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November 6, 1980

Ms. C. Jean Bishop, Secretary
Atomic Safety and Licensing Appeal Board
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Re: In the Matter of Northern Indiana Public
Service Company (Bailly Generating Station,
Nuclear - 1) Docket No. 50-367

Dear Ms. Bishop:

In accordance with our telephone conversation yesterday, in which you clarified the Appeal Board's interest in the parties' views as to the sufficiency of the reasons assigned for the Staff's conclusion that Mr. L. S. Rubenstein possessed the authority to issue the notice of opportunity for hearing in this proceeding, the City of Gary, et al. submit these brief comments.

The Gary petitioners question whether the Staff has demonstrated a proper delegation to Mr. Rubenstein. According to the Staff's letter of October 27, 1980, the only document existing at the time the notice was issued which was cited as conferring such authority on the Branch Chiefs of the Division of Project Management was the Licensing Project Manager's Handbook (December 30, 1977). Unlike the explicit delegations of authority to the Director of NRC and Director of the Division of Project Management which are contained in the sections of the NRC Manual cited in Mr. Goldberg's letter, the "Handbook" contains no language indicating a further delegation to the Branch Chiefs. The absence of a specific "delegation of authority" in the Handbook is emphasized by the explicit use of such delegation language in Mr. Denton's subsequent letter of October 16, 1980, which was, of course, issued after the November 26, 1979 notice of opportunity for hearing in this proceeding.

Moreover, while the NRC Manual was issued by the Commission, it is not clear who issued the Licensing Project Manager's Handbook. From Mr. Goldberg's letter, we know only that the Handbook was "distributed" to the Commission. Thus, even if the Handbook can be construed as containing a delegation, it is unclear whether the Handbook was issued by an authority with power to do so.

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While we therefore question the sufficiency of the reasons assigned in the Staff's response, the City of Gary, et al. do not at this time take a position on the question of what effect a defective notice would have on the validity of this proceeding. We do note, however, that NIPSCO and the NRC Staff have taken the position that, should the Staff approve NIPSCO's short pilings proposal, NIPSCO would be free to resume construction without any determination of the merits of their position in this extension proceeding. We assume their position would be the same even if the proceedings which have occurred thus far are found to be defective and substantial delays ensue before any good cause finding is made. It is the position of the City of Gary, et al. that the Atomic Energy Act would prohibit NIPSCO from beginning construction and the NRC from authorizing them to do so in this case without NRC first making a finding of good cause for an extension. See Section 185 of the Atomic Energy Act.

Sincerely,

Diane B. Cohn
Diane B. Cohn

DBC/ms
cc: Service List