

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD



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

PORTER COUNTY CHAPTER INTERVENORS'
ARGUMENTS IN SUPPORT OF THE ADMISSIBILITY
OF "NEWLY-FILED CONTENTIONS"

Pursuant to the Board's Order Following Special Prehearing Conference ("Order") (pp. 52, 69), Porter County Chapter of the Izaak Walton League of America, Inc., Concerned Citizens Against Bailly Nuclear Site, Businessmen for the Public Interest, Inc., James E. Newman and Mildred Warner ("Porter County Chapter Intervenors"), by their attorneys, submit the following arguments in support of Contentions R-I 1 through R-I 15, which are set forth in full in "Porter County Chapter Petitioners' Objections to, Comments on, Requested Revisions of, and Reworded Contentions in Response to Provisional Order Following Special Prehearing Conference" (pp. 9-17), filed June 30, 1980.*

* We understand the Board to have ruled (Order, p. 51) that these contentions have been timely filed. Accordingly, we do not discuss either the timeliness issue or NIPSCO's position that no incorporation by reference is allowed.

Porter County Chapter Intervenors submit that under the test articulated by the Order each of the "newly-filed contentions" should be admitted and litigated in this construction permit extension proceeding. Under the standards set forth by the Board governing admissibility of contentions, a contention should be admitted if it either arises from reasons assigned for the delay in construction or is directly related to the prolonged period of construction and is not appropriate to abide the operating license hearing, or if it is a serious safety or environmental question that arose after the construction permit proceeding and cannot await the operating license stage. Porter County Chapter Intervenors submit that each of their "newly-filed contentions" comes within the Board's standard, and when considered together, they show that no "good cause" exists for the extension of the Bailly construction permit which NIPSCO seeks. At a minimum, Intervenors should be allowed sufficient discovery to enable them to establish a prima facie showing that the safety matters cannot be timely resolved.

The totality of the circumstances surrounding the Bailly plant are unique. The construction permit expired with the plant consisting of a hole-in-the-ground, less than 1% complete. Since that permit was issued on May 1, 1974, an extraordinary number of profoundly significant events have occurred which were not and could not have been considered in the construction permit proceeding. The extension sought is for a longer period of time than was permitted for construction under the original

permit. Never before has the NRC or the AEC conducted a construction permit extension proceeding with respect to a plant in such an early stage of construction.

Under the exceptional circumstances surrounding Bailly, a common sense approach compels the conclusion that these matters be considered. A compelling case exists for admitting these contentions in this proceeding and for questioning whether reasonable assurance of adequate protection of the public health and safety, and the environment, does exist. The time to consider these issues, never before considered in any hearing, is before Bailly is built. Any argument that consideration of these significant issues in this proceeding will destroy the two-stage licensing process of the Atomic Energy Act is without merit. The fact that, if the plant is built, there will be an opportunity for a hearing before operation commences cannot be a reason to make this good cause hearing into a sham. A common sense approach requires consideration of these significant matters.

R-I 1, 4 and 7. These contentions seek to introduce studies resulting from the March 28, 1979 accident at Three Mile Island, and in particular the effects, consequences and preventability of such accidents. The consequences of a Class 9 accident were not litigated in the Bailly construction permit hearings, and the fact that such an accident did occur shows that there are grounds to question whether all safety issues arising from such an accident at the Bailly plant could be resolved by the requested latest completion date. Indeed, the occurrence of the Class 9 accident at TMI is a compelling

reason for not resting on the Board's determination six years ago in the construction permit proceeding of reasonable assurance of the resolution of all safety issues. Finally, because NIPSCO, in its August 31, 1979 letter to the Commission requesting an extension of the Bailly permit relies on the delays caused by the TMI accident, NIPSCO itself has put this subject in issue.

R-I 2, 4, 7 and 9. These contentions seek to litigate recent nuclear power developments which have occurred since the issuance of the Bailly permit. NIPSCO has put these in issue by its reliance on unspecified new Commission regulations and guidelines as support for its new requested latest completion date of December 1, 1987. See NIPSCO letters dated February 7, 1979 and August 31, 1979. The question of NIPSCO's ability to comply with them thus arises from one of the assigned reasons for delay and is directly related to the requested prolonged period of construction. These developments are thus appropriate subjects for this extension proceeding. Each concerns fundamental design problems, and the fact that their existence has become known only since the issuance of the construction permit makes consideration of them in this proceeding all the more crucial. They each potentially involve the structure and components of the plant and there is no assurance that their resolution can wait until the operating license stage. At the very minimum, Intervenors should be allowed to litigate NIPSCO's technical ability to alleviate these problems prior to the requested latest completion date.

R-I 3, 5 and 6. These contentions seek to litigate the adequacy of the design of the Mark II containment vessel in light of knowledge about Mark II which has become known since the issuance of the construction permit, as well as similar new developments concerning the adequacy and safety of other General Electric components. Because the deficiencies alleged in the contentions were not known at the time of the issuance of the construction permit they could not have then been litigated. The developments listed in these contentions cast serious doubt on the Board's 1974 finding of "reasonable assurance" both because they could not have been considered at the construction permit stage, and because they involve major component parts of the plant.

R-I 2 and 8. These contentions seek to litigate the issue of spent fuel storage. The question of whether the proposed Bailly reactor would have adequate space in the containment vessel for such storage was not dealt with at the construction permit stage. If the issue is not resolved prior to the installation of the containment vessel, it will be incapable of resolution at all. Thus it is a matter which clearly "cannot abide the operating license stage". The fact that many operating reactors are applying for operating license amendments to allow for dangerous dense storage illustrates the significance of this safety issue.

R-I 10, 11, 12, 14 and 15. These contentions seek to put into issue the need for, and contents of, a new or supplemental Environmental Impact Statement (EIS) under the National Environmental Policy Act, 42 USC §4332 et seq. (NEPA). Porter County Chapter Intervenors submitted a more general NEPA contention as Contention 10 in their Joint Intervenors' First Supplement to Petition for Leave to Intervene,

filed February 26, 1980. These reworded contentions add detail and specificity to Contention 10. As reflected by Porter County Chapter Intervenors' Motion Concerning Environmental Impact Statement, filed August 25, 1980, it now is time for the Staff to determine whether or not it will prepare an EIS voluntarily, and, if it will not, for the Board to order it do so. While we realize that the admissibility of these NEPA contentions may not be ruled upon until the Staff makes its determination of whether it will prepare a new or supplemental EIS, we reiterate that now is the appropriate time for such a determination.

R-I 13. NIPSCO's financial capability to construct the Bailly plant is put in issue in this contention. To the extent that NIPSCO's financial incapacity is a reason for the delay thus far, this is already in issue by reason of the Board's ruling on Porter County Chapter Intervenors' Contentions 1 and 3. This contention adds further specificity to those earlier contentions. Moreover, this contention seeks consideration of NIPSCO's financial ability to build the plant, even apart from whether it was a reason for the delay. The significant new facts which arose after the construction permit was issued and NIPSCO's ability to finish the plant obviously should be determined before construction proceeds further.

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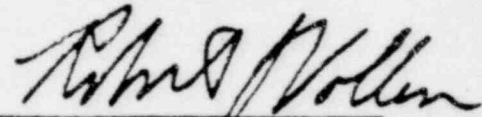
For the foregoing reasons, all of Porter County Chapter
Intervenors' "newly-filed contentions" should be admitted in
this proceeding.

DATED: August 28, 1980

Respectfully submitted,

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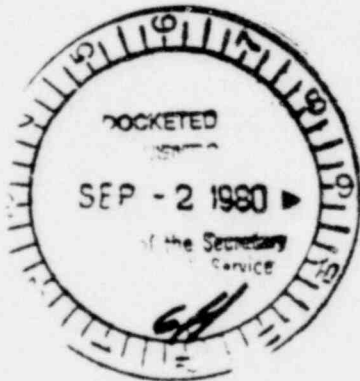
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CERTIFICATE OF SERVICE

I hereby certify that I served copies of the foregoing Porter County Chapter Intervenor's Arguments in Support of the Admissibility of "Newly-Filed Contentions" on all persons on the attached Service List, by causing them to be deposited in the U. S. mail on August 28, 1980, first class postage prepaid.


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