

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD



In the Matter of)	Docket No. 50-367
)	
NORTHERN INDIANA PUBLIC)	(Construction Permit
SERVICE COMPANY)	Extension)
)	
(Bailly Generating Station,)	June 22, 1981
Nuclear-1))	



NORTHERN INDIANA PUBLIC SERVICE COMPANY'S
SECOND MOTION TO COMPEL ANSWERS TO ITS
SECOND SET OF INTERROGATORIES TO ILLINOIS

Northern Indiana Public Service Company (NIPSCO) filed its "Second Set of Interrogatories to the State of Illinois" on April 23, 1981. Under NRC regulations, responses were due May 12, 1981. On May 11, counsel for Illinois requested by telephone that counsel for NIPSCO agree to an extension to June 16 of the time for filing Illinois' responses. On May 12, counsel for NIPSCO responded that he would not object to an extension to June 1. On May 29, counsel for Illinois filed a "Motion for Extension of Time" requesting the Board grant an extension of "fourteen days from this date within which to file responses to NIPSCO's Second Set of Interrogatories" (i.e., June 15). NIPSCO opposed this motion by a response filed June 4.*/ Illinois filed its "Answers" to the Second Set of

*/ Our pleading also requested an order compelling Illinois to respond. That motion is superseded by this "Second Motion."

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Interrogatories on June 9, 1981, 47 days after the interrogatories were served.

The "Answers" are in substantial part non-responsive and the objections to the interrogatories therein stated are not well taken; NIPSCO therefore files this Second Motion to Compel.

I. Illinois' Objections to Interrogatories

1. "Extended period of construction."

Illinois objects to a number of interrogatories^{*/} which contain that phrase "on the ground that [they are] vague, in that the phrase 'extended period of construction' is not defined." The phrase is also used in other interrogatories which were not answered on other grounds.^{**/} The interrogatories are posed in a proceeding to consider NIPSCO's request for an extension of the period for construction of Bailly Generating Station, Nuclear-1 from September 1, 1979, to December 1, 1989. In this context it is clear that the "extended period of construction" refers to the period between those dates (i.e., September 1, 1979, to December 1, 1989) and the interrogatories are not vague. We note incidentally that Illinois has used

^{*/} These include Interrogatories 8(a); 9(a); 14(a); 18(a), (b), (c), (d); 19(a); 21(e).

^{**/} These include Interrogatories 15; 17; 18(f); 23(b); 24(c).

similar terminology--e.g., "increased period of construction," "extended construction," "additional length of construction time," "additional period of construction time," "longer period of construction time." (Supplemental Petition of the State of Illinois, pp. 7, 8 (February 26, 1980).) The objections taken by Illinois are therefore contrived and foolish--as well as being entirely without merit. We request that Illinois be required to answer fully these interrogatories and those which stem from the answers (including 8(d), 8(e), 9(d), 9(e), 14, 15, 16, 17, 18(e), 18(f), 19(b), 21(f), 21(g)).

2. "Assessed."

This word is used in several interrogatories to which Illinois objects^{*/} "on the ground that it is vague, in that the term 'assessed' is not defined nor is it stated by whom an assessment was made." The interrogatories in question use the term "assessed" with express reference to that action "in connection with issuance of Construction Permit No. CPPR-104." Thus, it refers to that action by the Atomic Energy Commission including the Staff, Licensing Board, and Appeal Board, performed in accordance with the National Environmental Policy Act and AEC's implementing regulations. Furthermore, the verb "assess" is (clearly, we believe) intended to be given a usual

^{*/} These include Interrogatories 8(c), 9(c).

dictionary meaning--"to analyze critically and judge definitively the nature, significance, status, or merit of; [to] determine the importance, size, or value of" (Webster's Third New International Dictionary at 131 (1966).) In short, there is no vagueness and the objection is without merit. Illinois should be ordered to answer fully these interrogatories and those which stem from those answers, including Interrogatories 8(d) and (e), 9(d) and (e), 14, 15, 16, 17.

3. "Environmental assessment."

This objection is very similar to that described in paragraph 2 above. Interrogatory 10(a) explicitly refers to the "environmental assessment at the construction permit stage." Illinois objects "on the ground that [the Interrogatory] is vague, in that it is not stated whose 'environmental assessment' is being referred to." In context, there can be no question but that the interrogatory refers to the environmental assessment by the Atomic Energy Commission including the Staff, Licensing Board and Appeal Board. The objection is without merit and Illinois should be ordered to answer fully.*

4. "Incremental environmental impact."

Illinois objects to Interrogatory 14(a) on several grounds. One is that "it is vague, in that the phrases 'incremental

*/ The objection was taken to Interrogatory 10(a) and answers to several other interrogatories are dependent thereon (e.g., 10(b) and (c); 11(a), (b), and (c), 12, 13).

environmental impact' and 'extended period of construction' are not defined."^{*}/ Interrogatory 19(a) is also objected to because the phrase "incremental environmental impact" is not defined. Again, use of a dictionary might have assisted Illinois in responding to these interrogatories. "Incremental" is an adjective meaning "of, relating to, constituting, or resulting from increments" "Increment" is a noun meaning "something that is added or gained; an added quantity or character" (Webster's Third New International Dictionary at 1146 (1966).) Therefore, the Interrogatory clearly asks whether Illinois contends that there will be an additional (in quantity or character) environmental impact resulting from the enumerated or other causes. The nature and specifics of any such "incremental environmental impact" are not defined in the Interrogatory; that is the information which the Interrogatory seeks.

Illinois' objection has no merit. The state should be ordered to answer fully.^{**}/

5. "Extra period of dewatering."

An additional objection to Interrogatory 19(a) is based "on the ground that it is vague, in that the [phrase] 'extra

^{*}/ The matter of defining "extended period of construction" is addressed in Paragraph I.1. above.

^{**}/ Answers to Interrogatories 14(b), 15, 16, 17, and 19(b) will also be required.

period of dewatering' . . . [is] not defined." Essentially the same objection is stated with respect to Interrogatory 22(j). In context, it is clear, we submit, that the interrogatories refer to the period of dewatering during the requested extended construction period.^{*/} There is no vagueness; the objection is without merit and Illinois should be ordered to respond to these and related interrogatories.^{**/}

6. In several instances, Illinois objects to interrogatories on the ground that they are "incomprehensible." These objections are incorrect and invalid. They may stem from a failure on the part of the drafter of the answer to consult anyone who understands the substance of the matters addressed by the interrogatories--and the substance of contentions advanced by Illinois. However well-intentioned and sincere the objections, they must be rejected.

In an effort to aid Illinois and expedite completion of its answers, we offer the following elaborations of the Interrogatories in question. We shall also be pleased to discuss them with Illinois representatives if they wish.

^{*/} Illinois may assume that dewatering continues throughout that period (i.e., until December 1, 1989) unless it contends that dewatering will be terminated sooner.

^{**/} These include 19(b), 22(k), 22(l), 22(m), 22(n), 22(o), 22(p), 22(q).

Interrogatory 19(a). This interrogatory asks whether Illinois contends that dewatering for the additional period of time will cause an incremental environmental effect. It asks Illinois to distinguish between effects attributable to the additional period of time and changes in the parameters of the groundwater (see Interrogatory 18 listing of parameters).

Interrogatory 23. This interrogatory reminds Illinois of the earlier Licensing Board's conclusion in the construction permit proceeding that NIPSCO will not conduct dewatering during operation of Nuclear-1 (i.e., that dewatering will be conducted only during construction). It then asks a number of questions regarding Illinois' contentions about alteration of the soil conditions after dewatering has ceased.

Interrogatory 24. This interrogatory also reminds Illinois of the earlier Licensing Board's conclusion that NIPSCO will not conduct dewatering during operation of Nuclear-1 (i.e., that dewatering will be conducted only during construction). It then asks a number of questions related to Illinois' contentions concerning effects on the load-bearing capacity of the foundation and effects of a "core melt."

7. Illinois objects to Interrogatory 24(e)^{*/} "on the ground that it is vague, in that it is not specified which Commission

^{*/} In pertinent part, the Interrogatory asks, "Are you contending that the load-bearing capacity and foundations of Bailly are deficient under the Commission's regulations in a 'situation of altered water tables?'"

regulations are being referred to." That objection is evasive and ill founded. The Interrogatory asks whether a quoted portion of Illinois' contention 3.E. alleges a deficiency under NRC regulations--any NRC regulations. Those regulations may be found in 10 C.F.R., Parts 1 through 170.

8. Interrogatory 20(a).

The interrogatory quotes Illinois' contention that the "additional period of construction time [sought] is sufficient to cause some of the rare species, particularly the 'Bog indicator' plants to disappear from the dunes ecosystem"^{*} It then asks Illinois to identify the "rare species" referred to--i.e., the ones which Illinois alleges will be caused "to disappear." Illinois objects "on the ground that the identity of rare species existing in the Indiana Dunes National Lakeshore is provided in literature which is just as available to NIPSCO as it is to Illinois."

Illinois has apparently misunderstood the question and objected to a question which was not asked.^{**} It should be required to answer the interrogatory.

^{*}/ "Supplemental Petition of the State of Illinois," Contention 2.A., p. 8 (Feb. 26, 1980).

^{**}/ We note that the objection would be invalid even if the question had been asked. Illinois is obliged to furnish information concerning its allegations and its case; a general response to the effect that NIPSCO knows or can find the information is insufficient. Pennsylvania Power and Light Co. et al. (Susquehanna Steam Electric Station), ALAB-613, 12 NRC 317, 323 (1980); Boston Edison Co. (Pilgrim Nuclear Generating Station, Unit 2), 1 NRC 579, 587 (1975); 4A Moore's Federal Practice (1980 ed.) ¶3.27 at n. 18.

II. Other Deficient Answers

1. Interrogatory 20(c).

Illinois was requested to furnish the bases for its contention (quoted in 20(a)) that rare species will be caused to disappear. Its answer is "Literature including that listed in the Environmental Impact Statement for Bailly, February 1973, and the Final Panel Report submitted to the National Park Service, November 26, 1980."

Illinois should be required to identify any and all "literature" which it maintains constitute a basis for its contention; identification of two documents can not suffice if, as the answer implies, there are additional materials. The reference to "that listed in the Environmental Impact Statement for Bailly" is imprecise; Illinois must specify which of the "literature" listed there are bases for its contention since, clearly, not all can be. The remainder of the sentence is ambiguous--one can not be certain whether Illinois is referring to the "Final Panel Report" or to literature listed therein. We have some difficulty understanding how a report submitted November 26, 1980, could have been a basis for a contention filed by Illinois in February 1980. Furthermore, in the case of lengthy documents, Illinois should be required to identify the portions thereof which support its contention.

2. Interrogatory 21(b).

Illinois was asked to specify the numerical values which it uses as a reference for determining whether a deficiency, surplus, or change in "water"^{*/} would adversely affect the Lakeshore. The answer^{**/} is not responsive. NIPSCO's interrogatory is designed to discover the "reference" points used by Illinois for determining whether a deficiency, surplus, or change occurs. If Illinois has no reference points, it may of course say so but it should be required to answer this and related interrogatories (e.g., 21(d), (e), (f), (g), (h)).

3. Interrogatory 21(g) requested, inter alia, that Illinois identify documents upon which it relied in answering Interrogatories 21(b) through 21(f). Among the "documents" listed is the "record in the Bailly construction permit proceeding." That record is extensive; the certified index furnished to the Court of Appeals in 1974 was an 82-page list which indicated that the record consisted of 31,883 pages. Illinois should be required to specify the individual documents within the "record" upon which it relies.

^{*/} Illinois' answer to Interrogatory 21(a) states that the "water" to which it refers is "[a]ll groundwater and surface water in, under, and adjacent to the Indiana Dunes National Lakeshore."

^{**/} That answer is: "Illinois uses as a reference any change from what would occur in the absence of dewatering at the Bailly site and seepage from NIPSCO's ash ponds."

4. Interrogatory 22(a) requested Illinois to identify the bases for its contention that "[d]ewatering can alter subsoil structure in such a way that it can change the reaction to seismic occurrences." The response, in its entirety, is "Longwell, Flint & Saunders, Physical Geology," a college text book. Illinois should be required to cite the specific provisions within that volume upon which its contention is based.

5. With respect to several Interrogatories^{*/} Illinois states: "This Interrogatory apparently requests a more definite and particular statement of contention 3E in Illinois' supplemental petition, February 26, 1980. For the limited purpose of making Contention 3E more definite and particular, Illinois answers: Yes." We appreciate receiving the answers given by Illinois but the meaning and purpose of the limitation is unclear. In any event, we know of no basis upon which answers may be limited in this way. If there is another answer (or answers) to be given for other "purposes," Illinois should be required to do so.

6. Interrogatory 24(g)(2) requested identification of the bases for contending that there would be significant differences between environmental impacts of a core melt at Bailly in the presence of "altered water tables" and in the absence of "altered

^{*/} Interrogatories 22(b), (c), (f), (h); 24(g).

water tables." Illinois' answer, in its entirety, is "'Reactor Safety Study,' WASH-1400, NUREG 75-014, October 1975, and Appendices." The Reactor Safety Study itself has approximately 200 pages (including the Addendum) and there are 11 appendices in 7 additional volumes. Illinois should be required to cite the specific provisions within those volumes upon which its contention is based.

III. Observation

We submit that the "Answers of the People of the State of Illinois to NIPSCO's Second Set of Interrogatories" fall substantially below the standard which is required of parties in NRC proceedings, particularly those represented by counsel. These interrogatories seek clarification, elaboration, definition of the contentions which Illinois proposed as issues in this proceeding. They probe subjects with which Illinois must be presumed to be familiar. Yet the answers provide little of substance. The objections raised in the Answers appear to have been contrived for the purpose of evasion; in any event, they are without merit.

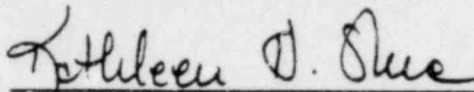
We urge the Board to order Illinois to file promptly full and complete answers to NIPSCO's Second Set of Interrogatories. Those answers may, of course, state that Illinois does not know the answer to an interrogatory when that is the case. We suggest that the Board may wish to remind Illinois of the obligation

which it assumed by seeking party status and of the fact that sanctions may be imposed upon those who fail to meet their obligations.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that copies of Northern Indiana Public Service Company's Second Motion to Compel Answers to Its Second Set of Interrogatories to Illinois in the above-captioned proceeding were served on the following by deposit in the United States mail, postage prepaid, this 22nd day of June, 1981.

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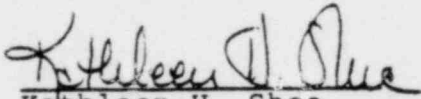
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