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NUCLEAR REGULATORY COMMISSION

Title: Crow Butte Resources License
Renewal for In-Situ Leach Facility

Docket Number: 40-8943-OLA

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

Location: teleconference

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1 UNITED STATES OF AMERICA

2 NUCLEAR REGULATORY COMMISSION

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4 ATOMIC SAFETY AND LICENSING BOARD PANEL

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6 HEARING

7 -----x

8 In the Matter of: : Docket No.

9 CROW BUTTE RESOURCES : 40-8943-OLA

10 (License Renewal for : ASLBP No.

11 In-Situ Leach Facility) : 08-867-02-OLA-BD01

12 -----x

13 Wednesday, January 18, 2017

14
15 Teleconference16
17 BEFORE:

18 MICHAEL M. GIBSON, Chair

19 BRIAN K. HAJEK, Administrative Judge

20 DR. RICHARD E. WARDWELL, Administrative Judge

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P R O C E E D I N G S

11:04 a.m.

CHAIR GIBSON: We are here today on a teleconference following the issuance of our second partial initial decision in Docket No. 8943 concerning the Nuclear Regulatory Commission's renewal of a source materials license to Crow Butte Resources, Inc. for its in situ leach mining operation near Crawford, Nebraska.

I would like to begin today by introducing the members of the Board and our law clerks. On the phone with me today is Judge Richard Wardwell, Judge Brian Hajek. Also sitting in is Judge Sue Abreu, and as well our law clerks Lindsay Simmons and Jen Scro.

Next, I would like to have counsel for the parties identify themselves, beginning first with the NRC staff. Hello, is anybody there? Is staff there? We've just been talking in thin air.

MR. CYLKOWSKI: Hello, can you hear me Judge Gibson?

CHAIR GIBSON: Yes.

MR. CYLKOWSKI: Oh, I apologize. Our phone malfunctioned there.

CHAIR GIBSON: That's okay.

MR. CYLKOWSKI: This is David Cylkowski

1 for the NRC staff. Also with me in the room are Molly
2 Marsh and Emily Monteith, also counsel for the staff,
3 and Sabrina Allen, our paralegal. We also have Nathan
4 Goodman, the project manager for the Crow Butte
5 license renewal, and Cynthia Roman, the Environmental
6 Review branch chief.

7 CHAIR GIBSON: Thank you. For Crow Butte?

8 MR. SMITH: This is Tyson Smith from
9 Winston and Strawn on behalf of Crow Butte, and also
10 on the line is Larry Teahon, the SHEQ manager for Crow
11 Butte.

12 CHAIR GIBSON: Thank you. Consolidated
13 Interveners?

14 MR. FRANKEL: Good morning. This is David
15 Frankel, spelled F-R-A-N-K-E-L for Consolidated
16 Interveners.

17 CHAIR GIBSON: And for the Oglala Sioux
18 Tribe?

19 MR. REID: Good morning. This is Andrew
20 Reid for the Oglala Sioux Tribe.

21 CHAIR GIBSON: Okay, and is anyone else,
22 any other counsel on the line?

23 MR. BALLANCO: Good morning, Your Honor.
24 This is Tom Ballanco for Consolidated Interveners.

25 CHAIR GIBSON: Good morning Mr. Ballanco,

1 thank you. Okay. Our second partial initial
2 decision, which was issued on December 6th, covered a
3 ruling on all of the parties' contentions save for
4 Contention 1, which we had previously resolved earlier
5 in the year in our first partial initial decision.

6 Relevant to this conference, the second
7 partial initial decision addressed Contention 12B,
8 which concerned the adequacy of the analysis in the
9 environmental assessment of the impacts of selenium on
10 wildlife from the potential land application of ISL
11 waste water on the grounds of the licensed area.

12 As you know, the Board concluded that the
13 NRC staff had not satisfied NEPA's requirement to take
14 a hard look at the impacts of selenium, that might
15 result from land application of the waste water. So
16 we retained jurisdiction for the limited purpose of
17 reviewing the NRC staff's curative actions.

18 However, based on the recent filings, it
19 appears that there may not be much for us to review.
20 Is that correct Mr. Cyilkowski?

21 MR. CYLKOWSKI: Yes, Your Honor. As the
22 staff notified the Board and parties yesterday in its
23 filing, and in response to Crow Butte's request that
24 it submitted to the staff, the staff has decided to
25 stop work on the curative actions regarding

1 Contentions 1 and 12B until the Commission has ruled
2 on the pending appeals.

3 CHAIR GIBSON: All right. So with that,
4 I guess the only thing that I would add to that is
5 that we are not in the business of holding anyone in
6 contempt. That's not within our powers here. We have
7 issued a ruling, directed the staff to advise us what
8 they're doing. They have advised us what they're
9 doing, and there isn't a whole lot for us to
10 superintend until -- unless and until the Commission
11 makes a ruling.

12 So if I don't know Interveners or Tribe,
13 if you all want to respond, please feel free to do so.
14 But I do want you to understand that if you want to
15 take issue with this action, you'll probably need to
16 go straight to the Commission because we are not
17 really in the business, as I said, of holding anyone
18 in contempt. Mr. Frankel, Mr. Reid, Mr. Ballanco, do
19 you all have anything that you all want to say?

20 MR. FRANKEL: Your Honor, David Frankel
21 speaking briefly for Consolidated Interveners. Well,
22 frankly this is no surprise. I think that Crow Butte
23 would like to wait until the uranium market recovers
24 if possible. I note that it gets special treatment.
25 None of the other uranium companies have gotten this

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1 kind of treatment.

2 I'm aware of the Powertech Azargo
3 situation and there's been none of this well, we'll
4 just not act on the ruling and just let y'all do
5 whatever you want for a while. But I understand Crow
6 Butte's special because they're so big. So I'll just
7 leave it at that. There's nothing to comment on
8 because there's nothing to superintend.

9 CHAIR GIBSON: Mr. Reid.

10 MR. REID: I have nothing to add, Your
11 Honor.

12 CHAIR GIBSON: Mr. Ballanco.

13 MR. BALLANCO: I have nothing to add, Your
14 Honor.

15 CHAIR GIBSON: All right, very well. Mr.
16 Smith, I didn't give you a chance to say anything. I
17 don't suppose you probably want to say anything, but
18 I ought to give you the chance.

19 MR. SMITH: Thank you, Your Honor. This
20 is Tyson Smith for Crow Butte. I don't have anything
21 to add. I think, as you know, Crow Butte has
22 requested that the staff delay taking further action
23 pending resolution of the appeals. None of the issues
24 that are involved in either appeal are likely to be
25 the subject of any, you know, ongoing action or

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1 activity or harm is going to occur from the delay.

2 As you know, the site does not have any of
3 the facilities necessary to do land application, and
4 has consistently stated it has no intent to do so. So
5 there's no harm from a slight delay there until the
6 Commission can rule. Similarly on Contention 1,
7 there's no plan for ground disturbing activity at the
8 site.

9 We'll continue to maintain the protections
10 that are already in place, and in that case there's
11 also no incremental harm associated with the delay.
12 So for that reason, we support the staff's decision,
13 which as you know was consistent with our request.

14 CHAIR GIBSON: Judge Wardwell?

15 JUDGE WARDWELL: I have nothing.

16 CHAIR GIBSON: Judge Hajek?

17 (No response.)

18 CHAIR GIBSON: I guess Judge Hajek doesn't
19 have anything else he wanted to say, so that's fine.
20 Okay. Well with that, I can only say that we'll go
21 ahead and adjourn this proceeding, and --

22 JUDGE HAJEK: Judge Gibson, this is Judge
23 Hajek. I had my phone on mute, but I do not have
24 anything to add.

25 CHAIR GIBSON: Okay, good. That's good,

1 okay. Very well. So with that, we will stand in
2 recess, and I don't think there's anything else that
3 we need to cover today. Thank you so much for your
4 time.

5 (Whereupon, the above-entitled matter went
6 off the record at 11:12 a.m.)