

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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Before the Atomic Safety and Licensing Board

82 SEP-1 P3:31

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

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DECADE'S REPLY BRIEF IN SUPPORT OF ITS
MOTION CONCERNING LITIGABLE ISSUES

Wisconsin's Environmental Decade, Inc. ("Decade"), hereby submits its Reply Brief in Support of Its Motion Concerning Litigable Issues, dated July 21, 1982 ("Decade Motion"), and its Amendment to Motion Concerning Litigable Issues, dated August 20, 1982 ("Decade Amended Motion"), in response to the Licensee's Response to Decade's Motion Concerning Litigable Issues, dated August 9, 1982 ("Licensee Response"), Licensee's Response to Decade's Amendment to Motion Concerning Litigable Issues, dated August 24, 1982 ("Licensee Supplemental Response"), and the NRC Staff Response to Decade's Motion Concerning Litigable Issues, dated August 12, 1982 ("Staff Response").

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I N T R O D U C T I O N

The Licensee and Staff essentially pursue three lines of attack in their unrelenting opposition to letting the public be heard in this proceeding. First, they contend that the burden on the public to secure a hearing is extremely great and ultimately insurmountable. Second, the Licensee argues that all, and the Staff avers that some, of the proposed contentions are either irrelevant or late-filed. Third, both opposing parties take the position that none of the proposed contentions are sufficiently supported to meet the extremely high burden necessary to justify a hearing.

None of these arguments are correct, as more fully answered below.

A R G U M E N T

I

SUMMARY JUDGMENT MAY NOT BE GRANTED IF THERE IS THE SLIGHTEST DISPUTE AS TO THE FACTS

The essential issue before the tribunal at this time is whether or not a hearing should be held on the Licensee's proposed sleeving program for Point Beach Nuclear Plant Unit 2 during the Spring 1983 refueling.

Without ever squarely making such an assertion, both the Licensee and Staff seek to create the impression that the public must make a very substantial showing, tantamount to proving its case, before it is entitled to receive a hearing at which such a showing may be developed. Staff Resp., at pp. 3 to 4; Licensee Resp., at pp. 37 to 39.

Such an interpretation would do violence to all accepted

tenets of law applied in the courts of this country.

The motions before the Board are captioned a motion concerning litigable issues and motions for summary disposition. However, at their heart, each of these motions, which concern the question of whether there exists a sufficient dispute over material facts to necessitate an adjudicatory hearing, essentially bring into play the more commonly known concept of summary judgment.

This is precisely the holding of this Board which has articulated:

"* * * [T]he standard that will be applied to [the Decade's] motion concerning litigable issues will be the same standard as would be applied to a motion for summary disposition." Transcript p. 891.

In turn, the Commission rules for summary disposition state that the test to be applied is whether "there is no genuine issue as to any material fact and * * * the moving party is entitled to a decision as a matter of law", 10 C.F.R. §2.749(d), which is the same test as for summary judgement in a court of law. Fed.R.Civ.P. 56. Re Alabama Power Company(Farley Nuclear Plant), 7 A.E.C. 210(1974).

Therefore, it is appropriate to look to judicial interpretations of Rule 56 for the controlling law governing this agency.

Although a person would come away with the opposite opinion after reading the briefs of opposing counsel, the law holds that, in a summary judgment procedure, it is the moving party--not the party opposing the motion--who bears a heavy burden of proof. Adickes v. S.H. Kress & Co.(1970), 398 U. S. 144, 157. The

movant must make a clear showing that virtually no genuine issue of material fact exists. Suchomajcz v. Hummel Chemical Co., 3rd Cir. 1975), 524 F.2d 19, 24.

All inferences, doubts or issues of credibility must be resolved in favor of the party opposing summary judgement. United States v. Diebold(1962), 369 U.S. 654, 655; Bohn Aluminum & Brass Corp. v. Storm King Corp.(6th Cir. 1962), 303 F.2d 425. United States ex rel. Jones v. Rundle(3rd Cir. 1971), 453 F.2d 147, 150. Catalano v. Target Sales(9thCir. 1979), 605 F.2d 1097, 1101. Mutual Fund Investors v. Putman Management Co.(9th Cir. 1977), 553 F.2d 620, 624. Summary judgment is to be denied by the trier of fact when a contrary inference might be drawn from the evidence. United States v. Diebold, supra, at 655.

Most important to this particular case, once a court finds that material facts are in dispute, it must leave the resolution of that dispute to another day and deny summary judgment. United States ex rel. Jones, supra, at 150. Summary judgment is inappropriate where there is the slightest doubt as to the facts. Tomalewski v. State Farm Insurance Company(3rd Cir. 1974), 494 F.2d 882, 884. Any dispute regarding a material fact is sufficient to require the case to be tried rather than disposed of by motion. Ortiz v. Ciba-Geigy Corp.(N.D.Ill. 1980), 87 F.R.D.723, 724. Indeed, even if the basic facts are not in dispute, summary judgment is not appropriate if contrary inferences may be drawn from them. United States v. Diebold, supra, at 655.

Furtnermore, when, as here, there is a case of a complex nature involving public issues of far-flung import, summary

judgment is particularly inappropriate. Kennedy v. Silar Mason Co.(1947), 334 U.S. 249, 256.

In America, the public's opportunity to be heard is a right with both statutory and constitutional roots. 42 U.S.C. §§554 and §2239; Fifth and Fourteenth Amendment of the United States Constitution. It is not a privilege to be conferred as an agency sees fit.

The election of a president with a mandate to reduce taxes may not be transmorgified into a mandate to ignore safety, and a quadrennial political event does not serve to void two centuries of legal tradition.

II

THE CONTENTIONS ARE TIMELY

The Licensee objects to the following contentions as untimely: Contention 3(a) relating to inspectability, Licensee Resp., at p. 14; Contention 3(b) relating to the annulus, Licensee Resp., at p. 16; Contention 3(d) relating to under-expanded sleeves, Licensee Resp., at p. 16; Contention 3(e) relating to over-expanded sleeves, Licensee Resp., at p. 17; Contention 3(f) relating to sleeving corroded tubes, at Licensee Supp. Resp., at p. 4 n. 1; Contention 5 relating to loose parts, Licensee Resp., at p. 17; and the Alternative Contention. The Staff only joins in the timeliness objection to Contentions 3(d) and 3(e), Staff Resp., at p. 11.

With respect to the Licensee's objection to Contentions 3 (a) and (b), it would appear that the Staff does not agree with the argument that the proposed issues are untimely. There is

good reason for this.

The Decade's preliminary list of contentions specifically referenced the inspectability and annulus issues. Letter from P. Anderson(WED) to R. G. Bachmann(NRC), dated January 18, 1982("Preliminary Contentions"), at p. 2, ¶¶4 and 5. Apparently, the Licensee finds it objectionable that, after several months of discovery and additional time to review the application, the intervenor has industriously refined its original statement of the issue by filling in more details. This is hardly the basis of a valid objection. It is unclear what purpose counsel believes that discovery fulfills if not to make such refinement possible. If counsel truly believes that no further refinements ought to be made on the basis of information gleaned from discovery and that discovery serves no purpose, then his proper conduct would have been, in the first instance, to object to discovery being allowed at all.

With respect to Contentions 3(d) and (e), the original focus of the Decade's preliminary contentions was on the effect of brazing the sleeve to the tube as proposed in the application because of the very serious questions of structural integrity and dissolution raised by the process. Prelim. Contention 3. The validity of this concern is attested to by the Staff evaluation which concluded that additional justification was required before the process could be approved. Safety Evaluation Relating to Full Scale Steam Generator Tube Sleeving at Point Beach Units 1 and 2, undated, at p. 26.

However, at the eleventh hour, the Licensee chose to

substantially alter its application to exclude brazing and rely entirely upon an expansion process for sleeving. Letter from D. Ridgway(WE) to P. Bloch(NRC), dated July 9, 1982, at p. 2.

Since it is the Licensee who has made a last minute alteration in the application, there exists ample good cause to permit the intervenor to react to the new circumstances. 10 C.F.R. §2.714(a)(1)(i). Furthermore, it should be noted that until March 19, 1982, the Board's statements led both the Starr and Decade to believe that new contentions could be filed until the time for filing the motion concerning litigable issues without any special showing. Memorandum and Order Concerning a Motion to Reconsider, dated March 19, 1982, at p. 2.

With respect to Contention 3(f), it is not disputed that the schedule provided for amendments to contentions based upon information deriving from the Safety Evaluation Report("SER"). However, the Licensee stridently maintains that the Decade should have pursued with Staff questions concerning other plants prior to issuance of the SER. Licensee Supp. Resp., at p. 4 n. 1.

The Licensee's indignation is not, it should be emphasized, consistent with the facts. The fact of the matter is that the Decade repeatedly sought, formally and informally, ongoing information from the Staff concerning the status of other plants experiencing similar problems, and it was the opposition of the Licensee, among other things, which prevented our receiving such information. See, e.g. Licensee's Response to Decade's Request for Leave to Undertake Discovery of NRC Staff, dated April 12, 1982.

Licensee also decries the alleged failure of the Decade to

alert the utility in advance to the possibility of the issue arising as part of our initial motion. Licensee Supp. Resp., at p. 4 n. 1. However, our original motion was filed July 21, 1982, and the answers to the interrogatories from which the contention derived was not served until August 6, 1982--more than two weeks later. NRC Staff's Answer to Decade's Interrogatories Relative to the Safety Evaluation Report on Full Scale Sleeving, dated August 6, 1982, at p. 6.

With respect to Contention 5, this matter dealing with loose parts did not become the object of the Commission's attentions until after the investigation of the January 25, 1982 accident at the Ginna Nuclear Power Plant, Safety Evaluation Report Related to the Restart of R.E. Ginna Nuclear Power Plant, Docket 50-244, NUREG-0916(May 1982), at p. 5-57, and the fact of similar problems at Point Beach was not provided until later, Licensee's Response to Decade Second Interrogatories, dated June 21, 1982, at p. 8--all of which occurred substantially after the Board requested the intervenor to file preliminary contentions.

Again the fact of new evidence constitutes good cause to supplement the earlier filing. 10 C.F.R. §2.714(a)(1)(i). It also should be noted that, beyond the fact that this issue came to the fore after the time for filing preliminary contentions, the Licensee was made aware of our awakened interest in the subject with the Decade's filing of interrogatories on the subject. Decade's Second Interrogatories and Request for Production of Documents, dated May 29, 1982, at p. 6, ¶13.

With respect to the Alternative Contention, as stated in our

filing, it is a matter of continual recurring discussion which is only plead in the alternative and does not require a further response.

III

THE CONTENTIONS ARE RELEVANT

The Licensee and Staff object to the following contentions as irrelevant to sleeving: Contention 1 relating to the tube failures during LOCA, Licensee Resp., at p. 23, Staff Resp., at p. 5; Contention 2 related to tube failures during normal operation, Licensee Resp., at p. 24, Staff Resp., at p. 6; Contention 4 related to failing plugs, Licensee Resp., at p. 34, Staff Resp., at p. 11; Contention 5 related to loose parts, Licensee Resp., at p. 35, Staff Resp., at p. 12; and the Alternative Contention, Licensee Resp., at p. 36, Staff Resp., at p. 13.

With respect to Contentions 1 and 2, it is the Decade's view that the consequences from a tube or sleeve leak in a small number of tubes as few as one to ten may be extremely severe, and in some cases, catastrophic. The manner in which the Board addresses Contention 3 dealing with the possibility of sleeve induced leakage, as an example, is directly related to the consequences of such leakage.

That is to say, if the consequences of leakage were major, and if the number of tubes which must leak to be significant is small, an entirely different conclusion might be reached by the decision-maker than if the consequences were minor and the number large. More specifically, a low probability event which, if it occurs, is calamitous would warrant concern while it might not

justify further investigation if its consequences were not of such moment; and an event which cannot be discounted in at least some tubes must be reckoned with if only a few tubes can precipitate an accident. Contentions 1 and 2 go the consequences and necessary amount of leakage to raise the most profound concern and, therefore, are an absolutely essential part of an informed decision on whether or not to permit sleeving. The consideration of Contentions 3, 4 and 5 must be read in para materia with contentions 1 and 2.

With respect to Contention 4 dealing with failing plugs, the relevance is shown by the Licensee's own original application which sought permission to sleeve tubes which had previously been explosively plugged. Point Beach Steam Generator Sleeving Report for Wisconsin Electric Power Company, WCAP-9960 (September 28, 1981) ("Sleeving Report"), at p. 4.1. Following the problems with this process noted during the first post-operation inspection of the sleeving demonstration program, the Licensee withdrew that part of its original application. Letter from B.W. Churchill (WE) to P. B. Bloch (NRC), dated May 25, 1982, at p. 2.

But, the fact that the Licensee subsequently deleted its request to remove explosive plugs before sleeving speaks to the problems experienced with plug removal, not to the relevance of leaking plugs to the safety of Point Beach. As shown by the Licensee's own statements, explosive plugs are such a serious potential source of leakage, Letter from G.A. Reed (WE) to James S. Taylor (W), dated June 17, 1975, that the Licensee originally believed it necessary to attempt their removal notwithstanding

the fact that this involved significantly greater worker exposure and cost, Sleaving Report, at p. 4.1.

With respect to Contention 5 related to loose parts, the relevance arises from the fact that unexpected repair activities arising out of real-world problems with sleaving may be required on the secondary side of the generators--where loose parts are an established problem--even though, if everything goes perfectly, the planned sleaving repair may be confined to the primary side of the generator.

Any steam generator repair effort in the field is inherently neither tidy nor predictable. Undertaken by transient workers without consistent academic qualifications in an extremely radioactively hostile and cramped environment on a plant component whose exact integrity is in doubt, it is inevitable that unexpected actions may have to be taken to complete the overhaul operation.

As just one example, during the San Onofre sleaving, the force of the sludge pile and extensive denting impeded successful completion of planned sleeve installation in some areas and required on-the-spot modifications in the original plan that did not go through hearing for approval. Memorandum from S.J. Nowicki(NRC) re San Onofre Unit 1 Summary of February 25, 1981 Meeting to Discuss Status of the San Onofre Unit No. 1 Steam Generator Repair Program, dated March 30, 1982.

Thus, it is unreasonable and unrealistic to deny questions now at a time when the proceeding is open that may crop up later when things go wrong and the proceeding no longer exists. This proceeding is not a theoretical exercise, but rather a deathly

serious attempt to prevent a recurrence of accidents such as has already happened at Browns Ferry and Three Mile Island Nuclear Plants.

With respect to the Alternative Contention, the relevance is extensively dealt with in the documents previously cited and will not be repeated here.

IV

FOR THE PURPOSE OF SUMMARY JUDGMENT, THE CONTENTIONS HAVE BEEN ADEQUATELY SUPPORTED

A reading of the Licensee and Staff arguments in support of summary judgment only serves to show that they are asking the Board to weigh the evidence and to act as if the entire case has already been tried. As stated repeatedly before, the issue here is not the merits of the case but rather the extremely narrow question raised by a summary judgment pleading. To reiterate the rules controlling summary judgement:

-The burden is on the Licensee and Staff, not the Decade, and that burden is heavy.

-The Licensee and Staff must make a clear showing that virtually no dispute exists and the slightest doubt precludes judgment.

-All inferences, doubts or issues of credibility must be resolved in favor of the Decade.

-The resolution of any dispute must be left to another day.

-Matters of major public import are more likely to demand a hearing.

For those contentions whose relevance is not challenged (i.e. Contention 3), it is clear that they involve "material

facts" within the meaning of Rule 56 and the only issue for the Board is whether there is a "genuine" dispute. For those contentions whose relevance is challenged (i.e. Contentions 1, 2, 4, 5 and the Alternative Contention), the same single issue remains if the Board overrules the relevancy objection. Should the relevancy objection not be rejected for any contention, then it would not be necessary to consider the applicable section under this part of the brief.

In making the determination of whether a genuine dispute exists, the Board must apply the long standing standards articulated above.

With respect to Contention 1 related to tube failures under accident conditions, the Licensee's line of argument only emphasizes the extent to which it is attempting to subvert a limited summary judgment motion to a complete decision of the entire case, but without the trial ever having been conducted.

The validity of the concern about steam binding has been attested to in eight separate, reputable scientific reports. Decade Motion, at pp. 2 to 3. It is true that the Licensee's proposed witness, Mr. Fletcher, has criticized these independent scientific reports and indicated that Westinghouse has reached different conclusions. Statement of W. D. Fletcher, dated August 4, 1982 ("Fletcher Affidavit"), at pp. 2 to 4.

But, in a summary judgment proceeding, it is not for the Board to weigh the conflicting scientific positions. Rather, the fact of the disagreement only serves as a testament to the need for a hearing to adjudicate the dispute over this material fact.

The Licensee and Staff also attempt to eliminate any dispute over this contention by claiming that the rate of sleeve-induced in-leakage would be too small to be of concern to steam binding. Licensee Resp., at p. 40; Staff Resp, at p. 19.

In this regard, it is critical to note two things that undermine their claim. First, the alleged low rate of in-leakage through sleeved tubes is predicated upon a pathway between the upper joint of the sleeve and tube where the flow space may be confined. However, another possible pathway is adjacent through-wall cracks in the tube and sleeve to which the claims do not apply.

Second, the alleged low rate of in-leakage is supported for the first time in the Fletcher Affidavit in a one sentence assertion. That assertion is not supported with detailed results of any scientific analysis nor has the assertion been opened up for discovery to probe its basis.

With respect to Contention 2 relating to tube failures during normal operation, the Licensee asserts that sleeving does not increase the risk of tube failure. Licensee Resp., at p. 42. But that really is the question posed in Contention 3, and, therefore we will deal with the subject in that section.

The Staff adds an objection to the part of the contention based upon concerns over excessive primary coolant iodine levels. According to the Staff, it is "unaware" of any instances in the past where iodine levels have been excessive in pressurized water reactors. Staff Resp., at p. 22.

However, the issue before the Board is the future, not the past. Although the Board has denied the admissibility of

evidence on the interrelated thermal shock problem, we would make the following reply as an offer of proof. Since 1980, the Licensee has reracked the reactor at Point Beach Nuclear Plant so as to place high output assemblies at the center of the core to avoid intense radiation bombardment that would otherwise embrittle the beltline welding of the vessel wall if placed on the perimeter. Letter from C.W. Fay(WE) to H.R. Denton(NRC), dated January 15, 1982, at p. 3 of the attachment. It necessarily follows that this reracking will significantly alter the peaking characteristics of the reactor in such a way as to create the possibility of embrittled cladding, that would lead to increased iodine levels in the primary coolant.

To the part of the contention based upon excessive radioactive leakage through the spring operated safety valve on the steam generator into the environment, the Staff attempts to eliminate the concern by positing future reliance on the secondary side power operated relief valve. According to Staff, the Ginna operators improperly isolated the power operated relief valve before the accident which caused excess stress on the non-isolable spring operated valve that can fail open. Since a functioning power operated relief valve can be closed by the plant operators if it sticks, the Staff contends the problem does not exist. Staff Resp., at p. 22 to 23.

This kind of mindset typifies one of the significant reasons why the Commission has failed to adequately regulate. It assumes that the 72 reactors spread across the country are all in mint condition, are each manned by flawless operators under laboratory

conditions, and are not subject to economic constraints that bias against engineering necessary shutdowns.

In the real world, it is reasonable to assume that the reason the Ginna operators isolated the power operated relief valve relates to the fact that the excessive cycling and crud buildup that shake loose from check valve shock lead to continual and annoying seal failures throughout the facility. One quick fix response of plant operators in the real world is to isolate "redundant" valves instead of constantly shutting down and repairing seals.

Operability of the secondary side power operated relief valve is not a preemptory limiting condition for operation of Point Beach and, absent such a mandatory prohibition, it is unreasonable to assume that the Licensee will operate the plant without, in the future, taking the kinds of short cuts Ginna operators took in the past.

With respect to Contention 3(a) relating to inspectability, the Licensee argues that "sleeving in no way affects inspectability", Fletcher Afr., at p. 6 ¶13. This is contradicted by the Staff SER, Decade Motion, at App. III-C, and by some plant operators on the staff of the Licensee, Decade Motion, at App. III-E. Again, it must be emphasized that it is not the purpose of a summary judgment motion to weigh competing claims. The fact that there is a dispute, by itself, precludes summary judgment from being granted.

A further review of the Licensee's affidavit shows that its claims do not rise to the level of denying the existence of a factual dispute. Of the potential causes of degraded

inspectability, Mr. Fletcher of Westinghouse states that scaling is not "expected" to be increased, the "objective" of all-volatile chemistry is to "minimize" concentration of solids, the presence of conductive deposits will not "significantly" affect eddy current testing. Fletcher Affidavit, at pp. 8 and 9, ¶18, ¶19 and ¶20.

Of course, these heavily qualified statements on their face do not rise to the level required by Rule 56 to eliminate the slightest dispute and restrict the public's right to test the validity of that representation in hearing. Furthermore, the contentions are supported by contrary opinion from various sources that establish the fact that eddy current testing has substantial limitations, and the Board must look at these in the light most favorable to the Decade. Decade Motion, at App. III-A and III-B.

But, even if this were, arguendo, the appropriate time to judge the controversy on the merits, the Board has the industry's track record to consider in weighing Westinghouse's credibility.

Remember that Westinghouse on prior occasions has stated "that maintenance of the proper level of congruent phosphate will eliminate the source of free caustic and thereby eliminate new intergranular attack,"¹¹ Westinghouse, Review of Steam Generator Tube Failures Secondary System Water Chemistry (May 10, 1972) (emphasis added), only to admit seven years later that "intergranular corrosion * * * is believed to be caused by residual caustic from the use of phosphates for steam generator chemistry control", Re Wisconsin Electric Power Company, PSCW

Docket 6630-UI-2, Utility Response(1979)(emphasis added).

In 1972 Westinghouse also stated "the alternate water chemistry [of all-volatile treatment] is not recommended", Review of Steam Generator Tube Failures, supra(emphasis added), yet two years later confidently claimed that "AVT is now the preferred method of steam generator chemistry control", Letter from E.R. Duhn(W) to G.A. Reed(WE), dated August 29, 1974. Then, before the year was out, a new form of degradation not previously experienced called "denting was first observed in steam generators after the secondary side water treatment had been changed from phosphate-type to AVT", J. Meyers, A Review for the Wisconsin Public Service Commission of Steam Generator Tube Corrosion at Point Beach Unit No. 1(March 22, 1981).

Westinghouse has also highly recommended that sludge lancing should be employed to remove corrosive deposits. "The cleansing action of the lancing process together with post startup blowdown are considered to accomplish effectively a 'neutralization' of the remaining deposits." Duhn Letter, supra. It is now recognized, however, that "the reason [Westinghouse] got into [crevice corrosion problems] is because that's not steam blanketed [due to sludge lancing]. 11 Re Wisconsin Electric Power Company, PSCW Docket 6630-ER-10, at Tr. p. 1952.

Clearly, even if this tribunal were in a posture at this time of weighing the credibility of competing representations, Westinghouse's deplorable track record speaks to the lack of credence that can be given to its unqualified statements. Its qualified statements can only be considered as worthless.

For its part, the Staff primarily relies upon elaborate

procedures for inspection to dispell any questions. Staff Resp., at p. 26. But these kinds of procedures have existed for years, Regulatory Guide 1.83, and that has not prevented four major steam generator tube accidents in this country alone, Office of Nuclear Reactor Regulation, Evaluation of Steam Generator Tube Rupture Events, NUREG-0651(March 1980), and NRC Report on the January 25, 1982 Steam Generator Tube Rupture at R.E. Ginna Nuclear Power Plant, NUREG-0909(April 1982). Procedures do not constitute a defense against disputed facts.

With respect to Contention 3(b) relating to the annulus, the Licensee states that "there is no mechanism by which secondary water impurities entering the tube sleeve annulus through a degraded tube could conceivably give rise to a corrosive environment", Licensee Resp., at pp. 45 to 46.

However, previous statements from the vendor have described the annulus environment as the same as in the crevice. Decade Motion, at App. III-F. Experts from other utilities have pointed to the fact that one of the more serious flaws in the sleeving process is the fact that it recreates the corrosive environment of the crevice (which Westinghouse did not predict) in the annulus between the sleeve and tube. Decade Motion, at App. III-J. We have also cited to authoritative reports that strongly suggest a corrosion mechanism in the annulus under expected operated conditions. Decade Motion, at App. III-G, III-H and III-"I".

Viewed from the perspective most favorable to the Decade, the display of contradictory positions does not justify a

conclusion that there is not the slightest basis for dispute over material facts.

The Staff argues that sleeving will not increase the level of impurities beyond that which already exists such as to eliminate concerns about the process. Staff Resp. at p. 29.

But this misses the critical point. It is undisputed that the tubesheet crevice created a hostile environment that corroded tubes to an unacceptable extent. It is also undisputed that the Licensee and Staff discounted concerns with this degradation by pointing to the constraining influence of the surrounding tubesheet wall that would allegedly retard in-leakage from ruptured tubes. What the Staff fails to understand is that the sleeving process recreates that corrosive crevice problem in the annulus between the tube and sleeve and that the annulus extends above the constraining tube wall by several inches. This raises the most serious safety concerns in the case of adjacent cracks in the tube and sleeve that it would be unconscionable to bar from even being discussed.

This Commission has already been severely chastized in the past by the American Physical Society and others for refusing to even consider major safety issues from tube degradation. Decade Motion, at App. I-B. The most recent Ginna accident demonstrated major and potentially catastrophic omissions in safety procedures for steam generators, Safety Evaluation Report Related to the Restart of R.E. Ginna Nuclear Power Plant, NUREG-0916(May 1982), at ch. 3, most of which had been anticipated in an earlier Commission study, Evaluation of Steam Generator Tube Rupture Events, supra, at pp. 1-2 and 2-6, but which had not been acted

upon. At this stage, the Commission's persistent and unflagging refusal to even consider the most profound questions is ethically criminal.

With respect to Contention 3(c) relating to quality control, again the Licensee and Staff rely upon a recitation of elaborate procedures. Even if the procedures to regulate channel head workers fail, they argue that testing will disclose any mistakes Licensee Resp., at p. 47; Staff Resp., at p. 30.

On the other hand, the Board has before it the results of a Commission investigation of the only full-scale sleeving program ever performed which concluded that serious transgressions of channel head workers occurred. That sleeving program was conducted by the same contractor and subcontractor who will sleeve Point Beach. Decade Motion, at App. III-K. Also, the tests at the other plant failed to disclose leaks that subsequently developed after a short period of operation. SER, at p. 36.

Using the standards of Rule 56, this difference of opinion cannot succeed in avoiding the existence of sufficient doubt to warrant a hearing.

With respect to Contention 3(d) and (e) relating to under and over expanded tubes, the Licensee and Staff point to post-installation inspections that allegedly eliminate this problem. Licensee Resp., at p. 49; Staff Resp., at p. 31.

However that inspection will only be conducted on 10% of the sleeved tubes. Affidavit of Emmett L. Murphy, dated August 17, 1982, at p. 6 ¶14. Thus, 90% of the tubes may not be inspected,

and this large number of uninspected sleeve joints leaves sufficient doubt to defeat summary judgment. The leaks in the expanded sleeve joints at San Onofre, SER, at p. 36, attest to the unresolved nature of the problem.

With respect to Contention 3(f) relating to sleeving corroded tubes, the Licensee argues that the tubes will be eddy current tested before being sleeved to avoid expanding a joint in a degraded region. Licensee Supp. Resp., at p. 9.

This may be, but the record contains evidence that the eddy current testing has been found ineffective in locating 30% through wall defects even in laboratory tests. Decade Motion, at App. III-B. The fact of the matter is that no one knows the true state of the tubes in Point Beach. Sufficient doubt exists to preclude summary judgment.

With respect to Contention 4 relating to leaking plugs, the Licensee's defense is confined to a statement that the issue is not relevant. Licensee Resp., at p. 51. This has been dealt with in Part III, supra, and will not be repeated here.

The Staff contends that plugs would not rock loose during a loss-of-coolant-accident and are, therefore, not a source of concern over in-leakage. Staff Resp. at 34. However, the actual record has shown instances where plugs have fallen out of the tube under normal operating conditions, Letter from G.A. Reed(WE) to D.C. Spencer(W), dated November 1, 1977, which creates more than sufficient doubt over their integrity in accident conditions to defeat summary judgment.

With respect to Contention 5 relating to loose parts, the Licensee and Staff argue that the issue is irrelevant because

sleeving will be limited to the primary side of the steam generators. Licensee Resp., at p. 51; Staff Resp. at p. 34.

However, as already explained in Part III, supra, the issue is relevant because, in the real world, it may be necessary to undertake unscheduled work on the secondary side.

C O N C L U S I O N

Above all else, the Board must constantly remember that it is not now judging the merits of the case.

Were this Board to accede to the Licensee and Staff, it would shamefully repeat the inexcusable record of neglect compiled by the Commission which has not only failed to resolve major safety problems, but also has refused to even consider them. For this failure in the past, it has been roundly criticized by prestigious scientific bodies, by Congress, by the public and by dissenting Commissioners.

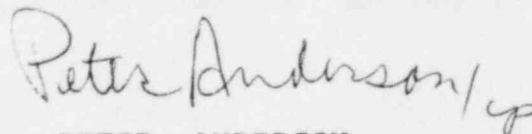
There is no possibility of avoiding the ultimate consequence of such a pattern of malign neglect, for the inevitable result is a nuclear nightmare.

In the aftermath of such an event, legal niceties will not serve as a defense to individual responsibility.

DATED at Madison, Wisconsin, this 31st day of August, 1982.

WISCONSIN'S ENVIRONMENTAL DECADE, INC.

by



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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Wisconsin Electric Power Company
POINT BEACH NUCLEAR PLANT UNITS 1 & 2
Docket Nos. 50-266 and 50-301
CERTIFICATE OF SERVICE

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