

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

DOCKETED
USNRC

Before the Atomic Safety and Licensing Board P4:48

In the Matter of
LONG ISLAND LIGHTING COMPANY
(Shoreham Nuclear Power Station,
Unit 1)

OFFICE OF SECRETARY
Docket No. 50-322 O.L.

SUFFOLK COUNTY RESPONSE TO LILCO'S MOTION TO STRIKE
PORTIONS OF SUFFOLK COUNTY TESTIMONY ON SUFFOLK COUNTY
CONTENTIONS 12, 13, 14 & 15 -- QUALITY ASSURANCE

On August 31, 1982, LILCO moved to strike portions of Richard B. Hubbard's Prefiled Testimony on Suffolk County Contentions 12-15 -- Quality Assurance. LILCO first seeks to strike those portions of Mr. Hubbard's testimony which address quality assurance ("QA") for systems, structures and components ("SS&C's") important to safety but not safety-related.^{1/} LILCO asserts that such discussion is outside the scope of Contentions 12-15 and is unduly repetitious because QA requirements and compliance for such SS&C's has allegedly been fully litigated in the context of Contention 7B. LILCO also moves to strike discussion of the QA

1/ LILCO in its motion mischaracterizes Mr. Hubbard's testimony as addressing QA for "non-safety-related" SS&C's. See, e.g., Motion, p. 1. In fact, Mr. Hubbard's testimony, consistent with the definitions in Appendix A of Part 50 and GDC 1 and with the Denton Memorandum of November 1981, addresses QA for items important to safety, including safety-related SS&C's. This is narrower in scope than all non-safety-related SS&C's which would include SS&C's which are not important to safety.

problems and NRC Inspection and Enforcement ("I&E") program at other plants as irrelevant and lacking in probative value.

Suffolk County strongly opposes LILCO's Motion. The bases for the County's position are set forth below.

I. Mr. Hubbard's Discussion of the QA Program for Items Important to Safety but Not Safety-Related is Within the Scope of Contentions 12-15 and Not Repetitious

A. LILCO first argues that Contentions 12-15 relate solely to Part 50, Appendix B and thus that any discussion of QA for non-safety-related SS&C's which are important to safety is irrelevant. This is not the case. First, Contention 12 plainly encompasses the QA for the entire class of items important to safety as it states in its first sentence:

Suffolk County contends that LILCO and the NRC Staff have not adequately demonstrated that the quality assurance program for the design and installation of structures, systems, and components for Shoreham was conducted in a timely manner in compliance with the pertinent portions of 10 C.F.R. 50, Appendix B, Sections I to XVIII, and 10 C.F.R. 50, Appendix A, GDC 1. (emphasis supplied).

Thus, failure to comply with GDC 1 requirements is squarely presented by the Contention. LILCO attempts to avoid the scope of Contention 12 as including SS&C's important to safety as provided by GDC 1 with the following statement:

While SC 12 also references GDC 1, it does so only in the context of Appendix B. Accordingly, the reference to GDC 1 in SC 12 is limited by the subsequent particularization to Appendix B. Put another way, the scope of GDC 1 in SC 12 is explicitly limited to the scope of

Appendix B. Further confirmation of this is found in the remainder of the contention which alleges non-compliance with Appendix B, Criteria II, III, and V-XVIII and then further refines SC 12 by attaching as Appendix 1 a long list of alleged failures to comply with Appendix B. (LILCO Motion, pp. 3-4).

The County respectfully suggests that LILCO's argument must be rejected. The Contention does allege that LILCO has not instituted a QA program which complies with Appendix B. However, the Contention also alleges no compliance with Appendix A, GDC 1. The QA program mandated by GDC 1 covers all SS&C's "important to safety," including those which are not safety-related. There is nothing in the Contention which limits its scope, as LILCO would suggest, to only safety-related SS&C's.

Second, LILCO omits to acknowledge that a portion of Contention 13 explicitly addresses QA requirements for items important to safety. Thus, Contention 13(c) alleges LILCO's:

Failure to ensure that replacement materials and parts of systems classified as components "important to safety" will be equivalent to the original equipment, that replacements will be installed in accordance with adequate process procedures, and that the repaired or reworked structures, systems, or components will be adequately inspected, tested, and documented in "as-built" drawings (emphasis supplied).

Third, LILCO cannot now move to strike portions of Mr. Hubbard's testimony which address QA requirements for non-safety-related SS&C's which are important to safety when LILCO's own testimony on Contentions 12-15 also addresses the same subject. Thus, at pages 14-15 of LILCO's testimony concerning the GE QA/QC program, it is stated:

The quality of items and services not considered "safety-related" has been controlled in accordance with the importance of the overall function or purpose to be performed by the item or service.

Similarly, on page 221, in testimony on the operating QA ("OQA") program, LILCO states:

Non-safety-related materials, parts and components are subject to administrative controls for procurement, installation and testing. Technical review determines the degree to which the controls are applied.

Finally, on page 3 of its testimony, LILCO makes the following broad assertion regarding its QA for items other than those which are classified as safety-related:

The quality of structures, systems, components, and services not classified "safety-related" has been controlled in accordance with the importance of the overall function or purpose to be performed by the item or service.

Thus, by including such discussion in its testimony, LILCO has implicitly acknowledged its understanding that the QA contentions were not rigidly limited to discussion of QA for safety-related items. Since LILCO has addressed these matters, the County of course is entitled to do so as well.^{2/}

B. LILCO's second argument is that Appendix B applies only to safety-related SS&C's. LILCO asserts that all active parties

^{2/} Under LILCO's reasoning, it would be permitted to make broad assertions on QA for items not classified as safety-related, but the County is not permitted to address the same subjects. Presumably LILCO would also object to cross-examination on those very subjects which are addressed in LILCO's testimony.

have agreed to this proposition. Based upon LILCO's first proposition that Contentions 12-15 only concern Appendix B (which the County has shown to be false in Part I.A, above), LILCO concludes that the Contentions and QA testimony must deal only with safety-related SS&C's.

First, it is not settled (as LILCO suggests) that Appendix B only applies to safety-related SS&C's. Indeed, the County submits that recent NRC statements document that Appendix B criteria always have been intended to apply also to items important to safety but not safety-related.

LILCO states that "[t]he NRC's published regulatory agenda confirms this fact [that Appendix B only applies to safety-related SS&C's] by noting that the Commission has under consideration a rulemaking which would extend Appendix B to some non-safety-related items." LILCO Motion, p. 5 (emphasis supplied). In fact, however, the NRC's most recent Regulatory Agenda does not state that Appendix B will be extended, but that Appendix B always has been intended to be applied to the full range of SS&C's important to safety and that the clarifying rule under consideration by the NRC could expand the NRC's substantive review. To the extent Appendix B has not been so applied in the past, parties have not been following existing regulatory requirements. Thus, in NUREG-0936, Vol. 1, No. 2 (July 1982), the NRC states:

The proposed rule is intended to clarify the Commission's original intent by revising Criterion 1 of Appendix A to state specifically

that the criteria to be used for the quality assurance program required in Appendix A are those criteria contained in Appendix B. Additionally, in order to eliminate confusion over definition of the terms "important to safety" as used in Appendix A and "safety-related" as used in Appendix B, the proposed rule would, in Appendix B, delete the term "safety-related." (p. 90). 3/

Second, LILCO asserts that Mr. Hubbard, the County's chief QA consultant, agrees that Appendix B applies only to safety-related SS&C's. LILCO Motion at 5, citing Tr. 1342-43, 1353, 1454-57. If the Board will simply review these pages, the Board will ascertain that LILCO has not fairly represented Mr. Hubbard's statements. For instance, the following was stated at pages 1342-43:

- Q. Now, as I understand your contention, Mr. Hubbard, it is that there is a large group of structures, systems, and components that are important to safety, and a subset of that group are safety related, and it is that subset which is entitled to Appendix B quality assurance standards. Is that right?
- A. No.
- Q. In what respects is it not correct?
- A. As I previously stated, the ones who are in the category of safety related should have the full Appendix B. The ones that are in the broader category of important to safety should have the appropriate ones of the 18 criteria which in some cases might be all of the 18 criteria.
- Q. So what I said was correct with the exception of the fact that the remainder of the structures, systems, and components other than safety related that are important to safety in your scheme would get

3/ For convenience, the relevant pages of NUREG-0936 are attached hereto.

something less than the full Appendix B, but some portions of Appendix B.

- A. No. They would get some portion of the 18 criteria up to including all 18 criteria. I could conceive there would be some that are important to safety that it might be appropriate to use all 18 criteria.

Mr. Hubbard did not state that Appendix B criteria were inapplicable to SS&C's important to safety but not safety-related as suggested by LILCO. Rather, he indicates that the Appendix B criteria must be applied commensurate to an item's importance to safety. In this regard, Appendix B makes the same requirement.

The quality assurance program shall provide control over activities affecting the quality of the identified structures, systems, and components, to an extent consistent with their importance to safety. 10 C.F.R. Part 50, App. B, Criterion II.

C. LILCO next argues that the QA applicable to items important to safety but not safety-related was fully litigated during the hearing on Contention 7B and thus should be struck as unduly repetitious. The County submits that this argument clearly is wrong.

First, the County's direct testimony on Contention 7B did not address in the QA context the QA requirements applicable to SS&C's important to safety but not safety-related. LILCO asserts, however, that the County did address this subject at pages 19-22 of its 7B testimony. See LILCO Motion, p. 8 and n. 7. A review of pages 19-22 demonstrates that the County's 7B testimony addressed

inconsistencies in LILCO's classification system, not the details of LILCO's QA program. The QA program was mentioned in the classification context only because LILCO's classification table (FSAR Table 3.2.1-1) defines classification, inter alia, in terms of QA categories. This hardly constitutes direct testimony on the QA contentions and LILCO never so argued when it sought to strike portions of the County's 7B testimony. Thus, the County clearly is not attempting a "second bite at the apple" as LILCO asserts. See LILCO Motion, p. 9.^{4/}

Second, it is astonishing for LILCO to assert that its direct testimony fully covered QA requirements for items important to safety but not safety-related. That testimony with respect to design and construction addresses only briefly the GE and Stone and Webster programs and provides virtually no details of LILCO's program. With respect to OQA, that testimony is entirely silent.

Third, the undersigned, who conducted the County's cross-examination of those parts of the LILCO testimony dealing with QA, must take issue with the suggestion that the 7B hearing was intended to be the one and only opportunity to address the QA applicable to items important to safety but not safety-related. The undersigned personally limited his examination on QA matters

^{4/} LILCO does not even attempt to argue that the portions of the County's QA testimony which LILCO finds objectionable repeat statements made in the 7B testimony. If there were repetition -- and if it were in the same context -- there might be a scintilla of basis for LILCO's argument. However, the fact is that the 7B and QA testimony for Suffolk County are in a sharply different context and are not repetitious. Further, as noted later in this Response, a degree of repetition provides no basis for a motion to strike in the context of this case.

in the 7B hearing because Contention 7B focused on classification issues, not QA. It seemed far more appropriate to defer the details of such questioning (manuals used, audits conducted, etc.) until Contentions 12-15 were reached. Further, the LILCO 7B witnesses did not even purport to be QA experts, nor to have direct personal knowledge of the details of the respective QA programs. For that additional reason, in depth examination on QA details was viewed as inappropriate in the 7B context.

Finally, even if there is overlap between Contention 7B and the QA issues, that is no basis to strike the testimony. This Board has noted before that there is overlap between issues (for example, 7B and SC 3 overlap regarding the water level system; 7B and SC 16 overlap regarding the standby liquid control system; and SC 24 and SC 25 overlap regarding cracking of materials and ISI requirements). Such overlap may be inevitable in a complex case such as this one. It certainly does not support a motion to strike but only would argue for care by attorneys to ensure that the same questions are not repeated.

D. LILCO also argues that the three portions of the County testimony should be struck for the additional reason that the County has impermissibly attempted to expand the NRC's regulations without complying with 10 C.F.R. § 2.758. See LILCO Motion, pp. 9-10.^{5/} The County believes no detailed response is required beyond

^{5/} In footnote 11 at page 9 of its Motion, LILCO implies surprise that Mr. Hubbard would not define "important to safety" and "safety-related" as synonymous. There, of course, can be no real surprise in light of the testimony regarding Contention 7B. Indeed, Mr. Hubbard uses the same definitions as the Staff uses.

that provided previously which shows that the Contentions are not solely limited to QA for safety-related SS&C's and that the Appendix B criteria do have applicability to SS&C's important to safety.

E. The specific portions of the County testimony which LILCO moves to strike are set forth at page 7 of the LILCO Motion. The foregoing discussion, in the County's view, demonstrates why each allegedly objectionable item is, in fact, relevant and within the scope of the QA issues. In the interest of brevity therefore, the County, with one exception, will not address each item in turn.

The one exception is LILCO's suggestion that the discussion of the Kemeny Commission findings (pp. 58-59) is outside the scope of these Contentions. This discussion in the testimony addresses the proper scope and implementation of a QA program under Part 50, Appendices A and B, particularly in light of the TMI experience, and the adequacy of the NRC's I&E program. The criticisms of the NRC I&E program by the Kemeny Commission are particularly relevant because they concern I&E Region I, the same region which inspects Shoreham. Such matters are squarely relevant to Contentions 12-15.

II. The Portions of Testimony Regarding QA at Other Plants are Relevant

LILCO also argues that certain portions of Mr. Hubbard's testimony are inadmissible because the QA experience and breakdowns at other plants which are referenced by Mr. Hubbard are not linked

to Shoreham. LILCO Motion, p. 11. This argument must be rejected because it ignores the context in which the statements are made and the linkage to Shoreham which has been asserted in the testimony.

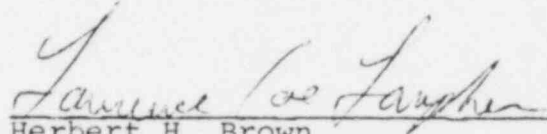
The allegedly objectionable statements on pages 7-8 concern the pervasiveness of QA requirements and how some plants have failed to comply. This is in the context of the section entitled, "Background and Importance to QA/QC." As such, Mr. Hubbard is attempting to provide a setting or context of concern for QA/QC matters which provides an introduction to his later detailed remarks regarding Shoreham. An expert is clearly entitled to provide such background data which provide a focus for his concerns.

The allegedly objectionable statements on pages 54-55 concern deficiencies in the I&E program -- a program which is squarely the subject of Contentions 14 and 15. If the NRC's I&E program has been inadequate at other plants, that evidence is relevant in considering the I&E program at Shoreham. Mr. Hubbard specifically states that these I&E breakdowns "are pervasive and systematic," making clear Mr. Hubbard's belief that the same deficiencies in the I&E program apply to Shoreham. Thus, the suggestion that Mr. Hubbard has not linked the problems to Shoreham is simply not true. Indeed, the title of the section on page 54 specifically links the deficiencies to Shoreham. Further, we expect in cross-examination of the Staff to determine whether there are any significant differences in I&E efforts

at Shoreham that would suggest that deficiencies in I&E inspections at other plants do not apply to Shoreham. Thus, this testimony is clearly relevant to Contentions 14 and 15.

Respectfully submitted,

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September 3, 1982

NRC Regulatory Agenda

Quarterly Report
April-June 1982

U.S. Nuclear Regulatory
Commission

Office of Administration



PART: 50

OTHER AFFECTED PART(S): None

FEDERAL REGISTER CITATION: Not yet published

SUBJECT: Applicability of Appendix B to Appendix A

SUMMARY: Description. The proposed rule would clarify the quality assurance program requirements for those structures, systems, and components of nuclear power plants which are important to safety. The proposed rule would also eliminate any possible confusion over the definition of the terms "important to safety" and "safety-related" and provide a clear statement in the Commission's regulations concerning the applicability of the quality assurance criteria (in 10 CFR Part 50) of Appendix B to the structures, systems, and components covered in Appendix A. The proposed rule could expand the extent of the review applied to nuclear power plant structures, systems, and components, and thus, it could help ensure the appropriate application of quality assurance program requirements during the construction of nuclear power plants.

Objective. To assure that the requirements of Appendix A to 10 CFR Part 50, Criterion 1, result in the establishment by licensees of effective quality assurance programs that are implemented in a manner that provides adequate assurance that structures, systems, and components covered in the appendix will satisfactorily perform their safety functions. Also, to assure that the requirements in Appendix B to 10 CFR Part 50 result in the establishment by licensees of adequate quality assurance requirements for the design, construction, and operation of certain structures, systems, and components that prevent or mitigate the consequences of postulated accidents that could cause undue risk to the health and safety of the public.

Background. In the aftermath of the Three Mile Island Unit #2 accident, a number of studies have concluded that the scope of the items to which the quality assurance criteria of Appendix B to 10 CFR Part 50 apply needs to be broadened to include the full range of safety matters as was originally intended. Typical examples of structures, systems, and components for which the Appendix B quality assurance program criteria may not have been fully implemented are in-core instrumentation, reactor coolant pump motors, reactor coolant pump power cables, and radioactive waste system pumps, valves, and storage tanks. The proposed rule is intended to clarify the Commission's original intent by revising Criterion 1 of Appendix A to state specifically that the criteria to be used for the quality assurance program required in Appendix A are those criteria contained in Appendix B. Additionally, in order to eliminate confusion over definition of the terms "important to safety" as used in Appendix A and "safety-related" as used in Appendix B, the proposed rule would, in Appendix B, delete the term "safety-related".

Legal Basis: 42 U.S.C. 2133, 2134, 2201, 2233.

TIMETABLE: Commission action on the proposed rule is scheduled for
November 1982.

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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_____)

CERTIFICATE OF SERVICE

I hereby certify that copies of SUFFOLK COUNTY RESPONSE TO LILCO'S MOTION TO STRIKE PORTIONS OF SUFFOLK COUNTY TESTIMONY ON SUFFOLK COUNTY CONTENTIONS 12, 13, 14 & 15 -- QUALITY ASSURANCE have been served to the following this 3rd day of September, 1982 by U.S. Mail, first class, except as otherwise noted.

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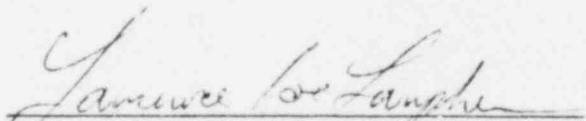
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