

NUCLEAR REGULATORY COMMISSION

ORIGINAL

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of: :

WISCONSIN ELECTRIC POWER COMPANY : DOCKET NOS. 50-266 OLA

(Point Beach Units 1 and 2) : 50-301 OJA

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

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WISCONSIN ELECTRIC POWER COMPANY : Docket Nos.
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(Point Beach Units 1 and 2) : 50-266 OLA
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In the Offices of
Alderson Reporting Company
440 First Street, N.W.
Washington, D.C.

Monday, November 8, 1982

The telephone conference in the above-entitled
matter convened, pursuant to notice, at 10:40 a.m.

BEFORE:

PETER BLOCH, Chairman
Atomic Safety and Licensing Board

APPEARANCES:

On behalf of the Applicant, Wisconsin Electric
Power Company:

BRUCE CHURCHILL, Esq.
LISA RIDGEWAY, Esq.
Shaw Pittman Potts & Trowbridge
1800 M Street, N.W.
Suite 900-South
Washington, D.C.

On behalf of Intervenor, The Environmental
Decade:

PETER ANDERSON, Esq.

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On behalf of the Nuclear Regulatory
Commission:

RICHARD BACHMANN, Esq.

1 P R O C E E D I N G S

2 CHAIRMAN BLOCH: Good morning.

3 This is Peter Bloch, Chairman of the Licensing
4 Board for Point Beach Nuclear Plant, Units 1 and 2,
5 Docket No. 50-266-OLA, and 50-301-OLA.

6 The purpose of this conference is to resolve a
7 request from Wisconsin's Environmental Decade for
8 consideration of a oral motion concerning a special
9 discovery matter.

10 Mr. Anderson, I am requesting that you keep
11 your presentation to five minutes, if feasible.

12 MR. ANDERSON: Certainly.

13 I asked for this conference call to make an
14 oral motion, and the motion concerns a request to have a
15 metallurgical examination of two of the sleeved tubes at
16 Unit 1 at this period of time, at the present time, when
17 the plant is down.

18 The reason for asking permission to make an
19 oral motion in this matter is because it is our belief
20 that the matter of an anti-current testing inspection
21 can depend very much on how much effort is put into it,
22 whether a pancake versus a circumferentially wound probe
23 is used, and so forth.

24 We felt that it is important to have a
25 comparison of an actual anti-current test inspection

1 with a metallurgical examination done. For that reason,
2 we felt that it was important to not make the motion
3 prior to the present refueling period, so that we can
4 ensure that the anti-current test inspection that was
5 going to be compared to the actual metallurgical be a
6 real-life comparison situation. It was for that reason
7 that we delayed making this motion until after we
8 understood the anti-current testing examination was
9 completed.

10 It is our understanding that the plant went
11 down for refueling on October 22nd, and the earliest
12 date we have ascertained from the PSC staff that the
13 anti-current testing examination of Unit 1 was completed
14 was November 3rd. I then called the Chairman.

15 So the reason that we have delayed making this
16 motion is to assure an actual, real-life anti-current
17 test purposes for inspection. The reason for asking to
18 do it orally --

19 CHAIRMAN BLOCH: Let's go off the record for a
20 moment.

21 (Discussion was held off-the-record regarding
22 noise interference on the telephone.)

23 CHAIRMAN BLOCH: Back on the record.

24 Mr. Anderson.

25 MR. ANDERSON: The reason for asking for an

1 oral motion, as opposed to a motion in writing, is
2 because the plant is down for approximately six weeks,
3 as we understand it, and an oral motion would be past at
4 that point in time and also be past the hearing date.

5 The motion to be more specific, is with
6 respect to tube R-27-C-49, and also with respect to tube
7 R-26-B-53, two tubes and sleeves be metallurgically
8 examined during the present refueling outage.

9 CHAIRMAN BLOCH: Are you talking about the
10 incision of the tubes from the steam generator and the
11 plugging of those tubes?

12 MR. ANDERSON: It involves pulling the tube
13 out and plugging the tube hole. The two tubes are ones
14 which are indicated in the tube sleeving demonstration
15 report to have had, in terms of the original tubes that
16 have the greatest amount of through-wall degradation and
17 will have the greatest probability of having a
18 through-wall leak of the ten tubes which were sleeved in
19 the demonstration project last year.

20 The grounds for the motion is that we believe,
21 I think, the Board's Memorandum and Order concerning
22 summary disposition issues, dated October 1, 1982,
23 indicates the importance of accurate detection to
24 prevent an accident at Point Beach Nuclear Power Plant.
25 We feel that also it is of paramount concern, to the

1 extent that we believe that the report reflects the rate
2 of degradation between inspections is very high.

3 We believe that it is also reflected in the
4 Board's Memorandum and Order previously referenced that
5 the inspectability of the sleeved tube has not been
6 demonstrated in the existing record. So we feel that it
7 would be extremely desirable to have additional
8 information that the destructive test would provide.

9 I would add that it would not be certain to
10 have useful information because if the tube on which the
11 metallurgical examination is done does not have a
12 through-wall defect, the kinds of additional problems
13 that may arise would not occur. But those are two tubes
14 that have the most likely probability of having in the
15 intervening period of time had a through-wall defect in
16 the surrounding tube.

17 That completes our statement.

18 CHAIRMAN BLOCH: Mr. Anderson, could you tell
19 us the basis for the belief about the rapid rate of
20 corrosion?

21 MR. ANDERSON: I don't have the numbers but it
22 would be reflected in the Licensee Event Reports which
23 show tubes that have no defects, or having 30 percent
24 defect in one inspection, and having something like 90
25 percent in an ensuing inspection. I don't have the

1 precise numbers, but the Licensee Event Reports, we
2 believe, do demonstrate that.

3 CHAIRMAN BLOCH: Do you have direct evidence
4 in front of you?

5 MR. ANDERSON: The Licensee Event Reports up
6 and through the fall of '81 were incorporated into the
7 record by reference during the Demonstration hearing in
8 Milwaukee.

9 CHAIRMAN BLOCH: I know, but have you
10 submitted your direct evidence for the hearing yet?

11 MR. ANDERSON: We do not have any direct
12 testimony for the hearing.

13 CHAIRMAN BLOCH: What about documents?

14 MR. ANDERSON: Do you mean documents for
15 cross-examination of the witnesses?

16 CHAIRMAN BLOCH: Yes. Your interpretation of
17 our procedural ruling is that the documents you are
18 going to be relying on need not be submitted at this
19 point?

20 MR. ANDERSON: No. We don't need to resubmit
21 them until we know which ones we are going to be using.
22 I can't recall the exact date that it occurred, but I
23 think in the record I indicated to Mr. Churchill that as
24 soon as we became aware, and we also have the continuing
25 discovery request obligation on documents that are going

1 to be relied upon. We would in fact provide that to Mr.
2 Churchill.

3 CHAIRMAN BLOCH: Mr. Churchill.

4 MR. CHURCHILL: Yes, sir.

5 CHAIRMAN BLOCH: You have five minutes if you
6 would like to respond.

7 MR. CHURCHILL: I would respond to it in two
8 ways.

9 First of all, 2.730(b) requires that unless
10 you are actually in the hearing process, all motions
11 should be made in writing. There is absolutely no basis
12 anywhere in the record, and there is a lot of
13 evidentiary material on this record in the form of
14 affidavits, nor is there any basis on any document cited
15 or produced by Mr. Anderson or anybody else that
16 anti-current testing is going to be done sloppily or in
17 a different way or something that would justify his
18 having to surprise us like that, to try to catch us with
19 our hand in the cookie jar, so to speak. We find it an
20 incredibly repugnant motion at this point in time,
21 almost a week before the hearing.

22 Secondly, on a special discovery request in
23 2.740 and the other requirements for discovery are
24 patterned after the Federal Rules. There is no
25 requirement that somebody would have to provide evidence

1 or information that they don't have. Discovery is not a
2 mechanism for or a vehicle for requiring special steps.

3 Furthermore, there are any number of rules on
4 discovery, both in the record and in the Board's Order,
5 as to when they should have been filed. This could have
6 been asked for a long time ago, if he wanted it, we
7 would have objected for the same reason.

8 He could not possibly cite any discovery
9 regulations in the Commission's regulations for
10 requiring this type of discovery. It clearly goes well
11 beyond any requirement that any party has for
12 discovery.

13 I can comment also on some substantive reasons
14 why it would be counterproductive not to require, and in
15 fact probably adverse for everybody to require such a
16 thing.

17 CHAIRMAN BLOCH: Mr. Churchill, in doing that,
18 could you refresh my memory as to what was said on the
19 destructive testing on the sleeved tubes during the
20 demonstration hearings, and how the Applicant has
21 apparently changed his mind since then?

22 MR. CHURCHILL: Nothing was said, to my
23 recollection, Your Honor, about the destructive
24 testing.

25 CHAIRMAN BLOCH: I thought we said during the

1 hearing that you thought you might take a tube out for
2 the purpose of examining it, and that was one of the
3 reasons that you wanted to do the demonstration
4 program. Maybe I am recollecting incorrectly.

5 MR. CHURCHILL: The only thing there was, and
6 I think that came out peripherally as one of the reasons
7 for doing it, one of the additional reasons, and
8 certainly not the primary reason, was the so-called
9 "bleeder-through" concept, and that was if a tube would
10 bleed a year ahead of time.

11 If there are any indications or reasons why it
12 might be worthwhile, or if there were trouble
13 interpreting any signals, that gave us the option or the
14 possibility of seeing what happened to the sleeve. But
15 it wasn't necessary to do destructive testing. It could
16 also have been an advance indication, anti-current
17 indication, or some reason that it made sense, Your
18 Honor, to have this test, then there was that option
19 available. There were no commitments to do it.

20 I should point out that these have been
21 anti-current tested, and, as expected, there was
22 absolutely no indication whatsoever of any kind of
23 degradation in the sleeve, and one wouldn't expect it.
24 These sleeves have only been in there for one year of
25 operation, they are more resistant to corrosion than the

1 others. Furthermore, if we are talking about an ICA,
2 for example, it is probably about seven years before
3 even any indication of that would start occurring.

4 There is no rational basis in science or
5 engineering, or metallurgy or chemistry, to suspect that
6 there would be any degradation whatsoever in the tubes.

7 I have called back to find out what the
8 indications were in these latest tests that were done,
9 and they are absolutely clean on the sleeves. I said
10 tubes before and I meant the sleeves. They are
11 absolutely clean, and nobody would go in and pull a tube
12 under those circumstances.

13 Pulling a tube requires getting special
14 equipment in. It requires reopening the steam
15 generator, which has been buttoned up again since the
16 anti-current testing, and there is not an insignificant
17 man-rem exposure, and, of course, it requires taking two
18 more tubes that are used for cooling purposes out of the
19 steam generator.

20 There is absolutely no reason to require such
21 a test.

22 CHAIRMAN BLOCH: Mr. Churchill, have you
23 finished your presentation?

24 MR. CHURCHILL: Yes, I have for the moment,
25 Your Honor.

1 CHAIRMAN BLOCH: Staff.

2 MR. BACHMANN: The staff, first of all, does
3 agree with Mr. Churchill's objection to this motion on
4 a procedural basis, that is, that the motion should be
5 in writing and that this is not a proper way of
6 conducting discovery.

7 Beyond that, the staff also agrees with the
8 Licensee as to the necessity of pulling tubes. In other
9 words, along with the Licensee, we have gotten no
10 indication that there are any problems with the sleeved
11 tubes.

12 Because of the man-rem exposures, among other
13 things, that would be required to pull the particular
14 sleeved tubes, absent any indication that there is any
15 problem with the sleeved tube, the staff sees absolutely
16 no reason or need to pull and examine the already
17 sleeved tubes that were sleeved during the demonstration
18 project.

19 That pretty much sums up the staff's position
20 on this, Your Honor.

21 CHAIRMAN BLOCH: Does staff also agree with
22 Applicant's position that it is improper to order
23 discovery that would require the conducting of new
24 tests?

25 MR. BACHMANN: Yes, sir. We agree on all

1 procedural points with the Licensee.

2 CHAIRMAN BLOCH: Mr. Anderson, there are two
3 procedural objections made. The first, there is no
4 provision whatsoever for an oral motion. Secondly, even
5 if it were proper to have an oral motion, that discovery
6 requiring the conducting of new tests is not
7 appropriate.

8 Do you have an answer to either of those
9 arguments?

10 MR. ANDERSON: Yes, I do.

11 With respect to discovery not being
12 appropriate, we agree that discovery cannot be used to
13 make a party produce that which does not presently
14 exist. We are not seeking this. Apparently there has
15 been a misapprehension. We are not seeking this relief
16 through the discovery process. We are seeking to have
17 the Board make this a requirement to complete the
18 record.

19 CHAIRMAN BLOCH: If that is the case, wouldn't
20 it be more appropriate to consider that remedy after the
21 evidentiary hearing is completed?

22 MR. ANDERSON: The problem would be that after
23 the evidentiary hearing is completed, the plant will be
24 back up.

25 CHAIRMAN BLOCH: How long are they down?

1 MR. ANDERSON: As I understand it -- Mr.
2 Churchill can correct me -- they are down for six weeks
3 from October 22.

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

6 MR. CHURCHILL: I don't know how long the
7 plant will be down. In any event, that is irrelevant.

8 MR. ANDERSON: To answer your question, Mr.
9 Chairman. Our concern was that the plant is back up and
10 running, and to ask it to come down for those tests
11 would be a burden that we would not be readily able to
12 overcome.

13 CHAIRMAN BLOCH: Are you contending that you
14 have actually established the evidentiary basis at this
15 point for requiring that relief?

16 MR. ANDERSON: I think it would be more
17 desirable to do it at the completion of the evidentiary
18 proceeding, because obviously something can come up at
19 that point that would impact on this. But the problem
20 we have is that there won't be adequate time to catch
21 the plant while it is still down, and the cost of
22 one-and-a-half-million dollars a week in downtime for
23 replacement power is a very heavy cost economically. It
24 would be better put, when you weigh in the cost of a
25 destructive examination versus the cost of the

1 replacement fuel, it would be better put to err on the
2 side of having the examination done now while the plant
3 is down.

4 CHAIRMAN BLOCH: We are going to decide this
5 motion. There will be another couple of matters to
6 discuss after our conclusion on this motion.

7 MR. ANDERSON: Could I respond to the other
8 points that were made?

9 CHAIRMAN BLOCH: Yes, but I think we are going
10 to decide on the one we have just discussed.

11 MR. ANDERSON: I want to respond to the other
12 point made as well, if I may.

13 CHAIRMAN BLOCH: All right.

14 MR. ANDERSON: It will be very brief.

15 I don't know that I want to use the words
16 "sloppy anti-current testing." Mr. Churchill indicated
17 or he expressed a strong reservation about the
18 implication of anti-current testing being done in less
19 than an ideal situation.

20 The testimony that was submitted in OLA-2 by
21 the staff, for example, points out that if you use a
22 pancake probe, this is one illustration of the concept,
23 if you use a pancake probe you get much more
24 resolution. I have talked to anti-current test experts
25 at various national labs, and I think it is a factor of

1 ten in terms of resolution ability with a pancake probe
2 versus the normal bobbin probe. The pancake probe is
3 rarely used because of the cost.

4 I think that and other things would support
5 the concept that there are different quality
6 anti-current tests that can be done.

7 The second point that Mr. Churchill and Mr.
8 Bachmann made is that it is not the ideal time to do a
9 test because it has only been one year in place. Also,
10 I would add, it is not a tube which we know to be a
11 through-wall defect. I would agree with that, but it is
12 the best evidence available, even though it is less than
13 the ideal situation to run this test.

14 Because of the fact that the tube failure in
15 the wrong circumstances and wrong conditions can be so
16 catastrophic in its impact, I think that a less than
17 ideal test, which is the best evidence available, is
18 nonetheless in order.

19 That completes my response.

20 CHAIRMAN BLOCH: The oral motion for
21 examination of the steam generator tubes metallurgically
22 is denied. We need not decide whether it is ever proper
23 to make an oral motion. However, in this instance, both
24 Applicant and staff have argued that discovery is not
25 properly addressed to information that must be obtained

1 only by conducting new studies.

2 Decade has not rebutted that particular legal
3 position, and argued instead that it should be ordered
4 to be done as a matter of relief. Given the state of
5 the record at this time, there is no evidentiary basis
6 for ordering such relief. We therefore consider this to
7 be a motion that might be renewed at the close of the
8 hearings, but which we cannot grant affirmatively at
9 this time.

10 Mr. Churchill, I would like your comment, if I
11 could, on whether we should have a deadline for the
12 filing of documents in this case.

13 MR. CHURCHILL: I have been under the
14 understanding that if any documents were to be used on
15 an evidentiary basis, they, obviously, would have been
16 filed or at least identified at the time that our
17 testimony was due.

18 I am talking about evidentiary documents, Your
19 Honor. I am not talking about documents that would be
20 necessarily used as the basis for cross-examination,
21 although it would have been helpful, had we known them.

22 CHAIRMAN BLOCH: Mr. Churchill.

23 MR. CHURCHILL: To the extent that he was
24 trying to use documents that he would propose to
25 introduce into evidence, that would, of course, require

1 some sort of testimony and sponsoring witnesses, and so
2 on, just to get the documents in.

3 I would think, and I had always assumed, and I
4 feel very strongly about this, that it would be in
5 contravention of the Board's order to have testimony and
6 the written evidence in back when it was due a week ago,
7 back on November 2nd.

8 CHAIRMAN BLOCH: Apparently, Mr. Anderson is
9 planning to use documents for cross-examination. Do you
10 think that we should have a deadline on the filing of
11 such documents, subject to a showing of cause at the
12 hearing for use of documents that have not been
13 pre-filed?

14 MR. CHURCHILL: Yes, sir, I think that would
15 be consistent with good administrative and judicial
16 practice, to the extent that what we are trying to do is
17 get at the truth of the matter and not to win by
18 surprises or blindsiding. I think that this is a
19 principle that has been well-established in the
20 administrative hearings for years.

21 CHAIRMAN BLOCH: Mr. Anderson, would you
22 comment on that?

23 MR. ANDERSON: We have no problem with that,
24 if the Commission provides the finances so we can
25 proceed on that basis.

1 Mr. Churchill represents a client who has one
2 set of attorneys for this case, a second set -- I am
3 talking about sets and not single attorneys -- for the
4 PSC proceeding which is going on at the same time, and a
5 third set of attorneys for the rate case, which has
6 interrelated issues, going on at the same time.

7 To order such a thing would not only tie our
8 hands but also gag our mouth. I think that unless there
9 is equal opportunity to have the financial resources to
10 proceed with that kind of expedition, the effect is to
11 preclude the public from participating.

12 It is not the substance of the idea of having
13 everything alerted to in an early period of time, it is
14 the fact that the absence of equality or anything
15 resembling equivalent financial resources means that we
16 would be precluded from having time to do research that
17 we otherwise would have.

18 Basically, I am going to be down to the wire
19 with this, because we have a brief that is due in the
20 Wisconsin rate case; we have discovery that is due in
21 the PSC sleeving application; plus all the other
22 administrative details of running an organization of our
23 size entails. It simply would not be feasible, as a
24 practical matter, because of the financial situation.

25 CHAIRMAN BUCH: It is not feasible for you to

1 file documents you know you are going to rely on 48
2 hours in advance?

3 MR. ANDERSON: I will be glad to do that. All
4 I am saying is that between that 48 hours and the
5 hearing, I may come up with additional documents.

6 CHAIRMAN BLOCH: You will have to make a
7 showing of cause to permit you to use them. If you can
8 show that you did not know it at the time, or you had
9 not realized that you were going to use them at the
10 hearing.

11 MR. ANDERSON: If those are the two criteria
12 for cause, we would have no problem.

13 Again, I have indicated before, and I have no
14 problem reiterating that we have no problem even
15 voluntarily indicating as soon as we know about
16 documents that we want to use, indicating that to Mr.
17 Churchill at that point.

18 CHAIRMAN BLOCH: That would mean that you
19 would indicate also the document concerning LERs where
20 you are going to attempt to show the differences in
21 signals from period to period.

22 MR. ANDERSON: If I understand -- Let me make
23 an inquiry, if I may, Mr. Chairman.

24 When the discussion previously came up, I
25 thought we excluded from these kinds of documents to be

1 alerted to, documents that are already part of this
2 record, and it would only extend to documents which are
3 not part of this record. Is that correct?

4 MR. CHURCHILL: The LERs are not a part of
5 this record, Mr. Anderson.

6 MR. ANDERSON: I am not reaching that at this
7 point, Mr. Churchill. I am just saying that the only
8 thing that we would alert Mr. Churchill to is documents
9 that are not presently part of the record.

10 CHAIRMAN BLOCH: I think the purpose of
11 alerting people prior to the hearing is to put people on
12 notice. So while you need not needlessly duplicate
13 things that are already in the record, it does seem to
14 me that if you know you are relying on certain documents
15 as part of this issue, it would be helpful to have the
16 transcript citation. Is there a problem with that?

17 MR. ANDERSON: I am not sure that it is
18 legally required, but as an accommodation I will be glad
19 to do that.

20 CHAIRMAN BLOCH: Staff would have no objection
21 to a 48-hour rule?

22 MR. ANDERSON: Excuse me, what was the
23 question?

24 CHAIRMAN BLOCH: Does the staff have any
25 objection to the imposition of a 48-hour rule requiring

1 that all documents, to be relied on in the hearing,
2 including those documents for cross-examination, be
3 served on the other parties at least 48 hours prior to
4 hearing, with the understanding that additional
5 documents may be used provided that there is good cause
6 shown at the hearing.

7 MR. BACHMANN: Judge Bloch, the staff would
8 consider that only on the basis that we have those
9 documents in hand 48 hours, at least 48 hours prior to
10 the hearing, or at least, if we already have the
11 documents, supposing they were NRC documents, that they
12 be identified to us at least 48 hours prior to the
13 hearing.

14 The staff would strongly object to a filing
15 date 48 hours prior to the hearing, because we would
16 more than likely be en route by the time they arrived.

17 CHAIRMAN BLOCH: This date is only for the
18 purpose of documents not already included in the
19 previous order on direct testimony, Mr. Bachmann.

20 MR. BACHMANN: I am not quite sure as to what
21 documents Mr. Anderson might be referring to. They may
22 be documents that are easily available and need only be
23 identified. However, if these are documents that no one
24 has yet seen, the staff again asserts that we would
25 require these particular documents, that we would

1 require copies of, be in hand no later than 48 hours
2 prior to the time of the hearing.

3 CHAIRMAN BLOCH: The Board is prepared to
4 order that there be a 48-hour rule that requires that
5 there be effective notice given to all parties 48 hours
6 prior to hearing concerning documents which will be
7 relied on for cross-examination.

8 This order in no way abrogates the original
9 order setting a deadline for direct testimony. The
10 purpose of the order is to assure full and fair notice
11 of documents that the parties know they are going to
12 rely on.

13 MR. ANDERSON: Mr. Bloch, how would effective
14 notice be effected. We have a Federal Express
15 requirement, if it is required to be there in 48 hours,
16 it would have to be in Federal Express by November 12,
17 which is actually five days and not two days. Would
18 telephone calls be sufficient?

19 CHAIRMAN BLOCH: It depends on the documents,
20 and that is why I wanted to require effective notice,
21 Mr. Anderson. If the parties already have the documents
22 in their possession, and you call them and tell them
23 specifically which documents, that would be acceptable,
24 but it must be effective notice, which means that they
25 have the ability at that time to know what you are

1 relying on.

2 On the other hand, if they are documents that
3 you have that are important to your case, it might be
4 necessary to mail them an additional three days in
5 advance, or at least to call up and tell them that they
6 are there, and arrange for them to have them in time.
7 There may be some way that either the Applicant or the
8 staff would be willing to accommodate you, provided they
9 know you have got those documents.

10 All right, that is our order.

11 MR. ANDERSON: Judge Bloch, I have no idea
12 what will transpire, and I certainly will do everything
13 I can, but I am not sure how it will work out in
14 practice.

15 Because of the additional three days for
16 Federal Express to be arriving on the 15th in certain
17 cases, I would want to note an objection just to
18 preserve our position in the event that becomes
19 necessary, but I will endeavor, certainly, to
20 accommodate in the spirit of what the Board has
21 ordered.

22 CHAIRMAN BLOCH: We appreciate that.

23 MR. BACHMANN: Judge Bloch, I would like to
24 make one small point of clarification, if I might.

25 CHAIRMAN BLOCH: Yes, sir.

1 MR. BACHMANN: In the case of identification
2 of documents, we would also like it to be made clear
3 that if there is, for instance, a 500-page document, we
4 would certainly expect specific pages or sections that
5 are to be relied upon to be identified.

6 CHAIRMAN BLOCH: Mr. Bachmann, the purpose of
7 the order is to give effective notice, the purpose is to
8 allow the other parties to fairly know what each is
9 relying on at the hearing.

10 MR. ANDERSON: If I may, I want to
11 recapitulate what I understood you to say earlier
12 because this is an important point to us, and that is,
13 good cause is constituted by the fact that a party did
14 not know in its own mind that it would be using a given
15 document prior to those 48 hours.

16 CHAIRMAN BLOCH: That is correct.

17 We don't intend that to be a criteria that
18 cannot be explored. That is, you know, for example, at
19 this point that you are going to rely on certain LERs
20 for comparison purposes, that obviously falls outside of
21 this idea that you can wait until the last moment to
22 begin thinking about things, and then say that you
23 didn't think about them until 48 hours.

24 We want this to be done fairly and in the
25 interest of full disclosure, yes. If you have

1 legitimately waited until the last moment and have not
2 thought of the documents, we will listen to that at the
3 hearing.

4 MR. ANDERSON: Can I inquire as to what
5 legitimately means. We have another brief that is due
6 in another proceeding and we cannot get to a certain
7 issue until the day before the hearing.

8 CHAIRMAN BLOCH: If at this point, you have
9 already thought of the documents that you are going to
10 be using on cross, those documents must be disclosed.
11 We don't expect to hear at the hearing that you knew
12 about the documents, but didn't get around to sending
13 them.

14 But you are getting some leniency on the
15 possibility that in your last-minute preparations, you
16 will come up with new ideas.

17 MR. ANDERSON: Yes.

18 I will indicate at this point in time that we
19 will be reviewing the LERs, all the LERs, to determine
20 the rate of degradation between inspections while we are
21 on the phone right now, but I have not yet done a
22 compilation.

23 CHAIRMAN BLOCH: Okay.

24 Now we have one more matter that the Board
25 would like to raise.

1 We are interested in hearing at the hearing
2 about the methods that are used to analyze the
3 anti-current test records. Of interest to us would be
4 examination of the anti-current test records on the
5 sleeved tubes in the outage.

6 In addition, we would like to see some other
7 indications of other tubes that show the existence of a
8 flaw or that are allegedly clear. Then we would like to
9 have someone who actually does the diagnosis, the
10 operator, explain to us how he looks at those written
11 documents and makes the conclusion about whether there
12 is an indication.

13 Are there any questions about that request?

14 MR. CHURCHILL: Your Honor, I assume that this
15 is directed primarily, if not exclusively, at the
16 Applicant.

17 CHAIRMAN BLOCH: The Applicant, of course, has
18 control of the operator, but the staff might be
19 interested in addressing the same question.

20 MR. CHURCHILL: You would like to know the
21 results of the anti-current examination of the sleeved
22 tubes that was just concluded.

23 CHAIRMAN BLOCH: Not quite that, not quite
24 that. We are interested in knowing directly the
25 material from which we can understand how the operator

1 determines whether there is a signal of a defect present
2 or not. We want to know that process.

3 MR. BACHMANN: Judge Bloch, may I make a quick
4 interjection.

5 CHAIRMAN BLOCH: Please.

6 MR. BACHMANN: It is not the staff's practice
7 to do the evaluation or diagnosis of these records, so
8 we would not be bringing witnesses in that area.

9 CHAIRMAN BLOCH: Okay, I was just interested
10 in the staff's comment on whether this process is an
11 elaborate one, if it is something that goes to the use
12 of the anti-current test being helpful or reliable. You
13 might want to comment on that aspect of it, even though
14 it doesn't itself examine these records.

15 MR. BACHMANN: Yes, the staff is prepared to
16 comment upon the reliability of the record
17 interpretation. It is simply that we do not do the
18 entire diagnosis, and analysis of the records
19 themselves.

20 CHAIRMAN BLOCH: I appreciate that.

21 Mr. Churchill, do you understand?

22 MR. CHURCHILL: I think so. You would like us
23 to produce a witness, along with the anti-current
24 records of the results of the testing, so that he could
25 show the Board -- or the interpreter could show the

1 Board what he is seeing and how he reaches his
2 conclusion.

3 CHAIRMAN BLOCH: Okay, we would also ask that
4 some of the records would be from unsleeved tubes.

5 MR. CHURCHILL: From sleeved and unsleeved
6 tubes?

7 CHAIRMAN BLOCH: Right, so we can see how the
8 records compare, and if there are special problems in
9 the sleeved tubes as well.

10 MR. CHURCHILL: I am not sure precisely how I
11 am going to do this, but I will get back to the
12 company. I think I understand what you are asking.

13 CHAIRMAN BLOCH: We require an operator
14 explaining or whoever does the actual interpretation for
15 the company, because of the fact that someone else might
16 be able to explain it is of less importance than the
17 people who are actually doing it know how to make the
18 interpretation.

19 MR. CHURCHILL: We will endeavor to supply
20 this.

21 CHAIRMAN BLOCH: I would like to thank
22 everyone involved for participating in this particular
23 hearing, and particularly the reporter who has had to
24 record everything which is most helpful to the Court.

25 Is there anything that must come before the

1 Board before we adjourn?

2 There being nothing, the hearing is
3 adjourned.

4 (Whereupon, at 11:15 a.m., the hearing was
5 adjourned.)

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NUCLEAR REGULATORY COMMISSION

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

in the matter of: Wisconsin Electric Power Company (Point Beach
Units 1 & 2)

Date of Proceeding: November 8, 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)