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August 22, 1983

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSIONOFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCHBefore the Atomic Safety and Licensing Appeal Board

| | | |
|----------------------------------|---|---------------------------|
| In the Matter of |) | |
| |) | |
| WISCONSIN ELECTRIC POWER COMPANY |) | Docket No. 50-266 (OLA-2) |
| |) | |
| (Point Beach Nuclear Plant, |) | |
| Unit 1) |) | |

LICENSEE'S RESPONSE TO DECADE REQUEST
FOR LEAVE TO RESPOND TO STAFF AFFIDAVIT

By letter dated August 11, 1983, Wisconsin's Environmental Decade, Inc. ("Decade") requests leave to respond to the "Affidavit of Herbert F. Conrad." The Conrad affidavit was provided to the Appeal Board on August 1, 1983, in response to the Appeal Board's request for the Staff's assessment of eddy current testing techniques in the transition region of steam generator tubes. See "Memorandum and Order" (July 8, 1983).

Licensee opposes Decade's request. The Appeal Board has affirmed the dismissal of Decade's petition for intervention in this proceeding. See ALAB-719, 17 N.R.C. ____ (March 22, 1983), aff'g, LBP-82-108, 16 N.R.C. ____ (December 10, 1982). As the Appeal Board has emphasized:

Decade is not, and has never been, a party to this proceeding. * * * The fact that Decade has filed with the Commission a petition for review of the denial of its intervention petition does not by itself endow Decade with party status.

"Memorandum and Order" (July 8, 1983), at 4 n.3. Lacking party status, Decade has no right to respond to the Staff affidavit, and the request must therefore be denied.

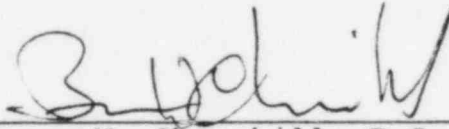
In any event, nothing in the history of this proceeding (or the companion "sleeving" proceeding)^{1/} suggests that Decade is equipped to make a significant substantive contribution to the development of the record beyond that made by the Staff and Licensee. Certainly Decade's August 11 letter attempt is no such showing, asserting nothing more than the desire of Mr. Anderson, a non-expert, to take exception to the Staff's affidavit. Decade's pending petition for Commission review consists of little more than a restatement of its proposed contentions and "a broad harangue against the Commission's generic policies with respect to steam generator tube leakage." Compare "Petition For Review of Appeal Board Decision" (April 7, 1983) with "Answer to Wisconsin Electric Power Company In Opposition To Petition For Review of Appeal Board Decision ALAB-719" (April 22, 1983) and "NRC Staff's Answer In Opposition To Wisconsin's Environmental Decade Petition For Review" (April 22, 1983). Similarly, its brief on appeal to the Appeal Board "merely quote[d], with little more, its original contentions" (ALAB-719, supra, slip op. at 17-18) -- contentions which were themselves based on nothing more than "unconnected quotations drawn from various documents and technical reports" (Id., at 10-11).

^{1/} Wisconsin Electric Power Co. (Point Beach Nuclear Plant, Units 1 and 2), Docket Nos. 50-266 and 50-301 (OLA-1).

In short, Decade has to date evidenced either an inability or an unwillingness to assist substantively in the development of the record in this proceeding. Given Decade's opportunities to make a substantive contribution to the record, and its repeated failure to do so, there is no indication that Decade can contribute at this late date significant factual information bearing on the subject matter of this proceeding.

Respectfully submitted,

SHAW, PITTMAN, POTTS & TROWBRIDGE

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

Bruce W. Churchill, P.C.
Delissa A. Ridgway

Counsel for Licensee

1800 M Street, N.W.
Washington, D.C. 20036
(202) 822-1000

Dated: August 22, 1983

RELATED CORRESPONDENCE

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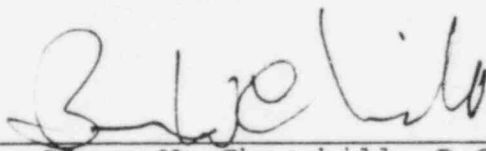
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Unit 1))

CERTIFICATE OF SERVICE

This is to certify that copies of "Licensee's Response to Decade Request for Leave to Respond to Staff Affidavit" were served, by deposit in the United States Mail, first class, postage prepaid, to all those on the attached Service List, this 22nd day of August, 1983.



Bruce W. Churchill, P.C.

Dated: August 22, 1983

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NUCLEAR REGULATORY COMMISSION

Before the Atomic Safety and Licensing Appeal Board

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SERVICE LIST

Thomas S. Moore, Chairman
Atomic Safety and Licensing
Appeal Board
U. S. Nuclear Regulatory
Commission
Washington, D. C. 20555

Dr. W. Reed Johnson
Atomic Safety and Licensing
Appeal Board
U. S. Nuclear Regulatory
Commission
Washington, D. C. 20555

Dr. Reginald L. Gotchy
Atomic Safety and Licensing
Appeal Board
U. S. Nuclear Regulatory
Commission
Washington, D. C. 20555

Peter B. Bloch, Chairman
Atomic Safety and Licensing
Board
U. S. Nuclear Regulatory
Commission
Washington, D. C. 20555

Dr. Hugh C. Paxton
1229 - 41st Street
Los Alamos, New Mexico 87544

Dr. Jerry R. Kline
Atomic Safety and Licensing
Board
U. S. Nuclear Regulatory
Commission
Washington, D. C. 20555

Atomic Safety and Licensing Board
Panel
U. S. Nuclear Regulatory Commission
Washington, D. C. 20555

Atomic Safety and Licensing Appeal
Board Panel
U. S. Nuclear Regulatory Commission
Washington, D. C. 20555

Docketing and Service Section
Office of the Secretary
U. S. Nuclear Regulatory Commission
Washington, D. C. 20555

Stuart A. Treby, Esquire
Office of the Executive Legal Director
U. S. Nuclear Regulatory Commission
Washington, D. C. 20555

Richard G. Bachmann, Esquire
Office of the Executive Legal Director
U. S. Nuclear Regulatory Commission
Washington, D. C. 20555

Myron Karman, Esquire
Office of the Executive Legal Director
U. S. Nuclear Regulatory Commission
Washington, D. C. 20555

Peter Anderson
Wisconsin's Environmental Decade
114 North Carroll Street
Suite 208
Madison, Wisconsin 53703