

July 10, 2014

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of	)	
	)	
STRATA ENERGY INC.	)	Docket No. 40-9091-MLA
	)	
(Ross <i>In Situ</i> Uranium Recovery	)	ASLBP No. 12-915-01-MLA
Site)	)	

NRC STAFF RESPONSE TO JUNE 26, 2014 MEMORANDUM AND ORDER  
(OPPORTUNITY FOR PARTY COMMENTS ON SITE VISIT REPORT)

On June 26, 2014, the Atomic Safety and Licensing Board (Board) issued a Memorandum and Order inviting the parties to comment on Strata Energy, Inc.'s (Strata's) Report on Site Tours, filed on June 23, 2014.<sup>1</sup> The Board specifically invited the NRC Staff (Staff) to comment on the "constraints that may exist under the Nuclear Regulatory Commission's ethics rules and guidelines regarding the receipt by agency personnel of [Strata]-supplied transportation and lunch."<sup>2</sup> For the reasons stated below, the Staff has determined that there are no ethical prohibitions to accepting transportation and lunch from Strata during the scheduled site visits, but, based on past agency practice, will reimburse Strata for the market price of the lunch.

5 C.F.R. § 2635.202 prohibits an employee of the executive branch (i.e. NRC Staff) from accepting a gift from a prohibited source.<sup>3</sup> The regulatory definition of a gift includes transportation and meals.<sup>4</sup> Further, a prohibited source is defined as "any person who (1) Is seeking official action by the employee's agency; or . . . (3) Conducts activities regulated by the

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<sup>1</sup> Memorandum and Order (Opportunity for Party Comments on Site Visit Report) at 2 (June 26, 2014) (unpublished) (Agencywide Documents Access & Management System (ADAMS) Accession No. ML14177A382).

<sup>2</sup> *Id.* at 2 n. 3.

<sup>3</sup> 5 C.F.R. § 2635.202(a)(1).

<sup>4</sup> 5 C.F.R. § 2635.203(b).

employee's agency.”<sup>5</sup> Since the NRC regulates activities performed by Strata under its license, and Strata is seeking agency action in the form of a favorable Board decision, Strata is a prohibited source.

The Staff, however, believes that transportation provided by Strata does not implicate the ethics rules because it is not being offered to NRC Staff for their personal benefit, but is instead being offered to the agency for operation reasons. While it is true the ethics rule specifically use transportation as an example of a gift,<sup>6</sup> the rule focuses on the individual<sup>7</sup> and contains no discussion of gifts to an agency. Therefore, the Staff concludes that the regulatory definition of a gift does not apply in this instance. The NRC does not have independent gift acceptance authority. Rather, gifts or contributions of value to an agency would fall under appropriations law and may run afoul of the prohibition of augmentation from licensees or applicants to appropriated funds.<sup>8</sup> The Staff concludes that the provision of this transportation would not be considered an augmentation of appropriated funds as the transportation is being provided for operations reasons of providing all parties the same information at the same time and minimizing vehicle travel on each site rather than for the purpose of conferring a gift.

In contrast, the proposed lunch is a gift because it is being offered as a convenience rather than for operations reasons. One of the exceptions in which an employee may accept a gift from a prohibited source is where the gift is valued at less than \$20, “provided that the aggregate market value of individual gifts received from any one person . . . shall not exceed \$50 in a calendar year.”<sup>9</sup> The value of a lunch provided to an NRC employee would most likely fall below that \$20 threshold, making it legal to accept under the ethics rules. However, it has been Staff practice to reimburse a licensee or applicant the market value of the lunch to avoid

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<sup>5</sup> 5 C.F.R. § 2635.203(d).

<sup>6</sup> See 5 C.F.R. § 2635.203(b).

<sup>7</sup> See 5 C.F.R. § 2653.202(a) (“*an employee* shall not . . .”) (emphasis added).

<sup>8</sup> See GENERAL ACCOUNTING OFFICE, GAO-06-382SP, PRINCIPLES OF FEDERAL APPROPRIATIONS LAW, VOLUME II 6-162 through 6-163 (3rd ed. 2004), *available at* <http://www.gao.gov/special.pubs/d06382sp.pdf>.

<sup>9</sup> 5 C.F.R. § 2635.204(a)(1).

the perception of impropriety. The Staff intends to follow that past practice in this situation, and will coordinate with Strata in advance of the site visit.

Respectfully submitted,

**/Signed (electronically) by/**

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Dated at Rockville, Maryland  
this 10th day of July, 2014.

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CERTIFICATE OF SERVICE

Pursuant to 10 C.F.R § 2.305, I hereby certify that copies of the foregoing "NRC STAFF RESPONSE TO JUNE 26, 2014 MEMORANDUM AND ORDER (OPPORTUNITY FOR PARTY COMMENTS ON SITE VISIT REPORT)" in the above-captioned proceeding have been served via the Electronic Information Exchange (EIE) this 10th day of July, 2014.

**/Signed (electronically) by/**

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Date of Signature: July 10, 2014