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RELATED CORRESPONDENCE

July 11, 1985
DOCKETED
NRCUNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

85 JUL 16 P3:22

BEFORE THE ATOMIC SAFETY AND LICENSING BOARDOFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

In the Matter of

TEXAS UTILITIES ELECTRIC
COMPANY, et al.(Comanche Peak Steam Electric
Station, Units 1 and 2)Docket Nos. 50-445
50-446Docket Nos. 50-445/2
50-446/2NRC STAFF RESPONSE TO CASE'S MOTIONS
FOR DISCOVERY ON THE MAC REPORTI. Introduction

CASE has filed a "Board Notification and CASE's Motions for Discovery Regarding the MAC Report and Issues Raised by the MAC Report and/or for Hearings and/or Evidentiary Depositions" (June 24, 1985) ("CASE's Motion"). ^{1/} Attached to CASE's Motion is "CASE's Interrogatories to Applicants and Requests to Produce Re: the MAC Report and Issues Raised by the MAC Report" ("CASE's Interrogatories"). CASE's Motion requests that the Board hold immediate hearings on a 1978 report prepared by Management Analysis Company ("MAC") for Applicants, and on "issues raised by the MAC Report and recent reassignments/resignations of Applicants' management personnel." CASE's Motion, pp. 5, 6. CASE proposes that such a hearing

^{1/} Although CASE'S Motion was filed in Docket 1, CASE has subsequently indicated that the information sought is "equally applicable to both dockets and should be produced in both Docket 1 and 2." June 24, 1985 letter from Anthony Roisman, Counsel for CASE, to Robert Wooldridge, Counsel for Applicants.

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commence without the prefiling of testimony by Applicants or the NRC Staff ("Staff"), and that witnesses be sequestered and be ordered not to discuss their testimony. Id., p. 5. In the alternative, CASE asks that immediate "evidentiary depositions" be held, with Judge Bloch presiding over the depositions. CASE's Motion, pp. 5, 6. CASE proposes that witnesses be sequestered and be ordered not to discuss their testimony. Id., p. 5. ^{2/} CASE finally suggests that if these two alternatives are rejected by the Board, that CASE be permitted to conduct discovery on an expedited basis, as permitted by 10 C.F.R. §§ 2.740b(b) and 2.741(d). CASE's Motion, p. 6. Immediate action on these alternatives is necessary, according to CASE, because of the possibility that "key individuals involved will be moving on to other jobs and other locations, and therefore may not be available for testifying/depositions of a later time." Id.

II. Background

On May 29, 1985, Applicants filed a letter informing the Board and parties that Applicants had discovered a 1978 report prepared by Management Analysis Company (the "MAC Report"). ^{3/} The MAC Report was provided to the Board and parties as an attachment to Applicants' May 29, 1985 letter. Also attached to Applicants' May 29, 1985 letter is a July 11,

^{2/} CASE also asks that the hearings/depositions be held in Dallas or Fort Worth. CASE's Motion, p. 6.

^{3/} May 24, 1985 Letter from Robert Wooldridge, Counsel for Applicants, to Atomic Safety and Licensing Board.

1978 Office Memorandum from R.J. Gary and L.F. Fikar to Perry Brittain, which sets forth the Applicants' response to the concerns identified in the MAC Report. The MAC Report appears to summarize the findings of a two-week audit by MAC of the Applicants' Quality Assurance ("QA") program for CPSES. Nine (9) areas of concern were identified by MAC, including problems with the design control ("DC") system, QC inspection instructions and checklists, timely disposition of nonconforming items, and qualifications and training of QC personnel.

On June 12, 1985, Applicants transmitted a second letter ^{4/} to the Board and parties, which discussed the Applicants' failure to provide CASE with the MAC Report during discovery, and the circumstances surrounding the Applicants' rediscovery of the MAC Report. ^{5/}

CASE's Motion was filed on June 24, 1985. ^{6/} On June 28, 1985 Applicants' counsel, Mr. Wooldridge, transmitted a letter to Chairman Bloch stating that Applicants' counsel had no reason or basis to believe that by allowing Applicants the full time to respond to CASE's Motion, "any relevant evidence (either documents or potential witnesses) relating to

^{4/} June 12, 1985 letter from Robert Wooldridge to the Atomic Safety and Licensing Board.

^{5/} In a June 13, 1985 Memorandum the Staff has requested the NRC Office of Investigations ("OI") to investigate TUGCO's withholding of the MAC Report. See Board Notification 85-067 (June 28, 1985).

^{6/} On June 26, 1985, Chairman Bloch informed Staff counsel that any Staff response to CASE's Motion be filed by July 1, 1985, since the Board intended to issue a decision on CASE's Motion on July 2, 1985. Subsequently, on June 28, 1985, Chairman Bloch informed Staff counsel that, based upon representations by Applicants' counsel, the Staff and Applicants would be afforded the normal time for response to CASE's Motion.

the matter of the MAC Report will be rendered unavailable for any appropriate legal review process."

III. Discussion

CASE's request that immediate hearings or evidentiary depositions be held on the MAC Report appears to be based upon CASE's apprehension that potentially relevant evidence on the MAC Report may become unavailable, and that certain individuals will be moving and therefore become unavailable for testifying either at discovery depositions or at hearing. See, e.g., CASE's Motion, pp. 4, 6. Applicants' counsel has represented to the Board and parties that he:

had no reason or basis to believe that by allowing Applicants the full time to respond to CASE's June 24, 1985 motion for discovery. . . . any relevant evidence (either documents or potential witnesses) relating to the matter of the MAC Report will thereby be rendered unavailable for any appropriate legal review process.

See, June 28, 1985 Letter from Robert Wooldridge to Peter Bloch. To assuage any concern that potentially relevant evidence is preserved, the Applicants should commit to preserving all documentary evidence on the MAC Report. ^{7/} Such a commitment will be sufficient to ensure that the status quo is maintained, and that the Board and parties will have the benefit of all relevant information should the Board find that evidence

^{7/} Although somewhat ambiguous, Applicants appear to have made such a commitment. See "Applicants' Response in Opposition to CASE's Motion for Immediate Hearings, Evidentiary Depositions, and/or Discovery Regarding the MAC Report" (July 8, 1985), in which Applicants, referring to this sentence in Mr. Wooldridge's letter, "reiterate that commitment."

on the MAC Report is necessary for a decision. With regard to CASE's concern that individuals with possibly relevant information may be leaving the company and therefore be unavailable for discovery depositions or hearings, the Staff notes that discovery of any individual with information relevant to a licensing decision may be had under 10 C.F.R. §§ 2.740 and 2.740a. Moreover, the Atomic Safety and Licensing Board has the authority, pursuant to 10 C.F.R. §§ 2.718(b) and 2.720, to issue subpoenas requiring the testimony of individuals. In summary, the Staff concludes that the need for immediate hearings or evidentiary depositions has not been adequately demonstrated by CASE.

With regard to CASE's request for discovery on the MAC Report, the Staff points out that the MAC Report is not currently identified as an issue in controversy in this proceeding, and CASE's Motion does not discuss either the relevance of the MAC Report to those issues or the independent significance of the MAC Report to Contention 5. Accordingly, CASE is not entitled to discovery on the MAC Report unless it shows the relevance of the MAC Report to already-identified issues, or the independent significance of the MAC Report to Contention 5. See 10 C.F.R. § 2.740(b); Allied General Nuclear Services (Barnwell Fuel Receiving and Storage Station), LBP-77-13, 5 NRC 489 (1977). The Staff notes that Applicants have filed a Management Plan ^{8/} which sets forth the Applicants' current position as to what issues, now in contention in this proceeding, need to be resolved, and which issues are moot, together with a statement of basis for their position. The MAC

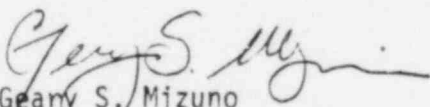
^{8/} "Applicants' Current Management Views and Management Plan for Resolution of All Issues (June 28, 1985).

Report and the circumstances of its withholding and subsequent release have not been directly discussed by Applicants in their Management Plan. ^{9/} If CASE believes that the MAC Report is either relevant to currently admitted issues or has independent significance, the Staff submits that CASE's position on this matter and the reasons for its position should be presented in its response to Applicants' Management Plan. The Staff will consider the question of relevance of the MAC Report in its response to Applicants' Management Plan. The Board should not permit discovery on the MAC Report until all parties' positions are filed with the Board, and the Board finds that the MAC Report is either relevant to currently-admitted issues, or has independent significance to Contention 5.

IV. Conclusion

For the reasons set forth above, the Board should deny those portions of CASE's Motion which request immediate hearings or evidentiary depositions, and defer ruling on that portion of CASE's Motion requesting discovery.

Respectfully submitted,


Geary S. Mizuno
Counsel for NRC Staff

Dated at Bethesda, Maryland
this 11th day of July, 1985

^{9/} Applicants only discussion of the MAC Report is a statement that the failure to disclose the MAC Report is an indication of the "lack of appreciation of nuclear power regulation." Applicants' Management Plan, p. 15, n.14. Applicants have now set forth their views on the relevance of the MAC Report to the existing issues in this proceeding in their "Response in Opposition to CASE's Motion for Immediate Hearings, Evidentiary Depositions, and/or Discovery Regarding the MAC Report" (July 8, 1985).

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CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF RESPONSE TO CASE'S MOTIONS FOR DISCOVERY ON THE MAC REPORT" 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 11th day of July, 1985:

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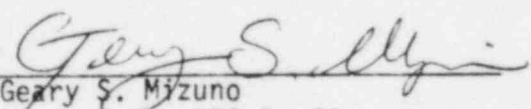
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