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Filed: October 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 (Construction Period Recapture)

ANSWER OF VERMONT YANKEE NUCLEAR POWER CORPORATION TO STATE OF VERMONT'S MOTION TO COMPEL (Interrogatories, Set No. 3)

Vermont Yankee submits this answer to the State of Vermont's "Motion to Compel Answers to Interrogatories (Vermont Set No. 3)," filed by mail October 5, 1990 (hereinafter "MOTION TO COMPEL"). In the motion, SOV demands that the Board compel further responses to ninety-five (95) more of the interrogatories posed by it to Vermont Yankee. For the reasons discussed below, that motion should be denied.

For ease of reference, the interrogatories in question have been categorized into those dealing more or less with the same subject.

I. **General Introduction.**

As SOV has elsewhere also revealed,[1] it is bent upon taking its admitted contention far beyond the parameters of that which the Board in fact admitted. These interrogatories derive, in large part, from that effort at expansion and transformation.

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[1] *E.g.*, STATE OF VERMONT ANSWER IN OPPOSITION TO VERMONT YANKEE NUCLEAR POWER CORPORATION FIFTH MOTION TO COMPEL AND STATE OF VERMONT APPLICATION FOR PROTECTIVE ORDER, filed September 27, 1990, at 4-7. And see also ANSWER OF VERMONT YANKEE NUCLEAR POWER CORPORATION TO STATE OF VERMONT'S MOTION TO COMPEL (DOCUMENT REQUESTS, SET NO. 1), filed July 11, 1990, at 10 & n. 26.

As originally admitted, the contention asserted that there was a specific, narrow inadequacy in the Vermont Yankee maintenance *program*. According to SOV, VY's maintenance *program* would be unable—due to alleged *programmatic* flaws specified in the basis sub-paragraphs of the contention—to adequately detect and replace "components found to have aged to a point where they no longer meet the safety standards applicable to this plant."[2] To be sure, SOV has never been able to identify—either at the time the contention was admitted or since—where is to be found the legal standard against which the adequacy of a maintenance *program* may be judged for NRC licensing purposes.[3] Nonetheless, the contention did in fact, and must as a matter of law, relate to the maintenance *program*.

When pressed in discovery for the factual bases for the alleged programmatic flaws, however, SOV's response was a distressing set of obfuscations, apparent flip-flops, and protestations of ignorance and inability to process information.[4] After a period of time in which, pressed to state its

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[2]STATE OF VERMONT SUPPLEMENT TO PETITION TO INTERVENE, filed October 30, 1989 (hereinafter "SOV CONTENTIONS"), at 42.

[3]For the reasons discussed in detail by Licensee in its response to SOV's Interrogatory No. 144, Vermont Yankee does not believe that 10 C.F.R. § 50.57(a)(3) constitutes such a standard in this context. To say that that subsection does not apply to this case, however, is by no means to "belittle" the provision's role in the Commissions regulatory scheme, and Licensee regrets if any language that it has used has inadvertently struck the Board as implying the contrary.

[4]One representative example of SOV's vacillating can be seen in its response to queries about the personnel issue it alleged. As originally framed, SOV's contention was that Vermont Yankee's alleged reliance on its superlative staff of maintenance personnel was in fact a programmatic flaw because there would be a shortage of qualified maintenance personnel in the years after 2000. When asked to substantiate its allegation of a maintenance personnel shortage, SOV at first defended the allegation by citing to sources which demonstrably did *not* support that proposition. RESPONSES TO APPLICANT'S INTERROGATORIES (SET NO. 1) BY VERMONT DEPARTMENT OF PUBLIC SERVICE, filed April 9, 1990, at 6-7. When pressed further, however, SOV disavowed that there would be a shortage, and instead advanced the wholly new assertion that there will be a *surplus* of maintenance personnel, due to plant license expirations, and that this *surplus* will result in a somehow problematic "movement and rotation" of personnel. RESPONSES TO INTERROGATORIES BY STATE OF VERMONT TO THE VERMONT YANKEE NUCLEAR POWER CORPORATION (SET NO. 3), filed May 17, 1990, at 11-16. For this entirely new contention—advanced without a passing nod to the requirements of 10 C.F.R. § 2.714(a)—SOV offers as basis only the *ipse dixit* of its purported expert. RESPONSES TO INTERROGATORIES BY STATE OF VERMONT TO THE VERMONT YANKEE NUCLEAR POWER CORPORATION (SET NO. 4), filed

evidence, SOV apparently was unable to find any remaining flaws in the maintenance *program*,[5] SOV has now embarked on a new strategy. SOV's manifest intent is now not to critique the maintenance *program*, but rather to cavil various past details of daily implementation. In an attempt to conceal this radical change of tack, meanwhile, SOV declares that it will not disclose its evidence "categorized according to the sub-parts of Contention VII,"[6] hoping thus to conceal the fact that it has abandoned most or all of those original allegations.

Vermont Yankee believes that this new approach by SOV is doubly defective. Not only are SOV's new quibbles not within the scope of the contention as admitted; SOV's apparent aim of litigating the details of various instances of past daily performance is manifestly beyond the scope of the issues open for litigation under the Notice of Opportunity for this hearing, or indeed for any construction recapture litigation.

Moreover, even while attempting to shift fields, SOV continues its evidentiary shell game. At a number of places in its motion to compel, SOV makes claims of relevance, or attacks the veracity of Vermont Yankee's answers, on the basis of information supposedly possessed by SOV.[7] The rub, however, is that SOV has never disclosed those purported facts to Vermont Yankee, despite the necessity of interrogating SOV "upwards, sidewards,

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July 18, 1990, at 18-19. And now, moreover, it is impossible to tell whether SOV continues to adhere to even this position, given its present declared refusal to disclose what evidence (if any) it has in support of its original contention bases. See RESPONSES TO INTERROGATORIES BY STATE OF VERMONT TO THE VERMONT YANKEE NUCLEAR POWER CORPORATION (SET No. 5), filed August 13, 1990, at 2, 3.

[5]Vermont Yankee's maintenance program is, by its very nature, a constantly evolving process. A large part of SOV's present discomfiture seems to stem from the fact that recent enhancements to VY's maintenance program—many of which were in process or under consideration long before SOV's intervention—have mooted most or all of SOV's original allegations. (The bulk if not the entirety of SOV's original allegations were simply adoptions of criticisms or suggestions for improvements previously made by others.)

[6]RESPONSES TO DOCUMENT REQUESTS BY STATE OF VERMONT TO THE VERMONT YANKEE NUCLEAR POWER CORPORATION (SET No. 1), filed August 28, 1990 [hereinafter "SOV DOCUMENT RESPONSE"], at 2; see also RESPONSES TO INTERROGATORIES BY STATE OF VERMONT TO THE VERMONT YANKEE NUCLEAR POWER CORPORATION (SET No. 5), filed August 13, 1990, at 2.

[7]*E.g.*, MOTION TO COMPEL at 5, 12, 14, 16, 21, 22, 32, 54, 55, 78, 120.

downwards and backwards"[8] as to the factual basis for its case. As is discussed in detail with respect to the particular interrogatories in question,[9] Vermont Yankee respectfully contends that SOV should be compelled to disclose these alleged facts, which already were long ago requested by Vermont Yankee, before the Board undertakes to even consider those portions of SOV's present motion.

Finally, SOV repeats yet again its plaint about the "burden" to it of having to participate in discovery in these proceedings.[10] This argument lacks credibility. The State of Vermont has at its command resources far in excess of those of the Vermont Yankee Nuclear Power Corporation. Moreover, it was SOV that chose to intervene in this proceeding, thus volunteering to superimpose its passing interest in the matter upon the daily oversight of the Commission's Staff. It was SOV that chose the topics to be litigated. It was SOV that chose to pose 425 interrogatories and 327 document requests—many of them duplicative and/or irrelevant—to Vermont Yankee. It was SOV that demanded (and received) more than 9000 pages of documents from Vermont Yankee. It was SOV that apparently chose to have its personnel comb those documents for badly-xeroxed pages, so that SOV could bring that monumental issue to the Board in the form of a late-filed contention. And it was SOV that chose to move to compel further responses to 200 interrogatories and 184 document requests.

In sum, SOV has demonstrated that it has ample resources to do what *it* wants to do—*i.e.*, make charges and fire off innumerable demands for information. What it does appear to lack, however, is the willingness to look for facts behind the charges, or digest the mounds of information that it has forced Vermont Yankee (at the ratepayers' expense) to dish up. Simply put, SOV's problem stems from its unwillingness to live up to the responsibilities it voluntarily undertook as a litigant in these proceedings.[11]

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[8]SOV DOCUMENT RESPONSE at 3.

[9]*See infra* at 9, 14, 16, 18, 22, 38.

[10]*E.g.*, MOTION TO COMPEL at 27, 36.

[11]Engaging in an intervention of either the type represented by the admitted contention or, indeed, the type to which SOV seems inclined to transmute the contention, requires an enormous dedication of resources and willingness to process information. (It should be remembered that the task that SOV assumed for itself based on limited staff and budget is one that the NRC Staff requires teams of qualified people and years of background experience to perform; it is, therefore, not surprising that SOV is having difficulty.) It seems clear that SOV is not willing to commit the resources,

II. **Valve Leak Rates**
(Interrogatories Nos. 4, 5, 6, 7, 8, 24, 25, 27, 30, 31, 35, 36).

Introduction.

To put these interrogatories in their proper context, it is necessary to recall the requirements applicable to containment integrity.

In the first instance, a requirement of containment integrity does not exist in a vacuum; it exists, rather, as a means by which the design criterion of capping site-boundary (and beyond) doses, given a postulated accident, is achieved. The regulatory requirement regarding these doses is contained in 10 C.F.R., Part 100. The safety standard to which the plant must be designed is contained in 10 C.F.R. § 100.11(a). As a part of the design function, these requirements are translated into a leak rate such that the requirements of § 100.11(a) will be met *or exceeded* (that is to say, the resulting calculated doses would be equal or less than the Part 100 limits).

The VYNPS Technical Specifications contain provisions dictating when containment integrity tests must be performed. Second, they contain quantified values that, if found to be exceeded as a result of a test, require that the plant either remain shut down or, if it is running, that a Limiting Condition for Operations be entered, until the leak rate has been brought down to the Technical Specification values. (In the main, containment integrity tests cannot be performed while the plant is running.)[12]

Next, there is 10 C.F.R. § 50.54(o) and Part 50, Appendix J, which was initially promulgated in 1973 (38 Fed. Reg. 4386) and has been amended four times since (1976, 41 Fed. Reg. 16,447; 1980, 45 Fed. Reg. 62,789; 1986, 51 Fed. Reg. 40,311; and 1988, 53 Fed. Reg. 45891). Appendix J "provide[s] for preoperational and *periodic* verification by tests of the leak-tight integrity of the primary reactor containment, and systems and components which penetrate containment of water-cooled power reactors." *Id.*, § I ("Introduction") (emphasis added). Note the reference to "periodic verification," not

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time and effort that it perhaps did not adequately foresee would be required. Regardless, a voluntary intervenor has no right to attempt to shift the burden of his assumed responsibility to the Board and the other parties.

[12]See 10 C.F.R., Part 50, Appendix J, § III.D.1(b) (Type A test), III.D.2 (Type B test), III.D.3 (Type C Test). The reason for these requirements is that any component being tested under a Type B or Type C test is not available to perform its normal functions during the test.

"continuous verification." Finally, not all of the provisions of Appendix J have been applicable to all operating plants at all times; a number of plants, including Vermont Yankee, have operated under Commission-granted partial waivers of aspects of Appendix J from time to time.

Together, the Technical Specifications and Appendix J provide a method for (i) determining initial acceptability of the containment system and (ii) periodically thereafter verifying acceptability of that system, and they contain a built-in margin to account for degradation between tests.[13] Nothing in either establishes a dynamic, continuous requirement of leak tightness, as such continuous monitoring of leak tightness during operations cannot be done.

Maintenance plays a limited role vis-à-vis containment integrity. It is the function of the surveillance program to insure that the required tests are performed when required. It is the role of the maintenance function to repair or replace any component that is the cause of the system, or any portion thereof, to fail the test.

For purposes of this proceeding, containment integrity is a relevant issue if, and only to the extent that, SOV originally alleged and now can demonstrate that (i) containment integrity has become impaired on account of "aging" in a sense relevant to the original operating license term,[14] (ii) the

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[13]This is the reason why the acceptance criterion for Type A tests is set at only 0.75 of L_a, and the acceptance criterion for the sum of all Type B and Type C tests is set at only 0.6 of L_a. See 10 C.F.R., Part 50, Appendix J, § III.A.5(b)(2) (Type A test), III.B.3 (Type B test), III.C.3 (Type C Test).

[14]Thus, the general subject of containment integrity and the challenges to it, apart from the specific aging allegations raised in the bases by SOV, is not within the scope of the admitted contention. Moreover, the concept of "aging" as originally used by the contention, and as admitted by the Board, means more than simply the passage of any minutely small amount of time since last successful test (since otherwise it would include *all* reasons for equipment non-functionality). Consider:

Assume that VYNPS contains a gasoline engine whose spark-plugs are required to be replaced every six months. The adequacy of the maintenance program that was approved in 1972 to deal with a requirement normally expected to occurred 80 times in the license period of 40 years, and for which the extension of 4+ more years portends no change, could not be within the scope of the admitted contention for the simple reason that it is not within the scope of the Notice of Opportunity for a Hearing. Rather, "aging" must be related to the difference between the license periods.

maintenance function has demonstrated a programmatic inability to detect this lack of integrity,[15] and (iii) on account of this inability, the proposed operation of the facility in the post-2007 years would present an issue of safety not within the scope of the original VYNPS operating license assessment.

With these general principles in mind, we turn to the specific interrogatories.

Interrogatory No. 4.

This interrogatory is objectionable on several grounds. In the first instance, it seeks an advisory legal opinion, unrelated to facts or the application of law to facts (none of which are specified in the question). Second, it necessarily assumes that there is a legal requirement of dynamic conformity to Tech. Spec. and Appendix J leak rates, which is legally erroneous. Third, the question as framed has no necessary connection either to maintenance or aging.

Nonetheless, Vermont Yankee answered the question and pointed out (i) that, as requested, it does not agree with the statement made, and (ii) the reason why it does not agree. That, in turn, was because the question assumed that the VYNPS Tech. Spec. leakage acceptance rates were set *exactly* at the 10 C.F.R., Part 100 limits (such that *any* exceedence of the first

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SOV's unwillingness to be bound by the parameters of the admitted contention is nowhere better illustrated than in the context of containment isolation valve leak rates. As has been previously described (and is well known to SOV), recent problems with the testability of certain of these valves have *nothing* to do with "aging" in the sense in which the contention was admitted. See ANSWER OF VERMONT YANKEE NUCLEAR POWER CORPORATION TO STATE OF VERMONT'S MOTION TO COMPEL (DOCUMENT REQUESTS, SET No. 1), at 3 & nn.5 & 6. It may be that the regulatory decision to require the installation of differently designed valves in order to permit valve-specific testability (Type C tests) was, in hindsight, counterproductive of the overall goal of maintaining containment integrity. Indeed, it is possible that the currently approved valve design is imperfect. Neither of these topics is within the scope of the admitted contention or, for that matter, within the scope of the Notice of Opportunity for a Hearing.

[15]From an operational economics perspective, the important function of maintenance is to repair whatever caused the leak, since the plant cannot be restarted until that has been done. The capacity of maintenance to repair valves that fail Appendix J tests presents no safety issue, however, for (by definition) the plant is shut down when such tests are performed, and a retest of containment integrity is performed before restart is permitted.

would produce some exceedence of the second),[16] and, while this may be true for some plant designs, it is not true at VYNPS. Thus, Vermont Yankee fully answered the question posed, and SOV's demand in the motion to compel that Vermont Yankee disclose its entire "evidentiary case" in the entire "area of containment integrity" seeks by the motion more than was sought by the interrogatory.

We note one other point. SOV's MOTION TO COMPEL argues (at 3) that it is confounded by the response to this interrogatory to figure out what Vermont Yankee contends is the licensing basis:

> "First, it is impossible to relate the licensee's response to the interrogatory. Is [SOV] to infer that the 'Vermont Yankee Tech. Spec. limit' is what the licensee believes is the current licensing basis?"

In fact, either this assertion of confusion is difficult to comprehend unless SOV has simply failed to read Vermont Yankee's response to the immediately prior interrogatory.[17]

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[16]The question postulated no quantification of the amount by which Tech. Spec. acceptance values were hypothetically exceeded at a test (nor, for that matter did it hypothesize a test). Prescinding from the second deficiency in the question, the effect of the first deficiency is to convert the question into one about the equality of acceptance criteria for leak rates in the Tech. Spec. and the acceptance criteria under Part 100. That is to say, the question necessary asked whether exceedence of the Tech. Spec. limits *in any amount, however small* means an exceedence of the Part 100 limits. That question was fully answered.

It seems apparent from SOV's argument on this question that its comprehension of the subject in question is only belatedly developing, and that in hindsight it would have preferred to ask the half-dozen or so different questions that are propounded in its argument (see MOTION TO COMPEL at 3), but which were not propounded in interrogatories. Vermont Yankee, however, was obliged to—and did—answer only the question actually posed.

[17]The response to Interrogatory No. 3 contains the following:

> "a. The current licensing basis containment leakage is 0.8%/day.
>
> "b. This value is the Tech. Spec. limit as presented in Tech. Spec. 3.7.A.3. This value would limit the calculated site boundary doses following a design basis LOCA to approximately 1/2 of the 10 C.F.R., Part 100 criteria. The calculational methodology is conservative in that it does not take account of real world phenomena that would further reduce actual site boundary doses."

Interrogatory No. 5.

This interrogatory, similar in form to No. 4, shares the objectionable traits of No. 4 and adds one: it is based on a calculational methodology different from that approved for the Vermont Yankee design basis. Any answer would thus be functionally meaningless, which translates into legal irrelevance.

As a threshold matter, moreover, it should be noted that SOV premises the relevance of the interrogatory on two factual assertions: that the "containment integrity has been maintained such that the resulting dose rate, calculated in accordance with current licensing basis assumptions is greater than 10 C.F.R. Part 100 limits";[18] and that "single worst effect active failure" and "radiological consequence (calculated in accordance with Standard Review Plan 15.6.5 with Appendices and Regulatory Guide 1.2"[19] are "components of what Vermont believes to be the current licensing basis" of the Vermont Yankee containment.[20] Presumably, SOV has some factual basis for making these assertions. However, SOV has never disclosed it in response to Vermont Yankee's interrogatories, despite being asked several questions that would seem fairly to elicit those facts.[21] Indeed, SOV has previously categorically stated that it "does not know all of the current licensing bases for the

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[18]MOTION TO COMPEL at 5.

[19]We presume that SOV intended to refer to Regulatory Guide 1.3 ("Assumptions Used for Evaluating the Potential Radiological Consequences of a Loss-of-Coolant Accident for Boiling Water Reactors") and not 1.2 ("Thermal Shock to Reactor Pressure Vessels").

[20]*Id.* It is not clear, but subtly included in this argument may the notion that the pending operating license amendment application is to be tested against regulatory requirements applicable to new plants in 1990, as opposed to the regulatory requirements applicable to Vermont Yankee. The "Standard Review Plan" (NUREG-0800) was published after Vermont Yankee received its operating license and is not applicable to Vermont Yankee. This Board has already rejected a proposed contention to the effect that the pending application is a new license to be tested against current standards. *Vermont Yankee Nuclear Power Corporation* (Vermont Yankee Nuclear Power Station), LBP-90-6, 31 NRC 85, 104 (1990).

[21]*See* Licensee's Interrogatories (Set No. 2) Nos. 130, 131, 132, 133, 134, 135, 136, 137, 140, 142; (Set No. 3) Nos. 11, 12, 14; and (Set No. 5) Nos. 13 and 14.

Vermont Yankee containment."[22] Before the Board even considers this portion of SOV's MOTION TO COMPEL, SOV should be required to supplement its own prior interrogatory answers and disclose the facts which it apparently has been withholding.

These difficulties notwithstanding, the question suffers from a vagueness problem such that the only meaningful interpretation that Vermont Yankee was able to place on it is that of the rhetorical truism described in the response. If SOV intended to ask something different, it failed.

Finally we point out that the indictment of "evasive and incomplete" is particularly vacuous where, as here, not only did Vermont Yankee answer the troubled question, it went out to point out to the questioner that (i) he was basing his question on the wrong calculational methodology, (ii) he was making an incorrect assumption that the Tech. Spec. limits were set at exactly those necessary to insure compliance with the Part 100 limits, and (iii) that in the real world, doses experienced at the site boundary would be less than the those predicted by calculational methods, because of the conservative omission of these methods to take account of several real world, dose-diminishing phenomena. SOV's closing demand for an evidentiary limitation seems patently designed to exclude rather than elicit the truth as to SOV's allegations, on the ground that SOV's bad question did not produce facts that the terms of the question did not call for. Neither the indictment nor the suggested punishment is warranted.

Interrogatory No. 6.

This interrogatory sought to elicit a purely legal opinion, namely whether a set of facts the subject of the identified LERs constituted legal violations of certain provisions of the VYNPS Tech. Spec. The relevance of such a question, even assuming it to be a proper interrogatory, is obscure.

Nonetheless, Vermont Yankee answered the question ("no") and explained the answer (because the Tech. Spec. provisions in question do not require dynamic conformance to the leak rate test acceptance values). SOV's assertion that "[t]he licensee's response, relying upon its objections, is evasive in that it avoids the question asked" (MOTION TO COMPEL at 8) can only mean

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[22] RESPONSES TO INTERROGATORIES BY STATE OF VERMONT TO THE VERMONT YANKEE NUCLEAR POWER CORPORATION (SET NO. 4), filed July 18, 1990, at 12.

that SOV didn't read the complete response.[23] Indeed, the real problem seems to be that SOV was so sure of the answer it thought should be given to the question it thought it had posed, that it now simply disagrees with Vermont Yankee's answer.[24] SOV's disagreement with Vermont Yankee's answer is an issue going to the merits (if the whole issue is relevant), not one appropriate for resolution on a motion to compel.

Interrogatory No. 7.

Interrogatory No. 7 is only a slight variant of No. 6; it shares the same objectionable traits, and it was fully answered (given that the question as posed is apparently different from what SOV now contends it had in mind).[25]

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[23]It would seem that SOV intended to ask a very different question, namely whether, had leak rate tests been performable on and performed on these valves prior to the shut down (at which time the values recorded in the LERs were obtained), would those tests have also produced values above the values that Tech. Spec. §§ 3.7.A.3 and 3.7.A.4 establish for tests performed when required to be performed? Had such a question been asked, the answer would have been along the lines of "We don't know, as no tests were performed and a test is the only way in which such values can be established." But SOV insisted on phrasing its question not in terms of physical leak rates, but in terms of compliance with a legal document. Since the legal document doesn't require compliance at the time in question, the answer was as stated. What SOV perceives to be a problem thus lies not in the answer, but in the question.

[24]Indeed, SOV calls Vermont Yankee's answer "superfluous," MOTION TO COMPEL at 9, which leads one to wonder why SOV has nonetheless chosen to waste the Board's and Vermont Yankee's time and energy in moving to compel.

[25]See note 23, *supra*. If SOV had asked how long the plant was operated while the valves were in a condition that, had a leak rate test been performable and had a leak rate test been performed, it would have resulted in numbers greater than those contained in §§ 3.7.A.3 and 3.7.A.4, the answer would have been along the lines of "We don't know, but not necessarily for any time." However, the question was asked in terms of legal significance: how long did the plant operate while the legal requirements of the Tech. Spec. were not met. The answer to that is very different: zero time.

Interrogatory No. 8.

As with Nos. 6 and 7, SOV apparently intended to ask a different question; it didn't, and the question it did ask was fully answered.[26]

Interrogatory No. 24.

Interrogatory No. 24 was in the form of a "do you agree with" a long and convoluted statement that included both conclusions of fact and conclusions of law, and which has nothing to do with aging.[27] After stating a valid objection, Vermont Yankee patiently explained the legal errors and also patiently explained the apparently uncomprehended facts, as well as its disagreement with the statement. Thus, the question asked, though not applicable to these proceedings, was answered. SOV's attempt now to wedge several new questions into its motion to compel is improper. Finally, SOV's demand that Vermont Yankee's answer be "disallowed," MOTION TO COMPEL, is simply another disagreement on the merits and not a request for any relief cognizable to discovery practice.[28]

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[26]It would appear that what SOV intended to ask was whether Vermont Yankee would agree it to be an acceptable conservative assumption that the plant was operated for 100% of the prior cycle with valves in a condition such that, had they been testable and tested, they would have produced numbers above the numbers contained in Tech. Spec. §§ 3.7.A.3 and 3.7.A.4. The answer to that question would probably have been along the lines of "No, since such an assumption requires an antecedent assumption that whatever caused the valves to degrade from their 'as left' condition occurred and was completed prior to the ensuing restart, and we can think of no basis for making such an antecedent assumption," but that question wasn't asked. The question asked was whether it was a conservative assumption that the plant had operated in legal violation of its Tech. Spec. for 100% of the preceding cycle, and the answer to that question is no.

We point out that SOV seems to have overlooked a critical shortcoming in the form of the question itself. The obligation to provide any answer is stated in conditional terms. The condition is Vermont Yankee's perception of its own inability to determine something. Should Vermont Yankee conclude that it *is* capable of determining that thing, as it was here, then by its own terms the interrogatory required no response.

[27]See note 14, *supra*.

[28]One statement contained in SOV's argument on this interrogatory reveals, we respectfully suggest, the danger inherent in admitting a contention that, in essence, calls for this Board to determine an *ad hoc* standard for the acceptability of a maintenance and surveillance standard. In the context of a subject highly regulated both by the accepted and approved (and not open to question in this proceeding) VYNPS Tech. Spec. and by the

Finally, as above (see *supra* at note 17), SOV premises its rhetorical argument ("Is [SOV] to infer that the licensee equates 'safety standards' of the plant with 'current licensing basis?'" MOTION TO COMPEL at 25) upon either its failure to have read or its failure to accept Vermont Yankee's prior answer to exactly that question (which answer was in the negative). See the response to Interrogatory (Set No. 2) No. 56.

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regulations of the Commission—surveillance requirements for containment valves—SOV contends that no program is acceptable unless it "can detect and replace [failed] equipment *before* it [fails]." MOTION TO COMPEL at 26. The only way such a requirement could be met with respect to containment integrity would be (i) to delete the requirement of inerting the VYNPS containment during operations and (ii) to devise some way of continuously monitoring containment system leak tightness. The former is plainly beyond the jurisdiction of this Board under the notice under which these proceedings were commenced. The latter would appear to have serious safety implications for the reason (among others) that valves have to be deactivated from their normal function in order to be leak rate tested. In point of fact, the inherently legislative issue of how frequently containment valves should be leak rate tested is (i) one not suited for resolution in a contested proceeding by a Licensing Board and (ii) one that the Commission has already resolved.

This same assertion also signals yet another unheralded but significant shift in SOV's litigation strategy. See note 4, *supra*. In its original contention, SOV argued that Vermont Yankee had an obligation to have a "program to maintain and/or determine and replace all components found to have aged to a point . . . ." SOV CONTENTIONS at 42. In Interrogatory (Set No. 1) No. 1, SOV was asked to define the term "program to maintain and/or determine and replace all components found to have aged to a point . . . ." SOV eventually responded:

> "The term 'found' in 'found to have aged . . ." refers to the situation in which a structure, system or component has exceeded its useful life, whether determined programmatically *or by failure on demand*."

SUPPLEMENTAL RESPONSES TO APPLICANT'S INTERROGATORIES BY STATE OF VERMONT (SET No. 1), filed May 29, 1990, at 2 (emphasis added). SOV's present assertion that only a program capable of determining all failures before they occur is acceptable is thus beyond the scope of the admitted contention as SOV drafted it and later defined it.

Interrogatory No. 25.

This interrogatory calls for a description of something that hasn't been done yet.[29]

Interrogatory No. 27.

This is another of the "do you agree with" questions asking adoption or rejection of a long and convoluted statement of legal and technical import. See *supra* at 12. Vermont Yankee signified its rejection of the statement, including the reasons therefor. No more is required.

Interrogatory No. 30.

This is yet another of the "do you agree with" questions asking adoption or rejection of a long and convoluted statement of legal and technical import. See *supra* at 12. Here, too, SOV attempts to employ the motion to compel device as a means of covertly propounding supplemental interrogatories. Vermont Yankee signified its rejection of the statement, including the reasons therefor. No more is required.

Interrogatory No. 31.

This is another of the "do you agree with" questions asking adoption or rejection of a long and convoluted statement of legal and technical import. See *supra* at 12. Moreover, a cursory reading of either (i) the report cited in the question or (ii) the facts provided in the response to Interrogatory No. 30 would have illuminated SOV as to why its assertion that the problem with the new seats was something caused by or permitted by the maintenance program is patently false. Vermont Yankee signified its rejection of the statement, including the reasons therefor. No more is required.

Moreover, SOV asserts that it is "obvious" that "it was the Vermont Yankee Maintenance Program which evaluated and effected the change to a sealing material which was inadequate." MOTION TO COMPEL at 32. (In fact, SOV's assertions of fact are neither obvious nor accurate.) As a threshold

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[29]We trust that the Board will not be misled by SOV's use of quotation marks in a fashion that might signify (falsely) that "plans" in the original was used as a plural noun, as opposed to as a verb in the present tense. The complete sentence reads as follows:

> "Vermont Yankee plans to develop a preventative maintenance schedule for replacing the seats."

matter, SOV should be required to supplement its interrogatory responses[30] and disclose what facts (if any) support the truth *and relevance* of this assertion, which on its face has nothing whatsoever to do with "aging."

Interrogatory No. 35.

SOV's argument on this interrogatory shows its only complaint is that Vermont Yankee does not share its conclusion with respect to a set of facts that are matters of record. Such a disagreement is (if relevant) the subject of the merits, but not of a motion to compel.

Interrogatory No. 36.

Please see the response to Interrogatory No. 25, *supra* at 13.[31]

III. VYNPS Accident Analyses (Interrogatories Nos. 11, 13, 14, 15, 16, 21, 22).

Interrogatory No. 11.

Several years ago, in connection with approval of certain design and regulation exemption questions, the Commission's Staff requested an accident analysis be performed. It then reviewed and approved that analysis in a Supplemental Safety Evaluation Report ("SSER"), contained in the letter of the Commission to Vermont Yankee dated August 19, 1983, and numbered NVY-83-192. With the issuance of the SSER, the analysis in question became a part of the VYNPS licensing basis (see the response to Interrogatory No. 13), and as such it applies to current VYNPS operations as well as, without change, to the proposed extended operation. The correctness of the SSER and the design basis analysis approved thereby are, of course, not open

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[30] *E.g.*, INTERROGATORIES PROPOUNDED BY VERMONT YANKEE NUCLEAR POWER CORPORATION TO THE STATE OF VERMONT (SET No. 5), filed July 24, 1990, at 7-8 and 9-10 (Interrogatories Nos. 11 and 15).

[31] The complete sentence SOV has truncated reads as follows:

> "Vermont Yankee plans to [assess] the availability of returning to the previously installed seats or developing a preventative maintenance schedule using the new seats."

to question in this proceeding.[32] Nonetheless, SOV has embarked on a course of essaying, apparently, precisely such a challenge.

The statement quoted in Interrogatory No. 11 comes directly from the SSER. Whether or not anyone agrees with it is irrelevant to these proceedings. SOV's intention, announced in the MOTION TO COMPEL at 12-13, to challenge the VYNPS design basis does not legitimate, but rather it damns, the question. The objection should be sustained.

Prescinding from the foregoing, it should be noted that SOV's argument as to relevance turns on three assertions: (i) SOV's assertion of what constitutes "current licensing basis assumptions," MOTION TO COMPEL at 12; (ii) its argument "that there is *not* reasonable assurance that there would have been enough time for feedwater heater valves to be closed," *id.* (emphasis in original); and (iii) the contention that "it is improper to rely upon these feedwater heater valves to prevent 'escape of containment atmosphere.'" *Id.* Presumably SOV has some factual basis for these assertions. If so, and if one accepts SOV's argument of relevance, then those facts are ones which SOV was asked to—but did not—disclose in response to Vermont Yankee's interrogatories.[33] Accordingly, SOV should be required, as a condition precedent to the Board's considering this portion of the MOTION TO COMPEL, to supplement its interrogatory responses with all the facts which it has to date withheld.

Interrogatories Nos. 13 and 14.

Whether or not the propositions identified in the quoted statements are within VYNPS's current licensing basis is of no obvious relevance to aging issues. Moreover, Interrogatory No. 13 is fully answered by the reference

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[32]We point out, however, that the SSER was issued in support of a Commission-granted exemption under 10 C.F.R. § 50.12 from the application of the 10 C.F.R., Part 50, Appendix J Type C Leak Rate Test requirements to certain "inboard" feedwater check valves, including Valves -28B and -28A. These valves were replaced with Anchor-Darling valves during the recently complete refueling outage and, as a consequence, the exemption has no continuing effect.

[33]Vermont Yankee's fifth set of interrogatories was expressly designed—by calling for all facts and evidence under each of the admitted bases, and then all other facts and evidence SOV contended supported their contention—to smoke out all allegedly relevant evidence possessed by SOV. Thus, even if facts did not fit within one of Vermont Yankee's prior specific interrogatories, they would have been picked up by one or another part of Set No. 5.

to the Commission document establishing the licensing basis on the point in question, and Interrogatory No. 14 is fully answered by stating that the consequences of the inquired-about scenario are fully bounded by (*i.e.*, would be equal to or less than) those of the design basis steam line break and loss of coolant accidents described in chapter 14 of the FSAR.

Interrogatories Nos. 15 and 16.

Whether or not the propositions identified in the quoted statements are within VYNPS's current licensing basis is of no obvious relevance to aging issues (within the meaning of "aging" on which the admission of Contention VII was premised, see note 14, *supra*). Nothing in SOV's argument on Interrogatory No. 4 even adverts to the special problems of "aging" within that meaning. Rather, relevance of these interrogatories is claimed only because of SOV's claim of warrant to an unlimited review of *all* possible maintenance questions, aging related and otherwise. No such contention was admitted.

Interrogatories Nos. 21 and 22.

These interrogatories are doubly irrelevant. They are irrelevant to the admitted contention for the same reason as above, namely that it has no connection to "aging" in the sense in which that term was employed for admission of the contention. They are irrelevant also in the licensing sense because they require an accident calculation based on hypotheticals that transcend those required for any issue even in an original operating license proceeding.

In this case, the applicable regulations are reasonably clear. 10 C.F.R., Part 50, App. J, §§ III.B.3 and III.C.3 make clear that only the results of Type B and Type C tests are to be summed (and their sum must be equal to or less than 60% of L_a (or 80% of the acceptance value for the Type A test). Not only do the regulations not require summation of Type A and Types B and C data, but they specify no acceptance criterion for any such effort. Indeed, at Vermont Yankee, the Commission has specifically concluded that neither the governing regulations nor the Vermont Yankee design basis require the type of summation that SOV insists upon. See also the letter of the Commission to Vermont Yankee dated June 16, 1987: "We concur that no further actions are necessary at this time with respect to adding Type B and C leak

rate test results into the total containment leakage determination. . . ." (Copy attached.)[34]

In any event, even were the question legally relevant, the question is fully answered by saying that no such calculation has been done. An interrogatory may not require the performance of original research or complex calculations; it may only call for the result of those that have already been done.

Finally, we observe that SOV's argument contains a series of factual assertions: "that these assumptions are the proper current licensing basis assumptions," MOTION TO COMPEL at 21; "that the results will show doses above 10 C.F.R. Part 100 limits," *id.*; and the complex of assertions in the middle paragraph of page 22 of the MOTION TO COMPEL. If SOV were correct in claiming relevance, then it perforce would also be admitting to having concealed the factual bases for these assertions, and should now be required to disclose them.

IV. **Duplicative Interrogatories (Interrogatories Nos. 41, 47, 89, 94).**

Interrogatory No. 41

In response to SOV's first set of interrogatories, Vermont Yankee made available written job descriptions for all maintenance positions, which descriptions expressly include the entry level qualifications for the positions. Vermont Yankee made the same descriptions available in response to SOV's first set of requests for documents. There simply is no justification for SOV to demand the identical information yet again. The only "burden" on SOV has been for it to read the answers that it already has elicited.

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[34]In addition, it should now be clear that the calculation that SOV demands in Interrogatory No. 21 would amount to double-counting leakages. The "Type A" result of 0.571%/day includes all of the "Type B" leakage of 0.15%/day, and all of the "Type C" leakages listed in the interrogatory (with the necessary exception of FDW-96A, for which no quantification was possible with the equipment available, and the exclusion of which is both fully explained in the report and has been determined by the Commission to be consistent with the VYNPS design basis). It is not clear whether SOV demands double-counting of leakages through innocent non-comprehension or for other reasons; nor does it matter. No rational analysis in the world requires that a given leak rate component be counted twice.

Interrogatory No. 47

Vermont Yankee answered Interrogatory (Set No. 1) No. 106 by pointing out that the information demanded by SOV "may be found via the Maintenance Request process or via the trending program as defined in AP 0200, both of which have previously been made available for SOV's inspection."[35] Rather than look at the proffered documents, which contain all of the extensive information requested, SOV has simply asked the question again. Again Vermont Yankee responded by citing the proffered documents, while also listing several examples therefrom. SOV's present motion, which focuses on the example and ignores the complete set of proffered documents, thus misses the mark. As Vermont Yankee has previously noted, production of the documents containing the requested information is a fully satisfactory response.[36]

Interrogatories Nos. 89 and 94

In each of these interrogatories, SOV asked for the "qualifications" of a particular consultant. In each case, Vermont Yankee directed SOV's attention to a prior interrogatory answer which set forth those qualifications. To the extent that SOV's present demand for "specific qualifications regarding the assessment of coating systems", MOTION TO COMPEL at 65 and 69, is intended by SOV to encompass information other than the "qualifications" previously requested and provided, that is a wholly new question, raised for the first time in the MOTION TO COMPEL. Vermont Yankee already answered in full, more than four months ago, the question actually posed in the interrogatory.

As for SOV's demand for "training" information, Vermont Yankee is at a loss to understand what SOV wants beyond that which Vermont Yankee has already provided. The professional training of these individuals obviously is encompassed in their qualifications; hence Vermont Yankee's answer. If SOV was looking for employee training, it should be obvious that these outside consultants received none from Vermont Yankee (other than the general orientation required for issuance of a site badge, which we presume is not what was intended).

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[35]ANSWERS OF VERMONT YANKEE NUCLEAR POWER CORPORATION TO INTERROGATORIES PROPOUNDED BY THE STATE OF VERMONT, filed May 30, 1990, at 86.

[36]ANSWERS OF VERMONT YANKEE NUCLEAR POWER CORPORATION TO STATE OF VERMONT'S MOTION TO COMPEL (INTERROGATORIES, SET NO. 1), filed June 29, 1990, at 4-6.

V. **Paint**
(Interrogatories Nos. 50, 51, 52, 53, 54, 55, 85, 86, 92, 93, 101, 103, 104, 105, 109, 115, 116, 117, 118, 120, 121, 139).

Interrogatory No. 50

SOV's present interrogatory asks for all evidence of the ability of the primary containment "to meet its design basis requirements." Prescinding from the fact that SOV's question misparaphrases Vermont Yankee's prior interrogatory answer,[37] the broad topic of containment integrity is not before this Board for litigation.

In its MOTION TO COMPEL, SOV attempts to rephrase its question to focus on the narrow topic of paint degradation (*i.e.*, a topic more in line with what Vermont Yankee actually said in response to Interrogatory (Set No. 1) No. 110). Apart from the impropriety of this rephrasing, the answer to SOV's new question is fully set forth in the response to Interrogatory (Set No. 1) No. 110.

Interrogatory No. 51

This interrogatory is a definitional one, asking Vermont Yankee what it meant by the term "essentially precluded" in a prior interrogatory response. Vermont Yankee explained its meaning in response to Interrogatory (Set No. 3) No. 45, citing therein to facts so obvious—*e.g.*, that oxygen must be present for oxidation to occur, or that containment is de-inerted during refueling—as to themselves constitute "evidence."[38] Thus SOV's attempt to set an evidentiary trap for the Licensee is not warranted by either the terms of the actual question or the content of the actual answer.

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[37]What Vermont Yankee actually said was

> "VY has a high degree of confidence that the ability of the primary containment to meet its design basis requirements will not in the future (either during the presently-licensed period of operations or the requested additional period of operations) be impaired by any effect of interior corrosion."

Vermont Yankee then went on to describe in detail the reasons for that profession of confidence.

[38]As for SOV's present demand for "expertise," MOTION TO COMPEL at 40, no such information was requested in the original interrogatory.

Interrogatories No. 52, 85, 149

These three interrogatories concern the criteria used to determine if reapplication of either primer or topcoat material is needed. Vermont Yankee identified the criteria, OP 4115.04. SOV evidently does not agree with those criteria. That substantive disagreement, however, is neither grounds for a motion to compel nor an excuse for SOV to pose a whole series of new questions concerning the criteria.

Interrogatory No. 53

SOV's original interrogatory was irrelevant, and its present motion to compel is (at best) deceptive.

SOV asks whether calculations going into the design of a particular piece of equipment, *i.e.*, the ECCS suction strainers, were arrived at in conformance with a quoted piece of regulatory guidance. Prescinding from the fact that, as SOV itself concedes, the guidance in question is not a requirement, this design issue is simply beyond the scope of the admitted (or, indeed, any proffered) contention.

Notwithstanding its irrelevance, Vermont Yankee answered the question, patiently explaining why (in Vermont Yankee's view) the guidance was met. SOV now attempts to mask its simple disagreement with the answer given by launching into a baseless and insidiously misleading denunciation of Vermont Yankee's attempts to comply with SOV's myriad discovery demands.

Prescinding from all of the above, this is yet another example of SOV leaping before looking. SOV's assumption that "GE-VY-86008" is a "calculation" (MOTION TO COMPEL at 44) is both without basis (Vermont Yankee called it an "evaluation of fibrous insulation debris") and erroneous. This indisputable fact is demonstrated by the document in question, a copy of which was provided to SOV on June 13, 1990. Reviewing the document, if done, would also reveal that the evaluation (GE-VY-86008) is based, in part, on calculation "VY LOCA DEBRIS" DRF No. A00-1713 (misrendered, but not noticed by SOV to have been misrendered, "No. 100-1713"), which is referenced. Thus, there is no contradiction. Nor is there any "practice of serving up new information from a treasure house of unrevealed, though requested, documents." There is, rather, a clear case of SOV publishing a serious allegation of intentional purloining that was not only false when made, but capable of being known to be false when made had SOV only read

the material it had demanded and received. See also the discussion at note 17, *supra*.[39]

Interrogatories Nos. 54, 92, 93, 101, 103, 105, 115, 116, 118

In each of these cases, SOV simply disagrees with the substance of Vermont Yankee's answers. Moreover, in Nos. 115, 116, and 118, SOV admits that the basis for its disagreement is not the adequacy of the present response, but rather Vermont Yankee's alleged failure to address a wholly new question posed now by SOV in its MOTION TO COMPEL. There simply are no valid grounds for SOV to demand further responses to the questions previously asked.

In addition, it should be noted that, in its discussion concerning Interrogatory No. 115, SOV adverts to alleged problems arising from "paint chips whose surface area allows floatation, and paint chips which remain on the surface because of surface tension." MOTION TO COMPEL at 78. This reference is intriguing, since nowhere in SOV's responses to Vermont Yankee's various interrogatories concerning SOV's paint allegations[40] does SOV mention, let alone discuss, these phenomena. As a precondition to the

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[39]SOV's practice of not reading things goes further. Its assertion (MOTION TO COMPEL at 44) that "In Interrogatories (Set No. 1) Nos. 89 and 90, licensee identified [calculation No. 100-1713] as *the* NPSH basis" (emphasis added), is simply not what was said in those answers. Rather, Vermont Yankee stated that:

> "Net positive suction head available ("$NPSH_A$") is a function of the pressure on the surface of the water being pumped, the static head due to the difference in elevation of the water surface and the pump elevation, friction losses due to flow in the suction piping which is a function of flow and piping and fittings losses, and vapor pressure of the water which is a function of temperature. There is, therefore, not a singular value for this parameter."

See also the several sources identified in the table entitled "Typical $NPSH_A$ Values" in that very same answer to an interrogatory.

Vermont Yankee would truly like to satisfy SOV. It is difficult to meet a demand, though, when the demand keeps changing. It is equally difficult to satisfy someone's request for information when they not only don't read the information provided, but then continuously castigate you for not having provided what you in fact have provided.

[40]*E.g.*, the following Vermont Yankee interrogatories would seem to be on point: (Set No. 1) No. 16; (Set No. 2) No. 145; (Set No. 4) No. 29; (Set No. 5) Nos. 13-14.

Board even considering this part of the MOTION TO COMPEL, SOV should be required to disclose all of its facts, evidence, and expertise on these issues.[41]

Interrogatory No. 55

The topic of the admitted contention is specific—*i.e.*, the alleged inability of Vermont Yankee's maintenance program, due to specific alleged programmatic deficiencies, to adequately detect and replace aging equipment during the recapture term. In its present motion, SOV clearly discloses its intent to go far beyond that contention, and to attempt to turn this litigation into an exploration of any and every past alleged "breakdown in the licensee's maintenance program (and quality assurance program)." MOTION TO COMPEL at 47. SOV's interrogatory is irrelevant to the admitted aging contention, and is beyond the scope of the Notice of Opportunity for this hearing.

Interrogatory No. 86

SOV does not address Vermont Yankee's relevance objection. The topic of waterproofing any and all "continually contaminated or wetted areas" in the plant—which is what SOV's actual question asked—is far beyond the scope of the admitted contention. The new question raised by SOV in its MOTION TO COMPEL, asking about "water absorption" without any limitation or rationale, suffers much the same defect.[42]

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[41]When SOV identifies its basis for "floating paint chips," it might consider whether it wishes to press the concept. Had Vermont Yankee found that the paint chips tended to float, it most likely would have avoided all of the cost of the analyses performed, since the strainers in question are near the bottom of the water in the torus and would be wholly unaffected by floating debris.

[42]Apparently what SOV sought—but failed, twice—to ask was whether the dry well and torus should be waterproofed to prevent water absorption. Had that question been asked, the answer would have been no, since the surfaces in question are steel, and steel does not absorb appreciable amounts of water. Or perhaps the intendment of the interrogatory was to elicit Vermont Yankee's position on the technical necessity for the primer-effected water barrier. Had that question been asked directly, Vermont Yankee would have responded in two parts: first, as indicated in Vermont Yankee's answer to Interrogatory (Set No. 1) at 80-81, there is no apparent design or licensing basis for the liner paint. Second, regardless of that fact, maintaining the primer coat has been assumed to be required, and, because it is straightforward to do so, not much work has been spent determining whether the assumed requirement is technically justified.

Interrogatory No. 104

In sub-part b of its answer, Vermont Yankee explained that there were no "elevated temperatures" in the sense implied by SOV's question. Accordingly there are no documents or components that fit the terms of sub-parts c and e of the question, as Vermont Yankee's answer made reasonably clear. There is no "additional response" to be compelled.[43]

Interrogatory No. 109

SOV's argument demonstrates nothing less than, and nothing more than, a simple disagreement with the substance of Vermont Yankee's answer. SOV asked for a calculation of the specific date when "generalized repair and/or replacement of the zinc coating will be required." Another way of phrasing that question would be, "On what day will you need to repaint the wall?" Vermont Yankee responded, fully and truthfully, that no such date has been calculated. Indeed, for the reasons discussed in sub-part a of Vermont Yankee's response, it would be impractical (and irresponsible) to pretend to make such a calculation. It should be noted, by the way, that nowhere has SOV suggested that Vermont Yankee would not repaint the wall if and when necessary.[44]

Interrogatory No. 117

SOV makes two claims as to this interrogatory, which in form is defective because it purports to dictate the nature of the response.[45] As to

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[43]When Vermont Yankee first answered this interrogatory, it interpreted the document request in item (c) to be for the types of documents that would have described abnormal temperatures, which is a null set. As literally read, it calls for documents which "describe" the state of being between 180°F and 200°F, a meaningless request. Sub-part (c) was not understood at that time (and may never have been intended) as calling for the containment temperature profiles. If that was the intention, then the profiles are available for inspection and copying upon request.

[44]This is another instance in which SOV's problem seems to arise from a lack of familiarity with the context. While the SWEC consultant's statement about the effect of decontamination is probably true, the fact of the matter is that the surfaces in question are not decontaminated and are not planned to be decontaminated. Thus, the whole premise of SOV's syllogism ("each time the liner is decontaminated," MOTION TO COMPEL at 77) is false.

[45]SOV begins by asking for all Vermont Yankee's support for a given conclusion, and then insists that Vermont Yankee's support for the conclusion must contain at least the answers to 4 different questions. The content of

sub-parts (a) and (b), SOV claims that the response (which consisted of a reference to the final report of a substantial evaluative effort) is "inadequate" because SOV apparently doesn't agree with the conclusions reached in that report. Such disagreement does not signify inadequacy in the interrogatory answer, however. As to sub-parts (c) and (d), SOV contends that the proffer of the evaluative effort is inadequate because these precise topics are nowhere addressed. As to (c), SOV is in error (see page 11 of the report, describing the results of the 1989 survey of the areas in question); as to (d), SOV is correct that Vermont Yankee has provided no documentation beyond the report, for the simple reason that, separate from the analyses contained and referenced in YAEC 1696, no assessment of that portion of the future was performed (or considered to be necessary to perform).

We add: as stated in YAEC 1696, surveys of the condition of the area in question are planned for each succeeding outage. In fact, an "as found" inspection was performed subsequent to the filing of Vermont Yankee's answers to these interrogatories, and is available to SOV upon request. (Memo L.A. Tremblay to S.R. Miller (VYL 35/90) dated September 27, 1990.)

Interrogatory No. 120

The referenced document addresses SOV's questions at 14 and 15. That SOV purports not to be persuaded by the substance of that discussion is not grounds for a motion to compel.

Interrogatory No. 121

SOV here asked Vermont Yankee to perform a specific calculation, using specific parameters. Vermont Yankee responded that the calculation could not be performed as specified, for two reasons: (i) SOV asked Vermont Yankee to add two components that are not additive; and (ii) SOV failed to state what values should be used for the specified component of "other debris." In its MOTION TO COMPEL, SOV does nothing to address either of these fatal deficiencies in its question. Vermont Yankee did the best it could with the question posed; nothing more is required.[46]

Vermont Yankee's support for a proposition cannot be dictated by the interrogatory.

[46]Upon reflection, we are unable to divine why this interrogatory was not objected to, as it is manifestly irrelevant. Note that the SOV argument is carefully framed in terms of "insufficient NPSH will be shown to have been present in the 'as-found' containment condition *of 1989*." MOTION TO COMPEL at 83 (emphasis added). The 'as-found containment condition of 1989,' however, is irrelevant to the subject of this proceeding or to Conten-

VI. **INPO Interrogatories (Interrogatories Nos. 58, 59).**

SOV's demands for the contents of the INPO documents should be rejected for the reasons discussed in Vermont Yankee's OBJECTION TO DOCUMENT PRODUCTION AND REQUEST FOR PROTECTIVE ORDER (INPO DOCUMENTS), filed June 15, 1990, and MOTION TO SUPPLEMENT ANSWER OF VERMONT YANKEE NUCLEAR POWER CORPORATION TO STATE OF VERMONT MOTION TO COMPEL (DOCUMENT REQUESTS, SET NO. 1), filed July 14, 1990.

VII. **"Industry Initiatives" (Interrogatories Nos. 64, 77).**

SOV's motion to compel with respect to these two interrogatories is based upon two legal fallacies and several misstatements of fact. Once these are dispelled, it is clear that both of Vermont Yankee's objections are valid, and that the answer which Vermont Yankee nonetheless voluntarily gave is *a fortiori* more than sufficient.

The first legal fallacy is SOV's assertion, referenced from its prior motion to compel production of various INPO documents, that "industry initiatives" constitute some sort of regulatory requirement applicable to Vermont Yankee's maintenance program in this proceeding. Not surprisingly, SOV cites no support for this novel proposition. Indeed, the record is undisputed that the "initiatives" which SOV seeks to impose as requirements are in fact part of industry efforts to achieve a "raising standard of excellence" *in excess* of regulatory requirements, and that those efforts would be jeopardized—to the ultimate loss for the public—if the legerdemain attempted here by SOV were allowed.[47]

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tion VII given that (i) the "'as-found' containment condition of 1989" was prior to the implementation of a corrective action that will continue into the future and (ii) given the removal of yet more loosened topcoat each outage, by the year 2007 either the amount of remaining topcoat will be diminishingly small, or the remaining topcoat will have ceased peeling between outages. Without intending to minimize the seriousness with which Vermont Yankee has aggressively attacked what was a potential *present* problem, SOV has utterly failed to articulate a rationale by which it presents a potential *future* problem for the post 2007 period.

[47] *See, e.g.*, ANSWER OF VERMONT YANKEE NUCLEAR POWER CORPORATION TO STATE OF VERMONT'S MOTION TO COMPEL (DOCUMENT REQUESTS, SET NO. 2), filed July 13, 1990, at 6-7 and 8-10.

SOV's alternate assertion of relevance is that Vermont Yankee made a passing reference to "industry initiatives" in a prior interrogatory answer; this "made" the topic relevant, according to SOV. MOTION TO COMPEL at 50. Prescinding from the fact that a review of the actual question asked and the full answer given shows that SOV's argument has no factual merit, it simply is wrong as a matter of law to assert that every utterance in every response to every discovery request is automatically relevant.

On the facts, SOV truncates and misstates Vermont Yankee's responses to Interrogatory (Set No. 2) No. 79.b and (Set No. 3) No. 64. In the former, Vermont Yankee stated that

> "[INPO] documents [have] been routed within both the Yankee Atomic and VY organizations, to those responsible for the topics in question. There is no formal routing scheme available, but typically upper level managers determine routing as they see a need to know. This concept follows down the chain as managers on each level make decisions as to who should review various documents."

In response to the latter interrogatory, which dealt with initiatives as opposed to documents, Vermont Yankee stated that

> "[U]sually initiatives arising from groups such as these are assigned for evaluation via a formal process that tracks the review and approval process to completion. The assessment is assigned by the Department head to the appropriate technical personnel. The resulting assessment is reviewed and approved by the department head and the next higher level manager."

The two answers, to the extent that they overlap, are not inconsistent, contrary to SOV's assertion. Rather, they make clear that the specific route followed—the "formal process"—by each initiative is going to vary depending on who the "appropriate technical personnel" are and the nature of the document itself. Thus Vermont Yankee clearly is correct in contending that it would be unduly burdensome to identify every past initiative and trace back the *sui generis* route followed by each one.

VIII. **Trend Analysis**
(Interrogatories Nos. 68, 73).

Interrogatory No. 68

Upon careful review, Vermont Yankee remains convinced that it answered the question posed and has become convinced that SOV does not

understand the answer. For evidence, it specifically cited SOV to the information contained in the response to Interrogatory (Set No. 1) No. 116. That SOV might not agree that avoiding forced entry of LCOs is conservative, perhaps because SOV has not considered how LCO triggering conditions themselves are conservative,[48] provides no grounds for a motion to compel.

Interrogatory No. 73

Vermont Yankee stated that it believed trending will work well in the future because it has worked well in the past. It then cited the examples described in the response to Interrogatory (Set No. 1) No. 116. It is manifestly impractical (as well as unreasonable) for SOV to demand the details of *every* past instance of past trending performance.

With respect to identifying individuals, Vermont Yankee *already* identified, in its response to SOV's Interrogatory (Set No. 1) No. 1, those persons who participated in answering SOV's interrogatories regarding trending. (Presumably the reason why SOV asked who answered which particular interrogatory was precisely so that it could distinguish who was expert in what area.) In response to Interrogatory (Set No. 3) No. 73, Vermont Yankee indicated that it relies on those same persons. SOV's apparent election not to believe that response grounds no motion to compel.

IX. Design Life
(Interrogatories Nos. 74, 75, 154, 155, 161, 162, 186, 187).

Each of these interrogatories seeks, in some form or another, for a calculation of the "useful life" of either a specified component (Interrogatories Nos. 154, 155, 161, 162, 186 and 187) or the entire set of components not originally intended to last the life of the plant (Interrogatories Nos. 74 and 75). The subject of "useful life" of components is not relevant to any of the admitted bases of Contention VII, and it was squarely the subject of proposed Contention VI, the admission of which was rejected by this Board. Interrogatories seeking to backdoor the topic are objectionably irrelevant.[49]

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[48]For an example, see note 17, *supra*.

[49]We take some exception to SOV's otherwise unqualified statement in the MOTION TO COMPEL at 101 that "Valves V2-27B and V2-96B have been found with cracks exceeding ASME limits." Prescinding from the relevance of the fact *simpliciter*, and prescinding further from the fact that this discovery was made by the very maintenance and surveillance programs that SOV apparently believes to be incompetent to make such discoveries, we urge the Board not to be misled into the implication (perhaps unintended) that this discovery was something withheld from SOV. In fact, the discovery was not

The motion in respect of the responses to Interrogatories Nos. 74 and 75 is invalid for an additional reason. In essence, these interrogatories demand a list of the components that were in mind when a prior statement was made. Vermont Yankee has already said that no set of components was in mind, and that the statement (that it was originally contemplated that not everything in the plant would last for 40 years) was conceptual in nature. SOV argues that the statement (that Vermont Yankee made) was not conceptual, but rather "implies that specific components were in [Vermont Yankee's] mind." After having been told that no such list was in mind, disagreement with the response is not the basis on which a motion to compel may be brought.[50]

X. The Meaning of Words (Interrogatories Nos. 126, 127, 128, 129).

In each case, SOV's argument with the responses to these interrogatories is based on disagreement with them.

Interrogatories Nos. 127, 127 and 128 were all "definition" interrogatories. In response to each, Vermont Yankee responded that the phrases in question were used with their ordinary English meanings. With respect to Interrogatory No. 126, SOV claims that "[SOV] believes this is a usage of 'fundamental' different from 'ordinary English' . . . ." MOTION TO COMPEL at 84. This argument is incorporated by reference without further illumination, and thus presumably SOV also disagrees with Vermont Yankee's answer that the phrases "discrete changes" and "to account separately" were used with their ordinary English meanings. MOTION TO COMPEL at 84-85.

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made until after these answers to interrogatories were filed, and SOV was promptly notified. Moreover, as this response is prepared, the defect has been evaluated, a remedy proposed and the Staff has concurred with the remedy and the timetable therefor.

As an aside, SOV's implication at the same point that the discovered cracks relate to the issue of "qualified life," made in furtherance of SOV's continued desire to litigate excluded Contention VI, is wide of the mark. In point of fact, the expected lives of the two valves in question is the life of the plant, and the cracks in question were not within that expectation. This experience confirms the wisdom of avoiding undue reliance upon "qualified life" as the means by which one monitors the continued qualification of components. See the response to Interrogatory No. 75.

[50]SOV's claim, MOTION TO COMPEL at 61, that "[t]he reference to the 'Vermont Yankee Maintenance Program' is so vague as to be meaningless" suggest that SOV has not bothered to look at the document by that name, a copy of which was given to it on June 6, 1990.

Interrogatory No. 129 asked whether Vermont Yankee agreed that a particular procedure change was a "fundamental change." After a valid relevance objection,[51] Vermont Yankee said it was not. SOV now contends that this Board should compel Vermont Yankee to change its "No" answer to a "Yes" answer because SOV believes the thing in question was "fundamental."

Apart from the questionable utility of great energy being spent on an issue of no import, disagreement with the substance of an answer to an interrogatory is not a recognized ground for an order compelling the answer to be changed. See MEMORANDUM AND ORDER of July 20, 1990, at 13, 14, 20.

XI. Vermont Yankee Legal Contentions (Interrogatories Nos. 72, 144, 145).

Interrogatory No. 72.

This interrogatory, which should have been objected to, seeks both a pure legal opinion[52] *and* does so by means of a hypothetical so devoid of any specificity as to be essentially meaningless. Nonetheless, Vermont Yankee answered the question with an unqualified "No," and it then explained its answer in a fashion that demonstrated that the "No" was not dependent upon any facts. (It also explained why the question, which is in terms of a changing legal acceptability in a licensing context, necessarily assumed a changing legal standard, an assumption Vermont Yankee believes to be unfulfilled.)

SOV now complains that the answer was deficient because it did not supply a catalog of unspecified "[c]ommitments made or required through NRC Information Notices, Bulletins and Generic Letters; commitments made or required as a result of NRC Inspections; and commitments made or required by the NRC Senior Resident Inspector." Prescinding from the

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[51]Absolutely nothing mentioned in any of the admitted bases of Contention VII turns on whether a change in a maintenance procedure effected more than a decade before the commencement of the period of extended operations is or is not "fundamental." The real question is whether the changes, "fundamental" or not, moot the (second hand) criticisms contained in SOV's contention. See note 5, *supra*. *This* question, however, SOV apparently does *not* want to address.

[52]Cf. MEMORANDUM AND ORDER of May 24, 1990, at 8.

relevance of such an inquiry,[53] the simple fact is that this is not the question that was propounded.

Interrogatory No. 144.

This interrogatory sought a pure legal opinion: what are the standards that "Vermont Yankee asserts are applicable to the resolution of this proceeding." The answer to this depends solely on (i) the nature of the proceeding (*i.e.*, operating license amendment) and (ii) the nature of the admitted contention (*i.e.*, alleged inadequacy of the operational maintenance program). Nonetheless, Vermont Yankee did not object, but rather stated, rather fulsomely, the standard that "Vermont Yankee asserts" is applicable to "the resolution of this proceeding."

SOV makes two claims that the answer is defective. First, it claims that the answer is legally wrong. Second, it claims that the answer does not state

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[53]SOV makes, in its argument on Interrogatory No. 72, a passing reference to its argument on Interrogatory No. 69. That argument, in turn, contains two revealing propositions. First, SOV asserts that "the licensee seems to be arguing that no safety standard of the reasonable assurance is necessary since the plant was licensed 18 years ago" (MOTION TO COMPEL at 53), an assertion as fuzzy in its reflected thinking as it is in its grammar. The position of Vermont Yankee regarding applicable licensing legal requirements is far more clearly stated (in, for instance, the answer to Interrogatory No. 144) and, assuming that SOV comprehends what Vermont Yankee's legal position is, it is non-sensical to assert that "it is important for [SOV] to know whether the licensee agrees that maintenance regulatory requirements have changed in the intervening years." (*Id.*) Second, SOV "notes" in the argument on Interrogatory No. 69 "that regulatory requirement, as used here [referring presumably to the argument, since no such definition was supplied in the interrogatory], means not only those items subject to rulemaking, but also those items which are required by NRR or the NRC Senior Resident Inspectors (and may be implemented voluntarily at their urging)." In the first instance, the assertion that the Commission (or any other agency) may effectively promulgate matters having the force of regulations without going through the process of the Administrative Procedures Act is one that has been routinely rejected by the Courts. *E.g.*, *United States v. Reinis*, 794 F.2d 506 (9th Cir. 1986); *City of New York v. Diamond*, 379 F. Supp. 503 (S.D.N.Y. 1974); *see also Graham v. Lawrimore*, 185 F. Supp. 761, 763-64 (E.D.S.C. 1960), *aff'd*, 287 F.2d 207 (4th Cir. 1961). Second, the assertion that something that is "implemented voluntarily" might be the effective equivalent of a mandatory "regulatory *requirement*" upon which the grant or denial of a license might be based, is hopelessly internally inconsistent.

what "[Vermont Yankee] believes to be the 'safety standards' applicable *to the plant*."[54] SOV is wrong on both points.

As to the first claim, whether SOV agrees with the legal position taken by Vermont Yankee—and, indeed, whether this Board, the Appeal Board, the Commission, or the United States Supreme Court agrees with the position taken by Vermont Yankee—is utterly irrelevant to the question of whether Vermont Yankee has accurately stated what "Vermont Yankee asserts" to be the correct legal standard.[55] In point of fact, Vermont Yankee believes that a review of the regulations cited by it in its answer, a careful assessment of the language used in those regulations by the Commission, and considered observation of how SOV bases its case on a bad paraphrase of the regulations that in fact changes their statement and meaning (as set forth in the answer to the interrogatory itself) should convince one that Vermont Yankee's legal position is legally correct.[56] But it need not. The interrogatory did not call

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[54]MOTION TO COMPEL at 89 (emphasis added).

[55]SOV goes to some length to remind those who need no reminding that this Board rejected the argument of the Licensee and the Commission's Staff that, on account of the legal standard properly applicable to the resolution of this proceeding, then-proposed Contention VII lacked a "regulatory basis." See MOTION TO COMPEL at 90, quoting MEMORANDUM AND ORDER of May 24, 1990, at 9 & n.5. SOV thus equates the question of adequacy of a regulatory basis and the legal standard by which a licensing application will be judged; it is not clear that SOV recognized such an equation at the time the admissibility of the contention was at issue. And see MEMORANDUM AND ORDER of May 24, 1990, at 4.

[56]It is noteworthy that, despite all the ink spilled on this question, SOV makes no attempt whatsoever to point out where Vermont Yankee has misread the regulations (it hasn't), or to justify the clear and significant difference between the words of the regulations and the legal proposition contented for by SOV (*i.e.*, "reasonable assurance that the activities authorized by the operating license *will be* conducted without undue risk to the health and safety of the public") and upon which Contention VII depends. It may be that no such justification is attempted because none exists.

We observe that nothing in *Vermont Yankee Nuclear Power Corporation* (Vermont Yankee Nuclear Power Station), CLI-74-40, 8 AEC 809 (1974), is to the contrary. In the first instance, there is no discussion in that case on the differences between 10 C.F.R. § 50.57(a)(3)(i) and 10 C.F.R. § 50.57(a)(3)(ii), or of the limitations of either. In the second instance, the case involved design considerations, where the words of the applicable standard (§ 50.57(a)(3)(i)) do *not* purport confine one to the requirements of the Commission's regulations (as the plain words of § 50.57(a)(3)(ii) do purport to confine one). Likewise, nothing in CLI-74-70 stands as support for the existence of a third subsection of § 50.57(a)(3) such as the one SOV

for a statement by Vermont Yankee of what SOV's legal position is, nor did it call for a statement of what the Board's apparent conclusion is, but rather it asked for a statement of what Vermont Yankee's legal position is. In the absence of any assertion by SOV that the answer given does not accurately state Vermont Yankee's legal position, disagreement by anyone else with the correctness of Vermont Yankee's legal position does not render the answer given in any respect inadequate.

As for SOV's second claim, it is premised upon an unacknowledged but nonetheless none too subtle attempt to change the interrogatory from a question that sought Vermont Yankee's position on the standard "applicable to the resolution of this proceeding" to a question that would somehow call for Vermont Yankee to catalog apparently all "the 'safety standards' applicable *to the plant*."[57] SOV did not ask that question, and had it done so Vermont Yankee would have objected.

Interrogatory No. 145.

Drawing upon its apparent belief that approval of the pending application requires a "reasonable assurance" finding that Vermont Yankee is unable to find in the applicable regulation, and that Vermont Yankee does not believe is required to be made in this proceeding, SOV asks a "contention" interrogatory as to how Vermont Yankee believes such a finding is to be methodologically made. Vermont Yankee answered, truthfully, that because it doesn't believe such a finding has to be made, it isn't prepared to make a "contention" as to the methodology by which it would be made. SOV's present motion apparently seeks an order forcing Vermont Yankee to articulate a legal position that it hasn't yet formulated, which seems at least a bizarre concept.

A moment's reflection upon the issue may illuminate the difficulty of the question, thus both illustrating the improvidence in "guessing" at an answer and demonstrating the wisdom of the Commission in consciously not adopting the licensing standard that SOV contends applies here. Determining whether or not a given design of a system renders that system *capable* of being operated safely is a straightforward engineering task. Likewise,

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expressly claims to be relying upon. Finally, CLI-74-40 interpreted the two provisions of 10 C.F.R., Part 50, Appendix A, as supporting the Staff's contested assertion, thus explaining why nothing in the case would be expected to bear on the existence *vel non* of room to contend for a licensing requirement beyond those contained in the regulations.

[57]MOTION TO COMPEL at 89 (emphasis added).

determining whether a given program for activities *conforms* to a set of regulations is also theoretically a straightforward comparison of the contents of the program to the contents of the regulations (as was pointed out in the response to Interrogatory No. 144). These are the findings that are required by sub-sub-sections (i) and (ii) of 10 C.F.R. § 50.57(a)(3), neither of which is apparently contested by SOV. Both are matters in the present tense.

Per contra, the "reasonable assurance" finding for which SOV contends appears to be manifestly a prediction of the future. The "methodology" by which one predicts the future is far from clear, and the methodology by which a tribunal resolves competing assertions about what will happen in the future is no more obvious. It is therefore eminently reasonable for agencies such as the Commission to eschew setting regulatory standards that incorporate such predictions, and that wisdom is apparent in the carefully drawn (by the Commission), but not carefully read (by SOV), sub-sub-sections of 10 C.F.R. § 50.57(a)(3).

In all events, the interrogatory has been fully answered. The question was "describe the thing that Vermont Yankee asserts . . . ." At least at the moment, Vermont Yankee doesn't assert.

XII. Changes in Forms (Interrogatories Nos. 146, 147).

Interrogatory No. 146.

SOV propounded this interrogatory based on its view that it has a mandate to explore every possibility of an "irregularity" in the maintenance program.[58] Neither SOV nor this Board has any such mandate. Rather, the proceedings before this Board are limited to the capacity of the maintenance program to deal with "aging" as in turn relates to the extension of a 36 year operating life into a 40-year operating life, and proceedings on SOV's

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[58]For the edification of those who are curious, SOV's automatic assumption of an "irregularity" has no basis in fact. As a close reading of the applicable procedures will reveal (and as we believe SOV knows, and as, indeed, the very next interrogatory makes clear SOV knew when it propounded this inquiry), when certain procedures were amended to include amendment in MR forms, it was required that previously written, but as-yet unperformed, MRs be rewritten on the new form. In the case in question, MR 90-0178 was initially written in January, 1990. Procedure AP 0021 was revised in June, 1990, and the revision included a revision to Form VYAPF 0021.01. MR 90-0178 was still open at the time. The instructions accompanying the revision to the procedure required that the open MR be rewritten on the new form.

contention are limited to matters that bear some topical relevance to one of the admitted bases of the contention. Vermont Yankee objected to this interrogatory because, after careful consideration, it could discern no such connection. After reading SOV's argument on the point, Vermont Yankee's conclusion appears to be confirmed.

Interrogatory No. 147.

The relevance objection to Interrogatory No. 147 are valid for the same reasons set forth with respect to Interrogatory No. 146. The question has no relevance to any of the admitted bases of Contention VII, and SOV has made no claim that it does.

XIII. Visi-Records
(Interrogatories Nos. 153, 156, 158, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 181, 189, 190, 193, 194).

Interrogatory No. 153

SOV declares its intent to investigate the alleged "failure of the maintenance program to maintain containment integrity." MOTION TO COMPEL at 95. Here again, SOV seeks to go far beyond the narrow "aging" contention actually admitted by the Board. SOV has articulated no nexus between its present query and the aging-focused allegations admitted by the Board; Vermont Yankee's objection should stand.

This is demonstrated by the content of a "further answer," had one been proffered. The requirement for regularly replacing Stilman seals in these four valves was instituted by Vermont Yankee in 1989.[59] The basis for the requirement was the experience with Valve -96A. Valve -96A failed Type C leak rate testing in 1985, a corrective action for which was the replacement of the Stilman seal. In 1987, Valve -96A passed its Type C leak rate test. In 1989, Valve -96A again failed its Type C leak rate test. Based on this experience, it appeared that the Stilman seals had the ability to last one cycle, but not necessarily two cycles, and as a result the change-every-cycle requirement was instituted. We point out that, prior to the recently completed outage, Valves -28A and -28B did not have Stilman seals, and Valve -27A has Stilman seals, but has never failed a Type C leak rate test. In each case, the advent of the valves with Stilman seals was a result of replacing

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[59]As SOV is aware (or should be) from the copy of the Anchor-Darling Vendor Manual for 16" Feedwater Check Valves, VYEM 0104, a copy of which was provided to it in June, 1990, the manufacturer of the valves has no recommendation for periodic replacement of the Stilman seals.

Walworth valves (of a design that does not use Stilman seals, is not readily adapted to being Type C leak rate tested and derived from prior to the requirement of Appendix J for Type C testing on these valves) with Anchor-Darling valves (so as to be able to permit valve-specific Type C tests). See note 14, *supra*. None of this has anything to do with "aging" within the meaning of Contention VII. *Id*.

Interrogatory No. 156

Vermont Yankee's objection should stand, for the reasons discussed with respect to Interrogatory No. 153 above. Moreover, here again SOV's dispute seems to be with the substance of Vermont Yankee's answer, a matter going to the merits. As for the new questions posed by SOV at page 98 of the MOTION TO COMPEL, they were not part of the original question, and accordingly no response should be compelled.[60]

Interrogatory No. 157

SOV asks to "preserve" its opportunity to move to compel until it gets around to reviewing the document proffered by Vermont Yankee. What authority (if any) SOV believes allows for such a request is notably unspecified. If SOV meant to rely on 10 C.F.R. § 2.711(a), then its proffered justification—its own lack of diligence in reviewing the document, especially after the extension agreed to by Vermont Yankee[61]—signally fails to constitute the requisite showing of "good cause."

Interrogatory No. 158

Once again, based upon its own interpretation of the facts, SOV expresses its belief that Vermont Yankee's answer is incorrect. And, once again, SOV seeks to inject wholly new questions. Neither tactic is proper in a motion to compel.

Moreover, Vermont Yankee's objections to the questions are valid, for the reasons stated with respect to Interrogatory No. 153, *supra*.

Interrogatories Nos. 163, 166, 172

Each of these questions asked for the "inspection and maintenance requirements" applicable to a particular set of valves. In each case, Vermont

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[60]But see the discussion above regarding Interrogatory No. 153.

[61]See MOTION TO COMPEL at 1.

Yankee identified the requirements. SOV apparently believes that the identified requirements are insufficient. That issue, however, is one going to the merits (assuming arguendo it were relevant), not one for resolution by a motion to compel.

Moreover, SOV's use of the answer to suggest that Vermont Yankee does not understand either the term or the concept "preventive maintenance" tends to reveal that SOV does not understand at least the concept. "Inspection" can clearly be an aspect of preventive maintenance, particularly when it is required by a schedule and not an event (such as component failure). Moreover, SOV's lambast is apparently dependent upon its incorrect assumption that the results of all Type C tests are binary: either the valve passes or fails, and if it passes, no other work is performed. In the real world, a valve can technically pass a Type C test and nonetheless be determined to be in need of some preventive maintenance. SOV's understanding of "preventive maintenance" is apparently limited to the *aspect* of preventive maintenance that relates to the periodic replacement of parts without regard to failure or condition.

Finally, Vermont Yankee's objections to the questions are valid, for the reasons stated with respect to Interrogatory No. 153, *supra*.

Interrogatories Nos. 164, 165, 167, 173

In each of these instances, SOV asked a frankly snide question, and now seems shocked that there was an answer to it. That shock, however, is no grounds for a motion to compel. Vermont Yankee was not obligated to answer, since it raised a valid relevance objection—see the discussion *supra* concerning Interrogatory No. 153. Nonetheless, Vermont Yankee did answer, fully and truthfully.

Interrogatories Nos. 168, 169, 170, 171, 174, 175

Vermont Yankee answered each of these questions by noting that inspections in fact were performed. SOV replies by claiming that inspections were not performed. This is a merits dispute, not one for a motion to compel.

Moreover, Vermont Yankee's objections to the questions are valid, for the reasons stated with respect to Interrogatory No. 153, *supra*.

Interrogatory No. 181

Vermont Yankee's objection should stand, for the reasons discussed with respect to Interrogatory No. 153, *supra*. Moreover, Vermont Yankee's voluntary answer *is* complete. SOV's interrogatory only requested facts and evidence "[i]f your answer is *anything other than* an unqualified affirmative." (Emphasis added.) Vermont Yankee answered "Yes.", which is an "unqualified affirmative."

Interrogatories Nos. 189 and 190

It is, of course, past the deadline for noticing additional depositions, so SOV's proffered explanation of relevance for No. 189 seems pretextual. Prescinding from this problem, however, SOV has articulated no nexus between the notation of "excessive seat leakage" and any programmatic failure of Vermont Yankee's maintenance program within the scope of SOV's aging contention. The objections should stand.

Interrogatory No. 193

Once again SOV seeks to litigate every individual past instance of alleged failure of a since replaced component, rather than a programmatic, aging-related deficiency. And, once again, SOV attempts to use its Motion to Compel as a vehicle to wedge in a new question. Vermont Yankee's objection should be sustained, and SOV's attempt to misuse its motion to pose new interrogatories should be rejected.

Interrogatory No. 194

Vermont Yankee's objection should be sustained, for the reasons discussed immediately above. As for SOV's request to "preserve" its objection, it should be rejected for the reasons discussed with respect to Interrogatory No. 157.[62]

Moreover, while SOV states that it "suspects the quoted statement in the interrogatory was knowingly, or should have been know to be, false when it was made in the LER 89-07," MOTION TO COMPEL at 120, it has yet to disclose any facts on which this suspicion is based, as it was required to do in response to Vermont Yankee's Interrogatories (Set No. 1) No. 13 and (Set

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[62]For the edification of the Board, the statement quoted in the interrogatory comes from the Commission's Staff's Safety Evaluation Report, NVY 83-192, August 19, 1983, from which it was taken in LER 89-07.

No. 2) No. 130. SOV should now be compelled to supplement its responses to those interrogatories and state what facts (if any) it has.

XIV. Miscellaneous Uncategorized Interrogatories (Interrogatories Nos. 19, 69, 70, 71, 148).

Interrogatory No. 19

Vermont Yankee's objection is valid, for whether or not a categorized quantification that happened to be "right on the line" was ultimately called correctly, when the underlying facts were available, well-known, and matters of record, simply has no earthly connection to the programmatic sufficiency of the Vermont Yankee maintenance program to capture the effects of true "aging"[63] as well as it captures other occasions for required maintenance. Moreover, it is impossible to divine what purpose SOV thought might be served by a motion to compel in this case, where, after lodging the obvious objection, Vermont Yankee then proceeded to answer the question in a fashion that SOV acknowledges is correct. Regrettably, one is forced to the conclusion that this interrogatory, and then the motion to compel in respect of it, were not designed to elicit information for trial preparation, but rather were designed solely to publicize the fact that, at least on occasion and with respect to details of minute if any importance,[64] Vermont Yankee is not

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[63]See note 14, *supra*.

[64]What happened is that the prior event was categorized as being a few days more than five years old, when it turned to be a few days less than five years old, and where the "five year rule" is not a matter of regulatory import, but rather is a self-imposed Vermont Yankee guideline. Even assuming "the record" to have been left unmodified, it can be "untruthful" only as to matters material, and this isn't one of them.

We add that there is no way that Vermont Yankee, having filed an LER, can then change that LER. Rather, if additional information, or the correction of previously supplied information is subsequently determined to be appropriate, that must be done by some separate document. In material cases that warrant the cost of processing the paperwork, it may be done by a "supplemental LER." In this case, Vermont Yankee consulted with the Commission's representative with respect to the procedurally appropriate method by which to correct "the record"—which consultation SOV elects to label "collaboration"—and the combined judgment was that the reference in the forthcoming Type A report was the appropriate vehicle.

Finally, the function of LERs is to inform the Commission. There can be no argument that the Commission was misinformed. Nor, obviously, was SOV misinformed, given that (i) it had the Type A Report before it and (ii) its knowledge of the fact that the Type A report was used to correct the LER

perfect. We do not see that to be a relevant issue, but if it is, we can save some time by stipulating.

Interrogatory No. 69

SOV's motion to compel with respect to this interrogatory serves to confirm, rather than rebut, the validity of Vermont Yankee's objections.[65] What constitutes, at any given point in time, the "regulatory requirements for commercial nuclear power plant maintenance" clearly *is* a question of pure law; one would respond to such a query by citing specific regulatory provisions.[66] As for relevance, SOV's first assertion is incoherent, and in any case is more than adequately met by Vermont Yankee's response to Interrogatory No. 144. The second assertion, that SOV needs the information in order "to establish a case on how Vermont Yankee may react to maintenance requirement changes from now to the extended period," MOTION TO COMPEL at 53, reveals once again SOV's unbounded litigatory agenda. The subject of SOV's sole admitted contention is the alleged inadequacy of Vermont Yankee's maintenance program to deal with aging, *not* the much broader (and inherently speculative) question of how Vermont Yankee might respond to new future regulatory requirements. Finally, SOV's assertion that it needs to know about past regulatory changes in order "to develop its case regarding plant maintenance staffing," MOTION TO COMPEL at 53, simply does not hold

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is the manifest source of this interrogatory. Thus, the entire flap is a matter of, at best, form and not substance.

[65]One might also add that SOV's use of the word "increased" tends to render the question ambiguous, at best.

[66]SOV's argument that requirements or suggestions imposed on or offered to various power plants by the NRR or Resident Inspectors are also "regulatory requirements" of general applicability—which is what the question asked for—is clearly erroneous, for the reasons discussed *supra* at note 53. Also, if that was indeed what SOV intended to ask, then the question was overbroad and unduly burdensome, as there is no practical way for Vermont Yankee to collect all such information for all "commercial nuclear power plant[s]."

We confess to some uncertainty regarding SOV's position on the relationship between an operating plant and its on-site inspection. In its argument on this interrogatory, SOV would champion this relationship but bestowing upon it a regulatory significance it does not have. Elsewhere, SOV belittles the relationship by referring to it as "collaboration." See note 64, *supra*.

water, *especially* in light of SOV's latest position that there will be a surplus rather than a shortage of maintenance workers.[67]

Interrogatory No. 70

SOV responds to Vermont Yankee's relevance objection by referencing its discussion of Interrogatory No. 69. Its argument is equally defective here as it was with respect to that interrogatory.

Moreover, SOV's question was fatally ambiguous. What did it mean by "industry knowledge"? What did it mean by "requirements"? What did it mean by "increased"? Vermont Yankee gave the best answer that it could, in light of those ambiguities. SOV now seeks to pose a new question that is somewhat clearer (albeit equally irrelevant). Vermont Yankee, however, was obliged only to respond to the original question, to the extent possible—and it did.

Interrogatory No. 71

Here again, SOV relies on its relevance argument as to Interrogatory No. 69, and here again that argument is defective. Moreover, this question too was hopelessly ambiguous. SOV's reading of "more sophisticated" for "increased" is neither obvious nor exclusive—nor of any value in reducing ambiguity—and is simply too late for SOV to pose a new question.

Interrogatory No. 148

Vermont Yankee's relevance objection is based on the point that audit is a QA function, not a maintenance function. SOV seems to concede that point; it then proceeds to argue that QA is within the scope of Contention VII.

SOV's argument discloses yet again its boundless conception of what the Board admitted with Contention VII. First, SOV argues that "quality assurance associated with maintenance," MOTION TO COMPEL at 93, is one of the topics contained within the contention. Instructively, SOV does not identify *where* in the text of the admitted contention it is referred to—for the simple reason that it is not. To the contrary, SOV has proffered an entirely separate, late-filed contention as to quality assurance. Second SOV argues that "the interrogatory concerns information related to inadequacies in the

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[67]See *supra* at note 4.

maintenance program." MOTION TO COMPEL at 93. Perhaps; but "inadequacies in the maintenance program" was not admitted as a contention.[68]

Conclusion

For the foregoing reasons, the MOTION TO COMPEL should be denied in its entirety.

By its attorneys,

R. K. Gad III
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One International Place
Boston, Massachusetts 02110
Telephone: 617-951-7520

Dated: October 22, 1990.

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[68] *See, e.g., Vermont Yankee Nuclear Power Corporation* (Vermont Yankee Nuclear Power Station), ALAB-876, 26 NRC 277, 284 (1987); *Carolina Power & Light Company* (Shearon Harris Nuclear Power Plant), ALAB-852, 24 NRC 532, 545-46 (1986); *Philadelphia Electric Company* (Limerick Generating Station, Units 1 and 2), ALAB-845, 24 NRC 220, 242 (1986); *Carolina Light & Power Company* (Shearon Harris Nuclear Power Plant), ALAB-843, 24 NRC 200, 208 (1986).

APPENDIX J

UNITED STATES
NUCLEAR REGULATORY COMMISSION
REGION I
631 PARK AVENUE
KING OF PRUSSIA, PENNSYLVANIA 19406

RECEIVED
JUN 22 1987
W.P. MURPHY

Docket No. 50-271 JUN 16 1987

Vermont Yankee Nuclear Power Corporation
ATTN: Mr. Warren P. Murphy
Vice President and Manager
of Operations
RD 5, Box 169
Ferry Road
Brattleboro, Vermont 05301

Gentlemen:

Subject: Systematic Assessment of Licensee Performance (SALP) Report No. 50-271/85-98

This refers to the evaluation we conducted of the activities at the Vermont Yankee Nuclear Power Station for the period of October 19, 1985 - December 31, 1987, and discussed with members of your staff on March 27, 1987 in a meeting in Vernon, Vermont. The list of meeting attendees is attached as Enclosure 1. The NRC Region I SALP Report is provided as Enclosure 2. Our letter of March 12, 1987 (Enclosure 3) forwarded the SALP Board Report and requested comments within 30 days of our meeting. As discussed during the March 27 meeting and subsequently documented in your April 24, 1987 letter (Enclosure 4), you provided additional comments on our report.

Our overall assessment of your facility concludes that performance remained generally consistent throughout the assessment period, with a strong orientation toward safe plant operations. We note in particular the organizational and performance improvements you achieved in the area of Security and Safeguards. Although performance in each functional area is at least at the Category 2 level, we know that you share our goal to strengthen overall operations and thereby achieve even higher performance levels. We note in particular your determination to correct problems noted in the Radiological Controls, Maintenance and Modifications, and Emergency Preparedness areas. We continue to urge Vermont Yankee management to be aggressive in self-evaluation in all activities required to assure quality and safety in operations, and to vigorously pursue identified opportunities for improvement.

We welcome your comments concerning our evaluation of the individual functional areas. Your comments on the entire SALP Report have provided clarifying information relative to our assessment and are considered most responsive in identifying your intended actions to address noted weaknesses. None of the comments or additional information provided by you will change the rating in the individual functional areas; however, we feel certain issues raised by you warrant our comment. These are discussed below.

- Radiological Controls (Section IV.B, Page 12, Paragraphs 2 and 3). We agree that based on information obtained after the assessment was completed, the comments concerning the control rod drive modifications do not accurately reflect the work activity. We will delete reference to that job in our discussion of the ALARA issue, as reflected in Page 12 of the amended report.

- Maintenance (Section IV.C, Page 16, Paragraph 4). We feel the comments regarding post maintenance testing of IRM detectors are accurate, and the text will stand as written. The proposed revisions to Procedures OP 4301 and 5307 that will use detector breakdown voltage measurements and a revised functional test method to provide for precritical (preoperational) identification of the types of detector problems noted in July 1986 are responsive to our concerns on this issue.

- Board Recommendations for Maintenance (Section IV.C.3, Page 18). We provide the following clarification with respect to the need for your review of NRC bulletins and notices: "Vermont Yankee management should assure that present and future actions in response to IE bulletins and notices are fully responsive to the NRC requests and that the scope of your reviews fully address the stated concerns." Your intentions to audit this activity to assure effectiveness is appropriate and is considered responsive to our concerns.

- Surveillance area (Section IV.D, Page 20, Paragraph 2). We concur that no further actions are necessary at this time with respect to adding Type B and C leak rate test results into the total containment leakage determination. However, as you have indicated, procedural modification may be later necessary as a result of pending NRC actions to revise 10 CFR 50, Appendix J.

We consider our meeting and subsequent interchange of information to be beneficial and have improved the mutual understanding of your activities and our regulatory program. No reply to this letter is required. Your actions in response to the NRC Systematic Assessment of Licensee Performance will be reviewed during future inspections of your licensed facility.

Sincerely,

W.T. Russell

William T. Russell
Regional Administrator

Enclosures:
1. SALP Management Meeting Attendees
2. NRC Region I SALP Report 50-271/85-98
3. NRC Region I Letter, T. Murley to W. Murphy, March 12, 1987
4. Vermont Yankee Letter, W. Murphy to T. Murley, April 24, 1987

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Certificate of Service

I, R. K. Gad III, hereby certify that on October 22, 1990, I made service of the within Answer of Vermont Yankee Nuclear Power Corporation to State of Vermont's Motion to Compel, by mailing copies thereof, first class mail, postage prepaid, as follows:

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