

11/2/84

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

DOCKETED  
USNRC

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD NOV -8 AIO:18

In the Matter of

TEXAS UTILITIES GENERATING  
COMPANY, et al.

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

Docket Nos. 50-445-0L  
and 50-446-0L

CASE'S ANSWER TO, AND MOTIONS REGARDING,  
APPLICANTS' MOTIONS TO SET SCHEDULE  
FOR BRIEFS ADDRESSING CYGNA PHASE 3 ISSUES  
AND FOR EXPEDITED RESPONSES

Pursuant to 10 CFR 2.730 and the extension granted by the Licensing Board Chairman /1/, CASE (Citizens Association for Sound Energy), Intervenor herein, hereby files this, its Answer to Applicants' Motions to Set Schedule for Briefs Addressing Cygna Phase 3 Issues and for Expedited Responses.

It appears that, in this particular instance, CASE and Applicants were on the same wave length, to the extent that we were both apparently thinking that the Cygna Phase 3 Report should not be forgotten. CASE received Applicants' Motions on Monday, 10/8/84, by Federal Express. On Saturday, 10/6/84, CASE had filed its 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; since CASE had

/1/ During 10/23/84 informal conference call among the Board Chairman, NRC Staff Counsel Mr. Mizuno, Applicants' Counsel Mr. Horin, and CASE's primary representative Mrs. Ellis, the NRC Staff sought permission for an extension until 10/31/84 in which to respond to Applicants' 10/5/84 Motions to Set Schedule for Briefs Addressing Cygna Phase 3 Issues and for Expedited Responses. CASE requested that the time be set at 11/2/84, rather than 10/31/84, due to other deadlines which CASE was attempting to meet. The parties had no objections, and the Board granted extensions to the Staff and CASE.

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sent this Motion by Express Mail and the Post Office was closed on Monday, 10/8/84, the Board and parties did not receive CASE's Motion until Tuesday, 10/9/84. Applicants' 10/5/84 Motions and CASE's 10/6/84 Motion crossed in the mails.

As discussed herein, CASE is in general agreement with Applicants in some respects, but not in others; in addition, we believe that Applicants' proposed procedures are overly optimistic and require adhering to too strict a time table to be practical, necessary, or even desirable for assuring a complete record.

Applicants state their position to be "now that the Phase 3 Final Report has been published, the report and the matters it was designed to address should be resolved as issues in this proceeding" (Motions at page 2).

First of all, CASE believes that Applicants' Motions are premature, in that there are still open issues to be resolved by Cygna before the Cygna Phase 3 Report will be complete (cinched-down U-bolts and seismic analysis come immediately to mind, and there may be others).

CASE asks that the Board first ascertain from Cygna the status of the open items, Cygna's expected closing date of the open items, when all Cygna Phase 3 correspondence, memoranda, reports to Cygna from Applicants, etc., will be forwarded to CASE and other parties for review, etc. (At the same time, CASE believes that it is imperative that the Board make certain that Cygna understands that they are not being pressured, and should not be pressured by Applicants, to rush their review to a conclusion to the possible detriment of their doing a thorough job.)

Then, before the setting up of schedules for hearings, or other methods of dealing with the Cygna Phase 3 Report go forward, CASE asks that the Board ascertain from Cygna that the report and any supplementary documents, which all parties should have received by that time, is in actuality, the Final Report and that it represents the final position of Cygna on the issues, and that all of the open issues have been resolved.

One of the most frustrating aspects for CASE and its two engineering witnesses of the previous hearings involving the Cygna Phases 1 and 2 Report was that we found ourselves constantly shooting at a moving target. Messrs. Walsh and Doyle, in good faith and in many instances under severe time pressures due to last-minute receipt of testimony and documents, addressed themselves to testimony and documents which they believed to be the final versions -- only to find that what they had were not the absolutely, positively, unequivocally final versions (even to the point of some testimony and documents being changed by Cygna right in the middle of the hearings).

The Board should also guard against a repeat of the late filing of testimony and documents, such as happened during the earlier hearings on the Cygna Report. In some instances, for example, this placed CASE Witness Mr. Doyle in the untenable position of arriving in Fort Worth on Saturday afternoon and having between then and Monday morning to review numerous detailed technical drawings, calculations, and other documents, and prepare cross-examination questions and rebuttal testimony regarding them in two evenings and one day. (The burden on Mr. Walsh was similar, but not quite

as severe, since he lives in the Dallas/Fort Worth metroplex area, and CASE was able to get copies of last-minute documents to him quicker.) CASE then had the additional burden of running copies (over the week-end, when commercial copying facilities were closed) of CASE Exhibits to be used in cross-examination. The excessive use (almost around the clock) of the then-brand-new, but small, copy machine (owned by one of CASE's members which CASE had available for its use) led to the fusing together of two wires on the machine.

This type of haste-makes-waste process is patently unfair and flies in the face of due process. CASE and Messrs. Walsh and Doyle are handicapped enough by our small numbers and severely limited resources, without adding still other avoidable handicaps. The Board should not impose a repeat of this unnecessary and unduly burdensome procedure on CASE and its two engineering witnesses during the consideration of the Cygna Phase 3 Report.

We ask that the Board make certain that CASE's due process rights are protected so that we have adequate time to receive, review, and prepare responses (and, if hearings are held, cross-examination questions and documents, and rebuttal testimony) -- on the final version of the Cygna Phase 3 Report -- in advance of being required to file pleadings (or in advance of hearings, if hearings are held) in a fair and orderly fashion.

At page 3 of their Motions, Applicants propose that "the Board establish a schedule for all parties to file their positions on the Phase 3 findings," with such brief to "identify those aspects, if any, of the Phase 3 Report which each party believes should be the subject of further

consideration by the Board, either through summary disposition or in evidentiary hearings."

CASE opposes this proposal by Applicants. As discussed in the preceding, establishment of such a schedule is premature. Further, although Messrs. Walsh and Doyle have briefly reviewed some few portions of the Cygna Phase 3 Report (and already prepared some points on certain aspects of it), they have not yet completed their review of it or of other applicable documents received from Cygna. In fact, in the last few weeks, CASE has received numerous memoranda and documents from Cygna (adding up to a stack approximately 18"-24" tall), many of which pertain to the Phase 3 Cygna Report (and some of which are more enlightening than the information contained in the Report itself). We have not yet had the time to go through those documents (after which we will have to make copies of applicable ones to send to Mr. Doyle, since in this instance, as is usually the case, we received only one copy of the documents from Cygna). /2/.

/2/ We note that the NRC Staff has stated that it has just begun its review of the Cygna Phase 3 Report and expects that its review will be completed by 12/7/84, and the Staff states that until the Staff's review is complete, it will not be able to state its position regarding what portions of the Cygna Phase 3 Report should be litigated (see NRC Staff 10/31/84 Response to Applicants' Motions to Set Schedule for Briefs Addressing Cygna Phase 3 Issues and for Expedited Response, at page 3).

The Board can hardly expect CASE and its two engineering witnesses to make such review more quickly than the NRC Staff with its much larger number of personnel -- especially in light of the fact that CASE, unlike the Staff, has been engaged in answering (at least in part) all of the 18 Motions for Summary Disposition filed by Applicants, and is currently working on necessary responses to new information provided by Applicants in their responses to CASE's Answers. (We have also filed a Motion, on 10/30/84, requesting leave to file additional responses regarding Applicants' Motion for Summary Disposition Regarding Applicants' Quality Assurance Program for Design of Piping and Pipe Supports for Comanche Peak Steam Electric Station, and will be working on that if the Board rules favorably.)

Further, CASE does not understand how the Staff can adequately address which aspects of the Cygna Phase 3 Report should be further considered by the Board in light of the fact that there are still open items in that Report.

CASE notes that there is an important omission in the discussions of both Applicants and the NRC Staff. Nowhere is there any reference to the tying together of the Cygna Phases 1 and 2 Report and the Cygna Phase 3 Report; however, there must be some mechanism for this to be done, since there are very important similarities and overlapping aspects of those Reports which should be considered /3/.

CASE agrees with the NRC Staff that the Board should await the development of the Staff position on Cygna before directing the parties to identify the issues for litigation (pages 3 and 4 of NRC Staff's 10/31/84 pleading; see Footnote 2 on page 5 preceding), as well as awaiting the development of CASE's position on the Cygna Report. However, as discussed in the preceding, we also believe that the Board should await the development of Cygna's position on the Cygna Report before directing the parties to identify the issues for litigation.

Having said that, CASE must also state that we believe it is imperative, in the meantime, for the transfer of information to continue -- even prior to the setting up of the schedule proposed by Applicants -- followed by hearings, if necessary. This can be done in a variety of ways, but Motions for Summary Disposition appear to CASE to be the most logical under the circumstances, and until the Cygna Phase 3 Report is finalized, the NRC Staff develops its position on the Cygna Report, etc. In the meantime, CASE suggests that the Board allow CASE and Applicants to file Motions for Summary Disposition (and all necessary responses until the

/3/ See CASE's 10/6/84 Motion and Offer of Proof Regarding First Motion for Summary Disposition Regarding Certain Aspects of the Implementation of Applicants' Design and QA/QC for Design; see also CASE's 11/2/84 Third Motion for Summary Disposition, Regarding Lack of Independence and/or Credibility of Cygna (copy of which is being sent in the same mailing as CASE's instant pleading).

issues are fully explored) on whatever aspects of the Cygna Phase 3 Report either party believes is necessary. Such a procedure would serve several purposes:

1. It would recognize the heavy burdens currently being imposed upon the NRC Staff and make allowances for them;
2. It would allow the transfer of information to continue and for Applicants and CASE to come to agreement on issues where possible and to narrow the issues for hearings; and it would allow the Licensing Board to deal with the issues in a continuing fashion and avoid the Board's having to deal with an excessive number of issues at the last minute;
3. It would assist the NRC Staff and the Licensing Board by putting them on notice regarding the issues Applicants and CASE believe are important, thereby avoiding surprise;
4. It would allow the Board to take whatever steps are necessary to assure that all parties have sufficient time to engage in necessary discovery, receive documents, adequately review documents, and respond to the other parties' Motions for Summary Disposition in an orderly fashion but without the potential for violation of due process rights which have been experienced in the past (as discussed at pages 3 and 4 preceding);
5. It will narrow the issues for hearing; and
6. It will expedite the proceedings.

We believe that the following alternative proposal by CASE would allow the proceedings to continue, while at the same time assisting the parties in

developing their positions on the Cygna Phase 3 Report and the Board in determining which issues regarding which hearings are necessary.

For the reasons stated above, CASE urges that the Board deny Applicants' Motions, and moves that the Board instead adopt the following procedures:

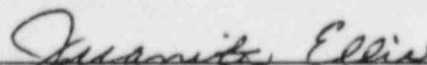
1. The Board first ascertain from Cygna the status of the open items, Cygna's expected closing date of the open items, when all Cygna Phase 3 correspondence, memoranda, reports to Cygna from Applicants, etc., will be forwarded to CASE and other parties for review, etc.
2. Before the setting up of schedules for hearings, or other methods of dealing with the Cygna Phase 3 Report go forward, the Board ascertain from Cygna that the report and any supplementary documents, which all parties should have have received by that time, is in actuality, the Final Report and that it represents the final position of Cygna on the issues, and that all of the open issues have been resolved.
3. The Board include provisions, in whatever procedure they decide upon, for the tying together of the Cygna Phases 1 and 2 Report and the Cygna Phase 3 Report and dealing with similarities and overlapping aspects of those Reports which should be considered.
4. The Board await the development of the Staff position on Cygna before directing the parties to identify the issues for litigation (as well as awaiting the development of CASE's position on the



Cygna Report). The Board also await the development of Cygna's position on the Cygna Report before directing the parties to identify the issues for litigation.

5. In the meantime, the Board allow CASE and Applicants to file Motions for Summary Disposition (and all necessary responses until the issues are fully explored) on whatever aspects of the Cygna Phase 3 Report either party believes is necessary.
6. The Board take whatever steps are necessary to assure that all parties have sufficient time to engage in necessary discovery, receive documents, adequately review documents, and respond to the other parties' Motions for Summary Disposition.
7. The Board rule on the Motions for Summary Disposition, where possible.
8. Following the above-listed steps, the Board direct the parties to identify the issues which remain for litigation.

Respectfully submitted,

  
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(Mrs.) Juanita Ellis, President  
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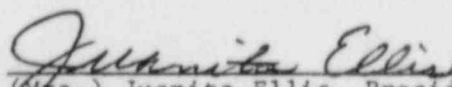
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