

August 6, 1981

UNITED STATES OF AMERICA  
BEFORE THE NUCLEAR REGULATORY COMMISSION

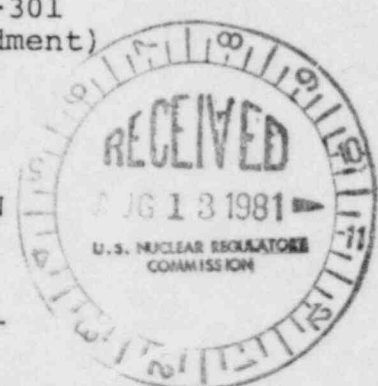
WISCONSIN ELECTRIC POWER COMPANY ) Docket Nos. 50-266  
 ) and 50-301  
(Point Beach Nuclear Plant ) (OL Amendment)  
Units 1 and 2) )

LICENSEE'S ANSWER IN OPPOSITION TO PETITION  
OF WISCONSIN'S ENVIRONMENTAL DECADE  
FOR ADMISSION AS PARTY, HEARING AND  
ENVIRONMENTAL IMPACT STATEMENT

By letter dated July 2, 1981, Wisconsin Electric Power Company ("Licensee") filed with the Director of the Office of Nuclear Reactor Regulation ("NRR") Technical Specification Change Request No. 69. In this Request, Licensee seeks to amend Facility Operating Licenses DPR-24 and DPR-27 for the Point Beach Nuclear Plants Units 1 and 2, respectively. Specifically, Nuclear Regulatory Commission ("Commission") approval of these license amendments would permit Licensee to conduct as part of a demonstration program during the fall 1981 refueling outage a verification that degraded or defective steam generator tubes at Point Beach Nuclear Plant Unit 1 can be repaired by inserting Inconel 600 sleeves inside the tubes, thereby bridging the degraded or defective portion of the original tubes. Licensee plans to sleeve several tubes whose degradation exceeds the Point Beach Nuclear Plant Unit 1's present Technical Specification plugging limit.

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In response to Licensee's July 2 letter, Wisconsin's Environmental Decade, Inc ("Decade") filed a petition on July 20, 1981. In its petition, Decade requests the Commission to convene an adjudicatory hearing on the proposed license amendments, and to admit Decade as an intervenor therein. Decade also asks the Commission to prepare an environmental impact statement ("EIS") on the proposed license amendments. For the reasons enumerated below, Licensee asks that the Commission defer consideration of the subject petition pending Staff review of Licensee's license amendment application.

Whenever a holder of an operating license desires to amend its license, it must apply for an amendment with the Commission fully describing the changes desired. 10 CFR § 50.90. If the requested amendment involves a so-called "significant hazards consideration," the Commission will give notice of its proposed action by publication in the Federal Register before acting on the amendment. 42 U.S.C. § 2239(a); 10 CFR §§ 50.91, 2.105. No such prior notice, with opportunity for hearing, is necessary if the amendment does not involve a significant hazards consideration. (Of course, the Commission, in its discretion, can determine that an opportunity for a public hearing should be afforded. 10 CFR § 2.105(a)(4).)\*

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\*In support of its request for a hearing and to intervene, Decade inappropriately relies upon Sholly v. NRC, \_\_\_ F.2d \_\_\_ (D.C. Cir. November 19, 1980). While the Sholly decision ordinarily would be relevant, the mandate of the Court in Sholly was stayed on January 6, 1981, extended on February 12, 1981, and the Commission's petition for certiorari was granted by the Supreme Court on May 26, 1981. The District

(Continued on page 3)

In the present case, Licensee applied for the sleeving license amendments pursuant to 10 CFR § 50.59 in its July 2, 1981 letter. The Commission has not had the opportunity to prepare and issue a safety evaluation in which a formal determination is reached by NRR on whether these amendments involve any significant hazards considerations. Nor has the Commission had the opportunity to consider the environmental impact of sleeving defective or degraded steam generator tubes at Point Beach. Decade's petition therefore is premature and should be held in abeyance at this juncture pending Staff resolution of these matters and publication in the Federal Register of the Staff's proposed action. Coincident with this determination, Decade's petition should be considered according to the standard enunciated in 10 CFR § 2.714, concerning petitions to intervene.\*\*/

The rationale for deferring Decade's petition is particularly compelling in view of the Staff's prior consideration and disposition of these issues in connection with the extensive

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(Footnote continued from page 2)

of Columbia Court of Appeals' decision therefore has no present force or effect. See Federal Rules of Appellate Procedure, Rule 41(b) (1980). Furthermore, the applicable criteria for determining whether a proposed amendment to an operating license involves a significant hazards consideration are those used by the NRC prior to Sholly. See, e.g., Commodity Futures Trading Commission v. British American Commodity Options Corp., 434 U.S. 1316, 1320 (1977) ("stays entered by the Court of Appeals merely preserve the regulatory status quo pending final action by this Court").

\*\*Of course, Decade is free to amend its petition at any time up to fifteen days prior to the holding of the special prehearing conference, e.g., to set forth with particularity the personal interest of at least one of its members in this proceeding. See Houston Lighting and Power Company (Allens Creek Nuclear Generating Station, Unit 1), ALAB-535, 9 N.R.C. 377, 390 (1979).

plugging and sleeving program at San Onofre Nuclear Generating Station, Unit 1. On June 8, 1981, NRR issued a Safety Evaluation Report ("SER"), Environmental Impact Appraisal ("EIA") and Negative Declaration on the steam generator repair project conducted by Southern California Edison Company at San Onofre. After evaluating in detail the sleeve repair method proposed by Southern California Edison, the Staff concluded in its SER that it "provides a sound technique for restoring the integrity of degraded or defective steam generator tubing as a primary pressure boundary, and, thus, provides an acceptable alternative to tube plugging as a repair procedure." Southern California Edison Company (San Onofre Nuclear Generating Station, Unit 1), Docket No. 50-206, Safety Evaluation by the Office of Nuclear Reactor Regulation Supporting Amendment No. 55 to Provisional Operating License No. DPR-13, Steam Generator Repair Program and Restart, June 8, 1981, at 13. Moreover, based on its safety evaluation, the Staff further concluded that

(1) because the amendment does not involve a significant increase in the probability or consequences of accidents previously considered and does not involve a significant decrease in a safety margin the amendment does not involve a significant hazards consideration, (2) there is reasonable assurance that the health and safety of the public will not be endangered by operation in the proposed manner, and (3) such activities will be conducted in compliance with the Commission's regulations and the issuance of this amendment will not be inimical to the common defense and security or to the health and safety of the public.

Id., at 23.

The Point Beach sleeving demonstration and sleeving programs will utilize a sleeve and joints of the same or similar design as the sleeves and joints that have been installed at San Onofre. See July 2, 1981 letter from Licensee to Harold R. Denton, Director, Office of NRR, at 2. In both repair programs, the sleeves are fabricated from thermally treated Inconel 600 tubing. Compare San Onofre SER Supporting Amendment No. 55, at 4, with July 2, 1981 letter from Licensee to Harold R. Denton, Director, Office of NRR, at 2. In order to demonstrate that data developed for San Onofre are applicable to the Point Beach steam generators, Licensee will be performing confirmatory testing, including leak rate testing and load carrying capability, with the Point Beach size steam generator tubing. Id. Thus, it is likely that the Staff will find no significant hazards consideration involved in the Point Beach sleeving demonstration project.

Similarly, while Decade contends that an EIS must be prepared addressing the environmental impact of Licensee's sleeving program, the Staff found preparation of an EIS unnecessary at San Onofre. An EIA was prepared by the Staff on the San Onofre steam generator repair program which assessed the environmental impacts of the sleeving project, including projected occupational and public radiation exposure levels. Based on its assessment, the Staff concluded that the San Onofre steam generator repair program would not significantly affect the quality of the human environment. See Southern California Edison Company (San Onofre Nuclear Generating



Station Unit 1), Docket No. 50-206, EIA by the Office of NRR, Supporting Amendment No. 55 to Provisional Operating License No. DPR-13, June 8, 1981, at 5-1. Accordingly, a negative declaration was issued. There is no reason to believe that Licensee's sleeving amendments will result in a contrary environmental finding.

The Staff's review of the San Onofre sleeving program is all the more relevant here since Decade raises no factual allegations unique to Licensee. Rather, Decade's concerns are with the sleeving process generally, and its safety and environmental consequences. See Decade Petition, at 3-4. Thus, the petition identifies the very issues which the Staff satisfactorily resolved in its SER and EIA on the San Onofre steam generator repair program, e.g., eddy current test capabilities and radiation hazards. In summary, all evaluations to date suggest that the Licensee's sleeving program involves no significant hazards considerations and does not require issuance of an EIS.

Finally, while Licensee recognizes the Commission's discretionary authority to convene a hearing prior to acting on Licensee's amendment request, no basis exists for the Commission's exercising its discretion in this instance. Decade has alleged no rationale for the Commission taking exception to its general rule allowing for NRC resolution of a license amendment without a prior hearing if the amendment involves no significant hazards consideration. On the other hand, the delay which

would ensue if a hearing is convened on the requested amendment would result in either deferral of the proposed sleeving program or a sleeving demonstration program without the use of defective tubes. Both results would significantly impede further confirmation of the effectiveness of sleeving as a sound and effective alternative to tube plugging.

Licensee therefore recommends that the Commission defer consideration of Decade's petition until the Staff has completed its safety and environmental reviews and entertain Decade's request for a hearing at that juncture.

Respectfully submitted,

SHAW, PITTMAN, POTTS & TROWBRIDGE



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Dated: August 6, 1981

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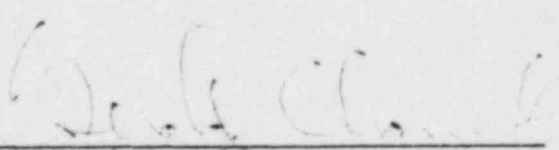
CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing "Licensee's Answer in Opposition to Petition of Wisconsin's Environmental Decade for Admission as Party, Hearing and Environmental Impact Statement" were served this 6th day of August, 1981 by deposit in the U.S. mail, first class, postage prepaid, upon the following:

Mr. Harold R. Denton  
Director  
Nuclear Reactor Regulation  
Nuclear Regulatory Commission  
Washington, D.C. 20555

Docketing and Service Section  
Office of the Secretary  
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Washington, D.C. 20555

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