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September 8, 2008

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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

APPLICANT'S REPLY TO PETITIONERS' BRIEF ON EXPORT LICENSING

I. INTRODUCTION

In accordance with the August 5, August 19, and August 21, 2008 Orders of the Atomic Safety and Licensing Board in this matter,¹ Crow Butte Resources, Inc. ("Crow Butte" or "Applicant") hereby submits its reply to "Petitioners' Response to Board's Questions By Order Dated August 19, 2008," dated August 29, 2008 ("Pet. Brief").

II. DISCUSSION

In its Order of August 19, 2008, the Licensing Board requested additional information from the parties regarding a hypothetical licensing proceeding on a hypothetical future Crow Butte export license application. In response, the Petitioners submitted a filing based on the mistaken presumption that material mined at Crow Butte is exported pursuant to a general license. As discussed below, Petitioners' arguments are based on fundamental

¹ See Order (Confirming Matters Addressed at July 23, 2008, Oral Argument), dated August 5, 2008; Order (Regarding Matters to be Addressed in Further Filings by Parties), dated August 19, 2008; Order (Granting Joint Motion For Extension of Time), dated August 21, 2008.

misconceptions of the NRC's export licensing process and erroneous interpretations of relevant regulations. At bottom, Petitioners fail to fully address the specific questions raised by the Licensing Board and, to the extent they attempt to address those questions, fail to provide any useful information that might aid the Board in resolving the admissibility of proposed Contention E.

Petitioners first assume that any exports from Crow Butte to a location outside the United States would take place pursuant to a "general" export license. *See* Pet. Brief, at 2 ("Applicant has a general license issued by Section 110.22(a)."). Petitioners do not, however, appear to have examined the regulatory provisions upon which they rely. Even a cursory reading of Section 110.22 demonstrates that a general license could not be used to export material from Crow Butte. Under Section 110.22(a), a general license is issued to any person to export certain limited quantities of material to any country not listed in Section 110.28.² However, the natural uranium mined at Crow Butte would not qualify for a general license under Sections 110.22(a)(1)-(3). According to page 2 of the license amendment application (Item 5 – Chemical or Physical Form), the uranium concentration in dried product is 50% to 80% uranium. This exceeds the threshold concentration for a general license in Section 110.22(a)(1) of 0.05%. *See* 10 C.F.R. § 110.22(a)(1). Further, the uranium is not incorporated into incandescent gas candles or into a device. Thus, the general license provisions in Section 110.22(a) are inapplicable.

In addition, one drum of natural uranium (as U₃O₈) at Crow Butte holds about 900 pounds of yellowcake uranium, which translates into a little more than 400 kilograms. Thus, a single drum of natural uranium exceeds the threshold quantities for general licenses under

² The countries to which exports under a general are prohibited include Cuba, Iran, Iraq, North Korea, Syria, and Sudan.

Sections 110.22(b), (d), and (e). And, since only natural uranium is produced at Crow Butte, Section 110.22(c) is likewise inapplicable. Therefore, any export of natural uranium from Crow Butte will likely be made in accordance with an existing or future specific license issued in accordance with the process established in Part 110. The balance of the Petitioners' arguments in their filing are based on a faulty premise that there is a general license and should be given no weight by the Board.

Although the Petitioners' answers to the Board's queries are fundamentally flawed for the reasons discussed above, we nevertheless address their response to each question below.

1. How Intervenors might show standing to participate in any such future export license proceeding under 10 C.F.R. §§ 110.82(a)(4) [sic.], 110.84(b).

In their brief, Petitioners argue that "there is no clear regulatory basis for public notice or intervention in a Part 110 export licensing [sic]." Pet. Brief, at 5. As an initial matter, Petitioners ignore the Board's specific directive to discuss the factors in Section 110.82, which apply to a *specific* export license application. The Petitioners also ignore the entire thrust of Sections 110.82 and 110.84, which provide the specific criteria to be used by the Commission in determining whether to grant a hearing on an export license application.

Further, Petitioners argue that "it would be in the public interest, under 10 CFR §110.84(a) [sic] to hold a public hearing on these issues." Even disregarding the Petitioners' failure to provide any reasons to suggest that such a hearing would, in actuality, be in the public interest, the fact remains that there is simply no export license application presently at issue nor would the requested license amendment authorize the export of any material from Crow Butte. Moreover, the determination as to whether to grant a hearing on an export license application lies

in the first instance with the Commission, and not with a Licensing Board. Thus, any issues related to export licensing are outside the scope of this proceeding.

2. How could *any* potential intervenor show standing in any such proceeding under 10 C.F.R. §§ 110.82(a)(4) [*sic.*], 110.84(b), and otherwise under 10 C.F.R. §§ 110.82, 110.84.

Again, Petitioners ignore the Board's specific directive to address the factors under Sections 110.82 and 110.84. *See* Pet. Brief, at 6 (which lacks any reference to the specific factors in Sections 110.82(b)(4) and 110.84(b)). Instead, Petitioners argue that it "seems impossible" for anyone to show standing where "no application is filed, no public notice is given and no opportunity to intervene is contained in NRC regulations under Part 110." Pet. Brief, at 6. We agree that it is difficult to address the Licensing Board's question in the abstract (*i.e.*, in the absence of an export application). But, regardless, standing has nothing to do with notice. Rather, the standing requirement is necessary to ensure that a person has a concrete and particularized interest in the outcome of the proceeding, and Petitioners are in the best position to articulate their interests. Yet, despite being given the opportunity to discuss those interests in their filing, Petitioners failed to advance any arguments regarding the factors in Sections 110.82 and 110.84.

Finally, as discussed above, contrary to their mistaken presumption, exports from Crow Butte would generally involve a specific export license rather than a general license. Thus, there would be notice and an opportunity to demonstrate interests in connection with a specific authorization (as opposed to each shipment), if a new export license is required.³

³ To the extent an export will occur under an existing license, a petitioner is simply too late.

3. What sort of interest(s) would satisfy the requirements of 10 C.F.R. §§ 110.82(a)(4) [sic.], 110.84(b).

Petitioners assert “the general interests of retaining nuclear fuel resources within the United States and under United States control.” Pet. Brief, at 6. But, as discussed previously, that is insufficient to support the particularized interest necessary for standing. More fundamentally, however, Petitioners did not avail themselves of the opportunity to identify specific issues with a hypothetical export from Crow Butte. Petitioners advanced no arguments based on the applicable regulatory criteria or on Commission cases regarding standing beyond this limited reference to “general interests.”⁴

That said, we again agree with Petitioners to the extent they acknowledge that it is not possible to adequately evaluate and describe standing issues without reference to a specific application or export.

4. What standards should be applied in determining whether a petitioner has satisfied these requirements, and any other requirements under 10 C.F.R. §§ 110.82, 110.84, with citation to any relevant case law.

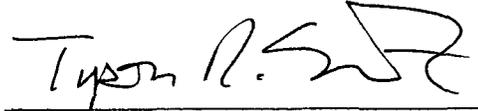
Petitioners argue that the “general standards of the due process clause and of the trust responsibility apply,” but fail to mention any of the numerous Commission decisions addressing requests for hearings in export licensing proceedings. Moreover, Petitioners’ erroneous assumption that export would take place pursuant to a general license undermines the balance of their argument. And, as discussed previously, Section 110.70 identifies the form and timing of notices related to specific export licensing proceedings.

⁴ At some level, it is to Petitioners’ advantage to imply that there is a high bar to participation in an export licensing proceeding. But, because they failed to even address the criteria in Part 110 or discuss Commission precedent, no weight should be given to their arguments in this regard.

III. CONCLUSION

For the foregoing reasons, nothing in Petitioners' filing on export licensing is relevant to the circumstances at Crow Butte. Accordingly, Contention E is inadmissible.

Respectfully submitted,



Tyson R. Smith
Winston & Strawn LLP
1700 K Street, N.W.
Washington, DC 20006-3817

COUNSEL FOR CROW BUTTE
RESOURCES, INC.

Dated at Washington, District of Columbia
this 8th day of September 2008

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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CERTIFICATE OF SERVICE

I hereby certify that copies of "APPLICANT'S REPLY TO PETITIONERS' BRIEF ON EXPORT LICENSING" in the captioned proceeding have been served on the following by deposit in the United States mail, first class, this 8th day of September 2008. Additional e-mail service, designated by *, has been made this same day, as shown below.

Administrative Judge*
Ann Marshall Young, Chair
Atomic Safety and Licensing Board Panel
Mail Stop: T-3 F23
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
(e-mail: AMY@nrc.gov)

Administrative Judge*
Richard F. Cole
Atomic Safety and Licensing Board Panel
Mail Stop: T-3 F23
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
(e-mail: RFC1@nrc.gov)

Administrative Judge*
Frederick W. Oliver
Atomic Safety and Licensing Board Panel
10433 Owen Brown Road
Columbia, MD 21044
(e-mail: FWOliver@verizon.net)

Office of Commission Appellate
Adjudication*
Mail Stop: O-16 G4
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
(e-mail: OCAAmal@nrc.gov)

Office of the Secretary*
Attn: Docketing and Service
U.S. Nuclear Regulatory Commission
Mail Stop: O-16 G4
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
(original + two copies)
(e-mail: HEARINGDOCKET@nrc.gov)

Brett Klukan, Esq.*
Catherine Marco, Esq.*
Office of the General Counsel
U.S. Nuclear Regulatory Commission
Mail Stop: O-5 D21
Washington, DC 20555-0001
(e-mail: clm@nrc.gov, brett.klukan@nrc.gov)

Stephen P. Collings, President*
Crow Butte Resources, Inc.
141 Union Boulevard, Suite 330
Lakewood, CO 80228
(e-mail: steve_collings@cameco.com)

David C. Frankel, Esq.*
P.O. Box 3014
Pine Ridge, SD 57770
(e-mail: arm.legal@gmail.com)

Bruce Ellison, Esq.*
Law Offices of Bruce Ellison
P. O. Box 2508
Rapid City, SD 57709
(e-mail: belli4law@aol.com)

Western Nebraska Resources Council*
Attn: Buffalo Bruce
P.O. Box 612
Chadron, NE 69337
(e-mail: buffalobruce@panhandle.net)

Elizabeth Maria Lorina*
Mario Gonzalez
Law Offices of Mario Gonzalez
522 7th Street, Suite 202
Rapid City, SD 57701
(e-mail: elorina@gnzlawfirm.com)

Mark D. McGuire, Esq.*
McGuire and Norby
605 South 14th Street, Suite 100
Lincoln, NE 68508
(e-mail: mdmsjn@alltel.net)

Debra White Plume*
P.O. Box 71
Manderson, SD 57756
(e-mail: LAKOTA1@gwtc.net)

Johanna Thibault, Law Clerk*
Atomic Safety and Licensing Board Panel
Mail Stop: T-3 F23
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
(e-mail: JRT3@nrc.gov)

Owe Aku, Bring Back the Way*
Attn: Debra White Plume
P.O. Box 325
Manderson, SD 57756
(e-mail: LAKOTA1@gwtc.net)

Shane C. Robinson
2814 E. Olive St.
Seattle, WA 98122
(e-mail: shanecrobinson@gmail.com)



Tyson R. Smith
Winston & Strawn LLP
1700 K Street, N.W.
Washington, DC 20006-3817

COUNSEL FOR CROW BUTTE
RESOURCES, INC.