

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION



Atomic Safety and Licensing Board

Herbert Grossman, Chairman
Glenn O. Bright, Member
Dr. Richard F. Cole, Member

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

}
} Docket No. 50-367 CPA
} (Construction Permit Extension)

ORDER DENYING OBJECTIONS TO ORDERS
FOLLOWING SPECIAL PREHEARING CONFERENCE

On August 7, 1980, and August 25, 1980, this Board issued an Order Following Special Prehearing Conference and a Supplemental Order, respectively, which ruled on several intervention petitions and supplemental petitions filed in this proceeding. In order to ameliorate the problems created by an inadequate transcript of the conference proceedings, the Board had first issued a Provisional Order on May 30, 1980, to which objections from the conference participants were solicited and, subsequently, taken into account in the Board's final orders of August 7, 1980 and August 25, 1980. Objections have now been received to the final orders from the Applicant (NIPSCO), the Staff, the State of Illinois and the Porter County Chapter Intervenors. Many of the objections are repetitions of the previously-filed objections to the Board's Provisional Order which were taken into account and discussed in the final orders,

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and were filed presumably to protect the parties from any suggestion of waiver of the original objections. The Board denies those objections without further discussion. Only the new matters raised will be discussed below.

NIPSCO's Objections

NIPSCO's objection to the scope of PCCP Contentions 1 and 3 and Illinois Contention 2, if sustained, would restrict intervenors' discovery on the actual reasons for the delay in construction only to reasons that are already known to the intervenors. The Board intends that intervenors be given full opportunity to discover all of the reasons. To the extent, however, intervenors may attempt to utilize these contentions to discover matters not relating to the actual reasons for delay or the reasonableness of the requested extension, as NIPSCO suggests might be attempted, the Board will not hesitate to take protective action upon appropriate objection or motion. Moreover, the Board has been careful to distinguish between the scope of discovery and the scope of any prospective hearing on these contentions, the latter being more limited. (Order of August 7, 1980, pp. 53-54)

With regard to NIPSCO's request for clarification of the Board's admission of PCCP Contention 7 and Illinois Contention 5, dealing with the question of technical competency, and for clarification of the Board's limiting the contentions

regarding dewatering, we consider the wording of our August 7, 1980 Order clear enough. Without endorsing NIPSCO's wording, we see nothing in its statements regarding its understanding of the Board's Order which shakes our confidence in the Order's clarity. We would expect that any paraphrasing by the Board of its Order, resulting in there being two versions outstanding, would more likely lead to ambiguity than resolve misunderstandings. Any disputes that may arise during the course of specific discovery will be resolved when appropriate.

NIPSCO's objections to the Board's failure to rule on all contentions filed before the prehearing conference were resolved by the Board's Supplemental Order of August 25, 1980, which ruled on the admissibility of the contentions that had been inadvertently omitted from the August 7, 1980 Order.

Staff's Objections

The Staff's objection to the Board's ruling on the ash pond seepage aspect of the construction dewatering contentions suggests the same communications problem between the Board and Staff that was apparent in the Staff's objections to the Provisional Order. While the Staff presents (p. 3) as a possible litigable issue in this proceeding an issue which fits the scope of the dewatering contention admitted by the Board, it continues to object to an issue not admitted by the Board, i.e., "the environmental effects of sealing the ash ponds." Had NIPSCO not understood (NIPSCO Objections, pp. 10-11) that the sealing of

the ash ponds is an issue in this proceeding "only as it relates to the incremental effects of the prolonged period of dewatering, and that the sealing of the ash ponds in and of itself has no significance to this proceeding," we might suspect that the problem in communication lies with the Board's Order. Apparently, it does not.

If, however, Staff's understanding of the Board's Order is the the same as NIPSCO's (and the Board's), but the Staff merely disagrees with it, the Board sees no reason to change the ruling.

Illinois' Objections

The State of Illinois objects to the Board's rejection of its Contention 6, relating to siting. In addition to renewing its objection to the Board's ruling out siting and evacuation contentions for the reasons stated in the Board's prior orders, Illinois points out that its Contention 6 referred also to an alleged alteration of the physical site subsequent to the issuance of the construction permit that presumably made the site unsafe for construction.

Although not so stated by Illinois, the origin of this portion of Contention 6 appears to be the report of the Advisory Committee on Reactor Safeguards to the Chairman of the Nuclear Regulatory Commission in response to questions directed to the ^CRS on the short pilings proposal. Northern Indiana Public

Company (Bailly Generating Station Nuclear - 1), CLI 79-11, 10 NRC 733, 745 App. A. (1979). The ACRS report identified as a potential safety issue arising from use of shorter piles the disturbance of the soil resulting from the installation of exploratory longer piles with the aid of high pressure water jets. The ACRS recommended (pp. 746-747) certain procedures to remedy the disturbance of the soil, to which NIPSCO agreed.

For the reasons stated in our August 7, 1980 Order, the Board will not hear the evacuation and siting issues related to the geographic location of Bailly. Furthermore, safety matters that arise during construction will ordinarily be heard at the operating license proceeding. However, the Board has admitted a contention relating to the incremental effect of the prolonged period of dewatering, and has before it contentions on which it has not yet ruled relating to the installation of short pilings.

To the extent that the prolonged period of dewatering is alleged to cause an unsafe condition, that allegation will be heard as part of the dewatering contentions already admitted. To the extent that any activity relating to the design of the pile foundations is alleged to have created safety problems, the matter will be heard as part of the contentions regarding the short pilings if those contentions are admitted. If the Board rejects those contentions, Illinois may raise this issue at the operating license proceeding, if it desires. We discern

nothing additional in this contention that would constitute a showing that a compelling safety issue exists that cannot abide the operating license proceeding than has been presented in the contentions dealing primarily with the short pilings proposal.

Porter County Chapter Intervenors' Objections

With regard to intervenors' objection to the Board's denial of PCCP Contention 9, the Board continues to view the alleged nexus between the accident at TMI-2 and the requested extension as tenuous and insufficient to permit hearing TMI-related matters in this proceeding. The intervenors' reliance upon the Staff's preoccupation with TMI's contributing to the delay in the completion of the facility does not afford a basis for litigating the particulars of the TMI accident.

As to the early stage of construction's being considered a special circumstance requiring a consideration of TMI-related matters in this proceeding, the Commission's Statement of Policy dated June 16, 1980 (45 Fed. Reg. 41738, 41739) which concluded that the list of TMI-related requirements for new operating licenses found in NUREG-0694 is necessary and sufficient for response to the TMI-2 accident, signifies to us the Commission's intention that those TMI-related matters that were not heard at the construction permit hearing should abide the operating license proceeding.

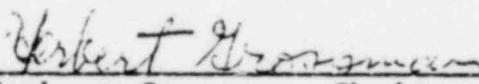
With regard to the siting aspect of the objection to our denial of Contention 9, intervenors may refer to the reasons given by the Board in rejecting the siting contentions. The Appeal Board is now considering that matter on appeals filed by the City of Gary petitioners and Dr. Schultz.

Conclusion

For the reasons stated above, the objections discussed above are denied. All of the other objections concern matters previously brought to the attention of the Board and ruled upon in the Board's Orders of August 7, 1980 and August 25, 1980. The Board sees no reason to change its rulings. All of the objections are denied.

BY ORDER OF THE BOARD.

FOR THE ATOMIC SAFETY AND
LICENSING BOARD


Herbert Grossman, Chairman

Dated at Bethesda, Maryland
this 2nd day of October, 1980.