

RASI-43

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OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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 MOTION FOR EXTENSION OF TIME TO FILE OPPOSITION TO PA'INA HAWAII, LLC'S MOTION TO REINSTATE "CATEGORICAL EXCLUSION" STATUS FOR PA'INA HAWAII, LLC'S IRRADIATOR

Pursuant to 10 C.F.R. § 2.323, intervenor Concerned Citizens of Honolulu seeks an extension of time to file its opposition to Applicant Pa'ina Hawaii, LLC's Motion to Reinstate "Categorical Exclusion" Status for Pa'ina Hawaii, LLC's Irradiator. Pa'ina served its 23-page motion on August 25, 2008, one day before Concerned Citizens received Pa'ina's and the Nuclear Regulatory Commission Staff's initial written statements, which contain nearly 100 pages of argument, plus testimony from six witnesses and hundreds of additional pages of exhibits. Henkin Decl. ¶ 3.

Absent an extension, Concerned Citizens' opposition to Pa'ina's motion would be due on September 4, 2008, in the middle of the 20-day period the Board provided for Concerned Citizens to prepare rebuttal statements of position. See 10 C.F.R. § 2.323(c); 7/17/08 Board Scheduling Order at 5. Due to the need to address Pa'ina's and the Staff's voluminous initial statements and supporting documents, Concerned Citizens is simply unable to devote time to responding to Pa'ina's motion prior to the current due date. Henkin Decl. ¶ 5.

TEMPLATE = SECY-041

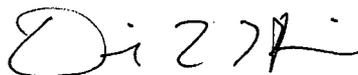
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Rather than seek a delay in the briefing schedule for the hearing, Concerned Citizens would like to defer its deadline to respond to Pa'ina's motion until a reasonable time following the filing of its rebuttal statements. Concerned Citizens' rebuttal to the Staff's initial written statement is due on Tuesday, September 16, 2008. Accordingly, Concerned Citizens respectfully asks the Board to extend the deadline to oppose Pa'ina's motion until Monday, September 22, 2008, which is only four business days later.

Pursuant to 10 C.F.R. § 2.323(b), Concerned Citizens contacted the other parties on August 27, 2008 to seek their agreement to an extension. Henkin Decl. ¶ 6. That same day, the Staff informed Concerned Citizens that it has no objection to the requested extension. Id. On August 28, 2008, Pa'ina informed Concerned Citizens that it opposes the extension. Id. ¶ 7.

Dated at Honolulu, Hawai'i, August 28, 2008.

Respectfully submitted,



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Concerned Citizens of Honolulu

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE COMMISSION

In the Matter of)	
Pa'ina Hawaii, LLC)	Docket No. 30-36974-ML
)	ASLBP No. 06-843-01-ML
Material 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 currently the sole attorney representing intervenor Concerned Citizens of Honolulu.

2. I make this declaration in support of Concerned Citizens' Motion for Extension of Time to File Opposition to Pa'ina Hawaii, LLC's Motion to Reinstate "Categorical Exclusion" Status for Pa'ina Hawaii, LLC's Irradiator. This declaration is based on my personal knowledge, and I am competent to testify about the matters contained herein.

3. On August 25, 2008, I received via electronic mail Pa'ina's 23-page motion to reinstate. The following day, I received Pa'ina's and the Nuclear Regulatory Commission Staff's initial written statements, which contain nearly 100 pages of argument, plus testimony from six witnesses and hundreds of additional pages of exhibits.

4. Pursuant to the Board's July 17, 2008 scheduling order, Concerned Citizens' rebuttal to Pa'ina's initial statement of position is due on Monday, September 15, 2008. Since I received the Staff's initial statement of position after 5 p.m., Hawai'i Standard Time, the

deadline for Concerned Citizens' rebuttal to the Staff's submittal is one business day later, Tuesday, September 16, 2008.

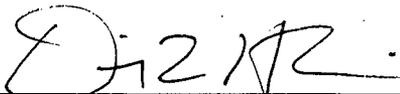
5. Due to the need to address Pa'ina's and the Staff's voluminous initial statements and supporting documents, I am unable to devote time to responding to Pa'ina's motion prior to the current due date, Thursday, September 4, 2008. The other attorneys at Earthjustice are not familiar with the issues presented by Pa'ina's motion, and, in any event, due to the demands of their cases, no other attorney is currently available to work on Concerned Citizens' opposition.

6. On August 27, 2008, I contacted Fred Paul Benco, counsel for Pa'ina Hawaii, LLC, and Michael Clark and Molly Barkman, counsel for the Staff, to seek their agreement to an extension of time until September 22, 2008 for Concerned Citizens' opposition to Pa'ina's motion. Later that day, Mr. Clark sent me an email stating that the Staff does not oppose Concerned Citizens' request.

7. On August 28, 2008, Mr. Benco sent me an email stating that, as long as Concerned Citizens has a request for stay pending before the Board, Pa'ina would oppose Concerned Citizens' request for an extension of time.

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, August 28, 2008.



DAVID L. HENKIN

CERTIFICATE OF SERVICE

The undersigned hereby certifies that, on August 28, 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

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

Molly L. Barkman
Michael J. Clark
U.S. Nuclear Regulatory Commission
Office of the General Counsel
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Administrative Judge
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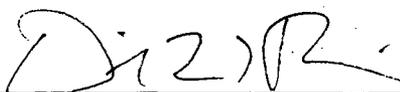
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Washington, DC 20555-0001
E-Mail: Anthony.Baratta@nrc.gov

In addition, the undersigned hereby certifies that, on August 28, 2008, a true and correct copy of the foregoing document was duly served on the following via e-mail:

Lauren Bregman
Lauren.Bregman@nrc.gov

Johanna Thibault
Johanna.Thibault@nrc.gov

Dated at Honolulu, Hawai'i, August 28, 2008.



DAVID L. HENKIN
Attorneys for Intervenor
Concerned Citizens of Honolulu



EARTHJUSTICE

Because the earth needs a good lawyer

BOZEMAN, MONTANA DENVER, COLORADO HONOLULU, HAWAII
INTERNATIONAL JUNEAU, ALASKA NEW YORK, NEW YORK 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: August 28, 2008

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

<u>ENCLOSURES</u>	<u>DATE</u>	<u>DESCRIPTION</u>
Original and two copies	8/28/08	INTERVENOR CONCERNED CITIZENS OF HONOLULU'S MOTION FOR EXTENSION OF TIME TO FILE OPPOSITION TO PA`INA HAWAII, LLC'S MOTION TO REINSTATE "CATEGORICAL EXCLUSION" STATUS FOR PA`INA HAWAII, LLC'S IRRADIATOR

- 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: