



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

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WISCONSIN ELECTRIC POWER COMPANY

Docket Nos. 50-256-OLA  
50-301-OLA

(Point Beach Nuclear Plant, Units 1 and 2)

April 22, 1982

MEMORANDUM AND ORDER  
(Concerning a Motion to Compel)

This motion addresses whether Wisconsin Electric Power Company (applicant) has an obligation to respond to certain interrogatories served on it by Wisconsin's Environmental Decade (Decade) on February 10, 1982. Decade's Motion to Compel was filed on March 28, 1982 and responded to by applicant on April 12, 1982. Then, on April 16, 1982, Decade filed a brief reply. The Nuclear Regulatory Commission's staff has declined to participate in this procedural dispute.

The disputed interrogatories address the following areas of concern: (1) the interrelationship between possible deterioration (embrittlement) of the reactor's pressure vessel due to irradiation and the safety of the proposed tube sleeving project; (2) the names, addresses and position of workers temporarily employed on the tube sleeving project; and (3) information about leaking plugs. We have considered each of these categories of information separately. For reasons stated below, we have decided to order that applicant answer questions in the second and third categories but that it need not answer questions in the first category.

I APPLICABLE PRINCIPLES

The principles applicable to motions to compel were discussed in a

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scholarly opinion by a Licensing Board whose chairman was the Hon. Max Paglin. Boston Edison Company, et al. (Pilgrim Nuclear Generating Station, Unit 2), LBP-75-30, 1 NRC 579. The following passage is particularly helpful:

It has been uniformly recognized that the discovery rules are to be accorded a liberal treatment so that parties may obtain the fullest possible knowledge of issues and facts before trial, and that the inquiries are limited only by the requirement that they be reasonably relevant to a sensible investigation.

However, the authorities have also held that, as a rule of necessity, there must be limitations on the concept of relevancy so as " . . . to keep the inquiry from going to absurd and oppressive grounds."

[Footnote omitted.] Id. at 582; Pennsylvania Power and Light Company and Allegheny Electric Cooperative, Inc. (Susquehanna Steam Electric Station, Units 1 and 2), ALAB-613, 12 NRC 317 (1980) at 322.

With respect to interrogatories concerning embrittlement, we face a tough question about whether embrittlement of the reactor vessel is relevant to an application for an amendment to authorize the sleeving of steam generator tubes. On this issue, we find the appeal board decision in Consumers Power Compant (Big Rock Point Nuclear Plant), ALAB-636, 13 NRC 312 (1981) helpful. In that case, intervenors argued that unless the fuel pool expansion were permitted the plant would have to cease operation; they therefore sought to raise environmental questions about whether the plant should be permitted to operate. However, the appeal board rejected that argument, finding that:

The federal action sought here is approval of a license amendment to expand the capacity of the Big Rock Point spent fuel pool by the addition of extra racks for the fuel assemblies; it is not approval to alter any other aspect of the facility or the term of the license.

Id. at 323. Similarly, applicant requests permission to sleeve corroded steam generator tubes but not to alter any other aspect of the facility or the term of the license. Although we are now ruling on safety issues rather than environmental issues, the principles of Big Rock are still applicable. Our proceeding is directed at the safety of the proposed amendment and not

to the general safety of the Point Beach unit. Although intervenors are correct in arguing that the Commission has a general responsibility for the safety of operating nuclear plants, this Board's jurisdiction is limited to issues legitimately before it and is not plenary. See Decade's Motion to Compel at 9.

## II EMBRITTLEMENT INTERROGATORIES

Decade is concerned that irradiation of the walls of the reactor pressure vessel have embrittled it, making it more susceptible to a rupture, possibly as the result of pressurized thermal shock. As Decade points out, a pressure vessel rupture would cause a very serious condition. In addition to creating a direct risk of an unrecoverable loss-of-coolant accident, a rupture could cause the coincident rupture of weakened steam generator tubes, leading to steam binding that would further interfere with attempts to reflood the reactor. Id. at 4.

At an earlier stage of this proceeding, we ruled on a similar but not identical question. At that stage, we required Decade to show cause why a sleeving demonstration program, involving permission to sleeve six steam generator tubes, should not be licensed. Wisconsin Electric Power Company (Point Beach Nuclear Plant, Units 1 and 2), LBP-81-55, 14 NRC 1017 (1981). In the course of that proceeding, Decade contended that a possible embrittlement problem was grounds for not licensing the tube sleeving demonstration project. We rejected that argument, finding that Decade had failed to establish a basis for relating embrittlement to the safety of the tube sleeving demonstration project. Id. at 1026, citing Tr. 598.

Now we face a somewhat different question: whether discovery should be permitted either because the information sought is in controversy and would be admissible at a hearing or because "the information sought appears reasonably calculated to lead to the discovery of admissible evidence." 10 CFR §2.740(b)(1) and (2). It is this latter standard, concerning what can be "reasonably calculated" that differentiates the instant question from the

question we previously decided. Compare Licensee's Response at 3-5. (We reject applicant's argument that we already ruled on this question at Tr. 736. Instead, we find that Tr. 736-739 makes it clear that we refrained from ruling at that time, awaiting the results of discussions among the parties.)

However, our review of Decade's filings fails to discover any showing of how the sleeving program would cause problems in the reactor pressure vessel or how discovery of information about embrittlement, or steps to remedy embrittlement, would lead in any way to information reflecting unfavorably on the safety of sleeving. Indeed, Decade seems to have things somewhat reversed. It seems to be arguing that if the sleeving program would weaken steam generator tubes then reactor vessel problems of embrittlement and thermal shock would make this weakened condition dangerous. It also argues that a failure of steam generator tubes would cause special problems at Point Beach if the reactor core should be reconfigured in response to embrittlement problems, thereby increasing the cooling requirements in the center of the core during a loss of coolant accident.

For the purpose of analyzing the relevance of these arguments, let us assume that Decade can prove its underlying premise, that steam generator tubes would be weakened by sleeving and would be dangerous. If Decade demonstrates the truth of that premise, then it will have drawn the tube sleeving project into serious question. However, the validity of Decade's case depends on its proving that tube weakening may occur and does not depend on whether the reactor vessel is embrittled. Evidence of embrittlement would not contribute to the proof that sleeving weakened the tubes and is therefore dangerous. Further proof that the vessel is embrittled would be unnecessary icing on the cake, unessential to obtaining relief from a sleeving project that had been shown to be unsafe.

Our ruling will not, of course, resolve Decade's concerns about embrittlement. However, our jurisdiction is limited to the particular licensing amendment before us and to safety and environmental issues that have

been admitted for consideration. To the extent that our authority is insufficient, Decade must look elsewhere for a remedy. It may, for example, investigate the possible applicability of a petition to the Director of the Office of Nuclear Reactor Regulation under 10 CFR §2.206. See, e.g. Southern California Edison Company (San Onofre Nuclear Generating Station, Unit 1), DD-81-19, 14 NRC 1041 (1981).

### III NAMES OF TEMPORARY EMPLOYEES

Decade seeks to discover:

the names, last known address, and job title of all persons who were employed by the Licensee or its contractors or subcontractors to perform the fall 1981 demonstration sleeving program at Point Beach Nuclear Plant Unit 1.

Applicant objects to this form of discovery, stating that "the only reason it has the names of channel head workers (who were not Licensee's employees) is because of [required] personnel radiation exposure records." It relies on the government policy expressed in the Freedom of Information Act, 10 CFR §§9.5(a)(6) and 9.6, for the proposition that "personnel and medical files and similar files" need not be released. Licensee's Response at 8. It also argues, without submitting any supporting evidence, that disclosure of the requested information would expose more than 50 people and their families "to potential annoyance, embarrassment, intimidation, oppression, and reprisals, such as harassing and threatening phone calls and vandalism." *Ibid.* It asserts that these results would flow from the specially sensitive nature of the nuclear industry.

Decade assures us, however, that it would conduct a select number of structured interviews that would be voluntary and polite and therefore non-intrusive. Decade's Motion to Compel at 10. Furthermore, Decade points out that it seeks to find out about the performance of transient workers hired to perform "the delicate installation of sleeves." *Id.* at 10. It considers this information sufficiently important that it is willing to agree to rely

on an independent investigator appointed by the Commission to assemble the facts. Id. at 11.

We think the merits of this issue are clear. Decade has not shown that there were any quality assurance problems in the tube sleeving demonstration program. However, its interrogatories are directly related to its contention that transient workers are unreliable for those tasks. Hence, it is entitled to inquire further.

Since the requested records are not agency records and applicant is not an agency, the Freedom of Information Act is merely suggestive. All Decade is asking is the right to obtain the names of these workers for the purpose of asking their voluntary cooperation in obtaining relevant information. We have no reason to assume that these workers would object to being asked or that they would refuse voluntary cooperation in supplying information of potential importance to the health and safety of the public. Nor do we have any reason to believe that either Decade or the public would harass these individuals or that their identities would be released to the public.

Decade's motion to compel an answer to its interrogatory 11 shall be granted.

#### IV LEAKING PLUGS

Decade made the following discovery request:

Please list all leaking plugs observed at Point Beach Nuclear Plant by unit, steam generator, row, column, and date observed.

State any and all studies, analyses or consideration of any kind given to leaking plugs.

Decade's First Interrogatories at 7-8. Applicant has not answered these interrogatories because it asserts that leaking plugs are "in no way related to the sleeving of steam generator tubes, and is thus totally outside the scope of this proceeding." Licensee's Response at 12.

Decade believes its interrogatories are relevant because of a Staff conclusion allegedly reached in a Safety Evaluation Report on Point Beach

Unit 1. That report, said to have been dated November 30, 1979, allegedly found that "the extent of the in-leakage through tube ruptures at Point Beach Nuclear Plant would be less than that needed to prevent reflood." Decade's Motion to Compel at 12.

Although we find Decade's explanation to be without merit because it is unrelated to the safety of tube sleeving (in a similar fashion to the lack of relevance of the embrittlement questions), we find that its interrogatories merit a response. Plugs are inserted into Point Beach tubes through mechanical and other means. The performance of those plugs may have direct relevance to the performance of sleeves inserted into identical tubes through arguably analagous processes. This data is relevant to the admitted contention, that:

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.

Point Beach, LBP-81-45, 14 NRC 853 (1981) at 860. (For motions Decade may subsequently make, the contention has been restricted. Point Beach, LBP-82---, March 19, 1982.) Furthermore, since some previously plugged tubes will be sleeved, the history of those previously plugged tubes could have a bearing on the sleeving process. We note as well that data on plugged tubes could be relevant to Decade's original contentions on a possibly corrosive environment in the annulus formed in the tube by sleeving.

Consequently, we will require applicant to respond to interrogatories 15 and 16.

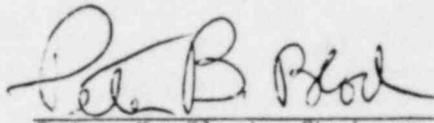
O R D E R

For all the foregoing reasons and based on consideration of the entire record in this matter it is this 22nd day of April, 1982,

ORDERED

Wisconsin Electric Power Company's (applicant) objections to the Wisconsin Environmental Decade's (Decade) February 10, 1982 Interrogatories #11, 15 and 16 are found to be without merit but its objections to Interrogatories #1, 2, 3 and 4 are sustained. Hence, applicant shall respond promptly to Interrogatories #11, 15 and 16; but they are excused from responding to Interrogatories #1, 2, 3 and 4.

FOR THE  
ATOMIC SAFETY AND LICENSING BOARD

A handwritten signature in cursive script, appearing to read "Peter B. Bloch".

Peter B. Bloch, Chairman  
ADMINISTRATIVE JUDGE

Bethesda, Maryland