

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges:

Michael M. Gibson, Chairman
Dr. Richard F. Cole
Brian K. Hajek

In the Matter of

CROW BUTTE RESOURCES, INC.

(License Renewal for the In Situ Leach Facility,
Crawford, Nebraska)

Docket No. 40-8943

ASLBP No. 08-867-02-OLA-BD01

September 18, 2008

NOTICE and ORDER
(Regarding Oral Argument)

Oral argument will be heard on standing and contention admissibility issues presented with regard to the several hearing requests received in this proceeding,¹ which involves the application of Crow Butte Resources, Inc. (Crow Butte or Applicant) to renew its Source Materials License for the continued operation of its current in-situ leach (ISL) uranium recovery facility in Crawford, Nebraska. That argument will be held on September 30², continuing into October 1 as necessary, in the Chicoine Atrium, Mari Sandoz High Plains Heritage Center,³ Chadron State College, 1000 Main Street, Chadron, Nebraska.

¹ In response to a May 27, 2008, notice of opportunity for hearing published in the Federal Register, Petitioners Beatrice Long Visitor Holy Dance, Joe American Horse, Sr., Debra White Plume, Loretta Afraid of Bear Cook, Thomas Kanatakeniate Cook, Dayton O. Hyde, Bruce McIntosh, Afraid of Bear/Cook *Tiwahe*, American Horse *Tiospaye*, Owe Aku/Bring Back the Way, Western Nebraska Resources Council, the Oglala Sioux Tribe, and the Oglala Sioux Delegation Treaty Council, on July 28, 2008, timely filed requests for hearing and petitions to intervene in accordance with 10 C.F.R. § 2.309.

² The Board scheduled the oral argument for September 30 and October 1, 2008, after consultation with the parties in an August 28, 2008, telephone conference.

³ For specific locational information, the Chadron State College provides details on its website at <http://www.csc.edu/visitors/location.html>.

The Board has also scheduled, through consultation with the parties, site visits to the Crow Butte ISL mining facility and the Pine Ridge Indian Reservation. Although many of the parties and at least one of the judges attended a previous tour of the mining facility in conjunction with an ongoing license amendment proceeding, the Applicant felt that the judges and parties who did not attend that earlier tour would benefit from some familiarization with the project.⁴ Moreover, during the August 28, 2008 telephone conference, counsel for petitioners likewise suggested that all parties and the Licensing Board might benefit from a tour of the Pine Ridge Indian Reservation.⁵ During these visits, the Board and all parties shall make every effort to assure that no *ex parte* communications are engaged in, even inadvertently.

The Licensing Board and parties will participate in a tour of the Crow Butte ISL mining facility on the morning of October 2, 2008.⁶ Counsel for Crow Butte will notify all the parties by September 22, 2008, of the information it requires from persons participating in the visit, along with any security or other considerations of which the parties need be informed. No later than September 25, 2008, all parties are to provide this required information to the proper representative as identified by Crow Butte counsel.

The Licensing Board and parties will participate in a tour of the Pine Ridge Reservation, led by the Petitioners through its Counsel, the afternoon of October 2, 2008.⁷

The oral argument will commence at 9:00 a.m. with the format, including the allocation of time to the various participants, to be determined at the outset of the September 30 session. For the present, it is enough to provide the following guidance to participating counsel in aid of their preparation for the oral argument.

⁴ Letter from Tyson R. Smith, Counsel for Crow Butte Resources, Inc., to Administrative Judges, Atomic Safety Licensing Board (Sept. 17, 2008).

⁵ Licensing Board Order (Confirming Matters Addressed on August 28, 2008 Telephone Conference) at 2-3 (Sept. 2, 2008).

⁶ The precise meeting time and location will be determined prior to conclusion of the oral argument.

⁷ In the event the oral argument concludes early, the tour of the Pine Ridge Reservation may be moved, as necessary, to the afternoon of October 1.

The Board will be fully familiar on September 30 with the content of the extensive written submissions on the numerous standing and contention admissibility issues that have been presented to it. It therefore neither needs nor desires a repetition of the pleadings at the oral argument. The decision of the Board to hear oral argument is based entirely on its conclusion that, after a full study of the written submissions, its informed resolution of some of the presented issues might be materially advanced by a further exploration with the parties of the positions taken on those issues in the written submissions.

In sum, the oral argument is being conducted principally to assist the Board in the discharge of its decisional responsibilities in this matter. At the same time, however, it should prove of considerable value to the parties in that it will provide their counsel with an opportunity, not otherwise possessed, to endeavor to resolve any doubts that the Board members might have regarding the merits of their positions on the issues under consideration. For that reason, counsel should be fully prepared on each identified issue that is a matter of concern to his or her client(s).

In addition to addressing the standing issues presented in the written submissions (principally relating to whether the hearing requesters have established the requisite injury in fact), the oral argument will largely focus upon the matters listed below pertaining to contention admissibility. While not an exhaustive list of the items on which the Board will receive oral argument, these are the items the Board expects the parties to be prepared to address:

(1) Assuming that they are admitted to the proceeding, should the Consolidated Petitioners' Environmental Contentions A and D, and Oglala Sioux Tribe's Environmental Contentions C and D, be consolidated given the commonality of the issues and the bases in support of those contentions.

(2) The Board expects the Applicant to address the data regarding subsurface conditions in the Applicant's possession, if any, that is not part of the publicly available record.

(3) In the event that Consolidated Petitioners' Technical Contention B is admitted, the Board will solicit views from Consolidated Petitioners regarding whether identical Environmental Contention B may then be withdrawn.

(4) In the event that Consolidated Petitioners' Environmental Contention C is admitted, the Board will solicit views from Consolidated Petitioners regarding whether identical Technical Contention C may then be withdrawn.

(5) With regard to the Consolidated Petitioners' Environmental Contention C, the NRC Staff is to discuss whether climate change is to be addressed in its National Environmental Policy Act (NEPA) environmental review and, if so, whether the Applicant would be required to provide information beyond that to be found in its already submitted environmental report.

(6) With regard to the Consolidated Petitioners' Environmental Contention E, the NRC Staff is to discuss whether the economic value of environmental benefits is to be addressed in its NEPA environmental review and, if so, whether the Applicant would be required to provide information beyond that to be found in its already submitted environmental report.

(7) With regard to the Oglala Sioux Tribe's Environmental Contention A, the NRC Staff is to discuss whether non-radiological health effects are to be addressed in its NEPA environmental review and, if so, whether the Applicant would be required to provide information beyond that to be found in its already submitted environmental report.

(8) With regard to the Consolidated Petitioners' Technical Contentions D, E, F, G and Miscellaneous Contention L, while NRC Staff and the Applicant have both asserted that Consolidated Petitioners failed to identify specific supporting regulations, it appears there may be no specific regulations relating to those practices for ISL uranium mining that are necessary and sufficient for the protection of the public health and safety. Consequently, the Board expects the parties to address the standards that are used for review of a license renewal for an ISL uranium mining operation to ensure that the public health and safety is protected.

(9) It is clear that the scope of the License Renewal proceeding encompasses the Applicant's existing ISL uranium mining operation in Crawford, Nebraska. Likewise, it is clear

that the proceeding concurrently underway for an amendment to the Applicant's same source materials license encompasses proposed mining operations at the North Trend Expansion area that are not currently included in the existing license subject to renewal. At the same time, however, the License Renewal Application refers to the proposed North Trend Expansion area as a "Satellite Facility" suggesting that, if that Amendment is granted, processing activity for uranium extraction on the existing site will increase concomitantly. Accordingly, the NRC Staff is to address the scope of the NEPA review for both applications. Moreover, all parties are to address whether the operations proposed in the pending application for license amendment are relevant in this proceeding.

(10) With respect to the Consolidated Petitioners' Miscellaneous Contentions A and B, and the Oglala Sioux Tribe's Environmental Contention B, these petitioners are to address what, if any, obligations the NRC Staff and the Applicant have for tribal and cultural consultation at the existing mining location to renew the continued operation of the existing ISL uranium mining and processing facility.

(11) With regard to the Consolidated Petitioners' Miscellaneous Contentions D, E, and F, all parties are to address the legal basis on which the Licensing Board may entertain contentions based on *Winters* rights, treaty rights, and hunting and fishing rights.

(12) The NRC Staff is to identify the notice(s), if any, by which the public was afforded the opportunity to participate in previous licensing actions at Crow Butte's existing ISL mining facility.

It is so ORDERED.

FOR THE ATOMIC SAFETY
AND LICENSING BOARD
/RA/

Michael M. Gibson, Chairman
ADMINISTRATIVE JUDGE

Rockville, Maryland
September 18, 2008

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of	)	
	)	
CROW BUTTE RESOURCES, INC.	)	Docket No. 40-8943-OLA
	)	
In-Situ Leach Uranium Recovery Facility,	)	
Crawford, Nebraska	)	
	)	
(License Amendment)	)	

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing LB NOTICE AND ORDER (REGARDING ORAL ARGUMENT) have been served upon the following persons by Electronic Information Exchange.

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DOCKET NO. 40-8943-OLA
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[Original signed by Nancy Greathead]
Office of the Secretary of the Commission

Dated at Rockville, Maryland
this 18th day of September 2008