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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

DOCKETED
USNRC

Before Administrative Judges: NOV 19 P2:25

Peter B. Bloch, Chairman
Dr. Kenneth A. McCollom
Dr. Walter H. Jordan

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

In the Matter of

TEXAS UTILITIES ELECTRIC COMPANY, et al.

(Comanche Peak Steam Electric Station,
Units 1 and 2)

SERVED NOV 19 1984

Docket Nos. 50-445-OL
50-446-OL

ASLBP No. 79-430-06 OL

November 19, 1984

MEMORANDUM

(Challenge to CASE's Summary Disposition Motion)

CASE's First Motion for Summary Disposition Regarding Certain Aspects of the Implementation of Applicants' Design and QA/QC for Design," was filed on October 6, 1984. On November 13, 1984, Applicants filed their "answer," consisting entirely of a brief on why the motion should be denied and excluding any discussion of the merits.

We find Applicants answer confused and unpersuasive. Applicants correctly remind us that they filed a "Plan to Respond to Memorandum and Order (Quality Assurance for Design)" on February 3, 1984. Applicants then correctly state, on page 3 of their answer, that "As Applicants completed the different segments of their Plan, they submitted motions for summary disposition. . . ." They also are correct that those motions are subject to standards discussed in our Memorandum and Order (Written-Filing Decisions #1; some AWS-ASME Issues), June 29, 1984.

However, Applicants then conclude that the sole method for litigating their plan should be through the summary disposition motions they

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have filed. This argument is without merit. First, there has been no decision of this Board restricting which parties may file such motions. Second, such a rule would lack symmetry--placing one party perpetually on offense and the other on defense and prohibiting the intervenor from placing the facts into a context that represents its view of the case.

Although the Staff has expressed its dissent from CASE's position that it should be free to file summary disposition motions, we are not persuaded by its position. See NRC Staff Response to CASE's Answer To, and Motions Regarding, Applicants' Motions to Set Schedule for Briefs Addressing Cygna Phase 3, November 15, 1984. CASE summary disposition motions should present final positions of CASE. They should not be repetitive or redundant. If CASE lives up to those obligations, then CASE summary disposition motions will serve the purpose of informing the Staff of its position before the Staff completes its work on these matters. That should expedite the overall decision process by permitting the Staff to consider CASE's views and to assist the Board in determining those issues.

We find intervenors' motion useful. It brings together threads found in many different places in the fabric of this case. To exclude this filing would be to channel intervenor's responses in such a way that they would be prevented from addressing the overall impact and significance of the problems Applicants allegedly have had in design and quality assurance for design. The motion, being technical in nature, is subject to the same written filings procedures and considerations applied to Applicants' motions. Those procedures were never explicitly

limited to Applicants' motions and there is no reason for them to be so limited. Although the Board did not invite such a filing, we think it would be wholly improper to exclude it.

Applicants also have stated that summary disposition motions are not appropriate for matters already litigated. However, were we to apply that principle neutrally, all Applicants motions would be excluded. They relate to matters not only litigated but decided.

We will consider motions to restrict further Summary Disposition or Written Filings motions only if they suggest neutral principles affecting all parties.

Applicants may respond to the merits of CASE's filing by December 21, 1984. They may reference other summary disposition motions they have filed, as appropriate, and may argue that some of CASE's arguments are untimely. Additionally, since CYGNA Phase III testimony is not sworn, they may state reasons why CYGNA may be wrong or why CYGNA's position may change.

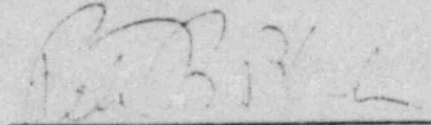
O R D E R

For all the foregoing reasons and based on consideration of the entire record in this matter, it is this 19th day of November 1984

ORDERED:

That Texas Utilities Electric Co., et al. may respond to CASE's First Motion for Summary Disposition by December 21, 1984.

FOR THE
ATOMIC SAFETY AND LICENSING BOARD



Peter B. Bloch, Chairman
ADMINISTRATIVE JUDGE

Rethesda, Maryland