

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

OFFICE OF NUCLEAR REACTOR REGULATION
HAROLD R. DENTON, DIRECTOR

In the Matter of

PUBLIC SERVICE COMPANY OF INDIANA, INC.)
WABASH VALLEY POWER ASSOCIATION)
(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 petition dated August 30, 1979, Stephen Laudig on behalf of the Paddlewheel Alliance requested pursuant to 10 CFR 2.206 of the Commission's regulations that the Director of Nuclear Reactor Regulation (NRR) suspend or revoke the construction permits issued to Public Service Company of Indiana, Inc. (PSI) for the Marble Hill Nuclear Generating Station, Units 1 and 2. The Alliance also requested that the safety hearings on the facility be reopened.

In addition to specifying the action requested, a petitioner under 10 CFR 2.206 is required to "set forth the facts that constitute the basis for the request," (10 CFR 2.206(a)). Although the Alliance has identified the relief it seeks (i.e. suspension or revocation of the permits and reopening of the safety hearings), the Alliance has not clearly stated the factual basis which would support its request that the Director of NRR issue an Order or recommend reopening of the safety hearings.^{1/}

In its petition the Alliance states that significant problems have been identified in recent months with respect to construction at the Marble Hill site.

^{1/} The Director does not have the power to reopen the safety hearings by reconstituting the Licensing Board or Appeal Board to conduct further proceedings on the issues which the Alliance raises. The Director could recommend to the Commission that the hearings be reopened.

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Because unacceptable construction practices have been revealed by NRC inspectors, the licensee, and construction workers, the Director of the Office of Inspection and Enforcement (I&E) issued an Order on August 15, 1979, to suspend safety-related construction at the Marble Hill site until the licensee submits a description of its revised quality assurance program and of the licensee's actions to assure that safety-related construction will be conducted in accordance with the Commission's requirements. Before permitting resumption of safety-related construction in whole or in part, the Director of I&E must confirm that there is reasonable assurance that safety-related construction will be conducted in accordance with the Commission's requirements. In addition to issuance of the Order, the NRC has referred allegations of criminal activity connected with Marble Hill's construction to the Justice Department for appropriate investigation. The NRC, through the Office of Inspection and Enforcement, will continue to monitor and inspect construction at Marble Hill as appropriate to ensure that the facility is built in accordance with all applicable regulatory requirements. If the Alliance is seeking corrective action with respect to construction deficiencies, the Commission has taken such action in the Director of Inspection and Enforcement's August 15 Order. Should further corrective action be required, the Commission will not hesitate to take appropriate measures.

The Alliance seems to suggest that recent construction problems at Marble Hill warrants action by the Director of NRR to institute a proceeding which would explore various issues listed in the Alliance's petition (pp. 3-4). If the construction problems at Marble Hill form the basis of the Alliance's requested relief, it is unclear how construction problems are related to such issues as storage of high-level wastes, provisions for decommissioning of Marble Hill at the termination

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of its use as an operating facility, and the need for power from the facility. Without specification of the nexus between construction problems at Marble Hill and issues which on their face appear unrelated to construction practices, the Alliance has not provided a sufficient factual basis in its petition as required under 10 CFR 2.206. A mere allegation that the Alliance or other persons are "newly interested" in the Marble Hill facility is, without more, an insufficient basis for granting the relief which the Alliance requests. By requiring the Alliance to state the factual basis for its request, the Director does not intend to impose an insurmountable burden on the petitioner. Under the Commission's regulations, the Director cannot issue an Order to modify, suspend or revoke a license without specifying the basis for his action.^{3/} See 10 CFR 2.202(a).

- 2/ The Alliance also lists issues concerning adequate quality control and construction in conformance with the regulatory requirements (pp. 3-4). As discussed supra, the Commission has taken action to correct construction problems at Marble Hill and to assure adequate quality control and construction in conformance with the Commission's requirements. Moreover, the Alliance apparently is not requesting a hearing as an interested party under the August 15th Order. The Alliance specifically stated that its petition was brought under 10 CFR 2.206, and the Alliance also believes that a hearing on the issues specified in the Order is insufficient to satisfy "the newly-aroused public interest" in Marble Hill.
- 3/ With respect to the Alliance's request to reopen the safety hearings, the Director has generally followed in other Decisions under 10 CFR 2.206, the Appeal Board's standard for reopening proceedings: i.e. a petitioner must identify a significant unresolved safety issue or a major change in facts material to the resolution of major environmental issues. See Public Service Co. of Indiana (Marble Hill Nuclear Generating Station, Units 1 and 2), DD-79-10, 9 NRC ____ (July 6, 1979) (Docket Nos. STN 50-546 and STN 50-547); Georgia Power Company (Alvin W. Vogtle Nuclear Plant, Units 1 and 2), DD-79-4, 9 NRC ____ (April 13, 1979) (Docket Nos. 50-424 and 50-425). Although the Appeal Board's standard is not binding on the Director when he considers petitions under 10 CFR 2.206, the standard is persuasive in light of the Commission's admonition that 10 CFR 2.206 should not be used "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).

The only other basis for the Alliance's request is that

"Major environmental, health, and safety questions relating to the construction and operation of MH (Marble Hill) ... have not been adequately addressed at previous hearings, by the Final Environmental Impact Statement, the Preliminary Safety Analysis Report, the Environmental Report-Operating License or the Final Safety Analysis Report." Petition at 2.

The Alliance does not specify which issues it believes were inadequately addressed either in prior proceedings on Marble Hill or in the named documents. If the Alliance means the issues which it believes should be litigated in a new hearing (Petition at 3-4), the Alliance does not explain how those issues have received inadequate consideration. Moreover, although PSI has submitted its Environmental Report for the operating license stage and its Final Safety Analysis Report, the NRR staff has reviewed neither document to determine its acceptability for docketing as an application for an operating license. The staff does not expect to begin this review until 1980. See enclosed letter dated July 23, 1979, from L. S. Rubenstein, NRR, to J. Coughlin, PSI. When the application is formally docketed, a notice of opportunity for a hearing will be issued. See 10 CFR 2.105. Upon issuance of that notice, the Alliance would then have an opportunity to request a hearing on the proposed issuance of an operating license.

In the absence of a factual basis which would support the Alliance's request to further suspend or revoke the Marble Hill construction permits or to reopen the safety hearings, the Alliance's petition is 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 at 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.



Harold R. Denton
from Harold R. Denton, Director
Office of Nuclear Reactor Regulation

Enclosure:
As stated

Dated at Bethesda, Maryland
this 11th day of October, 1979

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UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20585

JUL 23 1979

Docket Nos.: STN 50-546
STN 50-547

Dr. James Coughlin
Vice President, Nuclear
Public Service of Indiana
1000 East Main Street
Plainfield, Indiana 46168

Dear Dr. Coughlin:

SUBJECT: TENDERING OF APPLICATION FOR LICENSES - MARBLE HILL NUCLEAR
GENERATING STATION, UNITS 1 & 2

On June 1, 1979, we received your tendered application for an operating license for the Marble Hill Station. The tendered application included the following documents:

1. General Information
2. Final Safety Analysis Report
3. Environmental Report - Operating License Stage
4. Safeguards Volume

As a result of the recent accident at the Three Mile Island facility, review resources within the Office of Nuclear Reactor Regulation, which would normally be available for this review, have been assigned to several high priority tasks. Therefore, we are not able to perform an acceptance review of your application at this time. We plan to initiate an acceptance review of your application in January, 1980.

In your letter to Mr. Boyd, dated May 4, 1979, you took issue with the findings of the NRC's Caseload Forecast Panel. Your letter discussed several reasons why Marble Hill Unit 1 would be ready to load fuel prior to the Panel's estimated date of July, 1983. I want to assure you that these reasons were considered by the Panel and were factored into their estimated fuel load date for Marble Hill Unit 1. Your letter also stated that your current projection for setting the Unit 1 reactor pressure vessel in place is September, 1979. Therefore, based on the Forecast Panel's projection and new information on the construction schedule, we have determined that there is sufficient time to complete our review of your application for an operating

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Dr. James Coughlin

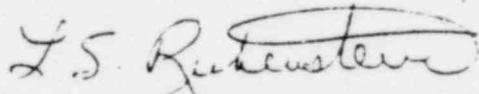
- 2 -

JUL 23 1979

license prior to completion of construction at the Marble Hill Station.

A copy of your application has been placed in the NRC Public Document Room, 1717 H Street, N. W., Washington, D. C. and at the Madison-Jefferson County Public Library, 420 West Main Street, Madison, Indiana, 47250. A copy of the application, and other relevant documents, as they become available, will be on file for public inspection. It is requested that you have one of your representatives make periodic checks of the material available and assure that any revised and supplemental information is properly incorporated into the application and that any amendments, reports, and letters which you file with us are available. We will send documents that you file with us to the Madison-Jefferson County Public Library.

Sincerely,



L. S. Rubenstein, Acting Chief
Light Water Reactors Branch #4
Division of Project Management

cc: See next page

1202 346

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