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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
before the
ATOMIC SAFETY AND LICENSING BOARD

In the Matter of	)	
	)	
VERMONT YANKEE NUCLEAR POWER CORPORATION	)	Docket No. 50-271-OLA-4 (Operating License Extension)
	)	
(Vermont Yankee Nuclear Power Station)	)	

STATE OF VERMONT
ANSWER IN OPPOSITION TO
VERMONT YANKEE NUCLEAR POWER CORPORATION
SECOND MOTION TO COMPEL
AND STATE OF VERMONT
APPLICATION FOR PROTECTIVE ORDER

Introduction

On May 2, 1990, the Vermont Yankee Nuclear Power Corporation ("Vermont Yankee") served by first-class mail a "Motion to Compel Answers to Interrogatories (VYNPC Set No. 2)" (hereinafter referred to as the "Motion to Compel"). Pursuant to 10 C.F.R. §§ 2.730(c) and 2.740(c), the State of Vermont ("Vermont") files this Answer in opposition to Vermont Yankee's Motion to Compel and this application for protective order. This Answer will demonstrate that the Atomic Safety and Licensing Board ("Board") should reject

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Vermont Yankee's Motion to Compel and grant Vermont's application for protective order contained herein.

This Answer is organized in the following manner: Part I addresses two general arguments that appear throughout Vermont Yankee's Motion to Compel; Part II provides Vermont's positions on groups of interrogatory responses for which Vermont Yankee presents common arguments; and Part III presents Vermont's position on each of the contested interrogatory responses. Vermont does not, in this Answer, repeat in full the interrogatories and responses which Vermont Yankee is challenging, because Vermont Yankee's Motion to Compel already sets them out in full.

I. Responses To General Arguments Contained In Vermont Yankee's Motion To Compel

A. Vermont's "Legal Opinion" Objection

In partial response to many of Vermont Yankee's interrogatories Vermont raised an objection "to the extent that [the question] seeks a legal opinion." In its Motion to Compel Vermont Yankee characterizes this objection as "frivolous." See, e.g., Motion to Compel at 29.

As noted in Vermont's May 9, 1990 Answer to the first Vermont Yankee motion to compel, this objection is entirely appropriate. Vermont raises this objection when a question may be interpreted as seeking a legal definition or opinion;

in these instances Vermont notes the objection in order that its response not be misinterpreted as Vermont's position on a legal definition or opinion. In all instances in which Vermont notes this objection, Vermont continues its response and provides a complete response[1] to the question. Had Vermont not raised this objection, Vermont would surely now be responding to a Vermont Yankee motion to compel just such legal definitions and opinions in response to the interrogatories in question.

B. Vermont Yankee Requests A Remedy That Is Utterly Inappropriate

Vermont Yankee seeks to bar Vermont from further participation in this proceeding if Vermont does not supplement its responses to certain interrogatories. E.g., Motion to Compel at 46, 48, 49. Vermont Yankee provides no citation to case law or rule, nor any other support, for the propriety of this requested severe remedy. The requested remedy should be applied only for egregious failures to provide discovery responses, and then only for failure to obey an order compelling the responses. 8 C. Wright & A. Miller, Federal Practice and Procedure § 2284 (1970).[2] Such

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[1] Omitting only the legal opinion or legal definition which was properly objected to.

[2] "[C]ourts should make the punishment [for failure to produce discovery responses] fit the crime and should not impose a drastic sanction that will prevent adjudication of a case on its merits except on the clearest showing that this course is required." 8

is not the case here. This Answer will explain why Vermont's responses to the second set of interrogatories are entirely adequate and thus, in fact, need not be supplemented at all.

II. Groups of Interrogatory Responses For Which Vermont Yankee Has Common Arguments

A. Interrogatories No. 46, 77, 81, 83, 84, 85, 88, 91, 94, and 97

In each of these interrogatories Vermont Yankee has dissected the quotations from LRS Associates quoted in sub-parts j and k[3] of Contention 7 by selecting words and phrases from the quotations; Vermont Yankee then asks Vermont to "define what is meant by SOV" by the word or phrase as used in Contention 7. Vermont's response to each of these interrogatories follows the form,

> The phrase "_____" 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.

Vermont Yankee claims that this response is inadequate because

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C. Wright & A. Miller, Federal Practice and Procedure § 2284 (1970).

[3] In Interrogatory No. 46 the quotation is from IR 89-80, quoted in sub-part d of Contention 7.

> it does not reveal what SOV intends to contend is the applicable standard against [sic] the VYNPS maintenance 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 ....

Motion to Compel at 2.

However, Vermont Yankee's interrogatories did not ask Vermont to provide the "applicable standard," "specific deficiencies," or "reasons." Vermont Yankee only asked "what is meant by" Vermont.

Vermont's responses to these interrogatories are true, factual and complete in each case. As a responsible regulatory agency, the Vermont Department of Public Service reviews certain documents that Vermont Yankee makes public. From its review of documents, including IR 89-80 and the LRS Associates reports, it was clear that Vermont Yankee has a maintenance program problem and that the maintenance program could not perform as claimed in Vermont Yankee's application. Vermont fulfilled its regulatory responsibility by using the means at its disposal -- this proceeding -- to identify portions of these documents which illustrate Vermont Yankee's maintenance problems. As a responsible public body, Vermont then took no further action nor expended additional public resources pending the

admission of contentions, their survival through the period for filing an appeal, and establishment of a discovery schedule.

Shortly into the discovery period, before Vermont was able to prepare its discovery requests for filing, Vermont Yankee pursued the tactic of inundating Vermont with its first set of interrogatories (eighteen in number) followed closely by its second set of interrogatories (155 in number), requiring the devotion of Vermont's limited resources to responding to them and thus hindering Vermont's own discovery efforts.

Without the ability to devote resources to case development, the complete extent of Vermont's investigation at the time of response to these interrogatories (numbers 46, 77, 81, 83, 84, 85, 88, 91, 94, and 97) was the identification of the words and phrases in question as portions of reputable documents which reveal maintenance program weaknesses and inadequacies. Thus, for each interrogatory, Vermont's response is absolutely and completely true.

The motion to compel for these interrogatories should be denied because the answers submitted respond completely and accurately to that which was asked.

B. Interrogatories No. 87, 90, 93, 96, and 99

In each of these interrogatories Vermont Yankee asked a question in the following form:

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

Vermont's response to each of these interrogatories follows the form,

> 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.

In its Motion to Compel Vermont Yankee contends that for each of these interrogatories,

> SOV's objections should be overruled for the reasons stated in Section I.[4] 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.

This Answer in Part I has already discussed why Vermont's "legal opinion" objection is appropriate, and why Vermont

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[4] Section I of Vermont Yankee's Motion to Compel does not respond to Vermont's objection that these interrogatories request a demonstration that must be made by the licensee.

Yankee's requested relief of barring Vermont from further participating in this proceeding is completely unfounded.

In addition, for these particular interrogatories Vermont Yankee's Motion to Compel does not contest Vermont's objection that the requested demonstration must be made by the licensee. Since Vermont Yankee has not challenged this valid objection, the Motion to Compel concerning these interrogatories must be denied.

C. Interrogatories No. 107, 109, 111, 113, 115, 117, 119, 124, 126, 128, 145, 148[5]

In each of these interrogatories Vermont Yankee argues:

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

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[5] Vermont is baffled by Vermont Yankee's statement:

"Finally, a paradigm of the sort of answer that, while facially responsive must be required to be supplemented before the hearings can begin, are those given in response to Interrogatories 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))."

Motion to compel, at 2 and 3. Vermont responded to Interrogatories 118, 129, 131, 133, 135 and 137, with the statement, "This LER has not been evaluated by Vermont with regard to the requested information." This statement does not include the phrase, "at this time" as alleged, but rather represents a complete and truthful response. The reference to Interrogatory 144 is even more befuddling. Vermont's response to Interrogatory 44, "'Gross age failure of the drywell paint system' refers to the drywell paint failure discovered by the NRC Maintenance Team, and described in letter, BVY 89-69," gives not hint of "'at this time' this is what we have (or we have nothing)." Because of inaccuracies and confusion in Vermont Yankee's statement at pages 2 and 3 of its Motion to Compel, no weight should be given it.

Vermont Yankee attempts to change the meaning of "at this time," used by Vermont in response to these interrogatories to signify that the response was incomplete. However, in each instance the response was complete and entirely truthful when filed. "At this time" in each instance refers to the extent of our case development and discovery. See Part II.A of this Answer, and Vermont's May 9, 1990 Answer to the first motion to compel at 4 - 6. Vermont recognizes and will fulfill its responsibility for supplementation of responses in accordance with 10 C.F.R. § 2.740(e). Since Vermont Yankee makes no statement of why Vermont's responses to these interrogatories are incomplete, and offers no valid argument that Vermont's responses were not true and factual when made, Vermont Yankee makes no valid argument to compel. The motion to compel for these interrogatories should be denied.

D. Interrogatories No. 54, 92, 98, 114 and 122.

In each of these interrogatories Vermont Yankee argues:

"To the extent that SOV admits that[6] this answer is incomplete, SOV must be required to supplement it."

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[6] Vermont Yankee's argument for Interrogatory No. 114 omits "that SOV admits;" the argument for Interrogatory No. 54 uses "concede" instead of "admits;" the argument for Interrogatory No. 122 begins "As SOV admits."

As above, Vermont Yankee again unsuccessfully and illogically attempts to turn a phrase in Vermont's response to meet a 10 C.F.R. § 2.740(f) criterion to compel. Vermont Yankee wishes to parlay the following phrases into admissions or concessions that the response is incomplete:

> Interrogatory No. 54: "has not completed it evaluations"
>
> Interrogatories No. 92 and 98: "has not evaluated the meaning of this quotation further"
>
> Interrogatories No. 114 and 122: "has not been completely evaluated"

Each of these phrases refers to the extent of Vermont's case development and discovery at the time of the response, and in no way implies that the response is incomplete. To the contrary, the responses were fully complete and truthful. Vermont recognizes and will fulfill its obligation to supplement responses in accordance with 10 C.F.R. § 2.740(e). Since Vermont Yankee makes no statement of why Vermont's responses to these interrogatories are incomplete, and offers no argument that Vermont's responses were not true and factual when made, Vermont Yankee makes no valid argument to compel. The motion to compel for these interrogatories should be denied.

E. Interrogatories No. 110, 112, 116, 118, 120, 125, 127, 129, 131, 133, 135, and 137

In each of these interrogatories Vermont Yankee asked a question in the following form:

> 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.

Vermont's response to each of these interrogatories follows the form,

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

In its Motion to Compel with respect to each of these responses, Vermont Yankee claims that,

> _____,[7] 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.

Vermont Yankee's argument is premised on completely wrong interpretations of both the nature of Vermont's reliance on the LERs and Vermont's obligation to evaluate the LERs. Vermont, as part of its ongoing state regulatory efforts, has been aware of Vermont Yankee's flawed maintenance

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[7] Vermont Yankee variously begins this claim with "Here too" (Interrogatories No. 110, 112, 116, 118 and 120), "Again" (interrogatories No. 125, 127, 129, 131, 133 and 135) and "Once again" (Interrogatory No. 137). While unclear, these apparently refer back to the argument for the first interrogatory in this "series," Interrogatory No. 108, an argument, however, which is not made. (See the discussion of Interrogatory No. 108, below.)

program through monitoring documents with which Vermont is provided. Upon observing the reliance placed upon this flawed maintenance program for the requested life extension, Vermont reviewed the LER's for 1988 and 1989, and identified those which revealed maintenance-related problems. These LER's were listed in sub-parts m and n of Contention VII as clear examples of maintenance problems. This was the extent of Vermont's consideration of these LER's, and, because of the delay in case development as described above in Part II.A, continues to be the extent of consideration of these LERs.

Vermont's responses to these interrogatories were complete, accurate and truthful. Vermont has not "raise[d] an issue in a contention and then blandly refuse[d] to state its position on the issue," as Vermont Yankee complains. Instead, Vermont has identified hard evidence of maintenance problems, and states its position that "applicant has failed to demonstrate that there is reasonable assurance" in accordance with 10 C.F.R. § 50.57(a)(3). Vermont has not determined "each and every change ... that would have precluded the occurrence of the matters described in the License Event Report" since this obligation belongs to the applicant. However, Vermont recognizes its duty with regard to supplementation in accordance with 10 C.F.R. § 2.740(e), should Vermont elect to review any of the LERs further.

Thus, the motion to compel should be denied for these interrogatories since their responses were complete, accurate and truthful.

Vermont Yankee's argument to condition "further participation in this proceeding" upon additional responses to these interrogatories is completely unfounded, as stated in Part I.B of this Answer.

III. Specific Interrogatories

Interrogatories No. 1 and 3

For each of these two interrogatories, Vermont Yankee in its Motion to Compel claims that "what [Vermont's response] 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 ["maintenance program" and "surveillance program"] as applied by [Vermont] to Vermont Yankee in the specific context of SOV's Contention 7. The interrogatory is clearly directed at obtaining a bounded set of items..." (emphasis added). This argument misstates what was requested by the interrogatories. Interrogatory No. 1 asked Vermont to "define what SOV contends is included within the scope of the term 'maintenance program.'" Interrogatory No. 3 asked Vermont to "define what SOV contends is included within the scope of the term 'surveillance program.'" Vermont provided those definitions

in its responses, and thus no further response should be compelled.

Interrogatory No. 5

Vermont answered this interrogatory to the fullest extent of its ability. After citing the reasonable assurance requirement of 10 C.F.R. § 50.57(a)(3), Vermont noted in its response that it "is not aware of each and every requested requirement." Vermont then stated those requirements of which it was currently aware. There is no further responsive information that Vermont can be compelled to provide.

Interrogatory No. 6

Vermont filed a complete response to Interrogatory No. 6, which asked Vermont to "list and describe in as much detail as is available to SOV each of the changes ..." (emphasis added). Vermont listed those changes in as much detail as was available to it. As the interrogatory asked, Vermont provided as much detail as possible, at the time of response. Thus there is no additional responsive information that can be compelled from Vermont.

Vermont Yankee contends that "[t]o the extent that this response falls into the 'no 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." Vermont Yankee is wrong. The interrogatory specifically

asked for "as much detail as is available" to Vermont, and not for any "finalized" position. To the extent that in its Motion to Compel Vermont Yankee now seeks to force Vermont to disclose the "steps" Vermont is taking to further develop its case, Vermont objects for the reasons set forth in conjunction with the discussion of Interrogatory No. 155, below.

Interrogatory No. 7

Vermont's Response No. 7 in part referred to its Response No. 1, Set No. 1. That response is the subject of a separate pending motion to compel; Vermont refers the Board to its May 9, 1990 Answer to that motion to compel.

Vermont Yankee states in its Motion to Compel that "[t]his response merely references SOV's response to Interrogatory No. 1 in Licensee's Set No. 1." Apparently Vermont Yankee did not read the sub-parts to Contention 6, to which Response No. 7 referred, which identify aging failure mechanisms for different categories of structures, systems and components. This reference provides a complete response.

Vermont's response to this interrogatory is similar to its Response No. 6 in that Vermont provided all the responsive information available to it at the time of filing its response. Thus, as discussed in relation to

Interrogatory No. 6 above, there is no additional responsive information that can be compelled from Vermont.

Finally, Vermont Yankee argues that "[t]o the extent that the response is incomplete 'at this time,' it must be required to be supplemented before hearings commence." Vermont responded to this argument in Part II.C of this Answer.

Interrogatories No. 9, 10, 11, 12

These interrogatories ask Vermont to "define the measure" of "sufficiently effective" and of "sufficiently ... comprehensive" and to provide the bases for the definitions. Vermont responds to the licensee's argument concerning Vermont's "legal opinion "objection in Part I.A.

Considering the comments in Part II.D. of this Answer, Vermont's reference to Response No. 44, in Responses No. 9 and 11, provides as complete and full a definition of the adverb "sufficiently" as it had when the response was made. Response No. 44 identifies the reasons, facts and evidence known to Vermont of instances where the maintenance program is "insufficient." A response defining "sufficient" in terms of what is "insufficient" is entirely acceptable for Vermont, especially considering the comments in Part II.D. Vermont Yankee bears the burden of presenting a maintenance program which meets the measure or standard of 10 C.F.R. §

50.57(a)(3), and Vermont cannot be compelled to create this acceptable maintenance program for Vermont Yankee.

Regarding Vermont Yankee's argument concerning the "measure" of effectiveness or comprehensiveness, Vermont thought it obvious that the measure is that of 10 CFR 50.57(a)(3).[8]

With regard to Responses No. 10 and 12, Vermont's reference to "the decision of the Board" is a clear reference to the ruling the Board will make on Vermont Yankee's attempt to demonstrate reasonable assurance, in accordance with 10 C.F.R. § 50.57(a)(3). Thus, these responses are complete and truthful and no additional response should be compelled.

Interrogatories No. 14 and 16

These interrogatories ask Vermont to identify "requirements with which SOV contends the VYNPS [maintenance, surveillance] program is not in compliance...." In response to these questions, Vermont has identified the reasonable assurance requirement of 10 C.F.R. § 50.57(a)(3). Vermont Yankee in its Motion to Compel argues that "[t]he Board should therefore either rule that

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[8] This "measure" had been defined in response to Interrogatory (Set No. 1), No. 2, and has been defined again in response to Interrogatory (Set No. 3), No. 8. Vermont has made no other determination of the "measure." Vermont Yankee should wish to compel this definition yet a third time.

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." Vermont Yankee provides no legal basis for such a ruling. As noted in Vermont's May 9, 1990 Answer to Vermont Yankee's first motion to compel, Vermont is quite appropriately further developing its case during the discovery process, since most of the relevant information is in the possession or control of Vermont Yankee and not of Vermont. If in the course of discovery Vermont uncovers evidence that Vermont Yankee is not in compliance with other relevant legal requirements, there is no basis for denying Vermont the opportunity to rely on such requirements.

Interrogatory No. 17

As it does throughout its Motion to Compel, Vermont Yankee here attempts to redefine an interrogatory. In its Motion to Compel Vermont Yankee complains that Vermont has not defined what constitutes closure by Vermont. However, the interrogatory requested "what SOV means by the phrase 'no closure showing improvement.'" Vermont has provided a complete and accurate description to what was meant.

In a footnote, Vermont Yankee suggests that if the phrase includes "closure by Vermont," as Vermont stated in its Response No. 17, then Vermont must amend its Contention 7. This argument makes no sense. Interrogatory No. 17 asked

what the phrase meant "as used by [Vermont] in ... its Contention 7." Vermont has responded that, as used in Contention 7, the phrase included "closure by Vermont." If Vermont Yankee, in its argument regarding amendment of the Contention, is suggesting that the phrase in the Contention could have meant only "closure by the NRC Maintenance Team," then Vermont Yankee would have had no need to ask its Interrogatory No. 17.

Interrogatory No. 18

This interrogatory asks Vermont to "describe the set of items, events or circumstances that would constitute 'closure showing improvement'...." Vermont in its Response No. 18 provided just such a description. Now in its Motion to Compel Vermont Yankee seeks to force Vermont to answer an entirely new, reformulated interrogatory. Vermont Yankee now states that:

> 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.

Motion to Compel at 12. Interrogatory No. 18 nowhere asked Vermont to state, for each of the seven problems, what needed to be done to solve the problem.

Interrogatory No. 19

Vermont Yankee unsuccessfully attempts, in its argument, to interpret the wording from sub-part b of Contention 7,

"no closure showing improvement," to apply only to closure by NRC staff, completely ignoring Vermont's response to Interrogatory No. 18. In Response No. 18 Vermont has completely and accurately explained that this is not what is meant, and never was what was meant, by this wording. The fact that Vermont Yankee is not pleased, or is surprised, by this meaning is not a valid argument to compel a different response. Vermont Yankee's footnote regarding reformulating contentions is superfluous and irrelevant.

The response to Interrogatory No. 19 is clearly "no" and perhaps that should have been added to the reference to the previous response. Nevertheless, the response is clear, accurate and truthful in its present form. For these reasons, and because Vermont Yankee offers no cogent argument, no further response should be compelled.

Interrogatory No. 20

In its Motion to Compel Vermont Yankee contends that Vermont's Response No. 20, which refers to its Response No. 18, is defective for the same reason that Response No. 18 is allegedly defective. Therefore, see the discussion of Interrogatory No. 18, above.

Interrogatory No. 23

Vermont Yankee complains that Vermont's Response No. 23 focuses on <u>why</u>, while the question asked <u>how</u>, post maintenance testing must be incorporated into the

maintenance procedures. Vermont Yankee fails to consider the last sentence of the response which explains "how" post maintenance testing should be incorporated. Vermont Yankee's argument is that Vermont has not described "how" in the terms it wished or expected (perhaps including drafting such procedure additions). However, Vermont's description of "how" is valid and is based on the industry description in Draft Regulatory Guide DG-1001. Thus, Vermont Yankee's Motion to Compel with respect to this response should be rejected.

Interrogatory No. 24

Vermont truthfully noted in its Response No. 24 that, without access to Vermont Yankee's maintenance procedures, it could not provide the identification of steps requested by this interrogatory. In its Motion to Compel Vermont Yankee essentially contends that Vermont should have, by the date of its responses, conducted sufficient discovery to provide a substantive response to this interrogatory. Vermont Yankee thus proposes that a party must have completed sufficient discovery, <u>prior to</u> the completion of the discovery period, to be able to respond in full to

another party's discovery requests. This completely unsupported proposition must be rejected.[9]

Interrogatory No. 29

In its Motion to Compel Vermont Yankee attempts to force a yes or no answer upon Vermont. However, the question cannot fairly be answered so narrowly. The interrogatory asks if non-incorporation of "PRA concept" renders Vermont Yankee's maintenance program "in any respect not in compliance with any regulatory requirement of the Commission" (emphasis added). Vermont's Response No. 29 is a fair and full answer to this broad interrogatory. Furthermore, it is not possible to state with precision whether failure to implement a particular measure will defeat the reasonable assurance requirement, since that requirement by its nature does not establish black-and-white objective standards for compliance. Thus, Vermont's response appropriately did not provide an overly simplified yes or no answer.

Interrogatory No. 30

Vermont is especially baffled by Vermont Yankee's argument concerning Response No. 30. The response referred

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[9] Vermont emphasizes that a primary reason that it has not propounded more discovery requests than it has to date is because Vermont has been forced to devote its limited resources to responding to Vermont Yankee's burdensome discovery requests and Vermont Yankee's lengthy and generally groundless motions to compel.

back to Response No. 29, which clearly identified the "reasonable assurance" requirement. In its Motion to Compel regarding Interrogatory No. 30, Vermont Yankee states that Vermont failed to point to a legal requirement in its response. Vermont Yankee is mistaken, since by reference to Response No. 29 Vermont's Response No. 30 did point to the "reasonable assurance" requirement.

Interrogatory No. 31

This interrogatory asks:

> 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.

Vermont properly objected to this interrogatory on the two, independent grounds that the significance of the Commission's decision not to promulgate a regulation is (1) a matter of legal opinion, and (2) is not a matter of substance in this proceeding. Vermont stands by these entirely appropriate objections.[10] Vermont's objection that the Commission's decision regarding PRA concepts is not a matter of substance in this proceeding is especially appropriate. Vermont is unaware that the Commission has

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[10] In its Motion to Compel Vermont Yankee denigrates these objections as "patently frivolous." By now the Board should recognize that Vermont Yankee resorts to colorful language when it has nothing of substance to offer.

ever given consideration to the matters of this proceeding -- i.e., reliance on a maintenance program in lieu of a determination of qualified life of structures, systems and components for plant life extension -- in any decision regarding PRA concepts.

Interrogatory No. 33

Interrogatory No. 33 asked for Vermont's definition of "qualified replacement personnel." Vermont provided its definition in its Response No. 33. In its Motion to Compel Vermont Yankee complains that Vermont should have provided quantitative amounts in its response. The question only asked for the definition, and Vermont responded to that request. Vermont Yankee cannot force Vermont now to provide information not requested in the original question.

Interrogatory No. 37

In its Motion to Compel Vermont Yankee contends that Vermont should have answered "I don't know," rather than objecting on the grounds that the information sought is outside the scope of what Vermont should reasonably be expected to know. Vermont stands by its objection. Notwithstanding its objection, Vermont provided a full and complete response by referring to its response to Set No. 1,

Interrogatory No. 8, upon which Vermont Yankee does not comment in its Motion to Compel.[11]

Interrogatory No. 40

Vermont Yankee suffers distress from its choice of words in Interrogatory 39:

> Does SOV contend 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" will <u>always be incapable</u> of achieving the purposes of a maintenance program (emphasis added)?

By using the words "always be incapable" Vermont Yankee of its own volition sets the bounds of the question within the hypothetical. Vermont Yankee transfers the hypothetical bound to Interrogatory No. 40 by the phrase, "If your answer to the foregoing interrogatory is anything other than an unqualified affirmative."

Vermont has answered Interrogatory No. 40 in the only manner it could, hypothetically, and the answer is entirely responsive. The interrogatory requests "state the conditions" and Vermont has stated that the conditions at present, i.e., a stable maintenance staff with longevity compensating for deficient procedures, are conditions which <u>could be considered by some</u> (hypothetically) to make such a maintenance program adequate. This does not mean that

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[11] This dispute, while groundless, is now made moot by Vermont's response to Interrogatory No. 12, Set No. 3.

Vermont believes the such a program is adequate now, or will be in the future. The remedy for Vermont Yankee's woes would be to replace "always be incapable" in Interrogatory 39 with "will be incapable in the extended period" or "is incapable at the present time." Since such remedy is not proper through a motion to compel, no further response should be compelled.

Interrogatory No. 41

Vermont in its responses answered this interrogatory completely, as is obvious from Vermont Yankee's concluding statement on this interrogatory in its Motion to Compel: "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 on?" Vermont clearly and unambiguously stated in its Response No. 41 that "[t]hese facts do not lead Vermont to the conclusion that the standard for quality of maintenance work is high" (which is the "precise conclusion" to which Vermont Yankee refers in its Motion to Compel). Vermont clearly and unambiguously stated in its response that it relied on the facts and evidence set forth in its Response No. 44.

Interrogatories No. 42 and 43

Without any substantive argument, Vermont Yankee contends that Vermont's Responses No. 42 and 43 are deficient for the same reasons as its Response No. 41. Instead, Vermont's

Responses No. 42 and 43 are complete and appropriate for the same reasons as is its Response No. 41.

Interrogatory No. 44

The frivolous nature of Vermont Yankee's Motion to Compel is glaringly apparent in its claim that this response is deficient. Vermont Yankee again contends that a Vermont response is deficient for the same reasons as its Response No. 41. Not only did Vermont unequivocally answer "No" to this interrogatory, but also Vermont painstakingly listed specific facts, with numerous specific references, in support of its disagreement with the conclusion stated in the interrogatory.

Vermont Yankee drops a footnote (number 5) at this point in its Motion to Compel. Two statements in that footnote cannot be left unchallenged. First, Vermont Yankee refers to the reasonable assurance requirement of 10 C.F.R. § 50.57(A)(3) as a "residual requirement." Vermont believes that the "reasonable assurance" requirement is anything but residual, and is of vital importance to the protection of the public. The Board should not tolerate such a cavalier attitude by the licensee toward a regulatory requirement designed to ensure the public well-being, and must seriously question Vermont Yankee's commitment toward protecting the health and safety of the public in its operation of the Vermont Yankee plant.

Second, Vermont Yankee's footnote 5 also states that:

> In this case, the very same Staff report that identifies the supposedly fatal "weaknesses" concluded 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.

It is hard to imagine how Vermont Yankee could make this statement unless it did not bother to read Vermont's Response No. 44. In that response Vermont cited specific facts, supported by numerous documents other than the "very same Staff report," that indicate that Vermont Yankee's maintenance program is not adequate to satisfy the reasonable assurance requirement.

Interrogatory No. 45

In its Interrogatory No. 45 Vermont Yankee asked Vermont to define "age-related problem." Vermont responded with the clear and sensible definition with which Vermont uses the term. In its Motion to Compel Vermont Yankee complains that Vermont's response is a "perfect circle." The problem is that Vermont Yankee has sought the definition of a term that should have been clear on its face to Vermont Yankee. Vermont has merely supplied the common-sense definition to which the term is eminently susceptible; now Vermont complains that the definition is the same as the term. Unfortunately for Vermont Yankee, that is the response

called for by the question, and there is nothing further to compel.[12]

Interrogatory No. 46

See Part II.A of this Answer.

Interrogatory No. 47

Vermont answered this interrogatory fully; in the last sentence of its response Vermont cites the requirement of 10 C.F.R. § 50.57(a)(3).

Interrogatory No. 49

In its Response No. 48, Vermont stated that there is a maximum amount of time within which VYNPC must perform a "review [of] the appropriateness and technical adequacy of completed maintenance activities." Interrogatory No. 49 then asks Vermont to identify what it contends is that maximum amount of time, with supporting reasons. Vermont truthfully responded that at present it could not provide quantitative values, but went on to list factors, including the setting of priorities, relevant to that determination.

---

[12] In its footnote 6 Vermont Yankee contends that a truck backing into a switchyard transformer is within Vermont's definition of "age-related problem." This fatuous example not only is clearly outside Vermont's definition, it also illustrates the frivolous nature of Vermont Yankee's Motion to Compel. It is only through such absurd arguments that Vermont Yankee is able to produce a seventy-five page, largely single-spaced Motion to Compel to which Vermont must devote its limited and valuable resources to respond.

In its Motion to Compel Vermont Yankee claims that the list of factors is not responsive to the question. Vermont may have gone beyond the question in that part of its response, but since Vermont could not provide the quantitative values sought, Vermont attempted to provide what relevant information that it did possess. In particular, Vermont Yankee claims that the interrogatory "has nothing to do with setting priorities." However, the question asked for the reasons why Vermont contends that a particular amount of time is the maximum allowable. Although Vermont could not yet provide the quantitative values, it could and did list the reasons (which the question requested) it had determined to date.

Finally, Vermont Yankee contends that Vermont's Response No. 49 is "inconsistent" with its Response No. 48. Vermont Yankee is wrong. In Response No. 48 Vermont said that it believes that there is a maximum amount of time, and in Response No. 49 stated that it could not yet quantify that amount of time. There is no inconsistency.

Interrogatory No. 50

In its Motion to Compel, Vermont Yankee for this interrogatory attempts to force the response "None" on Vermont. There is no basis for this. Vermont answered the interrogatory by listing two incidents which may fit the circumstances set forth in the question; Vermont further

noted that until it reviewed Vermont Yankee records it could not state with certainty whether those (or any other) incidents truly fit those circumstances. "None" would have been a somewhat deceptive response, since Vermont had identified the two incidents noted in its response as possibly responsive to the question. Thus, Vermont answered this interrogatory to the fullest extent to which it was capable, and clearly noted the qualifications to its response. No further response should be compelled.

Interrogatory No. 52

This interrogatory asked for Vermont's definition of "the term 'timely updating.'" Vermont provided that definition in its response. Now, in its Motion to Compel, Vermont Yankee claims that Vermont should have defined "timely" and provided a response "in units of time." That was not the question asked, and thus no further response should be compelled.

Interrogatory No. 53

In this interrogatory Vermont Yankee asks Vermont to "describe the types of circumstance under which SOV understands VYNPC vendor manuals to be updated." Vermont truthfully and completely responded that it had not been granted access to vendor manuals or vendor manual updates. In its Motion to Compel Vermont Yankee provides no indication of what additional information it expects Vermont

to be able to provide in response to this question; the reason is that there is no such additional information that Vermont can provide, and thus no further response should be compelled.

Interrogatory No. 54

See Part II.D of this Answer.

Interrogatory No. 55

Vermont's Response No. 55, and Vermont Yankee's argument in its Motion to Compel, parallel those for Interrogatory No. 47. Vermont's answer here is thus the same as for its Response No. 47: Vermont answered this interrogatory fully. In the last sentence of its response Vermont cites the requirement of 10 C.F.R. § 50.57(a)(3).

Interrogatory No. 58

Vermont stands by its objection provided with its original response.

Interrogatory No. 59

It is clear from this pair of questions (Interrogatories No. 58 and 59) that Vermont Yankee asserts that a "fact or circumstance" which would eliminate the "basis for sub-paragraph 'h.(1)' of Contention 7" would be:

> "[T]hat 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."

Vermont, while properly objecting in Response No. 58 to this irrelevant hypothesis, followed the letter of Interrogatory No. 59 (the objection in Response No. 58 was not an "unqualified affirmative"), and answered on a parallel plane to Vermont Yankee assertions. The "fact or circumstance" which establishes the "basis for sub-paragraph 'h.(1)' of Contention 7" is stated directly in Response No. 59:

> "The concepts of reliability-centered maintenance apply to the life extension proposed by this amendment...."

(The "life extension proposed by this amendment" was defined in Response No. 57.) Since this is a complete and truthful response, following the parallelism constructed by Vermont Yankee, no further response should be compelled.

Interrogatory No. 60

This is yet another instance in its Motion to Compel where Vermont Yankee seeks to change its original interrogatory and then compel Vermont to respond to the reformulated question. Interrogatory No. 60 asked Vermont what it understood "to be the special effectiveness of RCM for 'life extension.'" In its Motion to Compel Vermont Yankee contends that its interrogatory sought reasons why RCM is the "only," "best," or "uniquely able" method to accomplish certain goals. Unfortunately for Vermont Yankee, "special" is susceptible to a variety of meanings, including "surpassing what is common or usual;" "having a limited or

specific function"; "additional"; and "extra." (The American Heritage Dictionary, Second College Edition, 1982.) Vermont answered the question as asked. If Vermont Yankee now regrets its choice of wording in its original interrogatory, that is no basis to compel Vermont to provide a further response.

Interrogatory No. 61

Vermont's response to, and Vermont Yankee's argument in its Motion to Compel concerning, this interrogatory parallel those for Interrogatories No. 47 and 55. As with those two questions, Vermont has responded completely to the question.

Interrogatory No. 67

Vermont's response to this interrogatory refers to Set No. 1, Response No. 6. In its Motion to Compel Vermont Yankee refers to the pending motion to compel that relates to Set No. 1. Vermont likewise will rely on its position set forth in its Answer to that previous motion to compel.

Interrogatory No. 68

Vermont Yankee admits that Vermont's answer to this interrogatory "appears to be responsive." Vermont Yankee's complaint is that the response is "a non-inclusive illustrative list." This is an accurate description of the response only to the extent that the response is possibly non-inclusive because Vermont has not yet completed its

preparation of its case,[13] and thus Vermont may uncover additional supportive facts as it continues to prepare its case. Because the response provided all responsive information known to Vermont at the time of response, and as noted in Part II of this Memorandum Vermont recognizes its duty to supplement its responses, no further response should be compelled.

Interrogatory No. 70

Vermont Yankee admits that Response No. 70 is responsive, and contends only that "a deadline must be set for its completion." The discussion in Part II.D of this Answer applies to this interrogatory. Also, as with Response No. 68, Vermont provided all responsive information available to it at the time of response, and as noted in Part I of this Memorandum Vermont recognizes its duty to supplement its responses. Thus no further response to this interrogatory should be compelled.

Interrogatory No. 72

Contrary to Vermont Yankee's argument, Vermont has made a complete statement regarding its "reason SOV contends (if it does) that [this maintenance deficiency] would materially impact safety" with the following:

---

[13] Response No. 44, which is referenced by Response No. 68, makes this clear.

> [T]he 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.

In order to avoid verbosity, Vermont did not include certain obvious logical linkages already established. For example:

> Maintenance has an effect on safety - established in subpart b of Contention VII.
>
> NRC has grave concerns of nuclear plant maintenance (53 FR 47823 and 54 FR 50611) - Response to Interrogatory No. 2.
>
> NRC is relying on industry initiatives to ally its concerns (54 FR 50611) - Response to Interrogatory No. 2.
>
> Vermont Yankee's review of industry practice is part of its maintenance program.
>
> The legal basis of this proceeding is a demonstration of reasonable assurance that the proposed action will protect the public health and safety - 10 C.F.R. § 50.57(a)(3).

Vermont Yankee's recalcitrance with regard to industry initiatives materially impacts safety because these initiatives are what NRC is relying upon to ally its concern about the impact of maintenance on nuclear safety. This is what is stated in, or at least obvious from, Vermont's Response No. 72.[14]

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[14] Vermont cannot let pass Vermont Yankee's comment in footnote 9, Motion to Compel at 39. The theorizing regarding "the best maintenance program in the world" cannot be taken seriously considering the NRC Revised Maintenance Policy Statement (54 FR 50611). Further Vermont Yankee claims:

Interrogatory No. 73

This interrogatory asks Vermont what it meant by the phrase "better computerization of the MR system." Vermont responded completely, noting that the phrase was quoted from LRS Report #3-88, and that Vermont uses the phrase to refer to the computerization of the currently manual Visicard system. In its Motion to Compel Vermont Yankee chides Vermont for not defining the word "better" which appears in the phrase.[15] Vermont contends that it is abundantly obvious that "better" in "better computerization" refers to the comparison between a manual (i.e., non-computerized) to

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> "[u]nless 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."

This is not so. A correct statement is:

> "Unless the Board can find as a matter of fact that the Vermont Yankee has demonstrated that the VYNPS maintenance program results in reasonable assurance that operation in the extended period can be conducted without endangering the health and safety of the public, it cannot legally approve the proposed amendment."

There is a great difference between the statements. Vermont does not have to demonstrate the maintenance program will result in unsafe conditions. Rather, Vermont Yankee has to prove, which Vermont does not believe possible, that the maintenance program will yield safe operations in the extended period.

[15] Note that in this instance Vermont Yankee complains because Vermont has defined a complete phrase, instead of the individual elements of the phrase. In its first motion to compel, Vermont Yankee adopted the diametrically opposed position that a phrase must be defined as a whole, and not by its constituent parts. See Vermont Yankee's first Motion to Compel at 4.

a computerized system, and thus no further response should be compelled.

Interrogatory No. 75

Vermont agrees that this response is less clear than it could be, but that, nevertheless the answer is provided in full. Vermont Yankee asked "define what is meant" and Vermont responded:

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

Vermont could have responded:

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

Vermont accepts the accusation of imprecision,[16] but submits that the answer is there, and there is no reason to compel further.

Interrogatory No. 76

This interrogatory asks for Vermont to state its reasons for contending "that 'better utilization of the Assistant to the Operations Supervisor' would materially impact safety ....'" In response Vermont stated its reasons, which in

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[16] Isolated instances of imprecision are a hazard of long documents submitted on short schedules. See for example, licensee's argument for this very interrogatory: "The question asked '[p]lease define what it [sic] meant ....'"

part are based on an "impression" given by the LRS Report. Vermont Yankee complains that "'impressions' do not answer the question." The complaint over the word "impression" represents a continuation of Vermont Yankee's tactic to play the bully since it has access to the complete record and knows that Vermont does not. The word "impression" was used because, lacking the documents requested by Vermont Interrogatories (Set No. 1) Nos. 5, 102, 103 and 104, and Vermont Documentation Production Requests (Set No. 1) No. 17, the LRS Report gives the only public view of this problem. We have stated our reservations about the LRS Report conclusions in response to Interrogatory (Set No. 1) No. 12. Thus the most precise statement of our "reason" is by using the word "impression." For these reasons Vermont Yankee's argument is without validity and no further response should be compelled.

Interrogatory No. 77

See Part II.A of this Answer.

Interrogatory No. 79

No further response should be compelled for this interrogatory because Vermont Yankee makes no argument to compel. Vermont Yankee's argument with respect to this interrogatory is that "[t]his response is, for the same reasons as No. 77, an evasion of the question." The "reasons" referred to in "No. 77" do not relate in any way

to the response to Interrogatory No. 79. Vermont's answer is fully responsive to the interrogatory, and Vermont Yankee's irrelevant argument to compel must be rejected.

Interrogatory No. 80

In addition to its "legal opinion" objection (discussed in Part I of this Answer), Vermont responded to this interrogatory that "Vermont has not yet made a determination." As noted repeatedly in this Answer and in Vermont's Answer to Vermont Yankee's first motion to compel, it is entirely appropriate for Vermont to develop its case through the discovery process. The "no determination" response is thus both truthful and appropriate.

Interrogatory No. 81

See Part II.A of this Answer.

Interrogatory No. 82

The identifications of weaknesses in Vermont Yankee's maintenance program are not, as Vermont Yankee contends, "bland" assertions of "lack of assurance," but rather are serious (at least in the opinion of the Board (Memorandum and Order of January 26, 1990 at 46) and Vermont) instances in which Vermont Yankee has not demonstrated its claims in the application nor met the 10 C.F.R. § 50.57 standard. This portion of Vermont Yankee's agrument to compel is without merit.

Likewise without merit is Vermont Yankee's argument concerning Vermont's legal objection (see Part I.A.). Considering Vermont's argument in Part II.D of this Memorandum, the response to this interrogatory is fully responsive and complete. For these reasons, no further response should be compelled.

Interrogatories No. 83, 84, and 85

See Part II.A of this Answer.

Interrogatory No. 86

As part of its response to this interrogatory, Vermont provided an answer similar to those provided for Interrogatories No. 46, 77, 81, 83, 84, 85, 88, 91, 94, and 97, which are discussed in Part II of this Answer. Vermont's Response No. 86 also references its responses to Set No. 1, questions 8, 9, and 10. Vermont Yankee's Motion to Compel claims only that Response No. 86 is deficient for the same reasons as it claims Responses No. 46, 77, 81, 83, 84, 85, 88, 91, 94, and 97 to be inadequate.

Vermont Yankee's Motion to Compel with respect to Response No. 86 should be denied for two reasons. First, the Motion to Compel is silent as to why the referenced Set No. 1 responses 8, 9, and 10 do not adequately respond to this interrogatory. Second, as discussed in Part II of this Answer, Vermont Yankee's claim that Responses No. 46, 77,

81, 83, 84, 85, 88, 91, and 97 are inadequate must be rejected.

Interrogatory No. 87

See Part II.B of this Answer.

Interrogatory No. 88

See Part II.A of this Answer.

Interrogatory No. 89

Vermont Yankee seeks to compel further answers to this interrogatory on the same grounds as it relies on for the interrogatories discussed in Part II.A above. Please see that section of this Answer for Vermont's reply to Vermont Yankee's argument.

Interrogatory No. 90

See Part II.B of this Answer.

Interrogatory No. 91

See Part II.A of this Answer.

Interrogatory No. 92

See Part II.D of this Answer.

Interrogatory No. 93

See Part II.B of this Answer.

Interrogatory No. 94

See Part II.A of this Answer.

Interrogatory No. 95

Vermont Yankee seeks to compel further answers to this interrogatory on the same grounds as it relies on for the

interrogatories discussed in Part II.A above. Please see that section of this Answer for Vermont's reply to Vermont Yankee's argument.

Interrogatory No. 96

See Part II.B of this Answer.

Interrogatory No. 97

See Part II.A of this Answer.

Interrogatory No. 98

See Part II.D of this Answer.

Interrogatory No. 99

See Part II.B of this Answer.

Interrogatory No. 100

In this interrogatory Vermont Yankee asked Vermont to "define what is meant by SOV by the term 'tested with satisfactory performance' ... including the testing interval requirement and the acceptance criteria implied thereby." Vermont responded to this request and explained what it meant by the phrase. In its Motion to Compel Vermont Yankee complains that Vermont's response contains "[n]o explanation of what would constitute 'satisfactory performance'...." That was not the question; the question asked for what Vermont meant by the phrase "tested with satisfactory performance," and Vermont responded to that question as asked.

Vermont Yankee also contends that Vermont's response does not describe any "acceptance criteria." Vermont did not in its Contention 7 refer to or rely on any "acceptance criteria." That Vermont Yankee recognizes this is clear by the wording of Interrogatory No. 100, which refers to implied acceptance criteria. Additionally, the interrogatory is not a model of clarity; it asks Vermont to "define what is meant" by the phrase, "including ... the acceptance criteria implied thereby." As best Vermont could interpret the question, it asked what Vermont meant in using the quoted phrase. Vermont's response explained in relevant part that any "implied acceptance criteria" should be mutually agreed upon. This is Vermont's meaning, and that is what the question appears to request. Thus no further response should be compelled.

Interrogatory No. 101

Vermont's Response No. 101 is clear and complete: "[C]hanges" must be "proven effective." Vermont states no facts nor evidence because it relys solely on the expert opinion of its consultant. Therefore, no further response should be compelled.[17]

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[17] The licensee's footnote 10 requires comment. Vermont Yankee exhibits great inflexibility in its thought process regarding this proceeding. Since this is the first hearing regarding plant life extension (contrary to the licensee's semantics, Vermont believes that "a rose by any other name is still a rose"), it is not clear what the possible boundaries of

Interrogatory No. 106

Vermont's response was clear since Vermont Yankee correctly understood that it was "Yes." However, Vermont Yankee does not wish to show that it clearly understands the daily process under which it interacts with NRC in the operation of the plant, the very process described in this response. Often, NRC imposes unwritten requirements through its resident inspectors, Regional Office and the Division of Nuclear Reactor Regulation. Impressions of actions which would be accepted are gained through telephone calls and meeting with the NRC, and often these actions are implemented without any guiding, specific written requirement. The decision to replace the UPS is just such a situation. In order to maintain its high ratings (e.g., SALP) Vermont Yankee "voluntarily" agrees to replace this reliability outlier. Vermont submits that this process

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Board actions are, for an amendment which is not effective for seventeen years. It is a wonder to Vermont that Vermont Yankee thinks "daily over[sight] of Licensee performance" by the Board is a possibility. Vermont certainly does not. But delay of the decision until Vermont Yankee has done what is necessary to demonstrate reasonable assurance (if it ever can) is certainly possible, even if it takes a number of years to work the kinks out of its overhauled maintenance program. And while this remedy may not be appropriate for the original operating authority (because it is not possible in that instance), it may very well be appropriate in this proceeding (because it is possible).

constitutes a "requirement" although not a written requirement.[18]

Vermont Yankee understands these types of requirements well, and therefore its arguments to compel are "straw men" which have no merit. But in addition, Vermont has identified a specific requirement in Draft Regulatory Guide DG-1001. Vermont believes that the content of this regulatory guide needs to be considered for this proceeding since it is part of the NRC resolution the maintenance program concerns.

Since Vermont has presented a complete and truthful response, no further response should be compelled.

Interrogatory No. 107

See Part II.C of this Answer.

Interrogatory No. 108

In its Motion to Compel Vermont Yankee's argument concerning this interrogatory in no way relates to the question or to Vermont's response. It appears that Vermont Yankee inserted the wrong choice of one of its standard arguments. Vermont Yankee's completely irrelevant argument must be rejected.

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[18] Vermont identified this process of "voluntary commitments" as requirements in Response No. 2, apparently overlooked by Vermont Yankee.

Interrogatory No. 109

See Part II.C of this Answer.

Interrogatory No. 110

See Part II.E of this Answer.

Interrogatory No. 111

See Part II.C of this Answer.

Interrogatory No. 112

See Part II.E of this Answer.

Interrogatory No. 113

See Part II.C of this Answer.

Interrogatory No. 114

See Part II.D of this Answer.

Interrogatory No. 115

See Part II.C of this Answer.

Interrogatory No. 116

See Part II.E of this Answer.

Interrogatory No. 117

See Part II.C of this Answer.

Interrogatory No. 118

See Part II.E of this Answer.

Interrogatory No. 119

See Part II.C of this Answer.

Interrogatory No. 120

See Part II.E of this Answer.

Interrogatory No. 122

See Part II.D of this Answer.

Interrogatory No. 124

See Part II.C of this Answer.

Interrogatory No. 125

See Part II.E of this Answer.

Interrogatory No. 126

See Part II.C of this Answer.

Interrogatory No. 127

See Part II.E of this Answer.

Interrogatory No. 128

See Part II.C of this Answer.

Interrogatories No. 129, 131, 133, 135, and 137

See Part II.E of this Answer.

Interrogatory No. 138

Vermont's Response No. 138 refers to its response to Set No. 1, question 6. In its Motion to Compel Vermont Yankee notes that response 6 to Set No. 1 is subject to a separate pending motion to compel. Vermont has previously responded to that motion to compel.

Interrogatory No. 145

See Part II.C of this Answer.

Interrogatory No. 147

This interrogatory, which asks Vermont to compare the "adequacy of the coating system" in the present licensing

term and in the extended licensing term. Vermont properly objected to the relevance of this interrogatory because this proceeding is not considering the ability of the Vermont Yankee plant to satisfy applicable requirements during the balance of the current licensing period. Therefore, the adequacy or inadequacy of the coating system during the current licensing term is not an issue in this proceeding, and the interrogatory need not be answered.

Vermont Yankee's argument against Vermont's objection is obviously without merit. The licensee wishes to ignore any aging process related to its painting system which would make the unresolved problem in the present time, even worse in the extended period. Because of the lack of a valid argument to compel, no further response should be compelled.

Interrogatory No. 148

See Part II.C of this Answer.

Interrogatory No. 150

Yet again Vermont Yankee is dissatisfied with Vermont's response to a "define what is meant by SOV" interrogatory. In its Motion to Compel Vermont Yankee claims that "[t]he interrogatory asked SOV to explain its assertion that 'ECCS criteria is not met.'" Vermont Yankee misstates its own interrogatory, which asked Vermont to "define what is meant by SOV," not "to explain its assertion." Vermont's Response No. 150 provides the definition of what Vermont meant by the

phrase quoted in the interrogatory. Having responded fully to the interrogatory, Vermont should not be compelled to provide any further response.

Interrogatory No. 152

Vermont Yankee contends that Vermont "has simply not answered the question." That is wrong. Vermont clearly states its reason in Response No. 151, to which Response No. 152 refers: "[F]lashing in the suppression pool could cause ECCS pumps to fail on loss of suction." This is a full and complete statement of Vermont's position on the statement queried in Interrogatory No. 152. However, due to the situation described in Part II.A of this Answer, this is all that could be said. Facts, evidence and expert opinion cannot be developed until details about the vent are known.[19] Since the answer is responsive, no further response should be compelled.

Interrogatory No. 155

Vermont's Response No. 155 stated:

> 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.

---

[19] Vermont Yankee s footnote 10 regarding sub-part o of Contention VIII is off point. It wishes to ignore the first part of sub-part o, "One adverse consequence of the failure of coating systems and production of other corrosion products is the fouling of ECCS pump suctions such that ECCS criteria is not met," which is clearly related to maintenance.

In its Motion to Compel Vermont Yankee argues that these objections "are without merit." Quite to the contrary, the objections are well-founded and appropriate. First, to comply with the interrogatory would undeniably be a great burden to Vermont, in that the interrogatory seeks, for each prior interrogatory that Vermont could not answer or answer completely:

-a description of the additional information needed;

-every reason why the additional information is needed;

-the steps Vermont is taking to acquire the information; and

-Vermont's intentions concerning supplementing its responses.

Vermont Yankee contends that providing this information cannot be burdensome because Vermont Yankee's interrogatories "simply track the allegations in SOV's contentions." This facile argument must be quickly rejected for two reasons. First, the interrogatories do not "simply track" Vermont's contention. For example, Interrogatories No. 87, 90, 93, 96, and 99 ask Vermont to supply information that it has no duty to develop; as noted in Section II.B of this Answer, with respect to those interrogatories it is incumbent upon Vermont Yankee to develop the requested information. Second, even if the interrogatories did "simply track" Vermont's contention, Vermont Yankee's

strategy of asking several questions, each with multiple sub-parts, concerning each and every term and phrase in Vermont's contention is nothing more than an attempt to divert Vermont's limited resources from focusing on further development of its case. Vermont has responded to these voluminous requests with all responsive information in its possession, a chore that itself has proven burdensome and has severely interfered with the further development of Vermont's case. To force Vermont to identify and describe each and every piece of information that it does not possess that may be needed to further respond to Vermont Yankee's interrogatories is totally unreasonable and far beyond Vermont's means. To grant Vermont Yankee's Motion to Compel with respect to Interrogatory No. 155 would force Vermont to develop information that it would not otherwise develop in this proceeding and strain the state's resources in this proceeding to the breaking point.

In addition to the outrageously burdensome nature of this interrogatory, the question seeks disclosure of privileged information concerning Vermont's case strategy and thought processes of counsel. In its Motion to Compel Vermont Yankee employs two subtle "misdirections" in its argument on this point. First, Vermont Yankee contends that Vermont's objection is controlled by Fed.R.Civ.P. 26(b)(3) and 10 C.F.R. § 2.740(b)(2), and that thus only "documents and

tangible things" prepared in anticipation of litigation are protected. This argument must be squarely rejected. As the court in Ford v. Philips Electronics Instruments Co., 82 F.R.D. 359 (E.D.Pa. 1979), stated:

> Too much can be made, however, of the observation that Rule 26(b)(3) is not controlling because the dispute does not involve a document or tangible thing. It does not follow from this that the desired discovery is necessarily permissible.
>
> * * *
>
> The distinction implicit in Rule 26(b)(3) between documents and tangible things, which are discoverable upon the proper showing, and facts for which no special showing is required, in no way intimates that Rule 26(b)(3) opens to discovery an attorney's mental impressions. On the contrary, the Rule provides that when discovery is ordered upon the proper showing, "the court shall protect against disclosure of the mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party concerning the litigation." Fed.R.Civ.P. 26(b)(3). The Rule in no way implies that mental impressions not embodied in documents are otherwise discoverable. Such a reading of the Rule would be contrary to the comments of the Advisory Committee on the 1970 amendments to the Federal Rules of Civil Procedure. "The courts have steadfastly safeguarded against disclosure of lawyers' mental impressions and legal theories, as well as mental impressions and subjective evaluations of investigators and claim agents." Advisory Committee Notes, 48 F.R.D. 487, 502. Moreover, such a reading would fly in the face of "the general policy against invading the privacy of an attorney's course of preparation" of a case. Hickman v. Taylor, supra, at 512, 67 S.Ct. at 394.

82 F.R.D. at 360.

The second "misdirection" is the attempt to focus the Board's attention on "facts that the adverse party's lawyer has learned" and "the existence or non-existence of

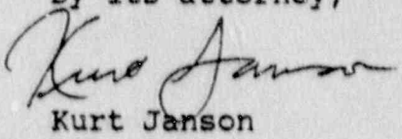
documents." Motion to Compel at 73. Interrogatory No. 155 clearly inquires into Vermont's case strategy ("the steps Vermont is taking to acquire the information"). Even where the particular pieces of information are not themselves subject to privilege, counsel's "selection and compilation" of the information "falls within the highly-protected category of opinion work product" and thus the selection and compilation is not discoverable. Sporck v. Peil, 759 F.2d 312, 316 (3d Cir. 1985). As in Sporck, in this case Interrogatory No. 155, sub-parts (a), (b), and (c), seeks to reveal "counsel's legal opinion as to the evidence relevant both to the allegations in the case and the possible legal defenses" and thus is not proper subject matter for discovery. Id. at 313.

In its responses to this second set of interrogatories Vermont has provided all responsive, non-privileged information available to it. Vermont recognizes and will comply with its duty to supplement its responses. To provide any information beyond the existing responses and any required supplementation would disclose thought processes of counsel and case strategy, and thus Vermont Yankee's motion to compel concerning Interrogatory No. 155 must be denied.

Conclusion

For the reasons set forth above, the Board should deny Vermont Yankee's Motion to Compel and should issue a Protective Order that provides that Vermont need not supplement any of its responses to Vermont Yankee's second set of interrogatories other than the supplements which Vermont has agreed to provide, as noted herein.

By its attorney,



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Dated: May 22, 1990

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
before the
ATOMIC SAFETY AND LICENSING BOARD

In the Matter of VERMONT YANKEE NUCLEAR POWER CORPORATION (Vermont Yankee Nuclear Power Station)	Docket No. 50-271-OLA-4 (Operating License Extension)

CERTIFICATE OF SERVICE

I hereby certify that on May 22, 1990, I made service of "State of Vermont Answer in Opposition to Vermont Yankee Nuclear Power Corporation Second Motion to Compel and State of Vermont Application for Protective Order" in accordance with rules of the Commission by mailing a copy thereof postage prepaid to the following:

Administrative Judge
Robert M. Lazo, Chairman
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Administrative Judge
Jerry Harbour
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
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Dated: May 22, 1990