

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)	Docket No. 50-367
)	
NORTHERN INDIANA PUBLIC)	(Construction Permit
SERVICE COMPANY)	Extension)
)	
(Bailly Generating Station,)	August 17, 1981
Nuclear-1))	

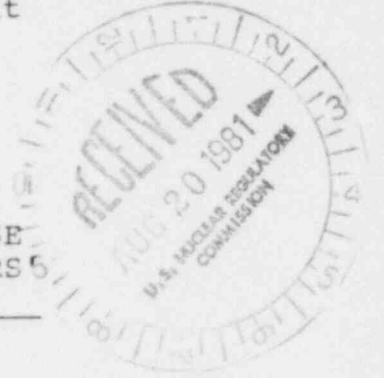
NORTHERN INDIANA PUBLIC SERVICE COMPANY'S RESPONSE
IN OPPOSITION TO PORTER COUNTY CHAPTER INTERVENORS'
MOTION TO EXTEND TIME FOR TAKING DEPOSITIONS

On June 1, 1981, Northern Indiana Public Service Company (NIPSCO) submitted a motion for establishment of a schedule, which requested the issuance of an order closing discovery (including taking of depositions) by July 31, 1981.^{*/} On July 10, 1981, the Licensing Board issued an order which inter alia directed that all depositions be scheduled by August 28, 1981.^{**/} Following complaints from Illinois and the Porter County Chapter Intervenors (PCCI) that the July 10 order was "ambiguous,"^{***/} the Board scheduled September 30, 1981, as

^{*/} Northern Indiana Public Service Company's Motion for Establishment of Schedule (June 1, 1981), p. 2.

^{**/} Order (Closing Discovery) (July 10, 1981), p. 1.

^{***/} Motion for Clarification of Order (July 17, 1981), p. 1., Porter County Chapter Intervenors' Motion for Clarification or Reconsideration of Orders Concerning Discovery Dated July 10, 1981 (July 22, 1981), p. 3.



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the deadline for the taking of depositions.^{*/} PCCI has now filed Porter County Chapter Intervenors' Motion to Extend Time for Taking Depositions (Motion) (August 10, 1981), which seeks a further deferral of the last date for taking depositions. NIPSCO hereby submits its response in opposition to the Motion.

As grounds for its Motion, PCCI points to the fact that it is seeking to depose individuals during all but three weekdays during September. It argues that such a schedule for taking depositions "is totally unworkable and unrealistic," and that such a schedule "would deprive PCCI of a fair opportunity to prepare for the hearing." (Motion, pp. 5-6). A review of the record in this proceeding reveals that PCCI's claims lack merit.

Discovery was opened in this proceeding on August 7, 1980.^{**/} Thus, between the time that discovery was opened and the time NIPSCO filed its motion for establishment of a schedule, the intervenors were afforded almost ten months of discovery. However, during this period, PCCI only requested the deposition of nine different individuals.^{***/} In fact, during approximately

^{*/} Order (Summarizing Actions Taken at Conference Call of August 3, 1981) (August 4, 1981), p. 2.

^{**/} Order Following Special Prehearing Conference (August 7, 1980), p. 69.

^{***/} See Attachment A.

five months of this period, PCCI filed no formal discovery requests at all.^{*/}

However, as soon as NIPSCO filed its motion to close discovery, PCCI suddenly increased its requests for depositions. In the 2 1/2 month period following the submission of NIPSCO's motion, PCCI has requested the deposition of 27 different individuals,^{**/} three times as many individuals which PCCI sought to depose during the previous ten months. PCCI is now attempting to utilize its recent flurry of requests for depositions as an excuse for extending the date for closing discovery.

A party should not be permitted to defer its requests for depositions, schedule numerous depositions during the latter part of the discovery period, claim that its own schedule for numerous depositions "is totally unworkable and unrealistic," and then utilize its deposition schedule as a ground for extending the discovery period. Acceptance of such a ploy would enable a party to extend discovery at its will.

Moreover, in the context of this proceeding, PCCI's actions are suspect. First, it is apparent that PCCI desires to delay

^{*/} PCCI filed no formal discovery requests between October 24, 1980 (notice of deposition of Eugene W. O'Rourke) and March 20, 1981 (interrogatories to and request for the production of documents from NIPSCO). See also Porter County Chapter Intervenors' Motion to Suspend Litigation Proceedings (November 13, 1980).

^{**/} See Attachment B.

completion of discovery, and hence this proceeding, for as long as the Board will tolerate. This is evident by PCCI's request to suspend discovery,^{*/} its objection to NIPSCO motion to close discovery,^{**/} its motion for reconsideration of the July 10 order which closed discovery,^{***/} its attempt to obtain generally a "further round of discovery,"^{****/} its motion for leave to initiate further discovery,^{*****/} and its instant motion.

Second, PCCI has had ample opportunity for discovery, and in fact has conducted extensive discovery. In addition to its numerous requests for depositions, PCCI has filed seven different sets of requests for documents from NIPSCO, five different sets of requests for documents from the NRC Staff, five different sets of interrogatories to NIPSCO, and three different sets of interrogatories to the NRC Staff. NIPSCO

^{*/} Porter County Chapter Intervenors' Motion to Suspend Litigation Proceedings (November 13, 1980).

^{**/} Porter County Chapter Intervenors' Answer to NIPSCO's Motion for Establishment of Schedule (June 16, 1981).

^{***/} Porter County Chapter Intervenors' Motion for Clarification or Reconsideration of Orders Concerning Discovery Dated July 10, 1981 (July 22, 1981), p. 4.

^{****/} Id., pp. 4-5.

^{*****/} Porter County Chapter Intervenors' Motion for Leave to Initiate Further Discovery (July 31, 1981).

estimates that it alone has made more than 250,000 pages of documents available to PCCI during the course of this proceeding. Given this background, PCCI's claim, that absent an extension it would be deprived of a "fair opportunity to prepare for the hearing," rings hollow.^{*/} (See Motion, p. 5).

Finally, there is no indication that PCCI could not have scheduled these depositions for earlier in the proceeding. The existence of most, if not all, of the requested deponents was known to PCCI long before it scheduled their depositions, yet PCCI delayed scheduling these depositions until after NIPSCO filed its motion to close discovery. Since PCCI was certainly free to select a different schedule for the depositions, any "unreasonable burden" it might suffer as a result of the deposition schedule is of its own making. (See Motion, p. 1).

^{*/} In this regard, it is difficult to discern any necessity for many of the depositions which PCCI has noticed. For example, PCCI has requested to depose nine individuals solely because they have authored reports related to dewatering. (See Porter County Chapter Intervenor's Showing of General Relevance in Support of Application for Subpoenas (August 10, 1981)). There is no reason to believe that PCCI could not obtain the information it seeks from these individuals without the necessity of resorting to subpoenas and the formality of depositions. Similarly, there is no indication that these individuals could provide PCCI with any information which it already does not possess. Moreover, the information provided by some of these individuals would obviously be cumulative (e.g. six individuals from USGS who are involved in the same report).

Thus, it is apparent that the intervenors have had ample opportunity for discovery, that PCCI has postponed the filing of the vast majority of their requests for depositions until the last two months of discovery, and that PCCI is attempting to rely upon its own actions as a ground for prolonging discovery and this proceeding. The Board should not sanction such a tactic, and should deny the Motion.*/

Respectfully submitted,

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*/ Under the August 4 Board Order if any party, including PCCI, can show good cause, it can request the Board to authorize specific additional discovery beyond the established deadline. This would presumably require at least a showing that the specific additional discovery requested is essential, that there are good reasons why such discovery could not have been requested earlier and accomplished prior to the deadline, that no party will be prejudiced in its trial preparation by such additional discovery, and that the hearing would not be delayed thereby. Obviously, this is the course that should be followed by any party which has an appropriate basis for additional discovery; not the open ended and unsupported request for unlimited depositions sought by PCCI.

Attachment A

Requests for Depositions filed by PCCI
Between August 7, 1980 and June 1, 1981

<u>Date of Request</u>	<u>Deponents</u>
Aug. 19, 1980	Eugene M. Shorb ^{3/ 4/}
Aug. 28, 1980	Russell Bohn ^{2/ 4/}
Sept. 17, 1980	NRC Staff Witness ^{1/ 5/}
Sept. 17, 1980	Edmund A. Schroer ^{2/ 4/}
Sept. 17, 1980	Horace P. Lyle ^{2/ 4/}
Oct. 7, 1980	A. P. Severance ^{2/ 4/ 6/}
Oct. 24, 1980	Eugene W. O'Rourke
May 12, 1981	Dean H. Mitchell ^{4/}
May 19, 1981	James G. Keppler

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- 1/ This witness is M. David Lynch. See letter from Richard J. Goddard to Robert J. Vollen (Oct. 7, 1980).
- 2/ An amended notice regarding these individuals was submitted by PCCI on May 12, 1981.
- 3/ An additional notice regarding this individual was submitted by PCCI on May 12, 1981.
- 4/ An amended notice regarding these individuals was submitted by PCCI on May 19, 1981.
- 5/ A motion regarding this individual was filed on June 26, 1981, by PCCI.
- 6/ An amended notice regarding this individual was filed on July 17, 1981, by PCCI.

Attachment B

Requests for Depositions filed by PCCI
After June 1, 1981

<u>Date of Request</u>	<u>Deponent</u>
June 9, 1981	Owen Thompson - NRC
June 9, 1981	E. L. Jordan - NRC
June 9, 1981	J. W. Dunn ^{1/} - NIPSCO
June 18, 1981	Harold Ricca - NIPSCO
June 18, 1981	James F. Purcell - NIPSCO
June 19, 1981	D. L. Leone - Sargent & Lundy Engineers
June 19, 1981	G. A. Chauvin - Sargent & Lundy Engineers
June 19, 1981	Richard F. Brissette - Canonie Environmental Services Corp.
June 19, 1981	Stevo Dobrijevic - Canonie Environmental Services Corp.
June 19, 1981	Eugene E. Barnett - C. F. Braun & Co.
June 19, 1981	Thomas J. Wysockey - Thatcher Engineering
June 29, 1981	Allen H. Petersen - NIPSCO
June 29, 1981	Forrest G. Hiple - NIPSCO
June 29, 1981	Carl R. Kulawinski - NIPSCO
July 31, 1981	Superintendent - IDNL
July 31, 1981	Chief Scientist - IDNL
July 31, 1981	William Meyer - USGS
July 31, 1981	Patrick Tucci - USGS
July 31, 1981	Daniel C. Gilles - USGS
July 31, 1981	Mark A. Hardy - USGS

^{1/} An amended notice regarding this individual was filed on July 21, 1981, by PCCI.

<u>Date of Request</u>	<u>Deponent</u>
July 31, 1981	Wayne W. Lapham - USGS
July 31, 1981	James Marie - USGS
July 31, 1981	Person(s) at Ground/Water Technology, Inc.
July 31, 1981	Daniel Willard - Indiana University
August 11, 1981	L. G. Hulman - NRC Staff
August 11, 1981	L. M. Bykoski - NRC Staff
August 11, 1981	William F. Lovelace - NRC Staff or Consultant