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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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before the

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

ATOMIC SAFETY AND LICENSING BOARD

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

**MOTION TO COMPEL ANSWERS TO INTERROGATORIES
(VYNPC SET NO. 3)**

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. 3)" as are set forth herein. The interrogatories were served by mail on April 26, 1990; the answers were served by Federal Express on May 17, 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 two prior Motions to Compel filed under dates of April 24, 1990, and May, 1990, and its Reply to SOV' Answer in Opposition to [Licensee's First] Motion to Compel, filed under date of May 17, 1990. We supplement that discussion with a reference to a point of recurring applicability.

In its responses to Licensee's first round of interrogatories, SOV used several terms which were not self-defining, and SOV then made a number of new assertions of purported fact the bases of which were not readily apparent. Licensee therefore followed up by asking SOV to define these new terms, and to state the factual bases for these new assertions.

In response to several of those follow-up questions -- specifically 5, 13, 14, and 15 -- SOV in effect responded that it did not wish to answer at this time:

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"Vermont objects to this interrogatory to the extent that it attempts to compel Vermont to do work or take actions in preparation for this case which it has not made the decision to perform. Vermont further objects to this interrogatory to the extent that it attempts to impose a schedule for doing such work within a relatively short discovery period."

As a matter of law, SOV's assertion, that it can choose to disclose its case when and if it wants, is simply wrong. The Appeal Board long ago noted that such "contention" interrogatories are appropriate:

"Judicial tribunals have long recognized that the party being interrogated would have to gather such information before trial in any event; the only burden is to advance that compilation to an earlier stage."¹

In so holding, the agency was following hornbook law to the effect that "[a]n interrogatory will not be held objectionable as calling for research if it relates to details alleged in the pleading of the interrogated party, about which he presumably has information, or if the interrogated party would gather the information in the preparation of his own case."²

As a practical matter, moreover, SOV's refusal to disclose its case during the discovery period threatens to lengthen and complicate these proceedings, by reducing the possibility of resolving issues by summary disposition, and by forcing Licensee to present an affirmative case at hearing against vague and open-ended charges. Quite aside from the issue of fairness to Licensee, this Board as a matter of efficiency should compel SOV to respond to these questions, no later than the close of discovery.

II. Specific Interrogatory Answers.

Interrogatory No. 1.

Interrogatory:

Please identify each and every SALP report or "other enforcement actions" relating to VYNPS wherein SOV contends that NRC has placed "importance" on "clearly established management controls" for the purpose of alleviating any "shortage of qualified replacement

¹*Pennsylvania Power and Light Co.* (Susquehanna Steam Electric Station, Units 1 and 2), ALAB-613, 12 NRC 317, 334 (1980).

²Wright and Miller, *Federal Practice and Procedure: Civil* § 2174 at 555 (1970) (footnotes omitted); *see also* cases cited therein.

[maintenance] personnel," as asserted in the answer to Interrogatory No. 8, Set 1 Responses at page 7.

Response:

Vermont objects to this interrogatory because it misstates Vermont's response to Interrogatory No. 8. Vermont did not respond that, in SALP reports or enforcement actions specific to Vermont Yankee, NRC placed importance on clearly established management controls. Notwithstanding and without waiving this objection, Vermont states that the sentence from part 2 of Vermont's Response to Vermont Yankee Interrogatory (Set No. 1) No. 8:

"This fact is established by the importance placed on management by NRC in such vehicles as SALP evaluations and enforcement actions."

was stated to indicate the importance attached to management control over nuclear plant activities. For example, the importance that NRC attaches to management is demonstrated by the SALP criteria, reproduced on page RI-1 of NRC letter to Vermont Yankee of March 7, 1990 (Russell to Murphy), "Final Systematic Assessment of Licensee Performance (SALP) Report...." The definition of each SALP performance category, Category 1, Category 2 and Category 3, begins with the words, "licensee management attention and involvement" The SALP process is set up to evaluate each aspect of licensee performance in terms of licensee management attention and involvement.

Argument:

SOV's answer to this perfectly reasonable follow-up question is evasive. (In particular, it evades giving the accurate and responsive answer of "None.")

In Interrogatory No. 8 of Licensee's first round of interrogatories, Licensee asked "Does SOV contend that 'clearly established management controls' can adequately compensate for a shortage of 'qualified replacement personnel', as those terms are used by SOV in sub-paragraph "c" of its Contention 7?" The question asked about the *link* between controls and a personnel shortage, and called for SOV to state all the facts and evidence possessed by SOV bearing on the question.

In its answer, SOV asserted that:

"Without clearly established management controls the shortage of qualified replacement personnel cannot be compensated for. This fact is established by the importance placed on management by NRC in such vehicles as SALP evaluations and enforcement actions."

In light of this answer, Licensee understandably followed up by asking SOV exactly *where* (if anywhere) the NRC has drawn such a link between controls and compensating for a personnel shortage. In its "answer" to the follow-up question, however, SOV ignores the topic of personnel shortage (which previously it had alleged as a basis to its contention) altogether. Instead, SOV chooses to answer another question, of its own design, as to what emphasis the NRC places on management controls in general. Licensee respectfully suggests that SOV should be compelled to answer the question asked, not some other question SOV may prefer but which was not asked, especially since the question asked seeks to pin down the factual basis (if any) for one of SOV's own assertions.

If, in fact, "None" is the accurate and responsive answer to the question that was asked, the Licensee is entitled to have that answer on the record.

Interrogatory No. 5.

Interrogatory:

Please define what SOV contends is included within the scope of the term "correct controls" as used by SOV at page 7 of its Set 1 Responses, and provide all the bases for your definition.

Response:

The term, "correct controls" as used in part 4 to Vermont's response to Vermont Yankee Interrogatory (Set No. 1) No. 8, is a general reference to the changes necessary to correct the inadequacies in Vermont Yankee's maintenance program. A description of these changes was requested by Vermont Yankee Interrogatory (Set No. 2) No. 6. As of this date we have yet to receive response to a single discovery request, and due to time spent responding to licensee's interrogatories and motions, our evaluation has not progressed beyond that described in response to Vermont Yankee Interrogatory (Set No. 2) No. 6.

Vermont has not determined "what....is included within the scope of the term", and thus Vermont objects to this interrogatory to the extent that it attempts to compel Vermont to do work or take actions in preparation for this case which it has not made the decision to perform. Vermont further objects to this interrogatory to the extent that it attempts to impose a schedule for doing such work within a relatively short discovery period.

Argument:

SOV's objections should be overruled, and a full response compelled, for the reasons stated in Section I above. SOV clearly is dodging here. In its

Contention, SOV stated that "clearly established management controls" were needed. When Licensee asked what that meant, SOV said that "clear" controls were *not* enough, that "correct" controls were needed. Licensee then followed up by asking what "correct" controls meant, only to be told that SOV does not know. It is fundamentally unfair, Licensee respectfully suggests, for Licensee to be asked to defend against accusations when the authors of those accusations themselves cannot—or will not—define them.

Interrogatory No. 13.

Interrogatory:

For each and every assertion made by SOV in his Set 1 Responses at Interrogatory No. 10.b, pages 10-12, please:

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

Response:

Vermont objects to this interrogatory because it attempts to compel Vermont to do work or take actions in preparation for this case which it has not made the decision to perform. If Vermont Yankee wishes to argue in this proceeding that it can lure maintenance craftspersons from other industries and train them effectively, it is incumbent on Vermont Yankee, and not Vermont, to develop and present evidence on this point.

Argument:

SOV's objection should be overruled, and a full response compelled, for the reasons stated in Section I above. All that this interrogatory sought from SOV was the factual basis, possessed at that time by SOV, for a series of SOV's own assertions. There is simply no basis for SOV to object to revealing what it knows. Licensee cannot fairly be expected to meet its burden of proof if SOV is allowed to conceal the substance (or lack thereof) of its case.

Interrogatory No. 14.

Interrogatory:

Please describe in detail what level of awareness SOV contends, at pages 10-11 of its Set 1 Responses, that "nuclear maintenance personnel" must have of "the interrelationships between ECCS and other safety systems." Please also:

- a. State each and every fact on which your answer 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. Provide either the technical qualifications (education, employment history, licenses and certificates, experience, or other information that SOV contends establishes the qualifications of the person), of any person on whose expertise SOV relies for the answer or state that SOV does not rely upon the expertise of any person for the answer.

Response:

Vermont objects to this interrogatory on the same grounds as stated in response to the foregoing interrogatory. To the extent that this interrogatory seeks Vermont to quantify specifically the awareness that a maintenance craftsperson must have, without adequate procedural guidance, of "[t]he interrelationships between ECCS and other safety systems with the power producing systems of the plant," Vermont objects further on the basis that it would be unduly burdensome. Such quantification would amount to developing the "precautions" sections of procedures which Vermont Yankee is apparently lacking.

Notwithstanding and without waiving these objections, Vermont states that nuclear maintenance craftspersons should be trained as outlined in INPO 86-018, "Guidelines for Training and Qualification of Maintenance Personnel", or receive the equivalent training. The required training and qualification should provide the required knowledge and skills to perform maintenance on all safety related systems, structures, and components. Such training not only should provide maintenance craftspersons an awareness of interrelationships between ECCS and other safety systems but also between nonsafety systems that can affect safety systems. INPO 86-018 states that maintenance craftspersons should have knowledge of: site or plant layout; impact of maintenance on ECCS Components, knowledge of plant systems including alarm types, system block diagrams, importance to plant operations/safety, effect of isolation systems components on operations and interrelationships with other plant systems; knowledge of control logic and diagrams, normal/abnormal performance and probable cause of abnormal indication; and any specialized skills needed.

The above answer should not be considered a complete listing of all guidance but gives examples of knowledge and skills that maintenance craftspersons should have to attain the minimum awareness of maintenance activities performed on safety or nonsafety systems that may adversely effect ECCS systems and reduce the margin of plant safety to unacceptable levels. For this response, Vermont relies on the expert opinion of its technical consultant, Mr. H. Shannon Phillips, whose technical qualifications were identified in response to Vermont Yankee Interrogatories (Set No. 1).

Argument:

SOV's objections, to the extent that they are identical to those made to the preceding interrogatory, should be overruled, and a full response compelled, for the reasons stated in Section I above. As for SOV's objection that answering would be "unduly burdensome", SOV has not demonstrated any impropriety in being required to explain the factual basis for its own assertion. Moreover, the case law makes clear that such inquiries are both proper and prudent. *E.g., Pennsylvania Power and Light Co. (Susquehanna Steam Electric Station, Units 1 and 2), ALAB-613, 12 NRC 317, 334-35 (1980).*

SOV admits that its response is incomplete. Given the baselessness of its objections, SOV should be compelled to respond to the full extent of its present knowledge.

Interrogatory No. 15.

Interrogatory:

Please describe in detail what level of awareness SOV contends, at page 11 of its Set 1 Responses, that "nuclear maintenance personnel" must have of "requirements, commitments and regulations." Please also:

- a. State each and every fact on which your answer 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. Provide either the technical qualifications (education, employment history, licenses and certificates, experience, or other information that SOV contends establishes the qualifications of the person), of any person on whose expertise SOV relies for the answer or state that SOV does not rely upon the expertise of any person for the answer.

Response:

Vermont objects to this interrogatory on the same grounds as stated in response to Interrogatory No. 13. To the extent that this interrogatory seeks Vermont to quantify specifically the awareness that a maintenance craftsperson must have, without adequate procedural guidance, of "requirements, commitments and regulations" Vermont objects further on the basis that it would be unduly burdensome. Such quantification would amount to developing the "precautions" sections of procedures which Vermont Yankee is apparently lacking. Notwithstanding and without waiving these objections, Vermont states that the Vermont Yankee plant is a complicated facility consisting of numerous systems and controlled by rigorous safety requirements, and presenting the possibility of accidents causing radiological effects upon local land and population. As such, Vermont Yankee is more complicated than a coal- or oil-fired plant, or other industrial facility (the subject of Vermont Yankee Interrogatory (Set No. 1) No. 10, sub-part b), and the consequence of maintenance error is more serious. The maintenance craftspersons (who would perform maintenance at Vermont Yankee without adequate written procedures) must be aware of the requirements, commitments and regulations, in order to be able to perform maintenance on systems without violating safety requirements, without endangering public health and safety, and without challenging safety systems. For this response, Vermont relies on the expert opinion of its technical consultant, Mr. Shannon Phillips, whose technical qualification were identified in response to Vermont Yankee Interrogatories (Set No. 1).

Argument:

SOV here repeats the same flawed objections as it made in the immediately preceding response. It is neither procedurally improper nor unduly burdensome to ask SOV to state the facts (if any) underlying its own assertions.

When stripped of its objections and irrelevance, SOV's answer to the question is simply to restate, without any elaboration or factual support, the assertion which prompted this follow-up question in the first place. A full response should be compelled, so that Licensee has some fair warning of what case it must defend against.

By its attorneys,

Handwritten signatures of R. K. Gad III and Jeffrey P. Trout.

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Dated: June 1, 1990.

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Certificate of Service

I, R. K. Gad III, hereby certify that on June 1, 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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