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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 COMPANY, et al. (Comanche Peak Steam Electric Station, Units 1 and 2)	Docket Nos. 50-445-OL and 50-446-OL (Application for an Operating License)

CASE'S RESPONSE CONCERNING THE PRESENT ROLE OF CYGNA

In its 9/9/86 Memorandum and Order (Questions About Cygna's Continuing Role), the Board ordered that Applicants set forth, by 9/26/86, their views concerning the present role of Cygna, the extent to which that role should be modified from what the Board has approved, and the reasons why the Board should approve that modification; the Board further ordered that CASE and Cygna respond by 10/3/86, and that the NRC Staff respond by 10/8/86. Applicants sought and were granted an enlargement of time, and the following schedule was approved by the Board: Applicants to file on October 27, 1986; CASE and Cygna to file on November 4, 1986; and NRC Staff to file on November 11, 1986. CASE also sought and was granted permission to include in its response comments regarding something which the Board said in its Order. (See CASE's 9/15/86 letter to Board under Subject: Memorialization of Changes in Recent Board Orders and/or Filing Dates for Certain Pleadings, page 2, items 2 and 3.)

The portion of the Board's Order which CASE and CASE Witness Jack Doyle felt it necessary to address was that portion which appears on page 2:

"At first, Cygna's testimony followed guidelines developed between it and Applicants and made findings generally favorable to Applicants' design. However, Cygna's witnesses always testified in a manner that we consider forthright and helpful. Witnesses Bjorkman and Williams were particularly helpful. Their technical testimony was so carefully presented and technically persuasive that Jack Doyle, a CASE witness, withdrew some of his prefiled testimony based on analyses of these witnesses."

Mr. Doyle believed it necessary to address that portion of the Board's Order because "While the Board's statement is accurate in its conclusion, it is not complete in the background leading to such conclusions" (as stated in the attached Affidavit of CASE Witness Jack Doyle, at page 1). Since the Board had reached and stated certain conclusions regarding Mr. Doyle's motivations for withdrawing some of his prefiled testimony, it was necessary for Mr. Doyle to discuss motivations to an extent that might otherwise have not been necessary. He discusses these in some detail in his affidavit in the context of Cygna's continuing role in these proceedings.

We will not repeat here all of Mr. Doyle's discussions and instead refer the Board to his affidavit; however, CASE agrees specifically with his conclusions that: Cygna is now the only somewhat independent source of information available for these hearings in relation to pipe supports, piping systems, cable tray supports, etc. It is necessary to retain Cygna in these proceedings to determine what Cygna has to say in reference to the allegations they have authored (for example, mass participation, among others). Cygna's role in these proceedings is not complete without their commentary on the CASE allegations, including Applicants' understanding of, the disposition of, and the root cause and generic implications of the problems; and we believe this can only be achieved through sworn testimony

of witnesses. Cygna's input is necessary regarding whether or not problems have in fact been found and to what extent, the root cause and generic implications of the problems, and regarding management's role in the breakdown of design (and construction) QA/QC (to the extent it has such information). The Board should require that all sworn participants to these hearings remain available until these questions are satisfactorily answered.

CASE's position regarding Cygna's role remains basically the same as it was expressed on 2/7/85 (see transcript of NRC Contention 5 Panel Meeting with CASE, pages 8-32, especially page 26, line 17, through page 28, line 17; we also still have the same reservations regarding Cygna's lack of ability to reach a decision that something is not a problem because they do not have all the necessary data and facts to come to a conclusion like that). In short, although Cygna would not have been CASE's first choice and although CASE has had serious concerns regarding Cygna's role, we believe it is absolutely essential that Cygna complete the job it has started in order for the Board to have a complete record and to obtain the answers required to determine if CPSES can be operated in a safe and open manner such that it should be granted an operating license.

This is especially true now because it is not at all clear that Applicants plan to ever adequately address the root causes and generic implications of the many problems (in construction, design, and QA/QC for both construction and design) at their plant; there are disturbing but unmistakable indications, based on Applicants' own recent statements, that the contrary is true and that Applicants plan instead to continue to ignore

the Board's plainly stated concerns and to attempt to totally duck these vitally important issues until their plant is finally completed and they again ask for an operating license -- without ever having to address these issues.

The present role of Cygna, as outlined on page 2 of Applicants' 10/27/86 Views Concerning the Present Role of Cygna, is totally unacceptable to CASE. As stated in Mr. Doyle's affidavit, Applicants only promise that Cygna's Phase IV report will state whether or not Cygna's concerns (including root causes and generic implications of those concerns) have been, or will be, adequately addressed by the CPRT, Stone & Webster, Ebasco/Impell, et al. The Board has not given its approval to this. Further, Applicants, in their 10/27/86 Views, have not done as the Board ordered (that they set forth their views concerning the extent to which Cygna's role should be modified from what the Board has approved, and the reasons why the Board should approve that modification). Instead, Applicants appear to have adopted the attitude that this is the way it is going to be (by implication, whether the Board likes it or not). The Board should not accept Cygna's diminished role, even if Cygna itself (which is after all limited by what the Applicants allow and pay for it to do) were to accept it.

There is another aspect of this which is not being considered: the extensive delay which has been, and is being, caused by Applicants' curtailing Cygna's ability to complete the job it was supposed to do. There is no acceptable reason for Applicants not to have long ago provided Cygna

with much of the information it needed to get on with its work. It is still not clear to CASE whether or not the information which Applicants have only recently supplied to Cygna is adequate and sufficient for Cygna's needs (even under Cygna's already previously-diminished scope; see Board's 9/17/85 Memorandum (Cygna Review of Revised Designs) -- which scope Applicants are apparently now curtailing even more). One of the problems which Cygna has encountered in the past has been that it has not been supplied with sufficient information to do its job in a thorough and complete manner (see Affidavit of Cygna Witness Nancy H. Williams, attached to Cygna's 12/7/84 Response in Opposition to CASE's Third Motion for Summary Disposition, Regarding Lack of Independence and/or Credibility of Cygna; see also Cygna's 8/1/86 letter 84056.103 and 9/12/86 letter No. 84056.104 from Cygna's President to TUGCO's President).

There were other alternatives which might possibly have been available to Applicants once they decided they didn't want Cygna to continue its work to completion. One possiblity, for instance, might have been if Applicants, when they first set up the CPRT, had set it up so that Stone & Webster was going to really be totally unfettered, with proper independence and protocol criteria in place, and thoroughly look at everything, from scratch, necessary to determine whether or not the design of the plant was safe and adequate, including everything Cygna had been looking at and including the root causes and generic implications of the problems (both in scope and out-of-scope) they found -- as opposed to the course chosen by Applicants, where Stone & Webster also is in their own little box /1/ -- the Board (and even

/1/ CASE considers Applicants' failure to allow Stone & Webster to do a thorough and complete job to be a generic flaw in Applicants' CPRT Program Plan for design/design QA issues.

CASE) might have gone along with that idea at that time. But that option was never offered to the Board by Applicants. They never asked leave of the Board to make yet another change in their 1984 Plan by whittling away at Cygna's scope and responsibility; they just did so.

The Board should not now allow Applicants to again change horses in midstream. Stone & Webster is performing the analyses of record for part of the plant (to the extent possible from the perspective in their box), and they have not even been looking for root causes or generic implications (see specifically Applicants' response to Questions 88.a and b, pages 98-99 of Applicants' 9/5/86 Responses to CASE's 7/29/86 Interrogatories and Request for Documents and Motion for a Protective Order). Obviously, if they were going to be looking for root causes and generic implications, the best time to have begun that would have been at the same time they were doing their reanalyses, redesign, etc. Part of CASE's concerns is not only that Cygna is the most logical and best possible entity to complete the work it has already begun, but that unless Cygna itself does complete its previous scope of work, there are certain aspects of it which no one else will do.

Thus, although the Board should not rely only on Cygna (or, for that matter, only the CPRT) to determine whether or not Comanche Peak has been designed and constructed such that it can be licensed and operated safely, Cygna and its work provide a vitally important ingredient in the overall mix which will constitute the basis for the Board's final decision on the operating license.

The Board should not allow Applicants to make this unauthorized shift away from Cygna for another reason: Applicants made a voluntary commitment -- because they were in fear that the Licensing Board would deny them an operating license if they didn't. They pleaded with the Board for another chance. If Applicants had not made the commitments they did in their 1984 "get well" Plan, the Board would have had to take action much different from what it did -- the Board did strongly suggest guidelines for Applicants, which Applicants chose to ignore; the Board might have said that, based on the record before it, nothing short of a 100% reinspection utilizing guidelines similar to those suggested by the Board would provide the Board with the assurance necessary to grant an operating license; or the Board might have denied the operating license outright based on the record before it at that time, which Applicants would have then had to try to defend before the Appeal Board. The Board's options were changed because of its reliance upon Applicants' commitments.

The Board did not select Cygna; Applicants did. But once Applicants presented Cygna as a vital part of their three-pronged 1984 Plan as a way of responding to the Board's 12/28/83 Memorandum and Order (Quality Assurance for Design) and the Board (and the NRC Staff) had approved of Cygna over CASE's initial strong objections, Applicants should not be allowed to now back out of this part of their agreement without a by-your-leave to the Board and to simply ignore their commitment. Cygna has not completed the job that Applicants promised it was going to perform; they are, in effect, being prematurely and arbitrarily fired from very important portions of their job.

Because of Applicants' commitment to Cygna (as well as their now-withdrawn Motions for Summary Disposition and their extremely quiet expert from the academic community), everyone in the proceedings gave up other possible options with the understanding that, as stated by the Board in its 9/9/86 Memorandum and Order, they could rely on Cygna to "provide the NRC, the ASLB, and Texas Utilities with an integrated basis for evaluating the adequacy of the design and design process employed on CPSES."

CASE also relied upon Applicants' following through with their 1984 "get well" Plan. We expended a tremendous amount of limited resources in discovery, preparation, and finally hearings on Cygna's Phase I and II Plan; we expended additional limited resources in discovery, preparation, and responding to Applicants' now-withdrawn Motions for Summary Disposition. (Goodness only knows whatever happened to, and whether we'll ever hear from, the third prong of Applicants' 1984 Plan, Dr. Boresi, the independent expert from the academic community -- though CASE is still trying to obtain more information and work with Applicants on this and other outstanding discovery requests /2/.)

CASE also relied on Applicants' commitment to Cygna (as we did regarding the other two prongs of Applicants' 1984 "get well" Plan). Had we not relied on this, we might have done some things much differently. The

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/2/ CASE is still attempting to work with Applicants and obtain more responsive answers regarding Applicants' 7/28/86 Responses to CASE's 6/30/86 Interrogatories and Request for Documents and Motion for Protective Order and Applicants' 9/5/86 Responses to CASE's 7/29/86 Interrogatories and Request for Documents and Motion for a Protective Order; see CASE's 9/15/86 (item 1), 10/7/86, and 10/25/86 letters to the Board regarding enlargements of time before CASE files Motions to Compel regarding certain sets of interrogatories. As indicated previously, we still believe that such efforts are worthwhile to all parties.

questions we asked on discovery might have been different; for instance, we might have availed ourselves of requests for admissions to place into the record admissions from Cygna which would have been extremely damaging to Applicants. We might have pushed for early hearings on the revisions to Cygna's Phase I and II Report (which would have resulted in testimony from Cygna which would undoubtedly have been extremely damaging to Applicants), and pushed for Proposed Findings and decisions from the Board regarding such testimony. CASE instead did what we believed the Board wanted the parties in this proceeding to do, thinking that it made better sense and would result in more orderly proceedings if we waited until Cygna completed its Phase IV Report and asked that hearings on the Phase IV Report also include hearings on Cygna's revised positions regarding its earlier Phases. We might have utilized our extremely limited resources very differently had we known that Applicants would renege on their commitment regarding Cygna (not to mention their now-withdrawn Motions for Summary Disposition and their academic expert). CASE has already been severely damaged by Applicants' handling of their Motions for Summary Disposition. We will be again severely damaged if Applicants' latest ploy of curtailing Cygna's role is allowed by the Board.

Another aspect of Applicants' actions regarding Cygna is that it raises yet again the question: Why should the Board (or anyone else) believe that Applicants can be trusted to comply with their other commitments, such as their claims that they will now assure with their most recent Plan that their plant has been designed and constructed properly, or that they will operate their plant in a safe manner if an operating license is granted? If these Applicants cannot be trusted to comply with commitments made directly to the Licensing Board in these proceedings, there is no reason to

believe they will honor other commitments which may have even more serious consequences.

Yet another aspect of Applicants' actions regarding Cygna (and the rest of their 1984 "get well" Plan) is that it raises the question of whether or not it is merely coincidental that (as in the case of Mr. Lipinsky and O. B. Cannon Company, where a consultant was called in, advised the Applicants that they were going to be giving them bad news, and promptly found themselves off the project), when Cygna started delivering bad news to the Applicants about the quality of their plant, Applicants began drastically reducing Cygna's work, stonewalling by not providing Cygna with the information necessary to do its work, and now appear poised to give (as Mr. Doyle stated) the coup de grace to Cygna's efforts or at the very least minimize as much as possible the damage already done by the information Cygna has already brought forward. Even if the Board rules that Applicants can proceed with what amounts to basically gutting Cygna's work, CASE should be afforded the opportunity to raise a new issue in these proceedings and should be allowed to have hearings on what appears to CASE to be a pattern by Applicants of getting rid of consultants who are the bearers of bad news.

The Board should consider these developments as to what the legal implications are of Applicants' actions. Applicants do not have the right to cancel Cygna or gut its work, because the Board, the NRC Staff, and CASE have relied upon Cygna's work. Further, even if the Board rules that Applicants do have that right, CASE is entitled to a hearing on the implications of the manner in which these Applicants deal with bad news, based on how they have dealt with Cygna.

To CASE, what's been going on recently regarding Cygna is very disappointing and very disturbing. We believe it goes to the very heart of what is one of Applicants' most fundamental problems: Their unwillingness to face the facts, look the root causes in the face, and finally bite the bullet and admit that nothing less than a properly performed 100% reinspection is called for, which will finally identify at least as many of the problems with their plant as possible (there is obviously no way that all of them could ever be identified, much less corrected, at this late date because too many are already built in, covered up, and forgotten but not gone). As evidenced by recent NRC Region IV Inspection Reports, there are still major glitches in Applicants' Plan and in the way it is being carried out. In Applicants' 10/6/86 Response to Board Memorandum of 8/8/86 (Assistance to the Board), Applicants state that "Applicants' present expectation is that, when completed, essentially 100% of the safety significant design will have been reviewed and that, as a result, reliance upon root cause will not be required to defend any lesser scope of review" (emphasis added). CASE submits that an "essentially" 100% review of the "safety significant" (as defined by Applicants) design is not acceptable and is a far cry from what is truly called for: a 100% reinspection of design, followed by a 100% reinspection of construction, under the proper protocol from the beginning, with all the proper criteria in place before the reinspection begins. Again, we must ask: What's it going to take to finally require the Applicants to do it right?

Respectfully submitted,

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