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July 13, 1984

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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Before the Atomic Safety and Licensing Board

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In the Matter of)	
)	
METROPOLITAN EDISON COMPANY, <u>ET AL.</u>)	Docket No. 50-289-OLA
)	ASLBP 83-491-04-OLA
(Three Mile Island Nuclear)	(Steam Generator Repair)
Station, Unit No. 1))	

OFFICE OF SECRETARY
DOCKETING SERVICE

LICENSEE'S ANSWER TO COMMONWEALTH OF
PENNSYLVANIA'S MOTION FOR LEAVE TO PARTICIPATE

By motion dated July 9, 1984, the Commonwealth of Pennsylvania seeks to participate in the instant proceedings as an interested State pursuant to 10 C.F.R. § 2.715(c). The motion was received by Licensee on July 11, without prior notice, just days before the hearing is scheduled to begin on July 16. No explanation or showing of good cause for the extraordinarily late filing was offered by the Commonwealth.

Section 2.715(c) has no specific time limitations for the filing of a State's intent to participate. It does, however, state that the Licensing Board is to afford representatives of the interested State a "reasonable opportunity" for participation. Therefore, to the extent that any party to a proceeding considers the circumstances to be such that the Board's favorable disposition of a State's request would constitute an "unreasonable" opportunity to participate, that party should have the right to assert its opposition to the participation. Further, it is

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Licensee's position that the Licensing Board, under such conditions, would have both the duty and the power to exclude participation by a State under the provisions of 10 C.F.R. § 2.718. That regulation states that the presiding officer has the duty, for example, "to take appropriate action to avoid delay."

The Commonwealth's desire to participate in these proceedings comes as a surprise to Licensee. Licensee's technical personnel have kept Commonwealth's personnel advised of developments related to the steam generator repair. Licensee has also been keeping the Commonwealth informed by sending them copies of the filings in this proceeding, including documents originated by the Licensing Board and the other parties. The Commonwealth has given no indication that it intended to join the proceeding formally as a participant.

At this stage of the proceeding, Licensee is concerned primarily with avoiding a delay in the hearing process. Examining the Commonwealth's motion from that point of view, we note that the Commission has held that a tardy participant must "take the proceeding as he finds it." See Pacific Gas and Electric Co. (Diablo Canyon Nuclear Power Plant, Units 1 and 2), ALAB-600, 12 NRC 3, 8 (1980) citing Nuclear Fuel Services, Inc. (West Valley Reprocessing Plant, CLI-75-4, 1 NRC 273, 276 (1975)). See also Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1), LBP-83-13, 17 NRC 469 (1983). The Commonwealth's statement at paragraph 5 of its motion, that its participation "will

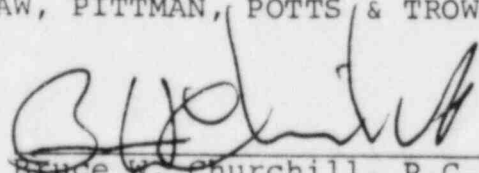
not cause delay or confusion and will not complicate this proceeding" would seem to reflect their intention to abide by this requirement. Moreover, when counsel for Licensee contacted the Commonwealth's counsel upon receipt of the motion, he was informed that the Commonwealth was familiar with the issues to be litigated and the testimony which had been filed by the parties, that he was unaware of problems with Licensee's proposed testimony and did not expect extensive cross-examination, and that the Commonwealth's participation thus could be expected to have little or no impact on the duration of the hearing.

Accordingly, Licensee does not here oppose the Commonwealth's motion.

Respectfully submitted,

SHAW, PITTMAN, POTTS & TROWBRIDGE

By


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Dated: July 13, 1984

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Station, Unit No. 1))

CERTIFICATE OF SERVICE

I hereby certify that copies of "Licensee's Answer to Commonwealth of Pennsylvania's Motion for Leave to Participate" were served, by deposit in the U.S. Mail, first class, postage prepaid, to all those persons on the attached Service List, this 13th day of July, 1984.



Bruce W. Churchill, P.C.

Dated: July 13, 1984

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