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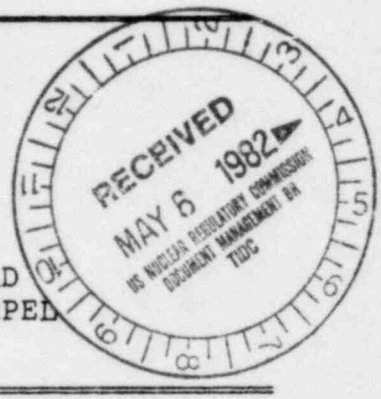
UNITED STATES OF AMERICA

NUCLEAR REGULATORY COMMISSION

B fore the Atomic Safety and Licensing Board

Wisconsin Electric Power Company
POINT BEACH NUCLEAR PLANT UNITS 1 & 2
DOCKET NOS. 50-266 AND 50-301
Operating License Amendment
(Steam Generator Tube Sleeving Program)

DECADE'S MOTION FOR RECONSIDERATION OF BOARD MEMORANDUM AND ORDER CONCERNING MOTION TO COMPEL



Wisconsin's Environmental Decade, Inc.("Decade"), hereby moves the Atomic Safety and Licensing Board("Board") in the above-captioned matter for reconsideration of Part II(Embrittlement Interrogatories) of its Memorandum and Order Concerning a Motion to Compel, entered April 22, 1982("Order"), in order to:

(1) Compel the Licensee to answer Decade's interrogatories concerning embrittlement; or, in the alternative,

(2) Devise its own means of insuring that the embrittlement issue is addressed in a timely fashion.

This motion is made on the grounds set forth below.

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The Licensee had objected to answering the interrogatories based upon an argument that embrittlement is unrelated to sleeving.[1/] In rebuttal, the Decade had asserted that potential actions taken to ameliorate embrittlement could mean that an otherwise minor impairment of safety functions from defective sleeves would become a matter of major significance.

The Board in its Order has sustained the Licensee's objection, but not on the grounds maintained by the utility. Indeed, for the purpose of enforcing discovery, the Board recognizes that there is a nexus between embrittlement and sleeving to establish relevance, but nonetheless denies enforcement of discovery for this reason:

> "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 informtion about embrittlement, or steps to remedy embrittlement, would lead in any way to information reflecit 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 weakend[sic] 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. [Emphasis in text]
>
> "For the purpose of analyzing the relevance of these arguments, let us assume that Decade can prove its uderlying 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." [Emphasis added]

Order, at p. 4.

If our understanding of the Order is correct, the Board is stating that the ultimate issue in this case is whether sleeving is safe or unsafe. Compounding problems arising out of embrittlement do not bear on this question because they would only make an already unsafe condition more unsafe, in the view of the Board.

That statement of the issue, we believe, does not comport with the law established by Commission to govern these proceedings.

Rightly or wrongly, a license amendment such as this one is controlled by 10 C.F.R. §50.57(a)(3), which states that the Board shall find that:

> "There is a reasonable assurance (i) that the activities authorized by the operating license can be conducted without endangering the health and safety of the public, and (ii) that such activities will be conducted in compliance with the regulations in this chapter." [Emphasis added]

This formulation of the issue has apparently been accepted by the Board on another occasion. Transcript p. 164.

Thus, the question of safety is not treated by the Commission as some kind of light switch that is either on or off, but rather as a matter of degree; and this undermines the Board's logic for denying enforcement of discovery in this regard.

For the way that this process has evinced itself in the case of Point Beach is as an imputed analysis of probabilities. In an earlier phase of this docket arising out of Decade's November 13, 1979 §2.206 petition, the Staff rejected our safety concerns by an analysis that implicitly utilized such a relative process.

First, the Staff postulated that the secondary-to-primary in-leakage during a loss-of-coolant-accident("LOCA") would have to exceed 1300 gallons per minute to result in unacceptable steam binding. Second, it made an estimate of the in-leakage from a ruptured tube within the tubesheet and in the freestanding region of the steam generator, which was 7 gallons per minute and 27 gallons per minute, respectively. This implied the necessity for 185 ruptures in the tubesheet or 48 above to stall reflood. It then evaluated such a leak rate against the number of tube failures that, in its view, could be expected during a LOCA in the absense of sleeve induced failures and concluded that there was not "undue" risk. Safety Evaluation Report Related to Point Beach Unit 1 Steam Generator Tube Degradation Due to Deep Crevice Corrosion, dated November 30, 1979, at pp. 20 to 21 and Appendix A. Public Meeting of the Nuclear Regulatory Commission on Briefing on Point Beach 2.206 Petition, November 28, 1979, at Transcript p. 15.[2/]

When this case reaches the merits, the Board will be asked by the Staff and Licensee to undertake the same type of relative review. In performing that kind of analysis, the Board will, illustratively, be asked to weigh its conclusion as to the probability of sleeve induced in-leakage during LOCA[3/] against that alleged 1300 gallons per minute threshhold of concern for steam binding.

But--and this is the critical point--the validity of that 1300 number may be significantly affected by reconfiguration of the core to ameliorate embrittlement because a higher resultant

heat flux in the center of the core may increase cooling requirements, making less in-leakage lower than 1300 gallons per minute fatal for steam binding.

If discovery or subsequent cross-examination of these questions is not permitted, then the Decade will be deprived of its legal right to adduce countervailing evidence. 5 U.S.C. §554. Ohio Bell Tel. Co. v. P.U.C.(1936), 301 U.S. 292.

Therefore, Decade's motion to compel the Licensee to answer its embrittlement interrogatories should be granted.

In the alternative, in the event the Board, on reconsideration, still determines to deny the motion to compel, it should, itself, undertake whatever efforts are necessary to find a proper and timely vehicle for investigating the core reconfiguration issues. Naive though it may sound in the rarified atmosphere of "H" Street, we firmly believe that every professional employee of the Commission has a solemn obligation to act to prevent a nuclear accident, and, if the present organizational parameters limit such action, that employee is obligated to pursue all proper avenues to correct those limits.

The Commission has already been called on the carpet by its own members for abusing procedural circumlocutions, not in the pursuit of an orderly process, but rather as a deliberate expedient of evading its responsibilities:

> "One need not have high expectations about the contribution that a hearing might make to the safety of the plant in any given case to be distressed about the levels of illusion involved in the Nuclear Regulatory Commission's application of its recent Marble Hill decision to this and to future cases. * * *
>
> " * * * The agency so misstates history that it is clearly either incapable of giving an accurate account of its own past doings or else its legal positions are being

> chosen after the desired result (in this case no meaningful opportunity for hearing) has been decided.
>
> " * * * The hearing being offered as a matter of right pursuant to Marble Hill is a sham. Petitioners are not permitted to contest the issue that concerns them most, namely the sufficiency of the NRC's action as against the claimed need for other remedies. In short, the Commission has constructed a test that grants a meaningful right to a hearing in cases of this sort only to the utility or another party which may assert that the order goes too far. Anyone else seeking to argue the sufficiency of an NRC imposed remedy must prove that the remedy has made the facility less safe than it had been. Thus, the public's opportuntiy to be heard when dangerous conditions are shown to exist at a plant can be foreclosed by a staff action resulting in a minimal improvement in safety. * * *
>
> " * * * Most unfortunate of all is the way in which the Commission's pell mell retreat from meaningful public inquiry in the twistings between here and Marble Hill suggests to the staff and the outside world that the agency is run by people living in fear of their own citizenry. In the wake of the Kemeny and Rogovin Reports' caling for more effective public involvement, the Commission responds with a hearing offer that is a transparent sham."

Order of the Commission Concerning Request for Hearing, Docket 50-266, entered May 12, 1980, at pp. 1 to 3(Dissenting Opinion of Commissioners Bradford and Gilinsky. [Citations omitted]

Please remember, too, that the Commission's own independently commissioned investigation found that there was a mindset in the agency that accidents do not happen. Special Inquiry Group, Three Mile Island(1980), at p. 90.

To the rest of the world, the accident which did occur at Three Mile Island Nuclear Plant on March 28, 1979, demolished any rational basis for such complacency. Yet, the continuation of an attitude in which critical safety questions are ignored and not even considered because of meaningless legalisms can only convince the public that the agency is unfit to perform the responsibilities assigned to it.

DATED at Madison, Wisconsin, this 3rd day of May, 1982.

WISCONSIN'S ENVIRONMENTAL DECADE, INC.

by

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Footnotes

1 The Licensee argued as a second defense that the Board had previously disposed of this matter adversely to the Decade. The Board also rejected this defense. Order, at p. 3.

2 Permission to cite the public meeting transcript is requested because the refusal of the Commission to grant a hearing on which a record could be made deprives the Decade of any other way to establish the Staff's prior positions.

3 The possibility of concluding that sleeves can increase the risk of tube failure cannot be ignored. See, for example, recent reports of leaking sleeves at San Onofre Nuclear Plant. Office of Nuclear Reactor Regulation, Items of Interest, Week Ending March 26, 1982.

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Docket Nos. 50-266 and 50-301
CERTIFICATE OF SERVICE

I certify that true and correct copies of the foregoing document will be served this day by depositing copies of the same in the first class mails, postage pre-paid and correctly addressed, to the following:

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