

discovery on the Realism contentions, (2) the Board's inquiry is motivated by false assumptions about the behavior of the Intervenor, and (3) the inquiry directed by the Board should not be pursued by LILCO. None of the arguments advanced by the Intervenor is persuasive, and the Motion to Quash should be denied.

II. DISCUSSION

A. The Subpoenas are Reasonable and Require Relevant Evidence

Intervenor suggests that the Board quash the subpoena for Mr. Regan because it would require him to take some time off from a new job. Motion to Quash at 3. In view of the importance of the inquiry before the Board, and the necessity of obtaining all relevant evidence in order to reach a timely and fair result, the relative inconvenience to Mr. Regan is insignificant. Asking him to take a day off his new job in order to provide testimony essential to the disposition of this proceeding can hardly be considered an unreasonable request.

Intervenor also suggests that the subpoenas of both Mr. Regan and Mr. Roberts be quashed because there has been no showing that they have knowledge relevant to this inquiry. The pertinent pleadings, however, demonstrate that LILCO has more than adequately met the test of a showing of general relevance as set out in 10 C.F.R. § 2.720(a). LILCO requested a subpoena for the deposition of Mr. Regan on the grounds that he was the Director of the Suffolk County Division of Emergency Preparedness, and as such responsible for County emergency planning and response, until several months ago. LILCO's Application for Issuance of Subpoenas, June 15, 1988 (LILCO Application) at 1. Furthermore, LILCO has expressed its belief that Mr. Regan served in the preceding agency, the Department of Emergency

Preparedness, from 1982-83. LILCO's Response to Motion to Quash Subpoenas, June 22, 1988 (LILCO Response) at 3. Given Mr. Regan's involvement in Suffolk County emergency planning during the time discovery was being conducted in this proceeding, he should have knowledge which is directly relevant to this inquiry.

Regarding Mr. Roberts, LILCO requested a subpoena for deposition on the grounds that he was, until recently, the Chief Inspector of the Suffolk County Police Department. LILCO Application at 2. LILCO has further stated that Mr. Roberts served in that position for several years before his retirement. LILCO Response at 3. Considering the necessity for involvement of the local police in the development of a County emergency plan, it is reasonable to conclude that Mr. Roberts would have knowledge about the existence of the County of Suffolk Emergency Operation Plan during the time over which this inquiry centers.

II. The Board has Jurisdiction Over an Inquiry into the Conduct of the Intervenors.....

Intervenors are wrong in arguing that the Board does not have jurisdiction over an inquiry into the question of whether their conduct has compromised the integrity of this proceeding. Most importantly, their conclusion is premised on the erroneous assumption that the Board has disposed of the realism contentions. As the Board emphasized during the telephone conference of 11:00 am on June 24, 1988, no decision has been reached as to which sanction it will impose with regard to those contentions; either dismissal or a ruling in favor of LILCO Tr.

20904-05. ^{2/} Furthermore, the Board has not yet decided whether the appropriate sanctions should extend to other contentions at issue, as requested by LILCO. The decision which is ultimately reached by the Board will depend upon the facts elicited by the inquiry into the extent of the Intervenors noncompliance with discovery orders.

As the Appeal Board has stated in regard to whether Licensing Board had disposed of the subject realism contentions:

Any such conclusion, however, appears to be tentative, for the Board has not yet determined the actual scope and rationale for its "conclusion."

Order, June 27, 1988 (unpublished) at 1-2. Thus, there is no basis for the Intervenors' argument that the Board has no jurisdiction to inquire into the conduct of Intervenors.

C. The Purpose of the Board's Inquiry is to Discover Whether the Integrity of this Proceeding has Been Compromised

Intervenors' claim that the Board's inquiry is motivated by false assumptions about their behavior is specious. The purpose of the inquiry is simply to learn whether their behavior warrants the imposition of sanctions, and if so, which ones. LILCO has raised serious questions about Intervenors compliance with discovery orders throughout the course

^{2/} The fact that the Board has not yet disposed of any of the pending issues, including realism, distinguishes this factual situation from that in Philadelphia Electric Company (Limerick Generating Station, Units 1 and 2) CLI-86-18, 24 NRC 501 (1986). In that case the Appeal Board had issued its final decision on matters germane to the motion to reopen and grounded its jurisdiction over the integrity of the decision making process on its residual power, not on its authority over pending issues. In reversing that decision, the Commission only found that the jurisdictional premise selected by the Appeal Board was unsupported. 24 NRC at 503-4.

of this proceeding which in turn have prompted factual disputes between the parties. For example, LILCO claims that the County Operations Plan was not produced in response to its 1982-83 discovery requests, while Intervenor claim that it was. See Motion to Vacate at 7. The only way for the Board to learn the truth of the matter is to order discovery. Even if that discovery vindicates the Intervenor, they cannot complain that it was not conducted in order to resolve a legitimate dispute between the parties.

IV. The Procedure Used to Conduct the Inquiry is a Appropriate

The determination of how this inquiry should be conducted falls within the Board's authority under 10 C.F.R. § 2.718 to regulate the course of the hearing and the conduct of the participants, and the Board's duty to conduct a fair and impartial hearing. In this situation, having LILCO conduct depositions on the the question of whether Intervenor have complied with discovery orders need not impair the fairness or the impartiality of this proceeding. While LILCO certainly has an interest in pursuing the question of whether Intervenor have engaged in conduct which would warrant sanctions, the Intervenor may object to any improper questions and seek relief from the Board. Moreover, LILCO is not being vested with any decision-making or prosecutorial power. Despite Intervenor's attempts to style this proceeding as criminal in nature, with LILCO acting as a prosecutor, it is simply a civil proceeding in which LILCO is being authorized to conduct depositions to develop pertinent information. The ultimate determination as to what sanctions should be

imposed will be made by the Board, after hearing evidence from all parties. ^{3/}

III. CONCLUSION

The subpoenas issued for Mr. Regan and Mr. Roberts are reasonable and necessary in order to obtain evidence relevant to this proceeding. The arguments advanced by Intervenorors in support of their Motion to Quash are without merit and should be rejected.

Respectfully submitted,



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Dated at Rockville, Maryland
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^{3/} During the June 24 teleconference, Intervenorors expressed their willingness to submit to depositions conducted by the Board. Tr. 20901-02. Should the Board choose to adopt that suggestion in order to expedite this proceeding and avoid any more discovery impasses, this challenge to the subpoenas would be moot.

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