

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))	

APPLICANT’S BRIEF REGARDING MISCELLANEOUS CONTENTION K

I. INTRODUCTION

In accordance with the November 21, 2008 Order of the Atomic Safety and Licensing Board, as amended by the Board’s December 9, 2008 Order, Crow Butte Resources, Inc. (“Crow Butte” or “Applicant”) hereby submits supplemental briefing on Miscellaneous Contention K. As is discussed further below, the statutory and regulatory provisions referenced by Consolidated Petitioners and highlighted by the Licensing Board (“ASLB” or “Board”) in LBP-08-24 are not applicable to Crow Butte’s current operations. Accordingly, there is no prohibition on ultimate foreign ownership of Crow Butte, there is no relief available to the Petitioners, and Miscellaneous Contention K should be resolved in favor of the Applicant.

II. BACKGROUND

A. Scope of Miscellaneous Contention K

As proposed, Miscellaneous Contention K asserted a “[l]ack of [a]uthority to [i]ssue [l]icense to US [c]orporation which is 100% owned, controlled and dominated by foreign interests; voidability of mineral and real estate leases due to Nebraska Alien Ownership Act.” “Consolidated Request for Hearing and Petition for Leave to Intervene,” dated July 28, 2008, at 36 (“Petition”). According to the Licensing Board, the issues presented in Miscellaneous

Contention K are two-fold. First, Consolidated Petitioners contest the legitimacy of Crow Butte’s license “on grounds that [Crow Butte’s] status as a foreign corporation violates the explicit terms of the Atomic Energy Act, and the rules and regulations promulgated by the Commission thereunder.” LBP-08-24 at 70. Second, Consolidated Petitioners allege the voidability of mineral and real estate leases under the Nebraska Alien Ownership Act is dispositive on Crow Butte’s Source Materials License for its ISL uranium mining operations. *Id.* at 71. As discussed below, the Board admitted the portion of the contention related to foreign ownership. However, the Board did not admit the portion of the contention related to the Nebraska Alien Ownership Act and this aspect of the contention is not discussed further.

With respect to the first portion of the contention, the Board indicated that it needed to determine “whether the AEA and 10 C.F.R. § 40.32(d) prohibit a foreign entity from obtaining a NRC license to operate an ISL mine in the U.S.” The Board stated that, although the prohibition against foreign control and ownership are clear with regard to uranium enrichment facilities (citing 10 C.F.R. § 40.38)¹ or nuclear power plants (citing 10 C.F.R. § 50.38), the regulations applicable to source materials licensing provide no such clarity. Accordingly, the Board sought briefing on whether there is an “absolute prohibition on NRC issuing a license for an ISL mine in the U.S. to a foreign corporation.”² LBP-08-24 at 73.

¹ Contrary to the suggestion by the Board, foreign ownership of all uranium enrichment facilities is not prohibited by 10 C.F.R. § 40.38. Section 40.38 only prohibits foreign ownership of the United States Enrichment Corporation or its successors. Other uranium enrichment facilities may be owned by foreign entities. For example, as discussed below, the National Enrichment Facility is owned by Louisiana Energy Services, which is 100% owned by a foreign entity.

² As discussed below, Crow Butte Resources is a U.S. corporation, as is its parent company, Cameco US Holdings, Inc. Although the Board framed the issue as whether there is a prohibition on the NRC issuing a license to a foreign corporation, the actual question presented is whether the NRC is prohibited from issuing a license to a U.S. company that is ultimately owned by a foreign “grandparent.”

As discussed below, there is no prohibition on the NRC issuing a license to an entity that has a foreign parent.

B. Ownership of Crow Butte

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 to provide an expanded description of the corporate ownership structure for Crow Butte. 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.* According to the most recent information available on institutional and retail ownership, total U.S. shareholdings in Cameco are 52%. Canadian ownership accounts for 39% of outstanding shares.

II. DISCUSSION

In LBP-08-24, the Board identified two issues in the context of Miscellaneous Contention K. Specifically, the Board stated that it needed to determine (1) whether the Atomic Energy Act (“AEA”) and 10 C.F.R. § 40.32(d) prohibit a foreign entity from obtaining a NRC license to operate an ISL mine in the U.S.; and (2) if not restricted under the AEA, whether

foreign ownership of the Applicant would, under Part 40, including § 40.32(d), have an impact on or endanger the common defense or security of the United States, so as to bring into question the propriety of granting the sought license renewal.

Below, we first address the threshold question identified by the Board as being potentially fatal to Crow Butte's application.³ Based on the statutory and regulatory provisions applicable to Crow Butte, there are no prohibitions regarding the ultimate foreign ownership of a source material licensee. Moreover, as discussed below, because the ultimate foreign ownership of Crow Butte does not implicate 10 C.F.R. § 40.32(d), the Board should also find that the foreign ownership of the Applicant does not have an impact on or endanger the common defense or security. The operation of Crow Butte raises no proliferation concerns and provides a clear benefit to the United States. On this basis, the Board should resolve Miscellaneous Contention K in favor of the Applicant.

³ As a matter of timing, the initial determination as to whether the application satisfies the criteria for issuance of a renewed license under 10 C.F.R. §§ 40.45 and 40.32 lies with the NRC Staff. Because the NRC Staff has not yet completed its review of the application, a comprehensive discussion of the merits of the second issue — *i.e.*, whether issuance of a license to Crow Butte is inimical to the common defense and security — is premature. Moreover, Crow Butte and the NRC Staff have both appealed the admissibility of the contention (including the second issue identified by the Board in LBP-08-24). *See, e.g.*, “Crow Butte Resources’ Brief In Support Of Appeal From LBP-08-24,” dated December 10, 2008. Specifically, Crow Butte has argued that the Board erred in expanding the scope of the contention to encompass “whether issuance or renewal of a source materials license would be inimical the U.S. national interest and the common defense and security.” *See* LBP-08-24, at 73. The contention, as proposed, was a straightforward legal contention: that the AEA prohibits issuance of a Part 40 license to a corporation that has a foreign parent. The proposed contention did not assert that issuance of the license would be inimical to the common defense and security or provide a basis for such a contention. In light of the fact that there is no change in ownership associated with the renewal amendment, Crow Butte also argued that this issue is beyond the limited scope of a license renewal proceeding. Finally, Crow Butte appealed Petitioners’ standing to support this contention. Petitioners must establish standing for every single claim. But here, the Board found that the alleged injuries based on foreign ownership of Crow Butte (Hyde Aff. at ¶7) did not support the particularized showing of harm needed to support an injury-in-fact. LBP-08-24, at 18.

A. Section 103d. of the Atomic Energy Act Does Not Prohibit Issuance of a Source Material License to a U.S. Corporation With a Foreign Grandparent

Section 103d. of the AEA governing “Commercial Licenses” is the most pertinent to foreign ownership. It states that “no license may be issued to an alien or any corporation or other entity if the Commission knows or has reason to believe it is owned, controlled, or dominated by an alien, a foreign corporation, or a foreign government.” 42 U.S.C. § 2133d. However, Section 103d. of the AEA applies only to production and utilization facilities. 42 U.S.C. § 2133a. (“The Commission is authorized to issue licenses to persons applying therefore to transfer or receive in interstate commerce, manufacture, produce, transfer, acquire, possess, use[,] import, or export under the terms of an [Agreement for Cooperation], *production or utilization facilities* for commercial or industrial purposes.”) (emphasis added). Utilization facilities are nuclear power reactors,⁴ while production facilities generally include enrichment plants.⁵ See 42 U.S.C. §§ 2014v. (production facility) and 2014cc. (utilization facility). These facilities handle special nuclear material (*i.e.*, enriched material) and therefore pose a greater risk of criticality or diversion. Section 103d. simply does not apply to source material licensees such as Crow Butte that handle only natural, un-enriched uranium. Thus, the restrictions on foreign ownership in Section 103d. are irrelevant to the source material license renewal at issue.⁶

⁴ Most nuclear power reactors are licensed under Section 103 of the AEA, though some are licensed under Section 104 as research and development reactors.

⁵ Although not relevant in this proceeding, in some regulatory contexts there is a further distinction between a production facility and a uranium enrichment facility. See 10 C.F.R. § 110.2 (definitions of “production facility” and “uranium enrichment facility”).

⁶ Petitioners’ reference to *Siegel v. AEC*, 400 F.2d 778, 784 (D.C. Cir. 1968) is inapposite. Con. Pet. at 40. In *Siegel*, the Court was addressing issues regarding the use of special nuclear material (enriched uranium) at power reactors (utilization facilities). See *Siegel*, 400 F.2d at 781-782. As discussed above, Section 103d. imposes restrictions on foreign control of utilization facilities, but does not apply to source material licensees.

Licenses to possess source material are issued under 10 C.F.R Part 40 pursuant to Chapter 7 of the AEA (42 U.S.C. §§ 2091-2099). Section 62 of the AEA states that no person may, *inter alia*, transfer, possess, or import/export source material without a license from the Commission. Significantly, Chapter 7 does not contain a prohibition on foreign ownership of source material similar to that in Section 103d. Likewise, the NRC's regulations governing source material in 10 C.F.R. Part 40 do not contain any restrictions on the ownership of source material. Accordingly, there is no absolute prohibition on ultimate foreign ownership of source material licensees.

Indeed, even a cursory review of the various source material licenses issued under 10 C.F.R. Part 40 shows that no such prohibition has been applied in practice. Most obviously, the NRC approved the transfer of a controlling ownership of Crow Butte to a foreign owned entity. *See* Ltr. from Stephen Collings, Crow Butte Resources, to Joseph Holonich, Chief, Uranium Recovery Branch, dated May 13, 1998 (ADAMS Accession No. 9805260014); Ltr. from Joseph Holonich, Chief, Uranium Recovery Branch, to Stephen Collings, Crow Butte Resources, dated June 5, 1998 (ADAMS Accession No. 9806120319). Other examples include the following:

- COGEMA Mining Inc. holds a license (SUA-1341) to conduct in situ uranium recovery operations at the Christensen Ranch/Irigaray Site in Wyoming. COGEMA Mining is ultimately owned by foreign entities. *See, e.g.*, "Irigaray and Christensen Ranch Projects, U.S. NRC License Renewal Application, Source Material License SUA-1341," dated May 2008, at 1-2 (ADAMS Accession No. 0818904140).
- Cameco Corporation is the ultimate owner of the Smith Ranch – Highland Project in Wyoming. Smith Ranch – Highland holds NRC License No. SUA-1548.
- The NRC issued a license (SNM-2010) under 10 C.F.R. Part 40 to Louisiana Energy Services for its National Enrichment Facility. Louisiana Energy Services is 100% owned by foreign entities. *See, e.g.*, "Louisiana

Energy Services Request for Indirect Transfer of License,” dated October 19, 2007 (ADAMS Accession No. ML073580228).

- The NRC is currently reviewing applications for uranium recovery licenses that involve applicants that are 100% owned by foreign entities. For example, the applicant for the Antelope and JAB Uranium Project is a wholly-owned subsidiary of Uranium One, a Canadian Corporation. *See* “Antelope and JAB Uranium Project USNRC Source Materials License and WEQ Class III UIC Permit Application, Sweetwater County, Wyoming: Volume 1, Technical Report,” dated June 2008, at 1-1 to 1-2 (ADAMS Accession No. 082750234).
- Similar circumstances exist with respect to the Moore Ranch ISR application. *See* “Application for USNRC Source Material License, Moore Ranch Uranium Project, Campbell County, Wyoming,” dated September 2007, at 1-2 (ADAMS Accession No. 072910131).

The numerous examples of source material licensees with foreign owners confirm the conclusion above that there is no absolute statutory or regulatory prohibition on foreign ownership of source material licensees.

B. 10 C.F.R. § 40.32(d) Does Not Prohibit Issuance of a License to Crow Butte

Section 40.32(d) states that an application for a license will be approved if, among other criteria, “[t]he issuance of the license will not be inimical to the common defense and security or to the health and safety of the public.” The common defense and security considerations are not pertinent here. Crow Butte does not propose to export the uranium mined at its facility as part of the license renewal application. The Commission has recognized in previous Part 40 licensing proceedings that, where the renewal does not involve the import or export of nuclear materials, the common defense and security considerations of 10 C.F.R. § 40.32(d) are not implicated. *See Kerr-McGee Corporation* (West Chicago Rare Earths Facility), CLI-82-2, 15 NRC 232, 238 n.3 (1982).

In a judicial decision involving an export licensing proceeding that evaluated the phrase “inimical to the common defense and security,” the court specifically concluded that, in

the absence of unusual circumstances, the Commission need not look beyond non-proliferation safeguards in determining whether the common defense and security standard is met. *See NRDC v. NRC*, 647 F.2d 1345, 1363 (D.C. Cir. 1981). Here, no export (or transfer of material to another party) is authorized by the license renewal and therefore there is no need to even examine non-proliferation safeguards. That is an issue for a separate export licensing proceeding.⁷ Consequently, the “inimical to the common defense and security” aspect of 10 C.F.R. § 40.32(d) is applicable to Part 40 license renewals in general, but is irrelevant to the instant license renewal application (and admitted contention). Put simply, Crow Butte, regardless of its foreign ownership, will not impact or endanger the common defense or security of the United States because it is not importing or exporting nuclear materials. Therefore, renewal of Crow Butte’s license does not implicate the common defense and security considerations of 10 C.F.R. § 40.32(d).

Accordingly, the Board should resolve Miscellaneous Contention K in favor of the applicant.

C. Issuance of a Renewed License Is Not Inimical to the Common Defense and Security

As discussed above, there is no statutory or regulatory prohibition against foreign ownership of Crow Butte and the “inimical to the common defense and security” aspect of 10 C.F.R. § 40.32(d) is inapplicable to the license renewal. The Board should resolve Miscellaneous Contention K in favor of the Applicant on this basis alone. Nevertheless, we provide the following discussion in order to demonstrate that the Petitioners concerns are misplaced and that the foreign ownership of the Applicant does not have an impact on or endanger the common defense or security.

⁷ The statutory and regulatory provisions relating to the export of source material are discussed further below.

1. Crow Butte's License Does Not Implicate Proliferation Issues

Petitioners appear to be most concerned with “exporting something as sensitive as uranium, which is an obvious precursor to weapons grade uranium.” Con. Pet. at 39. Petitioners allege that Cameco has taken advantage of a loophole by acquiring “de facto ownership of a uranium mine and NRC source materials.” *Id.* Petitioners state that “[u]nder the Cameco Loophole, such enemies [of the U.S.] would have legal grounds to acquire US based uranium and nuclear assets through a complex of subsidiary companies.” *Id.* at 40. Petitioners further assert that the “Cameco Loophole” could “enable the creation and use of weapons of mass destruction by enemies of the United States.” *Id.*

Again, in the contention, Petitioners fail to recognize that Crow Butte’s source material license does not authorize the export of source material. Indeed, Petitioners speculate and hypothesize about scenarios without regard for the statutory, regulatory, and treaty-related obligations that apply to source material produced at Crow Butte.

First, the distribution of source material outside the United States requires an export license, except in limited circumstances. *See* 42 U.S.C. § 2094 (requiring an export license generally, but authorizing the Commission to cooperate with foreign nations to distribute source material pursuant to an Agreement for Cooperation or to distribute up to three metric tons per year per recipient of source material to other nations). The NRC implements its statutory obligation with respect to source material through 10 C.F.R. § 40.51, which states in relevant part that no licensee shall transfer source material to any person abroad except pursuant to an export license issued under 10 C.F.R. Part 110. To the extent that Petitioners’ concerns are based on the export of uranium mined at Crow Butte, they raise an issue that is immaterial to this

license renewal proceeding — which only authorizes possession and use of source material, not the export of the source material.

Second, the argument that Crow Butte is a Canadian-owned company does not, by itself, pose any proliferation or security concerns. As already noted, there is no prohibition on the mere fact of Canadian ownership of a uranium mining operation. Crow Butte, the licensee, is a U.S. company; a majority of Cameco’s shareholders are U.S.-based; and uranium produced at the Crow Butte facility benefits U.S. utilities.

Lastly, Canada’s non-proliferation credentials and its important foreign policy relationship with the United States cannot be seriously questioned. Canada entered into an Agreement for Cooperation on Civil Uses of Atomic Energy with the United States in 1955. Canada also supports the International Atomic Energy Agency (“IAEA”) safeguards, is a member of the Nuclear Suppliers Group, and is a signatory to numerous international treaties and conventions relative to non-proliferation and nuclear safety. Specifically, both Canada and the United States are both signatories to the Non-Proliferation Treaty (“NPT”).⁸ Canada signed the treaty on July 23, 1968 and the date of deposit of ratification was January 8, 1969. The Canadian Nuclear Safety Commission, through the *Nuclear Safety and Control Act*, c.9 1997, and corresponding regulations, implements Canada’s NPT commitments. The United States signed the NPT on July 1, 1968, and the date of deposit of ratification was March 5, 1970.

In 1972, Canada was the first country to bring into force a comprehensive safeguards agreement with the IAEA pursuant to the NPT.⁹ The safeguards agreement gives the

⁸ *Treaty on the Non-Proliferation of Nuclear Weapons*, 21 U.S.T. 483, T.I.A.S. No. 6839, 729 U.N.T.S. 161.

⁹ *Agreement Between the Government of Canada and the International Atomic Energy Agency for the Application of Safeguards in Connection with the Treaty on the Non-*

IAEA the right and obligation to monitor Canada's nuclear related activities and verify nuclear material inventories and flows in Canada. In 2000, as part of worldwide efforts to strengthen IAEA safeguards, Canada brought into force an Additional Protocol to its safeguards agreement with the IAEA.¹⁰ The Additional Protocol gives the IAEA enhanced rights of access to nuclear sites and other locations and provides it with access to information about nuclear-related activities in Canada above and beyond the original safeguards agreement.¹¹

Based on the regulatory framework that applies to NRC source material licensees and the existing international non-proliferation and safeguards regimes, it can easily be concluded that issuance of the renewed license to Crow Butte poses no proliferation danger.

2. *Crow Butte Provides a Benefit to the U.S. National Interest*

Petitioners also argue that there is “no benefit to the U.S. national interest, common defense, or security” from issuing a renewed license. Con. Pet. at 41. As a legal matter, there is no statutory or regulatory requirement that an applicant demonstrate any particular benefit (local, domestic, or other benefit) from a license amendment. *Tennessee Valley Authority* (Sequoyah Nuclear Plant, Units 1 & 2; Watts Bar Nuclear Plant, Unit 1), LBP-02-14, 56 NRC 15, 35 (2002). However, as discussed below, Crow Butte (and Cameco) clearly provide benefits to the United States' national interests.

Proliferation of Nuclear Weapons (entered into force Feb. 21, 1972), INFCIRC/164 (June 2, 1972).

¹⁰ Protocol Additional To The Agreement Between Canada And The International Atomic Energy Agency For The Application Of Safeguards In Connection With The Treaty On The Non- Proliferation Of Nuclear Weapons (entered into force Sept. 8, 2000), INFCIRC/164/Add.1 (October 11, 2000).

¹¹ Canada is also a signatory to the Convention on Early Notification of a Nuclear Accident and the Convention on Assistance in the Case of a Nuclear Accident or Radiological Emergency.

Cameco is the leading U.S. producer of uranium. *See Energy Information Administration*, U.S. Department of Energy, <http://www.eia.doe.gov> (2008). Crow Butte and Smith Ranch-Highland, which both provide uranium to Cameco, have accounted for the vast majority of all U.S.-produced uranium for nearly a decade. *Id.* Cameco is also the largest supplier of uranium to U.S. utilities. More than half of Cameco's global sales in 2007 were to U.S. customers, which include, among many others, the Omaha Public Power District in Nebraska and the Tennessee Valley Authority. Ultimately, Cameco supplied approximately 32% of all U.S. uranium requirements in 2007. This uranium accounts for more than 5% of all electricity generated in the United States.

Cameco also plays a critical role in the success of the 1993 U.S.-Russia Highly Enriched Uranium Agreement, commonly referred to as "Russian HEU Agreement" or the "Megatons to Megawatts" program. *See* <http://www.cameco.com/about/history/1999-mar-24/> (last accessed on Jan 14, 2009). As of March 2008, 325 metric tons of weapons grade HEU from the former Soviet Union has been recycled — the equivalent to eliminating more than 14,000 nuclear warheads. *See* <http://www.usec.com/megatonstomegawatts.htm> (last accessed on Jan. 14, 2009). Virtually the entire U.S. nuclear reactor fleet has participated in this program by using fuel fabricated with LEU from the Megatons to Megawatts program. *Id.*

Petitioners highlight a portion of Cameco's 2007 Annual Information Form that states: "[t]he U.S. restrictions have no effect on the sale of Russian uranium to other countries. About 70% of the world uranium requirements arise from utilities in countries unaffected by US restrictions. In 2007, approximately 48% of Cameco's sales volume was to countries unaffected by the U.S. restrictions." Cameco Corporation, Annual Information Form at 12-13 (March 28, 2008); *see* Con Pet. at 51. Petitioners apparently interpret this text as an indication that Cameco

can avoid or ignore U.S. or international agreements related to proliferation. However, the restrictions mentioned are commercial in nature and not related to proliferation (*i.e.*, they are intended to protect the market for domestic suppliers of uranium, such as Crow Butte). As the Annual Information Form explains, “[a]s a result of anti-dumping proceedings brought in the early 1990s, the US and certain countries entered into suspension agreements to limit access to the US market. Only the suspension agreement with Russia remains in effect. In February 2008, the United States Department of Commerce and Russia signed an amendment to the Russian suspension agreement, which allows for additional Russian supply directly to US utilities. The amendment sets out an annual [low enriched uranium] quota with very limited quantities in 2011 to 2013. Upon completion of the Russian HEU Agreement, in 2014 the quota increases to about 13 million pounds U3O8 equivalent through 2020. In addition to this quota, Russian uranium products may be supplied for initial cores in new US reactors.”¹² Annual Information Form at 12. Thus, contrary to the Petitioners’ implication, the Annual Information Form indicates that Cameco is complying with U.S. restrictions on sale of uranium and the Russian HEU Agreement.

¹² The Russian Uranium Suspension Agreement, signed October 1992, suspended the investigation by the U.S. Department of Commerce (“DOC”) of Russia dumping uranium products into the U.S. market. The Suspension Agreement avoided dumping duties, recommended by DOC, of 115.8 percent on Russian uranium product imports. Russia can only sell uranium product into the United States under the HEU Agreement and only to USEC, which sells the SWU (enrichment) component to its customers and returns the uranium component to Tenex. The uranium component can then be sold subject to an annual quota in the United States. No direct Russian sale of commercial uranium or SWU in the United States was permitted. *See* “Report on the Effect the Low Enriched Uranium Delivered Under the Highly Enriched Uranium Agreement Between the Government of the United States of America and the Government of the Russian Federation has on the Domestic Uranium Mining, Conversion, and Enrichment Industries and the Operation of the Gaseous Diffusion Plant,” at 5 (Information Date Dec. 31, 2007).

The Crow Butte project also provides substantial benefits to U.S. citizens. Financial benefits accrue to the community from the presence of the Crow Butte Project, such as local expenditures of operating funds and the federal, state and local taxes paid by the project. LRA, at 9-2. The contribution to taxes is on the order of \$1.4 million per year. *Id.* As of December 31, 2008, Crow Butte employs approximately 66 employees and 20 contractors on a full-time basis. Short-term contractors and part-time employees are also used for specific projects and/or during the summer months and may add up to 10 percent to the total staffing. *Id.* In 2006, Crow Butte's total payroll was over \$2.5 million. *Id.* In addition to providing a significant number of well-paid jobs in the local communities of Crawford, Harrison, and Chadron, Nebraska, Crow Butte actively supports the local economies through purchasing procedures that emphasize obtaining all possible supplies and services that are available in the local area. *Id.* at 9-3. Total payments made to Nebraska businesses in 2006 exceed \$6.5 million. *Id.*

CONCLUSION

For the all foregoing reasons, the AEA and 10 C.F.R. § 40.32(d) do not prohibit foreign ownership of Crow Butte, and the foreign ownership of the Applicant does not have an impact on or endanger the common defense or security. Accordingly, the Board should resolve Miscellaneous Contention K in favor of the Applicant.

Respectfully submitted,

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

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE COMMISSION

In the Matter of:)	
)	Docket No. 40-8943
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(License Renewal))	

CERTIFICATE OF SERVICE

I hereby certify that copies of "APPLICANT'S BRIEF REGARDING MISCELLANEOUS CONTENTION K" 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 _____

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