

than addressing and resolving the same issues in the context of the Cygna Phases 1 and 2 Report;

- (2) Defer the filing of motions for summary disposition and responses thereto, including CASE's present Motion, regarding Cygna Phases 1 and 2 until a reasonable period of time after the Staff has filed its evaluation of that Cygna Report;
- (3) Defer consideration of that part of CASE's Motion which concerns the Cygna Phase 3 Report, in accordance with the Staff's position as stated in "NRC Staff Response to CASE's Answer to, and Motions Regarding, Applicants' Motions to Set Schedule for Briefs Addressing Cygna Phase 3 Issues" (November 15, 1984).

II. BACKGROUND

In response to a request by the Staff, the Applicants commissioned Cygna to perform an independent assessment of the quality of design and construction at CPSES. On November 5, 1983, Cygna released its Phase 1 and 2 Report. The Cygna Phases 1 and 2 Report was not originally contemplated as a matter to be litigated as part of Contention 5. The Board subsequently decided, with the concurrence of all parties, that the Cygna Phases 1 and 2 Report should be litigated. This alternative course of action was adopted in order to avoid delay in issuing a final partial initial decision until the release of investigative reports by the NRC Office of Investigations ("OI"). See Memorandum (Procedure Concerning Quality Assurance) (October 25, 1984).

Independent of these matters, the Board issued its "Memorandum and Order (Quality Assurance for Design) ("Design QA Order") on December 28, 1983. In the Design QA Order, the Board determined that the record "casts doubt on the design quality of Comanche Peak, both because applicant has failed to adopt a system to correct design deficiencies promptly and because our record is devoid of a satisfactory explanation for several design questions raised by intervenors." Id., pp. 1-2, 69-70. The Board suggested that an independent design review be conducted at CPSES to provide the Board with additional evidence on the quality of design and design QA at CPSES. Id., pp. 1, 72-75.

Applicants responded to the Board's Design QA Order by proposing, inter alia, that: (1) Applicants present "detailed testimony and/or documentary evidence" to address sixteen design and design QA issues which Applicants believe were identified by CASE witnesses Mark Walsh and Jack Doyle; and (2) Cygna be retained to perform an independent design review of CPSES in the area of pipe support design. Applicants' Plan to Respond to Memorandum and Order (Quality Assurance for Design) (February 3, 1984) ("Applicants' Plan"). The Cygna Phase 3 Report was issued on July 16, 1984, in accordance with the commitments made in the Applicants' Plan.

II. DISCUSSION

CASE's Motion states that it concerns Cygna's independence and/or credibility. Motion at 1. However, a reading of the attached Doyle Affidavit discloses that CASE is actually addressing the technical substance of the Cygna Phases 1 and 2 Report, based on the testimony

adduced at the hearing sessions held in April and May, 1984. ^{1/} Moreover, it appears that CASE's Motion discusses the same pipe support design issues which are the subject of Applicants' motions for summary disposition as part of Applicants' Plan. Finally, CASE addresses the Cygna Phase 3 Report, which has not yet been a subject of litigation. The Staff will address each of these subjects separately.

A. Pipe Support Design and Design QA Issues Should be Addressed Through Applicants' Pending Motions for Summary Disposition

Applicants have filed numerous motions for summary disposition on pipe support design and design QA issues, as part of the implementation of Applicants' Plan. It is apparent that the technical issues being addressed as part of Applicants' Plan are issues which were also litigated in the hearings on Cygna Phases 1 and 2. It is the Staff's assessment that it would be an inefficient use of the Staff's resources, as well as the Board's and other parties' resources, to litigate the identical piping and pipe support design and design QA issues twice, once in context of Applicants' motions for summary disposition as part of Applicants' Plan, and again in the context of Cygna Phases 1 and 2. ^{2/} Accordingly, the

^{1/} The Board has already ruled on the issues of Cygna's independence and credibility at the April 1984 hearing session. Tr. 13,117. Accordingly, any effort by CASE to request reconsideration of that Board decision is untimely.

^{2/} It is also the Staff's position that it would be an inefficient use of the Board's and parties' resources to relitigate the pipe support design and design QA issues addressed in Applicants' motions for summary disposition in the context of the Cygna Phases 3 and 4 Reports. NRC Staff Response to Applicants' Motions to Set Schedule for Briefs Addressing Cygna Phase 3 Issues and for Expedited Response (October 31, 1984).

Board should address the pipe support design and design QA issues by resolving Applicants' motions for summary disposition on these subjects, rather than relitigating these same issues in the context of the Cygna Phases 1 and 2 Report.

B. Motions Concerning the Cygna Phases 1 and 2 Report Should Be Deferred Until the Staff Files its Position

CASE's Motion, which attempts to address the Cygna Phases 1 and 2 Report in advance of the filing of the Staff's evaluation of that Cygna report, is premature. Subsequent to the April and May 1984 hearings, where testimony was adduced on Cygna Phases 1 and 2 from both Cygna and CASE, the Board expressed its view as to the procedure to be followed in closing the record on the Cygna Phases 1 and 2 Report. During the telephone conference of June 15, 1984, the Board stated that the Staff should resolve the remaining Cygna issues through written filings. Tr. 14,103. The Board also indicated that, after such filing, the Board might determine that further hearings are necessary, either on its own, or as a result of a request from CASE or Applicants. ^{3/} Tr. 14,104, 14,105-106. Thus it appears that the Board contemplated the filing of the Staff's review of Cygna Phases 1 and 2 to be the initiating event, after which the other

^{3/} The Staff understands that the Board would grant a motion to hold further hearings on the Cygna Phases 1 and 2 Report only if the party requesting the hearings shows that it is responding to new information or arguments presented for the first time in the Staff's evaluation of the Cygna report. The Staff also understands that the parties would be prohibited from presenting information or arguments which could have been presented at the April and May 1984 hearing sessions.

parties would make written filings or request further hearings. ^{4/} Since the Staff has not yet filed its safety evaluation on Cygna Phases 1 and 2, CASE's Motion should not now be considered. Once the Staff has made its filing, CASE should then resubmit its Motion, taking into account the Staff's evaluation.

C. Summary Disposition on Cygna Phase 3 is Premature Prior to the Completion of the Staff's Evaluation

CASE's Motion also appears to address the substance of the Cygna Phase 3 Report. As set forth in the Staff's "Response to CASE's Answer to, and Motions Regarding, Applicants' Motions to Set Schedule for Briefs Addressing Cygna Phase 3 Issues" (November 15, 1984), it would be premature for the parties to file summary disposition motions on the Cygna Phase 3 Report until the Staff has completed its review of that report. The Staff hereby incorporates its November 15, 1984 response into this pleading. ^{5/}

^{4/} CASE's representative agreed she had no problem with the Board's procedure. Tr. 14,104.

^{5/} The Staff also agrees with Applicants' position on this issue as set forth in "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," (November 13, 1984), pp. 7-8.

IV. CONCLUSION

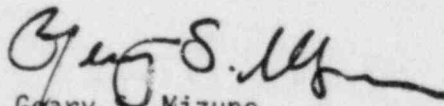
For the reasons discussed above, the Staff urges the Board to:

- (1) address pipe support design and design QA issues by resolving Applicants' motions for summary disposition, rather than conducting a parallel inquiry in the context of the Cygna Phases 1 and 2 Report.
- (2) defer consideration of motions on the Cygna Phases 1 and 2 Report until the Staff has filed its safety evaluation on that report;
- (3) defer consideration of the Cygna Phase 3 Report until the Staff has completed its evaluation of that report, and until items (1) and (2) above are completed.

Respectfully submitted,



Richard G. Bachmann
Counsel for NRC Staff



Geary S. Mizuno
Counsel for NRC Staff

Dated at Bethesda, Maryland
this 20th day of November, 1984

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)

TEXAS UTILITIES ELECTRIC COMPANY,)
et al.)

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

Docket Nos. 50-445
50-446

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CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF RESPONSE TO CASE'S THIRD MOTION FOR SUMMARY DISPOSITION, REGARDING LACK OF INDEPENDENCE AND/OR CREDIBILITY OF CYGNA" 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 20th day of November, 1984:

Peter B. Bloch, Esq., Chairman*
Administrative Judge
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Dr. Kenneth A. McCollom
Administrative Judge
Dean, Division of Engineering,
Architecture and Technology
Oklahoma State University
Stillwater, OK 74078

Dr. Walter H. Jordan
Administrative Judge
881 W. Outer Drive
Oak Ridge, TN 37830

Atomic Safety and Licensing Board
Panel*
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Mrs. Juanita Ellis
President, CASE
1426 South Polk Street
Dallas, TX 75224

Renea Hicks, Esq.
Assistant Attorney General
Environmental Protection Division
P.O. Box 12548, Capital Station
Austin, TX 78711

Nicholas S. Reynolds, Esq.
William A. Horin, Esq.
Bishop, Liberman, Cook,
Purcell & Reynolds
1200 17th Street, N.W.
Washington, DC 20036

Docketing and Service Section*
Office of the Secretary
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Atomic Safety and Licensing Appeal
Board Panel*
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Lanny Alan Siskin
114 W. 7th, Suite 220
Austin, TX 78701

Mr. Michael D. Spence, President
Texas Utilities Generating Company
Skyway Tower
400 North Olive Street, L.B. 81
Dallas, TX 75201

Robert A. Wooldridge
Worsham, Forsythe, Sampels & Wooldridge
2001 Bryan Tower, Suite 2500
Dallas, TX 75201

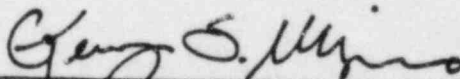
Elizabeth B. Johnson
Administrative Judge
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Mr. James E. Cummins
Resident Inspector/Comanche Peak
Steam Electric Station
c/o U.S. Nuclear Regulatory Commission
P. O. Box 38
Glen Rose, TX 76043

Robert D. Martin
William L. Brown
U.S. Nuclear Regulatory Commission
611 Ryan Plaza Drive, Suite 1000
Arlington, TX 76011

Billie Pirner Garde
Citizens Clinic Director
Government Accountability Project
1901 Que Street, N.W.
Washington, DC 20009

Ellen Binsberg, Esq.*
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, DC 20555



Geary S. Mizuno
Counsel for NRC Staff