

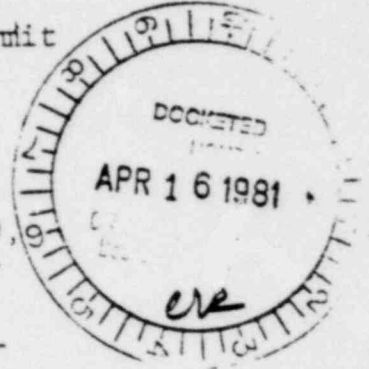
UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD



In the Matter of)
)
NORTHERN INDIANA PUBLIC)
SERVICE COMPANY)
(Bailly Generating)
Station, Nuclear-1))

Docket No. 50-367
(Construction Permit
Extension)



PORTER COUNTY CHAPTER INTERVENORS' (1) MOTION
TO RECONSIDER MEMORANDUM AND ORDER OF MARCH 30,
1981 DENYING O'RORKE DEPOSITION; AND, (2) COM-
PLETION OF ANSWER IN OPPOSITION TO GENERAL
ELECTRIC'S MOTION FOR PROTECTIVE ORDER

The Board's Memorandum and Order of March 30, 1981, denied Porter County Chapter Intervenors ("PCCI") the opportunity to depose the General Electric employee whose affidavit was submitted as the sole basis for GE's motion for a protective order, and directed that PCCI complete their answer to that motion. PCCI, by their attorneys, hereby (1) respectfully move the Board to reconsider the denial of the opportunity to depose Mr. O'Rorke, and, (2) complete their answer in opposition to the General Electric motion.

(1) Motion to Reconsider

In denying PCCI the opportunity to depose Mr. O'Rorke, the Board has misconceived the reason for the initiation of that discovery and overlooked its potential impact. PCCI does not seek "discovery on discovery" as the Board has characterized it. Rather, we seek discovery to demonstrate that GE has failed to sustain its burden of demonstrating good cause for, and

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and that justice requires, the granting of the extraordinary remedy of a protective order which it seeks.

In suggesting that the taking of Mr. O'Rourke's testimony "is not covered directly by the NRC rules", we believe the Board has misconceived the scope of discovery authorized by the rules. Ten CFR §2.740(b)(1) permits "discovery regarding any matter ... which is relevant to the subject matter involved in the proceeding" The GE contracts, and hence their discoverability, clearly are relevant to the subject matter of this proceeding. Moreover, the fact that discovery is specifically authorized to learn of such things as the existence and location of documents (id.) amounts to a clear negating of the view that discovery may only concern the "merits of the proceeding", as that phrase is used in the Memorandum and Order (pp. 3-4).

In expressing its difficulty in discerning any prejudice to intervenors' interest should it grant GE a protective order, the Board has misconstrued the public nature of Commission proceedings. The starting premise is and should be that all aspects of NRC proceedings, including information furnished in discovery, are open and public. A party seeking a deviation from that premise has the burden of establishing its right to it. A party seeking discovery in the normal and public manner need not show prejudice from his failure to receive it, nor should the burden be shifted to such a party to show that lifting the restriction of a protective order is "necessary to the prosecution of their case."

Finally, the Board may have overlooked the apparently very real possibility that Mr. O'Rorke's deposition might demonstrate facts to moot the entire basis of the claim for a protective order. Mr. O'Rorke's affidavit indicates that the contracts in question were filed with the Securities and Exchange Commission by NIPSCO. It also indicates that GE has submitted affidavits to the SEC in support of the contracts being withheld from public disclosure. It does not, however, indicate whether the SEC has agreed to withhold them. If the SEC has not, and if the contracts are a matter of public record, then there is patently no legitimate basis for a protective order. PCCI should be permitted to learn from Mr. O'Rorke what the facts are in this regard.

For the foregoing reasons, PCCI urge the Board to reconsider its ruling denying them the opportunity to take the deposition of Mr. O'Rorke on the subjects in his affidavit. Such limited discovery would not delay this proceeding.

(2) Completion of Answer in Opposition to Motion For Protective Order

Should the Board decide that some sort of protective order is to be entered, clearly it should not be the proposed form of order attached to GE's motion. That form of order is in no way tailored to this dispute, these contracts, or this proceeding. Any order entered here should be tailored to the facts of this

dispute.

GE's proposed form of protective order is unduly and prejudicially restrictive and could effectively prevent PCCI from preparing their case. For example:

(a) It denies access to the contracts, and any information they contain, to the parties, and permits access only to counsel.

(b) It prohibits disclosure even to any consultants and experts who may be retained by PCCI to aid them in analyzing the information obtained from these contracts.

(c) It requires that inspection shall be at a time and place "mutually convenient to the Intervenor's counsel and GE" -- not to PCCI's counsel and NIPSCO, in whose possession the contracts are, from whom production has been requested, and who is located near Chicago, as compared to GE's location in San Jose, California. No reason is suggested why a time and place certain for production should not be ordered.

(d) It prohibits even photocopying of the contracts, apparently contemplating that counsel for PCCI copy by hand any information which they seek from the documents. It is not surprising that no reason is offered by GE for this absurd requirement, for none is conceivable.

(e) It negates the possibility of even non-sensitive information being put into the public record of this proceeding. Any order should be limited only to that

information within the contracts, if any, which the Board finds to be entitled to protection.

(f) It requires the destruction of notes and data at the conclusion of this proceeding, without regard to possible appeals or subsequent proceedings.

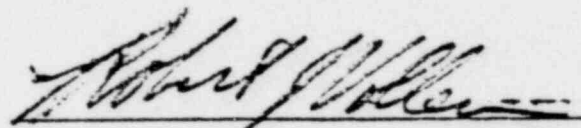
Should the Board enter a protective order, it should disregard the proposed form submitted by GE and formulate one which would provide reasonable and appropriate protection for only such information which GE proves in advance is entitled to protection.

DATED: April 13, 1981

Respectfully submitted,

Robert J. Vollen
Jane M. Whicher

By:



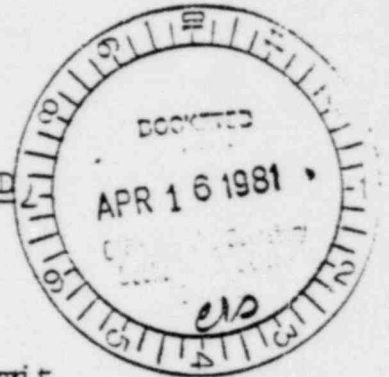
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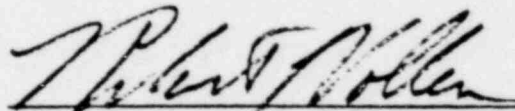


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CERTIFICATE OF SERVICE

I hereby certify that I served copies of the Porter County Chapter Intervenors' (1) Motion To Reconsider Memorandum and Order of March 30, 1981, Denying O'Rorke Deposition; and (2) Completion of Answer in Opposition to General Electric's Motion for Protective Order, on all persons on the attached Service List, by causing them to be deposited in the U.S. mail, first class postage prepaid, on April 13, 1981.



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