



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555

JUN 10 1985

Docket No. 50-322

Robert R. Belair, Esquire
Kirkpatrick & Lockhart
1900 M Street, NW
Washington, DC 20036

IN RESPONSE REFER
TO FOIA-85-190

Dear Mr. Belair:

This is in further response to your letter dated March 19, 1985, in which you requested, pursuant to the Freedom of Information Act (FOIA), copies of documents related to radiological emergency plans for the Shoreham Nuclear Power Plant since January 1984, and copies of correspondence between NRC and the Long Island Lighting Company since January, 1984.

The documents identified on enclosed Appendix D are being placed in the NRC Public Document Room (PDR), located at 1717 H Street, NW, Washington, DC 20555, in file folder FOIA-85-190 in your name. The documents identified on enclosed Appendix E are already in the PDR. I have indicated the file location beside each document description.

The documents identified on enclosed Appendix F are being withheld in part. Portions of documents 1 and 2 on Appendix F contain the predecisional analyses, opinions and recommendations of the Commissioners on a proposed response to Congressman Markey regarding Shoreham. The withheld portions of Document 3 on Appendix F contain the predecisional legal analyses, opinions and recommendations of the Office of the General Counsel to aid the Commission in its consideration of two questions certified to it by the Appeal Board in ALAB-769 (Shoreham). Because portions of documents 1 through 3 reflect the predecisional process in the communication among the Commissioners, and between the Office of the General Counsel and the Commissioners, the documents are exempt from mandatory disclosure pursuant to Exemption 5 of the FOIA, 5 U.S.C. §552(b)(5), and the Commission's regulations, 10 CFR §9.5(a)(5). Release of the documents would tend to inhibit the open and frank exchange of ideas essential to the deliberative process. The releasable portions of these documents are being placed in the PDR.

The withheld portion on page 1 of document 4 on Appendix F are personal comments of the staff of the Federal Emergency Management Agency (FEMA). These comments are being withheld by FEMA under Exemption 5 of the FOIA, 5 U.S.C. §552(b)(5). You may appeal this denial by writing to: The Director, Office of Public Affairs, FEMA, 500 C Street, SW, Room 806, Washington, DC 20472. The releasable portions of this document are being placed in the PDR.

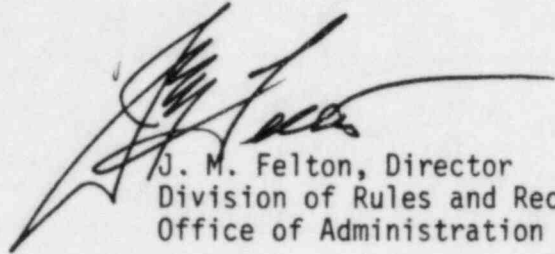
The documents identified on enclosed Appendix G are being withheld. Documents 1, 3, and 4 on Appendix G contain the predecisional legal analyses, opinions and recommendations between the attorneys in the Office of the General Counsel (OGC) and were prepared for OGC's use to track and analyze the Shoreham adjudicatory proceeding. Documents 2 and 15 contain the predecisional legal analyses, opinions and recommendations of OGC for the Commissioners' review of ALAB-780 and for the Commissioners' consideration of the DOE/FEMA authority to implement emergency plans for nuclear power plants. Documents 5, 6, 16, 17, and 18 contain OGC's updates on the development for the Shoreham facility. The monitoring reports inform the Commission on the status of the adjudicatory proceeding. Documents 7 through 13 were prepared by OGC attorneys in the course of the Cuomo v. NRC lawsuit and, therefore, are protected under the attorney work-product privilege because their disclosure would reveal OGC's theory of the ongoing litigation. Documents 14, 19 and 20 contain the predecisional analyses, opinions and recommendations among the Commissioners about scheduling the emergency plan exercise for Shoreham. Document 21 contains the predecisional legal analyses, opinions, and recommendations between OGC attorneys regarding draft answers to questions from Senator Simpson. Because these documents reflect the predecisional process between OGC and the Commissioners, and among the Commissioners, the documents are exempt from mandatory disclosure pursuant to Exemption 5 of the FOIA, 5 U.S.C. 552(b)(5), and the Commission's regulations, 10 C.F.R. 9.5(a)(5). Release of the documents would tend to inhibit the open and frank exchange of ideas essential to the deliberative process. The documents do not contain any reasonably segregable factual portions. The documents are being withheld in their entirety.

Pursuant to 9.15 of the Commission's regulations, it has been determined that the information withheld is exempt from production or disclosure, and that its production or disclosure is contrary to the public interest. The person responsible for the denial of portions of Documents 1 and 2 on Appendix F, and Documents 14, 19 and 20 on Appendix G is John C. Hoyle, Assistant Secretary of the Commission. The person responsible for the denial of portions of Document 3 on Appendix F, and Documents 1 through 13, 15 through 18 and Document 21 on Appendix G is James A. Fitzgerald, Assistant General Counsel.

These denials may be appealed to the Commission within 30 days from the receipt of this letter. Any such appeal must be in writing, addressed to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should clearly state on the envelope and in the letter that it is an "Appeal from an Initial FOIA Decision."

The search for and review of documents that are subject to your request are continuing. We will notify you upon completion of the search and review.

Sincerely,

A handwritten signature in black ink, appearing to be 'J. M. Felton', written over the typed name and title.

J. M. Felton, Director
Division of Rules and Records
Office of Administration

Enclosures: As stated

APPENDIX D
Documents Being Placed in the PDR

1. 04/11/85 Shoreham Litigation Status Report (Updated as of 4/11/85)
(3 pages)
2. 03/26/85 Memo from J. P. Murray to J. M. Taylor and H.R. Denton,
subject: United States District Court's Decision in
Citizens for an Orderly Energy Policy, Inc. v. Suffolk County.
3. 03/04/85 Shoreham Litigation Status Report (Updated as of 3/4/85)
(3 pages)
4. 02/25/85 Shoreham Litigation Status Report (Updated as of 2/25/85)
(3 pages)
5. 02/05/85 Letter from Sen. Moynihan to the Chairman and Commissioners, re:
Shoreham Licensing issues. (2 pages)
6. 12/12/84 Note from Ed Jordan to Richard Krimm transmitting draft memo
from Jordan to Krimm. (4 pages)
7. 04/09/84 Memo from W.J. Dircks to Richard Udell, subject: Shoreham RAC
Review. (1 page)
8. 03/30/84 Letter from Cong. Markey to Palladino, re: risks associated
with low power operation at commercial nuclear power reactors.
(2 pages)
9. Undated Article re: LILCO plan to hold emergency plan drill at
Shoreham. (1 page)
10. Undated Draft memorandum from W. J. Dircks to Chairman Palladino,
Subject: Scheduling of Emergency Plan Exercise for Shoreham,
w/enclosures. (7 pages)

APPENDIX E
Documents ~~Already~~ in the PDR

1. 04/23/84 ASLBP Memorandum and Certification to the Commission, ALAB-769.
(PDR Dock. 50-332)
2. 07/17/84 SECY-84-290, "Needs and Standards for Exemption"
Accession No. 8407250299
3. 07/26/84 SECY-84-290A, "Exemptions." Accession No. 8407300105

APPENDIX F
Documents Being Withheld in Part

1. 07/10/84 Memo from N. J. Palladino to the Commission, "Draft Response to Congressman Markey's letters on Shoreham," w/handwritten notation of J. K. Asselstine. Comm. Asselstine's separate views, an attachment to this memo, are being released.
2. 07/10/84 Memo from N. J. Palladino to the Commission, "Draft Response to Congressman Markey's Letters on Shoreham." Enclosure 2 of this memo is being released.
3. 05/18/84 SECY-84-206, memorandum from H. Plaine, General Counsel, to the Commission, Subject: Shoreham--Appeal Board Certification in ALAB-769. Portions of pages 2, 4, 5, 7, 9, and 14, and all of pages 8, 10, 11, 12 and 13 are being withheld. [The released portions of this memo are in the PDR in file folder FOIA-84-798, Graber.] Attachment 2, draft Commission Memorandum and Order, is being withheld in its entirety. Attachment 3, ALAB-769, Memorandum and Certification to the Commission is being addressed in Appendix E of this letter.
4. Undated Draft memo from E. Jordan to R. Krimm, subject: Shoreham Exercise. [Personal comments by FEMA staff on page 1 are being withheld]

Appendix G

Documents Being Withheld in Their Entirety

1. 9/4/84 Handwritten memo from Mike Blume, OGC, to Karla Smith, OGC, re: Shoreham, (3 pages)
2. 9/12/84 SECY-84-359, memo from James Fitzgerald, Assistant General Counsel, to the Commissioners, Subject: Review of ALAB-780, In the Matter of Long Island Lighting Company (August 15, 1984) (5 pages)
3. 10/5/84 Memorandum from Karla Smith, OGC, to William Briggs, Solicitor, and Mike Blume, OGC, re: Shoreham, (9 pages)
4. 10/11/84 Memorandum from Karla Smith, OGC, to William Briggs, Solicitor, and Mike Blume, OGC, re: Shoreham, (9 pages)
5. 10/24/84 Memorandum from K. Smith, OGC to Mike Blume, OGC, Subject: Shoreham Monitoring Report (1 page); attachment: Draft Monitoring Report for July-September 1984 on Shoreham OL by Karla Smith (6 pages)
6. 11/19/84 Memorandum from K. Smith, OGC to S. Trubatch, OGC, Subject: Shoreham Monitoring Report (1 page); attachment: Draft Monitoring Report for July-September on Shoreham OL by Karla Smith (7 pages)
7. undated Draft portion of a brief by Mike Blume, OGC, re: Cuomo v NRC, (9 pages)
8. undated Draft portion of a brief by Mike Blume, OGC, re: Cuomo v NRC, (13 pages)
9. undated Draft portion of a brief by Mike Blume, OGC, re: Cuomo v NRC, (23 pages)
10. undated Draft portion of a brief by Mike Blume, OGC, re: Cuomo v NRC, (18 pages)
11. 10/16/84 Draft pleading entitled "Respondent U.S. Nuclear Regulatory Commission's Opposition to Emergency Motion for Stay" by Mike Blume, OGC, re: Cuomo v NRC, (21 pages)

Appendix G

12. 12/11/84 Draft pleading entitled "Respondent U.S. Nuclear Regulatory Commission's Opposition to Emergency Motion for Stay" by Mike Blume, OGC, re: Cuomo v NRC (41 pages)
13. 12/11/84 Draft pleading entitled "Respondent U.S. Nuclear Regulatory Commission's Opposition to Emergency Motion for Stay" by Mike Blume, OGC, re: Cuomo v NRC (43 pages)
14. 1/8/84 Note from Thomas M. Roberts, Commissioner, to Chairman Palladino, Commissioners Asselstine, Bernthal and Zech, Subject: Scheduling of Emergency Plan Drill for Shoreham (1 page)
15. 1/23/85 Draft memorandum from Herzel H. E. Plaine, General Counsel, to the Commissioners, Subject: DOE/FEMA Authority to Implement Emergency Plans for Nuclear Power Plants, (8 pages); Attachment 1, Draft letter from Palladino to Senator Simpson, undated, re: DOE/FEMA authority to implement emergency plans for nuclear power plants, (3 pages)
16. 1/24/85 Draft paper entitled "Monitoring Report" re: Shoreham, by Karla Smith, OGC, (8 pages)
17. 1/29/85 Draft paper entitled "Monitoring Report" re: Shoreham, by Karla Smith, OGC, (8 pages)
18. 1/29/85 Paper entitled "Monitoring Report" re: Shoreham, by Karla Smith, OGC, (8 pages)
19. 2/19/85 Memorandum from Thomas M. Roberts, Commissioner, to Chairman Palladino, Commissioners Asselstine, Bernthal, and Zech, Subject: Scheduling of Emergency Plan Exercise for Shoreham, (1 page)
20. 2/22/85 Memorandum from James K. Asselstine, Commissioner to Herzel H. E. Plaine, General Counsel, Subject: Scheduling of Emergency Plan Exercise for Shoreham, (1 page)

Appendix G

21. 3/21/85

Memorandum from Karla Smith, OGC,
to Mike Blume, OGC, Subject: Shoreham--
Answers to Questions from Senator
Simpson (2 pages)