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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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before the
ATOMIC SAFETY AND LICENSING BOARD

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

In the Matter of

VERMONT YANKEE NUCLEAR
POWER CORPORATION

(Vermont Yankee Nuclear
Power Station)

)
) Docket No. 50-271-OLA-4
) (Construction Period
) (Recapture)
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**MOTION TO COMPEL ANSWERS TO INTERROGATORIES
(VYNPC SET NO. 2)**

Pursuant to 10 C.F.R. § 2.740(f), the Licensee, Vermont Yankee Nuclear Power Corporation, moves that the Board enter an order compelling the intervenor, the State of Vermont ("SOV") to give proper answers to those of its "Interrogatories Propounded by Vermont Yankee Nuclear Power Corporation to the State of Vermont (Set No. 2)" as are set forth herein. The interrogatories were served by mail on April 5, 1990; the answers were served by Federal Express on April 24, 1990.

I. Introduction - Applicable Legal Principles.

The Licensee relies upon and respectfully refers the Board to the discussion of applicable legal principles contained in its Motion to Compel filed under date of April 24, 1990. We supplement that discussion with a reference to a number of points of recurring applicability to SOV's present set of answers.

An interrogatory calling for a party to disclose what findings or rulings the party will contend for in the litigation regarding some relevant point is not properly objectionable on the ground that it calls for a legal opinion. *Per contra*, this is a paradigm of the use of discovery to narrow and focus issues and to obtain the knowledge necessary for sound trial preparation. SOV has raised this objection repeatedly, and it should be rejected by this Board.

In a similar vein, an objection to the effect that something on which discovery is sought "will ultimately be determined by the Board after hearing" is not only not proper, such an objection is, upon analysis, patently frivolous.

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By definition, anything a party believes will be determined by the Board after hearing is relevant. Also by definition, anything a party believes will be determined by the Board after hearing is something on which that party may be expected to adduce evidence, submit argument and request findings and rulings. It is a legitimate (indeed, a central) purpose of discovery to force the disclosure of such evidence, arguments, ruling requests and finding requests prior to the commencement of evidentiary hearings. SOV has raised this objection repeatedly, and it, too, should be rejected by this Board.

SOV has provided a number of answers that are categorically inadequate and can be dealt with as a category. In each case, an interrogatory asked what as what *SOV* meant in using a vague and non-specific term in a subsection of Contention 7. In each case, *SOV* has responded to this effect:

"The term _____ is quoted from _____. To the extent this question asks what the author meant by this term, it is unanswerable, since the author's meaning is unknown to Vermont. Vermont's meaning in quoting the term is that it is part of a statement of an identified weakness in the Vermont Yankee maintenance program, identified by _____, on its face a credible and respected expert opinion."

See Interrogatories Nos. 46, 77, 81, 83, 84, 85, 88, 91, 94 and 97.

This is a completely inadequate answer because it does not reveal what *SOV* intends to contend is the applicable standard against the VYNPS maintenance program is to be measured, because it does not reveal the specific deficiencies that *SOV* will contend warrant rejection of the pending application, because it does not reveal the reasons why *SOV* will contend (and against which the licensee must defend), and, most generally, because it does nothing to lift the fog of utter vagueness implicit in the blind incorporation by reference of excerpts of documents for which *SOV* had at the time it pleaded contentions (and has at the time it now evades answering interrogatories) anything of its own to offer.

A technical case cannot be tried on this basis, and preparation to defend against technical contentions cannot proceed—indeed, is not proceeding as the Commission intended it to proceed—on this basis. In each case (and in the case of follow-up questions similarly evaded), *SOV* must be compelled either to define with precision the position for which it is contending or to abandon the applicable portion of the contention.

Finally, a paradigm of the sort of answer that, while facially responsive, must be required to be supplemented before hearings can begin, are those given in response to Interrogatories Nos. 7, 49, 107, 109, 111, 113, 115, 117,

118, 124, 126, 128, 129, 131, 133, 135, 137, 144, 145 and 148 ("at this time" this is what we have (or we have nothing)).

II. Specific Interrogatory Answers.

Interrogatory No. 1.

Interrogatory:

Please define what SOV contends is included within the scope of the term "maintenance program" as used by it in its Contention 7.

Response:

Vermont uses the term "maintenance program" to include any policy, procedure, guideline, method, practice or standard which accomplishes, controls, or relates to "maintenance" as it is defined in NRC Policy Statement on Maintenance of Nuclear Power Plants (53 FR 9430).

The definition in the Policy Statement is consistent with the definition of NUREG-1212, Volume 1, "Status of Maintenance in the U.S. Nuclear Power Industry, 1985," Section 1.1.

Argument:

This response is, at best, only partially responsive and therefore incomplete. What it provides is the view of a party other than SOV of the definition of the term "maintenance program." What it does not provide—and what was specifically sought—was SOV's assertion regarding the set of things that are within the scope of the term as applied by it to Vermont Yankee in the specific context of SOV's Contention 7. The interrogatory is clearly directed at obtaining a bounded set of items; the response is inherently unbounded and therefore does little or nothing to focus the issues.

Interrogatory No. 3.

Interrogatory:

Please define what SOV contends is included within the scope of the term "surveillance program" as used by it in its Contention 7.

Response:

The term "surveillance" is used in the broadest sense as expressed in applicable NRC and industry sources, including the application. We note that 10 CFR 50.36(c)(3) defines "surveillance requirements" as requirements relating to test, calibration, or inspection to assure that

the necessary quality of systems and components is maintained, that facility operation will be within the safety limits, and the limiting conditions of operation will be met. Draft Regulatory Guide DG-1001 defines "maintenance surveillance" as consisting of collecting data at specific frequency that supports the predictive and corrective maintenance programs.

A "surveillance program" includes any policy, procedure, guideline, method, practice or standard which accomplishes, controls, or relates to surveillance. The surveillance program is one aspect of the maintenance program (refer to the response to question 1).

Argument:

This response is, at best, only partially responsive and therefore incomplete. What it provides is one party's view of the definition of the term "surveillance program." What it does not provide—and what was specifically sought—was SOV's assertion regarding the set of things that are within the scope of the term as applied by it to Vermont Yankee in the specific context of SOV's Contention 7. The interrogatory is clearly directed at obtaining a bounded set of items; the response is inherently unbounded and therefore does little or nothing to focus the issues.

Interrogatory No. 5.

Interrogatory:

Does SOV contend that NRC imposes any requirements upon the content, substance or form of the VYNPS "program to maintain and/or determine and replace all components found to have aged to a point where they no longer meet the safety standards applicable to this plant" as that term is used by SOV in its Contention 7? If so, please identify, by citation to or identification of a document, each and every such requirement.

Response:

Vermont contends that the VYNPS maintenance program does not meet the NRC requirement of 10 CFR 50.57(a)(3), that reasonable assurance has not been demonstrated that the maintenance program will function to the degree relied upon in the application, to maintain the plant within its current licensing basis in the extended period. To the extent that this question requests a legal opinion of what this reasonable assurance is, or should be, Vermont objects, since this will be determined by the Board at the end of the hearing.

Notwithstanding and without waiving our objection, Vermont states that we are not aware of each and every requested requirement. However, Vermont is aware that NRC, as its policy, expects industry

initiatives to improve maintenance (54 FR 50611), and as stated in response to question 2, these initiatives become requirements in this proceeding. Some of these industry initiatives are described in an NRC Memorandum of December 28, 1989 (Roe to Murley), "Meeting with NUMARC on Maintenance." Also, Draft Regulatory Guide DG-1001 sets requirements applicable to the licensee's program.

Argument:

This response is evasive (perhaps in recognition that SOV is attempting to have this Board establish as legal requirements items that the Commission has yet to establish as legal requirements and may never so establish). A responsive answer would list each of the things that SOV contends impose legal requirements, which list limits any later assertions that might be made and which list then provides the basis for pre-trial rulings by the Board, upon appropriate motion, as to whether an item in fact imposes a legal obligation on which a licensing decision might be based (as, for instance, a draft regulation or an "industry initiative" does not). SOV should be required to respond with such a list.

Interrogatory No. 6.

Interrogatory:

Please list and describe in as much detail as is available to SOV each of the changes to the VYNPC maintenance program, surveillance program, or other program that, if made to the programs, would render SOV's Contention 7 satisfied.

Response:

Vermont objects to this question to the extent that it requests a legal opinion of reasonable assurance that the maintenance and surveillance programs will provide adequate protection. This matter will be determined at the end of the hearing by the Board. Notwithstanding and without waiving the objection, Vermont states that it would not be responsible at this stage to identify all changes which would render Contention VII satisfied (if this were possible) without fully reviewing with our technical consultant all the information we seek in discovery. Nevertheless, program inadequacies are identified in response to question 44. Program modifications to correct these inadequacies are necessary. For example, the program needs to be proceduralized rather than relying on individual worker skills. Vendor manual updates need to be controlled and used. Post maintenance test requirements need to be included in procedures. Adequate staffing resources need to be provided to accomplish review of completed maintenance requests. The program needs to be computerized to track and account for each component in the plant and to track surveillance activities so that surveillance and maintenance activities

are not missed. Management needs to take an active role in trend evaluation. The trend evaluation process needs to be formalized to establish criteria for action with degrading trends. Industry initiatives, such as reliability-centered maintenance, which shift the emphasis from corrective to preventive maintenance, need to be considered. Performance monitors for maintenance need to be established, along with criteria for actions based on such monitors.

Finally, once these, and other changes identified as a result of our discovery, are made, they must be monitored, as stated in response to question 100.

Argument:

For the reasons set forth under Section I, SOV's objections should be rejected. Beyond that, this answer is non-responsive.

In context, SOV has contended that the pending operating license amendment should be denied because, absent the implementation of certain enhancements, the VYNPS maintenance program will be non-compliant with the Commission's regulations (or that the amendment should be approved conditioned upon implementing those specific enhancements). Ultimately, SOV must necessarily have a list of the enhancements for which it contends; this interrogatory is an entirely permissible attempt to require the pre-trial disclosure of that list.

To the extent that this response falls into the "no final position yet" category, SOV at a minimum is required to advise when it will have a position and the steps that it is taking to "finalize" its position. See *Public Service Company of New Hampshire* (Seabrook Station, Units 1 and 2), LBP-83-9, 17 NRC 403, 407-08 (1983).

Interrogatory No. 7.

Interrogatory:

Please define the failure mechanisms that SOV contends are within the scope of the phrase "found to have aged to a point where they no longer meet the safety standards applicable to this plant" as this phrase is used by it in its Contention 7.

Response:

Refer to the response to licensee's set no. 1, question 1. Vermont, and probably the industry, is unaware of all the applicable and operable failure mechanisms which affect the structures, systems and components, and which will cause degradation and failures in the

extended period. However, we have provided as complete a list as possible at this time in the sub-parts to Contention VI.

Argument:

This response merely references SOV's response to Interrogatory No. 1 in Licensee's Set No. 1, which response was incomplete and evasive. For the same reasons as stated in Licensee's Motion to Compel Answers to Interrogatories (VYNPC Set No. 1), at pages 4-5, a full and responsive answer to this question should be compelled. To the extent that the response is incomplete "at this time," it must be required to be supplemented before hearings commence.

Interrogatory No. 9.

Interrogatory:

Please define the measure of "sufficiently effective" as the term is used by SOV in its Contention 7.

Response:

To the extent that this question requests a legal definition for "sufficiently effective", Vermont objects. This is a matter which will be determined by the Board at the end of the hearing. Notwithstanding and without waiving the objection, we state that "effective" refers to the implementation of the maintenance program. Facts 3, 6, 7, 8, 9, 11 and 12, identified in response to question 44, relate to aspects of the maintenance program which are not "sufficiently effective."

Argument:

SOV's objections should, for the reasons set forth in Section I hereof, be rejected.

Beyond that, this answer is entirely non-responsive. In its contention, SOV used the term "sufficiently effective." The adverb denotes that there is a measure of effectiveness and that effectiveness beneath that measure is not acceptable. At some point in time, SOV will contend for a measure of "sufficiently effective" that it will ask this Board to adopt. This interrogatory properly and legitimately seeks disclosure of what SOV contends the measure is. SOV is obliged to answer it.

Interrogatory No. 10.

Interrogatory:

Please identify or describe all of the bases for the definition supplied in response to the foregoing interrogatory.

Response:

The ultimate basis for the measure of "sufficiently effective" is the decision of the Board.

Argument:

This answer is a non-answer. For the reasons set forth in respect of the prior interrogatory, this interrogatory is entirely legitimate and deserving of an answer.

Interrogatory No. 11.

Interrogatory:

Please define the measure of "sufficiently . . . comprehensive" as the term is used by SOV in its Contention 7.

Response:

To the extent that this question requests a legal definition for "sufficiently . . . comprehensive", Vermont objects. This is a matter which will be determined by the Board at the end of the hearing. Notwithstanding and without waiving the objection, we offer that "comprehensive" refers to the completeness of the program. Facts 1, 2, 3, 4, 5, 10, and 13 identified in response 33 relate to aspects of the program which are not sufficiently comprehensive.

Argument:

This response is defective equally as and for the same reasons as the response to Interrogatory No. 9.

Interrogatory No. 12.

Interrogatory:

Please identify or describe all of the bases for the definition supplied in response to the foregoing interrogatory.

Response:

The ultimate basis for the measure of "sufficiently . . . comprehensive" is the decision of the Board.

Argument:

This response is defective equally as and for the same reasons as the response to Interrogatory No. 9.

Interrogatory No. 14.

Interrogatory:

If your response to the foregoing interrogatory is anything other than an unqualified negative, please identify, by citation to or identification of a document, each and every such requirement with which SOV contends the VYNPS maintenance program is not in compliance, and, for each such requirement, each and every reason why SOV contends that the VYNPS maintenance program is not in compliance with it.

Response:

Vermont contends that the VYNPS maintenance program does not meet the NRC requirement of 10 CFR 50.57(a)(3), that reasonable assurance has not been demonstrated that the maintenance program will function to the degree and in the manner relied upon in the application to maintain the plant within its current licensing basis in the extended period. To the extent that this question requests a legal opinion of what constitutes this reasonable assurance, Vermont objects, since this will be determined by the Board at the end of the hearing.

Notwithstanding and without waiving the objection, Vermont states that facts indicating maintenance program aspects which do not demonstrate reasonable assurance, are provided in response to question 44.

Argument:

SOV's objections should, for the reasons set forth in Section I hereof, be rejected.

Beyond the objections, SOV has again provided only 1 legal requirement (10 C.F.R. § 50.57(a)(3)). The Board should therefore either rule that SOV is limited to that asserted legal requirement or should require SOV to identify any other asserted legal requirements on which it intends to rely.

Interrogatory No. 16.

Interrogatory:

If your response to the foregoing interrogatory is anything other than an unqualified negative, please identify, by citation to or identification of a document, each and every such requirement with which SOV contends the VYNPS surveillance program is not in compliance, and, for each such requirement, each and every reason why SOV contends that the VYNPS surveillance program is not in compliance with it.

Response:

Refer to the response to question 14. Fact 7, in response to question 44, specifically relates to surveillance.

Argument:

Beyond the objections, SOV has provided only 1 legal requirement (10 C.F.R. § 50.57(a)(3)). The Board should therefore either rule that SOV is limited to that asserted legal requirement or should require SOV to identify any other asserted legal requirements on which it intends to rely.

Interrogatory No. 17.

Interrogatory:

Please describe what SOV means by the phrase "no closure showing improvement" as used by it in sub-paragraph "b." of its Contention 7.

Response:

By "no closure showing improvement", we meant that at the time of the filing of the contention, the NRC Maintenance Team had not reinspected and issued a followup inspection report indicating that corrective action had been taken for all of the listed weakness. In addition, as noted in response 18, once weaknesses are identified, two distinct meanings of "closure" come into being: closure by the NRC Maintenance Team, and closure by Vermont.

Argument:

This response is, at best, incomplete. To the extent that SOV intends to modify the original contention so as to include "closure by [SOV],"¹ it must specifically define what constitutes "closure by [SOV]."

Interrogatory No. 18.

Interrogatory:

Please describe the set of items, events or circumstances that would constitute "closure showing improvement" within the meaning of sub-paragraph "b." of Contention 7 such that, were any such item, event or circumstance to occur or exist, sub-paragraph "b." would no longer be true.

Response:

To the extent this question calls for a legal opinion of what would constitute reasonable assurance that the listed weaknesses were corrected, it is objected to, and is a matter which will be decided by the Board at the end of the hearing. Notwithstanding and without waiving the objection, Vermont states, that once weaknesses are identified, two distinct meanings of "closure" come into being. In the one sense, closure will occur when the NRC Maintenance Team reinspects, and issues an inspection report indicating the weaknesses have been corrected. However, once the weakness is identified, attention is focused on it. Vermont reviews the circumstances surrounding the weakness and independently determines the extent and nature of the weakness and its solution. Closure by Vermont is, therefore, independently evaluated and determined.

¹The original contention did not take the form of "the application should be denied because situation A exists and that is in violation of the Commission's regulations." Rather, the contention took the form of "the application should be denied because the Staff has found situation A to exist and the Staff open item on this point has yet to be closed." The latter formulation asserts only that, so long as the Staff carries the matter as a open item, approval of the amendment is prohibited. *Pari passu*, once the Staff has "closed" the item, that closure satisfies the contention *ex proprio vigore*. An intervenor is held to the literal terms of its contentions, e.g., *Texas Utilities Electric Company* (Comanche Peak Steam Electric Station), ALAB-868, 25 NRC 912, 932 n.83 (1987), and it is a bit late for SOV to be amending the wording of its contentions. *Vermont Yankee Nuclear Power Corporation* (Vermont Yankee Nuclear Power Station), ALAB-919, 30 NRC 29, 42 (1989) ("To permit reformulation of contentions every time their proponents file another pleading would be tantamount to rejecting all notions of an orderly and fair administrative process").

Argument:

SOV's objections should , for the reasons set forth in Section I hereof, be rejected.

Beyond the objections, SOV's response is evasive. SOV has contended that seven specific conditions prevent issuance of the subject amendment. Taken in that context, this interrogatory clearly and reasonably asked SOV to state, for each such alleged problem, what SOV asserted needed to be done to solve the problem.

Interrogatory No. 19.

Interrogatory:

If the NRC Staff were to publish a document or make a finding to the effect that any item described by it in an Inspection Report ("IR ") is now closed, would SOV acknowledge that such publication or finding constitutes "closure" as that term is used by SOV in sub-paragraph "b." of its Contention 7 of the item in respect of which the publication or finding were made?

Response:

Refer to the previous response.

Argument:

This is a straightforward, yes or no, question, and it deserves a straightforward response. The plain language of sub-paragraph "b" of SOV's Contention 7—to which SOV is bound²—claims only that the Staff had not yet closed the specified open items. Licensee is entitled to a clear answer from SOV as to the effect on its contention once Staff closure has occurred.

²E.g., *Texas Utilities Electric Company* (Comanche Peak Steam Electric Station), ALAB-868, 25 NRC 916, 932 n.83 (1987); see also *Vermont Yankee Nuclear Power Corporation* (Vermont Yankee Nuclear Power Station), ALAB-919, 30 NRC 29, 42 (1989) ("To permit reformulation of contentions every time their proponents file another pleading would be tantamount to rejecting all notions of an orderly and fair administrative process").

Interrogatory No. 20.

Interrogatory:

If your response to the foregoing interrogatory is anything other than an unqualified affirmative, please describe all of the reasons why such a publication or reading would not constitute "closure."

Response:

Refer to the response to question 18.

Argument:

This response is defective for the same reason that the response to No. 18 is defective.

Interrogatory No. 23.

Interrogatory:

Please describe exactly how SOV contends that post maintenance testing must be incorporated into the maintenance procedures in order for the procedures to be adequate.

Response:

To the extent that this question calls for a legal definition of what would constitute reasonable assurance that the lack of post maintenance testing requirements in maintenance procedures was corrected, it is objected to, and is a matter which will be decided by the Board at the end of the hearing. Notwithstanding and without waiving this objection, Vermont states that proceduralization of these requirements is necessary to assure consistent application of post maintenance testing, rather than depending of the random skills of the individual preparer or reviewer in the maintenance or operations department. Vermont notes, from section 4.7 of Draft Regulatory Guide DG-1001, that:

"The work control process should be based on procedures that provide for . . . post maintenance testing, return-to-service procedures . . ."

Such procedures should provide systematic guidance to the craftsman, should be technically correct, complete and up-to-date; and should be presented using sound human factors principles.

Argument:

Insofar as SOV has objected to this interrogatory, its objections should be overruled for the reasons set forth in Section I. Beyond that, this response does not answer the question. The interrogatory did not call for a statement of belief as to *why* something was necessary, but rather *how* SOV contends that [it] must be incorporated" This question has not been answered.

Interrogatory No. 24.

Interrogatory:

If SOV contends that post maintenance testing must be proceduralized in order for the maintenance program to be adequate, please describe the steps that SOV contends must be included in the procedures for insuring that post maintenance testing is comprehensive enough for a given maintenance task.

Response:

To the extent that "comprehensive enough" in this question calls for a legal definition of what would constitute reasonable assurance that the lack of post maintenance testing requirements in maintenance procedures was corrected, it is objected to, and is a matter which will be decided by the board at the end of the hearing. Notwithstanding and without waiving this objection, Vermont states that we are unable to identify specific procedural steps without access to the maintenance procedures, which we have not been granted.

Argument:

For the reasons set forth in Section I hereof, this objection must be overruled. Indeed, we respectfully submit that this response is an example of an objection that is not only meritless but frivolous. This is a proceeding in which SOV has proffered and secured the admission of a contention that something is not "comprehensive enough" to permit the approval of a proposed license amendment. For SOV so to contend, and then, when asked on discovery what it asserts must be done to make it "comprehensive enough," for SOV to decline to answer reveals an exercise at gamesmanship that transcends, we respectfully submit, anything authorized or tolerated by the Commission's Rules of Practice.

Moreover, SOV's fall back position (also something of a pattern) that it cannot respond because it has not been granted access to information, should be rejected. Had SOV contended that it had sought and been denied access to necessary information, the case *might* be different. However, SOV has not made—and cannot make—such a claim, for as of the date of this answer: (i)

SOV had propounded no discovery, (ii) SOV had been afforded "informal" discovery and been provided with access to everything it requested, and (iii) is regularly provided with copies of the FSAR, the Technical Specifications, and licensing correspondence.³

Interrogatory No. 29.

Interrogatory:

Does SOV contend that its asserted non-incorporation of "PRA concept" renders the VYNPS maintenance program, or the operation of VYNPS, in any respect not in compliance with any regulatory requirement of the Commission?

Response:

Vermont objects to this question to the extent that it asks for a legal opinion of whether non-incorporation of "PRA concept" defeats a demonstration of reasonable assurance. This will be decided by the Board as a result of the hearing. Notwithstanding and without waiving this objection, Vermont states that in response to question 44 we have identified facts relating to a failure to demonstrate reasonable assurance. Facts 2 and 13 relate to non-incorporation of "PRA concepts." Incorporation of "PRA concepts" would assist toward demonstrating reasonable assurance that the maintenance program would function as claimed in the application.

Argument:

For the reasons set forth in Section I, the objection should be overruled. Then SOV should be ordered to answer this "Yes or No" question with a "Yes or No" answer, in order to focus sharply the obvious (and central) legal issue. Whether or not "PRA concepts" "would assist" does not answer the question of whether something is legally required such that its absence authorizes (or requires) the denial of operating authority.

³SOV's overly facile defense of "no access" should be rejected for an additional reason. The question as framed does not call for access to the VYNPS procedures in order to be able to provide, at least in part, an answer. The question says, "what steps . . . must be included" in sufficiently comprehensive post maintenance testing procedures. Presumably, if someone with qualifications thought this a real issue, an answer could be provided (at least in part) *a priori*. Then, one might need access to the VYNPS procedures only to determine whether the supposedly required steps were present or absent, a proposition: (i) not called for by the question and (ii) given SOV's response to which, leads inexorably to the conclusion that SOV had no basis for proffering this aspect of the contention in the first place.

Interrogatory No. 30.

Interrogatory:

If your answer to Interrogatory No. 29 is anything other than an unqualified negative, please state each and every regulatory requirement of the Commission with which SOV contends VYNPS is not in compliance on account of the non-incorporation of "PRA concept" into the VYNPS maintenance program.

Response:

Refer to the previous response.

Argument:

This response evades the obvious (and central) issue that this (and the prior) interrogatory are designed to put in unavoidably sharp focus. If SOV contends that "X" is a legal requirement (such that the absence of "X" authorizes the denial of operating authority—and, indeed, renders the operation of every other reactor that does not employ "X" unlawful), then SOV must be able to point to a regulation, to a standards organization code or standard incorporated into a regulation, or to a case decision by which such a legal requirement was established. Or it must face the music and answer, "None."

Interrogatory No. 31.

Interrogatory:

What significance, if any, to the question of whether the "incorporation" of "PRA concept" into a maintenance program is necessary to the permissibility of plant operation does SOV attribute to the fact that the Commission has declined to impose such a requirement through the promulgation of a regulation? Please state in detail the bases for your response.

Response:

Vermont objects to this question on the basis that it asks for a legal opinion, and that the Commission's decision not to promulgate a regulation, assuming the activity is not prohibited, is not a matter of substance in this proceeding.

Argument:

Once again, SOV evades a response with a patently frivolous objection. The licensee contends that SOV is irretrievably blocked in its assertion that

"X" can be construed to be a presently effective requirement of the Commission by virtue of the fact that the Commission has considered whether to promulgate a regulation that might require the same thing and has determined, at least for the time being, *not* to promulgate such a regulation and *not* to establish such a requirement. Absent a concession, SOV is going to have to respond to this assertion. The licensee is within its rights to demand that SOV reveal its contention on this point in advance of hearings, and SOV is obliged to do so.

Interrogatory No. 33.

Interrogatory:

Please define what is meant by SOV by the term "qualified replacement personnel" as it is used by SOV in sub-paragraph "c" of its Contention 7.

Response:

By "qualified replacement personnel," we mean maintenance personnel with a level of skill, stability, knowledge of plant, long-term experience, and expertise, necessary to perform maintenance, as defined in response to question 1.

Argument:

The vague generalities offered by SOV in response to this interrogatory shed no substantive light on its contention and thus evade the question. How much skill and how measured? What is stability and how much is required? How much knowledge of the VYNPS plant does SOV contend is required of a new hiree, and why? How much experience? At what? How much expertise and in what fields? These questions are critical because only by eliciting SOV's response can the issue of precisely what is required as the minimum qualifications for new hirees be put into focus.

Interrogatory No. 37.

Interrogatory:

Please describe the data, investigations and analytical or investigative processes upon which the conclusions of the author (or authors) of the work dated October 9, 1989, to which SOV refers in sub-paragraph "c." of its Contention 7 were based.

Response:

Vermont objects to this question as requesting information which is outside the scope of what can by or should be known to Vermont. Notwithstanding and without waiving this objection, Vermont states that the work was partially based on the references identified in response to Set No. 1, question 8.

Argument:

It is not objectionable that a question calls for information as to which a truthful answer is "I don't know." One simply answers, "I don't know." Consequently, the objection should be overruled and SOV should be required to answer this question directly.

Interrogatory No. 40.

Interrogatory:

If your answer to the foregoing interrogatory is anything other than an unqualified affirmative, please state the conditions under which SOV acknowledges that a maintenance program "based on the stability of maintenance staff, their skill in their professions, and their knowledge of plant system characteristics that come with long-term experience" can be capable of achieving the purposes of a maintenance program?

Response:

The above question is similar to Set No. 1, question 9, and we respond on a similar basis. We respond, no, based on the word "always" in the question. Within the time continuum, a maintenance program "based on the stability of maintenance staff, their skill in their professions, and their knowledge of plant system characteristics that come with long-term experience" will at some time be capable of achieving the purposes of a maintenance program. For example, the NRC Maintenance program compensate for many weaknesses. However, refer to our response to Set No. 1, question 4, for our position regarding the NRC Maintenance Team conclusions.

Argument:

The interrogatory asked SOV to described the circumstances under which, it would concede, a maintenance program of the type that it contends Licensee has would be adequate. Stripped of its verbosity, and of cross-references to prior answers that add nothing on point, SOV's answer to the question boils down to the words "at some time"—which is no answer at all. Having claimed that such a program sometimes is, and sometimes is not,

adequate, SOV should be compelled to state its position as to which is which—and how one tells—as the question asked.

Interrogatory No. 41.

Interrogatory:

Does SOV agree without qualification with the following statement:

"The standard for the quality of maintenance work at VYNPC is high and this standard is reflected in a relatively low rework rate for maintenance and repairs on plant systems."

If your answer is anything other than an unqualified affirmative, then please:

- a. State each and every qualification you have with respect to the quoted assertion.
- b. State each and every fact on which your qualification is based.
- c. Describe all of the evidence in SOV's possession or of which SOV has knowledge that SOV contends establishes each such fact.
- d. For each qualification, either provide the technical qualifications (education, employment history, licenses and certificates, experience, or other information which SOV contends establishes the qualifications of the person), of any person on whose expertise SOV relies for the qualification or state that SOV does not rely upon the expertise of any person for the qualification.

If SOV agrees with the substance of the foregoing assessment, then please:

- e. State each and every reason why SOV believes that the situation described therein has come to exist.
- f. State each and every reason why, assuming the rejection of this contention, the SOV contends (if it does) that the same condition might not be expected to continue through the balance of the existing VYNPS license term.
- g. State each and every reason why, assuming the rejection of this contention, the SOV contends (if it does) that the same condition might not be expected to continue through the balance of the extended VYNPS license term.

Response:

Vermont recognizes this statement as a finding of the NRC Maintenance Team, from page 8 of IR 89-80. We state facts and evidence

in response to question 44 which show that vendor manuals have not been controlled, surveillances and maintenance activities have been missed, trend data showing degrading trends have not had management involvement and action, and maintenance errors have caused failures and safety system challenges. These facts do not lead Vermont to the conclusion that the standard for quality of maintenance work is high. Refer to the response to question 44 for facts, evidence and expertise relied upon.

Argument:

This response, though (taking into account the material incorporated by reference) verbose, does not answer the question. And the question deserves a serious answer.

The context is that SOV has propounded a contention raising serious claims about the VYNPS maintenance program—claims, indeed, to the effect that the maintenance program is so deficient that it fails even below the minimum requirements for license authorization. SOV's entire basis for this contention (sufficient, perhaps, to warrant admission of the contention but not sufficient to carry even SOV's minimal burden of production)⁴ was a Staff report. That report contained observations of respects in which, in the opinion of the authors, the VYNPS maintenance program might be strengthened. In that context, the authors of the report refer to these areas as "weaknesses," that SOV latches onto this arguably inappropriate use of language to convert the "weaknesses" into regulatory deficiencies.

⁴It is, we respectfully submit, established that when a contention is based on a document, it is the obligation of the contentions board to scrutinize the document to see if it really supports the premise for which it is offered. *Vermont Yankee Nuclear Power Corporation* (Vermont Yankee Nuclear Power Station), ALAB-919, 30 NRC 29, 48-49 (1989). Where the document does not sustain the premise, or where it has been repudiated by its source, the contention is without basis. *Id.*; *Public Service Company of New Hampshire* (Seabrook Station, Units 1 and 2), CLI-89-3, 29 NRC 234, 241 (1989). The Staff report in question not only does not sustain the proposition that the VYNPS maintenance program is unacceptably deficient, it flatly concludes to the contrary.

To be sure, this is a motion to compel and not a motion for reconsideration—hence the admissibility of Contention 7 is no longer on the floor. But the obligations of an intervenor of going forward with a contention once it has been admitted are even more rigorous, and plainly the continued reliance upon selected, distorted and out-of-context portions of the Staff report can no longer to do the job.

If SOV were correct in its interpretation of the Staff report on which it premised this contention, the overall conclusions of the Staff report would be dire indeed. No such dire conclusions can be found. To the contrary, and despite what were unfortunately labelled "weaknesses" the Staff's overall conclusion about the adequacy and competence of the VYNPS maintenance program is the quoted accolade.

It is thus not only fair, and not only sound discovery, it is an essential question to SOV: what is your position on this precise conclusion and what do you rely upon?

Interrogatory No. 42.

Interrogatory:

Does SOV agree without qualification with the following statement:

"The overall Vermont Yankee management support at the corporate and plant levels for maintenance is strong and effective."

If your answer is anything other than an unqualified affirmative, then please:

- a. State each and every qualification you have with respect to the quoted assertion.
- b. State each and every fact on which your qualification is based.
- c. Describe all of the evidence in SOV's possession or of which SOV has knowledge that SOV contends establishes each such fact.
- d. For each qualification, either provide the technical qualifications (education, employment history, licenses and certificates, experience, or other information which SOV contends establishes the qualifications of the person), of any person on whose expertise SOV relies for the qualification or state that SOV does not rely upon the expertise of any person for the qualification.

If SOV agrees with the substance of the foregoing assessment, then please:

- e. State each and every reason why SOV believes that the situation described therein has come to exist.
- f. State each and every reason why, assuming the rejection of this contention, the SOV contends (if it does) that the same condition might not be expected to continue through the balance of the existing VYNPS license term.

- g. State each and every reason why, assuming the rejection of this contention, the SOV contends (if it does) that the same condition might not be expected to continue through the balance of the extended VYNPS license term.

Response:

Vermont recognizes this statement as a finding of the NRC Maintenance Team, from page 10 of IR 89-80. We state facts and evidence in response to question 44 which show that management has not established clear policies and procedures but rather relies on individual worker skills, management has not periodically reviewed overall program requirements, management is reluctant to incorporate industry changes, management has not established effective policy to control vendor manuals, management has allowed surveillances and maintenance activities to be skipped, management has not been actively involved in managing trend data, management has not allocated sufficient resources to allow completed maintenance requests reviews, and management has established a program which has relied more upon corrective maintenance rather than preventive maintenance. These facts do not lead Vermont to the conclusion that management support is strong and effective. Refer to the response to question 44 for facts, evidence and expertise relied upon.

Argument:

This response shares the deficiency of the response to Interrogatory No. 41.

Interrogatory No. 43.

Interrogatory:

Does SOV agree without qualification with the following statement:

"VYNPS's informal management oversight and feedback system works well to assure safe and reliable plant operations."

If your answer is anything other than an unqualified affirmative, then please:

- a. State each and every qualification you have with respect to the quoted assertion.
- b. State each and every fact on which your qualification is based.
- c. Describe all of the evidence in SOV's possession or of which SOV has knowledge that SOV contends establishes each such fact.

- d. For each qualification, either provide the technical qualifications (education, employment history, licenses and certificates, experience, or other information which SOV contends establishes the qualifications of the person), of any person on whose expertise SOV relies for the qualification or state that SOV does not rely upon the expertise of any person for the qualification.

If SOV agrees with the substance of the foregoing assessment, then please:

- e. State each and every reason why SOV believes that the situation described therein has come to exist.
- f. State each and every reason why, assuming the rejection of this contention, the SOV contends (if it does) that the same condition might not be expected to continue through the balance of the existing VYNPS license term.
- g. State each and every reason why, assuming the rejection of this contention, the SOV contends (if it does) that the same condition might not be expected to continue through the balance of the extended VYNPS license term.

Response:

Vermont recognizes this statement as a finding of the NRC Maintenance Team, from page 10 of IR 89-80. We state facts and evidence in response to question 44 which show that equipment information showing degrading trends has not had management involvement and the equipment has been allowed to continue to degrade, degraded components have not been detected for long periods of time, maintenance errors have caused equipment failures and safety system challenges, equipment with reliability problems has not been promptly replaced, and aging equipment has failed prematurely before detection and replacement by the maintenance program. These facts do not lead Vermont to the conclusion that informal management oversight and feedback work well to assure safe and reliable plant operation. Refer to the response to question 44 for facts, evidence and expertise relied upon.

Argument:

This response shares the deficiency of the response to Interrogatory No. 41.

Interrogatory No. 44.

Interrogatory:

Does SOV agree without qualification with the following statement:

"VYNPC has implemented a maintenance program adequate to provide reasonable assurance that VYNPC can and will be operated without endangering the health and safety of the public."

If your answer is anything other than an unqualified affirmative, then please:

- a. State each and every qualification you have with respect to the quoted assertion.
- b. State each and every fact on which your qualification is based.
- c. Describe all of the evidence in SOV's possession or of which SOV has knowledge that SOV contends establishes each such fact.
- d. For each qualification, either provide the technical qualifications (education, employment history, licenses and certificates, experience, or other information which SOV contends establishes the qualifications of the person), of any person on whose expertise SOV relies for the qualification or state that SOV does not rely upon the expertise of any person for the qualification.

If SOV agrees with the substance of the foregoing assessment, then please:

- e. State each and every reason why SOV believes that the situation described therein has come to exist.
- f. State each and every reason why, assuming the rejection of this contention, the SOV contends (if it does) that the same condition might not be expected to continue through the balance of the existing VYNPS license term.
- g. State each and every reason why, assuming the rejection of this contention, the SOV contends (if it does) that the same condition might not be expected to continue through the balance of the extended VYNPS license term.

Response:

No. Rather than agree with this statement, Vermont asserts Contention VII. Vermont has not been granted access to much of licensee's maintenance information, and, therefore, feels it is not able to identify each and every fact in disagreement with this statement until it fully reviews with its technical consultant material which is sought from discovery. Nevertheless, at this point we have determined the following facts, with their stated bases:

1. Implementation of the maintenance program has relied too much on worker skills rather than on consistent, well develop-

ed procedures. This is based on evidence from the report of the NRC Maintenance Team review (IR 89-80), "NRC Maintenance Team Report," and the summary of Westec Incorporated safety system functional inspection (SSFI) provided at the NRC Region I meeting of January 26, 1989, "Westec SSFI Summary."

2. The program has relied on program elements which were established at startup rather than on requirements which have been comprehensively reviewed and updated to latest methods. There has been a reluctance to modify the maintenance program to meet industry standards. This is based on evidence from the NRC Maintenance Team Report, the Westec SSFI Summary, and LRS Incorporated, Reports #3-88 and #2-89.
3. Updated recommendations from vendors have not been controlled. This is based on evidence from the NRC Maintenance Team Report, the Westec SSFI Summary, and LRS Incorporated, Report #2-89.
4. The program has not included a requirement for management review and evaluation of trends. This is based on evidence from the NRC Maintenance Team Report.
5. The program has not included a long term plan to reverse degrading trends. This is based on evidence from the NRC Maintenance Team Report.
6. Sufficient engineering resources have not been allocated to complete the review of maintenance requests promptly. This is based on evidence from the NRC Maintenance Team Report, the Westec SSFI Summary, and LRS Report #3-88.
7. The maintenance program has not provided the control to avoid missed surveillances and preventive maintenance. This is based on evidence from the Westec SSFI Summary and LERs 88-03, 88-13, 88-14, 89-10, 89-23, and 89-24.
8. The maintenance program has not detected, or has left undetected for long periods, degraded components. This is based on evidence related to flaws in the feedwater check valves, incorrect wiring and post modification testing of the "squib" valves, and inoperability of service water check valves (LER 89-17).
9. The maintenance program has had maintenance errors or omissions which have caused failures, or has allowed actions which could have led to failures or the inability of components to perform their safety function. This is based on evidence from LER 89-14, LER 88-09, and the Westec SSFI Summary.

10. Control and evaluation of equipment has relied on worker skills rather than on a comprehensive and all-inclusive master equipment list. This is based on evidence from the NRC Maintenance Team Report and LRS Report #2-89.
11. The maintenance program has failed to identify reliability problems and/or obsolete equipment and take prompt action. This is based on evidence from the NRC Maintenance Team Report, LRS Report #3-88.
12. Instances have occurred in which the maintenance program has been unable to determine and replace aging components. This is based on evidence from the NRC Maintenance Team Report and LERs 89-07, 87-07, 85-07, 84-11, 89-03, 89-04, 89-19, and 89-21.
13. The maintenance program has been characterized by weak preventive maintenance, with activities heavily oriented to corrective maintenance. This is based on evidence from the Westec SSFI Summary.

The evidence described above is supplemented by the expertise of Mr. H. Shannon Phillips, whose qualifications have been provided in response to licensee's interrogatories, Set No. 1.

Argument:

This response shares the deficiency of the response to Interrogatory No. 41.⁵

Interrogatory No. 45.

Interrogatory:

Please define the term "age-related problem" as it is used by SOV in sub-paragraph "d." of Contention 7.

⁵Indeed, in this case the issue is even more stark. For lack of any citable regulatory requirement for the details of the maintenance program "improvements" that SOV would like to see implemented, SOV continually falls back on the residual requirement of "reasonable assurance that the activities authorized by the operating license can be conducted without endangering the health and safety of the public . . ." 10 C.F.R. § 50.57(a)(3). In this case, the very same Staff report that identifies the supposedly fatal "weaknesses" concludes that such reasonable assurance does exist. There can be no starker exposure of the vacuity of SOV's "we say so because they say so" contention syllogism.

Response:

By "age-related problem," we mean any action or lack of action which causes or allows structures, systems and components to age to a point where they no longer meet the safety standards applicable to the plant.

Argument:

This response is a perfect circle: "age-related problem" is defined in terms of anything that causes things "to age." Like a circle, it goes nowhere.⁶ At some point, however, the term is going to have to be defined and focussed or litigation over it will be impossibly unmanageable, and this being so, then the time at which SOV must declare its position is now.

Interrogatory No. 46.

Interrogatory:

Please define the term "timely fashion" as it is used by SOV in subparagraph "d." of Contention 7.

Response:

The term, "timely fashion," is quoted from IR 89-80. To the extent this question asks what the author meant by this statement, it is unanswerable, since the author's meaning is unknown to Vermont. Vermont's meaning in quoting the term is that it is an aspect of a weakness in the Vermont Yankee program identified by a respectable author.

Argument:

This response is evasive and inadequate for the reasons set forth in Section I, at page 2, above.

Timely is a relative term: something is capable of being or failing to be timely only by reference to some standard. Believing that no such standards exist, this interrogatory was propounded. SOV has refused (or at least declined) to answer.

The interrogatory did not ask from whence the statement was quoted. Nor does it ask SOV to declare the subjective intent of the author (which,

⁶In this case, while the circle ends up precisely where it started, in the process it traverses the County of the Ridiculous. An errant truck backing into a switchyard transformer (with subsequent failure of the transformer) is within the "definition" cavalierly offered by SOV.

clearly, was *not* that the VYNPS maintenance program fails either any applicable regulatory requirement or even any judgmental standard what would preclude the program from being acceptably adequate and capable of providing "reasonable assurance," given that the source of the phrase is the same Staff report described above in connection with Interrogatories Nos. 41-44). The interrogatory asks SOV, as the proponent of a contention to the effect that operating authority should be denied by this Board because something is not done in "timely fashion," what *SOV* contends is the measure or reference of timely. The question should be answered.

Interrogatory No. 47.

Interrogatory:

Does SOV contend that there is an applicable NRC requirement specifying the maximum amount of time within which VYNPC must perform a "review [of] the appropriateness and technical adequacy of completed maintenance activities?" If so, please identify, by citation to or identification of a document, each and every such requirement.

Response:

Vermont is unaware of each and every NRC requirement for maintenance programs. However, licensee claims, as a basis for the proposed life extension, that mechanical components are periodically inspected and maintained, and that age-related degradation will be identified and corrected, and component functional capability maintained. Yet, IR 89-80 reports weakness with regard to the review of maintenance activities for appropriateness and technical adequacy. Thus, the applicable requirement is the reasonable assurance requirement of 10 CFR 50.57(a)(3), which Vermont contends has not been demonstrated.

Argument:

SOV, which contends that operating authority should be denied because lack of "timely fashion" is a failure of some applicable legal requirement, must respond directly to this interrogatory. If the only requirement that SOV can cite (and thus the only one on which it will be able to rely at hearings) is § 50.57(a)(3), then it should say so directly.

Interrogatory No. 49.

Interrogatory:

Unless your answer to the foregoing interrogatory is an unqualified negative, please identify what SOV contends is such maximum amount

of time and provide each and every reason why SOV contends that its time is the maximum allowable.

Response:

To the extent that this question requests the maximum time which would provide reasonable assurance that the procedural step was effective, it calls for a legal conclusion and is objected to, and is a determination which will be made by the Board at the end of the hearing. Notwithstanding and without waiving this objection, we offer that we are not able, at this time, to supply quantitative values for these attributes which demonstrate any effective program. Measurable attributes upon which to judge the effectiveness of the procedural step, "review [of] the appropriateness and technical adequacy of completed maintenance activities," are backlog and maximum amount of time elapsed since completion of the activities. Additionally, an effective program will set priorities in the review of the appropriateness and technical adequacy of completed maintenance activities, such that activities involving critical structures, systems, and components will be given a higher priority for review than will non-critical structures, systems, and components. Vermont Yankee has not demonstrated that it has set such priorities for its process of reviewing completed maintenance activities.

Argument:

For the reasons set forth in Section I, the claimed objection is invalid (indeed, frivolous) and should be rejected.

The balance of the response, with the possible exception of the portion that says "we don't know," is not responsive. The question has nothing to do with setting priorities.

We would accept the "I don't know" were it not for the inconsistent response to the prior question. Both should be stricken; SOV should be required to respond to Interrogatory No. 48 again; and if it again answers "Yes," then it must respond responsively to this one.

Finally, to the extent that the response is incomplete "at this time," it must be required to be supplemented before hearings commence.

Interrogatory No. 50.

Interrogatory:

Please identify each and every instance of which SOV is aware in which, after the maintenance or repair of a component, the lack or untimeliness of a "review [of] the appropriateness and technical

adequacy of completed maintenance activities" subsequently led to "a failure before correction."

Response:

Vermont is aware of the failure of the RCIC-21 valve as a result of maintenance activities (LER 89-14), and the maintenance related failure in the turbine pressure control system (for example, LER 88-09). While it is possible that untimeliness of the "review [of] the appropriateness and technical adequacy of completed maintenance activities" played a part in these failures, Vermont has not been granted access to the review records of maintenance activities for these, or any other events, upon which to base a response to this question.

Argument:

This response is an example of evading the response that seems clearly to be made, to wit, "None." Narrowing and focussing of issues is not enhanced—rather it is impeded—when a party who does not know the answer to a question gives any other response.

Interrogatory No. 52.

Interrogatory:

Please define the term "timely updating" as it is used by SOV in subparagraph "e." of Contention 7.

Response:

"Lack of timely updating" refers to, and is considered equivalent to, the NRC Maintenance Team statement of program weakness in that same sub-part e.

Argument:

This question called for a definition of "timely," since in context the allegation is not that something wasn't done, but that it wasn't done quickly enough. It is fair to inquire what the allegor means by "quickly enough," to which a responsive answer would be in units of time.

Interrogatory No. 53.

Interrogatory:

Please describe the types of circumstances under which SOV understand VYNPC vendor manuals to be updated. For each such type of

circumstance, please explain the mechanisms by which, as SOV contends is the case, "information on aging equipment from the vendors will be critical to prevent failure of safety equipment."

Response:

Vermont has not been granted access to vendor manuals or vendor manual updates, nor has it reviewed this material. It is conceivable that a vendor manual update could incorporate safety-significant changes to recommendations as a result of operating experience, which, if not incorporated into the vendor manual, would be ignored by the maintenance program, and thus result in failure of the equipment.

Argument:

This response is evasive. One doesn't need access to the manuals to be able to reveal its contention about the circumstances under which manuals have been or should have been updated. Responses in terms of "it is possible" are not responsive to any question that doesn't start with "Is it possible . . . ?"

Interrogatory No. 54.

Interrogatory:

Please identify each and every instance of which SOV is aware in which an "update" of a vendor manual contained information not previously available that was "critical to prevent failure of safety equipment" in which the criticality was directly related to aging.

Response:

Vermont has not been granted access to vendor manuals and vendor manual updates, and has not completed its evaluations in this area. However, Vermont offers, for example, that 1) vendor or EPRI/NMAC information may have been available to prevent the burn out of the RCIC-21 motor (LER 89-14), and 2) that the safety evaluation may be incomplete in that it neither proved nor considered whether the valve would have performed its function in the accident environment, nor did it evaluate the consequences of being unable to close the RCIC-21 valve once it was opened. The RCIC-21 valve is safety equipment, and LER 89-14 identifies the root cause as premature end of life failure.

Argument:

To the extent that SOV concedes that this answer is incomplete, SOV must be required to supplement it before hearings.

Interrogatory No. 55.

Interrogatory:

Does SOV contend that there is an applicable NRC requirement specifying the nature and content of trend analysis programs applicable to the VYNPC maintenance program? If so, please identify, by citation to or identification of a document, each and every such requirement.

Response:

Vermont is unaware of each and every NRC requirement for maintenance programs. However, as stated in sub-part g. to Contention VII, licensee relies on trend analysis to indicate decreased equipment reliability and expected life in the extended period. Yet, IR-89-80 reports weakness in the evaluation of adverse trends. Thus, the applicable requirement is the reasonable assurance requirement of 10 CFR 50.57(a)(3), which Vermont contends has not been demonstrated.

Argument:

SOV, which contends that operating authority should be denied because lack of trend analysis is a failure of some applicable legal requirement, must respond directly to this interrogatory. If the only requirement that SOV can cite (and thus the only one on which it will be able to rely at hearings) is § 50.57(a)(3), then it should say so directly.

Interrogatory No. 58.

Interrogatory:

Would SOV acknowledge that, if what the authors of EPRI NP-6152, (January, 1989) meant by the term "life-extension" does not include the authorization sought by this operating license amendment, then sub-paragraph "h.(1)" of Contention 7 is without basis?

Response:

Vermont objects on the basis that this question is a hypothetical question with no foundation in facts which are of record.

Argument:

The objection is without foundation, for in the present context the hypothetical is plainly within the realm of the legitimate. The document in question was designed to address an entirely different licensing context,

namely the renewal of operating licenses for periods beyond 40 years from first operation (since construction period recapture was a concept that, at the time EPRI NP-6152 was written, was so routine that it had *never* been the subject of any opposition from even the most dedicated nuclear opponent). The legitimate function of this interrogatory is to test the extent to which this aspect of the contention is critically dependent upon the demonstrably false interpretation placed by SOV upon the work of other people. It should be answered.

Interrogatory No. 59.

Interrogatory:

If your response to the foregoing interrogatory is other than an unqualified affirmative, please state each and every fact or circumstance that SOV contends provides a basis for sub-paragraph "h.(1)" of Contention 7.

Response:

The concepts of reliability-centered maintenance apply to the life extension proposed by this amendment, whether or not the authors of EPRI NP-6152 had the life extension of this proposed amendment in mind.

Argument:

This statement of contention, unadorned by any statement of reasons or of facts and circumstances (as the question called for), is wholly non-responsive to the question propounded.

Interrogatory No. 60.

Interrogatory:

Please describe what SOV understands to be the special effectiveness of RCM for "life-extension."

Response:

Reliability-centered maintenance can result in realignment of maintenance resources to improve overall plant availability and safety, and a more favorable preventive maintenance to corrective maintenance ratio. As part of the reliability-centered maintenance program, controlling degradation mechanisms can be identified, important predictive and preventive maintenance program features can be determined, and plant data and record-keeping requirements to minimize the potential for unanticipated failures can be established.

Data can be collected and evaluated to determine specific evaluation documentation requirements for aging mechanisms that have been identified as potentially limiting to the life of critical components. Recommendations can be developed to modify data and records requirements to support component reliability assessments. One task of the reliability-centered maintenance program can be to reduce the rate of life-limiting degradation mechanisms and to monitor the rate of degradation in order to avoid failure or expiration of qualified design life.

Vermont notes that all of the above is essentially the expectation that the licensee places on the maintenance program in its application for the operating license extension.

Argument:

This interrogatory called for SOV's position on the asserted *special* effectiveness of RCM to a task. In response, SOV lists goals and capabilities that might be accomplished. It offers, however, no reason why RCM is the only, or the best, way in which to accomplish them. It therefore doesn't answer the question.⁷

Interrogatory No. 61.

Interrogatory:

Does SOV contend that there is an applicable NRC requirement VYNPS have in place, or have made a commitment to, an RCM maintenance program? If so, please identify, by citation to or identification of a document, each and every such requirement.

Response:

Vermont is unaware of each and every NRC requirement for maintenance programs. However, as stated in responses to the previous question, the licensee relies on its maintenance program to serve the functions, in the extended period, which could be provided by a reliability-centered maintenance program. Yet licensee has not described the use of reliability-centered maintenance techniques and the NRC Maintenance Team has identified the lack of the use of PRA concepts as a weakness. Thus, the applicable requirement is the

⁷Certainly even SOV must concede that if RCM is but one way of accomplishing a goal, then regardless of how required it be that the goal be accomplished, the method of doing so is subject to the choice of the plant operator alone. That is the reason why it is both appropriate and necessary to inquire whether SOV contends that something about RCM renders that approach uniquely able to accomplish a required goal.

reasonable assurance requirement of 10 CFR 50.57(a)(3), which Vermont contends has not been demonstrated.

Argument:

This response is an evasion. RCM/PRA (or anything else) could be a requirement for one of two sorts of reasons. First, it could be a requirement because it is specifically called out by some promulgation to which obeisance is owed (*i.e.*, a regulation). (A requirement *de jure*.) Alternatively, it could be required because as a practical matter it is the only way in which to accomplish something else that is itself a requirement. (A requirement *de facto*.) SOV in its contention blurs the critical distinction. The purpose of this interrogatory is to explore the basis, if any, on which SOV intends to rely to establish a *de jure* requirement (as its prior answers tend to concede the lack of a *de facto* requirement).⁸ Perhaps perceiving the slippery slope, or perhaps for other reasons, SOV declines to be pinned down. Pinning issues down, however, is the legitimate function of discovery.

Interrogatory No. 67.

Interrogatory:

Please define what is meant by SOV by the term "weakness in the maintenance programs" as it is used by SOV in sub-paragraph "h.(2)" (hereafter used to refer to the second of the two sub-paragraphs labelled by SOV "h") of its Contention 7.

Response:

Refer to the response to Set No. 1, question 6.

Argument:

This response is as inadequate as was the one to which SOV refers, which is the subject of a pending motion to compel.

Interrogatory No. 68.

Interrogatory:

Please state each and every reason SOV contends that "weakness in the maintenance programs" is "of specific risk," and, for each reason, please:

⁸See SOV's response to Interrogatory No. 62 (Set No. 2).

- e. State each and every fact on which your reason is based.
- f. Describe all of the evidence in SOV's possession or of which SOV has knowledge that SOV contends establishes each such fact.
- g. For each reason, either provide the technical qualification (education, employment history, licenses and certificates, experience, or other information which SOV contends establishes the qualifications of the person), of any person on whose expertise SOV relies for the reason or state that SOV does not rely upon the expertise of any person for the reason.

Response:

Vermont objects to this question to the extent that a legal definition of reasonable assurance is requested, since this will be determined at the end of the hearing by the Board. Notwithstanding and without waiving this objection, Vermont states that "Weakness in the maintenance programs" is "of specific risk" when it negates the demonstration of reasonable assurance that protection of public health and safety is or will be provided. Facts, along with evidence and expertise relied upon, have been provided in response to question 44 which illustrate aspects of the maintenance program which do not provide this assurance.

Argument:

For the reasons set forth in Section I, the objection should be overruled.

Insofar as this answer states that the matters adverted to in response to Interrogatory No. 44 are SOV's reasons, it appears to be responsive. However, SOV may not permissibly limit its response to a non-inclusive illustrative list. Either the Board must determine that SOV is limited to the reasons set forth (or incorporated) in this answer, or SOV must complete the answer.

Interrogatory No. 70.

Interrogatory:

For each and every "aspect[] of maintenance problems" identified in response to the foregoing interrogatory, please state each and every reason why SOV contends it is "relevant to the proposed action."

Response:

Vermont has not completed a review to determine each and every reason why these aspects are relevant to the proposed action. However, we are aware of the following:

- "1. There is indication that needed maintenance is not being accomplished or is not performed effectively."

The NRC Maintenance Team identified a large backlog of completed Maintenance Requests awaiting review for appropriateness and technical adequacy. LRS Incorporated identified that the backlog of maintenance requests is large and there is no visible push to rectify the situation. SSFI Observation VY-WCS-7 recorded that more than half the environmentally qualified limitorque motor operator valves have not had grease changeout or spring pack inspection since the original installation. SSFI Observation VY-WCS-3 records non-performance of vendor recommended preventive maintenance. SSFI Observation VY-WRB-4 records lack of testing of check valves in the diesel generator air start system. SSFI Observation VY-WRB-5 records lack of adequate logic testing of the HPCI system. LERs 88-03, 88-13, 88-14, 89-10, 89-23, and 89-24 identify missed surveillances.

- "2. Many failures result from improper performance of maintenance."

LER 89-14 identifies an instance of improper maintenance. LER 88-09 identifies a suspected case of improper maintenance. SSFI Observation VY-SMK-6 records that heating lamps installed by maintenance request to keep HPCI turbine bearing housing warm may not be seismically anchored or qualified to withstand a seismic disturbance. SSFI Observation VY-WCS-5 records that diesel generator minimum lube oil pressure requirement of 20 psig is set below manufacturer's recommended minimum pressure of 26 psig. SSFI Observation VY-WCS-4 records the current HPCI lube oil filter high dp setpoint is set above the filter internal bypass fully open position. SSFI Observation VY-WRB-6 records that motor operated valve RHR-V10-65A and 65B valve actuation time (and surveillance test acceptance criteria) may not be adequate to assure its full stroke open position can be reached. SSFI Observation VY-WRB-7 records that acceptance criteria for the stroke time of safety related valves exceeds times specified in the FSAR and exceeds the time required for the system to perform its function. SSFI Observation VY-WGD-3 records that circuit breaker and relay setpoint selection and control has not been established.

- "3. The interface between maintenance and operations is presently inadequate."

LRS Incorporated identifies that better utilization of the Assistant to the Operations Supervisor in handling corrective MR's . . . could significantly reduce the administrative burden. LRS Incorporated identifies that operators do not feel Vermont Yankee pays sufficient heed to their desires for hardware repair and replacement.

"4. The number of maintenance-related challenges to safety systems is excessive."

LER 89-14 and LER 88-09 identify maintenance-related challenges to safety systems.

Argument:

This answer is responsive, but incomplete. A deadline must be set for its completion.

Interrogatory No. 72.

Interrogatory:

Please state each and every reason SOV contends (if it does) that a "review [of] the industry practice in maintenance planning to determine if the industry trend in establishing formal maintenance planning groups would aid in increasing productivity in the maintenance area" would materially impact safety through the balance of the extended VYNPS license term.

Response:

Formal maintenance planning groups can take the form of planning groups for such areas as maintenance policy, program specifics, professionalism, outage management assistance, and human performance evaluation. While we are aware that licensee has taken some initiatives in the area of maintenance planning, we are similarly aware of the Westec Incorporate SSFI general conclusion that licensee is reluctant to modify maintenance programs to meet industry standards. We are also aware of the NRC Maintenance Team identified weakness of the lack of comprehensive and structures review for adequacy and applicability of the plant's maintenance requirements. In sum, we believe the lack of "review [of] the industry practice in maintenance planning [which] would aid in increasing productivity in the maintenance area" can contribute to the lack of demonstration of reasonable assurance that the proposed action will protect the public health and safety.

Argument:

This response is evasive. Assuming that the quoted language is but a means of achieving a necessary goal, the interrogatory demands SOV to reveal

its contention as to how the asserted failure to implement this mean translates into a demonstrable impact on safety.⁹ SOV has not done so.

Interrogatory No. 73.

Interrogatory:

Please define what is meant by SOV by the term "better computerization of the MR system" as it is used by SOV in sub-paragraph "j" of its Contention 7.

Response:

Vermont quotes the phrase, "better computerization of the MR system" from LRS Report, #3-88, because we agree that better computerization is needed. The Vermont Yankee "Visicard" system is a manual system which was established before the development of personal computer technology, and is outdated. Computerization would allow the creation and use of a master equipment list, and will allow tracking of maintenance activities.

Argument:

This response is evasive. SOV has used a comparative term ("better") in its contention. "Better" is inherently vague; neither can the Board resolve a contention in terms of "better" nor can the licensee ascertain that against which it must defend if the charges is framed in terms of "better." This interrogatory requires SOV to define in a meaningful way how much constitutes the "better" that renders the contention satisfied. SOV has not done so.

⁹The exercise in semantics in which SOV engages illustrates, we respectfully submit, the fallacy of this aspect (as well as others) of this contention. However relevant it might to be a Staff reviewer that a licensee is obviously and explicitly reviewing industry practices, the fact of substance for a contested licensing proceeding is whether the result of the maintenance program is a demonstrable safety concern. Certainly in theory (and as well in practice), one is capable of implementing not only an acceptably safe maintenance program, but also the best maintenance program in the world without having the slightest idea how the rest of the industry is doing. Unless the Board can find as a matter of fact that the VYNPS maintenance program results in a demonstrably unsafe condition of operations, it cannot legally disapprove the proposed amendment, whether or not the Board might prefer (as perhaps the Staff might prefer) that VY be more obviously watching the rest of the industry. This delta between issues of concern to the Staff and the bases for Licensing Board action on a proposed amendment is the reason why a contention premised entirely on the Staff inspection report founders.

Interrogatory No. 75.

Interrogatory:

Please define what is meant by SOV by the term "better utilization of the Assistant to the Operations Supervisor" as it is used by SOV in sub-paragraph "j" of its Contention 7.

Response:

Vermont quotes the phrase, "better utilization of the Assistant to the Operations Supervisor" from the LRS Report, #3-88, because we agree that it would be desirable to reduce or eliminate shift supervisor review time.

Argument:

The "answer" is totally non-responsive. The question asked "[p]lease define what it meant . . ." The answer tells us the motive in using the phrase.

Interrogatory No. 76.

Interrogatory:

Please state each and every reason SOV contends (if it does) that "better utilization of the Assistant to the Operations Supervisor" would materially impact safety through the balance of the extended VYNPS license term.

Response:

The LRS Report gives the impression that review of maintenance requests place a significant burden on the shift supervisor. Safety is impacted by either 1) diverting shift supervisor from other shift monitoring duties, or 2) delaying completion of maintenance requests.

Argument:

This answer, which again illustrates the dangers of blind reliance upon poorly understood reports prepared for entirely different purposes, is non-responsive. "Impressions" do not answer the question, nor do theoretical specifications. The question, which must be answered, is what specifically is the safety connection for which SOV will contend in this proceeding. If that question cannot be answered, then this aspect of the contention must be dismissed.

Interrogatory No. 77.

Interrogatory:

Please define what is meant by SOV by the term "sufficient heed to their desires" as it is used by SOV in sub-paragraph "j" of its Contention 7.

Response:

The phrase "sufficient heed to their desires" is quoted from LRS Report, #3-88. To the extent this question asks what the author meant by this phrase, it is unanswerable, since the author's meaning is unknown to Vermont. Vermont's meaning in quoting the phrase is that it is an apparent weakness in the Vermont Yankee maintenance program, identified by LRS Incorporated, on its face a credible and respected expert opinion.

Argument:

This answer is likewise wholly unilluminating and non-responsive (and for the same reasons). The question did not ask why SOV quoted a phrase from a portion of an assessment for which (SOV's response clearly reveals) SOV has no comprehension or ability to support. The issue is not what someone else may have meant. The issue is what is the precise issue to be litigated perforce this aspect of the admitted contention. If SOV cannot respond, then this aspect of the contention must be dismissed; *pari passu*, this aspect of the contention may only remain in the proceeding if SOV provides a sufficiently precise definition of what it contends to permit its litigation and resolution.

Interrogatory No. 79.

Interrogatory:

Please state each and every reason why SOV contends (if it does) that "pay[ing] sufficient heed to [the operators] desires for hardware repair and replacement" would materially impact safety through the balance of the extended VYNPS license term.

Response:

The policy, practice or occurrence of not "pay[ing] sufficient heed to [the operators] desires for hardware repair and replacement" is an apparent weakness in the maintenance program. The maintenance program is offered as a basis for the assurance that the proposed amendment will protect public health and safety. This identified weakness contributes to the lack of assurance that the maintenance

program will perform as claimed in the application. To the extent that this question requests a legal opinion of this assurance, Vermont objects since this will be determined by the board at the end of the hearing.

Argument:

This response is, for the same reasons as No. 77, an evasion of the question.

Interrogatory No. 80.

Interrogatory:

Please describe in detail exactly what "more work" SOV contends (if it does) needs to be done in "the certification area," as these terms are used in sub-paragraph "j" of its Contention 7, and state each and every reason SOV contends (if it does) that such work would materially impact safety for the balance of the extended VYNPS license term.

Response:

Vermont has not made a determination of exactly what "more work" needs to be done in the "certification area." The area of certification of training skills is an identified weakness in the maintenance program. The maintenance program is offered as a basis for the assurance that the proposed amendment will protect public health and safety. This identified weakness contributes to the lack of assurance that the maintenance program will perform as claimed in the application. to the extent that this question requests a legal opinion of this assurance, Vermont objects since this will be determined by the board at the end of the hearing.

Argument:

For the reasons set forth in Section I, the objection to this interrogatory is not valid and should be overruled. Thereupon, SOV must be ordered to answer the question to the extent of its ability (which extent will then bound the issues for litigation).

Interrogatory No. 81.

Interrogatory:

Please define the term "formality" as it is used by SOV in sub-paragraph "j" of its Contention 7.

Response:

The term "formality" is quoted from LRS Report, #1-89. to the extent this question asks what the author meant by this term, it is unanswerable, since the author's meaning is unknown to Vermont. Vermont's meaning in quoting the terms is that it is an apparent weakness in the Vermont Yankee maintenance program, identified by LRS Incorporated, on its face a credible and respected expert opinion.

Argument:

This response is evasive and inadequate for the reasons set forth in Section I, at page 2, above.

Interrogatory No. 82.

Interrogatory:

Please state each and every reason SOV contends (if it does) that "formality" would materially impact safety for the balance of the extended VYNPS license term.

Response:

The lack of maintenance program formality is an identified weakness in the maintenance program. The maintenance program is offered as a basis for the assurance that the proposed amendment will protect public health and safety. This identified weakness contributes to the lack of assurance that the maintenance program will perform as claimed in the application. To the extent that this question requests a legal opinion of this assurance, Vermont objects since this will be determined by the board at the end of the hearing.

Argument:

SOV's objection should be overruled for the reasons stated in Section I. SOV's answer is totally vacuous; it blandly asserts, with no factual basis, that anything that anyone identifies as a "weakness" contributes to a "lack of assurance." If SOV has any factual basis for its assertions, it should be compelled to state them, as the interrogatory had asked.

Interrogatory No. 83.

Interrogatory:

Please define what is meant by SOV by the term "program informality" as it is used by SOV in sub-paragraph "k." of its Contention 7.

Response:

The phrase "program informality" is quoted from LRS Report, #2-89. To the extent this question asks what the author meant by this phrase, it is unanswerable, since the author's meaning is unknown to Vermont. Vermont's meaning in quoting the phrase is that it is part of a statement of an identified weakness in the Vermont Yankee maintenance program, identified by LRS Incorporated, on its face a credible and respected expert opinion.

Argument:

This response is evasive and inadequate for the reasons set forth in Section I, at page 2, above.

Interrogatory No. 84.

Interrogatory:

Please define what is meant by SOV by the term "vulnerable" as it is used by SOV in sub-paragraph "k." of its Contention 7.

Response:

The term "vulnerable" is quoted from LRS Report, #2-89. To the extent this question asks what the author meant by this term, it is unanswerable, since the author's meaning is unknown to Vermont. Vermont's meaning in quoting the term is that it is part of a statement of an identified weakness in Vermont Yankee maintenance program, identified by LRS Incorporated, on its face a credible and respected expert opinion.

Argument:

This response is evasive and inadequate for the reasons set forth in Section I, at page 2, above.

Interrogatory No. 85.

Interrogatory:

Please define what is meant by SOV by the term "attrition in the experienced maintenance organization" as it is used by SOV in sub-paragraph "k." of its Contention 7.

Response:

The phrase "attrition in the experienced maintenance organization" is quoted from LRS Report, #2-89. To the extent this question asks what the author meant by this phrase, it is unanswerable, since the author's meaning is unknown to Vermont. Vermont's meaning in quoting the phrase is that it is part of a statement of an identified weakness in the Vermont Yankee maintenance program, identified by LRS Incorporated, on its face a credible and respected expert opinion.

Argument:

This response is evasive and inadequate for the reasons set forth in Section I, at page 2, above.

Interrogatory No. 86.

Interrogatory:

Please describe how SOV contends that "program informality" (as SOV uses the term) leaves VYNPS "vulnerable" (as SOV defines the term) to "attrition in the experienced maintenance organization" (as SOV uses the term).

Response:

As stated above, Vermont's use of the LRS quotation is to document the identification of a weakness in the Vermont Yankee maintenance program, identified by LRS Incorporated, on its face a credible and respected expert opinion. Vermont has not specifically evaluated the meaning of this quotation further. To the extent this question asks what the author meant by this phrase, it is unanswerable, since the author's meaning is unknown to Vermont. Notwithstanding the above, Vermont offers that this question is answered by the responses to Set No. 1, questions 8, 9 and 10.

Argument:

This response is evasive and inadequate for the reasons set forth in Section I, at page 2, above.

Interrogatory No. 87.

Interrogatory:

Please describe each and every enhancement to "program formality" that SOV contends is required to obviate VYNPS's "vulnerability" to "attrition in the experienced maintenance organization," and, for each

such enhancement, set forth all of the reasons why SOV contends that, if implemented, the enhancement would obviate the vulnerability.

Response:

To the extent the request to identify "enhancement[s which] would obviate the vulnerability" represents a request for Vermont to demonstrate reasonable assurance that the maintenance program would protect public health and safety in the extended period, Vermont objects, since this demonstration must be made by licensee. further, Vermont objects to the extent that this requests a legal opinion of what would constitute reasonable assurance, which will be determined by the board at the end of the hearing. Notwithstanding and without waiving these objections, Vermont offers that we are unable to answer this question without access to and review of licensee's maintenance documents.

Argument:

SOV's objections should be overruled for the reasons stated in Section I. This interrogatory requests SOV's position as to one of its own assertions, and the Board should compel SOV to provide a complete answer as a condition to participating further in this proceeding.

Interrogatory No. 88.

Interrogatory:

Please define what is meant by SOV by the term "communications problems" as it is used by SOV in sub-paragraph "k." of its Contention 7.

Response:

The terms "communications problems" is quoted from LRS Report, #2-89. To the extent this question asks what the author meant by this term, it is unanswerable, since the author's meaning is unknown to Vermont. Vermont's meaning in quoting the term is that it is part of a statement of an identified weakness in the Vermont Yankee maintenance program, identified by LRS Incorporated, on its face a credible and respected expert opinion.

Argument:

This response is evasive and inadequate for the reasons set forth in Section I, at page 2, above.

Interrogatory No. 89.

Interrogatory:

Please describe how SOV contends that "program informality" (as SOV uses the term) leaves VYNPS "vulnerable" (as SOV defines the term) to "communications problems" (as SOV uses the term).

Response:

As stated above, Vermont's use of the LRS quotation is to document the identification of a weakness in the Vermont Yankee maintenance program, identified by LRS Incorporated, on its face a credible and respected expert opinion. Vermont has not specifically evaluated the meaning of this quotation further. To the extent this question asks what the author meant by this phrase, it is unanswerable, since the author's meaning is unknown to Vermont.

Argument:

This response is evasive and inadequate for the reasons set forth in Section I, at page 2, above.

Interrogatory No. 90.

Interrogatory:

Please describe each and every enhancement to "program formality" that SOV contends is required to obviate VYNPS's "vulnerability" to "communications problems" and, for each such enhancement, set forth all of the reasons why SOV contends that, if implemented, the enhancement would obviate the vulnerability.

Response:

To the extent the request to identify "enhancement[s which] would obviate the vulnerability" represents a request for Vermont to demonstrate reasonable assurance that the maintenance program would protect public health and safety in the extended period, Vermont objects, since this demonstration must be made by licensee. Further, Vermont objects to the extent that this requests a legal opinion of what would constitute reasonable assurance, which will be determined by the board at the end of the hearing. Notwithstanding and without waiving these objections, Vermont offers that we are unable to answer this question without access to and review of licensee's maintenance documents.

Argument:

SOV's objections should be overruled for the reasons stated in Section I. This interrogatory requests SOV's position as to one of its own assertions, and the Board should compel SOV to provide a complete answer as a condition to participating further in this proceeding.

Interrogatory No. 91.

Interrogatory:

Please define what is meant by SOV by the term "incidents involving vendor data shortcomings" as it is used by SOV in sub-paragraph "k." of its Contention 7.

Response:

The phrase "incidents involving vendor data shortcomings" is quoted from LRS Report, #2-89. To the extent this question asks what the author meant by this phrase, it is unanswerable, since the author's meaning is unknown to Vermont. Vermont's meaning in quoting the phrase is that it is part of a statement of an identified weakness in the Vermont Yankee maintenance program, identified by LRS Incorporated, on its face a credible and respected expert opinion. Notwithstanding the above, Vermont believes this phrase refers to the lack of effective policy and procedures for controlling and updating manufacturer technical manuals, identified as a weakness in IR 89-80.

Argument:

This response is evasive and inadequate for the reasons set forth in Section I, at page 2, above.

Interrogatory No. 92.

Interrogatory:

Please describe how SOV contends that "program informality" (as SOV uses the term) leaves VYNPS "vulnerable" (as SOV defines the term) to "incidents involving vendor data shortcomings" (as SOV uses the term).

Response:

As stated above, Vermont's use of the LRS quotation is to document the identification of a weakness in the Vermont Yankee maintenance program, identified by LRS Incorporated, on its face a credible and

respected expert opinion. Vermont has not specifically evaluated the meaning of this quotation further. To the extent this question asks what the author meant by this phrase, it is unanswerable, since the author's meaning is unknown to Vermont. Notwithstanding the above, Vermont offers that further response to this question is provided in response to questions 53 and 54.

Argument:

To the extent that SOV admits that this answer is incomplete, it must be required to supplement it before hearings can proceed.

Interrogatory No. 93.

Interrogatory:

Please describe each and every enhancement to "program formality" that SOV contends is required to obviate VYNPS's "vulnerability" to "incidents involving vendor data shortcomings" and, for each such enhancement, set forth all of the reasons why SOV contends that, if implemented, the enhancement would obviate the vulnerability.

Response:

To the extent the request to identify "enhancement[s which] would obviate the vulnerability" represents a request for Vermont to demonstrate reasonable assurance that the maintenance program would protect public health and safety in the extended period, Vermont objects, since this demonstration must be made by licensee. Further, Vermont objects to the extent that this requests a legal opinion of what would constitute reasonable assurance, which will be determined by the board at the end of the hearing. Notwithstanding and without waiving these objections, Vermont offers that we are unable to answer this question without access to and review of licensee's maintenance documents.

Argument:

SOV's objections should be overruled for the reasons stated in Section I. This interrogatory requests SOV's position as to one of its own assertions, and the Board should compel SOV to provide a complete answer as a condition to participating further in this proceeding.

Interrogatory No. 94.

Interrogatory:

Please define what is meant by SOV by the term "procedural inadequacies" as it is used by SOV in sub-paragraph "k." of its Contention 7.

Response:

The term "procedural inadequacies" is quoted from LRS Report, #2-89. To the extent this question asks what the author meant by this term, it is unanswerable, since the author's meaning is unknown to Vermont. Vermont's meaning in quoting the term is that it is part of a statement of an identified weakness in the Vermont Yankee maintenance program, identified by LRS Incorporated, on its face a credible and respected expert opinion.

Argument:

This response is evasive and inadequate for the reasons set forth in Section I, at page 2, above.

Interrogatory No. 95.

Interrogatory:

Please describe how SOV contends that "program informality" (as SOV uses the term) leaves VYNPS "vulnerable" (as SOV defines the term) to "procedural inadequacies" (as SOV uses the term).

Response:

As stated above, Vermont's use of the LRS quotation is to document the identification of a weakness in the Vermont Yankee maintenance program, identified by LRS Incorporated, on its face a credible and respected expert opinion. Vermont has not specifically evaluated the meaning of this quotation further. To the extent this question asks what the author meant by this phrase, it is unanswerable, since the author's meaning is unknown to Vermont.

Argument:

This response is evasive and inadequate for the reasons set forth in Section I, at page 2, above.

Interrogatory No. 96.

Interrogatory:

Please describe each and every enhancement to "program formality" that SOV contends is required to obviate VYNPS's "vulnerability" to "procedural inadequacies" and, for each such enhancement, set forth all of the reasons why SOV contends that, if implemented, the enhancement would obviate the vulnerability.

Response:

To the extent the request to identify "enhancement[s which] would obviate the vulnerability" represents a request for Vermont to demonstrate reasonable assurance that the maintenance program would protect public health and safety in the extended period, Vermont objects, since this demonstration must be made by licensee. Further, Vermont objects to the extent that this requests a legal opinion of what would constitute reasonable assurance, which will be determined by the board at the end of the hearing. Notwithstanding and without waiving these objections, Vermont offers that we are unable to answer this question without access to and review of licensee's maintenance documents.

Argument:

SOV's objections should be overruled for the reasons stated in Section I. This interrogatory requests SOV's position as to one of its own assertions, and the Board should compel SOV to provide a complete answer as a condition to participating further in this proceeding.

Interrogatory No. 97.

Interrogatory:

Please define what is meant by SOV by the term "human error" as it is used by SOV in sub-paragraph "k." of its Contention 7.

Response:

The term "human error" is quoted from LRS Report, #2-89. To the extent this question asks what the author meant by this term, it is unanswerable, since the author's meaning is unknown to Vermont. Vermont's meaning in quoting the term is that it is part of a statement of an identified weakness in the Vermont Yankee maintenance program, identified by LRS Incorporated, on its face a credit and respected expert opinion.

Argument:

This response is evasive and inadequate for the reasons set forth in Section I, at page 2, above.

Interrogatory No. 98.

Interrogatory:

Please describe how SOV contends that "program informality" (as SOV uses the term) leaves VYNPS "vulnerable" (as SOV defines the term) to "human error" (as SOV uses the term).

Response:

As stated above, Vermont's use of the LRS quotation is to document the identification of weakness in the Vermont Yankee maintenance program, identified by LRS Incorporated, on its face a credible and respected expert opinion. Vermont has not specifically evaluated the meaning of this quotation further. To the extent this question asks what the author meant by this phrase, it is unanswerable, since the author's meaning is unknown to Vermont. Notwithstanding the above, Vermont offers that this refers to the weakness identified by IR 89-80:

"The licensee's failure to develop a comprehensive set of documents to formalize and upgrade existing practices; thereby, providing an infrastructure capable of sustaining future good performance in light of the certainty of staff turnover, is considered the licensee's greatest weakness."

Argument:

To the extent that SOV admits that this answer is incomplete, it must be required to supplement it.

Interrogatory No. 99.

Interrogatory:

Please describe each and every enhancement to "program formality" that SOV contends is required to obviate VYNPS's "vulnerability" to "human error" and, for each such enhancement, set forth all of the reasons why SOV contends that, if implemented, the enhancement would obviate the vulnerability.

Response:

To the extent the request to identify "enhancement[s which] would obviate the vulnerability" represents a request for Vermont to demonstrate reasonable assurance that the maintenance program would protect public health and safety in the extended period, Vermont objects, since this demonstration must be made by licensee. Further, Vermont objects to the extent that this requests a legal opinion of what would constitute reasonable assurance, which will be determined by the board at the end of the hearing. Notwithstanding and without waiving these objections, Vermont offers that we are unable to answer this question without access to and review of licensee's maintenance documents.

Argument:

SOV's objections should be overruled for the reasons stated in Section I. This interrogatory requests SOV's position as to one of its own assertions, and the Board should compel SOV to provide a complete answer as a condition to participating further in this proceeding.

Interrogatory No. 100.

Interrogatory:

Please define what is meant by SOV by the term "tested with satisfactory performance" as it is used by SOV in sub-paragraph "k" of its Contention 7, including the testing interval requirement and the acceptance criteria implied thereby.

Response:

The phrase, "tested with satisfactory performance," means that simply altering procedures and implementing enhancements cannot be considered remedy to demonstrate reasonable assurance that the proposed amendment will protect health and safety until these procedural changes and enhancements are proven effective over a period of time. Should the board decide that a set of procedural changes and enhancements would provide reasonable assurance if demonstrated effective, Vermont provisionally believes a monitoring period of five years would represent a reasonable testing interval, with agreed upon acceptance criteria and access to monitor.

Argument:

SOV's response is, at best, incomplete. No explanation of what would constitute "satisfactory performance" is provided, as the question asked. Nor are any "acceptance criteria" described, beyond that such criteria must be

"agreed upon." SOV should be required to provide a complete and responsive answer.

Interrogatory No. 101.

Interrogatory:

Please state each and every reason why SOV contends that "the proposed action cannot be considered" until "such maintenance improvements are made and tested with satisfactory performance," and, for each such reason, please:

- a. State each and every fact on which your reason is based.
- b. Describe all of the evidence in SOV's possession or of which SOV has knowledge that SOV contends establishes each such fact.
- c. For each reason, either provide the technical qualification (education, employment history, licenses and certificates, experience, or other information which SOV contends establishes the qualifications of the person), of any person on whose expertise SOV relies for the reason or state that SOV does not rely upon the expertise of any person for the reason.

Response:

The reason "the proposed action cannot be considered" until "such maintenance improvements are made and tested with satisfactory performance," is that reasonable assurance cannot be demonstrated until procedural changes and program enhancements which purport to make such a demonstration are proven effective. Vermont relies on the expertise of Mr. H. Shannon Phillips to establish this reason and fact.

Argument:

SOV's answer is, at best, incomplete. SOV has neither stated the facts underlying its purported reason (which "reason" is merely a slight rephrasing of the original allegation), nor described the evidence which it contends establish those facts, both of which the interrogatory specifically asked it to do. SOV should be compelled to state what (if any) facts it knows, upon pain of having its contention sub-paragraph stricken as abandoned.¹⁰

¹⁰It is worth observing at this stage (as the point may arise again) that this response reflects a profound misunderstanding of the nature of the NRC licensing process. Per the confused notions revealed in this answer, approval of the pending amendment will still not be in order even after the VYNPS maintenance program were undeniably perfect, but rather the Board would

Interrogatory No. 106

Interrogatory:

Does SOV contend that NRC imposes any requirements as to "reliability standards" as that term is used by SOV in sub-paragraph "m" of its Contention 7. If so, please identify, by citation to or identification of a specific provision of a document, each and every such requirement.

Response:

NRC imposed requirements on reliability have worked to elicit a commitment from the licensee to replace the UPS. In addition Draft NRC Regulatory Guide DG-1001 states:

"Maintenance effectiveness indicators based on component failure data should be monitored to provide indication of the effectiveness of the overall maintenance program. One acceptable method is to establish indicators based on the number of failures experienced or discovered per unit time."

Vermont contends that this is an appropriate requirement for the licensee's proposed life extension.

Argument:

This response is totally evasive and non-responsive. The question (never answered) is whether SOV asserts that the Commission has imposed reliability requirements compliance with which is a legal condition precedent to the grant of operating authority (and, if so, what are the citations to such requirements). One may infer broadly from the response that SOV believes the answer to the former is "Yes," but SOV has provided (and, frankly, could provide) not a single citation. That inability, however, is not an acceptable justification for avoiding the question.

first have to serve a five-year term as the daily overseer of Licensee performance. In the first instance, oversight of licensee performance is the sole province of the Staff. More fundamentally, this same logic applies equally to every other program at an operating nuclear power plant, such that, were it so, no amendment or original operating authority could be granted until the plant had first operated, under Board oversight, for a substantial period.

What is at issue in this proceeding (if anything is) is the adequacy of the maintenance *program*. The adequacy of licensee *performance* under this (or any other program at the plant) is not a licensing issue in this proceeding.

Interrogatory No. 107.

Interrogatory:

With respect to the matter referred to on page 49 of its "Supplement to Petition to Intervene" as "LER-89-24," does SOV possess any information regarding the matter beyond that contained in the Licensee Event Report? If so, please set forth all of the information known or believed by SOV to be known by it relating to that matter.

Response:

At this time we have no information beyond that in the LER.

Argument:

To the extent that the response is incomplete "at this time," it must be required to be supplemented before hearings commence.

Interrogatory No. 108.

Interrogatory:

Please describe each and every change to the VYNPS maintenance program or surveillance program that SOV contends, had such change been implemented earlier, would have precluded the occurrence of the matters described in the Licensee Event Report described in the foregoing interrogatory.

Response:

This LER has yet not been evaluated by Vermont with regard to the requested information.

Argument:

SOV's answer is, at best, incomplete. SOV has neither stated the facts underlying its purported reason (which "reason" is merely a slight rephrasing of the original allegation), nor described the evidence which it contends establish those facts, both of which the interrogatory specifically asked it to do. SOV should be compelled to state what (if any) facts it knows, upon pain of having its contention sub-paragraph stricken as abandoned.

Interrogatory No. 109.

Interrogatory:

With respect to the matter referred to on page 49 of its "Supplement to Petition to Intervene" as "LER-89-23," does SOV possess any information regarding the matter beyond that contained in the Licensee Event Report? If so, please set forth all of the information known or believed by SOV to be known by it relating to that matter.

Response:

At this time we have no information beyond that in the LER.

Argument:

To the extent that the response is incomplete "at this time," it must be required to be supplemented before hearings commence.

Interrogatory No. 110.

Interrogatory:

Please describe each and every change to the VYNPS maintenance program or surveillance program that SOV contends, had such change been implemented earlier, would have precluded the occurrence of the matters described in the Licensee Event Report described in the foregoing interrogatory.

Response:

This LER has not been evaluated by Vermont with regard to the requested information.

Argument:

Here too, SOV cannot raise an issue in a contention and then blandly refuse to state its position on the issue. The Board should require SOV to make a complete response to this interrogatory as a condition of participating further in this proceeding.

Interrogatory No. 111.

Interrogatory:

With respect to the matter referred to on page 49 of its "Supplement to Petition to Intervene" as "LER-89-17," does SOV possess any information regarding the matter beyond that contained in the

Licensee Event Report? If so, please set forth all of the information known or believed by SOV to be known by it relating to that matter.

Response:

At this time we have no information beyond that in the LER.

Argument:

To the extent that the response is incomplete "at this time," it must be required to be supplemented before hearings commence.

Interrogatory No. 112.

Interrogatory:

Please describe each and every change to the VYNPS maintenance program or surveillance program that SOV contends, had such change been implemented earlier, would have precluded the occurrence of the matters described in the Licensee Event Report described in the foregoing interrogatory.

Response:

This LER has not been evaluated by Vermont with regard to the requested information.

Argument:

Here too, SOV cannot raise an issue in a contention and then blandly refuse to state its position on the issue. The Board should require SOV to make a complete response to this interrogatory as a condition of participating further in this proceeding.

Interrogatory No. 113.

Interrogatory:

With respect to the matter referred to on page 49 of its "Supplement to Petition to Intervene" as "LER-89-14," does SOV possess any information regarding the matter beyond that contained in the Licensee Event Report? If so, please set forth all of the information known or believed by SOV to be known by it relating to that matter.

Response:

At this time we have no information beyond that in the LER.

Argument:

To the extent that the response is incomplete "at this time," it must be required to be supplemented before hearings commence.

Interrogatory No. 114.

Interrogatory:

Please describe each and every change to the VYNPS maintenance program or surveillance program that SOV contends, had such change been implemented earlier, would have precluded the occurrence of the matters described in the Licensee Event Report described in the foregoing interrogatory.

Response:

This LER has not been completely evaluated by Vermont with regard to the requested information. However, refer to the response to question 54.

Argument:

To the extent that the response is incomplete "at this time," it must be required to be supplemented before hearings commence.

Interrogatory No. 115.

Interrogatory:

With respect to the matter referred to on page 49 of its "Supplement to Petition to Intervene" as "LER-89-10," does SOV possess any information regarding the matter beyond that contained in the Licensee Event Report? If so, please set forth all of the information known or believed by SOV to be known by it relating to that matter.

Response:

At this time we have no information beyond that in the LER.

Argument:

To the extent that the response is incomplete "at this time," it must be required to be supplemented before hearings commence.

Interrogatory No. 116.

Interrogatory:

Please describe each and every change to the VYNPS maintenance program or surveillance program that SOV contends, had such change been implemented earlier, would have precluded the occurrence of the matters described in the Licensee Event Report described in the foregoing interrogatory.

Response:

This LER has not been evaluated by Vermont with regard to the requested information.

Argument:

Here too, SOV cannot raise an issue in a contention and then blandly refuse to state its position on the issue. The Board should require SOV to make a complete response to this interrogatory as a condition of participating further in this proceeding.

Interrogatory No. 117.

Interrogatory:

With respect to the matter referred to on page 49 of its "Supplement to Petition to Intervene" as "LER-88-14," does SOV possess any information regarding the matter beyond that contained in the Licensee Event Report? If so, please set forth all of the information known or believed by SOV to be known by it relating to that matter.

Response:

At this time we have no information beyond that in the LER.

Argument:

To the extent that the response is incomplete "at this time," it must be required to be supplemented before hearings commence.

Interrogatory No. 118.

Interrogatory:

Please describe each and every change to the VYNPS maintenance program or surveillance program that SOV contends, had such change been implemented earlier, would have precluded the occurrence of the

matters described in the Licensee Event Report described in the foregoing interrogatory.

Response:

This LER has not been evaluated by Vermont with regard to the requested information.

Argument:

Here too, SOV cannot raise an issue in a contention and then blandly refuse to state its position on the issue. The Board should require SOV to make a complete response to this interrogatory as a condition of participating further in this proceeding.

Interrogatory No. 119.

Interrogatory:

With respect to the matter referred to on page 49 of its "Supplement to Petition to Intervene" as "LER-88-13," does SOV possess any information regarding the matter beyond that contained in the Licensee Event Report? If so, please set forth all of the information known or believed by SOV to be known by it relating to that matter.

Response:

At this time we have no information beyond that in the LER.

Argument:

To the extent that the response is incomplete "at this time," it must be required to be supplemented before hearings commence.

Interrogatory No. 120.

Interrogatory:

Please describe each and every change to the VYNPS maintenance program or surveillance program that SOV contends, had such change been implemented earlier, would have precluded the occurrence of the matters described in the Licensee Event Report described in the foregoing interrogatory.

Response:

This LER has not been evaluated by Vermont with regard to the requested information.

Argument:

Here too, SOV cannot raise an issue in a contention and then blandly refuse to state its position on the issue. The Board should require SOV to make a complete response to this interrogatory as a condition of participating further in this proceeding.

Interrogatory No. 122.

Interrogatory:

Please describe each and every change to the VYNPS maintenance program or surveillance program that SOV contends, had such change been implemented earlier, would have precluded the occurrence of the matters described in the Licensee Event Report described in the foregoing interrogatory.

Response:

This LER has not been completely evaluated by Vermont with regard to the requested information. Provisionally, we believe the maintenance procedure for the turbine pressure control system (if one exists) did not provide for proper cleaning and setpoint determination of the oil system pressure control valves. Additionally, relevant vendor manual updates may not have been incorporated which would have prevented the reactor trips. Finally, the turbine pressure control system may be approaching obsolescence. Such changes cannot be confirmed or dismissed until access is gained to licensee's maintenance program documentation.

Argument:

As SOV admits that this answer is not complete, SOV must be required to supplement it prior to hearings.

Interrogatory No. 124.

Interrogatory:

With respect to the matter referred to on page 49 of its "Supplement to Petition to Intervene" as "LER-88-05," does SOV possess any information regarding the matter beyond that contained in the Licensee Event Report? If so, please set forth all of the information known or believed by SOV to be known by it relating to that matter.

Response:

At this time we have no information beyond that in the LER.

Argument:

To the extent that the response is incomplete "at this time," it must be required to be supplemented before hearings commence.

Interrogatory No. 125.

Interrogatory:

Please describe each and every change to the VYNPS maintenance program or surveillance program that SOV contends, had such change been implemented earlier, would have precluded the occurrence of the matters described in the Licensee Event Report described in the foregoing interrogatory.

Response:

This LER has not been evaluated by Vermont with regard to the requested information.

Argument:

Again, SOV cannot raise an issue in a contention and then, as it has here, blandly refuse to state its position on the issue. The Board should require SOV to make a complete response to this interrogatory as a condition of participating further in this proceeding.

Interrogatory No. 126.

Interrogatory:

With respect to the matter referred to on page 50 of its "Supplement to Petition to Intervene" as "LER-88-04," does SOV possess any information regarding the matter beyond that contained in the Licensee Event Report? If so, please set forth all of the information known or believed by SOV to be known by it relating to that matter.

Response:

At this time we have no information beyond that in the LER.

Argument:

To the extent that the response is incomplete "at this time," it must be required to be supplemented before hearings commence.

Interrogatory No. 127.

Interrogatory:

Please describe each and every change to the VYNPS maintenance program or surveillance program that SOV contends, had such change been implemented earlier, would have precluded the occurrence of the matters described in the Licensee Event Report described in the foregoing interrogatory.

Response:

This LER has not been evaluated by Vermont with regard to the requested information.

Argument:

Again, SOV cannot raise an issue in a contention and then, as it has here, blandly refuse to state its position on the issue. The Board should require SOV to make a complete response to this interrogatory as a condition of participating further in this proceeding.

Interrogatory No. 128.

Interrogatory:

With respect to the matter referred to on page 50 of its "Supplement to Petition to Intervene" as "LER-88-03," does SOV possess any information regarding the matter beyond that contained in the Licensee Event Report? If so, please set forth all of the information known or believed by SOV to be known by it relating to that matter.

Response:

At this time we have no information beyond that in the LER.

Argument:

To the extent that the response is incomplete "at this time," it must be required to be supplemented before hearings commence.

Interrogatory No. 129.

Interrogatory:

Please describe each and every change to the VYNPS maintenance program or surveillance program that SOV contends, had such change been implemented earlier, would have precluded the occurrence of the matters described in the Licensee Event Report described in the foregoing interrogatory.

Response:

This LER has not been evaluated by Vermont with regard to the requested information.

Argument:

Again, SOV cannot raise an issue in a contention and then, as it has here, blandly refuse to state its position on the issue. The Board should require SOV to make a complete response to this interrogatory as a condition of participating further in this proceeding.

Interrogatory No. 131.

Interrogatory:

Please describe each and every change to the VYNPS maintenance program or surveillance program that SOV contends, had such change been implemented earlier, would have precluded the occurrence of the matters described in the Licensee Event Report described in the foregoing interrogatory.

Response:

This LER has not been evaluated by Vermont with regard to the requested information.

Argument:

Again, SOV cannot raise an issue in a contention and then, as it has here, blandly refuse to state its position on the issue. The Board should require SOV to make a complete response to this interrogatory as a condition of participating further in this proceeding.

Interrogatory No. 133.

Interrogatory:

Please describe each and every change to the VYNPS maintenance program or surveillance program that SOV contends, had such change been implemented earlier, would have precluded the occurrence of the matters described in the Licensee Event Report described in the foregoing interrogatory.

Response:

This LER has not been evaluated by Vermont with regard to the requested information.

Argument:

Again, SOV cannot raise an issue in a contention and then, as it has here, blandly refuse to state its position on the issue. The Board should require SOV to make a complete response to this interrogatory as a condition of participating further in this proceeding.

Interrogatory No. 135.

Interrogatory:

Please describe each and every change to the VYNPS maintenance program or surveillance program that SOV contends, had such change been implemented earlier, would have precluded the occurrence of the matters described in the Licensee Event Report described in the foregoing interrogatory.

Response:

This LER has not been evaluated by Vermont with regard to the requested information.

Argument:

Again, SOV cannot raise an issue in a contention and then, as it has here, blandly refuse to state its position on the issue. The Board should require SOV to make a complete response to this interrogatory as a condition of participating further in this proceeding.

Interrogatory No. 137.

Interrogatory:

Please describe each and every change to the VYNPS maintenance program or surveillance program that SOV contends, had such change been implemented earlier, would have precluded the occurrence of the matters described in the Licensee Event Report described in the foregoing interrogatory.

Response:

This LER has not been evaluated by Vermont with regard to the requested information.

Argument:

Once again, SOV cannot raise an issue in a contention and then, as it has here, blandly refuse to state its position on the issue. The Board should require SOV to make a complete response to this interrogatory as a condition of participating further in this proceeding.

Interrogatory No. 138.

Interrogatory:

Please define "weakness" as that term is used by SOV in sub-paragraph "I" of its Contention 8.

Response:

Refer to the response to Set No. 1, question 6.

Argument:

This response is defective to the same extent, and for the same reasons, as the response which it references. See Licensee's *Motion to Compel Answers to Interrogatories (VYNPC Set No. 1)* (April 24, 1990) at 9-10.

Interrogatory No. 140.

Interrogatory:

Please state each and every reason SOV contends that VYNPS will have "future inadequacies in [its] maintenance program", and, for each such reason, please:

- a. State each and every fact on which your reason is based.

- b. Describe all of the evidence in SOV's possession or of which SOV has knowledge that SOV contends establishes each such fact.
- c. For each reason, either provide the technical qualification (education, employment history, licenses and certificates, experience, or other information which SOV contends establishes the qualifications of the person), of any person on whose expertise SOV relies for the reason or state that SOV does not rely upon the expertise of any person for the reason.

Response:

Refer to response to question 14.

Argument:

Beyond the objections, which should be overruled for the reasons set forth in Section I, SOV has provided (in its "response" to Interrogatory No. 14) only 1 legal requirement (10 C.F.R. § 50.57(a)(3)). The Board should therefore either rule that SOV is limited to that asserted legal requirement or should require SOV to identify any other asserted legal requirements on which it intends to rely.

Interrogatory No. 145.

Interrogatory:

With respect to the matter of "gross age failure of the drywell paint system" referred to by SOV in sub-paragraph "n" of its Contention 8, does SOV possess any information regarding the matter beyond that contained in "letter, BVY 89-69, Pelletier to NRC"? If so, please set forth all of the information known or believed by SOV to be known by it relating to that matter.

Response:

At this time, we have no additional documents regarding the containment paint failure. We are aware of information related to paint failures in NRC Information Notice 85-24 and INPO SER 68-83. In addition we possess Regulatory Guide 1.54, Quality Assurance Requirements for Protective Coatings Applied to Water-Cooled Nuclear Power Plants, June 1973, and the document, "Analytical Evaluation of Station Service Water System," Comanche Peak Nuclear Power Station, Case Consultant Jack Dole, December 31, 1989. This document evaluates painting failure modes.

Argument:

To the extent that the response is incomplete "at this time," it must be required to be supplemented before hearings commence.

Interrogatory No. 147.

Interrogatory:

Please state each and every reason SOV contends (if it does) that the "adequacy of the coating system" would differ for the extended period from its "adequacy" for the balance of the present VYNPS license term, and, for each reason, please:

- a. State each and every fact on which your reason is based.
- b. Describe all of the evidence in SOV's possession or of which SOV has knowledge that SOV contends establishes each such fact.
- c. For each reason, either provide the technical qualification (education, employment history, licenses and certificates, experience, or other information which SOV contends establishes the qualifications of the person), of any person on whose expertise SOV relies for the reason or state that SOV does not rely upon the expertise of any person for the reason.

Response:

Vermont objects to such a comparison with "adequacy" in the present licensing term, since this is not at issue in the present proceeding. Notwithstanding and without waiving this objection, Vermont states that we contend simply that reasonable assurance has not been demonstrated that the containment coating system will meet its current licensing basis in the extended period.

Argument:

SOV's relevance objection is ill-founded. As is a license amendment proceeding, matters are legitimate for contest only if they arise out of the amendment. If, on the other and, a contestant wishes to litigate a matter that is equally applicable to any period of operation—that does not have some special relevance to the period 2007-2012—then it cannot be raised in this proceeding. Hence the legitimate test: "How does this differ from what is there now?"

Thus, if a plant system is adequate for the balance of the present license term—*i.e.*, into the year 2007—then some specific reason would need to be shown why it would not remain equally adequate for the period from 2007

to 2012. Not only is this a relevant inquiry; it is virtually the *only* type of evidentiary analysis that can be used to establish the truth (or the baselessness) of most or all of SOV's allegations concerning conditions during the amended license term. Thus SOV should be compelled to respond to the request for all facts, evidence, and expertise (if any) underlying its stated reasons, upon pain of having its contention sub-paragraph stricken as abandoned.

Interrogatory No. 148.

Interrogatory:

Please set forth all of the information known or believed by SOV to be known by it relating to "torus wall thinning experienced at Nine Mile Point."

Response:

We are aware, through following industry activities, that a torus wall thinning problem exists at Nine Mile Point. An investigation provided verbal information that the Nine Mile Point torus is uncoated, while the Vermont Yankee torus is coated. At this time, we have no additional information.

Argument:

To the extent that the response is incomplete "at this time," it must be required to be supplemented before hearings commence.

Interrogatory No. 150.

Interrogatory:

Please define what is meant by SOV by the term "ECCS criteria is not met" as it is used by SOV in sub-paragraph "o" of its Contention 8.

Response:

"ECCS criteria" refers to the requirements of 10 CFR 50.46; 10 CFR 50, Appendix K; 10 CFR 50, Appendix A, Criteria 35; NRC Regulatory Guide 1.1 (Safety Guide 1), "Net Positive Suction Head for Emergency Core Cooling and Containment Heat Removal System Pumps," and all aspects of the Vermont Yankee ECCS current licensing basis.

Argument:

SOV's answer is evasive. The interrogatory asked SOV to explain its assertion that "ECCS criteria is not met." SOV provided no explanation, and instead merely provides a vague and open-ended citation to various ECCS criteria (including "all aspects of the Vermont Yankee ECCS current licensing basis"). A full and responsive answer should be compelled.

Interrogatory No. 152.

Interrogatory:

Please state each and every reason SOV contends that "ECCS pump suction [sic] must . . . be evaluated with regard to the effects of operation and misoperation of a proposed hardened containment vent," and, for each reason, please:

- a. State each and every fact on which your reason is based.
- b. Describe all of the evidence in SOV's possession or of which SOV has knowledge that SOV contends establishes each such fact.
- c. For each reason, either provide the technical qualification (education, employment history, licenses and certificates, experience, or other information which SOV contends establishes the qualifications of the person), of any person on whose expertise SOV relies for the reason or state that SOV does not rely upon the expertise of any person for the reason.

Response:

Refer to the previous response. The question cannot be answered until the final design for the containment vent is submitted by Vermont Yankee.

Argument:

SOV has simply not answered the question. SOV has not given its reasons, described the evidence it *currently* is aware of, or identified whose (if anyone's) expertise it relies on. SOV clearly *can* provide such information as it now possesses; it should be *compelled* to do so.¹¹

¹¹One might add that, given the responses to Interrogatories Nos. 151 and 152, it should now be clear that "sub-part o." of Contention 8 should not have been admitted as related to Contention 7. Nothing in these answers relates to maintenance (as, frankly, nothing in Contention 8 related to maintenance). Rather, it now seems clear that the hand SOV wishes to play on this issue is design review of the proposed (by the Staff) containment vent. Any such

Interrogatory No. 155.

Interrogatory:

If, in response to any of the foregoing interrogatories, SOV has responded that it cannot answer or that it cannot answer completely without the acquisition by it of additional information, for each such response:

- a. Describe the additional information that SOV contends is required in order for it to answer or to answer completely the interrogatory.
- b. State each and every reason why SOV contends that the acquisition of such information is necessary in order for it to answer or to answer completely the interrogatory.
- c. State the steps that SOV is taking to acquire the information, and, for each step, the anticipated date on which it will be completed.
- d. State the intentions, if any, of SOV concerning supplementation of its answer to the interrogatory, including (if supplementation is intended), the date on which it is anticipated that SOV will serve its supplemental response.

Response:

Vermont objects to this question on the grounds that it is burdensome, that it seeks disclosure of the thought processes of counsel, and that it seeks disclosure of case strategy.

Argument:

SOV's objections are without merit. As to burden, the Licensee's interrogatories simply tracked the allegations in SOV's contentions; SOV can hardly be heard to complain that it is burdensome to state what additional information it contends is needed to prove (or disprove) its own allegations. See, e.g., *Pennsylvania Power and Light Company* (Susquehanna Steam Electric Station, Units 1 and 2), ALAB-613, 12 NRC 317, 334 n.26, 335 (1980).

SOV's claim that the interrogatory "seeks disclosure of the thought processes of counsel" and "seeks disclosure of case strategy" is unsupported,

review is completely inappropriate unless and until there is pending a license amendment for authority to implement the containment vent.

and insupportable. SOV's claim is one of work product, the requirements for which are straightforward:

"In order for material to fall within the realm of the work product doctrine incorporated in Rule 26(b)(3) and 10 C.F.R. § 2.740(b)(2), the material must be:

- "(1) documents and tangible things,
- "(2) prepared in anticipation of litigation or trial and
- "(3) by or for another party or for that other party's representative.

"The objecting party has the burden of establishing that the material meets these tests and thus is protected by the rule."

Public Service Company of New Hampshire (Seabrook Station, Units 1 and 2), LBP-83-17, 17 NRC 490, 495 (1983) (emphasis added).

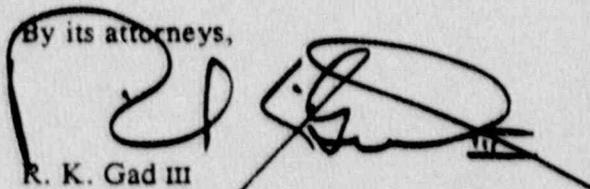
SOV has not met its burden of showing that the privilege applies. Nor could it, given that:

"The courts have consistently held that the work product concept furnishes no shield against discovery, by interrogatories or by deposition, of facts that the adverse party's lawyer has learned, or the persons from whom he has learned such facts, or the existence or non-existence of documents, even though the documents themselves may not be subject to discovery."

Id. (emphasis added) (quoting 8 Wright and Miller, Federal Practice and Procedure § 2023 at 194).

Subsection "a" of the interrogatory asked what information—facts and documents—SOV contends it needs in order to answer straightforward factual questions directly relevant to SOV's own allegations. Subsection "b" asks why, as a factual matter, SOV is unable to answer the questions without the information. Neither of these queries in any way calls for disclosure of "thought processes of counsel" or "case strategy." Subsections "c" and "d", to be sure, ask what (if anything) SOV is doing to acquire the information and whether SOV will supplement its earlier, incomplete answers, but even these inquiries hardly impinge on attorney work product in any objectionable manner.

By its attorneys,



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Dated: May 4, 1990.

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Certificate of Service

OFFICE SECRETARY
DOCKETING & SERVICE
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I, R. K. Gad III, hereby certify that on May 4, 1990, I made service of the within Motion to Compel, by mailing copies thereof, first class mail, postage prepaid, as follows:

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Washington, D.C. 20555

Jerry Harbour
Administrative Judge
Atomic Safety and Licensing Board
U.S.N.R.C.
Washington, D.C. 20555

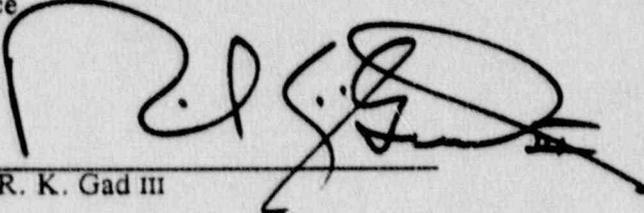
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