

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

February 6, 2009

ORDER

(Setting Date and Time for Telephone Conference)

It appears from the NRC Staff's written presentation on the admitted contentions¹ and the Intervenor's most recent submission,² that there are a number of subject areas in which the Staff arguably has done more than merely "supplement [or] refine"³ (*i.e.*, it has "substantially modif[ied]"⁴) the Final Environmental Assessment.⁵ It is apparent that the United States Court of Appeals for the Ninth Circuit and the Council on Environmental Quality's regulations place a strong emphasis on "public involvement" when drafting an environmental document.⁶ Therefore, in the event the Board were to conclude that the Final Environmental Assessment

¹ NRC Staff's Initial Statement of Position on Amended Environmental Contentions 3 and 4 (Aug. 26, 2008).

² Intervenor Concerned Citizens of Honolulu's Supplemental Statement of Position (Feb. 2, 2009).

³ Hydro Res., Inc. (P.O. Box 15910, Rio Rancho, NM 87174), CLI-01-04, 53 NRC 31, 53 (2001).

⁴ Philadelphia Elec. Co. (Limerick Generating Station, Units 1 and 2), ALAB-819, 22 NRC 681, 705 (1985).

⁵ Final Environmental Assessment for Proposed Pa'ina Hawaii, LLC Irradiator (Aug. 10, 2007) (ADAMS Accession No. ML0711501211).

⁶ *See, e.g., Bering Strait Citizens for Responsible Res. Dev. v. U.S. Army Corps of Eng'rs*, 524 F.3d 938, 952 (2008); 40 C.F.R. § 1506.6.

required any of the substantial modifications set forth in the Staff's written presentation to satisfy the National Environmental Policy Act's requirements, the question necessarily arises as to how and when the Staff would satisfy the public involvement requirement as to such matters.

Accordingly, the Board will hold a telephone conference on Tuesday, February 24, 2009, at 4:00 p.m. EST to discuss, inter alia, this matter with the parties.⁷

No later than February 23, 2009 at 4:00 p.m. EST, counsel for each of the parties shall contact Ashley H. Prange at (301) 415-0110 to obtain the telephone number and pass code for the conference call. At the same time, counsel for each party shall provide Ms. Prange with the name of the individual who will participate so that we can identify each conference participant in advance to the court reporter.

FOR THE ATOMIC SAFETY
AND LICENSING BOARD*
/RA/

Thomas S. Moore, Chairman
ADMINISTRATIVE JUDGE

Rockville, Maryland
February 6, 2009

⁷ For example, the parties should be prepared to discuss whether the Staff should consider seeking written comments from the public on these subject areas and whether the time for the Staff and the Applicant to file any response to the Intervenor's latest filing should accommodate such action so their responses may take any appropriate public comments into account.

* 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)
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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 (SETTING DATE AND TIME FOR TELEPHONE CONFERENCE) 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 6th day of February 2009