

RAS#EE-04

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

Before Administrative Judges:

Alex S. Karlin, Chair
Paul B. Abramson
William M. Murphy

DOCKETED
USNRC

June 2, 2009 11:27 pm

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

In the Matter of

COGEMA MINING, INC.
(Christensen & Irigaray Ranch
Facilities)

Docket No. 040-08502

ASLBP No. 09-887-01-MLR-BD01

June 2, 2009

PETITIONER'S BRIEF RE: IN RE: CROW BUTTE, CLI-09-09

Petitioner, the Oglala Delegation of the Great Sioux Nation Treaty Council ("Oglala Delegation"), hereby submits this legal brief in response to the invitation of the Board in its Order dated May 21, 2009.¹

INTRODUCTION

As articulated in painful detail in his Affidavit², based on the Lakota experience with the Wasicus, Chief Oliver Red Cloud and the Oglala Delegation did not go into the proceedings at Crow Butte with the belief that the US, or its subordinate agencies, would properly safeguard Lakota treaty territory and water. They never have. The United States has just started respecting the 1868 Ft. Laramie Treaty, and Article I thereof after 141 straight years of treaty violations.³

¹ Order dated May 21, 2009 at Part B, slip. op. at p. 5. .

² See Affidavit of Chief Oliver Red Cloud dated April __, 2009 [sic] filed with the Petition, which incorporates by reference Chief Red Cloud's July 28, 2008 Affidavit at Accession No. ML082170263.

³ See "**Judge rules treaty obligations include reimbursement for pain and suffering.**" Rapid City Journal (April 30, 2009) at <http://www.rapidcityjournal.com/articles/2009/04/30/news/local/doc49f8af4b84cec843787154.txt>.

Temp = SECT 021

DS03

The Oglala Delegation's decision to participate in those proceedings was actually an invitation to the Nuclear Regulatory Commission and the Applicant to demonstrate their assertions that in situ leach mining of uranium is a safe activity that does not significantly degrade, nor endanger water resources and the environment on the Pine Ridge Reservation or in the Greater Sioux Nation Treaty Territory. The Oglala Delegation has no doubt that if such were the case, both the NRC and the Applicant would welcome the opportunity to prove the safety of their operation.

That a group of political appointees, meeting in Washington, who never even introduced themselves to the Delegation, nor traveled to the Territory, could dismiss the claims accepted by the panel of judges who heard the arguments, asked questions and researched and analyzed the applicable law under current facts and circumstances, only serves to reinforce and reiterate to the Oglala Delegation that their impression of the Wasicu is accurate – at least in so far as the Commissioners are concerned.

DISCUSSION

1. **CLI-09-09 Is Arbitrary, Capricious, Contrary to Law, and Unsupported By Substantial Evidence.**

The May 18th ruling in CLI-09-09 by the four political appointees comprising the five-member Commission overruled the careful, deliberative and well-cited legal analyses of at least six learned NRC administrative judges. The Commission disregarded the on-the-merits briefing of the issues by the parties

preferring instead to dictate its own summary conclusions concerning foreign ownership which have no support in fact or law and omit legal citations.⁴ As a result, it is highly likely that CLI-09-09 will be overruled on appeal.

2. **OST and Consolidated Petitioners in Crow Butte Have Appealed to the 8th Circuit Court of Appeals.**

On May 29, 2009, the Oglala Sioux Tribe and the Consolidated Petitioners/Intervenors in the Crow Butte (Renewal) proceeding each filed a Petition for Review with the 8th Circuit Court of Appeal.⁵ The Consolidated Petitioners' Petition for Review asserts in relevant part that:

Petitioners seek relief on the grounds that the Nuclear Regulatory Commission's orders and rulings in CLI-09-09 with respect to Consolidated Petitioners' Environmental Contention E, Miscellaneous Contention G, Miscellaneous Contention K and Safety Contention A, violate the Atomic Energy Act of 1946, P.L. 79-585 (the "1946 Act"), the Atomic Energy Act of 1954, 42 U.S.C. § 2011, *et. seq.* (the "1954 Act"), and NRC implementing regulations in 10 C.F.R. Parts 40 and 51. The NRC's orders also violate the National Environmental Policy Act ("NEPA"), 42 U.S.C. § 4332 *et. seq.* and its implementing regulations and the National Historic Preservation Act ("NHPA"), 16 U.S.C. § 470 *et. seq.*, particularly Section 106 thereof, and its implementing regulations including 36 CFR Section 800 *et. seq.* The Nuclear Regulatory Commission's orders and rulings in CLI-09-09 also violate the Administrative Procedures Act, 5 U.S.C. § 706, because they are arbitrary, capricious, contrary to law and/or unsupported by substantial evidence.

Finally, the Nuclear Regulatory Commission's orders and

⁴ See, e.g., CLI-09-09 at 38 "[a]s for Consolidated Petitioners' Miscellaneous Contention K, there is no statutory or regulatory bar on a foreign ownership or control of a source materials license, whether as a licensee or as a parent entity. In addition, we find the admission of the second "issue" of Miscellaneous Contention K to be unsupported." Consolidated Petitioners failed to show any basis why renewing the license would be "inimical" to the common defense and security.

⁵ See Oglala Sioux Tribe v. United States NRC, et al., (No. 09-2262); it is unclear whether Consolidated Petitioners' appeal will be issued a different Case Number but the parties contemplate consolidation of the appeals.

rulings in CLI-09-09 violate the trust responsibility owed by the United States to the indigenous petitioners, including the Canons of Construction, and violate the Ft. Laramie Treaty of 1851, and the Ft. Laramie Treaty of 1868, and the rights thereunder owed to the Oglala Lakota petitioners, and the rights retained and reserved to the indigenous petitioners under the Reserved Rights Doctrine.

Petitioners request that the Court reverse the Nuclear Regulatory Commission's orders and rulings in CLI-09-09 and reinstate the admissibility of Consolidated Petitioners Environmental Contention E, Miscellaneous Contention G, Miscellaneous Contention K, and Safety Contention A as ruled by the ASLBP. In the alternative, Petitioners request that the Court remand to the NRC for further proceedings consistent with the 1946 Act, 1954 Act, NEPA, NHPA, the Ft. Laramie Treaties of 1851 and 1868, the trust responsibility, the Canons of Construction and the Reserved Rights Doctrine.⁶

3. The Intervenors Have Filed Motions to Stay Crow Butte Proceedings Pending Appeal.

The Intervenors have filed motions with the ASLBP Boards in both the Crow Butte Renewal and Crow Butte Expansion proceedings.⁷ Because the foreign ownership issue is present in this case as well, this Board should await final resolution of this key legal issue before ruling against the foreign ownership contentions in this case. Otherwise, there could be a huge waste of judicial and parties' resources to re-litigate matters and re-perform mandatory disclosures, etc. in the event that the Commission decision is overruled for the reasons asserted in the Petition for Review.

4. Petitioner's General Comments.

A. Standing.

The NRC order *supports* standing for the Oglala Delegation

⁶ Petition for Review (attached as Exhibit A hereto) at 3-4.

⁷ See Motions for Stay attached hereto as Exhibit B and Exhibit C, respectively.

based on its interest in protecting cultural resources and/or artifacts at or near the COGEMA site. In this case, the Oglala Delegation has the same interest that the Oglala Sioux Tribe has in the Crow Butte ruling which was upheld by the Commission in CLI-09-09 and which is not being appealed. Therefore, it is final and instructive to this Board.

B. Foreign Government Ownership Contentions.

The Commission's dismissal of Intervenors' Miscellaneous Contentions G and K are not dispositive in this case. In re: Crow Butte is highly distinguishable from this case because while in Crow Butte the ultimate parent is owned by private foreign interests⁸, the ultimate parent of Applicant is the Government of France. Section 7(c) of the 1946 Act requires that this Board and the Commission deny the renewal.

Miscellaneous Contention G was found to be a contention of omission and mooted by Applicant Crow Butte Resources' amendment to its application to accurately and precisely disclose its foreign ownership. This dismissal has no bearing on this proceeding because Applicant COGEMA has not amended its Application to disclose the ultimate foreign ownership by the Government of France.

The Commissioners turned a blind eye to serious issues despite specific recommendations in the WMD Commission Report that the Atomic Energy Act be more strictly enforced. None of the following questions raised by Petitioner in this proceeding and by Intervenors in the Crow Butte Renewal

⁸ Albeit the now-privatized, former Canadian crown corporation, Cameco, Inc.

Proceeding have been properly addressed by CLI-09-09 or otherwise:

- How would the control persons of the parent company of Applicant, in this case the Government of France, be made subject to NRC Regulations if Section 40.2 makes them applicable only to persons in the United States?
- How can NRC regulations be enforced against a foreign government?
- What happens if, as happened in 1981, the internal politics of France change its national policy concerning uranium and nuclear power?

The Commission ignored Intervenors arguments against issuing a source materials license to a company under foreign ownership and control on the grounds that concerns over foreign control of the destination of U.S.-mined uranium may be addressed at the export-licensing stage. However, ownership and control of a source license by a foreign government as opposed to private foreign interests clearly have additional and different implications for the common defense and national security and public health and safety. For instance, unlike private foreign interests, the foreign governmental interests would have and likely use diplomatic leverage if it were prevented from exporting the uranium it mined in the U.S.

C. Arsenic Contention

The Commission's rejection in CLI-09-09 of Safety Contention A⁹ should not be understood to preclude admission of the arsenic contention in this

⁹ CLI-09-09 at 40.

case. First, the rejection of Safety Contention A is being appealed as discussed above. Second, with respect to this proceeding, Petitioner has shown that COGEMA's Application demonstrates that it is aware of arsenic concentrations in the water 60 times higher as a result of its mining methods, and aware that this Arsenic-contaminated water reaches the Wasatch formation. This in itself shows a plausible link between Applicant's release of Arsenic at its mine and human and wildlife and plant health-threatening concentrations of Arsenic in the water near the mine.

Petitioner further contends that Applicant fails to comply with Criterion 5A, 5B, 5C and 5D and 7A of the Appendix A to Part 40 by its failure to test for or monitor or filter Arsenic, posing a threat to the public health and safety as well as the health of the environment and wildlife. This failure to comply demands that Applicant's renewal must fail. None of these assertions were made with as much particularity in In Re: Crow Butte Renewal as were made in the Petition in this case.

D. Economic Value of Wetlands.

The Commission's rejection in CLI-09-09 of Environmental Contention E – Failure to consider economic value of wetlands – should not be understood to preclude admission of Environmental Contention H. Petitioner's identification of Willow Creek and the 18 watersheds associated with it, along with Applicant's documented leak/spill into a dry draw adjacent to Willow Creek, provide the necessary support for contention that ongoing operation will

contaminate wetlands such that they can no longer provide the economic benefits that a well-functioning wetland could even under the standards articulated in CLI-09-09.

CONCLUSION

For all the foregoing reasons and those expressed in the Petition and Petitioner's Reply, the Board should rule in favor of the standing of the Oglala Delegation and admit the contentions of the Oglala Delegation despite any contrary indications presented by the rulings in CLI-09-09.

Dated this 2nd day of June, 2009.

Respectfully submitted,

~ electronically signed by

Thomas J. Ballanco
Counsel for Petitioner
Harmonic Engineering, Inc.
945 Taraval Ave., #186
San Francisco, CA 94116

Tel: 650-296-9782
E-mail: harmonicengineering1@mac.com

~ electronically signed by

David Frankel
Counsel for Petitioner
POB 3014
Pine Ridge, SD 57770

Tel: 308-430-8160
Email: arm.legal@gmail.com

wetlands²; (2) failure to disclose foreign ownership in CBR's source materials license application and lack of authority of the NRC to issue a source materials license to an applicant that is 100% owned, controlled and dominated by foreign interests³, and (3) safety concerns related to Arsenic being released to drinking water aquifers, to The White River and to Pine Ridge Indian Reservation as a result of geochemical reactions from the intensive oxygenation that is part of Applicant CBR's In-Situ Leach (ISL) uranium mining activities in the mined aquifer and those connected to it by fractures and faults, including the Brule Aquifer, the Arikaree Aquifer, and the Oglalla Aquifer (High Plains Aquifer).

Petitioners seek review of the following order issued by the Nuclear Regulatory Commission: CLI-09-09 (May 18, 2009), Commission Order granting interlocutory appeal of NRC and CBR, reversing the prior admission by the NRC's Atomic Safety Licensing Board Panel ("ASLBP"), of Consolidated Petitioners' Environmental Contention E, Miscellaneous Contention K, Safety Contention A, and ordering the summary disposition of Consolidated Petitioners' Miscellaneous Contention G.⁴

This final decision was issued by the Nuclear Regulatory Commission on May 18, 2009. This petition is timely filed pursuant to 28 U.S.C. § 2344 as it is filed within 60 days of the final agency action. To date, no court has upheld the validity of these orders.

This Court has jurisdiction pursuant to the Hobbs Act, 28 U.S.C. § 2342(4); the

¹ Petitioners understand from counsel for the Oglala Sioux Tribe that the Oglala Sioux Tribe intends to submit its own appeal in this matter which should be suitable for consolidation.

² Consolidated Petitioners Environmental Contention B.

³ Consolidated Petitioners Miscellaneous Contention G and Miscellaneous Contention K.

⁴ This NRC final ruling was implemented by the ASLBP Order dated May 27, 2009, ordering summary disposition of Miscellaneous Contention G and canceling the oral argument that had been scheduled for June 11, 2009 on the merits of Miscellaneous Contention K and on the

Atomic Energy Act of 1954, 42 U.S.C. § 2239(b); and the Administrative Procedure Act, 5 U.S.C. §§ 702.

Venue is asserted pursuant to 28 U.S.C. § 2343. Petitioners all reside in either Nebraska, South Dakota or at Pine Ridge Indian Reservation. The uranium mine which is the subject of the licensing action at issue in this proceeding is located in Crawford, Nebraska.

Petitioners seek relief on the grounds that the Nuclear Regulatory Commission's orders and rulings in CLI-09-09 with respect to Consolidated Petitioners' Environmental Contention E, Miscellaneous Contention G, Miscellaneous Contention K and Safety Contention A, violate the Atomic Energy Act of 1946, P.L. 79-585 (the "1946 Act"), the Atomic Energy Act of 1954, 42 U.S.C. § 2011, *et. seq.* (the "1954 Act"), and NRC implementing regulations in 10 C.F.R. Parts 40 and 51. The NRC's orders also violate the National Environmental Policy Act ("NEPA"), 42 U.S.C. § 4332 *et. seq.* and its implementing regulations and the National Historic Preservation Act ("NHPA"), 16 U.S.C. § 470 *et. seq.*, particularly Section 106 thereof, and its implementing regulations including 36 CFR Section 800 *et. seq.* The Nuclear Regulatory Commission's orders and rulings in CLI-09-09 also violate the Administrative Procedures Act, 5 U.S.C. § 706, because they are arbitrary, capricious, contrary to law and/or unsupported by substantial evidence.

Finally, the Nuclear Regulatory Commission's orders and rulings in CLI-09-09 violate the trust responsibility owed by the United States to the indigenous petitioners, including the Canons of Construction, and violate the Ft. Laramie Treaty of 1851, and the

summary disposition motion of CBR concerning Miscellaneous Contention G, and limiting mandatory disclosure obligations to the remaining contentions not affected by CLI-09-09.

Ft. Laramie Treaty of 1868, and the rights thereunder owed to the Oglala Lakota petitioners, and the rights retained and reserved to the indigenous petitioners under the Reserved Rights Doctrine.

Petitioners request that the Court reverse the Nuclear Regulatory Commission's orders and rulings in CLI-09-09 and reinstate the admissibility of Consolidated Petitioners Environmental Contention E, Miscellaneous Contention G, Miscellaneous Contention K, and Safety Contention A as ruled by the ASLBP. In the alternative, Petitioners request that the Court remand to the NRC for further proceedings consistent with the 1946 Act, 1954 Act, NEPA, NHPA, the Ft. Laramie Treaties of 1851 and 1868, the trust responsibility, the Canons of Construction and the Reserved Rights Doctrine.

Two copies of this Petition are included for service on respondents and Petitioners are serving or are having served (through the NRC's Electronic Information Exchange (EIE) System) on all other parties to the administrative proceeding as indicated on the Certificate of Service filed herewith, which contains a list of those so served pursuant to FRAP 15(c).

Dated: May 29, 2009

Respectfully submitted,

/s/

David Frankel, Attorney for Consolidated Petitioners
P. O. Box 3014
Pine Ridge, SD 57770
Tel: 308-430-8160
Fax: 831-603-8634
E-mail: arm.legal@gmail.com

Attorney for Petitioners

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

Before Administrative Judges:
Michael M. Gibson, Chairman
Dr. Richard F. Cole
Mr. Brian K. Hajek

In the Matter of

CROW BUTTE RESOURCES, INC.
(License Renewal In Situ Leach Facility,
Crawford, NE)

Docket No. 40-8943

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

June 1, 2009

**INTERVENORS' MOTION AND APPLICATION FOR
STAY PENDING APPEAL**

Pursuant to 10 CFR §2.323(a), Intervenors file by this motion¹ an application to stay this proceeding pending resolution of the appeal of the Oglala Sioux Tribe and the Intervenors from the Commission's ruling in CLI-09-09, except that such stay should not interfere with the perpetuation of testimony of Aloysius Weasel Bear should Safety Contention A (Arsenic) be re-admitted after the appeal is resolved.

Petitioners hereby move that this Board issue an Order: (1) staying this proceeding until the appeals from CLI-09-09 are finally resolved, including a stay of this Board's Order dated May 27, 2009 (other than the part regarding the filing of affidavits for David House and Francis Anders; (2) allowing for the perpetuation of the testimony of Aloysius Weasel Bear during the period of the stay in case Safety Contention A is re-admitted after the appeal; and (3) including such other Orders as the Board finds to be

¹ Pursuant to Regulation 2.323, the undersigned emailed over the weekend and had a telephone conversation with each of Counsel for Applicant and Counsel for the NRC Staff. Brett Klukan for the NRC Staff stated that the NRC Staff would review the motion when it was received, would not take a position on the motion at this time and would respond to the motion after reviewing it. Tyson Smith for Applicant stated that Applicant would oppose the motion.

necessary or appropriate in the interests of justice and developing a sound record in this proceeding, as contemplated below.

DISCUSSION

1. Need for Stay. Intervenors would be severely prejudiced in the event that this proceeding is allowed to continue during the pendency of the appeal. This is because the findings in CLI-09-09, especially denying the admissibility of Environmental Contention B, Miscellaneous Contention G, Miscellaneous Contention K and Safety Contention A, as implemented by the Board's Order dated May 27, 2009, causes a dramatic change in the nature and scope of the proceeding. For example, the mandatory disclosures are now limited to the admitted contentions. The oral argument scheduled for June 11th and briefing on the merits from January-February 2009 has been made irrelevant.

If the stay is not granted, then there is a high likelihood that there will be waste in this proceeding because if the appeal overturns all or part of CLI-09-09, the parties will have to back-track to re-integrate the re-admitted contentions into the proceeding and catch up on disclosures related to such contentions.

If the proceeding were allowed to continue prior to resolution of the appeal, Intervenors would be irreparably harmed because they would be foreclosed from raising issues related to the denied contentions until the appeal is resolved and by that time, the proceeding would have progressed to a point that matters such as mandatory disclosures would have to be redone. Further, if the appeal reverses the Commission, Miscellaneous

Contention K would be dispositive and potentially 'fatal' to the license renewal.

Therefore, the foreign ownership legal issue must be finally and fully resolved before this proceeding continues.

2. No Prejudice to Other Parties. Since the Crow Butte mine continues to operate under an automatic extension, its operations will continue during the pendency of the stay and, therefore, there is no prejudice to Applicant. In addition, since appeals are a regular part of this litigation process, they are to be expected and so there is no prejudice to the NRC Staff. The Oglala Sioux Tribe has likewise filed an appeal and the undersigned has been informed that the Oglala Delegation of the Great Sioux Nation Treaty Council does not object to the stay.

3. Other Factors. Because the appeal is from a Commission ruling on issues of first impression, it is not possible to make a showing that Intervenors are likely to prevail on the merits. Finally, the public interest lies in favor of staying the proceeding pending resolution of the appeal both in order to foster public confidence in the integrity of the NRC licensing process and to foster conservation of parties' and ASLBP and judicial resources.

4. Motion to Stay May Be Issued by Court of Appeal. In the event that this Board denies this motion to stay, Intervenors shall be entitled to file a motion to stay before the Court of Appeals, for the same reasons as described above. Federal Rules of Appellate Procedure (FRAP) 18 requires that before a motion for stay pending review is filed with the Court of Appeals, a petitioner is required to first make a motion before the agency for a stay pending review of its order. Accordingly, Intervenors have filed this

motion as contemplated by NRC Regulations, 10 CFR §2.323 & §2.342. Section 2.342 provides that this motion/application may be filed with the Commission or the presiding officer but not both. Accordingly, this motion has been filed with the Board. In the event that the applied for stay is not granted, Intervenors (as petitioners in the appeal) will file a motion to stay with the Court of Appeals under FRAP 18(a)(2).

CONCLUSION

For all the foregoing reasons, the Board should issue the order requested by Intervenors herein.

Dated this 1st day of June, 2009.

Respectfully submitted,

- electronically signed by

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

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

Before Administrative Judges:

Ann Marshall Young, Chair

Dr. Richard F. Cole

Dr. Fred W. Oliver

In the Matter of

CROW BUTTE RESOURCES, INC.
(Expansion License for In Situ Leach
Facility, Crawford, NE)

Docket No. 40-8943

ASLBP No. 07-859-03-MLA-BD01

June 1, 2009

**INTERVENORS' MOTION AND APPLICATION FOR
STAY PENDING APPEAL IN RELATED LICENSE RENEWAL PROCEEDING**

Pursuant to 10 CFR §2.323(a), Intervenors file by this motion¹ an application to stay this proceeding pending resolution of the appeal of the Oglala Sioux Tribe and the Intervenors from the Commission's ruling in CLI-09-09, concerning a license renewal for Crow Butte Resources, Inc.

Petitioners hereby move that this Board issue an Order: (1) staying this proceeding until the appeals from CLI-09-09 are finally resolved; and (2) including such other Orders as the Board finds to be necessary or appropriate in the interests of justice and developing a sound record in this proceeding, as contemplated below.

DISCUSSION

1. Need for Stay. Intervenors would be severely prejudiced in the event that this proceeding is allowed to continue during the pendency of the appeal. This is because

¹ Pursuant to Regulation 2.323, the undersigned emailed over the weekend and had a telephone conversation with each of Counsel for Applicant and Counsel for the NRC Staff. Brett Klukan for the NRC Staff stated that the NRC Staff would review the motion when it was received, would not take a position on the motion at this time and would respond to the motion after reviewing it. Tyson Smith for Applicant stated that Applicant would oppose the motion.

the findings in CLI-09-09, especially denying the admissibility of Miscellaneous Contention G, Miscellaneous Contention K and Safety Contention A, as implemented by the Renewal Board's Order dated May 27, 2009, are likely to cause a dramatic change in the nature and scope of this proceeding because the same foreign ownership issues in Miscellaneous Contention G and Miscellaneous Contention K are presented in Contention E in this proceeding. For example, the mandatory disclosures will now be limited to those excluding the foreign ownership issues.

If the stay is not granted, then there is a high likelihood that there will be waste in this proceeding because if the appeal overturns all or part of CLI-09-09, the parties will have to back-track to re-integrate contention E issues into the proceeding and catch up on disclosures related to such contention. The same applies to arsenic contention.

If the proceeding were allowed to continue prior to resolution of the appeal, Intervenor would be irreparably harmed because they would be foreclosed from raising issues related to the denied contention until the appeal is resolved and by that time, the proceeding would have progressed to a point that matters such as mandatory disclosures would have to be redone. Further, if the appeal reverses the Commission, Contention E would be dispositive and potentially 'fatal' to the license amendment. Therefore, the foreign ownership legal issue must be finally and fully resolved before this proceeding continues.

2. No Prejudice to Other Parties. The North Trend Expansion is proposed to occur years in the future to accommodate uranium demand that has not yet materialized as of this date. Crow Butte Resources, Inc. has no pressing need for its expansion license

at this time and there is therefore no reason to rush this proceeding while the appeal of critical issues is pending. In addition, since appeals are a regular part of this litigation process, they are to be expected and so there is no prejudice to the NRC Staff. The Oglala Sioux Tribe has likewise filed an appeal and the undersigned has been informed that the Oglala Delegation of the Great Sioux Nation Treaty Council does not object to the stay.

3. Other Factors. Because the appeal is from a Commission ruling on issues of first impression, it is not possible to make a showing that Intervenors are likely to prevail on the merits. Finally, the public interest lies in favor of staying the proceeding pending resolution of the appeal both in order to foster public confidence in the integrity of the NRC licensing process and to foster conservation of parties' and ASLBP and judicial resources.

4. Motion to Stay May Be Issued by Court of Appeal. In the event that this Board denies this motion to stay, Intervenors shall be entitled to file a motion to stay before the Court of Appeals, for the same reasons as described above. Federal Rules of Appellate Procedure (FRAP) 18 requires that before a motion for stay pending review is filed with the Court of Appeals, a petitioner is required to first make a motion before the agency for a stay pending review of its order. Accordingly, Intervenors have filed this motion as contemplated by NRC Regulations, 10 CFR §2.323 & §2.342. Section 2.342 provides that this motion/application may be filed with the Commission or the presiding officer but not both. Accordingly, this motion has been filed with the Board. In the event that the applied for stay is not granted, Intervenors (as petitioners in the appeal) will file a

/

/

/

/

motion to stay with the Court of Appeals under FRAP 18(a)(2).

CONCLUSION

For all the foregoing reasons, the Board should issue the order requested by
Intervenors herein.

Dated this 1st day of June, 2009.

Respectfully submitted,

- electronically signed by

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

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

Before Administrative Judges:

Alex S. Karlin, Chair
Paul B. Abramson
William M. Murphy

In the Matter of
COGEMA MINING, INC.
(License Renewal In Situ Leach Facility,
Irigaray & Christensen Ranch, WY)

Docket No. 040-08502
ASLBP No. 09-887-01-MLR-BD01
June 2, 2009

CERTIFICATE OF SERVICE

I hereby certify that copies "**PETITIONER'S BRIEF RE: IN RE: CROW BUTTE, CLI-09-09**" in the above captioned proceeding has been served on the following persons by electronic mail (or fax as indicated); on this 2nd day of June, 2009:

Office of the Secretary
Attn: Docketing and Service
U.S. Nuclear Regulatory Commission
Washington, DC 20555
E-mail: Hearing.Docket@nrc.gov

Alex S. Karlin, Chair
Administrative Judge
E-mail: ask2@nrc.gov

Paul B. Abramson
Administrative Judge
E-mail: pba@nrc.gov

William M. Murphy
Administrative Judge
E-mail: William.murphy@nrc.gov

Anthony C. Eitrem, Esq.
Chief Counsel
E-mail: acel@nrc.gov

COGEMA Mining, Inc.
935 Pendell Boulevard
P.O. Box 730
Mills, WY 82644
Fax: 307-473-7306
Attention: Mr. Bernard Bonifas,
General Manager

Morgan, Lewis & Bockius, LLP
1111 Pennsylvania Avenue, N.W.
Washington, DC 20004

Stephen J. Burdick, Esq.
sburdick@morganlewis.com
James A. Glasgow, Esq.
jglasgow@morganlewis.com
Alvin Gutterman, Esq.
agutterman@morganlewis.com
Ray P. Kuyler, Esq.
rkuyler@morganlewis.com
Goud Maragani, Esq.
gmaragani@morganlewis.com

Areva NC, Inc. (US)
Bethesda, MD Office
One Bethesda Center
4800 Hampden Lane, Suite 1100
Bethesda, MD 20814
Fax: (301) 841-1611
Fax: (301) 841-1610
Email: communication@areva.com

Attention: Jacques Besnainou,
President/CEO
Powder River Basin Resource Council
Attn: Shannon Anderson
934 N. Main St.
Sheridan, WY 82801
E-mail: sanderson@powderriverbasin.org

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

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

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

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

Christine Joachim Boote, Esq.
Christine.joachimboote@nrc.gov

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

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

Cc: Ron.Linton@nrc.gov

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

Also From EIE Service List:

Ajb5@nrc.gov
Anthony.eitreim@nrc.gov
rl@nrc.gov

nancy.greathead@nrc.gov
nsg@nrc.gov
erh@nrc.gov
elj@nrc.gov
bmkl@nrc.gov
Linda.lewis@nrc.gov
clm@nrc.gov
esn@nrc.gov
mshd.resource@nrc.gov

ocaamail@nrc.gov
ogcmailcenter@nrc.gov
cmp@nrc.gov
tom.ryan@nrc.gov
caj3@nrc.gov
emile.julian@nrc.gov
alex.karlin@nrc.gov
Evangeline.ngbea@nrc.gov
Megan.wright@nrc.gov

Respectfully submitted,

/s/ - electronically signed by

David Frankel
Attorney for Petitioner
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: Tuesday, June 02, 2009 11:27 PM
To: Hearing Docket; OCAAMAIL Resource; Catherine Marco; Brett Klukan; Ron Linton; Shannon Anderson; Tom Ballanco; communication@areva.com; Deb White Plume; Elizabeth Lorina; Bruce Ellison; Shane Robinson; Anthony Baratta; Anthony Eitreim; Rebecca Giitter; Nancy Greathead; Nancy Greathead; Roy Hawkens; Emile Julian; Brett Klukan; Linda Lewis; Catherine Marco; Evangeline Ngbea; MSHD Resource; OGCMailCenter Resource; Christine Pierpoint; Tom Ryan; gmaragani@morganlewis.com; rkuyler@morganlewis.com; Christine Jochim Boote; agutterman@morganlewis.com; jglasgow@morganlewis.com; sburdick@morganlewis.com; Alex Karlin; William Murphy; Anthony Eitreim; Paul Abramson; Christine Jochim Boote; Emile Julian; Alex Karlin; Evangeline Ngbea; Megan Wright
Subject: Transmitting Document in Docket No. 040-08502 - ASLBP No. 09-887-01-MLR-BD01
Attachments: Petitioner Brief re CLI-09-09 06022009.pdf; Exhibit A - Crow Butte Renewal Appeal by Cons Pet Intervenors 05292009.pdf; Exhibit B - Intervenors Motion to Stay (Renewal) 06012009.pdf; Exhibit C - Intervenors Motion to Stay (Expansion) 06012009.pdf; Cogema COS EIE Conformed 06022009.pdf

Dear All,

Attached please find Petitioner's Brief re: CLI-09-09 and related COS.

Sincerely,

David Frankel
POB 3104
Pine Ridge, SD 57770
308-430-8160
Arm.legal@gmail.com

Received: from mail2.nrc.gov (148.184.176.43) by TWMS01.nrc.gov
(148.184.200.145) with Microsoft SMTP Server id 8.1.358.0; Tue, 2 Jun 2009
23:27:15 -0400

X-Ironport-ID: mail2

X-SBRS: 5.2

X-MID: 3117216

X-IronPort-AV: E=Sophos;i="4.41,295,1241409600";
d="pdf?scan'208";a="3117216"

Received: from mail-px0-f103.google.com ([209.85.216.103]) by mail2.nrc.gov
with ESMTP; 02 Jun 2009 23:27:09 -0400

Received: by pxi1 with SMTP id 1so6983226pxi.6 for <multiple
recipients>; Tue, 02 Jun 2009 20:27:08 -0700 (PDT)

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=Y/6sQZ+kuCBgLC1FpCgHuX8Lt2MfxSBoM4xwM00ieHw=;

b=FusrvR+Di4dQ7lh927s3RNPkuJLHQ/xxnSpQnp1q4Gs3plHBhOM72yHtwPlmZTCfYk
pC3rP245xy+f8T4a5fBx4mTshJzCHUVUVwZVbw4GEshnj4T/yAI4Zb/IK5iLRanGcoDL
1QChMWiG8Wk+WNEOhcgfELrSH8xkeO05iECIA=

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=JHrkh+ws/7dMDCCAzhGTTriNntF0FsC2ZjSWRQW7W8aI9pn/09kl4fN8p8h4Gr+wrO

DrNitkf1meJS1HkCFkwvAwLopsLHWcvT4EqBPCaqZ0ppKLF1EqhjQbs9godorqHYE1Ya
uku0hq9laEExKsYlXgmawae2fOtkSz6XCC0yM=

Received: by 10.114.88.1 with SMTP id I1mr743874wab.97.1243999628264;

Tue, 02 Jun 2009 20:27:08 -0700 (PDT)

Return-Path: <davidcoryfrankel@gmail.com>

Received: from ?192.168.1.2? (128.sub-75-208-248.myvzw.com [75.208.248.128])

by mx.google.com with ESMTPS id j31sm368398waf.33.2009.06.02.20.26.47

(version=TLSv1/SSLv3 cipher=RC4-MD5); Tue, 02 Jun 2009 20:27:04

-0700 (PDT)

User-Agent: Microsoft-Entourage/11.4.0.080122

Date: Tue, 2 Jun 2009 20:26:42 -0700

Subject: Transmitting Document in Docket No. 040-08502 - ASLBP No.

09-887-01-MLR-BD01

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

To: <Hearing.Docket@nrc.gov>, OCAAMAIL Resource <OCAAMAIL.Resource@nrc.gov>,

Catherine Marco <Catherine.Marco@nrc.gov>, Brett Klukan

<Brett.Klukan@nrc.gov>, Ron Linton <Ron.Linton@nrc.gov>, Shannon Anderson

<sanderson@powderriverbasin.org>, Tom Ballanco

<harmonicengineering1@mac.com>, <communication@areva.com>, Deb White Plume

<lakota1@gwtc.net>, Elizabeth Lorina <elorina@gnzlawfirm.com>, Bruce Ellison

<belli4law@aol.com>, Shane Robinson <shanecrobinson@gmail.com>,

<ajb5@nrc.gov>, <anthony.eitreim@nrc.gov>, "rll@nrc.gov" <rll@nrc.gov>,

"nancy.greathead@nrc.gov" <nancy.greathead@nrc.gov>, "nsg@nrc.gov"

<nsg@nrc.gov>, <erh@nrc.gov>, "elj@nrc.gov" <elj@nrc.gov>, "bmk1@nrc.gov"

<bmk1@nrc.gov>, Linda Lewis <Linda.lewis@nrc.gov>, Catherine Marco

<clm@nrc.gov>, "esn@nrc.gov" <esn@nrc.gov>, <mshd.resource@nrc.gov>,

"ogcmailcenter@nrc.gov" <ogcmailcenter@nrc.gov>, "cmp@nrc.gov" <cmp@nrc.gov>, "tom.ryan@nrc.gov" <tom.ryan@nrc.gov>, "gmaragani@morganlewis.com" <gmaragani@morganlewis.com>, "rkuyler@morganlewis.com" <rkuyler@morganlewis.com>, "caj3@nrc.gov" <caj3@nrc.gov>, "agutterman@morganlewis.com" <agutterman@morganlewis.com>, "jglasgow@morganlewis.com" <jglasgow@morganlewis.com>, "sburdick@morganlewis.com" <sburdick@morganlewis.com>, <ask2@nrc.gov>, <William.murphy@nrc.gov>, <ace1@nrc.gov>, <pba@nrc.gov>, Christine Jochim Boote <Christine.JochimBoote@nrc.gov>, <emile.julian@nrc.gov>, <alex.karlin@nrc.gov>, <evangeline.ngbea@nrc.gov>, Megan Wright <Megan.Wright@nrc.gov>

Message-ID: <C64B3B82.2C63E% davidcoryfrankel@gmail.com>

Thread-Topic: Transmitting Document in Docket No. 040-08502 - ASLBP No. 09-887-01-MLR-BD01

Thread-Index: Acnj+x0GW3+56E/uEd6p/gAbYzBOIA==

MIME-Version: 1.0

Content-Type: multipart/mixed; boundary="B_3326819211_22205"