

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~~389~~

(Construction Permit
Extension)

July 21, 1981

PROD. & UTIL. PAC. 50-367

NORTHERN INDIANA PUBLIC SERVICE COMPANY'S
MOTION TO COMPEL ANSWERS TO ITS SECOND
SETS OF INTERROGATORIES TO
(1) PORTER COUNTY CHAPTER OF THE IZAAK WALTON
LEAGUE OF AMERICA, INC.
(2) CONCERNED CITIZENS AGAINST BAILLY NUCLEAR
SITE
(3) BUSINESSMEN FOR THE PUBLIC INTEREST, INC.
(4) JAMES E. NEWMAN
(5) MILDRED WARNER



On April 23, 1981, the Northern Indiana Public Service Company (NIPSCO) served its Second Set of Interrogatories on the intervenors which are frequently denominated "Porter County Chapter Intervenors" or "PCCI." In view of counsel's technical objection that interrogatories so addressed were directed to a "non-existent entity,"* NIPSCO reserved on May 29, 1981, a Second Set of Interrogatories on each of the listed organizations or persons: 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.

* See Answers of 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 to NIPSCO's First Set of Interrogatories, p. 1 (May 11, 1981).

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On July 8, 1981,* "Edward W. Osann, Jr., agent of each of the above parties" and "Robert J. Vollen and Jane M. Whicher, Attorneys for" the listed parties filed a document entitled "Answers and Objections of 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 to NIPSCO's Second Sets of Interrogatories" (hereinafter "Answers and Objections").**

The few answers provided by these intervenors are largely non-responsive to the interrogatories and the objections stated are not well-taken. NIPSCO therefore files this Motion to Compel.

I. Intervenors' Objections to Interrogatories

1. "Extended Period of Construction."

The objection is made with respect to a number of interrogatories*** that the phrase "extended period of construction" is not "identified or described." This alleged deficiency renders the interrogatory "too vague and ambiguous to be answerable." In addition, the term is apparently

* The Answers and Objections were thus filed 76 days after the interrogatories were originally served and 39 days after they were re-served. NRC regulations establish 14 days (plus 5 days for service) as the period within which interrogatories are to be answered.

** The Answers and Objections are patterned on Answers filed earlier by Illinois. This Motion to Compel is therefore somewhat repetitive of NIPSCO's Second Motion to Compel answers from Illinois (June 22, 1981).

*** These include interrogatories 9(a); 10(a); 15(a); 19(a); 19(b); 19(c); 19(d); 20(a).

deficient in that "no 'extended period of construction' has been authorized." The phrase is also used in other interrogatories which were not answered on other grounds.*

The interrogatories are posed in a proceeding to consider NIPSCO's request for an extension of the period for construction of Bailly Generating Station, Nuclear-1 from September 1, 1979, to December 1, 1989. In this context, it is clear that the "extended period of construction" refers to the period between those dates (i.e., September 1, 1979, to December 1, 1989) and the interrogatories are not vague. We note incidentally that these intervenors have used strikingly similar terminology: "drastically extended period," "the extended period of site dewatering," "dewatering over a longer period of time," "the extended period of construction," "the additional length of construction site dewatering," "the additional period of construction," "the additional years of construction site dewatering," "extended period of construction dewatering," "the additional period of time," "the additional period of construction time." (Joint Intervenors' First Supplement to Petition for Leave to Intervene, pp. 9-13 (February 26, 1981).)

The objection thus cannot even be called specious; it is totally without merit and cannot have been seriously raised. We request that the intervenors be ordered to answer fully these interrogatories and those which stem from the answers (including 9(d), 9(e), 10(d), 10(e), 15(b), 16, 17, 19(e), 19(f), 20(b)).

* These include interrogatories 16, 18, 19(f).

2. "Assessed."

This word is used in several interrogatories to which the intervenors object* on the ground that they are "too vague and ambiguous to be answerable." That is to say, "[t]he Interrogatory does not specify or identify whose 'assessment' is referred to nor what is meant by the term 'assessed,' nor what is meant by the term 'in connection with.'"

The interrogatories in question use the term "assessed" with express reference to that action "in connection with issuance of Construction Permit No. CPPR-104." Thus, it refers to that action by the Atomic Energy Commission, including the Staff, Licensing Board, and Appeal Board, performed in accordance with the National Environmental Policy Act and AEC's implementing regulations. We suspect that these intervenors would count themselves among the contributors in the process by which the assessment was conducted.

Finally, the verb "assess" is (clearly, we believe) intended to be given a usual dictionary meaning--"to analyze critically and judge definitively the nature, significance, status, or merit of: [to] determine the importance, size, or value of" (Webster's Third New International Dictionary at 131 (1966).)

* These include interrogatories 9(c) and 10(c).

** Intervenors correctly state that the "Interrogatory does not specify . . . what is meant by the term 'in connection with.'" Nor need it since participation in NRC proceedings necessarily presupposes some modest level of intelligence, reasonable familiarity with the English language, and access to a fair-sized dictionary.

In short, the interrogatories are not vague and the objection has no merit. We request the Board order intervenors to respond fully to these interrogatories and those which stem from those answers, including Interrogatories 9(d) and (e), 10(d) and (e), 15, 16, 17, and 18.

3. "Environmental Assessment."

This objection is very similar to that discussed in paragraph 2 above. Interrogatory 11(a) expressly refers to the "environmental assessment at the construction permit stage." Intervenor object that the interrogatory is "too vague and ambiguous to be answerable." That is, the interrogatory "does not identify what 'environmental assessment' is referred to, nor by whom the 'environmental assessment' was performed or prepared." In the context, there can be no question but that the interrogatory refers to the environmental assessment by the Atomic Energy Commission including the Staff, Licensing Board, and Appeal Board. The objection is without merit and intervenors should be ordered to answer fully.*

4. "Incremental Environmental Impact."

The intervenors object to Interrogatory 15(a) on several grounds. One is that "the term 'incremental environmental impact' is not defined, nor is the 'environmental impact,'

* The objection was taken to Interrogatory 11(a) and answers to several other interrogatories are dependent thereon (e.g., 11(b) and (c), 12, 13, and 14).

concerning which information about an increment is sought, defined." A similar objection is stated with respect to Interrogatory 20(a). Again, use of a dictionary might have assisted intervenors in responding to these interrogatories. "Incremental" is an adjective meaning "of, relating to, constituting, or resulting from increments" We assume that intervenors know the meaning of the word "increment" since they use it in stating their objections. The Interrogatory clearly asks whether these intervenors contend that there will be an additional (in quantity or character) environmental impact resulting from the enumerated or other causes. The nature and specifics of any such "incremental environmental impact" are not defined in the Interrogatory; that is the information which the Interrogatory seeks.

The objection is without merit and intervenors should be ordered to respond fully.*

5. "Extra Period of Dewatering."

An additional objection to Interrogatory 20(a) is based on use of the undefined term, "extra period of dewatering." In the context, we submit that it is clear that the interrogatory refers to the period of dewatering during the requested extended construction period.** There is no vagueness and intervenors

* Answers to Interrogatories 15(b), 16, 17, 18, and 20(b) will also be required.

** Intervenors may assume that general construction dewatering continues for 30 months after construction resumes (see NIPSCO's Response to Illinois' First Set of Interrogatories, p. 6 (July 8, 1981)) unless it contends that dewatering will be terminated at another time.

should be ordered to respond to this and related Interrogatory 20(b).

6. Additional objections to Interrogatory 19 are taken because "[n]either the rate, the period of time nor the depth of the 'dewatering' referred to are identified or described"; because details regarding ground water levels, flow, and chemical characteristics at distances of 700 feet, 1/2 mile, and 1 mile from the excavation which occurred as a result of dewatering prior to September 1, 1979, are not specified; and because "the point in the excavation from which those distances are measured" are not identified. Clearly, these objections have been put forth only for the purpose of avoidance. The interrogatories seek information regarding intervenors' own contentions; they ask intervenors to provide some specifics regarding the effects of dewatering which they have repeatedly alleged will occur. If they have none, they may of course state that in response to the interrogatories but they cannot be allowed to evade their responsibility to answer interrogatories through use of contrived, artificial objections. Intervenors should be ordered to answer fully Interrogatory 19.

7. Intervenors object to Interrogatory 27 on the ground that it "is too vague and ambiguous to be answerable." That is, the Interrogatory, "does not specify what is meant by 'relies' nor does it specify the purpose for which PCCI rely on particular documents." "Rely" is obviously used in a usual dictionary

meaning: "to find support: depend" (Webster's Third New International Dictionary at 1919 (1966).) The interrogatory requests identification of documents relating to admitted contentions upon which an intervenor relies for any purpose in this proceeding. This objection also contrived and calculated to delay discovery. Intervenors should be ordered to answer fully Interrogatory 27.

II. Other Deficient Answers

1. The answer to Interrogatory 21(a) refers inter alia to "the species identified during the AEC construction permit proceedings with respect to the proposed Bailly plant." Given the length of those "proceedings" and the extensive record compiled in the course thereof, the answer is insufficient. Intervenors should be ordered to list the species and identify the transcript page, exhibit number and page, etc. where the information can be found.
2. The answer to Interrogatory 21(c) similarly refers to "[t]he evidence in AEC construction permit [proceeding?] with respect to the proposed Bailly plant . . ." in response to the request to "provide the bases" for a quoted contention. Intervenors must be required to identify which "evidence" they are referring to since they clearly do not refer to all. The same answer refers to "studies of the impact of construction dewatering at Bailly upon the Indiana Dune National Lakeshore done by the U.S. Department of the Interior, the National Park Service and the United States Geological

Survey" Intervenors must be required to identify by title, author, date, etc., the reports, memoranda, etc. which document those "studies."

3. No answer has been given to Interrogatory 22(h). Intervenors should be ordered to respond fully.

III. Execution of Answers and Objections

The Answers and Objections were executed by "Edward W. Osann, Jr., agent of each" of the listed parties and "Robert J. Vollen and Jane M. Whicher Attorneys for" the listed parties. (Answers and Objections, p. 13.) Mr. Osann has also signed an "Affirmation" which recites that he is "an attorney for" the named organization and persons; that he has "the authority as agent for each of those parties to submit their respective answers" to NIPSCO's interrogatories and does so "as agent." The Affirmation records that Mr. Osann has read the answers and objections and "conferred with other attorneys for these parties concerning them and that they are true and correct to the best of [his] knowledge and belief." (Answers and Objections, pp. 14-15.)

Therefore, as in the case of the Answers to NIPSCO's First Set of Interrogatories, it appears that there has been no consultation with the organizations and persons admitted to this proceeding in preparation of the responses. Furthermore, the individual parties have failed to execute their answers, as required by NRC regulations. (10 C.F.R. § 1.740b(a).) We shall not repeat the arguments made in NIPSCO's Motion to Compel

Responses to the First Set of Interrogatories (May 26, 1981) but refer the Board to that document.

IV. Observation

In large part, the Answers and Objections filed by "Porter County Chapter," "Concerned Citizens," "Businessmen," Mr. Newman, and Ms. Warner are apparently patterned upon the "Answers of the People of the State of Illinois to NIPSCO's Second Set of Interrogatories" (June 9, 1981). Thus the Answers and Objections would also fall substantially below the standard which is required of parties in NRC proceedings, particularly those represented by counsel.

The Second Sets of Interrogatories seek clarification, elaboration, definition of the contentions which these parties proposed as issues in this proceeding. They probe subjects with which these intervenors must be presumed to be familiar. Yet the answers provide little of substance. The objections appear to have been contrived for the purpose of evasion; in any event they are without merit.

The Commission recently reminded its Licensing Boards and the parties in its proceedings that:

The purpose of discovery is to expedite hearings by the disclosure of information in the possession of the parties which is relevant to the subject involved in the proceeding so that issues may be narrowed, stipulated, or eliminated and so that evidence to be presented at hearing can be stipulated or otherwise limited to that which is relevant.

(Statement of Policy of Conduct of Licensing Proceedings, 46 Fed. Reg. 28,533, 28,535 (May 27, 1981).) However, these

intervenors appear determined to thwart accomplishment of that purpose and to use discovery for the purpose of delay.

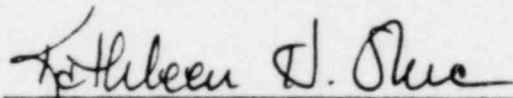
We regret that it has been necessary to request frequently that the Board intervene in the discovery process. However, there is no alternative when parties obviously -- or purposefully -- seek to avoid their responsibilities with respect to discovery.

It would therefore appear appropriate for the Board to remind these intervenors of the obligation which each assumed by seeking party status and of the fact that sanctions may be imposed upon those who fail to meet their obligations. (See, e.g., Pennsylvania Power & Light Co. (Susquehanna Steam Electric Station), Memorandum and Order on Pending Motions, pp. 23-28 (May 20, 1981).)

V. Conclusion

NIPSCO requests the Licensing Board to issue an order compelling each of the three organizations and two individuals to file full, complete, and properly executed answers,* complying with the requirements of NRC Regulations, to NIPSCO's Second Sets of Interrogatories.

Respectfully submitted,



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* Joint answers are unobjectionable if they otherwise meet NRC requirements.

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)	

CERTIFICATE OF SERVICE

I hereby certify that copies of Northern Indiana Public Service Company's Motion to Compel Answers to Its Second Sets of Interrogatories to (1) Porter County Chapter of the Izaak Walton League of America, Inc. (2) Concerned Citizens Against Bailly Nuclear Site (3) Businessmen for the Public Interest, Inc. (4) James E. Newman (5) Mildred Warner in the above-captioned proceeding were served on the following by deposit in the United States mail, postage prepaid, or by hand delivery, this 21st day of July, 1981:

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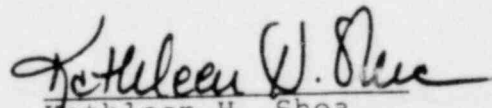
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