

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) )

PEOPLE OF THE STATE OF ILLINOIS' RESPONSE  
TO NIPSCO'S SECOND MOTION TO COMPEL  
ANSWERS TO ITS SECOND SET OF INTERROGATORIES

The People of the State of Illinois ("Illinois"), by its attorney, Tyrone C. Fahner, Attorney General of the State of Illinois, responds to NIPSCO's Second Motion To Compel Answers To Its Second Set Of Interrogatories as follows:

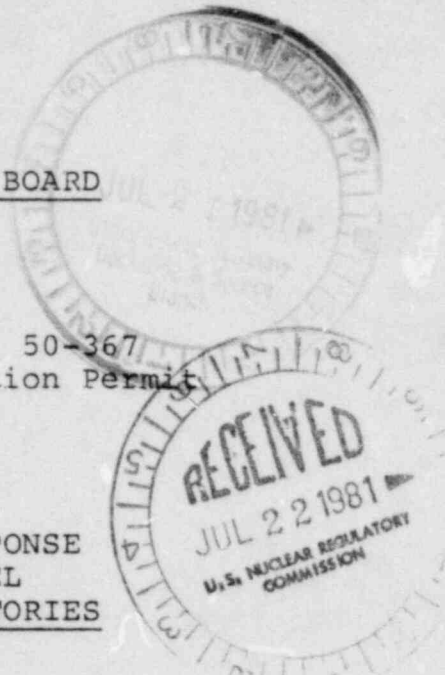
I. Illinois' Objections to Interrogatories

1. "Extended period of construction."

Illinois objected to several interrogatories because they contained the vague and undefined phrase "extended period of construction". NIPSCO asserts that in the context of this proceeding "it is clear" that such phrase refers to the period September 1, 1979 to December 1, 1989. Illinois denies that the meaning of such phrase is "clear"; the period September 1, 1979 to December 1, 1989 is "clearly" only the period of the extension for the construction permit sought by NIPSCO. Moreover, in defining the time period meant by the phrase "extended period of construction" NIPSCO concedes the validity of Illinois' vagueness objection.

Illinois notes that NIPSCO's accusation that Illinois has

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used "similar terminology" is ill-founded. By the use of such phrases as "increased period of construction", "extended construction", "additional length of construction time", and "longer period of construction time", Illinois was referring to any further construction time beyond that allowed in the construction permit, not to a specific period of further construction such as NIPSCO apparently had in mind.

NIPSCO's motion to compel should be denied; if it so chooses NIPSCO can propound proper interrogatories.

2. "Assessed."

Illinois objected to several interrogatories because they contained the word "assessed" which was not defined, nor was it stated by whom an assessment was made. NIPSCO responds by offering a specific definition of "assess" and by stating that the assessment referred to is that made by "the Staff, Licensing Board, and Appeal Board, performed in accordance with the National Environmental Policy Act and AEC's implementing regulations." In defining the intended meaning of the term "assessed" and in stating by whom an assessment was made, NIPSCO concedes the validity of Illinois' vagueness objection.

NIPSCO's motion to compel should be denied; if it so chooses NIPSCO can propound proper interrogatories.

3. "Environmental assessment."

Illinois objected to several interrogatories on the ground that they contained the term "environmental assessment" without stating whose environmental assessment was being referred to.

NIPSCO responds by stating that the environmental assessment in question was made by the Staff, Licensing Board and Appeal Board. In specifying whose environmental assessment the interrogatory referred to, NIPSCO concedes the validity of Illinois' vagueness objection.

NIPSCO's motion to compel should be denied; if it so chooses NIPSCO can propound proper interrogatories.

4. "Incremental environmental impact."

Illinois objected to several interrogatories because they contained the vague, undefined phrase "incremental environmental impact". In response NIPSCO states that the interrogatories ask "whether Illinois contends that there will be an additional (in quantity or character) environmental impact resulting from the enumerated or other causes." In thus explaining the meaning of the interrogatory, NIPSCO concedes the validity of Illinois' vagueness objection.

NIPSCO's motion to compel should be denied; if it so chooses NIPSCO can propound proper interrogatories.

5. "Extra period of dewatering."

Illinois objected to several interrogatories because they contained the vague, undefined phrase "extra period of dewatering." NIPSCO responds that "it is clear . . . that the interrogatories refer to the period of dewatering during the requested extended construction period." This, however, is not illuminating. Assuming that the "requested extended construction period" runs from September 1, 1979 to December 1, 1989, the "period of dewatering during" such time period may not be identical



thereto.\* In a footnote on page 6 of its motion, NIPSCO goes on to say that Illinois "may assume" that dewatering will continue throughout the requested extended construction period, i.e., from September 1, 1979 to December 1, 1989. In thus defining the phrase "extended period of dewatering" (or, more accurately, in specifying an assumption on which interrogatory answers are to be based), NIPSCO concedes the validity of Illinois' vagueness objection.

NIPSCO's motion to compel should therefore be denied; if it so chooses, NIPSCO can propound proper interrogatories.

6. In item (6) of its motion to compel, NIPSCO offers "elaborations" of several interrogatories to which Illinois objected because they were incomprehensible. In thus attempting to elaborate the meaning of interrogatories, NIPSCO concedes the validity of Illinois' objection.

With respect to Interrogatory #19(a), NIPSCO's elaboration does not make the interrogatory any more comprehensible. Is NIPSCO asking whether dewatering after September 1, 1979 will cause incremental environmental effects other than those specific changes in groundwater parameters mentioned in Interrogatory #18? Or is NIPSCO asking whether there will be incremental environmental effects from the additional period of dewatering other than incremental effects resulting from the changes in those groundwater parameters?

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\*Nor is it clear from the objectionable interrogatories that the "period of dewatering" will not extend, either indefinitely or for a fixed length of time, beyond the date of completion of construction.

With respect to Interrogatories #23 and #24, NIPSCO's elaboration is curious at best and disingenuous and improper at worst. NIPSCO states that these interrogatories first "remind" Illinois that the Licensing Board in 1974 concluded that dewatering would not continue during operation of Bailly and then go on to ask specific questions. Such interrogatories are curious because there is not necessarily any connection between the reminder and the specific questions. Such interrogatories are disingenuous and improper because they appear to imply an assumption or to require, without explicitness so stating, that Illinois should make an assumption--such assumption being that dewatering will end with the completion of construction. If NIPSCO knows that dewatering will end with construction it should plainly say so. If NIPSCO does not know whether dewatering will end with construction but wants Illinois to assume that it will for the purpose of answering interrogatories, then NIPSCO should plainly instruct Illinois to make that assumption. NIPSCO should not evade the important issue of the true extent of dewatering by giving "reminders" of earlier and possibly outdated Board findings.

NIPSCO's motion to compel should therefore be denied; if it so chooses NIPSCO can propound proper interrogatories.

7. Illinois objected to Interrogatory #24(e) on vagueness grounds because it referred to NRC regulations without specifying which particular regulations NIPSCO had in mind. NIPSCO responds by stating that the interrogatory refers to any of the NRC's regulations. By giving this explanation, NIPSCO concedes the

validity of Illinois' vagueness objection.

NIPSCO's motion to compel should be denied; if it so chooses NIPSCO can propound proper interrogatories.

8. NIPSCO argues that Illinois "misunderstood" Interrogatory #20(a). While NIPSCO's remarks do indicate that the interrogatory was ambiguous, Illinois will file an amended answer.

## II. Other Deficient Answers

### 1. Interrogatory 20(c).

NIPSCO argues that Illinois inadequately answered Interrogatory #20(c), which requested the basis for the contention that rare species will be caused to disappear, by referring to literature cited in the February 1973 Bailly Environmental Impact Statement and in the November 1980 Final Panel Report. NIPSCO contends that Illinois must specify which particular items listed in those documents are bases "since, clearly, not all can be." Illinois agrees that, clearly, not all the listed literature is relevant; rather only that literature dealing with vegetation in Cowles Bog or similar ecosystems is referred to in Illinois' answer. NIPSCO also remarks that it has "some difficulty understanding" how the Final Panel Report could be a basis for a previously-filed contention; Illinois responds that the views and conclusions of the Final Panel Report demonstrate the validity of the contention.

Illinois' answer to Interrogatory #20(c) was adequately specific, and NIPSCO's motion to request a particular form of answer should be denied.



2. NIPSCO argues that portions of Illinois' answer to Interrogatory #21 are inadequate. Illinois will file an amended answer.

3. NIPSCO argues that Illinois' reference in response to Interrogatory #21(g) to the construction permit record was insufficiently specific. Illinois will file an amended answer.

4. NIPSCO argues that Illinois' reference in response to Interrogatory #22(a) to Longwell, Flint & Saunders was insufficiently specific. Illinois will file an amended answer.

5. While NIPSCO "appreciate[s] receiving" Illinois' answers to several interrogatories (#22(b), (c), (f), (h), and #24(g)), it objects to the limited nature of those answers. The answers in question were entirely proper and NIPSCO's objection is ill-founded. The interrogatories were not clear; Illinois interpreted them as requesting a more definite statement of the meaning and scope of Contention #3E and answered accordingly. If NIPSCO had in mind some question other than the meaning and scope of Contention #3E, Illinois would appreciate receiving appropriately specific interrogatories.

6. NIPSCO argues that Illinois' response to Interrogatory #24(g)(2) was insufficiently specific. Illinois will file an amended answer.

Respectfully submitted,

TYRONE C. FAHNER  
Attorney General  
State of Illinois

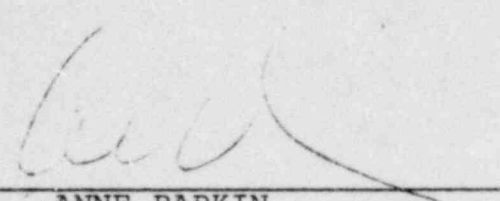
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CERTIFICATE OF SERVICE

I, hereby certify that I served copies of People of the State of Illinois' Response to NIPSCO's Second Motion to Compel Answers to its Second Set of Interrogatories 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 15th day of July 1981.

  
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