

**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
)	
)	Date: September 23, 2014
(Ross In Situ Uranium Recovery Project)	
)	
_____)	

STRATA ENERGY, INC. MOTIONS IN LIMINE

Strata Energy, Inc. (Strata) hereby submits these motions *in limine* regarding testimony offered in this proceeding. Strata respectfully requests that the Atomic Safety and Licensing Board (Licensing Board) strike from the administrative record references from the Natural Resources Defense Council (NRDC) and the Powder River Basin Resource Council (PRBRC) (hereinafter the “Intervenors”) revised expert testimony of Dr. Larson to URL websites in contravention of the Licensing Board’s September 10, 2014 Order and preclude Intervenors’ use of a CD/DVD with GIS application at the evidentiary hearing to be held in Gillette, Wyoming from September 30 to October 2, 2014. Strat has consulted with all parties on this motion and Intervenors oppose the motion, while NRC Staff does not oppose the motion.

I. BACKGROUND

The detailed background and procedural history is contained in Strata’s August 25, 2014 Initial Statement of Position and its September 12, 2014 Rebuttal Statement of Position and is hereby incorporated by reference. Additionally, on September 10, 2014, the Licensing Board issued an Order regarding Intervenors’ pre-filed position statements and testimony and directed

Intervenors to refile certain portions of such statements and testimony in accordance with several Licensing Board directives. In particular, this Order stated regarding JTI005:

“This prefiled exhibit consists of a listing of three Internet universal resource locator (URL) citations that apparently represent an application. A reference to *an internet website is not admissible evidentiary material* to the extent a party wants to have the material on that website considered as part of the evidentiary record.”

In the Matter of Strata Energy, Inc. (Ross ISR Project), Memorandum and Order: Clarifying Evidentiary Materials, (September 10, 2014) (emphasis added).

On September 16, 2014, Intervenors responded to the Licensing Board’s September 10, 2014 directives and re-filed their initial and rebuttal positions statements and testimony. Amongst these re-filed materials, Intervenors’ expert Dr. Larson re-submitted his initial testimony’s references to URL websites (JTI003R at ¶¶ A.42, A.57, A.61, and A.77), which were specifically excluded from evidence by the Licensing Board. On September 19, 2014, the Licensing Board issued an Order that permitted Intervenors to use a CD/DVD program with a GIS application during the evidentiary hearing associated with their “story maps” offered as evidence in this proceeding. Per the Licensing Board’s Order to address evidence sought to be admitted in this proceeding within seven (7) days of the offering of such evidence, Strata respectfully requests that the Licensing Board strike from Intervenors’ revised expert testimony of Dr. Larson to URL websites in contravention of the Licensing Board’s September 10, 2014 Order and preclude Intervenors’ use of internet-connected computers at the evidentiary hearing to proffer “story maps” using data that cannot be independently reviewed and/or challenged by Strata or NRC Staff and its expert witnesses as will be discussed below.

II. LEGAL STANDARD

As a general rule, an evidentiary hearing may receive and hear argument on “[o]nly relevant, material, and reliable evidence which is not unduly repetitious....Immaterial or

irrelevant parts of an admissible document will be segregated and excluded so far as is practicable.” 10 CFR § 2.337(a). During the course of an administrative proceeding under 10 CFR Part 2, Licensing Boards may “on motion or on the presiding officer’s own initiative, strike any portion of a written presentation or a response to a written question that is irrelevant, immaterial, unreliable, duplicative or cumulative.” 10 CFR § 2.319(d); *see also* 10 CFR § 2.319(e).

III. ARGUMENT

Strata’s instant motion seeks to strike any and all references by Intervenors in their pre-filed position statements and testimony to URL websites, which were specifically precluded by the Licensing Board’s September 10, 2014 Order and to preclude use of an internet website to display during the evidentiary hearing to display evidence with data that cannot be confirmed by either Strata or NRC Staff during the evidentiary hearing and for which no time has been allotted for either party to validate and/or challenge such data. With respect to the former, the Licensing Board’s Order of September 10, 2014 is clear:

“A reference to an internet website is not admissible evidentiary material to the extent a party wants to have the material on that website considered as part of the evidentiary record.”

However, Intervenors’ witness Dr. Larson continues to submit URL websites at JTI003R at pages 23, 29, 43, 57, 63, 65, and 66. More specifically, Dr. Larson’s revised testimony contains URL citations at ¶¶ A.26-27 (Page 23 of JTI003-R), each of which lacks a reference to a required .pdf exhibit. Two additional references in Dr. Larson’s testimony at ¶¶ A.86-87 also lack a reference to a required .pdf exhibit. Further, there is no reference in Intervenors’ re-filed position statements and testimony that refer to an appropriate .pdf exhibit. Additionally, with

respect to the July, 25 2014 Licensing Board Memorandum and Order at page 3, footnote 6, which states:

“Citations in witness testimony to documentary material (other than citations to legal authorities, including statutes, regulations, and NRC Issuances), including information referenced as a hyperlink, a hypertext markup language (HTML) document, or a hyperlinked portable document format (PDF) document, must be accompanied by a PDF evidentiary exhibit, submitted with its own exhibit number, that includes the relevant portions of the referenced supporting material.”

Intervenors did provide pre-filed exhibits for the URLs found at, 43 (A.61.), 57 (A.77.), and 63 (A.84) as requested by the Licensing Board in its September 10, 2014 Order. However, the URLs are not linked to documents, but rather they send the reader to “interactive databases and maps” and not static text as found in .pdf or .html links. Thus, Strata respectfully requests that all aforementioned references to URL websites that may or may not be used during the hearing be stricken from the administrative record. Strata also requests that the Licensing Board preclude any use of URL websites that do not specifically link to or reference specifically identified and admitted evidence in this proceeding.

Strata also opposes the option offered by the Licensing Board in its September 19, 2014 Order addressing Intervenors’ motion for clarification regarding admissibility of the aforementioned “story map” applications available via internet-connected computers. Strata was not offered an opportunity to respond to Intervenors’ motion for clarification on this issue and, thus, registers its opposition to the Licensing Board’s Order here. The option of utilizing internet-based applications during the evidentiary hearing does not provide Strata or NRC Staff an opportunity to review, validate, and/or challenge the data used in such application. Thus, Intervenors effectively would be allowed to offer new evidence for identification and admission during the evidentiary hearing without an opportunity for Strata or NRC Staff or their expert witnesses to review and evaluate such evidence, including the opportunity to verify water quality

values depicted in any simulation. Therefore, Strata respectfully requests that the Licensing Board issue limiting instructions to Intervenors precluding the use of internet-connected computers or any other avenue allowing for the introduction of evidence to this proceeding that cannot be reviewed and evaluated by Strata or NRC Staff beyond the use of visuals in Intervenors' pre-filed exhibit JTI005B-R.

Based on the aforementioned argument, Strata respectfully requests that the Licensing Board grant each of Strata's motions *in limine* discussed above.

Respectfully Submitted,

**/Executed (electronically) by and in
accord with 10 C.F.R. § 2.304(d)/
Christopher S. Pugsley, Esq.**

Dated: September 23, 2014

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