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

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| In the Matter of | Docket No. 40-9091-MLA |
| STRATA ENERGY, INC. | ASLBP No. 12-915-01-MLA-BD01 |
| (Ross In Situ Recovery Uranium Project) | July 25, 2014 |

MEMORANDUM AND ORDER
(Ruling on Summary Disposition Motion Regarding
Environmental Contention 4/5A)

Relative to the four contentions admitted in this proceeding, among the dispositive motions currently pending with the Licensing Board are requests filed by applicant/licensee Strata Energy, Inc.,[1] (SEI) and the NRC staff with respect to Joint Intervenors[2] Environmental Contention 4/5A: The application fails to adequately assess cumulative impacts of the proposed action and the planned Lance District expansion project.[3] See [SEI's] Motion for

[1] On April 25, 2014, the staff notified the Board that, in accord with 10 C.F.R. § 2.1202(a), the SEI license had been issued, effective immediately. See Letter from Christopher C. Hair, NRC Staff Counsel, to Licensing Board (Apr. 25, 2014) at 1–2. Although section 2.1213(a) afforded Joint Intervenors the opportunity to seek a stay of this staff action, no such request was filed. The SEI license nonetheless is subject to any merits determination the Board might make relative to each of Joint Intervenors' pending contentions.

[2] Joint Intervenors are the Natural Resources Defense Council and the Powder River Basin Resource Council.

[3] Also pending with the Board is a dispositive motion filed by Joint Intervenors regarding Environmental Contention 1: The FSEIS fails to adequately characterize baseline (i.e., original or pre-mining) groundwater quality, which has been contested by both SEI and the staff. See [Joint Intervenors'] Motion for Summary Disposition on Environmental Contention 1 (June 13,

(continued...)

Summary Disposition [of Contention 4/5A] at (June 13, 2014) at 1 [hereinafter SEI Contention 4/5A Dispositive Motion]; NRC Staff's Motion for Summary Disposition of Contention 4/5A (June 13, 2014) at 1–2 [hereinafter Staff Contention 4/5A Dispositive Motion]. Joint Intervenors, however, object to any grant of summary disposition regarding environmental contention 4/5A. See [Joint Intervenors'] Opposition to Motions for Summary Disposition of Contention 4/5A (July 2, 2014) [hereinafter Joint Intervenors Response].

For the reasons set forth herein, we grant the SEI and staff motions as they request that we forego any further consideration of environmental contention 4/5A in this proceeding.

## I. BACKGROUND

As originally admitted by the Board, the focus of environmental contention 4/5A was purported deficiencies in the analysis of cumulative impacts in the environmental report (ER) portion of SEI's then-pending application to possess and use Atomic Energy Act (AEA) section 11.z source and AEA section 11.e(2) byproduct materials pursuant to 10 C.F.R. Part 40 in the operation of SEI's proposed Ross In Situ Recovery (ISR) Uranium Project site in Crook County, Wyoming.[4] See LBP-12-3, 75 NRC 164, 192 (2012). Subsequently, with the March

[3](...continued)
2014) at 1; [SEI] Response in Opposition to Intervenors' Motion for Summary Disposition (July 3, 2014) at 1; NRC Staff's Answer to [Joint Intervenors'] Motion for Summary Disposition on Contention 1 (July 3, 2014) at 1. The Board will issue a separate ruling regarding that motion.

[4] As outlined by the Commission in its decision in Sequoyah Fuels Corp. (Gore, Oklahoma Site), CLI-03-15, 58 NRC 349 (2003), section 11.e(2) byproduct material is that material, as defined by AEA section 11.e(2), 42 U.S.C. § 2014e(2), that is "the tailings or wastes produced by the extraction or concentration of uranium or thorium from any ore processed primarily for its source material content." This byproduct material category was created in 1978 by the Uranium Mill Tailings and Reclamation Act to afford the NRC regulatory jurisdiction over mill tailings at active and inactive uranium milling sites. See Sequoyah Fuels, CLI-03-15, 58 NRC at 353–54.

2013 issuance of the staff's draft supplement to the agency's generic environmental impact statement (GEIS) on ISR facilities providing the staff's preliminary National Environmental Policy Act (NEPA) assessment of the SEI application, Joint Intervenors sought to "resubmit" their admitted contentions, including environmental contention 4/5A, as a challenge to the staff's draft GEIS supplement. With respect to environmental contention 4/5A, their request was denied, the Board concluding that because the cumulative impacts analysis in the staff's GEIS supplement differed substantially from the approach taken in the SEI ER, the so-called "migration tenet" would not apply. See LBP-13-10, 78 NRC 117, 143 (2013), reconsideration denied, Licensing Board Memorandum and Order (Denying Motion for Reconsideration of LBP-13-10 Ruling Regarding Environmental Contention 4/5A or, Alternatively, to Admit Amended Contention) (Aug. 27, 2013) (unpublished). As a consequence, a showing regarding the 10 C.F.R. §§ 2.309(c), (f)(1) factors governing the admission of new/amended contentions was required. But because Joint Intervenors had not provided such an analysis, the Board found it could not admit a new or amended contention challenging the draft GEIS supplement, thus raising questions about the continuing relevance or materiality of their existing ER-based contention. See id. at 143–44.

Subsequently, in February 2014 the staff put forth its final GEIS supplement, which prompted another motion from Joint Intervenors regarding their admitted contentions in which they urged that, by reason of the migration tenet or amendment, environmental contention 4/5A should be allowed to go forward as a challenge to the final GEIS supplement. For the same reasons stated in its July 2013 ruling on the draft GEIS supplement contention, the Board found the migration tenet was not available so as to require an amended contention. And with regard to Joint Intervenors' alternative request to amend this contention, the Board concluded that their proposed amendment failed to meet any of the timeliness requirements of section 2.309(c)(1)

so as to be admissible. Finally, the Board observed again that the contention's continuing ER focus left its efficacy in some doubt. See Licensing Board Memorandum and Order (Ruling on Motion to Migrate/Amend Existing Contentions and Admit New Contentions Regarding Final Supplement to Generic Environmental Impact Statement)) (May 23, 2014) at 13–14 (unpublished) [hereinafter Board Final GEIS Supplement Order].

Thereafter, in accord with the general schedule for this proceeding, the staff and SEI filed the pending dispositive motions described above regarding environmental contention 4/5A.

## II. ANALYSIS

### A. Summary Disposition Standards

For proceedings such as this one conducted pursuant to the "simplified" hearing procedures in 10 C.F.R. Part 2, Subpart L, see LBP-12-3, 75 NRC at 208, summary disposition motions are to be resolved in accord with the same standards for dispositive motions that are utilized for "formal" hearings as set forth in 10 C.F.R. Part 2, Subpart G. See 10 C.F.R. § 2.1205(c). Under Subpart G, 10 C.F.R. § 2.710 provides that summary disposition may be entered with respect to "all or any part of the matters involved in the proceeding" if the motion, along with any appropriate supporting materials (including affidavits, discovery responses, and documents), shows that there is "no genuine issue as to any material fact and that the moving party is entitled to a decision as a matter of law." Id. § 2.710(a), (d)(2).

The party proffering the motion bears the burden of making the requisite showing by providing "a separate, short, and concise statement of the material facts as to which the moving party contends that there is no genuine issue to be heard." Id. § 2.710(a). A party opposing the motion must counter any adequately supported material facts provided by the movant with its own "separate, short, and concise statement of the material facts as to which it is contended

there exists a genuine issue to be heard," with the recognition that, to the degree the responsive statement fails to contravene any adequately supported material facts proffered by the movant, the movant's facts "will be considered to be admitted." Id.

The Commission has provided the following additional guidance regarding summary disposition motions:

> The [section 2.710] standards are based upon those the federal courts apply to motions for summary judgment under Rule 56 of the Federal Rules of Civil Procedure. . . . When a motion for summary disposition is made and supported as described in our regulations, "a party opposing the motion may not rest upon [] mere allegations or denials," but must state "specific facts showing that there is a genuine issue of fact" for hearing. It is not sufficient, however, for there merely to be the existence of "some alleged factual dispute between the parties, for "the requirement is that there be no genuine issue of material fact." "Only disputes over facts that might affect the outcome" of a proceeding would preclude summary disposition. "Factual disputes that are . . . unnecessary will not be counted."
>
> The correct inquiry is whether there are material factual issues that "properly can be resolved only by a finder of fact because they may reasonably be resolved in favor of either party." At issue is not whether evidence "unmistakably favors one side or the other," but whether "there is sufficient evidence favoring the non-moving party" for a reasonable trier of fact to find in favor of that party. If the evidence in favor of the non-moving party is "merely colorable" or "not significantly probative," summary disposition may be granted.
>
> In ruling on a motion for summary disposition a licensing board (or presiding officer) should not, however, conduct a "trial on affidavits." At this stage, "the judge's function is not himself to weigh the evidence and determine the truth of the matter but to determine whether there is a genuine issue for [hearing]." "The evidence of the non-movant is to be believed, and all justifiable inferences are to be drawn in his favor." If "reasonable minds could differ as to the import of the evidence," summary disposition is not appropriate. Caution should be exercised in granting summary disposition, which may be denied if "there is reason to believe that the better course would be to proceed to a full [hearing]."

Entergy Nuclear Generation Co. (Pilgrim Nuclear Power Station), CLI-10-11, 71 NRC 287, 297–98 (2010) (footnotes omitted) (quoting Anderson v. Liberty Lobby, 477 U.S. 242, 247–51, 255 (1986) (emphasis in original)).

With these standards in mind, we turn to the parties' dispositive motions.

B. Environmental Contention 4/5A

As set forth by the Board in its May 2014 decision, environmental contention 4/5A reads as follows:

> Environmental Contention 4/5A: The application fails to adequately assess cumulative impacts of the proposed action and the planned Lance District expansion project.
>
> CONTENTION: The application violates 10 C.F.R. § 51.45, NEPA, and the Council on Environmental Quality's (CEQ) implementing regulations for NEPA because it fails to consider adequately cumulative impacts, including impacts on water quantity, that may result from SEI's proposed ISL uranium mining operations planned in the Lance District expansion project.

Board Final GEIS Supplement Order attach. A, at 2. As noted previously, in its July 2013 and May 2014 decisions, the Board ruled that environmental contention 4/5A was not eligible to be migrated or to be admitted as an amended contention challenging the staff's draft or final GEIS supplements. See id. at 5. Thus, the Board has allowed environmental contention 4/5A to proceed only as a challenge to SEI's ER. See id. at 13. And, perhaps not surprisingly, whether those rulings effectively spelled the death-knell for this contention is a focus of the parties' summary disposition arguments.

1. SEI's Position on Environmental Contention 4/5A

In support of its dispositive motion, SEI asserts that because environmental contention 4/5A did not migrate to become a challenge to the cumulative impacts analysis in the staff's GEIS supplement, which serves as the final NEPA assessment of cumulative impacts and supersedes the ER portion of SEI's license application, Joint Intervenors lack the ability to

challenge the sufficiency of the staff's NEPA assessment, so that there is no longer any genuine issue of material fact relative to the contention. See SEI Contention 4/5A Dispositive Motion at 5–6. SEI states that Joint Intervenors' contention 4/5A only challenges the cumulative impact data and information provided by SEI in its license application and does not challenge any other part of the record of decision or administrative record, thereby making environmental contention 4/5A ripe for dismissal. See id. Additionally, SEI declares that the staff's draft and final GEIS supplements addressed any cumulative impacts concerns relative to the SEI ER that were raised by Joint Intervenors in admitted environmental contentions 4/5A. In this regard, referencing different portions of chapter 5 of the staff's final GEIS supplement, which is entitled "Cumulative Impacts," SEI declares that the staff's discussion regarding area operational and planned future uranium recovery projects and non-uranium mining projects, water resources impacts, and liquid waste disposal fully address the concerns raised in admitted environmental contention 4/5A regarding the adequacy of the SEI ER's cumulative impacts discussion so as to merit a ruling in their favor on the adequacy of the agency's NEPA decisional documents and the associated record of decision/administrative record. See id. at 7–8.

2. NRC Staff's Position on Environmental Contention 4/5A

In its motion for summary disposition of environmental contention 4/5A, the staff also argues that the ER has been superseded by the staff's draft and final GEIS supplements. Furthermore, the staff asserts that under NRC practice, the issues in dispute are determined by the scope of the admitted contention and the scope of a contention is defined both by its terms and its bases. See Staff Contention 4/5A Dispositive Motion at 7-8 (citing Pilgrim, CLI-10-11, 71 NRC at 297). Since the basis of environmental contention 4/5A is the ER, the staff maintains that the contention has been rendered moot by the publication of the staff's draft and final GEIS supplements, which contain a cumulative impacts discussion that encompasses aquifer

restoration along with a qualitative evaluation of the drawdown in the Lance and Fox Hills formations, consumption rates, and consideration of recharge rates and mitigation that Joint Intervenors failed to challenge with the required timely filed amendment request. See id. at 8–9. As a consequence, according to the staff, Joint Intervenors have failed to provide an admitted contention that challenges the staff's superseding analyses of the groundwater quality and quantity cumulative impacts in the draft and final GEIS supplements so that their ER-focused contention should be dismissed. See id. at 9.

3. Joint Intervenors' Position Regarding Environmental Contention 4/5A

In response to the SEI and staff assertions that the issue of the adequacy of the ER cumulative impacts analysis as framed by environmental contention 4/5A is now moot in light of the unchallenged cumulative impacts analyses in the staff's draft and final GEIS supplements, Joint Intervenors declare that they are still entitled to an evidentiary hearing relative to the adequacy of the cumulative impacts analysis in the SEI ER. According to Joint Intervenors, this is so based on the recognized principle that "a claim cannot be moot if it is 'capable of repetition[,] yet evading review.'" Joint Intervenors Response at 11 (quoting Beethoven.com LLC v. Librarian of Cong., 394 F3d 939, 950 (D.C. Cir. 2005); Humane Soc'y of the United States v. EPA, 790 F.2d 106, 112 (D.C. Cir. 1986)). Citing the two criteria associated with this precept -- i.e., that the duration of the challenged action is too short to be fully litigated prior to its cessation and that there is a reasonable expectation that the same complaining party will be subjected to the same action again -- Joint Intervenors maintain that the circumstances surrounding environmental contention 4/5A meet both criteria. Joint Intervenors first assert that the duration of the ER contention was too short to be litigated because under NRC regulations, an evidentiary hearing on a NEPA-based contention is never convened until after the final EIS is complete, by which time the ER contention becomes moot. And with regard to the reasonable

expectation that they will again be subjected to the same deficiency outlined in environmental contention 4/5A, Joint Intervenors state that the claim by both SEI and the staff in contesting this contention's admissibility that there is no duty under 10 C.F.R. § 51.45 for an applicant to include such an analysis in its ER establishes that the failure claimed in this contention will continue. See id. at 11–12. Further, Joint Intervenors assert that the staff's position regarding the need for a cumulative impacts assessment in an ER should be considered agency policy that is entitled to review without regard to mootness principles. See id. at 13.

Also supporting continued review here, Joint Intervenors assert, is the severe prejudice they and the public will suffer from the failure to include a meaningful cumulative impacts analysis in the ER, particularly given (1) this Board's and staff's recognition that the ER lacked specificity about SEI's planned satellite facilities; and (2) the fact they are suffering this prejudice as a direct result of SEI's initial failure to include an adequate cumulative impacts analysis in its ER, which caused Joint Intervenors to (a) presume incorrectly that their admitted contention raising the issue of the need for an adequate cumulative impacts analysis would simply migrate to encompass the cumulative impacts analysis in the staff's draft GEIS supplement, and (b) delay, to their detriment, positing a challenge as to whether the full scope of the planned project had been revealed. See id. at 13–15.

Finally, Joint Intervenors claim that the Board cannot resolve the merits of the issue of the adequacy of the staff's draft or final GEIS supplement cumulative impacts analysis based on the SEI and staff dispositive motions regarding environmental contention 4/5A. Up to this point, Joint Intervenors declare, the Board's only ruling regarding the cumulative impacts issue framed by environmental contention 4/5A is that the staff's discussion of this issue in the draft GEIS supplement was sufficiently different from what was posited in the ER so as to require an amended contention. That procedural ruling, in conjunction with the information Joint

Intervenors previously proffered in support of their filings regarding the draft and final GEIS supplements, demonstrates the inadequacy of the required cumulative impacts analysis such that it is apparent the contention's central concern about the adequacy of the NEPA cumulative impacts analysis that will support any agency licensing action regarding the Ross facility has not been adequately addressed and remains in dispute. See id. at 15–17.

4. Licensing Board Ruling Regarding Environmental Contention 4/5A

That the Board made the above-referenced July 2013 and May 2014 determinations Joint Intervenors' ER-based environmental contention 4/5A did not convert, either through migration or amendment, into a challenge to the staff's draft or final GEIS supplement, which, in turn, meant environmental contention 4/5A was a continuing challenge only to the SEI ER, see supra pp. 3–4, are the pre-eminent material factual issues not in dispute identified by both SEI and the staff as supporting their dispositive motions seeking dismissal of this contention. See Staff Contention 4/5A Dispositive Motion attach. 1, at unnumbered p. 3 (Statement of Material Facts on Which No Genuine Dispute Exists) (items 11 and 17); SEI Contention 4/5A Dispositive Motion attach. 1, at 12, 13 ([SEI] Statement of Material Facts to Support Motion for Summary Disposition of Environmental Contention 4/5A (items 12, 15). Further, although Joint Intervenors may disagree with the substance of these rulings, they do not contest the fact that these Board determinations were made. See Joint Intervenors Response at 7–8, 10 n.3. And as the Board also noted in both these rulings, in an instance such as this one in which the staff has issued an environmental document, an admitted contention posing a NEPA dispute based on the applicant's ER is, in the ultimate, one that must be refocused to contest the staff environmental document, thereby rendered the ER-footed contention's continuing viability problematic. See LBP-13-10, 78 NRC at 143–44; Board Final GEIS Supplement Order at 13–14; see also Duke Power Co. (Catawba Nuclear Station, Units 1 and 2), CLI-83-19,

17 NRC 1041, 1049 (1983) (if the staff provides a different analysis in its draft environmental impact statement (EIS) from that supporting an admitted ER-based contention, the ER-based issue statement can be amended or disposed of); 10 C.F.R. § 2.332(d) (indicating if EIS is involved, evidentiary hearing on environmental issues addressing EIS cannot commence before issuance of final EIS).

In an attempt to overcome this difficulty, Joint Intervenors posit the creative argument that an ER-based claim, such as is embodied in environmental contention 4/5A, cannot become moot even when it is not migrated or amended to become an EIS-related contention if the contention meets the two criteria associated with the well-recognized precept that a claim should not be declared moot if it is "capable of repetition, yet evading review." See Joint Intervenors' Response at 11. Nonetheless, in our view, the contention at issue here does not fulfill either of the criteria cited by Joint Intervenors as support for their argument.

First, contrary to Joint Intervenors' assertion, the duration of the challenged action, i.e., the alleged inadequacy of the ER's cumulative impacts discussion, is not too short to be fully litigated prior to its cessation. This argument, which seemingly would apply to every ER-based NEPA challenge, fails to account for the fact that there are readily available platforms -- the staff's draft and final EISs -- that allow such a claim to move forward in a proceeding, assuming that the contention is subject to the migration tenet or the contention's sponsor acts timely to amend the contention, neither of which was applicable in this instance.[5] Nor do we find merit in

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[5] In another ISR facility licensing proceeding, a board recently has observed that

> an admitted contention remains an admitted contention until it is adjudicated by the Board or eliminated prior to the hearing by the filing of a dispositive motion. To remove an admitted contention from the proceeding a party must file, and a Board must grant, a motion for summary disposition in conformance with 10 C.F.R. § 2.1205.

(continued...)

Joint Intervenors' assertion that the second criterion -- a reasonable expectation that the complaining party will be subjected to the same action -- is applicable here. It is true, as Joint Intervenors point out, that in opposing Joint Intervenors' initial contentions both SEI and the staff argued that the agency's Part 51 regulations imposed no duty on SEI to prepare a cumulative impacts analysis in its ER. But this claim, regardless of whether or not it was a staff assertion of agency policy, had all the hallmarks of an attempt to obtain an overbroad Board ruling, particularly given, as the Board pointed out in its contention admission ruling, the applicable staff guidance on ER preparation requests such an analysis from an applicant and the staff itself supported the admission of both environmental contentions 4 and 5A relative to the purported inadequacy of the SEI ER's cumulative impacts analysis as it concerned SEI's planned satellite facilities. See LBP-12-3, 75 NRC at 200, 201–03. Thus, we fail to see that it is at all clear there is a reasonable expectation that the same complaining party will be subjected to the same action again.

Further, concerning Joint Intervenors' assertion that they and the public will face severe prejudice from the failure to include a meaningful cumulative impacts analysis in the ER, we do not consider this a material matter in this case. Purported prejudice regarding the unresolved merits claims associated with an environmental contention that fails to move forward to an

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[5](...continued)
Powertech USA, Inc. (Dewey-Burdock In Situ Uranium Recovery Facility), LBP-14-5, 79 NRC __, __ (slip op. at 7) (Apr. 28, 2014). Although SEI contends that Joint Intervenors were required to amend this contention as early as March 2012 when SEI responded to staff requests for additional information (RAIs) regarding, among other things, cumulative impacts, see SEI Contention 4/5A Dispositive Motion at 5, SEI does not address the issue of what, in accord with 10 C.F.R. § 2.323(a) (stating that "[a] motion must be made no later than ten (10) days after the occurrence or circumstance from which the motion arises"), constitutes a timely request to terminate a contention that is alleged not to have been amended timely. Nonetheless, given the procedural context of this case in which Joint Intervenors initially interposed the issue of contention migration with the Board, see supra p. 3, and have not raised a question about the timeliness of the pending SEI or staff dispositive motions seeking an end to the Board's consideration of environmental contention 4/5A, we decline to parse that issue at this juncture.

evidentiary hearing because of a Board-identified failure by an intervenor to take the procedural steps necessary to accomplish that end does not, in and of itself, provide the basis for a Board ruling that such procedural deficiencies should be swept aside to permit continuing litigation regarding the contention.

Finally, we do agree with Joint Intervenors that, contrary to SEI's suggestion, in the context of this contested proceeding,[6] it is not appropriate in this instance for the Board to make any merits determination regarding the adequacy of the cumulative impacts analysis in the staff's supplement to the GEIS. Joint Intervenors' failure to take the procedural steps necessary to move environmental contention 4/5A forward as a challenge to the staff's GEIS supplement cumulative impacts discussion necessarily means that we have before us no admissible intervenor challenge to that staff analysis that would provide a basis for such a ruling.[7] Consequently, in dismissing this contention, we make no merits ruling on the adequacy of that staff analysis.[8]

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[6] If this were a construction permit-type proceeding for a power reactor or uranium enrichment facility requiring a mandatory hearing in which the presiding officer is permitted to consider safety and environmental issues that are not the subject of intervenor concerns being litigated on the merits in the contested portion of the proceeding, we might have more latitude to consider this matter further as an uncontested issue.

[7] By the same token, we see nothing in that analysis that causes us to seek 10 C.F.R. § 2.340(b) sua sponte review authority from the Commission relative to this matter.

[8] In ruling in favor of SEI and the staff on the motions before us, we recognize that the grant of a motion for summary disposition generally results in a "merits" ruling on the contention at issue. This can be contrasted with the grant of a motion to dismiss that, while not a "merits" determination regarding a contention, still is dispositive of an issue statement's continuing viability in a proceeding. That our ruling on what SEI and the staff each have labeled as a dispositive motion is more in the nature of a determination regarding a dismissal motion is not significant as a procedural matter because these two types of motions can be treated interchangeably as is appropriate to the circumstances that exist relative to the parties' pleadings and the record. See Shaw Areva MOX Services (Mixed Oxide Fuel Fabrication Facility), LBP-12-2, 75 NRC 159, 162 (2012).

## III. CONCLUSION

In the face of the Board's earlier determinations that, notwithstanding the staff's issuance of its draft and final Ross facility-associated supplements to the agency's GEIS for ISR facilities, Joint Intervenors' environmental contention 4/5A remained a challenge to the SEI ER because it was neither subject to the migration tenet nor the subject of an amendment request meeting the requirements of 10 C.F.R. § 2.309, the Board finds there are no genuine material

factual disputes remaining regarding this contention and grants the SEI and staff requests that this contention not be the subject of further consideration in this proceeding.

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For the foregoing reasons, it is twenty-fifth day of July 2014, ORDERED, that the June 13, 2014 motions of the NRC staff and SEI for summary disposition of Environmental Contention 4/5A are granted in that Environmental Contention 4/5A is dismissed.

THE ATOMIC SAFETY
AND LICENSING BOARD

***/RA/***

G. Paul Bollwerk, III, Chairman
ADMINISTRATIVE JUDGE

***/RA/***

Richard F. Cole
ADMINISTRATIVE JUDGE

***/RA/***

Craig M. White
ADMINISTRATIVE JUDGE

Rockville, Maryland

July 25, 2014

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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| In the Matter of | ) | |
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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 the foregoing **MEMORANDUM AND ORDER (Ruling on Summary Disposition Motion Regarding Environmental Contention 4/5A)** have been served upon the following persons by Electronic Information Exchange.

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[Original signed by Brian Newell ]
Office of the Secretary of the Commission

Dated at Rockville, Maryland
this 25th day of July, 2014