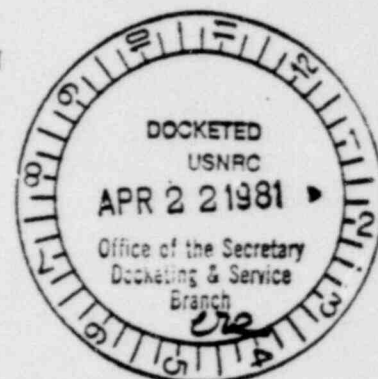


BEFORE THE NUCLEAR REGULATORY COMMISSION  
WASHINGTON, D. C.

Commissioners, Joseph M. Hendrie, Chairman,  
Peter A. Bradford  
Victor Gilinsky  
John F. Aherne



IN THE MATTER OF PUBLIC SERVICE  
OF INDIANA, MARBLE HILL NUCLEAR  
POWER PLANT, DOCKET NOS. STN 50-546  
AND STN 50-547

4-14-81

SAVE THE VALLEY'S PETITION TO THE COMMISSIONERS  
TO REVIEW THE NRC MARCH 27, 1981 ORDER TO RESUME  
CONSTRUCTION AT MARBLE HILL

Comes now Save The Valley, by its attorney, and for cause of  
Save The Valley's Petition To The Commissioners To Review The NRC  
March 27, 1981 Order To Resume Construction at Marble Hill, states:

1. That on or about March 27, 1981, the NRC acting by and  
through Victor Stello, Director of Inspection and Enforcement,  
Washington, D. C., (hereinafter called Director), lifted the August  
15, 1979 Order Confirming Suspension of Construction to the Public  
Service Company of Indiana.
2. That there has been approved by the Director in conjunction  
with Save The Valley, the petitioner herein, an agreement to allow an  
independent examination of the existing concrete at Marble Hill and an  
examination of the report submitted by the licensee as prepared by  
Sargent & Lundy, Report SL-3753, 11-20-79, "Evaluation of In-Place

DS03  
50/1

Concrete, Marble Hill Generating Station, Units 1 & 2"; at the conclusion of the review, the consultants were to provide "written findings and conclusions which address the adequacies of the licensee's investigation and repairs relative to problems found in the field after concrete placement," and will "provide written findings and conclusions" addressing the adequacy of the repaired structural or expected strength reduction," Scope For Civil-Structural Consultant Support On Marble Hill dated May 1, 1980, The NRC, Division of Inspection and Enforcement, Washington, D.C., attached hereto and entitled Exhibit "1".

3. That the NRC, Division of Inspection and Enforcement, Chicago, advised orally that a written report of the independent engineers would be submitted to Save The Valley; that Save The Valley's engineering consultant would be privileged to comment thereon, either by mail or personally in Washington, D.C., at a meeting of the independent engineers, the Save The Valley engineering consultant (presumably with a Save The Valley representative) and the NRC.

4. That to the petitioner's knowledge, there has been provided no written findings and conclusions which address the adequacy of the licensee's investigation and repairs relative to problems found in the field after concrete placement; to the petitioner's knowledge, the consultants have not provided signed written findings and conclusions which address the question of adequacies of the repaired structures or expected strength reduction and have offered no findings concerning porosity in said concrete.

5. That the petitioner questions whether Victor Stello, the Director of Inspection and Enforcement, Washington, D.C., has abused his discretion in lifting the August 15, 1979 order confirming suspension of construction without having complied with subparagraph four (4) herein.

6. That the NRC Division of Inspection and Enforcement, has stated further that Report SL-3753, supra, should include therein as its criteria that the concrete quality of internal concrete in structures at Marble Hill shall meet the structural integrity criteria of 95% reliability and 95% confidence level; that on or about March 4, 1981, the Save The Valley engineer submitted Exhibit "A" to the NRC, Region III with copies to the Director and the two independent engineers; said Exhibit "A" questioned whether the NRC had actual reason to believe that said test criteria had been met and/or exceeded. That on March 26, 1981, the petitioner responded to a letter of Victor Stello dated March 20, 1981 and also enclosed as Exhibit "B".

7. That as part of a certain March 13, 1980 Memorandum And Order by the NRC, the Commission ordered the Director to "brief the Commission prior to lifting the order suspending construction at Marble Hill", and, "in any event not (to allow resumption of construction) earlier than five (5) days after the briefing".

8. That Save The Valley has standing and a cognizable interest of Save The Valley has been adversely affected by the actions of the Director, on March 27, 1981, and prior thereto if a briefing has been held before the Commissioners and no notice given to the petitioner herein of said briefing.

9. That, further, Save The Valley's interest has been adversely affected by the fact that the Director has granted a resumption of work order without having received the signed written findings and conclusions of the independent engineers; further, the Director of Inspection and Enforcement has made said order allowing resumption of concrete placing before allowing Save The Valley's engineer time to review the independent engineers' final written report.

10. That 20 days have not elapsed since the date of the Director of Inspection and Enforcement's decision.

For the above reasons, Save The Valley respectfully requests that the NRC Commissioners review the March 27, 1981 decision of Victor Stello, to determine if he has abused his discretion under 10 CFR 2.206 (c)(1) and other relevant sections of the CFR, and for all other proper relief in the premises.

RESPECTFULLY SUBMITTED,  
SAVE THE VALLEY, PETITIONER

BY:

T. M. Dattilo  
THOMAS M. DATTILO, ATTORNEY FOR SAVE  
THE VALLEY, PETITIONER

DATED: APRIL 14, 1981.

M E M O R A N D U M

Commissioner Bradford in re Public Service Company of Indiana,  
Memorandum And Order, dated March 13, 1980 in his dissenting opinion  
stated:

The quality assurance and quality control (QA-QC) program is supposed to assure that the plant is built according to its design. If the QA-QC program fails, the plant becomes a potential threat to the public health and safety, for NRC's regulatory decisions assume the plant is built according to its design . . . . NRC does not normally monitor nuclear power plant construction in great detail. Instead, NRC relies primarily on the licensee and their contractors to assure the QA-QC program is working. 7 AEC 7, 11, (1974) . . . . (T)he NRC has found it difficult to support a civil penalty sanction for QA-QC violations because of the general nature of construction permit and QA program requirement.

The Director of NRC's Division of Inspection and Enforcement has properly suspended safety-related construction at the (Marble Hill) site pending the licensee's submission of a new QA-QC program which will be judged according to certain stated criteria. The issue is whether the inspection efforts in this case and the Director's judgment about the proper remedy should be examined in an evidentiary proceeding. Given the seriousness of the problems uncovered at the site and their possible significance to the safe operation of the plant (a hearing) is potentially helpful to us as a supplement to our own enforcement effort. Additionally, it would allow interested citizens to participate in assessing and determining the risks they are being told to live with . . . . (A)t Marble Hill, . . . events have given citizens some basis for concern about the licensee('s) commitment to their safety and about the sufficiency of NRC surveillance.

Commissioner Bradford further stated in Wisconsin Electric Power Company, Docket No. 50-266 in an Order dated May 12, 1980 in dissent in conjunction with Commissioner Gilinsky the following concerning the levels of illusion involved in the NRC's application in denying hearings:

The (NRC) agency so misstates history that it is clearly either incapable of giving an accurate account of its own past doings or else its legal positions are being chosen after the desired result has been decided.

" . . . the Commission's Pell Mell Retreat from meaningful public inquiry in the twisting between here and Marble Hill so suggests to the staff and the outside world that the agency is run by people living in fear of their own citizenry . . . . (T)he message can only be that the NRC's priority in citizen involvement . . . is a relatively low one."



This (dissenting) opinion (would) (allow) a hearing to a group able to make a reasonable showing that the action taken by the staff had failed in some important respect to remedy a particular safety concern.

The petitioner herein analogizes the present fact situation with the stated comments of Commissioner Bradford with their relevance toward the present Marble Hill state of facts. The NRC Director of Inspection and Enforcement has, albeit gratuitously, provided for an independent examination of concrete in conjunction with the petitioner under certain stated criteria. The Director has made a present judgment dated March 27, 1981, which on the surface would manifest that the NRC wanted a desired result, that result being the same as its prior interpretation in initially approving Report SL-3753 soon after November 20, 1979.

Has the stated criteria of 95% confidence with 95% reliability been met and/or exceeded? The petitioner contends based on statistical evidence that said criteria has not been met and/or sufficiently explained to assure the NRC and the people of Southern Indiana and Northern Kentucky that the plant is built according to its design and that the concrete is a potential threat to the public health and safety of the area.

The NRC's independent consultants were to provide written findings and conclusions; they were to provide an independent assessment of the type and extent of deficiencies in concrete construction; they were to

provide an independent assessment of needed repairs or remedial actions and independent conclusions regarding capabilities of affected structures to perform the intended design functions. . The Director has, in our opinion, abused his discretion in allowing a resumption of work, allegedly based on the NRC's position prior to the tendering of said above written documentation to the public and to the affected STV engineer. See Task Order No. 2, Objections Of Tasks, Page 1 of the NRC, Division of Inspection and Enforcement included herein and made a part hereof and entitled Exhibit "C".

This action is not intended to delay the proceedings; has the Director made the resumption order effective immediately, in essence frustrating any attempts by Save The Valley to appeal or thwart his decision? Shafly v. NRC, No. 80-1691 (D.C. Circ. Ct.), November 19, 1980, as reported in ERC, 12-5-80, page 1185.

Concerning 10 CFR, Sec. 2.206(C)(1), within 20 days after the date of the Directors' decision, under this section that no proceeding will be instituted or other action taken in whole or in part the Commission may on its own motion review that decision in whole or in part to determine if the Director has abused his discretion. This review power does not limit in any way the Commission's supervisory power of delegated staff actions.

If the Director has granted the original Section 2.206 request of Save The Valley for the purpose of not allowing any further review thereon, then the Code of Federal Regulations' letter and spirit, in our opinion, has been violated. It is obvious that the original Order of August 15, 1979, granting a hearing, was a sham. See Bradford dissenting opinion, in Wisconsin Electric Power Company, Docket No. 50-266, dated May 12, 1980, supra. Likewise the granting of a Section 2.206 Motion of Save The Valley without a firm commitment on the part of the Director to carry out his stated objectives may be considered to be less than acceptable.

For the above reasons, the petitioner respectfully requests the NRC Commissioners to review in whole and in part the actions of the Director on March 27, 1981 to determine whether or not he has abused his discretion; and to rescind the Director's March 27, 1981 resumption of work order, and for all other proper relief in the premises.

SAVE THE VALLEY, PETITIONER

BY:

*T.M. Dattilo*

THOMAS M. DATTILO, ATTORNEY FOR SAVE  
THE VALLEY, PETITIONER  
311 EAST MAIN STREET  
MADISON, INDIANA 47250  
PHONE: 812-265-6355

DATED: APRIL 14, 1981



CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Petition has been mailed to the following:

Peter A. Bradford, NRC, Washington, D.C. 20555, Certified Mail  
Joseph M. Hendrie, NRC, Washington, D.C. 20555, Regular U.S. Mail  
Victor Gilinsky, NRC, Washington, D.C. 20555, Regular U.S. Mail  
John F. Aherne, NRC, Washington, D.C. 20555, Regular U.S. Mail  
James Keppler, NRC, Roosevelt Rd., Glen Ellyn, Ill., Reg. U.S. Mail  
James Pope, Public Service Co. of Indiana, 1000 E. Main St.,  
Plainfield, Indiana 46168, Regular U.S. Mail  
NRC Docketing Section, Washington, D.C. 20555, Regular U.S. Mail,

postage prepaid, this 14th day of April, 1981.

  
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THOMAS M. DATTILO



5/1/80

SCOPE FOR CIVIL-STRUCTURAL  
CONSULTANT SUPPORT ON MARBLE HILL

The scope of the work to be completed by a civil-structural engineer or group will include a review of the deficiencies which were found through visual observation such as the local honeycombing and voids to ascertain that significant deficiencies were detected. The effort will also involve a review of the other techniques used to locate voids, discontinuities, etc., to determine if all significant deficiencies have in all probability been detected. These techniques included coring and pulse echo. The repair procedures and repairs made as a result of the findings of the investigations are also to be reviewed for adequacy. The main basis of the consultant's review effort will be the report submitted by the licensee and its references as prepared by Sargent & Lundy, Report SL-3753, 11/20/79, "Evaluation of In-Place Concrete, Marble Hill Generating Station, Units 1 and 2."

At the conclusion of the review, the consultant will provide written findings and conclusions which address the adequacy of the licensee's investigation and repairs relative to problems found in the field after concrete placement. The consultant will also need to provide written findings and conclusions which address the question of structural adequacy of the repaired structures or expected strength reduction, if such is the case.



*Exhibit "1"*