

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

8/22/80

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)	
)	
NORTHERN INDIANA PUBLIC)	Docket No. 50-367
SERVICE COMPANY)	(Construction Permit Extension)
)	
(Bailly Generating Station,)	
Nuclear-1))	

NRC STAFF POSITION ON NEWLY-FILED
CONTENTIONS AND MOTION TO CONSOLIDATE

INTRODUCTION

In its August 7, 1980 Order Following Special Prehearing Conference, the Board afforded the Staff an opportunity to state its position on the admissibility of the newly-filed contentions submitted by the Porter County Chapter Intervenors (PCCI) in their June 30, 1980 objections to the earlier provisional special prehearing conference order and adopted by the State of Illinois. In its Order, the Board made the general observation that these contentions "appear to be matters not directly related to the requested extension, matters that are not fundamental to the construction of the facility (as are the issues of siting and foundation pilings), and/or matters that would not appropriately be heard before the operating license proceeding under any circumstances." Order at 51-52. The Staff agrees. Its further position on the contentions is set forth below.

In addition, the Staff hereby moves, pursuant to 10 C.F.R. § 2.715a, to consolidate the prosecution of any of the newly-filed contentions which may be admitted under either PCCI or the State of Illinois on the grounds that

their interest in these matters is indistinguishable and that these contentions raise identical questions for adjudication.

DISCUSSION

Newly-filed contentions 1 through 10 raise the following concerns: (1) post-TMI studies; (2) recent developments such as the required shut-down in 1979 of five nuclear plants because of earthquake design, the 1979 Inter-agency Review Group on Nuclear Waste Management to the President, and the 1978 Risk Assessment Review Group Report to the NRC (NUREG/CR-0400); (3) the Mark-II containment design; (4) post-accident monitoring; (5) unresolved generic safety issues; (6) ATWS; (7) occupational exposure due to a nuclear accident; (8) spent fuel storage; (9) nuclear system material failure; and (10) the need to prepare an environmental impact statement. Contention 10 has the following subparts: (a) consideration of contentions 1 through 9 from an environmental standpoint; (b) need for power; (c) construction cost increases; (d) population density; (e) dewatering impacts and the slurry wall effects to date upon the Indiana Dunes; and (f) Class 9 accidents. Contentions 11 and 12 assert that, in the alternative, the matters raised in contention 10 must be considered in a supplement to the construction permit Final Environmental Statement and their impact upon the cost-benefit analysis performed therein evaluated. Contention 13 questions the financial ability of the Applicant to design and construct the Bailly facility. Contention 14 asserts that the cost and availability of uranium must be considered in this proceeding and contention 15 asserts that energy conservation must be considered as an alternative to the requested extension.

As a general precept, contentions must fall within the scope of the particular licensing action and be set forth with basis and specificity per the requirements of 10 C.F.R. § 2.714(b) and applicable case law. See, e.g., BPI v. Atomic Energy Commission, 502 F.2d 424, 429 (D.C.Cir. 1974). All of these proposed contentions suffer from the same infirmity -- they seek the introduction of issues that lie outside the scope of this permit extension proceeding. A number of the contentions^{1/} raise certain safety concerns of no apparent applicability to the particular Bailly facility. Without such a demonstration, these contentions lack the requisite basis and specificity of 10 C.F.R. § 2.714.

As a general matter, these contentions embrace issues already litigated during lengthy construction permit hearings, issues considered in other post-construction permit actions, issues to be considered at the operating license stage of review, generic issues, or issues of developing Commission policy. It is clear on their face that none of these contentions are relevant to the required "good cause" criteria of 10 C.F.R. § 50.55(b) nor do they bear any reasonable nexus to the reasons assigned in the extension application for the delay in construction so as to be cognizable under the Appeal Board decision in Cook. Indiana and Michigan Electric Co. (Donald C. Cook Nuclear Plant, Units 1 and 2), ALAB-129, 6 AEC 414, 420 (1973).

To the extent that the contentions involve safety issues applicable to the Bailly plant, even under the Board's theory of the permissible scope of this proceeding, Intervenor's have not made a "convincing prima facie showing that the safety matters alleged will not be satisfactorily resolved by the new

^{1/} See, e.g., contentions 1, 2, 5, in part, and 9.

completion date of the facility" so as to be presently litigable. Order at 28-29. Despite its disagreement with the Board's formulation of this theory, the Staff does not believe that any contentions fall within that category of issues admissible thereunder.

As noted, many of these matters have already been considered in this docket. Certain of the matters were addressed at the construction permit or "slurry wall" hearings.^{2/} Others provided the partial bases for Intervenor's unsuccessful petition of November 26, 1976 to suspend the Bailly construction.^{3/} The balance of these issues, to the extent specifically relevant to the Bailly facility, will be considered at the operating license phase. Design (and implementation) changes during construction and developments in the NRC regulatory process are to be expected. The matter of nuclear construction, licensing, and regulation is not a static process. 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. This 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 Northern Indiana Public Service Co. (Bailly Generating Station,

2/ See, e.g., contentions 6, 10(c), (d), (e), and 15.

3/ Porter County Chapter of the Izaak Walton League v. NRC, 606 F.2d 1362 (D.C. Cir. 1979). See, e.g., contentions 3, 10(b), (c), and (e), 13 and 14.

Nuclear-1), CLI-79-11, 10 NRC 733 (1979). If Intervenor believe that an unsafe or environmentally harmful activity or practice is or will occur prior to the operating license application, their remedy is to seek appropriate Commission action under 10 C.F.R. § 2.206 as Intervenor are well aware.

With regard to Intervenor's claim in contention 10, 11, and 12 that an environmental impact statement (EIS) or supplement must be prepared, the Staff intends to perform a safety and environmental evaluation of the proposed action to the extent required by law and the operative facts. If the Staff determines that this constitutes a major Commission action which will have a significant impact on the environment, it will prepare an EIS pursuant to the requirements of Section 102(2)(C) of the National Environmental Policy Act. It is premature to reach that decision now as the Intervenor and the Board have already recognized. See Order at 61.

CONCLUSION

For the foregoing reasons, the Staff opposes the admission of the newly-filed contentions. In the event that one or more such contentions are admitted, the Staff moves that their prosecution be consolidated under either the Porter County Chapter Intervenor or the State of Illinois.

Respectfully submitted,



Steven C. Goldberg
Counsel for NRC Staff

Dated at Bethesda, Maryland
this 22nd day of August, 1980

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CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF POSITION ON NEWLY-FILED CONTENTIONS AND MOTION TO CONSOLIDATE" in the above-captioned proceeding have been served on the following by deposit in the United States mail, first class or, as indicated by an asterisk, through deposit in the Nuclear Regulatory Commission's internal mail system, this 22nd day of August, 1980.

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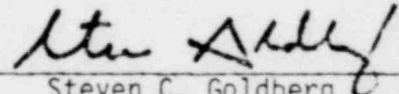
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