

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD PANEL

Before the Licensing Board:

G. Paul Bollwerk, III, Chair
Dr. Richard F. Cole
Dr. Kenneth L. Mossman

In the Matter of

STRATA ENERGY, INC.

(Ross In Situ Recovery Uranium Project)

Docket No. 40-9091-MLA

ASLBP No. 12-915-01-MLA-BD01

August 7, 2012

MEMORANDUM AND ORDER
(Requesting Scheduling Input)

By memorandum and order issued June 13, 2012, the Licensing Board provided the parties with a revised general schedule for this proceeding that reflected certain changes made in response to information provided by the NRC staff regarding modifications to the staff's schedule for issuing its safety and environmental review documents. See Licensing Board Memorandum and Order (Revised General Schedule) (June 13, 2012) (unpublished) [hereinafter Revised General Schedule]. Recently, another circumstance has arisen that may require additional modifications to this proceeding's general schedule, albeit ones about which the Board wishes to consult with the parties before making any additional general schedule revisions.

On August 3, 2012, the agency published in the Federal Register a notice of the adoption of a final rule that outlines certain changes to its 10 C.F.R. Part 2 rules of practice. See Amendments to Adjudicatory Process Rules and Related Requirements, 77 Fed. Reg. 46,562 (Aug. 3, 2012). Among the alterations are two that potentially impact this

proceeding's general schedule.¹ One is a change incorporated into 10 C.F.R. § 2.309(i)(1) that provides that the applicant and staff have twenty-five days to file an answer to a hearing petition, or to any subsequently filed request to admit a new or amended contention. See id. at 46,592. This revision can be compared with the provisions of the Board's general schedule setting a fourteen-day time period for an answer to a new or amended contention following the issuance of the staff's safety evaluation report (SER) or draft or final environmental impact statement (EIS), which is based on a directive in the Board's initial prehearing order establishing such a deadline for submitting any new or amended contention answers. See Revised General Schedule app. A, at 1-2; see also Licensing Board Memorandum and Order (Initial Prehearing Order) (Nov. 3, 2011) at 4 n.3 (unpublished). Additionally, the general schedule establishes a thirty-day period following the filing of the parties' answer and replies within which the Board is to rule on the admissibility of any new or amended contention relating to the SER or a draft or final EIS. See Revised General Schedule app. A, at 1-2. Under a recent rule change embodied in section 2.309(j)(1), that period is expanded to forty-five days. See 77 Fed. Reg. at 46,592.

According to the explanation in the agency's statement of considerations regarding the effectiveness of these rule changes relative to any ongoing proceedings, any "new or amended requirements will be effective and govern all obligations and disputes that arise after the effective date of the final rule," i.e., September 4, 2012. Id. at 46,562. The statement of considerations thereafter provides an example regarding the impact of the rule's changes on the fourteen-day mandatory discovery disclosure deadline under existing section 3.336(d), which (absent some other party agreement) is changed to a monthly due date. The agency's

¹ If, after reviewing these modifications to the agency's rules of practice, any party sees any other revision that it believes requires an additional scheduling change in this proceeding, it should bring that change to the Board's attention in the response to this issuance that is provided for herein. See infra p. 4.

statement of considerations indicates that a monthly disclosure schedule consistent with the new language in section 2.336(d) is to take effect following the September 4 effective date of the rule change.² See id.

The agency's statement of considerations effectiveness account thus suggests that, absent some new Board order to the contrary reflecting an agreement of the parties or some other factor that provides an appropriate basis for establishing another time period, the final rule's twenty-five day time frame governing applicant and staff answers to a new/amended contention admission motion and the new forty-five day period for a Board ruling on such a motion would govern in this proceeding. The impact of applying these provisions to this proceeding's existing general schedule would be to move the dates for any evidentiary hearing and initial decision on any admitted contentions back by three to four weeks. As a consequence, the Board wishes to seek the parties' views as to whether they wish to have the proceeding continue under the existing time frames for these actions or have the Board utilize the periods provided for under the recent rule change.

Further, in requesting this party input, the Board would note that (1) remaining under the existing fourteen-day deadline for filing new/amended contention answers would be without prejudice to a party requesting and, based on an appropriate showing, obtaining an extension of that deadline; and (2) for the sake of consistency, the Board will (a) proceed either under both or neither of these changed provisions, and (b) apply whatever provisions are adopted in all applicable circumstances for the balance of this proceeding.

² The Board notes that for this proceeding the parties already proposed, and the Board adopted, a mandatory discovery schedule that seemingly conforms with revised section 2.336(d). See Licensing Board Memorandum and Order (Establishing Schedule for Discovery) (Mar. 29, 2012) at 1-2 (unpublished).

Input from Joint Intervenors,³ applicant Strata Energy, Inc., and the staff concerning their preferences regarding these rule changes should be provided to the Board on or before Friday, August 17, 2012. If possible, the Board would appreciate a joint response that indicates whether or not the parties are in agreement relative to the application in this proceeding of the recent rule changes outlined above.

It is so ORDERED.

FOR THE ATOMIC SAFETY
AND LICENSING BOARD

/RA/

G. Paul Bollwerk, III
CHAIR

Rockville, Maryland

August 7, 2012

³ Joint Intervenors are the Natural Resources Defense Council (NRDC) and the Powder River Basin Resource Council (PRBRC).

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)
(Materials License Application))

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing **MEMORANDUM AND ORDER (Requesting Scheduling Input)** have been served upon the following persons by Electronic Information Exchange.

U.S. Nuclear Regulatory Commission.
Atomic Safety and Licensing Board Panel
Mail Stop T-3F23
Washington, DC 20555-0001

G. Paul Bollwerk, III, Chair
Administrative Judge
paul.bollwerk@nrc.gov

Dr. Richard F. Cole
Administrative Judge
richard.cole@nrc.gov

Dr. Kenneth L. Mossman
Administrative Judge
kenneth.mossman@nrc.gov

James Maltese
Law Clerk
james.maltese@nrc.gov

U.S. Nuclear Regulatory Commission
Office of Commission Appellate Adjudication
Mail Stop O-7H4M
Washington, DC 20555-0001
OCAAMAIL@nrc.gov

U.S. Nuclear Regulatory Commission
Office of the General Counsel
Mail Stop O-15D21
Washington, DC 20555-0001
Molly Barkman Marsh, Esq.
Brett Klukan
Carrie Safford, Esq.
Catherine Scott, Esq.
Michelle Albert, Esq.
molly.barkmanmarsh@nrc.gov
brett.klukan@nrc.gov
carrie.safford@nrc.gov
catherine.scott@nrc.gov
michelle.albert@nrc.gov

OGC Mail Center:
OGCMailCenter@nrc.gov

U.S. Nuclear Regulatory Commission
Office of the Secretary of the Commission
Mail Stop O-16C1
Washington, DC 20555-0001
Hearing Docket
hearingdocket@nrc.gov

STRATA ENERGY, INC., Ross In Situ Recovery Uranium Project, Docket No. 40-9091-MLA
MEMORANDUM AND ORDER (Requesting Scheduling Input)

Strata Energy, Inc.
Thompson & Pugsley, PLLC
1225 19th Street, NW, Suite 300
Washington, DC 20036
Christopher S. Pugsley, Esq.
ajthompson@athompsonlaw.com
cpugsley@athompsonlaw.com

Powder River Basin Resource Council
934 N. Main Street
Sheridan, WY 82801
Shannon Anderson, Esq.
sanderson@powderriverbasin.org

Natural Resource Defense Council
1152 15th Street, NW, Suite 300
Washington, DC 20005
Geoffrey H. Fettus, Esq.
Senior Project Attorney
Andres J. Restrepo, Esq.
Legal Fellow
gfettus@nrdc.org
arestrepo@nrdc.org

[Original signed by Herald Speiser]

Office of the Secretary of the Commission

Dated at Rockville, Maryland
this 7th day of August, 2012