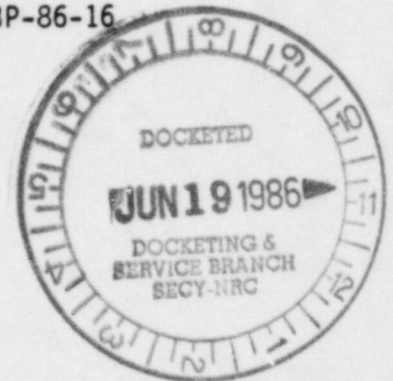


641
SERVED JUN 19 1986

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges:
Ivan W. Smith, Chairman
Gustave A. Linenberger, Jr.
Dr. Oscar H. Paris

LBP-86-16



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. 50-546-0L
50-547-0L

ASLBP No. 83-487-02 0L

June 18, 1986

MEMORANDUM AND ORDER

The recent and relevant history of this matter is set out in our May 30, 1986 Memorandum and Order Directing Briefs. LBP-86-14A, 23 NRC _____. There we noted that none of the intervenors in this proceeding had commented on the Applicants' Motion to Terminate Proceeding dated April 4, 1985. Consequently, no provision was made for any filing by the intervenors in the schedule for additional briefing required by the order.

By letter dated June 11, 1986 the Indiana Sassafras Audubon Society requests that the Marble Hill site be restored as completely as possible to farmland, timber land and wildlife habitat. The Audubon Society states that it felt that there was nothing to comment on at the time of the 1985 motion to terminate since the NRC Staff then sought an opportunity to review and to approve a site restoration plan. See NRC

DS02

Staff's Response, April 24, 1985. To the extent that the Audubon Society now seeks to address the initial motion to terminate the proceeding, it is late. Any answer by Audubon to the motion to terminate was due within ten days after service of the motion. The Staff exercised its prerogative to answer the motion fifteen days after its service. 10 CFR § 2.730(c). Audubon has not demonstrated good cause for failing to address the motion to terminate at the time an answer was due in 1985.

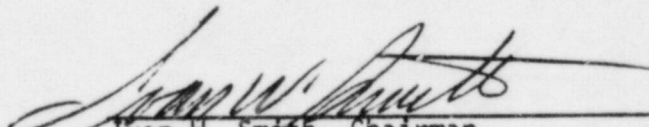
However the Board is not aware of any law or regulation which would per se bar the Audubon Society from answering the Applicants' supplement to the motion to terminate which supplement will be filed in obedience to our May 30, 1986 order. Accordingly, the Board amends its May 30, 1986 order as follows:

- (1) The Indiana Sassafras Audubon Society and any other intervenor in this proceeding may file an answer to the Applicant's supplement to the motion to terminate within ten days after service of the supplement;
- (2) Or the Audubon Society may rest on its letter of June 11, 1986 which the Board will consider in light of the entire record, provided;
- (3) That any other party may argue that any intervenors' position on the supplement, on the grounds of tardiness or on other grounds, should not be considered. The Applicants and NRC Staff may address issues relating to intervenors in their

respective forthcoming responses to the Board order of May 30, 1986 or they may seek other relief to do so.

The Audubon Society also requests that it be provided with a copy of the Applicants' supplement and the NRC Staff's response to the supplement. A random check of the more recent filings by the Staff and Applicants indicates that the intervenors have been served with documents in this proceeding as provided by regulation. We expect that that will also be the case in the future. On the other hand, the Audubon Society did not provide service of its June 11, 1986 letter to each of the other parties to the proceeding as required by the regulations. The Board calls to the attention of the Audubon Society the provisions of 10 CFR § 2.701(b) requiring that documents offered for filing in NRC proceedings be served on all parties or their attorneys and that there be proof of such service accompanying any filed document. In this instance the Board will cause the Audubon Society's June 11, 1986 letter to be served by attaching it to this order.

FOR THE ATOMIC SAFETY AND
LICENSING BOARD



Ivan W. Smith, Chairman
ADMINISTRATIVE LAW JUDGE

Bethesda, Maryland

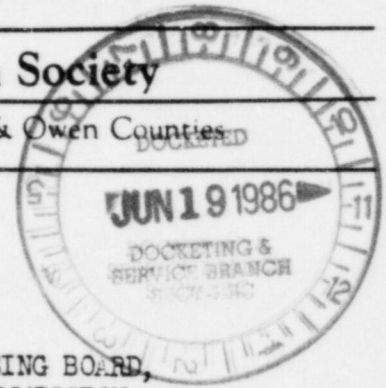
June 18, 1986



The Indiana Sassafras Audubon Society

of Lawrence, Greene, Monroe, Brown, Morgan & Owen Counties

June 11, 1986



TO: ATOMIC SAFETY AND LICENSING BOARD,
NUCLEAR REGULATORY COMMISSION

FROM: THE INDIANA SASSAFRAS AUDUBON SOCIETY

RE: MEMORANDUM AND ORDER DIRECTING BRIEFS, JUNE 2,
1986

This letter is in reference to the Memorandum and Order Directing Briefs issued by the Atomic Safety and Licensing Board, Nuclear Regulatory Commission (NRC), June 2, 1986, directing the Public Service Company of Indiana, Inc. and Wabash Power Association, Inc. to supplement their motion to terminate the Marble Hill Nuclear Generating Station Proceeding within 30 days of service of the order.

In the section of the Memorandum and Order providing background to the matter, it was noted that none of the intervenors had commented on the April 24, 1985 Motion of the Applicants to terminate the Marble Hill Proceeding. Sassafras Audubon felt at the time there was nothing to comment on since the NRC staff deferred ruling on the motion until they had opportunity to review and approve a site restoration plan.

Our present concern is with the NRC Staff position as expressed on March 28, 1986 of supporting the applicants motion to terminate the proceeding based on a site stabilization plan that would leave the Marble Hill site essentially unrestored. We do not agree with the NRC Staff statement in support of their position that "there will be no significant detrimental environmental impact on or offsite resulting from termination of the proceeding."

In 1981 the Appeal Board supported the action of the Licensing Board requiring the applicant in the Davis-Besse Proceeding to restore the site as nearly as possible to its original pre-construction state and to enhance the site's qualities as a wildlife habitat.

In 1982 the Licensing Board imposed conditions in Bailly requiring substantial but uncontroversial site restoration.

In 1983 the Licensing Board required in Black Fox the dismantling of site improvements not included in a plan for future use of the Black Fox site, again uncontroversial.

Public Service Indiana has not indicated a need nor plans for future use of the Marble Hill site. As the Atomic Safety and Licensing Board notes in their Memorandum and Order, around 500 acres of the 960 acre site is of prime farmland. The remaining acres have potentially high value for timber and wildlife habitat. We ask that the site be restored as completely as possible to these uses.

We would appreciate receipt of the Applicant's supplement to their motion to terminate the Marble Hill Proceeding, and the response of the NRC Staff to that Supplement, as well as subsequent communications concerned with resolution of the matter.

Yours sincerely,

T. Zeller
Tom Zeller, President
Sassafras Audubon Society (SAS)
6620 E. State Road 45
Bloomington, Indiana 47401

Mrs. David G. Frey
Mrs. David G. Frey
Energy Policy Committee, SAS
2625 S. Smith Road
Bloomington, Indiana 47401

cc: Director, NRR