

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD



In the Matter of)
)
NORTHERN INDIANA PUBLIC)
SERVICE COMPANY)
(Bailly Generating Station,)
Nuclear-1))

Docket No. 50-367
(Construction Permit
Extension)

PORTER COUNTY CHAPTER INTERVENORS' REPLY
IN SUPPORT OF APPLICATION
PURSUANT TO 10 CFR §2.720(h)(2)(i)

The staff, in its "NRC Staff Response to Porter County Chapter Intervenor's Application Pursuant to §2.720(h)(2)(i)" ("Response"), opposes PCCI's application to depose James G. Keppler on two grounds. Both are without merit, and PCCI's application should be granted.

The staff's first ground of opposition is an assertion that PCCI wish to examine Mr. Keppler on matters which are not relevant to any issue in the proceeding. (Response at p. 2) Four general topics are designated in the Notice of Deposition. The first, NIPSCO's technical incompetence, is a matter of controversy in this proceeding: PCCI's Contention 7 was admitted insofar as the delay in completion of Bailly "was attributable to technical incompetence which brings into question Permittee's ability to construct a safe facility." (Order Following Prehearing Conference, dated August 7, 1980, at p. 60.) The second topic designated in the Notice, NIPSCO's quality assurance program, is one aspect of the issue of

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NIPSCO's technical competence and as well as an aspect of its "ability to construct a safe facility." The third and fourth topics, the reasons for NIPSCO's failure to complete the Bailly plant by September 1, 1979, and the reasonableness of December 1989 as the new requested latest completion date, have also been admitted by the Board. (Order Following Prehearing Conference, at pp. 52-53.) Clearly none of the designated topics is irrelevant: each falls squarely within an admitted contention. Thus, the staff assertion that PCCI seeks to take a deposition on a rejected contention ignores the plain wording of the Notice of Deposition.

The staff's second ground for resisting PCCI's application is an assertion that PCCI have failed to satisfy the proper test for deposing a named NRC staff member. (Response at pp. 4-6.) Contrary to the staff position, 10 CFR §2.720(h)(2)(i) does not establish a three part test. It requires simply a showing of "exceptional circumstances." The three-part "test" submitted by the staff is not a test at all, but rather the regulation's example of one circumstance under which the "exceptional circumstances" showing could be met. The requisite showing of exceptional circumstances has been made and PCCI's application should be granted.

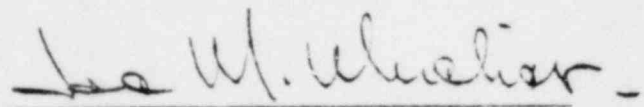
DATED: June 18, 1981

Robert J. Vollen
Jane M. Whicher
c/o BPI
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Chicago, Illinois 60602 By:

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Respectfully submitted,

Robert J. Vollen
Jane M. Whicher



Jane M. Whicher

Attorneys for Porter County Chapter
Intervenors

RELATED CORRESPONDENCE



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NUCLEAR REGULATORY COMMISSION

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)

CERTIFICATE OF SERVICE

I hereby certify that I served copies of the following documents:

Porter County Chapter Intervenor's Response to General Electric's Motions for Extension of Time;

Porter County Chapter Intervenor's Notice of Depositions of Harold Ricca and James F. Purcell;

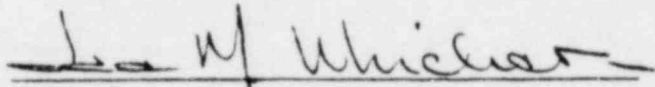
Motion for Leave to File Reply Brief; and

Porter County Chapter Intervenor's Reply in Support of Application Pursuant to 10 CFR §2.720(h)(2)(i)

on the persons on the attached Service List by causing them to be deposited in the U.S. mail, first class postage prepaid, on this 18th day of June, 1981; and that copies of Porter County Chapter Intervenor's Response to General Electric's Motions for Extension of Time were served on Edward A. Firestone, Esq., General Electric Company, 175 Curtner Avenue, M/C 323, San Jose, CA 95125, and on George L. Edgar, Morgan, Lewis & Bockius, Suite 700, 1800 M. St.,

N.W., Washington D.C. 20036; and that copies of the Notice of Depositions were served on the respective deponents at Northern Indiana Public Service Company, 5265 Hohman Avenue, Hammond, Indiana 46320, by causing them to be deposited in the U.S. mail, first class postage prepaid, on this 18th day of June, 1981.

Robert J. Vollen
Jane M. Whicher

A handwritten signature in dark ink, appearing to read "Jane M. Whicher", written over a horizontal line.

by: Jane M. Whicher

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