

September 16, 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 for the North Trend Expansion Area))	ASLBP No. 07-859-03-MLA-BD01

NRC STAFF'S WITHDRAWAL OF ITS MOTION FOR RECONSIDERATION AND RESPONSE
TO PETITIONERS' MOTION TO STRIKE NRC STAFF'S MOTION FOR PARTIAL
RECONSIDERATION AND RESPONSE TO THE BOARD'S ORDER OF AUGUST 19, 2008

INTRODUCTION

The NRC staff ("Staff") herein (1) withdraws from consideration in this proceeding its motion for partial reconsideration ("Motion for Reconsideration") filed as part of "NRC Staff's Motion for Partial Reconsideration and Response to the Board's Order of August 19, 2008," ("Staff's Combined Motion & Response") dated August 29, 2008, and (2) responds to "Petitioners' Motion to Strike NRC Staff's Motion for Partial Reconsideration and Response to the Board's Order of August 19, 2008" ("Motion to Strike"), dated September 8, 2008. Petitioners allege that Staff violated the terms of 10 C.F.R. § 2.323(e) by (1) filing its Motion for Reconsideration without first seeking leave to do so from the Board and (2) for failing to manifest, as to said motion, requisite compelling circumstances.¹ In addition, Petitioners move that the Board "find[] the NRC Staff in default under 10 C.F.R. § 2.320 due to its failure to answer Questions 1, 2 & 3 fully and completely" and, further, "pursuant to Section 320(a),

¹ See Motion to Strike at 1-4.

order[] in regard to such failure that the facts as to the matters in question are in accordance with the claims being made by the Petitioners in this Proceeding.”² Staff herein argues that (1) Petitioners’ motion to strike is moot as Staff is withdrawing its Motion for Reconsideration and (2) that Petitioners’ request that the Board issue, pursuant to 10 C.F.R. § 2.320(a), a default order in favor of the Petitioners is baseless and unwarranted.

DISCUSSION

I. Staff’s Withdrawal of the Motion for Reconsideration

The Staff hereby withdraws its Motion for Reconsideration in light of its response therein to the Board’s questions and of those of the other parties.³ For the sake of clarity, Staff proffers as Exhibit 1 to this filing a “strikeout version” of “NRC Staff’s Motion for Partial Reconsideration and Response to the Board’s Order of August 19, 2008,” leaving in place Staff’s assertions in support thereof. Isolated from the context of the Motion for Reconsideration, such assertions constitute Staff’s response to those portions of the Board’s Order as to which Staff filed its Motion for Reconsideration. In response to Question 1, in toto, and Questions 2 and 3, each in part, Staff asserts that, “[b]ecause portions of the Board’s questions relate directly to the Intervenors in this matter and because responses thereto depend on various potential scenarios, the Staff finds itself unable to meaningfully respond to such inquiries as such

² *Id.* at 2.

³ See “Petitioners’ Response to Board’s Questions by Order dated August 19, 2008,” at 6 (Aug. 29, 2008) (Petitioners submit that the general interests of retaining nuclear fuel resources within the United States and under United States control would satisfy the requirements of 10 C.F.R. §§ 110.82(b)(4), 110.84(b). However the foregoing is speculative at the present time because there is no application or information to look at. In such an information vacuum, it is not possible to adequately evaluate and describe standing issues.”); “Applicant’s Response to NRC Staff’s Response to Board’s Order of August 5, 2008,” at 5-9 (Aug. 29, 2008).

responses would necessarily be based on speculation and hypothesis regarding the Intervenor.”⁴

II. Staff’s Response to Petitioners’ Filing of September 8, 2008

A. Petitioner’s Motion to Strike⁵

In light of Staff’s withdrawal of its Motion for Reconsideration, the Petitioners’ motion to strike is now moot. Thus, the Board should deny Petitioners’ motion to strike as moot.

B. Petitioners’ Motion for a Default Order Pursuant to 10 C.F.R. § 2.320(a)

Petitioners assert that, pursuant to 10 C.F.R. § 2.323(g), “the filing by the NRC Staff of the Motion for Reconsideration did not stay any proceeding, toll any time, or extend the time for performance of the acts ordered in the August 19, 2008 Order, namely the answering of Questions 1, 2 & 3 therein.”⁶ Petitioners argue that “since the NRC Staff failed to comply with the August 19th Order, the NRC Staff is subject to [10 C.F.R. § 2.]320(a), the Board should issue an order that the facts as to the matters in question related to Questions 1, 2 & 3 are in accordance with the claims being made by Petitioners in this Proceeding.”⁷

⁴ Staff’s Combined Motion & Response at 4.

⁵ Petitioners argue that, with regard to Staff’s Motion for Reconsideration, the Staff failed to comply with the terms of 10 C.F.R. § 2.323(e). Motion to Strike at 1-3. That section, in pertinent part, provides

Motions for reconsideration may not be filed except upon leave of the presiding officer or the Commission, upon a showing of compelling circumstances, such as the existence of a clear and material error in a decision, which could not have reasonably been anticipated, that renders the decision invalid.

10 C.F.R. 2.323(e); *see also* Changes to the Adjudicatory Process, 69 Fed. Reg. 2182, 2245 (Jan. 14, 2004). Petitioners aver that the Staff did not attempt to request leave to file its Motion for Reconsideration nor did Staff present as part of said motion requisite compelling circumstances. Motion to Strike at 2-3.

⁶ *Id.* at 5.

⁷ *Id.*

In response, Staff asserts that Petitioners' motion for a default order must fail because Petitioners have not presented a valid basis for such an order. 10 C.F.R. § 2.320(a) provides that

[i]f a party fails ... to comply with any prehearing order entered by the presiding officer ... the presiding officer may make any orders in regard to the failure that are just, including ... [w]ithout further notice, find the facts as to the matters regarding which the order was made in accordance with the claim of the party obtaining the order, and enter the order as appropriate...

Staff did not fail to comply with the Board's Order. The Staff timely responded to all of the Board's questions as best it could. Thus, the Board should deny Petitioners' request for a 10 C.F.R. § 2.320(a) default order.

CONCLUSION

Pursuant to the foregoing, the Board should deny (1) Petitioners' motion to strike Staff's Motion for Reconsideration and (2) Petitioners' request for a 10 C.F.R. § 2.320(a) default order.

Respectfully submitted,

/RA/

Brett Michael Patrick Klukan
Counsel for NRC Staff

EXHIBIT 1

August 29, 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 for the North Trend Expansion Area))	ASLBP No. 07-859-03-MLA-BD01

NRC STAFF'S MOTION FOR PARTIAL RECONSIDERATION
AND RESPONSE TO BOARD'S ORDER OF AUGUST 19, 2008

INTRODUCTION

~~Pursuant to 10 C.F.R. § 2.323(a), the NRC Staff ("Staff") moves for partial reconsideration of the Board's Order of August 19, 2008 ("Order").¹ Specifically, the Staff respectfully requests that the Board reconsider its Order to the extent that it necessitates the Staff to engage in speculation regarding hypothetical situations in order to produce responses, such as, pursuant to Question 1, "how Intervenor might show standing to participate in any such future export license proceeding under 10 C.F.R. §§ 110.82(a)(4), 110.84(b)."² The Staff thereafter proffers its response to the remainder of the Board's questions in the Order.³~~

¹ Order (Regarding Matters to be Addressed in Further Filings by Parties) (Aug. 19, 2008).

² ~~*Id.* at 3. Pursuant to 10 C.F.R. § 2.323(b), the Staff contacted the parties to this proceeding to discuss Staff's motion. Counsel for the Applicant supports Staff's Motion. Counsel for Western Nebraska Resources Council opposes Staff's motion. Staff did not receive responses from the other parties.~~

³ *Id.* at 3-4.

BACKGROUND

On August 15, 2008, the Staff filed its response to the Order issued by the Board on August 5, 2008, wherein, *inter alia*, the Board directed the Staff to

file an informative brief regarding the requirements and process for an entity such as the Applicant to obtain an export license, specifically including information regarding the means of publication of notice of opportunity for hearing with regard to such a proceeding, as well as argument and supporting law relating to the standards for showing standing to participate in such a proceeding.⁴

While the Board “appreciate[d] the Staff’s recitation of relevant regulatory provisions,” the Board found that the Staff in its response to the above Board directive had not proffered any argument as to “the issue before [the Board] relating to potential export of uranium from the proposed new Crow Butte mining site.” The Board noted that “the likely success of any persons, including the current Intervenors, in intervening in any future export license proceeding relating to potential exports by the Applicant, might be relevant to the question of whether the current proceeding is an appropriate context to consider Intervenors’ arguments in support of Contention E that relate to potential future exports,” and, as such, the Board expressed that it “would like to hear the parties’ arguments on whether the Intervenors could realistically assert their concerns about potential exports in any future export licensing proceeding.”⁵ Thus, the Board solicited the parties’ responses to four questions relating to export license proceedings and requirements under 10 C.F.R. Part 110:

⁴ Order (Confirming Matters Addressed at July 23, 2008, Oral Argument), at 2 (Aug. 5, 2008).

⁵ Order at 2-3.

- (1) how Intervenor might show standing to participate in any such future export license proceeding under 10 C.F.R. §§ 110.82(a)(4), 110.84(b);
- (2) how could *any* potential intervenor show standing in any such proceeding under 10 C.F.R. §§ 110.82(a)(4), 110.84(b), and otherwise under 10 C.F.R. §§ 110.82, 110.84;
- (3) what sort of interest(s) would satisfy the requirements of 10 C.F.R. §§ 110.82(a)(4), 110.84(b);
- (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.⁶

In addition the Board directed the “*Staff and/or Applicant*” to

- (5) identify all cases of which they [Staff and/or Applicant] are aware in which any persons have petitioned to intervene with regard to any export license.
- (6) provide citations to relevant regulatory and case law and documents in any such instances, including any notices, requests for hearing and rulings on any such requests;
- (7) state what standards were applied in determining whether to find standing in such cases (i.e. what regulatory standards, as well as any other standards developed in case law, including e.g. to what extent does proximity come into play, proximity to what, etc.);
- (8) indicate which provisions of Part 110 were applicable to past export licenses sought and/or used by the Applicant;
- (9) indicate whether there were notices of opportunity for hearing with respect to any such export licenses; and
- (10) if so, provide citations to any such notices, any requests for hearing with regard to them, and any rulings on any such requests.⁷

The Staff hereinafter ~~respectfully submits its reasoning as to why the Board should reconsider portions of its Order and, subsequently,~~ provides its responses to Questions 2 through 10.⁸

⁶ *Id.* at 3.

⁷ *Id.* at 4.

⁸ The Staff respectfully reiterates its position, as it has previously, that the consideration of issues relating to the requirements and processes related to 10 C.F.R. Part 110 export matters are not required under this license amendment proceeding. The regulations at 10 C.F.R. Part 110 establish a framework for the resolution of export licensing issues, which is entirely separate and different from that established for the adjudication of licensing or license amendment issues under Part 40.

DISCUSSION

I. Staff's Motion for Reconsideration.

Because portions of the Board's questions⁹ relate directly to the Intervenor in this matter and because responses thereto depend on various potential scenarios, the Staff finds itself unable to meaningfully respond to such inquiries as such response would necessarily be based on speculation and hypothesis regarding the Intervenor. The Staff is concerned that such speculation and hypothesis may give Staff the appearance of taking positions with respect to future unknown proceedings related to the Applicant, or other applicants or intervenors. In addition, such responses, to the extent they could be perceived by the public as the Staff taking a position in a hypothetical future proceeding, may serve to confuse the public. ~~Accordingly, the Staff respectfully requests to be excused from offering its opinion on the type of arguments (and the success of such arguments) that the current Intervenor might advance, in support of standing, in a hypothetical future export licensing proceeding. In light of the foregoing reasons, the Staff requests that it be relieved from responding to inquiries that require an opinion by Staff regarding Intervenor's interests in future export licensing proceedings.~~

~~Pending the Board's consideration of the foregoing motion and in recognition of the Board's concern with this matter,~~ the Staff immediately hereafter offers its response to the last three of the Board's questions, subsequently followed by Staff's response to the remainder thereof.¹⁰

II. Staff's Response to Questions 8, 9, and 10.

The Staff's search of its electronic database of export licenses and its paper files did not reveal that the NRC has ever issued a specific export license to the Applicant. However, the

⁹ Specifically, Question 1 *in toto*, Questions 2 and 3, in part.

¹⁰ With the exception of Question 1 *in toto* and Questions 2 and 3, in part.

Staff retrieved two export licenses issued to another person wherein the Applicant was cited as a supplier of source material for export.¹¹ As to each of those licenses, all provisions of 10 C.F.R. § 110 applied except (1) those provisions relating to general licenses, (2) those provisions not implicating the nuclear material or equipment subject to the export license, and (3) those provisions relating to import licenses.

Based on its research of NRC records, the Staff believes that the Applicant has never applied for an export license, and thus, the NRC has never had the need to issue any public notices in accordance with 10 C.F.R. § 110.70 regarding an application for an export license application filed by the Applicant. However, were the Applicant to apply for a specific license, notice thereof would be published in the manner as specified in 10 C.F.R. § 110.70.

III. Staff's Response to the Remainder of the Board's Questions.

The Staff, in responding to the remainder of the Board's questions, proffers the ensuing discussion of relevant NRC regulations and Commission case law regarding standing in export licensing proceedings under 10 C.F.R. Part 110.

A. Judicial Concepts of Standing.

A request for hearing or petition for intervention in an export licensing proceeding must:

- (1) State the name, address and telephone number of the requestor or petitioner;
- (2) Set forth the issues sought to be raised;
- (3) Explain why a hearing or an intervention would be in the public interest and how a hearing or intervention would assist the Commission in making the determinations required by 10 C.F.R. § 110.45;
- (4) Specify, when a person asserts that his interest may be affected, both the facts pertaining to his interest and how it may be affected, with particular reference to the factors in 10 C.F.R. § 110.84.¹²

¹¹ Both licenses were issued to RSB Logistic Services, Inc. License No. XSOU8798 was issued on March 5, 2004, set to expire on December 31, 2008. Crow Butte Resources, Inc. is listed as a supplier on that license by which the NRC authorized RSB Logistics Services, Inc. to ship natural uranium to Canada for conversion and back to the United States for further processing. Prior to that, RSB Logistics held an export license, No. XSOU8744, which expired in 2004. Crow Butte Resources, Inc. was listed as a supplier on that license as well.

¹² 10 CFR § 110.82(b).

In determining whether a petitioner has established the requisite “interest” to manifest standing under the Commission’s regulations, the Commission has consistently applied contemporary judicial concepts of standing, as stated and developed in federal court case law.¹³ Judicial concepts of standing have been consistently interpreted by the Commission to mean that, in order to demonstrate standing, “a petitioner must (1) allege a concrete and particularized injury that is (2) fairly traceable to the challenged action and (3) likely to be redressed by a favorable decision.”¹⁴ The shorthand by which the Commission has referred to the foregoing three criteria is, respectively, “injury in fact,” causality, and redressability.¹⁵ “Injury in fact” may be actual or threatened,¹⁶ but it cannot be “conjectural” or “hypothetical.”¹⁷ Nor can the threat of injury be too speculative.¹⁸ Additionally, the “injury in fact” alleged by a petitioner must lie within the “zone of interests” protected by the respective statutes governing the proceeding (*i.e.*, the AEA for export licensing issues).¹⁹

¹³ See *e.g.*, *Dep’t of Energy* (Plutonium Export License), CLI-04-17, 59 NRC 357, 363 (2004); *Transnuclear, Inc.* (Export of 93.15% Enriched Uranium), CLI-94-1, 39 NRC 1, 5 (1994); *Westinghouse Electric Corp.* (Nuclear Fuel Export License for Czech Republic-Temelin Nuclear Power Plants), CLI-94-7, 39 NRC 322, 331 (1994); *Edlow International Co.* (Agent for the Government of India on Application to Export Special Nuclear Material), CLI-76-6, 3 NRC 563, 569 (1976).

¹⁴ *Yankee Atomic Elec. Co.* (Yankee Nuclear Power Station), CLI-98-21, 48 NRC 185, 195 (1998) (*citing Steel Co. v. Citizens for a Better Environment*, 523 U.S. 83, 102-04 (1998)); see also *Westinghouse Electric Corp.*, CLI-94-7, 39 NRC at 331.

¹⁵ *Yankee Atomic Elec. Co.*, CLI-98-21, 48 NRC at 195; see also *Westinghouse Electric Corp.* (Export to South Korea), CLI-80-30, 12 NRC 253, 257 (1980).

¹⁶ *Yankee Atomic Elec. Co.*, CLI-98-21, 48 NRC at 195 (1998) (*citing Wilderness Soc’y v. Griles*, 824 F.2d 4, 11 (D.C. Cir. 1987)).

¹⁷ *Sequoyah Fuels Corp. & Gen. Atomics* (Gore, Oklahoma Site), CLI-94-12, 40 NRC 64, 72 (1994) (*citing O’Shea v. Littleton*, 414 U.S. 488, 494 (1974)).

¹⁸ *Id.* at 72 (*citing Los Angeles v. Lyons*, 461 U.S. 95, 105 (1983)); *Edlow International Co.*, CLI-76-63, 3 NRC at 578.

¹⁹ *Quivira Mining Co.* (Ambrosia Lake Facility), CLI-98-11, 48 NRC 1, 6 (1998).

A petitioner must also establish a “causal link” between the alleged “injury in fact” and the challenged action.²⁰ A determination that this causal link exists, that the injury alleged is fairly traceable to the challenged action does “not depend on whether the cause of the injury flows directly from the challenged action, but whether the chain of causation is plausible.”²¹ Finally, as to the element of redressability, “it must be likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision.”²²

B. Review of Commission Case Law.

In recent decades, the Commission has heard and opined on numerous petitions to intervene on applications for a license to export nuclear equipment or material (e.g., material ranging from the highly enriched uranium to weapons-grade plutonium).²³ In several of these

²⁰ See *Commonwealth Edison Co.* (Zion Nuclear Power Station, Units 1 & 2), LBP-98-27, 48 NRC 271, 276 (1998).

²¹ *Id.* (quoting *Sequoyah Fuels Corp.*, -94-12, 40 NRC at 75). In *Dep’t of Energy*, the petitioners requested to intervene on an application to export weapons-grade plutonium to France. *Dep’t of Energy*, CLI-04-17, 59 NRC at 357. The intervenors asserted representational standing based on the proximity of some of their members to the shipment of plutonium in case of a radiological release based on a terrorist attack. *Id.* at 364-65. To establish the proximity presumption, the Commission reiterated the standard as “whether the proposed action involves a significant source of radioactivity producing an obvious potential for offsite consequences.” *Id.* at 365. The Commission rejected the petitioners representational standing argument because the potential injury due the intervening illegal acts of a third party would not result from the issuance or denial of the export license. *Id.* at 365.

²² *Sequoyah Fuels Corp.*, CLI-94-12, 40 NRC at 76 (internal quotation marks omitted) (quoting *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 561 (1992)).

²³ See, e.g., *Dep’t of Energy*, CLI-04-17, 59 NRC at 357 (Relating to a license application to export weapons-grade plutonium to France); *Transnuclear, Inc.* (Export of 93.3% Enriched Uranium), CLI-00-16, 52 NRC 68 (2000) (Relating to a license application to export highly enriched uranium to Netherlands); *Transnuclear, Inc.* (Export of 93.3% Enriched Uranium), CLI-99-15, 49 NRC 366 (1999) (Relating to a license application to export high-enriched uranium to Canada); *Transnuclear, Inc.* (Export of 93.3% Enriched Uranium), CLI-98-10, 47 NRC 333 (1998) (Relating to license application to export highly enriched uranium to Canada); *Westinghouse Electric Corp.*, CLI-94-7, 39 NRC at 322 (Relating to a license application to export nuclear fuel to Czech Republic); *Transnuclear, Inc.*, CLI-94-1, 39 NRC at 1 (Relating to a license application to export highly enriched uranium to France); *General Electric Co.* (Exports to Taiwan), CLI-81-2, 13 NRC 67 (1981) (Relating to a license application for export two nuclear reactors and associated nuclear fuel to Taiwan); *Westinghouse Electric Corp.*, CLI-80-30, 12 NRC at 253 (Relating to a license application to export two nuclear reactors to South Korea); *Westinghouse Electric Corp.* (Exports to the Philippines), CLI-80-14, 11 NRC 631 (1980) (Relating to a license application to (continued. . .)

cases, the Commission authorized the issuance of the export licenses because it determined that the applications satisfied the Atomic Energy Act's three requirements for issuance of an export license.²⁴

In the balance of export license cases, the Commission determined that the petitioners did not have standing, and, as such, denied the requests for intervention.²⁵ As an example of one such case, in *Edlow International Co.*, three non-profit organizations— namely, the Sierra Club, the Natural Resources Defense Council, and the Union of Concerned Scientists—filed

(. . .continued)

export a nuclear reactor and certain components to the Republic of the Philippines); *Edlow International Co.* (Agent for the Government of India on Application to Export Special Nuclear Materials), CLI-79-4, 9 NRC 209 (1979) (Relating to a license application to export special nuclear material to India); *Babcock & Wilcox* (On Application for Consideration of Facility Export License), CLI-77-18, 5 NRC 1332 (1977) (Relating to a license application to export a utilization facility to the Federal Republic of Germany); *Transnuclear, Inc.* (On Application to Export Special Nuclear Material), CLI-77-29, 6 NRC 719 (1977) (Relating to a license application to export special nuclear material to the Federal Republic of Germany); *Westinghouse Electric Corp.* (Application for the Export of Pressurized Water Reactor to Association Nuclear ASCO II, Barcelona, Spain), CLI-76-9, 3 NRC 739 (1976) (Relating to a license application to export a utilization facility to Spain); *Edlow International Co.*, CLI-76-6, 3 NRC at 563 (Relating to a license application to export special nuclear material to India).

²⁴ See *Westinghouse Electric Corp.*, CLI-80-14, 11 NRC at 656 (The Commission rejected the petitioners' contention that it was required to consider the health, safety and environmental impact of the reactor export on the Philippine and American citizens living near the reactor site and authorized the issuance of the export license for export of a nuclear reactor and certain components to the Republic of the Philippines); *Edlow International Co.*, CLI-79-4, 9 NRC at 226-29 (The Commission concluded that the license application met the three requirements (the "common defense and security" requirement, public health and safety requirement, and the Agreement of Cooperation requirement) of the Atomic Energy Act relating to the issuance of export licenses and directed the issuance of the export license for export of special nuclear material to India); *Transnuclear, Inc.*, CLI-77-29, 6 NRC at 721-24 (The Commission concluded that the license application met the three requirements of the Atomic Energy Act relating to the issuance of export licenses and directed the issuance of the export license to export special nuclear material (low-enriched uranium) to the Federal Republic of Germany); *Westinghouse Electric Corp.*, CLI-76-9, 3 NRC at 743-56 (The Commission authorized the grant of a license to export major components of a reactor to Spain).

²⁵ See *Transnuclear, Inc.*, CLI-94-1, 39 NRC at 5 (The Commission reiterated its determination that "interest in providing information to the public and the generalized interest of their memberships in minimizing danger from proliferation [was] insufficient for standing"); *Westinghouse Electric Corp.*, CLI-80-30, 12 NRC at 257 (The Commission denied the petitioner's institutional interest because there was no threat or actual injury); *Babcock & Wilcox*, CLI-77-18, 5 NRC at 1336 (The Commission denied the petition, inter alia, because the "petitioner [had] not presented a single contention appropriate for the Commission to consider")

petitions to intervene and for a hearing relating to an application to export special nuclear material to India. Generally, the petitioners asserted interests in “disseminating information” and promoting the “wise use of technology and resources and the development of sound energy policy.”²⁶ The Commission interpreted the alleged interests of the petitioners as either institutional or as that of the constituent members.²⁷ The Commission rejected the petitioners’ institutional interest because of the lack of a nexus between the “ability to conduct an active and useful educational program for their members or the public” and the petitioners’ request to “participate in a trial-type hearing as opponents to issuance of the Tarapur licenses ...”²⁸

As for interests of their members, two of the three petitioners asserted a public health and safety interest relating to their members. Specifically, they asserted that

members who travel to or reside in India may be exposed to the risks associated with the operation of Tarapur [the name of the nuclear facility] and, moreover, members in the United States will be endangered by the increased risk of nuclear weapons proliferation; by possible theft of nuclear materials or sabotage of the facility; and by unsafe operation of the Tarapur Atomic Power Station.”²⁹

The Commission rejected both arguments. With regards to the potential increased risk to those traveling or residing in India, the Commission concluded that “foreign health and safety matters are beyond [the Commission’s] jurisdictional authority....”³⁰ With regards to the potential increased risks to persons in the United States, the Commission concluded that the “diversion of special nuclear materials from Tarapur by a terrorist group [causing] domestic harm [was]

²⁶ *Edlow International Co.*, CLI-76-6, 3 NRC at 572.

²⁷ *Id.*

²⁸ *Id.* at 573.

²⁹ *Id.* at 574.

³⁰ *Id.* at 575.

also no basis for standing”³¹ and as such finding to be “highly conjectural, speculative, and remote.”³²

CONCLUSION

~~Pursuant to the foregoing, Staff offers its response to Board's Questions 2 through 10 in the Order and, further, according to the above motion for reconsideration, Staff requests that it be relieved from responding to inquiries in the Order that require an opinion by Staff regarding intervenors' interests in future export licensing proceedings.~~

Respectfully submitted,

/RA/

Brett Michael Patrick Klukan
Counsel for NRC Staff

³¹ *Id.* at 577.

³² *Id.* at 578.

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
In-Situ Leach Facility, Crawford, Nebraska)
) ASLBP No. 07-859-03-MLA-BD01
(License Amendment for the North Trend)
Expansion Project))

CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF'S WITHDRAWAL OF ITS MOTION FOR RECONSIDERATION AND RESPONSE TO PETITIONERS' MOTION TO STRIKE NRC STAFF'S MOTION FOR PARTIAL RECONSIDERATION AND RESPONSE TO THE BOARD'S ORDER OF AUGUST 19, 2008" in the above-captioned proceeding have been served on the following by deposit in the United States mail; through deposit in the Nuclear Regulatory Commission's internal system as indicated by an asterisk (*), and by electronic mail as indicated by a double asterisk (**) on this 16th day of September, 2008:

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