



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555

PDR-016
LPDR

May 23, 1984

Docket No. 50-322

Robert R. Belair, Esquire
Kirkpatrick, Lockhart, Hill,
Christopher & Phillips
1900 M Street, NW
Washington, DC 20036

IN RESPONSE REFER
TO FOIA-84-250

Dear Mr. Belair:

This is in further response to your letter dated April 4, 1984, in which you requested, pursuant to the Freedom of Information Act (FOIA), three categories of records concerning the Long Island Lighting Company or the Shoreham Nuclear Power Station.

By letters dated May 4, May 8, May 18, and May 21, we provided partial responses to your request and informed you that the staff was searching for and reviewing additional records subject to your request. The staff has now completed search for and review of additional records subject to your request.

We are enclosing Appendix I, J, and K. Appendix I identifies additional records which are available for your inspection and copying at the NRC Public Document Room, 1717 H Street, NW, Washington, DC 20555. Appendix J identifies records among NRC files which are being addressed by the Federal Emergency Management Agency (FEMA) during discovery with regard to the Shoreham adjudicatory proceeding before the Atomic Safety and Licensing Board. Appendix K identifies records which are being withheld in their entirety for reasons noted below.

Documents 1, 3, 6, 7, 8, 10 through 30 identified on Appendix K contain the legal analysis, opinions, and recommendations of the Office of the General Counsel (OGC) to the Commissioners. Document 1 contains OGC's legal analysis on Suffolk County's request that the Licensing Board be prevented from implementing a proposed "evidentiary deposition procedure" in the Shoreham adjudicatory proceeding. Document 3 contains OGC's advice on the NRC staff contacting FEMA regarding the Shoreham emergency planning controversy. Document 6 is OGC's analysis of the legal issues raised regarding the County emergency plan. Documents 7 and 17 contain OGC's legal recommendations on the review of a transcript of a closed Commission meeting. Document 8 contains a Commissioner's advice on the Commission's course of action in dealing with the emergency planning

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issue in the Shoreham adjudicatory proceeding. Documents 10 and 11 contain OGC's legal analysis of the offsite emergency planning controversy regarding the Shoreham adjudicatory proceeding. Document 12 contains OGC's recommendations on Suffolk County's motion to terminate the Shoreham adjudicatory proceeding. Documents 13 and 14 contain OGC's recommendations on the matters that the Licensing Board should consider in the Shoreham adjudicatory proceeding. Documents 15 and 16 contain OGC's recommendations on the application of the Commission's regulations to the emergency planning issue in the Shoreham adjudicatory proceeding. Documents 18, 19, 20, 21, and 22 contain OGC's recommendations on accepting the certified question from LBP-83-21 on low-power operation in the Shoreham adjudicatory proceeding. Documents 23 and 24 contain OGC's recommendations on Suffolk County's "Motion for Commission Ruling on LILCO's Utility Plan for Emergency Preparedness". Document 25 contains OGC's recommendation pertaining to the review of ALAB-743 regarding a late intervention petition. Document 26 contains OGC's updates on the developments for the Shoreham facility. The report informs the Commission on the status of the adjudicatory proceeding. Documents 27, 28, and 29 contain OGC's recommendations on Commission guidance on applicant's March 20, 1984 Supplemental Motion for Low Power Operating License. Document 30 contains OGC's proposals for hearings on the Shoreham facility.

Documents 1, 3, 6, 7, 8, 10 through 30 do not contain any reasonably segregable factual portions. The factual contents of Document 26 are already in Docket No. 50-322 which is available in the Public Document Room, and release of the factual portions of Document 26 would reveal a predecisional evaluation of which facts are important. See Russell v. Department of the Air Force, 2 GDS 81.123 (D.D.C. 1981), aff'd, 682 F.2d 1045 (D.C. Cir. 1982). Therefore, Document 26 does not contain any reasonably segregable factual portions. Because the documents reflect the predecisional process between the Office of the General Counsel and the Commissioners and between the offices of the Commissioners, the documents are exempt from mandatory disclosure pursuant to Exemption 5 of the FOIA (5 U.S.C. 552(b)(5)) and the Commission's regulations, 10 C.F.R. 9.5(b)(5). Release of the documents would tend to inhibit the open and frank exchange of ideas essential to the deliberative process. For these reasons, these documents are being withheld in their entirety.

Document 2 contains OGC predecisional questions to the staff on answering a letter to Congressman Carney about a constituent inquiry concerning the interim licensing at Shoreham. Documents 4 and 5 contain the Commission's drafts of the memo to staff regarding FEMA's role in the Suffolk County emergency plan.

Document 9 contains the predecisional discussions between the Office of the Secretary and the Office of the General Counsel regarding the draft memorandum requesting the NRC staff to contact FEMA regarding the Shoreham emergency planning controversy. The documents do not contain any reasonably segregable factual portions. Because the documents reflect the predecisional process of the Office of the Secretary and the Commissioners, the documents are exempt from mandatory disclosure pursuant to Exemption 5 of the FOIA (5 U.S.C. 552(b)(5)) and the Commission's regulations, 10 CFR 9.5(b)(5). Release of the documents would tend to inhibit the open and frank exchange of ideas essential to the deliberative process. For these reasons, these documents are being withheld in their entirety.

The attachments to documents 7 and 17 are the transcripts of closed Commission meetings. It has been determined that the transcripts are exempt from mandatory public disclosure under Exemption 10 of the Government in the Sunshine Act. The transcripts discuss possible courses of action regarding offsite emergency planning at the Shoreham Nuclear Power Station which is a matter involved in a formal agency adjudication. Not only do Commission deliberations of this nature benefit from the uninhibited exchange of ideas and opinions, but the public disclosure of this material would be contrary to the well-established principle of protecting the Commission's deliberative process. Accordingly, the transcripts are being withheld pursuant to Exemption 10 of the Government in the Sunshine Act (5 U.S.C. 552(c)(10)) and the Commission's regulations, 10 CFR 9.104(a)(10).

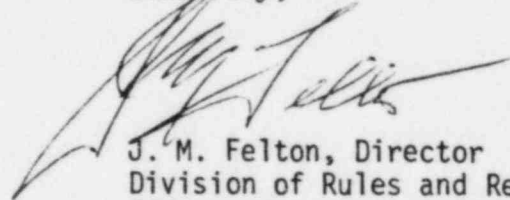
Document 31 contains the opinions and recommendations of Chairman Palladino's legal assistant written in order to advise the Chairman on the conduct of the Shoreham low power proceeding. Documents 32, 33, and 34 are undated draft memoranda from the Chairman to other high-level agency officials concerning the ongoing Shoreham adjudication and other plants currently being reviewed by the agency. Document 35 contains Chairman Palladino's undated draft notes for a meeting on licensing delays. Release of these predecisional documents would tend to inhibit the open and frank exchange of ideas between agency officials which is essential to the deliberative process. To preserve the quality of the agency's deliberative process, it is necessary to maintain the confidentiality of draft notes of agency decisionmakers. Release of draft notes would inhibit decisionmakers from writing down anything but final or formal opinions. Because the five documents reflect the predecisional process and their disclosure is not in the public interest, they are being withheld pursuant to Exemption 5 of the FOIA (5 U.S.C. 552(b)(5)) and the Commission's regulations, 10 CFR 9.5(a)(5). The documents do not contain any reasonably segregable factual portions.

Pursuant to 10 CFR 9.15 of the Commission's regulations, it has been determined that the information withheld is exempt from production or disclosure and that its production or disclosure is contrary to the public interest. The person responsible for the denial of documents 1, 3, 4, 5, 7 through 25, and 27 through 35 is Mr. John C. Hoyle, Assistant Secretary of the Commission. The person responsible for the denial of documents 2, 6, and 26 is Mr. James A. Fitzgerald, Assistant General Counsel.

This denial may be appealed to the Commission within 30 days from the receipt of this letter. Any such appeal must be in writing, addressed to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should clearly state on the envelope and in the letter that it is an "Appeal from an Initial FOIA Decision".

In view of the NRC's response to your FOIA request and the fact that you have new appeal rights, no further action is being taken on your letter dated April 25, 1984.

Sincerely,

A handwritten signature in black ink, appearing to read "J. M. Felton", written over a horizontal line.

J. M. Felton, Director
Division of Rules and Records
Office of Administration

APPENDIX I

1. 5/7/82 Ltr to Senator Moynihan from M. Mellman, Nassau Democratic County Committee, w/cc to Chrnm. Palladino. (No response) (2 pages)
2. 11/18/82 Memo to Commissioners from Chrnm. Palladino, "Suffolk County Letter to Commission Regarding Evidentiary Depositions in Shoreham Proceeding", w/stated attachment. (2 pages)
3. 1/5/83 Ltr to Chrnm. Palladino from Lorusso. (No response) (2 pages)
4. 1/5/83 Ltr to Chrnm. Palladino from Lascelle with response ltr to Lascelle from Kammerer dated 2/10/83. (4 pages)
5. 1/19/83 Ltr to Congressman Mrazek from Kammerer with attached 1/4/83 incoming ltr to Chrnm. Palladino from Congressman Mrazek. (3 pages)
6. 2/17/83 Statement by Governor Mario M. Cuomo. (1 page)
7. 2/18/83 Memo to Haller and others from Rehm, "Briefing Book - Hearing Issues", w/stated enclosures. (9 pages)
8. 3/17/83 Memo to Dircks from Chrnm. Palladino, "Shoreham Offsite Emergency Planning Controversy". (1 page)
- * 9. 3/28/83 Handwritten note to Krimm, FEMA, from VanNiel with attached 3/17/83 Memo to Dircks from Chrnm. Palladino and draft memo. (3 pages)
10. 6/29/83 Memo to Legal Assistants from Reamer, "Shoreham Certified Question on Low-Power Authorization (SECY-83-215A). (1 page)
- * 11. 4/1/83 Memo to Chrnm. Palladino from Dircks, "Shoreham Offsite Emergency Planning Controversy". (1 page)
12. 6/29/83 Ltr to Congressman Lent from Kammerer with attached incoming 6/7/83 ltr from Congressman Lent to F. Combs and 6/3/83 ltr to Chrnm. Palladino from Jaffe with article. (5 pages)
13. 9/20/83 Memo to Showman from Triner, "Background Information on Shoreham Nuclear Power Station for Commissioner Gilinsky", w/stated attachment. (5 pages)
14. 9/23/83 Ltr to Congressman Lent from Kammerer with attached 9/1/83 ltr to Kammerer from Congressman Lent, 4/20/83 ltr to Congressman Lent from Kammerer, 3/24/83 ltr to Kammerer from Lent and three constituent letters. (9 pages)
15. 10/18/83 Memo to Dircks from Comm. Gilinsky, "Shoreham Operation". (3 pages)
16. 10/25/83 Ltr to Governor Cuomo from Chrnm. Palladino, (The incoming 10/4/83 ltr and the follow-up 10/27/83 response to Governor Cuomo from Dircks are in the PDR: 8310140027 and 8311020120, respectively) with attached 11/15/83 acknowledgement of 10/27 ltr. (2 pages)
17. 10/26/83 Memo to Commissioners from Palladino, "Letter of Acknowledgment to Governor Cuomo", with attached 10/25/83 ltr to Governor Cuomo from Chrnm. Palladino and 10/4/83 ltr to Chrnm. Palladino from Governor Cuomo. (4 pages)

APPENDIX I CONT'D

18. 11/23/83 Memo to Commissioners from Chrmn. Palladino, "Telephone Call from Congressman Stratton". (1 page)
19. 12/2/83 Note to Commissioners from Dircks, "Shoreham", w/stated attachment. (4 pages)
20. 12/29/83 Memo to Dircks from Palladino, "Federal Assistance with Emergency Planning", w/attached 12/20/83 New York Times article. (2 pages)
- * 21. 1/4/84 Handwritten note to Winkle from Weiss, w/attachments identified at No. 20 above. (3 pages)
- * 22. 1/22/84 Draft ltr to Governor Cuomo from Chrmn. Palladino with note to FEMA staff. (6 pages)
23. 3/9/84 Memo to Commissioners from Dircks, "NRC Monthly Licensing Report", w/attached 3/8/84 Memo to Dircks from Denton, "NRC Monthly Status Report" and February report. (17 pages)
24. 3/28/84 Ltr to Chrmn. Palladino from Congressman Markey. (4 pages)
25. 4/4/84 Memo to Commissioners from Chrmn. Palladino, "Shoreham", w/attachments. (11 pages)
26. Undated "Shoreham". (2 pages)
- * 27. Undated "Topics for Chairman's Meeting with General Giuffrida. (1 page)
28. Undated Draft SECY paper, "Licensing Delays". (19 pages)

Periodic Bevill and Simpson reports are available elsewhere in the PDR.

APPENDIX J

1. 11/3/83 Letter to Frank Petrone, Regional Director, FEHA, from Craig Gordon, RAC Member, NRC (1 page), with attachment, "LILCO Plan for Shoreham, Plan Review", containing comments on review of the plan (4 pages).
2. 1/12/84 Letter to Roger Kowieski, Region II, FEMA, from Robert Bores, NRC (1 page), with enclosures, "LILCO Plan for Shoreham, Plan Review - Rev. III, Dated 12/29/83" (10 pages), and "Comments on Shoreham Local Offsite RERP (Rev.3), 12/83" (5 pages)
3. 1/20/84 Memorandum to RAC Members from Roger Kowieski, Chairman, RAC, "Legal Issues Identified during RAC Review of LILCO Transition Plan for Shoreham (Revision 3)" with three attachments (10 pages).
4. 1/20/84 Preliminary Draft "LILCO Plan Review, (LILCO Transition Plan Revision 3)" (60 pages).

APPENDIX K

1. Nov. 17, 1982 Memorandum for the Commissioners from M. Malsch, Deputy General Counsel, Subject: Suffolk County Letter to Commission Regarding Evidentiary Depositions in Shoreham Proceeding, 4 pp.; undated draft letter to P. Cohalan, Suffolk County Executive, from N. Palladino, NRC, 2 pp.
2. Nov. 24, 1982 Memorandum for T. Rehm, Office of Executive Director for Operations (EDO), from P. Bollwerk, Office of the General Counsel (OGC), Subject: Response to Constituent Inquiries Concerning Interim Licensing at Shoreham, 1 p.
3. Mar. 1, 1983 Memorandum for the Commissioners from H. Plaine, General Counsel, Subject: Draft Memorandum Requesting NRC Staff to Contact FEMA Regarding Shoreham Emergency Planning Controversy, 1 p.; Attachment Mar. 1, 1983 draft memorandum for W. Dircks, EDO, from N. Palladino, Subject: Shoreham Offsite Emergency Planning Controversy, 1 p.
4. Mar. 1, 1983 Draft memorandum for W. Dircks, EDO, from N. Palladino, Subject: Shoreham Offsite Emergency Planning Controversy, 1 p.
5. Undated Draft memorandum for W. Dircks, EDO, from N. Palladino, Subject: Shoreham Offsite Emergency Planning Controversy, 1 p.
6. Undated Paper entitled "Legal Issues Raised by Pleadings" by an attorney in the Office of the General Counsel, re: local offsite emergency plan
7. Mar. 10, 1983 SECY-83-95, memorandum for the Commissioners from T. Rothschild, Acting Assistant General Counsel, Subject: Review of Transcript of Closed Commission Meeting of February 24, 1983, 2 pp.;

APPENDIX K CONT'D

- attachment, Feb. 24, 1983
Commission meeting transcript,
60 pp.
8. Mar. 10, 1983 Memorandum for Commis-
sioners Palladino, Gilinsky,
Roberts, and Asselstine, from
Commissioner Ahearne, Subject:
Shoreham - Draft Memo Requesting
Staff to Contact FEMA, 2 pp.
9. Mar. 17, 1983 Memorandum for P. Bollwerk, OGC,
from G. Gilbert, Office of the
Secretary, Subject: Draft Memo-
randum Requesting NRC Staff to
Contact FEMA Regarding Shoreham
Emergency Planning Controversy,
1 p.; attachment, Mar. 1, 1983
memorandum for W. Dircks, EDO, from
N. Palladino, Subject: Shoreham
Offsite Emergency Planning Contro-
versy, 1 p.
10. Apr. 4, 1983 SECY-83-124, memorandum for the
Commissioners from H. Plaine,
General Counsel, Subject: Back-
ground on Shoreham Offsite Emer-
gency Planning Controversy, 22 pp.
11. Apr. 5, 1983 SECY-83-124A, Memorandum for the
Commissioners from H. Plaine,
General Counsel, Subject: Legal
Issues and Current Options in
Shoreham Emergency Planning Contro-
versy, 9 pp.
12. Apr. 12, 1983 SECY-83-132, Memorandum for the
Commissioners from H. Plaine,
General Counsel, Subject: Commis-
sion Order Providing Guidance with
Regard to the Shoreham Offsite
Emergency Planning Controversy,
1 pp.; attachment, undated draft
Commission memorandum and order,
re: Feb. 23, 1983 Suffolk County
motion before Licensing Board,
12 pp.
13. Undated Draft of SECY-83-132A, Memorandum
for the Commissioners from

APPENDIX K CONT'D

- H. Plaine, General Counsel, Subject: Commission Order Concerning Issues to be Addressed by Shoreham Licensing Board, 1 P.; attachment, draft Commission order, re: Suffolk County's motion to terminate Licensing Board proceeding, 3 pp.
14. Apr. 13, 1983 SECY-83-132A, Memorandum for the Commissioners from H. Plaine, General Counsel, Subject: Commission Order Concerning Issues to be Addressed by Shoreham Licensing Board, 1 p.; attachment, undated draft Commission order, re: Suffolk County's motion to terminate Licensing Board proceeding, 3 pp.
15. May 2, 1983 Draft of SECY-83-157, Memorandum for the Commissioners from H. Plaine, General Counsel, Subject: Commission Order Indicating Agreement with Licensing Board Order Declining to Terminate the Shoreham Operating License Proceeding, 4 pp.; attachment, undated draft Commission memorandum and order, re: April 20, 1983 Licensing Board order, 5 pp.
16. May 2, 1983 SECY-83-157, Memorandum for the Commissioners from H. Plaine, General Counsel, Subject: Commission Order Indicating Agreement with Licensing Board Order Declining to Terminate the Shoreham Operating Licensing Proceeding, 4 pp.; attachment, undated draft Commission memorandum and order, re: April 20, 1983 Licensing Board order, 5 pp.
17. May 5, 1983 SECY-83-169, Memorandum to the Commissioners from J. Fitzgerald, Assistant General Counsel, Subject: Review of Transcript of Closed Commission meeting of April 5, 1983, 1 p.; attachment, April 5, 1983 Commission meeting transcript, 47 pp.

APPENDIX K CONT'D

18. June 2, 1983 Draft SECY-83-215, Memorandum for the Commissioners from H. Plaine, General Counsel, Subject: Commission Determination on Acceptance of Certified Question from LBP-83-21 on Low-Power Operation at Shoreham Nuclear Power Station, 2 pp.; attachment (2), entitled "Analysis Regarding Acceptance of Certified Question from LBP-83-21" by an OGC attorney, 5 pp.; Attachment (5) draft Commission order, re: April 20, 1983 Licensing Board Order, 2 pp.
19. June 3, 1983 SECY-83-215, Memorandum for the Commissioners from H. Plaine, General Counsel, Subject: Commission Determination on Acceptance of Certified Question from LBP-83-21 on Low-Power Operation at Shoreham Nuclear Power Station, 2 pp.; attachment (2), entitled, "Analysis Regarding Acceptance of Certified Question from LBP-83-21" by an OGC attorney, 5 pp.; attachment (5) draft Commission order, re: April 20, 1983 Licensing Board order, 2 pp.
20. Undated Draft SECY-83-215A, Memorandum for the Commissioners from H. Plaine, General Counsel, Subject: Acceptance and Determination of Certified Question from LBP-83-21 on Low-Power Operation at Shoreham Nuclear Power Station, 2 pp.
21. June 24, 1983 Draft SECY-83-215A, Memorandum for the Commissioners from H. Plaine, General Counsel, Subject: Acceptance and Determination of Certified Question from LBP-83-21 on Low-Power Operation at Shoreham Nuclear Power Station, 2 pp.; attachment, undated draft Commission order, re: April 20, 1983 Licensing Board order, 4 pp.

APPENDIX K CONT'D

22. June 24, 1983 SECY-83-215A - Memorandum for the Commissioners from H. Plaine, General Counsel, Subject: Acceptance and Determination of Certified Question from LBP-83-21 on Low-Power Operation at Shoreham Nuclear Power Station, 3 pp.; attachment, undated draft Commission order, re: April 20, 1983 Licensing Board order, 4 pp.
23. June 17, 1983 Draft SECY-83-240, Memorandum for the Commissioners from M. Malsch, Deputy General Counsel, Subject: Disposition of Suffolk County "Motion for Commission Ruling on LILCO's 'Utility Plan' for Emergency Preparedness," 4 pp.; attachment (5), draft Commission order, re: Suffolk County's "Motion for Commission Ruling on LILCO's 'Utility Plan' for Emergency Preparedness," 2 pp.
24. June 20, 1983 SECY-83-240, Memorandum for the Commissioners from M. Malsch, Deputy General Counsel, Subject: Disposition of Suffolk County "Motion for Commission Ruling on LILCO's 'Utility Plan' for Emergency Preparedness," 4 pp.; attachment (5), Draft Commission order, re: Suffolk County's "Motion for Commission Ruling on LILCO's 'Utility Plan' for Emergency Preparedness," 2 pp.
25. Nov. 2, 1983 SECY-83-448, Memorandum to the Commissioners from J. Fitzgerald, Assistant General Counsel, Subject: Review of ALAB-743 (In the Matter of Long Island Lighting Company - Emergency Planning), 9 pp.

APPENDIX K CONT'D

26. July 1981 -
Jan. 1984 Portions of the memoranda deal with Shoreham's OL, memoranda to the Commissioners from the General Counsel, re: Monthly Monitoring Adjudicatory Proceedings
27. Undated Draft Commission order and stay re: March 20, 1984 Supplemental Motion for Low-Power Operating License, 3 pp.
28. Undated Draft Commission order and stay, re: March 20, 1984 Supplemental Motion for Low Power Operating License, 4 pp.
29. Undated Draft Commission order and stay, re: March 20, 1984 Supplemental Motion for Low Power Operating License, 3 pp.
30. Apr. 2, 1984 Memorandum to the Commissioners from Herzel H. E. Plaine, General Counsel, Subject: Shoreham Low Power Proceeding, 5 pp.
31. Apr. 4, 1984 Memorandum for Chairman Palladino from C. W. Reamer Re: Shoreham Low Power Proceeding.
32. Undated draft Memorandum for B. P. Cotter from Chairman Palladino Re: Shoreham.
33. Undated draft Memorandum for J. E. Zerbe/H.E. Plaine from Chairman Palladino Re: Review Plants and Options for Dealing with them.
34. Undated draft
(short version) Memorandum for J. E. Zerbe/H.E. Plaine from Chairman Palladino Re: Review Plants and Options for Dealing with Them.
35. Undated draft Notes for meeting on licensing delays.