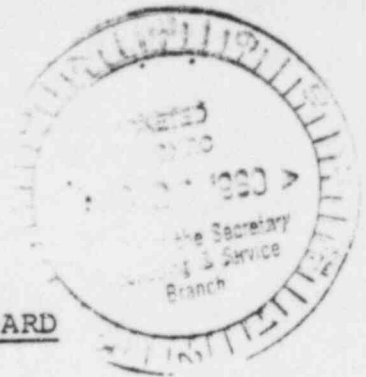


UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD



In the Matter of )  
 ) Docket No. 50-367  
 ) (Construction Permit  
NORTHERN INDIANA PUBLIC SERVICE )  
COMPANY ) Extension)  
 )  
(Bailly Generating Station, ) August 28, 1980  
Nuclear-1) )  
\_\_\_\_\_ )

NIPSCO'S RESPONSE TO REVISED CONTENTIONS

I. Introduction

On February 26, 1980, Illinois and the Porter County Chapter Intervenors submitted contentions which incorporated by reference their December 20, 1979, petitions.\*/ Those petitions in turn incorporated by reference their joint petition of June 29, 1979.\*\*/ The June 1979 petition in turn incorporated petitions filed with NRC in 1976 by Porter County

\*/ "Supplemental Petition of the State of Illinois," p. 1 (February 26, 1980); "Joint Intervenors' First Supplement to Petition for Leave to Intervene," p. 18 (February 26, 1980). Illinois and the Porter County Chapter Intervenors had filed essentially identical petitions on December 20, 1979, entitled "Petition for Leave to Intervene".

\*\*/ "Joint Supplement to Requests for Hearing," p. 11 (June 29, 1979).

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Chapter Intervenors and Illinois.<sup>\*/</sup> These last three petitions were filed prior to publication of the Notice of Opportunity for Hearing on the request for a construction permit extension (44 Fed. Reg. 69,061 (1979)) and the Licensing Board was unfamiliar with their contents at the special prehearing conference held on March 12-13, 1980. Consequently, the Board deferred ruling on incorporated contentions and ordered the Porter County Chapter Intervenors to submit reworded contentions in substitution for those incorporated contentions which it wished the Board to consider.<sup>\*\*/</sup> Porter County Chapter Intervenors submitted fifteen revised contentions which Illinois adopted as its own.<sup>\*\*\*/</sup> After holding that these revised contentions were timely-filed, the Board directed the parties "to submit arguments in support of, or

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<sup>\*/</sup> Porter County Chapter et al. "Request to Institute a Proceeding, and Motion, to Suspend and Revoke Construction Permit No. CPPR-104" (November 24, 1976); Illinois "Request to Institute a Proceeding, and Motion, to Suspend and Revoke Construction Permit No. CPPR-104" (December 15, 1976).

<sup>\*\*/</sup> "Provisional Order Following Special Prehearing Conference," pp. 49-50 (May 30, 1980).

<sup>\*\*\*/</sup> "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 (June 30, 1980); "State of Illinois Response to Provisional Order Following Special Pre-hearing Conference," p. 9 (June 30, 1980).

opposition to, the admissibility of these newly-filed contentions."\*/ Pursuant to the Board's Order, Northern Indiana Public Service Company (NIPSCO) hereby submits its response to the revised contentions of the Porter County Chapter Intervenor and Illinois (hereinafter "intervenor").

## II. Arguments on Revised Contentions

Porter County Chapter has submitted fifteen revised contentions, numbered R-I to R-I 15. Of these, Contentions R-I 1 to R-I 9 and R-I 13 pertain to health and safety issues. Contentions R-I 10 to R-I 12 and R-I 14 to R-I 15 deal with environmentally-related issues. We will discuss each group separately.

### A. Health and Safety Contentions

The revised health and safety contentions cover a wide spectrum of issues, ranging from implications of the TMI accident to the financial ability of NIPSCO to design and construct Bailly. However, none of the health and safety issues raised by these contentions is related to a cause of the delay in construction of Bailly. In our view, Indiana and Michigan Electric Co. (Donald C. Cook Nuclear Plant, Units 1 and 2), ALAB-129, 6 AEC 414 (1973), limits the issues in an extension proceeding to those which are related to a cause

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\*/ "Order Following Special Prehearing Conference" (Order), p. 52 (August 7, 1980).

of delay in construction.<sup>\*/</sup> The health and safety issues proposed must therefore be rejected.

Although the Board did not issue a definitive ruling on its jurisdiction to consider health and safety contentions unrelated to a cause of delay in construction, it did state that, at most, the Board would have jurisdiction to admit and consider these contentions only if they relate to "compelling safety matters" and the intervenors make "a convincing prima facie showing that the safety matter alleged will not be satisfactorily resolved by the new completion date of the facility . . . ."<sup>\*\*/</sup> The intervenors have not even attempted to do so with respect to their contentions and these contentions must, therefore, be dismissed even under the Board's suggested theory of scope. In fact, as we understand the Order, the Board has already so concluded in apparently rejecting similar contentions proposed by Local 1010.<sup>\*\*\*/</sup>

In addition to this general defect, most of the contentions contain specific faults which warrant their exclusion from this proceeding. We will discuss each contention and its faults individually.

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<sup>\*/</sup> See "NIPSCO's Objections to Provisional Order Following Special Prehearing Conference," pp. 17-26 (June 30, 1980).

<sup>\*\*/</sup> Order, pp. 28-29.

<sup>\*\*\*/</sup> Petition to Deny Permit (December 20, 1979) contains contentions on Reg. Guide 1.97, generic safety issues, ATWS, worker exposures, fuel pool size, material selection and control, and plant cost which we understand to have been denied although that ruling was not expressly made.

Contention R-I 1

This contention refers to the occurrence of the TMI accident and to subsequent studies regarding that accident. It contains no allegations regarding Bailly and does not identify any defects in the plant or request any corrective measures. In short, Contention R-I 1 raises no litigable issue; it is, in effect, a statement of fact. Consequently, it lacks the attributes of a contention and must be rejected.\*/

Contention R-I 2

This contention states that the Board must consider other "developments," including the shutdown of five plants in 1979 "because of potentially inadequate design to withstand earthquakes; the 1979 Interagency Review Group on Nuclear Waste Management Report . . . ; and the 1978 Risk Assessment Review Group Report . . . ." The contention does not state the manner in which these subjects are to be "considered," nor does it indicate the relevance of these subjects to Bailly's extension. Consequently, this contention lacks the necessary specificity and basis under 10 C.F.R. § 2.714(b), and it must be rejected.

Contention R-I 3

This contention states that serious unresolved questions exist "about the safety of the Mark II containment system."

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\*/ The Board has previously rejected related contentions pertaining to the TMI accident. Order, p. 61.

This contention does not provide a nexus between the generic issue and the Bailly plant. To be admissible a contention pertaining to a generic safety issue, inter alia, must allege:

that the fashion in which the application deals with the matter in question is unsatisfactory, that because of the failure to consider a particular item there has been an insufficient assessment of a specified type of risk for the reactor, or that the short-term solution offered in application to a problem under staff study is inadequate.

(Gulf States Utilities Co. (River Bend Station, Units 1 and 2), ALAB-444, 6 NRC 760, 773 (1977).) Contention R-I 3 contains no such allegations or bases therefor. Moreover, the Board has previously ruled that contentions regarding the Mark II containment are not admissible in this proceeding.<sup>\*/</sup> Finally, the proposed contention is vague and unspecific. It must be rejected.

Contention R-I 4

This contention states that NIPSCO has not "taken into account" Regulatory Guide 1.97 in the design of Bailly, and that the plant design is inadequate because it lacks sufficient post-accident monitoring capabilities. Initially, it should be noted that compliance with regulatory guides is not mandatory, and a licensee may utilize a method different from that specified in a regulatory guide in order to satisfy the Commission's regulations. (River Bend, supra.) Moreover,

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<sup>\*/</sup> Order, pp. 65-66.



the intervenors have not specified the manner in which Bailly's post-accident monitoring system is inadequate. Consequently, this contention lacks the requisite specificity and basis required by Section 2.714(b), and it must be rejected.

Contention R-I 5

This contention states that River Bend, NUREG-0510, and "the Reed Report" list "numerous generic safety issues which have not yet been resolved" and identify "safety items which need improvement." However, the contention does not specify the relationship of these issues to the Bailly plant, nor does it satisfy the criteria of River Bend, supra, for the admission of a contention pertaining to generic safety issues. Consequently, this contention must be rejected.

Contention R-I 6

This contention states that "anticipated transients without scram" (ATWS) is an unresolved safety issue, and that Bailly must be designed and constructed to accommodate the possible solutions to ATWS contained in NUREG-0460. In fact, the Bailly plant must satisfy whatever requirements concerning ATWS are applicable when the operating license is sought. These may or may not be the measures proposed in NUREG-0460. It should not be forgotten that the ATWS issue was considered in the construction permit proceeding, and the licensing board found that "adequate provisions will be incorporated in the

design of the Bailly nuclear facility to assure adequate protection against the effects of common mode failures and anticipated transients without scram."<sup>\*</sup>/ Finally, the contention does not satisfy the criteria of River Bend, supra, for admission of a generic issue in a proceeding. Consequently, this contention must be rejected.

Contention R-I 7

This contention states that NIPSCO has not dealt with problems similar to those experienced at TMI with respect to "worker exposure in attempting to mitigate the effects of the less-than-Class 9 accident." This contention is extremely vague and unspecific and it is difficult to ascertain precisely what the intervenors desire to litigate. One might assume that they do not seek to litigate now whether unidentified health physics operating procedures meet the as-low-as-reasonably-achievable standard but that is not clear. If the intervenors are alleging that workers will incur excessive doses because the plant has been improperly designed, they have not indicated which particular systems at Bailly are inadequate and have not stated a basis for the allegation of insufficiency. The mere assertion that problems have been experienced at other plants does not qualify as a valid contention. Consequently, this contention lacks the specificity and basis required by Section 2.714(b) and it must be rejected.

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<sup>\*</sup>/ Northern Indiana Public Service Co. (Bailly Generating Station, Nuclear-1), LBP-74-19, 7 AEC 557, 578 (1974).



Contention R-I 8

This contention states that NIPSCO has allowed insufficient size for the spent fuel pool "in view of the lack of alternative storage and disposal facilities for spent fuel." The contention is immaterial to any applicable legal standard, since the Commission's regulations do not require Bailly to accommodate all of the spent fuel generated at the plant. To the extent that NIPSCO may be required at some future date to apply for an amendment to expand the capacity of its spent fuel pool, the environmental and safety consequences of such an amendment need only be considered if and when such an amendment is requested. (Minnesota v. NRC, 602 F.2d 412, 416 n.5 (1979).) Moreover, the Commission has undertaken a rulemaking concerning the availability of off-site storage and disposal of spent fuel and has directed that issues relating thereto should not be considered in individual licensing proceedings during the rulemaking proceeding. (44 Fed. Reg. 61,372 at 61,373 (1979).) Consequently, this contention is inadmissible.

Contention R-I 9

This contention states that the operating history of boiling water reactors indicates the existence of problems regarding "pipe cracks, vessel cracks, sparger cracks and control rod failures" and that NIPSCO has not demonstrated the adequacy of "material selection and control to avoid such problems." However, the mere assertion that problems have been experienced at

other plants is an insufficient basis for a contention. This contention lacks the requisite specificity and basis to be admissible pursuant to Section 2.714(b).

Contention R-I 13

This contention alleges that the current estimated cost of construction of Bailly casts serious doubt upon "the financial ability of NIPSCO to design and construct the Bailly plant, without seriously impairing the financial position of the company." If the intervenors are alleging that financial impairment of NIPSCO should be an issue in this proceeding separately and apart from the ability of NIPSCO to construct and operate a safe plant, their contention must be rejected since the NRC has no jurisdiction over purely economic issues. If the intervenors are alleging that financial impairment of NIPSCO would render it unable to engage in proposed activities in accordance with the Commission's regulations, the contention should be rejected since this issue was litigated in the construction permit proceeding and NIPSCO was found "financially qualified to design and construct the proposed Bailly facility."\*/

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\*/ Bailly, supra, 7 AEC at 567. This Board has previously rejected a related contention pertaining to the increase in the cost of construction. Order, pp. 59-60.

B. Environmental Contentions

Contentions R-I 10 to R-I 12 state that, before an amendment can be issued extending the construction permit, the Staff must issue a new environmental impact statement (EIS) or a supplement to the final environmental statement for the construction permit, or a revised cost-benefit analysis. Contentions R-I 10, R-I 14, and R-I 15 state that certain environmental issues must be considered. The Board previously deferred ruling on similar contentions until the Staff completes and issues its environmental evaluation<sup>\*/</sup> and we assume that these revised contentions will also be deferred. Consequently, we will not respond to these contentions at this time.<sup>\*\*/</sup> If the Board desires not to defer its consideration of all or part of these contentions, we are prepared to submit a response promptly upon notification by the Board.

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<sup>\*/</sup> Order, p. 61.

<sup>\*\*/</sup> We continue to rely upon our arguments presented in "NIPSCO's Response to Petitions Filed in Response to Notice for Opportunity for Hearing," pp. 32-35 (January 18, 1980). The environmental review in connection with an extension considers the incremental impacts associated with the extension. An extension cannot be used as an occasion to reopen or reconsider findings made in the construction permit proceeding.

III. Staff's Motion to Consolidate

We have received the NRC Staff's pleading "Position on Newly-Filed Contentions and Motion to Consolidate" dated August 22, 1980. In that document, the Staff requests consolidation in connection with any of these contentions which may be admitted. Such consolidation would permit either PCCI or Illinois to prosecute the admitted contention. NIPSCO supports the Staff's request and reserves the right to seek additional appropriate consolidation of parties and/or participation in this proceeding.

IV. Conclusions

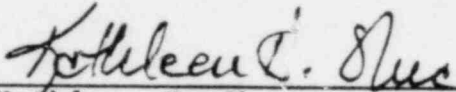
The revised health and safety contentions submitted by the intervenors do not relate to a cause of delay in construction. They also fail to satisfy the prima facie showing required by the Board's Order. Additionally, most of these contentions are objectionable for other reasons, including the lack of adequate specificity and basis. Consequently, these contentions must be rejected. Since the Board has deferred a ruling on previously submitted environmental contentions, we assume that the Board will defer a ruling on the revised environmental contentions. Therefore, we have not responded to these contentions in this pleading.

NIPSCO supports the Staff's motion for consolidation of prosecution of contentions.

Very truly yours,

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NUCLEAR REGULATORY COMMISSION

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COMPANY	)	Extension)
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(Bailly Generating Station,	)	August 28, 1980
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	)	

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CERTIFICATE OF SERVICE

I hereby certify that a copy of NIPSCO's Response to Revised Contentions was served on the following by deposit in the United States mail, postage prepaid, on this 28th day of August, 1980:

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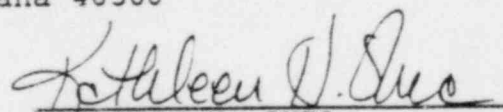
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