

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 31, 2008

ORDER

(Denying Motion for Reconsideration and Directing Parties to Bind, Mark,
and Divide Written Statements and Supplemental Materials)

On December 4, 2008, the Licensing Board directed the Intervenor to file within sixty (60) days a full factual and substantive written statement of position with testimony, affidavits, and exhibits rebutting and responding to the presentations of the Staff and the Applicant.¹ The Board provided the Staff and the Applicant with the opportunity to file written responses to the Intervenor's presentation within thirty (30) days of the Intervenor's submission.² Additionally, the Board instructed the parties to provide the dates in May, June, and July 2009 that counsel and their witnesses will not be available for a hearing.

Subsequently, the Applicant filed a motion for "[r]econsideration/[c]larification" of the Board's Order.³ In its motion, the Applicant seeks to have the Board require the Intervenor "to declare whether or not it intends to file any further rebuttal testimony" and to alter the prescribed filing dates so as to reduce significantly the number of days within which each party must file.⁴

¹ Licensing Board Order (Ruling on Intervenor's Motion to Strike Testimony, Releasing Previously Reserved Hearing Dates, and Directing Parties to Submit Scheduling Information for Hearing) (Dec. 4, 2008) at 2 (unpublished).

² Id.

³ Licensee Pa'ina Hawaii, LLC's Motion for Reconsideration/Clarification of Board's December 4, 2008 Order (Dec. 15, 2008).

⁴ Id. at 3.

On December 18, 2008, the Staff filed a response in support of the Applicant's motion.⁵ In its December 26, 2008 opposition to the Applicant's motion, the Intervenor first indicates that it intends to comply fully with the Board's Order. Next, the Intervenor argues that the motion should be denied because it fails to comply with the Commission's procedural and substantive requirements for reconsideration motions and that an earlier filing date would prejudice the Intervenor's ability to file a full factual and substantive written statement of position.⁶

The Applicant's motion is denied. Although the motion is styled a motion for "[r]econsideration/[c]larification," the motion fails to pay even lip service to, much less meet, the regulatory requirements of 10 C.F.R. § 2.323(e) for a reconsideration motion, and it seeks clarification of nothing. Oral hearing dates will be established as soon as is practicable to accommodate the scheduling conflicts of the Board members.

Finally, with regard to the format for the upcoming filings, each party is directed to fasten together its filings using a three-ring binder or other fastening device, mark clearly each document with its title and any assigned number, and separate each document from the others with dividers. The Staff and the Applicant may use the Intervenor's Initial Statement of Position and supplemental materials, filed on August 26, 2008, as a model for their own future filings.

It is so ORDERED.

FOR THE ATOMIC SAFETY
AND LICENSING BOARD*

/RA/

Thomas S. Moore, Chairman
ADMINISTRATIVE JUDGE

Rockville, Maryland
December 31, 2008

⁵ NRC Staff's Response to Pa'ina's Motion for Reconsideration (Dec. 18, 2008).

⁶ Intervenor Concerned Citizens of Honolulu's Opposition to Licensee Pa'ina Hawaii, LLC's Motion for Reconsideration/Clarification of Board's December 4, 2008 Order (Dec. 26, 2008).

* 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 (DENYING MOTION FOR RECONSIDERATION AND DIRECTING PARTIES TO BIND, MARK, AND DIVIDE WRITTEN STATEMENTS AND SUPPLEMENTAL MATERIALS) 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 Christine M. Pierpoint]

Office of the Secretary of the Commission

Dated at Rockville, Maryland
this 31st day of December 2008