

August 23, 2011

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE COMMISSION

In the Matter of)	
)	
STRATA ENERGY INC.)	Docket No. 40-9091-MLA
)	ASLBP No.
(Ross In Situ Uranium Recovery)	
Site))	

NRC STAFF'S RESPONSE IN SUPPORT OF STRATA ENERGY, INC.'S
MOTION FOR RECONSIDERATION OF THE OFFICE OF THE SECRETARY'S
DECISION GRANTING NATURAL RESOURCES DEFENSE COUNCIL/
POWDER RIVER BASIN RESOURCE COUNCIL'S MOTION FOR EXTENSION OF TIME

INTRODUCTION

This proceeding involves an application by Strata Energy, Inc. for a license to operate an *in situ* uranium recovery site. Natural Resources Defense Council (NRDC) and Powder River Basin Resource Council (Powder River) apparently wish to request a hearing in response to the NRC publication of a Notice of Opportunity to Request a Hearing, but requested an additional 45 days beyond the pertinent deadline to do so. The Office of the Secretary granted that extension request without permitting other parties an opportunity to respond to the request.

On August 22, 2011, Strata Energy filed a "Motion for Reconsideration of the Office of the Secretary's Decision Granting Natural Resources Defense Council/Powder River Basin Resource Council Motion for Extension of Time to File a Request for a Hearing." The NRC Staff supports this Motion. In sum, the Commission should reconsider the Office of the Secretary's August 17, 2011 Order and make a determination on the NRDC and Powder River's Request for Extension of Time (Extension Request) based on the information contained not only in the Extension Request, but also in the NRC Staff and Strata Energy's responses. As explained below, because the NRDC and Powder River have not demonstrated good cause for extending the hearing request deadline, the Commission should deny their request.

BACKGROUND

On July 13, 2011, the NRC published in the Federal Register a Notice of Opportunity to Request a Hearing and Petition for Leave to Intervene in this proceeding.¹ As stated in the Federal Register Notice, the deadline for filing hearing requests is September 12, 2011.

On August 10, 2011, the NRDC and Powder River filed a request to extend the deadline for hearing requests by at least 45 days. The NRDC and Powder River argue that they are unable to meet the filing deadline because the application is over 3,500 pages, they are reviewing numerous cited references in the application, and their experts are on vacation during some part of August.² The NRDC and Powder River also state that they have already spent 150 hours reviewing the application and relevant documents.³

DISCUSSION

I. The Commission Should Reconsider the Office of the Secretary's August 17, 2011 Order

On August 17, 2011, the Office of the Secretary of the Commission issued an Order granting the NRDC and Powder River's Extension Request, extending the deadline from September 12, 2011 to October 27, 2011. The Office of the Secretary issued the Order under its authority in 10 C.F.R. § 2.346, which allows it to rule on motions for extensions of time.⁴ The Office of the Secretary, in ruling on the motion, effectively denied the NRC Staff or the applicant Strata Energy an opportunity to respond to the motion since the ten days allowed for responses to motions under 10 C.F.R. § 2.323(c) had not ended when the Office of the Secretary ruled.⁵

¹ *Strata Energy, Inc., Ross In Situ Recovery Uranium Project, Crook County, WY; Notice of Materials License Application, Opportunity To Request a Hearing and To Petition for Leave To Intervene, and Commission Order Imposing Procedures for Document Access to Sensitive Unclassified Non-Safeguards Information for Contention Preparation*, 76 Fed. Reg. 41308 (July 13, 2011).

² Extension Request at 1-2.

³ Extension Request at 1.

⁴ 10 C.F.R. § 2.346(b).

⁵ Answers to motions are to be filed within 10 days after service of a motion or other period as determined

The NRDC and Powder River did not consult the NRC Staff or Strata Energy in order to resolve the motion, as required by 10 C.F.R. § 2.323(b), so there was no certification in the Extension Request indicating the position of the NRC Staff and Strata Energy on the motion; and in fact, the NRC Staff and Strata Energy each oppose the Extension Request.

The Office of the Secretary's action ruling on the Extension Request without accepting responses from the NRC Staff and Strata Energy and without providing notice that it would deviate from the standard procedure in 10 C.F.R. § 2.323, "could not have reasonably been anticipated," and so reconsideration is warranted.⁶ The NRC Staff relied on the 10-day time period in 10 C.F.R. § 2.323(c), and had no reason to believe that the Secretary intended to proceed without responses or to shorten the response period. The NRDC and Powder River filed their request for an extension on August 10, 2011, 33 days before the Federal Register Notice hearing request deadline of September 12, 2011. The NRC Staff was prepared to file its response to the NRDC and Powder River's motion on August 18, 2011, which would have provided time to rule on the Extension Request well before the September 12, 2011 deadline. The Commission should reconsider the Office of the Secretary's August 17, 2011 Order and make a determination on the NRDC and Powder River's Extension Request based on the information contained not only in the Extension Request, but also in the NRC Staff and Strata Energy's responses. As explained below, because the NRDC and Powder River have not demonstrated good cause for extending the hearing request deadline, the Commission should deny their request.

by the Secretary. Here, the acting Secretary did not notify the Staff or Strata Energy of any other response period and instead granted the Extension Request seven days after it was filed. While it may have been the intent of the acting Secretary to proceed without the views of other parties, the Staff and applicant nevertheless wished to be heard and the Staff believes, in the main, that a 45-day extension request is not insubstantial and raises issues worthy of consideration by all parties or potential parties.

⁶ 10 C.F.R. § 2.323(e).

II. The Commission Should Deny the NRDC and Powder River's Extension Request

As the parties moving for an extension of time, the burden is on the NRDC and Powder River to show that they are entitled to the requested relief. Although under 10 C.F.R. § 2.307(a) the Commission may extend the deadline for submitting hearing requests upon a showing of good cause, the Commission discourages extensions of deadlines absent "unavoidable and extreme circumstances."⁷ The Commission has recently emphasized that, where there are no special circumstances amounting to good cause to extend the date to file hearing requests and petitions to intervene the extension request should be denied.⁸ Circumstances that could be anticipated or which are not unique to the person requesting an extension—such as difficulties in coordinating action among volunteers and large public interest organizations and the challenge of simultaneously preparing for meetings while drafting contentions—do not "amount to good cause for an extension."⁹ Further, where application materials have been in the public record prior to the opening of the period for requesting a hearing, the Commission has taken into account the availability of those materials in determining whether any extension is warranted.¹⁰

None of the NRDC or Powder River's reasons for seeking an extension of time amounts to unique and unanticipated circumstances that would justify granting their request. The NRDC

⁷ *Statement of Policy on Conduct of Adjudicatory Proceedings*, CLI-98-12, 48 NRC 18, 21 (1998); see also *Hydro Resources, Inc.* (2929 Coors Road Suite 101, Albuquerque, NM 87120), CLI-99-1, 49 NRC 1, 1 (1999).

⁸ *Detroit Edison Co.* (Enrico Fermi Atomic Power Plant, Unit 3) CLI-09-4, 69 NRC 80, 82 (2009) (Petitioners in a nuclear power reactor combined license application had sought a 90-day extension of time. The Commission only granted 10 days of the extension request in light of the newness of procedures for requesting sensitive information.). NRDC and Powder River have not requested such information in the instant case, and, in any event, the deadline for requesting such information has expired. 76 Fed. Reg. 41308 .

⁹ *Fermi*, CLI-09-4, 69 NRC at 82.

¹⁰ *Id.*; see also *Changes to Adjudicatory Process (Part II)* 69 Fed. Reg. 2182, 2200 ("The Commission believes that sixty (60) days is more than ample time to review the application for a complex and/or broad scope radioactive materials license and prepare a request for hearing/petition to intervene and contentions, in view of Web site notice of pre-application meetings, availability of application-related documents for reading on the NRC Web site and/or download, and Web site notice of the filing of an application and acceptance of the application for docketing."). Indeed, in the instant case, such documents have been available since January 2011.

and Powder River first argue that a review of the more than 3,500 pages of the application cannot take place in the 60-day time period from the Federal Register Notice to the September 12, 2011 hearing request deadline. That is because, the NRDC and Powder River argue, most individuals, including their expert witnesses are on vacation in August, and their review will require a significant investment of time.¹¹

The Commission has established that 60 days is more than ample time for reviewing complex radioactive materials license applications and preparing a request for hearing/petition to intervene and contentions.¹² The NRDC and Powder River do not argue that the Strata Ross application is more complex or voluminous than other license applications. And, in fact, the license application has been publicly available since January 25, 2011, giving potential intervenors more than seven months to review the application. The only addenda to the application were filed with the NRC on February 25, 2011, and were publicly available in ADAMS on March 21, 2011, still giving potential intervenors more than five months to review the material before the hearing request deadline.¹³ In addition, the NRC issued a press release on June 30, 2011, stating that the application was available on the NRC website, and that there would be a notice of opportunity to request a hearing shortly.¹⁴

The NRDC and Powder River also argue that they need more time to review references included in the application such as "background information on hydrology, geology, abandoned wells, water wells, the Nubeth project, and other materials."¹⁵ As stated above, the Strata Ross

¹¹ Extension Request at 1.

¹² 69 Fed. Reg. at 2200.

¹³ Addendum 2.9-D, Baseline Radiological Monitoring; Results and Final Conclusions; 4th Quarter. (ADAMS Accession No. ML110800134); Addendum 3.6-B, Site-Specific Meteorology and Climatology Data. (ADAMS Accession No. ML110800135).

¹⁴ "NRC Announces Availability of License Application for Ross Uranium Recovery Project in Wyoming," June 30, 2011. (ADAMS Accession No. ML11181A191).

¹⁵ Extension request at 2. NRDC and Powder River state that Strata Energy cited references rather than using hyperlinks or making the references available on the internet. It is unclear, however, what

application, with its list of references has been publicly available since January. Moreover, Strata submitted a Letter of Intent to submit a license application on October 5, 2009,¹⁶ and the NRC has held public meetings with Strata Energy regarding the Ross project since October 14, 2009, and each of the meetings has been announced on the NRC website.¹⁷ Counsel for Powder River attended at least one of the meetings, on September 9, 2010.¹⁸ Thus, even before the application was submitted to the NRC, the NRDC and Powder River were made aware of the project, and they could have anticipated the relevant issues involved with the project. Hydrology, geology, and wells are considerations in every *in situ* uranium recovery project. The NRDC and Powder River have had the opportunity to research background information about the Ross project for close to two years, and the references in the application for seven months.

Summer vacations, as long-planned as they were, could have been anticipated and schedules could have been adjusted to accommodate them, especially given the fact that the application had been available for five and a half months by the time the Federal Register Notice was published. In *Fermi*, the Commission rejected an extension request that asserted a need for more time to review application materials, noting that by the hearing request deadline, the materials would have been in the public record for five months.¹⁹ The NRDC and Powder River state that they will not be able to accomplish a thorough response by the September 12, 2011 Federal Register Notice deadline, and suggest a 45-day extension. But the length of the

references NRDC and Powder River are having trouble locating, but in any case, applicants are not required to hyperlink their references, so unlinked references are not unique to the Strata Ross proceeding.

¹⁶ ADAMS Accession No. ML092790410.

¹⁷ <http://www.nrc.gov/materials/uranium-recovery/license-apps/ross.html>; see also ADAMS Accession No. ML092870668.

¹⁸ See Meeting Attendees; Meeting with Strata Energy, Inc., to Discuss Proposed Ross ISR Uranium Project in State of Wyoming, September 9, 2010. (ADAMS Accession No. 102530427).

¹⁹ CLI-09-04, 69 NRC at 82.

application and relevant background information, and summer vacations are not unique and special circumstances and thus do not constitute good cause for extending the deadline to request a hearing in this proceeding.

CONCLUSION

The Commission should grant Strata Energy's motion for reconsideration of the Office of the Secretary's August 17, 2011 Order granting an extension of the hearing request deadline to October 27, 2011. The NRDC and Powder River have not demonstrated good cause for a 45-day extension of the hearing request deadline, and thus, the Commission should deny the extension request.

Respectfully submitted,

/signed (electronically) by/
Molly Barkman Marsh
Counsel for the NRC Staff

Dated in Rockville, Maryland
this 23rd day of August 2011.

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NOTICE OF APPEARANCE

Notice is given that the undersigned attorney enters an appearance in the above-captioned matter. In accordance with 10 C.F.R. § 2.314(b), the following information is provided:

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Name of Party: NRC Staff

Respectfully submitted,

/Signed (electronically) by/

Molly Barkman Marsh
Counsel for NRC Staff

Dated at Rockville, Maryland,
this 23rd day of August, 2011.

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NOTICE OF APPEARANCE

Notice is given that the undersigned attorney enters an appearance in the above-captioned matter. In accordance with 10 C.F.R. § 2.314(b), the following information is provided:

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Respectfully submitted,

/Signed (electronically) by/

Carrie M. Safford
Counsel for NRC Staff

Dated at Rockville, Maryland,
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CERTIFICATE OF SERVICE

I hereby certify that copies of the "NRC Staff's Response in Support of Strata Energy Inc.'s Motion for Reconsideration of the Office of the Secretary's Decision Granting Natural Resources Defense Council/Powder River Basin Resource Council's Request for Extension of Time," and Notices of Appearance for Molly Barkman Marsh and Carrie Safford have been served via the Electronic Information Exchange (EIE) this 23rd day of August 2011, which to the best of my knowledge resulted in transmittal of the copies to those on the EIE Service List for this proceeding.

Respectfully submitted,

/Signed (electronically) by/
Molly Barkman Marsh
Counsel for the NRC Staff

Dated in Rockville, Maryland
this 23rd day of August 2011.