



UNITED STATES  
NUCLEAR REGULATORY COMMISSION  
WASHINGTON, D. C. 20555

July 28, 1983

The Honorable Lee H. Hamilton  
United States House of Representatives  
Washington, D.C. 20515

Dear Congressman Hamilton:

This is in response to your July 5, 1983 letter inquiring about the possibility of an independent review of the recent electrical installation problems at the Marble Hill site and a public hearing on the matter. You indicate your questions were initiated by a letter to you from one of your constituents, Mrs. David Frey.

As you know from our May 26, 1983 letter to you on the Marble Hill problems, the NRC and the utility took prompt action to deal with the problems. The utility issued a stop work order, and the NRC's Region III Office issued a Confirmatory Action Letter describing the steps to be completed before work would be resumed. Resumption of work was to be contingent on NRC approval, including a review of the corrective measures.

Following inspections by the Region III Office, initial portions of the electrical work were permitted to resume on April 25, 1983. Additional work was authorized on June 15, 1983 and the final segments of work were permitted to resume on July 11, 1983.

There is no requirement that the NRC provide an opportunity for a public hearing prior to permitting resumption of construction halted by a utility's stop work order or even for the lifting of a Commission-issued Order suspending construction. This position was affirmed by the Sixth Circuit Court of Appeals in a Marble Hill decision issued June 7, 1983. (A copy of the Decision, No. 82-3148, *Save the Valley v. NRC*, is enclosed.)

The Commission's regulations do require that a public hearing be held on the proposed issuance of a construction permit -- and, if requested by a person with an interest affected by the proceeding, another public hearing be held as part of the operating license consideration. There is also a provision for any person to request (under Section 2.206 of the Commission's regulations) that the NRC staff institute a proceeding to suspend, revoke or modify a license or construction permit.

A Notice of Opportunity for Hearing on the pending Operating License for Marble Hill was issued in March 1983, and the Sassafras Audubon Society, of which Mrs. Frey is an official, was among the petitioners. On June 30, 1983 the Atomic Safety and Licensing Board, designated to consider the petitions, denied the group's petition, but allowed it 30 days to submit an amended petition for consideration.

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PDR COMMS NRCC  
CORRESPONDENCE PDR

Should Mrs. Frey wish to have the electrical quality assurance deficiencies formally considered, she should pursue the petition of the Sassafras Audubon Society to be admitted as an intervenor in the Operating License proceeding, and if admitted, the organization could advance, pursuant to 10 CFR 2.714, the electrical issue as a contention to be addressed in the hearing. Alternatively, she could submit a request to the Commission staff under Section 2.206 of the regulations to take appropriate enforcement action on the basis of the deficiencies. Upon consideration of such a request, the staff would either grant the requested relief or provide a written decision, subject to Commission review, explaining the basis for denying the request.

Mrs. Frey has further suggested that a group of independent electrical engineers assess the adequacy of the quality assurance program for the electrical work at Marble Hill. We see no regulatory benefit to such a review at this time. The corrective actions taken in response to the quality assurance problems have been inspected carefully by NRC inspectors -- the Senior Resident Inspector at the site and region-based inspection personnel.

We hope this explanation has been helpful to you. If we can be of further assistance, please let us know.

Sincerely,

A handwritten signature in cursive script, reading "Nunzio J. Palladino".

Nunzio J. Palladino

Enclosure:  
As stated

No. 82-3148

FILED

JUN 7 1983

UNITED STATES COURT OF APPEALS  
FOR THE SIXTH CIRCUIT

JOHN P. HEHMAN, Clerk

SAVE THE VALLEY, INC.,

Petitioner,

O R D E R

v.

UNITED STATES NUCLEAR REGULATORY COMMISSION,

Respondent.

PUBLIC SERVICE CO. OF INDIANA, INC., and  
WABASH VALLEY POWER ASSN.,

Intervenors.

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Before: ENGEL and MARTIN, Circuit Judges; and CELEBREZZE,  
Senior Circuit Judge

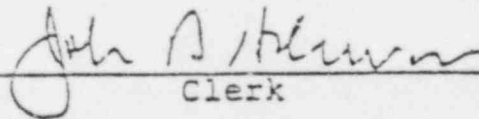
Save the Valley, Inc., ("STV") petitions for review of a decision of the United States Nuclear Regulatory Commission ("NRC") denying STV a hearing in the course of the NRC review of a decision to allow resumption of certain construction activities at the Marble Hill Nuclear Generating Station. In August, 1979, the NRC formally suspended all safety-related construction at the reactor site after discovering certain quality control problems. In May, 1980, however, the NRC authorized an incremental program leading to resumption of construction. The NRC staff confirmed and documented each step of the program as it was satisfied. STV disputed these staff determinations and requested NRC review. The NRC ultimately upheld the decision and rescinded the suspension order but refused to grant STV a hearing on the matter. STV argues that this action is arbitrary,

an abuse of discretion, and in violation of section 189(a) of the Atomic Energy Act, 42 U.S.C. § 2239(a).

Upon consideration, the court is of the opinion that 42 U.S.C. § 2239(a) does not impose upon the Commission any obligation to accord petitioner a "formal" evidentiary hearing on the question of the propriety of rescinding the earlier suspension order. See City of West Chicago, Illinois v. United States Nuclear Regulatory Commission, \_\_\_\_ F.2d \_\_\_\_, No. 82-1575 (7th Cir. March 1, 1983); Rockford League of Women Voters v. United States Nuclear Regulatory Commission, 679 F.2d 1218 (7th Cir. 1982). It further appears that any hearing which might be accorded petitioner under 10 C.F.R. 2.206 is not automatic or of right but rests in the NRC's sound discretion, which under the fully developed record herein was not abused. See Seacoast Anti-Pollution League v. Nuclear Regulatory Commission, 690 F.2d 1025 (D.C. Cir. 1982). Accordingly,

The petition for review is denied.

ENTERED BY ORDER OF THE COURT

  
Clerk

JOHN P. REHMAN  
CLERK

OFFICE OF THE CLERK  
UNITED STATES COURT OF APPEALS  
FOR THE SIXTH CIRCUIT  
CINCINNATI, OHIO 45202

June 7, 1983

Mr. Frank E. Spencer  
Mr. Thomas M. Dattilo  
Ms. Marian Moe  
Ms. Janet L. Steckel  
Ms. Anne S. Almy

Re: Our Case NO. 82-3148  
Save The Valley, Inc., vs. U.S.N.R.C.

Dear Counsel:

Enclosed is a copy of an order which was entered today in the above-styled case.

Very truly yours,

John P. Rehman, Clerk

By Shelley A. Vazis  
(Ms.) Shelley A. Vazis  
Deputy Clerk

Enclosure