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

'90 JUN 21 P3:59

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

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

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

Introduction

On June 1, 1990, the Vermont Yankee Nuclear Power Corporation ("Vermont Yankee") served by first-class mail a "Motion to Compel Answers to Interrogatories (VYNPC Set No. 3)" (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: Section I addresses general arguments that appear in Vermont Yankee's Motion to Compel; Section II presents Vermont's position on the five 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**

Vermont Yankee has done a yeoman's job of "covering the waterfront" with its 197 interrogatories¹, all propounded before Vermont had received its first discovery response from Vermont Yankee. In each of its sets of interrogatories, Vermont Yankee calls to attention the requirement for supplementation of interrogatories of 10

¹ The licensee has propounded interrogatories in three sets: Set No. 1, March 21, 1990, 18 interrogatories; Set No. 2, April 5, 1990, 156 interrogatories; and Set No. 3, April 26, 1990, 23 interrogatories.

C.F.R. § 2.740(e). Vermont fully intends to comply with 10 C.F.R § 2.740(e).²

For four of the five interrogatories for which Vermont Yankee seeks to compel further responses (numbers 5, 13, 14, and 15), Vermont's initial responses included objections "... to the extent that [the interrogatory] attempts to compel Vermont to do work or take actions in preparation for this case which it has not made the decision to perform." In its Motion to Compel Vermont Yankee contends that "... [Vermont's] assertion, that it can choose to disclose its case when and if it wants, is simply wrong" (Motion to Compel at 2). Vermont Yankee badly mischaracterizes Vermont's objection. Vermont is not asserting that it can choose to disclose its case at its whim. Instead, Vermont has rightly objected to those interrogatories that would require Vermont to develop information for its case that Vermont has not yet decided to develop.³

Vermont Yankee claims that it wants to avoid being taken by surprise by Vermont's case (Motion to Compel at 5).

² Vermont has met each deadline in this proceeding with truthful and complete responses, and intends to continue doing so.

³ If Vermont Yankee contends that Vermont cannot present an adequate case without including that information, then Vermont Yankee is entitled to attempt to demonstrate the alleged inadequacy to the Board. What Vermont Yankee is not entitled to is to force Vermont to undertake case development that Vermont has not chosen to perform.

Surprise plays no part whatsoever in Vermont's case development. Should Vermont Yankee in fact be "surprised" by any part of our case, we will agree, to the extent within our power, to a grant of additional time to allow Vermont Yankee "to defend against accusations" (id.) and to attempt to "meet its burden of proof" (id.).⁴

III. Specific Interrogatories

Interrogatory No. 1

Since the licensee seems to have understood our answer correctly as "none," there is no reason to compel further response.

Interrogatory No. 5

Vermont's response to Interrogatory 5 was not "dodging" (Motion to Compel at 4), but rather was complete and truthful. The response demonstrates that "correct controls"

⁴ The licensee's complaint that any action of Vermont has "threatened to lengthen and complicate these proceedings" (Motion to Compel at 2) is hollow because there just is no present or foreseeable schedule pressure in this proceeding for a decision which is not effective until seventeen years in the future. Specifically because of this lack of schedule pressure, there is reason to assure all parties the necessary time for case preparations for these important nuclear safety issues.

And, contrary to the licensee's complaints, it is the licensee's own actions which are lengthening and complicating the proceeding, as we have argued in two previous answers to motions to compel.

are defined as "the changes necessary to correct the inadequacies in Vermont Yankee's maintenance program." This in itself is a complete response, but in order to be even more forthcoming, the response included a reference to Vermont Yankee Interrogatory (Set No. 2) No. 6 that provides the extent to which such changes are identified⁵. For these reasons, and for the reasons stated in Section I, no further response should be compelled.

Interrogatory No. 13

Vermont's objection to this interrogatory is directly on point. There likely exist a number of scenarios approaching the infinite which the licensee could present hypothetically in discovery, and then (by its argument) demand a researched case on each scenario. (For example, replacement maintenance craftspersons from the paper mill next door; replacement maintenance craftspersons from a granite quarry in a nearby town; etc.) This is not proper subject matter for discovery.

⁵ At the time of response, Vermont had received no discovery response. While we now are just beginning to receive requested documents, no evaluation of material has been completed. Thus, the status at the time of this "Answer" is the same as at the time of response. See also our comments regarding supplementation in Section I.

In our response, we properly noted that Vermont Yankee should first present an affirmative case concerning recruitment of replacement craftspersons from other industries, and then Vermont may choose to develop further information regarding the source of replacement maintenance craftspersons beyond the general (and expert) opinions stated in response to Vermont Yankee Interrogatory (Set No. 1) No. 10b.

For these reasons and the reasons set forth in Section I, the objection should be sustained and the motion to compel denied.

Interrogatory No. 14

There is no reason to overrule Vermont's objection or to compel further response for this interrogatory since Vermont stated all the information known to us at the time. This response was (and still is) complete and truthful. Vermont did not intend to give the impression of incompleteness (Motion to Compel at 7); the licensee is mistaken about this. The statement, "[s]uch qualifications would amount to developing the 'precautions' sections of procedures..." was meant as a reference to these "precaution" sections of the Vermont Yankee procedures (which are completely at the licensee's disposal) which identify the "interrelationships between ECCS and other safety systems."

For these reasons and the reasons set forth in Section I, the motion to compel should be denied. In addition, Vermont's objection should be sustained because we are neither able, nor is it reasonable to ask us, to develop information to this detail.

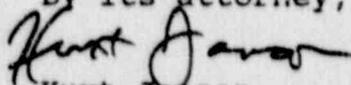
Interrogatory No. 15

Vermont's comments concerning this interrogatory are the same as for the previous interrogatory. Here again, Vermont's objection should be sustained and the motion to compel should 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 third set of interrogatories.

By its attorney,



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Dated: June 18, 1990

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

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In the Matter of
VERMONT YANKEE NUCLEAR
POWER CORPORATION

(Vermont Yankee Nuclear
Power Station)

Docket No. 50-271-OLA-4
(Operating License
Extension)

OFFICE OF SECRETARY
OF STATE
STATE SERVICE
BRANCH

CERTIFICATE OF SERVICE

I hereby certify that on June 18, 1990, I made service of "State of Vermont Answer in Opposition to Vermont Yankee Nuclear Power Corporation Third 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:

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Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Administrative Judge
Jerry Harbour
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U.S. Nuclear Regulatory
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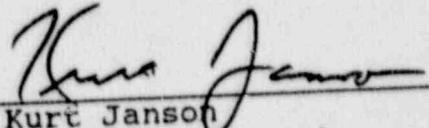
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Kurt Janson
Special Assistant
Attorney General

Dated: June 18, 1990