

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

DOCKETED 10/05/07

ATOMIC SAFETY AND LICENSING BOARD

SERVED 10/05/07

Before Administrative Judges:

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

In the Matter of

PA'INA HAWAII, LLC

(Material License Application)

Docket No. 30-36974-ML

ASLBP No. 06-843-01-ML

October 5, 2007

ORDER

(Temporarily Holding in Abeyance Stay Application)

After the Staff issued License No. 53-29296-01 to the Applicant, Pa'ina Hawaii, LLC, the Intervenor, Concerned Citizens of Honolulu, filed an application to stay the effectiveness of the license.¹ In opposing the Intervenor's stay request, the Applicant informed us that "Pa'ina has not yet entered into a final lease with the State of Hawaii. . ." for the proposed site to build the irradiator.² In denying a stay last year in Entergy Nuclear Vermont Yankee (Vermont Yankee Nuclear Power Station), CLI-06-8, 63 NRC 235, 237 (2006), the Commission reiterated the four familiar regulatory standards for obtaining a stay stating, inter alia, that irreparable harm is "the *sine qua non* of obtaining a stay" and that "[a] party seeking a stay must show it faces imminent, irreparable harm."

Although, the Intervenor's seek to stay the effectiveness of the Staff's action in granting the materials license, it appears that the Applicant's failure yet to have signed a lease for the

¹ See Intervenor Concerned Citizens of Honolulu's Application for Stay of NRC Staff's Issuance of License for Possession and Use of Byproduct Material. (Aug. 27, 2007)

² Applicant Pa'ina Hawaii, LLC's Opposition to Intervenor Concerned Citizens of Honolulu's Application for Stay of NRC Staff's Issuances of License for Possession and Use of Byproduct Material (Sept. 6, 2007) at 3.

irradiator site robs the irreparable harm asserted by the Intervenor of any imminence. The Commission's regulations, however, mandate that the Intervenor must apply for a stay within five days of the issuance of the notice of the Staff's action and provide no avenue for seeking a stay at a later time. See 10 C.F.R. § 2.1213(a). Therefore, we shall hold the Intervenor's stay request temporarily in abeyance until the question of the Applicant's lease for the proposed irradiator site is resolved.

By a notice filed no later than October 12, 2007, the Applicant shall inform us of the current status of its lease negotiations for the irradiator site. Thereafter, on the first of each month for the remainder of the year or until it executes a lease for the proposed site, the Applicant shall inform us of the then current status of its lease negotiations for the proposed site.

It is so ORDERED.

FOR THE ATOMIC SAFETY
AND LICENSING BOARD³

/RA/

Thomas S. Moore, Chairman
ADMINISTRATIVE JUDGE

Rockville, Maryland

October 5, 2007

³ Copies of this Order were sent by 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 ORDER (TEMPORARILY HOLDING IN ABEYANCE STAY APPLICATION) 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 5th day of October 2007