

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

In the Matter of)	Docket No. 40-8943
)	
CROW BUTTE RESOURCES INC.)	ASLBP No. 13-926-01-MLA-BD01
)	
(Marsland Expansion Project))	December 29, 2014

**OGLALA SIOUX TRIBE’S REPLY TO NRC STAFF’S RESONSE TO TRIBE’S
MOTION FOR EXTENSION OF TIME TO RESPOND TO SHOW CAUSE ORDER,
AND, TRIBE’S RESPONSE TO SHOW CAUSE ORDER**

Pursuant to 10 CFR Section 2.307, the Oglala Sioux Tribe (the “Tribe”) hereby submits this reply to NRC Staff’s Response to Oglala Sioux Tribe’s Motion for Extension of Time and Response to Show Cause Order.

REPLY

The NRC Staff’s Response to the Tribe’s Motion sets forth a general argument in regards to the demonstration of “good cause” to extend the deadlines set by the Board. The Staff acknowledges that there is no set definition of what constitutes “good cause.” Response, at 3. “Good cause” has been defined, for example, as “a fair and honest reason, regulated by good faith, that is not trivial, arbitrary or capricious, ...or pretextual,” *Sandberg v. St. Farm Mut. Auto. Ins. Co.*, 182 F.3d 927 (9th Cir. 1999).

The facts underlying the Tribe’s delay in responding to the Board are not in dispute. The Staff admits that the Tribe’s counsel did not receive notice of his authorization to represent the Tribe in this and the two other active collateral matters regarding the Crow Butte facility until October 27, 2014, the day before the Show Cause Order was published in the Federal Register.

The Staff does not dispute that, upon his retention on October 27, 2014, the Tribe's counsel was tasked with having to review in each matter hundreds of filings over a span of years and involving a record of thousands and thousands of pages. The Staff faults the Tribe's counsel for not appearing in these matters for 2 weeks, until November 12, 2014, and asserts that 5 weeks was sufficient for the Tribe's counsel to have reviewed the voluminous record in each matter and become aware of the pending Order to Show Cause in this matter. The Staff also does not contest the other assertions in the Motion, including the Tribe's counsel's focus on meeting known deadlines in the license renewal matter, his reliance on the other intervenors whom had been actively involved in the collateral matters for a heads up on what needed immediate attention¹, and, most importantly, the Staff does not dispute the extreme poverty of the Tribe and its people or the fact that this poverty has contributed to its difficulty in retaining counsel to protect their unique sovereign, historic, cultural, spiritual, and health interests.

The Staff does, however, attempt to dismiss the unique nature and interests of the Tribe and the federal government's unique assumed trust responsibility to it. Response, 9-10. The Tribe is not just any interested party. It is a sovereign entity with treaty rights and other interests unique to it that creates obligations upon the federal government. As stated in the Motion, these unique, special, and extremely significant rights and interests, as a matter of federal law, are well recognized in almost 100 years of decisions of the US Supreme Court, in the President's Executive Order, and in the agency's own policy declarations. *See*, Motion, 4-5. They cannot be summarily dismissed by the Staff nor ignored. The lack of continuing counsel caused by the

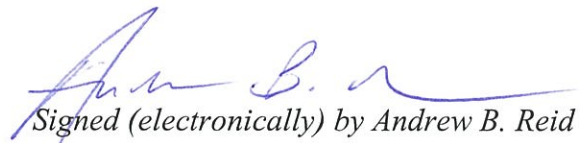
¹ The Tribe's counsel had assumed at the time that the Consolidated Intervenors whom had been granted intervention in the other two matter had also been granted intervention in this, the Marsland, matter. It was only after having been first made aware of the Show Cause Order by the Board's law clerk on December 2, 2014, that he also became aware that the requests for intervention by the Consolidated Intervenors had been denied in the Marsland matter.

extreme poverty of the Tribe - a direct and well known consequence of centuries of colonial and racially oppressive policies of the federal government, of occupation and of genocide, and of theft of Lakota lands and natural resources, including the land upon which that the Crow Butte project is found and the natural resources Crow Butte continues to exploit, together with the inherent sovereignty of the Tribe and the collective historic, spiritual, and health interests of its people, the Lakota Peoples, and together with the assumed great trust obligation of the federal government to the Tribe and its peoples, fully demonstrate “a fair and honest reason, regulated by good faith, that is not trivial, arbitrary or capricious, ...or pretextual,” for the Board to excuse the inability of the counsel-less Tribe to prosecute its contentions over the past year.

Finally, it is significant that the Staff is unable to articulate any specific harm that it has sustained from the absence of the Tribe’s participation over the past year nor any specific harm it may sustain in the Board’s granting of the Tribe’s Motion. The evidentiary hearing regarding OST Contention 2 has been scheduled for May/June 2016, over a year and a half from now. ML14220A401. The Staff makes no allegations of bad faith on the part of the Tribe or its past or current counsel. As such, the Staff’s Response itself is in effect a procedural “pretext” for depriving the Tribe of its voice in this matter. This issue should be determined upon a consideration of rights, interests, and equity, not procedure.

WHEREFORE, for the reasons stated above and for good cause shown, this litigation should not be dismissed.

Respectfully Submitted,



Signed (electronically) by Andrew B. Reid

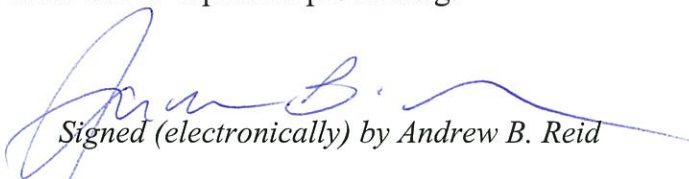
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Dated: December 29, 2014, Denver, Colorado.

CERTIFICATE OF SERVICE

Pursuant to 10 C.F.R. § 2.305 (as revised), I certify that, on this date, copies of the OGLALA SIOUX TRIBE'S REPLY TO NRC STAFF'S RESPONSE TO TRIBE'S MOTION FOR EXTENSION OF TIME TO RESPOND TO SHOW CAUSE ORDER, AND, TRIBE'S RESPONSE TO SHOW CAUSE ORDER were served upon the Electronic Information Exchange (the NRC's E-Filing System), in the above-captioned proceeding.

Dated: December 29, 2014.



Signed (electronically) by Andrew B. Reid

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