

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)

FEMA'S RESPONSE TO
SUFFOLK COUNTY REQUEST FOR
PRODUCTION OF DOCUMENTS

FEMA was served with a Discovery Request by Suffolk County on April 23, 1984. Included in that request was a three part Document Request related to the Regional Assistance Committee's (RAC) review of the LILCO Transition Plan. Pursuant to the provisions of 10 CFR 2.740(f), 2.741(d) and the Board's instructions of May 9, 1984 FEMA respectfully submits the following reply.

FEMA has produced as part of a Freedom of Information Request numerous documents to the law firm of Kirkpatrick-Lockhart. Counsel for Suffolk County has agreed that FEMA need only identify those documents previously provided which are responsive to the present Discovery Request.

The following documents relevant to this Request were provided to Suffolk County's counsel pursuant to the FOIA inquiry:

1. September 23, 1983 memorandum from Jeffrey S. Bragg, Executive Deputy Director to Frank P. Petrone, Regional Director, Region II requesting Mr. Petrone's office arrange for the performance of a full RAC review of Revision 1 of the LILCO Transition Plan.
2. September 23, 1983 memorandum from Richard W. Krimm, Chairman, FRPCC to the Federal Radiological Preparedness Coordinating Committee (FRPCC) members informing them that a request will be made for RAC support.

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3. October 4, 1983 memorandum from Frank P. Petrone, Regional Director to all Region II RAC members outlining the schedule for review of the LILCO Plan for Shoreham.
4. October 7, 1983 memorandum from Philip McIntire for Frank P. Petrone, Regional Director to Richard Krimm, Assistant Associate Director, NTH - Subject: Status Report #1 Shoreham Plan review.
5. October 24, 1983 memorandum from Frank P. Petrone, Regional Director to Richard W. Krimm, Subject: Shoreham Plan Review Status Report #2.
6. October 27, 1983 memorandum from Richard W. Krimm to Edward L. Jordan, Director Division of EP&ER, USNRC. Subject: FEMA'S need for an extension to complete the review of the LILCO Transition Plan, Revision 1.
7. November 4, 1983 letter from Louis O. Giuffrida, Director FEMA and Nunzio J. Palladino, Chairman NRC to Honorable Alan K. Simpson conveying quarterly report on emergency preparedness for nuclear power plants.
8. November 8, 1983 memorandum from Frank P. Petrone to Richard Krimm, Subject: Shoreham Plan Review Status Report #3.
9. November 16, 1983 memorandum from Frank P. Petrone to Richard W. Krimm, Subject: Shoreham Plan Review Revision 2.
10. November 18, 1983 memorandum from Roger B. Kowieski, Chairman RAC to Philip McIntire, Chief NTH, Region II, Subject: LILCO's Emergency Response Plan Revision II.
11. November 23, 1983 memorandum from Roger B. Kowieski to Frank P. Petrone and Philip McIntire - Subject: Review of the LILCO Plan for the Shoreham Nuclear Power Station (Assumptions used in review of Plan).
12. December 8, 1983 memorandum from Samuel W. Speck, Associate Director State & Local Programs and Support to Frank P. Petrone, Subject: Extension of time for the Review of the LILCO Transition Plan. Revision 2.
13. December 12, 1983 memorandum from Roger B. Kowieski to Philip H. McIntire, Subject: RAC review of the LILCO Transition Plan.
14. December 14, 1983 letter from Donald P. Irwin to Bernard M. Bordenick dealing with timeliness of submittal of Revision 3 to FEMA.
15. December 14, 1983 letter from Donald P. Irwin to Stewart M. Glass including a general description of changes to occur in Revision 3.

16. December 14, 1983 letter from Donald P. Irwin to Stewart M. Glass relating to Revision 3 of the LILCO Transition Plan.
17. December 15, 1983 Telefax from Frank P. Petrone to Richard W. Krimm, Subject: Shoreham Activities Report #5.
18. December 16, 1983 from Roger B Kowieski to all Region II RAC members outlining schedule for work on Revision 2.
19. December 20, 1983 memorandum from Frank P. Petrone to Samuel W. Speck, Subject: Extension of time for RAC review of LILCO Transition Plan for Shoreham.
20. December 21, 1983 letter from Stewart M. Glass to Donald P. Irwin, confirming Transmittal of collated LILCO Transition Plan, Revisions 3 and matrix of changes.
21. December 29, 1983 letter from John Wesmantle (LILCO) to Stewart M. Glass, confirming that copies of the LILCO Transition Plan were sent to all RAC members. Attached is cross - reference to the plan.
22. January 9, 1984 memorandum from Frank P. Petrone to Samuel W. Speck, Subject: RAC Review of LILCO Transition Plan - Revision 1, 2, & 3.
23. January 10, 1984 - Attendance list and staff notes of LILCO Briefing on Revision #3. (In attendance representatives from Kirkpatrick-Lockhart, NRC, ANL, FEMA, LILCO, Hutton-Williams, KLD Assoc., LERIO).
24. January 13, 1984 - memorandum from Richard W. Krimm to Edward L. Jordan, Subject: RAC review of LILCO Transition Plan for Shoreham.
25. January 20, 1984 attendance list from RAC meeting.
26. January 24, 1984 memorandum from Frank P. Petrone to Samuel W. Speck, Relating to Shoreham Plan Review, Governor's position, legal authority and assumptions made in order to allow RAC members to proceed with a technical review.
27. January 25, 1984 letter from Samuel W. Speck to William J. Dircks as to whether FEMA should continue, modify or terminate the NRC requested reviews of the LILCO Plan.
28. February 3, 1984 memorandum from Samuel W. Speck to Frank P. Petrone, Subject: Whether NRC wishes FEMA to proceed with Plan review.

29. February 9, 1984 letter to H. Taylor Reveley III, Esq. from George W. Jett, General Counsel, Subject: Emergency preparedness issues for Shoreham.
30. March 1, 1984 Fax of changes to page 6 of portion of RAC review.
31. Copies of pages that were changed in RAC review after initial submittal to FEMA Headquarters.
32. March 14, 1984 memorandum from Roger B. Kowieski to Stewart M. Glass conveying letter from Joseph H. Keller.
33. March 14, 1984 memorandum from Roger B. Kowieski to Stewart M. Glass, Subject: Submission of Revisions/Additions to LILCO Transition Plan.
34. March 15, 1984 letters to Dr. Catacosinos, Chairman LILCO, King Mallory, Honorable Alan Simpson from Louis O. Giuffrida, Director FEMA conveying copy of letter to NRC.
35. March 15, 1984 memorandum from Roger B. Kowieski to Marianne Jackson conveying Regional Director briefing paper and chronology of events relevant to the review of the LILCO Transition Plan, Revisions 1, 2 & 3 (with those attachments).
36. March 15, 1984 draft of letter from Ronald G. Eberhardt, Director of Congressional Relations conveying copy of RAC review. Attached is list of Congressional recipients of that letter.
37. March 15, 1984 letter from Samuel W. Speck to William J. Dircks conveying the RAC review. Also provided summary sheet prepared by Richard W. Krimm comparing Argonne review and RAC review.
38. March 19, 1984 letter from Congressman Markey to Louis O. Giuffrida, Director FEMA requesting additional information.
39. March 30, 1984 memorandum from Stewart M. Glass to George Jett Subject: Status Report on Shoreham ASLB Proceedings.
40. April 13, 1984 letter from Donald P. Irwin to Stewart M. Glass and Spence Perry requesting a meeting with the RAC.

In addition, the following documents have been provided to Suffolk County with this Response:

1. September 15, 1983 memorandum from Edward L. Jordan to Richard W. Krimm, Subject: Federal Emergency Management Agency (FEMA) Support for the Nuclear Regulatory Commission (NRC) Licensing of Shoreham Nuclear Station.

2. November 10, 1983 memorandum from Edward L. Jordan to Richard W. Krimm. Subject: Federal Emergency Management Agency (FEMA) Support for the Nuclear Regulatory Commission (NRC) Licensing of Shoreham Nuclear Station.
3. November 15, 1983 memorandum from Edward L. Jordan to Richard W. Krimm, Subject: Shoreham Long Island Lighting Company Transition Plan.
4. December 22, 1983 memorandum from Edward L. Jordan to Richard W. Krimm, Subject: The Federal Emergency Management Agency (FEMA) Support for the Nuclear Regulatory Commission (NRC) Licensing of Shoreham Nuclear Station.
4. December 28, 1983 memorandum from Edward L. Jordan to Richard W. Krimm, Subject: The Federal Emergency Management Agency (FEMA) Support for the Nuclear Regulatory Commission (NRC) Licensing of Shoreham Nuclear Power Station.
5. January 11, 1984 memorandum from Edward L. Jordan to Richard W. Krimm, Subject: Federal Emergency Management Agency (FEMA) Review of Long Island Lighting Company (LILCO) Transition Plan for the Shoreham Nuclear Power Plant.
6. January 26, 1984 letter from William J. Dircks, to Samuel W. Speck regarding response to January 25, 1984, letter asking whether FEMA should continue, modify, or terminate its review of LILCO offsite emergency plans for the Shoreham facility.
7. February 24, 1984 Draft memorandum from Sheldon A. Schwartz to E. Christenbury, Subject: FEMA review of offsite emergency plan for Shoreham.
8. April 2, 1984 letter from A. Schwencer, to M.S. Pollock regarding - Federal Emergency Management Agency (FEMA) Findings on Long Island Lighting Company (LILCO) Transition Plan for Shoreham.

Pursuant to the terms of 10 CFR 2.740 (f) and 2.741 (d), Rule 26(b) of the Federal Rules of Civil Procedure and the terms of the Boards instructions of May 9, 1984 the Federal Emergency Management Agency respectfully objects to the release and discovery of the following documents.

1. Letter dated November 3, 1983 conveying NRC RAC member, Craig Z. Gordon's, comments on the LILCO Transition Plan, Revision 1 for Shoreham.
2. Memorandum dated November 2, 1983 conveying DOE RAC member, Herb G. Fish's, comments on the LILCO Transition Plan, Revision 1 for Shoreham.
3. Letter dated October 21, 1983 conveying FDA (HHS) RAC member, Ronald E. Bernacki's, comments on the LILCO Transition Plan, Revision 1 for Shoreham.

4. Memorandum dated November 3, 1983 conveying DOT RAC member, Paul Lutz's, comments on the LILCO Transition Plan Revision 1 for Shoreham.
5. Letter dated October 14, 1983 conveying USDA RAC member, Cheryl Malina's, comments on the LILCO Transition Plan, Revision 1 for Shoreham.
6. Submission dated November 1, 1983 conveying FEMA employee, Robert L. Acerno's, comments on the LILCO Transition Plan, Revision 1 for Shoreham.
7. Letter dated November 2, 1983 conveying INEL RAC consultant, Joe H. Keller's, comments on the LILCO Transition Plan, Revision 1 for Shoreham.
8. Memorandum dated November 4, 1983 conveying ANL RAC consultant, Thomas E. Baldwin's, comments on the LILCO Transition Plan Revision 1 for Shoreham.
9. Letter dated December 5, 1983 conveying EPA RAC member, Linda Olmer's, comments on the LILCO Transition Plan Revision 1 for Shoreham.
10. Letter dated January 12, 1984 conveying NRC RAC member, Robert J. Bores's, comments on the LILCO Transition Plan Revision 3 for Shoreham.
11. Memorandum dated January 6, 1984 conveying DOE RAC member, Herbert Fish's, comments on the LILCO Transition Plan, Revision 3 for Shoreham.
12. Letter dated January 6, 1984 conveying FDA RAC member, Ronald E. Bernacki's, comments on the LILCO Transition Plan, Revision 3 for Shoreham.
13. Memorandum dated January 10, 1984 conveying DOT RAC member, Paul Lutz's, comments on the LILCO Transition Plan, Revision 3 for Shoreham.
14. Letter dated January 6, 1984 conveying USDA RAC member, Cheryl Malina's, comments on the LILCO Transition Plan, Revision 3 for Shoreham.
15. Submission dated January 9, 1984 written directly on copy of preliminary draft conveying FEMA staff member, Robert L. Acerno's, comments on the LILCO Transition Plan Revision 3 for Shoreham.
16. FEPA Plan Review Form - dated January 12, 1984 conveying EPA RAC member, Joyce Feldman's, comments on the LILCO Transition Plan Revision 3 for Shoreham.

17. Letter dated January 10, 1984 conveying INEL RAC consultant Joe H. Keller's comments on the LILCO Transition Plan Revision 3 for Shoreham.
18. Memorandum dated January 9, 1984 conveying FEMA member, Marianne C. Jackson's, comments on the LILCO Transition Plan Revision 3 for Shoreham.
19. Submission dated January 9, 1984 written directly on Preliminary Draft conveying ANL RAC consultant, Thomas E. Baldwin's, comments on the review of the LILCO Transition Plan Revision 3 for Shoreham.
20. Preliminary Draft of Consolidated RAC Review dated January 20, 1984 with individual notes of Cheryl Malina of RAC meeting of January 20, 1984.
21. Preliminary Draft of Consolidated RAC Review dated January 20, 1984 with individual notes of Robert Bores of RAC meeting of January 20, 1984.
22. Preliminary Draft of Consolidated RAC Review dated January 20, 1984 with individual notes of Joyce Feldman of RAC meeting of January 20, 1984.
23. Preliminary Draft of Consolidated RAC Review dated January 20, 1984 with individual notes of Paul Lutz of RAC meeting of January 20, 1984.
24. Pre-Decisional Drafts of March 15, 1984, Letter Transmitting FEMA Finding to NRC.
25. Pre-Decisional Draft of Definitions of Categories, etc., for February, 1984, Consolidated RAC Review of the LILCO Transition Plan.
26. Sample of Four Random Draft Pages of February, 1984, Consolidated RAC Review of LILCO Transition Plan.
27. Pre-Decisional Drafts of the 2/21/84 Region II Transmittal Memorandum to Headquarters for the RAC review of the LILCO Transition Plan.
28. Pre-Decisional Drafts of the 2/3/84 Memorandum to Frank P. Petrone, Regional Director, Region II, From Samuel W. Speck, Associate Director, State and Local Programs and Support, Federal Emergency Management Agency, Subject: Shoreham Plan Review.
29. Pre-Decisional Draft of Discussion Points, for Richard W. Krimm and Joseph Winkle for Press Conference (not held) on the FEMA finding of 3/15/84 for Shoreham.
30. Pre-Decisional Sets of Q's and A's for Press Conference (not held) on the FEMA Finding of 3/15/84 on Shoreham.

31. Margaret Lawless' copy of Region II RAC findings with her annotated notes.
32. Pre-Decisional Notes and Option Paper on Strategies for Handling Shoreham Offsite Emergency Preparedness Problem.
33. Draft Telefax Header and Pre-decisional draft of FEMA 10/27/83 Memorandum to: Edward L. Jordan, Director, Division of Emergency Preparedness and Engineering Response, Office of Inspection and Enforcement, Nuclear Regulatory Commission, From: Richard W. Krimm, Assistant Associate Director, Office of Natural and Technological Hazards Programs, Subject: Federal Emergency Management Agency Support for Nuclear Regulatory Commission Licensing of Shoreham Nuclear Station.
34. Memorandum to Regional Assistance Committee members from Roger Kowieski, Subject: Legal Issues Identified During the RAC Review of LILCO Transition Plan for Shoreham (Revision 3).
35. Three (3) Drafts of Consolidated RAC Review of LILCO Transition Plan for Shoreham - Revision 3, (1/20/84)-Annotated with notes of FEMA employees and contractors.
36. Draft LILCO Plan Review (LILCO Transition Plan Revision 1) consolidated RAC review.
37. 26 pages of a flip chart of Regional Assistance Committee members' individual comments on LILCO Transition Plan titled Shoreham Review Compilation of RAC Comments.

It is the position of the Federal Emergency Management Agency that the above thirty-seven (37) documents are privileged, that they are subject to the protection of executive privilege. FEMA rely's on the Board's Memorandum and Order Ruling on Suffolk County Motion to Compel FEMA to Produce Documents dated November 1, 1983, the arguments FEMA submitted in support thereof (attached) and the Board's Memorandum and Order Ruling Upon LILCO's Motion to Compel Production of Documents and Objections of Governor Mario Cuomo dated March 6, 1984.

The above documents fall within a number of subgroups. Items one (1) through nineteen (19) contain the individual review comments of the individual RAC members, consultants and staff as provided to the RAC Chairman. Items twenty (20) through twenty-three (23) contain the

individual personal notes of RAC members of the RAC meeting of January 20, 1984 as annotated on the Preliminary Draft of the Consolidated RAC Review. It should be noted that these personal notes were not originally in the possession of FEMA but were provided by the RAC members to Region II to enable it to fully identify all items contemplated by Suffolk County's Discovery Request. The individual notes have not been reviewed at this time. Items twenty-five (25), twenty-six (26), and thirty-four (34) through thirty-seven (37) contain the various drafts and working papers of the RAC review and the compilation of the individual RAC comments. While item thirty-one (31) contains a headquarters staff employee's comments on the RAC Plan Review.

FEMA objects to the discovery of any advisory memoranda, predecisional deliberations related to the RAC review, or the input of the individual RAC members to the final FEMA RAC report. FEMA has provided to Suffolk County documents outlining the assumptions made in order to allow the RAC members to proceed with a technical review and copies of changes and clarifications to the Review after its submittal to FEMA headquarters. The County's document request to FEMA makes absolutely no showing of any circumstances requiring disclosure of the requested documents. It is obvious from the Memorandum explaining Suffolk County Discovery Requests Relating to FEMA that they are seeking to ascertain the predecisional thoughts and opinions of the individual RAC members. Executive privilege is meant to protect these very thought processes, advisory opinion recommendations and deliberations.

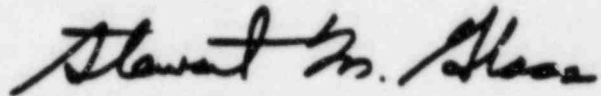
In addition these documents are irrelevant and will not lead to the production of admissible relevant evidence. The FEMA RAC review is not being litigated in this proceeding and the inputs of the various members of the RAC Committee have absolutely no probative value. The RAC submitted its final report which reflects the collegial judgment of the RAC. The RAC review is included as a portion of the testimony which further addresses the specific contentions which are the issues in litigation before this body. The FEMA witnesses have indicated that the purpose of their testimony is to address the contentions relating to offsite preparedness at the Shoreham Nuclear Power Station which are properly the matter before this Board. Further, the panel indicates that their testimony (Q.17 p. 8 FEMA Testimony) represents the current FEMA evaluation of the LILCO Transition Plan, Revision 3.

Items twenty-four (24), twenty-seven (27) through thirty (30), and thirty-two (32) and thirty-three (33) all consist of drafts of documents which contain the thoughts and opinions of individual staff members. In the case of items twenty-four, twenty-seven and twenty-eight the final documents were submitted and are available to the parties. These documents fall squarely within the scope of executive privilege while the matters contained therein are not related to the issues in contention before this Board.

It is understood that pursuant to NRC regulations all that FEMA need undertake in response to the County's Discovery request is identify the items being withheld, state the privilege that is being asserted and the

reason the privilege applies to the documents in question. The burden is on the County to seek an Order to Compel. Under normal circumstances the party from whom discovery is sought would have an opportunity to respond to the County's Motion. Due to the constraints of time that opportunity is not available, therefore FEMA expresses its willingness to engage in oral argument on Friday, May 18th if that would assist the Board.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "Stewart M. Glass". The signature is fluid and cursive, with the first name "Stewart" being more prominent than the last name "Glass".

Stewart M. Glass
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New York, New York 10278

Dated: May 14, 1984