

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

**RAS 11644**

**DOCKETED 05/15/06**

COMMISSIONERS

**SERVED 05/15/06**

Nils J. Diaz, Chairman  
Edward McGaffigan, Jr.  
Jeffrey S. Merrifield  
Gregory B. Jaczko  
Peter B. Lyons

\_\_\_\_\_  
In the Matter of )  
 )  
PA'INA HAWAII, LLC )  
 )  
(Material License Application) )  
\_\_\_\_\_ )

Docket No. 30-36974-ML

**CLI-06-13**

**MEMORANDUM AND ORDER**

This adjudicatory proceeding stems from Pa'ina Hawaii, LLC's ("Pa'ina") application for a materials license to construct and operate an industrial irradiator at the Honolulu International Airport. On October 3, 2005, Concerned Citizens of Hawaii ("Petitioner") requested intervention and a hearing to challenge Pa'ina's application. On January 24 and March 24, 2006, the Licensing Board issued two orders which, collectively, admitted five of Petitioner's contentions,<sup>1</sup> found that Petitioner had standing, and granted its requests for intervention and a hearing.<sup>2</sup>

The Commission's procedural rules allow an applicant (here Pa'ina) the right to file an interlocutory appeal of board orders admitting contentions, but only if the appeal challenges the

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<sup>1</sup> Safety Contentions 4, 6 and 7, Environmental Contention 1, and part of Environmental Contention 2.

<sup>2</sup> LBP-06-4, 63 NRC 99 (2006) (concerning environmental contentions and standing); LBP-06-12, 63 NRC \_\_\_\_ (slip op. March 24, 2006) (concerning safety contentions).

admissibility of *all* admitted contentions.<sup>3</sup> Pa'ina's instant appeal challenges the admission of *only three* contentions.<sup>4</sup> Its appeal is thus facially deficient and we dismiss it on that ground. Of course, Pa'ina may, if it wishes, renew its challenge to the admission of the three contentions later in this proceeding, once the Board has issued its Initial Decision.

IT IS SO ORDERED.<sup>5</sup>

For the Commission

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Annette L. Vietti-Cook  
Secretary of the Commission

Dated at Rockville, Maryland,  
this 15<sup>th</sup> day of May, 2006.

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<sup>3</sup> 10 C.F.R. § 2.311(c). See also *Exelon Generation Co., LLC* (Early Site Permit for the Clinton ESP Site), CLI-04-31, 60 NRC 461, 468 (2004). This procedural requirement is well-established in Commission jurisprudence and in fact long precedes the promulgation of our current Rule 2.311(c), *supra*. See 10 C.F.R. § 2.714a(c) (2004) (rescinded); *Northern States Power Co.* (Tyrone Energy Park, Unit 1), ALAB-492, 8 NRC 251, 252 (1978) (challenges to the admissibility of less than all admitted contentions must "abide the end of the case").

<sup>4</sup> Safety Contention 7 and Environmental Contentions 1 and 2.

<sup>5</sup> The Commission has recently received from Pa'ina a motion to consolidate the instant appeal with a second appeal that Pa'ina filed May 8, 2006. The issuance of today's order renders Pa'ina's motion moot. The Commission will address Pa'ina's second appeal in due course.

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In the Matter of )  
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PA'INA HAWAII, LLC ) Docket No. 30-36974-ML  
 )  
 )  
(Honolulu, Hawaii Irradiator Facility) )

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing COMMISSION MEMORANDUM AND ORDER (CLI-06-13) have been served upon the following persons by U.S. mail, first class, or through NRC internal distribution.

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[Original signed by Evangeline S. Ngbea]

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Office of the Secretary of the Commission

Dated at Rockville, Maryland  
this 15<sup>th</sup> day of May 2006