ORIGINAL

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the matter of:

PHILADELPHIA ELECTRIC COMPANY

(Limerick Generating Station, Units 1 & 2)

Docket No. 50-352
50-353

Location: Philadelphia, Pa.

Pages: 11,902-11,995

Date: Thursday, May 31, 1984

Please return original + 2 copies to Jack Whitestine, E/W-439 - Distribution: TR 01

0/1

TAYLOE ASSOCIATES
Court Reporters
[illegible] Street, N.W. Suite [illegible]
Washington, D.C. [illegible]
(202) [illegible]

MM/mm1

UNITED STATES OF AMERICA

NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of:	:	
PHILADELPHIA ELECTRIC COMPANY	:	Docket Nos. 50-352 50-353
(Limerick Generating Station Units 1 and 2)	:	

U. S. Customs House
Old Customs Courtroom No. 300
Second and Chestnut Streets
Philadelphia, Pennsylvania 19106

Thursday, 31 May 1984

The hearing in the above-entitled matter reconvened at 9:05 a.m., pursuant to recess,

BEFORE:

LAWRENCE BRENNER, ESQ., Chairman
Atomic Safety and Licensing Board

RICHARD F. COLE, Member
Atomic Safety and Licensing Board

PETER A. MORRIS, Member
Atomic Safety and Licesning Board

mmMM

APPEARANCES:

On behalf of the Applicant, Philadelphia Electric Company:

MARK J. WETTERHAHN, ESQ.
NILS NICHOLS, ESQ.
Conner and Wetterhahn, P.C.
Suite 1050
1747 Pennsylvania Avenue, NW
Washington, D.C. 20006

On behalf of the NRC Staff:

BENJAMIN VOGLER, ESQ.
ANN HODGDON, ESQ.
Office of the Executive Legal Director
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

On behalf of the City of Philadelphia:

MARTHA W. BUSH, ESQ.
Deputy City Solicitor
1500 Municipal Service Building
Philadelphia, Pennsylvania 19102

Pro se and on behalf of Friends of the Earth in the Delaware Valley:

ROBERT ANTHONY
Box 186
Moylan, Pennsylvania 19065

On behalf of AWPP:

FRANK ROMANO
Air and Water Pollution Patrol
61 Forest Avenue
Ambler, Pennsylcania 19002

P R O C E E D I N G S

JUDGE BRENNER: We are on the record.

We can have the reporter note the appearances without going through them. It is counsel for the Applicant, of course, for the Staff, counsel for Philadelphia, Mr. Romano is here and I assume Mr. Anthony is here also.

Good morning. We have a few matters to take up. The first thing would be the findings for the severe accident contentions, that is, the length of the findings that the parties were to propose, which we would stay with unless and until the parties suggest an alteration when we are back in evidentiary hearing starting on June 19th, which will be at 1:30 p.m. in this courtroom.

Any proposals from the parties?

MS. BUSH: Your Honor, I would like to propose a 60-page limit. I understand that in the past it is often measured by the length of the hearing time. I would indicate for the record --

JUDGE BRENNER: That is not an accurate statement.

MS. BUSH: I wouldn't want the amount of time I spent in the hearing to reflect what I have to say on the issue because we try to narrow what we actually ask on the record.

JUDGE BRENNER: I made the same comments in the past. In fact, sometimes I have observed the life of the

hearing is adversely proportional to whatever the other values you want to assign.

Sixty pages for all the severe accident contentions not counting City 15?

MS. BUSH: No. I don't know how much Mr. Elliott would like. We haven't spoken with him.

JUDGE BRENNER: All right. You are proposing 60 pages just for City 13 and 14?

MS. BUSH: Yes.

JUDGE BRENNER: That sounds too long. Let's get the other parties' views.

MR. WETTERHAHN: Applicant suggests 35 pages apiece for LEA's contention and 35 pages for the City's contention.

JUDGE BRENNER: Staff?

MS. HODGDON: The Staff agrees that 35 pages would be adequate for each; 35 pages for LEA's contentions and 35 pages for the City's Contentions 13 and 14.

JUDGE BRENNER: All right. Give us a moment.

(Board conferring.)

JUDGE BRENNER: Ms. Bush, we think the proposals of the Applicant and Staff are reasonable, not because they both came up with the same number and you didn't but because that estimate comports with our own estimate.

I don't understand why you needed 60 pages

certainly and 35 pages sounds about right to us.

You know, findings are not to regurgitate every sentence in the written testimony or in the FES or anything else you would want to use. One important purpose of our page limitation is to avoid that, which I have seen on occasion in other cases at least -- that is, the parties just regurgitating that instead of boiling it down and focusing what the findings are.

So we are going to impose that limit of 35 pages for City 13 and 14 and 35 pages for the LEA severe accident contentions and we will set 15 pages for the replies.

Now if when we are back on the record in June you find you have a severe problem, you can bring it back to our attention and we will consider what you have to tell us then.

So you will have that safety valve. I think 35 pages is about right.

MS. BUSH: I would just note for the record that I disagree with that, but I appreciate the safety valve and I will raise it in June if I continue to have this opinion.

JUDGE BRENNER: I don't want it to be just a prospective opinion. In June, you can tell me that your findings are substantially written if not completed even though they are not due then and that having gone through them and made every good faith effort to boil it down but

still preserve the points that you need to make on behalf of your client that you need some more pages, and if you need a little bit of relief, I have in mind just that -- a little bit.

MS. BUSH: Thank you.

JUDGE BRENNER: And of course as we said, these page limitations do not include City 15.

MS. BUSH: Yes, I understand.

JUDGE BRENNER: Is there anything else that we need to discuss with respect to the City's severe accident contentions, any need for clarification on the Board's requirements with respect to initial settlement negotiations to be followed up as the parties see fit after the initial contacts?

MS. BUSH: Your Honor, we did have a discussion this morning about the issues and settlement and it seems the situation might be that the City would want a certain analysis done of the --

JUDGE BRENNER: I don't want to have the negotiations on the record.

MS. BUSH: It seems that there might not be any quid pro quo so I am not sure negotiations are something that might be productive. We can try but I don't -- until we see what it is we want, we couldn't give any quid pro quo, so therefore it is not a normal kind of negotiation situation--

just to let you know if you were expecting that there was a normal kind of negotiation situation.

JUDGE BRENNER: I don't know what you mean by normal kind of negotiation because they are always sui generis depending on the issue that you are discussing. Negotiations after litigation but before findings are sometimes different than negotiations in advance of the litigation and quid pro quos can sometimes be found that already exist in part at least on the record.

If you don't know what City wants, I certainly don't know what the City wants either.

MS. BUSH: I do know what we want. I am saying it is information that we want and until we get the information we would have to evaluate it to give the quid pro quo.

JUDGE BRENNER: All right. You take a look at what information has been developed on the record and I think that may go a long way towards what we understood to be the City's concern. But you may disagree and are free to do that, but I think your attitude can be a little more positive than I just heard this morning. I understand your warning us that it may go nowhere and we certainly knew that, but give it a good faith attempt and see what happens.

MS. BUSH: I will and I want you to understand, I don't think I was speaking for myself but it is the sense of the discussion we had.

JUDGE BRENNER: Okay. Thank you. I think that completes any need for you to be here, Ms. Bush.

MS. BUSH: Thank you.

JUDGE BRENNER: Nice to see you again. We will see you in June.

MS. BUSH: Thank you.

JUDGE BRENNER: I wanted to get a report on the emergency planning implementing procedures problem.

MR. WETTERHAHN: Applicant has contacted Mr. Elliott with regard to his position on the motion. Mr. Elliott objects to a hearing on June 4th through 6th in Bethesda. He instead wanted a hearing on June 11th and 12th.

I know the Board had noted on the record that it was not available.

JUDGE BRENNER: We have noted that for months and I have emphasized we set the schedule well in advance so all parties could be ready, so that those dates are not acceptable.

End 1.

MR. WETTERHAHN: According to my understanding, Mr. Elliott indicated there was one change, at least one change, that he considered to be substantive as far as the difference in the procedures and that is where the discussions stand with regard to the Staff's position. I believe Mr. Vogler can state that position.

MR. VOGLER: Staff's position was determined by counsel for Philadelphia around 10 o'clock last night, so I do not have a case citation yet this morning upon which the Staff is relying.

We would like to see the Applicant's motion to substitute perhaps be changed to a motion to supplement. We do not believe that the implementing procedures that we had hearing on should be removed and the other procedures put in its place.

Rather the Staff would prefer that the new implementing procedures be added to the record and that the parties have a chance to comment on those implementing procedures.

We do not think at this time that additional hearing is necessary, I note, and as I prefaced my remarks before I got started, I do not have a citation this morning, but the licensing board handled such a procedure in the San Onofre, the Southern California Edison proceeding on approximately November, 1980, a similar procedure was

followed whereby additional material was added to the record rather than substituted to the record.

JUDGE BRENNER: I am not familiar with the case either but it depends upon the extent of agreement among the parties and how significant the issues are and so on.

MR. VOGLER: The Staff is aware of that.

JUDGE BRENNER: So it isn't too much precedent unless you look at exactly what was involved and then make a determination as to similarities or differences to the case at hand.

What change is it that LEA thinks may create a problem, do you know?

MR. WETTERHAHN: EP102, Section 9.1.1.2, the original stated "Shift supervision -- supervisor -- to initiate" and then the change was, "Shift supervisor to direct" and this was the single example given over the telephone.

Mr. Elliott may have others but that is the one he discussed with Mr. Conner.

JUDGE BRENNER: That which you just told me does not comport with Appendix A as I am looking at it, although I don't have the implementing procedures with me.

But on page 1 of Appendix A, which is attached to -- is referenced in the motion, the supplement, Applicant's motion to substitute dated May 25, but the actual Appendix A

was attached to that May 25 letter from counsel for the Applicant to the other parties and under their 9.1.1.2, it indicates that the change is to add, "Shift supervision to initiate." It has a few more words in there.

MR. WETTERHAHN: This is what I was told over the phone as far as again -- double hearsay.

JUDGE BRENNER: When are the findings, the Applicant's findings do? I don't have the --

MR. WETTERHAHN: June 11.

(Board conferring.)

JUDGE BRENNER: Since LEA is not here today and apparently as we understand could not be available for hearing next week and if we had a hearing at the outset we would have made a close determination as to whether a hearing was necessary and if so, why. But of course we need LEA's presence for that too. Given that procedural situation, we will handle it as follows and I would appreciate it if these transcript pages could be sent to LEA's counsel and in addition if Mr. Elliott could be contacted as soon as possible to tell him about it, namely today, or as soon thereafter as practicable.

Each party shall argue in its findings which of the changes to the procedures raise material controversy and if so, why, how the findings would be changed and depending on any substantive problem, what procedural steps the party

believes is necessary, be it reopening the record or mandating that a certain change to a procedure not be made and so on.

And of course the main thing is all these arguments have to be very much in the specific context of what findings on the contention a party is proposing and the close analysis as to how the changes in the procedures of which any party has a concern would affect the outcome on the merits of the contention.

Now I think the normal sequence on this sub-point at least would be for LEA, now that the Applicant has indicated specifically what the changes are, for LEA at the time of filing its findings to devote some of the findings to the points I just indicated. Any procedures not objected to or not discussed will not be dealt with in our decision and the Applicant will be free to use the procedures as changed.

Then in the reply findings by the Applicant the Applicant can pick up any of these points and we will allow the Staff -- in fact, ask the Staff, require the Staff to file a reply also on the same date as the Applicants, but just on this one sub-part of the findings -- that is the changes to the procedures, because normally the Staff would not be filing a reply on the other matters in the findings, and I think we can then get th issue focused, highlight which ones if any remain in dispute, which changes remain in

dispute and we can see exactly what the controversy is and we will then take the appropriate action.

MR. VOGLER: Staff didn't concentrate on the pages on reply. Are you going to permit us to -- more pages on the reply?

Generally I don't have the page limitation that you gave the parties.

JUDGE BRENNER: I think it was 30; that is my recollection. We said 60 pages for the findings and as a rule of thumb, we have allowed approximately half or a little less when the number was uneven for a reply.

But that reply limitation was set for an entire reply, certainly don't go over it, but you should be well under it for this matter.

End 2.

MR. VOGLER: All right.

mgc 3-1

JUDGE BRENNER: This also gives the parties a little more leeway to see if they can resolve the matter, and of course getting the information this way, we still don't understand what the dispute is, nor do I understand why the changes couldn't have been timely indicated when we were here the first time on the record.

If that becomes material to argue it, we can hear more on it. Right now, I don't know whether that point is material.

We have no other miscellaneous matters, and we are prepared to discuss the findings we received on AWPP's Contention VI-1 concerning welding, if the parties have nothing else.

Mr. Romano, we stated on the record previously, and this has been reported to you through various conversations from Staff, as we understand it -- that is, we have received the written proposed findings and conclusions on AWPP's Contention VI-1. We have read them. We have gone through the transcript as to each portion cited in each of the findings. We have also kept the whole record in mind and reviewed those portions of the record that, on our own, we think remanded rereview, even though not cited by any parties, and we have done that, and our conclusion is unchanged from the one we gave at the end of the evidentiary hearing session.

mgc 3-2

However, we wanted to give you the opportunity on the record, if you want to avail yourself of it, to go through the substantive proposed findings that you have made and the responses by the parties, just to see if there is some point in the responses that we are still missing. But we only want to deal with the substantive matters, not any of our procedural rulings. Many of your findings deal with the procedural rulings, such as the method of cross-examination, and Dr. Eberson's testimony and so on. Our rulings on those matters are amply set forth on the record, and we have nothing to add on those, and the record is there for any party to argue later as to whether what we did was correct.

However, we are willing now to deal with any of the proposed findings that would go to the merits of deciding the contention. I take it you are here for that purpose.

MR. ROMANO: Well, fundamentally I am here to preserve my appellant rights. Otherwise, I really don't know why I'm here.

I couldn't help feeling, as I have stated in my conclusions and findings, that it was practically useless to even file the findings and conclusions, which I feel suggested bias, that I think I felt all through the readings of the inspection and engineering reports,

mgc 3-3

and that certainly there was great doubt many times that the Staff, the NRC Staff, did as much as it could do to protect the public.

I was not, because I have never been through the process of conclusions and findings and on to oral argument -- I didn't even know what oral argument was, and I still am not sure of it, because I'm sure it has something to do with what you just said this morning --

JUDGE BRENNER: It's exactly what I just said this morning. It's applied to this context.

MR. ROMANO: But I didn't get the Staff reply until yesterday morning, and I didn't get the Applicant's reply until last night. And so again, we have a situation where, as it went all along, intentional or unintentional, we have great delays which have, in effect, prejudiced, to one degree or another, our effort.

JUDGE BRENNER: I want to get to the substantive matters, Mr. Romano, but let me say one thing on your last point.

In terms of prejudice, we could have stayed just with these written filings, so you cannot possibly be prejudiced by having been given this further opportunity, which is over and above what we could have stayed with. That's number one in terms of prejudice.

Number two, there were phone conversations as

mgc 3-4

early as Tuesday afternoon, which we've had reported back on the record, in which you were apprised by Staff counsel that we would give you the opportunity to have this oral argument, and there was some uncertainty as to whether we would schedule it for this morning or yesterday afternoon, and that was resolved also from your point of view in your favor to this morning, and you did not mention at that time that you did not have the written replies. Had you done so, the parties could have easily gotten it to you that day.

In fact, it wasn't until midday or later yesterday that we learned that you did not have the Applicant's reply. You were having these conversations. It just would have been very normal for you to say, "I don't have the written reply yet," and by not saying that on Monday afternoon -- Tuesday afternoon -- you prevented anybody curing that problem.

Be that as it may, that point is a side point, because the main point is that we are holding this session over and above what would have been required. So that takes care of that point.

MR. ROMANO: Well, I want to say that Tuesday afternoon I had two, three calls, but I wasn't told --

JUDGE BRENNER: Mr. Romano, I want to keep this as efficient as possible. I would like to go beyond that point, because I don't want you to devote too much of your

mgc 3-5

energy to that this morning. It's more important that we try to focus on substantive matters.

The points in the findings, of course, are not new, as we set up the procedure, and they are in response to the very points raised by you. So what we will do, we will go through those of your findings that raise substantive matters, and we will point out to you what we think the record says. We have been directed to the record by your findings and findings of the Staff and the Applicant, and as I stated, on our own , we have parts of the record that we went back to.

MR. ROMANO: You know, Judge, I missed the boat as it relates to cross-examination of their material, and so when I heard of oral argument, it wasn't until last night until about nine-thirty or ten o'clock to reach a lawyer to explain to me what oral argument is all about, because I could come in here this morning and start to talk and be stumped at every sentence because I didn't know.

I have a little idea, but still it wasn't enough to take time to analyze some of the things.

JUDGE BRENNER: Why don't we just proceed and see how it goes. If you don't want to, we won't. It's up to you.

MR. ROMANO: Well, I just wanted to say, throughout the entire VI-1 situation, including discovery,

mgc 3-6

time was lost, because it took two, three weeks one time to get copies. I have that on record, where my material at the Xerox was picked up by PE, and then I did not get it.

I think it's important that being without counsel and then having these other kinds of obstructions is involved.

End 3

mgc 4-1

JUDGE BRENNER: I am prepared to proceed, and I want to direct the sequence. Then after we're done, if there is anything you want to add, we will allow you to do it.

MR. ROMANO: What was that?

JUDGE BRENNER: I will proceed. I've got a sequence in mind that I want to go through, because I want to deal only with what I consider your substantive findings. I will go through those. One or two may bear on procedural matters which may not have been argued at the time of the hearing, and this will be an opportunity to give our reasons for our views on them now. But as I said, we won't use this for any procedural rulings, for which our views are already laid out on the record.

For example, two of your points involve your argument that the Applicant did not understand at the hearing and in their work at the Limerick plant, their auditing and inspection work, did not understand or apply a proper sampling based on statistical analysis, and that comes up in -- I'll use the Staff's numbering of your findings, which we found to be very useful, and we appreciate that on the part of the Staff, and you have that copy appended to the Staff's findings -- your Paragraph 5 and 21 raise those points.

MR. ROMANO: There's only one problem. I didn't

mgc 4-2

think I had the paragraphs marked in my --

JUDGE BRENNER: If you look at the Staff's findings, they have attached a copy of your findings, and they have numbered the paragraphs, and we will use that numbering system because it is convenient.

MR. ROMANO: I did not get a copy of my findings and conclusions with the paragraphs marked.

MS. HODGDON: Mr. Anthony has a copy. He will give it to you.

MR. ROMANO: See, I did not know I have to refer to this, and I had no previous --

MS. HODGDON: I am sure that Mr. Romano's copy is like the other copies; however, Mr. Anthony has given him a copy that has the paragraphs marked.

MR. ROMANO: As I read your reply, I wondered why we had those numbers.

JUDGE BRENNER: They just numbered the paragraphs in sequence as a convenience. This is quite digressive.

MR. ROMANO: I will try to go along.

JUDGE BRENNER: It's your Page 2, the last paragraph. Number that one 5, so we can refer to it again.

MR. ROMANO: Page 2?

JUDGE BRENNER: The last paragraph. Don't you have a copy with the paragraphs numbered by hand?

MR. ROMANO: Paragraphs on my --

mgc 4-3

JUDGE BRENNER: Yes, sir.

MR. ROMANO: No, I haven't. I just got it from Mr. Anthony.

JUDGE BRENNER: It doesn't matter whether you just got it or not. They are your findings. You should be familiar with them.

(Counsel Vogler tenders the document to Mr. Romano.)

JUDGE BRENNER: In sum, the Staff and the Applicant combined point out that a 100 percent inspection was performed. We have examined the transcript pages they cite, and we agree that the transcript, at least, supports that conclusion.

Further, we have looked at the transcript portion cited by you --

MR. ROMANO: Is that still Paragraph 5?

JUDGE BRENNER: And 21 combined. I am talking about both of them, because even though you have them separated, they deal with the same subject, as I have labeled the subject. And on many other pages in the record, Transcript Page 10,468, testimony by Mr. Corcoran shows the 100 percent inspection was performed, and as I said, it's just an example.

MR. ROMANO: Will you give me that paragraph, Judge, please?

mgc 4-4

JUDGE BRENNER: The transcript page?

MR. ROMANO: No, the paragraph.

JUDGE BRENNER: 21.

MR. ROMANO: Still 21.

JUDGE BRENNER: Further, we have looked at your argument that there is no assurance that the 100 percent inspection was performed, and we believe that is not supported by the transcript. The transcript pages cited by you show why the total audit program gives reasonable assurance that the inspection program was carried out properly at or very close to the level of 100 percent inspection. Again, we do not have absolute, positive 100 percent assurance that 100 percent of the inspections were performed. What we have is reasonable assurance, in fact more than reasonable assurance, in the record that it was. And that is based on the whole program as described, plus every time a particular example of an instance was looked at, and for all the contentions defined by the instances, we found that adequate measures had taken place.

There is no evidence even as to the broomstick affairs, which is your main example as to why an inspection might not have been performed, that those inspections were not, in fact, performed, although it was later found to be improperly performed.

However, even if we were to conclude that that

mgc 4-5

inspection was not made -- and the evidence is to the contrary -- primarily the fact that Mr. Corcoran testified that much of the other work performed by that same inspector was shown to be proper, and more to this particular point, was shown to have been performed, whether proper or not, based on the inspector's findings and the record -- and also there is the fact that the inspector was actually at the level where the work was being performed for the particular broomstick welds in question, because his initials were found in connection with other work at that level, although not in connection with the particular welds -- beyond that, even if the inspection had not been performed, the remedial action taken for the broomstick affair was the same action that would have been taken if the inspector had not performed the inspection -- that is, a reinspection of those welds -- and, in fact, the reworking of those welds when they were found not to meet all the requirements.

In terms of sampling, to return to the point I started out with, you have the 100 percent inspection. The work that was being discussed by Mr. Corcoran and other Applicant witnesses involved auditing. In your combined findings, Paragraphs 5 and 21, you take issue with the ten percent rule of thumb, particularly as applied to the reauditing effort, and I will give you the transcript pages where that is discussed.

mgc 4-6

Yes, you are discussing in your Paragraph 5, Mr. Romano, your disagreement with Mr. Corcoran's use of the ten percent audit sample as a rule of thumb.

I'll back up in the transcript pages shortly. I have them here.

The testimony at the appropriate transcript pages reveals that that reauditing of the welds in question and inspection program was -- an auditing program rather; strike inspection -- an auditing program was developed by Mr. Corcoran going towards twenty percent of the welds. What he had wanted to do was start the program and then evaluate the results as they came in. At the point of having evaluated something more than ten percent of the welds, but before the auditing plant, which had it gone to completion would have looked at about twenty percent of the welds, was, in fact, completed.

It was our judgment, which is supported in the record, that the results did not require further auditing. The deficiency they found amounted to six. They were minor. There were no common patterns developed and so on. And so they stopped the auditing at that point, because they had surpassed the ten percent rule of thumb, and the results did not mandate going beyond that to completion of this initial twenty percent, and depending on the results, they might have had to go even beyond that. But as the results came in,

mgc 4-7

it was not necessary to do so.

That judgment is supported by their expert testimony that it was not necessary to go beyond that.

Furthermore, on further questioning, Transcript Page 10,799 discloses that the ten percent figure is not something which Mr. Corcoran made up. It is widespread industry practice, and among other places, its basis is found in the military specification which was applied to auditing.

End 4

In addition, some of your complaints that the Applicant does not understand statistics is not borne out by the transcript pages you cited.

We have gone back and reread them, of course, after reading your findings, particularly you are asking about a term "high degree of confidence." And it is well explained there by Applicant's witness at 10,471 to 472 that he was using that term in a qualitative sense and he explained again at that point, not for the first time, that they were not basing auditing on statistics but rather they were basing it on their judgment, their expert judgment in part and as applied to results of what they were looking at as it came in.

We saw that demonstrated again every time we look at a particular instance where it was required that the results of an audit be looked at. We find that the judgment applied to those instances, applied by the Applicant, is supported by the record.

I do want to give you those transcript pages where the 10 percent particularly was discussed in addition to the one page relevant to that that I did give you.

New BU

My notes are ambiguous and that is why I want to check the transcript. I think I have transposed a number.

MR. WETTERHAHN: We have that listed as 10,781-86 if that makes sense.

JUDGE BRENNER: Yes. Those are in large part the pertinent pages, 10,781-786 and they refer also to the Applicant's testimony, the context of the program in which the ten percent came up begins -- I want to give you the general context.

It begins at approximately Applicant's paragraph 87 in its written testimony and continues through paragraph 92.

We find that the oral testimony filled in the details but supported fully the facts reported in that portion of the testimony and we also found that what was done was proper in terms of the sampling selected, given the results reported, which results we heard more of in the oral testimony, and that is why those portions of your findings do not persuade us that the contention has any merit as to that aspect.

It is an open question as to whether or not the whole subject of the sampling size as used by the Applicant and so on are even directly in the contention because it was certainly not specified as a problem in any of the instances raised by you when we asked you to raise the instances and the problem.

Nevertheless, it is certainly relevant to whether the Applicant took proper action. It was fairly raised in the direct testimony and for the sake of argument we are going

to consider it material to the result we reach on the contention and in so considering it, we find the contention without merit in that regard. That is our findings as to that portion.

I guess the sum of it is in the cross examination at least you confused auditing with inspection, overlooked the fact that essentially 100 percent inspection did take place in the instances where -- in the broomstick affair instance where arguable it did not take place and we believe the record is the other way, and that is the record supports the fact that it is more likely than not that the inspection was made.

But nevertheless, even assuming for the sake of argument from AWPP's point of view that it was not made, the remedial action would account for that.

I repeated myself just now to sum it up for you, so I want you to understand why we were rejecting your findings in paragraph 5 and 21.

If you have any questions, I will answer them or the Board will attempt to.

MR. ROMANO: Well, as it relates to statistics, I am sure that the judges cannot be experts at every kind of science out there and that quality assurance definitely involves statistics and because there is a controversy in the statistical point that I brought up, which is proper in

quality assurance, I think it is only proper before a final decision is made whether or not Dr. Eberson or whoever -- because none of us know how it relates to this exactly, that that should certainly be looked into before a final decision is made, simply because it involves public safety, which is more important than, say, the fact that I was late in presenting a witness.

JUDGE BRENNER: You are correct and I did not bring up the point of our ruling that Dr. Eberson not testify. That falls under the category of one of the procedural rulings for which we believe we have amply given our reasons in the record and nothing would be gained by repeating it.

I would just say that we did not give our sole reason as the fact that you were late. That was one of the reasons. But then we had alternate grounds, which we set forth in the record.

MR. ROMANO: Yes, I appreciate that, Judge. However, because it is an unsettled, very important point, I think it still merits looking into as it relates to what information the judges will need to certainly know that their judgment -- that it is not just left to judgment of anyone because it is so important.

Now then, again as it relates to auditing, I felt that whereas I was told that I did not stick to substantive matters, it seems like the testimony and the answers of those

involved with auditing, in spite of my repeated effort to get them to stick to welding, they too wandered way off in the whole auditing program and then it is stated that the ten percent is a widespread practice.

Well, I didn't hear too much about how widespread it was, except that it was used in the military and the Navy and so forth and we have had all kinds of complaints about repairs of Naval ships, and so I would not use that as a guide or to use that as assurance that this ten percent situation is something that people can say okay, start the reactor.

I am in science too and I have never heard of anybody anywhere in science saying, we are going to use judgment and take ten percent of something. If they did, they would take ten percent of it because then they would be able to calculate or interpolate or extrapolate to a wider situation.

To just take ten percent -- and I still feel that the fact that their ten percent turned out to be 52 rather than 42, it cannot be excused on the basis that we just took some more.

To make it lighter, I was going to say that someone based a claim that he was selling 50 percent rabbit sausage and he later said, yes, he used one rabbit and one horse. That does not make 50 percent rabbit sausage, although

it sounds good when you talk about percentages.

Here again, I very much feel that 52 demonstrates not assurance of trying to get in some more welds, but demonstrates carelessness. You don't say you take ten percent and you come up with 52 out of 423. That is not scientific at all and I can't help but say among other things that I have read and am not allowed to speak about, that this does not suggest -- I would say that this does suggest that there has been, as I stated in my findings, gross weakness in the quality assurance program, in particular as it relates to welding.

Now then, on page 2 of the Applicant's reply, they state that we raised no points contradicting their case.

JUDGE BRENNER: Before you get too general, let me stay with your points on what we have been discussing, which are primarily your paragraphs 5 and 21. I did not mention the fact that your paragraph 26 is tangentially related to that also. I will cover that in a moment.

But as I tried to emphasize in my statement, the ten percent, although they found support in the record, was not something that was just made up by the Applicant's witnesses. That percentage is not the basis for our saying, oh, well, they looked at more than ten percent so that is acceptable. Far from it.

The more important point is to examine the

qualitative judgment applied by the auditor and reapplied as the results come in, depending on the nature of what is being looked at, the variability involved. I am repeating what has been testified to in many places in the record -- the variability involved, the complexity and so on, as applied to the particular instances raised. I forget the exact number; I guess it was 423 welds and the fact that 52 were looked at, the results there amply supported the fact that there was no need to go further given the types of welds involved as testified to and the six minor deficiencies found.

That was the basis for our result there.

In addition, since I mentioned paragraph 26, I want to acknowledge the fact that you have stated that Mr. Corcoran was unconvincing on the point -- I am paraphrasing your view -- was unconvincing on the point on whether or not there is assurance that a weld has been inspected. And I guess part of your complaint was that he did not answer that question.

We have looked at the transcript. It is at transcript page 10,611 and we have examined it and we agree -- I guess the Staff said your complaint was subjective. That is certainly correct, and even as characterized we looked at it to see if it was valid or not.

We agree with the Applicant and Staff that your

complaint there is not valid.

You asked a general question as to how you were sure that a weld has been inspected and you got a general answer, but we find the answer, although general, (a) response to the question and (b) does disclose some useful information as to the way the program of checks on the work of an inspector works.

And there is the formal auditing program plus the existence of all the levels of records and so on, so as a side matter, if we had found that there is no assurance or if we found that the Applicant did not carry its burden of showing that there was reasonable assurance that the inspection program had been carried out, then of course that cascades into a severe problem into how things are audited because if the fundamental inspection program is not carried out, then a normal approach to auditing may not be sufficient and moreover, if we had discovered that the inspections were not carried out and the auditing program did not disclose this, that would raise problems, but everything is to the contrary as I have indicated so far.

Incidentally, I don't want to burden you with giving all the transcript pages that we have collected, but we have examined each and every one raised, as I think I said before by the parties in the proposed findings. There have not been so many that we did not have ample time to do it

and we have done it.

We find that the characterization of those transcript pages by the Staff and Applicant is fully accurate in the sense, not only fully accurate but when we examine findings we also look to see whethere there is an overstatement of what is said -- you know, an advocate pushing a point too far and we found nothing of the kind.

In fact, in our opinion, in some instances, there was understatement from the point of view of the party of the Applicant and Staff and we have looked at other transcript pages which would have made the statement even stronger in some cases.

Your statements as to what the transcript represents are, on several occasions, inaccurate and we have already discussed to the extent it is material, we have discussed where yours are inaccurate. We have already done that a little bit.

I know you wanted to move to Applicant's page 2, but let me try to stay with some things that are a little more specific and then if you still want to come back to it, we will let you do that, if that is necessary.

End 5.

mgc 6-1

MR. ROMANO: Could I follow up on your qualitative sampling?

JUDGE BRENNER: Yes.

MR. ROMANO: Well, --

JUDGE BRENNER: Follow up with a record reference, if you could.

MR. ROMANO: The references you had there of Page 5 where it talks about ten percent, back to the ten percent situation Mr. Corcoran says he uses as it relates to degree of confidence and so forth, and the five percent that he used qualitative methods of sampling or statistics --

JUDGE BRENNER: Wait a minute. You're saying a lot of things in there. It's just not comprehensible.

MR. ROMANO: Well, he used what he calls --

JUDGE BRENNER: He didn't say what you just said he said.

MR. ROMANO: -- qualitative sampling there, rather than statistical sampling.

JUDGE BRENNER: That's correct.

MR. ROMANO: Now, then, he discusses one ten percent sampling that I feel was improper, too, and then on the basis of that sampling -- he only discusses that one -- it is important to know how many ten percent samplings he did throughout to determine that ten percent which would permit him to go to the qualitative.

mgc 6-2

Nowhere did Mr. Corcoran describe -- even describe what qualitative -- what he meant by qualitative.

JUDGE BRENNER: We think he did describe what he meant by qualitative in many places. And in part, the transcript pages I previously referred to encompass that description.

MR. ROMANO: I want to ask how many ten percent samplings did he do to arrive at the point where he knew he had this high degree of confidence.

JUDGE BRENNER: I don't know, Mr. Romano, and in part, I don't fully understand your question. I have referred to the high degree of confidence quote in a slightly different context.

MR. ROMANO: I think there's only one context.

JUDGE BRENNER: We've also discussed why the ten percent was not simply made up by Mr. Corcoran. Beyond that, we discussed why the results in the instance that you raise in your findings -- that is, the results of what audits were performed -- are supported by the results that came in.

In addition, I referred to the transcript page which the parties had not cited as to the basis for the ten percent, on 10,799. If you go beyond that page -- well, before that page, starting at 10,798 and '799, that adds a little more as to what Mr. Corcoran meant by the

mgc 6-3

qualitative approach, although it's general, and I prefer to discuss it earlier in the specific item of those 52 welds being looked at, because that's a good illustration and we have the specifics to deal with, and we've done that in addition, and I think it 's getting somewhat redundant also on a general basis. But in response to questions from you, Mr. Corcoran, at Page 10,353 and for some pages beyond that, at least through '355, discusses quite well what he means by qualitative sampling.

Now you asked a general question, and that is the general background there, but it was good background. In reviewing the record, it was helpful.

And then we looked at it as applied to this particular instance. And not only did we find the statement by Mr. Corcoran of how he would proceed in qualitative sampling to be reasonable, supported by what we had found to be appropriately expert opinion, we found that as it was applied in this instance, it was properly applied. And that is how we put those two pieces together. They occurred at different parts in the record, but we put them together for purposes of this judgment that we have reached.

We can repeat what is in the transcript pages I just cited, but we don't think it's necessary to do that. But as we say, it logically ticks off the elements of the sampling program. Again, this is the audit program, not the

mgc 6-4

basic inspection program, a distinction that we have kept firmly in mind.

I wanted to get to a related matter, which is a refrain repeated several times in your written findings, Mr. Romano, and the connection to what we have already discussed is at Paragraph 26, where among other things you thought Mr. Corcoran was not answering the question. We have discussed that one already. You said his answer was unconvincing. I have discussed that.

You have some other complaints where you say that the witness did not answer the question, and we examined those to see if, in fact, there was some action by the witness in trying to avoid giving information that you were seeking, which information could have been detrimental to the Applicant's case. At the end of the hearing, you had made that complaint, at the hearing also, and it was our view at the time of the hearing that such was not the case. In fact, quite the contrary. And the Applicant in its written findings has cited my comment in that regard.

Nevertheless, it may be, of course, as humans, that we did not appreciate an evasive answer at the time we heard it because it was so cleverly done or something to that effect. And so we went back and looked at your particular complaints, and we find that they are not valid.

mgc 6-5

For example, in your Paragraph 19 -- this is the number given by the Staff -- on Page 7 of your findings, you complain that Mr. Corcoran did not answer the question -- I'm paraphrasing -- and, in fact, gave an overly long statement which was apparently memorized, in your view.

I don't know whether the statement was memorized or not in rereading it. It certainly was not the smoothest memorized statement. You know, sometimes when somebody has memorized something word for word, it comes out in more perfect English, as it does when you write rather than speaking. Be that as it may, whether it was memorized or not, it answered the question, and I don't know how he would have anticipated that that question would have come up. You asked him a general question as to whether there were written procedures, and the answer he gave was responsive to that general question.

MR. ROMANO: Judge, I asked a specific question on whether or not he had written procedures for welding. He did not every state anywhere where he had written procedures for welding inspection. He gave me all kinds of other discussions on procedures. But the question is specific: Does he have written procedures to ensure proper selection of welds as it relates to sampling welds?

Nowhere did he answer the question, as I say. He avoided the answer.

mgc 6-6

JUDGE BRENNER: Well, the question that was asked on the transcript was fully answered, as far as we are concerned. The question that you are now asking or sharpening relates to the previous discussion we just had as to whether they used statistical sampling, and we found out that they did not, and we found out why that was acceptable.

MR. ROMANO: Then as it relates to qualitative inspections, does he have written procedures for inspections. I didn't ask specifically whether it should be statistical methods of sampling -- procedures for statistical or qualitative. But he didn't answer as to whether he had either of those

JUDGE BRENNER: Well, he answered it, and he explained that they have the procedures as to how they scope audits.

MR. ROMANO: I don't see his answer.

JUDGE BRENNER: Our judgment is -- the point I want to make is, we have examined it, and it is our judgment that the question you asked there was fully and properly answered, and not in an overly long fashion either, to the extent that's material.

You have a similar refrain in your Paragraph 22, which is on Page 8, where you say that Mr. Corcoran again gave a long, evasive answer. And this is a good example of our general comment, that given the nature of the

mgc 6-7

questions, we thought the witness' answers were remarkably responsive. I observed at the hearing, and the Applicant repeated with a little more strength in its proposed findings, that we "discouraged", my word -- the Applicant said "all but prohibited" -- I didn't mean to go that far, but it is not an unfair characterization of what we did -- we discouraged technical objections to the way your question was phrased. The questions you asked Mr. Corcoran at the pages you cite here, which are 10,476 and '477, were very difficult questions to comprehend, because they were compound and they had premises, assertions by you in the question which you were not asking the witness about, they were your subtier assertions, if you will, and then at the end you got to what apparently was your question, and in these particular lines you talked about missed welds or welds slipping through and so on, and Mr. Corcoran said he was trying to get to your answer, but he didn't want to state that he agreed with the premises.

And again, given the nature of those questions -- and I just don't want to get into a debate with you now as to whether the questions were good or not -- they were bad questions in our judgment, and you will have to live with that judgment. We think the answers were responsive, notwithstanding the way the questions were phrased.

It would have been sufficient for us to find that

mgc 6-8

questions were phrased in such a way that it would be very difficult for an answer to be truly responsive, but we can go further here, given our best judgment as to where you were going with those questions, that the answers were responsive, despite the questions.

All right. Similarly, you complain -- and I don't have your paragraph number, but let me tell you where it is, and then I or somebody will find it -- that Mr. Corcoran was misleading as to whether or not he supervised welding, until Judge Morris cleared it up, and again that's a paraphrase.

Again, we have looked at this to apply our judgment as to whether or not these witnesses were honest, truthful, correct witnesses, worthy of belief and worthy of our finding their answers to be credible. Again over and above the particular answers, if we found they were playing these types of games so to speak, that would certainly color our view as to all their answers, but here again, we have found quite the contrary.

The transcript page which is pertinent is 10,468, and what Judge Morris cleared up, in our view, is what Judge Morris perceived as to some possible confusion on your part as you were asking the questions. It's the numbered Paragraph 20 in your findings on Page 7.

We had no misimpression at the time the question was asked, and the answer confirmed what our view had been.

Incidentally, continuing off that point at 10,469, Judge Morris at that point led into yet another example of Mr. Corcoran's describing what the purpose of their qualitative sampling is and although not as detailed as the previous transcript pages we have cited, as the transcript pages we have cited previously, some of which occur before this point, some of which occur after this point, this particular page also fills in the picture as to what the qualitiative sampling for audits is all about and it is consistent and that is the point.

As many times as this came up on the transcript, it is always consistent. There is never any contradiction.

MR. ROMANO: That is why I called it "memorized."

JUDGE BRENNER: It is not inappropriate for witnesses to prepare to questions they might get and try to prepare answers. If it becomes so rote -- r-o-t-e -- that regardless of the questions asked they retreat to that answer even if it is not responsive, then certainly you would have a valid complaint.

But that is not the case here . Beyond that, it is my personal opinion, having observed the witnesses on the particular answer you complain of that is memorized, is that those answers were not memorized. I am sure there were certain points that they had prepared on and again, that is perfectly proper and it is expected, so that we have

an efficient hearing.

But the particular answers were not memorized and the witnesses adjusted admirably to the questions and thereby attempted to be responsive rather than just giving you some canned answer regardless of the question.

Your questions are sometimes difficult to comprehend, Mr. Romano. I have to state that for the record, not for any purpose of unnecessary criticism but that is our view.

We have covered the most important of what I would call vour substantive findings. In fact, we have covered all of your substantive findings but one. There are two other ones I want to get to the remaining substantive finding and the other is an arguably procedural one, but I want to address it in any event.

In your paragraph 26, and this is a substantive finding -- I'm sorry, in your paragraph 30, you are there discussing the matter of the receipt inspection, which was an instance in which the Applicant argued was not related to welding.

We did not strike it in the prehearing motions because we could not tell that it was unrelated to welding and we allowed you to ask questions to try to get to the relationship and you did develop that it was certainly possible that the particular receipt inspector had looked

at -- had performed the receipt inspection for thermometers which were used in the ovens for welding and you asserted, although it is not in the record, that proboems were found with the weld ovens due to lack of calibration.

We will accept the assertion as fact for purposes of our analysis, that in fact there were problems with calibration of welding of oven temperatures, weld rod oven temperatures.

However, the answers at 10,886 and 887 lead to our conclusion that the Applicant's written finding is correct, that the witnesses amply demonstrated that even if the inspector was involved with the receipt inspection of thermometers, that would not have affected this calibration problem because the thermometers were calibrated onsite by different personnel and this would not have been part of this receipt inspector job function. That is our conclusion.

Given that conclusion, it was immaterial to get to other points as to whether or not the particular deficiency found in the qualifications of that inspector to perform his job would have made him unqualified to in substance perform the inspections.

We did not have to get to that final point and do not reach it.

There is a credible argument that the problem noted with respect to that receipt inspector was not so

severe as to vitiate inspections made by him in all regards. But we don't get that far.

MR. ROMANO: But how about the man who was working involving welding, who was working around that oven, worse than the inspector, which would not be coming in? That does not obviate the fact that this is a problem with kinds of work done at Limerick, not just because the thermometers were not right. It indicates that the person that had to deal with this heat treating of welding rods did not really know what he was doing because he was using thermometers that read differently every time he tried them and then ultimately he thought he had 400 degrees, which was over what was specified and because the thermometer that he used at that time happened to read 400, he just took it as being okay -- the thermometer being okay.

That is, as I say in my findings, is backward and it demonstrates more than anything else again, that for him to be allowed to go on with that excuse, with saying that that thermometer was right indicates he does not appreciate the operation at that point of heat treating and even reading thermometers and using ovens.

I think again this is a demonstration of the kind of work that was being done at Limerick and who will ever know how many welding rods were improperly preheated and then have an effect on the weld performed?

JUDGE BRENNER: You have a big problem raising that and it is not just a technical matter. You are way beyond the record, because none of the instances cited by use involve that instance. We allowed you to go into it on the record to the extent of examining the instance that we did accept of the receipt inspectors' work.

All of your assertions as far as we are concerned now are just assertions. You would have had ample opportunity to develop evidence on it, either by cross-examination or otherwise had you raised it, and you did not and we cannot take it up in a post-hearing matter in this fashion.

Now you are going to think this is a technical procedural ruling and this is an important matter. Well, we just don't accept that anymore because you have been in this proceeding for a long time. The idea was for you to put all of your important matters down and you chose to omit this one and that is where it stands.

So we made no findings on the merits of whether or not there was a problem in the weld rod ovens, calibration and if so, whether or not that problem led to other problems which were uncorrected and so on and that is where it stands.

So you have the record that we have not looked at that on the merits for the reasons that it was not part of the contention.

Well, I have already stated many times before how

you cannot conduct a litigation by going from one moment to the next, whatever strikes one party's fancy as to what they want to discuss without notice. And that is the reason for having to define the contention as we do. I will leave that at that. You have your record on it.

MR. ROMANO: Is this now demonstrated improper work of an individual there and also involving inspection, involving welding, is this now that it is found out going to be permitted to not be involved just because of a technicality where it could be a factor in possibly an accident?

Is the Board now so technical, so involved in technicalities that it must just not look at this thing?

JUDGE BRENNER: We are not going to look at it, that is correct. I have disagreed in advance and I see my prediction was correct with your characterization that it is just a technicality.

That's right. We are not going to look at it, because it is not a matter in controversy before us. The result of that -- there are many, many matters that are not in controversy before us. It becomes up to the Applicant in the first instance and then the Staff's work in its review and inspection program and other work, and that is where the matter stands.

So if you think there is still some uncorrected

problem with it, you should raise it before the Staff.

MR. ROMANO: You say if I think it is still uncorrected?

JUDGE BRENNER: Yes -- talk to the Staff about it. They may agree or disagree with you.

MR. ROMANO: I see. I intend to bring that up if I can later. That could not be now, used as a new contention, can it?

JUDGE BRENNER: No.

It is old information. We can tell that much about it.

MR. ROMANO: It is extremely important though.

JUDGE BRENNER: Let me cover the last item, and then we will take a break and then come back.

You raise in your paragraph 24, which is on page 8 of your findings, in part the last half of that paragraph that the Staff's inspector, Mr. Toth -- T-o-t-h -- was not a witness. This is arguably procedural.

Side 2,BU

That came up briefly at the hearing and we disposed of it but since it was done rather briefly and in passing, I want to take this opportunity to state we agree with the Applicants and Staff's combined finding -- not combined, we agree we have combined them in our mind. We agree with the Applicants and Staff's findings on this point; that is, you had amply opportunity before the hearing to show why a

particular witness should be presented and in fact after the testimony was filed, you knew who the witnesses would be at that point.

You had opportunity then to say that you required Mr. Toth as a witness and you did not. Beyond that, it is our judgment in looking at the transcript pages that you cite in your paragraph 24, that you have not shown any reason on the transcript or in your argument now in the findings that the absence of Mr. Toth has caused some material gap in the record.

His findings are in the inspection report; the broomstick affair so-called by you instance is fully described in all of the details and we see no material need for Mr. Toth.

Whether or not you had some points that you thought you wanted to develop, you could have asked for him at the times I have just indicated, but even now, looking back on it with the benefit of hindsight, we see nothing material to be added to the record by his presence.

There might have been one or two details he could have been informative of. For example, whether or not he saw Mr. Ferretti's initials up there. But whether or not the initials were there, it is not material for reasons of our other results. So we see no prejudice by Mr. Toth not being present and we will leave it at that.

Let me add, it was the Staff's decision in the first instance as to whether or not to have him as a witness. They decided to have the witnesses they did have and we don't see any reason to disagree with that judgment in the way the record was developed.

In fact, as it turned out, it is my personal opinion that it was fortuitous. One of the witnesses was not only the official in charge of the inspection branch, responsible for the -- I forget the exact name of the branch -- but is the special procedures type branch which includes welding. It was fortuitous that he was also an inspector at Limerick, so in both capacities was quite familiar with the facts of what needed to be discussed and it was also appropriate as an expert witness even in court and certainly in an administrative hearing for him to report his views as to Mr. Toth's approach.

I guess the one more arguable point was you could have asked Mr. Toth whether or not he was discouraged from making the checks on the welds that he made.

The evidence that we have from the Staff's witnesses is that they will know their right to perform those inspections.

The record shows that the inspections that Mr. Toth wanted to perform were performed promptly thereafter and we see nothing to be added that would be material on that

point.

In fact, there was ample support in the record for the fact that the Staff's inspectors were able to do what they wanted to do by the very fact that it was promptly accomplished.

MR. ROMANO: Judge, can I just say that during the deposition, Mr. Wetterhahn knows that I asked why all people involved with the 760601 affair were not present and of course I meant that they would also be present here.

JUDGE BRENNER: I read that portion of the deposition, Mr. Romano. Mr. Gutierrez's answer was the correct one as to why there were no Stafff witnesses there. We set up the procedure and I don't want to repeat it all but in the particular context of giving you yet another opportunity over and above your previous discovery opportunities to clarify the discovery of the Applicant, which was what your complaint was, we particularly ordered at the time that it was those Applicant witnesses that be made available and we described the category of Applicant witnesses that be made available and the Staff was never included. Your own thought that Mr. Toth would have been at the hearing just does not arise. It is not soundly based on anything. There was no reason for you to believe that, particularly after receiving the written testimony, which indicated who the witnesses would be.

But be that as it may, even with the benefit of

hindsight, we found nothing material lacking by Mr. Toth not being here.

We have one other point we want to come back with but we will take a 15-minute break at this point.

One point that we want to come back with relates to an additional finding that we want to emphasize although you did not argue it in your findings, Mr. Romano, and then we will hear from you on anything you want to say beyond what we have discussed.

We will be back at 10:55.

End 7. (Recess.)

mgc 8-1

JUDGE BRENNER: We have two more subjects that we want to cover, one raised in the proposed findings and another one beyond the proposed findings, but something that was material to our decision, and so we will indicate the consideration which we have given it.

One is, Mr. Romano, in your Paragraphs 7 and 9, and that's at Pages 3 to 4 of your findings, you take issue with the qualifications of the Applicant's witnesses to perform the job they performed.

MR. ROMANO: Did you say Page 3?

JUDGE BRENNER: Yes, and also Page 4. It's your Paragraphs 7 and 9.

JUDGE COLE: It's that one on 3 which begins, "I find that Mr. Corcoran" --

MR. ROMANO: Oh, yes.

JUDGE BRENNER: I guess 8 is somewhat related, too, although it deals with other matters also.

We disagreed with you. We disagreed with you at the time of the hearing, and we went back and looked at the transcript pages cited, and we find they do not support your conclusion that Mr. Coyle and Mr. Corcoran and Mr. Clohecy particularly the three to which you refer, are unqualified to perform the jobs that they performed.

There was a refrain at the hearing to the effect that the very brief, one-week training course that Mr. Coyle

mgc 8-2

took by Bechtel, it all relates to the question you asked him as to whether -- what courses he took from Bechtel, and he indicated that was the course. We then prevented him from giving a longer explanation at your request. Then the next day you asked, in effect, the same question, and you got the explanation then. And he is well qualified for his position as an engineer by his engineering education. He is qualified as an auditor -- this is Mr. Coyle we are speaking about -- he did not claim to be an expert weld inspector and, in fact, to the contrary, he pointed out that if he sees a weld that is questionable, if in his auditing function one of the things he sees is a weld that is questionable, he brings in the assistants, and he used Mr. Zong as an example and other people with more direct welding inspection type qualifications. That's, incidentally, on Transcript Pages 10,365, the second of those two pages; the two pages were inadvertently given the same number, but the second 10,365, and continues over to '366.

And similarly, you cite 10,361-362 for the proposition that Mr. Corcoran and I guess Mr. Clohecy have minimal experience, and those transcript pages do not support that assertion at all.

Beyond that, we find that the written qualifications, plus the description of what they have done, show them amply qualified to perform the tasks that they

mgc 8-3

have performed in their jobs. They are also, incidentally, to give the expert testimony they gave, but that's a little different than your main complaint.

Certainly nobody, including Mr. Coyle, ever claimed that his one-week Bechtel course provided him all the qualifications he needs in his job.

Now to the additional point that we considered. In the reinspections as a result of the so-called broomstick affair -- that is, the reinspections of inspections performed by Mr. Ferretti, it is correct, in our view, that -- and is testified to by the Applicant -- that the welds which were inspected by Mr. Ferretti were missed in the Applicant's program. They would have been completed in that program, and there would have been no reason to go back and look but for the fact that it was raised in the hearing here. And we then asked a question about it, and in the course of reviewing the corroboration of the answer to that question, they discovered their error. And we conclude that the normal functioning of the QA program, as it was applied, would not have discovered the error, had we not required the Applicant to go back and supply some information, and then it was only due to serendipity that in the course of providing that information, they realized they had better doublecheck on some points, and then in the course of that, they discovered discrepancies between

mgc 8-4

what they had looked at and what the records that were now available in the records storage vault disclosed.

We were therefore interested on our own as to whether this disclosed an important deficiency in the QA program, and we were particularly interested in the Applicant's own corrective, preventive and remedial actions. And we looked at the explanation as to why the error occurred, which among other places is given at Transcript Page 10,708 to '710 by Mr. Boyer.

We think it is reasonable that most of the problem was caused by the oversight by the Applicant of the fact that there were records in progress, which are not closed out until the particular sequence of the job activity is closed out, and the records are then put in the vault. This was an oversight which it is reasonable to believe accounts for most of the problem, not necessarily 100 percent, but we also agree that it is reasonable not to be able to precisely know what caused 100 percent of the problem.

I asked some questions to try to understand how much of the problem was likely caused by this, and it was explained, and we find correctly that you couldn't just match up the number of welds involved, because the open items involved many welds, some of which would have been inspected by Mr. Ferretti and so on. So we couldn't

mqc 8-5

certainly ascertain one-for-one whether each and every one not previously found is due to that activity. But it was reasonable, looking back at it now, to decide that it was. We accept and find credible the testimony by Mr. Corcoran at 10,714 to '16, that it is not a routine function of procedure to keep records in such a way that they are retreivable by the name of the particular weld inspector who performed the inspection. To the best of our knowledge it comports with the standard practice, and beyond that it is reasonable to keep the records by the system and subsystems of what was being inspected.

However, the name of the inspector and, in fact, the welder -- let me stay with the inspector -- the name of the inspector is retained in the records, so that that informatio is retreivable, although not easily and not readily.

Given the error, we find the way they kept the records was reasonable. We found the testimony credible that now, since that error was discovered, they have improved their procedures. They now realize that if they ever have to make a similar check, they have to be alert to the fact that if they are looking at just closed-out records, they may not catch everything if there is still work in progress being performed.

In addition, we were impressed that as part of

mgc 8-6

the lessons-learned type action, the Applicant went back to instances unrelated to welding where they had found -- where the Applicant had found some things that required checking and verification in light of things that were learned. They applied the lessons and realized that those previous checks may not have been complete due to the same problem, that their records on those other activities might not have been in the storage area. And as to those other two searches, the Applicant went back and rechecked the searches. So that was an example of applying the lesson beyond the narrow sphere, and properly so.

In addition, another remedial action coming out of the broomsticks -- I should say those other record searches were testified to by Mr. Corcoran at Page 10,716 to '17 in answer to my question and in addition 10,717 to '19, Mr. Corcoran referred to the documents in evidence in answer to my question as to how the remedial action included training and so on given to the inspectors to avoid any problems that might have occurred in the way Mr. Ferretti performed the inspection of the welds in question, and I specifically asked about vantage points, since that was a possible apparent problem -- that is, maybe he was at a bad vantage point with respect to angle and distance when Mr. Ferretti first performed the inspection, assuming arguendo that the inspection was

mgc 8-7

performed. And Mr. Corcoran pointed out that that general description of the action taken with respect to further information and emphasis on training for the inspectors did specifically include discussion of that potential problem. So that although you didn't raise it in your findings, we were interested in how -- what conclusions we should draw from the fact that the error was made in the way the Applicant searched the records initially, and the conclusion we draw is that it does not disclose a material weakness to the quality assurance program such that we should broaden what was found to a judgment that the quality assurance program for welding is lacking.

We find it was an oversight, an error if you will, that while it should not have been made, we understand the explanation as to why it was made.

More importantly, it is not the type of error that is a permeating pattern-type error. It is an unusual search that had to be made in this instance, and it has been corrected both for this instance and for other instances of searchs unrelated to welding which occurred prior to the time this error was discovered, and it has not been adjusted in terms of the fact that the error -- we find reasonable assurance that this type of error will not be repeated in the future as to the nature of the record searchs. That is a quality assurance interest.

mgc 8-8

With respect to the inspection of welding, we believe that this particular problem has properly been brought to the attention of welding inspectors and is now obviously well-known to the auditing people, and reasonable and proper actions were taken in that regard.

End 8

mgc 9-1

All of this brings us back to the conclusions that we stated on the record at the completion of the evidentiary hearing, which were that we found that the conclusions in the Staff's testimony and the conclusions in the Applicant's testimony -- that is, the written testimony in both cases -- to be well supported by the entire evidentiary record, which includes the oral examination, and that the conclusions are well supported. And we find they are correct. We find the testimony was accurate, truthful and complete, and there are no material gaps in our knowledge in reaching those conclusions as applied to the contention, and we find that the Applicant has prevailed on the contention on the merits.

What we have done since we made those statements, which we now adhere to, is reexamine any of the points raised by you in the findings, as I have discussed. And if you think that we still in an important respect misunderstand any of your points, or if you would like to state anything else that is pertinent to that, we would certainly be willing to hear about it.

MR. ROMANO: Well, you say, or the Board says -- you speak for the Board -- use the word "credible."

JUDGE BRENNER: When I don't speak for them, they grab me quickly.

(Laughter.)

mgc 9-2

When I say something they don't agree with, they let me know in a hurry. We have the same rule as the witness panel rules, but we discussed this in advance, as I'm sure you can imagine -- everything that occurred this morning.

MR. ROMANO: That "credible" again is a big generalization, as I see it, which is the same criticism of my speaking. I don't feel in particular the 760601 affair is credible. I go back on the basis that the Board was written many times back in May and continuing throughout '83 that they repeatedly stated that all welds, accessible as well as inaccessible, were inspected way back there in May.

Now on the basis of those statements and the indication that they had to look at records to make such statements, and the records certainly must have been faulty for them to write you letters repeatedly stating that all welds, accessible and inaccessible, were inspected, and then when they were required to sign an affidavit --

JUDGE BRENNER: Slight correction. They did not state that inaccessible welds were inspected. I think you misstated that elsewhere, but go ahead. I understand the main point you are making.

MR. ROMANO: All right. Then when it came to the point where they had to -- they were required to assure

mgc 9-3

that through an affidavit, they had to come up with a letter admitting that they did not inspect all the welds, both accessible and inaccessible.

And on that basis, I see no reason why we should, in their effort to reconciliate the whole situation, that we accept everything they state as credible and that there are no material gaps in what they say.

I feel there are -- as it relates to the 760601 affair, there are extensive material gaps because Mr. Corcoran admitted that this Mr. Ferretti did not have his initials on this weld, on this weld which was discovered. Now how many other welds -- and this is a very important question that has to be answered -- how many other welds did Mr. Ferretti check off as being final verification of a proper weld that was never inspected?

For Mr. Corcoran to say that, "We know he has inspected other welds, and he is a good inspector," that in itself does not explain away why he did not -- he had procedures. He knew he had to initial his welds. He didn't do that. He stated that the welds were properly performed, and then found to be very deficient. I think this again is another example with those statements that we did all this, and then when the time came up to prove it, they couldn't prove it and had to admit they didn't. Here's a case where again the leeway is being given that this

mgc 9-4

situation was credible as it related to an inspector who had procedures, and he deviated from the procedures, stating that welds were properly done and not putting his initials down and checking them off as okay is a very big gap.

And I think to say that he was a good inspector, with this kind of thing, without knowing how many other ways -- how many other welds might have been skipped in this exact manner, because I don't think they have records, they have proof that many other welds were not -- were just checked off as inspected. And for Mr. Ferretti to be fired on the same day that this information came up, that this improper inspection and improper recording indicates something beyond this one weld, as I see it.

And to follow it up, then, with statements on the basis of all the other welds, other inspections he did, he did proper inspections, doesn't seem to fit -- doesn't seem to be credible at all. And then to fire the man -- I think it's important that the Board must consider certain questions relating to the Ferretti affair and this situation as it relates to 100 percent inspection.

How is it possible that it can be stated that there was 100 percent inspection when you have a situation like this? Who is to say how many inspections were not made? And this is a point -- this is a point that has to be resolved. We don't know how many other inspectors may have

mgc 9-5

done the same thing here about when it's a little inconvenient to make a proper inspection, all you do is record it as okay.

Nowhere did the Applicant prove that they had a means of doublechecking that all welds were, in fact, inspected, so that they could say that they inspected 100 percent. And I think that's a crucial point.

We have here two very blatant incidents of stating things were done. In the one case, it was proven as it relates to the statements, repeated statements that all welds, accessible and inaccessible, were inspected, and now again we have the situation with Mr. Ferretti -- there, too, things that are extremely important as it relates to whether or not we make the decision that everything the Applicant had stated is credible, I think in the public interest it deserves a lot more proof.

I have -- let me find here a few questions I have which I believe the Board must look into. You'll have to excuse me, because I had not much time to get this together.

JUDGE BRENNER: Are the questions related to what you just said now, or should we get some responses to what you just said now?

MR. ROMANO: Yes, they are, Judge.

JUDGE BRENNER: Okay.

End 9

MR. ROMANO: I am going back to that page 2, as it relates again to the 100 percent inspection, as it relates to 76 --

JUDGE BRENNER: I can't hear you.

MR. ROMANO: I am going to page 2 of the Applicant's reply. It states that AWPP has raised no points contradicting the cases put forth by the Applicant and it further states that the AWPP arguments, none whatsoever could be concluded that the Applicant has not overwhelmingly met its burden of proof on the contention.

And we say that while we may -- while AWPP may not have presented arguments by which it could be concluded that the Applicant did not meet its burden of proof, unfortunately for the public there is not proof that the Applicant has fully controlled performance of welding and inspection there in accordance with quality control and quality assurance procedures and requirements.

The fact that as much -- even at this time, Mr. Corcoran said they were still having as much as 17 percent hanger welds not meeting or being deficient indicates they have not still corrected situations and still you don't have improperly -- you know, properly performed welding. And that in itself indicates the Applicant has not taken all proper preventive action.

I say the fact that the 760601 broomstick affair

shows it did happen that an inspector can inspect the weld and check it off as okay in the final inspection record and that it cannot be determined anywhere in what has been asked and answered that Mr. Ferretti did so inspect this weld and it is an example that that kind of a thing was going on and therefore the claim of a hundred percent inspection does not necessarily mean there has been 100 percent inspection.

I think it is the burden of the Applicant to explain that question -- I mean that statement of 100 percent inspection, because on the basis of that claim, we seem to say it is credible and therefore decide that there is no use looking into it any further.

I think that is absolutely not fair to the public, not fair to the contention that AWPP raises.

We don't know how many people did the inspection and there is no way, therefore, to go back and say that the statement of 100 percent inspection can be taken just merely by statement and I say that these are the kind of questions the Board must consider, that the 760601 affair requires checkout beyond inspection slips upon which Applicant alleges it did 100 percent inspection.

How many welds could have been missed in the two million welds? That is a big number and taking in what I call evidence here of welds being checked off as okay and in my estimation there is absolutely no way a jury could

come to the conclusion that what with the manner in which the weld was made, the fact that it wasn't inspected properly, the fact that it wasn't initialed, how they could ever say that that weld was okay and therefore it could not happen many times other than at that point.

Now did we have the situation where welds were supposed to be initiated? Did we have a record that says welds were initialed? That all the welds that were stated to be okay, do they have records that indicate that they observed the initials of the welder and therefore assure themselves that many welds were not just skipped altogether?

We want to know who observed that situation.

These are the kinds of things which I think the Board must consider, because it is so important that we just not take the words or the writings of the Applicant because we have, along with the record, other reactors.

In particular, I want to mention Midland, where the same architect-engineer, the Bechtel Corporation, was involved in absolutely disgraceful kinds of workmanship that they had -- that Bechtel had a great responsibility in. This is the same Bechtel. We have the same kind of what I call nepotistic effects where at Midland, and what I saw in reading inspection and engineering reports, that the process happened to be that if and when an inspector found something wrong, we had a slap on the wrist and we had a little

teaching session and it was all over, but as far as I am concerned, that kind of procedure with what we are discussing here as it relates to public safety does not at all -- did not at all assure public safety because we had examples upon examples of repeated infractions and evidence of not following specified procedures.

I want to say here that I don't feel in any way that repeated letters and affidavits from Mr. Boyer going from 350 welds to 709 to 1235 really is fair to just accept as written and then on the ones he couldn't inspect we have a nice, convenient manner of disposing of those things, which was engineering analyses.

These kind of things were used to obviate or move out of the way instances where they did not follow procedures and did not keep records so that they knew what was happening. To merely state that engineering procedures, studies, analyses solve that question is too risky a situation. To use the terms as they did, that these welds do not exist, is going to be hard to say, a jury to believe or be able to understand.

Now I want to say that I feel that they should have to again make some statements under oath as they did with the repeated facts that all welds in the 760601 affair were reinspected, were reinspected when in actuality they did not inspect them. Who knows how many welds are in that

construction on account of that kind of rationalization.

There is too many welds that were not visually looked at or done in other proper means and I believe that the inbred engineering analysis, quality assurance and so forth is not sufficient for the public interest.

I think, as I want to state it finally, what I want to close with, is that another look -- there should be another look at this thing and then I want to read something from the Byron decision I have here that I think is important in this instance.

This is Byron decision, the memorandum and order of May 7, 1984, wherein I would like to read, as the licensing board at least implicitly acknowledged in its initial decision and the Intervenors explicitly conceded at oral argument, the record is devoid of anything establishing the actual existence of uncorrected welding deficiency as it may relate in the 760601 affair and other places of potential safety significance --

JUDGE BRENNER: Mr. Romano, let me interrupt. I am sure that you are confusing the transcript record here because I am sure that was not all a quote from Byron.

You said that you were going to quote something from Byron and some of what you said is obviously not from Byron.

MR. ROMANO: It is not from Byron?

JUDGE BRENNER: They didn't mention the 760601 broomstick affair, for example. If you are going to quote something, you need to give the quote and make clear when you are returning to your own comments rather than the quote.

End 10

mgc 1.-1

MR. ROMANO: All right. I wanted to indicate that it could apply also to the 76. I'll just read it as is.

JUDGE BRENNER: We've read it, for what it's worth. We've read the Byron -- that's the Appeal Board decision you are reading from?

MR. ROMANO: I would like to read it. "As both the Board and the Intervenors see it, operating license denial is justified because the ascertained quality assurance shortcomings precluded a finding of reasonable assurance that any and all serious construction infirmities have been detected and rectified." And I believe that is most appropriate for Limerick.

JUDGE BRENNER: All right. Now you're not quoting anymore. Close quote.

Go ahead.

MR. ROMANO: Now I'm not quoting anything. As a comment, I think this is most appropriate to Limerick, in particular as it relates to welding infractions.

And I continue: "Obviously so long as legitimate uncertainty remains respecting whether the Byron facility has been properly built, the Licensing Board was obliged to withhold the green light for an operating license. Thus, assuming the Licensing Board justifiable concluded that such uncertainty existed, it necessarily follows that

mgc 11-2

it rightly declined to authorize license issuance."

Not reading again, I would say that there are grave doubts, not just those that I listed, but many more which I had wanted to put in as it relates to a pattern of carelessness at Limerick, that I feel should be looked at in light of how the Byron people -- Board -- looked at this.

That's all I have to say.

JUDGE BRENNER: Did you want to say something else?

MR. ROMANO: I was just glad to see that Judge Cole was on this Board, and I plead with Judge Cole and the whole Board to relook at this thing in that light.

JUDGE BRENNER: In fact, he was supposed to be in Rockford on the Byron case this very week, but through the modern age of metaphysics, he is here and there, also through the transcript and reports.

MR. ROMANO: Good man.

JUDGE BRENNER: Well, I am familiar with the entire Byron Appeal Board decision from which you only read a very small portion there, and Judge Cole, of course, is, I am sure, more familiar with it than I am.

Mr. Wetterhahn, did you want to respond?

MR. WETTERHAHN: A few points. Let me correct some errors with regard to the inspector's initials.

mgc 11-3

I think Mr. Romano may have mischaracterized the record.

In response to a Board inquiry of Mr. Corcoran, Mr. Corcoran attempted to recall whether at the time he had reinspected the welds in question with Mr. Toth, whether he could recall seeing the initials of the inspector. And he honestly stated after some seven or eight years that he could not recall whether he saw those initials.

Having gone back and looked subsequently, those initials were not there.

He also testified that that's not surprising since the welds were ground out, and it's very possible that in preparation for grinding out and replacing those welds, the initials were destroyed. He did testify that other welds that he did check had Mr. Ferretti's initials. Whether the initials are by a weld or not of the inspector, that really doesn't make a difference. There are records available, which are the ultimate judge of whether an inspection had been made.

With regard to whether Mr. Ferretti was fired or not, I think the testimony is clear on that, is ample that Mr. Ferretti left of his own accord for other reasons. But whether he was fired or not, I don't think that makes a difference to the ultimate conclusion. Assuming arguendo that he was discharged for what he did, the remedial action would have been the same. The company started out to

mgc 11-4

reinspect the welds that he did. Whether he was retrained or was separated, I don't think it would make a difference. I don't think it's crucial for this Board's decision. The objective evidence with regards to what Mr. Ferretti did in his course of work over approximately a year is contained in the results of the reinspection. It was upon those objective results done by a number of other inspectors, who were fully qualified, that Mr. Corcoran made his conclusion that he thought Mr. Ferretti was a good inspector, not on the basis of one or two welds, but upon all the welds that he did look at.

With regard to many of the other things that Mr. Romano raised, they are entirely hypothetical. They are speculative.

I would emphasize again that all of the instances that he brought up were the result of matters which were in inspection reports. There is no evidence, other than matters that were addressed by the NRC, that there are welds which weren't properly inspected. We have no witnesses from Mr. Romano or AWPP that there are any deficient welds.

With regard to the affidavits of Mr. Boyer and how the reinspections were done, that matter is covered extensively in Applicant's testimony. That testimony is uncontroverted. I asked specifically the Staff witnesses whether they agreed with the testimony. They stated they did.

mgc 11-5

I needn't go over the affidavits of Mr. Boyer, but just to say that they were exactly as they purported to be. There were progress reports, and the ultimate results were contained in the Applicant's testimony, and I believe you will find that there is no inconsistency with Mr. Boyer's affidavits.

Finally, with regard to making statements under oath, I am sure the Board is aware that all of the statements made by Applicant's and Staff's witnesses were under oath, so that there is no problem there.

With regard to Mr. Romano's grave doubts, I don't think the objective evidence would lead any reasonable individual to share his view.

One final point with regard to these hanger welds which were deficient. Mr. Romano quote 17 percent. The fact that welds are found deficient at the first inspection and have to be redone or fixed does not lead to the conclusion that any deficient welds will be ultimately accepted. It just means that upon final inspection the first time, some welds were not up to the quality requirements. It shows a quality assurance organization working, rather than deficient welds being accepted.

Again, there are many reasons why ordinarily capable welders don't always make perfect welds the first time. If they did, there wouldn't be a reason for inspection.

mgc 11-6

But all in all, none of the matters which Mr. Romano has raised here, in addition to the ones raised in his findings, would rise, in our opinion, to a substantive issue which would give any reason for the Board to reconsider its initial conclusions, based upon the record evidence.

Thank you.

JUDGE BRENNER: Give us one moment, and then we will give the Staff an opportunity.

(The Board confers.)

End 11

JUDGE BRENNER: Ms. Hodgdon?

MS. HODGDON: Thank you.

Mr. Romano opened his remarks here this morning with the statement that he doubted that the Staff had done as much as it could to protect the public.

The Staff feels that Mr. Romano's remark was entirely subjective in that the evidence on the record was entirely to the contrary and that it showed that with regard to the contention raised by Mr. Romano, the Staff had shown great diligence in its efforts to assure quality welding at Limerick.

Also, the Staff believes that most of the arguments, the arguments made here this morning by Mr. Romano mischaracterized the record as his findings mischaracterized the record.

We agree with Mr. Wetterhahn's statements regarding Mr. Corcoran's testimony concerning the existence or non-existence of Mr. Ferretti's initials on the subject welds, the welds involved in the inspection report 760601.

We agree that Mr. Corcoran did not state, as Mr. Romano has stated that he did, that Mr. Ferretti's initials were not on the weld.

Also there is no basis for Mr. Romano's -- no basis in the record for Mr. Romano's conclusions that Mr. Ferretti was fired. In fact, the evidence was entirely

to the contrary.

Mr. Wetterhahn has described the reinspection program and its having confirmed that Mr. Ferretti's inspections were conducted and were adequately conducted.

Further, there was testimony, the Applicant testified that the welds in questions, even the welds involved in the 760601 report, all of them could have been used, could have been dispositioned, used as is.

Therefore, there is no basis for the statements made by Mr. Romano regarding the quality of Mr. Ferretti's inspections.

Further, the general statements regarding the Applicant's -- the inadequacy of the Applicant's programs and of NRC inspections, Mr. Romano does not seem to understand that the Applicant's QA program and the NRC inspection program are designed to reveal missed or inadequate inspections. The testimony amply demonstrated that in the case of inspection report 760601 the program worked as it was designed to work in that it revealed the -- that the inspection had not been adequate. With regard to hanger welds, the testimony was contrary to the way that it has been characterized by Mr. Romano. The testimony was that the percentage of hanger welds had been substantially reduced and that the hanger welds problem was no longer a problem, that the rejection rate might be high in rejection rate for

other types of welds but that hanger welds are very difficult.

Therefore, Staff does not feel that Mr. Romano's characterization -- that Mr. Romano properly characterized the testimony given with regard to hanger welds.

Certainly, Mr. Romano had an opportunity to prove that the welds in question were not in fact inspected by Mr. Ferretti. He was not able to prove that and Mr. Corcoran did poing out in his testimony that the indicia were to the contrary.

As regards Mr. Romano's citation to the Byron decision, we were not able to ascertain the applicability of that decision to the matters now before the Board and we feel that Mr. Romano has not shown anything here this morning which would lead this Board to reconsider its tentative judgment that Mr. Romano's Contention VI-1 is lacking in merit.

Thank you.

JUDGE BRENNER: We did not interrupt the responses to get specific transcript citations in part because we will remember the record on the points raised.

Some of it is repeat of the transcript pages in the proposed findings and some of that we have alluded to again on the record this morning.

Beyond that, we have recalled the points and we agree with the points raised by the Applicant and Staff just

now.

Let me just hit a few highlights, we we find they are correct.

On the question of whether or not Mr. Ferretti inspected welds, in one context for the sake of argument we assumed he did not inspect that weld to evaluate the remedial action taken for the broomstick affair, and as we have discussed this morning, the remedial action is fully proper, as if he did not do the inspection.

On the larger question as to what that means for whether or not we have reasonable assurance that welds are inspected very close to or at the requirement of a 100 percent inspection, all the indications are that the system is properly working to provide reasonable assurance that that is being done. Not absolute assurance -- that cannot be found anywhere anyhow, but reasonable assurance.

There were indications that Mr. Ferretti had performed other inspections even at that same level of these welds.

I have earlier alluded -- not alluded, I have earlier given Mr. Corcoran's general answer to the general question of assurance that weld inspections are performed and he described the other checks that exist.

Again I will say that is at page 10,611 of the transcript.

In terms of whether Mr. Ferretti was fired or not is not material to any of our rulings before us, but it does seem to me that you can't have it both ways, Mr. Romano.

On the one hand, you say Mr. Ferretti is much worse than the Applicant says -- he didn't do his job at all. If that is the case, he should have been fired, or it is the Applicant's view that that is not a correct characterization of Mr. Ferretti and he was not in fact fired, so you can't have it both ways but either way, it is not material.

And for the reasons just reiterated by the Applicant and Staff and combined with our earlier findings in the written proposed findings we find there is reasonable assurance that the 100 percent inspection program was in effect and being met and that the auditing procedures and other checks and balances described there were effective to provide reasonable assurance that it was -- that the inspections were being performed in fact.

With respect to the hanger welds, you are raising that and the particular context in which you raised it for the first time orally, you did not raise it in your written proposed findings, however we recall that clearly because I asked a question about it among others with respect to the results reported in paragraph 90 of the Applicant's testimony and that is that finding 19 deficiencies, although they were characterized as minor out of 47 welds being reinspected was

a rather high percentage, approximately 50 percent.

First of all, that was not the initial inspection. We clarified that, and this is the one point raised by the Applicant that we disagree with. That was a high rate of deficiencies found on a reinspection of the initial inspection or at least it was not clear, because the work had been in progress and it couldn't be ascertained, but certainly some of it if not all of it was a reinspection.

For the sake of argument, we will assume it was the reinspection.

End 12.

mgc 13-1

(The Board confers.)

JUDGE BRENNER: Judge Cole pointed out, on Transcript Page 10,814, the witness, who I believe was Mr. Corcoran at that time -- we'll check it, but it's in response to my question -- stated that that was the first level of inspection, but I have a definite recollection that in another transcript page, it was clarified that while still in the first level of inspection, it was not necessarily the first inspections performed of those welds.

Be that as it may, the potential difference is not material, because assuming even that it was not the first inspection performed, the witness explained at Page 10,813 to '814 the particular problems unique to hanger welds in connection with the fact that they were small welds, small circular welds with a close tolerance of five percent strength allowance, I believe is the way he put it, and that they were working on a particular hanger program.

This, again, was discovered by the Applicant or its agents themselves. They were working on it, and the rate of acceptable welds as the program was being implemented was greatly improving, and they were performing 100 percent reinspections. In addition, the percentage rates could be misleading, as we went through the questioning and answers in some detail, because there could

mgc 13-2

be more than one weld -- in fact, in our judgment, a lot more than one weld -- in connection with the particular hanger, although it would show up as a rejection.

But even accepting it as a high percentage, which it admittedly was, and we had the same reaction -- that's why we asked about it -- and we are satisfied that there is a particular program geared to the hanger welds, as there should be. But the Applicant did not need anybody to tell it that there should be. They are going through the program.

In terms of Byron, you know, the general statements there are certainly correct. And had we found these types of patterns, using your instances, we would have applied the judgment to the fact that, in general, we don't have reasonable assurance as to what other problems might be out there, and we were looking at it with just that point of view.

However, to the contrary, we found that the quality assurance program is well in place and working well for the instances we examined. If it had not been, we would not have said, "Oh, it's okay because just those instances were fixed up." We would have indeed made the broader judgment that the Byron board made, and as noted, we have one judge in common with that Board. And the result we reach here is not inconsistent with the view of

mgc 13-3

the Byron Appeal Board. So it is not applicable. The Byron view, while correct, is not applicable to the facts developed in this hearing.

In terms of the statements under oath and so on, we have been through and have referred ourselves, without being asked by you, Mr. Romano, to the fact that we were interested in seeing -- we found there was an error made in the report of the welds reinspected, which had initially been inspected by Mr. Ferretti. We are satisfied with the explanation as to the probable main cause of the error and the remedial action taken, and we are satisfied with the explanations and testimony of facts that we now have as to the remedial action as full and complete and supports the conclusions reached, and it is all under oath.

And we agree that given the initial discrepancies and errors, that we needed to get to the heart of the matter under oath, and that is why we reconsidered the admissibility of your contention and admitted it. It should be noted, of course, that the errors were discovered by the Applicant, even though given the context that it was a result of the Applicant going back and looking due to the questions arising out of this hearing proceeding.

Nevertheless, no one went in there with the Applicant and said, "Oh, you made an error; you overlooked this." The Applicant discovered the error on their own,

mgc 13-4

properly reported the error to us, and properly took all the other action on its own after discovering the error. And although an error has been made, these other facts are noteworthy to fill in the context also.

MR. ROMANO: Could I comment on that?

JUDGE BRENNER: Yes. That completes our remarks.

MR. ROMANO: I seem to feel that I didn't see anywhere absolutely that the error regarding these welds was discovered by the Applicant. If you are talking about their trying to explain how it went from 305 to 709 or 1235, because they continued to state that everything had been inspected, and then AWPP pushed on wanting to know more about it, and I think it was that push that sent them to try to find out what had happened.

Further, on another point --

JUDGE BRENNER: Let me stay with that for a minute. I think we have agreed with the statement you just made as far as it goes, -- that is, the proceeding and your contention was the stimulus for the Applicant to go back. But the facts appear -- and again, this isn't really very material to our results on the merits of the contention, but nevertheless the facts reveal that the Applicant discovered the error it made in overlooking the records on its own, because the point you were complaining of was a different point. You were complaining as to whether

mgc 13-5

they looked at inaccessible welds versus accessible welds, and that's a different point than the error they discovered.

Nevertheless, we have given you credit along with the entire proceeding for stimulating the relooking and reexamination by the Applicant. It made an error. The error was repeated in a letter from counsel, but the error was also discovered by Applicant, too, and I have explained why we believe that's the case.

While we're on that point of this accessible versus inaccessible, in your remarks you mentioned, I think you said no jury would be convinced by the engineering analysis of the Applicant that you can just assume welds not to exist.

Well, I don't know whether a jury would understand it or not. I have no reason to believe that a jury would not find as we have found. Nevertheless, we certainly understand that where welds are nonstructural and put in for purposes other than permanent structural support, then the fact that they may not be proper welds would not affect the integrity of the structure, and in fact, in other cases we can understand how engineering analyses could lead to a conclusion that even though a weld is inaccessible, if you assume that it is inadequate, the results may still be okay, and that is supported in the

mgc 13-6

record also. But again, it is not in the context of the details of the engineering analyses. That would be a whole different contention. It was in the context of your contention that no remedial action was done, these other welds were just ignored once they were physically covered up by concrete or other obstructions, and we find that not to be the case, given the testimony.

MR. ROMANO: But I thought it was not only important to find those welds, it's also important to find in that search whether or not Ferretti had done many more welds -- had checked off many more welds without inspecting them and whether or not this same kind of thing was an ongoing situation among other inspectors.

I agree that Mr. Ferretti should have been fired. I disagree with the Applicant that he was not hurried away, though. I am concerned with the Applicant's veracity in all these little points, and I would like to say that you assume that -- you did assume that perhaps Mr. Ferretti did not inspect that weld, but then again, how many other welds did he not inspect that was not brought up because I don't believe that this whole issue would be heard, this whole contention, if it wasn't for the fact that we helped to push it to the top. It may never have been found out. So how many other possible situations could have had the same kind of lack of certainty occur?

mgc 13-7

I would like to make a statement relative to the Staff's "used as is." It's the same thing there. Just dispositioning welds as used as is, because it later cannot be inspected again brings up the point of, can we look at that as covering up Mr. Ferretti's improper inspections or other inspectors' improper checking-off as okay without inspection?

Then as it relates to Mr. Wetterhahn, I would like to -- I just want to say that as it related to the oaths that I talked about, it was not just the oath relating to the Boyer affidavits, which certainly I know he presented, but which I questioned. I was referring to "under oath" to recheck and go over many more records to indicate the public risk. And I would think that it's important enough to do that.

I will just let it go at that.

JUDGE BRENNER: Well, I don't think we heard any new points just now. You have reiterated the others. So we have nothing to add to our ruling.

I don't know if the Applicant or Staff wishes to add anything.

MR. WETTERHAHN: No, sir.

MS. HODGDON: No.

JUDGE BRENNER: We have reached the judgment we have reached, as reaffirmed today, and that is our

mgc 13-8

ruling. It's a bench order. It is not our decision in the sense that it's an interlocutory order at this point. We will incorporate it in our partial initial decision, which will include this, as well as other subjects, and at that point it will become a part of the initial decision of the Board, and not until that point.

We thank you for your time today. We also thank you for the proposed findings which were helpful to us, because beyond reviewing the portions we wanted to review, as we have always said, the proposed findings of the parties direct us to portions of the transcript relied on by the parties, and that is why transcript citations in proposed findings are so important. And we appreciate the effort of all the parties in preparing those to assist us in our task.

We will be adjourned at this point. As I stated earlier, we will be back in this courtroom at 1:30 p.m. on June 19th to take up the evidentiary hearing on City 15. Whether or not we have any other business related to the admissibility of the City of Philadelphia's remaining issues on offsite emergency planning will depend on the status of the matter as the time unfolds between now and then.

MR. ANTHONY: Judge Brenner, if I may, I would like to have the opportunity to transfer to you a

mgc 13-9

supplement to my motion that I submitted on the 18th.

JUDGE BRENNER: All right. You can give it to us off the record.

We are recessed at this time.

(Whereupon, at 12:10 p.m., the nearing was recessed to reconvene at 1:30 p.m., June 19, 1984.)

CERTIFICATE OF PROCEEDINGS

This is to certify that the attached proceedings before the NRC COMMISSION

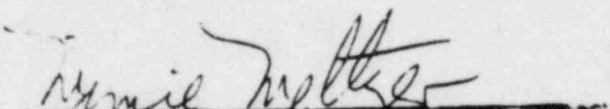
In the matter of: Philadelphia Electric Company

Date of Proceeding: Thursday, 31 May 1984

Place of Proceeding: Philadelphia, Pennsylvania

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

Mimie Meltzer
Official Reporter - Typed


Official Reporter - Signature