

BEFORE THE  
U.S. NUCLEAR REGULATORY COMMISSION

IN THE MATTER OF )  
 )  
NORTHERN INDIANA PUBLIC ) Docket No. 50-367  
SERVICE COMPANY ) (Request for Action)  
(BAILLY GENERATING STATION, ) 10 C.F.R. 2.206  
NUCLEAR -1) )

REQUEST FOR ACTION TO SUSPEND OR  
REVOKE CONSTRUCTION PERMIT

Pursuant to 10 C.F.R. 2.206, the City of Gary, Indiana, United Steelworkers of America Local 6787, the Bailly Alliance, Save the Dunes Council and the Critical Mass Energy Project hereby join in the State of Illinois' request for action to suspend or revoke the construction permit for the Bailly Nuclear Power Plant. In particular, the City of Gary, et al., submit that construction should not be resumed at the Bailly site until the Commission considers whether the surrounding populations can be evacuated in case of a nuclear accident.

The City of Gary, et al. petitioned to intervene in the construction permit extension proceeding pending before the Atomic Safety and Licensing Board, solely for the purpose of litigating the question of whether realistic evacuation and emergency plans can be implemented to protect the populations surrounding the Bailly site. By Order dated May 30, 1980, the Board denied their petition to intervene on the ground that the question of the suitability of the Bailly site, and in particular whether adequate evacuation plans could ever be devised, was outside the scope of the extension proceeding (Docket No. 50-367). The Board stated that while a reconsideration of the Bailly site would be appro-

priate at some point, it concluded that the Commission's requirements for siting and emergency planning were still sufficiently in flux so as to make it inappropriate for the Licensing Board, as opposed to the Commission, to attempt to resolve this issue at this time. As the Board stated:

Petitioners have made a persuasive argument for reconsidering the suitability of the Bailly site before further resources are committed to construction in the event that site suitability standards are changed. We can only recommend in this Order that the Staff and Commission consider the Bailly site in particular when the new rules are formulated, as we are certain they will and as NUREG-0625 suggests they are doing. However, in the absence of a final statement of policy by the Commission on new siting requirements which suggest the unsuitability of the Bailly site, we do not deem it appropriate to authorize a re-litigation of a matter that was already determined by a licensing board in the construction permit proceeding on the standards in 10 C.F.R. Part 100 that have not yet been finally changed.

We disagree with the Licensing Board's conclusion that the Commission's change in policy is not sufficiently clear as to require a reevaluation of the Bailly site at the present time. As demonstrated in the City of Gary's, et al. petition to intervene and supplement thereto, which are attached to and incorporated in this request, the siting and evacuation planning criteria upon which Bailly was approved have been unanimously rejected by the Commission in its interim rules (44 F.R. 75168 (Dec. 19, 1979)), by the GAO, by a joint NRC-EPA task force on emergency planning, by the House Government Operations Committee, and by the Rogovin Report. Given the high population density surrounding the Bailly site, it is clear that Bailly cannot meet the Commission's current rules requiring workable plans for evacuation within a 10-mile emergency planning zone as a condition for operation. See 44 F.R.

75168 (Dec. 19, 1979). Indeed, Bailly is the only nuclear plant, operating or under construction, that failed to meet all 6 siting criteria recommended in the Report of the Siting Policy Task Force (NUREG-0625).<sup>1/</sup>

Since Bailly is now only 1% complete, the public health and safety demand a reevaluation of the Bailly site before substantial resources are committed to its construction. In view of the Board's decision to defer to the Commission, and the Commission's recent statement that it will give its personal attention to emergency planning matters in individual proceedings, 44 F.R. 75168 (December 19, 1979), the City of Gary, et al. request that the Commission suspend or revoke the construction permit for Bailly pending a decision on whether the Bailly site remains feasible from an evacuation perspective. The City of Gary, et al. also join in Illinois' request that this matter be decided by the Commission itself or by an Atomic Safety and Licensing Board and not by the Director of the Office of Nuclear Reactor Regulation or by his staff, which is acting as an adversary party in the construction permit extension proceeding.<sup>2/</sup>

Respectfully submitted,

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<sup>1/</sup>See Memorandum from R. Wayne Houston, Chief, Accidents Analysis Branch, Division of Site Safety and Environmental Analysis, to Daniel R. Muller, Acting Director, Division of Site and Safety and Environmental Analysis, attached to Illinois' supplement to its letter of November 21, 1979. The City of Gary, et al. also adopt and incorporate herein the additional factors for consideration cited in the state of Illinois' supplement.

<sup>2/</sup>By making this request, the City of Gary, et al. do not waive the emergency evacuation contention raised in the extension proceeding or their right to pursue their claim in that proceeding.

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CERTIFICATE OF SERVICE

I hereby certify this 5th day of June, 1980 that copies of the foregoing request for action to suspend or revoke construction permit were served by mail, first class and postage prepaid, upon the following:

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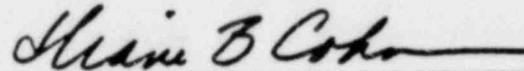
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