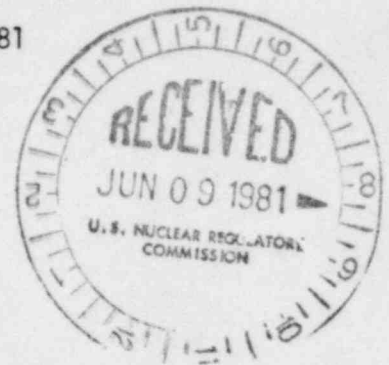


6/8/81

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION



BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)	
NORTHERN INDIANA PUBLIC SERVICE)	Docket No. 50-367
COMPANY)	(Construction Permit Extension)
(Bailly Generating Station,)	
Nuclear-1))	

NRC STAFF'S RESPONSE TO PCCI'S APPLICATION
PURSUANT TO 10 CFR § 2.720(h)(2)(ii)

INTRODUCTION

On May 19, 1981 Porter County Chapter Intervenors ("PCCI") filed an "...Application Pursuant to 10 CFR § 2.720(h)(2)(ii)" seeking an order from the Atomic Safety and Licensing Board requiring the NRC Staff to answer PCCI's First Set of Interrogatories to the NRC Staff, which were filed simultaneously with the Application. The NRC Staff offers this response to the Application.^{1/} Following an order on the Application, the Staff will file responses to such interrogatories as the Licensing Board may direct it to answer.

^{1/} Section 2.720(h)(2)(ii) does not expressly provide for responses to applications thereunder. Section 2.730(c) does, however, provide for answers to any motion, which we take to include applications under § 2.720(h)(2)(ii).

DISCUSSION

Section 2.720(2)(h)(ii) provides that the presiding officer may require the Staff to answer interrogatories upon a showing that the answers are "necessary to a proper decision in the proceeding" and "not reasonably obtainable from any other source". In support of their Application PCCI asserts that answers to the interrogatories are "necessary to PCCI's presentation of their case and evaluation of the staff's case" and that the interrogatories "go to matters solely within the staff's knowledge". Application, at 1. The Staff does not contest the latter assertion, but does respond that one of the interrogatories is not necessary to a proper decision in this proceeding in that it relates to an issue which has been explicitly rejected by the Licensing Board as an issue in controversy.

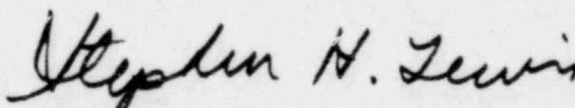
Under the NRC's rules of practice, discovery "shall relate only to those matters in controversy which have been identified by the Commission or the presiding officer in the prehearing order entered at the conclusion of the [§ 2.751a] prehearing conference". 10 C.F.R. § 2.740(b)(1). PCCI interrogatory 3 relates to Staff's plans for Safety Evaluation Reports ("SER's") "in response to or as a result of the accident at Three Mile Island", both with respect to Bailly and any other nuclear plant. The Licensing Board has expressly rejected as contentions in this proceeding contentions alleging that an updated SER needs to be prepared for the Bailly facility to take into consideration, inter alia,

inter alia, "safety issues resulting from the TMI-2 accident".^{2/} The Board reasoned that these issues were not related to the delay in construction or the reasonableness of the extension requested, nor was there any prima facie showing by PCCI that there was not reasonable assurance that these issues will be resolved by the completion date of construction.^{3/} PCCI is, therefore, seeking information as to an issue which has been rejected by this Board with respect to the Bailly facility and there is even less relevance to this proceeding of PCCI's request for this same information with respect to "any nuclear plant".

CONCLUSION

PCCI interrogatory 3 relates to an issue which has been rejected by the Licensing Board and an answer to it is not, therefore, "necessary to a proper decision in the proceeding". The Board should deny that portion of PCCI's Application for a finding under 10 CFR § 2.720(h)(2)(ii) which asks that the Staff be required to respond to interrogatory 3.

Respectfully submitted,



Stephen H. Lewis
Counsel for NRC Staff

Dated at Bethesda, Maryland
this 8th day of June, 1981

^{2/} "Order Supplementing Order Following Special Prehearing Conference", August 25, 1980, at 2.

^{3/} Id.

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

Docket No. 50-367
(Construction Permit Extension)

CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF'S RESPONSE TO PCCI'S APPLICATION PURSUANT TO 10 CFR § 2.720(h)(2)(ii)" in the above-captioned proceeding have been served on the following by deposit in the United States mail, first class, or as indicated by an asterisk by deposit in the Nuclear Regulatory Commission internal mail system, this 8th day of June, 1981:

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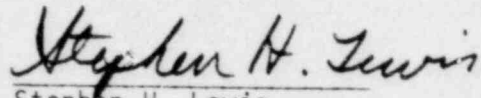
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