

5/11/81

RELATED CORRESPONDENCE

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
TO COMPEL PRODUCTION OF DOCUMENTS BY NIPSCO
PURSUANT TO PCCI'S THIRD REQUEST TO
NIPSCO FOR PRODUCTION OF DOCUMENTS



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 ("PCCI"), by their attorneys, move the Board to enter an order, pursuant to 10 CFR 52.740(f)(1), compelling NIPSCO to produce those of the documents requested in paragraphs 2, 8, 14, 15, 16 and 17 of PCCI's Third Request to NIPSCO for Production of Documents, dated March 20, 1981 ("Third Request") which Northern Indiana Public Service Company's Response to Porter County Chapter Intervenor's Third Request to NIPSCO for Production of Documents ("Response"), dated April 24, 1981, states that NIPSCO is withholding from production. We show below that PCCI are entitled to production of these documents and that NIPSCO's objections are without merit.

1. Paragraphs 2, 8 and 16. The documents requested in Paragraphs 2, 8 and 16 relate to NIPSCO's

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forecasts of demand on its system and its projections of the need for the power to be generated by the proposed Bailly plant.

NIPSCO raises two objections, both of which are without merit.

NIPSCO first objects to these Paragraphs on relevancy grounds, contending that the requested documents are "not relevant to any contention admitted in this proceeding." (Response at pp. 2,3). Such an assertion is simply beside the point and is an attempt to limit discovery to impermissibly narrow scope.

The scope of this proceeding is whether NIPSCO can show the "good cause" required by section 185 of the Atomic Energy Act. The scope of discovery is "any matter, not privileged, which is relevant to the subject matter involved in the proceeding, whether it relates to the claim or defense of the party seeking discovery or to a claim or defense of any other party..." 10 CFR §2.74.0(b). NIPSCO claims that good cause exists for extension of the Bailly permit, and, to prevail in this proceeding, must so show under section 185 of the Act. Neither the scope of this proceeding nor scope of discovery is limited to contentions admitted. The only proper bound is NIPSCO's claim of good cause. If NIPSCO does not need the power from Bailly that is certainly relevant to the "good cause" inquiry. */ NIPSCO's "relevancy" objection is obviously without merit.

*/ NIPSCO has already furnished, without objection, much of the information contained in the requested documents in its answers to Interrogatories 3 and 12 of Porter County Chapter Intervenor's First Set of Interrogatories to NIPSCO, and in its response to a letter from Robert L. Tedesco to the Northern Indiana Public Service Company, dated November 21, 1980 and attached "Request for Additional Information Regarding the Bailly CP Extension". NIPSCO should not now be heard to object to producing the documents which contain that information.

NIPSCO's second objection to production of documents requested in Paragraphs 2, 8 and 16 is the assertion that "public dissemination" (a term which it does not define) of some of the information contained in the documents could be detrimental to NIPSCO's customers. NIPSCO's assertions of harm to others are unsupported by facts or logic and purely speculative. However, in an effort to avoid potentially unnecessary disputes, PCCI are willing to have NIPSCO produce the documents, at least preliminarily, with the identity of the customer concealed. PCCI's right to know the identity of the customer could be litigated when, and if, we conclude that we desire that information. Accordingly, the documents requested in Paragraphs 2, 8 and 16 should be ordered to be produced, with NIPSCO being given permission to conceal the identity of its customer.

2. Paragraph 14. Paragraph 14 of the Third Request seeks the minutes of those meetings of NIPSCO's board of directors at which Bailly was discussed. NIPSCO has objected to that request as "beyond the scope of the contentions admitted". (Response at p. 6). In spite of NIPSCO's assertions as to scope, the documents are clearly discoverable. As with its objections Paragraph 2, 8 and 16, it has simply misconstrued the scope of discovery in this "good cause" proceeding. The request obviously falls squarely within the standard of 10 CFR §2.740(b)(1) as being "reasonably calculated to lead to the discovery of admissible

evidence", for it is calculated to lead to evidence of the reasons for the failure to construct Bailly. The scope of this proceeding is not defined by admitted contentions. It is defined by whether good cause for an extension of the Bailly construction permit exists.

NIPSCO has excerpted certain portions of minutes of some of its board meetings and produced only those excerpts. Such a practice of editing a document is not contemplated nor permitted by the NRC discovery rules, absent an order of this Board or agreement of the parties, neither of which NIPSCO has requested or received. If such a practice as NIPSCO has unilaterally initiated were tolerated, NIPSCO could conceivably extract and edit every produced document. If a document is responsive to a request for production, the entire document must be produced, not just the portion NIPSCO wants to produce. NIPSCO's objection to Paragraph 14 is without merit, and it should be ordered to produce the entire minutes of the meetings at which Bailly was discussed.

3. Paragraph 15. Paragraph 15 of the Third Request seeks notes and summaries of telephone conversations with NRC employees by NIPSCO employees. NIPSCO has stated that it has produced those portions of the documents which NIPSCO has described as "pertaining to any admitted contention" and has objected to the remainder as "overly broad" and "beyond the scope of the contentions admitted." (Response at pp. 6-7).

As with the other paragraphs to which it objects, NIPSCO has misdescribed the scope of the proceedings and of discovery. The documents requested do relate to the subject matter of this proceeding. PCCI believe they will lead to evidence of the true reasons for NIPSCO's failure to construct the Bailly plant and of whether NIPSCO can show "good cause" for the extension it seeks. Notes of conversations may well reveal evidence not contained in more formal communications. NIPSCO should not be permitted to withhold documents solely because it claims they do not pertain to an admitted contention. The request is proper and NIPSCO should be ordered to produce the documents.

4. Paragraph 17. NIPSCO has objected to production of the file requested in Paragraph 17 of the Third Request on the ground that it "vague, overly broad and does not identify any document but rather refers to an unidentified file from which a memorandum of a telephone conversation was earlier produced", and that it "does not attempt to identify any subject matter or specific type of document" (Response at p. 7). Those assertions are simply erroneous. The request refers to and incorporates a colloquy during the deposition of Eugene M. Shorb, NIPSCO's First Vice President. That discussion by counsel for NIPSCO and for PCCI concerned a certain file in NIPSCO's possession. During that colloquy, Mr. Eichhorn four times referred to "that file" or "the file" acknowledging his familiarity with its identity. (Deposition of Eugene M. Shorb, at pp. 239-40.) NIPSCO's present claim that the file is "unidentified" simply lacks credibility. The fact

that production of the "file", rather than all documents in the file, is requested obviously is not a valid ground for objection. NIPSCO's objection to the breadth of the request is unsupportable. The requested file clearly contains documents relevant to the scope of this proceeding as defined by section 185 of the Atomic Energy Act. NIPSCO should be ordered to produce the file requested in Paragraph 17 of the Request.

CONCLUSION

For the foregoing reasons, this motion should be granted and NIPSCO should be ordered to produce all of the documents requested in Paragraphs 2, 8, 14, 15, 16 and 17 of PCCI's Third Request.

Dated: May 11, 1981

Respectfully submitted,

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RELATED CORRESPONDENCE

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
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NORTHERN INDIANA PUBLIC
SERVICE COMPANY
(Bailly Generating Station,
Nuclear-1)

Docket No. 50-367
(Construction Permit
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CERTIFICATE OF SERVICE

I hereby certify that I served copies of the following documents:

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, and

PORTER COUNTY CHAPTER INTERVENORS' MOTION
TO COMPEL PRODUCTION OF DOCUMENTS BY NIPSCO
PURSUANT TO PCCI'S THIRD REQUEST TO
NIPSCO FOR PRODUCTION OF DOCUMENTS

on the persons on the attached Service List by causing them to
be deposited in the U.S. mail, first class postage prepaid,
on this 11th day of May 1981.

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Jane M. Whicher

By:

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