

July 28, 2015

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)	
)	
CROW BUTTE RESOURCES, INC.)	Docket No. 40-8943-OLA
)	
(License Renewal for the In Situ Leach)	ASLBP No. 08-867-02-OLA-BD01
Facility, Crawford, Nebraska))	

NRC STAFF RESPONSE TO OST MOTION REGARDING TESTIMONY OF DR. REDMOND

In accordance with 10 C.F.R. § 2.323(c), the staff of the U.S. Nuclear Regulatory Commission (Staff) files this answer to the Oglala Sioux Tribe's motion regarding the testimony of Dr. Louis Redmond.¹ The Staff finds it necessary to respond because the language in the OST Motion does not clearly express the Staff's position regarding the OST Motion as provided during 10 C.F.R. § 2.323(b) consultation.

In an email sent earlier today, Staff counsel informed Andrew Reid, counsel for the OST, that the Staff would not oppose a motion to have the Board start the proceeding with Contention 1 on Monday, August 24, to allow Dr. Redmond to testify, as long as all witnesses for Contention 1 were paneled at that time and would have an opportunity to respond to Dr. Redmond and be questioned by the Board contemporaneously on the topics that Dr. Redmond will be testifying about. Staff counsel also informed Mr. Reid in the same e-mail that the Staff would object to paneling Dr. Redmond by himself on Monday and leaving the other witnesses to respond to Dr. Redmond's statements and be questioned by the Board on the same topics at a later time. In a follow-up email, Staff counsel clarified the Staff's position as follows:

The Staff feels that it would be best to panel all witnesses for Contention 1 together on Monday (applicant, Staff and OST/CI), including Dr. Redmond, and

¹ Oglala Sioux Tribe's Motion to Call Contention 1 Witness Out of Order, or, Alternatively, to Reset Contention 1 (July 28, 2015) (OST Motion).

allow the Board to question the panel as a whole. The Staff would not be opposed to the Board dismissing that panel after Monday, moving on to other contentions, and coming back to the Contention 1 panel (minus Dr. Redmond) later in the week to address issues that Dr. Redmond has not testified on. The Staff would also not be opposed to the Board continuing on to finish Contention 1 and then moving on to other contentions.

The bottom line is that the Staff would object to a situation where all of the witnesses for all parties are not paneled together. We believe it would be prejudicial for Staff witnesses not to be able to respond in "real time" to statements Dr. Redmond makes, and not to be able to offer testimony on the same issues at the same time. We also feel it would contribute to a clearer record to have the entire panel available at one time.

The Staff's position as outlined above reflects the Staff's understanding of the Board's July 13 Order that all parties' witnesses would be seated at one time for a given contention or set of contentions.²

The motion filed by the OST states that the Staff "does not oppose moving Contention 1 to the first day of the evidentiary hearing and having Dr. Redmond set as the first witness."³ Because it is not clear what the OST means by "having Dr. Redmond set as the first witness," the Staff wishes to clarify its position to the Board. As explained above, the NRC Staff is not opposed to reordering the proceeding to accommodate Dr. Redmond's testimony on Monday, August 24, provided all witnesses for Contention 1 are seated as a panel during that time to allow contemporaneous questioning of Dr. Redmond and other witnesses, as envisioned in the Board's July 13 Order.

Respectfully submitted,

/Signed (electronically) by/

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Dated at Rockville, Maryland
This 28th day of July, 2015

² Order (Governing Evidentiary Hearing) at 2 (July 13, 2015) (unpublished).

³ OST Motion at 1.

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing "NRC STAFF RESPONSE TO OST MOTION CONCERNING TESTIMONY OF DR. REDMOND" in the above captioned proceeding have been served this 28th day of July, 2015, via the NRC's Electronic Information Exchange ("EIE"), and via e-mail to David Frankel and Thomas Ballanco, counsels for Consolidated Intervenor, which to the best of my knowledge resulted in transmittal of the foregoing to those on the EIE Service List for the above captioned proceeding.

Signed (electronically) by

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