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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
OFFICE OF SECRETARY
OF THE SERVICE
BRANCH

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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

SUFFOLK COUNTY'S RESPONSE TO LILCO'S
FIRST REQUEST TO SUFFOLK COUNTY FOR
PRODUCTION OF EMERGENCY
PLANNING DOCUMENTS

Suffolk County hereby responds to LILCO's June 2,
1982 First Request to Suffolk County for Production of
Emergency Planning Documents (the "Request") as follows:

OBJECTIONS

Introduction

On April 20, 1982, the Board held a Prehearing
Conference to determine, among other things, the scope of the
emergency planning issues that would be open to consideration
by the Board. Recognizing that there was no County radiologi-
cal emergency response plan in existence at that time (Tr. 744)
and that "it is going to be a long time before we can litigate

offsite matters . . . " the Board nevertheless declared that certain emergency planning issues were ripe for litigation (Tr. 744-746). It defined those issues as "the licensee's actions under its emergency plan whether those actions be onsite or offsite" (Tr. 760; emphasis added).

Counsel for Suffolk County, SOC, and the NSC objected strenuously to the Board's effort to separate consideration of the licensee's emergency planning responsibilities from those of the County and State (Tr. 748-750, 770-775, 795-802). They argued that emergency planning was necessarily an integrated effort among the utility and affected governments and that the emergency plan of no particular party could be evaluated in isolation (Tr. 809-810). Therefore, they concluded, no emergency planning issue should be litigated prior to the completion of the County's plan. Despite those objections, the Board directed that the parties go forward with discovery and litigation of LILCO's plan (Tr. 794, 802). Its Order of April 20, 1982, reiterated the narrow scope of emergency planning issues subject to litigation, ordering that contentions "based on LILCO's emergency response plan must be received by June 22, 1982."

In accordance with the Board's guidance, Suffolk County submitted to LILCO on May 11, 1982, a request for documents seeking only those items relevant to the issues defined by the

Board. In contrast, even a cursory review of LILCO's June 2, 1982 Request reveals that LILCO has virtually ignored the Board's explicit directives restricting the emergency planning issues to LILCO's plan. Instead, with few exceptions, LILCO has requested a broad range of documents having no relevance whatsoever to those limited emergency planning issues which are now before the Board.

LILCO's Request may be broken down into four general categories:

- 1) Those documents pertaining to Suffolk County's emergency planning efforts culminating in the compilation of certain emergency planning response materials dated March 10, 1982 (Requests 1, 6-12).
- 2) Those documents pertaining to Suffolk County's plans for emergencies not related to nuclear power (Requests 13-19);
- 3) Those documents pertaining to Suffolk County's plans for emergencies involving Brookhaven Laboratory and the Millstone Point Nuclear Power Station (Requests 20-31); and
- 4) Those documents pertaining to Suffolk County's development of its Radiological Emergency Response Plan (Requests 32-39),

Quite clearly, LILCO's Request, pertaining as it does almost exclusively to Suffolk County's radiological response plan and its responsibilities in the event of various emergencies are not within the scope of the issues defined by the Board at the Prehearing Conference and in its subsequent Order -- that is, LILCO's own plan and its actions pursuant to that plan. It appears instead that LILCO is endeavoring to roam through the County's emergency planning files before offsite planning becomes an issue in these proceedings and before completion of the County's plan. Furthermore, LILCO's irrelevant and over-broad requests are not reasonably calculated to lead to discovery of admissible evidence on the issues at hand. Thus, LILCO is seeking discovery outside the scope permitted by the Board and 10 CFR §2.740(b)(1). In light of LILCO's unwarranted and unpermissible document request, Suffolk County objects to Requests 1 and 6-39.

LILCO is not without previous notice of Suffolk County's objections. For the very purpose of avoiding numerous objections to LILCO's request, Suffolk County noted the foregoing reservations in letters to LILCO's counsel on June 15 and again on June 22, 1982, and suggested that LILCO amend its Request in conformance with the Board's guidance. (See Attachments A and C hereto). LILCO responded by letter of June 17, 1982 stating that Suffolk County's position was "unfounded" and, in essence,

declined to limit the scope of LILCO's Request. (See Attachment B).

Complying with LILCO's Request at this time, insofar as the Request calls for materials not remotely germane to LILCO's plan, would impose undue burden and expense on Suffolk County -- particularly in view of the likelihood that the parties will engage in further discovery on Suffolk County's plan at a future stage of this proceeding. Moreover, given the breadth of the Request, a search of the County's records for responsive documents would require a considerable amount of time which would necessarily entail cascading delays in the orderly development of a record in this proceeding. The County is compelled, therefore, to make the following objections which, to avoid unnecessary repetition, will be addressed to the four general categories outlined above, except as otherwise noted.

March 10, 1982, Materials

1. All documents pertaining to the "Suffolk County Radiological Emergency Response Plan as of March 10, 1982," as supplemented by the letter of April 19, 1982, from Herbert H. Brown to the Atomic Safety and Licensing Board (the March 10 plan), if such documents are not covered by requests 2-12 below.

6. All documents analyzing, studying, or otherwise concerning the quality, adequacy, completeness, of effectiveness of the March 10 plan.
7. All documents to or from Mr. Frank R. Jones, Mr. Lee E. Koppelman, and/or Mr. Robert C. Meunkle regarding the March 10 plan, including any documents discussing the County's decision to abandon preparation of that plan.
8. All documents regarding preparation of the March 10 plan, including any documents indicating the division of responsibility for preparing the plan, the schedule by which the plan was to be completed, and the persons, if any, who were to review the plan.
9. All documents used in preparing the March 10 plan, including any other local emergency response plans obtained by the County from other local governments.
10. All documents analyzing, studying, or critiquing documents used in preparing the March 10 plan.
11. All documents describing additions or revisions to the March 10 plan since March 10, 1982.
12. All documents pertaining to additions or revisions to the March 10 plan since March 10, 1982,

including any documents indicating the division of responsibility for preparing the additions or revisions, the documents addressing the schedule by which the additions or revisions were to be completed, documents relied upon in preparing the additions or revisions, and documents analyzing, studying or critiquing the additions or revisions.

Response: Objected to as outside the scope of the emergency planning issues now under consideration by the Board (see Introduction). These requests are irrelevant and are not reasonably calculated to lead to discovery of admissible evidence pertaining to LILCO's plan. Furthermore, Request 7 seeks intra-governmental correspondence (and other documents) regarding County policymaking decisions. Such materials are privileged and not subject to discovery.

Suffolk County Plans for Non-Nuclear Emergencies

13. All documents pertaining to the County's organization for coping with emergencies that do not involve nuclear power.
14. All documents pertaining to the County's procedures for coping with emergencies that do not involve nuclear power.

15. All documents analyzing, studying or critiquing the County's plan or plans for dealing with emergencies that do not involve nuclear power.
16. All documents relied upon in preparing the County's plan or plans for dealing with emergencies that do not involve nuclear power.
17. All documents analyzing, studying, or critiquing any documents relied upon in preparing the County's plan or plans for dealing with emergencies that do not involve nuclear power.
18. All documents indicating the division of responsibility for preparing the County's plan or plans for dealing with emergencies that do not involve nuclear power, the schedule by which the plan or plans were to be completed, and the persons, if any, who reviewed the plan or plans.
19. All other documents pertaining to the County's plan or plans for dealing with emergencies that do not involve nuclear power.

Response: Objected to as outside the scope of the emergency planning issues now under consideration by the Board (see Introduction). Suffolk County's plans and procedures for coping with non-nuclear accidents are not pertinent to LILCO's plan or its actions to be taken in the event of a radiological

emergency. Furthermore, the requests seek documents pertaining to Suffolk County policymaking which are privileged. LILCO's requests are thus irrelevant and are not reasonably calculated to lead to discovery of admissible evidence pertaining to the emergency planning issues now before the Board.

Suffolk County's Plans For Emergencies Involving Brookhaven National Laboratory and the Millstone Nuclear Power Stations

20. All documents pertaining to the County's organization for coping with emergencies involving the Brookhaven National Laboratory.
21. All documents pertaining to the County's procedures for coping with emergencies that involve the Brookhaven National Laboratory.
22. All documents analyzing, studying or critiquing the County's plan for dealing with emergencies that involve the Brookhaven National Laboratory.
23. All documents analyzing, studying, or critiquing any documents relied upon in preparing the County's plan for dealing with emergencies that involve the Brookhaven National Laboratory.
24. All documents indicating the division of responsibility for preparing the County's plan for dealing with emergencies that involve the Brookhaven National Laboratory, the schedule by

which the plan was to be completed, and the persons, if any, who reviewed the plan.

25. All other documents pertaining to emergency planning for emergencies involving the Brookhaven National Laboratory.
26. All documents pertaining to the County's organization for coping with emergencies involving the Millstone Point Nuclear Power Station.
27. All documents pertaining to the County's procedures for coping with emergencies involving the Millstone Point Nuclear Power Station.
28. All documents analyzing, studying or critiquing the County's plan for dealing with emergencies involving the Millstone Point Nuclear Power Station.
29. All documents analyzing, studying, or critiquing any documents relied upon in preparing the County's plan for dealing with emergencies involving the Millstone Point Nuclear Power Station.
30. All documents indicating the division of responsibility for preparing the County's plan for dealing with emergencies involving the Millstone Point Nuclear Power Station, the schedule by which the plan was to be completed, and the persons, if any, who reviewed the plan.

31. All other documents pertaining to emergency planning for emergencies involving the Millstone Point Nuclear Power Station.

Response: Objected to as outside the scope of the emergency planning issues now under consideration by the Board (see Introduction). Suffolk County's plans or procedures for emergencies at Brookhaven National Laboratory or the Millstone Point Nuclear Power Station are not pertinent to LILCO's plan or the actions it will take in the event of an emergency at Shoreham. LILCO's requests are thus irrelevant and are not reasonably calculated to lead to discovery of admissible evidence pertaining to the emergency planning issues now before the Board.

Suffolk County's Radiological Emergency Response Plan

32. All documents regarding preparation of the county-wide Radiological Emergency Response Plan (Response Plan) now being developed under Resolution No. 262-82, including any documents indicating the person or persons preparing the plan, the division of responsibility for preparing the plan, the schedule by which the plan will be completed, and the persons who will review the plan.

33. All documents that outline, describe, summarize or contain drafts of the Response Plan or parts of it.
34. All documents analyzing, studying, or critiquing any descriptions, outlines, summaries, or drafts of the Response Plan or parts of it.
35. All documents being used to prepare the Response Plan, including but not limited to:
 - (a) consultants' reports.
 - (b) studies or analyses of the topographic area surrounding Shoreham.
 - (c) studies or analyses of the population surrounding Shoreham.
 - (d) other emergency response plans.
36. All documents analyzing, studying, or critiquing documents being used to prepare the Response Plan.
37. All documents to or from the County's Radiological Emergency Response Plan Steering Committee, or individual members of that Committee, including but not limited to:
 - (a) directions or guidelines to be followed by the Committee.

- (b) schedules for the Committee's work.
- (c) documents addressing the division of responsibility among Committee members.

38. All documents reflecting any meeting or contacts involving Suffolk County officers, personnel, contractors, subcontractors, consultants, or other representatives and pertaining to emergency planning.

39. All other documents pertaining to the preparation of the Response Plan or parts of it.

Response: Objected to as outside the scope of the emergency planning issues now under consideration by the Board (see Introduction). Suffolk County's own emergency planning efforts are not presently at issue. The requests are therefore irrelevant and are not reasonably calculated to lead to discovery of admissible evidence pertaining to the issues now under consideration by the Board. Furthermore, as noted above, even assuming arguendo that LILCO Requests 32-39 are relevant, the production of responsive documents would be extremely burdensome. Suffolk County is expending exhaustive efforts to develop an emergency response plan by October 1, 1982. A massive amount of material is continuously being developed and refined on a daily basis for inclusion in the proposed plan. A records-search and production of all responsive material would

distract the County and its consultants from their efforts to complete the plan in time. Moreover, even if the Board determines that Requests 32-39 are required to be produced by Suffolk County, the Board should defer requiring the County to produce responsive materials until the completion of the County's plan.

LILCO's REMAINING REQUESTS

2. All maps, drawings or other documents concerning placement of tone-activated radios within the Prompt Notification System network.

Response: Provided. See also the March 10, 1982, materials previously provided to LILCO.

3. All documents analyzing, studying or otherwise concerning the basis for placement of the tone-activated radios and the effectiveness of such radios.

Response: Provided. See response to Request 2.

4. All documents describing procedures for use of the Prompt Notification System including: (a) how it is activated. (b) who may activate it.

Response: Provided. See response to Request 2.

5. All documents analyzing, reviewing or otherwise concerning under what emergency conditions the Prompt Notification System should be used,

including documents concerning use of the system early in an emergency for notification of areas where sheltering may not be a viable option.

Response: Provided. See also response to Request 2.

40. All documents pertaining to emergency planning on which Suffolk County will rely in the NRC operating license proceeding for Shoreham.

Response: Suffolk County has not yet made a determination as to the documents to be relied upon. Such documents will be furnished promptly after Suffolk County has made the requisite determination.

41. All testimony on emergency planning given by any of Suffolk County's consultants, officials, employees, consultants, or representatives in any proceeding, be it administrative, legislative, or judicial. Such consultants include, but are not limited to, the following:

PRC Voorhees
Prof. Philip B. Herr
Dr. Kai T. Erikson
Dr. James H. Johnson
Dr. Donald J. Ziegler
Dr. Walter C. Farrel, Jr.
Dr. David Stevenson
Dr. Fred Finlayson
Dr. Robert J. Budnitz
Dr. Edward P. Radford

Response: Provided with respect to the written testimony of Andrew C. Kanen of PRC Voorhees, Dr. Kai T. Erikson, and Dr. James H. Johnson. Any written testimony on emergency planning given by Dr. Edward P. Radford Dr. Donald J. Ziegler, Dr. Walter C. Farrel, Jr., and Dr. David Stevenson will be forthcoming shortly if such testimony exists.

The oral testimony of the above consultants may be found in the following transcripts of ASLB proceedings:

Andrew C. Kanen

In the Matter of
The Detroit Edison Company,
Enrico Fermi Atomic Power
Plant Unit 2. Docket
No. 50-341.

Dr. James H. Johnson

In the Matter of
Pacific Gas and Electric Company,
Diablo Canyon Nuclear Power
Plant Units No. 1 and 2.
Docket No. 50-275, 50-323.

Dr. Kai T. Erikson

In the Matter of
Pacific Gas and Electric Company,
Diablo Canyon Nuclear Power
Plant Units No. 1 and 2.
Docket No. 50-275, 50-323.

In the Matter of
Metropolitan Edison Co.
Three Mile Island Unit One
Docket No. 50-289.

To the extent that there exists oral testimony regarding emergency planning given by Dr. Edward P. Radford, Dr. Donald J. Ziegler, Dr. Walter C. Farrel, or Dr. David Stevenson, such

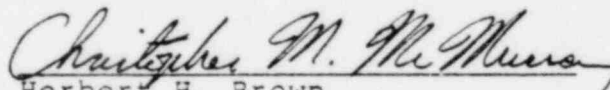
testimony will be identified shortly. In addition, Dr. Erikson was deposed in the present proceedings regarding Indian Point.

Suffolk County objects to Request 41, insofar as it pertains to the remaining consultants, in that such consultants are working solely on development of Suffolk County's plan, are not presently providing services regarding litigation of LILCO's plan, and are not presently expected to testify on the issues at hand. Therefore, the testimony sought is not relevant to LILCO's plan, nor is it reasonably calculated to lead to admissible evidence on that issue. In the event that Suffolk County decides to utilize one of the remaining named consultants as a witness on LILCO's plan, any prior testimony of that witness will be provided.

Respectfully submitted,

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Suffolk County Attorney

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Attorneys for Suffolk County

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)
)
)

LONG ISLAND LIGHTING COMPANY)

(Shoreham Nuclear Power Station,)
Unit 1))
_____)

) Docket No. 50-322 (O.L.)

CERTIFICATE OF SERVICE

I hereby certify that copies of Suffolk County's Response to LILCO's First Request to Suffolk County For Production Of Emergency Planning Documents were sent on July 1, 1982, by U.S. Mail, first class, to the following:

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Washington, D.C. 20555

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Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Mr. Peter A. Morris
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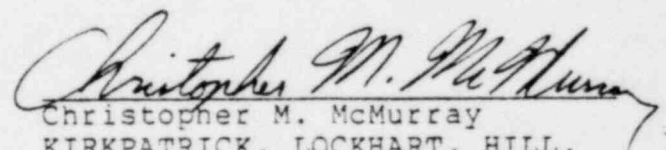
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DATE:

July 1, 1982


Christopher M. McMurray
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June 15, 1982

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James Christman, Esq.
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Dear Jim:

I am in receipt of "LILCO's First Request to Suffolk County for Production of Emergency Planning Documents" dated June 2, 1982. It appears from my review of that request that the vast majority of items sought pertain to Suffolk County's emergency response planning efforts and related matters, rather than LILCO's own actions in the event of an emergency. In this respect, LILCO's discovery request far exceeds the scope of the emergency planning issues which the Board has indicated are presently subject to litigation.

At the pre-hearing conference of April 14, 1982, the Board specifically outlined the area of emergency planning "on which we can proceed to litigation." That area was defined as "the licensee's actions under its emergency plan whether those actions be onsite or offsite...." Tr. 860. In its Order of April 20, 1982, the Board reiterated that emergency planning contentions "based on LILCO's emergency plan must be received by June 22, 1982." Order at 7. In light of the Board's explicit statements, it would appear that LILCO's discovery request seeks documents not relevant to the present scope of permissible emergency planning issues. For instance, documents pertaining to Suffolk County's radiological emergency planning documents as of March 10, 1982 (Requests 1, 6-12), the County's plans for emergencies not related to nuclear power (Requests 13-19), the County's plans for emergencies at Brookhaven National Laboratory (Requests 20-25), and the County's plans for emergencies involving the Millstone Point Nuclear Power Station (Request 26-31) do not fall within the

KIRKPATRICK, LOCKHART, HILL, CHRISTOPHER & PHILLIPS

James Christman, Esq.

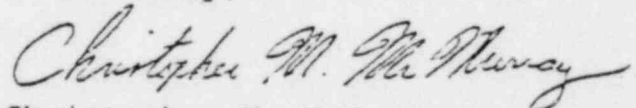
June 15, 1982

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scope of relevant issues provided by the Board. In addition, the requests (32-39) seeking discovery of documents pertaining to Suffolk County's Radiological Emergency Response Plan are far beyond those that are permissible in light of the Board's guidance.

I am indicating these concerns to you at this time in the interest of avoiding numerous formal objections to the breadth of your request at a later date. Suffolk County is prepared to respond to any reasonable discovery request regarding the issues on which discovery is presently open. Please notify me promptly should you desire to amend your discovery request in accordance with the Board's guidance.

Yours truly,

A handwritten signature in cursive script, reading "Christopher M. McMurray".

Christopher M. McMurray

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FILE NO.

DIRECT DIAL NO. 804 788- 8368

June 17, 1982

Christopher M. McMurray, Esq.
Kirkpatrick, Lockhart, Hill,
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1900 M Street, N.W.
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Dear Chris:

Thanks for your letter of June 15, 1982, which I received yesterday by the telecopier. As I understand it, you are going to refuse to answer at least 35 of our 41 document requests dated June 2, and maybe more. Although you might have mentioned this to me over the last ten or so days, I do appreciate your not waiting until any later to spring the news.

I gather your position is that the ASLB, in its \$ 2.752 prehearing conference order, has somehow ordered the parties not to conduct discovery on those parts of the emergency planning issue other than emergency planning functions that are the responsibility of LILCO, rather than, for example, the County. I must say I can't find anything in the Board's order that says such a thing. What the Board did was to cut off document production requests relating to LILCO's plan as of June 22; try as I might, I cannot conceive of any way that can be converted into a sort of protective order shielding your client from discovery on other parts of the emergency planning issue. Nor do I know of anything in the NRC regulations that would have that effect.

I might add that I find it hard to understand your client's motive for refusing to produce documents. Whatever the Board meant, it is inconceivable that it would object to your providing us with the documents we requested. And since we will repeat the same requests in the future, if they are not satisfied now, you will have to produce in due course anyway. I can, in short, think of no good reason why your client would refuse to produce. If you find the request burdensome to meet in the allotted time, we can of course discuss it and try to find a solution to the problem; but you haven't indicated that you can't produce, only that you won't.

I might add that your client's position is particularly strange in light of the large number of documents that we

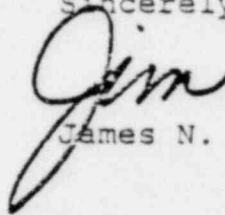
HUNTON & WILLIAMS

Christopher M. McMurray, Esq.
June 17, 1982
Page 2

provided for you on Monday, at no small sacrifice in time and effort by LILCO people. Your client's somewhat grudging response to our document production request, which was far less burdensome than your request to us, hardly seems to be in the same spirit, and certainly not within either the spirit or the letter of the NRC regulations.

In short, I guess I would have to say that I find your position both unfounded and hard to understand. I believe you should produce the documents we've requested in the interest of avoiding delay later on.

Sincerely,

A handwritten signature in cursive script, appearing to read "Jim", is written over the typed name.

James N. Christman

126/740

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June 22, 1982

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James N. Christman
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Dear Jim:

I am in receipt of your letter of June 17, 1982. It appears that we have a fundamental difference of opinion concerning the permissible scope of discovery on the emergency planning issues in this proceeding.

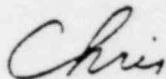
As I stated in my letter, and in subsequent telephone conversations with you and Kathy McClesky, it is Suffolk County's position that the only emergency planning issues that have been defined by the Board for litigation, and therefore the only issues on which there may be discovery, are those pertaining to LILCO's actions, both onsite and offsite. It seems to be your position that discovery may be had on issues related to the County's emergency planning efforts, which issues are as yet undefined and for which the relevant scope of discovery cannot yet be determined. We do not agree, particularly in light of the Board's explicit statements in the record and the fact that there will be no County plan in existence until later this year.

Despite your suggestion to the contrary, our client has no motive for refusing to produce documents pertaining to the County's emergency planning efforts other than to adhere to litigation of the issues that the Board has indicated are presently open to consideration. Furthermore, while we of course are cognizant of your efforts in complying with Suffolk County's first document discovery request, you will note that that request fell well within the permissible scope of discovery. Therefore, your compliance with that request was mandatory, not magnanimous.

James N. Christman
June 22, 1982
Page Two

Despite our continuing belief that your request exceeds the permissible scope of discovery, we are open to further discussion of this matter with you, particularly in light of the statement in your June 17 letter that our position is "unfounded." I would appreciate learning the basis for your conclusion and encourage you to contact me on this point. We are prepared to reconsider your request if there is something new brought to our attention.

Yours truly,

A handwritten signature in cursive script, appearing to read "Chris".

Christopher M. McMurray

CMM:rs