

RELATED CORRESPONDENCE

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

'82 AGO 31 P2:17

Before the Atomic Safety and Licensing Board

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

Docket No. 50-322 (OL)

RESPONSE AND OPPOSITION OF SUFFOLK COUNTY
TO LILCO'S MOTION TO COMPEL PRODUCTION OF
DOCUMENTS

On August 23, 1982, LILCO filed a "Motion to Compel Production of Emergency Planning Documents." On August 25, 1982, LILCO supplemented that motion to include additional documents described in an August 24 letter from Suffolk County's counsel.

The LILCO Motion, as supplemented, has two facets. First, LILCO objects to the timing of the County's production of documents, arguing that the County was required to produce all documents by August 3, 1982. Second, LILCO disagrees with the County's asserted privilege claims against production of certain documents described in letters of August 11 and 24 from Suffolk County's counsel to LILCO's counsel. LILCO asks in each instance that the Board order full and immediate production of all documents.

In accordance with the schedule announced by the Board, the County responds below to the LILCO motion. The County submits that the Motion should be denied.

DS03

Alleged Failure of County to Respond to
LILCO Production Requests

LILCO first complains about the fact that the County did not produce all emergency planning documents by August 3, 1982. As LILCO recognizes in its motion, the County began producing documents on July 26, 1982. Additional batches of documents were produced on August 5, 9, 14 and 16. The County is continuing to produce documents as speedily as it is able to do so, and can now represent that all documents will be produced on or before September 3, 1982.^{1/}

In view of the fact that production will be complete this week, LILCO's motion in this regard for an order compelling production is essentially moot. The County notes two additional points, however.

First, it must be made clear that LILCO has known since late July that due to the dimensions of LILCO's requests, the County could not produce all documents by early August. Nevertheless, LILCO refused to narrow its requests to facilitate more prompt production. In this regard, LILCO was alerted as early as July 26, 1982, and in telephone conversations before and since that date, that there was potentially a vast volume of documents that might be construed to fall within LILCO's document requests. The

^{1/} Essentially all County documents were produced by August 16. Counsel understands that only a small number of documents from the County Executive's office remain to be produced. Contrary to the suggestion at page 4 of LILCO's motion, documents in the possession of the County's consultants have been produced.

County advised LILCO that its various agencies had emergency procedures for a wide range of events ranging from nuclear and natural disasters to such other emergencies as finding contaminated food in a supermarket and getting a check cashed on a Sunday. In view of the foregoing, LILCO was asked to narrow its requests. In response, LILCO declined to narrow its requests. Indeed, it stated that the County's procedures for tracking down contaminated canned tuna fish in supermarkets could in its view be relevant and thus were intended to be encompassed by LILCO's requests.

Second, if LILCO objected to the County's failure to complete production by August 3 or 6, it should not have waited until August 23 to move to compel. Under 10 C.F.R. §2.740(f)(1), a motion to compel should have been filed within ten days of August 3 or 6. Thus, LILCO's motion which complains of untimely County response is itself untimely.

County Response to LILCO Motion
to Compel Production of Documents
Withheld Under Claim of Privilege

Pursuant to the Board's request, counsel for the County and LILCO have discussed each document withheld under claim of privilege. Based upon these discussions, many items in the August 11 County letter and one item in the August 24 letter have been resolved and require no Board ruling. The Board will find attached hereto copies of the August 11 and 24 letters with resolved items crossed out.

Notwithstanding these discussions, a number of documents remain in dispute. The County addresses below the privilege claims as applied to the specific documents. First, however, the County will respond to several general complaints contained in LILCO's motion.

LILCO argues that the County in its August 11 letter provided "no grounds" for the privilege claims and that it "is not possible to evaluate the County's claims of privilege because the County provides no details." Motion, p. 4. This is not true. The County has identified the author, recipient, date and subject matter of the requested documents in its letters of August 11 and 24. As to each document or group of documents, the privilege(s) that applied was(were) specifically noted. This is the type of information which in our experience is normally provided when privilege claims are asserted. LILCO never demonstrates why it is unable to evaluate the claims based upon the data which were provided but rather makes a general, nonparticularized allegation of being unable to evaluate the claims.

LILCO also complains that the County failed to provide legal citations to support its privilege claims. Motion, p. 4. The short answer is that neither the NRC rules nor general federal practice require a listing of legal authorities when asserting a privilege claim.

LILCO further complains that the County acted improperly in failing to seek a protective order. See Motion, pp. 4-5; 10 C.F.R. §2.740(f). However, a party is not required to seek a protective order when, as in the case of the County, the party does in fact respond.

Finally, LILCO complains that the County's initial response to the document requests did not include a list of documents being withheld. LILCO fails to note the County's explanation for having submitted the list on August 11:

As I stated to you by phone in the late afternoon on Monday, August 9, 1982, you did not receive this list [of privileged documents] 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. August 11 letter, ¶1.

Thus, the County clearly was not attempting to hamper discovery by submitting the list of documents on August 11.

Turning to the actual privilege claims themselves, the County has asserted that documents fall under three privileges: the attorney-client privilege, the work product doctrine, and the intragovernmental deliberative process privilege. These privileges are each generally described below.^{2/}

The elements of the attorney-client privilege can best be stated by repeating the widely quoted judicial definition in United States v. United Shoe Machinery Corp., 89 F. Supp. 357, 358-59 (D. Mass. 1950):

The privilege applies only if (1) the asserted holder of the privilege is or sought to become a client; (2) the person to whom the communication was made (a) is a member of the bar of a court, or his subordinate and (b) in connection with this communication is acting as a lawyer; (3) the communication relates to a fact of which

^{2/} The County will describe the attorney-client privilege and work product doctrine briefly, given the Board's assumed familiarity with these. The intragovernmental deliberation privilege is discussed in more detail, since its bases are not as commonly understood.

the attorney was informed (a) by his client (b) without the presence of strangers (c) for the purpose of securing primarily either (i) an opinion on law or (ii) legal services or (iii) assistance in some legal proceeding, and not (d) for the purpose of committing a crime or tort; and (4) the privilege has been (a) claimed and (b) not waived by the client.

The privilege has been held to apply also to communications from an attorney to a client made for the purpose of rendering legal services to the client.^{3/}

The discovery rules regarding the work product doctrine are derived from the Supreme Court's decision in Hickman v. Taylor, 329 U.S. 495 (1947). The NRC's rules, 10 C.F.R. §2.740(b)(2), specifically embody the doctrine:

A party may obtain discovery of documents and tangible things otherwise discoverable under subparagraph (1) of this paragraph and prepared in anticipation of or for the hearing by or for another party's representative (including his attorney, consultant, surety, indemnitor, insurer, or agent) only upon a showing that the party seeking discovery has substantial need of the materials in the preparation of the case and that he is unable without undue hardship to obtain the substantial equivalent of the materials by other means. In ordering discovery of such materials when the required showing has been made, the presiding officer shall protect

^{3/} See Natta v. Hogan, 392 F.2d 686, 693 (10th Cir. 1968); Garner v. Wolfenbarger, 430 F.2d 1093, 1096 n.7 (5th Cir. 1970), cert. denied, 401 U.S. 974 (1971); Schweinner v. United States, 232 F.2d 855, 863 (8th Cir.), cert. denied, 352 U.S. 833 (1956); United States v. Osborn, 409 F. Supp. 406 (D. Ore. 1975), modified on other grounds, 561 F.2d 1334 (9th Cir. 1977); Diematic Mfg. Corp. v. Packaging Industries, Inc., 22 Fed. Rules Serv. 2d 1015 (S.D.N.Y. 1976). But See SCM Corp. v. Xerox Corp., 70 F.R.D. 508, 520-22 (D. Conn.), appeal dismissed, 534 F.2d 1031 (2d Cir. 1976)

against disclosure of the mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party concerning the proceeding.

Finally, the County asserts a component of executive privilege, which is the privilege against disclosure of interagency or intra-agency documents containing advisory opinions, recommendations and deliberations which comprise "part of a process by which governmental decisions and policies are formulated." N.L.R.B. v. Sears, Roebuck & Co., 421 U.S. 141, 150 (1975); see, Carl Zeiss Stiftung v. V.E.B. Carl Zeiss, Jena, 40 F.R.D. 318, 324 (1966), aff'd 384 F.2d 979 (1967). The rationale for the privilege is that candid discussion of and advice regarding legal or policy matters would be inhibited if disclosed to the public. Sears, Roebuck & Co., supra; Smith v. F.T.C., 403 F. Supp. 1000, 1015 (D. Del. 1975). The ultimate goal is protection of the "decision making processes of government agencies." Tennessean Newspapers, Inc. v. FHA, 464 F.2d 657, 660 (6th Cir. 1972). Even though the privilege focuses on predecisional deliberations, the Supreme Court has held "that documents shielded by executive privilege remain privileged even after the decision to which they pertain may have been effected, since disclosure at any time could inhibit the free flow of advice, including analysis, reports, and expression of opinion within the agency." Federal Open Market Committee of the Federal Reserve System v. Merrill, 443 U.S. 340, 360 (1979).

The privilege is qualified and, therefore, may be overcome by an appropriate showing of need. See United States v. Capitol Services, Inc., 89 F.R.D. 578, 583 (1981). In balancing the interests to determine whether disclosure would be more injurious

to an agency's decisionmaking process than nondisclosure would be to a private litigant's case, a court will consider, inter alia, the importance of the documents to the private litigant and the availability elsewhere of the information contained in the documents. Cf. United States v. Leggett & Platt, Inc., 542 F.2d 655, 659 (6th Cir. 1976).

With the foregoing introduction, the County now will address the documents which have been withheld by the County. In the interest of permitting the Board a full opportunity to consider this matter, the County is voluntarily producing the documents to the Board for its in camera review. The County believes that such review may not be necessary but the County also does not wish to prolong this matter, something which might occur if, upon review of this filing without the benefit of the documents, the Board determined that it needed to review the materials. The documents produced for possible in camera review are grouped for discussion purposes as discussed below.

At pages 2, 3 and 5 (top) of the August 11 letter (Group I of the in camera submission), the following documents are withheld on the basis of the attorney-client and intragovernmental communication privileges.

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.

A letter from Robert C. Meunkle to Patricia Dempsey, dated February 24, 1982, regarding school district participation during 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 Richard A. Strang, Deputy Commissioner, Department of Transportation, to Patricia Dempsey, dated August 20, 1980, regarding time estimates for evacuation.

Each of the foregoing letters involves Ms. Dempsey, an attorney employed by Suffolk County who was performing work relating to preliminary County planning to respond to a Shoreham emergency. Mr. Meunkle was employed by the County Planning Group and Mr. Strang is the County Commissioner of Transportation. Hence, in each instance there is a communication between the attorney and the client. Further, the communications involve the County's preliminary planning efforts whereby the County was considering options regarding bus and emergency facility use and the preliminary views of the County regarding evacuation times. As such, the documents are protected under both the attorney-client and intragovernmental communication privileges.

Group II of the in camera submission consists of the documents listed under number "2" on pages 5 and 6 of the August 11 letter. As described in the August 11 letter, these are:

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. Kai 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.

Each of the Group II documents falls squarely within the work product doctrine. With one exception, they were prepared as part of the effort in formulating contentions in the April-June 1982 period. The documents authored by consultants were prepared at the express request of the County's attorneys to help the attorneys formulate emergency planning contentions. The documents authored by counsel request the consultants' assistance in these and related litigation activities. They reveal the attorneys' mental impressions. The July 26 letter, which concerns possible additional witnesses, consists of a list of persons supplied by consultants for the attorneys' use in the litigation. To the extent these documents reflect the attorneys' mental impressions, they are subject to almost an absolute privilege. See In re Murphy, 560 F.2d 326, 336 (8th Cir. 1977). To the extent these documents are work product not containing mental impressions, LILCO cannot demonstrate the need to obtain these documents since the consultants who authored the documents (other than the attorneys' documents) all were made available for deposition by LILCO where their views regarding the LILCO plan could be examined. Accordingly, production of the Group II documents must be denied.

The final documents in the August 11 letter (Group III of the in camera submission) were withheld because they consist of intra-governmental communications containing advice, opinions, recommendations, or policy-making decisions which are subject to executive privilege. These documents are:

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.

The first, second, fourth and fifth documents reflect the preliminary views of the County's consultants and County officials concerning items for possible inclusion in the County plan. Such predecisional data reflecting the deliberative process of County government are subject to the privilege. While the privilege is not absolute, LILCO has demonstrated no basis to believe that it needs these documents, particularly since it was able to inquire during depositions into much of the County's planning effort. The third document should be withheld under the

work product doctrine because it reflects counsel's request for consultants to perform tasks in connection with litigation. These requests were made at a meeting which is memorialized in the document. The final document reflects a request between County officials for legislation to be enacted. The request was not acted upon. However, such a request should be shielded to ensure the free flow of intragovernmental communications.

Turning to the August 24 letter, the bases for the privilege claims largely track the bases previously given. Group IV of the in camera submission concerns communications between attorneys and between attorneys and the client. These documents, August 24 letter, page 1, are:

Memorandum from Frank R. Jones, Deputy County Executive, to Herbert H. Brown, Esq., dated April 16, 1982, regarding supplements to March 29 draft emergency evacuation documents submitted to NRC.

A letter from Christopher M. McMurray to Patricia Dempsey, Esq., County Attorney's office, dated May 10, 1982 regarding scope of services for Kai Erikson and Jim Johnson.

These items are protected under the attorney-client privilege.

Group V of the in camera submission (Aug. 24 letter, pp. 1-2) concerns documents shielded by the work product doctrine.^{4/}

These documents are:

Letter from Philip B. Herr to Christopher McMurray, Attorney, dated July 6, 1982 regarding panel on behavior under stress.

^{4/} In the August 24 letter, the attorney-client privilege is also asserted. Subsequent review indicates that only the work product doctrine applies.

Letter from Christopher M. McMurray to Dr. Fred Finlayson, dated July 15, 1982 regarding LILCO testimony on PRA.

Letter from Christopher M. McMurray to Robert J. Budnitz, dated July 15, 1982 regarding LILCO testimony on PRA.

Letter from Christopher M. McMurray to Dr. Fred Finlayson, dated July 13, 1982 regarding social survey.

Letter from Fred C. Finlayson to Christopher M. McMurray, dated July 1, 1982 regarding interaction with authors of SAI and PL&G reports.

Letter from Christopher M. McMurray to Dr. Fred Finlayson, dated June 18, 1982 regarding documents pertaining to LILCO's consequence analysis.

These documents involve the consultants' views on litigation matters (such as possible witnesses) or attorneys' requests for consultants to review materials in the litigation context. These are squarely within the work product doctrine and many involve attorneys' mental impressions. We note that Messrs. Herr, Finlayson, and Budnitz all were deposed by LILCO and thus were available to answer factual questions in areas which LILCO sought to probe.

Group VI of the in camera submission (Aug. 24 letter, pp. 2-3) are documents shielded by both the attorney-client and intragovernmental communication privileges. These documents are:

Memorandum from Patricia A. Dempsey to Frank R. Jones, dated January 27, 1982 regarding the development of the County's radiological emergency response plan, interface between the County attorney's office and the Department of Planning, and the role of the legislature in the preparation of the County's plan.

Memorandum from Patricia A. Dempsey to Frank R. Jones, dated March 12, 1982 regarding Judge Brenner's order that all parties produce any draft plans prepared for its emergency planning efforts.

Memorandum from Chris McMurray to Frank Jones, Chairman SCRERP Steering Committee, dated May 6, 1982 regarding the SCRERP personnel.

Letter from Peter A. Polk to Christopher M. McMurray, dated August 4, 1982 regarding establishment of EPZ boundaries.

These documents in each instance reflect attorney-client communications concerning ongoing legal services and processes or the predecisional deliberations of the County's planning effort. Such communications are privileged and LILCO has made no effort to demonstrate any need to overcome the privileges.

Finally, Group VII of the in camera submission (Aug. 24 letter, p. 3) concerns documents shielded by the intragovernmental communication privilege. These documents are:

Activity report by Kathleen Goode, Suffolk County Executive's Office, dated June 18, 1982 regarding meeting between PRC Voorhees and Department of Emergency Preparedness.

Memorandum from Charles R. Skinner to Frank Jones, Deputy County Executive, dated June 21, 1982 regarding public education about SCRERP.

Memorandum from Charles R. Skinner to Frank Jones, Deputy County Executive, dated June 21, 1982 regarding meeting with Director of Fire Safety Ron Buckingham.

Activity report by Kathleen Goode, County Executive's Office, dated June 4, 1982 regarding SCRERP Steering Committee meeting.

Activity Report by Kathleen Goode, County Executive's Office, dated July 1, 1982 regarding meeting of Steering Committee.

In each instance, these documents reflect the predecisional phase of the County's emergency planning efforts. In this phase, various options are being considered by the County and work tasks are discussed. If such options and tasks are open to disclosure, the free flow of ideas may be seriously inhibited. Thus, this is precisely the kind of situation -- particularly in the predecisional phase -- that requires the protection of the privilege.

For the foregoing reasons, Suffolk County respectfully urges that LILCO's motion be denied.

Respectfully submitted,

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Dated: August 31, 1982

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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 particular issue.~~

~~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. Kai 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.

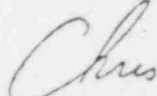
Meeting notes authored by Peter Polk, dated April 29, 1982, regarding Suffolk County radiological emergency response plan.

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.

Yours truly,


Christopher M. McMurray

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Dear Jim and Kathy:

The following is an additional list of documents which are arguably relevant to your discovery requests, but which we are withholding on grounds that these documents fall under recognized privileges. This list covers all documents received from Suffolk County since my last letter to you of August 11, 1982.

1. The following documents are not subject to discovery because they fall within the attorney-client privilege:

Memorandum from Frank R. Jones,
Deputy County Executive, to Herbert
H. Brown, Esq., dated April 16, 1982,
regarding supplements to March 29
draft emergency evacuation documents
submitted to NRC.

A letter from Christopher M. McMurray
to Patricia Dempsey, Esq., County
Attorney's office, dated May 10, 1982,
regarding scope of services for Kai
Erikson and Jim Johnson.

2. The following documents are not subject to discovery because they fall within the attorney-client privilege and the attorney work product privilege:

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Letter from Philip B. Herr to Christopher McMurray, Attorney, dated July 6, 1982 regarding panel on behavior under stress.

Letter from Christopher M. McMurray to Dr. Fred Finlayson, dated July 15, 1982 regarding LILCO testimony on PRA.

Letter from Christopher M. McMurray to Robert J. Budnitz, dated July 15, 1982 regarding LILCO testimony on PRA.

Letter from Christopher M. McMurray to Dr. Fred Finlayson, dated July 13, 1982 regarding social survey.

Letter from Fred C. Finlayson to Christopher M. McMurray, dated July 1, 1982 regarding interaction with authors of SAI and PL&G reports.

Letter from Christopher M. McMurray to Dr. Fred Finlayson, dated June 18, 1982 regarding documents pertaining to LILCO's consequence analysis.

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

Memorandum from Patricia A. Dempsey to Frank R. Jones, dated January 27, 1982 regarding the development of the County's radiological emergency response plan, interface between the County attorney's office and the Department of Planning, and the role of the legislature in the preparation of the County's plan.

Memorandum from Patricia A. Dempsey to Frank R. Jones, dated March 12, 1982 regarding Judge Brenner's order

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Kathy E.B. McCleskey, Esq.
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that all parties produce any draft plans prepared for its emergency planning efforts.

Memorandum from Chris McMurray to Frank Jones, Chairman SCRERP Steering Committee, dated May 6, 1982 regarding the SCRERP personnel.

Letter from Peter A. Folk to Christopher M. McMurray, dated August 4, 1982 regarding establishment of EPZ boundaries.

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

Activity report by Kathleen Goode, Suffolk County Executive's Office, dated June 18, 1982 regarding meeting between PRC Voorhees and Department of Emergency Preparedness.

~~Activity report by Charles R. Skinner, dated June 15, 1982 regarding public meetings sponsored by Suffolk County on SCRERP.~~

Memorandum from Charles R. Skinner to Frank Jones, Deputy County Executive, dated June 21, 1982 regarding public education about SCRERP.

Memorandum from Charles R. Skinner to Frank Jones, Deputy County Executive, dated June 21, 1982 regarding meeting with Director of Fire Safety Ron Buckingham.

Activity report by Kathleen Goode, County Executive's Office, dated June 4, 1982 regarding SCRERP Steering Committee meeting.

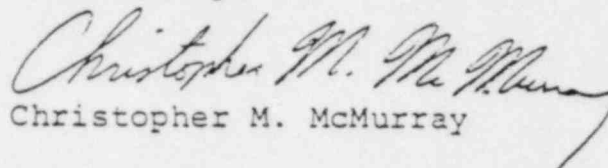
Activity Report by Kathleen Goode, County Executive's Office, dated July 1, 1982 regarding meeting of Steering Committee.

KIRKPATRICK, LOCKHART, HILL, CHRISTOPHER & PHILLIPS

James N. Christman, Esq.
Kathy E.B. McCleskey, Esq.
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Please do not hesitate to contact me should you have any questions regarding this matter.

Yours truly,


Christopher M. McMurray

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter Of)
)

LONG ISLAND LIGHTING COMPANY)

(Shoreham Nuclear Power Station,)
Unit 1))
_____)

Docket No. 50-322 (OL)
(Emergency Planning
Proceedings)

CERTIFICATE OF SERVICE

I hereby certify that copies of Response and Opposition
Of Suffolk County To LILCO's Motion To Compel Production Of
Documents were sent on August 31, 1982 by first class mail,
except where otherwise noted, to the parties listed below.
Furthermore, one copy of an in camera submission was sent to
Judge Brenner by hand.

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U.S. Nuclear Regulatory Commission
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Atomic Safety and Licensing Board
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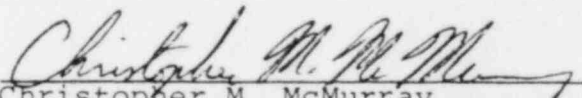
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Date: August 31, 1982


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