

April 12, 1982

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Before the Atomic Safety and Licensing Board

In the Matter of

WISCONSIN ELECTRIC POWER COMPANY

(Point Beach Nuclear Plant,
Units 1 and 2)

)
)
) Docket Nos. 50-266

50-301

) (OL Amendment)
)

LICENSEE'S RESPONSE TO DECADE'S REQUEST
FOR LEAVE TO UNDERTAKE DISCOVERY OF NRC STAFF

By letter to the Board dated March 28, 1982, Decade requests leave to undertake discovery of the Staff "on matters concerning recent events at the Ginna Nuclear Plant and at the Three Mile Island Nuclear Plant related to steam generator tube degradation." In support of its request, Decade asserts only that "[t]hese matters were not sufficiently ripe to discover at the time the first round discovery was scheduled."

The Commission's regulations provide that discovery against the Staff is permitted only upon a showing of "exceptional circumstances," and requires:

* * * a finding by the presiding officer that answers to the interrogatories are necessary

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to a proper decision in the proceeding and that answers to the interrogatories are not reasonably obtainable from any other source * * *.

10 C.F.R. §2.720(h)(2)(ii). See also 10 C.F.R. Part 2, App. A, §IV(d). Plainly, Decade's two-line motion fails to make the showing of "exceptional circumstances" required to justify discovery against the Staff.

Moreover, the subjects of the proposed discovery -- recent events at the Ginna and Three Mile Island facilities "related to steam generator tube degradation" -- are in no way related to the sleeving of steam generator tubes, and are thus totally beyond the scope of this proceeding. See generally "Memorandum and Order Concerning The Admission of A Party and Its Contentions" (October 13, 1981), at 6.

There is no indication whatsoever that the Ginna incident will shed any light on sleeving. To the contrary, the Ginna licensee has conclusively determined that the tubes involved in the January 25, 1982 incident were not sleeved. Nor does the discovery of corrosion in the TMI-1 steam generators have any bearing on sleeving at Point Beach. There are no sleeved tubes at TMI-1. Also, as Decade conceded in its February 4, 1982 letter to the Board, the degradation of the TMI-1 tubes is from the primary side -- a unique mode of corrosion not experienced at Point Beach. Thus, since the events at Ginna and TMI-1 are wholly unrelated to sleeving, Decade cannot even demonstrate that its proposed discovery "is relevant to the subject matter

involved in the proceeding" and that "the information sought appears reasonably calculated to lead to the discovery of admissible evidence." See 10 C.F.R. §2.740(b)(1) and (2).

Finally, assuming, arguendo, that events at TMI-1 and Ginna bear on sleeving at Point Beach, Decade's bald, unsupported assertion that those events were not ripe at the time of scheduled first round discovery would be insufficient to justify the proposed discovery. Decade has utterly failed to explain what it needed to know and now knows, but did not know and could not through the exercise of due diligence have known on February 10, 1982, when it filed its first round discovery.

Accordingly, for all the reasons stated above, Decade's request for leave to take discovery of the Staff on events at Ginna and TMI-1 should be denied.

Respectfully submitted,

SHAW, PITTMAN, POTTS & TROWBRIDGE

By



Bruce W. Chruchill, P.C.
Delissa A. Ridgway

Counsel for Licensee

Dated: April 12, 1982

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CERTIFICATE OF SERVICE

This is to certify that copies of "Licensee's Response To Decade's Motion to Compel Licensee's Answer to First Interrogatories Relative to Full Scale Sleeving" and "Licensee's Response to Decade's Request for Leave to Undertake Discovery of NRC Staff" are being served to all those on the attached service list by deposit in the U.S. Mail, first class, postage prepaid, this 12th day of April, 1982.

Bruce W. Churchill

Dated: April 12, 1982

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