

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION  
ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges:

Michael M. Gibson, Chair  
Dr. Richard E. Wardwell  
Brian K. Hajek  
Alan S. Rosenthal (Special Assistant to the Board)

In the Matter of

CROW BUTTE RESOURCES, INC.

(License Renewal for the  
In Situ Leach Facility, Crawford, Nebraska)

Docket No. 40-8943

ASLBP No. 08-867-02-OLA-BD01

June 30, 2015

ORDER

(Granting Extension of Time for Filing of Answers to NRC Staff Motion in Limine)

On June 15, 2015, the NRC Staff filed a motion in limine to exclude certain exhibits filed by the Oglala Sioux Tribe and Consolidated Intervenorors (collectively Intervenorors).<sup>1</sup> On June 25, 2015, Intervenorors filed their answers.<sup>2</sup> Although the Board had set a pre-hearing schedule giving the parties seven days to respond to a motion in limine,<sup>3</sup> Intervenorors took ten days to file their answers. Intervenorors as a result also filed a motion for extension of time on June 25, 2015, stating that while the original pre-hearing schedule did not create any issues, changes since made to the schedule resulted in the deadline for answers to motions in limine now falling

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<sup>1</sup> NRC Staff's Motion in Limine to Exclude Certain Exhibits Filed by Consolidated Intervenorors and the Oglala Sioux Tribe (June 15, 2015).

<sup>2</sup> The Oglala Sioux Tribe's Response to NRC Staff's Motion in Limine to Exclude Certain Exhibits Filed by Consolidate[d] Intervenorors and the Oglala Sioux Tribe (June 25, 2015); Consolidated Intervenorors' Answer to NRC Staff's Motion in Limine (June 25, 2015).

<sup>3</sup> Licensing Board Order (Setting Schedule through Evidentiary Hearing and Providing Case Management Information) at 3 (Mar. 25, 2015) (unpublished).

during an important cultural ceremony.<sup>4</sup> Intervenor note that under the NRC's regulations, answers to motions are due within ten days of the filing of a motion.<sup>5</sup> Citing a licensing board order in Private Fuel Storage, LLC, they add that there is no harm from their late answer since motions in limine are generally resolved at the hearing itself.<sup>6</sup> Crow Butte and the NRC Staff take no position on the motion for extension of time.<sup>7</sup>

According to 10 C.F.R. § 2.323, answers to motions must be filed "[w]ithin ten (10) days after service of a written motion, or other period as determined by . . . the presiding officer."<sup>8</sup> The pre-hearing schedule was set after significant consultation with the parties to accommodate their interests and scheduling concerns.<sup>9</sup> Since then, however, the parties have repeatedly asked to extend timelines.<sup>10</sup> Notably, the Board amended the hearing schedule on May 1, 2015, upon a request by Intervenor, to allow for a one-week delay for the filing of initial statements of position and direct testimony.<sup>11</sup> That Intervenor now attribute the Board's

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<sup>4</sup> Consolidated Intervenor's and Oglala Sioux Tribe's Joint Motion for Extension of Time to File Answer to NRC Staff's Motion in Limine (June 25, 2015). Intervenor claim that several of their members "are intricately involved as sponsors, dancers, and supporters" of the Lakota Sun Dance of the Afraid of Bear/American Horse Tiospayes. Id. at 2.

<sup>5</sup> Id. at 3.

<sup>6</sup> Id. (citing Private Fuel Storage, LLC (Independent Spent Fuel Storage Installation), Order (Regarding Pending in Limine Motions) (Apr. 18, 2002) (unpublished)).

<sup>7</sup> Id. at 1.

<sup>8</sup> 10 C.F.R. § 2.323(c).

<sup>9</sup> Tr. at 565–89.

<sup>10</sup> See, e.g., Licensing Board Order (Granting Crow Butte and NRC Staff Joint Unopposed Motion to Amend Deadline to Make Mandatory Disclosures on Newly Admitted/Amended Contentions) (Mar. 26, 2015) (unpublished); Licensing Board Order (Granting in Part Unopposed Motion by the Oglala Sioux Tribe for a One-Week Extension of Time of Certain Filing Deadlines) (May 1, 2015) (unpublished) [hereinafter Order Amending Schedule].

<sup>11</sup> Order Amending Schedule. In granting Intervenor's request, the Board reset several filing dates to which all parties agreed, including Intervenor. See Email from Andrew Reid, Counsel for Oglala Sioux Tribe, to Nicholas Sciretta, Board Law Clerk, Agreeing to Amended Pre-

amending of the schedule upon their request as a reason for their late filing is perplexing. In addition, Intervenor's do not explain why they waited until after the deadline had passed to file their motion for extension of time, although the cause for the delay was known well in advance.

Intervenor's citation to the order in Private Fuel Storage is misplaced. Even if it is sometimes preferable to rule on a motion in limine at the hearing itself, Intervenor's ignore that the Board needs time to review the motions and answers ahead of the hearing.

Nonetheless, as the parties have otherwise met the remaining pre-hearing filing deadlines, the Board finds a short delay in the filing of answers to the NRC Staff's motion in limine not to be harmful to the hearing schedule. Therefore, for good cause shown, the motion for extension of time is granted. The Board expects to rule on the pending motion in limine shortly before the hearing or on the first day of the hearing. The Board also expects the parties to abide by all future deadlines in the Scheduling Order, but if that proves not to be possible, at least to seek an extension of a deadline before it has passed.

It is so ORDERED.

FOR THE ATOMIC SAFETY  
AND LICENSING BOARD

/RA/

Michael M. Gibson, Chair  
ADMINISTRATIVE JUDGE

Rockville, Maryland  
June 30, 2015

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Hearing Schedule (Apr. 30, 2015); Email from David Frankel, Counsel for Consolidated Intervenor's, to Nicholas Sciretta, Board Law Clerk, Agreeing to Amended Pre-Hearing Schedule (Apr. 30, 2015).

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

In the Matter of	)	
	)	
CROW BUTTE RESOURCES, INC.	)	Docket No. 40-8943-OLA
	)	
In-Situ Leach Uranium Recovery Facility,	)	
Crawford, Nebraska	)	
	)	
(License Renewal)	)	

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing **ORDER (Granting Extension of Time for Filing of Answers to NRC Staff Motion in Limine)** have been served upon the following persons by Electronic Information Exchange, and by electronic mail as indicated by an asterisk.

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DOCKET NO. 40-8943-OLA

**ORDER (Granting Extension of Time for Filing of Answers to NRC Staff Motion in Limine)**

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[Original signed by Clara Sola \_\_\_\_\_]  
Office of the Secretary of the Commission

Dated at Rockville, Maryland  
this 30<sup>th</sup> day of June, 2015