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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

DOCKETED
USNRC

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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OFFICE OF SECRETARY
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BRANCH

In the Matter of	)	
	)	
TEXAS UTILITIES ELECTRIC COMPANY, et al.	)	Docket Nos. 50-445 OL 50-446 OL
	)	
(Comanche Peak Steam Electric Station, Units 1 and 2)	)	

NRC STAFF RESPONSE TO CASE'S ANSWER TO, AND MOTIONS REGARDING, APPLICANTS' MOTIONS TO SET SCHEDULE FOR BRIEFS ADDRESSING CYGNA PHASE 3 ISSUES

I. INTRODUCTION

CASE filed a "Answer to, and Motions Regarding, Applicants' Motions to Set Schedule for Briefs Addressing Cygna Phase 3 Issues and for Expedited Responses" (November 2, 1984) ("CASE's Motion"). CASE's Motion opposes Applicants proposal [1/] that the parties identify their positions regarding the Cygna Phase 3 Report. CASE's Motion, pp. 2, 4-5. Instead, CASE agrees with the NRC Staff ("Staff") view [2/] that the Board should await the development of the Staff's position on the Cygna Phase 3 Report before directing the parties to identify issues for litigation. CASE's Motion, p. 6. However, CASE then suggests that both CASE and Applicants be permitted to file motions for summary disposition on the Cygna Phase 3 Report, as well as "all necessary responses until the issues are fully

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1/ Applicants' Motions to Set Schedule for Briefs Addressing Cygna Phase 3 Issues and for Expedited Responses (October 5, 1984) ("Applicants' Cygna Motion").

2/ NRC Staff Response to Applicants' Motions to Set Schedule for Briefs Addressing Cygna Phase 3 Issues and for Expedited Response (October 31, 1984) ("Staff's Cygna Response").

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explored." CASE's Motion, pp. 8-9. In support of this request, CASE contends that this procedure would "allow the transfer of information to continue," identify the issues regarding the Cygna Phase 3 Report which CASE and Applicants believe to be important, narrow the issues for hearing, and expedite the proceeding. Id., pp. 6-7.

The NRC Staff hereby responds to CASE's Motion.

II. BACKGROUND

The relevant background on the Cygna Energy Services ("Cygna") Phase 3 Report is set forth in the "NRC Staff Response to Applicants' Motions to Set Schedule for Briefs Addressing Cygna Phase 3 Issues and for Expedited Response" (October 31, 1984) ("Staff's Cygna Response"). Following the filing of the Staff's Cygna Response, as well as CASE's Motion, the Board issued a "Memorandum (Scheduling of Cygna Matters)" (November 7, 1984) ("Cygna Order"). In its Cygna Order, the Board stated that it would await the Staff's analysis of the Cygna Phase 3 Report before deciding what matters, if any, should be further litigated. Cygna Order, p. 1. However, the Board also directed all parties to comment by December 7, 1984 (or whatever later date the Staff files its analysis of the Cygna Phase 3 Report) on "the necessity for Cygna Phase IV matters [to be] considered in this proceeding." Id., pp. 1-2. In an informal telephone call, the Board indicated that its Cygna Order did not address CASE's Motion, and that the parties would have an opportunity to respond to that motion.

III. DISCUSSION

The NRC Staff opposes CASE's Motion. Contrary to CASE's assertion, CASE's proposed procedure permitting the filing of summary disposition motions (and replies by CASE and Applicants to each others responses) will not narrow the issues on the Cygna Phase 3 Report, or expedite this proceeding. The Staff reiterates the position set forth in the Staff's Cygna Response that until the Staff has completed its review and developed its position on the Cygna Phase 3 Report, the Staff will be unable to assist the Board in the development of a comprehensive and coherent record on this subject. The Staff also reiterates that the overlap of issues between the Cygna Phase 3 Report, and Applicants' summary disposition motions can only result in unnecessary litigation of the same issues in context of the Cygna Phase 3 Report. Staff's Cygna Response, pp. 3-4. Under these circumstances, the Staff concludes that the filing of summary disposition motions on the Cygna Phase 3 Report prior completion of the Staff's evaluation would be premature and unlikely to result in expeditious resolution of Cygna Phase 3 issues.

The Staff also notes that CASE implies that it has not yet completed its review of the Cygna Phase 3 Report, as well as explicitly stating that its two engineering consultants have been engaged in answering Applicants' motions for summary disposition. CASE's Motion, p. 5, note 2. If CASE's representations are true, the Staff submits that any summary disposition motions filed by CASE on the Cygna Phase 3 Report would be without the benefit of CASE's complete review of the Report. Thus, any CASE summary disposition motions on Cygna Phase 3 Report would be premature, and possibly result in the inefficient use of the parties' resources expended

in responding to any summary disposition motions, should CASE subsequently discover in completing its review of the Cygna Phase 3 Report that an issue it earlier identified in summary disposition motion is no longer valid. The Staff concludes that adoption of CASE's proposal will not expedite this proceeding in a reasonable fashion.

IV. CONCLUSION

For the reasons set forth above, the Board should decline to adopt the procedure urged by CASE in its Motion.

Respectfully submitted,

Geary S. Mizuno
Counsel for NRC Staff

Dated at Bethesda, Maryland
this 15th day of November, 1984

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CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF RESPONSE TO CASE'S ANSWER TO, AND MOTIONS REGARDING, APPLICANTS' MOTIONS TO SET SCHEDULE FOR BRIEFS ADDRESSING CYGNA PHASE 3 ISSUES" 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 15th day of November, 1984:

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