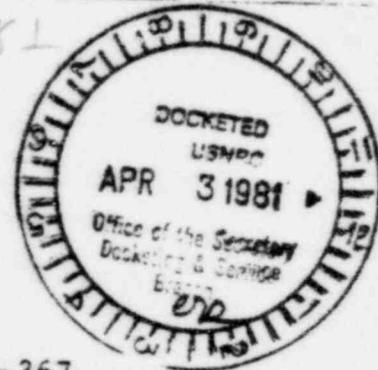


3/31/81

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)



NOTICE OF INTENTION TO SEEK STAY

Porter County Chapter Intervenors, by their attorney, hereby give notice to the Board and to all parties of their intention to seek, if necessary and when appropriate, an order preventing the commencement of construction of the Bailly plant, unless and until NIPSCO receives a valid extension of the latest completion date in the Bailly construction permit, and until all legal proceedings in connection therewith are fully resolved.

All construction at the Bailly site has been halted since September, 1977 pursuant to the Staff's direction, pending its review and acceptance of NIPSCO's plan to build the plant on a foundation of short pilings. (See letter of February 11, 1978, from Roger S. Boyd, Director, Division of Project Management, Office of Nuclear Reactor Regulation to Northern Indiana Public Service Company, Attn: Russell J. Bohn.) At that time Bailly was, as it remains today, a hole in the ground, about 1% complete. The latest completion date in the Bailly construction permit is September 1, 1979.

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Section 185 of the Atomic Energy Act provides in part:

"Unless the construction or modification of the facility is completed by the completion date, the construction permit shall expire, and all rights thereunder are forfeited, unless upon good cause shown, the Commission extends the completion date."

This proceeding is to determine whether NIPSCO can show good cause for the extension it requests to 1989 and whether that extension should be granted. It is the position of Porter County Chapter Intervenors that no construction can lawfully commence before a valid extension is granted. Under the circumstances, including the fact that the permit will have expired more than two years prior to the proposed commencement of construction, neither section 9 of the Administrative Procedure Act, nor 10 CFR §2.109, authorizes construction prior to the issuance of a valid extension.

On March 5, 1981, the Staff wrote a letter to NIPSCO, transmitting its safety evaluation report of the short pilings plan, indicating its acceptance of the plan and purporting to authorize NIPSCO to drive safety-related short piles. In the view of Porter County Chapter Intervenors, that purported authorization is invalid - it violates the Atomic Energy Act, the Administrative Procedure Act and the National Environmental Policy Act. However, NIPSCO has committed to not commence construction for at least

six months after March 5, 1981; i.e., until at least September 5, 1981. (See letter dated March 11, 1981, from Kathleen H. Shea, one of the attorneys for NIPSCO, to Robert J. Vollen, one of the attorneys for Porter County Chapter Intervenors, a copy of which is attached hereto and marked "Exhibit A", and NIPSCO's letter of November 26, 1980, to Harold R. Denton, Director, Nuclear Reactor Regulation, at p. 2.) Since NIPSCO has committed to do voluntarily precisely what would be achieved by a stay order, Porter County Chapter Intervenors have not sought such an order.

Under the unique facts surrounding Bailly and under the applicable law, it seems clear that all requirements for a stay pendente lite are present. Allowing construction to commence prior to a valid extension of the construction permit would violate the Atomic Energy Act, the Administrative Procedure Act and the National Environmental Policy Act. NIPSCO will not be able to show "good cause" for extension of its now-expired construction permit, and thus it is likely that Porter County Chapter Intervenors will prevail on the merits of their position. The interests of Porter County Chapter Intervenors would be irreparably injured if construction were to commence before such an extension. A stay would involve relatively little, if any, harm to

NIPSCO, inasmuch as no construction will have taken place for almost four years. Protection of the public interest and of the interests of Porter County Chapter Intervenors demands that construction not be commenced.

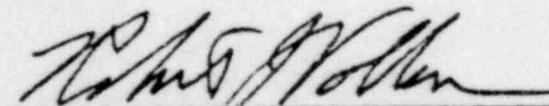
In the event that NIPSCO does not seek to commence construction there will, of course, be no occasion for Porter County Chapter Intervenors to seek a stay. However, in the absence of NIPSCO's continued agreement or the continued prevention of construction by some other means, Porter County Chapter Intervenors intend to seek an order which will prevent construction after September 5, 1981. Such an order will be sought at a time sufficiently in advance of September 5, 1981, to provide orderly presentation and consideration of Porter County Chapter Intervenors' position.

The purpose of this notice is to eliminate any possible ambiguity as to Porter County Chapter Intervenors' position and to eliminate any further question concerning why Porter County Chapter Intervenors did not seek a stay immediately after the March 5, 1981, Staff letter to NIPSCO.

Dated: March 31, 1981 Respectfully submitted,

Robert J. Vollen
Jane M. Whicher

By:



Robert J. Vollen
Attorneys for Porter County Chapter
Intervenors

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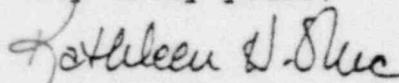
March 11, 1981

Robert J. Vollen, Esquire
c/o BPI
109 North Dearborn Street
Suite 1300
Chicago, Illinois 60602

Dear Mr. Vollen:

This is to confirm that, in response to your inquiry, I advised you today that a minimum of six months from March 5, the date of the NRC Staff's letter concerning its review of the piles proposal, will elapse before actual construction of the Baily facility can commence.

Very truly yours,



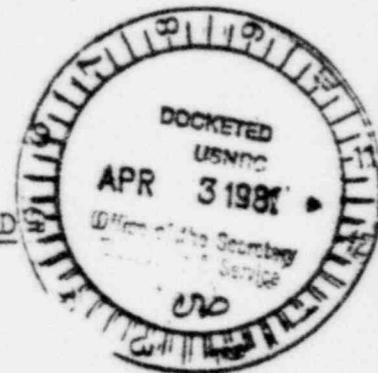
Kathleen H. Shea

KHS:vd

Exhibit A

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)

CERTIFICATE OF SERVICE

I hereby certify that I served copies of the Porter County Chapter Intervenors' Notice of Intention To Seek Stay on all persons on the attached Service List, by causing them to be deposited in the U.S. mail, first class postage prepaid, on March 31, 1981.

Robert J. Vollen

One of the Attorneys for
Porter County Chapter Intervenors

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