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LILCO, September 13, 1982
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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Before the Atomic Safety and Licensing Board

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

LILCO'S REPLY TO SUFFOLK COUNTY'S
OBJECTIONS TO LILCO'S MOTION TO COMPEL
PRODUCTION OF EMERGENCY PLANNING DOCUMENTS

I.

On June 2, 1982, LILCO served on Suffolk County LILCO's first request for production of emergency planning documents; on June 22, 1982, LILCO served its second request. Suffolk County responded to the first request on July 1, 1982, objecting to many of the requests as irrelevant, as burdensome, or as s . ig documents protected by intragovernmental privilege.^{1/}

^{1/} The County filed its response to LILCO's second request on August 4, 1982. Under 10 C.F.R. 2.710 and 2.741(d), the

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See "Suffolk County's Response to LILCO's First Request to Suffolk County for Production of Emergency Planning Documents" at 3, 5, 7, 9, and 13. Over these objections, the Board ruled that Suffolk County was to produce "all existing emergency planning documents, whether they related to LILCO's or Suffolk County's planning efforts." Board Order of July 27, 1982 at 23; see Tr. 7404-05. Documents in the County's direct possession were to be produced by July 26, 1982; documents held by consultants were to be produced by August 3, 1982. Tr. 7416-17; July 27 Order at 25.

During the course of production, the County in letters dated August 11, 1982 and August 24, 1982 identified sixty-two documents it was withholding under claims of attorney-client privilege, work product doctrine, and intragovernmental privilege. In response to the August 11 letter, LILCO filed a motion to compel on August 23, 1982, seeking the documents listed in the August 11 letter. LILCO supplemented that motion on August 25, 1982, to include the documents listed in the August 24 letter.^{2/} Pursuant to the Board's direction, the

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County had thirty-two days within which to respond. The County's response was out of time.

^{2/} LILCO received on September 3 a third list of documents being withheld by the County. The Board instructed the County during a September 10 conference call with the par-

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parties discussed each document being withheld. As a result of these discussions, twenty-seven of the sixty-two items were deleted from LILCO's objections. Suffolk County filed a response on August 31, 1982 to LILCO's motion to compel, objecting to production of the remaining documents.3/

The County's August 31 objections to LILCO's motion to compel are addressed below. The legal bases of the privileges claimed by the County are discussed in part II, and are applied in part III to the documents being withheld.4/

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ties to send this list, along with the documents being withheld, to the Board for possible in camera review.

- 3/ The Board subsequently asked the County to reexamine the documents to determine whether parts of them could be produced by deleting privileged portions. The County declined to produce any parts of the documents.
- 4/ LILCO's August 23 motion to compel addressed the timelines of the County's production of documents as well as the documents withheld. At the time the motion to compel was filed, the County had produced documents on July 26, August 5, August 9, August 14, and August 16 (all but the first date are beyond the time limits set by the Board in its July 27 Order), and had refused to set a date certain by which the remaining documents would be produced. The County has now completed its production. However, three items in response to the County's discussion of the timeliness of its production merit mention.

First, Suffolk County states that LILCO was advised that "there was potentially a vast volume of documents that might be construed to fall within LILCO's document requests." For that reason, LILCO offered to inspect the documents on Long Island and to accept additional documents on August 6, three days past the last day for pro-

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II.

Title 10 C.F.R. § 2.740(b)(1) defines the scope of discovery in NRC proceedings as follows:

Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the proceeding, whether it relates to the claim or defense of the party seeking discovery or to

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duction as set by the Board. LILCO requested several times that the County provide a list of the documents withheld. The list was provided on August 11. By that time, the County had refused several times to inform LILCO as to when it planned to complete document production. LILCO filed its motion to compel using August 11 as the "date of response" under 10 C.F.R. §2.740(f)(1). The County states that LILCO's motion was filed out of time. LILCO did not file a motion to compel on August 3 upon the County's refusal to provide the remaining documents (and a list of the documents being withheld) because LILCO was hopeful that the parties would work out the discovery disputes without having to resort to filings with the Board.

Second, the County quotes out of context from LILCO's letter of August 5, 1982, regarding narrowing of requests. (That letter is attached to LILCO's motion to compel.)

Third, the County suggests that due to the vast amount of material it was required to produce in response to LILCO's requests, it was not possible to produce the documents on time. The County has produced 4,818 pages of emergency planning material in response to LILCO's requests. LILCO provided 4,800 pages of emergency planning material in response to the County's requests, as well as thousands of pages of material related to the quality assurance and health and safety issues. The documents were provided by LILCO within the time allowed by NRC regulations or as ordered by the Board.

the claim or defense of any other party, including the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter.... It is not ground for objection that the information sought will be inadmissible at the hearing if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

The NRC rules governing discovery between parties are to be construed liberally. Illinois Power Company (Clinton Power Station, Unit 1), LBP-81-61, 14 NRC 1736 (1981).

[A]n important reason for allowing discovery is to eliminate, insofar as possible, the element of surprise in modern litigation. The underlying concept is to shorten the actual trial, with its attendant expense and inconvenience for all concerned, while increasing the parties' ability to develop a complete record for decisional purposes Stated another way, "[i]n modern administrative and legal practice, pretrial discovery is liberally granted to enable the parties to ascertain the facts in complex litigation, refine the issues, and prepare adequately for a more expeditious hearing or trial."

Pennsylvania Power and Light Company and Allegheny Electric Cooperative, Inc. (Susquehanna Steam Electric Station, Units 1 and 2), ALAB-613, 12 NRC 317, 322-23 (1980), quoting Pacific Gas and Electric Company (Stanislaus Project), LBP-78-20, 7 NRC 1038, 1040 (1978). The County seeks to avoid producing certain documents by claiming that the attorney-client privilege, the

work product doctrine or an intragovernmental privilege applies to the documents. These doctrines are addressed in turn below.

Attorney-Client Privilege

It appears that the County invokes the attorney-client privilege pursuant to 10 C.F.R. § 2.740(b)(1) ("[p]arties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the proceeding").^{5/} The attorney-client privilege is the oldest of the testimonial privileges, 8 Wigmore, Evidence § 2290 (McNaughton rev. 1961); its purpose is "to encourage clients to make full disclosure to their attorneys." Fisher v. United States, 425 U.S. 391, 403 (1976). As noted by the County in its objections at 5, a frequently-quoted formulation of the privilege appears in United States v. United Shoe Machinery Corporation, 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 the attorney was informed (a)

^{5/} This rule, like the other NRC rules governing discovery between parties, derives from the Federal Rules of Civil Procedure. Pennsylvania Power and Light Co. and Allegheny Electric Cooperative Inc. (Susquehanna Steam Electric Station, Units 1 and 2), ALAB 613, 12 NRC 317, 322 (1981).

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 (e) the privilege has been (a) claimed and (b) not waived by the client.^{6/}

The privileged information must be "essential to the lawyers' performance of legal services." Burlington Industries, Inc. v. Exxon Corp., 65 F.R.D. 26, 40 (D. Md. 1974). "The privilege only protects disclosure of communications; it does not protect disclosure of the underlying facts by those who communicated with the attorney." Unjohn Co. v. United States, 449 U.S. 383, 395 (1981). While information within the scope of the privilege is rigorously protected, see 8 Wright and Miller, Federal Practice and Procedure § 2017 (1972), all the elements of the privilege must be met to obtain its protection.

Work Product Doctrine

The County also seeks to withhold certain documents under the work product doctrine, which is stated in 10 C.F.R. § 2.740(b)(2) as follows:

^{6/} Wigmore's Treatise provides a similar formulation, prefaced by the author's warning that the phrasing of the general principle "so as to represent all its essentials, but only essentials . . . is a matter of some difficulty." 8 Wigmore, Evidence § 2292 (McNaughton rev. 1961).

A party may obtain discovery of documents and tangible things otherwise discoverable under paragraph (b)(1) of this section 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 this 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 against disclosure of the mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party concerning the proceeding.^{7/}

In contrast to the attorney-client privilege, which protects confidences of the client, the work-product doctrine is designed to protect the lawyers' mental impressions and opinions. Under 10 C.F.R. § 2.740(b)(2), two questions must be addressed: (1) whether the document the County seeks to withhold constitutes "trial preparation materials" and (2) whether LILCO has shown "substantial need of the materials in the preparation of [its] case", and that it is "unable without undue hardship to obtain the substantial equivalent of the materials by other means."^{8/}

^{7/} The doctrine originated in *Hickman v. Taylor*, 329 U.S. 495 (1947), and has been codified in the federal discovery rules. See Fed. R. Civ. P. 26(b)(3).

^{8/} The Appeal Board has recognized that 10 C.F.R. § 2.740 is patterned after and parallels Rule 26 of the Federal Rules

Governmental Privilege

The County is also withholding documents under a claim of "executive privilege, which is the privilege against disclosure of interagency or intra-agency documents containing advisory opinions, recommendations, and deliberations." County Objections at 7. The cases cited by the County to support its claim in the main involve the assertion by federal agencies of a statutory exemption under the Freedom of Information Act (FOIA), and therefore are not applicable here. See, e.g., Market Committee of the Federal Reserve System v. Merrill, 443 U.S. 340, 360 (1979); N.L.R.B. v. Sears, Roebuck & Co., 421 U.S. 141, 150 (1975).

Presumably, the County is relying upon the "unless privileged" language of 10 C.F.R. § 2.740(b)(1) to argue that the NRC discovery rules incorporate some sort of common-law, non-statutory governmental privilege. But LILCO has not found

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of Civil Procedure. Commonwealth Edison Company (Zion Station, Units 1 and 2), ALAB-196, 7 AEC 457, 460 (1974). Accordingly, the legal authorities in federal court decisions involving Rule 26 illuminate, and provide appropriate guidelines for interpreting, the discovery standards set forth in the Commissions's rules. Boston Edison Company (Pilgrim Nuclear Generating Station, Unit 2), LBP-75-30, 1 NRC 579, 581 (June 6, 1975), cited in Allied-General Nuclear Services (Barnwell Fuel Receiving and Storage Station), LBP-77-13, 5 NRC 489, 492 (1977).

any NRC decisions applying a governmental privilege, and the County has cited none.^{9/}

It is settled that governments enjoy a common-law privilege for writings that include military or diplomatic secrets of state, based upon the potential harm to the public which might result from disclosure of such information. Aaron Burr's Trial, Robertson's Rep. I, 121, 127, 186, 255, II, 536 (1807) (subpoena duces tecum issued by Marshall, C.J., to President Jefferson, stating that nothing before the court indicated it would be contrary to the public interest to produce correspondence between the President and General Wilkinson); Totten v. United States, 92 U.S. 105 (1985) (action by former Union spy for services during Civil War was denied to avoid endangering secrecy of such employments). Some courts, absent a statute, have extended the privilege to other situations where disclosure may be injurious to the public health; others express doubt whether the privilege should be expanded,

^{9/} The attorney-client privilege and the privilege for commercial information, as incorporated into the NRC discovery rules through 10 C.F.R. § 2.740(b)(1), have been addressed by the Appeal Board. See, e.g., Kansas Gas & Electric Co. (Wolf Creek Nuclear Generating Station, Unit 1), ALAB-327, 3 NRC 408 (1976). Protection of governmental documents is frequently addressed in NRC proceedings -- but only in the context of discovery between the NRC and a party, which is governed by special discovery rules. See 10 C.F.R. §§ 2.720, 2.740a, and 2.790.

given the statutory privileges, standard attorney-client privilege, and work product doctrine which often protect information sought from governments. Cf. United States v. Leggett & Platt, Inc., 542 F.2d 655 (6th Cir. 1976); see also 8 Wigmore, Evidence (McNaughton rev. 1961) § 2378, n. 7.

When the government is a litigant, it waives any non-statutory privilege covering government materials and is subject to discovery rules. United States v. Proctor and Gamble Co., 356 U.S. 677, 681 (1958); United States v. Cotton Valley Operators Committee, 9 F.R.D. 719 (W.D. La. 1949). The County is participating as a party in this proceeding (not, for example, as an interested County pursuant to 10 C.F.R. § 2.715(c)). It has therefore waived any privilege that may have applied to its documents.

Even if the Board were to find there exists a governmental privilege under 10 C.F.R. § 2.740(b)(1) of the sort advanced by the County, and that the privilege has not been waived by the County's participation as a party to this proceeding, the County has not demonstrated how the public interest would be harmed if the material it is withholding were disclosed. Additionally, any privilege that may exist is qualified; LILCO may obtain the documents by showing need. United States v. Capitol Services, Inc., 89 F.R.D. 578 (1981).

III.

Each of the documents listed in the County's objections is discussed below.^{10/}

Group I includes the following documents, withheld based on attorney-client and intragovernmental communication privileges:

I.1 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.

I.2 A letter from Robert C. Meunkle to Patricia Dempsey, dated February 24, 1982, regarding school district participation during a radiological emergency.

I.3 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.

I.4 A letter from Richard A. Strang, Deputy Commissioner, Department of Transportation, to Patricia Dempsey, dated August 20, 1980, regarding time estimates for evacuation.

^{10/} The County grouped the documents within each letter by the privilege it is asserting. (Group I, for example, contains those documents listed in the County's August 11 letter that are being withheld based upon attorney-client and intragovernmental communications privileges; Group VI contains documents listed in the County's August 24 letter withheld based on those same privileges.) LILCO has numbered the documents consecutively (1 through 34) in the order listed in the County's objections. The group numbers assigned by the County have been retained as well.

Items 1, 2, and 4 appear to contain facts, not privileged communications, regarding the County's emergency planning contentions. It does not appear that the information in items 1, 2, and 4 was routed through Ms. Dempsey "for the purpose of securing primarily either (i) an opinion on law or (ii) legal services or (iii) assistance in some legal proceeding." United Shoe, 89 F. Supp. at 359. Therefore, a component of the attorney-client privilege is lacking, and these documents should be provided by the County.

Further, it appears that item 4 is directly responsive to the NRC's July 2, 1980 request for evacuation times. (See the sixth item listed on page four of the County's August 11, 1982 letter.) If item 4 was prepared in response to the NRC's request, it was not held as confidential by the client, and no privilege exists. If Ms. Dempsey sent Mr. Reagan's response to the NRC, any privilege that may exist has been waived. Finally, it is not clear that Mr. Reagan is properly considered a client within the meaning of the privilege. See Upjohn, 449 U.S. at 390.

As to item 3, to the extent that document contains information as well as requests for legal advice, the portions covered by the privilege should be blocked out and the remainder of the document provided.

Items 1 through 4 are also claimed under an intragovernmental communication privilege. The County has not demonstrated how the public interest would be harmed if these items are disclosed. Therefore, the items should be produced.

Group II contains the following documents, withheld under the work product doctrine:

II.5 PRC Voorhees' notes on LILCO's emergency plan.

II.6 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.

II.7 Comments on the Shoreham Nuclear Power Station emergency plan authored by Dr. James Johnson.

II.8 A letter from Dr. Kai T. Erikson to Christopher M. McMurray, dated May 13, 1982, regarding Dr. Erikson's review of the LILCO plan.

II.9 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.

II.10 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.

II.11 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.

The County argues regarding these documents that LILCO cannot demonstrate need since the consultants involved "were made available for deposition by LILCO where their view regarding the LILCO plan could be examined." County Objections at 10. However, Dr. Erikson stated the following in his

deposition, when asked whether he had any opinion or conclusions about the LILCO plan: "I had several. I don't have with me material that will allow me to be specific." Tr. at 112. (Pages 110-113 are attached.)^{11/} Dr. Johnson, in response to questions on his opinion related to the LILCO plan, stated he had prepared a critique of the plan. Tr. at 140. (Pages 139-147 are attached.) LILCO was not able to question Dr. Johnson about the contents of the critique, because counsel for the County asserted the material was covered by attorney-client privilege. In response to questions about the LILCO plan, Mr. Kanen stated he couldn't recall "the very issues" he found deficient in the plan, but that he had drafted a set of questions about the plan. LILCO thinks that item 5 may be comprised of Mr. Kanen's questions.

LILCO was unable to obtain details from these witnesses on their views of the LILCO plan. Having shown need, and an inability to obtain through depositions the information contained in the documents being withheld, LILCO is entitled to the documents.

^{11/} The transcripts have not yet been corrected and signed by the County's witnesses.

Group III contains the following documents, withheld under the intragovernmental communication privilege:

III.12 A document authored by Fred Finlayson titled "Criteria for Establishing EPZ Boundaries".

III.13 A memo to Frank Jones, Deputy County Executive, from Philip B. Herr, dated May 12, 1982, regarding radiological emergency response plan demographics.

III.14 Meeting notes authored by Peter Polk regarding review of LILCO on-site plan.

III.15 Meeting notes authored by Peter Polk, dated April 29, 1982, regarding Suffolk County radiological emergency response plan.

III.16 All Steering Committee minutes.

III.17 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.

It appears item 13 may represent Mr. Herr's views on certain aspects of emergency planning. In response to questions regarding the LILCO plan, Mr. Herr was unable to answer questions in any detail, and counsel for Suffolk County objected to certain questions. Tr. at 145-149, 159-165 (attached). The County should provide item 13 to LILCO because it contains information for which LILCO has a substantial need, and which was unavailable to LILCO in depositions.

LILCO seeks production of the documents contained in Group III for the reasons previously stated. In addition, item 12 appears to be unrelated to any intragovernmental communication and should not be withheld on that basis.

Group IV consists of the following documents, withheld under a claim of attorney-client privilege:

IV.18 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.

IV.19 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.

Again, it does not appear from the description of item 18 that Mr. Brown is acting in his capacity as a lawyer in receiving supplements that were subsequently made part of the public record, nor did Mr. Jones apparently intend his communications to be privileged. Thus, this document is not properly within the attorney-client privilege.

As to item 19, LILCO has attached a letter which may be the same item being claimed. The letter in LILCO's possession is part of a legislative appropriations package and as such is in the public record.

Group V contains the following documents, withheld under a claim of work product:

V.20 Letter from Philip B. Herr to Christopher McMurray, Attorney, dated July 6, 1982, regarding panel on behavior under stress.

V.21 Letter from Christopher M. McMurray to Dr. Fred Finlayson, dated July 15, 1982, regarding LILCO testimony on PRA.

V.22 Letter from Christopher M. McMurray to Robert J. Budnitz, dated July 15, 1982, regarding LILCO testimony on PRA.

V.23 Letter from Christopher M. McMurray to Dr. Fred Finlayson, dated July 13, 1982, regarding social survey.

V.24 Letter from Fred C. Finlayson to Christopher M. McMurray, dated July 1, 1982, regarding interaction with authors of SAI and PL&G reports.

V.25 Letter from Christopher M. McMurray to Dr. Fred Finlayson, dated June 18, 1982, regarding documents pertaining to LILCO's consequence analysis.

These documents are not properly claimed under the work product doctrine because they are not trial preparation materials. With the exception of number 20, the documents were prepared by persons that the County has represented are working on developing the County plan, not litigating the LILCO plan. The County should produce these documents.

Group VI contains the following documents, withheld under the attorney-client and intragovernmental communications privileges:

VI.26 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.

VI.27 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.

VI.28 Memorandum from Chris McMurray to Frank Jones, Chairman SCRERP Steering Committee, dated May 6, 1982, regarding the SCRERP personnel.

VI.29 Letter from Peter A. Polk to Christopher M. McMurray, dated August 4, 1982, regarding establishment of EPZ boundaries.

For the reasons previously stated, County planning documents should not acquire a privileged status merely because the County's attorneys have been involved in the planning process. To the extent the Board finds these documents contain any privileged material, the material may be deleted and the remainder of the documents produced.

Group VII contains the following documents, withheld under a claim of intragovernmental communication privilege:

VII.30 Activity report by Kathleen Goode, Suffolk County Executive's Office, dated June 18, 1982, regarding meeting between PRC Voorhees and Department of Emergency Preparedness.

VII.31 Memorandum from Charles R. Skinner to Frank Jones, Deputy County Executive, dated June 21, 1982, regarding public education about SCRERP.

VII.32 Memorandum from Charles R. Skinner to Frank Jones, Deputy County Executive, dated June 21, 1982, regarding meeting with Director of Fire Safety Ron Buckingham.

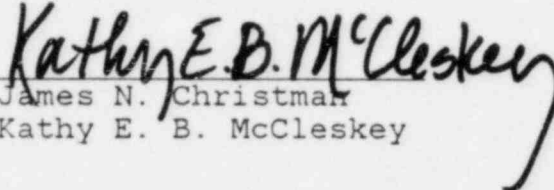
VII.33 Activity report by Kathleen Goode, County Executive's Office, dated June 4, 1982, regarding SCRERP Steering Committee meeting.

VII.34 Activity Report by Kathleen Goode, County Executive's Office, dated July 1, 1982, regarding meeting of Steering Committee.

For the reasons previously stated, these documents should not be accorded privileged status.

LILCO asks that the Board require Suffolk County to provide these documents, if necessary deleting any material the Board deems privileged.

Respectfully submitted,


James N. Christman
Kathy E. B. McCleskey

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DATED: September 13, 1982

LILCO, September 13, 1982

CERTIFICATE OF SERVICE

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

I hereby certify that copies of LILCO'S REPLY TO SUFFOLK COUNTY'S OBJECTIONS TO LILCO'S MOTION TO COMPEL PRODUCTION OF EMERGENCY PLANNING DOCUMENTS was served upon the following by first-class mail, postage prepaid, by Federal Express (as indicated by an asterisk), or by hand (as indicated by two asterisks), on September 13, 1982:

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Respectfully submitted,

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Kathy E. B. McCleskey

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DATED: September 13, 1982

1 (Discussion off the record.)

2 THE WITNESS: Yes, I reviewed that document.

3 BY MR. EDWARDS:

4 Q Did you read that document in light of the
5 regulatory requirements that it must meet?

6 A No, I did not. There are many issues in that plan
7 that I feel were not within my area for judgment.

8 Q On those areas that are within your areas of
9 judgment or expertise, did you evaluate that plan with
10 respect to the regulatory requirements?

11 A I attempted to do so, yes.

12 Q Can you please list for me with respect to the
13 original LILCO plan those areas that you felt were deficient
14 in meeting the regulatory requirements?

15 MR. MC MURRAY: This is of course to the best of
16 his ability to recall that plan.

17 MR. EDWARDS: All question sare to the best of his
18 ability.

19 THE WITNESS: I cannot recall the very issues. I
20 generated a set of questions at the time about the plan. The
21 one that I do recall was an item where NUREG 654 and
22 Appendix 4 recommends the determination and reporting of an

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NATIONWIDE COVERAGE

1 evacuation time from the entire EPZ and that time estimate
2 was not included in the plan.

3 BY MR. EDWARDS:

4 Q Did other employees of PRC Voorhees read that
5 that you know of -- read the original LILCO plan to
6 determine whether it met the regulatory requirements with
7 respect to those areas in which they had an expertise?

8 A Yes. Mr. Peter Pulk.

9 Q Who is Mr. Pulk?

10 A He is a senior associate with PRC Voorhees.

11 Q What is his area of expertise?

12 A He is a transportation planner that has been
13 involved in evaluation studies and off-site emergency
14 planning on many of the projects that we spoke of earlier in
15 this deposition.

16 Q Do you know whether Mr. Pulk generated a set of
17 Questions about LILCO's plan with respect to the regulatory
18 requirements?

19 A No, he did not; no.

20 Q Do you know whether your set of questions ended up
21 being contentions that were filed by Suffolk County?

22 MR. MC MURRAY: I will object to that question.

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1 I think that evades the attorney work product privilege.

2 THE WITNESS: I believe some of the questions may
3 have become part of a contention, but not in a verbatim
4 context.

5 BY MR. EDWARDS:

6 Q Other than the one area that you specifically
7 mentioned, do you remember any other areas that you
8 questioned about that plan?

9 A Most of the other questions I recall are questions
10 of where the information did not allow me to exercise a
11 judgment on adequacy or inadequacy.

12 Q And when you say "information," are you referring
13 to information within the emergency plan itself?

14 A That's correct.

15 Q Are you also referring to the emergency plan
16 implementing procedures?

17 A Yes.

18 Q You have reviewed those?

19 A Yes.

20 Q In reviewing the July version of LILCO's emergency
21 plan, have any of the questions that you raised originally
22 been alleviated by that revision?

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1 A I have not had the opportunity to go through that
2 document in detail to check the list of questions in
3 connection with the time estimate for the entire EPZ.

4 I do not believe that was changed in the July version of
5 the plan.

6 Q Do you intend to review the revision to LILCO's
7 plan to determine with respect to the other questions that
8 you raised that the reasons you raised those questions have
9 been alleviated?

10 A Yes.

11 Q Do you have a time frame in which you intend to do
12 that?

13 A We would expect to do that within the next 10
14 days.

15 Q If I were to ask you, sir, your areas of expertise
16 with respect to LILCO's plan, that you feel that you can
17 evaluate what areas would that be?

18 A Primarily the areas in which activities in the
19 on-site plan area predicated upon certain off-site
20 conditions and in certain areas of public alerting.

21 Q Do you know whether you will be testifying on
22 those areas at the hearings in front of the ASLB?

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Tor 1

AFTERNOON SESSION

2

(1:20 p. m.)

3

Whereupon,

4

KAI T. ERIKSON

5

resumed the stand and, having been previously duly sworn, was

6

examined and testified further as follows:

7

EXAMINATION (continued)

8

BY MR. RUDLIN:

9

Q

Dr. Erikson, you indicate you have reviewed the
LILCo emergency plan.

10

11

A

The on-site emergency plan, right.

12

MR. MC MURRAY: Excuse me, Mr. Rudlin, can we

13

make a distinction between the LILCo Plan Revision 1 and the
LILCo Plan Revision 2 which came out in July?

14

15

MR. RUDLIN: If that's a distinction that the

16

witness needs to make.

17

THE WITNESS: It is. I have read 1 but not 2.

18

BY MR. RUDLIN:

19

Q

You have not read the LILCo emergency plan that
is dated, I believe, June 28, 1982?

20

21

A

If that's the plan in multiple volumes?

22

Q

Yes.

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1 Tor 1 A I haven't read that yet, no.

2 Q Okay. Have you had a copy of the revised LILCo

3 emergency plan furnished to you?

4 A Yes, I have.

5 Q You simply have not yet had the opportunity to

6 review it, I take it?

7 A Yes. It was sent to an address, a different

8 address from the one I have been occupying for the summer

9 which nobody could have known. So I haven't actually had

10 physical access to it.

11 Q Do you plan on reviewing it?

12 A I would assume so.

13 Q Do you know when you are going to be reviewing

14 it?

15 A Soon.

16 Q What is the purpose of your review of the LILCo

17 emergency plan?

18 A I would review it in consultation with other

19 people so I can only -- so all I can give you is a very

20 general answer that I would look at it to see whether I

21 thought it satisfactorily met the needs of the people of the

22 county.

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BRTor 1 Q Satisfactorily in the sense, from your
2 perspective as a sociologist?

3 A Yes. Yes.

4 Q For instance, you do not have the background or
5 expertise to judge evacuation times?

6 A No.

7 Q And you are not an expert with respect to knowing
8 what an adequate evacuation time is or not?

9 A Right.

10 Q Now, in your review of the first draft of the
11 LILCo emergency plans, did you reach any opinions,
12 conclusions, or impressions about that plan?

13 A I had several. I don't have with me material
14 that will allow me to be specific but I thought as a general
15 proposition that the plan did not sufficiently address the
16 question of the kinds of -- of the degree to which people
17 who are expected to be called upon in an emergency would
18 experience conflict with other responsibilities they had and
19 I didn't think it addressed the question as to how the
20 particular people of Suffolk County would respond to very
21 general kinds of directives because no one at that point in
22 time had asked the question of -- had done a psychological

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BRTor 1 and social profile of that population.

2 Q You have reviewed other emergency plans done by
3 utilities for nuclear facilities; is that right?

4 A Yes.

5 Q I believe you said Diablo Canyon?

6 A Yes.

7 Q Indian Point?

8 A Indian Point, there's a number of them. And I
9 have reviewed some of that large number.

10 Q Are the deficiencies that you have just generally
11 described with respect to the Shoreham plan the same type of
12 deficiencies that you found in these other emergency plans?

13 A Very generally speaking, yes.

14 Q From what you know of Shoreham and its vicinity
15 and what you know of the other nuclear facilities and the
16 emergency plans that you have reviewed, are there any
17 significant distinctions in the deficiencies between the
18 emergency plans for the various facilities?

19 A This plan is not strictly comparable with the
20 others that I have reviewed and the reason I paused a moment
21 ago is I was trying to remember whether I had ever seen
22 another on-site emergency plan, and I think all the other

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May 10, 1982

EXPRESS MAIL

Patricia Dempsey, Esq.
County Attorney's Office
H. Lee Dennison Building
Veterans Memorial Highway
Hauppauge, New York 11788

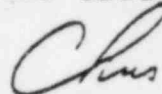
Dear Pat,

Enclosed please find the proposed scope of services for Kai Erikson and Jim Johnson who will be conducting the social surveys for the RERP as well as assisting us in litigation of LILCO's emergency plan. As we discussed by phone today, Dr. Stephen Cole of Stoneybrook, who will be doing the actual polling for the survey, will be contracting separately with you for his services.

Please note also that Drs. Erikson and Johnson will be enlisting the aid of some other experts who are named in the proposal.

Please contact me if you have any questions regarding the enclosed.

Yours truly,



Christopher M. McMurray

CMMcM:hmw

Enclosures

cc: Kai Erikson

Jim Johnson

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DEPT. OF LAW
COUNTY ATTORNEY
SOUTHERN COUNTY

10 12

RTcus 1 THE WITNESS: Do you want to rephrase the question
2 and get an answer?

3 MR. POWELL: You can answer the question.

4 THE WITNESS: Yes.

5 BY MR. POWELL:

6 Q What is "program design"?

7 A Program design is the design of the things which
8 one does, in this case in preparing a plan arranged over
9 time, and distributed over who does what.

10 Q By "plan," do you mean emergency plan?

11 A Yes, sir, in this case.

12 Q In paragraph 2, you say, "In addition, I will, if
13 requested as above, consult on matters relating to on-site
14 emergency planning -- ." Have you been requested?

15 A Yes.

16 Q Have you then consulted on matters relating to
17 on-site emergency planning?

18 A Yes.

19 Q Would you describe for me what you mean when you
20 say on-site emergency planning?

21 A As I understood it at the point at which this
22 document was drafted, it was those aspects of emergency

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BRTcus 1 planning for which the applicant, as opposed to the county,
2 has the primary responsibility for preparation and which are
3 matters that deal with measures to be taken onsite in
4 response to, or in anticipation of, some form of incident.

5 Q Describe for me if you will, then, what you have
6 done with respect to on-site emergency planning?

7 MR. MC MURRAY: I object to that. That gets into
8 work product privilege, and also attorney-client privilege,
9 and I will instruct the Witness not to answer that question.

10 BY MR. POWELL:

11 Q Mr. Herr, do you chose to follow Mr. McMurray's
12 instruction?

13 A Yes, I do.

14 MR. POWELL: Rather than repeating again what I
15 have already put on the record, I will merely make reference
16 to it is to my position on your instruction not to answer.

17 BY MR. POWELL:

18 Q Mr. Herr, in that same paragraph, at the center of
19 the first page, you refer to "Other matters in contention."
20 Have you been requested to consult on other matters in
21 contention?

22 A I don't believe so.

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3RTous 1 Q Has there been any informal discussion between you
2 and representatives of the county that might lead you to
3 believe that in the future you will be called upon to
4 consult on other matters in contention?

5 MR. MC MURRAY: I'll object to that question on
6 relevance.

7 THE WITNESS: No.

8 BY MR. POWELL:

9 Q But you would do so if asked?

10 A If it seemed reasonable and we had relevant
11 capacities and budget and so on, sure.

12 Q You refer at the end of that paragraph to "related
13 litigation." What do you mean by related litigation?

14 A This whole letter was written by me. To be very
15 clear, I'm not an attorney and I get confused as to what
16 these words mean. And again, they really had the same
17 intent as "as related matters." That is, not to foreclose
18 flexibility in what the client might seek in seeking
19 whatever help I might give.

20 Q When you wrote this letter in April 1982, were you
21 aware of any related litigation?

22 A No, sir, I wasn't.

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Focus 1 Q Are you currently aware of any related litigation?

2 A No, I'm not. I think there may be some, but I'm
3 not cognizant of it.

4 Q I take it, then, that you had not been requested
5 to consult with respect to any related information?

6 A Maybe I didn't understand the question, but
7 nothing that I'm cognizant of.

8 Q Mr. Herr, the next paragraph in Herr Deposition
9 Exhibit 3, indicates that you first visited the site on
10 April 13. I take it that's the power station?

11 A I believe I meant "site" much more broadly and
12 really meant Suffolk county as the site.

13 Q Have you ever had occasion to go to the power
14 station?

15 A Yes, I have.

16 Q How many times have you been there?

17 A Once.

18 Q When was that?

19 A I believe it was April 13.

20 Q Were you given a guided tour?

21 A No, sir, I was not.

22 Q Who did you visit the site with?

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BRTcus

1 A If --
 2 Q If you can recall.
 3 A If I can recall, to the best of my recollection I
 4 visited the site with representatives from Voorhees'
 5 Associates and perhaps Attorney McMurray.
 6 MR. MC MURRAY: Excuse me, may I make something
 7 clear? How are you defining site? Inside the fence
 8 boundary or inside the reactor building and structures like
 9 that --
 10 MR. POWELL: I suppose by "site," I mean within
 11 the owner-controlled zone which is, I forget how many feet
 12 that is.
 13 MR. MC MURRAY: You're talking within the fence
 14 boundaries or whatever? Not beyond where you drive your car
 15 up to the gate, for instance, and just looking at the plant?
 16 BY MR. POWELL:
 17 Q Well, why don't we ask the Witness how many times
 18 have you been within a 1000 yards of the power station?
 19 A Why don't you ask it another way, if I might? Why
 20 don't you ask me how many times have I been inside the
 21 fence?
 22 Q How many times have you been inside the fence?

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Tous 1 entiretv?

2 A That's correct.

3 Q Are you half-way through it? Quarter of the way
4 through it? Most of the way through it?

5 A I have reviewed the plain document itself from one
6 end to the other, quickly. I have reviewed some, but not
7 all, of the documents which are incorporated by reference.

8 Q Such as?

9 A The training manuals, the exercise manuals, the
10 Wiley Report, and I haven't yet had an opportunity to focus
11 that review in substantial depth in any of the selected
12 parts of the whole of it.

13

14

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Q Have you had occasion to review it sufficiently to develop an opinion regarding its overall adequacy in light of the regulatory standards that you have indicated you have reviewed?

A I think the answer is no. I think it's premature to form conclusions.

Q Have you had occasion to form an opinion with respect to the adequacy of any parts of the plan as opposed to the entire plan?

A I think the same comment. I think it's premature to have done that.

Q So at this point in time, you don't have any opinion at all with respect to the adequacy of any particular part of the plan or with respect to the entire plan?

A That's correct; that I don't have any conclusions with regard to any parts of it.

Q Have you had an opportunity to review Suffolk County's emergency planning contentions?

A Yes, I have.

Q Before I get further into the contentions, have you developed any tentative, as opposed to final opinions,

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sk jBRT 1 with respect to adequacy of either the LILCO emergency plan
2 as a whole or any of its parts?

3 A I would say no, I really haven't formed even a
4 tentative conclusion regarding either the whole or the
5 parts.

6 Q Have you had occasion to assist in the drafting or
7 preparation of any of Suffolk County's emergency planning
8 contentions?

9 A My hesitation is over memory rather than content.
10 I don't believe — I don't believe that I contributed to
11 that.

12 Certainly not in any substantial way.

13 Q Do you anticipate participating in any redrafting
14 of any of Suffolk County emergency planning contentions?

15 A I wasn't even aware that they were subject to
16 being redrafted.

17 Q When was the last time you reviewed the Suffolk
18 County emergency planning contentions?

19 A This past weekend.

20 Q Can you identify for me — strike that.

21 Have you been assigned by the county any particular
22 responsibility with respect to the county's position as

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sk jBRT

1

MR. POWELL: Mr. McMurray, will you stipulate for the record that that is an accurate rendition of 3B?

2

3

And perhaps we can read it into the record?

4

5

MR. MC MURRAY: Let me compare it with my version of 3B first.

6

(Discussion off the record.)

7

MR. MC MURRAY: We will stipulate that that is an accurate version of contention 3B, of course noting that the underlinings under several words and the marginal notes are not part of 3B.

10

11

BY MR. POWELL:

12

13

Q Mr. Herr, will you then read for the record those several lines which appear to be B.?

14

15

16

17

18

19

A "Furthermore, LILCO has failed to adequately demonstrate that ground transportation (Plan at 6-21A) is adequate for conveyance of contaminated individuals to Central Suffolk Hospital under the congested traffic or radiological conditions that might exist during a radiological emergency.

20

21

22

"Thus, LILCO has failed to satisfy 10 CFR Paragraph 50.47(b)(12), 10 CFR Part 50, Appendix E, Item IV.E.6, and NUREG 0654, Item II.L.4."

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skJBRT 1 embodied in any of these contentions?

2 A No.

3 MR. MC MURRAY: I'll object to that question and
4 ask the Court to strike that answer.

5 MR. POWELL: What was the answer?

6 THE WITNESS: Was I not to answer?

7 MR. MC MURRAY: I have stated my objection.

8 THE WITNESS: No, I have not been assigned any
9 responsibility in it.

10 BY MR. POWELL:

11 Q Mr. Herr, Suffolk County's attorneys, in a letter
12 to an associate of my firm, suggested that you have been, or
13 may be assigned responsibility with respect to three of the
14 emergency planning contentions.

15 One of these, and it's the only one I intend to focus on
16 for the moment, is number 3B. Let me just give you a copy
17 of 3B from my file.

18 The marginal notes are mine, and I'm not going to ask you
19 about them. I just want you to read the paragraph that is
20 delineated B. on this page, and tell me if you recognize
21 that?

22 A Yes, I do.

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skjBRT 1 Q Mr. Herr, do you agree with that statement that
2 you have just read into the record, which is Suffolk County
3 Emergency Plan Contention 3B?

4 A I haven't --

5 MR. MC MURRAY: I'll object to that question. It
6 goes to an issue directly at controversy -- in controversy
7 at the moment.

8 MR. POWELL: That's why I'm asking him. That's
9 why I thought we were here.

10 BY MR. POWELL:

11 Q Do you agree with that, Mr. Herr?

12 MR. MC MURRAY: I'll just note my objection.

13 THE WITNESS: I haven't formed a conclusion about
14 that contention.

15 BY MR. POWELL:

16 Q Does the second line plan at 6-21A mean anything
17 to you in particular?

18 A No, it doesn't -- it does.

19 MR. MC MURRAY: Excuse me, I think Mr. Herr just
20 said it does mean something.

21 THE WITNESS: To the degree it means anything, my
22 recollection is that I was confused by it because when I

sk 19RT

1 looked at my copy of the plan, I didn't find ground
2 transportation materials at 6-21A, if my memory serves me
3 correctly.

4 BY MR. POWELL:

5 Q Were you aware that Suffolk County counsel
6 identified you as a witness who would be knowledgeable with
7 respect to Suffolk County Contention 3B?

8 MR. MC MURRAY: I'll object to that question.
9 That goes to attorney work product, and the attorney-client
10 privilege.

11 MR. POWELL: I disagree with you.

12 BY MR. POWELL:

13 Q Were you aware, sir?

14 A I had been informally informed that there was a
15 set of contentions, that I was likelier to be called on as
16 an expert than others.

17 But that's how I took it, that it is conditional, and
18 depending on whether others — these were more or less
19 appropriate for my involvement.

20 BY MR. POWELL:

21 Q What was included in that set?

22 A I can't tell you that.

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T 1 appearing before the board to have a ruling on this matter
2 in connection with the resumption of the deposition.

3 And I will further ask that the board enjoin the county
4 from reimbursing Mr. McMurray any of those expenses.

5 BY MR. SPIVEY:

6 Q When did you review the on-site plan, what you
7 have called the on-site plan, Dr. Johnson?

8 A During the month of May.

9 Q And when did you look at the county's plan?

10 A It may have been during the month of April. I
11 don't really recall.

12 MR. SPIVEY: It just occurs to me, I'm going to
13 ask for a further sanction, too, and that is to prohibit
14 Dr. Johnson from filing any testimony in this matter.

15 And to prevent him from appearing for examination or
16 cross-examination at any proceeding before the board; and
17 also to prevent the filing of any testimony and the
18 appearance of his colleagues who have assisted him in the
19 study that is currently ongoing.

20 BY MR. SPIVEY:

21 Q In reviewing the on-site plan and in reading the
22 county's plan, Dr. Johnson, did you see any areas where the

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PT 1 two appeared to come together?

2 I think the term that's use that I dispose is
3 "interface"?

4 A When I read the two plans, I didn't look at them
5 in that regard.

6 Q What was your purpose in looking at what you had
7 called the on-site plan?

8 A I was asked to write a review of it based on my
9 expertise.

10 Q Did you do that?

11 A Yes, I did.

12 Q And where is that?

13 A It has been submitted to you, as I understand it,
14 in the --

15 MR. MC MURRAY: Objection. That's getting into
16 attorney work product.

17 BY MR. SPIVEY:

18 Q Is it your understanding it has been submitted to
19 the applicant, Dr. Johnson?

20 A As far as I know, I have submitted it per their
21 request.

22 MR. MC MURRAY: Let me state for the record that

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7T 1 Dr. Johnson, pursuant to the board's order that Suffolk
2 County's consultants turn over all their written material.
3 sent various items from its files.

4 One was a critique of Lilco's plan, which we withheld
5 because it consists of attorney work product and also
6 infringes on the attorney-client privilege.

7 So therefore, it has not been turned over.

8 BY MR. SPIVEY:

9 Q Dr. Johnson, have you submitted any other
10 documents to the county or its attorneys to date, other than
11 the one you have just described?

12 A Prior testimony and all of the communications,
13 letters —

14 Q Prior testimony where?

15 A San Luis Obispo, the Diablo Canyon hearing.

16 MR. MC MURRAY: Let me state for the record that
17 that has been turned over.

18 BY MR. SPIVEY:

19 Q Does that include the deposition that was taken of
20 you in that proceeding?

21 A I don't think so. No, it didn't.

22 Q Dr. Johnson, should you ever determine to publish

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PT 1 in an academic endeavor the surveys that are underway in
2 Suffolk County, would you expect them to go before a peer
3 review?

4 A They would have to.

5 Q And what's your basis for saying they would have
6 to?

7 A That's the only way you can get published in
8 academic journals; the ones that are acceptable.

9 Q In undertaking to draft such a report — strike
10 that.

11 Have you ever been a part of a peer review group?

12 A Have I ever reviewed?

13 Q Yes, sir.

14 A Yes, I have.

15 Q As a part of peer review?

16 A Yes.

17 Q In looking at the type of report, or the type of
18 publication that may come out of this Suffolk County survey,
19 would you be sensitive to the language that was used?

20 A By whom?

21 Q By yourself.

22 A Yes. As a social scientist, I am very careful

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PT 1 with the language that I use.

2 Q For example, if you had a choice of the word
3 "plight" or "situation," which one would you choose?

4 A In what context?

5 Q Any context.

6 A It depends on the context of the writing, the word
7 that I would choose. I may not use either one.

8 Q Well, I'm putting a hypothetical to you, and the
9 hypothetical is if you had to choose and were limited to the
10 words "plight" or "situation," which one would you choose?

11 A Situation.

12 Q And if you had to choose between the verbs "flee
13 or fled" and "departed," which one would you choose?

14 A Departed.

15 Q With respect to this critique that you wrote,
16 which has been furnished to your counsel, when was that
17 prepared?

18 MR. MC MURRAY: Objection. That's attorney work
19 product; also infringes on the attorney-client privilege.

20 MR. SPIVEY: I don't intend to ask him about the
21 contents, since you asserted the privilege. I just want to
22 know when it was prepared.

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THE WITNESS: May, I believe. Or first of June.

May-June, somewhere in there.

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BY MR. SPIVEY:

Q And what did you have resort to, other than the document itself when you prepared it? Your critique?

A My expertise.

Q Did you refer to any learned journals or publications?

A Yes. I did. Indirectly, yes.

Q Did you call on them from memory, or did you have occasion to go pick up a tome?

A Well, I looked at things to make sure what I recalled from memory is correct.

Q And tell me in as much detail as you can recall, what reference works you consulted.

A Works by different researchers. Works that have appeared on Three Mile Island, including our own survey work.

Q Approximately how long was this document? How many pages?

A Three pages. I think.

Q And when did you turn this over to counsel?

A Again, late May, early June.

MR. MC MURRAY: I'll object to this line of

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Tous 1 questioning again. I think you're infringing again on the
2 work product privilege.

3 BY MR. SPIVEY:

4 Q Can you tell me why it was prepared?

5 MR. MC MURRAY: Objection.

6 THE WITNESS: It was requested.

7 BY MR. SPIVEY:

8 Q By whom?

9 A The law firm.

10 MR. MC MURRAY: Objection.

11 BY MR. SPIVEY:

12 Q The law firm, you said?

13 A Yes.

14 Q Dr. Johnson, in your review of what you have
15 called the on-site plan, did you detect any deficiencies?

16 A Yes, I did.

17 Q What were they?

18 A There was NUREG 0654, requires some estimate of
19 the time it takes to evacuate the population he included in
20 the plan. That was non-existent. NUREG 0654 requires some
21 mechanism for dealing with rumors he included in the plan.
22 That was non-existent. The plan assumes that emergency

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1 response personnel respond promptly to calls for
2 assistance. Empirical evidence suggests that that may not
3 be forthcoming.

4 Q Anything else?

5 A That's it.

6 Q Dr. Johnson, could you just expand for me what the
7 deficiency was that you detected with respect to evacuation
8 times?

9 A They didn't appear in the plan, the coop that I
10 had, at that point.

11 Q Have you ever heard of an outfit called the Esset
12 Corporation?

13 A No, I haven't.

14 Q Have you ever done any work for them?

15 A No, I haven't.

16 Q Dr. Johnson, looking at the on-site plan within
17 your area of expertise, does the Shoreham facility present
18 any obstacle to a workable plan that could not be worked out
19 by good faith effort?

20 MR. MC MURRAY: I'm unclear on the question. Good
21 faith effort on whose part?

22 MR. SPIVEY: On everyone involved with the plan's

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