

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the matter of)

PUBLIC SERVICE COMPANY OF INDIANA, INC.)
WABASH VALLEY POWER ASSOCIATION, INC.)

Docket Nos. 50-546
50-547

(Marble Hill Nuclear Generating
Station, Units 1 and 2))

AMENDMENT TO THE SASSAFRAS AUDUBON SOCIETY PETITION
FOR INTERVENTION IN OPERATING LICENSE HEARING

I. INTRODUCTION

On response to the Nuclear Regulatory Commission staff response dated May 13, 1983, we file this amendment to our petition to intervene, postmarked April 23, 1983.

II. DISCUSSION

A. Standing

1. Delbert H. Rust, Evelyn Chalmers Seward, and Nancy D. Pettyjohn of Columbus Indiana are residents within a fifty mile radius of the proposed nuclear plant, an area which could be affected by routine or accidental release of fission products from the plant. For this reason, these parties' pursuit of normal and recreational activities could be affected. Delbert H. Rust, Evelyn Chalmers Seward, and Nancy D. Pettyjohn are members in good standing in the Sassafras Audubon Society and by affidavit attached do hereby authorize the Sassafras Audubon Society to represent their interest in the Marble Hill Nuclear Plant proceedings cited above.

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2. The Sassafras Audubon Society has approximately 600 members in the counties of Owen, Lawrence, Greene, Monroe, Brown, Morgan and Bartholomew. Virtually all of these members reside within 100 miles of the plant site and have property, health, or recreational activities affected by the operation of the plant. Sixty-two of these members live within fifty miles of the plant. The Society, as a chapter of the National Audubon Society, is dedicated to the conservation of wildlife and other natural resources and to the sound protection of the natural environment. To accomplish these purposes, the Sassafras Audubon Society engages in public education, scientific research, and educational/recreational outings, and speaks for the public interest in the natural environment. Our activities include educational outings and research in areas within fifty miles of the plant site; including the eastern section of the Hoosier National Forest, the Falls of the Ohio near Louisville, the Indiana Knobstone Trail System near New Albany, the Muscatatuck National Wildlife Refuge, Clifty Falls State Park, and the East and South Forks of the White River. Thus, Sassafras Audubon submits that there are demonstrable environmental, health, and recreational interests of the organization affected by the outcome of this proceeding. Sassafras Audubon suffers recreational and aesthetic "injury in fact" because its programming includes, and its members use, the land in the potentially impacted area of the plant. See, United States v. SCRAP, 412 U.S. 669 (1973). Our interest in this proceeding stems from our protectionist goal and is of an adversary rather than an academic nature. As described, our Society possesses the necessary expertise to contribute on substantial issues of fact which would otherwise not be properly

raised or pursued. These issues are relevant to the determination of technical, environmental, aesthetic, health and wildlife concerns inherent in the operation of a nuclear power plant in this area. In addition, our chapter activities in the area of energy development and use can shed light on several concerns we raised in our Petition. Failing to adequately consider these concerns or "aspects" will also, we believe, cause an "injury in fact" to our organization and its individual members.

The policy and purpose of the Atomic Energy Act (42 U.S.C. §2011, 2013 et seq) call for the Act's "maximum contribution to the general welfare" by providing for programs "to encourage widespread participation in development and utilization of atomic energy for peaceful purposes to the maximum extent consistant with ... the health and safety of the public." (emphasis added) Thus, in addition to the "injuries in fact" described above, the Society's concerns are arguable within the "zone of interest" protected by the statute invoked.

Besides the legally protected interest of the organization and its members, Sassafras Audubon Society has a "personal stake" and "adversarial interest" in these license proceedings. The Society's "personal stake" is more than that of each member's concern of actual interference with normal activities; it is also an "ideological" personal stake based on good faith personal views and subjective feelings. Cf., Citizens Committee for Hudson Valley v. Volpe, 425 F.2d 97 (2d Cir. 1970). This personal stake is more than "merely" academic: The group's ability, means and desire to participate in these and other proceedings have led to active attempts to intervene. Sassafras Audubon Society's present efforts demonstrate a significant ability to contribute on substantive issues relating to Marble Hill,

including the willingness to assume the burdens and costs of litigation. See Citizens Committee for Hudson Valley, supra.

Finally Sassafras Audubon Society accepts that "judicial concepts of standing" should control the issue of requisite interest to intervene; these standards, we assert, have been met. The Society also respectfully points out, however, that many of the standards relied upon by the NRC were judicially developed to govern the stricter area of standing to petition for court review of administrative actions, not participation in the proceedings themselves.

B. Specific Aspects of the Proceeding

We declare that the "contentions which Sassafras Audubon would raise" in our petition are specific aspects of the subject matter of the proceeding in which we wish to intervene. Furthermore, in regard to the issue of "need for power", we assert that special circumstances exist which support an exception to the amended rule prohibiting consideration at the operating license stage of the need for power issue.

Sassafras Audubon asked the NRC on September 4, 1979 to add the question of need to the list of issues on which we requested a hearing, noting that:

1. PSI had based need on a highly inflated growth rate of electrical consumption, and,
2. PSI had lowered their 1977 growth estimate of 8% to 6% in 1979; this new estimate still being far above less biased estimates.

The NRC document, Director's Decision under 10 CFR 2.206 of November 27, 1979, denied the Society's request noting:

"Considering the uncertainties attendant to forecasting the probable reclassification and/or decommissioning of certain older units on PSI's system over the next decade, the substitution of nuclear baseload plants for older fossil plants, and the probably higher-than-average (National) growth rate in PSI's service area, the Board finds that Marble Hill, Units 1 and 2, will be needed in the early to mid 1980's (6 NRC 311).

The NRC further noted:

"Small variations in need for power and facility costs would not change these conclusions. In addition, any reanalysis of the cost-benefit balance for Marble Hill would have to consider the costs already expended on the facility. Therefore, the SAS allegations of a declining growth rate for electrical consumption and increasing costs of construction are not of the type and substance likely to have an effect on the need for power issue such that relitigation is warranted, even in an operating license proceeding."

Sassafras Audubon, in our APPEAL TO COMMISSION TO REVIEW DIRECTOR'S DECISION UNDER 10 CFR 2.206, of December 10, 1979, asserted special circumstances worthy of a hearing:

1) Marble Hill's power will not be needed in the foreseeable future in the PSI service area. PSI possessed a current peak load overcapacity of 53%. Their own data showed that Marble Hill would not be needed in the next several decades. Population growth in the region grew only 25% as fast as the rest of the country during 1970-77 and was forecast by the U.S. Commerce Dept. to grow only 45% as rapidly from then to the year 2000. We also noted that energy costs have caused a decline in consumption and that the increased energy produced by conservation and improved energy productivity were almost three times the total increase in U.S. energy consumption. (Vince Taylor, The Easy Path Energy Plan, May 30, 1979, Cambridge, MA. UCS).

2) The cost of Marble Hill should be realistically recalculated in terms of soaring construction costs.

The NRC denied the Society's appeal in March 1980 on a 3-2 vote with Peter Bradford writing a dissenting opinion. The

decision was made on very narrow grounds (see decision).

On March 25, 1980, at a meeting held by the NRC Office of Inspection and Enforcement, on the response of PSI to the NRC "Order Confirming Suspension of Construction" at Marble Hill, Sassafras Audubon again noted:

"The paramount question concerning Marble Hill is not whether safety-related construction should be resumed, but whether all construction should be stopped. Should the public be subjected to the dangers inherent in the operation of this plant, including the storage of the plant's highly toxic wastes on site, if its power is not needed? the expected population growth and general economic activity in its service area is likely to remain low, below the Nation's average."

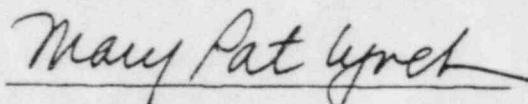
The NRC Licensing Board has stated in their decision concerning need for power, " the probable higher than average (National) growth rate in PSI's service area" as one of the reasons for finding that Marble Hill was needed. As the U.S. Commerce Department figures showed, this was a totally unwarranted assumption based on 1970-77 data.

Fred Hauck of Save the Valley testified at the 1977 construction permit hearing on behalf of all intervenors that Marble Hill was not needed, based on his projections of population, electrical demand, and data from PSI annual reports. Mr. Hauck has updated his projections annually. The October 1982 hearing in Indiana on the economics of completing Marble Hill verified his predictions. From the time of the construction permit hearing, Sassafras Audubon has been denied the opportunity to present new and significant evidence on this question at a timely point in the licensing and construction process.

III. Conclusion

For the reasons given above, the Sassafras Audubon Society submits that we have made the requisite showing that one or more of our members have standing and have authorized the Society to represent their interest in this proceeding and that the Sassafras Audubon Society as an organization has standing. In addition, we identify those contentions we wish to litigate; including a special exception for consideration of "need for power."

Respectfully submitted,

A handwritten signature in cursive script, reading "Mary Pat Lynch", written over a horizontal line.

Mary Pat Lynch, President
Indiana Sassafras Audubon Society

New address:

6620 E. State Rd. 45
Bloomington, IN 47401

Dated at Bloomington, Indiana
this 21st day of July, 1983

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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
50-547

AFFIDAVIT

COMES NOW, Evelyn Chalmers Seward being duly sworn, states
that the following is true:

1. That I reside at 632 Lafayette Ave., Columbus, Indiana 47201
within 50 miles of the Marble Hill site.

2. That I am a member in good standing of the Indiana
Sassafras Audubon Society, Inc.

3. That my environmental, recreational, health, and
property interests are affected by the outcome of the Operating
Licensing proceedings for Marble Hill Units 1 and 2.

4. That I authorize the Sassafras Audubon Society, Inc.
to represent my interests in these proceedings.

Evelyn Chalmers Seward

STATE OF INDIANA
COUNTY OF BARTHOLOMEW

Sworn and subscribed to before me on this 15th day of July,
1983.

Betty Rutan
Betty Rutan

My commission expires:

Residence: Bartholomew County, IN

Feb. 14, 1987

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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AFFIDAVIT

COMES NOW, DELBERT H. RUST being duly sworn, states
that the following is true:

885 NORTH STREET

1. That I reside at COLUMBUS INDIANA 47203

within 50 miles of the Marble Hill site.

2. That I am a member in good standing of the Indiana
Sassafras Audubon Society, Inc.

3. That my environmental, recreational, health, and
property interests are affected by the outcome of the Operating
Licensing proceedings for Marble Hill Units 1 and 2.

4. That I authorize the Sassafras Audubon Society, Inc.
to represent my interests in these proceedings.

Delbert H. Rust

STATE OF INDIANA
COUNTY OF BARTHOLOMEW

Sworn and subscribed to before me on this 14TH day of JULY,
1983.

Doreen Ellen Hardy

BARTHOLOMEW COUNTY.

My commission expires:

APRIL 1ST 1986.

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AFFIDAVIT

COMES NOW, Nancy D. Pettyjohn being duly sworn, states
that the following is true:

1. That I reside at 1634 Franklin St., Columbus, IN.
within 50 miles of the Marble Hill site.

2. That I am a member in good standing of the Indiana
Sassafras Audubon Society, Inc.

3. That my environmental, recreational, health, and
property interests are affected by the outcome of the Operating
Licensing proceedings for Marble Hill Units 1 and 2.

4. That I authorize the Sassafras Audubon Society, Inc.
to represent my interests in these proceedings.

Nancy D. Pettyjohn

STATE OF INDIANA
COUNTY OF BARTHOLOMEW

Sworn and subscribed to before me on this 20th day of July 1983.
1983.

Victoria K. Walker

My commission expires:

Victoria K. Walker

Jan. 25, 1987

CERTIFICATE OF SERVICE

I hereby certify that copies of the Sassafras Audubon amendment to our petition to intervene in the Marble Hill Operating Licensing process have been served on the following by deposit in the United States Mail, first class, this 22nd. day of July, 1983.

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(2)

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Mary Pat Lynch

Mary Pat Lynch, President
Indiana Sassafras Audubon Society