

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

Before Administrative Judges:

Michael M. Gibson, Chairman
Dr. Richard F. Cole
Brian K. Hajek

In the Matter of

CROW BUTTE RESOURCES, INC.

(License Renewal for the In Situ Leach Facility,
Crawford, Nebraska)

Docket No. 40-8943

ASLBP No. 08-867-02-OLA-BD01

May 27, 2009

ORDER

(Canceling Oral Argument, Ruling on Summary Disposition of Consolidated Petitioners'
Miscellaneous Contention G, Requiring Filing of Affidavits)

On May 18, 2009, the Commission issued a memorandum and order, CLI-09-09, on the appeals of Crow Butte and the NRC Staff both from a licensing board order granting a hearing to several petitioners in the above-captioned proceeding (LBP-08-24), and from a subsequent decision admitting a late-filed contention concerning the effects of arsenic (LBP-08-27). The Commission's May 18, 2009 Memorandum and Order affirmed in part and reversed in part this Board's decisions in LBP-08-24 and in LBP-08-27.¹ Specifically, the Commission upheld this Board's ruling on the Petitioners' standing, but found that the Board erred in admitting Oglala Sioux Tribe Environmental Contentions B (Failure to Consult with the Oglala Sioux Tribe Concerning Properties of Potential Cultural Significance) and E (Wastes Remain on Site); Consolidated Petitioners' Environmental Contention E (Failure to Consider Economic Value of Wetlands in Cost/Benefit Analysis), Consolidated Petitioners' Miscellaneous Contentions G

¹ See Crow Butte Resources, Inc. (License Renewal for In Situ Leach Facility, Crawford, Nebraska), CLI-09-09, 69 NRC __, __ (slip op. at 1) (May 18, 2009).

(Failure to Disclose Foreign Ownership) and K (Lack of Authority to Issue License to a Foreign-Owned Entity); and Consolidated Petitioners' Safety Contention A (Arsenic Contamination).²

Because of the Commission's ruling in CLI-09-09 that Consolidated Intervenors' Miscellaneous Contentions G and K were erroneously admitted, the oral argument that had previously been scheduled for June 11, 2009,³ in Rapid City, South Dakota, is hereby CANCELLED. Moreover, because the Commission ruled in CLI-09-09 that Consolidated Petitioners' Contention G was one of "omission," and that omission was cured by a prior amendment to the License Renewal Application,⁴ the Applicant's Motion for Summary Disposition on Consolidated Petitioners' Contention G regarding the disclosure of the Applicant's alleged foreign ownership is GRANTED.

In addition, the Commission in CLI-09-09 remanded to this Board its ruling on representational standing of Owe Aku and WNRC, who were granted standing based on the incorporation by reference of affidavits that had been filed in a related proceeding for Crow Butte's North Trend Expansion Application (NTEA).⁵ The Commission held that its case law "requires an organization to submit written authorization from a member whose interests it purports to represent in order to have a 'concrete indication' that the member wishes to have the organization represent his interests there."⁶ Acknowledging that it would be permissible to incorporate by reference specific documents in a proceeding, the Commission determined it was unable to allow such an incorporation to "expand the legal effect of an affidavit."⁷ Thus, the issue was remanded to this Board to afford Owe Aku and WNRC the opportunity to cure the defects in their affidavits.⁸

² Id. at __ (slip op. at 18). Oglala Sioux Tribe Environmental Contention B and E, Consolidated Petitioners' Environmental Contention E, Consolidated Petitioners' Miscellaneous Contentions G and K, and Consolidated Petitioners' Safety Contention A.

³ See Licensing Board Order (Rescheduling Oral Argument) at 1 (Apr. 21, 2009) (unpublished).

⁴ Id. at __ (slip op. at 37).

⁵ Id. at __ (slip op. at 15); see also id. at __ (slip op. at 11-15).

⁶ Id. at __ (slip op. at 13).

⁷ Id. at __ (slip op. at 14) ("[a]ffidavits authorizing organizational representation must be filed with specific reference to the proceeding in which standing is sought).

⁸ Id. at __ (slip op. at 15).

In response to the Commission's remand, we direct counsel for Owe Aku and WNRC to file affidavits of their representational members no later than June 22, 2009, that provide specific reference to this proceeding, in an effort to cure defects noted by the Commission.⁹

The Commission in CLI-09-09 affirmed this Board's decision to admit the Oglala Sioux Tribe's Environmental Contentions A, C, and D, and the Consolidated Petitioners' Technical Contention F. Accordingly, disclosure obligations for these four contentions will continue in accordance with 10 C.F.R. § 2.336 and this Board's March 6, 2009 Order.¹⁰

It is so ORDERED:

FOR THE ATOMIC SAFETY
AND LICENSING BOARD

/RA/

Michael M. Gibson, Chairman
ADMINISTRATIVE JUDGE

Rockville, Maryland
May 27, 2009

* Copies of this notice were sent this date by the agency's E-Filing system to the counsel/representatives for (1) applicant Crow Butte Resources, Inc.; (2) Consolidated Petitioners; (3) NRC Staff; 4) Oglala Delegation of the Great Sioux Nation Treaty Council; and 5) Oglala Sioux Tribe.

⁹ See *id.* at ___ (slip op. at 14).

¹⁰ See Licensing Board Order (Regarding Mandatory Disclosures) at 1 (Mar. 6, 2009) (unpublished).

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of)
)
CROW BUTTE RESOURCES, INC.) Docket No. 40-8943-OLA
)
In-Situ Leach Uranium Recovery Facility,)
Crawford, Nebraska)
)
(License Amendment))

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing ORDER (CANCELING ORAL ARGUMENT, RULING ON SUMMARY DISPOSITION OF CONSOLIDATED PETITIONERS' MISCELLANEOUS CONTENTION G, REQUIRING FILING OF AFFIDAVITS) have been served upon the following persons by Electronic Information Exchange.

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 OF AFFIDAVITS)

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[Original signed by Nancy Greathead]
Office of the Secretary of the Commission

Dated at Rockville, Maryland
this 27th day of May 2009