

February 10, 2009

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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

NRC STAFF'S RESPONSE TO APPLICANT'S
BRIEF REGARDING MISCELLANEOUS CONTENTION K

In accordance with the Atomic Safety and Licensing Board's ("Board") Order of January 8, 2009,¹ the NRC staff ("Staff") offers its response to the Applicant's brief regarding Consolidated Miscellaneous Contention K ("Misc. Contention K").² The Staff agrees with the Applicant that the Atomic Energy Act does not prohibit the issuance of a source material license to a foreign-controlled corporation.³ The Staff also agrees with the Applicant that concerns regarding potential exports of uranium are not part of the 10 C.F.R. § 40.32(d) analysis pertinent to this license renewal application, as such license would not authorize the export of any source material.⁴ Thus, insofar as the arguments set forth in the Applicant's

¹ Initial Scheduling Order, at 3 (Jan. 8, 2009).

² Applicant's Brief regarding Miscellaneous Contention K (Jan. 21, 2009) ("Applicant's Brief").

³ See Applicant's Brief at 5-6; NRC Staff Response in Opposition to Petitioners' Consolidated Request for Hearing and Petition for Leave to Intervene of Debra White Plume, Thomas K. Cook, Loretta Afraid of Bear Cook, Dayton O. Hyde, Bruce McIntosh, Joe American Horse, Sr., Beatrice Long Visitor Holy Dance, Owe Aku/Bring Back the Way, Afraid of Bear/Cook Tiwahe, American Horse Tiospaye and Western Nebraska Resources Council, at 50 (Aug. 25, 2008).

⁴ See Applicant's Brief at 7-11; NRC Staff's Brief in Response to Consolidated Petitioners' Miscellaneous Contention K (Jan. 21, 2009) ("Staff's Brief"). However, the Staff disagrees with the Applicant as to the nature of the 10 C.F.R. § 40.32(d) analysis regarding inimicality to common (continued. . .)

Brief are in accord with those in the Staff's Brief, the Staff agrees with the Applicant's arguments in its Brief.

Executed in Accord with 10 CFR 2.304(d)

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Dated at Rockville, Maryland
This 10th day of February, 2009

(. . .continued)

defense and security. The Applicant suggests that because exports of uranium would not be authorized by the instant license renewal, "common defense and security considerations are not pertinent here." Applicant's Brief at 7. While the Staff agrees that potential exports of uranium are not pertinent to the instant licensing action, that does not mean that 10 C.F.R. § 40.32(d) is not applicable to the application here. There are other factors the Commission could rely upon to evaluate whether the grant of the license renewal is inimical to common defense and security.

In this regard, the Commission has held that the phrase "inimical to the common defense and security" refers not only to "the absence of foreign control over the applicant," but also to "the safeguarding of special nuclear material; ... the protection of Restricted Data; and the availability of special nuclear material for defense needs." *Florida Power & Light Co.* (Turkey Point Nuclear Generating Units No. 3 and No. 4), 4 AEC 9, 12-13 (1967). The Staff does not read the Commission's decision in *Kerr-McGee Corp.* to mean, as the Applicant does, that, generically, if a license "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." Applicant's Brief at 7 (*citing Kerr-McGee Corp.* (West Chicago Rare Earths Facility), CLI-82-2, 15 NRC 232, 238 n.3 (1982)). Rather, the Staff reads the Commission's decision in that case to stand for, outside the specific circumstances of that case, the proposition that the scope and nature of the evaluated risk, if any, to common defense and security hinges upon the nature of the specific licensing action under review. Staff's Brief at 6.

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing "NRC STAFF'S RESPONSE TO APPLICANT'S BRIEF REGARDING MISCELLANEOUS CONTENTION K" in the captioned proceeding have been served via the Electronic Information Exchange ("EIE") this 10th day of February 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.

Executed in Accord with 10 CFR 2.304(d)

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