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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

'88 JUN 30 P2:31

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

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

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} Docket No. 50-322-0L-3
(Emergency Planning)

NRC STAFF RESPONSE TO BOARD REQUEST FOR DEPONENTS
FOR PROPOSED DISCOVERY SANCTION INQUIRY

During a conference call on June 23, 1988, the Board considered various pleadings filed by Intervenors contesting Board ordered discovery and LILCO's request for an additional subpoena and a revised schedule for previously ordered depositions. Tr. 20896-20903. ^{1/} The Board reiterated its June 17 ruling (Tr. 20872) that a hearing on the realism contentions (Contentions 1-2, 4-10) would not proceed because the Board would (1) impose sanctions on Intervenors which would dispose of the realism contentions and (2) would retain jurisdiction over the issue as to whether the recently produced Suffolk County Operations Plan or other plans should have been produced during discovery. Tr. 20892; 20905. The Board also clarified its earlier rulings that the purpose of any inquiry into the failure to comply with discovery was to enable the Board to determine whether the integrity of the NRC's rules of practice had been compromised and what sanction would be appropriate. Tr. 20875 76; 20892-93; 20904-05.

1/ LILCO Response to Intervenors' Motion to Vacate, June 23, 1988, at 23 ("LILCO Vacate Response").

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In light of the Intervenor's offer to make certain individuals available for Board conducted depositions (Tr. 20901-02; 20905-07), the Board asked the parties to provide their views on the proper deponents for a possible Board conducted deposition proceeding to determine the circumstances surrounding the nonproduction of State or County emergency planning documents and access to and knowledge concerning such plans. Tr. 20923-25. The Staff suggestions for that inquiry are as follows:

1. It is inappropriate for the Intervenor to dictate who should be made available for discovery. Opposing parties have a right to identify those parties they believe appropriate for deposition. See 10 C.F.R. § 2.740a. ^{2/} Thus, LILCO should be permitted to question those it formerly noticed for deposition. Any deposition concerning the failure to produce documents should include the individuals Intervenor claim are cognizant about document production during 1982-83 (F. Jones and J. Billello) and 1988 (for Suffolk County - F. Petrone, R. Jones and J. Billello; for New York State - DeVito). ^{3/} The Board should also, however, expand the list, as necessary, to include individuals who were knowledgeable about the existence of emergency plans during the 1983-88 time period. The list of deponents proposed by LILCO is consistent with that goal, but the Board may also find it necessary, in order to determine the State's responsiveness to discovery inquiries since it entered the proceeding in 1984, to question a cognizant official from the New York National Guard, Reserve or Militia who

^{2/} Nothing in Young vs. United States, 107 S. Ct. 2124 (1987) would preclude LILCO from questioning these individuals.

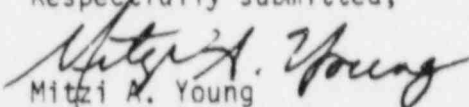
^{3/} See Governments' Motion for Licensing Board to Vacate June 17 Order, June 20, 1988, at 11-12 n.9. In order to avoid unnecessarily protracting the sanction inquiry, the Board may wish to begin with the individuals proffered by Intervenor (including the affidavit of counsel) and question the other remaining deponents as necessary.

is knowledgeable about emergency/civil defense plans for counties in proximity to Shoreham (e.g., Nassau, Suffolk, Westchester, Dutchess, and Putnam), which might provide a basis for a response to an accident at Shoreham.

2. The Board should issue a written order requiring the depositions of the individuals listed in Attachment 3 of LILCO Vacate Response and set forth the purpose of such inquiry. This would include signing a subpoena for Frank Jones, former Deputy Suffolk County Executive, and reissuing the subpoenas for William Regan, former Director of the County's Division of Emergency Preparedness, and Richard Roberts, former Assistant Chief Inspector of the County's Police Department.

In sum, the Staff believes that Intervenor's' past defiance of Board ordered discovery on realism issues should result in the dismissal of the realism contentions ^{4/} and it is not necessary to develop a further record concerning Intervenor's' failure to fully execute their responsibilities as parties to NRC proceedings. Should the Board wish to inquire further to see whether dismissal of the realism contentions, or additional sanctions, are appropriate, the inquiry into the failure to identify or produce emergency plans which could be used for Shoreham emergencies should include the individuals mentioned above.

Respectfully submitted,


Mitzi A. Young
Counsel for NRC Staff

Dated at Rockville, Maryland
this 28th day of June, 1988

4/ See NRC Staff Comments On The Proposed Imposition Of Sanctions On Intervenor's For Failure To Comply With Discovery Orders, June 15, 1988.

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CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF RESPONSE TO BOARD REQUEST FOR DEPONENTS FOR PROPOSED DISCOVERY SANCTION INQUIRY" in the above-captioned proceeding have been served on the following by deposit in the United States mail, first class or, as indicated by an asterisk, through deposit in the Nuclear Regulatory Commission's internal mail system or, as indicated by double asterisks, by telecopier, this 28th day of June 1988.

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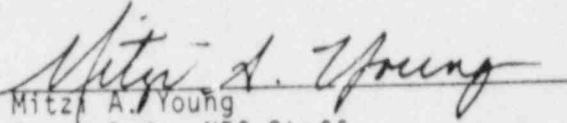
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