

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

July 29, 2015

ORDER

(Granting the Oglala Sioux Tribe's Motion to Call Contention 1 Witness out of Order)

On July 27, 2015, this Board held a prehearing conference call with the parties. During this call, Consolidated Intervenors and the Oglala Sioux Tribe informed this Board that Dr. Louis Redmond, a Contention 1 witness, was unavailable to testify at the evidentiary hearing during the time previously set aside for the Board to examine witnesses regarding Contention 1.<sup>1</sup>

In a motion submitted on July 28, the Oglala Sioux Tribe proposed that the Board accommodate Dr. Redmond's late-notice scheduling conflict by questioning him at the outset of the hearing, on August 24, either alone or alongside the other Contention 1 witnesses.<sup>2</sup> The NRC Staff responded to this motion, stating that it does not oppose seating all Contention 1

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<sup>1</sup> Licensing Board Order (Governing Evidentiary Hearing) (July 13, 2015). The Board had anticipated questioning the Contention 1 panel on the final days of the evidentiary hearing, on either or both of August 27 and 28.

<sup>2</sup> Oglala Sioux Tribe's Motion to Call Contention 1 Witness out of Order, or, Alternatively, to Reset Contention 1 (July 28, 2015).

panel witnesses on August 24, and either completing Contention 1 on that day, or returning to Contention 1 at the end of the hearing to continue to address questions that Dr. Redmond has not testified on.<sup>3</sup> The NRC Staff also does oppose paneling Dr. Redmond by himself.<sup>4</sup> Crow Butte also responded to the Oglala Sioux Tribe's motion, and does not object to reordering the contentions at the evidentiary hearing as long as Contention 1 is questioned in full at the start of the hearing, with Dr. Redmond seated alongside all other Contention 1 panel witnesses.<sup>5</sup>

For good cause shown, the Oglala Sioux Tribe's motion to call Dr. Redmond out of order at the evidentiary hearing is granted. Boards possess wide discretion in regulating the course of a hearing.<sup>6</sup> Given all current considerations, and acknowledging the opposition of the NRC Staff and Crow Butte, the Board has determined that in order to conduct this hearing as expeditiously as possible, and to develop an adequate decisional record, Dr. Redmond will be the first witness seated at the evidentiary hearing. Dr. Redmond will appear without the presence of the other Contention 1 panel witnesses, at the beginning of the hearing on August 24, and will be questioned by the Board at that time. The Board anticipates this questioning will require no more than one hour. After the Board has completed its interrogation of Dr. Redmond, each party will be afforded an opportunity to submit, in camera, any additional questions that may be raised by the Board's examination of Dr. Redmond. The Board will consider the in camera submissions and, if necessary, will conduct a further examination of Dr. Redmond. At that point, Dr. Redmond will be excused from further testimony in this proceeding, and the Board will proceed to question the parties' witnesses with respect to Contentions A, C, D, F, and 14. The

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<sup>3</sup> NRC Staff Response to OST Motion Regarding Testimony of Dr. Redmond (July 28, 2015).

<sup>4</sup> Id.

<sup>5</sup> Crow Butte Response to Motion Regarding Testimony of Dr. Redmond (July 28, 2015).

<sup>6</sup> Philadelphia Elec. Co. (Limerick Generating Station, Units 1 & 2), ALAB-819, 22 NRC 681, 727 (1985) (noting that Boards have "considerable flexibility to regulate the course of a hearing"); see also 10 C.F.R. §§ 2.319, 2.324.

Board anticipates that further examination of witnesses with respect to Contention 1 will resume on Thursday morning, August 27, when all Contention 1 witnesses other than Dr. Redmond will be seated and questioned.

It is so ORDERED.

FOR THE ATOMIC SAFETY  
AND LICENSING BOARD

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Michael M. Gibson, Chair  
ADMINISTRATIVE JUDGE

Rockville, Maryland  
July 29, 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 the Oglala Sioux Tribe's Motion to Call Contention 1 Witness Out of Order)** 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 the Oglala Sioux Tribe's Motion to Call Contention 1 Witness Out of Order)**

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

Dated at Rockville, Maryland  
this 29<sup>th</sup> day of July, 2015