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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION



IN THE MATTER OF

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

Docket No. 50-367

PETITIONERS' COMMENTS ON ACRS' JULY 16, 1979 LETTER

In its Order dated July 25, 1979, the Commission invited comments on the ACRS' July 16, 1979 letter concerning the use of shorter pilings than originally contemplated to support the Bailly facility. This document contains the comments of the below-named Petitioners.*

At the outset, it should be emphasized that the ACRS' letter does not provide a meaningful response to the request in Chairman Hendrie's letter dated June 8, 1979. To be sure, the last paragraph on page 3 of the ACRS' letter states conclusory answers to the particular questions in Chairman Hendrie's letter. However, nothing in the ACRS' letter even

*The Petitioners on whose behalf these comments are submitted are the People of the State of Illinois; Porter County Chapter of the Izaak Walton League of America, Inc.; Concerned Citizens Against Bailly Nuclear Site; Business and Professional People for the Public Interest; James E. Newman; Mildred Warner, and George Hanks; The City of Gary, Indiana; and the Lake Michigan Federation.

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purports to provide the reasoning, the basis, the support or the justification for these answers. Thus, while the ACRS' letter states that "the use of short piling is not a significant design change from the standpoint of engineering", absolutely nothing in the letter provides any support for that conclusion. There is no discussion in the letter of what constitutes a "significant" design change, what the standards are for ascertaining such a change, or what evidentiary or factual basis supports the conclusion of insignificant design change. Similarly, the ACRS' letter states that "the use of shorter piling would not require significant alteration of other aspects of the design of the facility." Again, the letter contains no indication of any support for that conclusion. There is nothing as to what, if any, other aspects of the facility were considered, or what standard was employed to determine a "significant alteration". Finally, the ACRS letter states that "there will be no difference in the safety of the facility depending on whether long or short pilings will be used...." As with the other conclusions, however, there is no way of determining what was considered in reaching that conclusion. There is no indication as to what, if any, safety analysis was made or what, if any, other issues were considered.

In short, the ACRS' beliefs without any supporting findings or explanation for them, are simply of no value in

answering the questions asked in Chairman Hendrie's letter. Moreover, the ACRS' failure to set forth the reasons for its conclusions violates its duties as enumerated by the United States Supreme Court in Vermont Yankee Nuclear Power Corporation v. NRDC, 435 U.S. 519, 556 (1978).

Going beyond the statements on the face of the ACRS' letter, it is clear from external circumstances that the ACRS' review was simply inadequate to provide any valuable advice to the Commission.* The inadequacy of the ACRS' review is illustrated by the presentation to it concerning the foundation problems at the Bethlehem Steel Company facilities on the site adjoining the Bailly site. At the ACRS' subcommittee meeting on July 9, 1979, questions about which the Staff apparently had been concerned since May, 1978 were raised with regard to settlement of structures at the Bethlehem facilities (Tr. 108-09). At the full ACRS meeting on July 12, 1979, answers apparently satisfactory to the ACRS were provided in the form of a statement by a member of the Staff who reported that he had contacted an otherwise

*For example, the ACRS reports that it had the benefit of "8. Request by the Porter County Chapter of the Izaak Walton League of America, Inc., February 27, 1979." That document does not refer to the short pilings proposal. At the same time, the ACRS apparently did not have the benefit of Petitioners' "Petition With Respect To Short Pilings Proposal", dated November 1, 1978, a 12 page document which does discuss the short pilings proposal.

unidentified individual "technically qualified...in a responsible position in Bethlehem Steel management and is in a position to know and responsible for the functioning of that facility" (Tr. 105) and a statement by a NIPSCO representative who had a discussion the day before with an employee of Walsh Construction Company who had "been on the site for some 16 years and, will continue to be on the site as an employee of Walsh due to their construction there." (Tr. 116) Plainly, the ACRS was not given the opportunity for thorough and careful consideration of the relationship of the problems at the Bethlehem facilities to the short pilings proposal at the Bailly site.

Apart from its failure to answer the Commission's questions, the main body of the ACRS' letter consists of a discussion of the ACRS' identification of two potential safety issues arising from the use of shorter pilings. As to each these two safety issues, the ACRS discussion amounts to a complete non sequitur. The first potential safety issue is the disturbance of the soil resulting from the water jetting employed by NIPSCO. The ACRS' conclusion concerning the issue is completely circular and, in effect, no conclusion at all. The ACRS states that it agrees that NIPSCO's proposal to use "compaction piles" is an acceptable procedure, subject to compliance with four procedures, one of which is "compaction of the disturbed material by driving compaction

piles." The other three procedures similarly are described in terms of their success. In other words, the ACRS' says nothing more than NIPSCO's proposal for dealing with the disturbed areas is satisfactory if it works. There is, however, no hint of any analysis of whether NIPSCO's proposal will work.

The second potential safety issue identified in the ACRS' letter is the potential settlement of the support structures. Again, the ACRS' conclusion is a non sequitur. The letter says that NIPSCO has established the settlement "to be on the order of 2 inches" and concludes, without support, that that amount of settlement would have no significance to safety. However, the letter then goes on to say that the Staff should find out whether that calculated settlement is a reliable one. Moreover, the ACRS' letter does not deal with the substance of the settlement question. It abdicates to the Staff's statement that "suitably conservative limits on permissible settlements will be established." Such limits according to the ACRS, would then be included in the Technical Specifications applicable to operation of the plant. Nonetheless, the fact that it constituted a violation of the Technical Specifications would not prevent excessive settlement of the plant with the attendant risks to the public health and safety.

It was not until just before the ACRS meeting that the ACRS consultants were given any documents by NIPSCO on settlement (Tr. 50-52) and although the ACRS consultants recommended strongly that before the ACRS made a decision they should be given a chance to meet with NIPSCO's consultants to review settlement documents and verify the calculations relied on (Tr. 51, 57, 117) the ACRS chose not to wait for this consultation to occur before issuing a letter to Chairman Hendrie (Tr. 117-118). The concerns for the unanswered questions regarding the settlement appear to be justified, for NIPSCO's consultant admitted that no criteria has been developed yet for settlement rates. (Tr. at 86).

In sum, notwithstanding the use of a great many words, the ACRS has, in fact, said nothing about these two safety related issues.

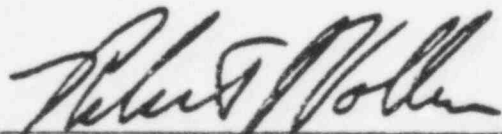
Petitioners respectfully submit that the ACRS' letter fails to provide meaningful answers or assistance to the Commission on the matter now pending before the Commission - whether hearings should be held to consider NIPSCO's short pilings proposal. The ACRS was able to identify "only two" potential safety issues. One of the purposes of full and fair administrative proceedings, with the full range of discovery and procedural rights accorded to the parties, would be to identify other or additional potential safety

issues not identified by the ACRS in its hastily done, cursory review of this very significant issue.

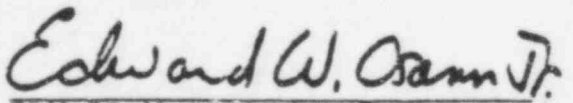
Further, the ACRS chose not to pursue several other significant but unresolved issues identified at the July 9, 1979, Subcommittee meeting, by the Staff such as corrosion, seismic analysis, factors of safety, uplift of the piles, heave criteria and tolerances on the placement of the piles (Tr. 81-82). Nor did the ACRS even wait until its consultants had reported back to them before issuing their letter to Chairman Hendrie (Tr. 118, July 12, 1979 ACRS meeting).

Under no circumstances can a report from the ACRS be viewed as a substitute for the full panoply of procedural rights attendant to full and fair administrative proceedings. Under the particular circumstances here the need for such proceedings is increased, not reduced, by the ACRS' letter of July 16, 1979.

Respectfully submitted,



ROBERT J. VOLLEN
109 North Dearborn Street
Suite 1300
Chicago, Illinois 60602
(312) 641-5570



EDWARD W. OSANN, JR.
One IBM Plaza
Suite 4600
Chicago, Illinois 60611
(312) 822-9666

WILLIAM J. SCOTT
Attorney General
State of Illinois

JOHN VAN VRANKEN
Chief, Northern Region
Environmental Control Division
DEAN HANSELL
SUSAN N. SEKULER
Assistant Attorneys General
188 West Randolph Street
Suite 2315
Chicago, Illinois 60601
(312) 793-2491

Robert L. Graham
ROBERT L. GRAHAM
One IBM Plaza
44th Floor
Chicago, Illinois 60611
(312) 222-9350

Michael I. Swygert
MICHAEL I. SWYGERT
2600 - 70th Avenue South
St. Petersburg, Florida 33711
Attorney for Petitioner
City of Gary, Indiana

Attorneys for Petitioners
Porter County Chapter of
the Izaak Walton League of
America, Inc.; Concerned
Citizens Against Bailly
Nuclear Site, Inc., Business-
men for the Public Interest,
Inc.; James E. Newman, Mildred
Warner and George Hanks

Richard L. Robbins
RICHARD L. ROBBINS
Lake Michigan Federation
53 West Jackson Boulevard
Chicago, Illinois 60604
(312) 427-5121

Attorney for Petitioner
Lake Michigan Federation

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CERTIFICATE OF SERVICE

I hereby certify that I have served copies of the foregoing Petitioners' Comments on ACRS' July 16, 1979 Letter upon each of the following persons by causing them to be deposited in the United States mail, first class postage prepaid, this 14th day of August, 1979:

Joseph Hendrie
Chairman
U.S. Nuclear Regulatory
Commission
Washington, D.C. 20555

Peter Bradford
Commissioner
U.S. Nuclear Regulatory
Commission
Washington, D.C. 20555

John Ahearne
Commissioner
U.S. Nuclear Regulatory
Commission
Washington, D.C. 20555

Samuel J. Chilk
Secretary of the Commission
U.S. Nuclear Regulatory
Commission
Washington, D.C. 20555

William H. Eichhorn, Esq.
Schroer, Eichhorn and Morrow
5243 Hohman Avenue
Hammond, Indiana

Marsha Mulkey
Counsel for the NRC Regula-
tory Staff
U.S. Nuclear Regulatory Comm.
Washington, D.C. 20555

Steven C. Goldberg
Counsel for the NRC Regulatory
Staff
U.S. Nuclear Regulatory Comm.
Washington, D.C. 20555

Richard Kennedy
Commissioner
U.S. Nuclear Regulatory
Commission
Washington, D.C. 20555

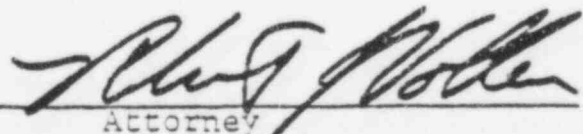
Victor Gilinsky
Commissioner
U.S. Nuclear Regulatory
Commission
Washington, D.C. 20555

Director of Nuclear Reactor
Regulation
U.S. Nuclear Regulatory
Commission
Washington, D.C. 20555

Chief, Public Proceedings
Branch
Office of the Secretary of the
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Jack R. Newman, Esq.
Newman, Reis & Axelrad
1025 Connecticut Avenue, N.W.
Washington, D.C. 20036

James L. Kelley
Acting General Counsel
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555


Attorney