



The Staff answers the first question in the affirmative. See attached Staff affidavit of Maurice D. Lynch (Lynch Affidavit). In response to the second question, the Staff estimates that its evaluation of the pile installation proposal will issue on or about September 15, 1980. Id. With regard to the third question, the legal reason for deferring the hearings has been stated on several prior occasions.<sup>1/</sup> In its December 12, 1979 decision declining to initiate a hearing on the issue of short pilings, the Commission expressly concluded that the operating license review is the "appropriate forum" for a hearing on such issue.<sup>2/</sup> In reaching this conclusion, the Commission expressed the belief that there is "reasonable assurance" that any outstanding safety questions involving the short pilings plan "can be resolved, and resolved early in the construction process."<sup>3/</sup>

Since the short pilings proposal arguably arises from a reason for the delay in completion, its consideration as a potential issue in this proceeding is appropriate under Cook<sup>4/</sup> if it is first determined that it cannot abide the operating license phase. The Board argues that it is not bound by the decision of the Commission that this issue can abide the operating license stage because that decision was rendered in a separate context. Order at 22.

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- 1/ See NRC Staff objections to provisional special prehearing conference order, dated June 24, 1980; NRC Staff response to intervention petitions, dated January 16 and 23, 1980, at 12 and 17 respectively, and NRC Staff response to supplemental petitions, dated March 7, 1980, at 11.
  - 2/ Northern Indiana Public Service Co. (Bailly Generating Station, Nuclear-1), CLI-79-11, 10 NRC 733, 742 (1979).
  - 3/ Id. This is the essence of the fourth question posed by the Board.
  - 4/ Indiana and Michigan Electric Co. (Donald C. Cook Nuclear Plant, Units 1 and 2), ALAB-129, 6 AEC 414 (1973).

It is true that the Commission did not squarely decide whether the short pilings matter might be litigated in this extension proceeding (an issue not before it). Nonetheless, its reasoning that the matter can and should abide operating license review, while not dispositive, should apply with equal force to this proceeding.

The matter of nuclear construction, licensing, and regulation is a dynamic process. Design changes during construction are not a rarity. At the same time, not every such "change" requires licensing board scrutiny prior to the eventual submission of an operating license application. Cf. Cook, supra. If this were not true, a construction permit could never issue without being subject to the interdiction of periodic hearings. Such a result would frustrate the regulatory scheme established by statute and regulation. The scheme should not be abrogated simply because certain events combined to require a construction permit extension. See, Cook, supra, 6 AEC at 421; see also Bailly, 10 NRC 733, supra.

The chief practical reason not to conduct a hearing on the pile installation proposal at this time stems from the necessarily site-specific nature of a pile foundation. Specifically, despite the Staff belief that analytical calculations, engineering experience with pile foundations, the results of the 1978 indicator pile program, conservative pile load estimates, and the applicable pile installation specifications combine to provide reasonable assurance that the fundamental pile design criteria will be met, this cannot be known with certainty until after actual production pile installation has taken place and verification procedures performed. Id. at 1, 5. Any hearing prior to

this stage would be premature and of little practical value in determining the ultimate acceptability of the pile foundation. Id. At the same time, there is no strictly engineering reason why evidentiary consideration of the adequacy of the installed pile foundation must await a later point in time. Id.

With regard to question four, the Applicant has requested until December 1, 1987 to complete construction of the Bailly plant. Production pile installation can proceed immediately upon issuance of a favorable Staff safety evaluation. As already noted, that evaluation is expected to issue on or about September 15, 1980. Actual pile installation could be accomplished within six to nine months depending on weather conditions. Lynch affidavit at 6.

The Staff believes that two primary factors combine to provide reasonable assurance that all safety questions arising from the Applicant's short pipings proposal will be resolved before December 1, 1987. These are (1) the conservative nature of the design specifications and (2) the administrative procedures developed to ensure the proper implementation of such specifications. Lynch affidavit at 6. These factors are delineated in the attached Staff affidavit of M. D. Lynch. Both the applicable design specifications and administrative procedures have already been devised and are considered resolved. Id. at 7-9. The ultimate Staff review and evaluation of the entire pile placement program must, of course, await its physical completion. This review must be favorably concluded prior to authorizing any further construction. This review can be accomplished within three months.

Id. Any problems identified at that juncture should be capable of resolution well in advance of December 1, 1987. If such problems cannot be resolved, the Staff will take whatever steps are necessary to prevent further construction.

In light of the above, the Staff opposes the admission of the short pilings issue in this proceeding.

Respectfully submitted,



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Dated at Bethesda, Maryland  
this 18th day of August, 1980