

Docket 50-439
Reg. Central

FEB 5 1974

Docket Nos. 50-438
50-439

Honorable Robert E. Jones
House of Representatives

Dear Mr. Jones:

Thank you for your letter of January 17, 1974, addressed to the Chairman of the Commission, transmitting a copy of a letter received from Dr. Daniel P. Hale of Huntsville, Alabama regarding his petition for leave to intervene in the Commission's public hearing on the application of the Tennessee Valley Authority (TVA) for construction permits to construct the Bellefonte Nuclear Plant near Scottsboro, Alabama. Your letter has been referred to me for response in view of the fact that it relates to a matter which is involved in an adjudicatory proceeding subject to review by the Commissioners.

Under the provisions of the Atomic Energy Act of 1954 (Act), as amended, a public hearing is required to be held by the Commission on each application for a construction permit for a nuclear facility of the type proposed by TVA. The Act and the Commission's implementing regulations set forth the requirements for members of the public to participate in these hearings.

Dr. Hale's letter expresses a number of concerns regarding his efforts to participate in the Bellefonte proceeding. With regard to many of these concerns the following reflects our understanding of the situation.

On August 3, 1973, a Notice of Hearing with respect to the Bellefonte construction permits was published by the Commission in the Federal Register (38 F.R. 20932). The notice identified the procedural requirements for members of the public to participate in the hearing and specified that petitions for leave to intervene must be filed with the Commission within 30 days. The substance of this notice was also published in several newspapers in the vicinity of Scottsboro, Alabama.

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FEB 5 1974

In a document dated September 3, 1973, Dr. Hale and Lyle A. Taylor requested to intervene in the hearing. As provided by the Commission's Rules of Practice, both TVA and the AEC regulatory staff submitted to the presiding Atomic Safety and Licensing Board, whose Chairman is Elizabeth Bowers, Esq., a response to the petition. In its response the AEC regulatory staff took the position that the petition failed to comply with the requirements of the Commission's regulations, but recommended that further opportunity be given Dr. Hale and Mr. Taylor to submit an amended petition to correct the identified deficiencies. TVA took the position that the petition should be denied.

On October 30, 1973, members of the AEC regulatory staff met with Dr. Hale to discuss this matter. At the conclusion of this discussion it was the impression of staff members that Dr. Hale did not choose to pursue his petition. This information was conveyed to staff counsel who so informed the presiding Atomic Safety and Licensing Board. Subsequently, Dr. Hale informed staff counsel that this impression was incorrect. By letter of November 14, 1973, staff counsel expressed regret for the mistaken impression of Dr. Hale's intent and offered assistance in his effort to amend his petition to intervene, and so informed the presiding Board. On December 3, 1973, the presiding Atomic Safety and Licensing Board granted Dr. Hale until January 2, 1974 to submit the amended petition. Dr. Hale did not contact staff counsel for any assistance in preparing the amended petition.

On January 1, 1974, Dr. Hale filed the amended petition. This amended petition also failed to meet the Commission's requirements for an acceptable petition and in an answer dated January 14, 1974, the AEC regulatory staff identified these deficiencies. In its answer, however, the staff urged the presiding Atomic Safety and Licensing Board to permit Dr. Hale to make a limited appearance at the hearing pursuant to the provisions of 10 CFR § 2.715 of the Commission's Rules of Practice. TVA also filed an answer opposing the amended petition on essentially the same grounds.

On January 22, 1974, the presiding Atomic Safety and Licensing Board issued an Order in which it ruled that Dr. Hale's amended petition must be rejected for failure to meet the requirements of the Commission's Rules of Practice. The Board did, however, provide Dr. Hale with an opportunity to make a limited appearance at the hearing.

In connection with making such an appearance Dr. Hale will have an opportunity to express his views with respect to the proposed Bellefonte plant and have these views made a part of the official record of the proceeding. Furthermore, any questions he may have regarding the

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proposed facility may be raised in the context of the limited appearance. Since questions are normally responded to by the AEC regulatory staff and the applicant during the course of the hearing, it may be anticipated that Dr. Hale's questions will be appropriately dealt with during the hearing on the Bellefonte application.

For your information we are enclosing copies of the Notice of Hearing, Dr. Hale's petition for leave to intervene and his amended petition, the AEC regulatory staff answer to these documents and the Board's Order of January 22, 1974. In addition we are enclosing copies of the Commission's Rules of Practice and call your attention particularly to sections 2.714 and 2.715.

Sincerely,

Howard K. Shapar
Assistant General Counsel
Licensing and Regulation

Enclosures:

- Notice of Hearing on Application for Construction Permits
- Affirmative Relevant to Request to Intervene in the Bellefonte Nuclear Hearings
- Ltr to Elizabeth Bowers from Dr. Hale dtd 1/1/74
- Answer of AEC Reg. Staff to Petition for Leave to Intervene filed by Dr. Hale and Mr. Taylor
- Answer of AEC Regulatory Staff to Amended Petition for Leave to Intervene Filed by Dr. Hale
- Memo and Order dtd 1/22/74

Rules of Practice
Distribution:

- SECY (3) PDR
- LGossick LPDR
- HKShapar OCR (3)
- TFEngelhardt Reg. Central File
- JScinto OGC file Beth/G'town
- WPaton Etter (DR-6596)
- Docket files 50-438 & 50-439 (2)

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ROBERT E. JONES
5TH DISTRICT, ALABAMA

HOME ADDRESS:
SCOTTSBORO, ALABAMA

COMMITTEES:
PUBLIC WORKS
GOVERNMENT OPERATIONS

Congress of the United States
House of Representatives
Washington, D.C. 20515
January 17, 1974

Honorable Dixy Lee Ray, Chairman
Atomic Energy Commission
Washington, D. C. 20545

Dear Chairman Ray:

I am enclosing a copy of a letter which I have received from Dr. Daniel P. Hale, of Huntsville, Alabama, regarding the proceedings relative to the Bellefonte Nuclear Plant.

I know you and your staff will accord Dr. Hale all due consideration on the points he has raised, and I am sure he will be most grateful for this.

If you would advise me when the problems relative to the proceedings are resolved, I would gladly receive your comments.

Thank you for your cooperation in this regard.

Sincerely,

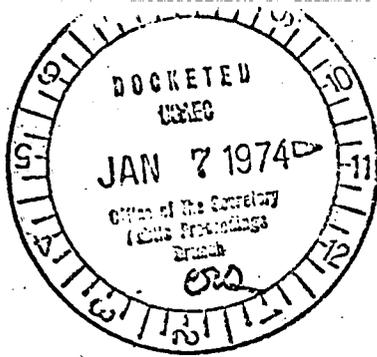


Robert E. Jones

J:pp
Enclosure

DR 6596

Rec'd Off. Dir. of Reg.
Date 1/22/74
Time 2:05



January 1, 1974
04 1000 Airport Rd.
Huntsville, Alabama 35802

Mrs Elizabeth Bowers
Chairman Atomic Safety & Licensing Board
Atomic Energy Commission
Washington, D.C. 20545

Dear Mrs Bowers:

As discussed with you by telephone in early December I am hereby submitting to the AEC the following addition to my petition to intervene in proceedings relative to the Bellefonte Nuclear Plant. The implications of my remarks may not reflect on the AEC to its credit; however I hope you do not interpret them to be a personal attack upon you - for I have had little interaction with you and it is possible for an Agency to be wrong without all of its employees being negligent.

First I urge you in scheduling hearings on Bellefonte to schedule as many of these as possible at night so that citizens who are not being paid to appear as you and your associates are, can participate without having to absent themselves from their regular employments. This would seem to be a reasonable request in that AEC employees who work evenings in the line of duty are paid for that duty. Why place this unnecessary penalty on citizens who are public spirited enough to give of their own time in the interests of our achieving a better nation? In this matter as also in regard to other issues I will advise, please give me a full, detailed response in writing.

Succinctly in my dealings with the AEC I am discouraged and angered by a choking, stifling bureaucracy which by my being absolutely the most generous possible, could not honestly be termed anything better than inefficient - and it may be that some of the difficulties I am suffering relative to being an intervener are deliberately inflicted upon me. My dealings with the AEC can be briefly summarized as follows:

1) After being told by an employee of the AEC that my petition to intervene had to be either affirmed or notarized I affirmed it since it was not convenient for me to go to a notary; yet after you received my petition it was held invalid because it was not notarized - seemingly I was trapped by an employee who ought to have known better and so advised me.

2) Despite my giving the AEC notification months in advance of my intent to appear at the hearing held on the Brown's Ferry Nuclear Plant, I was given only 55 hours to prepare my statement for a limited appearance - I had to drive over 70 miles and give up a day's work. Apparently a dozen other citizens had the same miserable experience in that they did not appear at the hearing in Athens Alabama despite their expressed intent to so appear.

3) Four AEC staff members meeting with me and two others the evening of October 30 somehow acquired the utterly false idea that I was withdrawing as an intervenor in the Bellefonte affair. Upon receiving notice to this effect I was amazed and I immediately phoned and wrote the AEC stating emphatically that I never had any intention of withdrawing, nor can I now by any distortion of the facts as known to me conceive of any combination of circumstances which would give this false impression. Strangely some elements of the AEC want to disqualify my petition to intervene because it is not notarized - yet quite inconsistently they leap to the quite unwarranted conclusion that I wished to withdraw as an intervenor, basing this at best on distorted hearsay let alone not being based upon a notarized written withdrawal; they seem biased pro TVA and anti citizen in their interpretations.

4) After submitting a written petition to intervene to the AEC I am now informed that my petition is "deficient" and must be amended - which this notarized statement is. Why was I not supplied in writing a detailed list of particulars wherein my petition is deficient? Will you please supply me with such a list? and I would be consistent with prior AEC policy to demand that this list and accompanying material be notarized. Why am I being harassed? You are not supposed to be pro TVA to the extent of suppressing public knowledge and public debate.

I am discouraged not only by the bumbling pettifogery which seems to characterize some of my dealings with the AEC, but even more I am distressed that the particular manner in which my petition has been handled may indeed characterize many of AEC's actions. Indeed the AEC through its Safety and Licensing Board ought to be a most severe ~~critic~~ critic of the TVA and ought to be a reliable champion of the rights of any citizen to be heard, to ask questions with such statements, such questions and answers being matters of official record. All citizens should have these rights without having to be Ph D's in nuclear physics or having to own property on which a proposed plant would be built.

I am incensed with very good cause that the TVA - supposedly just a party to hearings involving nuclear plants - advised you that my petition fails to comply with the requirements of 10 CFR Part 2 Sections 2.714 and 2.715 and hence should be denied. I could just as well volunteer my services to the AEC and point out that TVA's Bellefonte project does not coincide with ought to be the proper Government policy toward the development of nuclear energy, and hence such project should be abandoned. Such collusion no matter how it may be formalized or brought about indirectly, suggests that the AEC really works for the TVA - far, far, far from adequately fulfilling its responsibilities to the public for the safety and licensing of nuclear power plants.

Our nation should have as a basic operating policy that all citizens have a right to know, a right to ask questions, and a right to make comments - and that all of the above should be public record. Such basic civil rights should most emphatically be allowed even when the particular citizens involved do not agree with the AEC, the AEC's staff, and the TVA. To spell it out clearly to you again, WHETHER YOU AND/OR ANY OF YOUR ASSOCIATES INCLUDING THE TVA AGREE OR DISAGREE WITH MY VIEWS SHOULD NOT IN ANY WAY ENTER INTO THE DECISION TO PERMIT MY PARTICIPATION IN HEARINGS AS AN INTERVENOR. It is my hope in the interests of a better society that any attempt by the AEC, the TVA, or by any other governmental agency to

stifle public discussion and debate will redound to the complete destruction of that agency - indeed our Safety and Licensing Board as a representative of the AEC ought to be most zealous in seeing that those who wish to comment, who wish to know, or who wish to question and criticize should receive every opportunity to do so. Those of the AEC or of any other Agency which would deliberately - either directly or indirectly - act to stifle or deny these rights to the public should very quickly have real cause to regret their anti democratic actions and attitudes.

I believe my desire to intervene has been adequately expressed previously; however to formally and rigorously comply with all requirements I have carefully read 10 CFR Part 2 Sections 2.714 and 2.715. I honestly explicitly state my convictions relative to nuclear power plants at our present level of technology, in order to make "aspects", "facts" pertaining to my interest, and the "basis of (my) contentions" evident. I do own property that could be destroyed in the event of a catastrophic accident, and I may ingest radioactive wastes which Bellefonte will discharge - and all claims of safety notwithstanding, presently leaking radioactive wastes at Hanford, failure of emergency (one) cooling systems, and the Price-Anderson Act to limit liability, all of these facts and possibilities should not be necessary to qualify me as an intervener.

Washington state

It is utterly unacceptable morally for us to subject citizens of the world who will not be born even ten thousand years from now - i.e. 11974 AD - to the obligations and hazards of dealing with radioactive wastes which we have deliberately created and deliberately thrust on our descendants. While the "Climate" in the AEC may now be such that no employee can openly have such views, the above is a respectable view which is at this very moment bothering some of our most thoughtful citizens - and most emphatically whether you agree or not should not enter into any deliberation as to whether I and Mr Taylor be allowed to intervene. Certainly this is a fundamental moral question attracting such widespread attention that if such concerns and related discussions do not appear in detail in the Official Records of Hearings dealing with nuclear projects, it will be clearly evident that the AEC is deliberately suppressing public debate that momentarily might be unfavorable to aims of the AEC and that the AEC is not worthy of the position it now enjoys in the government of the United States. If the AEC honestly respects basic civic rights how can it rule against would-be interveners who might be critical of proposed projects by making such absurd distinctions as to how much property a would-be citizen intervener owns and how close he and his property is to the site of a proposed nuclear power plant.

Certain aspects of my interests may be controversial - indeed if we know radioactive wastes and heat discharged in our rivers and oceans, caused no damage to people, animals, property, and the environment, I probably would not be interested in being an intervener. But quite to the contrary, WE DO KNOW THAT RADIOACTIVITY, EXPLOSIONS, HEAT DISCHARGED, AND ACCIDENTS CAN INDEED CAUSE SERIOUS DAMAGE. We certainly do know enough already to fully justify citizen concern about how much radioactive waste will be produced, how such wastes will be transported, and how they will be stored; and if the Atomic Safety and Licensing Board permits any citizen to be an intervener it should certainly permit a citizen to intervene who is explicitly interested in the production, transportation, and storage of radioactive wastes, and associated moral questions mentioned above. For the board to allow less, makes a farce of the whole proceeding. My concern with radioactive waste management and with emergency procedures proposed to prevent maximum serious accidents in the event of failure of one or more basic systems is sufficiently explicit to justify my participation as an intervener as defined in ~~the~~ Title 10 (Atomic Energy Commission Rules and Regulations).

The extent of damages which may occur as the result of an accident may be controversial and not yet even fully known; hence the entertaining of views and the asking of questions which might unfavorably impact the destinies of the AEC and of the TVA as these destinies are now established for by the AEC and by the TVA should NOT, NOT, NOT justify directly or indirectly the disqualification of any citizen who desires to intervene. A most convincing demonstration of the AEC's impartiality and the AEC's worthiness of the trusts to simultaneously regulate and simultaneously promote nuclear fission energy, would be the acceptance of an intervener who the AEC knows to be doubtful about the wisdom of continued large scale nuclear power plant development. If you really believe in active democracy and informed public consent and choice, and if you are courageous enough to assert your beliefs, you must allow questioning by possibly hostile interveners who may not own the site of a projected nuclear power plant.

Sincerely,

Daniel Payne Hale

Daniel Payne Hale Ph D Nuclear Physics

State of Alabama
County of Madison

Subscribed and sworn to before me

this 1st day of January, 1974

Dorothy J. Davis

Dorothy J. Davis

Notary Public, State of Alabama At Large

My Commission expires Jan. 3, 1977