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August 30, 1985

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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(USNRC)

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In the Matter of

TEXAS UTILITIES ELECTRIC
COMPANY, et al.

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

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Docket Nos. 50-445 *DL*
50-446 *DL*

NRC STAFF RESPONSE TO CASE'S OFFER OF
PROOF ON LACK OF INDEPENDENCE OF CPRT

I. INTRODUCTION

CASE has filed its "Offer of Proof of Lack of Independence of Applicant's Latest Plan ("CPRT Plan") (August 19, 1985) ("CASE's Offer of Proof"). The NRC Staff ("Staff") herein responds to CASE's Offer of Proof.

II. BACKGROUND

On June 28, 1985, Applicants filed their "Current Views and Management Plan for Resolution of All Issues" ("Applicants' Management Plan") and the "Comanche Peak Response Team Program Plan, Revision 2" ("CPRT Program Plan"). Applicants' Management Plan proposed that litigation in this proceeding be refocused on whether the CPRT Program Plan is adequate to provide the Board with reasonable assurance that the CPSES facility has been properly designed and constructed. Applicants' Management Plan also proposed that, if their Management Plan was accepted, CASE be required to submit a list of "charges" indicating, with specificity and basis, those aspects of the CPRT which CASE wishes to challenge as being

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inadequate. Applicants' Management Plan, pp. 43-45, 72. The Board has decided not to adopt the Applicants' Management Plan at this time. Memorandum and Order (Proposal for Governance of this Case), LBP-85-32 (August 29, 1985) ("Board Order").

III. DISCUSSION

Since CASE's Offer of Proof does not explicitly request any Board action or finding, it is unclear what CASE seeks from the filing of its Offer of Proof. If CASE intends that its Offer of Proof be notice to the parties that one of the issues that it wishes to litigate regarding the CPRT Program Plan is the independence of the CPRT (and therefore the validity of the CPRT results), the Staff submits that CASE's Offer of Proof is a premature filing. The Board has decided not to adopt Applicants' Management Plan at this time; therefore, there is no immediate relevance of the CPRT and issues regarding its independence to the currently-admitted issues-in-controversy. The Staff submits that it is therefore inappropriate for CASE to submit any pleadings regarding the adequacy of the CPRT Program Plan at this stage in the proceeding, given the August 29, 1985 Board Order.

The Staff points out that CASE is not without an avenue to present in a timely fashion its views on the adequacy of CPRT Program Plan to the Staff and Applicants. As indicated in Board Notification 85-075 (August 16, 1985), the Staff will be receiving and evaluating CASE's comments on the CPRT Program Plan. ^{1/} CASE also has the opportunity to

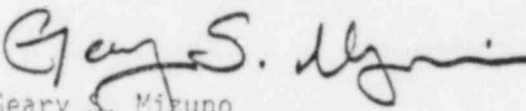
^{1/} The Board also encouraged CASE to share their concerns regarding the CPRT Program Plan with the Staff. Board Order, p. 3, n.3.

submit its concerns directly to Applicants for their consideration. The Staff favors CASE's early identification of concerns, since it affords the Applicants the opportunity to consider CASE's comments in an informal, non-adversarial framework. ^{2/} Applicants may well modify elements of the CPRT Program Plan to address CASE's concern, thereby removing that concern as a matter of contention between the parties. Indeed, CASE may well come to an understanding with Applicants on the question of CPRT independence. Because of this possibility, it is the position of the Staff that the Board need not, at this time, consider CASE's Offer of Proof. Likewise it would be inappropriate for CASE to file similar "offers of proof" raising concerns with the CPRT at this time.

IV. CONCLUSION

The Board should not consider CASE's Offer of Proof.

Respectfully submitted,


Geary S. Mizuno
Counsel for NRC Staff

Dated at Bethesda, Maryland
this 30th day of August, 1985

^{2/} Just as the Staff believes that it is desirable for CASE to identify its concerns with the CPRT Program Plan early in the process, the Staff also recognizes that early identification of Staff concerns with the CPRT Program Plan would be helpful to Applicants. Thus, the Staff transmitted a preliminary series of questions and comments to the CPRT Program Plan to Applicants on August 9, 1985 (attachment to Board Notification 85-075).

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CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF RESPONSE TO CASE'S OFFER OF PROOF ON LACK OF INDEPENDENCE OF CPRT" 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 30th day of August, 1985:

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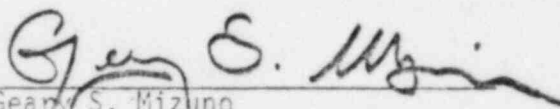
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