

Official Transcript of Proceedings

NUCLEAR REGULATORY COMMISSION

Title: Crow Butte Resources, Inc.
Pre-hearing Conference

Docket Number: 40-8943; ASLBP No.: 07-859-03-MLA-BD01

Location: (telephone conference)

Date: Tuesday, July 7, 2009

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3 NUCLEAR REGULATORY COMMISSION

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5 ATOMIC SAFETY AND LICENSING BOARD PANEL

6 + + + + +

7 PRE-HEARING CONFERENCE

8
9 In the Matter of: ||

10 CROW BUTTE RESOURCES INC. || Docket No. 40-8943-MLA

11 (In-situ Leach Uranium || ASLBP No.

12 Recovery Facility, || 07-859-03-MLA-BD01

13 Crawford, Nebraska) ||

14

15
16 Tuesday, July 7, 2009

17
18 The above-entitled conference convened
19 telephonically, pursuant to notice, at 2:00 p.m.
20 Eastern Daylight Time.

21 BEFORE:

22 THE HONORABLE ANNE YOUNG, Administrative Judge

23 (Chair)

24 THE HONORABLE FRED OLIVER, Administrative Judge

25 THE HONORABLE RICHARD COLE, Administrative Judge

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1 APPEARANCES:

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3 Resources Council:

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14 On Behalf of the Nuclear Regulatory Commission:

15 BRETT KLUKAN, Esquire;

16 CATHERINE MARCO, Esquire; and

17 CHRISTINE JOACHIM BOOTE, Esquire

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24 ALSO PRESENT:

25 JOHANNA THIBAUT, ASLBP Law Clerk

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P-R-O-C-E-E-D-I-N-G-S

(3:05 p.m.)

1
2
3 CHAIRPERSON YOUNG: This is Anne Marshall
4 Young, Chair of the Licensing Board. I have with me
5 Judge Richard Cole and Judge Brett Oliver and a law
6 clerk, Johanna Thibault.

7 Did we just get someone new? Did someone
8 join us? Are people still with us?

9 MR. FRANKEL: David Frankel here, Your
10 Honor.

11 CHAIRPERSON YOUNG: Okay. There was a
12 mysterious beep. Let's just start with the NRC and
13 then the petitioners and then the applicant and have
14 everyone who is present identify yourselves.

15 MR. KLUKAN: Your Honor, this is Brett
16 Klukan for the NRC staff -- I am listening on a
17 different line -- and Catherine Marco and Christine
18 Jochim Boote.

19 CHAIRPERSON YOUNG: And for the
20 petitioners?

21 MR. FRANKEL: David Frankel here, Your
22 Honor, for Western Nebraska Resources Council. And
23 also I have with me Shane Robinson on the phone. And
24 we'll also cover for Mr. Ellison concerning Owe Aku
25 and Debra White Plume.

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1 CHAIRPERSON YOUNG: Thank you.

2 MS. LORINA: Elizabeth Lorina, the Oglala
3 Tribe.

4 MR. BALLANCO: Tom Ballanco for the Oglala
5 Delegation of the Black Hills-Sioux Treaty Council.

6 MR. SMITH: For then for Crow Butte
7 Resources, we have Tyson Smith. And also on the line
8 is Mark McGuire and Emily Duncan.

9 CHAIRPERSON YOUNG: Okay. Anyone else?

10 (No response.)

11 CHAIRPERSON YOUNG: Thank you for all
12 being available today. Really, what we would like to
13 do today is address a schedule for the proceeding and
14 to get input from all of the parties on that. We
15 would also like to just touch on the nature of the
16 participation and interaction between the various
17 petitioners on the remaining contentions in this case.

18 We would like to hear from you all as to
19 whether any of you see any interaction between this
20 case and the case involving the Crow Butte license
21 renewal application.

22 As far as the schedule goes, our general
23 tendency is to for the schedule that may not have
24 specific dates other than those which we know. And
25 our approach is based on the fact that sometimes

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1 triggering dates can change. And so our approach
2 would be to approach it in somewhat the same way that
3 the model milestones do; in other words, using the
4 staff issuance of the SER and the NEPA documents as
5 triggering further time lines after that.

6 One way in which we might adapt a little
7 bit would be to set any deadlines for motions for
8 summary disposition a bit earlier so that there will
9 be adequate time between those getting to them and
10 rulings on them and hearings that might still be held
11 after rulings on any motions for summary disposition.

12 I guess the first thing would be to ask
13 the staff, what is your current expectation as to the
14 issuance date for your documents?

15 MR. KLUKAN: Your Honor, this is Brett
16 Klukan. The environmental review documents, we still
17 predict finishing that around December of 2009.

18 The SER, as I think in our last update we
19 indicated that date twisted a little. So it's now mid
20 Fall 2009, so around possibly October or November time
21 frame.

22 CHAIRPERSON YOUNG: All right. The next
23 thing I would be interested in hearing is whether any
24 of the parties see any other issues than those we have
25 listed that it would be appropriate to address today.

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1 MR. FRANKEL: David Frankel, Your Honor.
2 I remind the Board -- and I had a brief conversation
3 with Tyson about this in Denver last week. We are
4 going to appeal this. The decision was arbitrary and
5 capricious. So we expect to prevail on the field. We
6 would ask you to consider that.

7 And I apologize for a premature motion to
8 stay. I thought that the earlier ruling had some
9 persuasiveness possibly. And so I didn't mean to
10 frustrate any of the parties' time or resources, but
11 I would ask either whether the Board would be open to
12 a motion to reconsider or a motion to stay now that
13 this Commission decision has come down or, in the
14 alternative, clarify whether the Board is making a
15 final ruling on that issue so that we would be free,
16 then, to take it up at the Eighth Circuit with a
17 motion to stay.

18 CHAIRPERSON YOUNG: Well, I think that you
19 are asking us to give you a sort of an anticipatory
20 ruling on a motion that is not really before us. If
21 you want to renew your motion or to file a new motion,
22 I think the thing to do would be to go ahead and file
23 that at this point and make it specific to the current
24 circumstances.

25 MR. FRANKEL: Thank you, Your Honor.

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1 David Frankel here. I will comply with the rule 323
2 and contact counsels and file a new motion. Thank
3 you.

4 CHAIRPERSON YOUNG: Now, I think we would
5 like to -- well, let me back up. Are there any other
6 issues besides those and the ones that Mr. Frankel
7 just raised?

8 MR. SMITH: Your Honor, this is Tyson
9 Smith for Crow Butte Resources. As you know, the
10 Commission's decision triggered one of the events in
11 an earlier stay motion you had issued regarding
12 mandatory disclosures. So we will be in the process
13 of preparing those.

14 I have communicated with some of the
15 parties. And I am hopeful that we will be able to
16 agree on some mandatory disclosure protocols that
17 govern our disclosures and may impact the timing by a
18 week or so.

19 And hopefully this is something we can all
20 agree on. I volunteer to take the lead on that. And
21 we'll be sending that via letter to you all once I
22 have had a chance to speak with all the parties.

23 So I don't think there is anything you
24 need to do now, but I just wanted to let you know that
25 that was out there.

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1 CHAIRPERSON YOUNG: Very good. Actually,
2 that is one of the things that we would have addressed
3 on the schedule. And, to whatever degree, all the
4 parties can get together and, in effect, suggest a
5 proposed schedule among all of you with the
6 understanding that obviously this motion per se may be
7 coming in.

8 But assuming that, arguendo, that were not
9 to be granted, if all the parties wanted to get
10 together and come up with a joint proposed schedule,
11 you would be free to do that. And that would be we
12 would appreciate that.

13 The mandatory disclosures are now in
14 effect. And so what you are proposing, Mr. Smith,
15 unless anyone else objects I think would be a good
16 course to get us started on those.

17 We have all heard what the staff just
18 said, namely late October or November for the SER and
19 December for the environmental review document. Under
20 the model milestones, 30 days after issuance of each
21 of those, we see the deadline for any new contentions
22 based on either or both of those. So I just want to
23 advise all parties of that at this point.

24 Are there any other particular
25 considerations that any party thinks should be taken

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1 into account in drawing up this schedule?

2 (No response.)

3 CHAIRPERSON YOUNG: Hearing none, I am
4 going to assume the answer is no. Have the parties
5 talked at all about a proposed schedule? Have you
6 talked together about this at all?

7 MR. SMITH: This is Tyson Smith for Crow
8 Butte Resources. I don't believe that we have
9 specifically discussed the schedule for the balance of
10 the hearing. You know, I don't think we have
11 discussed any of the events that would take place
12 after the issuance of the SER and EIS.

13 CHAIRPERSON YOUNG: Does anybody have
14 anything that you would like to bring out at this
15 point about the schedule? We have indicated that we
16 would generally follow these model milestones except
17 that we would want to set a deadline for summary
18 disposition motions earlier so that those could
19 receive adequate attention by the parties and by the
20 Board.

21 Any other particular aspects of the
22 schedule that might vary from the model milestones
23 that any party would like to propose or raise in any
24 way?

25 MR. FRANKEL: Judge, David Frankel with a

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1 quick question. It seems like a large portion of the
2 30 days from the issuance is going to fall in the
3 middle of the holiday season. And I wonder if we
4 might be allowed a blackout period, say, from maybe
5 the 18th of December to January 4th or something like
6 that just so that no parties have to work through
7 religious observance times or holiday times.

8 CHAIRPERSON YOUNG: Is there any objection
9 to that?

10 (No response.)

11 CHAIRPERSON YOUNG: Can we assume by
12 silence that there is no objection to that approach?

13 MR. SMITH: This is the applicant. We
14 have no objection to that approach.

15 MR. KLUKAN: This is Brett Klukan, Your
16 Honor, for the staff. We have no objection.

17 MS. LORINA: Elizabeth Lorina for Oglala
18 Sioux Tribe. I have no objections.

19 CHAIRPERSON YOUNG: All right. And,
20 again, obviously we don't know what the ultimate
21 issuance dates are. The staff has given us their best
22 estimate, but those might move on into the future.

23 But hearing no objection to that approach,
24 I think that that makes sense. And we can basically
25 toll the time during that time period if the final

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1 date would have any impact on it.

2 Let's see. Anything else on the schedule
3 that the parties would like to share with us at this
4 point?

5 (No response.)

6 CHAIRPERSON YOUNG: Okay. Next question.
7 With regard to the actual handling or presentation of
8 evidence, both through the written testimony, prefiled
9 testimony and any oral presentations, have the various
10 petitioners gotten together and worked out how you
11 want to handle this?

12 MR. FRANKEL: David Frankel. Your Honor,
13 could we step back for just a quick second to the
14 prior question about any other issues? There was one
15 outstanding issue that I never heard back from Owe
16 Aku, Debra White Plume, or Bruce Ellison on after
17 sending messages to them. And it has to do with
18 obtaining the affidavit of David House.

19 Apparently they were in touch with him by
20 phone and fax, but I didn't see anything get filed.
21 And I have left it to them to file that. I handled
22 the Dr. Anders' one. It doesn't appear that anything
23 was filed.

24 CHAIRPERSON YOUNG: I think you are
25 talking about the renewal proceeding on that, right?

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1 MR. FRANKEL: Oh, I am. I'm sorry, Your
2 Honor. I apologize for my confusion.

3 CHAIRPERSON YOUNG: That is okay. We are
4 going to get to the interaction between the two in a
5 minute. For now, just on the issue of the parties and
6 your interaction with each other on presentation of
7 testimony and other evidence, have you consulted with
8 each other? And do you have a proposed approach that
9 you want to take?

10 MR. FRANKEL: Your Honor, David Frankel.
11 We have not consulted specifically, but we have always
12 found cooperation with each other. We have not
13 prepared anything specifically.

14 CHAIRPERSON YOUNG: It might be a good
15 idea, and it's sort of easier to think about the idea
16 of presentation of evidence being handled by the
17 attorney for one party or having the attorney for one
18 party take the lead counsel role.

19 In a subpart L proceeding, you don't
20 really -- the situation is a little bit different
21 since most of the evidence needs to be presented in
22 writing.

23 But to the extent that we can avoid
24 duplication and you can work together to try to
25 consolidate your presentation of evidence, I think

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1 that would probably be helpful to everyone concerned
2 and make the proceeding go forward more efficiently.

3 So I guess we would ask you, see if you
4 can come up with a proposed plan on how you will do
5 that or maybe it would just resolve itself by your
6 indicating to us that you have agreed to make that
7 effort.

8 I guess from a practical standpoint, the
9 question would be, are we going to be receiving one
10 joint set of submissions, written testimony
11 submissions, from all the petitioners together or do
12 any of the petitioners wish to make separate written
13 submissions?

14 MR. FRANKEL: David Frankel, Your Honor.
15 First of all, on behalf of the petitioners I represent
16 -- and I believe the counsels for the others can chime
17 in -- we will certainly work together to avoid
18 duplication, number one.

19 Number two, I think we can consult with
20 each other and get back to the Board and the parties
21 with a suggested lead counsel after we have had a
22 chance to talk amongst ourselves and assess our
23 resources in that regard.

24 CHAIRPERSON YOUNG: All right. Can you
25 anticipate how soon you might be able to advise us on

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1 that?

2 MR. FRANKEL: How about no later than July
3 25th unless you need it earlier? I could commit to an
4 earlier date if you'd like.

5 CHAIRPERSON YOUNG: No. July 25th is
6 fine. Anything else on that issue of the parties and
7 their interaction?

8 (No response.)

9 CHAIRPERSON YOUNG: The next issue, then,
10 would be the interaction between, if any, the two
11 proceedings. And given that they do involve different
12 actual physical locations, there would not necessarily
13 be any interaction. But I guess we wanted to flush
14 out whether any of the parties thought that there
15 might be some interaction between the proceedings.

16 MR. SMITH: This is Tyson Smith for the
17 applicant. I don't believe we think that there is
18 much interaction between these two proceedings. The
19 North Trend issues relate to the area at the North
20 Trend site; whereas, the license renewal issues relate
21 to the area of the license renewal site.

22 I mean, obviously there's maybe some
23 overlap in terms of background information, but the
24 specific technical issues will be site and
25 location-specific. So we don't believe that there is

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1 much -- we may be able to reuse some material, but I
2 don't think there's much overlap in the actual
3 proceeding.

4 CHAIRPERSON YOUNG: Anyone disagree with
5 that

6 MR. FRANKEL: David Frankel, Your Honor.
7 I think it depends on how the appeal ends up. If the
8 government's motion to dismiss on appeal in the
9 renewal succeeds, then I think what Mr. Smith said is
10 pretty close to how I would see it.

11 However, if the Eighth Circuit denies that
12 motion and our appeal goes forward, then I think, you
13 know, the issues we raise in the appeal bring in a
14 host of issues not contemplated by Mr. Smith's
15 response.

16 CHAIRPERSON YOUNG: Well, obviously keep
17 us informed if anything happens. Whatever happens,
18 keep us informed.

19 MR. FRANKEL: All right. Yes, ma'am.
20 David Frankel. Just one more point. Just so that
21 this Board knows the -- we are filing our final papers
22 in that July 20th or so. And so I would think well
23 before any of the SER or the environmental report is
24 issued, well before that, everyone will know probably
25 where we stand with the Eighth Circuit.

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1 CHAIRPERSON YOUNG: Okay. Would July 25th
2 give the parties enough time? Since Mr. Frankel
3 suggested that for advising us on where the
4 petitioners are on their interaction, would all of the
5 parties see July 25th as a reasonable day for a
6 deadline for --

7 MS. MARCO: This is Ms. Marco. For the
8 staff, we would need a bit more time than that.

9 CHAIRPERSON YOUNG: Well, I hadn't
10 actually finished saying what it was a deadline for,
11 but --

12 MS. MARCO: I hit my speakerphone. So
13 that may be a problem.

14 CHAIRPERSON YOUNG: Okay. What I was
15 going to say is for all the parties to get together
16 and see whether you can submit a joint proposed
17 schedule to the Board, if that is what you wanted more
18 time for, just how much time would the staff need?

19 MS. MARCO: That is correct. I'm sorry
20 about that, Your Honor.

21 CHAIRPERSON YOUNG: That is all right.
22 How much time do you think you would need? And who
23 was that just speaking?

24 MS. MARCO: This is Catherine Marco.

25 CHAIRPERSON YOUNG: Okay.

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1 MS. MARCO: We're all in different
2 locations.

3 CHAIRPERSON YOUNG: Right. July 25th is
4 a Saturday anyway. What would the staff propose is a
5 good date for that? Hello? Is the staff still with
6 us?

7 MS. MARCO: Yes. We are still.

8 MR. FRANKEL: David Frankel back on the
9 call.

10 CHAIRPERSON YOUNG: I just asked what date
11 would be a good date for the parties, good deadline
12 for the parties, to submit a joint proposed schedule
13 or to the extent that you cannot agree to your
14 separate proposals as to a schedule for the
15 proceeding.

16 I would like to give you a full
17 opportunity to provide us with your points of view on
18 this. And we are waiting to hear back from the staff,
19 who had indicated that July 25th would not provide
20 enough time for that if I understood that correctly.

21 MS. MARCO: That is right. I believe
22 probably mid August. I don't see -- based on when our
23 documents would be available anyway, I think that
24 would be a fair time.

25 CHAIRPERSON YOUNG: Okay. Anyone disagree

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1 with that? Does anybody want to share your two cents
2 on it?

3 (No response.)

4 CHAIRPERSON YOUNG: So let's see. Mid
5 August. We could say August 14th or 17th. Any
6 preference?

7 (No response.)

8 CHAIRPERSON YOUNG: Let's say August 14th.
9 I may actually be unavailable during some of that
10 time. So if you wanted a later date than that, you
11 can have that. Otherwise if August 14th works for
12 everybody, we'll leave it at that.

13 Do any of the parties have any other
14 issues that you would like to address today?

15 (No response.)

16 CHAIRPERSON YOUNG: Mr. Frankel, when can
17 we expect to receive your motion? There may --

18 MR. FRANKEL: How about --

19 CHAIRPERSON YOUNG: There may be a
20 deadline set in the -- I think it was -- when was --

21 MR. FRANKEL: How about by next -- well,
22 I'm sure there was a deadline. Well, no. I don't
23 know that there is, but I could get it in by next
24 week.

25 CHAIRPERSON YOUNG: Your deadline would be

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1 past if we counted the ten days from the June 25th
2 issuance of CLI 09-12. I suggest you go ahead and
3 file it as soon as possible. And then we'll just get
4 responses unless --

5 MR. FRANKEL: Your Honor, David Frankel
6 speaking. How about I'll get it in by the end of this
7 week?

8 CHAIRPERSON YOUNG: Which would be July
9 10th.

10 MR. FRANKEL: Tenth or if any party wants
11 it in earlier, I appreciate the accommodation and I
12 can get it in within two days if any party wants. It
13 would be substantially similar to what I previously
14 filed.

15 CHAIRPERSON YOUNG: Any of the other
16 parties -- what do the staff and the applicant have to
17 say on that?

18 MR. SMITH: This is Tyson Smith for the
19 applicants. I think that's fine. We'll respond to
20 the motion whenever it comes in.

21 MR. KLUKAN: This is Brett Klukan for the
22 staff. I concur with the applicant, Your Honor.

23 CHAIRPERSON YOUNG: All right. So we'll
24 leave that July 10th. Obviously we should probably
25 say that that should not be construed as in any way

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1 stating any viewpoint on any arguments that any of the
2 parties might make.

3 MR. FRANKEL: And could you repeat that
4 date? It kind of clicked out on me for a second, Your
5 Honor. David Frankel speaking.

6 CHAIRPERSON YOUNG: You had asked for July
7 10th. So we'll just say July 10th. And what I had
8 said after that was that it would not be appropriate
9 for us by agreeing to that date and setting that
10 deadline for that to be construed as in some way
11 stating any viewpoint or opinion on any arguments that
12 any party might make as to the timeliness of it.

13 MR. FRANKEL: David Frankel, Your Honor.
14 Thank you. I understand.

15 CHAIRPERSON YOUNG: All right. Anything
16 else?

17 (No response.)

18 CHAIRPERSON YOUNG: I don't think we have
19 anything else. We appreciate your availability today
20 again. And we look forward to hearing from you.
21 Three dates that I have down would be July 10th, July
22 25th for the advice on interaction of the petitioners,
23 and then August 14th for a possible joint proposed
24 schedule or separate proposed schedules. If there's
25 nothing further, then that would -- did someone just

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1 join us?

2 (No response.)

3 CHAIRPERSON YOUNG: If there's nothing
4 further, then that would conclude this conference.

5 (Whereupon, the foregoing matter was
6 concluded at 3:32 p.m.)

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CERTIFICATE

This is to certify that the attached proceedings
before the United States Nuclear Regulatory Commission
in the matter of: Crow Butte Resources, Inc.


Name of Proceeding: Pre-Hearing Conference

Docket Number: 40-8943

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

Location: (teleconference)

were held as herein appears, and that this is the
original transcript thereof for the file of the United
States Nuclear Regulatory Commission taken by me and,
thereafter reduced to typewriting by me or under the
direction of the court reporting company, and that the
transcript is a true and accurate record of the
foregoing proceedings.


John Mongoven
Official Reporter
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