

ORIGINAL

# OFFICIAL TRANSCRIPT PROCEEDINGS BEFORE

NUCLEAR REGULATORY COMMISSION  
BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

DKT/CASE NO. 50-266-OLA-2

TITLE WISCONSIN ELECTRIC POWER COMPANY  
(Point Beach Nuclear Power Plant, Replacement Unit 2)

PLACE Milwaukee, Wisconsin

DATE November 19, 1982

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ALDERSON REPORTING

(202) 628-9300  
440 FIRST STREET, N.W.  
WASHINGTON, D.C. 20001

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

4 - - - - - x

5 In the Matter of :

6 WISCONSIN ELECTRIC POWER COMPANY : Docket No.

7 (Point Beach Nuclear Power Plant, : 50-266-OLA-2

8 Replacement Unit 2) :

9 - - - - - x

10 Room 398, Federal Building  
11 517 East Wisconsin Avenue  
12 Milwaukee, Wisconsin

13 Friday, November 19, 1982

14 The special prehearing conference in the  
15 above-entitled matter convened, pursuant to notice, at  
16 9:02 a.m.

17 BEFORE:

18 PETER B. BLOCH, Chairman  
19 Administrative Judge

20  
21 JERRY R. KLINE, Member  
22 Administrative Judge

23  
24 HUGH C. PAXTON, Member  
25 Administrative Judge

## 1 APPEARANCES:

2

3 On behalf of Applicant:

4 BRUCE W. CHURCHILL, Esq.

5 DELISSA A. RIDGWAY, Esq.

6 Shaw Pittman Potts &amp; Trowbridge

7 1800 M Street, N.W.

8 Suite 900 - North

9 Washington, D.C.

10

11 On behalf of the Regulatory Staff:

12 RICHARD BACHMANN, Esq.

13 MYRON KARMAN, Esq.

14 Washington, D.C.

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C O N T E N T S

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3 Transcript pages 1881 thru 1883 from last evengings

4 session in the related Point Beach amendment case

5 follows.....page 43

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P R O C E E D I N G S

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2 JUDGE BLOCH: The hearing will please come to  
3 order. The time is 9:00 a.m., the announced time for us  
4 to start. I note that Mr. Anderson is not present for  
5 Wisconsin's Environmental Decade. Unless there is an  
6 objection, we plan to take a ten-minute recess to await  
7 Mr. Anderson.

8 MR. CHURCHILL: No objection, Your Honor.

9 MR. BACHMANN: No objection.

10 JUDGE BLOCH: We will recess for ten minutes.  
11 (Recess.)

12 JUDGE BLOCH: The hearing will please come to  
13 order. Good morning.

14 This is Peter Bloch, Chairman of the Atomic  
15 Safety and Licensing Board for the license amendment  
16 application of Wisconsin Electric Power Company for the  
17 Point Beach Nuclear Plant, Docket No. 50-266-OLA-2.

18 The purpose of this hearing is a special  
19 prehearing conference in order to decide on the possible  
20 admission of a party and its contentions. The party  
21 that has petitioned to be admitted to this proceeding is  
22 Wisconsin's Environmental Decade.

23 I note that the representative for Wisconsin's  
24 Environmental Decade is not now present in the  
25 courtroom. A portion of the reason for his not being

1 present is presumably contained in the transcript from  
2 last evening's session in the related Point Beach  
3 amendment case. We have asked the reporter that those  
4 pages be bound into the transcript for this proceeding.

5 (The document referred to follows:)

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# Lay-In

1 it's scheduled to go all day, too?

2 JUDGE BLOCH: Off the record.

3 (Discussion off the record.)

4 JUDGE BLOCH: During our off the record  
5 discussions the parties presented various views on the  
6 schedule on the special prehearing conference for CLA-2  
7 which is a related proceeding.

8 Mr. Anderson expressed a scheduling conflict  
9 having to do with an important meeting that might occur  
10 at 11:00 a.m. tomorrow morning. The other parties  
11 prefer to start in the morning, although the applicant  
12 stated that it might be willing to start meeting at 8:00  
13 this evening. The staff also would be willing to meet  
14 at 8:00 this evening.

15 The Board feels that the parties would be  
16 fresher in the morning. We did schedule this hearing to  
17 last for three and possibly three and a half days. We  
18 do think it would be more orderly and more proper to  
19 start at 9:00 in the morning, and we therefore order  
20 that the proceeding be set for 9:00 in the morning.

21 MR. ANDERSON: Could I indicate I will have to  
22 check with my office on whether I can be here? I simply  
23 have that problem. I'll be glad to call you at your  
24 hotel. I want to make it clear I have a very  
25 substantial problem.

# Lay-In

1 JUDGE BLOCH: The hearing was set. There's no  
2 objection to the problem. This is part of a scheduled  
3 proceeding. If Decade is not represented, there is a  
4 good chance they will default in the proceeding.

5 MR. ANDERSON: I understand, and there are  
6 conflicts with the organization, I would add, if I may,  
7 Mr. Chairman, at every phase of this proceeding. The  
8 applicant has rushed us, and we have always been on the  
9 losing end of those rushes. We have been impaired, and  
10 our ability to function has been deprived; and here now  
11 is a case where we need to go -- we have had a hearing  
12 scheduled to go this evening. We were all advised we  
13 could go, and we think it is appropriate. We are in a  
14 substantial problem because we have limited resources.  
15 We don't have a set of lawyers for every proceeding and  
16 a set of lobbyists for every case. We don't have that  
17 kind of resources.

18 JUDGE BLOCH: Refresh my mind once again in  
19 detail what this meeting is and why you waited until  
20 6:00 on Thursday evening to tell the Board that you had  
21 a meeting at 11:00 tomorrow morning.

22 MR. ANDERSON: It is because I got notice of  
23 it at 4:30 this afternoon by telephone from my office,  
24 and because the Governor-elect wasn't elected until this  
25 hearing was set.

LAY-IN

1 JUDGE BLOCH: The Governor-elect is going to  
2 do what?

3 MR. ANDERSON: I don't think it is appropriate  
4 for me to discuss exactly what we're doing, but the  
5 question is the transition that is going on with the  
6 Governor's office in Wisconsin, and we have a meeting at  
7 11:00 that we -- that is the only option given to us.  
8 It is not a meeting set by us, sir.

9 JUDGE BLOCH: The Board will reconsider its  
10 consideration only at the request of one of the other  
11 parties. There being no request, the Board's ruling  
12 stands for 9:00 tomorrow morning.

13 MR. ANDERSON: Do you want me to notify you  
14 when I call my office what my position will be tomorrow?

15 JUDGE BLOCH: We will be here at 9:00, and if  
16 you are not, we'll proceed without you.

17 MR. ANDERSON: Thank you.

18 (Whereupon, at 6:05 p.m., the hearing was  
19 recessed.)

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1 JUDGE BLOCH: With me this morning are Judge  
2 Jerry Kline and Judge Hugh Paxton.

3 Would the parties please identify themselves  
4 for the record.

5 MR. CHURCHILL: Good morning, Your Honors. My  
6 name is Bruce Churchill. I am with the law firm of Shaw  
7 Pittman Potts & Trowbridge in Washington, D.C.,  
8 representing the Applicant. And with me at counsel's  
9 table is Lisa Ridgway of the same law firm.

10 MR. BACHMANN: My name is Richard Bachmann  
11 representing the NRC Staff. With me at the counsel  
12 table is Mr. Myron Karman, whose notice of appearance  
13 was included in a letter to the Board and parties dated  
14 November 2nd, 1982, copies of which have been furnished  
15 to the Board and the parties today.

16 JUDGE BLOCH: The Board proposes that we  
17 proceed in the following manner: that we consider the  
18 filing of November 5, 1982, of Wisconsin's Environmental  
19 Decade despite the fact that the representative of  
20 Decade is not present, and then after having gone  
21 through that filing we then consider whether it might  
22 also be appropriate to impose more serious sanctions,  
23 including dismissal of the petition on the grounds of  
24 lack of prosecution.

25 I wish the pleasures of the parties about this

1 proposed method of proceeding.

2 MR. CHURCHILL: Your Honor, that proposal is  
3 acceptable to the Applicant.

4 MR. BACHMANN: It is also acceptable to the  
5 Staff.

6 JUDGE BLOCH: I would urge the parties to  
7 attempt to hold their presentations for each contention  
8 to five minutes, but if it is necessary for them to  
9 exceed the five-minute limit they may do so, provided  
10 they are trying to be conserving of our time.

11 Mr. Churchill, would you begin with contention  
12 number one. I do want to argue each contention  
13 separately.

14 MR. CHURCHILL: Your Honor, it is well  
15 established in Commission proceedings that in order for  
16 a contention to be admissible it must fall within the  
17 scope of the application on which the hearing has been  
18 scheduled and within the scope of the issues set forth  
19 in the Commission's notice of opportunity for hearing.  
20 The citation -- I have a couple. In the Bailey Unit 1  
21 plant, ALAB 619, 12 NRC 558 at page 565 in 1980. The  
22 Marble Hill 1 and 2 proceeding, ALAB 316, 3 NRC 167 at  
23 page 171. That is a 1976 case.

24 In this proceeding, the notice of opportunity  
25 for hearing states that "contentions shall be limited to

1 matters within the scope of the amendment under  
2 consideration." That is found at 47 Federal Register  
3 30125, July 12, 1982.

4 The reason I am starting out my comments  
5 generally on the question of relevance, because most of  
6 the contentions in Decade's petition are irrelevant to  
7 the subject matter in the proceeding. I will not have  
8 to repeat this for each of the contentions.

9 JUDGE BLOCH: Mr. Churchill, if you would  
10 prefer, you could address at one time each of the  
11 contentions which you wish excluded for irrelevance.  
12 That might expedite matters, instead of doing it one  
13 contention at a time. That would be up to you.

14 MR. CHURCHILL: Well, I think that would be  
15 helpful, because once we establish that relevance is  
16 necessary and what the relevance standards are, it would  
17 be fairly easy to go through those contentions. I can  
18 identify them for you, sir.

19 They are contentions 1, 2, 4, 5, 6, and 7. In  
20 other words, all but contention 3.

21 JUDGE BLOCH: Are you confident that each part  
22 of each of those contentions is relevant, or is it  
23 possible that there is a part of one of those that is  
24 relevant?

25 MR. CHURCHILL: I am confident that each part

1 of each of those contentions is relevant, and I will  
2 discuss each contention.

3 JUDGE BLOCH: Okay. I take it that our own  
4 positions in the related proceeding are consistent with  
5 this principle that contentions must be relevant?

6 MR. CHURCHILL: Yes, sir. And you will see in  
7 the course of my argument I will cite a Board ruling in  
8 another case involving steam generator repair.

9 JUDGE BLOCH: Please continue.

10 MR. CHURCHILL: The amendment under  
11 consideration, as stated in the Federal Register notice  
12 of the notice of opportunity for hearing is, "to permit  
13 repair of steam generators by replacement of major  
14 components, including tube bundles, in accordance with  
15 Licensee's application for amendment dated May 27,  
16 1982."

17 JUDGE BLOCH: Off the record, please.

18 (Discussion off the record.)

19 MR. CHURCHILL: Therefore, Your Honor, any  
20 contention that is not related to the repair process or  
21 the repair of steam generators, as compared to the  
22 existing unrepaired steam generator, as not within the  
23 scope of this proceeding. This proceeding is not to  
24 litigate the adequacy of steam generators generally.  
25 That subject was considered and decided during the

1 operating license proceeding for this Point Beach  
2 plant.

3 All we are concerned with here is the extent  
4 to which by repairing it we might, either through the  
5 repair process or a change in a certain design aspect of  
6 the steam generator, raise some concern, some safety  
7 concern. Most of Decade's contentions, the ones that I  
8 have mentioned, in no way relate to any specific aspects  
9 of the repair. They don't even attempt to relate them  
10 to the repair. Some are even beyond the scope of steam  
11 generators, and they are involved in balance of plant.

12 And I should note that this is consistent with  
13 the intent of Decade's petition to intervene, which  
14 itself -- and the petition, as you recall, did not  
15 contain contentions. But that petition itself virtually  
16 ignored anything specific about the repair process.

17 The requirement of 10 CFR Section 2.714(a)(2),  
18 as reiterated in the notice of opportunity for hearing,  
19 is that the petition should identify "the specific  
20 aspects of the subject matter of the proceeding as to  
21 which petitioner wishes to intervene." The petition  
22 didn't do that. The petition made no reference to any  
23 of the subject matter of the proceeding, which is the  
24 repair process.

25 The subject matter of the proceeding being the

1 proposed repair, the petition addressed only a  
2 generalized concern that "primary to secondary or  
3 secondary to primary leakage through ruptured steam  
4 generator tubes might lead directly or indirectly to the  
5 exposure of the public surrounding Point Beach." It in  
6 no way even attempted to say how that would be related  
7 to the proposed repairs.

8           Since the subject matter of the proceeding is  
9 not the adequacy of the steam generator generally, a  
10 contention cannot be admitted unless it alleges that  
11 some aspect of the repair of the steam generator that  
12 differs from the original steam generators is somehow  
13 less safe than the existing steam generators. But  
14 beyond that, Your Honor, it also has to provide some  
15 colorable basis that, in addition to being less safe, it  
16 is somehow unacceptable. It may well be that a  
17 component that is being repaired had far more margin  
18 than was necessary.

19           Now, I don't think that I have to get into  
20 that particular aspect in the argument on the  
21 contentions, but I think that is necessary to complete  
22 the reason behind this, that really makes this whole  
23 proceeding logical and emphasizes how and why  
24 contentions have to be related to the repair process.

25           JUDGE BLOCH: Mr. Churchill, just to go back

1 to the procedural point you're making, do you really  
2 wish us to dismiss Decade based on the inadequacy of the  
3 original petition, or do regulations permitting  
4 amendment prevent us from taking that action?

5 MR. CHURCHILL: No, sir, Your Honor. I was  
6 not alleging the inadequacy of the original petition,  
7 although I have done so in the past and I stand with  
8 those arguments. What I am merely doing is showing that  
9 the contentions that have been advanced are indeed  
10 consistent with what the Applicant alleged was an  
11 inadequacy of the original petition. That is, it just  
12 goes further to the intent of the petitioners that  
13 indeed they are trying to litigate steam generators  
14 generally and have not thought about relating them to  
15 the proposed repair.

16 Now, this brings me to contention 1, Your  
17 Honor. Contention 1 alleges, and I will paraphrase,  
18 that degradation of steam generator tubes could induce  
19 essentially uncoolable conditions in the course of a  
20 loss of coolant accident, a LOCA. That's all it says.  
21 It bears no relationship to the repair. It bears no  
22 relationship whatsoever to the repaired steam  
23 generators. It is just a general statement that steam  
24 generators in general should be looked at for that  
25 reason.

1           Even the bases that have been cited, if we  
2 look to the bases to see if perhaps it could give us a  
3 clue or some relation to it, bear absolutely no  
4 relationship to the proposed repair. There is nothing  
5 in there at all.

6           This is squarely analogous with the Licensing  
7 Board ruling on a similar hearing involving sleeving of  
8 steam generator tubes at this very same plant. It  
9 happens to be the same Intervenor was involved in that  
10 proceeding, and in fact he advanced what was virtually  
11 an identical contention. That proceeding was similar to  
12 this in that it was an application for repair of the  
13 steam generators. The Board in that proceeding, with  
14 respect to this contention, held that the issue did not  
15 relate to "the safety of tube sleeving" and was  
16 therefore irrelevant to an application for sleeving.

17           Now, I think it would be instructive if I  
18 would quote further what was said in that decision with  
19 respect to this contention. This is a quotation from a  
20 memorandum and order in Docket No. 50-266-OLA and  
21 50-301-OLA, October 1, 1982; identical contention,  
22 involving an application for sleeving:

23           "This is not an application to build or  
24 operate a nuclear power reactor. In an amendment  
25 proceeding the relationship of steam generators to the

1 remainder of the plant is not germane. In this case  
2 Applicant already has an operating license, granted  
3 after the safety of its reactor was considered. We do  
4 not think it appropriate to permit an Intervenor to  
5 question the original design of the reactor or the  
6 systems not directly involved in this application, or  
7 the unexplained premise that they are somehow related to  
8 the steam generator."

9           And the citation there is to LBP 8145 at 14  
10 NRC 853 at page 858, 1981, rejecting a previous version  
11 of contention 1 as irrelevant to the proceeding because  
12 it is an allegation of the consequences of tube failure,  
13 which may be litigated only if a mechanism for tube  
14 failure is shown to exist.

15           The quote goes on: "The test of relevance we  
16 have applied is to ask whether an issue is relevant to  
17 how the sleeving program" -- and "sleeving" is  
18 underlined -- "would cause problems or whether it  
19 reflects unfavorably on the safety of sleeving."  
20 Sleeving is a repair. You could easily substitute the  
21 word "repair" and this is directly analogous: how the  
22 relevance as to how the repair program would cause  
23 problems or whether it reflects unfavorably on the  
24 safety of the repair.

25           And the cite is to LBP 8233, 15 NPC 887, 1982,

1 at pages 890 to 891; LBP 8155 at 14 NRC 1017, 1981, at  
2 1026, citing transcript 598.

3           These are all previous Board decisions in that  
4 same proceeding. Therefore, Your Honor, Applicant  
5 believes that contention number 1 is totally irrelevant  
6 to the subject matter of this proceeding.

7           Would you like me to go on with contention 2?

8           JUDGE BLOCH: Please.

9           MR. CHURCHILL: Contention 2 again --

10          JUDGE BLOCH: Which is the one you say might  
11 be relevant?

12          MR. CHURCHILL: Contention 3.

13          JUDGE BLOCH: Continue with 2. Just skip over  
14 3.

15          MR. CHURCHILL: Yes, sir. Contention 2 is  
16 entitled "Tube Failures Under Normal Conditions" --  
17 "Under Normal Operating Conditions." This again, the  
18 main part of this contention again is virtually  
19 identical to a contention advanced in the sleeving  
20 proceeding we just referred to. Here the allegation  
21 generally is that rupture of steam generator tubes  
22 during normal operation may release radiation to the  
23 environment from the plant's secondary side in excess of  
24 maximum permissible doses, to the extent that -- and it  
25 gives what I would consider five reasons supporting that

1 general allegation.

2           The point to be emphasized here is, this is  
3 just that, a general allegation about his concerns with  
4 steam generators in general. There is absolutely no  
5 relationship between this contention and the proposed  
6 repair process or the proposed repair to steam  
7 generators.

8           Moreover, this isn't particularly necessary,  
9 but I say this as a footnote. Even if you go down the  
10 list of reasons, there is no relationship, and some of  
11 them even have nothing to do with steam generators. For  
12 example, the safety valve. The safety valve is located  
13 outside the containment on the steam line. It is not  
14 being touched. There is no suggestion at all that an  
15 inadequacy that he alleges in the safety valve has  
16 anything to do with the repaired steam generator.

17           I am prepared to move on to the next  
18 contention.

19           JUDGE BLOCH: Please.

20           MR. CHURCHILL: We will skip contention 3.  
21 Contention 3 is arguably relevant to the proposed steam  
22 generators. We will come back to that. We oppose that  
23 on other grounds.

24           The fourth contention, again, Your Honor, not  
25 only does it not make reference to the repair process,

1 but it has -- all of it has to do with the balance of  
2 plant, and I think that the reasoning articulated by the  
3 Board in the memorandum and order that I cited from the  
4 sleeving proceeding -- and incidentally, that memorandum  
5 and order language applies equally well to contention  
6 2. I think I failed to mention that then.

7 This simply does not involve steam generators  
8 and it certainly does not involve the steam generator  
9 repair. These are all balance of plant systems and  
10 components.

11 JUDGE BLOCH: Of course, that is the title of  
12 this contention.

13 MR. CHURCHILL: Pardon?

14 JUDGE BLOCH: The title of this contention is  
15 "Balance of Plant."

16 MR. CHURCHILL: Yes, sir. What he simply says  
17 is that what we are doing won't alleviate those concerns  
18 on these balance of plant items.

19 The fifth contention, "All-Volatile  
20 Treatment." The argument seems to be that there is  
21 something in the all-volatile treatment of the water  
22 chemistry at Point Beach that he doesn't like. I can't  
23 tell whether he's suggesting that we change back to the  
24 phosphate treatment or not.

25 The important point is that this is the

1 chemistry water treatment that has been in use in Point  
2 Beach Unit 1 since the mid-seventies, I believe 1974 or  
3 1975. There is no proposal to change that. Any changes  
4 in that or whether it is changed or not is totally  
5 unrelated to the repaired steam generator. Again, the  
6 Board's language in the memorandum and order in the  
7 sleeve proceeding would be applicable here.

8           Similarly, sir, the sixth contention, operator  
9 performance. This is a generalized allegation or  
10 concern of the Intervenor about the proficiency or  
11 capabilities of operators to operate the plant safely,  
12 including making the correct decisions about steam  
13 generators.

14           There's nothing in here that is in any way  
15 specific to the proposed repairs. If he has problems  
16 with the steam generator after the repair, he obviously  
17 has the very same problems with the steam generator  
18 before repair. It is just totally unrelated.

19           The seventh contention, Your Honor, I do have  
20 a relevancy argument, but I also have others. The  
21 relevancy argument is a little less clear here, because  
22 if you take the contention at face value what he is  
23 saying is that the model F steam generator may be  
24 expected to experience new forms of tube degradation of  
25 an undefined nature that cannot be specifically

1 anticipated at this time.

2           The bases that he cites bear absolutely no  
3 relationship to the repaired steam generator. They are  
4 not the same machines and in fact he doesn't even  
5 attempt to relate those. He cites those, but at no time  
6 does he actually state in this contention that the  
7 concerns that he is articulating down there would -- he  
8 doesn't even allege that they would occur. All he has  
9 alleged that would occur to the repaired steam generator  
10 is something that is undefined, that he cannot  
11 specifically identify.

12           This of course is something we could not  
13 possibly litigate.

14           JUDGE BLOCH: But the real problem here is  
15 lack of basis, not relevance.

16           MR. CHURCHILL: It is lack of basis, but it's  
17 also lack of specificity. There's no issue here that we  
18 could handle in a hearing. I would like to argue that  
19 point, but I'm wondering if -- would you like to hear  
20 that now?

21           JUDGE BLOCH: Why don't we continue, since we  
22 started.

23           MR. CHURCHILL: Very well. We can't possibly  
24 litigate an issue that says, I don't know what they are,  
25 but there are bound to be problems because it's new.

1 This just couldn't fit the definition of a contention,  
2 which by common sense has to be something at least  
3 sufficient to put the parties on notice, so that they  
4 know what they have to litigate and what they have to  
5 defend against.

6 Now, we noted earlier that the bases that he  
7 has cited here, the problems encountered in other  
8 plants, he doesn't even allege that they will occur at  
9 the Point Beach repaired steam generators.  
10 Nevertheless, it might be of interest to the Board, at  
11 least, to know what the situation is with respect to  
12 those bases.

13 The first three paragraphs of his bases relate  
14 to primary side cracking, up at the inner U-bends of the  
15 inner tubes, both at the apex and also where the bend  
16 starts. And the experience here, I believe he looks to  
17 Surry Point and Turkey Point -- I'm sorry. He looks  
18 to the Surry units and the Turkey Point units as having  
19 experienced this difficulty.

20 It should first be emphasized that the Board  
21 may or may not be aware that both Surry and Turkey Point  
22 have replaced their steam generators or have repaired  
23 them by replacement of major components in a very  
24 similar manner to that which is proposed here. The  
25 problems that are referred to here are not the new steam

1 generators, they are the old steam generators.

2           Secondly, the cracking up in the area of the  
3 U-bend has been taken care of by a completely different  
4 design change of certain manufacturing characteristics.  
5 For one thing, the Inconel 600, which is thermally  
6 treated, is now used, and that was designed specifically  
7 to counteract this kind of cracking, as well as to  
8 resist corrosion.

9           For another thing, one of the reasons for this  
10 problem was denting caused by the carbon steel support  
11 plate, the upper support plate, which built up a layer  
12 of material between the holes through the support plate  
13 in the tubes, causing the tubes to push in and putting  
14 more stress on that U-bend. In this new design,  
15 stainless steel support plates are used, again designed  
16 specifically to alleviate this problem.

17           JUDGE BLOCH: Mr. Churchill, are there  
18 references in the steam generator repair report?

19           MR. CHURCHILL: Yes, sir. The support plate  
20 can be found at page 2-96 and 2.2.1.6. The thermally  
21 treated Inconel 600 -- and I am referring to the repair  
22 report, which is the large document entitled "Point  
23 Beach Nuclear Plant Unit No. 1 Steam Generator Repair  
24 Report."

25

1 JUDGE BLOCH: That document was previously  
2 filed and need not be included in the transcript.

3 MR. CHURCHILL: Yes, sir. The thermally  
4 treated Inconel is mentioned at 2-8, Section 2.2.1.4,  
5 and finally, on this same problem, in this, and the  
6 manufacture of these components of the steam generator,  
7 the bends of the inner rows are stress relieved  
8 following bending to minimize residual stresses in the  
9 inner rows.

10 I can give you a citation to our original  
11 application in the form of a letter on May 27, 1982, at  
12 Page 3. I am also sure there is a reference in the  
13 repair report. I just don't have that handy right now.

14 The last three paragraphs of the basis have to  
15 do with an experience at Ringles Unit 3, which is a  
16 three-loop Westinghouse plant. That all has to do with  
17 something called a pre-heater. There is no pre-heater  
18 in this design. So I just want to point out to the  
19 board that the bases that he cited for this generalized  
20 allegation don't really apply to this, nor did he even  
21 allege that they applied.

22 JUDGE BLOCH: Have you concluded this portion  
23 of your argument?

24 MR. CHURCHILL: Yes, sir. The only thing I  
25 have left to talk about is Contention 3.

1 JUDGE BLOCH: Mr. Bachmann?

2 MR. BACHMANN: Yes, Mr. Chairman. May I state  
3 at the beginning that the staff agrees in general with  
4 Mr. Churchill's presentation concerning the relevance of  
5 these proposed contentions? I would like to go through  
6 them briefly and make some comments as the staff sees  
7 them. We do not disagree in any respect. I would just  
8 like to make a few extra comments on that.

9 As far as Contention 1 is concerned, the  
10 staff's primary belief that this contention is  
11 irrelevant is because it seems to say or allege that  
12 this LOCA combined with tube rupture had not previously  
13 been considered. Maybe we should now consider it.

14 Just for the board's information, a LOCA is  
15 not required by the Commission to be considered.

16 JUDGE BLOCH: Because?

17 MR. BACHMANN: That is not the bounding  
18 accident.

19 JUDGE BLOCH: The bounding accident is the  
20 main steam line break.

21 MR. BACHMANN: That's right.

22 JUDGE BLOCH: Which causes far greater  
23 stresses than the LOCA.

24 MR. BACHMANN: Yes, sir. We agree with what  
25 Mr. Churchill has said on Contention 2. Contention 4.

1 We wish to add as far as Contention 5 is concerned,  
2 which is the all volatile treatment, Mr. Churchill  
3 indicated this is not a new treatment that will be put  
4 into effect because of new steam generators, and that  
5 has been used since approximately the mid-seventies.  
6 That is correct.

7 It also is required to be used by the NRC as  
8 part of the technical specifications of this license.

9 As far as Contention 6 is concerned, we also  
10 agree with the applicant's evaluation of that  
11 contention. I think I might add that if Decade had  
12 evidence concerning a deterioration of operator  
13 performance, this would be or should be handled in the  
14 form of a petition under 10 CFR 2.206. That would be  
15 the proper place to address concerns of these, and not  
16 in this proceeding.

17 As far as Contention 7, which I believe Mr.  
18 Churchill addressed almost entirely on the basis  
19 requirements and specificity. Am I correct on that, Mr.  
20 Churchill?

21 MR. CHURCHILL: Yes.

22 MR. BACHMANN: Contention 7, the staff would  
23 like to bring to the board's attention another licensing  
24 board decision, which was the Perry case, Unit 1 and 2,  
25 LBP 81-24. The citation is 14 NRC 175, 1981. In that

1 case, the board, the licensing board addressed the  
2 factors that would apply to the specificity requirements  
3 of contentions on Page 184 of the published decision.

4           The staff believes that Factors 2, 3, and 5  
5 and probably Factor 6 should be applied as far as  
6 Contention 7 is concerned.

7           Basically and briefly, the Factor 2 is, as Mr.  
8 Churchill has already described, the sufficient  
9 specificity for notice of the issues. The Factor 3 is a  
10 very reasonable explanation or plausible authority for  
11 factual assertions. I do not see that in Contention 7.

12           Factor 5 is if they were all proved, would  
13 these facts require the imposition of a contention or  
14 denial, and I do not think that is the case. There is  
15 just no real assertion here that can be proved. In  
16 fact, one could probably say that is a correct  
17 statement, that some time in the future there may be  
18 problems.

19           There is no 100 percent guarantee that there  
20 might not be problems that we don't know about some time  
21 in the future. That is essentially a given any time you  
22 are dealing with a complex situation or complex piece of  
23 machinery such as an atomic power plant.

24           Then the Factor 6, the Intervenor's  
25 familiarity with the subject and its contribution to the

1 proceedings being helpful, I would think, judging from  
2 what Mr. Churchill has stated about the items cited by  
3 the Intervenor as its basis for this contention, the  
4 fact that the basis does not seem to apply at all to  
5 what we are dealing with, one must feel that there is  
6 not a great deal of familiarity with the proposed  
7 repairs, and that also militates against the admission  
8 of this contention.

9 JUDGE BLOCH: That particular criterion deals  
10 mostly with the possibility of permissive intervention,  
11 doesn't it? I think that is why we listed it.

12 MR. BACHMANN: On the page that I cited, it is  
13 not specifically broken out. Perhaps further on in the  
14 order there might be --

15 JUDGE BLOCH: Would we have to rule both on  
16 permission to intervene as if right and also permissive  
17 intervention, or is it unnecessary to rule on permissive  
18 intervention?

19 MR. BACHMANN: The way I understand the  
20 permissive intervention, which is the Pebble Spring case  
21 criteria, that applied at an earlier stage in an  
22 intervention petition. That would apply at the time the  
23 petitioner would come in and show its interest and  
24 standing and whether its filing was on time. If it did  
25 not meet certain of the threshold tests then the

1 licensing board would then have the discretion to permit  
2 them to intervene, and then there was a number of  
3 tests.

4 JUDGE BLOCH: Is this applicable only to late  
5 filed contentions? Is that the idea?

6 MR. BACHMANN: No, I believe -- let me clarify  
7 where we are now. We started out discussing Factor 6 in  
8 the Perry decision, and you inquired of me whether that  
9 factor --

10 JUDGE BLOCH: I have asked you an irrelevant  
11 question, but I do want to know whether in deciding  
12 whether or not to admit Decade based on these  
13 contentions we must decide not only whether it is  
14 admissible as if right but whether we should admit it  
15 permissively.

16 MR. BACHMANN: I do not believe that is a  
17 correct statement, sir. The permissive admission versus  
18 the admission as of right applies to the individual or  
19 organization, not to the admission of contentions. Once  
20 that is established, then the individual or organization  
21 must provide at least one good contention to complete  
22 the process.

23 JUDGE BLOCH: Mr. Churchill, do you agree with  
24 Mr. Bachmann on this?

25 MR. CHURCHILL: Yes. I believe that the

1 permissive intervention you are referring to is  
2 sometimes called the discretionary intervention, where  
3 the board at its discretion would admit a party. I  
4 think it is not necessary to do that. That would only  
5 come into play if the board decided that in spite of the  
6 fact that he didn't meet requirements, if he had some  
7 special reason to admit the party.

8 JUDGE BLOCH: So it would require a special  
9 showing, and there has been no such special showing.

10 MR. CHURCHILL: Yes, and I don't think the  
11 board need even address that.

12 JUDGE BLOCH: Mr. Bachmann, please continue.

13 MR. BACHMANN: That is the end of the staff's  
14 presentation, as far as Contentions 1, 2, 4, 5, 6, and 7  
15 are concerned.

16 JUDGE BLOCH: I would point out that it has  
17 been the practice of the boards of which this chairman  
18 has presided to allow quite full explanations at this  
19 point by a petitioning party, and sometimes those  
20 explanations can help us understand why what appears to  
21 be irrelevant is relevant.

22 We regret that Decade is not represented at  
23 this time, but it is woefully unrepresented, and there  
24 is just nothing we can do about that.

25 Mr. Churchill, would you proceed with your

1 argument on Contention 3?

2 MR. CHURCHILL: Yes, sir. Contention 3, Your  
3 Honor, I am not raising the relevance argument on.  
4 Everything I said about relevance presumably could be  
5 considered to be satisfied here, because he has in this  
6 case zeroed in on a specific design aspect.

7 JUDGE BLOCH: Mr. Churchill, I would prefer  
8 that you would refer to the party as Decade rather than  
9 "he."

10 MR. CHURCHILL: I will try. He is the only  
11 one I have ever seen.

12 JUDGE BLOCH: Or the Intervenor. It sounds to  
13 me a bit too personal.

14 MR. CHURCHILL: Okay. Let's depersonalize  
15 it. The alleged Intervenor here has identified a  
16 specific design aspect of the repair of the steam  
17 generator which he notes correctly is different than the  
18 design of the current steam generators, and for that  
19 reason we have no objections to this on the basis of  
20 relevance.

21 We do, however, have strong objections to this  
22 contention because of failure to meet the requirements  
23 of bases that are set forth in the Commission's rules of  
24 practice, and I think I should emphasize at this point  
25 in order that we can keep the proper perspective on

1 this, this is not some new and untried machine that has  
2 never been looked at by the staff before or approved  
3 before.

4           These steam generators, when they are  
5 repaired, will be essentially identical to a number of  
6 steam generators that have already been looked at by the  
7 staff in some detail or approved by the staff, and in  
8 fact are already installed in the Surrey plants and in  
9 the Turkey Point plants.

10           We are not dealing with some new and  
11 mysterious phenomenon here.

12           JUDGE BLOCH: Mr. Churchill, when you address  
13 this particular contention, it would be helpful to the  
14 board if you attempt to state each subsection of it and  
15 then your best understanding of what the basis for that  
16 subsection appears to be, and then why you think there  
17 is no adequate basis.

18           MR. CHURCHILL: Yes, sir. That is my intent.

19           The basis requirement, of course, is in  
20 Section 10 CFR, Section 2.714(b). And that says that  
21 the contention has to have bases specified, and those  
22 bases have to be specified with reasonable specificity,  
23 and the reason for the basis requirement is very clear  
24 and it is very important.

25           In the licensing of a nuclear plant, there are

1 any number of issues that could be raised. A hearing  
2 could go on forever if there is not some practical,  
3 reasonable limit on how to determine what issues to  
4 litigate in the first place. And the Commission's  
5 scheme is that when the petitioner desires a hearing, he  
6 must set forth his issue, and he must show that there is  
7 some reasonable basis that would warrant putting forward  
8 this long and expensive hearing machinery into effect,  
9 and essentially shifting the applicant's burden of proof  
10 to disprove the allegation that he is making.

11           And the initial threshold requirement that the  
12 Commission places on the petitioner is a basis to  
13 somehow show that there is a safety concern that  
14 warrants holding a hearing on this issue. The standard  
15 for granting a license or an amendment that the NRC has  
16 is that there is demonstrated reasonable assurance that  
17 the health and safety of the public will be concerned.

18           So, a contention, aside from environmental  
19 contentions, which aren't really being raised here, so a  
20 contention has to show, it has to allege that somehow  
21 there is -- something is inadequate with respect to, in  
22 this case, the repaired steam generators to protect the  
23 health and safety of the public.

24           It always has to come back to that. We are  
25 not going to litigate whether the color of the paint on

1 the outside of the plant is pleasing.

2 JUDGE BLOCH: Mr. Churchill, it would be  
3 helpful to us if you were able some time before we  
4 adjourn to give us the transcript citation at which we  
5 informed Decade that that was in fact what we intended  
6 to require at the special prehearing conference. I  
7 believe we specifically discussed that with them in a  
8 telephone conversation.

9 Mr. Bachmann could do it instead.

10 MR. CHURCHILL: I am sure we could find it.  
11 This contention is all premised on one particular design  
12 feature, the steam generators, and I realize that this  
13 is a different proceeding than the sleeving proceeding  
14 we just went through, but as the board has noted, it is  
15 the same board and the same parties. So I know that we  
16 are all familiar with the fact that in the current steam  
17 generator, they have what they call a tube sheet at the  
18 bottom of the steam generators which is essentially a  
19 22-inch fit metal plate with holes drilled in it, and  
20 the bottom of the steam generator tubes are put into  
21 those holes, and anchored into them.

22 In the current design, they are fastened in by  
23 a hard mechanical roll end welding just at the bottom of  
24 that tube sheet plate, but not at the top, so there is  
25 formed a long crevice between the tube sheet hole and

1 the tube. In this design, which is considered an  
2 improvement, an effort was made to eliminate that  
3 crevice where impurities could concentrate by expanding  
4 the tube out the entire length of the crevice.

5 JUDGE BLOCH: Mr. Churchill, just because the  
6 board is curious, and it may not be relevant, what is  
7 the history on why these were originally built with a  
8 crevice? Can you comment on that?

9 MR. CHURCHILL: I think, Your Honor, and I  
10 really hesitate to say because I am not sure I know, but  
11 I think the reason was that when they were originally  
12 designed, it probably wasn't fully appreciated that  
13 there would be any problem with the crevice. They were  
14 designed to sufficiently anchor the tubes in, and that  
15 was what was done down at the bottom. There just was no  
16 reason to roll it all the way up.

17 Now, there are some other improvements, too,  
18 which I will get into, and that is that we now do have a  
19 different rolling process which has far less -- leaves  
20 far less residual stresses in the metal than has been in  
21 the past, where we had a hard mechanical roll.

22 JUDGE BLOCH: So the earlier rolling process  
23 over a more extended portion of the tube would have  
24 caused more weakening than the new rolling process. Is  
25 that what you are saying?

1           MR. CHURCHILL: Well, as a matter of fact, it  
2 would have called more residual stress in it but I am  
3 not sure that is the reason that it was not done. I  
4 think at the next break I can talk to people, and  
5 perhaps I can fill you in a little bit more in answer to  
6 that question.

7           But in this contention, and he breaks it down  
8 into four subsections, his first allegation is entitled  
9 Residual Stresses, and he states that the newly situated  
10 roll stressed transition zone will be subject to stress  
11 assisted cracking due to residual stresses from the  
12 hydraulic expansion process, and I gather that he means  
13 by the newly situated roll zone that it is now the  
14 transition zone between the expanded part of the tube  
15 and the tube that is unexpanded now is up at the top of  
16 the tube sheet.

17           That is all he alleges in this one, is that it  
18 will be subject to stress assisted cracking due to  
19 residual stresses. Well, in the current steam  
20 generators, we have the same thing. We have a tube  
21 which is expanded, and that also has residual stresses  
22 at the transition zone. There is no way to avoid that.  
23 There are, however, some significant differences because  
24 there has been a lot of research just on this problem.

25           In the first place, the hydraulic roll becomes

1 very important.

2 JUDGE BLOCH: Is the research referenced in  
3 the steam generator report?

4 MR. CHURCHILL: The research, Your Honor, is  
5 not referenced in the steam generator report. The  
6 practical results of that appear in the steam generator  
7 report. The first is that it is a hydraulic roll  
8 instead of a mechanically expanded roll. This hydraulic  
9 roll reduces the residual stresses within the transition  
10 zone by about a factor of three. That is a significant  
11 improvement. The reason is, with a hydraulic expansion  
12 I believe it is done slowly and probably not quite as  
13 hard.

14 JUDGE BLOCH: Mr. Churchill, I have a problem  
15 at the contention stage with taking information that is  
16 not in the record already.

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1           MR. CHURCHILL: In the record, sir, I can at  
2 least refer you to the place where it is hydraulically  
3 rolled. This is at page 2-8, Section 2.2.1.3.

4           JUDGE BLOCH: Is there at least a statement  
5 that the hydraulic rolling produces less stress?

6           MR. CHURCHILL: It probably was not, but this  
7 was designed for the NRC and they know that. There does  
8 happen to be in the sleeving report, which is the  
9 subject of the sleeving hearing, a graph, a chart which  
10 shows the difference in stresses between hydraulic and  
11 hard roll. It was done in conjunction with the method  
12 of creating the joints for the sleeves, and it is a  
13 generic chart that is applicable, but it's not in the  
14 record of this proceeding.

15           JUDGE BLOCH: Should we decide that since  
16 these proceedings are so related that we could apply  
17 that to the consideration of this contention, could you  
18 give us the citation?

19           MR. CHURCHILL: Yes, sir. It appears at 6.56,  
20 and I would like to state on the record that there is an  
21 incorrect designation in it. Well, just strike those  
22 last remarks. It does appear at page 6.56.

23           JUDGE BLOCH: 6.56 of what?

24           MR. CHURCHILL: Of what we have been referring  
25 to as the sleeving report, which is the Point Beach

1 steam generator sleeving report. It is a Westinghouse  
2 document, WCAP 9960, Revision 1, dated September 1981,  
3 Revised February 1982.

4 JUDGE BLOCH: A also deals with a comparison  
5 of cracking. Is there anything in, first, the steam  
6 generator repair report for this proceeding that deals  
7 with the fact that this is thermally treated Inconel,  
8 which is more resistant than the previous mill-annealed  
9 Inconel?

10 MR. CHURCHILL: Yes, sir. That's the next  
11 important point, and that is found at page 2-8, Section  
12 2.2.1.4.

13 JUDGE BLOCH: And does that enable us to  
14 conclude that the rolled thermally treated Inconel is  
15 more resistant than unrolled mill-annealed Inconel, or  
16 is that too much of a leap?

17 MR. CHURCHILL: I hesitate to define how much  
18 of a leap you could take. Actually, what I was saying  
19 is that the transition zone in this case is subjected to  
20 significantly less residual stresses than the transition  
21 zone in the current, because of the hydraulic expansion  
22 process; and furthermore, that the resistance to such  
23 cracking is better here because of the thermally treated  
24 Inconel.

25 Now, it is not clear from this, because he

1 talks about stress-assisted cracking. He can only mean  
2 something that has to do with a corrosion mechanism. We  
3 know of no way where this would just crack in the  
4 absence of corrosion. There's nothing in the basis that  
5 would suggest that.

6 Now, the problem that I have with his  
7 contention is that when I go to his basis I really  
8 cannot find a basis that would suggest there's any kind  
9 of a safety problem with his transition zone. He has  
10 quoted a report from 1974 -- this is eight years old --  
11 which appears to be a criticism by a member of industry  
12 that Westinghouse isn't doing any research on this  
13 transition zone. In fact, that simply is not true.

14 At that time he may have been trying to  
15 encourage them to, but in fact a lot of research has  
16 been done. A great deal of research has been done, but  
17 it is not spelled out in the application because that  
18 generally isn't what would be submitted in support of  
19 it.

20 JUDGE BLOCH: You say the basis is simply  
21 outdated?

22 MR. CHURCHILL: It is incredibly outdated.  
23 The evidence that Westinghouse has done research on this  
24 is the fact that they are now using a hydraulic roll and  
25 the fact that they are using the Inconel 600, and your

1 assurances from me that there has been a lot of  
2 Westinghouse research because I have talked to the  
3 Westinghouse people.

4 JUDGE BLOCH: Some of this research I take it  
5 was in the sleeving procedure; is that correct?

6 MR. CHURCHILL: I suppose some was, to the  
7 extent that research supporting the corrosion resistance  
8 of Inconel 600. You might find some of that  
9 applicable. There has been other research having to do  
10 with corrosion of the transition zone, actually designed  
11 specifically to determine the optimum placement of the  
12 actual transition zone with respect to the top of the  
13 tube sheet.

14 In fact -- and again, I'm getting into things  
15 that aren't on the record, so I hesitate as to how much  
16 I should do it. But if you will look, sir, at the  
17 picture that Decade has attached to its petition. It is  
18 called Attachment 1 and it is way at the back. This  
19 picture, I don't know where he got it. He doesn't  
20 identify it or give us a cite for the source. But none  
21 of those four diagrams are what the case us in this  
22 particular steam generator repair.

23 The fact is, is that the transition zone is  
24 carefully placed so that actually the most highly  
25 stressed part of it actually does occur below the top of

1 the tube sheet. I think he is suggesting that Diagram C  
2 is the case that we have. It is not because -- the  
3 reason you don't put the transition zone way above there  
4 is because you don't want to have an expanded part of  
5 the tube out above the top of the tube sheet, so it  
6 could possibly bow or expand out. So it's down in  
7 there.

8 JUDGE BLOCH: The situation that we have is  
9 that the transition zone was within the tube sheet, the  
10 transition zone in the repair would remain within the  
11 tube sheet, but over a longer stretch of tube?

12 MR. CHURCHILL: No, not exactly. The  
13 transition zone is partly within the tube sheet. The  
14 most highly stressed portion of it, that is at the  
15 widest part, is within the tube sheet. And some of the  
16 research that has been done has been done with boiler  
17 tests, corrosion tests in a typical boiler test-type  
18 setup to determine the optimum crevice size, so that we  
19 could balance it with the hydraulic and mechanical  
20 considerations such that you minimize the concentration  
21 of corrodants in that crevice.

22 That is just another example of the type of  
23 research that has been done. But the point is, this is  
24 an outdated citation that Westinghouse isn't doing  
25 research. Westinghouse indeed has done a lot of

1 research.

2 JUDGE BLOCH: Just to be a devil's advocate,  
3 assuming someone does introduce a source which is  
4 outdated, does that leave us with admitting it as a  
5 contention and then dismissing it on summary  
6 disposition, or does that leave us with dismissing it  
7 outright?

8 MR. CHURCHILL: I think it leaves you with  
9 dismissing it outright, because the purpose of the  
10 requirement for providing basis is that they come in  
11 with a basis. Now, if that basis is inadequate, you  
12 have to remember he didn't supply the document; he only  
13 supplied an excerpt. This happens to be a document I  
14 tried to get a hold of and couldn't find.

15 I do, however, know it is outdated, because  
16 Westinghouse simply has done lots and lots of research  
17 in this area. If Mr. Anderson were here perhaps he  
18 could argue with that or he could explain that this has  
19 some other meaning that doesn't come across here. But I  
20 don't see how it does.

21 He has simply cited a basis which is  
22 inadequate, and I am pointing out why it is inadequate.

23 JUDGE BLOCH: If he had missed something that  
24 was in the steam generator report, he would have failed  
25 to follow directions we specifically gave him. He does

1 have to address this specific application. But I think  
2 what you're telling me is that it is not something that  
3 is already in the record that he has missed. He has a  
4 basis that he has furnished in terms of a citation, and  
5 the reason that that basis is not true is because of  
6 additional research that you can present to us to prove  
7 that that previous citation is now outdated.

8 It sounds like a factual controversy over an  
9 issue.

10 MR. CHURCHILL: Well, Your Honor, I think we  
11 have to take into consideration everything. I think it  
12 is obvious from what I have pointed out that is in the  
13 sleeve report that research has been done. We have a  
14 change in design. We have consideration of that  
15 question.

16 This happens to be obvious on its face that  
17 the basis that he has cited is outdated. But I think we  
18 also have to look at the fact that even assuming this  
19 was -- that the basis wasn't outdated, does this basis  
20 support his allegation? Now, his allegation has got to  
21 be that there is somehow a safety problem involved  
22 because of the residual stresses that he is alleging are  
23 in there.

24 He makes no reference to any basis as to why  
25 we should be concerned about that. So there are

1 residual stresses in the entire length of the steam  
2 generator tube. They are just there as a byproduct of  
3 the manufacturing process. The fact that he is alleging  
4 that there are residual stresses in no way gets us even  
5 close to questioning why we should be concerned about  
6 those residual stresses.

7 JUDGE BLOCH: Well, isn't he alleging that  
8 those stresses increase the chance of stress-assisted  
9 cracking and that, I infer, he means that that would  
10 weaken the tube?

11 MR. CHURCHILL: Yes, sir. But what is his  
12 basis for saying that the chances of stress-assisted  
13 cracking are a safety concern? He has no such basis. I  
14 could argue that there is a chance of stress-assisted  
15 cracking in the entire length of the tube simply because  
16 there are residual stresses in the tube. They are just  
17 there from manufacturing, the manufacturing process. So  
18 the fact that there are more residual stresses at one  
19 particular place in the tube does not at all tell us  
20 that there's any basis for being concerned with the  
21 additional residual stress.

22 This is my point, and I hope I'm making it  
23 clear, because it is very important. If we look at  
24 anything, the same degree, from system to system the  
25 same degree of assurance with respect to a particular

1 aspect may not necessarily be the same. But because in  
2 one place you can say you have less stress or less  
3 exposure to corrosion, for example, than in another  
4 place, that doesn't mean that there is anything wrong  
5 with the other place.

6 Now, whereas he said that we have any basis  
7 for concern about the particular stress, residual  
8 stresses in transition zone, he hasn't. There is no  
9 basis for that.

10 JUDGE BLOCH: One thing that puzzles me is  
11 that this seems to be the principal change, the rolling  
12 out of the crevice seems to be the principal change in  
13 this repair from the previous steam generator. Yet,  
14 you're telling me there was a lot of research done, but  
15 you didn't bother to cite it in the steam generator  
16 repair report.

17 MR. CHURCHILL: Well, one reason for that,  
18 Your Honor, may be that this is not new to the NRC. The  
19 NRC has seen generic documents about this. Perhaps I  
20 could find documents in there that are referenced, I  
21 don't know.

22 JUDGE BLOCH: I think that would be helpful if  
23 there were. I am not saying that we would necessarily  
24 admit the contention without that, but it would be  
25 helpful, I think, to have those citations or in fact to

1 have citations to widely available Commission documents  
2 that were recently published.

3 MR. CHURCHILL: Could I have just a moment,  
4 sir.

5 (Pause.)

6 MR. CHURCHILL: I don't know if -- again, I  
7 don't think the research is cited. One of the reasons  
8 may well have been, you will notice that this repair  
9 report is non-proprietary. We did not have to submit a  
10 proprietary repair report. To have described the  
11 research which the NRC is already aware of would have  
12 required that we to have a proprietary report.

13 JUDGE BLOCH: Do you think we could refuse to  
14 admit this contention consistent with the Allen's Creek  
15 case, which suggested perhaps that once you have a  
16 citation to an authority that says something, you  
17 shouldn't even look beyond that and question whether  
18 what it says is reasonable?

19 MR. CHURCHILL: Oh, yes, sir. The basis or  
20 the authority that is cited has to have some  
21 relationship to what is being alleged, and nothing is  
22 being alleged that there is any problem with these, with  
23 the residual stresses.

24 I know for a fact, Your Honor, that back in  
25 1974 when this was done nobody was even talking about

1 hydraulic expansions.

2 JUDGE BLOCH: But the citations says "testing  
3 the rolled-out specimens should be done under realistic  
4 environmental conditions." That is a statement from  
5 what, the Edison Electric Institute. That suggested  
6 that at that time the people who wrote that passage  
7 seemed to think there was a problem.

8 Can we go beyond and say, well, research has  
9 been done since that that rebuts that? I am really  
10 concerned about the Allen's Creek precedent.

11 MR. CHURCHILL: What I'm concerned about in  
12 this is, he hasn't even talked about whether this is the  
13 same kind of a roll. As a matter of fact, the word  
14 "roll" doesn't even apply to a hydraulic expansion.  
15 Hydraulic expansion is not a roll.

16 JUDGE BLOCH: You say it is not applicable  
17 because there is a hydraulic expansion, which is not a  
18 roll, and they are very different processes.

19 MR. CHURCHILL: That's right. There is  
20 significantly less stress.

21 JUDGE BLOCH: So he hasn't shown the relevance  
22 of this concern about a roll.

23 MR. CHURCHILL: That's right, he hasn't shown  
24 the relevance of this to the process that is used.  
25 Moreover, it is outdated.

1 JUDGE BLOCH: Have you completed your  
2 discussion of this subcontention?

3 MR. CHURCHILL: Yes, sir.

4 JUDGE BLOCH: Mr. Bachmann, would you address  
5 this subcontention.

6 MR. BACHMANN: Yes, Mr. Chairman. Very  
7 briefly, I think that the idea or concept that was  
8 addressed at the end of Mr. Churchill's presentation is  
9 the most germane, and that is the fact that it is known  
10 that this is an hydraulic expansion. The basis for the  
11 contention is that this roll procedure would cause  
12 increased residual stresses. We've got an apples and  
13 oranges situation.

14 On the contention, even though there's a cite  
15 to authority, the cite to authority does not refer to  
16 the process being used and I don't see how that could  
17 possibly form a basis for the contention.

18 JUDGE BLOCH: Thank you for being so  
19 succinct.

20 Mr. Churchill, the next subcontention.

21 MR. CHURCHILL: That wasn't a subtle  
22 criticism, was it, sir?

23 JUDGE BLOCH: No, sir. I have a feeling that  
24 our discussion helped him to be succinct.

25 MR. CHURCHILL: Thank you.

1           Your Honor, the next contention relates to  
2 sludge deposits. He alleged that the zone -- and again,  
3 we're talking about the transition zone -- will be  
4 subjected to corrosive attack because of the deposition  
5 of sludge, and he brings in again the all-volatile water  
6 chemistry treatment.

7           Now, I think the first thing I should do is  
8 point out that when you go to the basis, essentially the  
9 way I would read this and interpret it is, he was saying  
10 you are going to have a safety problem because sludge is  
11 going to concentrate in that area. All right. Now,  
12 let's look at the basis for him saying we're going to  
13 have a safety problem, because keep in mind, sir, that  
14 all steam generators have sludge. We know they have  
15 sludge. The NRC knows they have sludge. They've always  
16 had sludge and it is a recognized problem.

17           But he is saying we're going to have a problem  
18 here with sludge. Now, why is that going to be  
19 different than the problem here we now have? We go to  
20 the basis. There's nothing there. All he cites is  
21 something from a 1972 paper ten years ago relating to  
22 the GESMO-1 plant, and all he is saying is that back  
23 then in 1972 somebody at Westinghouse at that point was  
24 not recommending all-volatile treatment.

25           He hasn't given us a basis. He hasn't given

1 us a basis for the contention that the sludge that we  
2 know tends to accumulate in the bottom of steam  
3 generators will present a problem here.

4           Okay, now let's look at the other side of it.  
5 He has completely ignored what we do have about sludge  
6 in the repair report, and there's quite a bit about  
7 sludge in the repair report. First of all and probably  
8 most important, we are now using Inconel 600, which is  
9 more resistant to corrosion. We don't have that in the  
10 present steam generators.

11           Secondly, there are a number of design  
12 improvements that are specifically made to minimize, if  
13 not eliminate the deposition leaving behind the sludge.  
14 And I'll give you specific references to these design  
15 improvements and try to explain them a little bit if I  
16 can.

17           The first occurs at page 2-7 of the repair  
18 report, Section 2.2.1.1, as well as Figure 2-2. This is  
19 what they call the flow distribution baffle. This is  
20 like a plate in the shape of a donut, if you will, of a  
21 flat donut, that is put inside the steam generator  
22 covering, almost covering the outer ring of the steam  
23 generator down near the bottom. And the purpose of that  
24 plate is to have the water that comes in -- the source  
25 of the water coming in is at the top of the steam

1 generator. It runs down the outsides, across the  
2 bottom, and then up through the middle, where it flashes  
3 to steam.

4           The purpose of this plate is to direct this  
5 water farther toward the center of the bottom of the  
6 steam generator. The water continues the motion along  
7 the bottom of the steam generator and it tends to flush  
8 the water toward the center and minimize the deposition  
9 of sludge, and it also brings the sludge in toward the  
10 center of the bottom of the steam generator tube where  
11 the blowdown holes are located.

12           That leads us to the second design  
13 improvement, which is an improved internal blowdown  
14 design. The blowdown port or hole is located in the  
15 center. We have increased the blowdown capability there  
16 and made it so that you don't have blowdown originating  
17 from farther out toward the outside of the steam  
18 generator.

19           This improved internal blowdown design is  
20 discussed in Section 2.2.1.2, also on page 2-7. And  
21 there is a sentence here that says, "The blowdown intake  
22 location is coordinated with the baffle plate design so  
23 that the minimum intake is located where the greatest  
24 amount of sludge will collect.

25           And finally, there's another design

1 improvement, too, and that is found on page 2-8, Section  
2 2.2.1.5. This is called the offset feedwater  
3 distribution and basically what it does, Your Honor, is  
4 that instead of the feedwater coming into the steam  
5 generator evenly at both sides, the cold leg side and  
6 the hot leg side of the steam generator -- and again, I  
7 should say the cold side, actually, and the hot side --  
8 coming in toward the top, they have got it so that 80  
9 percent of it comes in now at the hot side and only 20  
10 percent comes in at the cold side.

11           By having more water come in at the hot side,  
12 you have more cooling of that water, and the sludge  
13 deposits traditionally have accumulated at the bottom of  
14 the steam generator more on the hot side than the cold  
15 side. By more water coming in on the hot side, you have  
16 more flow through there and you have the water at a  
17 lower temperature, and this also fights and resists even  
18 the formation of the sludge in the first place.

19           So all three of these have been designed to  
20 improve the sludge problem. The application has  
21 directly talked about it. Contradicting that, we have  
22 no basis whatsoever from Decade suggesting that we would  
23 have a sludge problem or why the accumulation of sludge  
24 with these design improvements would in fact lead to a  
25 corrosion problem that is unacceptable from the

1 standpoint of the public health and safety in the  
2 Commission's standards and requirements.

3 JUDGE BLOCH: To summarize, you have said  
4 there are at least three major improvements which lead  
5 Wisconsin Electric Power to believe there's a reduced  
6 chance of corrosion.

7 MR. CHURCHILL: Yes, sir.

8 JUDGE BLOCH: At this point we would liked to  
9 have asked Mr. Anderson to comment on whether he has  
10 reason to believe that there is a corrosion problem that  
11 is serious in light of those improvements. But of  
12 course, we are unable to ask Mr. Anderson that  
13 question.

14 Have you completed your argument on that  
15 second contention?

16 MR. CHURCHILL: Yes, sir.

17 JUDGE BLOCH: Mr. Bachmann?

18 MR. BACHMANN: The Staff has nothing to add to  
19 Mr. Churchill's presentation. However, I would like to  
20 request a short break.

21 JUDGE BLOCH: The Board declares us to be in  
22 recess for ten minutes.

23 (Recess.)

24 JUDGE BLOCH: The hearing will please come to  
25 order.

1           Mr. Churchill, during the break the Board  
2 discussed some language you used, in which we thought  
3 you meant to say "thermally treated Inconel 600" and  
4 left out the "thermally treated."

5           MR. CHURCHILL: I did leave out the "thermally  
6 treated" and that is what I meant to say. And if I can  
7 clarify for the record, the repaired steam generators  
8 will have thermally treated Inconel 600 tubes. The  
9 existing steam generators do not.

10          JUDGE BLOCH: We also thought that the  
11 diagram, Figure 2-4, might be helpful to understand  
12 where the roll transition area is, and I would like your  
13 comment on whether that would help us at all.

14          MR. CHURCHILL: No, sir. That diagram only  
15 shows the bottom of the tube at the bottom of the tube  
16 sheet. We do not have a diagram in there showing  
17 precisely where the roll transition area is.

18          JUDGE BLOCH: Is there a verbal description  
19 that discusses where the roll transition area is?

20          MR. CHURCHILL: No, there is not.

21          JUDGE BLOCH: Shall we continue with the next  
22 subcontention, Mr. Churchill?

23          MR. CHURCHILL: Yes, sir. You had asked for a  
24 transcript reference.

25          JUDGE BLOCH: Yes.

1           MR. CHURCHILL: I believe that would be at  
2 page 33 of the transcript of a September 27, 1982,  
3 conference call in this proceeding with the Board and  
4 all parties. I am not sure whether that's the one you  
5 want or not.

6           JUDGE BLOCH: I recall that what we had said  
7 was that Decade would be expected to respond to the  
8 comments the Applicant had and would in particular be  
9 responsible for knowing the contents of the steam  
10 generator repair report.

11          MR. CHURCHILL: Yes, sir.

12          JUDGE BLOCH: Thank you.

13          MR. CHURCHILL: I think that leads us to item  
14 C of contention 3, entitled "Detectability." I would  
15 like to read this one. Mr. Anderson says:

16                 "It will be more difficult for eddy current  
17 testing to detect stress-assisted defects or corrosion  
18 in the transition zone than in the unexpanded portion  
19 of" -- he says "sleeve" and I am sure he means "tube."

20                 Again, this gets me back to the argument that  
21 I made before: Supposing it is more difficult than it  
22 is in an unexpanded tube --

23          JUDGE BLOCH: There really is no allegation  
24 that there is any safety hazard associated with that  
25 difference.

1 MR. CHURCHILL: That's right, there is no  
2 allegation of a safety hazard. I could argue that the  
3 detectability of the tube in the steam generator is more  
4 difficult than looking at it in the lab, too. The  
5 question is, has he alleged a safety problem and has he  
6 provided a basis to support it, and he has not.

7 I would also state that by now the parties to  
8 this proceeding and the Board are well aware that  
9 inspectability is not the whole picture by any means.  
10 It is only one of a number of factors that one builds  
11 into this to ensure the integrity of the primary  
12 pressure system to the extent that we can have  
13 reasonable assurance of the health and safety of the  
14 public. He hasn't --

15 JUDGE BLOCH: There is a citation in the  
16 detectability basis to a statement by Emmett Murphy. I  
17 take it that the concern here really is that there might  
18 be circumferential cracks which are hard to detect in  
19 the transition area. Is there a way that we can treat  
20 this supposed basis as not establishing a basis?

21 MR. CHURCHILL: Your Honor, even if you did  
22 use that as a basis for suggesting that there could be  
23 circumferential cracks --

24 JUDGE BLOCH: Because I am also suggesting  
25 that it inferentially modifies the language of the

1 contentions, that he really means to say something a  
2 little different, as is expanded upon in this basis  
3 section.

4 MR. CHURCHILL: I have a strong objection to  
5 using the basis portion of a petition to inferentially  
6 modify the contention. The basis portion that he has  
7 here is really a quotation from a document. You can't  
8 say that the language in a quotation from a document  
9 which has already been established by the document  
10 itself could be used to inferentially modify the  
11 contention. I think the contention has to speak for  
12 itself.

13 He simply has not alleged that there is a  
14 safety problem or explained how there would be a safety  
15 problem from the fact, as he alleges, or from the  
16 allegation, that it is harder to inspect the transition  
17 zone in the tube. He doesn't allege it is inadequate,  
18 and if he does allege it is inadequate he doesn't say  
19 why.

20 JUDGE BLOCH: If there were cracks in the  
21 transition zone for which we have no picture and those  
22 cracks were circumferential and if, further, those  
23 cracks were to expand and have a double-ended break,  
24 would we now be above the tube sheet?

25

1           MR. CHURCHILL: Well, as I pointed out before,  
2 the exact description of the location of that transition  
3 zone isn't in here, and if I gave you an answer, I'm not  
4 sure you would accept it, but the answer as I understand  
5 it is, is that the most highly stressed portion of the  
6 transition zone is down below the tube sheet, but you  
7 see, there is a lot more to this story, and it is hard  
8 for me to know how to tell this story, because he hasn't  
9 made the allegations, and he has ignored the rest of the  
10 story. You have the leak before break. You have the  
11 fact that there is nothing at all to suppose that even  
12 if a crack weren't detected, you would have a safety  
13 problem or that it would lead to a circumferential  
14 break.

15           In fact, his basis himself, one of the things  
16 that Mr. Murphy said is that such cracks typically  
17 involve only a small fraction of the tube circumference  
18 before resulting in a detectable leak.

19           JUDGE BLOCH: I take it it is fairly standard  
20 when basis is presented on insisting on interpreting the  
21 entire basis as one document rather than taking one  
22 portion of it and accepting it and rejecting another.

23           MR. CHURCHILL: Absolutely, Your Honor,  
24 because the ultimate conclusion of this document and  
25 this particular -- for the purpose it was written, which

1 was in another proceeding, was that everything was okay  
2 from a safety point of view, and also keep in mind, too,  
3 Your Honor, that the majority of the steam generator  
4 tube, I don't know whether it's 99 percent of it, but a  
5 lot is not confined in a tube sheet.

6 We don't have the tube sheet. We don't have  
7 the confines of the tube sheet for protecting against  
8 defects that could occur anywhere along the tube, and  
9 there is no basis to suggest that in this particular  
10 case the transition zone confinement to the tube sheet  
11 would even be necessary.

12 JUDGE BLOCH: Have you completed your argument  
13 on this subcontention? In fact, have you completed your  
14 argument on the contentions?

15 MR. CHURCHILL: I have completed my argument  
16 on this subject. Now, his final one, there is one  
17 other --

18 JUDGE BLOCH: Well, let's wait on that one.  
19 Let's have staff's comments on detectability.

20 MR. BACHMANN: The staff has nothing to add to  
21 what Mr. Churchill has said on detectability.

22 JUDGE BLOCH: That is, I guess, my confusion  
23 on why I thought you were done is, I was looking at the  
24 basis section, where there was nothing after  
25 detectability.

1 (General laughter.)

2 MR. CHURCHILL: Which brings up a good point.

3 JUDGE BLOCH: Would you address the last  
4 subcontention?

5 MR. CHURCHILL: Yes, sir. His final point is  
6 that the transition zone is not confined to a crevice,  
7 and my point here is that there is absolutely no basis  
8 cited for why we should expect it to or want it to or  
9 need it to be confined to a crevice. He has not alleged  
10 or shown any basis as to why there would be a safety  
11 reason for it.

12 The only thing he says in his contention is  
13 that if you do have a leak there, the leak rate is not  
14 confined by a tube sheet annulus -- I am sorry, a tube  
15 sheet crevice, and as I noted before, indeed, that is  
16 the case for 99 percent of the tube, and there is no  
17 basis to suggest that there is a health and safety  
18 reason for confining this part of the tube to the  
19 crevice.

20 As the board noticed, he doesn't even state a  
21 basis.

22 JUDGE BLOCH: Mr. Bachmann?

23 MR. BACHMANN: The staff has nothing to add,  
24 sir.

25 JUDGE BLOCH: We would like some comments on

1 the procedural question of the appropriate sanctions to  
2 be taken against a party which wilfully fails to appear  
3 at a special prehearing conference. Excuse me. It is  
4 not a party. It is a petitioner. Particularly when the  
5 petitioner has not yet been admitted as a party.

6 We are particularly interested if the parties  
7 know of legal precedent that is useful on this point,  
8 but we would be interested in general argument as well.

9 Mr. Churchill.

10 MR. CHURCHILL: Your Honor, there is a basic  
11 policy that does suggest, in fact, I can read it, that  
12 almost encourages -- the board encourages that it is  
13 appropriate to impose sanctions when a participant in a  
14 hearing such as this does not fulfill his obligations.

15 JUDGE BLOCH: We of course were aware of  
16 that. We were interested in which sanctions.

17 MR. CHURCHILL: Now, I believe probably the  
18 more severe sanctions are easiest and more reasonably  
19 administered early in the proceeding, before the  
20 proceeding really gets started and before the party has  
21 actually been admitted as a party. It strikes me that  
22 this particular special prehearing conference was a  
23 particularly important aspect of this whole proceeding.  
24 This is the one when we decide whether the party should  
25 be admitted, and in particular whether and to what

1 extent his contentions, which are going to define the  
2 course of the proceeding, will be admitted.

3 I note from the transcript citation that you  
4 cited that not only did you tell him what should be in  
5 his petition, but I really believe you said that at this  
6 special prehearing conference he would be expected to  
7 appear and advise the board and explain and defend his  
8 position and advance it. He has not done that.

9 He has not yet been admitted as a party. I  
10 would wonder why that if he thinks that if this  
11 proceeding is so important and he has such overriding  
12 safety concerns about this that he has not bothered to  
13 appear, particularly in view of the fact that this  
14 prehearing conference has been scheduled for some time  
15 now, not only that it was scheduled in conjunction with  
16 another proceeding at which he was a participant, and in  
17 fact he appeared at that other proceeding.

18 He was here on Wednesday, the day before  
19 yesterday. He was here yesterday. And he advised the  
20 board and the parties at the end of the day yesterday as  
21 the subsequent hearing ended for the first time that he  
22 would not be able to appear at this prehearing  
23 conference. I looked at his petition for leave to  
24 intervene, and he alleges that he has -- when I say he,  
25 I don't mean to personalize it.

1           We are talking about the representative of  
2 Decade, the only one who has entered an appearance here,  
3 and the only one whom we have had any evidence of in  
4 this proceeding so far based on the pleadings. His name  
5 is Mr. Anderson. He is a co-director of the petitioning  
6 organization, and he advised the board and the parties  
7 for the first time at 6:00 o'clock last evening that he  
8 would not appear. He knew the prehearing conference was  
9 scheduled for today. He has known that for some time,  
10 and he has alleged in his petition that he represents an  
11 organization with a membership of some 64,000 people.

12           I am not sure what membership means, but it  
13 strikes me that somewhere there might have been one  
14 person who could have stood in for him. It is not as if  
15 he were counsel and that he was having problems because  
16 he couldn't get a lawyer. He is not a lawyer. He in  
17 fact singlehandedly handled the last proceeding, at  
18 least the last number of months of that proceeding, by  
19 himself, without benefit of counsel.

20           I look at the letterhead, which I presume is  
21 one of the more recent ones that is attached, by which  
22 he submitted his contentions, and I see that he is  
23 listed as a co-director, but I also see by name on the  
24 righthand side of the letterhead a total of 12 people  
25 there who have some kind of title or another of this

1 organization, including Kathleen M. Falk, who is listed  
2 as co-director and general counsel.

3           Now, Ms. Falk did enter an appearance in the  
4 other hearing, the sleeving hearing, although she has  
5 not attended that hearing for some time. But it just  
6 goes beyond any conceivable stretch of my imagination  
7 how an organization like this can think that it has such  
8 overriding concerns and won't even bother, especially  
9 after it was directed by the board, to send even one  
10 representative here to represent it at this special  
11 prehearing conference.

12           The board has already indicated that it itself  
13 was not only disadvantaged, but disadvantaged because it  
14 wasn't able to question Mr. Anderson about the intent or  
15 some clarifications or specifics of his allegations. I  
16 think this is a very serious breach of the  
17 responsibilities of any party who wants to start into  
18 motion this incredibly expensive, time consuming process  
19 of litigating an application, which I must emphasize is  
20 before the NRC for review. In the absence of a request  
21 for hearing, we cannot at all assume that safety  
22 concerns will be overlooked.

23           The basic regulatory scheme is that these  
24 applications are evaluated by a staff of skilled  
25 professionals who are employed by the Nuclear Regulatory

1 Commission for safety. This particular steam generator  
2 that we are talking about has already on two occasions  
3 been improved and installed. I have made my arguments  
4 that all but possibly one of the contentions that he has  
5 raised is irrelevant to the proceeding, and I have also  
6 argued as strenuously as I could that the one contention  
7 that might possibly be relevant to the new design were  
8 submitted without any basis for the board or any of us  
9 to say, hey, he might have a point. Maybe I am  
10 concerned. Maybe there is something the staff might  
11 overlook.

12 He simply provided no such basis, and under  
13 those circumstances, Your Honor, taking everything  
14 together, I think that the only reasonable sanction in  
15 this particular case would be to deny the petition of  
16 Wisconsin's Environmental Decade.

17 JUDGE BLOCH: Mr. Churchill, in the earlier  
18 proceeding on sleeving, after the demonstration project  
19 was approved, Decade appealed and failed to appear  
20 before the appeal board. Is that previous delinquency  
21 in a different case related or unrelated to the  
22 sanctions to be imposed in this case?

23 MR. CHURCHILL: That previous case, Your  
24 Honor, ALAMP 696, I am not sure that it is related  
25 directly in the sense that that is a different docketing

1 case, but it does show that this is not an isolated  
2 incidence, and it might give us a clue to the  
3 seriousness of intent and purpose of this particular  
4 petitioner.

5           He has alleged that he is being spread too  
6 thin, that he can't be in two places at once. He has  
7 done that repeatedly throughout this proceeding as well  
8 as the last proceeding. He has been warned certainly by  
9 the applicant that there is appeal board case law that  
10 suggests that while boards can make accommodations, a  
11 party cannot be expected to hold up the normal course of  
12 the proceedings because he himself lacks resources or  
13 lacks people to do it, and again, we have to keep in  
14 mind that this is not something where his rights are on  
15 trial and somehow he is being deprived of something.

16           We are talking here about this particular  
17 intervenor petitioning for and asking for the hearing.  
18 We wouldn't have a hearing, or we wouldn't even be here  
19 today if he hadn't asked for it, but he has not even  
20 bothered to follow up on his request, despite a direct  
21 indication by the board and previous notice.

22           JUDGE BLOCH: Mr. Churchill, the board is  
23 seriously considering dismissing the petitioner because  
24 of non-appearance. If we were to do that, we would like  
25 your advice on whether we should also as part of the

1 same opinion address whether the contentions and  
2 subcontentions ought to be admitted.

3 MR. CHURCHILL: Your Honor, it might not be  
4 totally inappropriate to say something about the  
5 contentions and subcontentions. I think that there are  
6 a number of different factors that the board may want to  
7 consider in dismissing the case, and one of them is the  
8 seriousness or the depth of the allegations that he has  
9 presented.

10 Now, it strikes me that it is relevant at  
11 least as one factor to consider that in the applicant's  
12 opinion nearly all of his contentions were irrelevant,  
13 and the one that I think could be relevant simply was  
14 not supported by basis to cause reasonable men to  
15 suggest that we had a safety concern such that the  
16 health and safety of the people of this country and the  
17 state of Wisconsin would be somehow jeopardized by the  
18 failure to go ahead with this proceeding.

19 I think, yes, that would be relevant.

20 JUDGE BLOCH: Mr. Bachmann, your comments,  
21 please.

22 MR. BACHMANN: Yes, Your Honor.

23 The staff generally agrees with Mr.  
24 Churchill's characterization of the status of the case,  
25 and the staff is definitely distressed at the

1 non-appearance of the petitioner's representative. So  
2 we have no opportunity to hear his explanation of these  
3 issues he has raised.

4           However, we do differ slightly from Mr.  
5 Churchill in the sense that the staff does not believe  
6 that any of these purported or alleged contentions are  
7 admissible on the basis of either not being relevant or  
8 not having basis or sufficient basis to admit them.

9           The staff believes the board should rule on  
10 the admissibility of the contentions, because, as I  
11 said, the staff did not believe that any of them should  
12 be admitted, and if so, this would obviate the necessity  
13 of dismissing the petitioner as a sanction for  
14 non-appearance.

15           JUDGE BLOCH: Of course, we could decide the  
16 case for both grounds, although I am not certain when we  
17 do a thorough review of each subcontention that we will  
18 agree that each and every one of them is inadmissible,  
19 so that it would be possible that we would say either,  
20 A, none of the subcontentions is admissible, and  
21 further, there would have been a sanction of dismissal,  
22 or we might say there are one or two subcontentions that  
23 are admissible but there is a sanction of dismissal.

24           MR. BACHMANN: I might add on the basis of the  
25 sanction that the staff thoroughly believes that the

1 Decade's representative has violated the rules of the  
2 Commission, that he has disregarded an order of this  
3 licensing board, given on the record yesterday, and I  
4 might add also --

5 JUDGE BLOCH: I don't think that is correct.  
6 I don't think we ordered him to appear, did we?

7 MR. BACHMANN: He requested leave not to  
8 appear. That request was denied.

9 JUDGE BLOCH: My understanding of what we did  
10 -- you might correct us if the language is different --  
11 is merely tell him that if he didn't appear, he might  
12 risk default, and that we might also just proceed  
13 without him. I don't think we ordered that he should  
14 appear. I am not sure we would have the authority to  
15 order that he should appear.

16 MR. BACHMANN: I stand corrected on the  
17 wording of that. As I said, he requested leave not to  
18 appear. That request was denied. That is correct, that  
19 he was warned that we would proceed without him, and  
20 that his non-appearance could subject the entire case to  
21 dismissal, so he had that warning. This is not a  
22 surprise. The staff believes that the sanctions are in  
23 order on that basis.

24 JUDGE BLOCH: But you think in any event our  
25 opinion should cover both parts of the case, the

1 subcontentions and the sanctions.

2 MR. BACHMANN: Yes, sir.

3 JUDGE BLOCH: I think in that case you are in  
4 complete agreement with the applicant. Is that correct?

5 MR. CHURCHILL: Yes, sir. I do have one other  
6 point that I think is germane here. There was another  
7 very important aspect, procedural aspect of this  
8 particular proceeding, and that is, we have said from  
9 the very beginning that we, the applicant, are under  
10 severe time constraints. We had hoped to have this  
11 prehearing conference earlier such that contentions  
12 could have been identified, if any. This was at the  
13 time before we had ever seen any of his contentions. So  
14 the discovery could have commenced, I believe the  
15 schedule that we proposed was commencing discovery on  
16 November 5.

17 The reason for that is that the outage, the  
18 refueling outage for which the repairs are scheduled is  
19 to commence October 1, 1983. Now, these things are  
20 dictated by the amount of fuel. You have to come down  
21 when you have to come down. And I believe I made a  
22 statement at the telephone conference call at the time  
23 the current schedule was established, that is, the  
24 schedule for this prehearing conference, that, yes, I  
25 believe that without necessarily cutting down any of the

1 time periods specified in the rules, that I thought it  
2 was theoretically possible starting today to complete  
3 the hearing in time to enable you to issue an initial  
4 decision in time for us to do it.

5 But I said, and if I didn't say, I will  
6 emphasize now, that it was just barely possible --

7 JUDGE BLOCH: Let me ask the following. I  
8 suppose there is a risk that under one of the  
9 alternatives we laid out, which is that we might admit  
10 one or two subcontentions, and then rule, that the party  
11 has nevertheless forfeited because of non-appearance,  
12 that we would then be reversed, that we would come back  
13 to trial four months from now or five months from now,  
14 and then you would miss your deadline. Is that a risk  
15 you are willing to take?

16 MR. CHURCHILL: Well, I think that in this  
17 particular case, the default by the Intervenors is so  
18 egregious that I would not expect to be reversed on  
19 that, particularly since this intervenor knows full well  
20 our schedule or constraints.

21 And I think also that if there were an appeal,  
22 that that would be a cogent and persuasive argument to  
23 make on the basis of that appeal, is that we simply do  
24 not have time now to go forward again with a hearing  
25 that got off to a false start because of the

1 Intervenor's default.

2 MR. CHURCHILL: We are almost done, but I  
3 guess it would be helpful to the board if the parties  
4 would say something very briefly about the specific  
5 ground given by Decade for non-appearance, which is a  
6 meeting of unspecified importance with the  
7 Governor-Elect of the state of Wisconsin.

8 MR. CHURCHILL: Yes, sir. He did not give the  
9 board a reason why he had to be at that meeting. The  
10 only reason he gave is that that was the only time that  
11 that meeting could be scheduled. He didn't give any  
12 grounds as to the importance of that meeting.

13 He didn't give any reason why he and not his  
14 co-director of one of these other officers couldn't have  
15 done that, and in fact he gave the board no explanation  
16 of why there couldn't have been alternate counsel or  
17 alternate representation at either one of those. He  
18 didn't tell the board why he couldn't send somebody else  
19 here. No explanation. Nor did he tell the board why he  
20 couldn't send anyone else to that other meeting. No  
21 explanation.

22 We don't know what that other meeting is  
23 about. He gave the board no basis for the board to make  
24 a determination that it was so important that, A, he had  
25 to attend the other meeting, or B, that he absolutely

1 could not get somebody else to cover either one.

2 I think that he really, in essence, gave the  
3 board no choice but to go ahead with the prehearing  
4 conference, because he simply did not present a case as  
5 to why he couldn't either cover the meeting or cover  
6 this.

7 I also would note that we did not -- I think I  
8 said this before -- hear about it until the close of the  
9 hearing at 6:00 o'clock.

10 MR. BACHMANN: Judge Bloch, staff would like  
11 to add the fact that the dates of the 17th through the  
12 20th of November were set up as hearing dates through  
13 the telephone conference on the record of October 6th,  
14 1982. This is not something that just happened last  
15 week.

16 MR. CHURCHILL: The board has a vague  
17 recollection of a specific recollection which a  
18 hearing board did dismiss a petitioner for failure to  
19 live up to hearing obligations, and they were reversed  
20 with the direction that certain contentions should still  
21 remain in the proceeding. Do any of the parties have a  
22 more specific recollection of that case?

23 MR. KARMAN: The Byron proceeding, Judge.  
24  
25

1           JUDGE BLOCH: Could either of you fill us in  
2 on the specific applicability of that case to the issue  
3 before us?

4           MR. KARMAN: To the best of my recollection,  
5 Your Honor, the intervening group -- the case had been  
6 going on for several years. The intervening group  
7 through its counsel apparently refused to comply with  
8 the interrogatory or the discovery schedule as had been  
9 set up. A conference call had been held between the  
10 Board and the parties. Specific dates had again been  
11 set by the Board for discovery, and again the discovery  
12 was not complied with, at which point the Board ordered  
13 sanctions and dismissed the party and its counsel from  
14 the proceeding.

15           Now again, this is not my case, you  
16 understand. But again, to the best of my recollection  
17 the Appeal Board, in trying to handle this matter in a  
18 Solomonic a manner, severely criticized the Intervenor  
19 and its counsel and indicated it was going to give them  
20 one last chance and again specified certain days, a  
21 relatively short time within which to comply with the  
22 discovery schedule.

23           That, to the best of my ability, was the Byron  
24 decision. But I don't think it is particularly  
25 applicable to this proceeding.

1 JUDGE BLOCH: Primarily because of the stage  
2 of the case?

3 MR. KARMAN: Yes, that was one of the matters,  
4 and a newly engaged counsel. It appeared, if my  
5 recollection serves me correctly, the attorney for this  
6 intervening group had come on as counsel within maybe a  
7 month or two prior to all of this.

8 JUDGE BLOCH: Does counsel for Applicant have  
9 any comment on the precedent?

10 MR. CHURCHILL: I guess the main difference  
11 would be, as Mr. Karman stated, the state of the  
12 proceeding and the particular consequences there. I do  
13 believe that as a proceeding -- as we get further and  
14 further into a proceeding, it becomes more and more  
15 difficult for the Board to impose the more severe  
16 sanctions.

17 I think it is very important to remember here  
18 we are not dealing with a party; we are dealing with  
19 somebody who is asking the Commission under its rules to  
20 grant it a hearing. He does not have that as a matter  
21 of right. He has to comply with certain obligations,  
22 and for him to have such a gross failure of one of the  
23 basic obligations right at the outset not only  
24 exacerbates the extent of the default, but it really  
25 tells us a lot, I think, about the seriousness of

1 purpose of this particular Intervenor in this  
2 proceeding.

3 JUDGE BLOCH: Are there any other matters that  
4 must be covered before we adjourn?

5 MR. CHURCHILL: Yes, sir.

6 JUDGE BLOCH: Yes, Mr. Churchill.

7 MR. CHURCHILL: This is the part that I never  
8 like, because having heatedly argued for what I truly  
9 believe should be the proper course of action, I am  
10 aware that we do have a very tight hearing schedule and  
11 I think that I would like to discuss, on the possibility  
12 that the proceeding might go forward and that a  
13 contention might be admitted, I think we have to, in  
14 order for us to finish in time for the scheduled  
15 operations, begin a hearing process.

16 The reason I don't like to do this is I don't  
17 like to dilute or imply a dilution to my previous  
18 arguments. But I think while we are all here I would  
19 like to propose a schedule.

20 JUDGE BLOCH: Mr. Churchill, I would prefer  
21 that we not. I would prefer instead that if we do admit  
22 a subcontention, were that event to occur, that we would  
23 immediately call a telephone conference to set a  
24 schedule. I think we can do it expeditiously.

25 MR. CHURCHILL: Okay. Could I at least give

1 the Board a clue as to when I think we almost need to  
2 start the process?

3 JUDGE BLOCH: If you'd like.

4 MR. CHURCHILL: I have played out a schedule  
5 in which, based on the prehearing conference today, I  
6 would like to have the first round of discovery due by  
7 December 17th. I don't have to play out the rest of my  
8 schedule, but that schedule gets us to an initial  
9 decision less than three weeks before the October 1  
10 deadline.

11 JUDGE BLOCH: Actually, I would prefer that if  
12 there is a full schedule that you would like to present,  
13 that that could be done in a letter, that we could have  
14 it and we could consider it in a telephone conference  
15 should that transpire.

16 MR. CHURCHILL: I will wait with the letter  
17 until I hear from you.

18 JUDGE BLOCH: You may mail the letter at any  
19 time. The fact that it's in our files might be helpful  
20 if we want to expedite the hearings later. Should Mr.  
21 Anderson read the record, he also is free to file a  
22 suggested schedule, as may the Staff.

23 MR. CHURCHILL: Thank you.

24 JUDGE BLOCH: Are there any further matters  
25 that must be covered?

1 (No response.)

2 JUDGE BLOCH: There being none, I would like  
3 to thank the parties for their participation, and the  
4 hearing is adjourned.

5 (Whereupon, at 11:17 a.m., the hearing in the  
6 above-entitled matter was 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 Nuclear  
Power Plant, Replacement Unit 2)

Date of Proceeding: November 19, 1982

Docket Number: 50-266-OLA-2

Place of Proceeding: Milwaukee, Wisconsin

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

ALFRED H. WARD

Official Reporter (Typed)



Official Reporter (Signature)