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June 16, 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 REPLY BRIEF REGARDING  
FOREIGN OWNERSHIP AND HEARING PROCEDURES

INTRODUCTION

In accordance with the May 29, 2008 Order of the Atomic Safety and Licensing Board in this matter,<sup>1</sup> Crow Butte Resources, Inc. ("Crow Butte" or "Applicant") hereby submits its reply to the supplemental briefs on foreign ownership and hearing procedures filed by petitioners and the NRC Staff on June 9, 2008.<sup>2</sup>

As is discussed further below, the petitioners' arguments and submittals fail to satisfy the NRC's strict criteria for admissibility of contentions. Contention E lacks a legal or factual basis and, in any event, fails to demonstrate a genuine dispute with regard to foreign ownership. Indeed, documents cited by petitioners in their earlier submittals to the Licensing Board directly contradict their baseless claims regarding changes in ownership. Moreover, the

<sup>1</sup> See Order (Granting Extension for Filing Responses to May 23, 2008, Briefs on Foreign Ownership Issue), dated May 29, 2008.

<sup>2</sup> See "Petitioners' Reply to Applicant's Brief Regarding Foreign Ownership and Subpart G," dated June 9, 2008 ("Pet. Answer"), and "NRC Staff Response to Petitioners' Brief on Foreign Ownership and Subpart G," dated June 9, 2008 ("NRC Staff Answer").

petitioners continue to disregard the Commission's regulations governing the submission of new or amended bases and/or contentions. Petitioners' belated attempt to address standing for Contention E also fails to satisfy the NRC's substantive and procedural requirements. Finally, the hearing on this license amendment application, if any, should be held using the procedures in 10 C.F.R. Part 2, Subpart L.

## DISCUSSION

### A. Petitioners Make Unsupported And Inaccurate Allegations Regarding Foreign Ownership

In their brief, the petitioners make gratuitous and unfounded allegations regarding the actions of Crow Butte Resources and its employees. The petitioners argue that Crow Butte has been involved in "intentional concealment of foreign ownership" (Pet. Answer, at 4) and has "unclean hands" (Pet. Answer, at 8). Yet, inexplicably, the petitioners make this argument despite having previously cited documents directly contradicting these claims. In their May 23, 2008 brief on foreign ownership, the petitioners cited the same document that Crow Butte attached as Exhibit B to its June 9, 2008 brief.<sup>3</sup> That document clearly notifies the NRC of a proposed change in the ownership of the shareholders of Crow Butte Resources — stating that Cameco had agreed to purchase a controlling ownership interest in Crow Butte and seeking 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

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<sup>3</sup> See "Petitioners' Brief Concerning Contention E and Subpart G," dated May 23, 2008, at 41, n.15 ("Pet. Brief"), *citing* 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" to Applicant's June 9th Brief).

ownership to be acceptable” and consenting to the change.<sup>4</sup> The NRC also determined that no 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 the petitioners’ baseless allegations, 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. The Board should neither permit nor condone the petitioners’ scurrilous attacks on the actions and reputation of Crow Butte, which has complied with NRC regulations regarding changes in ownership.

B. Petitioners Raise Issues Outside the Scope of This Proceeding and Otherwise Fail to Satisfy Requirements for Admissible Contentions.

The petitioners fail to comprehend the scope of this narrow NRC license amendment proceeding. In their answer, the petitioners restate their flawed arguments regarding application of Nebraska law to Crow Butte. Pet. Answer, at 4. 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). And, in any event, the State of Nebraska has definitively addressed and resolved the concerns with foreign ownership of Crow Butte. See Order of the District Court of Lancaster County, Nebraska, dated September 29, 1993 (dismissing WNRC’s Amended Petition for Writ of Mandamus) (Exhibit “A” to Applicant’s June 9th Brief). The petitioners’ apparent

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<sup>4</sup> 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” to Applicant’s June 9th Brief). 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” to Applicant’s June 9th Brief).

dissatisfaction with that outcome is no basis for an admissible contention here. Likewise, the petitioners' arguments regarding application of Canadian law are beyond the jurisdiction of NRC adjudicatory bodies.<sup>5</sup>

The petitioners also display a fundamental misunderstanding of the structure of NRC regulations. For example, the petitioners argue that Crow Butte "seeks to challenge NRC Regulation 10 CFR 50.92," which is "clearly an impermissible challenge under NRC Regulation 10 CFR 2.335(a)." Pet. Answer, at 5. Crow Butte has done nothing of the sort. The entirety of 10 C.F.R. Part 50 applies to power reactors and not to source material licenses, which are addressed in 10 C.F.R. Part 40.

The petitioners also urge that Crow Butte "be required to divest itself of illegally held assets, or more appropriately, Cameco should be ordered to divest itself of its stock in [Crow Butte]." Pet. Answer, at 2. Such a request is outside the scope of this license amendment proceeding. Anyone who seeks to modify a license (or other enforcement action) 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). More directly, the petitioners arguments regarding compliance with 10 C.F.R. § 40.46 are wholly lacking in any evidentiary support, and, in fact, are contradicted by documents

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<sup>5</sup> The petitioners arguments are also incorrect. Contrary to the assertions in their brief that Cameco is violating Canadian law, the actual restrictions relate specifically to individual ownership and voting rights rather than ownership of shares generally. Pet. Answer, at 3, (incorrectly stating that ownership is limited to 25% in the aggregate for non-Canadians). Instead, "[i]n 2002, Cameco's articles were amended to increase the individual non-resident maximum share ownership from 5% to 15% and to increase the limit on aggregate non-resident ownership voting rights from 20% to 25%." *Cameco 2007 Annual Information Statement*, dated March 28, 2008, at 6 (emphasis added).

cited in the petitioners' brief (as discussed above). Moreover, a license amendment proceeding is simply not the proper 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).

Procedurally, the petitioners also fall short. The petitioners do not address the criteria for new or amended contentions in 10 C.F.R. § 2.309(f)(2). Petitioners have an ironclad obligation to examine the publicly-available documentary material pertaining to Crow Butte to uncover any information that could serve as the foundation for a specific contention. Yet, the petitioners continue to introduce numerous new legal theories *more than six months* after the deadline for filing contentions. 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." *Duke Energy Corp. (Oconee Nuclear Station, Units 1, 2, and 3)*, CLI-99-11, 49 NRC 328, 334, 338 (1999). The Board should not permit the petitioners to interject new issues while ignoring the NRC's strict contention admissibility and timeliness requirements.

C. Petitioners Do Not Have Standing for Contention E.

Although petitioners belatedly seek to address standing for Contention E in their June 9, 2008 brief, their efforts fail to remedy the significant and inexcusable deficiencies in their petition, which did not address standing for Contention E. Pet. Answer, at 9. Moreover, petitioners argue that they have standing because "they are US citizens and residents who are the 'public'" and because they are "beneficiaries of the US national interest, common defense and security [sic]." *Id.* Under longstanding NRC (and judicial) interpretations, standing cannot be

based solely on a “generalized grievance” shared in substantially equal measure by all or a large class of citizens (e.g., the “public”). *Metropolitan Edison Co.* (Three Mile Island Nuclear Station, Unit 1), CLI-83-25, 18 NRC 327, 333 (1983). Assertions of broad public interest do not establish the particularized interest necessary for participation by an individual or group in NRC adjudicatory processes. *Id.*, at 332. The petitioners must establish that they will be injured and that the injury is not a generalized grievance shared in substantially equal measure by all or a large class of citizens. *Transnuclear, Inc.* (Ten Applications for Low Enriched Uranium Exports to EURATOM Member Nations), CLI-77-24, 6 NRC 525, 531 (1977). Here, petitioners make no showing of individualized harm and therefore fail to establish standing for Contention E.

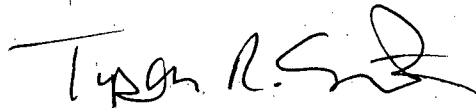
D. Subpart G Hearing Procedures Are Not Available

Finally, the petitioners do not address the plain language of 10 C.F.R. § 2.310, which does not contemplate or permit use of Subpart G procedures in source material licensing proceedings. See “Petitioners’ Reply to the NRC Staff’s Brief Regarding Foreign Ownership and Subpart G,” dated June 9, 2008, at 7-8. Nor would petitioners’ groundless accusations warrant a Subpart G hearing even if such procedures were available. Alleging generalized aspersions on the tactics or motives of the parties, their employees, members, lawyers, or representatives does not satisfy the “credibility” or “motive” elements of either criterion so as to trigger a Subpart G proceeding. *Entergy Nuclear Vermont Yankee, LLC & Entergy Nuclear Operations, Inc.* (Vermont Yankee Nuclear Power Station), LBP-04-31, 60 NRC 686, 700 (2004). 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.*

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  
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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

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CERTIFICATE OF SERVICE

I hereby certify that copies of "APPLICANT'S REPLY BRIEF 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 16<sup>th</sup> day of June 2008. Additional e-mail service, designated by \*, has been made this same day, as shown below.

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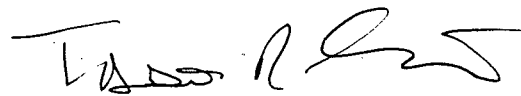
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