

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of  
DUKE POWER COMPANY

(Catawba Nuclear Station, Unit No. 1 )

Docket No. 50-413A

NRC STAFF'S ANSWER TO REQUEST FOR AN  
ANTITRUST HEARING BY HARVARD G. AYERS

I. INTRODUCTION

The NRC Staff hereby submits its Answer to the request for hearing by Mr. Harvard G. Ayers in the above captioned proceeding, made in his letter dated December 15, 1980 (hereinafter the "Ayers Letter").<sup>1/</sup> The NRC Staff opposes the Ayers request for a hearing, and further asks that the Licensing Board treat this matter in an expedited manner in light of the unusual circumstances, described below. The Staff opposes the Ayers request because: (1) the Ayers Letter fails to establish that Mr. Ayers has standing to request an antitrust hearing; (2) the Letter does not satisfy any of the general criteria set forth in 10 CFR § 2.714 or the other antitrust criteria governing such requests; and (3) discretionary intervention is not warranted.

---

<sup>1/</sup> The Ayers Letter is annexed hereto as Attachment No. 1.

1981 JAN 9 PM 3 31

RECEIVED DISTRIBUTION  
SERVICES UNIT

## II. BACKGROUND

### A. The Duke Power Amendment Application

On July 1, 1980, Duke Power Company ("Duke Power") submitted an application to amend its construction permit for Catawba Nuclear Station, Unit 1, to permit North Carolina Electric Membership Corporation ("NCEMC") and Saluda River Electric Cooperative to become co-owners and co-licensees in that nuclear unit. NCEMC, an association of rural electric cooperatives which has as one of its members Blue Ridge Electric Membership Corporation ("Blue Ridge"), is seeking to purchase 56.25% of Catawba Unit 1, while Saluda River is seeking an 18.75% share of that unit.

In connection with the application for this amendment, Duke Power also submitted antitrust information on behalf of NCEMC and Saluda River as required by 10 CFR Part 50, Appendix L. The antitrust information was forwarded on July 11, 1980, to the Attorney General for his review and advice, pursuant to Section 105(c) of the Atomic Energy Act of 1954, as amended (hereinafter referred to as the "Atomic Energy Act").<sup>2/</sup>

Notices were published in the Federal Register on August 8, 15, 22, and 29, 1980, acknowledging receipt of the antitrust information and providing an opportunity for persons to submit their views on antitrust matters to the NRC and the Attorney General for consideration. 45 Fed. Reg. 52975, 54493, 56215, 57800. In addition, notices were published in seven local newspapers and electric utility trade journals during this same time period. Mr. Ayers did not respond to any of the notices.

---

<sup>2/</sup> 42 U.S.C. § 2135(c).

By letter dated October 29, 1980, the Attorney General advised the NRC that no antitrust hearing would be necessary with respect to the transfer of ownership interests from Duke Power to NCEMC and Saluda River, as sought by the application to amend the Catawba Unit 1 construction permit. Pursuant to Section 105c(5) of the Atomic Energy Act,<sup>3/</sup> the Attorney General's advice letter was published in the Federal Register on November 14, 1980. 45 Fed. Reg. 75393. This November 14th notice also provided that:

Any person whose interest may be affected by this proceeding may, pursuant to § 2.714 of the Commission's "Rules of Practice," 10 CFR Part 2, file a petition for leave to intervene and request a hearing on the antitrust aspects of the application. Petitions for leave to intervene and requests for hearing shall be filed by December 15, 1980, either (1) by delivery to the NRC Docketing and Service Branch at 1717 H Street, N.W., Washington, D.C. or (2) by mail or telegram addressed to the Secretary, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, ATTN: Docketing and Service Branch.

B. The Ayers Letter

As of the close of business on December 15, 1980, no petitions for intervention or requests for hearing had been received. The Staff nevertheless waited until December 19, 1980, before commencing the final approval process for the Duke Power license amendment because of the possibility that there might be a letter as yet undelivered.

In the early afternoon of Friday, December 19, 1980, a member of the NRC Staff telephoned the Office of the Secretary to determine whether any responses to the November 14th notice had been received, and was advised

---

<sup>3/</sup> 42 U.S.C. § 2135c(5). See also, 10 CFR § 2.102(d)(3).

that there were none. In light of that information, the Antitrust Division of OELD then concurred in the issuance of the license amendment and sent it to other NRC offices for similar action. Later that same day around 4:00 p.m., the Ayers Letter, dated December 15, 1980, was time-stamped by the Office of the Secretary, Docketing and Service Branch, but no notification of the Staff was made. To date, the envelope containing the Ayers Letter has not been located, and the Staff has no other information as to the actual mailing date. The Ayers Letter states, in full:

I am a member of the Blue Ridge Electric Membership Corporation of northwestern North Carolina, and as such I am seriously concerned with the pending purchase by the North Carolina EMC's (which includes BREMCO of 56.25% of Duke Power's Catawba) reactor. I feel the safety of this Westinghouse unit is clearly in question, vis-a-vis the McGuire containment adequacy question being pursued by the ASLB at this time. Further I question the financial advisability of the NCEMC purchase - we are in essence giving Duke Power a blank check for construction costs plus a guaranteed profit. Because of these and other reasons, I request that the NRC hold hearings on this matter preferably in Boone.

On Monday, December 22, 1980, the OELD Hearing Division (which deals with health, safety, and environmental matters but does not have any anti-trust responsibilities) also reviewed and concurred in the license amendment. On Tuesday, December 23, 1980, the license amendment was formally issued and sent out to Duke Power, effective as of that date. By this time, the Ayers Letter had apparently been forwarded only to two NRC administrative offices not directly involved in the issuance of the Duke Power amendment - the Atomic Safety and Licensing Board Panel and the NRC Document Management Branch. The Document Management Branch forwarded the Ayers Letter to TERA, a contractor that indexes and computerizes documents the NRC receives. No other distribution or notifications were made by that Branch.

On the afternoon of Wednesday, December 24, 1980, Mr. Ayers telephoned an attorney in the Hearing Division (whom he apparently knew from another NRC proceeding) and mentioned his hearing request while inquiring if his letter had been received. The attorney receiving the call was not involved in the Catawba license amendment matter, but notified others who were more familiar with the instant matter. This marked the first time when NRC Staff members involved with the license amendment became aware of the existence of the Ayers request.

By Monday, December 29, 1980, contact with Mr. Ayers had been attempted but was unsuccessful. Also by this date, TERA had indexed the Ayers Letter and returned it to the NRC Document Management Branch. Finally, on Tuesday, December 30, 1980, a Hearing Division attorney was able to obtain a copy of the Ayers Letter from the Document Management Branch. At that point, the Staff began its consideration of the genesis and status of the Ayers Letter and of its relationship to the Duke Power license amendment.

### III. THE PRESENT STATUS OF THIS MATTER

#### A. Ambiguities Found in the Ayers Letter

An examination of the Letter reveals that it makes no reference to the Federal Register Notice providing an opportunity for an antitrust intervention petition to be filed no later than December 15, 1980, nor does it reference an NRC docket number. The Staff, however, understands that in his telephone conversation of December 24, 1980, Mr. Ayers did mention "waiting until the last day" to send the Letter. Further, there is the coincidence of dates between the Ayers Letter of December 15, 1980 and the close of the

intervention period on that same date. In addition, the Ayers Letter mentions the "pending purchase by the North Carolina EMC's (which includes BREMCO) of 56.25% of Duke Power's Catawba 1 reactor," which is referred to in the Federal Register Notice of November 14, 1980. Finally, the Letter questions the "financial advisability" of the NCEMC purchase.

On the other hand, the Ayers Letter states: "I feel the safety of this Westinghouse unit is clearly in question, vis-a-vis the McGuire containment adequacy question being pursued by the ASLB at this time." If construed as a request for a hearing relating to health, safety, or environmental matters, it would be premature since opportunity for a hearing on the Catawba operating license has not yet been noticed. To the extent that the Ayers Letter is intended to express concern about public health and safety considerations attendant to this amendment, the Staff has reviewed the proposed action and concluded that no significant hazards consideration is involved. Notice to this effect will be published in the Federal Register shortly. Mr. Ayers also could elect himself to resubmit this Letter as a request for action under 10 CFR § 2.206 but, under the present facts and in view of the requirements of § 2.206, there is no basis to treat the Ayers Letter as such a request.

The Ayers Letter is, in our opinion, best viewed as a request for a hearing pursuant to the antitrust notice, and such request appears to be timely under the presently known facts, given the December 15, 1980 date on the Letter. Were it not for the inopportune sequence of events, the license



amendment would not have been issued until the issues raised by the Ayers Letter had been adjudicated.<sup>4/</sup>

B. NRC Pre-Licensing Antitrust Review

An electric utility seeking an NRC license to become an owner of a nuclear power facility must undergo NRC pre-licensing antitrust review and obtain NRC antitrust approval before it can obtain the license.<sup>5/</sup> Completion of the pre-licensing antitrust review ordinarily occurs after an opportunity to request a hearing is provided,<sup>6/</sup> and after any timely hearing request is adjudicated. This regime applies to the situation where utilities are seeking to become co-owners and co-licensees through a license amendment after a construction permit has been granted to the initial owner. See, e.g. South Carolina Electric and Gas Company, CLI-80-28, 11 NRC 817, 830 (1980); Detroit Edison Company (Enrico Fermi Atomic Power Plant, Unit No. 2), ALAB-475, 7 NRC 752 (1978), aff'g LBP-78-13, 7 NRC 583 (1978).

Under the unusual circumstances set forth above and despite the efforts of the NRC Staff to determine if a timely hearing request had been received, the license amendment received concurrence from the NRC Antitrust Division

---

<sup>4/</sup> Intervention petitions and requests for hearing cannot properly raise antitrust issues and health and safety in the same proceeding. Houston Lighting and Power Co. (South Texas Project, Unit Nos. 1 and 2), ALAB-381, 5 NRC 582, 589 (1977); Public Service Co. of Indiana (Marble Hill Nuclear Generating Station, Units 1 and 2), ALAB-316, 3 NRC 167 (1976).

<sup>5/</sup> Section 105c of the Atomic Energy Act of 1954, as amended, 42 U.S.C. § 2135c; Houston Lighting and Power Co. (South Texas Project, Units Nos. 1 and 2), CLI-77-13, 5 NRC 1303 (1977).

<sup>6/</sup> Sections 105c(5) and 189 of the Atomic Energy Act of 1954, as amended, 42 U.S.C. §§ 2135c(5), 2239.

before the Ayers Letter arrived at the Office of the Secretary of the Commission. Final issuance of the license amendment to Duke Power, NCEMC, and Saluda River occurred on December 23, 1980, before any NRC office with substantive approval responsibilities was aware of the existence of the Ayers Letter.

C. Staff's Request for Expedited Action

In light of the highly unusual circumstances described above, the Staff believes that the most appropriate action is for the Board to act in an expedited manner on the Ayers Letter.<sup>7/</sup> The Staff expects this expedited course of action to achieve the most orderly resolution possible, primarily because the complete failure of the Ayers Letter to establish standing under 10 CFR § 2.714 or to meet the criteria for initiating an antitrust hearing should result in a prompt decision denying his request. The Staff considered and rejected the idea of requesting the Board to suspend or stay the effectiveness of the license amendment. If expedited action is taken, however, a suspension or stay of the effectiveness of the license amendment would be unnecessary.

Another positive aspect of an immediate resolution of this matter by a Licensing Board is that all interested parties, including not only Mr. Ayers but also Duke Power and the prospective co-owners, will have an opportunity to present their views of this matter. As the Staff is seeking expedited

---

<sup>7/</sup> The Staff has been advised by the Rural Electrification Administration that the transfer of ownership has not yet occurred. Due to certain unresolved REA administrative items, this transfer is not expected to occur until February 13, 1981 at the earliest.



treatment of this matter, the Staff also takes this opportunity to respond to the substantive merits of whether the Ayers Letter meets the applicable standards governing requests for antitrust hearings.

IV. THE AYERS LETTER DOES NOT ESTABLISH STANDING AND DOES NOT MEET THE REQUIREMENTS FOR ANTITRUST HEARING REQUESTS

A. Standing and Mr. Ayers' Interest

The Commission has held that requests for hearings and intervention as a matter of right into an NRC licensing proceeding under Section 189a. of the Atomic Energy Act of 1954, as amended, and 10 CFR § 2.714, are governed by judicial principles of standing. Portland General Electric Company (Pebble Springs Nuclear Plant, Units 1 and 2), CLI-76-27, 4 NRC 610 (1976). The Ayers Letter must, therefore, meet these judicial standing principles, which require a showing that: (1) some injury has occurred or will probably result from the action involved [the "injury in fact" test], and (2) that the interest alleged is "arguably within the zone of interest" protected by the statute [the "zone of interests" test]. See, e.g., Sierra Club v. Morton, 405 U.S. 727 (1972); Warth v. Seldin, 422 U.S. 490 (1975); Virginia Electric and Power Co. (North Anna Power Station, Units 1 and 2), ALAB-342, 4 NRC 98, 102-103 (1976); Detroit Edison Company (Enrico Fermi Atomic Power Plant, Unit No. 2), LBP-78-13, 7 NRC 583 (1978), aff'd, ALAB-475, 7 NRC 752 (1978).

1. The "Injury in Fact" Test

The Ayers Letter does not indicate the connection between Mr. Ayers, Blue Ridge, NCEMC, or Duke Power, nor does it mention any antitrust concern. Mr. Ayers states only that he "question[s] the financial advisability of the

NCEMC purchase - we are in essence giving Duke Power a blank check for construction costs plus a guaranteed profit." The Staff can only assume that Mr. Ayers intends to assert that an injury to him, ostensibly as a ratepayer of Blue Ridge, might occur from higher electric rates resulting from NCEMC's participation in Catawba Unit 1.<sup>8/</sup> Even if one presumes a hypothetical transfer of allegedly higher costs to an ultimate individual customer of Blue Ridge due to the NCEMC purchase of an interest in Catawba Unit 1, these purchase costs and hypothetical assumptions are too remote and speculative to establish any "injury in fact."

The same type of ratepayer complaint was rejected as a basis for intervention in Detroit Edison Company, supra. There the Licensing Board stated:

The thrust of Petitioner's complaints is an attack on the business judgment of the generation and transmission cooperative (Northern Michigan) in buying an ownership interest in the Fermi 2 facility. As the Appeal Board has noted in another context (an environmental cost-benefit balance): "In the scheme of things, we leave such matters to the business judgment of the utility companies and to the wisdom of the State regulatory agencies responsible for scrutinizing the purely economic aspects of proposals to build new generating facilities."<sup>9/</sup>

The Licensing Board then went on to find that such claims by a petitioner did not demonstrate sufficient "injury in fact" to establish standing as a matter of right.<sup>10/</sup>

---

<sup>8/</sup> NCEMC is the parent organization of a group of rural electric cooperatives, one of which is Blue Ridge Electric Membership Corporation.

<sup>9/</sup> 7 NRC at 589-90 (footnote omitted).

<sup>10/</sup> Id. at 590. See also, ALAB-475, 7 NRC at 756.

The Ayers Letter has precisely the same deficiencies. His request fails to show the "direct" stake needed to demonstrate injury in fact. Any impact on Mr. Ayers' rates is wholly speculative and too remote to be a cognizable "injury in fact" before the NRC, particularly in light of the decision in Detroit Edison. Absent a showing of any "injury in fact" to Mr. Ayers, the Ayers Letter does not establish this essential element of standing.

2. The "Zone of Interests" Test

The Ayers Letter, to merit a hearing, must also show that his interests are within the "zone of interests" to be protected by the anti-trust provisions of Section 105 of the Atomic Energy Act, as amended.<sup>11/</sup> Portland General Electric Co. (Pebble Springs Nuclear Plant Units 1 and 2), supra, at 613-614; Virginia Electric and Power Co. (North Anna Power Station Units 1 and 2), supra, at 106-107 (1976); Detroit Edison Co. (Enrico Fermi Atomic Power Plant, Unit No. 2), supra, at 756-58. As the Ayers Letter fails to establish that Mr. Ayers is a ratepayer complaining of an antitrust problem, any interest which can be deduced from the letter is beyond the scope of interests protected by Section 105. In addition, there is no connection between the "zone of interests" protected by Section 105 and the "financial advisability" question which the Ayers Letter raises.

The Appeal Board, in Detroit Edison, supra, specifically rejected standing for ratepayers based on such representations:

Boiled down, Mrs. Drake's arguments amount to dissatisfaction with the cooperatives' management decision to satisfy an expected need for more baseload power by acquiring part of the Fermi nuclear plant. She would prefer some

---

<sup>11/</sup> 42 U.S.C. § 2135.

other course; she fears this one will raise her electrical rates inordinately.

But the Nuclear Regulatory Commission and its adjudicatory boards do not sit to supervise the general business decisions of the public utility industry nor to second-guess the judgment of those who do; that task is entrusted to others. Injuries from those causes are beyond the zone of interests that Section 105c of the Atomic Energy Act was designed to protect or regulate.<sup>12/</sup>

The Ayers Letter fails, then, to establish the second criteria for standing to request an antitrust hearing.

B. Requirements of 10 CFR § 2.714 and the Wolf Creek Antitrust Criteria

Section 2.714(a)(2) of the Commission's Rules of Practice requires that request for a hearing or a petition to intervene in a Commission proceeding set forth:

- (1) the interest of the petitioner in the proceeding;
- (2) how that interest may be affected by the proceeding;
- (3) the specific aspects of the subject matter of the proceeding as to which intervention is sought; and
- (4) a petitioner's contentions with regard to each of those aspects.

In order for a hearing request to be granted, the Board designated to rule on the request must find that these requirements are satisfied. Mississippi Power and Light Co. (Grand Gulf Nuclear Station, Units 1 and 2), ALAB-130, 6 AEC 423 (1973); Pacific Gas and Electric Company (Stanislaus Nuclear Project, Unit 1), LBP-77-26, 5 NRC 1017, 1021-1025 (1977).

---

<sup>12/</sup> 7 NRC at 757-58 (footnote omitted).

In particular, in determining whether a hearing request is sufficient to invoke the Commission's antitrust jurisdiction, the request must also meet requirements set forth in Wolf Creek:

- (1) describe the situation allegedly inconsistent with the antitrust laws which is the basis for intervention;
- (2) describe how that situation conflicts with the policies underlying the Sherman Act, Clayton Act, or Federal Trade Commission Acts;
- (3) describe how the situation allegedly inconsistent with the antitrust laws would be created or maintained by activities under the license;
- (4) identify the specific relief sought; and
- (5) explain why the relief sought fails to be satisfied by the license conditions, if any, which have been proposed by the Department of Justice.<sup>13/</sup>

The Ayers Letter thus fails to meet the standards set forth in Section 2.714, as amplified by NRC antitrust decisions. There is simply nothing which can be construed to raise legitimate antitrust concerns under the Wolf Creek criteria; the failure of Mr. Ayers to state cognizable antitrust

---

<sup>13/</sup> Kansas City Gas and Electric Co. (Wolf Creek Generating Station, Unit No. 1), ALAB-279, 1 NRC 559 (1975) (Wolf Creek I). See also Louisiana Power & Light Co. (Waterford Steam Generating Station, Unit 3), CLI-73-7, 6 AEC 48 (1973) (Waterford I); Louisiana Power & Light Co. (Waterford Steam Generating Station, Unit 3), CLI-73-25, 6 AEC 619 (1973) (Waterford II); Pacific Gas and Electric Company (Stanislaus Nuclear Project, Unit 1), LBP-77-26, 5 NRC 1017 (1977).

aspects goes far beyond a mere inability to articulate them well -- they are completely absent.

First, the Ayers Letter does not describe a situation inconsistent with the antitrust laws in the barest degree, much less with the specificity necessary to merit a hearing. Concomitantly, the Ayers Letter plainly omits allegations showing how a situation allegedly inconsistent with the antitrust laws would be created or maintained by activities under the license, and fails to identify any relief sought. Mr. Ayers only "question[s] the financial advisability of the NCEMC purchase - we are in essence giving Duke Power a blank check for construction costs plus a guaranteed profit." This is not an antitrust or anticompetitive allegation, but has been held by the Appeal Board in Detroit Edison to be a business judgment matter not appropriate for NRC antitrust review. It should also be kept in mind that widespread participation in nuclear units (particularly by smaller utilities such as cooperatives) was a primary goal of Congress in enacting Section 105c, and is one element of relief that is ordered, when appropriate, after an NRC antitrust hearing.<sup>14/</sup> To the extent Mr. Ayers questions the participation of NCEMC in Catawba Unit 1 and in the absence of any other demonstration of antitrust aspects, the Ayers Letter fails to raise concerns that are inconsistent with Section 105 and its legislative history.<sup>15/</sup>

As for the general criteria of Section 2.714, the Ayers Letter is deficient. While the Ayers Letter makes mention of his concern about the

---

<sup>14/</sup> Detroit Edison Co. (Enrico Fermi Atomic Power Plant, Unit No. 2), ALAB-475, 7 NRC 752, 756-57 (1978).

<sup>15/</sup> Id.; see also, LBP-78-13, 7 NRC at 595.



financial advisability of the NCEMC purchase, the Letter fails to show Mr. Ayers' personal interest or how that might be affected by the license amendment. The burden is not on others to engage in speculation on what his interest might be, but rather on Mr. Ayers to state with specificity the elements set forth in Section 2.714. The reasons that demonstrate standing is absent here serve also to illustrate that the interest of the petitioner is not sufficient to meet the requirements of 10 CFR § 2.714. In addition, the Ayers Letter fails to mention any aspects of a hearing on which he wishes to be heard.

Mr. Ayers is not, however, without avenues to pursue legitimate complaints he may have in the areas of health and safety. At the time the Catawba operating license hearings are noticed, he may seek to be heard. In addition, the availability of procedures under 10 CFR § 2.206 remain should he elect not to await the Catawba operating license phase. Since the Ayers Letter is so totally lacking in merit with regard to the standards for initiating an antitrust hearing, there is no reason to expect that an opportunity to redraft the request for a hearing would result in a product which would satisfy the applicable requirements.

C. Discretionary Intervention

In addition to standing as a matter of right, the Commission has determined that a petition for intervention may be granted as a matter of discretion to certain petitioners who may make some contribution to the proceeding. Portland General Electric Co. (Pebble Springs Nuclear Plant, Units 1 and 2), CLI-76-27, 4 NRC at 610, 616-617 (1976). Although the Ayers Letter is cast

as a request for a hearing and does not explicitly request intervention, we will consider it as such for purposes of discussing discretionary intervention. In determining whether to grant intervention as a matter of discretion, the Licensing Boards have been directed to consider all the facts and circumstances of a particular case, including some of the factors set forth in 10 CFR § 2.714(a) and (d). See Virginia Electric Power Co. (North Anna Power Station, Units 1 & 2), ALAB-363, 4 NRC 631 (1976). Factors considered have also included:

- (1) a petitioner's showing of significant ability to contribute on substantial issues of law or fact which will not be otherwise properly raised or presented;
- (2) the specificity of such ability to contribute on those substantial issues of law or fact;
- (3) justification of time spent on considering the substantial issues of law or fact;
- (4) provision of additional testimony, particular expertise, or expert assistance;
- (5) specialized education or pertinent experience.<sup>16/</sup>

The Staff maintains that the one-page letter of Mr. Ayers fails to make even a rudimentary showing of any of the factors set forth in § 2.714(a) and (d) or of those other factors listed above. Since the Ayers Letter fails to set forth any anticompetitive concerns, there cannot be demonstrated any

---

<sup>16/</sup> Portland General Electric Co. (Pebble Springs Nuclear Plant, Units 1 & 2), *supra*; Public Service Co. of Oklahoma (Black Fox Units 1 and 2, ALAB-397, 5 NRC 1143 (1977) affirming in part LBP-77-17, 5 NRC 657 (1977); Tennessee Valley Authority (Watts Bar Nuclear Plant, Units 1 and 2), ALAB-413, 5 NRC 1418 (1977).

"significant ability to contribute on substantial issues of law or fact." Also, Mr. Ayers Letter fails to reveal any allegation that would lead to a reasonable expectation that he would provide expertise, expert assistance, or additional testimony that would be helpful to any proceeding. This seems especially true where there is no Catawba antitrust proceeding now under way, where the Attorney General has advised that no antitrust hearing is necessary, and where the Ayers Letter is the lone request for a hearing. In such circumstances, a petitioner's showing on the criteria for discretionary intervention must be particularly strong.<sup>17/</sup>

As the Appeal Board said in Detroit Edison Company:

What we said in Watts Bar applies here:  
"Certainly, before a hearing is triggered at the instance of one who has not alleged any cognizable personal interest in the operation of the facility, there should be cause to believe that some discernible public interest will be served by the hearing. If the petitioner is unequipped to offer anything of importance bearing upon [subject matter], it is hard to see what public interest conceivably might be furthered by nonetheless commencing a hearing at his or her behest."<sup>18/</sup>

In the absence of any basis for determining that Mr. Ayers would make a "valuable contribution ... to our decision-making process,"<sup>19/</sup> or otherwise further the public interest, the Ayers Letter does not warrant the granting of discretionary intervention.

---

<sup>17/</sup> Tennessee Valley Authority (Watts Bar Nuclear Plant, Units 1 & 2), ALAB-413, 5 NRC 1418, 1422 (1977); Detroit Edison Co. (Enrico Fermi Atomic Power Plant, Unit No. 2), ALAB-475, 7 NRC 752, 758 n. 19 (1978).

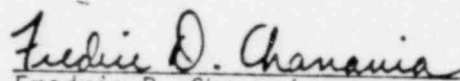
<sup>18/</sup> ALAB-475, 7 NRC at 758 n. 19.

<sup>19/</sup> Portland General Electric Co. (Pebble Springs Nuclear Plant, Units 1 and 2), supra, at 617.

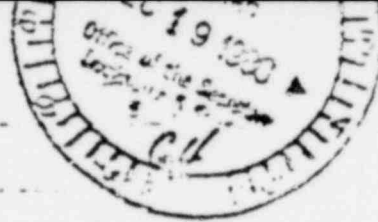
V. CONCLUSION

Mr. Ayers failure to show a direct injury in fact and his failure to set forth any interest which meets the "zone of interests" test establish that he lacks the requisite standing. In addition, the Ayers Letter, on its face, does not satisfy the general requirements of 10 CFR § 2.714 or those set forth in Wolf Creek for antitrust hearings and intervention, which must be met in all requests. Further, no showing on the factors which are necessary to permit discretionary intervention is made in the Ayers Letter. Accordingly, the Licensing Board should expeditiously deny the Ayers request.

Respectfully submitted,

  
Fredric D. Chanania  
Counsel for NRC Staff

Dated at Bethesda, Maryland  
this 9th day of January, 1981.



RT 3 Box 662  
Boone, N.C. 28607  
December 15, 1960

Nuclear Regulatory Commission  
Washington, D.C. 20555

Dear Sirs:

I am a member of the Blue Ridge Electric Membership Corporation of northwestern North Carolina, and as such I am seriously concerned with the pending purchase by the North Carolina EMC's (which includes BREM) of 56.25% of Duke Power's Catawba 1 reactor. I feel the safety of this West-  
inghouse unit is clearly in question, vis-a-vis the McGuire containment adequacy questions being pursued by the ASLB at this time. Further I question the financial advisability of the NCEMC purchase - we are in essence giving Duke Power a blank check for construction with plus a guaranteed profit. Because of these and other reasons, I request that the NRC hold hearings on this matter preferably in Boone.

dup of  
801229021

H

Sincerely,  
Harvard G. Ayers

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of )

DUKE POWER COMPANY )

(Catawba Nuclear Station, Unit No. 1 )

Docket No. 50-413A

CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF'S ANSWER TO REQUEST FOR AN ANTITRUST HEARING BY HARVARD G. AYERS" in the above-captioned proceeding have been served on the following by deposit in the United States mail, first class, or, as indicated by an asterisk through deposit in the Nuclear Regulatory Commission's internal mail system, this 9th day of January, 1981.

B. Paul Cotter, Jr., Esq., Chairman  
Atomic Safety and Licensing Board  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555 \*

Docketing and Service Section  
Office of the Secretary  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555 \*

Jerome Saltzman, Chief  
Utility Finance Branch  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555 \*

Atomic Safety and Licensing Board  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555 \*

Joseph B. Knotts, Jr., Esq.  
J. Michael McGarry, III, Esq.  
Debevoise & Liberman  
1200 Seventeenth Street, N.W.  
Washington, D.C. 20036

William L. Porter, Esq.  
Duke Power Company  
P. O. Box 33189  
Charlotte, North Carolina 28242

North Carolina MPA-1  
Suite 208  
222 North Person Street  
Raleigh, North Carolina 27601

Harvard G. Ayers  
Rt 3 Box 662  
Boone, North Carolina 28607

Richard P. Wilson, Esq.  
Assistant Attorney General  
S. C. Attorney General's Office  
P. O. Box 11549  
Columbia, South Carolina 29211

William C. Wise, Esq.  
Ring Bldg. Suite 500  
1200 18th Street, N.W.  
Washington, D.C. 20036



State Clearinghouse  
Office of the Governor  
Division of Administration  
1205 Pendleton Street  
4th Floor  
Columbia, South Carolina 29201

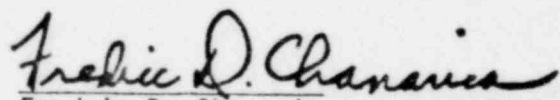
Attorney General  
P. O. Box 11549  
Columbia, South Carolina 29211

Attorney General  
Department of Justice  
Justice Building  
Raleigh, North Carolina 27602

Federal Energy Regulatory Commission  
825 North Capital Street, N.E.  
Washington, D.C. 20426

Chairman  
South Carolina Public Service  
Commission  
P. O. Box 11649  
Columbia, South Carolina 02903

Chairman  
North Carolina Utilities Commission  
430 North Salisbury Street  
Dobbs Building  
Raleigh, North Carolina 27602

  
Fredric D. Chanania  
Counsel for NRC Staff