

May 19, 1982

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

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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 ANSWER TO DECADE'S MOTION  
FOR RECONSIDERATION OF BOARD MEMORANDUM AND ORDER  
CONCERNING MOTION TO COMPEL

By motion dated May 3, 1982 and served May 4, 1982, supplemented by an addendum dated May 7, 1982, Decade has requested the Board to reconsider that part of its Memorandum and Order of April 22, 1982 which denied Decade's motion to compel Licensee to respond to interrogatories related to reactor vessel embrittlement. Decade seeks to have the Board compel Licensee to answer Decade's embrittlement interrogatories or, in the alternative, to have the Board act independently to address the embrittlement issue. Both requests are beyond the scope of this proceeding and should be denied.

During the course of this proceeding, for both the demonstration project and full-scale sleeving phases, including

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the October 29-30, 1981 hearing, Decade has persistently attempted to obtain discovery on the issue of reactor vessel embrittlement. Licensee has consistently maintained that there is no relationship between that issue and Licensee's request to repair steam generator tubes by sleeving. In its various filings and statements on the subject, Decade has not once shown any such relationship. Indeed, in Decade's May 28, 1982 Motion to Compel, at 4, Decade, in essence, admitted that it could show no such relationship and based its request on a hope that it might through discovery obtain information "showing a nexus between sleeving and reactor embrittlement." Aside from the fact that discovery which is not shown to relate to the matters in controversy is impermissible, 10 C.F.R.

§ 2.740(b)(1), an examination of the interrogatories themselves, filed February 10, 1982, shows that Decade was seeking no information even remotely related to sleeving or to an attempt to learn of a possible relationship to sleeving.

The Board was correct in its finding that Decade had failed to make "any showing of how the sleeving program would cause problems in the reactor pressure vessel or how discovery of information about embrittlement, or steps to remedy embrittlement, would lead in any way to information reflecting unfavorably on the safety of sleeving." Memorandum and Order at 4. Decade now seeks reconsideration of the Board's denial

of that portion of Decade's motion to compel, but provides no new information to show even the remotest nexus between Licensee's proposed sleeving program and reactor vessel embrittlement.

Decade, having been unable to show a nexus between sleeving and reactor vessel embrittlement, now begs the question by alleging that the Board itself has somehow found such a nexus, Motion at 2. Where the Board found the information linking the two issues is not explained; certainly it did not come from Decade, which has admitted that it needs discovery just to determine whether such a nexus exists. But more to the point, the foundation of the Board's decision is that a relationship has not been shown. The Board clearly stated, for example, at page 4 of its Memorandum and Order, that the validity of Decade's case depends on a determination that sleeving would cause tube weakening, and does not depend on whether or not the reactor vessel is embrittled. In denying the motion to compel, the Board went on to say that "our jurisdiction is limited to the particular licensing amendment before us and to safety and environmental issues that have been admitted for consideration." Memorandum and Order at 4-5. This is hardly a finding by the Board that reactor vessel embrittlement relates to sleeving, the only subject of the licensing amendment before it in this proceeding.

Decade's next argument, surprisingly, is based on a Staff analysis in response to a petition filed by Decade in 1979 pursuant to 10 C.F.R. § 2.206. That petition was not limited to sleeving; in fact, sleeving was not mentioned.<sup>1/</sup> Ironically, the subject matter Decade wishes to address could very well be relevant in a section 2.206 proceeding, which is exactly what was suggested by the Board at page 5 of its Memorandum and Order. That does not, however, make Decade's argument--and the analysis Decade asserts will be made by the Staff and the Board--relevant to this proceeding. Decade is simply restating the same argument it has repeatedly made without success throughout the duration of this proceeding--that the Board must consider the effects of tube rupture in relationship to a LOCA--but has still failed to show a relationship to the sleeving process. Decade's reliance on a Staff analysis in the course of a section 2.206 proceeding is of no relevance to the instant proceeding.

Decade's May 7, 1982 addendum to its motion to compel adds nothing except to emphasize Decade's concern about embrittlement. Nothing in the cited documents or in Decade's addendum relates to sleeving.<sup>2/</sup> The Board has appropriately noted, at

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<sup>1/</sup> Decade's emphasized reference at page 4 of its motion to "the absence of sleeve induced failures" in the context of the Staff's section 2.206 analysis is, at best, misleading.

<sup>2/</sup> Again, Decade's reference at page 3 of its addendum to "sleeve induced failure" is misleading.

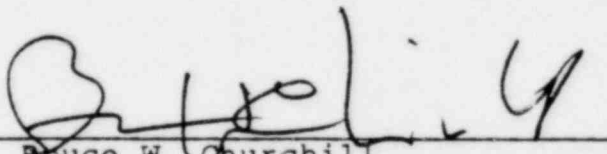
pages 4-5 of its Memorandum and Order, that its jurisdiction is limited to the amendment request before it, and Decade's proper course would be to pursue other avenues.

For the foregoing reasons, Licensee respectfully submits that Decade's motion for reconsideration should be denied.

Respectfully submitted,

SHAW, PITTMAN, POTTS & TROWBRIDGE

By



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Dated: May 19, 1982

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NUCLEAR REGULATORY COMMISSION

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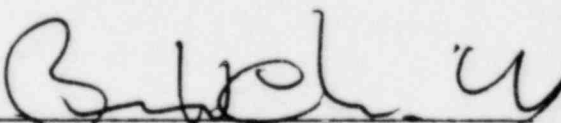
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CERTIFICATE OF SERVICE

This is to certify that copies of Licensee's Answer to Decade's Motion For Reconsideration of Board Memorandum and Order Concerning Motion to Compel," are being served to all those on the attached Service List by deposit in the U.S. Mail, first class, postage prepaid, this 19th day of May, 1982.

  
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Bruce W. Churchill

Dated: May 19, 1982

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