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Lawrence Brenner, Esq.
Dr. James L. Carpenter
Dr. Peter A. Morris
Administrative Judges
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Re: Long Island Lighting Company;
Shoreham Nuclear Power Station,
Unit 1; Docket No. 50-322 O.L.

Gentlemen:

Ms. Letsche has relayed to me the Board's comments which were expressed in a conference call on September 3, 1982, regarding Suffolk County's privilege claims regarding emergency planning documents. This letter will address the Board's comments.

Pursuant to the Board's request, the County has reviewed once again the documents which were submitted to the Board in camera on August 31. The County respectfully submits that its review confirms that the privileges asserted for each document are supportable in each case.

The attorney/client and work product privileges which the County has asserted embody well-recognized principles of confidentiality important to a strong attorney/client relationship and effective litigation. In addition, the County has asserted the intra-governmental privilege in a narrow fashion to prevent disclosure of its deliberations prior to a final decision. The bases for all of these privileges were briefed in detail in the "Response and Opposition of Suffolk County to LILCO's Motion to Compel Production of Documents," filed on August 31, 1982 and will not be reargued here.

The Board has noted, and the County does not contest, that certain documents may not be as significant in their content as

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others. Thus, many of the documents in Groups I, IV and V of the in camera submission to the Board constitute cover letters or brief memoranda. Nevertheless, the fact that they appear to the Board to be of little significance does not render them less privileged or more discoverable. Suffolk County considers the principles underlying the privileges it has asserted to be important to effective litigation and effective decision-making. Moreover, it is not always possible to determine which documents are highly significant and which are not. The significance of a document may not be always apparent and, indeed, may shift with time. Thus, while documents such as those in Groups I, IV and V may not appear highly significant, they are nevertheless privileged and therefore not subject to discovery.

On the other hand, documents in other Groups are of clear significance. Their production could give an unfair advantage to LILCO in the pending proceedings or cause an untimely examination of the deliberative process behind Suffolk County's emergency planning efforts, even before a draft plan is ready. For instance, in the former category, the documents in Group II constitute classic attorney work product, and those in Group VI include attorney/client matters, the privileged nature of which appears unquestionable. Further, while the Board has suggested that counsel's assistance to the Steering Committee and membership on that Committee might somehow eliminate the attorney/client privilege, the County respectfully submits that the facts do not support that suggestion. Counsel sits on, and advises, the Committee as counsel to Suffolk County. All services performed for the Committee by counsel are performed pursuant to an attorney/client relationship. Therefore, confidential communications between counsel and the County Steering Committee are privileged.

The documents in Groups III and VII are likewise privileged in that they provide information on the County's deliberative and decision-making processes. For the reasons explained in our previous Response and Opposition of August 31, premature examination of County deliberations, prior to a final decision, can be damaging to the efficient operation of government.

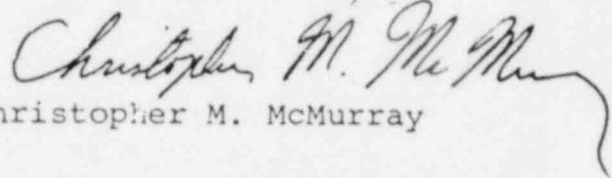
Finally, the Board suggested in the September 3 conference call that the County, by participating in the pending licensing proceedings, may have in some way waived any privilege it might assert with respect to outside scrutiny of its deliberative

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processes. The County knows of no statute, regulation or case supporting that suggestion. Counties are specifically invited by statute and NRC regulations to participate in operating license proceedings because of the obvious concerns that a county has for the health and welfare of its citizenry. Likewise, the County is developing an emergency response plan which it believes will afford the best possible protection to its inhabitants in the event of a radiological emergency. In undertaking these activities, the County has not waived any of its rights as a litigant or as a governmental body.

Respectfully submitted,



Christopher M. McMurray

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