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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of	)	
TEXAS UTILITIES ELECTRIC	)	Docket Nos. 50-445 and
COMPANY, ET AL.	)	50-446
(Comanche Peak Steam Electric	)	(Application for
Station, Units 1 and 2)	)	Operating Licenses)

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APPLICANTS' ANSWER TO CASE'S MOTION AND  
OFFER OF PROOF REGARDING CASE'S FIRST  
MOTION FOR SUMMARY DISPOSITION REGARDING  
CERTAIN ASPECTS OF THE IMPLEMENTATION OF  
APPLICANTS' DESIGN AND QA/QC FOR DESIGN

I. INTRODUCTION

Texas Utilities Electric Company, et al. ("Applicants") hereby submit their answer to CASE's "Motion and Offer of Proof Regarding CASE's First Motion for Summary Disposition Regarding Certain Aspects of the Implementation of Applicants' Design and QA/QC for Design," filed October 6, 1984.<sup>1</sup> For the reasons set forth below, Applicants urge the Board to dismiss CASE's motion for summary disposition as untimely and/or an improper use of summary disposition procedures. The Board should find that to

<sup>1</sup> Applicants and CASE agreed, and notified the Board, that Applicants would file their answer to CASE's first motion at this time, when their answer to CASE's second motion would be due. Applicants' answer to CASE's second motion was filed on November 9, 1984, with Applicants' response to the Board's memorandum regarding Applicants' retention of an independent academic expert.

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assure the efficient conduct of the proceeding the assertions in CASE's motion should be or should have been addressed in other contexts.

## II. BACKGROUND

On December 23, 1983, the Board issued its Memorandum and Order (Quality Assurance for Design). Therein the Board identified certain issues it believed required additional evidence in order for it to reach a decision concerning Applicants' pipe support design process. The Board requested that Applicants file a plan to respond to the Board's concerns. In response to that Memorandum and Order, Applicants submitted their "Plan to Respond to Memorandum and Order (Quality Assurance for Design)" on February 3, 1984. Each of the parties was afforded an opportunity to respond and did so.<sup>2</sup> The Board also commented on Applicants' Plan during the February and April, 1984, hearings (see Tr. 10,337-38, 13,115-23), where it stated that a satisfactory demonstration of the adequacy of Applicants' designs through its Plan was likely to provide the Board with adequate assurance as to Applicants' design QA process. Applicants considered the comments of each of the parties and the Board and supplemented their Plan on March 13, 1984.

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<sup>2</sup> CASE filed a "partial answer" to Applicants' Plan on February 10, 1984, and an additional "answer" on March 5, 1984. The NRC Staff filed comments on Applicants' Plan on March 9, 1984.

As Applicants completed the different segments of their Plan, they submitted motions for summary disposition regarding the various technical issues. The Board and parties agreed to this approach for resolving those issues and agreed that hearings would be held only if the Board was unable to reach a reasoned decision on written filings (Tr. 13,798, 13800-01; 13,803; Memorandum and Order (Written-Filing Decisions #1; some AWS-ASME Issues), June 29, 1984). After receiving the first group of CASE's answers to Applicants' motions the Board requested that Applicants respond to those answers (Tr. 13,995). The Board also established procedures by which CASE, and Applicants, may file subsequent pleadings on these issues (see Memorandum (Multiple Filings), October 31, 1984).

Simultaneous with the above process, the Board and parties have undertaken, on Applicants' motion,<sup>3</sup> to establish procedures for the resolution of issues raised in the Cygna Phase 3 Report. At present, the Board is awaiting completion of the Staff's review of Cygna Phase 3 before deciding on the procedures for addressing that report (Memorandum (Scheduling of Cygna Matters), November 7, 1984). Hearings have already been held on Phases 1 and 2 of the Cygna Report.

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<sup>3</sup> Applicants' Motions to Set Schedule for Briefs Addressing Cygna Phase 3 Issues and for Expedited Responses, October 5, 1984.



III. APPLICANTS' ANSWER TO CASE'S MOTION

CASE requests in the instant motion that the Board grant it "summary disposition" regarding "the implementation of Applicants' design and QA/QC for design." CASE's motion consists of a series of assertions regarding numerous issues at various stages of litigation. For the most part, those assertions concern the technical adequacy of the pipe support designs themselves. CASE's motion does not focus on any aspect of the quality assurance program for design. Rather, CASE asserts that what it perceives to be technical deficiencies in Applicants' designs evidence a deficient design process.

Applicants demonstrate below that CASE's assertions are not proper subjects for summary disposition. For the most part these technical issues have already been, or are in the process of being, litigated and, thus, summary disposition is inappropriate and/or untimely. The remaining issues are presently the subject of efforts to establish procedures for their resolution. Summary disposition on these matters is inappropriate at this time. To assure a fair and efficient process for resolving these issues the Board should dismiss CASE's motion and direct that CASE pursue these issues in their appropriate contexts and through established procedures.

A. CASE's Motion is Inconsistent With Procedures for Summary Disposition

The Rules of Practice contemplate the use of summary disposition procedures in advance of litigation of particular issues. Section 2.749(a) provides, in part, as follows:

There shall be annexed to the motion a separate, short and concise statement of the material facts as to which the moving party contends that there is no genuine issue to be heard. . . . The Board may dismiss summarily motions filed shortly before the hearing commences or during the hearing if the other parties or the Board would be required to divert substantial resources from the hearing in order to respond adequately to the motion. [10 C.F.R. §2.749(a) (emphasis added).]

Thus, summary disposition regarding matters which have already been litigated and for which additional proceedings are not contemplated is inconsistent with the Commission's Rules of Practice. Indeed, the correct procedure for addressing issues already litigated is proposed findings, in accordance with 10 C.F.R. §2.754.

1. Cygna Phases 1 and 2

A significant portion of CASE's "summary disposition" motion concerns matters raised in Cygna Phases 1 and 2.<sup>4</sup> Litigation of

<sup>4</sup> Appended hereto is an outline of the various issues raised by CASE in its Motion and cross-references to the context in which the issues were raised and in which they should be litigated. We note that CASE itself recognizes that the four categories of issues on which it bases its motion are: (1) CASE's original pipe support design testimony, (2) Cygna Phases 1 and 2, (3) Cygna Phase 3, and (4) Applicants' Motions for Summary Disposition (see Doyle Affidavit accompanying CASE's motion, at 75).

these matters occurred earlier this year and has been completed, with the exception of a few discrete Board questions. In fact, the Board indicated at the conclusion of those hearings that proposed findings on Cygna Phases 1 and 2 would be called for. Thus, contrary to CASE's claim (Motion at 8), there will be an opportunity to file proposed findings on these issues. Further, it would be patently unfair to Applicants and an inefficient use of the Board's and parties' time and resources to allow CASE to relitigate matters as to which months of litigation were already dedicated. CASE should be required to pursue the issues stemming from Cygna Phases 1 and 2 through proposed findings as contemplated by Commission regulation.<sup>5</sup>

## 2. CASE Original Allegations

Even more inappropriate for summary disposition are the allegations which were originally raised by CASE and addressed in CASE's proposed findings of fact on pipe support design issues, filed August 23, 1983. Not only is consideration of these matters through summary disposition inappropriate in that it is untimely and, thus, contrary to the Rules of Practice, but it is inconsistent with the procedure the Board established for resolution of these matters.

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<sup>5</sup> In that context CASE would be required to provide record citations, as well as clear and concise proposed findings of fact and conclusions of law, in accordance with 10 C.F.R. §2.754.



Those issues have already been the subject of Board decision and, to the extent the Board found additional evidence would be required for it to resolve the issues, separate procedures have already been established (i.e., Applicants' Plan) to provide that evidence. Each of the parties has had an opportunity to comment on those procedures and the Board has already ruled that adhering to those procedures (Applicants' Plan) is an appropriate way for Applicants to attempt to provide the Board with reasonable assurance as to the adequacy of Applicants' support designs (Tr. 10,338, 13,123). The parties are in the midst of the process approved by the Board for resolution of those issues. For CASE to pursue these questions now is, therefore, contrary both to the Rules of Practice governing summary disposition and the procedure previously established to resolve pipe support design issues.

Accordingly, the Board should find that further consideration of these assertions is inappropriate and dismiss CASE's motion to the extent it seeks to raise matters previously addressed in its proposed findings.

B. CASE's Motion With Respect to Cygna Phase 3 Matters is not Ripe for Summary Disposition

On October 5, 1984, Applicants filed a motion to establish procedures for addressing Phase 3 of the Cygna Report. Applicants proposed that a conference call be held to hear the parties' answers to Applicants' motion. In its response to Applicants' motion, dated November 2, 1984, CASE acknowledged

that the parties should establish a process for resolving Cygna Phase 3 issues, but argued that it was premature to establish those procedures. On November 7, 1984, the Board ruled that it would further defer establishing procedures for addressing Cygna Phase 3 matters until the Staff completes its review of the report.

Applicants submit that the most efficient means of addressing the Cygna Phase 3 Report is to establish coordinated procedures for addressing the entire Report. It is not an efficient use of the parties' or the Board's resources to resolve these issues piecemeal.<sup>6</sup> As the Board found with respect to another matter, summary disposition should not be used to address issues in such a piecemeal fashion (see Memorandum (CASE's Motion Regarding J.J. Lipinsky) (October 10, 1984).

Accordingly, the Board should dismiss CASE's motion with respect to the assertions regarding Cygna Phase 3 and direct CASE to hold those matters in abeyance pending a determination as to the procedures for addressing Cygna Phase 3 issues.

C. CASE's Motion Regarding Plan Items  
is Inappropriate and Untimely

A large portion of CASE's motion concerns allegations regarding individual items from Applicants' Plan which are presently being addressed through Applicants' motions for summary

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<sup>6</sup> In its answer to Applicants' motion CASE made several motions concerning proposals for handling the Cygna issues. Applicants will be responding to CASE's motions shortly.



disposition. This procedure, which includes an opportunity for CASE to respond to any filing made by Applicants, has been approved by the Board for resolving the Plan items. CASE's attempt to address these items in its motion is, thus, contrary to that procedure. To permit CASE to pursue this course now would be grossly inefficient and burdensome to the other parties.<sup>7</sup>

Further, to the extent CASE seeks to raise new allegations regarding topics addressed in Applicants' motions for summary disposition. CASE's arguments are untimely. CASE is simply attempting to inject new issues which it should have raised in its answers to Applicants' motions. CASE had more than ample opportunity to raise those claims in its answers. To permit it to do so now not only would be grossly unfair to Applicants (who would of necessity be forced to reply in detail after already expending time and resources responding to CASE's authorized answers) but would create a quagmire of litigation that would make the Board's attempt to resolve these technical issues all the more difficult.

Accordingly, the Board should strike CASE's motion with respect to issues already being addressed in Applicants' motions for summary disposition.

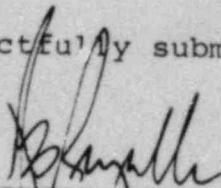
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<sup>7</sup> The Staff has already indicated that it will not respond to CASE's motion until it responds to Applicants' motion for summary disposition. The Staff anticipates filing its response in January, 1985.

III. CONCLUSION

For the foregoing reasons, the Board should dismiss CASE's first motion for summary disposition and direct CASE to pursue the issues raised in its motion in the proper fashion, consistent with the above answer.<sup>8</sup>

Respectfully submitted,



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<sup>8</sup> In the event the Board does not follow Applicants' recommendation in whole or in part, Applicants request an extension of time to file whatever formal answer to CASE's motion may be required. Applicants request an extension to file such answer to no later than the date the Staff files its answer.

CASE ORIGINAL ALLEGATIONS

<u>Issue</u>	<u>Affidavit Citation (page and line number)</u>
General	5 (1-3, 19-25); 6-7(6); 15(24)-20(3)
Stability*	7(7) - 8 (18)

CYGNA PHASES 1 AND 2

General	5(3-5); 21
Local displacements and stresses*	22-23
Axial restraints*	24-26(17)
Deadweight	26(20)-29(8)
Cinched U-bolts*	29(11)-33(12)

CYGNA PHASE 3

General	5(5-9); 36(11)-54(7); 73(12)-74(24)
Stability*	14(23)-15(10)

PLAN ITEMS

General	5(11-15); 20(4-25), 36(3-10), 54(8)-55(6); 56(4)-57(17); 72(5)-73(9)
Stability	8(18)-15(23)
U-bolts acting as two-way restraints	16(15-17); 60(21)-68(15)
Local displacements and stresses	22-23; 33(16)-36(2); 55(11-17);
Axial restraints	24-26(17)
Cinched J-bolts	29(11)-33(12); 55(18)-56(3); 57(19)-60(19)
Upper lateral restraint	55(7-10)
General v. Actual Stiffness	68(16)-72(3)

\* Also related to Plan item.



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CERTIFICATE OF SERVICE

I hereby certify that copies of "Applicants' Answer to CASE's Motion and Offer of Proof Regarding CASE's First Motion for Summary Disposition Regarding Certain Aspects of the Implementation of Applicants' Design and QA/QC for Design", in the above-captioned matter was served upon the following persons by express delivery (\*), or deposit in the United States mail, first class, postage prepaid, this 13th day of November, 1984, or by hand delivery (\*\*) on the 14th day of November, 1984.

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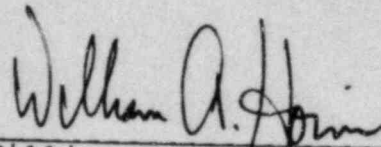
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