

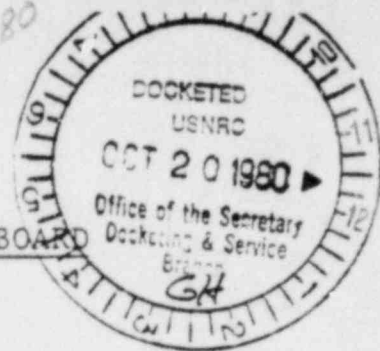
POOR ORIGINAL

RELATED CORRESPONDENCE

Oct 17, 1980

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'  
MOTION CONCERNING DEPOSITION OF M. DAVID LYNCH

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, move the Board to enter an order directing that the deposition of M. David Lynch of the NRC Staff be taken at the offices of Business and Professional People for the Public Interest, Inc., 109 N. Dearborn, Suite 1300, Chicago, Illinois, on a date to be mutually agreed upon or ordered by the Board.

In support of this motion, Porter County Chapter Intervenors state as follows:

1. On September 17, 1980, Porter County Chapter Intervenors served their First Request for Designation of Witness or Witnesses Pursuant to 10 CFR §2.720(h)(2)(i), asking that the Staff designate a witness or witnesses for a deposition to be taken commencing on October 15, 1980, at the office of one of the attorneys for Porter County Chapter Intervenors in Chicago, Illinois.

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2. In response, Richard J. Goddard, counsel for the NRC Staff, sent a letter dated October 7, 1980 to Robert J. Vollen, one of the attorneys for Porter County Chapter Intervenors, a copy of which is attached hereto. The October 7, 1980 letter and telephone conversations between Mr. Vollen and Mr. Goddard on October 14, 1980 and Mr. Vollen and Mr. Steven C. Goldberg, another attorney for the NRC Staff, on October 15, 1980, have led counsel for Porter County Chapter Intervenors to conclude that while counsel probably will be able to agree upon a date for the deposition of Mr. Lynch, no agreement can be reached as to the place for the deposition. No Staff witness appeared for deposition on October 15, 1980 pursuant to Porter County Chapter Intervenors' First Designation. Accordingly, Porter County Chapter Intervenors move the Board to order that the deposition of Mr. Lynch be taken in Chicago, Illinois

3. All of the persons participating in or likely to be interested in attending the deposition are located in or near Chicago, except Mr. Lynch and the NRC Staff counsel. Counsel for Porter County Chapter Intervenors and for the State of Illinois are located in Chicago. Counsel for NIPSCO, William H. Eichhorn, who has been present at all previous depositions in this proceeding, is located in Hammond, Indiana, less than an hour's drive from downtown Chicago. NIPSCO, which might want one or more of its employees to attend the deposition of Mr. Lynch, also is located in Hammond, Indiana. George and Anna Grabowski and Local 1010 of the United Steelworkers of America also are located in northern Indiana, near Chicago. Although

the Grabowskis and Local 1010, neither of whom are represented by counsel in this proceeding, have not attended the depositions of NIPSCO personnel thus far taken, they may desire to be in attendance at Staff depositions, particularly the deposition of the Project Manager on Bailly. Their opportunity to do so obviously would be greatly enhanced if the deposition is taken in Chicago, near where they are located, rather than requiring that they travel to Bethesda, Maryland.

4. An attorney for the Staff has attended the depositions of NIPSCO personnel thus far taken in Hammond, Indiana, and we understand that one is planning to attend the depositions of NIPSCO personnel scheduled to be taken in Chicago. The deposition of Mr. Lynch can be scheduled at a time when a Staff attorney will be in the Chicago area for another deposition in this proceeding.

5. Accordingly, only one person, the expenses of whom would be paid by the United States Government, would have to travel specifically for Mr. Lynch's deposition if it is taken in Chicago, as compared to all of those who would or might be required to undertake the travel expense if Mr. Lynch's deposition is taken in Bethesda.

6. As indicated in the memoranda from Mr. Lynch dated May 12, 1978 and April 2, 1980, copies of which are attached hereto, on at least two occasions, representatives of the NRC Staff, including Mr. Lynch, Staff counsel and a number of other persons, have come to Chicago for meetings concerning aspects of the Bailly plant.

While we do not know whether those meetings were held in Chicago for the convenience of NIPSCO or its contractors, or to reduce travel expenses of NIPSCO or its contractors, or for some other reason, the fact is that the NRC Staff has previously incurred the travel expenses of bringing a substantial number of persons, including Mr. Lynch, to Chicago for meetings concerning the Bailly plant. No valid reason exists for the NRC Staff not to be required to incur the travel expense of bringing one person to Chicago for a deposition at the request of Porter County Chapter Intervenors.

7. Requiring that the deposition of Mr. Lynch be taken in Bethesda will impose an unnecessary and inappropriate financial burden on Porter County Chapter Intervenors. The NRC is far more able to bear the financial expense of Mr. Lynch's traveling to Chicago than Porter County Chapter Intervenors are to bear the expenses of their counsel traveling to Bethesda. This disproportionate financial ability and the appropriateness of Commission action to reduce the financial burden on Intervenors has been recognized by the Commission in other respects. E.g., 10 CFR §2.712(f), and corresponding notice at 45 Fed. Reg. 49535 (July 25, 1980). In addition, holding the deposition in Chicago would be consistent with the Commission's policy of holding proceedings near a proposed nuclear plant site. See Appendix A to 10 CFR, Part 2, §I(a).

8. The Staff is a party to this proceeding, pursuant to 10 CFR §2.701(b), Mr. Lynch is the Bailly Project Manager, and the Staff has designated him as an appropriate person to testify at a deposition in this proceeding. Thus, unlike a case where the deposition of an uninterested or uninvolved person is sought, a requirement that a deeply involved employee of a party travel to

have his deposition taken is not inappropriate.

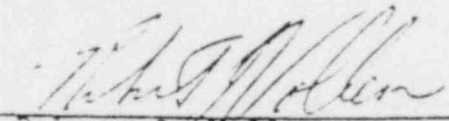
9. Under 10 CFR §2.718 the presiding officer has broad powers to regulate the course of proceedings, including powers over discovery and other procedural matters. Porter County Chapter Intervenors submit that under all the circumstances of this proceeding an order directing that the deposition of Mr. Lynch be taken in Chicago, Illinois is just and appropriate.

DATED: October 17, 1980

Respectfully submitted,

Robert J. Vollen  
Jane M. Whicher  
Edward W. Osann, Jr.  
Robert L. Graham

By



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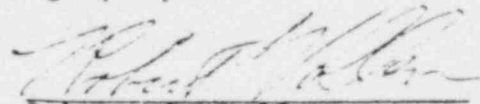
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CERTIFICATE OF SERVICE

I hereby certify that I served copies of the Porter County Chapter Intervenors' Motion Concerning Deposition of M. David Lynch, dated October 17, 1980, on all persons on the attached Service List, by causing them to be deposited in the U. S. mail on October 17, 1980, first class postage prepaid.

  
Robert J. Vollen

SERVICE LIST

POOR ORIGINAL

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UNITED STATES  
NUCLEAR REGULATORY COMMISSION  
WASHINGTON, D. C. 20555

October 7, 1980



Robert J. Vollen, Esq.  
c/o BPI  
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Chicago, Illinois 60602

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

Dear Mr. Vollen:

This letter is in response to the Porter County Chapter Intervenors' (PCCI) request for the designation of witnesses for deposition, dated September 17, 1980, and request for the production of NRC Staff documents, dated September 13, 1980, filed in the captioned proceeding.

Pursuant to the former request, the Staff will make Mr. M. David Lynch, the Bailly project manager, available for deposition on October 30 or 31, 1980, or some other mutually convenient date, at the NRC Staff offices located at 7735 Old Georgetown Road, Bethesda, Maryland. I can provide the name(s) of a local court reporter for your retention if needed. Mr. Lynch has been project manager on Bailly since 1973. No other Staff witnesses have been designated to date. Mr. Lynch will be prepared to address the matters advanced in the deposition request with the exception of those involving PCCI proposed Contention 3 (pile installation) which is not at issue in this proceeding.

With regard to PCCI's document request, the Staff has begun the compilation of the affected documents. They can be made available to you for inspection and copying at a mutually convenient time and place or copies of such documents can be forwarded to you as they are assembled. The Staff objects to portions of the request which will be specified at a later date.

Because of the volume of material on the Bailly docket, the Staff is uncertain whether all of the affected documents can be assembled by October 14, 1980 as requested. The Staff will exercise its best efforts to compile these documents in a timely manner.

Sincerely,

Richard J. Goddard  
Counsel for NRC Staff

cc: See page 2

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cc: Herbert Grossman, Esq.  
Dr. Richard F. Cole  
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Edward W. Osann, Jr., Esq.  
Robert L. Graham, Esq.  
George and Anna Grabowski  
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