

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

IN THE MATTER OF:)
)
NORTHERN INDIANA PUBLIC) Docket No. 50-367
SERVICE CO.)
)
(Bailly Generating Station,)
Nuclear 1))
Construction Permit Extension)

STATE OF ILLINOIS RESPONSE TO APPLICANT'S MOTION FOR
ESTABLISHMENT OF SCHEDULE FOR PREHEARING CONFERENCE
AND RELATED FILINGS

The State of Illinois (Petitioner) hereby objects to the request of the Northern Indiana Public Service Co. (Applicant) that the Atomic Safety and Licensing Board(Board) establish a schedule for a prehearing conference and for filing of supplemental pleadings. The reasons for objection are stated as follows:

Establishment of a prehearing schedule would be preemptory as no notice of hearing has as yet been published by the Board. The Procedural Rules of the Nuclear Regulatory Commission, 10 C.F.R. §2.751(a) provide for convening a special prehearing conference "within ninety (90) days after the notice of hearing is published." In the instant proceeding only a "Notice of Opportunity for Hearing on Construction Permit Extension" has been published (44 Fed. Reg. 69061, November 30, 1979), and that notice was issued not by the ASLB convened for this proceeding, but by Commission. The "Notice of Opportunity for Hearing" stated:

In the event that a hearing is held a person is permitted to intervene, that person becomes a party to the proceeding and has a right to participate fully in the conduct of the hearing" 44 Fed. Reg. 69061.

Although a hearing is required in this matter and will in fact be held, the Board cannot and should not schedule conferences prior to publishing its Order for Hearing, for until such Order there can be no assumption that a hearing will be held. Thus NIPSCO's suggestion that a special pre-hearing conference be held on February 28, 1980 is both legally and practically impossible. 10 C.F.R. §2.104 specifies that in the case of an application concerning a construction permit for a facility described in §50.22, commercial or industrial facilities, notice of hearing shall be issued at least 30 days prior to the date set for the hearing on the notice. Such notice must state, in addition to the time, place and nature of the hearing, "the matters of fact and law to be considered". Time for filing answers to the notice must be provided as well. §2.705 provides 20 days after service of notice of hearing for each party to file an answer which will further define the issues to be addressed at the hearing.

As to filing of contentions, 10 C.F.R. §2.714(b) clearly states that a petitioner who has filed a Petition to Intervene may have up to 15 days prior to any scheduled pre-hearing conference or special prehearing conference in which to file a list of contentions which the petitioner seeks to have litigated. Provisions for

additional time to file contentions are also included in §2.714(b).

The reason for adopting minimal time limits for filing pleadings and for notice of hearing is obvious. Without some preparation time, petitioners would be deprived of meaningful participation in the proceeding. Sufficient notice of hearing must be had to allow for the maximum participation by the interested parties. Sufficient time to prepare a statement of contentions must be allowed to provide accurate presentation of issues.

To unduly hasten the filing of contentions would not reflect the intent of Congress in providing the hearing procedure, nor would it truly facilitate the hearing procedure. For although contentions may be filed in "final" form 15 days prior to a special prehearing conference, the Board always has an obligation under 10 C.F.R. §2.752 to consider further amendments. In practical effect, where premature filing of contentions is foisted upon intervenors, additional time is necessarily consumed at the prehearing conferences, and after, as issues must be redefined and contentions must be amended to conform to the regulatory standards set in §2.714(a) and to adduce further information.

In addition to asking for a rush to judgment which would eliminate the opportunity for petitioners to adequately frame contentions, Applicant also asks the Board to limit Petitioners access to discovery (Ap. Br. at 3). This request is premised on Applicant's assumption that this proceeding is governed by the

rules that apply to construction permit proceedings under 10 C.F.R. §2.751. This assumption is incorrect. The construction permit proceeding in this case has been held. The application for construction permit extension is an application for amendment of the construction permit, and the rules should be adapted accordingly.

In this regard Petitioner draws the Board's attention to 10 C.F.R. §2.756 which allows for final proceedings. Even in a construction permit proceeding where discovery is not formalized until the special prehearing conference, it is not unusual for informal discovery to begin prior to that time. Certainly in an amendment proceeding such as the instant one, a strict conformity to rules regarding Construction Permit and Operating License proceedings would be inappropriate. See 10 C.F.R. §2.740 (b) (1).

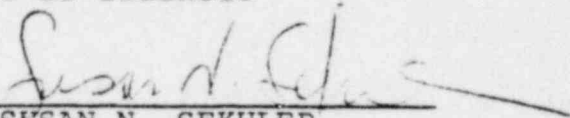
Discovery which proceeds before the filing of final contentions, as in accord with Rule 30(a) of the Federal Rules of Civil Procedure, may indeed achieve the goal espoused by Applicant to "facilitate orderly and expeditious disposition of the matters set forth in the "Notice of Opportunity for Hearing...". Early discovery will help Petitioners to better define their concerns, and may serve to eliminate some questions Petitioners have in regard to the construction permit extension and the scope of the proceedings in regard thereto.

WHEREFORE, Petitioner, the STATE OF ILLINOIS prays
this Board deny Applicant's Motion to establish a schedule for
Prehearing Conference.

Respectfully submitted,

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NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

IN THE MATTER OF)	
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NORTHERN INDIANA PUBLIC)	Docket No. 50-367
SERVICE COMPANY)	
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CERTIFICATE OF SERVICE

I hereby certify that I have, this 4th day of February, 1980, caused copies of State of Illinois Response to Applicant's Motion for Establishment of Schedule for Prehearing Conference and Related Filings to be served by first class mail to the following:

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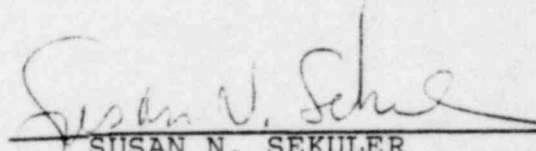
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