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Filed: October 39, 1990.

UNITED STATES OF AMERICA

'90 NOV -1 P2:30

NUCLEAR REGULATORY COMMISSION

before the

DOCKE ING & SECRETARY DOCKE ING & SERVICE BRANCH

ATOMIC SAFETY AND LICENSING BOARD

In the Matter of

VERMONT YANKEE NUCLEAR POWER CORPORATION

(Vermont Yankee Nuclear Power Station) Docker No. 50-271-OLA-4 (Construction Period Recapture)

ANSWER OF VERMONT YANKEE NUCLEAR POWER CORPORATION TO STATE OF VERMONT'S MOTION FOR LEAVE

Under date of October 18, 1990, SOV filed a pleading styled as "State of Vermont Motion for Leave to File Reply to NRC Staff's Response to Vermont Yankee's Motion to Compel" (hereinafter "MOTION FOR LEAVE"). The question raised therein, i.e., of whether the Board wishes to entertain further pleadings on the issues raised in Vermont Yankee's September 12, 1990 Motion to Compel is, of course, one addressed to the discretion of the Board. Vern as Yankee observes, however, that several of the rationales proffered by SO in the MOTION FOR LEAVE are erroneous.

I.

SOV complains that the Staff's response to Vermont Yankee's Motion to Compel "internally [was] also a reply to" SOV's response. MOTION TO COMPEL at 1. This may be true, but it constitutes no ground for allowing SOV a further reply. It is clear from the structure of the Regulations that one purpose of allowing the NRC Staff more time than other parties to respond to motions and other filings is precisely so that the Staff may take into account the prior filings of those other parties.

II.

SOV then attacks the Staff's citations, claiming that they apply to contentions rather than bases. MOTION FOR LEAVE at 2. This argument by SOV is misleading at best. SOV does not therein deny the line of authority in NRC jurisprudence to the effect that, when a party submits a very general

contention for litigation supposedly supported by more specific bases (as SOV has here) then the issues open for litigation are limited by the specific allegations contained in the admitted basis or bases. *Illinois Power Company* (Clinton Power Station, Unit 1), LBP-81-61, 14 NRC 1735, 1737 (1981):

"Where a contention is made up of a general allegation which, standing alone, would not be admissible under 10 C.F.R. § 2.714(b), plus one or more alleged bases for the contention set forth with reasonable specificity, the scope of the matters in controversy raised by such contention are limited by the specific alleged basis or bases set forth in the contention."

See also Philadelphia Electric Company (Limerick Generating Station, Units 1 and 2), CLI-85-15, 22 NRC 184, 185-86 (1985); Public Service Company of New Hampshire (Seabrook Station, Units 1 and 2), ALAB-924, 30 NRC 331, 347 n. 43 (1989); Vermont Yankee Nuclear Power Corporation (Vermont Yankee Nuclear Power Station), LBP-88-26, 28 NRC 440, 446-47 (1988). The cases cited by the Staff are entirely in accord with this line of authority and thus are not, as SOV apparently seeks to imply, off point.

III.

Finally, SOV argues that Vermont Yankee has not been denied its right "to effectively inquire above [SOV's] case . . . since [SOV] has already replied adequately to 262 interrogatories and document requests." MOTION FOR LEAVE at 2. SOV's use of the word "adequately" in the above argument open to question, however, given that SOV: (i) has refused altogether to respond to 47 of Vermont Yankee's discovery requests, plus parts of others; (ii) has declined to answer another 55 on the ground that it is still preparing its case; and (iii) has responded to still another 34 requests by saying that it did not know the answer. Unless SOV substantially supplements, in a timely

One might also observe that, wholly apart from prior decisions recognizing the point, SOV's argument suffers a fatal logical flaw. If, as SOV apparently contends, the topical limits of "bases" are to be ignored once the contention is admitted, then it would be a meaningless act for a Board to dictare one or more of the "bases" excludable, as happened here. Likewise, were SOV correct in its implicit argument, that portion of a general contention beyond the scope of an admitted basis would in effect be admitted for litigation even though never supported by an admitted "basis." Rather, SOV apparently contends that one narrow "basis" may serve as the toehold by which a topically broader and different "contention" is admitted, a concept that makes a mockery of the contention rules.

manner, its prior responses, then the Staff's citation to the stonewalling by the intervenors in the Shoreham proceeding would seem well on point.

Respectfully submitted,

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Dated: October 29, 1990.

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Certificate of Service ing & STEVICE BRANCH

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:

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