RAS B-46

June 9, 2008

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)	)	

APPLICANT'S CONSOLIDATED RESPONSE REGARDING FOREIGN OWNERSHIP AND HEARING PROCEDURES

INTRODUCTION

In accordance with the May 2, 2008 Order of the Atomic Safety and Licensing Board in this matter, Crow Butte Resources, Inc. ("Crow Butte" or "Applicant") hereby submits its consolidated response to the supplemental briefs on Contention E filed by petitioners and the NRC Staff on May 23, 2008.[1] As is discussed further below, Crow Butte agrees with the NRC Staff with respect to the applicable legal standards and the inadmissibility of proposed Contention E. Crow Butte also agrees with the NRC Staff that the appropriate procedures to be used in this Part 40 license amendment proceeding are those in 10 C.F.R. Part 2, Subpart L. *See* 10 C.F.R. § 2.310(a).

For the reasons discussed further below, the petitioners have failed to demonstrate that Contention E is admissible. There is no prohibition on foreign ownership of source material licensees. Previously-resolved issues regarding application of Nebraska state law are not

[1] *See* "Petitioners' Brief Concerning Contention E and Subpart G," dated May 23, 2008 ("Pet. Brief"), and "NRC Staff's Response to Board's Order of April 29, 2008," dated May 23, 2008.

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material to the instant license amendment requested by Crow Butte. Similarly, the historical ownership of the Crow Butte project is not material to the specific license amendment request at issue. And, in any event, the new arguments, documents, and requests included in the petitioners' brief were not included in the initial hearing request, which was filed more than six months ago, and should be struck. Further, to the extent petitioners seek enforcement against Crow Butte or a moratorium on review of Crow Butte's license amendment application, this license amendment proceeding is not the proper forum. Finally, the petitioners request to conduct the proceeding under the procedures in 10 C.F.R. Part 2, Subpart G, must be denied because that hearing track is not available for Part 40 license amendment proceedings.

DISCUSSION

A. Neither the Atomic Energy Act Nor Commission Regulations Prohibit Foreign Ownership of Source Material Licensees

Despite a lengthy discourse on the statutory and regulatory provisions related to foreign ownership of power reactor and source material licensees, petitioners ultimately acknowledge the fundamental shortcomings of their position in response to the two specific questions posed by the Board in LBP-08-06. First, petitioners acknowledge that the bar on foreign ownership in Section 103d. of the Atomic Energy Act ("AEA") applies only to production and utilization facilities and not to source material licensees. Pet. Brief, at 7-8. Second, petitioners acknowledge that 10 C.F.R. § 40.38 is "not directly applicable" to the source material license amendment at issue. *Id.*, at 21.

Despite the absence of a prohibition on foreign ownership, petitioners go on to argue that "AEA Sections 62 and 69 Directly Apply to Bar Foreign Ownership of Applicant." Pet. Brief, at 11. Neither section, however, contains a prohibition on foreign ownership. As

discussed in Crow Butte's brief on foreign ownership issues, the NRC implements Sections 62 and 69 of the AEA (among others) though its regulations in 10 C.F.R. Part 40, which themselves do not contain any prohibition on foreign ownership. There simply is no prohibition on foreign ownership of Crow Butte.

Further, to the extent that petitioners urge the Board to apply Commission precedent regarding application of Section 103d. to source material licensees, this would be contrary to the plain text of the Atomic Energy Act and NRC regulations — neither of which bar foreign ownership of source material licensees. The cases cited by petitioners in Section I of their brief (pages 27 to 35) involve nuclear power reactors, which are expressly subject to Section 103d. and 104d. of the AEA. And, as petitioners acknowledge, a prohibition on foreign ownership did not apply in the one case involving a materials licensee. Pet. Brief, at 30-31.

Likewise, the various guidance documents cited by petitioners do not prohibit foreign ownership of Crow Butte. The NRC's "Standard Review Plan on Foreign Ownership, Control, or Domination," 64 Fed. Reg. 52355 (Sept. 28, 1999), is only "used by the staff to analyze applications for reactor licenses, or applications for the transfer of control of such licenses, with respect to the limitations contained in sections 103 and 104 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 50.38 against issuing a license for a production or utilization facility to an alien or an entity that is owned, controlled, or dominated by foreign interests" (emphasis added). The SRP has no applicability to Part 40 source material licensees. Also, the Department of Energy Order (Order DOE 5634.3) cited by petitioners does not apply to NRC licensees such as Crow Butte, and, in any event, does not prohibit foreign ownership even where applicable.

Moreover, in this license amendment proceeding, the common defense and security considerations under 10 C.F.R. § 40.32(d) are not pertinent. Crow Butte does not seek authorization to export the uranium mined at its facility as part of the license amendment application.[2] The Commission has recognized in previous Part 40 license amendment proceedings that, where the amendment does not involve the import or export of nuclear materials, the common defense and security considerations of 10 C.F.R. § 40.32(d) are not implicated. *See Kerr-McGee Corporation* (West Chicago Rare Earths Facility), CLI-82-2, 15 NRC 232, 238 n.3 (1982).

Regardless, petitioners' new arguments were not advanced in their initial request for a hearing. The contention pleading criteria set forth in 10 C.F.R. § 2.309 are mandatory and must be scrupulously followed. As the Commission has stated, "[i]f any one of these requirements is not met, a contention must be rejected." *Arizona Public Service Co.* (Palo Verde Nuclear Generating Station, Units 1, 2, and 3), CLI-91-12, 34 NRC 149, 155 (1991); *accord Duke Energy Corp.* (Oconee Nuclear Station, Units 1, 2, and 3), CLI-99-11, 49 NRC 328, 335 (1999); *see* "Final Rule, Rules of Practice for Domestic Licensing Proceedings; Procedural Changes in the Hearing Process, Statement of Considerations," 54 Fed. Reg. 33168, 33171 (Aug. 11, 1989). The contention admissibility requirements were specifically adopted by the Commission "to raise the threshold bar for an admissible contention" and prohibit "vague,

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[2] Petitioners implicitly acknowledge that the export of source material is outside the scope of the instant proceeding by referencing the provisions of the AEA that impose a separate, independent licensing obligation for export of material. *See* Pet. Brief, at 12 (citing AEA Section 126).

unparticularized contentions" resulting from "notice pleading with the details . . . filled in later."[3] *Oconee,* CLI-99-11, 49 NRC at 334, 338. Here, petitioners took advantage of the limited opportunity presented by the Board to address three specific questions, and instead seek to expand their initial petition to encompass new arguments not previously advanced in support of the proposed Contention E.

B. Issues Involving Application of Nebraska State Law Are Outside the Scope of the License Amendment Proceeding

In their brief, petitioners raise a host of issues related to Crow Butte's compliance with Nebraska statutes. These issues are outside the scope of this proceeding, which is limited to Crow Butte's compliance with the Federal AEA and NRC regulations. The requirements of State law are for State bodies to determine, and are beyond the jurisdiction of NRC adjudicatory bodies. *Northern States Power Company* (Tyrone Energy Park, Unit 1), ALAB-464, 7 NRC 372, 375 (1978).

In any event, as discussed below, the State of Nebraska has definitively addressed and resolved the concerns with foreign ownership of Crow Butte. Moreover, the petitioners' brief fails to accurately describe the history of petitioner Western Nebraska Resources Council's

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[3] The Commission toughened its contention admissibility standards in 1989 because in prior years "licensing boards had admitted and litigated numerous contentions that appeared to be based on little more than speculation." *Oconee,* 49 NRC at 334. "Admitted intervenors often had negligible knowledge of nuclear power issues and, in fact, no direct case to present, but instead attempted to unearth a case through cross-examination." *Id.* (citing "Proposed Rule, Contentions," 51 Fed. Reg. 24365, 24366 (July 3, 1986)). Serious hearing delays — of months or years — occurred, as licensing boards admitted and then sifted through poorly defined or supported contentions. *See Oconee,* 49 NRC at 334. Congress thus called upon the Commission to make "fundamental changes" in the public hearing process. *Id.* (citing H.R. Rep. No. 97-177, at 151 (1981).

("WNRC's") effort to dissolve Ferret Exploration Company of Nebraska ("FEN") and its wholly owned subsidiary, Crow Butte Land Company ("CBL").

For example, Petitioners allege that the "Nebraska Attorney General (1) caused the Dawes County Attorney to commence forfeiture proceedings where the mineral leases were located pursuant to Neb. Rev. Stat. § 76-408." Pet. Brief, at 42. This is inaccurate. No forfeiture proceedings were commenced by the Dawes County Attorney regarding FEN and/or CBL.

Petitioners also state that the "Nebraska Attorney General . . . (2) caused the NE Secretary of State to commence an action to forfeit Applicant's corporate charter and dissolve Applicant and its subsidiary." *Id.* Again, this is an inaccurate statement. No such action was initiated by the Nebraska Secretary of State. In fact, WNRC filed a (unsuccessful) mandamus action to compel the Secretary of State to commence dissolution proceedings.

In sharp contrast, what occurred was a dialogue between FEN/CBL counsel and the Nebraska Attorney General regarding the alien ownership issues. The result was Mr. Mark McGuire's November 7, 1989 letter to Attorney General Spire with a memorandum from Mr. J. F. Welborn, Assistant Secretary of FEN, outlining changes that were in process regarding the structuring of FEN.[4] Subsequently, the Attorney General determined that:

> (1) FEN and CBL are in compliance with Nebraska law regarding alien ownership; and
>
> (2) ". . . forfeiture proceedings concerning the leases, forfeiture of the charter, and dissolution of the corporations and delay in the permitting process for uranium mining in the Chadron area are no

[4] Both documents were attached to petitioners' May 23, 2008 brief, but were not numbered or lettered.

> longer necessary. The Attorney General will contact and inform the Dawes County Attorney, Secretary of State, and Department of Environmental Control of this decision."[5]

WNRC erroneously suggests the litigation it commenced prompted the restructuring of FEN and CBL. However, the changes in structure were made as reflected in Mr. Mark McGuire's November 7, 1989, letter. WNRC's mandamus action was not filed until June 8, 1990, some seven months later. The result of that litigation was an Order of the District Court of Lancaster County, Nebraska, dated September 29, 1993, dismissing WNRC's Amended Petition for Writ of Mandamus (attached as Exhibit "A"). The District Court's Order clearly held "on April 9, 1990, neither FEN nor CBL were in violation of § 76-406; therefore, the [Nebraska Secretary of State] was under no duty to certify said corporations for dissolution." WNRC appealed this decision to the Nebraska Court of Appeals. The Secretary of State moved for summary affirmance on January 18, 1994. In response, WNRC requested, and the State granted, a stipulation so that WNRC could dismiss its appeal. The stipulation was granted and the appeal was dismissed February 1, 1994.

Aside from correcting WNRC's tortured rendition of history, the fact is that FEN and CBL were judicially determined to be in compliance with Nebraska law and its Alien Ownership Act §§ 76-402 through 76-415. WNRC's incomplete and inaccurate representations are nothing more than a 15-year old collateral attack on a case WNRC filed, tried, lost, and abandoned on appeal. Even if somehow within the scope of this NRC proceeding, the baseless allegations do not support an admissible issue.

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[5] *Attorney General Press Release*, State of Nebraska, Department of Justice, dated January 29, 1990. This document was attached to petitioners' May 23, 2008 brief.

C. Issues Related to Historical Ownership of Crow Butte Do Not Support an Admissible Contention And Are Beyond the Scope of the Proceeding

Petitioners make several other unsupported and inflammatory allegations regarding ownership of Crow Butte and Crow Butte's compliance with NRC regulations. *See, e.g.*, Pet. Brief, at 7. These arguments consist of nothing more than baseless speculation and are again, in any event, immaterial to the specific license amendment request at issue. At bottom, the groundless attacks serve only to highlight the utter lack of a cognizable, admissible contention in this license amendment proceeding.

As an initial matter, the petitioners arguments regarding the lack of notice of the change in ownership of Crow Butte are simply incorrect. On May 13, 1998, Crow Butte notified the NRC "pursuant to 10 CFR § 40.46" of an upcoming change in the ownership of the shareholders of Crow Butte Resources.[6] In that letter, Crow Butte informed the NRC that Cameco had agreed to purchase all of the shares of Uranerz U.S.A., Inc. — 79 of 100 shares, which would give Cameco a controlling ownership interest in Crow Butte. The letter also sought NRC confirmation that the notification satisfied 10 C.F.R. § 40.46. On June 5, 1998, the NRC responded, notifying Crow Butte that "the NRC staff finds the proposed change in shareholder ownership to be acceptable" and consenting to the change.[7] The NRC also determined that no

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6 *See* Ltr. from Stephen P. Collings, President, Crow Butte Resources, to Joseph J. Holonich, Chief, Uranium Recovery Branch, NRC, dated May 13, 1998 (Accession No. 9805260014) (Exhibit "B").

7 *See* Ltr. from Joseph J. Holonich, Chief, Uranium Recovery Branch, NRC, to Stephen P. Collings, President, Crow Butte Resources, dated June 5, 1998 (Accession No. 9806120319) (Exhibit "C"). The NRC also found that Crow Butte provided the information identified in NRC Information Notice (IN) 89-25, "Unauthorized Transfer of Ownership or Control of Licensed Activities," dated March 7, 1989 (Accession No. ML031180579) (Exhibit "D").

amendment to Crow Butte's source material license was necessary and attached a Technical Evaluation Report assessing the proposed change in ownership. Thus, contrary to petitioners' unsupported arguments, Crow Butte clearly notified the NRC of the proposed change in ownership, and sought (and received) prior approval, in writing, of the proposed change in conformance with 10 C.F.R. § 40.46.

In their brief, petitioners also request that the Board and the NRC "commence an investigation with help of US Department of Justice and FBI as needed to ascertain the true nature of the transactions [discussed in the brief]" and further request that the NRC "exercise its discretion to suspend all of Cameco's license and license applications." Pet. Brief, at 7; *see also*, *id.*, at 18. These requests are outside the scope of this license amendment proceeding. Anyone who seeks the suspension of a license should not file a petition for intervention, but, instead, must file a petition under 10 C.F.R. § 2.206 requesting that the Commission initiate enforcement action pursuant to 10 C.F.R. § 2.202. *Texas Utilities Electric Co.* (Comanche Peak Steam Electric Station, Units 1 and 2), CLI-92-12, 36 NRC 62, 67, 77-78 (1992).

Moreover, to the extent that petitioners would base a proposed contention on the historic actions of Crow Butte's owners and management, the Commission has placed strict limits on "management" and "character" contentions. "Allegations of management improprieties or poor 'integrity' . . . must be of more than historical interest: they must relate directly to the proposed licensing action." *Georgia Institute of Technology* (Georgia Tech Research Reactor, Atlanta, Georgia), CLI-95-12, 42 NRC 111, 120 (1995). License amendment proceedings are not a forum "to litigate historical allegations" or past events with no direct bearing on the challenged licensing action. *See Georgia Power Co.* (Vogtle Electric Generating Plant, Units 1

and 2), CLI-93-16, 38 NRC 25, 36 n.22 (1993). As a rule, license amendment applications do not "'throw[ ] open an opportunity to engage in a free-ranging inquiry into the "character" of the licensee.'" *Commonwealth Edison Co.* (Zion Nuclear Power Station, Units 1 and 2), CLI-99-4, 49 NRC 185, 189 (1999) (citing *Vogtle,* 38 NRC at 32).

Here, the changes in ownership took place years ago and were expressly approved by the NRC. And, importantly, the petitioners make no effort to show how these historical events have a direct bearing upon the discrete license amendment request at issue. There is no change in ownership associated with the amendment application. The Board should not permit admission of contentions premised on a general fear that a domestic licensee (with a foreign grandparent) cannot be trusted to follow regulations of any kind. The petitioners' various efforts to overcome their initial failure to identify a specific illegality or safety flaw in the license amendment application are highly generalized and do not come close to meeting the Commission's contention rule.

Finally, in their brief, petitioners have raised new legal theories and introduced new documents without addressing the criteria for new or amended contentions in 10 C.F.R. § 2.309(f)(2). An intervention petitioner has an ironclad obligation to examine the publicly available documentary material pertaining to the facility in question with sufficient care to enable the petitioner to uncover any information that could serve as the foundation for a specific contention. As discussed above, the contention admissibility requirements were specifically adopted by the Commission "to raise the threshold bar for an admissible contention" and prohibit "vague, unparticularized contentions" resulting from "notice pleading with the details . . . filled in later." *Oconee,* CLI-99-11, 49 NRC at 334, 338. The documents submitted by petitioners in

their brief on foreign ownership are not new; they existed prior to the close of the opportunity to request a hearing. Accordingly, the Board should strike the portion of the petitioners' brief that raises new legal theories or new bases for the proposed Contention E.

D. The Proceeding Should Be Conducted Under Subpart L Procedures

In their initial request for a hearing, the petitioners requested that the hearing be conducted under 10 C.F.R. Part 2, Subpart G, "pursuant to Section 2.310(d) ... because [its] contentions necessitate resolution of issues of material fact relating to the occurrence of past events, i.e., whether CBR disputes any of the Relevant Facts [stated by petitioners]." Corrected Reference Petition ("Pet."), at 4.

As an initial matter, petitioners' reliance on section 2.310 is misplaced as it applies only to nuclear power reactors and not to license amendment proceedings under 10 C.F.R. Part 40. Licensee-initiated amendment proceedings under Part 40, such as the amendment at issue in this proceeding, are conducted pursuant to the procedures in 10 C.F.R. Part 2, Subpart L or Subpart N. *See* 10 C.F.R. §§ 2.310(a) and (h). Moreover, 10 C.F.R. § 2.1200 provides that Subpart L procedures govern all but a select few proceedings. In promulgating Section 2.310, the Commission stated that unless one of the applications specified in paragraphs (b) through (h) are at issue, "the listed proceedings are to be conducted under Subpart L."[8] *See* "Final Rule: Changes to Adjudicatory Process," 69 Fed. Reg. 2182, 2206

[8] The regulations governing the selection of hearing procedures authorize use of Subpart G procedures in only four circumstances: (1) enforcement matters, § 2.310(b); (2) licensing and construction of enrichment facilities, § 2.310(c); (3) certain power reactor licensing proceedings, § 2.310(d); and (4) high-level waste repository proceedings, § 2.310(f). None of these provisions applies to a Part 40 source material license amendment proceeding.

(Jan. 14, 2004) (emphasis added). Thus, according to the plain language of the Commission's regulations, the only available hearing procedures in the instant case are those in Subpart L.[9]

Even if Subpart G procedures were hypothetically available, the Commission's rules of practice at 10 C.F.R. § 2.310(d) list only two criteria that would entitle a petitioner to a hearing under Subpart G procedures:

> (1) The Board finds that (a) a contention necessitates resolution of "a dispute of material fact concerning the occurrence of a past activity" *and* (b) that "the credibility of an eyewitness may reasonably be expected to be an issue" in resolving that dispute; or
>
> (2) A proceeding issue involves "issues of motive or intent of the party or eyewitness material to the resolution of the contested matter."

See Entergy Nuclear Vermont Yankee, LLC & Entergy Nuclear Operations, Inc. (Vermont Yankee Nuclear Power Station), LBP-04-31, 60 NRC 686, 694-695 (2004). Subpart G is not appropriate here because petitioners did not allege existence of issues that satisfy the criteria for Section 2.310(d). First, with respect to the first criterion, the petitioners only alleged resolution of facts relating to past events — facts that are not even material to the specific license amendment request at issue. The petitioners did not address the second prong of that test in their request for hearing — that is, the petitioners failed to allege that the credibility of an eyewitness may be at issue. Moreover, with respect to the second criterion, the petitioners did not assert in their petition that that the proceeding involves the motive or intent of Crow Butte or eyewitnesses.

Petitioners are not entitled to a Subpart G hearing because of a high degree of public interest in the proceeding, because the issue is controversial, or because discovery and

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[9] Under certain circumstances not present here (*e.g.*, agreement among the parties), the procedures in 10 C.F.R. Part 2, Subpart N, could be used.

cross-examination are allegedly required to assure public confidence in the proceeding and its decisions. *Vermont Yankee*, 60 NRC at 697. Alleging generalized aspersions on the tactics or motives of the parties, their employees, members, lawyers, or representatives will not satisfy the "credibility" or "motive" elements of either criterion so as to trigger a Subpart G proceeding. *Id.*, at 700. Further, the fact that a witness may be a paid employee or dedicated member of a party, does not, *per se,* create a presumption that his or her credibility or motives are in such doubt that a Subpart G proceeding is required. *Id.*

Accordingly, even if Subpart G procedures were available for Part 40 license amendment proceedings, the petitioners would not have satisfied the criteria for conducting the hearing under Subpart G.

CONCLUSION

For the all foregoing reasons, proposed Contention E should not be admitted in this proceeding. In addition, any hearing should be conducted pursuant to the procedures in 10 C.F.R. Part 2, Subpart L.

Respectfully submitted,

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

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)	)	

CERTIFICATE OF SERVICE

I hereby certify that copies of "APPLICANT'S CONSOLIDATED RESPONSE REGARDING FOREIGN OWNERSHIP AND HEARING PROCEDURES" in the captioned proceeding have been served on the following by deposit in the United States mail, first class, this 9th day of June 2008. Additional e-mail service, designated by *, has been made this same day, as shown below.

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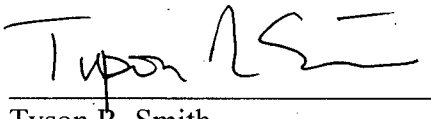

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EXHIBIT A

IN THE DISTRICT COURT OF LANCASTER COUNTY, NEBRASKA

STATE OF NEBRASKA, ex rel. WESTERN NEBRASKA RESOURCES COUNCIL, INC., Petitioner, v. ALLEN J. BEERMANN, SECRETARY OF STATE TO THE STATE OF NEBRASKA, Respondent.	Docket 451	Page 098
	ORDER	

This is a mandamus action which comes before the court on the petitioner's "Amended Petition for Writ of Mandamus" and the "Third Alternative Writ of Mandamus" served on the respondent on December 10, 1990. The respondent's Amended Answer was filed on March 19, 1991.

As set forth in State ex rel. FirsTier Bank v. Buckley, 244 Neb. 36, 41, _____N.W.2d_____ (1993),

> [m]andamus is a law action. It is defined as an extraordinary remedy, not a writ of right, issued to complete the performance of a purely ministerial act or duty, imposed by law upon an inferior tribunal, corporation, board, or person, where (1) the relator has a clear legal right to the relief sought, (2) there is a corresponding clear duty existing on the part of the respondent to perform the act in question, and (3) there is no other plain and adequate remedy available in the ordinary course of the law [Citations omitted.]
>
> To warrant the issuance of a peremptory writ of mandamus to compel the performance of a legal duty to act, (1) the duty must be imposed by law, (2) the duty must still exist at the time the writ is applied for, and (3) the duty to act must be clear. Mandamus lies only to enforce performance of a mandatory ministerial

> act or duty and is not available to control judicial discretion. The general rule is that an act is ministerial if there is an absolute duty to perform in a specified manner upon the existence of certain facts. [Citation omitted.]

Since the initial petition was filed on April 9, 1990, the relevant facts are those that existed on April 9, 1990, relevant to whether the respondent failed to perform a ministerial act or duty imposed by law.

On September 18, 1989, the Nebraska Attorney General determined that Ferrett Exploration Company of Nebraska, Inc., [FEN] was in violation of the Nebraska Alien Ownership of Land Act, Neb. Rev. Stat. §§ 76-402 to -415 (Reissue 1986) and stated, in a press release, that his office would be contacting the respondent to begin an action to forfeit the charter of and dissolve FEN and its wholly owned subsidiary Crow Butte Land Company [CBL]. Pursuant to Neb. Rev. Stat. § 21-2093 (Reissue 1987), a corporation could be dissolved, if it ". . . continued to exceed or abuse the authority conferred upon it by law."

After September 18, 1989, FEN restructured its Board of Directors and ownership of shares. This resulted in the Attorney General concluding, on January 29, 1990, that FEN and CBL had come into compliance with the Nebraska Alien Ownership of Land Act and that no dissolution proceedings should be commenced. This conclusion was based, in part, on information received from counsel for FEN and CBL. This information included, inter alia, the following:

(a) CBL was a Nebraska corporation, having five directors, three of whom were U.S. citizens and two who were non-U.S.

citizens. It had no managers or executive officers who were aliens. One hundred percent of the stock of CBL was owned by FEN.

(b) FEN was a Nebraska corporation. It had nine directors, five of whom were U.S. citizens and four who were non-U.S. citizens. Its stock was owned in the following configuration:

(1) Ferret Exploration Company, Inc. a Delaware Corporation	96 Shares
(2) Geomex Minerals, Inc., a Delaware Corporation	1 Share
(3) First Holding Company, a Colorado Corporation	1 Share
(4) Uranerz USA, Inc., a Colorado Corporation	1 Share
(5) Korea Electric Power Corporation, a Republic of Korea Corporation	1 Share
TOTAL SHARES ISSUED AND OUTSTANDING	100 Shares

(c) Ferret Exploration Company, Inc., [FEC] the majority stock owner of FEN, was a Delaware corporation, with three directors, two of whom were U.S. citizens and one who was a Canadian Citizen. One hundred percent of the stock of FEC was owned by First Holding Company, a Colorado corporation. The officers of FEC were all U.S. citizens and it had no persons acting in a managerial capacity who were not officers.

There is nothing in the evidence before the court which suggests that the foregoing described ownership and directorships of FEN and CBL was different on April 9, 1990.

Neb. Rev. Stat: § 76-406 (Reissue 1986) provided as follows:

> No corporation organized under the laws of this state

> and no corporation organized under the laws of any other state or country, doing business in this state, which was organized to hold or is holding real estate, except as provided in Sections 76-404 and 76-412 to 76-414, shall elect aliens as member of its board of directors or board of trustees in numbers sufficient to constitute a majority of such board, nor elect aliens as executive officers or managers nor have a majority of its capital stock owned by aliens.

Only CBL "was organized to or is holding real estate" interest in Nebraska. CBL did not have aliens constituting a majority of its Board of Directors; did not have aliens serving as executive officers or managers; and did not have a majority of its capital stock owned by aliens. Therefore, CBL was not an "alien" corporation under § 76-406.

FEN owned 100% of the stock of CBL. FEN's directorships, stock ownership and managers and executive officers were, on April 9, 1990, as set forth previously. FEN, likewise, was not an "alien" corporation under § 76-406.

While it may not be necessary to analyze the corporate ownership of FEC, the principle shareholder of FEN, the facts show that 100% of the stock of FEC was owned by First Holding Company, a Colorado corporation. The officers of FEC were all U.S. citizens and it had no persons acting in a managerial capacity who were not officers. FEC was not an "alien" corporation under § 76-406.

On April 9, 1990, neither FEN nor CBL were in violation of § 76-406; therefore, the respondent was under no duty to certify said corporation for dissolution. In making this determination, the court has not addressed the question of whether FEN and CBL are exempt from the provisions of the Nebraska Alien

Ownership of Land Act under the "industrial exception" of § 76-413.

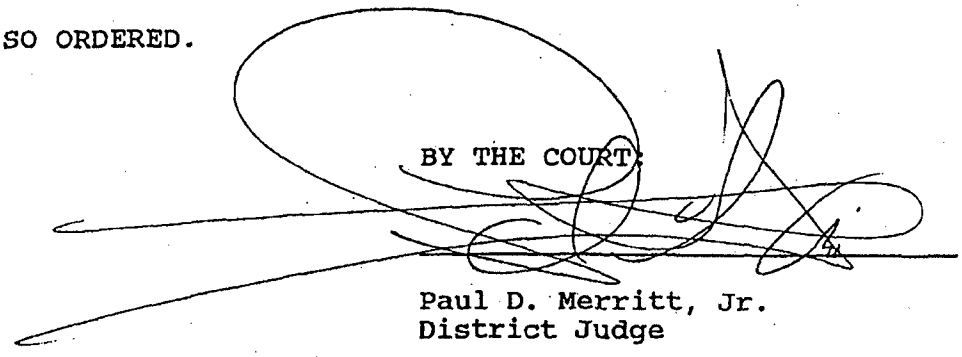
The petitioner's Amended Petition is dismissed, at the petitioner's costs.

A copy of this order is mailed to counsel.

Dated this 29th day of September, 1993.

SO ORDERED.

BY THE COURT:



Paul D. Merritt, Jr.
District Judge

EXHIBIT B

CROW BUTTE RESOURCES, INC.

216 Sixteenth Street Mall, Suite 810
Denver, Colorado 80202

(303) 825-2266
(303) 825-1544 - FAX

May 13, 1998

Mr. Joseph J. Holonich, Chief
Uranium Recovery Branch
Division of Waste Management,
NMSS (T-7-J9)
Office of Nuclear Material Safety
and Safeguards
U.S. Nuclear Regulatory Commission
11545 Rockville Pike
Rockville, MD 20850

40-8943

Re: Docket No. 40-8943
License No. SUA-1534

Dear Mr. Holonich:

Crow Butte Resources, Inc. (CBR) is the operator of the Crow Butte *in-situ* leach (ISL) uranium mine near Crawford, Nebraska. CBR holds Source Material License SUA-1534 with the USNRC for the operation of the Crow Butte mine. This letter is written pursuant to 10 CFR §40.46 to inform the U.S. Nuclear Regulatory Commission (USNRC) of an upcoming change in the ownership of one of the shareholders of CBR.

Currently, the shareholders of CBR are Geomex Minerals, Inc., a Delaware Corporation, (16 shares); Kepco Resources America, Ltd., a Colorado Corporation, (5 shares); and Uranerz U.S.A., Inc., a Colorado Corporation, (79 shares). Cameco Corporation has entered into an agreement to purchase all of the shares of Uranerz U.S.A., Inc. with closing likely to occur in late summer or early fall of this year pending completion of the due diligence process. Both before and after the purchase is complete, the shareholders of CBR and their share ownership will be the same; only the ownership of one of the CBR shareholders will have changed.

In keeping with the information requirements of 10 CFR §40.46, as outlined in NRC Information Notice 89-25, Rev. 1, the following points detail the effects of the share transfer on the license:

1) There will be no change to the name of CBR or its shareholders. Rather, Cameco Resources (U.S.) Inc., a Nevada Corporation and a wholly owned subsidiary of Cameco Corporation, will acquire 100% of Uranerz U.S.A., Inc.

2) There will be no change in the regulatory contacts at CBR.

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NLCS

3) There will be no changes to the personnel listed in the license responsible for radiation safety or licensed material use. In addition, it is not contemplated at this time that changes will be made to the officers of CBR so that current officers (named below) will continue to serve following the purchase. The officers of CBR will be:

Steve Collings	President and CEO
Steve Magnuson	Vice President and Secretary
Ralph Knode	Vice President
William Doty	Treasurer
Jeff Welborn	Assistant Secretary

If the transaction closes, the three current appointees of Uranerz U.S.A., Inc. to the CBR Board of Directors will resign from the Board as a condition of the closing, and three new directors will be appointed by Uranerz after the purchase has been completed. The CBR Board of Directors will then consist of the three new appointees together with four of the current directors, Steve Collings, Crew Schmitt, B. Y. Lee and Gerald Grandey. The names of the new directors will be provided as soon as they are known.

4) There will be no changes to the organization, location, facilities, equipment, or procedures.

5) There will be no changes in use, possession, location or storage of licensed material.

6) As the facility will continue to operate as it is now, all records (i.e., surveillance, decommissioning, etc:) will continue to be collected and maintained in accordance with the license and NRC regulations.

7) As the facility will continue to be operated in accordance with its permit, no decontamination or decommissioning is required.

8) The restoration and decommissioning commitments will be maintained per the existing permit. The financial surety arrangement will remain unaffected by the transfer of ownership in Uranerz U.S.A. The letters of credit issued in the name of CBR will remain in effect, and CBR will maintain responsibility for decommissioning and restoration in accordance with the existing plan.

9) There is no action regarding this purchase which would generate a license amendment or a revision to the Operations Plan.

10) Cameco Resources U.S., Inc. has indicated that it will provide any assurances necessary, in writing, should they be required.

In short, the purchase will not affect the day to day management and operation of CBR or impair CBR's ability to comply with the requirements of the Source Material license and NRC regulations. The shareholders will remain the same, and CBR will continue to have its own officers, directors, employees and other corporate attributes.

CBR requests confirmation from the NRC that this notification meets the NRC's notification requirements under 10 CFR §40.46. As time is of the essence, CBR would appreciate the above confirmation as soon as possible. We will be contacting you in the near future to discuss the timetable for the confirmation.

If you have any questions, or you require further information, please call me.

Sincerely,

Stephen P. Collings

Stephen P. Collings
President, Crow Butte Resources, Inc.

cc: Ross Scarano, USNRC

EXHIBIT C

June 5, 1998

Crow Butte Resources, Inc.
ATTN: Mr. Stephen P. Collings, President
216 Sixteenth Street Mall, Suite 810
Denver, Colorado 80202

SUBJECT: CHANGE IN CORPORATE OWNERSHIP

Dear Mr. Collings:

By letter dated May 13, 1998, Crow Butte Resources, Inc. (CBR) notified the U.S. Nuclear Regulatory Commission (NRC) of an upcoming change in the ownership of one of the shareholders of CBR. In addition, CBR provided the information identified under NRC Information Notice (IN) 89-25, Revision 1 (December 7, 1994).

Based on its review, the NRC staff finds the proposed change in shareholder ownership to be *acceptable, and this letter is evidence of NRC's consent to the change. The details of CBR's* notification and the NRC staff's evaluation of the proposed change are discussed in the enclosed Technical Evaluation Report. No amendment to Source Material License No. SUA-1534 is necessary as a result of this licensing action.

If you have any questions regarding this letter or the enclosure, please contact Mr. James Park of my staff, at (301) 415-6699.

Sincerely,

[D. Gillen for]
Joseph J. Holonich, Chief
Uranium Recovery Branch
Division of Waste Management
Office of Nuclear Material Safety
and Safeguards

Docket No. 40-8943
License No. SUA-1534
Case Closed: L51660

Enclosure: As stated

cc: H. Borchert, RCPD, NE
NDEQ
PDR, NE

DISTRIBUTION (w/ Encl.): PUBLIC [redacted] NMSS r/f URB r/f
ARamirez BSpitzberg/RIV ACNW PMackin, CNWRA
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NAME	JPark JP		DGillf		JHolonich			
DATE	6/ 4 /98		6/ 5 /98		6/ 5 /98			

OFFICIAL RECORD COPY

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UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. [illegible]

June 5, 1998

Crow Butte Resources, Inc.
ATTN: Mr. Stephen P. Collings, President
216 Sixteenth Street Mall, Suite 810
Denver, Colorado 80202

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Sincerely,

Joseph J. Holonich, Chief
Uranium Recovery Branch
Division of Waste Management
Office of Nuclear Material Safety
and Safeguards

Docket No. 40-8943
License No. SUA-1534

Enclosure: As stated

cc: H. Borchert, RCPD, NE
NDEQ
PDR, NE

TECHNICAL EVALUATION REPORT
FOR REQUEST FOR LICENSE TRANSFER

DOCKET NO. 40-8943 LICENSE NO. SUA-1534

LICENSEE: Crow Butte Resources, Inc.

FACILITY: Crow Butte Uranium Project

PROJECT MANAGER: James Park

SUMMARY AND CONCLUSIONS:

The U.S. Nuclear Regulatory Commission (NRC) staff has reviewed Crow Butte Resources, Inc.'s (CBR's) notification of a change in shareholder ownership, submitted by letter dated May 13, 1998. Based on its review, the NRC staff has no objection to the change in ownership. No amendment to Source Material License No. SUA-1534 is necessary as a result of this licensing action.

DESCRIPTION OF LICENSEE'S AMENDMENT REQUEST:

By letter dated May 13, 1998, CBR notified NRC of an upcoming change in ownership of one of the shareholders of CBR. Currently, the shareholders of CBR are Geomex Minerals, Inc. (16 shares), Kepco Resources America, Ltd. (5 shares), and Uranerz U.S.A., Inc. (79 shares). Cameco Corporation has entered into an agreement to purchase all of the shares of Uranerz U.S.A., Inc, with the likely closing to occur in the late summer or early fall of 1998. The remaining shareholders and their shares will be unaffected by this purchase.

As part of its submittal, CBR provided the information identified in Information Notice (IN) 89-25, Rev. 1. As a result of this change in ownership, CBR does not anticipate any effect on the day-to-day management and operation of the company, or any impairment to its ability to comply with NRC regulations or the requirements in SUA-1534.

TECHNICAL EVALUATION:

The NRC staff has reviewed CBR's license transfer request against the requirements in 10 CFR Part 40, using staff guidance that addresses licensee applications involving changes in company ownership.

With the change in shareholder ownership, CBR has stated that it will maintain the same functional organization structure, responsibilities, and qualifications, as those currently in place at the Crow Butte facility. In addition, there are no planned changes in organization, facility location, equipment, current operating and emergency procedures, or personnel, as a result of this change in ownership. Records will continue to be maintained as required under NRC regulations and in SUA-1534. Also, there will be no change in the use or storage of any

licensed material on site. Finally, no modification to the existing surety arrangement is necessary.

Therefore, based on its review, the NRC staff has no objection to the change in shareholder ownership of CBR.

ENVIRONMENTAL IMPACT EVALUATION:

An environmental review was not performed, since this action is an administrative action which is categorically excluded under 10 CFR 51.22(c)(11).

EXHIBIT D

UNITED STATES
NUCLEAR REGULATORY COMMISSION
OFFICE OF NUCLEAR MATERIAL SAFETY AND SAFEGUARDS
WASHINGTON, D.C. 20555

March 7, 1989

NRC INFORMATION NOTICE NO. 89-25: UNAUTHORIZED TRANSFER OF OWNERSHIP OR CONTROL OF LICENSED ACTIVITIES

Addressees:

All U.S. Nuclear Regulatory Commission (NRC) source, byproduct, and special nuclear material licensees.

Purpose:

This notice is to inform licensees of their responsibility to provide timely notification to NRC before the planned transfer of ownership or control of licensed activities, and to obtain prior written consent to such action from NRC, as specified in 10 CFR Sections 30.34(b), 40.46, and 70.36. In addition, this notice provides guidance on the type of information that should be submitted to NRC, before a change of ownership or control. It is expected that recipients will: review this notice for applicability to their licensed activities; distribute it to responsible licensee management and corporate staff, radiation protection staff, and authorized users, as appropriate; and maintain procedures to preclude problems from occurring as the result of the transfer of control of licensed activities. However, suggestions contained in this notice do not constitute any new NRC requirements, and no written response is required.

Discussion:

Sections 81 and 184 of the Atomic Energy Act of 1954, as amended, require that a license be possessed to conduct licensed activities, and 10 CFR Section 30.34(b) states that no NRC license nor any right under a license shall be transferred, assigned or in any manner disposed of, either voluntarily or involuntarily, directly or indirectly, through transfer of control of any license to any person, unless the Commission shall, after securing full information, find that the transfer is in accordance with the provisions of the Act and shall give its consent in writing. Similar wording is found in Sections 40.46 and 70.36 of the regulations for source and special nuclear material.

Recently, NRC has noticed an increasing trend to transfer ownership of businesses that control the use of licensed materials. Such changes in ownership are usually the results of mergers, buy-outs, or majority stock transfers. These actions appear to be occurring at a greater frequency because of the present economic environment. Although it is not the intent

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of NRC to interfere with the business decisions of licensees, it is necessary for licensees to provide timely notification to NRC whenever such decisions could involve changes in the corporate structure responsible for management oversight, control, or radiological safety of licensed materials. The purpose of such notification is to allow NRC to assure that: radioactive materials are possessed, used, owned, or controlled only by persons who have valid NRC licenses; materials are properly handled and secured; persons using such materials are capable, competent, and committed to implement appropriate radiological controls; and public health and safety are not compromised by the use of such materials.

In 1988, NRC identified several instances of businesses authorized to possess and use licensed materials that were transferred to other owners, with a consequent change in control, without any notification to the NRC. In such cases, NRC has usually become aware of the change either when conducting a routine inspection or when notified by the new controlling organization (transferee).

Transfer of company ownership often results in the assumption of licensed activities by a corporation not authorized to use or possess licensed materials, and whose competence and ability to establish, implement, and maintain radiological controls have not been previously evaluated by NRC. In such cases, NRC usually determines that the transferee violated NRC requirements on use and possession of radioactive materials (because of its unauthorized use and possession), and that the predecessor entity (transferor) failed to inform NRC of the planned transfer of ownership.

In specific cases, licensees have failed to inform NRC of changes in ownership and changes in locations of licensed material from those specified on the transferor's licenses. In one particular case, failure to notify NRC of a change in ownership may have contributed to the inadvertent loss of two nuclear weighing scales, containing several hundred millicuries of cesium-137. This type of situation could result in the exposure or contamination of individuals or the environment.

NRC licensees planning to transfer ownership, a change in corporate status, or control of licensed activities are required by 10 CFR to provide sufficient prior notice and full information about the change to NRC, in order to obtain written consent from the Commission before the transfer. Although the burden of adhering to this requirement is on the existing licensee, it will be necessary for the transferee to provide supporting information or to independently coordinate the change in ownership or control with the appropriate NRC Regional Office. Failure to comply with this requirement may adversely affect the public health and safety and interfere with NRC's ability to inspect activities. Therefore, NRC may consider that a violation of this requirement warrants escalated enforcement action, including civil penalties and orders, if indicated by the circumstances against one or both of the parties involved. Willful failure to obtain prior NRC approval of the transfer may result in referrals to the Department of Justice for consideration of criminal prosecution.

The following guidance is provided concerning notification of NRC of ownership or control changes:

1. Full information on change in ownership or control of licensed activities should be submitted to the appropriate NRC Regional Office as early as possible, preferably at least 90 days before the proposed action.

2. NRC approvals for change in ownership or control may be delayed or denied if the following information, where relevant, is not included in the submittal:

   a. The name of the organization, if changed. Provide the new name of the licensed organization and if there is no change, so state.

   b. Identification of any changes in personnel named in the license, including any required information on personnel qualifications.

   c. An indication of whether the seller will remain in business without the license.

   d. A complete, clear description of the transaction. The description should include any transfer of stocks or assets.

   e. An indication of any planned changes in organization, location, facilities, equipment, procedures, or personnel. If such changes are to be made, they should be fully described.

   f. An indication of any changes in the use, possession, or storage of the licensed materials. If such changes are to be made, they should be described.

   g. An indication of whether all surveillance items and records, including radioactive material inventory and accountability requirements, will be current at the time of transfer. A description of the status of all surveillance requirements and records, e.g., calibrations, leak tests, surveys, etc. should be provided.

   h. A description of the status of the facility. Specifically, the presence or absence of contamination should be documented. If contamination is present, will decontamination occur before transfer? If not, does the successor company agree to assume full liability for the decontamination of the facility or site?

   i. A description of any decontamination plans, including financial assurance arrangements of the transferee, should be provided,

as specified in 10 CFR Sections 30.35, 40.36, and 70.25. This should include information about how the transferee and transferor propose to divide the transferor's assets, and responsibility for any cleanup needed at the time of transfer.

j. An indication of whether the transferor and transferee agree to the change in ownership or control of the licensed material and activity. If so, documentation stating this should be provided.

k. A commitment by the transferee to abide by all constraints, conditions, requirements, representations, and commitments identified in the existing license. If not, the transferee must provide a description of its program to assure compliance with the license and regulations.

No specific action or written response is required by this information notice. Questions on this matter should be directed to the appropriate NRC Regional Office or to this office.

Richard E Cunningham

Richard E. Cunningham, Director
Division of Industrial and
Medical Nuclear Safety
Office of Nuclear Material
Safety and Safeguards

Technical Contact: Scott Moore, NMSS
(301) 492-0514

Attachments: 1. List of Recently Issued NMSS Information Notices
2. List of Recently Issued NRC Information Notices