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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

OFFICE OF SECRETARY
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BRANCH

Before 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-1
(Steam Generator Tube Sleeving Program)

STATEMENT OF INADEQUATE RECORD

Wisconsin's Environmental Decade, Inc. ("Decade"), submits the following Statement of Inadequate Record in the above-captioned matter, in lieu of proposed findings of fact.

As an administrative agency, the Nuclear Regulatory Commission and its designated agents must act according to clear standards, and may not act arbitrarily and capriciously. 42 U.S.C. §706.

Congress has established as the statutory standard to control the Commission's action:

"In any event, no license may be issued to any person within the United States if, in the opinion of the Commission, the issuance of a license to such person would be inimical to the common defense and security or to the health and safety of the public." 42 U.S.C. §2133.

In turn, the Commission has established as the administrative regulation to control its conduct, as well as its Licensing Board's actions:

"In determining that a license will be issued to an applicant, the commission will be guided by the following considerations:

"(a) The processes to be performed, the operating

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procedures, the facility and equipment, the use of the facility, and other technical specificans, or the proposals, in regard to any of the foregoing collectively provide reasonable assurance that the applicant will comply with the regulations in this chapter, including the regulations in Part 20, and that the health and safety of the public will not be endangered." 10 C.F.R. §50.40(a) [Emphasis added.]

"The reactor coolant pressure boundary shall be designed, fabricated, erected, and tested so as to have an extremely low probability of abnormal leakage, of rapidly propagating failure, and of gross rupture." 10 C.F.R. Part 50 App. A Crit. 14. [Emphasis added.]

The Board has before it in this docket a proceeding to determine whether to approve a new procedure (sleeving) intended to repair one part of the reactor coolant pressure boundary (steam generator tubes) that is failing. Tr. 1385.

Sleeving involves the insertion of 3/4 inch tubes, approximately [extremely thin] inch in wall thickness, into a 7/8 inch tube, approximately .005 inch in wall thickness, from the confined, radioactive primary side of the steam generator by temporary workers, and then joining the ends of the first tube to the inside face of the second tube by a complex proprietary process. Appl. Ex. 1.

In making a determination as to whether to approve sleeving, the Board is not free to act arbitrarily, but rather must make a reviewable record on whether the new procedure will be "inimical to the health and safety of the public," 42 U.S.C. §2133, whether the "public health and safety will be endangered", 10 C.F.R. §50.40(a), and whether it will engender a "low probability of abnormal leakage, of rapidly propagating failure or of gross rupture", 10 C.F.R. Part 50 App. A Crit. 14.

In making a factual determination of whether sleeving will

meet these tests, it must compile evidence on the consequences to "the health and safety of the public" from a sleeve induced tube failure under various accident conditions, 10 C.F.R. §50.40(a), and weigh that in relation to a whether there is "low probability" of such a failure, 10 C.F.R. Part 50 App. A Crit. 14.

It may be noted that neither statutory standard consists of a precise quantifiable test, and, therefore, judgment must be applied. The exercise of judgment by an administrative agency, however, must be done on the basis of a reviewable record in order to establish that it has not been done arbitrarily.

From this, it necessarily follows that the Board must adduce evidence to ascertain:

1. The consequences to "the health and safety of the public" from differing magnitudes of sleeve induced tube failures, as weighed against,

2. The "probability" of failure.

As to the first question, the Board has ruled questions related to the consequences of failures from accidents during loss-of-coolant conditions and during normal accident conditions to be irrelevant. Memorandum and Order, dated October 1, 1982, at pp. 7 to 8. Because of this ruling, the Board does not have before it evidence on either the consequences to the public health and safety from tube failures nor on the number of tube failures necessary to precipitate these consequences.

As to the second, it should be noted at the outset that evidence on this question -- even if arguendo it did exist -- would be meaningless unless used in conjunction with evidence on

the first question related to the number of tubes necessary to engender or exacerbate accident conditions. Since there is no evidence on the first question, it is unnecessary to consider the adequacy of the evidence on the second question related to the probability of failures.

Even if there was evidence on the first issue, however, it is clear that the testimony concerning probability which does exist is wholly insufficient to reach any informed judgment. On this point, each of the Licensee's witnesses disclaimed any knowledge sufficient to quantify the probability that incipient failures will be detected. See, e.g., Tr. 1502 to 1508 and 1648 to 1649.

The Board does know that the detection techniques to avert catastrophic failures are not perfect, but it does not know what degree of perfection is required to necessary to protect the public health and safety.

The Licensee avows that the risks of rupture are low, but even if -- for the sake of argument only -- that were accepted, the Board does not know how low is necessary to comply with its legal obligations. With regard to the validity of the Licensee's representations, however, we strongly urge the Board to carefully review Int. Ex. 2 at Tr. 1712, to observe the devastating inadequacy of eddy current testing. Unfortunately, the establishment of a briefing schedule which compels the intervenor to prepare during the Christmas vacation precludes completion of our argument.

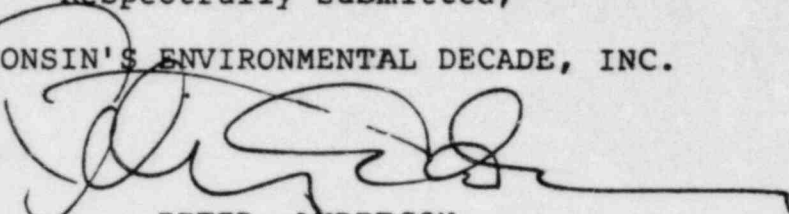
For the foregoing reasons, the Board must reopen the record

for the purpose of completing the record before proceeding to a decision.

Respectfully submitted,

WISCONSIN'S ENVIRONMENTAL DECADE, INC.

By

A handwritten signature in black ink, appearing to read 'Peter Anderson', written over the company name.

PETER ANDERSON
Co-Director

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Dated: December 30, 1982

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CERTIFICATE OF SERVICE

I certify that true and correct copies of Decade's Statement of Inadequate Record, dated December 30, 1982, were served this day by either depositing the same in the first class mails or to a delivery service to:

Mr. Peter B. Bloch, Chairman
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DATED at Madison, Wisconsin, this 30th day of December, 1982.