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NUCLEAR REGULATORY COMMISSION

Title: Crowe Butte Resources, Inc.

Docket Number: 40-8943-OLA

ASLBP Number: 08-867-02-OLA-BD01

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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ATOMIC SAFETY AND LICENSING BOARD PANEL

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PRE-HEARING TELECONFERENCE

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In the Matter of: : Docket No.

CROW BUTTE : 40-8943-OLA

RESOURCES, INC. : ASLBP No.

In Situ Leach Uranium : 08-867-02-OLA-BD01

Recovery Facility, :

Crawford, Nebraska :

(License Renewal) :

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Monday, July 27, 2015

BEFORE ADMINISTRATIVE JUDGES:

MICHAEL M. GIBSON, Chair

DR. RICHARD E. WARDWELL

BRIAN K. HAJEK

1 APPEARANCES:

2 Counsel for the Oglala Sioux Tribe:

3 Andrew Reid, Esq.

4 of: Ved Nanda Center for International and

5 Comparative Law

6 1075 Waite Dr.

7 Boulder, CO 80303

8 (303) 437-0280

9 lawyerreid@gmail.com10
11 On Behalf of the Nuclear Regulatory Commission:

12 Marcia Simon, Esq.

13 David Cylkowski, Esq.

14 Emily Monteith, Esq.

15 of: U.S. Nuclear Regulatory Commission

16 Office of the General Counsel

17 Mail Stop O-15D21

18 Washington, DC 20555-0001

19 301-415-1261 (Simon)

20 marcia.simon@nrc.gov21 david.cylkowski@nrc.gov22 emily.monteith@nrc.gov

On Behalf of Crow Butte Resources, Inc.:

Tyson R. Smith, Esq.

of: Winston & Strawn, LLP

101 California St.

San Francisco, CA 94111

(415) 591-6874

trsmith@winston.com

On Behalf of Consolidated Intervenors:

David C. Frankel, Esq.

1430 Haines Ave.

Ste. 108-372

Rapid City, SD 57770

(605) 515-0956

arm.legal@gmail.com

Thomas J. Ballanco, Esq.

945 Taraval Ave.

Ste. 186

San Francisco, CA 94116

(650) 296-9782

harmonicengineering@gmail.com

P-R-O-C-E-E-D-I-N-G-S

10:41 a.m.

JUDGE GIBSON: On the phone with me are Judges Wardwell, Hajek and Rosenthal, as well as our two clerks, Nick Sciretta and Sachin Desai. I would like to have announcements of counsel, beginning first with Crow Butte.

MR. SMITH: This is Tyson Smith, counsel for Crow Butte.

JUDGE GIBSON: For the staff.

MS. SIMON: Good morning, this is Marcia Simon. With me are Co-counsel Emily Monteith and David Cylkowski. We also have Nathan Goodman, the environmental project manager for this project, with us in the meeting.

JUDGE GIBSON: For the Tribe.

MR. REID: Andrew Reid of the Nanda Center for the Oglala Sioux Tribe.

JUDGE GIBSON: For consolidated interveners.

MR. FRANKEL: David Frankel for consolidated interveners.

JUDGE GIBSON: Is Mr. Ballanco on the phone?

MR. BALLANCO: Yes, Your Honor, Tom

1 Ballanco for consolidated interveners.

2 JUDGE GIBSON: Is there anyone else on the
3 phone? Very well. This will not be a long call. We
4 just needed to get a couple of little housekeeping
5 matters out of the way. First of all, we have
6 confirmed that our hearing location will be in
7 Crawford, at the Crawford Community Building. I know
8 some concern has been expressed about security.

9 I want to tell you that we are taking
10 measures to ensure that we will have a safe hearing.
11 We issued a notice prohibiting weapons on July 14. We
12 will have some Crawford officers as guards. We will
13 have signs prohibiting weapons in the facility.
14 Although there will be no metal detectors, pat downs
15 will be performed at the discretion of the officers.
16 With respect to the hearing setup, the audio/visual
17 setup will provide monitors and a projector screen,
18 both displaying the evidence.

19 The judges will be facing the witness; the
20 parties' counsel, however, will have to be a little
21 bit to the side. We will send out a diagram to you of
22 what that's going to look like, and if you all have
23 any concerns about it, please let us know. I don't
24 think you will have any, but if you do, let us know.
25 We did the most we could to arrange this space. It

1 was obviously not designed as a courtroom, but
2 considering the space limitations we have, I think
3 it's going to work. With respect to the hearing
4 process, we anticipate calling all of the witnesses
5 with respect to three groups of contentions at the
6 same time. On Monday morning, all witnesses who are
7 Contentions A, C, D, F, and 14 should be prepared to
8 be sworn in and to be examined about their testimony.

9 Once we're finished with that, we will
10 begin with Contentions 6, 9, and 12, and we will
11 finish with Contention 1, with one minor alteration
12 that I will discuss in a second. With respect to
13 Contention 1, even if we are not complete with all of
14 Contention 6, 9, and 12 by the end of the day on
15 Wednesday, we will begin talking about Contention 1
16 first thing on Thursday morning. I apologize for any
17 inconvenience this may cause for your 6, 9, and 12
18 witnesses.

19 We will put them back on -- if we haven't
20 finished with them on Wednesday afternoon, we will put
21 them back on Thursday afternoon. Then we will finish
22 with Contention 1 on Friday. What we basically
23 anticipate at this point is that no questioning with
24 regard to Contention 6, 9, and 12 will happen before
25 Wednesday. All day Monday and all day Tuesday we will

1 be focused on Contingents A, C, D, F, and 14. I also
2 want to make clear that we are really going to be
3 squeezed on time. For that reason, there will be no
4 opening statements. We do anticipate that there will
5 be a brief closing, that each party will be afforded
6 about ten minutes at the conclusion of the proceeding.
7 Each side will have ten minutes.

8 In particular, to the extent there have
9 been legal issues that have been raised, we would
10 certainly like to have those addressed by you at that
11 time. When we conclude Contentions A, C, D, F, and 14
12 on either Tuesday or Wednesday, we will recess, and
13 all the parties will be afforded an opportunity to
14 caucus among their individual party, your counsel and
15 members of your party, to caucus for a brief amount of
16 time, perhaps 15 minutes or so, and you will be
17 afforded an opportunity to then submit additional
18 questions that you would like the Board to ask with
19 respect to Contentions A, C, D, F, and 14.

20 Likewise, when we conclude Contentions 6,
21 9, and 12, we will do the same thing. We will recess.
22 You will have an opportunity to caucus within your
23 individual group there, and to propose additional
24 questions with respect to Contentions 6, 9, and 12.
25 Finally, we will do the same thing with respect to

1 Contention 1, which will be the last contention heard,
2 subject to the fact that we're going to start that on
3 Thursday morning. Again, because we're going to have
4 a real challenge to try to get all of this
5 accomplished during that week, we will hold a
6 pre-trial conference to try to get as much of any
7 pending matters, any pre-trial matters resolved as
8 possible during the week of August 17th.

9 What we would like to do is to do that
10 either Monday morning, the 17th, or Tuesday morning,
11 the 18th. I guess I need to find out does anybody
12 have a problem with doing that? I would anticipate it
13 would be a couple of hours, no more than two, but
14 might take a couple of hours. Does anybody have a
15 problem with the morning of the 17th, say this same
16 time, 10:30?

17 MR. REID: Counsel for the Oglala Sioux
18 Tribe would prefer the 18th. I have things scheduled.
19 I can change them if I have to.

20 JUDGE GIBSON: Okay, let me ask, then,
21 does anybody have a problem with the 18th at 10:30?
22 Hearing none, we will have our pre-trial and get as
23 much of this out of the way as we can on the morning
24 of August 18, at 10:30. We will send out an order
25 subsequently. We will hopefully get as much of this

1 resolved as possible. I know there may be some
2 matters we have to take up at the beginning of our
3 hearing, but we certainly would like to get as much
4 done as possible before then. A couple of things.
5 With respect to the final updated exhibit list, does
6 anybody anticipate updating their exhibit list at this
7 point in time? Let me start with Crow Butte.

8 MR. SMITH: No, Judge, we have no plans to
9 update our exhibit list at this time.

10 JUDGE GIBSON: Okay, staff?

11 MS. SIMON: Your Honor, this is Marcia
12 Simon. Actually, I was just informed that one of our
13 staff witnesses on Contention 1 is not going to be
14 able to attend the hearing. I'd like to know what the
15 Board would like to do? There wouldn't be any change
16 to the testimony, itself, because the other two
17 witnesses fully provided that testimony, but would the
18 Board like us to submit that as a revised exhibit,
19 taking off Ms. Shumaker's (phonetic) name, and taking
20 out her statement of qualifications?

21 JUDGE GIBSON: If we're not going to be
22 able to examine a witness, to the extent that she
23 submitted testimony, I think it's going to be
24 important to excise her from this proceeding. To the
25 extent that any of her testimony is something that

1 she's the only one who can sponsor it, then we need to
2 know that. If that's not the case and the other
3 parties are fully prepared to adopt it, that's fine.
4 However, are there any -- was she going to have any
5 factual testimony, or was all of her testimony going
6 to be expert testimony?

7 MS. SIMON: I believe all her testimony
8 was going to be expert. As I said earlier, there is
9 no testimony that she provided that is solely hers.
10 What I was going to suggest is that we could provide
11 a revised exhibit, taking her name off, taking out her
12 affidavit and her statement of qualifications, and
13 providing a new affidavit from the other two
14 witnesses, if you'd like.

15 JUDGE GIBSON: Okay, that sounds like a
16 good solution to me. Does anybody have any objection
17 to that? Okay, hearing none, then we would like you
18 to proceed in that way, and we will be expecting to
19 see a revised exhibit and, I assume, exhibit list and
20 witness list when you finish.

21 MS. SIMON: Yes, Your Honor, thank you.
22 That would be the only changes to our exhibit list
23 that we foresee. Thank you.

24 JUDGE GIBSON: Very well. How about the
25 Tribe?

1 MR. REID: At this point, no. There is a
2 possibility -- and maybe it's a good time to bring it
3 up -- we have one witness that wishes to show some
4 PowerPoint exhibits. I believe that those exhibits
5 have been disclosed. There may be one or two she may
6 wish to use during her presentation. I will clear
7 that up immediately and find that out. I'm unable, at
8 this point, to give you a clear answer on that. She
9 did request to know whether or not there would be a
10 projector or something available where she could do a
11 PowerPoint?

12 JUDGE GIBSON: Let me say first of all,
13 there will be a projector. We certainly can receive
14 information that is in that electronic format.
15 However, we are planning to ask questions. I do not
16 know how a PowerPoint presentation is going to address
17 the questions that we have. We're going to be asking
18 witnesses questions about the testimony that they
19 filed in the case. It's difficult for me to
20 understand how someone's PowerPoint slides would fit
21 into that format. Help me understand that. I don't
22 understand that (Simultaneous speaking).

23 MR. REID: Right (Simultaneous speaking)
24 specific exhibits that have been submitted, and the
25 expert wishes to testify in regards to those exhibits.

1 It would be helpful to have them up on the screen.

2 JUDGE GIBSON: Oh, so you're just talking
3 about having a way to display the points that she has
4 -- just displaying her testimony?

5 MR. REID: The exhibits that were part of
6 her testimony, yes.

7 JUDGE GIBSON: I think that's fine. I
8 will say, however, that Mr. Deucher, who is going to
9 be running the IT show at this hearing can put
10 essentially anything up on the screen, and he probably
11 will be putting up things on the screen related to
12 testimony. I don't think there's any need for your
13 witness to go to the trouble of creating PowerPoint
14 slides from her testimony because to the extent
15 there's something in her testimony, it can be
16 displayed up on the screen. That should work.

17 MR. REID: All right, thank you.

18 JUDGE GIBSON: Is there anything else, Mr.
19 Reid?

20 MR. REID: No.

21 JUDGE GIBSON: How about consolidated
22 interveners?

23 MR. FRANKEL: David Frankel for
24 consolidated interveners. We were informed very
25 recently that Dr. Redmond will not be attending the

1 hearing, so we'll need to update our witness list and
2 our exhibit list to remove his testimony.

3 JUDGE GIBSON: So you would anticipate
4 doing a similar excision, if that's the word, of your
5 testimony, as Ms. Simon was proposing for her witness,
6 is that correct?

7 MR. FRANKEL: Yes.

8 JUDGE GIBSON: Okay. Now let me ask you,
9 in Ms. Simon's case, she is confident that her
10 witnesses will be able to testify to testify to
11 everything that's in their testimony, that this
12 witness did not have independent opinions or knowledge
13 that would necessitate actually eliminating part of
14 their testimony. Let me ask you, with respect to this
15 witness, is he going to be -- is he the only person
16 that has knowledge about certain aspects of something
17 he's testifying about? Are you going to have to
18 actually excise some of the exhibits that he was going
19 to sponsor? What are you planning to do there, Mr.
20 Frankel?

21 MR. FRANKEL: For one, I believe that Mr.
22 Reid will be taking the lead on these cultural issues,
23 so I'll defer the first part of your question to him
24 as to whether there are other witnesses that will be
25 able to testify to the same thing. I am aware that

1 Dr. Redmond -- we have exhibits in concerning his
2 opinions, and also his CV. I would expect to be
3 removing those from the exhibit list.

4 JUDGE GIBSON: Okay, fair enough. Mr.
5 Reid, do you wish to speak to this?

6 MR. REID: Yes, I do. I think that he was
7 the only witness that we -- the Tribe was relying --
8 they've been working with consolidated interveners and
9 was relying on Dr. Redmond's submissions, particularly
10 in regards to the sufficiency of the on-site cultural
11 and historical surveys. I don't believe that there
12 are other witnesses from our side that will cover
13 those. I'm not sure I'm totally comfortable that
14 we've resolved this. I haven't had the opportunity
15 really to speak with Dr. Redmond. He was a witness
16 that was obtained by consolidated interveners. He has
17 a conflict in schedule. I believe it's a wedding or
18 something he has to be out of state on.

19 I was hoping that if it would be
20 acceptable to the parties and the Board that perhaps
21 if necessary, we could have him testify by telephone,
22 on speakerphone, and answer the questions of the Board
23 that way, rather than having to excise him completely
24 and not have his testimony because I believe his
25 testimony's the only one on those areas. The

1 witnesses that the Tribe is calling, specifically Mike
2 Catches Enemy and Dennis Yellow Thunder, will testify
3 mostly as to the procedures that were employed, but
4 not to the -- it's my understanding, will not
5 specifically be testifying in detail as to the
6 sufficiency of the site surveys. That was an area
7 that was going to be covered by Dr. Redmond. We're at
8 a loss. Frankly, I feel like the rug's been pulled
9 out from under us a little bit. We'd like to see what
10 we can do to try to keep Dr. Redmond if we can.

11 JUDGE GIBSON: Let me just say, first of
12 all, you can certainly tell this witness that he will
13 not need to be there on Monday or Tuesday or
14 Wednesday. It would be Thursday and Friday -

15 MR. FRANKEL: Your Honor, sorry to
16 interrupt, but this is David Frankel. I think I can
17 help you save some time on this. I'll read the email
18 I got from Dr. Redmond, which says that he has a
19 wedding that following weekend on the East Coast,
20 meaning the 29th-30th. He says, "In order to make it
21 back there and get settled in for family, we would be
22 living mid-day on the 25th or very early on the 26th.
23 For those who pay attention to the tribal thing, this
24 young man is Makunski. He is the blood of my father
25 and brother. His two sons are the only ones who carry

1 the name of my father directly. Should someone like
2 to interpret this for someone, I will not interfere
3 with his ceremony, family reunion, or family gathering
4 in any way. To me, it is very close to sacred.
5 Possibly someone from the Tribe may be able to explain
6 what this means within the greater realm of the
7 Kioshbaiyee for some of the folks involved in this."
8 Since he's pro bono, he told us we could dock his pay.
9 Oh, yeah, he's not getting paid, never mind.

10 JUDGE GIBSON: Let me just make sure I
11 understand this. You're saying that Dr. Redmond could
12 testify, but Dr. Redmond could only testify on Monday
13 or Tuesday, and that would be it. Is that right?

14 MR. FRANKEL: Dr. Redmond has not agreed
15 to do that, so I can't say that.

16 JUDGE GIBSON: Okay, this is what I would
17 suggest. I think that you all -- this is obviously a
18 new development you all need to discuss. We had
19 anticipated taking these contentions in a different
20 order, but if the only way -- if your choice is
21 basically to drop your whole claim in the grease
22 because somebody can't be available, we can
23 accommodate that, and we can change the order of these
24 contentions, but this is what you need to do. You all
25 are going to need to -- you've been told what we plan

1 to do. If you all need to have this witness present
2 and the only time this witness can be present is if we
3 reverse the order of the contentions, you need to file
4 a motion, after you've consulted with the other
5 parties, requesting the Board to do that. You all
6 obviously are going to need to talk among yourselves
7 and with this witness, but if that's the case, we can
8 change the order.

9 If that is not the case, then we're going
10 to need to -- we'll just proceed as we planned. But
11 if you all need to do that, we can -- it would've been
12 more logical from our standpoint to do this, but we do
13 not want to be in a position of preventing a witness
14 from testifying because of the order we set up. Can
15 you all do that? Mr. Reid, Mr. Frankel, can you all
16 do that?

17 MR. FRANKEL: What I can do is attend a
18 conference call with Mr. Reid and Dr. Redmond and --

19 JUDGE GIBSON: Yeah, you all can discuss
20 among yourselves, and then you can let us know. I
21 would also ask that you let us know if there is not
22 going to be such a motion to let us know that, as
23 well. Everybody's trying to get their witnesses there
24 at the right time. We don't want to be in a situation
25 where we're preventing you from putting your case on

1 because a witness can't be available on a specific
2 date. That goes for all parties, I should add. Fair
3 enough?

4 MR. SMITH: Judge Gibson, this is Tyson
5 Smith for Crow Butte. The only thing I would add to
6 that is it would be helpful to know sooner than later.
7 The judges put out the order with the schedule for the
8 proceeding, and our witnesses have made travel
9 arrangements and flight plans in accordance with that.
10 If we are going to change the order, it's very helpful
11 to us to have that information sooner than later, so
12 we don't incur additional costs related to that.

13 JUDGE GIBSON: Mr. Smith, your point is
14 well taken. A lot of people's travel plans are riding
15 on the outcome of this, so we would ask that you all
16 facilitate that and try to get us something by the end
17 of the week to let us know yes, we would like --
18 asking the Board to change the order and providing
19 this as good cause. Because I think Mr. Smith's point
20 is well taken. Everybody else has got witnesses
21 coming in, and they're going to need to get them there
22 at the right time, as well.

23 JUDGE WARDWELL: Judge Gibson, this is
24 Judge Wardwell. Do we have the opportunity for us to
25 caucus quickly here offline?

1 JUDGE GIBSON: Yes, sir, sure.

2 (Whereupon, the above-entitled
3 teleconference went off the record at 11:07 a.m. and
4 went back on the record at 11:08 a.m.)

5 JUDGE GIBSON: Just one thing. It's
6 possible that we could take this witness first,
7 examine him about the issues we have concerns with his
8 testimony, then go to Contentions A, C, D, F and 14,
9 and continue to do Contention 1 at the end, except we
10 will have taken this witness out of order, at the
11 beginning, in order to accommodate him. I don't know
12 which approach we're going to take, but the main point
13 is Mr. Frankel, Mr. Reid, you all need to get together
14 with this witness. You all need to figure out what
15 you want to do and let us know one way or another,
16 either by a motion, or by an email that basically says
17 never mind, the witness will not be appearing. Fair
18 enough?

19 MR. FRANKEL: David Frankel for
20 consolidated interveners. Just wanted to let
21 everybody know I've already sent an email to Dr.
22 Redmond, while we were talking, asking if Mr. Reid and
23 I could speak with him as soon as possible, preferably
24 later today. It is helpful that we can offer him
25 first at bat, so to speak, in that he would be

1 interested in dismissing the witness that same day, on
2 Monday, giving him an opportunity to head back to his
3 home and prepare for his travels. We'll do our best,
4 and we will certainly talk with Dr. Redmond promptly,
5 and in a timely fashion.

6 JUDGE GIBSON: Mr. Reid, is that okay with
7 you?

8 MR. REID: Yes, it sounds great. Thank
9 you.

10 JUDGE GIBSON: Okay, very well. Other
11 than that, Mr. Frankel, are there any other changes to
12 the -- anymore updates to the exhibit list or anything
13 that we can anticipate?

14 MR. FRANKEL: David Frankel for the
15 consolidated interveners. Your Honor, the only other
16 thing I can think of is in the Board's granting of the
17 NRC's motion to submit the errata and to submit
18 revised rebuttal testimony, the Board did give the
19 opportunity for our expert, Lindsay McQueen
20 ***11:10:47, to submit a rebuttal to that change. We
21 expect that we will be doing that by the deadline this
22 Friday and that would result in an additional exhibit
23 and the updated exhibit list, as well.

24 JUDGE GIBSON: Very well, thank you.
25 Okay, the only other -- I guess in that regard, Ms.

1 Simon, I guess it's really none of my business, but
2 have you all made the errata known to the Commission,
3 since there's an interlocutory appeal pending?

4 MS. SIMON: Your Honor, give me one second
5 to discuss this with my colleagues?

6 JUDGE GIBSON: Sure.

7 MS. SIMON: Your Honor, this is Marcia
8 Simon. The Commission was not specifically notified
9 of the errata. It was placed in ADAMS as a publicly
10 available document. The Office of Commission
11 ***11:12:00 adjudication, I believe, would have
12 received it through the EIE.

13 JUDGE GIBSON: Okay, very well. One other
14 thing, Mr. Smith. I don't know whether any of this --
15 the errata sheet is going to cause you to need to
16 submit any additional exhibits, like Mr. Frankel is,
17 but obviously -- are you anticipating doing that at
18 this time?

19 MR. SMITH: This is Tyson Smith. No, we
20 have no plans to revise or update our testimony. We
21 have reviewed it, in light of the errata, and there
22 are no changes warranted or necessary to our
23 testimony.

24 JUDGE GIBSON: Thank you very much, Mr.
25 Smith. With that, I believe that concludes the items

1 that I had. Let me ask if there is anything else we
2 need to address. Mr. Smith?

3 MR. SMITH: No, Your Honor.

4 JUDGE GIBSON: Ms. Simon?

5 MS. SIMON: Your Honor, just two quick
6 things. The first one was have you made arrangements
7 for the setup in the community center to have power
8 strips at the counsel table so we'll be able to plug
9 in computers?

10 JUDGE GIBSON: I believe so, but we will
11 be sure and get an email out to you all. Mr. Sciretta
12 or Mr. Desai will get you out an email about power
13 strips for computers.

14 MS. SIMON: Okay, thank you. Then just
15 one other thing quickly. We have a request for the
16 Board to consider. I've been informed one of our
17 staff witnesses may need to step down from the witness
18 stand periodically for short breaks due to a health
19 issue. We'd like the Board to consider how to
20 accommodate that. My understanding is that he
21 appeared in the Powertech proceeding, and he was
22 permitted to step away for short breaks, as needed, as
23 long as he wasn't being questioned at the time. We'd
24 just like to ask if the Board could consider whether
25 a similar arrangement could be made?

1 JUDGE GIBSON: We'll certainly do whatever
2 we can to accommodate him. I can tell you that with
3 the advanced age of the Board members, we do have to
4 take periodic breaks. Hopefully, that will
5 accommodate this witness as much as possible, but
6 certainly if we need to accommodate him more than
7 that, we can do that, Ms. Simon.

8 MS. SIMON: Thank you very much. That's
9 all for the staff.

10 JUDGE WARDWELL: Judge Gibson, we are
11 anticipating having the witnesses be seated at all
12 times. I don't know if that's related to this issue,
13 but they're not going to be standing at a podium or
14 anything, isn't that correct?

15 JUDGE GIBSON: That certainly was what I
16 was anticipating (Simultaneous speaking).

17 JUDGE WARDWELL: I just wanted to make
18 sure people were aware of that, in case they were
19 thinking something different.

20 JUDGE GIBSON: Okay, very well. Mr. Reid,
21 anything else?

22 MR. REID: I have two things. You said
23 you're not taking opening statements. Can we submit
24 a written opening statement, just so it's part of the
25 record?

1 JUDGE GIBSON: You can certainly submit
2 it, and it will -- but it's not going to be part of
3 the record. It will be part of the transcript.
4 That's fine. If you guys want to submit something --
5 how long is it going to be, Mr. Reid?

6 MR. REID: That's up to you. I was
7 hoping, hopefully, to have about a 10 or 15-minute
8 opening statement.

9 JUDGE GIBSON: How about if anybody wants
10 to submit a written opening, not to exceed three
11 pages, they can do that, okay? Fair enough?

12 MR. REID: That's about a three-minute
13 opening statement, but we can do that.

14 JUDGE GIBSON: Okay. Well, just assume
15 you're going to talk fast and get it all in three
16 pages, okay? Mr. Frankel?

17 MR. FRANKEL: I'm sorry, there's one other
18 thing.

19 JUDGE GIBSON: Yes, sir.

20 MR. FRANKEL: The Tribe, I think we've
21 made this clear in the past, it's very likely -- we've
22 listed some of the witnesses that have not submitted
23 written statements. Their elderly representatives
24 from the Tribe, cultural leader, religious leaders
25 from the Tribe that may wish to offer short oral

1 statements. I did read the order that came out in
2 regards to the submission of written statements. I
3 would ask that the Board honor the oral traditions of
4 the tribal elders and allow -- it's a long ways for
5 them to travel, to travel from the reservation to the
6 proceedings in Crawford on Friday, to offer a
7 five-minute or so statement or testimony and be
8 subject to questioning regarding the spiritual and
9 religious significance of the area to them and the
10 Tribe.

11 JUDGE GIBSON: We mean no disrespect to
12 the oral traditions, I assure you, but we are
13 constrained on time significantly. We have afforded
14 an opportunity for written limited appearance
15 statements to be made. If there is a critical piece
16 of this, you can move for leave to add a witness, and
17 we can look at it, but that is the only way I can see
18 that coming in.

19 I do not anticipate -- no one is going to
20 be testifying that has not previously provided written
21 testimony. We have had that written testimony limit
22 in our scheduling order for some time. If there were
23 any additional witnesses, they would have needed to be
24 submitted. This is not a matter of disrespect; it is
25 just a matter of trying to get all of this

1 accomplished in one week. I would ask you to do one
2 of two things, either move for leave to add a party --
3 you'll have to see if anyone will agree to do it, and
4 we'll have to be looking at that in terms of good
5 cause -- or, alternatively, to submit it as a written
6 limited appearance statement, even though it will not
7 be the oral tradition they would have liked. It is
8 about the only way I see that we can accommodate that.

9 MR. FRANKEL: The only thing I would
10 mention is I'm speaking solely of persons that were
11 listed by the Tribe on their witness list. These are
12 elders that advise the Tribe. Also, as I recall in
13 the Powertech proceeding, they took oral testimony
14 from several witnesses, and it was short. It was very
15 short. I was looking at the transcript. I don't
16 think any of them were more than a couple of pages.

17 If I might suggest, if we do have time,
18 particularly if we move Dr. Redmond to the first day,
19 if we do have time on Friday and these witnesses come
20 all the way from the reservation, I'll just advise the
21 Board that we would probably be making a motion for
22 the opportunity to have them just present a short oral
23 statement and be subject to questioning if necessary,
24 if that's acceptable.

25 JUDGE GIBSON: Again, you're certainly

1 welcome to submit such a motion after you've consulted
2 with the other parties for leave to add some testimony
3 that's not been pre-filed, but I certainly don't want
4 anyone's hopes to be raised that they're going to be
5 able to testify at this point in time. It is a month
6 away from trial, and we have quite a lot of ground to
7 cover. This is not something that we expect.

8 I would ask you to maybe do this in the
9 alternative, so that at least you can get this in as
10 a limited written appearance statement if that's the
11 only option you'll end up having. But again, if the
12 other parties are agreeable and we have time, I'm sure
13 that we'll do what we can to accommodate because I'm
14 sure we all want to honor the oral traditions. That's
15 not the issue. The issue is getting everything
16 accomplished.

17 MR. FRANKEL: Understood.

18 JUDGE GIBSON: Fair enough. Okay, with
19 respect to Mr. Frankel, is there anything else that
20 you need to raise with us at this point in time, sir?

21 MR. FRANKEL: David Frankel for
22 consolidated interveners. Yes, Your Honor, thank you.
23 Just a couple of clarifying questions. Our attorneys
24 and experts expect to be able to have their computers
25 and phones with them in the hearing. Is there any

1 expectation by the Board that conflicts with that?

2 JUDGE GIBSON: I will say I sure want you
3 to have your cell phone turned off with respect to
4 ringing, but otherwise, I understand that there is
5 some limited -- there's a cell phone tower not too far
6 away. We may be able to get access. What I will do is,
7 along with the power strip question, Mr. Sciretta and
8 Mr. Desai will consult with Mr. Deucher, and we will
9 get an email out about electronics.

10 If we need to, we can put it in an order.
11 I think we probably get that in an email, what are the
12 dos and don'ts with respect to that. We're certainly
13 going to do whatever we can to accommodate you. I
14 think Mr. Deucher has figured out a fix to be able to
15 get everybody's computer working in the courtroom.
16 But again, we'll be getting something out in that
17 regard. Is there anything else, Mr. Frankel?

18 MR. FRANKEL: Yes, there is. At the
19 beginning of the call, you mentioned that the Crawford
20 Police would be handling security. In your order, I
21 thought there was a reference to Dawes County
22 Sheriff's Department. Is it both those groups, or
23 just Crawford Police?

24 JUDGE GIBSON: Frankly, I don't know that.
25 We actually have a security office here at the NRC.

1 That security office has been working with the staff
2 for the Atomic Safety and Licensing Board panel. We
3 told them what our needs were, and they're making
4 arrangements for that. I frankly don't know if it's
5 the county sheriff's office or the local police
6 office. I don't really know. Is there a problem
7 there, Mr. Frankel?

8 MR. FRANKEL: Yes, there is. This is a
9 company-owned town. The police that are employed by
10 that town may not use their discretion in pat downs
11 and the like in a non-discriminatory way. I can't say
12 that the local police have an excellent reputation at
13 tribal relations. We would want to see some diversity
14 and some county-wide presence at the security, and we
15 would want a commitment, possibly even a Board order,
16 that these discretionary pat downs will be in a
17 non-discriminatory way, having nothing to do with
18 racial profiling.

19 JUDGE GIBSON: Okay, thank you, Mr.
20 Frankel. We'll certainly take your concerns into
21 consideration. Is there anything else?

22 MR. FRANKEL: Yes, one more question.
23 Something that came up at the Powertech hearing was a
24 strong tension between the Board's desire to keep the
25 hearing on schedule and provide a very short period of

1 time for lunch breaks -- in fact, there was one
2 incident where our entire team was not able to make it
3 back until about 15 minutes after the deadline. You
4 have to understand we all get hungry out there. We're
5 all of varying ages. We have a few older counsels on
6 our side, as well.

7 My experience is that from the moment that
8 the Board breaks for lunch, if they only give, let's
9 say, one hour's time, the first thing that happens is
10 we get slowed down in getting out of the room by
11 people on our side want to ask us questions
12 ***11:25:16 filing out of the building in an orderly
13 fashion, getting into vehicles or walking to someplace
14 for lunch, you can hardly even order and get your food
15 into your face before you have to turn around and come
16 back. I'm wondering if there'll be any opportunity
17 for lunch service within the Crawford Building, and if
18 not, is there any objection to people packing their
19 lunches and just staying inside and having lunch
20 inside?

21 JUDGE GIBSON: Those are all excellent
22 points, Mr. Frankel. We'll do what we can. I don't
23 want anybody to not have time to eat lunch. I'm sure
24 we will be reasonable about all of those concerns. I
25 don't know the specifics yet about the questions you

1 raised, but again, sounds like it's going to be a long
2 email that you'll be getting from the clerks.
3 Hopefully it won't be necessary to put this in an
4 order, but if it is, we will. But we will also try to
5 find out about that, as well. Is there anything else,
6 sir?

7 MR. FRANKEL: If it's not in an order, we
8 did have an incident in the Powertech hearing where
9 something was discussed that wasn't in the technical
10 terms of the order. It was discussed and approved by
11 the Board verbally and could be demonstrated by
12 transcript. When we got to the actual hearing,
13 security had not been advised of those small
14 modifications and were going with the letter of the
15 order, as well they should. So should there be any
16 circumstances that arise that you would handle in an
17 email, we would just as soon see it come out in the
18 terms of a formal order that is then shared with the
19 security detail.

20 JUDGE GIBSON: We had issued an order on
21 July 14 with regard to security.

22 MR. FRANKEL: Yes, I understand that, Your
23 Honor. For example, last time we had a question come
24 up -- one of our experts wanted to know if a small pen
25 knife that he typically carries was going to violate

1 the weapons order. The judges said, "No, I don't
2 think that would be a problem at all." Then when we
3 showed up, security said, "It says all edged weapons.
4 A pen knife is an edged weapon." It may seem like a
5 minor thing, but I'm asking you to make sure that if
6 there are issues that come up and you send them to us
7 an email from the Board clerk that you make sure to
8 advise the security detail so, for example, they don't
9 stop people from bringing in their computers at the
10 door, or their lunch at the door, if you've made
11 arrangements for that. All I ask is a complete loop
12 of communication on your side.

13 JUDGE GIBSON: Okay, thank you, Mr.
14 Frankel. Is there anything else, sir?

15 MR. FRANKEL: No, thank you, appreciate
16 the time to raise my issues.

17 JUDGE GIBSON: Mr. Ballanco, is there
18 anything that you can see that we've missed, sir?

19 MR. BALLANCO: No, Your Honor.

20 JUDGE GIBSON: Okay, thank you. I believe
21 we have heard from you. Hopefully you've heard from
22 us. We are expecting to get some more filings this
23 week, and we're looking forward to knowing who's going
24 to be there and who's no. With that, we will stand in
25 recess until the week of -- I guess the 18th of

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1 August, at 10:30, Eastern Daylight Time.

2 (Whereupon, the above-entitled
3 teleconference was concluded at 11:28 a.m.)
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