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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSIONBEFORE THE ATOMIC SAFETY AND LICENSING BOARDOFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

In the Matter of)

TEXAS UTILITIES ELECTRIC)
COMPANY, et al.)Docket Nos. 50-445 ^{OL}
50-446 ^{OL}(Comanche Peak Steam Electric)
Station, Units 1 and 2))NRC STAFF RESPONSE TO CASE'S LETTER
REGARDING MATERIAL FALSE STATEMENT ON U-BOLTSI. INTRODUCTION

The NRC Staff ("Staff") received an August 26, 1985 letter from CASE to the Board ("CASE's Letter"), regarding Board Notification 85-077. CASE's Letter requests that the Board hold hearings on the subject of "Applicants' statement on the U-bolt sample, which CASE considers to be a material false statement." CASE's Letter, p. 1. Alternatively, CASE asks that the Board should now rule that Applicants' statement does constitute a material false statement. Id. The Staff opposes these CASE requests.

II. BACKGROUND

On June 29, 1984 Applicants submitted "Applicants' Motion for Summary Disposition of CASE's Allegations Regarding Cinching Down of U-Bolts" ("U-Bolt Summary Disposition Motion"), together with the attached "Affidavit of Robert C. Iotti and John C. Finneran, Jr. Regarding Cinching Down of U-Bolts" ("Applicants' U-Bolt Affidavit").

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In the course of arguing that U-Bolts at CPSES were acceptable and did not impose unacceptable stresses on the supported piping, Applicants' stated that "[t]o determine the range of torques which exist in the field, applicant inspected the torque of a randomly selected representative sample of cinched down U-bolt supports..." Applicants' U-bolt Affidavit, p. 10. Subsequently, the parties held an informal telephone conference call to afford CASE the opportunity to ask the Applicants questions regarding the various summary disposition motions filed by the Applicants, including their U-Bolt Summary Disposition Motion. During this conversation Applicants' representatives were asked about the representativeness of the U-bolt sample.

On October 16, 1984, the Board requested that the Applicants provide it with the "raw data underlying Table 2..." of Applicants' Affidavit. Memorandum and Order (Information Concerning Torques in U-Bolts). On October 23, 1984, Applicants submitted their "Response to Board Request for Information Regarding Cinched-Down U-Bolts" ("U-Bolt Response"), which included a 9 page table listing the pipe supports which were selected for testing, their location, pipe size, and the average torque of the U-bolts on the supports.

Following the filing of Applicants' U-Bolt Response, the Board issued a second order on the subject, reiterating its desire for the "raw data" since the data supplied did not permit the Board to "observe the variance of readings on individual bolts." Memorandum (Raw Data on U-Bolts) (October 24, 1984) ("Second U-Bolt Order"), p. 1. Applicants responded by filing their "Response to Board Request

for Raw Data Regarding Cinching Down U-Bolts" (November 9, 1984) ("Second U-Bolt Response").

At this time, CASE moved the Board to open discovery on the matter of Applicants' statements on U-bolts, and to find that Applicants had made a "material false statement." "CASE's Motions and CASE's Answer to Applicants' Response to Board Request For Information Regarding Cinched Down U-Bolts" (November 5, 1984) ("CASE's Motion"). On November 19, 1984, Applicants filed "Applicants' Reply to CASE's Motion Concerning Information Regarding Cinching Down U-Bolts" ("Applicants Reply") along with another affidavit by Mr. Finneran ("Finneran Affidavit"). The Staff also filed a reply to CASE's Motion. "NRC Staff Response to CASE's Motions and CASE's Answer to Applicants' Response to Board Request for Information Regarding Cinched-Down U-Bolts" (December 7, 1984) ("Staff's Reply"). The Staff's Reply indicated that the NRC Office of Inspection and Enforcement ("IE") had been requested to determine whether Applicants' statements and omissions regarding the U-bolt sampling amounted to a "material false statement." Staff Reply, p. 6. The Staff also stated that apart from the "material false statement issue", Applicants' statements and omissions also have a bearing on issues currently in issue before the Board, including the credibility of Applicants' witnesses who have submitted affidavits on other summary disposition motions, and the variety of statements in other summary disposition motions. Id., pp. 6-7. Thus, the Staff supported opening discovery to CASE and the Staff in the two areas mentioned above. Id., p. 7.

On December 18, 1984, the Board issued its "Memorandum (Reopening Discovery; Misleading Statement)" ("U-Bolt Order"), which permitted CASE and Staff to undertake discovery on "samples, tests or the credibility of testimony or representations" by Applicants. U-Bolt Order, pp. 2, 9-10. Although the Board indicated that it would await the Staff's investigation before determining whether Applicants made a material false statement, the Board expressed its views that the sample was neither random nor representative, and that the credibility of other testimony or affidavits submitted by Applicants' witnesses/affiants would be open to question. U-Bolt Order, pp. 1-2, 4-9.

As part of the Staff's evaluation of the Applicants' representations on U-bolt sampling, a meeting was held on April 22, 1985 between the Staff and Applicants to discuss technical questions relevant to the U-bolt sampling process. Thereafter, Board Notification 85-077 was issued on August 29, 1985, which stated that IE had determined that Applicants' statement on U-bolt sampling was not a "material false statement" within the meaning of Section 186 of the Atomic Energy Act of 1954, as amended. Attached to the Board Notification were 5 internal NRC memoranda leading to the Staff's decision.

III. DISCUSSION

The Staff opposes CASE's request that the Board now rule that Applicants have made "material false statements" regarding the U-bolt sample representativeness. Much of the documents and primary information on this matter is not in evidence, e.g., Applicants' U-Bolt Response; 2nd U-Bolt

Response; Applicants' Reply and Finneran Affidavit (November 19, 1984); Transcript of Technical Conference between Applicants and Staff of April 22, 1985; Board Notification 85-077 and attachments thereto. Nor have the Staff and Applicants been afforded the opportunity, in legal briefs, affidavits, or prepared testimony, to synthesize the relevant materials and present their respective views on the matter. Therefore, the Staff submits that the evidentiary record on this subject is currently incomplete and insufficient to support a Board decision on this matter.

The Staff also opposes CASE's request that hearings be held in the near future to complete the evidentiary record on the U-bolt sampling matter and the "material falseness" of Applicants' statements. In the Staff's view, the "material falseness" of Applicants' representations regarding U-bolt sample raise two separate areas of inquiry: (1) whether Applicants' representations are false or misleading, and if so, whether the representations are relevant and material to the resolution of the technical issues involving U-bolt design; and (2) whether Applicants' representations, if false or misleading, affect the reliability of the affidavits, testimony or other evidence propounded by the affiants who made the "material false statements." Thus, the "material falseness" of Applicants' representations relates to the immediate technical issue regarding U-bolts as well as more broad questions regarding the credibility of Applicants' affiants responsible for the "material false statement." In both of these areas of inquiry, the Staff concludes that certain actions by Applicants have the potential to supersede any need to develop the record on the "material falseness" of Applicant's statements.

Turning first to the aspect of technical adequacy, the Applicants' CPRT Program Plan will address all currently-identified piping and pipe support design issues, including U-bolt design. See, e.g., CPRT Program Plan (Revision 2, June 28, 1985), Appendix A, Appendix C, Item IX. Thus, implementation of the CPRT Program Plan may preclude the need for the Board to consider and rely upon evidence submitted as part of the Applicants' U-bolt design summary disposition motions. Indeed, the Board has recognized that the CPRT could have an impact on design issues and therefore has deferred the time when Applicants need to respond to CASE's summary disposition motions until the CPRT is completed. See "Memorandum and Order (Proposal for Governance of this Case)" LBP-85-25 (August 29, 1985), p. 3. If the Board ultimately determines that the U-bolt design issue is resolved on evidence other than that submitted pursuant to the summary disposition motion process (i.e., evidence on the CPRT Program Plan), the question of whether the Applicants' statements are false or misleading becomes irrelevant from the viewpoint of resolution of the technical design issue on U-bolts.

With regard to the aspect of credibility, the CPRT Program Plan is intended to, inter alia, comprehensively address all currently-identified design issues which are the subject of Applicants' summary disposition motions. Therefore, the CPRT has the potential to supersede any need for the Board to consider and rely upon any evidence submitted by Applicants in their summary disposition motions and responses on all design issues. If it does, any concerns regarding the credibility of Applicants' affiants who were responsible for the purported "material false statement", and

the reliability of evidence submitted as part of other Applicants' summary disposition motions on design/design QA, ^{1/} will no longer be relevant.

In sum, since future developments such as the CPRT Program Plan may preclude the need to resolve currently-identified issues under the existing litigation theories, it would be premature for the Board to schedule hearings or otherwise develop the record on the "material falseness" of Applicant's U-bolt sampling statements at this time.

In any case, it would be best to litigate the "material falseness" of Applicants' statements at the same time as the technical issues on U-bolt design, should the course of the proceeding ultimately require that these issues, as currently formulated, be resolved. Such a course of action would eliminate the need to reiterate for the record the background information on these related subject matters, and would serve to organize the record such that a discrete, contiguous portion of the transcript would be devoted exclusively to U-bolt issues. ^{2/} Moreover, litigating these two related matters together would not impose a burden on or be unfair to any party.

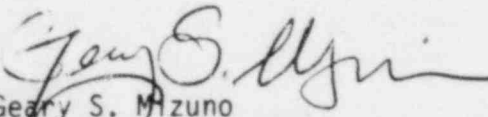
^{1/} The Board identified these concerns with credibility in their "Memorandum (Reopening Discovery; Misleading Statement)" (December 18, 1984), pp. 2, 4-9.

^{2/} C.f., "Memorandum and Order (Motion to Supplement and Correct the Record)" (August 15, 1983); "Memorandum (Clarification of Open Issues)" (March 15, 1984), pp. 3-5.

IV. CONCLUSION

For the foregoing reasons, the Staff submits that the Board should deny each of CASE's requests on the subject of Applicants' statements on U-bolt samples which are contained in CASE's Letter.

Respectfully submitted,


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Dated at Bethesda, Maryland
this 16th day of September, 1985

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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50-446

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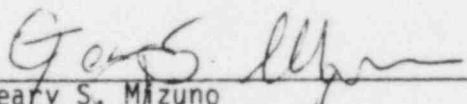
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