



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



Intervenor of)
)
NORTHERN INDIANA PUBLIC)
SERVICE COMPANY)
(Bailly Generating)
Station, Nuclear-1))
)

Docket No. 50-367
(Construction Permit
Extension)

PCCI'S MOTION TO COMPEL FURTHER STAFF RESPONSE
AND PRODUCTION OF DOCUMENTS

On May 19, 1981, Porter County Chapter Intervenors (PCCI) filed their Second Request to the NRC for Production of Documents. On June 25, 1981, one of the attorneys for the NRC staff sent a letter to counsel for PCCI concerning that Request, enclosing copies of some documents. Counsel for PCCI responded with a letter on June 29, 1981, in an attempt to obtain more complete information concerning the staff response. Counsel for the staff responded in a letter dated July 7, 1981, which was responsive to some, but not all, of PCCI's requests for clarification.* Accordingly, PCCI hereby move the Board to enter an order compelling the NRC staff to submit a definitive response to PCCI's Second Request to the NRC Staff for Production of Documents, and to produce all documents described in that request, except Paragraphs 4 through 9 and 12.**

The NRC Regulation controlling document production by the

* Copies of each of the three letters referred to above have been served on the Board and all parties to this proceeding.

** Paragraphs 4 through 9 and 12 seek documents pertaining to the staff's answers to PCCI's First Set of Interrogatories to the NRC Staff, which the staff has said will be produced when the staff files its interrogatory answers.

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staff, 10 CFR §2.744, does not speak directly to the form of response required to a request for production of documents. However, a response to a request for production of documents under 10 CFR §2.741(d) fulfills two functions. First, it tells the requester, as to each paragraph of the request, whether inspection of the described documents will be permitted. Second, as to any objections raised, it informs the requester of the reasons for the objection. Thus, although 10 CFR §2.741(d) may not by its terms apply to the staff, it certainly can serve as a guide to judge the adequacy of the staff response and the duties incumbent on a party responding to a request for production of documents.

While the staff's July 7, 1981 letter clarified its response to some extent, the response remains inadequate. The letter is ambiguous and leaves unclear whether the staff has produced the documents described in the various categories of the request, and whether there are others which it has not yet produced. The July 7, 1981 letter states, as to Paragraphs 1, 2, 3, and 10, that staff counsel has "not been able to identify" documents responsive to those paragraphs. The assertion of counsel's inability to "identify" documents is nonresponsive. If the documents do not exist, the staff should be ordered to so state. If they do exist, the staff should be ordered to state that fact and produce the documents.

The staff letters assert an objection to producing documents falling within Paragraph 11 of the Request. The June 25, 1981 letter states an objection to production of "uncirculated notes, because such notes are not in the Commission's possession." The July 7, 1981 letter indicates a change of position and states that production is objected to under §2.744(b)(2).

The staff's July 7, 1981 objection should be denied. First, it has been waived by the staff's failure to raise it in a timely manner. The July 7, 1981 letter states that the objection is based on §2.744(b)(2), in that the documents are not available under §2.790, and that their "disclosure is not necessary to a proper decision in the proceeding." While PCCI do not dispute that, under §2.790 n. 10, handwritten notes and drafts are not made available in the Public Document Room, the staff's assertion that their "disclosure is not necessary to a proper decision" is both unsupported and erroneous.

The requested documents relate to the timing of the issuance of the staff review of the short pilings evaluation. NIPSCO has stated that the short pilings review is one of the reasons for its failure to have completed construction of Bailly by September, 1979. (See letter from NIPSCO by E.M. Shorb to Harold R. Denton dated February 7, 1979.) The requested documents are directly relevant to the amount of delay caused by the review as well as to the reasonableness of the extension requested by NIPSCO. Moreover, the staff has not attempted to set forth any reason or basis for its assertion that the documents are "not necessary to a proper

decision."

* * *

In sum, the staff's response is wholly inadequate, and it should be compelled to file a response stating definitively whether the documents requested exist, and if so, whether they will be produced. Further, to the extent the staff letters raise an objection to Paragraph 11 of the Request, such objection is without merit and should be denied. The staff should be ordered to produce all documents described in the Second Request, except those described in Paragraphs 4 through 9 and 12.

DATED: July 10, 1981

Respectfully submitted,

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by:

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In the Matter of)
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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 following documents:

Motion to Extend Time to File Answers or Objections to Third Set of Interrogatories; and

PCCI's Motion to Compel Further Staff Response and Production of Documents,

to all persons on the attached Service List, by causing them to be deposited in the U.S. mail, first class postage pre-paid, this 10th day of July, 1981.

DATED: July 10, 1981

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