

NUCLEAR REGULATORY COMMISSION

ORIGINAL

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of: :
: :
WISCONSIN ELECTRIC POWER COMPANY : DOCKET NO. 50-266 OLA-2
: :
(Point Beach Nuclear Plant, Unit 1) :

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UNITED STATES OF AMERICA

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 (Point Beach Nuclear Plant, Unit 1):
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In the Offices of
 Alderson Reporting Company
 400 Virginia Avenue, S.W.
 Washington, D. C.

Monday September 27, 1982

The telephone conference in the above-entitled matter
 was convened, pursuant to notice, at 4:50 p.m.

BEFORE:

PETER BLOCH, Chairman
 Atomic Safety and Licensing Board

APPEARANCES:

On behalf of the Applicant, Wisconsin Electric
 Power Company:

BRUCE CHURCHILL, Esq.
 LISA RIDGEWAY, Esq.
 Shaw, Pittman, Potts and Trowbridge.

On behalf of the Staff of the NRC:

RICHARD BACHMANN, Esq.

On behalf of Intervenors, The Environmental
 Decade:

PETER ANDERSON, Esq.

300 7TH STREET, S.W., REPORTERS BUILDING, WASHINGTON, D.C. 20024 (202) 554-2345

P R O C E E D I N G S

1
2 CHAIRMAN BLOCH: My name is Peter Bloch. I am the
3 Chairman of the Licensing Board in Docket No. 50-266-OLA-2. This
4 is a license amendment proceeding filed by Wisconsin Electric
5 Power Company with respect to repair of steam generators by
6 replacement of major components, including the tube bundles,
7 in accordance with the Licensee's application for amendment dated
8 May 27, 1982.

9 This conference was called at the request of the
10 Applicant and the purpose of the conference is to discuss
11 scheduleing.

12 I would ask the parties to identify themselves for the
13 record. For the Applicant.

14 MR. CHURCHILL: Yes, Your Honor. My name is Bruce
15 Churchill, I am with the law firm of Shaw Pittman Potts and
16 Trowbridge. With me is Lisa Ridgeway also with the same law
17 firm.

18 CHAIRMAN BLOCH: For the staff of the Nuclear Regulatory
19 Commission.

20 MR. BACHMANN: Yes, this is Richard Bachmann, with the
21 Office of the Executive Legal Director.

22 CHAIRMAN BLOCH: For Petitioner.

23 MR. ANDERSON: Wisconsin's Environmental Decade, Inc.,
24 makes a special appearance until clarification occurs on a
25 certain matter, by its Co-Director, Peter Anderson.

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1 CHAIRMAN BLOCH: Mr. Anderson, will you please address us
2 as to what you need clarification on.

3 MR. ANDERSON: Sir, I think it is pretty clear, but I
4 just want to make sure that there is no ambiguity, that this is
5 not a special prehearing conference pursuant to 10 CFR Section
6 2.751(a).

7 CHAIRMAN BLOCH: No. The purpose is entirely one for
8 deciding and to schedule things, possibly leading to a special
9 prehearing conference.

10 MR. ANDERSON: That obviates my need to make a special
11 limited appearance.

12 CHAIRMAN BLOCH: Thank you, Mr. Anderson.

13 Mr. Anderson, I would like us to have a status report on
14 the documents that Decade is filing pursuant to the September 20
15 deadline that the Board imposed, and to the understanding of the
16 Board there will be delayed filed affidavits which will explain
17 the reason for the late filing. Could you explain what has
18 already been filed, what is about to be filed, and what we expect
19 to learn.

20 MR. ANDERSON: We filed a petition for a hearing dated
21 August 11. I don't have my notation here, but I received a
22 call in the earlier part of this month asking if we could have
23 any supplement or amendment to that petition made by September
24 20th, which will focus obviously on the letters from the
25 individuals on whose behalf we are filing the petition.

1 We have sent the letter out at the time I left town on
2 September 17th, I was out of the state. We have not received it.
3 I had left the transmittal filing to be sent by the secretary
4 if they arrived by the 20th, and they did not. My notes
5 indicate, as I was not in the office at the time, she called you
6 on September 20th saying that those returns had not yet been
7 made.

8 CHAIRMAN BLOCH: That is correct.

9 MR. ANDERSON: You indicated, apparently to her, that
10 a special filing would have to be required to accompany that.
11 I returned on Wednesday, the same day on which those documents
12 came in. I have only been holding them because we were on hold,
13 per the Licensee's request to have a prehearing conference, and
14 it is today.

15 So the status is that I have those letters. I will put
16 them in the mail today. I just wanted to find out what the
17 accompanying -- The reason I delayed it until this conference
18 call right now was to find out what the accompanying format
19 should be.

20 MR. BLOCH: Those should have been mailed, Mr. Anderson.
21 We were asking you to make up a deficiency pointed out by the
22 Applicant concerning whether or not you had appropriate authority
23 to represent individuals who lived within an appropriate radius
24 from the plant, and whether there was a sufficient interest.

25 MR. ANDERSON: Right.

4
1 CHAIRMAN BLOCH: Could you now tell me, then, do these
2 affidavits show that?

3 MR. ANDERSON: These are letters which read, "To Wisconsin
4 Environmental Decade. This is to request that Wisconsin's
5 Environmental Decade intervene on my behalf before the Nuclear
6 Regulatory Commission in opposition to the application by
7 Wisconsin Electric Power Company to replace the steam generator
8 at its Point Beach Nuclear Plant, Unit 1."

9 Are we on the record?

10 CHAIRMAN BLOCH: Yes, we are.

11 MR. ANDERSON: Should I repeat that slowly?

12 CHAIRMAN BLOCH: The reporter, I suspect, will interrupt
13 if she doesn't get it.

14 MR. ANDERSON: The first letter was signed by Joseph
15 Duark, and the second by Paul Cortens.

16 CHAIRMAN BLOCH: Do they also state that they are members?

17 MR. ANDERSON: The letter does not state that, no.
18 They are.

19 CHAIRMAN BLOCH: There is a possible problem. There has
20 to be some evidence, I believe, and I think Applicant will
21 demand it as well, that they are members, as well as the fact
22 that they are authorizing you to represent them. I think you'
23 should probably show how long they have been members, or some-
24 thing of that sort to indicate that they are good faith. These
25 are technical requirements, but they are important because

1 they are the underpinning for your intervention.

2 MR. ANDERSON: I could include that in my letter. To get
3 it back from them would be another delay.

4 CHAIRMAN BLOCH: I would like to have comments from
5 Applicant on this particular aspect of the proceeding. We, then,
6 may pass on to other scheduling matters.

7 Mr. Churchill.

8 MR. CHURCHILL: Yes, Your Honor. Our response to the
9 petition dated August 24, we cited the law and in what respects
10 the petition was deficient, not only showing the requisite
11 standing and interest through members of Decade, but also in
12 that it didn't specifically state interest, and also that the
13 interest that it did state was outside the scope of the amend-
14 ment request.

15 We asked that the petition be denied, and we pointed out
16 that this was an experienced, sophisticated intervenor in these
17 proceedings and it well knew the requirements. We also pointed
18 out our timing problems in that we don't have a lot of time in
19 order to go through an entire hearing. As everybody is well
20 aware, we now have 12 months to go through the entire process
21 of initial decision, and that means even that a license wouldn't
22 be issued until well after lots of preparation would have had to
23 have been made in this very expensive undertaking.

24 Decade was, therefore, under notice of the time require-
25 ments. We did not ask that there be an opportunity for

6
1 petition to be cured, we asked that it be denied. The staff has
2 well pointed out deficiencies in the petition and also asked
3 that it be denied, and not that it be given another chance for
4 it to be cured.

5 In spite of that, he was given an opportunity by the
6 Board, by September 20th, to cure the petition. He did not do
7 that. Furthermore, he is now saying that even he has affidavits,
8 which may or may not be sufficient, that for some reason he
9 still did not send them in. This is more than a technicality.
10 This is a case more than any other that I can think of, including
11 slewing hearing, which all of the parties on this call are
12 parties, where the procedural aspects with respect to scheduling
13 and timing could have substantial substantive effects, because
14 the plant goes down for October 1, if we don't have the authori-
15 zation or know one way or another what we are going to do, we
16 could very well foreclose entirely from doing it.

17 I see no reason at all why Mr. Anderson should be given
18 yet a third opportunity, having failed twice to provide an
19 adequate petition to intervene.

20 CHAIRMAN BLOCH: The staff.

21 MR. BACHMANN: Yes, Judge Bloch. I am quite disadvantaged
22 here in using a speaker phone and not having the regulations
23 close by me. It occurs to me, though, from what I remember of
24 the regulations that up to 15 days prior to the special pre-
25 hearing conference, a potential intervenor does have an

7
1 opportunity to amend his petition. On the other hand, I tend
2 also to agree with Mr. Churchill that the delays here, at least
3 from an attorney's standpoint, have been really somewhat
4 inexcusable.

5 The basic premise is, I suppose, that an organization,
6 according to the letter of the regulation, does have the
7 opportunity to name and identify members. Then, in turn, those
8 members could then state that the organization could represent
9 them. I don't think that it is quite as closed as has been
10 stated, wherein they must themselves identify themselves as
11 members. I am just going from the exact words of the regulation,
12 and not going from that which is available.

13 If we get to the situation, however, where we are within
14 those days preceding the prehearing conference, the first
15 special prehearing conference, the 2.751(a) special prehearing
16 conference, I would be definitely stronger in my opposition to
17 allow a petitioner for intervention any more chance to cure the
18 petition. This is pretty much the staff's position at this
19 point.

20 CHAIRMAN BLOCH: Mr. Bachmann, when I commented on the
21 intervenor saying that he was a member it was because of
22 experience in the Perry decision in which it turned out that
23 there was a person who thought he was a member, but the organiza-
24 tion had no record or recollection of that.

25 It seems to me that to some extent membership is a

1 reciprocal thing. It is nice, certainly, to pin things down.
2 Both the organization has to believe he is a member, and he has
3 to believe that he is a member.

4 In addition, at this point, it seems to me he should have
5 been a member when the petition was filed. Do you have any
6 comment on that?

7 MR. BACHMANN: I would say that an affidavit from Mr.
8 Anderson under oath, stating that this person indeed was a
9 member of Decade at the time the petition was filed, and signed
10 and sworn to by Mr. Anderson as an official of the organization,
11 at least should be enough to move forward in this area.

12 CHAIRMAN BLOCH: Mr. Churchill, before we ask Mr.
13 Anderson, do you agree that this would be sufficient to
14 demonstrate membership?

15 MR. CHURCHILL: I would be satisfied with that to
16 demonstrate membership, but I have other problems with the defects
17 in the affidavit.

18 CHAIRMAN BLOCH: Could you expand a little bit orally,
19 before we give Mr. Anderson a chance to respond, on the problems
20 with paragraph 4 of the petition, stating that they have a
21 recognized life and property interest. What more do you think
22 they should state in order to establish a safety concern for
23 the organization and the individual members?

24 MR. CHURCHILL: I am looking for the petition.

25 Your Honor, it states that Decade has a recognized life

1 and property interest.

2 CHAIRMAN BLOCH: Your problem is that it is the individuals
3 who have that?

4 MR. CHURCH: Yes. The individual must show how (a) that
5 he has an interest; and (b) that he wants Decade to represent
6 that interest. From what heard read by Mr. Anderson, the
7 individual does not state what his interest was.

8 CHAIRMAN BLOCH: As I heard it, it did not state where the
9 individual resided. I am not sure of the distance from the plant
10 or what the nature of the interest was.

11 Mr. Anderson, would you like to comment at this point?

12 MR. ANDERSON: I would, if I may, Mr. Chairman.

13 I would be less than honest and less than forthright if
14 I did not say here and now that I am appalled at the focus that
15 is being placed in this proceeding by the Licensee and the staff.
16 The Nuclear Regulatory Commission and the industry have been on
17 notice since at least 1971 about the enormity of the safety
18 problem from degrading steam generator tubes.

19 Through the 11 years that have transpired since that
20 time, it has been one attempt at evasive action to avoid
21 resolving that problem after the other. In our view, with all
22 due respect, I must say that the focus of the discussion by the
23 Licensee and the staff is not taken as a good faith legal
24 representation on our part, but rather as an attempt to continue
25 to take evasive action that can only have its final consequence

1 in a nuclear nightmare that will be catastrophic to all of us.

2 I would like to add one more thing, if I may, Mr.
3 Chairman. There is a fundamental inconsistency in Mr. Churchill's
4 position. On the one hand, he is saying, we have to move quickly
5 because of the urgency that the Licensee perceives. On the other
6 hand, Mr. Churchill is quibbling about every small, slight,
7 meaningless technicality, that obviously will be resolved, but
8 if dwelled upon could take weeks, months, and years of every
9 one's time for no import.

10 I think that the reason for that inconsistency in our
11 view is because he is attempting simply not to pursue a legal
12 interest, but to wear down with trivia and layers of meaningless
13 formalities, an intervenor who has far less legal resources.

14 I think that the rules of the Commission provide, under Section
15 10, CFR 2.751(a), that we have a right, prior to 15 days before
16 the special prehearing conference, to amend. There is not short-
17 coming, or lacking, or anything else on the part of the
18 intervenor.

19 I would urge that if we are going to move forward in this
20 spirit of accommodation to serve the public interest from all
21 our perspectives. Any further dwelling on this kind of
22 minutia is simply counterproductive, and I think in the long
23 run analysis, when something does go catastrophically wrong, will
24 redound very substantially to the reflection on the motivation
25 of the parties involved. That completes my statement.

1 CHAIRMAN BLOCH: Mr. Anderson, I understand from dealing
2 with you in the prior proceeding on the license amendment on
3 Point Beach, that you feel extremely strongly about licensing
4 matters and their dangers. We respect you for that feeling.
5 But we are asking questions that, however trivial they may seem
6 to you, are nevertheless matters on which legal standing may
7 depend and which the Board is going to have to rule on.

8 I hope that you will not overlook these minutae in your
9 concerns for the big picture.

10 I just would like to know whether we are correct in
11 having heard the affidavit, that also does not establish the
12 place of residence of the individual.

13 MR. ANDERSON: The place of residence is not stated in
14 the letter sent to us, but it is a matter of record in terms of
15 the phone book, or whatever. They do reside in Two Rivers and
16 White Law respectively.

17 CHAIRMAN BLOCH: And those are within what distance of
18 the plant?

19 MR. ANDERSON: I think White Law would be something like
20 12 miles, and Two Rivers certainly would be within 20 miles of
21 the plant.

22 CHAIRMAN BLOCH: Presumably they can file affidavits that
23 state their place of residence, and also states that they are
24 concerned for their safety.

25 MR. ANDERSON: Certainly, but I would add that if you

1 want affidavits, these are farmers, we have to recognize.

2 CHAIRMAN BLOCH: You can talk to them.

3 MR. ANDERSON: All I am saying is that each additional
4 layer of detail and legal procedure one wants and demands will
5 delay. I am just trying to make it clear that if you want to
6 move expeditiously, one is going to have to not make so many
7 demands in these courts. These are not legal law firms. Talking
8 about affidavits means additional time.

9 We call them, and they are out in the field plowing,
10 taking their harvest in, explaining to them what it is, making
11 arrangements, each thing takes time. These are not legal law
12 firms.

13 CHAIRMAN BLOCH: Okay. Mr. Anderson, if you just
14 thought it through, there are certain steps that have to be
15 taken. It might have been done only once, and then you would
16 have been done with it. It has to get done, and it has to be
17 done right before you are admitted as a party.

18 Can you, as a matter of your own affidavit, state to us
19 that these people are members and the date of their membership?

20 MR. ANDERSON: No, I can't. Our files don't go back
21 more than I don't know how long, a year and a half. I can
22 state that they were parties as members. I can state that they
23 were members as of a certain date, but in terms of the
24 initiation date of membership that is lost to time.

25 CHAIRMAN BLOCH: No, members as of a certain date prior

1 to the date that you filed the petition.

2 MR. ANDERSON: These go back to a PSC proceeding in
3 1980.

4 CHAIRMAN BLOCH: And they have been members since.

5 MR. ANDERSON: Yes.

6 CHAIRMAN BLOCH: What you will have to do, for the
7 record, is to establish carefully that you have met all the
8 standing requirements. It is technicality from your viewpoint,
9 but it is essential technicality. It has to be done, and it has
10 to be done 15 days before the special prehearing conference.

11 Mr. Churchill, I know that you have in mind -- Assuming
12 that this first hurdle is gotten over, which is not certain at
13 this time, but Mr. Anderson understands what is required and it
14 seems that he may be able to meet these requirements. The
15 Board is not prepared to rule at this point that he is unable to
16 correct his petition. What is the schedule that you would like
17 to suggest for the filing of the last amended petition and for
18 the special prehearing conference?

19 MR. CHURCHILL: Your Honor, I can answer the second part
20 about the special prehearing conference, but I would like to
21 make a comment on the rules. The rules do not say that he has
22 until 15 days prior to the special prehearing conference to amend
23 his petition. The rules state that he shall submit a supplement
24 stating the contentions in 15 days prior to the special
25 prehearing conference.

1 An amendment to the petition has to be done on a showing of
2 good cause. The rules do not provide that he has the opportunity
3 to come in 15 days before the prehearing conference with the
4 amended petition. I am referring to 2.714(a)(3).

5 CHAIRMAN BLOCH: The Board will take a brief recess to
6 examine the rule.

7 MR. CHURCHILL: Excuse me, I may have misspoken slightly.
8 He can amend it without prior approval up until that time. After
9 that time, good cause has to be shown. I was referring to
10 2.714(b) which states that the supplement must be filed 15 days
11 prior to the 2.751(a) special prehearing conference.

12 CHAIRMAN BLOCH: If I heard you correctly, then, you
13 agree that up to 15 days prior to the special prehearing
14 conference, the petition may be amended. As far as you repre-
15 sent to us at this time, the law does not preclude an amendment
16 that meets objection to standing.

17 MR. CHURCHILL: I am sure that that wasn't the intent of
18 that particular provision, Your Honor.

19 CHAIRMAN BLOCH: How are you sure?

20 MR. CHURCHILL: Because of the way it is written. The
21 2.715(a) special prehearing conference is established to
22 consider, among other things, the contentions that are submitted.
23 We would have to read in there that that could be established
24 also to take into consideration the defects in the petition. I
25 have always read 2.714(a)(3) to mean, if there were some kind

1 of substantive amendment, if he wanted to change it, not
2 necessarily to cure the defects.

3 In any event, our primary argument, Your Honor --

4 CHAIRMAN BLOCH: Wait a second, Mr. Churchill. The first
5 sentence of (3) says, "Any person who has filed a petition for
6 leave to interve or who has been admitted as a party." It
7 suggests that even if you have not been admitted as a party, you
8 may amend.

9 MR. CHURCHILL: Yes, but it is my understanding, in this
10 particular case where we have pointed out the extreme scheduling
11 problems, he was ordered by the Board to provide the amendment to
12 cure the petition by September 20th.

13 CHAIRMAN BLOCH: I understand that.

14 MR. CHURCHILL: This he did not do.

15 CHAIRMAN BLOCH: Now the question that I asked you, what
16 would you suggest as a date for the special prehearing conference?

17 MR. CHURCHILL: Excuse me one moment.

18 (Pause.)

19 MR. CHURCHILL: Your Honor, the schedule that I would like
20 to propose, assuming of course that the petition would be cured,
21 is a special prehearing conference for October 19. Actually,
22 Your Honor, the date that I had in mind, and which I informed
23 Mr. Anderson of last week when I called him, was that the filing
24 of his special supplement to his petition stating his contentions
25 would be filed by October 1, in which case the special prehearing

1 conference could be October 15. However, October 15 falls on
2 a Friday, and I think a more convenient day for a special
3 prehearing conference would be on a Tuesday, the following
4 Tuesday.

5 CHAIRMAN BLOCH: Mr. Churchill, what are the Federal
6 Register notice requirements that we have to meet?

7 MR. CHURCHILL: For a special prehearing conference?

8 CHAIRMAN BLOCH: Yes, are there any?

9 MR. CHURCHILL: I am not sure that there would be any as
10 far as the number of days. I would have to check.

11 CHAIRMAN BLOCH: I think we may need 15 days notice,
12 analogous to a construction permit, but I ask you that sincerely
13 because we are going to have to give adequate notice if it is
14 a public hearing.

15 MR. CHURCHILL: Just a minute. I will see if the rules
16 cover that.

17 (Pause.)

18 MR. CHURCHILL: I am reading 2.715(a) and I don't see any
19 particular restriction on that, Your Honor, other than the
20 special prehearing conference will take place sometime within
21 90 days after notice of hearing.

22 CHAIRMAN BLOCH: Isn't there a requirement that it has to
23 be a public hearing?

24 MR. CHURCHILL: Probably the general requirement that this
25 is all part of a public hearing, Your Honor, but I don't see

1 any specific requirement for the duration of the notice prior to
2 a special prehearing conference.

3 CHAIRMAN BLOCH: I am not seeing it right now, but I
4 think that there is one. I think there was one proceeding in
5 which there was a successful intervenor's motion in court based
6 on failure to give adequate notice.

7 In any event, the Board would intend to give at least
8 15 days prior notice before a public hearing, and it takes about
9 a week after we send a notice to the Federal Register for it to
10 be published. So that will push the date you are suggesting.
11 That one consideration alone would push it.

12 MR. CHURCHILL: Wouldn't that still give us enough time,
13 if it were on the 19th?

14 CHAIRMAN BLOCH: Barely. It would be nip and tuck.

15 MR. CHURCHILL: That is assuming that there would have to
16 be 15 days notice. We are not in a situation such as the notice
17 of opportunity for a hearing, where we are notifying other
18 members of the public of their right to come and submit a
19 petition to intervene or make limited appearance statements.

20 CHAIRMAN BLOCH: It is the right of the public to come
21 to the hearing and to know where it is going to be held.

22 MR. CHURCHILL: That's right, and that may be the reason
23 why there is no specified number of days, or why it wouldn't
24 be necessary to have even as much as 15 days notice. Certainly
25 it should be a reasonable notice. But subject to further check,

1 Your HONOR, I am not sure that there is a 15 day notice period.

2 CHAIRMAN BLOCH: Have you completed your presentation on
3 your suggested hearing date?

4 MR. CHURCHILL: No, I have not. I thought I could run
5 that out a little more.

6 It was an October 19 prehearing conference, preceded by
7 an October 1 date for the petitioner to submit his contentions.
8 What I would hope for is that by November 5 there may have been
9 a Board ruling on which contentions are in and which are out,
10 so that the first round of discovery could commence.

11 CHAIRMAN BLOCH: The Board's ruling will depend to some
12 extent on the complexity of the contentions and the response .

13 MR. CHURCHILL: Absolutely, Your Honor, and I cannot
14 suggest a particular time for the Board to rule. This is only
15 a suggestion that if we did have a special prehearing
16 conference and if it were possible to get a Board ruling in
17 late October on that, then we could proceed with the first round
18 of discovery on November 5.

19 CHAIRMAN BLOCH: The Board will always act with diligence,
20 and we hope that it will be the same with the parties.

21 You want to spell out what that means for the rest of
22 the schedule; is that what your argument is?

23 MR. CHURCHILL: I think probably at this point in time
24 that is all I would be requesting, that we get the special
25 prehearing conference going which requires the submission of

19
1 contentions, so that we can start our first round of discovery
2 in early November.

3 CHAIRMAN BLOCH: Your important objective is to begin
4 the sleeving project in October 1983?

5 MR. CHURCHILL: October 1, 1983.

6 MR. ANDERSON: Excuse me, Your Honor, but I think you
7 meant to say, replacement project.

8 CHAIRMAN BLOCH: If I said sleeving, I meant repair or
9 replacement.

10 MR. CHURCHILL: Yes, we would have to have authorization
11 by October 1, that is the date that unit 1 would be shut down,
12 and work would begin promptly. We would anticipate that this work
13 would take about six months. Not only because of the fuel that
14 is in there now, which pretty well indicates when the plant
15 would come down, but just all of the scheduling that is necessary
16 to start the work, plus the importance of getting the plant up
17 again promptly at the completion of the sleeving program, makes
18 it very important that we do have an initial decision in time
19 to start by October 1.

20 CHAIRMAN BLOCH: To be clear, do you already have a
21 commitment from your contractors that they will begin on that
22 date if licensing approval has been obtained?

23 MR. CHURCHILL: Yes, sir, we certainly do.

24 CHAIRMAN BLOCH: Do we have that commitment for us in our
25 record?

1 MR. CHURCHILL: You do not have that commitment in the
2 record, Your Honor. It has not been part of the application,
3 and those things generally are not.

4 CHAIRMAN BLOCH: You have made that statement on the
5 record, and we can rely on you. But is important that we have
6 that as a firm assurance, if that is what we are going to base
7 our expedition in this proceeding on.

8 MR. CHURCHILL: Yes, sir, you have my assurance.

9 CHAIRMAN BLOCH: When you say, there is a firm commitment
10 to do it, does the contract also call for penalties for lateness?

11 MR. CHURCHILL: I don't have an answer for that, Your
12 Honor. It may not.

13 CHAIRMAN BLOCH: The reason I am interested is that it
14 could be sort of an agreement to present to the NRC, a statement
15 that you would like to begin on that date, but if there is no
16 penalty for breach, it may not be a real contract to start on
17 that date.

18 MR. CHURCHILL: I couldn't begin to get into the
19 contractual consequences of missing that date. I don't have
20 the contract in front of me, and it may well be proprietary.

21 CHAIRMAN BLOCH: Is it the kind of thing that is subject
22 to possible scheduling difficulties by the contractor?

23 MR. CHURCHILL: I do know this, Your Honor. Yes, it is
24 subject to scheduling difficulties. I do know that in the
25 contract great pains were taken to make sure that that date

1 would be upheld by the contractor. The contractor, incidentally,
2 is Westinghouse.

3 CHAIRMAN BLOCH: But this is not the kind of situation,
4 as we had in the last case that we were in together, where
5 Westinghouse could come up to October and said, "We have decided
6 to take on some other project first. Therefore, we can't get
7 to you."

8 MR. CHURCHILL: In this case, I believe it is not, Your
9 Honor. The steam generators have already been ordered. They
10 are probably mostly fabricated by now. The major parts will be.
11 As far as I know that work is in progres. The steam generators
12 will, in fact, arrive on site sometime prior to the beginning
13 of work. A temporary construction building was erected to
14 house them, or will be erected.

15 CHAIRMAN BLOCH: The delivery of the piece, therefore,
16 has been promised on a particular date, but I think the more
17 difficult question is the labor, because apparently Westinghouse
18 does sometimes develop competing concerns from its different
19 customers.

20 MR. CHURCHILL: I do know that the Wisconsin Electric, in
21 negotiating the contract, went to great length to make sure that
22 the contract provide assurances that Westinghouse would be
23 ready and able to do this work on October 1. I can't tell you
24 the details because I don't know them in the sense that I don't
25 have the contract before me. Secondly, before I did that on a

1 public record like this, I would have to check with Westinghouse
2 and the company to find out how much, if any, of that was
3 proprietary.

4 CHAIRMAN BLOCH: I am not sure how much of an effect this
5 has at this stage, but you understanding that you are asking
6 for special consideration on scheduling based on this contract,
7 and you really should know the extent to which this is firm, or
8 the extent to which it is something that can easily slip because
9 it is possible, if not at this time, but at a later time, that
10 the degree of firmness in that arrangement would affect the
11 degree of expedition to which you are entitled.

12 MR. CHURCHILL: Two comments on that, Your Honor.

13 One is that I don't believe that I am asking for expedited
14 schedule per se, in the sense of asking that any normal time
15 periods be abbreviated and so on. I am only asking for an
16 efficient schedule that would begin right away, because as we
17 all know in these things, we cannot predict. A week or two
18 comes in here, and it comes in there, and schedules get
19 stretched out, particularly when we are starting here at the
20 beginning with much more than was anticipated.

21 So at this point, I would not like to use the word
22 expedition because we are not asking for any special shortening
23 of any periods of time specified in the regulations.

24 The second point I would like to make is that the
25 company itself would be at a tremendous financial disadvantage

1 if they could not begin the work at this time. It is not just a
2 question of a contract provision with Westinghouse, but it is a
3 question, with all the resources of the company being geared up
4 to go ahead with this work, and the very significant damage it
5 would suffer if it couldn't begin at this time.

6 I can undertake, Your HONOR, to keep the Board informed
7 if unforeseen circumstances should come up and for reasons
8 other than the hearing it looks like that schedule might slip.
9 But I can tell you that the company is going to do everything in
10 its power to make sure that that schedule is adhered to.

11 I believe that it is possible, if this hearing process
12 is schedulee efficiently, to complete the process in time to
13 have an initial decision prior to October 1. I don't think at
14 this time it requires what would actually be called expedition,
15 but it does require an efficient schedule that begins immediately.

16 CHAIRMAN BLOCH: We appreciate that.

17 Mr. Anderson, what schedule would you suggest for the
18 special prehearing conference?

19 MR. ANDERSON: I would like to, sir, first pose a question
20 to you, if I may. The schedule that we have from Mr. Churchill
21 in the sleeving docket, OLA-1 has a September 22nd date labeled
22 "Possible Board Decision on Litigable Issues." That hope is
23 obviously not realized. Could I ask, if I may, if there is an
24 anticipated date or expected of arrival of the sleeving
25 decision?

1 CHAIRMAN BLOCH: We hope to issue that within a week, and
2 it could be much less time than that. Certainly we hope to do
3 it within a week.

4 MR. ANDERSON: The reason I asked that question is that
5 the answer to Mr. Churchill depends upon what transpires in that
6 proceeding, namely, the fact is, we have two proceedings going
7 on at the same time, and for a party with extremely limited
8 resources that is next to impossible to do.

9 If that proceeding is truncated by a decision denying any
10 litigable issues, time is freed up to turn to this proceeding.
11 But if that proceeding is going on hot and heavy during the month
12 of October, and extending through the last week in October,
13 decision-making in two proceedings going on at the same time
14 will be tantamount, under the conditions we have in the real
15 world here, to preventing an effective representation on the
16 latter.

17 I would like to add on that score that I do not believe
18 that the Licensee comes through with clean hands. There have
19 been a number of attempts at the State and Federal level to
20 provide some equality of economic and financial ability to
21 participate and the company has vigorously prevented that from
22 happening.

23 So the company has taken a position consistently to prevent
24 us to have the financial wherewithal to proceed with expedition,
25 and then to come in the next day and say, "We h to have

1 expedition," can be construed as an attempt, basically, by
2 economic dominance, to prevent another side of the story from
3 being heard.

4 CHAIRMAN BLOCH: Mr. Anderson, how long will it take you
5 to file reasonable contentions that will live up to the contention
6 requirements of the NRC, if that is the only thing you are doing
7 now and you don't have the other proceeding to worry about?

8 MR. ANDERSON: October 15.

9 CHAIRMAN BLOCH: Until October 15 to file?

10 MR. ANDERSON: With the caveat that the other proceeding
11 is not going on at the same time.

12 CHAIRMAN BLOCH: I take it that that process has already
13 begun.

14 MR. ANDERSON: No, it has not started. I have in front
15 of me here the Point Beach Nuclear Plant steam generator repair
16 report, and I have not had time to do anything more than a very
17 cursory way to look at it. I have not begun the process of
18 writing contentions for OLA-2.

19 CHAIRMAN BLOCH: But you did receive that document in
20 August?

21 MR. ANDERSON: I received that document on August 18,
22 1982

23 CHAIRMAN BLOCH: Okay. Have you anything further to say
24 about the schedule. The earliest date you would suggest, if
25 there was nothing going on in the other proceeding, November 1

1 would be satisfactory. But if there are other things going on
2 in the other proceeding, you may need more time.

3 MR. ANDERSON: November 1 would be your assumption as to
4 the time required between the filing and the prehearing. All I
5 would say, we would be willing to accept a date of October 15
6 for filing the contentions.

7 I have another thing that I want to say. I think, in
8 fact, we all recognize that Mr. Churchill is seeking expedition.
9 I think in terms of whether the company is entitled to expedition,
10 there are two questions that you that you can bifurcate the issue
11 into. One is, what kind of contracts, and so forth, have they
12 entered into. In terms of that, it is our belief that if they
13 move in advance of their permit from the appropriate regulatory
14 bodies, they do so -- I think the law supports this -- at their
15 own risk.

16 It would be no different than my saying, I have
17 scheduled a vacation in the Bahamas for the whole month of
18 October, and I am entitled, therefore, to have no hearing in that
19 time. Obviously, it depends upon the relation of the application
20 to the public interest.

21 I think their contractual obligations, if there are any
22 and they are established, would be irrelevant. The issue is
23 what are the safety needs for installing the steam generators
24 in the 1983 refueling period. I think we would argue, and we
25 would hope the Board would adopt this position, that if

1 expedition is required, that they make a showing that can be
2 responded to with accompanying affidavits as to the safety needs
3 for undergoing the repair in October of 1983.

4 CHAIRMAN BLOCH: Mr. Anderson, obviously, the need for
5 that is economic, not safety. There is never any safety need to
6 do something sooner rather than later. If there is, they can
7 close the plant down. I don't understand your point.

8 MR. ANDERSON: If they chose to procure contracts arguendo
9 that impose penalties or incur costs related to this repair if
10 they don't go forward on that date, they incurred those contract
11 liabilities prior to receiving regulatory approval. I believe
12 that the rule of law is that they have done so at their own risk,
13 and that is their problem.

14 CHAIRMAN BLOCH: Your argument is that there was no
15 safety need to do the repair that soon. In fact, the generator
16 is safe enough that they could have gone beyond October of 1983?

17 MR. ANDERSON: No, I am not saying that. I am saying that
18 it is their requirement to make a showing that it is a safety
19 concern past October, which they could make a good showing about,
20 perhaps. I would add that they could make a showing that it is
21 economically not efficient to operate it after October. But
22 they cannot add to that economic argument any concern as to any
23 contractual penalty clauses, because those contracts are with
24 respect to a proposal that has not yet been approved by the
25 regulatory bodies.

1 Obviously, if that kind of contractual liability had to
2 be considered by the Board, you could be whipsawed backward and
3 forward, and have your freedom of action improperly constrained.
4 That is why I believe that you have to interpret those contractual
5 penalties, if any, as being incurred by the company at its own
6 risk and outside the consideration of this Board.

7 CHAIRMAN BLOCH: Mr. Bachmann, your advice, please.

8 MR. BACHMANN: About all that the staff can add to that,
9 obviously, is the fact that even after the Board issues its
10 initial decision, it merely authorizes the staff to make the
11 rest of the safety and environmental findings that need to be
12 made.

13 In other words, whatever is brought into issue here, and
14 assuming decided in the favor of Wisconsin Electric, the staff
15 still needs to complete its entire health safety and environmental
16 concerns. So we are attempting, or at least the staff is
17 attempting to be as neutral as possible in this particular
18 area. We will assume that we will make our findings as things
19 progress.

20 I might add, just for the benefit of the parties, that
21 it appears that a fairly realistic safety evaluation will not be
22 coming from the staff until December, and I would say, being
23 perhaps even more realistic, January.

24 CHAIRMAN BLOCH: This is January 1983?

25 MR. BACHMANN: December 1982, January 1983.

1 Additionally, there has been talk about the desirability
2 of an environmental impact statement in this case, which has not
3 yet been officially decided here by the staff and, therefore, I
4 am just mentioning it as a point that may put us even possibly
5 past that date before the staff has made its findings.

6 So, while the staff can sympathize with both Mr. Anderson
7 and Mr. Churchill, we have our own schedule that we are going
8 to have to follow to make our own findings in order to issue the
9 amendment, if indeed the Board authorizes the Director of NRR to
10 issue such an amendment.

11 CHAIRMAN BLOCH: I am not sure how that cuts. It arguably
12 does not affect in any way how we ought to schedule our hearing,
13 or are you suggesting that it has some weight in favor of one of
14 the parties?

15 MR. BACHMANN: No, sir. What I am saying is that the
16 staff, at the end of the hearing, assuming there is one, will be
17 given or not given authorization to proceed to make findings to
18 issue the amendment. As a result, we are between both parties.
19 In other words, the staff has no real stake in either pushing it
20 forward or pushing it back. Obviously, we would attempt to
21 keep our technical reviewers along with the hearing process, and
22 not delay it in any respect. At the same time, we have no real
23 stake in accelerating it.

24 The best I can say at this point is that the staff will
25 continue to attempt to make the deadlines put upon it -- when I

1 speak of the staff, I mean the technical staff -- by the Board.
2 Beyond that, we really have no position on this.

3 MR. ANDERSON: Mr. Bloch.

4 CHAIRMAN BLOCH: Yes.

5 MR. ANDERSON: To answer the question that you posed to
6 Mr. Bachmann, I think one implication of his statement to the
7 schedule would be this: In OLA-1, it was recognized the need to
8 have discovery on the SER as it pertains to discovery on staff.
9 If we are going to have discovery as to the SER as well, Mr.
10 Bachmann's statement would appear to imply that there would be
11 no point in having first round discovery completed until January
12 of 1983, which would obviate the need to rush the preceding part
13 of the schedule.

14 CHAIRMAN BLOCH: We had a rather unusual procedure in OLA-1.
15 The usual procedure is that you must have to contentions
16 admitted generally before the SER. At the time the SER is issued,
17 you have new contentions admitted only if there is good cause for
18 late filing as a result of the issuance of the SER.

19 There is no automatic discovery on the SER, unless you
20 have a new contention admitted as a result of good cause flowing
21 from the SER.

22 MR. ANDERSON: I was trying to do something different,
23 which is to relate the SER to the discovery, as opposed to the
24 submission of contentions.

25 CHAIRMAN BLOCH: I see. You are saying that the SER

1 could contain information relevant to admitted contentions.

2 MR. ANDERSON: Yes, and with regard to which discovery
3 is appropriate.

4 CHAIRMAN BLOCH: Which could affect the scheduling of
5 the close of discovery.

6 MR. ANDERSON: That is correct. If we are going to push
7 discovery back, that would mean that there would be less need to
8 have a crushing period for the contentions.

9 CHAIRMAN BLOCH: Mr. Churchill, do you see any implications
10 of the staff's statement on the SER for when the special pre-
11 hearing conference should be held?

12 MR. CHURCHILL: No, sir, there are no implications what-
13 soever on that. In fact, the recent Appeal Board decision in
14 the Duke Power Company, it is the Cawtawba decision, ALAP 687,
15 made it very clear that you do not wait for the issuance of the
16 SER before you settle on contentions.

17 CHAIRMAN BLOCH: But Mr. Anderson was suggesting that
18 you might, before you close the discovery period on admitted
19 contentions.

20 MR. CHURCHILL: NO, sir. I have very strong views on
21 that. I think that the majority and I believe all of the
22 discovery should be undertaken immediately after the conten-
23 tions have been admitted.

24 I don't think that there is anything in the regulations
25 or even in the statement of consideration, or in the policy

1 statements that say that discovery should wait until the SER is
2 out. Mr. Anderson may argue at some later time, after the SER
3 is out, that he should have an opportunity for additional
4 discovery after that. If he does argue that at some later date,
5 we will give our position on that. But it is not his as a matter
6 of right to wait until the SER is out before discovery begins.

7 Number one none of this has any bearing on when the
8 special prehearing conference would be held, because we have
9 to start that right away. Number two, after the special pre-
10 hearing conference and your order admitting contentions, if any,
11 discovery should proceed immediately. The question of whether
12 the SER, which is really just the staff's view of information or
13 ~~the~~ assessment of information that has already been submitted on
14 the record, generally does not contain new information. That
15 definitely should not wait to hold up the entire discovery
16 schedule as Mr. Anderson is suggesting.

17 CHAIRMAN BLOCH: Mr. Anderson, before we conclude this
18 conference, I would like to talk with you briefly about the
19 form for contentions because in OLA-1, in which we all partici-
20 pated together, we had a special way in which we considered
21 contentions, because of special expedition. That does not
22 apply here.

23 I just would like to call your attention to a decision
24 that the Chairman participated in in the Perry case, Licensing
25 Board Panel 8124, it appears at 14 NRC 175, 1981, particularly

1 page 184, which lists some of the factors which might be
2 considered for admitting a contention.

3 I am pointing it out to you because in this case, it is
4 a license amendment proceeding. We already have an application
5 that is filed that has a table of contents. We would expect,
6 when you file bases for contentions that you will show that
7 you understand this particular project well enough so that there
8 is no complete answer to your contention in the already filed
9 application.

10 Do you understand what I am saying, Mr. Anderson?

11 MR. ANDERSON: That was always my understanding. That wa
12 one of the reasons why I indicated that it would be next to
13 impossible to do this at the same time the other one is going
14 on. I understand what you are saying clearly.

15 CHAIRMAN BLOCH: The other parties understand this as
16 well?

17 MR. CHURCHILL: Yes, Your Honor. I apologize for this,
18 but earlier on, Mr. Anderson asked a question and I think it
19 had to do with when the decision would come out on OLA-1. I
20 did not really hear the question or the answer, and I apologize.

21 CHAIRMAN BLOCH: The Board said that we expected to be
22 able to issue that opinion within a week, possibly sooner.

23 MR. CHURCHILL: Okay.

24 CHAIRMAN BLOCH: It doesn't mean that it will happen,
25 that is just our expectation.

1 MR. CHURCHILL: Mr. Anderson did make a few comments at
2 tha time that I would like to respond to. Number one, his main
3 concern seems to be that he is in two proceedings at once, and
4 is stretched or spread too thinly. But I have to remind the
5 Board and the parties that Commission case law in fact does not
6 look kindly on one party making an excuse for not being able to
7 perform in another hearing because of his participation in
8 aother hearing.

9 CHAIRMAN BLOCH: Mr. Churchill, does that case law refer
10 to living up to obligations that have been set, or does it mean
11 that you don't consider those kinds of problems in setting
12 schedules?

13 I would even think that it would be proper, if your firm
14 had difficulty because you were in more than one case, for us to
15 consider that construct on your schedule.

16 MR. CHURCHILL: I think, Your Honor, thatthe Board has
17 the discretion to set schedules and to take into consideration
18 the various practical aspects. In this particular case, there
19 is an overwhelming practical aspect where we are undertaking to
20 get a license amendment. We did not ask for the hearing. We
21 don't think that the hearing is necessary. This was brought
22 about solely by this other party, who already is involved in
23 another proceeding.

24 We should not be whipsawed in-between two proceedings
25 neither of whichis our doing. We did not ask for either one.

1 Certainly, and I think we can probably find case law, too, that
2 suggests that when an organization, particularly one with lots
3 of members, and I think he said there were something like
4 64,000 members of this organization, on the strength of that
5 representation there ought to be, you would think, among those
6 64,000 people some other help somewhere on this.

7 In view of the fact, and we would ask the Board to
8 consider very carefully both sides of it, not just Mr. Anderson's
9 statement that because he is involved in one, he can't timely
10 act in this one, we would ask you to also consider the other
11 side of it, and that is the Applicant's very serious concern
12 about an efficient schedule beginning immediately.

13 CHAIRMAN BLOCH: Mr. Churchill, I know you want to finish
14 by next February. If we were to meet as late as November 15th,
15 could you trace out for me why that would be a serious hardship
16 in terms of meeting your October requirement?

17 MR. CHURCHILL: If we met on November 15, this of course
18 would depend on how long it would take for the discovery to take,
19 then how long it would take to file motions for summary
20 disposition, responses, and a Board decision on that, preparation
21 of testimony, how long it would take for a hearing to be held,
22 two months after that for proposed findings. This would depend
23 on how long it would take for an initial decision on it.

24 It probably would be possible if we a special -- It may
25 be theoretically possible to get it done if everything goes right

1 and according to step, but often times it is not the case.

2 I have a concern that right now it would be very difficult,
3 and already our schedule is in jeopardy. I am not sure that I
4 could play it out to the day exactly where this would come out
5 because there are too many variables.

6 CHAIRMAN BLOCH: You are talking of October 1983, right.

7 MR. CHUCHILL: Right.

8 CHAIRMAN BLOCH: October 1?

9 MR. CHUCHILL: That is correct.

10 CHAIRMAN BLOCH: I would like to have very brief closing
11 comments, first by Mr. Bachmann, then Mr. Anderson.

12 Mr. Bachmann, do you have any closing comments?

13 MR. BACHMANN: Nothing more than to indicate to the Board
14 that the staff is prepared to go ahead with the initially
15 proposed schedule that Mr. Churchill gave. However, again, as
16 I indicated, we have other things that need to be done, and we
17 expect the SER to issue somewhere, let's say, in December or
18 January, if that helps anybody in figuring out a schedule. Our
19 other commitments are set up by the Board.

20 CHAIRMAN BLOCH: Mr. Anderson, do you have brief closing
21 comments?

22 MR. ANDERSON: Very brief. We believe that the appropri-
23 ate course is to request the licensee to make a showing as to
24 why it is in the public interest, apart from any contractual
25 obligations, as to why expedition is required. We believe that

1 should be done as well.

2 I have a very small housekeeping matter, which will take
3 half a second, if I could.

4 CHAIRMAN BLOCH: Please.

5 MR. ANDERSON: The document room here for the transcript
6 has worked superbly in OLA-1. We think that it will work
7 superbly in OLA-2, as well, although we have not yet received
8 the September 9 transcript for OLA-1 for the document room.

9 CHAIRMAN BLOCH: Thank you. We will try to see what the
10 problem is on that.

11 Do any of the parties have any objection to Decade
12 maintaining an on-site library of our transcripts for OLA-2?

13 MR. BACHMANN: The staff has no objection.

14 MR. CHURCHILL: The applicant has no objection.

15 CHAIRMAN BLOCH: We will follow that same general
16 procedure, and we will attempt to get a copy of the transcript
17 for that purpose.

18 The Board would like to thank the parties for their
19 participation. We would point out that there were very strong
20 comments made by both the petitioner and the application, but
21 in days we are not more than 30 days apart at most. We are
22 hopeful that we can come up with a workable solution within the
23 next week.

24 The hearing is adjourned.

25 (Whereupon, at 6:00 p.m., the conference adjourned.)

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 Plant, Unit 1)

Date of Proceeding: Sept. 27, 1982

Docket Number: 50-266 OLA-2

Place of Proceeding: Washington, D. C.

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

Patricia A. Minson

Official Reporter (Typed)

Patricia A. Minson

Official Reporter (Signature)