



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555

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APR 16 1980

Docket No. 50-367

Mr. John R. Bayless
8925 Indian Boundary
Gary, Indiana 46403

Dear Mr. Bayless:

Your letters of February 1 and 20, 1980 to President Carter and Senator Bayh, respectively, have been referred to me for reply. The letters criticize an NRC Staff position that it is inappropriate to consider any and all safety issues otherwise relevant to the Bailly Generating Station within the context of the pending construction permit extension application. The Staff position is interpreted as one that advocates that any and all such issues must await evidentiary consideration at the operating license stage of the regulatory process. The issue apparently singled out for concern in your letters is the suitability of the Bailly site from the standpoint of population density and emergency evacuation capability.

Your letter to the President indicates that you are a member of the Bailly Alliance. That organization, as you are probably aware, has petitioned to intervene in the construction permit extension action, along with others, on the sole issue of emergency planning and evacuation. Other intervention petitioners have sought to introduce the issues of siting and population density into the proceeding. In the opinion of the NRC Staff, the range of issues that may be adjudicated in a construction permit extension proceeding are prescribed by Commission regulation and interpretative case law. They do not embrace issues considered at the construction permit hearings for a particular facility or those which, from a health and safety standpoint, can abide consideration at the eventual operating license stage of review when a separate opportunity for hearing will be afforded. For the reasons set forth most recently in response to supplemental intervention petitions filed in the construction permit extension action dated March 7, 1980, the NRC Staff does not believe that your apparent areas of concern fall within the litigable scope of this action. A copy of that response is enclosed for your information.

The intervention petitions filed in this matter and the issues advanced therein for evidentiary consideration were the subject of a prehearing conference held in Valparaiso, Indiana on March 12 to 13, 1980 before a presiding NRC Atomic Safety and Licensing Board (Licensing Board). The Bailly Alliance was represented at that prehearing conference by counsel. At the prehearing conference, all participants discussed their respective positions on the matter of standing to intervene, the scope of the proceeding, and the admissibility of prospective issues. The Licensing Board, upon consideration of the written filings and oral record compiled, will ultimately decide these issues. The Licensing Board may decide certain issues contrary to the Staff's position thereon.

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Importantly, however, the fact that any and all safety issues applicable to Bailly in general, or your apparent areas of concern in particular, do not receive evidentiary consideration in any construction permit extension hearings that may be held does not mean that they will not receive NRC attention. Under the Commission's two-stage licensing process, an opportunity to litigate these concerns will be provided in connection with the Bailly operating license application. In the event that a matter requires attention in advance of an operating license application, the NRC Staff will undertake the necessary level of technical review. An example of this is the pending NRC Staff review of the permittee's pile installation plans which must be concluded before presently suspended foundation pile installation may be resumed. This course of action is in addition to the general oversight role performed by the Commission's Office of Inspection and Enforcement during the course of plant construction.

If you or any member of the general public believes that significant health and safety issues are present with respect to activities authorized by the construction permit, you or another could seek the initiation of a show-cause proceeding under 10 C.F.R. § 2.206 of the Commission's regulations. Several such requests have been filed by various groups and individuals since issuance of the Bailly construction permit on different grounds. One such request, contained in a letter from the Illinois Attorney General, seeks a halt in Bailly construction on the grounds of population density. That request is presently pending before the NRC. A copy of the NRC response can be provided to you.

Another matter of apparent concern to you, emergency evacuation, is also under NRC review at this time. The Commission's requirements regarding emergency planning are the subject of proposed rulemaking* and may well change over the course of the Bailly construction. The NRC Staff is in the process of developing interim criteria regarding emergency preparedness, including evacuation planning, pending the development of a final rule on this matter. The Bailly plant will be required to satisfy the applicable requirements of any Commission rules in these areas as they become effective. Thus, while the areas with

* See Proposed Rule published December 19, 1979 (44 F.R. 75167); Proposed Rule published September 19, 1979 (44 F.R. 54308); see also Advance Notice of Proposed Rulemaking published July 17, 1979 (44 F.R. 41482).

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which you are concerned may not be the subject of litigation in the construction permit extension proceeding, they are and will continue to receive NRC attention, as necessary, prior to the submission of any operating license application, in order to ensure that Bailly can be safely built and operated at the selected site.

If you have any questions about the information provided herein, please feel free to contact me.

Sincerely,

Original Signed by
H. R. Denton

Harold R. Denton, Director
Office of Nuclear Reactor Regulation

Enclosure: As stated