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

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

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

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

Vermont Yankee submits this answer to the State of Vermont's "Motion to Compel Answers to Document Production Requests (Vermont Set No. 3)," filed by mail October 12, 1990 (hereinafter "MOTION TO COMPEL"). In the motion, SOV demands that the Board compel further responses to seventy-four (74) more of the document production requests 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. SOV's "Waiver" Argument.

SOV's MOTION TO COMPEL demonstrates, a number of respects, that a substantial amount of its purported difficulties in conducting discovery arises not from the quality of Vermont Yankee's responses, but rather from SOV's apparent unwillingness to read and digest those responses. A case in point is SOV's present "waiver" argument, MOTION TO COMPEL at 2-3. Any rational reading of Vermont Yankee's responses would reveal the fatuity of SOV's argument.

SOV is correct in noting that Vermont Yankee included the following rubrics in its responses to SOV's second and third set of interrogatories, respectively (emphases added):

9011270159 901029
PDR ADOCK 05000271
G PDR

DS03

"General Response Regarding Documents: In each case in which a document is *identified hereinafter to be available*, the documents will be produced for inspection and copying at either (i) the offices of Vermont Yankee Nuclear Power Corporation, in Brattleboro, (ii) the Vermont Yankee Nuclear Power Station, in Vermont, or (iii) Nuclear Services Division, Yankee Atomic Electric Company, Bolton, Massachusetts (depending on document location) on a date and time to be agreed upon by counsel."

and

"General Response Regarding Documents: In each case in which a document is *identified hereinafter to be available*, the documents will be produced for inspection and copying at the offices of Vermont Yankee Nuclear Power Corporation, in Brattleboro, on a date and at a time to be agreed upon by counsel."

The first rubric was also included in Vermont Yankee's responses to SOV's first set of interrogatories.¹ It is clear from the words of the rubrics themselves that they refer only to documents specifically "identified . . . to be available" for inspection, and not to every document that was in any way adverted to in Vermont Yankee's responses. The meaning was also made clear by the fact that Vermont Yankee did, in each case, note that the documents were being (or already had been) proffered. See Vermont Yankee's responses to SOV's Interrogatories: (Set No. 1) Nos. 1(b), 2(a), 2(d)(3), 2(g), 3(a), 4, 5(c), 6, 8(b), 8(d), 8(g), 9(c)(2) & (3), 16(c), 17, 19, 33, 37, 65, 67, 72, 115(a); (Set No. 2) No. 9; and (Set No. 3) Nos. 2, 11(c), 41, 47, 49, 53(b), 54, 60, 67(a), 68(c), 79, 85(c), 88, 91(b), 92(b), 93(b), 99(b), 100(b), 101, 103(b), 104(d), 106, 111(b), 114, 115, 116, 117, 118, 119, 120, 150(b). Thus SOV's claim that Vermont Yankee waived all objections to producing

¹The change in form in the rubric is attributable to the problems discussed in 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 7-8 n.14. See also ANSWER OF VERMONT YANKEE NUCLEAR POWER CORPORATION TO STATE OF VERMONT'S MOTION TO COMPEL (INTERROGATORIES, SET No. 1), filed June 29, 1990, at 2 n.5.

any document that was referenced in any answer to the interrogatories,² MOTION TO COMPEL at 2, is both unwarranted and disingenuous.³

**II. Documentation of Generalized Past Maintenance Activities:
(Requests Nos. 5, 8, 11, 15, 18, 20, 23, 26, 27, 28, 31).**

In this series of requests, SOV demands production of the full set of back records over the previous five years for all vibration analyses (No. 5), lube oil analyses (No. 8), infrared thermography evaluations (No. 11), spectrography and atomic absorption evaluations (No. 15), main condenser and secondary containment leakage surveillances (No. 23), insulation resistance evaluations (Nos. 26 and 27), polarization index evaluations (No. 28), and eddy current tests (No. 31). In addition, SOV demands production of the last year's bearing temperature trending documents (No. 18), plus older bearing temperature trending documents (No. 20).

A review of the above list strongly suggests that SOV seeks this mass of documents, not because of their relevance to SOV's admitted contention on aging, but rather so that SOV can conduct a general audit of Vermont Yankee's past maintenance performance in the hopes of finding something that SOV can parlay into a new issue. That suggestion is strengthened by the fact that none of these topics—vibration analyses, lube oil analyses, and the like—is even mentioned, let alone alleged to be defective, in SOV's admitted contention. And the suggestion is transformed into a certainty by SOV's failure, in its MOTION TO COMPEL, to articulate any specific nexus between these topics and the issues which the Board admitted for litigation.

²There also is some inconsistency in SOV's claim here that mention equals agreement to produce, and its assertion in a motion to compel filed by it just a week earlier SOV that it "can see no valid objection to the mere *identification* of . . . documents." MOTION TO COMPEL ANSWERS TO INTERROGATORIES (VERMONT SET No. 3), filed October 5, 1990 (hereinafter "INTERROGATORIES MOTION"), at 48 (emphasis in original). Indeed, if SOV genuinely believed that the rubrics used in each of Vermont Yankee's interrogatory responses amounted to a gratuitous commitment to produce each and every document identified therein, then it is difficult to understand why SOV (i) filed *separate* document requests for certain of those documents, and (ii) filed further *separate* motions to compel with respect to the document requests.

³With respect to Interrogatory (Set No. 2) No. 34.c, Vermont Yankee may have inadvertently created some ambiguity by using the word "available" as part of its description of the location of the referenced documents. No waiver was intended thereby, as should be reasonably clear from a comparison of that response to the others in which documents were in fact proffered to SOV.

Discovery in NRC practice is not a license to launch a "fishing expedition" for possible new issues; rather, discovery must focus on the issues already admitted for litigation, with the aim of filling out the factual record as to those issues. *E.g.*, *Vermont Yankee Nuclear Power Corporation* (Vermont Yankee Nuclear Power Station), LBP-88-25, 28 NRC 394, 396 (1988); *Illinois Power Company* (Clinton Power Station, Unit 1), LBP-81-61, 14 NRC 1735, 1741 (1981); *see also Kerr-McGee Chemical Corporation* (Kress Creek Decontamination), LBP-85-48, 22 NRC 843, 849 (1985) (intervenor's failure to answer questions as to basis for its contention suggests that it was engaged in a fishing expedition). SOV's MOTION TO COMPEL demonstrates that it is unwilling to adopt this necessary focus. To the contrary, SOV again argues that the litigation is not limited to its admitted allegations of programmatic weakness with respect to aging. MOTION TO COMPEL at 4. As Vermont Yankee has discussed at length elsewhere,⁴ this assertion is simply wrong. As for SOV's argument that these documents would be relevant as being "details" of "predictive maintenance" performance, that argument fails in that no connection is alleged by SOV between this broad-ranging array of details and the specific allegations of the contention.

III. Documents Already Produced:
(Requests Nos. 7, 17, 22, 25, 132).

SOV argues, MOTION TO COMPEL at 9-10, that it may demand the production of the same documents again and again, so long as it can keep devising new requests to which the documents would be responsive. Such is the law neither of this agency nor of the federal courts. To the contrary, it is well settled that a party will not be required to produce documents multiple times to the same party, especially when—as is the case here—not only have *all* the requested documents already been produced for the requestor's inspection, but the requestor *also* has asked for *and received* photocopies of a large number of the documents in question.⁵ *See, e.g., Jack Loeks Enter-*

⁴*E.g.*, ANSWER OF VERMONT YANKEE NUCLEAR POWER CORPORATION TO STATE OF VERMONT'S MOTION TO COMPEL (INTERROGATORIES, SET No. 3), filed October 22, 1990 (hereinafter "VY INTERROGATORY ANSWER"), at 1-3, 17, 23, 34-35.

⁵Request No. 7 asks for production of certain Visi-card records. During its week-long perusal of Vermont Yankee's records in June 1990, SOV's representatives not only were given access to all of Vermont Yankee's Visi-records, but they also asked for and received copies of 199 of those records. SOV does not disclose this fact in its MOTION TO COMPEL; nor does it contend that the documents now sought are not included in the 199 copies it already has.

prises, Inc. v. W. S. Butterfield Theatres, Inc., 20 F.R.D. 303 (E.D. Mich. 1957). Accordingly, Vermont Yankee should not be put to the burden of producing these documents yet again to SOV.⁶

IV. INPO and INPO-Related Documents:

(Requests Nos. 34, 35, 36, 37, 38, 40, 42, 44, 45, 46, 47, 49, 52, 55, 58, 61, 63, 65, 70, 74, 76, 79, 81, 84, 92, 94, 98, 101, 126).

With respect to each of these requests, SOV premises its argument on its prior demands for production of INPO documents. That argument should be rejected, and the present motion denied, for the reasons stated 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.

Request No. 22 asks for two procedures, both of which previously have been offered to SOV, and of one of which it already has taken a copy. Request No. 25 likewise calls for production of a procedure of which SOV already has taken a copy. Finally, a copy of the document demanded again in Request No. 132 was provided to SOV on June 6, 1990.

As Vermont Yankee has noted previously, a major cause of these continuing discovery difficulties seems to stem from SOV's apparent unwillingness to look at the very answers and documents which it has demanded. ANSWER OF VERMONT YANKEE NUCLEAR POWER CORPORATION TO STATE OF VERMONT'S MOTION TO COMPEL (INTERROGATORIES, SET No. 3), filed October 22, 1990 (hereinafter "VY INTERROGATORY ANSWER") at 8 and n.17, 18-19, 20 and n.38, 21-22 and n.39, 29 n.50; see also ANSWER OF VERMONT YANKEE NUCLEAR POWER CORPORATION TO STATE OF VERMONT'S MOTION TO COMPEL (INTERROGATORIES, SET No. 1) filed June 29, 1990, at 5 n. 12. Here again, SOV seems to be attempting to shift to others in this litigation extra and unnecessary burdens arising from SOV's own lack of diligence.

⁶With respect to Request No. 132, SOV also apparently seeks to incorporate by reference the argument made by it with respect to its motion to compel a further response to Interrogatory (Set No. 3) No. 75. As Vermont Yankee has previously pointed out, SOV's motion with respect to that interrogatory is without merit. VY INTERROGATORY ANSWER at 28-29. SOV protestation that "[t]he reference to the 'Vermont Yankee Maintenance Program' is so vague as to be meaningless," INTERROGATORIES MOTION at 61, would seem to stem from SOV's failure to review the document by that name which was copied and given to its representative on June 6, 1990.

In addition, SOV raises further arguments with respect to certain of these requests, which are addressed individually below.

Requests Nos. 34, 35, 36, 37

In Request No. 34, SOV used the phrase "all documentation for usage on the INPO NPRDS data base and its applicability to the Vermont Yankee plant." Vermont Yankee responded that it could not meet the request because it did not understand what SOV was asking for. In the MOTION TO COMPEL, SOV still does not explain what it meant by this phrase. To the contrary, SOV states that it "is seeking information regarding the INPO NPRDS database which the licensee claims [SOV] does not understand." MOTION TO COMPEL at 18. But we remain unenlightened as to what information SOV seeks, what documents it requests. SOV having failed to meet its obligation to frame a clear request,⁷ its motion with respect to No. 34 should be denied for this reason as well. Similarly, SOV's motion with respect to Nos. 35, 36 and 37, which simply incorporates by reference (despite its questionable applicability) SOV's argument concerning No. 34, should be denied for that reason too.

Finally, SOV's none-too-subtle attempt to amend its contention should not escape notice. In Contention VII as it was admitted by the Board, SOV criticized Vermont Yankee's ability to "determine and replace all components found to have aged to a point where they no longer meet the safety standards applicable to this plant."⁸ What SOV now demands, in other words, is a maintenance program that would ensure that nothing ever broke in the plant. In its argument with respect to Request No. 34, however, SOV claims that the issue is Vermont Yankee's ability to "determine and replace aging components before they have aged to a point where they no longer meet the safety standards of the plant."⁹ This change from "found to" to "before" marks, as we have previously noted,¹⁰ a radical shift in the issue SOV seeks to litigate,

⁷E.g., *Continental Access Control Systems, Inc. v. Racal-Vikonics, Inc.*, 101 F.R.D. 418, 419 (E.D. Pa. 1983); *In re Hunter Outdoor Products, Inc.*, 21 B.R. 188, 192 (D. Mass. 1982); *Paiewonsky v. Paiewonsky*, 50 F.R.D. 379, 381 (D. V.I. 1970); see also *United States v. Katin*, 109 F.R.D. 406, 410 (D. Mass. 1986).

⁸STATE OF VERMONT SUPPLEMENT TO PETITION TO INTERVENE, filed October 30, 1989, at 42 (emphasis added).

⁹MOTION TO COMPEL at 19 (emphasis added).

¹⁰VY INTERROGATORY ANSWER at 12-13 n. 28.

and one which SOV attempts to make without even invoking (let alone satisfying) the requirements of 10 C.F.R. § 2.714(a)(i).

Request No. 42

SOV's MOTION TO COMPEL as to this request strongly suggests that it did not read Vermont Yankee's response to the preceding request, even though Vermont Yankee specifically referenced that response in its response to No. 42. In its response to Request No. 41, Vermont Yankee explained that the document "Assessment of Maintenance Practices at the Vermont Yankee Nuclear Power Station," VY-88-1250-1, was not prepared by INPO. Moreover, in that response Vermont Yankee expressly agreed to produce that document to SOV. Thus it was (and is) unclear what documents SOV's request sought that Vermont Yankee has not already agreed to produce. If, as SOV's present argument implies, SOV sought—but failed—to ask for "the documents identified in response to [SOV's] Interrogatory (Set No. 3) No. 143," MOTION TO COMPEL at 23, then again SOV's motion seems to stem from a failure to read the answers given. Review of Vermont Yankee's response to Interrogatories (Set No. 2) No. 55 and Set No. 3) No. 143 would have disclosed to SOV that all the documents listed therein have already been proffered to SOV.

Finally, if SOV had looked at the proffered materials, it would have observed that they have nothing to do with "aging" as admitted by the Board in Contention VII.¹¹ Rather, they concern various general recommendations for enhancements of Vermont Yankee's maintenance program, and thus go far beyond the scope of SOV's admitted contention. Accordingly, Vermont Yankee's additional objection should be upheld as well.

Requests Nos. 47, 49, 58, 61, 65, 74, 79, 84

In response to each of these requests, Vermont Yankee undertook to produce (or indicated that it had already produced) responsive documents that do not compromise Vermont Yankee's obligation to restrict access to INPO materials. SOV's argument that these responses are incomplete, MOTION TO COMPEL at 6-9, thus misses the mark. Moreover, SOV's contention that the supposed existence of "a formal program to review and evaluate industry documents" should obviate the lack of specificity of SOV's requests, MOTION TO COMPEL at 8, is undecipherable as a matter of logic and mistaken as a matter of fact. Factually, as Vermont Yankee has pointed out previously, SOV seems to be laboring under a misimpression as to how Vermont Yankee

¹¹VY INTERROGATORY ANSWER at 6 n.14.

reviews such documents.¹² Logically, in order for Vermont Yankee to retrieve documents generated by even a "formal program" (which is not the case here, at least in the sense apparently meant by SOV), it would still only be able to do so if given a sufficiently precise request, which SOV's requests were not, and which SOV's present motion does not address (let alone remedy).

Requests Nos. 52, 55, 63, 70, 76, 81, 92, 94, 98, 101

As is discussed above, Vermont Yankee undertook to produce documents covered by SOV's INPO-related requests which did not compromise Vermont Yankee's obligation to INPO. With respect to this particular set of requests, Vermont Yankee diligently searched for such documents, and found none—indeed, it found no documents of any kind that would be responsive to the request as framed. SOV's present attack on Vermont Yankee's diligence, MOTION TO COMPEL at 5-6, seems to stem from its erroneous impression that some central file of such documents exists. To the contrary, as Vermont Yankee discussed in detail previously,¹³ review of each INPO document has to be tracked backwards along their *sui generis* route. With respect to these specific documents, when Vermont Yankee essayed that effort, nothing was found. Vermont Yankee has fully met its obligations. Accordingly, SOV's motion with respect to these requests is moot, and should be denied on that ground as well.

V. Training Program Documentation: (Request No. 86)

SOV's demand for "all documentation of Vermont Yankee's performance based training program" is, at best, overbroad.¹⁴ SOV's request stretches to

¹²*Id.* at 27.

¹³*Id.*

¹⁴The only mention of training in its admitted contention was in basis sub-paragraph j, where SOV quoted a January 1989 LRS suggestion to the effect that Vermont Yankee could improve its training skills certification. Had SOV requested production of Vermont Yankee's procedures for training skills certification, Vermont Yankee would have made them available. (And had, thereafter, SOV reviewed the material relating to closure of the LRS finding that was the basis for sub-paragraph j, it would have learned that the Vermont Yankee Training Department has implemented a formal oversight mechanism to monitor the certification process through a Training Department Directive (TdD-26), thus mooting the concern.) Instead, however, SOV demanded "all documentation of Vermont Yankee's performance based training program," which seems to slip altogether off the narrow point admitted by the Board for litigation.

all documentation relating to all forms of training—emergency response training, waste disposal training, fitness-for-duty training, plant security training, and so forth. SOV has articulated no justification for such an unfocused, across-the-board demand.

Moreover, SOV neglects to mention that Vermont Yankee has proffered to SOV, more than four months ago: (i) eight Training Program Instruction Guides, as well as the MR Training List;¹⁵ (ii) "all documents describing modules, courses, or training segments which train personnel to perform failure and root cause evaluations;"¹⁶ and (iii) all relevant portions of Vermont Yankee's training program "describing training modules, courses, or training segments which train personnel to perform the evaluation of safety consequences and implications of failures, inoperabilities and degradations of structures, systems and components."¹⁷ And see also the response to Request (Set No. 1) Nos. 2, 3, 4 and 8. It would thus seem that SOV's present request, even if it were in some part valid, is moot.

VI. Arguments Incorporated from Interrogatory Motion to Compel:
(Requests Nos. 107, 108, 109, 121, 124, 129, 131, 136, 137, 152, 153, 154, 159, 160, 161, 162, 164, 172, 174, 175, 177, 179).

With respect to these requests, SOV simply incorporates by reference its arguments to compel further responses to the corresponding interrogatories. This demand by SOV is defective, in each case, for the reasons stated by Vermont Yankee with respect to SOV's interrogatory motion. Specifically:

Request Nos. 107, 108, 109

Vermont Yankee incorporates herein its argument with respect to Interrogatory No. 16, VY INTERROGATORY ANSWER at 17.

Request No. 121

Vermont Yankee incorporates herein its argument with respect to Interrogatory No. 51, VY INTERROGATORY ANSWER at 20. Also, SOV's

¹⁵See Vermont Yankee's responses to SOV's Interrogatory (Set No. 1) No. 12 and Document Request (Set No. 1) No. 12.

¹⁶See Vermont Yankee's response to SOV's Document Request (Set No. 1) No. 60.

¹⁷See Vermont Yankee's response SOV's Document Request (Set No. 1) No. 64.

MOTION TO COMPEL fails to acknowledge that Vermont Yankee has already given SOV copies of General Electric Specifications 21A5837 and 22A1183, as noted in Vermont Yankee's response to Request No. 116 and cross-referenced in response to Request No. 121, thus previously mooted most or all of SOV's present demand.

Request No. 124

Vermont Yankee incorporates herein its argument with respect to Interrogatory No. 55, VY INTERROGATORY ANSWER at 23.

Requests Nos. 129, 136, 137

Vermont Yankee incorporates herein its argument with respect to Interrogatories Nos. 64 and 77, VY INTERROGATORY ANSWER at 26-27.

Request No. 131

Vermont Yankee incorporates herein its argument with respect to Interrogatory No. 74, VY INTERROGATORY ANSWER at 28-29. In addition, it should be noted that SOV does not address Vermont Yankee's objection that the request—for all documents showing the design life of any component in the plant to be less than 40 years—is also overbroad and unduly burdensome.

Requests Nos. 152, 153, 154

Vermont Yankee incorporates herein its argument with respect to Interrogatory No. 104, VY INTERROGATORY ANSWER at 24.

Requests Nos. 159, 160, 162

Vermont Yankee incorporates herein its argument with respect to Interrogatories Nos. 115, 116 and 118, VY INTERROGATORY ANSWER at 22-23.

Request No. 161

Vermont Yankee incorporates herein its argument with respect to Interrogatory No. 117, VY INTERROGATORY ANSWER at 24-25.

Request No. 164

Vermont Yankee incorporates herein its argument with respect to Interrogatory No. 120, VY INTERROGATORY ANSWER at 25.

Request No. 172

Vermont Yankee incorporates herein its argument with respect to Interrogatory No. 147, VY INTERROGATORY ANSWER at 34-35.

Requests Nos. 174, 176, 177

Vermont Yankee incorporates herein its argument with respect to Interrogatories Nos. 155, 162 and 187, VY INTERROGATORY ANSWER at 28-29.

Request No. 179

Vermont Yankee incorporates herein its argument with respect to Interrogatory No. 190, VY INTERROGATORY ANSWER at 38.

VII. "Design Life" of Components: (Requests Nos. 117, 133, 134).

In these three requests, SOV demanded production of various documentation concerning the "design life" of plant components. In its MOTION TO COMPEL, SOV advances two arguments in defense of these requests, both of which are erroneous.

SOV's waiver argument is fallacious for the reasons discussed in Section I, *supra*. As for SOV's other argument, that the requests are "relevant since it related [sic] to the licensee's knowledge and, and [sic] therefore the use of such information in its maintenance program, regarding aging components," MOTION TO COMPEL at 48, it merely demonstrates again SOV's unwillingness to remain focused on its admitted contention. Nowhere in the manifold bases of Contention VII does SOV allege that Vermont Yankee does not know that components age. Rather, the requests clearly seem to constitute yet another attempt by SOV to reintroduce its "design-life" Contention VI which was rejected by the Board.¹⁸ That attempt should be rebuffed.¹⁹

¹⁸*Vermont Yankee Nuclear Power Corporation* (Vermont Yankee Nuclear Power Station), LBP-90-6, 31 NRC 85, 105-107 (1990).

¹⁹SOV is grammatically correct that the phrase "to the extent" implies that the objection is not coextensive with the request. However, that phrase was obviously used in error, as the context of Interrogatory No. 3 is limited to PLEX. Precisely how the phrase became injected into the objection is a matter now lost to history, but it ought not to have confused anyone.

VIII. Personnel Files:

(Requests Nos. 141, 143, 178).

Requests Nos. 141, 143

In these two requests, SOV demands access to "all personnel files" of "each and every" (emphases added) worker and supervisor involved in scraping topcoat paint from the torus during the last two years. As Vermont Yankee pointed out in its responses, these requests are objectionable for a number of reasons.

First, the personnel files of these individuals have no conceivable relevance to these proceedings. SOV has never alleged that Vermont Yankee has not been able to have the paint scraped satisfactorily. Prescinding from that weakness, SOV's explanation, that it "needs this information to prepare for depositions of this personnel," MOTION TO COMPEL at 55, is disingenuous at best. SOV does not elucidate what information from these individual's personnel files it thinks could enable it to ask relevant questions in a deposition.

Second, the requests are overbroad. SOV has advanced no justification whatsoever for demanding "all personnel files" for these individuals. Moreover, even if the requests were limited to qualifications and training records—which they were not—SOV has offered no explanation of what possible relevance there could be to the qualifications and training of these persons to scrape paint, or to supervise the scraping of paint.²⁰

Third, these individuals have a clear and reasonable expectation that their privacy would not be violated by the turning over of their employment personnel files to state officials for generalized perusal by those officials. 10 C.F.R. § 2.790(a)(6); *id.* § 26.29.²¹ Both Vermont statutory policy and common law principles reinforce that right in this case. See VT. STAT. ANN. tit. 1, § 315 ("All people, however, have a right to privacy in their personal and economic pursuits, which ought to be protected unless specific information is needed to review the action of a governmental officer;" *see also United*

²⁰We observe that scraping paint is a task neither complex nor requiring specialized skill or supervision for its accomplishment.

²¹Moreover, Vermont Yankee and its contractors are obligated to protect the privacy of personnel records covered by 10 C.F.R. Part 26; thus there can be no question as to Vermont Yankee's standing—indeed, its obligation—to raise these privacy concerns. *See also United States v. Lasco Indus., Div. of Phillips Indus., Inc.*, 531 F. Supp. 256, 263 (N.D. Tex. 1981).

States v. Cadet, 727 F.2d 1453, 1468 (9th Cir. 1984); *NLRB v. Martins Ferry Hospital Ass'n*, 649 F.2d 445, 448-49 (6th Cir.), *cert. denied*, 454 U.S. 1083 (1981); *Sims v. City of New York Dept. of Corrections*, 1989 U.S. Dist. Lexis 604 (E.D.N.Y. 1989); *United States v. Lasco Indus., Div. of Phillips Indus., Inc.*, 531 F. Supp. 256, 263-64 (N.D. Tex. 1981). SOV has articulated no need for specific information that would warrant any interference with that right of privacy, let alone the wholesale abrogation demanded by SOV.

Fourth, SOV's request was, in part, directed to the wrong entity. The paint scraping was performed by employees of the Mercury Company; obviously it would be that entity, and not Vermont Yankee, that would have "all personnel files" of the individuals involved. SOV apparently argues by incorporation, MOTION TO COMPEL at 56, that Vermont Yankee "controls" those Mercury documents. SOV's argument as to control is wrong as a matter of law, as Vermont Yankee has previously explained;²² it also is unfounded as a matter of fact.²³

Finally, SOV's motion is moot to a considerable extent. In response to Interrogatory (Set No. 1) No. 2 Vermont Yankee proffered the qualifications and training of the Vermont Yankee personnel involved. In response to Interrogatory (Set No. 3) No. 82, Vermont Yankee described the qualifications of the crafts persons who scraped the paint. Prescinding from all its other frailties, SOV's MOTION TO COMPEL fails to articulate that any further information was wanted, or needed.

Request No. 189

This request seeks "all personnel records" of "the maintenance crafts person(s) who determined the existence of the 'excessive seat leakage' listed as the 'Description of Problem/Symptom' on Maintenance Request 87-9787 for valve FW-28B." The request suffers the same defects as to irrelevance, overbreadth, and invasion of privacy as discussed immediately above. In addition, it is irrelevant for the reasons discussed with respect to Interrogatory (Set No. 3) No. 189.²⁴ Finally, the time for noticing additional

²²See 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 3-4.

²³SOV's implication, MOTION TO COMPEL at 56, that Vermont Yankee does not "have a knowledge of the qualifications and skills of the crafts persons it allows to work on the plant" is also unfounded, as is demonstrated by Vermont Yankee's response to Interrogatory (Set No. 3) No. 82.

²⁴See VY INTERROGATORY ANSWER at 38.

depositions has passed, so SOV's explanation that it "needs this information in preparation for depositions," MOTION TO COMPEL at 63, seems pretextual.

Conclusion

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

By its attorneys,



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Dated: October 29, 1990.

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Certificate of Service

I, R. K. Gad III, hereby certify that on October 29, 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:

Robert M. Lazrus, Esquire
Chairman
Atomic Safety and Licensing Board
U.S.N.R.C.
Washington, D.C. 20555

Frederick J. Shon
Administrative Judge
Atomic Safety and Licensing Board
U.S.N.R.C.
Washington, D.C. 20555

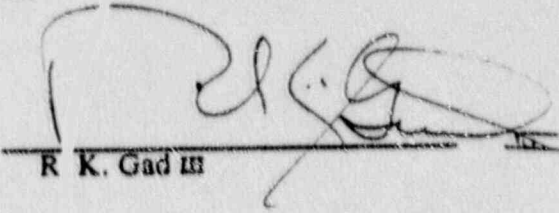
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