

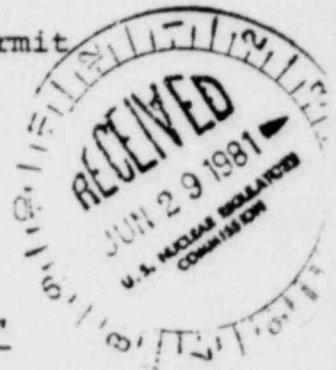
RELATED CORRESPONDENCE



UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

| | | |
|-----------------------------|---|----------------------|
| In the Matter of |) | Docket No. 50-367 |
| |) | |
| NORTHERN INDIANA PUBLIC |) | (Construction Permit |
| SERVICE COMPANY |) | Extension) |
| |) | |
| (Bailly Generating Station, |) | June 23, 1981 |
| Nuclear-1) |) | |



NIPSCO's Response in Opposition to
"PCCI's" "Motion for Leave to File Reply Brief"

On May 11, 1981, Porter County Chapter of the Izaak Walton League of America, Inc.; Concerned Citizens Against Bailly Nuclear Site; Businessmen for the Public Interest, Inc.; James E. Newman; and Mildred Warner (hereinafter sometimes referred to as "PCCI") filed a "Motion to Compel Production of Documents by NIPSCO Pursuant to PCCI's Third Request to NIPSCO for Production of Documents." NIPSCO responded on May 26 and the Staff filed a Response (May 18) limited to certain aspects of the "Motion to Compel." Those pleadings completed the list of pleadings permitted by NRC regulations. However, "PCCI" has filed a "Motion for Leave to File Reply Brief" with attached "Reply in Support of Motion to Compel" (June 10).

NIPSCO files this "Response" opposing the Motion and requests that the Board reject the unauthorized "Reply."

DS03
s
1/0

G

8106300174

NRC regulations state explicitly:

The moving party shall have no right to reply, except as permitted by the presiding officer or the Secretary or the Assistant Secretary.

10 C.F.R. § 2.730(c) (1980). "PCCI" has attempted to circumvent this provision by filing its "Motion for Leave to File Reply Brief" with the "Reply" attached. This tactic should not be permitted.

The "Motion for Leave to File Reply" fails to identify a basis which could justify its granting. "PCCI" alleges that

Because both the Staff and NIPSCO have misconstrued the admitted contentions and because NIPSCO has submitted factual affidavits in its Response to the Motion, this Reply is necessary and appropriate.

Assuming these reasons to be true, neither would support the authorizing of additional, extraordinary pleadings.

If NIPSCO and the Staff have "misconstrued the admitted contentions," the Licensing Board will no doubt perceive that and act accordingly in ruling on the Motion to Compel. "PCCI" was obliged to make its arguments in support of production in its Motion to Compel. Its failure to do so--or its desire to change the arguments there made--cannot justify another pleading. We note also that the scope of this proceeding has often been debated and briefed. That question is not novel; additional briefs are unlikely to be useful.

"PCCI" of course correctly notes that NIPSCO's Response included "factual affidavits." "PCCI" had labeled "speculative"

NIPSCO's claim that revealing the documents in question would be detrimental. The affidavits refute "PCCI's" charge.

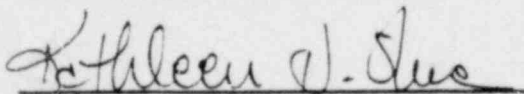
"PCCI" does not repeat its "speculative" charge and apparently has no quarrel with the substance of the affidavits; in any event, "PCCI" does not attempt to make any factual response. Surely then the filing of the affidavits cannot justify an exceptional "PCCI" pleading.

The "Reply" is simply another^{*/} attempt to communicate "second thoughts" and to have "the last word" on every disputed point raised by "PCCI's" discovery request and Motion to Compel. We urge the Board to deny the June 10 "Motion for Leave to File Reply Brief" and reject the June 10 "Reply." In the alternative, the Board may wish to invite NIPSCO and the NRC Staff to address promptly the arguments made in "PCCI's" Reply. We do not urge that course because we believe that, on the basis of the pleadings, the appropriate Board determination will be denial of the Motion to Compel without delay.

Respectfully submitted,

LOWENSTEIN, NEWMAN, REIS
& AXELRAD
1025 Connecticut Avenue, N.W.
Washington, D.C. 20036

By:


Kathleen H. Shea

EICHHORN, EICHHORN
& LINK
5243 Hohman Avenue
Hammond, Indiana 46320

Attorneys for Northern Indiana
Public Service Company

^{*/} See, e.g., PCCI's "Motion for Leave to File Reply Brief" and "Reply in Support of Motion for Order under 10 C.F.R. § 2.740(e)" filed simultaneously on April 16, 1981.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

| | | |
|---------------------------------|---|----------------------|
| In the Matter of |) | Docket No. 50-367 |
| |) | |
| NORTHERN INDIANA PUBLIC SERVICE |) | (Construction Permit |
| COMPANY |) | Extension) |
| |) | |
| (Bailly Generating Station, |) | June 23, 1981 |
| Nuclear-1) |) | |
| |) | |

CERTIFICATE OF SERVICE

I hereby certify that copies of Northern Indiana Public Service Company's Response in Opposition to "PCCI's" "Motion for Leave to File Reply Brief" in the above-captioned proceeding were served on the following by deposit in the United States mail, postage prepaid, this 23rd day of June, 1981.

Herbert Grossman, Esquire, Chairman
Administrative Judge
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Dr. Robert L. Holton
Administrative Judge
School of Oceanography
Oregon State University
Corvallis, Oregon 97331

Dr. J. Venn Leeds
Administrative Judge
10807 Atwell
Houston, Texas 77096

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

Howard K. Shapar, Esquire
Executive Legal Director
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Stephen H. Lewis, Esquire
Office of the Executive Legal Director
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Susan Sekuler, Esquire
Environmental Control Division
188 West Randolph Street
Suite 2315
Chicago, Illinois 60601

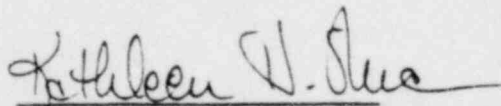
Robert J. Vollen, Esquire
c/o BPI
109 North Dearborn Street
Suite 1300
Chicago, Illinois 60602

Edward W. Osann, Jr., Esquire
One IBM Plaza
Suite 4600
Chicago, Illinois 60611

Robert L. Graham, Esquire
One IBM Plaza
44th Floor
Chicago, Illinois 60611

Mr. Mike Olszanski
Mr. Clifford Mezo
United Steelworkers of America
3703 Euclid Avenue
East Chicago, Indiana 46312

Mr. George Grabowski
Ms. Anna Grabowski
7413 W. 136th Lane
Cedar Lake, Indiana 46303


Kathleen H. Shea
LOWENSTEIN, NEWMAN, REIS
& AXELRAD
1025 Connecticut Avenue, N.W.
Washington, D.C. 20036