

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

Before Administrative Judges:

Michael M. Gibson, Chairman
Dr. Richard F. Cole
Dr. 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

March 29, 2011

MEMORANDUM

(Requesting Report from the NRC Staff)

This proceeding concerns the application of Crow Butte Resources, Inc. (Crow Butte) to renew its existing Source Materials License No. SUA-1534, which authorizes it to operate its in-situ leach (ISL) uranium mine facility in Crawford, Nebraska.¹ In an order issued on November 21, 2008, we determined that Consolidated Petitioners² and the Oglala Sioux Tribe (the Tribe) had standing, and together had submitted nine admissible contentions challenging the application.³ Accordingly, we granted their hearing request. We admitted a tenth contention in

¹ See 73 Fed. Reg. 30,426, 30,426 (May 27, 2008); Request for License Renewal of Source Materials License SUA-1534 – Crow Butte Resources, Inc. (Letter from Stephen P. Collings, President, Crow Butte Resources, Inc., to Charles L. Miller, Director, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, RE: Request for License Renewal Docket No. 40-8943, License No. SUA-1534) (Nov. 27, 2007) (ADAMS Accession No. ML073470645) [hereinafter LRA].

² The admitted Consolidated Petitioners consist of Beatrice Long Visitor Holy Dance, Debra White Plume, Thomas Kanatakeniate Cook, Loretta Afraid of Bear Cook, Afraid of Bear/Cook Tiwahe, Joe American Horse, Sr., American Horse Tiospaye, Owe Aku/Bring Back the Way, and the Western Nebraska Resources Council (WNRC).

³ LBP-08-24, 68 NRC 691, 760-61 (2008).

a later order.⁴ In CLI-09-9, the Commission reversed our ruling on six of those contentions, leaving four contentions that are now still pending evidentiary hearing.⁵

Commencement of an evidentiary hearing on the admitted contentions is contingent upon the NRC Staff's issuance of its environmental and safety review documents.⁶ In light of the significance of these documents in setting the schedule for evidentiary hearing, we asked the NRC Staff in our January 8, 2009 Initial Scheduling Order to submit to the Board monthly reports advising as to the estimated dates for issuance of the final safety evaluation report (SER) and the final environmental document (environmental assessment [EA] or environmental impact statement [EIS]).⁷ As of that date, the NRC Staff expected to issue these documents in summer/fall of 2009 and December of 2009, respectively.

By letter dated March 16, 2011, NRC Staff provided the latest of twenty-six monthly status reports⁸ regarding the schedule for the preparation and issuance of its technical review documents associated with Crow Butte's license renewal application. In this status report, NRC Staff advises that it is extending yet again the estimated issuance dates for the technical review documents of Crow Butte's renewal application. The Staff now estimates that it will issue these documents in June and August of 2011 – almost two years beyond their originally-predicted issuance dates of summer/fall 2009 and December 2009.⁹

⁴ LBP-08-27, 68 NRC 951, 957 (2008).

⁵ CLI-09-9, 69 NRC 331, 366 (2009).

⁶ See 10 C.F.R. Part 2, app. B (Model Milestones to Be Used by a Presiding Officer as a Guideline in Developing a Hearing Schedule for the Conduct of an Adjudicatory Proceeding in Accordance with 10 C.F.R. § 2.332).

⁷ Initial Scheduling Order (Jan. 8, 2009) at 4-5 (unpublished) [hereinafter Scheduling Order].

⁸ See Letter from Brett Michael Patrick Klukan, Counsel for the NRC Staff, to the Licensing Board (Mar. 16, 2011).

⁹ See Scheduling Order at 4-5.

The chronology of the NRC Staff's issuance date estimates, as indicated in its monthly status reports, is summarized as follows:

Changes to Estimated Dates for Issuance of Review Documents in the Crow Butte Resources, Inc. Proceeding¹⁰		
NRC Staff Status Report Date	Predicted Date of Issuance of the final SER	Predicted Date of Issuance of the final EA/EIS
Jan. 2009	Summer/Fall 2009	December 2009
Feb. 2009	-	-
Mar. 2009	-	-
Apr. 2009	-	-
June 2009	Dec. 2009	Feb. 2010
July 2009	-	-
Aug. 2009	-	-
Sept. 2009	Feb. 2010	-
Oct. 2009	-	May 2010
Nov. 2009	-	-
Dec. 2009	April 2010	-
Jan. 2010	-	-
Feb. 2010	May 2010	June 2010
Mar. 2010	Sept. 2010	-
Apr. 2010	-	-
May 2010	-	July 2010
June 2010	-	Nov. 2010
July 2010	-	-
Aug. 2010	Mar. 2011	-
Sept. 2010	-	-
Oct. 2010	-	-
Nov. 2010	-	Dec. 2010
Dec. 2010	-	Apr. 2011
Jan. 2011	-	June 2011
Feb. 2011	Apr. 2011	-
Mar. 2011	June 2011	Aug. 2011

Because the NRC Staff has yet to complete its technical review, the Intervenors have been, and continue to be, deprived of a timely hearing on their claims that the operation of the

¹⁰ Letters from Counsel for the NRC Staff to Licensing Board dated Jan. 15, 2009; Feb. 12, 2009; Mar. 16, 2009; Apr. 16, 2009; June 16, 2009; July 16, 2009; Aug. 14, 2009; Sept. 16, 2009; Oct. 16, 2009; Nov. 16, 2009; Dec. 16, 2009; Jan. 14, 2010; Feb. 16, 2010; Mar. 16, 2010; Apr. 16, 2010; May 13, 2010; June 16, 2010; July 16, 2010; Aug. 16, 2010; Sept. 16, 2010; Oct. 15, 2010; Nov. 15, 2010; Dec. 16, 2010; Jan. 13, 2011; Feb. 16, 2011; Mar. 16, 2011.

mine is causing them serious injury. For its part, the mine continues in operation irrespective of whether it is causing the harm alleged by the Intervenors.¹¹ This is certainly not what the Congress had in mind when it provided statutory hearing rights in the Atomic Energy Act,¹² nor does it induce public confidence in the fairness of our hearing process.

We are, of course, mindful of our lack of authority to superintend the conduct of Staff technical reviews. In our view, however, that consideration does not preclude the Board from bringing attention to what are entirely unexplained delays in carrying out the technical review in this proceeding, to the detriment of the reasonable expectations of the parties to it. Nor do we regard the Board to be barred from calling upon the Staff to provide an explanation of the reasons underlying the several extensions of the predicted completion dates of the technical review documents. Surely, the Intervenors are entitled to be told why it is that, well over two years after the grant of their hearing request, there still has been no evidentiary consideration of their claims that the mine operation is causing them serious injury.

Accordingly, for the benefit of the parties, the Board, and the public, we request that the NRC Staff submit a report to the Board, no later than April 18, 2011, providing an explanation of the significant and continuing delays in completing the technical review documents. That report shall describe in as much detail as practicable the NRC Staff's plans for completing the technical review for the Crow Butte license renewal application; outline the nature of any changes to the technical review schedule that might further extend the issuance date estimates

¹¹ Under 10 C.F.R. § 40.42(a), a source materials license “expires at the end of the day on the expiration date stated in the license unless the licensee has filed an application for renewal under § 40.43 not less than 30 days before the expiration date stated in the existing license.” 10 C.F.R. § 40.42(a) (emphasis added). Thus, in materials licensing matters, so long as a licensee files its renewal application 30 days in advance of the expiration date of its license, that licensee is entitled to continue activities under its license until its renewal application is acted upon, even though that may not take place for many years hence. Crow Butte submitted its application to renew its Source Materials License No. SUA-1534 in November of 2007. The expiration date of this license was February 28, 2008. See LRA at 1.

¹² See Atomic Energy Act of 1954, 42 U.S.C. § 2239(a)(1)(A) (2006).

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

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing MEMORANDUM (REQUESTING REPORT FROM THE NRC STAFF) have been served upon the following persons by Electronic Information Exchange.

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DOCKET NO. 40-8943-OLA
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[Original signed by Nancy Greathead]
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Dated at Rockville, Maryland
this 29th day of March 2011