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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

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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-OL-3  
(Emergency Planning)

SUFFOLK COUNTY MOTION TO COMPEL  
DISCOVERY FROM FEMA

I. INTRODUCTION

Suffolk County has previously moved this Board to compel FEMA to make certain individuals (Messrs. Bragg, Krimm and Johnson) available for depositions. See Suffolk County Motion to Compel Discovery, dated September 7, 1983; Supplement to Suffolk County Motion to Compel Discovery, dated September 12, 1983. By Order dated September 13, 1983, the Board has deferred ruling on that motion until FEMA files a response. See Order Concerning Suffolk County Motion to Compel Discovery from FEMA, dated September 13, 1983. The dispute set forth in the County's September 7 Motion, as supplemented on September 12, has been resolved by the County and FEMA insofar as it involved FEMA's refusal to produce certain documents. The dispute continues to exist concerning the depositions of Messrs. Bragg, Krimm, and Johnson. The Board will need to resolve that deposition dispute after receipt of the FEMA

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G PDR

response, which is due to be filed by close of business on September 21.

Suffolk County regrets to inform the Board, however, that another discovery dispute has arisen with FEMA. This new dispute involves FEMA's refusal to produce additional documents which were identified for the first time last week during the depositions of Messrs. Kowieski and Sharrocks, each of whom is scheduled to testify for FEMA in this ASLB proceeding. To obtain copies of these documents, Suffolk County is filing the instant motion.<sup>1/</sup> Counsel for FEMA is being provided a copy of this motion today. The County hopes that this Board can resolve this new dispute at the same time as it rules on the previous dispute with FEMA.

## II. FACTUAL BACKGROUND

Under 10 C.F.R. § 50.47(a)(2), FEMA's "findings" on the adequacy or inadequacy of the LILCO Transition Plan (or portions of it) normally constitute a rebuttable presumption

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<sup>1/</sup> The County could not have filed this motion at an earlier date because it only discovered the existence of the documents described in Part II during last week's depositions. These documents had not been identified by FEMA in response to the County's previous document request, although requests 3 and 5 would certainly have covered the documents which are the subject of this motion. See Suffolk County Request for Production of Documents by the NRC Staff and FEMA, dated August 12, 1983; September 8, 1983 letter from FEMA Counsel, Stewart Glass, to County Counsel, K. J. Letsche, enclosing FEMA's responses to County's August 12 request. The County's request and FEMA's response are Exhibits 1 and 2 hereto, respectively. If FEMA had previously identified these documents, the County could have included them in its September 12 Supplement to Suffolk County Motion to Compel Discovery. FEMA's counsel has indicated that he intends to file a corrected Response, but the County has not yet received that document.

regarding the adequacy/inadequacy issue. Accordingly, the FEMA findings constitute a central aspect of any emergency planning proceeding. In order to be in a position to rebut (or support) those findings, it is essential for parties to understand the processes by which these findings are reached.<sup>2/</sup> This is particularly important in the instant proceeding since FEMA has not followed its normal "350" review process but instead has (at least to date) utilized an abbreviated review process which relies primarily on Argonne National Laboratory.

Certain documents are important to an assessment of the FEMA "findings" process in the Shoreham proceeding. First, there is Mr. Krimm's June 23 memorandum to the NRC (Exhibit 3 hereto), which attempts to summarize (as of June 1983) FEMA's view of the adequacy/inadequacy of the LILCO Plan. Second, there is Mr. Bragg's August 29 letter to the NRC (Exhibit 4 hereto), which provides additional data to attempt to clarify the earlier Krimm memorandum. These documents are extremely important because they set forth FEMA's position regarding steps to be taken to obtain a favorable FEMA finding on the LILCO Plan.

Suffolk County has pursued discovery in an effort to understand fully the FEMA findings process in the context of

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<sup>2/</sup> For example, if the FEMA finding were based on extremely limited review by FEMA, its finding would likely be easier to rebut than if a more detailed review were undertaken. To gain information pertinent to such factors, detailed discovery into the FEMA process is essential.

this case. This discovery effort has enabled the County to identify the following materials which relate directly to the documents which are Exhibits 3 and 4 hereto:

(1) Mr. Sharrocks, who has been identified as a potential FEMA witness before the ASLB, prepared (along with a Ms. Lawless) a draft of the memorandum attached as Exhibit 3. This draft was given to Mr. Johnson and went through a revision process (including a second draft) prior to being signed by Mr. Krimm. See Sharrocks deposition, pp. 41-47.<sup>3/</sup> As noted earlier (see note 1), FEMA had not previously identified these documents and, at the deposition, FEMA counsel refused to provide the County with copies. Id. at 47-48. FEMA counsel stated that he would permit Mr. Sharrocks to answer questions regarding differences between the draft and the final version but without reference to the documents which he did not have with him, the witness could not recall what the differences were. Id. at 49-50.

(2) After receipt of Mr. Dircks' July 22 letter seeking clarification of Mr. Krimm's June 23 memorandum, a group of FEMA personnel in Region 2, including Mr. Kowieski who has also been identified as a probable FEMA witness in this ASLB

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<sup>3/</sup> The transcript of Mr. Sharrock's deposition is attached as Exhibit 5 and that of Mr. Kowieski's deposition is attached as Exhibit 6. [To avoid unnecessary duplication, Exhibits 5 and 6 are attached only to one copy going to the Board and to the copy going to docketing and service.] The County includes these exhibits in the event the Board desires to get a more detailed "feel" for these discovery disputes. These depositions also provide more data on the roles played by Messrs. Bragg, Krimm and Johnson in the review of the LILCO Plan.

proceeding, had discussions concerning a proper response to Mr. Dircks. The group apparently "felt" that "it is necessary to have local or at least state cooperation to have an effective emergency response plan." Kowieski deposition, p.

23. Mr. Kowieski testified at his deposition:

We raised questions as to how this would be feasible or possible for the utility to respond to radiological emergency, under what authority they would control evacuated areas, and obviously, other matters where state or local participation would be required.

Id. at 23.

\* \* \*

So we felt we were not certain how LILCO would coordinate the emergency response effort with the state in terms of decision-making, in terms of accident assessment, in terms of overall response.

Id. at 24.

Mr. Petrone, the FEMA Region 2 director who had participated in these discussions, then prepared a memorandum (dated about August 18) for Mr. Bragg and Mr. Guiffrida, the FEMA director. The Petrone memorandum (of which Mr. Kowieski had a copy at the deposition) was on the subject of FEMA's response to Mr. Dircks. Id. at 24-25. FEMA counsel refused to permit the witness to answer questions regarding the Region 2 views and also refused to provide the County with a copy of the memorandum. Id. at 25-32.

(3) Mr. Johnson asked Mr. Sharrocks to prepare a draft FEMA response to the Dircks letter of July 22. Mr. Johnson gave Mr. Sharrocks written instructions regarding this response.



FEMA counsel refused to produce a copy of the Johnson instructions. Sharrocks deposition, pp. 54-56. Further, as requested by Mr. Johnson, Mr. Sharrocks did prepare a draft response to Mr. Dircks' letter, which draft was given to Mr. Johnson. Id. at 56-57. The draft differs from the final Bragg letter which is Exhibit 4 hereto. Id. at 69. M. Sharrocks is not certain whether the draft still exists and FEMA counsel declined to state whether the draft would be provided if found. Id. at 57-58, 69.

### III. DISCUSSION

Suffolk County moves this Board for an order compelling FEMA to produce the documents it has withheld and to permit the deponents to answer questions regarding them. As noted previously, FEMA's finding process is a crucial element in this emergency planning proceeding. The County is entitled to get the details of that process -- including contrary views if any exist.

For example, in Exhibit 4 hereto, Mr. Bragg makes statements regarding what needs to be done for a fully positive FEMA finding on the LILCO Plan. Exhibit 4 appears possibly to be in conflict with statements of the Region 2 personnel (see Kowieski deposition, pp. 23-24, quoted earlier) regarding how LILCO could have overall effective emergency response without governmental participation. These Region 2 views presumably are contained in Mr. Petrone's memorandum. Although FEMA counsel has stated previously to the County that Mr. Bragg has

had limited participation in this matter, Mr. Bragg's letter (Exhibit 4) has obvious direct bearing on the FEMA findings. Yet, FEMA counsel refuses to permit Mr. Bragg to be deposed or to produce the materials (such as Mr. Petrone's memorandum or Mr. Sharrocks' draft letter) which presumably form the basis for Mr. Bragg's letter to Mr. Dircks.

FEMA counsel bases his refusal to produce the documents on the premise that these are "predecisional" materials and the assertion that revealing these materials would have a chilling effect on FEMA decision-making. See, e.g., Kowieski deposition, p. 26; Sharrocks deposition, pp. 47-48, 56.

With due respect to the FEMA decision-making process, the County submits that the FEMA position is simply incorrect. In a normal agency decision-making process, there is a qualified (but not absolute) privilege to protect "against disclosure of intra-governmental documents containing advisory opinion recommendations and deliberations . . . ." See United States v. Capitol Serv., Inc. 89 F.R.D. 578, 582 (E.D. Wis. 1981). When the privilege is asserted, the government has the burden of proving that it is entitled to the privilege and the privilege can be overcome by a showing of need. Id. at 582-83.

First, in this case, FEMA counsel has not properly asserted the privilege, having made only bald assertions of a "chilling"

effect.<sup>4/</sup> More important, in the circumstances of this case, the privilege simply has no basis. A central issue in this proceeding -- indeed a potential rebuttable presumption -- is the FEMA finding of adequacy/inadequacy of the LILCO Plan. To be in a position to test the evidentiary status given to FEMA's findings, a party must have the opportunity to test the bases for those FEMA findings and views. That is precisely what the County is attempting to do.

To accept FEMA's position on the materials at issue here, one must also then accept the view that a party has no right -- to inquire into the judgments and considerations which form the basis for the FEMA findings. However, FEMA's findings, in essence, constitute expert testimony and it is hornbook law in NRC proceedings that a party may seek the bases for the positions taken and judgments made by expert witnesses. Accordingly, since FEMA's findings are being made for and form the

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4/ To properly assert the privilege, three prerequisites must be met:

First, the privilege claim must be made by the head of the department which has control over the material after actual personal review and consideration of the materials. Second, the claim must specifically describe and designate the documents sought to be withheld. Third, the claim must state the precise and certain reasons for preserving the confidentiality of the communication.



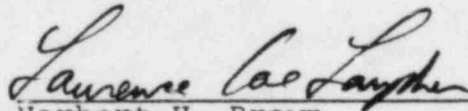
bases of expert testimony, the County is proceeding properly in pursuing discovery to find the bases for FEMA's views.

In view of the foregoing, Suffolk County moves this Board to order FEMA:

- (1) To produce for County review the documents which have been withheld by FEMA and which are described in Section II of this Memorandum;
- (2) To permit FEMA witnesses to answer questions regarding these documents; and
- (3) To produce for County inspection and copying any other documents which FEMA has withheld on the basis of this asserted privilege.

Respectfully submitted,

David J. Gilmartin  
Patricia A. Dempsey  
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Veterans Memorial Highway  
Hauppauge, New York 11788



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Washington, D.C. 20036

Attorneys for Suffolk County

September 19, 1983

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSIONBefore the Atomic Safety and Licensing Board

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In the Matter of

LONG ISLAND LIGHTING COMPANY

(Shoreham Nuclear Power Station,  
Unit 1)

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Docket No. 50-322  
(Emergency Planning)SUFFOLK COUNTY REQUEST FOR  
PRODUCTION OF DOCUMENTS BY  
THE NRC STAFF AND FEMA

Pursuant to 10 CFR §§2.741 and 2.744, the NRC Staff and FEMA are requested by Suffolk County to produce for inspection and copying, at the offices of Kirkpatrick, Lockhart, Hill, Christopher & Phillips, the documents specified below that are within the possession, custody, or control of the NRC Staff or FEMA. Part I of this Request is directed to the NRC Staff; Part II is directed to FEMA.

Definitions and Instructions  
For Document Production

The definitions and instructions applicable to these Requests are the same as those set forth in Suffolk County Interrogatories to the NRC Staff and FEMA, filed simultaneously herewith, and hereby incorporated by reference, except that subparts L through P, and W, of such Definitions and Instructions are not applicable to these Requests.

## Requests

### Part I -- NRC Staff

1. Provide a resume or statement of professional qualifications for John Sears.
2. Provide copies of all correspondence or documents reflecting communications between representatives of the Argonne National Laboratory ("Argonne") and the NRC regarding the LILCO Transition Plan.
3. Provide copies of all documents concerning the NRC Staff's definition of the scope of work for review of the June, 1983 PRA for the Shoreham plant.
4. Provide copies of all documents concerning the preparation, analysis or review of the LILCO Transition Plan by the NRC, or contractors or subcontractors including, but not limited to, final versions and all drafts of documents prepared by Thomas Urbanik or anyone associated with Thomas Urbanik.
5. Provide copies of all correspondence or other documents exchanged by and between Thomas Urbanik and any member of the NRC Staff, including but not limited to, John Sears.
6. Provide copies of all documents describing defining, or in any way concerning the NRC Staff evaluation, or review of

the LILCO Transition Plan (See August 5, 1983 response to question 3.)

7. Provide copies of all evaluations, reviews and analyses of the adequacy, implementability, or effectiveness of any aspect of the LILCO Transition Plan or other offsite emergency planning for Shoreham, performed by any consultants or contractors retained by the NRC including, but not limited to, Battelle.
8. Provide copies of all documents of any sort concerning any aspect of the LILCO Transition Plan in the possession of the NRC, consultants or contractors to the NRC, or consultants or subcontractors to the NRC's consultants or contractors.
9. Provide a copy of Mr. Urbanik's contract with Batelle.
10. Provide copies of the final report, supporting documents and analyses, supporting data, and any other documentation relating to Wilbur Smith and Associates, An Evacuation Time Assessment of Nine Nuclear Power Plants Emergency Planning Zones, Program Report, Contract No. EMW-C-0258, June, 1980, Vol. IX Shoreham Nuclear Power Plant Evacuation Time Assessment. If not described in the requested

materials, please describe the methodology by which the evaluation was conducted. (Mr. Bordenick's letter of August 5, 1983 did not respond to this request.)

Part II -- FEMA

1. Provide copies of all correspondence or documents reflecting communications between representatives of the Argonne National Laboratory ("Argonne") and FEMA regarding the LILCO Transition Plan.
2. Provide copies of all reports, notes, analyses, memoranda, and all other such documents, whether in draft or final form, produced or relied upon by any Argonne personnel or subcontractors of Argonne and concerning the LILCO Transition Plan or the review thereof by Argonne or its subcontractors.
3. Provide copies of all reports, notes, analyses, memoranda, and all other such documents, whether in draft or final form, produced or relied upon by FEMA personnel or contractors of FEMA and concerning the LILCO Transition Plan, FEMA's review of the Plan, or Argonne's review of the Plan.
4. Provide copies of all documents concerning the LILCO Transition Plan produced by any consultants or contractors of FEMA other than Argonne.



5. Provide copies of all documents concerning the preparation, analysis or review of the LILCO Transition Plan by FEMA or Argonne or contractors or subcontractors to either of the above, including, but not limited to, final versions and all drafts of documents prepared by Thomas Urbanik or anyone associated with Thomas Urbanik.
6. Provide resumes or statements of professional qualifications for the following individuals:

FEMA

- (a) Roger B. Kowieski
- (b) Fred Sharrocks

Argonne National Laboratory

- (c) Edward Tanzman
- (d) Chris Saricks
- (e) Kenneth Lerner
- (f) Phyllis Beckerman
- (g) James Opelka

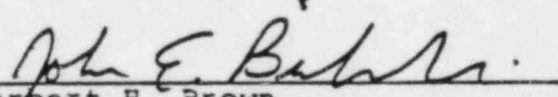
7. Provide copies of all prior testimony, concerning emergency planning, provided in any administrative, legislative or judicial forum (including deposition testimony) by any of the persons listed in question 6 above.
8. Provide copies of all correspondence or documents reflecting communications between LILCO and FEMA concerning the LILCO Transition Plan.

9. Provide copies of all documents concerning drills or exercises of an offsite emergency plan for Shoreham.
10. Provide copies of all documents concerning any review, by or on behalf of FEMA, of Revision 1 of the LILCO Transition Plan.
11. Provide copies of all documents analyzing, reviewing or concerning the authority of LILCO, or any private utility or corporation to implement all or part of the LILCO Transition Plan or any offsite emergency plan.

Dated: August 12, 1983  
Washington, D.C.

Respectfully submitted,

David J. Gilmartin  
Patricia A. Dempsey  
Suffolk County Department of Law  
Veterans Memorial Highway  
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Washington, D.C. 20036

Attorneys for Suffolk County



# Federal Emergency Management Agency

Region II

26 Federal Plaza

New York, New York 10278

8 SEP 1983

Karla Letsche, Esq.  
Kirkpatrick, Lockhart, Hill  
Christopher & Phillips  
8th Floor  
1900 M. Street, N.W.  
Washington, D.C. 20036

Dear Mr. Letsche:

Enclosed please find FEMA's response to your document request.

If you have any questions, please feel free to contact me on (212) 264-8980.

Very truly yours,

*for Miriam Rivera*  
Stewart M. Glass  
Regional Counsel

Ens.

PART II - FEMA

1. Provide copies of all correspondence or documents reflecting communications between representatives of the Argonne National Laboratory ("Argonne") and FEMA regarding the LILCO Transition Plan.

Response 1.

A review of the FEMA and Argonne files produced the following documents reflecting communications between Argonne and FEMA.

- (1) June 13, 1983 Tanzman to Johnson - Draft Legal Memorandum Legal Issues presented by Shoreham REP Plans
- (2) June 13, 1983 Wolsko to Johnson - Draft review of Five alternative offsite emergency response plans for Shoreham
- (3) June 14, 1983 Becherman to Johnson - List of deficiencies/Questions
- (4) June 16, 1983 Tanzman to Johnson - Description of Review Process
- (5) June 16, 1983 Tanzman to Johnson - revised review of LILCO Transition module of Shoreham Offsite Radiological Emergency Response Plan. (June 17, 1983).
- (6) June 22, 1983 Becherman to Johnson - revised review of LILCO Transition module of Shoreham Offsite Radiological Emergency Response Plan (June 22, 1983).
- (7) July 1, 1983 - Surles to Sharrucks - element by element review of 4 REP modular plans (cover letter only)

Attached please find item #4.

FEMA asserts that the other above captioned items are privileged. FEMA is presently reviewing these items to determine if additional items will be made available under the informal discovery process.

2. Provide copies of all reports, notes, analyses, memoranda, and all other such documents, whether in draft or final form, produced or relied upon by any Argonne personnel or subcontractors of Argonne and concerning the LILCO Transition Plan or the review thereof Argonne or its subcontractors.

Response 2.

Argonne relied on the following documents in conducting its review of the LILCO/Transition Plan.

- (1) NUREG 0654/FEMA REP 1-Rev. 1
- (2) LILCO Transition Plan and LILCO's Memorandum of Service of Supplemental Emergency Planning Information
- (3) 44 CFR 350
- (4) 10 CFR 50
- (5) NRC/FEMA Memorandum of Understanding
- (6) AAA Map of New York City and vicinity including Long Island
- (7) June 1, 1983 Memorandum for Edward Jordan to Richard W. Krimm
- (8) Memo of 6/13/83 - to Wingo/Hepler from Gary Johnson

Items # 1 through 5 are already in the possession of all parties and are public documents readily available.

Response 3.

Not presently available.

4. Provide copies of all documents concerning the LILCO Transition Plan produced by any consultants or contractors of FEMA other than Argonne.

Response 4.

5. Provide copies of all documents concerning the preparation, analysis on review of the LILCO Transition Plan by FEMA or Argonne's or contractors or subcontractors to either of the above, including, but not limited to, final versions and all drafts of documents prepared by Thomas Urbanik or anyone associate with Thomas Urbanik.

Response 5.

Neither, Thomas Urbanik or anyone associated with Mr. Urbanik was involved in FEMA's review of the LILCO Transition Plan. The primary document used was NUREG-0654 FEMA-REP-1, Revision 1.

6. Provide resumes or statements of professional qualifications for the following individuals:

FEMA

- (a) Roger B. Kowieski
- (b) Frederick Sharrocks

Argonne National Laboratory

- (a) Edward Tanzman
- (b) Chris Saricks
- (c) Kenneth Lerner
- (d) Physis Beckerman
- (e) James Opelka

Response 6.

The professional Qualifications of the above named individuals is attached.

7. Provide copies of all prior testimony, concerning emergency planning, provided in any administrative, legislative or judicial forum (including deposition testimony) by any of the persons listed in question 6 above.



Response 7.

Fred Sharrocks and Edward Tanzman have not testified on any matter concerning the above subject areas. Roger Kowieski was a witness before the ASLB in Indian Point. The transcripts of his testimony as well as the pre-filed testimony in that hearing is attached.

8. Provide copies of all correspondence or documents reflecting communications between LILCO and FEMA concerning the LILCO Transition Plan.

Response 8.

The attached correspondence or documents reflect communications between LILCO and FEMA concerning the LILCO Transition Plan.

1. LILCO furnished copies of the Transition Plan ((and the four other plans) to FEMA in early June 1983.
  2. FEMA representatives met with LILCO representatives on June 16, 1983, subsequent to FEMA's meeting with Suffolk County. An attendance list is attached. No minutes of this meeting were developed.
  3. FEMA received a copy of "Revision I" to the Transition Plan that was furnished Mr. Denton of the NRC. A copy of the July 28, 1983, letter is attached.
9. Provide copies of all documents concerning drills or exercises of an offsite emergency plan for Shoreham.

Response 9.

- (1) August 29, 1983 Bragg to Dircks - Response to letter of July 22, 1983 from Dircks.
10. Provide of all documents concerning any review, by or on behalf of FEMA, Revision I of the LILCO Transition Plan.

Response 10.

- (1) August 9, 1983 - Johnson to Wingo - LILCO Revisions to Plan as submitted through ASLB.
11. Provide copies of all documents analyzing, reviewing or concerning the authority of LILCO, or any private utility or corporation to implement all or part of the LILCO Transition Plan or any offsite emergency plan.

Response 11.

- (1) June 13, 1983 - Tanzman to Johnson (Legal Issues presented by Shoreham REP Plans) - subject to determination of privilege.

**SPECIAL**

2-Way Memo

Subject:

Shoreham Defense Findings

To :

Wingo/Hopler

## INSTRUCTIONS

Use routing symbols whenever possible.

SENDER (Originator of message):

Use brief, informal language.

Conserve space.

Forward original and one copy.

RECEIVER (Reader to message):

Reply below the message, keep one copy, return one copy.

DATE OF MESSAGE

6/13

ROUTING SYMBOL

SIGNATURE OF ORIGINATOR

TITLE OF ORIGINATOR

MESSAGE

By COB 6/16, I need a draft Findings & Determination memo on Shoreham per the outline below

1. Define the normal process and how this submitted was reviewed & why (i.e. lack of time, etc.)
2. Provide technical findings on the plans review (per the first reports, analyses); bottom line on adequacy of plan discussed here & why.

3. Generally discuss why we cannot address implementation because of

- the authority issues
- lack of State & local commitment
- FEMA bases findings on implementation (preparedness) & on exercises

4. Bottom line, based on 2 & 3 above, as appropriate.

Dave McLaughlin needs an acceptable draft

by COB 6/17. Therefore, notify Phyllis that this final work must be in by noon of the 17<sup>th</sup> for me if you have questions.

DATE OF REPLY

ROUTING SYMBOL

SIGNATURE OF REPLIER

TITLE OF REPLIER

June 16, 1983

TO: G. Johnson, FEMA

FROM: E. Tanzman, ANL *ET*

SUBJECT: Description of Process of Developing Shoreham Plan Review

Per your request to Phyllis Becherman yesterday, please find attached a draft discussion of the ordinary FEMA plan review and approval process as contrasted with the procedure followed for the Shoreham REP plans. I did not put this in any particular format (e.g., memorandum, letter, etc.) because I do not know how you intend to use this. Of course, I shall be available to answer any questions or make any necessary revisions.

EAT/slr

Encl

PROCEDURE FOLLOWED DURING REVIEW OF SHOREHAM NUCLEAR POWER  
STATION LOCAL OFFSITE RADIOLOGICAL EMERGENCY RESPONSE PLAN

1. INTRODUCTION

The FEMA review of the Shoreham Nuclear Power Station (SNPS) Local Offsite Radiological Emergency Response Plan was not typical of FEMA reviews of such radiological emergency preparedness plans, and consequently is not as thorough. The extraordinary nature of the request to evaluate this plan, as well as the very short time available for review, depart from the usual review and evaluation process defined in FEMA's operative regulations. This discussion explains the ordinary plan review and approval process and compares the method by which the Shoreham plan was evaluated.

2. FEMA REVIEW AND APPROVAL PROCESS

FEMA ordinarily reviews radiological emergency preparedness plans pursuant to its operative regulations, which are set forth at 47 Fed. Reg. 36,386 (1982)(to be codified at 44 C.F.R. pt. 350)(proposed August 19, 1982). These proposed regulations establish a step-by-step review procedure whose basic intent is to arrive at a final determination on the adequacy of State and local plans and preparedness "to protect the public health and safety by providing reasonable assurance that appropriate protective measures can and will be taken offsite in the event of a radiological emergency." (Id. at 36,390; to be codified at 44 C.F.R. pt. 350.5(b)). This procedure involves many internal checks and balances, as well as considerable public input.

Two basic inputs underly the FEMA review process embodied in these proposed regulations -- the plan review and the exercise evaluation. The plan review is initiated by a formal request to do so by the Governor of the State in which the nuclear facility is located (or a designee). The plan is submitted to all members of the relevant Regional Assistance Committee (RAC) for their comments. A public hearing is held to acquaint members of the public with the contents of the plan, to answer questions, and to receive suggestions and comments. During the course of the review, the FEMA Regional Director may suggest changes to the Governor, and the Governor may amend the plan.

Completion of an exercise is a pre-requisite to approval. The exercise must include all appropriate governments. It is observed by FEMA officials, as well as RAC members. It culminates in a critique, at which deficiencies discovered by the exercise observers are presented to the participants. A regular schedule of subsequent exercises, as well as any necessary remedial exercises, is intended to assure a continuing ability to implement the plan.

The FEMA Associate Director for State and Local Programs does not consider the adequacy of a plan until the Regional Director has reviewed the plan, held an exercise, convened a public hearing, and recommended its approval or disapproval. Upon receipt of such a recommendation, the Associate Director solicits the comments of members of the Federal Radiological Preparedness Coordinating Committee (FRPCC), conducts a review, and makes his



or her determination of adequacy. Only after this extensive review process does FEMA inform the NRC and the Governor of its decision.

### 3. PROCEDURE FOLLOWED DURING REVIEW OF SHOREHAM NUCLEAR POWER STATION LOCAL OFFSITE RADIOLOGICAL EMERGENCY RESPONSE PLAN

The procedure FEMA followed during its review of the SNPS Local Offsite Radiological Emergency Response Plan was quite different than the ordinary process. On June 1, 1983, the Assistant Associate Director of the FEMA Office of Natural and Technological Hazards was requested by memorandum from the Director of the NRC Division of Emergency Preparedness and Engineering Response to conduct a review of this plan pursuant to section II(4) of the Memorandum of Understanding Between NRC and FEMA Relating to Radiological Emergency Planning and Preparedness, 45 Fed. Reg. 82,713 (1980). This distinct review procedure permits NRC to request FEMA, notwithstanding its ordinary review methods explained above, to provide "findings and determinations on the current status of emergency preparedness around particular sites ...".

By its nature, this review is considerably more brief than FEMA's usual approach. In this instance, only from June 1 until June 23 was permitted for the review. The plan that was submitted was written by the license applicant and forwarded by the NRC, rather than being the product of local and State planning with a review requested by the Governor. Neither a public hearing nor an exercise has been held. Neither the relevant RAC nor the FRPCC was consulted. The five reviewers were not permitted to make suggestions to the plan authors to improve the plan, nor otherwise discuss the plan with them. The plan was reviewed as if it was a final product, with no allowances made for incompleteness. Thus, the review of this plan has been less thorough, was conducted with fewer checks and balances on its accuracy than the ordinary FEMA plan review process, and did not include an exercise as a test for its capability actually to be implemented.

### 4. CONCLUSION

The FEMA review of the Shoreham Nuclear Power Station Radiological Emergency Local Offsite Radiological Emergency Response Plan was conducted in an extraordinary fashion, pursuant to a request from the NRC, rather than the Governor of the affected State. Whereas the process mandated in FEMA's operative regulations involves several levels of checks and balances, a public hearing, and an exercise, this review simply is the opinion of its five reviewers, without benefit of public comment or the acid test of a complete exercise. As such, it must be used in a manner consistent with how it was accomplished.





## Federal Emergency Management Agency

Washington, D.C. 20472

JUN 23 1983

MEMORANDUM FOR: Edward L. Jordan  
Director, Division of Emergency  
Preparedness and Engineering Response  
Office of Inspection and Enforcement  
U.S. Nuclear Regulatory Commission

FROM: *Richard W. Krimm*  
Richard W. Krimm  
Assistant Associate Director  
Office of Natural and Technological Hazards

SUBJECT: Findings on the LILCO Transition Plan As Requested by  
the NRC as Part of NRC Licensing of the Shoreham  
Nuclear Power Station

This is in response to your June 1, 1983, memorandum in which you invoked Section II.4 of the November 1, 1980, NRC/FEMA Memorandum of Understanding by requesting the Federal Emergency Management Agency (FEMA) to provide the Nuclear Regulatory Commission (NRC) with findings and determinations as to whether the LILCO-County plan and/or the interim plans for the Shoreham Nuclear Station are adequate and capable of implementation. As a result of an Atomic Safety and Licensing Board (ASLB) order, your subsequent memorandum of June 17, 1983, requested that FEMA provide findings and determinations on the LILCO Transition Plan as a first priority. This Plan, developed wholly by LILCO, proposes to use LILCO personnel to carry out the offsite preparedness aspects of the plan (to include the total direction and control function) in the case of an emergency involving an accident at the Shoreham Nuclear Power Station.

First, we would like to indicate how the review process for the LILCO Transition Plan differed from the usual "350" approval process. As you know, under normal processing, the plan review is initiated by a formal request by the Governor of the State in which the nuclear facility is located, after he/she has received and analyzed plans submitted by the local governments in the emergency planning zone surrounding the facility. The request includes the State plan which is site-specific to the applicable power facility, appropriate local plans and a statement by the Governor that the State plan, together with the local plans, are adequate to protect public health and safety of the citizens living within the emergency planning zones for the nuclear power facilities included in the submission by providing reasonable assurance that appropriate protective measures can and will be taken in the event of a radiological emergency for the site. The FEMA processing of a Governor's submittal includes extensive review by the relevant Regional Assistance Committee (RAC), a public meeting and most importantly, a drill or exercise, including all appropriate governments, to test whether the plan can be implemented.

In contrast to the process described above, the LILCO Transition Plan was submitted, without Suffolk County or New York State endorsement, directly to FEMA Headquarters through the NRC for review under the terms of the NRC/FEMA Memorandum of Understanding. Because the Plan was not submitted under 44 CFR 350, a RAC review was not undertaken. For this reason, coupled with the fact that the NRC needed a FEMA finding within three weeks, it was necessary to obtain the support of Argonne National Laboratories to assist and perform a technical review of the plan against the 16 planning standards and criteria (A-P) listed in NUREG-0654/FEMA-REP-1, Rev. 1. FEMA Headquarters, assisted by FEMA's Region II Regional Director and staff, directed this technical review.

FEMA finds that the LILCO Transition Plan has 34 inadequacies in terms of NUREG-0654/FEMA-REP-1, Rev. 1. Our analysis relating these inadequacies to the various criteria is attached.

There are two preconditions, identified below, that need to be met for a FEMA finding as to whether the plan is capable of being implemented and whether LILCO has the ability to implement the plan.

- (1) A determination of whether LILCO has the appropriate legal authority to assume management and implementation of an offsite emergency response plan.
- (2) A demonstration through a full-scale exercise that LILCO has the ability to implement an offsite plan that has been found to be adequate.

FEMA will continue to review the other plans associated with your June 1 request in anticipation that the ASLB will require FEMA findings on these plans at a later date.

Attachment  
As Stated



# Federal Emergency Management Agency

Washington, D.C. 20472

August 29, 1983

Mr. William J. Dircks  
Executive Director for Operations  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555

Dear Mr. Dircks:

This is in response to your July 22, 1983, letter requesting the Federal Emergency Management Agency (FEMA) to provide additional information concerning our report to the Nuclear Regulatory Commission (NRC) of June 23, 1983, entitled "Findings on the LILCO Transition Plan as requested by the NRC as Part of NRC Licensing of the Shoreham Nuclear Power Station."

Generally, for any non-governmental plan submitted to us for review, our position will be:

1. The plan could be considered adequate, if there are no deficiencies when the plan is reviewed against the NUREG-0654/FEMA-REP-1 standards.
2. The plan could be implemented, if the organization or persons required to implement planned actions have the authority to do so.
3. FEMA, in its advisory role to NRC, could make a finding that there is reasonable assurance that offsite preparedness is adequate, if a full scale exercise demonstrates that, with the authority and resources, the plan can be carried out effectively.

Specifically with respect to our June 23 report:

- o If the NRC requests, we will review the revised LILCO Transition Plan against the standards and criteria in NUREG-0654/FEMA-REP-1, and if we find that the 34 previously identified deficiencies are corrected, we could certify to the adequacy of the plan.
- o If LILCO is given the authority to perform response roles of Suffolk County personnel, and there is an exercise in which this is demonstrated, FEMA, in its advisory role to the NRC, could make a finding that offsite preparedness is adequate to protect the public living in the vicinity of the Shoreham plant.

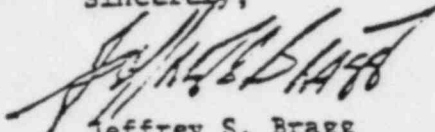
With regard to the first point, because of the short time that NRC allowed for the FEMA review of the LILCO Transition Plan we had to modify our procedure and not use the Regional Assistance Committee (RAC). If NRC requests a further review of the LILCO Plan, and there is adequate time, we would want to use the services of the RAC.

I also want to emphasize again that there is a real need to resolve the issue of LILCO's legal authority to act in accordance with the plan either in an exercise or during an actual emergency. This problem is one that can be resolved by the State of New York.

FEMA's preference, in any case, is to gain the active participation of State and local governments in the emergency planning and preparedness process related to Shoreham. Perhaps the diesel generator problem at Shoreham will provide more time for the State and Suffolk County to work out the offsite emergency preparedness problem.

This should clarify FEMA's views. Please do not hesitate to contact me if I can be of further assistance.

Sincerely,

A handwritten signature in dark ink, appearing to read "Jeffrey S. Bragg", is written over the typed name.

Jeffrey S. Bragg  
Executive Deputy Director