

LILCO, February 10, 1984

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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Before the Atomic Safety and Licensing Board

OFFICE OF SECRETARY
AND SERVICE
BRANCH

In the Matter of)	
)	
LONG ISLAND LIGHTING COMPANY)	Docket No. 50-322-OL-3
)	(Emergency Planning Proceeding)
(Shoreham Nuclear Power Station,)	
Unit 1))	

LILCO'S MOTION TO COMPEL EXPEDITED PRODUCTION
OF THE NEW YORK STATE EMERGENCY PREPAREDNESS PLAN

LILCO hereby moves that this Board compel New York State to produce the New York State Emergency Preparedness Plan, as further particularized below, and that it give this motion expedited consideration. In support thereof LILCO states as follows:

On February 8, 1984, counsel for LILCO requested counsel for the State of New York, by telephone call and by telecopier-delivered letter (Attachment 1), to provide a copy of the current New York State radiological emergency response plan, whose official name is believed to be the "New York State Emergency Preparedness Plan." The Plan consists of a generic State-wide plan prepared under the auspices of the New York Disaster Preparedness Commission, and includes State-prepared annexes or appendices for individual nuclear power plants within New York State. It also includes specific supplements or appendices prepared by each of the counties occupying the emergency

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planning zone around each nuclear plant in New York State. It also includes special supplemental materials regarding the Indian Point plant, believed to be officially entitled, "Radiological Emergency Response Interim Plan for Implementing Compensating Measures for Rockland County."

The New York State Plan is a public document. Therefore, LILCO did not anticipate any objection to its production by New York State, but in view of its size and bulk, LILCO offered to pay reasonable expenses associated with its expeditious production.

LILCO noted in its February 8 request that it was basically a reciprocal request, since Edward P. Bennett, one of the State's intended witnesses in this proceeding, had requested a copy of the Shoreham Offsite Radiological Emergency Response Plan on January 31, 1984 (Attachment 2). On February 8, the same day as LILCO's request for the New York Plan, Mr. Bennett sent to counsel for LILCO a letter (Attachment 3) by Federal Express, withdrawing his January 31 request, stating that it must have been "misinterpreted" and that the requested copy of the LILCO Plan it had been "for DPC's administration purposes only and did not pertain to the ongoing litigation" A copy of Mr. Bennett's letter was also addressed to New York State counsel.

LILCO inferred from this exchange of correspondence that New York State does not intend to provide a copy of the New

York State Radiological Emergency Response Plan voluntarily. In a telephone call this morning from LILCO counsel, New York State counsel confirmed that the State would not voluntarily make the New York State Plan available, and suggested that LILCO file a request for it under the New York Freedom of Information Act.

The New York State Emergency Preparedness Plan is the basic operational public document for emergency preparedness for the Government of the State of New York. The DPC is required to prepare a State disaster plan, which is to be reviewed by the Governor and updated annually. New York State Executive Law, Article 2-B, §§ 21(3)(c), 22(3). The scope of emergencies included within the emergency plan includes radiological accidents (Article 2-B, § 20(2)(a)). The requirements for the State Plan are numerous and are set forth in § 22(2) and (3) of Article 2-B (Attachment 4).

Knowledge of this Plan, which contains both generic and plant-specific components, is a unique and irreplaceable component in understanding how the Disaster Preparedness Commission and other New York State agencies involved in radiological emergency response conceive and execute their duties with respect to nuclear power plants in New York, of which Shoreham is one. There is no substitute for this Plan in enabling LILCO to understand the criticisms which New York State witnesses may make of the Shoreham Radiological Emergency Response Plan, and access to it is essential for that purpose.

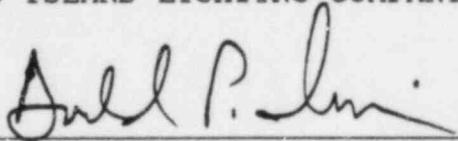
The availability of a document under the Freedom of Information Act does not remove it from eligibility for normal discovery. Further, the delays inherent in Freedom of Information Act proceedings would render that avenue useless for purposes of this litigation.

WHEREFORE, LILCO requests that this Board require New York State to produce a complete copy of its current New York State Radiological Emergency Preparedness Plan, as defined above, forthwith and that it require the State to respond to this motion on the same expedited basis as LILCO's previous motion, dated February 6, requesting that the Board compel production of State documents reviewing the Shoreham Radiological Emergency Response Plan.

Copies of this motion have been served this morning on New York State by telecopier, along with a formal request for production (Attachment 5).

Respectfully submitted,

LONG ISLAND LIGHTING COMPANY

By 
Donald P. Irwin

HUNTON & WILLIAMS
707 East Main Street
P.O. Box 1535
Richmond, Virginia 23212

DATED: February 10, 1984

HUNTON & WILLIAMS

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February 8, 1984

Fabian G. Palomino, Esq.
Special Counsel to the Governor
Executive Chamber, Room 299
State Capitol
Albany, New York 12224

BY TELECOPIER

Dear Fabian:

This will confirm, pursuant to our discussion a few minutes ago, that the depositions will commence each morning at 10:00 rather than 9:30, in order to accommodate the travel schedules both of LILCO and of the Albany-based State witnesses.

Second, this will also memorialize my request to you for a copy of the current New York State Radiological Emergency Response Plan. This Plan consists of a generic State-wide plan prepared, I believe, under the auspices of the Disaster Preparedness Commission, and includes State-prepared annexes or appendices for individual nuclear plants within New York State. It also includes specific supplements or appendices prepared by the counties occupying the emergency planning zone around each nuclear plant in New York State, usually in the form of offsite emergency response plans. This Plan is, of course, a public document, but it is a large and relatively cumbersome one, and LILCO would be willing to pay any reasonable expenses associated with its expeditious production.

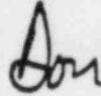
It would be most useful to have this document prior to the start of depositions next week.

I should add that this request is basically a reciprocal one: Ed Bennett requested a copy of the current LILCO Offsite Emergency Response Plan last week from LILCO; that request was transmitted to me last Friday; Monday of this week I instructed LILCO to send a copy of its Plan to Mr. Bennett as per his request.

HUNTON & WILLIAMS

Jim Christman of our office will be taking the deposition tomorrow. Would you be able to give him information at that time relating to production of the New York State Plan, with State and County annexes/appendices? Many thanks.

Sincerely yours,



Donald P. Irwin

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New York State Department of Environmental Conservation
50 Wolf Road, Albany, New York 12233-0001



Henry G. Williams
Commissioner

January 31, 1984

Mr. Donald P. Irwin
Hunton and Williams
707 East Main Street
P.O. Box 1535
Richmond, Virginia 23212

Dear Mr. Irwin:

I have requested from Mr. William Renz, Offsite Emergency Preparedness Coordinator for LILCO that the Department of Environmental Conservation receive a controlled copy of the SNPS Offsite Radiological Emergency Response Plan for Suffolk County. He has directed me to route this request through you due to the ongoing hearings concerning this plan. This document should be provided to Mr. William Miner, Disaster Preparedness Administrator for the Department of Environmental Conservation.

Please inform us if there exists any problem in fulfilling this request.

Yours truly,

Edward P. Bennett
Chief, Impact Analysis Section
Division of Air

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cc: Donald Davidoff, Director,
Radiological Preparedness
Mr. William Renz, LILCO
Mr. Richard Taylor, NYSDEC

*Ken future included to send copy 2/6/84
my*

New York State Department of Environmental Conservation
50 Wolf Road, Albany, New York 12233-0001



Henry G. Williams
Commissioner

February 8, 1984

Mr. Donald P. Irwin
Hunton and Williams
707 East Main Street
P.O. Box 1535
Richmond, Virginia 23212

Dear Mr. Irwin:

It appears that you have misinterpreted my request of January 31, 1984 to receive a controlled copy of the SNPS Offsite Radiological Emergency Response Plan for Suffolk County.

My request was for DEC's administration purposes only and did not pertain to the ongoing litigation on this plan. For this reason, I am rescinding my request for a controlled copy of this document until this litigation has ceased.

Yours truly,

Edward P. Bennett
Chief, Impact Analysis Section
Division of Air

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cc: Donald Davidoff, Director,
Radiological Preparedness
Mr. William Renz, LILCO
Mr. Richard Taylor, NYSDEC
Mr. Fabian Palomino, Special
Counsel to the Governor

Art. 2-B

DISASTER PREPAREDNESS

§ 22

g. assist in the coordination of federal recovery efforts and coordinate recovery assistance by state and private agencies.

h. provide for periodic briefings, drills, exercises or other means to assure that all state personnel with direct responsibilities in the event of a disaster are fully familiar with response and recovery plans and the manner in which they shall carry out their responsibilities, and coordinate with federal, local or other state personnel. Such activities may take place on a regional or county basis, and local and federal participation shall be invited and encouraged.

i. submit to the governor and the legislature by March thirty-first of each year an annual report which shall include but need not be limited to:

(1) a summary of commission and state agency activities for the year and plans for the ensuing year with respect to the duties and responsibilities of the commission;

(2) recommendations on ways to improve state and local capability to prevent, prepare for, respond to and recover from disasters;

(3) the status of the state and local plans for disaster preparedness and response, including the name of any locality which has failed or refused to develop and implement its own disaster preparedness plan and program, and

j. coordinate and, to the extent possible and feasible, integrate commission activities, responsibilities and duties with those of the civil defense commission.

Added L.1978, c. 640, § 3; amended L.1979, c. 225, § 8.

Historical Note

Subd. 1. Amended L.1979, c. 225, § 8, eff. Sept. 1, 1979, in sentence beginning "There is hereby" by inserting "the state fire administrator".	Effective Date. Section effective Apr. 1, 1979, pursuant to L.1978, c. 640, § 7.
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Library References

States §§ 45, 67, 73.

C.J.S. States §§ 79, 80, 82, 120, 121, 130 to 138, 140.

§ 22. State disaster preparedness plans

1. The commission shall prepare a state disaster preparedness plan and submit such plan to the governor for approval no later than one year following the effective date of this act. The governor shall act upon such plan by July first of that year. The commission shall review such plans annually.

2. The purpose of such plans shall be to minimize the effects of disasters by: (i) identifying appropriate measures to prevent disasters, (ii) developing mechanisms to coordinate the use of resources and manpower for service during and after disaster emergencies and the delivery of services to aid citizens and reduce human suffering resulting from a disaster, and (iii) provide for recovery and redevelopment after disaster emergencies.

3. Such plans shall be prepared with such assistance from other agencies as the commission deems necessary, and shall include, but not be limited to:

a. Disaster prevention. Plans to prevent and minimize the effects of disasters shall include, but not be limited to:

- (1) identification of potential disasters and disaster sites;
- (2) recommended disaster prevention projects, policies, priorities and programs, with suggested implementation schedules, which outline federal, state and local roles;
- (3) suggested revisions and additions to building and safety codes, and zoning and other land use programs;
- (4) suggested ways in which state agencies can provide technical assistance to municipalities in the development of local disaster prevention plans and programs;
- (5) such other measures as reasonably can be taken to prevent disasters or mitigate their impact.

b. Disaster response. Plans to coordinate the use of resources and manpower for service during and after disaster emergencies and to deliver services to aid citizens and reduce human suffering resulting from a disaster emergency shall include, but not be limited to:

- (1) centralized coordination of resources, manpower and services, utilizing existing organizations and lines of authority and centralized direction of requests for assistance;
- (2) the location, procurement, construction, processing, transportation, storing, maintenance, renovation, distribution or use of materials, facilities and services;
- (3) a system for warning populations who are or may be endangered;
- (4) arrangements for activating state, municipal and volunteer forces, through normal chains of command so far as possible and for continued communication and reporting;
- (5) a specific plan for rapid and efficient communication, and for the integration of state communication facilities during

a state disaster emergency, including the assignment of responsibilities and the establishment of communication priorities, and liaison with municipal, private and federal communication facilities;

(6) a plan for coordinated evacuation procedures, including the establishment of temporary housing and other necessary facilities;

(7) criteria for establishing priorities with respect to the restoration of vital services and debris removal;

(8) a plan for the continued effective operation of the criminal justice system;

(9) provisions for training state and local government personnel and volunteers in disaster response operations;

(10) providing information to the public;

(11) care for the injured and needy and identification and disposition of the dead;

(12) utilization and coordination of programs to assist victims of disasters, with particular attention to the needs of the poor, the elderly, the handicapped, and other groups which may be especially affected;

(13) control of ingress and egress to and from a disaster area;

(14) arrangements to administer federal disaster assistance; and

(15) a system for obtaining and coordinating disaster information including the centralized assessment of disaster effects and resultant needs.

c. Recovery. Plans to provide for recovery and redevelopment after disaster emergencies shall include, but not be limited to:

(1) measures to coordinate state agency assistance in recovery efforts;

(2) arrangements to administer federal recovery assistance; and

(3) such other measures as reasonably can be taken to assist in the development and implementation of local disaster recovery plans.

Added L.1978, c. 640, § 3.

Historical Note

Effective Date. Section effective
Apr. 1, 1979, pursuant to L.1978, c.
640, § 7.