

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD PANEL

Before the Licensing Board:

G. Paul Bollwerk, III, Chairman
Dr. Richard F. Cole
Dr. Craig M. White

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

November 6, 2013

MEMORANDUM AND ORDER
(Revised General Schedule)

In response to a September 3, 2013 NRC staff filing advising the Licensing Board that there would be a three-month delay in the issuance of its final supplemental environmental impact statement (SEIS), on October 7 the Board issued a revised schedule incorporating changes based on that information. See Licensing Board Memorandum and Order (Revised General Schedule) (Oct. 7, 2013) (unpublished) [hereinafter Revised Schedule Order]; see also Letter from Emily Monteith, NRC Staff Counsel, to Licensing Board at 1 (Sept. 3, 2013). In comments submitted on October 22, applicant Strata Energy, Inc., (SEI) has protested the Board's omitting from that revised schedule the opportunity to submit post-final SEIS dispositive motions, an objection echoed by both Joint Intervenors* and the staff in their October 29 responsive filings. See [SEI's] Objection to Licensing Board's October 7, 2013 Determination Not to Permit Summary Disposition Motion (Oct. 22, 2013) at 1 [hereinafter SEI Objection];

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

[Joint Intervenors'] Response to [SEI's] Objection to the Licensing Board's October 7, 2013 Order (Oct. 29, 2013) at 1 [hereinafter Joint Intervenors Response]; NRC Staff's Response to [SEI's] Objection to Licensing Board's October 7, 2013 Revised General Schedule (Oct. 29, 2013) at 2 [hereinafter Staff Response]. Thereafter, in line with a representation made in its October 29 comments, see Staff Response at 3, on November 4 the staff advised the Board and the other parties that as a result of the week-long agency mid-October shutdown because of a lack of appropriated funds, the issuance of the staff's final SEIS would be delayed an additional four weeks, until February 28, 2014, see Letter from Emily Monteith, NRC Staff Counsel, to Licensing Board at 1 (Nov. 4, 2013) [hereinafter November 4 Staff Letter].

In this memorandum and order, we address SEI's objection to our October 7 revised schedule, as well as the impact of the agency shutdown-related delay in the issuance of staff's final SEIS.

A. SEI Objection Regarding Post-Final SEIS Summary Disposition Opportunity

In our October 7 order, noting the potentially disruptive nature of dispositive motions filed in the latter stages of a proceeding as well as the parties' failure to take advantage of an early September 2013 opportunity to submit post-draft SEIS dispositive motions regarding the four environmental contentions admitted in this proceeding and our desire to reach a prompt merits determination regarding those contentions, the Board advised the parties that it was retooling the general schedule of this proceeding to eliminate a post-final SEIS opportunity for filing such motions. As a consequence, under that revised schedule once the Board made a determination about the admissibility of any final SEIS-related new or amended contentions and the parties had an opportunity to make the requisite information exchange regarding such contentions, the proceeding would move forward to an evidentiary hearing on the admitted contentions. See Revised Schedule Order at 1-2. Objecting to this determination in its October 22 filing, SEI

asserts that because each of Joint Intervenors' admitted contentions is classified as a National Environmental Policy Act-related "environmental" contention, the formulation of any dispositive motions regarding those contentions "is next to impossible" prior to the staff's issuance of its final SEIS, at which point the administrative record's environmental findings and analyses will be complete. SEI Objection at 2. As was noted previously, see supra p. 1, both the staff and Joint Intervenors have expressed their agreement with SEI's position, the latter going so far as to observe that "certain of Intervenors' Contentions may be suitable for summary disposition - in favor of Intervenors," Joint Intervenors Response at 1.

While the Board does not necessarily agree with the central premise of the parties' objection to its elimination of a post-final SEIS opportunity to file dispositive motions, given all the parties' evident desire to seek to resolve one or more of the pending contentions on the merits without conducting an evidentiary hearing, we will reinstate that opportunity in the proceeding's general schedule, albeit with an important caveat. Any party wishing to seek summary disposition of a particular contention must do so by filing a motion on the initial date provided for such a submission, not as part of (or at the same time as) a response to a previously submitted dispositive motion. Additionally, as the Board has observed previously, if a party wishes to seek summary disposition regarding more than one of the admitted contentions, it should file a separate dispositive motion regarding each contention. See Licensing Board Memorandum and Order (Prehearing Conference and Initial Scheduling Order) (Apr. 10, 2012) at 6-7 (unpublished). Further, each motion and any associated responses should not exceed twenty-five pages in length without leave of the Board and should be accompanied by, as appropriate, a statement of material facts not in dispute or a statement of material facts about which it is contended a genuine issue exists. See id. at 7.

B. Schedule Revisions Associated with Further Delay in Issuance of Final SEIS

As was also noted earlier, as a consequence of the one-week agency shutdown, the staff has advised the Board that it “is no longer confident that it will be able to issue the final SEIS for publication by January 31, 2014,” and so is revising the issuance date to February 28, 2014. November 4 Staff Letter at 1. We will incorporate that revised date into the general schedule of this proceeding. See 10 C.F.R. § 2.332(d).

This delay, along with the re-institution of a post-final SEIS summary disposition opportunity requested by the parties, has the potential effect of postponing by several more months the evidentiary hearing for this proceeding, which already was moved from mid-June to mid-July 2014 following the staff’s previously announced three-month final SEIS issuance schedule slippage. Nonetheless, as we noted in the October 7 order memorializing that schedule revision, we remain interested in reaching “a reasonably prompt merits determination” regarding Joint Intervenors’ four admitted contentions. Revised Schedule Order at 2. In that regard, given (1) the parties’ previous uncertainty about whether they wished to file in limine motions relative to the other parties’ prefiled direct and rebuttal testimony, see Licensing Board Memorandum and Order (Prehearing Conference and Initial Scheduling Order) (Apr. 10, 2012) at 7–8 (unpublished); and (2) the potentially marginal utility of such motions in a proceeding, such as this one, in which the admitted contentions are slated for an evidentiary hearing under 10 C.F.R. Part 2, Subpart L during which generally only the Board will be questioning witnesses based on its assessment of the relevance/significance of the parties’ prefiled evidentiary submissions, in providing a revised schedule we have eliminated the time allotted for such motions, thereby mitigating to at least some degree the delay in convening an evidentiary hearing that results from the parties’ requested summary disposition and agency shutdown-related schedule revisions.

Accordingly, included as Appendix A to this issuance is the revised general schedule for this proceeding that incorporates the changes noted in sections A and B above. Consistent with 10 C.F.R. § 2.329(e), any objections to, or other comments regarding, this memorandum and order shall be filed within five days after it is served.

It is so ORDERED.

FOR THE ATOMIC SAFETY
AND LICENSING BOARD

/RA/

G. Paul Bollwerk, III, Chairman
ADMINISTRATIVE JUDGE

Rockville, Maryland

November 6, 2013

APPENDIX A

Dated: 11/6/2013

REVISED GENERAL SCHEDULE -- Strata Energy, Inc. (Ross In Situ Recovery Uranium Project) Proceeding

Event	Environmental Contentions	Safety Contentions
Licensing Board Order on Standing/Admissibility of Contentions	Feb. 10, 2012	Not Applicable (N/A)
Mandatory Disclosures and Staff Hearing File Due	Apr. 2, 2012	N/A
Draft Supplemental Environmental Impact Statement (SEIS) Issued	Mar. 21, 2013	N/A
New/Amended Contention Motions Due	May 6, 2013	N/A
Answers to New/Amended Contention Motions Due	June 3, 2013	N/A
Replies to Answers re New/Amended Contention Motions Due	June 17, 2013	N/A
Licensing Board Ruling on New/Amended Contention Admission	July 26, 2013	N/A
Admitted New/Amended Contention Mandatory Disclosure Updates Completed	Aug. 5, 2013	N/A
Summary Disposition Motions re Admitted Contentions Due ¹	Sept. 3, 2013 (Contentions 1, 2, and 3)	N/A
Responses Supporting Summary Disposition Motion Due ²	Sept. 13, 2013 (Same)	N/A
Responses Opposing Summary Disposition Motion Due	Sept. 27, 2013 (Same)	N/A
Licensing Board Ruling on Summary Disposition Motions	Oct. 28, 2013 (Same)	N/A
Final Safety Evaluation Report Issued		Mar. 1, 2013
Final SEIS Availability Notice	Feb. 28, 2014	
New/Amended Contention Motions Due	Mar. 31, 2014	Apr. 1, 2013
Answers to New/Amended Contention Motions Due	Apr. 14, 2014	N/A

¹ If no new/amended contentions are submitted or no new/amended contentions are admitted/approved, the summary disposition motion/responses schedule for admitted contentions begins seven days from the date motions for new/amended contentions were due or were denied.

² If no responses supporting a summary disposition motion are filed, then responses opposing the motion are due within 20 days of the date of the dispositive motion.

Event	Environmental Contentions	Safety Contentions
Replies to Answers re New/Amended Contention Motions Due	Apr. 21, 2014	N/A
Licensing Board Ruling on New/Amended Contention Admission	May 23, 2014	N/A
Admitted New/Amended Contention Mandatory Disclosure Updates Completed	June 6, 2014	N/A
Summary Disposition Motions re Admitted Contentions ³ /Motion to Invoke Subpart N Procedures Due	June 13, 2014	N/A
Responses Supporting Summary Disposition Motion Due ⁴	June 23, 2014	N/A
Responses Opposing Summary Disposition Motion Due	July 7, 2014	N/A
Licensing Board Ruling on Summary Disposition Motions	Aug. 15, 2014	N/A
Position Statements/Prefiled Direct Testimony Due	Aug. 22, 2014	N/A
Direct Testimony Proposed Cross-Examination Questions/Requests for Cross-Examination Due	Sept. 5, 2014	N/A
Response Statements/Prefiled Rebuttal Testimony Due	Sept. 11, 2014	N/A
Responses to Requests for Cross-Examination Due	Sept. 12, 2014	N/A
Rebuttal Testimony Proposed Cross-Examination Questions Due	Sept. 18, 2014	N/A
Evidentiary Hearing	Sept. 30-Oct. 2, 2014	N/A
Proposed Findings of Fact/Conclusions of Law Due	Nov. 3, 2014	N/A
Reply Findings of Fact/Conclusions of Law Due	Nov. 17, 2014	N/A
Licensing Board Initial Decision	Jan. 9, 2015	N/A

³ If no new/amended contentions are submitted or no new/amended contentions are admitted/approved, the summary disposition motion/responses schedule for admitted contentions begins seven days from the date motions for new/amended contentions were due or were denied.

⁴ If no responses supporting a summary disposition motion are filed, then responses opposing the motion are due within 20 days of the date of the dispositive motion.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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Strata Energy, Inc.) Docket No. 40-9091-MLA
(Ross In Situ Recovery Uranium Project))
)
(Materials License Application))

CERTIFICATE OF SERVICE

I hereby certify that copies of **MEMORANDUM AND ORDER (Revised General Schedule)** have been served upon the following persons by Electronic Information Exchange.

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STRATA ENERGY, INC., Ross In Situ Recovery Uranium Project, Docket No. 40-9091-MLA
MEMORANDUM AND ORDER (Revised General Schedule)

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[Original signed by Herald M. Speiser]

Office of the Secretary of the Commission

Dated at Rockville, Maryland
this 6th day of November, 2013