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UNITED STATES OF AMERICA
BEFORE THE NUCLEAR REGULATORY COMMISSION

Wisconsin Electric Power Company
POINT BEACH NUCLEAR PLANT UNIT 1
DOCKET NO. 50-266
Operating License Amendment 2
(Steam Generator Replacement Proceeding)

PETITION FOR REVIEW OF APPEAL BOARD DECISION

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Pursuant to 10 C.F.R. §2.786 (b), Wisconsin's Environmental Decade, Inc. ("Decade"), hereby serves upon the U. S. Nuclear Regulatory Commission ("Commission") its petition for review of the Decision of the Atomic Safety & Licensing Appeal Board ("Appeal Board") dated March 22, 1983, and served March 23, 1983. Said Order denied the Decade's appeal, dated December 20, 1983, of a prior Prehearing Conference Order of the Atomic Safety & Licensing Board ("Licensing Board") dated December 10, 1983.

At issue is the safety of the Point Beach Nuclear Plant and the refusal of the Commission to even consider one of the major generic safety issues presently afflicting most pressurized water reactors in this country.

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THE DECISION UNDER REVIEW

The Appeal Board in Decision dated March 22, 1983, as did the Licensing Board in a Prehearing Order dated December 10, 1982, dismissed the Decade's Petition to Intervene dated August 10, 1982, in the proceedings below. This Petition seeks Commission review of those two orders.

THE NATURE OF THE PROCEEDINGS BELOW

The proceedings before the Licensing Board involved an application by the Licensee Wisconsin Electric Power Company ("Company") for an operating license amendment to permit replacement of the two steam generators at Point Beach Nuclear Plant Unit 1 ("Point Beach 1").

The heat transfer tubes in the existing Westinghouse model 44 steam generators are suffering from thinning, wastage, stress corrosion cracking, denting, intergranular attack and possibly pitting, with the apparent greatest problem from intergranular attack in the narrow crevices in the bottom of the generators. There is no operational experience with the proposed new model F steam generators intended to replace the model 44 generators.

The Decade had supplemented its Petition to Intervene with seven detailed contentions, along with lengthy and authoritative documentation in a twenty-two page filing dated November 5, 1982. In summary, the Decade argued that a hearing was necessary to adjudicate the following unresolved factual issues:

1. Degradation of one to ten steam generator tubes during a loss of coolant accident ("LOCA") could induce essentially uncoolable conditions in the core, a matter which was never considered with regard to the existing generators prior to

granting the original license for the facility, in the Final Safety Analysis Report or in any subsequent license amendment proceeding, nor which is addressed in the application for the proposed generators.

2. Rupture of steam generator tubes during normal operation may release radiation to the environment from the plant's secondary side in excess of maximum permissible doses under various conditions that have occurred in similar facilities, a matter which has been acknowledged in Commission Staff reports but not yet resolved.

3. The proposed steam generator will eliminate the problem of corrosion within the crevice in the bottom of the steam generator only by creating another more serious safety problem. In the present generator the portion of the tube subject to stress assisted cracking is deep within the leak-retarding crevice. In the new generator, that stress zone will be outside of any crevice but within the deposition area of any future corrosion products, and will, therefore, be subject to failure in a location that would leak to uncoolable conditions during LOCA.

4. The replacement of steam generators of the Point Beach steam generators will not serve to repair or substitute for other interrelated structural weaknesses in the balance of the plant that can lead to the reintroduction of corrosion products into the new steam generators, thereby nullifying the intended repair and perpetuating safety concerns.

5. The new water chemistry treatment to be used in the new steam generators that is intended to alleviate corrosion problems

induced by the prior treatment creates new problems that the vendor previously considered so severe as to preclude recommending its usage.

6. An extremely high degree of operator performance is required both to properly maintain the proposed steam generators to prevent new corrosion and to respond to tube rupture accidents. The entire management team at Point Beach have terminated in the past two years, including the Plant Manager, Maintenance Superintendant, Superintendant of Chemistry and Health Physics, the Health Physicist, the Operations Supervisor and the Shift Supervisor, as well as three of the experienced operators. Operator performance at Point Beach has seriously eroded in the that time and no longer provides the necessary margin of safety.

7. The new steam generators have no operational track record to demonstrate that they, too, will not suffer from debilitating tube degradation, and the past record of each successive improvement succumbing to new and unanticipated forms of degradation necessitates an open-ended investigation into possible new problems.

The Licensing Board found that these concerns were so unfounded that no hearing was even necessary to give these matters an airing in its Prehearing of December 10, 1982, and the Licensing Board's action was upheld by the Appeal Board in its Decision of March 22, 1983.

STATEMENT OF ANY MATTERS NOT RAISED BELOW

This Petition for Review raises all of the issues raised by the Decade below before the Licensing and the Appeal Board, and only those issues.

STATEMENT WHY THE COMMISSION SHOULD GRANT REVIEW

The Decade maintains in this Petition each of the issues raised before both the Licensing and the Appeal Board. However, due to limited time and resources, only one of the points is briefed below.

Decade's third contention is that the design change in the new steam generators intended to eliminate the crevice corrosion problem will create another problem of potentially greater safety significance. That contention is described in extensive detail with supporting authorities spread over four pages. See Decade's Contentions Concerning Steam Generator Replacement, dated November 5, 1982.

The Licensing Board, relying on post hoc rationalizations of counsel de hors the record, found the issue so unimportant that no hearing was needed to develop facts on the record on the questions raised. That denial was appealed and the Decade's objection, including its objection to the Board's reliance on controverted extra-record material, was specifically discussed in the appeal. The Appeal Board found the discussion was not sufficiently lengthy to be recognized and rejected the appeal on that ground alone without consideration of the merits.

The Appeal Board then turned around and issued another order which found that the record was insufficiently complete on the exact same steam generator design change that was the subject of

the Decade's third contention, and directed the Company to file additional information. See Order dated March 22, 1983, at p. 2.

When an Appeal Board decides that the record is not sufficiently complete on the design change issue, it necessarily follows that an intervenor's contention on the exact same subject is sufficient to mandate an on-the-record hearing. Any other conclusion is wholly irrational albeit in keeping with the past deliberative process of this Commission.

At Browns Ferry, Three Mile Island and Salem, this Commission's inexcusable abdication of its regulatory responsibilities led our country within a hairsbreadth of a nuclear nightmare -- largely because of a adamant refusal to address and resolve generic safety issues.

This Commission's record on the generic steam generator tube degradation issue mirrors the same malaise.

The fact that tube failures could lead to a core meltdown was first raised in 1972 by its own scientists. The Atomic Energy Commission later conceded that, although there had been some discussion of the subject, no one was even assigned to study the question.

Two years later, citizen organizations uncovered these concerns that had been submerged inside the bowels of the agency and attempted to insert them into a pending Atomic Energy Commission generic safety hearing. But, the agency abruptly cut off questions on the subject.

That refusal to act on safety concerns nearly a decade ago on its own or when pressed by others was criticized soon

thereafter by the nation's most prestigious scientific body, the American Physical Society, which found that "the potential for steam generator tube leakage is a serious problem which was precluded from evaluation [at the generic safety hearings in 1973]."

Chastized by the American Physical Society, the tube integrity issue was raised in a succeeding licensing proceeding a year later, involving the Prairie Island Nuclear Plant, but the record was closed without resolution after "the staff made a commitment * * * to conduct a 'generic appraisal of the likelihood and consequences of the customary transient and accident analyses with assumed tube failure.'"

However, this commitment was not fulfilled. Two years later, another independent scientific panel appointed to review the Risk Assessment Study, the Lewis Committee, pointed to the still unresolved nature of the problem, and three years later the agency's staff was still discussing what should be done to evaluate the problem at some point in the future.

Then, beginning in 1979 -- seven years after the first warning -- the nuclear industry experienced the outbreak of runaway corrosion in the steam generators of several nuclear plants including Point Beach.

Prodded by the threat of legal action from alarmed citizens, the Nuclear Regulatory Commission agreed to hold a series of hearings on Point Beach, but, following in its earlier footsteps, the agency restricted the scope of these hearings in such a way as to exclude testimony on the very safety questions which were at issue.

This action was so far outside the bounds of responsible behavior that two of the five Commissioners issued a stinging dissent in a May 12, 1980 order, stating in relevant part:

"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 * * *.

"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 * * * is a sham * * *."

"Most unfortunate of all is the way in which the Commission's pell mell retreat from meaningful public inquiry * * * 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 Report's calls for more effective public involvement, the Commission responds with a hearing offer that is a transparent sham."

After making the hearing process into what two of the Nuclear Regulatory Commissioners called a "sham", the Commission staff next took to acting through informal conversations with the utility instead of through appealable written orders so as to not be subject to hearing petitions from citizens. This legerdemain was so egregious that the State of Wisconsin was impelled to formally protest to the five Commissioners:

"The State of Wisconsin is dismayed and discouraged by the manner in which the NRC chose to convey its authorization. However, we are far more concerned with the tone of the correspondence and attitude of the NRC staff. Throughout the course of this controversy the staff has consistently resisted all efforts by the public to participate in the process. At this juncture, when the responsiveness of the NRC to public concerns is being called into question from all quarters, indeed from within its own ranks, the NRR and Commission staff should not be permitted to run rough-shod over legitimate public concerns.

"In this controversy, the State of Wisconsin has, to date, refrained from taking sides on the merits of the Commission's orders. We do feel that the Decade has raised legitimate concerns over the safety of Point Beach 1, and

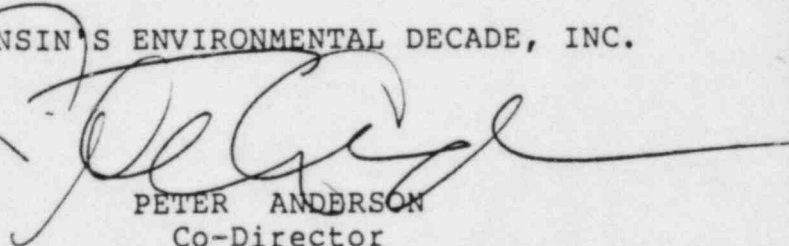
believe that the only way to ensure public confidence in the Commission and its actions is to permit full scrutiny of these orders in a public forum. The staff's cavalier attitude and resistance to public disclosure and scrutiny instill and accentuate an overall mistrust of the Commission and suspicion of its objectives. * * *

It is time for the Commission to recognize its legal, moral and ethical obligations to the people which it is supposed to serve. In the last analysis, a continuation of the abuse of the legal process which this Commission has finely honed to avoid its responsibilities will bring down the credibility of our legal institutions upon which this society rests, as well lead to a tragedy of untold dimensions.

A hearing on the steam generator tube degradation issue should be held at long last.

WISCONSIN'S ENVIRONMENTAL DECADE, INC.

by


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Co-Director

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Dated: April 7, 1983

CERTIFICATE OF SERVICE

I certify that true and correct copies of the foregoing were served this day on Mr. Bruce W. Churchill, counsel for the Licensee, and Mr. Richard G. Bachmann, counsel for the Staff.

Dated: 4/7/83