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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

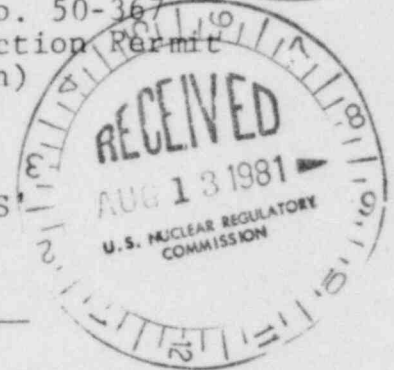
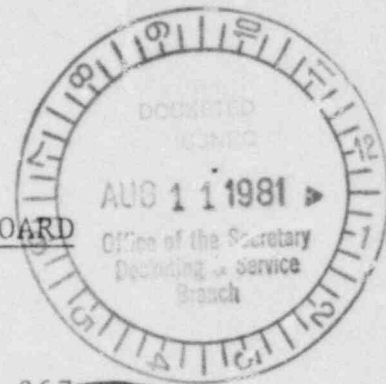
BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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'
RESPONSE TO NIPSCO'S MOTION TO
COMPEL ANSWERS TO ITS
SECOND SETS OF INTERROGATORIES



NIPSCO's Motion to Compel, dated July 21, 1981, is filled with vituperative rhetoric, snide comments and personal attacks directed to Porter County Chapter Intervenor (PCCI) and their counsel. The apparent effort to divert attention from the obvious deficiencies and ambiguities in NIPSCO's interrogatories should be rejected. The plain thrust of NIPSCO's motion, amidst the innuendo and challenges to PCCI's motives is to provide "definitions" for the very phrases which PCCI submits are ambiguous and NIPSCO claims are "clear". NIPSCO's post hoc efforts to correct its deficient interrogatories concede the validity of PCCI's objections. The unwarranted and unjustified attacks upon PCCI and their counsel by NIPSCO can neither hide nor correct those deficiencies.

1. "Extended period of construction"

Interrogatories containing this phrase, to which PCCI objected, are based on PCCI's Contentions, which are contained in Joint Intervenor's First Supplement to Petition for Leave to Intervene (February 26, 1981). NIPSCO has filed three separate requests for new latest completion dates for the Bailly construction

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permit, two of which were submitted before the date of the First Supplement and one after. PCCI do not know to what requested period the phrase is intended to refer. Therefore, it is not at all clear to what "extended period of construction" NIPSCO refers. NIPSCO's assertion that "[i]n 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)" (NIPSCO Motion at p. 3) is entirely without basis.

The interrogatories provide no basis for the conclusion now asserted by NIPSCO that "extended period of construction" is identical to the new "latest completion date" sought by NIPSCO. PCCI do not know if NIPSCO intends to, or will in fact engage in, construction during the entire period sought. NIPSCO's after-the-fact attempt to supply a definition cannot cure the defect in these interrogatories. NIPSCO is seeking to compel answers to interrogatories it has not asked and its motion should be denied.

2. "Assessed" and "environmental assessment"

In a similar manner, NIPSCO attempts post hoc to provide a definition for its term "assessment" in some of the interrogatories, with reference to an "assessment" performed "in connection with" the issuance of the Bailly construction permit." The motion, but not the interrogatories defines the assessment as "that action by the Atomic Energy Commission, including the Staff, Licensing Board, and Appeal Board..." (NIPSCO Motion at p. 4). But prior to the motion and on the face of the interrogatories, there was no way to know into whose assessments NIPSCO was inquiring. The assessment by NIPSCO "in connection with" the issuance of the

construction permit was quite different, for example, than the assessment by the Joint Intervenors, which in turn, was quite different than the assessment by the AEC Staff. NIPSCO should clarify its interrogatories at the time it propounds them, not by a subsequent motion to compel. Its present motion, to compel answers to interrogatories it has not propounded, should be denied.

3. "Incremental environmental impact"

This objection is stated with respect to Interrogatory 15(a) and the term also appears in Interrogatory 16. Interrogatory 15(a) asks a series of questions regarding "an incremental environmental impact." Obviously, for an impact to be "incremental" to something, there must be a reference to an already existing impact, yet a description of such an impact is not contained in the interrogatories. Consequently, no answer is possible. ^{*/} PCCI's objection should be sustained and NIPSCO's motion should be denied.

4. "Extra period of dewatering"

PCCI objected to answering interrogatories containing this term because this term is undefined. NIPSCO submits that the period to which it refers is "clear" "in the context" of the interrogatory, but nonetheless states in the motion that "Inter-

^{*/} NIPSCO's attempt to supply a dictionary definition for the term "increment" (Motion at p. 6) is similarly unhelpful because the impact to which the requested impact is "incremental" is still not stated.

venors may assume that general construction dewatering continues for 30 months after construction resumes...." (p. 6 note **). That suggestion as to what PCCI may assume concerning the "general" construction dewatering concedes the inadequacy of the interrogatory as propounded, even if there were any requirement for a party to make any assumptions in order to answer interrogatories. ^{*/} NIPSCO's motion should be denied.

5. Interrogatory 19

Each subpart of the interrogatory asks PCCI's contention regarding "different groundwater levels" (19(a)), "different direction or rates of groundwater flow" (19(b)), "different chemical characteristics" (19(c)), and "differen[ces] in any other respects" (19(d)). None of the things with which the levels, directions and rates of flow, or chemical characteristics are to be contrasted are specified. Therefore, the interrogatory is unanswerable.

Further, the "distances of 700 feet, 1/2 mile and 1 mile from the excavation" as used in the interrogatory are susceptible to different interpretations. Although its precise dimensions

^{*/} Moreover, in its Motion to Compel further answers of Illinois, filed June 22, 1981, at page 6 note *, NIPSCO stated that: "Illinois may assume that dewatering continues throughout that period (i.e., until December 1, 1989)..." Subsequently, NIPSCO responded to an interrogatory from the State of Illinois by stating: "General construction dewatering is now being conducted and will be required for the period of time necessary to bring the facility foundations to grade level. This is estimated to be between 18 to 30 months after construction resumes." (Northern Indiana Public Service Company's Response to the People of the State of Illinois' First Set of Interrogatories to NIPSCO in response to Interrogatory 8(a), filed July 8, 1981, at p. 6). Thus, even NIPSCO cannot determine what the "extra period of dewatering" will be. In addition, the NRC Staff has estimated this period as "two to three years after construction is resumed." "Environmental Impact Appraisal", dated July 17, 1981, at p. 3.

are not presently known to PCCI, the excavation is at least hundreds of feet in width and more than that in length. The point in that very large excavation from which the distances are to be measured is not stated. There may, in fact, be differences in measurements depending on at what point in the excavation one is measuring from. NIPSCO has not supplied such a point. NIPSCO's motion should be denied.

6. Interrogatory 27

NIPSCO again attempts to supply a definition for a previously undefined term. In this case, NIPSCO defines the term "rely" with a dictionary definition and the additional specification that such reliance is "for any purpose in this proceeding" (NIPSCO Motion at p. 8). As shown above, such a post hoc attempt to correct a deficient interrogatory is inadequate to compel an answer to the interrogatory. NIPSCO's motion should be denied.

7. Interrogatory 21

NIPSCO contends this answer is "deficient" because PCCI did not specify the transcript pages to which they refer in their answer. However, NIPSCO itself has given a similar answer in "NIPSCO's Response to PCCI's Second Set of Interrogatories" dated June 8, 1981. In response to Interrogatory 7, NIPSCO states that "21 geological investigations were referenced in the testimony of NIPSCO witnesses during the construction permit hearing." NIPSCO certainly has had the opportunity to ask a follow-up interrogatory requesting citations. It declined and should not be allowed to propound such an interrogatory indirectly by way of this motion to compel. Similarly, the dispute with PCCI's

answer to 21(c) is without merit. All of the referenced studies are public documents and are equally available to NIPSCO.

PCCI inadvertently omitted its response to Interrogatory 22(h). The response which should have been included is: "22(h) No response is required in view of the responses to 22(b) through 22(f)." PCCI apologize for this typographical error and hope that its omission did not cause great inconvenience.

8. Execution of answers and objections

NIPSCO's technical objection to the form of signature provided for interrogatory answers has previously been fully briefed. The answers are clearly those of the parties and NIPSCO's motion should be denied.

* * * * *

On the grounds set forth above, NIPSCO's motion should be denied, and PCCI's objections to NIPSCO's interrogatories should be sustained.

DATED: August 5, 1981

Respectfully submitted,

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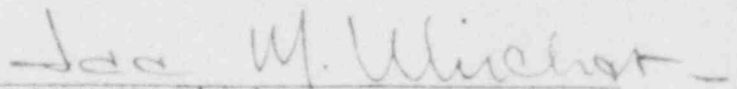
CERTIFICATE OF SERVICE

I hereby certify that I served copies of Porter County Chapter Intervenors' Response to NIPSCO's Motion to Compel Answers to its Second Sets of Interrogatories on all persons on the attached service list, by causing them to be deposited in the J.S. mail, first class postage prepaid, on this 5th day of August, 1981.

DATED: August 5, 1981.

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