

UNITED STATES OF AMERICA
 NUCLEAR REGULATORY COMMISSION



BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)
)
 NORTHERN INDIANA PUBLIC)
 SERVICE COMPANY)
)
 (Bailly Generating Station,)
 Nuclear-1))

Docket No. 50-367
 Construction Permit
 Extension

STATE OF ILLINOIS RESPONSE TO QUESTIONS
 REGARDING THE SHORT PILINGS ISSUE

The Board in its August 7, 1980 Order Following Special Prehearing Conference (August 7, 1980 Order), propounded the below listed questions to the Staff, Permittee and those Petitioners having sufficient information and desire to respond, to assist in determining whether to admit the short pilings issue in the above-captioned proceeding:

- (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 further to be done to bring them to that stage?
- (2) When does the Staff estimate it will complete its analysis of the short pilings proposal?
- (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?

- (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 State of Illinois responds to these questions as follows.

- (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 further to be done to bring them to that stage?

Yes. The plans are clearly advanced to the stage where they would be considered at a construction permit proceeding. There is nothing that remains to be done to bring them to that stage.

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

The Staff has stated in its response to these questions that the above analysis will be completed on or about September 15, 1980.

- (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 before further construction commences?

It is not preferable to defer the short pilings question to the operating license proceeding.

The scope of this proceeding includes consideration of the issues connected to the delay in the completion of the construction of the facility. The short pilings proposal clearly falls within this scope. The Board noted in its August 7, 1980 Order that NIPSCO, in its February 7, 1979, Application for Extension, stated as one

of the reasons for the construction delay the need to review the method to be used for installing the foundation piles (August 7, 1980 Order, p. 15). The Board itself stated in that Order that the legal nexus between the short pilings issue and the subject matter of this proceeding had been established in that the short pilings proposal was one reason given for the requested extension. (August 7, 1980 Order, p. 24.)

The Board was correct in its determination that the December 12, 1979 Memorandum and Order of the Commission (Northern Indiana Public Service Co., (Bailly Generating Station, Nuclear-1) CLI-79-11, 10 NRC 733, 742 (1973) did not apply to this proceeding but that this inquiry is directed toward determining whether at the time of this extension proceeding, the short pilings issue should abide the operating license proceeding. (August 7, 1980 Order, p. 22).

Under Cook, (Indiana and Michigan Power Company, (Donald C. Cook Nuclear Plants, Units 1 and 2), ALAB-129, 6 AEC 414 (1973)), the questions to be considered in determining whether or not to hear this issue now are 1) 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; and 2) whether the present consideration of any such issue or issues is necessary in order to protect the interests of intervenors or the public interest. (Cook, supra, 6 AEC at 420). The answer to both of these questions is in the affirmative.

The short pilings proposal is one of the reasons for the delay in construction. Because this proposal was not raised at the construction permit hearing, the health, safety and environmental issues it involves were never considered. The method of piling installation has never been used before, and, if used, serious questions arise as to how to correct any problems with the pilings once they have been installed. An evaluation of the proposed short pilings must be made and considered by the Board before installation begins. Furthermore, as this is the only opportunity that will be available to hear the issue of short pilings as it relates to the delay in construction of the facility, not hearing this issue will result in prejudice to the Intervenor.

On a practical basis, it is illogical not to hear this question, since the Board has already decided to hear other related issues at this time. If the determination as to the safety of the short pilings is deferred until the operating license proceeding, the fact that the plant is completed will inevitably affect the decision-maker. See In the Matter of Public Service Company of New Hampshire (Seabrook Stations 1 and 2), 7 NRC 952, 959 (1978).

- (4) What are the reasons, if any, why the Board should or should not be reasonably be 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?

There are several reasons why the Board should not be assured that, without hearing the short pilings issue in this proceeding, all the safety questions arising from the proposal will be resolved before the latest date in the request for the extension.

Part of the reasonable assurance doctrine is that it is presumed that the Permittee, in proposing a change in design will provide research and development plans for any such design changes during construction of the facility. At the original hearing, the Permittee never raised the issue of possible modifications to or change in the design of the pilings. Thus, any finding of reasonable assurance at the original construction permit hearing does not apply to the short pilings proposal. Secondly, if this were an original construction permit hearing, the Permittee would be required to provide evidence that this reasonable assurance existed. The Permittee should not be relieved of this duty merely because of a unique combination of events.

As of this time, no evidence of reasonable assurance has been submitted by the Permittee or any other party.

The Staff has now taken 2 years to consider the problems arising from the use of short pilings. The Staff has commissioned the United States Army Corps of Engineers to study the short pilings proposal; as of this date, no report has been made from this study.

Before this issue can be deferred to an operating license proceeding, there must be a positive showing to the Board that reasonable assurance exists that all safety questions arising during construction will be resolved before the latest date mentioned in the request for the extension. Merely a statement by the Staff that conservative design specifications have been incorporated into the proposal and that administrative procedures will assure that these specifications will be implemented is insufficient to give the degree of assurance to the Board that is necessary to defer this issue.

The change is one of the reasons, by NIPSCO's own admission (as stated above in (3)), assigned to the need for the extension. It is a major modification of what was claimed to be a substantially completed plan for the pilings. Furthermore, once the pilings are installed, it is unlikely that any alterations can be made to them should they fail to meet specifications.

The proposal to use short pilings gives rise to serious health, safety and environmental issues. It is a compelling safety issue that requires scrutiny now (1) because of the potential impact of such a design change; and (2) because the consideration of this issue is necessary to protect both the interest of the Intervenor and the interest of the public.

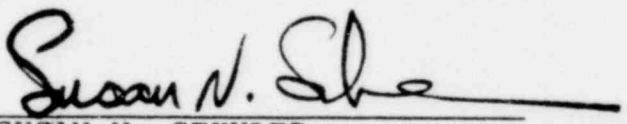
The Board should not defer this issue to the operating license proceeding on the basis of assurances by only one or two of the parties involved that any safety questions arising from the implementation of the short pilings proposal will be successfully

resolved in the future. Only after consideration of issues raised and evidence presented by all the parties can the Board make a determination as to whether or not reasonable assurance exists that safety questions can be resolved at the time of the operating license proceeding.

Respectfully submitted,

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NUCLEAR REGULATORY COMMISSION

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CERTIFICATE OF SERVICE

I hereby certify that copies of "STATE OF ILLINOIS RESPONSE TO BOARD QUESTIONS REGARDING THE SHORT PILING ISSUE" in the above-captioned proceeding have been served on the following by deposit in the United States mail, first class postage prepaid this 25th day of August, 1980.

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SUBSCRIBED AND SWORN TO
BEFORE ME THIS 25th DAY
OF AUGUST, 1980



Notary Public