

RAS 13284

March 14, 2007

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

DOCKETED
USNRC

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD March 14, 2007 (4:21pm)

In the Matter of)
Pa'ina Hawaii, LLC)
Materials License Application)
_____)

Docket No. 30-36974-ML
ASLBP No. 06-843-01-ML

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

INTERVENOR CONCERNED CITIZENS OF HONOLULU'S
UNOPPOSED MOTION FOR EXTENSION OF TIME TO FILE REPLY

Intervenor Concerned Citizens of Honolulu ("Concerned Citizens") seeks an extension of time to file its reply to applicant Pa'ina Hawaii, LLC's Answer to Concerned Citizen's Contentions Re: Draft Environmental Assessment and Draft Topical Report. Because it would be more efficient and convenient for Concerned Citizens to provide a single combined reply to both Pa'ina Hawaii's Answer and the Nuclear Regulatory Commission Staff's Response, Concerned Citizens respectfully requests that the Board extend the deadline for its reply to Pa'ina's Answer until March 19, 2007, which is the current deadline for Concerned Citizens' reply to the Staff's Response.

On Thursday, March 8, 2007, at 4:49 p.m. Hawai'i Standard Time, Pa'ina Hawaii's counsel, Fred Paul Benco, attempted to serve Pa'ina Hawaii's Answer on Concerned Citizens' counsel, David Henkin, by electronic mail. Henkin Decl. at ¶ 3. Mr. Henkin promptly attempted to open the documents attached to Mr. Benco's email, but, because the attachments lacked a required file extension, was unable to do so. Mr. Henkin immediately informed Mr. Benco that the electronic transmission was unreadable. Id.

Mr. Henkin finally was able to open the documents on Friday, March 9, after Mr. Benco had re-sent the documents and Mr. Henkin's office assistant was available to help resolve the problem. Id. at ¶ 4. The Staff's attorney Margaret Bupp was also unable promptly to open Pa'ina's documents due to the missing file extensions. Id.

As a result of the problems in electronic transmission, for purposes of 10 C.F.R. § 2.309(h)(2), Pa'ina Hawaii's Answer was not "received" until Friday, March 9, 2007. See also 10 C.F.R. § 2.306 ("period allotted for the recipient's response commences upon confirmation of receipt"). Accordingly, without an extension, Concerned Citizens' reply to Pa'ina's Answer would be due Friday, March 16, 2007. Concerned Citizens received the Staff's Response via electronic mail without difficulty on Monday, March 12, 2007. Henkin Decl. at ¶ 5. Thus, Concerned Citizens' reply to the Staff is currently due Monday, March 19, 2007.

Because similar and overlapping issues are raised in Pa'ina's Answer and the Staff's Response, it would be far more efficient and convenient for Concerned Citizens to prepare a single, combined reply to both. Accordingly, Concerned Citizens requests an extension until Monday, March 19, 2007, to reply to Pa'ina's Answer, which it will serve together with its reply to the Staff's Response.

Pursuant to 10 C.F.R. § 2.323(b), the undersigned has contacted counsel for Pa'ina Hawaii and for the Staff, who have informed him that neither party has any objection to Concerned Citizens' extension request. Henkin Decl. ¶ 6. A proposed form of order is attached, pursuant to 10 C.F.R. § 2.323(b).

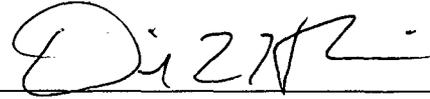
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Dated at Honolulu, Hawai'i, March 14, 2007.

Respectfully submitted,



DAVID L. HENKIN
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Attorney for Intervenor
Concerned Citizens of Honolulu

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)	
Pa'ina Hawaii, LLC)	Docket No. 30-36974-ML
)	ASLBP No. 06-843-01-ML
Materials License Application)	
_____)	

DECLARATION OF DAVID L. HENKIN

I, David L. Henkin, declare:

1. I am an attorney at law, duly licensed to practice before all courts of the State of Hawai'i, the U.S. District Court for the District of Hawai'i, the U.S. Court of Appeals for the 9th Circuit, and the U.S. Supreme Court. I am the lead attorney for intervenor Concerned Citizens of Honolulu.

2. I make this declaration in support of Concerned Citizens of Honolulu's unopposed notion for extension of time to file its reply to applicant Pa'ina Hawaii, LLC's Answer to Intervenor Concerned Citizens of Honolulu's Contentions Re: Draft Environmental Assessment and Draft Topical Report, dated March 8, 2007. This declaration is based on my personal knowledge, and I am competent to testify about the matters contained herein.

3. On Thursday, March 8, 2007, at 4:49 p.m., Hawai'i Standard Time, Pa'ina Hawaii's counsel, Fred Paul Benco, attempted to serve Pa'ina Hawaii's Answer on me by electronic mail. I promptly attempted to open the documents attached to Mr. Benco's email, but was unable to do so, because the attachments lacked a required file extension. Because my office assistant and Earthjustice's mainland technical support had left the office for the day, I

was unable to secure technical support to help open the documents. Consequently, I immediately sent Mr. Benco an email to inform him that his electronic transmission was unreadable.

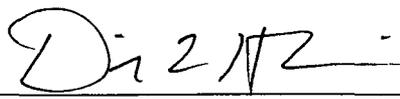
4. Mr. Benco re-sent Pa'ina's documents, this time with instructions to use Adobe Acrobat to open them, after 9 p.m. HST on Thursday, March 8, 2007, at which time I had left the office for the day. With these instructions and the assistance of our office manager, I finally was able to open the documents upon my return to the office on Friday, March 9, 2007. That same day, I received an email from the Nuclear Regulatory Commission Staff's attorney Margaret Bupp, stating that she also had been unable to promptly open the document due to the missing file extensions.

5. I received the Staff's Response via electronic mail without difficulty on Monday, March 12, 2007.

6. Pursuant to 10 C.F.R. § 2.323(b), I contacted Pa'ina Hawaii's counsel Fred Benco and the Staff's counsel Margaret Bupp to seek their agreement to the requested time extension. Late on Tuesday, March 13, 2007, Mr. Benco sent me an email indicating that Pa'ina Hawaii did not object to Concerned Citizens' request to extend the deadline to reply to Pa'ina's Answer until Monday, March 19, 2007. This morning Ms. Bupp emailed me to communicate the Staff's non-opposition.

I declare under penalty of perjury that I have read the foregoing declaration and know the contents thereof to be true of my own knowledge.

Dated at Honolulu, Hawai'i, March 14, 2007.



DAVID L. HENKIN

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)
Pa'ina Hawaii, LLC)
Materials License Application)
_____)

Docket No. 30-36974-ML
ASLBP No. 06-843-01-ML

PROPOSED ORDER

Having reviewed Intervenor Concerned Citizens of Honolulu's Unopposed Motion For Extension Of Time To File Reply and good cause appearing,

IT IS HEREBY ORDERED THAT the deadline for Concerned Citizens to file its reply to Applicant Pa'ina Hawaii, LLC's Answer to Intervenor Concerned Citizens of Honolulu's Contentions Re: Draft Environmental Assessment and Draft Topical Report shall extended until March 19, 2007.

FOR THE ATOMIC SAFETY
AND LICENSING BOARD

Thomas S. Moore, Chairman
ADMINISTRATIVE JUDGE

Rockville, Maryland
Dated: _____

CERTIFICATE OF SERVICE

The undersigned hereby certifies that, on March 14, 2007, a true and correct copy of the foregoing document was duly served on the following via e-mail and first-class United States mail, postage prepaid:

Fred Paul Benco
Suite 3409, Century Square
1188 Bishop Street
Honolulu, Hawai'i 96813
E-Mail: fpbenco@yahoo.com
Attorney for Pa'ina Hawaii, LLC

Office of the Secretary
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
Attn: Rulemakings & Adjudications Staff
E-Mail: HEARINGDOCKET@nrc.gov

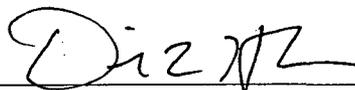
Margaret J. Bupp
U.S. Nuclear Regulatory Commission
Office of the General Counsel
Mail Stop - O-15 D21
Washington, DC 20555-0001
E-mail: mjb5@nrc.gov

Administrative Judge
Paul B. Abramson
Atomic Safety & Licensing Board Panel
Mail Stop - T-3 F23
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Administrative Judge
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Washington, DC 20555-0001
E-Mail: ajb5@nrc.gov

Dated at Honolulu, Hawai'i, March 14, 2007.



DAVID L. HENKIN
Attorney for Intervenor
Concerned Citizens of Honolulu



EARTHJUSTICE

Because the earth needs a good lawyer

BOZEMAN, MONTANA DENVER, COLORADO HONOLULU, HAWAII
INTERNATIONAL JUNEAU, ALASKA OAKLAND, CALIFORNIA
SEATTLE, WASHINGTON TALLAHASSEE, FLORIDA WASHINGTON, D.C.

TRANSMITTAL LETTER

TO: Office of the Secretary
 U.S. Nuclear Regulatory Commission
 Washington, DC 20555-0001
 Attention: Rulemakings and Adjudications Staff

VIA FIRST CLASS MAIL

FROM: David L. Henkin

DATE: March 14, 2007

RE: Pa`ina Hawaii, LLC (Materials License Application), Docket No. 30-36974-ML,
 ASLBP No. 06-843-01-ML

ENCLOSURES	DATE	DESCRIPTION
Original and two copies:	3/14/07	INTERVENOR CONCERNED CITIZENS OF HONOLULU'S UNOPPOSED MOTION FOR EXTENSION OF TIME TO FILE REPLY; CERTIFICATE OF SERVICE

- For Your Information.
- For Your Files.
- Per Our Conversation.
- Per Your Request.
- For Review and Comments.
- See Remarks Below.

- For Filing.
- For Recordation.
- For Signature & Return.
- For Necessary Action.
- For Signature & Forwarding.

REMARKS: