

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

DOCKETED 12/20/07

ATOMIC SAFETY AND LICENSING BOARD PANEL

SERVED 12/20/07

Before Administrative Judges:

Ann Marshall Young, Chair  
Dr. Richard F. Cole  
Dr. Fred W. Oliver

In the Matter of

CROW BUTTE RESOURCES, INC.  
(In Situ Leach Facility, Crawford, Nebraska)

Docket No. 40-8943

ASLBP No. 07-859-03-MLA-BD01

December 20, 2007

ORDER

(Confirming Matters Addressed on December 18, 2007 Telephone Conference)

On December 18, 2007, the Licensing Board held a telephone conference in this proceeding, which involves the application by Crow Butte Resources, Inc. (CBR) to amend its Source Materials License for development of additional uranium in-situ leach mining resources for its North Trend Expansion Area, and several petitions to intervene and requests for hearing that have been filed regarding this application. Appearing on the Applicant's behalf was its counsel, Mark McGuire; appearing on behalf of the Nuclear Regulatory Commission (NRC) Staff were its counsel, Andrea Jones, Marcia Simon, and Molly Barkman; appearing on behalf of Owe Aku and Debra White Plume was their counsel, Bruce Ellison; and appearing on behalf of Slim Buttes Agricultural Development Corporation, Western Nebraska Resources Council, and Thomas Cook was their counsel, David Frankel. It was noted that two previously-filed petitions, for High Plains Development Corporation and Chadron Native American Center, were withdrawn. The following matters were addressed in the conference:

1. Petitioner Debra White Plume's request for an extension to file a reply to the Applicant's and NRC Staff's Responses to her Petition was granted, for good cause shown, based on the late receipt of such responses. Ms. White Plume and all other Petitioners shall electronically file their Replies by 8:00 p.m. EST, Friday, December 28, 2007, to be followed up

with paper copies as previously specified in the Board's December 12, 2007 Order. To accommodate a scheduled network outage at NRC Headquarters, NRC Staff has requested that, in addition to serving electronically Petitioners' replies to Staff's NRC email address, Petitioners also use the following alternative email addresses for service of these replies: Andrea Jones at [andreazj31@yahoo.com](mailto:andreazj31@yahoo.com); and, Marcia Simon at [kasmjs1@starpower.net](mailto:kasmjs1@starpower.net).

2. Any additional affidavits related to Petitioners' standing shall also be filed on December 28. If the NRC Staff or Applicant wishes to respond to these, their responses shall be filed no later than January 4, 2008.

3. In view of the various time zones in which the participants reside, it was also ruled that, unless otherwise specified, all future filings will be due at 8:00 p.m. EST on the deadlines in question.

4. Oral argument will be heard on Petitioners' standing to participate in this proceeding and on their contentions, on January 16, 2008, continuing into January 17 as necessary, at Chadron State College, in Chadron, Nebraska. At a later date, the Licensing Board will notify the participants of more specific information regarding the oral argument.

5. In view of the similarity of Petitioners' contentions, and to promote efficiency and avoid duplication and repetition of arguments, counsel for Petitioners shall, pursuant to 10 C.F.R. § 2.316, to the extent possible consolidate their oral argument on Petitioners' contentions so that, with reasonable exceptions for matters overlooked, one or the other counsel will make the argument for each contention. Similarly, counsel for the Applicant and NRC Staff shall coordinate their oral argument to the extent possible, so that argument on each contention is made by one or the other counsel, with the same reasonable exceptions. The time set aside for the combined arguments of the Petitioners will be equivalent to the combined arguments of the Applicant and NRC Staff; time expended with questioning by Board members will not count against counsel's respective times, and the Board will endeavor to conduct the

session with concern for both efficiency and reasonable flexibility. Counsel shall file statements of which contentions and issues they believe would be appropriate for consolidation and which would not, no later than December 28, 2007.

6. Counsel are advised that the Licensing Board may have questions on standing and the various contentions based on information found in any and all sections of the petitions. In addition, the Licensing Board directs counsel that, particularly to the extent any argument is based on information found in sections of documents other than under obvious headings, specific references should be made to page numbers on which relied-upon information may be found. To make such references more easily usable by the Board and all participants, Petitioners' counsel will, prior to or simultaneously with the filing of Petitioners' Replies, designate one of the five Petitions as the "Reference Petition" for all of the Petitioners regarding arguments on contentions. The "Reference Petition" may include additions from other petitions as necessary (identified as such, noting their specific sources) to assure that all of the Petitioners' information and arguments on contentions are included. Finally, the Board may set different time allotments for argument on the various contentions and will notify the parties of this prior to the oral argument. Any participant may also request in advance that a greater time allotment be set for certain contentions; any such request shall be filed no later than January 4, 2008.

7. In order that all participants may familiarize themselves with the law that the Licensing Board is required to follow in ruling on petitions to intervene, the following matters were addressed:

a. NRC Staff counsel shall, in the near future and in any event before the due date for Replies, advise the Board and all participants of any sections of the NRC regulations that may be relevant to this proceeding, other than 10 C.F.R. Parts 40 and 51, and § 51.45, as well as any guidance documents not already mentioned in the Staff's Response. Staff counsel will also

provide the ADAMS numbers for the application and license at issue to all participants, as soon as possible.

b. With regard to NRC case law that may be relevant to this proceeding, the following information was provided, in addition to that already listed in the Board's December 12 Order: Regarding Petitioners' request that this proceeding be conducted in accordance with the procedures set forth in 10 C.F.R. Part 2, Subpart G, all participants were advised to familiarize themselves with a detailed interpretation of the regulatory standards for use of Subpart G found in a recent Licensing Board decision for the *Vermont Yankee* proceeding, *Entergy Nuclear Vermont Yankee, L.L.C., and Entergy Nuclear Operations, Inc.* (Vermont Yankee Nuclear Power Station, LBP-04-31, 60 NRC 686 (2004). If Staff counsel is aware of any other case law interpreting Subpart G procedures, they will also provide that to all participants.

c. With regard to the matter of discretionary standing, also sought by Petitioners, the participants were advised of the Commissioners' position on such matters as expressed in the *Siemaszko* enforcement proceeding, *Andrew Siemaszko*, CLI-06-16, 63 NRC 708 (2006).



UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

In the matter of )  
)  
CROWE BUTTE RESOURCES, INC. ) Docket No. 40-8943-MLA  
)  
In-situ leach Uranium Recovery Facility, )  
Crawford, Nebraska )  
)  
(License Amendment for the North Trend )  
Expansion Area) )

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing LB ORDER (CONFIRMING MATTERS ADDRESSED ON DECEMBER 18, 2007 TELEPHONE CONFERENCE) have been served upon the following persons by U.S. Mail, first class, or through NRC internal distribution.

Office of Commission Appellate  
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U. S. Nuclear Regulatory Commission  
Washington, DC 20555-001

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Docket No. 40-8943-MLA  
LB ORDER (CONFIRMING MATTERS ADDRESSED  
ON DECEMBER 18, 2007 TELEPHONE CONFERENCE)

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[Original signed by Nancy Greathead]

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Office of the Secretary of the Commission

Dated at Rockville, Maryland  
this 20<sup>th</sup> day of December 2007