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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

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In the Matter of: :  
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DAIRYLAND POWER COOPERATIVE :  
(LA CROSSE BOILING WATER :  
REACTOR) :  
-----x

Docket No. 50-409 SC

Room 303  
Cartwright Center  
University of Wisconsin  
La Crosse, Wisconsin

Thursday, September 11, 1980

The above-entitled matter came on for prehearing  
conference, pursuant to notice, at 9:35 a.m.

BEFORE:

CHARLES BECHHOEFER, CHAIRMAN  
DR. GEORGE ANDERSON  
MR. RALPH DECKER

APPEARANCES:

On behalf of the NRC staff:

STEPHEN BURNS, ESQ.  
KAREN CYR, ESQ.  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555

On behalf of Dairyland Power Cooperative:

O.S. HIESTAND, ESQ.  
KEVIN GALLEN, ESQ.  
Morgan, Lewis & Bockius  
1800 M Street, N.W.  
Washington, D.C. 20036

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1 APPEARANCES: (continued)

2 On Behalf of the Intervenors:

3 FREDERICK M. OLSEN, pro se  
4 609 N. 11th Street  
5 La Crosse, Wisconsin 54601  
6 On behalf of Intervenor Olsen

7 ANNE MORSE  
8 P.O. Box 1583  
9 La Crosse, Wisconsin 54601  
10 On behalf of Intervenor CREC  
11 (Coulee Region Energy Coalition)

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P R O C E E D I N G S

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2 CHAIRMAN BECHHOEFER: Good morning, ladies and  
3 gentlemen.

4 This is a prehearing conference in a show cause  
5 proceeding involving the La Crosse Boiling Water Reactor.

6 I will introduce the Board members to you. To my  
7 left is Mr. Ralph Decker, who is a retired nuclear  
8 engineer. To my right is Dr. George Anderson, Professor of  
9 Oceanography and Associate Chairman for Research at the  
10 Department of Oceanography at the University of Washington.  
11 My name is Charles Bechhoefer, an attorney with the Atomic  
12 Safety and Licensing Board Panel of the Nuclear Regulatory  
13 Commission.

14 This prehearing conference was first announced by  
15 a Memorandum and Order of August 5, 1980. The notice of  
16 this conference was dated August 22, 1980 and was published  
17 in the Federal Register of August 28, 1980.

18 For the benefit of the reporter, I would like the  
19 parties and the petitioners to identify themselves. I will  
20 go from my left to right. Mr. Hiestand.

21 MR. GALLEN: My name is Kevin Gallen. I am  
22 attorney with the firm of Morgan, Lewis and Bockius,  
23 representing the licensee in this proceeding, Dairyland  
24 Power Cooperative.

25 With me today is Mr. Orris Hiestand, a colleague

1 of mine from the same firm.

2 MR. OLSEN: My name is Frederick Olsen. I live at  
3 609 North 11th Street here in La Crosse.

4 MS. MORSE: My name is Anne Morse from La Crosse,  
5 Wisconsin.

6 MR. BURMASTER: Mark Burmaster, Chaseberg,  
7 Wisconsin.

8 MR. BURNS: My name is Stephen Burns. I am an  
9 attorney with the Office of the Executive Legal Director,  
10 acting as staff counsel in this proceeding.

11 With me is Karen Cyr, also of the OELD staff, and  
12 Mr. James Shea of the Office of Nuclear Reactor Regulation.  
13 He is the project manager for the La Crosse site.

14 CHAIRMAN BECHHOEFER: This proceeding began with  
15 the issuance of an Order to Show Cause, February 5, 1980.  
16 That order provided an opportunity for hearing for  
17 interested members of the public. The two petitions for a  
18 hearing or for intervention were received in addition. The  
19 licensee conditionally requested a hearing and sent in a  
20 response which was intended to be an answer to the show  
21 cause order, and the hearing request was conditional upon  
22 the staff's not accepting their response.

23 In effect, the staff now has accepted the response  
24 as supplemented a few times, so that the only request for a  
25 hearing before us now are those filed by the two



1 petitioners: one, Mr. Olsen, and two, the Coolee Region  
2 Energy Coalition.

3           On July 29, 1980, the Commission delegated  
4 authority to this licensing board to rule on the request for  
5 a hearing and to conduct a hearing if one is required. In  
6 our Memorandum and Order of August 5, we invited the  
7 licensee and the staff to file responses to the request for  
8 hearing. The licensee responded on August 28. The staff  
9 responded on August 29.

10           Earlier, on August 19, a Motion for  
11 Disqualification of this Board was filed by Mr. Olsen. It  
12 was amended on August 20. The staff and licensee filed  
13 responses on September 4th and 5th, respectively. This  
14 morning we were served with copies of Mr. Olsen's Answer to  
15 the staff and Applicant's responses -- staff and licensee's  
16 responses.

17           I might say that this proceeding involves a  
18 licensee, not an applicant for anything, so the licensee,  
19 where the question is whether certain conditions will be  
20 imposed on its existing license. This is unlike the other  
21 proceedings in which Dairyland has been an applicant for a  
22 license or an amendment to its license. We refer to them as  
23 licensees in this proceeding.

24           Well, we received this answer and we have read the  
25 answer. We think we should dispose of the disqualification

1 request before we get into anything else. I would ask  
2 whether there is anything further that either Mr. Olsen or  
3 the licensee or the staff want to add to the papers that  
4 have been filed. We have looked over all of them.

5 I will call on, I guess, first the licensee and  
6 the staff to respond to the latest paper if they wish to do  
7 so, and Mr. Olsen if he has further comments.

8 MR. GALLEN: Mr. Chairman, I think our position is  
9 pretty well summarized in our original response to the  
10 Motion for Disqualification. We think Mr. Olsen has set  
11 forth no grounds whatsoever that are sufficient to support a  
12 Motion for Disqualification. There is no evidence of bias  
13 or prejudgment of issues on the part of the Board that I can  
14 see, and I think that any reasonable person could see. I  
15 think the motion is frivolous and should be denied out of  
16 hand.

17 MR. BURNS: I have nothing further to add. The  
18 staff gave a response to the original motion.

19 CHAIRMAN BECHHOEFER: Do you have anything further?

20 MR. OLSEN: I would like to say that I don't  
21 consider the motion to be frivolous at all.

22 CHAIRMAN BECHHOEFER: Well, the Board has reviewed  
23 this motion and we have decided to deny it on the grounds  
24 that the subject matter is not the type which could call for  
25 disqualification of a board.

1           The governing rule is really summarized on the  
2 first page of the staff's response, quoting a paragraph from  
3 the Midland decision where the Appeal Board stated that  
4 administrative trier of fact is subject to disqualification  
5 if he has a direct, personal, substantial pecuniary interest  
6 in a result, if he has a personal bias against a  
7 participant, if he has served in a prosecutive or  
8 investigative role with regard to the same facts as are at  
9 issue, if he has prejudged factual, as distinguished from  
10 legal or policy issues, or if he is engaged in conduct which  
11 gives the appearance of personal bias or prejudgment of  
12 factual issues.

13           Those are the sole grounds upon which a motion for  
14 disqualification can rest. We do not think that any of those  
15 grounds have been alleged or, certainly, proved, and we will  
16 therefore deny the motion under the Commission's rules in  
17 CFR 2.704, which I will read. 2.704(C) states that the  
18 presiding officer -- that is us -- if we do not grant the  
19 motion, the motion shall be referred to the Commission or to  
20 the Appeal Board.

21           We shall do that. We understand that the  
22 proceeding and the review authority is going to be  
23 redelegated to the Appeal Board, so it will likely go to the  
24 Appeal Board. If it has not been done by the time we get  
25 around to writing it, which will be early next week, we will

1 send it up with the alternative.

2           The next matter we have to discuss is the matter  
3 of the standing of the petitioners to participate. Under  
4 Commission rules, a party has to show its standing. I think  
5 the staff has outlined pretty much the types of information  
6 that are required. The licensee may have done so, too, but  
7 basically, an organization has to show that it has at least  
8 one member who is affected by the outcome of the proceeding  
9 and the organization has authorized the member to act for  
10 him or her.

11           In addition, the organization must show the  
12 representative in the proceeding is authorized to represent  
13 the group. Now, CREC is a party in the operating license  
14 proceeding and was a party in the spent fuel pool proceeding  
15 and did establish its standing there. It is our thought  
16 that, while the record is technically deficient here, we  
17 could accept statements from Ms. Morse right here.

18           The Commission in an earlier case, the Midland  
19 case, did not require the Sierra Club, which was a party in  
20 the construction permit proceeding, to refile numerous  
21 documents which established those facts. I think the one  
22 additional bit of information that we will need is that the  
23 organization wishes to participate in this particular  
24 proceeding and that they have authorized presumably Ms.  
25 Morse to represent it.

1           The record would have to show that. I think we  
2 could take statements from Ms. Morse to that effect if that  
3 were the case.

4           Do either the licensee or the staff have  
5 objections to this procedure?

6           MR. GALLEN: I do, Mr. Chairman. I don't think we  
7 have to reach the issue of whether or not they have a  
8 sufficient interest in this proceeding. I think it is quite  
9 clear now in light of the Commission's recent decisions in  
10 other enforcement actions, the Marble Hill case and the  
11 Point Beach case, in which they indicated that the issues to  
12 be considered in the confines of an enforcement proceeding  
13 are different than other licensing proceedings.

14           The right to a hearing in an enforcement  
15 proceeding is confined to the issues raised by the Director  
16 of Nuclear Reactor Regulation. In this instance the  
17 Director originally raised two issues. I don't think anybody  
18 would have any quarrel with the notion that the scope of the  
19 proceeding, if there were to be one, would have to be  
20 confined to those two issues.

21           But what has happened in the meantime, before any  
22 ruling has been made on intervention, is that the staff has  
23 effectively withdrawn the Order to Show Cause and eliminated  
24 those issues from consideration. The staff is now satisfied  
25 that no problem exists with respect to liquefaction at the



1 site.

2           When you have a right to a hearing confined to  
3 issues raised by the Director and the Director has  
4 eliminated those issues, there is nothing to hold a hearing  
5 on; and we think you don't even have to reach the question  
6 of whether or not CREC or Olsen can profess any interest  
7 which would normally grant them standing in an  
8 administrative proceeding.

9           CHAIRMAN BECHHOEFER: Let me ask you this  
10 question. Is it not possible -- the Order to Show Cause was  
11 written generally. It did not say, as your brief said, your  
12 order to show cause to the staff -- it was just an order to  
13 show cause to the Commission. And the Commission having  
14 delegated or having first invited interested members of the  
15 public to participate, it would seem to me that if an  
16 interested member of the public thought that the dewatering  
17 system was necessary, they could challenge the Director's  
18 latest finding.

19           I would like you to comment on that. I think this,  
20 in fact, happened in the Midland case. I realize you  
21 distinguish Midland on timing grounds, but in the Midland  
22 case there was an earlier immediate effectiveness portion of  
23 the show cause order which was withdrawn before any action  
24 on the request for hearing was taken.

25           The Commission in its decision of December 20,



1 1973, CLI 73-38, made it very clear that if the group that  
2 was seeking a hearing wished a review of it other than by  
3 the staff, the hearing was the way to do it. The Order to  
4 Show Cause does not disappear just because the Director of  
5 Regulation at that time changes his mind.

6 MR. GALLEN: I think there are a couple of things  
7 to be borne in mind in connection with the Midland case, Mr.  
8 Chairman. One is that while the Director may have withdrawn  
9 the immediate effectiveness part of the Order to Show Cause,  
10 the Order to Show Cause was still out there. Here the  
11 licensee has satisfied all of the issues that were raised by  
12 the Director in the course of the Order to Show Cause.

13 The other thing is the Midland decision was  
14 rendered seven years ago, and since that time, the Marble  
15 Hill decision has come down. I think the Commission has  
16 made it very clear in there that in the enforcement context,  
17 there is no point in going to hearings and holding hearings  
18 on what are essentially nonissues.

19 The Commission has tasked this board with  
20 determining whether or not there is a need for hearings in  
21 this case. I think if ever there was a situation where  
22 there is no need to go to hearings, it is here. The whole  
23 liquefaction issue was raised by the Corps of Engineers and  
24 the staff. Dairyland has satisfied all their concerns. CREC  
25 has absolutely nothing to contribute on this point. I doubt

1 if Mr. Olsen does.

2           CHAIRMAN BECHHOEFER: That is one of the things we  
3 are going to try to find out today.

4           MR. CALLEN: Mr. Chairman, I think it is pretty  
5 clear that CREC and Mr. Olsen are interested in only one  
6 thing, trying to shut this reactor down, and they will use  
7 any device that is available to them to try and do that. I  
8 think the time has come for the Commission to stop letting  
9 its procedures and the regulatory process be abused to  
10 satisfy the whim of a small, disaffected minority in the  
11 community.

12           (Board Conferring.)

13           CHAIRMAN BECHHOEFER: The statement I am going to  
14 read from the Midland case seems to us, at least, to  
15 indicate that by issuing the show cause order, by offering  
16 an opportunity for hearing, the Commission took the  
17 decisional authority away from the Director, and the staff  
18 becomes a party just like anybody else. And the issue still  
19 can be raised for hearing.

20           What I am quoting from now appears at 680 C at  
21 page 1083. It says: Contrary to petitioner's intentions --  
22 this was the modification of that show cause order which  
23 they were contesting -- did not foreclose consideration at  
24 the hearing of any of the issues framed by the initial show  
25 cause order.

1           Then they describe what those issues were. It  
2 says the Director has really determined on a preliminary  
3 basis that -- what he determined there -- then the  
4 Commission said: Should the licensee or any interested  
5 person request a hearing, then the matter will be heard and  
6 determined not by the Director but by a licensing board. If  
7 the petitioners nevertheless believe that the Director has  
8 prejudged this matter, they can by requesting a hearing  
9 transfer the decisional authority from him to the licensing  
10 board.

11           That is what I think has happened. The Commission  
12 delegated the authority to this board. But I think that is  
13 the status of this proceeding. If there are matters to be  
14 heard in terms of the specific issues spelled out by the  
15 Commission, which is whether a dewatering system should be  
16 installed by a given date, designed and installed by a given  
17 date, those issues, I think, could be heard irrespective of  
18 the position the staff may take.

19           The staff's position obviously would be one  
20 position to be heard if there is a hearing at all. If the  
21 petitioners have a different view of that matter, I think  
22 they would have a right to express that view.

23           MR. CALLEN: Mr. Chairman, all I can say is I  
24 think the situation has changed drastically in light of the  
25 Commission's new enforcement policy. I again go back to

1 Marble Hill. The Commission, I think, made it very clear  
2 that they are going to refashion the scope of participation  
3 and issues to be considered in enforcement proceedings, and  
4 they made specific reference in there to the fact that they  
5 want to concentrate their inspection an enforcement  
6 resources on actual field inspections and related scientific  
7 and engineering work as opposed to the conduct of legal  
8 proceedings.

9 I don't think they can make it any more clear that  
10 they henceforth are going to confine the scope of  
11 enforcement proceedings to issues raised by the Director of  
12 Nuclear Reactor regulation. The Director has specifically  
13 withdrawn the two issues that were originally raised in this  
14 proceeding, and I just don't think there is any point in  
15 going any further with this proceeding.

16 (Board Conferring.)

17 CHAIRMAN BECHHOEFER: I would like to hear any  
18 comments the staff has on the discourse we have been having.

19 MR. BURNS: I think the position of the proceeding  
20 is that the staff had issued the Order to Show Cause, the  
21 licensee responded, and the staff had determined, as is our  
22 position in the proceeding, that the licensee has indeed  
23 shown cause, and there were no requests for a hearing.  
24 Indeed, a licensing board would never have been appointed,  
25 and without any request for a hearing, the matter would have

1 ended there.

2 I think the Director would have been within his  
3 powers -- by issuing, say, the August 29th letter he did --  
4 to terminate the proceeding. Here we have two requests for  
5 a hearing. The staff, that is, the Director, is not, I  
6 believe, empowered to both rule on the request for the  
7 hearing and determine whether or not to terminate the  
8 proceeding himself, because the staff is potentially a party  
9 to the proceeding.

10 I think under NECO, the Sheffield Appeal Board's  
11 standing decision, in Sheffield the question becomes whether  
12 the persons' interest may be adversely affected if the  
13 proceeding has one outcome versus another. Here, under an  
14 order to show cause, the possible outcome is either, one,  
15 that an order imposing the new license conditions or  
16 modification of the license may come into effect, or no such  
17 order may go into effect.

18 To some extent, that is different than Marble  
19 Hill Marble Hill is what we call a confirmatory order.  
20 There was, in the staff view, one outcome under that order.  
21 That was suspension of construction at Marble Hill. The  
22 staff opposed the request for a hearing filed by the two  
23 Audubon Societies in that case, basically because those  
24 persons sought to base their standing on something else,  
25 that is, that the proceeding did not consider revocation of



1 a license. They did not say that they were adversely  
2 affected by the outcome of the proceeding, that is,  
3 suspension of construction.

4           Here, with respect to CREC and Mr. Olsen, I think  
5 the staff's statement on August 29 makes clear we do not  
6 know right now exactly how either person claims that they  
7 are adversely affected by this proceeding. We have no  
8 objection to Ms. Morse putting forth for CREC and Mr. Olsen  
9 making further statements to show, if they can, that they  
10 are adversely affected by the proceeding.

11           What I think in our mind, beyond a  
12 representational issue, we have to make clear that if CREC  
13 is drawing again an analogy to what happened in Marble Hill,  
14 if CREC and Mr. Olsen are trying to base their standing on  
15 the fact that this order does not go far enough -- that is,  
16 that this order does not consider suspension of operation or  
17 revocation of the license -- then we would say that they are  
18 not adversely affected by the matters within the scope of  
19 this proceeding.

20           We have no objection to them further supplementing  
21 here or by further written filings the nature of the  
22 interests which they claim are affected by the proceeding.

23           CHAIRMAN BECHHOEFER: Would you take the position  
24 that they claim they would be injured if a dewatering system  
25 were not installed? Would that be sufficient, aside from



1 the other representational questions? Aside from that,  
2 would you take the position that they could assert that as a  
3 basis for the standing?

4 MR. BURNS: I think I would have to say yes.

5 CHAIRMAN BECHHOEFER: You think it is open to them  
6 to seek a determination on the dewatering system under the  
7 scope of this proceeding?

8 MR. BURNS: Yes. In order to be able to be  
9 entitled to a hearing in this proceeding, they have to  
10 establish that they may be adversely affected by an outcome,  
11 and that outcome, I imagine, would be that no dewatering  
12 system will be installed at the site. If, indeed, they so  
13 no, we want a hearing but we agree that a dewatering system  
14 is not necessary, I think then we are really on track with  
15 Marble Hill.

16 The Audubon Societies there said we agree  
17 construction ought to be suspended but we are concerned with  
18 some other matters.

19 (Board Conferring.)

20 CHAIRMAN BECHHOEFER: The Board thinks that the  
21 position just stated by the staff is the correct one. The  
22 scope of this proceeding is limited to whether or not a  
23 dewatering system should be designed and installed on a  
24 given schedule. But we do think that within that scope, the  
25 petitioners should be able to show that they have an

1 interest affected by it, if they think they can do it.

2 I guess we will lead off with Ms. Morse.

3 MS. MORSE: Yes, Mr. Chairman.

4 First off, I would like to respond, if I could, to  
5 counsel for licensee's characterization of the Cooley Region  
6 Energy Coalition as a small, disaffected minority within the  
7 community. I think the characterization of such  
8 organization is very narrow and I think it is incredibly  
9 inaccurate. You need only to look at the fact that this  
10 issue is as large as it is within the community. It is an  
11 issue that is strongly and hotly debated.

12 Moreover, I would also object to his statement  
13 that the issue of liquefaction was raised by the staff of  
14 the NRC only. I would like to point out CREC's Motion to  
15 Suspend Operating License of May 21, 1979, in which we  
16 clearly raised the issue of liquefaction, saying that the  
17 issue was not resolved and we are very concerned about the  
18 safety of the plant. Clearly, we raised that issue then.

19 However, I think he is also right and that we are  
20 very concerned about the LACBWR facility. We don't think it  
21 is safe, especially with regards to the liquefaction issue.  
22 I think CREC's interest in the proceeding has been clearly  
23 shown by our May 21 motion to suspend the license, and I  
24 have been authorized by the Energy Coalition to represent  
25 that organization.

1           So I think that our interest in the proceeding has  
2 clearly been shown.

3           CHAIRMAN BECHHOEFER: Ms. Morse, just to clear up  
4 the record, I don't think your petition actually showed your  
5 interest in terms of what the Commission views as interest.  
6 You have to show that you have at least one member of your  
7 organization who would be affected by the outcome of the  
8 proceeding, which would be either installation or  
9 non-installation of a dewatering system, and that that  
10 person desires the organization to represent him or her.  
11 The record ought to show that.

12           MS. MORSE: Well, I can safely say that at the  
13 time the members of the organization requested that I submit  
14 the request for hearing, it was made apparent that those  
15 members of the organization, some of whom live five to six  
16 miles from the plant, were very concerned about the issue.  
17 As a matter of fact, for several years now the NRC has been  
18 questioning whether or not the plant is safe. Anything that  
19 the NRC and licensee can do to ensure the safety of that  
20 plant is something we feel is absolutely essential -- i.e.,  
21 a dewatering system.

22           CHAIRMAN BECHHOEFER: Can you provide the name of  
23 at least one? The Commission requires that the name of at  
24 least one such person who is affected -- it could be  
25 yourself if --

1 MS. MORSE: I would submit the name of Mr.  
2 Burmaster.

3 CHAIRMAN BECHHOEFER: Mr. Burmaster?

4 MR. BURMASTER: Yes.

5 CHAIRMAN BECHHOEFER: Do you live within a  
6 reasonable --

7 MR. BURMASTER: Nine miles from the plant.

8 CHAIRMAN BECHHOEFER: And do you have any -- well,  
9 is there any way that you could be affected by this  
10 proceeding?

11 MR. BURMASTER: If there was an earthquake and the  
12 plant was not stable, then I would be affected by the  
13 radioactiave releases.

14 (Board conferring)

15 CHAIRMAN BECHHOEFER: Would the licensee or the  
16 staff have any comments on the information just provided?  
17 Not in terms of the overall proceeding but in terms of  
18 satisfaction of the Commission's standing requirements?

19 Mr. Gallen, do you have any comments, or Mr.  
20 Burns, in terms of whether the statement we just received  
21 would be satisfactory to satisfy the standing requirements,  
22 irrespective of the broader issue you raised earlier.

23 MR. GALLEN: Mr. Chairman, I think the Commission  
24 has very liberal standing requirements in normal licensing  
25 proceedings. This is not a normal licensing proceeding. I

1 think the bald assertion that I would be affected if they  
2 did not install the dewatering system is just kind of  
3 bootstrapping the whole issue. I don't think they  
4 demonstrate anywhere near what I would consider the  
5 requisite degree of standing that you should demonstrate in  
6 connection with an enforcement proceeding.

7 I mean your request for information from them just  
8 begs the question. They just parroted back to you what you  
9 told them to say. I think it is kind of a charade.

10 (Board conferring.)

11 CHAIRMAN BECHHOEFER: Mr. Burns, do you have any --

12 MR. BURNS: The only other comment I would make is  
13 a question to Mr. Burmaster.

14 Mr. Burmaster, living within 6 or 9 miles of the  
15 plant and, say, living within that distance, if there were  
16 an earthquake and that led to some radiological releases at  
17 the plant, you would be affected by that release. Are you  
18 saying -- is Mr. Burmaster saying that that possibility is  
19 an outgrowth of the fact that installation and design of a  
20 dewatering system may not be ordered as a result of this  
21 proceeding?

22 MR. BURMASTER: Well, I would want the dewatering  
23 system to increase the safety. And more recently, I am more  
24 concerned with earthquakes, considering that a  
25 scientifically unexpected earthquake down in Kentucky was



1 felt all the way up in this area. I would think the fact  
2 that more unexpected earthquakes are occurring more recently  
3 increases my concern for earthquakes. If we are going to  
4 have earthquakes, I want as much protection as I can get.

5 MR. GALLEN: Mr. Chairman, this sounds to me like  
6 it is just a generalized interest in the proceeding, which  
7 the courts and the Commission have regularly held is not  
8 sufficient to demonstrate standing. I think we need an  
9 injury in fact, and also to demonstrate that he falls within  
10 the zone of interest to be protected by the statute. I do  
11 not think he has shown that.

12 Again, we are not talking about living close  
13 enough to the plant, within the context of the Commission's  
14 normal criteria in a normal licensing proceeding. We are  
15 talking about a very specific set of issues related to  
16 dewatering and liquefaction. I do not think just the  
17 generalized statement that I am concerned about earthquakes  
18 and I live near the plant and I don't want to be affected by  
19 an earthquake is kind of stretching it a little thin.

20 MS. MORSE: Mr. Chairman, if I may, I would like  
21 to say that I do not think that the issue that Mr. Burmaster  
22 raised is very specific, his concern about earthquakes and  
23 the ability of the plant to withstand an earthquake at a  
24 .12 g magnitude; that the plant is built on silt and sand.

25 It has been an issue that members of our



1 organization have been concerned with for two years now. It  
2 has been an ongoing debate within the Commission to  
3 determine whether the plant meets its own standards. There  
4 have been studies done by licensee and an NRC staff report  
5 which concluded that licensee's studies are inadequate. So  
6 the licensee commissions another study to be done.

7           There is clearly an issue here. It is one that  
8 the organization is very interested in. It is very specific  
9 and I think it would be an injustice to the people of our  
10 organization and the people of La Crosse not to hold a  
11 hearing on the matter, if only to explain just what  
12 precisely has been happening over the last two months and  
13 how what was once termed a problem has now, in the words of  
14 NRC staff member Jim Shea, become a nonproblem.

15           (Board conferring.)

16           CHAIRMAN BECHHOEFER: The one thing we would have  
17 to establish is we are not authorized in a show cause  
18 proceeding to undertake a complete examination of the  
19 resistance of the plant safety structures to earthquakes.  
20 That may be appropriate in the operating license proceeding,  
21 but it would not be appropriate here.

22           The sole issue is whether a dewatering system  
23 should be installed to prevent liquefaction, to prevent the  
24 effects of liquefaction. And what we have to be sure about  
25 is that you claim you would be affected by either the

1 installation or noninstallation of such a system in this  
2 proceeding here.

3           So maybe you could clarify. Were your remarks  
4 focused specifically on liquefaction and dewatering, the  
5 necessity for a dewatering system?

6           MS. MORSE: Are you addressing Mr. Burmaster?

7           CHAIRMAN BECHHOEFER: Either you or Mr. Burmaster.

8           MS. MORSE: I think Mr. Burmaster addressed it  
9 when he said that he thinks that any margin of safety that  
10 can be applied in this instance is critical when a plant is  
11 so marginally safe as to require a two-year discussion. We  
12 think that the installation of a dewatering system is  
13 essential.

14           (Board conferring.)

15           CHAIRMAN BECHHOEFER: I guess we have not heard  
16 finally from the staff.

17           Mr. Burns.

18           MR. BURNS: I think the staff would have to say  
19 that at least for CREC, through the comments made by Ms.  
20 Morse and Mr. Burmaster, that they probably have passed the  
21 threshold of establishing that they may be adversely  
22 affected by an outcome of this proceeding. It is an outcome  
23 which, of course, the staff supports. That is no imposition  
24 of conditions to the licensee to install a dewatering system.

25           So I think I would have to say that they have

1 passed the threshold.

2           CHAIRMAN BECHHOEFER: Let me ask you just one  
3 clarification. When you said no conditions to be imposed,  
4 would not the dedicated pump system require a new condition,  
5 or not?

6           MR. BURNS: I think it is completed. That may  
7 require tech spec changes. That, of course, would be  
8 another action of the Commission. It is not what is  
9 contemplated specifically within this proceeding. That is,  
10 the question being whether or not a dewatering system should  
11 be installed.

12           (Board conferring.)

13           CHAIRMAN BECHHOEFER: I call on Mr. Olsen to find  
14 out whether he is likely to be affected by the outcome of  
15 this proceeding.

16           MR. OLSEN: I feel that I will be definitely  
17 affected by the outcome of this proceeding. With all the  
18 sparse information that has been made available to me and  
19 the sparse information made available to the public,  
20 certainly it does not seem at all clear that the  
21 liquefaction issue has been resolved. I think that even if  
22 one admits -- which I do not -- that the site has been  
23 declared safe from liquefaction, the margin of safety and  
24 declaration of the site as safe from liquefaction is so  
25 small that errors that we are currently aware of may make

1 the margin of safety to be much lower than we thought.

2 I think that even if the staff classification of  
3 this as a nonproblem is accepted, the dewatering system  
4 should be installed anyway because I do not think it is  
5 really clear in too many minds what is going on here. You  
6 know, I personally am going to experience an increase in  
7 anxiety if I do not find out whether the return time for  
8 your SSE is 1000 years, as the staff states, 10,000 years,  
9 or whether there have been five earthquakes capable of  
10 damaging LACBWR in the historical record, as stated in a La  
11 Cross Tribune article two or three years ago.

12 My interest is the public interest. The  
13 information available to the public is miniscule on this and  
14 other matters concerning LACBWR. One need only to look at  
15 the local public document room to realize how in the dark  
16 the local populace is.

17 Our LPDR does not even contain an order to show  
18 cause of February 9, 1980, so were anyone depending on local  
19 records to try and make some sort of analysis for himself of  
20 whether the situation is safe, they might not know it was at  
21 issue, much less be able to get any information.

22 I feel that the liquefaction issue and the staff's  
23 handling of this issue deserve close scrutiny. I am trying  
24 to ask questions for the people who do not know how to ask  
25 questions. The public needs information and they need a

1 person that they can get this information from. I think  
2 that person is me.

3 History has shown that we are not going to get it  
4 from Darrel and Power, who would not tell us about damaging  
5 events until long after the fact. And history down here in  
6 the local public document room has shown us that the NRC is  
7 a poor keeper of public records. I don't think the public  
8 document room has received excision lists for this year.

9 When government and industry act together, it may  
10 not be collusion, but acting together in what I consider to  
11 be a socialistic way, and when actions of government and  
12 industry lead a concerned citizen to find out that there  
13 might be something going on behind their backs while we also  
14 pay for it, I think it is time for individuals to step  
15 forward and help safeguard the concepts of a democratic  
16 government.

17 One of the main concepts of a democracy is free  
18 and open access to records. I think we need this access so  
19 we can make informed decisions concerning our public  
20 policy. I feel that -- just a moment.

21 MR. DECKER: Excuse me, Mr. Olsen. At this time  
22 what we are trying to find out is whether you meet the legal  
23 requirements for standing. We are not at this time  
24 interested in reasons why there should or should not be a  
25 hearing. You have already stated that you live within how



1 many miles of the plant?

2 MR. OLSEN: It is essentially the same distance  
3 from where we are right now here in La Crosse, and I feel  
4 that this qualifies me for geographic --

5 CHAIRMAN BECHHOEFER: How far is that?

6 MR. OLSEN: Nineteen or twenty miles. And I think  
7 we should take into consideration that the plant can be seen  
8 from La Crosse and that meteorological conditions can cause  
9 radiological effluents or releases from the plant to travel  
10 up and down the river valley.

11 MR. DECKER: And did you state or are you stating  
12 that you can be affected by an outcome of this proceeding,  
13 to-wit: a dewatering system is required to be designed and  
14 installed by such and such a date or a dewatering system is  
15 not required? Is that your position?

16 MR. OLSEN: Yes. Yes I will be --

17 MR. DECKER: Why would you be affected?

18 MR. OLSEN: Because I feel that if we do not  
19 install the dewatering system, there will be a smaller  
20 margin of safety, and that given a smaller margin of safety,  
21 that, as indicated even by staff, which I feel is a very  
22 small margin of safety even if it is considered to be  
23 stable, that this dewatering system should be added anyway  
24 just as a precaution.

25 I think it could be well justified under the



1 defense in depth concept.

2 MR. DECKER: That does not tell me how you  
3 personally are affected or could be affected.

4 MR. OLSEN: Well, I feel that if the Commission,  
5 through the Atomic Safety and Licensing Board, does not  
6 require that a dewatering system is installed, I am going to  
7 become very anxious because of any possible releases that  
8 might occur during an earthquake that liquefaction occurred  
9 during. I cannot predict earthquakes. They could happen at  
10 any moment.

11 (Board conferring.)

12 CHAIRMAN BECHHOEFER: Mr. Gallen, any comments?

13 MR. GALLEN: Yes, Mr. Chairman. I had a little  
14 trouble understanding exactly where Mr. Olsen was going, but  
15 as I understand it, he is going to suffer some anxiety if  
16 this dewatering system is not installed. I might note that  
17 we talk about the dewatering system here. The terms of the  
18 show cause order are whether Dairyland should be required to  
19 submit a detailed design proposal and whether they should be  
20 required to implement that proposal later on.

21 Certainly, the idea of the system itself has not  
22 been defined or what would constitute the system. The  
23 threshold issue is whether or not there is a liquefaction  
24 problem or potential problem at the site sufficiently severe  
25 to warrant taking those steps, and we never really get into

1 defining what the system is or what it might include if we  
2 conclude that the liquefaction potential is not severe  
3 enough to warrant it.

4           But in any event, I think it is clear that mere  
5 anxiety is not injury in fact within the traditional  
6 judicial and Commission precepts regarding standing. He is  
7 worried about psychological stress, and I think you just  
8 cannot raise that in this proceeding.

9           As to his other desire, to hold himself out as the  
10 self-appointed guardian of the public interest, I think it  
11 is pretty clear that that is not sufficient to justify  
12 standing at this proceeding. I think his convoluted  
13 explanation of why he is here and what he intends to do  
14 makes it pretty clear that he is attempting to use this  
15 proceeding as a platform to just hold forth on whatever  
16 jumps into his mind.

17           So far we have seen a motion that he submitted  
18 that, as I repeat, I think was frivolous. He is impugning  
19 the integrity of the Board in response to a Commission order  
20 which specifically limited the scope of the issues that we  
21 raise in this proceeding. He attempted to drag in four or  
22 five additional issues which are totally irrelevant to the  
23 proceeding and totally beyond the scope of the order.

24           I think the time has come for the Board to  
25 exercise a little discipline here and ensure that from the

1 outset, that this proceeding does not get started off to a  
2 broad-based inquiry into, you know, what is wrong with  
3 nuclear power or what is wrong with the public document room  
4 or what else he might want to raise.

5 MR. OLSEN: I would like to respond to Mr. Young's  
6 (sic) comments. I feel anxiety can lead to physiological  
7 problems of stress, and psychological anxiety is well known  
8 to lead to disorders of the stomach and digestive system,  
9 muscle tension, things like that. I think there is possible  
10 injury in fact, and I also feel that my -- just a second.

11 (Pause.)

12 MR. OLSEN: I think I would be also hurt in the  
13 event . earthquake.

14 (Board conferring.)

15 CHAIRMAN BECHHOEFER: Mr. Burns.

16 MR. BURNS: I think I would have to agree with  
17 counsel for licensee that a claim that a person may be  
18 anxious or suffer from anxiety in itself, because there may  
19 be earthquakes or may not be a dewatering system, is not  
20 sufficient. It is not sufficient to establish the interest.  
21 And I think I would also have to concede, in line with the  
22 NECO decision, that the standing must indicate a broad  
23 public interest, whether this matter or the types of general  
24 issues Mr. Olsen has raised in his request for hearing is  
25 not sufficient to establish the standing.

1           MR. OLSEN: I feel that both licensee and staff  
2 have mentioned that I have been talking about psychological  
3 problems, and they do not include the fact that I was  
4 talking about physical problems, physical problems which may  
5 be directly caused by psychological problems, and physical  
6 damage caused by radioactive releases from the plant in the  
7 event of an earthquake.

8           MS. MORSE: Mr. Chairman, if I could interject, I  
9 have seen Mr. Gallen and Mr. Burns both repeat that  
10 psychological effects resulting in physical harm to one's  
11 body are insufficient, and both times they have ignored the  
12 fact that Mr. Olsen stated that in the event of an  
13 earthquake which perhaps could result in radioactive  
14 releases from the plant, he would be affected in that  
15 regard, as well.

16           I am not sure if you are attempting to pretend  
17 that it was not said or you are just -- it is not clear to  
18 me. But I would think that you would consider both.

19           MR. BURNS: I may have misheard. I think if that  
20 is what is being said, I think we are going to have to -- we  
21 would have to concede he has established a standing. I am  
22 sorry. I did not get that.

23           MR. GALLEN: Mr. Chairman, I would not concede  
24 standing. Again, I think the normal distance parameters  
25 that are used for determining standing in normal licensing

1 proceedings are inapplicable in a much more limited  
2 proceeding of this sort, and I think you cannot just say,  
3 well, this is 20 miles from the plant, ergo he has standing  
4 if he just walks in and says, gee, I might be affected if  
5 there were releases from the plant.

6 I think he has got to come up with something more  
7 specific, something more concrete, and a little more detail  
8 as to how he will specifically be affected, and why he would  
9 be affected if dewatering were not accomplished at the site.

10 MS. MORSE: Mr. Gallen, may I ask you, what would  
11 you consider an appropriate description of standing?

12 CHAIRMAN BECHHOEFER: I think that that is not too  
13 appropriate, to ask a question of counsel.

14 (Board conferring.)

15 CHAIRMAN BECHHOEFER: I think at the moment we  
16 will take a short break. We want to talk over the standing  
17 question. We will be back in about 15 minutes.

18 (Brief recess.)

19 CHAIRMAN BECHHOEFER: Back on the record.

20 Off the record.

21 (Discussion off the record.)

22 CHAIRMAN BECHHOEFER: Back on the record.

23 The Board has decided that both of the petitioners  
24 have shown standing, that they have standing to participate.

25 It is still necessary to decide on the issues.



1           Now, the issues are those framed by the  
2 Commission, which are as stated in the show cause order.  
3 The broad issues are those. Because of the statement of the  
4 issues, we will rull out at this time all of Mr. Olsen's  
5 issues except numbers 1 and 2. Issues 3 through 7 are not  
6 within the scope of the Commission's show cause order, and  
7 these matters just cannot be heard in this proceeding.

8           I might add that the one that bears upon the cost  
9 of a dewatering system should it be installed is not  
10 relevant under the Atomic Energy Act, as raised. It might be  
11 relevant as a separate issue which is open for consideration  
12 in the operating license case. I believe it is encompassed  
13 within one of the issues that has been admitted in that  
14 proceeding. It cannot be heard in the show cause proceeding.

15           Under the Atomic Energy Act, if the matter is  
16 necessary for safety it has to be installed irrespective of  
17 what the financial cost might be. Our consideration of a  
18 dewatering system, design and installation of one, in this  
19 proceeding will be irrespective of what it costs.

20           So our decision is that the issues have to be  
21 confined to the first two.

22           Now, the issues which CREC had raised, I assume,  
23 are the same. That is, whether a dewatering system should  
24 be installed, designed and installed by a given date as  
25 stated by the Commission. That is the limit to which we can

1 go in this particular proceeding.

2           What we would like to find out, however, is  
3 whether there are specific subissues or whether the  
4 petitioners or intervenors have specific subissues which  
5 they have identified. Before going to a hearing, we will  
6 have to know if there is some information contrary to what  
7 the licensee and the staff have -- that can come to a  
8 hearing, that would justify actually holding a hearing.

9           What we would inquire now is whether the  
10 petitioners or intevenors, as the case may be, have  
11 subissues, really specific parts of the analysis which the  
12 staff and licensee have put in which they disagree with. We  
13 can hear you in either order, but we would like to discuss  
14 that: really what would you intend to prove if a hearing  
15 were held in terms of installation of a dewatering system.

16           Mr. Olsen, you can lead.

17           MR. OLSEN: I feel that forecasting liquefaction  
18 is currently an art and not a science, and theories being  
19 used have not had time to be properly borne out by  
20 historical prediction and observation of the results of  
21 earthquakes. I also feel that there are many questions to  
22 be asked, hopefully during a period of discovery which might  
23 be set in the future, that could show specifically that  
24 there may have been some variables left out of calculations.

25           I would also like to point out that Dames and

1 Moore in their analyses pointed out that there was new  
2 information, you know, coming in and new ways of predicting  
3 soil behavior. In the future I feel that new information  
4 will continue to come in and that it is not safe to rely on  
5 what we know now.

6           CHAIRMAN BECHHOEFER: Are there any specific  
7 portions of the analyses that have been done so far by  
8 either Dames and Moore or by Waterways Experiment Station?

9           MR. OLSEN: I have not had a chance to review the  
10 probabilistic studies used to predict the return period for  
11 a safe shutdown earthquake. I have not seen any calculation  
12 or variables which take into account changing water levels  
13 in the Mississippi River, which I think is a very important  
14 point, and I don't know if Waterways Experiment Station has  
15 repudiated their own findings.

16           There is so much interaction between staff and  
17 Applicant that has not been attended by the public, and I am  
18 not aware of any public record that has been made of things  
19 such as conference calls. So, at this point I would like to  
20 ask that a hearing date be agreed to and a period of  
21 discovery be set.

22           At this time I do have some specific points, but I  
23 feel that these points would become far more specific had I  
24 a chance to legally and nitpickingly question the staff and  
25 Applicant.

1 (Board conferring)

2 MR. OLSEN: Here we are reviewing highly technical  
3 data, and without being able to reference things in  
4 pertinent reports, it is difficult for me to lend credence  
5 to them.

6 (Board Conferring)

7 CHAIRMAN BECHHOEFER: Ms. Morse, do you have any  
8 specifics that you think the hearing should go into at this  
9 stage?

10 MS. MORSE: I would like to say that we are  
11 concerned with questions that Mr. Olsen raised, in  
12 particular the seismicity probabilities and how they differ  
13 and how they were established. We see from the licensee  
14 probabilities that differ from those of the staff, and we  
15 would like to know more about how that was established.

16 We would also be interested in being shown how the  
17 driven piles improve the conditions under the structure of  
18 the LACBWR facility.

19 Specifically, we are also interested in garnering  
20 more information with regards to the expert witnesses that  
21 parties are relying on. Here I refer to Drs. Sing and  
22 Seed. I do not believe that they are independent experts as  
23 one might choose to define them, and if anyone can prove to  
24 me that they are, I will be very happy.

25 I believe Dr. Seed was responsible for developing

1 the procedures which both WES and the staff and licensee  
2 relied upon, and thus those procedures are called in  
3 question. As far as I am concerned, I feel a great deal of  
4 confusion about the entire situation of procedures being  
5 used that prove one thing and the same procedures being used  
6 that prove another.

7           It is all very confusing, and I would like more  
8 information as well as an explanation as to what has  
9 happened here. As I earlier stated, what was once a problem  
10 is now a nonproblem.

11           MR. OLSEN: I have another point I would like to  
12 bring up that I did not cover before, and that is perhaps as  
13 licensee's reports state, the ground is more stable under  
14 the reactor building, the turbine building and the stack;  
15 but what about the ground around them? If the ground around  
16 the plant undergoes liquefaction, I do not understand why  
17 the nonliquefaction of the ground directly under the plant  
18 would mitigate anything.

19           (Board conferring.)

20           CHAIRMAN BECHHOEFER: The Board is trying to  
21 decide on the best system for developing really subissues  
22 within the broad issues that the Commission has set forth  
23 for the proceeding. One of the things we would like to know  
24 in terms of establishing a discovery period or any period  
25 for development of more specific contentions is what the



1 timing would be if we should require the most that the  
2 Commission has authorized, which is the design and  
3 installation of a dewatering system.

4           If one were -- what would be the time period, if  
5 you know, to design and install one? We were thinking in  
6 terms of a February cutoff date which the Commission has  
7 specified.

8           MR. GALLEN: I think the February cutoff date was  
9 the target when the Order to Show Cause was originally  
10 issued. If, in fact, we are going to go ahead and hold a  
11 proceeding on this issue, I would assume that that date  
12 would be extended day for day until the proceeding is  
13 terminated. And if at that time a decision were reached  
14 that Dairyland were required to install a dewatering system  
15 and submit a conceptual design, Dairyland would still have  
16 the time frame envisioned within the original show cause  
17 order.

18           In other words, approximately three months to  
19 submit such a proposal, and nine months to implement it. I  
20 don't think we are constrained in any way by the original  
21 February date.

22           I do want to add, in response to the issues or  
23 subissues that the Intervenor are attempting to raise, that  
24 I think it is clear that a couple of those go beyond the  
25 scope of the show cause order: in particular, Mr. Olsen's

1 concern that it is not safe to rely on what we know now.  
2 That involves sheer speculation. I think we have to rely on  
3 what we know now.

4           The question of the return period for a safe  
5 shutdown earthquake and the seismic probabilities in the  
6 area are givens. We are concerned with the question of  
7 whether or not liquefaction will occur given a particular  
8 size earthquake, assuming that we have that size earthquake,  
9 and whether or not there is a liquefaction potential  
10 associated with that earthquake.

11           There are other remarks that make it clear to me  
12 that all they are interested in doing is conducting a  
13 fishing expedition. They saw the original reports go in.  
14 The concerns that were raised concerning liquefaction were  
15 those of the Waterways evaluation group, of the Army Corps  
16 of Engineers and the NRC staff.

17           CREC and Olsen are attempting to ride the  
18 coattails of those concerns, and those concerns have been  
19 resolved to the satisfaction of the staff and WES. and I  
20 don't think there is any need to go any further with this  
21 proceeding if all that they intend to do is come in and  
22 query the result that has been reached.

23           The staff and the Applicant, or the licensee, in  
24 this instance, have resolved the problem. They have reached  
25 a compromise, as it were. Dairyland has agreed to take

1 certain other measures at the site, and I think this is  
2 clearly a stipulation and a settlement within the meaning of  
3 10 CFR 2.203, applicable to enforcement proceedings.

4 I would respectfully request that the Board  
5 approve that settlement and terminate this proceeding  
6 forthwith. I think it is clear they have nothing of  
7 substance to contribute at this proceeding. They are here  
8 to get some media coverage and have a good time. I think it  
9 is time that this board stops letting itself and the  
10 regulatory process be used for that purpose.

11 MS. MORSE: Mr. Chairman, I feel the need to  
12 respond, if I may. I think Mr. Gallen's characterization of  
13 us here to gain a little media coverage is patently false.  
14 I am here because I am concerned about the issues. I am  
15 concerned about the safety of that reactor, and you better  
16 acknowledge that.

17 If you think that the staff and licensee and the  
18 NRC can function without the public knowing what is  
19 occurring, what is happening, I think you are wrong. CREC is  
20 of the opinion that the public has the right to know, as  
21 well as the fact that the regulatory agencies have the  
22 obligation to explain to the public what, precisely, is  
23 going on. That is why we are here today.

24 MR. OLSEN: I feel that Mr. Gallen's  
25 characterization of our efforts as a fishing expedition is

1 way off-base, especially concerning some of the  
2 interrogatories that have been submitted to CREC by staff  
3 and Applicant, or licensee, in this case.

4 CHAIRMAN BECHHOEFER: I do not think those are  
5 relevant to this proceeding.

6 MS. MORSE: Mr. Chairman, I have not concluded my  
7 statement. I have one more remark to say, and that is Mr.  
8 Gallen referred to the probabilities as givens. We are  
9 talking about whether the dewatering system should be  
10 installed. But from my interpretation of some of the  
11 documents that I have read, licensee contends that the  
12 probabilities of an earthquake the magnitude of which we  
13 speak are so unlikely that this is not a problem.

14 So I would contest the fact that the probabilities  
15 are a given.

16 (Board conferring)

17 CHAIRMAN BECHHOEFER: Well, the Board has  
18 considered some of these matters on its own, and we do not  
19 think that some of these probabilities are givens. For  
20 instance, we do not think that this proceeding can be  
21 concluded unless the licensee can establish that .12 is a  
22 proper safe shutdown earthquake. In that respect, the staff  
23 and the licensing board found that a ground acceleration of  
24 .2 g was the proper one for that Tyrone proceeding.

25 I would want the record to show either why .2 is

1 not appropriate for the La Crosse site or, that given a .2  
2 acceleration, you would not have a liquefaction problem.  
3 Using Appendix A -- and, by the way, I personally do not  
4 read Appendix A as involving the probabilities of any given  
5 earthquake occurring - but under application of Appendix A  
6 as it was applied in Tyrone, a particular earthquake was  
7 used in Ohio and found not to be associated with a given  
8 structure.

9           Therefore, it was found to be the same tectonic  
10 provinces as the Tyrone plant, and it was therefore  
11 designated as the safe shutdown earthquake. It was a higher  
12 earthquake than the applicant in that case proposed, for not  
13 all of the plant structures but for some of them.

14           Therefore, I would think that before we could  
15 determine that no dewatering system should be imposed, we  
16 would have to be convinced that a safe shutdown earthquake  
17 of .12 g is appropriate for the La Crosse site rather than  
18 say one of .2 g.

19           I know the Waterways Experiment Station in its  
20 earlier analysis did do an analysis of a .2 g earthquake.  
21 We do not see that they have done so using their revised  
22 figures for their more recent analysis. At least we don't  
23 have a copy of that. We don't see that in the latest staff  
24 safety evaluation.

25           MR. GALLEN: Mr. Chairman, I think the Board might



1 be misreading the scope of the show cause order. That show  
2 cause order was predicated upon the Director's determination  
3 that .2 g was the ground acceleration associated with the  
4 SSE at the La Crosse site, and I do not think the Board is  
5 in a position to second guess that determination at this  
6 juncture.

7           The only reason a .2 g figure was used in the  
8 original WES report was because the staff, I think out of  
9 curiosity more than anything else, requested that  
10 information. The .12 g figure is the one that the NRC staff  
11 is using and has used for this plant, and it is now looking  
12 at it in conjunction with the SEP program. If you want a  
13 definitive determination that that is the correct figure  
14 that should be used for all time, I think we ought to  
15 postpone this proceeding until after the SEP is completed.

16           CHAIRMAN BECHHOEFER: I think that this issue is  
17 crucial to determining whether a dewater system -- whether  
18 liquefaction is a problem, and therefore whether a --

19           MR. GALLEN: The Board's function is to determine  
20 whether or not liquefaction is a problem, assuming .12 g is  
21 the g value.

22           CHAIRMAN BECHHOEFER: I do not see that. Under  
23 Appendix A, you have to find a safe shutdown earthquake, and  
24 we cannot assume one. You can assume anything, but I think  
25 one has to be established. And we cannot determine whether

1 liquefaction is a problem unless we know what a safe  
2 shutdown earthquake is. We cannot assume it.

3 MR. GALLEN: You said yourself, Mr. Chairman,  
4 earlier that this was not going to be a wide-ranging  
5 investigation of other seismic parameters associated with  
6 the plant.

7 CHAIRMAN BECHHOEFER: That is correct.

8 MR. GALLEN: Here is the classic case of a seismic  
9 parameter that the Board has to take as given for the  
10 purpose of this proceeding. This proceeding is very  
11 confined in scope. We are not going to reinvent the wheel  
12 here or duplicate efforts that are going on in conjunction  
13 with the SEP proceeding.

14 CHAIRMAN BECHHOEFER: In order to determine  
15 whether or not liquefaction is a problem, we have to know  
16 what the safe shutdown earthquake is, and I do not think we  
17 can accept an assumption which runs contrary to safe  
18 shutdown earthquake accepted for a plant that is less than  
19 100 miles away. I don't know how far away it is, but it is  
20 very close. It is clearly -- I think it is in the same  
21 tectonic province as defined by the staff in Tyrone.

22 I just don't think that we can isolate our  
23 decision on liquefaction from a factor that is crucial to  
24 determining whether liquefaction is a problem. I don't  
25 think Appendix A permits us to do that. I don't know

1 whether .2 or .12 is an appropriate safe shutdown  
2 earthquake, but I think we have to find out before we  
3 determine that a dewatering system either should or should  
4 not be installed.

5           MR. CALLEN: I think we have to conduct his  
6 hearing on the assumption that .12 g is the appropriate  
7 value. If after the completion of the SEP program the staff  
8 concludes that another value is appropriate, then perhaps we  
9 ought to take another look at the liquefaction issue. But I  
10 think for this Board to start down the road towards an  
11 open-ended inquiry of this sort is clearly going well beyond  
12 the scope of what the Commission contemplated and what the  
13 Director of Nuclear Reactor Regulation contemplated when the  
14 Order to Show Cause was issued.

15           I think it would be premature and inappropriate  
16 for this board to commence that inquiry.

17           MS. MORSE: Mr. Chairman, at this time I would  
18 like to state that we here in La Crosse, living not far from  
19 the plant, perhaps are a little bit more concerned than you  
20 who live wherever you live. I am sure it is much farther  
21 away.

22           There are a few things that have happened in the  
23 recent past that cause us to believe that that quake and the  
24 models that the NRC is using to determine safety at the  
25 plant are accurate, and I would like to refer to something

1 Mr. Olsen pointed out when he attempted to show his  
2 interest. That was a quake in Kentucky at the end of July.  
3 For your information, I would like to quote from several  
4 articles, brief quotes here in which they state that it is  
5 very surprising that this earthquake occurred at all because  
6 there is no known fault there.

7           They say that the tremor was much stronger than  
8 was expected because there has been no history of  
9 earthquakes. It can be seen that we are clearly not working  
10 here with an issue that people know much about and that can  
11 be predicted with such certainty.

12           An order to show cause was issued as a consequence  
13 of the motion that we filed to suspend the license of  
14 Dairyland for LACBWR because they do not meet NRC  
15 requirements. At this time CREC is going to propose that  
16 LACBWR be shut down until such time as the NRC can determine  
17 that their standards are safe, because it is clearly at this  
18 time in violation of their standards.

19           CHAIRMAN BECHHOEFER: Well, we do not have  
20 jurisdiction to consider plant shutdown in this proceeding  
21 here. Again, you would have to file another show cause  
22 request to do that. All we can consider here is whether a  
23 dewatering system should be designed and installed, and  
24 basically where there is a liquefaction problem. That is  
25 all we have authority to consider as the show cause board.

1           The other matters may come up in the operating  
2 license proceeding, to which you are a party, but it is not  
3 within the scope of this proceeding at all. But the question  
4 the Board had in mind, I think, is within the scope of this  
5 proceeding, and we think it should be answered.

6           We think that the staff cannot logically be  
7 claiming that .12 g is an adequate safe shutdown here at La  
8 Crosse and at the same time in Tyrone say that .2 g is  
9 required. I think whether or not liquefaction is a problem  
10 is very dependent on the answer to that question. I do not  
11 think we can assume a safe shutdown earthquake -- .12 may be  
12 perfectly adequate, but I think there has to be some  
13 explanation on the record why it is adequate as a safe  
14 shutdown earthquake.

15           It was assumed by the staff only because it was  
16 proposed by the applicant in the operating license case.  
17 Dairyland proposed it as an applicant. It has ever been  
18 ruled upon. I have read the analysis which came in in 1974,  
19 and it may well be correct, but the staff took a completely  
20 different view in Tyrone. There must be some reason.

21           If Appendix A requires a different result, which  
22 it seemed to in Tyrone, I want to find out why it does not  
23 require it here. We are under Appendix A in terms of  
24 determining when liquefaction becomes relevant as an aspect  
25 of Appendix A, which says that you design the plant to



1 withstand the safe shutdown earthquake and you take into  
2 account liquefaction in doing so. That is the whole  
3 regulatory basis for looking at liquefaction.

4           So it is our opinion that we have to determine  
5 what the safe shutdown earthquake is in order to determine  
6 whether liquefaction is a problem, and I think it is  
7 required by Appendix A to do it that way.

8           MR. GALLEN: Mr. Chairman, I take exception to  
9 that ruling. I think it should be certified to the  
10 Commission.

11           CHAIRMAN BECHHOEFER: We can certify it. You will  
12 have a right to appeal our -- we will have to issue a  
13 written ruling.

14           (Board conferring.)

15           MR. GALLEN: Mr. Chairman, I just became aware of  
16 a fact that may be relevant to the Board's deliberations on  
17 this point. The .12 g value was originally submitted by  
18 Dairyland in conjunction with its operating license  
19 application.

20           During the course of all subsequent submittals by  
21 Dames and Moore and evaluations by the staff, with the  
22 possible exception of the original request that WES just  
23 consider the .2 g case, .12 g has been used and this has  
24 been the -- it is not just an assumption. The staff has  
25 accepted this as the value pending the completion of a

1 report on seismic parameters prepared by the Terra  
2 Corporation in conjunction with the systematic evaluation  
3 program.

4           It is my understanding that that report has been  
5 issued in conjunction with the program, and the actual g  
6 value associated with the safe shutdown earthquake that they  
7 have reached is .1 g, somewhat less than the .12 used for  
8 the purposes of the liquefaction analysis. I think, again,  
9 it would be inappropriate for this board to go beyond what  
10 formed the factual basis for the Order to Show Cause in the  
11 first place, and this value was what triggered the Order to  
12 Show Cause in the first place.

13           If we used the .1 g value, we probably would not  
14 even be here today, and I just do not think this is the  
15 appropriate time, place or forum to go second guessing all  
16 that has gone before in connection with this effort.

17           CHAIRMAN BECHHOEFER: It may be that .1 turns out  
18 to be the answer, but I think that that is one of the things  
19 we will have to decide.

20           One of the questions I was going to ask you was:  
21 whether we would not object to certifying the question to  
22 the -- it is likely to be to the Appeal Board, because I  
23 think the review authority is going to be delegated. But be  
24 that as it may, we would not object to certifying.

25           But you will also have the opportunity to appeal

1 our ruling that there should be a hearing, so we would not  
2 bother certifying if you were going to file appeals from  
3 that ruling in any event.

4 MR. HIESTAND: Mr. Chairman, we would like the  
5 certification.

6 CHAIRMAN BECHHOEFER: If you are going to appeal,  
7 you are going to need the certification to raise the issue  
8 there. If you are going to appeal our ruling that there  
9 should be a hearing -- if you don't want to appeal that, we  
10 would be prepared at least to certify, although I would like  
11 to hear from the staff on that. But we would have no  
12 objection to certifying. Otherwise, we would just include  
13 it in our order. Under 714(A) you have a right to appeal.  
14 But if you are not going to object to other aspects of the  
15 hearing, then we would have a separate certification.

16 MR. HIESTAND: The day is not over yet. I don't  
17 know where we are going to come out.

18 CHAIRMAN BECHHOEFER: All right.

19 MR. HIESTAND: We are reserving our position on  
20 that at this time.

21 CHAIRMAN BECHHOEFER: I would like to hear from  
22 the staff. Do you think the size of a safe shutdown  
23 earthquake is within the scope of this proceeding?

24 MR. BURNS: I think preliminarily I have to agree  
25 with the licensee that I do not think it is. The reason for

1 that, I think to some extent it may be clarified by the way  
2 in which the order is structured. I think what the order  
3 did in its structure, given a .12 g acceleration, do you  
4 need, in effect, a site dewatering system, do you need to  
5 design and install such a system.

6 I think in view of Marble Hill, which notes not  
7 only the fact that enforcement proceedings are generally  
8 narrowly proscribed and it is appropriate to do so, I think  
9 the question becomes, given the .12 g peak ground  
10 acceleration, is a safety watering system necessary?

11 I think the Commission said in Marble Hill, if you  
12 are really posing the question in a different way, if you  
13 are asking something more, if you are saying, given .2 g, is  
14 a site dewatering system necessary, given .7 g or 2 g, is it  
15 necessary, I think my view at this stage is that is properly  
16 a request to the staff.

17 Under 10 CFR 2.206, in light of the guidance given  
18 in Marble Hill, I think .12 g is a given in the proceeding?

19 MR. GALLEN: Mr. Chairman, I might point out that  
20 on page -- I guess it is Part 3 of the Order to Show Cause  
21 -- the first paragraph says that the licensee show cause in  
22 a manner hereinafter provided why the licensee should not,  
23 one, as soon as possible submit a detailed proposal for site  
24 dewatering system to preclude the occurrence of liquefaction  
25 in the event of an earthquake with a peak ground

1 acceleration of .12 g or less.

2 I don't think the record could have made it any  
3 clearer that this was what the proceeding was based upon.

4 MR. BURNS: I would add to that. I think not only  
5 there, but then you get to the specification of the issues.  
6 One of the specification of issues is not whether .12 g is  
7 an acceptable or appropriate peak ground acceleration to use  
8 in the case of a seismic event at the La Crosse Site.

9 (Board conferring.)

10 CHAIRMAN BECHHOEFER: We have decided we will  
11 certify that question. We will issue an order authorizing a  
12 hearing but also certifying that specific question to the  
13 Commission. I think it will be the Appeal Board. The  
14 question will be whether, in determining whether a  
15 dewatering system is necessary, we are required to assume  
16 that the safe shutdown earthquake would be one of .2 g, or  
17 alternatively, whether we may, prior to determining whether  
18 a dewatering system is necessary, determine on our own what  
19 a safe shutdown earthquake should be.

20 MR. HIESTAND: Mr. Chairman, I still don't think  
21 you understood the distinction we have been trying to tell  
22 you. Your statement just now affirms that. All we were  
23 asked by the Director is, if you have this given earthquake  
24 situation, does it appear that you will have liquefaction?  
25 And we have answered that question. That is the only



1 thing.

2           You are following up a hearing on his show cause  
3 order as to whether it is needed under that statement of  
4 fact, and again, you are trying to expand this hearing as if  
5 it were a licensing proceeding or something. Your function,  
6 and clearly the rules show that you should talk about the  
7 issue that was raised by the show cause order.

8           Now, if the staff wants to come out and give us  
9 another set of equations on this thing and we have to  
10 respond to that, then maybe you would have a right to go  
11 into it if someone wanted a hearing, but not in this  
12 proceeding. It is a grievous error that you are doing to us.

13           CHAIRMAN BECHHOEFER: As I say, we are going to  
14 certify it to the Commission or the Appeal Board and let  
15 them decide. If we are limited to an earthquake of .12 g  
16 and we are told that we are, well, that will be it. We will  
17 consider it in that context.

18           MR. HIESTAND: Again, the question is whether you  
19 are limited to having a hearing on what is in the show cause  
20 order. You are trying to now bring in a generic issue of  
21 what is a proper safe shutdown thing. You are still not  
22 getting the question right. What we are saying is we are  
23 objecting to what you are doing.

24           CHAIRMAN BECHHOEFER: The show cause order was  
25 based on a study which analyzed both an earthquake at .12 g

1 and an earthquake at .2 g. The study showed that at the  
2 lower level, there appeared to be a problem, the original  
3 WES study. And the show cause order was written in that  
4 context because that was what Dairyland as applicant was  
5 proposing.

6 But no one has ever determined what a safe  
7 shutdown earthquake should be for this reactor.

8 MR. GALLEN: Mr. Chairman, I reiterate that  
9 passage I just read you from the ordering paragraph.  
10 Dairyland is only ordered to show cause with respect to the  
11 .12 g, and by definition this proceeding cannot go beyond  
12 .12 g. We are not ordered to do anything with respect to  
13 .2 g, and I do not see how you can just ignore that plain  
14 language and try to go beyond the scope of what the  
15 Commission laid out in black and white.

16 CHAIRMAN BECHHOEFER: We will refer it and we will  
17 see what the Commission has to say or the Appeal Board has  
18 to say.

19 MR. GALLEN: I think, Mr. Chairman, you are  
20 abnegating your responsibilities.

21 CHAIRMAN BECHHOEFER: You asked us to refer the  
22 question, and we will. Let the Commission tell us. If the  
23 Commission says no, well, that is what we will do.

24 MS. MORSE: Mr. Chairman, at this time I would  
25 like to commend the Board for --

1 (Laughter.)

2 MS. MORSE: -- for considering that what criteria  
3 have heretofore been used as safe shutdown earthquake have  
4 not been proven; and as Applicant is arguing, perhaps it is  
5 just not done, and perhaps it is not even with their  
6 authority. But I am happy that the question has come before  
7 some people who feel that it is an issue that needs to be  
8 raised and debated.

9 I assume that the Board has a certain amount of  
10 obligation to deal with the issue of the safety of the  
11 plant. I am glad to see that they took that position.

12 (Board conferring.)

13 CHAIRMAN BECHHOEFER: We would like to move on now  
14 to trying to establish either a discovery schedule or a  
15 schedule for development of more precise contentions, not  
16 within the scope of the one we are going to certify to the  
17 Commission, but the remainder of the order also deals with  
18 -- assuming the .12 is accepted, there still would have to  
19 be contentions within that scope, or more specific  
20 contentions.

21 Obviously, the broad contention is the issue as  
22 stated by the Commission, but in order to go to hearing, we  
23 will have to have specifics on what is wrong with the  
24 analyses used by the licensee or the staff.

25 So we would like parties' suggestions as to the

1 development of a schedule for doing this. Also, while we may  
2 or may not be bound by the February 21 date, we do think the  
3 date does indicate need for some expedition in developing  
4 the record and deciding whether an evidentiary hearing needs  
5 to be held.

6           The Commission more or less has sanctified that  
7 date even though it was probably arbitrary. It was probably  
8 based on one year from the show cause order, and we probably  
9 have discretion to change that date. But I think it does  
10 indicate that we should do things expeditiously.

11           So, we would like suggestions for some sort of a  
12 schedule for developing more precise contentions and going  
13 to hearing if necessary. I am sure the licensee would want  
14 to know whether you have particular witnesses you are going  
15 to sponsor and whether you are going to try to develop  
16 particular points that will require some specification of  
17 various points in the studies that we have that are not  
18 adequate or adequate, as the case may be.

19           So, I would invite the parties for some  
20 suggestions as to discovery, assuming the contentions now  
21 are in the form stated by the Commission's show cause order.  
22 We should develop a system for getting more specific as to  
23 what actually is at issue, what parts of those broad  
24 contentions are at issue.

25           Will you have a suggestion as to a discovery

1 schedule?

2           MR. GALLEN: Mr. Chairman, I think, given the  
3 number of limited issues involved, the two specified in the  
4 order to show cause, I think 30 days is more than adequate  
5 time to conduct discovery. I think after that 30 days has  
6 elapsed, we should have a brief period for the submission of  
7 any motions for summary disposition that might come into  
8 play, 10 days for response to those motions, perhaps another  
9 prehearing conference 10 days after that, and then we can  
10 determine at that time when hearings would be required.  
11 But I imagine if hearings were required, we could file  
12 testimony 10 days after the next prehearing conference and  
13 go to hearings as soon as the testimony is filed.

14           So I would expect the whole cycle, if we went all  
15 the way to hearings, could be completed in probably two  
16 months.

17           CHAIRMAN BECHHOEFER: I think the response time  
18 for summary disposition motions may be a little short. The  
19 Commission's rules do contemplate, I think, 20 days --  
20 approximately 20 days.

21           MR. GALLEN: Mr. Chairman, you were interested --

22           CHAIRMAN BECHHOEFER: We were interested in  
23 getting things on expeditiously.

24           MR. DECKER: However, Mr. Gallen, it seems to me  
25 -- I may not have heard you correctly. I thought you said



1 in the sequence of events there would be so many days for  
2 discovery, 30, I think you said. The next step in the  
3 process was so many days to consider motions or to write  
4 motions for summary disposition.

5           It is my understanding that between those two  
6 steps, somebody -- the Intervenors have to state some  
7 specific contentions within the scope of the hearing.

8           MR. HIESTAND: We assumed that was what the Board  
9 is going to end up with today.

10          MR. DECKER: They said they cannot do it without  
11 discovery.

12          MR. GALLEN: We would seek summary disposition  
13 with respect to the issues identified in the Order to Show  
14 Cause, and that would bound any subissues that the  
15 Intervenors may wish to raise in the interim. Our position  
16 is obviously there is no liquefaction problem at the site.  
17 There is no need to install a dewatering system or to submit  
18 a design proposal with respect to a dewatering system.

19          MS. MORSE: Mr. Gallen, your position does not  
20 surprise me. But I would have to say that we feel there are  
21 a number of subissues and it is also imperative that we have  
22 right and time for discovery so that we can establish the  
23 facts as you state them and how they differ from the facts  
24 that we might arrive at.

25          So we are going to request that there be time

1 allowed to establish contentions once discovery has been  
2 concluded. We can appreciate the need to proceed with the  
3 matter expeditiously, but I trust you can also appreciate  
4 the need for us to have as much time as possible because we  
5 do suffer under the constraints of employment other than  
6 such as a litigation. So I hope you would take that into  
7 consideration.

8           CHAIRMAN BECHHOEFER: Mr. Burns, do you have any  
9 comments? Particularly I would like you to address do you  
10 think it would be necessary or desirable to have development  
11 of board-specific subissues, shall we say? The Commission  
12 has defined the broad issues, but I think within that there  
13 might well be specific matters before we go to hearing,  
14 specific matters spelled out where there is disagreement  
15 with the studies being relied upon.

16           What I was going to try to determine was whether a  
17 schedule could be set up where we could get that and maybe  
18 have discovery before that, and then a further specification  
19 of issues. I would like your comments on whether that type  
20 of procedure would be appropriate or what type of discovery  
21 schedule --

22           MR. BURNS: Mr. Chairman, as I understand, what  
23 you are proposing is we would have a period to conduct some  
24 sort of discovery first, and then a further specification by  
25 the two parties as to what issues would be litigated. I

1 I guess the difficult part, you know, from the staff's point  
2 of view, is in terms of where the proceeding is going.

3           Since it is our position that it is not necessary  
4 to design and install the dewatering system, I suppose the  
5 hearing will be about whether that judgment is sound. I  
6 suppose through some discovery we can determine to what  
7 extent the petitioners believe that that judgment on behalf  
8 of staff is unsound. I think we can do that part with  
9 discovery, but I think we are going to have to have some  
10 specification of what specifically, in what ways -- Mr.  
11 Olsen and CREC are going to have to show us in what ways  
12 they believe it ought to be litigated, how the judgment of  
13 the Director that the licensee has shown adequate cause is  
14 sufficient.

15           I suspect the schedule Mr. Gallen proposed, two  
16 months may be a slightly liberal estimate of the time within  
17 which we could complete it, although I imagine in somewhere  
18 between two to three months we should be able to come to  
19 hearing on the matter.

20           MR. GALLEN: Mr. Chairman, I have one question, if  
21 I may interrupt. Both you and the representative from CREC  
22 were talking in terms of identifying the contentions after  
23 discovery is over. The whole purpose of discovery is to  
24 find out the basis for contentions. We are putting the cart  
25 before the horse if we put discovery first and then permit

1 them to identify contentions.

2 I think if we are going to have any specification  
3 of subissues, it should be done within the next week.

4 MR. OLSEN: Mr. Chairman, I feel that due to the  
5 unavailability locally of many records which will need to be  
6 used to develop contentions, that a period of discovery is  
7 appropriate before contentions.

8 MS. MORSE: Moreover, I would like to add that I  
9 think the issue as specified in the order is fairly  
10 precise. It is a question of safety against liquefaction.  
11 We cannot go too far afield on that issue.

12 MR. GALLEN: I think you can. Mr. Chairman, I do  
13 not think there is any need to identify contentions. If we  
14 are going to do it, I think we should do it up front.

15 (Board conferring.)

16 CHAIRMAN BECHHOEFER: The Board has decided, or at  
17 least we are proposing the following schedule for discovery  
18 and summary disposition motions. This is a fairly expedited  
19 schedule, but we would hope by September 26, discovery  
20 requests would be filed; that answers would be filed by  
21 October 15; and then summary disposition motions would have  
22 to be filed by October 30; and answers to that would be  
23 filed by November 17.

24 We are building in mailing times into all of  
25 these, but we would want comments on whether the parties

1 think that that would be suitable. After we get the answers  
2 on November 17, we will decide whether we need a further  
3 prehearing conference.

4 I might say, alternatively, that if the licensee  
5 decides not to file a summary disposition motion, they could  
6 advise us, say by October 30, at the same time they would  
7 have to file such motions, and we could then set a 2.752  
8 prehearing conference at a very early date if parties  
9 decided not to file summary disposition motions. So we  
10 would leave the date of that flexible.

11 Is that schedule satisfactory? It is an expedited  
12 schedule.

13 MS. MORSE: Mr. Chairman, I am going to have to  
14 request that we be allowed three weeks to file discovery  
15 requests.

16 (Board conferring.)

17 CHAIRMAN BECHHOEFER: If we gave you that time,  
18 what would be the time you think you could answer the  
19 licensee's questions? We figure if we gave you three weeks,  
20 that would run the discovery request period until October 2,  
21 if I calculate correctly. I was trying to figure what time  
22 you would need for answering questions, because you are  
23 going to have to answer. That would have to be done fairly  
24 rapidly. We were figuring two weeks plus mailing time.

25 MS. MORSE: That would be acceptable.



1           CHAIRMAN BECHHOEFER: We will shorten that by one  
2 day. If we say discovery has to be filed by October 2, we  
3 would want the answers filed by the 20th, which is Monday.  
4 Actually, it is one day less, but it may not take the five  
5 days to get it to you anyway.

6           So then the summary disposition motions then would  
7 be filed by November 5, and the answers would be by --  
8 before we decide on any final dates, the Board would be  
9 inclined to consolidate Mr. Olsen and CREC as parties to  
10 this proceeding. We wanted to hear whether you would have  
11 any objection to that.

12           MR. OLSEN: Yes, Mr. Chairman. I definitely would  
13 like to object to that. I am no longer a member of the  
14 Coolee Region Energy Coalition.

15           CHAIRMAN BECHHOEFER: Parties are often  
16 consolidated if they have similar interests. A usual  
17 practice is to consolidate to avoid duplication.

18           MS. MORSE: Can we take a couple of minutes and  
19 discuss that?

20           CHAIRMAN BECHHOEFER: Okay.

21           MR. DECKER: Before you do that -- I have no  
22 objection to you taking a few minutes -- bear in mind, if  
23 you will, that each of you have a big responsibility in this  
24 case, as you know. We are talking now about discovery.  
25 That is a lot of work. We are talking about answering

1 discovery. That is a lot of work. We are talking about  
2 motions and answers to motions if we get that far. We are  
3 talking about proposed findings.

4 I don't say this to twist your arm. I ask you to  
5 consider that.

6 (Pause.)

7 MR. OLSEN: Mr. Chairman, I would like to withdraw  
8 my objection to consolidation.

9 CHAIRMAN BECHHOEFER: Okay. The Board will  
10 consolidate the two parties for purposes of all aspects of  
11 this proceeding. You will be expected to consolidate your  
12 presentations, and if we get to a hearing, your  
13 cross-examination, that sort of thing.

14 The Board would establish this as a schedule.  
15 Discovery requests should be filed by October 2. Answers  
16 must be filed by October 20. Summary disposition motions  
17 should be filed by November 5. Answers would be filed by  
18 November 24.

19 Again, if the staff or the licensee decides they  
20 do not want to file summary disposition motions, they should  
21 advise us to that effect, and then after the completion of  
22 discovery, we will set a Section 2.752 prehearing conference  
23 at a fairly short day. If summary disposition motions are  
24 filed, we may or may not require a further prehearing  
25 conference. But as soon as we get the answers, we will

1 advise on that, also by a fairly rapid date.

2 MS. MORSE: Mr. Chairman, that schedule would be  
3 fine with us.

4 CHAIRMAN BECHHOEFER: Okay.

5 (Board conferring.)

6 CHAIRMAN BECHHOEFER: We are going to certify the  
7 size of the safe shutdown earthquake to the Commission, and  
8 pending the Commission or Appeal Board rule, we will refer  
9 to either the Appeal Board or the Commission, depending on  
10 who has review authority at the time. We will refer that,  
11 but discovery should not go into that, pending the  
12 Commission's answer to our question.

13 The question will be in terms of whether the  
14 Tyrone analysis should be used or whether we are restricted  
15 to a .12 earthquake. If the Commission or Appeal Board says  
16 we are restricted, we will conduct the hearing with that in  
17 mind. The latest staff analysis does use that as the  
18 earthquake, but the earlier WES study does indicate that a  
19 somewhat different answer might be required. We do not have  
20 that type of analysis before us, so we will certify that --  
21 we will do it as part of our decision authorizing the  
22 hearing, but we will just refer that one issue.

23 Anybody who disagrees on any other aspects of the  
24 order that we have issued, which we will put down in  
25 writing, will have a right to appeal under 2.714(A). We

1 will refer the disqualification motion separately. I hope  
2 to get that one off by early next week, as soon as I get  
3 back to Washington.

4 Are there other matters that any of the parties  
5 wish to raise at this time?

6 MR. GALLEN: Will you be the focal point for  
7 service for CREC?

8 MR. OLSEN: I would like to be served separately  
9 if possible.

10 MR. GALLEN: We have no objection to separate  
11 service. I want to make it clear that they are  
12 consolidated. We are serving an extra copy as a courtesy.

13 CHAIRMAN BECHHOEFER: Right.

14 MR. BURNS: I have nothing else, Mr. Chairman.

15 CHAIRMAN BECHHOEFER: Ms. Morse? Mr. Olsen?

16 The prehearing conference is now concluded.

17 (Whereupon, at 12:17 p.m., the prehearing  
18 conference was concluded.)

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POOR ORIGINAL

NUCLEAR REGULATORY COMMISSION

This is to certify that the attached proceedings before the

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in the matter of: DAIRYLAND POWER COOPERATIVE (LA-CROSSE BOILING WATER REACTOR)

Date of Proceeding: September 11, 1980

Docket Number: 50-409 SC

Place of Proceeding: La Crosse, Wisconsin

were held as herein appears, and that this is the original transcript thereof for the file of the Commission.

David S. Parker

Official Reporter (Typed)



(SIGNATURE OF REPORTER)