

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

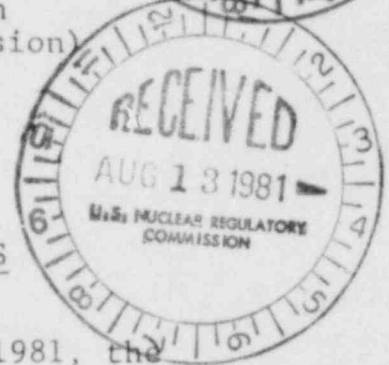
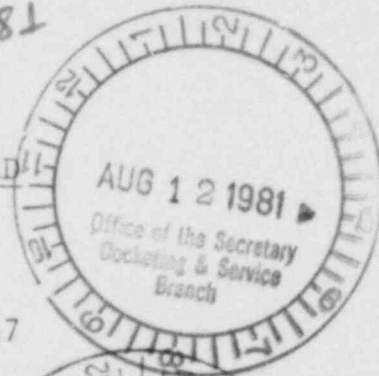
BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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'
SHOWING OF GENERAL RELEVANCE IN
SUPPORT OF APPLICATIONS FOR SUBPOENAS



In a telephone conference call on August 3, 1981, the Chairman of the Licensing Board directed counsel for Porter County Chapter Intervenor ("PCCI") to notice the depositions of those persons for which subpoenas had been applied, and to make a showing of general relevance of the evidence sought, by August 10, 1981. By a separate document, "PCCI's Notice of Depositions for Which Application Has Been Made for Subpoenas," dated August 10, 1981 ("Notice"), PCCI have complied with the direction to notice these depositions.^{*/} By this document PCCI make the required showing of general relevance.

The Commission's regulations with regard to subpoenas, 10 CFR §2.720(a), in pertinent part provides:

^{*/} The Notice has not been served upon the persons to be deposed as yet. Inasmuch as all of those persons are non-parties to this proceeding, the Notice would be ineffectual to require their attendance and might cause confusion and inconvenience. Accordingly, it is our intention to serve the Notice on those persons simultaneously with the service of the subpoenas for which we have applied.

On application by any party, the designated presiding officer or, if he is not available, the Chairman of the Atomic Safety and Licensing Board Panel, the Chief Administrative Law Judge or other designated officer will issue subpoenas requiring the attendance and testimony of witnesses or the production of evidence. The officer to whom application is made may require a showing of general relevance of the testimony or evidence sought, and may withhold the subpoena if such a showing is not made, but he shall not attempt to determine the admissibility of evidence.

I. PORTER COUNTY CHAPTER INTERVENORS' FIRST APPLICATION FOR SUBPOENAS, DATED JUNE 19, 1981

1. D.L. Leone. Mr. Leone is the Bailly project director at Sargent & Lundy Engineers which has been the architect-engineer for Bailly since the inception of the project. As such Mr. Leone can be expected to have knowledge of the facts related to NIPSCO's application for a construction permit extension, the reasons why NIPSCO did not complete construction of the Bailly nuclear plant by September 1, 1979, the estimated cost of building Bailly, NIPSCO's and Sargent & Lundy's competence to design and build a nuclear power plant, the reasonableness of the requested extension and virtually all other matters at issue in this proceeding. His testimony would be directly relevant to the matters in controversy.

2. G.A. Chauvin. Mr. Chauvin is an employee of Sargent & Lundy Engineers and has been personally and directly involved in its work on the Bailly plant since at least 1972. His testimony and knowledge of the facts would be directly relevant in the same way as that of Mr. Leone.

3. Richard F. Brissette. Mr. Brissette is the co-author of two reports, identified following his name in the Notice. Those reports deal with the impact of construction dewatering at Bailly on the Indiana Dunes National Lakeshore, an issue in this proceeding. Mr. Brissette's testimony concerning the basis and support for statements in those reports, their implications and significance and their justification and correctness, is directly relevant to the subject of this proceeding. NIPSCO has relied on the November 1980 report in stating its position that dewatering would have no effect on the Lakeshore. See NIPSCO's response to the People of the State of Illinois' First Set of Interrogatories to NIPSCO, dated July 8, 1981, in response to Interrogatories 10 and 16.

4. Stevo Dobrijevic. Mr. Dobrijevic is the co-author with Mr. Brissette of the two reports on dewatering. His testimony therefore is directly relevant in the same way as that of Mr. Brissette.

5. Eugene E. Barnett. Mr. Barnett is the person in charge of the Bailly project for C.F. Braun & Co., which is the construction manager for Bailly. As such, Mr. Barnett can be expected to have knowledge of the facts concerning the reasons why NIPSCO did not complete construction of Bailly by September 1, 1979, and the reasonableness of a latest completion date of December 1, 1989, for the Bailly plant. Those issues are directly at issue in this proceeding.

6. Thomas J. Wysocky is the person at Thatcher Engineering Corporation responsible for the Bailly project. Thatcher Engineering is the company which had a contract to do pile driving on the Bailly plant. Because the inability to install a workable and safe foundation of long pilings is a major cause of delay, Mr. Wysocky can be expected to have direct knowledge of the reasons why NIPSCO did not complete construction of Bailly by September 1, 1979, an issue in controversy in this proceeding.

II. PORTER COUNTY CHAPTER INTERVENORS' SECOND APPLICATION FOR SUBPOENAS DATED JULY 31, 1981

1. Superintendent, Indiana Dunes National Lakeshore, and
2. Chief Scientist, Indiana Dunes National Lakeshore.

Both the Superintendent and the Chief Scientist of the National Lakeshore have ongoing responsibilities for and concerns about the preservation, use, protection and enjoyment of the National Lakeshore. They can be expected to have knowledge of the potential impacts of NIPSCO's construction of Bailly, particularly the impacts of construction dewatering and of the sealing of the ash ponds on the Bailly site, on the Indiana Dunes National Lakeshore. These matters are in controversy in this proceeding and the testimony of the Superintendent and Chief Scientist would be directly relevant to them.

3. William Meyer,

4. Patrick Tucci,
 5. Daniel Gilles,
 6. Mark A. Hardy,
 7. Wayne W. Lapham,
- and
8. James Marie.

Each of these six people is the author or co-author of a U.S. Geological Survey report on an aspect of the impact of NIPSCO's activities in conjunction with Bailly on the Indiana Dunes National Lakeshore. Those reports are identified following the names of each of these persons in the Notice. The testimony of these persons on the subject matter of those reports will be directly relevant to issues in this proceeding.

9. The person or persons at Ground/Water Technology, Inc. responsible for or having input into "Supplementary Information, Hydrogeologic Evaluation of Construction Dewatering," dated October 27, 1979. That report is another which deals with the impact of construction dewatering at Bailly upon the Indiana Dunes National Lakeshore and the person(s) with knowledge of the material within it can be expected to have information relevant to that issue in this proceeding.

10. Daniel Willard. D. Willard is the chairman of a panel which issued a report, identified in the Notice following Dr. Willard's name, on the effects of dewatering on the Indiana

Dunes National Lakeshore. That report, and the testimony of Dr. Willard concerning the information in it, relate to the impact on the ecology of the Lakeshore of drawdown due to dewatering and thus are relevant to this proceeding.

CONCLUSION

The Commission's regulations authorize the Board to require a showing of "general relevance" of the evidence sought by way of subpoena. There is no room for serious doubt that the persons whom PCCI seek to depose have knowledge that is directly and immediately relevant to the issues in this proceeding. The standard of a showing of general relevance has been met and the subpoenas sought should be issued.

DATED: August 10, 1981

Respectfully submitted,

Robert J. Vollen
Jane M. Whicher

by: Jane M. Whicher
Jane M. Whicher
Attorneys for Porter County
Chapter Intervenors

Robert J. Vollen
Jane M. Whicher
c/o BPI
109 North Dearborn
Suite 1300
Chicago, Illinois 60602
(312) 641-5570