

February 18, 2009 (3:22am)

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE COMMISSION

In the Matter of) Docket No. 40-8943
CROW BUTTE RESOURCES, INC.) ASLBP No. 07-859-03-MLA-BD01
(In Situ Leach Facility, Crawford, Nebraska)) February 17, 2009

INTERVENORS' ANSWER TO APPLICANT'S APPEAL FROM LBP-09-01

Intervenors (formerly Petitioners in this matter) hereby respectfully submit this Answer to Applicant's appeal filed February 6, 2009, pursuant to 10 CFR Sections 2.311(a), and 2.341(c)(2).¹

INTRODUCTION

On January 27, 2009, the Atomic Safety and Licensing Board ("Board") issued LBP-09-01 admitting Contention E concerning foreign ownership and allowed the Arsenic contention filed September 22, 2008 (the "Arsenic Contention") to be litigated as part of the previously admitted Contention B in this proceeding. It would be inappropriate for the Commission to accept review, and if it did, such action by the Commission would itself be subject to being set aside as arbitrary, capricious, an abuse of discretion and not in accordance with law.

APPLICABLE STANDARD FOR REVIEW

The proper standard for review is found in Section 706 of the Administrative Procedure Act, which provides that the agency action, in this case, the Board's rulings, may be set aside if found to be "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance

¹ With the intervening President's Day holiday, this filing is made on February 17, 2009.

with law.”² Such a finding would be made by a federal court reviewing the agency action. Further, the Commission has expressed its “general unwillingness to engage in ‘piecemeal interference in ongoing Licensing Board proceedings’.”³ Applicant fails to discuss the standards to be applied by the Commission in determining whether to exercise its discretion to accept this interlocutory appeal, or the standard(s) of review to be used by the Commission in the event that discretion is exercised to allow the appeal. Rather, Applicant attempts to re-argue the merits in its appeal without addressing the applicable standards for appellate review. As a result, Applicant’s appeal is defective and must be denied.

Finally, Applicant attempts to appeal a non-reviewable portion of the Board’s order under Section 2.311(d) concerning the Board’s recommendation to the Commission that the Commission order Subpart G procedures be implemented in this proceeding. Nothing in Section 2.311(d) allows an appeal of a Board recommendation to the Commission; rather, such section deals with appeals of an order “selecting a hearing procedure” “on the question as to whether the selection of the particular hearing procedures was in clear contravention of the criteria set forth in §2.310.”⁴ Because the recommendation to the Commission was not a selection of a hearing procedure and because there has been no allegation that such recommendation, as such, was in clear contravention of the criteria set forth in Section 2.310, the portion of Applicant’s brief concerning Subpart G (pages 23-26) must be disregarded.

² 5 USC §706(2) (emphasis added).

³ Exelon Generation Co., LLC (Early Site Permit for the Clinton ESP Site), CLI-04-31, 60 NRC 461, 466 (2004) [quoting, Duke Cogema Stone & Webster (Savannah River Mixed Oxide Fuel Fabrication Facility), CLI-02-7, 55 NRC 205, 213 (2002)]; see, also, Shaw AREVA MOX Services (Mixed Oxide Fuel Fabrication Facility), CLI-09-02, 68 NRC ____ (slip. op. text surrounding footnote 21) (Feb. 2, 2009).

⁴ 10 CFR §2.311(d).

ARGUMENT

A. Interlocutory Review Is Not Available.

Applicant seeks interlocutory appeal under Sections 2.311(a), 2.311(c) and 2.11(d).⁵ Applicant has not alleged that any immediate or serious irreparable impact would occur if the appeal is denied. Applicant is not prejudiced because it continues operations in the existing mining area under SUA-1534 prior to the North Trend amendment. There is ample time for the Board to review the information resulting discovery, hear arguments, review briefing, complete its legal determinations, render a final decision in the case, and for Applicant to take up an appeal in due course. Accordingly, an interlocutory appeal should be denied.

B. Even if the Commission Reviewed the Board, Reversal Would Be Contrary to the Administrative Procedure Act.

Contrary to the Applicant's assertions, the decision of the Board was well-reasoned and factually supported by a substantial record: the Petition, Petitioners' permissible pleadings, replies and responses to Applicant's and NRC Staff pleadings,⁶ a site visit and oral argument. The Board made its decision based on its knowledge of the case. Nothing in LBP-09-01 is arbitrary or capricious, constitutes an abuse of discretion or is otherwise not in accordance with applicable law. Merely because Applicant believes that its arguments should have prevailed does not sustain an appeal in the absence of reversible error.

C. The Board's Findings Concerning Standing Were Not Reversible Error.

The Board's legal analysis and conclusions concerning Applicant's novel standing arguments were extensive, taking up more than 12 pages, were not an abuse of discretion and are

⁵ Applicant Brief at 1.

⁶ See LBP-09-01 at 22 (footnote 73) and at 26 (footnote 88).

not otherwise not in accordance with applicable law.⁷ The grounds for reversal suggested by Applicant do not constitute reversible error.⁸ Applicant has not cited any legal precedent directly on point requiring a conclusion different than that reached by the Board. Therefore, its appeal concerning standing must fail.⁹

D. The Board Ascertained the Proper Scope of the Proceeding.

Applicant argues that Contention E is outside the scope of this proceeding based on a myopic view of the proceeding as a ‘narrow license amendment proceeding.’¹⁰ Applicant states that “Petitioners may not challenge activities already permitted under the license,” citing Wisconsin Electric Power Co. (Point Beach Nuclear Plant, Units 1 and 2)¹¹. That case does not stand for the proposition for which it was cited by Applicant. In Wisconsin, the Board examined a truly narrow license amendment: to allow *sleeves* to be used instead of *plugs* in one part of a facility. In contrast, this proceeding involves a new satellite facility and new mining area which is not contiguous with the originally licensed mining area and has a substantially different geology.¹² Apparently, whatever the NRC Staff’s ‘secret formula’¹³ is for determining whether a substantial new activity

⁷ LBP-09-01 at 4-16.

⁸ Applicant Brief at 8; (reversal would be based on (1) “misapplication of the Commission precedent on standing and [(2)] the Petitioners’ failure to satisfy the Commission’s strict standards for admissibility of contentions.”) Nonetheless, the question on appeal is whether the Board in deciding otherwise acted in an arbitrary or capricious way, abused its discretion or is not otherwise in accordance with applicable law – none of which is shown by Applicant.

⁹ Even if such “super-standing” were required, each Intervenor, as US citizens and members of the US public, have standing to assert inimicality issues because they are aggrieved by any lapse of nuclear security caused by Applicant’s concealment of foreign ownership and foreign ownership and control by Cameco. Contrary to Applicant’s arguments, a denial of the amendment to the foreign owned Applicant due to inimicality would clearly resolve Intervenors’ concerns about export, diversion and proliferation of yellowcake uranium, negative impacts thereof on nuclear security and lack of adequate enforcement due to lack of NRC jurisdiction over foreign persons or assets (see 10 CFR §40.2).

¹⁰ Applicant Brief at 14.

¹¹ LBP-81-45, 14 NRC 853, 860 (1981).

¹² See LBP-09-01 at 28; see also Exhibit B – NDEQ Letter.

¹³ “It has been the Staff’s practice for “a number of years” to determine whether to treat an

will be treated as a license amendment or a new license, it is not something that the public is involved in, nor is there public notice or an opportunity for public participation as due process would require in order to make it binding on Intervenor. Further, the ‘secret formula’ seems to benefit Cameco affiliates including Applicant and Smith-Highland Ranch (WY) which have been routinely allowed to treat new satellite facilities as part of license amendments.¹⁴ Notably, the Nebraska Department of Environmental Quality (NDEQ) is treating the North Trend Expansion area as requiring a new permit application (not just an amendment) and the NDEQ has been extremely critical of Applicant’s failures to cite current geologic research for the new mining region as noted by Dr. LaGarry (see “Exhibit B – NDEQ Letter” in this matter).

Applicant’s reliance on Vermont Yankee Nuclear Power Corp. (Vermont Yankee Nuclear Power Station),¹⁵ is misplaced.¹⁶ In Vermont Yankee the Board found jurisdiction over an issue (the installation of new racks) that was ‘inextricably related to the proposed increase in the authorized storage capacity of the spent fuel and does not have any utility without authorization to increase the capacity of the pool.’¹⁷ In this case, the Board properly, consistent with Vermont Yankee, found that issues such as foreign ownership and the concealment thereof were inextricably related to the determination of inimicality under Section 40.32(d).¹⁸

application as a new license or a license amendment, but the standards for how this is accomplished have “not been codified,” and Staff counsel was “not in a position to comment on it publicly”— all that exists formally, relating to any such standards, is apparently “the regulatory framework” of 10 C.F.R. Part 40. Id. at 29.

¹⁴ Hearing Transcript at 542, 544-545; This seems to be a function of the nature of ISL mining that often require satellite facilities near the wellfields but which may achieve economies of scale among nearby mining areas by trucking resin to a centralized processing/drying facility, as in the case of this proceeding.

¹⁵ LBP-88-19, 28 NRC 145, 152-53 (1988).

¹⁶ Applicant Brief at 14 (“Board only has jurisdiction over those matters which are within the scope of the amendment application,” and “that any assessment of the proposed contention must focus on whether the proposed contention alleges an issue raised by the amendment application.”)

¹⁷ LBP-88-19, 28 NRC 145, 153 (1988).

¹⁸ Nothing in Vermont Yankee supports the proposition that an assessment by the Board must focus on whether the issue was raised by Applicant in the amendment application – such a conclusion

E. 1998 NRC Approval Under Section 40.46 of Stock Transfer Does Not Preclude Foreign Ownership Issues in This Proceeding.

Applicant argues without legal citation that because the change of ownership associated with Cameco's acquisition of Applicant was previously accepted by the NRC Staff in 1998 under Section 40.46, raising the foreign ownership issue (and concealment thereof) in this proceeding would be an "impermissible challenge" to an activity already permitted.¹⁹ The 1998 transfer occurred after Cameco had already acquired about 1/3 of Applicant's common stock in its 1995/1996 purchase of Geomex. Under Commission precedent,²⁰ Cameco should have disclosed that purchase because such a large shareholding carries with it substantial shareholder rights that were under foreign control. In any case, when it was time for Cameco to acquire Uranerz, USA, Inc. as the second stage of the planned 'creeping acquisition', the NRC Staff was informed and, in reliance on Mr. Collings' May 13, 1998 representations, NRC Staff approved the stock transfer.²¹ There was no analysis of inimicality in 1998 demonstrated by either Applicant or NRC Staff. The 1998 Collings letter does disclose the prior purchase of 1/3 of Applicant in 1995/1996, does not state the impacts of foreign ownership of 90% of Applicant's stock, the identity of Cameco executives based in Canada having authority over the management of Applicant or the extent to which records related to the mine or Applicant would be kept outside the United States, whether decisions related to Applicant would be made outside the United

would reward applicants for their non-disclosure and would run afoul of the Unclean Hands Doctrine. See Precision Inst. Mfg. Co. v. Automotive M.M. Co., 324 U.S. 806 (1945).

¹⁹ Applicant Brief at 14.

²⁰ Such as that related to AEA Section 103d rulings discussed in Petitioners Brief re: Misc. Contention K (Renewal) (January 21, 2009), Cameco at least would have been aware of Commission precedent because an ex-Commissioner James Curtiss was its lawyer and serves on its Board of Directors and would have been familiar with such precedent and presumably conveyed his advice and recommendations based thereon.

²¹ See NRC Staff Notice of Appeal dated February 6, 2009, at 19, footnote 78 (emphasis added).

States and whether the United States regulators would have jurisdiction over persons and records located outside the United States. All of the foregoing issues is material in that a reasonably prudent licensing decisionmaker would consider it important in making a licensing decision and the public would consider important in deciding whether to oppose. A Section 40.46 approval (such as that given by the NRC Staff in 1998) is only as good as the quality of the information upon which such approval is based. The Regulation refers to “after securing full information” which is an admonishment both to the NRC Staff and also a statement of the level and quality of information which must be disclosed to support a valid approval. Because the 1998 disclosure failed to provide ‘full information’ to the NRC Staff, the 1998 approval is not dispositive, binding or even relevant to this proceeding.

F. This License Renewal Conveys Key Legal Rights Enabling Export Under Part 110 by a Licensed Exporter.

Applicant argues that inimicality considerations are not pertinent because export of the uranium mined at the proposed North Trend facility would not be authorized by the license amendment.²² Applicant actually proposes to export uranium mined at its North Trend facility and possessed under License SUA-1534, as proposed to be amended, by shipping such uranium as an authorized ‘supplier’ via an export shipper which has an Export License under Part 110. The Applicant tells the shipper where to ship the Uranium and when to pick it up. The shipper does not have title to the Uranium that it ships. The export shipper would not be allowed to pick up the Uranium from a person that did not possess a valid source materials license and, in fact, the export shipper is required to update the NRC Staff as to the identity of its supplier customers. All this means that the License amendment at issue in this proceeding conveys the legal rights of

possession and use of the Uranium which is a precursor to the export shipment of the uranium under an export license. Applicant cites to dicta in a footnote in a 27 year-old Commission decision, Kerr-McGee Corporation (West Chicago Rare Earths Facility), CLI-82-2, 15 NRC 232, 238 n.3 (1982), which says:

In granting this and subsequent amendments to Kerr-McGee's 10 CFR Part 40 license, NRC regulations require that the NRC staff consider if: [reciting Section 40.32]. It should be noted, however, that in this instance, which involves no concern over import or export of nuclear materials, common defense and security considerations under section 40.32(d) are not implicated.²³

First, Applicant mischaracterizes this isolated dicta in a footnote from long ago as if it represents a long-standing and often applied Commission principle.²⁴ In McGee, there was absolutely zero concern about import or export of nuclear materials, the inimicality considerations were not implicated. Such is not our case because Intervenors have asserted a substantial concern about Applicant's export of source material. Further, there is no meaningful opportunity to intervene in a Part 110 export licensing proceeding; therefore, due process militates against excluding these issues from this proceeding.²⁵

G. The Board Properly Applied Section 2.309(f); There Is No Reversible Error Adding the Arsenic Contention to Contention B as Proposed by NRC Staff.

A specific discussion of the Section 2.309(f) factors is incorporated herein from Petitioners' Answer to Applicant's Notice of Appeal from LBP-08-27. In sum, it was not until the Johns Hopkins Study became available that Petitioners were made aware of the link between low-level inorganic Arsenic such as that released due to the massive oxidation of Uranium at the

²² Applicant Brief at 16-17.

²³ Kerr-McGee Corporation (West Chicago Rare Earths Facility), CLI-82-2, 15 NRC 232, 238 n.3 (1982).

²⁴ Applicant Brief at 16, footnote 15.

Mine, on the one hand, and damage to the pancreas such as is manifested in Type 2 Adult-onset diabetes and pancreatic cancer, on the other. When correlated with the observational study about the high incidence of pancreatic cancer in Chadron, which is downstream and downgrade from the Mine, this provided a *new understanding* which derives from the Study and which is materially different from any understanding previously available. Because the Request for Leave detailed responses to each of the Section 2.309(f)(1) criteria and applied them to the contention, the Board properly concurred and admitted the contention as part of existing Contention B, and its decision is not reversible error because there was no abuse of discretion.

Petitioners submitted tangible information and expert scientific analysis referred to in the Arsenic Contention as well as the supporting affidavit filed therewith collectively constituted “some” tangible information and transcend the level of “bare assertions and speculation” for purposes of establishing the admissibility of this contention consistent with Fansteel.²⁶ Such a conclusion is supported by law, was not an abuse of discretion and is not reversible error.

Applicant argues that there is no evidence to suggest that the Mine’s operations are causing such exposures to Arsenic.²⁷ In fact, Petitioners clearly identify the pathways by which contaminated water reaches and is being ingested by people living near the Mine due to fractures and faults, artesian pressures and migration up The White River (see Reference Petition and Exhibit B – NDEQ Letter). In any case, there is no reversible error for the Board to have accepted such information as a basis for its decision in LBP-09-01. Applicant argues that there

²⁵ See discussion in LBP-09-01 at 30 and 33-34.

²⁶ Fansteel, Inc. (Muskogee, Oklahoma Site), CLI-03-13, 58 NRC 195, 203 (2003). See also Duke Energy Corp. Inc. (Oconee Nuclear Station, Units 1, 2, and 3), CLI-99-11, 49 NRC 328, 342 (1999) (Expert support is not required for admission of a contention; a fact-based argument may be sufficient on its own.).

is no genuine issue in dispute. In fact, in the Request for Leave, Petitioners incorporated all facts and contentions raised in the initial Petition including the specific references to the Application. See Request for Leave at 3. Since Petitioners went well beyond mere notice pleading (see, Request for Leave at 6-8), the contention admissibility requirements were properly pled and it was not reversible error for the Board to find the contention to be admissible and to integrate it with previously admitted Contention B. It is not required for Petitioners to demonstrate causation in this proceeding, or at least at this stage of the proceeding. Accordingly, Applicant's argument in Footnote 20 (Applicant Brief at 22) is irrelevant. The question is not whether there are other contributing factors to diabetes or pancreatic cancer but rather the extent to which Arsenic contamination from the Mine's intentional and massive oxidation of the uranium is one of the contributing factors. In any case, none of these issues lead to any suggestion that the Board committed reversible error.

CONCLUSION

For all the foregoing reasons, the Commission should refuse to review the Board's decision in LBP-09-01 and deny Applicant's appeal.

Dated this 17th day of December, 2008.

Respectfully submitted,

/s/ - signed electronically

DAVID FRANKEL
Attorney for Consolidated Petitioners
PO Box 3014
Pine Ridge, SD 57770
308-430-8160
Arm.legal@gmail.com

²⁷ Applicant Brief at 21-22.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE COMMISSION

In the Matter of:)
) Docket No. 40-8943
CROW BUTTE RESOURCES, INC.)
)
(North Trend Expansion for)
the In Situ Leach Facility,) ASLBP No. **07-859-03-MLA-BD01**
Crawford, Nebraska))

CERTIFICATE OF SERVICE

I hereby certify that copies "INTERVENORS' ANSWER TO APPLICANT'S APPEAL FROM LBP-09-01" in the above captioned proceeding has been served on the following persons by electronic mail as indicated by a double asterisk (**); on this 17th day of February, 2009:

Judge Ann Marshall Young, Chair * **
Atomic Safety and Licensing Board Panel
U. S. Nuclear Regulatory Commission
Washington, DC 20555-0001
E-Mail: Ann.Young@nrc.gov

Judge Fred W. Oliver * **
10433 Owen Brown Road
Columbia, MD 21044
E-mail: FWOLIVER@verizon.net

Judge Richard F. Cole * **
Atomic Safety and Licensing Board Panel
U. S. Nuclear Regulatory Commission
Washington, DC 20555-0001
E-mail: Richard.Cole@nrc.gov

Crow Butte Resources, Inc. **
Attn: Stephen P. Collings
141 Union Blvd., Suite 330
Lakewood, CO 80228
E-mail: steve_collings@cameco.com

Mrs. Johanna Thibault * **
Board Law Clerk
Atomic Safety and Licensing Board Panel
U. S. Nuclear Regulatory Commission
Washington, DC 20555-0001
E-mail: Johanna.Thibault@nrc.gov

Office of the Secretary * **
Attn: Docketing and Service
U.S. Nuclear Regulatory Commission
Washington, DC 20555
E-mail: Hearing.Docket@nrc.gov
(original & 2 copies)

Office of Comm. App. Adjudication * **
U.S. Nuclear Regulatory Commission
Washington, D.C 20555
E-mail: OCAAMAIL.Resource@nrc.gov

Debra White Plume **
P. O. Box 71
Manderson, SD 57756
E-mail: LAKOTA1@gwte.net

Office of the General Counsel **
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Catherine Marco, Esq.
Catherine.Marco@nrc.gov

Brett M.P. Klukan, Esq.
Brett.Klukan@nrc.gov

Shahram Ghasemian, Esq.
Shahram.Ghasemian@nrc.gov

Tyson R. Smith, Esq. **
Winston & Strawn LLP
1700 K St. NW
Washington, DC 20006
E-Mail: trsmith@winston.com

Mark D. McGuire, Esq. **
McGuire and Norby
605 South 14th Street, Suite 100
Lincoln, NE 60508
E-Mail: mdmsjn@alltel.net
mdmsjn@windstream.net

Bruce Ellison, Esq. **
Law Offices of Bruce Ellison
P. O. Box 2508
Rapid City, SD 57709
E-mail: belli4law@aol.com

EIE Service List:

lcarter@captionreporters.com
ejduncan@winston.com
rll@nrc.gov
nsg@nrc.gov
elj@nrc.gov
Linda.lewis@nrc.gov
esn@nrc.gov
ogcmailcenter@nrc.gov

Thomas Kanatakeniate Cook **
1705 S. Maple Street
Chadron, NE 69337
E-mail: tcook@indianyouth.org

Western Neb. Resources Council **
Attn: Buffalo Bruce
P. O. Box 612
Chadron, NE 69337
E-mail: buffalo.bruce@panhandle.net

Owe Aku, Bring Back the Way **
Attn: Debra White Plume
P. O. Box 325
Manderson, SD 57756
E-mail: LAKOTA1@gwtc.net

Elizabeth Maria Lorina, Esq. **
Law Office of Mario Gonzalez
522 7th Street, Suite 202
RapidCity, SD 57701
E-mail elorina@gnzlawfirm.com

Thomas J. Ballanco, Esq. **
Harmonic Engineering, Inc.
945 Taraval St., #186
San Francisco, CA 94116
E-mail: harmonicengineering1@mac.com

Shane C. Robinson, Esq. **
2814 E. Olive St.
Seattle, WA 98122
E-mail: shanecrobinson@gmail.com

cmp@nrc.gov
matthew.rotman@nrc.gov
tpr@nrc.gov
csisco@winston.com
sxg4@nrc.gov
mxw6@nrc.gov
rfcl@nrc.gov
Bmk1@nrc.gov
clm@nrc.gov
jrt3@nrc.gov
axw5@nrc.gov
dxfs@nrc.gov
fxo1@nrc.gov
alberto@treatycouncil.org
amy@nrc.gov

Respectfully submitted,

/s/

David Frankel
P. O. Box 3014
Pine Ridge, SD 57770
308-430-8160
E-mail: arm.legal@gmail.com

Hearing Docket

From: David Cory Frankel [davidcoryfrankel@gmail.com]
Sent: Wednesday, February 18, 2009 3:22 AM
To: MDMSJN@alltel.net; belli4law@aol.com; jakefro@aol.com; slmbttsag@bbc.net; LAKOTA1@gwtc.net; TCOOK@indianyouth.org; Ashley Prange; Ann Young; Hearing Docket; Johanna Thibault; Karen Valloch; Richard Cole; Secy; SherVerne Cloyd; Bruce McIntosh; fwooliver@verizon.net; OCAAMAIL Resource; steve_collings@cameco.com; TrSmith@winston.com; Catherine Marco; Molly Barkman; Marc A. Ross (marcr@rocktheearth.org); Harold S. Shepherd (waterlaw@uci.net); Elizabeth M. Lorina (elorina@gnzlawfirm.com); Mario Gonzalez; Shane Robinson; Brett Klukan; Tom Ballanco; Shahram Ghasemian; mdmsjn@windstream.net; lcarter@captionreporters.com; ejduncan@winston.com; Rebecca Giitter; Nancy Greathead; Emile Julian; Linda Lewis; Evangeline Ngbea; OGCMailCenter Resource; Christine Pierpoint; Matthew Rotman; Tom Ryan; csisco@winston.com; Shahram Ghasemian; Megan Wright; Richard Cole; Brett Klukan; Catherine Marco; Johanna Thibault; Andrew Welkie; Don Frye; Frederick Oliver; alberto@treatycouncil.org; Ann Young; Tom Ryan
Subject: Transmitting documents in Docket No. 40-8943 - ASLBP No. 07-859-03-MLA-BD01
Attachments: Intervenor Answer to NRC NOA (Expansion) 02172009.pdf; Petitioners (Expansion) EIE conformed COS 02172009 NOA NRC Staff.pdf; Intervenor Answer to CBR NOA (Expansion) 02172009.pdf; Petitioners (Expansion) EIE conformed COS 02172009 NOA CBR.pdf

Dear All,

Attached for filing are Intervenor Answer to Applicant Notice of Appeal and related COS, and Intervenor Answer to NRC Staff Notice of Appeal and related COS.

Sincerely,

David Frankel
Counsel for Intervenor
POB 3014
Pine Ridge, SD 57770
308-430-8160
Arm.legal@gmail.com

Received: from mail1.nrc.gov (148.184.176.41) by OWMS01.nrc.gov
(148.184.100.43) with Microsoft SMTP Server id 8.1.291.1; Wed, 18 Feb 2009
03:24:14 -0500

X-Ironport-ID: mail1

X-SBRS: 4.4

X-MID: 35844968

X-IronPort-AV: E=Sophos;i="4.38,228,1233550800";
d="pdf?scan'208";a="35844968"

Received: from rv-out-0506.google.com ([209.85.198.225]) by mail1.nrc.gov
with ESMTTP; 18 Feb 2009 03:24:06 -0500

Received: by rv-out-0506.google.com with SMTP id g9so2011340rvb.2 for
<multiple recipients>; Wed, 18 Feb 2009 00:24:04 -0800 (PST)

DKIM-Signature: v=1; a=rsa-sha256; c=relaxed/relaxed;
d=gmail.com; s=gamma;
h=domainkey-signature:received:received:user-agent:date:subject:from
:to:message-id:thread-topic:thread-index:mime-version:content-type;
bh=MZ0fyW/J+riltNIECsS9INS4y0li98f8ffclYEQ6sQo=;

b=ehDb3cSAF+YUYwCY5chZQCWZe2xnj3NhL94SLMQc/2L1ZAmIBJN79pF9vqrTJ+SDPU

SnWjzlrwISn11aBxwygSEuqHN8QEP2ONbhy2AR5iVJfCobrsYCMBweA2MD50CVAA7xT
qhSuvjBVq5k3QT9ITSPB5LWMSTXNOTpQi1IfE=

DomainKey-Signature: a=rsa-sha1; c=noFWS;

d=gmail.com; s=gamma;
h=user-agent:date:subject:from:to:message-id:thread-topic
:thread-index:mime-version:content-type;
b=ZTNXc4mPY6NcFudFQTMpIG15jSN7/k8+W3JCKpjBfjBOMBt08rUi0FgqvlEgLN7pL7

NoTIUgd1xF0OsnGch3AQP9WWmU5fHyh0NcQbvucabFFJ/P2GQ+pEL3NNPY7aM6xIWxR5
dWYQmTOPY7VTI/D8cp/bWfDGs0zDXHpstbFPg=

Received: by 10.140.157.1 with SMTP id f1mr3084587rve.196.1234945444455;
Wed, 18 Feb 2009 00:24:04 -0800 (PST)

Return-Path: <davidcoryfrankel@gmail.com>

Received: from ?192.168.1.101? (66-233-92-76.mau.clearwire-dns.net
[66.233.92.76]) by mx.google.com with ESMTTPS id

k41sm7433038rvb.6.2009.02.18.00.22.47 (version=TLSv1/SSLv3
cipher=RC4-MD5); Wed, 18 Feb 2009 00:24:01 -0800 (PST)

User-Agent: Microsoft-Entourage/11.4.0.080122

Date: Tue, 17 Feb 2009 22:22:24 -1000

Subject: Transmitting documents in Docket No. 40-8943 - ASLBP No.
07-859-03-MLA-BD01

From: David Cory Frankel <davidcoryfrankel@gmail.com>

To: <MDMSJN@alltel.net>, <belli4law@aol.com>, <jakefro@aol.com>,
<slmbttsag@bbc.net>, <LAKOTA1@gwtc.net>, <TCOOK@indianyouth.org>, Ashley
Prange <Ashley.Prange@nrc.gov>, Ann Young <Ann.Young@nrc.gov>, HearingDocket
<Hearing.Docket@nrc.gov>, Johanna Thibault <Johanna.Thibault@nrc.gov>, Karen
Valloch <Karen.Valloch@nrc.gov>, Richard Cole <Richard.Cole@nrc.gov>, SECY
<SECY@nrc.gov>, SherVerne Cloyd <SherVerne.Cloyd@nrc.gov>, Bruce McIntosh
<buffalo.bruce@panhandle.net>, <fwoliver@verizon.net>,
<OCAAMAIL.Resource@nrc.gov>, <steve_collings@cameco.com>,

<TrSmith@winston.com>, <Catherine.Marco@nrc.gov>, Molly Barkman
<Molly.Barkman@nrc.gov>, "Marc A. Ross (marcr@rocktheearth.org)"
<marcr@rocktheearth.org>, "Harold S. Shepherd (waterlaw@uci.net)"
<waterlaw@uci.net>, "Elizabeth M. Lorina (elorina@gnzlawfirm.com)"
<elorina@gnzlawfirm.com>, Mario Gonzalez <gnzlaw@aol.com>, Shane Robinson
<shane robinson@gmail.com>, <Brett.Klukan@nrc.gov>, Tom Ballanco
<harmonicengineering1@mac.com>, Shahram Ghasemian
<Shahram.Ghasemian@nrc.gov>, <mdmsjn@windstream.net>,
<lcarter@captionreporters.com>, <ejduncan@winston.com>, <rll@nrc.gov>,
<nsg@nrc.gov>, <elj@nrc.gov>, <Linda.lewis@nrc.gov>, <esn@nrc.gov>,
<ogcmailcenter@nrc.gov>, <cmp@nrc.gov>, <matthew.rotman@nrc.gov>,
<tpr@nrc.gov>, <csisco@winston.com>, <sxg4@nrc.gov>, <mxw6@nrc.gov>,
<rfc1@nrc.gov>, <Bmk1@nrc.gov>, <clm@nrc.gov>, <jrt3@nrc.gov>,
<axw5@nrc.gov>, <dx8@nrc.gov>, <fxo1@nrc.gov>, <alberto@treatycouncil.org>,
<amy@nrc.gov>, <tom.ryan@nrc.gov>

Message-ID: <C5C0E926.2AAB3%davidcoryfrankel@gmail.com>

Thread-Topic: Transmitting documents in Docket No. 40-8943 - ASLBP No.
07-859-03-MLA-BD01

Thread-Index: AcmRoga0RQz1SP2VEd2SWQAbYzBOIA==

MIME-Version: 1.0

Content-Type: multipart/mixed; boundary="B_3317754196_33741752"