

November 20, 1981

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

OFFICE OF SECRETARY
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Before the Atomic Safety and Licensing Board

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



LICENSEE'S PROGRESS REPORT
REGARDING DISCOVERY ACTIVITIES

In its October 13, 1981 "Memorandum and Order Concerning The Admission of A Party and Its Contentions" ("Memorandum and Order Concerning Admission"), the Licensing Board directed all parties to file bi-monthly progress reports on discovery activities, on the last working day preceding the 22nd of each month and on the last working day preceding the 7th of each month. The Board orally modified that filing schedule at the close of the October 30, 1981 hearing, to eliminate the requirement for filing the first report each month. Tr. 701, 740.

"Licensee's First Set of Interrogatories and Request For Production of Documents to Intervenor Decade Relative To Full Scale Sleeving Program" were filed on November 10, 1981, and received by Decade on November 11, 1981. Tr. 828. Licensee seeks, through those interrogatories and document requests, specific information related to the issues raised by Decade in its Contentions 3, 4, 5 and 7, as well as to any other issues which Decade timely raises, as

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those issues relate to Licensee's July 2, 1981 amendment request, which would authorize full-scale sleeving of steam generator tubes at Point Beach Units 1 and 2. "Licensee's Second Set of Interrogatories and Request For Production of Documents to Intervenor Decade Relative To Full Scale Sleeving Program" is being filed today, served by Federal Express to Decade. Those discovery requests are designed to identify, and elicit the bases for, any and all issues which Decade wishes to litigate beyond the issues expressly raised by Decade in its Contentions 3, 4, 5 and 7, as those additional issues relate to Licensee's July 2, 1981 amendment request.

Licensee does not anticipate seeking follow-on discovery of Decade; nor does Licensee intend to seek discovery of the Staff.

In its "Statement of Policy on Conduct of Licensing Proceedings," CLI-81-8, 13 N.R.C. 452 (May 20, 1981), the Commission noted that it "expects licensing boards to set and adhere to reasonable schedules for proceedings." 13 N.R.C. at 454. The Commission further "encourages * * * boards * * * to establish time frames for the completion of * * * discovery," and directs that, "In virtually all instances, individual boards should * * * set a general discovery schedule immediately after contentions have been admitted." 13 N.R.C. at 456.

The Board noted at Tr. 771-72, that:

[A] schedule for the disposition of the entries in the proceedings * * * be suggested based, on the one hand, on the possibility that we will have no further finding that this is a real sleeving program that will take place in April or May or, on the other hand, the possibility that this [the sleeving of Unit 2 in spring 1982] is a real possibility * * *.

[emphasis supplied]. Licensee respectfully maintains that there clearly is now "a real possibility" that full-scale sleeving of Unit 2 will take place in Spring 1982. See, e.g., Letter, Counsel for Licensee to Licensing Board, dated November 13, 1981; Tr. 749-752. Neither Licensee nor the Staff considered the schedule set forth in Licensee's November 13, 1981 letter to be a "truncated" schedule, Tr. 756-58, particularly given the availability of discovery to Decade since September 16, 1981, more than two months ago.

There is no reason why Decade's discovery requests should not have already been filed. Decade's contentions have long since been identified, and the Commission's Rules of Practice specifically provide that discovery is to relate only to the matters in controversy in the proceeding, 10 C.F.R. § 2.740(b)(1). Discovery is not to be used as a method of general and unrestrained inquiry for the purpose of unearthing new issues.

Licensee therefore urges that, at a minimum, the Board set a deadline of November 30, 1981 for the filing of discovery requests, and a deadline of December 14, 1981 for the filing of responses to discovery requests (filed on November 30). Such a schedule would not abridge any of Decade's procedural rights, and would preserve the options of all parties to proceed to hearing prior to sleeving of Unit 2 in spring 1982, should that be necessary. And, in any event, discovery -- whenever closed -- can be reopened upon a showing of good cause.

Respectfully submitted,

SHAW, PITTMAN, POTTS & TROWBRIDGE

By

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

Bruce W. Churchill

Delissa A. Ridgway

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Dated: November 20, 1981

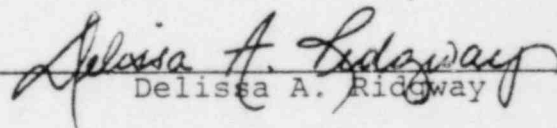
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CERTIFICATE OF SERVICE

This is to certify that copies of the foregoing "Licensee's Progress Report Regarding Discovery Activities" were this day served, by deposit in the U.S. Mail, first class, postage prepaid, to all those on the attached service list, except that Decade has been served by deposit with Federal Express, this 20th day of November, 1981.


Delissa A. Ridgway

Dated: November 20, 1981

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