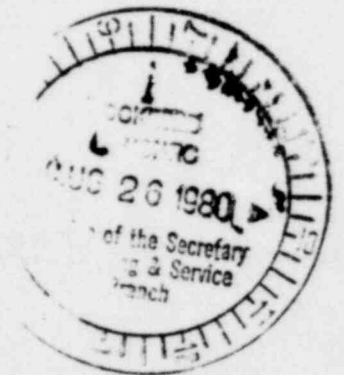


UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Atomic Safety and Licensing Board

Herbert Grossman, Chairman
Glenn O. Bright, Member
Dr. Richard F. Cole, Member



In the Matter of)
)
NORTHERN INDIANA PUBLIC SERVICE)
COMPANY)

(Bailly Generating Station,
Nuclear 1))

Docket No. 50-367 CPA

(Construction Permit Extension)

ORDER SUPPLEMENTING
ORDER FOLLOWING SPECIAL PREHEARING CONFERENCE

In the Order Following Special Prehearing Conference, issued on August 7, 1980, the Board inadvertently omitted a portion of its rulings on contentions, which would have covered all of the contentions filed prior to the conference.. It would have left for future disposition only those contentions filed subsequent to the conference by the Porter County Chapter Petitioners and adopted by the State of Illinois on the basis of the documents incorporated by reference in Petitioners' supplemental petitions.

We now issue this portion of the Board's rulings, which should have followed page 66 of the August 7, 1980 Order. Because it was omitted, we give Local 1010 until 10 days after service of this Order to indicate that it did not intend to transform contention 10-B into a narrow contention limited to dewatering over a prolonged construction period, if that is the case. Objections to this Order may be filed within the time limits prescribed by

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10 C.F.R. § 2.751a(d): 5 days after service of this Order, by the parties; 10 days after service, by the Staff.

The omitted portion of the Board's rulings is, as follows:

Illinois 7D, 8

These contentions allege that, because the construction permit was granted in 1974 and the plant is less than one percent complete at this time, the design should be rereviewed in an updated Safety Evaluation Report which should take into consideration current regulatory guides, ACRS recommendations, the Kemeny and Rogovin reports, generic unresolved technical issues, safety issues described in NUREG-0510 and safety issues resulting from the TMI-2 accident.

None of the issues raised relate to the delay in construction or the reasonableness of the extension requested. Nor has Petitioner made any prima facie showing that would persuade the Board that it should not be reasonably assured that all of these safety issues will be resolved by the completion date of the construction. Rather, Petitioner appears to base these contentions on the theory rejected by this Board in the August 7, 1980 Order (pp. 17-18, 24-29) that a request for an extension of a construction permit requires the Board to consider all significant health and safety or environmental issues that have arisen since the

granting of the construction permit. These contentions are denied.

Anna and George Grabowski 1

This contention alleges that the stay of construction granted by the Court of Appeals for the 7th Circuit is not good cause for the requested extension. We agree with the Staff (Staff Response to Supplemental Petitions, dated 3/7/80, p.26) that this presents an acceptable issue concerning the interpretation to be accorded a Commission regulation.

However, the contention proceeds to deny that the stay constitutes good cause on the ground that "it was due to Nipsco presenting false maps at the construction permit hearing" (Supplement to Petition, p. 5). Even ignoring the illogic (i.e., that the presentation of allegedly false maps would have resulted in the imposition of the stay, rather than the lifting of the stay), it is beyond the scope of this proceeding to relitigate matters resolved at the construction permit proceeding.

The portion of the contention that attempts to go into the merits of the proceeding involving the stay of construction is denied, and only the portion of the contention that alleges that the stay did not constitute good cause for the extension is admitted.

Anna and George Grabowski 2

This contention alleges that the two-year delay in construction due to the pile installation review is not good cause for the extension.

We agree with the Staff (Staff Response to Supplemental Petitions, p. 27) that this is an acceptable contention, and we admit it.

To the extent that Petitioners intend to litigate the merits of the short pilings proposal, they must await the Board's further ruling on the admissibility of that issue following the parties' responses to the four Board questions propounded in the August 7, 1980 Order.

Anna and George Grabowski 3

This contention alleges that the installation of the slurry wall was not good cause for the extension.

We agree with Staff (Ibid.) that this contention is acceptable as long as it does not entail a relitigation of the merits of the decision to install the slurry wall, and admit the contention on that basis.

Anna and George Grabowski 4

This contention questions whether there is need for the plant, whether it is still a worthwhile risk, and whether NIPSCO

can be trusted to tell the truth to the public.

The cost/benefit analysis required by the National Environmental Policy Act of 1969 has already been reviewed at the construction permit proceeding and should not be relitigated in this extension proceeding. The Appeal Board has held that an amendment proceeding is not to be utilized as a forum to replot the ground covered in the environmental review approved when the license was issued. Northern States Power Co. (Prairie Island Generating Plant Units 1 and 2), ALAB-455, 7 NRC 41, 46, fn. 4 (1978); Portland General Electric Co. (Trojan Nuclear Plant), ALAB 531, 9 NRC 263, 266, fn. 6 (1979).

Petitioner's allegation with regard to NIPSCO's veracity is presented without foundation and is unrelated to the question of whether good cause has been shown for the requested extension. This contention is denied.

Local 1010 3, 5, 6, 7, 9

These contentions entitled, respectively "Post Accident Monitoring", "Unresolved Generic Safety Issues", "Anticipated Transient without Scram (ATWS)", "ALARA", and "Nuclear System Material Failures", relate to a number of issues that have arisen or received prominence after the granting of the Baily construction permit. Had they arisen earlier, many would have been heard at the construction permit proceeding. Some might have been deferred to the operating license proceeding under 10 C.F.R. § 50.35(a).

None of these issues is directly related to the delay in construction. Nor has Petitioner alleged that these matters have been unsatisfactorily resolved, or made any showing that would indicate that they are incapable of being satisfactorily

resolved. Rather, Petitioner suggests for most of the issues that they "may be incapable of resolution during construction." Moreover, unlike the short pilings and siting issues, which must be resolved prior to initiating the bulk of construction, these issues, on the whole, are matters that would be expected to be resolved during successive stages of construction and dealt with at the operating license proceeding.

Petitioner has not satisfied the Board's test for hearing issues not related to the delay in construction, that it make a prima facie showing that the matters will not be satisfactorily resolved by the new completion date of the facility. Were the Board to accept these contentions on the theory espoused by the Petitioner, that an extension proceeding requires bringing up to date all significant safety issues that have arisen since the granting of the construction permit, the effect would be to undermine the two-stage procedure favored by the Commission of, first, a construction permit proceeding and, then, an operating license proceeding. These contentions are denied.

Local 1010 8

This contention would require reviewing the adequacy of the spent fuel pool in light of the lack of alternative storage and disposal facilities in order to preclude Permittee from having to resort to the "artificial mechanism of dense storage."

The planned storage pool was approved during a construction permit proceeding. Permittee has not yet proposed dense storage in the spent fuel pool, nor do we understand Petitioner to allege that dense storage per se renders a spent fuel pool unsafe. The plethora of proceedings that have permitted spent fuel pool expansion by the mechanism of denser storage would appear to belie any such assertion. See, e.g., Portland General Electric Co. (Trojan Nuclear Plant), ALAB-531, supra; Northern States Power Co. (Prairie Island Generating Plant, Units 1 and 2), ALAB-455, supra; Commonwealth Edison Co. (Zion Station, Units 1 and 2), LBP-80-7, 11 NRC 245 (1980); Duquesne Light Co. (Beaver Valley Power Station, Unit 1), LBP-78-16, 7 NRC 811 (1978).

Insofar as Permittee may opt for denser storage at some future time, the matter will either be dealt with at the operating license proceeding or at a license amendment proceeding. The issue is not ripe for consideration here, nor does it have any nexus to the requested extension. The contention is denied.

Local 1010 10, 11 and 12

These contentions entitled, respectively, "Indiana Dunes National Lakeshore", "Escalating Costs of Construction", and "Energy Conservation As An Alternative Under NEPA", with the exception of the portion of 10-B provisionally admitted as limited in our August 7, 1980 Order, relate to determinations made at the construction permit proceeding on the environmental impact of the Bailly facility. Petitioner appears to request the Board to utilize the

extension proceeding to reevaluate these matters. The Appeal Board has held that an amendment proceeding is not to be used for that purpose. Prairie Island, ALAB-455, supra, p. 46, fn. 4; Trojan Nuclear Plant, ALAB-531, supra, p. 266, fn. 6.

Petitioner has made no showing of a nexus between those matters and the delay in construction, and no showing of compelling safety issues that cannot abide the operating license proceeding. These contentions are denied.

It appears to the Board that all of the contentions raised in the original petitions have been resolved either separately or through a resolution of the duplicative contentions raised in supplemental petitions, and that all of the issues raised in the supplemental petitions, save those incorporated by reference to other documents (which will be resolved after the briefing scheduled in the August 7, 1980 Order), have now been resolved.

Mr. Glenn O. Bright, member, and Dr. Richard F. Cole, member, join in this Order.

BY ORDER OF THE BOARD

FOR THE ATOMIC SAFETY AND
LICENSING BOARD



Herbert Grossman, Chairman

Dated at Bethesda, Maryland
this 25th day of August, 1980.