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OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of:)	
)	Docket No. 40-8943
CROW BUTTE RESOURCES, INC.)	
)	ASLBP No. 07-859-03-MLA-BD01
(License Amendment Application for North)	
Trend Expansion Project))	

UNOPPOSED MOTION FOR STAY OF DISCLOSURE OBLIGATIONS

Applicant Crow Butte Resources, Inc. ("Crow Butte") files this unopposed motion pursuant to 10 C.F.R. § 2.323 requesting that the Atomic Safety and Licensing Board ("Board") stay any discovery obligations under 10 C.F.R. § 2.336 regarding the three contentions admitted by the Board in LBP-08-06, dated April 29, 2008. Crow Butte requests that the disclosure suspension remain in effect until 30 days after the Commission decides the appeals from LBP-08-06 filed by Crow Butte and the NRC Staff on May 9, 2008, or 30 days after the Board makes a determination regarding the hearing procedures to be used in this proceeding, whichever is later. The suspension would apply equally to the obligations that apply to all parties. Counsel for the NRC Staff and the intervenors have authorized Crow Butte to represent that they do not oppose the motion to stay discovery.¹

Through the instant motion, Crow Butte seeks to avoid the burden and expense of unnecessary efforts should any or all of the admitted contentions be dismissed. Further, should

¹ Counsel for Crow Butte certifies that he contacted counsel for the intervenors and the NRC Staff on May 8, 2008, regarding this motion pursuant to 10 C.F.R. § 2.323(b). Both parties have indicated that do not oppose the motion.

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the contentions survive, the intervenors will not be adversely affected by a delay in disclosure of relevant information. The draft Environmental Assessment and Technical Report are not anticipated to be published for several months, if not longer, and a short delay such as that contemplated here is not reasonably anticipated to adversely affect the intervenors' preparation for a hearing, which has not yet been scheduled.

Further, in LBP-08-06, the Board did not rule on the hearings procedures to be used in this proceeding. LBP-08-06, slip op. at 126-128. While the general discovery procedures in 10 C.F.R. § 2.336 would apply in a default Subpart L proceeding, different discovery obligations would apply in the event that the hearing is held under the procedures in Subpart G. Moreover, it would be more efficient for all parties to complete all disclosures at the same time (*i.e.*, after the Board rules on the admissibility of Contention E).

DISCUSSION

The Board has authority to adjust discovery deadlines. A presiding officer "has all the powers necessary" to "take appropriate action to control the prehearing and hearing process." 10 C.F.R. § 2.319. A Board "may exercise the powers of a presiding officer as granted by § 2.319." *Id.* § 2.321(c). Certain general discovery obligations must be met within thirty days of the order granting a request for hearing or petition to intervene, unless "otherwise ordered by the Commission, the presiding officer, or the Atomic Safety and Licensing Board assigned to the proceeding." *Id.* § 2.336(a). Thus, the Commission's rule provide the Board with ample authority to suspend the discovery deadline for Contentions A, B, and C.

Discovery on Contentions A, B, and C should be suspended until resolution of the dispositive appeals filed by Crow Butte and the NRC Staff with the Commission on May 9,

2008, and the Board's decision on the hearing procedures to be used in this proceeding. The disclosures mandated by 10 C.F.R. § 2.336(a) would require intervenors, the NRC Staff, and Crow Butte to dedicate personnel and incur expenses which may prove unnecessary. It would be burdensome for all parties to expend these resources only to have the Commission dismiss some or all of the admitted contentions, or to have the Board decide to apply Subpart G procedures.

Regardless, the intervenors and the NRC Staff would not be harmed if the contention is dismissed. If the contention survives, intervenors will not suffer any material harm from the requested stay, as the hearing is not imminent. Thus, resource conservation and fairness counsel in favor of the Board suspending the disclosure requirements for Contentions A, B, and C until 30 days after the Commission rules on the appeals filed by the NRC Staff and Crow Butte, or 30 days after the Board makes a determination regarding the hearing procedures to be used in this proceeding, whichever is later.

CONCLUSION

For all the above reasons, the Board should grant the unopposed motion to suspend disclosure obligations.



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Dated at Washington, District of Columbia
this 9th day of May 2008

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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CERTIFICATE OF SERVICE

I hereby certify that copies of "UNOPPOSED MOTION FOR STAY OF DISCLOSURE OBLIGATIONS" in the captioned proceeding have been served on the following by deposit in the United States mail, first class, this 9th day of May 2008. Additional e-mail service, designated by *, has been made this same day, as shown below.

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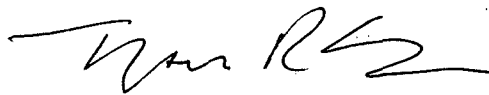
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