)

## II REQUEST FOR CLARIFICATION

Decade urges that we clarify the status of matters raised by it in its letter to staff on January 18, 1982. We agree with staff and with the carefully limited concession made by applicant that the matters listed in Decade's January 18, 1982, letter to the Staff were "matters already submitted on the record" and therefore were properly raised under the single broad contention admitted by the Board. Decade need not demonstrate the basis for these contentions until it submits its Motion Concerning Litigable Issues, pursuant to LBP-82-10, February 19, 1982, slip op. at 4-5. (Decade also is under a continuing obligation to respond to interrogatories which have requested it to supply a basis for its contentions.)

## O R D E R

For all the foregoing reasons and based on consideration of the entire record in this matter, it is this 19th day of March, 1982,

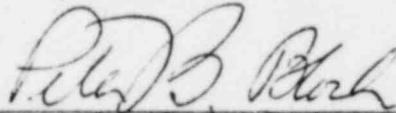
ORDERED

Wisconsin's Environmental Decade's Motion to Reconsider, filed on

Reconsideration: 5

February 24, 1982, is denied, except to the extent that this memorandum clarifies the meaning of certain language used by the Board.

FOR THE  
ATOMIC SAFETY AND LICENSING BOARD

A handwritten signature in cursive script, appearing to read "Peter B. Bloch". The signature is written in dark ink and is positioned above a horizontal line.

Peter B. Bloch, Chairman  
ADMINISTRATIVE JUDGE

Bethesda, Maryland