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USNRC

September 26, 2008 (12:56pm)

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September 26, 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)	)	

JOINT MOTION FOR EXTENSION OF TIME

Pursuant to 10 C.F.R. § 2.323, Crow Butte Resources, Inc. ("Crow Butte" or "the Applicant") files this joint motion on behalf of Crow Butte and the Nuclear Regulatory Commission ("NRC") Staff requesting that the Atomic Safety and Licensing Board ("Board") grant an extension of time for each to file a response to the Petitioners' request for leave to file a new contention, dated September 22, 2008.<sup>1</sup> The Petition seeks admission of a late-filed contention in this proceeding alleging a connection between low-level arsenic in water released from the Crow Butte facility and pancreatic failures such as diabetes and cancer.

For the following reasons, the Applicant and NRC Staff request an extension of time to October 13, 2008, for filing a response to the Petitioners' late-filed contention.<sup>2</sup> First, the Applicant and NRC Staff are attending a pre-hearing conference in the Crow Butte license renewal proceeding in Crawford, Nebraska. The Board in that matter has scheduled a pre-

<sup>1</sup> "Petition for Leave to File New Contention Re: Aresenic," dated September 22, 2008. ("Petition").

<sup>2</sup> Pursuant to 10 C.F.R. § 2.323(b), counsel for Crow Butte contacted counsel for petitioners, who indicated that they do not oppose the motion.

hearing conference for September 30th, continuing through October 1st, if necessary. The Board has also included a day of visits to the Pine Ridge Indian Reservation and the Crow Butte site. This three-day pre-hearing conference — combined with two days of travel to and from Nebraska — will occupy counsel for the Applicant and NRC Staff for the week of September 30th through October 3rd, and will inhibit their ability to effectively respond in writing to Petitioners' late-filed contention in this proceeding.

Furthermore, the rules regarding the timing for responses to such contentions are ambiguous and do not clearly specify when a response would be due. For example, in a *Vermont Yankee* Order, parties were given twenty-five days to respond to late-filed contentions. *Entergy Nuclear Vermont Yankee, L.L.C., and Entergy Nuclear Operations, Inc.*, Licensing Board Order (Initial Scheduling Order) at 7 (Nov. 17, 2006) (unpublished). However, in other cases, responses to late-filed contentions have been due in either 10 or 14 days. *See Entergy Nuclear Generation Company and Entergy Nuclear Operations, Inc.*, Licensing Board Order (Establishing Schedule for Proceeding and Addressing Related Matters) at 7-8 (Dec. 20, 2006) (unpublished) (10 days in Pilgrim license renewal proceeding); *Crow Butte Resources, Inc.*, Licensing Board Order (Regarding Schedule and Guidance for Proceedings) at 3-4 (August 21, 2008) (14 days for Crow Butte license renewal proceeding). If a response were due in 10 days, then a response to the Petitioners' late-filed contention would be due October 2, 2008. As stated above, counsel for the Applicant and the NRC Staff will be attending a pre-hearing conference in the license renewal proceeding at that time, hindering their ability to effectively respond to the Petition.

Finally, granting Applicant and NRC Staff an extension of time to respond to Petitioners' late-filed contention will not unduly prejudice the parties, and there are no time sensitive matters before the Board.

For the above reasons, the Applicant and NRC Staff respectfully request that the Board grant the joint motion for an extension of time to October 13, 2008 to file a response to Petitioners' late-filed contention.



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Dated at Washington, District of Columbia  
this 26<sup>th</sup> day of September 2008

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

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) ASLBP No. 07-859-03-MLA-BD01  
(License Amendment Application for North )  
Trend Expansion Project) )

CERTIFICATE OF SERVICE

I hereby certify that copies of "JOINT MOTION FOR EXTENSION OF TIME" in the captioned proceeding have been served on the following by electronic mail, this 26th day of September 2008.

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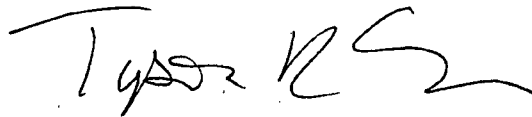
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