

June 30, 1982



SECY-82-277

ADJUDICATORY ISSUE
(Affirmation)

For: The Commissioners

From: Martin G. Malsch
Deputy General Counsel

Subject: REQUEST FOR FEES AND EXPENSES
UNDER THE EQUAL ACCESS TO
JUSTICE ACT IN BAILLY PROCEEDING

Discussion: On June 4, 1982, the Business and Professional People for Public Interest (BPPPI), lodged with the agency an application for attorney fees and expenses under the Equal Access to Justice Act, 5 U.S.C. § 504 (Attachment 1). BPPPI's claim is based on its participation in several matters concerning the Bailly facility.

Currently pending before the Commission are the proposed final rule to implement the Equal Access to Justice Act (SECY-82-241).

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PDR FOIA
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ATTACHMENT 1

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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

APPLICATION FOR AWARD OF FEES AND EXPENSES
UNDER THE EQUAL ACCESS TO JUSTICE ACT

BUSINESS AND PROFESSIONAL PEOPLE FOR THE PUBLIC INTEREST,
INC. (formerly known as Businessmen for the Public Interest, Inc.)
("BPI"), by its attorneys, hereby applies for award of attorneys'
fees and expenses, pursuant to the Equal Access to Justice Act,
P.L. 96-481, 94 Stat. 2321, amending 5 USC §501 et seq., all as
more fully set forth below.

1. BPI is one of the group of organizations and individuals frequently referred to as "Porter County Chapter Intervenor" or "PCCI" in the course of the proceedings for which an award is sought. BPI is informed and believes that neither any of the other groups or individuals who, together with BPI, comprised PCCI (Porter County Chapter of the Izaak Walton League of America, Inc., Concerned Citizens Against Bailly Nuclear Site, Mildred Warner and James E. Newman), nor any of the other attorneys who have appeared on behalf of PCCI, intend to file applications for fees.

DS03

2. Fees are hereby sought for services rendered and expenses incurred in two proceedings, both in connection with NORTHERN INDIANA PUBLIC SERVICE COMPANY (Bailly Generating Station, Nuclear-1), CPPR-104; Docket No. 50-367.

a. Proceedings in connection with the proposed amendment of the Bailly Construction Permit, No. CPPR-104, to set a new latest date for completion of the plant (see Notice of Opportunity for Hearing on Construction Permit Extension, 44 Fed. Reg. 69061 (November 30, 1979)) ("Construction Permit Extension proceedings"); and

b. Proceedings in connection with the proposed amendment of the Bailly Construction Permit to allow for a foundation of short pilings (see Amended Notice of Opportunity for Hearings (Pilings), 46 Fed. Reg. 43326 (August 27, 1981) ("Short Pilings proceedings")).

3. PCCI is the prevailing party in each of the two proceedings.

a. Construction Permit Extension Proceedings.

On May 7, 1982, the Licensing Board entered its final order terminating the proceedings in PCCI's favor. BPI's position in this proceeding, as evidenced by its contentions and other filings, has been that the Bailly construction permit should not be extended and that the plant should not be built.

See Joint Intervenors' First Supplement to Petition for Leave to Intervene, filed February 26, 1980. This is precisely what has occurred under the terms of the termination order.

b. Short Pilings Proceeding. BPI is also the prevailing party in the short pilings proceeding. Even before the filing of BPI's "Petition With Respect To Short Pilings Proposal" dated November 1, 1978, BPI had contended that NIPSCO's construction permit did not allow for a plant built on short pilings. BPI's position with respect to the foundation plan has been that, in order to legally install such a foundation, the permit must be amended, and that such an amendment required a hearing under the Atomic Energy Act. By NIPSCO's Motion to Terminate Proceedings, filed August 26, 1981, NIPSCO has effectively dismissed its request for an amendment allowing that short pilings plan. Because its litigative goals in the short pilings proceeding have been realized, BPI is a prevailing party in that proceeding.

4. The positions taken by the NRC staff in each of the proceedings were not substantially justified. BPI identifies the positions of the agency as follows:

a. Construction Permit Extension Proceeding. Despite repeated requests by BPI, the NRC staff refused to take a position in this proceeding until its July 17, 1981 submission, "NRC Staff Evaluation of Request for an Extension of Construction Permit CPPR-104 for the Bailly Generating Station, Nuclear-1" and accompanying Negative Declaration and Environmental Impact Appraisal. The positions taken in this document -- that "good cause" had been shown, that the permit should be extended, and that no new or supplemental Environmental Impact Statement was required -- were not substantially justified. Further, the staff's refusal to take a position at all until July 17, 1981 was not substantially justified.

b. Short Pilings Proceeding. The original NRC staff position in this proceeding -- that the question of piling depth was "left open" at the construction permit hearing, and that no hearing was required under the Atomic Energy Act -- was not substantially justified. Further, neither the staff position on the merits of the foundation plan as the position encompassed in the "Safety Evaluation Report Relating to the Pile Foundation Design and Installation for the Bailly Generating Station, Nuclear-1" dated March 5, 1981, nor the staff's failure to take a position until that date -- when it knew of the proposal at least as early as 1974 -- was substantially justified.

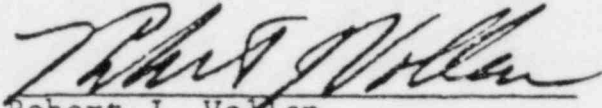
5. BPI is incorporated as an Illinois not-for-profit corporation and functions as a public interest law and research center. It is an organization described in Section 501(c)(3) of the Internal Revenue Code, 26 USC §501(c)(3), exempt from taxation under section 501(a) of the Code.

6. BPI seeks an award of attorneys' fees in the amount of \$55,200.00 for legal services rendered by Robert J. Vollen (736 hours X the statutory maximum rate of \$75.00 per hour) and of \$194,812.50 for legal services rendered by Jane M. Whicher (2597.5 hours X the statutory maximum rate of \$75.00 per hour) and an award for reimbursement of expenses in the amount of \$1841.45.

7. In support of this Application, there are attached hereto and submitted forthwith the Affidavits of Robert J. Vollen, Jane M. Whicher and Robert L. Graham. In addition, BPI submits

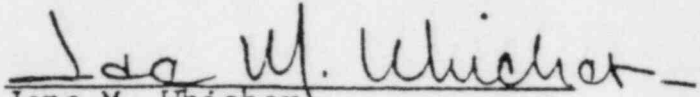
a Memorandum of Law in Support of this Application, showing the Board that it is entitled to an award under the Equal Access to Justice Act.

Respectfully submitted,

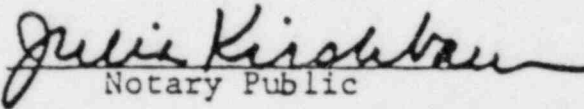

Robert J. Vollen,
One of the attorneys for BPI

Subscribed and sworn to
before me this 3rd day
of June, 1982.


Notary Public


Jane M. Whicher,
One of the attorneys for BPI

Subscribed and sworn to
before me this 3rd day
of June, 1982.


Notary Public

Dated: June 4, 1982

Robert J. Vollen
Jane M. Whicher
BUSINESS AND PROFESSIONAL PEOPLE FOR
THE PUBLIC INTEREST
109 North Dearborn Street - #1300
Chicago, Illinois 60602
312/641-5570

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) Re-consideration 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'Rorke, 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'Rorke 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
5/5/81	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	<hr/> 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.

Julia K. Kishball
Notary Public

AFFIDAVIT OF JANE M. WHICHER

JANE M. WHICHER, being duly sworn, states as follows:

1. That I am one of the attorneys of record for BUSINESS AND PROFESSIONAL PEOPLE FOR THE PUBLIC INTEREST, INC. ("BPI"), a party to the Bailly proceedings.

2. That I am a graduate of Iowa State University (B.S. 1971) and of the University of Iowa College of Law (J.D. 1976), and a member of the Order of the Coif.

3. That from June, 1976 until June, 1979, I was employed as an associate at the law firm of Morrison, Hecker, Curtis, Kuder, and Parrish, Kansas City, Missouri, where I engaged in a variety of litigation activities.

4. That from July, 1979 until May, 1980, I was employed as a Bigelow Teaching Fellow and Lecturer in Law, University of Chicago Law School, Chicago, Illinois, where I taught a legal writing and appellate advocacy course for first-year law students.

5. That I am a member of the bar admitted by examination in the following states: Iowa (1976), Missouri (1976), and Illinois (1980), and admitted to practice before the state courts of Iowa, Missouri and Illinois and the United States District Courts for the Western District of Missouri and the Northern District of Illinois.

6. That since April 15, 1980, I have been employed by BPI as an attorney, and from April 15, 1980 to May 15, 1980, I worked approximately half time and, since May 15, 1980, I have worked full time at BPI as a salaried staff attorney. Under the terms of my employment any fees awarded for my services will be paid to BPI.

7. That I was employed by BPI to work exclusively on proceedings involving Northern Indiana Public Service Company (Bailly Generating Station, Nuclear-1) CPPR-104, Docket 50-367, including proceedings involving the proposed extension of the latest completion date for the Bailly construction permit and the proceedings concerning NIPSCO's plans for the plant to be built on short pilings.

8. That from the time I commenced my employment at BPI, until August 26, 1981, I worked exclusively on the Bailly litigation described in paragraph 7 of this Affidavit, and on no other matters.

9. That my duties with respect to the Bailly litigation included drafting discovery requests, researching and drafting discovery motions, reviewing documents and discovery responses, preparing for and taking depositions, consulting with experts and witnesses, general hearing preparation, and research and drafting of the brief and reply brief in support of the petition to the Court of Appeals for the District of Columbia Circuit with respect to the short pilings issue.

10. That from April 15, 1980 to May 15, 1980, I worked approximately 20 hours per week on the Bailly litigation; and that from May 15, 1980 to August 26, 1981, I worked a minimum of 40 hours per week on the Bailly litigation, except for approximately ten days of vacation and personal time when I was not in the office.

11. That in May 1982 I prepared the detailed description of time spent contained in paragraph 12 of this Affidavit, and that in doing so I reviewed my personal calendars, pleadings in the construction permit extension proceeding, legal and factual research memoranda and files, notes of meetings and correspondence, and consulted with Robert J. Vollen. For each activity I recorded only what I believe to be the least amount of time I actually spent, and I have no doubt that I actually spent substantially more time than is recorded herein.

12. The following describes time spent by me in the above proceedings.

<u>Date</u>	<u>Activity</u>	<u>Hours</u> *
4/15/80	Meeting with Vollen to discuss background of case.	2.0
4/16/80- 5/15/80	Review of and familiarization with files and pleadings in construction permit, construction permit extension, petition to suspend or revoke permit, and short piling proceedings and review of NRC procedural regulations, and meetings with Vollen to discuss same. Review of transcript of prehearing conference.	55.0 (15)

* Those hours contained in parentheses are for work done with respect to the short pilings plan referred to in paragraph 7 of this Affidavit; all other hours are for work done with respect to the construction permit extension proceeding.

<u>Date</u>	<u>Activity</u>	<u>Hours</u>
5/2/80	Meeting with NRC staff counsel, State of Illinois counsel, and NIPSCO counsel regarding contentions; conferences with Illinois counsel and Vollen regarding same.	6.0
5/5/80	Meeting with representatives of Porter County Chapter Intervenor and others regarding strategy for hearing preparation.	2.0
5/19/80- 5/30/80	Continue familiarization with case. Conferences with Vollen regarding status, strategy, possibility of filing collateral NEPA lawsuit; begin research on NEPA suit.	65.0 (7.0)
6/5/80- 6/6/80	Receipt and study of provisional order following special pre-hearing conference; conference with Vollen regarding same and response.	14.0
6/9/80- 6/30/80	Meetings with Vollen regarding objections to pre-hearing order; draft and revisions of pleading in response to provisional order; review, discussion and revisions of "reworded incorporated contentions". Legal research on contentions and proper scope of proceedings.	55.0
6/30/80- 7/5/80	Review of comments of other parties to provisional order following special pre-hearing conference; conference with Vollen regarding short pilings appeal; study of agency record in construction permit hearing, particularly transcript; study of agency record in short pilings appeal; first draft of brief to D. C. Circuit; begin legal research for short pilings appeal.	2.0 (45.0)
7/7/80- 7/12/80	Legal research and revisions to draft of brief to D. C. Circuit in short pilings appeal.	(50.0)
7/21/80- 7/25/80	Revisions of draft brief; participation in office conferences with Robbins, Hammasfar, Sekuler, Osann and Graham regarding brief; legal research for same; citation and authority checking for brief.	(35.0)
7/28/80	Final revisions of brief.	(6.0)
8/4/80- 8/15/80	Legal research for NEPA lawsuit; draft of petition, motion for stay and memoranda of law in support of same; drafts of office memos regarding various aspects of NEPA suit; legal research and drafting memorandum concerning stay of construction pending appellate review of short pilings decision.	60.0 (20.0)

<u>Date</u>	<u>Activity</u>	<u>Hours*</u>
8/12/80- 8/15/80	Receipt and study of Order Following Special Pre-hearing Conference; conference with Vollen regarding same; strategy planning for discovery in preparation for hearing; preparation of objections to Final Order and notice of Shorb deposition.	32.0
8/18/80- 8/29/80	Receipt and review of Staff and NIPSCO objections to order; NIPSCO and Staff response to short pilings questions; preparation of PCCI's response to short pilings question; conferences with Vollen and Illinois regarding same; preparation of PCCI's first request to NIPSCO for production of documents; preparation of Motion Concerning Environmental Impact Statement; conferences with Illinois counsel regarding same; notice of Bohn deposition; preparation of PCCI's pleading in support of newly-filed contentions; review of Order Supplementing Order Following Special Pre-hearing Conference.	75.0
9/1/80- 9/5/80	Preparation for deposition of Shorb, including review and selection of documents; preparation of Porter County Chapter Intervenor's brief in support of appeals of City of Gary, et al. and of Dr. George Schultz, telephone conferences with D. Cohen and office conferences with Vollen regarding brief, reply to Staff re newly-filed contentions and motion to consolidate.	45.0
9/8/80	Preparation for deposition of Shorb.	7.0
9/9/80	Deposition of Shorb in Hammond, Indiana.	6.0
9/10/80- 9/12/80	Finalization of reply to Staff position on newly-filed contentions and answer to Staff motion to consolidate and NIPSCO's request for consolidation of replies and extension of time; study of NIPSCO memorandum of law on EIS.	17.0
9/15/80- 9/19/80	Preparation of PCCI's first request for designation of witness, notice of Schroer and Lyle depositions, and First Request to NRC for Production of Documents; legal research on points raised in NIPSCO memorandum of law; Second Request to NIPSCO for Production of Documents.	40.0
9/22/80- 9/26/80 & 9/29/80	Receipt and study of various orders and pleadings, preparation for continuation of Shorb deposition and for deposition of Schroer, including review of documents and filings.	48.0

<u>Date</u>	<u>Activity</u>	<u>Hours*</u>
9/30/80	Depositions of Shorb and Bohn in Hammond, Indiana.	6.0
10/1/80- 10/3/80	Receipt and study of filing and board order, meetings with Vollen and Illinois counsel re plan for discovery.	18.0
10/6/80- 10/10/80	Preparation of motion to compel production of documents by NIPSCO; receipt and review of various Staff and NIPSCO filings; notice of deposition of Severence; conferences with Vollen re course of discovery and deposition of Lynch.	40.0
10/13/80- 10/17/80	Preparation of motion to compel production of documents and answer to NIPSCO motion for protective order; study of General Electric motion for protective order; preparation of Motion Concerning Deposition of Lynch, including legal research re location of deposition.	45.0
10/20/80- 10/22/80 & 10/24/80	Legal research concerning discovery from General Electric, effect of filing appearance, discovery from third parties; answer to motion for protective order; second motion to compel production of documents by NIPSCO; notice of O'Rorke deposition; Bohn deposition continued.	35.0
10/23/80	Review of documents at Bailly plant site.	2.0
10/27/80- 10/31/80	Meeting with Herb Read re dewatering; Receipt and study of NIPSCO response to document request; preparation of motion to compel and answer to NIPSCO motion for protective order; gather materials for Joint Appendix in D. C. Circuit brief, meeting with Illinois counsel re same.	35.0 (5.0)
11/3/80- 11/6/80	Receipt and study of NRC brief to D. C. Circuit in short pilings appeal; begin research for reply brief; supervise printing of principal brief and appendix; discussion with Vollen regarding motion to suspend litigation proceedings and overview of litigation; preliminary draft of motion to suspend litigation activities.	8.0 (32.0)
11/10/80- 11/14/80	Legal research for and revisions of Reply Brief; revision and filing of motion to suspend litigation proceedings; receipt and study of GE filings and conference with Vollen re response.	15.0 (18.0)
11/17/80- 11/21/80	Preparation of response to Staff motion for protective order; receipt and study of <u>Sholly</u> decision and legal research re same; telephone conferences with <u>Sholly</u> attorneys; receipt and study of briefs in <u>Sholly</u> .	2.0 (48.0)

<u>Date</u>	<u>Activity</u>	<u>Hours</u> *
11/24/80- 11/28/80	Work on Reply Brief; supervision of printing of opening brief and appendix; response to GE motion for protective order; review of documents produced by NRC staff	15.0 (25.0)
12/1/80- 12/5/80	Work on Reply Brief; meetings with co-counsel re same and revision of brief; motion to extend time to file Reply Brief; study of NRC (Tedesco) questions to NIPSCO.	15.0 (30.0)
12/17/80- 12/19/80	Finalizing, proofreading and checking authorities cited in Reply Brief; arrange for printing, filing and service of same.	(21.0)
12/29/80- 12/31/80	Receipt and study of Memorandum and Order denying newly-filed and short pilings contentions; telephone conferences with Vollen regarding same and reply to same; draft of petition for rehearing on short pilings contentions.	22.0
1/5/81- 1/9/81	Preparation of Objections to December 24 order and motions for reconsideration and for certification of referral of same.	30.0
1/12/81- 1/16/81	Receipt of Moffett letter and Keppler memorandum; preparation of contention re Keppler memorandum; investigation of show cause proceeding; preparation of comment on proposed rulemaking (Design and Other Changes in Nuclear Power Plant Facilities After Issuance of Construction Permit).	35.0
1/19/81- 1/23/81	Draft of contention ; factual research (including review of Staff documents and NIPSCO reports).	30.0
1/26/81- 1/29/81	Preparation for meeting with Don Warner (possible expert witness - hydrogeologist); receipt and review of pleadings regarding Keppler contention and response to motion for reconsideration and certification or referral and letter from Toby Moffett regarding emergency planning.	22.0
1/30/81	Meeting with hydrogeologist and Attorney General Office and conference with Vollen and Illinois counsel re same.	6.0
2/2/81- 2/6/81	Investigation of show cause proceeding; planning meeting with Illinois counsel; finalization of rulemaking comments.	20.0

<u>Date</u>	<u>Activity</u>	<u>Hours</u> *
2/9/81- 2/13/81	Meeting with Attorney General's office regarding dewatering; review of dewatering documents and conferences with H. Read and co-counsel re same and re strategy of case; receipt and study of Staff pleadings, response to Contention 13.	35.0
2/16/81- 2/20/81	Preparation of response to NIPSCO's pleadings concerning production of General Electric's documents; legal research re admission of Contention 13 and draft response; investigation of show cause proceeding.	30.0
2/23/81- 2/27/81	Receipt and study of NIPSCO annual report; preparation of D. C. Circuit supplemental brief; receipt and study of Board orders on certification petition; office conference with Vollen regarding hydrogeological expert testimony; preparation of Contention 14 and motion for admission thereof; prepare response re General Electric documents and brief on admission of Contention 13.	40.0
3/2/81- 3/6/81	Finalization and filing of motion on Contention 14; factual and legal research for D. C. Circuit Supplemental Brief.	3.0 (30.0)
3/9/81- 3/13/81	Receipt and study of <u>Sholly</u> rehearing denial decision and briefs; meeting with Attorney General's Office; discovery update; receipt of filings re dewatering; conference with Vollen re draft of D. C. Circuit Supplemental Brief; submit rulemaking comment on proposed amendments to 10 CFR Part 50.	30.0 (8.0)
3/16/81- 3/20/81	Preparation of and filing PCCI's Third Request to NIPSCO for Production of Documents and First Set of Interrogatories to NIPSCO and motion for order under §2.740(e)(3); work on Supplemental Brief.	33.0 (2.0)
3/23/81- 3/27/81	3/24 meeting with co-counsel on <u>Bailly</u> brief for D. C. Circuit; preparation of interrogatories to NRC Staff; draft of notice of intention to seek stay; research for rulemaking comment on proposed changes to 10 CFR Part 2; finalize D. C. Circuit Supplemental Brief; receipt of letter from Eichhorn re documents and conferences with Vollen and Illinois counsel re document production.	25.0 (20.0)
3/30/81- 4/3/81	Finalization of notice of intention to seek stay; receipt and study of 3/30 Board orders and begin preparation of response to same; finalization of rulemaking comment; factual and legal research for Vollen's oral argument preparation; receipt and study of NIPSCO's Supplemental Brief.	20.0 (20.0)

<u>Date</u>	<u>Activity</u>	<u>Hours*</u>
4/6/81- 4/9/81	Preparation for oral argument, including moot court; receipt and study of order denying motion to suspend proceedings and conference with co-counsel re strategy; study of Staff filing regarding Contention 14; attendance at and second chair oral argument in D. C. Circuit; prepare and file letter to Court with memorandum referenced during argument.	5.0 (30.0)
4/13/81- 4/17/81	Receipt and study of NIPSCO response to PCCI's first interrogatories and Staff response to motion under §2.740(e)(3); receipt and study of NIPSCO's First Set of Interrogatories to PCCI and office conference with Vollen regarding objection to same; preparation and filing of motion to reconsider 3/30 order and opposition to General Electric motion for protective order; reply regarding §2.740(e)(3); motion to compel re First Set of Interrogatories.	38.0
4/20/81- 4/24/81	Preparation and filing of motion to compel NIPSCO interrogatory responses; meeting with Attorney General's Office re interrogatory responses and expert testimony; preparation of interrogatory responses.	40.0
4/27/81- 4/30/81	Receipt and study of NIPSCO responses to PCCI's Third Request for Production of Documents; Request for Extension of Time; arrange for document production; set up dates for depositions; meeting with Attorney General re interrogatory responses; planning meeting for document production.	32.0
5/4/81	Attendance at document production at Bailly plant site.	6.0
5/5/81- 5/8/81	Review of documents and selection of documents for copying; preparation of letter to Eichhorn re documents; finalization of answers of PCCI to NIPSCO's First Set of Interrogatories and motion to compel NIPSCO re third document request.	32.0
5/11/81- 5/15/81	Notice depositions of Schroer, Lyle, Severence, Bohn, Shorb and Mitchell; continue document review; conferences with Vollen and D. Cohen re possible intervention in <u>City of Gary</u> appeal; preparation of PCCI's Second Set of Interrogatories to NIPSCO, Fourth Document Request to NRC for Production of Documents, First Set of Interrogatories to NRC Staff, §2.740(h)(2)(i) and (ii) application.	50.0

<u>Date</u>	<u>Activity</u>	<u>Hour</u>
5/18/81- 5/22/81	Finalization and filing of various discovery matters; reviewing documents; draft and filing of motion to compel NIPSCO to physically produce documents.	40.0
5/26/81- 5/29/81	Receipt and study of NIPSCO motion to compel PCCI's interrogatory responses (first set) and production of documents and order granting General Electric protective order and draft of response to same; completion of document review and supervision of reproduction of designated documents; meeting with Herb Read re interrogatory answers.	42.0
6/1/81- 6/4/81	Preparation for deposition of Edmund Schroer; receipt and study of NIPSCO motion for establishment of schedule, and conference with Vollen and Illinois counsel re same; study of Second Set of Interrogatories from NIPSCO and preparation of response; supervision of reproduction of designated documents.	38.0
6/5/81	Deposition of Schroer in Hammond, Indiana.	6.0
6/8/81- 6/11/81	Preparation of second §2.720(h)(2)(i) application, deposition notices of Thompson, Jordan and Dunn; third request to NRC for production of documents; study of NIPSCO objections to interrogatories for response to same; meeting with Attorney General's Office re scheduling motion; receipt and study of GE motion, and NIPSCO response to motion to compel physical production of documents, NIPSCO's objection to PCCI's Second Set of Interrogatories and response to PCCI's Second Set of Interrogatories.	42.0
6/12/81	Deposition of Ed Schroer in Hammond, Indiana.	5.0
6/13/81- 6/14/81	Preparation for deposition of Lyle; draft of response to NIPSCO's scheduling motion; preparation for meeting with Bob Hilty (possible hydrogeologic expert witness).	8.0
6/15/81	Meeting with Hilty, Illinois counsel and H. Read, re dewatering.	7.0
6/16/81	Deposition of Horace P. Lyle in Hammond, Indiana.	6.0
6/17/81- 6/19/81	Preparation of first application for subpoenas; conference with Vollen re list of deponents; preparation of reply in support of §2.720(h)(2)(i) application; telephone conference with Oklahoma Attorney General re Black Fox appeal status for NEPA filing; meeting with Lake Michigan Federation	

<u>Date</u>	<u>Activity</u>	<u>Hours*</u>
	re dewatering case preparation; review of Illinois' First Set of Interrogatories to NIPSCO; preparation of response to Motion for Establishment of Schedule and GE motions, deposition notices (Ricca and Purcell).	28.0
6/22/81- 6/26/81	Telephone conference with Bill Eichhorn re fourth document request; draft of motion to compel interrogatory answers; draft of motion regarding deposition of Lynch; exchange of documents with NIPSCO counsel; receipt and study of NIPSCO's Third Set of Interrogatories to PCCI, second motion to compel answers regarding Second Set of Interrogatories to Illinois, response to PCCI's Fourth Document Request, Staff response to scheduling motion, and GE response; finalization of rulemaking comment.	40.0
6/29/81	Preparation for Shorb deposition, including review of documents for possible questioning and review of transcripts of previous depositions.	9.0
6/30/81	Deposition of Shorb in Hammond, Indiana.	5.0
7/2/81	Meeting with Illinois regarding motion to compel and interrogatory answers; arrange to return omitted documents; begin cataloging produced documents; receipt of telecopy of D. C. Circuit opinion and conference with Vollen re same.	7.0 (2.0)
7/6/81- 7/11/81	Preparation and filing of motion for protective order regarding Dunn deposition, motion to compel (Fourth Document Request) and motion to extend time to respond to Third Set of Interrogatories; preparation of notice of intention to seek stay, motion to extend time for Third Set of Interrogatories to PCCI and motion to compel further Staff response and production of documents; receipt of Staff documents and study of same; work on cataloging produced documents.	42.0
7/13/81	Preparation for Mitchell deposition and cataloging of documents.	9.0
7/14/81	Attendance at Mitchell deposition in Hammond, Indiana; review of documents in local Public Documents Room in Chesterton, Indiana.	4.0

<u>Date</u>	<u>Activity</u>	<u>Hours*</u>
7/15/81- 8/18/81	Legal research regarding requirements of NEPA; receipt and study of order closing discovery and conference with Vollen and Illinois counsel re response to same; filing pleadings re Lynch deposition.	35.0
7/20/81- 7/25/81	Receipt and study of Staff documents re environmental impact appraisal and evaluation of NIPSCO request for amendment and conference with co-counsel re same; draft of Third Interrogatories to NIPSCO and Fifth Request for production of documents; preparation of motion for clarification of order closing discovery; meeting with Herb Read; telephone conversation with Diane Cohen; reply to NIPSCO motion regarding depositions; review of documents for Bohn deposition; revision and addition to interrogatories to NIPSCO; receipt and study of NIPSCO Motion to Compel Answers to Second Set of Interrogatories; preparation of response to NIPSCO's motion for protective order; abstract of deposition testimony.	50.0
7/27/81- 7/31/81	Revision and filing of interrogatories and document request to NIPSCO; receipt and study of various pleadings; draft and filing of Fourth Request to NRC for production of documents, second application under §2.720(h)(2)(ii), Fourth Set of Interrogatories and Sixth document request to NIPSCO, Second Set of Interrogatories to NRC Staff and motion for leave to initiate further discovery; second application for subpoenas and review of letters regarding production of documents and depositions; deposition of Bohn (7/28/81); preparation of responses to NIPSCO's Third Set of Interrogatories.	53.0
8/3/81- 8/8/81	Preparation for conference call; conference call and office conference with Vollen regarding same; draft of response to NIPSCO motion regarding Second Set of Interrogatories; receipt and study of documents from NRC Staff and study of Staff answers to First Set of Interrogatories; receipt and study of order summarizing actions taken at conference call; draft of interrogatories and document request to Staff; draft of showing of general relevancy in support of applications for subpoenas, deposition notices, motion to compel Staff answers and production of documents, motion to extend time for taking depositions; draft of further discovery filings.	55.0

<u>Date</u>	<u>Activity</u>	<u>Hours*</u>
8/10/81- 8/15/81	Preparation and filing of application for discovery on Staff documents, application under §2.720(h)(2)(ii), Third Set of Interrogatories to Staff, application under §2.720(h)(2)(i), deposition notices, Seventh Request to NIPSCO for production of documents, Fifth Request to Staff for production of documents, amendment of Lynch notice, Fifth Set of Interrogatories to NIPSCO; receipt of discovery responses to NIPSCO from State of Illinois and review of same. Preparation for deposition of M. David Lynch; draft of motion for protective order; preparation for deposition of Bohn; review of transcript of previous Bohn depositions and summary of same; deposition of Bohn (8/14/81).	55.0
8/17/81- 8/22/81	Legal research for and draft of environmental impact assessment contentions and brief; preparation for Lynch deposition, deposition of Lynch (8/13/81 - 8/19/81); preparation for deposition of A. P. Severance, deposition of Severance (8/21/81).	55.0
8/24/81 8/26/81	Receipt of NIPSCO discovery filings and study of same; revisions of environmental impact statement contentions and brief in support of admission; conference with Illinois counsel to arrange for expert testimony on short pilings issues; receipt and study of commission orders regarding short pilings hearings and prohibiting installations of pilings.	15.0 (8.0)
8/27/81	Receipt of NIPSCO Motion to Terminate Proceedings and conference with Vollen re response.	.5
9/1/81- 9/3/81	Conferences with Vollen re site restoration and termination with prejudice; legal research re effect of termination with and without prejudice and of obligation to restore site.	9.0
9/22/81- 10/1/81	Conference with Vollen re site restoration and negotiations for same; preparation of motion concerning excavation.	3.5
10/12/81	Receipt and review of NIPSCO's report on site restoration.	1.0
10/22/81	Arrange for return of produced documents to NIPSCO.	.5
11/23/81	Receipt and review of Staff response to PCCI motion concerning excavation and of NIPSCO's revised site restoration plan; conference with Vollen re same.	1.5
12/7/81- 12/9/81	Preparation of motion to compel implementation of revised site restoration plan.	2.0

<u>Date</u>	<u>Activity</u>	<u>Hours*</u>
12/28/81- 12/30/81, 1/4/82- 1/15/82, 2/8/82- 2/12/82	Legal research concerning Equal Access to Justice Act, including review of legislative history and fee awards under other statutes referenced in statute and Congressional reports; draft of legal memorandum re same.	40.0
1/6/82- 1/8/82	Conference with Vollen re recovery of fees; legal research re award of fees under Federal Rule of Civil Procedure 41(a); draft Motion for Order Imposing a Condition Upon Withdrawal of NIPSCO's Application.	10.0
2/1/82	Study of NRC and NIPSCO responses to Motion for Order Imposing Condition.	1.0
2/22/82- 2/26/82	Prepare response to NIPSCO Motion for Reconsideration.	2.0
3/11/82	Conference with Vollen re requesting status report from NIPSCO.	.5
3/19/82 & 3/22/82	Receipt of letter from Eichhorn and conference with Vollen re same; preparation of Supplement to Position and Motion for Discovery.	2.0
4/15/82	Receipt and study of Proposed Order Terminating Proceeding; conference with Vollen re response to same.	3.0
4/26/82- 4/29/82	Draft of Objections to Proposed Order and of new Proposed Order; conferences with Vollen re same.	5.0
5/10/82- 5/14/82	Preparation of Application for Fees and Supporting Memorandum of Law.	9.0

<u>Date</u>	<u>Activity</u>	<u>Hours</u> *
5/24/82- 5/28/82	Preparation of fee Affidavit.	20.0
6/1/82- 6/3/82	Finalize fee application and supporting documents.	<u>3.0</u>
	Subtotals: (construction permit extension proceeding)	2120.5
	(short pilings proceeding)	<u>477.0</u>
	Total	2597.5

Further affiant says not.

Jane M. Whicher
JANE M. WHICHER

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

Jane M. Whicher
Notary Public

AFFIDAVIT OF ROBERT L. GRAHAM
IN SUPPORT OF PETITION
FOR ATTORNEYS' FEES

Robert L. Graham, being duly sworn on oath, states:

1. I am an attorney duly authorized to practice law in the State of Illinois, the State of California, the United States District Court for the Northern District of Illinois, the United States Court of Appeals for the Seventh Circuit, the United States Court of Appeals for the District of Columbia, and the United States Supreme Court.

2. For many years a substantial portion of my law practice has involved representation of both plaintiffs and defendants in complex actions in federal courts and before federal agencies, in which, by statute or otherwise, provision is made for the payment of attorneys' fees to counsel for prevailing plaintiffs. These cases have involved, inter alia, antitrust cases, securities cases, civil rights cases, agency licensing proceedings, and class actions of other kinds.

3. As a result of the foregoing, I have had occasion to become familiar with the customary hourly rates charged by attorneys in the City of Chicago for their services in all types of litigation, including administrative agency and related proceedings. In order to update my knowledge in this regard for the specific purpose of preparing this affidavit, I have examined the current hourly schedule

of charges in use by the Chicago law firm of Jenner & Block, where I am a partner. I have also familiarized myself with the background, experience, skill and reputation of Robert J. Vollen and Jane M. Whicher, counsel for BPI and the other groups and organizations commonly referred to as Porter County Chapter Intervenors in these proceedings.

4. Based upon my knowledge of the reasonable and customary charges in effect among lawyers in the City of Chicago of like experience, skill and reputation in litigation, including proceedings before administrative agencies, it is my opinion that the reasonable and appropriate hourly rate for the services of plaintiffs' attorneys in this case is as follows:

Robert J. Vollen	-	\$145/per hour
Jane M. Whicher	-	\$85/per hour

5. The charges set forth above are for services of lawyers of the skill, experience and reputation of Mr. Vollen and Ms. Whicher in matters in which fees are charged to and paid by clients on an ongoing basis, without regard to the outcome of the litigation. In litigation such as that involved in this case, it is the prevailing practice in the federal courts to award fees to the prevailing attorneys by applying a multiplier to the above fee schedule, in order to take into account and compensate the attorneys for the significance of their contributions to the litigation. The amount of that multiplier is determined, among other things, by the

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efficiency with which the litigation was conducted, the difficulty of the litigation, the particular skill and innovation brought to the litigation by the attorneys involved, and benefits conferred, whether monetary or otherwise.

Robert L. Graham

Robert L. Graham

SUBSCRIBED AND SWORN to
before me this 3rd day
of June, 1982.

Kathleen M. Lach

Notary Public

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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

MEMORANDUM OF LAW IN SUPPORT OF
APPLICATION FOR AWARD OF FEES AND
EXPENSES UNDER THE EQUAL ACCESS TO JUSTICE ACT

BUSINESS AND PROFESSIONAL PEOPLE FOR THE PUBLIC INTEREST, INC. ("BPI"), by its attorneys, submits this Memorandum of Law to aid the Board in its determination of BPI's Application for an award of fees and expenses under the Equal Access to Justice Act, P.L. 96-401, amending 5 USC §501 et seq. (EAJA).

I. INTRODUCTION

The EAJA became effective on October 1, 1981, and provides for awards of attorneys' fees against the federal government, including federal agencies, in circumstances such as those present here. Exposure to liability for fees is greater than that of private litigants, "because of the greater resources and expertise of the United States." EAJA §201 (codified at 5 USC §504 note.)

Section 203 of the EAJA amends the Administrative Procedure Act, 5 USC §§501 et seq., to provide in part:

"§504. Costs and fees of parties

(a)(1) An agency that conducts an adversary adjudication shall award, to a prevailing party other than the United States, fees and other expenses incurred by that party in connection with that proceeding, unless the adjudicative officer of the agency finds that the position of the agency as a party to the proceeding was substantially justified or that special circumstances make an award unjust."

II. FACTUAL BACKGROUND

For the Board's reference, a brief summary is set forth of each of the two proceedings for which an award is sought.

A. Construction Permit Extension Proceeding

Under §185 of the Atomic Energy Act (42 USC §2235) a construction permit must contain a latest completion date for the facility. That section provides further that:

"Unless the construction or modification of the facility is completed by the completion date, the construction permit shall expire, and all rights thereunder be forfeited, unless upon good cause shown, the Commission extends the completion date.

NIPSCO's construction permit was issued on May 1, 1974, and set September 1, 1979 as the latest completion date for the Bailly plant. On February 7, 1979, NIPSCO applied for an amendment to its construction permit to extend the latest completion date,*

* See letter from E.M. Shorb to Harold R. Denison, dated February 7, 1979, requesting an amendment stating a new latest completion date of September 1, 1985. By letters dated August 31, 1979 and November 26, 1980, NIPSCO subsequently changed its request to state new latest dates of December 1, 1987 and December 1, 1989, respectively.

and on February 27, 1979, BPI, as one of the parties comprising PCCI and on their behalf, filed a request for a hearing on that application.

In November, 1979, the NRC published a Notice of Opportunity for Hearing on Construction Permit Extension, 44 Fed. Reg. 69061 (November 30, 1979). In response to the notice, BPI filed a petition for leave to intervene, asserting that the amendment sought by NIPSCO should not be granted. The Licensing Board, on August 8, 1980, issued its Order following Special Prehearing Conference, allowing PCCI to intervene and partially delineating the scope of the proceeding. There followed extensive and intensive litigation activity, including voluminous and contested discovery. After repeated requests by BPI,* in July 1981 the NRC staff finally articulated its position that the permit extension sought by NIPSCO should be granted and that no new or supplemental Environmental Impact Statement was required by the National Environmental Policy Act, 42 USC §4321, et seq.

B. Short Pilings Proceeding

In November 1978, BPI on behalf of PCCI filed a petition with the NRC asserting that NIPSCO was attempting to change plans for the foundation of the plant from pilings extending to bedrock (as described in the PSAR) to substantially shorter pilings. BPI

* E.g., Joint Supplement to Requests for Hearing (June 29, 1979); Transcript of Prehearing Conference at pp. 282-305 (March 13, 1980); Porter County Chapter Intervenors' Motion Concerning Environmental Impact Statement (August 25, 1980); PCCI's Motion to Suspend Litigation Proceedings (November 13, 1980).

contended that the change constituted in fact and in law a request for a construction permit amendment, and that under the terms of §189 of the Atomic Energy Act, 42 USC §2239, a hearing was required. In December 1979, the Commission denied the request for a hearing. PCCI filed a petition for judicial review with the United States Court of Appeals for the District of Columbia Circuit. That court reversed the Commission and remanded the cause to the NRC for a hearing. State of Illinois, et al. v. NRC, No. 81-1131 (D.C. Cir. July 1, 1981). After receipt of the mandate, the Commission sent to the Federal Register an "Amended Notice of Opportunity for Hearings (Pilings)," 46 Fed. Reg. 43326 (August 27, 1981), dated August 21, 1981, stating that the pilings issue would be heard in the ongoing construction permit extension proceeding. On that same date the Commission issued an order forbidding NIPSCO from installing pilings until completion of the pilings proceeding. Because of NIPSCO's cancellation of the plant on August 26, 1982, no petitions for hearing were filed. Throughout the proceedings, the NRC staff before the Commission, and the Commission before the Court, took the position that no hearing was required, positions which were not substantially justified.

It is evident that NIPSCO and the staff began discussions of altering the foundation plans shortly after the construction permit was issued. From the very first indication of that change, BPI has taken the position that an amendment, together with the concomitant hearing, were required by the Atomic Energy Act before that change could be effected.

Further, the NRC staff had the short pilings proposal under

consideration for an inordinately long time. Plans were formally submitted by NIPSCO to the staff in March, 1978, but the staff did not release its report on the substance of that plan until three years later, on March 5, 1981. The staff concluded that the proposal was acceptable. Neither the failure to issue its evaluation until three years after submittal nor the acceptability of the plan were substantially justified.

C. Termination of Proceedings

On August 26, 1981, NIPSCO announced cancellation of the Bailly plant and on that same date filed a motion to terminate all related proceedings. The Board finally granted the motion on May 7, 1982, terminating both the construction permit extension and short pilings proceedings. NIPSCO was ordered to implement the site restoration plan produced by negotiation and agreement among PCCI, NIPSCO and the NRC staff. The termination order also requires reporting by NIPSCO and the staff, and inspections of the site by NIPSCO, the staff, and representatives of BPI and the other intervenors.

III. REQUIREMENTS OF THE EAJA

A. The proceedings were pending on the effective date of the act.

The EAJA took effect on October 1, 1981 and, pursuant to Section 208, is to

". . . apply to any adversary adjudication, as defined in section 504(b)(1)(C) of title 5,

United States Code, * and any civil action or adversary adjudication described in section 2412 of title 28, United States Code, which is pending on, or commenced on or after, such date."

Even though NIPSCO had filed its Motion to Terminate Proceedings before that date, both the construction permit extension proceeding and the short pilings proceeding were "pending" on the effective date and thereby come within the terms of the Act.

Under an analogous statute, the Civil Rights Attorneys Fees Act, (42 USC §1988), an action is considered "pending" if, on the effective date of the Act, there was no final judgment purporting to dispose of all issues, and there was "active controversy." Once these conditions are satisfied, that Act applies to the entire case, including to services rendered prior to that date. Northcross v. Board of Educ., 611 F.2d 624, 634-35 (6th Cir. 1979), cert. denied, 447 U.S. 911 (1980). See also Robinson v. Kimbrough, 652 F.2d 458, 464 (5th Cir. 1981). The "active controversy" need not be the ultimate issue of litigation, see, e.g., David v. Travisono, 621 F.2d 464, 467 (1st Cir. 1980) (per curiam) and may even include only the issue of attorneys fees, Northcross, supra, 611 F.2d at 634, Hartman v. Gaffney, 446 F.Supp. 809, 811 (D. Minn. 1977).

* Five USC §504(b)(1)(C) defines "adversary adjudication" as:

" . . . an adjudication under section 554 of this title in which the position of the United States is represented by counsel or otherwise, but excludes an adjudication for the purpose of establishing or fixing a rate or for the purpose of granting or renewing a license . . . "

Of course, there was no final judgment on the effective date of the EAJA, for that judgment was not entered until May 7, 1982. Issues pending before the Licensing Board in the construction permit extension proceeding on October 1 indeed involved active controversy: what sort of site restoration was to be done; whether the Licensing Board would retain jurisdiction pending that restoration; and whether the dismissal was to be with or without prejudice. There can be no question that the construction permit extension proceeding was pending on October 1, 1981. Indeed, the very purpose of the May 7 Order was to remove all pending issues from this Board's docket.

Similarly, there can be no question that the short pilings proceeding was also pending, as the NRC staff had admitted in its pleadings. See, e.g., NRC Staff Response to Northern Indiana Public Service Company's Motion to Terminate Proceedings, filed September 15, 1981. This proceeding is, of course, the same proceeding initiated by the original Petition by BPI in November of 1978, and the hearing which was to be held, if NIPSCO had not cancelled the project, would have been based on the allegations of that petition.

B. BPI is a prevailing party in both proceedings.

BPI's goal, whether as intervenor in the construction permit extension proceeding, or as initiator of the short pilings proceeding, has always been the same: that the Bailly nuclear plant not be built. This goal was realized upon NIPSCO's cancellation of the plant, thereby satisfying the Act's requirement that awards be made to a "prevailing party."

The legislative history of the EAJA, H.R. Rep. No. 96-1418, 96th Cong., 2d Sess. (1980), reprinted in [1980] U.S. Code Cong. & Ad. News 8631, et seq., makes clear that the interpretation of the term "prevailing party" is to be consistent with the case law developed under existing fee award acts, and a brief examination of that case law leaves no doubt that BPI is indeed such a party.

Cases under the Civil Rights Attorney's Fees Act, 42 USC §1988, have consistently allowed recovery by intervenors as "prevailing parties." See, e.g., Seattle School Dist. v. Washington, 633 F.2d 1338, 1349 (9th Cir. 1980), prob. juris. noted, 50 U.S.L.W. 3278 (Oct. 13, 1981); United States v. Board of Education, 605 F.2d 573, (2d Cir. 1979); Morgan v. McDonough, 511 F.Supp. 408, 414 (D. Mass. 1981). Further, the NRC regulations provide party status to intervenors. 10 CFR §2.714(g).

A party need not win on the merits in order to be "prevailing." The Conference Report, at p. 8637, states:

"It is the Committee's intention that the interpretation of the term . . . be consistent with the law that has developed under existing statutes. Thus, the phrase 'prevailing party' should not be limited to a victor only after entry of a final judgment following a full trial on the merits."

The Report at pp. 8656-57 gives the example of prevailing party status in the case of the plaintiff's voluntary dismissal

of a groundless complaint, citing Corcoran v. Columbia Broadcasting System, 121 F.2d 575 (9th Cir. 1974).

In other fee awards acts, similar results obtain. Where a complaint is dismissed as moot because defendant begins to comply with the applicable law, fees may be awarded so long as there is a causal relationship between the suit and the defendant's compliance. See, e.g., American Constitutional Party v. Munro, 650 F.2d 184, 188 (9th Cir. 1981); Iranian Students Ass'n v. Sawyer, 639 F.2d 1160, 1163 (5th Cir. 1981); Handicapped Federation v. Andre, 622 F.2d 342 (8th Cir. 1980).

Because of the structure of NRC license amendment proceedings, it is not possible to characterize NIPSCO as either plaintiff or defendant. Its actions, though, in cancelling the plant and moving to terminate the proceedings, have elements of both a plaintiffs' voluntary dismissal of a groundless complaint and a defendant's voluntary compliance with applicable law in the face of a suit to force such compliance. Like a plaintiff in Corcoran, NIPSCO capitulated to avoid having to proceed further to prove its case. Like the defendant who voluntarily brings itself into compliance with the law when faced with a proceeding it could not win, NIPSCO gave up rather than go to hearing. This is especially obvious in the short pilings proceeding, for NIPSCO's decision came within days of the issuance of notice of opportunity for hearing and concomitant order prohibiting piling installation. Even NIPSCO's press release announcing the cancellation cited opposition to the plant as a factor.

An alternative analysis was used by the court in Bonnes v.

Long, 599 F.2d 1316, 1319 (4th Cir. 1979), a case arising under 42 USC §1988. The "precise factual/legal condition that the fee claimant has sought to change" should be viewed as a "benchmark"; if the fee claimant's efforts "contributed in a significant way" and involved "an actual conferral of benefit or relief from burden when measured against the benchmark condition," an award is appropriate. Under this alternative analysis also, BPI is a prevailing party. In the construction permit extension proceeding, BPI, on behalf of PCCI, sought a ruling that the permit not be extended, thereby causing it to expire and stopping the plant. Although no such ruling was made because of NIPSCO's capitulation, BPI's activities certainly contributed in a significant way to a change from the benchmark. In the short pilings proceeding, the petition to the Commission and the appeal sought to enforce BPI's right to a hearing on the merits of the plan, and the Commission's subsequent orders on remand made that condition an imminent reality. Indeed, this Board has described its termination of the proceedings as having "the effect . . . equivalent to a determination on the merits against the dismissing party . . ."

Memorandum and Order (Issuing Proposed Order Terminating Proceeding, dated April 12, 1982, at p. 8.

Case law developed under other fee statutes makes it clear that no inquiry into the merits of the litigation is necessary, or even desirable, in order to term the plaintiff a "prevailing party." E.g., Dawson v. Pastrick, 600 F.2d 70, 78 (7th Cir. 1979). The court in COYOTE v. Roberts, 502 F.Supp 1342, 1349-50 (D.R.I. 1980), used as a test whether a purported claim is sub-

stantial enough to confer subject matter jurisdiction on the federal court. This standard is consistent with, in fact even lower than, the NRC's requirement that only contentions with specificity and basis may be admitted. 10 CFR §2.714(b). That test has, of course, been satisfied by the admission of BPI's contentions.

C. Amount of Fees and Expenses Compensible

Once it is determined that BPI is a "prevailing party", fees for all work done in connection with the two proceedings are to be awarded. EAJA §203, 5 USC §504(a)(1), quoted supra. See Northcross v. Board of Educ., 611 F.2d at 636 ("so long as the party has prevailed on the case as a whole, the district courts are to allow compensation for hours expended on unsuccessful litigation, unless the positions asserted are frivolous or in bad faith.")

The Act provides that the amount of fees awarded shall be "based upon prevailing market rates for the kind and quality of services furnished" except that there is a maximum rate of \$75 per hour. EAJA §203(b)(1)(A). The two attorneys for whose services a fee award is sought, Robert J. Vollen and Jane M. Whicher, have conservatively reconstructed the hours they spent on the Bailly proceeding at 736 and 2597.5, respectively.*

* Included are fees for work done in the construction permit extension proceeding before the NRC, and the short pilings proceeding before both the NRC and the United States Court of Appeals for the District of Columbia. Fees for those later services are, of course, equally compensible, for they were

(footnote continued on next page)

See Affidavits attached to Application. Since neither has a billing rate, a reasonable estimate of the market rates for their services is set forth in the affidavit of Robert L. Graham, an attorney familiar both with market rates for attorneys fees in Chicago, Illinois, and with the kind and quality of the services furnished. See affidavit of Robert L. Graham, attached to application. Since the market rate for both attorneys is in excess of \$75 per hour, that statutory maximum should be applied, as follows:

Robert J. Vollen, 736 hours at \$75 per hour =	\$ 55,200.00
Jane M. Whicher, 2597.5 hours at \$75 per hour =	<u>\$ 194,812.50</u>
Total =	\$ 250,012.50

In addition, the EAJA provides for payment of "reasonable expenses." See §203(b)(1)(A). As reflected in the affidavit of Robert J. Vollen, BPI has incurred expenses in the amount of \$1841.45, which should be reimbursed to it.

CONCLUSION

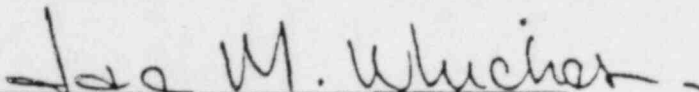
BPI meets all requirements for an award of fees and expenses in the total amount of \$251,853.95. Accordingly, this Board should

(continued from preceding page)
"in connection with," and an integral part of, BPI's enforcement of its right to participate in a hearing on the merits of the foundation plan. See Chrapliwy v. Uniroyal, Inc., 670 F.2d 760 (7th Cir. 1982); Sullivan v. Commonwealth of Pennsylvania, 663 F.2d 443 (3rd Cir. 1981); 5 USC §504(a)(1).

promptly enter its order directing payment in that amount.

DATED: June 4, 1982


Robert J. Vollen


Jane M. Whicher

Attorneys for BPI

Robert J. Vollen
Jane M. Whicher
109 North Dearborn Street
Chicago, Illinois 60602
(312) 641-5570

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)
)
(Bailly Generating Station,)
Nuclear-1))

CERTIFICATE OF SERVICE

I hereby certify that I have served copies of: Application for Award of Fees and Expenses Under the Equal Access to Justice Act (and attached Affidavits of Robert J. Vollen, Jane M. Whicher and Robert L. Graham) and Memorandum of Law In Support of Application for Award of Fees and Expenses Under the Equal Access to Justice Act on each of the persons listed on the attached Service List by causing them to be deposited in the U.S. mail, first class postage prepaid, this 4th day of June, 1982.

June 4, 1982

Robert J. Vollen
Jane M. Whicher

By:

Jane M. Whicher
Jane M. Whicher
Attorneys for
Business and Professional People
for the Public Interest

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