

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges:

Alex S. Karlin, Chairman
Dr. Paul B. Abramson
Dr. William M. Murphy

In the Matter of COGEMA MINING, INC. (Irigaray and Christensen Ranch Facilities)
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Docket No. 40-08502-MLR
ASLBP No. 09-887-01-MLR-BD01
May 21, 2009

ORDER
(Setting Oral Argument and Briefing of Specified Issues)

The Board will hear oral argument on standing and the admissibility of proposed contentions under 10 C.F.R. § 2.309, commencing at 9:00 am Mountain Daylight Time (MDT) on Tuesday, June 9, 2009. The oral argument will be held in Presentation Hall (Room 136) of the Whitney Building on the Campus of Sheridan College in Sheridan, Wyoming. Only duly-authorized attorneys of the Petitioners (the Oglala Delegation of the Great Sioux Nation Treaty Council (Oglala Delegation) and the Powder River Basin Resource Council (PRBRC)), Cogema Mining, Inc. (Cogema) and the staff of the Nuclear Regulatory Commission (NRC Staff) who have entered an appearance pursuant to 10 C.F.R. § 2.314 will be entitled to participate. The Board plans to adjourn on Tuesday by 6:00 pm MDT and continue, if necessary, at 9:00 am MDT on Wednesday, June 10, 2009. We expect to adjourn no later than 2:00 pm MDT on that day.

The oral argument will proceed as follows. First, we will hear a short opening statement, limited to ten minutes, from each participant. Second, the Board will hear argument on the standing of the Petitioners. Third, we will hear argument on certain contentions, which we intend to specify either in a subsequent written order or at the commencement of the oral

argument on June 9, 2009. Nonetheless, counsel for the parties must be prepared to answer questions concerning all issues raised in the pleadings. Fourth, we will hear a short closing statement, limited to five minutes, from each participant.¹

Except for the opening and closing statements, the sole purpose of the oral argument is to allow the Board to ask questions, and receive answers, to clarify the Board's understanding of legal and factual points and assist it in deciding the issues presented by the pleadings. Unless otherwise specified, no presentations by the parties will be entertained. Counsel should keep in mind that the Board has read their pleadings and are encouraged to be familiar with the relevant law on standing, contention admissibility, and 10 C.F.R. Parts 2 and 40. In preparing for the oral argument, counsel should focus on the critical points in controversy, as they have emerged in the pleadings.

No witnesses, other representatives of the parties, or members of the public will be heard at this time. However, members of the public and representatives of the media are welcome to attend and observe this proceeding. This is an adjudicatory proceeding and the Board intends to conduct an orderly hearing. Signs, banners, posters, and displays are prohibited in accordance with NRC policy. See Procedures for Providing Security Support for NRC Public Meetings/Hearings, 66 Fed. Reg. 31,719 (June 12, 2001). All interested persons should arrive at least fifteen minutes early so as to allow sufficient time to pass through security screening.

Limited appearance statements, pursuant to 10 C.F.R. § 2.315(a), will not be entertained at this time. If contentions are ultimately admitted, then the Board will accept written limited appearance statements and, at a later date, may hear oral limited appearance statements regarding admitted contentions.

¹ The Board may also hear oral argument related to the motion by the Oglala Delegation pursuant to 10 C.F.R. § 2.302(g)(4) for leave to be exempt from the electronic filing requirements of that regulation.

In addition to the foregoing, the Board instructs the parties to address the following two issues.

A. Information Regarding Oglala Delegation Standing²

First, the Board notes that the Oglala Delegation states that it is a “local governmental body and . . . an affected Indian tribe (that has been recognized by the federal government by the 1851 Treaty and the 1868 Treaty, among other things),” Request for Hearing and Petition for Leave to Intervene by the Oglala Delegation of the Great Sioux Nation Treaty Council at 11. The Oglala Delegation also states that “in the event that the Commission shall rule that 10 C.F.R. § 2.309(d)(2) is inapplicable to the Oglala Delegation, the Oglala Delegation respectfully requests a reasonable time . . . to submit additional information in satisfaction of 10 C.F.R. § 2.309(d)(1).” Id. 12. With respect to those statements and requests, on or before May 28, 2009, the Oglala Delegation shall

1. Submit a memorandum, that documents or demonstrates that the Oglala Delegation:
 - a. Is a “local governmental body” duly elected, appointed or established by the relevant procedures within its Nation;
 - b. Is a “federally recognized Indian tribe” as that term is used in 10 C.F.R. §§ 2.309(d) or 2.315(c), or any other relevant Federal law or regulation;
 - c. Is an entity which must be consulted under the National Historic Preservation Act pursuant to 36 C.F.R. § 800.2(c)(2); and
 - d. Is an “Indian Tribe” within the meaning of 36 C.F.R. § 800.16(m).³

² No page limit is imposed on these submissions, but the parties are encouraged to be brief and to the point. If any documents (other than citations to law) are important and referred to (including, but not limited to, documents in ADAMS such as the application or environmental report or documents relating to the Oglala Delegation’s status), then pertinent portions shall be attached, as attachments, which shall be marked sequentially as, for example, NRC Staff Attachment 1. The Board is not obliged to locate or retrieve any such materials. In addition, the party shall specify the precise page of the attachment that establishes its point.

2. Submit whatever “additional information” (assuming 10 C.F.R. § 2.309(d)(2) is inapplicable) that documents and demonstrates that the Oglala Delegation has standing as required by 10 C.F.R. § 2.309(d)(1).
3. Submit an affidavit or declaration from Chief Oliver Red Cloud, authorizing the Oglala Delegation to represent him in this proceeding.⁴

On or before June 2, 2009, Cogema and the NRC Staff may, respectively, submit their answers to the foregoing submissions of the Oglala Delegation. No answers or replies to these briefs will be entertained.

³ In this context, it would be helpful, but not required, to explain whether the Oglala Delegation would satisfy the definition of “Indian tribe” specified in Section 2(15) of the Nuclear Waste Policy Act of 1982. 42 U.S.C. § 10101(15).

⁴ See Crow Butte Resources, Inc. (License Renewal for In Situ Leach Facility, Crawford, Nebraska) CLI-09-09, 69 NRC ____ (May 18, 2009)(slip op. at 14-15) (establishing a new bright line rule requiring affidavits authorizing organizational representation to be filed with specific reference to the proceeding in which standing is sought and providing the petitioners the opportunity to cure such defects in their affidavits). The subpart 3 question is not an opportunity for Chief Oliver Red Cloud to supplement or change the substance of his affidavit, but merely an opportunity to reference this specific proceeding, rather than the Crow Butte proceeding.

B. Brief Concerning Legal Significance of Crow Butte Decision⁵

On or before June 2, 2009, the Petitioners, Cogema, and the NRC Staff may submit a legal brief, specifying their interpretation concerning the impact and significance of the Commission's recent decision in Crow Butte, CLI-09-09, 69 NRC ____ (slip op.) on the standing and admissibility of contentions presented in this case.

It is so ORDERED.

FOR THE ATOMIC SAFETY
AND LICENSING BOARD⁶

/RA/

Alex S. Karlin, Chairman
ADMINISTRATIVE JUDGE

Rockville, Maryland
May 21, 2009

⁵ Each Petitioner may have a total of 15 pages. Cogema and the NRC Staff are, respectively, limited to a total of 20 pages for a brief covering both Petitioners.

⁶ Copies of this order were sent this date by the agency's E-Filing system to the counsel/representatives for (1) Cogema Mining, Inc. (2) the NRC Staff; 3) the Oglala Delegation of the Great Sioux Nation Treaty Council; and 4) the Powder River Basin Resource Council.

UNITED STATES OF AMERICA
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)
Irigaray and Christensen Ranch Facilities)
)
(Source Materials License SUA-1341))

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Board ORDER (Setting Oral Argument and Briefing of Specified Issues), dated May 21, 2009, have been served upon the following persons by Electronic Information Exchange.

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COGEMA MINING, INC. - DOCKET NO. 40-08502-MLR
BOARD ORDER (Setting Oral Argument and Briefing of Specified Issues)

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[Original signed by Linda D. Lewis]
Office of the Secretary of the Commission

Dated at Rockville, Maryland
this 21st day of May 2009