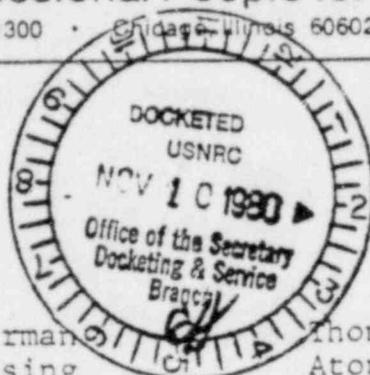




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November 6, 1980

Alan S. Rosenthal, Chairman
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U.S. Nuclear Regulatory
Commission
Washington, DC 20555

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Dr. John H. Buck
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U.S. Nuclear Regulatory Commission
Washington, DC 20555

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

Dear Mr. Chairman and Members of the Board:

This letter contains the comments of Porter County Chapter Intervenors on the staff's response, in its letter of October 27, 1980, to the Board's inquiry concerning the delegated authority of L. S. Rubenstein to issue the Notice of opportunity for hearing in this matter (the "Notice"). Although the Board's Memorandum and Order of October 28, 1980, permitting the parties to comment on that response, directed that comments be filed and served no later than November 5, 1980, in a telephone conversation on that date with Ms. C. Jean Bishop, Secretary to the Board, initiated by her in response to the undersigned's letter of November 3, 1980 to the Board, the undersigned was told that comments could be filed on November 6, 1980. This letter is being filed on that date.

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The staff response fails to demonstrate in at least two respects that Mr. Rubenstein was authorized to issue and sign the Notice.

First, there is a failure to demonstrate an authorized delegation to Mr. Rubenstein or someone in his position. The staff response describes a chain of delegation of authority from the Commission to the Director of Nuclear Reactor Regulation, and from him to the Director, Division of Project Management, and from him to the Branch Chiefs within the Division. The first link in that chain appears to have been authorized by the Commission's regulations. The second link appears to be authorized by the NRC Manual, itself apparently a Commission-promulgated document, although that cannot be ascertained from the sections transmitted with Mr. Goldberg's letter of October 28, 1980 to counsel and the parties. The sole cited authority for the last link in the chain, however, the delegation from the Director, Division of Project Management to the Branch Chiefs, is the "Licensing Project Manager's Handbook". There is no indication that that document, even if it contains the subdelegation claimed by the staff, was either authorized or approved by the Commission. Indeed, from the assertion in the staff's response that the Handbook was "distributed to the Commission", it might be inferred that it was neither authorized nor approved by the Commission. To the extent that the staff response may be suggesting some type of authorization by acquiescence on the part of the Commission, we know of no principle of law under which distribution of a handbook to the Commission can be deemed to be authority from the Commission for what is contained in that handbook.

In short, assuming that Mr. Rubenstein was in fact an "Acting Branch Chief" and assuming that an "Acting Branch Chief" has the same authority as a "Branch Chief", the staff response nonetheless fails to establish an authorized, valid delegation of authority to him to issue and sign the Notice.

Second, the staff response fails to demonstrate that the authority delegated includes the authority to do the act involved here - issue the notice. As we read it, with the exception of the last link in the chain, the subject matter of each of the delegations and subdelegations described in the staff response is the authority to issue reactor permits and licenses. While the last link, the delegation to the Branch Chiefs, does specifically refer to the authority to sign notices to the Federal Register, if that authority had not been delegated by the preceding links it could not validly be subdelegated by the last link. The sole authority in the staff response for the position that delegation of authority to issue reactor permits and licenses includes the authority to issue notices, is the bald assertion that the latter is a "concomitant duty" of the former. There is not even an explanation as to the reasoning to support that assertion.

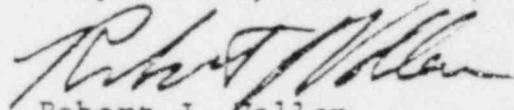
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Moreover, the assertion is made in an attempt to have it apply to amendments concerning which prior notice of opportunity is not required because of "no significant hazards consideration." It should be noted that there has never been any support in this proceeding for the position that the requested amendment involves no significant hazards consideration. Finally, 10 CFR §2.105(a)(4), relied upon in the staff response, refers specifically, and only, to the Commission, not to any delegate, and it applies to a situation where no hearing is to be held.

In sum, the staff response fails to show that, even if authority had been validly delegated to Mr. Rubenstein, it included the authority purported to have been exercised in issuing the Notice.

At this juncture, based upon the limited time available to consider the matter and lack of access to all of the pertinent NRC internal documents, Porter County Chapter Intervenor^s are unable to take a firm position as to whether or not Mr. Rubenstein did have the authority he purported to exercise in issuing the Notice. We do believe, however, that the staff response fails to demonstrate that he did have that authority. We hope that these comments will be of assistance to the Board.

Respectfully submitted,



Robert J. Vollen
One of the attorneys for
Porter County Chapter
Intervenor^s

RJV:pr

cc : All persons on attached Service List.

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