

LILCO, April 16, 1984

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USNRC'84 APR 18 AIO:28 UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSIONBefore the Atomic Safety and Licensing Appeal Board

In the Matter of	)	
	)	
LONG ISLAND LIGHTING COMPANY	)	
	)	Docket No. 50-322 (OL)
(Shoreham Nuclear Power Station,	)	
Unit 1)	)	

LILCO'S RESPONSE TO NRC  
STAFF'S SUPPLEMENTAL 7B FILINGS

In response to the NRC Staff's Memorandum in Response to Appeal Board Questions dated April 3, 1984 (Staff Memorandum) and its Motion for Leave to Supplement dated April 6, 1984 (Motion to Supplement), LILCO offers the following observations.

1. LILCO disagrees with the Staff's statement that "the position taken by the Staff in the Diablo Canyon proceeding was consistent with that taken by the Staff here [Shoreham]." Staff Memorandum at 6. Certainly the Staff's position should have been the same in both cases because the applicants in both cases consistently construed "important to safety" synonymously with "safety related" and in both cases the Staff, for many years, agreed with or acquiesced in this interpretation. Thus in the Diablo Canyon case, Judge Moore stated:

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We ruled that the history of the Diablo Canyon operating license application showed that the two terms, "important to safety" and "safety-related," had been used synonymously by the applicant and the staff, and to the extent the quality assurance criteria are currently interpreted to distinguish between the terms, such distinction would not be retroactively applied to Diablo Canyon.

Pacific Gas and Electric Co. (Diablo Canyon Nuclear Power Plant, Units 1 and 2), ALAB-763, slip op. at 105 (March 20, 1984).<sup>1/</sup>

Given that the facts of both cases were the same as to the interpretation of the terms, the Staff's treatment of both cases should have been the same. It was not: there is no important to safety license condition imposed on Diablo Canyon of the sort imposed at Shoreham.

Staff testimony at Diablo Canyon underscores this inconsistency. In Diablo Canyon, the Staff stated it was "working toward developing a generic resolution to the problem [of "important to safety" in the context of GDC-1] that we would propose to apply to Diablo Canyon when that solution becomes available."<sup>2/</sup> In other words, the Staff in Diablo Canyon

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<sup>1/</sup> Attached as Exhibit A to this Response are interrogatory answers filed by the applicant in the Diablo Canyon case confirming its understanding that the terms "safety related" and "important to safety" are synonymous.

<sup>2/</sup> Diablo Canyon transcript at 817. Attached as Exhibit B are copies of pages 813-18. See also Haass Affidavit dated

(footnote continued)

testified that it was pursuing a generic solution to this generic problem and that no interim solution would be imposed on Diablo until the generic solution became available. At Shoreham the Staff inconsistently required a license condition prior to a generic resolution.

2. The Staff's Memorandum and Motion to Supplement illustrate a second telling point: the Commission's November 19, 1981 order suspending the Diablo Canyon operating license, issued only one day before the Denton Memorandum, equates the terms "safety related" and "important to safety." The Staff's pleading concedes this. In an attempt to escape the consequences, the Staff suggests that the interchangeable use of the terms by the Commission merely created a temporary ambiguity ultimately clarified by the fact that the Attachment to the Commission order used only the term "safety related." The Staff further suggests that the ambiguity may not even exist since the order itself used the term "important to safety" in the context of Appendix B, which signals the meaning to be the safety related set. From this slender reed, the Staff argues that the Commission intended the term "important to safety" in

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(footnote continued)

June 6, 1983, at 3, attached as Exhibit 4 to the Staff Memorandum.

its November 19, 1981 order to mean only the subset of safety related features. More plausible is that the Commission equated the terms because it understood them to have the same meaning. The Staff, in its June 6, 1983 pleading in Diablo Canyon, characterized historical usage of the terms as inconsistent and interchangeable. Staff Response at 14. That the terms were interchangeable is clear. But until the Denton Memorandum and Staff TMI testimony, this historical interchangeable use was not considered inconsistent.

3. Two documents attached to the Staff's Memorandum indicate continuing Staff confusion over the terms when they are not equated. The Staff's response to the motion to reopen in Diablo Canyon seems to say that the Commission used the term "important to safety" in the November 19, 1981 order in its narrow sense to mean the subset of "safety related." Staff Response at 15. NRC Staff witness Walter Haass, in his affidavit which was attached to that Staff response, makes the following statement:

While the Commission's [November 19] order used the phrase "important to safety," it used the phrase in its broad context and Attachment 1 to the order narrowed the scope of the required [IDVP] program to safety related design activities and plant items.

Haass Affidavit dated June 6, 1983, at 2.

Thus the Staff, in its response, said the Commission used the term narrowly to mean "safety related" while Mr. Haass says the Commission used it broadly and that Attachment 1 served to narrow it. This underscores that, even if the Denton definitions are adopted, use of the term "important to safety," by itself, remains unclear. It is unclear whether the class of features intended is (a) the entire class, whatever it may be, of "important to safety" features, (b) the "safety related" subclass, or (c) the "important to safety but not safety related" subclass. This confusion did not exist before the Denton Memorandum because the terms had previously been equated.

4. The Staff stresses that it advised the Diablo Canyon Appeal Board of the Staff's position in support of the Denton definitions. Even fully apprised of the Staff's position, accordingly, the Appeal Board rejected it.

5. Finally, the Staff noted that it disagreed with Judge Moore's statement that, if there is now to be a distinction between the terms "important to safety" and "safety related," that distinction should not be applied retroactively. Pacific Gas and Electric Co. (Diablo Canyon Nuclear Power Plant, Units 1 and 2), ALAB-763, slip op. at 105 (March 20,



1984). The Staff's disagreement is rooted in its argument that past practice has been consistent with the Denton definitions. Again, the evidence to the contrary is overwhelming.<sup>3/</sup> The Staff's testimony in Shoreham is compelling on this point. There NRC witness Noonan testified that,

Historically -- and I will date that back to 1974 when I first joined the NRC -- when we made a finding that we met the intent of GDC 4, we always talked about safety-related equipment. That was always a definition of equipment important to safety.

Tr. at 19,391. Attached as Exhibit C are copies of transcript pages 19,391-92.

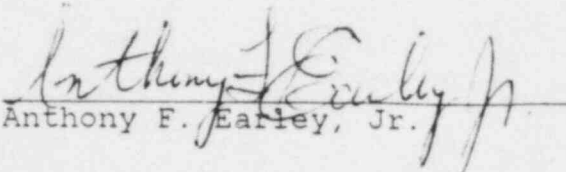
In summary, the Denton definitions do not reflect longstanding practice; rather, they are a response to criticisms and recommendations made as a result of the TMI investigation. If the Commission or the Staff thought then that the criticisms and recommendations were valid or consider them to be valid today, then the appropriate course of action is not to issue an intra-Staff memorandum changing the definitions, but to pursue notice and comment rulemaking pursuant to the APA.

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<sup>3/</sup> See, e.g., LILCO's Brief on Appeal, dated December 23, 1983, at 40-45; Utility Safety Classification Group's Brief Amicus Curiae, dated December 23, 1983, at 4-8; Public Service Co. of New Hampshire (Seabrook Station, Units 1 and 2), Memorandum and Order (slip op.), at 2 (May 13, 1983) ("In the past, 'important to safety' has been equated with 'safety related'").

Respectfully submitted,

LONG ISLAND LIGHTING COMPANY

  
Anthony F. Earley, Jr.

W. Taylor Reveley, III  
T. S. Ellis, III  
Anthony F. Earley, Jr.  
Hunton & Williams  
Post Office Box 1535  
Richmond, Virginia 23212

DATED: April 16, 1984

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USNRC

LILCO, April 16, 1984

'84 APR 18 A10:28

CERTIFICATE OF SERVICE

In the Matter of  
LONG ISLAND LIGHTING COMPANY  
(Shoreham Nuclear Power Station, Unit 1)  
Docket No. 50-322 (OL)

I hereby certify that copies of LILCO's Response to NRC Staff's Supplemental 7B Filings were served this date upon the following by first-class mail, postage prepaid, or by hand as indicated by as asterisk:

Alan S. Rosenthal\*  
Administrative Judge  
Atomic Safety and Licensing  
Board Panel  
U.S. NRC  
4350 East-West Highway  
Fourth Floor (North Tower)  
Bethesda, Maryland 20814

Gary J. Edles\*  
Administrative Judge  
Atomic Safety and Licensing  
Board Panel  
U.S. NRC  
4350 East-West Highway  
Fourth Floor (North Tower)  
Bethesda, Maryland 20814

Howard A. Wilbur\*  
Administrative Judge  
Atomic Safety and Licensing  
Board Panel  
U.S. NRC  
4350 East-West Highway  
Fourth Floor (North Tower)  
Bethesda, Maryland 20814

Secretary of the Commission  
U.S. Nuclear Regulatory  
Commission  
Washington, D.C. 20555

Atomic Safety and Licensing  
Appeal Board Panel  
U.S. Nuclear Regulatory  
Commission  
Washington, D.C. 20555

Atomic Safety and Licensing  
Board Panel  
U.S. Nuclear Regulatory  
Commission  
Washington, D.C. 20555

Robert E. Smith, Esq.  
Guggenheimer & Untermeyer  
80 Pine Street  
New York, N.Y. 10005



Bernard M. Bordenick, Esq.\*  
David A. Repka, Esq.  
U.S. NRC  
Maryland National Bank Bldg.  
7735 Old Georgetown Road  
Bethesda, Maryland 20814

Herbert H. Brown, Esq.  
Lawrence Coe Lanpher, Esq.  
Alan R. Dynner, Esq.\*  
Kirkpatrick, Lockhart, Hill,  
Christopher & Phillips  
8th Floor  
1900 M Street, N.W.  
Washington, D.C. 20036

Mr. Marc W. Goldsmith  
Energy Research Group  
4001 Totten Pond Road  
Waltham, Massachusetts 02154

MHB Technical Associates  
1723 Hamilton Avenue  
Suite K  
San Jose, California 95125

Mr. Jay Dunkleberger  
New York State Energy Office  
Agency Building 2  
Empire State Plaza  
Albany, New York 12223

Fabian G. Palamino, Esq.  
Special Counsel to the  
Governor  
Executive Chamber, Room 229  
State Capitol  
Albany, New York 12224

Hunton & Williams  
P.O. Box 1535  
Richmond, Virginia 23212

DATED: April 16, 1984

Martin Bradley Ashare, Esq.  
Attn: Patricia A. Dempsey, Esq.  
County Attorney  
Suffolk County Department of Law  
Veterans Memorial Highway  
Hauppauge, New York 11787

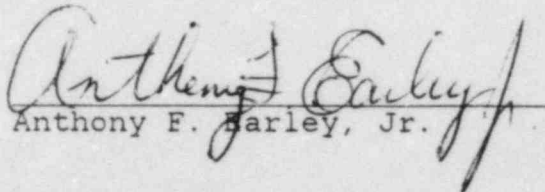
Stephen B. Latham, Esq.  
Twomey, Latham & Shea  
33 West Second Street  
P. O. Box 398  
Riverhead, New York 11901

Ralph Shapiro, Esq.  
Cammer and Shapiro, P.C.  
9 East 40th Street  
New York, New York 10016

James Dougherty, Esq.  
3045 Porter Street  
Washington, D.C. 20008

Howard L. Blau  
217 Newbridge Road  
Dicksville, New York 11801

Jonathan D. Feinberg, Esq.  
New York State  
Department of Public Service  
Three Empire State Plaza  
Albany, New York 12223

  
Anthony F. Earley, Jr.

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING APPEAL BOARD

In the Matter of )

PACIFIC GAS AND ELECTRIC COMPANY )

Diablo Canyon Nuclear Power Plant )  
Units Nos. 1 and 2 )

) Docket No. 50-275  
) Docket No. 50-323

APPLICANT PACIFIC GAS AND ELECTRIC COMPANY'S  
ANSWERS TO  
GOVERNOR GEORGE DEUKMEJIAN'S AND JOINT INTERVENORS'  
FIRST SET OF INTERROGATORIES

INTERROGATORY NO. 1:

With respect to each ITR, including all revisions,  
except ITR 36 and ITR 39, state:

- (a) What contractors and subcontractors to the IDVP worked on the ITR.
- (b) The person employed or retained by the IDVP or its subcontractors most knowledgeable about the ITR.
- (c) The person employed or retained by the IDVP or its subcontractors most knowledgeable about:

1 RESPONSE TO INTERROGATORY NO. 11:

2 (a) See Attachment 8.

3 (c) See Attachment 8.

4 (d) (i) The codes employed for analysis in the DCP  
5 Phase II Final Report were COCO, MARVEL, and  
6 RELAP4. See Attachment 6.

7 (ii) The codes employed for analysis in the DCP  
8 Phase II Final Report were FAULTX, FLUD, ME204,  
9 ME207, ME649, and VOLTANAL. See Attachment 7.

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11 INTERROGATORY NO. 12:

12 How do you define "safety-related" for purposes of  
13 compliance with appendix B to part 50 of 10 C.F.R.?

14  
15 RESPONSE TO INTERROGATORY NO. 12:

16 PCandE considers "safety-related" and "PCandE  
17 Design Class I" to be synonymous.

18 For the purpose of applying quality requirements  
19 PCandE has historically considered the term "safety-related"  
20 to be applicable to systems and components (and supporting  
21 design processes) that are necessary to assure;

- 22 (1) the integrity of the reactor coolant pressure boundary;  
23 (2) the capability to shutdown the reactor and maintain it  
24 in a safe shutdown condition; or

25 ///

26 ///

1 (3) the capability to prevent or mitigate the consequences  
2 of accidents which could result in potential off-site  
3 exposures comparable to the guideline exposures of 10  
4 CFR 100.

5  
6 INTERROGATORY NO. 13:

7 How do you define "important to safety" for  
8 purposes of compliance with General Design Criterion 1 of  
9 appendix A to part 50 of 10 C.F.R.?

10  
11 RESPONSE TO INTERROGATORY NO. 13:

12 Historically PGandE has considered the terms  
13 "important to safety" and "safety-related" to be synonymous.  
14 Further, PGandE considers "safety-related" and "PGandE  
15 Design Class I" to be synonymous. (See answer to Interroga-  
16 tory 12.) The H.R. Denton memorandum defining "important to  
17 safety" was issued long after "important to safety" was used  
18 in CDCI. Only recently has the NRC provided any indication  
19 that the definitions of "important to safety" and  
20 "safety-related" were not one and the same.

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23 ///

1 Presently, for those structures, systems, and com-  
2 ponents which do not have safety-related functions PGandE  
3 applies a quality assurance program which is commensurate  
4 with the structure's, system's or component's importance to  
5 safety.

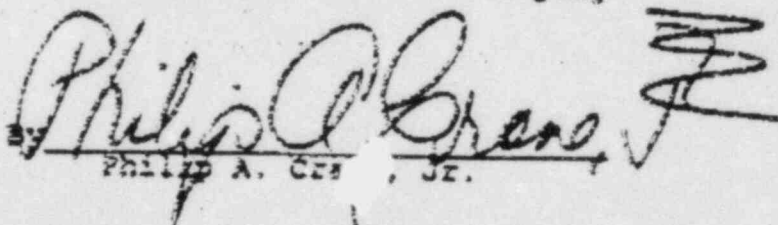
6  
7 Respectfully submitted,

8 ROBERT OHLBACH  
9 PHILIP A. CRANE, JR.  
10 RICHARD F. LOCKE  
11 Pacific Gas and Electric Company  
12 P.O. Box 7442  
13 San Francisco, California 94120  
14 (415) 781-4211

15 ARTHUR C. OEHM  
16 Snell & Wilmer  
17 3100 Valley Center  
18 Phoenix, Arizona 85073  
19 (602) 257-7288

20 BRUCE NORTON  
21 Morton, Burke, Berry & Franch, P.C.  
22 P.O. Box 10569  
23 Phoenix, Arizona 85064  
24 (602) 955-2446

25 Attorneys for  
26 Pacific Gas and Electric Company

27  
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DATED: May 23, 1993.



Is it the Staff's understanding  
that the provisions

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of 10 CFR, Appendix B, apply to items which are defined as safety-related in the construction of a nuclear power plant?

A (Witness Haass) That's correct.

Q Does the Staff impose requirements for a quality assurance program covering items which are not within the category safety-related?

A Our regulations include a general design criterion 1 of Appendix A to Part 50, which calls for a quality assurance program for structures, systems, and components important to safety, and important to safety is defined in the introduction to Appendix A as being the broad scope of items in the plant that have some effect on safety.

I believe I have answered your question. We do have a requirement for quality assurance for items important to safety, but not safety-related, and it comes out of GDC-1.

Q Well, do inspectors, when they go on to a site -- I presume that they make inspections of the performance to determine the performance of the quality assurance programs.

I have seen notices of violation which say that a particular program is in violation because it did not meet criterion 10 of 10 CFR, Appendix B. I'm not aware of ever seeing a notice of violation which indicates that a program had not met general design criterion 1.

MR. CHANDLER: I'm sorry, Dr. Johnson, that was a

1 question? I don't know whether you were stating something --

2 BY JUDGE JOHNSON:

3 Q Are you aware of any violation that has ever been  
4 issued for a failure to meet general design criterion 1?

5 A (Witness Haass) I'm not aware of any violations  
6 of that nature. I think maybe this is a time for explaining  
7 the scope of our inspection program and I would pass that  
8 to Mr. Faulkenberry. But generally speaking, our inspection  
9 program is directed toward the determination of conformance  
10 to Appendix B with regard to quality assurance, and therefore  
11 it is directed toward safety-related items in the plant;  
12 namely, those needed to prevent accidents or mitigate their  
13 consequences.

14 As far as an inspection program, we devote  
15 practically no attention to the other items in the plant  
16 because they are considered of lesser significance to safety,  
17 but I would defer to Mr. Faulkenberry.

18 A (Witness Faulkenberry) I'm not sure exactly what  
19 the question was

20 Q Well, what level of inspection is directed to  
21 the quality assurance program of an Applicant, which covers  
22 those items which are not safety-related? In other words,  
23 the, quote, GDC-1 portion of the quality assurance program.

24 A (Witness Faulkenberry) If I can try to explain  
25 this, I think on a general rule, our inspection program is

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1 not necessarily restricted to inspecting those activities  
2 in which we have strict regulations and guides for. I think  
3 basically we hire inspectors that are college graduates,  
4 normally with engineering degrees, and have work experience  
5 in the particular areas that they are asked to inspect.

6 So, therefore, we send them out with the chore  
7 of inspecting not only against the rules and regulations  
8 of the Commission, but against what we call, for lack of  
9 a better term, state of the art and acceptable industrial  
10 practices.

11 With regard to specifically citing against Appendix  
12 A versus Appendix B in the area of quality assurance, I'm  
13 not sure, and maybe some of the members of the panel could  
14 correct me if I'm wrong. I don't recall ever us citing against  
15 Appendix A. That does not mean that we have not inspected  
16 against activities that are performed outside the Appendix B  
17 umbrella of quality assurance. We have inspected these, and  
18 we have interacted with the Licensees and contractors to  
19 take corrective actions, even though we may not have had  
20 the ability to issue items of noncompliance against a regula-  
21 tion.

22 Q To what extent did the inspection technique and  
23 the scope of inspection focus -- let me stop that question  
24 and rephrase it entirely.

25 Prior to the Denton letter or sometime in 1981,

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1 I think, which made a distinction between the phrases  
2 "important to safety" and "safety-related," was it your  
3 opinion or the opinion of the NRC Staff that these two terms  
4 were synonymous?

5 A (Witness Haass) I think as reflected in the memo  
6 you make reference to, Mr. Denton stated that there was some  
7 past confusion regarding the definitions of those terms. And  
8 I think that confusion is fairly widespread, and the Staff is  
9 presently embarking on an approach to clarify it, and in fact  
10 to develop specific guidance regarding how we would expect  
11 GDC-1 to be implemented. And I think I addressed that in my  
12 affidavit.

13 Q That is the specific part of your affidavit that  
14 I was going to refer to.

15 JUDGE BUCK: Excuse me, Reed. I think, are we not,  
16 Mr. Haass, back to the thing that we covered, I think, in  
17 one of the TMI recent decisions, the ALLB, where we were  
18 concerned about the fact that the Commission itself, and the  
19 Staff to some extent, had used two terms interchangeably and  
20 nobody knew really what the word "commensurate" means in  
21 GDC-1 or how you change quality standards to be commensurate  
22 with certain quality levels. And this has been a problem  
23 for quite some time, because of the wording of it.

24 WITNESS HAASS: Yes, you are correct, Dr. Buck.  
25 It was addressed in the TMI hearing. It was also addressed



1 in the Shoreham hearing, and the Staff, as I mentioned before,  
2 is working toward developing a generic resolution to the  
3 problem that we would propose to apply to Diablo Canyon when  
4 that solution becomes available.

5 JUDGE BUCK: Mr. Faulkenberry, I think, wants to  
6 add to that.

7 WITNESS FAULKENBERRY: Dr. Johnson, if I might  
8 try to help clarify this a little bit. I think generally  
9 the inspection program, or the inspection force in the  
10 Regions, has always had a much broader definition of safety-  
11 related or important to safety, and the performance of their  
12 activities have put things under a much broader umbrella than,  
13 I would say, the Division of Licensing or NRR has.

14 I might ask Mr. Johnson to give you some examples  
15 of things that have happened in our inspection program,  
16 inspection activities, where we have identified things of  
17 concern to us in the area of important to safety, which we  
18 have taken corrective action on.

19 BY JUDGE JOHNSON:

20 Q Well, is it correct to say, however, that PG&E  
21 does not have a formal quality assurance program which  
22 addresses, under whatever criteria, those items which are  
23 not "safety-related"?

24 A (Witness Faulkenberry) If I understood you correctly,  
25 I think that is true; that for activities that are "not



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1 important to safety" --

2 Q No, you are using a word that I did not use in  
3 my question. I used the specific phrase "safety-related,"  
4 which to me meant the provisions of Appendix B applied to  
5 them.

End 5

1 memorandum and order requirements, particularly  
2 NUREG-0508, and that was the scope of the review, and  
3 that is what the conclusions of the SER addressed.

4 Q So your conclusions did not address equipment  
5 important to safety.

6 A (WITNESS KENNEDY) They did not. They address  
7 safety-related equipment.

8 A (WITNESS MOONAN) May I comment on that,  
9 please?

10 Q Yes, sir.

11 A (WITNESS MOONAN) Historically -- and I will  
12 date that back to 1974 when I first joined the NRC --  
13 when we made a finding that we met the intent of GDC 4,  
14 we always talked about safety-related equipment. That  
15 was always a definition of equipment important to  
16 safety. Other equipment, the so-called  
17 nonsafety-related equipment as defined in paragraph B(2)  
18 of the new rule, the 50-49, was never really considered  
19 by the Staff. It was sort of the responsibility of the  
20 Licensee and was not necessarily a part of our Staff's  
21 review in 1980 when we formed the equipment  
22 qualification branch as a separate branch to deal with  
23 equipment qualification.

24 And then subsequent to that with the  
25 Commission memorandum and order, the Commission

1 memorandum and order 80-21 strictly dealt with  
2 safety-related equipment, and that was our guidelines.  
3 It was in the finding in writing the rule that the Staff  
4 sort of expanded upon the definition of "equipment  
5 important to safety" as we normally treat it and term it  
6 within the Staff. And now you see it defined in 50-49  
7 basically in three components, in paragraphs B(1), B(2)  
8 and B(3), so that is the historical background.

9 All of the review done to date on Shoreham was  
10 basically guided by the Commission memorandum order  
11 80-21.

12 Q Just to clarify it, Mr. Noonan, all of the  
13 Staff reviews to date have been on safety-related  
14 equipment?

15 A (WITNESS NOONAN) Effectively that is it,  
16 yes. When I say all the Staff reviews I'm speaking in  
17 the equipment qualification area.

18 Q I was, too. That is how I understood you.  
19 You would agree, wouldn't you, though, Mr.  
20 Noonan, that GDC 4 does state that it applies to  
21 structures, systems and components important to safety?

22 A (WITNESS NOONAN) I would agree with you that  
23 that wording is correct. I would agree with you that --  
24 I would also say that the writing of the GDCs are very  
25 vague, and I can probably apply a number of GDCs to