

RAS 15049

January 31, 2008

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

DOCKETED
USNRC

January 31, 2008 (4:47pm)

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

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

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

INTERVENOR CONCERNED CITIZENS OF HONOLULU'S INITIAL BRIEF
RE: THE COMMISSION'S JANUARY 15, 2008 DIABLO CANYON DECISION

I. INTRODUCTION

Pursuant to the Atomic Safety and Licensing Board's ("Board's") January 24, 2008 order, intervenor Concerned Citizens of Honolulu files its initial brief regarding the admissibility of the portions of amended contention environmental contention 3 that challenge the Nuclear Regulatory Commission Staff's analysis of terrorism-related impacts in light of the Commission's January 15, 2008 decision in the Diablo Canyon proceeding.

Applicant Pa'ina Hawaii, LLC and the Staff undoubtedly will seize on the Commission's statement "that protecting national security information overrides ordinary [National Environmental Policy Act (NEPA)] disclosure requirements" to argue broadly against admission of Concerned Citizens' contentions. Pacific Gas & Elec. Co. (Diablo Canyon Power Plant Independent Spent Fuel Storage Installation), CLI-08-01, 67 NRC ____, slip. op. at 9 (Jan. 15, 2008). The Diablo Canyon decision makes clear, however, that security concerns cannot, and do not, relieve the Staff of its obligation to disclose to the public important information related to the analysis of potential terrorist threats. Rather, only "certain information cannot be made

TEMPLATE=SECY-021

SECY-02

public for security reasons.” Id. (emphasis added). Consequently, the Commission found “some portions of [San Luis Obispo Mothers for Peace’s (SLOMFP’s)] contentions admissible and some not.” Id.

Application of the Commission’s reasoning in the Diablo Canyon decision to this proceeding supports admission of many of Concerned Citizens’ challenges to the Staff’s final environmental assessment for Pa’ina’s proposed irradiator (“EA”).¹ As discussed below, the Commission’s ruling supports admission of Concerned Citizens’ claims challenging (1) the EA’s failure to assess and disclose likely modes of attack on the facility, (2) the EA’s failure to quantify the consequences of plausible terrorist threat scenarios, (3) the Staff’s failure to identify all data and analyses underlying its evaluation of threats from terrorism and to disclose all non-classified, non-safeguards information, and (4) the EA’s failure to evaluate all reasonably foreseeable terrorism-related impacts. See infra Parts III-V. SLOMFP did not file any contentions analogous to Concerned Citizens’ other challenges to the Staff’s analysis, and, thus, the Commission had no occasion to address them in its Diablo Canyon decision. See infra Part VI.

II. PROCEDURAL AND FACTUAL BACKGROUND²

On September 4, 2007, Concerned Citizens timely filed amended environmental contentions challenging the adequacy of the Staff’s final environmental assessment for Pa’ina’s proposed irradiator and associated Finding of No Significant Impact. Licensing Board Order

¹ As the Board instructed, this brief focuses only on the implications of the Commission’s decision in the Diablo Canyon proceeding. In its previous pleadings in support of its amended environmental contentions, Concerned Citizens already discussed why binding Ninth Circuit precedent justifies admission of its challenges to the EA’s analysis of terrorist threats.

² Since the facts of this case have been set forth in detail several times, Concerned Citizens will focus here on only those facts most relevant to its pending environmental contentions challenging the adequacy of the Staff’s analysis of terrorism-related impacts.

(Ruling on Admissibility of Intervenor's Amended Environmental Contentions) at 4 (Dec. 21, 2007) (hereinafter "12/21/07 Board Order"); see also 9/4/07 Amended Environmental Contentions (ML072530634). As part of amended environmental contention 3, Concerned Citizens challenged the Staff's failure "to furnish a complete analysis of potential terrorist acts involving the proposed irradiator." 12/21/07 Board Order at 19; see also 9/4/07 Amended Environmental Contentions at 18-29.

On December 21, 2007, the Board issued an order admitting Concerned Citizens' amended environmental contentions 3 and 4. 12/21/07 Board Order at 35. The Board reserved judgment on Concerned Citizens' challenges to the Pa'ina EA's analysis of terrorism-related impacts, deferring its decision until it had "the benefit of the Commission's guidance from its treatment of [an] analogous contention in the Diablo Canyon proceeding." Id. at 20. In the Diablo Canyon case, intervenor San Luis Obispo Mothers for Peace filed various challenges to the adequacy of the Staff's analysis of potential terrorist attacks on an independent spent fuel storage installation ("ISFSI") at the site of the Diablo Canyon nuclear power reactor in California. See generally Pacific Gas & Elec. Co., CLI-08-01.

On January 15, 2008, the Commission issued an order in the Diablo Canyon proceeding, admitting some of SLOMFP's contentions and excluding others. Id., slip op. at 9, 29. On January 24, 2008, the Board ordered the parties in this proceeding to "file a pleading detailing how, if at all, the Commission's January 15, 2008 decision on the parallel contentions in the Diablo Canyon proceeding impacts the admissibility of each of the enumerated specific deficits" of the EA's analysis of potential impacts related to terrorist attacks involving Pa'ina's proposed irradiator. 1/24/08 Board Order at 2.

III. THE DIABLO CANYON DECISION CONFIRMS THAT CONCERNS ABOUT PROTECTING SENSITIVE INFORMATION DO NOT PRECLUDE THE STAFF FROM DISCLOSING INFORMATION ABOUT PLAUSIBLE TERRORIST THREATS AND POTENTIAL CONSEQUENCES OF AN ATTACK

In defending the EA's failure to provide any meaningful analysis of potential threats to the public and the environment associated with Pa'ina's proposal to place a major sabotage target in the middle of urban O'ahu and near attractive terrorist targets like the international airport, Hickam Air Force Base, and Pearl Harbor (a particularly symbolic target), both the Staff and Pa'ina have repeatedly claimed the EA could not include a more detailed and quantified analysis without divulging safeguards or other protected information. The Commission's review of the analysis of terrorism-related impacts in the Diablo Canyon proceeding reveals as baseless the Staff's and Pa'ina's claims the Staff can withhold from disclosure important information relevant to its assessment of potential impacts associated with terrorist attack.

A. Diablo Canyon Supports Admission Of Concerned Citizens' Contention The EA Illegally Failed To Assess And Disclose Likely Modes Of Attack On Pa'ina's Proposed Irradiator.

Concerned Citizens' first challenge to the analysis of terrorist threats focuses on the EA's failure to comply with the Ninth Circuit's command to "assess likely modes of attack, weapons, and vulnerabilities of [Pa'ina's proposed irradiator]." 9/4/07 Amended Environmental Contentions at 19 (quoting San Luis Obispo Mothers for Peace v. Nuclear Regulatory Comm'n, 449 F.3d 1016, 1031 (9th Cir. 2006), cert. denied sub nom, Pacific Gas & Elec. Co. v. San Luis Obispo Mothers for Peace, 127 S.Ct. 1124 (2007)).³ While the EA admitted "there is a general,

³ This aspect of amended environmental contention 3 also challenges the Staff's failure to justify why the EA does not "provide any quantitative analysis of the likelihood Pa'ina's proposed irradiator would be the target of a terrorist attack." Id. The Diablo Canyon decision does not address this aspect of Concerned Citizens' contention, which is well-supported by binding Ninth Circuit case law. See Neighbors of Cuddy Mountain v. United States Forest

credible threat to NRC-licensed facilities and materials” and claimed “[t]he staff evaluated a spectrum of threat scenarios,” it failed to disclose to the public the types of terrorist attack the Staff deemed plausible and, therefore, worthy of further analysis regarding potential consequences. Pa’ina EA at B-4 to -5 (ML071150121); see also Klamath-Siskiyou Wildlands Center v. Bureau of Land Management, 387 F.3d 989, 996 (9th Cir. 2004) (“NEPA documents are inadequate if they contain only narratives of expert opinions”).

In response to Concerned Citizens’ challenge, Pa’ina and the Staff protested that any discussion of likely modes of attack, weapons, and vulnerabilities would provide terrorists with a “blueprint” to attack Pa’ina’s irradiator and argued that security concerns absolved the Staff of its obligation to inform the public about the basis of the Staff’s conclusion terrorist threats were insignificant. Pa’ina’s Answer To Amended Environmental Contentions #3 Through #5 at 27 n.5 (Sept. 18, 2007) (ML072680394); see also Staff’s Response to Amended Environmental Contentions #3 Through #5 at 12-14 (Sept. 20, 2007) (ML072670495); contra Idaho Sporting Cong. v. Thomas, 137 F.3d 1146, 1150 (9th Cir. 1998) (“NEPA requires that the public receive the underlying ... data” on which agency based opinions). This extreme position cannot be squared with the Staff’s actions in the Diablo Canyon proceeding, in which the EA identified “the most severe plausible threat scenarios,” which “included a large aircraft impact similar in magnitude to the attacks of September 11, 2001, and ground assaults using expanded adversary characteristics consistent with the design basis threat for radiological sabotage for nuclear power plants.” Final EA for Diablo Canyon ISFSI at 7 (Aug. 2007) (ML072400303); see also Staff’s Response to SLOMFP’s Contentions at 13 (July 13, 2007) (ML071970050) (noting Staff

Service, 137 F.3d 1372, 1380 (9th Cir. 1998) (“General statements about possible effects and some risk do not constitute a hard look absent a justification regarding why more definitive information could not be provided”)

considered threat scenarios beyond Design Basis Threat). It was the Diablo Canyon EA's disclosure of these plausible threat scenarios that convinced the Commission the Staff had "provided a sufficient description of its scenario identification process." Pacific Gas & Elec. Co., CLI-08-01, slip. op. at 11; see also id. at 23.

Unlike the Diablo Canyon EA, identification of plausible threat scenarios is completely absent from the Pa'ina EA, warranting admission of this aspect of amended environmental contention 3. See Pa'ina EA at B-5.⁴ While the Diablo Canyon decision indicates the Commission believes "the constraints of information security requirements" can justify withholding from the public some of the information that goes into the Staff's threat assessment, it is equally clear the Staff cannot turn its NEPA review into a complete black box. Pacific Gas & Elec. Co., CLI-08-01, slip. op. at 11. Where, as here, the Staff failed to disclose in its EA the threat scenarios its analysis revealed as plausible, a challenge to that omission is admissible.

B. Diablo Canyon Supports Admission Of Concerned Citizens' Contention The EA Failed To Assess Adequately The Consequences Of An Attack On Pa'ina's Proposed Irradiator.

The Commission's decision in Diablo Canyon also supports admission of Concerned Citizens' contention the Pa'ina EA failed adequately to address the consequences of plausible threat scenarios. 9/4/07 Amended Environmental Contentions at 25-27. In the Diablo Canyon EA, the Staff demonstrated it had evaluated the impact on public health of "the most severe

⁴ Unlike SLOMFP, Concerned Citizens does not seek to "adjudicate[e] alternate terrorist scenarios." Pacific Gas & Elec. Co., CLI-08-01, at 24. Rather, it seeks the opportunity to demonstrate that, as a matter of law, the EA's omission of any discussion of "likely modes of attack, weapons, and vulnerabilities of [Pa'ina's proposed irradiator]," 9/4/07 Amended Environmental Contentions at 19 (quoting San Luis Obispo Mothers for Peace, 449 F.3d at 1031), violated NEPA's requirement to "insure that environmental information is available to public officials and citizens before decisions are made and before actions are taken" that may have a significant impact on the human environment. 40 C.F.R. § 1500.1(b). Such a contention would be resolved via a motion for summary disposition, not trial.

plausible threat scenarios,” applying “Diablo Canyon site-specific dispersion parameters[] to generate a dose estimate to the nearest resident that was ... representative of the actual conditions at the site.” Final EA for Diablo Canyon ISFSI at 7, A-6. The Staff then disclosed the results of that inquiry, stating that, in the worst-case plausible scenarios, “the dose to the nearest affected resident ... would likely be well below 5 rem.” *Id.* at 7. In rejecting SLOMFP’s contentions challenging the Staff’s analysis of potential impacts, the Commission relied on the fact the Diablo Canyon EA “expressly discusses the Staff’s analysis of dosage” and included “consideration of site-specific conditions at the Diablo Canyon ISFSI.” Pacific Gas & Elec. Co., CLI-08-01, slip. op. at 12-13.

The Diablo Canyon’s EA’s analysis and disclosure of the potential radiation exposure that a member of the public might suffer in the event of a terrorist attack involving the ISFSI stands in sharp contrast to the Pa’ina EA, which fails completely to quantify the potential impacts of acts of sabotage at Pa’ina’s proposed irradiator or of the detonation of a “dirty bomb” using Cobalt-60 stolen or diverted from the irradiator. While the Pa’ina EA acknowledges that, in the event of sabotage, “radioactive material [might] escap[e] the pool” and that incidents involving a dirty bomb using Cobalt-60 from Pa’ina’s irradiator “could create fear and panic, contaminate property, ... require potentially costly cleanup,” and “result in radioactive contamination of several city blocks to an entire city,” as well as cause immediate deaths or serious injuries, the Staff never quantifies and discloses the site-specific impacts of such catastrophes. Pa’ina EA at B-6; see also 9/4/07 Amended Environmental Contentions at 25-27. The Pa’ina EA’s “[g]eneral statements about possible effects and some risk” from terrorist attacks do not satisfy NEPA’s requirement to take “a hard look absent a justification regarding why more definitive information could not be provided.” Neighbors of Cuddy Mountain, 137

F.3d at 1380. The Diablo Canyon decision confirms the Staff could have – and, thus, was required to – provide more definitive and quantified information about potential radiation exposure from terrorist attacks and debunks Pa‘ina’s and the Staff’s claims that “the requirement to protect sensitive information” precluded disclosure in the Pa‘ina EA of “the Staff’s analysis of dosage.” Pacific Gas & Elec. Co., CLI-08-01, slip. op. at 12.⁵

IV. THE DIABLO CANYON DECISION SUPPORTS ADMISSION OF CONCERNED CITIZENS’ CONTENTION CHALLENGING THE STAFF’S FAILURE TO IDENTIFY ALL DATA AND ANALYSES UNDERLYING ITS EVALUATION OF TERRORISM-RELATED THREATS AND TO DISCLOSE ALL NON-CLASSIFIED, NON-SAFEGUARDS INFORMATION

In Diablo Canyon, SLOMFP’s contention 1(b) challenged the Staff’s failure to identify in its EA all “sources and any other technical data the Staff relied on in reaching its conclusions.” Pacific Gas & Elec. Co., CLI-08-01, slip op. at 14. In ruling on this contention’s admissibility, the Commission noted that, pursuant to NEPA section 102(2)(C), the Staff may lawfully “withhold public disclosure of any NEPA document, in whole or in part, under the authority of [a Freedom of Information Act (FOIA)] exemption,” such as FOIA exemption 1 (permitting withholding classified information) and FOIA exemption 3 (which supports withholding safeguards material). Id., slip op. at 16-17 (quoting Weinberger v. Catholic Action of Hawaii, 454 U.S. 139, 143 (1981); emphasis omitted). The Commission emphasized, however, that:

“Ordinarily,” when access to documents is disputed in FOIA litigation, “the government must submit detailed public affidavits identifying the documents

⁵ The Diablo Canyon EA did not detail the methodologies underlying the Staff’s calculation of potential radiation exposures. See Final EA for Diablo Canyon ISFSI at 7. The Diablo Canyon decision indicates the Commission believes non-disclosure of that information can be justified based on “the constraints of information security requirements.” Pacific Gas & Elec. Co., CLI-08-01, slip. op. at 11 (finding description of “significance of associated consequences” in Diablo Canyon EA “sufficient”). As discussed above, security concerns do not, however, absolve the Staff of its legal duty to disclose the results of its calculations, providing the public with a quantification of potential radiation exposures and other impacts.

withheld, the FOIA exemptions claimed, and a particularized explanation of why each document falls within the claimed exemption.”

Id., slip op. at 17 (quoting Lion Raisins Inc. v. United States Dep’t of Ag., 354 F.3d 1072, 1082 (9th Cir. 2004)). The Commission further stressed that, even if certain documents “include safeguards information or classified information,” the Staff is required to consider whether they “might be redacted, with [non-sensitive] portions released.” *Id.*, slip op. at 18. The Commission then admitted “Contention 1(b) to the extent that it alleges that the Staff failed to provide source documents or information underlying its analysis, and failed to identify appropriate FOIA exemptions for its withholding decisions.” *Id.*, slip op. at 19.⁶

The Commission’s ruling compels admission of Concerned Citizens’ parallel contention challenging the Staff’s failure to identify and disclose data and other documents that informed its analysis of terrorist threats involving Pa’ina’s proposed irradiator. See 9/4/07 Amended Environmental Contentions at 23-25; 10/1/07 Reply In Support Of Amended Environmental Contentions at 32-34. In this case, the Staff identified only two documents – a March 2004 draft analysis (“SNL 2004”) and the June 6, 2003 order imposing compensatory measures (“NRC, 2003”) – as containing safeguards information. Staff’s Response to Amended Environmental Contentions at 14 n.10, 16 n.11;⁷ see also Pa’ina EA at B-8. While the Diablo Canyon decision indicates the Staff’s non-disclosure of the safeguards information in these two documents may be justified, that does not excuse the Staff’s failure to identify in the EA all of the data and analyses on which its evaluation of terrorist threats relied and to disclose all “[r]eleasable documents (or

⁶ The Commission denied SLOMPF’s request to access documents that are exempt from disclosure due to security concerns. *Id.*, slip op. at 18. Concerned Citizens has not made a similar request in this proceeding. See 10/1/07 Reply In Support Of Amended Environmental Contentions at 32-34 (ML072780350).

⁷ The Staff inaccurately suggests the entirety of the June 6, 2003 order is considered safeguards information. In fact, only the requirements set forth in Attachment 2 to the order are considered safeguards information. See 68 Fed. Reg. 35,458, 35,458 (June 13, 2003).

releasable portions of documents),” including the non-sensitive portions of the two documents the Staff identified as containing some safeguards information. Pacific Gas & Elec. Co., CLI-08-01, slip. op. at 18.

For example, the only document the Pa‘ina EA cites regarding the generic security assessments it claims support the Staff’s conclusions (“NRC, 2004”) reports only that such assessments were performed at nuclear power plants. Pa‘ina EA at B-3, B-4; see also “Protecting Our Nation – Since 9-11-01,” U.S. Nuclear Regulatory Commission, NUREG/BR-0314 at 18-19 (Sept. 2004) (ML042650352). That document does not indicate that any generic security assessments were performed for underwater irradiators like the one Pa‘ina proposes. Nor does it provide any discussion of which generic security assessments the Staff deemed applicable to Pa‘ina’s proposed irradiator.

The Diablo Canyon decision makes clear that, even if the generic assessments themselves are exempt from disclosure, the Staff still must identify those assessments by title, together with a summary of their contents. Pacific Gas & Elec. Co., CLI-08-01, slip. op. at 17-18.⁸ Likewise, the Staff was obliged to identify all other “documents on which it relied in preparing its environmental assessment” and to disclose all “[r]eleasable documents (or releasable portions of documents).” Id., slip. op. at 18. The Board should admit this portion of Concerned Citizens’ contention to resolve the parties’ dispute over whether the Staff failed to comply with this legal duty.

⁸ The Staff’s failure to identify the generic assessments in its list of references would be lawful only in the unusual circumstance in which the very existence of the assessments is, in and of itself, confidential, which the Staff has never claimed. Id., slip. op. at 17 n.71.

V. THE DIABLO CANYON DECISION SUPPORTS ADMISSION OF CONCERNED CITIZENS' CONTENTION CHALLENGING THE PA'INA EA'S FAILURE TO EVALUATE ALL REASONABLY FORESEEABLE IMPACTS

In Diablo Canyon, the Commission admitted SLOMFP's contention 2, which challenged the Staff's focus on only "early fatalities" and its failure to evaluate "the possibility of land contamination" and "non-fatal health effects (e.g., latent cancers) from a hypothetical terrorist attack." Id., slip. op. at 20. The Commission explained:

The Staff may be able to easily explain how such issues were addressed by reference to source documents ... or how such issues are bounded and were implicitly addressed by the very low dose estimates and other considerations, but we believe further inquiry is appropriate.

Id., slip. op. at 20-21.

In this proceeding, Concerned Citizens filed similar challenges to the Pa'ina EA's narrow "focus on only the immediate effects of a potential terrorist attack on the irradiator" and its failure "to provide any analysis of the long-term human health, environmental and socioeconomic effects of up to one million curies of radioactive Cobalt-60, dispersed by a bomb, persisting in the environment." 9/4/07 Amended Environmental Contentions at 27; see also 10/1/07 Reply In Support Of Amended Environmental Contentions at 36-37 & n.31. As in Diablo Canyon, the Board should admit this aspect of environmental contention 3 to determine whether the Staff failed to take the requisite "hard look" at all of the direct and indirect impacts of Pa'ina's proposed undertaking, whether immediate or long-term. Ocean Advocates v. U.S. Army Corps of Engineers, 402 F.3d 846, 864 (2005); see also 40 C.F.R. §§ 1508.8, 1508.27(a).

VI. THE DIABLO CANYON DECISION DID NOT ADDRESS SEVERAL ASPECTS OF CONCERNED CITIZENS' CONTENTIONS

In its January 24, 2008 order, the Board instructed the parties to detail "how, if at all," the Diablo Canyon decision informs consideration of whether to admit Concerned Citizens' various

challenges to the Pa'ina EA's analysis of impacts related to terrorism. 1/24/08 Board Order at 2. As discussed above, several of SLOMFP's claims overlap with the issues raised in this proceeding, allowing meaningful analysis of how the Commission would likely view Concerned Citizens' analogous contentions. There are other aspects of Concerned Citizens' claims, however, that the Commission did not discuss in its Diablo Canyon decision.

Specifically, the Diablo Canyon proceeding did not involve a challenge to the Staff's failure to justify the lack of a quantitative analysis of the likelihood of a terrorist attack involving the proposed facility. See 9/4/07 Amended Environmental Contentions at 19. Nor did the Diablo Canyon decision address a claim analogous to Concerned Citizens' challenge to the Staff's failure to analyze the potential for, and consequences of, a terrorist attack on Cobalt-60 shipments while in transit to and from Pa'ina's proposed irradiator. Id. at 28. Finally, the Commission did not address a contention similar to Concerned Citizens' challenge to the Pa'ina EA's failure to justify its conclusion that mitigation measures would reduce terrorism-related impacts to insignificance. Id. at 28-29; 10/1/07 Reply In Support Of Amended Environmental Contentions at 37-38.

Since the Diablo Canyon decision does not provide guidance regarding the admissibility of those aspects of amended environmental contention 3, the Board should make its decision based on the briefing the parties previously provided. As detailed in Concerned Citizens' prior pleadings, controlling Ninth Circuit case law calls for the admission of those claims.

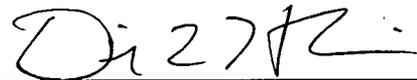
VII. CONCLUSION

For the foregoing reasons, Concerned Citizens respectfully submits that the Commission's Diablo Canyon decision supports admission of Concerned Citizens' claims challenging (1) the EA's failure to assess and disclose likely modes of attack on Pa'ina's

proposed irradiator, (2) the EA's failure to quantify the consequences of plausible terrorist threat scenarios, (3) the Staff's failure to identify all data and analyses underlying its evaluation of threats from terrorism and to disclose all non-classified, non-safeguards information, and (4) the EA's failure to evaluate all reasonably foreseeable terrorism-related impacts. Concerned Citizens further respectfully submits that Ninth Circuit precedent supports admission of those claims related to the Staff's analysis of terrorist threats that were not before the Commission in the Diablo Canyon proceeding.

Dated at Honolulu, Hawai'i, January 31, 2008.

Respectfully submitted,



DAVID L. HENKIN
Earthjustice
223 South King Street, Suite 400
Honolulu, Hawai'i 96813
Tel. No.: (808) 599-2436
Fax No. (808) 521-6841
Email: dhenkin@earthjustice.org

CERTIFICATE OF SERVICE

The undersigned hereby certifies that, on January 31, 2008, 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

Michael J. Clark
U.S. Nuclear Regulatory Commission
Office of the General Counsel
Mail Stop – O-15 D21
Washington, DC 20555-0001
E-mail: MJC1@nrc.gov

Administrative Judge
Paul B. Abramson
Atomic Safety & Licensing Board Panel
Mail Stop – T-3 F23
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
E-mail: pba@nrc.gov

Administrative Judge
Thomas S. Moore, Chair
Atomic Safety & Licensing Board Panel
Mail Stop – T-3 F23
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
E-Mail: tsm2@nrc.gov

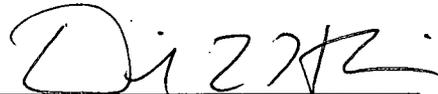
Administrative Judge
Anthony J. Baratta
Atomic Safety & Licensing Board Panel
Mail Stop – T-3 F23
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
E-Mail: ajb5@nrc.gov

In addition, the undersigned hereby certifies that, on January 31, 2008, a true and correct copy of the foregoing document was duly served on the following via e-mail:

Lauren Bregman
LRB1@nrc.gov

Johanna Thibault
JRT3@nrc.gov

Dated at Honolulu, Hawai'i, January 31, 2008.



DAVID L. HENKIN
Attorneys for Intervenor
Concerned Citizens of Honolulu