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UNITED STATES
NUCLEAR REGULATORY COMMISSION

In the matter of:

Northern Indiana Public Service Company
(Bailly Generating Station, Nuclear 1)

Docket No. 50-367

POOR ORIGINAL

Place: Valparaiso, Indiana

Date: March 12, 1980

Pages: 1 - 159

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3 UNITED STATES OF AMERICA
4 NUCLEAR REGULATORY COMMISSION

5 BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

6 In the Matter of:)

7 NORTHERN INDIANA PUBLIC)
8 SERVICE COMPANY)

9 (Bailly Generating Station,
10 Nuclear I))

) Docket No. 50-367
) (Construction Permit
) Extension

11 PROCEEDINGS held before THE ATOMIC
12 SAFETY AND LICENSING BOARD, on the 12th day of
13 March, A.D., 1980, at the National Guard Armory,
14 Valparaiso, Indiana, as taken by Bonnie Y. Brothers,
15 Certified Shorthand Reporter and Notary Public.

16 APPEARANCES:

17 MR. HERBERT GROSSMAN, Esq., Chairman
18 Atomic Safety and Licensing Board Panel

19 DR. RICHARD F. COLE
20 Atomic Safety and Licensing Board Panel

21 MR. WILLIAM EICHHORN
22 MS. KATHLEEN SHEA
23 MR. STEVE FRANTZ
24 appeared on behalf of NIPSCO

MR. STEVEN C. GOLDBERG, Counsel
Nuclear Regulatory Commission Staff
MR. RICHARD J. GODDARD, Co-counsel
Nuclear Regulatory Commission Staff

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2 APPEARANCES: (Continued)

3 MR. DEAN HANSELL, counsel
4 MS. SUSAN N. SEKULER, counsel
5 MR. JOHN VAN VRANKEN, counsel
6 appeared on behalf of State of Illinois

7 MS. DIANE COHN, counsel
8 appeared on behalf of:
9 City of Gary, Indiana
10 United Steelworkers of Amer, 6787
11 Save the Dunes Council
12 Bailly Alliance
13 Critical Mass Energy Project

14 MR. ROBERT J. VOLLEN, counsel
15 appeared on behalf of:
16 Porter Co. Chapter Isaac Walton
17 League of Amer., Inc.
18 Concerned Citizens Against Bailly
19 Nuclear Site
20 Businessmen for the Public Interest,
21 Inc.
22 James E. Newmann
23 Mildred Warner

24 MR. EDWARD W. OSANN, JR., co-counsel (Above)

MR. GREGORY REISING, counsel
appeared on behalf of Lake Michigan
Federation

1 THE CHAIRMAN: Ladies and Gentlemen, the special
2 pre-hearing conference before the
3 Atomic Safety and Licensing Board is
4 now called to order.

5 I'd first like to make sure that all
6 the participants are seated up front at the
7 tables provided for them. I believe counsel
8 are here, but there are some individual
9 petitioners, I'm not sure, that have not
10 taken seats up front, Mr. and Mrs. Grabowski,
11 could you have a seat up front. Doctor Schultz,
12 is he here? And there's at least one
13 microphone provided at each counsel's
14 table.

15 I'd like to take an opportunity to
16 say this is a special pre-hearing council
17 under the authority of the Nuclear Regulatory
18 Commission, it's being held today, Wednesday,
19 March 12, 1980, at the National Guard Armory
20 in Valparaiso, Indiana, pursuant to an
21 order of the Atomic Safety and Licensing
22 Board. In the matter of Northern Indiana
23 Public Service Company, Bailey Nuclear
24 Generator, involving NIPSCO's request for a

1 construction permit extension. .

2 This Board was designated on
3 December 31, 1979, by the Acting Chairman
4 of the Atomic Safety and Licensing Panel
5 pursuant to the regulations of the
6 Commission, particularly NCRFR, Section
7 2.105.

8 Now, I'd first like to introduce the
9 members of this Board. As many of you know,
10 NRC's Board is usually composed of three
11 members and an attorney who acts as Chairman
12 of the Board and two scientists, usually
13 an environmental scientist and nuclear
14 scientist. Now, our nuclear scientist,
15 Mr. Glenn Bright is absent today because he
16 sustained a severe injury recently after we
17 had scheduled this conference. He has
18 just undergone surgery and we hope he'll
19 rejoin us within a few weeks. Mr. Bright
20 has degrees of Bachelor of Science and PHD
21 of Science in engineering physics from the
22 University of Oklahoma, he taught three
23 years at Oklahoma and has an extensive
24 background in nuclear engineering in private

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industry, he's a full-time member of the Atomic Safety and Licensing Panel.

We are, by the way, conducting this conference as a forum, that is, two of the three members, including a chairman, under Section 2.721D. On my right is our environmental member, Doctor Richard F. Cole, Doctor Cole has a Bachelor of Science in Civil Engineering from Drexel, a Master of Science in Sanitary Engineering and Water Resources from MIT, a PHD in Environmental Engineering from the University of North Carolina, he spent seven years with the Pennsylvania Department of Health, he spent eleven years at the University of North Carolina, including seven-and-a-half years on the faculty of the graduate school, when he left the University of North Carolina he was a director of the International Program of Sanitary Engineering, he has been a permanent member of the Atomic Safety and Licensing Board Panel since 1973, he's a Registered Professional Engineer in Maryland and Pennsylvania and is a Diplomate

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in the American Academy of Environmental Engineering. My name is Herbert Grossman, I'm acting as Chairman of the panel, I have a BA from Cornell, and LOD from Columbia, a Masters course from Georgetown University, I was a trial attorney and appellate attorney at the Department of Justice over fifteen years, I'm on the Register of Certified Administrative Board Judges, and I've been a permanent member of this Board for a half-a-year.

This proceeding was initiated by NIPSCO's request for an extension of its construction permit, which had been granted on May 1st, 1974, after an extended hearing the completion date in that permit was September 1, 1979, on February 7, 1979. NIPSCO requested an extension of the completion date to September, 1985. On August 31, 1979, it amended its request to set the completion date at December 1, 1987, for ninety-eight months after the NRC's recoverage placement. On November 30, 1979 NRC published a notice that

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permits anyone who was interested to file a request for hearing in the form of a petition to intervene pursuant to 10 NRC 650.50R, if a good cause had been shown for the extension of the permit. On the deadline stated petitions were received . Firstly, a joint petition from the Porter County Chapter of the Isaac Walton League of America, Concerned Citizens against Bailly Nuclear Site, Businessmen for Public Interest, Inc., James Newmann and Mildred Warner. A petition was received from the State of Illinois by its Attorney General. A joint petition from the City of Gary, United States Steelworkers Local 6787, Bailly Alliance, Save the Dunes Council, Critical Mass Energy Project. A further petition was received from Local 1010 of United States Steelworkers of America, a petition was received from Lake Michigan Federation, another one from Doctor George Schultz Is Doctor Schultz here yet?

(No Response)

And finally a petition from George and Anna Grabowski. Let me ask if all

1 are present, other than Doctor Schultz.

2 On February 8, 1980, the Board set
3 the special pre-hearing conference for March
4 12 and 13th, at another site. Because of the
5 expected large turn-out, as I see we moved
6 the site somewhere else and then finally to
7 this National Guard Armory. We do not intend
8 to have public statements at this conference.
9 If a notice of hearing is issued and we do
10 have further conferences we will give the
11 public an opportunity to come in and make
12 statements with regard to the matters
13 before the Board.

14 The purpose of this conference is to
15 discuss the issues with respect to the
16 intervention petitions to discuss the rights of
17 the requests of certain petitioners for a
18 waiver of Regulation 50.55B, to discuss specific
19 issues raised and the contentions filed with
20 the petitions and supplemental petitions and
21 to discuss further the scheduling in this
22 proceeding .

23 Now, I'd like counsel to introduce
24 themselves, beginning with the table on my

1 left. Tell us who you represent and who
2 everyone is there.

3 MR. VOLLEN: I represent the Porter County Chapter
4 of the Isaac Walton League of America, Inc.,
5 Concerned Citizens Against the Bailly Nuclear
6 Site, Businessmen for the Public Interest,
7 Inc., James E. Newmann and Mildred Warner.

8 MR. OSANN: My name is Edward W. Osann, Jr., I represent
9 the same petitioners named by Mr. Vollen, I'm
10 co-counsel with Mr. Vollen.

11 MS. COHN: My name is Diane Cohn, I represent the
12 City of Gary, Indiana, United States Steelworkers
13 of America, 6787, Save the Dunes Council,
14 Bailly Alliance, Critical Mass Energy Project.

15 MR. REISING: My name is Gregory Reising, I'm an
16 attorney from Gary, Indiana. I represent
17 the Lake Michigan Federation.

18 MR. GOLDBERG: My name is Steven Goldberg, counsel
19 for the NRC staff in this matter. To my
20 left is Mr. Richard Goddard, who has recently
21 entered an appearance on behalf of the staff
22 in this matter.

23 MR. HANSELL: My name is Dean Hansell, an Assistant
24 Attorney General for the State of Illinois.

1 With me today is Susan Sekuler, also Assistant Attn.
2 General for the State of Illinois. To be joining
3 us at a later point will be John Van Vranken.

4 THE CHAIRMAN: Mr. and Mrs. Grabowski, will you
5 introduce yourself, please?

6 MR. GRABOWSKI: I'm George Grabowski.

7 MRS. GRABOWSKI: Anna Grabowski.

8 MR. EICHHORN: Mr. Chairman, my name is Bill Eichhorn,
9 I'm an attorney for the Northern Indiana Public
10 Service Company. With me today to my immediate
11 right, Kathleen Shea and to her right,
12 Steve Frantz, who are co-counsel with me
13 representing NIPSCO.

14 THE CHAIRMAN: Thank you.

15 Is Doctor Schultz here?

16 (No response)

17 MR. VOLLEN: I think now that the introduction of
18 counsel has been made, it is appropriate for
19 me at this very earliest stage to make a motion
20 but in view of the prediction that Mr. Bright
21 is not going to be available for a couple of
22 weeks, during which time argument will be
23 advanced and presumably the occasion for
24 rulings on contentions plus technical matters

1 concerning nuclear activity will be presented,
2 it seems to me that we may be getting ourselves
3 in a situation that we're going to have to
4 duplicate, or replicate a lot of this proceeding,
5 indeed, we may get into a situation where we'll
6 not have the availability of the technical
7 member of the Board. Accordingly, Mr. Chairman,
8 the Porter County Chapter and petitioners
9 we mentioned who I represent move to adjourn this
10 meeting until a full board can be in attendance.

11 THE CHAIRMAN: Motion is denied.

12 Well, there's a very good chance that
13 Mr. Bright will participate in any formal
14 order that may pursue from this pre-hearing
15 conference, first order of business I think
16 actually raises to the question of standing,
17 and I would like first to cover the -- by the
18 way does anyone know whether Doctor Schultz
19 intends to appear at this meeting?

20 (No response)

21 I'd first like to cover the question of
22 technical compliance with the organizational
23 requirements, and I understand that the
24 applicants and staff have objected to the

1 standing of certain of the organizations here
2 for at least failure to satisfy certain
3 requirements relating to the standing of
4 individual members. The applicant's attorney,
5 Mr. Eichhorn, Miss Shea, would you like to
6 elaborate on that?

7 MR. EICHHORN: I'll accede to Miss Shea on that.

8 MS. SHEA: I don't think it takes much elaboration,
9 Mr. Chairman, the regulation is quite clear
10 and Commission President clearly indicates
11 that an organization has standing on a derivative
12 basis and must present the affidavits of
13 members showing personal interest and the
14 authorization of the organization to represent
15 that personal interest in the proceedings.
16 The Porter County intervenors have not done
17 so, Lake Michigan Federation has not either,
18 I believe those are the two which have failed
19 to meet the technical requirements. Local
20 1010 and the other steelworkers local, I
21 believe also.

22 THE CHAIRMAN: I'm sorry, I believe we did receive
23 individual affidavits from the Gary intervenors,
24 is that correct, do the applicants concede that

1 these satisfy requirements with regard to
2 individual members of organizations?

3 MS. SHAI: I believe, first of all, that copies which
4 we were to receive were not executed, they
5 were unsigned copies, I assume that will be
6 remedied. Secondly, I believe that the identity
7 of the individual members alleging personal
8 interest being affected by the proceeding is
9 not revealed in those affidavits. Excuse me
10 just a moment, Mr. Chairman.

11 MR. CHAIRMAN: While Miss Shea is looking for those would
12 the staff like to state its position regarding
13 the organizational requirements and the
14 Gary intervenors in particular?

15 MR. GOLDBERG: The staff will rest on its findings in
16 that matter.

17 MR. VOLLEN: Wasn't Local 1010, United Steelworkers also --
18 didn't they also file a petition?

19 THE CHAIRMAN: Yes, that's correct. Is there any
20 problem as far as the staff is concerned with
21 the Local 1010's petition, as far as the
22 requirement as to individual members indicating
23 a geographical location and the organization
24 for the locals who represent them?

1 MR. GOLDBERG: I believe we indicate in our response to
2 several of the organizational petitions of
3 January 23rd, that Local 1010 had failed to
4 identify any of its individual members with
5 a personal interest in the proceedings.
6 How that interest might be affected by the
7 outcome of this proceeding and further demonstrate
8 that Local 1010 was authorized to represent
9 such personal interest of its members in this
10 proceeding and that these were necessary
11 requirements to establish organizational
12 standing in our administrative proceeding.

13 THE CHAIRMAN: By the way is Local 1010 represented
14 here?

15 (No response)

16 Now, Miss Shea.

17 MS. SHEA: The affidavits of the steelworkers and
18 Save the Dunes Council technically do not,
19 in our opinion, meet the requirements for
20 establishing organizational standards.

21 THE CHAIRMAN: In what particulars do they not?

22 MS. SHEA: They do not identify individual members of
23 the organizations who live within the area
24 and allege personal interest that may be affected.

1 THE CHAIRMAN: Would you like to respond to that,
2 Miss Cohn?

3 MR. VOLLEN: It's my understanding that Local 1010 is
4 represented by someone other than Miss Cohn
5 in this matter.

6 THE CHAIRMAN: Yes, now, this isn't Local 1010 that
7 we're discussing now, it's the Gary petitioners,
8 including, I believe another local of the
9 steelworkers.

10 MR. VOLLEN: Thank you.

11 MS. COHN: Mr. Chairman, I represent Local 6787 of
12 the United Steelworkers of America. With
13 respect to Ms. Shea's first question as to
14 whether the affidavits have been executed,
15 three out of four of them have been, and the
16 fourth will be shortly, and will be served
17 on all parties within a matter of days.
18 With respect to the two organizations identified
19 by Ms. Shea, as far as the affidavits submitted
20 on behalf of the Save the Dunes Council is
21 concerned, that affidavit was the affidavit
22 of Ms. Charlotte Reed, who is not only
23 a member, but executive director of that
24 organization. The affidavit alleges that she

1 not only uses the National Dunes Lake Shore
2 area, but resides within it, and I believe that
3 affidavit on its face, demonstrates the
4 prerequisites of the organizational standings.
5 My understanding of Mr. Goldberg's statements
6 are that the NRC staff has not raised an
7 objection with respect to the ability of the
8 Save the Dunes to participate here. On that
9 basis, as far as the Local Steelworkers 6787
10 is concerned, we submitted the affidavit
11 of the president of that local, his affidavit
12 indicates that the local represents six
13 thousand workers in the Burns Harbor Facility,
14 that at a membership organizational meeting
15 the vast majority of those members authorized
16 the union to participate in this proceeding
17 on behalf of those workers. If an objection
18 is still raised that we have not identified
19 a participar individual member of the union
20 by name who works at the Burns Harbor Plant,
21 if the Chairman would desire, we would
22 certainly submit a supplemental application
23 curing that defect, if indeed that is thought
24 to be significant.

1 THE CHAIRMAN: Well, Miss Shea, it appears as though
2 that's a technical defect that could easily
3 be cured if you insist on it. Do you insist
4 on that?

5 MS. SHEA: Are you referring to the signature or
6 to the --

7 THE CHAIRMAN: The signature and names of the individual
8 members of that local.

9 MS. SHEA: I believe that the pleadings should conform
10 to the requirements of the NRC regulations and
11 the holdings of the case, Mr. Chairman, I
12 do not disagree that in all probability
13 the defect can be corrected. The fact of the
14 matter is, however, the regulations in your
15 order establish times for the compliance
16 with the regulation and I'm not very inclined
17 to waive compliance with the requirements.

18 MR. CHAIRMAN: Well, fine, would you submit, then,
19 an affidavit?

20 MS. COHN: Certainly.

21 THE CHAIRMAN: Thank you.

22 MR. GOLDBERG: Mr. Chairman, I'm sorry to interrupt, but
23 I feel incumbent to do so. Ms. Cohn perhaps
24 has not adequately characterized the staff

1 position that we have sustained in our
2 separate findings, we do not find that any of
3 the named petitioners who she represents to
4 have satisfied the standing requirements of
5 commission regulation and case law.

6 MR. CHAIRMAN: Well, I'm referring now only to the
7 geographic location of the authorization to
8 be represented by that organization, we haven't
9 yet reached the question of whether there is
10 alleged injury in fact or any other such
11 requirement to the individual member.

12 MR. GOLDBERG: Thank you.

13 MR. CHAIRMAN: Now, continuing along the line of
14 the organizational requirements I'd like to
15 discuss the situation with the Porter County
16 Chapter intervenors, and by the way, I think
17 it would probably be preferable to refer to you
18 that way unless you have some particular
19 objection, but there are three joint petitions
20 in the case and I think it would be somewhat
21 confusing to refer to you as a joint
22 intevenor for the petitioners, with the City of
23 Gary having joint petition and the Grabowski's
24 having a joint petition. Is there any objection?

1 MR. VOLLEN: Certainly there's no objection, we have
2 no objection to referring to ourselves as
3 joint intevenors.

4 MR. GOLDBERG: That is also relevant to the question as
5 to why you haven't submitted individual affidavits
6 and I assume it was because you had already
7 established a standing in the prior proceedings,
8 however, I'm not sure that we can accept that
9 in the new proceedings, considering the fact
10 that membership may change and at least there
11 ought to be some renewal of the affidavit. Is
12 there any problem on your part with complying
13 with those technical requirements having
14 an individual state one's residence and the
15 fact that he authorizes you to represent him?

16 MR. VOLLEN: There is certainly no problem, you're
17 right, I thought it wholly unnecessary,
18 because of the prior adjudication by the
19 Atomic Licensing Board that Porter County did
20 have standing to participate. If you want
21 affidavits from individual members from each
22 of the three organizations, we'll be glad to
23 provide them.

24 THE CHAIRMAN: I think that would be the best way to do

1 that, so we'll allow you time after this
2 conference to file those affidavits.

3 Now, with regard to the State of
4 Illinois, is there any problem with regard
5 to the organizational requirement, notwith-
6 standing that no individual affidavit may have
7 been submitted?

8 MR. EICHHORN: No.

9 THE CHAIRMAN: I take it, then, the only other
10 organizational problem relates to Local 1010,
11 is that correct?

12 MS. SHAI: And Lake Michigan Federation, Mr. Chairman.

13 MR. CHAIRMAN: Would you like to speak for the Lake
14 Michigan Federation, Mr. Reising?

15 MR. REISING: Mr. Chairman, the Lake Michigan Federation
16 stands ready to make technical compliance
17 that NIPSCO attorneys are insisting upon.

18 THE CHAIRMAN: Well, fine, then, we'll expect to receive
19 affidavits subsequent to the adjournment of
20 this pre-hearing conference.

21 Now, I think we ought to move on to the
22 broad objections that the staff and the
23 applicants have to the standing of the petitioners
24 in this case and I think that we'd like a

1 statement first from Ms. Shea and Mr. Eichhorn
2 with regards to the overall deficiency that
3 the applicant sees in the standing of these
4 petitioners.

5 MS. SHEA: Briefly stated, Mr. Chairman, Section 185
6 of the Atomic Energy Act requiring that a
7 person seeking to intervene must show his
8 interest, may be affected by the proceedings
9 involved, and it's our belief that the
10 petitioners have failed to do so. Summarizing
11 somewhat, they allege in fact, the interest
12 that will be affected by the operation of the
13 Baily Nuclear Plant, that is not the issue
14 in this proceeding and it's our position that
15 they have not alleged an interest in the
16 proceeding involving the proposed Baily
17 construction permit.

18 THE CHAIRMAN: Do I understand that your position is
19 that unless they're actually affected by
20 the prolonged construction because of the
21 extension that they really have no interest
22 in the proceedings and that they are not sustained
23 or could not sustain an injury in fact?

24 MS. SHEA: That's correct.

1 THE CHAIRMAN: Well, I have some problem with that
2 position, in that the Regulation 50.55B
3 seems to have as its purpose not requiring
4 any further hearings with regard to health
5 and safety problems or environmental problems,
6 if a good cause is shown for the extension
7 and in effect, obviates having to redo all the
8 proceedings which had been held in order to
9 safeguard the persons who might have some
10 injury in fact. Now, if we can assume for the
11 moment that the company did not have a good
12 cause for the extension it would have to have
13 those proceedings done over again. If it were
14 to apply for a permit and license, isn't that
15 correct, Miss Shea?

16 MS. SHEA: You mean if it were to apply for a new
17 construction permit?

18 THE CHAIRMAN: Yes.

19 MS. SHEA: Correct.

20 THE CHAIRMAN: Well, one of the people who might be
21 affected by the operation of the plant would
22 be the ones who would have some interest in
23 seeing that the applicant had to have those
24 safety hearings over again if there wasn't

1 any good cause for extension.

2 MS. SHEA: You're going through a two-step process,
3 in fact.

4 THE CHAIRMAN: Well, what I'm saying is that the
5 original proceedings were intended to insure
6 that the health and safety of the residents
7 of the area were provided for if the plant
8 were to go into operation, and those being the
9 people who were affected by not having health
10 and safety standards adhered to. Now, aren't
11 those the same people who would show an
12 injury in fact if the applicant had to have
13 some further proceeding on health and safety
14 if there was no good cause shown for an
15 extension.

16 MS. SHEA: I'm sorry, sir, I'm not following.
17 Where is the injury in fact? Are you finding
18 an injury in a benefit?

19 THE CHAIRMAN: The injury in fact I can assume would
20 be in not having the health and safety,
21 inhabitants protected through a proceeding
22 which might be necessary if there isn't
23 good cause shown for an extension.

24 MS. SHEA: If another construction permit proceeding is

1 held they'll be able to allege the interest
2 in that proceeding and intervene in it.

3 THE CHAIRMAN: Well, that's correct, and what I'm
4 saying now is, well, aren't those the people
5 then, who really have an interest in showing
6 that there should be health and safety hearings,
7 rather than a reliance upon good cause.

8 MS. SHAI: But this proceeding cannot show that there
9 really aren't health and safety issues,
10 this is not within the scope of the proceedings,
11 the scope of proceedings is a good cause for
12 extension, the other may follow as a national
13 consequence, but the licensee fails to show
14 good cause in this case.

15 MR. CHAIRMAN: Right, but I'm not trying to discuss what
16 the scope of this proceeding ought to be, but
17 we want to determine whether these people
18 could show an injury in fact by not being able
19 to participate in a proceeding that will
20 determine whether health or safety proceedings
21 should be held, rather than obviated by the
22 showing of good cause. Do you follow me?
23 Mr. Eichhorn, would you care to comment on
24 that?

1 MR. EICHHORN: We don't mean to double-barrel you,
2 Mr. Chairman, but I think you brought up a
3 new twist in the hearing that we had not
4 anticipated before, I think it's obvious,
5 number one, that as far as the health and
6 safety questions are concerned that was
7 handled at a construction permit hearing,
8 now you're saying, I think, in trying to get
9 an injury out of a benefit, if they could
10 get another hearing that might benefit them,
11 however, that other hearing would be contingent
12 upon first finding that there was not good
13 cause for the extension of the existing
14 construction permit; secondly, it would
15 require the then ex-permit holder, NIPSCO,
16 to file a new obligation before that second
17 hearing comes to be, and it just seems to me
18 that when you're talking about an interest
19 in a possible second safety and health hearing
20 that you're getting rather attenuated from
21 the purpose of this hearing, and it takes not
22 only the step of finding no good cause for
23 extension, but it takes, then, a voluntary
24 act on the part of now a new applicant to refile

1 a whole new construction permit.

2 THE CHAIRMAN: Mr. Vollen, would you like to respond to
3 the position of the applicant?

4 MR. VOLLEN: I'd like to, if I understood it,
5 Mr. Chairman. I think it's important to keep
6 in mind the contention in which NIPSCO
7 is asserting that none of the intervenors or
8 petitioners for intervention have standing,
9 what they're saying, in effect, Mr. Chairman,
10 is this question of whether or not Bailly
11 should receive an extension for its construction
12 permit which is necessary to permit that plant
13 to be built, this question should not be
14 decided in a public hearing, because there will
15 be a public hearing only if the board grants
16 one person's intervention standing, one person
17 standing, and NIPSCO is, in effect, arguing
18 that there should be no public hearing. I
19 think that needs to be understood as the board
20 considers NIPSCO's technical arguments outstanding
21 of the intervenors and it ought to be understood
22 in relation to the Commission's proposal,
23 at least the express proposal of decisions
24 being made and public participation is valuable.

1 I understand the arguments that counsel for
2 NIPSCO are making, it's really an effort to
3 collapse into one issue the separate issues
4 of standing and scope of the hearing and I
5 think that's what your questions were eliciting
6 from them, Mr. Chairman. In fact, I think the
7 two issues are quite different, injury is one
8 question, the question is are the intervenors
9 the petitioners for intervention injured by --
10 affected by the proceedings? We need to look
11 at what the proceeding is about. I suggest
12 the proceeding is about whether or not Bailly
13 will be built, it's true that NIPSCO attempts
14 to put a semantic coloration on it and say
15 no, it really isn't about whether Bailly will
16 be built, but only about the time Bailly will
17 be built. The absolute fact of the matter
18 is without this extension Bailly cannot be built,
19 the construction permit has expired, so this
20 proceeding involves whether or not Bailly will
21 be built and it seems to me anybody who can be
22 affected by the construction of Bailly, that is
23 to say, anybody who could have, or in fact,
24 did participate in construction permit has standing.

1 I'm not reaching the scope question, that is not
2 to say that the scope in this proceeding is
3 the same as the construction permit proceedings,
4 its not, but as far as the people who are
5 injured by -- affected by this proceeding, it
6 seems to me that it's those who are affected
7 by the construction of Bailly plant.

8 THE CHAIRMAN: Would the staff like to indicate its
9 position with regards to that standing question?

10 MR. GOLDBERG: The staff's position on both standing
11 and the nature of the proceedings or the scope
12 of the proceedings is briefed more fully in
13 separate filings. And I'd like to address an
14 observation that the Chairman made in
15 discussion with counsel for the applicant, it
16 seems to me that the Board is speculating and
17 there may be some future licensing proceeding
18 that could arise from an unfavorable decision
19 on the present application for a permit
20 extension; proceedings to which many, if not,
21 most of these present petitioners could have
22 standing on the grounds their health and
23 safety could be adversely affected were that
24 permit be permitted to continue construction

1 and the eventual operation. This I think
2 is saying no more than what has been the clear
3 practice of the NRC in terms of its standing
4 requirements for construction permits,
5 themselves, however, this is not such a
6 proceeding, this is a proceeding whose scope
7 is defined by regulation, namely 50.55B,
8 and it is essentially designed to determine
9 if there is good cause to permit the continued
10 construction of a permit for whom previous
11 authorization had been given after extensive
12 construction permit hearing before a separate
13 Board, therefore, I do not think that one's
14 prospective standing in a construction permit
15 or the resubmission of a construction permit
16 and application were the present extension
17 application to be denied in first standing on
18 a petitioner in the present matter, which is
19 designed to ascertain whether or not there is
20 good cause for the requested extension which
21 is itself, defined by regulation interpretative
22 appeal board cases.

23 MR. CHAIRMAN: Well, aren't you saying, though, that the
24 only way construction can proceed without

1 having further hearings on health and safety
2 and environmental impact is to comply with
3 good cause requirement Section 50.55B?

4 MR. GOLDBERG: Yes, Mr. Chairman.

5 THE CHAIRMAN: So my question is, would the person who
6 might be adversely affected by not having
7 further health and safety hearings or environmental
8 impact hearings be the persons who can claim
9 injury in fact by having Regulation 50.55B
10 operative in this case, and shouldn't they be
11 the ones, then, who has standing to intervene
12 in this case, notwithstanding that they might
13 not raise health or safety or environmental
14 issues here, but nevertheless would be restricted
15 to the scope of Regulation 50.55B.

16 MR. GOLDBERG: To answer that, the staff's position is
17 that one's standing must necessarily derive
18 from the scope of the proceeding and you cannot
19 separate them. If the scope of the proceeding
20 is in fact, to ascertain whether there is good
21 cause for the extension, whatever attending
22 incremental safety environmental impacts there
23 may be beyond those previously evaluated,
24 then one's standing must flow from some injury

1 that would occur from that.

2 THE CHAIRMAN: Now, I take it you're referring to the
3 fact that there must be a contention that is
4 within the scope of the proceeding as defined
5 by the 50.55B, is that correct, is that what
6 you're alluding to now?

7 MR. GOLDBERG: I'm not quite, I'm suggesting that
8 one's standing in the matter must derive
9 from the nature of the action, the scope of
10 the action, if you will, which is defined by
11 50.55B and that will be affected, thereby
12 must flow similarly from considerations that
13 would be permissible in this construction permit
14 proceeding, not those that might otherwise
15 have been litigated in prior construction permit
16 proceedings, might have been occasion for a
17 litigation, for if this variable decision on
18 this application which might be promulgated
19 in the eventual operating license application ,
20 and may be presented. I think to confer
21 standing on the basis of an operational
22 health and safety interest in this proceeding
23 would be inconsistent with the scope of the
24 actions defined by 50.55B and the completion

1 is two steps, licensing process wherein persons
2 are given opportunity to litigate the merits
3 of construction permit application and upon
4 eventual submission of an operating license
5 application, again request permission to have
6 a hearing in that regard.

7 THE CHAIRMAN: Mr. Hansell.

8 MR. HANSELL: As the State of Illinois understands the
9 argument NIPSCO and the NRC staff -- which I
10 believe are a little more clearly stated by
11 the NRC staff -- now is attempting on their
12 part to make into a single question the
13 considerations regarding standing and the
14 considerations regarding scope. As I believe
15 you suggest, that's impermissible and indeed
16 they are separate issues. The question about
17 standing involves separate considerations and
18 instead revolves around the consideration of
19 injury. If the construction permit extension
20 is granted to the applicant the various
21 intervenors in this proceeding would suffer
22 an injury and the consideration of whether
23 that injury is one that would be recognized
24 or not is entirely a distinct question from the

1 question of the scope of the proceedings. I
2 believe stated in another way is the way that
3 the Supreme Court stated it recently in the
4 Dune Power case which is a case where the injury
5 was not too dissimilar to this one, it did
6 not involve a construction permit, rather
7 involved the consideration about the Price-
8 Anderson Act and the Supreme Court determined
9 but for the existence of the Price-Anderson
10 Act the nuclear power plant in that proceeding
11 probably would not be built. In this present
12 situation, but for the extension to the
13 construction permit to build a nuclear power
14 plant, the nuclear power plant in this
15 proceeding would not be built, that's a very
16 separate consideration and it was one that
17 in addition to the other test in having
18 distinct and culpable injury, which we did
19 not understand either the staff or the
20 applicant to be challenging constituted the
21 test about standing, rather than the scope of the
22 proceeding.

23 THE CHAIRMAN: Any other intervenors have a comment on
24 that?

1 Mr. Reising.

2 MR. REISING: Mr. Chairman, I'm a little bit hesitant
3 to comment, I'm going to preface my remarks
4 that I have never been involved in these
5 proceedings before, I'm a member of the
6 Lake Michigan Federation, and I sit on their
7 board and their attorney and executive director
8 wasn't able to come today and asked me to
9 fill in, so for me, it's a question of
10 pressure and I've read the Regulation 50.55B
11 which indicated NIPSCO has not shown good cause
12 in order to get an extension of their permit,
13 in going through the petitions that NIPSCO
14 filed and reading them and looking at the
15 thrust of their argument, the thrust seems to
16 be that it's the intervenors which have the use of the
17 lake and therefore we need an extension, and
18 then to hear them sit here and say, however,
19 we don't want the board to hear the intervenors,
20 it seems to me that that lacks logic, that
21 if the intervenors are the good cause on which
22 NIPSCO hangs its hat to get an extension, that
23 absurdly the intervenors have standing to
24 state whether or not what they did, was, in fact,

1 a good cause for NIPSCO to hang their hats
2 to get an extension, and that seems more than
3 logical to me. If NIPSCO had come in and
4 said, as 50.55B provides, could have said that
5 this was due to the experimental nature of the
6 facility or that it was due to fire, flood,
7 expulsion, strike, sabotage, domestic violence,
8 and the action and act of the elements beyond
9 their control, then I would say, well, perhaps
10 the intervenors have standing. On the issues
11 that the board was discussing earlier, it
12 seems to me when they come in and say the reason
13 for our cause was these intervenors prevented
14 us from building this plant, that assuredly
15 the intervenors should have and must have a
16 right to respond to that.

17 MR. CHAIRMAN: Does anyone want to comment further on
18 this issue?

19 Ms. Cohn.

20 MS. COHN: Mr. Chairman, our views on the standing
21 issue are essentially the same as expressed
22 by Mr. Vollen and Mr. Hansell, to fulfill
23 your requirements in demonstrating standing in
24 this proceeding the United States Supreme Court

1 has stated, New Power case, that the consideration
2 relating to issues, whether we have demonstrated
3 injury in fact and whether that injury can be
4 redressed by the proceedings to which we're
5 attempting to participate, we clearly
6 demonstrated that through individual members
7 of our organizations who reside within a few
8 miles, who work within a few miles of the
9 Bailly site are suffering injury in fact
10 under the New Power case, because the risk of
11 future injury which is occasioned by the
12 completion of this plant.

13 To satisfy the second test we have to
14 demonstrate a potential likelihood that will
15 benefit from the relief. We see in that if
16 this construction permit extension is denied
17 Bailly will not be completed and there will be
18 no injury to the members of our organizations.
19 The scope of this issue is separate, with
20 alleged injury in fact, we've shown injury in
21 fact, whether we can raise the various
22 contentions as submitted as a separate issue,
23 but we have nevertheless demonstrated standing
24 under control of law.

1 THE CHAIRMAN: Any further comments, any either in
2 support or against any of the arguments that
3 have been raised.

4 MR. GOLDBERG: Mr. Chairman, I don't want to belabor
5 a point, earlier I responded to your inquiries
6 as to whether I should respond to the NIPSCO
7 arguments, I did not make any affirmative
8 argument to why Porter County intervenors
9 have standing, if there's any remaining
10 doubt about the issue of standing, I would like
11 to just briefly address myself to NIPSCO's
12 view, it's perfectly clear that the Porter
13 County intervenors do have standing.

14 THE CHAIRMAN: Well, the issue is not resolved, so
15 whatever you have to say ought to be said
16 now.

17 MR. VOLLEN: Thank you, the standard, as Ms. Cohn
18 just stated, is whether or not a person is
19 affected by the proceedings. Does a person
20 have an interest and may that interest be
21 affected by the proceedings? As I understand
22 it, the staff has now conceded that the
23 Porter County intervenors have both an interest
24 and that interest may be affected. On page

1 13 of the staff report, the NRC staff response
2 to intervention petition and related filing
3 of several organizational and governmental
4 entities, dated January 23, 1980. I think
5 the staff's first response to our first
6 petition, Mr. Chairman, on page 13, and I
7 quote -- the paragraph that starts in the
8 middle of the page, "Petitioners or
9 intervenors in a construction permit hearing
10 and parties to several subsequent legalities
11 involving Bailly, therefore, comma, that the
12 staff will concede that they have an interest
13 which will provide a basis to confer standing
14 in this matter, end of quote. There I think
15 is one of the two elements to establish our
16 standing; and an interest in the document
17 recently put together by the staff entitled
18 NRC staff response to supplemental intervention
19 petitions. On page 8 of the document, again
20 referring to the Porter County petitioners,
21 the staff reiterates that position, that Porter
22 County intervenors possess an interest.
23 On page 12 of that same document, first complete
24

1 sentence on that page, the staff states and I
2 quote, without conceding the merits of these
3 contentions the staff believes that they
4 present acceptable issues for adjudication
5 in this proceeding and would further serve
6 to provide a basis upon which petitioners'
7 interest could be affected by the outcome of
8 this proceeding, end quote.

9 I think, Mr. Chairman, the two elements
10 of standing, interest and effect on interest
11 by this proceeding have been conceded by the
12 staff with respect to Porter County intervenors.
13 With respect to NIPSCO's position, it frankly
14 is a little difficult to understand what
15 their objections are. Mr. Reising suggests
16 NIPSCO spends a great deal of efforts arguing
17 that it is because of the Porter County
18 intervenors that they didn't get the plant
19 built by the date stipulated. And having said
20 that, they then turned around and say we
21 don't have an adequate interest in the question
22 of whether or not it should be built, nonethe-
23 less it seems to me we have to accept as a good
24 faith assertion by NIPSCO that they really don't

1 believe that the Porter County intervenors
2 have standing. Let me just reiterate
3 that notwithstanding NIPSCO's semantics,
4 that this proceeding does not involve whether
5 or not the construction permit, the Bailly
6 plant should be built, that's exactly what is
7 at stake in this proceeding, the question of
8 whether or not Porter County intervenors have
9 an adequate interest to participate in a
10 proceeding involving a question of whether or
11 not Bailly should be built and adjudicated
12 by the Atomic Safety and Licensing Board.

13 In 1972 there were two separate,
14 an order for immediate intervention dated
15 May 15, 1972, and this docket it's by the
16 Licensing Board which permitted intervention
17 by all of my clients with the exception of one,
18 which is an additional requirement for affidavit,
19 and that one was covered by an order to prevent
20 intervention in the public interest dated
21 June 26, 1972, so in a sense, Mr. Chairman,
22 the issue of these petitioners' standing,
23 their interest and their living near the plant
24 site and their working near the plant site

1 and their using recreational facilities
2 near the plant site have been legally adjudicated
3 and resolved.

4 One final point, even if the Board
5 were to accept NIPSCO's narrow view of
6 standing, even if the Board were to accept
7 NIPSCO's position that one must be affected
8 by not the construction of the plant but the
9 construction over a longer period of time
10 than was permitted by the original construction
11 permit, it's equally clear that the Porter
12 County intervenors have standing in that
13 limited view. We assert that we have an
14 interest in the use and enjoyment of the
15 Indiana Dunes National Lake Shore and we further
16 assert that the continued period of construction
17 will adversely affect that interest by reason
18 of the fact that the watering of the plant
19 site and a draw down of the ground water in the
20 national lake shore with all the attendant
21 risks and harms to it will occur during that
22 extended period of construction. In short,
23 whether under a proper view of standing if
24 our interest can be affected or under NIPSCO's

narrow and restrained view that it will be limited to the harm during the additional period of construction, Porter County clearly has standing .

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1 THE CHAIRMAN: Now, with regards to the Staff's position,
2 Mr. Goldberg, am I correct in understanding
3 that your views are similar to that of NIPSCO
4 with regards to what type of injuries in fact,
5 must be at issue and that you are only willing
6 to concede that there is standing if there is
7 injury in fact that is alleged from the actual
8 prolongation of the construction period, which is
9 one of the contentions that has been raised
10 by the Porter County Chapter, and
11 only if that contention is accepted as a valid
12 contention would you concede that there is
13 standing to intervene, do I understand your
14 position correctly?

15 MR. GOLDBERG: Up until that last point I'm not certain
16 we did. If I may have a moment.

17 THE CHAIRMAN: Well, rather than my suggesting things
18 to you, why don't you state your position with
19 regards to what Porter County Chapter has
20 suggested now, which we're concerned that it
21 does have standing to intervene.

22 MR. GOLDBERG: I think that Mr. Vollen referenced our
23 separate filings respecting Porter County
24 Chapter's position on supplemental petitions,

1 and together we take the position on those
2 petitions that they had an interest which
3 could provide a basis to confer standing and
4 on observation of their interest in the
5 incremental impacts of the watering over the
6 extended periods of construction, that might
7 be permitted as a result of this mater, could
8 be adversely affected thereby, but we had not
9 until Mr. Vollen's oral presentation necessarily
10 understood their statement of interest to be
11 that they were relying on the adverse impact
12 that might be occasioned by the increased
13 period of rewatering in any attendant environmental
14 impact on the Dunes and surrounding area
15 as their personal interest in the matter. If
16 that is true we have no objection to their
17 standing in this proceeding and would then
18 lead to a separate consideration whether they
19 have any acceptable contentions that would further
20 permit their intervention in this proceeding, but
21 if I understood that articulation of interest
22 probably we feel that they do now have standing.

23 THE CHAIRMAN: Mr. Vollen.

24 MR. VOLLEN: Only that I think it's now clear without

1 my reading the various sentences that the staff
2 has put in its brief, that the staff has
3 acceded explicitly that the Porter Counter
4 intervenors have standing to participate
5 as a matter of right in this proceeding.

6 THE CHAIRMAN: That's my understanding too, and that is
7 premised on the fact that there is an alleged
8 injury in fact through the prolonged construction
9 period, I don't want to belabor that point
10 any further, I think the record is clear on
11 that. I would like to ask the applicant to
12 respond to that point, that the staff has
13 conceded; the point being that there is an
14 allegation with regards to the prolonged
15 construction period causing injury in fact
16 to the organizational members and that,
17 therefore, there is a claim for standing on
18 that basis. Would you respond to that?

19 MR. EICHHORN: Yes, Mr. Chairman, I would.

20 There are several things that -- I
21 think Mr. Vollen has made a very lengthy
22 statement over here, but there's one thing
23 I want to clarify, and that is, this is not
24 a construction permit proceeding, that took

1 place in 1974. There will be an operating
2 license hearing if we can get to that point
3 eventually, but this is a hearing to determine
4 whether or not there should be an extension of
5 time within which to get the work that has
6 been authorized after extensive hearings, court
7 reviews have gone all the way to the Supreme
8 Court, and I take issue with Mr. Vollen's
9 suggestion that this is a proceeding to see
10 if this plant can be built.

11 Now, to your point, you correctly
12 summarized our position with respect to
13 standing, that Section 189 of the Act does
14 require that there be an interest that is
15 affected by the hearing. The hearing is to
16 determine whether or not extended period of
17 time should be granted to complete the
18 work previously authorized, and that is our
19 position, that the due case does not override
20 the statute of Congress that governs our
21 proceedings and that you must demonstrate
22 an interest that is affected by the proceedings
23 in question.

24 We have admitted that it factually

1 correct that additional and longer periods of
2 dewatering to the extent that they were not
3 reviewed in the initial decision because it's
4 not such a hearing would be an interest which
5 could possibly be affected, we don't believe
6 it's factually true, but unless Mr. Vollen
7 has made that allegation I don't think it's
8 sufficient statement of interest, but that's
9 a decision for --

10 THE CHAIRMAN: Well, now, I don't want to move too far
11 afield, but assuming that the prolonged period
12 of construction has a deminimus effect upon
13 the intervenors, isn't that a matter that
14 really should be disposed of on summary
15 disposition after the intention is admitted
16 and the Board accepts the possibility of an
17 injury in fact?

18 MR. EICHORN: With respect to a contention on that
19 fact, but if you're looking at the interest
20 from a standpoint of interest for standing
21 purposes, then I think you have a different --
22 that there must be a substantial interest, it
23 can't be a deminimus interest, that it's
24 sufficient to create standing.

1 THE CHAIRMAN: My question really, though, is do we
2 make that determination at this stage if
3 the interest alleged is a deminimus interest
4 or do we accept on its face that interest and
5 then dispose of the question if possible on
6 summary disposition. I take it your agreements
7 collaterally with the general course that we
8 would adopt.

9 MR. EICHHORN: That's correct.

10 THE CHAIRMAN: Mr. Hansell.

11 MR. HANSELL: Since the entire point of the standing
12 has not been totally resolved, with your
13 permission, I would like to discuss several
14 aspects as it relates to this.

15 First of all, it would be the injury
16 of 111 due to intervention as of right, then
17 to discuss the request we're also making
18 permissive intervention and also since we're
19 in a different situation than the other
20 parties involved, being a state, we have also
21 interest in intervention as an interest of
22 state.

23 Before I begin to discuss the tradition
24 of legal standing, I'd like to mention, this

1 is the first time that our standing in this
2 particular proceeding has really been challenged.
3 Illinois has been an interested party in
4 proceedings related to Bailly since 1974 and
5 indeed has participated in every proceeding
6 held with reference to Bailly since September
7 of 1974. The NRC staff in their document of
8 January 23rd on page 22 do concede our interest
9 based upon your previous participation in the
10 1974 hearing and those subsequent to them.
11 I will not go into detail regarding the nature
12 or past history of NIPSCO, and the NRC staff
13 do a more thorough job of that than I would,
14 and I would merely add that both the Commission
15 and the courts have found our interest to be
16 sufficient with regards to standing.

17 I've already discussed several of the
18 other parties, the two party case in other
19 tests that it's been outlined. The first of
20 the test is distinct and palpable injury. The
21 NRC staff appears to concede to what injury is
22 to Illinois State, and it indicates that --
23 I'm stating it though, it has been stated in
24 the past in previous pleadings involving

1 Baily, and that's several things, first of all
2 we base our injuries on the adverse impact on
3 the citizens of Chicago, which is located only
4 thirty miles from the plant, in the event of
5 a major nuclear accident or incident; the
6 second injury would be the effect on the lake
7 both during normal operation and in the event
8 of a major accident or incident, the lake is
9 relied upon as a major course of industry and
10 commerce for many Illinois residents and is a
11 source of drinking water for a number of
12 Illinois cities, including the Cities of Chicago
13 and Waukegan; and third, would be the impact
14 of the Baily plant from construction for normal
15 operation and in the event of a major accident
16 or incident on the Indiana Dunes National Lake
17 Shore. The Dunes Park is the closest park
18 to Chicago and its beaches and woods are enjoyed
19 by thousands of Illinois residents every year.
20 I've already discussed previously that the
21 appropriate standards as articulated by the
22 Supreme Court, and as you had suggested prior to
23 this, is that essentially but for the extension
24 of the construction permit the company would

1 be unable to build the plant, and we are relying
2 upon this particular situation. Now, even if
3 we were to accept NIPSCO's and the Staff's narrow
4 arguments regarding the scope of the hearing,
5 and we do not accept those arguments, we
6 believe we would still have standing as we will
7 as discuss in greater detail later. We have
8 raised certain contentions regarding the impact
9 on the National Lake Shore of the continuing
10 dewatering at this site and much of this impact
11 will resolve as a direct consequence of the
12 additional ninety-six months required for
13 construction. In addition, we have raised
14 a question about intervention as a matter of
15 discretion, which is permitted under the NRC
16 rules, although we believe we have intervention
17 as a matter of right.

18 In respect to the intervenor's parti-
19 cipation in the development of records, the
20 NRC has historically recognized the value
21 in ~~allowing~~ that issues of significance
22 would be raised which otherwise are not raised
23 and that subjects which are raised are fully
24 documented and intervenors can state this documenta-

1 tion in four ways; one, in raising issues of
2 importance in the form of documents for the
3 staff or applicants, witnesses and three-fourths
4 introduction of documents and qualified
5 witnesses. Illinois will participate fully
6 in these hearings in order to assist in the
7 development of a record. Now, there are several
8 other factors that the Commission also prescribes
9 for discretionary intervention. When the
10 intervenors interest in the hearing petitioners
11 interest, I've already stated are considerable.
12 At risk is the health and welfare of millions
13 of Chicagoans, in the event of a major accident
14 or incident, considering the economic and
15 recreational use of the lake and as a source of
16 drinking water and the interest of thousands
17 of Illinois citizens who use and enjoy the
18 Indiana Dunes National Lake Shore, in addition
19 to consideration about the possible effect of
20 an order on petitioners interest the Bailly
21 plant is only one percent complete at the
22 present time, a decision at this proceeding,
23 essentially the decision will be to build
24 ninety-nine percent of the plant, it can only

1 accede from a decision from the Atomic Safety
2 and Licensing Board. Bailly can be built, the
3 effects of the proceedings can be to subject
4 Illinois to each of the above.

5 Now, there are also other considerations
6 on the intervention which must be taken into
7 consideration; one of which is the extent to
8 which petitioner's interest can be protected
9 in other ways. Theoretically a petitioner,
10 such as Illinois, has two other options available,
11 they can institute proceedings on 2.206 action,
12 which are inadequate, because hearing under the
13 circumstances evidently are for the discretion
14 of the NRC staff rather than the licensing board
15 who decides the petitions, thus Illinois can be
16 deprived entirely of a hearing under 2.206 or
17 it could be one that would have to be decided
18 by the very people who serve as our adversaries
19 in this proceeding, the NRC staff.

20 Finally we wait until the utility has
21 spent in excess of one million dollars in
22 constructing a nuclear power plant to argue the
23 issues. The issues the petitioners have raised are
24

1 clear issues, which are required to be heard
2 in order for the plant to be without undue
3 risk of public health and safety, and therefore,
4 can not wait until the operating license hearing
5 in this case, which may not be held for many
6 years.

7 Another factor that the Commission
8 considers is the degree to which its interest
9 can be protected by other parties. Illinois
10 is a sovereign state and can not abdicate
11 its responsibilities to protect the health and
12 welfare of its citizens to other parties.
13 Further, Illinois has certain contentions that
14 have not been raised by the other intervenors.
15 No other party can represent Illinois in this
16 proceeding.

17 The final is the extent to which Illinois
18 intervenors would unduly broaden and prolong this
19 proceeding, the issues we raised ar all significant
20 issues and ones that could not have been raised
21 at the original construction permit proceedings
22 and are ones that are not appropriate for the
23 operating license hearing, therefore, that would not
24 unduly prolong this particular proceeding.

1 Now, Illinois has also requested
2 intervention as an interested state concerning
3 the 2.715 C, although NIPSCO challenges Illinois
4 to participate as a state, both contend
5 that if no parties, including Illinois, is
6 otherwise admitted as a participant, no hearing
7 will be held, no support for that position may
8 be found in the language of the regulation.
9 Indeed, to the contrary, the language of the regula-
10 tion is clear, that interested states shall be
11 afforded a reasonable opportunity to present
12 evidence, interrogate witnesses and otherwise
13 participate and advise the Commission regarding a
14 proposed licensing action, a state as a governmental
15 entity is accorded status to the NRC staff regard-
16 ing a participation in a matter before the
17 Commission and if a state is found to have
18 an interest in a licensing providing it
19 be afforded a hearing. Further support for
20 this may be found in the statement for
21 consideration, September 1st, 1978, which
22 amended the rules for participation, it provides
23 to 2.715, sub C, and was promulgated, and
24 I'll quote, "Pursuant to Section 161, Atomic

1 Energy Act, which grants broad discretionary
2 authority to the Commission to obtain information,
3 make investigations and order hearings as it
4 deems necessary, this type of cooperation
5 will be extended to other units of government,
6 which also have an interest in the licensing
7 proceedings. NIPSCO and the NRC staff both
8 contended that in order for an interested
9 party to participate in it there must otherwise
10 be a hearing. This interpretation is inconsistent
11 with 2.175, sub A, discussing limited appearance
12 and 2.175 B, discusses no disinterested parties,
13 it states that for those requirements to be
14 triggered there must first be a hearing.

15 2.715, sub C, governing interested
16 states makes no such allegation that there
17 otherwise would be a hearing, thus an interested
18 party , that a hearing can be held by its
19 participants, this is not to say that Illinois,
20 like the NRC staff, is not bound by the Commission's
21 procedural rules. Illinois has complied with
22 procedural requirements regarding timeliness
23 and specificity of intentions, and therefore, is
24 entitled to a hearing by virtue of its status as

1 an interested state on those issues which
2 other parties properly seek.

3 THE CHAIRMAN: What you're saying now is that 715C would
4 obviate the need for you to comply with the
5 standing requirements in that you would have
6 to have a valid contention in order to get
7 a hearing in the proceedings?

8 MR. HANSELL: That's correct, and also our petition would
9 have to be timely.

10 THE CHAIRMAN: Now, let me ask you, I don't recall
11 specifically your contention with regards to
12 dewatering in your supplemental petition, but
13 now if your contention relates to an effect
14 that dewatering would have on Illinois --

15 MR. HANSELL: Yes, sir, it's contention number six,
16 and it relates to the impact on Illinois,
17 because as I indicated in previous hearings
18 such as the slurry water proceedings, the
19 Indiana Dunes National Lake Shore, it's extensive
20 use from Illinois citizens, thousands of
21 citizens come to the Dunes every year for
22 the beaches and woods.

23 THE CHAIRMAN: I see. There wouldn't be an effect
24 upon Illinois, itself, but upon the residents

1 of Illinois who utilize the Indiana facilities,
2 is that what your contention is?

3 MR. HANSELL: That's correct, it's been recognized in
4 the past that a party such as a state may
5 assert the recreational impact of the operation
6 of a nuclear power plant on its citizens.

7 THE CHAIRMAN: Will either the applicants or the staff
8 like to address that particular interest
9 alleged on behalf of the State of Illinois?

10 MR. EICHHORN: Mr. Chairman, as far as the applicant
11 is concerned, I'm sorry to have misled.
12 Affirmatively we feel that the test for the
13 state to gain party status is saying under
14 2.714, if that indeed our petition has come as
15 it is for any other petition, I don't know
16 of any other special provisions that are
17 made for states under the provision, we have
18 never objected to the position or taken issue
19 with the position that the State of Illinois
20 as an interested state could not participate, but
21 we did believe that there should be a hearing
22 first. Certainly the regulations are not
23 crystal clear on that point, but it's difficult
24 to understand how you would have a hearing

1 without contentions and without parties and
2 without issues and have a system of developing
3 a record, that was our position with respect to that.

4 THE CHAIRMAN: If I understand that position, it is that
5 there is either intervention under 714 or
6 intervention under 715C and that you can't use
7 Section 2.715C to confer or to supply any
8 of the deficiencies under 2.714, and therefore,
9 create 2.714 intervention, is that correct?

10 MR. EICHHORN: That's correct.

11 MR. HANSELL: There are certain things I do disagree
12 with. As I pointed out before, 2.715C at no
13 time obviates responsibility that Illinois has
14 to comply with the Commission's procedural
15 regulations, and indeed we can not participate
16 if we did not properly raise contentions and
17 do so in a timely fashion, it's just that with
18 regards to standing, itself, 2.715C confers
19 standing on Illinois and by virtue of that,
20 a hearing is necessary, assuming that we do
21 raise legitimate contentions.

22 THE CHAIRMAN: But doesn't 2.715C also indicate the
23 nature of the participation so as to suggest
24 an exclusion of the type of participation as

1 specifically defined in 714?

2 MR. HANSELL: Could you restate that question? I'm sorry.

3 THE CHAIRMAN: Well, my question, and perhaps I ought
4 to refer to 214C, when I ask the question, is
5 doesn't that section, the exact nature of the
6 participation of an interested state and doesn't
7 2.714 also define the nature of the participation
8 under that section so that they might suggest
9 that there is no overlapping of the two
10 sections, you either come under 2.714C and
11 have the nature of your participation
12 defined by that section or you come under
13 2.714 and have the nature of your participation
14 defined under that section. Doesn't that seem
15 to be the case under the wording of those
16 respective sections?

17 MR. HANSELL: 2.714C does spell out the circumstances
18 under which -- or the manner in which Illinois
19 might participate in a proceeding which is
20 not unlike requirements spelled out in 2.714.
21 My point is merely that if a state is found to
22 be an interested state that triggered that in
23 and of itself is sufficient for standing, that
24 such a hearing would be held. The question of

1 scope of that hearing as to say the contentions
2 that could be considered is another question,
3 and my point simply is that the state would
4 be bound by the Commissions's procedural
5 regulations regarding standing, I'm merely
6 addressing the question of standing. Does
7 that answer your question?

8 THE CHAIRMAN: Does anyone want to add anything further
9 to that discussion?

10 Mrs. Grabowski.

11 MRS. GRABOWSKI: I'm not sure this is the right time
12 for us to respond. We believe that the
13 attorneys for NIPSCO and the NRC staff counsel
14 are being unnecessarily narrow in their
15 definition of standing. You, Mr. Grossman, have
16 shown wisdom in your explanation of injury
17 and standing which would have accepted the
18 petitioners as having standing. You are not
19 only taking in account all of the ramifications
20 of this proceeding and offering a fair and just
21 solution to the question of standing, you are
22 also showing foresight in foregoing a lengthy
23 debate which would have to show that the
24 petitioners do have standing. We think it's

1 fair to say that NIPSCO would not accept any
2 reason for standing unless you have drowned
3 the plant site and about to be buried alive in
4 concrete, as we believe you meant that it's
5 obvious we have an interest in the outcome
6 of this proceeding and we will be injured if
7 we are not allowed to intervene, we'd like
8 to explain what we think is the real significance
9 that your decision will have to us, you are
10 not merely deciding whether to hold a hearing,
11 you are deciding whether or not we truly have
12 a government for the people, you are deciding
13 whether or not the public has a right to help
14 make the decisions which will seriously,
15 drastically affect their lives, you are deciding
16 right here and now whether the Nuclear
17 Regulatory Commission works on behalf of the
18 people or on behalf of NIPSCO. We feel that
19 we should be allowed to intervene, because
20 even people who live more than ten miles
21 away from the nuclear plant site have a big
22 stake in the outcome of this proceeding. We
23 say this because summaries of accident studies
24 done in the past indicate that the nuclear

1 plant would affect people far more than ten
2 miles, we also feel that not enough research
3 has been done nation-wide on surrounding
4 population, we are especially concerned by
5 studies that have shown an increase in infant
6 mortality around nuclear plants. With this
7 hearing business we have to admit that we are
8 in over our heads, we kind of feel we've
9 been pushed into the deep end of the pool
10 and we're just learning how to swim and we
11 feel that NIPSCO is circling us in expensive
12 motor boats, stocking the pool with sharks,
13 we feel we don't have a chance, save the lifeguard,
14 and that's you, and the lifeguard doesn't have
15 to save us unless he wants to, and it's all up
16 to you. Normally we would understand that
17 you don't want to tangle with the sharks to
18 save us, but we're not the only ones stuck
19 out here in the water, everyone in Northern
20 Indiana is stuck in here with us, all the
21 children are stuck with us.

22 THE CHAIRMAN: I did want to make it clear that I'm
23 not taking positions, I have to be a Devil's
24 advocate, so certain of your premises are

1 unjustified, so you just have to wait until we
2 issue an order as to the position the Board
3 takes on the items that we discuss here.

4 MS. COHN: The City of Gary, Indiana is an interested
5 municipality within 2.715C and we read 2.715C
6 to provide a broader rights of participation
7 than that encompassed in 2.714 to the extent
8 that 2.715 indicates that interested states
9 or municipalities may participate in a
10 proceeding without taking a position with
11 regards to issues, we agree with Mr. Hansell,
12 however, that we would have to demonstrate
13 if we intended to participate with respect
14 to a specific contention that the contention
15 raised is within the scope of the proceeding.

16 THE CHAIRMAN: Mr. Goldberg.

17 MR. GOLDBERG: Mr. Chairman, I guess I sort of lost
18 the thread somewhere, I'd like to get back
19 to Mr. Hansell's direct statement interest
20 seemed to allege a logical health and safety
21 interest of Illinois citizens, which for reasons
22 we have explained in our separate briefs, we
23 do not believe to be recognizable interest in
24 this proceeding, however, I did understand

1 in a colloquy Mr. Hansell had with the Board
2 that the state may additionally be asserting
3 that its citizens could be affected by any
4 incremental impacts that might be attendant
5 upon construction of the dewatering for a period
6 of time. With that offered, if that is the
7 case, the Staff would have no objection if that
8 were to be the basis of the state's standing
9 for intervention under 2.714, maybe the state
10 should be heard from on that point with
11 respect to their participation under 2.714 and
12 2.715, as an interest in the state by the very
13 terms of that regulation, it involves the
14 participation of one not a party. If the
15 only actual litigant to the proceedings are
16 the parties to that proceeding, participation
17 by one under the section 2.715 is contingent
18 upon there being a proceeding to which one
19 might otherwise be a party, and in that regard
20 the laws of the state of NRC staffing serves
21 are not equivalent, the staff is a full party
22 to any adjudicant proceedings where one is
23 a party under section 2.715, is not, although
24 it is not clear what rights they're deprived of

1 if they elect to otherwise participate under
2 that regulation, but we would submit that they
3 are acceptable considerations and to some
4 extent mutually exclusive. If the state were
5 to satisfy the intervention requirements of
6 2.714, of course would raise contentions,
7 then otherwise prosecute those issues at the
8 same time, it could participate with regard
9 to the adjudication of contentions admitted
10 on behalf of other parties, that it has a discernible
11 interest of its own in those matters. I want to
12 clarify that for the record.

13 THE CHAIRMAN: Mr. Hansell, do you want to respond?

14 MR. HANSELL: Yes, I have several things to discuss,

15 2.715, sub C, in the first place the words
16 in this "which is not a party" is not meant to
17 be an expression of limitation, rather it's
18 meant to broaden that particular section; that
19 is to say, if Illinois were admitted under
20 2.714 by virtue of 2.715C we would also be able
21 to participate regarding issues that contentions
22 that we did not raise, but were raised by other
23 parties, but that is not normally the case,
24

1 2.715C is intended to afford, first of
2 all, recognition of the special situation of
3 other sovereign entities, such as the states and
4 their ability to be able to participate in NRC
5 licensing procedures, I think that the language
6 of that particular section clearly recognizes
7 that it's not necessary that there already be
8 a hearing before the state can participate in
9 a licensing proceeding, rather if a state is
10 found to be an interested state, or a municipality,
11 by virtue of that it triggers the requirements
12 of 2.715C and affords a state an opportunity
13 to participate in and introduce evidence,
14 etcetera, assuming that we otherwise comply
15 with the procedural regulations. Now, with
16 regards to the first point that was raised
17 by the NRC staff, they are correct that among
18 the bases upon which we are relying for
19 intervention would be the harm to Illinois,
20 during the course of construction from the
21 activities of dewatering at the plant and in
22 the impact on the Indiana Dunes lakeshore, to
23 be sure, and makes very clear we are also relying
24

1 upon a broader base for intervention, which is
2 regarding the impact of the nuclear power plant
3 on the citizens of Chicago, which are thirty
4 miles away and also the impact of the nuclear
5 power plant upon Lake Michigan which is used
6 by Illinois for commerce, for recreation and
7 as a source of drinking water for a number
8 of Illinois cities.

9 THE CHAIRMAN: Would the applicants like to respond either
10 to anything that's been stated further with
11 regards to 2.715C, all with regards to the
12 issue raised of dewatering affecting Illinois
13 residents, and use the Dunes for recreational
14 purpose, conferring standing on Illinois?

15 MR. EICHHORN: Mr. Chairman, as we previously stated,
16 their interest can not be founded upon
17 operational effects, because regardless of
18 the outcome of this hearing it will not be
19 judged on operations plans. In the interest
20 of time we won't reiterate that point. I
21 understand you want to zero in on the question
22 of the incremental increase in dewatering that
23 may occur as a result of a longer construction
24

1 authored further contentions, but that there
2 are not going to be any, at least until some
3 later stage in the proceeding after discovery
4 has been made. We do have a notice of hearing
5 here, is that correct?

6 MR. VOLLEN: Mr. Chairman, I do not have any additional
7 contentions to be filed at this time, I
8 certainly expect after discovery or further
9 proceedings, assuming as I say, notice of
10 hearing is issued and published that we will
11 be seeking to file additional contentions.

12 THE CHAIRMAN: I didn't mean to limit when you can
13 ask for further contention for discretion,
14 I just wanted to make sure that there weren't
15 any contentions that you haven't filed
16 because of the shortness of the time, and I
17 understand that there are not, that any further
18 contentions will not be a cause of the time
19 element I'm scheduling this pre-hearing
20 conference, but for matters that arise
21 subsequently or at least come to your knowledge
22 subsequently, can you assure me on that,
23 Sir?

24 MR. VOLLEN: I'm afraid I can't, Mr. Chairman, as you

1 well know, and we both know we sought
2 and the State of Illinois sought an extension
3 of time before this pre-hearing conference,
4 and one of the reasons for that was we did
5 feel we needed additional time to gather
6 information and to articulate contentions,
7 so it's not the case that any further
8 contentions that we may seek to present to
9 the Board in litigating this proceeding, our
10 contentions will arise only from discovery.

11 THE CHAIRMAN: Of course, your extension for two weeks
12 would have brought you up to about this time
13 for filing further contentions, isn't that
14 correct?

15 MR. VOLLEN: I don't remember the exact day, but I
16 do know that in the last period of time
17 I have had to devote a lot of energy for
18 preparing for this hearing and arguing and
19 preparing to argue issues about standing
20 and scope and the contentions that have been
21 filed, so it's not our position that there
22 are no contentions that we can articulate
23 now before discovery, we haven't time to
24 articulate.

1 THE CHAIRMAN: Does any other participant here have
2 any further contentions that he or she has
3 brought with him? None, as far as I can see.

4 Mr. Hansell.

5 MR. HANSELL: Mr. Chairman, Illinois has no additional
6 contentions at this particular time, however,
7 it may be at the conclusion of this hearing
8 we may ask leave to amend some of the contentions
9 that we did submit, we felt, and I'm extremely
10 concerned because of the limited period of time
11 we were allowed, not to submit a supplemental
12 pleading, and therefore, may want to amend
13 some of the contentions that we actually have
14 submitted at the present time for discovery,
15 we have no additional contentions. At some
16 other appropriate time we may ask leave to
17 file additional contentions.

18 THE CHAIRMAN: Thank you.

19 Mr. Reising.

20 MR. REISING: The Lake Michigan Federation would naturally
21 want to contend also, as the other intervenors
22 have, that they are going to redetermine and
23 amend their contentions. We add nothing to
24 that.

1 THE CHAIRMAN: Now, any other petitioners would like
2 to address the question of discretionary
3 intervention?

4 Ms. Cohn:

5 MS. COHN: Yes, it's our position that the factors
6 discussed by Mr. Vollen which favor the
7 discretionary intervention of Porter County
8 apply with force to local steelworkers 6787,
9 and the Bailly Alliance who represents
10 all individuals who work or live in the Bailly
11 site or use facilities just adjacent to it.

12 With respect to whether our interest in
13 these proceedings can be adequately represented
14 by other parties, as the Board is aware, we
15 have sought only to raise the question about
16 whether the population surrounding the Bailly
17 site can be evacuated in the case of emergency,
18 in the case of an accident at Bailly, we do
19 not believe that any parties here would adequately
20 represent that interest since we are the only
21 petitioners to have really raised it, and for
22 those reasons we believe that should the Board
23 determine that we have no intervention as a
24 right we ought to be able to participate as a

1 matter of discretion.

2 With respect to the critical mass
3 energy project we have sought intervention only
4 on the basis of the Board's discretion,
5 because of the expertise of critical mass
6 energy projects in the area. We believe that
7 should contention be found to be within the
8 scope of this proceeding that the critical
9 mass energy project will contribute substantially
10 to the record on that issue.

11 THE CHAIRMAN: Would the applicant care to respond at
12 all to what has been said with regards to
13 discretionary intervention?

14 MR. EICHHORN: Mr. Chairman, just to note that
15 discretionary intervention is precisely
16 right, that it is a matter of discretion for
17 the Board based on the six categories generally
18 accepted by the Commission. Mr. Vollen has
19 addressed those and I think that whether or
20 not he has made a case for discretionary
21 intervention depends in large upon how the
22 Board rules. Certainly the State of Illinois
23 and the Porter County Chapter group have
24 identified almost the exact same interest,

1 and for those who were overworked, Mr. Vollen
2 came back later to seek to adopt them, so
3 certainly the interest of the State of Illinois
4 and the Porter County Chapter are identical,
5 and if one or the other is in that discretionary
6 intervention, it is not necessary for the
7 protection of that right or interest for which
8 they seek protection and to the extent that
9 they would add to the record, I think that
10 was Illinois' position that they certainly
11 wanted to bring forward their expertise
12 in developing a record, if Illinois is in,
13 it's certainly not necessary, then, for Porter
14 County Chapter group to be in to develop
15 a record or to repeat that which the State of
16 Illinois has so -- basically what I'm getting
17 at is that whether there is a need for
18 even a consideration of discretionary
19 intervention depends in large upon how the
20 Board rules with respect to the various parties
21 as a matter of right as an interested
22 state and whether or not the interests are
23 adequately protected, whether or not the
24 record needs further development by two

1 people asserting the same interest.

2 THE CHAIRMAN: Thank you.

3 Anything further with respect to that?

4 Mr. Vollen.

5 MR. VOLLEN: Just very briefly, Mr. Chairman, I think

6 Mr. Eichhorn is incorrect that what he
7 says that the interest of the State of
8 Illinois is the same as the interest of the
9 Porter County Chapter, it may be true that
10 many -- although I think it's not true of
11 all of them, I think many of our contentions
12 are the same, in our litigating posture
13 may be the same, that is not true as our
14 interests, the interest of Mr. Newmann and
15 Mrs. Warner is really quite different than
16 the interest of the State of Illinois on the
17 question of whether or not Bailly gets
18 built, the other point I'd like to observe
19 is that while Mr. Eichhorn raises the
20 question if Illinois is admitted as a party
21 what need is there for Porter County Chapter
22 to be admitted as a party, even apart from
23 the question whether or not there's a need
24 for these people to be admitted, I wonder if

1 Mr. Eichhorn could identify any harm from
2 both Illinois and Porter County Chapter being
3 admitted.

4 THE CHAIRMAN: Mr. Hansell.

5 MR. HANSELL: I think I have a similar action, I
6 think, in fact, that the contentions submitted
7 by Porter County are different, there are
8 contentions of Porter County that Illinois
9 has not raised and we have not raised
10 because we choose to emphasize other things
11 and do not feel that we would do an adequate
12 job defending Porter County's interest on
13 those, but beyond that I think it's important
14 to recognize that though we are certainly
15 sympathetic to the interests of Indiana citizens
16 we are here representing Illinois citizens
17 and we would not represent Indiana citizens
18 regarding this proceeding. It would be beyond
19 our scope, and therefore, would not do an
20 adequate job of it.

21 THE CHAIRMAN: Before we leave the matter of
22 intervention does anyone have anything
23 further to say with regards to that subject?

24 Mr. Reising.

1 MR. REISING: I think the question of discretionary
2 intervention, Lake Michigan Federation
3 would say, in the first point, the extent of
4 participation in developing a sound record,
5 that inasmuch as I stated earlier, that the
6 position of the applicant is that the
7 interventioners, including Lake Michigan
8 Federation, were the cause for delay, I don't
9 know, I don't see how there possibly could
10 be a good record without our being here
11 to explain the position, in fact, I think
12 that Northern Indiana Public Service Company
13 has made us a party to these proceedings by
14 their pleadings, which state that we are
15 the cause. The second and third point,
16 frankly, have already been discussed today
17 by myself and other parties. Obviously,
18 there is no other means within the statute
19 or due process to address this issue, other
20 than at these hearings, at this hearing,
21 and I think the due process is a phrase
22 that should be considered by the Board
23 in considering our intervention. Again,
24 going back to the point that having been

1 named as the culprit, I think that due
2 process necessitates our ability to attend the
3 hearings as intervening parties and answer
4 on the extent to which the petitioner's
5 interest will be represented by existing
6 parties. The Lake Michigan Federation is
7 made up of members of those states which
8 geographically surround Lake Michigan, the
9 State of Michigan, Wisconsin, Illinois and
10 Indiana. We have a Board of Directors which
11 has members from each one of those states
12 and represents seven hundred people and
13 approximately a hundred organizations
14 which have interest in the preservation and
15 improvement of Lake Michigan, therefore,
16 while the State of Illinois has interests for
17 their citizens and Gary has interests for
18 their citizens and Porter County has interests
19 for their citizens, the Lake Michigan
20 Federation uniquely has the interest of a
21 broad range of people living in the Great
22 Lakes basin which is going to be directly
23 affected by this plant if it is built,
24 so I think that our status in this respect

1 is different from the other intervenors
2 and the extent to which the petitioners
3 participation will be appropriately broadened
4 or delay the procedures, the intervention
5 of this petitioner and all those
6 petitioners will not inappropriately
7 broaden, but will give the intervenors
8 an opportunity to answer the issues that
9 were raised by NIPSCO in their petition,
10 and therefore, the very reason for the
11 petition, so I would think that the Board
12 would have adequate grounds, if there is
13 such a thing as a mandatory discretionary
14 manner in which NIPSCO could raise this
15 issue, it is make the discretionary
16 intervention provable.

17 THE CHAIRMAN: I'm concerned about the extent of
18 your anticipated participation in this
19 proceeding, it's my recollection that in
20 lieu of filing specific intentions on the
21 Federation's behalf it has merely adopted
22 the contentions raised by other parties,
23 if that's correct, and perhaps I'm missing
24 something here, is that what you have in mind

1 with regard also to future participation
2 in this proceeding?

3 MR. REISING: Mr. Chairman, as I read over the petitions
4 for leave to intervene, other parties are
5 referred to by reference and then I believe
6 the grantor of the petition went on to
7 state those areas which specifically
8 affect the Lake Michigan Federation.

9 THE CHAIRMAN: It's true, you do have some
10 specific interest, but I don't see very
11 much in the way of particular issues that
12 have been raised, perhaps I'm misreading
13 it, but that is my impression right now.

14 MR. REISING: Without being coy, I suppose that's
15 why we reserved the right to amend.
16 Mr. Chairman, these pleadings do state in
17 general terms those areas in which Lake
18 Michigan Federation might have a specific
19 interest in the participation of Lake
20 Michigan Federation, I'm sure in these
21 proceedings would be to define those
22 arguments and those positions which specifically
23 are applicable to membership of r
24 organization and may not be within a range

1 of other intervenors.

2 THE CHAIRMAN: I'm not attempting to chastise
3 you for any deficiencies, I was merely
4 trying to establish what you envision
5 as your future participation in this
6 proceeding, and I'm really just asking
7 you whether it's going to be in the same
8 nature as has already referred to or whether
9 there is going to be a more active role
10 asserted by Lake Michigan Federation if
11 you are admitted to the proceeding.

12 MR. REISING: I would say there was going to be an
13 active role by the Lake Michigan Federation
14 and that the impact of that active role will be
15 to help the Chairman and members of the Board
16 reach just and proper conclusion on the
17 application.

18 THE CHAIRMAN: Mr. Eichhorn.

19 MR. EICHHORN: Mr. Chairman, I'd like to address the
20 comments of the counsel for Lake Michigan
21 Federation. To begin with, to my knowledge
22 they have not participated in any proceedings
23 involving NIPSCO in the past and I don't
24 know that NIPSCO has ever blamed them for

1 causing any delay in the construction, I
2 think they had joined with others in the
3 2.714 question, but I don't believe they
4 have been involved with any of the evidentiary
5 hearings that took place on the necessity of
6 the court proceedings; secondly, they are
7 addressing the question of discretionary
8 intervention and that is something, as I
9 understand it, granted by the Board, where
10 intervention as a matter of right is not
11 necessarily there, but there is some compelling
12 reason why this party would add to the
13 proceeding or would help in the developing
14 of a record. Up to this point, we have no
15 idea as to what the Lake Michigan Federation
16 intended to do in this proceeding, you
17 alluded to some of the questions that
18 you asked of counsel, they have filed no
19 contentions, they have failed the one
20 cognizable issue of 2.714. I really
21 don't see any basis upon which they can
22 be granted discretionary intervention at
23 this time when they have made no effort to
24 meet the requirements of intervention as a

1 matter of right or in any way to demonstrate
2 to the Board through filing contentions as
3 required, they have ignored the order of this
4 Board to supplement this petition fifteen
5 days prior to this date, and I certainly
6 don't view this as conduct which would justify
7 permitting discretionary intervention and
8 feel that they are not entitled to it and
9 have made no case for it at this point.

10 THE CHAIRMAN: Mr. Goldberg.

11 MR. GOLDBERG: A final point on that, I guess I
12 share Mr. Eichhorn's observations about
13 the showing of discretionary intervention on
14 behalf of the Lake Michigan Federation, we
15 would submit where one could otherwise
16 establish standing as a matter of right
17 there is no reason to seek intervention as
18 a matter of discretion. And not to get
19 ahead of ourselves on the matter of contentions,
20 but if a hearing is ordered to which
21 identical contentions of separate parties
22 are admitted as matters in issue, the staff
23 will move to consolidate the presentation
24 under those contentions pursuant to 2.715 .

1 THE CHAIRMAN: By the way, I would like to point out
2 that Doctor Schultz has not participated
3 yet in this proceeding and I don't know if
4 he is here. Has he come in since we
5 started? I don't see any response in the
6 audience so I assume he's not here. I'd
7 like to point out that the Grabowskis left
8 possibly an hour ago and I would like to have
9 that recorded unless they're still here in
10 the audience somewhere. Oh, yes, I'm sorry,
11 they are here, and I would like to give them
12 an opportunity to add anything further
13 along with any other participants here
14 with regards to the area of intervention,
15 because we are going to move on.

16 Is there anything further that anyone
17 would like to say with regards to that?
18 And I don't see any response.

19 Now, let's go off the record for a
20 second and find out what the participants
21 would like -- I'm sorry, the Grabowskis care
22 to make further statements.

23 MRS. GRABOWSKI: We apologize for not understanding
24 exactly what is going on. Did you just say

1 that this is the end of being able to state
2 whether you should have standing?

3 THE CHAIRMAN: Yes, that's correct, and we'll move
4 on to the scope of the proceeding after this.

5 MRS. GRABOWSKI: And we would like to remind you of
6 one more reason why we think we should have
7 standing, and that as we understand standing,
8 you have standing if you can show that you're
9 going to have some additional injury to
10 you by them taking eight more years to
11 build a plant than you would just by their
12 original construction on the plant, and we
13 feel that if they take eight more years to
14 build the plant it's going to injure us
15 and we'll have eight more years of being
16 under strain and under psychological stress
17 of knowing they're building a nuclear plant
18 where we'll be affected by it, and I don't
19 think this should be minimized and passed
20 off as not a real injury, because it's a
21 real stress and a real psychological stress
22 to someone who realizes the danger of nuclear
23 power, to those of us who are under the
24 strain of knowing what this will mean to us,

1 and it's not fair to say that it's only
2 psychological damage, and therefore, it isn't
3 cured by the Atomic Energy Act, because
4 psychological stress does cause physical
5 injuries, and this has been documented by
6 many physiologists and researchers, that
7 strain and tension can cause physical damage,
8 so I would like to remind you of that.

9 MR. CHAIRMAN: Now, this matter was responded to,
10 I believe, by both the applicant and the
11 staff, and perhaps you would like to add
12 something further or summarize, either the
13 applicant or the staff. I'm not requiring
14 you, if you both feel that your written
15 response was adequate and there's nothing
16 further to add, there's no reason to delay
17 any further on this point.

18 MR. EICHHORN: Mr. Chairman, as far as NIPSCO is
19 concerned, I think our written response
20 with respect to the psychological stress
21 is adequate and need not be further
22 expanded upon at this time.

23 MR. GOLDBERG: I think our position is stated in the
24 March 7 response and seems to provide

1 some latitude to the Grabowskis' in an
2 attempt to perfect their showing of interest,
3 if they were to allege some incremental,
4 related impact which was not on the five areas
5 of interest they raised in their supplemental
6 petitions.

7 THE CHAIRMAN: Ms. Cohn.

8 MS. COHN: Mr. Chairman, I've been asked by a member
9 of the audience to have the record reflect
10 that Doctor Schultz is not here because
11 he interpreted the NRC's staff response as an
12 indication that he lacked the standing to
13 appear.

14 THE CHAIRMAN: I'm not sure I fully understand that,
15 but I'm not sure you do either.

16 Mr. Goldberg.

17 MR. GOLDBERG: Mr. Chairman, let me clarify, that is
18 not on the basis of any personal communication
19 I have had with Doctor Schultz, because I've
20 had none.

21 MR. CHAIRMAN: Mrs. Grabowski.

22 MRS. GRABOWSKI: We haven't received a response that
23 was filed by the NRC to our supplement so
24 we don't really know what they're talking about,

1 when they said that we could amend it.

2 DOCTOR COLE: I don't think there was a written
3 response to your petition, Mrs. Grabowski,
4 or I haven't received it.

5 MR. GOLDBERG: It might come as some surprise, I hand-
6 delivered three copies of that response.

7 DOCTOR COLE: Is that the document dated March 7th?

8 MR. GOLDBERG: Yes, that is the staff position on
9 all those who submitted, including
10 Mr. and Mrs. Grabowski.

11 THE CHAIRMAN: To clarify for the record, there was
12 hand-delivered last Friday the response,
13 the Board, not the staff's response, to the
14 supplemental position, as well as the applicant's
15 response to the supplemental petition and I
16 wonder whether you received either of them.

17 MRS. GRABOWSKI: We received response from the
18 applicant.

19 THE CHAIRMAN: But not the staff's response?

20 DOCTOR COLE: I received that, I have it here, yes.

21 THE CHAIRMAN: Mr. Goldberg, would you see that that
22 response is transmitted and find out why it
23 wasn't delivered in the first instance.

24 MR. GOLDBERG: It was placed in the mail on March 7,

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perhaps it's just a failure to arrive, I'll try to get them a copy as soon as I am able.

THE CHAIRMAN: In view of that, I think perhaps we ought to permit a further response by the Grabowskis , if they care to make one in a written form, subsequent to this conference, does anyone have any objections to that? I see everybody agrees, that they have no objection, that's fine.

Now, I think we've concluded this issue of intervention and I would like to go off the record now and decide on what the scheduling will be for today.

(Discussion had off the record)

MR. EICHHORN: Before we break for lunch, may I make one final point here, we have secured an additional copy of staff filing and we'll deliver it to the Grabowskis' at this time so they'll have it as quickly as possible.

THE CHAIRMAN: The meeting is adjourned until 1:30.

Pre-hearing conference reconvened 1:29 p.m. March 12, 1980.

MR. GROSSMAN: First, I'd like to point out to the audience that talking is very distracting and it makes it very difficult for us to hear what is going on in the proceeding. It is not exactly appropriate for children. I don't think too many attention spans stand more than ten seconds of this. If anyone has a child here, you can expect them to create somewhat of a disturbance.

Before we proceed to any discussions, I would like to ask the parties or participants to submit certain documents that were missing. To begin with, the two letters requesting the extension of which we never received. And our file only really starts with the notice of opportunity for hearing. So that would be, I believe, February letter and the September letter amended to February. And also a joint supplement to request a hearing as were alluded to by the petitioners on a number of occasions, in particular to the request for another environmental review. So we don't have that. If the applicant would supply us with the first thing and one of the petitioners would supply us with the joint supplement, we appreciate that.

MR. VOLLEN: We'd be glad to Mr. Chairman. In addition to that joint supplement, there were at least two other documents which were filed with the Commission prior to the notice of opportunity. We filed a request for hearing

immediately or very shortly after the February 7 letter from NIPSCO and the joint supplement which you referred to. Then we filed an indictment amending our request for the hearing after August 31. Of course, we'd be glad to furnish each of the members of the Board with those documents.

MR. GROSSMAN: Will you supply, also, all the participants who have not yet received those documents with a copy of the documents?

MR. VOLLEN: Certainly, Mr. Chairman.

MR. EICHHORN: Mr. Chairman, I believe there is one more document along those lines. The State of Illinois on March 5th of last year filed a request for the hearing, and also, a joint supplement and an amendment filed for Mr. Vollen for his client.

MR. GORSSMAN: Would you please take care of that?

MR. VOLLEN: Yes, we would be happy to.

MR. GORSSMAN: Let me tell you what the agenda is for this afternoon so you will know what type of plans to make. We would first like to discuss the scope in general of the proceeding, and in particular, whether or not health and safety issues or environmental issues can be covered in this proceeding. We then would like to discuss the request for waiver of Regulation 50.55(b) and the effect of Section 2.75(a). We will then cover specific contentions raised by each of the petitions and about the preliminary discussions and the scope of the

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proceeding should save us some time when we get to the actual contentions. And then we will discuss any further scheduling in the proceedings. How that helps you in planning when leaving today or tomorrow, I don't know. Now. . . yes, Mrs. Grabowski?

MRS. GRABOWSKI: We would like to excuse ourselves for the remainder of this afternoon's proceedings. George is working midnights which means he works from twelve midnight to eight a.m. In order for him to safely perform his job he needs to go home to sleep. We would ask to be excused and to be allowed to make a brief statement concerning the scope of the hearing.

MR. GROSSMAN: Yes. And before you start I would like to also note Dr. Schultz has joined us now and that I think he would after you conclude, explain why he wasn't here. Let me say this to both of you and Dr. Schultz: We're not going to penalize you for missing any part of the proceedings. But that you take the proceedings as they are from this certain part. Well, we're not going to allow you to reintroduce matters covered. But, again we won't penalize you for not participating there. You will just have to hope someone else will have covered the material. You may proceed now.

MRS. GRABOWSKI: We urge the commission not to accept NIPSCO's very unrealistic concept of the scope of the

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MRS. GRABOWSKI: We urge the Commission not to accept NIPSCO's narrow, unrealistic concept of the scope of the hearing.

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Realistically, the scope of this proceeding should be denied by the positive outcome of the proceeding since only one percent of construction is completed at the site. This hearing would actually decide whether or not the plant would be built. Realistically, it will also determine whether or not the plant operating, since no operating permit has never been denied and no one could believe that NIPSCO spending 1.1 billion dollars would be denied operating permit, so that we could pay the bill.

MR. GROSSMAN: Thank you. Thank you very much for participating this morning in this discussion. Dr. Schultz, would you like to make some statement?

DR. SCHULTZ: Thank you for the opportunity. I was confused as to whether or not I would be given opportunity to speak and I feel at a disadvantage here because the issues are confusing to me. It seems we have very serious health and safety, what I consider moral, issues, involved here. And it seems to wait until the operating permit stage to look seriously at these questions is illogical and immoral. I work at a prison with 1700 inmates. We have the largest maximum security prison with the largest percentage of lifer's in the world--a very serious, dangerous population of men. As far as I know there is no evacuation plan. I can't conceive of one, I am not smart enough to. How they

would evacuate that facility while there is also the community being evacuated. All of this gives me great pause. I want to know what's going to happen in the event of a emergency, as the Rogovin report describes it happens at Three-Mile Island. I have serious doubt and, the concern I feel at this stage the moral imperative; that we look at these issues and not wait until 1.1 billion dollars is spent on this. I think it imperative the Commission look at the issues at this point and not at a further point.

MR. GROSSMAN: Doctor, thank you. I would like to ask a staff member, Mr. Goldberg, to first give us a general statement of what he thinks we can cover in this proceeding and what limits us in the coverage.

MR. GOLDBERG: Since the scope of the proceeding has been extensively briefed in our prior filing, I won't take up the Board and other's time to elaborate very fully on those. The primary determinant of the scope of the construction firm in an extension proceeding is the Commission's regulation section 50.55(b) which essentially provides that a construction permit may be extended for a reasonable period of which "good cause" was shown. The perimeters of that "good cause" showing under the regulations have been articulated by the appeal board and a decision which we sight in our paper involving a Donald C. Cook

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facility. With respect to the propriety of considering any health or safety issues in a construction permit extension proceeding, the Board, pardon me, the appeal board there concluded that it could not always rule out consideration of possible safety and environmental issues that were associated with the reasons assigned for the delay in the consideration of a particular facility. But further went on to qualify that by indicating that it must also determine before it embarks upon such a consideration, the preconsideration of those issues are necessary in order to protect the interest of the intervenor of the public interest. However, it clearly indicated that a construction permit extension proceeding is not first and foremost a proceeding designed to determine the safety and environmental aspect of the land in question, those first instances in a construction permit stage, and later at an operating license stage. And, only in the circumstances that the reasons assigned for the delay themselves raise serious safety and environmental concerns that cannot abide the eventual opportunity for the operating license stage, should a hearing on those matters be embarked on in the course of a construction permit extension proceeding. The underlying rationale for that approach follows both Commission and judicial precedent for the fact that issues received primary attention at the construction

permit hearing and later attention on the operating license hearing if one is requested and no others. One looks to the 50.55(b) of the Commission's regulations along with the interpretation of the scope of the clause criteria in that regulation developed in the Cook clause--defined in the Cook decision we'll find the scope of an action such as that before us now.

MR. GROSSMAN: Mr. Eichhorn, care to add anything to that?

MR. EICHHORN: Mr. Chairman, let me elaborate just a little on that and it is evident from the prior filing that we concur in staff position that the regulation in the Cook case do very well scope out the issues that can be heard in proceedings such as this. And I think it is important to look at this in proper context. That being that there was a very thorough review of the construction permit licensing stage of many, many issues over many, many months. Not only in the Commission and its appeal procedures, but in the court here at the Supreme Court of the United States. The Commission has established a very carefully structured two-step licensing procedure which has been judicially upheld in NRC case and subsequent cases, perhaps most recently in a case produced by the Porter County Chapter against NIPSCO. And the discussion of the Columbia Court of Appeal and we

alluded to that case in our recent file. But, nonetheless, to go beyond the scope delineated in the regulation and ascribed in Cook would be to disrupt their carefully structured two-step licensing procedure which was designed for the very purpose of picking up any design changes in criteria that may occur after the construction is authorized but before the operation of the plant has been considered. And, to re-review all of those items at this particular stage of proceedings would be to totally disrupt that procedure that has been set up by the Commission and judicially upheld. But, we do concur with Mr. Goldberg with respect to the scope of the proceeding and for the reasons enumerated.

MR. GROSSMAN: Mr. Vollen.

MR. VOLLEN: Thank you Mr. Chairman. Let me respond first most directly to the two points that Mr. Eichhorn just made. In point of fact the Atomic Energy Act sets up a two-stage licensing process with the provision for a third stage namely where the applicant for the permit holder, in this case NIPSCO, seeks an amendment to its construction permit and where an interested percentage request a hearing. There is a mandatory third stage, a hearing on the construction amendment. All of Mr. Eichhorn's remarks today about the two-stage licensing process and seeking to disrupt it and

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all the talk sessions by NIPSCO and by the staff about disrupting the two-stage licensing process. The statutes built in the third stage, the statute provides for that hearing when a permit holder and when an applicant seeks an amendment. We are not seeking a hearing on anything that the statute doesn't require. We are not coming in. There is talk in the paper about an ongoing process of hearings that there would never be a time that we would be free in this hearing. This hearing is by occasion, not by anything we have done; by occasion by NIPSCO seeking amendment. The second thing I want to respond to is that neither the Porter County Chapter nor anyone else as far as I can tell is seeking a re-review of anything that litigated in construction permit stage. No one has ascertained to my knowledge or contention that have to do with whether or not the construction permit should be issued. What we are litigating is whether or not an amendment to the construction permit should be issued. We are not seeking to cover the same ground that was covered before. I wanted to deal up front and first with those two points with Mr. Eichhorn. Clearly the most important in understanding what the scope of this hearing ought to be is the phrase, "good cause" in the statute. Unfortunately I think we all know that the statute does not tell us what "good cause" means.. Nor I think does the legislative

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history. Everybody agrees that is what the appeal board said in Cook's case and we have not found any legislative history to what "good cause" means. I think we can all agree, or some of us. But it seems to me quite clear from the face of the statute it does not mean that the burden is on NIPSCO to show "good cause" for failure to have completed construction by the next completion date. Congress knew how to write that. That is within the Federal Communication Act, and the Atomic Energy Act is quite different. I suggest the burden is on NIPSCO to show "good cause" for the text of the construction permit, not "good cause" for failure to have completed construction by the latest date of September 1, 1979. The inquiry before does not look exclusively retrospectively, as NIPSCO would suggest. We agree that the appeal board decision in Cook is the most important learning that has been written on the question of what does "good cause" in the statute mean and what does the language of 50.55(b) mean, and what is the language of the Commission rule; both in written submission of this Board and oral presentation today, the applicant and the staff have ignored some of the most important points. First of all, what Cook makes more clear than anything else is that the decision about "good cause" turns on the particular facts and circumstances

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of the case. Let me quote, if I can, just two sentences from the Cook decision: "whether good cause exists in a particular case obviously is dependent upon the facts of that case. A corollary to that axiomatic proposition, it seems to us, is that the factors which the adjudicator should take into account in making its "good cause" determination should also be influenced by the totality of the circumstances which confront it." If you put that sentence together with that facts in Cook which were the constructions virtually completed to that plant; that the operating license proceeding had commenced; that you already had request for a O.L. hearing; that parties had intervened; that the hearing had been scheduled. You realize that it didn't take much to abide the event of Cook the operating license from Cook because it was unknowing. Here in contrast the facts are that construction is one percent completed; that we have nothing but a hole in the ground. So, the totality of the circumstance here and another I will come to in a moment, make it quite a different situation than Cook in terms of what this Board ought to look at in determining "good cause". The other part of Cook I think both NIPSCO and the staff overlooked, is that decision clearly reject clear restrictions of the position the advocate here, which is, as I understand, that the only

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thing this Board can look at in determining "good cause" is the reason why construction was not completed by September 1, 1979. The Board indicates that position is too rigid. I don't have it quite right here but to the Board rejection. . .

MR. GROSSMAN: I think Mr. Goldberg that the Appeal Board in Cook did indicate that certain safety and health issues ought to be considered if they arise from the reasons in which request for extension for which the extension was requested. Is that what you are referring to in the Cook decision?

MR. VOLLEN: I'll find it in just a second. . . . Oh. The Board said and I quote, "Thus we have considerable difficulty in accepting the review of the applicant and the regulatory staff that a licensing board may never go beyond the sufficiency of the reason why the plant was not timely completed in deciding where the "good cause" was allowed in a deadline." What Cook is saying there you can't look beyond the reason why construction was not completed.

MR. GROSSMAN: Let me go back to the first point I made. Statutory to a hearing on amendment. Are you now saying that the regulations 50.55(b) is violation of the rights under the Atomic Energy Act?

MR. VOLLEN: I believe that when I get around to describing the scope of the hearing, our position is that

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50.55(b) contemplate a hearing of broader scope that the reason why construction was not completed. I do not claim 50.55(b) is violation of the statute. What we do say, and I'll jump ahead in the next point on the agenda today, I think there is no secret, our position we have said in three different documents we filed at the same time. We think 50.55(b) is the written contemplation broad scope hearing on the question of completion. Contemplate hearing on reasons that the NIPSCO failure to get the plant built. We have stated an alternative. If we are wrong about that we ask the Board under the particular circumstances today relate to Bailly not to apply 50.55(b) and we have said all along, that is the Commission, we have asked to rescind 50.55(b) or amend it. We think the circumstances in Bailly are not unique and so special. It doesn't make sense to limit a hearing to the question of NIPSCO didn't get it built. We are not saying, to answer your question, we are not saying 50.55(b) is illegal.

MR. GROSSMAN: You indicated that you believe you have statutory right to a hearing on license amendment or permit amendment. But now, isn't that limited to the effect of the actual amendment; rather than full scope review of the health and safety problem or environmental impact issues with regard to that facility. Mr. Vollen, let me say first of all that statutory right to a hearing comes not from 50.55(b) but from

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section 189 of the act. Secondly, we are not asserting that this hearing on the question, whether or not NIPSCO should be granted extension out to consider all the health and safety and all the environmental consequences of construction or operation of the Bailly plant, that is, the way that NIPSCO could like to characterize or position us. Putting us in the position of asking for a re-review as Mr. Eichhorn presents everything, when we gave before, that is without position at all. Let me if I can, tell you what your position is on that. I certainly don't want to stand in the way of asking my questions. Shall you ask or shall I provide?

MR. VOLLEN: Does the question, are you conceding now whatever had been reviewed then should not be re-reviewed as part of this proceeding. Are you making that concession? That is not a concession, that is a statement of our position. This hearing ought not to litigate the same question it was given in construction proceeding.

MR. GROSSMAN: Have you more to add to that?

MR. VOLLEN: It seems to me one of the problems we have in talking about what does "good cause" mean under section 185 of the act is that neither NIPSCO nor the staff tell us what their position is about "good cause". They tell us that the board ought to tell the reason why construction didn't get completed. Or, maybe safety questions arising out of

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those reasons for non-completion after saying that to the Board to look at them. Don't tell us how to put together and measure whether that is, "good cause" or not. Let us give the illustration: Suppose the facts were established that the reasons why NIPSCO didn't get it built by September 1973, were for reasons completely beyond its control. There were earthquakes or something. Construction just simply couldn't get it built. Beyond their control--does that amount to "good cause"? Neither NIPSCO nor the staff suggest any reason why it amounts to "good cause". Any reason why they didn't get it built totally within NIPSCO's control. Let's assume they made a judgement that the cost of armory money it took was so high they put off for five years totally within their control. Does that amount to "good cause"? They don't tell us why. It seems to me their failure to tell us why, what "good cause" denotes is one of the problems in their articulation of what scope of this hearing ought to be. It seems to be the only way you can really understand what "good cause" ought to mean. To see whether it comes up to "good cause" to try to understand statutory purpose for the requirement Congress required that every construction permit have a latent completion date and have it in writing. That's what section 165 of the (a)-(b) requires. Congress states if the facility is not completed by that date, the permit for at the time the permit expires,

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also upon "good cause" shown, the Commission extends that later completion date. In order to know what "good cause" is, very clearly you need to know what the purpose of the latest completion date is. I don't think NIPSCO or the staff express that. As I said before, the language doesn't help the legislative history very much. But, let's think about what the courts and the Commission has said about construction of nuclear power plants and construction permits. What they have said is that this rapidly developing technology, that was really the principle rationale for it, this first Supreme Court decision involving our reactor. They state, I don't have to make it definitive, find the cause and they have you shot. I suggest that recognizing this it was rapidly developing technology, Congress put stop gaps in there. The instant you pick the reason, tell why you think you are going to build this plant. If you don't get it built, let's stop and take a look at what has happened. Determine not whether there was "good cause" for not having built it; but to determine whether there still exists "good cause" for building this plant. Today, technology has occurred, but what has happened? What has transpired? I suggest that there really isn't any rational purpose for the latest completion date required by the statute, other than that. The Congress there before had in finding, looking at a broader subject

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than why the plant wasn't built. I suggest that the notion of looking at things that have occurred since the construction permit was issued is one of the elements built into the statutory scheme and is inconsistent with 50.55(b). That section says that among other things the Commission will consider a,b,c's about enumerated lists which NIPSCO now takes the position including things that were within its control. In other words, NIPSCO now concedes that 50.55(b) is not limited to things beyond the control of NIPSCO. We don't disagree with that but we say it is not limited to the reason why the plant can't be built. And so, let me suggest there are four things that the statute and 50.55(b) and regulatory scheme in 50.91 of the Commission regulation which refers to the statute are to be amended to construction standards. Number one, I think the thing that you ought to look at to determine whether or not good cause shown is reason why NIPSCO did not get the plant built by September 1, 1979. Let's add parenthetically to that, as I gather from what you said earlier, Mr. Grossman, having the benefit of the proceeding NIPSCO application. As I remembered, February seventh we asked for the extension. They said the reason they didn't get it built was for reasons beyond their control. We wrote some contentions. We said we contend they were beyond their control; now in their latest submission it

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says 50.55(b) is not limited to factors beyond our control. Be that as it may it seems to be pretty clear. At the very least the Board ought to consider the reason why the plant was not built. It is one of the factors in determining whether "good cause" for the extension sites. Secondly, I think NIPSCO and the staff conceptually agrees with this one as well. You want nobody to suffer if the plant is permitted to be built over the additional 99 months that is sought by NIPSCO. An example of that, the DOL we were talking about this morning. Thirdly, the Board ought to take a good look at considering "good cause". Any safety or environmental questions which are raised, which are presented by reason of factors which lead to its noncompletion. That is what I think Cook has said and that is what I think Mr. Chairman. Mr. Goldberg has said on behalf of the staff two examples of that. It seems to me problem short pile proposal chain. The design which NIPSCO describes one of the reasons for not having completed construction of it. The phenomenon of Three Mile Island which NIPSCO describes one of the reasons for noncompletion. And the fourth issue, the area this Board ought to look at in determining whether good cause exists is what significant events have occurred since May 1, 1974. That is subsequent to the issues of the construction permit which therefore could not have been and were not considered

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in the construction permit. To enlighten the Board on whether or not the "good cause" exists to build this plant I am in agreement with you. That is very vague. It needs a lot in your judgement. It seems to me the only way to interpret the statute and regulations, there have been in situations as we well know, a unique set of circumstances. I don't think there have been litigations. The construction permit amended proceeding involving a plant that was one percent complete is unique circumstances. There has never been less unique circumstances. There is a lot of things which in any interpretation for the requirement of good cause would lead this Board to consider determining NIPSCO issued "good cause" for extension.

MR. GROSSMAN: Before I ask for replies to that let me ask you whether or not that you are not confusing the reasons for requiring a completion date but the reasons for having a promulgated regulation 50.55(b) on the one hand had reason for the completion would seem to require the applicant who has not completed the facility by that time to re-apply and ask where to go further. Safety and health and environmental procedures from the beginning. But section 50.55(b) a percent to be obviated that requirement in that then appears to be the priming purpose of that regulation. What it really does is says that even the absence of 50.55(b) you would have to go

through the health and safety procedures and the environmental reviews. And you would have to take into account significant events that occurred after the set completion day. But Section 50.55(b) says, well, if you can show "good cause", then you don't have to do this. Then you can then rely upon what you have already established in the way of health and safety and environmental issues. Now, I am reading that incorrectly?

MR. VOLLEN: I am not sure I understand your argument. You are reading it--did I hear you say, Mr. Chairman, that 50.55(b)--are you suggesting that it is not consistent with the statutory requirement of "good cause" extension?

MR. GROSSMAN: No, no. What I am trying to say is it is one thing when you talk about the reason for having a completion day so that the applicant can only rely upon the health and safety reviews and the environmental reviews with regard to construction up until that completion date, and then in the absence of any provision for extension, if the applicant did not complete the facility by that completion date, it would then have to undergo health and safety reviews and environmental reviews again. But now that 50.55(b) is in effect, what it says is that if there is "good cause" shown for the extension, you can accept the health and safety reviews and the environmental reviews that you have already passed. Now, am

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I reading incorrectly?

MR. VOLLEN: I think you are. I think what you are suggesting is only 50.55(b) adds the authority for extending. The statute itself has the provision for extension on good cause shown.

MR. GROSSMAN: Yes. I am sorry. I was not trying to say it is only the regulation that stands by itself. What I am saying is that whether it is regulation or regulations based upon the statute, the provision for an extension, it appears to me is designed to preclude having to undergo the procedures that have already been held with regard to the health and safety and environmental and that it seems to be at opposing poles from the requirement completion date. In other words, the exception to having the applicant comply with that ordinarily stated completion date day. . . . You seem puzzled, perhaps I am not making myself clear on that .

MR. VOLLEN: To be perfectly honest I am puzzled. You are not arguing that either are with or without 50.55(b) that "good cause" requires a re-review of the thing we are living in. One of the things we think should be litigated in this "good cause" proceeding is whether the design defect in Mark II containment for this reactor have been resolved. If those questions about the Mark II containment had existed prior to May 1, 1974 when the construction

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permit was issued we would agree they should not be considered in this proceeding. It is because they are significant developments that have occurred subsequent to the issuance of the construction permit that now the C.P. has expired this Court should take a look at them in determining the "good cause" site.

MR. GROSSMAN: I am glad you pointed that out. I am sorry that. . . I am not suggesting that , by the way in the absence of 50.55(b) that it would be proceeding that would duplicate upon that had already been held, but the point was trying to make it appear as though the purpose of 50.55(b) is to obviate the need for undergoing any kind of health and safety review after there has already been a full-scale health and safety review after there has already been a review before the completion day and that would appear on its face to be the purpose of 50.55(b) is obviating the need for that. Now, let me ask of either the staff or the applicant would like to say anything with regard to that position.

MR. GOLDBERG: I guess as a first matter it appears that section 185 of the Atomic Energy Act is in fact the statutory basis for the showing necessary to permit construction to extend beyond the date in the permit. However, there is no legal authority that we have been directed to which would support the contention made by petitioners that this "good

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cause" showing must embrace essentially every development which has or rescinds the construction permit proceedings where held and concluding. On the contrary, section 50.55(b) have the Commissions regulations interpretive of section 185 (b) has as the chairman alluded, a far more narrow range of areas for consideration. Some samples of which are enumerated in the regulation itself. That is an example of the kind of thing that the Commission will recognize as basis for the untimely completion and the need for an extension. Had the Commission wished to provide a broader construction to section 185, it could have done so. It did not. Moreover, as I indicated, the Appeal Board in Cook has to some extent explained the perimeter of that good cause showing under certain circumstances to address not only the reason to design for the delay but my environmental or safety issues which may attend those reasons which could not otherwise abide consideration of the operating license stage. However, the Appeal Board upon the absence of such circumstances in that case, even though some of the issues as they do here involve the design changes which arose during the course of construction. Further, the Commission has had several occasions which arose as the result of separate requests for hearing which the same petitioners to undertake and immediate adjudicatory considerations of many of these same issues

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which are sought to be introduced in this proceeding and decline sighting instead the fact that to do so would eventually viciate as soon as process whereby a permit to construct is given after full proceedings and ultimately determination of what the options undertaken only after an opportunity for hearing has been afforded and those cases and the principle that have been articulated in those cases are contained in our separate filing and I won't take every item to renew those. But those are directly applicable because we have many of the same issues to be introduced in this proceeding. Chief among those is perhaps matters relating to the so-called Shorter Pilings Foundation. Again I guess I would say not withstanding some of the selective quotations that were taken from the Cook decision by the petitioners in this fact has read in its entirety along with the regulation whose validity must be presumed for purpose of this proceeding until otherwise challenged and another picture emerges of the scope that is a far more definitive one than that which is urged by the several petitioners in this proceeding.

MR. GROSSMAN: Mr. Vollen, would you like to respond? That someone pointed out there is proceedings in which the matters subsequent to the construction permit proceeding may be heard operating license proceeding.

MR. VOLLEN: I also think the statute Commission

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regulations provide for hearing between the construction permit and the operating license proceeding. Namely, we and applicant section and amendment to a permit that the requirement explicitly suggests to you that a hearing isn't held to determine whether or not "good cause" exists that will do destruction to the statutory scheme of requiring a hearing when an amendment is sought. The exception to (b), again, that is really the point Mr. Eichborn made before. But, there really is statutorally an interim proceeding. I'd like to try to come back to the question you were asking, Mr. Chairman. I think maybe I understand it now and if I do I think Mr. Goldberg provided the answer to it. I think you were asking whether it is that 50.55(b) has as its purpose to obviate any health and safety review after there had been a construction permit proceeding and construction permit as issued.

MR. GROSSMAN: To the extent that there wouldn't be a health and safety review at the licensing stage, but anything that might be considered as part of the structured permit review that is correct. That is what I suggest.

MR. VOLLEN: I think that Mr. Goldberg's statement demonstrates that can't be the accurate reading of 50.55(b) because even the staff agrees and I think it has agreed because Cook says so clearly that under some circumstances

at least there is health and safety reviews at the construction permit extension stage, so 50.55(b) can't be read to say you never look at the health and safety issues between construction permit and operating license.

MR. GROSSMAN: But, of course, that is health and safety review that relate to the question of extensions. Now, I can see--I don't quite understand that the Appeal Board stated the effects we have to consider, and that is health and safety questions that arise from the factors leading to the request for extension, rather than factors that result from it. That might result from the extension, but I am not--perhaps I ought to reread Cook and see if I can decide what the Appeal Board meant to say, unless someone would like to elucidate to that?

MR. VOLLEN: It seems to me what they were saying when they talked, were a health and safety considering factor arising out of the reason for the delay, is where the plant is under construction and midway through the construction process, and some newly discovered problems came up, something about containment or something about the design of the reactor, some technical questioning that hadn't been covered before, and as a result of that problem coming up, it could grind construction activity to a halt, wait until we resolve this previously unknown question. We're not going to proceed with construction. It seems to me Cook was saying in that

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particular case, the safety question is arising out of that reason for delay. Nobody said we can't, but the NRC told us you can't proceed with construction until that one is resolved, that reason for delay arises out of that question and that is what Cook was talking about. I suggest to you that never have the matters that we have sought to have litigated in that hearing are exactly like that. The short pilings matter is one of the reasons NIPSCO says they didn't get the plant built. Let me say briefly, if I can respond to the staff assertion that the Commission resolved hearing to the short piling question by December 12, 1979 decision. What the Commission said there was that our petition for a hearing on the short pilings question at that time was denied. The Commission did not say it could not have said because it didn't have before the question of whether or not we were entitled to a hearing on the short pilings question at a hearing required to be held on NIPSCO's request for extension of construction permit. Where NIPSCO had as described the staff review and the time that it took the staff review the short pilings proposal is beyond everything. The reason it could not get the plant built in the short pilings here for litigation is entirely different form and entirely different context before the Commission with the result December 12, 1979.

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MR. EICHHORN: There has been quite a bit of discussion. There are a couple of things I would like to point out, which I don't think are repetitious. What Mr. Goldberg has said. There is one point that Mr. Vollen makes in support of the proposition that Congress can and indeed did create a third step in the licensing procedure. That is where, if you don't complete the plant by the latest completion date, that you then must have another review of all matters which have not been reviewed up to that time. And that was the basis for section 185 having the "good cause" provision in it. I would like to--which is sheer speculation on his part--but I think to speculate more closer reality is that when the Atomic Energy act was written there was limited amounts of nuclear material available and it was controlled by the government, and following the FCC standards, like television stations, that if you don't complete it by the time you were going to complete, and could not demonstrate some good cause for the incomplete, we are going to give the opportunity to someone else to build that limited facility. Same too with Atomic Energy Act. With the limited amount of nuclear material, they required it to be put into use by a certain date, or that "good cause" be shown beyond that date, or that we'll give this allocation of nuclear material to another person. And I think that is why we have the latest completion

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date. In section 185 of the fact is opposed to giving Mr. Vollen and his people a third bite of the appeal. Another, I think, practicality that makes Mr. Vollen's approach to that illogical is the fact that there has been several plants recently that have fifty extentions on their construction permits. As much as I assume under Mr. Vollen's theory that requires fifty separate construction permit type hearings to review each and every new aspect of plant design criteria regulation that has evolved since the last hearing and I think it is very clear that this was not the purpose of the licensing procedure established by the Commission and it was to avoid this very thing that two-step licensing procedures were established. The other thing that Mr. Vollen mentioned was that Cook did say that where you have a design change that causes the delay that you must, you have to review that. In this amendment proceeding extending latest date of completion and he stopped just a little bit short in reading Cook and I would like read. The paragraph I am referring to where the design changing are not necessarily reviewable in such permit even if they are so the delay in the Court or the Board makes this observation "thus had the design changes effected by the applicant in the present case contain in conjunction with another maker not delayed completion of the construction beyond the latest completion specified in the permit, there

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would be no question that absent a show-cause proceeding any safety issue associated with those changes would have been considered by the licensing Board and operating license proceeding and not before." Note the very fact that a design change causes a delay in construction and perhaps in association with other things creates an extension of the latest completion date before completion of construction does not necessarily under the circumstances make that a reviewable issue in such a proceeding. I think he also stops short on the pile question. Where he said that the Commission did not say anything that would jeopardize their rights to bring that issue before this Board in this hearing but the Commission did indeed say that any questions regarding sufficiency of the pile design could abide operating licensing proceeding and the risk being what is with the utility and not the public. Also sighted favorably the lawsuit that was instituted by Mr. Vollen's client against NIPSCO with respect to the March 2 containment before the District Court of Columbia, Circuit Court of Appeals where that court held the same thing and the Commission followed that court's decision with respect to the pilings decision so he stopped a little short thereto. But for all those reasons I think that the scope of the proceedings such as we are in today are those as outlined in Cook.

MR. GROSSMAN: Now, Mr. Vollen you are not suggesting that the Board must consider all of the health and safety reasons that may have contributed to the request for an extension under Cook. I believe that didn't Cook indicate that the Board should consider the totality of the health and safety problems in relation to the request for extension. So, that in effect, there is some discretion on the part of the Board to consider or not consider.

MR. VOLLEN: I think there is. I think what Cook says above all else, that the question of cause can't be articulated as any precise mathematical formula applicable to every plan that would turn on the particular facts or circumstances of that particular plant, and I think you have to look at the statute of construction. This is what people think ought to be looked at. So, in that sense, Mr. Chairman, I agree with you there that there is discretion; that the Board new totally of the circumstances in connection with the plant when it is 99 percent complete, than in the operating license proceedings. On the other hand, here is a plant that is one percent complete. We think that is another thing that needs to be looked at.

MR. GORSSMAN: You have referred to health and safety items that contributed to the delay. Now, are you conceding then to the extent that there are health and

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safety issues that you have raised that may not have contributed to the request for an extension; that those cannot be considered by the Board since they are not covered by Cook. Not every environmental issue that has come up in the world since 1974 needs to be considered here, but rather significant events which this Board thinks might effect the totality of circumstances in making the judgement as to whether good cause exists for construction of the Bailly Plant. I think there are some events hard to argue that are not significant.

MISS COHN: We wholly agree that under Cook this proceeding need not embrace consideration of every new development which has occurred since the construction permit was issued. But what Cook does stand for is precisely what Mr. Vollen has stated; that the facts of each individual case and the totality of the circumstances will determine what the scope of the good cause determination is in each proceeding and particular Cook provides further to the effect that it states that in making a good cause determination a Board must particularly consider whether the present consideration of an issue is necessary to protect the interest of the intervenor to protect the public interest. Putting it another way, Cook stands for the proposition that a consideration, and this point is required of issues which simply cannot appropriately

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abide review at the operating license stage given the totality of circumstances here and those circumstance included the fact that Bailly is only one percent constructed. They include the fact that significant issues have arisen since the time that the construction permit was granted which have lead to vast and significant changes in Commission policy effecting matters which if not considered now, can give rise to health and safety concerns that cannot abide review at the operating license stage. I can't think of another issue that better illustrates the point I am trying to make than the one contention that we have raised here; that is, the issue of emergency planning. The question of emergency planning has taken on significance, because of the recent events leading to Three Mile Island and the fact of the accident at Three Mile Island has completely reversed the Commissions prior reviews as to how much consideration has to be given to the likelihood of an accident affecting the surrounding population and whether those populations might need to be evacuated. Because of Three Mile Island, the Commission has also adopted a significant change in policy on the issues of what kind of conditions relating to emergency planning have to be considered in determining whether a plant ought to be built in the first instance. As a result

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of these changes in Commission policy, for example, the NRC says that instead of taking a look at whether--in the case of Bailly--whether an area consisting of twenty-four hundred meters can be evacuated, we also have to consider whether an area of, at least, ten miles can be evacuated. This is an issue which was not considered at the construction permit stage. The whole idea of whether a plant can be evacuated in the case of an emergency is not an issue that can be accounted for by backbiting at the operating stage. We are simply talking about whether an entire power plant ought to be built at the financial expense of several billions of dollars and only after this financial investment has been made according to NIPSCO, and the NRC staff should then consider whether this plant has been built in the right place. We contend under Cook that this is precisely the kind of issue raising a health and safety concern as a result of developments which have occurred since the construction permit was granted. It is an issue which requires consideration now and not after ninety-nine percent of this power plant has been completed. Because of that, we think that emergency evacuation, for one, is an issue within the scope of this proceeding.

MR. COLE: Miss Cohn, are you aware of any Commission action relating to emergency planning going on right now?

MISS COHN: Yes, sir. There have been, as we
sited in our supplemental paper, some regulations proposed
in the area of emergency planning. Now, those proposals
indicate that the Commission is about to work out the
specifics of what new showing will be required, both in the
construction permit hearing and in the operating license
proceeding with respect to the applicant's plan for
evacuation of something called "emergency planning zone"
which will consist of ten miles for the plume pathway and
fifty miles away from the plant for the ingestion pathway.
However, the industry material to these proposed regulations
makes it quite clear that the Commission policy in the
area of emergency planning, though specifics are still
being worked out, has clearly changed. They have endorsed
the concepts contained in N.U.R.G-0396, which is a report
prepared by the NRC and the Environmental Protection Agency
on emergency planning which have proposed that planning
be based on these considerations of "emergency planning
zone" as opposed to very menial consideration as given
to emergency evacuation issues, for example, in the
construction permit stage here. In short, Bailly is one
percent construction as of now. If the construction
permits were sought for Bailly for one hundred percent of
Bailly right now, it is absolutely clear that the

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construction permit would not be granted without consideration of whether Bailly is an evacuable site; that consideration has not been given up to now. We contend it is raising the most critical issues for public health and safety. We can't wait until after the plant is built to have this issue considered.

MR. COLE: I understand your position, Miss Cohn, but I think it is clear that the Commission recognizes this important issue. The Commission is moving toward, as you have indicated, they have stated a policy and that policy is changing right now. I believe we have some appeal board guidance that indicates when an issue is about to go into rule making or is actively in rule making. That should be litigated in an individual proceeding. I will give you a chance to address that. But, in this particular case of emergency planning, there is no doubt the Commission is going forward, and the plans here at Bailly will have to be whatever the regulations or whatever the guidelines the Commission comes up with. Now, it is going to take some time to evolve that policy. It is in the middle of that now. In view of the Bar, we have been proceeding on an individual basis on matters that are in rule making or that are about to be in rule making. And in this particular case where the policy is changing, what could we settle on that issue

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here that wouldn't be settled at an operating license proceeding? And definitely, Bailly would have to meet whatever those requirements were at that time; and if they were not to meet it, that is at the risk of the licensee or applicant. Understand the dilemma of the Board, and particularly with respect to appeal board guidance on licensing and with respect to the issue of rule making.

MISS COHN: I'd first like to take issue with your characterization of how much inflex the Commission policies are in evacuation of an area. Granted, they are in the process of trying to work out the specifics of the contention of this rule making as to showing the required variations. However, any of the alternatives in suggesting what these proposals contain, NIPSCO could not found to have met any of them given the consideration that has already--that was made at the construction permit stage. And so, that is number one. I think the Commission has given--

MR. GROSSMAN: Miss Cohn, we will take a ten minute break. The reporter is getting tired.

(The hearing recessed at 2:45 p.m.)

(After recess 3:05 p.m.)

MR. GROSSMAN: Miss Cohn, I believe you were in the mist of your response.

MISS COHN: Thank you. I believe I have three points I want to make in response to the question. The first is that we believe the Commission has adopted a policy which will require an applicant to demonstrate that appropriate protection action includes evacuation which necessarily can be taken for any reason anticipating within the plume exposure emergency planning scene, and that is ten miles.

This is not a showing that NIPSCO has made. We, of course, have contended that those not shown NIPSCO could make, which would address, if they are permitted to intervene, to the extent that any of the specifics of the Commission's procedures reflected in the proposed rules are unclear or vague, don't provide sufficient guidance in the opinion of the Board. We believe that you don't have enough guidance to approve extension. Not that you don't have guidance not to. Second of all, I'd like to state that we believe that while the Commission is considering, as a generic matter, reconsidering the whole approach in the machine planning area, there are certain very specific factors here with respect to the Bailly site that warrant individual consideration; not generic consideration with respect to this

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emergency planning issue. Those factors relate to the fact that Bailly has been identified by NRC Task Force, at least, as being probably the worst site of any power plant in this country, considering the population density surrounding it. This finding was based upon the fact that Bailly is seven hundred feet from the Burns Harbor Steel Plant where thousands of steel workers are employed. It is approximately eight hundred feet from the boundry of the Lake and the City of Gary, Indiana is within several miles. All of these factors warrant, we believe, an individual consideration in the contention of this proceeding is to where these populations can be evacuated within a reasonable period of time in the event of an emergency. The third point I would like to make in response to your question is the implication relates to suggestion to the extent that any of the Commissions statements in this area are yet to be developed, can be simply a bid with you at the operating license stage and we say, as I've already stated, no it cannot. This is one of those issues that simply can't . To repeat what you have already said, at least with one respect, but for the fact that Nipsco has dug a hole, has completed one percent of construction, there is simply no question, but they would have to make the showing on emergency evacuation which we are asking that they make.

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If Cook says you have to consider the totality of the circumstances of each case we say that's determinative circumstances here. That it does not make any sense to permit Nipsco at present to complete this plant and only then to make determination on an emergency evacuation, to do so would ignore the fact the longer this consideration is deferred, the more the equities will naturally favor some approach which would permit Nipsco to salvage the enormous investment they have already made in constructing this entire plant at considerable expense, despite the increasing risk that the completion of the plant might pose to the surrounding population. Again, this does not take into consideration who will ultimately bear the costs in the event that it is determined as we contended now. Bailly is not being built as an evacuable site. For all of these reasons we contend that under Cook which eventually states that under the totality of the circumstances and health and safety issues presented by the extensions which cannot, in the public interest, abide review at the opening license stage then the interim "good cause hearing" or proceeding which is automatically triggered whenever an applicant has not completed construction by the last completion date is the appropriate time for considering issues like this.

MR. COLE: Miss Cohn, could you state for review for me

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the connection between the evacuability of the site and the issues of this particular proceeding, the license permit amendment and extension ?

MISS COHN: We contend that the evacuation issues, one which is appropriate to a "good cause" determination, because of the significant developments which have occurred since the construction permit was issued. Those developments including the accident at Three Mile Island change Commission policy, a general reevaluation by the Commission of the risks of an accident occurring that would require evacuation around another site. Because it was not an issue which adequately addressed to construction permit stage, because of these intervening developments we contend the extension poses a health and safety issue which relates to the question of whether this plant ought to be completed. And it is a question that does adequately address before it is a question that can't wait eight years to be determined and for that reason, that absent, a showing that NIPSCO can complete with present Commission policy in this critical health and safety area. The Commission should not find good cause exists for this plant to be completed.

MR. COLE: I don't understand your rationale connecting this with the extension request. Can you go over that again. I want to make sure I understand.

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MISS COHN: I am sorry it has to be cleared. It is my interpretation of Cook and Cook's holding that you take the totality of the circumstances in each individual case to determine what the good cause determination requires and the totality of the circumstances here is that Bailly is still a hole in the ground. It is therefore because the statute--again, we come back to additional questions of why did Congress write the statute in such a way that all rights are forfeited if construction is not completed by a certain day which contend this interjection and interphase. The interjection and opportunity, the Appellate Board found in Cook for there to be consideration of whether there are issues correctly presented that affect health and safety which must be considered at the present time. This is simply not a development that can be accounted for in the operating licence stage. It goes to the very question of where the site --this plant has been built. You can't unbuild it at the present time and that goes back to Cook and the issue of what stand we are at in construction and had the public interest will permit this issue not to be adjudicated until the opening licence stage--we say the public interest won't permit that.

MR. COLE: Okay, I understand your position.

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MR. GROSSMAN: By the way, as the issue of evacuation one of the items is that the applicant caused the delay and resulted in request for an extension?

MISS COHN: No, but I would suggest that there--well, I have two responses to that question. First of all we don't believe that Cook limits the scope of this proceeding only to a consideration of environmental issues raised by the reason for delay. We think that environmental issues that are also raised by significant intervening development, also warrant consideration under the total reading of Cook and again you have to understand that in Cook the intervenor where raising issues that did relate to the reason for delay. I suggest this where environmental issues that ought to be considered, but the fact situated here is different. We suggest the interpretation of the scope of the "good cause" determination should be different as well and also as a second point, emergency evacuation is not an issue that NIPSCO has contended, contributing to the reason for the delay. However, they are seeking additional time for construction based on Three Mile Island, and the additional consideration that that accident, the additional time which Commission reviews as a result of that accident would require with respect to all plants under construction to the extension that Three Mile Island is relevant in that limited

way is the main reason for NIPSCO's seeking the additional time. We suggest Three Mile Island in the Commission's change policy in the emergency evacuation issue is equally relevant to a determination of whether there is "good cause" here after Three Mile Island. We just believe you cannot find "good cause" absent some kind of showing that this site is evacuable.

MR. CROSSMAN: Mr. Eichhorn?

MR. EICHORN: Mr. Chairman, the points brought up by Doctor Cole, I think, are quite apt. I will not go over it. Quite obviously, the Board is aware of the rule making before the Commission being issues in individuals hearing, and that must be sought to be raised to delay an issue. A third more, I think, practical and perhaps important problem is what I am hearing from counsel for the City of Gary Group, is that should be a hearing based on the changes in the policy of the Commission, and the interum rule that has been adopted for issuance of LWA "is the new CP", and this hearing should take place before the Commission has determined what plans will be reviewed at what stage under the new regulations we adopted which would require this Board to do a great deal of speculation to determine what the Commission might do in the future and try to parallel that. And if, in deed, the Board files a speculative for that, the review should be done again to comply with those regulations when they do become in place

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and the Commission does give us its ruling with respect to when these regulations would be reviewed with respect to each individual site. I think that asks too much of this Board. So, for that further reason I don't believe that that is an appropriate issue in this case.

Miss Cohn, also found out the factual situation is different in Cook and that permits a broader base in this case, as far as issues are concerned, there maybe a slight differentiation in the factual situation. Certainly they are set out in Cook cases equally applicable here as it was there. I don't think that the general rules stand that the Cook Board adopted where health to be applicable to that factor situation only. Additionally, I think Miss Cohn has misread the request for extension of time. I notice that there are several present possible contentions that bring up the question of Three Mile Island because it was indeed mentioned in the amendment to the request for extension of the latest completion date, but a reading of that will provide the copy of what we have now indicates clearly that the delay from Three Mile Island that affected Baily that the fact that the people were reviewing the Baily pile design were pulled off that project to undertake review of Three Mile Island matters, not with respect to Baily, but on a general basis, because of it all, committees that were formed after the event occurred tremendous strain on the staff

resource manpower to review those things and haven't got down to that extension. We say Three Mile Island was part of a delay but certainly not to the extent that there was review of Baily safety related issues which might have been very, very, very present in Three Mile Island occurrence.

MR. COLE: But that there were some views of the Baily facility as a result of Three Mile Island, sir. There have been and will be a re-review of the Baily Power Plant as a result of what we learned from Three Mile Island, sir; is that correct?

MR. EICHHORN: I am certain that the Commission there have placed a number of new criteria and regulations in due course.

MR. COLE: You simply say that is not the reason for the delay.

MR. EICHHORN: That is correct. The only thing Three Mile Island had to do in this delay was take those people reviewing the Baily pile system design and put them on another project and that project is not completed. This is the point we were making.

MR. GROSSMAN: One thing I am not quite clear about, Miss Cohn, is the reasons why given that there is an extension in which there might be a hearing relating to the request for extension or why a company that does request an extension is put in any different position than a company that has not with regard to having a trifurcated proceeding rather than a bifurcated

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proceeding, and what is the difference between a company that does request an extension that requires that it be this kind of proceeding where as another company does await the opening license proceeding.

MISS COHN: Yes this is trifurcated proceeding to the extent that is statutory that Congress enacted we say yes, that is what it is.

MR. GROSSMAN: What is it that you center on as far as the "good cause" or the statute or regulation that suggests that there must be the consideration of the health and safety matters that have occurred since the construction firm staged this proceeding. Rather than await the operating proceeding as others did.

MISS COHN: I believe that relates back to the hole notion that Congress had to have considered the fact that this is an area of changing technology; that requirement for safety might change, might become more stringent between the time of granting the construction permit and the operating licenses is circumscribed and fairly short; that any intervenning safety issues will be considered in a fairly, proper course. However, where an extension beyond that is sought were to take an extensive case, and Bailly is an extreme case. You are seeking an extension where is doubles the original amount of time which during which construction was intended to be completed, but than that Congress

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provided that there is an interim opportunity to consider those issues.

MR. GROSSMAN: You are saying now that implicit in the fact that it was good cause but there isn't any particular wording that you would center on that which would indicate that that must be so.

MISS COHN: I am centering to the presumption by the statutory language. The presumption being all rights are forfeited unless for "good cause" shown, the Commission extends the permit. I think it presumes a difference in language used in the Atomic Energy Act as opposed to the language Mr. Vollen referred to earlier in the Federal Communication Act, indicates that the proper interpretation to be given to the statutory language.

MR. GROSSMAN: Do you have a response to that, Mr. Goldberg?

MR. GOLDBERG: I just have an observation to make. I don't think I will duplicate any of the statements made by any of the others on this point. I think there is danger. I think the NRC staff will perhaps feel that if there is no hearing on these issues that they will indeed not receive full consideration by the NRC. Or absent that if there is belief by any member of the public deferral of this consideration until such event as an operating license application, that there is no

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available forum to considering these matters because that is not correct. The NRC with concern to planning to some extent, has been touched on by counsel for Gary petitioners. They have noted, in fact, there is pending rule making on this matter as a generic basis, that pending the outcome, the Commission has indicated it will impose certain interim requirements on two of the applicants and license holders, and in that connection has sent a letter to the applicant in this matter to address its emergency planning and evacuation capability with respect to the proposed emergency plan scenes which could be codified in regulation, once the emergency planning rule was in the making and formulated. There is certainly an opportunity for any interested member of the public, and more specifically, these petitioners to contribute to the staffs process in connection with those response. And we have so extended that invitation to petitioners of Gary and others. But I didn't want to run the risk of leaving the impression that we would walk away here today taking the position that all these are not matters that are appropriate for consideration in connection with the limited proceedings we have before us. They will be ignored until such time when they receive an operating license application in some odd number of years. Perhaps, hence, that could be an incorrect assumption. As I said, there are additional avenues; namely, by the request to institute a show cause proceeding

under Section 2.206 in the regulations for any person to attempt to obtain a more immediate consideration, perhaps for remedial relief, if it believes that consideration, such as emergency planning capability, is possibly some immediate health and safety risks.

MR. GROSSMAN: Would you like to respond to that, Miss Cohn?

MISS COHN: Just briefly; that is to say that we have proceedings going on here which will determine whether construction ought to continue, and for the reasons I have already stated, we believe this is an appropriate forum in which to raise this issue to the extent that some procedural regulations have been published for comment and the critical mass has submitted comment with respect to those regulations. As Mr. Goldberg makes clear, those regulations represent the policy of the Commission which we have adopted on an interim basis. The suggestions that we have alternative suggestions to show cause are really not one that give us much solice on it to the extent described, limiting the nature of the right of the intervenor under that particular alternative remedy. The lack of adjudicatory procedure is very limited to the right of appeal. The very narrow, abusive discretion stand is simply not an answer to our concern; that this issue has to be addressed now.

MR. GROSSMAN: Mr. Hansell?

MR. HANSELL: I'd like to address a lot of the issues that have been discussed today regarding the appropriate scope for this particular proceeding, and in doing so, attempt to respond to your question about the difference between a company that has applied for extensions on its construction permit, and one who has not. The parties have discussed the scope, their function of what "good cause" NIPSCO must demonstrate. There are three different reasons for this and I will address the question about scope within the context of the discussion about "good cause". The three reasons why Illinois feels that the scope of this hearing is broad is based on the regulations based on Cook, and are also based on the analysis of the implication of NIPSCO and the NRC argument. First of all, regarding the regulations of the Atomic Energy Act, the Act itself provides, as everybody has been stating, that unless construction is completed by the latest construction date specified in the construction permit, it should expire and all rights shall be forfeited unless "good cause" is shown and the Commission extends the completion date and no other explanation for the issuance of amendment to the construction permit is found in the Atomic Energy Act or legislative history. I would have to add that I am unpersuaded by NIPSCO's interpretation by the shortage of Iranian asphalt. Found the Federal Communications Act was also found in the Cook case that any attempt to draw an analogy

should be resisted, would seem the opposite might be the case. In the Federal Communications Act it was very clear that "good cause" was limited for the reasons for delaying constructing television stations wherein the Atomic Energy Act, which came subsequent to the Federal Communications Act, that no such definition occurred. And I think that this seems to indicate that need is not the intention of Congress, because if it was, then you have read into the regulation or into the statute. In addition, the regulation provided additional guidance tendencies on 50.55(b) of the regulation which provide that a license maybe extended upon showing of "good cause" and that among other things, the Commission would recognize such factors as strikes, floods, and other controls to the permit holder. This part of the regulation is silent about what other things the Commission may take into consideration in determining whether or not to grant the amendment to the construction permit to extend the completion date. However, if you examine Section 50.91 which governs the amendment to construction permits that provide additional, necessary guidance. It states, and I quote, "In determining whether an amendment on a licensing construction permit will be issued to the applicant, the Commission will be guided by considering which governs the issuance of construction permits to the extent applicalbe or appropriate. The issuance of an amendment to the construction permit for the Bailly extension of the construction

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date which are governed by similar circumstances which govern that other construction permits were applicable or appropriate. Further, 10_CPR 50.45 provides that an applicant's amendment of license will be granted such change if the applicant is conforming with certain environmental regulations which are certainly enumerated regulations which are regulations appropriate to the grant and initial construction permit. The basic consideration which gives the grant of any construction permit are articulated in 50.35(a) 4 which provides that at the expiration of the initial construction permit, all safety questions shall be solely discovered and taken into consideration. The facility can be constructed and operating at the proposed location without undue risk to the health and safety of the public. Further, 50.40 provides that no license shall be issued which is unbeneficial to the public's health and safety. 50.91 by the term, does not relate to any case of issuance which had come up with any construction permit stage. Rather, the consideration will be given to the factors which govern the issuance of the construction permit, only the extent applicable and appropriate. Thus, 50.91 does not rehash old issues or consider the initial construction permit. Rather, these considerations which are applicable and appropriate are those issues which, if one, were not considered, could not have been considered at the construction permit stage, two, are significant, and three,

cannot be considered at the operating license stage of required findings. 50.35, sub(a), proposed the facility be constructed and operated at the proposed location and not because of undue risk to the health and safety of the public. As the applicant responded to the supplemental petition and as the NRC staff and others pointed out today, the primary cases involved in the construction permit extensions are Indiana and Michigan industries. At the Donald C. Cook Nuclear Plant the Appeal Board rejected arguments from both the staff and the applicant that the "good cause" showing necessities is limited to the reason the plant was not built on time, said the Board; that the Commission has ruled out of the "good cause" here, "any question other than is of the legal sufficiency of the reason for the construction delay." The Board similarly rejected an argument that a construction permit amended must consider the environment and safety issue which might be brought forward. Instead, it determined what would constitute "good cause" would be decided by the case basis to be influenced by the totality of the circumstances before it. I believe that is the response to the question about the possibility of Nuclear Power Plants receiving four or five extensions. Do they need to go to four or five hearings such as this one? That is the question that should be determined on a case by case basis taking into consideration the totality of the consideration. Now, the Board and Cook

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did not then go on as NIPSCO has suggested in their pleadings, and limit the issue of construction permit extension to those relating to the cause of the delay of construction or to only those which in and of themselves are serious doubts upon the ability of the applicant to the safety of the plant. Cook cited such a situation of circumstance which would be taken into consideration in determining whether or not there is "good cause", sites even those beyond the respected deviation of the scope offered by the staff and applicant in that case. The work of Cook determined those issues which could appropriately be deferred without prejudice to this intervenor or the public interest telling the operating license stage it should be deferred. I believe in addition that the construction permit extension proceeding should be further limited to the only significant environmental safety issue, the ones that have not already been litigated in the initial construction hearing. The fact that Bailly unlike the fact of Cook, strongly supports the fact of consideration beyond those of the reasons why the plant did not get built on time. And the plant was not complete at the time of decision. In fact, the notice of the consideration of the operating license had already been issued and the hearing had been scheduled and the intervenor and the construction permit cause had intervened in the operating license case and had been admitted. The Bailly application asks for permission to build

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99% of the plant. The Bailly Nuclear Plant is merely a large hole in the ground. The construction permit was let providing that the bond construction permit was concluded in 1974. The world today is a different place than it was in 1974. There are many significant differences which direct the effectability which should be taken into consideration. A bid at the Cook Plant in the operating license stage is a lot different than a bid in the Bailly site. In the Cook, the operating license here was going to held in a matter of days; Bailly was six or seven years at the earliest. Now, the final reason why we supported the broad base here is any indication NIPSCO and NRC argue. Both NIPSCO and NRC have not made clear what there stand is. They seem to suggest that they are out there pleading there comments today; that good cause is related to the reason why the plant did not get built on time. NIPSCO, in the letter of February 7, 1979 to the NRC requesting a construction permit extention even goes so far as to suggest that good cause is limited to determination of whether the reason why the plant did not get built on time were within its control. When the NRC suggested that the scope of this hearing be limited to the reason for not completing the plant on time, they make arguments out of reply. Whether or not the reason the nuclear power plant was not built on the date specified in the construction permit were factors

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within the control of the applicant, it has nothing to do with the matter with which the Nuclear Regulatory Commission or the Atomic Energy Act are concerned, which are factors of health and safety. If it can be, as I have and others have ascertained, and NIPSCO denies, that the reason for the delay in building the plant were for a large part in NIPSCO's control, surely the staff would argue that "good cause" is lacking and therefore the construction permit should be extended. Even if it were found that NIPSCO did negligently and carelessly did not complete the plant within the time that was provided, they would not argue that good cause is lacking. Nuclear power plant construction is delayed all the time by licensees, sometimes for reasons within their control, sometimes not. It is sometimes for good reasons and it is sometimes not. This consideration has nothing to do with protecting the public's health and safety. It is not clear why construction permit hearings must be held. If the NRC and NIPSCO have presented their understanding of "good cause" in their pleading, the "good cause" is limited to the reason why the plant did not get built and whether these reasons were within the applicant's control. The applicant and the staff have just created an argument without supporting any addage or regulation and without regard to ascertain consequences of such argument which is placed upon the nuclear industry for construction

permit extensions which are denied on the basis that an applicant itself has delayed construction of the nuclear power plant or could not get it finished within the time period within which the construction permit expired.

MR. GROSSMAN: Any response to that?

MR. EICHHORN: Mr. Chairman, I would just like to state that obviously Mr. Hansell interpretes Cook the same way as Porter County petitioners and certainly different than the way which it is read by the staff and counsel for NIPSCO.

MR. GOODMAN: I believe we have concluded the general discussion. I beleive we have concluded with the discussion in general of the scope of the proceeding as it relates to health and safety matters, and I would also, unless someone has something else to add, I would like to get to the question of what if we, the Board, were to adopt a narrow position being the position that the applicant and the staff was opposed to and the broad position--in characterizing this, it is not in a derogatory sense--as opposed to the broad position that is urged by the intervenors, the petitioners, whether there is any reason forced with regulation 2.758, why the Board should determine the petition a prima facie case made out of the waiver of Section 50.55(b). And I'd like to address that to Mr. Vollen to begin with.

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MR. VOLLEN: Thank you, Mr. Chairman. As I stated earlier this afternoon, our Petition for Waiver for Separation to 50.55(b) is conditional in the circumstance that you just described. We think, as I have said before, that "good cause" requirement, in the statute "good cause", for the continued construction in making the plant require consideration of the important significant events that have occurred. And if the Board thinks that 50.55(b) is to preclude some of those things is because of the very special, unique circumstances of Bailly. We think such a reading of 50.55(b) is a frustrated purpose of the "good cause" requirement. Much of those things which constitute special and unique circumstances surrounding the Bailly plant and this proceeding have been identified and have been mentioned before. Now, almost six years after the construction permit, before Bailly was built, and after it has expired, only one percent of the construction has been completed. I am unaware of any other situation where there was a contested proceeding before the Commission involving the question of whether the construction permit could be extended in that circumstance. Cook, as we talked before, involved a situation virtually completed, and a operating license proceeding which had already started. There has been no construction activity at all since September of '77, two-and-a-half years ago. I think the record reflects-- and if the record does not reflect, we contend to the inability

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of the company and the staff, the Commission, too, agrees on the acceptable design foundation. Another one of the circumstances that, except to us, led to the conclusion that 50.55(b) ought to be waived or presented to this proceeding, is the fact why the Three Mile Island incident occurred. Before this proceeding, as well as other, but particularly this proceeding, the probability and consequence of a class nine accident from our standpoint and the safety standpoint were ruled not to be appropriate of consideration because of the low probability. Another special circumstance is the waiver, since an appropriation exists, which was six twenty-five which was mentioned before. That document was presented by the staff and proposed six population density criteria. Of those six criteria, a proposed one, and only one nuclear power plant site in this country on which a reactor is operating or under construction fails all six criteria. That's Bailly. That makes Bailly a unique, special circumstance. It is the worst from the standpoint and the proposed criteria that the design of the plant, which is what the Commission has been talking about and considered to put special control limitations on it in light of the population density and in light of Three Mile Island, Bailly is the worst from that standpoint. Another special circumstance that makes waiver appropriate is the Bailly proximity. It has, approximately, a twenty person human capacity; approximately the Indiana Dunes

National Lakeshore. The length of the extension is approximately 99 months in relationship to the original length of construction permit, a little over five years. This is another special circumstance. It requires a broad look at the circumstances and conditions, and finally, in another vein, the fortuitousness of the fact that Bailly has not insofar as to have one percent, but have one percent construction activity. If we are talking not about 99 percent, but a hundred percent nuclear power plant, all of these things that are unquestionable will be considered in that special circumstance of the one percent activity. It seems to be not sufficient enough to justify. For those reasons it is in the Board's determination that 50.55 does not permit consideration of these broader issues in this proceeding. We ask that we waive exception to the procedure for these purposes.

MR. GROSSMEN: Mr. Goldberg, did you want to respond to that?

MR. GOLDBERG: Under Section 2.758, it is provided, and I quote, "The sole ground for the petition for waiver of exception shall be that special circumstance with respect to the subject matter in the particular proceeding that are such that application for the rule or regulation provision thereof would not serve the purpose for which the rule or regulation was adopted." We believe that petitioners have not satisfied the showing require

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under 2.758 to obtain a waiver or exception to Section 50.55(b) of the regulations. They provide no legal authority to support their interpretation of either that regulation or Section 185 of the Act which would stand for the proposition that every new development or even every significant new development which has a risk subsequent to the issuance of the construction permit must be considered in the context of the construction permit extension application. Ultimately, through petition for waiver whether you characterize the lists of the so-called special circumstances as an, indeed, special circumstance or new development, the result is the same. There is no showing that purposes of 50.55(b) would not be served by applying it to this proceeding. And I would cite for broad discussion Cook as a strong indication of what the purpose of the "good cause" showing in 50.55(b) was about. And the kind of issues that that shows, should embrace. Significantly, the Commission did not take review of that decision and this, I believe, the interpretation of the Appeal Board of 50.55(b), must be presumed to be consistent with the amendment of Section 185 of the Act. All those recognized through most of the prints here that the statutory history provided little useful insight as to what was meant. But I would submit there is absolutely no authority to support the submission by petitioners that it was meant to embark upon a fresh assessment of any new development that has arisen since the construction permit

was litigated and ultimately issued.

MR. GROSSMAN: You want to reply to that, Mr. Vollen?

MR. VOLLEN: I don't think so, Mr. Chairman.

MR. GROSSMAN: Mr. Eichhorn?

MRS. SHEA: I think the summary is a very simple one, completing what Mr. Goldbert has said. It is essentially the position of Mr. Vollen that his different interpretation of Section 185 and different interpretation of 50.55(b), Section 2.758, is not the mechanism for seeking to change interpretation of regulation. Instead, that the appropriate method for that is another one he has chosen.

MR. GROSSMAN: My problem, Mr. Vollen, is the fact if the Board were to adopt a narrow interpretation of Section 50.55(o) it would necessarily be saying that the purpose is different than the purpose that is yours, and therefore, it could not effectuate that purpose by waiving Section 50.55(b). If it were to adopt your interpretation of 50.55(b), then, of course, it wouldn't be setting it aside and waiving it, and so I guess it is just a logical problem as far as being able to recommend waiver of 50.55(b).

MR. VOLLEN: I think I understand that dilemma, Mr. Chairman. I think it answers the question as to whether the Commission fully reflected and accepted the interpretation of "good cause" that we argue. In other words, it is possible in 50.55(b) one way to resolve that logical dilemma that you proposed

to conclude that 50.55(b) does not define "good cause" as broadly as "good cause" should be defined under the statute. Therefore, that the Commission in promulgating 50.55(b) went as far as it could have. Under the statute it could have gone further, but did not. So before it promulgated 50.55(b), it is doubtful as to the statutory purpose applied in 50.55(b). The narrow view in the statute could logically say 50.55(b) would not in this case, fulfill the statutory definition effectuating "good cause" as Congress used in the statute.

MR. HANSELL: I have several comments as I will join in a request for a waiver. With regard to the point that you are raising right now, I think that Ms. Shae is correct that under the waiver the statute cannot change the meaning of the particular regulation. But that is not what is being asked in this particular circumstance. I think that the only reason we are having any of the discussions that we are is because of that fact that the regulation said some things that the statute doesn't say, and particularly what it does say through discussions among other things that the Commission will recognize as being "good cause" as part of the reason why it did not get the Nuclear Power Plant done within the date provided for under the construction permit. If you determine that for that reason you would not rule favorable to us with regard to our interpretation of the scope of this hearing under that circumstance, we believe that

the circumstances which were introduced by Mr. Vollen was warranted as a waiver or exception from those particular words within Section 50.55(b). We are not asking that you change the meaning of it, but rather, simply, this amplification which is not contained in the Atomic Energy Act.

MR. VOLLEN: I guess I'd just like to add one more sentence to the question of mechanism. Counsel for NIPSCO suggests we have chosen the wrong mechanism. The truth of the matter is because this is a very special circumstance. No where else has it been previously duplicated in history of a nuclear power plant special circumstances. With regard to the Bailly plant the things other than the reasons why it didn't get built must be considered and on the question of whether or not it should continue to be built. And we have-what we have done, as I said this morning is we have availed ourselves--tried to avail ourselves of every mechanism that we can find to have someone determine within the Commission that a broad scope of this be considered. We have asked the Board under 50.55(b) before and we have asked the waiver of 50.55(b) and we have asked the Board to rule on the petition. If we have chosen the wrong mechanism, we will be glad to see any other one.

MR. GROSSMAN: I believe the applicant has suggested that there isn't any other method with regard to these particular circumstances. That is a question of merit. I don't want to get into that.

MR. VOLLEN: I agree with you, Mr. Chairman.

MR. HANSELL: One additional point I think should be mentioned, Mr. Chairman, was brought out in at least one of the responses to the waiver is that there maybe a possible interpretation that our requests for waiver. Some cuts are argument about the proper scope. Illinois does believe that the appropriate interpretation of 50.55(b) is for a broad based hearing. We urge the Board to recognize any attempt by any of the parties to take a stand in our request for a waiver in our argument regarding the scope of this hearing. We placed in the minutes that we did earlier some possible points, So its consideration did not delay the hearing. And we do not want to have our argument jeopardized by this attempt on our part ot be responsible.

MR. GORSSMAN: Anything further on the question of labor? I think the next step we will take is with regard to specific intentions and perhaps everyone would like a break before we get into that. We will take another ten-minute recess.

(The hearing recessed at 4:03 p.m.)

(After recedd, 4:15 p.m.)

MR. GROSSMAN: I did want to go through Doctor Schultz' petition since he has indicated that he will probably not be here tomorrow. Is that correct Doctor Schultz?

DOCTOR SCHULTZ: (Nod)

MR. GORSSMAN: I am not sure that we have very much to

say about it. It appears to me what you raised in your petition is basically an evacuation plan, and before you make a statement in regard to the fact that we don't believe that there can be an effective one and that we have already discussed at length the scope of the hearing with regard to evacuation plans brought out by the Gary petitioners. I would like to give you a further opportunity to raise anything you want with regard to why you believe the petition that you have submitted, raised a valid contention. You don't have to say anything further if you have already said your piece, and Miss Cohn has already covered what you intended to cover, but you are free to say what you like.

MR. SCHULTZ: Thank you. It was suggested that if the plant were constructed, NIPSCO would have conformed to the policies defined by the NRC in order to operate it. After reading the Rogovin Report and other accounts of Nuclear Accidents, I would suggest that there are serious issues that should be looked at right now before the plant is built. Even if NIPSCO might be asked to conform to certain policies, it seems to me that in case of an unexpected incident like Three Mile Island, not everything conforms to policy. The wind and the weather don't seem to conform to anybody's policies. In the event of the evacuation of the prison I work at there are quite a few men who don't conform to anybody's policies.

Before I would feel comfortable with expenditures of a billion dollars, I would like to have some inkling of what the plan would be for those 1700 men and for the community who are surrounded in that prison. Those are the serious concerns on my part. It would solve technical problems much more easily than we will solve human problems. I am hoping--this is the last thing I want to say--that the Commission has an open mind; that this forum is not--that you are really listening; that this is not a sham; that you are going to take our concerns seriously beyond the legal necessities of the situation. I think we have a serious matter here. Thank you.

MR. GROSSMAN: Does anyone have a response with regard to the scope of the hearing in addition to what has already been said with regard to the contentions raised by Doctor Schultz?

MR. GOLDBERG: No.

MR. EICHHORN: I think it's been pretty well covered, Mr. Chairman.

MR. GROSSMAN: Miss Cohn, do you want to say anything in addition to anything that's been said with regard to evacuation of plants being within the scope of this hearing?

MISS COHN: I agree. I think it's already been covered to the--being at the present time that you are still considering what the scope of this proceeding is. I don't know if it is appropriate at this point to move on to the question of whether

our contention as a specific contention needs to be discussed in some future way. Beginning a discussion of all of the various contentions raised here, Mr. Grossman; do we need any discussion of revising? Doctor Schultz contends that if the Board decides that evacuation is a proper subject to be considered here, is there anything anyone wants to say with regards to that? Is there something to be said for leaving a contention in the form that it is in now?

MR. HANSELL: I guess I would say with regard to that, generally, if it is determined that a contention of the parties is within the scope, but that there is some defect regarding specificity, that those particular parties ought to be given a chance to amend or correct those defects.

MR. GROSSMAN: Now, Mr. Schultz, is it your feeling though, that you should remain a participant or become a party to those proceedings rather than perhaps have your participation consolidated with, perhaps, the Gary petitioners? Is there any reason why you believe you would want to make a contribution of your time and effort here that couldn't, perhaps, be more efficiently supplied by the Gary petitioners?

DOCTOR SCHULTZ: Only in the sense that I work at a place which is quite a unique place. It is a maximum security prison, and I don't know if--I think there are special considerations that need to be taken into consideration there. I would be

happy to reserve those considerations and to help in any way to bring forth any material that may be useful to you which they need. I have access to them easily and I will be happy to do whatever is useful.

MR. GROSSMAN: The question is: don't you think it would be more efficient if you were to assist the Gary petitioners in raising various points with regard to evacuation plans if that is accepted as a valid contention in the case rather than proceed on an individual basis, and I do want to point out that it is expensive and time consuming to participate in the discovery process and then to participate in conferences and hearings. And the Board does have the power to consolidate the petitioners. The question is, do you--would you really have an objection if we were to consolidate you as a part of the Gary petitioners and have counsel represent you as well as the others and have you assist the Gary petitioners rather than directly involve yourself in the proceeding?

DOCTOR SCHULTZ: I would ask the Gary people if they would mind my assistance if that is the best way to go. I don't have a lawyer. I don't know what is the best way to proceed.

MISS COHN: We would certainly welcome Doctor Schultz' assistance. I'm not sure he completely would understand the implication of what you suggest to the extent that he has

indicated that they might have an interest which we might not adequately represent. I would hate to have him waive his prior request of intervention as a party as a right on his own, but certainly, whatever assistance we could provide to Doctor Schultz we are willing to do that.

MR. GROSSMAN: I don't believe Doctor Schultz has taken a position on that.

DOCTOR SCHULTZ: Is it necessary that I make a decision right at this moment?

MR. GROSSMAN: No, it is not.

MR. COLE: We are talking about possibilities.

MR. EICHHORN: Mr. Chairman, before we leave that subject, the original question was if the Board should decide this were a proper issue, should there be some redrafting of the contention raised by Doctor Schultz and our reaction that to take that is the primary concern as expressed in his petition and his conversation statement today is the evacuation of the prison in Michigan City, and I think that contention must be included, that the fact that the prison is located within the area that would be evacuated in the event of an emergency under whatever criteria the Board might think would be appropriate, to measure the question of emergency plans should they allow that as an issue in this proceeding.

MR. GROSSMAN: I believe now is an appropriate time to adjourn the conference until tomorrow morning and not get on to another supplemental petition. Is there any objection to that procedure?

(No Response)

Okay, why don't we adjourn until 9:00 tomorrow morning.

(This session of the hearing adjourned for the day at 4:30 p.m.)