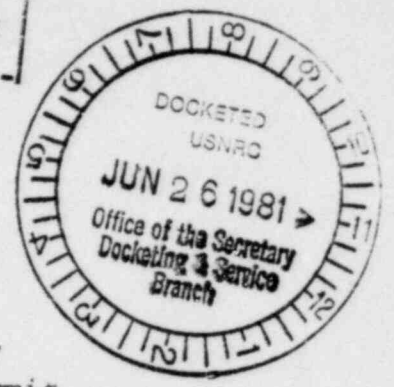


6/23/81

RELATED CORRESPONDENCE

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' RESPONSE TO
NIPSCO'S MOTION FOR PROTECTIVE ORDER AND MOTION
TO COMPEL ANSWERS TO INTERROGATORIES 9 AND 6(d)

On May 19, 1981, Porter County Chapter Intervenor (PCCI) served its Second Set of Interrogatories to NIPSCO. On June 8, 1981, NIPSCO filed its "Response to Porter County Chapter Intervenor's Second Set of Interrogatories" (Reponse) and its "Objection to Porter County Chapter Intervenor's Second Set of Interrogatories to NIPSCO and Motion for Protective Order" (Objection) objecting to PCCI's Interrogatory 9 and seeking an order specifying that it need not respond to that Interrogatory. PCCI hereby (1) respond to the motion for a protective order in regard to Interrogatory 9 and seek an order compelling NIPSCO to answer, and (2) seek an order compelling NIPSCO to answer Interrogatory 6(d).

PCCI's Interrogatory 8 asks whether NIPSCO contends it lacked authority to perform geologic tests and investigations other than those which it specified in response to Interrogatory 7. NIPSCO's response to Interrogatory 8 specified that it did not contend that it lacked authority to perform other tests and investigations; thus NIPSCO apparently contends that it had

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authority to perform tests and investigations which it did not perform. It is a description of these tests and investigations which is sought by Interrogatory 9. NIPSCO raises two grounds of objection: that to answer would be "burdensome" and that to answer "would serve no useful purpose." (Objection at p. 1; Response at pp. 6-7). Both grounds are without merit.

NIPSCO does not identify the respect in which it claims it would be burdensome to answer the interrogatory.^{*/} For example, it does not claim that the number of authorized tests which it failed to perform is so great that to list them all would be burdensome. NIPSCO's generalized, unsupported claim of burden is entitled to no weight at all. Moreover, any purported burdensomeness should be balanced against the need for the information sought. As is shown below, the information may be of great importance to PCCI's case.

NIPSCO's second ground of objection is that a response "would serve no useful purpose." This is indeed a surprising assertion. First, this is not a ground for objection. It is up to PCCI, not NIPSCO, to determine what is and what is not useful to PCCI in preparation of their case. ^{**/} Perhaps most importantly, NIPSCO's response to Interrogatory 8 indicates that it has changed its legal position. It has long been asserted that certain tests could not be performed by NIPSCO until after NIPSCO's construction permit had been issued, as one justification for NIPSCO's failure to adequately explore the subsurface structure underlying the Bailly site. See "NRC Staff Response

^{*/} Should NIPSCO, in its response to this Motion to Compel, provide greater specificity to its allegation of burdensomeness, PCCI hereby reserves the right to reply thereto.

^{**/} See Porter County Chapter Intervenor's Reply in Support of Motion to Compel, filed June 10, 1981, at pp. 2-3.

to Commission Questions of December 11, 1978" at p. 17 n. 22, in proceedings before the Commission concerning a "Petition with Respect to Short Pilings Proposal" filed by some of the Intervenor here and by others; "Brief of the Respondents United States Nuclear Regulatory Commission and the United States of America", dated October 1980, at p. 27, filed in State of Illinois v. NRC, No. 80-1163, United States Court of Appeals for the District of Columbia Circuit; Northern Indiana Public Service Company (Bailly Operating Station, Nuclear-1) CLA-79-11, 10 NRC 733, at 736, 742 (1979).

NIPSCO has never disputed these claims of lack of authority until its response to Interrogatory 8. Indeed, NIPSCO appears to have embraced the position.*/ Perhaps these tests would have lead to earlier discovery of the difficulty NIPSCO encountered in its attempts to drive or jet long piles to bedrock, or to other conclusions or discoveries relating to the bearing capacity of the glacial lacustrine deposits which NIPSCO now proposes as the bearing stratum for the foundation piles. Thus, the "useful purpose" (to paraphrase NIPSCO's objection) to be served by the answers to the Interrogatory is evident: it goes to, inter alia, to whom a delay in approval of the foundation plan is attributable, and what NIPSCO could have done to avoid that delay.

*/ See, e.g., "Comments of Northern Indiana Public Service Company on Petitions With Respect to Pile Foundation" (January 8, 1979) at p. 36, filed in proceedings before the Commission concerning "Petition With Respect to Short Pilings Proposal".

In sum, NIPSCO's response to Interrogatory 8, indicates that there were tests which it could have but did not perform. This is directly contrary to the position long asserted in these proceedings. NIPSCO should not be permitted to refuse to specify exactly what tests it now claims it could have performed.

NIPSCO's objection to Interrogatory 9 is without merit; the interrogatory is proper, NIPSCO should be ordered to answer it, and its motion for protective order should be denied.

* * *

Interrogatory 6 asks, in relevant part:

6. With respect to the slurry wall installed on the Bailly site, please state:

(d) all investigation and inquiry, before the date of issuance of the construction permit, by or on behalf of NIPSCO, to learn of any technique which could be used to mitigate or alleviate the effects of construction dewatering on the Indiana Dunes National Lakeshore.

ANSWER:

(d) NIPSCO determined that any effects of construction dewatering would be minimal and temporary. Construction techniques that were considered to further reduce even these minimal effects were the installation of sheet piling in those areas where it was necessary to dewater below elevation -4' and the installation of a ground-water drawdown mitigation system that would assure minimal effects off-site.

The interrogatory asks for "all investigation and inquiry." NIPSCO's response describes two "construction techniques": sheet piling and installation of a mitigation system. Nowhere in the response are any "investigations" or "inquiries" stated. If NIPSCO did not undertake any investigation or inquiry, it should so state. The "response" is nonresponsive and NIPSCO should be ordered to answer.

CONCLUSION

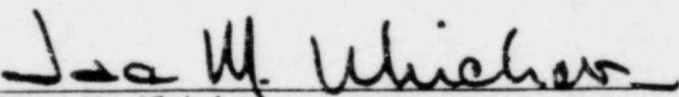
NIPSCO's Motion for Protective Order and its objection with respect to Interrogatory 9 are without merit and should be denied. NIPSCO's "response" to Interrogatory 6(d) is nonresponsive. NIPSCO should be ordered to answer Interrogatories 9 and 6(b).

DATED: June 23, 1981

Respectfully submitted,

Robert J. Vollen
Jane M. Whicher

by:


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Attorneys for Porter County Chapter
Intervenors

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June 23, 1981

Mr. William H. Eichhorn
 Eichhorn, Eichhorn & Link
 5243 Hohman Avenue
 Hammond, Indiana 46320

Re: In the Matter of Northern Indiana Public Service
 Company (Bailly Generating Station, Nuclear-1)
 Docket No. 50-367
 (Construction Permit Extension)

Dear Bill:

This is to confirm our delivery today, to a representative of NIPSCO, the following: (1) the two boxes of documents which you had delivered to my office on September 26, 1980; (2) Boxes #2 through #11 which were taken from the Bailly site on May 4, 1981 (Box #1 was returned on May 11, 1981); and (3) the latest cost estimate documents sent by you on May 29, 1981. The documents in these boxes are in the same form and condition as they were when you delivered them to us and we picked them up, respectively, with the exceptions described below:

In the brown wallet-style folder in Box #5 there is a manila envelope which we have labeled "Box 5 Copies -- produced documents retained by R.J. Vollen". As that label implies, I have retained the produced documents, and replaced them with the photocopies in the manila envelope. The produced documents were themselves copies and of a poor quality so that, as you will see, the copies which we are substituting are barely legible. We have retained the produced copies so that we may continue to review them and work with them in preparation for further discovery. We are giving you photocopies in the hope that you will be able to trace the originals of those documents so that we may all have legible copies to use. As you will see, not all of the pages in the manila envelope are illegible, but we wanted to keep them together as a package because that is

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June 23, 1981

the form in which they were produced to us. In Box #9 you will find a manila envelope labeled "Box 9 Copies -- produced documents retained by R.J. Vollen". The explanation for that envelope is exactly the same as for the manila envelope in Box #5. These documents were removed from a larger group of loose papers in Box #9.


As you may recall, at the deposition of Mr. Lyle on June 16, 1981, there was a discussion of the location of the original of Bohn Deposition Exhibit #2. The document which is marked Bohn Deposition Exhibit #2 was removed from one of the boxes which you produced at my office on September 26, 1980 for use as that deposition exhibit. The produced document was itself a copy and of poor quality. My recollection is that Mr. Bohn said that if the original of that document was not among those produced for us (which it is not) then the original would be at the Bailly site. I trust that you will locate that original.

The May 27, 1981 letter from R.J. Bohn to E.M. Shorb was removed from the cost estimate documents for use as Schroer Deposition Exhibit #5.

If you have any questions about our retention of the produced documents in the two manila envelopes, please do not hesitate to let me know. I hope that you will be able to locate the originals of all these documents promptly and will let me know when you do.

Thank you for your attention to these matters.

Very truly yours,



Robert J. Vollen
One of the Attorneys for Porter
County Chapter Intervenors

RJV:beg

cc: Service List

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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

CERTIFICATE OF SERVICE

I hereby certify that I served copies of the Porter County Chapter Intervenors' Response To NIPSCO's Motion For Protective Order and Motion To Compel Answers To Interrogatories 9 and 6(d), and a letter to William H. Eichhorn from Robert J. Vollen dated June 23, 1981, on all persons on the attached Service List, by causing them to be deposited in the U.S. mail, first class postage prepaid, on June 23, 1981.

Robert J. Vollen
Jane M. Whicher

by:

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