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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
ATOMIC SAFETY AND LICENSING BOARD PANEL

Before Administrative Judges:

Michael M. Gibson, Chairman

Dr. Richard F. Cole

Mr. Brian K. Hajek

In the Matter of

CROW BUTTE RESOURCES, INC.
(License Renewal In Situ Leach Facility,
Crawford, NE)

Docket No. 40-8943

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

December 15, 2008

PETITIONERS' ANSWER TO NRC RESPONSE TO JOINDER

On November 26, 2008, Consolidated Petitioners filed a simple statement to clarify the joinder with the Ogalala Sioux Tribe ("OST") on its contentions admitted by the Board on November 21, 2008. On December 8, 2008, the NRC Staff filed a "Response to Consolidated Petitioners' Joinder to Oglala Sioux Tribe Environmental Contentions A, B, C, D and E" (the "NRC Response"). Consolidated Petitioners hereby file this Answer to the NRC Response.

DISCUSSION

Consolidated Petitioners filed a simple joinder to the OST's admitted contentions. Contrary to the NRC Staff's understanding, the May 27, 2008 Notice of Opportunity is not relevant to this analysis because Consolidated Petitioners are not seeking to 'adopt' a contention proposed by another requester.¹ Further, the NRC Staff's suggestion that Section 2.309(f)(3) governs is misplaced. Section 2.309(f)(3) deals with the situation

¹ The NRC Staff correctly points out that with the Board's ruling on November 21, 2008, the OST and Consolidated Petitioners have been admitted as parties and, therefore, they no longer have the status of requester/petitioners. NRC Response at FN4, page 2.

where a requester/petitioner 'seeks to adopt the contention of another requestor/petitioner' and requires such person to either agree that the sponsoring petitioner shall act as a representative with respect to that contention or jointly designate with the sponsoring petitioner a representative with respect to that contention. 10 C.F.R. §2.309(f)(3).

Consolidated Petitioners do not desire to 'adopt' the OST Contentions as their own or co-sponsor them. Rather, Consolidated Petitioners desire to 'join' the OST Contentions so that we may submit arguments and briefing on the issues raised in those Contentions as they are heard by the Board. Consolidated Petitioners who are members of the OST are concerned that they have an opportunity to voice themselves which is independent of the OST.

The NRC Regulations are silent when it comes to joinder. Joinder itself is a common procedural action that is covered by Rule 20 of the Federal Rules of Civil Procedure. Parties are permitted to join in one action where "they assert any right...arising out of the same occurrence or series of occurrences...and any question of law or fact common to all plaintiffs will arise in the action." FRCP Rule 20(a)(1). The Court may issue protective orders to protect a party against any delay or other prejudice that arises from the joinder. FRCP Rule 20(b). Therefore, joinder of the Consolidated Petitioners to the OST's admitted contentions would not result in any prejudice to the NRC Staff or Applicant² or result in any delay in this proceeding. Accordingly, there is no good reason to deny joinder.

The Board has ample authority under Section 2.319(c), (g), (h), (i), (k), (p), (q)

² Notably, Applicant has not objected to the joinder.

and (r) to ensure that the joinder does not delay or prejudice any party.

Moreover, the trust responsibility, which applies in this proceeding³, requires at a minimum that the Consolidated Petitioners that are members of the OST be allowed to join. This is especially true when there is no prejudice to the other parties. Finally, allowing joinder would help ensure that a full and proper record is developed in this proceeding.

CONCLUSION

For all the foregoing reasons, the Board should allow the joinder.

Dated this 15th day of December, 2008.

Respectfully submitted,

/s/ - electronically signed

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³ See LBP-08-24 at 59, FN 290.

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December 15, 2008

CERTIFICATE OF SERVICE

I hereby certify that copies "PETITIONERS' ANSWER TO NRC RE JOINDER" in the above captioned proceeding has been served on the following persons by electronic mail as indicated by a double asterisk (**); on this 15th day of December, 2008:

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Hearing Docket

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Subject: Transmitting Document- Docket No. 40-8943- ASLBP No. 08-867-02-OLA-BD01
Attachments: Petitioners Answer to NRC re Joinder.pdf; Petitioners (Renewal) EIE conformed COS 12152008.pdf

Dear All,

Attached are Petitioners' Answer to NRC re Joinder and related COS.

Sincerely,

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