

January 21, 2009

UNITED STATES OF AMERICA
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))	

MOTION FOR SUMMARY DISPOSITION
OF MISCELLANEOUS CONTENTION G

I. INTRODUCTION

Applicant Crow Butte Resources, Inc. (“Applicant” or “Crow Butte”) files this motion pursuant to 10 C.F.R. § 2.1205 for summary disposition of Miscellaneous Contention G (“Failure to Disclose or Concealment of Foreign Ownership”). Summary disposition is warranted on the grounds that there exists no genuine issue as to any material fact relevant to the contention and therefore, under the applicable Commission regulations, the Applicant is entitled to a decision as a matter of law. This motion is supported by a Statement of Material Facts as to which Crow Butte asserts that there is no genuine dispute and a revision to Section 1.2, page 1-2, “Crow Butte Project Background,” of Crow Butte’s License Renewal Application that was filed by the Applicant with the Commission on December 16, 2008.¹

II. LEGAL STANDARDS FOR SUMMARY DISPOSITION

Because this is the first motion for summary disposition filed by Crow Butte, we set forth the relevant law at some length.

¹ Counsel for Crow Butte has contacted counsel for the NRC Staff and Consolidated Petitioners. Counsel for the NRC Staff indicated that they would not oppose the motion, while counsel for Consolidated Petitioners indicated that they would oppose the motion.

A. Rule

The proceeding is governed by the informal adjudicatory procedures described in Subpart L of 10 C.F.R. Part 2. Subpart L contains certain instructions for filing motions for summary disposition, but directs the Licensing Board to apply the standards of Subpart G, which are set forth in 10 C.F.R. § 2.710(d)(2). *See* 10 C.F.R. § 2.1205(c). A motion for summary disposition must be granted “if the filings in the proceeding ... together with the statements of the parties and the affidavits, if any, show that there is no genuine issue as to any material fact.” 10 C.F.R. § 2.710(d).

The movant for summary judgment bears the initial burden of showing the absence of a genuine dispute as to any material fact. *Advanced Medical Systems, Inc.* (One Factory Row, Geneva, Ohio 44041), CLI-93-22, 38 NRC 98, 102 (1993). If the movant makes such a showing and that showing is not countered by the opposing party, the Board may summarily dispose of the arguments in question on the basis of the pleadings. *Id.* “The opposing party must controvert any [individual] material fact properly set out in the statement of material facts that accompanies a summary disposition motion or the fact will be deemed admitted.” *Id.* at 102-103. Opponents must “pinpoint[] each of [the] Applicant’s stated material facts which they genuinely dispute and set[] forth the basis for their belief that the facts are not as stated.” *Commonwealth Edison Company* (Braidwood Nuclear Power Station, Units 1 and 2), LBP-86-12, 23 NRC 414, 420 (1986).

B. Material Fact

Material facts are determined by the substantive law applicable to the case. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). “Only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of

summary judgment. Factual disputes that are irrelevant or unnecessary will not be counted.” *Id.* A licensing board will ultimately determine which facts are material on the basis of the parties’ submissions and the record. *Advanced Medical Systems*, CLI-93-22, 38 NRC at 115 and n.65.

C. Genuine Issue

To counter a motion for summary disposition, an opponent “may not rest upon ‘mere allegations or denials,’ but must set forth specific facts showing that there is a genuine issue.” *Advanced Medical Systems*, CLI-93-22, 38 NRC at 102. “Bare assertions or general denials are not sufficient. Although the opposing party does not have to show that it would prevail on the issues, it must at least demonstrate that there is a genuine factual issue to be tried.” *Id.* (citations omitted). “[Opponents] have to present contrary evidence that is so significantly probative that it creates a material factual issue.” *Id.* n.13 (citing *Public Service Co. of New Hampshire* (Seabrook Station, Units 1 and 2), CLI-92-8, 35 NRC 145, 154 (1992)). Merely a “metaphysical doubt” concerning the material facts is insufficient. *Id.* n.13 (citing *Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp.*, 475 U.S. 574, 586-87 (1986)).

D. Evidence

Evidence in support of or opposition to a motion for summary disposition can include: “filings in the proceeding, depositions, answers to interrogatories, and admissions on file, together with the statements of the parties and the affidavits.” 10 C.F.R. § 2.710(d). All factual material in the administrative record may be used by pointing it out to the Licensing Board. *See Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). Identifying such material, however, is an obligation of the party, not the Licensing Board. *See, e.g., Barge v. Anheuser-Busch, Inc.*, 87 F.3d 256, 260 (8th Cir. 1996). The Board, however, retains the power to request and consider further materials from the parties to make a decision on a summary disposition

motion. *Cleveland Electric Illuminating Company* (Perry Nuclear Power Plant, Units 1 and 2), ALAB-443, 6 NRC 741, 752 (1977).

III. SCOPE OF ADMITTED CONTENTION

In their petition to intervene, Consolidated Petitioners raised a number of different issues related to Crow Butte's application for license renewal. "Consolidated Request for Hearing and Petition for Leave to Intervene," dated July 28, 2008 ("Petition"). As proposed, Miscellaneous Contention G asserted, in relevant part:

Failure to Disclose in violation of 40.9. There are several instances of intentional, reckless or negligent failures to disclose, including:

(1) Concealment of Foreign Ownership, as described herein.

Petition at 32. Consolidated Petitioners did not elaborate on this portion of the contention in their Petition. However, in their "Reply to Applicant and NRC Staff Answers to Consolidated Petition to Intervene," dated September 3, 2008, Consolidated Petitioners argued that Section 189 of the Atomic Energy Act requires a written license application to state the citizenship of the applicant. Reply at 64.

Crow Butte, in its "Response to Petition to Intervene Filed by Consolidated Petitioners," dated August 22, 2008, highlighted the fact that the ownership structure of Crow Butte had been publicly disclosed and described in publicly-available documents on the NRC's licensing docket.² App. Resp. Cons. Pet. at 53-54. Furthermore, Crow Butte explained that the

² See Ltr. from Stephen P. Collings, President, Crow Butte Resources, to Joseph J. Holonich, Chief, Uranium Recovery Branch, NRC, dated May 13, 1998 (ADAMS Accession No. 9805260014); Ltr. from Joseph J. Holonich, Chief, Uranium Recovery Branch, NRC, to Stephen P. Collings, President, Crow Butte Resources, dated June 5, 1998 (ADAMS Accession No. 9806120319). The NRC also found that Crow Butte provided all of the information identified in NRC Information Notice (IN) 89-25,

current ownership structure of Crow Butte had been described in filings on the adjudicatory docket in the North Trend expansion proceeding.³ *Id.* at 54 and n.38.

Nevertheless, the Licensing Board admitted a portion of Miscellaneous Contention G. LBP-08-24, __ NRC __, slip op. at 67 (November 21, 2008). Specifically, the Board found Miscellaneous Contention G admissible “as a contention of omission insofar as it claims Crow Butte has failed to disclose in its License Renewal Application that it is owned and controlled by a foreign corporation.” *Id.* At bottom, the admitted contention hinged on Crow Butte’s failure to specifically describe its corporate structure within the text of the License Renewal Application.

IV. THE APPLICANT IS ENTITLED TO SUMMARY DISPOSITION OF MISCELLANEOUS CONTENTION G

Crow Butte moves for summary disposition of Miscellaneous Contention G on the grounds that there no longer exists a genuine dispute concerning any facts material to the foregoing matters because Crow Butte has revised its license renewal application so as to render this contention of omission moot.

The Commission has explained that where a contention alleges the omission of particular information, and the information is later supplied by the applicant, the contention is moot. *Duke Energy Corp.* (McGuire Nuclear Station, Units 1 and 2; Catawba Nuclear State, Units 1 and 2), CLI-02-28, 56 NRC 373, 282-283 (2002); *see also USEC, Inc.* (American Centrifuge Plant), CLI-06-09, 63 NRC 433 (2006). On December 16, 2008, Crow Butte filed a revision to Section 1.2, page 1-2 of its November 27, 2007 license renewal application in order

“Unauthorized Transfer of Ownership or Control of Licensed Activities,” dated March 7, 1989 (ADAMS Accession No. ML031180579).

³ *See* “Applicant’s Reply Brief Regarding Foreign Ownership and Hearing Procedures,” dated June 16, 2008 (ADAMS Accession No. ML081760300).

to provide an expanded description of the corporate ownership structure for Crow Butte. See Ltr. from S. Collings, Crow Butte Resources, Inc., to C. Miller, NRC, “Revision to Section 1.2 of the License Renewal,” dated December 16, 2008 (ADAMS Accession No. ML090020026).

Specifically, the revised application states that the land (fee and leases) at the Crow Butte facility is owned by Crow Butte Land Company, which is a Nebraska corporation. LRA, at 1-2. All of the officers and directors of Crow Butte Land Company are U.S. Citizens. *Id.* Crow Butte Land Company is owned by Crow Butte Resources, Inc., which is the licensed operator of the facility. *Id.* Crow Butte Resources, which does business as Cameco Resources, is also a Nebraska corporation. *Id.* All of its officers are U.S. citizens, as are 2/3 of its directors. *Id.* Crow Butte Resources is owned by Cameco US Holdings, Inc., which is a U.S. corporation registered in Nevada. *Id.* For Cameco US Holdings, 3/4 of the officers are U.S. citizens, as are 2/3 of the directors. *Id.* Cameco US Holdings is held by Cameco Corporation, which is a Canadian corporation. *Id.* Cameco Corporation is publicly traded on both the Toronto and New York Stock Exchanges. *Id.*

Because the alleged omission in the application has been cured by the revision to the license renewal application, Miscellaneous Contention G, as admitted by the Licensing Board, is now moot. No contested issues remain. Accordingly, the Applicant is entitled to a decision as a matter of law.

V. CONCLUSION

Crow Butte is entitled to summary disposition of Miscellaneous Contention G because there remains no genuine issue as to any material fact relevant to the admitted contention.

Respectfully submitted,

/s/ signed electronically by
Tyson R. Smith
Winston & Strawn LLP
101 California St.
San Francisco, CA 94111

COUNSEL FOR CROW BUTTE
RESOURCES, INC.

Dated at San Francisco, California
this 21st day of January 2009

UNITED STATES OF AMERICA
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))	

STATEMENT OF MATERIAL FACTS
ON WHICH NO GENUINE DISPUTE EXISTS

Applicant Crow Butte Resources, Inc. (“Applicant” or “Crow Butte”) submits, in support of its motion for summary disposition of Miscellaneous Contention G, this statement of material facts as to which the Applicant contends that there is no genuine issue to be heard.

1. Crow Butte filed its license renewal application on November 27, 2007.
2. On July 28, 2008, Consolidated Petitioners submitted Miscellaneous Contention G, which argued that Crow Butte failed to disclose its alleged foreign ownership in its license renewal application.
3. In its Memorandum and Order dated November 21, 2008, the Licensing Board found Miscellaneous Contention G “admissible as a contention of omission insofar as it claims Crow Butte failed to disclose in its License Renewal Application that it is owned and controlled by a foreign corporation.” LBP-08-24, __ NRC __, slip op. at 67.
4. On December 16, 2008, Crow Butte revised Section 1.2, page 1-2, of its November 27, 2007 license renewal application to expand the discussion of the ownership of Crow Butte. The revision included the following information:
 - a. The land (fee and leases) of the Crow Butte facility is owned by Crow Butte Land Company, a Nebraska corporation. All of the officers and directors of Crow Butte Land Company are U.S. Citizens.
 - b. Crow Butte Land Company is owned by Crow Butte Resources, Inc., which is a licensed operator of the facility.
 - c. Crow Butte Resources, Inc., which does business as Cameco Resources, is also a Nebraska company. All of its officers are U.S. citizens, as are 2/3 of its directors.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE COMMISSION

In the Matter of:)	
)	Docket No. 40-8943
CROW BUTTE RESOURCES, INC.)	
)	ASLBP No. 08-867-02-OLA-BD01
(License Renewal))	

CERTIFICATE OF SERVICE

I hereby certify that copies of “MOTION FOR SUMMARY DISPOSITION OF MISCELLANEOUS CONTENTION G” and “STATEMENT OF MATERIAL FACTS ON WHICH NO GENUINE DISPUTE EXISTS” in the captioned proceeding have been served via the Electronic Information Exchange (“EIE”) this 21st day of January 2009, which to the best of my knowledge resulted in transmittal of the foregoing to those on the EIE Service List for the captioned proceeding.

/s/ signed electronically by _____

Tyson R. Smith
Winston & Strawn LLP
101 California St.
San Francisco, CA 94111-5894

COUNSEL FOR CROW BUTTE
RESOURCES, INC.



**CROW BUTTE
RESOURCES, INC.**

141 Union Blvd., Suite 330
Lakewood, Colorado 80228
Tel: (720) 879-5140
Fax: (720) 917-0188

December 16, 2008

Mr. Charles L. Miller, Director
Office of Federal and State Materials and Environmental Management Programs
U. S. Nuclear Regulatory Commission
Two White Flint North, Mailstop T8F5
11545 Rockville Pike
Rockville, MD 20852

RE: Revision to Section 1.2 of the License Renewal
Docket No. 40-8943
License No. SUA-1534

Dear Mr. Miller:

Crow Butte Resources, Inc. (CBR) hereby submits a revision to the renewal application for the Source Materials License No. SUA-1534 submitted November 27, 2007. Section 1.2, page 1-2 has been revised to provide an expanded description of the site's governance.

Enclosed with this letter are three copies of the revised section.

If you or your staff has any questions regarding this revision please contact me.

Sincerely,

Stephen P. Collings
President



A member of the Cameco group of companies



1 PROPOSED ACTIVITIES

1.1 LICENSING ACTION REQUESTED

Crow Butte Resources, Inc. (CBR) submits this combined Technical Report (TR) and Environmental Report (ER) in support of a license renewal application (LRA) of the Radioactive Source Materials License SUA-1534 for submittal to the United States Nuclear Regulatory Commission (USNRC). At the request of the USNRC, the ER and TR have been combined into one document, referred to from here on as the LRA, and incorporates applicable USNRC guidance regulations for both the TR and ER. This LRA concerns the continued commercial operation of uranium leach in-situ (ISL) mining resources located in Dawes County, Nebraska.

This LRA is prepared to supplement and update the information presented to the USNRC in support of issuance of Source Materials License SUA-1534 in 1989 and the subsequent renewal in 1997, and provides the supplemental information necessary to determine the environmental impacts of continuing uranium leach activities in the Crow Butte License Area under SUA-1534. This LRA is submitted in accordance with the licensing requirements contained in 10 Code of Federal Regulations (CFR) Part 40 and provides the USNRC staff with the necessary information to support the preparation of an Environmental Assessment (EA) as required in 10 CFR Part 51.

This LRA has been prepared using suggested guidelines and standard formats from both state and federal agencies. The application is presented primarily in the USNRC format found in Regulatory Guide 3.46, *Standard Format and Content of License Applications, Including Environmental Reports, For In Situ Uranium Solution Mining* (June 1982). USNRC document NUREG-1569, *Standard Review Plan for In Situ Leach Uranium Extraction License Applications* (June 2003) was used to ensure that all information is provided to allow USNRC Staff to complete their review of this amendment application. NUREG-1748, *Environmental Review Guidance for Licensing Actions Associated with NMSS Programs* (August 2003) was also used to ensure information typically found in the ER was appropriately incorporated into this LRA.

CROW BUTTE RESOURCES, INC.

SUA – 1534 License Renewal Application



1.2 CROW BUTTE PROJECT BACKGROUND

What is now the Crow Butte Project was originally developed by Wyoming Fuel Corporation, which constructed a R&D facility in 1985-1986. In 1986 the project was acquired and operated by Ferret Exploration Company of Nebraska until May 1994, when the name was changed to Crow Butte Resources, Inc. Only the name of the company changed, not its ownership. CBR is the current owner and operator of the Crow Butte Project.

The land (fee and leases) at the Crow Butte facility is owned by Crow Butte Land Company, which is a Nebraska corporation. All of the officers and directors of Crow Butte Land Company are U.S. Citizens. Crow Butte Land Company is owned by Crow Butte Resources, Inc., which is the licensed operator of the facility. Crow Butte Resources, which does business as Cameco Resources, is also a Nebraska corporation. All of its officers are U.S. citizens, as are 2/3 of its directors. Crow Butte Resources is owned by Cameco US Holdings, Inc., which is a U.S. corporation registered in Nevada. For Cameco US Holdings, 3/4 of the officers are U.S. citizens, as are 2/3 of the directors. Cameco US Holdings is held by Cameco Corporation, which is a Canadian corporation. Cameco Corporation is publicly traded on both the Toronto and New York Stock Exchanges.

The R&D facility was located in the N1/2 SE1/4 of Section 19, Township 31 North, Range 51 West, Dawes County, Nebraska. Operations at this facility were initiated in July 1986, and mining took place in two wellfields (WF-1 and WF-2). Mining in WF-2 was completed in 1987, and restoration of that wellfield has been completed. WF-1 was incorporated into Mine Unit 1 of commercial operations.

CBR has successfully operated the current production area since commercial operations began in 1991. Production of uranium has been maintained at design quantities throughout that period with no adverse environmental impacts.