



2. Porter County Chapter Intervenors do not know when the Staff estimates it will complete its analysis of the short pilings proposal.

3. Porter County Chapter Intervenors are aware of no reasons (practical, legal or otherwise) 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. To the contrary, every reason of which we are aware dictates that it would be far preferable to consider the matter now, before the short pilings foundation is installed, rather than after the foundation is installed and a billion dollar plant built on top of it.

We believe that as a matter of law a hearing on the short pilings proposal is required to be held in this construction permit extension proceeding. Regardless of one's view as to the proper scope of such a proceeding, it is clear that the short pilings proposal is precisely the type of matter to be considered. It is, according to NIPSCO, one of the reasons for the delay in construction, and unquestionably, safety issues arise from it. The short pilings proposal was first made after the construction permit was issued and thus could not have been considered in those proceedings. Protection of the public interest and of intervenors' interests demands that the proposal be considered before the short pilings foundation is installed. Because there was never any consideration of a short pilings foundation in the original Bailly construction permit proceeding, the Board should draw no inference from that proceeding

of reasonable assurance of the safety of such a foundation. The length of time that the Staff's review of the short pilings proposal has taken, subsequent to the issuance of the construction permit, is a further reason why no inference of reasonable assurance of safety should be made. Only if the decision as to whether the short pilings proposal can be an appropriate foundation is made before the installation can an objective decision on the merits of the proposal be made. If the proposal is considered after the pilings are installed, there will be an improper, but inevitable, influence on the decision-maker resulting from the fact that the plant has been built at an enormous cost. See, In the Matter of Public Service Company of New Hampshire (Seabrook Station, Units 1 and 2) 7 NRC 952, 959 (1978).

As a practical matter, if the decision ultimately is made to approve the short pilings proposal, that decision made before the fact of installation will be entitled to much greater public confidence than a decision approving the foundation after it already has been installed. A decision in the latter context could well be viewed as nothing more than a rubber-stamp approval of what already has been done. On the other hand, it is difficult to imagine any valid practical reason why a hearing should not be held before the pilings are installed. Construction has been halted for almost three years and it is difficult to imagine any reason why its resumption if that happens at all, cannot await the additional short time until a hearing is conducted. One possible reason NIPSCO might seek to delay a hearing until after the short piling foundation is installed, is the belief that the probability of approval will be

greater at that time. To the extent that is the case, such apparent recognition of the truth of the matter that decision-makers must inevitably be affected by the expenditure of over \$1 billion is precisely what dictates that the hearing be held now, before that expenditure.

The suggestion that additional information about the acceptability of the short pilings proposal may be available after the foundation is installed is no reason not to hold a hearing before the fact of installation. A hearing should be held before the pilings are installed, and, if permission to install them is given and new or additional information is subsequently generated, that information can then be considered at that time.

4. There are a number of reasons why the Board cannot reasonably be assured that all safety questions arising from the short pilings proposal will be resolved before the latest requested completion date. As stated in our response to Question 3, the short pilings proposal was not considered at the construction permit stage. Therefore, the finding of "reasonable assurance" made at that time did not deal specifically with the short pilings proposal. Unlike many of the component parts of the proposed Bailly plant, the foundation pilings are not susceptible to the same type of laboratory-like analysis that follows from use in similar nuclear power plants. Indeed, an evaluation of pilings requires consideration of essentially an unknown quantity - i.e., the subsoil composition. Accordingly, a greater degree of scrutiny to find the requisite assurance of safety is required for the pilings foundation than for other more common aspects of the plant. Only one other nuclear plant in the country has ever been built on a piling foundation.

Moreover, unlike safety problems in other aspects of the plant developing or becoming known late in the construction process, as to which backfitting is available, once the pilings are installed and the plant is built on top of them, backfitting is simply not a viable alternative. The difficulties are demonstrated by the problems created as a result of NIPSCO's ill-fated attempt at a water-jetting system of pile installation.

One of the purposes of public evidentiary hearings is to provide assurance, both to Licensing Boards and to the public, that safety questions either have been or will be resolved. Public hearings offer an opportunity for determination in a fair and open context where all parties with an interest and a point of view can be heard. To the extent that hearings are not conducted, those assurances of the adequate resolution of safety issues are lost. The Board should not rely upon the unilateral representations of safety made by any one party or parties. To do so would eliminate the integrity of the whole public hearing process. The Board should make its own determination, based upon evidence produced in a public hearing, concerning the adequacy of the resolution of safety questions presented by the short pilings proposal.

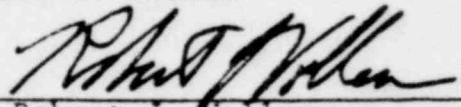
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For the foregoing reasons, and for the reasons previously advanced, the contentions regarding the short pilings proposal should be admitted in this proceeding.

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Respectfully submitted,

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