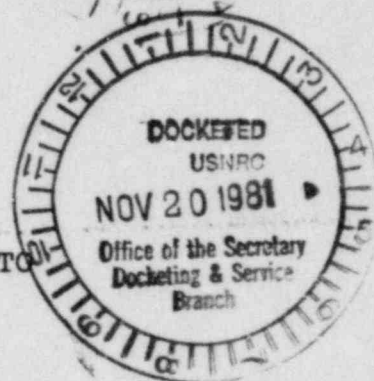


WED-11/19/81-P:50266NRC

UNITED STATES OF AMERICA  
BEFORE THE NUCLEAR REGULATORY COMMISSION



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



WISCONSIN'S ENVIRONMENTAL DECADE'S  
EXCEPTIONS AND BRIEF IN SUPPORT OF EXCEPTIONS TO  
THE INITIAL DECISION OF THE  
ATOMIC SAFETY AND LICENSING BOARD

Wisconsin's Environmental Decade, Inc. ("Decade") hereby takes the following exceptions to the Initial Decision of the Atomic Safety and Licensing Board ("Board") dated November 5, 1981, in the above-captioned matter, pursuant to 10 C.F.R. §2.762(a).

Error of Law in Initial Decision

The Initial Decision effectively grants the Licensee's Motion for Summary Disposition and finds that there is an insufficient basis for a hearing on Intervenor's Contentions 3, 4, 5 and 7, for the purpose of considering the Licensee's application for interim approval of "slewing" up to 12 steam generator tubes. Decade asserts that this finding is an error of law in that it is based upon an implied legal test requiring an intervenor to prove his or her case in order to secure the same hearing at which time the opportunity to make such a proof is

customarily provided.

Portion of Initial Decision to Which Exception is Taken

The particular portions of the Initial Decision to which this exception is taken are:

1. Standards for showing cause - Pages 6 to 7.
2. Ruling on Motion for Continuance - Page 8.
3. Admission of test results under trade secret protection - Page 10.
4. Ruling on Contention #3 - Pages 13 to 16.
5. Ruling on Contention #4 - Pages 16 to 17.
6. Ruling on Contention #5 - Pages 17 to 18.
7. Ruling on Contention #7 - Pages 18 to 19.

Brief in Support of Exceptions

One of the most fundamental rights cherished by our democratic society is the right to be heard and the right to have vital public decisions aired and debated before the government acts in a manner that may injure a citizen's interests. It would appear that this Commission and its Atomic Safety and Licensing Boards are interpreting the election of a President as grounds to, by the erection of insurmountable legal paraphernalia, undermine those principles of freedom which our country values.

Under prior Commission practice, the requirement for an intervenor to state contentions as a prerequisite to a hearing, see 10 C.F.R. §2.714(b), was limited to the question of whether a material issue of fact existed, and no inquiry was made into the merits of the contention, see Houston Lighting and Power Co.(Allens Creek Nuclear Generating Station Unit 1), 11 NRC 542, 548(1980).

By notice dated June 3, 1981, the Commission proposed to make its contention rule more stringent so as to require an intervenor to produce all of the evidence which supports his or her contentions. See Rules of Practice for Domestic Licensing Proceedings: Modifications to the NRC Hearing Process, dated June 3, 1981, at p. 5. This boded a first step to requiring the intervenor to prove his or her case prior to the same hearing at which he or she traditionally was afforded the opportunity to make such proof.

The Commission, however, has not gone forward with promulgation of the rule.

Notwithstanding the fact that the Commission retreated from its initial step to restrict the citizens' right to a hearing, the Board in the proceedings below not only applied that rejected extension, but also added more improper devices to cement shut any realistic chance for the citizen to have his or her day in court.

Specifically as described more fully below, the Board, first, unreasonably truncated the time to prepare for the hearing, and second, required intervenors to prove their case prior to the hearing instead of merely showing that the contention had a sufficient basis to justify a trial. The net result of these actions is to effectively bar the public from its right to be heard.

This proceeding involves an application dated July 2, 1981, by the Point Beach Nuclear Plant Licensee, Wisconsin Electric Power Company, to amend its operating license in order to

authorize a new experimental repair technique for degraded steam generator tubes. Previously degraded tubes were plugged and removed from operation as part of the primary boundary. Under the new technique, a section of a tube called a "sleeve" which is narrower than the original tube is inserted inside the original and bonded to the top and bottom of it. Existing technical specifications for Point Beach only permit plugged, not sleeving, degraded tubes. See Init. Dec., at pp. 1 to 2.

On September 28, 1981, the licensee requested interim relief on its application in the form of approval of a "demonstration" of the experimental process in which up to 12 tubes would be sleeved instead of plugged. See Init. Dec., at p. 1.

In response to the request for interim relief, the Board took what it characterized as "extraordinary action" and "unorthodox methods" to accelerate consideration of the proceeding, notwithstanding the Board's opinion that "the need for expedition has been created by W[isconsin] E[lectric], which delayed filing its amendment only because of its incorrect assumption that a hearing would not be necessary. See Mem. and Order, dated dated October 1, 1981, at pp. 2 and 5. The Board persisted in this abbreviated course even though the Licensee's formal representations to the Board did not include any statement of reason why the demonstration program was immediately necessary. More precisely, the only stated purpose of the demonstration program was to conduct the physical process of sleeve insertion and not to return the tubes to operation with the sleeves in place, and the conduct of the process did not require any license amendment. See Licensee Response to Board



Questions, dated October 9, 1981, at pp. 1 to 2.

As a consequence of the resulting acceleration of the proceeding, the citizen intervenors, who have limited financial resources, were required to review in detail thousands of pages of highly technical filings, complete discovery, and respond to dozens of motions and Board filing requirements in the space of only two weeks after being served with the voluminous filings.

Such a schedule is impossible for anyone to meet without a large number of lawyers, technical people and back up secretarial assistants who are able to devote full time to this matter for the course of month, and even then, only if this team of lawyers and technicians has had the advantage of prior familiarity with the exact details of the sleeving process.

While the Decade is a citizens' organization of over 50,000 members, it has but a handful of full-time staff that is insignificant compared to those of the Licensee. The Licensee has not only its own utility corporate staff, including lawyers and technical experts, but also a distinguished Washington law firm of one hundred attorneys and support staff, as well as the services of another giant corporation, Westinghouse Electric Corporation. The Decade's involvement in this proceeding has involved only one attorney, who has been required to devote a substantial amount of time to completing prior commitments of court and other deadlines, one technical staff person, who is not a chemist or metallurgist by training, and, to varying degrees, the assistance of one part time secretary.

No one except the Licensee, and, to a lesser extent the

Commission Staff, are able to meaningfully participate in such a time frame. For this reason, and in spite of its good faith efforts to accomplish all the filings required, the Decade found it necessary to move for a continuance, see Decade Motion for Continuance, dated October 26, 1981, a request which was denied by the Board, see Init. Dec., at 8.

This ruling of the Board, by itself, effectively acted to preclude public participation in a decision with fundamental safety implications. See Report to the American Physical Society by the Study Group on Light Water Reactor Safety, 47 Review of Modern Physics Supp. 1(Summer 1975), at pp. S85 to S91("APS Report").

In the event a citizen organization were able to summon the resources to meet these unreasonable time constraints, the Board's other action to require contentions to be proved before the hearing insured that the courtroom door is slammed in the public's face.

One example from the Board's Initial Decision illustrates that this is the test which was being applied.

Contention 7 related to the problem of maintaining quality control in the sleeving process because the large numbers of workers required who are subjected to large dosages of radiation cannot be provided from the Licensee's trained and stable work force. Instead, untrained people from the ranks the unemployed are recruited, called "jumpers", whose work quality is questionable. In support of this contention, the Decade made reference to the problems that, in fact, occurred during sleeving at San Onofre Nuclear Plant, and to the fact that the same

subcontractor was being retained for Point Beach as was used at San Onofre. See Init. Dec., at 18 to 19.

The Commission's own investigation of the San Onofre affair established, among othe things, that "it was substantiated that alcohol/narcotics useage did occur at the [site]" and that the jumpers included "'street people'". See Commission Inspection and Enforcement Region V Report No. 50-206/81-30, in Docket 50-206, dated September 11, 1981, at pp. 10 and 14.

Sleeving involves the bonding of two extremely thin tubes with a wall thickness of five one-hundredths of an inch in an crowded highly hostile environment. It is self-apparant that the need to perform this work with street people who take drugs and alcohol at the work site raises significant questions of whether the task will be formed satisfactorily to insure a leak tight seal between the primary and secondary side.

In the face of this major question, the Board points to the Licensee's written procedures to train the jumpers at Point Beach and concludes that the Decade's concern does not even warrent a hearing. "The hiring critera," concludes the Board, "seem appropriate \* \* \*." See Init. Dec., at p. 20.

It must be reemphasized that the issue at this phase of the proceeding was not a question of whether a decision-maker ought to draw solace from written procedures in the face of real-world experience, but rather whether that sobering real-world experience demands that a hearing be held.

The Board also justifies its blithe indifference to a full hearing on major safety issues by pointing to a "quality

assurance" program that follows the sleeve installation. See Init. Dec., at p. 20. But, it is undisputed in the record that the Licensee has, during previous inspections, plugged tubes that were not defective and inadvertently failed to plug tubes that were defective due to the great difficulty in accurately confirming the location of a handful of narrow tubes amongst more than 6,000 tubes in the crowded and hostile environment of the steam generator channel head. See Init. Dec., at p. 20.

That, combined with the fact that the American Physical Society has concluded that a rupture of only one tube in certain accident situations could cause "uncoolable conditions", see APS Report, at p. S91, certainly raises very serious questions concerning the adequacy of the Licensee's so-called "quality assurance" measures, yet the Board inexplicably concluded that they "do not case sufficient doubt \* \* \* to provide a basis for a contention." See Init. Dec., at 20 (emphasis added).

Again, it is self-apparent that the Board is deliberately confusing the question of admissability of contentions with the ultimate decision. Clearly, the only satisfactory showing of basis for this Board would be conclusive proof before the hearing is held at which affected citizens are entitled in this country to have their "day in court" and make that proof.

#### Conclusion

This Commission is presently operating under the stigma of every independent evaluation of its performance.

The President's Kemeny Commission concluded that the agency "is unable to fulfill its responsibility for providing an acceptable level of safety for nuclear power plants". See



President's Commission on the Accident at Three Mile Island, The Need for Change(1979), at p. 56. Similarly the Commission's own Rogovin Report conclude that the agency "is incapable, in its present configuration, of managing a comprehensive national safety program for existing nuclear powerplants". See Nuclear Regulatory Commission's Special Inquiry Group, Three Mile Island(1979), at p. 89.

One of the Commission's failures that served as the basis for these conclusions was the agency's practice of classifying major safety issues as "generic" and then leaving them unresolved for years without taking action. See Kemeny, at p. 51; Rogovin, at pp. 139 to 140.

The question of whether the emergency core cooling system will adequately function in a pressurized water reactor suffering from degraded steam generator tubes has been unresolved for ten years since it was first identified by the Commission's own staff as a major issue. See Docket RM-50-1, Exhibit 715.

It is an issue which the Commission has been repeatedly chasticized for ignoring by reputable independent scientists over the years that followed. See APS Report; Risk Assessment Group, Report to the Nuclear Regulatory Commission(1978), NUREG/CR-0400, at p. 48.

When the Commission was last asked to reform its ways and address this issue, it again evaded its responsibility and refused to hold a hearing of the safety issues under its discretionary authority in an action that was rebuked by two of its own members:

"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.

" \* \* \*

"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 ponds with a hearing offer that is a transparent sham."

See Docket 50-266, Order dated May 12, 1980.

In that case, the Commission offered to hold a hearing on whether the agency's refusal to take any substantive remedial action injured the Licensee, but not on whether that refusal to act on the safety issue injured the public.

Here, the Board has unveiled another technique to insure that one of the major safety issues affecting operating reactors remains unresolved and undebated--require responsible citizens to prove their case before the hearing is held at which cases are proved, and do so in a time frame that is impossible to meet.

It would appear that the decisions being made by this agency are not based upon responsible technical judgments, but rather on political directives to insure the economic survival of the nuclear industry by the inexcusable device of ignoring safety concerns.

Unless the Commission acts decisively now to repudiate such a deplorable policy, the legacy of a major nuclear accident will be on its hands.

WISCONSIN'S ENVIRONMENTAL DECADE, INC.

by *Kathleen M. Falk /jfb*

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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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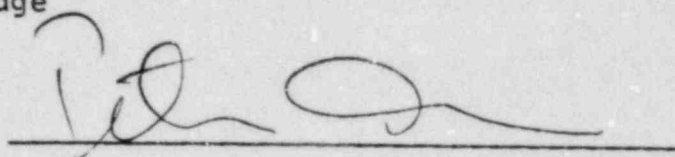
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A handwritten signature in dark ink, appearing to read "Bruce W. Churchill", is written over a horizontal line.

Dated: 11/19/81