

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

(Material License Application)

Docket No. 30-36974-ML

ASLBP No. 06-843-01-ML

December 4, 2008

ORDER

(Ruling on Intervenor's Motion to Strike Testimony, Releasing Previously Reserved Hearing Dates, and Directing Parties to Submit Scheduling Information for Hearing)

On October 16, 2008, the Intervenor, Concerned Citizens of Honolulu, filed a motion to strike testimony provided by the NRC Staff and the Applicant, Pa'ina Hawaii, LLC, in support of their statements of position.<sup>1</sup> In its motion, the Intervenor asserts that the Staff sought to improperly introduce post hoc testimony from Matthew Blevins and various personnel from the Center for Nuclear Waste Regulatory Analyses that "is irrelevant to resolving the parties' disputes regarding the environmental assessment [(EA)] for Pa'ina's proposed irradiator" and "improper" and "irrelevant" testimony from the Applicant's president regarding whether the Staff violated the National Environmental Policy Act when it failed to analyze the electron-beam irradiator alternative in its EA.<sup>2</sup> On October 23, 2008, the Staff and the Applicant filed replies to

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<sup>1</sup> Intervenor Concerned Citizens of Honolulu's Motion to Strike Testimony Submitted in Support of NRC Staff's and Pa'ina Hawaii, LLC's Statements of Position (Oct. 16, 2008).

<sup>2</sup> Id. at 1.

the Intervenor's motion.<sup>3</sup> On October 27, 2008, the Intervenor filed a request to file a reply in support of its motion to strike and its reply.<sup>4</sup> And, on October 31, 2008, the Staff filed a reply to the Intervenor's request to file a reply brief.<sup>5</sup>

The Intervenor's motion to strike is denied. Further, the Intervenor is directed to file, within sixty (60) days of the issuance of this Order, a full factual and substantive written statement of position (including written testimony with supporting affidavits and exhibits in support of its position) rebutting and responding to the presentations of the Staff and the Applicant,<sup>6</sup> including the allegedly "post hoc," "improper," and "irrelevant" testimony submitted by the Staff and the Applicant. The Staff and the Applicant will then have thirty (30) days to file written responses (including, for example, rebuttal testimony) to the Intervenor's presentation.

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<sup>3</sup> NRC Staff's Opposition to Intervenor's Motion to Strike (Oct. 23, 2008); Applicant Pa'ina Hawaii, LLC's Reply to October 16, 2008 Motion Strike Testimony Submitted in Support of NRC's Staff's and Pa'ina Hawaii, LLC's Statement of Position (Oct. 23, 2008).

<sup>4</sup> Intervenor Concerned Citizens of Honolulu's Request to File Reply Re: Motion to Strike Testimony Submitted in Support of NRC Staff's and Pa'ina Hawaii, LLC's Statements of Position (Oct. 27, 2008); Intervenor Concerned Citizens of Honolulu's Reply Re: Motion to Strike Testimony Submitted in Support of NRC Staff's and Pa'ina Hawaii, LLC's Statements of Position (Oct. 27, 2008).

<sup>5</sup> NRC Staff's Opposition to Intervenor's Request for Leave to File Reply Brief in Support of Motion to Strike (Oct. 31, 2008).

<sup>6</sup> NRC Staff's Initial Statement of Position on Amended Environmental Contentions 3 and 4 (Aug. 26, 2008); Licensee Pa'ina Hawaii, LLC's Trial Brief on the Law (Aug. 26, 2008); NRC Staff's Rebuttal Statement of Position and Testimony (Sept. 15, 2008); Licensee Pa'ina Hawaii, LLC's Rebuttal Memorandum in Opposition to Intervenor Concerned Citizens of Honolulu's August 26, 2008 Initial Written Statement of Position and in Response to NRC Staff's Initial Statement of Position and Initial Written Statement (Sept. 15, 2008).

The Board releases any previously reserved hearing dates and directs the parties' counsel to provide the dates in May, June, and July of 2009 that counsel and their witnesses will not be available for a hearing. Counsel shall file such schedule by Friday, December 12, 2008.

It is so ORDERED.

FOR THE ATOMIC SAFETY  
AND LICENSING BOARD\*

*/RA/*

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Thomas S. Moore, Chairman  
ADMINISTRATIVE JUDGE

Rockville, Maryland  
December 4, 2008

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\* Copies of this memorandum and order were sent this date by Internet 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 (RULING ON INTERVENOR'S MOTION TO STRIKE TESTIMONY, RELEASING PREVIOUSLY RESERVED HEARING DATES, AND DIRECTING PARTIES TO SUBMIT SCHEDULING INFORMATION FOR HEARING) have been served upon the following persons by U.S. mail, first class, or through NRC internal distribution.

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Washington, DC 20555-0001

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[Original signed by Christine M. Pierpoint]

Office of the Secretary of the Commission

Dated at Rockville, Maryland  
this 4th day of December 2008