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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)	Docket No. 30-36974-ML
)	ASLBP No. 06-843-01-ML
Material License Application)	
_____)	

INTERVENOR CONCERNED CITIZENS OF HONOLULU'S
REPLY IN SUPPORT OF AMENDMENT TO
ENVIRONMENTAL CONTENTION 3 RE: TRANSPORTATION ACCIDENTS

I. INTRODUCTION

Pursuant to 10 C.F.R. § 2.309(h)(2), intervenor Concerned Citizens of Honolulu files its reply to applicant Pa'ina Hawaii, LLC's Opposition To Intervenor's Amendment To Environmental Contention 3 Re: Transportation Accidents (dated May 1, 2009) and the Nuclear Regulatory Commission ("NRC") Staff's Response In Opposition To Intervenor's Amendment To Environmental Contention 3 Re: Transportation Accidents (dated May 1, 2009).

As discussed in detail below, Concerned Citizens properly filed an amended contention to challenge the adequacy of the analysis of transportation accidents involving shipments of cobalt-60 to and from Pa'ina's proposed irradiator that the Staff put forth for the first time when it submitted the testimony of Earl Easton on March 5, 2009. See Part II, infra. Moreover, Concerned Citizens' amended contention was filed within thirty days of service of Mr. Easton's testimony and, thus, is timely. See Part III, infra. Concerned Citizens respectfully submits that admission of the amended contention, which relates to a central issue in this proceeding – the Staff's failure to comply with its obligation under the National Environmental Policy Act

TEMPLATE = SECY 037

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(“NEPA”) to take a “hard look” at potential environmental impacts associated with Pa’ina’s proposed irradiator – is warranted. Klamath-Siskiyou Wilderness Center v. Bureau of Land Management, 387 F.3d 989, 1001 (9th Cir. 2004); see also Parts IV-VI, infra.

II. CONCERNED CITIZENS PROPERLY SEEKS TO AMEND ENVIRONMENTAL CONTENTION 3

The Staff’s assertion that “an amended contention is not the appropriate vehicle for responding to Staff testimony addressing the contention” is notable for the absence of citation to any supporting authority. Staff’s Response at 5.¹ As discussed in its moving papers, Concerned Citizens relies on the Board’s May 1, 2006 order, which instructed Concerned Citizens to file amended contentions not otherwise encompassed by the Board’s schedule “within 30 days of the ... document underlying the late-filed contention.” 5/1/06 Board Order at 2. Concerned Citizens also relies on the Commission’s hearing regulations, which provide that:

[o]n issues arising under the National Environmental Policy Act, ... [t]he petitioner may amend those contentions or file new contentions if there are data or conclusions in the NRC draft or final ... environmental assessment, or any supplements relating thereto, that differ significantly from the data or conclusions in the applicant’s documents.

10 C.F.R. § 2.309(f)(2) (emphasis added).²

As discussed in greater detail in the following section, Mr. Easton’s analysis of transportation accidents, which the Staff submitted with its response to Concerned Citizens’ Supplemental Statement of Position, differed significantly from the information presented in the final environmental assessment (“EA”) for Pa’ina’s proposed irradiator and the Staff’s prior

¹ Pa’ina’s joinder is lukewarm at best – merely “[a]ssuming arguendo that the Staff’s argument is correct” – and likewise devoid of any authority. Pa’ina’s Opposition at 2.

² The regulations governing amended contentions do not require “certification by [Concerned Citizens’] attorney that it [sic] had made a sincere effort to contact the other parties in an attempt to resolve the issue.” Pa’ina’s Opposition at 2. Accordingly, Pa’ina’s observation that “this was never done by Intervenor” is irrelevant. Id.

filings, all of which omitted any discussion of such impacts. See 8/26/08 Staff's Initial Statement of Position at 62-63 (Staff considered only "environmental impact of transporting cobalt-60 sources from the Port of Honolulu to Pa'ina's irradiator ... under normal operations"). Consequently, both the governing hearing regulations and this Board's scheduling order support Concerned Citizens' decision to file an amended contention.³

In arguing that an amended contention is improper, the Staff appears to have forgotten that, less than three months ago, it adopted the opposite position. On February 24, 2009, the Board held a telephonic conference to discuss the Staff's obligations under NEPA to involve the public with respect to "the substantial modifications" to the final EA set forth in the Staff's Initial Statement of Position. 2/6/09 Board Order (Setting Date and Time for Telephone Conference) at 2. During the conference, the Board specifically focused on "the testimony of

³ The Board should ignore the Staff's suggestion to "dismiss all admitted segments in amended environmental contentions 3 and 4 that are unrelated to transportation accidents." Staff's Response at 5. If the Staff wishes to seek such relief, it is obliged to bring its request before the Board in the form of a motion, after conferring with Concerned Citizens and Pa'ina. See 10 C.F.R. § 2.323(a), (b). It cannot pursue the claim by dropping unsupported rhetoric into its opposition to Concerned Citizens' filing. See id. § 2.323(b) (motion must "state with particularity the grounds and the relief sought" and "must be rejected if it does not include a certification by the attorney or representative of the moving party that the movant has made a sincere effort to contact other parties in the proceeding and resolve the issue(s) raised in the motion").

The short answer to the issue the Staff raises is there was no reason for Concerned Citizens to seek leave to amend the other aspects of its environmental contentions. On December 4, 2008, the Board responded to Concerned Citizens' motion to strike the Staff's and Pa'ina's testimony with an order instructing Concerned Citizens to file "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, including the allegedly 'post hoc,' 'improper,' and 'irrelevant' testimony submitted by the Staff and the Applicant." 12/4/08 Board Order at 2 (emphasis and footnote omitted). Having provided its response, including expert testimony, in compliance with the Board's order, it would have served no purpose for Concerned Citizens to seek leave to amend its other contentions.

Concerned Citizens reserves its right to provide a more complete response should the Staff bring a motion seeking the relief mentioned in its opposition.

staff witness Matthew Blevins,” which “gives the full explanation that is nowhere in the final EA” regarding why the Staff refused to examine the electron-beam irradiator alternative. 2/24/09 Transcript of Oral Argument at 62-63 (ML090620176). The Staff responded that anyone who was concerned about the adequacy of Mr. Blevins’ post hoc analysis could take advantage of the “opportunities provided in the NRC’s Rules of Practice,” including section “2.309 which provides for late-filed contentions.” Id. at 64; see also id. at 57 (“Any interested member of the public could have ... submitted a late-file[d] contention” in response to the Staff’s “primary evidentiary submittals ... in August [2008] and ... rebuttal submittals in September”). In filing its amended contention, Concerned Citizens has done nothing more than follow the procedure the Staff previously identified as proper for responding to its post-EA testimony.⁴

Notably, the February 24, 2009 telephonic conference was not the only time the Staff has gone on record acknowledging the propriety of filing amended contentions in response to Staff testimony that seeks to cure the EA’s omissions. Despite its protestations to the contrary, the Staff’s current opposition cannot be squared with the arguments it advanced in support of its request for leave to seek summary disposition. See Staff’s Response at 6 n.4. In that earlier motion, the Staff argued that summary disposition was appropriate because it had submitted testimony that allegedly “supplied the information the Intervenor claimed was omitted, and the Intervenor has not amended its contentions nor challenged the information provided in the Staff’s testimony.” 9/26/08 NRC Staff’s Motion To Dismiss Portions Of Amended

⁴ Concerned Citizens does not agree that the opportunity to file late-filed contentions addressing information that was withheld from the public during the EA’s preparation satisfies NEPA’s public participation requirements. That issue is distinct, however, from the one posed by the Staff’s opposition: whether Concerned Citizens, as an intervenor in this proceeding, may properly file an amended contention to challenge the sufficiency of an analysis the Staff presented for the first time long after the EA’s issuance.

Environmental Contentions And For Leave To Seek Summary Disposition at 9 n.14 (emphasis added).

In Duke Energy Corp. (McGuire Nuclear Station, Units 1 and 2; Catawba Nuclear Station, Units 1 and 2), CLI-02-28, 56 NRC 373 (2002), the Commission provided instructions for situations “[w]here a contention alleges the omission of particular information or an issue from an application, and the information is later supplied” Id., 56 NRC at 383. The Commission explained that, in such circumstances, “Intervenors must timely file a new or amended contention that addresses the factors in section 2.714(b)” – which are now set forth in section 2.309 – “in order to raise specific challenges regarding the new information.” Id. (emphasis added). That is precisely what Concerned Citizens has done here.⁵

III. CONCERNED CITIZENS’ AMENDED CONTENTION IS TIMELY

As this Board noted in admitting Amended Environmental Contention 3, the EA the Staff prepared for Pa’ina’s proposed irradiator “omitted any consideration of impacts from transportation accidents, the subject of the Intervenor’s challenge here.” 12/21/07 Board Order (Ruling on Admissibility of Intervenor’s Amended Environmental Contentions) at 18 n.62. In its subsequent filings, the Staff persisted in insisting it “was not required to analyze transportation impacts” in the EA. 8/26/08 Staff’s Initial Statement of Position at 57. The only site-specific

⁵ The Board should squarely reject the Staff’s claim that filing an amended contention is appropriate only when “the Staff’s testimony is not the only new information presented, such as where the Staff issues or makes publicly available a document to which the Staff refers in its testimony.” Staff’s Response at 6 n.4. Not only does the Staff fail to cite any authority in support of its claim, but it is inconsistent with its position during the February 24, 2009 conference that a late-filed contention would be appropriate to challenge Mr. Blevins’ initial testimony. The only document Mr. Blevins references in that testimony is an email from Pa’ina’s President, Michael Kohn, which “was included as part of the hearing file in this case.” Staff Exh. 1: Blevins Testimony at A.31. The only new information in Mr. Blevins’ testimony is his narrative about the alternatives analysis he allegedly conducted, which “is nowhere in the final EA on that very subject matter.” 2/24/09 Transcript of Oral Argument at 62.

analysis related to transportation the Staff claims to have conducted was an evaluation of “the environmental impact of transporting cobalt-60 sources from the Port of Honolulu to Pa‘ina’s irradiator ... under normal operations,” not accidents. Id. at 62-63 (emphasis added); see also Blevins Testimony at A.16, A.29.

It was not until filing its response to Concerned Citizens’ Supplemental Statement of Position on March 5, 2009, that the Staff, for the first time, performed and presented any analysis regarding the likelihood “any radiation would be released as the result of an accident occurring during the transport of cobalt-60 to Pa‘ina’s irradiator.” 3/5/09 Staff Response to Intervenor’s Supplemental Statement of Position at 36. The Staff provided this new analysis “through the testimony of Earl Easton,” id., who acknowledges in his testimony that he did not “have any role in the NRC Staff’s environmental review of the license application submitted by Pa‘ina Hawaii, LLC” and had “only become familiar with this case” in February 2009. Staff Exh. 70: Easton Testimony at Q.2, A.2. Notably, even in opposing Concerned Citizens’ amended contention, the Staff concedes “Mr. Easton’s testimony itself ... is ‘new’ information.” Staff’s Response at 7.

There is no dispute that Concerned Citizens filed its amended contention within thirty days of service of Mr. Easton’s testimony, as provided by the Board’s May 1, 2006 scheduling order. 5/1/06 Board Order at 2. The Staff’s argument the amended contention is, nonetheless, untimely focuses on whether “[t]he sources to which Mr. Easton refers in his testimony are not new” and “the sources cited by the intervenor in support of its amended contention are not new.” Staff’s Response at 7. Concerned Citizens respectfully submits that the vintage of the documents on which Mr. Easton based his newly minted analysis and on which Concerned Citizens’ expert relied in pointing out the flaws in that analysis is irrelevant to determining whether the amended contention is timely.

The portion of Environmental Contention 3 that Concerned Citizens now seeks to amend alleges the Staff violated NEPA's requirement to take a "hard look at the potential environmental impacts of the proposed facility" when it "failed to consider transportation accidents involving the cobalt sources." 12/21/07 Board Order at 9, 16. The Staff's subsequent mention of the existence of NUREG-0170 – which was neither cited nor discussed in the EA – in opposing this contention did not materially change the situation, since the Staff failed to "summarize ... the issues and reasoning of the generic study as is required when incorporating such environmental documents." *Id.* at 18-19; see also 40 C.F.R. §§ 1502.20 (to "tier" to NUREG-0170, Staff would have had to "summarize the issues discussed in the broader statement and incorporate statements from the broader statement by reference," concentrating on transportation-related issues specific to Pa'ina's proposed irradiator), 1508.28 (same).⁶

The Staff's submittal of Mr. Easton's testimony provided, for the first time, an analysis of transportation accidents (albeit flawed) that focused on Pa'ina's proposed irradiator. The Staff is simply wrong when it claims NUREG-0170 "provides the Staff's full analysis of risks associated with the transportation of cobalt-60 sources." Staff's Response at 7-8. To support his

⁶ The Staff is wrong when it asserts Concerned Citizens has never challenged "the Staff's position that any impacts associated with the transportation of cobalt-60 to Pa'ina's irradiator are encompassed by the analysis in the NUREG." Staff's Response at 3. On the contrary, Concerned Citizens has consistently argued the Staff failed to provide the requisite analysis to justify its reliance on NUREG-0170 with respect to transportation accidents involving Pa'ina's proposed irradiator. See, e.g., 10/1/07 Concerned Citizens' Reply Re: Amended Environmental Contentions 3 Through 5 at 22-23; 9/16/08 Concerned Citizens' Rebuttal to Staff's Statement of Position at 21-23; 2/2/09 Concerned Citizens' Supplemental Statement of Position at 35. Indeed, to this day, the Staff has failed to connect the dots between NUREG-0170 and Pa'ina's project. While Mr. Easton mentions NUREG-0170 at the end of his testimony (and, even the, only in response to a question whether the NRC previously addressed potential impacts associated with transportation of radioactive materials in general), he merely notes the NRC uses NUREG-0170 "to bound the environmental impacts of radioactive material shipments to and from individual facilities;" he never explains how its conclusions would apply to Pa'ina's specific proposal. Easton Testimony at A.8.

conclusion that “[a]n accident that would result in the release of Cobalt 60, and that could result in a significant environmental impact is not a reasonably foreseeable event,” Mr. Easton does not even mention NUREG-0170. Easton Testimony at A.7. Indeed, there is no way that NUREG-0170, which was published thirty-two years ago, could possibly be the basis of Mr. Easton’s key claim that, “during the past 30 years, there has never been a reported case of a release of radioactive material from a Type B package during either routine transportation or for shipments involved in an accident.” Id. at A.6 (emphasis added). Instead, Mr. Easton expressly relies on a 1987 “study completed for the NRC on Type B packages for spent fuel” (NUREG/CR-4829) and “statistics published by [the] Federal Motor Carrier Safety Administration” in 2008 regarding the “accident rate for large trucks.” Id.

The Staff had not previously included in the hearing file either of the documents on which Mr. Easton bases his conclusions, and, prior to the filing of Mr. Easton’s testimony, Concerned Citizens had no other reason to suspect these documents had any relevance to this proceeding. The Staff’s suggestion that Concerned Citizens bears the burden to use a crystal ball to try to divine which documents the Staff might someday invoke to support an analysis of transportation accidents (which the Staff previously insisted it need not, and would not, conduct) or be forever barred from challenging the Staff’s belated analysis is patently absurd. Staff’s Response at 10 (noting “[t]he documents that Mr. Easton cites ... have been publicly available for years”). In Duke Power Co. (Catawba Nuclear Station, Units 1 and 2), CLI-83-19, 17 NRC 1041 (1983), the Commission merely affirmed Concerned Citizens’ “obligation to examine the publicly available documentary material pertaining to the facility in question with sufficient care to enable it to uncover any information that could serve as the foundation for a specific contention.” Id. at 1045 (emphasis added). Here, prior to the Staff’s filing of Mr. Easton’s

testimony, there were no publicly available documents analyzing traffic accidents as they “pertain[] to the facility in question,” and, thus, it was clearly “impossible for [Concerned Citizens] to assert adequately specific contentions” to challenge an analysis that did not yet exist. Id.; cf. Florida Power & Light (Turkey Point Units 3 and 4), CLI-01-17, 54 NRC 3, 25 (2001) (prior to issuance of Staff’s NEPA document, intervenor obliged “to formulate contentions based upon ... license renewal application and Environmental Report” in hearing file). Accordingly, as this Board previously held, Concerned Citizens properly filed a contention of omission “challenging the Staff’s failure to consider transportation accidents involving the shipment of Co-60 sources to and from the proposed irradiator.” 12/21/07 Board Order at 17-18.⁷

Once the Staff submitted Mr. Easton’s testimony, Concerned Citizens promptly filed an amended contention to challenge his newly minted analysis, together with “a concise statement of the alleged facts or expert opinions which support [Concerned Citizens’] position on the issue,” as well as “the specific sources and documents on which [Concerned Citizens] intends to rely.” 10 C.F.R. § 2.309(f)(1)(v). In so doing, Concerned Citizens complied fully with the Commission’s hearing regulations, which authorize intervenors to “amend [their] contentions or file new contentions” if the Staff releases a supplemental NEPA analysis that “differ[s] significantly from the data or conclusions” that were previously available. Id. § 2.309(f)(2); see also Florida Power & Light (Turkey Point Units 3 and 4), CLI-01-17, 54 NRC at 26; Duke

⁷ The Staff fails to explain why Concerned Citizens was obliged to submit the reports contained in Exhibits A and B “when it filed amended environmental contention 3 on September 4, 2007.” Staff’s Response at 11. At that stage of this proceeding, the Staff had not yet presented any analysis regarding transportation accidents involving Pa’ina’s proposed facility. Concerned Citizens had no way to anticipate that, eighteen months later, Mr. Easton would erroneously assert that, “during the past 30 years, there has never been a reported case of a release of radioactive material from a Type B package during either routine transportation or for shipments involved in an accident” and, thus, no reason to present documentary evidence to disprove a claim that had not yet been made. Easton Testimony at A.6.

Power Co. (Catawba Nuclear Station, Units 1 and 2), CLI-83-19, 17 NRC at 1049. Moreover, since Concerned Citizens filed its amended contention “within 30 days of the ... document underlying the late-filed contention,” it was timely. 5/1/06 Board Order at 2.

IV. THE COMMISSION’S LATE-FILING CONTENTION FACTORS WEIGH IN FAVOR OF ADMITTING CONCERNED CITIZENS’ AMENDED CONTENTION

The “most important” of the Commission’s factors for the admission of late-filed contentions is “a showing of ‘good cause ... for failure to file on time.’” Entergy Nuclear Vermont Yankee, LLC, and Entergy Nuclear Operations, Inc. (Vermont Yankee Nuclear Power Station), LBP-06-14, 63 NRC 568, 580 (2006) (quoting 10 C.F.R. § 2.309(c)(1)(i)). Here, as discussed above, Mr. Easton’s testimony provided an entirely new analysis regarding the potential for impacts associated with transportation accidents involving cobalt-60 shipments to and from Pa’ina’s proposed irradiator. Prior to the time the Staff provided Mr. Easton’s analysis to the parties on March 5, 2009, Concerned Citizens had no way to challenge its adequacy. “Newly available material information has long been held to provide good cause to file a new contention.” Entergy Nuclear Vermont Yankee, LLC, and Entergy Nuclear Operations, Inc. (Vermont Yankee Nuclear Power Station), LBP-04-33, 60 NRC 749, 754 (2004) (citing Consumers Power Co. (Midland Plant, Units 1 and 2), LBP-82-63, 16 NRC 571, 577 (1982)).

Concerned Citizens respectfully disagrees with the Staff’s claim that intervenor’s interests would be adequately protected without admission of the amended contention. Even if the Board were “to invite the parties to propose additional questions to witnesses based on the parties’ supplemental testimony,” which it has not yet done, denial of the amended contention would deprive Concerned Citizens of the opportunity to introduce evidence that clearly demonstrates the fallacy of Mr. Easton’s claim that transportation accidents have never resulted

in radiation releases from Type B casks. Staff's Response at 12; see also Concerned Citizens' Exhs. A & B. In addition to prejudicing Concerned Citizens, failure to admit the amended contention would contravene the policy favoring development of "a sound record." 10 C.F.R. § 2.309(c)(1)(viii).

Furthermore, admitting the amended contention would not, as the Staff alleges, improperly "prolong the proceeding." Staff's Response at 12. The Staff has already submitted Mr. Easton's testimony, and it would not take long for Concerned Citizens to convert Dr. Resnikoff's declaration into testimony format.⁸

V. CONCERNED CITIZENS PROPERLY INCLUDED DISCUSSION OF THE RELEVANT CASELAW IN ITS AMENDED CONTENTION

The Commission's hearing regulations expressly require contentions to "[p]rovide a specific statement of the issue of law ... to be raised or controverted" and to "[p]rovide a brief explanation of the basis for the contention." 10 C.F.R. § 2.309(f)(1)(i), (ii). Concerned Citizens complied fully with these requirements when it included in its amended contention discussion of the legal authorities that support its claim that "it is improper for the Board to consider testimony from the Staff and Pa'ina when determining whether the Staff has complied with NEPA." Staff's Response at 13. There is accordingly no reason for the Board to honor the Staff's

⁸ Louisiana Enrichment Services, LP (Claiborne Enrichment Center), 1995 WL 110630 (Mar. 3, 1995), on which the Staff relies, is inapposite. In that case, the intervenor failed to establish "good cause for filing its amended contention ... over five months after the issuance of" the document the amended contention challenged and "less than a month before the scheduled start of the hearing on its contentions." Id. at *3. Here, in contrast, Concerned Citizens promptly filed its amended contention following the Staff's submittal of Mr. Easton's testimony, and no hearing date has yet been set. See 10 C.F.R. § 2.309(f)(2)(iii) (amended contention must be "submitted in a timely fashion based on the availability of the subsequent information").

request, which is devoid of citation to any authority, to “refuse to consider the Intervenor’s arguments.” Id.

VI. THE ISSUE RAISED IN CONCERNED CITIZENS’ CONTENTION IS WITHIN THE SCOPE OF THIS PROCEEDING

In admitting Amended Environmental Contention 3, this Board previously rejected the argument that Concerned Citizens’ challenge to “the Staff’s failure to consider transportation accidents involving the shipment of Co-60 sources to and from the proposed irradiator is beyond the scope of the proceeding.” 12/21/07 Board Order at 17-18. The Board explained that “NEPA requires consideration of the actions connected to the activity being licensed.” Id. at 18 (citing 40 C.F.R. § 1508.25(a)(1)). It then held:

Because the Applicant’s proposed facility cannot operate without regular shipments of Co-60 sources, the transportation of the radioactive sources shipped to and from the facility, along with transportation accidents that are an inevitable fact of life, appear to be connected and intertwined actions whose potential impacts may need to be examined in the final EA. Thus, in the context of a NEPA contention at the contention admissibility stage, it cannot be concluded that transportation impacts are beyond the scope of the proceeding.

Id. (citing 40 C.F.R. § 1508.28).⁹ Pa’ina gives the Board no valid reason to alter its prior decision. See Pa’ina’s Opposition at 2-3.¹⁰

⁹ Compliance with NEPA would permit the NRC and the public to assess whether, as Pa’ina asserts, alternate irradiator sites farther from Honolulu International Airport would “greatly increase the chances of a ground accident on Honolulu’s extremely dense, crowded highways and roadways.” Pa’ina’s Opposition at 3-4. The absence of the requisite “high quality” information about these potential impacts leaves such matters to pure speculation, contravening Congress’s intent “to foster excellent action” through “decisions that are based on understanding of environmental consequences.” 40 C.F.R. § 1500.1(c); see also id. § 1502.14 (alternatives section “should present the environmental impacts of the proposal and the alternatives in comparative form, thus sharply defining the issues and providing a clear basis for choice among options by the decisionmaker and the public”).

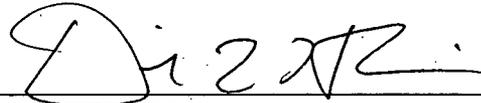
¹⁰ The Board should reject as “misguided” Pa’ina’s attempt to use its opposition “to engage in an attempted merit-based refutation” of Concerned Citizens’ amended contention. Pa’ina Hawaii, LLC (Material License Application), LBP-06-12, 63 NRC 403, 406 (2006).

VII. CONCLUSION

For the foregoing reasons, Concerned Citizens respectfully asks the Board to admit the amendment to Environmental Contention 3.

Dated at Honolulu, Hawai'i, May 8, 2009.

Respectfully submitted,



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Pa'ina's arguments about NEPA's requirements serve only to confirm there are numerous disputes over issues "within the scope of the proceeding" and "material to the findings the NRC must make to support the action that is involved in the proceeding" that should be resolved following admission of the amended contention. 10 C.F.R. § 2.309(f)(1)(iii), (iv); cf. 2/2/09 Concerned Citizens' Supplemental Statement of Position at 39-40 (explaining why Pa'ina's reliance on the Department of Transportation's regulatory scheme and Department of Transportation v. Public Citizen, 541 U.S. 752 (2004), is misplaced).

CERTIFICATE OF SERVICE

The undersigned hereby certifies that, on May 8, 2009, 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:

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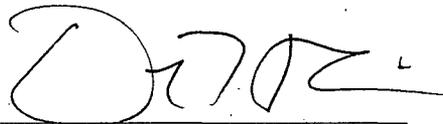
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Dated at Honolulu, Hawai'i, May 8, 2009.



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TRANSMITTAL LETTER

TO: Office of the Secretary
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
Attention: Rulemakings and Adjudication Staff

VIA FIRST CLASS MAIL

FROM: David L. Henkin

DATE: May 8, 2009

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

COPIES	DATE	DESCRIPTION
Original and two copies	5/8/09	INTERVENOR CONCERNED CITIZENS OF HONOLULU'S REPLY IN SUPPORT OF AMENDMENT TO ENVIRONMENTAL CONTENTION 3 RE: TRANSPORTATION ACCIDENTS; CERTIFICATE OF SERVICE

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REMARKS: