

December 15, 2014

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)
) Docket No. 40-8943-MLA-2
CROW BUTTE RESOURCES, INC.)
) ASLBP No. 13-926-01-MLA-BD01
(Marsland Expansion Project))

NRC STAFF'S RESPONSE TO OGLALA SIOUX TRIBE'S MOTION FOR
EXTENSION OF TIME AND RESPONSE TO SHOW CAUSE ORDER

Pursuant to the Atomic Safety and Licensing Board's (Board's) December 5, 2014 Order,¹ the U.S. Nuclear Regulatory Commission (NRC) Staff (Staff) submits this response to the Oglala Sioux Tribe's (OST) time extension motion and response² to the Board's Show Cause Order.³ As explained more fully below, OST has not provided a satisfactory explanation for its failure to file its response or a timely motion for an extension of time, nor has OST demonstrated its continued interest in this proceeding. Accordingly, the Board should dismiss Contention 2 and terminate the proceeding for want of prosecution.

BACKGROUND

In May 2012, Crow Butte Resources, Inc. (CBR) submitted an application for a license amendment authorizing the Marsland Expansion Area (MEA) facility.⁴ In May 2013, the Board granted OST's hearing request regarding the MEA and admitted two contentions, one related to

¹ Order (Schedule for Responses to Oglala Sioux Tribe's Time Extension Motion and Response to Show Cause Order) (Dec. 5, 2014) (unpublished).

² Motion for Extension of Time to Respond to Show Cause Order, And, Response of the Oglala Sioux Tribe to Show Cause Order (Dec. 4, 2014) (OST Response or Response).

³ Memorandum and Order (Order to Show Cause) (Oct. 22, 2014) (Agencywide Documents Access and Management System (ADAMS) Accession No. ML14295A245) (Show Cause Order).

⁴ "License No. SUA-1534, Docket Number 40-8943, Marsland Expansion Area License Amendment Application" (May 16, 2012) (ADAMS Accession No. ML12160A512).

cultural resources (Contention 1) and the other related to hydrogeology (Contention 2).⁵ On October 22, 2014, the Board issued an order granting the Staff's motion for summary disposition of Contention 1.⁶ On the same day, the Board issued the Show Cause Order directing OST to show cause as to why this proceeding should not be terminated for want of prosecution.⁷ The Board cited several significant junctures in the proceeding where OST did not participate, including the appeal of the Board's decision granting the hearing request, the opportunity to file new or amended contentions on draft sections of the Staff's Environmental Assessment, and the Staff's motion for summary disposition of Contention 1.⁸ The Board also noted that OST had not made any filings in the proceeding in over a year.⁹ Therefore, the Board stated, "absent some response from OST . . . that demonstrates a continued interest in this cause, the Board will dismiss OST contention 2 and terminate this proceeding."¹⁰

On October 29, 2014, the Board issued a Memorandum notifying the parties that the Show Cause Order had been published in the *Federal Register* on October 28 and, therefore, the deadline for responding to it was November 28, 2014.¹¹ OST did not respond to the Show Cause Order by November 28, nor did it file a motion for extension of time to respond by that date. On December 2, the Board's law clerk e-mailed OST's counselors of record, Ms. Gillis and

⁵ *Crow Butte Resources, Inc.* (Marsland Expansion Area), LBP-13-6, 77 NRC 253, 304, 306 (2013).

⁶ Memorandum and Order (Ruling on Motion for Summary Disposition Regarding Oglala Sioux Tribe Contention 1) (ADAMS Accession No. ML14295A237) (Oct. 22, 2014).

⁷ Show Cause Order at 1.

⁸ *Id.* at 2-3. The Commission has also noted that OST not only failed to reply to Staff and CBR appeals, but did not participate fully in the contention admissibility phase of the proceeding. *Crow Butte Resources, Inc.* (Marsland Expansion Area), CLI-14-2, 79 NRC 11, 14 & n.10 (2014).

⁹ Show Cause Order at 3.

¹⁰ *Id.* at 4. The deadline for responding was 30 days from the date of publication of the Show Cause Order in the *Federal Register*. *Id.*

¹¹ Memorandum (Date for Responses to Order to Show Cause) (Oct. 29, 2014) (ADAMS Accession No. ML14302A292).

Mr. Reid, informing them that the Board would take action on the Show Cause Order unless OST responded by December 5 and explained why it was unable to comply with the deadline or timely seek an extension.¹² On December 4, 2014, Mr. Reid filed OST's motion and response.

DISCUSSION

I. OST has not shown good cause for its untimely motion and response.

The NRC rule governing extensions of time, 10 C.F.R. § 2.307(a), states that deadlines may be extended "for good cause."¹³ However, the Commission "disfavors motions for extension of time that are themselves filed out-of-time,"¹⁴ and late filings not preceded by timely motions for extension of time are accepted only in "unavoidable and extreme circumstances."¹⁵ An untimely motion for extension of time must explain both why the deadline could not be met, as well as why the motion itself could not have been timely filed.¹⁶

In its Response, OST has failed to show good cause for its inability to comply with the November 28 filing date or to timely seek an extension. OST's explanation for failing to file a timely response or motion to extend time is that Mr. Reid, who was appointed on October 27, was unaware of the Show Cause Order until he received the December 2 email from the Board's law clerk.¹⁷ This explanation is unsatisfactory for two reasons: first, OST received

¹² Email from Nicholas Sciretta to Cindy Gillis and Andrew Reid "Re: Crow Butte Marsland Show Cause Order" (Dec. 2, 2014). Counsel for CBR and the Staff were copied on the email.

¹³ Although good cause is not defined in § 2.307(a), the Commission has suggested that "certain extraordinary circumstances such as a weather event or health issues might meet the definition of good cause in § 2.307." Amendments to Adjudicatory Process Rules and Related Requirements, 77 Fed. Reg. 46,562, 46,571 (Aug. 3, 2012) (final rule).

¹⁴ *Tennessee Valley Authority* (Bellefonte Nuclear Plant, Units 1 and 2), CLI-10-26, 72 NRC 474, 477 (2010).

¹⁵ *Id.* at 476; *Southern Nuclear Operating Co.* (Vogtle Electric Generating Plant, Units 3 and 4), LBP-10-21, 72 NRC 616, 636-37 (2010) (citations omitted).

¹⁶ *Kansas Gas & Electric Co.* (Wolf Creek Generating Station, Unit 1), ALAB-424, 6 NRC 122, 125 (1977).

¹⁷ OST Response at 2.

legally sufficient notice of the Order, and second, Mr. Reid should have been able to locate the Order in time to either respond or file for an extension of time before the deadline.

The Show Cause Order was served on Ms. Gillis, OST's counsel of record,¹⁸ and also published in the *Federal Register*. Service to "the last known address provided to the Office of the Secretary for the proceeding's service list" and publication in the *Federal Register* provided the "requisite notice" of the Order and the Board's proposed dismissal of the proceeding.¹⁹ Because OST hired Mr. Reid at the eleventh hour, after the Show Cause Order was issued, OST cannot complain that he (and by implication, OST) did not receive notice of the Order. In NRC proceedings, intervenors are responsible for deciding whether to be represented by counsel and for taking the necessary steps to do so.²⁰ Thus, if an intervenor's counsel withdraws or has "not been active," the intervenor must take steps to ensure that it receives filings and Board issuances. OST's failure to do so, while asserting its counsel "had not been active . . . for over a year," defeats a claim of good cause for late filing.

Furthermore, Mr. Reid should have been able to discover the Show Cause Order before the response deadline, as demonstrated by the following chronology of events:

¹⁸ See Attachment 1. Ms. Gillis has not filed a notice of withdrawal in this proceeding, which is customary in NRC practice when a person is no longer acting in a representative capacity. *Private Fuel Storage* (Independent Spent Fuel Storage Installation), No. 72-22-ISFSI, 2001 WL 1246650 at *1 (ASLBP Oct. 11, 2001). Ms. Gillis is aware of this practice, having filed a notice of withdrawal in the *Dewey-Burdock* proceeding, where she was also representing OST. Notice of Withdrawal for Waonsilawin C. Gillis (May 29, 2014) (ADAMS Accession No. ML14153A429).

¹⁹ *Washington Public Power Supply System* (Nuclear Project No. 1), LBP-00-18, 52 NRC 9, 14 n.2 (2000) (WPPSS).

²⁰ *Cleveland Elec. Illuminating Co.* (Perry Nuclear Power Plant, Units 1 and 2), ALAB-802, 21 NRC 490, 498 (1985) (citation omitted). There is no right to counsel in NRC proceedings unless attendance is compelled. See 10 C.F.R. § 2.314(a) (parties may be represented by counsel or by themselves); Attorney General's Manual on the Administrative Procedure Act 61-62 (1947) (right to counsel in 5 U.S.C. § 555(b) does not apply in voluntary appearances before an agency).

- June 24, 2014 – As documented in Tribal Resolution 14-117, OST voted to approve Mr. Reid’s appointment as counsel in CBR proceedings.²¹
- October 22 – The Board issued the Show Cause Order and its decision granting summary disposition of Contention 1.
- October 22 – OST wrote to Mr. Reid appointing him to represent it in CBR proceedings.²²
- October 27 – Mr. Reid received the appointment from OST.²³
- October 28 – The Show Cause Order was published in the *Federal Register*.
- October 29 – The Board issued a Memorandum notifying parties that the Show Cause Order was published in the *Federal Register* and that the deadline for responses is November 28.
- October 29 – David Frankel, counsel for Consolidated Intervenors in the CBR License Renewal (LR) proceeding, sent an email to other counsel in that proceeding informing them that Mr. Reid had been retained by OST.²⁴
- November 12 – Mr. Reid entered his appearances in the CBR License Renewal (LR), North Trend (NT), and Marsland proceedings.²⁵
- November 14 – In the LR proceeding, counsel agreed after consultation to Mr. Reid’s filing of an unopposed motion for extension of time, until Jan. 5, 2015, for filing new or amended contentions.²⁶
- November 17 – Mr. Reid contacted Staff counsel asking if there was a docket or list of filings in all three CBR proceedings, preferably a web link, so he could be sure he was “pulling up all the filings in each Crow Butte matter.” In response, Staff counsel provided the link to the Electronic Hearing Docket (EHD) in ADAMS.²⁷
- November 28 – the deadline to respond to the Show Cause Order.

²¹ Attachment 2 at 3-4. Attachment 2 consists of an October 29 email from David Frankel to other counsel in CBR LR proceeding and an October 22 letter from OST to Mr. Reid that was attached to Mr. Frankel’s email. OST Tribal Resolution 14-117 is an attachment to the OST letter.

²² Attachment 2 at 2.

²³ OST Response at 2.

²⁴ Attachment 2 at 1.

²⁵ OST Response at 2.

²⁶ Attachment 3 at 1-3. Attachment 3 consists of emails from counsel in the LR proceeding responding to an email from Mr. Reid on November 14 regarding a motion for extension of time.

²⁷ Attachment 4.

The above chronology defeats a finding of good cause for several reasons. First, although appointed to represent OST on October 27, Mr. Reid did not file his notice of appearance until November 12. He has offered no explanation for this delay. Mr. Reid recently entered an appearance in the Indian Point license renewal proceeding and thus is familiar with the process.²⁸ Had he filed his appearance immediately in this proceeding, he might have been added to the EIE service list in time to receive the Board's October 29 Memorandum.

Second, Mr. Reid's need to attend to a November 26 deadline for new and amended contentions in the LR proceeding²⁹ was averted on November 14 when counsel in that proceeding agreed to support Mr. Reid's motion for extension of time. Thus, as of November 14, Mr. Reid knew he was likely to receive an extension,³⁰ giving him ample time to address other matters, such as learning of the Show Cause Order in this proceeding.

Third, Mr. Reid stated that he relied on advice from counsel representing *other intervenors* in *other proceedings* regarding matters requiring his immediate attention in *this* proceeding, where OST is the sole intervenor. But on November 17, 11 days before the filing deadline, Mr. Reid asked for and was provided the link to the EHD in ADAMS. That web link provided a simple, straightforward means for locating recent Board and Commission orders in this proceeding—an obvious starting point for an attorney attempting to identify actions requiring immediate attention.

Finally, Mr. Reid asserted that he was “faced with the impossible task” of reviewing “hundreds of filings and tens of thousands of pages of documents in 3 separate actions . . . in a

²⁸ Notice of Appearance for Andrew B. Reid (Feb. 7, 2014) (ADAMS Accession No. ML14038A423). Presumably, based on this appearance, Mr. Reid has a digital certificate for the EIE, and the only steps necessary to enter his appearance in *Marsland* were to request access and file a notice of appearance.

²⁹ OST Response at 2.

³⁰ Mr. Reid did not file his motion until November 21, and the Board granted it on November 24. *Crow Butte Resources, Inc.* (In Situ Leach Facility, Crawford, Nebraska), Memorandum and Order (Granting Extension of Time) at 1 (November 24, 2014) (ADAMS Accession No. ML14328A223).

matter of a few weeks.”³¹ But the time between Mr. Reid’s appointment and the Show Cause Order deadline was 32 days—nearly five weeks. An attorney need not wait until he files a notice of appearance to begin reviewing a case, and it was not necessary to review every filing in each proceeding to identify recent Board orders containing imminent deadlines. The Commission has rejected untimely motions for time extensions based on an attorney’s new arrival to a case, the time required to become familiar with the case file, and the need to attend to other legal matters at the same time.³² Furthermore, the situation here stands in sharp contrast with the situation in *Vogle*, where the licensing board found good cause for granting an extension motion filed out of time after the intervenor’s attorney withdrew unexpectedly, and without the intervenor’s prior knowledge, on the day a pleading was due.³³

In summary, OST had sufficient notice of the Show Cause Order, and the circumstances surrounding Mr. Reid’s failure to find the Show Cause Order were avoidable and far from extreme. Therefore, there is no basis for granting the untimely motion for extension of time.

II. OST has failed to show cause why the Board should not dismiss Contention 2 and terminate the proceeding.

Under 10 C.F.R. § 2.320, a Board may take any just action when a party fails to answer a pleading or comply with an order. Here, OST’s sustained failure to engage in this proceeding justifies dismissal of Contention 2 and termination of the proceeding, as prior Boards have done in similar situations.³⁴ It is well-settled that “[p]arties may not dart in and out of proceedings on their own terms and at their convenience and still expect to enjoy the benefits of full participation without the responsibilities.”³⁵ In this very case, the Commission explicitly warned OST that

³¹ OST Response at 2.

³² *Bellefonte*, CLI-10-26, 72 NRC at 476.

³³ *Vogle*, LBP-10-21, 72 NRC at 638.

³⁴ See, e.g., *WPPSS*, LBP-00-18, 52 NRC at 13 (citing cases).

³⁵ *Consumer Powers Co.* (Midland Plant, Units 1 and 2), ALAB-691, 16 NRC 897, 907 (1982) (dismissing an appeal for failure to participate in the proceeding); see also *Policy on Conduct of*

“failure to pursue a contention in the future could result in . . . dismissal of the contention.”³⁶

Because OST’s response to the Show Cause Order lacks any new information or compelling reasons demonstrating its continued interest, OST has not shown why dismissal is unwarranted.

OST invokes issues associated with retaining counsel, but OST has no right to counsel in licensing proceedings.³⁷ And OST’s assertion that its counsel “had not been active . . . for over a year,” combined with its failure to appoint someone else as a representative—even a non-attorney—only shows that the Tribe has *not* maintained a continued interest in this proceeding. In *Vogtle*, the Board noted that the immediate appearance of another representative after the sudden, unexpected withdrawal of an intervenor’s attorney indicated the intervenor’s desire to remain active in the proceeding.³⁸ In contrast, OST’s only effort to demonstrate its interest in this proceeding comes when its remaining contention is on the brink of dismissal. OST voted in June 2014 to hire Mr. Reid, but waited until October 22—the day the Show Cause Order was issued—to send the letter finalizing the hire. And regardless of whether OST had counsel, it was obligated to comply with Board orders and the NRC’s Rules of Practice, and to pursue its contentions. While *pro se* intervenors enjoy more latitude in complying with procedural requirements, they cannot fail to participate in a case for over a year while the Board and other parties attend to it, which has been the case in this proceeding. OST’s limited resources do not excuse that failure. The Commission has made clear that “the

Adjudicatory Proceedings, CLI-98-12, 48 NRC 18, 19 (1998) (“[T]he opportunity for hearing should be a meaningful one that focuses on genuine issues and real disputes regarding agency actions subject to adjudication. By the same token, however, applicants for a license are also entitled to a prompt resolution of disputes concerning their applications.”).

³⁶ *Marsland*, CLI-14-2, 79 NRC at 14 & n.10 (citing 10 C.F.R. § 2.320).

³⁷ *Perry*, ALAB-802, 21 NRC at 498 (“[N]either the APA nor the Commission’s Rules of Practice require an adjudicatory tribunal to ensure that a party appearing before it is represented by counsel. Rather, it is the responsibility of the party itself not merely to decide whether it wishes to be represented by counsel but, in addition, to take the necessary measures to implement its decision.”).

³⁸ LBP-10-21, 72 NRC at 638.

fact that a party may have personal or other obligations or possess fewer resources than others to devote to the proceeding does not relieve that party of its hearing obligations.”³⁹

Because the hearing in this proceeding is currently slated for the late spring of 2016, OST argues that no other parties will be prejudiced if the Board does not dismiss the remaining contention. This argument misses the point of the Show Cause Order. The Board has placed the burden on OST to give reasons why the Board should not dismiss the remaining contention, not on the other parties to demonstrate prejudice. Still, it *is* prejudicial to parties who have consistently complied with their obligations to continue with a proceeding OST has shown little interest in pursuing. Preparing for and participating in a hearing requires significant time, effort, and other resources, and other parties should not be required to expend those resources absent a satisfactory explanation for OST’s failure to participate.

OST’s argument that its failure to pursue Contention 1 should not jeopardize Contention 2 similarly misses the point of the Show Cause Order. The Board did not issue the Show Cause Order solely because OST failed to pursue Contention 1, but because OST had not actively participated in the proceeding more or less from the outset. Both the Board and the Commission have remarked upon OST’s repeated failures to fully engage in the process.⁴⁰ Through these failures to respond to Board orders and filings from other parties, OST effectively communicated that it “does not have any interest in further pursuing this litigation.”⁴¹ And when ordered by the Board to demonstrate its continued interest, OST again failed to respond before the deadline.

Nor does OST’s argument that it should receive “great deference” based on the federal trust responsibility demonstrate its continued interest in the proceeding. Because the NRC is not directly responsible for control of tribal resources or land, the NRC’s obligation under the trust

³⁹ *Statement of Policy on Conduct of Licensing Proceedings*, CLI-81-8, 13 NRC 452, 454 (1981).

⁴⁰ Show Cause Order at 2-3; *Marsland*, CLI-14-2, 79 NRC at 14 & n.10.

⁴¹ Show Cause Order at 3.

responsibility is to comply with generally applicable statutes and regulations.⁴² At any rate, OST does not allege that the NRC has breached this duty or explain why the trust responsibility justifies its failure to prosecute its contentions in this proceeding.

In sum, OST's interest in this proceeding has been questionable from the outset. The Response provides no indication from OST itself (such as an affidavit or declaration from a tribal officer) that OST is now committed to engaging in this proceeding, nor does it present any other new information or compelling reasons showing why dismissal of Contention 2 is unwarranted.

CONCLUSION

For the reasons stated above, OST has failed to show good cause for its untimely motion for extension of time to respond to the Show Cause Order. Additionally, OST has not explained its extended lack of participation in this proceeding or demonstrated a continued interest that would warrant going forward with a hearing. Therefore, the Board should dismiss the remaining contention and terminate the proceeding.

Respectfully submitted,

/Signed (electronically) by/

Marcia J. Simon
Counsel for the NRC Staff
U.S. Nuclear Regulatory Commission
Office of the General Counsel
Mail Stop: O-15 D21
Washington, D.C. 20555-0001
(301) 415-1261
marcia.simon@nrc.gov

/Executed in accord with 10 CFR 2.304(d)/

David M. Cylkowski
Counsel for the NRC Staff
(301) 415-1631
david.cylkowski@nrc.gov

Dated at Rockville, Maryland
this 15th day of December 2014

⁴² *Skokomish Indian Tribe v. FERC*, 121 F.3d 1303, 1308-09 (9th Cir. 1997); *Morongo Band of Mission Indians v. Federal Aviation Administration*, 161 F.3d 569, 574 (9th Cir. 1988); see also NRC Tribal Protocol Manual, NUREG-2173, at 9 (2014).

ATTACHMENT 1

From: Hearingdocket@nrc.gov
To: [Allen, Sabrina](#); [Bollwerk, Paul](#); [Cylkowski, David](#); nformosa@winston.com; cindy@mariogonzalezlaw.com; [Docket, Hearing](#); [Hirons, Thomas](#); [Klukan, Brett](#); mdmcguire46@gmail.com; [Monteith, Emily](#); [OCAAMAIL Resource](#); dreddick@winston.com; drepka@winston.com; [Sciretta, Nicholas](#); [Simon, Marcia](#); CSisco@winston.com; trsmith@winston.com; [Spencer, Mary](#); stefen@nealrgross.com; [Wardwell, Richard](#)
Subject: Re: NRC Proceeding "Crow Butte Resources 40-8943-MLA2"
Date: Wednesday, October 22, 2014 10:51:27 AM

MESSAGE FROM THE OFFICE OF THE SECRETARY, NUCLEAR REGULATORY COMMISSION

Re: NRC Proceeding "Crow Butte Resources 40-8943-MLA2"

The Office of the Secretary has received a document entitled

"MEMORANDUM AND ORDER Order to Show Cause"

submitted by Brian Newell who is affiliated with NRC SECY.

It is intended for inclusion in the referenced proceeding. It was submitted through the NRC Electronic Information Exchange (EIE) system and arrived on 10/22/14 at 10:49 EDT.

As a hearing participant, you are entitled to view and/or retrieve this document by visiting the following web link:

MEMORANDUM AND ORDER Order to Show Cause -
<https://eieprod.nrc.gov/EIE25L1/downloadAttachment.do?submissionID=26737&docID=16313> (101 KB)

The document will remain available through this link for 365 day(s) after which it will be removed from the EIE system. Not later than 3 days from the date of this message the document will also be available through NRC Electronic Hearing Docket (EHD) web site. The web link for this site is: <http://adams.nrc.gov/ehd> and the documents can be located by browsing in the appropriate hearing folder.

Receipt of this message constitutes completion of service of this filing.

PARTIES SERVED WITH THIS SUBMISSION:

Allen, Sabrina; Bollwerk, G.; Cylkowski, David; Formosa, Noelle; Gillis, Waonsilawin; Hearing Docket, Hearing Docket; Hirons, Thomas; Klukan, Brett; McGuire, Mark; Monteith, Emily; OCAAMAIL, OCAAMAIL; Reddick, Darani; Repka, David A; Sciretta, Nicholas; Simon, Marcia; Sisco, Carlos L; Smith, Tyson; Spencer, Mary; Styrsky, Stefen; Wardwell, Richard

ATTACHMENT 2

From: [David Frankel](#)
To: trsmith@winston.com; [Simon, Marcia](#)
Cc: belli4law@aol.com; arm.legal@gmail.com; mdmcguire46@gmail.com; [Cylkowski, David](#); nformosa@winston.com; [Andrew Reid](#)
Subject: Re: NRC Proceeding "Crow Butte Resources 40-8943-OLA"
Date: Wednesday, October 29, 2014 1:09:51 PM
Attachments: [Andrew B. Reid, Esq. 102214.pdf](#)

Dear Counsel,

I am writing to alert you to the fact that I was just recently informed that the Oglala Sioux Tribe has appointed a new lawyer in the Cameco Crow Butte cases. His name is Andrew Reid, Esq., though he has not yet entered an appearance in the case.

Attached is a copy of the OST letter dated October 22, 2014 and the attached OST Tribal Council Resolution No. 14-117 evidencing the appointment of Mr. Reid as OST counsel in the Cameco Crow Butte cases.

I am concerned that the Oglala Sioux Tribe and tribal members who are part of Consolidated Intervenors will be irreparably harmed and prejudiced by the elapsed time between now and whenever Mr. Reid enters an appearance.

With the 30 day deadline looming for new or amended contentions, such prejudice would be apparent to anyone, I think, and accordingly, I would like to ask the parties if they would object or support a motion to stay the schedule in the Board's order for a short time of say 10-20 days in order to allow Mr. Reid to properly enter the case and hit the ground running ~

Kindly let me know if you would join in such a motion for the purpose of encouraging the orderliness and fairness of the proceeding and such a short delay would not seem to prejudice the interests of any party given the long term time frame within which this case has existed for the past several years.

I would like to notify the Board of this situation before the end of the week and/or file an appropriate motion for the short extension of time to allow the OST counsel to properly enter the case ~

Please respond with your client's position before end of business on Friday.

Many thanks,

Sincerely,

David Frankel
Attorney for Consolidated Intervenors
arm.legal@gmail.com
cel: 605-515-0956

On Tue, Oct 28, 2014 at 10:38 AM, Docket, Hearing <Hearing.Docket@nrc.gov> wrote:



Oglala Sioux Tribe

Office of the President

Pine Ridge Indian Reservation

Post Office Box 2070

Pine Ridge, South Dakota 57770

Phone: 605.867.8420

Fax 605.867.6076

bryan@oglala.org

Attachment 2
Page 2 of 4



Bryan V. Brewer
(Tatanka Luta Hoksila)
PRESIDENT

October 22, 2014

Andrew B. Reid, Esq.
Springer & Steinberg, P.C.
1600 Broadway, Suite 1200
Denver, CO 80202

Dear Mr. Reid:

Enclosed is a copy of Resolution No. 14-117, approving your appointment as Pro Bono Lead Attorney for the Oglala Sioux Tribe in the CAMECO Uranium Mining Case, which is self-explanatory.

If you should have any questions regarding this resolution, you may contact Ms. Rhonda Two Eagle, Executive Secretary for the Oglala Sioux Tribe at 605/867-8468.

Sincerely,

Bryan V. Brewer
President, Oglala Sioux Tribe

Enclosure: OST Resolution No. 14-117

cc: Treasurer, Oglala Sioux Tribe
Comptroller, Oglala Sioux Tribe
Legal Department, Oglala Sioux Tribe

RESOLUTION NO. 14-117

RESOLUTION OF THE OGLALA SIOUX TRIBAL COUNCIL
OF THE OGLALA SIOUX TRIBE
(An Unincorporated Tribe)

RESOLUTION OF THE OGLALA SIOUX TRIBAL COUNCIL APPROVING THE APPOINTMENT OF PRO BONO ATTORNEY ANDREW REED AS LEAD ATTORNEY FOR THE OGLALA SIOUX TRIBE IN THE CAMECO URANIUM MINING CASE, AND TO COVER HIS EXPENSES INCLUDING, BUT NOT LIMITED TO: A WESTLAW SUBSCRIPTION, EXPERT WITNESS FEES, TRAVEL, AND MILEAGE.

WHEREAS, the Oglala Sioux Tribe has adopted its Constitution and By-Laws by referendum vote on December 10, 1935, in accordance with Section 16 of the Indian reorganization Act of 1934 (25 U.S.C. § 476) and under Article I and III of the Oglala Sioux Tribe Constitution, the Oglala Sioux Tribal Council is the governing body of the Oglala Sioux Tribe, and

WHEREAS, the Oglala Sioux Tribe Constitution at Article IV, Section 1(b) gives the Oglala Sioux Tribal Council the authority to employ legal counsel for the protection and advancement of the rights of the Oglala Sioux Tribe and its members; and at Section 1(c) to encumber tribal assets, and

WHEREAS, Attorney Andrew Reed has been working on this case for at least the past eight years on a pro bono basis and Deborah White Plume proposed, and the HHS Committee agreed, that Tribal In House legal counsel, Lisa Adams, cannot dedicate 100% of her time to this matter, and Andrew Reed can, and

WHEREAS, the Tribe has a vested interest in continuing this matter for the benefit of the Tribe, and

WHEREAS, time is of the essence with regard to the proceedings currently pending before the NRC, and

WHEREAS, the HHS Committee at a regular meeting held on June 3, 2014, did approve this action to be forwarded to the Tribal Council for approval, now

THEREFORE BE IT RESOLVED, that the Oglala Sioux Tribal Council hereby approves the appointment of pro bono attorney Andrew Reed as lead attorney for the Oglala Sioux Tribe in the CAMECO uranium mining case, and to cover his expenses including, but not limited to: a WestLaw subscription, expert witness fees, travel, and mileage.

RESOLUTION NO. 14-117
Page Two

C-E-R-T-I-F-I-C-A-T-I-O-N

I, as the undersigned Secretary of the Oglala Sioux Tribal Council, of the Oglala Sioux Tribe hereby certify that this Resolution was adopted by a vote of: 8 For; 3 Against; 0 Abstain; and 4 Not Voting; during a REGULAR SESSION held on the 24TH day of JUNE, 2014.



RHONDA TWO EAGLE
Secretary
Oglala Sioux Tribe

A-T-T-E-S-T:



THOMAS POOR BEAR
Vice-President
Oglala Sioux Tribe

RECEIVED
JUN 30 2014
BASIC SETTLEMENT
AGENCY

ATTACHMENT 3

From: [David Frankel](#)
To: [lawyerreid .](#)
Cc: [Simon, Marcia](#); [Smith, Tyson R.](#); [belli4law@aol.com](#); [arm.legal@gmail.com](#); [Formosa, Noelle R.](#); [mdmcguire46@gmail.com](#); [Cylkowski, David](#)
Subject: Re: NRC Proceeding "Crow Butte Resources 40-8943-OLA"
Date: Friday, November 14, 2014 1:05:17 PM

No objections from Consolidated Intervenors -

On Fri, Nov 14, 2014 at 11:01 AM, lawyerreid . <lawyerreid@gmail.com> wrote:

If there are no objections then, I will request an extension on the deadline for new/amended contentions to and including January 5, 2015, to get us past the holidays. Please let me know at your earliest convenience if there will be any opposition.

Thank you.

Andrew Reid

On Fri, Nov 14, 2014 at 6:46 AM, Simon, Marcia <Marcia.Simon@nrc.gov> wrote:

Dear Counsel,

After considering the emails sent last night, the staff will not object to a 30-day extension of time for filing of new/amended contentions, for both the Oglala Sioux Tribe and Consolidated Petitioners. Given that 30 days would place the deadline at December 26, the staff would also not object to extending that deadline a few more days (until, say, Jan. 2 or Jan. 5) to accommodate holiday schedules.

The staff will still oppose a motion to stay the effectiveness of the license.

Marcia

Marcia J. Simon

Senior Attorney

Nuclear Regulatory Commission

Office of the General Counsel

Phone: [301-415-1261](tel:301-415-1261)

From: [Smith, Tyson R.](#)
To: [lawyerreid .](#); [Simon, Marcia](#)
Cc: [Frankel, David](#); belli4law@aol.com; arm.legal@gmail.com; [Formosa, Noelle R.](#); mdmcguire46@gmail.com;
[Cylkowski, David](#)
Subject: RE: NRC Proceeding "Crow Butte Resources 40-8943-OLA"
Date: Friday, November 14, 2014 1:09:49 PM

Andrew,

That is ok for Crow Butte.

Tyson

Tyson R. Smith

Winston & Strawn LLP

D: +1 (415) 591-6874

[Bio](#) | [VCard](#) | [Email](#) | winston.com

WINSTON
& STRAWN

From: lawyerreid . [mailto:lawyerreid@gmail.com]

Sent: Friday, November 14, 2014 10:02 AM

To: Simon, Marcia

Cc: Smith, Tyson R.; Frankel, David; belli4law@aol.com; arm.legal@gmail.com; [Formosa, Noelle R.](#); mdmcguire46@gmail.com; [Cylkowski, David](#)

Subject: Re: NRC Proceeding "Crow Butte Resources 40-8943-OLA"

If there are no objections then, I will request an extension on the deadline for new/amended contentions to and including January 5, 2015, to get us past the holidays. Please let me know at your earliest convenience if there will be any opposition.

Thank you.

Andrew Reid

On Fri, Nov 14, 2014 at 6:46 AM, Simon, Marcia <Marcia.Simon@nrc.gov> wrote:
Dear Counsel,

After considering the emails sent last night, the staff will not object to a 30-day extension of time for filing of new/amended contentions, for both the Oglala Sioux Tribe and Consolidated Petitioners. Given that 30 days would place the deadline at December 26, the staff would also not object to extending that deadline a few more days (until, say, Jan. 2 or Jan. 5) to accommodate holiday schedules.

The staff will still oppose a motion to stay the effectiveness of the license.

Marcia

Marcia J. Simon

Senior Attorney

From: Simon, Marcia
To: ["David Frankel"; lawyerreid](#)
Cc: [Smith, Tyson R.](#); [belli4law@aol.com](#); [arm.legal@gmail.com](#); [Formosa, Noelle R.](#); [mdmcguire46@gmail.com](#); [Cylkowski, David](#)
Subject: RE: NRC Proceeding "Crow Butte Resources 40-8943-OLA"
Date: Friday, November 14, 2014 1:07:00 PM

No objection from the NRC Staff

From: David Frankel [mailto:davidcoryfrankel@gmail.com]
Sent: Friday, November 14, 2014 1:05 PM
To: lawyerreid
Cc: Simon, Marcia; Smith, Tyson R.; [belli4law@aol.com](#); [arm.legal@gmail.com](#); Formosa, Noelle R.; [mdmcguire46@gmail.com](#); Cylkowski, David
Subject: Re: NRC Proceeding "Crow Butte Resources 40-8943-OLA"

No objections from Consolidated Intervenors -

On Fri, Nov 14, 2014 at 11:01 AM, lawyerreid . <lawyerreid@gmail.com> wrote:
If there are no objections then, I will request an extension on the deadline for new/amended contentions to and including January 5, 2015, to get us past the holidays. Please let me know at your earliest convenience if there will be any opposition.

Thank you.

Andrew Reid

On Fri, Nov 14, 2014 at 6:46 AM, Simon, Marcia <Marcia.Simon@nrc.gov> wrote:
Dear Counsel,

After considering the emails sent last night, the staff will not object to a 30-day extension of time for filing of new/amended contentions, for both the Oglala Sioux Tribe and Consolidated Petitioners. Given that 30 days would place the deadline at December 26, the staff would also not object to extending that deadline a few more days (until, say, Jan. 2 or Jan. 5) to accommodate holiday schedules.

The staff will still oppose a motion to stay the effectiveness of the license.

Marcia

Marcia J. Simon

Senior Attorney
Nuclear Regulatory Commission
Office of the General Counsel
Phone: [301-415-1261](tel:301-415-1261)
Fax: [301-415-3725](tel:301-415-3725)
marcia.simon@nrc.gov

ATTACHMENT 4

From: Simon, Marcia
To: "lawyerreid ."
Subject: RE: Crow Butte License Renewal -- Joint Report to Board re proposed hearing dates
Date: Monday, November 17, 2014 11:30:00 AM

Andy,

If you go to <http://adams.nrc.gov/ehd>, it will take you to the Electronic Hearing Docket in ADAMS. There is a directory for each NRC proceeding on the left side. If you click on a proceeding, you'll find various subdirectories, including "Pleadings," which sounds like what you are looking for. I hope this helps.

Marcia

Marcia J. Simon

Senior Attorney
Nuclear Regulatory Commission
Office of the General Counsel
Phone: 301-415-1261
Fax: 301-415-3725
marcia.simon@nrc.gov

From: lawyerreid . [<mailto:lawyerreid@gmail.com>]
Sent: Monday, November 17, 2014 11:13 AM
To: Simon, Marcia
Subject: Re: Crow Butte License Renewal -- Joint Report to Board re proposed hearing dates

Marcia -

I've been having to pull up the Crow Butte submissions from the NRC portal (ADAMS) by searching for them by docket number and ASLBP number. Is there a docket or list of filings (preferably a web link but one you can prove me will do) in each of the 3 (renewal, north trend, Marsland) matters that I can access/use to check to see if I am pulling up all of the filings in each Crow Butte matter? A list of docket entries would help me in reviewing the record in this matter in regards to the contentions as I ferret out whether or not new/amended contentions are necessary. I'd like to avoid submitting documents in the future that inaccurately cite the record or issues and thereby creating confusion and unnecessary filings.

I appreciate your cooperation.

Andy Reid
Boulder, CO

On Fri, Nov 14, 2014 at 6:58 AM, Simon, Marcia <Marcia.Simon@nrc.gov> wrote:
This is the evidentiary hearing on the license renewal that the Oglala Sioux Tribe and Consolidated Petitioners requested. It would address the admitted contentions (currently 3 for Oglala Sioux Tribe, 1 for Consolidated Petitioners).

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)
) Docket No. 40-8943-MLA-2
CROW BUTTE RESOURCES, INC.)
) ASLBP No. 13-926-01-MLA-BD01
(Marsland Expansion Project))

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing "NRC STAFF'S RESPONSE TO OGLALA SIOUX TRIBE'S MOTION FOR EXTENSION OF TIME AND RESPONSE TO SHOW CAUSE ORDER" in the above-captioned proceeding have been served via the Electronic Information Exchange ("EIE"), the NRC's E-Filing System, this 15th day of December, 2014, which to the best of my knowledge resulted in transmittal of the foregoing to those on the EIE Service List for the above-captioned proceeding.

/Signed (electronically) by/

Marcia J. Simon
Counsel for the NRC Staff
U.S. Nuclear Regulatory Commission
Office of the General Counsel
Mail Stop: O-15 D21
Washington, D.C. 20555-0001
(301) 415-1261
marcia.simon@nrc.gov

Dated at Rockville, Maryland
this 15th day of December, 2014