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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the matter of:

LONG ISLAND LIGHTING COMPANY
(Shoreham Nuclear Power Station)

Docket No.
50-322-OL

Location: Riverhead, New York Pages: 20,532 - 20,733

Date: Wednesday, April 6, 1983

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

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In the Matter of :
LONG ISLAND LIGHTING COMPANY : Docket No. 50-322-OL
(Shoreham Nuclear Power Station :
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Riverhead County Complex
Center Drive
Riverhead, New York 11901
Wednesday, April 6, 1983

The hearing in the above-entitled matter
reconvened, pursuant to recess, at 9:00 a.m.

BEFORE:
LAWRENCE BRENNER, Chairman
Administrative Judge
JAMES CARPENTER, Member
Administrative Judge
PETER A. MORRIS, Member
Administrative Judge

PENGAD CO., BATONNE, N.J. 07002 FORM AE-13

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C O N T E N T SWITNESSES DIRECT CROSS REDIRECT RECROSS BOARD

James H. Conran
(Resumed)
By Mr. Ellis

20,537

(Afternoon Session ... page 20,643)

James H. Conran
(Resumed)
By Ms. Letsche

20,718

EXHIBITS

<u>NUMBER</u>	<u>IDENTIFIED</u>	<u>RECEIVED</u>	<u>BOUND IN TRANSCRIPT</u>
LILCO No. 66	20,584		20,586
LILCO No. 67	20,589		20,595
LILCO No. 68	20,628		20,641
LILCO No. 69 & 70	20,653	20,654	20,654
Suffolk County No. 117	20,724		

RECESSES:

Morning - 20,579

Afternoon - 20,684
20,721

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P R O C E E D I N G S

(9:00 a.m.)

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3 JUDGE BRENNER: Good morning. We are ready
4 to proceed.

5 We have no preliminary matters, if none of the
6 parties do. We can immediately continue with the cross-
7 examination.

8 MR. ELLIS: Yes, Judge Brenner, I had one
9 item. I can do this on or off the record.

10 JUDGE BRENNER: Do it on the record.

11 MR. ELLIS: All right, sir.

12 I have not yet spoken to Mr. Dynner, but I was
13 looking really for a little more guidance on what the Board
14 wanted with respect to the OQA procedures. We have
15 proceeded in accordance with the spirit of that protocol
16 and essentially have reached accommodation on a number of
17 procedures.

18 I take it the Board doesn't want us to list
19 all of these various accommodations, but rather a kind of
20 summary; am I correct?

21 JUDGE BRENNER: We want precisely the same
22 content that the parties would think is required for a
23 settlement agreement, and it does not occur to me that kind
24 of detail would be necessary for that. We just want to
25 know what the agreement -- a summary of what was done

1 and what the agreement is that has been reached. There
2 were some possible alternate paths in the protocol,
3 as you recall, and I just want to see how it all worked
4 out in the end. That affects what you might be asking
5 us to do or not to do in the future.

6 And also, while we have the record open here,
7 I want to make sure we have everything before us that is
8 now timely to get before us on quality assurance/quality
9 control, and it is easier to do while we're on the
10 record in the event we have any questions.

11 Of course, if we knew now, we would have no
12 questions; there would be no problem of your supplying
13 it after we were no longer in session, but we don't know
14 at this point. I don't want it to drag out. Once
15 these things go out of session, things have a habit of
16 dragging on and on.

17 With respect to very minor matters that came
18 up yesterday and the responses that came back, that the
19 County should have acted more promptly on the issues
20 that were not important. I don't want this to drag out.

21 MR. ELLIS: I understand, Judge Brenner.
22 I think both parties have been doing their utmost in
23 this connection.

24 JUDGE BRENNER: I certainly know that on QA,
25 and we know the work that has been involved. I guess

1 I should say we received an I&E report which we do in
2 the normal course of events, and the parties did also,
3 and that lists some of the procedures that I&E made
4 comments on before of the NRC Staff. But we do want
5 to see the agreement and we would like to see it while
6 we're in session.

7 As of yesterday, I did not know whether we
8 would be in session next week. That depends on progress
9 here, and even as of today, ever the eternal optimism, I do
10 not want to assume we will be here next week, although it
11 is certainly a possibility.

12 MR. ELLIS: Yes, sir.

13 Whereupon,

14 JAMES H. CONRAN

15 was recalled as a witness, and having been previously
16 duly sworn, was examined and testified further as
17 follows:

18 CROSS-EXAMINATION (Cont'd.)

19 BY MR. ELLIS:

20 Q. Good morning, Mr. Conran.

21 A. Good morning.

22 Q. Mr. Conran, I would like to cover a few
23 matters that follow-up on questions that the Board asked
24 you yesterday.

25 You indicated in response, I believe, to

1 Judge Carpenter's questions, that the number -- you did
2 not think the number of questions in the Shoreham FSAR
3 were not extraordinarily large; is that correct?

4 A. I said I hadn't been able to determine
5 that, Mr. Ellis.

6 Q. You hadn't actually compared with any other
7 FSARs to determine that?

8 A. No.

9 Q. It is true, isn't it, that many of the questions
10 that are asked are generic questions by which the Staff
11 asked the same questions of similar plants being reviewed
12 at the same time, if you know?

13 A. I would presume that's true, yes.

14 Q. But you don't know of your own knowledge?

15 A. No.

16 Q. Did any of the questions in the Shoreham FSAR
17 relate to the definition or scope of the term "important
18 to safety," or GDC-1?

19 A. Specifically the definition? I wasn't looking
20 for specific reference to the definition. I was looking
21 for indications of problems that might arise -- because
22 of your way of interpreting "important to safety."
23 I wouldn't really expect to see references to the
24 definition.

25 Q. And you didn't in what you looked at?

1 A. No.

2 Q. You indicated that you examined some of the
3 questions in the Shoreham FSAR and my notes indicate to see
4 if there was an extraordinary disagreement that you would
5 attribute to the difference in the use of the term
6 "important to safety." Did you find any that you would --
7 extraordinary disagreements that you would attribute to
8 the difference in the use of the term "important to
9 safety"?

10 A. I wasn't able to determine that. I haven't
11 finished that look, incidentally.

12 Q. When did you start that?

13 A. Last week.

14 Q. You also indicated that some of the questions
15 you reviewed involved Staff positions. The use of Staff
16 positions in round 2 questions is not unusual, is it?

17 A. No. I didn't mean to suggest that it was
18 unusual. It is a mechanism, however, that is used to
19 resolve continuing dispute or disagreement between the
20 Staff and Applicant.

21 Q. When you use the term "Staff positions" in
22 reference to the FSAR questions, you didn't mean to
23 imply anything unusual about Shoreham, did you?

24 A. I thought that I -- I tried very hard to
25 leave the impression, to be fair about it. I don't know

1 that Shoreham is unusual in that respect.

2 Q Mr. Conran, is it fair to say that part of
3 your --

4 Is it fair to say that your concern that LILCO
5 acknowledges regulatory requirements only for safety-
6 related and no regulatory requirements for nonsafety-related?

7 A I believe that is true. I don't say it that
8 way, but I think I understand what you mean when you
9 say that.

10 Q Well, we were having a meeting of the minds,
11 Mr. Conran.

12 Would you agree that LILCO does acknowledge
13 that nonsafety-related systems, structures and components,
14 do have safety significance apart from part 100 of
15 Appendix A?

16 MS. LETSCHE: Judge Brenner, I would like to note
17 an objection to this. It's all been asked and answered
18 several times on the record here. I think Mr. Conran
19 explained several times his position, his understanding on
20 that, and I recall a specific question about part 100
21 considerations of LILCO being asked by Mr. Ellis.

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1 JUDGE BRENNER: It sounds very familiar to me,
2 too, but let me hear the question again.

3 Mr. Ellis, are you asserting it's a different
4 question, or is it you never got the answer?

5 MR. ELLIS: It's a little of both, but I
6 think it is largely the second. There have been a
7 great many questions and answers, and I think Mr. Conran
8 reasonably wants to explain his position, but it isn't
9 always clear. We understand his responses or his
10 responses have been responsive.

11 JUDGE BRENNER: Let me hear the question.

12 (The reporter read the record as requested.)

13 JUDGE BRENNER: I'll allow the question, because
14 I want to hear Mr. Conran's answer, not because we do not
15 have testimony in the record on the point.

16 We have abundant testimony on the record,
17 but I'm not sure as of this moment that we've got
18 Mr. Conran's direct answer to it.

19 MS. LETSCHE: Judge Brenner, I didn't object,
20 and I don't intend now to object to Mr. Ellis' prior
21 question, because I assumed it was some sort of a foundation
22 question, asking about Mr. Conran --

23 JUDGE BRENNER: You got the ruling on this
24 last one. We can proceed.

25 MS. LETSCHE: Could I finish what I was --

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JUDGE BRENNER: No, let's proceed. I ruled on the objection, and let's get the answer now.

THE WITNESS: I think the answer today is the same as yesterday. LILCO acknowledges some safety significance. LILCO does not acknowledge the degree of safety importance that the Staff does, because LILCO does not acknowledge that it has a level of importance to safety sufficient to address it as a requirement under the regulations.

The way that the agency indicates how important it thinks various matters are to safety, if it has a sufficient level of importance to safety, it is addressed either in or under the Commission's regulations.

BY MR. ELLIS:

Q Specifically addressed?

A I said in or under. The general design criteria expresses generally the Commission's safety concerns, for example, with regard to design and construction. Further detailed guidance is given in Regulatory Guides or standard review plans, or such Regulatory Guidance documents. Those are not in the regulations as such, but they are no less requirements in the sense that they derive their authority from the regulations.

Q For particular structure, system, or component

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1 that is nonsafety-related, for you to determine whether the
2 Applicant or LILCO ascribes to it the appropriate degree
3 of safety significance, is that degree of safety
4 significance defined anywhere?

5 A By "defined", an explicit definition as in
6 a dictionary, no. The first indicator, the first
7 indication, of the importance that the Commission would
8 attach to a component or a system is the fact that it's
9 addressed in its regulations.

10 Further guidance -- if detailed requirements
11 or guidance are not given in the regulations, for example, the
12 ASME Code, it is incorporated in the regulations by
13 reference, if not that way, then by Regulatory Guides or
14 a standard review plan which specifies an acceptable way
15 to do it.

16 Q So that compliance with the Regulatory
17 Guidance and the standard review plan would be to
18 accord a nonsafety-related structure, system or component
19 the degree of safety significance which the Staff would
20 find appropriate.

21 A I think not, Mr. Ellis. To accord the safety
22 significance to a structure, system or component, in the
23 way that the Staff does, I guess, in the term that I just
24 used, takes two steps. One is, you acknowledge that it
25 is important enough to address in or under the regulations

1 in the first place.

2 Secondly, you meet detailed specifications,
3 wherever they appear, either in the regulations themselves
4 or in the Regulatory Guidance document, or, if you prefer,
5 an alternate scheme to a Reg. Guide, for example, you employ
6 the detail and the Staff figures out whether it is
7 equivalent or not.

8 Q As I understand it, you said there are two
9 says. One is to acknowledge that it is covered by the
10 regulations. That in and of itself doesn't define or
11 prescribe any quality standards or quality assurance,
12 does it, for the nonsafety-related?

13 A Quality assurance requirements?

14 Q Yes.

15 A Presently it does not.

16 Q And just the fact that you acknowledge that it is
17 covered by GDC-1 does not in and of itself define any
18 quality standards or quality assurance?

19 A I would say it's necessary but not
20 sufficient, if that helps any. It is necessary to
21 acknowledge it, but you need additional information to know
22 how to implement it.

23 Q My point was, Mr. Conran, earlier I asked you
24 whether the compliance with the Regulatory Guides and
25 the SRP was sufficient, and you indicated, I thought --

1 tell me if I'm wrong -- that in addition to that, it
2 was necessary to acknowledge that the regulation covered the
3 nonsafety-related structure, system or component.

4 We're talking about DGC-1; isn't that right?

5 A That's right.

6 Q My question is, acknowledging the GDC-1 covers
7 a particular nonsafety-related structure, system or
8 component does not in and of itself result in the
9 application of any quality standard or any quality
10 assurance. It appears specific, does it?

11 A I think I've already acknowledged that there
12 are other additional detailed specifications or requirements;
13 is that right?

14 Q Well, could you answer my question. Could
15 I have that repeated, please?

16 (The reporter read the record as requested.)

17 MS. LETSCHE: Judge Brenner, I think Mr. Conran
18 indicated he has answered that question. Mr. Ellis has
19 asked him about three times now, and I think Mr. Conran
20 has, at least in his opinion, answered it.

21 JUDGE BRENNER: Well, that is normally a
22 witness' opinion when one answer has been given.

23 MS. LETSCHE: I am now noting my objection.
24 This has all been asked and answered.

25 JUDGE BRENNER: We have mixed feelings as to

j-2-6

1 whether we've heard a direct answer from Mr. Conran or
2 not. We've heard answers. Let's try it one more time on
3 this question, and then we'll move on.

4 Mr. Conran.

5 THE WITNESS: I think the answer that you're
6 looking for and the one that is applicable and by far
7 the most indicative that I can think of is no,
8 acknowledgement that a structure, system or component is
9 covered under the regulations does not specify or does not
10 see to it that that -- that the intended requirement is
11 met.

12 One reason that I was reluctant to give a
13 flat no, but answer is in the case of quality
14 assurance under GDC-1, since the Staff offers no
15 detailed guidance on how to implement nonsafety-related
16 QA program, in the past, I believe, as Mr. Haass
17 testified last summer, I believe, that acceptance of
18 the commitment, the acknowledgement that nonsafety
19 QA program is intended is covered under the regulations
20 was accepted as enough. That's the only example,
21 specific example that I could think of where the answer
22 wouldn't be a straightforward no.

23 But let me add just another comment to that,
24 Mr. Ellis. It seems clear that in that specific case that
25 the Staff regarded acknowledgement -- an acknowledgement of

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1 the requirement under the regulations for a nonsafety-
2 related QA program to be necessary and sufficient, even
3 though no additional guidance was required.

4 BY MR. ELLIS:

5 Q But a licensee could easily have a program
6 and apply nonsafety-related QA, or, that is, QA to nonsafety-
7 related structures, systems and components without a
8 commitment to do so; isn't that right?

9 A Yes. And I understand that's been done.

10 Q By Shoreham?

11 A Yes.

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1 Q Back to the point on whether LILCO acknowledges
2 structures, systems and components that are not safety-
3 related or covered by the regulations; it is true, isn't
4 it, that you understand that LILCO complies with
5 Part 50, Appendix I, which is "Performance Requirements
6 Under the Regulations"; isn't that right, Part 50, Appendix I?

7 A As I understand it, to the extent that
8 LILCO's submittals have been reviewed by the Staff for
9 compliance of Part 50, no deviations have been found,
10 at least any questions have been resolved in that
11 regard, yes.

12 Q And do you agree that in order to meet
13 Part 20 in Appendix I that those regulations encompassed
14 the performance of nonsafety-related structures,
15 systems and components, such as radwaste.

16 A Could you give me the question again, Mr. Ellis?

17 Q Yes.

18 It's true, isn't it, that compliance with
19 Part 20 and Appendix I to Part 50 encompasses the
20 performance of nonsafety-related structures, systems
21 and components, such as the radwaste?

22 I still am having trouble. "Encompasses," I guess,
23 is the word I'm wondering about.

24 Q Can you comply with Part 20 without properly
25 designing and operating a radwaste system or other

1 nonsafety-related systems essential to the compliance
2 with Part 20?

3 A I think not.

4 Q So, to that extent, as you understand it, then,
5 LILCO does acknowledge that certain regulations
6 extend to nonsafety-related structures, systems and
7 components?

8 A I'm not sure that I agree with that, to
9 acknowledge something is a positive act, in my view. To
10 say that you have -- to say that you've met the Staff's
11 expectations or requirements under their regulations
12 is not to acknowledge that they require you to do so.
13 That seems to strike you as too subtle of a difference,
14 but it is the important difference to me.

15 The fact that LILCO has done something does
16 not necessarily -- does not imply to me that LILCO thinks
17 that it was necessary to do that to protect public
18 health and safety.

19 You could have done it simply to get a license.

20 Q Well, let's explore that. You are aware, as
21 you've already testified, that LILCO did apply quality
22 assurance and quality standards to nonsafety-related
23 structures, systems and components, and I think the concern
24 you are expressing is that LILCO did so on its own without
25 acknowledging a regulatory requirement to do so.

j-3-3

1 Now, isn't it fair to say that by doing that,
2 without the requirement or the feeling that there was a
3 regulatory requirement, in fact, reflects favorably
4 on LILCO for doing something more than it perceived
5 the regulations required.

6 MS. LETSCHE: Just note my objection to
7 Mr. Ellis' characterization of Mr. Conran's testimony.

8 MR. ELLIS: If there is anything I
9 characterized, Mr. Conran, you are free to correct me.
10 Would you like to have it read back?

11 THE WITNESS: Yes.

12 (The reporter read the record as requested.)

13 THE WITNESS: Let me stay on the record for a
14 moment.

15 JUDGE BRENNER: I didn't want Mr. Conran to
16 forget. That was a perfectly appropriate observation
17 by Ms. Letsche, and maybe I was remiss in not going
18 through these things for you, Mr. Conran.

19 I did not, because I observed -- because you
20 certainly handled yourself very well on the stand last
21 spring with respect to these matters, and I knew you
22 understood that if you don't understand a question, it's
23 a perfectly acceptable answer if somebody has
24 mischaracterized something, it's perfectly acceptable
25 for you to conclude that observation on your part, as part

1 of your answer

2 We do like to get direct answers in the
3 first instance to the fullest extent practicable, and
4 then you can add the explanation after. Some of the problem
5 is that we get the full explanation first, and
6 by the time you're done, after a few questions, it becomes
7 apparent what's on your mind, and how the explanation
8 relates, but sometimes when you start out with the
9 explanation, the relationship is not immediately
10 apparent either to us or sometimes to the questioner.
11 So it is easier for all of us, including you, if we
12 get direct answers first, and then the explanation.

13 But don't feel restrained not to include
14 any disagreement you have with assumptions made as part
15 of your explanation.

16 (The reporter read the record as requested.)

17 THE WITNESS: Well, I think everyone would
18 like to think so, Mr. Ellis, that it reflects favorably,
19 but the point that I've been making is, it is not
20 necessarily so that LILCO very well may have
21 met what the Staff required, even though they didn't
22 think it was necessary, and never acknowledging that it
23 was required, simply to get a license. So the system
24 may be put together properly.

25 When you operate the system for the next

1 20, 30 years, the way that LILCO thinks about safety is
2 what is going to determine the way that the plant is
3 operated, not the way the Staff thinks about it; it's the
4 way that LILCO thinks about it. So, the fact that you've
5 done it, the fact that you've satisfied certain specific
6 requirements does not indicate to me that you attach
7 to that component the same safety significance that the
8 Staff does.

9 In fact, not acknowledging it for six or
10 eight months carries its own implications.

11 BY MR. ELLIS:

12 Q Well, if LILCO did not consider that it
13 was required under the regulations to apply the quality
14 assurance and quality standards to the nonsafety-related
15 set as it did, then are you saying that that may still
16 not reflect favorably on LILCO, because LILCO may have done
17 it in order to get a license.

18 A That's right.

19 That's not an unusual -- it's not an outrageous
20 viewpoint. There are people on the Staff who I work with
21 who don't think that everything required under the
22 regulations is necessary, but they acknowledge what is
23 required, and they go for it. They try to apply that and
24 enforce it. That's why it is very important for both
25 parties in this licensing proceeding to acknowledge what

1 is required without regard to what individuals think is
2 necessary to protect public health and safety.

3 Q So, would it be fair to say that it
4 may reflect favorably on LILCO if you knew all the
5 facts; you might conclude that it reflected favorably
6 on LILCO?

7 In other words, LILCO did it for other reasons?

8 MS. LETSCHE: I object to that question,
9 Judge Brenner.

10 JUDGE BRENNER: Better tell me a little more.

11 MS. LETSCHE: Mr. Conran has responded to
12 Mr. Ellis' question about whether it may or may not
13 reflect favorably on LILCO.

14 MR. ELLIS: Is this an objection?

15 JUDGE BRENNER: Wait, now.

16 MS. LETSCHE: Yes, it is.

17 JUDGE BRENNER: I'll tell you what. If you want
18 to talk to each other, I'll go away and relax, and come back
19 in an hour.

20 Let's hear the basis for the objection.

21 MS. LETSCHE: The objection is this has been
22 covered several times already, and Mr. Ellis' questioning,
23 in addition, had several assumptions and was requesting
24 Mr. Conran to speculate.

25 JUDGE BRENNER: Arguably, at least apparently

1 an inconsistent objection, that is, if it's a repeat
2 question, how could he now be including new assumptions?

3 I think it's all been covered, also. I
4 was just about to jump in on my own, but I'll give
5 Mr. Ellis an opportunity to tell me briefly why he's
6 entering into new ground now, as opposed to what he did
7 yesterday.

8 MR. ELLIS: I think I'm going to an important
9 point here, and rather than make the argument --

10 JUDGE BRENNER: The only question is, is it
11 a new point, not whether it is important or unimportant.

12 MR. ELLIS: It is a new aspect of something
13 we have covered, and I feel, if you give me just a few
14 more questions, I think I can demonstrate that.

15 JUDGE BRENNER: All right. I'll give you
16 that leeway, but keep in mind that we think we heard
17 a lot of this yesterday and this morning.

18 MR. ELLIS: Would you read my question again,
19 please?

20 (The reporter read the record as requested.)

21 THE WITNESS: I think it's fair to say that it
22 may reflect favorably on LILCO. In fact, if you recall,
23 that's sort of the attitude that I took this last summer
24 when I didn't know that you denied a third of -- or
25 25 percent of the Commission's regulations applicability.

1 The test for licensing is not that LILCO may operate the
2 plant safely.

3 It's that you have reasonable assurance
4 that's going to happen, and reasonable assurance, I
5 think requires something other than speculating about LILCO's
6 understanding of the level of importance of safety.

7 It's a very simple thing to establish by
8 acknowledging it, by stating it the way that the
9 Staff does.

10 I think what adds to the original concern
11 that was raised was that LILCO has avoided every opportunity
12 to do just that for a long while now.

13 BY MR. ELLIS:

14 Q By "avoided every opportunity for a long
15 while," are you saying that LILCO has not agreed to
16 accept the definitions since it -- is that what
17 you're referring to -- since the hearing?

18 A That's one straightforward way of doing it,
19 yes. I've tried not to be prescriptive about it, and
20 we've listened to proposals about how LILCO might do that
21 otherwise, and we've tried a couple of alternative
22 schemes, and both times, it's reduced itself to
23 tautology, and if there is really an understanding
24 between us on this point, why is it we can't say it, write
25 it down without the discussion that reducing itself to

1 to a tautology. There is an element of understanding
2 on this point, and I think it's a general point.

3 It hasn't been illustrated with specific
4 examples, because I'm not an example man, but it is a
5 fundamental, and it's an important point.

6 Q Well, Mr. Conran, are you, I take it you're
7 bothered by the fact that agreement between the Staff
8 and LILCO wasn't reached for some months after; is
9 that correct? You would have expected agreement to have
10 been reached sooner?

11 A Well, I've got to admit I didn't understand --
12 I didn't understand LILCO's approach, and not taking the
13 most direct approach to establishing an understanding.

14 In fact, in retrospect, it is easy to be critical
15 on these things; I understand that. But I think LILCO
16 might have tried to clarify a little bit sooner that
17 there was this very fundamental difference of understanding
18 on the part of LILCO and the Staff.

19 It took me a while to figure it out, but
20 I think you knew it last summer.

21 Q Well, Mr. Conran, didn't you know -- is there
22 any fact about LILCO's construction of the term "important
23 to safety" that you did not know as of July 22, which
24 I think is the last day that the Staff testified in
25 cross-examination this summer? There is no fact you

1 didn't know, is there?

2 A Yes.

3 Q Which fact did you not know?

4 A I didn't know that you didn't consider
5 conceptually the nonsafety equipment in the plant
6 not to be covered by the regulations.

7 In fact, if it was done in good faith, I'm
8 sure, but I remember sitting in on a number of
9 discussions last summer where we tried very hard to
10 establish that we did think alike. I thought conceptually
11 we did, and we were trying to get together on the
12 language.

13 I didn't understand the conceptual difference.

14 MR. ELLIS: Would you read me back the first
15 sentence of his answer, please?

16 (The reporter read the record as requested.)
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1 Q You knew, in fact, Mr. Conran, didn't you, that
2 LILCO interpreted important to safety to be the same as
3 safety-related; isn't that correct?

4 A I knew that you interpreted the term "important
5 to safety" to be the same as the term "safety-related."
6 It was not at all clear to me that you interpreted
7 the concept "important to safety" to be the same as the
8 concept of "safety-related."

9 Q What do you mean by the concept, "important to
10 safety"?

11 A Well, I mean the irrespective of what we call
12 the two sets that are involved -- important to safety and
13 safety-related, we call them A and B. The fact that one
14 is larger than the other, the fact that B is a subset of A
15 or safety-related is a subset of important to safety and that
16 both of them are covered under the regulations that they are
17 concepts, classification concepts that are intended to
18 convey the scope of the Commission's concern about how you
19 assure -- reasonably assure public health and safety.
20 That's what I mean by "concept."

21 I know we have this problem -- you have a
22 language difficulty to begin with, it's difficult to explain
23 with language, I guess, but I thought up until now that
24 people understood the difference between a language
25 difficulty and a conceptual difficulty.

1 Q Let's look, specifically, at GDC-1 and the
2 example.

3 You knew, didn't you, in July that LILCO's
4 construction of the term "important to safety" meant that
5 it construed GDC-1 to apply only to the safety-related
6 set?

7 MS. LETSCHE: Judge Brenner, I have to have
8 to note my objection to this as all being asked and
9 answered.

10 JUDGE BRENNER: It sounds very familiar,
11 Mr. Ellis.

12 MR. ELLIS: Well, Judge --

13 JUDGE BRENNER: Let me tell you where I thought
14 you were going to go more rapidly. I thought you were going
15 to what I consider a lot of generalizations from
16 Mr. Conran we went through yesterday and then this
17 morning, generalizations in the answer, without criticizing
18 the questions or the answers. It's just a comment
19 on the nature of the inquiry. I don't have one tangible
20 thing to base a finding on today that I've heard and
21 again, that's just a comment, not criticizing the questions,
22 per se. It's a factual comment on the questions and the
23 answers. I thought you were going to lead in from what
24 Mr. Conran said he was presently most concerned about;
25 that is, what's going to happen in the future, given
his view of what LILCO's approach is into and inquiry

1 onto this proposed licensing amendment and what he thinks about
2 that and why he thinks it.

3 I thought that was the natural lead-in
4 and that's what I want to hear about sooner rather than
5 later, because that is one fact that I know has changed.

6 There is this amendment thing proposed, worked
7 out, if you will, between the Staff and LILCO and this is
8 just speaking for myself, not for the Board. I don't know
9 what it means or why the Staff thinks it's so terrific,
10 and Mr. Conran apparently doesn't think it's so terrific,
11 either. But some things he said yesterday led me to
12 believe that it was a useful step in the right direction.
13 Maybe that's wrong, but I want to hear that from him
14 one way or the other, since he seemed to be worried about
15 that time frame. That is a potential future rather than
16 a purely what may have occurred in the past. He seems to
17 be looking for some sort of commitment, too.

18 If acknowledgement that rules embrace certain things, that's
19 the way he's expressed it, when he expressed it that way,
20 that looked to me to be in line with that type of
21 commitment, which on my own I didn't think was any
22 big deal, to put it bluntly. So now I've given
23 my characterization of what I thought Mr. Conran said
24 yesterday about the other things. I'm particularly interested
25 in hearing what he has to say about that, because it sounded

1 a little different, or at least in addition to what he
 2 said in the fuel testimony. So I thought you would be
 3 leading to that.

4 I know from the cross-plan you're going to lead
 5 to that, but the question is, how much more is there
 6 before you get into it more directly?

7 MR. ELLIS: There was quite a bit more, and
 8 I had not intended to use that. I will go to that point
 9 directly now, if you wish.

10 There is a great deal more, though, that
 11 I have to do in this general area, I think, and Mr. Conran
 12 has indicated that the point that he learned after
 13 July 22nd was a conceptual difference and I'm exploring
 14 that.

15 I have just a couple more questions, maybe one
 16 or two more on that, and that's all. Then I plan to remain
 17 in the general area, but I will be getting to the area
 18 that you mentioned, not as soon as I think.

19 JUDGE BRENNER: I'm not ordering you to get to
 20 it directly. I just wanted you to know what I just said.

21 MR. ELLIS: Yes.

22 JUDGE BRENNER: I don't want to spend a whole
 23 day before you get to it.

24 MR. ELLIS: I understand that.

25 JUDGE BRENNER: I also think you're entitled to

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1 a lot of leeway, given the unusual nature of this; that
2 is, you had a witness who testified for a party last
3 spring and now he says he has a different view and it's
4 important to find out why he has a different view and the
5 nature of that, necessarily, involves a lot of
6 repetition. That fact is why we denied a large
7 part of the motions to strike for this very reason. But
8 I think Ms. Letsche's point which I have shared a number
9 of comments this morning, is not just that it is repeating
10 testimony from last spring, but rather it is repeating
11 testimony from yesterday and this morning.

12 There comes a point where you are arguing
13 with the witness rather than getting new information;
14 not that your tone or your words have been argumentative.
15 In fact, quite the contrary. But you get as much as
16 you can get from a witness and then you have to rely on
17 the record of other witnesses as well as this witness.

18 MR. ELLIS: Yes, sir, I understand that.
19 I think in part I'm having and have had some difficulty
20 in understanding the answers, and I'll -- if I can
21 proceed with this, I'll try to move a little more
22 quickly. But it is, as you've noted, a situation where a
23 witness has indicated a difference in opinion and am
24 hoping to be able to explore that fully so that we can
25 understand what Mr. Conran means.

1 JUDGE BRENNER: I'm going to give you some more
2 leeway in a moment, but when you say you don't understand
3 the answers, distinguishing in your mind between not
4 understanding Mr. Conran's expression of his reasons from
5 not understanding how that could change his view, the
6 latter is argumentative. The former is reasonable
7 inquiry, and I think you may be drifting into the latter.
8 But just bear that in mind.

9 MR. ELLIS: Yes, I will. I think in the
10 questioning, though, I think maybe Mr. Conran and I may
11 come to a clearer understanding and it may be that
12 Mr. Conran may see things differently, too, as a result.

13 May I have the last question.

14 Or was there a question pending? I think
15 there was.

16 JUDGE BRENNER: Yes, there was.

17 Can you read it, please.

18 (The reporter read the record as follows:

19 "Q Let's look, specifically, at GDC-1 and
20 the example.

21 "You knew, didn't you, in July that LILCO's
22 construction of the term 'important to safety' meant that
23 it construed GDC-1 to apply only to the safety-related set?")

24 A If I understand the question correctly, no,
25 I didn't understand that.

1 BY MR. ELLIS:

2 Q Let me rephrase the question.

3 As a result of the testimony that you heard,
4 isn't it true that you understood that LILCO construed
5 "important to safety" to be equal to "safety related"?
6 That's true, isn't it?

7 A The term "important to safety" equivalent
8 to the term "safety-related."

9 Q And, therefore, wasn't it also --

10 JUDGE BRENNER: Wait a minute. He didn't answer
11 the question; he just repeated part of it.

12 You meant to answer the question, Mr. Conran,
13 but the transcript will only show what your exact words
14 were and you didn't say yes or no; you just repeated
15 a phrase out of the question.

16 A I understood that you equated the term "important
17 to safety" with the term "safety-related."

18 BY MR. ELLIS:

19 Q And LILCO did that in a regulatory sense,
20 didn't it?

21 MS. LETSCHE: I object, Judge Brenner. I don't
22 know what that question means.

23 JUDGE BRENNER: I'll sustain that question.

24 BY MR. ELLIS:

25 Q And LILCO construed the regulations that way?

1 A. It may be hard for you to believe, Mr. Ellis,
2 but I'm telling you I did not understand last summer that
3 your construction of the term "important to safety" meant
4 that you thought that there were no requirements under the
5 regulations or that the regulations did not address
6 nonsafety-related equipment; that there were no
7 requirements under the regulations for nonsafety-related
8 equipment. I did not understand that.

9 Q. When you say "under the regulations," are you
10 referring to GDC-1?

11 A. Well, I'm referring generally to every place
12 that the term "important to safety" appears.

13 Q. Well, Mr. Conran, didn't you find it necessary
14 to file rebuttal testimony in 7-B because you
15 were concerned?

16 A. I was concerned about language difficulties,
17 Mr. Ellis, and how that was interfering with the ordinarily --
18 normal review process. If we can't understand each
19 other -- if you mean something different by "important to
20 safety" than I mean, then your affidavit where you say I
21 meet all important to safety, I comply with all important
22 to safety requirement regulations, doesn't mean much.
23 It means something different to you than it does to me, and
24 that interferes with the way that the Staff gets to its
25 conclusion of reasonable assurance of no undue risk in the

1 operation of Shoreham by the normal process.

2 I also pointed out how it could lead to
3 misunderstandings and perhaps safety significant
4 misunderstandings in the future in the operation of
5 Shoreham, just the language difficulty.

6 JUDGE BRENNER: Mr. Ellis, I repeat myself.
7 I've heard all this before and you've heard me say it
8 before, so we have a lot of redundancy. Where are you in
9 your cross-plan?

10 MR. ELLIS: Judge Brenner, I am between -- I'm
11 actually following-up on matters that the Board raised
12 yesterday. I'm going to go through part 2 and 3, and
13 proceed in the cross-plan.

14 JUDGE BRENNER: Just tell me where you're going to
15 go, what part.

16 MR. ELLIS: I have covered 1, 2, and I think 3 has
17 been largely covered; there are a couple of things I want
18 to do within 3. I may be looking at different numbers.
19 I'm looking at an earlier draft, but that's all I have
20 here and I think my numbers have been changed. I still
21 have 4 to do. There are several back further that I think
22 have been covered.

23 JUDGE BRENNER: As soon as you finish what you
24 consider to be follow-up to our questions, you are going
25 to pick up somewhere in 5? You better get the same

1 version we have if you don't have it.

2 MR. ELLIS: Yes, sir, I have a couple of related
3 items in 3. For example, item 13 has been covered.

4 JUDGE BRENNER: Item 13 -- I'm looking at 3 on page
5 3, questions to establish, and then you have --

6 MR. ELLIS: Right.

7 JUDGE BRENNER: And you have more to do in 3,
8 then?

9 MR. ELLIS: Just a bit more.

10 JUDGE BRENNER: Then you're going to go in
11 sequence to 4 and so on?

12 MR. ELLIS: I don't know if I'll do it in
13 sequence. There's been -- a lot of it has been covered
14 and I don't know whether I'll do it in sequence or not.
15 For example, if you look at 16, I don't propose to go through
16 all of those. I simply propose to ask some questions to
17 confirm that that hasn't been reviewed.

18 JUDGE BRENNER: I guess, well, I will inquire
19 now on the record, what was the time estimate you gave to
20 the parties yesterday off the record, or what is your
21 present time estimate, to ask it more directly?

22 MR. ELLIS: I think I indicated all day.

23 Judge Brenner, on this last point, I'd like
24 leave to come back to that because I am frankly surprised
25 by that testimony and I would like to be able to --

1 JUDGE BRENNER: Well, you are arguing with him.
 2 You see, you don't understand how that could be the basis
 3 for his position. That's different than not understanding
 4 his expression of the position, and that's my problem.

5 MR. ELLIS: I am surprised that he could say
 6 today --

7 JUDGE BRENNER: Right, exactly.

8 MR. ELLIS: Right.

9 JUDGE BRENNER: I know. We've got the record
 10 to say how could he say that today, given what the
 11 record was before and maybe we'll agree with you and
 12 maybe we'll disagree with you. But you are not going to
 13 get anything more from him on that.

14 MR. ELLIS: If I take the time to show him the
 15 record, he may have a different view.

16 JUDGE BRENNER: He's going to tell how now
 17 that you pointed it out to him and now that he's seen the
 18 light, he can see how sincerely LILCO's witnesses had
 19 something different in mind than what we had in mind. But
 20 he didn't understand it that way then, and that's what he's
 21 going to tell you, I predict, because he's said
 22 essentially that already.

23 MR. ELLIS: Well --

24 JUDGE BRENNER: So what are you going to do with
 25 that kind of answer? You're going to say how could that be?

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1 How could you not understand it, then, and you're going to be
2 off arguing with him. Again, I don't mean in an
3 argumentative tone. I'm talking about it is in the sense of
4 a nonproductive inquiry, not that you're being unfair.
5 Your tone has not been argumentative or anything of that
6 nature.

7 MR. ELLIS: It may be the same thing and the
8 Board and I are understanding the same thing that
9 Mr. Conran is saying and it is difficult to talk about it
10 without testifying.

11 JUDGE BRENNER: I'm not going to cut you off
12 again. I tell you, I'm sure you don't think so. I believe
13 I'm being patient because I recognize the unusual nature of
14 the situation for your client, and I'm giving you leeway
15 for that reason. But if it continues like this and then
16 as we get to the end of the day you tell me you've got a
17 lot left to cover because it took longer than you thought,
18 I'm going to be very unhappy. But if you think this is
19 important, you weigh this in terms of the other priorities
20 of things you want to ask with your goal of still finishing
21 at the end of the day.

22 MR. ELLIS: Well, that I'm not sure is possible
23 now, frankly.

24 JUDGE BRENNER: Don't miss it by much, okay?
25 Go ahead.

1 MR. ELLIS: I'm doing my utmost, Judge Brenner,
2 but this is, I think, an extraordinary situation, as
3 you pointed out, but I'll do my utmost.

4 JUDGE BRENNER: Think about what you want to
5 risk not getting to if we get to losing patience in terms
6 of the sequence of how you are going to do things.

7 MR. ELLIS: Is there a question pending?

8 JUDGE BRENNER: I don't know. If there is, ask
9 another one anyway. I don't think so. I think I waited for
10 the answer before I jumped in.

11 BY MR. ELLIS:

12 Q Mr. Conran, if LILCO construed the term
13 "important to safety" as being equal to "safety-related,"
14 that's how it construed the two, is there anything in
15 GDC-1 that would suggest that despite that construction
16 GDC-1 would still apply to something other than safety-
17 related?

18 A I don't think so. On GDC-1. It's some other
19 than the general thought that's expressed there that
20 every -- well, I guess when you say important to safety is
21 safety-related in GDC-1, no, I think not.

22 Q Now, you indicated that you did not know in
23 July of 1982 that even though LILCO construed the term
24 "important to safety" to be equal to "safety-related,"
25 that LILCO did not believe that GDC-1 was applicable to

1 nonsafety-related. When did that realization come upon
2 you?

3 A. I think it's when I first became aware of
4 negotiations that were going on between LILCO and the
5 Staff and saw a draft letter, I think, given to the
6 Staff by LILCO, dated about November the 17th, in which
7 LILCO basically said "hey, here's our proposal for
8 resolving this outstanding matter," and it didn't say
9 anything different than you've said before, which
10 there was no movement at all and I had expected to see
11 movement because I thought it was only a language
12 difference. That's when -- I think that's when I first
13 seriously considered the possibility that it wasn't
14 just a language difference; that it was a -- it was
15 more fundamental than that.

16 Q. And the commitment you saw then was a
17 commitment to do in the future what had been done in the
18 past, essentially?

19 A. Yes, and a little bit beyond that. I think
20 it was also a commitment, more implicit but it was a
21 commitment to interpret important to safety exactly the
22 way that you had in the past, to accord nonsafety things,
23 the legal of importance that you had in the past. No
24 change in that position, though.

25

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1 Q That's what triggered in your mind the
2 realization that LILCO did not believe that GDC-1 was
3 applicable to nonsafety-related?

4 MS. LETSCHE: I object to that as asked and
5 answered.

6 JUDGE BRENNER: Sustained.

7 MR. ELLIS: Judge Brenner --

8 JUDGE BRENNER: Go on to another question.

9 MR. ELLIS: Note my objection. I think that
10 I'm entitled to get an answer in the form that I can use for
11 a finding.

12 JUDGE BRENNER: You have your objection without
13 having to note it, and you can tell the Appeals Board
14 what a big mistake we just made.

15 BY MR. ELLIS:

16 Q In July of 1982, you were satisfied that
17 if LILCO were to keep doing in the important to safety or
18 in the nonsafety-related QA area, that it would be okay what
19 they were doing; isn't that right?

20 A You'll have to take that view in the context --

21 Q Can you answer my question?

22 A -- of July. Yes, because I thought that LILCO,
23 although we used the language differently, that LILCO
24 accorded the level of significance to important to
25 safety things, all important to safety things basically

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1 the way the Staff did.

2 Q But in view -- you were then satisfied
3 with the quality assurance area for nonsafety-related at
4 that time, based on the testimony that you had heard?

5 MS. LETSCHE: I object, it's been asked and
6 answered.

7 JUDGE BRENNER: Wait. I don't think he finished
8 the question.

9 MS. LETSCHE: I'm sorry.

10 JUDGE BRENNER: Why don't you start again?

11 MR. ELLIS: Look at page 7718 in your
12 transcript. Do you have that in front of you?

13 MS. LETSCHE: Can you give us the dates?

14 MR. ELLIS: Sure, the date is July 22nd.

15 BY MR. ELLIS:

16 Q Look at the bottom of page 7718 through 19,
17 do you have it yet, sir?

18 A Yes, I have it.

19 Q You state "I think all the discussions in this
20 hearing indicate there is a meeting of the minds on this
21 subject in the QA area certainly, and from every
22 indication of LILCO, we keep doing and the important to
23 safety but not safety-related QA area, what they are doing
24 now, that would be okay."

25 Do you see that, sir?

1 A Yes.

2 Q There is no fact, is there, about any
3 QA for nonsafety-related structures, systems or
4 components that you learned since July 22nd?

5 A No.

6 You understand that I still don't have a
7 tremendous problem with what you proposed in the nonsafety-
8 related QA area. I'm not concerned about that.

9 Q Oh, I see.

10 JUDGE BRENNER: Wait. You have to answer
11 the question directly.

12 THE WITNESS: I'm sorry. I thought I did.

13 JUDGE BRENNER: I don't think he did.

14 MR. ELLIS: I think he did say no. May I
15 have it read back just to be sure.

16 (The reporter read the record as requested.)

17 BY MR. ELLIS:

18 Q Maybe I didn't understand, Mr. Conran. Is it
19 fair to say, then, that you are in agreement with what
20 LILCO proposes to do in the nonsafety-related QA
21 area?

22 A I'm not concerned about deficiencies in the
23 nonsafety-related QA area to the degree that I'm
24 expressing a concern about LILCO's understanding of what
25 is minimally required for safety with regard to quality

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1 standards.

2 There are others who have expressed concern,
3 I think, about what the implications of this fundamental
4 difference that we're talking about, what the implications
5 of that are in the QA area, but those are not my
6 reservations.

7 We heard a fairly detailed description from
8 LILCO of QA measures that are applied, and, as I
9 said last summer, it's better than a description that
10 I've heard before. And on that basis, my reaction now
11 is the same as it was then.

12 Yes, it sounds all right to me.

13 Q Well, your concern, then, is about quality
14 standards that would be applied in the future?

15 MS. LETSCHE: That's been asked and answered.

16 MR. ELLIS: Want me to repeat the question,
17 Mr. Conran?

18 THE WITNESS: I'm sorry. I thought there was an
19 objection.

20 MS. LETSCHE: Maybe I didn't say it loud enough.
21 Asked and answered objection.

22 JUDGE BRENNER: You didn't say it loud enough.

23 MS. LETSCHE: I'm sorry.

24 JUDGE BRENNER: It was asked and answered.

25 Sustained.

1 Give me one moment.

2 MR. ELLIS: Judge Brenner --

3 JUDGE BRENNER: Wait a minute. We're losing too
4 much time on the objections, and they are starting to take
5 up more room in the transcript than the testimony,
6 and I don't mean that as a criticism of the objection.

7 We sustained some of them. That shows we
8 think they were valid, but it is not efficient, and you know
9 we try to, not always successfully, try to come up with
10 the things that are more efficient.

11 Instead of jumping in with objections on the
12 basis that it's been asked and answered, we are going to
13 let Mr. Ellis ask all the questions over again as many
14 times as he wants, and he can ask the same question
15 over and over again, if he wants; however, his question is
16 going to end at 10:00 a.m. tomorrow morning, and if he's
17 only asked one question, that's his problem. And at that
18 point we are going to cut off your cross-examination.
19 That would have been the equivalent roughly of two full
20 days with normal interruptions, including Board questioning,
21 and then we are going to move to the County's cross.

22 MS. LETSCHE: I understand the Board's ruling.

23 JUDGE BRENNER: So don't make any more
24 objections with respect to his cross-examination of
25 Mr. Conran on the basis that it's cumulative or redundant,

1 or asked and answered.

2 MS. LETSCHE: I understand that, Judge Brenner,
3 and let me note for the record because Mr. Conran
4 is not represented here, I felt, and I will continue
5 to feel that it is important to keep harassing-type
6 situations from happening here.

7 JUDGE BRENNER: Well, I don't agree with that
8 characterization, because none of the questions were
9 harassing.

10 MS. LETSCHE: I didn't mean to suggest that.

11 JUDGE BRENNER: And none of your objections
12 would prevent harassment. You are making cumulative
13 objections, so I reject your characterization. You are
14 free to make objections of a legal nature with respect to
15 any witness who is on there, and I haven't criticized you
16 for that, but your characterization of why you had to
17 make those objections is incorrect in light of the
18 nature of the objections.

19 MS. LETSCHE: I didn't mean to suggest that
20 had happened up until now, Judge Brenner. I was noting
21 that with respect to my not making those objections in the
22 future.

23 JUDGE BRENNER: I assure you, if that situation
24 happened, you'd have to move very fast to get in there
25 ahead of us.

1 MR. ELLIS: Judge Brenner --

2 JUDGE BRENNER: That's the ruling.

3 MR. ELLIS: I understand the ruling, but I
4 would like an opportunity at the end of the day today
5 to put on the record my objection to the ruling.

6 JUDGE BRENNER: I want you to know, I purposely
7 extended it until one hour of tomorrow so that you would
8 have the opportunity tonight to pull it all together
9 and also in recognition of the fact that the first
10 day of the week is a short day. You only started, given
11 when we set time limits with the County, we made that same
12 judgment with respect to that short day. We aren't
13 going to finish this phase in two weeks if we keep this
14 up. And I assure you, we are going to finish this
15 phase in two weeks, and we are not going to stay all night
16 here. And we are not going to do it past the normal
17 adjournment time on Friday at 1:00 o'clock.

18 MR. ELLIS: I would like to state that no other party
19 has been restricted to two or two and a half days with
20 a witness who has filed a thirty-some odd page affidavit,
21 and covering a substantial amount of material.

22 JUDGE BRENNER: We made our ruling on the
23 basis of the questions and answers we've heard so far.

24 MR. ELLIS: But I'll continue.

25 JUDGE BRENNER: Not on an evaluation of the

1 number of pages in the testimony.

2 JUDGE BRENNER: Let's take our break and come
3 back at 10:30.

4 (Brief recess was taken at 10:15 a.m., to
5 reconvene at 10:30 a.m.)
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1 JUDGE BRENNER: All right, we're back on the
2 record.

3 You may proceed, Mr. Ellis.

4 MR. ELLIS: Thank you, Judge Brenner.

5 BY MR. ELLIS:

6 Q Mr. Conran, yesterday in response to one of
7 Judge Morris' questions, I think you indicated that I&E
8 inspectors you had heard had experienced some resistance in
9 reviewing nonsafety-related structures, systems and components
10 and even among licensees that use the language the same
11 way as the Staff does.

12 That's not true for Shoreham, so far as you
13 know, is it?

14 A The component was not directed to Shoreham
15 specifically, no, Mr. Ellis. It was a general sort of
16 observation based on conversations with several
17 inspectors and inspection enforcement personnel.

18 Q And you don't have any knowledge, then, with
19 respect to Shoreham?

20 A No, no specific knowledge that I thought should
21 go into the record.

22 I understand Mr. Higgins had the opportunity
23 to testify here, so presumably if it were that sort of
24 information, why, he would provide it.

25 Q Mr. Conran, look at your affidavit, please,

1 page 28.

2 A (Witness complied.)

3 Q All right.

4 A If I could supplement the last answer that I
5 made, Mr. Ellis, I -- there was a portion of the discussion
6 in the meeting with LILCO on February 18th that addressed
7 this point.

8 Do I understand that it would be permissible to
9 mention that now, or has that been ruled off limits?
10 What is the exact status?

11 JUDGE BRENNER: Go ahead. You can tell us what
12 you want to tell us and we can figure it out.

13 A Well, at one point in that meeting, I asked
14 Mr. Pollock about what would be LILCO's attitude
15 or understanding of an inspector's right to access to
16 QA records, for example, on nonsafety-related components?
17 Does LILCO recognize the scope of NRC's regulatory authority
18 to be such that an inspector would have access to that
19 sort of information the same way that he would have
20 access to Appendix B QA records?

21 And as I recall, LILCO didn't answer directly
22 and simply declined to answer and indicated that that was
23 a matter for the Board to decide. It was another example,
24 I thought, of LILCO avoiding an opportunity to address
25 the concern that was raised and it does bear on the question
that you're just asking.

1 I had some conversations with inspectors, in fact
2 some inspectors have called me and solicited upon reading
3 the affidavit and just wanted generally to offer support in
4 pursuing the point that was being pursued there. So given
5 the opportunity at the meeting with LILCO to try to
6 clarify the matter somewhat, I tried, but I didn't think
7 that the matter was really classified by the question
8 and answer.

9 BY MR. ELLIS:

10 Q Mr. Conran, are you aware that Mr. Higgins
11 testified in this -- did you review any of the quality
12 assurance testimony in this proceeding?

13 A No.

14 Q Are you aware by any other source that
15 Mr. Higgins testified that I&E, in his region, does not
16 use the term "important to safety" as a separate category?

17 A If you mean in the context where an individual
18 that you might be quoting clearly understood that the
19 intent of his words was to establish or refute a
20 definition, no. I'm not aware that Region 1 thinks
21 differently than the NRC Staff does.

22 If you allude to the fact that in various
23 contexts, inspection and enforcement personnel have used
24 the term "nonsafety-related" rather than the more awkward
25 "important to safety, but not safety-related terminology,"

1 that would not be -- it would not surprise me at all.

2 Q Well, is it your understanding that I&E
3 considers that the present system is one of two
4 categories, safety-related and nonsafety-related or not?

5 A I guess I am sort of anticipating that question.
6 I tried to address it in my just previous response.

7 I think it would not be surprising at all to
8 learn that inspection enforcement people spoke of a
9 categorization of plant systems that way. If you woke
10 me up in the middle of the night, I would probably
11 refer to what I've been referring to here as important
12 to safety, but not safety-related as nonsafety-related,
13 just because it's easier to say. But I wouldn't mean
14 anything different by it.

15 Q Mr. Conran, look, if you would, please at this
16 memorandum dated January 6, 1983 from Mr. Starostecki
17 to Mr. Haass.

18 MR. ELLIS: May we have this marked as a
19 LILCO Exhibit, Judge Brenner. I'll need Judge Morris'
20 assistance on the latest number.

21 JUDGE MORRIS: It will be LILCO Exhibit 66.

22 MR. ELLIS: Thank you.

23 JUDGE BRENNER: All right, marked for
24 identification only.

25 MR. ELLIS: Yes, sir.

1 (The document referred to was
2 marked LILCO Exhibit No. 66
3 for identification.)

4 BY MR. ELLIS:

5 Q Mr. Conran, what's been marked as LILCO
6 Exhibit 66 is a memorandum from Mr. Starostecki
7 to Mr. Haass, dated January 6, 1983, entitled "Comments
8 on EG&G Report."

9 Have you seen this memorandum before?

10 A Yes.

11 Q The sentence in the memorandum that says
12 "This approach should represent an improvement over our
13 present system of assignment of systems/components into
14 two categories as either 'safety-related' or 'nonsafety-
15 related,'" is that statement consistent with your
16 understanding that I&E Region 1 uses a two-category system
17 of safety-related and nonsafety-related?

18 A I don't think it is inconsistent with what I
19 said before, Mr. Ellis. Nowhere in here that I can
20 see is Mr. Starostecki indicate that he quarrels with the
21 Denton definitions.

22 I think he's referring to things in a way that
23 licensees within is region that he perhaps has been dealing
24 with referred to them. I also see that -- I interpret this
25 to say that the emphasis was not on safety-related,

1 nonsafety-related, but he was preferring the approach of
2 four categories rather than two, irrespective of what you
3 called them right now. It's a finer graduation. He
4 seemed to like the idea of finer graduations.

5 Q Isn't what he's saying that the approach of
6 the EG&G report in his view represents an improvement over
7 what is now being done in two categories which is
8 safety-related and nonsafety-related? Isn't that right?

9 A I think his emphasis was on the two categories,
10 not necessarily on what they were called.

11 Q Well, then --

12 A He likes the approach of breaking things into
13 four categories rather than two categories. I think
14 that is the primary emphasis here.

15 Q In your view, then, the nonsafety-related is
16 synonymous with important to safety, but not safety-related?

17 A I think in the absence of a statement from
18 Mr. Starostecki, that he intended something different,
19 yes. That's the way I would interpret that.

20 Q We focused a great deal on the term
21 "important to safety," but not "safety-related" in your
22 testimony.

23 Can you point to me any regulation or any
24 regulatory guidance that uses the term "important to
25 safety," but not "safety-related" to apply to any specific

1 set of structure, systems and components?

2 A. Any regulation, Reg. Guide or standard
3 review plan, no, not that I know of.

4 I would point out, however, that using the
5 terms more carefully that way is consistent with the
6 Denton directive to the Staff to be more careful in using
7 these things. He clearly holds open the possibility that
8 regulatory guidance documents would be modified to
9 reflect his directive to be more consistent and more
10 careful in the usage of these terms. I don't know that
11 any have been changed on that basis, but I think the
12 issue of Reg. Guides and the SRPs that you might be
13 referring to predate the Denton memorandum.

14 JUDGE BRENNER: Mr. Ellis, I would like to
15 bind in the exhibit for convenience so we don't lose it,
16 so it is only one page, bind it in at this point.
17 However, it is only an exhibit for identification and the
18 binding in is solely a convenience.

19 MR. ELLIS: Yes, I think Mr. Conran has
20 discussed what it said. I'm going to ask him one more
21 question or so about it.

22 (LILCO Exhibit No. 66 for identification follows.)

23

24

25



BDC

UNITED STATES
NUCLEAR REGULATORY COMMISSION
REGION I
631 PARK AVENUE
KING OF PRUSSIA, PENNSYLVANIA 19406
JAN 6 1983

MEMORANDUM FOR: ✓ Walter P. Haass, Chief, Quality Assurance Branch, Division of Engineering

FROM: Richard W. Starostecki, Director, Division of Project and Resident Programs, Region I

SUBJECT: COMMENTS ON EG&G REPORT (EGG-EA-6109 - NOVEMBER, 1982 - DRAFT)

EG&G's approach of establishing the four Quality Assurance Levels for structures, systems, and components, and the establishment of the graduated Quality Assurance Guidelines for these levels appears to be well-reasoned and sound. This approach should represent an improvement over our present system of assignment of systems/components into two categories as either "safety-related" or "non-safety-related." The approach is necessarily more complex, but should be a worthwhile improvement.

Richard W. Starostecki, Director
Division of Project and Resident
Programs

Starostecki

1 JUDGE BRENNER: Off the record.

2 (Discussion off the record)

3 JUDGE BRENNER: Go ahead, Mr. Ellis.

4 BY MR. ELLIS:

5 Q What's been marked as LILCO Exhibit No. 66,
6 Mr. Conran, does indicate, doesn't it, that the present
7 system of assignment of systems and components is in two
8 categories, is either safety-related or nonsafety-related?

9 MS. LETSCHE: I think the document speaks
10 for itself, Judge Brenner. I object to Mr. Ellis
11 continually restating.

12 JUDGE BRENNER: On the contrary, the document
13 isn't worth anything by itself, as far as I'm concerned,
14 because Mr. Starostecki is not here, and I'm not
15 bringing it for the truth of the matter asserter. So
16 the only use of the exhibit has been to see, to get
17 Mr. Conran's view on whether he believes this is
18 consistent or inconsistent with something he said before.

19 For that reason, we'll allow the question.

20 THE WITNESS: I read the sentence the same
21 way that you did, Mr. Ellis. I've explained that the
22 way I understand the sentence that I wrote was that
23 the point that he was trying to make here was that
24 he preferred the approach of four categories to two,
25 no matter what you called them.

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1 He labeled them in a way that was natural
2 for him to do so. I don't think it speaks for I&E. I
3 don't think it acts at all to establish or refute definitions
4 on the basis that we've been trying to discuss them more
5 carefully in this context.

6 BY MR. ELLIS:

7 Q You haven't had any discussions with Mr.
8 Starostecki about this, have you?

9 A No.

10 Q Now, you indicated yesterday that while
11 there may be other licensees or applicants that use the
12 same terminology as Shoreham, Shoreham was the only one
13 that you personally knew of; is that correct, or are there
14 others that you personally know of?

15 A If I'm recalling the same testimony that
16 you are recalling, I think what I said was that Shoreham
17 is the only utility, the only applicant or licensee,
18 that has clearly indicated in a formal licensing
19 context or proceeding that there is not only a difference
20 in the way that we use language, but in the way that
21 we understand the scope of the regulations.

22 Q Have you reviewed any FSARs in this connection?

23 A No.

24 Q Let me show you a letter also relating to
25 the EG&G report dated February 23, 1983, from Duke Power

1 Company to Mr. Haass, which, if I may, Judge Brenner,
2 I would like to have marked LILCO Exhibit No. 67.

3 JUDGE BRENNER: All right.

4 MR. ELLIS: For identification.

5 (The document referred to was
6 marked as LILCO Exhibit No. 67
7 for identification.)

8 BY MR. ELLIS:

9 Q This LILCO Exhibit 67 is also a comment on the
10 EG&G report. I take it you reviewed this along with
11 the rest of the package of EG&G comments?

12 A No.

13 Q You have not seen that?

14 A No.

15 Q Look, if you would, please, at page 2.

16 A (Witness complied)

17 Q The top of page 2 is a statement, "The
18 reason for this expansion appears to be based on a Staff
19 perception now that industry should apply two different
20 meanings to the term "safety-related and important to
21 safety" with the latter now to include most of the
22 nonsafety-related items within the plant. Since the
23 inception of 10-CFR-50 Appendix A and Appendix B,
24 Industry, the Staff and the regulations have used these terms
25 interchangeably without confusion. To expand the scope of

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1 the term 'important to safety' now would produce
2 unnecessary confusion."

3 See that, sir?

4 A Yes.

5 Q Does that indicate to you that important to
6 safety and safety-related are equated in portions of
7 the industry?

8 MR. RAWSON: I'm going to lodge an objection
9 to this question and to this line of inquiry at this
10 point. It seems to me Mr. Ellis is now back into an
11 area that we litigated at some length when Mr. Conran
12 was on the stand last summer.

13 It is something he had every incentive to
14 litigate. He is litigating the correctness of the
15 meaning of important to safety under the Denton definition
16 rather than the concerns that Mr. Conran has now expressed,
17 and it seems to me wasteful of our time and not within
18 the scope of the real proceeding.

19 We are going back through this entire matter.

20 JUDGE BRENNER: We're back into it because that's
21 the very starting point, according to Mr. Conran, for his
22 views now, that he didn't understand what, according
23 to him, what LILCO was saying before. And now that
24 he understands it, would he know things LILCO is
25 saying before is wrong, and inconsistent in his view with

1 with the way other people use it, and it's a
2 perfectly legitimate area of inquiry given the whole
3 basis for his change.

4 It's tied to his new perception of what was
5 said before, rather than any pure new facts, if you will,
6 although he feels tested as to some others. So I
7 disagree LILCO had every incentive to ask Mr. Conran
8 questions in this new light. And I can't separate out the
9 areas.

10 So the objection is overruled.

11 THE WITNESS: I guess my reaction to the first
12 paragraph is no surprise, whoever wrote this letter said
13 that the terms have been used -- the terms, the language
14 has been used interchangeably in the past without
15 confusion. I think obviously the gentleman has a different
16 perspective than I do. And I'm personally aware of a great
17 deal of confusion that has resulted from the interchangeable
18 use, and I was not the only one that was concerned about it.

19 It was of concern to the Director of Regulation
20 NRR to the point that he moved to clear up the
21 confusion, so it may be unfair, but my reaction to the
22 letter in general probably tied very closely to my estimate
23 of how accurate that same observation is that these
24 terms have been used interchangeably without confusion.

25 It's a different explanation than I had -- I

1 don't know what gives this gentleman -- it is certainly
2 different. It is certainly different than mine. It is
3 certainly different than Staff's.

4 BY MR. ELLIS:

5 Q LILCO is not the only one then that holds
6 the view that important to safety is equal to safety-
7 related, though; isn't that right?

8 A It says what I already knew, and that LILCO
9 is not only the one who uses the terms interchangeably
10 We are back to the question whether it is just a language
11 problem or a conceptual problem.

12 LILCO is the only one that I know of on
13 the basis of their own words repeated, insisted upon
14 over a period of six or eight months now, that if you
15 understand the concept, you understand the scope of
16 the regulations differently than the Staff does.

17 We claim that the Staff doesn't know the scope
18 of its regulations and that the NRR Staff is going
19 beyond what the regulations really requires, as I
20 understand it.

21 Q Well --

22 A It seems to me that we've established and
23 admitted many times over that there is language problems.

24 Q Throughout the industry and the Staff?

25 A (Nodding head affirmatively)

1 Generally, that's sort of difficult, yes.

2 Q Isn't LILCO Exhibit 67, though, making clearly
3 the point that important to safety and safety-related have
4 been equated, and that the EG&G report indicates a
5 substantial expansion of the important to safety term in a
6 regulatory sense or concept in a regulatory sense; isn't
7 that right?

8 And I call your attention to this second --

9 A I don't know, Mr. Ellis. But before I
10 draw conclusions like that, I guess I'd like a chance to
11 review the whole memo and understand the context. It
12 should be apparent now that it is easy to be confused
13 about these things when you selectively take things
14 out of context.

15 Q All right, Mr. Conran. I'll give you an
16 opportunity to do that, and I'll ask you about it after
17 lunch.

18 Let me call your attention in that connection to the first
19 paragraph, first sizeable paragraph on the first page,
20 where there is a reference to the proposed guidelines,
21 being the EG&G report, "would escalate requirements far
22 beyond the current practice or that actually required."

23 I've already called your attention to the first
24 full paragraph on the second page. Note also in the next
25 paragraph the reference to the EG&G report being a

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1 substantial escalation in the scope and application of
2 quality assurance requirements, and the same view
3 is expressed on the last page, where the writer of the
4 letter, whom you will see is a vice-president of
5 Duke Power, says "In conclusion, we feel that the proposed
6 guidelines would be an escalation beyond current
7 requirements, current practice and actual safety needs,"
8 do you see that, sir?

9 JUDGE BRENNER: What are you going to do with
10 all that, Mr. Ellis?

11 THE WITNESS: Yes.

12 JUDGE BRENNER: Do you want him to talk much
13 about this letter? You'd better let him read it
14 first of all.

15 MR. ELLIS: I am. I was just calling his
16 attention to that, and I told him I'd ask him questions
17 about it after lunch, after he has had a chance to read
18 it.

19 JUDGE BRENNER: Don't confuse you own mind, Mr.
20 Ellis. The fact we are allowing you to explore on
21 cross-examination Mr. Conran's bases for certain things
22 and whether some of his statements are correct, whether
23 something you are going to show him appears to be
24 inconsistent to what some of his statements are, that's
25 a perfectly appropriate approach, but you are not going to

1 base any findings on this letter saying affirmatively
 2 that the whole industry, or even Duke Power, thinks
 3 something, because this is just a letter by somebody
 4 who is not here, as you know.

5 MR. ELLIS: I understand that.

6 JUDGE BRENNER: All right. So you judge
 7 time spent with it in that light, it is appropriate for
 8 cross-examination, but if you think later you are going
 9 to write findings that Duke Power believes this or the
 10 industry believes this, based on this letter as opposed
 11 to other things you may have in the record, don't mislead
 12 yourself.

13 MR. ELLIS: The letter is going to be relevant
 14 for another purpose.

15 JUDGE BRENNER: Not for the truth of the
 16 matter in the letter, it's that simple. Unless you
 17 can convince me otherwise later. Let's bind it
 18 for convenience, since you've asked about it, or think
 19 you might ask about it again.

20 We'll bind it in at this point.

21 (LILCO Exhibit No. 67 follows)

22
 23
 24
 25

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