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May 7, 1981



Mr. Robert J. Vollen  
c/o BPI  
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Chicago, Illinois 60602

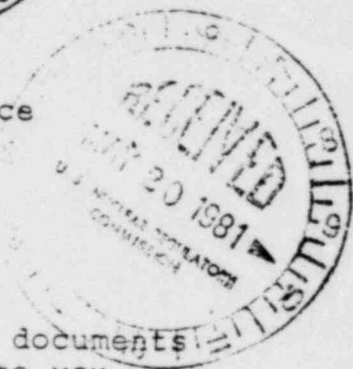
Re: In the Matter of Northern Indiana Public Service  
Company (Bailly Generating Station, Nuclear 1)  
Docket No. 50-367  
(Construction Permit Extension)

Dear Mr. Vollen:

I have your letter of May 5 demanding prompt delivery of documents in the box marked "Box 10." That box will be delivered to you at your convenience during the week beginning May 11, 1981.

We have removed four (4) documents from that box, two (2) which are beyond the scope of the discovery requests, one (1) which is proprietary and one (1) which was originally designated as proprietary. Those documents are as follows:

1. A letter dated April 29, 1974, from William H. Eichhorn to Dr. J. K. McClusky of the NIPSCO Nuclear Staff which contains counsel's analysis of and advice on a proposed nuclear fuel fabrication contract. This document was originally produced in response to Paragraph 8 of PCCI's Second Request, but because of its date it does not fall within the scope of that request and is therefore being withheld. Additionally, this document contains counsel's advice to his client and is therefore privileged and exempt from discovery.
2. A draft form of proposed agreement entitled "Contract Between Northern Indiana Public Service Company and General Electric Company for Nuclear Fuel and Related Services for Bailly Generating Station, Nuclear 1" dated September 5, 1969 (Draft 1/27/72). This document was originally produced



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in response to Paragraph 8 of PCCI's Second Request, but because of its date it does not fall within the scope of that request and is therefore being withheld. It also contains information which the General Electric Company considered proprietary at the time of its submittal to NIPSCO. This document will not be produced.

3. A draft form of proposed agreement entitled "Contract Between Northern Indiana Public Service Company and General Electric Company for Initial Core of Nuclear Fuel and Related Services for Bailly Generating Station, Nuclear 1" dated February 24, 1970 (Draft 7/11/73, Revised 1/3/74, Revised 7/8/74). This document contains information which General Electric Company considered proprietary at the time of its submittal to NIPSCO. We have not yet determined whether General Electric desires to maintain the proprietary status of this document.
4. A document entitled "8X8 C Lattice - 100 Mil Channels, Fuel Management Summary, Bailly IN, Data Sheet, 994.07, Rev. 0," dated September 5, 1974. This document contains information which General Electric Company considers proprietary. We have not yet determined whether General Electric will permit the production of this document under a protective agreement.

We will advise you further regarding the documents listed above as Items 3 and 4 upon completion of discussions with the General Electric Company.

Your understanding of the "sole basis" for NIPSCO's refusal to permit you to take the documents in question on May 5 is incorrect. As pointed out above, some of the documents which were in "Box 10" were provided to NIPSCO in confidence and have been treated by NIPSCO as confidential documents since their receipt. These documents were properly withheld from discovery without appropriate protection. Upon further examination of those documents, it was determined that two (2) of them (documents listed as Items 1 and 2 above) should not have been produced at all and have been withdrawn.

I am uncertain as to how the status of some of the documents in "Box 10" was overlooked in the first instance; however, as you are well aware, NIPSCO produced hundreds of thousands of pages in response to PCCI's Second and Third Request for Production of Documents and several NIPSCO employees were

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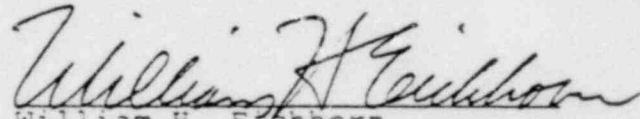
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involved in assembling the documents. It is not surprising that, during the process of gathering these documents, an individual failed to recognize the exact status of some of the documents in "Box 10" or failed to bring the documents to my attention for determination of discoverability or the filing of an appropriate response in the first instance. We do not view this incident as a "discovery tactic" but rather an inadvertence which may be unavoidable in an undertaking of this size and nature.

Yours very truly,

EICHHORN, EICHHORN & LINK

By:

  
William H. Eichhorn

WHE/dgg

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