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Docket Number: 40-8943; ASLBP No. 07-859-03-MLA-BD01

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UNITED STATES OF AMERICA
U.S. NUCLEAR REGULATORY COMMISSION

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BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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In the Matter of:	Docket No.
CROW BUTTE	40-8943
RESOURCES, INC.	ASLBP No.
-----	07-859-03-MLA-BD01

Tuesday,
July 23, 2008
Chadron, Nebraska

BEFORE:

ANN MARSHALL YOUNG, Chairman
FREDERICK W. OLIVER, Administrative Judge
RICHARD F. COLE, Administrative Judge

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P-R-O-C-E-E-D-I-N-G-S

10:00 a.m.

CHAIRMAN YOUNG: Thank you, you have to press the red button whenever you're talking. So remind each other and then remind me if I forget also.

As I said my name is Ann Marshall Young. I'm the Chair of the Licensing Board and the lawyer member of the Licensing Board.

I'm going to ask my colleagues to introduce themselves and then ask all Counsel and parties and people who you have with you that you'd like to introduce, to introduce yourselves for the record and then we'll move forward from there. Judge Oliver?

ADMIN. JUDGE OLIVER: My name is Fred Oliver and I am a Technical Judge for the Board.

ADMIN. JUDGE COLE: I'm Richard Cole. I'm an Environmental Engineer and a technical member of the Board.

(Whereupon, off the record from 10:02 a.m. until 10:04 a.m.)

MR. MCGUIRE: My name is Mark McGuire. That's M-C-G-U-I-R-E and I'm an Attorney for Crow Butte Resources.

MR. SMITH: My name is Tyson Smith. I'm

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1 also an Attorney for Crow Butte Resources.

2 MS. JONES: My name is Andrea Jones,
3 Attorney for Nuclear Regulatory Commission and I have
4 sitting next to me Mr. Stephen Collings who is the
5 assigned Project Manager for the Crow Butte Resources
6 license amendment.

7 MR. ELLISON: Bruce Ellison, Attorney for
8 Owe Aku and Debra Whiteplume. I have Ms. Whiteplume
9 next to me.

10 MR. FRANKEL: David Frankel, Attorney for
11 NRC and I have with me Bruce Macintosh, Vice Chairman
12 of NRC and also my colleague Shane Robinson, Attorney
13 for NRC.

14 CHAIRMAN YOUNG: Where's Mr. Robinson?
15 (No audible response.)

16 MS. LORINA: Elizabeth Lorina, Attorney
17 for the Oglala Sioux Tribe. Here with my associate
18 Monique Cesna and President John Steele of the Oglala
19 Sioux Tribe.

20 CHAIRMAN YOUNG: Let me just ask. We
21 haven't gotten any notification from any other tribes.
22 Does anyone here know whether there are any other
23 tribes who wanted to come in as an interested tribe?

24 (No audible response.)

25 CHAIRMAN YOUNG: Thank you and welcome

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1 everyone to Chadron and to this pre-hearing conference
2 and oral argument.

3 The first thing we indicated we wanted to
4 take up this morning was the participation of the
5 tribe under 10 CFR 2.315 C. And I'm sure everyone has
6 read that and you know what you're entitled to do.
7 You're entitled to introduce evidence, interrogate
8 witnesses where cross-examination is permitted.
9 Advise the Commission without requiring you to take a
10 position, and to file proposed findings.

11 You also are expected under that section
12 to identify which contentions you wish to participate
13 on. And in addition to those that we have admitted we
14 were interested in whether you wanted to do any
15 argument on the foreign ownership issue in Contention
16 E, I believe it was?

17 MS. LORINA: We don't wish to participate
18 in that particular contention.

19 CHAIRMAN YOUNG: Have you decided which of
20 the contentions you do wish to participate on?

21 MS. LORINA: All the others, Your Honor.

22 CHAIRMAN YOUNG: Okay, okay and then were
23 we to admit this contention you could notify us about
24 that one at a later time and we can discuss that when
25 we discuss timing issues.

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1 MS. LORINA: Okay.

2 CHAIRMAN YOUNG: Are there any other
3 issues with regard to the participation of the tribe
4 that any party wishes to raise or that the tribe
5 wishes to raise at this time?

6 MS. LORINA: At this time the tribe would
7 like to speak briefly on the issue of being a
8 Federally recognized tribe appearing before a Federal
9 Agency.

10 As we know the Oglala Sioux Tribe is a
11 Federally recognized tribe comprising over 41,000
12 members. And when I say we I mean my client, the
13 tribe, and we are a sovereign nation.

14 We have several treaties with the United
15 States Government including most importantly the 1851
16 and 1868 treaties of Fort Laramie.

17 Since the early 19th Century, the Marshall
18 Trilogy specifically the Federal Government has
19 recognized that it has a trust responsibility to
20 Indian tribes that they make treaties with.

21 And that trust responsibility means that
22 the Federal Government owes the highest fiduciary duty
23 to these Indian tribes and the duty to uphold these
24 treaties and their treaty rights.

25 And further more, as recognized by case

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1 law this Federal responsibility extends to any Federal
2 action including specifically Federal agencies.

3 And if I could just quote briefly from
4 Seminole Nation v. United States, a Supreme Court case
5 from 1942.

6 "In carrying out it's treaty obligations
7 with the Indian tribes the Government is something
8 more than a mere contracting party. Under a humane
9 and self-imposed policy which is found expressed in
10 many acts of Congress, and numerous decisions of this
11 Court, it has charged itself with a moral obligation
12 of the highest responsibility and trust."

13 So that means that the NRC, a Federal
14 Agency, has a duty higher that's owed to the Oglala
15 Sioux Tribe and any other Federally recognized tribe.
16 Higher than anyone else. Higher than the American
17 people as a whole and certainly higher that it owes to
18 Crow Butte Resources.

19 They have a duty to uphold the treaties it
20 made with the tribe. In part of those treaties the
21 thrust of them was making the Oglala Sioux Tribe no
22 longer nomadic, contained on this reservation. And
23 really promoting a farming and agrarian lifestyle
24 which of course we know means they need clean water
25 and they need sufficient water to meet those needs

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1 which of course implicates the Winters Right Water
2 Doctrine.

3 Which means that since the rights of the
4 tribe were recognized before the State of Nebraska
5 their rights are superior to anyone else's. And their
6 needs for water must be met before anyone else's.

7 So we're here to assert these treaty
8 rights, winters rights as well as remind the NRC of
9 the duty that they owe to the tribe before anyone
10 else. That they need to be looking into the possible
11 health impacts, whether or not it's truly safe. They
12 have an obligation above and beyond anyone else to
13 look into this and ensure that their meeting that
14 obligation to this sovereign nation. That they have
15 a trust responsibility for it.

16 And of course we're also concerned about
17 the fact that this pre-historic Indian Camp has been
18 found and under Section 106 of NEPA as well as
19 President Clinton's September 6, 2000 Executive Order
20 that the Federal Government, including these agencies
21 have a duty to consult with the tribe.

22 The tribe now has it's own THPO, Tribal
23 Historic Preservation Officer. Her name is Joyce
24 Whiting. But ever before we had a THPO, when the
25 tribe doesn't have a THPO under the CFRs the Agency is

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1 obligated to consult the SHIPO and the tribal
2 representative.

3 So we are of course concerned that the
4 tribe had not been consulted adequately with regards
5 to this pre-historic Indian camp. And the tribe is
6 the only one who can speak to whether or not it's
7 significant. Not the Nebraska SHIPO and certainly not
8 Crow Butte.

9 So, we are also demanding our right under
10 Federal Law of Contentions. And Andrew Jones has been
11 in contact with me regarding that. So hopefully that
12 should proceed. But we are on the record demanding
13 that we be involved, thank you.

14 CHAIRMAN YOUNG: Thank you, and obviously
15 the staff will be following up on it's
16 responsibilities and we're glad to hear that you are
17 in contact.

18 And assume that you will be working
19 together and to the extent that you need our help
20 you're welcome to contact us. To the extent that
21 anything later becomes an issue such that any new
22 contention would need to be filed -- I think I've
23 mentioned before, but if I haven't there is sort of a
24 general practice at the NRC of giving parties
25 potential interveners and actual interveners 30 days

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1 from any event or any receipt of information that
2 might prompt a new contention.

3 So that if any problems arose -- if once
4 the staff has finished it's consultations and duties
5 and takes an action, if there's a problem with that
6 the general practice has been that if any new
7 contention is to be filed with regard to that new
8 information or the staff's action. That that would be
9 30 days after you received that information for the
10 actions taken.

11 I don't think we have formally taken that
12 action here. But I just wanted to let you know that
13 so that if anything arises you'd know about that, how
14 that time line comes into play.

15 Does any other party have anything that
16 you'd like to say with regard to the participation of
17 the tribe?

18 MR. SMITH: Yes, Your Honor this is Tyson
19 Smith. So far I understood the tribe had only
20 requested to participate by filing a Amicus brief on
21 one of the earlier supplemental briefs we filed. I
22 don't recall seeing a request to participate as an
23 interested Governmental entity under 2.315 C.

24 I think our expectation was if there was
25 such a request --

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1 CHAIRMAN YOUNG: I think -- didn't we
2 order or allow their participation under 2.315 C in
3 our ruling?

4 MR. SMITH: In your order you did mention
5 that they would be -- had this opportunity under 315
6 C and you asked us to put them on the service list.
7 But I guess we didn't interpret that as a formal
8 request by them to participate in the hearing.

9 I think if they had done so we would have
10 requested an opportunity to respond in due course to
11 that request.

12 CHAIRMAN YOUNG: I'm taking what you've
13 said so far to be a request to participate under 2.315
14 C.

15 MS. LORINA: Yes.

16 CHAIRMAN YOUNG: And are you asking for
17 additional time to respond. Do you want to respond
18 now?

19 MR. SMITH: I wasn't -- coming into today,
20 when I thought we were going to discuss this today it
21 was our understanding that they hadn't made that
22 formal request yet and so we didn't really have
23 information about the nature of their interest in
24 these contentions and so on. So we were expecting to
25 see some filing on that.

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1 We can -- I guess if we need to respond to
2 that we will. We'll take this as a formal request
3 today and go from there.

4 CHAIRMAN YOUNG: And obviously what
5 happens with regard to the request for Sub-part G
6 hearing would play into what role all parties,
7 including the tribe would play.

8 But, we do know now that the tribe wishes
9 to participate on all of the admitted contentions so
10 far. And as we move forward the actual procedures
11 will be defined more clearly. And if at any time you
12 want to file something further, or any party sees any
13 additional issues you can bring those to our
14 attention.

15 Anything more this morning. Ms. Jones?

16 MS. JONES: Yes, and I wanted to mention
17 the same thing. I was not under the impression that
18 they were seeking to come in under that particular
19 provision.

20 Although you know, as you noted in your
21 decision and as you recognized we're not opposed to
22 them coming in under Amicus.

23 But I think that we also mentioned in our
24 response to their motion was that our expectation was
25 that we would be getting something more if they

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1 intended to participate under those particular
2 provisions.

3 So I would say that at this point we could
4 take their request as a formal request and I'd like an
5 opportunity to go back and examine how the staff needs
6 to respond if at all.

7 CHAIRMAN YOUNG: Well certainly I will say
8 that we did notify all parties that this would be the
9 first thing on the agenda this morning.

10 So, if anything further needs to be raised
11 you can raise it. But anything you can say now we
12 will listen to it with open ears.

13 MR. ELLISON: On behalf of Owe Aku and
14 Debra Whiteplume we would support the tribe being a
15 party. We raised Contention C amongst the issues to
16 be important to the tribe.

17 We're very glad to see this Board.
18 Basically invite the tribe to participate as a party
19 and we are very happy that they are here doing so.

20
21 MR. FRANKEL: On behalf of NRC we have
22 some members that are members of the tribe. So of
23 course we are supportive of the tribes participation
24 and we're glad their here.

25 CHAIRMAN YOUNG: Anything further from the

1 tribe?

2 MS. LORINA: No.

3 CHAIRMAN YOUNG: All right, the next item
4 on our agenda pursuant to our -- the email from our
5 law clerk Ms. Thibault was to discuss the potential
6 for Mr. Thoms Cook to go on the site visit tomorrow.

7 I guess -- well two things. One, Mr.
8 Frankel, have you decided whether you want Mr. Cook to
9 go. I think you mentioned the possibility of him
10 being --

11 MR. FRANKEL: If it's okay I'll defer this
12 to my colleague Shane. He's prepared to address this
13 with the Court.

14 CHAIRMAN YOUNG: Okay, then let me say
15 this. There are a couple of considerations here. If
16 we -- if this is going to take any time we might want
17 to put it off until later because if it takes any time
18 then we'll get started on the foreign ownership issue
19 and that will move us into possibly having to take a
20 lunch break in the middle of argument on foreign
21 ownership.

22 So I just wanted to hear from the parties
23 on whether you would prefer to go ahead and talk about
24 this at this point or whether this is something that
25 might be put off until after the argument?

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1 MR. FRANKEL: I think it's a very brief
2 argument.

3 CHAIRMAN YOUNG: Go ahead.

4 MR. ROBINSON: Your Honor, thank you for
5 this opportunity to speak on this. We would -- our
6 main premise on including Mr. Cook is to ensure that
7 we have five participants for the site tour tomorrow
8 and I think it's equally important to discuss this now
9 because the background check that was necessitated was
10 our proactive response to ensure that if something
11 were to come up and tomorrow morning we needed to
12 substitute someone that substitution wouldn't be
13 denied on -- because of the lack of a background
14 check.

15 And so in the event that perhaps the
16 applicant hasn't done that background check at this
17 point they could proceed with that to ensure that Mr.
18 Cook could participate tomorrow if that situation
19 would arise.

20 We believe that Mr. Cook is an ideal
21 candidate for joining the tour if need be because he
22 is a Commissioner as you noted in your order of the
23 Nebraska Commission on Indian Affairs. He's a member
24 of NRC. He's a highly respected community member
25 whose very observant, a very good note taker, would

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1 maintain a high degree of credibility to any
2 observations and representations made back to the
3 local communities regarding the site tour. And
4 basically for those reasons we believe that he is a
5 very good addition as an alternate to the site tour.

6 CHAIRMAN YOUNG: So you wouldn't make the
7 actual decision until tomorrow morning depending upon
8 what we rule?

9 MR. ROBINSON: At this point we understand
10 that we are only allowed to take five members in for
11 the tour. You know if it were amended to allow us to
12 take six we would decide now that we would like to
13 have him join.

14 However, at this point we plan to take the
15 initial five listed and just use Mr. Cook as an
16 alternate in the event that something would arise that
17 would prevent one of the other members from attending.

18 CHAIRMAN YOUNG: Mr. Smith, one I guess,
19 has a background check been done on him and two, I
20 don't know that we knew before that Mr. Cook was a
21 member of NRC. Now we know that.

22 What's your response at this point?

23 MR. SMITH: Well we have done the
24 background check just in order to be prudent. But I
25 think importantly we had this discussion in May and it

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1 talked about who would attend and NRC and the other
2 petitioners said they would have counsel, the
3 representatives from the party, and a technical
4 person, and alternatively a second technical person.

5 And what I haven't heard is that Mr. Cook
6 is a technical person. Instead he is more akin to a
7 member of the public. He petitioned to intervene this
8 proceeding which the Board denied that request to be
9 a party.

10 And so it's not just whether --

11 CHAIRMAN YOUNG: But, he is a member so he
12 would be a representative of the party, right?

13 MR. SMITH: I don't know that he's
14 necessarily -- I haven't seen anywhere that he's a
15 member of one of the parties.

16 And I think it's important here that we
17 just found out about this, not in a letter that was
18 sent to all of the parties or to the Board. It was in
19 the request for the list of attendees.

20 So we were under the expectation that
21 there was going to be technical people, counsel, the
22 members who had indicated they wanted to attend. And
23 so in our view it was really not necessary for Mr.
24 Cook to attend. It doesn't really aide in the
25 resolution of any of the issues that are at point in

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1 this hearing.

2 As a member of the public if he wants to
3 attend he could always you know request that Crow
4 Butte provide him with a tour. I think he's had that
5 opportunity in the past. So, I don't see it as being
6 related to the resolution of the issues in this
7 hearing.

8 CHAIRMAN YOUNG: Let me just ask you. If
9 Mr. Robinson -- pardon me -- states that Mr. Cook is
10 a member of NRC are you challenging that. Or if he is
11 a member would you challenge his participation as a
12 representative of the party?

13 MR. SMITH: Well they agreed they were
14 going to have two representatives from the party. So
15 I think if Mr. Cook is going to attend as a
16 representative of the party then that would -- this is
17 what we agreed upon in your May 8th order and then
18 another representative would not be expected to
19 attend.

20 CHAIRMAN YOUNG: At this -- tomorrow
21 morning they can. Okay, I was trying to -- I'll try
22 to push it harder.

23 Okay, my question really is this is are
24 you questioning whether he is a member and therefore
25 would be an appropriate representative of the party?

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1 MR. SMITH: No, we're not questioning
2 that. Again, what we had discussed in the May 8th
3 conference was that they would have two counsel, two
4 representatives from the party, and one technical
5 person.

6 Alternatively they would have two
7 technical people in the place of Mr. Ellison. What
8 they submitted in the list is different than that. If
9 Mr. Cook attended as an alternate that would not be
10 consistent with your earlier order regarding
11 attendance at the site visit.

12 CHAIRMAN YOUNG: Let me just ask. Who do
13 you plan to bring tomorrow not counting Mr. Cook. Or
14 before we consider him as an alternate. And what are
15 their roles?

16 MR. ROBINSON: It would be David Frankel
17 and Bruce Ellison, attorneys for the two
18 organizations. Debra Whiteplume and Bruce McIntosh,
19 members of the respectable organizations. And Mr.
20 Paul Robinson, a technical person.

21 CHAIRMAN YOUNG: Do you know which of
22 those might not be able to attend. I mean are you
23 asking that Mr. Cook be a representative or a
24 technical person, or?

25 MR. ROBINSON: We're not guessing on that

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1 Your Honor, we're only trying to ensure that we do
2 have the five members that were allotted to us and you
3 know this is more of something unexpectedly happening
4 tonight to anyone of those five. And so it would be
5 a total guess to assume who it would be.

6 CHAIRMAN YOUNG: I guess at this point I'm
7 not following. If he is a member, and if one of the
8 five cannot attend what would be the objection to him
9 attending as a representative of the parties, or as
10 one of the five who would be a member, and who would
11 serve as a representative of the party?

12 MR. SMITH: As I said earlier, I think our
13 only objection was that Mr. Cook's attendance in the
14 place of one of the other two people.

15 A couple of the people would be
16 inconsistent with your earlier order and it was a
17 surprise to us to see this in this letter that we got,
18 that wasn't submitted to the parties. And we still
19 haven't -- don't know whether he's going to attend or
20 not tomorrow.

21 So it seems like this is all a lot of
22 speculation about something that may or may not
23 happen. I mean ultimately --

24 CHAIRMAN YOUNG: What's your objection if
25 any?

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1 MR. SMITH: If you rule that it's okay
2 according to your order then we don't really have an
3 objection.

4 CHAIRMAN YOUNG: Any further discussion on
5 that?

6 MS. JONES: Not from the staff.

7 MR. COLLINGS: No, Your Honor.

8 CHAIRMAN YOUNG: What would be the problem
9 of adding Mr. Cook as the sixth person if that was
10 what we decided to do?

11 MR. SMITH: I don't know that there
12 necessarily would be a problem other than we had
13 discussed this back in May and had agreed on a
14 specific set and a maximum number of people.

15 And consistent that we permitted an
16 additional technical person from the tribe to attend
17 and the Board also added in another person.

18 So I mean we don't have an objection. I
19 believe we can accommodate that number. But August
20 has sort of been ratcheting up over time and in a
21 surprising fashion to us.

22 ADMIN. JUDGE COLE: I thought the number
23 you quoted back several months ago was 20 persons for
24 the tour. How many do we have?

25 MR. SMITH: I think we were counting last

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1 night and we were up to 19.

2 ADMIN. JUDGE COLE: Thank you.

3 CHAIRMAN YOUNG: After a break we'll make
4 our ruling on that. The rest of the agenda for the
5 day would be the argument on the foreign ownership and
6 alleged concealment issue that Contention E I believe
7 it was. And then the request for the Sub-part G
8 hearing.

9 And then at the end of the day, in
10 addition to anything else that any of the parties
11 wanted to raise with us we'd like to get some idea,
12 primarily from the staff of the staffs schedule with
13 regard to this case and get some sense of where we're
14 going over the next several months in the proceeding.

15 Is everyone ready to start with the
16 foreign ownership issue?

17 (No response.)

18 CHAIRMAN YOUNG: All right, just as a
19 preliminary matter -- we'll start in a minute. We'll
20 start with the interveners argument.

21 We haven't set specific time limits here.
22 If we sense that anyone is being repetitive we'll
23 probably stop you. We will have questions for you as
24 we go forward with the argument. And we'll adjust as
25 need be.

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1 But, to sort of get us on track there's a
2 few things we wanted to say in advance. What we're
3 here to discuss today is the admissibility of the
4 contention. We're not here to rule on the merits of
5 the contention. Sometimes there's a fine line drawn
6 between discussing the merits and discussing if the
7 contention is admissible.

8 But what we're here to decide is whether
9 there is genuine dispute on a material issue of fact
10 or law, or combined fact and law and whether that's
11 been supported sufficiently to admit it as a
12 contention.

13 We raised some legal issues that we found
14 in our research and asked the parties to brief this
15 further. We would like to hear from all of you on
16 this. Based on the briefs that you filed there's
17 certain things have become clear to us.

18 I guess the first thing that's become
19 clear to us is that Section 103 of the Atomic Energy
20 Act and the reference to production facilities therein
21 does not include mines. And so we stand corrected on
22 that and there's really no need to discuss that any
23 further.

24 With that said we are aware that the
25 interveners have argued that certain principles and

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1 case law related to 103 might be applicable to
2 considering whether foreign ownership is relevant
3 under 10 CFR 40.32 D. Under the common offense and
4 security language there. I think that whether this is
5 a relevant issue really falls under 40.32 D.

6 So, to the extent that you wanted to argue
7 that case law relating to power plants for example, is
8 relevant we're not going to stop you from arguing that
9 but we want it to be clear that that would be sort of
10 by reference and we don't think it's necessary to go
11 into that to any great extent.

12 But what we're more interested is the
13 parties arguments on whether it's relevant under 40.32
14 D at this point.

15 The original -- the issues before us are
16 the original issues in the contention as presented.
17 The contention alleged a failure to mention, or a
18 failure to disclose foreign ownership. So there's
19 sort of two aspects to it. One, foreign ownership.
20 Two, the disclosure or non-disclosure of that foreign
21 ownership.

22 Issues of foreign profit, possible future
23 exports, effect on the environment have been raised.
24 And we'll hear your arguments on those but what we're
25 really -- what we will be focusing on is whether 40.32

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1 D would make the foreign ownership relevant.

2 I second -- that expect to the extent that
3 information offered is "legitimate amplification of an
4 original contention or responds to issues raised by ..
5 nation." That new factual information is excluded
6 under the commissions case law on what's permissible
7 in a reply. And we're sort of here on an extended
8 reply in a sense.

9 But we do want to make clear that whenever
10 a party raises an issue, be a factual or legal issue
11 in a contention, obviously Licensing Boards research
12 the issues and any relevant law relating to an issue
13 is a valid ground and a valid matter to discuss.

14 So, we want to hear from you on any legal
15 issues, any legal support, or legal authority in
16 opposition to the contention that it's fair game in
17 contrast to the new factual information.

18 I guess one other issue that came up in
19 the -- hold on. One other issue that came up in the
20 responses to the contention that the applicants and
21 the staffs briefs has to do with the fact that the
22 application at issue in this proceeding is an
23 application for a license amendment as opposed to an
24 initial license.

25 And we would like to hear from you on the

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1 issue of what determines when an application to do new
2 mining, for lack of a better word, would require a
3 license amendment as opposed to another license. For
4 example, is it based on the distance between the
5 sites. If it were 100 miles would a new license be
6 required. I guess we're looking at the staff
7 primarily on this. But we want to hear from all the
8 parties.

9 What standards does the staff apply for
10 example in determining that and what law would be
11 relevant on that. Since the nature of this proceeding
12 is being an amendment has been one of the main
13 arguments raised by the staff and the applicant.

14 Have I left anything out Judge Cole?

15 (No audible response.)

16 CHAIRMAN YOUNG: Okay, those are just a
17 few thoughts that we had that we wanted to share with
18 you to help you focus your arguments. To let you know
19 what we think is sort of off the table. In other
20 words, I don't think anyone is going to argue that
21 Section 103 applies at this point to bind this
22 production facility based on the definition of
23 production facilities. And let you know what things
24 we ourselves have been sort of looking at.

25 So, Mr. Frankel you look like you're going

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1 to do the argument. Go ahead.

2 MR. FRANKEL: You can tell that I'm in the
3 starting gate. Okay, if I hold this here can
4 everybody hear me. Okay, I sort of don't like being
5 on an angle like that.

6 Okay, Your Honor, Your Honor, Your Honor,
7 ladies and gentleman, thank you. We appreciate this
8 opportunity to expand our prior arguments on
9 Contention E.

10 In our brief, page 38 we lay out
11 Contention E right from the reference petition. So,
12 let me summarize the exact wording from our reference
13 petition.

14 CBR is owned by Camico Inc. a Canadian
15 corporation. Camico acquired CBR in 2000. Foreign
16 owned CBR is using up and contaminating vital water
17 supplies in a time of drought for it's profit to the
18 detriment of the people, wildlife, and land in
19 Crawford, Nebraska, surrounding areas including
20 Chadron, Nebraska and Pine Ridge Indian Reservation,
21 and other users of the high plains aquifer in
22 Colorado, Kansas, New Mexico, Oklahoma, South Dakota,
23 Texas, and Wyoming.

24 Most of the such persons are unaware of
25 CBR's operations or the application. There is no

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1 assurance that yellow cake Uranium products from the
2 CBR operation goes to U.S. nuclear power plants and
3 such Uranium may be sold by CBR's Canadian parent
4 company to buyers in China, India, Pakistan, Russia,
5 and or to the highest bidder.

6 There's no assurance that yellow cake
7 Uranium products from CBR operation will not be used
8 for nuclear weapons of a foreign country or
9 terrorists.

10 CHAIRMAN YOUNG: How do you respond to the
11 argument that no export -- no right to export has been
12 requested in this application and there's no
13 application for export license pending at this time?

14 MR. FRANKEL: For us Your Honor, this goes
15 directly to adverse consequences that flow directly
16 from foreign ownership. And we submit that if it were
17 a U.S. owned company that these same issues wouldn't
18 be the case. So the issues arise by virtue of the
19 foreign ownership not by virtue of the potential
20 export of a nature of export license versus the
21 amendment.

22 And it's also known that isn't an export
23 license coupled with the license. In other words they
24 have an export license in part because they have this
25 license. Maybe I'll put that --

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1 ADMIN. JUDGE COLE: I think they require
2 a separate license for export.

3 MR. FRANKEL: Thank you, Your Honor.

4 ADMIN. JUDGE COLE: The staff might want
5 to speak to that.

6 MS. JONES: Would you like for me to
7 address that. Very briefly, the Office of
8 International Programs, as I understand it, and I
9 consulted with them. This is an application that
10 would have to go through their process. And this
11 would be under Part 110. This is for a specific and
12 general licenses for source material.

13 So -- and unfortunately, I'm sorry to say
14 it's not an application -- excuse me. Going back to
15 permits of the environmental regulation. This is not
16 a licensing review proceeding that I'm entirely
17 familiar with.

18 But any proposals to send this type of
19 material outside of the United States. The
20 destinations outside of the U.S. would have to go
21 through that particular licensing review process.

22 But this is not -- this is a separate
23 process. This is only for domestic licensing. In
24 fact, I did take a look at Part 110. I looked at the
25 statement of consideration and some of the commentary

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1 provided by the Commission. This was maybe some time
2 in 1978 or 1979.

3 And there was a statement that the
4 Commission made that they specifically in part one of
5 the reasons for promulgating the rules on the Part 110
6 was so that the public would be on notice that there
7 is a distinction between these two types of
8 proceedings. So this is only for domestic licensing.

9
10 CHAIRMAN YOUNG: Just for information.
11 You're saying that they do not -- Crow Butte does not
12 currently have an export license?

13 MS. JONES: For this particular amendment
14 application I'm not aware that any license application
15 under Part 110 has been submitted to the agency.

16 CHAIRMAN YOUNG: Since the original
17 license?

18 MS. JONES: I think I'm going to -- I
19 haven't really looked into that. I think I'm going to
20 let Mr. Tyson maybe address that.

21 MR. SMITH: Sure, from my understanding is
22 that each individual export requires a separate
23 licensing action by the NRC either under specific or
24 generalized under Part 110. And it's wholly separate
25 and apart from this Part 40 license amendment which is

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1 just to possess and use source material.

2 CHAIRMAN YOUNG: Have you gotten export
3 licenses before?

4 MR. SMITH: The export licenses had been
5 obtained to ship the material from Crow Butte outside
6 this country, yes.

7 CHAIRMAN YOUNG: With regard to the Part
8 110 is there a Federal register notice an opportunity
9 for a hearing on that?

10 MS. JONES: As I understand it in
11 consulting with the OIP, Office of International
12 Programs I think that there is. But it may be -- it
13 depends on what is -- what activity is being proposed.
14 So, generally speaking yes, as I understand it.

15 I think I do have the Federal register.
16 I can search for it. I believe I did bring it with me
17 if you would like a citation.

18 CHAIRMAN YOUNG: I think it would be of
19 interest to know the extent of the right to hearing
20 and where that would be published and obviously other
21 things will arise as well. But --

22 MR. FRANKEL: Thank you, Your Honor. We
23 would submit that unless we saw a citation to the
24 contrary it would seem that parties that do not have
25 a license to use or possess yellow cake Uranium would

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1 not be eligible to get a license to export such
2 material. But I look forward to seeing the citation
3 and would like to educate myself on that part of the
4 law.

5 Okay, continuing just to reiterate so
6 we're clear about what the originally filed Contention
7 E is. It continues, CBR fails to mention it's foreign
8 owned by Camico Inc. So all the environmental
9 detriment and adverse health impacts are for foreign
10 profit and there is no assurance that CBR mined
11 Uranium would stay in the U.S. for power generation.

12 And so this lists the six elements CBR
13 fails to mention. That it was acquired in 2000 by
14 Canadian Corporation by the name of Camico. The basis
15 for the contention is that CBR has omitted references
16 to foreign ownership in order to give the
17 misimpression that CBR's Uranium mining operations are
18 somehow profitable to U.S. interests when they are in
19 fact profitable to Canadian and other foreign
20 interests to the detriment to U.S. persons health and
21 safety.

22 Three, the issues and the scope of the
23 proceeding, because CBR seeks to expand it's
24 operations on the basis that the Uranium it produces
25 is needed to fulfill U.S. demand for power generation

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1 when it's Canadian owners may divert the Uranium
2 products to non-U.S. customers such as China, India,
3 Pakistan, or North Korea, or possibly Iran.

4 Four, the issue is material to the
5 findings of the NRC which is required to determine
6 whether CBR's current operation is and proposed
7 operation is in the best interest of the U.S. general
8 public. Understanding the foreign ownership of the
9 CBR is key to that determination.

10 Five, referring to the facts that I spoke
11 of just before. And then six, CBR's application
12 states that it's history -- states it's history
13 without reference to Camico and gives the impression
14 that CBR's operations are for the profit of U.S.
15 interests.

16 And then we cite specifically the
17 application. The operations, Crow Butte Resources
18 Inc. operates a commercial scale in seeking rich
19 Uranium mine. No reference to Camico. Er 1.1.1 Crow
20 Butte Uranium project background. The original
21 development of what is now the Crow Butte Uranium
22 project was performed by Wyoming Fuel Corporation
23 which constructed an R&D facility in 1986.

24 The project was subsequently acquired and
25 operated by Ferret Exploration Company of Nebraska

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1 until May 1994 when the name was changed to Crow Butte
2 Resources Inc.

3 This change was only a name change, not an
4 ownership change. CBR is the owner and the operator
5 of the Crow Butte project.

6 Now even a cursory examination of the
7 website of Camico.com tells you a whole lot more about
8 what's going on. It tells you about Camico acquiring
9 CBR in three stages of acquisitions. It tells you
10 that CBR is a wholly owned subsidiary of Camico. Er
11 1.2 and er 2.1.2, they write "in addition to leaving
12 a large deposit of valuable mineral resources on tap
13 failure to develop a north trend expansion would
14 result in a loss of a large investment and time and
15 money made by CBR for the rights to and the
16 development of these valuable deposits. Denial of the
17 amendment requests would also have an adverse economic
18 impact on the individuals that own mineral rights in
19 the north trend expansion area."

20 And finally, er 1.2 and 2.1.2 saying "the
21 Crow Butte project including the north trend area
22 represents an important source of new domestic Uranium
23 supplies that are essential to provide a continuing
24 source to fuel to power generation facilities."

25 And so we've made this contention, it is

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1 material that CBR is owned by a Canadian company.
2 We've referred in our briefs to the fact that the
3 foreign ownership violates state law. The alien --
4 the Nebraska Alien Ownership Act. And was the sum and
5 substance of the enforcement proceeding 20 years ago
6 against CBR for this very reason where the company was
7 threatened with forced dissolution and the
8 extinguishment of it's permits by the State.

9 Drastic actions to be taken by an Attorney
10 General against a private company, particularly one
11 that is an employer in the area. And yet those
12 drastic actions were taken because of a clear
13 violation of law.

14 Now, how is that consistent with the
15 statement in er 1.2 and er 2.1.2 that a failure would
16 result in an adverse economic impact on the
17 individuals that own the mineral rights when those
18 mineral leases are voidable due to the violation of
19 the alien ownership law in Nebraska.

20 CHAIRMAN YOUNG: Let me interrupt you on
21 that point. If we were to admit the contention, the
22 information -- it could be argued that the information
23 you're talking about relating to the Nebraska actions
24 might be relevant information on the contention.

25 But at this stage, when we're talking

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1 about contention admissibility I think the arguments
2 been made that this information is going beyond what
3 you really would be permitted to include in a replay.

4 What's your response to that argument?

5 MR. FRANKEL: Our response to that
6 argument is that applicant in it's briefing and in its
7 oral argument has stated repeatedly that there exists
8 a quote "iron clad obligation on us as the petitioners
9 to bring forward a certain amount of information."

10 And we established in our last argument,
11 and the Court supported in the order that we need to
12 bring forward a logical fact based argument which we
13 have done.

14 Now, if we argued in our contention that
15 there was concealment and the applicant argued that
16 they were not required to disclose any of this and so
17 we feel that the fact that this was a material
18 mitigated issue for applicant in conflict with my
19 client, NRC historically that that is relevant to us
20 rebutting the statements made by applicant in it's
21 replies to us to the effect that they have made the
22 disclosure, or that the disclosures were not required.

23 And what we have said all along is that
24 applicant suffers from a culture of non-disclosure, or
25 a culture of resistance to disclosure. And that that

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1 --

2 CHAIRMAN YOUNG: Let me just interrupt you
3 again before you go on with that. You're talking
4 about making responses to what the applicant said in
5 it's original replies, or original response to the
6 contention.

7 I'm just trying to pin down what things
8 you're replying to -- statements on the part of the
9 applicant.

10 MR. FRANKEL: One, in their application no
11 mention of foreign ownership. We called them on that
12 in our contention. And --

13 CHAIRMAN YOUNG: What I'm trying to focus
14 on is the Commissions case law that says that you
15 can't add any new factual information in your reply
16 unless it's legitimate amplification or unless it's
17 responding to something specifically raised by the
18 opponent of the contention.

19 In other words, under the new rules in
20 2004 you're not allowed to amend your contention to
21 add new support, new factual support for it.

22 MR. FRANKEL: So, there was a -- and I'm
23 not sure if -- I would say in the replies filed after
24 the oral argument, when we raised the issue and
25 counsel for the applicant stated that he would, that

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1 there was -- to short cut the issue he would tell us
2 there was no transfer file that was not required to be
3 filed.

4 CHAIRMAN YOUNG: And what I'm trying to
5 understand is -- are you saying that they said that in
6 the conference the telephone conference?

7 MR. FRANKEL: That it was stated in the
8 oral argument on January 16th and then it was followed
9 up in the reply or follow-up briefing that occurred
10 immediately after the January hearing. That there was
11 a submission on the statutes that might require that
12 kind of a transfer and disclosure of foreign ownership
13 and in that context and in our response to the
14 statements made by applicant, and in that series of
15 briefing that's where we would pinpoint it.

16 So --

17 CHAIRMAN YOUNG: Not the May 23rd briefs.
18 The one's that came after the previous oral argument
19 but before we ruled on the non-proliferation agreement
20 and so forth?

21 MR. FRANKEL: That's correct, Your Honor.

22 CHAIRMAN YOUNG: Okay.

23 MR. FRANKEL: So I'll go back to the heart
24 of our argument now having stated our contention.

25 First we concur and did from the beginning

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1 of our briefing that Section 103 D would be persuasive
2 but not controlling. And we have taken the consistent
3 position that the controlling sections are Atomic
4 Energy Act Section 62 and 69 which say, and I quote
5 this on page 11 of our brief filed May 23rd that
6 source material, this is quote from the statute.

7 "Source material and utilization
8 facilities are effected with the public interests and
9 regulation by the United States of the production and
10 utilization of atomic energy and of the facilities
11 used in connection therewith is necessary in the
12 national interest to assure the common defense and
13 security and to protect the health and the safety of
14 the public."

15 From our perspective this is the statutory
16 derivation, or the statutory basis of Rule 40.32.
17 This is where you get into those four standards. A,
18 B, C, and D where A is that the license bring
19 requested is for a purpose authorized by the Atomic
20 Energy Act.

21 And I note that contrary to the briefing
22 of the Government and the applicant it doesn't say for
23 a purpose that is not prohibited by the Atomic Energy
24 Act. It says for a purpose that is authorized by the
25 Atomic Energy Act.

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1 And that takes us right into the purposes
2 stated at the beginning of the Atomic Energy Act,
3 which goes to the U.S. national interests and the
4 common defense and security.

5 And so when we look at how foreign
6 ownership plays together with Section 40.32 we see
7 that it bars the issuance of a license amendment if
8 you either find that the license amendment is not
9 authorized in the AEA, which you would have to find if
10 you accept our argument that complete fraud and
11 ownership, domination, and control without --
12 especially without disclosure and especially without
13 any form of negation action plan, that that is not
14 authorized by the Atomic Energy Act. If you join us
15 in that conclusion you must deny the license.

16 Section 40.32 D goes straight to the
17 inimicality. And when we look at inimicality we have
18 to remember most if not all of the cases in this area
19 are decided in a pre 9/11 world.

20 And it's incumbent upon the Nuclear
21 Regulatory Commission and this Board to examine where
22 we are now factually. What is the world that we're
23 living in now. And then to make a determination
24 against that factual background. Where we are now
25 does the proposal, the proposed license lead to a

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1 finding that it may be inimicable to the common
2 defense and security.

3 And it may be that in 1987 or in 1998 or
4 even in 2000 that the analysis would be a lot
5 different. And we submit that it would be a lot
6 different. And what troubles us here, as much as the
7 foreign ownership is the concealment.

8 What happened to Section 40.9. Isn't
9 there a rule that requires an applicant to make full
10 disclosure of all material facts. Materiality is a
11 factor. That doesn't mean that someone fills out a
12 form and when the blanks are filled in you send it in.

13 It means you sit down and you figure out
14 what's material. What would the licensing decision
15 maker consider to be important in making a decision
16 because the public would consider that to be
17 important. That gives back bone and integrity to this
18 whole process.

19 The failure to make disclosures, or the
20 act of concealment of information that should be
21 disclosed undermines the integrity of this whole
22 process. Undermines the confidence that the public
23 might have in the process. And that's a very
24 important issue.

25 And so when we look at foreign ownership

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1 in general we can also look at Section 40.2. The
2 regulations apply only to persons in the United
3 States. Does that mean when Camico has a big meeting
4 and invites the executives from CBR, who are U.S.
5 citizens and they go and have a meeting in Canada, do
6 the regulations apply to those people when they are in
7 Canada because they are not persons in the United
8 States.

9 The minutes from that meeting, are they
10 discoverable. Who would you file papers with. Who do
11 you subpoena. And if you subpoena the Canadian
12 resident who is the President, CEO of Camico and they
13 say well, we appreciate your letter but we don't
14 really honor that as a subpoena. Who are you going to
15 go to next. Are you going to take this up country to
16 country with Canada.

17 So what we see here is that there is a
18 variety of indicators. Some of which might be
19 mitigated if full disclosure were made. Then the NRC
20 would have an opportunity to say well you know what,
21 we've handled situations like this before and this is
22 where I'll make a reference to one of those cases
23 under Section 103, that Exxon Nuclear case.

24 Exxon Nuclear comes and they have a whole
25 story for the NRC at that time. They want you to

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1 know, here's our corporate structure. Here is what
2 we're attempting to achieve. Here's why we think it's
3 consistent with what you all are trying to achieve in
4 regulating nuclear power.

5 Here is the people that are U.S. people.
6 Here's the people that are not U.S. people. Here's
7 the people that will have the key to the room where
8 the restricted data is, these are U.S. people.

9 Why was it a good idea for Exxon Nuclear
10 to come to the Commission with a full disclosure and
11 a negation plan. And why was it not a good idea or
12 not required for Camico to do the same thing. It
13 doesn't make any sense.

14 Particularly where you have that BMW case,
15 that Babcock Wilcox case that says that where the
16 Commission notes that less than 50 percent often gives
17 a person controlling rights, some form of control
18 rights under corporate law.

19 Well that to me says well, if you're
20 requiring more than a diminimous amount of stock in a
21 company you might want to notify the Commission. If
22 you're acquiring ten percent of a public company you
23 have to make disclosures. If you're acquiring 20
24 percent of a public or a private company you get
25 certain rights.

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1 Well in 1995, 1996 time frame we don't
2 actually know when. Why, because it was concealed.
3 There was a transfer of some number of shares. It
4 doesn't seem to reflect the number of shares that are
5 on the record prior to that. But it reflects some
6 transfer of 32.304 percent to Camico which we have
7 submitted as part of a creeping acquisition.

8 Then when they got another 57 percent off
9 of Uranersz they had 90 percent. That's effective
10 control. If they didn't have control before. So they
11 made a notification to the NRC, which the NRC notes in
12 it's brief. In 1998 they became aware of this. And
13 they didn't object to it.

14 But nothing in the record says that an
15 analysis was done of the foreign ownership attributes.
16 There's no record of any analysis of a negation plan.
17 There's no record of any analysis having to do with
18 the SRP, and I'm sure that if there is it would be
19 pointed out. But if it wasn't pointed out in the
20 briefs then I'm guessing that it's not there.

21 So, we have a situation of concealed
22 ownership domination and control. We have a situation
23 where people who have no loyalty to the United States
24 of America make controlled decisions about this
25 licensee and about where it's product goes.

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1 We have a situation where there's no fear
2 of enforcement by the United States Nuclear Regulatory
3 Commission because they are persons outside of the
4 United States and unless they have consented to the
5 jurisdiction of the Nuclear Regulatory Commission I
6 don't think that there is legal jurisdiction.

7 We have talked about how there's not
8 necessarily any subpoena power for records. How can
9 the NRC do it's job if it can't access records that
10 are held out of the country. And the people that
11 decide which records are held in the country and which
12 ones are held in Nebraska, they live in Canada.

13 And we're lucky that Canada is our ally.
14 The point is not which country is involved. The point
15 is whether this legal principle would support an
16 abusive situation.

17 We have submitted that it would because
18 under the same rule, if you can acquire 32 percent,
19 then 40, 50, 60, 70 up to 90 percent of a company that
20 owns an Uranium mining license without telling anyone
21 about it. If that's somehow okay for a Canadian
22 company why is that not okay for a Libyan, or a
23 Liberian, or an Abu Dhabi, or a Jordanian or what have
24 you.

25 If the ultimate parent, the tier parent of

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1 the subsidiary licensee is somehow irrelevant then
2 honestly, what stops the concealed acquisition by
3 parties who form a shell company if their interests
4 are adverse to the United States.

5 This is not the boy crying wolf. This is
6 about the enemies of the United States have access to
7 capital. They can form an LLC just as fast as anybody
8 else, throw a billion dollars into it and start
9 acquiring things. And if they can do that under the
10 precedent created by a large reputable and in business
11 publicly traded company then that precedent opens the
12 way for terrible abuses.

13 And that --

14 CHAIRMAN YOUNG: You mentioned LLC,
15 Limited Liability Corporation?

16 MR. FRANKEL: Yes, I was using that as an
17 example Your Honor, because in this day and age
18 entities can be formed with a phone call in five
19 minutes and often they are and you know it's up to the
20 lawyers involved to make sure that the people who are
21 supposed to get the property get the property.

22 Anyway, I'll continue. So we have
23 reckless disregard for contamination, spills,
24 regulations. Why reckless disregard, because there's
25 no loyalty to the U.S.

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1 When faced with the choice between making
2 a huge profit and complying with what seems like a
3 trivial U.S. regulation if there's no enforcement on
4 me why would I go ahead and do that. I don't see any
5 reason.

6 Rational people wouldn't do that unless
7 they had a ethical reason, which in our area of legal
8 enforcement we can't necessarily count on.

9 And just because there's the Non-
10 proliferation Treaty and Canada is a part of it
11 doesn't mean that there aren't other U.S.
12 restrictions. We noted that in fact Camico boasts in
13 it's annual report that a large percentage of it's
14 sales are outside of certain U.S. restrictions. Not
15 the non-proliferation ones. But it's an example.

16 It's up to the U.S. to decide what the
17 restrictions are. It's not up to some private company
18 to do an end run around those restrictions. The Non-
19 proliferation Treaty is an excellent treaty, but is it
20 100 percent enforceable against Canada and Camico.

21 Is it enforceable to the same extent as if
22 a U.S. company owned this mine. We don't think so.
23 And so we feel that the existence of the legal
24 position taken by applicant is itself inimicable to the
25 common defense and security of the United States

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1 because it opens pathways to harm the people in
2 America through abusing this Camico loophole.

3 So number one, the existence of the
4 argument itself is detrimental and undermines the
5 common defense and security and even if it were a
6 loophole, even if they can and the Exxon Nuclear kind
7 of a way and said yes, we are foreign owned, here's
8 our negation plan, we would still have serious
9 concerns. Especially here in Nebraska.

10 The State Legislature has taken action
11 that's been on the books for decades to protect my
12 client, the citizens of Western Nebraska and Nebraska
13 in general from the kinds of abuses that happen when
14 foreign people own real estate in their state. And
15 it's entirely reasonable for the State Legislature to
16 do that in Nebraska and that law needs to be
17 respected.

18 Okay, I'm going to take just a minute to
19 remind us of the setting that we're in. We have this
20 Supreme Court case called Chevron, we're aware of
21 that. As far as I read that case it stands for the
22 proposition that if there is an unambiguously
23 expressed intent of Congress then the Court has to
24 give that effect.

25 That's our situation. We have

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1 unambiguously expressed the intent of Congress that
2 atomic energy must be regulated to serve the U.S.
3 national interests.

4 So far in all of this briefing the
5 greatest extent of serving the U.S. national interest
6 seems to be that this company's activities mine enough
7 Uranium to provide five percent of the United States'
8 power generation.

9 It doesn't mean that they have to be
10 foreign owned. It seems to me that that point in and
11 of itself doesn't show how this is actually in the
12 U.S. national interests.

13 And then finally, if Chevron were to find
14 -- if you were to find under Chevron that Congress was
15 silent, not our case, ambiguous, you might get there.
16 You would then look to give deference.

17 But what deference would you give.
18 There's no administrative interpretation here that's
19 on point. So we're right back to the beginning of
20 Chevron. That the Court has to give effect to the
21 Congressional intent. And when it does that I would
22 ask you to be guided by that Supreme Court case we
23 cited, Vogel from 1982. The regulation or the action
24 you take must harmonize with the statutes origin and
25 purpose.

1 I'm not the first one to point out the
2 unique nature of the Atomic Energy Act, and the unique
3 nature of the Nuclear Regulatory Commission.

4 As far as I know, as it's been told to me,
5 there's no other agency like it. Why is that, because
6 there's no other substance being regulated like radio
7 active materials, like atomic energy that have such
8 awesome power to destroy nature and the environment.
9 And also have an awesome power to be used in
10 accordance and consistent with the policies of our
11 Government.

12 And so -- sorry, did I --

13 CHAIRMAN YOUNG: Before you conclude
14 ultimately I just want to say for the record.
15 Obviously we can interpret the law and interpret the
16 rules. But we I don't think would have the authority
17 to strike down any regulation under Chevron.

18 So -- and I think you probably understand
19 that, but --

20 MR. FRANKEL: Thank you, Your Honor, I do.
21 But I know that any Court that ultimately takes up a
22 review of this decision would have that power. So I
23 feel it's relevant to be at least guided by those
24 principles. But I appreciate you giving me that
25 clarification.

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1 And so all of these actions, you know a
2 lot of them, the concealment, the reasons for that.
3 They play into our request for Sub-part G which Mr.
4 Ellison will discuss.

5 I'm going to conclude with reminding
6 everyone that the NRC passed this 1999 SRP. It seems
7 to apply. I don't know why it wasn't referenced in
8 the application. Why it didn't make it in.

9 But it says --

10 CHAIRMAN YOUNG: He's talking about the
11 Standard Review Plan with regard to foreign ownership?

12 MR. FRANKEL: Yes.

13 CHAIRMAN YOUNG: For plants, right?

14 MR. FRANKEL: I suppose it is. So it
15 comes down under the persuasive quality under 103.

16 But what it talks about is some notion
17 that it might be acceptable if the foreign company
18 stock is held by a quote "largely by U.S. persons."

19 I want to point out that in these times a
20 lot of stock is held in street name. Street name
21 means that's held by a brokerage mostly in New York
22 City. So a lot of times a mailing address that's
23 associated with the stock certificate is not relevant
24 to the citizenship of the owner of the stock.

25 And so I wanted to give a clarification

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1 because there's been some misunderstandings. In our
2 briefing we pointed out some information we found that
3 said that Camico cannot be held more than a certain
4 percentage by non-Canadians. In other words it needs
5 to be majority owned by Canadians.

6 And then there was a statement that I'm
7 sure Mr. Smith will give us some amplification on to
8 the extent that some number of 52 percent of the share
9 holdings have -- are somehow connected to the U.S.

10 And maybe that ties into some notion of
11 complying with the spirit of this 1999 SRP about the
12 stock being held largely by U.S. persons. And what I
13 would like to understand as we go through this is that
14 the stock holdings are not often easy to trace because
15 of the different entities that hold stock and how
16 stock is held.

17 So, I'll conclude. I appreciate the
18 opportunity and I'll keep a few minutes open for
19 rebuttal if I'm allowed.

20 CHAIRMAN YOUNG: Thank you.

21 MR. ELLISON: On behalf of Owe Aku and
22 Debra Whiteplume may I just add one point?

23 CHAIRMAN YOUNG: Sure, quickly.

24 MR. ELLISON: Thank you, Your Honor. You
25 know we are trying to and will be upholding to the

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1 Boards instructions that we consolidate our arguments.
2 I just wanted to add one point if I may.

3 The Board raised the question about the
4 original license versus the amendment and does this
5 really even apply here. And just to supplement Mr.
6 Frankel's argument, if it is not relevant at the
7 amendment stage where a company, foreign company
8 acquires ownership after the original license was
9 issued then that would negate this ever being an issue
10 and always allow for a foreign company to come in, buy
11 an existing license, and then forever be immune from
12 any scrutiny or inquiry on this particular point.

13 So we would submit that, because as in
14 this case a foreign company came in bought this,
15 bought what is now CBR after the original license was
16 issued. This is will be the first time anyone can
17 address that in terms of this so called amendment
18 which we do view as a new mine license.

19 But I just wanted to reference that so
20 that we don't waive any arguments or objections on
21 this point but really this is the first time that we
22 can address this. This is the first time that it
23 really is right at this stage of the proceedings.

24 And they should not be able to get like it
25 grand-fathered in because they snuck in the back door

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1 on the original license, thank you.

2 CHAIRMAN YOUNG: This might be a good time
3 before we take a short break to mention with regard to
4 this proceeding that the issue is whether to grant the
5 amendment.

6 With regard to your arguments about
7 suspending the current license obviously that's not
8 something that's a part of this proceeding. There is
9 a way to file an enforcement petition under 10 CFR 2,
10 is it 206 with regard to the original license.

11 MR. ELLISON: And thank you, I guess my
12 point is the question is does the NRC have authority
13 to grant an amended license with a now foreign owned
14 company. And I think that's part of what the question
15 that we're trying to raise is.

16 Is the authority to do so without
17 addressing the foreign ownership question in this case
18 at this point.

19 CHAIRMAN YOUNG: Did you have anything to add
20 Mr. Frankel?

21 MR. FRANKEL: No, Your Honor.

22 CHAIRMAN YOUNG: Okay, let's take a break
23 before we go to Mr. Smith. And just if we --

24 (Whereupon, off the record from 11:17 a.m.
25 until 11:29 a.m.)

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1 CHAIRMAN YOUNG: All right, Judge Oliver
2 had one more question for Mr. Frankel.
3 We're back on the record.

4 Okay, Judge Oliver had one more question
5 for Mr. Frankel.

6 ADMIN. JUDGE OLIVER: Yes, Attorney
7 Frankel, you sort of in your presentation indicated
8 that there was an Nebraskan law against foreign
9 ownership. Is that still currently on the books and
10 if so why do you feel it's not being enforced?

11 MR. FRANKEL: Yes, Your Honor it is on the
12 books. It's something my client challenged the
13 applicant on about 20 years ago.

14 And I believe it has not been enforced due
15 to the active concealment of foreign ownership by an
16 applicant from the Nebraska regulators. And I think
17 that if they were fully made and when they are fully
18 made aware of it I don't see why they wouldn't seek to
19 enforce the law now the same way they did 20 years
20 ago.

21 ADMIN. JUDGE OLIVER: Okay then what
22 you're saying is they have an approach to this law
23 since in the past 20 years. Is that correct?

24 MR. FRANKEL: No, Your Honor, that's -- I
25 must have stated my remarks -- let me restate them.

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1 The law is a current law. It's on the
2 books, it's in effect. It can only be enforced when
3 some awareness is brought to the regulators that
4 there's been a violation or potential violation.

5 Up until -- I don't believe anyone has
6 notified the Nebraska Attorney General formally that
7 CBR is currently 100 percent foreign owned as they
8 were when they last were threatened with the
9 dissolution by the Nebraska Attorney General.

10 I believe that if we were to notify the
11 Attorney General of Nebraska of that they might, might
12 not, but it would have the discretion to institute a
13 similar enforcement proceeding.

14 ADMIN. JUDGE OLIVER: But is this the
15 proper forum to adjudicate that issue?

16 MR. FRANKEL: I think clearly not but it
17 is material to the effectiveness to the mineral
18 leases. If the company is mining based on mineral
19 leases that are either void or voidable due to having
20 an illegal purpose under state law then they are
21 mining without a right to mine and goes to Section
22 40.32 C which refers to the competence of the
23 applicant to receive the license.

24 And if they don't have the legal right to
25 mine the minerals how can they be competent.

1 ADMIN. JUDGE COLE: I understand your
2 position.

3 CHAIRMAN YOUNG: Let's go next to Crow
4 Butte. And Mr. Smith, you're going to make the
5 argument?

6 MR. SMITH: Yes ma'am.

7 CHAIRMAN YOUNG: Go ahead.

8 MR. SMITH: And first just let me respond
9 and say that with regard to that last issue with
10 regarding compliance with state law. Crow Butte has
11 been, is, and will be continue to be in compliance
12 with the state law that Mr. Frankel is referring to.

13 These issues were adjudicated previously
14 and were resolved by the Attorney General and there's
15 really nothing new or different out there that's going
16 to change that fact.

17 In assessing the admissibility of this
18 contention I think it's important to go back to what
19 the contention initially started out as and the first
20 principles of contention and admissibility. And that
21 is there a genuine dispute of material fact on a issue
22 within the scope of the proceeding.

23 Contention E states that CBR fails to
24 mention that it's foreign owned by Camico so that all
25 the environmental detriment and health effects are for

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1 foreign profit and there's no assurance that CBR mined
2 Uranium will stay in the U.S. for power generation.

3 First, there's no genuine dispute with the
4 applicant on anything in that contention. There's no
5 facts or data to support their argument.

6 The petitioners don't allege any specific
7 statutory or regulatory violations or provisions that
8 require Crow Butte to discuss it's distribution of
9 profits or describe it's sale of Uranium in detail.

10 Instead what their doing is speculating
11 and hypothesizing about various scenarios without any
12 regard to the existing statutory and regulatory and
13 international framework in place for the handling of
14 source material.

15 Let's see -- a similar contention has been
16 rejected by the Commission previously --

17 CHAIRMAN YOUNG: Let me just interrupt you
18 here before you go onto another case.

19 They do allege that you failed to disclose
20 the Canadian ownership and cite several sections of
21 your application that they say are incorrect in not
22 providing further information about the actual
23 ownership and relationships between the different
24 structures. Isn't there some dispute on that?

25 MR. SMITH: No, Your Honor, not at all.

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1 And actually they haven't alleged anything in there as
2 inaccurate or incorrect. What they've said is that
3 we've concealed allegedly the ownership -- the
4 ultimate grandparent ownership of Crow Butte
5 Resources.

6 And frankly we're a bit bewildered by
7 their continued arguments in this manner. As we cited
8 in our brief, and actually was first cited by them --

9 CHAIRMAN YOUNG: Let me stop you again.
10 The 40.9 A requires that you shall be complete -- in
11 addition to being accurate, complete in all material
12 respects. And as I understand their argument and the
13 original contention they are saying that these
14 sections that they cite from your application are not
15 complete in not providing additional information that
16 discloses the actual ownership, the actual parent who
17 actually has control and where they, where those
18 entities, whether they are Canadian or U.S. or
19 whatever.

20 MR. SMITH: Yes, I understand that that's
21 their argument. This is a license amendment
22 proceeding. The existing Part 40 license, Camico when
23 they gained a controlling interest in Crow Butte
24 Resources notified the Commission in a May 13th letter
25 pursuant to the NRC's regulations at 4046 of the

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1 upcoming -- that is we plan to make these changes in
2 ownership.

3 We asked the NRC for confirmation that
4 this was acceptable and that this complied with the
5 NRC requirements. The NRC responded, they notified
6 the Crow Butte that we find the proposed change in
7 shareholder ownership to be acceptable. They
8 consented to the change.

9 Contrary to what Mr. Frankel said they
10 performed an analysis of this ownership change. It's
11 embodied in this technical evaluation report that was
12 attached to that letter to Crow Butte.

13 And so Crow Butte has been fully on the
14 record made everyone aware of the docket of these
15 changes in ownership.

16 CHAIRMAN YOUNG: One of the things that
17 they cite just to give an example, because you're sort
18 of moving a little bit fast here and I want you to
19 slow down and address the arguments that they make in
20 the actual contention itself.

21 Er 1.1.1 talks about the original
22 development of what is now Crow Butte Uranium project.
23 That it was subsequently acquired by Ferret
24 Exploration Company. And the name was changed to Crow
25 Butte Resources. This change was only a name change

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1 and not an ownership change. CBR is the owner and
2 operator of the Crow Butte project.

3 That's one of the things that they cite in
4 the original contention. And it sounds as though
5 their argument that that does not provide complete
6 information and or accurate information at least
7 raises a dispute.

8 MR. SMITH: I respectfully disagree. Crow
9 Butte is the owner and the operator of Crow Butte
10 Resource Mine, always has been. And that is who the
11 applicant is. That is who the licensee is. The fact
12 that ultimate ownership is exercised by a different
13 company has been disclosed to the NRC and it's on the
14 docket and the petitioners didn't cite that in their
15 initial contention as some evidence in support of
16 this.

17 We have been -- Crow Butte has been above
18 board, has complied with all the NRC's regulations
19 regarding this. I don't see any concealment here or
20 any attempt to mislead. In fact we sought and
21 obtained NRC approval prior to making those changes in
22 ownership.

23 CHAIRMAN YOUNG: In the application
24 itself, does the application itself disclose the
25 actual ownership?

1 MR. SMITH: The application itself does
2 not discuss the complete corporate structure for
3 Camico Resources. No it does not.

4 But again, there's no requirement that it
5 do so. Especially when this is a license amendment
6 where the actual ownership or the ultimate ownership
7 has been disclosed and has been discussed.

8 It's not material to this narrow license
9 amendment proceeding. There's no change in ownership.
10 There's no change in activities that are permitted by
11 this license amendment. It's still Crow Butte
12 Resources.

13 And this actually raises a question that
14 you had asked us to comment on earlier about the
15 applicability of the various sections of Part 40. And
16 particularly whether 40.32 D applies here.

17 As we've discussed in our various filings.
18 All the parties have recognized that in considering an
19 application to amend a license the Commission will
20 apply the applicable criteria in 40.32.

21 But important in recognizing what those
22 applicable criteria are is you have to look at the
23 scope of what the license amendment application or
24 what the license amendment would authorize the
25 applicant to do.

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1 Here --

2 CHAIRMAN YOUNG: Right, and I think that
3 the word applicable is the reason that we ask you to
4 focus on what standards are applied in deciding which
5 of those are applicable.

6 And I believe the staff agreed that 40.32
7 D, whether the issuance would be inimical to the
8 common defense and security or to the health and
9 safety of the public is one of those that is
10 applicable in determining whether to grant this
11 license amendment.

12 MR. SMITH: I think that Part 40.32 D
13 generally applies to license -- potentially is
14 applicable to license in the proceedings.

15 Whether the inimical to the common defense
16 and security portion to 40.32 D applies is a different
17 question. The Commission has recognized --

18 CHAIRMAN YOUNG: But doesn't the staff
19 agree that -- let me ask Ms. Jones. I thought I read
20 your brief to say that you agree that 40.32 D and you
21 didn't say parts of it. But I understood you to say
22 that that applies?

23 MS. JONES: Yes, I did and but I also said
24 that you also have to look at the scope of the
25 amendment. And it applies in so far as --

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1 CHAIRMAN YOUNG: In how it applies?

2 MS. JONES: But, yes --

3 CHAIRMAN YOUNG: But you didn't argue that
4 the common defense and security part of it does not
5 apply?

6 MS. JONES: No I didn't.

7 CHAIRMAN YOUNG: What I understand Mr.
8 Smith to be saying is that there's some question.
9 Lets just clarify.

10 MS. JONES: Okay.

11 CHAIRMAN YOUNG: That there is some
12 question about whether the common defense and security
13 Part of 40.32 D even should be applied or should be
14 applicable in a license amendment proceeding such as
15 this?

16 MR. SMITH: Exactly, in this licensing and
17 proceeding the Commission has recognized in an earlier
18 Part 40 license amendment proceeding that did not
19 involve the export or import of nuclear materials,
20 source materials, same material as here. That the
21 common defense and security considerations of 10 CFR
22 40.32 D are not implicated. That's Cur-McGee
23 Corporation West Chicago Rare Earth Metal Facility CLI
24 82-2.

25 CHAIRMAN YOUNG: Right, and I read that

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1 actually and I think I have it here somewhere and when
2 I get that out because it struck me in reading it and
3 I want to get it and look at it and ask you about it.
4 That the language you were relying on was really sort
5 of did -- it wasn't necessary to the decision in that
6 case. I don't think, was it?

7 MR. SMITH: I don't recall specifically.
8 But I think the principle is what's important. And
9 that is that when we're not talking about import or
10 export of materials and we're just talking about the
11 possession and use of source material here in the
12 United States they be inimical to the common defense
13 and security provisions aren't going to be pertinent
14 to the overall finding of NRC staff must bank with
15 regards to whether to issue or grant the license
16 amendment.

17 CHAIRMAN YOUNG: If -- and I guess this is
18 where the issue of the export licenses and what
19 happens with those and whether there could be any in
20 the future comes in.

21 If you have sought and received export
22 licenses before and you might want to expand upon
23 where those were to and what they involved. What
24 would stop you from seeking export licenses in the
25 future for the material that you get from this site

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1 assuming the licenses were granted. The license
2 amendment were granted?

3 MR. SMITH: Any request -- 40.51 states
4 that no licensee shall transfer source material. So
5 in order to possess you have to -- in order to
6 transfer you have to already be a license to possess.

7 Transferring any source material abroad
8 except pursuant to an export license issued under Part
9 110. Now that means that each shipment you have to
10 get NRC approval --

11 CHAIRMAN YOUNG: Right, my question was
12 what would stop you from getting an export license
13 after this license were granted assuming this license
14 agreement were granted. There would be nothing to
15 stop you from seeking and obtaining another export
16 license, correct?

17 MR. SMITH: Of course, of course not,
18 absolutely. I mean every export has to be exported
19 pursuant to an export license. That is the nature of
20 the NRC's regulatory regime, that's how they ensure
21 the protection that this material is not inimicable to
22 the common defense and security. It's through the
23 export licensing proceedings.

24 CHAIRMAN YOUNG: Right, and I think that
25 that's what they are concerned about. And so if you

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1 obtained export licenses in the past what would stop
2 you from obtaining them in the future and are you in
3 fact saying that you would not seek to obtain them.

4 I mean --

5 MR. SMITH: No, not at all of course not.

6 I mean the export license is a separate licensing
7 action that requires a separate NRC approval that is
8 outside the scope of the Part 40 license that we're
9 talking about here and it's also well outside the
10 scope of this narrow license amendment proceeding
11 which we just authorized mining of some additional
12 units.

13 I think another point is worth making here
14 with regard to the overall admissibility of the
15 contention and the fact that Crow Butte is ultimately
16 owned by a Canadian owned company doesn't in and of
17 itself present a genuine dispute with the application.

18 There's no prohibition on the mere fact of
19 Canadian ownership. And the assertions regarding
20 distribution of profits and loss are not financially
21 sound. Crow Butte is a U.S. company. It's actually
22 a Nebraska company. Camico has U.S. stakeholders and
23 Uranium produced at the Crow Butte facility is used
24 and does benefit U.S. utilities.

25 And I think most importantly for a license

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1 amendment proceeding there is no requirement that the
2 applicant demonstrate any particular benefit as local,
3 domestic, or any other benefit from a license
4 amendment.

5 So there's simply is nothing to dispute
6 here regarding the benefits of the project. So for
7 these reasons --

8 CHAIRMAN YOUNG: What about the argument
9 that the general standard from the Atomic Energy Act
10 is that any license must be in the U.S. interest. If
11 I'm accurately representing the interveners argument?

12 MR. SMITH: That principle is reflected in
13 the commissions regulatory framework when they
14 established Part 40. And by establishing Part 40, by
15 not prohibiting foreign ownership, by establishing a
16 process by which ownership is assessed and reviewed
17 and by providing for export licenses and import
18 licenses that is how the Commission overall implements
19 the goals of the Atomic Energy Act.

20 CHAIRMAN YOUNG: But the 40.32 point --
21 40.32 D does include the common defense and security
22 language which has been interpreted in case law as
23 brining into play foreign ownership.

24 Now, let's assume that it does not
25 necessarily always bring into play foreign ownership.

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1 And this question is one I want to ask the staff more
2 pertinent. But I'll ask you now since you're on the
3 subject.

4 And that is if you were owned by a company
5 that was in some nation that presented some security
6 risks to the United States are you arguing that the
7 national -- the common defense and security language
8 should not be taken into account. That the ownership
9 by a company from a nation that presented security
10 risks to the U.S. should not be taken into account
11 under that language?

12 MR. SMITH: Well that's a --

13 CHAIRMAN YOUNG: Or are you just saying
14 that in this instance because it's a Canadian company
15 it doesn't come into play?

16 MR. SMITH: I'm saying this instance it
17 doesn't come into play because this is a license
18 amendment proceeding. That issue --

19 CHAIRMAN YOUNG: Are you saying though
20 that if in a license amendment proceeding somehow
21 between the original license and the license amendment
22 application the company were bought by another company
23 from a suspect nation, or a nation that presented
24 security risks to the United States and that had not
25 yet been brought out, that that would not ever be

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1 relevant in a license amendment proceeding.

2 That the license amendment proceeding
3 would go forward and it would be up to the separate
4 enforcement proceeding to address that foreign
5 ownership issue. Even if that separate enforcement
6 proceeding were commenced or ended before the license
7 amendment application determination were made.

8 Are you saying that that would never come
9 into play?

10 MR. SMITH: What I'm saying here is that
11 that's a separate approval. The transferable license
12 to it's owner --

13 CHAIRMAN YOUNG: What I'm trying to get
14 you to address is the situation where subsequent to
15 the original license, but before the license amendment
16 request the operator was purchased by a company from
17 a nation that presented some security risk to the
18 United States.

19 Are you saying that in that instance the
20 common defense and security should never bring into
21 play the foreign ownership of the applicant?

22 MR. SMITH: That issue would be addressed
23 and it would come into play. But not in the context
24 of a license amendment proceeding. That involves the
25 transfer of license.

1 CHAIRMAN YOUNG: So you're saying in that
2 instance, the example I gave you, you're saying in
3 that instance the staff and if involved the ASLB
4 should go ahead and grant the license and say well
5 that will be taken care of in another proceeding?

6 MR. SMITH: That is outside the scope of
7 the limited narrow Part 40 license in the proceeding.

8 CHAIRMAN YOUNG: You're saying it's
9 completely irrelevant. We should never consider that?

10 MR. SMITH: I'm saying that is a -- in a
11 individual proceeding focus on the license amendment.
12 The Licensing Board should not consider the transfer
13 of ownership, which is the subject of a separate NRC
14 review and approval. That's unrelated to the specific
15 license amendment. That's correct.

16 CHAIRMAN YOUNG: What if were a country
17 that the president and other people in power had --
18 were clearly considering a country that presented
19 national security risks to the United States.

20 You're saying that a Licensing Board and
21 the staff should grant the license amendment because
22 that would be taken care of in another proceeding.
23 Are you really saying that?

24 MR. SMITH: Yes ma'am, yes Your Honor.
25 That is a requirement that the regulatory framework is

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1 set up in a way such that issues related to
2 enforcement are subject of the staff to take and not
3 the purview of the Licensing Board in a license
4 amendment proceeding that did not in and of itself
5 involve a change in ownership.

6 And again here, I want to reiterate.
7 There is no change in ownership associated with this
8 license application, license amendment application.
9 So any challenge to the ownership of Crow Butte or any
10 challenge related to the ownership of Crow Butte is an
11 impermissible challenge to an activity that is already
12 permitted under their existing Part 40 license. And
13 as such it's outside the scope of this proceeding.

14 And the final issue I wanted to raise
15 relates to standing. And that is in the Boards
16 earlier decision on admissibility of contentions and
17 ruling on standing the Board found that petitioners
18 had standing with respect to Contentions A, B, and C.

19 And in each --

20 CHAIRMAN YOUNG: Let me interrupt you on
21 that one because I probably should have at the
22 introductory part of this mentioned some questions
23 about standing.

24 We found that the petitioners that we let
25 in had standing for this proceeding. We did not limit

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1 that standing to any contentions. The case law that
2 you cite about standing stands for the proposition as
3 I understand it and you can correct me if I'm wrong,
4 that standing for different forms of relief may need
5 to be determined separately.

6 I'm not aware of any case law that says
7 that standing for separate contentions in a NRC
8 proceeding needs to be determined separately.

9 So I'm -- I guess I'm doubtful about your
10 argument about having to prove standing separately for
11 each contention.

12 The form of relief that's at issue here is
13 either denial of the license amendment request or
14 possibly putting conditions on the license amendment
15 if granted.

16 There are not different forms of relief
17 requested such as injunctive versus damages or
18 whatever that might be involved in the cases that you
19 cite in support of requiring separate determinations
20 of standing for each form of relief.

21 MR. SMITH: I think Your Honor, that the
22 NRC has not specifically said that standing for each
23 contention is necessary.

24 However, the NRC has stated that it
25 follows judicial concept of standing. And this is a

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1 very clear and unambiguous --

2 CHAIRMAN YOUNG: What about the, what
3 about the fact that the case law refers to different -
4 - showing standing for each different form of relief
5 and that actually sort of got into a jurisdictional
6 question as well.

7 I'm not seeing that having to show
8 standing for different forms of relief is comparable
9 to having to show standing to different contentions in
10 a NRC proceeding and it seems to me that if that were
11 a valid issue, surely in all the years since the
12 enactment of the Atomic Energy Act and the hearings
13 that have been done in many, many cases there would be
14 some case law to support your argument. And to my
15 knowledge there's not.

16 MR. SMITH: A couple of points there.
17 First you asked about the specific cases Laidlaw
18 Environmental Services which talks about you must show
19 standing steadily for each form of relief.

20 Now I interpret that as one aspect of the
21 standing requirement. Which is injuring in fact,
22 causation, redressability.

23 Redressability is the form of relief.
24 Other cases that I also cited talk about certain
25 organizations did not have standing because they did

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1 not cite members who could not prove they had an
2 individual injury in fact at parts.

3 CHAIRMAN YOUNG: But that was showing
4 standing in the first place. That's not about showing
5 different standing for different forms of relief or
6 different contentions.

7 I mean when we found standing we found
8 that the parties that we admitted had showed standing.
9 They had shown injury. They had shown redressability.
10 The form of -- they're not multiple forms of relief in
11 any NRC proceeding. It's either you grant the applied
12 for license or license amendment. Or you put
13 conditions on it or you deny it.

14 I mean I want you to try to focus here and
15 not spend a lot of time on this because if there's
16 anything to support your argument besides what you
17 provided tell us. But I'm just -- I'm not following
18 that you can transfer the principle of showing
19 standing for different forms of relief to different
20 contentions.

21 MR. SMITH: Well the principle of standing
22 is based on Article 3 of the constitution which talks
23 about you need to have a case or a controversy.

24 If the alleged controversy here relates to
25 foreign ownership but there is no causation of injury

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1 related foreign related ownership, or there's no
2 redressability or if there is no change in ownership
3 there is no standing for that contention.

4 I think that's a fundamental principle of
5 the --

6 CHAIRMAN YOUNG: But the petitioner have
7 also argued -- the interveners now have also argued
8 that a foreign owned company would not be as
9 interested in protecting the environment.

10 Any way, I won't interrupt your argument
11 any more on that. But let's try to bring that to a
12 close quickly.

13 MR. SMITH: Sure, I'll just give an
14 example of exactly why a standing would not apply
15 here. And this is in previous cases where the
16 Commission has addressed standing regarding the export
17 of licensing material, of license material.

18 The Commission said that petitioners must
19 show -- even if petitioners had alleged some injury
20 based on non-proliferation or foreign ownership that
21 would not lead to the particularized showing of harm
22 necessary to support injury of fact.

23 According to the Commission a generalized
24 interest in minimizing the danger from proliferation,
25 that is selling material to these various foreign

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1 countries, is insufficient to confer standing.

2 CHAIRMAN YOUNG: I said I wouldn't
3 interrupt you. I'm going to prove myself a liar.

4 The petitioners here did not make a
5 generalized argument about nuclear non-proliferation
6 in seeking standing. They showed, and we examined
7 carefully and found standing only for those
8 petitioners who showed actual injury in fact under NRC
9 law.

10 So I think you're sort of mixing apples
11 and oranges there. And I want to just let you know my
12 thoughts on that so that you can respond to it because
13 what you're essentially doing is you're wanting to go
14 back to the start and say well these petitioners have
15 done no more -- or these interveners did no more than
16 assert a generalized interest. The one's that we
17 admitted showed specific injury in fact in our
18 determination.

19 MR. SMITH: And I agree with that, I
20 actually don't agree with your conclusions. But I
21 agree that they show the injury in fact. But that
22 injury only related to ground water contamination,
23 surface water contamination, it was unrelated to the
24 issue of foreign ownership.

25 And we must respectfully disagree with you

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1 then because I firmly believe that showing a standing
2 must be made for each individual contention if you're
3 going to fulfill the requirements the Commission has
4 set forth for showing standing consistent with
5 judicial concepts of standing.

6 CHAIRMAN YOUNG: Let me just ask you then
7 one last thing. If you can find any NRC case law in
8 which any party or any Board has discussed standing
9 from the standpoint of having to show standing for
10 each separate contention please bring it to our
11 attention.

12 MR. SMITH: Well in addition to that I
13 just want to point out a couple of other cases that
14 talk about standing for non-proliferation issues.

15 I think it's important to get a flavor
16 that this action, where they keep raising these issues
17 about proliferation they have not demonstrated an
18 injury to be associated with Contention E.

19 And that is in the University of Missouri
20 petitioners argued that if you let this project go
21 forward you're going to increase the risk of nuclear
22 weapons proliferation which would be inimicable to the
23 common defense and security.

24 The Commission said there's no standing
25 because there's no direct link between a challenged

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1 action, the license limited issue and weapons
2 proliferation.

3 Here we have the same thing. There's no
4 link between the mining of Uranium and proliferation
5 or sales of Uranium to other countries. There's an
6 intervening link and that is the export of the
7 material and also you have to have some violation of
8 these other international regulatory regimes that
9 exist out there.

10 CHAIRMAN YOUNG: Let me ask you this and
11 this actually becomes very pertinent in this
12 proceeding.

13 If for example this Board were to find
14 that the license amendment application should be
15 granted and we did that, for example in part on the
16 basis that if there were an opportunity for a hearing,
17 notice in the Federal Register and so forth with
18 regard to an application for an export license.

19 How would any potential intervener
20 successfully show standing in that case. In any case
21 like that, because it seems to me -- and fill me in
22 if I'm missing something.

23 But it seems to me that the upshot of what
24 you're saying is that there would really never be any
25 way for an intervener, like these interveners to show

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1 standing to intervene in an export license proceeding
2 and that this might be their only opportunity to raise
3 their concerns about that.

4 So how would -- how would a party in one
5 of the -- in an export license proceeding show
6 standing successfully?

7 MR. SMITH: Well I think that -- like
8 Andre I'm going to have to plead a little bit of
9 ignorance here as to exactly how the export licensing
10 program works. That's not something that I'm fully
11 familiar with.

12 CHAIRMAN YOUNG: Right, but let's assume -

13 -

14 MR. SMITH: But I can tell you a little
15 bit about what I've read and what I understand. And
16 that is there have been lots of cases where
17 interveners have challenged export licenses. There's
18 a whole series of them, most of them actually involve
19 the transfer of high enriched Uranium to India and
20 various shipments of those.

21 So there are opportunities to contest.
22 Interveners have successfully shown standing.
23 Typically it was based on a specific violation of a
24 international agreement or a regulation or something
25 like that.

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1 So they were able to show that there was
2 a specific harm to some regulation that was going to
3 be some specific requirement. That was how they
4 demonstrated standing.

5 So and then with respect to individual
6 export applications --

7 CHAIRMAN YOUNG: Did you cite those cases
8 to us. I guess I'm in a little bit of a hard time
9 following that because showing that there could be a
10 violation maybe the standing is considered differently
11 in those cases.

12 But I'm not sure how that relates to
13 injury to an individual petitioner in a export license
14 situation. In any event, to the extent that you can
15 answer it, answer it. But tell me if you provided
16 those cases and if you haven't could you provide those
17 cases to us.

18 MR. SMITH: Sure, many of those cases are
19 actually cited in our earlier filings. There are
20 cases such as Trans Nuclear, it's the export of 93.15
21 percent Uranium. CIO 94-1. It's hard for me to tell
22 based on my notes today which one didn't have admitted
23 standing or not because that's not what I was focused
24 on, but --

25 CHAIRMAN YOUNG: Maybe afterwards you

1 could provide the ones where they have show that you
2 can answer that question as to how you show standing.

3 MR. SMITH: Sure, I'd be happy to.

4 CHAIRMAN YOUNG: Okay.

5 MR. SMITH: And I would also add that
6 whether or not there is a specific Federal Register
7 notice is not the controlling factor of whether there
8 is an opportunity to request a hearing.

9 Many materials licensing actions do not
10 result in the issuance of a Federal Register notice.
11 So I would caution that that is not the only criteria
12 which you determine whether potential interveners have
13 an opportunity to raise issues related to a specific
14 export.

15 CHAIRMAN YOUNG: All right, so you're
16 saying basically it would be by publication on the
17 website or --

18 MR. SMITH: There's specific applications.
19 That's where I sort of lose my ability to state
20 exactly what --

21 CHAIRMAN YOUNG: I think we probably need
22 more information on that from all of you to the extent
23 that that can be only -- that that only can be done
24 after this argument. We can allow some leeway there
25 for you.

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1 MR. SMITH: Okay, I think ultimately
2 though the fact that there is a separate export
3 license. That is the point for addressing the export
4 and the non-proliferation issues and the transfer of
5 material abroad. It's a separate licensing proceeding
6 that's apart from this license amendment proceeding
7 which only authorizes domestic possession of source
8 material.

9 I think it's important to keep in mind
10 this narrow, limited license application that's
11 focused on the changes that are authorized by this
12 application rather than this broader principles that
13 would come into some initial application or some
14 separate review and approval by the Agency.

15 CHAIRMAN YOUNG: More quickly than I
16 thought.

17 MR. SMITH: I'm sorry Judge, if I may Mr.
18 McGuire here would like to add a little bit. He's
19 more experienced in other certain issues.

20 MR. MCGUIRE: This is in part of response
21 to your question Judge Oliver about why hasn't the
22 Attorney Generals office done something about this
23 alleged alien ownership problem.

24 A little bit of history is important. And
25 that is that this issue was litigated back in 1993.

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1 And the parties to that lawsuit were the same Western
2 Nebraska Resources Council group that we see here
3 today.

4 They brought what is known as a mandamus
5 action which is a kind of case where a Court orders a
6 Court official to a particular act.

7 They brought a mandamus action against
8 Allen Beerman who is the Secretary of State. They
9 wanted a Court order that directed the Secretary of
10 State to take action to dissolve Crow Butte.

11 That case was tried. That case, Western
12 Nebraska Resources Council lost. That was a Western
13 Nebraska Resources Council appealed to the Nebraska
14 Supreme Court. that is a case that it unilaterally
15 dismissed it's appeal.

16 Another piece to remember and in my view
17 this case and the foreign ownership stuff going back
18 then is perhaps not tremendously relevant. But it's
19 raised and particularly the comments of Mr. Frankel
20 that it's a dramatic result that the Attorney General
21 moved to dissolve Crow Butte.

22 Well he didn't do anything of the like.
23 Instead what was going on was that the Western
24 Nebraska Resources Council requested that and the
25 Court rejected that alternative.

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1 But the law on the books, as we've talked
2 about this morning says this. Any alien or foreign
3 corporation may purchase, acquire, and hold title to
4 or be a lessor or lessee of as much real estate as
5 shall be necessary for the purpose of one erecting
6 thereon manufacturing or industrial establishments.
7 In addition thereto such real estate as may be
8 required for facilities incidental to such
9 establishments.

10 An industrial foreign company can own
11 industrial establishments. That's as clear as could
12 possibly be. Tomorrow you will see something that can
13 only be described as industrial establishment that
14 mining operation that you'll get to see tomorrow is a
15 clear industrial establishment as one could envision.

16 The entire thing about the state law and
17 how this might impact a, has been resolved, and b, if
18 litigated any Court would have to find that it doesn't
19 matter. The foreign corporation may own industrial
20 establishments and that's what we have before us here.
21 Thank you.

22 MR. FRANKEL: Your Honor, I'm going to
23 want to rebut that in detail. Is this -- shall I wait
24 until after Ms. Jones or would you like me to reply to
25 that now?

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1 CHAIRMAN YOUNG: I was thinking waiting
2 until after the staff responded. But before we move
3 on I had made some notes about questions for Crow
4 Butte so I'd like to just look through those briefly
5 and see if I have any more questions for them.

6 Does anybody -- does the applicant or the
7 staff have any opinion on whether to allow interveners
8 to replay to applicant before we move to the staff.
9 What would be more feasible here. Anyone, any
10 thoughts on that?

11 MS. JONES: I don't have a particular
12 preference. If they want to do it now I say let them
13 go ahead and do it.

14 MR. SMITH: I think I would say it's
15 unnecessary. They've had their opportunity. They
16 raised it. We were responding to them. As one of the
17 Judges pointed out, I think it was Judge Cole. These
18 are requirements of state law are issues for state
19 bodies to determine and they are really beyond the
20 jurisdiction of the NRC adjudicatory bodies.

21 So I don't think that would serve much
22 purpose other than we both stated our positions and
23 attempted to clarify it and I think the rest can rest
24 on what we found in our briefs.

25 MR. FRANKEL: Your Honor, that would be

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1 true but I believe Mr. McGuire was referring to some
2 wrong dates, years, and different case than I have in
3 front of me.

4 So I wanted to make sure that we did not
5 proceed on a misunderstanding or mis-impression.

6 CHAIRMAN YOUNG: Since the question has
7 been opened up why don't you just go ahead and give
8 your response on it and then we'll move on to the
9 other issues.

10 MR. FRANKEL: Okay --

11 MR. SMITH: Just a moment Your Honor, is
12 this a different case than the one that we attached as
13 an exhibit to our responses on this brief. If it's a
14 new case I don't believe we've had an opportunity to
15 review it?

16 CHAIRMAN YOUNG: I think he's talking
17 about responding to Mr. McGuire's --

18 MR. FRANKEL: Same incident.

19 MR. SMITH: You said you had a different
20 case in front of you. And I'm just asking, the only
21 case that I've seen is one that we attached our brief.
22 It's docket number 451 it's dated Lancaster County,
23 September 29, 1993.

24 MR. FRANKEL: Perhaps I should just
25 continue and clarify why Mr. Smith doesn't understand

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1 the point I'm about to make.

2 We submitted in our brief a copy of a
3 press release from the State of Nebraska Department of
4 Justice dated September 18, 1989 which predates any
5 1993 case by four years.

6 It says that NRC brought some information
7 to the general -- Attorney Generals office. "The
8 Attorney General office believes that Ferret
9 Exploration Company of Nebraska Inc. is in violation
10 of the alien ownership of property provisions located
11 in the Nebraska revenue statute 76-400 through 76-
12 415."

13 So I think Mr. McGuire's statements were
14 possibly from memory and possibly inaccurate because
15 it conflicts with this press release from the Attorney
16 Generals office. I have reviewed correspondence where
17 the argument that Mr. McGuire just said concerning
18 there being some form of exemption for the erection of
19 a manufacturing facility.

20 I've seen correspondence where that was
21 stated and rejected by the Nebraska Attorney General.
22 And this press release says specifically that based on
23 the foreign ownership. And I again quote "the
24 Attorney Generals office conducted an investigation by
25 asking for materials and information from Ferret as

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1 well as reviewing testimony made by Ferret officials.

2 Upon initial review by the Attorney
3 Generals office it was determined that at most there
4 was a scientific controversy concerning the faulting
5 and fracturing."

6 So they refused WNRC's allegations
7 concerning perjury or false statements. But then they
8 say "FEN appears to have a majority of stock holders
9 who are aliens. As well as a majority of it's Board
10 who are aliens which bring it under the alien property
11 provisions. FEN has raised a number of defenses
12 claiming the statutes are unconstitutional" --

13 CHAIRMAN YOUNG: What's -- I'm sorry.

14 MR. FRANKEL: Yes ma'am.

15 CHAIRMAN YOUNG: What's the word you're
16 using FEN?

17 MR. FRANKEL: FEN means Ferret Exploration
18 that's the predecessor name of CBR.

19 CHAIRMAN YOUNG: Thank you.

20 MR. FRANKEL: And they raised a number of
21 defenses, exemptions, argued treaties. So clearly
22 there was some back and forth. This was not a
23 litigation. This is an investigation.

24 They find that the Attorney Generals
25 office says they will contact the county attorney

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1 where the leases are located and ask that forfeiture
2 proceedings begin as authorized on those mineral
3 leases.

4 It also says the Attorney Generals office
5 will contact the Secretary of State to begin an action
6 to forfeit the charter and dissolve Ferret Exploration
7 and it's wholly owned subsidiary Crow Butte Land
8 Company so that each company so that each company
9 forfeits it's right to do business in the state.

10 Further, the Attorney Generals office will
11 ask that the Director of Environmental Control delay
12 issuing any further permits to these corporations
13 pending the outcome of the action by the Secretary of
14 State.

15 Thereafter, in the letters that we filed
16 for Mr. McGuire's letters we filed with our May 23rd
17 brief there was a -- some rearrangement, some
18 disclosure of a rearrangement of stock ownership.
19 There was a suggestion that three of the corporations
20 that owned CBR were U.S. corporations. There was a
21 failure to disclose that those U.S. corporations were
22 themselves owned by foreign people.

23 But based on that inadequate and
24 incomplete disclosure that said that that the company
25 was owned by three U.S. corporations and one percent

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1 owned by Korean power company the Attorney General
2 turned around it's position and basically found that
3 the company had brought itself into some form of
4 compliance.

5 It's not correct to say that this was
6 fully adjudicated. It's not correct to say that this
7 was even properly concluded because the conclusion
8 that led to the change of position by Nebraska
9 Attorney General was based on an omission to state the
10 true foreign ownership of the U.S. corporations that
11 were the immediate share holders of CBR.

12 So that's my response. Is to clarify what
13 happened in 1989 with reference to the press release
14 issued by the Nebraska Attorney General.

15 MR. MCGUIRE: Fortunately the actual Court
16 decision is attached to our brief. The brief that's
17 dated June 9, 2008. You'll see what the Court
18 ordered.

19 My experience has always been in the last
20 35 years that Court orders trump press releases. What
21 occurred here was a press release. This lawsuit was
22 filed, it was drug out for three years before it went
23 to trial. But the facts as found by the Court are
24 accurate. And bare in mind when it's said that
25 there's an inappropriate conclusion reached, NRC had

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1 the opportunity to take that issue in front of the
2 Nebraska Supreme Court.

3 They did, then they unilaterally dropped
4 their appeal. So fortunately you have the case in
5 front of you that has a Court filing stamp on it.
6 It's not something that we've created. It's something
7 directly from the Court for the inclusion with our
8 June 9th brief. I think we're done with this, thanks.

9 CHAIRMAN YOUNG: Is there anything else
10 that you think it would be helpful, particularly to
11 respond to the applicant on or do you want to just
12 hold off until -- okay, then let's go -- well, let me
13 ask you.

14 How long -- obviously we're going to have
15 questions for you. But in terms of when to take a
16 break how long do you anticipate?

17 MS. JONES: I intend to be very brief,
18 Your Honor. I think you -- it appears that you've
19 delved into these issues with a lot of detail and I'm
20 sure obviously you have a lot of questions for me.

21 But, my arguments fortunately or
22 unfortunately they are pretty much -- their pretty
23 simple. And since we've briefed extensively the issue
24 and the questions that the Board posed in their April
25 order I would just go ahead and just make some very

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1 general statements.

2 The only two points I want to bring out,
3 or perhaps maybe three, is that there is -- I think as
4 much as -- with all due respect to the petitioners
5 concerns and I certainly do understand their concerns.
6 We do, as a regulator.

7 But I think it's just important to point
8 out that as much as they would like for the issue --
9 excuse me, for the information regarding foreign
10 ownership to be a requirement for the application it
11 just simply isn't it.

12 There are no rules in Part 40 that
13 required specifically that it be reported in a license
14 amendment application for this particular facility.

15 The --

16 CHAIRMAN YOUNG: Does 40.2 apply?

17 MS. JONES: I'm sorry?

18 CHAIRMAN YOUNG: 40.2, the complete and
19 accurate information?

20 MS. JONES: Well I think that is a general
21 catch all provision that applies in any license
22 application.

23 CHAIRMAN YOUNG: 40.9.

24 MS. JONES: Yes, I think I knew what you
25 meant. It generally applies in any license

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1 application review proceeding. And that is just to
2 ensure -- it sends out a message to the public as well
3 as to the applicant that when you submit information
4 to us you are to submit the complete, accurate
5 information that we request.

6 CHAIRMAN YOUNG: Including an amendment
7 application?

8 MS. JONES: Including an amendment
9 application depending on what the applicable criteria
10 is.

11 And in this instance there is no specific
12 regulation that requires them to submit information on
13 foreign ownership. Even in looking at 40.46 and
14 looking at the transfers of licenses. When you look
15 at that regulation it's kind of broad. But it's also
16 very specific about what could constitute a transfer.
17 Which we don't have that situation here.

18 They're not including in their amendment
19 a request to transfer a license. But even in that
20 instance, if you look at the information notice that
21 I cited in our last response, I believe it was the
22 June 9th response. We don't specifically ask for
23 foreign ownership information. We don't specifically
24 ask that the licensee make a distinction between
25 domestic and foreign ownership.

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1 But what we do ask is for information
2 regarding corporate ownership, shareholder changes,
3 management structure changes, and we ask that they
4 submit that information 90 days before the proposed
5 transaction.

6 Now mind you it is a guidance document.
7 But it is a document for the regulating community to
8 understand that before you undertake any transaction
9 of transferring a license it would behoove you to send
10 this information into us so that we can examine it and
11 we can comply with our duty under 40.46 which means
12 that we have to consent to the transfer.

13 So I have not located any -- even in case
14 law there's no specific requirement that foreign
15 ownership be reported and there's no prohibition under
16 Part 40 to granting a license. And I'm not suggesting
17 that we will do that in this instance.

18 But I could not locate anything. I think
19 the only prohibition that does exist is where the USEC
20 facility existed, 40.38. And that seems to be the
21 only place in Part 40 where it exists.

22 CHAIRMAN YOUNG: Let me just -- before you
23 go on let me back up a little bit. Part of an
24 application generally includes a description of who
25 the applicant is.

1 And I would assume that if that part of
2 the application was inaccurate or incomplete that you
3 could possibly have a violation of 40.9 by virtue of
4 that inaccurate or incomplete information. And you're
5 nodding your head as though you agree with that,
6 right?

7 MS. JONES: Yes, I agree.

8 CHAIRMAN YOUNG: Okay.

9 MS. JONES: Definitely Your Honor, I
10 agree.

11 CHAIRMAN YOUNG: Okay.

12 MS. JONES: But I think the caveat to that
13 particular provision is there would have to be a
14 requirement to submit certain types of information in
15 order for us to assess 40.9 was in fact violated.

16 CHAIRMAN YOUNG: Okay, but what I'm
17 talking -- I'm trying to be a little simpler here and
18 I want to take this a couple of steps.

19 If the applicant needs to say who the
20 applicant is and the application does not contain
21 complete information about who the applicant is or who
22 owns the applicant I understood you to agree that
23 there could be a possible violation of 40.9.

24 Now, let's back up and let's say if you
25 have a situation where -- hypothetical licensee

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1 already has their original license and they don't
2 propose to transfer their license. But instead
3 through a series of many purchases of stock or
4 creations of new entities over time the ownership in
5 fact changes even though there's no formal transfer or
6 sale from one company to another company.

7 That seems to me -- and again we're
8 talking hypothetically but it seems possible that in
9 a scenario like that the change in ownership could
10 sort of be lost track of.

11 I don't know off the top of my head how
12 detailed the requirements are. The NRC requirements
13 are with regard to when the requirement to seek a
14 license transfer would be triggered.

15 But it sounds as though there could be
16 this series of many transactions and structural
17 changes and so forth and so on where something like
18 that could be lost in the shuffle. And you're nodding
19 to that as well.

20 So if you have a situation like that and
21 at the license amendment stage a petitioner raises a
22 question and you have the rule that says you can't
23 grant a license, or in this case a license amendment
24 if it would be inimical to the common defense and
25 security of the public health and safety.

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1 I guess I'm not following why a contention
2 like that might not be admissible if there was enough
3 to raise a genuine dispute. The material issue would
4 be whether the grant of the license amendment would be
5 inimicable to the common defense and security.

6 I'll let you answer that and then I'll
7 just give you a warning. I want to also ask you about
8 the situation where you had that scenario and it turns
9 out that the actual owners several steps removed is
10 one of those countries that's considered by relevant
11 authorities in our Government to represent some threat
12 to our national security.

13 I guess I'm not following -- I understand
14 that the applicant says that in the license amendment
15 proceeding that wouldn't come up. But I guess I'm not
16 following that the NRC staff would necessarily not be
17 interested in those matters. And that the NRC staff
18 might not hesitate to grant a license amendment if it
19 became ware of those types of information.

20 Or that a Licensing Board shouldn't at
21 least hear the parties on a dispute of that nature.

22 MS. JONES: Well your comments are well
23 taken and --

24 CHAIRMAN YOUNG: And if I need to repeat
25 any please feel free to ask. I know I said a lot

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1 there.

2 MS. JONES: That's okay. Your comment is
3 well taken and there is -- you brought up some really
4 interesting issues and there is a lot that I can say
5 about much of it. And I'm going to try and break it
6 down and go, you know just be as simple as I can in my
7 response so that everyone understands.

8 But I think it's important to start out
9 with the premise that this is a licensee that's
10 seeking -- this goes back to the question that you
11 were asking earlier about when do we do a new license
12 and when do we not do a new license.

13 CHAIRMAN YOUNG: That's separate.

14 MS. JONES: But it's kind of related based
15 on your commentary in my mind, from my viewpoint.

16 But we can address that later. I'll just
17 try to be as direct as possible. But I believe in
18 this instance it's very important to keep in mind that
19 this is a licensee that we have a lot of information
20 about already because they -- in complying with 40.46
21 it is part of their requirement as a licensee to
22 report certain types of information to us, which they
23 have been doing.

24 And I have not gone back 20 years to
25 determine all of the different times and aspects that

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1 they've -- I've seen a lot of documents but I have not
2 studied them in extensive detail.

3 So I think that's important to keep in
4 mind that they are complying with a requirement under
5 their current license. So there is a lot of
6 information the NRC currently already has in it's
7 possession.

8 Again, of course when you go back and look
9 at the regulation regarding amendments we look at
10 certain pieces of information in so far as it's
11 applicable to the amendment. So I think it's just
12 important to bring that out.

13 And I would also say that the concern
14 about when would the NRC -- if the change of ownership
15 issues got lost in the mix that's an enforcement
16 issue. I think -- and one of the things that you
17 mentioned was once we become aware, if we become aware
18 through someone calling in an anonymous allegation
19 through an inspection because we do onsite inspections
20 and through the reporting requirements. If something
21 comes up that's just not copasetic our enforcement
22 procedure kicks in.

23 And that's where we would understand that
24 we need to do a little bit more than just what we're
25 doing currently on this particular license review.

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1 I'm sorry, you have a question?

2 ADMIN. JUDGE COLE: Yes, I would like you
3 to include in your presentation some consideration of
4 how you evaluate control of a company. You talked
5 about you want to be kept apprized of the management
6 organizations and etcetera.

7 At what point do you really evaluate the
8 control and is it included in your evaluation?

9 MS. JONES: Control with regard to?

10 ADMIN. JUDGE COLE: Control of --

11 MS. JONES: Of the company?

12 ADMIN. JUDGE COLE: -- direction of the
13 company and what it does.

14 MS. JONES: Again, that comes through the
15 reporting under -- well going back to transfers. I
16 mean there's obviously a reporting requirement there.
17 But I would have to consult the staff on exactly what
18 the reporting requirements are if you wouldn't mind if
19 I take a second.

20 Okay, as I understand it from the staff if
21 you look at our new reg 1569 we do examine corporate
22 management and control issues. It is part of our
23 review. Even in the license review --

24 CHAIRMAN YOUNG: The license amendment.

25 MS. JONES: -- even in the license

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1 amendment process we do look at that. And of course
2 we have -- obviously we are talking to the license
3 applicant regarding the amendment and we're dealing
4 with them on a regular basis and we know whose in
5 control and whose doing what in the company.

6 So that's just a practical every day, you
7 know just the back and forth. Not just through
8 enforcement or inspectors but also through our
9 personnel who are responsible for licensing.

10 But we do examine it --

11 CHAIRMAN YOUNG: So that would be a
12 relevant issue?

13 MS. JONES: Sorry, you're talking about
14 management, corporate management examining that issue.
15 Oh yes, it's relevant in our license amendment
16 proceedings.

17 CHAIRMAN YOUNG: So that would that follow
18 that you're not arguing anymore that the issue of
19 foreign ownership is irrelevant?

20 MS. JONES: I think what I'm arguing is
21 that it's not relevant with regard to this license
22 amendment and I think it's important for me to -- I'm
23 going to go back. I was hoping that I wouldn't have
24 to mention this because I was hoping that the panel
25 would just agree with us and we'd all go home.

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1 But I think it's important -- this is
2 probably an ideal time for me to disclose to the
3 Board. After our June 9th submittal I did a little
4 bit of research because of all the issues, the
5 historical foreign ownership issues that were being
6 brought up by the petitioners. And I discovered a
7 letter, two letters in fact that were sent by one of
8 our branch chiefs back in 1989, Edward Hawkins. He
9 responded to -- this is not the first time this issue
10 has come up with regard to this facility.

11 We have been aware of foreign ownership or
12 foreign interests in this company. Which at that time
13 was Ferret Exploration of Nebraska, since 1989 we
14 actually requested some information, not about foreign
15 ownership but specifically just about corporate
16 ownership and that information was disclosed to us.

17 So we were aware that it was a South
18 Korean corporation that actually had shareholder
19 interest in this facility. We did get a question.
20 These are not new issues.

21 We did get a question from the Broken Plow
22 Law Office and this was -- I'm assuming we sent the
23 letter to the attention of Mr. Andrew Reid where he
24 specifically asked about alien ownership. And our
25 response to him was -- hold on a second.

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1 And we said in August 24, 1980 response,
2 the two issues concerning alien ownership and overseas
3 shipment of mined Uranium that you brought to our
4 attention are not subjects considered in the issuance
5 of a source material license. The references you
6 cited in your August 12, 1989 letter, 10 CFR 40
7 paragraphs 40.4 E, 40.9 B, and 40.32 D have been
8 reviewed and if we find no basis for license of
9 denial.

10 So I'm just reading an excerpt from that
11 and that appears to have been the thinking of the
12 decision makers at the time. They reaffirmed this
13 position in another letter to the same individual in
14 October. So there's two letters where the Agency
15 affirmed their position on alien ownership and how it
16 plays into 40.32 D.

17 So I only say that not because I am saying
18 that the Board should accept that this is a done
19 issue. I only bring it to your attention because it
20 is not the first time that this issue has come up and
21 that we've been aware of foreign ownership for this
22 particular facility for some time.

23 But this was the position that we took
24 when the initial license was issued and of course the
25 license was subsequently issued in December of 1989.

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1 CHAIRMAN YOUNG: Let me just interrupt you
2 again here. It strikes me, based on what you've been
3 saying for the last few minutes that this -- the issue
4 of management and control and possible foreign
5 ownership has been at least enough to warrant further
6 inquiry by the staff in the past.

7 And one of the standards for contention of
8 admissibility is whether there is enough to warrant
9 further inquiry. I guess it sort of follows that it's
10 not irrelevant and the question becomes whether enough
11 has been presented in the contention to warrant
12 further inquiry at this point with regard to this
13 ownership issue.

14 And I think you're right. I don't think
15 we can take, we as a Board can take the past
16 conclusions which may have been after all the possible
17 structural changes or ownership changes or whatever
18 had taken place or might have been before some
19 activities had taken place to change the structure of
20 the various corporations and their relationships and
21 who had management control and so forth.

22 How do you respond to the question of the
23 issue at least at this point seeming to be one that at
24 least has warranted your further inquiry and might
25 warrant the Boards further, or might warrant enough

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1 further inquiry for the Board to admit the contention?

2 MS. JONES: Well I -- let me just clarify.
3 The reason that I undertook the extra task of looking
4 was because of -- I mean they researched this
5 extensively. Was a 69 page brief. And it was just
6 replete with information that raised a lot of
7 historical issues.

8 So I undertook the task because I wanted
9 to understand what was happening at the time because
10 their arguments went all the way back to '89. So I
11 wanted to understand what was going on at the time and
12 what the agencies thinking was at the time. So I just
13 want to make that clear that that's why I did it.

14 But I don't think that what we're doing
15 here 20 years later today -- I don't think our
16 position is entirely different. And I think there is
17 another, perhaps another point that I think is
18 important to make is that we're talking about source
19 material.

20 As the Board already knows and the Board
21 has extensive experience with this, you know different
22 types of material raise different threat levels and
23 there are different kinds of questions and policies
24 that the NRC has promulgated over the years.

25 I don't proclaim to know them all. You

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1 probably know a lot more about them than I do.
2 Particularly with regard to special nuclear material.
3 That raises a whole other set of issues with regard to
4 inimicality which we don't have here.

5 When it comes to proposals to export even
6 source material to other countries it triggers, if
7 there is a proposal that comes through our doors that
8 hits our doors then it triggers the 110 process which
9 is a separate process.

10 And so I think it's very important that
11 everyone here understands that we're talking about the
12 extraction of natural Uranium and that there are no
13 proposals to my knowledge to convert that, to enrich
14 it, to convert it into --

15 CHAIRMAN YOUNG: And I think that goes to
16 why 103 doesn't --

17 MS. JONES: Right.

18 CHAIRMAN YOUNG: Why the term production
19 facilities does not include mines. I mean obviously
20 you corrected us on that. But I think that's clear.
21 That doesn't need to be reiterated.

22 But I think that the issue still is -- I
23 mean you could make the argument in response to what
24 you just said that the national interest of the United
25 States these days, with regard to energy and resources

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1 for energy have become possibly even more relevant
2 than they were -- I can remember when gas for example
3 was 25 cents a gallon.

4 But, in any event I'm not sure that -- I
5 guess I'm not sure that it follows that simply because
6 source material represents less of a danger because of
7 the level of radioactivity and so forth. That the
8 arguments that the petitioners are making about the
9 relevance of foreign ownership and the national
10 interest in the common defense and security
11 necessarily go away.

12 MS. JONES: You know, I think that that is
13 a policy issue. And as you all know the NRC has been
14 constantly -- this is an ongoing process where we have
15 been constantly evaluating our regulatory framework to
16 determine --

17 CHAIRMAN YOUNG: But even if it's a policy
18 issue something might be a policy issue and that does
19 not necessarily exclude it from consideration as a
20 potential contention.

21 The issue that's before us is whether to
22 admit this contention. And part of what we need to
23 look at is whether there is a genuine dispute on a
24 material issue of fact or law.

25 The 40.32 D may or may not preclude a

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1 foreign owned company from getting an original source
2 materials license or amendment to it. But it at least
3 seems that it raises the issue sufficient to look at
4 it.

5 And I guess here my question would be if
6 you -- to go back to the example of if you had this
7 situation where the ownership trail had sort of become
8 lost in the shuffle, or maybe we're not, maybe you
9 knew most of it but there were aspects of it that you
10 weren't clear about it and it turned out that some
11 nation that could present some national security risks
12 did have some ownership control. And you have this
13 common defense and security language in 40.32 D.

14 How is -- even if it's a policy issue how
15 is that not an issue that can be raised in a
16 contention?

17 MS. JONES: I think that in this
18 particular instance it's not an admissible contention
19 because of how the contention is being raised, what
20 their arguing.

21 And again, I still have to -- you know the
22 regulatory framework it is what it is and I understand
23 --

24 CHAIRMAN YOUNG: Be more specific on how
25 their arguing what their arguing. What --

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1 MS. JONES: Well their saying -- I'm
2 sorry. Just reporting foreign ownership again we
3 don't have a requirement for these particular types of
4 licenses for these types of facilities and I --

5 CHAIRMAN YOUNG: But you said that the
6 staff does look at the management --

7 MS. JONES: Yes, we look at inimicality
8 but that doesn't necessarily mean that foreign
9 ownership is going to bar that. It doesn't mean that
10 we're --

11 CHAIRMAN YOUNG: Right, and I think you're
12 getting to the merits there. I mean, let's say this
13 contention were admitted. Ultimately it might be in
14 this case that the license would still be granted.

15 I'm talking hypothetically on every level
16 here. But you're argument it seems to me sort of goes
17 to the merits.

18 The question for us is is there an issue
19 that's been raised on which there's a genuine dispute
20 and is the issue material and has it been sufficiently
21 supported.

22 Whether or not there's a real concern
23 about this company at this point sufficient to deny
24 the license is sort of jumping ahead.

25 MS. JONES: Yes, I understand. It's just

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1 the way that these issues have been so -- have been
2 briefed in so much detail and I think there's a lot of
3 merit arguments that have already been made and we've
4 tried to stay away from doing that.

5 But again --

6 CHAIRMAN YOUNG: And that's fine. You
7 know but to some extent you sort of get into those to
8 inform you on what the real issue is. But the real
9 issue now is is there enough of a dispute, is it a
10 genuine dispute. Is it on a material issue and you're
11 saying the staff does look at management structure and
12 control.

13 We've got the language, the common defense
14 and security. I still haven't heard what you'd say
15 about the hypothetical nation that could present, you
16 know a risk to the national security. That -- whose
17 ownership and control had become lost in the shuffle.

18 I still haven't heard you say that that
19 would not be something that would be legitimate to
20 look at at this point.

21 MS. JONES: Well I think also what's
22 important too, I believe when you raised the question
23 it was --

24 CHAIRMAN YOUNG: Does that mean you agree
25 with what I said before you go any further?

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1 MS. JONES: In some form or fashion not
2 exactly because again I think it's important to keep
3 in mind that this is an amendment and -- but going
4 back to your question because I don't want to be
5 disrespectful and make it seem as if I'm trying to
6 evade that.

7 But if we were to acquire information that
8 a country for example, that we are at war with. For
9 example, we're at war now but if we acquired some
10 information that way that might impact this license
11 review then I would think that we would have to -- we
12 would have to take a look at that.

13 But that's -- I would think that would be
14 in the context of our enforcement proceedings. I
15 think you have to go back -- I'm trying not to deviate
16 too much from what the real -- what this license
17 review --

18 CHAIRMAN YOUNG: Let me just -- I'm sorry,
19 I'm going to interrupt from time to time. Let's say
20 that you then initiated an enforcement proceeding.

21 Are you saying the same thing Mr. Smith
22 said that the license amendment proceeding would go on
23 and that the enforcement would be completely separate
24 and that you'd actually get to the point of deciding
25 whether or not to grant the license when this

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1 enforcement proceeding is pending and that the issue
2 of the ownership by this country that we might either
3 be at war with or have some national security concerns
4 about would be completely ignored and the license
5 amendment would be granted.

6 If not -- you're shaking your head no. If
7 not then I guess I fail to see how it's not relevant.

8 The fact that something may be relevant as
9 policy in an enforcement proceeding and any number of
10 other context does not automatically preclude it's
11 also being relevant in a license amendment proceeding.

12 And then I don't want to forget to ask you
13 about the difference between a license -- or when you
14 do a license amendment and when you would require a
15 new license?

16 MS. JONES: I'm saying that yes, it would
17 be separate proceedings and I would also add that if
18 this proceeding -- if this proceeding was -- excuse
19 me. I'm losing blood sugar here. It's probably time
20 for lunch.

21 If we were in the process of doing -- of
22 looking at issues raised by petitioners and we had to
23 undertake an enforcement process because of
24 information that we received then it would be
25 incumbent upon me and the NRC obviously to bring it to

1 your attention. And that would probably have an
2 impact on the license review proceeding.

3 But we have not gotten any information of
4 the type. What we're talking about is whether or not
5 -- and I think we still just have to go back to the
6 contention of whether or not this is information that
7 should have been included in the license amendment
8 application and I'm saying that we don't have a
9 specific requirement for that.

10 And I'm saying that the compliance, when
11 we talk about the company and who it's being
12 controlled by and who it's shareholders are they have
13 been complying according to their license term. This
14 is part of their requirements as a licensee. They've
15 been following 40.46.

16 Of course I don't want to -- I'm not
17 representing today that they've complied every step of
18 the way because I just haven't looked into that
19 because it's just not really relevant here. They --

20 CHAIRMAN YOUNG: All right, let me --
21 let's point to something specific here.

22 And let me set a context.

23 We've got a license amendment application
24 that goes to the NRC, but obviously it's also relevant
25 to the public, it's also relevant to any potential

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1 interveners out there. That's what they have to
2 respond to, our law is replete with case law that says
3 you have to raise disputes or questions about the
4 application itself.

5 And we have the sections of the
6 application that the petitioners have cited and I'll
7 cite to you the same one that -- one among several
8 that they've cited that talks about the original
9 development of the Crow Butte and how it was
10 subsequently acquired and operated by Ferret until May
11 1994 when the name was changed to Crow Butte Resources
12 Inc.

13 This change was only a name change and not
14 an ownership change. CBR is the owner and operator of
15 the Crow Butte project.

16 Now when you have something like that out
17 there, notwithstanding whatever other knowledge you
18 might have this is what the public sees. Are you
19 saying that this statement from the application is
20 without dispute, complete and accurate?

21 MS. JONES: I would think it would be very
22 difficult for me to concede to that at this point
23 since the review process is being undertaken by the
24 staff. So I wouldn't want to --

25 CHAIRMAN YOUNG: Right, but the point I'm

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1 trying to make is if you just look at that and you
2 look at it from the standpoint of the public that's
3 out there that's being held to these contention
4 requirements and to challenging the application and
5 you looked -- and you considered the standard for
6 contention admissibility including is there a genuine
7 dispute on a material issue of law or fact.

8 And the member of the public out there
9 read this, what I just read to you from er 1.1.1. and
10 they filed a contention. They said well, that's not
11 true. We have a dispute with that. We dispute that.
12 This company is foreign owned. And they have not
13 revealed the extent of their foreign ownership.

14 How is that not a genuine dispute on an
15 issue that's part fact, part law, but material to what
16 would need to be decided under 40.32 D?

17 MS. JONES: Again, and you're not going to
18 like my response. But I'm sorry, I have to go back to
19 the same response and that is that if it was a
20 requirement for this particular license amendment
21 application.

22 If we had a requirement in Part 40 then I
23 think that that contention would hold some merit. But
24 we don't -- we just simply have that requirement here.

25 CHAIRMAN YOUNG: You do have that

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1 requirement for complete and accurate information and
2 you do have the requirement for the language of 40.32
3 D -- the issuance of the license would not be
4 inimicable to the common defense or security or to the
5 health and safety of the public.

6 And you've got the case law that talks
7 about common sense and security bringing into play
8 foreign ownership and you've got a section of the
9 environmental report that's being challenged as being
10 not complete and accurate.

11 The fact that you don't have a specific
12 requirement that an applicant say are you foreign
13 owned or not does that really knock all that -- all
14 the other factors aside?

15 MS. JONES: I think in this case the issue
16 that they're raising it does knock it aside because
17 again the regulatory framework that's in place is
18 notification to the public of how we are reviewing
19 these license applications. That's where it is.

20 And so --

21 CHAIRMAN YOUNG: Well the regulatory
22 framework for ISL Mining is new reg 1569. And it's
23 not -- it's not a rule, it's not a regulation, it's a
24 guidance document. It has some persuasive effect but
25 it's not law. It's not a rule.

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1 MS. JONES: That is correct and if you
2 look at that guidance we don't really make a
3 distinction between domestic or foreign. We just ask
4 for general information about --

5 CHAIRMAN YOUNG: But that's not binding.

6 MS. JONES: I understand that but I'm just
7 responding because I just wanted to clarify that we're
8 not really -- even in that instance we're not asking
9 for the information.

10 But the regulatory framework I'm referring
11 to is Part 40 and it's just simply not there. And I
12 think it's -- you know obviously you know we look at
13 each license amendment, it's a general rule,
14 regulatory agencies we look at these on a case by case
15 basis.

16 But we simply don't have that requirement
17 here. And as far as the cases that have been cited I
18 think there was something that you said very early on
19 in the proceeding when you indicated to everyone that
20 you wanted to put -- you sort of established what the
21 ground rules are.

22 And you did mention 103 D and you didn't
23 want that to pollute the thinking and I think it has.
24 I think from their standpoint their arguments have
25 grown quite a bit. They've been modified quite a bit

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1 since the initial argument and I think -- this is from
2 our viewpoint these cases that seem to construe
3 inimicality against the information regarding foreign
4 ownership these cases are very specific to those
5 prohibitions.

6 And it's just very important to keep that
7 in mind. We just don't have the same issue here.
8 Even when you look at source materials, statutes under
9 the AEA it's not there.

10 So I -- it's just I don't know of any
11 other way to say it. I know you're not happy with
12 that response.

13 CHAIRMAN YOUNG: I'm not happy or unhappy
14 that's not really relevant.

15 MS. JONES: Well, that's our viewpoint.

16 CHAIRMAN YOUNG: What I'm trying to get
17 you to focus on is 103 is out of the way, but that
18 does not govern here. You're right on that. But
19 40.32 D does govern. And 40.9 is it on complete and
20 accurate information does govern.

21 I don't know how much more you want to say
22 at this point. I do want to ask more questions about
23 the issue of -- since so much of your argument as well
24 as the applicants argument is based on the fact that
25 this is a license amendment application. I do want to

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1 get quite a bit more elicitation from you on when an
2 applicant is allowed to file a license amendment and
3 when they have to file a new license based on distance
4 and any number of other factors.

5 It may be that you can wrap up one train
6 of thought and we can take a lunch break and come back
7 when everybody is refreshed and continue on that
8 because obviously there's more on this issue and I
9 don't think we want to push things beyond the point of
10 people being too tired.

11 MS. JONES: Well, you know I don't have
12 much more to say I think. I think you know I've said
13 it and I really don't -- I think if I add anything
14 else it would be repetitive. So I don't want to bore
15 everyone.

16 CHAIRMAN YOUNG: Well then why don't we
17 take a lunch break and then when we do come back I
18 would like to hear more from you and ask you a few
19 more questions about the -- when it's a license
20 amendment proceeding and when it's a new license.

21 That is such a strong factor. We're not
22 quite finished. That's such a strong factor in your
23 arguments and the applicants argument that I am a
24 little unclear on, you know if the new site were 100
25 miles away, 50, 30, 20, 1,000, you know where do you

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1 draw the line.

2 And all of your arguments that were based
3 on, you know the license amendment
4 argument would fall away if this were a new license
5 and while the context we find ourselves in is in fact
6 a license amendment application the same standards as
7 applicable apply in ruling on the license amendment
8 application as applied to the initial license.

9 So, I think that has to play into -- at
10 least it plays into my thinking on it at this point.
11 So, when we come back if you could provide some
12 elucidation on that. That would be great, thank you.

13 And I guess we could go off the record for
14 now.

15 (Whereupon, off the record from 12:56 p.m.
16 until 2:09 p.m.)

17

18

19

20

21

22

A-F-T-E-R-N-O-O-N S-E-S-S-I-O-N

23

2:09 p.m.

24

CHAIRMAN YOUNG: All right -- I'm sorry.

25

Before we go onto the argument of -- back to the

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1 argument on foreign ownership we have deliberated on
2 the issue of Mr. Cook's attendance and based on the
3 earlier discussion about 20 people and on the fact
4 that Mr. Cook is a member of NRC we've decided that he
5 may attend in addition to the other five people.

6 MR. FRANKEL: Thank you, Your Honor.

7 CHAIRMAN YOUNG: Now, back to the stamp.
8 I think we left you with several questions. One of
9 which is the issue of when do you require an amendment
10 and when is a new license required because unlike in
11 some other cases where there are connected pieces of
12 property so that it's one discreet pieces of property.

13 In this case there's two separate pieces
14 of property separated by eight miles as I recall. And
15 then there are some additional questions, but why
16 don't you go ahead on that.

17 MS. JONES: Thank you, Judge. First I
18 just want to say that -- I just want to start out by
19 saying that the staff -- we are currently looking at
20 the issue of when is a proposed activity subject to a
21 new license application and when you would subject it
22 to an application -- a review process according to a
23 license amendment review application proceeding.

24 So, I just want to make that statement
25 that that review is actually taking place as we speak.

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1 We're looking at developing a policy. So I just want
2 to say that.

3 Getting to your -- to the other part of
4 your question proximity is an issue. It is a factor
5 when we're looking at whether or not we're going to do
6 an amendment for these particular types of facilities
7 or whether or not we're going to do a new license.

8 As I understand it, the policy of the NRC
9 with regard to satellite facilities and amendments
10 goes all the way back and I'm not really sure --

11 CHAIRMAN YOUNG: It goes all the way back
12 to?

13 MS. JONES: To probably to the 80's of
14 Uranium recovery facilities of this type. And so the
15 issue of when we undertake an amendment process has to
16 do -- it does have to do with proximity. But it also
17 has to do with what the facility is proposing to do at
18 the satellite facility.

19 And in this instance, in this particular
20 instance the facility is not proposing to do -- what
21 their proposing to do is part of certain steps of
22 their process. And the other portion of it is
23 actually slated to be complete at their main facility.

24 And so that is the other determining
25 factor if you will, that -- in terms of how the NRC

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1 has undertaken the review process for these
2 facilities. That's been our practice for many, many
3 years.

4 CHAIRMAN YOUNG: If they were going to
5 bring back the material to the original license site
6 but the new site were 100 miles away would that --
7 would that also be treated as an amendment?

8 MS. JONES: Okay thank you, sorry for
9 that. The staff wanted me to just make it clear that
10 the proximity is not a determining factor and I think
11 I said that. But he felt that I needed to make it
12 clear that it's not the only thing we look at.

13 We do have a facility that currently -- we
14 did a license amendment for that was approximately 100
15 miles away. But just as in that case is what we have
16 happening here only the first part of the in situ
17 leech recovery process is occurring at that facility
18 and then the rest of it happens at the main facility.
19 So -- and that's the situation we have here.

20 CHAIRMAN YOUNG: But the first part is the
21 part where they get the Uranium out right?

22 MS. JONES: Yes, they get the Uranium out

23 --

24 CHAIRMAN YOUNG: So it's the most
25 significant part, right?

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1 MS. JONES: I'm sorry?

2 CHAIRMAN YOUNG: It's sort of the most
3 significant part, right?

4 MS. JONES: I don't know. I don't know
5 that I would say it's the most. I think all parts are
6 significant. But it's the first part --

7 CHAIRMAN YOUNG: It's the purpose?

8 MS. JONES: I'm sorry?

9 CHAIRMAN YOUNG: It's the purpose of it.
10 If you didn't have the Uranium the rest of it wouldn't
11 have any role whatsoever.

12 MS. JONES: Right, it's extracted. It's
13 taken through an ion exchange process above ground and
14 then from there it's transported to the main facility
15 where they finish out the rest of the processing.

16 CHAIRMAN YOUNG: Obviously the reason this
17 is significant is because as I said before so much of
18 your argument and the applicants argument is based on
19 the fact that it's a licensed amendment.

20 I don't know how many situations have come
21 up before where a license amendment -- where the NRC
22 allows a licensed amendment application to be filed as
23 opposed to a initial license where there are more than
24 one location.

25 But, it seems to me most license amendment

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1 proceedings involve additional activities at the
2 original site. So it seems a little unusual.

3 Maybe I'm wrong, but it seems a little
4 unusual to have a license amendment for a new site at
5 a different location that's not connected, you know
6 it's not part of the same piece of property.

7 MS. JONES: Excuse me Judge. Okay, the
8 staff just explained to me we've issued approximately
9 four other amendments and this was for the Power
10 Resources Inc. facility.

11 And again it was a sort of similar general
12 concept that we have here. That part of the process
13 takes place at the satellite and then of course the
14 other rounds back to the main facility.

15 And part of it again, proximity factors in
16 but it's not the determining factor. And again I have
17 to reiterate that the issues that you're raising are
18 currently being reviewed and unfortunately I'm not in
19 a position to comment on it publicly until there is a
20 final policy that's developed.

21 ADMIN. JUDGE OLIVER: I have a question.
22 How is the decision made. Who is this made by. The
23 NRC or the applicant to file an amendment as opposed
24 to another license?

25 MS. JONES: I'm going to get a response

1 for you in a second. Okay, as the staff explained to
2 me. Ultimately it's their decision and I'm assuming -
3 - I'm sorry?

4 ADMIN. JUDGE COLE: Staff's decision?

5 MS. JONES: Yes, what happens is the
6 license applicant submits their proposal in the
7 license application and they obviously detail what the
8 proposed project is and even though --

9 CHAIRMAN YOUNG: I'm sorry, they submit a
10 proposal.

11 MS. JONES: I'm sorry, the application.
12 The license application.

13 CHAIRMAN YOUNG: We're talking about the
14 application?

15 MS. JONES: The application, yes sorry.

16 CHAIRMAN YOUNG: So, when they submit it
17 it's designated as an amendment or a new license
18 application?

19 MS. JONES: No, no actually that's what I
20 was going to explain. They submit an application and
21 even if they submit it as an amendment it's really
22 ultimately up to us to decide whether or not we will
23 in fact review it as an amendment.

24 And that's just been our practice with
25 regard to these facilities for a number of years.

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1 CHAIRMAN YOUNG: So, there are no
2 standards. It's pretty much just a discretionary
3 determination?

4 MS. JONES: Yes, I mean that hasn't --
5 that particular aspect has not been codified.

6 CHAIRMAN YOUNG: I guess the concern, in
7 addition to the fact that so many of the arguments of
8 the applicant and staff are based on this being a
9 license amendment application as opposed to an initial
10 license is that from the standpoint of, I guess the
11 public although you say proximity is not determinative
12 when you do have a site at some distance from the
13 original site, different members of the public might
14 be effected such that for them it's something
15 completely new.

16 Given that there are no standards, and
17 that this is sort of an open question what is -- I
18 guess I can't help wondering what impact that has on
19 all of the arguments that are based on this being a
20 license amendment proceeding because it seems as
21 though arguments could be made both ways.

22 That it could go -- that you could have
23 required it to be a new license, in which case none of
24 those arguments would apply.

25 MS. JONES: Again, I don't think it would

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1 be a good idea and I'm sure my client would chastize
2 me later if I commented on it publicly.

3 The question I think you're asking does go
4 to --

5 CHAIRMAN YOUNG: Well the question I'm
6 asking is given that observation that I've made do you
7 have any response you want to make to that?

8 MS. JONES: Again, I think with regard to
9 the contentions that have been raised you still have
10 to go back to the regulatory framework of what's
11 required to be submitted and what's not really
12 required.

13 And I think that, you know in terms of the
14 public being notified about what the proposed activity
15 is that would require them to examine and review the
16 application itself.

17 In this instance if there was -- going
18 back to the foreign ownership issue, if there was a
19 requirement in our regulations then I think that it
20 would have been there. That requirement would have
21 been spelled out.

22 But I understand the question you're
23 asking, but I don't really see how it bares on
24 anyone's ability to make an argument or not make an
25 argument based on what the current regulatory

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1 framework is for Part 40 licensees.

2 CHAIRMAN YOUNG: What -- how does the
3 staff interpret 40.32 D, the common defense and
4 security part of that. What do you look at there.
5 What types of things would you take into account there
6 because I guess I haven't heard any.

7 And the words are there so they've got to
8 mean something. So what do they refer to in the
9 staffs view?

10 (No response.)

11 CHAIRMAN YOUNG: And let me add to my
12 question. On page two of your 2/9 filing I had
13 highlighted your statement that foreign ownership
14 alone cannot support a finding of inimicality with
15 respect to this application.

16 And the questions I had written in the
17 margin were do you have a citation for that principle
18 too. And two, what else would come into play. And
19 actually that statement would seem to suggest that
20 foreign ownership would be relevant.

21 MS. JONES: Well I'll address that one
22 first since it's the last, the latest one.

23 When we made that statement it was made in
24 the context of responding to all of the contentions
25 that have been raised. When we said foreign ownership

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1 alone what we were basically responding to was their
2 contention that foreign ownership should somehow act
3 as a bar, or it is -- that in and of itself creates an
4 issue of inimicality.

5 And so when we responded that's the
6 context in which we were responding to it. According
7 to the research we did -- and again I do have to say
8 that this -- in terms of how the staff -- and let me
9 go back to your first question. In terms of how the
10 staff looks at inimicality they are looking at public
11 safety issues.

12 I mean in this particular instance that is
13 how we're using -- we're looking at that particular
14 provision with regard to this amendment. We're
15 looking at public safety issues. Yes, we do take
16 national defense into consideration obviously. But --

17 CHAIRMAN YOUNG: How?

18 MS. JONES: Well, I mean those are issues
19 that have already been -- and it's difficult for me to
20 comment on what the original thinking was when the
21 initial license was granted.

22 CHAIRMAN YOUNG: We're not talking about
23 the original license or the initial thinking. What
24 I'm talking about is some of your arguments seem to
25 sort of be saying that the common defense and security

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1 is just not relevant. And then in another place you
2 say it's not foreign ownership alone cannot support
3 it.

4 But, my main question is whatever the
5 initial thinking is, just as a matter of
6 interpretation what are the general -- what are the
7 things that you look at under that. I mean what --
8 give me examples of things that would be relevant to
9 the common defense and security?

10 MS. JONES: I think that when you look at
11 the curators case which was a slightly different.
12 That had some different issues because there was some
13 issues of special nuclear material, amendments to
14 those licenses.

15 I believe the Commission created, or at least
16 this is the first that I could see where they actually
17 had a test as to inimicality. And basically stated
18 that the petitioners in that case were raising issues
19 of nuclear proliferation.

20 And basically stated that it was important
21 for the -- any issues raised by the petitioners in
22 that case that it was important for them to
23 demonstrate that the action that is being proposed
24 would somehow directly create an issue, a risk to
25 common defense and security.

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1 And of course in that case they were
2 unable to demonstrate that. And so it appears what we
3 got from that in answering the Boards question, and it
4 appears from what the NRC has been doing since 1989
5 which was evident in the letter that I brought to your
6 attention is that they've been looking at this issue
7 with regard to this specific amendment in question and
8 whether or not -- what is being actually proposed in
9 that particular amendment.

10 And so that -- it's a case by case
11 determination because we don't have --

12 CHAIRMAN YOUNG: But what I'm trying to
13 find out is what case would raise a question. Is
14 there any case that would raise a question?

15 MS. JONES: I don't know because I haven't
16 come across --

17 CHAIRMAN YOUNG: Because the sense of your
18 argument sort of leaves me with the sense that there
19 is no case that would raise a question.

20 And if it's impossible to ever raise an
21 issue under a rule then that -- I mean that's almost
22 sort of an absurd interpretation of the rule.

23 It's got to mean something. There's got
24 to be some example of something that would arise under
25 the rule because you can't just interpret it out of

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1 existence.

2 MS. JONES: Right, I understand and I
3 think probably the answer to that is, you know if a
4 situation would probably be if someone were proposing
5 to -- and this is kind of in line with the Cur-McGee
6 case. If someone was purporting to send this type of
7 material to another country perhaps Iran, which I
8 believe under Part 110 is a prohibited destination
9 then we would obviously have a problem.

10 If they were proposing to do that in this
11 license application proceeding we would tell them
12 clearly you can't do that. In any proposal to send
13 source material out of the country you have to go to
14 another licensing process.

15 So --

16 CHAIRMAN YOUNG: And then that brings in
17 the whole --

18 MS. JONES: So, that will probably --

19 CHAIRMAN YOUNG: -- export license
20 proceedings --

21 MS. JONES: Correct.

22 CHAIRMAN YOUNG: -- and who could intervene
23 and how they, how a petitioner could show standing.

24 I believe Mr. Smith said they showed
25 standing by showing that there was some law or

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1 international treaty provision that would be actually
2 violated which would normally be more comparable to a
3 sort of contention admissibility question as opposed
4 to a standing question.

5 But, I mean just looking at the whole
6 situation from a practical real world standpoint that
7 provides for the kind of basic fairness that we are
8 required to fulfill. If the only alternative is
9 something that in all practical effects is something
10 that cannot be -- cannot lead to any meaningful
11 participation.

12 I mean that's the standard, the due
13 process standard is a meaningful opportunity for a
14 hearing. A meaningful opportunity to object. And so
15 that's why I'm raising these questions.

16 If it's always -- well you can't do it
17 here but you can do it somewhere else, but when you
18 get to that somewhere else there are other barriers
19 because there really is essentially no way to show
20 standing. You know then the question of
21 meaningfulness arises.

22 MS. JONES: And I -- your perspective is
23 understood and I think again we just have to keep
24 going back to the fact that it is a case by case. And
25 no, there hasn't been any specific codifications with

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1 regard to common defense and security.

2 A lot of it has come out of -- again it's
3 a case by case decision that the Commission has made
4 and I think --

5 CHAIRMAN YOUNG: I'm sorry, I keep
6 interrupting you. But a case by case situation. Sort
7 of the way I'm hearing you is you're saying it's a
8 case by case determination whether there is
9 inimicality.

10 But what we are here to determine is not
11 whether there is a situation that's inimical to the
12 common defense and security. We're here to determine
13 whether there is a genuine dispute.

14 And what you are talking about it seems to
15 me it sort of goes to the ultimate question of how
16 that dispute is resolved which is a separate issue.

17 So, what is sufficient to raise an issue
18 while being different than what would be sufficient to
19 make a finding it seems to me that foreign ownership
20 and the alleged failure to disclose or reveal, those
21 two things together -- let me just ask you.

22 In this case why are not, in your view
23 those two things together enough to at least raise an
24 issue, a dispute which is not being resolved at this
25 point.

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1 I mean admitting a contention in which a
2 petitioner and intervener makes an allegation doesn't
3 change that allegation into a fact. It simply says
4 they've raised an allegation. They've supported it
5 well enough to warrant further inquiry.

6 MS. JONES: Right, and I think it just
7 still goes back to the original position of the staff
8 is that we just don't have a requirement on the books
9 that requires them to report it.

10 And again, having to go back to our May
11 23rd response in response to the Boards question it
12 just -- to say that inimicality, foreign ownership in
13 and of itself raises an issue of inimicality without
14 demonstrating. I think that alone cannot demonstrate
15 inimicality for these particular types of licenses in
16 this instance.

17 CHAIRMAN YOUNG: And what if you have
18 foreign ownership and additionally -- and again this
19 is obviously just an allegation. But additionally
20 some indication that the information provided in the
21 application is not complete.

22 In other words, there's an alleged failure
23 to disclose. If you have those two things together --

24 MS. JONES: Then I think again they'd have
25 to undertake initiating an enforcement proceeding. I

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1 think at that point that's when we would take a closer
2 look and investigate to see what we have is a
3 violation by an already licensed applicant.

4 CHAIRMAN YOUNG: But, here we're talking
5 about the license amendment. You know, whether you do
6 an enforcement proceeding is a separate matter. What
7 I'm talking about is how you get a contention in on
8 this subject.

9 You say foreign ownership is not enough
10 alone and the question is foreign ownership plus some
11 allegation and support for the allegation for failure
12 to disclose.

13 And what I'm trying to get you to address
14 is one, is that enough, two, if that's not enough what
15 else would be required.

16 And we're sort of starting to go in
17 circles. So, but if you want to take another stab at
18 that and then I want to move onto another question.

19 MS. JONES: All I can say at this point
20 perhaps maybe this is another way to state it. That
21 when we say that foreign ownership alone cannot
22 present an issue of inimicality what we're saying is
23 just because -- in this particular proceeding, for
24 these types of licenses, for this kind of facility
25 that there may be some implication for foreign

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1 ownership two or three, maybe four or five steps
2 removed.

3 That in and of itself doesn't control
4 where the material ultimately ends up. That is not a
5 determining factor of how that material ultimately --
6 where it ultimately ends up which is --

7 CHAIRMAN YOUNG: Which is the starting
8 point. Without this license that there would never be
9 an opportunity for an export license application.

10 MS. JONES: I'm sorry?

11 CHAIRMAN YOUNG: It's the starting point.
12 It's a necessary precursor to the point of asking for
13 an export license for the material that's at issue
14 here.

15 MS. JONES: If someone is proposing to
16 send information -- excuse me, send material outside
17 of the country then we have 110 is implicated, Part
18 110.

19 Their specific contention which has been
20 modified, at least in my viewpoint several times, but
21 their original contention had to do with foreign
22 ownership and destinations of the material. And the
23 destinations issue was addressed under Part 110.

24 And again, we go back to the basic premise
25 that foreign ownership in itself does not necessarily

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1 control where this material is going to end up and how
2 it's going to be shipped.

3 CHAIRMAN YOUNG: Let me move on to another
4 question and we can come back to this if we need to.

5 But they've also raised 40.2, the
6 regulations applying to persons in the United States
7 and how does that work when you've got the possibility
8 of decisions being made outside of the United States.

9 MS. JONES: I'm sorry Judge. If you could
10 allow me to just take a minute to review it, thank
11 you.

12 Okay, would you mind repeating your
13 question. Sorry, and you wanted to know --

14 CHAIRMAN YOUNG: I believe we were talking
15 about 40.2 applying to all persons in the United
16 States and how -- this is probably not how I worded it
17 before.

18 But with regard to decisions that are made
19 by persons outside of the United States over what
20 happens at the Crow Butte mining site or sites how
21 does the NRC rules govern them if this says it only
22 applies to persons in the United States?

23 MS. JONES: Well as I understand it we
24 talked about this earlier and I believe that the
25 facility is owned by a U.S. company.

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1 And again, as I said even though you may
2 have a ultimate parent that's maybe three or five
3 steps removed --

4 CHAIRMAN YOUNG: Well that's what I'm
5 talking about.

6 MS. JONES: Right.

7 CHAIRMAN YOUNG: If the ultimate parent --
8 if some Board in Canada, or Korea or wherever is
9 making decisions about what happens with these sites,
10 which it would seem would be possible if they have
11 control, if they have ultimate ownership. How is that
12 governed if the NRC regulations don't apply to persons
13 outside the United States?

14 MS. JONES: Well again, I think it goes
15 back to control. And in fact it just triggered my
16 memory about inimicality.

17 This goes back to who was in control of
18 what and we asked the information, it specifically --
19 it's listed in our guidance. Although it is guidance.

20 CHAIRMAN YOUNG: Right --

21 MS. JONES: But it is information that we
22 do examine. That we do look at --

23 CHAIRMAN YOUNG: Right, right but again
24 the contention has to do with control by a foreign
25 company. There's a dispute over that. But the

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1 contention alleges that the foreign company and
2 persons outside the U.S. do have control.

3 And what you seem to be saying in response
4 to me is that no, you've already determined that they
5 don't. That U.S. companies in the U.S. have control.
6 But the contention alleges that there's control
7 outside the U.S.

8 MS. JONES: I think what I was -- some of
9 my responses and I need to make sure that we stay on
10 track on what I'm responding to and a lot of my
11 responses in the last -- or shall I say a lot of our
12 responses in the last few pleadings have been
13 specifically to specific questions about --

14 CHAIRMAN YOUNG: But my question right now
15 is 40.2 says regulations with certain exceptions apply
16 to all persons in the United States.

17 MS. JONES: Correct.

18 CHAIRMAN YOUNG: The contention suggests
19 that there are persons outside of the United States
20 who exert control over the activities at the Crow
21 Butte proposed mine site. And so how does the NRC
22 regulate what happens, what goes on with those
23 persons.

24 Now, this is a dispute but that's what the
25 contention alleges. So I'm asking you to consider

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1 that the possibility that there are persons outside of
2 the United States onboard in Canada, outside of the
3 United States who are making decisions that control
4 what happens at Crow Butte.

5 MS. JONES: Well, I guess I'd have to
6 maybe digress a little.

7 CHAIRMAN YOUNG: Try not to.

8 MS. JONES: Well, I'm trying not to but
9 it's so hard because of the way that these issues are
10 being presented and the arguments have been modified
11 so much.

12 But, this goes back to -- I think it just
13 goes back to the original contention admissibility and
14 that is that it's just not an issue that we look at.

15 We don't specifically ask --

16 CHAIRMAN YOUNG: All right, I'm really
17 asking you not to digress here.

18 MS. JONES: Okay.

19 CHAIRMAN YOUNG: I'm really just asking a
20 simple direct question. Let's assume, for sake of
21 argument that there are persons outside of the United
22 States, whether natural persons or corporations
23 outside of the United States that are making decisions
24 that control the activities, on some level of the mine
25 site.

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1 How is that regulated if the regulations
2 in Part 40 do not apply to those persons outside the
3 U.S.?

4 MS. JONES: Okay, I think I've been trying
5 to answer the question in different ways. Maybe this
6 is a more precise way of responding. This of course
7 goes back to control and what we look at is what kind
8 of control is being exerted over who complies with our
9 -- how our regulations are complied with.

10 And what we're looking at is the actions
11 of the U.S. company here in the United States and I
12 hope I'm not going into the merits. But I've see no
13 other way to respond to the question other than to say
14 that what we're examining is the control of the
15 company that is responsible. Whose exerting that
16 control in terms of how our regulations are being
17 complied with and whether public safety and health is
18 being taken into consideration by those persons here
19 in the United States.

20 So whatever is happening --

21 CHAIRMAN YOUNG: I think I understand.
22 What you're saying is you're looking at what the
23 company here, that says they manage the activities of
24 the mines here --

25 MS. JONES: Correct.

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1 CHAIRMAN YOUNG: -- what their doing and
2 how they control and how they comply with the NRC
3 regulations.

4 What the contention says, as I understand
5 it, what the interveners are saying is well it doesn't
6 really -- I mean it may be nice and find and good what
7 the people in the local company do, but if in fact
8 there is an foreign corporation and a foreign Board or
9 Boards that can, that have the power to overrule, to
10 direct what that new company in the U.S. is doing then
11 that would seem to raise a dispute.

12 And the question I'm asking you is, let's
13 assume for sake of argument that there is a foreign
14 company that has the power to overrule, to direct what
15 those U.S. people do. How can the NRC regulate that?

16 MS. JONES: We can't necessarily regulate
17 what goes on in the boardrooms. But what we can
18 regulate is what's happening on the ground and whether
19 or not they are complying with our regulations.

20 That's what we can control and that's what

21 --

22 CHAIRMAN YOUNG: Right, but what we're --
23 I'm sorry to interrupt you again but I'm going to have
24 to do this because I really -- we're here for you all
25 to help us. But I need to sort of get some questions

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1 answered to help me understand the issues better.

2 If we were talking about just sort of --
3 what's the word not flat playing field. We are
4 talking about a situation where there were no license
5 amendment at issue. You're regulating what the people
6 here do and unless something comes to your attention
7 that suggests that their doing the wrong thing then
8 you don't get into questioning what's going on.

9 If something arises that presents a
10 problem then you go in and you deal with that. But
11 the context here is there is a proposal to start new
12 activities at a new location and whether -- and the --
13 you're looking at it as a license amendment. But
14 however you look at it we're looking towards the
15 future, what's going to happen in the future.

16 Should the requested license amendment be
17 granted. And the petitioners, interveners correct me
18 if I'm wrong, are saying in looking towards the future
19 you need to take into account the fact that the people
20 outside the U.S., persons outside the U.S. are going
21 to be exerting actual control and you need to take
22 into account their allegation that they have not
23 provided full and complete disclosure of all the
24 relationships that go outside the country.

25 You need to take that into account in

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1 determining whether it would be in the public interest
2 and in the interest of the United States, whether it
3 would be inimical to the common defense in the
4 security or to the health and safety of the public to
5 grant this license amendment.

6 And they're arguing that there is at least
7 an issue as to whether these types of questions come
8 into play as a result of that foreign ownership and
9 control which was -- they allege not fully disclosed.

10 So how -- looking at it from the
11 prospective of predicting into the future, what you
12 have to do in any situation where there is a request
13 for a license or a license amendment. You have to
14 predict what's going to happen in the future. You
15 can't just say we'll handle it as it arises.

16 We're looking now at how do we look to the
17 future and best assure that we're not going to allow
18 something where there's a possibility that problems
19 could develop?

20 MS. JONES: And --

21 CHAIRMAN YOUNG: If I've over summarized
22 anyone can correct me or challenge that
23 characterization. But do you see what I'm getting at?

24 MS. JONES: I do understand, but I think
25 again now this is getting into possibly some policy

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1 issues that --

2 CHAIRMAN YOUNG: It may be, it may be.

3 MS. JONES: It is because we don't --

4 CHAIRMAN YOUNG: However, it may be, it
5 may be. We're not here to decide policy though.
6 We're here to decide whether to admit the contention
7 and that's all I'm asking you to address.

8 And we all know the contention
9 admissibility rules and we know 40.32 D, we know 40.2,
10 we know 40.9. So maybe you could just wrap up your
11 argument on all of that and then say whatever else you
12 want to say on that.

13 But I do have a concern that you haven't
14 really addressed the question that I've been trying to
15 get you to address. MS. JONES: Okay, I'm sorry
16 about that, that we disagree. I think I have been
17 trying to address it in terms of explaining what the
18 staff takes into consideration in terms of who is
19 controlling the activities in the United States and
20 how those activities impact the operation and how it
21 impacts their compliance with our regulations.

22 And I think I've done the best I could in
23 terms of explaining this is what we look at.

24 CHAIRMAN YOUNG: What if the -- instead of
25 Canada it were one of those countries -- I think you

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1 raised it Ron earlier.

2 What if it were -- what if there were some
3 indication that an Iranian company was the ultimate
4 owner would that change your approach in terms of
5 deciding -- well you're talking about deciding whether
6 to grant the license amendment in context contention
7 admissibility.

8 But, I guess I find it hard to believe
9 that you would take the same approach that you're
10 talking about if it were --

11 MS. JONES: An Iranian company that was
12 seeking an interest --

13 CHAIRMAN YOUNG: Right.

14 MS. JONES: -- an ownership interest --

15 CHAIRMAN YOUNG: Well not seeking an
16 interest but had -- the allegation is that they have
17 ultimate ownership, ultimate control and there may be
18 a dispute about that, but that's the allegation.

19 And so in that instance would the staff
20 look only at what the local company did without
21 consideration of the fact that it was wholly owned or
22 whatever controlled to a significant extent by an
23 Iranian company?

24 MS. JONES: I think it goes back to my
25 previous response that if that information was sent to

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1 us through an allegation what have you and we went
2 back and looked at our records in terms of their
3 compliance during their license term with 40.46.

4 If they somehow transferred an interest in
5 their facility to a country like that it's possible
6 that under those particular regulations, in terms of
7 how we look at license transfers for 40.46 we might
8 have a problem. But that's an enforcement matter.

9 CHAIRMAN YOUNG: So, if you had a license
10 amendment proceeding and there were a contention that
11 an Iranian company actually controlled the company
12 that was seeking the license amendment and that the
13 company that was seeking the license amendment there
14 were allegations that they had withheld the complete
15 information about the Iranian company that allegedly
16 had control you would go ahead and issue the license
17 amendment?

18 MS. JONES: We would go and look at what -
19 - let's -- I have to say we don't have a change of
20 ownership here. It's the same licensee that's
21 applying for an amendment.

22 So if we received an allegation of that
23 type, whether it's through a contention or what have
24 you we would have to go back and examine all of the
25 different notices under 40.46 to see if that was ever

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1 reported.

2 CHAIRMAN YOUNG: I'm asking you to assume
3 the truth, a hypothetical truth that the company, the
4 U.S. company was controlled by an Iranian company and
5 they didn't provide full disclosure about that. Is
6 there any possibility that you would grant the
7 license. Just to cut it very short.

8 MS. JONES: Again, you're going to issue
9 the control. We're looking at the corporate
10 management here.

11 CHAIRMAN YOUNG: Right, I'm asking you
12 assume control, assume control.

13 MS. JONES: Okay.

14 CHAIRMAN YOUNG: Assume some level of
15 concealment. Is there any chance you would grant that
16 license amendment?

17 MS. JONES: I think the staff, we would
18 have to initiate an enforcement proceeding. I think
19 we would have --

20 CHAIRMAN YOUNG: Forget the enforcement
21 proceeding. Would you grant a license amendment to a
22 company that was controlled by an Iranian company and
23 to a company that had concealed to some extent the
24 fact that it was controlled by an Iranian company.

25 That's the hypothetical I'm getting --

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1 asking you to answer.

2 MS. JONES: Right, and I guess my response
3 is I can't say one way or another because we would
4 have to take a look at exactly what is happening in
5 that particular instance.

6 CHAIRMAN YOUNG: Would it be relevant to
7 the determination of whether to grant the license
8 amendment?

9 MS. JONES: Would it be relevant?

10 CHAIRMAN YOUNG: Would it be relevant,
11 those circumstances?

12 MS. JONES: I think it would depend on the
13 information.

14 CHAIRMAN YOUNG: Do you have anything else
15 you want to argue?

16 MS. JONES: I think the only thing I'd
17 want to add just for assurances and I'm just
18 anticipating that the Board may go back and look at
19 their records and perhaps may want to ask a question
20 on the letters that I mentioned earlier.

21 That the NRC sent back in 1989 before the
22 first license was granted. I thought maybe I should
23 go ahead and have those submitted into the record
24 perhaps for your review.

25 CHAIRMAN YOUNG: Anybody can submit

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1 anything they want.

2 MS. JONES: I'd like to go ahead and do
3 that.

4 CHAIRMAN YOUNG: You may open the door to
5 something. You already mentioned them. But yes, you
6 can do that.

7 Just another question to put down on your
8 list before we go past this. On page six of your May
9 23rd brief you indicate that the standards with regard
10 to review of the license amendment application are
11 found in 10 CFR Part 20 and appendix A to 10 CFR Part
12 40 and then you mention new reg 1569.

13 And my question was simply what specific
14 parts of Part 20 and what specific parts of Appendix
15 A. If you haven't told us that elsewhere or you have
16 tell us where and if not if you could provide that
17 information either now or after --

18 MS. JONES: Sure, but you know what this
19 actually jogs my memory about what occurred at the
20 outset of the proceeding where I believe you requested
21 that we submit certain -- we go ahead and disclose
22 what parts of the CFR that we were actually using for
23 our review.

24 So, I would say that some of them are
25 probably listed there. But to the extent that their

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1 not included in that submittal, and I believe that was
2 in maybe November.

3 CHAIRMAN YOUNG: Right, that was early,
4 I'm right --

5 MS. JONES: I can go back and we can take
6 a look at that again and go back and maybe amend it.

7 CHAIRMAN YOUNG: The reference was
8 general. I just wanted to know which ones you were
9 actually meaning to refer to there.

10 MS. JONES: Okay, sure. Part 20 --

11 CHAIRMAN YOUNG: On page six of your May
12 23rd Part 20 and Appendix A. 10 CFR Part 40.

13 MS. JONES: Okay.

14 CHAIRMAN YOUNG: So anything further at
15 this point?

16 MS. JONES: I'm just going to go ahead and
17 hand these to the reporter and hand these to the --

18 CHAIRMAN YOUNG: And do you have copies --

19 MS. JONES: Yes, I'm going to hand these
20 to reporter.

21 CHAIRMAN YOUNG: -- for everyone?

22 MS. JONES: Yes, I'm going to hand these
23 to them first.

24 MR. FRANKEL: There are also digital
25 copies that you'll be sending us?

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1 MS. JONES: I can and I can also include
2 the Adams number. And I think that's it for us on
3 that particular issue.

4 CHAIRMAN YOUNG: Mr. Frankel, you reserved
5 some time for rebuttal.

6 MR. FRANKEL: Yes thank you, Your Honor.
7 Okay, first I think I ought to direct everyone's
8 attention -- we're aware of section 50.92, that was
9 pointed out as same standards apply in this proceeding
10 as would apply for a new license.

11 CHAIRMAN YOUNG: Part 50 is reactors.

12 MR. FRANKEL: Didn't -- was that the wrong
13 cite on my part. I thought that was the rule that says
14 -- that you cited to us that the same standards would
15 apply in an amendment as in an application for a new
16 license.

17 CHAIRMAN YOUNG: I think I -- I think we
18 did but I think we mentioned that that was with regard
19 to reactors.

20 Now that's -- I mean you can still make
21 the argument that it's comparable. But --

22 MR. FRANKEL: At any case what I'm trying
23 to trace back to what Ms. Jones was saying that she
24 was not aware of a specific requirement to disclose
25 that exact sort of information having to do with

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1 foreign ownership.

2 And I want to refer to Atomic Energy Act
3 Section 182 which talks about the kind of information
4 that needs to be in the application and it says that
5 the application shall state such information as the
6 NRC by regulation may find necessary to decide. And
7 it lists certain things. Technical and financial
8 qualifications, character, citizenship or other
9 qualifications.

10 So there is a law that says the
11 application has to state information related to
12 citizenship. And then if you look at Section 184 from
13 which 40.46 comes it says the licenses shall not be
14 transferable and it says that until after the NRC has
15 secured full information.

16 Now, those seem to me clearly indicate the
17 type of information that should be put in there. As
18 to whether an amendment or a new license is issued or
19 is going to be determined by the NRC to be the way the
20 application is received that seems to me to be a
21 purely administrative decision.

22 That would be very hard to overturn unless
23 it was shown to be arbitrary and capricious. Which
24 means that the public has no real opportunity to input
25 on that decision.

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1 When we get back to meaningful
2 participation, when we get back to the due process
3 clause what we're focused on is members of the public.
4 As you alluded to it's not so much what's in the NRCs
5 files, but what the public is given at each point in
6 time they get an opportunity to participate in the
7 public process.

8 And if in 1998 there was a notice and if
9 it's buried in the Adams system somewhere. But there
10 was no FRN, there was no public notice, there was no
11 opportunity for a hearing. Well it doesn't count for
12 purposes of depriving us now of an opportunity to
13 raise that issue.

14 If in 1998 there was a Federal notice and
15 there was an opportunity to be heard and people didn't
16 pay any attention it okay, well that's the way it
17 goes. That's how these rules work.

18 But we're entitled to have enough notice
19 and enough information to be able to decide if we feel
20 as public citizens our rights are being potentially
21 injured or that they quote "may be effected for
22 purposes of standing under the Atomic Energy Act and
23 file this kind of a petition."

24 And in rebuttal to the concept of Section
25 40.2 in that the NRC can control the people in the

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1 U.S. What that tells me and my clients is that they
2 have really good U.S. scapegoats if anything goes
3 wrong.

4 But if, in your analogy and your pure
5 hypothetical that Iranian company secretly buys this
6 mine those Iranian owners are not going to be around
7 for the NRC to go look at.

8 And if there is a big contamination rather
9 because there was a reckless disregard for ground
10 water control because possibly there was a profit
11 motive, or even some heinous motive specifically
12 against the U.S. they would be enabled to accomplish
13 that and then we, with the benefit of hindsight would
14 be looking at the people in the U.S. that we had
15 jurisdiction over.

16 It would not have prevented the problem.
17 Not ever problem can be prevented, but it's incumbent
18 on this agency to take realistic actions in a post
19 9/11 world.

20 In 1989 when supposedly this was looked at
21 the Berlin Wall wasn't even down yet. Wow, what a
22 different world we live in. And now with the
23 fracturing of the Soviet Union and the availability
24 and proliferation of suitcase nuclear weapons and
25 things like that and it's indicated to us that perhaps

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1 the viewpoint of how dangerous yellow cake Uranium is
2 can be indicated by the recent new story of Camico
3 purchasing all of that yellow cake from Iraq. It was
4 a concern.

5 It's not that it's not a concern because
6 it's not enriched. It's a concern because it's yellow
7 cake Uranium and it's still dangerous.

8 As to management outside of the U.S.
9 that's not a hypothetical. We have 100 percent
10 ownership here. No one at CBR gets to keep their job
11 or keep their paycheck unless someone in Canada thinks
12 it's a good idea.

13 And we note that when we were trying to
14 schedule the hearing certain members of applicant were
15 not available because they had to be in Canada for a
16 management meeting. So they would understand what
17 their jobs were to be for the next year.

18 So, we have a very unique situation.
19 We're also told that the amendments that were issued
20 for the other satellite facilities had to do with
21 Camico's other subsidiary, Power Resources.

22 So we really don't have a non-Camico
23 situation where a satellite situation like this was
24 treated as a new license. We only have Camico
25 situations where they would treat it as amendments.

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1 We know that these were administrative
2 decisions that are almost impossible to challenge
3 unless they are arbitrary and capricious. And we also
4 know that this is a policy under review.

5 What this tells me is we've clearly raised
6 the genuine issues. We've done our part at this stage
7 to show that these issues are material and that they
8 are grounded in reality.

9 I think what's not grounded in reality is
10 the fact that those members of NRC that are combat
11 veterans just heard a Government official say that
12 they might grant a NRC atomic energy license to
13 enemies of the United States depending on the
14 circumstances.

15 Which we were hoping that they would just
16 say no, they wouldn't grant it to a person on the list
17 and leave it to the President to say whose on the
18 list.

19 Now, we also note that NDEQ did not issue
20 an amendment to the underground objection permit.
21 They didn't entertain that. They entertained a new
22 application for a new underground rejection permit.

23 One of the things they said in Exhibit B
24 which was admitted by this Court is lack of site
25 specific data. Eight miles could be a long ways, it

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1 could be a short ways depending on what the geology is
2 like.

3 We're talking about a place where our
4 experts say and the NDEQ letter supports that there's
5 fractures and faulting and that there's different
6 sediment possibly. It needs to be studied
7 differently. Site specific data was the thrust of
8 that.

9 And so you know to us, possibly that might
10 under the new policy, as it might come down in the
11 future demand a new license because new site specific
12 information. I don't know and that goes back to --
13 that's not something that I or my clients want to get
14 in the middle of.

15 We're not looking to tell a project
16 manager at the NRC how to classify a piece of paper
17 that comes in, how their going to treat it. What we
18 want and what we've asked for is proper public notice,
19 proper opportunity and meaningful participation.

20 On this issue of the -- you know I'm just
21 going to -- on this issue of foreign ownership alone,
22 foreign ownership plus, a concealment violation of
23 40.9, a foreign ownership plus concealment of foreign
24 ownership I want to draw a distinction there.

25 This goes to trust and loyalty. And the

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1 one case that we really have that Siegel case the
2 words loyalty are used. Persons having a loyalty to
3 the U.S.

4 Foreign ownership alone is one thing.
5 Foreign ownership plus concealment of data required to
6 be disclosed which could include geologic data, data
7 about fractures and faulting, could include failure to
8 disclose monitoring problems. And then we have
9 another concealment. Failure to disclose foreign
10 ownership.

11 Well to me that's even more powerful than
12 analysis because that's foreign ownership plus the
13 concealment of that thing itself and that goes
14 straight to why foreign ownership is, always, or can
15 often times be inimicable.

16 And without disclosure of the foreign
17 ownership itself it becomes impossible to determine
18 that. One last point on the lack of jurisdiction in
19 Canada or another foreign place over a non-U.S.
20 people. It's also over non-U.S. assets.

21 So what we have is, we have these bonds
22 that are filed, restoration amounts. Sometimes they
23 are found to be inadequate and they get razed. And
24 sometimes they get found to be inadequate after the
25 case.

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1 If you have a letter of credit that bond
2 is sitting out there for 20 million dollars or
3 whatever and you end up with a clean up cost of 50
4 million dollars and you go to collect that other 30
5 million what if you run through the U.S. asset that
6 may or may not be there.

7 Then you go to collect it in Canada. Tell
8 me where you're going to file your case as the NRC
9 versus this company in Canada. How are you going to
10 collect on assets outside of the United States in the
11 case of under collateralized restoration or
12 remediation costs. So those -- that's something that
13 I had meant to mention earlier in my list of reasons
14 why foreign ownership is a problem. So I wanted to
15 just hit that again. I don't have anything further.

16 CHAIRMAN YOUNG: Thank you. Is there
17 anything else on foreign ownership before we go to
18 Sub-part G.

19 (No response.)

20 CHAIRMAN YOUNG: Let's take a 15 minute
21 break. Be back at 3:30 p.m. is that about right, and
22 we'll start on the Sub-part G argument.

23 (Whereupon, off the record from 3:16 p.m.
24 until 3:37 p.m.)

25 CHAIRMAN YOUNG: All right, let's go back

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1 on the record. I just want to say in the break Chief
2 Oliver Redcloud -- is that the right name --
3 approached me and said he wanted to bring something to
4 our attention and I explained that we can't talk to
5 anyone party whether it be the interveners or the
6 staff or the applicant without everyone being present
7 and that his attorney might have something to say
8 about that.

9 So, I just wanted to give you an
10 opportunity at this point. If there's anything that
11 Chief Redcloud would like to say?

12 MS. LORINA: He just wants to briefly
13 address the treaty issue. But he wants to make sure
14 that you're all aware of.

15 CHAIRMAN YOUNG: Thank you, and it's nice
16 to see you again Chief.

17 MS. LORINA: Go ahead.

18 CHIEF REDCLOUD: Okay, thank you I'm here,
19 about to speak here and I'm really concerned about
20 what's going on here and people talk here.

21 What happened here, you talk about two
22 issue here and how you're going to get to the Court.
23 But remember, I'll take reservation on treaty rights.
24 I'm chairman of that. And I'm a chief of Oglala Sioux
25 Tribe. And my grandpa Redcloud he made that treaty.

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1 That's why we're here today.

2 And we made a treaty and the way you talk,
3 you know our treaty we got '71, 1871 you know your
4 treaty and you know your rights, '71.

5 In the United States our Congress or
6 Senators or whoever they can't change our treaty
7 rights, '71. Or laws or whatever because the treaty
8 was made and all our rights in New York City before
9 the United States was organized and Washington was
10 organized.

11 Our treaty was made in New York City.
12 1393 you people come, three times you stay and you
13 made a treaty. And how come you sitting here and
14 trying to -- against my treaty. You broke ever our
15 treaty right.

16 And people talk over there, I listen. You
17 have no rights to talk to the Lakota people treaty
18 rights because right now United States had a -- we
19 arguing and organized with them and our treaty rights
20 we have Article I and the United States have to honor
21 that. In '71 they have to honor that.

22 And Article I we could take you to the
23 United Nations about our treaty rights before all
24 these laws, whatever they make. And I went through
25 that many time for our water rights, our treaty land,

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1 whatever under document 74B and A and 51.

2 You have to sit down with me and my tribe
3 and our council and we have Article 12. But today
4 other tribe in the United States like Arizona, out of
5 state they put them on the state. But us people here
6 we still have our rights.

7 We still have our rights through
8 Washington, to the United Nations. So I want my
9 nephew to explain what I told him just a little while
10 ago.

11 MR. WHITEPLUME: Thank you, I'm Alex
12 Whiteplume. I'm the nephew of Chief Oliver Redcloud.
13 And uncle Oliver what he mentioned was, since the
14 coming to this continent never got no respect to the
15 Lakota people.

16 Lakota means that we belong to the land,
17 that we're allies with all living things. And in this
18 treaty that was made between the United States and our
19 people under there there's Article I. That means
20 there's a bad man amongst us we have to send him
21 packing and this is what he want you to do with the
22 people ruining our water.

23 Before you change that treaty you have to
24 have 3/4 of the adult males approve it. So you can't
25 change that treaty unless 3/4 of us say yes you can.

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1 This has never happened.

2 He said that our treaty has been ratified
3 and signed by the President and approved by Congress.
4 So it's a valid treaty and he wants you to recognize
5 it and honor it and acknowledge that we're still here
6 as human beings.

7 MR. STEELE: Honorable Judges, Chief
8 Oliver Redcloud mentioned 1871. That's when the
9 United States Congress says hereafter there will be no
10 more treaties with Indian tribes. They will be
11 governed by statutes of Congress. But, nothing in
12 these forthcoming statutes will effect any treaty
13 rights existing.

14 And so 1851 establishes the water rights
15 and Chief Oliver Redcloud is very concerned about the
16 water rights because in this area they greatly effect
17 all of our Oglala peoples who we are fearful may
18 vanish as a people from this earth if they are
19 contaminated by this Uranium mining.

20 The first issuance of license did have
21 what they called 23 spills, or accidents and 95
22 Oglala's were effected. This is what we're concerned
23 about and the expansion of this Uranium mining. That
24 it is our responsibility to somehow protect our
25 people, our children, and our children children's

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1 future.

2 And we are very fearful because Pine Ridge
3 Reservation now contains all of our Oglala's and as a
4 people we may be eliminated from the face of the earth
5 if this is not done properly. And honorable Judges
6 you've got a big decision here. We just hope that we
7 can somehow get our fears to you about our future and
8 the fear of future contaminations. It's we think a
9 very great issue to us.

10 MS. LORINA: I was going to save this
11 until the end. Your Honor's you asked at the
12 beginning whether or not there were any other
13 interested tribes. And I found out after the break
14 through Chief Oliver, he is the chairman of the Black
15 Hills Sioux Nation Treaty Council which represents the
16 treaty interests of all eight Sioux reservations in
17 South Dakota.

18 And we also have their secretary here, Hal
19 Salloway, whose also a former President of Oglala
20 Sioux Tribe and they do wish to participate much like
21 the Oglala Sioux Tribe as an individual nation.

22 CHAIRMAN YOUNG: Can we get a formal
23 written notification of that. And are you going to
24 represent them also or will there --

25 MS. LORINA: Apparently I am and I will do

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1 that.

2 CHAIRMAN YOUNG: Okay, so you'll file
3 something. Thank you very much.

4 MS. LORINA: Thank you. They've already
5 gone on record in opposition and I will include that
6 resolution when I serve everyone electronically.

7 CHAIRMAN YOUNG: Thank you very much. And
8 I just want to say Chief Redcloud you are deserving of
9 much respect and we are honored that you chose to be
10 here and speak to us today. Thank you very much.

11 MS. LORINA: Au shte.

12 CHAIRMAN YOUNG: All right, on Sub-part G
13 just to sort of give a little, a couple of statements
14 to maybe focus the arguments.

15 The provision at 10 CFR 2310 A that states
16 that except with certain exceptions proceedings for
17 the grant renewal licensee initiated amendment or
18 termination of licenses and permits subject to parts
19 and then it lists several parts including Part 40, may
20 be conducted under the procedures of Sub-part L of
21 this part.

22 I believe the Vermont Yankee Board has
23 interpreted that to be permissive and certainly the
24 word may in legal analysis is considered to be a
25 permissive word as opposed to shall.

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1 Other parts of the rules might suggest
2 that this proceeding had to be conducted under Sub-
3 part L. We're presented with then a question of
4 interpretation and very similar to that that the
5 Vermont Yankee Board faced.

6 And so I don't think the parties need to
7 repeat your arguments. I think we understand them.
8 We may have questions for you but I think what we
9 would like to ask you to focus on is how that word may
10 should be interpreted if not as a permissive term that
11 would permit the proceeding to be conducted under Sub-
12 part L, which would imply that it could also be
13 conducted under Sub-part G.

14 The second major issue that we would ask
15 you to focus on is the issue of the credibility,
16 motive, intent and how that plays into the decision on
17 whether to conduct the proceeding under Sub-part G.

18 Was there anything else I -- so we'll
19 start again with you, the interveners. I don't know
20 which -- okay.

21 MR. ELLISON: I will do my best to not
22 repeat too much of our previous arguments. It will be
23 incumbent upon me to do that a little bit I think in
24 terms of talking about the disputes and material facts
25 component.

1 We too look at 10 CFR 2.31 O Sub-part D.
2 Recognize the May clause and we note that Vermont
3 Yankee says that the May gives the Board the
4 discretion and we would submit that means the
5 discretion to either conduct a Sub-part L or a Sub-
6 part G hearing. We of course have encouraged and have
7 asked for and would renew our request for a Sub-part
8 G hearing and I will get into some of the reasons why
9 I think that a Sub-part L hearing may not be adequate
10 in this situation.

11 CHAIRMAN YOUNG: Are you getting -- your
12 voice -- maybe you need to pull the microphone a
13 little bit closer.

14 MR. ELLISON: We feel that, and I'm just
15 going to in a summary fashion. In terms of questions
16 of credibility, motive, and intent, that where we're
17 dealing with here a issue of past activity including
18 spills, excursions, applications, omissions,
19 misrepresentations. That the credibility of necessary
20 witnesses would be very important and this Board
21 making a ultimate determination on material issues.

22 I must confess in making my arguments
23 that, and I may have pointed this out when we were
24 here in January, I'm a criminal defense attorney by
25 experience.

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1 And one of the things that I did in trying
2 to understand these rules and regulations was I went
3 to the NRC website and there was a wonderful part
4 there on frequently asked questions about 10 CFR Part
5 2 revisions, so we know how to bend the rules.

6 And what I would like to do though is just
7 to discuss some of the things that were discussed in
8 that website because I feel that they are pertinent
9 for our discussions here today and ultimately the
10 determination by this Board as to the kind of hearing
11 that we're going to get.

12 According to the website and the answer to
13 these questions the whole purpose of the revisions was
14 to improve case management and avoid needless delay
15 and unproductive litigation. And certainly a Sub-part
16 L hearing would be a shorter version both from
17 discover, from witness presentation, from a
18 examination standpoint.

19 But one of the things that -- I mean it's
20 almost encouraging a Sub-part L hearing wherever it
21 was appropriate, was the discussion on the website
22 about how the new rules really changed discovery.

23 They talked about mandatory discovery
24 mechanisms being required early disclosure of
25 documents, information, and witnesses giving all

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1 parties access to relevant information and suggesting
2 that it would even provide that mechanism should
3 provide greater discovery than what the otherwise --
4 equal to or greater than the APA.

5 But what this really depends upon is as
6 the NRC website points out, is it depends upon good
7 faith compliance. It depends upon their being truly
8 early disclosure of all pertinent documents, all
9 pertinent information, and information regarding any
10 witnesses because as website points out the Board is
11 always relied on to carry out disclosure
12 responsibilities -- relied upon attorneys to carry out
13 their disclosure responsibilities with the highest
14 integrity.

15 But that's why -- assuming that this
16 happens a Sub-part L hearing might be just fine. But
17 we're concerned and we believe that the record shows
18 and that we have shown that Crow Butte Resources, or
19 Camico Resources, or whatever they are choosing to
20 call themselves today doesn't really look upon this
21 disclosure requirement as seriously as we believe that
22 they should.

23 We -- you know, it's like the NDEQ
24 document from November of last year. Now some of us
25 struggled to get on the computer and find some of

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1 these things, but it wasn't even on there when we
2 filed their application even though the letters had
3 been out.

4 And then we had objections from the
5 company and from NRC staff as to even the -- why we
6 should be able to present it even though we only
7 learned about it the day before the hearing.

8 And that was such a dramatic document in
9 terms of really proving many of the issues that we
10 were trying to raise both in terms of why we should
11 have standing as well as why Contentions A and B at
12 least were proper and appropriate.

13 The discovery process is not a mere
14 formality. It's not just filing as Mr. Frankel
15 referred to earlier, just making sure all of the lines
16 are filled in on the application.

17 There has to be substance. We note that
18 when the NDEQ got it's information from Crow Butte
19 they regarded much of it as unsupported if not
20 misleading.

21 So non-disclosure then we would submit in
22 this case is contrary to the basic premise upon which
23 a Sub-part L hearing should be had. And a much more
24 limited discovery.

25 For example, and this is not meant to be

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1 an exhaustive list by any means. We have had disputes
2 or questions raised, how many spills and excursions
3 have there been. What have the extent of them been.
4 What has been -- how quickly have they been reported.
5 What has been done to remediate and clean-up the
6 spills. How much of that has been successful or not
7 when we have that information.

8 I want to have that information. We don't
9 have a lot of the ground truth data for the North
10 Trend area. We may have some drilling logs, but we
11 don't have any interpretations regarding geological,
12 hydrological, or geo-chemical interpretation of those
13 logs.

14 Information about primary and secondary
15 permeability of the different layers since one of the
16 issues here is, and I'm going to address this a little
17 bit more specifically perhaps, we have central
18 questions here. The company says this is a contained
19 aquifer where they want to mine.

20 So we don't have any problems with
21 contamination of other aquifers. And we know that not
22 to be true. We don't know what the permeability is
23 even in the so called containing layers at the various
24 points in North Trend.

25 And we should have that information to us,

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1 presented to us not just the raw data that's in some
2 of those logs because we need interpretation.

3 And we're not interested in mineralization
4 data. We're not interested in getting into the
5 companies private information of the exact amount of
6 Uranium percentage that they're finding in the
7 aquifer.

8 But we do want to know all this other
9 information because that goes to our central
10 contentions in terms of a and b.

11 We need more well records, pump tests,
12 drop and rise of water levels in all the wells in the
13 North Trend area. One of the complaints of the NDEQ
14 was that much of the information that was given was
15 given about the current mining site and not the North
16 Trend site.

17 We need the North Trend site. We need the
18 data regarding observation wells in understandable
19 form, therefore interpretation. We need information
20 on the producing formations and their properties.

21 We need other information about the other
22 aquifers that were tested. We need information -- we
23 know there's lots of bore holes, over 1,000. We don't
24 -- we know that there were problems in the past caused
25 by improper casings. What's going on with these holes

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1 that they have already dug. We need the data on that.

2 And again, just if I may get back briefly
3 to spill clean-up records. We have some information
4 that there are at least 27. There may well be more.
5 We know that there has been a serious problem with
6 discovery and with reporting and if I may just give a
7 recent example.

8 There was a complaint that was brought by
9 the State of Nebraska against Crow Butte Resources in
10 an action in just this year with a consent decree that
11 was settled. May 23rd of this year.

12 And the thing that was interesting was
13 this. According to the complaint the State alleged
14 that beginning in July 1, 2003 and continuing daily
15 thereafter until March 31, 2006 there was a violation
16 of the permit, over 1,000 days of violation.

17 And the first -- and this had to do with
18 releasing well development water upon the surface of
19 the ground instead of putting it in an evaporation
20 pond.

21 There was also a contention that the
22 permit prohibited the use of the Chadron formation,
23 well development water as drilling water and required
24 that the water be treated as liquid waste stream to be
25 collected and retained in lined evaporation ponds.

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1 Three years that didn't happen. The third
2 allegation was that on a daily basis during this 1,000
3 days CBR constructed injection wells and mineral
4 projection wells in a manner that had the potential to
5 allow the movement of fluid containing contaminants
6 into underground source drinking water.

7 And that they supposedly became aware of
8 this only in March of 2006 and then still waited a
9 week or so before they reported it. I'm sorry, until
10 May of 2006, so a couple of months, a month and a
11 half.

12 And of course this brings up other
13 questions. What happened during that period of time.
14 Was Canada contacted, Camico Canada contacted to ask
15 how to deal with this.

16 We have 1,000 days of this kind of
17 violations that aren't even detected which suggests
18 serious problems in monitoring or they were only
19 reported as having a really being noticed a month and
20 a half earlier in 2006.

21 We should be entitled to discovery
22 processes that we can get at the heart of all of this
23 information and we don't have it. And that alone we
24 would submit necessitates for us to properly litigate
25 this matter.

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1 It's pretty extensive discovery and the
2 opportunity to present witnesses and to challenge the
3 credibility of witnesses that might be called here in
4 rebuttal or as part of any presentation that Crow
5 Butte might try and present.

6 As this Board stated in it's April 29th
7 memorandum and order, petitioners have raised some
8 significant issues and demonstrated that further
9 inquiry in depth is appropriate regarding these
10 material, legal, and factual issues.

11 So we believe the first threshold, the
12 material issue certainly has been crossed.

13 And the Contention A as redrafted we
14 contend that the application did not accurately
15 describe the environment effected by the proposed
16 mining operation or the extent of it's impact on the
17 environment as a result of it's use and potential
18 contamination of water resources through mixing a
19 contaminated ground water in the mine aquifer with
20 water in surrounding aquifers and drainage of the
21 contaminated water into the White River.

22 And again, since the Judges have requested
23 that we just repeat everything. We've got basic
24 differences, material differences in our perspectives.
25 They say it's contained, our experts say that's

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1 ridiculous.

2 They say well, we don't -- you know what
3 faults are there. Is the White River fault really an
4 issue. You know they talk throughout much of their
5 environmental reports and their technical reports.
6 And again, we cited all of these, about all of the
7 information that's not known and how more drilling is
8 going to have to be done to determine many of these
9 things which almost suggests that all of this is
10 premature, these proceedings, this application perhaps
11 was premature.

12 And they contradict themselves even
13 internally. You know they'll claim there's no
14 intermixing between the Brule and the Chadron with the
15 irriquary in the high plains. But then they'll
16 discuss about how maybe there are some fractures. And
17 maybe there is this intermixing. And there is
18 impermeability in localized here.

19 CHAIRMAN YOUNG: I guess I want to
20 encourage you to focus -- the arguments that you're
21 making now we've heard those. I guess what would be
22 helpful for us is for you to focus on why there would
23 be questions about the motive or intent or credibility
24 or willingness to disclose all of that information
25 under Sub-part L, because that's sort of the second

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1 part of the analysis if we get past the word may.

2 Are there issues of credibility, motive,
3 intent that require this additional discovery that
4 would suggest that you might not get it all through
5 the sub-part L discovery.

6 MR. ELLISON: We would submit and one of
7 the reasons why I gave the example, the problem of the
8 excursion not even being found supposedly for three
9 years and then taking a month and a half before it's
10 reported certainly goes, like with so much of the
11 other things that we have discussed and presented
12 certainly goes to the credibility of everything that
13 has been presented by Crow Butte in it's application.

14 And since Contentions A and B really deal
15 with our concerns about protecting the ground water
16 and what is known and unknown about potential
17 contamination problems by this particular site.

18 I mean for example, our experts tell us
19 that this proposed North Trend site is probably one of
20 the worst places in Western South Dakota that you
21 would want to put -- I'm sorry, in Western Nebraska
22 that you would want to put a in situ mine because of
23 the interaction fractures and what not with the
24 various aquifers that are in that area that are used
25 as domestic water supplies.

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1 We would submit that the credibility of
2 everything that has been presented is in issue because
3 whenever we do get to look at the details of what has
4 been presented we find out, as the NDEQ did, that the
5 information is often misleading. The conclusions are
6 misleading, or just outright incorrect.

7 And what therefore would be the motive or
8 the intent of the company in doing this. I mean they
9 were kind of hoping we would submit that there would
10 be no interveners. That no one would take a hard look
11 at this, that maybe the NDEQ wouldn't take a hard look
12 at this.

13 But, we can't depend -- we found -- I mean
14 we've come here because we hope that a Federal agency
15 that is supposed to protect our health and safety and
16 look at certain -- before granting these kinds of
17 licenses to mine would really look and make sure that
18 our concerns about protecting surface and subsurface
19 water resources are really addressed. And can they be
20 handled and still grant this license application.

21 So we feel that the motive intent and the
22 company in both misleading and hiding documents, you
23 know it goes to the question even in Contention E.
24 When they fill out their application and they say
25 their a U.S. company and that their Crow Butte

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1 Resources and their really a foreign company, you know
2 that just starts the questions right there.

3 And then when we get into the geological
4 and the hydrological information which is so limited
5 and lacking and so we feel that the issues of
6 credibility, motive, and intent are central to this
7 Board in making a determination of Contentions A and
8 B.

9 And to give another example say with
10 Contention C. We had a representation that the tribe
11 was satisfied with the contacts that were had and the
12 consultations and then we submitted an affidavit from
13 the gentleman that made the call to Crow Butte for
14 further information to show that in fact that was not
15 the case.

16 And so it really goes to the heart of
17 those three issues that the Board is interested.
18 Credibility, motive, and intent because all the
19 company wants to do is come in here with as little
20 problems as possible. Get out this door, make it's
21 profit and take that money elsewhere and they don't
22 care what they leave here.

23 And that's why we come to this Agency
24 because you're the ones who are supposed to address
25 some of these issues from the Federal level and how

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1 else can there be a proper evaluation of the
2 credibility of the information witnesses on the
3 disputed issues and the motives and intent of the
4 company seeking this application to do this mining
5 without affording us an opportunity to have extensive
6 discovery without affording us an opportunity to
7 cross-examine their witnesses.

8 And that's not to say -- I mean I -- some
9 -- as I often find in Courts the Judges often times
10 ask the best questions. And I understand that in Sub-
11 part L there's almost like a recognition of that.

12 You folks in many ways are the experts.
13 However, we also look at this issue from the ground
14 and from a way that gives us perhaps a different
15 perspective. And the advantage of Sub-Part G hearing
16 would be that in addition to our questions you would
17 have questions to supplement.

18 Our questions may spark questions or areas
19 of inquiry that perhaps you hadn't thought about. All
20 we know is we're presented with an application that is
21 just not right from a geological, hydrological
22 standpoint.

23 And they want to ignore a lot of
24 environmental problems and we want an opportunity to
25 really explore those and to present to you what we're

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1 finding because as we have worked on getting ready for
2 whatever kind of a hearing that you will permit, but
3 hopefully a Sub-part G hearing.

4 We feel that what we're going to be able
5 to present is going to be able to show exactly that
6 the company has no credibility. And that exactly that
7 their motives and intent are not to comply with any
8 rules and regulations that get set down unless they
9 get caught at it, unless somebody actually finds out
10 about it or they feel somehow that they are compelled.
11 Not just simply because a regulation exists, or
12 apparently because they agreed to a permit
13 requirements.

14 And so if there was ever a hearing or a
15 Sub-part G hearing would be appropriate under the new
16 rules and allowing for the extensive discovery we feel
17 is appropriate.

18 Not to belabor this matter. We don't want
19 to delay it and we understand that the new rules are
20 designed to limit that. But this is such an important
21 issue, at least for us, and for those of us that live
22 in this region this is an important issue.

23 And because this is really the first of
24 many potential such operations in this area. You
25 probably hear me say this in subsequent applications

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1 too that we should have Sub-part G hearings. But this
2 is really the first one. And we can really explore
3 these issues the way they deserve to be explored under
4 the circumstances that we have confronted with with
5 what's in the application and what's not in the
6 application, and what is still unknown by the company
7 at least it claims, and what we feel is known and is
8 being ignored.

9 That's about the shortest way that I can
10 say what I said. But without repeating, because what
11 I had prepared to do was really go through a lot of
12 the disputed areas which the Board has identified in
13 it's opinion which we have also raised and responded
14 to when the company or when the NRC has said something
15 to the -- NRC staff has said something to the
16 contrary.

17 But that's essentially it. Are we going
18 to get a hearing where we really can explore these
19 issues in the way they deserve or not. And the only
20 way that we would submit that a thorough hearing will
21 address only those issues after appropriate discovery.

22 I mean there's so much we don't know yet
23 and so therefore the shortcut procedures of the Sub-
24 part L just can't work here. And you know we have to
25 get through that discovery even to know really how

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1 much we're going to be able to present.

2 I mean I can see this taking a while. I
3 know the company wants to help us out. They've got
4 other sites they want to start pushing as well.
5 They've announced that to you. They've got two other
6 areas they want to do. We understand that. But these
7 are fundamental questions dealing with the integrity
8 of the company, dealing with all of the issues in
9 terms of protecting the health and safety of the
10 environment and the population and all of the living
11 things in this area.

12 I'm starting to repeat myself. Thank you.

13 MR. SMITH: Sure, I'll endeavor to be
14 brief and answer your questions specifically.

15 As you noted 2.31 A says accepting certain
16 limited circumstances the procedures may be held under
17 Sub-part L. That may I believe refers only to the
18 extent -- only to 2.310 H which permits a hearing to
19 be conducted under Sub-part N in two situations, when
20 the hearing is expected to take less than two days,
21 and where all the parties agree.

22 So there is an outlet for that may without
23 resorting to some interpretation that extends beyond
24 what its' in the language of 2.310. And I note that
25 in promulgating 2.310 the Commission stated in the

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1 statement of consideration accompanying the rule that
2 unless one of the specific applications in paragraph
3 B through H are at issue, none of which are at issue
4 here, the listed proceedings are to be conducted under
5 Sub-part L.

6 So according to the plain language of
7 2.310 and the regulatory history accompanying 2.310
8 this proceeding must be held pursuant to the
9 procedures in Sub-part L, Sub-part G is simply not
10 available.

11 CHAIRMAN YOUNG: How do you deal with the
12 use of the word "may"?

13 MR. SMITH: As I just explained I think
14 the word refers only to the fact that there is a
15 option to conduct a hearing under Sub-part N where the
16 hearing is expected to take less than two days and
17 where all the parties agree that it can be conducted
18 under Sub-part N. That's all we have.

19 CHAIRMAN YOUNG: Ms. Jones?

20 MS. JONES: Yes, I'll be even more brief,
21 because again I don't want to belabor the point.

22 But again in answering your question
23 regarding "may" it's discretionary. But I believe
24 it's discretionary if certain exceptions listed in the
25 rules that are spelled out in 2.310, if these

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1 proceedings can't meet any of those exceptions
2 including H then I think it becomes discretionary
3 then.

4 But I would also add that I think you also
5 have to read it along with 2.12-100 where it says all
6 proceedings -- and I think are governed, are to be
7 governed by Sub-part L. And then there are exceptions
8 listed there.

9 But in looking at the Commissions
10 statement of consideration the Commission has stated
11 that they strongly encourage that the Board use a Sub-
12 part L proceedings. But to digress would only be in
13 very narrow circumstances those of which are actually
14 outlined in 3.10.

15 CHAIRMAN YOUNG: I take it neither one of
16 you have anything to argue about motive, intent,
17 credibility?

18 MS. JONES: I think that our brief -- I
19 believe that we said as much as we could say about
20 those particular issues in so far as the petitioners
21 have raised them.

22 Obviously there's a lot of disagreement
23 about the contentions themselves and whether or not
24 those should be admitted, which obviously as you know
25 is up on interrogatory review. And so that's all I

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1 have to say.

2 CHAIRMAN YOUNG: I did have one specific
3 question, not to suggest that that's the only possible
4 question. But the letter from Mr. Petersen alleged
5 that, I believe I'm using the right word, withholding
6 certain information and then the response to that from
7 the staff, which I have here but not right in front of
8 me this minute, addressed the geological issues that
9 were raised in Mr. Petersen's letter.

10 But as I read it the staffs letter back to
11 Mr. Petersen did not get into his allegations about
12 withholding information which sort of left that issue
13 still hanging out there. Would you disagree with that
14 characterization of the staffs letter?

15 MS. JONES: Actually I would agree to the
16 extent that the staff did address the issues that were
17 raised, the technical issues that were raised in the
18 letter. So yes, and in fact I can tell you as we
19 speak I am looking into whether or not an allegation
20 investigation was ever conducted.

21 And I'm not even sure if I would even be
22 at liberty to even say exactly one way or the other.
23 But I can tell you I've done some preliminary research
24 and as far as we could tell, even in contacting region
25 four, we're showing nothing on their docket. Whether

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1 or not an allegation was actually initiated,
2 investigation excuse me, was actually initiated.

3 But I'm still looking at that issue to see
4 whether or not there's some documents out there. But
5 as you know it's almost 20 years old. So, you know it
6 predates -- it does predate Adams.

7 I'm sorry, yes sir and it does predate
8 Adams which I think goes all the way back to '99. I
9 did take a look at legacy and I did not find anything.
10 But what I did find was the letter addressing at least
11 the technical issues that were raised.

12 So I can report to you about that and let
13 you know what I find.

14 CHAIRMAN YOUNG: Well, the reason I raised
15 that was not to solicit a report on what you found
16 actually, but --

17 MS. JONES: I just want to be responsive.

18 CHAIRMAN YOUNG: No, the reason I raised
19 it was really just to address what you discussed on
20 page eight of your May 23rd submission.

21 Where you say even if the Board determined
22 it had discretion to use Sub-part G procedures the
23 petitioners have not put forth any allegations that
24 justify resolution of issues of a material fact and so
25 forth and so on whatever the intent.

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1 But the allegations I think that have been
2 made certainly the allegations are made that
3 information has been withheld about the foreign
4 ownership and the information about the faults, the
5 fault lines if that's the right term, has been
6 withheld.

7 So from the standpoint -- not of resolving
8 the allegations as to their truth or falsity.

9 But I think you would probably have to
10 agree that at least the allegations have been made
11 that information has been withheld which would go to
12 the arguments of the interveners about having
13 questions about whether they would get all of the
14 information through the Sub-part 1 mandatory
15 disclosures.

16 MS. JONES: Well, I'd just like to say the
17 statement that we made in the May 23rd submittal I
18 don't believe that we had any additional information
19 until we saw their May 23rd submittal.

20 So when I made the -- we were making that
21 -- we were purely responding to the Boards order and
22 all of those details that came out in the 69 pages
23 brief -- it was very good guys. It's 69 pages, lots
24 of information and the details I guess of the larger
25 argument under Sub-part G did not come out until that

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1 submittal.

2 And as you know we responded to that and
3 we included a number of our objections to some of the
4 information that was being presented. So that's --

5 CHAIRMAN YOUNG: Anything else from you?

6 MR. ELLISON: I guess the only additional
7 thing I would point out and maybe I did cover it to an
8 extent, but -- thank you.

9 This whole question of fractures and
10 faults and the geological data that has been disclosed
11 and not disclosed. This really goes to the heart of
12 everything. So we really do urge Sub-part G. We urge
13 discovery so we can bring to this Board all the facts.

14 All of the facts are not before you. All
15 the facts are not before us. And we want to make sure
16 that we have a full, complete, proper, and adequate
17 record. Not only to present to this Board and
18 hopefully convince this Board as to the merits of our
19 contentions.

20 But also, once we have done that to
21 respond to any appeals that would then happen. But
22 primarily since we're addressing this Board yes, we
23 want it all. We want all that we're entitled to as
24 members of the public. As interested parties because
25 we feel we can prove what we can. We need some of

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1 their data to do that because their in there, their on
2 the site, we don't have access to that unless we get
3 it from them.

4 And that's what the whole purpose of this
5 good faith, up front disclosure of all pertinent
6 information to avoid the necessity of a Sub-part G
7 hearing was so emphasized I believe by the NRC in
8 answering it's ten most important questions that are
9 raised about this kind of a proceeding. Thank you.

10 CHAIRMAN YOUNG: Thank you, the last item
11 on the agenda has to do with the schedule. But before
12 we move onto that just to sort of close out the
13 argument portion of this.

14 Things left hanging. The standards from
15 page six of the staffs May 23rd. The standards that
16 you were referring to from Part 20 and Appendix A part
17 40.

18 Then if the applicant has any NRC case law
19 where standing was addressed with regard to separate
20 contentions as opposed to standing in general for a
21 proceeding.

22 Then the staff indicated that at this
23 point you're not that familiar with the export license
24 proceedings and that you would like to be able to get
25 that information to us and specifically about the --

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1 what kind of notice. Were the notices published.

2 The type of opportunity for hearing. And
3 then for both of the -- for all parties really the
4 issue of standing in those proceedings, how standing
5 would be shown in those proceedings.

6 MR. FRANKEL: I didn't understand that
7 Your Honor, to be one of the open issues regarding
8 standing. I thought we were just going to see some
9 cases from the applicants counsel if there were any.

10 CHAIRMAN YOUNG: On the export license.
11 I had raised -- right, I had raised a question is if
12 a reason for not considering foreign owner -- or not
13 considering foreign ownership --

14 MR. FRANKEL: I understand now, thank you.

15 CHAIRMAN YOUNG: Okay, okay what the
16 standing -- how, how a party would show standing in an
17 export license proceeding. It sounded as though that
18 would be a difficult task based on the arguments that
19 Mr. Smith was making.

20 So, that's part of the whole collection of
21 issues in the export license proceedings. And so I
22 guess for that one we would start with the staff and
23 then if other parties want to respond to that.

24 Mr. Ellison, you made a reference to the
25 recent violation in Nebraska. I don't know whether

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1 you provided that. But if you want to provide that
2 today or afer that would be fine.

3 MR. ELLISON: Thank you.

4 CHAIRMAN YOUNG: Then also the --

5 MR. SMITH: Your Honor, I think that
6 should be accompanied by a motion with regard to
7 materiality for this proceeding.

8 I don't believe you need state actions to
9 have any material implications for this NRC
10 proceeding. Which again is focused on compliance with
11 the NRC's regulations not proceedings of state bodies.

12 CHAIRMAN YOUNG: And this, I think you
13 raised this with regard to the motive, intent and so
14 forth. And so when you provide that, provide whatever
15 support argument you want to offer in support of that
16 information with regard to the Sub-part G hearing
17 that's the only thing that it came up with regard to.

18 Okay, so then we also have I think it was
19 the applicant asked for the stay pending the
20 resolution of the appeals. I don't have that request
21 or order in front of me. But I do have it here in
22 case we need to look at it.

23 MR. FRANKEL: This is the stay of the
24 discovery disclosures?

25 CHAIRMAN YOUNG: Stay of discovery, right.

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1 Obviously, whatever we do on the Sub-part G requests
2 will -- may play into that.

3 But we may want to reconsider that stay
4 issue depending upon when the Commission acts as it
5 relates to when other things happen at this level.

6 Are there any other things left hanging
7 that I have not identified. Those are the ones that
8 I sort of kept a running list of.

9 So for each of those we need to set some
10 deadlines.

11 MS. JONES: Judge, excuse the interruption
12 but I did -- I think I did indicate earlier and I
13 believe David did ask for me to provide a citation on
14 Part 110, the Federal Register and I said I would do
15 that.

16 CHAIRMAN YOUNG: Okay.

17 MS. JONES: I just wanted to --

18 CHAIRMAN YOUNG: Right, and I would
19 consider --

20 MS. JONES: I can get it tomorrow
21 actually. I have it now, I'm sorry.

22 CHAIRMAN YOUNG: Okay, go ahead.

23 MS. JONES: Yes, I can give it to him now.
24 Would you like for me to just provide it to everyone
25 just on the record. Okay, I'll look for it.

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1 CHAIRMAN YOUNG: While you're looking and
2 just a couple of things that I thought of with regard
3 to tomorrow. I wanted to remind everyone and I'll
4 just say that in this little interim.

5 On the site visit we need to remember to
6 be especially careful about not having any ex parte
7 communications. These tend to be somewhat informal
8 and we're walking around and the natural tendency is
9 to talk about the case and what we're looking at.

10 But, we need to be real careful that if
11 anything at all about anything that would be related
12 to the case is said to any of us or in our presence
13 you need to make sure that all of the other parties
14 are in our presence.

15 We're mainly going to look tomorrow and
16 not to discuss or argue or obviously the applicant
17 will be providing some explanation to all of us as we
18 go. But it may seem a little unnatural not to get
19 into discussions. But I think we need to probably
20 avoid that just to protect against having any
21 inadvertent ex parte communications.

22 MR. ELLISON: Judge, if I may I have a
23 question then about tomorrow. I wasn't -- one of the
24 things I was wondering is when we are being shown
25 various parts of the operation and things are being

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1 explained are we going to be permitted to ask
2 questions?

3 CHAIRMAN YOUNG: It seems that questions
4 would be fine if we're all together and we're in the
5 context of the Crow Butte person explaining something.

6 If anyone there -- and we were all
7 together listening. I -- I assume your person
8 wouldn't mind --

9 MR. SMITH: No, I think that's -- we were
10 talking about having -- you know at the plant when we
11 first get there there would be a briefing and an
12 explanation of what's going on and an overview of the
13 plant processes.

14 That won't be given by me, that will be
15 given by experts in the various areas who are
16 presenting at the plant. I think we could certainly
17 handle some questions. I think that makes for a
18 better tour.

19 CHAIRMAN YOUNG: That's fine and actually
20 we're not going to have a Court reporter with us.
21 I've actually done things like that with a Court
22 reporter. But if anyone wants to put anything on the
23 record afterwards, you know you can do that in writing
24 and just file it.

25 But the only other thing is it's been

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1 pointed out that no photographs. Are there any other
2 things Mr. Smith that I've overlooked that I need to -
3 -

4 MR. SMITH: No, I just mention proper
5 attire. It is an industrial --

6 CHAIRMAN YOUNG: Right.

7 MR. SMITH: -- facility.

8 CHAIRMAN YOUNG: Right, so no open toed
9 shoes or shorts.

10 MR. ELLISON: Can we make a request to see
11 certain things if we're not shown. I mean for
12 example, there have been reports of excursions on the
13 surface at certain of the ponds and I'm just wondering
14 for example can we make a request. We'd like to see
15 pond four or pond two?

16 MR. SMITH: You will be able to observe
17 the ponds from the road as we discussed previously in
18 our discussions.

19 CHAIRMAN YOUNG: Anybody can -- my view of
20 the law is anybody can always request. You may not
21 get it but you can request it.

22 MR. SMITH: We will not be entering into
23 restricted areas. We will not be walking through the
24 well fields. I mean that is just not appropriate for
25 a group of this size. But you will be able to see all

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1 of this stuff. You just won't be able to talk through
2 it.

3 CHAIRMAN YOUNG: I guess with regard to
4 requests, again it would probably be better to do that
5 in the context of all of us being together with the
6 guide and so forth.

7 MR. FRANKEL: Are we going to be exposed
8 to radioactive areas and given dosimeters and stuff
9 like that?

10 MR. SMITH: What's the question again?

11 MR. FRANKEL: Are we going to be exposed
12 to radioactive areas, and if so are we going to be
13 given dosimeters or something to make us know that
14 we're not exposed?

15 MR. SMITH: As I mentioned we will not be
16 entering into any radiation controlled areas.

17 MR. FRANKEL: Thank you.

18 CHAIRMAN YOUNG: Okay, go ahead. Anything
19 else on -- anything else on just to close out on the
20 site visit. We're going to meet at 7 o'clock in the
21 parking lot of the Best Western Hotel in Chadwick.

22 MR. SMITH: Yes, and we'll have a
23 representative from the site is going to meet us there
24 and pass out a map. That the thinking would be we
25 would all caravan together. That's just in case

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1 someone gets lost. The road is not very well marked.
2 So we should probably all try and stick together when
3 we're going out there. I'm not sure how many cars
4 that will be. But, you'll have the map there.

5 CHAIRMAN YOUNG: Sounds like a good idea.

6 MR. ELLISON: I guess that brings up one
7 other question and Mr. Smith mentioned cars. So
8 therefore I'm assuming that the roads, even though
9 they are not marked their in a condition for cars?

10 MR. SMITH: I think for the most part
11 we're on county roads.

12 CHAIRMAN YOUNG: Okay, Ms. Jones?

13 MS. JONES: Yes, I have a citation for
14 everyone. This is coming out of the Federal Register
15 Volume 43, page 6915. And this is dated February 17,
16 1978. And it's a final rule.

17 MR. ELLISON: Ms. Jones could you just
18 repeat that again please?

19 MS. JONES: Sure, Volume 43 Federal
20 Register, 6915, February 17, 1978.

21 MR. ELLISON: Thank you, and can you
22 describe for us briefly what that is?

23 MS. JONES: It's just a final rule, the
24 Commission's final rule for procedures and regulations
25 on the export and import on nuclear facilities and

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1 materials.

2 MR. ELLISON: Thank you.

3 MS. JONES: Sure.

4 CHAIRMAN YOUNG: It seems to me that the
5 simplest way to approach the deadline issue for these
6 things that I went through before would be to set one
7 deadline for initial filings of everything. Second
8 deadline for responses to anything and if anyone wants
9 to do replies maybe a third very short deadline for
10 that.

11 So, do any of you have any thoughts on --
12 or any requests as to what would be reasonable for
13 you?

14 I think the staff -- probably the greatest
15 burden falls on you.

16 MS. JONES: Yes.

17 CHAIRMAN YOUNG: So --

18 MS. JONES: Actually you know, Your Honor
19 it actually falls on me. What I was going to say is
20 I'm actually in the process of complying with the
21 hearing file requirements in the MOX case, which as
22 you know is tremendous. The files that we're having
23 to produce.

24 They are currently working on that. I
25 just don't know -- when I get back to Washington I'm

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1 not sure what I'll be looking at. I know that we have
2 a due date of July 28th, which is Monday.

3 I'm not sure -- we have a supplement as
4 you know due in 14 days. I'm not sure what's going on
5 with that. But I know that it's a huge undertaking.
6 So, and right now I'm the only attorney whose been
7 assigned to both cases unfortunately. So --

8 CHAIRMAN YOUNG: And you're not
9 superhuman?

10 MS. JONES: No I'm not, but what I was
11 about to say that I should not -- and I'm not saying
12 that to say that somehow I should, you know not do the
13 best that I can to make sure that I respond in a
14 timely manner.

15 But I just thought that I should bring
16 that up because I'm not really sure what's going on at
17 the office right now.

18 CHAIRMAN YOUNG: So, do you have a --
19 would you like to notify us by email --

20 MS. JONES: I can.

21 CHAIRMAN YOUNG: -- of what would be
22 reasonable?

23 MS. JONES: That would be great if I can
24 do that. As soon as I get back and I speak with OGC
25 Management and figure out where the staff is on the

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1 MOX case.

2 CHAIRMAN YOUNG: And then from that we can
3 set response, reply deadlines. Can you get us that by
4 Monday?

5 MS. JONES: I can, I really appreciate it,
6 thank you.

7 CHAIRMAN YOUNG: And then we'll issue an
8 order setting the deadlines and that will be for the
9 staff, the additional information about the export
10 license proceeding. The right to hearing, the type of
11 notification, how a party would show standing in your
12 view on -- in an export license proceeding. And all
13 issues related to that. That would be one.

14 The other would be the parts of the
15 standards in Part 20 and Appendix A to Part 40 that
16 you wanted to make reference to on that.

17 Then for the applicant any NRC case law on
18 making standing determinations with regard to separate
19 contentions and then for the interveners, the
20 information on the recent violation that you referred
21 to and your argument in support of providing that on
22 the Sub-part G issue. And I think that's all. And
23 then we'll just set the same deadline for each of
24 those four things.

25 Okay, and then on the schedule obviously

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1 at this point I don't think that we can do too much.
2 But we thought that it would be helpful at least if we
3 get some sense of the staffs -- at least tentative
4 schedule on the environmental document that you intend
5 to produce and whatever safety related document you
6 intend to produce.

7 Do you have any dates in mind for that,
8 for those?

9 MR. COLLINGS: Right now we are in the
10 process of doing the technical review which will lead
11 to a technical evaluation report.

12 Staff at one of our other branches, our
13 environmental review branch is working on the
14 environmental assessment which is the -- that's the
15 environmental document.

16 I cannot give you a schedule on when the
17 environmental document is going to be done. And I'm
18 really hesitant to give a precise schedule for the
19 technical document.

20 But I can tell you at some point in the
21 next five months we're going to have -- and I cannot
22 give -- you know, I'm not not going to be held to
23 this. But in the next five months or so we'll have a
24 draft technical evaluation report sometime in the next
25 five months maybe and then if we need additional

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1 information we're going to send out a request for
2 additional information to the applicant or licensee.

3 And then when they respond we will come
4 out with a final technical evaluation report. And
5 then at that point everything depends on how the -- at
6 that point actually I don't know if we would go final
7 with the technical evaluation report, it's depending
8 on how the hearing goes.

9 CHAIRMAN YOUNG: If you want to give more,
10 you know approximate expected range of dates for those
11 two, the environmental and the technical, technical
12 being what I was referring to as a safety review, when
13 you file your other things that would be fine.

14 MR. COLLINGS: If I could. When the NRC
15 staff submits the other information I can go back to
16 management and see if they can come up with a firmer
17 schedule. If that would be okay?

18 CHAIRMAN YOUNG: Okay, okay thank you.
19 Are there any other matters that it would be possible
20 to take up today, or is -- does that take care of
21 everything we can do today?

22 (No response.)

23 CHAIRMAN YOUNG: We thank you for your
24 participation or attention as the case may be. We're
25 glad that a lot of people came and listened and we

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1 appreciate the participation of all counsel and we
2 will see you -- the parties tomorrow morning at 7
3 o'clock for the 20 people that we've identified.

4 (Whereupon, the hearing was adjourned at
5 4:43 p.m.)

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This is to certify that the attached proceedings
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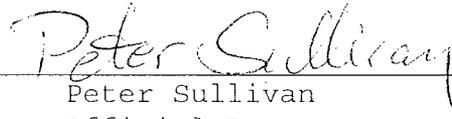
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Docket Number: 40-8943

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Location: Chadron, Nebraska

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