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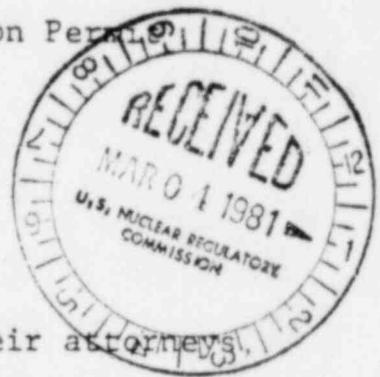
UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION  
BEFORE THE ATOMIC SAFETY AND LICENSING BOARD



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

Docket No. 50-367  
(Construction Permit  
Extension)

PORTER COUNTY CHAPTER INTERVENORS'  
RESPONSE IN SUPPORT OF THE  
ADMISSIBILITY OF CONTENTION 13



Porter County Chapter Intervenors, by their attorneys,  
submit this response in support of the admissibility of  
Contention 13, pursuant to the Order dated February 12,  
1981.\*

NIPSCO does not object to the admission of the first  
paragraph of Contention 13.\*\* (Northern Indiana Public  
Service Company's Response to Contention 13, dated February  
11, 1981.) Incredibly, the Staff opposes the admission

\* Although it appears from the Order that the Board considers  
that Contention 13 should have been brought to the Board's  
attention through motion, we are not aware of the require-  
ment for such a motion in the Commission's regulations.  
Further, NIPSCO's letter of November 26, 1980, on which  
the contention is based, was not submitted by motion. We  
do not understand why NIPSCO's "amendment" apparently does  
not require a motion and our contention does. To the  
extent, however, that a motion is required, we request  
the Board to treat this response as such a motion.

\*\* To the extent that NIPSCO's objection to the second para-  
graph of the contention (NIPSCO Response at p. 2) is an  
offer to withdraw the possibility of later raising any  
argument that the newly requested date is contingent on  
a future event, Porter County Chapter Intervenors are  
prepared to drop that portion of the contention which  
concerns the contingent nature of the request. NIPSCO  
has previously indicated it would forego such an argument  
with respect to its letter of August 31, 1980. See  
Order Following Special Prehearing Conference, dated  
August 31, 1980, at p. 54.

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of any part of Contention 13, apparently both on the grounds that Porter County Chapter Intervenors have not addressed the factors contained in 10 CFR §2.714(a) relative to "late-filed" contentions and that the contention is "duplicative" and its admission "would serve no useful purpose." (NRC Staff Response to Porter County Chapter Intervenors Request to Admit Contention Concerning NIPSCO's Letter of November 26, 1980, dated February 9, 1980.) The Staff position is ludicrous and its opposition frivolous. Contention 13 should be admitted.

Although implying that Contention 13 was not filed timely, the Staff nowhere identifies the time within which it should have been filed. Clearly, the contention could not have been filed 15 days prior to the prehearing conference held March 12 and 13, 1980, as contemplated by 10 CFR §2.714, since the subject it addresses did not come into existence until November 26, 1980. The Staff makes no suggestion as to why a contention filed less than two months after receipt of the information giving rise to its allegations should be viewed as being "late-filed." Particularly in the circumstances of this proceeding, the filing of Contention 13 on January 27, 1981 should not be deemed as late.

In any event, even if Contention 13 is viewed as having been filed untimely, by balancing the five factors set forth in 10 CFR §2.714(a)(1)(i)-(v), it should nonetheless be admitted. See CFR §2.714(b); Cincinnati Gas and Electric Company (William H. Zimmer), LBP-80-24, 12 NRC 231, 232 (1980); id., LBP 79-22, 10 NRC 213 (1979). As we show below, each of the five factors, to the extent applicable to admission of the contention at issue, weighs in favor of admitting Contention 13.

(i) Good cause, is any, for failure to file on time. The letter by Mr. Shorb, upon which this contention is based, is dated November 26, 1980, and was served that same day. It was obviously impossible for Porter County Chapter Intervenors to file this contention within the time specified by 2.714(b), inasmuch as the document was not then in existence. The availability of new information or documents has long been held to be a valid reason for accepting new contentions. Cincinnati Gas and Electric Company (William H. Zimmer), LBP 80-14, 11 NRC 570, 574 (1980).

(ii) The availability of other means whereby the petitioner's interest will be protected. It is apparent that a limited appearance statement at the hearing could not suffice to bring these issues before the Board.

Cf., William H. Zimmer, LBP-79-22, 10 NRC at 215 n. 2; id., LBP-80-24, 12 NRC at 237. Nor is there another forum, such as a state proceeding, available to raise the issues contained in the letter. See, Florida Power and Light Company (Turkey Point Nuclear Generating Units 3 and 4), LBP-79-21, 10 NRC 183, 193 (1979). This proceeding is the only available means to protect our interest in litigating these issues.

(iii) The extent to which the petitioner's participation may reasonably be expected to assist in developing a sound record. Although this factor appears to be applicable to the matter of intervention rather than to contentions, to the extent it applies to the circumstances at hand, the litigation of Contention 13 is essential to the development of a sound record. The NIPSCO letter, if accepted by the Board, becomes a part of NIPSCO's application for an amendment, the subject matter of this proceeding.

(iv) The extent to which the petitioner's interest will be represented by existing parties. The contention has not been raised by any other party. The Staff cannot be expected to adequately represent our interest in litigating this contention (see William H. Zimmer, LBP-79-22, 10 NRC at 215), particularly since it has taken

the position that the contention is inadmissible. Thus, admission of the contention is the only means by which our interests in litigating it will be protected.

(v) The extent to which the petitioner's participation will broaden the issues or delay the proceedings. This factor also appears to be inapplicable to the admission of Contention 13. In any event, the admission of Contention 13 would not result in any prejudice to either NIPSCO or the Staff. Any expansion of the issues results from NIPSCO's changing its application. No claim can be made that admission of Contention 13 will cause a delay in the scheduling of the hearing.

Apart from the timeliness of its filing, Contention 13 meets all other requirements for a valid contention and should be admitted in this proceeding. It identifies the matter which we seek to have litigated and the basis for it with reasonable specificity. 40 CFR §2.714(b). By any definition, it is within the scope of this proceeding.

The November 26, 1980, NIPSCO letter purports to supplement and amend NIPSCO's letters of February 7 and August 31, 1979. Contentions regarding matters raised in those two previous letters have been admitted in this proceeding, through Porter County Chapter Intervenors' Contentions 1 and 3, to the extent that the reasons they

state are not the actual reasons for the delay, that the actual reasons do not constitute "good cause", and that the latest completion date requested by the August 31 letter is unreasonable. (Order Following Special Prehearing Conference, dated August 8, 1980, at pp. 52-53.) There is no basis for distinguishing the admissibility of a contention based on the letter supplementing the previous two letters.

The Staff asserts that the contention is "unnecessarily duplicative" of Contentions 1 and 3, and that its admission "would serve no useful purpose." (Staff Response at p. 2) The Staff's position is clearly wrong: the reasonableness of December 1, 1987, as the latest completion date, as requested in the August 31 letter, is not the same as the reasonableness of December 1, 1989, as requested in the November 26 letter. The Staff's position that the apparent reasonableness of the extension period requested can be determined apart from its duration is absurd. Further, the November 26 letter raises other issues, such as the reasonableness of the six month mobilization period, not contained in Contentions 1 and 3. Thus, not only is the contention not duplicative, but its admission is essential for a full and fair hearing on whether NIPSCO can

show good cause for its requested extention until December 31, 1989.

For the foregoing reasons, Contention 13 should be admitted.

Dated: February 26, 1981

Respectfully submitted,

Robert J. Vollen  
Jane M. Whicher

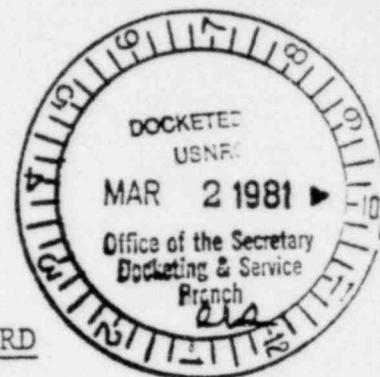
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CERTIFICATE OF SERVICE

I, Robert J. Vollen, hereby certify that I served copies of the Porter County Chapter Intervenors' Response in Support of the Admissibility of Contention 13 on all persons on the attached Service List, by causing them to be deposited in the U.S. mail, first class postage prepaid, on February 26, 1981.

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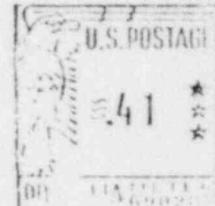
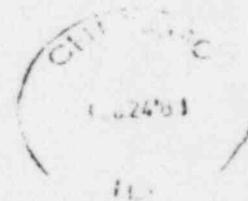
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