

DECLERED
JAN 7 1978
A10:48

AFFIDAVIT OF ROBERT J. VOLLEN

ROBERT J. VOLLEN, being duly sworn, says:

1. I am one of the attorneys of record for the group of organizations and individuals commonly referred to in the Bailly proceedings before the Nuclear Regulatory Commission as "Porter County Chapter Intervenors" or "PCCI," one of which is Business and Professional People for the Public Interest, Inc. (previously known as Businessmen for the Public Interest, Inc.) ("BPI").
2. I first provided legal services in connection with BPI's efforts to prevent construction of the Bailly nuclear plant in the summer of 1974 and since approximately the beginning of 1975 I have served as lead counsel for BPI, and the other Porter County Chapter Intervenors, in all litigation efforts seeking that goal, including in the NRC proceedings concerning an extension of the Bailly construction permit, No. CPPR-104, and in the NRC and judicial proceedings concerning the short pilings proposal for construction of Bailly.
3. I am a graduate of the University of Michigan (A.B. 1961) and of the University of Chicago Law School (J.D. 1964), where I was a member of the editorial board of the Law Review and a member of the Order of the Coif. I am admitted to practice

in the Supreme Court of the United States, in the United States Court of Appeals for the Fourth, Seventh, Eighth and District of Columbia Circuits, in the United States District Courts for the District of Columbia and for the Northern District of Illinois, and in the Supreme Court of Illinois.

4. From July 1964 until December 1975 I was an attorney in the Attorney General's Honors Graduate Program in the Appellate Section, Civil Division, United States Department of Justice, where my practice was exclusively in civil appellate matters.

From January 1966 and until October 1972 I was an associate and then a partner with the law firm that is now known as Schiff, Hardin & Waite in Chicago, where my practice was almost exclusively in a variety of civil litigation matters, many of them lengthy and complex.

Since October 1972, I have been General Counsel and a full-time salaried employee of BPI.

Upon joining BPI in 1972, I assumed primary responsibility for the representation of a number of intervenors before the United States Atomic Energy Commission (AEC) in the operating license proceedings concerning the Zion, Cook and Kewaunee nuclear plants. Since joining BPI I also have had primary responsibility for a number of cases in the United States District Court for the Northern District of Illinois, and in the United States Court of Appeals for the Seventh and District of Columbia Circuits, and in the Supreme Court of the United States, to a number of which either the NRC or the AEC was a party. Since early 1975, I have served

as lead counsel in all of the legal proceedings concerning construction of the Bailly plant to which BPI has been a party, including those before the United States Nuclear Regulatory Commission, the United States Court of Appeals for the Seventh and D.C. Circuits and the Supreme Court of the United States, as well as non-litigative efforts involving the United States Department of the Interior, and others.

3. BPI was incorporated as an Illinois not-for-profit corporation in 1969 and since that time has functioned as a public interest law and research center. It has extremely limited resources. It is funded by contributions and grants from individuals, business and foundations, and occasionally by an award of attorneys fees. BPI has been determined by the Internal Revenue Service to be an organization described in section 501(c)(3) of the Internal Revenue Code of 1954 (26 USC §501(c)(3)), exempt from taxation under section 501(a) of the Code.

6. Most of PCCI's costs and expenses of carrying on the litigation to prevent construction of Bailly, including the salaries of myself and Jane M. Whicher, has been paid by BPI. Any fees awarded for my services in this case will be paid to BPI.

7. In May and June 1982 I prepared a written record (set forth in paragraphs 8 and 9 hereof) of some of the professional time I estimate having spent on the NRC proceedings concerning the application of Northern Indiana Public Service Company (NIPSCO) for an extension of the Bailly construction permit and on the proceedings before the NRC and the United States Court of Appeals for the

District of Columbia concerning the short pilings proposal for construction of the Bailly plant. The primary sources which I used to refresh my recollection and to reconstruct the time which I spent are copies of pleadings, briefs, and other documents filed with the NRC and with the Court of Appeals for the District of Columbia Circuit, internal legal and factual research memoranda, and my appointment calendars for the years 1978 through 1981. For each activity I recorded only what I believe to be the least amount of time I actually spent. I have no doubt that I actually spent substantially more time than is recorded herein.

8. The written record with respect to the proceedings concerning NIPSCO's application for an extension of the Bailly construction permit, referred to in paragraph 7 hereof, is as follows:

<u>DATE</u>	<u>ACTIVITY</u>	<u>HOURS</u>
2/19/79- 2/27/79	Review NIPSCO letter to NRC of 7/7/79, draft, edit and finalize Request for Hearing, filed 2/27/79.	4.0
6/11/79- 6/29/79	Legal and factual research, draft, review, edit and finalize Joint Supplement to Requests for Hearing, filed 6/29/79.	15.0
9/17/79- 10/3/79	Review NIPSCO letter to NRC of 8/31/79; prepare and finalize Amendment to Requests for Hearing, filed 10/3/79.	2.0
11/27/79- 12/20/79	Review Notice of Opportunity, factual and legal research; draft, review, edit and finalize Porter County Chapter Petition for Leave to Intervene and Request for Hearing, and Petitions for Waiver of Exception and for Rule Making, all filed 12/20/79.	40.0
1/22/80- 1/24/80	Review submission of NIPSCO of 1/18/81 and of NRC staff of 1/23/80.	4.0

<u>DATE</u>	<u>ACTIVITY</u>	<u>HOURS</u>
1/22/80- 2/4/80	Review NIPSCO Motion for Establishment of Schedule; draft, review, edit and finalize Answer to NIPSCO Scheduling Motion, filed 2/4/80.	5.0
2/19/80- 2/20/80	Prepare and finalize Motion for (1) Reconsideration and (2) Continuance, filed 2/20/80.	2.0
2/18/80- 2/26/80	Draft, revise, edit and finalize First Supplement to Petition for Leave to Intervene, filed 2/26/80.	10.0
2/27/80	Review Supplemental Petition of State of Illinois, prepare and finalize Notice of Joinder and Adoption, filed 2/27/80.	3.0
3/3/80- 3/11/80	Prepare for Prehearing Conference, including review of NIPSCO and NRC staff submissions of 3/7/80.	14.0
3/12/80- 3/13/80	Attend Prehearing Conference in Valparaiso.	10.0
3/20/80	Prepare and finalize Notice of Service and accompanying documents, filed 3/20/80.	2.0
3/20/80- 3/31/80	Prepare and finalize Notice of Filing and accompanying affidavits, filed 3/31/80	3.0
4/1/80- 4/10/80	Prepare and finalize Brief Re Contentions 4 and 5 and Ash Pond Seepage, Brief in Support of Contention 1, Views Concerning Prehearing Conference transcript, and Notice Concerning Grabowski Submissions, all filed 4/10/80.	16.0
5/2/80	Meeting with counsel for NRC Staff, NIPSCO, and State of Illinois re contentions.	5.0
6/5/80- 6/30/80	Review Provisional Order Following Special Prehearing Conference, draft, review, edit and finalize Objections to Comments On, Requested Revisions of and Reworded Contentions in Response thereto, filed 6/30/80.	20.0
8/13/80- 8/18/80	Review Order Following Special Prehearing Conference, prepare and finalize Objections thereto, filed 8/18/80.	6.0

<u>DATE</u>	<u>ACTIVITY</u>	<u>HOURS</u>
8/19/80	Prepare and finalize Notice of Deposition of Eugene M. Shorb, filed 8/19/80.	1.0
8/18/80- 8/25/80	Prepare, review and finalize First Request to NIPSCO for Production of Documents, filed 8/21/80, Responses to the Board's Questions on Short Filings Issue, filed 8/25/80, Motion Concerning Environmental Impact Statement, filed 8/25/80.	15.0
8/26/80- 8/28/80	Prepare, review, edit and finalize Arguments in Support of the Admissibility of "Newly-Filed Contentions," filed 8/28/80.	4.0
9/3/80- 9/8/80	Prepare, review and finalize Reply to Staff Position on Newly-Filed Contentions and Answer to Staff Motion to Consolidate, Response to NIPSCO's Request for Consolidation of Replies, and Request for Extension of Time to File Reply, all filed 9/8/80; prepare for deposition of Eugene M. Shorb.	10.0
9/9/80	Take deposition of Eugene M. Shorb.	6.0
9/2/80- 9/15/80	Prepare, review and edit Brief in Support of Appeals of City of Gary, et al. from Order Denying Petitions to Intervene, filed 9/15/80.	8.0
9/15/80- 9/18/80	Prepare and finalize Notice of Depositions of Edmund A. Schroer and Horace P. Lyle, filed 9/17/80; First Request to NRC for Production of Documents and Second Request to NIPSCO for Production of Documents, both filed 9/18/80.	8.0
9/26/80 & 9/29/80	Review documents produced by NIPSCO and prepare for deposition of Eugene M. Shorb.	5.0
9/30/80	Take depositions of Eugene M. Shorb and Russell J. Bohn.	6.0
10/1/80- 10/2/80	Prepare for and Present Oral Argument before Appeal Board.	4.0
10/6/80- 10/10/80	Review and finalize Reply to NIPSCO Response Newly-Filed Contentions, filed 10/10/80.	2.0
10/13/80- 10/14/80	Prepare and finalize Motion to Compel Production of Documents and Answer to NIPSCO's Motion for a Protective Order, filed 10/14/80.	4.0

<u>DATE</u>	<u>ACTIVITY</u>	<u>HOURS</u>
10/16/80- 10/17/80	Meet with potential expert witness, prepare and finalize Motion Concerning Deposition of M. David Lynch, filed 10/17/80.	6.0
10/20/80- 10/21/80	Prepare for and take deposition of Russell J. Bohn.	5.0
10/22/80	Prepare for, edit and finalize Partial Answer in Opposition to Motion for Protective Order, Motion to Extend Time to Complete Answer, Second Motion to Compel Production of Documents by NIPSCO, Notice of Deposition of Eugene W. O'Rourke, all filed 10/24/80.	6.0
11/3/80- 11/6/80	Prepare and finalize Third Motion to Compel Production of Documents by NIPSCO, Answer to NIPSCO's Motion for Protective Order, filed 11/6/80.	4.0
11/10/80- 11/13/80	Prepare, review, edit and finalize Motion to Suspend Litigation proceedings, filed 11/13/80.	5.0
11/19/80	Review and finalize Response to NRC Staff Motion for Protective Order, filed 11/19/80.	2.0
11/24/80	Review and finalize Response to GE's Motion for Protective Order with Respect to Notice of Deposition, filed 11/24/80.	2.0
1/5/81- 1/9/81	Review and finalize Objections to Memorandum and Order of December 24 and Motion for Reconsideration and Motion for Certification or Referral, all filed 1/9/81.	8.0
1/19/81- 1/27/81	Review documents and prepare contention concerning NIPSCO's letter of 11/26/80, letters to counsel for NIPSCO and to Director of National Park Service, all dated 1/27/81.	6.0
1/29/81- 1/30/81	Review documents and meet with potential expert witness.	6.0
2/19/81- 2/26/81	Review and finalize Response in Support of the Admissibility of Contention 13, filed 2/26/81.	6.0
3/2/81- 3/6/81	Prepare, review and finalize Contention 14 and Motion for the Admission of Contention 14, filed 3/6/81.	3.0

<u>DATE</u>	<u>ACTIVITY</u>	<u>HOURS</u>
3/9/81- 3/20/81	Prepare, review, edit and finalize Third Request to NIPSCO for Production of Documents, First Set of Interrogatories to NIPSCO, Motion for Order Under 10 CFR §2.740(e), all filed 3/20/81.	10.0
3/23/81- 3/31/81	Review March 5, 1981 NRC Staff letter to NIPSCO Safety Evaluation Report, legal research, prepare and finalize Notice of Intention to Seek Stay, filed 3/31/81.	10.0
4/2/81- 4/7/81 and 4/13/81	Prepare, review and finalize (1) Motion to Reconsider Memorandum and Order of March 30, 1981, denying O'Rourke deposition and (2) completion of answer in opposition to General Electric's Motion for Protective Order, filed 4/13/81.	5
4/15/81- 4/16/81	Review and finalize Motion for Leave to File Reply and Reply in Support of Motion for Order under 10 CFR §2.740(e), filed 4/16/81.	2
4/17/81- 4/20/81	Review and finalize Motion to Compel Answers to First Set of Interrogatories to NIPSCO, filed 4/20/81.	2
4/24/81- 5/11/81	Review documents, prepare and file answers to NIPSCO's First Set of Interrogatories and Motion to Compel Production of Documents by NIPSCO filed 5/11/81.	8
5/12/81- 5/19/81	Prepare and finalize amended Notice of Depositions, filed 5/12/81 and Second Set of Interrogatories to NIPSCO; Fourth Request to NIPSCO for Production of Documents; Application pursuant to 10 CFR §2.720 (h)(2)(i); Notice of Deposition of James G. Keppler; Second Request to the NRC for the Production of Documents; Application pursuant to 10 CFR §2.720 (h)(2)(ii); First Set of Interrogatories to the NRC staff; and Amended Notice of Depositions; all filed 5/19/82.	10
5/21/81- 6/4/81	Review documents filed by NIPSCO; review documents produced in discovery; prepare for deposition of Edmund A. Schroer.	10
6/5/81	Take deposition of Edmund A. Schroer.	6
6/8/81- 6/9/81	Review and finalize Second Application pursuant to 10 CFR §2.720(h)(2)(i); Notice of Deposition of Owen Thompson and E. L. Jordan; Third Request to the NRC for production of documents; Notice of Deposition of J. W. Dunn; all filed 6/9/81.	6

<u>DATE</u>	<u>ACTIVITY</u>	<u>HOURS</u>
6/10/81	Review and finalize Motion for Leave to File Reply Brief and Answer to NIPSCO's Motion to Compel, all filed 6/10/81.	4
6/11/81	Prepare for deposition of Edmund A. Schroer.	2
6/12/81	Take deposition of Edmund A. Schroer.	5
6/15/81- 6/16/81	Prepare and finalize answer to NIPSCO's Motion for Establishment of Schedule, filed 6/16/81; attend deposition of Horace P. Lyle, 6/16/81.	8
6/17/81- 6/18/81	Prepare and finalize Response to General Electric's Motion for Extension of Time; Notice of depositions of Harold Ricca and James F. Purcell; Motion for Leave to File Reply Brief; Reply Brief; First Application for Subpoenas; all filed 6/18/81.	6
6/19/81- 6/23/81	Prepare and finalize Response to NIPSCO's Motion for Protective Order and Motion to Compel Answers to Interrogatories 9 and 6(d), filed 6/23/81.	3
6/23/81- 6/29/81	Review documents and prepare for deposition of Eugene M. Shorb; prepare and finalize answer to NIPSCO's Request for Reconsideration; Notice of depositions and letter to counsel for NRC staff.	10
6/30/81	Take deposition of Eugene M. Shorb.	5
7/1/81- 7/8/81	Prepare and finalize answers and objections of PCCI to NIPSCO' Second Set of Interrogatories; Supplement to Notice of Intention to Seek Stay; Motion to Compel Documents by NIPSCO; all filed 7/8/81.	10
7/9/81- 7/10/81	Prepare and finalize Motion to Extend Time and Motion to Compel Further Staff Response and Production of Documents, filed 7/10/81.	4
7/13/81	Prepare for deposition of Dean H. Mitchell.	3
7/14/81	Take deposition of Dean H. Michell; review of documents in Chesterton public document room.	4
7/15/81- 7/17/81	Prepare and finalize Notice of Deposition of M. David Lynch and Notice of Withdrawal of Motion to Compel Deposition of M. David Lynch, filed 7/17/81.	2

<u>DATE</u>	<u>ACTIVITY</u>	<u>HOURS</u>
7/20/81- 7/23/81	Review documents to prepare for deposition of Russell J. Bohn; prepare and finalize Motion for Clarification on Reconsideration of Orders Concerning Discovery, filed 7/22/81; Response to NIPSCO's Motion for Protective Order; filed 7/23/81.	10
7/28/81	Take deposition of Russell J. Bohn.	6
7/29/81- 7/31/81	Prepare and finalize Fifth Request to NIPSCO for Production of Documents; Third Set of Interrogatories to NIPSCO; both filed 7/30/81; Fourth Request to the NRC for Production of Documents; Second Application Pursuant to 10 CFR §2.720(h)(2)(ii); Fourth Set of Interrogatories to NIPSCO; Second Set of Interrogatories to the NRC Staff; Motion for Leave to Initiate Discovery; Sixth Request to NIPSCO for Production of Documents; letters to counsel for NRC staff and to NIPSCO; and Second Application for Subpoenas; all filed 7/31/81.	10
8/1/81- 8/3/81	Prepare and finalize Answers and Objections to NIPSCO's Third Set of Interrogatories.	6
8/3/81	Prepare for and participate in conference call.	2
8/4/81- 8/5/81	Prepare and finalize Response to NIPSCO's Motion to Compel Answers to Its Second Set of Interrogatories, filed 8/5/81.	2
8/6/81 & 8/10/81	Review and finalize Motions to Compel, to Extend Time and Necessaries of Depositions, filed 8/10/81.	3
8/11/81	Review and finalize discovery documents filed 8/11/81.	5
8/13/81	Prepare for deposition of Russell J. Bohn.	4
8/14/81	Take deposition of Russell J. Bohn.	7
8/17/81	Prepare for deposition of M. David Lynch.	4
8/18/81 & 8/19/81	Take deposition of M. David Lynch.	10
8/20/81	Prepare for deposition of A.P. Severance.	3
8/21/81	Take deposition of A.P. Severance.	6

<u>DATE</u>	<u>ACTIVITY</u>	<u>HOURS</u>
8/24/81- 8/26/81	Review discovery document filed by NIPSCO.	6
8/27/81	Review NIPSCO Motion to Terminate Proceedings.	1
9/8/81- 9/10/81	Prepare, review and finalize Response to NIPSCO's Motion to Terminate Proceedings, filed 9/10/81.	2
10/1/81	Prepare and finalize Motion Concerning Excavation, filed 10/1/81.	4
10/12/81- 12/9/81	Review NIPSCO's Site Restoration Plan and revise Site Restoration Plan; discussions with experts concerning same; discussions with counsel for NRC staff and NIPSCO concerning same; prepare and finalize Motion to Compel NIPSCO to Implement Its Revised Plan for Site Restoration.	10
1/4/82- 1/8/82	Legal research; prepare, revise and finalize Motion for an Order Imposing a Condition Upon Withdrawal of NIPSCO's Applications, filed 1/8/82.	5
2/25/82- 3/1/82	Prepare and finalize Response to NIPSCO's Motion for Reconsideration of Order dated 1/29/82, filed 3/1/82.	4
3/22/82- 3/23/82	Prepare and finalize Supplement to Position Regarding Timing of Termination of Proceedings; Motion for Leave to Take Limited Discovery; First Interrogatories to NIPSCO concerning Site Restoration; all filed 3/23/82.	4
4/14/82- 4/29/82	Review Memorandum and Order of 4/12/82 and prepare and finalize objections to and requested modifications of proposed order terminating proceedings, filed 4/29/82.	4
5/10/82	Review Memorandum and Order terminating proceedings, dated 5/6/82.	1
5/17/82- 5/28/82	Prepare application for and award of attorneys fees and expenses and affidavit in support.	10
6/1/82- 6/4/82	Review and finalize application for award of attorneys fees and expenses, filed 6/4/82.	5
Total		562

9. The written record with respect to the proceedings concerning NIPSCO's short pilings proposal, referred to in paragraph 7 hereof, is as follows:

<u>DATE</u>	<u>ACTIVITY</u>	<u>HOURS</u>
8/28/74	Review NIPSCO letter of 6/13/74 to AEC and prepare letter of 8/28/74 to counsel for NIPSCO and AEC Staff.	2.0
10/10/77- 12/31/77	Review and transmit correspondence from and to NRC and NIPSCO and telephone conversations with counsel for NRC Staff and for NIPSCO.	10.0
1/31/78- 3/8/78	Review correspondence from NRC to NIPSCO and telephone conversations with staff counsel.	3.0
3/10/78- 8/11/78	Review correspondence and technical documents from NRC and NIPSCO; attend meetings with counsel for State of Illinois and with potential experts; attend meetings with representatives of NIPSCO and NRC; telephone conversations and correspondence with counsel for NRC and NIPSCO.	10.0
9/1/78- 11/1/78	Legal and factual research, draft, review, edit and finalize Petition With Respect to Short Pilings Proposal, filed 11/1/78.	30.0
12/4/78	Review letter of 12/1/78 from NIPSCO and to NRC.	1.0
12/14/78	Review and discuss with co-counsel Commission Memorandum of 12/11/78.	1.0
1/10/79	Review NIPSCO submission of 1/8/79.	2.0
1/12/79	Review NRC Staff submittal of 1/10/79.	2.0
6/13/79	Review NRC letter of 6/8/79 to ACRS.	0.5
6/29/79	Review NRC Notice of ACRS meeting.	0.5
7/16/79	Review NRC Staff Submission of 7/10/79.	1.0
7/19/79	Attend ACRS Subcommittee meeting in Portage, Indiana.	5.0

<u>DATE</u>	<u>ACTIVITY</u>	<u>HOURS</u>
7/30/79	Review ACRS letter of 7/16/79 and NRC Order of 7/25/79.	1.0
8/1/79- 8/14/79	Draft, review, edit and finalize Petitioners' Comments on ACRS' 7/16/79 letter, filed 8/14/79.	10.0
8/17/79	Review NIPSCO submission of 8/14/79 and NRC Staff submission of 8/15/79.	1.0
10/3/79	Prepare and finalize Motion to Consolidate, filed 10/3/79.	1.0
10/30/79	Review NIPSCO submission of 10/10/79 and NRC Staff submission of 10/23/79; prepare and finalize Reply in Support of Motion to Consolidate, filed 10/30/79.	1.0
12/13/79- 12/21/79	Review NRC Memorandum and Order of 12/12/79.	5.0
1/2/80- 2/13/80	Legal research, meet with co-counsel, draft, review and finalize Petition for Review in <u>People of the State of Illinois, et al. v. NRC, et al.</u> in D. C. Circuit, filed 2/13/80.	15.0
5/28/80- 6/3/80	Preparation and finalize of Petitioners' Motion to Extend Time for Filing Briefs, filed 6/3/80.	3.0
6/11/80- 6/12/80	Preparation and finalize Supplement to Petitioners' Motion to Extend Time For Filing Briefs, filed 6/12/80.	2.0
6/12/80- 7/30/80	Legal research, draft, review, edit, and finalize Brief for Petitioners, filed 7/30/80.	30.0
11/4/80- 12/20/80	Review Brief to Respondents, legal research, draft, review, edit and finalize Reply Brief for Petitioners, filed 12/22/80.	20.0
3/25/81- 3/26/81	Prepare and finalize Supplemental Brief for Petitioners, filed 3/26/81.	2.0
3/31/81- 4/8/81	Prepare for oral argument.	10.0

<u>DATE</u>	<u>ACTIVITY</u>	<u>HOURS</u>
4/9/81	Present oral argument.	1.0
4/9/81	Meet with counsel for NRC, preparation of letter to Clerk of Court, filed 4/9/81	1.0
7/6/81	Review Judgment and Memorandum of Court of Appeals, filed 7/1/81.	1.0
8/24/81- 8/25/81	Consideration of further proceedings before NRC.	<u>2.0</u>
TOTAL		174.0

10. BPI has incurred substantial out-of-pocket expenses in the proceedings concerning the short pilings proposal and construction permit extension. Among those expenses are some for copying of documents for filing and service and some for out-of-town travel, for which I believe an attorney in private practice would ordinarily charge clients separately. Based upon a review of BPI's file and records, I believe the BPI has incurred at least the following expenses:

Copying:

Approximately 20,000 pages at 5¢ per page \$1,000.00

Travel:

Valparaiso, Indiana, March 12, 13, 1980 for prehearing conference	135.95
Washington, D.C., April 8, 9, 1981 for oral argument in Court of Appeals	525.00
Bailly site, May 4, 1981 for document inspection	39.50

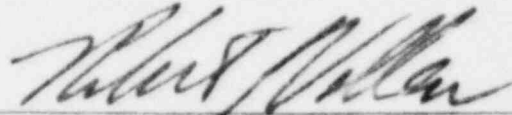
Hammond, Indiana, June 5, 12, 15 and 30 and
July 14, 1981 for depositions of NIPSCO
officers and employees

\$ 140.95

TOTAL

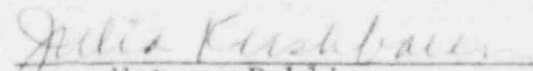
\$1,841.45

Further affiant says not.



ROBERT J. VOLLEN

Subscribed and sworn to
before me this 4/16 day
of June, 1982.



Notary Public