

RELATED CORRESPONDENCE

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

DOCKETED
USNRC

ATOMIC SAFETY AND LICENSING BOARD

'84 FEB 27 A10:54

Before Administrative Judges
James A. Laurenson, Chairman
Dr. Jerry R. Kline
Mr. Frederick J. Shon

OFFICE OF SECRETARY
DOCKETING & SERVICE
DATE:

In the Matter of

Docket No. 50-322-OL-3

LONG ISLAND LIGHTING COMPANY

(Emergency Planning Proceeding)

(Shoreham Nuclear Power
Station, Unit 1)

February 23, 1984

OBJECTIONS OF GOVERNOR MARIO CUOMO,
REPRESENTING THE STATE OF NEW YORK,
TO LILCO'S MOTION TO COMPEL EXPE-
DITED PRODUCTION OF DOCUMENTS BY
NEW YORK STATE

I. Background

This is in response to LILCO's motion to compel expedited production of documents by New York State, dated February 6, 1984. The State of New York opposed this motion in a memorandum of February 13, 1984. On February 15, 1984, the Board held a telephone conference and ordered the State of New York to provide LILCO with a complete list of documents that were responsive to the Town of Southampton's request for documents from the New York State Disaster Preparedness Commission ("DPC") under the New York State Freedom of Information Law. The Board also ordered the State of New York to provide LILCO with all documents that the State of New York did not object to releasing. On February 16, 1984, pursuant to the Board's order, the State of New York provided LILCO with the first four pages of the document listing; LILCO now possesses a complete document listing.

II. Documents Which Have Been Provided to LILCO

For your reference, attached hereto is the complete document listing that the DPC prepared in response to the Town of Southampton's Freedom of Information

8402280322 840223
PDR ADOCK 05000322
G PDR

DS03

Law request. The document listing is entitled "Inventory of Responsive Documents" and it is marked Exhibit A.

The State of New York has provided LILCO with a substantial number of documents, despite the documents' lack of relevancy to this proceeding. These documents are identified on the document listing by a single handwritten asterisk.

III. Documents Which Have Not Been Provided to LILCO and Which Have Not
Been Submitted to the Board for an In-Camera Inspection

Several documents have not been provided to LILCO or to the Board for various reasons. These documents are identified on the document listing by two handwritten asterisks. A brief explanation, according to the order in which the documents appear in the document, follows:

<u>Document Date</u>	<u>Explanation</u>
Undated	the chart is unidentifiable and thus could not be located
9/10/82	Christman is a member of LILCO's law firm and thus LILCO already has the document
6/8/82	this document is a letter to Cordaro of LILCO and thus LILCO already has the document
5/17/82	the documents are letters to and from Cordaro of LILCO and thus LILCO already has the documents
4/26/83	the handwritten note from Stasuik to Axelrod could not be located in the files
4/26/83	the document could not be located in the files
Undated	same as directly above
Stamped received 3/11/83	same as directly above
1/30/82	the month is an error; it should be "11" - the excerpt from NUREG-0654 and the completed review sheet could not be located in the files

Document DateExplanation

Undated

the document could not be located
in the files

9/15/82

LILCO attached this document to its
motion for leave to reply, and reply,
to memorandum of Governor Mario Cuomo,
representing the State of New York, in
opposition to LILCO's motion to compel
expedited production of documents by
New York State, dated February 14, 1984,
and thus LILCO already has the document

11/30/82

as noted above, this is an inadvertent
duplication in the document listing

IV. Documents Which Have Not Been Provided to LILCO Due to New York State
Objections and Which are Being Submitted to the Board for In-Camera
Inspection

Several documents have not been provided to LILCO due to objections by
the State of New York. These documents are identified on the document listing
by three handwritten asterisks. Pursuant to the Board's telephone conference
of February 15, 1984, the State of New York is submitting the documents to the
Board for an in-camera inspection. The documents are attached hereto. A brief
explanation of objections, according to the order in which the documents appear
in the document listing, follows. The objections supplement any objections
which are raised in the document listing. The State of New York objects to dis-
closure of all of these documents because they all are irrelevant to the issues
in this proceeding; therefore, LILCO has no need for any of the documents.

Document DateExplanation of Objections

6/1/82

The document is irrelevant because it
concerns a plan prepared by LILCO in the
spring of 1982, which plan relied on the
County and the State for implementation.
LILCO has no need for the document because
the subject matter was addressed in the
letter of 6/8/82 to Cordaro of LILCO from
Hennessy, which is attached to this 6/1/82
document for the Board's information. The
document is protected by executive privilege
because it is merely an advisory rating by
DPC staff. The rating was a recommendation

Document Date

Explanation of Objections

6/1/82 (Cont'd.)

by the DPC staff to the DPC, and the DPC never even met to consider or review the DPC staff's rating or the plan which was the subject of the rating. Such a rating is deliberative and should be protected from disclosure in order to avoid the chilling effect disclosure would have on the ability of the DPC staff to rate this plan and others without inhibition.

Undated

This document is a "Summary of Comments..." and should not be disclosed for the reasons stated directly above.

5/17/82 and 5/14/82

These documents pertain to a meeting which LILCO attended. The documents are protected by executive privilege because they are advisory and deliberative and constitute internal recommendations, analysis and interpretations.

4/26/83

This document is protected by executive privilege due to its deliberative character.

3/4/83

same as directly above

3/7/83

same as directly above, except that this document is also protected by attorney work product and attorney client privilege

2/23/83

same as directly above. The factual material already has been disclosed; see 4/18/83 document on page 3 of the document listing

1/19/83

This document has been released in its redacted form. The unredacted portion consists of the last 2 items, which are protected by executive privilege.

2/16/83

same as 3/7/83 memo above.

2/11/83

The document is protected by executive privilege. It contains staff analysis and advice.

1/30/82, error,
should be 11/30/82

This document is protected by executive privilege because it is merely an advisory rating by DPC staff. The rating was a recommendation by the DPC staff to the DPC, and the DPC never even met to consider or review the DPC staff's rating or the plan which was the subject of the rating. Such a rating is deliberative and should be protected from disclosure in order to avoid the chilling effect disclosure would have on the ability of the DPC staff to rate this plan and others without inhibition.


<u>Document Date</u>	<u>Explanation of Objections</u>
12/6/82	This document is protected by <u>executive privilege</u> . The meeting referred to in the document never was convened.
Various dates	This draft letter is protected by <u>executive privilege</u> . The final version has been released, see 11/29/82 document on page 4 of the document listing.
11/24/82, 11/23/82, 11/19/82, 11/15/82, 10/25/82, 9/16/82, 9/13/82, 9/8/82, and 5/17/82	same as "1/30/82, error, should be 11/30/82" document above
11/9/82	This draft is protected by <u>executive privilege</u> . The final has been released, see 11/12/82 document on page 4 of the document listing.
7/23/83	This draft is protected by <u>executive privilege</u> and the final has been released, see 7/29/82 document on page 5 of the document listing. In addition, this document is protected by attorney client privilege, see handwritten instruction on the third buckslip.
5/18/82	Mr. Phillips is a staff attorney reporting to Mr. Millock, the Department of Health's General Counsel. This document is protected by <u>attorney work product, attorney-client privilege and executive privilege</u> .
7/18/83	Mr. Zahnleuter is an attorney, the unredacted portion of this document is protected by <u>attorney work product, attorney-client privilege and executive privilege</u> . The redacted version has been released. See document directly below for relevancy objection too.
7/1/83	This document is protected by <u>executive privilege</u> . It is a part of the internal review process before a regulation is noticed to the public for comment. The document is also <u>irrelevant</u> to this proceeding because the DPC's proposed rules and regulations regard DPC procedures at its meetings. The regulations have nothing to do with this proceeding. This argument has been made more fully on page 7 of the MEMORANDUM OF GOVERNOR MARIO CUOMO, REPRESENTING THE STATE OF NEW YORK, IN OPPOSITION TO LILCO'S MOTION TO COMPEL EXPEDITED PRODUCTION OF DOCUMENTS BY NEW YORK STATE, dated February 13, 1984.

<u>Document Date</u>	<u>Explanation of Objections</u>
6/27/83	same as directly above, except that the document is also protected by <u>attorney work product</u> and <u>attorney-client privilege</u> .
6/20/83	same as directly above, except that the attachments are protected for the reasons set forth for the "1/30/82, error, should be 11/30/82" document above.
5/17/83	same as 6/27/83 document above
5/11/83	same as 7/1/83 document above
4/29/83	same as 6/27/83 document above
4/29/83	same as 6/27/83 document above
5/18/83	same as 7/1/83 document above
Undated	same as 6/27/83 document above.

Respectfully submitted,

MARIO CUOMO,
Governor of the State of New York

FABIAN C. PALOMINO, ESQ.
Special Counsel to the Governor
of the State of New York

BY: 
RICHARD J. ZAHNLAUTER, ESQ.
Assistant to the Special Counsel
for the Governor

February 23, 1984
Hauppauge, New York

INVENTORY
OF
RESPONSIVE
DOCUMENTS

1) The following document is not being provided because it has already been transmitted to Mr. Latham:

<u>DATE</u>		<u>DOCUMENT</u>
4/14/83	*	letter from Axelrod to Latham
7/12/83	*	Notice of Proposed Agency Action

2) A copy of each of the following documents is being provided at this time:

<u>DATE</u>		<u>DOCUMENT</u>
4/18/83	*	testimony of Axelrod
5/10/83	*	press release of Cuomo
4/26/83	*	unidentified factual material headed by "Shoreham"
undated	*	unidentified factual material headed by "This memorandum summarizes the recent events concerning the Shoreham Nuclear Power Station."
3/22/83	*	press release concerning Axelrod's statements to NRC with attachments (2/28/83 memo from Brenner to Axelrod and 3/18/83 letter to Brenner from Axelrod)
3/5/83	*	memo to DPC members from McQueen
2/23/83	*	letter to Cohalan from Axelrod with attachments (letter of 2/2/83 to Axelrod from Jones and letter of 3/1/83 to Axelrod from Cohalan)
12/15/82	*	stipulation of settlement in <u>Cohalan v. New York State Disaster Preparedness Commission</u>
2/17/83	*	press release of Cuomo
undated	**	chart
1/19/83	*	memo to Castellano from Davidoff is being released but portion containing opinion, belief and conjecture is being redacted; attachments (letter of 1/6/83 from Howard to Davidoff, testimony of 1/17/83, newsclip of 11/8/83) are being released
12/14/82	*	letter from Davidoff to Jones with attachments (buck slip of 12/3/83 and letter of 12/2/82 from Cohalan to Hennessy)
12/9/82	*	<u>motion to dismiss in Cohalan v. New York State Disaster Preparedness Commission</u> , with attachment (affirmation of Alvy of 12/9/82 and affidavit of Davidoff of 12/10/82)

12/6/82 * letter to Harenberg from Hennessy with attachment
(letter of 11/23/82 to Hennessy from Harenberg)

12/7/82 * Telegram from Hennessy to Cohalan with attachment
(telegram to Hennessy from Cohalan)

11/29/82 * letter to Cohalan from Hennessy with attachments
(letter of 11/22/82 to Hennessy from Jones,
letter of 9/16/82 from Jones to Davidoff, letter
of 9/9/82 to Jones from Davidoff, letter of
7/26/82 to Jones from Hennessy, letter of 6/30/82
from Jones to Hennessy)

11/12/82 * letter to Cohalan from Hennessy

9/10/82 * letter to Jones from Davidoff with attachments
(letter of 9/3/82 to Davidoff from Jones and
* letter of 7/21/82 from Christman to Hennessy)

8/3/82 * memo to Millock from Davidoff with attachments
(letter of 7/28/82 from Hennessy to La Valle, and
letter of 7/8/82 from La Valle to Hennessy)

6/9/82 * press release

7/28/82 * memo to Millock from Davidoff with attachments
(letter of 7/26/82 from Hennessy to Jones, letter
of 6/30/82 to Hennessy from Jones, letter of
6/11/82 to Cohalan from Hennessy)

7/26/82 * letter to Halpin from Hennessy with attachment
(letter of 6/10/82 from Halpin to Hennessy)

6/23/82 * letter to Berman from Axelrod with attachment
(letter of 5/25/82 to Axelrod from Berman)

6/17/82 * letter to Newburger from Hennessy with attachment
(letter of 6/9/82 to Hennessy from Newburger)

6/15/82 * letter to Berger from Davidoff with attachment
(letter of 5/21/82 from Berger to Hennessy)

6/15/82 * letter to DPC members from Davidoff

6/14/82 * letter to Marten from Davidoff with attached
petition and letter of 6/1/82 to Hennessy from
Marten

6/8/82	* *	letter to Cordaro from Hennessy with attachment (review of Shoreham plan)
6/11/82	*	letter to Trunzo from Davidoff with attachment (letter of 5/17/82 to Davidoff from Trunzo)
varicus dates	*	letters from McQueen to various persons
7/29/82	*	letter to Pachman from Hennessy
6/1/82	* * *	"Analysis of Shoreham Offsite Emergency Plan"
undated	* * *	"Summary of Comments on Sections A, C, and J of the Shoreham-Suffolk County Off-site Plan"
5/26/82	*	letter from Hennessy to Wolosin
5/17 and 19/82	<	legislative contact reports
5/17/82	* *	letter to Cordaro from Hennessy with attachments (letter of 5/10/82 from Cordaro to Hennessy)
5/17/82	* * *	memo to Stasiuk from Davidoff
5/14/82	* * *	handwritten notes
4/19/83 and 5/16/83	*	press release, statement by Governor Cuomo

3) The following materials may be responsive documents, but they are being withheld on the grounds specified. The New York State Disaster Preparedness Commission and/or the New York State Department of Health reserve the right to amend or expand the grounds for withholding documents which are protected by privileges, exemptions or objections. Mr. Millock, Mr. Phillips and Mr. Zahnleuter are attorneys employed by the State who function as attorneys. The following privileges, exemptions or objections are referenced by the following code system:

- 1) "A" refers to inter-agency materials which are not:
 - (i) statistical or factual tabulations or data;
 - (ii) instructions to staff that affect the public, or
 - (iii) final agency policy or determinations;

- 2) "B" refers to intra-agency material which are not:
 - (i) statistical or factual tabulations or data;
 - (ii) instructions to staff that affect the public, or
 - (iii) final agency policy or determinations;
- 3) "C" refers to material prepared for litigation;
- 4) "D" refers to attorney work product;
- 5) "E" refers to materials protected by attorney-client privilege.

<u>DATE</u>	<u>DOCUMENT</u>
4/26/83 ***	transmittal slip to Axelrod/DPC from Davidoff/DPC with two attachments ("suggested questions for consideration by the Shoreham panel" and a handwritten note from Stasiuk/DOH to Axelrod/DPC concerning questions which should be emphasized); these materials contain preliminary suggestions, recommendations, opinions, conjecture and deliberations pertaining to the consequences of radioactive materials releases, A, B.
4/26/83 **	document is being released but portion containing opinion, conjecture and beliefs concerning possible Atomic Safety and Licensing Board decisions is being redacted, A, B.
undated **	non-final, draft, working copy of essay headed by "this memorandum summarizes the recent events concerning the Shoreham Nuclear Power Station.", A, B.
stamped received 3/11/83 **	non-final, draft, working copies of a letter to the New York Times concerning a 2/27/83 editorial re: Shoreham, A, B.
3/4/83 ***	memo to Millock/DOH from Davidoff/DPC concerning a draft reply to Brenner's 3/28/83 memo, with attachment (draft, non-final response dated 3/3/83); this is deliberative material, A, B, E.
3/7/83 ***	memo to Axelrod/DPC from Millock/DOH concerning resolution of <u>Cohalan v. New York State Disaster Preparedness Commission</u> with attachments (draft, non-final working copy of a stipulation of discontinuance) A, B, C, D, E.

- 2/23/83 *** memo from Millock/DOH to Axelrod/DPC concerning events pertaining to Shoreham, A, B, C, D, E.
- 1/19/83 * → memo to Castellano/DPC from Davidoff/DPC is being released but portion pertaining to interpretation and opinion of the hearing and news coverage is being redacted, A, B.
- 2/16/83 *** memo to Axelrod/DPC from Millock/DOH concerning failure of Suffolk County to prepare a response plan, A, B, C, D, E.
- 2/11/83 *** → memo from Slocum/DOH to Axelrod/DPC concerning an editorial written by M. Patterson in Newsday on 2/7/83; this memo contains opinions, conjecture, evaluations, recommendations and deliberative material, A, B.
- 1/30/82 *** error in 1/30/82 memo to DPC members from Davidoff/DPC transmitting DPC's staff's review of the adequacy of LILCO's plan; this memo contains non-final, opinions, conclusions, evaluations and recommendations by staff which have not been acted upon the the DPC members; these documents constitute deliberative materials; attachments are an excerpt from NUREG-0654 and a completed review sheet, A, B.
- undated ** non-final, draft working copy of a DPC resolution pertaining to Shoreham and associated planning, A, B.
- 12/6/82 *** non-final, draft, working copy of a DPC press release concerning proposed 12/8/82 DPC meeting, A, B.
- various dates *** drafts of Hennessy's letter of 11/29/82 to Cohalan, A, B.
- 11/24/82 *** memo from Czech/DPC to Davidoff/DPC containing non-final, preliminary advisory comments, opinions, evaluations, beliefs, conjecture and deliberative material pertaining to the adequacy of LILCO's plan, A, B.
- 11/23/82 *** memo from Czech/DPC to Davidoff/DPC containing same subject matter as described directly above, A, B.

11/19/83 *** memo to Czech/DPC from Clemente/DPC containing same subject matter as described directly above for 11/24/82 memo A, B.

11/15/82 *** memo to "Larry"/DPC from "Jim P."/DPC containing same subject matter as described above for 11/24/82 memo, A, B.

11/9/82 *** draft, non-final working copies of letter to Cohalan from Hennessy, A, B.

10/25/82 *** memo to Czech/DPC from Lowery/DPC containing same subject matter as described directly above for 11/24/82 memo, A, B.

9/16/82 *** memo to Czech/DPC from Clemente, same as 11/24/82 memo A, B.

9/15/82 ** memo to Dillenbeck/DPC from Albertin/DOT, same as 11/24/82 memo, A, B.

9/13/82 *** memo to Davidoff/DPC from Czech/DPC, same as 11/24/82 memo, A, B.

9/8/82 *** memo to Czech/DPC from Popile/DPC, same as 11/24/82 memo, A, B.

7/23/83 *** draft, non-final letter from Hennessy to Pachman.

5/18/82 *** memo from Phillips/DOH to Millock/DOH concerning legal issues pertaining to LILCO's plan, A, B, D, E.

5/17/82 *** memo to "REPG Staff" from Davidoff concerning assignments for Shoreham plan review, A, B.

11/30/82 ** memo to DPC members from Davidoff/DPC containing non-final, preliminary advisory comments, opinions, evaluations, beliefs, conjecture and deliberative material pertaining to the adequacy of LILCO's plan, A, B.

7/18/83 *
*** memo to Davidoff/DPC from Zahnleuter/DOH advising of the applicable comment period for regulations, A, B, D, E.

7/1/83 *** memo to Aberrathy/DOH from Duncan/DOH circulating for internal review proposed, draft, regulations and regulatory impact statement, this is deliberative material, A, B.

6/27/83 *** memo to Taylor/DOH from Millock/DOH transmitting a revised, proposed regulation transmittal form for further internal review, this is deliberative material, A, B, D, E.

6/20/83 *** memo to Millock/DOH from Zahnleuter/DOH with attachments (rating sheet for "Shoreham Offisite Emergency Plan" and pages 31-79 of an unidentified document) circulating non-final, draft, proposed regulation transmittal form for internal review, this is deliberative material, A, B, D, E.

5/17/83 *** memo to Millock/DOH from Zahnleuter/DOH discussing and identifying several possible modifications of proposed regulation transmittal form, this is deliberative material, A, B, D, E.

5/11/83 *** slip from Slocum/DOH to Duncan/DOH expressing comments on proposed regulation transmittal form, this is part of the internal review process and is deliberative material, A, B.

4/29/83 *** memo to Millock/DOH from Zahnleuter/DOH requesting comments and opinions concerning draft proposed regulation transmittal form, this is part of the internal review process and is deliberative material, A, B, D, E.

4/29/83 *** same as memo directly above, but containing handwritten comments, A, B, D, E.

5/18/83 *** memo to Duncan/DOH from Holohean/DOH expressing comments on proposed regulation transmittal form, this is part of the internal review process and is deliberative material, A, B.

undated *** handwritten memo from Millock/DOH to Axelrod/DPC/DOH concerning possible contents of the proposed draft regulations, this is deliberative material and part of the internal review process, A, B, D, E.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD
Before Administrative Judges
James A. Laurenson, Chairman
Dr. Jerry R. Kline
Mr. Frederick J. Shon

In the Matter of)

LONG ISLAND LIGHTING COMPANY)

(Shoreham Nuclear Power Station,
Unit 1))

) Docket No. 50-322-OL-3

) (Emergency Planning Proceeding)

) February 24, 1984

CERTIFICATE OF SERVICE

I hereby certify that one copy of the OBJECTIONS OF GOVERNOR MARIO CUOMO, REPRESENTING THE STATE OF NEW YORK, TO LILCO'S MOTION TO COMPEL EXPEDITED PRODUCTION OF DOCUMENTS BY NEW YORK STATE has been served to each of the following this 24th day of February 1984 by U. S. Mail, first class, except as otherwise noted:

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Assistant to the Special Counsel
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*By Hand on February 23, 1984

**By U. S. Express Mail on February 24, 1984

Hauppauge, New York
February 24, 1984