

LILCO, August 23, 1982

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USNRC

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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Before the Atomic Safety and Licensing Board

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

LILCO'S MOTION TO COMPEL PRODUCTION
OF EMERGENCY PLANNING DOCUMENTS

In accordance with 10 C.F.R. § 2.740(f), the applicant, Long Island Lighting Company (LILCO), hereby moves the presiding officer in this proceeding for an order compelling Suffolk County (the County) to produce the documents requested in "LILCO's First Request to Suffolk County for Production of Emergency Planning Documents" and in "LILCO's Second Request to Suffolk County for Production of Emergency Planning Documents." In support of this motion LILCO hereby states as follows:

1. On June 2, 1982, LILCO served on intervenor Suffolk County a request for documents entitled "LILCO's First Request to Suffolk County for Production of Emergency Planning Documents." On June 22, 1982, LILCO served on intervenor Suffolk County a request for documents entitled "LILCO's Second Request to Suffolk County for Production of Emergency Planning Documents."

2. On July 1, 1982, the County served "Suffolk County's Response to LILCO's First Request to Suffolk County for Production of Emergency Planning Documents" (First Response). On August 4, 1982, the County served "Response of Suffolk County to LILCO's Second Request to Suffolk County for Production of Emergency Planning Documents" (Second Response).^{1/}

3. In its response to the first request, the County objected to producing documents, arguing that the documents requested were irrelevant to the limited Phase I emergency planning issues before the Board and were therefore not discoverable. First Response at 3. These documents included any materials connected to the development of Suffolk County's emergency plan, the County's plans for emergencies not related to nuclear power, and the County's plans for emergencies involving Brookhaven Laboratory and Millstone Point Nuclear Power Station. The County also argued that responding to LILCO's first request would be burdensome, First Response at 5 and 13 and that at least some documents sought were intra-governmental correspondence protected by privilege. First Response at 7 and 9.

^{1/} The County's second response was filed out of time. Under 10 C.F.R. §§ 2.710 and 2.741(d), the County had thirty-two days within which to file a response.

4. LILCO filed a motion to compel production of the documents on July 9, 1982; the County responded on July 19, 1982, opposing the motion. The Board ruled at the hearings on July 20, confirming the ruling in its July 27 Order, that the County was to produce "all existing emergency planning documents, whether they related to LILCO's or Suffolk County's planning efforts." July 27 Order at 23; see Tr. 7404-05. The County was to produce documents in its "direct possession and control" by July 26, and "documents in the possession of consultants and expert witnesses" by August 3. Tr. 7416-17; July 27 Order at 25. This schedule was tied in part to LILCO's request that documents be produced prior to the taking of depositions. Tr. 7414-15.

5. On July 26, LILCO received a letter (attached) from the County stating the County was on that day "beginning the process of producing documents relevant to [LILCO's] discovery requests of June 2 and 22, 1982."^{2/} The County also noted it was asserting an attorney-client privilege and an intra-governmental communications privilege with respect to certain unnamed documents.

^{2/} Documents responsive to the First Request were due on July 26, pursuant to the Board's Order; documents responsive to the Second Request were due July 24. See footnote 1, above.

6. LILCO requested in its letters of July 30 and August 5 (attached) that the County provide a list of the documents being withheld under claims of privilege, and the basis for the claims. (LILCO's first and second document requests also asked that the County in its responses identify documents withheld as privileged, and state the grounds for claiming privilege.) The County responded on August 11 with a list of documents being withheld (letter attached). No grounds were given.

7. The County's response to LILCO's second request for documents, filed on August 4, contained no mention of documents withheld under a claim of privilege. Further, the County's August 4 response suggests that the County may be producing only those documents it considers within its "possession, custody or control," excluding from that category documents in its consultants' possession.

8. It is not possible to evaluate the County's claims of privilege because the County provides no details. With respect to privilege the County cites no legal authority, nor did it list in its filed responses the documents for which it claims the privilege, even though LILCO's document requests asked the County to provide a list of any documents considered to be privileged from production. In addition, the County has

not applied for a protective order. The NRC regulations, 10 C.F.R. § 2.740(f), say that "[f]ailure to answer or respond shall not be excused on the ground that the discovery sought is objectionable unless the person or party failing to answer or respond has applied for a protective order pursuant to paragraph (c) of this section."

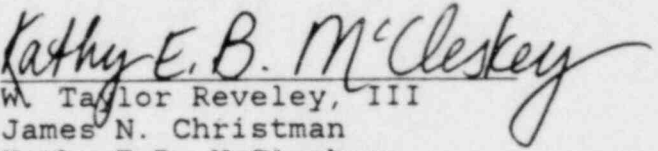
9. The County has not produced documents within the dates set by the Board. In an attempt to accommodate the County, LILCO offered to inspect documents in New York. See LILCO's July 30 letter, attached. LILCO also agreed to the County's producing documents by August 6, rather than July 26 and August 3, even though that date was three days past the last day set by the Board for producing documents from the County's consultants, and eleven days past the last day set by the Board for producing documents in the County's possession. See LILCO's letters of August 5 and August 13, attached. The County has produced documents well past August 6. See the transmittal letters, attached, dated August 5, August 9, August 14, and August 16. The County has not provided a date by which it will produce the remaining documents responsive to LILCO's request.^{3/}

^{3/} Suffolk County's abuse of the discovery process is not limited to its unjustified failure to comply with the Board's July 2nd mandate respecting document production. Throughout the

10. For the above reasons, LILCO moves the presiding officer to issue an order compelling the County to respond fully and immediately to LILCO's first and second requests to Suffolk County for emergency planning documents.

Respectfully submitted,

LONG ISLAND LIGHTING COMPANY


W. Taylor Reveley, III
James N. Christman
Kathy E.B. McCleskey

Hunton & Williams
707 E. Main Street
Richmond, Virginia 23212

DATED: August 23, 1982

footnote continued

depositions of County employees and consultants, attorneys for the County have repeatedly instructed deponents not to answer a variety of questions. LILCO is currently cataloguing these additional obstructionist tactics. Although LILCO is not seeking sanctions in this motion to compel, it expressly reserves the right to lay before the Board the full array of the County's efforts to hamstring LILCO's discovery. At such time, LILCO will seek appropriate sanctions.

The above-mentioned attachments are being sent by
Federal Express to Hauppauge with another copy of the motion.

LILCO, August 23, 1982

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 MOTION TO
COMPEL PRODUCTION OF EMERGENCY PLANNING DOCUMENTS were served
upon the following by first-class mail, postage prepaid, by
hand (as indicated by an asterisk), or by Federal Express (as
indicated by two asterisks), on August 23, 1982.

Lawrence Brenner, Esq.*
Administrative Judge
Atomic Safety and Licensing
Board Panel
U.S. Nuclear Regulatory
Commission
Washington, D.C. 20555

Dr. Peter A. Morris*
Administrative Judge
Atomic Safety and Licensing
Board Panel
U.S. Nuclear Regulatory
Commission
Washington, D.C. 20555

Dr. James H. Carpenter*
Administrative Judge
Atomic Safety and Licensing
Board Panel
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

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David A. Repka, Esq.
U.S. Nuclear Regulatory
Commission
Washington, D.C. 20555

David J. Gilmartin, Esq.
Attn: Patricia A. Dempsey, Esq.
County Attorney
Suffolk County Department of Law
Veterans Memorial Highway
Hauppauge, New York 11787

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

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Lawrence Coe Lanpher, Esq.
Karla J. Letsche, Esq.
Kirkpatrick, Lockhart, Hill,
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Washington, D.C. 20036

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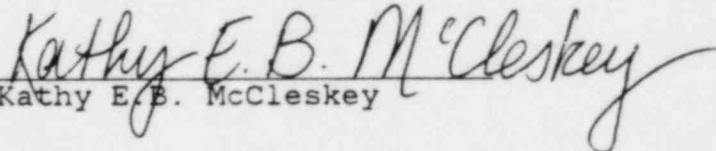
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Department of Public Service
Three Empire State Plaza
Albany, New York 12223

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

Respectfully submitted,

LONG ISLAND LIGHTING COMPANY


Kathy E. B. McCleskey

Hunton & Williams
707 East Main Street
P.O. Box 1535
Richmond, Virginia 23212

DATED: August 23, 1982

KIRKPATRICK, LOCKHART, HILL, CHRISTOPHER & PHILLIPS

A PARTNERSHIP INCLUDING A PROFESSIONAL CORPORATION

1900 M STREET, N. W.

WASHINGTON, D. C. 20036

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CABLE: HIFPHI
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WRITER'S DIRECT DIAL NUMBER

July 26, 1982

IN PITTSBURGH
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1500 OLIVER BUILDING
PITTSBURGH, PENNSYLVANIA 15222
(412) 355-6500

(202) 452-8391

James Christman, Esq.
Kathy McCleskey, Esq.
Hunton & Williams
P.O. Box 1535
707 East Main Street
Richmond, Virginia 23212

Dear Jim and Kathy:

Pursuant to the Board's decision on LILCO's motion to compel discovery, we are today beginning the process of producing documents relevant to your discovery requests of June 2 and 22, 1982. The documents produced today are from the files of Suffolk County's Department of Planning and Department of Emergency Preparedness and, with few exceptions, pertain to nuclear emergency planning. However, they by no means comprise the total of relevant documents in Suffolk County's possession.

By memorandum of July 22, 1982, Deputy County Executive Frank Jones ordered all department heads to conduct a search of their department's files within 24 hours in order to identify and copy all documents pertaining to your request. While this process is moving forward with all possible dispatch, it is simply impossible to produce all relevant documents by today. The County has over fifty agencies, many of which have some role to play in various emergencies, both nuclear and non-nuclear. Thus, Suffolk County has emergency procedures for a wide range of events, from coping with hurricanes to tracking down contaminated canned tunafish in supermarkets. Furthermore, the Department of Emergency Preparedness occupies an entire building. Every scrap of paper produced in that building may well pertain to your request for documents. While Suffolk County has every intention of complying with the Board's order, I might suggest that you narrow your request, particularly with regard to non-nuclear planning, in order to prevent discovery in this case from reaching nightmare proportions.

James Christman, Esq.
Kathy McCleskey, Esq.
July 26, 1982
Page Two

Item 7 of your June 2 request seeks "[a]ll documents used in preparing the March 10 plan" In addition to the materials provided today, the Suffolk County Department of Planning utilized a number of reference publications in preparing that document. Most of these reference materials have not been produced today, but are listed on Attachment A. If you wish to obtain some of the listed items, and they are in the County's possession, we will provide them to you upon request.

With respect to documents not directly in the possession of the County, but rather in the possession of its emergency planning consultants, please be advised that on July 21, 1982, a letter was sent by Federal Express to each consultant seeking all documents in your June 2 and 22 requests. We will contact you with the results of that request on August 3, 1982, the date set by the Board for production by the County's consultants. As we have stated to you earlier, these consultants are presently at work on Suffolk County's Radiological Emergency Response Plan. Their efforts in complying with your request may very well affect the County's ability to complete that plan on schedule.

Please note that the County is asserting privileges with respect to the following documents:

1. Correspondence and other such documents between the Suffolk County Department of Law and any agency or employee thereof, which fall within the attorney-client privilege and are thus not subject to discovery. Furthermore, they represent intra-governmental communications, production of which is not required.

2. All communications and other such documents between Suffolk County's counsel in the Shoreham licensing proceeding and Suffolk County officials or their consultants. Such items fall within the attorney-client privilege and include attorney work product.

3. All communications, memoranda, and minutes from or to the Suffolk County Radiological Emergency Response Plan Steering Committee. These documents reflect advisory opinions, recommendations and deliberations pertaining to the County's radiological emergency planning efforts, and thus fall within the intra-governmental communications privilege.

In compliance with your request to take depositions of certain Suffolk County witnesses from August 5-17, 1982, we

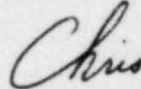
KIRKPATRICK, LOCKHART, HILL, CHRISTOPHER & PHILLIPS

James Christman, Esq.
Kathy McCleskey, Esq.
July 26, 1982
Page Three

are in the process of contacting the individuals you have identified for that purpose. Stephen Cole has informed us that he will appear on August 5, 1982 in Washington, D.C. only upon receipt of assurance that he will be paid by LILCO at a rate of \$200 per hour for his deposition (including travel) and \$100 per hour for any preparation time, as well as expenses. Furthermore, Frank Jones will be out of town from August 8-28 and will not be available for a deposition in Washington, D.C. on August 17, 1982 as you requested. Please advise us how you wish to proceed with these two individuals in light of these concerns.

We will be in contact with you as further documents are made available by the County. I suggest that as the volume of relevant documents increases, we might want to arrange for inspection at the County's offices in Hauppauge, New York. In addition, we will have to work out the means by which LILCO intends to pay for the costs incurred in producing such a large volume of documents.

Yours truly,



Cherif Sedky
Christopher M. McMurray

Attachment

HUNTON & WILLIAMS

707 EAST MAIN STREET

P.O. Box 1535

RICHMOND, VIRGINIA 23212

TELEPHONE 804-788-8200

July 30, 1982

B B & T BUILDING
P.O. BOX 109
RALEIGH, NORTH CAROLINA 27602
919-828-9371

FIRST VIRGINIA BANK TOWER
P.O. BOX 3889
NORFOLK, VIRGINIA 23514
804-622-5501

1919 PENNSYLVANIA AVENUE, N.W.
P.O. BOX 19230
WASHINGTON, D.C. 20036
202-223-8650

FILE NO.

DIRECT DIAL NO. 804 788-

Cherif Sedky, Esq.
Christopher M. McMurray, Esq.
Kirkpatrick Lockhart, Hill, Christopher,
and Phillips
1900 M. Street, N.W.
Washington, D.C. 20036

Document Production and Depositions

Gentlemen:

This letter responds to your letter of July 26 and memorializes our phone conversations of July 27 and 28 regarding document production and depositions.

As to document production, we understand from your July 28 letter that the County will produce many relevant documents over the new few days in response to our requests. We will, if necessary, inspect the documents in New York. We suggest that the County provide at fifteen cents a page any copies we may request after inspecting the documents. (LILCO provided QA documents under a similar arrangement.)

Although it was not unexpected, we still find disturbing your suggestion that your consultants' efforts in complying with our discovery requests "may very well affect the County's ability to complete the [County] plan on schedule." We think it is incumbent upon the County, as on any litigant in any proceeding, to fulfill its discovery and other obligations promptly, even if occasional extraordinary efforts are necessary. We will have to resist any efforts to delay the licensing proceeding based on asserted burdens of participating in the legal process.

You also noted in your July 26 letter that you intend to assert privileges with respect to certain documents. To our knowledge, you have not filed a pleading in response to LILCO's second document request, listing the documents you are claiming are protected and the basis for your claim. Nor did you provide that information in your response to LILCO's first request or in your letter. Until we receive this information, we are unable to respond to your assertion of privilege, but we are inclined to view your assertion as unfounded.

HUNTON & WILLIAMS

Cherif Sedky, Esq.
Christopher M. McMurray, Esq.
July 30, 1982
Page 2

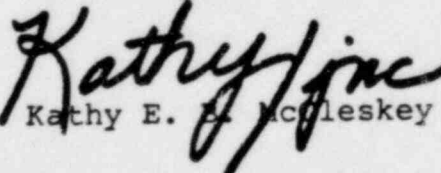
As to depositions, we will depose Frank Jones on August 5, since he is unavailable August 8 through 28. Also, at our request we will not depose Kai Erikson on August 6, and his deposition will be rescheduled for sometime during the week of August 16.

Please tell Dr. Cole and your other experts that LILCO is prepared to reimburse them at the same rate that was agreed upon for the 7B depositions: (1) round-trip coach fare, (2) car rental at Avis rates, (3) one night's lodging if the expert is unable to return home the same day, and (4) the expert's time at the deposition, at the hourly rate the expert charges the County. We presume the County will reimburse LILCO's experts under the same arrangement.

As I mentioned during our phone conversation, we think it would save time if we discussed in this round of depositions all issues submitted in contentions EP 2 through EP 27, including those designated for Phase II in the Board's July 27 Order. Since you have stated that you object to putting off any of those issues, and since we will have the deponents assembled, we think it makes sense to discuss those issues now. We do not understand your refusal to do so.

Jim Christman and I are compiling information and settlement language regarding the contentions. We look forward to discussing that material with you during our meeting at your offices Tuesday next.

Sincerely,


Kathy E. McCleskey

301/586

HUNTON & WILLIAMS

707 EAST MAIN STREET P. O. BOX 1535

RICHMOND, VIRGINIA 23212

TELEPHONE 804-788-8200

August 5, 1982

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WASHINGTON, D. C. 20036
202-223-8650

FILE NO. 24566.000003

DIRECT DIAL NO. 804 788- 8368
8701

Cherif Sedky, Esq.
Christopher M. McMurray, Esq.
Kirkpatrick, Lockhart, Hill,
Christopher & Phillips
1900 M Street, N.W.
Washington, DC 20036

Gentlemen:

In your letter of July 26, 1982, you suggested that we narrow our discovery request. Unfortunately you haven't given us any information on which we could make a decision to narrow. You need to understand that none of our document requests were made merely to harass you; every single one of them was made because we believe it will produce information relevant to the issues in this proceeding.

Let us give you an example. You seem to think that our requests for documents related to nonnuclear emergency planning are somewhat unreasonable. But surely you can understand that, in our view, if we can show that the authorities are capable, for example, of evacuating people from hurricanes or toxic chemical spills, we have gone a long way toward proving that they are capable of evacuating them in a radiological emergency. This becomes particularly important in light of your insistence that the County has no radiological emergency plan.

Another example: you mention that Suffolk County has procedures for tracking down contaminated canned tuna fish in supermarkets. Surely it has occurred to you that those procedures might be relevant to how the County might deal with the ingestion exposure pathway, where it might be necessary to take action to protect the public from consumption of contaminated foodstuffs (look at NUREG-0655, page 64). So unless you give us more details about the documents that you think are not relevant, we have no way to make our own judgment and must conclude that if the documents are responsive to our requests, then they are relevant to our case and ought to be produced.

HUNTON & WILLIAMS

It is our understanding that you are producing the remainder of the documents responsive to our discovery request this Friday, August 6. We would appreciate receiving further information regarding the documents you are not producing under a claim of privilege. We also note once again that we have not received a filed response to our second request for documents.

Sincerely,

James N. Christman
Kathy E.B. McCleskey

301/728

KIRKPATRICK, LOCKHART, HILL, CHRISTOPHER & PHILLIPS

A PARTNERSHIP INCLUDING A PROFESSIONAL CORPORATION

1900 M STREET, N. W.

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--August 11, 1982

IN PITTSBURGH
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PITTSBURGH, PENNSYLVANIA 15222
(412) 522-0500

James N. Christman, Esq.
Kathy E.B. McCleskey, Esq.
Hunton & Williams
707 East Main Street
Richmond, Virginia 23212

Dear Jim and Kathy:

The following is a list of documents which are arguably relevant to your broad discovery request, but which we are withholding on grounds that these documents fall under recognized privileges. As I stated to you by phone in the late afternoon on Monday, August 9, 1982, you did not receive this list earlier because I was receiving the documents from Suffolk County in phases, and felt that it would be more efficient for both sides to receive one document listing all materials we consider privileged, rather than a number of shorter lists.

1. The following documents are not subject to discovery because they fall within the attorney-client privilege or the executive privilege concerning intra-governmental communications and which might reveal advice, opinions or policy making decisions within the Suffolk County government:

Memorandum from David J. Gilmartin,
County Attorney to Suffolk County
Legislators dated April 24, 1981,
concerning negotiations with LILCO
regarding the outstanding issues
surrounding ultimate operation of
the Shoreham Nuclear Power Station.

Memorandum to David J. Gilmartin
from Patricia A. Dempsey, dated
May 21, 1982 regarding Ms. Dempsey's
comments regarding the issues and
problems related to the County's
preparation of a radiological
emergency response plan.

Memorandum to the members of the
Health Committee, Suffolk County
Legislature, from Patricia A. Dempsey,
Assistant County Attorney, dated

November 19, 1981, regarding a report from Ms. Dempsey regarding the sixth stipulation re Shoreham Nuclear Power Station.

A letter from Patricia A. Dempsey to all Suffolk County legislators dated October 1 regarding the sixth stipulation and settlement of Suffolk County contentions regarding the Shoreham Nuclear Power Plant. Attached to this letter is a copy of the sixth stipulation and a settlement of Suffolk County contentions in draft form dated October 5, 1981.

Memorandum from Patricia A. Dempsey, Assistant County Attorney, to Lee Kopelman, copies to Robert Meunkle, David J. Gilmartin, William J. Kent, and E. R. Riley regarding emergency planning services negotiated between Cleveland Electric Illuminating Company in Lake County and PRC Voorhees' involvement in that effort.

Memorandum to Patricia A. Dempsey, Assistant County Attorney, from Robert C. Meunkle, dated September 2, 1981, regarding school buildings proposed to use as transfer points in the event of an evacuation of the EPZ around the SNPS.

Memorandum from David J. Gilmartin, Suffolk County Attorney, to Peter F. Cohalan, County Executive and others, dated March 18, 1982, regarding the Planning Department's emergency planning efforts and presentation of those efforts to the County executive.

A letter from Patricia A. Dempsey, Assistant County Attorney, to Robert C. Meunkle, dated February 3, 1982, regarding use of school buses and school building in case an evacuation is required.

Memorandum to Laura Palmer from Patricia A. Dempsey, Assistant County Attorney, dated February 11, 1982, regarding correspondence from the Long Island railroad regarding the County's radiological emergency response plan.

A letter from Patricia A. Dempsey, Assistant County Attorney, to Robert C. Meunkle, dated January 25, 1982, regarding letters receiving from school districts regarding the use of their school building and buses.

~~A letter from Patricia A. Dempsey, Assistant County Attorney, to Robert C. Meunkle, dated January 15, 1982, regarding materials relevant to the Shoreham Plant which were forwarded by MHB Technical Associates.~~

A letter from Patricia A. Dempsey to Mr. Robert Meunkle, dated January 14, 1982, regarding securing copies of reports on the Shoreham radiological emergency response plan and the county's intention to have a contention on a

A letter from Robert C. Meunkle to Patricia Dempsey, dated February 24, 1982, regarding school district participation during a radiological emergency.

A letter to Robert C. Meunkle from Patricia A. Dempsey, dated November 18, 1981, regarding agreements between school districts to permit use of school buses in the event of a radiological emergency.

A letter from Robert C. Meunkle to Patricia A. Dempsey, dated April 30, 1981, regarding legal documents necessary to guarantee availability of facilities, equipment and services required for an evacuation plan.

A letter from David J. Gilmartin, County Attorney, to Suffolk County Legislators regarding County intervention in the Nuclear Power Station Licensing hearings.

A letter from Patricia A. Dempsey, Assistant County Attorney, to Mr. Richard A. Strang, dated October 28, 1980, regarding the County's involvement in the Shoreham Nuclear Licensing proceedings, and a review of LILCO's emergency planning activities.

A letter from Richard A. Strang to Patricia A. Dempsey, dated October 30, 1980, regarding agreements between LILCO and the Wading River Fire Department.

A letter from Patricia A. Dempsey, Assistant County Attorney, to Mr. Richard A. Strang, Deputy Commissioner, Department of Transportation, dated October 28, 1980, regarding a review of LILCO's activities in the area of emergency planning.

A letter from Richard A. Strang, Deputy Commissioner, Department of Transportation, to Ms. Pat Dempsey, dated May 7, 1980, regarding proposed legislation by Assemblyman Fink on radiological emergency preparedness.

A letter from Richard A. Strang to Patricia Dempsey, dated May 7, 1980, regarding transportation of radioactive material in general and spent fuel in particular.

A letter from Patricia A. Dempsey to William Reagan, Director, Department of Emergency Preparedness, dated August 8, 1980, enclosing copy of comments submitted regarding legislator thinks proposed act concerning emergency response plans.

A letter from Patricia A. Dempsey to William E. Reagan, dated August 12, 1980, regarding Suffolk County's evacuation plans for the Shoreham Nuclear facility.

A letter from Patricia A. Dempsey to William E. Reagan, dated August 13, 1980, regarding a memo from the Federal Emergency Management Agency.

A letter to Patricia Dempsey from the Department of Transportation, dated August 18, 1980, regarding policy and procedures for review and approval by FEMA of emergency planning efforts.

A letter from Eugene R. Kelly, Assistant County Attorney, to Mr. Anthony Noto, dated September 11, 1980, regarding a tour of the Shoreham facility for members of the legislature.

A letter from Richard A. Strang, Deputy Commissioner, Department of Transportation, to Patricia Dempsey, dated August 20, 1980, regarding time estimates for evacuation.

A letter from Patricia A. Dempsey, Assistant County Attorney, to William E. Reagan, Director, Emergency Preparedness Department, dated August 14, 1980, regarding policy and procedures for review and approval by FEMA of emergency plans.

A letter from Patricia A. Dempsey to Assembly Speaker Fink, dated August 5, 1980, offering comments on the proposed radiological emergency preparedness act.

Memorandum from Patricia A. Dempsey to David J. Gilmartin and William J. Kent, dated June 5, 1981, regarding the contract between Suffolk County and LILCO for preparation of County radiological emergency response plan.

A letter from Howard E. Pachman, County Attorney, to Messrs. Noto and Grant and Dr. Feldman, dated May 16, 1979, regarding regulating the operation of nuclear power facilities.

2. The following documents are not discoverable because they were prepared by the County's attorneys or by the County's consultants for the use of the County's attorneys, in preparation for litigation of the emergency planning issues under consideration.

PRC Voorhees' notes on LILCO's emergency plan.

Memorandum to Dr. Edward P. Radford, from Chris McMurray, Counsel to Suffolk County, dated May 25, 1982, regarding Dr. Radford's review of the LILCO plan.

Comments on the Shoreham Nuclear Power Station emergency plan authored by Dr. James Johnson.

A letter from Dr. Kai T. Erikson to Christopher M. McMurray, dated May 13, 1982, regarding Dr. Erikson's review of the LILCO plan.

A letter from Christopher M. McMurray,
~~Counsel to Suffolk County, to Dr. Karl~~
Erikson, dated May 3, 1982, regarding
a review of LILCO's plan.

A letter from Christopher M. McMurray,
Counsel to Suffolk County, to James
H. Johnson, Jr., dated April 21, 1982,
regarding a review of the LILCO plan.

A letter to Herbert Brown, Counsel to
Suffolk County, from James H. Johnson,
dated July 26, 1982, regarding a review
of Suffolk County's plan.

3. The following documents are not discoverable because
they consist of intra-governmental communications containing
advice, opinions, recommendations, or policy making decisions
which are subject to executive privilege:

A document authored by Fred Finlayson
titled "Criteria for Establishing EPZ
Boundaries"

A memo to Frank Jones, Deputy County
Executive, from Philip B. Herr, dated
May 12, 1982, regarding radiological
emergency response plan demographics.

Meeting notes authored by Peter Polk
regarding review of LILCO on-site
plan.

Meeting notes authored by Peter Polk,
dated April 29, 1982, regarding Suffolk
County radiological emergency response
plan.

All Steering Committee minutes.

A letter to Dr. Lee Kopelman, Executive
Director, Nassau/Suffolk Regional
Planning Board, from Richard A. Strang,
Director of Traffic Safety, dated
February 23, 1981, regarding legislation
regarding emergency response planning.

Please do not hesitate to contact me should you have any
questions regarding this matter.

HUNTON & WILLIAMS

707 EAST MAIN STREET P. O. Box 1535

RICHMOND, VIRGINIA 23212

TELEPHONE 804-788-8200

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919-828-9371

FIRST VIRGINIA BANK TOWER
P. O. BOX 3889
NORFOLK, VIRGINIA 23514
804-625-5501

1818 PENNSYLVANIA AVENUE, N. W.
P. O. BOX 18230
WASHINGTON, D. C. 20036
202-223-8850

FILE NO. 24566.000003

DIRECT DIAL NO. 804 788-8701

August 13, 1982

Cherif Sedky, Esq.
Christopher M. McMurray, Esq.
Kirkpatrick, Lockhart, Hill,
Christopher & Phillips
1900 M Street, N.W.
Washington, D.C. 20036

Gentlemen:

We have received your August 11 letter listing documents you are withholding under a claim of privilege. We had previously asked you in our letters of July 30 and August 5 (not to mention our two requests for documents) to provide us with a list of the documents being withheld and a statement of the bases for withholding the documents. We repeated that request during our phone conversation with you on August 9. Your letter of August 11, which was telecopied a day later than promised, does not provide any information regarding the bases for your claim of privilege. It merely lists the documents you have refused to produce to LILCO.

Further, as stated in our August 5 letter, it was our understanding that you were producing any remaining documents on Friday, August 6. That date was three days past the last day set by the Board for producing documents from the County's consultants, and was eleven days past the last day set by the Board for producing documents in the County's possession. However, in light of our statements to the Board that we were

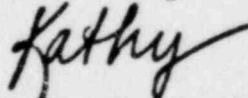
HUNTON & WILLIAMS

willing to work within a flexible time frame on production of documents, we agreed that Friday, August 6 was acceptable for final production.

The existence of the additional documents that arrived this week, plus the text of the cover letter accompanying those documents, makes clear that you intend to continue to produce documents piecemeal for an indefinite period. We asked you on Monday last to include in your letter regarding document production (the letter you sent on August 11) a date by which you would complete production of documents. You have refused to do so. We regard your actions as in violation of the Board's decisions.

We also received on August 11 the County's response to LILCO's second document request. Your certificate of service states this document was served on Taylor Reveley by hand, presumably in Long Island, on August 4. We reiterate our insistence that, should you determine to serve pleadings or documents on us by hand in Long Island, copies be sent by expedited means to us in Richmond. We are particularly disturbed to have received this response seven days after it was served, as we inquired about it frequently over the past few weeks, both in letters and during phone conversations, and were advised last week that it had been mailed, only to learn that it was actually mailed on August 10.

Yours very truly,



Kathy E. B. McCleskey
James N. Christman

301/798

rec'd Fed Ex Aug 6
KMH

KIRKPATRICK, LOCKHART, HILL, CHRISTOPHER & PHILLIPS

A PARTNERSHIP INCLUDING A PROFESSIONAL CORPORATION

1900 M STREET, N. W.

WASHINGTON, D. C. 20036

TELEPHONE (202) 452-7000

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TELEX 440900 NIPH UI

WRITER'S DIRECT DIAL NUMBER

(202) 452-8391

August 5, 1982

IN PITTSBURGH

KIRKPATRICK, LOCKHART, JOHNSON & HUTCHISON

1600 OLIVER BUILDING

PITTSBURGH, PENNSYLVANIA 15222

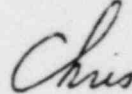
(412) 355-1500

James N. Christman, Esq.
Kathy McCleskey, Esq.
Hunton & Williams
707 East Main Street
Richmond, Virginia 23212

Dear Jim and Kathy:

Enclosed please find further documents pertaining to your first and second discovery requests. These documents include various materials forwarded by our consultants, as well as emergency procedures from the Suffolk County Police Department and the Sheriff's Office. More documents relevant to your request are being processed and will be provided as soon as possible.

Yours truly,



Christopher McMurray

Encls.

KIRKPATRICK, LOCKHART, HILL, CHRISTOPHER & PHILLIPS

A PARTNERSHIP INCLUDING A PROFESSIONAL CORPORATION

1900 M STREET, N. W.

WASHINGTON, D. C. 20036

August 9, 1982

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KIRKPATRICK, LOCKHART, JOHNSON & HUTCHISON
1500 CHEVET BUILDING
PITTSBURGH, PENNSYLVANIA 15222
(412) 586-8600

rec'd Aug 10 KMS

Kathy McClesky, Esq.
Hunton & Williams
707 East Main Street
Richmond, Virginia 23212

Dear Kathy:

Enclosed are documents received from various
Suffolk County agencies, all pertaining to their
emergency planning procedures. We will forward
others as we receive them.

Yours truly,

Chris

Christopher McMurray

CM:ras
Enclosures

KIRKPATRICK, LOCKHART, HILL, CHRISTOPHER & PHILLIPS

A PARTNERSHIP INCLUDING A PROFESSIONAL CORPORATION

1900 M STREET, N. W.

WASHINGTON, D. C. 20036

August 14, 1982

TELEPHONE (800) 488-7000

CABLE: NIPHI

TELEX 440806 NIPH VI

WRITER'S DIRECT DIAL NUMBER

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Aug. 16. KNE

IN PITTSBURGH

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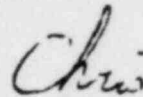
(412) 525-7000

Kathy McClesky, Esq.
Hunton & Williams
707 East Main Street
Richmond, Virginia 23212

Dear Kathy:

Enclosed are documents received from consultants and from the Suffolk County Department of Fire Safety, pertaining to emergency planning. We will continue to forward others as we receive them.

Your truly,



Christopher McMurray

CM:ras

Enclosures

KIRKPATRICK, LOCKHART, HILL, CHRISTOPHER & PHILLIPS

A PARTNERSHIP INCLUDING A PROFESSIONAL CORPORATION

1900 M STREET, N. W.

WASHINGTON, D. C. 20036

August 16, 1982

TELEPHONE (202) 462-7000
CABLE: KIRKP
TO: UN-440009 FROM: UI
WE CAN REPORT DATA MURRAY
(202) 462-8391

IN PITTSBURGH
KIRKPATRICK, LOCKHART, JOHNSON & HUTCHISON
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PITTSBURGH, PENNSYLVANIA 15222
(412) 386-6500

Kathy McCleskey
Hunton & Williams
P.O. Box 1535
707 East Main Street
Richmond, Virginia 23212

Dear Kathy:

Enclosed please find further documents related
to emergency planning issues.

Sincerely,

Chris

Christopher McMurray

CMM:ras

Enclosures