

September 24, 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 ANSWER TO JOINT INTERVENORS' MOTION FOR CLARIFICATION AND
RESPONSE TO STRATA'S MOTION IN LIMINE REGARDING
ADMISSIBILITY OF STORY MAP APPLICATIONS

Pursuant to 10 C.F.R. § 2.323(c),¹ the U.S. Nuclear Regulatory Commission (NRC) staff (Staff) respectfully submits this answer to the Joint Intervenors'² motion of September 16, 2014 for clarification of the order issued by the Atomic Safety and Licensing Board (Board) on September 10, 2014 (hereinafter Motion for Clarification). In addition, pursuant to 10 C.F.R. § 2.323(c) and the Board's Memorandum and Order (Additional Prehearing Items) (Sept. 24, 2014), the Staff also responds to Strata Energy, Inc.'s (Strata's) September 23, 2014 motion in limine regarding the admissibility in written and oral testimony of the Intervenors' story map applications (hereinafter Motion in Limine).

In their September 16, 2014 motion, in the guise of a request for clarification, the Intervenors sought leave to admit "two online NRC databases and two expert-created

¹ 10 C.F.R. § 2.323(c) permits the filing of answers to any motion within ten (10) days of the service of any written motion, or other period as determined by the presiding officer. As the Board did not set forth a different period governing the submission of answers to the Intervenors' motion, the ten-day period for submission of an answer to the Intervenors' motion of September 10, 2014, appears to govern the timing of this answer.

² The Joint Intervenors are, collectively, the Natural Resources Defense Council and the Powder River Basin Resource Council.

applications (called story maps),” submitted originally as uniform resource locator (URL) links in a document labeled exhibit JTI005. Motion for Clarification at 2. Specifically, the Intervenor requested the “Board to clarify that . . . it will accept the entirety of Dr. Larson’s applications into evidence based on a full understanding of their relevance and significance to this proceeding, and the insurmountable obstacles to submitting a complete set of all potential visuals of the Story Maps in either .pdf or any other nonwebsite application form.” Motion for Clarification at 5.

On September 19, 2014, the Board issued a memorandum permitting the Intervenor to use Dr. Larson’s applications to generate new story maps during the course of the proceeding, as long as the witness generating the story map explains the process for generating that particular story map and memorializes the resulting story map in PDF form for submission as a newly filed exhibit. Memorandum (Responding to Motion for Clarification) issued by the Board on September 19, 2014 (hereinafter Clarification Memorandum) at 5-6. On September 23, 2014, Strata submitted a motion in limine requesting the Board to strike from the administrative record references in the revised expert testimony of Dr. Larson to story map application URL links and to preclude the Intervenor’s use of a CD/DVD with a GIS application at the evidentiary hearing. Motion in Limine at 1.

Pursuant to the Staff’s right to submit an answer to the Intervenor’s motion within ten days of its filing, and the Board’s order of September 24, 2014 inviting written responses to Strata’s motion in limine regarding the story map applications,³ the Staff hereby responds in favor of Strata’s motion in limine and objects to the admission of the use of the story map applications during the course of the evidentiary hearing and any admission of the story map applications into evidence, including the introduction of new exhibits based on the manipulation of the story map applications during the course of the hearing.

³ Memorandum and Order (Additional Prehearing Items) (Sept. 24, 2014), at 4.

According to 10 C.F.R. § 2.337(a), “[o]nly relevant, material, and reliable evidence which is not unduly repetitious will be admitted.” The Intervenor’s various filings in support of the story map applications do not indicate that the information derived from the use of these applications can be verified as reliable prior to its use as a testimony aid and its subsequent introduction in PDF form as new exhibits. For example, in their motion for clarification, the Intervenor’s state that “while the storymaps allow display of myriad variations, the underlying data cannot be altered by third parties, and thus in this respect the storymaps will remain fixed just as an exhibit submitted in .pdf form will remain unaltered in the future.” Motion for Clarification at 3.

However, as the Board noted in its Clarification Memorandum, Dr. Larson stated in his prefiled testimony that “I am the only person that can alter the Storymaps or how the underlying source data can be imported into the program.” Clarification Memorandum at 4 (quoting Pre-filed Testimony of Dr. Lance Larson on Contentions 2 and 3, Prefiled Ex. JTI003-R at 23 (Sept. 16, 2014)). The clear implication is that Dr. Larson, the expert witness for the Intervenor’s on Contentions 2 and 3, is able to manipulate the data in the story map applications at any time prior to utilizing to those applications during the course of the hearing.

The continuing ability of Dr. Larson to revise the information in the story map applications without any attendant requirement to mark an existing exhibit as “revised” raises ongoing concerns regarding the reliability of the story map applications and any PDF screenshots generated from the applications. While the submission of screenshots in their initial and rebuttal testimony at least afforded the Staff some opportunity to review the data presented in the story map screenshots and to compare that data to the spreadsheets presented as Exhibit JTI005A-R, the Staff will not have that opportunity as the data is generated in real time through the manipulation of the story maps at the evidentiary hearing. The continually changing nature of the applications and the lack of opportunity for the Staff to independently verify the accuracy of the data – including such information as well names, the numerical values for constituents, accurate placement of well locations on the map, and other

aspects of the process involved in transferring the data from the spreadsheet to the application⁴ – imperils the Staff’s ability to present comprehensive and accurate testimony regarding any new exhibits generated as a result of the Intervenor’s use of these applications. These concerns apply equally to the maintenance of URL links in Dr. Larson’s testimony, as these links can be used to access the story map applications at any time.

For these reasons, the Staff opposes the Intervenor’s request, through their motion for clarification, to admit the story map applications and any PDF screenshots generated from the applications into evidence. The Staff also respectfully requests that the Board grant Strata’s motion in limine.

Respectfully submitted,

/Signed (electronically) by/
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⁴ For example, the Intervenor’s have not explained how they transferred the data from the spreadsheet submitted as Ex. JT1005A-R to the story maps. If all of the data was transferred manually, there is a greater chance that errors may have occurred during transposition of the data. With the entire story map application available for use by the Intervenor’s, the potential set of data is too great for the Staff to verify the accuracy of all data that may be referred to in the evidentiary hearing. If the Intervenor’s used a computer-developed script to facilitate transfer of the information, the Staff does not have sufficient information regarding the parameters of the script to determine whether the script itself may have generated systemic errors, such as, for example, the transcription of values represented as “<X” in the spreadsheet to “X” in the story map application.

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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 ANSWER TO JOINT INTERVENORS' MOTION FOR CLARIFICATION AND RESPONSE TO STRATA'S MOTION IN LIMINE REGARDING ADMISSIBILITY OF STORY MAP APPLICATIONS" in the above-captioned proceeding have been served via the Electronic Information Exchange (EIE) this 24th day of September, 2014.

/Signed (electronically) by/

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