

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

Before Administrative Judges:

Michael M. Gibson, Chairman
Dr. Richard E. Wardwell
Brian K. Hajek

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

December 6, 2016

ORDER

(Ruling on Remaining Evidentiary Objections)

In our Partial Initial Decision dated May 26, 2016, we deferred ruling on a number of the NRC Staff's objections to exhibits and testimony,¹ specifically certain Board exhibits (Ex. BRD-011 through Ex. BRD-016), and certain Intervenor exhibits (Ex. OST-001, Ex. INT-002, Ex. INT-004, Ex. INT-005, Ex. INT-046 through Ex. INT-049, Ex. INT-069 through Ex. INT-071, Ex. INT-082-R, Ex. INT-084, and Ex. INT-085).² We now address these objections, as well as (1) the NRC Staff's objections to four sections of testimony from the August 24–28, 2015 evidentiary hearing in Crawford, Nebraska, and (2) Crow Butte's and the NRC Staff's objections to holding an additional hearing day in Rockville, Maryland, on October 23, 2015.³

¹ LBP-16-7, 83 NRC 340, 409–11 (2016).

² See NRC Staff's Motion in Limine to Exclude Certain Exhibits Filed by Consolidated Intervenor and the Oglala Sioux Tribe (June 15, 2015) [hereinafter NRC Staff's Motion in Limine]; NRC Staff's Motion to Strike Portions of the Rebuttal Statement of Linsey McLean (Aug. 7, 2015) [hereinafter NRC Staff's Motion to Strike McLean Rebuttal]; NRC Staff's Response to Board's September 10 Order (Sept. 14, 2015) [hereinafter NRC Staff's Objection to Board Exhibits]; and NRC Staff's Response to the Board's October 13 Orders (Oct. 19, 2015) [hereinafter NRC Staff's Objections to Weather Exhibits].

³ Tr. at 1881, 1907–08, 2004–05, 2198, 2201–05, 2208.

Under 10 C.F.R. § 2.319, a licensing board has the power to “[r]estrict irrelevant, immaterial, unreliable, duplicative or cumulative evidence and/or arguments.”⁴ Licensing boards are not bound by formal rules of evidence,⁵ even if they do refer to them at times for guidance.⁶ Moreover, unlike jury trials where rules of evidence serve as a bulwark against unfair prejudice and confusion,⁷ in Subpart L proceedings “[w]ritten prefiled testimony and exhibits are typically submitted well in advance of the evidentiary hearing, and in our most common types of hearings, the licensing boards themselves—not the parties—orally examine the witnesses.”⁸ As a result, the concerns of unfair prejudice and confusion addressed by the Federal Rules of Evidence are rarely at issue when licensing boards rule on the admissibility of evidence in Subpart L proceedings.⁹ Accordingly, “a licensing board normally has considerable discretion in making evidentiary rulings.”¹⁰

1. Objections to Board Exhibits

Ex. BRD-011, Ex. BRD-012, Ex. BRD-014, Ex. BRD-015, and Ex. BRD-016 are NUREGs and Regulatory Guides. These guidance documents can play a key role in all NRC adjudicatory proceedings,¹¹ and so are to be accorded “special weight” in establishing the

⁴ 10 C.F.R. § 2.319(e).

⁵ Id. § 2.319(d).

⁶ S. Cal. Edison Co. (San Onofre Nuclear Generating Station, Units 2 & 3), ALAB-717, 17 NRC 346, 365 n.32 (1983).

⁷ See Old Chief v. United States, 519 U.S. 172, 188 n.9 (1997).

⁸ PSEG Power, LLC & PSEG Nuclear, LLC (Early Site Permit Application), LBP-16-4, 83 NRC 187, 210–11 n.171 (2016) (citing 10 C.F.R. § 2.1207).

⁹ Id.

¹⁰ Duke Energy Corp. (Catawba Nuclear Station, Units 1 & 2), CLI-04-21, 60 NRC 21, 27 (2004).

¹¹ Curators of the Univ. of Mo., CLI-95-8, 41 NRC 386, 397 (1995).

standards by which to evaluate the NRC Staff's performance.¹² As a practical matter, rather than introducing these guidance documents at the evidentiary hearing for this proceeding, we could have simply relied on them in our Partial Initial Decision.¹³ Instead, we introduced them at the hearing to promote transparency and to engender a more robust examination of the issues they raised. Accordingly, we overrule the NRC Staff's objection to these guidance documents that were admitted as Ex. BRD-011, Ex. BRD-012, Ex. BRD-014, Ex. BRD-015, and Ex. BRD-016.

While Ex. BRD-013, a paper on tornado probabilities, is not itself an NRC Staff guidance document, it does provide technical support for certain NRC guidance documents, and it is cited as support for the conclusions reached in a critical NRC Staff NUREG on tornado impacts.¹⁴ Moreover, as a seminal paper on the issue of tornadoes, it is exactly the type of document to which a licensing board dealing with tornadoes should consider as part of its own expertise¹⁵ and as general background information.¹⁶ For this reason, we overrule the NRC Staff's objection to this document that was admitted as Ex. BRD-013.

¹² Entergy Nuclear Operations, Inc. (Indian Point, Units 2 & 3), CLI-15-6, 81 NRC 340, 356 (2015).

¹³ See Curators of the Univ. of Mo., CLI-95-8, 41 NRC at 397.

¹⁴ See Ex. BRD-012, Office of Nuclear Material Safety and Safeguards, Final Generic Environmental Impact Statement on Uranium Milling, NUREG-0706, § 7.1.6.3.1 (Sept. 1980) (citing Ex. BRD-013, Herbert Conrad Schlueter Thom, Tornado Probabilities, 1963 Monthly Weather Review 730, 734–35 (1963)); see also Ex. CBR-011, Application for 2007 License Renewal USNRC Source Materials License SUA-1534 Crow Butte License Area § 2.5.5 (Nov. 27, 2007) [hereinafter LRA] (citing NUREG-0706 § 7.1.6.3.1).

¹⁵ Commonwealth Edison Co. (Zion Station, Units 1 & 2), ALAB-222, 8 AEC 229, 236, aff'd in part on other grounds, CLI-74-35, 8 AEC 374 (1974).

¹⁶ Pac. Gas & Elec. Co. (Diablo Canyon Nuclear Power Plant, Units 1 & 2), ALAB-644, 13 NRC 903, 915 n.24 (1981).

2. Motions in Limine Regarding Intervenor's Exhibits

In the NRC Staff's Motion in Limine, the NRC Staff sought to exclude fourteen exhibits offered by Intervenor.¹⁷ First, the NRC Staff challenged Ex. OST-001, which is a declaration of Charmaine White Face, a member of a volunteer organization that monitors drinking water in the Crow Butte region, and, more specifically, at the Pine Ridge Indian Reservation (PRIR).¹⁸ The NRC Staff argued that the portions of her declaration discussing radionuclide doses and cancer mortality among American Indians are outside the scope of Contentions A, D, and 9.¹⁹ Ms. White Face provided this information as evidence that water containing radionuclides has migrated from Crow Butte's license area to the PRIR —allegations that are relevant to whether the Basal Chadron/Chamberlain Pass Formation (BC/CPF) Aquifer communicates with aquifers that supply drinking water to the PRIR. Accordingly, we deny the NRC Staff's Motion in Limine insofar as it sought to exclude Ex. OST-001.

Second, the NRC Staff's Motion in Limine sought to exclude Ex. INT-002 (2008 Abitz Opinion), Ex. INT-004 (2008 JR Engineering Opinion), and Ex. INT-005 (2008 Paul Robinson Opinion), arguing these exhibits are inadmissible because they contain statements made in support of contention admissibility by persons not called as witnesses, and thus are not reliable.²⁰ As noted earlier, licensing boards are not bound by strict rules of evidence.²¹ Rather, the NRC Staff's concerns in this regard merely go to the weight of this evidence—which we have considered in our review of these exhibits. Accordingly, we deny the NRC Staff's Motion in Limine insofar as it sought to exclude Ex. INT-002, Ex. INT-004, and Ex. INT-005.

¹⁷ See NRC Staff's Motion in Limine at 1–2.

¹⁸ Ex. OST-001, Statement of Charmaine White Face (AKA Zumila Wobaga) (May 5, 2015).

¹⁹ NRC Staff's Motion in Limine at 14.

²⁰ Id. at 6.

²¹ 10 C.F.R. § 2.319(d).

Additionally, the NRC Staff's Motion in Limine sought to exclude Ex. INT-046 and Ex. INT-047, which consist of portions of the testimony of Dr. Kreamer and Mr. Wireman.²² The NRC Staff asserted that Dr. Kreamer's testimony in Ex. INT-046 was outside the scope of Contention A (as it deals with the adequacy of Crow Butte's bi-weekly testing of its monitoring wells) to the extent that he addressed the "characterization of the Crow Butte site hydrogeology; placement, construction and screening of monitoring wells; well sampling methodology; the potential for 'synergistic health effects'; and spill monitoring contingencies."²³ Likewise, the NRC Staff argued that Mr. Wireman's testimony in Ex. INT-047 concerning the "characterization of local and regional hydrogeology and groundwater flow, groundwater restoration, and [Crow Butte's] environmental sampling program" was outside the scope of Contention A.²⁴

Testimony about the basic hydrogeology of the local area and Crow Butte's installation and testing of monitoring wells is essential for determining whether there is communication between certain aquifers. Moreover, resolving the issue of whether there is communication between certain aquifers, in turn, affects whether bi-weekly testing is too infrequent to detect possible excursions. As this testimony is relevant for our decision, we deny the NRC Staff's Motion in Limine insofar as it sought to exclude Ex. INT-046 and Ex. INT-047.²⁵

The NRC Staff's Motion in Limine also sought to exclude certain portions of Ex. INT-048 and Ex. INT-049 insofar as they contain the testimony and supporting materials of Ms. Linsey McLean that do not relate to Contention 12, and, specifically, insofar as they do not address "the

²² See NRC Staff's Motion in Limine at 2.

²³ NRC Staff's Motion in Limine at 11.

²⁴ Id.

²⁵ See Entergy Nuclear Operations, Inc. (Indian Point, Units 2 & 3), CLI-12-18, 76 NRC 371, 376 (2012).

potential environmental impacts of selenium from land application of ISR process wastewater.”²⁶

Contrary to the NRC Staff’s argument, however, Contention 12 is not limited to selenium.

Rather, Contention 12 states that “The Final EA . . . inadequately discusses the potential impacts from land application of ISL mining wastewater.”²⁷ Because Ms. McLean’s testimony concerning other heavy metals was offered to show the potential environmental impacts of land application of ISL wastewater, her testimony is relevant to the admitted Contention and hence is admissible.²⁸ Accordingly, we deny the NRC Staff’s Motion in Limine insofar as it sought to exclude Ex. INT-048 and Ex. INT-049.

Next, the NRC Staff’s Motion in Limine sought to exclude Ex. INT-069 and Ex. INT-070, which contained the rebuttal testimony of Dr. Kreamer and Mr. Wireman. In support, the NRC Staff argued that portions of both exhibits included new information “that could have been raised in initial testimony.”²⁹ Rebuttal evidence is properly admissible, however, when it will “explain, repel, counteract or disprove the evidence of the adverse party.”³⁰ We conclude that Dr. Kreamer’s testimony in Ex. INT-069 appropriately rebutted the NRC Staff’s characterization of surface water resources as well as the NRC Staff’s assertions regarding the potential impacts of an accident or a leak. Likewise, Mr. Wireman’s testimony in Ex. INT-070 properly rebutted the NRC Staff’s characterization of the upper confining unit for the BC/CPF Aquifer and its other hydraulic properties.

²⁶ NRC Staff’s Motion in Limine at 12–13.

²⁷ LBP-15-11, 81 NRC 401, 451, app. A (emphasis added), petition for interlocutory review denied, CLI-15-17, 82 NRC 33, 47 (2015).

²⁸ See Duke Energy Corp. (McGuire Nuclear Station, Units 1 & 2; Catawba Nuclear Station, Units 1 & 2), CLI-02-28, 56 NRC 373, 379 (2002).

²⁹ Staff Motion in Limine at 15–16.

³⁰ United States v. Lamoreaux, 422 F.3d 750, 755 (8th Cir. 2005) (internal quotations omitted).

In addition, the NRC Staff argued that certain portions of Mr. Wireman's testimony in Ex. INT-070 regarding alternate concentration limits (ACLs) were irrelevant.³¹ To the contrary, however, Mr. Wireman's statements about ACLs were relevant with respect to whether Crow Butte's restoration plan poses a potentially significant impact to water quality. The NRC Staff also based several objections on an assertion that Dr. Kreamer's and Mr. Wireman's "statements of opinion are not backed by any factual basis, and should be excluded for that reason as well."³² But, as the NRC Staff itself argued, the extent to which experts explain the bases for their conclusions goes to the weight to be accorded those experts' conclusions.³³ Determining the weight to give an expert's conclusions is a licensing board's responsibility, and we are capable of admitting evidence and assessing the weight to give it, depending on the support proffered.³⁴ Accordingly, we deny the NRC Staff's Motion in Limine insofar as it sought to exclude Ex. INT-069 and Ex. INT-070.

The NRC Staff's Motion in Limine also sought to exclude most of Ex. INT-071 (the bulk of Ms. McLean's rebuttal testimony), asserting that it was proffered in contravention of our order allowing only narrow, limited rebuttal statements in response to the NRC Staff's July 23, 2015 errata.³⁵ That errata reversed the EA's prior statement that Crow Butte is not allowed to conduct land application of ISL wastewater after wet weather events and substituted in its place

³¹ NRC Staff's Motion in Limine at 18 (citing Ex. INT-070, Rebuttal Statement of Mickel Wireman at 4 (June 8, 2015)).

³² Id. at 19.

³³ Id. at 4 (citing Duke Cogema Stone & Webster (Savannah River Mixed Oxide Fuel Fabrication Facility), LBP-05-4, 61 NRC 71, 81 (2005)).

³⁴ See Catawba, CLI-04-21, 60 NRC at 29.

³⁵ See Licensing Board Order (Granting NRC Staff's Motion to Submit Revised Rebuttal Testimony and New Exhibit and Providing All Other Parties with an Opportunity for Rebuttal Testimony and to Propose Additional Questions in Camera) at 1–2 (July 24, 2015) (unpublished).

a statement indicating that Crow Butte may conduct such operations only after wet weather events.³⁶ With the exception of one sentence, Ex. INT-071 did not address the NRC Staff's July 23, 2015 errata, but instead covered a number of technical issues regarding ISL wastewater, and so the remainder of this testimony amounts to a late-filed second attempt to contravene the testimony of witnesses for the NRC Staff and for Crow Butte.³⁷ Accordingly, we grant the NRC Staff's Motion in Limine with respect to excluding all of Ex. INT-071,³⁸ save and except for the one sentence in Ex. INT-071 that stated: "land application during wet weather vs dry weather was deemed necessary to prevent further migration of the metals from flooding and runoff, and has nothing to do with the actual toxic bioavailability of the metals, only the spread of their territories."³⁹

In addition, the NRC Staff's Motion in Limine sought to exclude the first two pages of Ex. INT-082-R (Dr. Kreamer's rebuttal testimony offered in conjunction with our supplemental hearing) on the ground that "the relationship between precipitation and excursion events . . . is irrelevant,"⁴⁰ and because it had never been raised before.⁴¹ To the contrary, however, Dr. Kreamer's testimony in this regard has relevance with respect to whether mining activities have lowered water levels in the Upper Brule Aquifer, i.e., one of the six topics that was to be covered during our supplementary hearing day.⁴² Accordingly, we deny the NRC Staff's Motion in Limine insofar as it sought to exclude these pages of Ex. INT-082-R.

³⁶ See id.

³⁷ See Ex. INT-071, Rebuttal Statement of Linsey McLean (July 31, 2015).

³⁸ See NRC Staff's Motion to Strike McLean Rebuttal at 4–5.

³⁹ Ex. INT-071 at 3.

⁴⁰ NRC Staff's Objections to Weather Exhibits at 2.

⁴¹ Id.

⁴² Licensing Board Notice of Supplementary Hearing at 3–4 (Sept. 25, 2015) (unpublished).

Finally, the NRC Staff's Objections to Weather Exhibits took issue with Ex. INT-084 and Ex. INT-085, which are website printouts of weather data that Intervenor offered in support of a supplemental day of hearing in October 2015. The NRC Staff argued (1) that these two exhibits were originally listed only as website links in Dr. Kreamer's testimony, and (2) that neither is reliable.⁴³ We overrule this objection insofar as it concerned website links because we previously directed that any exhibits for the supplemental hearing be filed electronically and not be "merely listed as a reference" in a party's testimony.⁴⁴ As a result of the directive, we initially treated the weather data (in the website links in Dr. Kreamer's timely filed rebuttal testimony) as undisputed evidence so that this weather data did not have to be filed as a separate exhibit.⁴⁵ However, Intervenor quickly corrected any possible mistake by subsequently filing the weather data as exhibits.⁴⁶ We also note that the NRC Staff itself had relied on website links for some of its materials that were not filed as separate exhibits.⁴⁷ Moreover, the law is clear that courts may rely on data provided as links.⁴⁸

Insofar as the NRC Staff's objection goes to the reliability of the weather data contained in Ex. INT-084 and Ex. INT-085, the NRC Staff claimed that significant differences existed within the data, and pointed to the website's disclaimer that the weather data was "correct most of the time, but could also be wrong."⁴⁹ We note that the source data comes from the federal

⁴³ NRC Staff's Objections to Weather Exhibits at 1, 3.

⁴⁴ Licensing Board Order (Admitting Exhibits; Scheduling Supplemental Testimony and October Hearing Day) at 3 (Sept. 4, 2015) (unpublished).

⁴⁵ Ex. INT-082-R, Rebuttal Statement of Dr. David D. Kreamer at 1 (Sept. 28, 2015).

⁴⁶ Ex. INT-084, Weather History for Crawford, NE for November (Oct. 8, 2015); Ex. INT-085, Climate Crawford - Nebraska and Weather averages Crawford (Oct. 8, 2015).

⁴⁷ NRC Staff's Initial Statement of Position at 15 n.45.

⁴⁸ See Reese v. Malone, 747 F.3d 557, 570 n.8 (9th Cir. 2014) (describing appellant's "educational background" based on a link to her alma mater's website).

⁴⁹ Staff Objections to Weather Exhibits at 3.

government.⁵⁰ Certainly, we are well able to judge the reliability of this data in comparison to other data provided by the parties.⁵¹

Accordingly, because we may rely on data provided as links, and because we may judge the reliability of such data, we deny the NRC Staff's Motion in Limine insofar as it sought to exclude Ex. INT-084 and Ex. INT-085.

3. Objections to Testimony

The NRC Staff objected to four sections of testimony during the August 24–28, 2015 evidentiary hearing held in Crawford, Nebraska.⁵² Crow Butte and the NRC Staff also objected to our decision to hold an additional hearing day in Rockville, Maryland, on October 23, 2015.⁵³

First, the NRC Staff objected to its own witness, Dr. Elise Striz, providing testimony on ACLs on the ground that such testimony called for a legal conclusion as to the meaning of certain NRC regulations. That objection, however, was rendered moot⁵⁴ after we re-stated our questions to focus on the NRC Staff's evaluation of ACL applications—a matter on which expert witness Dr. Striz stated she had relevant knowledge.⁵⁵

Second, the NRC Staff also objected to testimony from Intervenor's hydrogeology expert witnesses, Dr. David Kreamer and Mr. Michael Wireman, on tornado-related issues associated

⁵⁰ Id., attach. 1, at 1.

⁵¹ See Pac. Gas & Elec. Co. (Diablo Canyon Nuclear Power Plant, Units 1 & 2), LBP-94-35, 40 NRC 180, 192 (1994).

⁵² Tr. at 1881, 1907–08, 2004–05, 2198, 2203–04.

⁵³ Tr. at 2201–05, 2208.

⁵⁴ Tr. at 1881.

⁵⁵ Tr. at 1882–83; see also Ex. NRC-008, Curriculum Vitae of Dr. Elise A. Striz (May 8, 2015).

with Contention 12 due to the absence of related NRC Staff witnesses.⁵⁶ This objection was also rendered moot, however, because these two witnesses declined to testify on tornadoes.⁵⁷

Third, the NRC Staff preemptively objected to any testimony from a potential Intervenor witness, Dr. Francis Anders, about the state of wells in the license area⁵⁸ on the ground that: (1) Dr. Anders was not timely identified as a witness for the hearing; and (2) Intervenor did not submit his testimony when the NRC Staff filed its initial or rebuttal testimony.⁵⁹ Ultimately, Mr. Anders was not called as a witness by Intervenor, and so this objection is rendered moot as well.

Fourth, the NRC Staff objected to certain portions of our examination regarding tornadoes on the ground that the Board was providing its own testimony.⁶⁰ While it is debatable whether the challenged Board examination constitutes testimony,⁶¹ we nevertheless grant the NRC Staff's objection in this regard and strike the challenged passages of the Transcript in light of the fact that they were not utilized in either of our Partial Initial Decisions herein.

Lastly, Crow Butte⁶² and the NRC Staff⁶³ objected to adding another day of hearing to address certain hydrogeology issues on the ground that it would be inappropriate and burdensome to allow new testimony on issues not raised before the beginning of the hearing.⁶⁴

⁵⁶ Tr. at 1907–08.

⁵⁷ Tr. at 1908–09.

⁵⁸ Tr. at 2198.

⁵⁹ Tr. at 2203–04.

⁶⁰ Tr. at 2004–05.

⁶¹ Statements from judges, like statements from lawyers, are not evidence. See Fla. Power & Light Co. (St Lucie Nuclear Power Plant, Unit No. 2), ALAB-420, 6 NRC 8, 14 n.18 (1977).

⁶² Tr. at 2201–05.

⁶³ Tr. at 2208.

⁶⁴ Tr. at 2201–05.

This objection fails to acknowledge that the additional hearing day was held to afford the parties' witnesses an opportunity to testify on certain new relevant evidence admitted during the August 24–28 hearing relating to otherwise unsupported claims from the parties. In fact, some of these otherwise unsupported claims were actually raised by Crow Butte and the NRC Staff. For example, there were certain critical determinations in Crow Butte's License Renewal Application that relied on "[a]quifer pump test data" collected by Crow Butte;⁶⁵ however, it became clear during the course of the August 24–28 hearing that this pump test data had not been offered into evidence. As a result, we requested that Crow Butte provide this pump test data—for without this data, some of Crow Butte's central assertions in this proceeding could not have been supported.⁶⁶

Similarly, to support its claim that there is containment of the BC/CPF, the NRC Staff alluded to excursion root cause reports; however, it became clear during the course of the hearing that these excursion root cause reports had not been offered as evidence in this proceeding. As a result, we requested that the NRC Staff provide these excursion root cause reports—for, without them, some of the NRC Staff's central assertions in this proceeding could not have been supported.⁶⁷

Another example of the need for a supplementary hearing day was the fact that the NRC Staff never disclosed modeling data of the White River Feature to Intervenors.⁶⁸ Pursuant to 10

⁶⁵ LRA § 2.7.2.3; Tr. at 1289.

⁶⁶ Tr. at 1291–93 (filing Ex. CBR-061, Results of Consolidated Tests of Confining Layer Core Samples (undated)); Tr. at 1296. After Crow Butte provided these documents, they were admitted as Ex. BRD-002A, Aquifer Test #1 (July 29, 1987); Ex. BRD-002B-R, Aquifer Test #2 (July 29, 1987); and Ex. BRD-002C, Ground-water Pumping Test #3 Data Evaluation Report (Oct. 15, 1996).

⁶⁷ Tr. at 1896–98. After the NRC Staff provided these documents, they were admitted as Ex. BRD-010.

⁶⁸ Tr. at 1383–86.

C.F.R. § 2.336(b), the NRC Staff is obligated to disclose “[a]ll documents . . . that both support the NRC staff’s review of the application or proposed action that is the subject of the proceeding and are relevant to the admitted contentions.”⁶⁹ We agree with the conclusion reached in Progress Energy Florida, Inc. (Levy County Nuclear Power Plant, Units 1 & 2), LBP-10-23, 72 NRC 692 (2010), that “the underlying data used in a computer analysis or simulation, the programs and programming methods, the software that embodies the computer program, and the inputs and outputs that comprise the model,” are subject to mandatory disclosure.⁷⁰ The NRC Staff belatedly provided this data, which measures hundreds of pages,⁷¹ several days after the initial August 24–28 hearing had ended.⁷²

For these reasons, we overrule these objections interposed by Crow Butte and the NRC Staff and the transcript of that additional day of hearing is accordingly made part of the record for this proceeding.

4. Conclusion

In sum, we rule as follows:

- a. We overrule the NRC Staff’s objections to Ex. BRD-011, Ex. BRD-012, Ex. BRD-013, Ex. BRD-014, Ex. BRD-015, and Ex. BRD-016.
- b. We deny the NRC Staff’s motions to exclude Ex. OST-001, Ex. INT-002, Ex. INT-004, Ex. INT-005, Ex. INT-046, Ex. INT-047, Ex. INT-048, Ex. INT-049, Ex. INT-069, Ex. INT-070, Ex. INT-082-R, Ex. INT-084, and Ex. INT-085.

⁶⁹ 10 C.F.R. § 2.336(b)(3).

⁷⁰ Progress Energy Fla., Inc. (Levy County Nuclear Power Plant, Units 1 & 2), LBP-10-23, 72 NRC 692, 703–04 (2010); see also Entergy Nuclear Operations, Inc. (Indian Point Nuclear Generating Units 2 & 3), CLI-16-7, 83 NRC 293, 310–11 (2016) (concluding that input values were not meaningfully addressed in a final supplemental environmental impact statement that did not identify the underlying data and reasoning).

⁷¹ Tr. at 1385.

⁷² Tr. at 1571.

- c. We grant the NRC Staff's motion to exclude most of Ex. INT-071 as untimely and we strike from the record the Board's examination regarding tornadoes that is found on Transcript pp. 1980–2004.⁷³
- d. The NRC Staff's other objections to testimony at the evidentiary hearings have been rendered moot.
- e. Finally, we overrule Crow Butte's and the NRC Staff's objections to the supplemental hearing day.

It is so ORDERED.

FOR THE ATOMIC SAFETY
AND LICENSING BOARD

/RA/

Michael M. Gibson, Chairman
ADMINISTRATIVE JUDGE

Rockville, Maryland
December 6, 2016

⁷³ Tr. at 1980–2004.

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 (Ruling on Remaining Evidentiary Objections)** have been served upon the following persons by Electronic Information Exchange, and by electronic mail as indicated by an asterisk.

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ORDER (Ruling on Remaining Evidentiary Objections)

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

Dated at Rockville, Maryland
this 6th day of December 2016