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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges:

Thomas S. Moore, Chairman
Dr. Paul Abramson
Dr. Anthony J. Baratta

In the Matter of	Docket No. 30-36974-ML
PA'INA HAWAII, LLC	ASLBP No. 06-843-01-ML
(Material License Application)	June 22, 2006

MEMORANDUM AND ORDER
(Ruling on Admissibility of Two Amended Contentions)

I. Introduction

Before the Board is a motion by the Applicant, Pa'ina Hawaii, LLC, to dismiss two of the previously admitted safety contentions, safety contentions 4 and 6,[1] and a request by the Intervenor, Concerned Citizens of Honolulu, for leave to amend these contentions.[2] On January 24, 2006, we issued LBP-06-04, 63 NRC 99 (2006), granting the hearing request of the Intervenor, Concerned Citizens of Honolulu, on the application of Pa'ina Hawaii, LLC to build and operate a commercial pool-type irradiator, and admitting two environmental contentions. Having bifurcated the admissibility of contentions portion of the proceeding to develop procedures for dealing with portions of the license application not publicly disclosed, we

[1] See Applicant Pa'ina Hawaii, LLC's Motion to Dismiss Safety Contentions #4 and #6 (April 18, 2006) [hereinafter Applicant's Motion to Dismiss].

[2] See Intervenor Concerned Citizens of Honolulu's Motion for Leave to Amend Safety Contentions #4 and #6 (May 1, 2006) [hereinafter Intervenor's Motion to Amend].

addressed the remaining safety contentions in an order dated March 24, 2006.[3] Two of the three admitted safety contentions were admitted as contentions of omission challenging the complete absence of outlines of proposed emergency procedures in the event of a prolonged loss of electricity, safety contention 4, and in the event of a natural disaster, safety contention 6.

Prior to our order addressing the admissibility of the proffered safety contentions, the NRC Staff issued a letter to the Applicant outlining areas of deficiency in the application including the lack of emergency procedure outlines for natural disasters.[4] Over a month later, on March 9, 2006, the Applicant, in response to the Staff's letter, submitted its outline of emergency procedures for natural disasters.[5] Following the March 24, 2006 order admitting three safety contentions, the Applicant submitted to the NRC Staff its outline of emergency procedures for prolonged loss of electrical power.[6] On April 26, 2006, we held a telephone conference regarding, among other issues, scheduling matters for the remainder of this proceeding.[7] During that scheduling conference we established a time-frame for the filing of

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[3] See LPB-06-12, 63 NRC __ (Mar. 24, 2006).

[4] See Letter from NRC Staff to Pa'ina Hawaii, LLC (Jan. 25, 2006) ADAMS Accession No. ML060260023.

[5] See Letter from Pa'ina Hawaii, LLC to NRC Staff (Mar. 9, 2006) ADAMS Accession No. ML060730528.

[6] See Letter from Pa'ina Hawaii, LLC to NRC Staff (Mar. 31, 2006) ADAMS Accession No. ML061000640.

[7] See Licensing Board Order (Establishing a Schedule) (May 1, 2006) (unpublished) [hereinafter May 1 Scheduling Order].

new or amended contentions stating, "[l]ate-filed contentions shall be filed within 30 days of the initiating action, event or document underlying the late-filed contention."[8]

The Applicant now claims that its submission of the proposed outlines of emergency procedures for natural disasters and prolonged loss of electricity cure the omissions that gave rise to the Intervenor's safety contentions 4 and 6. The Intervenor opposes the dismissal of both the contentions and concurrently seeks leave to amend them. Because the disposition of the motion to dismiss and the motion to amend are interrelated, we address them together.

Initially, it is apparent that the Intervenor misapprehends pertinent parts of our March 24, 2006 ruling admitting portions of safety contentions 4 and 6. In admitting the Intervenor's fourth safety contention, we stated the "contention is admitted as a contention of omission, i.e., the application fails to describe emergency procedures involving a prolonged loss of electricity."[9] Again, in admitting safety contention six, we concluded that the "contention is admitted as a contention of omission, i.e., the application lacks emergency procedures for tsunamis and hurricanes as required by 10 C.F.R. § 36.53(b)(9)."[10] Contrary to the Intervenor's claims in its opposition to the motion to dismiss the contentions[11] and its motion for leave to amend the contentions[12] and, as is obvious from our ruling, we did not admit any of the unsupported, ill-defined and extraneous portions of the proffered fourth contention and only admitted that part

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[8] Tr. at 46. The Board reiterated its position in the Scheduling order of May 1, 2006, stating, "[a]bsent extraordinary circumstances, a late-filed contention filed beyond the 30-day period will be found to lack good cause for the untimely filing."

[9] LBP-06-12, 63 NRC __, __ (slip op. at 17).

[10] Id. at 21.

[11] See Intervenor Concerned Citizens of Honolulu's Opposition to Applicant's Motion to Dismiss Safety Contention's #4 and #6 (May 1, 2006) at 4-6 [hereinafter Intervenor's Opposition to Motion to Dismiss].

[12] See Intervenor's Motion to Amend.

of the contention addressing the complete absence from the application of emergency procedures for a prolonged loss of electricity.[13] Similarly, as even a cursory reading of our decision shows, our ruling on the sixth contention only admitted it as a contention of omission because the application lacked any emergency procedures addressing tsunamis and hurricanes.[14] Indeed, as filed, the contention addressed no other subject.[15] Our ruling was clear, unambiguous and unequivocal and no further discussion is necessary.

Our earlier rulings outlined the requirements for the general admissibility of contentions in 10 C.F.R. § 2.309(f)(1)(i)-(vi), and while that discussion will not be repeated here, we assess the admissibility of the proffered amended contentions against those same requirements.[16] Once a proceeding has been initiated, a party wishing to submit new or amended contentions must also satisfy the requirements of 10 C.F.R. § 2.309(f)(2) by showing that: (i) the information upon which the amended or new contention is based was not previously available; (ii) the information upon which the amended or new contention is based is materially different than information previously available; and (iii) the amended or new contention has been submitted in a timely fashion based on the availability of the subsequent information. New or amended contentions that are not filed in a "timely fashion" under 10 C.F.R. § 2.309(f)(2)(iii) must be evaluated using the applicable factors set forth in 10 C.F.R. § 2.309(c): (i) good cause, if any, for the failure to file on time; (ii) the nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (iii) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; (iv) the possible

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[13] See LBP-06-12, 63 NRC __, __ (slip op. at 13-17).

[14] See id. at 19-21.

[15] See Request for Hearing by Concerned Citizens of Honolulu (Oct. 3, 2005) at 15.

[16] See LBP-06-04, 63 NRC 99, 107-108 (2006).

effect of any order that may be entered in the proceeding on the requestor's/petitioner's interest; (v) the availability of other means whereby the requestor's/petitioner's interest will be protected; (vi) the extent to which the requester's/petitioner's interests will be represented by existing parties; (vii) the extent to which the requestor's/petitioner's participation will broaden the issues or delay the proceeding; and (viii) the extent to which the requestor's/petitioner's participation may reasonably be expected to assist in developing a sound record.[17]

II. Contentions

Amended Contention 4

Proffered amended safety contention 4 is entitled, "Pa'ina's Proposed Emergency Procedures for Prolonged Electricity Loss Are Inadequate."[18] Initially, the Intervenor asserts that the proposed emergency procedures are "grossly inadequate 'to protect health and minimize danger to life or property,' as required by 10 C.F.R. § 30.33(a)(2)."[19] Focusing on concerns related to a hypothetical loss of a functioning Area Radiation Monitor ("ARM") and/or Water Radiation Monitor ("WRM") during a prolonged loss of electricity, the Intervenor describes a variety of perceived dangers and claims that the Applicant's outlined procedures are incapable of addressing such dangers.[20] Specifically, the Intervenor questions whether "there is any back-up power supply or batteries for these monitors," and expresses concern regarding the function of the monitors during a power surge after power is restored.[21] According to the Intervenor, without a properly functioning ARM and/or WRM the Applicant

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[17] 10 C.F.R. § 2.309(c).

[18] Intervenor's Motion to Amend at 6.

[19] Id. at 5-6 (quoting 10 C.F.R. § 30.33(a)(2)).

[20] See id. at 6-7.

[21] Id. at 6.

cannot monitor and detect abnormal radiation levels, "detect radiation leaks that trigger automatic shut-off of product conveyance," or accurately test pool water for radiation, and thus, would violate 10 C.F.R. §§ 36.29(b), 36.29(a), and 36.83(a)(7), respectively.[22] The Intervenor then asserts that without provisions for backup power and/or monitors the emergency procedures are deficient, and points to the Statement of Consideration for 10 C.F.R. § 36.53(b), which states that emergency procedure outlines in an application must "specifically state the radiation safety aspects of the procedures," as support for its assertion.[23]

The Applicant objects to the admission of the Intervenor's proposed amended contentions, essentially arguing that the motion to amend was filed impermissibly late and that the contentions fail to meet the admissibility requirements of 10 C.F.R. § 2.309(f)(1).[24] Specifically, the Applicant claims that the two outlines submitted by Pa'ina Hawaii that triggered the Intervenor's motion to amend "were placed on ADAMS on March 9, 2006 and March 31, 2006, respectively."[25] Thus, according to the Applicant, the Intervenor's motion filed after 5:00 p.m. (Hawaii Standard Time) on May 1, 2006, was filed more than 30 days after the initiating event and impermissibly late pursuant to our instructions and 10 C.F.R. § 2.309(c) and (f). Additionally, the Applicant suggests that the Intervenor's amended contentions are not based on new information in the March 9 and March 31 outlines, but rather on information

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[22] Id. at 7.

[23] Id. at 7-8 (quoting 58 Fed. Reg. 7715, 7717 (Feb. 9, 1993)).

[24] See Applicant Pa'ina Hawaii, LLC's Opposition to Intervenor Concerned Citizens of Honolulu's Motion for Leave to Amend Safety Contentions #4 and #6 (May 10, 2006) at 2-8 [hereinafter Applicant's Response]. While the Applicant lists five separate arguments, the first two both address timing-related issues, and the remaining three focus on various aspects of section 2.309(f)(1). The Applicant's response presents a single set of arguments applied to both amended contentions, accordingly we discuss its responses to amended contention 4 and 6 simultaneously.

[25] Applicant's Response at 2.

available from the outset in the application, making the amended contentions "much too late."[26] For an example, the Applicant cites the discussion in amended contention 4 regarding the lack of back-up power supplies or batteries for the ARM and/or WRM and argues that the purported "absence of any back-up power supply or batteries for the monitors" in the proposed design and equipment has been clear for over 10 months.[27]

Turning to the substance of the contentions, the Applicant argues that the emergency procedures provided fully satisfy the regulatory requirements for outlines and that, contrary to the Commission's intent, the Intervenor is arguing for detailed or "complete procedures."[28] According to the Applicant, the amended contentions address issues that are post-licensing repair issues that are outside the scope of this proceeding.[29] In conclusion, the Applicant argues that the contentions fail to present a specific statement of an issue of law or fact, are outside the scope of the proceeding, are not material to the findings the NRC must make, and fail to provide sufficient information to show that genuine dispute exits, in violation of 10 C.F.R. § 2.309(f)(1)(i), (iii), (iv), and (vi).[30]

The Staff does not challenge the "timeliness" of amended contention 4.[31] Acknowledging that the amended contention was filed twenty-one days after the triggering document was published on ADAMS, the Staff argues that the contention satisfies 10 C.F.R.

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[26] Id.

[27] Id. at 3.

[28] Id. at 4.

[29] See id. at 6-7.

[30] See id. at 8.

[31] See Staff Response to Intervenor Concerned Citizens of Honolulu's Motion for Leave to Amend Safety Contentions #4 and #6 (May 30, 2006) at 5 [hereinafter Staff Response].

§ 2.309(f)(2)(iii), and indicates that the information in the underlying document was not previously available and is materially different than information originally submitted thus satisfying the remaining factors of 10 C.F.R. § 2.309(f)(2).[32]

However, the Staff claims that the contention fails to demonstrate that a genuine dispute exists on a material issue of fact or law, as required by 10 C.F.R. § 2.309(f)(1)(vi), and has failed to provide sufficient facts and expert opinion to support its position, as required by section 2.309(f)(1)(v).[33] Noting that 10 C.F.R. § 36.13(c) requires only outlines of emergency procedures listed in 10 C.F.R. 36.53(b), the Staff argues that the Intervenor has failed to identify "the absence of radiation safety provisions from the procedure outline."[34] The Staff argues that the Intervenor has failed to challenge the specific radiation safety measure proposed by the Applicant to respond to the prolonged loss of electricity, i.e., the use of handheld batter-powered survey monitors to monitor radiation levels. Thus, according to the Staff, the amended contention's focus on the adequacy of the ARM and/or WRM rather than the proposed use of handheld survey monitors does not demonstrate that a genuine dispute exists with the Applicant on a material issue of law or fact.[35] Further, the Staff alleges that the Intevenor's reliance on the declaration of Dr. Resnikoff, without more, is insufficient to satisfy 10 C.F.R. § 2.309(f)(1)(v)'s requirement that a contention be supported by sufficient facts or expert opinion.[36]

Turning first to the requirements of 10 C.F.R. § 2.309(f)(2), we find that the proffered contention 4 meets all of the prescribed requirements and, as such, the requirements of 10 C.F.R. § 2.309(c) are inapplicable. The Intervenor's amended contention was filed in response

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[32] See id.

[33] See id. at 5-6.

[34] Id. at 6.

[35] See id. at 7; 10 C.F.R. § 2.309(f)(1)(vi).

[36] See id. at 7.

to the Applicant's outline of its planned procedures for a prolonged loss of electricity submitted on March 31, 2006. The Applicant had not previously submitted any information related to emergency procedures for prolonged loss of electricity, and as such, the amended contention is based on previously unavailable and materially different information. See 10 C.F.R. § 2.309(f)(2)(i)-(ii). The document was not served upon the Intervenor or made available by any other manner until its publication on NRC's ADAMS system on April 10, 2006. On May 1, 2006, the Intervenor filed its motion to amend contentions 4 and 6. Thus, the motion was filed within the prescribed time-frame for "presumptively timely" amended contentions and meets the final requirement of 10 C.F.R. § 2.309(f)(2). See 10 C.F.R. § 2.309(f)(2)(iii).

By alleging that the proposed outline of emergency procedures mandated by 10 C.F.R. § 36.53(b) are insufficient to "'protect health and minimize danger to life or property,' as required by 10 C.F.R. § 30.33(a)(2)," the amended contention has set forth the specific issue of law and fact that it intends to raise, as required by section 2.309(f)(1)(i).[37] The Intervenor's assertion that provisions outlining the use of backup power and backup radiation monitors are a necessary and missing component of the proposed emergency procedure outline provides the necessary basis for the amended contention, satisfying 10 C.F.R. § 2.309(f)(1)(ii). Section 36.13(c) requires that an "application must include an outline of the written operation and emergency procedures listed in § 36.53 that describes the radiation safety aspects of the procedures." Therefore, a contention challenging the adequacy of such outlines is within the scope of this proceeding and raises an issue that is material to findings the NRC must make in this proceeding. See 10 C.F.R. § 2.309(f)(1)(iii) & (iv). The proposed contention does not, however, provide sufficient information to demonstrate that a genuine dispute exists. The Intervenor and its expert have proposed a list of changes, such as backup ARMs and/or WRMs

[37] Intervenor's Motion to Amend at 5-6.

and backup power supplies, that it argues should be incorporated into the proposed application, but fails to challenge or dispute the procedures specifically outlined by the Applicant with respect to 10 C.F.R. § 36.53(b)(6). The Applicant's emergency procedure states that it intends to rely on hand-held, battery-operated survey monitors during a loss of power event to fulfill the essential radiation safety function of monitoring radiation levels in the Restricted Area during a loss of power event. The Intervenor does not present facts or arguments to support the proposition that the use of handheld monitors does not satisfy the regulatory requirements, and as such, has failed to proffer an admissible contention. See 10 C.F.R. § 2.309(f)(1)(vi).

Amended Contention 6

As with amended contention 4, the Intervenor prefaces its discussion of amended contention 6, entitled "Pa'ina's Proposed Emergency Procedures for Natural Disasters Would Not Protect the Public or Environment from Harm," by asserting that the proposed emergency procedures are "grossly inadequate 'to protect health and minimize danger to life or property,' as required by 10 C.F.R. § 30.33(a)(2)."[38] The amended contention then describes a number of possible consequences from a natural disaster, such as a tsunami or hurricane, at the proposed irradiator site. The potential consequences include a cracked pool lining, loss of radiation monitors, exposures to the public and emergency responders, loss of compressed air supply, and clogged ion-exchange filters. Turning to the application, the Intervenor insists that the proposed procedures "fail to provide adequately for any of these situations."[39] Specifically addressing procedures involving emergency responders, the Intervenor quotes NUREG-1556 at 8-50, stating that the notification and/or training of emergency responders "regarding the

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[38] Intervenor's Motion to Amend at 5-6 (quoting 10 C.F.R. § 30.33(a)(2)).

[39] Intervenor's Motion to Amend at 9.

unique concerns and hazards associated with emergencies at the irradiator facility," is required.[40]

The Staff opposes the admission of amended contention 6 and argues that Intervenor failed to file its amended contention in a timely fashion pursuant to 10 C.F.R. § 2.309(f)(2)(iii). Furthermore, the Staff insists that the Intervenor has not demonstrated that the requisite "good cause" exists for the submission of nontimely filings.[41] According to the Staff, the Intevenor's amended contention was filed 48 days after the public availability date of the document that triggered the amended contention, and therefore, the contention does not satisfy our 30 day rule for the submission of amended contentions. Despite its assertion that the amended contention was impermissibly late, the Staff also addresses the general contention admissibility standards of 10 C.F.R. § 2.309(f)(1) and asserts that the amended contention fails to satisfy the later requirements. Specifically, the Staff claims that the amended contention has failed to establish that a genuine dispute exists in that procedures addressing events such as a cracked pool lining, loss of radiation monitors, exposures to the public and emergency responders, loss of compressed air supply, or a clogged ion-exchange filters are not required at the application stage by 10 C.F.R. §§ 36.13 or 36.53(b). See 10 C.F.R. § 2.309(f)(1)(vi). As with amended contention 4, the Staff also challenges the Intervenor's reliance on the declaration of Dr. Resnikoff, claiming that the declaration, without more, does not provide sufficient facts or expert opinion to support the amended contention.[42] See 10 C.F.R. § 2.309(f)(1)(v).

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[40] Id. 9-10.

[41] See Staff Response at 8-9.

[42] See id. at 10-11.

First, we must assess amended contention 6 pursuant to 10 C.F.R. § 2.309(f)(2) and (c). As acknowledged by the Staff,[43] by basing the challenge on the Applicant's March 9, 2006 response to a Staff deficiency letter regarding emergency procedures for natural disasters, the Intervenor has satisfied 10 C.F.R. § 2.309(f)(2)(i) & (ii) in that the particular information was submitted for the first time in Applicant's response (i.e., previously unavailable) and the information submitted by the Applicant was related to a heretofore unaddressed topic (i.e., materially different information). While the Applicant's response to the Staff's deficiency letter was filed on March 9, 2006, the document was not placed on the publicly available ADAMS system until March 14, 2006.[44] The Intervenor's May 1, 2006 motion to amend the contentions was filed 48 days after the triggering document was made publicly available, and thus fails to meet the 30 day window granting presumptive timeliness set in our April 26, 2006 pre-hearing conference.

Because the failure to satisfy the timeliness requirement 10 C.F.R. § 2.309(f)(2)(iii) does not preclude the admission of the amended contention, we must also assess the amended contention according to eight requirements in 10 C.F.R. § 2.309(c) for "nontimely" filings. Concerned Citizens of Honolulu has been granted a hearing on safety and environmental issues distinct from the amended contention and is the only intervenor admitted to this proceeding. Thus, we agree with the Staff regarding the inapplicability of factors (ii) - (vi) and

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[43] See id. at 8.

[44] The Applicant suggests that the March 9, 2006 letter and the March 31, 2006 letter were placed on ADAMS on March 9th and March 31, respectively, and bases its timeliness calculations using those dates. The Applicant, however, is working from false assumptions. Submission of a document to the NRC does not result in immediate public availability and thus does not trigger submission deadlines. See Applicant's Response at 2. If the Applicant had served the Intervenor with the documents in question on the date submitted, the Intervenor's duty to file amended contentions would have been triggered.

(viii) of 10 C.F.R. § 2.309(c).[45] The Intervenor's continuing party-status suggests that the admission of an additional amended contention would not significantly delay the proceeding; however, amended contention 6 would represent an outlier among the remaining amended contentions which are linked by their common association with the forthcoming environmental assessment. As such, the remaining factor, 10 C.F.R. § 2.309(c)(vii), examining the extent to which the Intervenor's participation will broaden the issues or delay the proceeding, does not tip the balance significantly in either direction.

While our analysis of the proposed amended contention pursuant 10 C.F.R. § 2.309(c) amounts to a balancing test, each factor is not necessarily applicable to the present case, nor is it necessary or appropriate to assign each factor equal weight. Rather, the first factor, "good cause," is the most important factor and is focus of our analysis.[46] Addressing the good cause factor, the Intevenor listed only the existence of newly available information as providing good cause for its nontimely filing.[47] While new information may trigger the right to file new or amended questions, it does not alleviate the responsibility to file such contentions promptly, or to offer an explanation of why it had good cause for failing to do so. The information at issue was available to the Intervenor on March 14, 2006, via the publicly available and searchable ADAMS system. It is unfortunate that both the NRC Staff and the Applicant chose not to inform the Intervenor of the existence of the document in question, but the Intevenor, nonetheless, has a responsibility to diligently monitor ADAMS if it desires to proffer new or amended contentions as new information becomes available. We recognize that the Intevenor's counsel may have

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[45] See Staff Response at 4.

[46] See Dominion Nuclear Connecticut, Inc. (Millstone Nuclear Power Station, Units 2 and 3), CLI-05-24, 62 NRC 551, 564 (2005); State of New Jersey (Dep't of Law and Public Safety), CLI-93-25, 38 NRC 289, 296 (1993).

[47] See Intervenor's Motion to Amend at 11.

been facing a multitude of impending deadlines and lacked the ability personally to monitor ADAMS for a portion of the prescribed 30 day window. Nevertheless, it is the Intervenor's responsibility to balance such pressures and determine what tasks require the highest priority. Further, the Intervenor is always free to seek relief from us by filing a motion for an extension of time. Accordingly, the Intervenor's description of events surrounding its nontimely filing do not represent a valid demonstration of "good cause." Thus, amended contention 6 is inadmissible.[48]

Having found the amended contentions to be inadmissible, we turn to the Applicant's motion to dismiss. The Intervenor, in its opposition to the Applicant's motion to dismiss, asserts that the motion is untimely in that it did not comply with 10 C.F.R. § 2.323(a)'s mandate that a "motion must be made no later than ten (10) days after the occurrence or circumstance from

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[48] Because we find amended contention 6 to be untimely, we need not address the substance of the Intervenor's argument regarding the sufficiency of the outlines of the emergency procedures for natural disasters. We note that, in the circumstances presented, it appears that the dispute regarding the sufficiency of the outlines would be most appropriately dealt with in the context of a motion for summary disposition, as it is seems to be a predominately factual issue.

Additionally, while it does not affect our timeliness analysis, the Staff's position regarding the notification and/or training of emergency responders, necessitates a brief comment. The Staff correctly states that this requirement is found in NUREG-1556, which is a staff guidance document that does not impose binding regulatory requirements. The presence of the requirement in the Staff Guidance document does not undercut its relevance to this proceeding; rather, it further demonstrates the obvious if not universal importance of having a plan to notify and/or train offsite emergency responders. While the NUREG may not be "binding," 10 C.F.R. § 36.13's requirement to include outlines of emergency procedures "that describe[] the radiation safety aspects of the procedures," is a necessary prerequisite for the approval of the proposed license. Furthermore, when an applicant proposes to construct and operate an irradiator at ocean's-edge that may be subject to the threats of hurricanes and tsunamis, common sense suggests that the classification of the notification and/or training of emergency responders is a necessary radiation safety aspect of the proposed emergency procedures. Full procedures for dealing with an emergency related to a natural disaster are not required, and the Commission has acknowledged the need for flexibility in the modification and amendment of the procedures at later dates. The Commission has also plainly stated, however, that the outlines in the application must "specifically state the radiation safety aspects of the procedures." 58 Fed. Reg. 7715, 7717 (1993).

which the motion arises."[49] However, we see no need to delve into the unnecessary task of assessing submission time-lines and the applicability of 10 C.F.R. § 2.323(a) because the Commission has made clear that "[w]here a contention alleges the omission of particular information or an issue from an application, and the information is later supplied by the applicant . . . the contention is moot."[50] Having found the Petitioner's proffered amended contentions to be inadmissible, and that the outlines submitted by the Applicant on March 9 and March 31, 2006, facially cure the only omissions at issue in the Intervenor's originally proffered contentions 4 and 6, we find safety contentions 4 and 6 are moot. Therefore, the Applicant's motion to dismiss the contentions is granted.

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[49] See Intervenor's Opposition to Motion to Dismiss at 3.

[50] Duke Energy Corp. (McGuire Nuclear Station, Units 1 and Units 2; Catawba Nuclear Station, Units 1 and 2), CLI-02-28, 56 NRC 373, 383 (2002); see also Duke Power Corp. (Catawba Nuclear Station, Units 1 and 2), CLI-83-19, 17 NRC 1041, 1050 (1983).

III. Conclusion

For the foregoing reasons, the Intevenor's amended contentions 4 and 6 are not admitted and the Applicant's motion to dismiss these two contentions is granted.

It is so ORDERED.

THE ATOMIC SAFETY
AND LICENSING BOARD*

/RA/

Thomas S. Moore, Chairman
ADMINISTRATIVE JUDGE

/RA/

Dr. Paul B. Abramson
ADMINISTRATIVE JUDGE

/RA/

Dr. Anthony J. Baratta
ADMINISTRATIVE JUDGE

Rockville, Maryland
June 22, 2006

* Copies of this memorandum and order were sent this date by Internet e-mail transmission to counsel for (1) Applicant Pa'ina Hawaii, LLC.; (2) Intervenor Concerned Citizens of Honolulu; and (3) the NRC Staff.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing LB MEMORANDUM AND ORDER (RULING ON ADMISSIBILITY OF TWO AMENDED CONTENTIONS) 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]

Office of the Secretary of the Commission

Dated at Rockville, Maryland
this 22nd day of June 2006