

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

COMMISSIONERS:

Gregory B. Jaczko, Chairman
Dale E. Klein
Kristine L. Svinicki

In the Matter of)
)
) Docket No. 30-36974-ML
PA'INA HAWAII, LLC)
(Materials License Application))
)

)

CLI-09-17

ORDER

This long-pending proceeding stems from a June 2005 application for an underwater irradiator to be located in Honolulu, Hawaii. Applicant Pa'ina Hawaii, LLC recently filed a motion requesting the Commission to transfer this case from the Atomic Safety and Licensing Board to itself, for final disposition.¹ The motion states that there is no current scheduling order in the proceeding,² and expresses concern over delays.³

Under NRC regulations, the Board has an obligation to establish a case scheduling order, and to advise the Commission of any significant delay in meeting major activities set forth in the hearing schedule.⁴ In May 2006, the Board issued a scheduling order indicating that it

¹ See *Applicant Pa'ina Hawaii, LLC's Motion to Transfer Case to Nuclear Regulatory Commission* (July 24, 2009).

² See *id.* at 2.

³ Pa'ina's motion is under consideration, and will be addressed in a separate decision.

⁴ See 10 C.F.R. §§ 2.332(a); 2.334(c).

intended to meet the Model Milestones for a Subpart L proceeding.⁵ The Model Milestones set the goal of beginning an evidentiary hearing (if one is to be held) within 175 days of the NRC Staff's issuance of the final Safety Evaluation Report (SER) and final document under the National Environmental Policy Act (NEPA).⁶ Following issuance of the final Environmental Assessment in this case, the Board issued at least three orders requesting the parties to provide dates acceptable for a hearing,⁷ but did not establish a hearing date, and only recently indicated that it had concluded that no hearing would be necessary.⁸

The following items appear to be pending before the Board:

- NRC Staff's Motion to Dismiss Portions of Amended Environmental Contentions and for Leave to Seek Summary Disposition (September 26, 2008);
- Motion for Leave to File Supplemental Direct Testimony of Michael Kohn, President of Pa'ina Hawaii, LLC (April 2, 2009);
- Intervenor Concerned Citizens of Honolulu's Amendment to Environmental Contention 3, Re: Transportation Accidents (April 6, 2009).

In addition, the Board has yet to make merits rulings with respect to admitted Environmental Contentions 3 and 4.

Under our inherent supervisory authority over adjudicatory proceedings, we direct the Board to provide us with a status report outlining the Board's general plan, together with a timetable, for resolving all pending matters, including whether, in the Board's view, any

⁵ See Order (May 1, 2006)(unpublished).

⁶ See 10 C.F.R. Part 2, Appendix B, II. Model Milestones for Hearing Conducted Under 10 C.F.R. Part 2, Subpart L.

⁷ See Order (Submission of a Joint Proposed Schedule)(Apr. 29, 2008); Order (Directing Parties to Submit Scheduling Information for Hearing)(Aug. 7, 2008); 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). The Board's last actual scheduling order appears to have been issued on July 17, 2008. This order did not set forth a hearing date, but indicated that the Board would later do so. See Order (Scheduling Order)(July 17, 2008)(unpublished).

⁸ See Order (Notice Regarding Hearing)(June 5, 2009)(unpublished).

additional briefing, oral argument or other actions will be necessary to complete the record. The Board should provide this status report no later than September 3, 2009.

IT IS SO ORDERED.

For the Commission

(NRC SEAL)

/RA/

J. Samuel Walker
Acting Secretary of the Commission

Dated at Rockville, Maryland
this 13th day of August, 2009.

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 COMMISSION ORDER (CLI-09-17) have been served upon the following persons by electronic mail this date, followed by deposit of paper copies in the U.S. mail, first class, and NRC internal mail.

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[Original signed by Christine M. Pierpoint]

Office of the Secretary of the Commission

Dated at Rockville, Maryland
this 13th day of August 2009