

JAN 15 1982

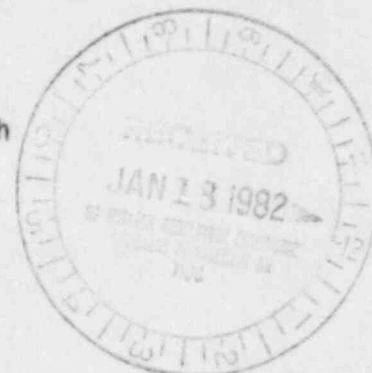
Docket No. 50-367

MEMORANDUM FOR: Ronald L. Ballard, Chief
Environmental Engineering Branch
Division of Engineering

George E. Lear, Chief
Hydrologic & Geotechnical Engineering Branch
Division of Engineering

FROM: M. Dave Lynch, Project Manager
Licensing Branch #2
Division of Licensing

SUBJECT: REDRESSING OF THE BAILLY SITE



On August 26, 1981, NIPSCO indicated that it would no longer seek an extension of the Bailly CP, thereby effectively cancelling the facility. In a letter to H. Denton dated October 8, 1981, NIPSCO submitted its proposal to redress the Bailly site. Following consultations with the NRC staff and the chief intervenors, (Porter County Chapter Intervenors), NIPSCO modified its proposal to accommodate some, but not all, of PCCI's concerns. This modified redressing proposal was submitted as an attachment to a letter dated November 19, 1981 (Enclosure 1). While it is not certain whether PCCI will oppose any portion of the latest proposal on this matter, it is most probable that they will not.

The staff suggested to the Licensing Board on September 15, 1981, that the NRC staff should determine the acceptability of NIPSCO's redressing proposal. In the staff's latest response to the ASLB dated November 18, 1981 (Enclosure 2), we now suggest that the Board should issue an order terminating the proceedings (i.e., the CP extension request made by NIPSCO), conditioning this order with the provisions proposed in NIPSCO's November 19 letter. In our November 18 response to the ASLB, we also suggest that I&E enforce the terms and conditions of the forthcoming ASLB order pursuant to Section 2.107(a) of 10 CFR Part 2.

I request that you review the latest NIPSCO redressing proposal. Please provide some minimum documentation of your evaluation even if you find that no comment would ordinarily be required so that we may establish an internal record of our review for future reference. This documentation will also assist NRR in responding to possible Region III inquiries as the region conducts its inspection of NIPSCO's restoration activities. Under one of NIPSCO's options for filling the excavation (i.e., sand dredged from Lake Michigan), the restoration activities may be delayed until the summer of 1982.

Contact:

Dave Lynch, X29793

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PDR ADOCK 05000367
A PDR

OFFICE
SURNAME
DATE

R. L. Ballard
G. E. Lear

- 2 -

JAN 15 1982

Your evaluation and/or comments should be completed within four (4) weeks of this memo. If this represents a problem, please contact me immediately.

Original signed by

M. Dave Lynch, Project Manager
Licensing Branch #2
Division of Licensing

Enclosures:
As stated

DISTRIBUTION

~~Docket~~

NRC PDR

LB#2 Reading

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OFFICE	DL:LB#2	DL:LB#2					
SURNAME	MDLynch:lb	ASchwencer:lb					
DATE	12/17/81	12/17/81					
	1/15/82	1/15/82					



Northern Indiana Public Service Company

Corporate Headquarters / 245 Michigan Avenue / Hammond, Indiana 46320 / Tel. 853-6300/2131

EUGENE M. SHORB
EXECUTIVE VICE PRESIDENT
AND CHIEF OPERATING OFFICER

November 19, 1981



Mr. Harold R. Denton, Director
Office of Nuclear Reactor Regulation
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Re: Northern Indiana Public Service Company
Bailly Generating Station, Nuclear-1
Docket No. 50-367
Construction Permit No. CPPR-104

Dear Mr. Denton:

On October 8, 1981, I forwarded to you a document entitled "Report on the Resolution of All Construction Activities Undertaken at the Bailly Site for the Construction of Bailly Generating Station, Nuclear-1 for Northern Indiana Public Service Company." That report identified the on-site construction work which had been done and the restoration work which is planned. The report was also served on all parties to the above-referenced proceeding.

Subsequent to the submittal of the report, the NRC Staff (Staff) and the Porter County Chapter Intervenors (PCCI) made comments on and suggested changes in the portion of the report covering backfilling of the excavation. The revised report attached to this letter incorporates those suggested changes and, in NIPSCO's opinion, satisfies all comments of the Staff and PCCI.

The revised report is being served on the Licensing Board and other parties to the construction permit extension proceeding.

Yours very truly,

NORTHERN INDIANA PUBLIC SERVICE COMPANY

By: 

E. M. Shorb
Executive Vice President and
Chief Operating Officer

EMS/dgg
Attachment
(25 copies)

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A PDR

Boo!
S/1

REPORT ON THE RESOLUTION OF ALL
CONSTRUCTION ACTIVITIES UNDERTAKEN AT THE
BAILLY SITE FOR THE CONSTRUCTION OF
BAILLY GENERATING STATION NUCLEAR-1 FOR
NORTHERN INDIANA PUBLIC SERVICE COMPANY

October 8, 1981
Revised November 18, 1981

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INTRODUCTION

The site on which Northern Indiana Public Service Company's (NIPSCO) Bailly Generating Station, Nuclear-1 (Bailly N-1) was to be constructed was purchased in 1932 for the specific purpose of constructing electrical generating facilities. The site presently consists of approximately 350 acres and is generally "L" shaped. Site development began in 1959 and Unit #7 (coal-fired, 194 MWe) was placed in commercial operation in 1962. A second coal-fired unit, Unit #8 (422 MWe), and a combustion turbine (Unit #10, 33 MWe) became operational at the site in 1968. There is a large coal storage pile on the western side of the site. Ash ponds associated with the operation of coal-fired Units #7 and #8 are located along the east-west leg of the site. Support buildings and transmission lines for the fossil units are located throughout the site and the Dune Acres Substation is located at the extreme southeast corner of the site.

The excavation for Bailly N-1 is located between the existing fossil units on the east and the coal storage pile on the west, Lake Michigan on the north and Bethlehem Steel Co. on the south. That portion of the site was cleared and graded to elevation approximately +40' when the site was originally developed in 1959.

The following report identifies the site related construction activities carried out by NIPSCO associated with the construction of Bailly N-1 and NIPSCO's plan for the disposition of each such item.

EXCAVATION

The excavation, which has been completed down to approximately elevation +8' station datum, will be backfilled to an elevation of approximately +40' station datum which was the approximate grade elevation of the area prior to commencement of excavating work. The materials to be used for backfilling the excavation may include any or all of the following:

- (1) Material removed from the excavation.
- (2) Sand presently located on the Bailly Site. No fill material will be taken from the area of the Bailly Site known as the "Green Belt."
- (3) Sand of the type generally found in the area surrounding the Bailly Site, including sand dredged from Lake Michigan.
- (4) Other clean inorganic fill material of a character such as to not produce appreciable differences in hydrologic conductivity or groundwater quality from the material originally removed from the excavation.

The work associated with backfilling the excavation will commence promptly upon receipt of necessary approvals of this proposal, and weather permitting, will take approximately 120 days to complete. However, if the dredging option is elected, actual dredging operations will not begin until the summer of 1982.

SLURRY WALL

The slurry wall originally authorized by Amendment #1 to the Bailly N-1 construction permit consists of a slurry wall and sheet piling which form the perimeter of the excavation for the main building complex. The slurry wall and sheet piling will be left in place.

SHEET PILING

All sheet piling within the excavation except that used as a portion of the perimeter of the excavation will be removed, if practicable.

H-PILES

The H-Piles presently installed in the excavation will be cut off to approximately +8' elevation and left in place and covered over when the excavation is backfilled.

SUMPS AND WELLS

Six (6) sumps with dewatering pumps were located within the excavation. The pumps have been removed and the casings will be left in place and covered over when the excavation is backfilled.

TEST WELL AND DRAINS

One (1) test well and two (2) drains are located within the excavation and will be left in place and covered over when the excavation is backfilled.

WELL POINTS

All of the well points within the excavation along with their associated headers will be removed, if practicable, prior to backfilling the excavation.

OBSERVATION WELLS

Forty-nine (49) groundwater observation monitoring wells have been installed by NIPSCO on NIPSCO property including six (6) pore pressure transducers. The groundwater observation monitoring wells, all of which are located outside the excavation, will be capped and left in place. The pore pressure transducers, all of which are located within the excavation, will be left in place and covered over when the excavation is backfilled.

METEOROLOGICAL TOWER AND INSTRUMENT BUILDING

The meteorological tower and instrument building initially installed to collect meteorological data for Bailly N-1 will be removed.

CONSTRUCTION BUILDINGS

During the initial phase of Bailly N-1 construction, the following facilities were built to support the anticipated construction activities:

The Nuclear Staff Office Building.

The Bailly N-1 Construction Warehouse.

The Bailly N-1 Civil Test Lab.

The Sewage Treatment Plant.

All of these facilities are located on the Bailly N-1 site which is also the site of NIPSCO's existing fossil Units #7, #8 and #10. The present and proposed future use of each of these structures is discussed below.

The Nuclear Staff Office Building

The Nuclear Staff Office Building is a two-story metal frame structure, 60' x 160' located approximately 350' west of the east property line of the northern section of the "L" shaped site and 800 feet south of the Unit #7 turbine room. This building was constructed in 1975 to provide office space and record storage facilities for NIPSCO's Nuclear Staff and the Bailly N-1 Construction Manager. Various other departments within NIPSCO are now occupying much of the office space left vacant as a result of Nuclear Staff reductions. The Nuclear Staff Office Building will be left in place and continue to be used by other NIPSCO departments to meet NIPSCO's increasing need for office space.

The Bailly N-1 Construction Warehouse

The Construction Warehouse is a 60' x 180' steel building located approximately 100' west of Bailly Unit #10 combustion turbine building. This building was constructed in 1975 to provide storage and prefabrication areas for Bailly N-1. Currently, approximately one-half of this building is being used for storage of nuclear equipment while the other half is being used to supplement the storage area requirements of NIPSCO's existing fossil Units #7 and #8. Following the removal of the nuclear equipment, this building will be used at the Bailly site as a warehouse and/or machine shop for the existing units.

The Bailly N-1 Civil Test Lab

The Civil Test Lab is a 24' x 76' steel building located east of NIPSCO's ash ponds and wastewater treatment plant. This building was constructed in 1978 to provide facilities for testing concrete and reinforcing bar to be used in the construction of Bailly N-1. These facilities are now planned to be used as a quality assurance laboratory.

The Sewage Treatment Plant

The facilities for Bailly N-1's sewage treatment plant are housed in a steel building approximately 140' x 25' located near the southeast corner of the Bailly N-1 excavation. The plant handles raw sewage from the existing generating station as well

as the Bailly N-1 office and warehouse. The need for the Sewage Treatment Plant is not affected by cancellation of Bailly N-1.

34,500 VOLT CONSTRUCTION LINE

The 34,500 volt, three-phase line (the line) placed on wooden poles and traversing from the Dune Acres Substation (at the extreme southeastern portion of the Bailly site) along the Bailly site entrance road, was installed in 1974.

The line is used to supply the electrical power to the following:

- The civil test laboratory building.

- The newly constructed wastewater treatment plant substation for Units #7 and #8.

- The Units #7 and #8 pollution control system construction substation.

- The Bailly N-1 construction substation which is used to supply power to the Nuclear Staff office building, construction warehouse, sewage treatment plant, parking lot lights for fossil unit construction employees and parking lot lights for the fossil unit operating employees.

The line and all associated substations must remain in service as the power provided for all of the above-listed functions must continue for operation of the existing fossil plants, their pollution control equipment and the wastewater and sewage handling systems.

SLAGGED LAYDOWN AREA AND RAILROAD SPUR

The slagged laydown area which was installed north of the Dune Acres Substation, along with a railroad spur, will be left in place and utilized by fossil plant and substation departments.

BAILLY N-1 EQUIPMENT

NIPSCO began receiving and storing Bailly N-1 equipment in 1972. At present, equipment is stored in two (2) warehouses on the Bailly site, two (2) warehouses at the Michigan City Generating Station, one (1) warehouse in the Town of Chesterton and one (1) warehouse at the Port of Indiana. NIPSCO intends to seek interested buyers for this equipment and dispose of it as soon as practicable.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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on October 8, 1981, on the Board and the parties to this proceeding of copies of a "Report on the Resolution of All Construction Activities Undertaken at the Bailly Site for the Construction of Bailly Generating Station Nuclear 1". NIPSCO, anticipating that the parties would reach agreement on the substance of the restoration plans, stated that in its view there was no need to argue the procedural point concerning whether a determination of the acceptability of site restoration plans should be made by the Board, as suggested by PCCI, or by the Staff, as suggested in Staff's Response of September 15, 1981 to NIPSCO's Motion to Terminate the Proceeding.

For the reasons discussed below, Staff suggests that the Board should find that PCCI's Motion is moot insofar as it seeks to have the Board require NIPSCO to submit its plan. Further, the Board should deny that portion of the Motion which seeks to require the Board to determine that the redress plan has been satisfactorily completed prior to termination of the proceedings. Board action on that part of the Motion which seeks a Board order requiring NIPSCO to fill the excavation should await a supplementary submittal by the parties.

II. DISCUSSION

Insofar as PCCI seeks an Order directing NIPSCO to submit its plans concerning the excavation, Staff agrees with NIPSCO that NIPSCO's submittal of October 8, 1981 moots PCCI's request. With respect to PCCI's request that prejudice attach to the termination of these proceedings, Staff would note that the question of termination with prejudice has been recently addressed by the Atomic Safety and Licensing

Appeal Board in Philadelphia Electric Company (Fulton Generating Station, Units 1 and 2) ALAB-657, 13 WRC _____, (November 17, 1981), in which the Appeal Board set forth standards to be followed in determining whether prejudice should attach to withdrawal of an application. Briefly stated, these standards require a finding of bad faith in prosecuting the application resulting in harm to other parties to the proceeding or to the public interest in general before prejudice attaches. Slip op. at 18. Based on Staff's review of the record in this proceeding, we do not believe that these standards have been met and therefore it is our belief that Board action on NIPSCO's request should be without prejudice.

In Staff's opinion, the only matter properly raised in PCCI's Motion which has not been mooted or modified by subsequent events is its suggestion that, prior to termination of the proceedings, the Board should determine "...upon notification by NIPSCO and further opportunity for comment by parties, that the matter of the excavation has been satisfactorily resolved...." (Motion at 2)

As the Staff noted in its Response to the Motion to Terminate, under 10 C.F.R. §2.107(a) the Licensing Board has the authority to condition the withdrawal of NIPSCO's extension application upon such terms as it may prescribe. The Staff also suggested that the Licensing Board should require NIPSCO to submit a site restoration plan for Staff approval. Such a plan has been submitted and NIPSCO and the Staff have reached an agreement concerning revisions to that plan which will be submitted to the Director of the Office of Nuclear Reactor Regulation by NIPSCO very shortly. Copies of the revised plan will be served on the Board and

parties. The provisions of the plan should become conditions of the order which the Board issues pursuant to §2.107(a). Staff sees no reason for these proceedings to continue after the issuance of such an order.

The Staff's suggestion is not without precedent. In fact, a procedure similar to that suggested by Staff was followed with regard to Toledo Edison's withdrawal of construction permit applications for Davis-Besse Nuclear Power Station, Units 2 and 3 and request that the adjudicatory proceedings on those applications be terminated. The Chairman of the Atomic Safety and Licensing Appeal Panel determined that the request that the proceeding be terminated should be addressed to the Licensing Board. Toledo Edison Co. et al. (Davis-Besse Nuclear Power Station, Units 2 and 3), ALAB-622, 12 NRC 667, 669. (1980). The Chairman instructed the Licensing Board that, before taking action, it was to "accord the staff a reasonable opportunity to propose any conditions which its inspection of the current state of the site might suggest be attached to the termination order." Id., 12 NRC at 669.

Subsequently, the Licensing Board issued an order which, in pertinent part, granted Toledo Edison's request that its application for construction permits be withdrawn, prescribed conditions pursuant to 10 C.F.R. §2.107(a) on the withdrawal, and granted Applicant's motion to terminate the proceedings. Toledo Edison Company, et al. (Davis-Besse Nuclear Power Station, Units 2 and 3), Slip op., August 28, 1981.

No party appealed that order and in a Memorandum of September 3, 1981, the Atomic Safety and Licensing Appeal Panel Chairman stated that appellate review sua sponte was not necessary because the conditions were

acceptable to all concerned, were unexceptional in nature, and seemed on their face appropriate to the accomplishment of their purpose.

Toledo Edison Company, et al. (Davis-Besse Nuclear Power Station, Units 2 and 3) ALAB-852, 13 NRC ____ (September 3, 1981).

Staff sees no reason for this Licensing Board to depart from the procedures followed in Davis-Besse.

The Staff has previously advised the Board that the parties were discussing the substance of conditions to be imposed upon NIPSCO's withdrawal. Agreement has been reached between NIPSCO and Staff on changes proposed by PCCI to NIPSCO's site restoration plan. It is Staff's understanding that even though its proposals have been accepted, PCCI intends not to join in a motion seeking a Board order imposing the provisions of the plan as conditions of withdrawal because the parties have not reached agreement concerning the need for the Board to retain jurisdiction over the implementation of the conditions attached to withdrawal. In Staff's view, conditions attached to a licensing board order granting withdrawal of an application have the same force and effect as conditions imposed on a construction permit or operating license. The NRC's Office of Inspection and Enforcement is available to enforce the terms and conditions of an order pursuant to § 2.107(a) in the same way that it enforces the performance of license conditions. Even though the Board's jurisdiction will have terminated with the

issuance of an order pursuant to § 2.107(a), the Commission's jurisdiction to enforce the conditions of the order remains.^{1/}

III. CONCLUSION

For the reasons discussed above, the Board should deny PCCI's Motion insofar as it seeks to require Board approval of NIPSCO's execution of its site restoration plan prior to the termination of these proceedings. The Board should find that the portion of the Motion which seeks a Board order requiring NIPSCO to submit a restoration plan is moot and should defer action on the portion of the motion requesting the Board to order NIPSCO to fill the excavation until NIPSCO has submitted amandatory

^{1/} This is clear from the full text of § 2.107(a), which reads:

The Commission may permit an applicant to withdraw an application prior to the issuance of a notice of hearing on such terms and conditions as it may prescribe, or may on received a request for withdrawal of application, deny the application or dismiss it with prejudice. Withdrawal of an application after the issuance of a notice of hearing shall be on such terms as the presiding officer may prescribe.

As the Appeal Board points out in ALAB-657, cited supra, Section 2.107(a) is similar to Rule 41(a)(2) of the Federal Rules of Civil Procedure, which permits a court to dismiss an action at a plaintiff's request "upon such terms and conditions as the court deems proper." Slip op. at 9.

language to its restoration plan to which Staff has agreed and other parties have had an opportunity to comment on NIPSCO's amended plan.

Respectfully submitted,

Ann P. Hodgdon

Ann P. Hodgdon
Counsel for NRC Staff

Dated at Bethesda, Maryland
this 18th day of November, 1981

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

Docket No. 50-367
(Construction Permit Extension)

Atomic Safety and 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 *

Docketing and Service Section
Office of the Secretary
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555 *

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