

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

4/17/80

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)	
)	
NORTHERN INDIANA PUBLIC)	Docket No. 50-367
SERVICE COMPANY)	(Construction Permit Extension)
)	
(Bailly Generating Station,)	
Nuclear-1))	

NRC STAFF RESPONSE TO LAKE MICHIGAN
FEDERATION MOTION FOR ADDITIONAL TIME TO FILE
CONTENTIONS AND FIRST SUPPLEMENT TO PETITION

On March 28, 1980 the Lake Michigan Federation (Federation), which has petitioned to intervene in the captioned matter, filed a motion to serve its contentions on an untimely basis. Pursuant to the Board's "Order Setting Special Prehearing Conference," dated February 7, 1980, intervention petitioners were directed to supplement their petitions with a list of specific proposed contentions at least 15 days prior to the special prehearing conference scheduled for, and held on, March 12-13, 1980. The Federation failed to file such a supplement. Instead, it sought to present its contentions on the record at the special prehearing conference (Tr. 173). The Board disallowed this but permitted the Federation to request leave to submit contentions in a subsequent written motion (Tr. 175).

The instant motion seeks to adopt all of the proposed contentions of Petitioners Porter County Chapter, et al. except contention 2, proposed

contention 4 of the State of Illinois, and advances an additional contention.^{1/} The motion is also accompanied by an affidavit of a member of the Federation which contains a statement of his interest in the proceeding and authorization to the Federation to intervene on his behalf herein.^{2/} The Staff believes that the motion fails to adequately justify the Federation's late filing and should be denied.

Pursuant to 10 C.F.R. § 2.714(a)(3), late-filed contentions must address the factors relative to non-timely filings contained in paragraph (a)(1) thereof. See Louisiana Power and Light Company (Waterford Steam Electric Station, Unit 2), LBP-73-31, 6 AEC 717, appealed dismissed as interlocutory, ALAB-186, 6 AEC 1155 (1973). These factors are:

- (i) good cause, if any, for failure to file on time.
- (ii) the availability of other means whereby the petitioner's interest will be protected.

^{1/} The gravamen of this additional contention is that the findings which underlied the grant of the Bailly construction permit are no longer legally binding and that all applicable contentions (particularly those relevant to construction dewatering) should be considered in light of "all new issues which have arisen since the construction permit process." Motion at 6. The Federation presents no legal authority for this proposition and the Staff position to the contrary is a matter of record. See, e.g., "NRC Staff Response to Supplemental Intervention Petitions," dated March 7, 1980.

^{2/} The affiant states that his recreational interest in Lake Michigan will be adversely impacted by Bailly construction. Though lacking the requisite degree of particularity, this statement of interest could serve as a basis to confer standing on the Federation in this matter.

- (iii) the extent to which the petitioner's participation may reasonably be expected to assist in developing a sound record.
- (iv) the extent to which the petitioner's interest will be represented by existing parties.
- (v) the extent to which petitioner's participation will broaden the issues or delay the proceeding.

With regard to the first factor, the motion states that the single lawyer for the Federation underwent surgery during January, February and March, 1980 (Motion at 3). It is also stated that there were substantial absences from the office and shortened work days during this period. Id. It is further noted that the lawyer is also the administrator and was busy compiling information on the Bailly site which could not be completed simultaneously with the preparation of contentions.

While counsel's surgery and competing administrative and research responsibilities between January and March, 1980 could have provided grounds for a timely request for an extension of time to file contentions or a postponement in the special prehearing conference, no such request was made.^{3/} Timely motions to postpone the special prehearing conference were submitted by other petitioners. The Federation, however, remained silent until its appearance at the special prehearing conference before seeking to assert

^{3/} Cf. Virginia Electric and Power Co. (North Anna Nuclear Power Station, Units 1 and 2), ALAB-568, 10 NRC 554 (1979).

contentions. Further, as the motion manifests, all the Federation seeks is to adopt the contentions of other petitioners. It is difficult to conceive why this position should have taken so much time to formulate and memorialize. Thus, there is no "good cause" why the proposed contentions could not have been advanced in a timely manner and consideration of this factor weighs against the Federation.

The Federation does not specifically address the second factor. The Federation's foremost interest seems to be the alleged adverse impacts upon Lake Michigan due to construction dewatering. Motion at 2. If so, this is probably the best forum within which to protect such interest. Therefore, consideration of this factor weighs in favor of the Federation.

With regard to the third factor, the Federation states that it published the "definitive" report on the "dewatering controversy" in March, 1980 (Motion at 2). A copy of the report is not provided. The Federation also claims to have "engineering and natural science capacity" to further address the dewatering issue. The Federation does not profess to have any "expertise" on any other issue. The dewatering concern is not a novel one or one which the construction permit extension will necessarily impact. See "NRC Staff Brief on the Finality of Ash Pond Seepage and Construction Dewatering Considerations at the Bailly Construction Permit Stage," April 10, 1980. In any

event, the motion fails to delimit the precise nature of the perceived impact that the Federation believes will accrue from continued construction dewatering or identify the substance of its March, 1980 report. Without this information, at a minimum, the Staff cannot conclude that the Federation's participation will reasonably contribute to the development of the record.

With regard to the fourth factor, the Federation merely adopts the contentions of the Porter County Chapter petitioners and the State of Illinois. If these petitioners are admitted, the Federation's assistance with their intervention would probably be welcomed. In any event, the issues of joint concern would be adjudicated. Therefore, this factor weighs heavily against the Federation.

With regard to the fifth factor, since the Federation essentially seeks to litigate contentions previously advanced by others (thus making consolidation likely), their participation should not affect the scope or pace of the proceeding. Therefore, consideration of this factor does not weigh against the Federation.

CONCLUSION

After balancing the foregoing considerations, the Staff concludes that the motion to supplement fails to make an adequate showing upon the requirements of 10 C.F.R. § 2.714(a) governing non-timely filings and should be denied.

If the Federation is, nonetheless, granted intervention, the Staff believes that it should be confined solely to the issue of construction dewatering.

Respectfully submitted,


for Steven C. Goldberg
Counsel for NRC Staff

Dated at Bethesda, Maryland
this 17th day of April, 1980.

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CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF RESPONSE TO LAKE MICHIGAN FEDERATION MOTION FOR ADDITIONAL TIME TO FILE CONTENTIONS AND FIRST SUPPLEMENT TO PETITION" in the above-captioned proceeding have been served on the following by deposit in the United States mail, first class or, as indicated by an asterisk, through deposit in the Nuclear Regulatory Commission's internal mail system, this 17th day of April, 1980.

*Herbert Grossman, Esq., Chairman
Atomic Safety and Licensing Board Panel
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Edward W. Osann, Jr., Esq.
Suite 4600
One IBM Plaza
Chicago, Illinois 60611

*Dr. Richard F. Cole
Atomic Safety and Licensing Board Panel
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Robert L. Graham, Esq.
One IBM Plaza
44th Floor
Chicago, Illinois 60611

*Mr. Glenn O. Bright
Atomic Safety and Licensing Board Panel
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

George and Anna Grabowski
7413 W. 136th Lane
Cedar Lake, Indiana 46303

Kathleen H. Shea, Esq.
Lowenstein, Newman, Reis, Axelrad
and Toll
1025 Connecticut Avenue, N.W.
Washington, D.C. 20036

Dr. George Schultz
110 California Street
Michigan City, Indiana 46360

Robert J. Vollen, Esq.
c/o BPI
109 North Dearborn Street
Chicago, Illinois 60602

Richard L. Robbins, Esq.
Lake Michigan Federation
53 West Jackson Boulevard
Chicago, Illinois 60604

John Van Vranken, Esq., Chief
Northern Region
Environmental Control Division
188 West Randolph Street
Chicago, Illinois 60601

Clifford Mezo, Acting President
Local 1010
United Steelworkers of America
3703 Euclid Avenue
East Chicago, Indiana 46312

William H. Eichhorn, Esq.
Eichhorn, Morrow & Eichhorn
5243 Hohman Avenue
Hammond, Indiana 46320

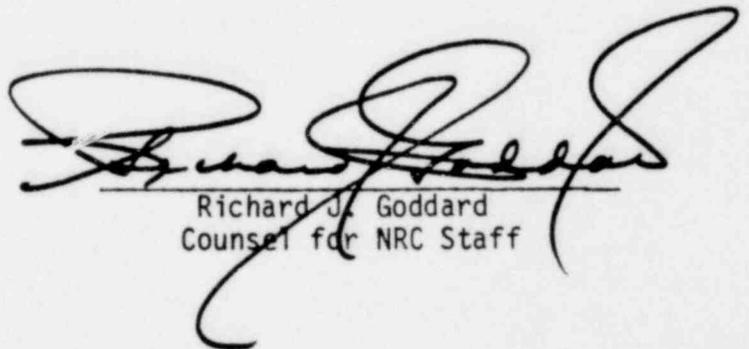
Diane B. Cohn, Esq.
Suite 700
2000 P Street, N.W.
Washington, D.C. 20036

Stephen Laudig, Esq.
445 N. Pennsylvania Street
Indianapolis, Indiana 46204

*Atomic Safety and Licensing
Board Panel
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

*Atomic Safety and Licensing
Appeal Board Panel
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

*Docketing and Service Section
Office of the Secretary
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555



Richard J. Goddard
Counsel for NRC Staff