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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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: In the Matter of: Docket Nos.:
: WISCONSIN ELECTRIC POWER COMPANY: 50-266 OLA
: (Point Beach Units 1 and 2): 50-301 OLA
: -----x

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

Thursday, September 9, 1982
The telephone conference in the above-mentioned matter
convened, pursuant to notice, at 12:55 p.m.

BEFORE:

PETER BLOCH, Chairman
Atomic Safety and Licensing Board
HUGH PAXTON, Member
Atomic Safety and Licensing Board

APPEARANCES:

On behalf of the Applicant, Wisconsin Electric
Power Company:

BRUCE CHURCHILL, Esq.
LISA RIDGEWAY, Esq.
Shaw, Pittman, & Trowbridge

On behalf of Intervenor, The Environmental
Decade:

PETER ANDERSON, Esq.

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On behalf of the Nuclear Regulatory Commission
Staff:

RICHARD BACHMANN, Esq.
STUART TREBY, Esq.

1 issues of fact that he considers relevant to the
2 proceeding and should explain why the issues are
3 relevant and why, in light of Staff's and Applicant's
4 response, they are genuine issues.

5 After Mr. Anderson speaks on each issue, we
6 will give an opportunity to the Applicant and then to
7 Staff. I hope that we can keep each issue to at most
8 ten minutes. I do want to confirm that Judge Paxton is
9 on the line.

10 JUDGE PAXTON: Yes.

11 CHAIRMAN BLOCH: Judge Kline is not with us
12 today. He is busy on another case. I have asked Judge
13 Paxton to indicate if for any reason he must leave the
14 line, because then we would lack a quorum.

15 Are there any objections or comments on the
16 opening statement that the Chair delivered?

17 MR. ANDERSON: We have, as have the other
18 parties, filed extensive briefs and motions on this
19 issue, which include the issues of time and relevance.
20 Do I understand that you want us to repeat what we have
21 already written down, or is that not necessary?

22 CHAIRMAN BLOCH: I would like you to, as a
23 matter of oral argument, to bring out the highlights, so
24 that we can know what you are relying on principally. I
25 would rather that you not read extensive portions of the

1 filed documents, but I would like to know in discussion
2 form what it is you really want us to find for you and
3 what the principal arguments are you are relying on.

4 MR. ANDERSON: Should I proceed, then?

5 CHAIRMAN BLOCH: Let me see if there are any
6 other objections to what I have outlined.

7 MR. CHURCHILL: Your Honor.

8 CHAIRMAN BLOCH: Yes.

9 MR. CHURCHILL: This is Mr. Churchill. I do
10 have one question on this method of procedure. I had a
11 few opening general comments that I wanted to make. I
12 don't know if it is appropriate or not, but there is one
13 in particular that may be and that goes to the fact that
14 part of our response to the motion for litigable issues
15 is indeed a motion for summary disposition. There are
16 some basic fundamental requirements based on somebody
17 opposing the motion for summary disposition which Decade
18 has not complied with. One of my arguments is that
19 because he has not complied with that, it should not
20 even be necessary to go into a fact by fact discussion
21 of that.

22 CHAIRMAN BLOCH: The principal deficiency that
23 you see is, is it not, that he has not specified the
24 specific genuine issues?

25 MR. CHURCHILL: That is one of them. There are

1 two of them. The other one is far more important, and
2 that is that the law is very clear that an opposition to
3 a motion for summary disposition has to be in
4 evidentiary form. It has to be in the form of an
5 affidavit, or a deposition, or answers to
6 interrogatories, or something that rises to the level of
7 evidence. I can cite law. It is clear that he has not
8 done that.

9 CHAIRMAN BLOCH: Mr. Churchill, some of the
10 points he relies on are in fact evidence, are they not?
11 They are answers to interrogatories. Others you claim
12 are not, is that correct?

13 MR. CHURCHILL: I would say that absolutely
14 nothing that he said satisfies that test.

15 CHAIRMAN BLOCH: For example, there is a letter
16 from Mr. Porter to Mr. Anderson, that satisfies the
17 test, doesn't it?

18 MR. CHURCHILL: We would have to look at that
19 letter and what it is supposed to do, but I don't think
20 so because there is no affidavit, and there has to be an
21 affidavit.

22 CHAIRMAN BLOCH: I think that we should discuss
23 this point first.

24 Mr. Anderson, please do comment on this point.

25 MR. ANDERSON: Are you challenging the

1 authenticity of the Porter letter, is that what the
2 issue is, Mr. Churchill?

3 MR. CHURCHILL: I will tell you exactly what I
4 am. Under 2.749(b), it says: "Affidavit shall set
5 forth such facts as would be admissible in evidence and
6 shall show affirmatively that the affiant is competent
7 to testify to the matters stated therein. The presiding
8 officer may submit affidavits to be supplemented or
9 opposed by depositions, answers to interrogatories, or
10 further affidavits. A party opposing the motion may not
11 rest upon mere allegations or denials of his answer."

12 There are a number of cases that hold that
13 there has to be evidentiary opposition to a motion for
14 summary disposition.

15 MR. ANDERSON: Are you challenging the
16 expertise of Mr. Porter, is that what you are saying,
17 Mr. Churchill?

18 MR. CHURCHILL: Absolutely not, Mr. Anderson.
19 All I am saying, as I am reading the clear language of
20 the requirement, and we were on notice since January
21 that there would be a motion for summary disposition
22 involved in this, and I see no reason at all why the
23 proper response could not have been made.

24 MR. ANDERSON: Let's put one thing behind us,
25 if it is appropriate with you, Mr. Churchill. Is it

1 fair to state that you are not challenging the
2 authenticity of the documents or the appendices to our
3 motion for litigable issues?

4 MR. CHURCHILL: It is very difficult for me to
5 make one statement or another with respect to that
6 because I don't know what you are referring to. You
7 have a lot of documents cited.

8 No, I am not challenging the authenticity. I
9 am saying that unless you have an affidavit or an answer
10 to an interrogatory or depositions, all of which are
11 sworn, you cannot defeat a motion for summary
12 disposition, unless of course we fail to do the same
13 thing, then we could not prevail.

14 CHAIRMAN BLOCH: I suggest, Mr. Anderson, that
15 at this point, if you wish to, you may address this as a
16 general legal proposition, but that you also may address
17 it, if you wish, in the context of each of the
18 contentions, and whether you have raised genuine issues
19 that meet the criterion that Mr. Churchill is referring
20 to. You may make your choice as to how to respond.

21 MR. ANDERSON: I would suggest that an overall
22 response on a very brief basis would be the most
23 organized way to proceed, if it is all right with you,
24 sir.

25 CHAIRMAN BLOCH: Yes.

1 MR. ANDERSON: I will just note that in our
2 view the affidavit is what you have a right to add to
3 the record in a summary judgment proceeding to the
4 extent that you feel it necessary. If there are matters
5 in the record already, available to you, that are
6 sufficient to buttress the case to the extent that the
7 parties desire. You don't have to convert the caption
8 to affidavit to serve the purpose of an evidentiary
9 basis to establish a genuine issue of material fact.

10 That is what I wanted to say, and I would just,
11 if it is all right with you, proceed to the first
12 proposed contention.

13 CHAIRMAN BLOCH: I think I want staff to be
14 heard on this also.

15 MR. ANDERSON: Okay.

16 CHAIRMAN BLOCH: May I ask Mr. Churchill
17 first. In your opinion, would an affidavit merely
18 stating that the appendices to the motion are in fact
19 true copies of the documents they purport to represent
20 satisfy the requirement?

21 MR. CHURCHILL: No, they would not. I would
22 cite a Cleveland Electrical Illuminating Company case,
23 et al., ALAP 443, December 8, 1977, that is at 6 NRC
24 741.

25 CHAIRMAN BLOCH: Is that 741?

1 MR. CHURCHILL: Yes, 741.

2 CHAIRMAN BLOCH: Okay.

3 MR. CHURCHILL: Note 46, it draws the parallel
4 between 2.749 and the Federal Rules of Practice, and
5 notes that it is well settled in official proceedings
6 -- the rule is well settled that documents submitted
7 with affidavit on a summary judgment motion must be
8 admissible in evidence.

9 In this particular case, it went against the
10 proponent of the motion for summary disposition because
11 the supporting documents to support the motion for
12 summary disposition was a document accompanied by an
13 affidavit of an official of the company who had not
14 authored the document, but who had the authority to
15 submit license applications and application amendments.
16 He did, in the affidavit, say that, yes, this was a
17 true, authenticated copy, and so on, but he couldn't
18 speak to the content of the document.

19 He, himself, was not qualified to provide the
20 back up evidence, that is the affidavit which would
21 support the statement of material fact. For that
22 reason, even though there was an affidavit of the kind
23 you just suggested, sir, that motion failed because it
24 did not meet the requirements.

25 CHAIRMAN BLOCH: Let me clarify that point a

1 little further. Would that same logic apply also to
2 documents that Applicant has furnished in the course of
3 discovery, and also to official NRC documents?

4 MR. CHURCHILL: It would certainly apply to
5 documents that have been produced in the course of
6 discovery because they are certainly not in evidence, or
7 evidentiary or, as Mr. Anderson suggests, they are not
8 part of the record. Documents submitted on discovery
9 are extra-record. They have not been identified as
10 exhibits or admitted. As we are all well aware, just
11 because a document is in the literature, that does not
12 mean in and of itself that it would be admissible. It
13 would have to be properly sponsored by someone who can
14 attest to the facts before us.

15 Similarly, it is my understanding that even
16 documents which have been produced by the NRC, in order
17 for them to be admitted into evidence, they have to be
18 appropriately sponsored by the appropriate staff
19 witnesses.

20 I think we can find any number of cases that
21 really go to the proposition that summary disposition is
22 a very serious and important part of litigation, which
23 plays a very important role, and that is to narrow and
24 eliminate issues so that they do not go to trial for
25 which there is no genuine dispute.

1 CHAIRMAN BLOCH: The Board agrees with that as
2 a desirable goal.

3 Mr. Churchill, the precedent that you cited was
4 a summary disposition motion which failed. Have you
5 precedent where the parties chose to raise genuine
6 issues of fact based on documents produced in the course
7 of discovery in which their opposition to summary
8 disposition was overruled because the facts provided to
9 them had not been introduced into evidentiary form?

10 MR. CHURCHILL: I don't have a case like that
11 directly at my fingertips, Your Honor, but I do have
12 some general language from Federal Court cases that
13 state in general that the affidavits have to rise to the
14 level of evidentiary material.

15 CHAIRMAN BLOCH: Have you cited cases in which
16 summary disposition was granted because the response did
17 not rise to that level?

18 MR. CHURCHILL: The cases that I have before
19 me, I believe and I will have to read them more
20 carefully, go to the affidavits in support of the moving
21 party. However, the general proposition that is stated
22 talks about the affidavits that are required in summary
23 disposition proceedings. In Rule 56 and in Rule 2.749,
24 there is no distinction when it says what the
25 requirements for an affidavit are. It says that

1 affidavits are required with the motion itself, and in
2 opposition -- I beg your pardon, you do not have to file
3 affidavits, you could also do depositions.

4 CHAIRMAN BLOCH: In this case, the letter from
5 Mr. Porter is not evidence because it would require Mr.
6 Porter's testimony that it is authentic, and yet
7 Applicant has said that it does not challenge Mr.
8 Porter's letter. Wouldn't that be granting summary
9 disposition on pretty highly technical grounds?

10 MR. CHURCHILL: I don't believe so. I think
11 that if you are going to get an affidavit, as I said
12 before, we take this very seriously, it is highly
13 unlikely that anybody could produce an affidavit that
14 would take a letter, such as you say may be written by
15 Mr. Porter, although I am not familiar with the specific
16 letter in mind, and that it would be presented out of
17 context or in a vacuum under an affidavit.

18 CHAIRMAN BLOCH: There is a letter as exhibit
19 3B to the motion for litigable issues. It is on
20 Wisconsin Electric letterhead and signed by Mr. Porter,
21 and it was produced in discovery. This is just an
22 example, perhaps a most extreme example, which just
23 stuck in my memory as something that would be hard to
24 rule out as not raising a genuine issue of fact, if in
25 fact there is a genuine issue in it, on the ground that

1 it is not in affidavit form.

2 MR. CHURCHILL: What Mr. Anderson was required
3 to have done was to have obtained in an affidavit or in
4 answers to interrogatories, which he could have got the
5 proper material for response to this.

6 CHAIRMAN BLOCH: In this case, it would have
7 consisted of the deposition of Mr. Porter validating
8 this document?

9 MR. CHURCHILL: Or an interrogatory answer.

10 CHAIRMAN BLOCH: My understanding is that this
11 letter was produced in answer to an interrogatory. You
12 would have had to have an additional interrogatory
13 answer or request for admission from Mr. Porter in order
14 that the response to a previous interrogatory was
15 genuinely a letter.

16 MR. CHURCHILL: No, I don't think so. I don't
17 think that would do it. I would have to go back and
18 check the files to see what interrogatory this was a
19 response to, but probably, based on my recollection, it
20 was a question something like, "Give me everything in
21 your files that relates to such and such a subject."
22 There was no particular question, substantive question
23 to which this was an answer.

24 CHAIRMAN BLOCH: Okay.

25 Have you any further comments before I proceed

1 to Mr. Anderson and to the Staff?

2 MR. CHURCHILL: No, only to state that the
3 other requirement is as you mentioned before, that there
4 was supposed to be a short and concise statement of the
5 fact which he alleges are material and for which there
6 is a genuine issue.

7 CHAIRMAN BLOCH: Your interpretation of that is
8 that it requires a separate set of facts, and that it
9 should not be done by looking at narrative and picking
10 it out of that.

11 MR. CHURCHILL: Yes, sir, that is definitely my
12 interpretation.

13 CHAIRMAN BLOCH: Mr. Anderson, do you wish to
14 address that is new material briefly.

15 MR. ANDERSON: I think the Chairman himself has
16 indicated what we would characterize as the absurdity of
17 Mr. Churchill's position, basically having initiated a
18 procedure of getting a witness on the stand to vouch for
19 a document, and he is faulting us for not having that
20 witness available to vouch for it. I think that falls
21 from its own weight.

22 As to the itemization of contentions, the
23 reason we did it this way, in terms of our motion dated
24 July 21st, as opposed to as part of the response, is
25 because it was the request of the Board to, essentially

1 in one kind of sense, go in it backwards.

2 I think the Board has adopted a special set of
3 rules in this proceeding, and I think we have complied
4 with the rules. We have enumerated the contentions
5 clearly and separately and succinctly, and we have filed
6 them with citations to the record, to establish
7 literature and establish NRC documents. We think that
8 meets the import of the rules.

9 What we are trying to get is not abstract and
10 meaningless technicality, we are trying to establish
11 that there is a genuine fact within the meaning and
12 standard defined by Rule 56. We believe we have done
13 so.

14 MR. CHURCHILL: Let me speak once more to that
15 because I take great objection to that. It has been
16 clear from the very beginning that to the extent our
17 response to this motion includes a motion for summary
18 disposition, it has always been understood to be
19 governed by the Commission's own rules of practice for
20 motions for summary disposition. In fact, what we are
21 getting away from by following those rules is any sort
22 of highly abstract discussions or obtuseness. We are
23 trying to clearly and succinctly state the facts for
24 which there is or is not an issue.

25 I have heard nothing or read nothing in any of

1 the discussions with the Board, or any of the pleadings
2 or order we have received from the Board, to suggest
3 that the motion for summary disposition will be handled
4 in any way or by any special procedure.

5 CHAIRMAN BLOCH: The motion was stated by the
6 Board to be governed by the same standards that apply to
7 summary disposition. I believe Mr. Anderson has stated
8 that as well in his legal brief. Is that correct, Mr.
9 Anderson?

10 MR. ANDERSON: Yes. Referring to my previous
11 comment to which Mr Churchill took exception, it is not
12 that the standards are different, but rather that the
13 procedures and the timing for itemization of our
14 contentions is different. That is to say, the Board
15 directed us to file basically what would be a response
16 to their summary disposition motion prior to their
17 having filed that motion, we did not take objection to
18 it, we just did so. We complied with the order, and we
19 don't expect to be faulted for complying with that
20 order.

21 CHAIRMAN BLOCH: Without in any way ruling on
22 what Mr. Churchill's point is, I am not sure I
23 understand why the change in order affects whether or
24 not you have to state genuine issues of fact in whatever
25 way the rules require. I don't understand why coming

1 first changes that.

2 MR. ANDERSON: We think we have stated them.

3 CHAIRMAN BLOCH: Then you don't think that it
4 changes the standard, you just think you have met the
5 standard?

6 MR. ANDERSON: Yes, exactly, sir.

7 MR. CHURCHILL: I do have one comment on that.

8 I have never perceived this as coming out of
9 order because Decade was given a chance to reply to our
10 motion for summary disposition. Ordinarily, when a
11 motion is filed, and then it is answered, there is not a
12 chance for the mover to come back again as Decade was
13 given here. It is clear that this was supposed to have
14 been his response in opposition to our motion for
15 summary disposition.

16 CHAIRMAN BLOCH: Staff, please.

17 MR. BACHMANN: This is Richard Bachmann of the
18 Staff. While the discussion was going on, Mr. Stuart
19 Treby, who is also assigned to this case, joined us.

20 Staff's position is essentially that of Mr.
21 Churchill's in that the Intervenors have not complied
22 with the regulations insofar as they have not filed. As
23 stated in 10 CFR 2.749(a), "There shall -- I emphasize
24 "shall" -- be annexed to the motion a separate short
25 type of statement of material fact."

1 There has been no affidavits, albeit we will
2 concede the fact that there is a provision in 10 CFR
3 2.749 that these facts in disputes may be submitted
4 either with or without affidavits. I would further like
5 to say that we seem to be in a position where Mr.
6 Anderson and Decade are responding to a motion for
7 summary disposition, even though we have not gleaned it
8 in other ways.

9 It says in 2.749(a) that all material facts,
10 and I am talking about opposition a motion for summary
11 disposition, all material facts set forth in the
12 statement required to be served by the moving party will
13 be deemed to be admitted unless controverted by the
14 statement required to be served by the opposing party.
15 In this case, I would say that Mr. Anderson would be
16 construed to be the opposing party.

17 It also says in 10 CFR 2.749(b), referring to
18 the answer by the opposing party to the motion for
19 summary disposition, it assumes the response to the
20 motion concerning litigable issues is a motion for
21 summary disposition, therefore Mr. Anderson and Decade
22 would be providing, using that terminology in 10 CFR
23 2.749(b), his answer by affidavit or otherwise, provided
24 in section, must set forth specific facts showing that
25 there is a genuine issue of fact.

1 If no such answer is filed, the decision
2 sought, if appropriate, shall be rendered. I refer back
3 again to 10 CFR 2.749(a) which gives the presiding
4 officer the authority to rule in whole or in part on any
5 of the facts that are deemed not to be controverted,
6 which is a long way of saying that while we genuinely
7 support Mr. Churchill's statement, the regulations do
8 indeed, by affidavit or otherwise, the Staff does not
9 submit that one affidavit must be countered by another,
10 but the Staff submits to the Board at this point that
11 any issues that have been stated not to be controvers
12 have to be controverted as a genuine issue of material
13 fact by the Intervenor in this case.

14 CHAIRMAN BLOCH: Mr. Bachmann, in this case,
15 portions of the motion for litigable issues are labeled
16 "basis." Is it possible to interpret those portions
17 labeled "basis" as short and concise statements of
18 material fact?

19 MR. BACHMANN: Judge Bloch, I can't give you
20 the cite immediately, but I do believe that in our
21 brief, in responding to the motion concerning litigable
22 issues, the Staff did state that we would treat those
23 items named "basis" as Decade's issues or Decade's
24 alleged issues of material fact that need to be
25 litigated. I believe there is a footnote some place in

1 our brief.

2 CHAIRMAN BLOCH: Then I don't understand the
3 point that you are making right now. It seems to me
4 that you said first they don't have to have affidavits,
5 if they have indeed raised genuine issues of fact.
6 Maybe I heard you wrong.

7 MR. BACHMANN: Yes, sir, that is correct.

8 CHAIRMAN BLOCH: You have also said you would
9 interpret the "basis" as separate short statements. So
10 what is the procedural deficiency that you find?

11 MR. BACHMANN: The procedural deficiencies that
12 we find are in the second document, which is Decade's
13 reply brief in support of its motion concerning
14 litigable issues. If I understand the Board's
15 instructions correctly, the initial document to be filed
16 by the Intervenor Decade was the motion concerning
17 litigable issues, which in essence was to be in the form
18 of a response to a motion for summary disposition.

19 At that point, the Licensee and the Staff had
20 the opportunity to file a response to that which would
21 be in the nature of a motion for summary disposition,
22 following which Decade then had the opportunity, and I
23 recall our telephone conference on this, to reply to our
24 response in the nature of a response to a motion for
25 summary disposition. It is their reply that we feel is

1 deficient in that they have not controverted or
2 contradicted, whatever word we may use, the material
3 facts stated by the Licensee and the Staff, nor
4 supported them by affidavits, or in any way contradicted
5 material facts, other than to make general allegations.

6 CHAIRMAN BLOCH: Would that also be true,
7 though, if we said that the reply should be interpreted
8 to incorporate by reference the original motion?

9 MR. BACHMANN: That is a difficult question,
10 however, considering the procedural aspects of this
11 particular proceeding, I would say that even if you took
12 the motion and Decade's reply together, that
13 procedurally they are definitely deficient in the manner
14 that Mr. Churchill has already described.

15 CHAIRMAN BLOCH: Which manner is that? You
16 said that it didn't need to have an affidavit, or am I
17 incorrect on that? You also said that the "basis"
18 should be interpreted as short statements of genuine
19 issues, or whatever.

20 MR. BACHMANN: Judge Bloch, the problem that
21 the staff is undergoing at this point is that: if you
22 take the motion concerning litigable issues together
23 with Decade's reply brief in support of its motion, we
24 are still unsure, and I think the Board also should be
25 unsure, of what genuine issues of material fact that

1 Decade seeks to litigate.

2 CHAIRMAN BLOCH: You may be making a
3 substantive point, which is no matter how we parse this
4 document, there are no genuine issues raised. Is that
5 really the point you want to make, or is it a procedural
6 point?

7 MR. BACHMANN: Excuse me just for a second.

8 Judge Bloch, yes, it is a procedural point to
9 the extent that by not listing the facts in dispute to
10 be litigated at an evidentiary hearing, neither the
11 Licensee nor the Staff can understand what issues the
12 Decade wishes to litigate at an open hearing. It may be
13 somewhat substantive, but in the major sense it is
14 procedural in that neither the Board, nor the parties,
15 other than Decade, have any idea of what facts are at
16 issue.

17 CHAIRMAN BLOCH: That could be because there
18 are no facts, or it could be because there have not been
19 clearly set forth. If in fact Decade in the course of
20 this conversation clarifies in conversational form on
21 the record what the genuine issues are, would the
22 problem of fair notice before hearing go away?

23 MR. BACHMANN: I can only refer to
24 approximately the third sentence, I believe, of 10 CFR
25 2.749(a), which says, "There shall be annexed to the

1 motion a separate short and concise statement of
2 material facts as to which the moving party contends
3 there is no genuine issue to be found." Both the
4 Licensee and the Staff have annexed to their response to
5 Decade's motion concerning litigable issues a short and
6 concise statement, these are the facts and they need not
7 be litigated.

8 We have had no response to that saying that
9 these facts are controverted or uncontroverted. I think
10 procedurally, I must agree with Mr. Churchill that this
11 is not the way to proceed if this is to be done in an
12 orderly manner according to the rules and regulations of
13 the Commission.

14 MR. ANDERSON: Mr. Chairman, I simply must
15 interrupt. We have gone 35 minutes and we have gotten
16 absolutely nowhere. With my document dated July 21,
17 1982, he received such a document. I think we are
18 talking about the substance. This is getting absolutely
19 nowhere in our estimation, with all due respect to Mr.
20 Bachmann's position. I think we have a document here,
21 and I think we are talking about the substance. I would
22 really urge the Board to move to the substance of the
23 issues.

24 CHAIRMAN BLOCH: I do want to hear very
25 briefly, before we do that, from Mr. Churchill. I would

1 point out that there is one thing that we may have
2 learned from this discussion, Mr. Anderson, and that is
3 that it is going to be extremely important in the
4 transcript of this hearing that you set quite clearly
5 what the genuine issues of fact are that you want to
6 litigate.

7 MR. ANDERSON: I will be glad to do that, sir,
8 and it will be simply a restatement in an encapsulated
9 form of a highlight of all that was provided to Mr.
10 Bachmann and to Mr. Churchill almost two months ago.

11 CHAIRMAN BLOCH: Okay, I understand that
12 point.

13 Mr. Churchill.

14 MR. CHURCHILL: Yes, Judge Bloch. You had
15 raised the question before of whether Mr. Anderson's
16 statement of basis could be considered facts to be
17 litigated. I would say, no, they could not, simply
18 because they were never presented as a fact to be
19 litigated. All they were presented for was a support of
20 the facts that he does wish to litigate.

21 For example, he may be talking about something
22 that happened or did not happen at San Onofre. We are
23 not litigating whether or not it happened there, and it
24 clearly was not presented for that purpose, and it would
25 be inappropriate to do that.

1 CHAIRMAN BLOCH: What he must present, or he
2 should have already in your possession, and he certainly
3 must in the course of this hearing, the factual
4 inference that he believes the Board should accept as
5 being a genuine issue. Then, having said that, he may
6 support it by evidence. That is your position, isn't
7 it, Mr. Churchill?

8 MR. CHURCHILL: That is what he should have
9 done, Your Honor.

10 CHAIRMAN BLOCH: You disagree that he could
11 remedy that now.

12 MR. CHURCHILL: Absolutely, 2.749(a) goes on to
13 show what the moving party is supposed to do, and what
14 the party in opposition is supposed to do. I believe it
15 is the second to the last sentence that says, "No
16 further supporting statements or responses thereto shall
17 be entertained."

18 Furthermore, in the full procedural context of
19 this case, where we have been on notice for almost a
20 year that this was coming, and where we are in a very
21 crucial situation with our schedule, it would be
22 substantively impossible for us to entertain anything
23 further without totally moving the whole hearing, and
24 effectively defeating the Licensee's license
25 application.

1 CHAIRMAN BLOCH: Mr. Churchill, when you get a
2 chance to answer on the individual contentions, I hope
3 that you will also clarify the extent of the fair notice
4 problem you faced when Mr. Anderson's document was
5 filed, to show us the difficulties in anticipating the
6 scope of what it was that he was alleging.

7 MR. CHURCHILL: Yes, sir, I will do that.
8 Then, my final, I think, is that our motion for summary
9 disposition, clearly captioned a motion for summary
10 disposition, started out with an explanation in the form
11 of a short brief of precisely what it was we were doing,
12 and precisely what it was that was required of Mr.
13 Anderson or the Staff, if they chose to oppose the
14 motion for summary disposition.

15 So he clearly was on notice, and that is
16 clearly consistent with the understanding that we have
17 all had from the very beginning.

18 CHAIRMAN BLOCH: Mr. Anderson, before you begin
19 on your first contention, I would like to state that we
20 have serious reservations about the relevance of this
21 contention under separate contentions. It does seem to
22 me, as I think it did in the earlier ruling in this
23 case, that you are really talking about the effects that
24 could occur if there is a deficiency in sleeving.

25 This is an amendment proceeding, and not a

1 proceeding challenging the safety of steam generators in
2 general, or the entire steam generator at Point Beach.
3 So, please, if you are going to argue this contention,
4 the first thing you have got to show is the relevance to
5 an amendment proceeding.

6 MR. ANDERSON: All right. Before I do that, I
7 just wanted to make one point, because I am deeply
8 disturbed by the fallacious inference and fallacy
9 perpetuated by repetition by Mr. Churchill. At
10 transcript page 891, the Board rules and I quote: "We
11 will require that it -- it being the Decade -- file a
12 motion concerning litigable issues in which it will
13 document the genuine issues of fact which it believes
14 exist with respect to any litigable issue which it plans
15 to try at an evidentiary hearing."

16 That document was due in July, and it was filed
17 in July, and it contains that response to that. Now,
18 Mr. Churchill is saying that he did not receive notice
19 of what we plan to try. I think that spending 45
20 minutes on that subject is simply a waste of time.

21 With that, I would proceed to answer the first
22 litigable issue. I would suggest, if it is acceptable
23 to the Board, it might make more sense to argue the
24 first and second together because conceptually we are
25 talking about the same thing. Would that be

1 appropriate?

2 CHAIRMAN BLOCH: I think I would prefer that
3 they be kept separate, Mr. Anderson. It is clear to me
4 that one seems irrelevant than it is that two is
5 irrelevant.

6 MR. ANDERSON: Okay.

7 The first litigable issues deals with the
8 consequences of a rupture of two steam generator tubes
9 that follows a loss of coolant accident in a pressurized
10 water reactor, and it refers to the fact that many
11 scientific bodies believe that the rupture of tubes
12 following a LOCA could basically cause steam binding to
13 such an extent that it would prevent adequate core
14 cooling and lead to a reactor core melt down.

15 With that description of the contention, we
16 would concur with the Chairman's statement that it
17 really underlays contention No. 3 as does contention No.
18 2. We listed it separately because it is a distinct
19 item in the sense that it is a hotly contested issue, as
20 Mr. Fletcher's affidavit amply suggests.

21 CHAIRMAN BLOCH: What you are also saying is
22 that in order for it to support the need for a hearing,
23 you must also find another genuine issue which raises
24 the spectre of this problem occurring because of the
25 sleeving.

1 MR. ANDERSON: Let me preface this by saying, I
2 don't accept the way the NRC proceedings are defined,
3 but with that behind us for the sake of discussion,
4 contention one does not stand by itself, it stands in
5 conjunction with contentions three, four, and five, to
6 the extent that they are found relevant and genuine by
7 the Board.

8 CHAIRMAN BLOCH: With that understanding, would
9 you prefer to hold your response on this until we get to
10 No. 3, Mr. Churchill?

11 MR. CHURCHILL: Excuse me just one moment.

12 I think it is irrelevant because in no way has
13 he related this to sleeving. Even if he were able
14 somehow to persuade the Board that something in
15 contention No. 3 should be in there, again he would have
16 to somehow get to that, which is somehow related to
17 sleeving, back to the problem of how that could possibly
18 relate to this concern that he is raising.

19 We have a number of facts, uncontroverted by
20 the way by his reply, which show that not only it is not
21 related to the sleeving, but it is not in this case a
22 problem. I would not like to see, for example, if we
23 did have to litigage an issue in No. 3, that somehow as
24 part of our case we would then have to come back and put
25 on evidence related to this No. 1, because it is simply

1 not relevant.

2 CHAIRMAN BLOCH: In that case, Mr. Anderson,
3 Mr. Churchill is contending not only that this is
4 subsidiary to some other point, but that in fact you
5 have not raised a genuine issue in this contention.
6 What do you think the specific genuine issue of fact
7 with respect to Point Beach is?

8 You pointed out a general problem in steam
9 generators, what is it about Point Beach that would
10 create a genuine issue of fact on this problem?

11 MR. ANDERSON: If I may inquire, sir, did you
12 want to discuss the timing issue, as you indicated, or
13 do you want to go directly to that point?

14 CHAIRMAN BLOCH: I think that on this one it is
15 in your letter, isn't it? There was notice of this
16 particular -- In fact, it was in your original
17 contentions, wasn't it?

18 MR. ANDERSON: Yes, I think so.

19 CHAIRMAN BLOCH: I don't think that there is a
20 problem on this one.

21 MR. ANDERSON: We put that behind us, then, is
22 that correct?

23 MR. CHURCHILL: The Licensee has not raised a
24 timing issue with respect to this contention.

25 MR. ANDERSON: I will proceed, then, with the

1 timing issue not being an objection on this contention
2 on that basis.

3 CHAIRMAN BLOCH: Please.

4 MR. ANDERSON: I guess what we are talking
5 about, in terms of your inquiry and Mr. Churchill's
6 statement, is the relevance of steam generator tube
7 degradation in a LOCA situation.

8 CHAIRMAN BLOCH: No, I don't think so.

9 MR. ANDERSON: You are asking why it pertains
10 to Point Beach in particular?

11 CHAIRMAN BLOCH: I think if you could show that
12 there would be degradation of many tubes resulting in
13 this kind of a steam binding problem at Point Beach, you
14 would have a legitimate material fact.

15 I think Mr. Churchill is saying, and tell me if
16 I am wrong, that even if there is some weakness at Point
17 Beach, it doesn't raise the question that you have
18 documented for this contention.

19 MR. ANDERSON: From what Mr. Fletcher has said
20 in his affidavit, he disputes, for example, the American
21 Physical Society, he disputes their conclusion that it
22 would take a small number of tubes. Should we put that
23 behind us, too?

24 MR. CHURCHILL: No, we can't put that behind us
25 because it is an incorrect statement you are making.

1 CHAIRMAN BLOCH: Just state what you think the
2 genuine issue of fact is, Mr. Anderson.

3 MR. ANDERSON: We believe that the bases listed
4 on pages 2 and 3 of our motion of July 21st demonstrate
5 that there is a genuine issue that establishes that a
6 through-wall crack or rupture in a small number of tubes
7 would be sufficient to raise an extremely serious, if
8 not catastrophic, safety concern.

9 The reason why that ties in to the sleeving
10 issue is, for example, what 10 percent of the tubes are
11 proposed for post-inspection. That might be adequate if
12 it would require a large number of tubes to rupture in
13 order to have the safety issue become paramount. If, in
14 fact, the expressed contention properly establishes a
15 genuine issue that it may only require a small number of
16 tubes to fail, I think it establishes that the relevance
17 of sleeving is that it may cause that small number of
18 tubes that are needed to cause the problem of steam
19 binding from this kind of LOCA induced situation.

20 CHAIRMAN BLOCH: Mr. Churchill.

21 MR. CHURCHILL: I think we have to somehow keep
22 this in perspective because I think Mr. Anderson jumps
23 ahead a couple of steps to a place where it wasn't
24 appropriate to jump.

25 The contention says that a small number of

1 tubes, if they rupture, it would cause steam binding
2 and, therefore, essentially uncoolable conditions in the
3 core. Our first point, which we urge the Board to pick
4 it up in this order, is that nothing in his basis or in
5 his response to our motion for summary disposition, or
6 in anything that he has filed, in any way relates that
7 concern to sleeving.

8 If that is a concern, it is there whether or
9 not there is sleeving. We think that we cannot go into
10 that anymore than we can go into thermal shock and
11 reactor core embrittlement.

12 CHAIRMAN BLOCH: Mr. Churchill, I don't
13 understand. I was trying to state that I thought this
14 contention was relevant only if the author showed that
15 there would be a small number, three or four sleeved
16 tubes that failed. I thought you were arguing that even
17 if he showed that, it would not be relevant.

18 MR. CHURCHILL: Yes, sir, and to do that we
19 will have to move ahead to our motion for summary
20 disposition wherein in Mr. Fletcher goes in at some
21 length to discuss the dynamics and the forces that occur
22 during a LOCA, just what sleeving does do, what types of
23 leak could conceivably happen, although he says they
24 won't.

25 The basis for this whole contention is a

1 statement which we have quoted in our response to the
2 motion for summary disposition, that we are talking
3 about a guillotine rupture or the equivalent, perhaps a
4 fishmouth burst or something that could somehow create
5 an opening big enough to be equivalent to a guillotine
6 rupture -- a crack is a rupture not a failure. The
7 affidavit clearly shows that this will not occur and
8 cannot occur to a sleeved tube as a result of it being
9 sleeved.

10 CHAIRMAN BLOCH: Are you saying that the
11 testimony about the safety of the sleeved tube is not
12 controverted by the earlier general statement of the
13 American Physical Society on tubes in general.

14 MR. CHURCHILL: Yes, sir, I am saying that and
15 Mr. Fletcher, whether or not he agrees with the American
16 Physical Society, did not controvert that statement
17 because it was not necessary to do so in the context of
18 this hearing.

19 CHAIRMAN BLOCH: Mr. Anderson, do you have any
20 answer to that?

21 MR. ANDERSON: The statement that Mr. Fletcher
22 does make, and I am looking at his affidavit of August
23 4, which is relied upon in the Licensee's answer, does
24 refer to his disagreement with the American Physical
25 Society as part of the basis for his refuting.

1 CHAIRMAN BLOCH: He may do that, but if he has
2 independent grounds that don't depend to the decision of
3 the American Physical Society --

4 MR. ANDERSON: On that point, if I may proceed,
5 the only one that I spot of a paramount nature, and this
6 gets to a thing that perhaps I should have led the
7 discussion with, throughout Mr. Fletcher's affidavit, he
8 relies upon a statement that the maximum sleeved tube
9 leakage would be 12.5 gallons -- let me find the
10 reference, if I may, I think it is expressed in
11 paragraph 4.

12 Looking at paragraph 11, for example, on page 4
13 of the Fletcher affidavit, and it also, I appears later
14 on in paragraph 53, the statement that leakage in the
15 sleeved tube would be 5 percent of the rate which could
16 be expected from an unobstructed leak path of a
17 double-ended break.

18 I think, to be directly responsive to your
19 question, Mr. Chairman, what you are asking is, what
20 paramount thing is the Licensee relying upon,
21 independent of the disagreement with the APS. It
22 appears to me that is the statement.

23 CHAIRMAN BLOCH: Have you in any of your
24 filings controverted that statement?

25 MR. ANDERSON: We have. I wanted to reiterate

1 it because on a previous occasion you indicated that it
2 was wise to repeat your objection. We have objected to
3 that on page 14 of our reply brief of August 21. I want
4 to make sure that it is repeated here.

5 The reason we objected to that being used for
6 the purpose of sustaining summary judgment is two-fold
7 as set forth in the brief. We start out with the caveat
8 that the support for Mr. Fletcher's statement is not
9 detailed so it is very difficult to do so. Apparently,
10 as we perceive his statement, he is hypothesizing one
11 single kind of path, which would be the over the lip of
12 the sleeve, down the annulus, and through the joint.

13 I think that is what the 5 percent reference
14 is, but I can't be sure of that. If that is the case,
15 our first response to that claim is that that is not the
16 only potential leak source. The other potential leak
17 path could be adjacent cracks in the tube and in the
18 sleeve.

19 CHAIRMAN BLOCH: What is it on which you rely
20 as evidence. I see that as a statement on page 14, but
21 what is the evidence for that?

22 MR. ANDERSON: There is the second point to
23 which I will get back to answer this question. We have
24 not had, to my knowledge and I may be wrong, and I am
25 willing to retract it if I am in error, but I don't

1 recall ever having seen that statement in the Licensee's
2 reporting or any other filing prior to this occasion.

3 It would be our position, if this is going to
4 be relied upon, it has to be the subject of discovery so
5 that we know what is going on. We can't simply go to a
6 hearing and be defeated by an eleventh hour assertion of
7 the company's hired witness, without any basis or
8 explanation to know what the discussion is. We can't go
9 on more than that until we have the procedure and a
10 basis to find out the details of that.

11 I want to reiterate as strongly as I can one
12 time, in addition to the brief, and continue the
13 objection, that we would object very strongly.

14 CHAIRMAN BLOCH: If I understand correctly, you
15 are saying that you have basis for controverting what he
16 said, but it is unfair that he is allowed to say it.

17 MR. ANDERSON: I am saying that until he
18 provides a basis for his assertion, so it can be tested,
19 we cannot be required to refute it. I want to make sure
20 that the record is clear, we object to any reliance upon
21 that eleventh hour statement, if I am correct that it is
22 an eleventh hour statement, unless we have an
23 opportunity to engage in discovery on what the basis and
24 the details of that assertion are.

25 CHAIRMAN BLOCH: The first paragraph you were

1 pointing to on page 14, you really are not relying on
2 because that is just your speculation, that is not
3 evidence. The second paragraph is what you relying on,
4 and that is not enough to create a genuine issue because
5 it is a statement of expert opinion not founded in
6 empirical fact.

7 MR. ANDERSON: Yes, but I think the first part
8 establishes that there is potentially a sufficient doubt
9 about it on an intuitive basis, but it is speculative.
10 Specifically for the purpose of defeating summary
11 judgment, the assertion in paragraphs 11 and 53 of Mr.
12 Fletcher's affidavit.

13 CHAIRMAN BLOCH: Mr. Churchill.

14 MR. CHURCHILL: Yes, sir, 2.749(b), "A party
15 opposing the motion may not rest upon the mere
16 allegations or denials of his answer." It just won't
17 do, and what I am seeing here is Mr. Anderson saying,
18 let's throw the rules out. Here we have got something
19 where Mr. Anderson has made a claim, and we have come
20 back with a long set of facts, specific, short,
21 succinct, concise, explaining exactly why it is not a
22 concern with sleeving, and he says that we are being
23 unfair, and that he gets another chance for discovery
24 after he has had unlimited discovery for almost a year
25 now.

1 CHAIRMAN BLOCH: I think I also disagree with
2 Mr. Anderson's assertion because haven't you previously
3 stated that the additional length of sleeve will
4 constrain this leakage?

5 MR. CHURCHILL: We certainly have.

6 CHAIRMAN BLOCH: Is there anything there that
7 it is just this percentage deduction about what the flow
8 would be?

9 MR. CHURCHILL: Not only that, but I think you
10 will find in the Staff's affidavit that sort of expert
11 testimony. This statement is in agreement with that.

12 CHAIRMAN BLOCH: I think to me it is more
13 important in another context, Mr. Churchill, but since
14 it has been raised here, what is the basis for our
15 believing that in fact the sleeve would remain
16 constrained at the upper end in the cases of break? Is
17 that merely expert opinion, or is there a portion of the
18 study by Westinghouse that support that?

19 MR. CHURCHILL: We have the statement of what
20 the sleeve is made of, the material that the sleeve is
21 made of.

22 CHAIRMAN BLOCH: More specifically, I think
23 there is a statement that even if the joint ruptures,
24 that the sleeve will stay within the tube. I think that
25 may depend on what the forces are that are operating and

1 the length of sleeve that extends into the tube. But I
2 just wondered if you were relying on that statement?

3 MR. CHURCHILL: What it is, if you put
4 everything altogether, it is there together with the
5 discussion of the dynamics and the forces that occur
6 during a LOCA.

7 CHAIRMAN BLOCH: Where is it?

8 MR. CHURCHILL: I guess we would have to go
9 piece it together because the statement was made by Mr.
10 Fletcher and also by the Staff's expert witness that the
11 sleeve does in fact contain the tube.

12 CHAIRMAN BLOCH: I know that. It has been made
13 repeatedly. I was wondering whether a portion of the
14 analytical discussion in the Westinghouse document
15 supports that, or whether that is just a statement of
16 opinion.

17 MR. CHURCHILL: I think neither is the case. I
18 don't think there is an analytical discussion of that is
19 true, nobody thought it necessary because it was so
20 obvious. Secondly, it is not an opinion, they know that
21 to be true simply because of the way the tubes in the
22 steam generator are constrained.

23 CHAIRMAN BLOCH: What is the distance that the
24 sleeve pokes up further. I think that particular fact
25 is going to be confidential.

1 MR. CHURCHILL: Yes. I will tell you, so that
2 we don't have to worry about keeping this transcript in
3 camera or anything, I can point to a paragraph and we
4 can all see what the distance is.

5 MR. ANDERSON: Mr. Churchill, there is a lot of
6 traffic in the street outside my office, so if you could
7 speak louder that would facilitate my hearing what you
8 are saying.

9 MR. CHURCHILL: On page 3 of the Fletcher
10 statement, which is supported by affidavit, paragraph 8,
11 toward the bottom, it gives the two lengths of the
12 sleeve that will be used. It also says that these are
13 within the 22-inch thick tube sheet. We all know that
14 the tube is level with the bottom of the tube
15 sheet, so the distance that the sleeve extends upward is
16 the two figures given there, whichever is the proper
17 sleeve to be used.

18 CHAIRMAN BLOCH: But the upper joint, Mr.
19 Churchill, as I understand it, is above the tube sheet.

20 MR. CHURCHILL: I think that if you give me a
21 moment, I can find that answer.

22 CHAIRMAN BLOCH: It is possible that we can
23 cover that later, if you prefer to have someone research
24 it while we talk.

25 MR. CHURCHILL: That is probably a good idea

1 because I think it is given in the sleeving report.

2 CHAIRMAN BLOCH: Let's defer your answer on
3 that, if you would. Have you completed your
4 presentation on this point?

5 MR. ANDERSON: Is that addressed to me, sir, or
6 to Mr. Churchill?

7 CHAIRMAN BLOCH: To Mr. Churchill.

8 MR. CHURCHILL: I have, except to make that one
9 statement, and that is that nothing in Mr. Anderson's
10 reply controverts or contradicts any of the statements
11 in our statement of material facts with respect to
12 contention one. I think that he may alleged that
13 something contradicts it, but nothing does contradict
14 it.

15 CHAIRMAN BLOCH: Staff.

16 MR. BACHMANN: I agree with Mr. Churchill to
17 the extent that insofar as the Staff has provided a
18 statement of material facts about which there is no
19 dispute, and has argued the same thing. The Staff, one,
20 does not see the relevance of this argument or of this
21 contention to the proposed action, i.e., the sleeving of
22 the steam generator tubes.

23 To elucidate a little bit further on that, the
24 allegation that one or more degraded tubes could cause
25 the problem during a LOCA, it is the Staff's belief, and

1 I think just common sense-wise, that the process of
2 sleeving is to prevent degraded tubes from rupturing, so
3 I see no connection, no relevance at all between the
4 proposed action of sleeving degraded tubes and the
5 contention that has been submitted by Decafe that
6 degraded tubes could rupture and cause the problem
7 during a LOCA.

8 Second of all, we also submitted a statement of
9 material facts, as we also stated in the footnote in our
10 brief, admit that there is any relevance. The Staff has
11 also submitted an affidavit and statement of material
12 facts which have also not been disputed by the
13 Intervenor. Therefore, the Staff is at a loss at this
14 point to understand why the Board is still entertaining
15 this as a possible viable contention.

16 This is all we have.

17 CHAIRMAN BLOCH: We are just listening to the
18 arguments.

19 Mr. Bachmann, are there any issues that you
20 raise, in addition to the ones that Mr. Churchill
21 brought to my attention, that you would like to mention
22 at this time in terms of your affidavit?

23 MR. BACHMANN: Would you excuse me just one
24 second, sir. I have my project manager here, and he
25 wants to tell me something. I will be back in about 20

1 seconds.

2 Judge Bloch, I am back again. I have just
3 conferred with my project manager on this case. The
4 Staff feels that the combination of the facts submitted
5 by the Staff and the Licensee on this issue, if we are
6 going to the actual material heart of the argument as
7 opposed to the legal argument that is that there is no
8 relevance of this contention, is that Decade has simply
9 not provided any facts at all that need to be litigated
10 in an open, public evidentiary hearing. There is just
11 simply nothing in dispute as far as this contention is
12 concerned.

13 CHAIRMAN BLOCH: Mr. Anderson, only if you have
14 a reply to the material that was introduced by the other
15 parties should you speak again on this point. Is there
16 new matter that you must reply to?

17 MR. ANDERSON: No, because the way you
18 described it initially was borne out by their
19 discussion. What is being disputed here is contention
20 three and not contention one. I think we would move
21 further discussion of this as a part of contention
22 three.

23 CHAIRMAN BLOCH: Now contention two, Mr.
24 Anderson.

25 MR. ANDERSON: Contention two is again a

1 contention that we believe is an underlying contention
2 to the third contention in the same way the first one
3 was. The first one dealt with the kinds of safety
4 concerns raised under accident conditions, and the
5 second contention relates to safety concerns raised
6 during normal operating conditions.

7 Basically, the thrust of contention No. 2 as we
8 propose it, the rupture of steam generator tubes during
9 normal operation may release radiation to the
10 environment from the plant's secondary side in excess of
11 maximum permissible doses. We point out to three
12 possible sources of this concern: from iodine levels in
13 the primary coolant exceeding the tech specs; from
14 unconsidered leakage rates that are higher than bounded
15 in the safety analysis; and from the safety valves in
16 the secondary side sticking open.

17 I also believe, if I am correct, Mr. Examiner,
18 and Mr. Churchill can interject if I am wrong, that the
19 timeliness of the second contention is not in dispute.
20 Is that correct?

21 CHAIRMAN BLOCH: We are awaiting your response,
22 Mr. Churchill.

23 MR. CHURCHILL: That is correct.

24 MR. ANDERSON: Again, moving to the second
25 point to respond, Mr. Chairman, the relevance is just in

1 the same way we talked about the first contention, and
2 does not stand alone.

3 CHAIRMAN BLOCH: I understand. What are the
4 genuine issues?

5 MR. ANDERSON: In terms of moving from the
6 relevance to the genuine issue, we established the bases
7 for the iodine level was in reference to the safety
8 evaluation report.

9 The basis for unconsidered leakage related to
10 the kinds of problems, as we detailed more in our
11 motion, the Ginna incident showed that the estimates for
12 the double-guillotine break, for example, at the outside
13 bounding range of leakage, may be not be adequate.

14 The third, the safety valves, we again refer to
15 the NRC documents from the Ginna accident, which show
16 that the safety valves can stick open.

17 CHAIRMAN BLOCH: On the iodine, is there any
18 basis for believing that it either has occurred or will
19 occur at Point Beach?

20 MR. ANDERSON: There is a basis, and as
21 indicated in our reply brief, we understood that the
22 basis relied upon has been ruled out of evidence, but we
23 made an offer of proof, or we intend to make an offer of
24 proof.

25 CHAIRMAN BLOCH: What page of your reply

1 brief?

2 MR. ANDERSON: I am finding that right now. It
3 starts of page 14 and extends to page 15. The subject,
4 so the transcript reflects this, would be the reracking
5 of the core at Point Beach creating the possibility of
6 higher embrittlement of the cladding at Point Beach,
7 creating the possibility that iodine levels will be
8 higher than otherwise would be the case if it were not
9 for the reracking that is going on at Point Beach.

10 It also does say, beyond that specific offer of
11 proof we made in the reply brief, that the

12 CHAIRMAN BLOCH: Wait a second. What is the
13 evidence that that reracking will in fact cause the
14 substantial higher risk that the iodine levels will
15 exist?

16 MR. ANDERSON: It is not proof. We believe, in
17 rule 56, the reasonable inferences go to the person
18 opposing the motion for summary judgment.

19 CHAIRMAN BLOCH: There is reasonable inference
20 just from the fact that they rerack, without any
21 evidence that rerack will increase this risk?

22 MR. ANDERSON: I think it is undisputed that
23 the reason for reracking is to reduce embrittlement of
24 the beltline welding of the reactor vessel. As you are
25 moving that same cause of the beltline embrittlement to

1 a different place, we believe that it is a reasonable
2 inference, but not a proof, that it will cause or may
3 cause embrittlement of the cladding where the
4 concentration of the high active fuel assemblies have
5 been moved to.

6 CHAIRMAN BLOCH: That is the iodine. On the
7 others?

8 MR. ANDERSON: Before I leave that, I want to
9 add as well the fact that the Staff raised that as a
10 need for changing the tech specs also speaks to the fact
11 that it is a matter of concern whether or not, as Mr.
12 Murphy's affidavit alleges, there have been violations
13 of iodine levels in the past.

14 CHAIRMAN BLOCH: Of course, you stating that
15 there is a problem even if there is a change in the tech
16 specs.

17 MR. ANDERSON: It would depend what the tech
18 specs said. The reason I am making that statement is
19 that the tech specs say that you have sufficient
20 monitoring to detect a violation immediately, and if you
21 have to shutdown immediately upon detection, it could
22 conceivably take care and remove the contention. But at
23 this point in time, all they have is a statement that
24 this will be resolved without any specific detail. Our
25 contention only goes to the extent that until

1 satisfactory detail is provided, the contention in our
2 view lives. We are not asserting that no tech spec
3 change could resolve it, we are not making that part of
4 the contention.

5 CHAIRMAN BLOCH: The contention has a
6 reservation that you are not sure how this tech spec
7 will be rewritten.

8 MR. ANDERSON: Right.

9 CHAIRMAN BLOCH: Why don't discuss the problem
10 of iodine separately. I think that is is easier to
11 discuss one thing at a time, they are really not
12 directly related to one another.

13 Mr. Churchill.

14 MR. CHURCHILL: Yes, Your Honor. This one
15 seems fairly obvious. If you read the contention
16 closely, it says "rupture of steam generator tubes
17 during normal operation may release radiation" --
18 rupture of steam generator tubes. He hasn't given any
19 facts or any basis whatsoever anywhere.

20 CHAIRMAN BLOCH: You made that argument in
21 support, so I understand that.

22 MR. CHURCHILL: To relate to how in the world
23 sleeve could cause a rupture of a tube, a rupture is a
24 big break.

25 CHAIRMAN BLOCH: Mr. Churchill, I heard that

1 argument before, I do understand it. Is there another
2 point that you want to make?

3 MR. CHURCHILL: Three things that he has added
4 since he first identified these, all they do is give, as
5 he said, three sources, or three reasons why he is
6 concerned if a tube should rupture during normal
7 operation. None of these is related to sleeving.

8 The business of the tech spec is a red herring,
9 it just has nothing to do with this. The Staff did
10 mention the tech spec, but they did that in the context
11 of the normal sleeve limiting leakage that is expected
12 in normal operation. It had nothing to do with
13 rupture.

14 The Staff said that they would like to see the
15 Westinghouse tech spec, as indeed the Licensee will
16 have, because during normal operation, without rupture,
17 you want to keep the secondary site down. The tech spec
18 argument, and the tech spec discussion, and tech spec
19 reference and citation by the Staff has absolutely
20 nothing to do with rupture.

21 We said that in our brief, and the Staff said
22 that at pages 6 and 7 of their brief, but there is
23 nothing there to suggest that anything having to do with
24 sleeving would cause, exacerbate, or be in any way
25 related to the possible rupture of a tube, and that in

1 fact is what the contention is.

2 CHAIRMAN BLOCH: Staff.

3 MR. BACHMANN: I agree thoroughly with Mr.
4 Churchill's comment about the irrelevancy of this
5 particular contention. I might also point out that in
6 the Staff's August 16 response to the motion, on pages
7 21, 22, and referencing Mr. Colburn's affidavit. Going
8 back to the original contention, Decade has alleged that
9 the iodine levels exceed the Westinghouse tech spec, we
10 have submitted as a fact in an affidavit, which the
11 Intervenor has not controverted, that they will be
12 within limits before we will allow them to operate.

13 I see absolutely no dispute of fact at this
14 point. I see no reason why we need to litigate this.

15 CHAIRMAN BLOCH: Mr. Bachmann, if they are not
16 within the limits at some future time, they must file an
17 immediate report?

18 MR. BACHMANN: That is correct, sir.

19 CHAIRMAN BLOCH: Then the staff will decide on
20 appropriate action.

21 MR. BACHMANN: That is also correct.

22 CHAIRMAN BLOCH: Have you finished?

23 MR. BACHMANN: That is all I have, sir.

24 CHAIRMAN BLOCH: Mr. Anderson, reply only to
25 new matter raised.

1 MR. ANDERSON: I think that basically the bulk
2 of the objection by the opposing parties goes to whether
3 contentions No. 3, 4 and 5 are correct. I will not
4 speak to that at this point, I will hold that to the
5 contention three.

6 Mr. Bachmann, I think, has mischaracterized
7 what he facts are. The facts that have been alleged by
8 the staff is that in the past, insofar as he knew, and
9 it was not based upon a clear statement of
10 definitiveness by Mr. Murphy, he was not familiar with
11 any violations in the past. As to the future, that is
12 pure speculation, it depends upon what the tech specs
13 say. Right now, the tech specs say nothing on the
14 subject, as I understand, with respect to this plant.
15 That is the sole issue before this Board.

16 CHAIRMAN BLOCH: What about 3B.

17 MR. ANDERSON: Do you mean 2B?

18 CHAIRMAN BLOCH: That is correct. The other
19 parties seem to only respond to the preface. We have
20 not given you the chance on 2B yet.

21 MR. ANDERSON: The second part of the
22 contention No. 2 talks about the possibility of
23 unconsidered leakage. What is refers to in terms of the
24 basis for unconsidered leakage, for example, is the fact
25 that the bounding done of estimates of leak rates, and

1 the concern of the amount of contaminated primary
2 coolant that would get out into the environment, has
3 been done by the guillotine break in the single tube.

4 The second part of this contention No. 2, for
5 example, refers to the Ginna episode in which the NRC
6 Staff authors say the initial leak rate at Ginna was
7 calculated to be about 760 gallons per minute, even
8 though the break was not a double-ended guillotine
9 break. They said that the guillotine break had been
10 estimated to be 843.

11 We believe that the inference from that
12 paragraph, which we referenced in our motion, is that
13 there is a possibility that if in fact a guillotine
14 break did occur, it might not be in fact bounded by the
15 kinds of analyses that have been done in the past. So
16 we think that the inference viewed most favorably to the
17 Decade as required by Rule 56 is that the bounding being
18 done is unsatisfactory.

19 For example, if one did, though we think that
20 it is improper to do so, use that 5 percent of a
21 double-guillotine break to derive the amount of leakage
22 that would come to a sleeved tube, it would have to be 5
23 percent multiplied by a bigger number, and of course the
24 bigger the number you use, the more you approach the
25 kinds of problems that relate to accepted levels.

1 CHAIRMAN BLOCH: What is the basis for
2 believing that you get a fishmouth type of rupture on
3 the sleeved portion of the tube?

4 MR. ANDERSON: The second basis for the second
5 contention doesn't assume a fishmouth.

6 CHAIRMAN BLOCH: Isn't that what happened at
7 Ginna, which you are using as a basis for this?

8 MR. ANDERSON: Yes, but I am using it for a
9 different purpose, sir. The reason I am saying that, it
10 was not a guillotine break at Ginna, it was a fishmouth
11 rupture, and even though it was not a guillotine break,
12 it was almost the same level of leakage.

13 CHAIRMAN BLOCH: But how does that become
14 relevant to the sleeving, or why would we expect a
15 fishmouth rupture of that sort? What basis do we have
16 to believe that?

17 MR. ANDERSON: I think the proper question, if
18 I could interject on that, is not why we would expect a
19 fishmouth, we would say, why would you expect some kind
20 of crack that could leak several hundred gallons per
21 minute.

22 CHAIRMAN BLOCH: What is the evidentiary basis
23 for believing that in the sleeved portion of the tube?

24 MR. ANDERSON: That would relate to the
25 contention No. 3. I think that it would be better put,

1 not going back and forth, but discussing contention
2 three separately.

3 CHAIRMAN BLOCH: For this one, there is nothing
4 left except for contention three, is there?

5 You are saying that there could be a fishmouth
6 rupture despite the sleeving structure, and you are
7 going to argue that for contention three. What does 2B
8 add to it?

9 MR. ANDERSON: We are not saying that there
10 will be a fishmouth. We are saying that the leakage
11 rates can be higher than they have been detected in the
12 past.

13 CHAIRMAN BLOCH: But you are going to argue
14 that under three.

15 MR. ANDERSON: I will argue that under three.

16 CHAIRMAN BLOCH: Is there anything left to 2B
17 alone?

18 MR. ANDERSON: All we are using contention two
19 for is to say that, if you have some doubt that a few
20 number of tubes might rupture, you have a serious safety
21 concern, even though it might sound, if you were not
22 aware of contention No. 1 and contention No. 2, a couple
23 of tubes going wrong wouldn't be a bad thing at all.

24 CHAIRMAN BLOCH: Is 2C the same sort of
25 contention?

1 MR. ANDERSON: Yes.

2 CHAIRMAN BLOCH: The basis for 2C?

3 MR. ANDERSON: It talks about a safety valve
4 sticking open which would let the contaminated secondary
5 water, with radioactive contaminants, get into the
6 environment. It was unconsidered in previous analysis,
7 as pointed out in the document cited, and the Ginna
8 incident proved that it can stick open.

9 CHAIRMAN BLOCH: In the Ginna episode, wasn't
10 it also installation failure?

11 MR. ANDERSON: Yes, the Staff has responded
12 that the Ginna episode is not relevant to Point Beach
13 because Ginna improperly isolated its power operated
14 safety valves. We pointed out that the fact that it was
15 improperly isolated or was not prudently isolated at
16 Ginna does not mean that it is excluded from being a
17 problem at Point Beach.

18 The normal operating conditions that exist in
19 the plant are such that you cannot hypothesize and
20 speculate that everything is going to work perfectly and
21 be operated perfectly. When you talk about a Rule 56
22 summary judgment motion, you have to take the inferences
23 viewed most favorably to the opposing party, and you
24 have to take everything that is most favorable to them,
25 and any doubt whatsoever goes to the advantage of those

1 opposing summary judgment.

2 CHAIRMAN BLOCH: That was the kind of argument
3 that I asked not to be made. You have made once, please
4 don't make it again.

5 MR. ANDERSON: Okay.

6 CHAIRMAN BLOCH: Are you finished with this
7 argument?

8 MR. ANDERSON: Yes.

9 CHAIRMAN BLOCH: Mr. Churchill.

10 MR. CHURCHILL: On this, it is the same
11 argument that I had before. None of this is relevant to
12 sleeving. Secondly, Ginna did not involve sleeved tubes
13 to any extent, so that also is irrelevant.

14 CHAIRMAN BLOCH: Mr. Bachmann.

15 MR. BACHMANN: I assume, after this lengthy
16 discussion, that we are still on 2B?

17 CHAIRMAN BLOCH: Yes, 2B and C.

18 MR. BACHMANN: As far as 2B is concerned, and
19 as far as Mr. Anderson's issue as he stated on page 4 of
20 his motion, the Staff will not dispute that "The
21 consequences of multiple tube failures in excess of
22 design basis has been seriously studied." That is
23 correct, we did not feel that it was a fact in dispute.

24 We also, adding to that, agree with Mr.
25 Churchill that there is no relevancy to what we are

1 talking about here.

2 As far as the safety valve is concerned, and
3 the occurrence at Ginna, the Staff feels that again
4 there is no relevancy to the proposed action here, i.e.,
5 sleeving, and also that the argument, material fact, and
6 affidavit indicating what the problems had been at Ginna
7 does state the Staff's position.

8 As an after thought, I will add that I agree
9 totally with Mr. Churchill that in this case it does not
10 involve sleeved tubes, and that is not a problem and,
11 therefore, should not be considered in this proceeding.

12 This is all the Staff has.

13 CHAIRMAN BLOCH: Mr. Anderson, I believe we are
14 ready for 3A.

15 MR. ANDERSON: I think so.

16 Contention 3, in the overall construct, refers
17 to the contention that the sleeving operation itself
18 will increase the risk of failures, especially in the
19 unconstrained free-standing regions of the steam
20 generator tubes.

21 CHAIRMAN BLOCH: Would you tell us right now,
22 to clarify the record, what you mean by the
23 unconstrained free-standing regions of the steam
24 generator?

25 MR. ANDERSON: Yes, I was going to do that.

1 That is the area above the upper-face of the tube
2 sheet.

3 CHAIRMAN BLOCH: Does that include the free
4 portion of the tube?

5 MR. ANDERSON: Part of that region will have a
6 sleeve and part of it will not.

7 CHAIRMAN BLOCH: That includes a portion of the
8 sleeved part of the tube.

9 MR. ANDERSON: Right, the upper portion of the
10 sleeve and the remaining part of the tube that extends
11 beyond the sleeve.

12 Should I proceed?

13 CHAIRMAN BLOCH: Please.

14 MR. ANDERSON: We specifically focused on six
15 areas with respect to establishing that contention.

16 The first area under it was the area of
17 inspectability. The reason why inspectability is of
18 importance is that if you are not able to detect in
19 advance possible tube rupture, you can have the
20 situation where it would be susceptible to suffering
21 those consequences.

22 CHAIRMAN BLOCH: When you say, inspectability,
23 initially you were talking about anti-current testing.
24 Are you talking about other kinds of inspectability now
25 also?

1 MR. ANDERSON: Inspectability here refers to
2 anti-current, yes, sir.

3 CHAIRMAN BLOCH: Only the anti-current test?
4 The Applicant had a problem with the broad wording you
5 are using now. They said that it goes beyond what you
6 said initially.

7 MR. ANDERSON: That is correct.

8 We started out with the basis that I think is
9 very important, it overlays a series of points and
10 counter-points that come into play.

11 The salient point is that even in an unsleeved
12 tube, the inspection is inadequate to detect defects to
13 the extent required, and we made specific reference, for
14 example, to what we call the Porter letter, which talks
15 about a laboratory test, without any interference at
16 all, being unable to detect a 30 percent through-wall
17 defect.

18 Moving from the situation of --

19 CHAIRMAN BLOCH: Let me ask you about that,
20 though. It seems to me that you have raised potentially
21 a serious question about effectiveness of any kind of
22 testing on detecting anti-granular structure and
23 cracking. Wouldn't you say, though, that the place in
24 the reactor where that is the least problem is in the
25 sleeved region?

1 MR. ANDERSON: No, I say the opposite.

2 CHAIRMAN BLOCH: Why is that?

3 MR. ANDERSON: Because the focus of the concern
4 that has occurred preceding this aspect of the
5 proceeding on the American Physical Society kinds of
6 concern has two things that are undisputed. One is that
7 the corrosive forces in the narrow crevace surrounding
8 the tube can be highly deleterious to a very
9 unacceptable extent.

10 CHAIRMAN BLOCH: We start there. We put a
11 sleeve in that starts with no corrosion and has an
12 additional thickness to it. Let's assume for the time
13 being it doesn't have any greater resistance to
14 corrosion, it may, they are arguing it does. You start
15 with an uncorroded sleeve that spans the region of
16 degradation.

17 Any corrosion which is going to attack that
18 sleeve is going to have to start from zero. Why would
19 you worry about the sleeved region, when the corrosion
20 is occurring in other parts of the reactor and has
21 already started?

22 MR. ANDERSON: The company alleges, and we do
23 not accept, that apart from sleeving, the corrosion,
24 they would argue, is confined to the area within the
25 tube sheet.

1 CHAIRMAN BLOCH: Do you have evidence that it
2 is not?

3 MR. ANDERSON: We do, but I think it might be
4 outside this proceeding to get into that.

5 CHAIRMAN BLOCH: No, I think you have to have
6 evidence in the record of this proceeding.

7 MR. ANDERSON: I am saying that I am not sure
8 that establishment is relevant to this proceeding.

9 CHAIRMAN BLOCH: Can you establish that?

10 MR. ANDERSON: Yes, I can, if you can wait five
11 minutes, or I can mail an LER from the company that has
12 defects above the tube sheet.

13 CHAIRMAN BLOCH: But it is not in the record at
14 this point, so you would have to show good cause for
15 late filing.

16 MR. ANDERSON: Yes, and the reason I am not
17 filing it is because I don't think the Commission has
18 defined the scope of this proceeding to embrace that.
19 If it wanted to, I would be very much eager to expand
20 the scope, but I understand the scope to embrace that
21 issue.

22 CHAIRMAN BLOCH: Maybe it doesn't.

23 MR. ANDERSON: I would like to, though.

24 CHAIRMAN BLOCH: Why is it not relevant to
25 answer my question about starting from zero in corroding

1 a new sleeve. I am still saying, isn't it the safest
2 part of the whole steam generator?

3 MR. ANDERSON: I wanted to get to answer that
4 question by establishing two things, which I believe are
5 undisputed. One is that there is a very corrosive
6 environment in a crevace type situation. Secondly, the
7 fact that the corrosion in the crevace at Point Beach in
8 the past, as to its safety concern, has been minimized
9 by the Staff and by the Licensee on the basis of the
10 fact that although there may be a lot of corrosion
11 there, the leak path that will be created to that corrosion
12 in just a rupture would be constrained by the
13 surrounding wall of that crevace.

14 CHAIRMAN BLOCH: Our record shows that the
15 corrosion occurs, I believe, both in the tube sheet and
16 in the sludge area above the tube. Isn't that correct?

17 MR. ANDERSON: I believe the company would
18 dispute that. I would accept that.

19 CHAIRMAN BLOCH: The SER, I think, say that,
20 doesn't it?

21 MR. ANDERSON: I am not aware if it does or
22 not.

23 CHAIRMAN BLOCH: The other parties can
24 contradict me if that is wrong. But my question is,
25 even assuming that there is corrosion above the tube

1 sheet -- Are you saying that there is no corrosion above
2 the tube sheet right now?

3 MR. ANDERSON: I would say there is, and they
4 would say there is not. I can answer your question.
5 Without that fact being established I can answer your
6 question.

7 CHAIRMAN BLOCH: Okay, answer.

8 MR. ANDERSON: I wanted to establish those two
9 things. One is that the crevice is highly corrosive, to
10 a disturbing extent. The second one is the safety
11 implications of that corrosion has been minimized in the
12 past by saying that it will be constrained.

13 What you are doing by doing the sleeve, and
14 this is not a statement which is initiated by us, it is
15 a statement that is initiated by a letter from Northern
16 States Power Company, which has a number of nuclear
17 plants itself. It is Appendix 3G.

18 CHAIRMAN BLOCH: I am familiar with the
19 letter.

20 MR. ANDERSON: What the Northern States Power
21 Company official states is that what is that disturbing
22 thing about sleeving to him is that you are recreating
23 the entire problem area of a crevice induced corrosion
24 all over again.

25 The reason why we think that is an enormous

1 safety concern, as well as operational concern, is
2 because that annulus between the two is an area that is
3 in the free-standing region where there is no
4 constraint. There is no tube sheets surrounding the
5 tube to constrain the leakage, so that the leak rate
6 could be very substantial. If the leak rate is very
7 substantial, you have the kind of safety concerns raised
8 in contentions No. 1 and 2.

9 CHAIRMAN BLOCH: If we assume that the
10 corrosion rate in that new annulus that you are worried
11 about is the same as existed in the old annulus --

12 MR. ANDERSON: In the crevace, you mean?

13 CHAIRMAN BLOCH: What period of time are we
14 worried about?

15 MR. ANDERSON: Excuse me?

16 CHAIRMAN BLOCH: What period of time are we
17 worried about? How much time from now is there going to
18 be a corrosion problem, if that occurs, if the rate of
19 corrosion occurs in the new annulus at the same rate as
20 the old annulus?

21 MR. ANDERSON: At Point Beach, I am not sure
22 if it is in the record or not, but at Point Beach, I
23 think it could be established very clearly that in the
24 period from August 1979 through the beginning of 1980,
25 there was like 100 tubes a month that were suffering

1 from sufficient corrosion to require that they be
2 plugged.

3 CHAIRMAN BLOCH: They have been in operation
4 for what, ten years?

5 MR. ANDERSON: Yes.

6 CHAIRMAN BLOCH: So we are talking about ten to
7 eleven years from now?

8 MR. ANDERSON: We don't know. I think there is
9 a large amount of dispute as to what precipitated,
10 apparently suddenly, that crevice corrosion. One of the
11 attachments, I can't recall which one off-hand, is a PFC
12 witness. But in terms of the kind of context to
13 establish a genuine fact or not, there is no way of
14 knowing what would initiate it, except I think all we
15 have is the fact that a crevice environment is highly
16 corrosive, and it is being recreated all over again
17 intentionally.

18 CHAIRMAN BLOCH: If it appears to be a safety
19 problem, do we have expect both that there will be
20 corrosion in the annulus and also that it cannot be
21 detected through inspection?

22 MR. ANDERSON: If the term inspection means
23 that you would not be able to anticipate a failure
24 between inspection periods, yes.

25 CHAIRMAN BLOCH: Your inspection won't be

1 sufficiently accurate and reliable to detect the problem
2 before it causes either a fishmouth rupture or a
3 double-ended guillotine break?

4 MR. ANDERSON: I would not want to define
5 that.

6 CHAIRMAN BLOCH: Excuse me, just a guillotine
7 break?

8 MR. ANDERSON: It would not be sufficient to
9 prevent a substantial amount of leakage.

10 CHAIRMAN BLOCH: Why is the substantial amount
11 of leakage a safety problem, if they shut down?

12 MR. ANDERSON: They have two kinds of
13 concerns. If it occurs in the period immediately
14 following a loss of coolant accident, you have
15 contention one. If it is in normal operation, you have
16 contention two. Contention one would mean that you have
17 the potential for a melt down. Contention two, you
18 would have off-site doses in excess of maximum permitted
19 levels.

20 CHAIRMAN BLOCH: The substantial leakage that
21 you are referring to is not in the nature of a fishmouth
22 rupture, or something of that size, it is something that
23 is smaller?

24 MR. ANDERSON: I am just saying that it is not
25 limited to -- A fishmouth would be in normal operation,

1 for example, because that would imply forces moving out.
2 A loss of coolant accident would not be the kind of
3 situation at Point Beach.

4 All I am saying by not using the word
5 "fishmouth" is a leakage, it would depend upon the
6 circumstance of what the kind of crack would be.

7 CHAIRMAN BLOCH: Do you want to conclude on A?

8 MR. ANDERSON: On A, I think we actually
9 slipped into B.

10 CHAIRMAN BLOCH: Why don't you argue A and B
11 together, I think they may be related.

12 MR. ANDERSON: I think they are.

13 Focusing more on A, initially though, if I may,
14 we start with the premise that anti-current test is not
15 infallible. We have submitted documents which we
16 believe show reasonable doubt to establish a genuine
17 dispute in that regard.

18 Moving from there, we are talking to the fact
19 that if there is a through-wall crack in the outer
20 tubes, the secondary water, because you are using all
21 volatile treatment, may have corrosives in it that will
22 make it extremely more difficult for anti-current tests
23 to work because corrosives will include copper-based
24 alloys which may impair the ability of the signal.

25 We presented in our motion a number of

1 document, official documents, that relate to the fact
2 all volatile treatment is not effective.

3 CHAIRMAN BLOCH: What is the evidence that you
4 submitted that you can't detect actual corrosion taking
5 place by the anti-current test?

6 MR. ANDERSON: That relates to reasonable
7 inference most favorable to the Decade, and the
8 inference arises from the fact which is established that
9 it is reasonable to conclude, for the purpose of this
10 proceeding, that there may be metallic corrodants in the
11 annulus scaling the side of the sleeve. We are saying
12 that there is a reasonable inference from that fact, for
13 the purpose of this phase of the proceeding, to conclude
14 that the anti-current signal would be impaired.

15 CHAIRMAN BLOCH: You say, impaired, if it is
16 impaired, then they can detect the difference in the
17 signal. I understand your problem with detecting stress
18 corrosion and cracking. I don't understand your
19 difficulty in detecting an accumulation of metallic
20 contaminants in that annulus.

21 MR. ANDERSON: Our understanding of the
22 anti-current test, it would just screw up the signals,
23 so you wouldn't know what that means. For example, if
24 you look at the reports, many of the anti-current
25 inspection reports are part of this file from the

1 demonstration phase, you will see a number of them
2 saying, undefined signal. What I am saying is,
3 undefined signal is the same kind of thing that you
4 would have here. You would not know what is going on
5 any longer.

6 CHAIRMAN BLOCH: Have you concluded your
7 argument on inspectability?

8 MR. ANDERSON: Yes, I have. On the annulus, I
9 think we covered it.

10 CHAIRMAN BLOCH: You think you have covered the
11 annulus also?

12 MR. ANDERSON: Yes.

13 CHAIRMAN BLOCH: Please, Mr. Churchill?

14 MR. CHURCHILL: This one, as you know from our
15 filing, we have a number of different grounds that we
16 are challenging the adequacy of this contention. I
17 don't know whether you want me to really argue them all,
18 because they are set down in the brief, but I would like
19 to briefly tick off what they are.

20 First of all, we have an estoppel argument here
21 based, as you know, on two things. One, the failure of
22 Decade to file a motion concerning litigable issues on
23 time, and secondly, their continuing obligation to keep
24 the Licensee informed. To that extent, contention three
25 generally, that is the introductory part of the

1 contention three, contains two items that are brand
2 new.

3 CHAIRMAN BLOCH: Mr. Churchill, I saw that
4 argument in your brief. Isn't this merely an
5 adversary's way of saying what we have always intended
6 in this proceeding. Why would they be raising any of
7 these questions, except for that brief preface? This is
8 just argument on what was already contentions.

9 MR. CHURCHILL: I disagree, in fact, the most
10 serious one is the constrained free standing region.
11 Never has there been any inference, implicit or
12 explicit, that we were dealing with anything above the
13 sleeve.

14 CHAIRMAN BLOCH: He just defined that to
15 include -- Your concern is that it goes above the
16 sleeve. If he stopped it at the top of the sleeve, you
17 would have no problem.

18 MR. CHURCHILL: In fact, Mr. Fletcher went into
19 some detail --

20 MR. ANDERSON: If I could interrupt, with your
21 permission, Mr. Churchill. If it facilitates your
22 answer, we are admitting that the proceeding, although
23 we disagree with it, is limited to the effect of
24 sleeving. So if that assuages your concern in part to
25 say that we are not talking about ruptures that will

1 occur above the edge of the sleeve, we will be glad to
2 say that.

3 CHAIRMAN BLOCH: Mr. Churchill, I don't think
4 there is any genuine issue for which there is evidence
5 above the sleeve.

6 MR. CHURCHILL: So in this proceeding, we are
7 talking about the area of the tube and the sleeve up to
8 the top of the sleeve.

9 CHAIRMAN BLOCH: Yes, and he is just asserting
10 tht if it broke in that area, it would be
11 unconstrained. If it broke completely around in that
12 area, the tube sheet would not constrain it.

13 MR. CHURCHILL: I am not sure that that is
14 actually one of the contentions, but I guess what he is
15 saying is that when he meant unconstrained, he meant
16 from the top of the tube sheet, but we have no way of
17 knowing that.

18 CHAIRMAN BLOCH: I understand your problem, but
19 your problem is that you didn't have notice of something
20 he didn't intend to allege. Let's proceed with the
21 factual argument, and if you see how you were
22 disadvantaged, tell me.

23 MR. CHURCHILL: I think that maybe most of the
24 concerns are taken care of as long as it is established
25 that what we are talking about is the area of the tube

1 and the sleeve up to the top of the sleeve.

2 MR. ANDERSON: I would agree with that, Mr.
3 Churchill.

4 MR. CHURCHILL: Going from there, our second
5 argument -- Let me think that out, and see how it would
6 affect what I was going to say.

7 With respect to the general, I wouldn't have
8 any more to say. However, there clearly is expanded
9 additional issues in 3A.

10 CHAIRMAN BLOCH: I thought so, too, but Mr.
11 Anderson says that he is only questioning anti-current
12 testing.

13 MR. CHURCHILL: But there are a number of other
14 ones, and there are three reasons for them. There are
15 two grounds of estoppel, and then there is the good
16 cause argument, he has not given good cause to make the
17 new issues.

18 CHAIRMAN BLOCH: I also told you I didn't want
19 argument on the legal questions. Just tell me what is
20 new.

21 MR. CHURCHILL: The fact that he is now
22 challenging the adequacy of the present inspection
23 methods, that is new. He has never done that before.
24 Anti-current, he has taken care of that as limited. The
25 other thing that is quite significant, before he said

1 that the presence of the sleeve will make inspection
2 difficult by anti-current. Three, here is the quote
3 from the original contention in the January 18 letter to
4 the staff, "increase the probability that tube with
5 incipient failure may go undetected and rupture during a
6 loss of coolant accident." He was concerned with
7 ruptures and he was concerned with the LOCA.

8 Now what he is saying is that it will increase
9 the probability of failure generally, not just a
10 rupture, but I presume some small leak less than a
11 rupture, and also for concerns other than the LOCA. It
12 is an extensive expansion of the original contention of
13 which there was no prior notice, and furthermore for
14 which we were misled by his misrepresentation on July 19
15 when the motion was supposed to have been due.

16 He says that the inspectability will degrade
17 over time, he never said that before.

18 CHAIRMAN BLOCH: Mr. Churchill, one way we
19 could handle that would be to allow you to get an
20 inquiry on a couple of issues you think you were
21 surprised on. You should keep in mind that a possible
22 remedy, if you have been surprised, is to allow to make
23 a filing. If you need an opportunity to do that, after
24 we have clarified what these issues are, I hope you will
25 request it.

1 MR. CHURCHILL: Because of the nature of this
2 particular proceeding, Your Honor, because of the
3 scheduling difficulties we have and because all of this
4 was supposed to have been handled a long time ago, while
5 we are arguing that these should not be in, in our
6 subsequent argument, we have addressed those concerns.
7 We don't think that they should have been addressed, but
8 we didn't have time to first get a decision from you on
9 this, and then come back for the next. So our filing
10 does cover them all.

11 The last point for which we were surprised was
12 all of the allegations with respect to chemistry. Never
13 was chemistry mentioned before, never was there a hint
14 that he was going to, all of a sudden, start challenging
15 the adequacy of the all volatile treatment which has
16 been in use in Point Beach since 1974 for Unit 1, and
17 1975 for Unit 2, and which is not going to be changed.
18 The situation that we have now, and which is the
19 situation that we should take as we see it.

20 CHAIRMAN BLOCH: I am not sure you are right
21 about that, Mr. Churchill. He earlier said that he
22 expected there to be corrosion in the annulus, and all
23 he is doing here is pointing out in the inspectability
24 portion that that is the kind of corrosion that you are
25 going to have to detect, isn't it?

1 I mean if there were corrosion in the annulus,
2 and you were using all volatile treatment, wasn't he
3 alleging that there could be corrosion even when you
4 have all volatile treatment? There would have to be a
5 chemical consequence, wouldn't it?

6 MR. CHURCHILL: He didn't allege anything at
7 all about the chemistry treatment. What he alleged
8 before, and now we are getting into B, is that there
9 would be some expectedly corrosive environment inside
10 the annulus. Never did he relate that to all volatile
11 treatment. In fact, he has been under a continuing duty
12 not only to tell us ahead of time on a continuing basis
13 of new contentions, but also any bases for contentions
14 that he already has. He has never mentioned that
15 before.

16 I don't think that we need to argue anymore
17 about that, but I wanted to point out that I do have
18 those two estoppel arguments and his failure to show
19 good cause for a new contention, those three arguments
20 for all of the points that I have just listed.

21 Moreover, he hasn't replied to the estoppel
22 arguments at all. His only argument on the no good
23 cause is, I guess, he is belatedly coming back with an
24 attempt at good cause in his reply, and that is simply a
25 generalized statement that all he is doing is refining

1 his contentions. Clearly, he is doing much more than
2 refining them, he is substantially expanding them.

3 CHAIRMAN BLOCH: Now let's get to the merits.

4 MR. CHURCHILL: There is one other thing, Your
5 Honor, and that is, we have a section on basis. Under
6 sections under 2.714(a), he is supposed to provide a
7 basis before contention can even get admitted and be
8 subject to a motion for summary disposition. We have
9 parsed his contention 3A sentence by sentence and shown
10 that he has not provided any basis for it.

11 CHAIRMAN BLOCH: If he has not provided a
12 basis, has he also a priori not shown a genuine issue of
13 fact?

14 MR. CHURCHILL: Absolutely, but we are talking
15 about it because you may well apply a different standard
16 to the basis argument than you would to the summary
17 disposition. In fact, I think you at one time stated
18 that you have a less of a burden to provide a basis than
19 he does for summary disposition.

20 CHAIRMAN BLOCH: Okay, but if I go through and
21 I feel that way about it, and I go through and I apply
22 the genuine issue standard and gloss over the basis, I
23 am not going to be injuring your client.

24 MR. CHURCHILL: It is possible you could, Your
25 Honor, if he comes in with a contention for which there

1 is no basis.

2 CHAIRMAN BLOCH: I don't see how he could do
3 that and still have a genuine issue. The genuine issue
4 requires evidence that there is something to litigate.

5 MR. CHURCHILL: That is right, and he does not
6 actually have to produce evidence, or at least a basis
7 that rises to the level of evidence, to satisfy 2.714.
8 He is not, for example, required to have affidavits
9 under 2.714.

10 CHAIRMAN BLOCH: You are saying that I could
11 save myself trouble if I applied the test of the genuine
12 issue of fact which requires evidence. Also, if he does
13 not have a basis for admitting the contention, then a
14 priori, I must throw it out under the genuine issue
15 test.

16 MR. CHURCHILL: Your Honor, that is probably
17 correct. I would like to reserve an unequivocal answer
18 on that, unless I can go through point by point and see
19 it. I suspect, in general, that would be right. I am
20 not sure whether it is impossible that there be a
21 situation where we could be prejudiced by that, so I
22 would rather not concede that at this point.

23 CHAIRMAN BLOCH: Let's try to get to the merits
24 test.

25 MR. CHURCHILL: Now, on summary disposition, on

1 inspectability, we have a fairly long statement. The
2 beginning part of the statement covers the contention as
3 it was originally tendered. That is that he is
4 concerned about failure during a LOCA, and for the first
5 several statements in our statement of facts, Mr.
6 Fletcher's affidavit shows that you are not going to get
7 a failure during a LOCA as a result of sleeving.

8 The remainder of the statement is fairly long,
9 that covers the contention 3A in its entirety, including
10 the expanded part of it which we are objecting to.
11 Whether or not we could simplify things by saying that
12 we have put in those statements, all of those
13 statements, and none of them have been controverted or
14 contradicted by Mr. Anderson's reply.

15 CHAIRMAN BLOCH: Let me ask what the basis for
16 my believing that you could find inter-granulus stress
17 corrosion and cracking if it started to develop on the
18 sleeve?

19 MR. CHURCHILL: Our understanding, Your Honor,
20 and here I am talking of my understanding, and I am not
21 sure this appears, but my understanding is that
22 inspectability of the tube itself may be somewhat
23 decreased where the sleeve is.

24 CHAIRMAN BLOCH: I think your evidence says
25 that, that in fact it is improved because there is less

1 of an echo from the tube sheet in the tube sheet
2 region.

3 MR. CHURCHILL: The inspectability of the
4 sleeve is improved. The sleeve, in effect, is now the
5 new primary to secondary pressure boundary.

6 CHAIRMAN BLOCH: I know that argument. My
7 question is, assume even that it is improved, there
8 seems to be serious doubt based on the letter from Mr.
9 Porter, plus some of the other occurrences in the record
10 that the anti-current testing had some problems
11 detecting defects.

12 I don't want to mention specific cites right
13 now, but there seems to be some problem as to whether
14 detect stress corrosion cracking at all in any region.
15 Could you detect it, or how would we know that you could
16 detect it in the sleeve?

17 MR. CHURCHILL: Our understanding, Your Honor,
18 is that if you could detect it in the tube, you would
19 have a better chance to detect it in the sleeve.

20 CHAIRMAN BLOCH: Let's admit that, but can we
21 detect it in the sleeve, because there is an argument
22 before us that it is a little bit worse in the sleeve
23 because it is more likely that if you get a through-wall
24 rupture there, it will be above the tube sheet.

25 MR. CHURCHILL: The real issue, Your Honor, is

1 whether a defect, whether caused by that kind of
2 corrosion or not, can be detected before it becomes
3 large enough to create the potential for a leak. I
4 think that the dispute about whether or not you can
5 detect all inter-granular corrosion goes to whether you
6 can detect at a certain point when it absolutely first
7 starts, when it is still in its incipient stage.

8 CHAIRMAN BLOCH: Let's say that we wanted to
9 detect it at the tech spec limit, at 40 percent. What
10 is the evidence in the record that we could detect it
11 when it reached 40 percent?

12 MR. CHURCHILL: We have evidence in the record,
13 Your Honor, in the affidavit of both Mr. Fletcher and
14 the Staff, that you can detect whatever kind of
15 degradation you have well before it reaches the 40
16 percent level.

17 CHAIRMAN BLOCH: I am sorry for not being aware
18 of where I can find it. Could you give the cite?

19 MR. CHURCHILL: Let me look for it.

20 CHAIRMAN BLOCH: The Staff may be looking for
21 this as well. If Mr. Anderson happens to know of the
22 citation, in the interest of full disclosure, he might
23 want to talk about it, too.

24 MR. ANDERSON: I don't have any research
25 assistants here with me to go hunt. I can look for it

1 later on.

2 MR. CHURCHILL: I am acting as my own research
3 assistant, Your Honor.

4 MR. ANDERSON: I stand in awe, Mr. Churchill.

5 MR. CHURCHILL: I think what he is asking for,
6 Mr. Anderson, is in the affidavit submittals and in the
7 statement of facts that we have submitted in connection
8 with this proceeding.

9 CHAIRMAN BLOCH: I suggest that we take a two
10 minute recess, but stay on the telephone line. During
11 the recess, I would like to ask the parties not to make
12 casual remarks at one another, that doesn't help the
13 proceeding.

14 (A short recess was taken.)

15 CHAIRMAN BLOCH: On the record.

16 MR. CHURCHILL: In the Fletcher affidavit, page
17 9, paragraph 22, that is the general statement that
18 anti-current inspection of unsleeved tubes is adequate
19 for the 40 percent limit imposed by the NPC.

20 CHAIRMAN BLOCH: I suggest that at this stage
21 of the proceeding on summary disposition, I would be
22 hard pressed to accept that in light of the letter from
23 Mr. Porter that Mr. Anderson has included as Appendix
24 3B.

25 MR. CHURCHILL: Why don't I do this, Your

1 Honor, could I go through and give you the rest of what
2 I have found here, and then I will go back and look at
3 that letter.

4 CHAIRMAN BLOCH: Please.

5 MR. CHURCHILL: Page 10, paragraph 25, at the
6 bottom of the page, "The Piping testing program has
7 demonstrated by use of anti-current technique
8 detectability of degradations which are smaller than
9 that which would cause a tube rupture during normal
10 operation or postulated accident."

11 CHAIRMAN BLOCH: Does that say the reliability
12 with which you can measure a 40 percent through-wall
13 inter-granular stress corrosion cracking?

14 Maybe that is not important, and we will want
15 the Staff's comment, but it seems to me that in order to
16 have a tech spec to sort of mean anything, you have to
17 be able to measure to see whether it is being complied
18 with.

19 MR. CHURCHILL: What this says is that it is
20 sufficiently sensitive to detect to that extent, which
21 is 40 percent.

22 CHAIRMAN BLOCH: I don't read it that way. It
23 says, smaller than that which would cause a tube
24 rupture, and that might be more than 40 percent. I
25 don't know that it is the same standard that the staff

1 is applying in the tech spec.

2 MR. CHURCHILL: Paragraph 22 does that.

3 CHAIRMAN BLOCH: To clarify again, one thing
4 you want to know with any measurement instrument is its
5 reliability. These statements say that it is possible
6 to detect certain things. Even if you accepted them as
7 an opinion that you can do, you still don't know what
8 frequency of error you would have.

9 MR. CHURCHILL: Paragraph 26, that went to the
10 standard anti-current technique, the kind that is
11 generally used now.

12 CHAIRMAN BLOCH: Again, that talks about
13 sensibility in a particular region. It doesn't talk
14 about the ability to detect inter-granular stress
15 corrosion cracking generally. The letter from Mr.
16 Porter says that that may be particularly difficult.
17 Let me cite you the portion of the letter that concerns
18 the Board.

19 Mr. Porter says at the top of page 2 of that
20 letter, as part of the second sentence, "Anti-current
21 techniques are presently not capable of detecting
22 inter-granular attack so long as the metal grains in the
23 suspect region remain in physical and electrical
24 contact, diverting a continuous path for anti-current
25 induced when the anti-current test is performed."

1 In this case, we have particular tubes that
2 were examined which show no anti-current indication,
3 which showed in one place that 33 percent of tube wall
4 inter-granular attack. I have nothing that says that it
5 would have caught it if it was 40 percent. In fact, I
6 have nothing that says that the basic physical
7 conclusion that Mr. Porter makes about metal grains and
8 physical and electrical contact would change at all at
9 40 percent or 50 percent, or even 70 percent. I don't
10 know where that conclusion changes.

11 MR. CHURCHILL: The only thing I can do at this
12 point, Your Honor, is refer you to paragraphs 26, 27 and
13 28.

14 CHAIRMAN BLOCH: I am not sure on what ground I
15 could say that there is no genuine issue. It is
16 possible that if I heard Mr. Fletcher, and I had a
17 chance to question him, I could change my mind, but that
18 is not the stage we are at.

19 MR. CHURCHILL: The question is whether there
20 is a safety problem here, and the testimony here is that
21 anti-current inspection, this is 27, is therefore
22 expected to provide adequate sensitivities for the
23 determination of tube degradation before such
24 degradation becomes a safety concern.

25 CHAIRMAN BLOCH: If I were to accept that as

1 being dispositive, would I also have to say that it
2 doesn't matter whether you comply with the 40 percent
3 tech spec limit?

4 MR. CHURCHILL: Your Honor, in addition to what
5 we have here, we have the next step which is to show
6 that even if we did have a pathway that went undetected,
7 and I think the testimony here says that you would not
8 have a pathway that would go undetected before it became
9 a safety concern. But even if you did have, he didn't
10 get around to explaining what the consequences of that
11 would be, and the consequences are such that it would
12 not be a safety concern.

13 We also have the Staff's filing, the affidavit
14 of Mr. Murphy, and here we are talking about the
15 toughest part of the break, and that is right at the
16 joint, and even there the tests indicate that the flaws
17 would generally be detectible before they are
18 sufficiently large to cause a rupture.

19 MR. ANDERSON: Could you give a citation of
20 what you are reading from, sir?

21 MR. CHURCHILL: The affidavit of Mr. Murphy,
22 paragraph 4.

23 CHAIRMAN BLOCH: I need a moment's recess, and
24 I will tell you when I am ready.

25 (A short recess was taken.)

1 CHAIRMAN BLOCH: Back on the record.

2 MR. CHURCHILL: In the Staff's filing also, in
3 the statement of material facts, I would refer to No. 35
4 on page 5.

5 CHAIRMAN BLOCH: Mr. Churchill, that particular
6 section of Mr. Murphy's affidavit gave me some problem
7 because I couldn't figure out what he was talking
8 about. Maybe you can interpret it for me. "Various
9 structural discontinuities will produce background
10 signals which will make flaw detection more difficult.
11 However, laboratory indicates that flaws will generally
12 be detected before they are sufficiently large to cause
13 a rupture."

14 First of all, he doesn't seem to be referring
15 to the tech spec of 40 percent, or to inter-granular
16 stress corrosion cracks, that is one problem I have.
17 The other problem is that I have no idea what these
18 laboratory tests he is talking about that overcome the
19 problem that he says is going to make things even more
20 difficult than in other places. Do you have any idea if
21 the lab tests are in the Westinghouse report, or are
22 they in our record?

23 Perhaps Staff can clarify that when they get a
24 chance to speak on that issue.

25 MR. BACHMANN: Judge Bloch, this is Mr.

1 Bachman. Unfortunately, we don't have Mr. Murphy with
2 us today, so I don't really think that we can address
3 the specific language that you have given us.

4 CHAIRMAN BLOCH: Okay.

5 I am reading paragraph 5, and Mr. Murphy seems
6 to admit of the possibility in paragraph 5 that you
7 can't detect the inter-granular cracks, and that is why
8 he seems to fall back on the corrosion resistance of the
9 inconnel sleeve.

10 MR. CHURCHILL: The concern, Your Honor, is the
11 inter-granular crack.

12 CHAIRMAN BLOCH: My concern is whether the 40
13 percent tech spec means anything. Is that the point at
14 which we have to worry about break, or can we take we
15 statement of experts that you can go beyond that,
16 without reference to whether you are going beyond that
17 which would be safe.

18 MR. CHURCHILL: I can tell you what I have been
19 told with greater assurance, which probably is not worth
20 anything, and that is that the 40 percent is far short
21 of any kind of potential danger limit. It is a very
22 conservative limit, if you are talking about tube
23 rupture.

24 CHAIRMAN BLOCH: Is there any indication that
25 that was established with some very wide margin of

1 detectability in mind, or does the record show that, so
2 that we can rest assured that you can detect right at 40
3 percent?

4 I mean, if we know that we are willing to
5 accept 80 percent, and we set 40 percent for
6 conservatism, and we can detect the 80 percent, even
7 that would satisfy me, but I just don't know how these
8 limits were set and where the assurance that is safe
9 comes from.

10 MR. CHURCHILL: Your Honor, not being a
11 technical expert, I can't answer that, but I do know
12 that the affidavits of both the staff and the
13 Westinghouse expert have shown that you can detect flaws
14 prior to the time they become a safety concern, that is
15 for the potential for a leak that is a rupture. That
16 statement in these affidavits is not contradicted or
17 controverted by anything in Mr. Anderson's filing.

18 MR. BACHMANN: Judge Bloch, this is Mr.
19 Bachmann. I have with me the project manager for Point
20 Beach, Mr. Timothy Colburn, who is willing to take a
21 shot at answering your question, if it is all right with
22 you at this time.

23 CHAIRMAN BLOCH: For the purposes of this
24 motion, it is going to be very important that he either
25 refer to published regulatory material or to the record

1 of the case, because if he goes beyond that in order to
2 answer it, of course, it will be an admission that we
3 have a genuine issue on the record.

4 MR. COLBURN: Judge Bloch, this is Tim
5 Colburn.

6 Generally, part of the section that Mr.
7 Anderson references to support his contention about the
8 inspectability refers to the Staff's safety evaluation
9 report of November 30, 1979.

10 CHAIRMAN BLOCH: Can you give me the page
11 reference, if you think that it is important?

12 MR. COLBURN: Yes, it is Appendix 3A of his
13 motion, and then go what would have been page 12 of the
14 safety evaluation. He did not include all the pages,
15 but he has page 12.

16 MR. ANDERSON: To make it clear to you, Judge
17 Bloch, he is talking about an SER that preceded this
18 phase of the proceeding.

19 CHAIRMAN BLOCH: The page 13 of the present SER
20 is not that.

21 MR. ANDERSON: Right.

22 MR. COLBURN: It is page 12 of the previous SER
23 that is dated November 30, 1979.

24 MR. ANDERSON: The excerpt of that is at tab 3A
25 of my motion, sir.

1 CHAIRMAN BLOCH: I am reading that. What do
2 you think that shows, Mr. Colburn?

3 MR. COLBURN: He uses that in support of the
4 part of the motion concerning the inspectability. The
5 sentence that he uses to support that is "The Licensee
6 and Westinghouse conclude that anti-current testing is
7 currently not able to detect inter-granular corrosion
8 within tube sheet."

9 The next sentence in that same safety
10 evaluation report states, "However, significant (greater
11 than 20 percent through-wall) crack or through-wall
12 penetrations in the tube sheet area are, however,
13 detectible by anti-current testing."

14 CHAIRMAN BLOCH: I guess that is the problem,
15 then. The problem is left with Mr. Porter who suggests
16 that in at least one case there was 30 percent
17 degradation in stress corrosion cracking and it was not
18 detectible at all through anti-current testing. He gave
19 me a principle which I cited on the record just a moment
20 ago that gives me problems with how deep the
21 inter-granular cracking would be before the
22 principle was violated because if the grains are still
23 in contact, you can't detect it.

24 MR COLBURN: Judge Bloch, I don't know of
25 anything on the record now that addresses the level of

1 inspectability within the tube sheet area, i.e., the
2 range or the thickness of wall penetration that you can
3 detect, or flaw that is caused by inter-granular
4 attack.

5 CHAIRMAN BLOCH: In fact, this question doesn't
6 just relate to the tube sheet area, it is anywhere along
7 the sleeve.

8 MR. COLBURN: Could you reference me to where
9 that letter is in the record, sir?

10 CHAIRMAN BLOCH: The next appendix after the
11 one that you are citing me to, in particular page 2 of
12 that. Page 1 has the results of comparative tests that
13 were done using laboratory radiography on one tube, and
14 then the discussion on page 2 generalizes from that.

15 MR. COLBURN: The only thing I can state there
16 that references this particular tube that apparently was
17 removed back in the 1979 era is that the anti-current
18 inspection that was conducted during the October 1979
19 refueling outage was done with the anti-current
20 technique, if I recall correctly the LER, with single
21 frequency anti-current technique. Techniques utilized
22 since then have involved multi-frequency.

23 CHAIRMAN BLOCH: Does anything in our record
24 show us the ability of the multi-frequency technique to
25 detect inter-granular stress corrosion cracking and at

1 what depth of penetration that ability produces reliable
2 results?

3 MR. COLBURN: I don't know they reference the
4 specific depth of penetration, Your Honor, but I do
5 believe that each of the LERs that would have been
6 provided to Mr. Anderson on the record in this case as
7 part of the discovery request would relate to the
8 general improvement of the anti-current testing
9 technique using multi-frequency techniques as opposed to
10 single-frequency techniques, and that they do have a
11 greater ability to detect inter-granular attack within
12 the tube sheet.

13 CHAIRMAN BLOCH: In most of what I have seen,
14 even when you do this validation with notches, does not
15 discuss reliability of detecting flaws. I certainly
16 haven't seen anything on reliability of detecting
17 inter-granular stress corrosion cracking. Most of it is
18 the ability to detect a particular size flaw, I guess,
19 in a laboratory.

20 In fact, I guess in one case, the fact that
21 there was a failure to detect a flaw, this is at Ginna,
22 they went back and they said, if we had looked at it
23 carefully, we could have seen the flaw. But that is the
24 kind of reliability question that it seems to me has
25 some importance. This ability to do it in the

1 laboratory isn't really what counts.

2 MR. CHURCHILL: Your Honor.

3 CHAIRMAN BLOCH: Mr. Churchill.

4 MR. CHURCHILL: We have, while this was going
5 on, made a phone call back to Wisconsin Electric to try
6 to clarify this. It was pointed that on this letter,
7 the Porter letter, what we are talking about here, and
8 it is the first sentence on the top of page 2, this is
9 detection within the tube sheet.

10 CHAIRMAN BLOCH: I see.

11 MR. CHURCHILL: That is the only place that
12 this goes to. We are talking here about unsleeved
13 tubes, and apparently detection of inter-granular attack
14 within the tube sheet is more difficult, and that, of
15 course, is because of the proximity of the tube itself
16 to the inner-walls of the whole in the tube sheet.

17 CHAIRMAN BLOCH: My problem, of course, is that
18 I have only seen statements about the validation of
19 anti-current on notches. I have never seen anything
20 anywhere on validation on inter-granular attack.

21 MR. ANDERSON: Let me also add, if I could, to
22 Mr. Churchill's point. I don't think that what he said
23 is a fair statement because one of the reasons that I
24 put in this letter in 3B was because if you look at the
25 second underscored statement, the laboratory

1 anti-current test also showed no indication. The
2 laboratory anti-current test, by definition, is not in
3 the tube sheet.

4 From what Mr. Timothy Colburn said, since we
5 are straying so far from the record, the purpose for the
6 advance from the single to the multi-frequency test was
7 to sort out the problem in the transition zones when you
8 go from the tube sheet to above the tube sheet, and that
9 is what multi-frequency gives you an advantage in.

10 The key thing that I want to focus the Board's
11 attention on in this letter is the fact that the
12 laboratory anti-current test, that any conflicting
13 signals in the best of circumstances showed a defective
14 tube was flaw-free.

15 MR. CHURCHILL: No, that is not correct. The
16 laboratory radiography did show inter-granular attack.

17 MR. ANDERSON: No, the laboratory anti-current
18 test showed no indication, according to this letter. If
19 anything disputes that, that is not on the record. The
20 Laboratory anti-current test, no indication, that is
21 what the letter says.

22 CHAIRMAN BLOCH: Unless there is something new
23 that someone has to raise, I would like to pass on to
24 the next portion of the contention.

25 MR. CHURCHILL: Your Honor, it is not new, but

1 I would like to summarize to keep this in context. What
2 we are dealing with here is an amendment to sleeve. We
3 are not dealing here with a litigation of the entire
4 process of anti-current inspection.

5 What we have is testimony that shows that the
6 anti-current inspectability of sleeved tubes is adequate
7 to detect flaws before they become a safety concern, and
8 that is well before the time when they could potentially
9 cause a rupture, and that is uncontradicted.

10 CHAIRMAN BLOCH: Just a minute.

11 (Pause.)

12 CHAIRMAN BLOCH: Back on the record.

13 I understand that, Mr. Churchill.

14 Are there any further arguments?

15 MR. ANDERSON: Are you asking all parties, or
16 just Mr. Churchill?

17 CHAIRMAN BLOCH: I wouldn't address that to
18 just Mr. Churchill, but it should be brief, please.

19 MR. ANDERSON: I wanted to just respond to the
20 new points raised by them very briefly.

21 The first one, which I should have addressed
22 initially, is the question of whether 3A and B are
23 timely. I think we have addressed it in our reply
24 brief, so I won't repeat that except to note one thing.
25 Mr. Churchill mentioned, when you asked him for

1 specifics of what was new, one thing that I wanted to
2 address and that was the aspect of the corrosion in the
3 annulus being of concern in situations which were not
4 related to a LOCA situation.

5 The reason why that is a new thing, which has
6 good grounds to be expanded into, is because all the
7 sources for that contention relate to contention No. 2.
8 Contention No. 2, the thing about normal operation and
9 tube rupture relate to documents that arose subsequent
10 to the January 18 filing that we made. We are guilty as
11 charged of continuing to read on an on-going basis new
12 NRC material that comes out and then putting it in.

13 Mr. Churchill secondly said as a criticism, why
14 weren't we given prior notice. We can't give notice
15 prior to the time we form the contention, and we are not
16 required to -- Mr. Churchill, I think, is trying to
17 erect a requirement for us to --

18 CHAIRMAN BLOCH: Mr. Anderson, when you came to
19 writing these contentions, you had not yet connected the
20 new NPC materials to your contention, is that your
21 point?

22 MR. ANDERSON: Not until the week before it was
23 due did we start to put together all the material that
24 we received from the discovery together with the
25 reports. The reason that we wait until the end, this is

1 a parenthetical, collateral remark, is because the
2 company has a knack for changing its posture as to it is
3 doing at the last minute, and we can't afford the time
4 on something that may be made moot going forward and
5 doing research before we are sure that it going to be
6 needed to be done.

7 CHAIRMAN BLOCH: More important than that, we
8 had a brief telephone conversation before you filed
9 late. At that point, you still were not aware that you
10 were going to raise this issue?

11 MR. ANDERSON: I was in the process of reading
12 the material at that point in time, as I indicated. But
13 I do believe that the detail we provide falls within the
14 ambit of the annulus inspectability noted in the January
15 18th letter. I think what we are talking about is
16 taking advantage of the subsequent material.

17 CHAIRMAN BLOCH: Mr. Churchill, briefly on that
18 point.

19 MR. CHURCHILL: I would certainly like to know
20 the precise document that he says that he didn't get,
21 and then I would like to know why after he received that
22 document, we didn't hear about it. He has just made a
23 general statement that some kind of materials were
24 received.

25 CHAIRMAN BLOCH: What kind of documents, Mr.

1 Anderson, the new NRC documents?

2 MR. ANDERSON: The documents that are listed.
3 For example, contention No. 2, it is the documents
4 listed on page 4. Apparently from the implication of
5 Mr. Churchill's tone of voice, he is saying, why didn't
6 I read it the instant it arrived. The reason is because
7 I am a busy person.

8 CHAIRMAN BLOCH: Page 4 of your motion for
9 litigable issues?

10 MR. ANDERSON: Yes.

11 MR. CHURCHILL: You will note my response to
12 that one, Your Honor, he has had those documents for
13 some time.

14 MR. ANDERSON: I answered that already, Mr.
15 Churchill. You are attempting to erect a requirement
16 that does not exist, and you have no right to impose,
17 and I resent that, sir.

18 MR. CHURCHILL: Mr. Anderson, I strongly
19 disagree with you. We have a strong estoppel argument
20 based on your misrepresentations on July 19 when the
21 motion was due. We have an argument that you were
22 supposed to keep us continually informed, and you did
23 not.

24 You were also supposed to have shown good
25 cause, and it is my understanding, Mr. Anderson, that

1 the Board Chairman gave you the courtesy, after he
2 received our reply to your motion for litigable issues,
3 to call you up and tell you that if you had any good
4 cause, that you now had another shot, another bite at
5 the apple, and you did not do that.

6 CHAIRMAN BLOCH: I think that issue is
7 clarified.

8 Mr. Anderson, could you please pass on to the
9 annulus question?

10 MR. ANDERSON: There are couple of issues that
11 were raised prior to my opening statement in this
12 regard. You asked, Mr. Chairman, what can give you
13 assurance about the tech specs, and whether there would
14 be adequate assurances against safety problems.

15 I would call your attention to the fact, as Mr.
16 Colburn stated, that the Staff has filed, as part of
17 this proceeding in the demonstration phase, the LERs,
18 the Licensee Event Reports, for the period August of
19 1979 through the middle of 1981. In those LERs, you can
20 compare tubes which actually went through a leak to the
21 preceding filing to see how much defect there was prior
22 to that.

23 You can look, for example, as to whether a 20
24 percent defect went through fail before the next
25 inspection to reach conclusions as to your concern for

1 the safety implications. I call your attention to that
2 for that purpose.

3 That completes my comments on the new points
4 raised.

5 MR. CHURCHILL: Your Honor, I apologize for
6 continuing on this, but there is one more important
7 point that has just been brought to my attention that I
8 think might be helpful to you, and that is the fact that
9 the very last two sentences of the Porter letter say
10 that in portions of the tube above the tube sheet, and
11 outside of the support plate, the unrestrained tube
12 expands under internal pressure and inter-granular
13 penetrations would appear as cracks which are detectible
14 by anti-current.

15 As stated in our November 23 letter, no
16 evidence of such inter-granular attack has been found at
17 or above the tube sheet. So the only thing that we are
18 talking about is the particular kind of corrosion that
19 occurs within the tube sheet. Now, in fact, with the
20 sleeving, we have a situation that has already existed,
21 which is not the subject of the hearing, plus the fact
22 that you have the additional sleeves which provides
23 additional support there.

24 Also, there you have two constraints against
25 leakage, should it occur, first of all, the crevace

1 constraint that we always had, which meant that leakage
2 problems within the tube sheet were not a great safety
3 concern, and secondly there is now a sleeve in there.
4 So I think that we are not really even talking about a
5 material fact here.

6 MR. ANDERSON: I think that is wrong because if
7 you look at your own report, Mr. Churchill, you will
8 find that you report, which is the Point Beach Slewing
9 Report, Revision one, at page 6.1 says, "The behavior of
10 the annulus between the tube and sleeve, with respect to
11 the capability to concentrate secondary side water
12 impurities, it starts to be similar to that of the
13 original tube and tube sheet crevace."

14 So to the extent that your comment meant to
15 imply that the tube to sleeve annulus would be different
16 in the corrosive mechanism than the crevace, your own
17 statement, as well as, of course, the Northern States
18 Power Company letter, which I won't read, state the
19 opposite effect.

20 MR. CHURCHILL: In that case, we have to
21 remember that we do have on the record that
22 inspectability of the sleeve is enhanced over
23 inspectability of the tube.

24 CHAIRMAN BLOCH: I would like to ask Mr.
25 Colburn one question, if he would not mind responding in

1 a short time, if there is no objection.

2 MR. BACHMANN: Judge Bloch, Mr. Colburn has an
3 early carpool and has already departed, so he is not
4 available to answer any questions at this time.

5 CHAIRMAN BLOCH: I would like to ask either the
6 Applicant or the Staff that is present if they can tell
7 me, if there was a 45 percent inter-granular stress
8 corrosion cracking above the tube sheet in the sleeve,
9 what the reliability is with which that defect could be
10 detected. Is there anything in the record that can shed
11 any light on that?

12 MR. CHURCHILL: I don't think that there is
13 anything in our affidavit. However, the Porter letter
14 itself says that inter-granular attack is detectible
15 above it because the reason that it was not detectible
16 is the fact that the grain were undisturbed when it was
17 constrained within the tube sheet. But above the tube
18 sheet, the pressure inside, and you as you know under
19 normal operation the pressure is upward, causes a
20 cracking and that in fact is detectible.

21 By the terms of the letter itself, the only
22 problem that we have is where you have inter-granular
23 which is where the tube is constrained and cannot part
24 and cause the cracking that is detectible. In fact,
25 that would answer Mr. Anderson's earlier comment that

1 now you have a crevace or an annulus that goes above
2 that, well, that is not constrained either, so that
3 would be detectible by every fact that we now have in
4 the record.

5 CHAIRMAN BLOCH: I guess it now depends on how
6 it occurs within the sleeve, because if it occurred in
7 the annulus and the sleeve was held together by the
8 tube, there would be no separation, would there be?

9 MR. CHURCHILL: The sleeve wouldn't be held
10 together by the tube because there is an annulus.

11 CHAIRMAN BLOCH: Let's assume for the time
12 being that a little water leaked through into the space
13 between the tube and sleeve and causes some stress
14 corrosion cracking. Now the stress corrosion cracking
15 might occur in a limited area, weakening the sleeve, but
16 there would still be a tube around the sleeve to stop it
17 from separating and bowing that would separate the grain
18 as is required for detection according to Mr. Porter.

19 MR. CHURCHILL: That is an annulus that
20 contains no sludge.

21 CHAIRMAN BLOCH: Assuming that it contains no
22 sludge, and there was some sizable area there, there
23 would still be a belt around the sleeve, wouldn't there
24 be?

25 MR. CHURCHILL: I don't think so. There is an

1 annulus there which would allow it to expand.

2 CHAIRMAN BLOCH: Even if there was sludge in
3 the annulus?

4 MR. CHURCHILL: Yes.

5 CHAIRMAN BLOCH: Why doesn't it expand in the
6 annulus in the tube sheet? There has got to be sludge
7 in there, too. The sludge must be strong enough to stop
8 it from expanding.

9 MR. CHURCHILL: There is no evidence that there
10 would be sludge within the annulus.

11 CHAIRMAN BLOCH: There has to be if there is
12 corrosion.

13 MR. CHURCHILL: In the crevace, there is a
14 whole path of the crevace for the sludge to come down
15 and build up, and there is no such thing in the
16 annulus.

17 CHAIRMAN BLOCH: I guess if you got a gradual
18 build up of chemicals inside that space between the tube
19 and the sleeve, there would then be materials which were
20 stopping the expansion, just as there would be in the
21 tube sheet.

22 MR. CHURCHILL: Your Honor, that doesn't
23 happen. There is absolutely nothing in anybody's record
24 to suggest that that could happen. The only way you are
25 going to get anything in the annulus is, first of all,

1 if you have some kind of a leak that will allow the
2 water or the impurities to come in from the secondary
3 side and come into the annulus.

4 Here we are talking about a highly speculative
5 and remote contingency. I can't see how that could even
6 happen, and certainly nobody has suggested that that
7 would happen either in the SER or in any of the filings
8 on this.

9 CHAIRMAN BLOCH: What we have gotten to is the
10 possibility that we can rely on that last sentence you
11 found in the Porter letter, and that sentence raises a
12 question of what would happen to the sleeve within the a
13 tube, and whether the grains would separate there. I
14 guess I don't know of anything in the record that tells
15 me whether the grains would separate there.

16 MR. CHURCHILL: I think now I can go back to an
17 earlier question that you asked about how would we be
18 disadvantaged if you skipped the notion of basis, and
19 this is a good example of how we are. There was
20 absolutely no basis to suggest that any of this could
21 happen.

22 Furthermore, when you read the contention
23 itself, there is nothing to suggest that it would
24 happen, and there is nothing in any of his responses to
25 suggest that it would happen.

1 CHAIRMAN BLOCH: The contention was that it was
2 difficult to inspect.

3 MR. CHURCHILL: But we have to know what we are
4 responding to, when we file a motion for summary
5 disposition, and if there is some kind of a postulated
6 even that is so remote, that is that there is no basis
7 for it, then we should not be required to somehow
8 respond to it or to raise in the motion for summary
9 disposition.

10 MR. ANDERSON: If I may, Mr. Churchill, you
11 have 100 pages to respond to. You were not responding
12 to the January 18 filing, you were responding to the
13 July 27th document which had all of this material.

14 MR. CHURCHILL: Your Honor, I think this is a
15 very good example that someone should not be allowed to
16 postulate a remote situation, with absolutely no basis,
17 and then we would be prejudiced for not treating that
18 directly in our motion for summary disposition. This is
19 precisely the reason for the basis requirement in the
20 first place.

21 CHAIRMAN BLOCH: Let's pass on to the question
22 of corrosion in the annulus itself.

23 MR. ANDERSON: Before you do that, I do want to
24 correct one grossly incorrect statement of Mr.
25 Churchill's. He put forward the last paragraph of Mr.

1 Porter's letter for the proposition that anti-current
2 test for inter-granular attack would work above the tube
3 sheet. Again, I point out that, apart from the
4 conclusionary statement, the facts in the Porter letter
5 show that laboratory anti-current tests did not detect
6 the 30 percent defect, and that is a laboratory
7 anti-current test without a tube sheet surrounding it.

8 CHAIRMAN BLOCH: Mr. Anderson, that is
9 consistent with that last sentence because what Mr.
10 Porter is saying is that if the inter-granular stress
11 corrosion cracking occurs in the steam generator, where
12 the tube is under pressure, those grains will separate
13 enough to be detected. If they occur in the crevice,
14 and you take the tube out and test it in the laboratory
15 the separation would never have occurred, and therefore
16 you can't detect it.

17 MR. ANDERSON: I guess that would require more
18 knowledge than is in this letter, but basically the
19 argument that was made by the Licensee in this period of
20 time was not the pressure, it was the surrounding wall
21 of the tube sheet crevice itself.

22 CHAIRMAN BLOCH: The letter itself says that is
23 is the pressure that makes the difference, because the
24 pressure holds it in, so that the grains don't separate,
25 in another region it won't happen.

1 MR. ANDERSON: That wouldn't suffice to protect
2 them, I could make a slight depression, because the
3 purpose of the intention of focusing on above and below
4 the tube sheet is to say that they can detect defects
5 above the tube sheet where the leakage will be
6 unconstrained, and above or below where both would be
7 operated under the same pressures of the steam
8 generator.

9 MR. CHURCHILL: That is true, what we are
10 talking about is the fact that when it is down in the
11 crevice, the pressure doesn't blow the tube out. It is
12 held in. It is not held in that way above the tube
13 sheet, and therefore it is detectible. Now, when you
14 take the tube out and do a laboratory anti-current test,
15 there is no internal pressure blowing it out, so as
16 Judge Bloch said, that is consistent with the letter.

17 MR. ANDERSON: Blowing it out is going to make
18 it more likely that there will be a separation rather
19 than less likely.

20 MR. CHURCHILL: And detectible, that is right,
21 and it is the separation that is detectible, that is
22 what the letter says.

23 CHAIRMAN BLOCH: Okay, that is what the Board
24 understands. I think we have had ample opportunity to
25 discuss this question. The next question is the

1 possibility of corrosion in the annulus.

2 Mr. Anderson.

3 MR. ANDERSON: I think what we did was, we took
4 A and B together, as far as I was concerned. At this
5 juncture, what I would like to interject, if it is
6 appropriate, I assume at some point there will be a
7 restroom break, I have just received a stipulation that
8 I have from another court case that I have to approve.
9 If it is correct that you are going to take some break
10 at some point, would it be convenient to take that five
11 minute break here?

12 CHAIRMAN BLOCH: The Staff has not spoken on
13 that last issue. Why don't we take the break after the
14 Staff speaks.

15 MR. ANDERSON: That will be fine, if that is
16 all right with you, sir.

17 CHAIRMAN BLOCH: Mr. Bachmann.

18 MR. BACHMANN: Yes, Judge Bloch. The staff
19 might indicate that as far as the legal argument is
20 concerned, I will be brief.

21 We did accept the fact as basis that
22 contentions 3A and B would be admissible. Lacking my
23 technical advisors at this point, since they had to
24 leave, I would say that the Staff stands on its factual
25 affidavit and statements as to material facts. There

1 are no material facts in disputes, other than 3A and B.
2 That is the Staff's position.

3 CHAIRMAN BLOCH: Mr. Anderson, can you be back
4 in five minutes sharp, or do you need ten?

5 MR. ANDERSON: Five will be fine, sir.

6 CHAIRMAN BLOCH: I have 3:40 our time, we will
7 resume at 3:45.

8 (A short recess was taken.)

9 CHAIRMAN BLOCH: Back on the record.
10 Mr. Churchill.

11 MR. CHURCHILL: I have a brief on this. Let me
12 say that we do have a basis argument, which is written
13 down in our brief. But getting in on summary
14 disposition, this contention, you have to read B with
15 the introductory part, and it is that sleeving will
16 increase the probability of tube failure and will
17 substantially increase the risk of failure. I guess we
18 are not in the unconstrained free-standing region, that
19 has been disposed of.

20 Our affidavit in support of summary disposition
21 shows that there is in fact no mechanism for increasing
22 the probability of failure. Even if you assume that the
23 corrosive environment inside the annulus was the same as
24 the crevace, the statement says that there is nothing to
25 suggest that it could be worse. He said that the

1 problem is that it would increase it.

2 Furthermore, the affidavit goes on to say that
3 the thermally treated inconnel 600 that is used is more
4 corrosive resistant, so you have actually enhanced and
5 improved the situation with respect to corrosion, and by
6 sleeving you have actually decreased the probability of
7 tube failure.

8 CHAIRMAN BLOCH: Mr. Churchill, at an earlier
9 time I was very reassured resistance of t Inconnel 600
10 that was thermally treated. I have a problem with it
11 now because I have looked back over the Boiler report
12 and over the evidence, and it seems to me that the tests
13 that have been performed have not been done in a
14 radiation environment which contains radiation, and
15 therefore contains free oxygen for radialysis.

16 Am I incorrect in that and were these tests
17 done with radiation present?

18 MR. CHURCHILL: I don't have an answer for
19 that, Your Honor. But I do know that the tests are
20 relevant.

21 CHAIRMAN BLOCH: Do you know if they are
22 relevant if there was no radiation present? Would the
23 difference in another environment necessarily
24 extrapolate to the radiation environment?

25 MR. CHURCHILL: I am sorry, I used the wrong

1 word, relevant. The tests are relative to the tests of
2 the unthermally treated inconel.

3 CHAIRMAN BLOCH: I know, but I don't know how
4 to extrapolate to the radiation environment. Does it
5 stay proportionate? Is there any way that we can learn
6 from a non-radiation environment what will happen in a
7 radiated environment?

8 MR. CHURCHILL: I have no technical people here
9 to answer that question. All I can say is that the
10 tests were done to compare its resistance to corrosion
11 with that that of the untreated tube which of course
12 were in a radiated environment.

13 CHAIRMAN BLOCH: That, of course, is something
14 of a surprise question. You never had any notice of
15 it. If you did want to answer that in the next couple
16 of days, or the next few days, we would be pleased to
17 see your affidavit on that, not yours personally.

18 MR. CHURCHILL: I understand.

19 CHAIRMAN BLOCH: Does the Staff know whether we
20 should take any comfort from the tests on the thermally
21 treated inconel 500 as to how it will perform in a
22 radiated environment?

23 MR. BACHMANN: Judge Bloch, like Mr. Churchill,
24 my technical people have departed. I would not even
25 begin to know how to answer that question.

1 CHAIRMAN BLOCH: Okay.

2 Mr. Churchill, do you have anything further on
3 that issue?

4 MR. CHURCHILL: No, I don't, sir.

5 CHAIRMAN BLOCH: Mr. Anderson?

6 MR. ANDERSON: If I could deal with the last
7 point that was not dealt with earlier, the issue of
8 thermally treated inconnel 600.

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1 MR. ANDERSON: If I could deal with the last
2 point that was not dealt with earlier, the issue of
3 thermally treated inconnel 600, and whether or not it is
4 greater or lesser or to what extent it is greater or
5 lesser in terms of its corrosive resistance to the
6 original tube material is not relevant at this stage.
7 There is a relative question to the merits of the case,
8 but not to the issue of whether it is a genuine fact --
9 genuine dispute over facts.

10 CHAIRMAN BLOCH: Okay. Next part of the
11 Contention.

12 MR. ANDERSON: The next part of the Contention
13 is 3C, quality assurance, and the concern raised here is
14 that the large number of workers required who are
15 transitory workers in a hostile environment in doing
16 delicate work will make it difficult to maintain quality
17 control and in support of that we have pointed to the
18 situation at the San Onofre plant, where serious
19 allegations were raised, and some of which were found to
20 have support by the NRC investigation.

21 In response to that, the company -- the
22 licensee and the Staff point to the large number of
23 procedures that will be used at Point Beach. Again,
24 that goes to the weight of the evidence, not to the
25 question of whether there is a dispute over material

1 fact.

2 We believe that it is the same kind of plant
3 made by the same vendor and being performed by the same
4 contractor means a great and sufficient doubt for the
5 purpose of defeating summary judgment.

6 CHAIRMAN BLOCH: I would have thought it is
7 also the admissibility of the evidence at all. They are
8 saying look, you are trying to get evidence in about
9 another plant in which the procedures were extremely
10 different from the ones here. It is not relevant. It
11 is not admissibility.

12 MR. ANDERSON: Well, to answer that one, in
13 the context of the situation of a plant which was an
14 identical situation to Point Beach, which had a full
15 scale sleeving, obviously that would be the information
16 you would take.

17 But in the real world, the ideal comparison is
18 not always going to be there, and then sometimes you
19 take the best evidence that exists as being more
20 relevant than and being more admissible than an abstract
21 list of procedures which do not relate to the real world
22 in any necessary extent.

23 CHAIRMAN BLOCH: Well, there was an occurrence
24 that you were allowed to find out about, wasn't there --
25 the small scale sleeving project, but you were unable to

1 find any problems in that project.

2 MR. ANDERSON: Well, I did not make that
3 statement, but I did do a demonstration project. The
4 demonstration project was with far fewer workers. I
5 think it was only 68 workers, tunnel head workers, and I
6 think that the act of doing a project on ten sleeves is
7 different than doing it on 2,000 sleeves of each steam
8 generator. I think it is a magnitude difference of such
9 an extent that it is not comparable.

10 San Onofre is more comparable, we believe,
11 because it was a large-scale project.

12 CHAIRMAN BLOCH: Even at San Onofre none of
13 the problems caused by the shoddy work there resulted in
14 serious safety problems, did they?

15 MR. ANDERSON: That remains to be seen. San
16 Onofre has operated precious little since that time.
17 Even in that precious little period of time that it has
18 been operating, it has had three leaks. But the --

19 CHAIRMAN BLOCH: In sleeve two?

20 MR. ANDERSON: In sleeve two, according to the
21 SER, as cited in our motion.

22 But the other thing to remember is San Onofre
23 has operated very little since that time.

24 CHAIRMAN BLOCH: Mr. Churchill?

25 MR. CHURCHILL: Yes. Just to remind the Board

1 that we have quite an extensive basis argument, which is
2 detailed in our brief. And as for summary disposition,
3 and in that basis argument we feel very strongly that
4 the experience there differs considerably and none of
5 that can provide a basis for what would or might go on
6 at Point Beach.

7 CHAIRMAN BLOCH: Under judicial standards,
8 would the occurrence at San Onofre be admissible
9 evidence?

10 MR. CHURCHILL: No, sir. I don't see how that
11 could possibly be admissible. How would that be
12 relevant to this?

13 CHAIRMAN BLOCH: I was asking you for your
14 opinion.

15 MR. CHURCHILL: That's my opinion. I'm
16 sorry.

17 As to Mr. Anderson's comment about procedures,
18 we have a very detailed affidavit and statement of
19 material facts which go to far more than procedure.
20 They detail, to some extent, the particular things that
21 he was worried about as set forth in his basis, to show
22 that there is very sophisticated equipment and training
23 and screening for hiring and close supervision and, of
24 course, procedures -- but constant supervision by
25 somebody at the opening of the panel head as well as by

1 closed circuit TV. So it is more than just procedures.

2 But mostly my main point here is that we have
3 set forth all of those material facts, which
4 overwhelming would show that there is not a problem here
5 and there is nothing material to be litigated. And Mr.
6 Anderson has in no way controverted a single one of
7 them.

8 CHAIRMAN BLOCH: Staff?

9 MR. BACHMANN: Yes, Chairman Bloch, I would
10 like to make a comment on the Staff's August 16, '82
11 response to the motion. In the arguments section on
12 page 29 there may be some confusion. In fact, I was
13 confused a little bit myself when I first looked at it.
14 At page 29 it says Contention 3(c), and then the first
15 sentence states Contention 3(d) and 3(e) relates to
16 sleeves becoming underexpanded or overexpanded at the
17 reference joint.

18 If there is any confusion among the parties,
19 it goes back to the original 3(c) contention, in which
20 the last phrase or the last sentence of which it states
21 it will increase the probability of the kinds of
22 problems indicated in (d) and (e). So that is a direct
23 reference back to it.

24 The Staff agrees with the licensee, Mr.
25 Churchill's arguments on 3(c) that referencing a

1 different plant with a different type of tubes,
2 different type of workers, et cetera, is not the type of
3 factual argument that we would want to say that we would
4 dispute over material facts that should be litigated in
5 an evidentiary hearing. This is not the type of act
6 that one puts in dispute. That really goes to the basis
7 argument also.

8 The other point is -- and Mr. Churchill didn't
9 bring it out -- is that point of clarification I first
10 mentioned. And that is that Contentrion 3(c) refers to
11 the unskilled or semi-skilled workers causing conditions
12 such as in 3(d) and (e) which are over or underexpanded
13 joints, which are explained our summary disposition
14 section.

15 Now the contention must be read as a whole and
16 going back to the original contention it states that the
17 dependence on the large number of transient workers, et
18 cetera, will increase the probability of the kinds of
19 problems indicated in 3(d) and (e), which is over and
20 under-expanded.

21 As we point out in our statement of material
22 facts, the over or under-expansion of joints at San
23 Onofre was caused by equipment failure and is in no way
24 attributable to the transient workers.

25 So whether the contention should be rejected

1 because of the lack of basis since it refers to another
2 plant and should not be considered in the case of Point
3 Beach, or in the sense that the results of the problem
4 were in no way at San Onofre attributable to the
5 transient workers, but rather to equipment problems.

6 So either one or both of those points should
7 eliminate this particular Contention from consideration
8 in an evidentiary hearing.

9 CHAIRMAN BLOCH: Thank you, Mr. Bachmann. Is
10 there any strictly limited reply, Mr. Anderson?

11 MR. ANDERSON: No.

12 CHAIRMAN BLOCH: That is the Contention. So I
13 take it that (d) and (e) are really part of (c), aren't
14 they, and we have already discussed them in a way?

15 MR. ANDERSON: I'm not sure.

16 CHAIRMAN BLOCH: Do you have further to say
17 about (d) and (e)?

18 MR. ANDERSON: (d) and (e), just for the
19 record, are the problems that would arise with under and
20 expanded joints at the upper joint of the sleeve. I
21 think I had better, in terms of your initial opening
22 statement, just indicate the timeliness argument can be
23 made as to why it is timely to move from a focus on the
24 braising to the expansion joint, because it was not
25 until very recently that the Staff -- that the licensee

1 decided not to use the alternative joint.

2 CHAIRMAN BLOCH: But he was always going to
3 use the expansion joint anyway, wasn't he?

4 MR. ANDERSON: That's correct. But the focus
5 of our Contention, I think it is an accurate statement
6 to say everyone -- or a large number, a significant
7 number of people -- were very, very concerned about
8 using the alternative joint, and that's why our
9 attention was focused on that, because that was the
10 worst of the situation at that point in time, when the
11 January 18 letter was written.

12 And when that was removed from the issue in
13 July, we turned our attention to the remaining reference
14 joints.

15 CHAIRMAN BLOCH: Mr. Churchill, do you want to
16 rejoin to that?

17 MR. CHURCHILL: Yes. But before I do, I think
18 I have an answer to your radiation question, or should I
19 wait until I rejoin?

20 CHAIRMAN BLOCH: Well, why don't you tell me?
21 Yes. Let's do that one first, if you would.

22 MR. CHURCHILL: All right. I think the answer
23 is that no, the tests were not done in a radiation
24 environment, and the reason they were not was because
25 there was no need to.

1 CHAIRMAN BLOCH: Do we know this in the
2 record, or are we going to learn something outside the
3 record?

4 MR. CHURCHILL: This is outside the record,
5 Your Honor. It's not in the record because --

6 CHAIRMAN BLOCH: You are going to tell me, and
7 then someone's going to file an affidavit?

8 MR. CHURCHILL: If, after I tell you, you
9 still want an affidavit, we would be glad to file an
10 affidavit.

11 CHAIRMAN BLOCH: Okay, why don't we see?

12 MR. CHURCHILL: Okay. The only problem with
13 material integrity under radiation is due to neutrons
14 and if you are talking about the boiler report -- which
15 I assume that you are talking about --

16 CHAIRMAN BLOCH: No. I'm not talking about
17 direct effects on the metal. I'm talking about
18 radiolysis, so that there is increased free oxygen in
19 the area of the metal -- not a direct effect on the
20 metal.

21 MR. CHURCHILL: Okay. Well, then, I don't
22 have an answer for you because -- perhaps I do, but at
23 least you'll get a preview here.

24 The steam generator tubes really see very
25 little radiation. The only thing they would see is low

1 levels, very low levels, of gamma radiation that might
2 be coming through from the primary coolant. Gamma
3 radiation does not affect the metals. Neither does
4 beta, but they are not likely to see much, I don't
5 think.

6 CHAIRMAN BLOCH: I think that's right, but it
7 may cause radiolysis.

8 MR. CHURCHILL: So the question is whether
9 those low levels of gamma would cause radiolysis. It
10 would be of some concern to make you wonder whether or
11 not or how much better the incannel is treated. Is that
12 your question?

13 CHAIRMAN BLOCH: That's right. I don't think
14 it is a difficult -- it is a technical question, but I
15 still don't have the answer to it.

16 MR. CHURCHILL: I suspect it's fairly easy to
17 answer, but the only thing I have is what I have just
18 given you.

19 MR. CHURCHILL: Okay. Well, maybe we can
20 follow up on that later.

21 Now would you like to rejoin to the question
22 of timeliness?

23 MR. CHURCHILL: Yes, just simply by reminding
24 the Board that I have the two estoppel arguments and
25 also the good cause argument.

1 I cannot accept, and I cannot see how anybody
2 could possible accept, the argument that this is somehow
3 new information or something. This particular joint has
4 always been present from the very beginning, from the
5 time the application was filed, well over a year ago.
6 And the fact that he had to shift his focus when we
7 decided not to do the braising is out of place because
8 there has been a long time to prepare for this -- an
9 inordinately long time. And I would urge the Board to
10 reject that argument.

11 We also have a basis argument and that is set
12 forth fairly clearly in our brief and, similarly, to the
13 other Contentions Mr. Anderson has not responded to the
14 basis argument.

15 I might add for the record, right now, he
16 hasn't addressed the basis argument for any of the
17 contentions.

18 Finally, on summary disposition, I guess the
19 only thing that I can tell you is that we went into some
20 detail explaining how the joints are expanded and the
21 checks and balances we have to make sure that they are
22 neither underexpanded nor overexpanded in the first
23 place, plus the various tests, including the hydrostatic
24 tests. And, again, we have a statement of concise
25 material facts, not one of which has been controverted

1 by evidence or otherwise in Mr. Anderson's filings.

2 MR. BACHMANN: Mr. Bloch, this is Mr.
3 Bachmann. May I interject one comment, please?

4 CHAIRMAN BLOCH: Sure.

5 MR. BACHMANN: On page 11 of the Staff
6 response, we quote your ruling in your memorandum and
7 order, 15 NRC 341, 346. Late contentions will be
8 admitted only if they comply with the criteria for the
9 admission of late contentions, and citing 10 CFR Section
10 2.714(a)(1).

11 I agree with Mr. Churchill that contentions
12 concerning over or under-expanded joints should fall
13 within that category and -- i.e., subsequent to Mr.
14 Anderson's January 18 letter to myself.

15 And there has been no showing on paper, at
16 least, in the documents submitted other than the
17 statements made today as to why these late-filed
18 contentions should be admitted. The Staff also agrees
19 with the licensee that 3(d) and (e) should be dismissed
20 really on that basis alone.

21 CHAIRMAN BLOCH: Mr. Anderson, I don't think
22 there is anything new to be said, am I correct?

23 MR. ANDERSON: Just one thing -- to note that
24 the SER that came out July 9, 1982, was the first time
25 we received information that I am aware of that the

1 reference joint was leaking at another plant. And that
2 was what began to draw attention to the fact that maybe
3 the reference joint, although not as bad as the
4 alternative joint, might be something of concern, and
5 that SER followed the January 18 preliminary filing of
6 contentions.

7 MR. CHURCHILL: I remind the parties that Mr.
8 Anderson's citation of two, possibly three --

9 MR. ANDERSON: I can't hear you, please, Mr.
10 Churchill.

11 MR. CHURCHILL: Okay. I would like to remind
12 the parties and call attention to the Board that Mr.
13 Anderson's reference to two or possibly three so-called
14 leaking joints at San Onofre was from the SER, but the
15 part of the SER that he did not quote was the part that
16 went on to say that since these joints are
17 "leak-limiting" leakage was not unexpected. It was
18 minor. It caused no problems, and everything went
19 exactly according to expectations.

20 Furthermore, there is absolutely nothing to
21 suspect or to tie this back to any indications of
22 inadequate workmanship by temporary workers.

23 CHAIRMAN BLOCH: Mr. Anderson, can I pass on
24 to the next Contention?

25 MR. ANDERSON: Yes. That would be 3(f), the

1 amendment to the Contention, which was the problem that
2 arises if a joint is expanded at a point on the original
3 tube where the original tube may be corroded and as a result,
4 we believe, from the response to the SER interrogatories
5 that we filed on the Staff, and for that reason we
6 believe it was timely.

7 As the Board Chairman knows from informal
8 conference calls held, we have been trying to get a
9 greater accommodation from the Staff about data on other
10 plants for a long period of time.

11 Moving from the question of timeliness to the
12 question of whether the basis -- the contention does
13 raise a genuine dispute, the company replies and the
14 Staff replies that since there will be a base line, eddy
15 current tests done of all tubes that will be sleeved,
16 that would preclude that problem from occurring.

17 We do not consider that an adequate rebuttal
18 because of the fact that the eddy current test, we
19 believe, as shown in Section 3(a) of our motion, is an
20 inadequate test. It is an art and it is not a science
21 and its reliability is not sufficiently great to prevent
22 the small number of tube failures that Contention 1
23 indicates could be a serious, a very serious problem.

24 CHAIRMAN BLOCH: Mr. Churchill?

25 MR. CHURCHILL: Yes. First of all, on the

1 question of timeliness, Mr. Anderson responds to this
2 particular one on page 7 and 8. And I think he has said
3 it before, that we have in fact been trying to obtain
4 this information on discovery and that we, the licensee,
5 have in fact objected to and opposed that.

6 I think Mr. Anderson is fairly seriously
7 misrepresenting the facts.

8 CHAIRMAN BLOCH: I heard him say that this was
9 a late Staff response. Am I wrong?

10 MR. ANDERSON: That's what I am saying. It's
11 not that it was late. It is just that it came at a late
12 date.

13 MR. CHURCHILL: Your Honor, our argument was
14 that this is not an issue that was raised by new
15 information in the SER. This is information that
16 pertains to experience with sleeves at other plants. It
17 is information that he could have and should have, had
18 he been interested in, asked for on discovery a long
19 time ago, back when the normal course of discovery was
20 taking place.

21 Now he says that he attempted later in the
22 game to get this information from the Staff and that it
23 was opposed. In fact, if you go back and look at the
24 filing that he is talking about, he did not ask for this
25 information. He asked for information relating to the

1 conditions of the tubes at Three Mile Island and Ginna.
2 He did not ask for anything related to sleeves there or
3 anyplace else.

4 MR. ANDERSON: There was, if I could
5 interject, Mr. Churchill, there was a conference call
6 that was not transcribed, in which we did indicate we
7 believed that we were entitled to information from the
8 Staff on other plants, that it all related to sleeving
9 and tube problems.

10 And the Board Chairman was asked to adjudicate
11 those disputes. That led to a ruling which did not
12 require the Staff to produce on an ongoing basis, but
13 suggested that they do so.

14 MR. CHURCHILL: Your reply suggests -- you say
15 it follows. The fact of the matter is that the Decade
16 repeatedly sought, formally and informally, ongoing
17 information from the Staff concerning the status of
18 other plants experiencing similar problems, and it was
19 the opposition of the licensee, among other things,
20 which preventing our receiving such information. And
21 you referred to our April 12 response.

22 Well, I went back and looked at that. What we
23 were objecting to was your request, which was in a
24 short, one-page letter of one paragraph asking for
25 specific information about what happened with tube

1 degradation at Three Mile Island and with respect to the
2 Ginna accident. You did not ask any questions about
3 experience with sleeve tubes at other plants.

4 CHAIRMAN BLOCH: Mr. Churchill, is that really
5 relevant?

6 Subsequent to that, the Board suggested to the
7 Staff that they keep the Decade informed of new
8 developments related to sleeving and they got the
9 information and they reacted to it in a timely fashion.
10 Shouldn't they be allowed to have a contention on it?

11 MR. CHURCHILL: I believe they should not,
12 Your Honor, for a couple of reasons. Number one is that
13 this is the type of information that is something that
14 should have been asked well before that point in time
15 and could have been asked, and the Staff would have
16 given them the information had they asked it.

17 Remember, he was asking for information about
18 accidents and other things that didn't necessarily
19 relate to sleeving; and in fact did not relate to
20 sleeving.

21 CHAIRMAN BLOCH: What was the date at which we
22 suggested to Staff that information of this sort should
23 be provided?

24 MR. ANDERSON: I can't recall. I think it was
25 an off-the-record, I mean an untranscribed conference

1 call.

2 CHAIRMAN BLOCH: Then there was a report made
3 of it.

4 MR. ANDERSON: I don't have the citation here,
5 sir.

6 CHAIRMAN BLOCH: I think it must have been
7 before July.

8 MR. CHURCHILL: But, Your Honor, it's
9 different information that we are talking about. The
10 procedure that you set up in this was that if they found
11 new information in the SER, he was allowed to ask more
12 interrogatories.

13 He asked interrogatories to the effect of what
14 has been the experience with sleeved tubes in other
15 plants after the SER came out. That was not what he was
16 asking in those conference calls or in that letter to
17 the Staff which he cites here -- our response that we
18 objected to.

19 He asked something completely different.

20 CHAIRMAN BLOCH: I guess my question is
21 whether this was within the scope of the general
22 suggestion we gave to the Staff to keep them informed of
23 developments at other plants, because that was a
24 substantial time ago and if this is new and it came out
25 of that, it seems to me that he ought to be able to

1 respond to it with a contention.

MR. CHURCHILL: Your Honor, it did not come
3 out of that. It came out of specific interrogatories
4 that he asked.

CHAIRMAN BLOCH: Well, they came out of the
6 general request, though.

MR. CHURCHILL: This came -- the basis for
8 this contention that he has cited, Your Honor, are
9 answers to interrogatories from the Staff,
10 interrogatories that the Decade had asked after the SER
11 came out, supposedly on the basis of information in the
12 SER.

CHAIRMAN BLOCH: You are saying there was no
14 information in the SER related to this?

MR. CHURCHILL: Our point is that the
16 information in the SER did not justify these
17 interrogatories. These were interrogatories that could
18 have and should have been asked a long time ago, in fact
19 well before the time the Board suggested that the Staff
20 keep the Decade informed.

MR. ANDERSON: The point you are missing, Mr.
22 Churchill, is that the Board decides to use an informal
23 procedure, and that informal procedure did contemplate
24 these kinds of questions being answered, and for some
25 reason it lagged over into the SER. But that is not the

1 burden that falls on me, and that is the point that I
2 believe you are missing.

3 MR. CHURCHILL: It didn't lag over into the
4 SER, Mr. Anderson. You asked those interrogatories
5 under your privilege of asking a second late round, or a
6 third or a fourth -- whatever it was -- after the SER
7 came out, based on what the Board had specifically said
8 should be --

9 MR. ANDERSON: You are missing the point
10 again, Mr. Churchill.

11 CHAIRMAN BLOCH: I think that is the end of
12 that discussion because I understand the position of
13 both parties.

14 Mr. Churchill, do you have further information
15 on the merits?

16 MR. CHURCHILL: Again, in our supplemental
17 response to his amendment, we did have a basis
18 argument. We said that there was no basis for any
19 aspect of the contention that would allow it to be
20 admitted in the first place and those arguments are
21 fairly clear in our response, so I don't think I have to
22 go into those.

23 MR. ANDERSON: Mr. Churchill, could you please
24 talk louder or use your phone instead of the speaker
25 phone? It is very difficult to hear from Wisconsin.

1 MR. CHURCHILL: Okay. I'm sorry.

2 Now we also have a motion for summary
3 disposition which has a statement of three material
4 facts or three numbered facts. Mr. Anderson has not
5 controverted those by evident or otherwise. He has not
6 controverted any of those.

7 CHAIRMAN BLOCH: Tell me the three facts
8 briefly.

9 MR. CHURCHILL: One is that the region of the
10 tube where the upper joint is located has virtually been
11 free of corrosion degradation in the past at Point
12 Beach.

13 Two, the tubes will be inspected by eddy
14 current techniques prior to sleeving and a joint will
15 not be placed where degradation is indicated to exist.

16 And then, three, even if, for the sake of
17 argument, it is assumed that a joint will be expanded so
18 the tube is corroded, that the expansion process that
19 point will weaken the tube and that the weakening of the
20 tube will cause the worst conceivable failure during
21 operating or accident conditions -- i.e., a complete
22 severance of the tube at the joint -- these are all the
23 assumptions for the sake of argument -- even then, the
24 resulting leakage would be minimal and would not be of
25 significant safety concern.

1 The leakage, approximately five percent of the
2 rate, which would be expected from the unobstructed leak
3 path of a double-ended break would be detected by normal
4 radiation monitoring systems and would allow for an
5 orderly, planned shutdown if technical specifications
6 were exceeded.

7 These are all supported by the affidavit of
8 Mr. Fletcher.

9 CHAIRMAN BLOCH: May I ask whether the quality
10 assurance system you have after the installation of the
11 sleeve will give you information on whether the joint
12 might be either too high or too low in relationship to
13 the end of the sleeve?

14 MR. CHURCHILL: Oh, yes, very definitely,
15 because each one of those is visually inspected, but
16 also, as explained, I think, in response to either
17 Contention 3(b) or 3(c) in the affidavit, the equipment
18 that's used -- that is, the automated equipment, which
19 will probably be 100 percent of the use, or even the
20 hand equipment -- either one of them cannot actually do
21 the expansion unless the tube is flush up against the
22 bottom of the tube sheet.

23 CHAIRMAN BLOCH: No. I wasn't concerned about
24 whether it was fully inserted, but whether the upper
25 joint might be formed too close to the top of the

1 sleeve.

2 MR. CHURCHILL: That also is automatically
3 taken care of by the equipment that's used. There is no
4 judgment used by any individual in doing it. The
5 equipment automatically goes up there and has to be
6 fully seated.

7 CHAIRMAN BLOCH: Measured from the bottom of
8 the tube?

9 MR. CHURCHILL: Yes, from the bottom of the
10 tube. And even then it can't go unless the bottom of
11 the tube is placed where it should be. So I guess that
12 answers two questions -- one of which you didn't ask.

13 CHAIRMAN BLOCH: Okay. Have you completed
14 your presentation on that?

15 MR. CHURCHILL: Yes, I have.

16 CHAIRMAN BLOCH: Does the Staff have a
17 comment? I'm sorry I call you the Staff all the time.
18 I meant Mr. Bachmann.

19 MR. BACHMANN: All right. I don't know how
20 long I'm going to be here.

21 As we stated in our response to Decade's
22 amendment, the sole basis which we have chosen to
23 interpret as Decade's genuine issue of material fact was
24 Emmett Murphy's statement in response to their
25 interrogatories, which is restated on page four of our

1 response. And the sole -- let me start again.

2 If their basis is indeed, as we have assumed,
3 material facts that are in dispute, let me say right at
4 the beginning that the Staff does not dispute the truth
5 of that statement and maybe we could just wrap it up
6 there and forget about it. It is true.

7 CHAIRMAN BLOCH: And they plugged these tubes
8 before they ever went into service, is that right?

9 MR. BACHMANN: That's correct. And we have no
10 dispute at all with the statement that some of the tubes
11 at San Onofre had their joints formed within the
12 corroded region, and that is perfectly true. It is also
13 perfectly true that they were detected before the steam
14 generators went into service by eddy current inspection,
15 by a base line eddy current inspection and those tubes
16 were plugged.

17 Now if that is what Decade feels is in
18 dispute, there is nothing to litigate. We agree.
19 That's true.

20 In our motion, essentially our motion for
21 summary disposition, or in our attempt to show that
22 there is no internal fact in dispute, we submitted an
23 affidavit by Emmett Murphy, who, by the way, also wrote
24 the response to the interrogatory, at Point Beach we
25 will perform the same base line inspection and if we

1 detect the same problems, although we do not expect this
2 for other reasons, if we detect the same problems as at
3 San Onofre that we will plug those tubes.

4 It is the Staff position that there is simply
5 nothing here to litigate. They indicated that they
6 found sleeve tubes with problems at San Onofre. They
7 detected the problems. They plugged them. It is the
8 Staff position that the same thing would happen at Point
9 Beach. If something like this would happen -- which we
10 do not expect -- we would detect it the same way it was
11 detected at San Onofre and plugged.

12 Therefore, it is the Staff's position that
13 there is simply nothing here to litigate.

14 CHAIRMAN BLOCH: Mr. Anderson?

15 MR. ANDERSON: Three things in three seconds.
16 In terms of the pretest, the pretest was the eddy
17 current test and we previously established that there is
18 sufficient data to reliability.

19 Second, as to the post-test of the ten percent
20 sample, that's inadequate. Third, as to the alleged low
21 leakage rate, we previously made our objection, to
22 repeat, to the use of that five percent figure. I don't
23 see where you have a chance to determine what the basis
24 of it is.

25 All that was previously stated in the

1 documents prior to this flurry of paper was that there
2 would be some constraining effect. To go from there to
3 a statement that 25 percent of the normal leakage rate
4 of a double break is a substantially major new issue and
5 we don't think it is appropriate to bring in by
6 affidavit.

7 MR. CHURCHILL: Judge Bloch, really, he was
8 supposed to provide us with genuine issues of material
9 fact that should be litigated in an evidentiary hearing
10 on the issue here in dispute. And all he has done is
11 made a statement, quoted a statement that one of our
12 technical reviewers has made, which the Staff does not
13 dispute.

14 Now these other things are simply not right to
15 start bringing in off the record or on the record that
16 this is in dispute because of this contention.

17 CHAIRMAN BLOCH: Okay. Mr. Anderson, your
18 next contention, please.

19 MR. ANDERSON: Actually there are two more.
20 The fourth contention relates to other sources of
21 leakage and the reference here was to the failing
22 explosive plugs.

23 CHAIRMAN BLOCH: Has there ever been a
24 catastrophic failure in the explosive plugs?

25 MR. ANDERSON: Well, I don't know if we know.

1 I cannot identify any, sir, but that does not mean there
2 are none. We do know, though, that the plugs have
3 failed under normal operation. Because they failed in
4 normal operation, I think it is a reasonable inference
5 for the purpose of this phase of the proceeding to
6 assume that they could fail under accident circumstances
7 with much more stress loadings.

8 CHAIRMAN BLOCH: Well, why is that in a
9 plugged tube. We wouldn't discuss this, perhaps, the
10 tube above the plug.

11 MR. ANDERSON: Because there will be an
12 instantaneous pressure reversal which would be a dynamic
13 stress situation. That is not the same as normal.

14 CHAIRMAN BLOCH: Well, not on the plug. What
15 would it be on the plug?

16 MR. ANDERSON: Well, if there is through-wall
17 degradation, there would be, sir.

18 CHAIRMAN BLOCH: It would be filled with
19 water. What is this situation you are arguing?

20 MR. ANDERSON: Well, the pressure from the
21 primary side before a LOCA would be 2,200 pounds per
22 square inch pushing the plug upward toward into the tube.

23 CHAIRMAN BLOCH: Right.

24 MR. ANDERSON: And 800 pounds per square inch
25 on the secondary side. And suddenly the 2,000 pounds

1 would be removed in a LOCA, if it is a large-scale LOCA,
2 and you would have the secondary side 800 pounds pushing
3 the tube out.

4 CHAIRMAN BLOCH: Pushing the tube?

5 MR. ANDERSON: I'm sorry. Pushing the plug
6 out of the tube.

7 CHAIRMAN BLOCH: That has to assume what?
8 There is no water flowing through that tube.

9 MR. ANDERSON: That would assume that either
10 the tube was ruptured prior to or after the accident.

11 CHAIRMAN BLOCH: Okay. So you are just
12 assuming there is a direct access to the secondary side.
13 Now why is this at all relevant to sleeving? Or is it
14 like Contention 1? It's relevant only if you establish
15 first that there is a genuine mechanism -- another
16 mechanism for failure?

17 MR. ANDERSON: It would be. It also is to the
18 extent, I think, that the original application embraced
19 explosive plug removal, which I think demonstrates from
20 the applicant's standpoint a serious concern about the
21 fact of failing explosive tubes and some of the
22 documents we've submitted shows that the integrity of
23 the explosively inserted plugs is very much an open
24 question, for the application as originally submitted
25 embraces this issue.

1 CHAIRMAN BLOCH: The problem is with sleeving
2 tubes that are previously explosively plugged, right?
3 And the application doesn't state anything else about
4 explosive plugs, does it?

5 MR. ANDERSON: The original application
6 says -- I'm actually paraphrasing from the perspective
7 most advantageous to our side, but with that
8 understanding, the application says that leaving the
9 explosive plugs in is a real problem. Let's get them
10 out and sleeve those tubes instead.

11 Now the application is different. It says we
12 are not going to take the explosive plugs out. But they
13 only changed their position not because of the need to
14 take the explosive plugs out, but because of the
15 difficulty of the removal process.

16 CHAIRMAN BLOCH: And you said they said they
17 were a serious problem? You are talking about other
18 than an economic problem of the tube being closed? What
19 kind of serious problems?

20 MR. ANDERSON: I think their focus when they
21 respond will be on the economic -- the operational need
22 to shut down because of the leakage that would result
23 from the failing tubes.

24 CHAIRMAN BLOCH: Is there any evidence that it
25 is more than an economic problem?

1 MR. ANDERSON: Well, I think in the same way
2 they disagree with the APS apart from the plug issue,
3 and they say it is just operational. We believe that
4 the integrity of the primary and secondary barrier in
5 the steam generator is, as the APS says, a major
6 concern. Of course, it is a source -- a potential
7 additional source of leadage.

8 I want to add one thing that carries over to
9 all these things --

10 CHAIRMAN BLOCH: But they said in their
11 response actually that there are very heavy forces
12 weighing that plug in place.

13 MR. ANDERSON: They did say that, but they
14 also have --

15 CHAIRMAN BLOCH: I just want to know what
16 specific factual evidence contradicts that statement.

17 MR. ANDERSON: The letters from them which
18 say, for example, they found plugs in the reactor
19 vessel.

20 CHAIRMAN BLOCH: So where is this in your
21 motion?

22 MR. ANDERSON: I'll have to look. Wait one
23 second. I think it may not be a motion. It may have
24 been in the interrogatory follow-up. I think it may
25 have been in the interrogatory responses I didn't get a

1 chance to incorporate in the motion. But I think it may
2 actually be in the context of the licensee's answer to
3 our second interrogatories.

4 CHAIRMAN BLOCH: So there are situations in
5 which you say the plug was found in the reactor vessel.
6 Was there a serious safety problem?

7 MR. ANDERSON: No, because that was not under
8 a -- whether there was or not a damaged -- a potential
9 threat to the integrity of any part of the vessel, I
10 don't know. I'm not making the allegation.

11 But I am saying that if they can and do fall
12 out during a LOCA situation, it will be a pathway for
13 substantial secondary to primary end leakage and that
14 the APS and other scientific bodies said it was a safety
15 problem.

16 CHAIRMAN BLOCH: Okay. Have you completed
17 your argument on that specific contention?

18 MR. ANDERSON: I think so, sir.

19 CHAIRMAN BLOCH: Mr. Churchill?

20 MR. CHURCHILL: Just briefly, Your Honor, it
21 is obviously irrelevant to sleeving. The removal of
22 plugs or the non-removal of an explosive plug bears
23 absolutely no relationship to the proposed sleeving
24 program in Point Beach.

25 We do have a statement or the statements for

1 summary disposition as well, none of which are
2 controverted, again, either by evidence or otherwise.
3 However, I would like to correct a wrong impression left
4 by Mr. Anderson.

5 He is saying that the reason that the licensee
6 is not removing explosive plugs for sleeving or that the
7 reason that they decided to was because there was a
8 serious problem with explosive plugs, that is not at all
9 the case.

10 If you will recall, back in the beginning of
11 this proceeding we were contemplating sleeving both
12 units. Unit 1 has far more tubes plugged with both
13 mechanical and explosive plugs than Unit 2. The plans
14 have basically changed so that the sleeving is not now
15 contemplated for Unit 1.

16 And the reason, when we were going to sleeve
17 Unit 1, that we would remove explosive plugs, was not
18 because there was a concern over the safety of explosive
19 plugs but because we wanted to recapture and reuse a
20 number of tubes that had been plugged and could now be
21 repaired by sleeving, in order to keep the normal
22 coolant flow going to the steam generators.

23 It has absolutely nothing to do with the
24 concern for safety and over the existence of explosive
25 plugs, and I don't think that there is anything cited by

1 Mr. Anderson that would suggest otherwise, other than
2 his conjecture.

3 CHAIRMAN BLOCH: Mr. Churchill, have you
4 completed?

5 MR. CHURCHILL: Yes, I have, Your Honor, other
6 than to note that because there are so few explosive
7 plugs in Unit 2, it is not necessary to recapture those
8 in order to have an adequate flow, as well as, you know,
9 the difficulty we did have in removing the explosive
10 plug in such a manner that we could be sure that the end
11 of the tube was suitable for sleeving.

12 CHAIRMAN BLOCH: When you say recapture, you
13 mean sleeve, right?

14 MR. CHURCHILL: Yes. If you take a plugged
15 tube --

16 CHAIRMAN BLOCH: I understand. We had this
17 image of the plug running away. I didn't think you
18 meant to recapture it in that sense.

19 MR. CHURCHILL: No, I mean to be able to use
20 the tube again.

21 MR. CHURCHILL: Mr. Bachmann?

22 MR. BACHMANN: Yes, sir. The Staff has a
23 couple of points on this. One, we agree with Mr.
24 Churchill that the contention concerning explosive plugs
25 is totally irrelevant to a sleeving operation. I see no

1 way that it could be connected to the proposed actions
2 which would take place after the license amendment is
3 granted.

4 Second of all, as noted on page 33 under our
5 summary disposition section of our response to the
6 motion of Decade, that by affidavit we have indicated
7 that the licensee will not be removing explosive plugs
8 and that is part of the concern.

9 And the third point is that the force
10 necessary to install the plugs, as stated by Mr.
11 Coburn's affidavit, is such that the force necessary to
12 put the plug in is considerably more than any pressure
13 that one should expect during a LOCA and, therefore, it
14 is not a concern of the Staff.

15 But I do want to reiterate my first point, and
16 that is the Staff sees no way that this contention, as
17 it is phrased or by any stretch of the imagination could
18 apply to the proposed sleeving.

19 CHAIRMAN BLOCH: Mr. Anderson, I don't think
20 there is a need for reply, but the next contention?

21 MR. ANDERSON: Contention number 5 deals with
22 the problem of loose parts and those parts causing tube
23 degradation. The question before the Board appears to
24 be turning on the issue of whether there will be any
25 work on the secondary side of the steam generator in

1 light of the fact that the plan does not contemplate any
2 secondary side work.

3 We simply responded that the whole history of
4 tube degradation at pressurized water reactors is a
5 history of unexpected things, and to assume the
6 unexpected doesn't occur is not a reasonable inference
7 for the purpose of making a decision at this phase of
8 the proceeding.

9 CHAIRMAN BLOCH: Mr. Anderson, would you be
10 satisfied if there was a requirement that if there was
11 secondary side work there would be a visual inspection
12 before those tubes went up to service?

13 MR. ANDERSON: I think that would begin to
14 approach the issue, but I don't think that simple visual
15 inspection is sufficient. I think that there are needs
16 for also inventory checks and doublechecks. But I think
17 if you talk about going in that direction, that would be
18 a direction that would remove the contention.

19 Visual inspection by itself I don't think
20 would be sufficient, though.

21 CHAIRMAN BLOCH: Okay. But your concern
22 relates to the possibility that secondary side work
23 might be done during installation?

24 MR. ANDERSON: Yes. Or another way to phrase
25 your question to get a more clear answer from my

1 perspective is the company ought to come back to the
2 Commission to get approval before they began the
3 secondary work. That ought to remove the objection.

4 CHAIRMAN BLOCH: Of course, that would be a
5 tougher condition than the one I would suggest.

6 MR. ANDERSON: Yes. It would more carefully
7 insure the detailed consideration of this need. You
8 have to remember two or three of the major tube events
9 are not felt to be caused by loose parts. It is a major
10 inadequately considered aspect of this problem by the
11 Commission, in our view.

12 CHAIRMAN BLOCH: Thank you.

13 Mr. Churchill?

14 MR. CHURCHILL: Yes, sir. We have described
15 in this application permission to do sleeving. It is
16 this sleeving that we need a license for so that we can
17 operate with the sleeves in place. The sleeving process
18 has been described in detail.

19 There is absolutely no way that anything
20 involving sleeving would go into the secondary side.

21 CHAIRMAN BLOCH: So you think it is fair to
22 understand that you would undertake never to do
23 secondary side work under this application?

24 MR. CHURCHILL: Secondary side work, Your
25 Honor, wouldn't be related to sleeving. Therefore, it

1 wouldn't be under this application.

2 CHAIRMAN BLOCH: I know that, providing it
3 goes according to schedule. During the demonstration
4 project you sleeved the cold leg of the tube and that
5 was thought of as a part of the sleeving project
6 either.

7 MR. CHURCHILL: But it was sleeving. Sleeving
8 just simply does not involve the secondary side.

9 And the only thing that Mr. Anderson is saying
10 is if -- he is giving us conjecture that the unexpected
11 may happen and then in the process of sleeving we might
12 need to do something on the secondary side.

13 CHAIRMAN BLOCH: And what kind of
14 authorization would be required -- any?

15 MR. CHURCHILL: No. No authorization would be
16 required if it didn't change the operating
17 characteristics or the tech specs. But that isn't even
18 the issue. The issue is that sleeving simply does not
19 get to the secondary side and we have affidavits to show
20 that.

21 CHAIRMAN BLOCH: Okay. One other question.
22 You apparently did do a visual inspection of
23 the steam generator recently, is that correct? You
24 discovered a small loose object.

25 MR. CHURCHILL: And I'm not sure what kind of

1 inspection it was. I think it was visual inspection and
2 I'm not sure how recently it was.

3 CHAIRMAN BLOCH: Okay.

4 MR. ANDERSON: It was visual and it was in
5 April of this year.

6 MR. CHURCHILL: That also had nothing to do
7 with sleeving.

8 CHAIRMAN BLOCH: Okay. Mr. Bachmann?

9 MR. BACHMANN: Yes, sir, Judge Bloch. The
10 Staff agrees with Mr. Churchill on this, on the fact
11 that the proposed license amendment simply authorizes
12 the plant to operate with sleeves in tubes that would
13 ordinarily have had to have been plugged.

14 I see nothing in this contention that relates
15 to the matter before this Licensing Board at this time,
16 and on that basis the Staff opposes the admission of
17 the Contention.

18 CHAIRMAN BLOCH: Do you have a reply, Mr.
19 Anderson?

20 MR. ANDERSON: No. I think it's already been
21 said.

22 CHAIRMAN BLOCH: I have a few questions to ask
23 the Staff before we conclude.

24 These questions are preliminary inquiries
25 which will probably not lead to sua sponte issues, but

1 we would like to be satisfied on them.

2 On page 4 of the SER I think that there is a
3 typographical error. There is a sentence that says "A
4 functional requirement for reference upper joints is
5 that they must be sufficiently leak-limiting such that
6 the total leakage between the primary and secondary
7 through all the sleeves, taken together, is less than
8 the technical specification leak rate limit during
9 normal operation."

10 Mr. Bachmann, is that right, or should it be
11 for all of the tubes in the generator? In other words,
12 there is no special leak limit on the sleeves, is
13 there?

14 MR. BACHMANN: No, sir, there isn't. I do not
15 have the SER in front of me, but your reading of that, I
16 would say without fear of contradiction that that should
17 be the tubes, not the sleeves.

18 CHAIRMAN BLOCH: All right. On page 16 of the
19 SER the Staff states that the computer analysis code,
20 the WECAN code, which is currently under review by the
21 Staff, is used to determine, et cetera.

22 I just wanted to know from the Staff what we
23 should take from that statement that it is currently
24 under review. I would like to have a Staff opinion as
25 to whether there is a question about its validity.

1 MR. BACHMANN: Would you read that statement
2 one more time, sir?

3 CHAIRMAN BLOCH: At the beginning of stress
4 analysis, it says -- I will give you the full
5 sentence -- "The Westinghouse computer analysis code,
6 WECAN" -- W-E-C-A-N -- "which is currently under review
7 by the Staff, is used to determine the stress levels in
8 the tube/sleeve/braise configurations and roll
9 transition regions for pressure and temperature loading
10 conditions."

11 As I reread it, it may only relate to the
12 braised sleeves and then it would be irrelevant. But I
13 am not sure it does relate only to the braised sleeves.

14 MR. BACHMANN: I'll have to check on that and
15 get back to you in a letter or I'll call you.

16 CHAIRMAN BLOCH: Okay. There are two
17 questions that are related to Ginna which may or may not
18 be related to sleeving. I really haven't decided that
19 yet. But we are talking about repairing and returning
20 to operation the steam generator. Page 5-61 of the
21 Ginna SER discusses the fact that some of the plugged
22 tubes were going to be removed, apparently because of
23 mechanical damage to them.

24 I guess my question is why we should be
25 comfortable with allowing all of the plugged tubes, even

1 those that are close to the new sleeves, to remain
2 within the generator -- the steam generator -- even
3 though we can't any longer non-destructively test those
4 plugged tubes to see whether they have retained their
5 integrity.

6 MR. BACHMANN: I'm not quite sure I got the
7 gist of your question. I understand the reference, but
8 what is your concern here?

9 CHAIRMAN BLOCH: Why the Staff is comfortable
10 with permitting all of the plugged tubes to remain in
11 the steam generator, even though they can't be
12 non-destructively tested any longer.

13 It is different in Ginna because there was
14 substantial mechanical damage within the generator, but
15 we can't inspect those tubes any more and the
16 possibility that they could corrode through, I suspect,
17 is there. I would just like to know why we should be
18 comfortable with allowing them in even though they might
19 damage other tubes, even freeze tubes.

20 The other question is why a loose parts
21 monitoring program isn't being required at Point Beach,
22 even though it was required at Ginna. If applicant
23 would like to comment on these issues, of course they
24 are free to do so also.

25 MR. CHURCHILL: Your Honor, could I have the

1 Ginna reference for your plugging question, please?

2 CHAIRMAN BLOCH: The reference on plugging is,
3 I think, page 5-61. If you want to go off the record, I
4 will check that.

5 (Pause.)

6 That's correct. It is section 5.6.4,
7 post-repair structural integrity of plugged tubes.

8 Mr. Anderson, is there anything further that
9 we must cover?

10 MR. ANDERSON: I have two closing matters, if
11 I may, sir.

12 CHAIRMAN BLOCH: Please.

13 MR. ANDERSON: The first one is I want to make
14 sure that the objection we have lodged in our reply
15 brief and orally today to the statements in paragraphs
16 number 11 and 53 of the statement of Mr. W. D. Fletcher,
17 dated August 4, 1982, are sufficient to maintain an
18 objection before the Board.

19 CHAIRMAN BLOCH: I'm sorry. I'll have to know
20 more specifically what you are referring to.

21 MR. ANDERSON: The statements in those
22 paragraphs relate to Mr. Fletcher's first-time statement
23 that the leak rate in a sleeve tube, if defective, would
24 be five percent of a double guillotine break.

25 CHAIRMAN BLOCH: The issue on that is before

1 the Board based on the record of this proceeding. If
2 the objection is sufficient based on the record, so be
3 it. We have to proceed based on the record.

4 MR. ANDERSON: I understand that. But I am
5 saying you are not requesting or desiring any more
6 written filing to maintain an objection on our part, are
7 you, sir?

8 CHAIRMAN BLOCH: The only way you would be
9 permitted to is to show good cause, and at this late
10 date, after we have had oral arguments on summary
11 disposition, I think that probably would be tough to
12 show.

13 MR. ANDERSON: That's why I make it in the
14 reply brief and I made it before we opened today. I
15 just wanted to make sure that that is sufficient and it
16 is understood that the objection continues from our
17 perspective.

18 CHAIRMAN BLOCH: My attention is called to
19 that.

20 Is there another matter?

21 MR. ANDERSON: The second last one -- I don't
22 want to take any time, but I just want to note that we
23 have, to preserve our right on appeal, the alternative
24 litigable issue concerning thermal shock. We are not
25 waiving it. We understand the Board has a proclivity on

1 that and we won't take your time.

2 But, by the same token, we do continue that
3 for the purpose of preserving that issue on appeal.

4 CHAIRMAN BLOCH: Okay. Just be advised here
5 any time we have issued an opinion in the course of this
6 case when it comes to the initial decision or any final
7 decision we have made, you can always appeal it. You
8 don't have to preserve your rights if we have issued an
9 opinion on it.

10 Are there any other further matters from the
11 parties that must be covered at this time?

12 MR. CHURCHILL: You asked earlier for a
13 discussion on schedule.

14 MR. ANDERSON: I'm sorry, Mr. Churchill, could
15 you speak louder, please?

16 MR. CHURCHILL: Yes. Your Honor, I think you
17 were asking me a question earlier in the proceeding in
18 this call about our scheduling problems.

19 CHAIRMAN BLOCH: I don't recall that problem.
20 Could you refresh my memory?

21 MR. CHURCHILL: Well, let's see. I think you
22 said during the course of your responses to this we will
23 be bringing up the scheduling problems you have. I
24 think it was in light of the discussion of whether there
25 would be further supplements to any of these pleadings.

1 CHAIRMAN BLOCH: I asked if you felt that was
2 necessary.

3 MR. CHURCHILL: Yes, and I said that no, I
4 would prefer that it not be necessary because we did go
5 ahead and respond to all of the expanded parts of the
6 contentions and the new contentions, even though we felt
7 they shouldn't be in.

8 CHAIRMAN BLOCH: Well, that's why I didn't
9 think that was open any longer.

10 MR. CHURCHILL: Okay. I just wanted to be
11 sure that I wasn't derelict in giving you some
12 information that you had asked for.

13 CHAIRMAN BLOCH: I guess I would like to know
14 what time schedule, when I might get an answer to the
15 few questions that I asked on the record. Can you
16 roughly estimate that, Mr. Bachmann?

17 MR. BACHMANN: Well, I've got some fairly
18 decent notes of what you gave me, Judge Bloch. I would
19 obviously prefer to be able to read it off of the
20 transcript so that we have it directly and rather than
21 from memory and my bad notes.

22 CHAIRMAN BLOCH: Okay. Why don't we just
23 leave it and as soon as you have had a chance to confer
24 with Staff over the answers that you communicate to the
25 Board a rough time schedule and then we will let the

1 parties know.

2 MR. BACHMANN: All right. I have on question
3 on that. As far as some of the technical questions are
4 concerned, do you want them as a letter from myself to
5 the Board or simply that, or do you want an affidavit
6 included?

7 CHAIRMAN BLOCH: Whatever you think will be
8 necessary to satisfy the Board. It depends on the
9 nature of the answer, I guess.

10 I suppose that the couple of questions about
11 Ginna are sufficiently technical that it would be
12 helpful to have an opinion from the Staff person, the
13 technical person.

14 MR. BACHMANN: Well, we'll just leave it at
15 that and I'll see what sort of answers I get either
16 tomorrow or next week from my technical people.

17 MR. ANDERSON: I don't know if it will be
18 necessary, but we would reserve the right to reply if it
19 is necessary.

20 CHAIRMAN BLOCH: That's understood.

21 MR. CHURCHILL: Your Honor, we also will
22 attempt to answer this question as soon as possible. I
23 think this is something I'm going to have to go back to
24 the company and probably also to Westinghouse on, but
25 obviously we will try to do it as soon as we possibly

1 can.

2 I would like to just point out that in our
3 June 7 letter to you we had set forth a proposed
4 schedule which we by and large have been following. And
5 we had hoped for a possible Board decision on litigable
6 issues by September 22, prefiled testimony by all
7 parties on October 12, and the hearing to begin on
8 October 25.

9 The reason for this was that if you assumed a
10 hearing lasting about two weeks and then approximately
11 two months for all the post-hearing filings, proposed
12 findings and conclusions and replies, another month for
13 it to come out with its decision, then we're looking at
14 an initial decision in early February. And the sleeving
15 outage is scheduled to begin in March.

16 CHAIRMAN BLOCH: We understand your scheduling
17 needs. I think the Board prefers to mull over the gift
18 that is before it right now. We will have a better idea
19 of how our schedule needs to be adjusted after we decide
20 tentatively how much of this motion will or will not be
21 granted.

22 MR. CHURCHILL: Yes, sir. I just wanted to
23 reaffirm that what was set out in that letter of June 7
24 was still in effect -- that is, with respect to the time
25 of shutdown for sleeving.

1 CHAIRMAN BLOCH: Would you remind me of the
2 official effect of that letter? That is when the
3 shutdown is needed. But the schedule you suggested is
4 just your suggestion at this point, is that correct? We
5 haven't adopted it yet.

6 MR. CHURCHILL: You have adopted the schedule
7 right up through this telephone conversation, I believe,
8 but the remainder of it is what you are suggesting to us.

9 Could you just excuse me just one minute?

10 (Pause.)

11 MR. CHURCHILL: Your Honor, I think I am going
12 to have to go back and reread the letter of June 7
13 again. This was the letter that we wrote you reporting
14 on the minutes of a conference call we had and --

15 CHAIRMAN BLOCH: Okay, we know about that
16 letter now. We have it in our record and we will refer
17 to it. We will attend to the scheduling problems as
18 promptly as we can. Whether or not we want to adjust
19 that schedule or officially promulgate it will depend on
20 our impressions of the task before us.

21 Are there any other necessary matters?

22 (No response.)

23 CHAIRMAN BLOCH: There being none, I would
24 like to thank the parties and my fellow judge for your
25 attention. I believe that the oral argument, although

1 it in many ways repeated the written documents, helped
2 to clarify the issues in my mind and will help to bring
3 about a fair resolution of the issues before us.

4 The hearing is adjourned.

5 (Whereupon, at 4:55 o'clock p.m., the
6 telephone conference adjourned.)

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NUCLEAR REGULATORY COMMISSION

This is to certify that the attached proceedings before the

Atomic Safety & Licensing Board

in the matter of: Wisconsin Electric Power Co., (Point Beach Units 1&2)

Date of Proceeding: September 9, 1982

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.

Patricia A. Minson

Official Reporter (Typed)

Patricia A. Minson

Official Reporter (Signature)