



II. BACKGROUND

Applicants have filed approximately 16 motions for summary disposition on pipe support design and design QA issues, as part of their Plan <sup>2/</sup> to address the Board's "Memorandum and Order (Quality Assurance for Design)" (December 28, 1983). In accordance with 10 C.F.R. § 2.749(a), CASE has begun filing its answers to the Applicants' summary disposition motions. In a telephone conference call on August 22, 1984, the Applicants requested and were granted leave to file replies to CASE's answers to the summary disposition motions. Tr. 13,995. At that time, the Board specifically noted that Applicants had no right of reply to CASE's answers, but that the Board would permit Applicants to file such replies only because the Board perceived that CASE raised "technical issues that [the Board] was not sure were or were not relevant. That is really the reason that we wanted a further response." Id.

CASE filed an answer to Applicants' summary disposition motion on consideration of friction forces <sup>3/</sup> to which Applicants filed a reply brief. <sup>4/</sup> CASE then filed the contested answer to the Applicant' reply on October 1, 1984, and Applicants submitted their Motion.

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<sup>2/</sup> Applicants' Plan to Respond to Memorandum and Order (Quality Assurance for Design) (February 3, 1984).

<sup>3/</sup> CASE's Answer to Applicants' Motion for Summary Disposition Regarding Consideration of Friction Forces in the Design of Pipe Supports with Small Thermal Movements (August 6, 1984).

<sup>4/</sup> Applicants' Reply to CASE's Answer to Applicants' Motion for Summary Disposition Regarding Consideration of Friction Forces (September 19, 1984).

Following the filing of Applicants' Motion, the Board indicated that it would defer ruling on the Applicants' Motion. The Board also stated that CASE's answers to Applicants reply briefs would be considered on a case-by-case basis, with CASE having to show that it was responding to new and significant information raised for the first time in Applicants' reply briefs. <sup>5/</sup>

In the October 23, 1984 telephone conference call with the parties, the Board reiterated its intent to defer ruling on the Applicants' Motion, as well as its view that the Board would decide whether to strike any CASE answers to Applicants' reply briefs on a case-by-case basis. CASE would have to show that it was responding to significant new information. The Board permitted the parties to comment upon the Board's proposed standard as part of their answers to Applicants' Motion.

### III. DISCUSSION

10 C.F.R. § 2.749(a) provides an opportunity for parties to file answers supporting or opposing motions for summary disposition. However, there is no opportunity afforded as of right to the party submitting the summary disposition motion to reply to the other parties' answers. <sup>6/</sup>

10 C.F.R. § 2.749(a).

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<sup>5/</sup> Staff counsel apparently was not involved in or notified of the discussions which led to the Board's rulings in this matter.

<sup>6/</sup> The regulation does permit a party opposing the summary disposition motion to file an answer to a party supporting the motion. 10 C.F.R. § 2.749(a).

The Board, while specifically noting the dictates of 10 C.F.R. § 2.749(a), granted leave to Applicants to file replies to CASE's answers to their summary disposition motion. The Board specifically stated that the reason for allowing Applicants to respond to CASE's answers was the Board's perception that CASE's answers raised new technical issues which may or may not be relevant to the issue sought to be disposed of. Tr. 13,995.

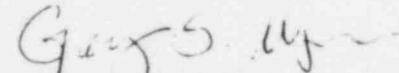
Resolution of the 16 summary disposition motions in an expeditious manner that is fair to all parties necessitates an acceptance by the parties that issues should be identified and addressed in a comprehensive and coherent manner, so that the Board's and parties' resources will be utilized in an efficient manner. An unfettered right by either Applicants or CASE to continue disagreeing over the same underlying technical issues in a never-ending set of reply briefs does not further the goal of expeditious resolution of the issues in a fair manner. In light of 10 C.F.R. § 2.749, and the limited purpose for which the Board granted leave for Applicants to file reply briefs, the Staff submits that the Board consider CASE's answers responding to the Applicants' reply only if CASE can show good cause for filing an answer. In these circumstances, good cause could exist if significant new information presented for the first time in Applicants' reply, e.g., new technical arguments, new calculations. Good cause may also exist if Applicants' reply grossly misrepresented CASE's technical position on a key point.

#### IV. CONCLUSION

The Staff supports the Board's view that CASE be permitted to file answers to Applicants' reply briefs only if CASE first shows that there

is significant new information relied upon by Applicants in their reply briefs. Similarly, the Staff opposes any further Applicant briefs responding to CASE's answer to Applicants reply briefs without leave of the Board.

Respectfully submitted,

  
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Dated at Bethesda, Maryland  
this 1st day of November, 1984