

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION  
ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges:  
Herbert Crossman, Chairman  
Glenn O. Bright  
Richard F. Cole



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

Docket No. 50-367 CPA  
(Construction Permit Extension)  
December 24, 1980

MEMORANDUM AND ORDER  
(Denying (1) Newly-Filed Contentions  
and (2) The Short Pilings Issue)

MEMORANDUM

(1) Newly-Filed Contentions

In their supplemental petitions, the State of Illinois (opening para.) and the Porter County Chapter Intervenors (PC/CI Contention 12) incorporated by reference unspecified issues that had been raised in documents filed with the N.R.C. during 1979 in support of requests for hearings not involving the requested extension. Pursuant to this Board's provisional and final<sup>1/</sup> orders following the special prehearing conference, intervenors were permitted to submit as timely-filed specifically worded contentions in place of their allusions to matters contained in the referenced documents.

<sup>1/</sup> Our final order, LBP-80-22, dated August 7, 1980, is found at 12 N.R.C. 191.

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PCCI submitted these "newly-filed" contentions, numbered "R-I [Reworded-Incorporated] 1" to "R-I 15", in their response to the Board's Provisional Order Following the Special Prehearing Conference. These contentions were simultaneously adopted in toto by the State of Illinois in its response to our provisional order.

Except for Contentions R-I 10-12, 14 and 15, relating to the alleged need for a new environmental impact statement or supplement to the final environmental statement, the newly-filed contentions are not directly related to the requested construction permit extension. They raise generic safety issues involving post-TMI considerations, Mark II containment design, post-accident monitoring, ATWS, etc., and site-specific safety issues that either had been resolved at the construction permit proceeding or are ordinarily deferred until the operating license stage. Most, if not all, of the issues were previously raised by these or other intervenors and rejected in prior orders on the grounds that no prima facie case has been made by the intervenors that these were compelling safety matters that could not abide the operating license proceeding. PCCI and the State of Illinois have made no further showing that these matters cannot abide the operating license stage and request (PCCI Arguments in Support of the Newly-Filed Contentions, dated August 28, 1980, p. 2) merely that they "be allowed sufficient discovery to enable them to establish a

prima facie showing" to that effect.

On that basis alone -- that the burden is on the petitioners in the first instance, without discovery, to make that required prima facie showing -- this Board would have been inclined to reject the contentions as not falling within the scope of the proceeding as delineated in our Order Following Special Prehearing Conference. However, because of the imminence of the Appeal Board's ruling on the petitions by the Gary Petitioners and Dr. Schultz, which was expected to shed further light on its decision in Indiana and Michigan Electric Co. (Donald C. Cook Nuclear Plant, Units 1 and 2) ALAB-129, 6 A.E.C. 414 (1973), we deferred ruling on these contentions.

On November 20, 1980, the Appeal Board issued Northern Indiana Public Service Company (Bailly Generating Station, Nuclear 1), ALAB-619, 12 N.R.C. \_\_\_\_\_, affirming this Board's rejection of the petitions of the Gary Petitioners and Dr. Schultz. As anticipated, it discussed its prior decision in Cook in a manner which offers further guidance to this Board. It read into the Cook decision a determination (Op. 17) that had previously escaped this Board, that an intervenor in an extension proceeding could "only" litigate issues that (1) arose from the reasons assigned to the requested extension and (2) could not abide the operating license proceeding. Considering that the newly-filed

contentions, with the possible exception of those relating to the environmental statements, are unrelated to the reasons assigned for the requested construction permit extension (the first prerequisite), this Board has no choice but to reject the contentions, without reaching the question of whether the issues can abide the operating license proceeding (the second prerequisite).

We make no rulings with regard to the environmental contentions pending the receipt of the Staff's determination of the type of environmental analysis to be made. Nevertheless, upon reviewing those contentions we do feel constrained to offer our opinion, that the National Environmental Policy Act of 1969 requires only incremental analyses and not those duplicative of prior analyses. See generally, Consumers Power Company (Big Rock Point Nuclear Power Plant) LBP-80-25, 12 N.R.C. \_\_\_\_\_ (Sept. 12, 1980), and the cases cited therein.

(2) Short Pilings Issue

The Board also deferred ruling on the short pilings issue <sup>2/</sup>

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NIPSCO's consultant had testified at the construction permit hearing that the company anticipated driving the foundation pilings to bedrock or glacial till. After the construction permit had issued, NIPSCO communicated to the NRC Staff its intention to install pilings extending only to the glacial lacustrine deposits. In Northern Public Service Co. (Bailey Generating Station, Nuclear 1) CLP-79-11, 10 N.R.C. 733 (1979), the Commission denied petitions to determine that the proposed change in design constituted a construction permit amendment involving significant hazards considerations that required a hearing. In our Order Following Special Prehearing Conference, LBP-80-22, supra, 12 N.R.C. at 198-204, we discussed the issues raised by intervenors concerning the merits of the short pilings proposal, and posed four questions to the parties.

to await the Appeal Board's decision on the City of Gary's and Dr. Schultz' petitions. Unfortunately, Bailly, ALAB-619, supra, is not quite as informative with regard to issues arising from the reasons assigned for the construction permit extension as with matters unrelated to the delay in construction, except to reaffirm that related matters might be heard if they could not appropriately abide the operating license proceeding. However, since ALAB-619 did not broaden the scope of Cook, supra, we need not look beyond the answers to the questions we posed to the parties on the short pilings issue<sup>3/</sup> to decide not to hear that issue in this proceeding.

To begin with, it is clear that, had the short pilings design proposal been in the present posture at the time of the construction permit hearings, the matter would have been considered by the Licensing Board. Despite Permittee's insistence that it is the option of an applicant to defer the operating license proceeding the consideration of design features such as the short pilings proposal (NIPSCO's Objections to Provisional Order, dated June 30, 1980, p. 9; NIPSCO's Response to Board Questions, dated August 25, 1980, pp. 2-4), it is inconceivable that a known design feature of this significance would not have been brought up

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<sup>3/</sup> See, fn. 2, supra. The questions are found at 12 N.R.C., p. 203.

by the Staff and heard by the board, even if the applicant had sought to defer it. It is also clear to us that only a preliminary, and not a dispositive, review could have been made by a construction permit board. Certainly, considering the uncertainties attendant to the actual placement of the pilings, a board could not now be in a position to offer a final verdict on that design feature. PCCI admit as much when they state (Response to Board's Question on the Short Pilings Issue, p. 4) that "an evaluation of pilings requires consideration of essentially an unknown quantity - i.e., the subsoil composition." In fact, the review of PCCI's and Illinois' submissions with regard to short pilings discloses no substantial reason for a board to deny the design change. Intervenors appear to assert merely that short pilings are a somewhat innovative design for nuclear facilities, which require close scrutiny by a licensing board or the N.R.C. Commissioners.

It is clear from reviewing the parties' responses to the Board's questions that the most drastic remedy that conceivably could result from a hearing on the short pilings design in its present posture would merely be the implementation of 10 C.F.R. § 50.35(a) to this design feature, under which a research and development program would be required to resolve any safety questions associated with it. Whether any such program sanctioned

by the Board would agree in every particular with the extensive program already adopted by the Permittee and Staff, as summarized in the Staff's Response to the Board Questions (Lynch Affidavit, pp. 3-8), is not critical in deciding whether a hearing on that issue should be held at this juncture. Nothing submitted to the Board suggests that there exists any material insufficiency in the program already adopted to test the short pilings design in its site-specific application to the Bailly facility. Consequently, we have no basis for finding that the absence of a board's approval of that specific testing program constitutes a compelling reason for determining that a hearing should be held now, rather than at the operating license stage.

ORDER

For the foregoing reasons, it is this 24th day of December 1980

ORDERED

That the newly-filed Contentions numbered R-I 1-9 and 13 are denied; and

That all contentions raised by Intervenors with regard to the merits of the short pilings proposal are denied.

FOR THE ATOMIC SAFETY AND  
LICENSING BOARD

Herbert Gissman, Chairman  
ADMINISTRATIVE JUDGE