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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges

Charles Bechhoefer, Chairman
Glenn O. Bright
Dr. James H. Carpenter

_____)	
In the Matter of)	
)	
VERMONT YANKEE NUCLEAR)	Docket No. 50-271-OLA
POWER CORPORATION)	
)	ASLBP No. 87-547-02-LA
(Vermont Yankee Nuclear)	
Power Station))	September 27, 1988
_____)	

MEMORANDUM AND ORDER
(NECNP Motion to Compel)

In our Second Prehearing Conference Order, dated July 12, 1988 (LBP-88-18, 28 NRC 43), we authorized additional discovery between NECNP and the Applicant concerning the revised fuel pool cooling system submitted by the Applicant on June 7, 1977 for review by the Staff. That system is the subject of (safety) Contention 1, which alleged that the then-proposed system for cooling the spent fuel pool violated the single-failure criterion, particularly as set forth in General Design Criterion 44. On August 4, 1988, NECNP submitted interrogatories and requests for production of documents to the Applicant; on August 16, 1988, the Applicant filed its answers.

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In its answers, the Applicant objected to most of NECNP's discovery requests. Thereafter, on August 31, 1988, NECNP filed a motion to compel responses to many of those requests. On September 15, 1988, the Applicant responded to that motion. (No party other than NECNP and the Applicant has taken any position on the instant discovery requests.) We turn to each interrogatory or discovery request in the sequence dealt with in NECNP's motion.

A. Interrogatories 11-17

These interrogatories in general seek details respecting compliance of the newly proposed cooling system with the environmental qualification (Interrogatories 11-12), seismic qualification (Interrogatory 13), and missile and fire protection requirements (Interrogatories 15-16), and conformance of the system with requirements concerning testing, inspection, and surveillance (Interrogatory 14) and corrosion (Interrogatory 17). The Applicant claims that these requests seek information outside the scope of the contention.

In its motion, NECNP claims that, because the contention refers to the single-failure criterion, as embodied in General Design Criterion 44, these matters are encompassed within the contention. It goes on to assert that the systems and components comprising the spent fuel pool cooling system must meet these requirements, and it assumes that the Applicant claims otherwise (as it had done

earlier in the proceeding). It also describes these requirements as "implicit in the philosophy underlying the single-failure criterion" (Motion, at 4).

To be sure, early in this proceeding the Applicant did question the applicability of the single-failure criterion to the spent fuel pool cooling system. But in responding to NECNP's discovery requests, it assumed that the criterion is applicable. In this opinion, we shall do likewise. The Applicant instead argues that the *sine qua non* of the single-failure criterion is redundancy and that none of these other matters are either incorporated by reference in the single-failure criterion or, alternatively, encompassed either by the contention or its underlying basis.

We need not decide at this time whether the single-failure criterion incorporates by reference any or all of the qualification matters raised by NECNP's interrogatories. For we agree with the Applicant that Contention 1 does not encompass them. On the assumption that the single-failure criterion is applicable to the fuel pool cooling system, all of these matters could potentially have been raised as the subject of a contention. However, NECNP did not do so. Nowhere has it provided any allegation of any potential problem in any of these areas, nor any reference to a basis dealing with problems of this sort. General Design Criterion 44, which is referenced in the contention, also does not explicitly include these matters.

It specifies the applicability of the single-failure criterion and spells out certain requirements bearing only on redundancy. That is not sufficient to bring into the contention the various qualification requirements covered by the interrogatories.

This is not to say that the qualification requirements raised by NECNP are not applicable to the spent fuel pool cooling system. Nor are we stating that contentions dealing with these subjects would necessarily have been acceptable at the early stages of this proceeding. The June 7, 1988 proposal by the Applicant might well have served as an appropriate vehicle for the submission of late-filed contentions on subjects of this sort, but NECNP did not follow that course of action. Instead, it embarked through its discovery request on what amounts to a fishing expedition to uncover possible problems in these areas. This is impermissible under NRC regulations and precedents.

In particular, the NRC Rules of Practice limit discovery to the boundaries of admitted contentions (10 C.F.R. 2.740(b)(1)). The Appeal Board has emphasized that the scope of a contention is determined by the "literal terms" of the contention, coupled with its stated bases. Public Service Co. of New Hampshire (Seabrook Station, Units 1 and 2), ALAB-899, 28 NRC ____ (August 23, 1988)(slip op. at 6-7); Philadelphia Electric Co. (Limerick Generating Station, Units 1 and 2), ALAB-845, 24 NRC 220, 242 (1986).

This principle was applied by the Appeal Board to the very contention for which NECNP is seeking discovery, limiting the pool temperature ceiling under consideration to 150°F (as alleged by NECNP) rather than the 140°F temperature limit specified by the Standard Review Plan and included in the rewritten contention which we had admitted. ALAB-869, 26 NRC 13, 24-25 (1987). It stated that "[w]hat the proper temperature limit for the pool should be is an issue unto itself." *Id.* at 24.

Given these considerations, it is apparent to us that NECNP's contention cannot properly be read or construed as covering the qualification and similar matters encompassed by Interrogatories 11-17. To the extent that NECNP seeks to inquire into such matters, its motion to compel further answers to the foregoing interrogatories is denied.

B. Interrogatory 5

This interrogatory sought a detailed description of the Applicant's schedule for completing the "design, installation, and testing" of the cooling system proposed by the June 7, 1988 submission to the Staff, "including but not limited to the date this system is expected to be operational". The Applicant did not object to this interrogatory but answered only that the system will be completed, designed, installed and tested prior to the storage in the spent fuel pool of more than 2000 spent fuel

assemblies, "for which no more definite schedule now exists."

NECNP deems this response to be incomplete and unresponsive. It observes that, although it is difficult to predict such schedules with absolute accuracy, the Applicant must have a schedule for completion of the design, installation and testing if indeed it is in good faith in proposing the enhancements to its spent fuel pool cooling system. For its part, the Applicant maintains that the fact that NECNP is dissatisfied is irrelevant; that so long as the answer is complete, no further answer can be compelled.

It is clear that a response to an interrogatory, if true and if complete, is adequate, irrespective of the satisfaction with that response of the party that propounded the question. Based on previous filings in this proceeding, however, we have considerable doubt that the Applicant here has provided an adequate answer.

Thus, in a meeting with the Staff on February 9, 1988, in Rockville, MD, the Applicant (per Mr. David McElway) stated, in terms of a "proposed schedule" which had already been developed by the Applicant, that the conceptual design is scheduled to be completed by the end of Cycle 14 (scheduled for September, 1990), that the final detailed design would be completed by the end of Cycle 15 (scheduled for April, 1992) and that the entire design change would take place during Cycle 16, so that it would be "completed

and fully operational at the end of Cycle 16" (scheduled for October, 1993) (Tr. 19-20 of meeting of 2/9/88, provided to the parties and Board by the Staff's memorandum dated February 16, 1988). Both the Vermont Yankee official who signed the Applicant's answer to Interrogatory 5 and one of the counsel for the Applicant were in attendance at this meeting and must be charged with knowledge of its substance.

Later, in a letter dated March 2, 1988 to NRC, which confirmed its "commitment" to install the new cooling system, the Applicant stated that "[t]his system will be operational no later than the end of Cycle 16 (Projected to be 1993)". Against this background, the Applicant now asks us to find its answer to Interrogatory 5 to be complete and adequate. We decline to close our eyes to the existing record before us.

Given these inconsistencies, we have questions as to whether, if it now has no schedule (and has thus abandoned the proposed schedule previously furnished to the Staff), the Applicant is seriously pursuing the supplemental cooling system proposal. Absent a satisfactory explanation, we, if not the Staff as well, might have good reason for questioning the good faith, if not the veracity or completeness, of any statements made in support of the application. Indeed, it is necessary to avoid a situation where no schedules are established and no work is undertaken with respect to the supplemental cooling system and where,

to avoid the "hardship" of shutting down the reactor, the Applicant might well seek an "emergency" extension of time within which to install the enhanced cooling system, relying in the interim on the RHR system for supplemental cooling, as proposed in the initial expansion application.

To clarify these matters, we direct the Applicant to provide a complete (and truthful) response to Interrogatory 5.

In addition, we direct the Applicant to respond to three issues. First, it should provide an explanation of the apparent inconsistencies between its statements made at the February 9, 1988 meeting with the Staff, its commitment in its letter of March 2, 1988 to the Staff, and its August 16, 1988 response to Interrogatory 5. Second, because one of the Applicant's counsel of record was present at the February 9, 1988 meeting (and thus was aware of the scheduling statements made by the Applicant), we direct the Applicant to explain any discrepancies between statements made at the meeting and assertions made in the Applicant's response to NECNP's motion to compel (which indicates that it was in part the responsibility of, although it was not signed by, that same counsel).

Finally, we note that the Applicant has committed to have the supplemental pool cooling system in place and operational prior to the storage of more than 2000 fuel assemblies in the pool. We also note that the June 7, 1988

submission states (at Table A.2) that, for full core offload situations, 1954 assemblies would be in the pool by the end of Cycle 14, and 2090 by the end of Cycle 15. Inasmuch as the timing of the capacity expansion appears to be based in part on the full core offload situation, it is not clear to us how the Applicant is reconciling its commitment to install the supplemental cooling system prior to the storage of more than 2000 bundles with a potential full core offload situation occurring during or following Cycle 15 (apparently scheduled to occur between September, 1990 and April, 1992). As a third issue to be addressed, we request the Applicant to explore this matter and, in particular, explain how it would handle a full core offload during this period when the total number of bundles requiring storage would exceed 2000.

C. Interrogatory 6.

NECNP's Interrogatory 6 asks whether the enhanced fuel pool cooling system is "similar" to that used by any other nuclear plants and, if so, to identify the plants and describe their cooling systems and any differences from that proposed for Vermont Yankee. The Applicant objected to this interrogatory insofar as it related to any equipment other than the Emergency Standby Subsystem which was proposed by the June 7, 1988 submission. With respect to that subsystem, it interpreted "similar" as relating to use of the same technologies relating to fluid flow and heat transfer and responded that the proposed system was

"similar" to the subsystems used by all other commercial nuclear plants in the United States. The Applicant identified no particular plants and did not describe any differences between any other plants and the system proposed for Vermont Yankee. Nor did the Applicant state that there were no differences.

NECNP in its motion claims that the answer is unresponsive and that the Applicant's interpretation of "similar" as relating to fluid flow and heat transfer is too broad. NECNP adds that it was plainly referring to the addition of the Emergency Standby Subsystem, a plant specific system which, in its opinion, obviously cannot be used by all other commercial nuclear power plants and, indeed, is not even now being used at Vermont Yankee. The Applicant responds only to the effect that the interrogatory was ambiguous.

In our view, the Applicant's answer was clearly non-responsive and inadequate. Even if the proposed system might be deemed "similar" to all other domestic nuclear plants, it plainly is not identical; yet the answer makes no reference at all to any differences, as requested by the interrogatory (and for which no objection was interposed). To answer this interrogatory adequately, under the construction supplied by the Applicant, it would have been necessary to detail any known differences between the Vermont Yankee system and that used in other plants,

including but not limited to such matters as, for example, heat transfer capacity of the equipment, number of fuel elements to be cooled, and water temperature which each system is designed to attain.

On the other hand, we would suspect that the Applicant, in answering this interrogatory, was in effect using the asserted ambiguity to avoid providing a meaningful response. This is particularly apparent by the Applicant's objection to answering any portion of the interrogatory which dealt with equipment other than the Emergency Standby Subsystem. In view of this objection, the remainder of the interrogatory to be answered could only have referred to the Emergency Standby Subsystem.

For the foregoing reasons, we direct the Applicant to provide a complete answer to Interrogatory 6, at least insofar as it relates to the Emergency Standby Subsystem.

For the above reasons, it is, this 27th day of September, 1988

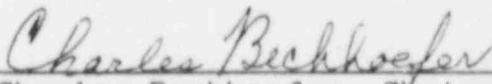
ORDERED:

1. That NECNP's motion to compel answers to interrogatories is granted with respect to Interrogatories 5 and 6 and denied with respect to Interrogatories 11-17.

2. The Applicant shall also provide answers to the three additional matters bearing on schedules raised by the Board in conjunction with Interrogatory 5.

3. The Applicant shall respond to Interrogatories 5 and 6, and provide the additional information requested by the Board in conjunction with Interrogatory 5, within 14 days of the date of service of this Memorandum and Order. Cf. 10 C.F.R. 2.740b.

FOR THE ATOMIC SAFETY AND
LICENSING BOARD



Charles Bechhoefer, Chairman
ADMINISTRATIVE JUDGE

Dated at Bethesda, Maryland,
this 27th day of September, 1988.