

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

January 8, 2009

INITIAL SCHEDULING ORDER

In this proceeding, the Licensing Board granted hearing requests by several individuals and organizations – collectively “Consolidated Petitioners”<sup>1</sup> – and the Oglala Sioux Tribe to challenge an application by Crow Butte Resources, Inc. (“Crow Butte”) to renew its source materials license for continued operation of its in-situ leach uranium mine in Crawford, Nebraska. On December 15, 2008, the Board convened a telephonic pre-hearing conference call to discuss the issuance of an initial scheduling order pursuant to 10 C.F.R. § 2.332(a). This Memorandum and Order summarizes significant aspects of that call, establishes an initial scheduling order, and provides administrative directives that shall apply to the conduct of this proceeding.

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<sup>1</sup> Collectively, Consolidated Petitioners include Beatrice Long Visitor Holy Dance, Debra White Plume, Thomas Kanatakeniate Cook, Loretta Afraid of Bear Cook, the Afraid of Bear/Cook Tiwahe, Joe American Horse, Sr., the American Horse Tiospaye, Owe Aku/Bring Back the Way, and Western Nebraska Resources Council.

## I. Summary of Conference Call

### A. Mandatory Disclosures

The Board confirmed that all parties will be filing initial mandatory disclosures on March 2, 2009<sup>2</sup> in accord with this Board's December 9, 2008 Order,<sup>3</sup> which granted the parties' joint motion to extend the deadline set forth in 10 C.F.R. § 2.336(a).

Counsel for Crow Butte indicated it is likely a Protective Order will be required, based on information Crow Butte anticipates filing pursuant to its disclosure obligations. With the agreement of all parties, counsel for Crow Butte offered to prepare a draft proposal to be circulated among all parties, and once agreed upon by all parties, would then be jointly submitted to the Board.<sup>4</sup> After joint submission of a proposed Protective Order, the Board will issue an appropriate Memorandum and Order.

Counsel for Crow Butte also indicated that its mandatory disclosure materials will encompass some items that are not readily amenable for reproduction. For example, Crow Butte's well logs are not printed on traditional media and are voluminous (i.e., 10,000 borehole logs), and their reproduction would be very expensive.<sup>5</sup> All parties agreed to identify an acceptable arrangement for on-site viewing of such disclosures.<sup>6</sup>

### B. Environmental and Safety Evaluations

Counsel for the NRC Staff represented that NRC anticipates completing the final Safety Evaluation Report (SER) by the summer/fall of 2009 and the final environmental document (either Environmental Assessment [EA] or Environmental Impact Statement [EIS]) by December of 2009. The Board considered the possibility of bifurcating the proceeding by convening hearings on contentions as soon as they are ready for disposition.<sup>7</sup> Based on discussions with

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<sup>2</sup> Tr. at 445.

<sup>3</sup> Licensing Board Order (Granting Motion for Stay of Disclosure Obligations) at 1 (Dec. 15, 2008) [hereinafter Order Granting Stay of Disclosure Obligations].

<sup>4</sup> Tr. at 446-7.

<sup>5</sup> Tr. at 448.

<sup>6</sup> Tr. at 449-50.

<sup>7</sup> Tr. at 438.

the parties during the conference call,<sup>8</sup> it appears at this time that the foreign ownership and disclosure issues (presented in Consolidated Petitioners' Miscellaneous Contentions G and K) will be ripe for disposition in the spring of 2009. However, it also appears at this point that all remaining admitted contentions present issues too interrelated to litigate through independent evidentiary hearings,<sup>9</sup> and as a consequence, they probably will not be ripe for disposition until after issuance of the final EA/EIS consistent with the model milestones for Subpart L hearings.

C. Briefing on the Merits of Miscellaneous Contentions G and K

In accordance with LBP-08-24,<sup>10</sup> as amended by the Board's December 9, 2008 Order,<sup>11</sup> parties will submit briefs on issues related to Consolidated Petitioners' Miscellaneous Contention K no later than January 21, 2009. Responses to such briefing shall be filed no later than February 10, 2009, with replies following no later than February 20, 2009. After the Board completes review of these submissions, it may elect to hold oral argument on the legal issues presented and to identify the need for an evidentiary hearing. If needed, oral argument will be held this spring at a date and place to be determined by the Board. This determination will be made by the Board no later than February 27, 2008.

Similar briefing on issues related to Consolidated Petitioners' Miscellaneous Contention G will no longer be required at this stage of the proceeding. Instead, parties may respond, as appropriate, to Crow Butte's proposed amendment to its License Renewal Application related to disclosure issues raised by Consolidated Petitioners in this contention.<sup>12</sup>

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<sup>8</sup> Tr. at 437-44.

<sup>9</sup> Id.

<sup>10</sup> See Crow Butte Resources, Inc. (License Renewal for the In Situ Leach Facility, Crawford, Nebraska), LBP-08-24, 68 NRC \_\_\_, \_\_\_ (slip op. at 83) (2008).

<sup>11</sup> Licensing Board Order (Granting Motion for Extension of Time) at 2 (Dec. 9, 2008) [hereinafter Order Granting Extension of Time].

<sup>12</sup> Counsel for Crow Butte informed all parties and the Board of its intent to cure the omission alluded to in Miscellaneous Contention G by amending the License Renewal Application to include some discussion of its foreign parent. See Tr. at 439.

D. Summary Disposition Motions

In conjunction with amending its License Renewal Application to address the alleged omissions in Miscellaneous Contention G, Crow Butte intends to submit a summary disposition motion arguing that this contention is now moot.<sup>13</sup> Crow Butte's summary disposition motion will be submitted on January 21, 2009, and briefing with respect to this motion will supplant the prior scheduled briefing for Miscellaneous Contention G<sup>14</sup> that had been set forth in LBP-08-24.<sup>15</sup> Pursuant to 10 C.F.R. § 2.1205(b), any answer or opposing motion shall be filed within twenty (20) days after service of the motion, or February 10, 2009.

**II. Schedule**

In addition to the general deadlines and time frames applicable to Subpart L proceedings pursuant to 10 C.F.R. Part 2, we establish the following scheduling requirements for this initial stage of the proceeding:

A. Updating of Mandatory Disclosures and Hearing File. The parties shall comply with the mandatory disclosure provision of 10 C.F.R. §§ 2.336 and 2.1203, as modified by this Board's December 9, 2008 Order,<sup>16</sup> to file motions relating to initial mandatory disclosures by March 2, 2009. The duty of disclosure is continuing and, pursuant to 10 C.F.R. § 2.336(d), any information or documents that are subsequently developed or obtained must be disclosed within fourteen (14) days thereafter. The duty to update mandatory disclosures and the hearing file shall terminate at the close of the evidentiary hearing.

B. Monthly Status Report. Commencing on January 15, 2009, the NRC Staff shall submit a short report advising as to whether the estimated dates for issuance of the final SER (predicted for summer/fall of 2009) and final EA/EIS (predicted for December of 2009) have

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<sup>13</sup> Tr. at 439, 451-2.

<sup>14</sup> Id.

<sup>15</sup> See Crow Butte, LBP-08-24, 68 NRC at \_\_\_ (slip op. at 83). The deadline for filing briefs on the legal issues associated with Consolidated Petitioners' Miscellaneous Contention G was extended by this Board an additional 30 days to January 21, 2009. See Order Granting Extension of Time at 2.

<sup>16</sup> Order Granting Stay of Discovery Obligations at 1.

changed or become more definitive. The NRC Staff's report shall update this estimate on a monthly basis, even if only to reflect no change.

C. Proposed Protective Order, Privilege Logs, Privilege Disputes.

1. The parties shall confer with one another for the purpose of discussing and developing a joint proposed protective order and nondisclosure agreement dealing with the handling (and redaction) of documents that are claimed to contain privileged, proprietary or otherwise protected information. On or before March 2, 2009, the parties shall submit to the Board either (i) a unanimously agreed proposed protective order and nondisclosure agreement, or (ii) individually proposed protective orders and nondisclosure agreements.

2. If, and only if, the parties are unable to submit a unanimously agreed proposed protective order and nondisclosure agreement, then, on or before March 12, 2009, the parties may each file a single brief, responding to any points previously raised by any other parties in its proposed protective orders and nondisclosure agreement.

D. Evidentiary Hearing Filings.

Consistent with 10 C.F.R. § 2.332(b), it is presumed that the scheduling of significant events in this proceeding, except for Consolidated Petitioners' Miscellaneous Contentions G and K, will be keyed to the issuance of the final EA/EIS and SER, as provided in the model milestones for Subpart L hearings.<sup>17</sup> Convening of future prehearing conferences will be addressed in subsequent orders, after which additional scheduling orders will be issued to address such matters as motions for summary disposition; initial statements of position, testimony, affidavits and exhibits; rebuttal statements of position; motions *in limine*; proposed direct examination questions for the Board; and motions for cross-examination.<sup>18</sup>

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<sup>17</sup> As recognized in subsections 2.332(b) and (d), the schedule might also be modified based on the existence of new or additional contentions, the complexity of issues presented, or the ability to expedite the proceeding without adversely affecting the development of the record or impeding the fair resolution of the issues.

<sup>18</sup> All parties are to become familiar with the process and schedule for submissions in a Subpart L proceeding as set forth in 10 C.F.R. § 2.1207.

For any filing not covered by the deadlines listed above, including the filing of any late-filed contentions, the Board will, absent compelling circumstances, expect compliance with the applicable model milestones for hearings conducted under 10 C.F.R. Part 2, Subpart L. The model milestones are listed in Appendix B to Part 2.

To augment the early resolution of issues without Board intervention, motions will be summarily rejected if they are not preceded by a sincere attempt to resolve the issues and include the certification specified in 10 C.F.R. § 2.323(b). Each party shall endeavor to make itself available for consultation and shall cooperate in attempting to resolve the issues.

It is so ORDERED.

FOR THE ATOMIC SAFETY  
AND LICENSING BOARD<sup>19</sup>

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Michael M. Gibson, Chairman  
ADMINISTRATIVE JUDGE

Rockville, Maryland  
January 8, 2009

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<sup>19</sup> Copies of this memorandum and order were sent this date by the agency's E-Filing system to the counsel/representatives for (1) applicant Crow Butte Resources, Inc.; (2) Consolidated Petitioners; (3) NRC Staff; 4) Oglala Sioux Tribe.

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

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CROW BUTTE RESOURCES, INC. ) Docket No. 40-8943  
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In-Situ Leach Uranium Recovery Facility, ) ASLBP No. 08-867-02-OLA-BD01  
Crawford, Nebraska )  
)  
(License Amendment) )

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing LB INITIAL SCHEDULING ORDER have been served upon the following persons by Electronic Information Exchange.

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[Original signed by Nancy Greathead]

Office of the Secretary of the Commission

Dated at Rockville, Maryland  
this 8<sup>th</sup> day of January 2009