

7/22/81

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'  
MOTION FOR CLARIFICATION OR  
RECONSIDERATION OF ORDERS CONCERNING  
DISCOVERY DATED JULY 10, 1981



Porter County Chapter Intervenor ("PCCI"), by their attorneys, respectfully submit that both of the orders dated July 10, 1981, one subtitled "Denying PCCIs' Application Pursuant to 10 CFR §2.720(h)(2)(i) and (ii)" (served July 14, 1981), and the other subtitled "Closing Discovery" (served July 13, 1981), contain ambiguities which, in the interest of all parties to this proceeding, should be clarified by the Board. Accordingly, PCCI hereby move the Board to clarify both orders in the respects identified below. If PCCI's understandings of the Board's intention in those orders, as reflected below, is incorrect, then we respectfully move the Board to reconsider its rulings and modify its rulings to be consistent with those understandings.

1. Order (Denying PCCIs' Application Pursuant to 10 CFR §2.720(h)(2)(i) and (ii))

"Porter County Chapter Intervenor's' Application Pursuant to 10 CFR §2.720(h)(2)(i) and (ii)," dated May 19, 1981, sought an order requiring the Staff to answer "Porter County Chapter Intervenor's' First Set of Interrogatories to the NRC Staff," also

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dated May 19, 1981. There are thirteen interrogatories in that first set. The "NRC Staff's Response to PCCI's Application Pursuant to 10 CFR §2.720(h)(2)(ii)", dated June 8, 1981, urged that the Board deny only that portion of PCCI's application "which asks that the Staff be required to respond to interrogatory 3" (p. 3). The Staff expressed no objection to any of the other interrogatories. Nonetheless, the Order of July 10, 1981 provides that "PCCI's applications are denied."

PCCI respectfully submit that in sustaining the Staff's position with respect to Interrogatory 3, the Board may have inadvertently failed to order the Staff to answer all interrogatories in PCCI's first set other than Interrogatory 3. Since it appears that such a direction by the Board is required under 10 CFR §2.720 (h)(2)(ii), and since the Staff has indicated that it "will file responses to such interrogatories as the Licensing Board may direct it to answer" (Response of June 8, 1981, at p. 1), PCCI respectfully urge the Board to clarify the order and direct the Staff to answer all interrogatories other than Interrogatory 3.

In the event that the Board's failure to order the Staff to answer all interrogatories in the first set other than Interrogatory 3 was not inadvertent, PCCI respectfully move the Board to reconsider its ruling and to direct the Staff to answer Interrogatories 1, 2 and 4 through 13. The Staff has raised no objection to them, and indeed appears to have conceded that the interrogatories "go to matters solely within the Staff's knowledge" (Response at p. 2). There is no possible basis for denial of the application

with respect to these interrogatories.

2. Order (Closing Discovery)

a. The order closing discovery provides that "all depositions be scheduled by August 28, 1981." The provision is ambiguous as to whether dates for all depositions should be established by August 28 or whether all depositions must actually be taken by August 28. PCCI respectfully submit that the Board must have intended the former, and move the Board to clarify the order to eliminate that ambiguity.

At the time that the order was entered on July 10, 1981, PCCI had already noticed four depositions to be taken subsequent to August 28, 1981. In addition, PCCI, on June 18, 1981, and the State of Illinois, on June 23, 1981, had applied for subpoenas to take as many as nine other depositions of employees of NIPSCO contractors. As of July 10, the Board had not yet either issued the subpoenas or directed the applicants to make a showing of the general relevance of the testimony sought, as a precondition to the issuance of the subpoenas, as NIPSCO had requested. (See letters to the members of the Board from William H. Eichhorn dated June 25 and July 8, 1981.)

It fairly can be predicted that the issuance of the subpoenas, whether or not a prior showing of general relevance is required, the service of the subpoenas and notices of deposition, and the taking of the depositions cannot reasonably be accomplished

by August 28, 1981. This is particularly so in view of the number of depositions already scheduled to be taken by that date as well as other discovery matters to be completed.

If the Board declines to clarify the July 10, 1981 Order (Closing Discovery) so as to indicate that dates for depositions are to be scheduled by August 28, 1981, but that the depositions actually need not be taken by that date, PCCI respectfully move to reconsider its rulings, and for the foregoing reasons, to so order.

b. The order closing discovery also provides that "all responses to discovery be updated by August 31, 1981." PCCI respectfully submit that this provision should be clarified.

The Order (Denying Motion to Supplement Discovery), dated May 20, 1981, provides that "the Board will require that the parties update all of their previous responses by a date certain, and will permit a further round of discovery based upon the updated responses." To the extent that the July 10, 1981 order closing discovery was intended to impose that requirement, it fails to do so fully by omitting the authorization for the "further round of discovery." The matters to be updated or supplemented under 10 CFR §2.740(e) include the identity of persons expected to be called as expert witnesses and the substance of the testimony to be offered. If discovery is barred after such information is furnished, much of the purpose of supplementation will have been frustrated.

Accordingly, PCCI respectfully move the Board to clarify its order closing discovery to require that discovery be updated as of a date certain and that a further round of discovery based

on such updated responses be permitted. If PCCI have misunderstood the Board's intention, then we respectfully move for reconsideration of the Board's ruling and urge that it enter an order consistent with the above-described understanding and with the May 20, 1981 Order (Denying Motion to Supplement Discovery).

CONCLUSION

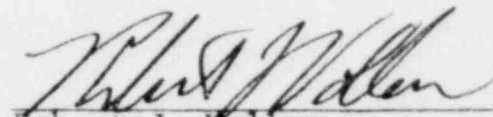
For the foregoing reasons, PCCI move the Board to enter an Order clarifying the July 10, 1981 orders, as described herein, or, if appropriate, to grant reconsideration thereof.

DATED: July 22, 1981

Respectfully submitted,

Robert J. Vollen  
Jane M. Whicher

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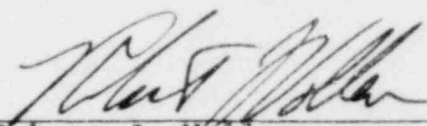
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CERTIFICATE OF SERVICE

I hereby certify that I caused copies of Porter County Chapter Intervenors' Motion for Clarification or Reconsideration of Orders Concerning Discovery Dated July 10, 1981 to be served on all persons on the attached service list, by causing them to be deposited in the U.S. mail, first class postage prepaid, on this 22nd day of July 1981.

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