

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

DD-79-21

OFFICE OF NUCLEAR REACTOR REGULATION

HAROLD R. DENTON, DIRECTOR

In the Matter of

PUBLIC SERVICE COMPANY OF INDIANA, INC.)
WABASH VALLEY POWER ASSOCIATION, INC.)
(Marble Hill Nuclear Generating)
Station, Units 1 and 2))

Docket Nos. STN 50-546
STN 50-547

DIRECTOR'S DECISION UNDER 10 CFR §2.206

By letters dated June 29, July 27, and September 4, 1979, Mr. John A. Eyed, President, Sassafras Audubon Society (SAS), petitioned the Director of Nuclear Reactor Regulation pursuant to 10 CFR §2.206 to suspend or revoke the construction permits for the Marble Hill Station and reopen safety hearings on said facility^{1/}. Notice of receipt of the SAS petition was published in the Federal Register on August 22, 1979 (44 FR 49320).

The SAS petition of July 27, 1979 and the first issue of the SAS petition of June 29, 1979 were granted in a letter to Mr. Eyed dated August 15, 1979, insofar as the Order attached to that letter encompassed the relief sought. The remaining seven issues from the June 29th petition and the three issues from the September 4th petition are addressed herein. For the reasons stated in this decision, SAS's petition based on these other matters is denied.

^{1/} SAS has requested the Director himself to reopen the safety hearings. The Director, however, does not have the power to reconstitute the Licensing Board or Appeal Board to conduct further proceedings on the matters which SAS raises. The Director could recommend to the Commission that the hearings be reopened or the Director could issue an Order based on the matters raised by SAS under which interested persons may have a right to request a hearing.

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Before examining the specific issues raised by SAS in its petition, it is appropriate to review the criteria used to evaluate requests for an action under 10 CFR 2.206. Petitioners shall specify the action requested and set forth the facts that constitute the basis for the request.^{2/} The factual basis of the petition should identify new information regarding the issue under consideration,^{3/} and that new information should identify a significant unresolved safety issue or a major change in facts material to the resolution of major environmental issues.^{4/} The petitioner should also specify a nexus between the issues raised and the facility with respect to which the petitioner requests relief.

For the most part, SAS raises issues which would be considered as part of the Staff's review of the Licensee's application for operating licenses. In point of fact, SAS asks the Director to institute a proceeding on the basis of its objections to portions of the Licensee's submittals in its application for operating licenses. Although the Licensee tendered its application for an operating license on June 1, 1979, the application has not as yet been

2/ 10 CFR §2.206(a).

3/ The Commission has stated that, "(P)arties must be prevented from using 10 CFR §2.206 procedures as a vehicle for reconsideration of issues previously decided . . ." Consolidated Edison Co. (Indian Point Units 1-3), CLI-75-8, 2 NRC 173, 177 (1975).

4/ See Director's Decisions under 10 CFR §2.206 in Public Service Co. of Indiana (Marble Hill Nuclear Generating Station, Units 1 & 2), DD-79-10, 9 NRC ____ (July 6, 1979) (Docket Nos. STN 50-546 & STN 50-547); Georgia Power Co. (Alvin W. Vogtle Nuclear Plant, Units 1 & 2), DD-79-4, 9 NRC 582 (Apr. 13, 1979) (Docket Nos. 50-424 & 50-425). In this respect, the Director has generally followed the Appeal Board's standard for reopening the record in a proceeding. See Cleveland Elec. Illuminating Co. (Perry Nuclear Power Plant, Units 1 & 2), ALAB-443, 6 NRC 741 (1977); Vermont Yankee Nuclear Power Corp. (Vermont Yankee Nuclear Power Station), ALAB-124, 6 AEC 358 (1973).

reviewed by the NRC Staff for purposes of docketing. The Staff does not expect to begin this review until 1980. After the application is docketed, a notice of opportunity for hearing will be published in the Federal Register. 10 CFR 2.105. At that time, interested persons may seek a hearing on the proposed issuance of the operating licenses. 10 CFR 2.714.^{5/} Such issues as SAS raises in its petition may be litigated as appropriate in any hearing that may be held on the operating licenses.

Although SAS seeks to be heard at a "meaningful stage in the licensing process" on the issues SAS raises before the Director in its petition, SAS does not provide a convincing rationale for holding a hearing prior to the operating license review. The mere fact that SAS or members of the public are newly interested in matters concerning Marble Hill because of recent construction problems at the site does not in itself establish a basis for taking the extraordinary step of ordering a hearing prior to the initiation of proceedings on the issuance of operating licenses. As the District of Columbia Circuit Court of Appeals recently recognized, even the existence of an unresolved safety question between the construction permit stage and the operating license stage does not mandate institution of proceedings to consider such issues:

"In the case of a construction permit for a nuclear power plant, however, permitting continued construction of the plant despite unresolved safety questions does not of itself pose any danger to the public health and safety. Before the

^{5/} The Staff notes that SAS was a party to the construction permit proceeding, although the Licensing Board eventually dismissed SAS as a party for SAS' failure to participate in the proceeding. LBP-77-22, 6 NRC 294, 301 (1977).

license is granted to operate the plant there will be adjudication proceedings. Any interested party may request a hearing. In such an operating license proceeding unresolved safety questions will be considered. A positive finding of reasonable assurance of safety is a prerequisite to issuance of the operating license." Porter County Chapter of the Izaak Walton League v. NRC, No. 78-1556, Slip Op. at 12 (D. C. Cir., Sept. 6, 1979).

Therefore, in the absence of some special circumstances, I would ordinarily find no basis to upset the Commission's usual two-stage licensing process and institute a proceeding prior to the operating license stage to consider issues that are properly within the scope of the operating license review.

Each of the issues SAS raises is addressed in the remainder of this Decision. In light of the opportunity for hearing concerning issuance of operating licenses for the Marble Hill Station that will be noticed after the application is docketed, none of the issues that SAS raises warrants action by the Director to institute a proceeding at this time.

Marble Hill's Potential for a Class 9 Accident

Under this general rubric, SAS raises three separate matters as a basis for reopening hearings on the Marble Hill facility. First, SAS refers to a 10 CFR §2.206 petition submitted by Save the Valley - Save Marble Hill (STV), which alleged that WASH-1400 was a "fundamental determinant" in the granting of the construction permits for Marble Hill. Because WASH-1400 was not a "fundamental determinant" in either the record on radiological health and safety matters or in the environmental record that led to issuance of the construction permits, STV's petition was denied in my decision of July 6, 1979.^{6/} SAS presents no reasons why that decision should be overturned.

^{6/} This decision is attached to a letter from Harold R. Denton, Director of NRR, to Thomas M. Dattilo, Counsel for STV, dated July 6, 1979. DD-79-10, 9 NRC ____ (July 6, 1979) (Docket Nos. STN 50-546 and STN 50-547). The Commission did not overturn the Director's Decision.

Second, SAS requests, without further elaboration, that the NRC reassess Marble Hill "in terms of its potential for a Class 9 accident as well as for an accident(s) that would result in significant release of radiation into the environment, whatever the class of severity," because of the accident at Three Mile Island (TMI). The fact that the Three Mile Island accident occurred does not in itself compel the Commission to consider Class 9 accidents with respect to the Marble Hill facility. The Commission's current policy, as set forth in the proposed Annex to Appendix D to 10 CFR Part 50, 36 Fed. Reg. 22851 (1971), does not require consideration of Class 9 accidents for power reactors, like those being constructed at Marble Hill, that are covered by the Annex.^{7/} The NRC staff is preparing recommendations for rulemaking on consideration of Class 9 accidents in NEPA and Safety Reviews. However, until the Commission changes that policy, I find no basis for instituting a proceeding to consider Class 9 accidents at the Marble Hill facility.^{8/}

Third, SAS requests a hearing to address Category 2, 3 and 4 items.^{9/} As I indicated in my decision of July 6, 1979, these items and any new requirements resulting from various TMI investigations will be included in our review of Public

^{7/} See Offshore Power Systems (Floating Nuclear Power Plants), ALAB-489, 8 NRC 194 (1978). Courts have upheld the Commission's view in this matter. Hodder v. NRC, 589 F.2d 1115 (D. C. Cir. 1978), cert. denied, 48 U.S.L.W 3203 (No. 78-1652, Oct. 1, 1979). Carolina Environmental Study Group v. United States, 510 F.2d 796, 798 (D. C. Cir. 1975).

^{8/} In its decision in Offshore Power Systems (Floating Nuclear Power Plants), Slip. Op. at 9 (Docket No. STN 50-437, Sept. 14, 1979), the Commission stated that it was not "expressing any views on the question of environmental consideration of Class 9 accidents at land-based reactors."

^{9/} These items constitute categories of implementation for new or revised Regulatory Guides as determined by the Regulatory Requirements Review Committee.

Service Company of Indiana's (PSI) application for an operating license.^{10/} If this application is docketed, a notice of opportunity to request a hearing will be published in the Federal Register, and a hearing to consider specific issues related to these items may be requested at that time.^{11/} Accordingly, I do not find it appropriate to order suspension or revocation of the Marble Hill construction permits for the purpose of instituting a proceeding on these issues at this time.

Nuclear Power as an Experimental and Developing Technology

Under this general heading, SAS makes several references to various Board Notifications which were distributed to persons on the Marble Hill service list. Apart from SAS' statement that these notifications "raise questions on safety issues to which we (SAS) seek answers," SAS does not specify why the matters raised in these particular Notifications should be a basis for imposing a further suspension of the Licensee's construction permits to institute a proceeding at this time to consider issues related to these Notifications. To the extent that any of these Notifications are relevant to the Marble Hill facility or indicate that additional requirements should be imposed as conditions of operating licenses, these matters will be included in the Staff's review of PSI's application for operating licenses. As indicated previously in this Decision, SAS will have an opportunity to request a hearing on issuance of the operating licenses at which time, if SAS is admitted to the proceeding, SAS may raise contentions

^{10/} It should be noted that the Units at the Marble Hill Station will use Westinghouse reactors while the Three Mile Island plant uses a Babcock and Wilcox reactor. Therefore, some of the results and recommendations of the Staff's investigation may not be directly applicable to the Marble Hill Station.

^{11/} See 10 CFR § 2.714.

related to matters pertaining to these Notifications. In the interim, the mere fact that a Board Notification has been issued does not in itself provide a basis for instituting a proceeding with respect to a facility in the absence of some special circumstances which might warrant the extraordinary step of instituting a review of these matters prior to the operating license review.

Marble Hill as a High Level Waste Storage Site

SAS alleges that PSI's proposed expansion of storage capacity for the Marble Hill spent fuel pool provides a further basis for instituting a proceeding on the Marble Hill construction permits. It asserts that, "The Nuclear Regulatory Commission has specified no maximum period within the effective terms of the operating license for the storage of spent fuel elements in onsite fuel pools." And, "The potential exists . . . for Marble Hill to continue to serve as a high-level waste storage site indefinitely after final shutdown of the reactor." The NRC grants a licensee the right to store spent fuel in an onsite fuel storage pool throughout the duration of the operating license. However, a licensee must remove all radioactive material from the facility prior to termination of the operating license. Therefore, the Marble Hill site will not become a high-level waste storage site after termination of the operating license.

The NRC has issued a notice of proposed rulemaking in the Federal Register on storage and disposal of nuclear waste. 44 FR 61372 (October 25, 1979). As stated in the notice:

The purpose of this proceeding is solely to assess generically the degree of assurance now available that radioactive waste can be safely disposed of, to determine when such disposal or off-site storage will be available, and to determine whether radioactive wastes can be safely stored on-site past the expiration of existing facility licenses until off-site disposal or storage is available. This rulemaking has been initiated in response to the decision of the United States Court of Appeals for the District of Columbia

Circuit in State of Minnesota v. NRC, Nos. 78-1269 and 78-2032 (May 23, 1979), but it also is a continuation of previous proceedings conducted by the Commission in this area. 42 FR 34391 (July 5, 1977).

PSI's application for an operating license for the Marble Hill Station will be subject to whatever final determinations are reached in this proceeding.

The NRC staff stated in a letter dated September 29, 1978, from Counsel for NRC staff, to Mr. Thomas Dattilo, Counsel for STV, that notice of NRC consideration of an expansion of the spent fuel pool would be given to members of the public. PSI has proposed an expanded spent fuel storage capacity in its application for operating licenses for the Marble Hill Station. The Staff will, therefore, consider PSI's proposal as part of the review of PSI's application for operating licenses. As indicated above, a notice of opportunity for a hearing will be issued after the application for the operating licenses is docketed. Thus, SAS will have an opportunity at that time to request a hearing regarding PSI's proposed expansion of storage capacity in the spent fuel pool. In all events, expansion of the spent fuel pool's storage capacity is dependent on Commission approval prior to spent fuel being stored in an expanded pool at the Marble Hill site. Therefore, this issue does not meet the criteria for action under 10 CFR §2.206.

Decontamination and Decommissioning of Marble Hill

In this portion of the petition, SAS states that, "The NRC should require as a condition of licensing a detailed decommissioning plan plus detailed cost estimates and financial arrangements to assure that the plan would be implemented." The procedure for decommissioning is described in the Marble Hill Final Environmental Statement (p. 10-2), NUREG-0097, dated September 1976. We state in

this report that "it is to the applicant's advantage not to foreclose any of the several acceptable options on methods of decommissioning until near the end of useful plant life." Assuming issuance of operating licenses for the facility, the applicant would request termination of these licenses near the end of useful plant life in accordance with 10 CFR Part 50.82 and Regulatory Guide 1.86, "Termination of Operating Licenses for Nuclear Reactors." This request will contain the specific proposal for decontamination and decommissioning of the facility. If the licensee plans to dismantle the facility or if the proposal involves significant hazards considerations, then a public notice of the proposal will be issued and an opportunity to request a hearing will be provided. In addition, during the operating license review, the Staff will determine if the applicant is financially qualified to decommission the Marble Hill facility at the end of its useful life in accordance with 10 CFR Part 50.33(f) and Appendix C to 10 CFR Part 50. Accordingly, this issue does not constitute sufficient basis to suspend or revoke the Marble Hill CP.

Marble Hill and Radon

As a further basis for its request, SAS raises the issue of reevaluation of radon releases from the nuclear fuel cycle. In view of the fact that the radon issue is still under consideration by the Appeal Board, it is not appropriate to institute another proceeding to consider this same issue. The Commission has previously indicated that 10 CFR 2.206 should not be used as a mechanism to circumvent an existing forum in which issues should be more logically presented. Consolidated Edison Company (Indian Point Units 1-3),

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CLI-75-8, 2 NRC 173, 177 (1975).^{12/} Therefore, this issue does not provide a proper basis for action under 10 CFR §2.206.

Marble Hill and the ALARA Principle

SAS states, without elaboration, that "not enough attention was paid in the design of currently operating reactors to lower exposures appropriately on an ALARA basis." The Marble Hill design was based on operating experience, was reviewed against ALARA guidance, and met Appendix I to 10 CFR Part 50 at the construction permit stage as stated in the Marble Hill Safety Evaluation Report (NUREG-0115). Our review of the Marble Hill application for operating licenses will also be performed with regard to ALARA principles. SAS will have an opportunity to request a hearing at the operating license stage concerning specific issues related to application of ALARA principles at the Marble Hill facility. The petition does not establish a basis for suspension of the Marble Hill construction permits for purposes of considering ALARA issues at this time.

Conservation "Energy" and Solar Energy as Viable Alternatives

The basis for this issue is the allegation that conservation and solar energy were not considered as viable alternatives to the Marble Hill station. This issue was considered in the construction permit hearings for the Marble

^{12/} As indicated in note 5 supra, SAS was dismissed as a party from the Marble Hill construction permit proceeding. SAS attempted to reenter the proceeding on the radon issue. Although the Staff opposed the SAS's reentry at will into the proceeding, the Appeal Board has never ruled on the Staff's motion to dismiss SAS from the radon proceeding. If SAS were not permitted to participate in that proceeding, then 10 CFR 2.206 would be the appropriate route for SAS to pursue its claim. In all events, it is not appropriate to institute a proceeding at this time while the radon issue is pending before the Appeal Board. SAS does not raise new information or different aspects of the radon issue in its petition.

Hill station. See Public Service Company of Indiana (Marble Hill Nuclear Generating Station, Units 1 & 2), Partial Initial Decision, LBP-77-52, 6 NRC 294, 306-11, 328-29 (1977), aff'd, ALAB-459, 7 NRC 179 (1978). As stated earlier, 10 CFR §2.206 should not be used as a vehicle for reconsideration of issues previously decided. Therefore, this issue does not constitute a proper basis for suspension or revocation of the construction permit.

Siting Criteria

This issue consists of allegations of groundwater problems at the Marble Hill site. The basis for the issue is a reference to an Advisory Committee on Reactor Safeguards (ACRS) meeting of July 12, 1979. The NRC staff has reviewed the transcript of the 231st General Meeting of the ACRS held on July 12, 1979, and found no reference to groundwater problems in that transcript.

Requests for action under 10 CFR §2.206 must ". . . set forth the facts that constitute the basis for the request." The lack of a factual basis for this issue is grounds for denial. Moreover, groundwater at the Marble Hill site, including possible contamination of the groundwater by postulated accidents, is discussed in Sections 2.4.7, 2.4.8, and 15.4 of the Marble Hill Safety Evaluation Report (NUREG-0115) dated June 1977. This issue was also litigated during the Marble Hill construction permit hearings and the Licensing Board concluded that the analyses of potential groundwater contamination did not preclude acceptability of the site for the Marble Hill facility. Partial Initial Decision, supra, 6 NRC at 341. As a result, SAS has not provided a basis for action under 10 CFR §2.206.

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Site Evacuation

In this issue SAS requested that, ". . . site evacuation be considered at a full-scale safety hearing on Marble Hill prior to consideration of whether safety-related construction should resume at Marble Hill." The issue of emergency planning, which includes site evacuation, is evaluated in Section 13.4 of the Marble Hill Safety Evaluation Report. This issue was also litigated during the Marble Hill construction permit hearings on September 30, 1977 (TR. 6403-6490) and the Licensing Board concluded that the applicant's program met the requirements of Appendix E to 10 CFR Part 50. LBP-77-67, 6 NRC 1101, 1122 (1977).

PSI is also required to present its detailed emergency plan in its FSAR, which will be reviewed as part of the Staff's consideration of PSI's application for an operating license. Additional requirements for emergency planning have recently been proposed (44 F.R. 54308, September 19, 1979). Any new requirements on site evacuation resulting from this proposed rule will be included in the staff's review of PSI's application for operating licenses. As indicated previously in this Decision, SAS will have an opportunity to request a hearing on issuance of the operating licenses at which time, if SAS is admitted to the proceeding, SAS may raise contentions related to specific issues derived from the emergency planning review. Therefore, this issue does not constitute sufficient basis for suspension or revocation of the Marble Hill construction permits.

Need for Power

The basis for this issue is the allegation that the Marble Hill Station is not needed. This issue was litigated at the Marble Hill construction permit hearings. The Licensing Board found that:

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Considering the uncertainties attendant to forecasting, the probable reclassification and/or decommissioning of certain older units on PSI's system over the next decade, the substitution of nuclear base-load plants for older fossil plants, and the probable higher-than-average (national) growth rate in PSI's service area, the Board finds that Marble Hill, Units 1 and 2, will be needed in the early to middle 1980's. (6 NRC 311).

The Licensing Board also found that:

Based upon the entire record regarding need for power and the available alternatives to the plant, construction of the Marble Hill Nuclear Generating Station is reasonable and prudent to meet the need for electrical power and that the facility, as designed and selected from available alternatives, represents the optimum selection based on overall economic and environmental consideration. The Board further finds that, based on the entire record, the environmental and economic benefits from construction and operation of the facility are greater than the environmental and other costs which will necessarily be incurred (6 NRC 336).

Small variations in need for power and facility costs would not change these conclusions. In addition, any reanalysis of the cost-benefit balance for Marble Hill would have to consider the costs already expended on the facility. Therefore, the SAS allegations of a declining growth rate for electrical consumption and increasing costs of construction are not of the type or substance likely to have an effect on the need for power issue such that relitigation is warranted, even in an operating license proceeding. SAS has not provided a basis for action under 10 CFR §2.206.

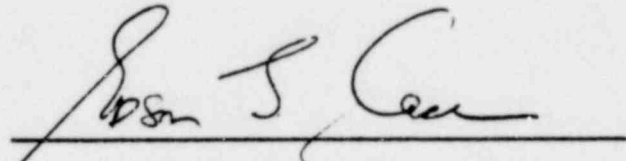
CONCLUSION

For the reasons set forth above, the petition of the Sassafras Audubon Society to suspend or revoke the Marble Hill construction permits or to reopen the safety hearings is hereby denied.

A copy of this Decision will be placed in the Commission's Public Document Room at 1717 H Street, N. W., Washington, D. C. 20555, and the Local Public Document Room for the Marble Hill Nuclear Generating Station, located at the

Madison-Jefferson County Public Library, 420 West Main Street, Madison, Indiana 47250. A copy of this Decision will also be filed with the Secretary of the Commission for review by the Commission in accordance with 10 CFR §2.206(c) of the Commission's regulations.

In accordance with 10 CFR §2.206(c) of the Commission's regulations, this Decision will constitute the final action of the Commission twenty (20) days after the date of issuance, unless the Commission on its own motion institutes a review of this Decision within that time.

A handwritten signature in cursive script, appearing to read "Edson G. Case", is written over a horizontal line.

Edson G. Case, Acting Director
Office of Nuclear Reactor Regulation

Dated at Bethesda, Maryland,
this 27th of November, 1979.

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