

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY & LICENSING BOARD

In the Matter of)	Docket No. 40-9091-MLA
)	
STRATA ENERGY, INC.,)	ASLBP No. 12-915-01-MLA
)	
(Ross In Situ Recovery Uranium Project))	September 16, 2014

**NATURAL RESOURCES DEFENSE COUNCIL’S & POWDER RIVER BASIN
RESOURCE COUNCIL’S MOTION FOR CLARIFICATION OF THE BOARD’S
SEPTEMBER 10, 2014 ORDER**

INTRODUCTION

On September 10, 2014, the Board issued an order related to certain exhibits submitted by Intervenor Natural Resources Defense Council and Powder River Basin Resource Council (Joint Intervenor) as support of their initial statement of position and direct testimony submitted on August 25, 2014 (hereafter “Order”). Joint Intervenor will comply with the terms of that order with filings to be submitted today, September 16, 2014 as required by the Order. Order at 4. However, in order to better understand the scope of the Order, Joint Intervenor hereby submit this brief Motion for Clarification. Both Nuclear Regulatory Commission Staff and Strata Energy, Inc. oppose any motion to admit the story map applications into evidence.

DISCUSSION

The Board’s September 10, 2014 Order directed Joint Intervenor to correct certain aspects of exhibits associated with their August 25, 2014 filing. Joint Intervenor do not need clarification related to the identified administrative deficiencies for Items 1-2, and 4-6 of the Board’s Order. However, with respect to Item Number 3, related to

JTI005, Joint Intervenors would like to clarify the scope of what can be submitted as an exhibit in this proceeding.

As discussed in our filing on September 12, 2014 – Joint Intervenors Response Statement – the .pdf submitted as JTI005 refers the Board to two online NRC databases and two expert-created applications (called story maps). We submit this day the entire set of .pdfs of the NRC spreadsheets at JTI005A-R, numbered 1-346.

We also submit this day .pdfs of a representative sampling of the story maps at JTI005B-R, numbered 1-36.¹ But as we make this submission to be in full compliance with the Board's directions, we bring to its attention that unlike other websites, which are static text that can easily be turned into a .pdf document, the story maps referenced by the original .pdf JTI005 are interactive databases and maps, with accompanying text, compiled and created by Joint Intervenors' expert, Dr. Lance Larson. The story map applications are an integral part of Dr. Larson's testimony and are the work product of his expertise. In essence, the websites are akin to a diagram or chart prepared by an expert using primary data. The full foundation of how he created the applications and what they demonstrate is described in his pre-filed direct testimony at pages 22-41, 44-49, and 56-65.

As there are literally thousands of variations that could be created by the maps and text, it is impractical for Joint Intervenors (and, we believe, it would not assist the Board in its weighing of the evidence) to attempt to turn to every potential visual available in the story maps into .pdf documents for exhibits. As we described last week,

¹ Also per the Board's direction, we also refile today our Position Statement, Rebuttal Statement, and Dr. Larson's pre-filed testimonies with the proper citations to the .pdfs comprising the revised JTI005, of course without altering any text but for the revised citations.

any one visual would be akin to depicting a chess board in the midst of a game. So along with submitting a representative set of story maps as .pdfs, Joint Intervenors believe that the entirety of the story map applications – and the database of information they contain – should be admitted as an exhibit accompanying Dr. Larson’s testimony. Importantly, as Dr. Larson has also explained, 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. *See* Dr. Larson’s pre-filed direct testimony at 24.

While we appreciate the Board’s direction to ensure the coherence of the parties filings by requiring that .pdfs of all text documents be filed via the agency’s Electronic Information Exchange, if the Board were to limit the record to a sampling of .pdf documents, as opposed to the applications themselves, the Board will unjustly limit the extent of Joint Intervenors’ evidence and specifically the NRC’s own data interpreted by Joint Intervenors’ expert, Dr. Larson. Only by allowing for the presentation of Dr. Larson’s expert application in its intended visual form – which contains all the data, and all the variations of that data – will the Board obtain a complete picture of Dr. Larson’s testimony and evidence. Courts have applied Rule 702 of the Federal Rules of Evidence liberally by favoring the admission of any evidence to assist the trier of fact.² Rule 702 of the Federal Rules of Evidence provides that “[a] witness who is qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an

² *See* NRC discussion of standards applicable to expert testimony in decision over whether to grant summary judgment in *In The Matter Of Duke Cogema Stone & Webster* (Savannah River Mixed Oxide Fuel Fabrication Facility), 61 N.R.C. 71, 80 (2005) (citing *Kannankeril v. Terminix International*, 128 F.3d 802, 806 (3d Cir. 1997); *Holbrook v. Lykes*, 80 F.3d 777, 780 (3d Cir. 1996); *In re Paoli R.R. Yard PCB Litigation*, 35 F.3d 717, 741-43 (3d Cir. 1994)) and *c.f.* discussion regarding the weight merited by each witness’s testimony in *In The Matter Of Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), 62 N.R.C. 328, at 357 (2003).

opinion or otherwise if: (a) the expert's scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue; (b) the testimony is based on sufficient facts or data; (c) the testimony is the product of reliable principles and methods; and (d) the expert has reliably applied the principles and methods to the facts of the case." In the case of Dr. Larson and his story maps, all four factors are answered in the affirmative. It will be up to the Board's discretion, of course, to weigh all the evidence presented by the parties at the evidentiary hearing in a few weeks.

Moreover, as we noted in our September 12 Response Statement (at 3, n.3), because the Board's July 25, 2014 Order recognized that parties may put into evidence material that is not from a .pdf, see Order at 4, n.7 (discussing audio and visual files), Joint Intervenors assumed that the applications would be considered here, given the substantial evidentiary foundation supplied in Dr. Larson's pre-filed direct testimony. Joint Intervenors did not seek advance approval for the submission because, unlike physical objects such as a geological sample, or even audio or visual files, it was possible to provide the Board with this evidence via the original .pdf filed as JTI005. Further, a story map application is not an item that we could submit via digital video disc or other form of electronic storage media. Rather, its functional integration with Geographic Information Systems makes it functional only when utilized in an internet application.

Finally, since neither NRC Staff nor SEI has, prior to this date, raised a concern regarding the story maps, Joint Intervenors believe no party will be unjustly burdened or prejudiced by the inclusion of JTI005A-R and JTI005B -R, as well as Dr. Larson's expert interpretation via the story maps, per the website, into evidence.

Therefore, Joint Intervenor move this Board to clarify that, along with the .pdfs to be filed this day via JTI005A-R and JTI005B-R, 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 non-website application form.

Respectfully submitted,

/s/ Geoffrey H. Fettus

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Date: September 16, 2014

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing *Motion for Clarification* in the above-captioned proceeding were served via the Electronic Information Exchange (EIE) on the 16th day of September 2014, which to the best of my knowledge resulted in transmittal of same to those on the EIE Service List for the captioned proceeding.

Howard M. Crystal (electronic signature)

Date: September 16, 2014