

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

September 9, 2009

ORDER
(Denying Motion to Strike)

Before this Board is a Motion to Strike filed by Crow Butte Resources, Inc.¹ (Crow Butte) in response to a Supplemental Standing Affidavit (Affidavit) filed by Owe Aku,² an intervenor in this case. Crow Butte argues that, because Owe Aku's Affidavit was filed on July 17, 2009, nearly a month after the Board's deadline for said filing, the Affidavit should be excluded and Owe Aku's participation in this proceeding should be terminated.³ We deny Crow Butte's Motion to Strike, accept the Affidavit as filed, and permit Owe Aku to continue to participate as a party in this proceeding.

I. Background

On May 18, 2009, the Commission issued CLI-09-09 addressing appeals filed in response to this Board's rulings in LBP-08-24 and LBP-08-27. One of the issues raised on appeal was whether this Board was correct in finding that Owe Aku and the Western Nebraska

¹ Crow Butte Resources' Motion to Strike Supplemental Standing Declaration of Owe Aku (July 27, 2009) (Motion to Strike).

² Affidavit of David Alan House in Support of Owe Aku (July 17, 2009).

³ Motion to Strike at 1.

Resource Council (WNRC) had successfully established organizational standing.⁴ Crow Butte and the Staff argued that this Board erred in granting standing to Owe Aku and WNRC because our finding was based on affidavits, submitted by these two organizations in a related proceeding, that Intervenors “incorporated by reference” in their pleadings filed in this proceeding.⁵ The Commission held, inter alia, that “[a]ffidavits authorizing organizational representation must be filed with specific reference to the proceeding in which standing is sought.”⁶ Accordingly, the Commission remanded this issue to the Board so that we “may give these organizations the opportunity to cure the defects in their affidavits.”⁷

On May 27, 2009, the Board issued an Order that, inter alia, required Owe Aku and WNRC to submit affidavits specific to this proceeding that establish their authority to represent their members in this proceeding.⁸ The Board required the affidavits to be filed on June 22, 2009.⁹ On June 17, 2009, WNRC filed its supplemental affidavit.¹⁰ Owe Aku filed its Affidavit on July 17, 2009,¹¹ nearly one month after the Board’s deadline.

II. Discussion

While the Board agrees with Crow Butte that Owe Aku’s Affidavit was untimely, we do not agree that the Affidavit should be excluded or that Owe Aku should be dismissed as a party to this proceeding. Crow Butte has not alleged that it is prejudiced by Owe Aku’s untimely filing; though the Affidavit was filed late, it did not contain any surprising or unexpected information that places Crow Butte at an unfair disadvantage. We certainly are not prepared to take such

⁴ Crow Butte Res., Inc. (License Renewal for In Situ Leach Facility, Crawford, Nebraska), CLI-09-09, 69 NRC __, __ (slip op. at 5) (May 18, 2009).

⁵ Id. at 11-12.

⁶ Id. at 14.

⁷ Id. at 15.

⁸ Licensing Board Order (Canceling Oral Argument, Ruling on Summary Disposition of Consolidated Petitioners’ Miscellaneous Contention G, Requiring Filing Affidavits) (May 27, 2009) at 3 (unpublished).

⁹ Id.

¹⁰ Intervenors’ Submission of Anders Affidavit (June 17, 2009).

¹¹ Affidavit of David Alan House in Support of Owe Aku (July 17, 2009).

an extreme measure as excluding the Affidavit from consideration, which would necessarily prohibit Owe Aku from participating as a party in this proceeding. At the same time, untimely filings are a serious transgression, and we want to make clear that we expect all parties to respect this Board's deadlines. If future filings from any party, but especially from Owe Aku, are not timely, this Board will not hesitate to sanction parties for flaunting this Board's deadlines, including terminating a party's participation in this proceeding.¹²

It is so ORDERED.

FOR THE ATOMIC SAFETY
AND LICENSING BOARD¹³

/RA/

Michael Gibson, Chairman
ADMINISTRATIVE JUDGE

Rockville, Maryland
September 9, 2009

¹² See Entergy Nuclear Operations, Inc. (Indian Point Nuclear Generating, Units 2 and 3), CLI-08-29, 68 NRC __, __ (slip op. at 3-4) (Dec. 9, 2008) (dismissing a party due to its continued disregard for Board instructions).

¹³ Copies of this memorandum and order were sent this date by the agency's E-Filing system to the counsel/representatives for (1) applicant Crow Butte Resources, Inc.; 2) Consolidated Intervenors; 3) NRC Staff; 4) Oglala Delegation of the Great Sioux Nation Treaty Council; and 5) Oglala Sioux Tribe.

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 (DENYING MOTION TO STRIKE) have been served upon the following persons by Electronic Information Exchange.

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

Dated at Rockville, Maryland
this 9th day of September 2009