

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD PANEL

Before the Licensing Board:

G. Paul Bollwerk, III, Chairman
Dr. Richard E. Wardwell
Dr. Thomas J. Hirons

In the Matter of

CROW BUTTE RESOURCES, INC.

(Marsland Expansion Area)

Docket No. 40-8943-MLA-2

ASLBP No. 13-926-01-MLA-BD01

July 27, 2018

NOTICE OF HEARING

(Notice of Evidentiary Hearing and
Opportunity to Provide Oral, Written, and
Audio-Recorded Limited Appearance Statements)

The Atomic Safety and Licensing Board hereby gives notice that it will convene an evidentiary hearing to receive testimony and exhibits in this proceeding regarding intervenor Oglala Sioux Tribe's (OST) challenge to the May 2012 application of Crow Butte Resources, Inc., (CBR) seeking to amend the existing 10 C.F.R. Part 40 source materials license for its Crow Butte in situ uranium recovery (ISR) site to authorize CBR to operate a satellite ISR facility within the Marsland Expansion Area (MEA) in Dawes County, Nebraska. The evidentiary hearing will concern OST's admitted Contention 2, which raises hydrogeological-related environmental and safety matters regarding the proposed license amendment. In addition, the Board gives notice that, in accordance with 10 C.F.R. § 2.315(a) and the procedures specified below, it will entertain oral, written, and audio-recorded limited appearance statements from members of the public in connection with the issues raised by Contention 2.

A. Matters to be Considered

As set forth by the Licensing Board in a July 20, 2018 issuance, OST Contention 2 provides as follows:

OST Contention 2: Failure to Include Adequate Hydrogeological Information to Demonstrate Ability to Contain Fluid Migration

The application and final environmental assessment fail to provide sufficient information regarding the geological setting of the area to meet the requirements of 10 C.F.R. Part 40, Appendix A, Criteria 4(e) and 5G(2); the National Environmental Policy Act; and NUREG-1569 section 2.6. The application and final environmental assessment similarly fail to provide sufficient information to establish potential effects of the project on the adjacent surface and ground-water resources, as required by NUREG-1569 section 2.7, and the National Environmental Policy Act.

LBP-18-3, 88 NRC __, __ (slip op. at 43) (July 20, 2018). This issue will be the subject matter of the evidentiary hearing and should be the focus of any limited appearance statements.¹

¹ As the Board also indicated in its July 2018 issuance, LBP-18-3, 88 NRC at __ (slip op. at 43),

the scope of the safety and environmental concerns encompassed by this contention include the following: (1) the adequacy of the descriptions of the affected environment for establishing the potential effects of the proposed MEA operation on the adjacent surface water and groundwater resources; (2) exclusively as a safety concern, the absence in the applicant's technical report, in accord with NUREG-1569 section 2.7, of a description of the effective porosity, hydraulic porosity, hydraulic conductivity, and hydraulic gradient of site hydrogeology, along with other information relative to the control and prevention of excursions such as transmissivity and storativity; (3) the failure to develop, in accord with NUREG-1569 section 2.7, an acceptable conceptual model of site hydrology that is adequately supported by site characterization data so as to demonstrate with scientific confidence that the area hydrogeology, including horizontal and vertical hydraulic conductivity, will result in the confinement of extraction fluids and expected operational and restoration performance; and (4) whether the final EA contains unsubstantiated assumptions as to the isolation of the aquifers in the ore-bearing zones.

B. Date, Time, and Location of Evidentiary Hearing

The Board will convene an evidentiary hearing conducted in accord with the procedures set forth in 10 C.F.R. Part 2, Subpart L, regarding the environmental and safety matters specified in section A above on the following date at the specified location and time:

Date:	Tuesday, October 30, 2018
Time:	8:30 a.m. Mountain Time (MT)
Location:	Crawford Community Building 1005 1st Street Crawford, Nebraska

The hearing will continue from day-to-day until concluded. CBR, the NRC staff, and OST will be parties to the hearing and will sponsor witnesses and evidentiary material.

Any member of the public who plans to attend the hearing is advised that security measures may be employed at the entrance to the room where the hearing will take place, including searches of hand-carried items such as briefcases or backpacks, and is reminded to arrive in sufficient time to allow for security screening. Items that could readily be used as weapons will not be permitted in the room where the evidentiary hearing sessions will be held. Also, during the evidentiary hearing session no signs will be permitted in the hearing room.

C. Date, Time, and Location of Oral Limited Appearance Statement Session

A 10 C.F.R. § 2.315(a) oral limited appearance session regarding the MEA ISR proceeding will be held on the following date at the specified location and time:

Date: Sunday, October 28, 2018 (if there is sufficient interest)
Time: 2:00 p.m. to 4:00 p.m. MT
Location: Scottsbluff Room
Chadron State College Student Center
1000 Main Street
Chadron, Nebraska

D. Participation Guidelines for Oral Limited Appearance Statements

Any person not a party, or the representative of a party, to this proceeding will be permitted to make an oral statement setting forth his or her position on matters of concern relating to the proceeding. Although these statements do not constitute testimony or evidence, they nonetheless may help the Licensing Board and/or the parties in their consideration of the matters of concern in this proceeding relating to OST Contention 2.

Oral limited appearance statements will be entertained during the hours specified in section C above, or such lesser period as may be necessary to accommodate the speakers who are present. In this regard, if all scheduled and unscheduled speakers present at the session have made a presentation, the Licensing Board reserves the right to terminate the session before the ending time listed in section C above. The Board also reserves the right to cancel the Sunday afternoon session scheduled above if there has not been a sufficient showing of public interest as reflected by the number of preregistered speakers.

Any member of the public who plans to attend the limited appearance session is strongly advised to arrive early to allow time to pass through any security measures that may be employed. Attendees are also requested not to bring any unnecessary hand-carried items, such as packages, briefcases, backpacks, or other items that might need to be examined individually. Items that could readily be used as weapons will not be permitted in the room where this session will be held. During the oral limited appearance session, signs no larger than 18 inches by 18 inches will be permitted, but may not be attached to sticks, held over one's head, or moved about in the room.

The time allotted for each limited appearance statement normally will be no more than five minutes, but to ensure everyone will have an opportunity to speak, may be further limited depending on the number of written requests to make an oral statement that are submitted in accordance with section E below and/or the number of persons present at the designated times.

E. Submitting a Request to Make an Oral Limited Appearance Statement

A person wishing to make an oral statement who has submitted a timely written request to do so will be given priority over those who have not filed such a request. To be considered timely, a written request to make an oral statement must either be mailed, faxed, or sent by email so as to be received by 5:00 p.m. Eastern Time (ET) on Monday, October 12, 2018.

Based on its review of the requests received by October 12, 2018, the Licensing Board may decide that the Sunday afternoon session will not be held due to lack of adequate interest in that session. Written requests to make an oral limited appearance received after Monday, October 12, 2018, will be honored to the extent practicable.

Written requests to make an oral statement should be submitted to:

Mail:	Administrative Judge G. Paul Bollwerk, III Atomic Safety and Licensing Board Panel Mail Stop T-3A02 U.S. Nuclear Regulatory Commission Washington, D.C. 20555-0001
Fax:	(301) 415-5205 (verification (301) 415-5277)
Email:	paul.bollwerk@nrc.gov and sarah.ladin@nrc.gov

F. Submitting Written Limited Appearance Statements

As provided in 10 C.F.R. § 2.315(a), any person not a party, or the representative of a party, to the proceeding may submit a written statement setting forth his or her position on matters of concern relating to this proceeding. Although these statements do not constitute testimony or evidence, they nonetheless may help the Board or the parties in their consideration of the matters of concern in this proceeding relating to OST Contention 2.

A written limited appearance statement may be submitted at any time, however, for the statement to be the most helpful to the Board and parties relative to the evidentiary hearing on Contention 2, it should be submitted so as to be received by Wednesday, October 24, 2018.

The written limited statement should be sent to the Office of the Secretary using one of the methods prescribed below:

Mail: Office of the Secretary
Rulemakings and Adjudications Staff
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001

Fax: (301) 415-1101 (verification (301) 415-1677)

E-mail: hearingdocket@nrc.gov

In addition, using the same method of service, a copy of the written limited appearance statement should be sent to the Licensing Board Chairman as follows:

Mail: Administrative Judge G. Paul Bollwerk, III
Atomic Safety and Licensing Board Panel
Mail Stop T-3A02
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001

Fax: (301) 415-5599 (verification (301) 415-6094)

Email: paul.bollwerk@nrc.gov and sarah.ladin@nrc.gov

G. Submitting Audio-Recorded Limited Appearance Statements

As provided in 10 C.F.R. 2.315(a), any person not a party, or the representative of a party, to the proceeding may submit an audio-recorded statement setting forth his or her position on matters of concern relating to this proceeding. Although these statements do not constitute testimony or evidence, they nonetheless may help the Board or the parties in their consideration of the matters of concern in this proceeding relating to OST Contention 2.

To ensure that the Licensing Board members will have the opportunity to review an audio-recorded limited appearance statements prior to the beginning of the evidentiary hearing, an audio-recorded limited appearance statement must be submitted so that it is received

by Friday, October 12, 2018. All recordings must conform to the directions below in order for the Board and parties to consider the information and concerns contained therein. All audio-recorded limited appearance statements will be transcribed by a court reporter and included in the docket of this proceeding.

1. Size

Due to technical constraints, all audio-recorded limited appearance statements submitted must be no more than 15 minutes in length.

2. Format and Submission

Audio-recorded limited appearance statements may be sent to the Board one of two ways. An audio-recorded limited appearance statement may be sent by email to paul.bollwerk@nrc.gov as an attachment. The total size of the email cannot exceed 17 megabytes (MB). The attached file must be sent as an .mp3, .mp4, or .dss file.

An audio-recorded limited appearance statement may also be sent by mail on either a compact disc (CD) or digital versatile disc (DVD) to:

Mail: Administrative Judge G. Paul Bollwerk, III
Atomic Safety and Licensing Board Panel
Mail Stop T-3A02
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001

H. Availability of Documentary Information Regarding the Proceeding

The CBR application and license and various staff documents relating to the application are available on the NRC website at <https://www.nrc.gov/info-finder/materials/uranium/licensed-facilities/crow-butte.html>.² These and other documents relating to this proceeding also are available for public inspection at the Commission's Public Document Room (PDR), located at

² On May 24, 2018, the staff notified the Board that, in accordance with 10 C.F.R. § 2.1202(a), the CBR license amendment license had been issued, effective immediately. See Letter from Emily Monteith, NRC Staff Counsel, to Licensing Board at 1 (May 24, 2018). Although section 2.1213(a) afforded OST the opportunity to seek a stay of this staff action, no such request was filed. Nonetheless, the CBR license amendment is subject to any merits determinations the Board might make relative to OST's pending contention.

One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, or electronically from the publicly-available records component of NRC's document system (ADAMS) at www.nrc.gov/reading-rm/adams.html (the Public Electronic Reading Room), including the agency's Electronic Hearing Docket, <https://adams.nrc.gov/ehd/> (under Docket No. 40-8943-MLA-2). Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC PDR reference staff by telephone at (800) 397-4209 or (301) 415-4737 (available between 8:00 a.m. and 4:00 p.m. ET, Monday through Friday, except federal holidays), or by e-mail to pdr@nrc.gov.

I. Information Updates to Schedule

Any updates or revisions to the evidentiary hearing schedule or the schedule for the limited appearance session can be found on the NRC website at www.nrc.gov/public-involve/public-meetings/index.cfm, or by calling (800) 368-5642, extension 5036 (available between 7:00 a.m. and 9:00 p.m. ET, Monday through Friday, except federal holidays), or by calling (301) 415-5036 (available seven days a week, twenty-four hours a day).

It is so ORDERED.

FOR THE ATOMIC SAFETY
AND LICENSING BOARD

/RA/

G. Paul Bollwerk, III, Chairman
ADMINISTRATIVE JUDGE

Rockville, Maryland

July 27, 2018

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of)	
)	
CROW BUTTE RESOURCES, INC.)	Docket No. 40-8943-MLA-2
)	
In-Situ Leach Uranium Recovery Facility,)	ASLBP No. 13-926-01-MLA-BD01
Crawford, Nebraska)	
)	
(License Amendment –)	
Marsland Expansion Area))	

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing **NOTICE OF HEARING (Notice of Evidentiary Hearing and Opportunity to Provide Oral, Written, and Audio-Recorded Limited Appearance Statements)** have been served upon the following persons by Electronic Information Exchange.

Office of Commission Appellate
Adjudication
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
E-mail: ocaamail@nrc.gov

U.S. Nuclear Regulatory Commission
Office of the Secretary of the Commission
Mail Stop O-4F00
Washington, DC 20555-0001
Hearing Docket
E-mail: hearingdocket@nrc.gov

Atomic Safety and Licensing Board Panel
U.S. Nuclear Regulatory Commission
Mail Stop T-3F23
Washington, DC 20555-0001

U.S. Nuclear Regulatory Commission
Office of the General Counsel
Mail Stop O-14A44
Washington, DC 20555-0001
Susan Vrahoretis, Esq.
Marcia J. Simon, Esq.
Emily Monteith, Esq.
Robert G. Carpenter, Esq.
Sabrina Allen, Paralegal
E-mail:

Dr. Richard E. Wardwell
Administrative Judge
E-mail: richard.wardwell@nrc.gov

susan.vrahoretis@nrc.gov
marcia.simon@nrc.gov
emily.monteith@nrc.gov
robert.carpenter@nrc.gov
kayla.gamin@nrc.gov
sabrina.allen@nrc.gov

Dr. Thomas J. Hiron
Administrative Judge
E-mail: thomas.hiron@nrc.gov

Law Clerks
Sarah B. Ladin
E-mail: sarah.ladin@nrc.gov
Joseph D. McManus
E-mail: joseph.mcmanus@nrc.gov

OGC Mail Center:
OGCMailCenter@nrc.gov

NOTICE OF HEARING (Notice of Evidentiary Hearing and Opportunity to Provide Oral, Written, and Audio-Recorded Limited Appearance Statements)

W. Cindy Gillis, Esq.
522 Seventh Street, Suite 202
Rapid City, S.D. 57701-2756
Counsel for Oglala Sioux Tribe
Email: cindy@mariogonzalezlaw.com

McGuire Law Firm
625 South 14th Street, Suite C
Lincoln, Nebraska 68508
Mark D. McGuire
Counsel for Crow Butte Resources, Inc.
E-mail: mdmcguire46@gmail.com

Winston & Strawn, LLP
101 California Street
San Francisco, CA 94111
Tyson R. Smith, Esq.
Louise Dyble, Esq.
Counsel for Crow Butte Resources, Inc.
E-mail: trsmith@winston.com
ldyble@winston.com

Winston & Strawn, LLP
1700 K Street
Washington, DC 20006
Carlos Sisco, Paralegal
Counsel for Crowe Butte Resources, Inc.
E-mail: csisco@winston.com

Ved Nanda Center for International and
Comparative Law
1075 Waite Drive
Boulder, CO 80303
Andrew Reid, Esq.
Counsel for Oglala Sioux Tribe
E-mail: lawyerreid@gmail.com

[Original signed by Brian Newell.]
Office of the Secretary of the Commission

Dated at Rockville, Maryland
this 27th day of July, 2018