

NUCLEAR REGULATORY COMMISSION

ORIGINAL

ATOMIC SAFETY AND LICENSING BOARD

In the Matter of:

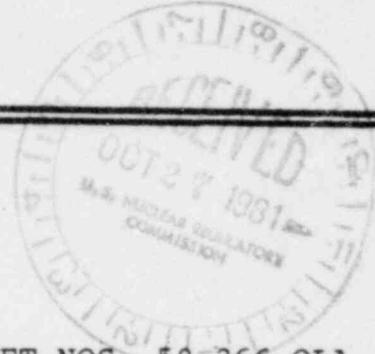
WISCONSIN ELECTRIC POWER COMPANY

POINT BEACH NUCLEAR PLANT

UNITS 1 AND 2

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DOCKET NOS. 50-266-OLA
50-301-OLA



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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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In the Matter of: :
WISCONSIN ELECTRIC POWER COMPANY : Docket No. 50-266-OLA
POINT BEACH NUCLEAR PLANT : 50-301-OLA
Units 1 and 2 :

In the Offices of
Alderson Reporting Co.
400 Virginia Avenue, S.W.
Washington, D.C.

Monday, October 26, 1981

A telephone conference in the above-entitled
matter was convened, pursuant to notice, at 4:05 p.m.

BEFORE:

PETER B. BLOCH, Board Chairman
Atomic Safety and Licensing Board
HUGH C. PAXTON, Ph.D., Member
Atomic Safety and Licensing Board

APPEARANCES:

On behalf of Wisconsin Power Company
BRUCE CHURCHILL, Esq.
Shaw, Pittman, Potts & Trowbridge
1800 M Street, N.W.
Washington, D.C.

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On behalf of Wisconsin's Environmental Decade

PETER ANDERSON, Esq.
114 Lewis Carroll Street
Madison, Wisconsin 53703

On behalf of the Nuclear Regulatory Commission

STUART TREBY, Esq.

P R O C E E D I N G S

1
2 CHAIRMAN BLOCH: Good afternoon. This is Peter
3 Bloch, Chairman of the Licensing Board for Point Beach
4 Nuclear Plant, Units 1 and 2, Docket Number 50-266-OLA and
5 50-301-OLA.

6 This is an on-the-record special prehearing
7 conference in this case. The transcript may be ordered at
8 the close of the formal conference from the reporter, whom I
9 will ask to remain on the line.

10 The roll has been called before the conference
11 began. I would ask that the reporter note the attendees in
12 the record.

13 There are two principal issues to be discussed
14 today. One is a brief discussion of Applicant's change in
15 plans and the continuing need for a demonstration during
16 this fall's outage. And two is further clarification of the
17 nature of the show cause proceeding. The second issue is
18 one which I have raised on my own motion, and the first
19 issue arose as a result of a filing by Applicant which I
20 received this morning and which I think we ought to discuss
21 at least briefly this afternoon.

22 Mr. Churchill, would you like to begin with a
23 presentation on the change in Applicant's plans?

24 MR. CHURCHILL: Yes, thank you. This change in
25 plans, the only real change in plan is the change from our

1 plans to do the full scale sleeving of Unit 2 in March of
2 1982. That will have been put off for a year. And in fact,
3 I think it would be safe to say that the decision being put
4 off pending the completion of the demonstration program, it
5 does not change our need to sleeve Unit 1; nor does it
6 change or have any effect whatsoever on the need to do the
7 sleeving demonstration program.

8 The reason for that is that Unit 1 will have to be
9 sleeved during its fall outage next year. That full scale
10 sleeving program has to be preceded by a demonstration
11 program on Unit 1, and the only possible time for that
12 demonstration program on Unit 1 is the current refueling
13 outage.

14 CHAIRMAN BLOCH: Mr. Churchill, why can't it be
15 preceded by a demonstration program on Unit 2 during the
16 spring outage?

17 MR. CHURCHILL: Because there has been no decision
18 yet whether to do any sleeving whatsoever in Unit 2. I
19 should point out that Unit 1, having operated the longest,
20 has many more steam generator tube degradation problems than
21 Unit 2. And Unit 1 is the one that is most critical to do
22 the work on. Unit 1, for example, does have the plug tubes,
23 which would be unplugged during the demonstration program.

24 CHAIRMAN BLOCH: Mr. Churchill, I notice that in
25 the letter to the Wisconsin Commission, the Public Utility

1 Commission, I think you mentioned the possibility that if
2 the demonstration doesn't go well, you might have to install
3 new steam generators in their entirety. It makes it hard
4 for me to understand the completeness of your answer to our
5 first four questions in the first set of questions, in which
6 we tried to ask what the importance of the program was. I
7 just feel that I don't have a full understanding of what the
8 areas of uncertainty are that you are trying to resolve.

9 MR. CHURCHILL: Let me see if I can explain that a
10 little better. The areas of uncertainty really do not go to
11 the questions of whether the sleeving is adequate per se,
12 that is adequate to maintain the integrity of the secondary
13 to primary pressure boundary.

14 The areas of uncertainty go to the feasibility of
15 whether we can physically go in there and perform all these
16 operations in a timely manner. If, for example, as a result
17 of the sleeving demonstration program, we would see that for
18 any effective full scale sleeving, the plant would have to
19 be shut down for months on end for reasons we had not
20 anticipated, this would significantly affect the decision as
21 to whether or to what extent to go ahead with sleeving, and
22 on which unit.

23 CHAIRMAN BLOCH: Could you tell me very briefly,
24 if you know the answer now, what the reason is that a
25 demonstration on Unit 1 wouldn't give you the information

1 you need concerning sleeving of Unit 2?

2 MR. ANDERSON: If I could interject, my name is
3 Peter Anderson. Do you mean it the opposite way around?

4 CHAIRMAN BLOCH: -- that a demonstration on Unit
5 2, which will be done in the spring, wouldn't give you the
6 information you need concerning Unit 1.

7 MR. CHURCHILL: I think there are two answers to
8 that. One is we have to make the decision much sooner than
9 that, and I think we would want to make the decision now in
10 order to know whether to go ahead, especially if there's the
11 possibility that the steam generators for one of the units
12 might have to be replaced.

13 CHAIRMAN BLOCH: Mr. Churchill, you were going to
14 be able to make the decision based on a demonstration now
15 for doing sleeving in the spring. How come you need so much
16 more time now?

17 MR. CHURCHILL: I guess this gets very
18 complicated, and I think it has to do with lead times on
19 ordering parts, whether or not lead times in having steam
20 generators available and so on.

21 The other part of my reason is that there are much
22 better candidates for a sleeving program within the Unit 1
23 steam generators than there are within the Unit 2 steam
24 generators.

25 CHAIRMAN BLOCH: You mean you don't have six

1 degraded tubes in Unit 2?

2 MR. CHURCHILL: I don't know. We may very well
3 have, but they might not be as degraded, or there might not
4 be placed properly. There never was planned to be a
5 demonstration program on Unit 2. Unit 1 gives us every type
6 of sleeve we need, the two different types of plugs, for
7 example, some sleeves which are degraded below the plugging
8 limit and some which haven't yet reached the plugging limit.

9 CHAIRMAN BLOCH: One other question before I allow
10 the other parties to comment. That is, I don't understand
11 from the filing what the reason was for this delay.

12 MR. CHURCHILL: For putting off the decision on
13 Unit 2?

14 CHAIRMAN BLOCH: Right. For putting off the
15 demonstration on -

16 MR. CHURCHILL: No, we're not putting off any
17 demonstration.

18 CHAIRMAN BLOCH: I'm sorry. It's for putting off
19 the full scale sleeving of Unit 2.

20 MR. CHURCHILL: Okay. Well, one of the reasons
21 for putting off the full scale sleeving of Unit 2 is because
22 the company has to decide whether or not to go ahead with
23 the Unit 2 demonstration, and they can't do that until they
24 have done this.

25 Now the company originally thought they were going

1 to go ahead with the Unit 2 demonstration, but the closer we
2 get to it, the more it looks like they are uncertain whether
3 or not it's feasible to go ahead and sleeve Unit 2, which
4 does not have quite the steam generator tube problems that
5 Unit 1 does. And I'm afraid this gets into technical
6 judgments and best guesses by technical experts as to how
7 long it would be before Unit 2 would have to be sleeved.
8 Some people believe never; other people believe that maybe
9 it should be sleeved.

10 CHAIRMAN BLOCH: I think it might make the Board
11 feel more comfortable in being able to act to know really
12 what considerations have been important to Applicant in
13 planning its demonstration originally and how those
14 considerations have changed. Unless we understand that, it
15 gives us the uncomfortable feeling of acting somewhat in a
16 vacuum.

17 I think that you've raised the principal outlines
18 of the response, but I'm not sure it's enough to give us
19 great comfort that we understand fully what's happening. Do
20 you understand the problem, Mr. Churchill?

21 MR. CHURCHILL: I think I do. I guess the best I
22 could do at this point would be to get back to you later
23 with more complete information.

24 CHAIRMAN BLOCH: Well, unless the parties persuade
25 me otherwise, we could wait until Milwaukee for that. Would

1 Mr. Anderson like to comment?

2 MR. ANDERSON: Before I do, just so the
3 transcriptual record is accurate, I think when you said a
4 demonstration on Unit 2 earlier, Mr. Churchill, you meant to
5 say on Unit 1?

6 MR. CHURCHILL: Yes. There's no demonstration on
7 Unit 2.

8 MR. ANDERSON: Let me make an observation, if I
9 may, which I would not want to be construed as agreeing with
10 Mr. Churchill that a demonstration on Unit 2 would not be
11 adequate for the purpose of evaluating the Unit 1 full scale
12 sleeving.

13 But with that caveat, as I understand it, Mr.
14 Churchill, you are going to be having a continuation of the
15 plants under the confirmatory letter, which I think has 150
16 effective full power day inspection, does it not?

17 MR. CHURCHILL: I'm not sure exactly when the next
18 full power inspection is, but that sounds about right.

19 MR. ANDERSON: If we could go on that basis for a
20 moment, that would seem to imply that either one will be
21 taken down prior to next fall refueling for purposes of
22 inspecting the steam generators.

23 MR. CHURCHILL: I was not aware that that would be
24 the case, Peter. I think that Unit 1 is planned to be
25 operating to -- I don't know.

1 MR. ANDERSON: Well maybe perhaps you might want
2 to think about that, and to the extent that's the case, and
3 to the extent that it were, for the sake of argument true
4 that a Unit 1 demonstration is necessary for a Unit 1 full
5 scale sleeving, that might be the time when the
6 demonstration could go forward.

7 MR. CHURCHILL: Well, I'm not sure that it's
8 necessarily related to whether the Unit 1 demo program is
9 necessarily related to Unit 1 full scale sleeving. The demo
10 program is necessary, I believe, for any sleeving. And the
11 logical plant to do a demo on is Unit 1, and the only time
12 we can do the demo in Unit 1 and still proceed on any kind
13 of a reasonable basis for sleeving Unit 1, which is the one
14 that would most probably have to be sleeved, as opposed to
15 Unit 2, would be at this outage.

16 The only thing we did do is defer this full scale
17 sleeving of Unit 2, and that does not affect our plans or
18 our need to conduct the Unit 1 demonstration at this time at
19 all.

20 MR. ANDERSON: The only other comment that I would
21 have is that we, when I ran through the letter that we did
22 finally receive this afternoon, the same questions that were
23 asked by the Chairman were questions that occurred to us as
24 well. I won't repeat them for that reason.

25 CHAIRMAN BLOCH: Does Mr. Bachmann or Mr. Treby

1 have a comment?

2 MR. TREBY: This is Mr. Treby. My understanding
3 of the value of a demonstration program is that it does
4 provide very useful information for going forward with a
5 full scale sleeving program. And I would agree that we
6 would like to have as much information and as much time
7 before the full sleeving program commenced to analyze the
8 demonstration material.

9 So for those reasons, I could see a reason why it
10 would be helpful to go forward with the demonstration
11 program at this outage.

12 Other than that, I have no other comment.

13 CHAIRMAN BLOCH: We have of course raised some
14 questions which were partially answered. I think the
15 relevance of this issue is that, depending on the importance
16 of having this demonstration at this time and this
17 particular unit, that could affect the balance with respect
18 to show cause. Obviously if it is very important, as Mr.
19 Treby has just said, that it be conducted at this time, the
20 burden on showing cause would be slightly higher.

21 On the other hand, if we were to find that it were
22 not as important as Mr. Treby represents after we get the
23 full answers from Mr. Churchill, the burden might be a
24 little less.

25 Are there any other important comments on this

1 change in scheduling?

2 MR. ANDERSON: Peter Anderson speaking. If we
3 understand the company's interpretation of the technical
4 specifications correctly, the interpretation would allow the
5 sleeving to go forward without inhibition, but would not
6 allow return to service with sleeves on tubes which exceed
7 the plugging limit.

8 And the value of the demonstration program which
9 has been stated so far relates to the ability to get in
10 there, the ability to work the equipment and so forth, and
11 to the extent that that were done and the tube was plugged
12 after that testing and demonstration was adequately
13 performed, you would not need a technical specification
14 change if the plug was put in afterwards.

15 It would seem to me that this basically speaks to
16 the showing required for the interim approval really is not
17 there. I'm not sure we understand what the need for the
18 hearing is because there is basically no showing for a need
19 for an interim approval.

20 CHAIRMAN BLOCH: Mr. Churchill, would you comment
21 on that?

22 MR. CHURCHILL: Peter Anderson is correct in that
23 a technical specification change is not necessary to
24 actually go in and perform sleeving. This I think we have
25 said in previous conference calls and have mentioned it in

1 one or two papers that have been filed.

2 We would not be allowed to return to power with
3 the six tubes sleeved that exceeded the plugging limit
4 unless we first plugged them up. We do not want to sleeve
5 the tubes, in essence repair the tubes, and then have to
6 plug them up. It makes no sense. It would, in a case where
7 we are wanting to maximize flow through the core, it doesn't
8 seem to me that it would be a good idea to plug tubes up
9 that no longer have to be plugged because they are repaired.

10 Now this doesn't say that this would reduce core
11 flow to any degree where we would be bumping up against
12 other technical specifications, but it just is that in
13 general, especially if the need to plug tubes should occur
14 in the future, we want to have as few tubes plugged as
15 possible.

16 The other reason that we would want to have tubes
17 that are sleeved not repaired is that we would like to
18 observe and learn as much as we can about the behavior of
19 these sleeved tubes in operation.

20 We have always recognized that it might be
21 necessary if for some reason we did not obtain permission to
22 plug the tubes up, we think that that would not be a good
23 thing. We think that there would be information that could
24 be derived, if not necessarily helpful or necessary for
25 health and safety, certainly information that would be of

1 interest for optimum reactor performance.

2 Also, we just do not believe that it is prudent or
3 even appropriate to plug tubes which don't have to be
4 plugged, and cut down reactor coolant flow any more than it
5 is.

6 CHAIRMAN BLOCH: Mr. Anderson, do you have a
7 comment on that?

8 MR. ANDERSON: I think to go into it at any length
9 would perhaps abuse what a conference call really is
10 intended to accomplish. I would just briefly note that we
11 don't view the nuclear reactors as an experimental
12 laboratory, which I think Mr. Charnoff's comments connote.
13 It certainly would be nice to find out what the real life
14 operation of a sleeve tube is, but I think that the idea of
15 wouldn't it be nice if it poses a substantial risk, that has
16 to be balanced and it's not being balanced. That's number
17 one.

18 Number two, I think that that which would be nice
19 in terms of actual experience of the sleeve in operation,
20 we're going to learn more over time in a very short period
21 that would be involved at Point Beach, and the longest
22 period of time we're going to have to evaluate sleeves in
23 operation is at San Onofre.

24 So even if you think or believe that it's like a
25 laboratory experiment, that wouldn't it be nice is all

1 right, you would look, I think because of the time factor
2 being more critical, to the San Onofre experience which has
3 been in operation with sleeves I think since April of this
4 year, rather than to a much shorter period of time at Point
5 Beach.

6 CHAIRMAN BLOCH: I think I understand the
7 positions of both private parties. Mr. Treby, do you have a
8 final comment?

9 MR. TREBY: Yes. It is true, as Mr. Anderson
10 says, that you would get a lot of information by repairing
11 the tubes through a sleeving process and then flood them
12 before you went up to operation. The staff, though, thinks
13 it would be valuable to have the information that you would
14 get from the actual operation of a sleeve tube.

15 The other comment I would make is that it is true
16 that San Onofre did undergo this process some time ago.
17 However, San Onofre has been shut down for other purposes I
18 don't believe related to the steam generator tube, for most
19 of the time since April, and I'm not sure we have much
20 operating information from San Onofre.

21 And secondly, there are some small differences
22 between San Onofre and Point Beach, so that not all the
23 information is totally transferable.

24 CHAIRMAN BLOCH: I think these arguments will set
25 the stage for our discussions on Thursday.

1 The other item that I wish to discuss was prompted
2 by reviewing Decade's most recent filings related to the
3 order to show cause, and I thought I would want it surfaced
4 as quickly and as early as possible what I perceive to be
5 some difficulties, apparent difficulties at least in
6 Decade's understanding of what we had meant by showing cause.

7 For that purpose, I have reviewed our records and
8 have attempted and am now going to attempt to summarize the
9 most important things that have been said about the show
10 cause process, and where necessary to interpolate some
11 explanations.

12 The first mention of show cause in this proceeding
13 occurred on page 9 of our October 1, 1981 order. In that
14 order, we timed the showing of cause to permit response to
15 Wisconsin Electric's answers to our questions. We stated,
16 and in reading this if you compare it to the original
17 statement, you will see that I am interpolating a couple of
18 bracketed remarks.

19 "Decade and the staff would have 14 days from
20 receipt of Wisconsin Electric's answers to the first set of
21 Board questions, to show cause why an order authorizing
22 immediate operation with up to 12 tube sleeves should not be
23 issued. Cause might consist of legal argument or of a
24 substantive matter which should be pursued before the Board
25 can reach a reasonable conclusion concerning the safety and

1 environmental acceptability of the portion of the amendment
2 dealing with the demonstration program."

3 I just inserted that this is about the
4 demonstration program because I believe that was what was
5 intended.

6 "Cause could include comment on whether the
7 demonstration proposed by Wisconsin Electric is important to
8 its overall sleeving program. It would be understood that a
9 showing of good cause would require that something important
10 be shown, but that given the fact that W.E. could have
11 alleviated the urgency in this matter by filing earlier, the
12 Board will listen receptively to attempts to show cause."

13 Our October 13 order also made the following
14 comment, which is relevant to the meaning of show cause.
15 "After discovery is completed, Decade will have the burden
16 of coming forward to demonstrate that there are one or more
17 genuine issues of fact related to this contention.
18 Wisconsin Electric Power Company will then have the burden
19 of persuasion concerning the existence of the genuine issue
20 of fact, and will of course have the burden of persuasion on
21 any issue admitted for hearing."

22 Now this is a new matter: "Although we are at an
23 early stage of this proceeding, and allowances must be made
24 for Decade not being completely informed, it must
25 nevertheless carry the burden of showing us that there are

1 one or more important issues concerning the demonstration
2 program which should be admitted to a hearing. For cause to
3 be shown, Decade must demonstrate that there is an important
4 genuine issue. It can do this by showing that there is an
5 important issue that is not fully determined by the record
6 in this case."

7 At pages 122 and 123 of the transcript, we also
8 had this to say, quoting myself, Chairman Bloch: "It is the
9 responsibility of the person who is supporting a contention
10 to come forward with a prima facie case that includes the
11 basis for that contention."

12 Mr. Barth: "I assume that they have a basis prior
13 to your admitting the contention."

14 Chairman Bloch: "Generally they would, but
15 depending on how discovery goes, the grounds for that basis
16 may disappear, and there may no longer be a genuine issue of
17 fact."

18 Transcript pages 153 and 154 and 157 also are
19 helpful. We have stated that the standard for showing cause
20 is higher than the standard for admitting contentions. We
21 also stated that "it is going to be the intervenor that has
22 to come forward and show that there are material issues of
23 fact or that they have met the criteria in the show cause
24 order."

25 We also stated that the hearing on the show cause

1 order would clarify what material issues of fact were in
2 dispute and would need to be tried.

3 We believe Decade also should be guided by other
4 portions of the October 13 order, as well as by the conduct
5 of the Board in phrasing its own questions for Applicant to
6 answer. In the October 13 order, we ruled that the
7 admissability of contentions may be judged in light of the
8 full procedural context. In that order, we ruled that the
9 basis for the contentions had to be judged prior to the
10 filing of the Westinghouse report and prior to the filing of
11 a supplementary affidavit.

12 Obviously, we also judged the basis for
13 contentions without reference to the answers Wisconsin
14 Electric has filed to the Board's questions.

15 Furthermore, we indicated in parentheses on page 5
16 of that order that subsequent Applicant filings may have
17 drawn into question the basis for Decade's contentions.

18 Reference to the Perry case, the Cleveland
19 Electric Illuminating case, cited on page 3 of the October
20 13 opinion, also is important here. In that case the Board
21 required intervenor to reply to detailed responses provided
22 by Applicant. That is why the Board attempted to assist in
23 the resolution of issues in this case by addressing specific
24 questions to Applicant's filing.

25 It is intervenor's task to raise reasonable

1 questions. We intend to require that Decade show us that
2 there are serious questions remaining in this case
3 concerning the demonstration program, in light of the entire
4 record of the case to this point.

5 In this regard, citations to technical source
6 materials or the use of depositions may prove to be
7 essential to the showing of good cause. Although it is
8 possible that logical argument may show gaps in the
9 application, without resort to expert opinion, Decade should
10 be aware that mere speculation about gaps will not in itself
11 be adequate to show good cause.

12 Decade should also be aware that potentially
13 important nuclear safety issues such as possible
14 embrittlement of reactor vessels, are not admissable in this
15 proceeding unless there is a factual basis for relating them
16 to the specific license amendment before us.

17 On the other hand, we wish to stress that there is
18 no prejudgment implied in these remarks. In particular,
19 several of Decade's interrogatories appear to be highly
20 pertinent. In addition, there are some Board questions
21 which were not as fully answered as we wish, which we may
22 need to pursue further in Wisconsin.

23 If Decade can show that omissions in Applicant's
24 responses are important, it may be able to show cause. We
25 ask of Decade that if Wisconsin Electric provides answers to

1 interrogatories prior to the hearing, that Decade attempt to
2 be prepared to state why those answers are not satisfactory,
3 or for what specific reasons it requires additional time
4 before being able to respond adequately.

5 I would like comments. I'm sure that Mr. Anderson
6 would like to comment first.

7 MR. ANDERSON: Let me be quite frank, if I may,
8 Mr. Bloch. Our ability to proceed at the pace that the
9 Applicant's time requests seek is simply not there. It is
10 our belief that the ability to proceed in that time frame
11 that the company is seeking is predicated upon a party
12 having two or three counsel and a very large technical staff
13 and support staff, with the facility to put aside all other
14 work for a several week period in order to prepare.

15 So the net result is we do not have that kind of
16 resources and we don't purport to do so, and we have not
17 been able to even finish digesting the WAP report or the
18 other report on San Onofre, and we've been unable to get all
19 the interrogatories completed in this very short time frame
20 that would allow us to provide a more evidentiary basis for
21 the contentions that I understand you're contemplating.

22 The bottom line of that all is that in the time
23 permitted, without that kind of resources which the
24 Applicant does have, we simply can't reach that high a
25 burden. And I don't think it bespeaks in any way of the

1 lack of seriousness or genuineness of the issues. I think
2 the fact that other parties, particularly the staff in other
3 cases, as well as the statements of the company itself in
4 the proceedings, bespeak to their importance. But the time
5 frame is so short to attain this standard that I think
6 you're contemplating is not going to be possible for anyone
7 for a utility applicant.

8 From conversations we have had with the staff, I
9 understand the staff as well is having a substantial problem
10 with the time burden, and they have far more resources, of
11 course, than we do.

12 We can endeavor to try to meet those standards,
13 but I would be less than frank if I didn't say -- and we've
14 tried; we've tried as much as we can. But I don't want to
15 mislead you to think we can.

16 CHAIRMAN BLOCH: Of course the level we're talking
17 about, to some extent, is to show us which questions are
18 sufficiently open so that you know they must be pursued.
19 That is, that you have expert opinion that there is
20 something that needs to be pursued and what the reasons are
21 for thinking it needs to be pursued. It seems to me if you
22 can't raise questions of that type --

23 MR. ANDERSON: It's our belief, though, in terms
24 of that level, that the September 24 letter that we sent to
25 the Board relating to the bases for the contentions, does

1 provide that. When we read the October 13 memorandum and
2 order of the Board, I think it seems to us that the Board
3 order did reflect the fact that these were very serious
4 concerns.

5 CHAIRMAN BLOCH: I think what we tried to reflect,
6 though, Mr. Anderson, was that we were considering them to
7 be serious concerns when we blotted out from our minds part
8 of the then-existing record, and we felt that was
9 appropriate at that time.

10 But there comes a time when we can't blot that
11 record out and we have to consider whether those are serious
12 issues in light of the reports that have already been filed.

13 MR. ANDERSON: Certainly.

14 CHAIRMAN BLOCH: Mr. Treby, would you like to
15 comment?

16 MR. TREBY: Yes, Judge Bloch.

17 The staff thinks it's important to distinguish
18 between the fact that the object of this hearing on the 29th
19 and 30th, and for which the Board has developed this show
20 cause procedure, is a demonstration project involving no
21 more than sleeving 12 tubes, up to six of which would have
22 been degraded.

23 This is quite different from a project of sleeving
24 thousands of steam generator tubes. And in light of this
25 difference, it seems to me that what has been requested of

1 the intervenors is that they indicate what their concerns
2 are of going forward with this demonstration project. And I
3 would think that that is a lesser burden than having to
4 review for the entire sleeving project.

5 Also, as I understand it, what has been requested
6 of intervenor is just for them to identify what their
7 concerns are, with some reference to some technical support
8 for those concerns. And it seems to me that that is
9 something that they would know now without having to deeply
10 delve into the documents dealing with full scale sleeving.

11 MR. ANDERSON: If I may, let me briefly respond to
12 that, Mr. Bloch. This is Peter Anderson.

13 CHAIRMAN BLOCH: Mr. Anderson, I would like you to
14 respond but I would prefer to have you be last so that you'd
15 hear Mr. Churchill first. Is that acceptable?

16 MR. ANDERSON: That's certainly fine.

17 CHAIRMAN BLOCH: Mr. Treby, have you completed?

18 MR. TREBY: Yes, I have.

19 CHAIRMAN BLOCH: Mr. Churchill?

20 MR. CHURCHILL: Yes. I think I agree and
21 understand what you've said. What you've said sounds very
22 similar to the burden that a party would have to respond to
23 a motion for summary disposition.

24 What I'm not quite clear on, and perhaps I could
25 ask this before I respond further, the way I see the

1 procedural situation shaping up is that we first filed a
2 motion asking permission to go ahead with this demonstration
3 project. That is to operate with the six sleeve tubes not
4 plugged.

5 This was analogous in my mind anyway to if this
6 were a full scale operating license hearing, to asking
7 interim permission to load fuel and perhaps operate at low
8 power prior to the initial decision on the total operating
9 license.

10 You then proposed a show cause proceeding and you
11 asked the parties to comment on it, and we are now
12 discussing what that means. And in the meantime I filed a
13 motion for summary disposition based on what I thought the
14 contentions might be ultimately, because none had been
15 admitted. Subsequently they have been.

16 Now my question is this: the show cause
17 proceeding seems to be asking the intervenors to come
18 forward with some basis for believing that there is a
19 genuine issue of fact. And if they did that, does that mean
20 that the proceeding is over and the motion automatically
21 loses, or does that mean that I have the opportunity to show
22 that even though he has shown an issue, I can dispose of
23 that with my witness, which I will have available at the
24 hearing?

25 The reason I ask that is because the ultimate goal

1 is for me to try to obtain permission to go ahead with this
2 project, and losing a motion for summary disposition, if you
3 will, doesn't mean that you've lost the battle at all, lost
4 the war at all. It simply means that your next step is
5 okay, there is an issue; now I will put on my evidence to
6 show that that issue is not a problem. And I am prepared to
7 do that at the hearing.

8 So I am presuming that if they were to somehow
9 show that there is a genuine issue that really should be
10 considered by the Board before the Board decides whether to
11 approve the sleeving project, that the second part of the
12 Board's order, which set forth the agenda for the hearing,
13 would then kick into effect, whereby we would determine that
14 issue during the course of the hearing on the 29th, 30th and
15 possibly into Saturday.

16 CHAIRMAN BLOCH: Mr. Churchill, that was the plan
17 an my discussion of what showing cause means does not repeal
18 any portion of that prior order. Whether or not we can
19 resolve the issue I think will depend on what the issue is
20 and what cause Decade may show for an inability to proceed
21 immediately. If they can proceed immediately, we ought to.
22 If they show good cause, we'll have to consider what the
23 implications are.

24 MR. CHURCHILL: Okay. I understand. I just
25 wanted to clarify that because we had intended, as you will

1 see when you read our hearing brief, which we are going to
2 file by 9:30 tomorrow, to make available witnesses to
3 testify on these issues as they relate to the sleeving
4 demonstration project.

5 Having said that, I think I have no further
6 comment on your explanation of what the good cause
7 proceeding is. I'm not sure I fully understand how it
8 relates to my motion for summary disposition. They may be
9 very much the same.

10 CHAIRMAN BLOCH: I do have the feeling that
11 they're very close, particularly because I'm inclined to
12 rule, as I said in an earlier report or in a parentheses,
13 that at this stage of the proceeding if someone shows that
14 there is an open issue, one on which it needs discovery,
15 that I would be inclined not to grant the summary
16 disposition motion but to consider it later, after the
17 attempt at discovery had gone forward.

18 Mr. Churchill, that's the only difference I can
19 think of.

20 MR. CHURCHILL: Okay. That is consistent with the
21 way I've been approaching this.

22 CHAIRMAN BLOCH: Mr. Anderson, I promised you a
23 last crack.

24 MR. ANDERSON: Last but not least in any event.
25 As to Mr. Churchill's comment or I guess query,

1 while I don't like the result I think I would agree with his
2 assumption that if his motion for summary disposition falls,
3 he certainly still is entitled to make his evidentiary case
4 and have that heard on the merits of it.

5 I wanted to focus mostly on Mr. Treby's comments,
6 and I think it really has two parts to it. The first part
7 is one we have absolutely no problem with, and that was that
8 we should distinguish the contentions we have as to whether
9 they have any application of concern for a small
10 demonstration, as opposed to a full scale sleeving, from six
11 tubes up to 4,000. That was basically how we largely
12 interpreted the request to us, and that was the focus of our
13 October 23 filing, which spent a significant portion of the
14 time stating our view of why some but not all of the
15 contentions -- for example contention number 6 would not be
16 applicable to demonstration to full scale. But we stated
17 why we thought contentions 3, 4, 5 and perhaps, depending
18 upon the answers to discovery, 7, are equally germane to
19 demonstration as they are to full scale and I won't repeat
20 them here except to say that we agree with that, the needs
21 of a rational proceeding too for us to have done that, and
22 that's what we endeavor to do. Whether the Board ultimately
23 agrees or disagrees, I don't know, but that's what we tried
24 to do.

25 As to the second thing, the question of an

1 evidentiary basis for the contentions that are applicable,
2 that are found to be applicable to demonstration, I think it
3 could be simplified somewhat in an illustrative sense. We
4 had a chance to scan the Westinghouse report, for example,
5 and apparently, if I recall correctly, chapter 7 deals with
6 inspectability of sleeve tubes. But to recapitulate back to
7 the opening comments I made, we have not yet had the time to
8 review the chapter 7 in that very thick volume sufficiently
9 to either make a counterargument as to whether or not that
10 answers the inspectability problems or to file more specific
11 discovery requests to unravel the problems.

12 The bottom line of it is, as to the second part of
13 what Mr. Treby was saying, which gets back to the Board's
14 requirements as well, or the Board's contemplation as well,
15 we simply are unable to do that in the time frame involved,
16 notwithstanding extremely long hours that we've been putting
17 in, because of limited resources and because of the
18 inability to focus resources entirely on one issue to the
19 exclusion of all else. I don't know what we can do about
20 that, except we can do our level best, but we can't move
21 mountains.

22 I think there are major issues there. I think if
23 time is permitted, that will be amply shown. But I can't
24 pretend to or in fact accomplish something which time does
25 not permit with the resources we have available.

1 CHAIRMAN BLOCH: Mr. Anderson, I guess we'll have
2 to take up those questions on Thursday morning. I
3 understand your position, however.

4 There was one minor question relating to the
5 precise time and the method of delivery for Wisconsin
6 Environmental Decade's papers in this case.

7 Mr. Churchill, I called about an hour before the
8 meeting, before this conference, and asked that you talked
9 with Decade. Have you been able to resolve that issue?

10 MR. CHURCHILL: I think we might have, Your
11 Honor. I talked with Mr. Anderson and told him that I was
12 going to hand-deliver our documents to him tomorrow morning,
13 some time before 9:30, and I hope to have the staff
14 documents as well. I have a messenger out at Mr. Treby's
15 office waiting for his documents. If he can intercept me at
16 the airport before my plane leaves tonight, I will have the
17 staff documents. I have not had a recent progress report on
18 that, though.

19 MR. TREBY: This is Mr. Treby. I can give you a
20 progress report, and that is that the staff did give to your
21 messenger our documents and your messenger left our office
22 around 4:30.

23 MR. CHURCHILL: Okay. Then in that case I assume
24 that we will have those documents and can also give Mr.
25 Anderson the staff's documents tomorrow morning before 9:30.

1 Now the problem remains as to how to get Mr.
2 Anderson's documents to Washington primarily. I can pick
3 them up when we deliver ours tomorrow morning, but I don't
4 know how I would get them to Washington before 9:30.

5 CHAIRMAN BLOCH: I think the Board would be
6 willing to accept what is acceptable to Mr. Treby. Would
7 you like to comment?

8 MR. TREBY: Well, if we could have the intervenor
9 serve their papers to us via Federal Express, while it might
10 not reach us by 9:30, I suspect it should reach us some time
11 during the day tomorrow, and that would be acceptable.

12 MR. ANDERSON: This is Peter Anderson speaking.
13 Let me ask if I could, we've been getting a lot of pressure
14 from our bookkeeper about the expenses we're running up.
15 Could we cut them back by serving two copies of our filings
16 with the NRC on either the staff or the Board, and have the
17 Board use the internal Commission routing to get the second
18 copy to the other, so that we'll save the \$20 involved in
19 the Federal Expressing with just having one package?

20 CHAIRMAN BLOCH: Yes. I think you did it with one
21 package last time. Why don't you send the one package to
22 Mr. Treby and he'll manage somehow to get it to us.

23 MR. ANDERSON: That would be very helpful. We
24 would really appreciate that.

25 So we will also be endeavoring to serve Mr.

1 Churchill this evening, but if that fails we certainly will
2 serve him in the exchange tomorrow morning. But it's quite
3 possible we'll be able to do it this evening.

4 MR. CHURCHILL: I should call the bus station then
5 when I get to Milwaukee.

6 CHAIRMAN BLOCH: Is there any further business for
7 this meeting?

8 MR. TREBY: This is Mr. Treby. I guess there is
9 one other thing I would like, and that is it would be
10 helpful if we could call Decade tomorrow morning, and for
11 them to perhaps give us a brief summary of what it is
12 they've filed, if that would be all right with Mr. Anderson.

13 MR. ANDERSON: Oh, sure.

14 MR. TREBY: Fine.

15 CHAIRMAN BLOCH: There being no further business,
16 parties wishing to arrange for a transcript may stay on the
17 line. We will follow the procedure that we developed
18 earlier of sending one of the Board's copies to the
19 depository in Decade's offices and they will be custodian
20 and bring them to the hearing for us.

21 There being no further business, the hearing is
22 adjourned.

23 (Whereupon, at 4:05 p.m., the telephone conference
24 was adjourned.)

25

NUCLEAR REGULATORY COMMISSION

This is to certify that the attached proceedings before the
ATOMIC SAFETY AND LICENSING BOARD

in the matter of: Wisconsin Electric Power Co., Point Beach Nuclear Plant
Units 1 and 2

Date of Proceeding: October 26, 1981

Docket Number: 50-266-OLA & 50-301-OLA

Place of Proceeding: Washington, D. C.

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

Susan A. Harris

Official Reporter (Typed)

Susan A. Harris

Official Reporter (Signature)