

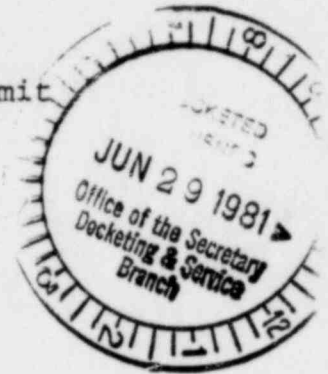
RELATED CORRESPONDENCE

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

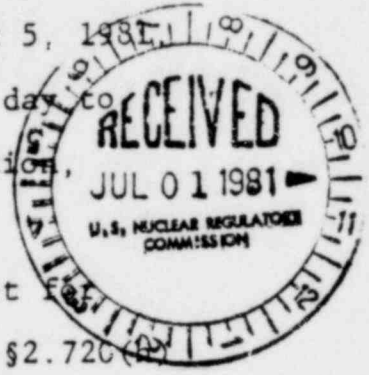
In the Matter of )  
)  
NORTHERN INDIANA PUBLIC )  
SERVICE COMPANY )  
(Bailly Generating Station, )  
Nuclear-1) )

Docket No. 50-367  
(Construction Permit  
Extension)



PORTER COUNTY CHAPTER INTERVENORS' MOTION  
TO COMPEL DEPOSITION OF M. DAVID LYNCH IN CHICAGO

Porter County Chapter Intervenors ("PCCI"), by their attorneys, for the reasons set forth below, hereby move the Board to order that the deposition of M. David Lynch be taken at the offices of counsel for PCCI, Suite 1300, 109 North Dearborn, Chicago, Illinois, commencing at 10:00 A.M. on Wednesday, August 5, 1981, or on such date as the Board may order, and continuing day to day thereafter until completed. In support of this motion, PCCI state as follows:



On September 17, 1980, PCCI filed its First Request for Designation of Witness or Witnesses pursuant to 10 CFR §2.720 (2)(i), requesting that the staff designate a witness for deposition to be taken commencing October 15, 1980, in Chicago. Staff counsel designated M. David Lynch, NRC Project Manager for Bailly, but refused to bring Mr. Lynch to Chicago for the deposition. Accordingly, PCCI, on October 17, 1980, moved the Board to order that Mr. Lynch's deposition be taken in Chicago.\*/

\*/ Porter County Chapter Intervenors' Motion Concerning Deposition of M. David Lynch.

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The staff, on November 6, 1980, filed a pleading \*/ responding to that motion and moving for a protective order, attaching an affidavit signed by Mr. Lynch. The pleading and affidavit described in great detail Mr. Lynch's unfortunate personal circumstance relating to an illness in his family, and asked that a protective order be entered specifying that Mr. Lynch's deposition be taken in Bethesda unless Mr. Lynch planned to be in the Chicago area "under circumstances which would permit his deposition there and then." (Staff Response at p. 5).

PCCI responded to the motion for protective order on November 19, 1980. \*\*/ PCCI's position was, as it continued to be until PCCI was informed of changed circumstances, that counsel for PCCI did not wish to take Mr. Lynch's deposition at all, either in Chicago or Bethesda or any other place, while he was under the strain of his mother's illness. (PCCI Response at p. 1, and attached Affidavit of Robert J. Vollen.)

On January 19, 1981, the Board ruled on PCCI's Motion to Compel and on the staff's Motion for Protective Order. Apparently misunderstanding PCCI's explicit statement that Mr. Lynch's deposition should not be taken at all while he was under the strain of his mother's illness, the Board acted upon PCCI's Motion "as one seeking to compel the presence of Mr. Lynch in Chicago at this time." (Memorandum and Order Restricting Location for

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\*/ NRC Staff Response to Porter County Chapter Intervenor's Motion to Compel Discovery and Motion for Protective Order.

\*\*/ Porter County Chapter Intervenor's Response to NRC Motion for Protective Order.

Deposition, at p. 3). The Board concluded that under the present circumstances, "which require Mr. Lynch to remain near his mother," more inconvenience would be created than cured if the deposition were ordered to be held in Chicago. (Id. at 3.) Therefore, the Board ordered that "any deposition to be taken of Mr. Lynch in the immediate future be restricted to the NRC staff offices in Bethesda, Maryland or other convenient location in the Washington D.C. metropolitan area ..." (Id. at pp. 3-4) (emphasis in original).

The circumstances present at the time of the above-described motions and order have now substantially changed. Following the deposition of Edmund A. Schroer on June 12, 1981, at NIPSCO's offices in Hammond, Indiana, counsel for PCCI inquired of counsel for the staff as to whether Mr. Lynch's personal situation was still such that his deposition was inappropriate. Counsel for PCCI were then informed, for the first time, that Mr. Lynch's mother had passed away some time ago. Further inquiry by counsel for PCCI disclosed the staff counsel's view that Mr. Lynch's emotional state was such that it would not be inappropriate for him to give his deposition. Counsel for the staff indicated he would ascertain Mr. Lynch's availability and whether he had plans to come to Chicago.

In a telephone conversation between counsel for the staff and counsel for PCCI on Friday, June 19, counsel for the staff stated that while Mr. Lynch was available to be deposed he

did not have any plans to be in the Chicago area. Counsel for the staff also stated that the staff position was that Mr. Lynch would not be produced in Chicago without an order of the Board. Accordingly, PCCI now move this Board for an order that Mr. Lynch's deposition be held in Chicago.

\* \* \*

While it is true, as set forth in the Board's January 19 Memorandum and Order, at p. 3, that "as a general rule, depositions of non-plaintiffs are taken at the deponent's place of residence or principal place of business", case law is clear that, in circumstances of unusual inconvenience or other hardship, a party's deposition may be taken at another location. PCCI submit that such circumstances are clearly present in this case, and Mr. Lynch's deposition should be ordered to be taken in Chicago.

Where a deposition of an employee of a party is requested, the comparative burden -- financial or otherwise -- on the parties should determine the location of the deposition. Terry v. Modern Woodmen of America, 57 F.R.D. 141, 14 (W.D. Mo. 1972); Powell v. Int'l Foodservice Systems, Inc., 52 F.R.D. 205, 206 (D.P.R. 1971); Tomingas v. Douglass Aircraft Co., 45 F.R.D. 94, 97 (S.D.N.Y. 1968). All of the persons participating in or likely to be interested in attending the deposition are located in or near Chicago, except Mr. Lynch and the NRC Staff Counsel. Counsel for Porter County Chapter Intervenors and for the State of Illinois are located in Chicago. The counsel for NIPSCO

who has been present at all previous depositions in this proceeding is located in Hammond, Indiana, less than an hour's drive from downtown Chicago, as is NIPSCO's headquarters. George and Anna Grabowski and Local 1010 of the United Steel Workers of America are also located in northern Indiana, near Chicago.\*/ All depositions thus far taken have been taken either in Hammond or at the offices of PCCI counsel and an attorney for the staff has attended all of them, except for one session of one. If necessary, the deposition of Mr. Lynch can be scheduled at a time when a staff attorney will be in the Chicago area for another deposition in this proceeding. Thus only one person will be required to travel to the Chicago area \*\*/ specifically for the deposition if it is held in Chicago.

The staff is a party to this proceeding, pursuant to 10 CFR §2.701(b); Mr. Lynch is the Bailly Project Manager; and the staff has designated him as an appropriate person to testify at a deposition in this proceeding. This is not a case where the deposition of an uninterested or uninvolved person is sought. Requiring that a deeply involved employee of a party to travel to have his deposition taken is completely appropriate in this circumstance.

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\*/ Although the Grabowskis and Local 1010, neither of whom are represented by counsel in this proceeding, have not attended the depositions of NIPSCO personnel thus far taken, they may desire to participate in staff depositions, particularly the deposition of the NRC Project Manager for Bailly.

\*\*/ PCCI would agree to taking Mr. Lynch's deposition in Hammond or other location near the Bailly plant site if this would prove more convenient for Mr. Lynch; however, PCCI's counsel's office is more accessible to Chicago airports than are Hammond and the plant site.

As indicated in PCCI's October 17, 1980, Motion and attachments, Mr. Lynch, representatives of the NRC staff, staff counsel, and a number of NRC personnel have previously come to Chicago for meetings concerning aspects of the Bailly plant. Requiring the deposition to be held at a place other than the deponent's residence or place of business is particularly appropriate when the deposition is to be held at a location to which the deponent or his colleagues have frequently traveled. Baker v. Standard Industries, Inc., 55 F.R.D. 178, 179 (D.P.R. 1972); Powell v. Int'l Foodservice Systems, Inc., 52 F.R.D. at 206.

Further, requiring that the deposition of Mr. Lynch be taken at a location other than in the Chicago area will impose an unnecessary and inappropriate financial burden on Porter County Chapter Intervenors as well as upon other intervenors who may wish to participate in the deposition. The NRC is more able to bear the financial expense of Mr. Lynch's traveling to Chicago than Porter County Chapter Intervenors are to bear the expense of their counsel traveling to Bethesda. In addition, holding the deposition in the Chicago area would be consistent with the Commission's policy of holding proceedings near a proposed nuclear plant site. See, Appendix A to 10 CFR, Part 2 §I(a).

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\*

Porter County Chapter Intervenors submit that under all the circumstances of this proceeding, including the relative expense and convenience of holding the deposition in Chicago, and the comparative abilities of all the parties to bear that expense, an order directing that the deposition of Mr. Lynch be taken in Chicago, Illinois is just and appropriate. Accordingly, this motion should be granted.

DATED: June 26, 1981

Respectfully submitted,

Robert J. Vollen  
Jane M. Whicher

by:



Attorneys for Porter County Chapter  
Intervenors

Robert J. Vollen  
Jane M. Whicher  
c/o BPI  
109 North Dearborn  
Suite 1300  
Chicago, Illinois 60602

(312) 641-5570



# BPI

## Business and Professional People for the Public Interest

109 North Dearborn Street, Suite 1300 • Chicago, Illinois 60602 • Telephone: (312) 641-5570

June 26, 1981

Mr. William H. Eichhorn  
Eichhorn, Eichhorn & Link  
5243 Hohman Avenue  
Hammond, IN 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 letter is to inform you of an inadvertent omission from the group of documents returned to NIPSCO on June 23, 1981, as described in my letter to you of that date. A file labeled "T-2983 Pile Testing Work Pre-Award Correspondence 1971-12/74" should have been in "Box #4," but was not, due to a mixup among the people who were doing the copying work.

In order to avoid the risk of loss in mailing this file to you, I intend to bring it with me and deliver it to you personally on Tuesday, June 30, 1981, at the deposition of Mr. Shorb.

I apologize for the omission and hope that it will not cause any inconvenience.

Very truly yours,

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

RJV:jk  
cc: Service List

#### Directors

Robert B. Litton  
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Donald Dann  
Alan Saks  
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*Vice Presidents*  
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Carol Y. Farwell  
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Joseph Keliman  
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Michael D. Maltz  
John L. McKnight  
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Alexander Polikoff  
Rudolph S. Rasin  
Jeremy Warburg Russo  
James A. Shapiro  
Dick Simpson  
Bill Singer  
Cecil J. Troy  
Robert J. Vollen  
Lois Weisberg  
Morton Weisman  
Richard Wolff

#### Staff

Alexander Polikoff  
*Executive Director*  
Robert J. Vollen  
*General Counsel*  
Douglass W. Cassel, Jr.  
Mary Galloway James  
Elizabeth L. Lassar  
Jane M. Whicher  
Howard A. Learner  
*Attorneys*  
Ron Stevens  
*Attorney, The  
Housing Agency*

Dianne L. Sautter  
*Director of Development*  
M. Seima Wise  
*Community Development  
Director*  
Nancy Stone  
*Paralegal*  
Jeanne L. Yeidel  
*Administrative Assistant*  
**Past Presidents**  
Gordon B. Sherman  
Elliot Lehman



UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

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 Porter County Chapter Intervenors' Motion to Compel Deposition of M. David Lynch in Chicago and a letter from Robert J. Vollen to William H. Eichhorn, dated June 26, 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 26, 1981.

Robert J. Vollen  
Jane M. Whicher

by: Jane M. Whicher  
Jane M. Whicher  
Attorneys for Porter County Chapter  
Intervenors

Robert J. Vollen  
Jane M. Whicher  
c/o BPI  
109 North Dearborn  
Suite 1300  
Chicago, Illinois 60602

(312) 641-5570

SERVICE LIST

Herbert Grossman, Esq.  
Administrative Judge  
Atomic Safety & Licensing  
Board Panel  
U.S. Nuclear Regulatory  
Commission  
Washington, D.C. 20555

Dr. Robert L. Holton  
Administrative Judge  
School of Oceanography  
Oregon State University  
Corvallis, Oregon 97331

Dr. J. Venn Leeds  
Administrative Judge  
10807 Atwell  
Houston, Texas 77096

Maurice Axelrad, Esq.  
Kathleen H. Shea, Esq.  
Lowenstein, Newman, Reis,  
Axelrad and Toll  
1025 Connecticut Ave., N.W.  
Washington, D.C. 20036

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

Diane B. Cohn, Esq.  
William P. Schultz, Esq.  
Suite 700  
2000 P Street, N.W.  
Washington, D.C. 20036

Atomic Safety & Licensing  
Board Panel  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555

Atomic Safety and Licensing  
Appeal Board Panel  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555

George & Anna Grabowski  
7413 W. 136th Lane  
Cedar Lake, Indiana 46303

Dr. George Schultz  
807 E. Coolspring Road  
Michigan City, Indiana 46360

Mr. Mike Olszanski  
Mr. Clifford Mezo  
Local 1010 - United Steelworkers  
of America  
3703 Euclid Avenue  
East Chicago, Indiana 46312

Stephen H. Lewis, Esq.  
Office of the Executive  
Legal Director  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555

Anne Rapkin, Asst. Attorney General  
John Van Vranken, Environmental  
Control Division  
188 W. Randolph - Suite 2315  
Chicago, Illinois 60601

Docketing & Service Section (3)  
Office of the Secretary  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555

Stephen Laudig, Esq.  
21010 Cumberland Road  
Noblesville, Indiana 46060