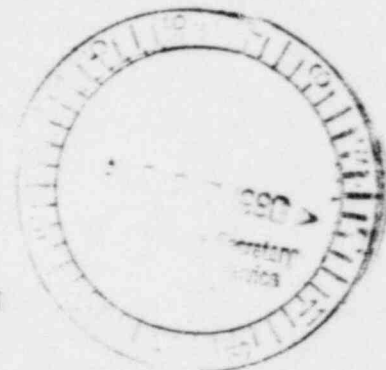


UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION



BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)	Docket No. 50-367
)	
NORTHERN INDIANA PUBLIC)	(Construction Permit
SERVICE COMPANY)	Extension)
)	
(Bailly Generating Station,)	August 25, 1980
Nuclear-1))	

NORTHERN INDIANA PUBLIC SERVICE COMPANY'S RESPONSE
TO BOARD QUESTIONS WITH RESPECT TO PILE FOUNDATION

The Board in its "Order Following Special Prehearing Conference" dated August 7, 1980, propounded four specific questions to be answered by the parties, presumably to aid the Board in determining whether the issue of pile foundation design is a proper issue for consideration in this proceeding. We disagree with the Board's theory regarding the pile issue and do not believe the questions posed are germane to its admissibility. Northern Indiana Public Service Company's (NIPSCO) objections on this issue have been filed in other documents.

In accordance with the Order, however, NIPSCO hereby provides its response to the Board's questions.

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1. Are the Permittee's plans with regard to the pilings advanced to the stage where they would be considered at a construction permit proceeding? If not, what remains to be done to bring them to that stage?

Under Section 50.35 of the NRC regulations, in order to obtain a construction permit, an applicant is required to submit as part of its Preliminary Safety Analysis Report (PSAR) a description of the proposed facility design including the principal architectural and engineering criteria for the design. An applicant is not required to furnish "all of the technical information required to complete the application and support the issuance of a construction permit which approves all proposed design features." The type of information now contained in NIPSCO's "plans with regard to the pilings" would not have had to be included in the PSAR, and it would not have had to be considered at the construction permit proceeding. Moreover, since a substantial portion of the information results from an extensive indicator pile program which could not have been conducted prior to the issuance of the construction permit, it could not have been considered at the construction permit proceeding.

However, the Board is apparently inquiring about the conduct of a hypothetical construction permit proceeding held approximately six years after the issuance of a construction permit. Even under these circumstances the level of detail required to be submitted in the PSAR would not change. Thus,

the detailed information concerning the piles would still not be required to be considered in the construction permit proceeding, unless NIPSCO, in its sole discretion, requested approval of this design feature under Section 50.35(b) and incorporation of the approval in its construction permit.^{*/}

Although inclusion and review of such information at the hypothetical construction permit proceeding thus would not be required, it is possible to postulate circumstances under which the information might become part of the proceeding. For example, as part of its review, the Staff might (although it would not be required to do so) request such information and incorporate it into the Safety Evaluation Report (SER). Or, the Board might request the information. Or, if a contention relating thereto were admitted, an intervenor might obtain the information through discovery and might be able to introduce it as evidence. These possibilities are, of course, conjectural. The same theoretical possibilities would exist with respect to any information^{**/} which a permittee (or an

^{*/} NIPSCO, of course, has not made any such request.

^{**/} Thus, for example, the same reasoning would apply to any of the following information: calculations, analyses, raw field data, incomplete designs, rejected designs, etc. And, of course, if the hypothetical construction permit proceeding were held late enough, it would also apply to final design or even as-built drawings.

applicant) might happen to possess which extends beyond that required to be included in a PSAR.

In sum, only the level of information which must be included in the PSAR will necessarily be considered at the construction permit proceeding. Any additional information possessed by a permittee or applicant would be considered if some procedural events (which cannot be predicted) take place. In our opinion, no one can entirely foreclose the possibility that any additional information, if available, would be considered.

2. When does the Staff estimate it will complete its analysis of the short pilings proposal?

NIPSCO has no independent information on this subject.

3. What are the reasons (practical, legal or otherwise), if any, why it would be preferable to defer the short pilings proposal to the operating license proceeding, rather than hear it at this proceeding before further construction commences?*/

We have previously presented NIPSCO's legal position regarding the pile design issue and why it should not be heard

*/ We note that, perhaps through inadvertence, this question refers to the possibility of the piling proposal's being heard in this proceeding "before further construction commences." As the Board is aware resumption of construction of the Bailly facility awaits only NRC Staff concurrence in NIPSCO's proposed pile placement methodology. Upon receipt of that concurrence, NIPSCO is free to go forward with construction. No other action or ruling by the Staff or Commission stands in the path of continued construction of Bailly N-1. While the construction permit's expiration date has passed, the permit is deemed not to have expired until final agency action on NIPSCO's requested extension of the completion date. 10 C.F.R. § 2.109. Thus, even if the Board determines to hear the pile question in this proceeding, this would not necessarily result in hearing the question "before further construction commences."

in this proceeding. We need not reiterate those arguments at length here. Instead, we direct the Board's attention to our prior pleadings:

NIPSCO Response to Supplemented Petitions to Intervene, pp. 49-51 (3/7/80).

NIPSCO's Objections to Provisional Order Following Special Prehearing Conference, pp. 13-17 (6/30/80).

NIPSCO's Objections to "Order Following Special Prehearing Conference," pp. 3-6 (8/18/80).

In summary, the Commission has decided that the appropriate forum for any hearing on the pile question is the operating license proceeding. (Commission Memorandum and Order, dated December 12, 1979, Northern Indiana Public Service Company (Bailly Generating Station, Nuclear-1), CLI-79-11, 10 NRC 733.) While that decision was made at a time when no other proceeding was pending, it is based upon the sound principle of maintaining the integrity of the administrative process and the assurances that safety matters will be resolved in the proper course of that process. In that decision, the Commission explicitly decided that "the proper occasion for a hearing on this pilings proposal is at the operating license review stage" (10 NRC at 743.) Such a determination thus dealt precisely with the subject of the finding required under Cook, namely, ". . . whether the reasons assigned for the extension give rise to health and safety or environmental issues which cannot appropriately abide the event of the environmental review-facility operating license hearing." (Indiana and Michigan Electric Co. (Donald C. Cook Nuclear Plant), ALAB-129, 6 AEC 414 at 420 (1973).)

Even if the Board does not agree that it is bound by the Commission's determination, clearly it must give that determination great weight. Unless the Board is aware of information which was not in the possession of the Commission, it cannot and should not reach a determination contrary to that of the Commission. No such new information has been identified by the petitioners.^{*/}

That the procedural posture before this Board is different from that before the Commission is irrelevant. The Commission's determination as to whether a hearing on a safety issue could await the operating license stage could not and would not have been based on procedural considerations.

There are also compelling practical considerations why the piling proposal should await the operating license stage. At that time, regulatory review of the piles will have the benefit of all of the detailed information developed during the installation and testing of the piles. Instead of assessing predictions of pile performance, the review will more properly and definitively be based upon actual "as-built" information which cannot be available prior to pile placement. It is also possible

^{*/} The fact that the Commission did not foreclose the possibility that the Staff could undertake a Section 2.202 proceeding meant only that the Staff could do so if, as part of its continuing review or exercise of its enforcement authority, it identified new information warranting such a proceeding. Obviously such information would be additional to that which had been presented to the Commission.

that refinements in some aspects of pile placement procedure or pile design will occur as installation takes place. This might then require that any hearings on this subject held prior to installation be repeated once again either at the time of the refinement or at the operating license stage.

Finally, admission of the short piles issue in this proceeding is not without its practical adverse effects. Litigation of this issue would increase the scope of discovery and entail a more lengthy hearing. At the very least, a hearing on this issue would increase the amount of effort which NIPSCO and the Staff would be required to devote to the proceeding; at worst, it could delay the conclusion of the proceeding significantly. Such a result would be damaging to NIPSCO in the financial community because of the uncertainty engendered by an ongoing proceeding on the extension of the Bailly construction permit, even though construction could proceed in the interim. These practical considerations reveal the fallacy in any suggestion that admission of a contention on short piles would not cause any harm simply because such contention would be heard in the context of an ongoing proceeding.

4. What are the reasons, if any, why the Board should or should not be reasonably assured, without hearing that issue in this proceeding, that all safety questions arising from the proposal to use short pilings will be resolved before the latest date mentioned in the request for the extension?

The NRC is structured to provide adequate assurance that all safety questions arising during construction will be resolved prior to completion of construction whether or not a hearing is held. Under the present NRC organizational structure, the Office of Nuclear Reactor Regulation (NRR), Division of Licensing, is responsible for managing safety reviews of applications for construction permits and evaluating technical specifications. (10 C.F.R. § 1.61(a).) It is this branch of the NRC Staff that is responsible for assuring that all safety issues are resolved during construction. The NRR is staffed with experts in all facets of nuclear plant design and construction and in many instances has retained experts from outside the agency to assist in the review and assure that all safety issues are properly resolved. The NRR also has the authority to amend licenses and institute hearings where matters of safety are not appropriately resolved. (10 C.F.R. § 2.202.)

As is promised in the Staff's Safety Evaluation Report, NRR has been reviewing the pile design during construction and, in fact, has ordered extensive testing and analyses to be performed during this review. Thus the Board can be assured that safety issues regarding piles will be resolved during construction because of the authority and responsibilities delegated

by the Commission to the NRR and its ongoing review and supervision of the Bailly pile design.

Additional assurance regarding resolution of safety questions is found in the Office of Inspection and Enforcement which is responsible for ascertaining that licensees comply with NRC regulations, rules, orders, and license provisions to appropriately protect the health and safety of the public. (10 C.F.R. § 1.64.)

Not every safety question involved in nuclear plant construction need be resolved by licensing boards. The NRC organizational structure clearly anticipates that the final design of a facility will evolve during construction and has made adequate provision for resolution of safety questions associated with the evolution of final design.

This Board, however, need not rely solely upon its recognition of organizational safeguards that all safety questions regarding pile design will be adequately resolved prior to the completion of construction. The Commission itself when confronted with the same pile design safety questions only eight months ago found:

Based on all these considerations, we believe that there is reasonable assurance that the outstanding safety questions can be resolved, and resolved early in the construction process. We therefore see no reason to alter our view, reflected in the original issuance of the construction permit, that the facility can be constructed and operated without undue risk to the health and safety of the public.

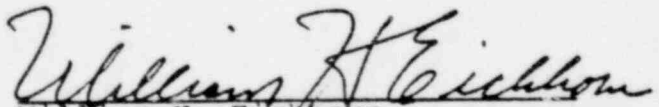
(Commission Memorandum and Order, dated December 12, 1979, Northern Indiana Public Service Company (Bailly Generating Station, Nuclear-1), CLI-79-11, 10 NRC 733 at 742.)

It is important to remember that the Commission was dealing with the same pile design at nearly the same point in time that is being considered by this Board in this proceeding. We know of no facts or other reasons which should or, indeed, could lead this Board to a conclusion different from that of the Commission regarding this question. Thus, we submit that reasonable assurance exists that outstanding safety issues can and will be resolved before the completion of construction without an evidentiary hearing on the issue at this time.

Respectfully submitted,

William H. Eichhorn, Esquire
EICHHORN, EICHHORN & LINK
5243 Hohman Avenue
Hammond, Indiana 46320

Maurice Axelrad, Esquire
Kathleen H. Shea, Esquire
Steven P. Frantz, Esquire
LOWENSTEIN, NEWMAN, REIS,
AXELRAD & TOLL
1025 Connecticut Avenue, NW
Washington, D.C. 20036

By: 
William H. Eichhorn

Attorneys for Northern Indiana
Public Service Company

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CERTIFICATE OF SERVICE

I hereby certify that a copy of Northern Indiana Public Service Company's Response to Board Questions With Respect to Pile Foundation was served on the following by deposit in the United States mail, postage prepaid, on this 25th day of August, 1980:

Herbert Grossman, Esquire
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Glenn O. Bright
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Richard F. Cole
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

Howard K. Shapar, Esquire
Executive Legal Director
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Steven Goldberg, Esquire
Office of the Executive Legal Director
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Susan Sekuler, Esquire
Environmental Control Division
188 West Randolph Street
Suite 2315
Chicago, Illinois 60601

Robert J. Vollen, Esquire
c/o BPI
109 North Dearborn Street
Suite 1300
Chicago, Illinois 60602

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

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

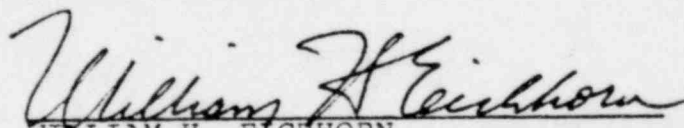
Mr. Mike Olszanski
Mr. Clifford Mezo
United Steelworkers of America
3703 Euclid Avenue
East Chicago, Indiana 46312

Diane B. Cohn, Esquire
William B. Schultz, Esquire
Suite 700
2000 P Street, NW
Washington, D.C. 20036

Richard L. Robbins, Esquire
53 West Jackson Boulevard
Chicago, Illinois 60604

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

Dr. George Schultz
110 California
Michigan City, Indiana 46360



WILLIAM H. EICHHORN
Eichhorn, Eichhorn & Link
5243 Hohman Avenue
Hammond, Indiana 46320