

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
)	
Materials License Application)	ASLBP No. 06-843-01-ML

MOTION TO TERMINATE PROCEEDING

On March 1, 2011, the NRC Staff issued the final supplement to the environmental assessment (EA) for Pa'ina Hawaii, LLC's proposed irradiator on Palekona Street in Honolulu, Hawaii. The final supplement addresses transportation accidents, electron-beam irradiation, and alternative sites. These are the three areas in which the Board found that the Staff needed to conduct additional analyses in order to comply with the National Environmental Policy Act.¹ Concerned Citizens of Honolulu, the Intervenor in this proceeding, had 30 days to file new or amended contentions based on the final supplement.²

On March 31, 2011, Concerned Citizens informed the Board and the other parties that it did not intend to file contentions regarding the final supplement.³ Because the final supplement addresses the remaining issues raised in Concerned Citizens' Amended Environmental Contentions #3 and #4, and because Concerned Citizens does not intend to challenge the final supplement, the NRC Staff respectfully requests that the Board terminate this proceeding.⁴

¹ Initial Decision (Ruling on Concerned Citizens of Honolulu's Amended Environmental Contentions #3, #4, and #5) (August 27, 2009).

² Order (Requesting Scheduling Information) (July 16, 2010) at 3.

³ "Intervenor Concerned Citizens of Honolulu's Statement Re: New or Amended Contentions" (March 31, 2011).

⁴ Cf. *Duke Energy Corporation* (McGuire Nuclear Station, Units 1 and 2; Catawba Nuclear Station, Units 1 and 2), CLI-02-08, 56 NRC 373, 383 (2002) ("Where a contention alleges the omission of particular information or an issue from an application, and the information is later supplied by the applicant . . . the contention is moot."); *Amergen Energy Co., LLC* (Oyster Creek Nuclear Generating Station), LBP-06-16,

Consistent with 10 C.F.R. § 2.323(b), Staff counsel has contacted counsel for Pa'ina and Concerned Citizens to obtain their views on this motion. Counsel for Pa'ina stated that his client supports this motion. Counsel for Concerned Citizens stated that, since his client has not filed any contentions with respect to the EA supplement, Concerned Citizens agrees there are no remaining issues for the Board to resolve with respect to the Palekona Street site. Counsel also stated, however, that Concerned Citizens reserves its right to seek judicial review of various decisions the Commission has made in the course of this proceeding.

Respectfully submitted,

/RA/

Michael J. Clark
Molly Barkman Marsh
Counsel for NRC Staff

Dated at Rockville, Maryland
This 11th day of April, 2011

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
)	
Materials License Application)	ASLBP No. 06-843-01-ML

CERTIFICATE OF SERVICE

I hereby certify that today, April 11, 2011, the Nuclear Regulatory Commission Staff served copies of the attached "MOTION TO TERMINATE PROCEEDING" on the recipients listed below by electronic mail, as indicated by an asterisk (*); by deposit in the United States mail, as indicated by a double asterisk (**); or by deposit in the Nuclear Regulatory Commission's internal mail system, as indicated by a triple asterisk (***) .

Thomas S. Moore, Chair * ***
Administrative Judge
U.S. Nuclear Regulatory Commission
Mail Stop: T-3 F23
Washington, D.C. 20555
thomas.moore@nrc.gov

Anthony J. Baratta * ***
Administrative Judge
U.S. Nuclear Regulatory Commission
Mail Stop: T-3 F23
Washington, D.C. 20555
anthony.baratta@nrc.gov

Paul Abramson * ***
Administrative Judge
U.S. Nuclear Regulatory Commission
Mail Stop: T-3 F23
Washington, D.C. 20555
paul.abramson@nrc.gov

Office of Commission Appellate
Adjudication * ***
U.S. Nuclear Regulatory Commission
Mail Stop: O-16 G4
Washington, D.C. 20555
OCAAMAIL.Resource@nrc.gov

Office of the Secretary * ***
ATTN: Rulemakings and Adjudication Staff
U.S. Nuclear Regulatory Commission
Mail Stop: O-16 G4
Washington, D.C. 20555
HEARINGDOCKET@nrc.gov

David L. Henkin, Esq. * **
Earthjustice
223 South King Street, Suite 400
Honolulu, HI 96813
dhenkin@earthjustice.org

Fred Paul Benco * **
The Law Offices of Fred Paul Benco
Suite 3409 Century Square
1188 Bishop Street
Honolulu, HI 96813
fpbenco@yahoo.com

Janice Brown, Officer Manager *
jbrown@earthjustice.org

Rachel Figueroa, Litigation Assistant *
figueroa@earthjustice.org

Michael Kohn, President **
Pa'ina Hawaii, LLC
P.O. Box 30542
Honolulu, HI 96820

Anthony C.Eitreim * ***
Atomic Safety and Licensing Board Panel
Mail Stop: T-3F23
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
anthony.eitreim@nrc.gov

Mathew Rotman * ***
Katie Tucker * ***
Atomic Safety and Licensing Board Panel
Mail Stop: T-3F23
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
matthew.rotman@nrc.gov
katie.tucker@nrc.gov

/RA/

Michael J. Clark
Counsel for NRC Staff