

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

10/8/80

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)	
)	
NORTHERN INDIANA PUBLIC)	Docket No. 50-357
SERVICE COMPANY)	(Construction Permit Extension)
)	
(Bailly Generating Station,)	
Nuclear-1))	

NRC STAFF COMMENTS UPON PORTER COUNTY CHAPTER
INTERVENORS' ARGUMENTS, AND STATE OF ILLINOIS'
MEMORANDUM, IN SUPPORT OF THE ADMISSIBILITY
OF NEWLY-FILED CONTENTIONS

INTRODUCTION

Pursuant to the Board's August 7, 1980 Order Following Special Prehearing Conference, the NRC Staff filed a statement of position, dated August 22, 1980, on the admissibility of the newly-filed contentions submitted by the Porter County Chapter Intervenor (PCCI) in their June 30, 1980 objections to the earlier provisional special prehearing conference order and adopted by the State of Illinois. The Porter County Chapter Intervenor filed arguments in support of these contentions on August 28, 1980. The State of Illinois filed a memorandum in support thereof on September 11, 1980. Under the provisions of the Board's Order, the Staff submits the following comments upon the arguments advanced by the Intervenor in the referenced pleadings.

ARGUMENT

The Staff opposes the admission of the newly-filed contentions for the reasons given in its August 22 statement of position. It noted therein that none of the proffered contentions are relevant to the required "good cause"

criteria of 10 C.F.R. § 50.55(b) nor bear any reasonable nexus to the reasons given in the extension application for the delay in completion of construction so as to be eligible for litigative consideration 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).

The Porter County Chapter Intervenors posit their argument in support of the admissibility of contentions 1, 2, 4, 7, and 9, in part, on the grounds that these contentions involve matters which arise either from the reasons assigned for the delay in completion of construction in the February 7, 1979 permit extension request, and the August 31, 1979 supplement thereto, or from the reasons given as justification for the prolonged period of construction (until December 1, 1987) requested.^{1/} These contentions embrace the following: post-TMI studies, "recent developments" such as the required shutdown in 1979 of five nuclear power plants because of earthquake design, post-accident monitoring, occupational exposure, and nuclear system material failure.

The February 7, 1979 extension request cites the following reasons for the delay in construction: judicial stay of construction, the remobilization of contractors after the stay was removed, installation of a slurry wall, and

^{1/} The State of Illinois advances a similar argument in support of the admission of certain contentions which, with the exception of contention 13 and those dealing with the "effects of Three Mile Island on this construction" (Memorandum at 3), remain undifferentiated. Contention 13 concerns the Applicant's financial ability to afford plant construction.

the work stoppage imposed pending Staff review of proposed pile installation. The August 31, 1979 supplemental request does not contain additional reasons for the delay in construction. Rather, it provides several reasons for seeking to extend the latest completion date beyond the date requested in the February 7 request. None of the above-referenced contentions bear any relationship to the reasons assigned for the delay in completion in the February 7 request. Therefore, they are not appropriate for evidentiary consideration within the ambit of Cook.

The August 31, 1979 letter identifies the following factors in support of its requested completion date: the uncertain termination date of the Staff's evaluation of pile installation; NRC Staff computations of average construction schedules for nuclear reactors contained in a March 1979 document; and the delays in the performance of Staff reviews of plant-specific activities (e.g., Bailly pile installation) as a result of the Staff concentration on Three Mile Island (TMI) post-accident reviews. None of the subject contentions bear any direct relationship to these factors.^{2/} Even if such a relationship can be found, however, it does not supply a basis for the litigation of the safety consequences of such matters under Cook.

^{2/} In this regard, it should be noted that the Applicant's reference to TMI is in terms of its resultant diversion of Staff manpower and not the technical lessons learned from the accident itself. Given this fact, contentions seeking to adjudicate the technical implication of the accident upon the Bailly facility are misdirected.

As a separate matter, the Board has indicated that in order for potential safety issues to be litigable in this matter, the intervenors must make a "convincing prima facie showing that the safety matters alleged will not be satisfactorily resolved by the completion date of the facility." Order at 28-19. The Staff believes that this is an unduly expansive theory of the permissible scope of this proceeding. Nonetheless, as noted in its August 22 statement of position, none of the newly-filed contentions are admissible even under the Board's theory. The arguments presented in PCCI's August 28 pleading do not establish a "convincing prima facie showing" that the safety concerns embraced within the proposed contentions cannot be satisfactorily resolved by the requested completion date.^{3/} These intervenors appear to concede as much by claiming that they should be allowed "sufficient discovery" to enable them to make such a showing. Pleading at 2.

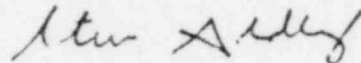
The scope of such discovery is potentially boundless. In any event, it is well established that discovery may not be employed to frame contentions. Northern States Power Co. (Prairie Island Nuclear Generating Plant, Units 1 and 2), ALAB-107, 6 AEC 188, 192, reconsid. den., ALAB-110, 6 AEC 247, aff'd, CLI-73-12, 6 AEC 241 (1973). Intervenors have had ample opportunity to establish a basis for the introduction of these issues within the scope of this proceeding under any reasonable construction thereof. They have not succeeded in doing so.

^{3/} The State of Illinois does not even attempt such a showing.

CONCLUSION

For the foregoing reasons, the Staff maintains its position that the newly-filed contentions are inadmissible in this proceeding.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Steven C. Goldberg".

Steven C. Goldberg
Counsel for NRC Staff

Dated at Bethesda, Maryland
October 8, 1980

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

Docket No. 50-367
(Construction Permit Extension)

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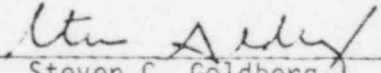
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