

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

April 14, 2014

MEMORANDUM AND ORDER

(Granting Motion for Extension of Time to File Responses/Reply
to Pending New/Amended Contentions Motion
and Setting Schedule/Parameters for Parties
to Provide Proposed Revised General Schedule)

In response to Joint Intervenors'¹ April 7, 2014 motion (1) noting the unopposed request of applicant Strata Energy, Inc., (SEI) for additional time to file a response to Joint Intervenors' March 31 motion to migrate/amend/admit new contentions relative to the NRC staff's February 28 final supplement to the agency's generic environmental impact statement (EIS) on in situ recovery (ISR) facilities; and (2) seeking an unopposed extension of time for filing Joint Intervenors' reply to any SEI and staff responsive pleadings, on April 8 the Licensing Board issued a memorandum and order indicating that if it were to grant in toto the additional sixteen days requested by the parties, this would have the effect of placing the planned late September/early October evidentiary hearing/site visit/oral limited appearance session in the Gillette/Sundance, Wyoming area outside of what potentially has been identified by this and

¹ Joint Intervenors are the Natural Resources Defense Council (NRDC) and the Powder River Basin Resource Council (PRBRC).

other licensing boards, particularly in the Powertech proceeding, to be the "seasonably appropriate" window for adjudicatory activities in the eastern Wyoming/western South Dakota-Nebraska area. See Licensing Board Memorandum and Order (Regarding Requests for Extension of Time) (Apr. 8, 2014) at 2 (unpublished). As a consequence, the Board indicated that if it granted the motion, the Board (1) intended to conduct the evidentiary hearing in the Licensing Board Panel's Rockville, Maryland hearing facility; and (2) would not conduct a site visit or oral limited appearance session in Wyoming. The Board also offered the parties an opportunity to respond to both Joint Intervenors' motion and the Board's issuance. See id. at 2-3. By filings dated April 9, 10, and 11, respectively, SEI, Joint Intervenors, and the staff have submitted such responses. See [SEI's] Reponse to [Licensing Board's] April 8, 2014 Memorandum and Order Regarding Extensions of Time and Amendment of the General Schedule (Apr. 9, 2014) [hereinafter SEI Response]; [Joint Intervenors'] Response to the Board's April 8, 2014 Memorandum and Order (Apr. 10, 2014) [hereinafter Joint Intervenors Response]; NRC Staff's Response to Board Order Regarding Requests for Extension of Time (Apr. 11, 2014) [hereinafter Staff Response].

In its response, SEI (1) noted that the scheduled evidentiary hearing/site visit/oral limited appearance session is already outside of a "seasonably appropriate" window relative to the schedule in the Powertech proceeding; (2) asserted that it is being "penalized" because the schedule for this proceeding affords only fourteen days for a response to a motion to admit new/amended contentions rather than twenty-five days;² and (3) urged the Board, regardless of

² In this regard, the Board observes that the question of the number of days for filing a response to a new/amended contention motion has come up previously in this proceeding. Although the Board in its initial prehearing order established 14 days as the time for such a response, see Licensing Board Memorandum and Order (Initial Prehearing Order) (Nov. 3, 2011) at 4 n.3 (unpublished), an August 2012 change to 10 C.F.R. § 2.309(i) provided that "[u]nless otherwise specified by the [Licensing Board] . . . the applicant/licensee . . . may file an

(continued...)

where the evidentiary hearing is held, to come to eastern Wyoming for a site visit at both the planned Ross ISR facility and a working local ISR facility. Additionally, SEI suggested that, along the lines of the Powertech proceeding cited by the Board in its April 8 order, if the requested extensions are granted to both Joint Intervenors and SEI, then the parties be permitted a period of seven days to propose a schedule that would accommodate the sixteen days while retaining the late September/early October dates for the hearing. SEI Response at 2-4. For their part, Joint Intervenors indicated that while they “defer” to the Board on the question of a hearing location, they are concerned that the already “tight” schedule may make changes to accommodate this and any future extension requests difficult. As a consequence, they would prefer to hold the evidentiary hearing at a later date and in another venue and maintain the time frames for the deadlines in the current schedule rather than shortening other deadlines to preserve the existing late September/early October dates and have the hearing at an eastern Wyoming venue. Joint Intervenors Response at 2-3. Finally, the staff stated that it does not oppose the extension requests sought by the Joint Intervenors and SEI and is willing to work with the parties to preserve the current evidentiary hearing dated through adjustments to the existing hearing schedule, as suggested by SEI. See Staff Response at 2.

²(...continued)

answer to . . . a [new/amended contention] motion . . . within 25 days after service of the . . . motion,” Amendments to Adjudicatory Process Rules and Related Requirements, 77 Fed. Reg. 46,562, 46,592 (Aug. 3, 2012) (codified at 10 C.F.R. § 2.309(i)(1)). In an August 21, 2012 issuance that reported on the parties’ joint response to, among other things, the Board-raised issue of whether to retain the existing 14-day requirement or adopt the more generous twenty-five-day filing schedule provided for in the new rule, the Board noted that “applicant SEI prefers that the Board continue to utilize the fourteen. . .-day time frame[] so as to maintain the existing schedule,” which the Board, in fact, did by retaining that response time relative to any new/amended contention motion for any general schedule revisions going forward. Licensing Board Memorandum and Order (Recent Part 2 Changes and General Schedule Revisions) (Aug. 21, 2012) at 2-3 (unpublished).

Initially, we note that the Board agrees with SEI that the current late September/early October dates for the evidentiary hearing and associated activities are indeed beyond what was considered to be in a “seasonably appropriate” window in the Powertech proceeding. Nonetheless, in deference to the long-standing agency policy to conduct hearings near the site of the facility at issue, in establishing these dates, the Board was willing to “push the envelope” in this proceeding, which it is still willing to do if (but only if) the evidentiary hearing dates in the current general schedule can be retained. Yet, the Board also shares Joint Intervenors’ concern that, to the extent possible, the current filing time frames for party submissions be retained going forward.

All that being said, the Board recognizes that, at the licensing board’s behest, the parties to the Powertech proceeding have been able to develop a jointly-supported schedule that will allow that case to go to hearing in August 2014. Since the Board would, if possible, prefer to conduct the hearing in the eastern Wyoming area if it can be done on the dates specified under the current general schedule, the Board is willing to provide the parties with an opportunity jointly to suggest revisions to the existing schedule that will accommodate the two extensions requested here while retaining the hearing dates specified under the current general schedule.

Accordingly, the requests of Joint Intervenors and SEI, as outlined in Joint Intervenors’ April 7 filing, for an extension of time to file their respective new/amended contention admission motion response and reply are granted in that any SEI or staff responses to Joint Intervenors’ March 31 motion to migrate or amend contentions and to admit new contentions shall be filed on or before Wednesday, April 23, 2014, and that any reply by Joint Intervenors to such responses shall be filed on or before Wednesday, May 7, 2014.

Additionally, on or before Monday, April 21, 2014, the parties shall provide the Board with a joint report outlining the extent to which they are able to agree on proposed changes to

the current general schedule that would retain that schedule's late September/early October dates for an evidentiary hearing. In preparing this report, the parties should operate within the following parameters:

1. The times frames established in the current general schedule for Board decisional work shall be retained.
2. In proposing such schedule changes at this juncture, the parties going forward are committing to a process by which any further changes to the general schedule relative to party filings will only be proposed jointly and will be timely presented with an explanation as to how the Board would be able to adopt the change and still retain the late September/early October dates for an evidentiary hearing specified in the current general schedule.

Once the Board has received this report, it will issue a revised general schedule that incorporates the filing extensions granted in this order, as well as makes any other appropriate changes to other aspects of this proceeding's general schedule.³

It is so ORDERED.

FOR THE ATOMIC SAFETY
AND LICENSING BOARD

/RA/

G. Paul Bollwerk, III, Chairman
ADMINISTRATIVE JUDGE

Rockville, Maryland

April 14, 2014

³ At that time or shortly thereafter, the Board will also provide further information on its plans regarding the dates and location for the evidentiary hearing and for any site visit and/or oral limited appearance session.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of)
)
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 a **MEMORANDUM AND ORDER (Granting Motion for Extension of Time to File Responses/Reply to Pending New/Amended Contentions Motion and Setting Schedule/Parameters for Parties to Provide Proposed 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
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Responses/Reply to Pending New/Amended Contentions Motion and Setting
Schedule/Parameters for Parties to Provide Proposed Revised General Schedule)**

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[Original signed by Herald M. Speiser]
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Dated at Rockville, Maryland
this 14th day of April, 2014