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October 10, 1979

Mr. Samuel J. Chilk, Secretary
U. S. Nuclear Regulatory Commission
Washington, D.C. 20555

Re: Northern Indiana Public Service Company
Bailly Generating Station, Nuclear-1
Docket No. 50-367

Dear Mr. Chilk:

On October 3, 1979, Porter County Chapter of the Isaac Walton League of America, Inc., and other organizations and individuals which have made various requests for hearings in connection with Bailly Generating Station, Nuclear-1, filed a "Motion to Consolidate." The motion asks "the Commission" to consolidate their requests for a hearing with respect to a proposed extension of the Bailly construction permit with their request for a hearing in connection with the "short pilings proposal."

No Commission regulation specifically authorizes this "Motion to Consolidate." Nor does any regulation authorize answers to the Motion. (10 C.F.R. § 2.730 appears to apply to motions filed in "proceedings" and there is presently no Bailly "proceeding.") Nevertheless, we take the liberty of filing this brief response.

It is our understanding that the request for a hearing with respect to the "short pilings proposal," first filed with the NRC on November 1, 1978, remains pending before the Commission and that the requests for hearing in connection with the Licensee's request for extension of the construction

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permit are pending before the Staff of the Commission. We can conceive of no purpose to be served by "consolidating" separate requests for hearings on these separate matters pending before separate entities within the NRC; certainly, the motion identifies none.

As the Commission is aware, Licensee is fully convinced that no hearing with respect to the "short pilings proposal" is required as a matter of law and that no such hearing should be ordered as a matter of discretion. See letter, William H. Eichhorn to Samuel J. Chilk with attached Comments (January 8, 1979).

Similarly, no hearing prior to action by the NRC with respect to Licensee's request for extension of the construction permit is required as a matter of law since, as noted in our request, the action does not involve a "significant hazards consideration." In such case, of course, notice is published after issuance of the amendment and members of the public may then request a hearing. In every prior case of which we are aware, a number totalling more than 35, that is the procedure which has been followed.

Elemental fairness as well as concern for an orderly regulatory process require that the extension of completion date requested for the Bailly facility be evaluated and treated procedurally on the same basis as other requested extensions. If the application filed by the Northern Indiana Public Service Company should be singled out for treatment at odds with those precedents, it could not only prejudice the Licensee in the eyes of the public (including the financial community upon which all utilities necessarily rely) but it would set a disturbing precedent for other Commission license holders. If persistent intervenors, whose sole objective is to block or delay a project, are permitted to determine whether or when a hearing is to be held, a mockery will be made of the regulatory process. The Commission has previously declined to order institution of a proceeding to suspend and revoke the Bailly construction permit at the request of some of the present intervenors. Memorandum and Order of the Commission, 7 NRC 429 (1978). The Court of Appeals affirmed the Commission's denial of that requested proceeding. Porter County Chapter v. NRC, _____ F.2d _____ (D.C. Cir. 1979).

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Without regard to the merits of the requests, their consolidation would be pointless and improper. The factors to be considered as to each request are substantially different. The scope of the requested hearings, if granted, would be substantially different. There is thus no reason for "consolidation" except the requestors' penchant for attempting to consolidate and make inter-dependent matters which are independent and can properly be reviewed on their own merits. For example, as the Commission will recall, some of these requestors asked the Court of Appeals to delay the argument in and decision on the case cited above pending completion of the administrative proceeding they requested on the proposed extension of the Bailly construction permit. The Commission and NIPSCO objected to the unwarranted attempt to mix disparate subjects; the Court denied the Motion and, of course, ultimately ruled against the requestors on the merits of the appeal.


For all of the foregoing reasons, Licensee opposes the present "Motion to Consolidate" as unsupported and serving no useful purpose. We request its denial.

Respectfully submitted,

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By


Maurice Axelrad

Dated at Washington, D.C.
This 10th day of October, 1979

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of)

NORTHERN INDIANA PUBLIC SERVICE)
COMPANY)

Docket No. 50-367

Bailly Generating Station,)
Nuclear-1)

CERTIFICATE OF SERVICE

I hereby certify that copies of the letter from Maurice Axelrad to Samuel J. Chilk dated October 10, 1979, were served on the following by deposit in the United States mail, postage pre-paid, or by hand delivery this 10th day of October, 1979.

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