

UNITED STATES
 NUCLEAR REGULATORY COMMISSION
 OFFICE OF INSPECTION AND ENFORCEMENT
 Victor Stello, J., Director

In the Matter of)	
)	
)	
Public Service Company of Indiana)	Docket Nos. STN 50-546
(Marble Hill Nuclear Generating)	STN 50-547
Station, Units 1 & 2))	(10 CFR 2.206)

DIRECTOR'S DECISION UNDER 10 CFR 2.206

The Commission has referred a petition filed by Save the Valley on April 14, 1981 to the Director of the Office of Inspection and Enforcement for consideration under 10 CFR 2.206. In its petition, Save the Valley requested that the Commission review the Director's March 27, 1981 authorization that permitted resumption of certain concrete construction work on the Public Service Company of Indiana (PSI) Marble Hill project.¹ Save the Valley contends that the Director's action constituted an abuse of discretion for the following reasons:

- (1) The independent engineering consultants to NRC have not issued a final written report on existing concrete at Marble Hill;

¹Counsel for Save the Valley styles the petition as a request for review under 10 CFR 2.206(c) of the Director's decision to permit resumed construction. The Director's authorization was not, however, an action pursuant to 10 CFR 2.206. The authorization did not involve a denial of a petition filed by Save the Valley and was made in accordance with the terms of the Director's Graduated Rescission of Order Dated August 15, 1979 (May 15, 1980) which outlined the terms of rescission of the original Order Confirming Suspension of Construction (August 15, 1979).

- (2) Contrary to an alleged commitment by Region III, Save the Valley has not had an opportunity to review and comment on the final version of the consultants' report before resumption of construction;
- (3) Sargent & Lundy's report for PSI does not meet the structural integrity criteria specified by the NRC; and
- (4) The Director permitted resumption of construction without briefing the Commission in accordance with the Commission's Memorandum and Order of March 13, 1980 [CLI-80-10, 11 NRC 438 (1980)].

Save the Valley's contentions are without merit, and I have therefore denied its petition requesting that I halt renewed construction on the basis of Save the Valley's contentions.

Contrary to Save the Valley's impression, resumption of concrete placement and related construction activities was not dependent on the terms that Save the Valley suggests: i.e., on final, written findings and conclusions of NRC's independent consultants and receipt of Save the Valley's comments on the consultants' report.² Resumption of construction at Marble Hill has

²Region III staff made no commitment to Save the Valley to provide them an opportunity to review and comment on the final version of the consultants' report before resumption of construction.

been predicated on PSI's satisfactory completion of the steps outlined in the Graduated Rescission of Order Dated August 15, 1979, which I issued on May 15, 1980.³

The Office of Inspection and Enforcement regards the work of its consultants as important to the overall confidence that can be attached to the quality of Marble Hill's construction. Accordingly, the consultants' interim reports and informally transmitted comments have been factored into the decision to permit resumption of concrete construction at Marble Hill. To suggest, as Save the Valley does, that receipt of the consultants' final conclusions was an absolute precondition to resumption of construction goes far beyond the intent of the rescission program and would not be warranted under the circumstances. The NRC consultants have reported to the inspection staff that the concrete at Marble Hill is of acceptable quality and that the methodology used in Sargent & Lundy's report for PSI meets the required level of 95% reliability and 95% confidence. This information was conveyed to Dr. Cassaro, technical adviser to Save the Valley.

A copy of the final report will be provided to Save the Valley and copies will be made available to other members of the public when the report is issued. In light of the consultants' preliminary findings and PSI's satisfactory completion of the required steps under the rescission program,

³Mr. Dattilo, counsel to Save the Valley, received a copy of this letter and all other formal correspondence referred to in this decision.

my decision to permit resumed construction was appropriate. If the consultants' final report differs for some reason from their preliminary conclusions or if PSI does not demonstrate that it is satisfactorily implementing its construction program, I shall take appropriate action in accordance with the rescission program and my enforcement authority under 10 CFR Part 2 and the Commission's interim enforcement policy (45 FR 66754, October 7, 1980).

As its third basis for relief, Save the Valley contends that Sargent & Lundy's report for PSI regarding the integrity of concrete does not meet NRC structural integrity criteria of 95% reliability and 95% confidence. Save the Valley points to concerns raised by its technical adviser, Dr. Cassaro, in his letters to Region III dated September 26, 1980, March 4, 1981, and March 26, 1981. The concerns contained in Dr. Cassaro's September 26, 1980 and March 4, 1981 letters were responded to in detail in a letter to him dated March 20, 1980, from James G. Keppler, Director of NRC Region III. The staff has also had informal conversations with Dr. Cassaro. With respect to Dr. Cassaro's March 26 letter, in which he took exception to points in Region III's March 20 letter, NRC invited Dr. Cassaro and his associate to travel to Region III, at NRC's expense, to further discuss the basis of NRC's decision regarding concrete quality at Marble Hill. Since Dr. Cassaro declined the offer, Region III will provide him with a further written response. In any event, all of the concerns addressed in Dr. Cassaro's letters have been reviewed and, for the reasons discussed in the March 20 letter to him, I have concluded that the Sargent & Lundy report meets NRC criteria.

The Commission has informed Save the Valley that the fourth basis for relief, an alleged failure of the Director to brief the Commission, is without merit. In accordance with the Commission's Memorandum and Order of March 13, 1980, CLI-80-10, 11 NRC 438 (1980), the Director briefed the Commission on May 7, 1980, with respect to the intended course of action in permitting resumed construction at Marble Hill. Mr. Dattilo, counsel for Save the Valley, attended that briefing.

For the reasons stated in this decision, Save the Valley's petition is denied. A copy of this decision will be filed with the Secretary for the Commission's review in accordance with 10 CFR 2.206(c). As provided in 10 CFR 2.206(c), this decision will become the final action of the agency 25 days after issuance unless the Commission determines to institute a review of this decision within that time.

Victor Stello, Jr., Director
Office of Inspection and Enforcement

Dated at Bethesda, Maryland
this _____ day of June, 1981

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Save the Valley's 2.206 Petition to the Commissioners to review the NRC 3/27/81 Order to resume construction at Marble Hill (petition from Thomas Dattilo dtd 4/14/81)	See SECY-81-279 for copy of petition		
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