

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges:
Herbert Grossman, Chairman
Dr. Robert L. Holton
Dr. J. Venn Leeds



SERVED MAY 28 1981

In the Matter of:

NORTHERN INDIANA PUBLIC
SERVICE COMPANY

(Bailly Generating Station,
Nuclear-1)

Docket No. 50-367
(Construction Permit
Extension)

May 22, 1981

MEMORANDUM AND ORDER
(Granting Protective Order to GE)

Porter County Chapter Intervenors (PCCIs) request production from NIPSCO of certain contracts under which the General Electric Company (GE) agreed to supply the nuclear steam supply system and turbine generator for the Bailly nuclear facility. NIPSCO and GE oppose unrestricted production on the grounds that these are confidential and proprietary documents that GE does not want disclosed to its competitors, and that they are not relevant. The Staff takes no position in this dispute.

We need not decide at this juncture whether the documents are generally relevant to this proceeding. GE, on whose behalf NIPSCO and GE request a protective order, has indicated its willingness to produce the documents "subject to a fair and reasonable protective order designed to protect GE against public disclosure of the contents of these contracts while at the same time accommodating Porter County's interests in this proceeding."

GE's Answer to PCCIs' Motion, November 7, 1980, p. 5. GE had previously

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submitted a form of protective order as Attachment A to its motion for protective order of October 14, 1980. Although our protective order differs from that proposed by GE, we assume that GE's concession of limited production would apply to our protective order. If not, GE shall have 7 days from service of this order to object to the provisions of our protective order. This order will not go into effect unless the 7 days have passed and GE has not objected.

Nor do we have to conclusively decide at this juncture whether the documents are confidential and proprietary. GE has made a prima facie case in support of maintaining the confidentiality of the documents through the affidavit of Eugene W. O'Rourke, dated October 17, 1980, submitted in support of its motion for protective order. In view of the opportunity we are affording PCCIs in this protective order to further move for more complete disclosure, a prima facie showing is all that is required now.

We agree with certain of PCCIs' criticism of GE's proposed protective order. PCCIs' Answer to Protective Order, April 13, 1981. Certainly, requiring an inspection at San Jose, California, when the documents are in possession of NIPSCO's attorneys in Hammond, Indiana, is unreasonable. Furthermore, precluding the possibility of ever putting any of the information in the public record is too limiting. However, the Board does agree with GE's attempt to restrict disclosure at this point only to counsel who sign the protective order. The Board is providing further remedy in the event that inspection turns up information that might warrant wider disclosure.

PROTECTIVE ORDER

For the foregoing reasons and based upon a consideration of the entire record in this matter, it is, this 22nd day of May 1981

Ordered that

1. The contracts under which GE agreed to supply the nuclear steam supply system and turbine generator for the Bailly generating station, now in possession of NIPSCO, shall be accorded confidential treatment under which only counsel for intervenors and staff shall be permitted to inspect the information; such inspection shall be made at the offices of Eichhorn, Eichhorn, & Link, 5243 Hohman Avenue, Hammond, Indiana 64320, during business hours, at the convenience of counsel seeking to inspect the documents under this order, as many times as such counsel believe desirable;

2. The foregoing documents and information contained therein shall only be made available to any person designated in paragraph 1 if he or she shall have first read this order and shall have agreed in writing to be bound by its terms, the Commission, or members of the Licensing or Appeal Board Panels;

3. Said counsel shall not disclose the information to any person not described in paragraphs 1 and 2, nor photocopy, duplicate or transcribe such information;

4. Said counsel shall be permitted to take notes and data from the information, but the disclosure of said notes shall be subject to the restrictions of paragraphs 3, 5, and 6;

5. Said counsel shall utilize the information only for the purpose of preparation of the issues in this proceeding and for no other purpose;

6. Said counsel shall destroy all notes and data taken from the information at the conclusion of this proceeding;

7. Any portion of a transcript in connection with this proceeding which refers to information contained in the documents shall be examined in camera and shall be bound separately and filed under seal. If said documents or information are included in an authorized transcript of a deposition or exhibits thereto, arrangements shall be made with the court reporter taking the deposition to bind such portions and separately label them "(Company's Name), BUSINESS INFORMATION, SUBJECT TO PROTECTIVE ORDER." Before a court reporter receives any such document or information, he or she shall have first read this order and shall have agreed in writing to be bound by the terms thereof;

8. If said documents or information are disclosed to any person other than in the manner authorized by this protective order, the person responsible for the disclosure must immediately bring all pertinent facts relating to such disclosure to the attention of counsel for GE and NIPSCO, and the presiding officer and, without prejudice to other rights and remedies of GE and NIPSCO, make every effort to prevent further disclosure by it or by the person who was the recipient of such information;

9. Nothing in this order shall affect the admissibility into evidence of the foregoing documents or information contained therein;


10. Upon inspection of the documents, counsel for intervenors may move for lifting certain of these restrictions from all or portions of

the documents. Counsel for intervenors should first consult with counsel for GE and NIPSCO to seek agreement on removing such restrictions. The removal of such restrictions for all or any portion of the documents shall not be considered a waiver by GE or NIPSCO of any of the other restrictions or of those restrictions with regard to other portions of the documents. If agreement cannot be reached, counsel for intervenors may file a motion stating simply, without disclosing any of the matters contained in the documents, that intervenors move for further disclosure and request that a conference call be held between counsel for the parties who have agreed in writing to be bound by the protective order and the Board, in which the positions of the respective parties might be discussed. The Board will issue an appropriate order at the conclusion of the telephone conference to resolve the conflict or set further procedures for resolving it;

11. PCCIs' motion that the Board reconsider its order denying Mr. O'Rourke's testimony is denied; and

12. GE shall have 7 days from service of this order to object thereto. This order shall become effective on June 9, 1981, if GE's time has expired and it has interposed no objection. If GE objects within the time limits, this order shall not become effective until further action by the Board.

FOR THE ATOMIC SAFETY AND
LICENSING BOARD


Herbert Grossman, Chairman
ADMINISTRATIVE JUDGE

Dated at Bethesda, Maryland
this 22nd day of May 1981.