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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
ATOMIC SAFETY AND LICENSING BOARD

DOCKETED
USNRC

Before Administrative Judges 84-160-8 P2:49
James A. Laurenson, Chairman
Dr. Jerry R. Kline
Mr. Frederick J. Shon

OFFICE OF SECRETARY
MARKETING & SERVICE
BRANCH

In the Matter of
LONG ISLAND LIGHTING COMPANY
(Shoreham Nuclear Power Station,
Unit 1)

SERVED AUG 8 1984

Docket No. 50-322-OL-3
(Emergency Planning Proceeding)
August 8, 1984

MEMORANDUM AND ORDER
CONCERNING DEPOSITION OF FRANK N. RASBURY

On July 30, 1984 LILCO filed revised testimony concerning relocation centers. This revised testimony is sponsored by a panel of witnesses including Frank M. Rasbury, Executive Director of the Nassau County Chapter of the American Red Cross. Prior to July 30, 1984, LILCO had not disclosed its intent to call Mr. Rasbury as a witness in this matter. On July 31, 1984, counsel for Suffolk County requested the deposition of Mr. Rasbury for August 3, 1984. On August 1, 1984, counsel for LILCO stated that LILCO would not voluntarily produce Mr. Rasbury for a deposition.

On August 3, 1984, Suffolk County filed a Motion to Compel LILCO to Produce Frank M. Rasbury, a LILCO Witness, for Deposition. In that motion, the County presented an alternative motion that Mr. Rasbury be

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"stricken from LILCO's witness panel and that all testimony sponsored by him be similarly stricken." Motion to Compel at 1. The essence of the County's motion is that LILCO significantly revised the manner in which evacuees are to be relocated and the County has a need to discover the facts underlying the witness's opinion. The County asserts that it acted promptly and that LILCO's last minute notification of Mr. Rasbury's vacation plans "are a contrivance to keep the County from obtaining discovery." Motion to Compel at 9. New York supports Suffolk County's motion.

On August 6, 1984, LILCO filed its Answer Opposing Suffolk County's Motion to Compel. LILCO argues that this motion should be denied for the following reasons: (1) we have already denied as untimely LILCO's request to depose two New York State officials on this issue, thus our denial of this request would place Suffolk County at no greater disadvantage than LILCO has already incurred; (2) the instant situation of a new witness being produced shortly before hearing "is of the County's own making" because on two prior occasions, the State and County drafted letters stating that their facilities were not available as relocation centers; and (3) the County has not justified its need for this deposition and there is no compelling reason why the County cannot develop the facts it needs at the hearing.

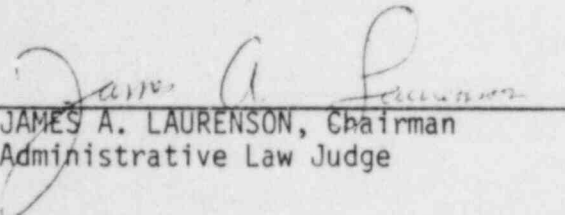
We find that LILCO's arguments are unpersuasive. First, the fact that LILCO's discovery request was denied as untimely is irrelevant here where LILCO does not assert untimeiness as a defense. Indeed, we find that Suffolk County acted promptly in this instance. Second, the issue of the "County's own making" is also irrelevant to a request to depose a

witness prior to hearing. Finally, one of the purposes of discovery is to eliminate a "fishing expedition" at trial. To that end, a deposition should expedite the hearing.

In conclusion, we grant Suffolk County's request to take the deposition of Frank N. Rasbury at a time to be agreed upon by the parties.

IT IS SO ORDERED.

ATOMIC SAFETY AND
LICENSING BOARD



JAMES A. LAURSON, Chairman
Administrative Law Judge

Bethesda, Maryland