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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. 1)

Licensee Vermont Yankee Nuclear Power Corporation (hereinafter "Licensee" or "Vermont Yankee") responds to the "Motion to Compel Answers to Interrogatories (Vermont Set No. 1)" (hereinafter "Motion") filed by intervenor the State of Vermont ("SOV") on June 14, 1990. In the Motion, SOV moves that this Board compel further responses to sixty-seven (67) interrogatories posed by it to Vermont Yankee. For the reasons discussed below, the Motion should be denied, except with respect to two interrogatories.[1] As to those three interrogatories, Vermont Yankee will voluntarily supplement its answers on or before July 13, 1990.

I. General Comments on SOV's Motion

SOV's arguments in favor of compelling further responses break down into several generic categories that between them account for the vast majority of the interrogatories covered by the Motion. In Section II *infra*, Licensee addresses in detail each of these generic arguments by SOV. Then, in Section III, Licensee reviews each of the specific interrogatories as to which SOV moves for further response, and briefly describes in each case why such action is not warranted.

[1]Specifically Interrogatories No. 3(g) and 22.

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First, however, it is necessary to address a general plaint raised by SOV. Throughout the Motion SOV charges that Vermont Yankee has "purposefully" pursued a "strategy to impede [SOV] in its ability to prepare its case."[2] SOV has made this same charge previously in its various pleadings resisting Licensee's attempts to obtain discovery from SOV.[3] Every incident, no matter how small[4] or how distorted,[5] is portrayed by SOV as part of this sinister plot by Vermont Yankee to take advantage of SOV's "limited resources."[6] In light of this alleged "strategy" by Licensee, SOV demands a six month "extension of discovery . . . to have time to prepare its case."[7]

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[2]*E.g.*, Motion at 3 and 4 n.4.

[3]*E.g.*, "State of Vermont Answer in Opposition to Vermont Yankee Nuclear Power Corporation Second Motion to Compel and State of Vermont Application for Protective Order" (May 22, 1990) at 6.

[4]For example, SOV twice remonstrates that it did not receive all the attachments to Licensee's interrogatory answers. *See* Motion at 1 n.1 and 3 n.3. SOV does admit, however, that Licensee sent SOV a full set, by overnight delivery, immediately upon being notified of this alleged omission. Licensee has queried a number of the other recipients of the same mailing, and none of the recipients of the more than 15 (fifteen) other sets sent out has reported lacking the attachments.

[5]The maudlin tale related by SOV in footnote 4 of the Motion would ordinarily receive no response (as no relief is requested in connection with it). Here such benign treatment isn't appropriate because the footnote is a concoction of distortions and strategic omissions. What purpose is sought to be achieved by SOV, other than attempting to bias the Board against Vermont Yankee or, perhaps, to pressure Vermont Yankee employees into submission to the State's improper demands, we cannot fathom. For the Board's information: SOV omits to mention that its representative had two Vermont Yankee engineers and another Licensee employee tied up at his beck and call for all of June 6, a complete perversion of the document production process necessitated only by the inability of the SOV representative to articulate before arriving what documents he wished to inspect. The timing of the use of the microfilm reader, to cite another example, was worked out with SOV's representative at the start of the day to suit *his* stated convenience. Also, the Engineering Design Basis Manual was produced on June 8, not the following week (as implied by SOV), after prodigious efforts were made to reproduce the EDBM's included microfiche *qua* microfiche so that the SOV would not have to deal with the mound of paper that would otherwise have been involved in making a copy.

[6]Motion at 3.

[7]*Id.* at 4-5 n.5.

SOV's charge is so wrong-headed, in so many different respects, that it is difficult to judge just where to begin to rebut it. First of all, Vermont Yankee has no "strategy" of attempting to obstruct SOV. To the contrary, Licensee has made prodigious efforts to respond to the 230 interrogatories and 148 document requests filed to date by SOV. As the Motion itself discloses, it took 28 Licensee personnel four weeks to compile the set of answers that are the subject of the Motion.[8] Indeed, it took so much work by Vermont Yankee to respond that SOV now complains it is too "burdensome" for SOV to look at the resumes of the individuals involved.[9] In assembling and producing the documents called for by the interrogatories and document requests, Licensee has already expended in excess of 250 man hours. More than 5,000 pages of documents requested by SOV have already been produced; indeed many had been produced even before SOV filed the instant motion to compel.

Second, the sovereign State of Vermont has resources far in excess of those possessed by Licensee. The tremendous discovery effort by Licensee described above is a substantial burden on a relatively small, single function corporation[10] that must meet SOV's demands without stinting on its main job—*i.e.*, the safe and efficient day-to-day operation of Vermont Yankee Nuclear Power Station. SOV, on the other hand, entirely controls the scope of the litigation it chooses to undertake, and it also controls the amount of the State's vast resources that it chooses to devote to that undertaking. For SOV to deliberately take its sole admitted contention, attempt to inflate that contention into an exhaustive inquiry into every facet of every topic that is even imaginably related to maintenance, and then to complain that the "resources" it has allocated are not adequate to the task it has set itself is either incredibly naive or incredibly cynical.

Finally, SOV's argument that it needs a six month delay because of obstructionism by Vermont Yankee is simply untrue. Instead, any "need" SOV might perceive for a delay "to prepare its case" arises from two facts. First, as has been disclosed by SOV's non-responses to Licensee's inter-

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[8]Motion at 1 and 11-13.

[9]*Id.* at 14.

[10]Vermont Yankee is not, it must be recalled, a "garden variety" public utility running multiple generating facilities, a transmission system, and a distribution system, and servicing and dealing with thousands or millions of retail customers, with associated staff. It owns and operates a single generator, all of the output of which is taken directly by other utilities at wholesale. See *Vermont Yankee Nuclear Power Corporation* (Vermont Yankee Nuclear Power Station), 4 AEC 776 (March 14, 1972).

rogatories, SOV entered into this litigation with virtually no factual underpinning for its various allegations, and instead apparently was hoping to turn up at least some substantiating evidence in a vast fishing expedition through Licensee's documents, procedures and personnel. The second fact, now made clear by this very Motion, is that SOV is now unwilling even to do the work to attempt to develop its own case through the massive discovery campaign it has opted to launch. In sum, the cause of SOV's discomfort is SOV's own irresponsible conduct, for which SOV should not be rewarded by the granting against Vermont Yankee of a punitive "extension."

II. Generic Arguments By SOV

SOV repeats three basic arguments time and again in the Motion. First, SOV contends that Licensee may not respond to broad-ranging, complex questions requiring original research by offering to produce relevant documents from which the answers might just as easily (or burdensomely) be derived by SOV, but rather that Vermont Yankee must perform for SOV the research it requests and must compose for SOV a series of treatise-length digests of the information contained in these documents. Second, SOV moves to strike Licensee's objections to a whole string of interrogatories, despite the fact that Licensee went on the answer those interrogatories fully and SOV professes no dissatisfaction with the substance of the answers given. Third, SOV moves to compel responses to interrogatories that clearly fall outside the scope of the contention admitted by the Board. Vermont Yankee discusses each of these categories in turn below.

A. Interrogatories Answered Through Proffer of Documents.

SOV moves to compel with respect to at least twenty (20) different interrogatories—specifically, Nos. 1, 2, 3, 5, 6, 7, 8, 9, 10, 11, 13, 14, 16, 20, 49, 50, 51, 64, 67, and 71—that Vermont Yankee answered, in whole or in part, by offering to produce documents containing the information sought by SOV. In each case, SOV argues that "[t]he inspection which is offered is burdensome" to it, and that instead Licensee should be compelled to review the proffered documents, extract all potentially relevant information, and digest that material for SOV. This demand by SOV is unwarranted as a matter of fact, and unsupported as a matter of law.

Looking first to the facts, the most striking one is that, with respect to each of the vast majority of those requests, SOV has filed a parallel document

request.[11] If it is too "burdensome" for SOV to even look at these documents, then why has it specifically made Vermont Yankee go to the trouble of assembling them all in response to SOV's document requests?[12]

Similarly, a brief examination of the questions asked by SOV discloses the unreasonableness for SOV's demand for original dissertations in lieu of the underlying documents. Interrogatory 20, for example, called upon Licensee to "list" and describe "the physical location" of "all structures, systems and components" in the power plant. Interrogatories 1, 2, 3, 5 and 8 between them called upon Licensee to describe the qualifications of more than two hundred individuals. Interrogatory 6 demanded that Licensee "describe in detail the current licensing basis for each structure, system and component of the Vermont Yankee Plant." These questions are paradigms of interrogatories that are best answered by reference to pre-existing documents, rather than by the generation of whole new tomes whose sole purpose is to meet a discovery demand. Since SOV knows (presumably) what specific information it is seeking in these broad questions, it is more efficient (as well as fairer) for SOV to cull the existing documents to extract what it seeks.

Turning to the legal aspect of SOV's argument, it runs contrary to the settled federal practice, enshrined in Fed. R. Civ. P. 33(c), whereby an interrogatory may be answered by production of business records.[13] The

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[11] *See* Document Production Requests Propounded by the State of Vermont to the Vermont Yankee Nuclear Power Corporation (Set No. 1)(May 7, 1990) at Requests No. 1, 2, 3, 5, 6, 7, 8, 9, 10, 11, 14, 15, and 55.

[12] The glaring inconsistency between the present Motion, wherein SOV claims that it does not have time to look at the responsive documents proffered by Vermont Yankee, and the further motion to compel filed by SOV on June 26, 1990, wherein SOV demands to see numerous other vast categories of documents evokes the image of one so consumed with "fishing" for documents of every conceivable stripe and species that it has not taken the time to "clean and put away" those documents that it has already "caught."

[13] Fed. R. Civ. P. 33(c) provides that:

> "Where the answer to an interrogatory may be derived or ascertained from the business records of the party upon whom the interrogatory has been served or from an examination, audit or inspection of such business records, including a compilation, abstract or summary thereof and the burden of deriving or ascertaining the answer is substantially the same for the party serving the interrogatory as for the party served, it is a sufficient answer to such interrogatory to specify the records from which the answer may be derived or ascertained and to afford to the party serving the interrogatory

adjudicatory boards of the NRC long ago adopted the same approach as that of the federal rule, allowing designation of documents in lieu of discursive interrogatory answers. *E.g., Boston Edison Co.* (Pilgrim Nuclear Generating Station Unit 2), LBP-75-42, 2 NRC 159, 168 (1975); *Consolidated Edison Company of New York* (Indian Point, Unit No. 2), LBP-82-113, 16 NRC 1907, 1908 (1982); *see also Commonwealth Edison Co.* (Byron Nuclear Power Station, Units 1 and 2), ALAB-678, 15 NRC 1400, 1421 n.39 (1982) (relying on cases decided under Fed. R. Civ. P.). As one licensing board has observed, a "rule of reason" applies to when a proffer of documents constitutes a sufficient interrogatory response.[14] In the context of SOV's queries and requests, Vermont Yankee's responses clearly were reasonable.

B. Portions of SOV's Motion That are Moot.

SOV moves to compel with respect to twelve (12) interrogatories—Nos. 19, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, and 90—to which Vermont Yankee objected but then provided full responses. SOV expresses no dissatisfaction with the responses given. Rather, the sole relief that SOV requests with respect to each of these interrogatories is that "the objection should be overruled." Accordingly, since SOV asks for and would receive no further response as a result of its Motion, the Motion is moot with respect to these twelve interrogatories. Even assuming that SOV is right to question Licensee's objections (a dubious proposition, as Licensee discusses in Section III *infra* with respect to the individual interrogatories), there is no relief for the Board to grant, and thus no reason for the Board to waste its time on those portions of the Motion.[15]

> reasonable opportunity to examine, audit or inspect such records and to make copies, compilations, abstracts or summaries. A specification shall be in sufficient detail to permit the interrogating party to locate and to identify, as readily as can the party served, the records from which the answer may be ascertained."

[14] *Cleveland Electric Illuminating Co.* (Perry Nuclear Power Plant, Units 1 & 2), LBP-82-67, 16 NRC 734, 736 (1982).

[15] To the extent that SOV's arguments could be construed as attempts to obtain advance evidentiary rulings as to relevance, such requests are premature. Relevance is best addressed as the proceedings develop, when a specific proffered piece of evidence can be evaluated in the context of the whole developing record, rather than in the abstract and before the parties' cases are clear.

C. Interrogatories Going to Excluded Topics.

Licensee objected to nineteen (19) of SOV's interrogatories on the grounds that they sought information concerning issues that this Board has previously expressly excluded from litigation in this proceeding. SOV moves to compel responses to every one of these interrogatories. The nineteen questions break down into three general topics: environmental conditions within the plant; the qualified life of plant components; and construction period information. Licensee addresses each of these topics below.

(1) *Environmental Conditions: Interrogatories 23 and 24*

In its Memorandum and Order ruling upon the admission of contentions, the Board held that "[t]he State has not shown that there is any real connection between environmental qualification and life extension."[16] On the basis of that factor among others, the Board declined to admit SOV's Contention VI, sub-part "t" of which had challenged the adequacy of Licensee's environmental qualification program.[17]

SOV, however, has posed two interrogatories, Nos. 23 and 24, which seek identification of "all documents which describe the environmental conditions of each area of the Vermont Yankee plant." Licensee objected to these interrogatories on the grounds that the only topic ever even proffered for litigation to which the questions seemed reasonably related was the rejected Contention VI sub-part "t."

SOV now responds that the interrogatories do not relate to sub-part "t."[18] Rather, SOV hypothesizes that environmental conditions might conceivably relate to "the inability of the maintenance program" to prevent failures of radiation monitor sensors, the uninterruptible power supply system, and the drywell paint topcoat.[19]

There are at least three problems with SOV's proffered justification for its interrogatories. First, SOV has never filed a contention that asserted that Licensee's maintenance program would not adequately account for the

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[16] *Vermont Yankee Nuclear Power Corporation* (Vermont Yankee Nuclear Power Station), LBP-90-6, 31 NRC 85, 106 (1990).

[17] *Id.* at 106-107

[18] Motion at 41.

[19] *Id.* at 42.

constraints posed by plant environmental conditions. The two interrogatories in question, if they do not relate to VI sub-part "t," could only reasonably relate to such an environmental contention. Since such a contention has never been proffered and admitted, it is not an appropriate topic for discovery.

Second, SOV's tactic of postulating—with no explanation or support, and no basis in its contention as filed—environmental conditions as being somehow involved in other problems, opens the door to discovery on any conceivable subject. Sabotage, operator error, or Martian invasion could be *imagined* as being somehow related to the discrete failure of a piece of equipment. If every topic *imaginably* related to a broad topic concerning one aspect of which a specific contention has been admitted were, without more, open to discovery, then the relevance limit on discovery scope would be meaningless. (As also would the contention limit on litigation scope.)

Third, SOV's argument seeks to justify questions it did not ask. SOV did not request documents relating to the impact of environmental conditions on drywell paint failures or the UPS. Rather, SOV asked two unfocused questions going to plant-wide environmental conditions in general.

(2) Qualified Life of Structures, Systems and Components: Interrogatories 25, 47, and 48

SOV's argument on these interrogatories (Motion at 6-7) does not contest, but rather fairly concedes, the correctness of the Vermont Yankee objections based on this Board's rulings on admitting and excluding contentions. As to these interrogatories, SOV instead effectively seeks reconsideration of the exclusion of its Contention VI.[20] Thus, SOV complains that it "is not clear [to SOV] how the Board's ruling on Contention VI square" with a conceptual paper relating to what both the Commission's Staff and Board have previously concluded (and SOV continues to disagree) relates to a fundamentally different licensing action. SOV compounds its problem by asserting that, given an uncorrected failure of equipment and the resultant requirement (per the VYNPS Technical Specifications) that the plant be shut down until the equipment's function has been restored, this results "in a less-than-design-basis condition until the repair is successfully completed." SOV couldn't be

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[20]Indeed, SOV begins by misstating, or at least drastically understating, the Board's prior rulings. The rulings in question are not those quoted by SOV at page 5 of the Motion (the only reference there is); the rulings in question are those of the Board at page 41 of its Memorandum and Order ("We will not admit Contention VI for litigation" and page 46 of its Memorandum and Order ("the 'durability' and 'time limit' views of Contentions V and VI [are] untenable"). See LBP-90-6, 31 NRC at 107, 109.

more wrong: the Technical Specifications *are* the applicable licensing basis and they are not open for relitigation (even on a timely request) in this proceeding.

Given SOV's concession that the interrogatories in question are not relevant to the *admitted* contention, and its concession that (even given its speculative hypothetical) the Technical Specifications would be satisfied, the objection to these interrogatories must be sustained.

(3) Construction Period Information: Interrogatories 27-31, 34-41, and 70

As in the prior case, SOV clearly proposed for litigation a contention to the effect that construction effects must be specifically and separately accounted for in some form of *a priori* prospective life measurement, and this Board just as clearly rejected those assertions as the bases for litigation.[21] As its reargument, SOV now claims only that "It is *possible* that the cause for the maintenance program to fail to maintain and determine and replace an aging component may be premature aging due to events in the construction period. *If* this is so, predictive technique[s] could be effective in determining such failure." Motion at 10 (emphases added). Prescinding entirely from its illogic,[22] this argument adds nothing new to the unstated motion for reconsideration.

III. Responses as to Specific Interrogations

Interrogatory No. 1. SOV herein requested the resumés and qualifications of "all persons who participated in the preparation of answers to these interrogatories." Vermont Yankee responded by proffering the resumés of all 28 individuals involved, which resumés contain the requested qualifications. As discussed in Section II. A *supra*, this response is completely adequate, and SOV's complaint that it is too "burdensome" for it review the information that its own request elicited should be rejected.[23]

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[21]See note 20, *supra*.

[22]Giving SOV every benefit of the doubt and crediting its blatantly unsupported speculation, it still is not possible for the "cause" of a maintenance program's asserted failure to repair or replace a non-functional item of equipment to lie in the equipment's asserted "premature aging." The "premature aging" can cause only the non-functionality.

[23]It may well be that SOV's real (but unstated) complaint is that it doesn't want to pay either for the labor cost of having its personnel inspect and note the information that is contained in pre-existing documents or that it doesn't

Interrogatory No. 2. SOV moves to compel descriptions of the responsibilities, qualifications, and training of all supervisory personnel. Vermont Yankee has proffered the job descriptions, resumes, and training records of the 31 individuals covered by SOV's interrogatory. As discussed in Section II. A *supra*, this response is appropriate. If SOV feels that such information is reasonable and necessary to its case development, it should examine the relevant documents made available to it and elicit the information it desires.

Interrogatory No. 3. SOV seeks descriptions of the responsibilities, qualifications, and training of each of the 88 maintenance workers identified by Licensee in Attachment 3-1 to Licensee's interrogatory answers. The relevant job descriptions and training records have been made available to SOV in Vermont Yankee's responses to Interrogatory No. 3 and Document Request No. 3. As noted in Section II.A *supra*, no further response is required as to these subjects.

It is true that the request for qualifications (separate from resumes) was overlooked, and Vermont Yankee will supplement as to this portion of subpart "g" by July 13, 1990.

Interrogatory No. 5. Here SOV asks for the resumes and qualifications of Licensee's operators. Vermont Yankee has already made available the resumes of the 32 individuals involved, which resumes contain the requested qualifications. Section II.A above makes clear that no further response is necessary.

Interrogatory No. 6. SOV demands that Vermont Yankee write, for the purposes of this discovery demand, a detailed description of "the current

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want to pay for having the documents copied. But the Commission's rules are clearly stated:

> "[What emerges is] an intervenor laboring under a serious misconception of the nature and purpose of discovery and of its rights and responsibilities as a litigant. For example, the [intervenor] repeatedly insisted that its rights were improperly abridged because the parties did not mail its representatives all the documents demanded. But the Commission's rules, like the corresponding Federal Rules, simply do not impose that requirement. A demand for documents is satisfied before the Commission as in court by producing them for inspection and copying."

Pennsylvania Power and Light Company (Susquehanna Steam Electric Station, Units 1 and 2), ALAB-618, 12 NRC 317, 338 (1980). This rule cannot be evaded by simply incorporating a document request into an interrogatory.

licensing basis for each structure, system and component of the Vermont Yankee plant." As Licensee noted in its answer, however, that information already exists in written form, in the Engineering Design Basis Manual ("EDBM") and the documents indexed therein. The EDBM was copied and given to SOV even before SOV filed its motion to compel, and the other documents have been and are available to SOV. This portion of the Motion is an excellent illustration of the argument made in Section II.A, as to why the production of existing documents is a fully satisfactory (and much more efficient) response.[24]

Interrogatory No. 7. This interrogatory was an extension of No. 6, and is governed by the same considerations as discussed immediately above and in Section II.A. It would be difficult to conceive of a more apt application of the principles of Fed. R. Civ. P. 33(c).[25]

Interrogatory No. 8. The disputed portions of this interrogatory seek the resumes, qualifications, and "instructions" of another 26 Licensee personnel. Licensee has proffered the resumes, which contain the qualifications, as well as the procedures containing the "instructions." Pursuant to the discussion in Section II.A *supra*, nothing more is required.

Interrogatory No. 9. Here again SOV moves to compel Licensee to restate, for the sake of this discovery request, information fully and cogently contained in the documents proffered by Licensee. SOV's motion should be denied, for the reasons stated in Section II.A.

Interrogatory No. 10. The Licensee has fully responded to this interrogatory by stating the dates of all of the described quality assurance audits performed since 1/1/1988, stating that an identification of the subsidiary documentation requested is contained therein, and holding such results available for review by SOV. The Licensee has thus placed the information SOV requests at its disposal. Nothing more is required. See Section II.A *supra*.

Interrogatory No. 11. The motion to compel as to this interrogatory, concerning quality assurance audits, is doubly without merit. First Licensee identified the relevant documents, and has expressly (in response to SOV's

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[24]SOV's assertion that the applicable regulations, orders and commitments "should be described in detail" is disingenuous, as they are so described in the EDBM of which SOV now has a copy.

[25]See note 13, *supra*.

parallel Document Request No. 11) made them available to SOV. As discussed in Section II.A *supra*, no further response is required.

Indeed, even this response was not necessary, since SOV's interrogatory was not relevant to Contention VII. SOV's explanation of the interrogatory, at page 31 of the Motion, confirms that its topic is design (or license basis) control. There simply is no contention relating to design control for the extended term that has been admitted for litigation in this proceeding.

Interrogatory No. 13. In this interrogatory SOV seeks the "location and nature of each revision" and "the reason each revision has been made" to some 300 maintenance documents. The Licensee has made available to SOV marked copies of the documents from which the information sought can be derived. SOV notes that the derivation of such information is "an enormously time-consuming and costly effort."[26] However, the task would be no less time-consuming and costly to the Licensee. The Licensee has fulfilled its discovery obligation by making the information SOV seeks available.[27] SOV's complaint that it must do some work to master this information is not a proper reason to compel. See Section II.A *supra*.

Interrogatory No. 14. To the extent that this portion of the Motion repeats SOV's complaint about how "burdensome" it is for SOV to try to digest the mass of discovery information it has demanded, that complaint should be rejected for the reasons stated in Section II.A *supra*. To the extent that SOV is quibbling with the word "captured," Licensee offers as a synonym "incorporated or referenced."

Interrogatory No. 15. The problem here is one of definition, and in particular, the definition of "maintenance." The four specific item enumerated deal with maintenance at the term is commonly understood. The complete list of procedures that might arguably be thought of as comprising some larger view of "maintenance" was set forth in Attachment 14-1—*with a statement of latest revision date included!* SOV's quibble is entirely without substance.[28]

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[26]Motion at 2.

[27]In the words of the applicable rule, "the burden of deriving or ascertaining the answer is substantially the same for the party serving the interrogatory as for the party served." See note 13, *supra*,

[28]The four items specifically called out in the response to Interrogatory No. 15 were the items identified as having been produced or modified in direct response to the IR 89-80.

Interrogatory No. 16. With respect to subparts a and c, SOV repeats its "burdensome" argument, which should again be rejected for the reasons stated in Section II.A. *supra*. With respect to subparts g and h, concerning nonsafety-related vendor manuals, Licensee fully answered the actual question asked by SOV. Interrogatory 16 asks Licensee to "respond to the following *concerning the vendor manual update program*." (Emphasis added.) Licensee's reply, that "the program does not apply to non-safety related manuals," was thus completely responsive.[29]

Interrogatory No. 19. As discussed in Section II.B, *supra*. Licensee has already answered this question, and so SOV's motion with respect to it is moot.

Interrogatory No. 20. SOV's demand that Licensee describe "all structures, system and components" in the plant is another excellent illustration of why, as discussed in Section II.A, production of pre-existing documents is an adequate response. The information sought by SOV is contained in the FSAR, of which SOV already possesses a controlled copy.

SOV tries to characterize this interrogatory as a request for an "integrated master equipment list," and then castigates Licensee for allegedly not possessing such a list.[30] That is not what the interrogatory asks. Moreover, when SOV did ask for such a list, in its Document Request No. 24, Licensee responded that "[t]he information requested is contained within a computer data base, which will be made available."[31] SOV's motions to compel a further response to this interrogatory, and for a negative evidentiary inference to be drawn against Licensee,[32] are thus moot and deceptive, respectively.

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[29]Thus SOV's [illegible] at page 37 of the motion, to tie nonsafety-related manuals to the adequate operation—arguing that failure to follow vendor recommendations for nonsafety equipment could lead to inadequate maintenance of such equipment, which could lead to reactor trips—is irrelevant. It also is wrong. There is no necessary connection between a reactor trip and any threat to the public health and safety. Indeed, tripping the reactor is one mechanism for avoiding any possible safety threat.

[30]Motion at 39-40.

[31]*See* Responses of Vermont Yankee Nuclear Power Corporation to Document Requests Propounded by the State of Vermont (June 11, 1990) at 12. This response was filed three days *before* SOV's motion.

[32]Motion at 40.

Interrogatory No. 22. Vermont Yankee agrees, upon reflection, that this interrogatory was sufficiently related to an admitted contention, and it will supplement its answer by July 13, 1990.

Interrogatory No. 23-26. For the reasons stated in Section III.c(1) *supra*, SOV's motion to compel should be denied as to these interrogatories.

Interrogatory No. 25. For the reasons stated in Section III.C(2) *supra*, SOV's motion to compel should be denied as to this interrogatory.

Interrogatories No. 27-31. For the reasons stated in Section II.C(3) *supra*, SOV's Motion to Compel should be denied with respect to these interrogatories.

Interrogatories No. 34-41. For the reasons stated in Section II.C(3) *supra*, SOV's Motion to Compel should be denied with respect to these interrogatories. Moreover, with respect to Interrogatories 37 and 38, SOV's motion is moot, since Licensee fully answered the questions. See Section II.b, *supra*.

Interrogatory No. 44. SOV admittedly seeks to compel documents possessed by Westec Incorporated, a wholly separate entity that has on occasion contracted to perform certain work for Licensee. Licensee does not control Westec; hence SOV's demand for Westec documents is directed to the wrong party.[33] "Control," moreover, and not whether "Westec was acting pursuant to Vermont Yankee's direction" (Motion at 53), is the relevant standard. Licensee's response was complete and accurate.[34]

Interrogatory No. 45. CFARs, as we (perhaps erroneously) assumed SOV was aware, are not documents; they are reports that may be generated by

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[33] *See, e.g., Kerr-McGee Chemical Corp.* (West Chicago Rare Earths Facility), LB-85-1, 21 NRC 11, 22 (1985).

[34] Manifestly, if the documents were either in Vermont Yankee's possession or control, they would have been identified. Given the response to Interrogatory No. 104, however, it is obvious that Westec regards its workpapers to be "secret" from Vermont Yankee as much as from anyone else.

There is some reason for believing that SOV's unstated impetus for this item is its belief that, prior to Westec's publication of the final report, Vermont Yankee had an opportunity to review and comment upon a draft. This may or may not have occurred (it is not uncommon). However, no copy of the draft remains in Vermont Yankee's files.

accessing a database. Consequently, the identifying information definitions do not apply to them.[35]

Interrogatories 47 and 48. For the reasons stated in Section II.C(2) *supra*, SOV's motion to compel should be denied.

Interrogatory 49. Licensee's response was complete and truthful.[36] Moreover, Licensee has made available to SOV documents containing the requested information. *See, e.g.*, Vermont Yankee's response to Document Request No. 55. Per Section II.A *supra*, nothing more is required.

Interrogatories 50 and 51. These interrogatories follow from, and are governed by the same considerations as, Interrogatory 49 discussed immediately above.

Interrogatory 52. Vermont Yankee identified the three documents which contain the information requested by SOV. To the extent that SOV's complaint is that it is too "burdensome" for SOV to look at those documents, that complaint should be rejected for the reasons discussed in Section II.A *supra*. To the extent that SOV's dissatisfaction parallels its complaints concerning Interrogatories 49-51, the same considerations as governed those three interrogatories apply here.

Interrogatory 56. Vermont Yankee has provided the detailed descriptions of "the method by which failure and root cause evaluations are performed and documented," broken down by different cases, that SOV had requested. Thus SOV's present demand for even more detail is neither reasonable nor warranted. To the extent that SOV's complaint is taken to be that it is too "burdensome" for it to look at the referenced documents, that complaint should be rejected for the reasons discussed in Section II.A *supra*.

Interrogatory 62. Vermont Yankee's painstaking, step-by-step response to this interrogatory covers 2½ single-spaced pages in SOV's own pleading.[37]

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[35]This is the subject of the forthcoming response to Interrogatory (Second Set) No. 51.

[36]SOV may believe "that the information *should* be available in a single file location" (Motion at 56, emphasis added), but, as SOV itself has previously noted, a motion to compel is not the proper procedural device for raising such a point. *See* State of Vermont Answer in Opposition to Vermont Yankee Nuclear Power Corporation Third Motion to Compel and State of Vermont Application for Protective Order (June 18, 1990) at 3 n.3.

[37] Motion at 61-63.

SOV's demand for still more detail is thus wholly unreasonable and unjustified. Likewise, SOV's tiresome plea that it is "burdensome" for it to read the documents that SOV itself demanded should be rejected, per Section II.A *supra*.

Interrogatory 64. All the information requested by SOV is contained in the documents identified by Licensee.[38] As discussed in Section II.A *supra*, no further response is required.

Interrogatory 67. Vermont Yankee's response was adequate, for the reasons set forth in Section II.A *supra*.

Interrogatory 68. Vermont Yankee's response, especially when read in conjunction with the response to Interrogatory 67, was appropriately detailed. SOV's motion to compel a further response should be denied.

Interrogatory 70. For the reasons discussed in Section II.C(3) *supra*, SOV's motion to compel should be denied.

Interrogatory 71. SOV's attempt to gloss over the deficiency in its own interrogatory is neither effective nor carried out with much grace. The "identification" of the "good maintenance practices" was complete with their enumeration.[39] Notwithstanding that no more was called for, Vermont Yankee specified the procedure under which the maintenance practices are accomplished and pointed out that the MRs in question would provide such detail as trends, acceptance criteria and the like. The answer was more than complete.

Interrogatory 72. Licensee fails to see what possible use the specific dates, as opposed to the general frequency, would have to SOV. Nonetheless, SOV has since been afforded the opportunity to inspect and copy all completed 4115 surveillance sheets since the commencement of operations. This complaint, if ever valid, is now wholly moot.

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[38]SOV's attempt to demonstrate the inadequacy of the response to this interrogatory in fact demonstrates something else. The so-called "MOO Directive" is only an instruction for the classification *of equipment*. It does not "provide[] guidance or instructions to personnel performing the evaluation of safety consequence and implications of failures, inoperabilities and degradations of structures, systems and components," as the interrogatory called for. SOV's contrary assertion is attributable either to a lack of knowledge of the contents of the MOO Directive or a failure to have reviewed a document in its possession. See note 12, *supra*.

[39]"Please describe in detail *or identify* . . . ."

Interrogatories 80-90. As discussed in Section II.B *supra*, Licensee has already answered these questions fully, and so SOV's motion with respect to them is moot. Moreover, Licensee's objection was appropriate. These interrogatories seem to be aimed at reviving sub-part "m" of Contention VI, which was rejected by the Board.

Interrogatory 91. Vermont Yankee's response was complete and accurate as of the date it was given.

Interrogatories 92 and 93. These interrogatories follow from, and are governed by the same considerations as, Interrogatory 91 immediately above.

Interrogatory 94. SOV claims that Licensee's answer is not correct. In reality it is, but prescinding from that fact, a motion to compel is not the appropriate procedural mechanism for addressing a dispute as to the merits.

Interrogatory 95. This interrogatory follows from, and is governed by the same considerations as, Interrogatory 94 immediately above.

Interrogatories 102 and 104. SOV agrees with Vermont Yankee that confidentiality is warranted, and thus does not oppose the entry of a protective order as requested by Vermont Yankee. Accordingly, the protective order should be granted.

As for SOV's request that it be granted access to the names despite the general protective order, no reasoned basis is offered by SOV for believing that access by SOV would not have the chilling effect which the protective order seeks to avoid. Given that SOV has expressly conceded the wisdom of

avoiding that chilling effect, the exception it seeks to the protective order should not be granted.[40]

By its attorneys,

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Dated: June 29, 1990.

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[40]In assessing the importance of information called for notwithstanding concededly valid reasons for keeping the information confidential, the Board should recall that the only asserted relevance of this information is the asserted failure to have cured the LRS observation by the time of the Staff Maintenance Team Inspection, demonstrated, as SOV initially contended, by the fact that the same observation was made in IR 89-80. In this connection, Vermont Yankee has asked SOV to point out where IR 89-80 makes the same observation. (See Interrogatory (Set No. 4) No. 32.) We believe that the answer to this interrogatory must be "None," in which case all of this information will become instantly irrelevant.

Certificate of Service

I, R. K. Gad III, hereby certify that on June 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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