

December 8, 2008

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of	)	
	)	
CROW BUTTE RESOURCES, INC.	)	Docket No. 40-8943-MLA
	)	
(License Renewal Application)	)	ASLBP No. 08-867-02
	)	

NRC STAFF'S RESPONSE TO CONSOLIDATED PETITIONERS' JOINDER  
TO OGLALA SIOUX TRIBE ENVIRONMENTAL CONTENTIONS A, B, C, D and E

INTRODUCTION

On November 26, 2008 the Consolidated Petitioners filed "Petitioners' Joinder to Oglala Sioux Tribe Environmental Contentions A, B, C, D, and E" ("Motion for Joinder"). For the reasons set forth below, the Staff opposes the Consolidated Petitioners' Motion for Joinder.

DISCUSSION

The Consolidated Petitioners, without any explanation, filed their Motion for Joinder months after the deadline established in the Commission's May 27, 2008 "Notice of Opportunity for a Hearing" had expired.<sup>1</sup> The Notice of Opportunity for a Hearing specified that

. . . in accordance with 10 CFR 2.309(f)(3), any requestor/petitioner that wishes to adopt a contention proposed by another requester/petitioner must do so, in accordance with the E-Filing rule, within ten days of the date the contention is filed, and designate a representative who shall have the authority to act for the requester/petitioner.

*Id.* (*emphasis added*). The Oglala Sioux Tribe filed its Environmental Contentions A, B, C, D and E on July 28, 2008.<sup>2</sup> Therefore, Consolidated Petitioners' Motion for Joinder is impermissibly late and should be rejected.<sup>3</sup>

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<sup>1</sup> See "Notice of Opportunity for Hearing, Crow Butte Resources, Inc., Crawford, NE, In Situ Leach Recovery Facility, and Order Imposing Procedures for Access to Sensitive Unclassified Non-Safeguards Information (SUNSI) for Contention Preparation," 73 Fed. Reg. 30,426, 30,427 (May 27, 2008).

<sup>2</sup> See Oglala Sioux Tribe's "Request for Hearing and/or Petition to Intervene," dated July 28, 2008 (ML0821702643).

Additionally, the Consolidated Petitioners' Joinder should be denied because it fails to demonstrate compliance with the regulations pertaining to adoption of contentions. See 10 C.F.R. § 2.309(f)(3). That provision specifies

[i]f a requestor/petitioner seeks to adopt the contention of another requestor/petitioner, the requestor/petitioner who seeks to adopt the contention must either agree that the sponsoring requestor/petitioner shall act as the representative with respect to that contention, or jointly designate with the sponsoring requestor/petitioner a representative who shall have the authority to act for the requestors/petitioners with respect to that contention.

The Consolidated Petitioners have not demonstrated compliance with the representational designation requirement set forth in the Commission's regulations. Therefore, the Consolidated Petitioners' Joinder should be rejected.<sup>4</sup>

### CONCLUSION

For the reasons set forth above, the Board should deny the Consolidated Petitioners' Motion for Joinder.

Respectfully submitted,

**Executed in Accord with 10 CFR 2.304(d)**

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Dated at Rockville, Maryland  
This 8<sup>th</sup> day of December, 2008

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<sup>3</sup> Further, had the Consolidated Petitioners sought leave to file their Motion for Joinder at this time, they would have no good cause for their lateness. During the course of the proceeding, Consolidated Petitioner have had opportunities to confer with the Oglala Sioux Tribe and could have addressed the representation requirements pertaining to the adoption of contentions set forth in 10 C.F.R. § 2.309(f)(3). In addition, the Board has now issued its anticipated November 21, 2008 "Ruling on Hearing Requests" (LBP-08-24). "Memorandum and Order (Ruling on Hearing Requests)," LBP-08-24, dated November 21, 2008 (ML0832604050). In its decision, the Board evaluated and rejected certain of the Consolidated Petitioners' contentions that it now seeks to adopt from the Oglala Sioux Tribe. To entertain late adoption at this point would therefore frustrate judicial economy.

<sup>4</sup> In addition, 10 C.F.R. § 2.309(f)(3) speaks to "petitioners" and "requestors." With the Board's ruling of November 21, 2008, the Oglala Sioux Tribe and most of the Consolidated Petitioners have been admitted as parties. See *Ruling on Hearing Requests*, LBP-08-24 at 82. Therefore, they no longer have the status to make such an adoption under the Commission's regulations.

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NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of )  
 ) Docket No. 40-8943  
CROW BUTTE RESOURCES, INC. )  
 ) ASLBP No. 08-867-02-OLA-BD01  
(License Renewal for the In Situ Leach Facility, )  
Crawford, Nebraska) )

CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF'S RESPONSE TO CONSOLIDATED PETITIONERS' JOINDER TO OGLALA SIOUX TRIBE ENVIRONMENTAL CONTENTIONS A, B, C, D and E" in the above-captioned proceeding have been served on the following persons by Electronic Information Exchange on this 8<sup>th</sup> day of December, 2008:

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**Executed in Accord with 10 CFR 2.304(d)**

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