

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

Before Administrative Judges:

Lawrence Brenner, Chairman  
Dr. James H. Carpenter  
Dr. Peter A. Morris

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

Docket No. 50-322-0L  
(Emergency Planning)

September 29, 1982

SUPPLEMENTAL MEMORANDUM AND ORDER RULING ON LILCO'S MOTION  
TO COMPEL DISCOVERY OF SUFFOLK COUNTY  
EMERGENCY PLANNING DOCUMENTS

On September 22, 1982, we issued our "Memorandum and Order Ruling on LILCO's Motion to Compel Discovery of Suffolk County Emergency Planning Documents", LBP-82-82, 16 NRC \_\_\_\_ (hereinafter LBP-82-82). This order ruled on claims of attorney-client, work product and executive privileges asserted by Suffolk County (County) in opposition to two LILCO discovery requests for production of certain emergency planning documents.

By a letter to the Board dated and received on September 27, 1982, counsel for the County provided the Board with an additional document,

County emergency planning steering committee minutes responsive to LILCO's discovery requests, which the County claims to be privileged from production by virtue of the executive privilege.

The County explains that although this document was not included in its September 10, 1982 in camera submission to the Board, privilege for this document was intended to be asserted by the inclusion in that submission of another set of steering committee minutes, described by the County as "all security meeting minutes." According to the County, the document provided to the Board on September 10 (Item III.5) was merely intended to be representative of all such minutes, not to constitute all documents which fit that description; we assumed the contrary in LBP-82-82, since we had not been informed otherwise. Slip. op. at 45. The County's September 27 letter acknowledges that the County failed to communicate to the Board its intention that the document included in its September 10 submission only be viewed as an example of other such documents which might exist, but states that it is now submitting this item for the Board's in camera review "[i]n the interest of a full and fair disclosure...."

While we appreciate the County's coming forward with this document at this time, albeit very late, we regret that it was not accompanied by any attempt to address the standards which we described in LBP-82-82 (slip. op. at 7-12) for the assertion of a discovery privilege. As we stated in that order, a party seeking to claim privilege for a document

in response to a discovery request must make the same showing of good cause as would a party seeking a protective order denying a request for the production of that document. Id. The County has offered no information which could establish any good cause for keeping this document secret.

We further regret that the County has apparently not recognized that full and fair disclosure includes an objective weighing of a claim of privilege by a party prior to asserting it. We believe that had the County examined its claim of privilege for this document in light of the Commission precedent and Federal case law upon which we relied in LBP-82-82, it could not have concluded this document to be privileged and would have submitted it to LILCO, instead of this Board, in the first instance. Relying on the authority cited in our previous order, which we see no reason to reiterate here, we believe the executive privilege clearly to be inapplicable to these steering committee minutes.

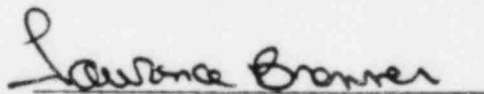
The document submitted to us in camera on September 27 is a memorandum from Suffolk County attorney Christopher M. McMurray to Deputy County Executive Frank Jones, in his role as Chairman of the Suffolk County Radiological Emergency Response Plan Steering Committee, transmitting the minutes of the Steering Committee's May 7, 1982

meeting.\*/ These minutes appear to be a purely factual recitation of scheduling matters relative to the County Plan. This document does not contain advisory opinions, recommendations or deliberations of the Steering Committee. Even if it did, we do not believe the disclosure of these committee meeting minutes to LILCO could in any way inhibit the County's ability to hold frank discussions or make decisions. As the minutes clearly state that reporters from The New York Times and Newsday were present and asked questions during the meeting, we are aware of no purpose which would be served by keeping the contents of these minutes secret.

In light of our ruling that the executive privilege does not apply to these documents, we do not address LILCO's need for this information or its availability from other sources.

We therefore direct that the County provide these minutes and the chart attached thereto to LILCO as soon as possible.

FOR THE ATOMIC SAFETY  
AND LICENSING BOARD

  
Lawrence Brenner, Chairman  
ADMINISTRATIVE JUDGE

Bethesda, Maryland  
September 29, 1982

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\*/ Apparently recognizing that Mr. McMurray was not serving in the role of an attorney in preparing these minutes, which contain no legal advice and which reflect conversations held in front of third parties, the County does not assert the attorney-client privilege in connection with this document.