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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

BEFORE THE PRESIDING OFFICER

In the Matter of)
EDWARD WALLACE) Docket No. 50-289 EW
(GPU Nuclear, Three Mile Island,)
Unit No. 1))

NRC STAFF ANSWER TO COMMONWEALTH
OF PENNSYLVANIA'S PETITION TO
PARTICIPATE AS AN INTERESTED STATE

I. INTRODUCTION

In CLI-86-09, issued May 15, 1986, the Commission issued an Advisory Opinion and Notice of Hearing (Notice) in response to a request for hearing by Edward Wallace on the issue of Mr. Wallace's involvement in Licensee's December 5, 1979 response to an October 25, 1979 Notice of Violation. On June 30, 1986 the Commonwealth of Pennsylvania filed a Petition for Leave to Participate as an Interested State (Petition) pursuant to the provisions of 10 C.F.R. § 2.715(c). Absent an intervention petition meeting the requirements of 10 C.F.R. § 2.714, the Commonwealth's Petition should be denied. ^{1/}

^{1/} If a hearing were to be held, the Staff would not object to the Commonwealth's participation as an interested State.

II. DISCUSSION

The Commonwealth has not requested a hearing in accordance with 10 C.F.R. § 2.714. Rather, the Commonwealth has requested leave to participate as an interested State pursuant to the provisions of 10 C.F.R. § 2.715. Petition at 1. Under both the specific terms of CLI-86-09, as set forth below, and applicable Commission case law, a petition filed pursuant to 10 C.F.R. § 2.715(c) seeking interested State status does not trigger a hearing.

The Notice provides that any petitions to intervene in this proceeding by persons who had filed comments in response to an earlier invitation by the Commission (see CLI-85-19) ^{2/} must be filed in accordance with 10 C.F.R. § 2.714, within 45 days of the Notice, and that no other interventions would be permitted except on a balancing of the factors in 10 C.F.R. § 2.714(a)(1). The Notice further provided, inter alia, that if no person intervenes against Mr. Wallace and the NRC Staff does not advocate a position against Mr. Wallace, then the proceeding shall be terminated and an earlier Commission-imposed notification requirement concerning the employment of Mr. Wallace at TMI-1 will be removed.

No party has filed a petition to intervene. The NRC Staff, by letter to the Presiding Officer filed contemporaneously with this Pleading, has stated that it does not advocate a position against Mr. Wallace. ^{3/} Accordingly, in the absence of any petition to intervene, and since the

^{2/} The Commonwealth filed such comments. See Commonwealth of Pennsylvania's Comments on Commission Order CLI-85-19, January 24, 1986.

^{3/} See letter from Mary E. Wagner to Judge Ivan W. Smith, July 17, 1986.

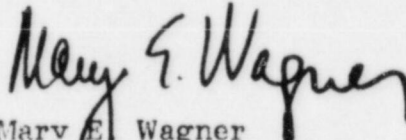
Staff does not advocate a position against Mr. Wallace, the Commission's Notice provides that there will be no hearing.

It is clear under Commission case law that in a situation such as that presented here, where a hearing is not mandatory, the filing (or acceptance) of a petition to participate under § 2.715(c) permits the petitioning state or local jurisdiction to participate in the adjudicatory hearing only if one is held. Dusquesne Light Company, et al. (Beaver Valley Power Station, Unit-2), LBP-84-6, 19 NRC 393, 426 (1984) (no hearing is required in an operating license proceeding when no litigable contention has been submitted in accordance with 10 C.F.R. § 2.714); Niagara Mohawk Power Corp. et al. (Nine Mile Point Nuclear Station, Unit 2), IBP-83-45, 18 NRC 213, 216 (1983) (no hearing is required on an operating license application without a request for a hearing in accordance with § 2.714); see Northern States Power Company (Tyrone Energy Park, Unit 1), CLI-80-36, 12 NRC 523, 527 (1980) (separate views of Chairman Ahearne and Commissioner Hendrie). Accordingly, absent an intervention petition and in light of the fact that the Staff has not taken a position against Mr. Wallace, under both the terms of CLI-86-09 and applicable case law, there will be no hearing and the Commonwealth's request for interested state status, therefore, should be denied.

III. CONCLUSION

For the reasons set forth above, the Commonwealth's Petition should be denied.

Respectfully submitted,

A handwritten signature in cursive script, reading "Mary E. Wagner". The signature is written in dark ink and is positioned above the printed name and title.

Mary E. Wagner
Counsel for NRC Staff

Dated at Bethesda, Maryland
this 17th day of July, 1986

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CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF ANSWER TO COMMONWEALTH OF PENNSYLVANIA'S PETITION TO PARTICIPATE AS AN INTERESTED STATE" 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, by deposit in the Nuclear Regulatory Commission's internal mail system, this 17th day of July, 1986:

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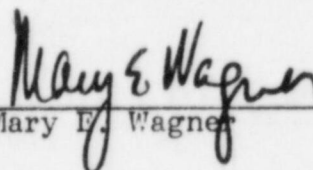
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