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OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

JUNE 26, 2007

RAS 13838

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE SECRETARY

In the Matter of)
Pa'ina Hawaii, LLC) Docket No. 030-36974
) ASLBP No. 06-843-01-ML
Materials License Application)

APPLICANT PA'INA HAWAII, LLC'S ANSWER TO
INTERVENOR CONCERNED CITIZENS OF HONOLULU'S
AMENDED SAFETY CONTENTIONS #13 AND #14

CERTIFICATE OF SERVICE

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TEMPLATE = SECY-037

SECY-02

APPLICANT PA'INA HAWAII, LLC'S ANSWER TO
INTERVENOR CONCERNED CITIZENS OF HONOLULU'S
AMENDED SAFETY CONTENTIONS #13 AND #14

On June 1, 2007, Intervenor Concerned Citizens of Honolulu filed amended Safety Contentions #13 and #14. In those Amended Contentions, Intervenor seeks to make "specific challenges" to the "Final Topical Report on the Effects of Potential Natural Phenomena and Aviation Accidents at the Pa'ina Hawaii, LLC Irradiator Facility," which was posted on ADAMS on May 8, 2007.¹

Intervenor's June 1st filing reasserts and slightly modifies its Safety Contention #13 by contending that the Final Topical Report inadequately addresses safety risks and consequences of an airplane crash into the Pa'ina Hawaii, LLC irradiator.

Intervenor's June 1st filing also reasserts and slightly modifies its Safety Contention #14 by contending that the Final Topical Report inadequately analyzes the risks and consequences from natural phenomena (tsunamis, earthquakes, hurricanes) upon the Pa'ina irradiator facility.

This Answer by Applicant Pa'ina Hawaii, LLC will briefly demonstrate why Intervenor's June 1st filing fails to state any

¹ This response will necessarily be brief for two reasons: (1) because Applicant Pa'ina incorporates by reference herein its arguments and legal authority set forth in its earlier Answer filed March 8, 2007; and (2) in light of the Board's June 21, 2007 Order which requires further filings after the issuance of the final Environmental Assessment in July 2007.

valid claims as a matter of law, and why those modified claims ought to be denied.

I. INTERVENOR'S MODIFIED SAFETY CONTENTION #13 OUGHT TO BE DENIED AS A MATTER OF LAW FOR ANY OF SEVERAL REASONS.

Intervenor reiterates its February 9, 2007 Contention #13 by, again, challenging the Final Topical Report's evaluation of the probability of an aircraft striking the proposed irradiator, and further, by also challenging the Final Topical Report's evaluation of the possible consequences of such a crash.

First, as to the probability of an airplane crash, the information upon which Intervenor's modified Contention #13 is based is not "materially different" than that contained in the Draft Topical Report. Therefore, Intervenor's modified Contention #13 ought to be denied/dismissed as a matter of law. 10 C.F.R. Sec. 2.309(f)(2)(ii).

Secondly, and in any event, Intervenor's modified Contention #13 is basically a disagreement about "methodology," i.e., a disagreement between Intervenor's formula and data, and the NRC Staff's formula and data.² However, as already noted in Pa'ina's March 8th filing, a

² Indeed, Intervenor itself uses the term "methodology" to make its argument. Intervenor's June 1, 2007 filing, at Page 5.

contention based upon disagreement between methodologies does not constitute a valid contention, and such a contention ought to be denied/dismissed. See Friends of Endangered Species, Inc. v. Jantzen, 760 F.2d 976, 986 (9th Cir. 1985).

Based upon the above legal points, and also the legal points set forth in Pa'ina's March 8, 2007 Answer, Intervenor's modified Contention #13 ought to be denied/dismissed insofar as it challenges the NRC's estimate of probabilities of airplane crashes.

Likewise, Intervenor's modified Contention #13, insofar as it challenges the Final Topical Report's evaluation of the consequences of an airplane crash, ought to be denied/dismissed.

First, this challenge to the consequences of a highly-unlikely airplane crash is based upon data and information which is not materially different that was presented in the Draft Topical Report. Consequently, because the information contained in the two reports is not materially different, the modified Contention #13 ought to be denied/dismissed as a matter of law. 10 C.F.R. Sec. 2.309(f)(2)(ii).

Second, Intervenor's fail to create any genuine issue of material fact regarding the loosening of the cobalt sources at the bottom of the water pool, because Intervenor fails to allege or show (by sworn or documentary evidence) just what

force is required to loosen or disperse the sources. There are no "specific" allegations or calculations provided by Intervenor, and there is no sworn or documentary evidence. Intervenor's utter failure to provide any specific allegations, and any sworn calculations, renders its modified Contention #13 invalid, and it ought to be denied/dismissed.

Next, Intervenor seeks to reiterate its original Safety Contention #13 insofar as it claims the Final Topical Report fails to adequately evaluate the possible impacts of flying debris upon the sources. Again, because the information upon which this modified Contention is based is not "materially different" than the basis of the original Contention #13, this modified contention ought to be denied/dismissed as a matter of law. 10 C.F.R. Sec. 2.309(f)(2)(ii).

Next, Intervenor seeks to reallege or reargue its earlier contention that jet fuel could cause complications at the irradiator site, because alleged super-hot temperatures caused by burning gasoline could burn off the water in the water pool (at least down to the waterline, which is still 12 feet or so above the sources). Intervenor uses an "exploding gasoline tanker"³ in California as the factual basis for its modified claim.

³ Intervenor's Exhibit 21 states in the first sentence that the fire was caused by an "exploding gasoline tanker."

However, this claim is not based upon information "materially different" than the alleged basis for Intervenor's original February 9th contention. Consequently, the modified Contention #13 should not be allowed to stand pursuant to 10 C.F.R. Sec. 2.309(f)(2)(ii).

Furthermore, and in any event, the modified contention cannot be deemed valid because neither Intervenor nor its expert has shown any valid or meaningful comparison between the temperatures at which gasoline burns, and the temperatures at which jet fuel burns.⁴

Finally, Intervenor basically reiterates its earlier Contention #13 by alleging that the "loss of monitoring equipment would cause a loss of control of radioactive material." However, this same allegation was already set forth in Intervenor's February 9th Safety Contention #14, and the Intervenor cites no new evidence or expert support for this latest reiteration. Therefore, because the Intervenor has failed to cite any new material information, the modified Contention #13 should not be allowed to stand pursuant to 10 C.F.R. Sec. 2.309(f)(2)(ii).

⁴ It is well known, and can be judicially noticed, that gasoline burns at a temperature above 945 degrees Celsius, while burning jet fuel (in the U.S., called Jet A) has a much lower burning temperature of 260-315 degrees Celsius. The Staff's Final Topical Report cited the accurate burning temperature of jet fuel.

To summarize: As a matter of law, Intervenor's modified Contention #13 fails in all respects to state a valid claim, and it also fails in all respects to create any genuine issues of material fact. Modified Safety Contention #13 should therefore be denied/dismissed.

II. II. INTERVENOR'S MODIFIED SAFETY CONTENTION #14 OUGHT TO BE DENIED AS A MATTER OF LAW FOR ANY OF SEVERAL REASONS.

Intervenor in its June 1st filing also submits a modified Safety Contention #14, which basically rehashes the same arguments as made in its February 9th filing. Applicant Pa'ina believes that the modified Safety Contention #14 ought to be denied/dismissed for the same reasons as set forth in Pa'ina's March 8th Answer. Indeed, Intervenor admits that the Final Topical Report is "essentially identical" to the Draft Topical Report.

Indeed, the modified Safety Contention #14 relies upon the same Pararas-Carayannis Declaration filed on February 9, 2007, as well as Pages 11-14 of Intervenor's February 9th filing. Since Intervenor fails to cite any materially-new information upon which it bases its modified Contention #14, there can be no valid modified Contention #14 pursuant to 10 C.F.R. Sec. 2.309(f)(2)(ii).

Since there is no "materially different" information upon which Intervenor bases its modified Contention #14, its modified Contention #14 likewise ought to be denied/dismissed.

III. CONCLUSION.

For the reasons stated above, for the further reasons stated in Applicant Pa'ina's March 8th filing, and based upon the records and files of this case, Intervenor's proposed modified Safety Contentions #13 and #14 ought to be denied/dismissed.

DATED: Honolulu, Hawaii

June 26, 2007



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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing "APPLICANT PA'INA HAWAII, LLC'S ANSWER TO INTERVENOR CONCERNED CITIZENS OF HONOLULU'S AMENDED SAFETY CONTENTIONS #13 AND #14" dated June 26, 2007 in the captioned proceeding have been served as shown below by deposit in the regular United States mail, first class, postage prepaid, this June 26, 2007. Additional service has also been made this same day by electronic mail as shown below:

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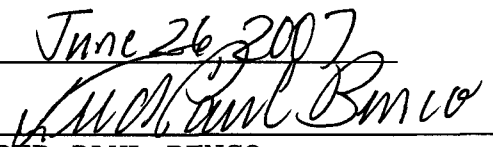
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June 26, 2007

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Re: Docket No. 030-36974
ASLBP No. 06-843-01-ML
"Applicant Pa'ina Hawaii, LLC's
Answer To Intervenor Concerned
Citizens Of Honolulu's Amended
Safety Contentions #13 and #14"

Dear Secretary:

I represent the legal interests of Pa'ina Hawaii, LLC, which has applied for a Materials License.

Pursuant to your regulations, please find enclosed an original and two (2) copies of the above document.

This document was e-mailed to your office and to all parties on the Certificate of Service on this date. Hard copies were also mailed to each of the parties on this date.

If you have any questions or comments, please feel free to contact my office. Tel: 808-523-5083; Fax: 808-523-5085; e-mail: fpbenco@yahoo.com. Thank you.

Very respectfully yours,


Fred Paul Benco

Encl.

cc: All parties on Certificate of
Service