

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

Before Administrative Judges:

Michael M. Gibson, Chair  
Dr. Richard E. Wardwell  
Brian K. Hajek  
Alan S. Rosenthal (Special Assistant to the Board)

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 25, 2015

ORDER

(Setting Schedule through Evidentiary Hearing and Providing Case Management Information)

This proceeding challenges the application of Crow Butte Resources, Inc. (Crow Butte) to renew its Source Materials License No. SUA-1534 for continued operation of its in-situ leach uranium recovery facility near Crawford, Nebraska.<sup>1</sup> In this Order, we establish the schedule for written filings made in advance of the evidentiary hearing, which is being conducted under the provisions of 10 C.F.R. Part 2, Subpart L.<sup>2</sup> The Order updates, but does not replace, the Board's prior orders concerning scheduling and procedure.<sup>3</sup> The dates established in the Order

---

<sup>1</sup> Application for 2007 License Renewal USNRC Source Materials License SUA-1534 Crow Butte License Area (Nov. 2007) (ADAMS Accession No. ML073480264). For a list of admitted contentions, see LBP-15-11, 80 NRC \_\_, \_\_ (slip op. at 61) (Mar. 16, 2015).

<sup>2</sup> 10 C.F.R. § 2.310(a).

<sup>3</sup> Licensing Board Order (Scheduling Filing of New/Amended Contentions and Requesting Proposed Evidentiary Hearing Dates) at 1 (Oct. 28, 2014); Licensing Board Order (Concerning Amended Rules of Practice) (Aug. 17, 2012) (unpublished); Licensing Board Initial Scheduling Order (Jan. 8, 2009) (unpublished); Licensing Board Order (Regarding Schedule and Guidance for Proceedings) (Aug. 21, 2008) (unpublished).

have been agreed to by the parties and set forth in a previous order.<sup>4</sup> A summary of the dates established in this Order is included as Attachment A.

### I. SCHEDULE FOR HEARING

#### A. Updated Witness Lists and Mandatory Disclosure

No later than March 30, 2015, the parties (including the NRC Staff) must make certain mandatory disclosures pursuant to 10 C.F.R. § 2.336(a) and (b). The parties have a “continuing” duty to update their mandatory disclosures.<sup>5</sup> Likewise, the NRC Staff has a “continuing” duty to update the hearing file.<sup>6</sup> For the purposes of this proceeding, the term “mandatory disclosures” includes the witness lists and privilege logs required under 10 C.F.R. § 2.336(a) and (b). The parties should provide a resume or other detailed statement describing each witness’ education and experience related to the subject matter of his or her testimony.

#### B. Summary Disposition Motions

No later than April 6, 2015, the parties shall submit any motions for summary disposition, pursuant to the requirements of 10 C.F.R. § 2.1205(a). Answers to summary disposition motions shall be due by April 20, 2015.

#### C. Statements of Position, Testimony, Affidavits, and Exhibits

No later than May 1, 2015, each party shall file its initial written statement of position, exhibits, and written testimony with supporting affidavits, pursuant to 10 C.F.R. § 2.1207(a)(1). The initial written statement of position should be in the nature of a trial brief that sets out affirmative arguments and applicable legal standards, identifies witnesses and evidence, and specifies with particularity how the testimony of each witness and how each exhibit supports

---

<sup>4</sup> Tr. at 565–89; Licensing Board Order (Granting NRC Staff and Crow Butte Joint Unopposed Motion for Extension of Time to Respond to Consolidated Intervenor’s Additional Contentions) app. A (Mar. 19, 2015) (setting forth procedural dates).

<sup>5</sup> 10 C.F.R. § 2.336(d).

<sup>6</sup> Id. § 2.1203(c).

that party's factual or legal position. All written testimony shall be under oath or by affidavit, and shall be offered directly, in exhibit form, in accordance with 10 C.F.R. § 2.1207(b)(2). The exhibits shall include all documents that the party referred to, relied on, or used to reach its position.

D. Rebuttal Statements of Position, Testimony, Affidavits, and Exhibits

No later than May 29, 2015, each party shall file its written responses, rebuttal testimony with supporting affidavits, and rebuttal exhibits, pursuant to 10 C.F.R. § 2.1207(a)(2). The written response should be in the nature of a response brief that identifies the legal and factual deficiencies in an opponent's position, identifies rebuttal witnesses and evidence, and specifies with particularity how the rebuttal testimony of each witness and how each rebuttal exhibit supports that party's factual or legal position. All rebuttal testimony shall be under oath or by affidavit, and shall be offered directly, in exhibit form, in accordance with 10 C.F.R. § 2.1207(b)(2). The exhibits shall include all documents that the party referred to, relied on, or used to reach its position. Being in the nature of rebuttal, the response, rebuttal testimony, and rebuttal exhibits are not to advance any affirmative claims or arguments that were not included in the party's previously filed initial written statement of position.

E. Motions in Limine or to Strike

No later than June 9, 2015, each party shall file its motions in limine or motions to strike regarding the materials submitted under paragraphs C and D. Answers to such motions shall be filed no later than seven (7) days after service of the subject motion.

F. Proposed Questions for Board to Ask

No later than June 23, 2015, each party shall file its proposed questions for the Board to consider propounding to the direct or rebuttal witnesses, pursuant to 10 C.F.R. § 2.1207(a)(3)(i) and (ii). The direct or rebuttal examination plans should contain a brief description of the issue or issues that the party contends need further examination, the objective of the examination, and the proposed line of questioning (including specific questions) that may logically lead to

achieving the objective. The prefiled proposed questions should not focus on a party's own witnesses, but should instead be directed to the witnesses of the other parties. The proposed direct and rebuttal examination questions and plans should be filed in camera with the Board and not served on any other party. This is accomplished by using the "in camera" option in the NRC's e-filing system, or if email filing has been allowed, by sending an email to only the Board.

G. Motions for Cross-Examination

No later than June 23, 2015, each party shall file its motions to conduct cross-examination of a specified witness or witnesses, if any, together with that party's associated cross-examination plan(s), pursuant to 10 C.F.R. § 2.1204(b). Such motion to conduct cross-examination shall be filed with all parties, but the cross-examination plan itself should be filed in camera only with the Board as described in paragraph F.

H. Prehearing Conference Call

The Board will hold a prehearing conference call with the parties at a date to be determined to discuss additional administrative details concerning the evidentiary hearing. The Board may rule on any prehearing motions at that time. Further details will follow in a subsequent order.

I. Limited Appearance Statements

The Board will not be holding an oral limited appearance session. The Board will, however, accept written limited appearance statements of position on the issues raised by the admitted contentions from any "person who is not a party" in this proceeding.<sup>7</sup> Written limited appearance statements should be sent by one of the following methods:

---

<sup>7</sup> 10 C.F.R. § 2.315(a). A party to this proceeding includes "persons who are affiliated with or represented by a party." Anyone submitting a "written statement of his or her position on the issues . . . may not otherwise participate in the proceeding." Id.

Mail: Office of the Secretary  
Rulemakings and Adjudications Staff  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555-0001

Fax: (301) 415-1101 (verification (301) 415-1966)

Email: [hearingdocket@nrc.gov](mailto:hearingdocket@nrc.gov)

In addition, using the same method of service, a copy of the written limited appearance statement should be sent to the Chairman of this Licensing Board as follows:

Mail: Administrative Judge Michael Gibson, Chairman  
c/o Nicholas Sciretta/Sachin Desai, Law Clerks  
Atomic Safety and Licensing Board Panel  
Mail Stop T-3F23  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555-0001

Fax: (301) 415-5599 (verification (301) 415-4128)

Email: [Nicholas.Sciretta@nrc.gov](mailto:Nicholas.Sciretta@nrc.gov) and [Sachin.Desai@nrc.gov](mailto:Sachin.Desai@nrc.gov)

J. Evidentiary Hearing

The evidentiary hearing will occur the week of August 24, 2015, at a location to be determined near the Crow Butte license renewal area in Nebraska. Further details will follow in a subsequent order.

K. Witness with Written Testimony Must Be Available in Person

Unless the Board expressly provides otherwise, each party must, at its own expense and effort, assure that each person for whom it submitted written direct or rebuttal testimony attends the evidentiary hearing in person and is available to testify and to respond orally to questions. A failure to do so may result in that witness' testimony being stricken.

L. Proposed and Reply Findings of Facts and Conclusions of Law

The parties shall file written posthearing proposed findings of fact and conclusions of law on the contentions addressed at the hearing no later than thirty (30) days after the close of the hearing, in accordance with 10 C.F.R. § 2.1209. Reply findings of fact and conclusions of law shall be filed no later than fifteen (15) days thereafter.

M. Initial Decision

The parties can expect an initial decision from the Board within ninety (90) days after the close of the record. The Board will notify the parties if it foresees any delay.

II. FORMATTING CONSIDERATIONS

A. Exhibit Numbering

In accordance with 10 C.F.R. § 2.304(g), all prefiled testimony and proposed exhibits must be submitted via the agency's e-filing system, or if email filing was previously allowed, by email, as an individual electronic file. Each document must be marked with a three character party designation followed by a three character zero-filled number. The three character designations to be used by the parties are "NRC" for the NRC Staff, "CBR" for Crow Butte, "OST" for the Oglala Sioux Tribe, and "INT" for Consolidated Intervenors. The numbering sequence for the parties' proposed exhibits should be numbered, [Designation]-001, [Designation]-002, . . . [Designation]-999. For example, for the NRC Staff, the designations would be NRC-001, NRC-002, . . . NRC-999. Each party should attempt to order and number prefiled testimony and exhibits in the order in which it plans to identify and present them for inclusion in the record.

The exhibit number should be placed in the upper right hand corner of the first page of the prefiled testimony or exhibit. A party should only use a separate cover sheet if there is no available space on the page of the document where the exhibit number can be placed so that it is clear and legible. All pages in the exhibit should be numbered consecutively so that they can be referred to easily and quickly at the evidentiary hearing.

If a previously filed exhibit must be revised, the revised exhibit should be labeled with '-R' following the numbering sequence. For example, if exhibit NRC-005 must be revised, the revised exhibit would be labeled NRC-005-R. If this exhibit must again be revised, it would be labeled NRC-005-R2.

B. Large File Size Exhibits

If prefiled testimony or an exhibit needs to be separated into multiple segments to ensure that it does not exceed the agency's recommended file size,<sup>8</sup> each segment should be labeled by adding a letter directly following the exhibit number to reflect the relationship of each part of the prefiled testimony or exhibit to the other parts. For example, if NRC Staff exhibit NRC-005 must be submitted in multiple parts, each portion should be assigned a different exhibit number: NRC-005A, NRC-005B, NRC-005C, etc.

C. Proposed Exhibit List

When the prefiled testimony, proposed exhibits, or revisions are filed, each party should submit its prefiled exhibit list via the NRC's e-filing system, or if email filing was previously allowed, by email. The exhibit list should be prepared using the exhibit list template included as Attachment B to this Order.

D. Duplicate Exhibits

Only one copy of each document should be offered into evidence. Therefore, if one party offers a certain document, other parties should not offer the same document as evidence, but should instead rely on the document already filed. To facilitate this, the parties must discuss with one another and determine whether any of the exhibits one party intends to offer into evidence would be duplicated by another party. The parties must then coordinate to determine who will offer that exhibit into evidence. All parties should then reference this single filing of the exhibit. If a party recognized as the only party to offer a document later decides not to offer the

---

<sup>8</sup> See Guidance for Electronic Submissions to the NRC, rev. 6.1 at 15–16 (May 27, 2011), available at <http://www.nrc.gov/site-help/e-submittals/guide-electronic-sub.pdf>.

document, that party must provide timely notice of its intent to the other parties.

It is so ORDERED.

FOR THE ATOMIC SAFETY  
AND LICENSING BOARD

*/RA/*

---

Michael M. Gibson, Chair  
ADMINISTRATIVE JUDGE

Rockville, Maryland  
March 25, 2015



**Attachment A**

Procedural Schedule

March 25, 2015

Event	Date
Final EA Available	October 27, 2014
New/Amended Contention Motions Due	January 5, 2015
Answers to New/Amended Contention Motions Due	January 30, 2015
Replies to Answers re New/Amended Contention Motions	February 6, 2015
Telephone Oral Argument on New/Amended Contentions	February 17, 2015
Licensing Board Ruling on New/Amended Contention Admission	March, 16, 2015
New/Amended Contentions Based on Proposed EPA In-Situ Leach Mining Regulations or on Recent U.S. Fish and Wildlife Service Correspondence	March 16, 2015
Answers to New/Amended Contentions Based on Proposed EPA In-Situ Leach Mining Regulations or on Recent U.S. Fish and Wildlife Service Correspondence	March 27, 2015
Mandatory Disclosures/Updated Witness List	Within 14 days of Board decision (March 30, 2015)
Mandatory Disclosures	Continuing on a Monthly Basis
Replies to Answers to New/Amended Contentions Based on Proposed EPA In-Situ Leach Mining Regulations or on Recent U.S. Fish and Wildlife Service Correspondence	April 1, 2015
Summary Disposition Motions on New or Amended Contentions	April 6, 2015
Answers to Summary Disposition Motions	April 20, 2015
Position Statements/Prefiled Direct Testimony on All Contentions (Parties File Simultaneously)	May 1, 2015
Answering Statements/Answering Testimony	May 29, 2015
Motions in Limine/Motions to Strike	June 9, 2015
Proposed Questions for Board to Ask	June 23, 2015
Motions for Cross-Examination	June 23, 2015
Telephone Prehearing Conference	TBD
Evidentiary Hearing Begins	Week of August 24, 2015
Findings of Fact/Conclusions of Law	Within 30 days of close of evidentiary hearing
Reply Findings of Fact/Conclusions of Law	Within 45 days of close of evidentiary hearing
Licensing Board Initial Decision	Within 90 days of end of evidentiary hearing and closing of record



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 Renewal) )

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing **ORDER (Setting Schedule through Evidentiary Hearing and Providing Case Management Information)** have been served upon the following persons by Electronic Information Exchange, and by electronic mail as indicated by an asterisk.

Office of Commission Appellate  
Adjudication  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555-0001  
E-mail: [ocaamail@nrc.gov](mailto:ocaamail@nrc.gov)

Administrative Judge  
Michael M. Gibson, Chairman  
Atomic Safety and Licensing Board Panel  
Mail Stop T-3F23  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555-0001  
E-mail [michael.gibson@nrc.gov](mailto:michael.gibson@nrc.gov)

Administrative Judge  
Richard E. Wardwell  
Atomic Safety and Licensing Board Panel  
U.S. Nuclear Regulatory Commission.  
Mail Stop T-3F23  
Washington, DC 20555-0001  
E-mail: [richard.wardwell@nrc.gov](mailto:richard.wardwell@nrc.gov)

Administrative Judge  
Brian K. Hajek  
Atomic Safety and Licensing Board Panel  
Mail Stop T-3F23  
U.S. Nuclear Regulatory Commission.  
Washington, DC 20555-0001  
E-mail: [NETS@Columbus.RR.com](mailto:NETS@Columbus.RR.com)  
[brian.hajek@nrc.gov](mailto:brian.hajek@nrc.gov)

Administrative Judge  
Alan S. Rosenthal  
Atomic Safety and Licensing Board Panel  
U.S. Nuclear Regulatory Commission.  
Mail Stop T-3F23  
Washington, DC 20555-0001  
E-mail: [alan.rosenthal@nrc.gov](mailto:alan.rosenthal@nrc.gov)

U.S. Nuclear Regulatory Commission  
Office of the Secretary of the Commission  
Mail Stop O-16C1  
Washington, DC 20555-0001  
Hearing Docket  
E-mail: [hearingdocket@nrc.gov](mailto:hearingdocket@nrc.gov)

DOCKET NO. 40-8943-OLA

**ORDER (Setting Schedule through Evidentiary Hearing and Providing Case Management Information)**

U.S. Nuclear Regulatory Commission  
Office of the General Counsel  
Mail Stop O-15D21  
Washington, DC 20555-0001  
Marcia J. Simon, Esq.  
Mary Spencer, Esq.  
David Cylkowski, Esq.  
Sabrina Allen, Law Clerk  
E-mail:  
[marcia.simon@nrc.gov](mailto:marcia.simon@nrc.gov)  
[mary.spencer@nrc.gov](mailto:mary.spencer@nrc.gov)  
[david.cylkowski@nrc.gov](mailto:david.cylkowski@nrc.gov)  
[sabrina.allen@nrc.gov](mailto:sabrina.allen@nrc.gov)

Owe Oku, Debra White Plume,  
and David House  
P.O. Box 2508  
Rapid City, South Dakota 57709  
Bruce Ellison, Esq.  
Roxanne Andre  
E-mail: [belli4law@aol.com](mailto:belli4law@aol.com)  
E-mail: [roxanneandre@yahoo.com](mailto:roxanneandre@yahoo.com)

Alberto Saldamando  
International Indian Treaty Council  
2940 16<sup>th</sup> Street, Suite 205  
San Francisco, CA 94103-3688  
E-mail: [alberto@treatycouncil.org](mailto:alberto@treatycouncil.org)

Ved Nanda Center for International and  
Comparative Law  
1075 Waite Drive  
Boulder, CO 80303  
Andrew Reid, Esq.  
Counsel for Oglala Sioux Tribe  
E-mail: [lawyerreid@gmail.com](mailto:lawyerreid@gmail.com)

Winston & Strawn, LLP  
101 California Street  
San Francisco, CA 94111  
Tyson R. Smith, Esq.  
Noelle R. Formosa, Esq.  
Counsel for Crow Butte Resources, Inc.  
E-mail:  
[trsmith@winston.com](mailto:trsmith@winston.com)  
[nformosa@winston.com](mailto:nformosa@winston.com)

Western Nebraska Resources Council  
Chief Joseph American Horse  
Thomas K. Cook, Francis E. Anders  
David Cory Frankel, Esq.\*  
P.O. 3014  
Pine Ridge, South Dakota 57770  
E-mail: [Arm.legal@gmail.com](mailto:Arm.legal@gmail.com)

McGuire Law Firm  
625 South 14th Street, Suite C  
Lincoln, Nebraska 68508  
Mark D. McGuire  
Counsel for Crow Butte Resources, Inc.  
E-mail: [mdmcguire46@gmail.com](mailto:mdmcguire46@gmail.com)

Winston & Strawn, LLP  
1700 K Street  
Washington, DC 20006  
Noelle R. Formosa, Esq.  
Carlos L. Sisco, Paralegal  
Counsel for Crowe Butte Resources, Inc.  
E-mail: [nformosa@winston.com](mailto:nformosa@winston.com)  
[csisco@winston.com](mailto:csisco@winston.com)

DOCKET NO. 40-8943-OLA

**ORDER (Setting Schedule through Evidentiary Hearing and Providing Case Management Information)**

Thomas J. Ballanco\*  
945 Taraval Avenue, # 186  
San Francisco, CA 94116  
Counsel for Joe American Horse, Thomas  
Cook, Loretta Afraid-of-Bear Cook, Slim  
Buttes Community, and Pine Ridge  
Reservation, South Dakota 57770  
E-mail: [HarmonicEngineering@gmail.com](mailto:HarmonicEngineering@gmail.com)

[Original signed by Clara Sola \_\_\_\_\_]  
Office of the Secretary of the Commission

Dated at Rockville, Maryland  
this 25<sup>th</sup> day of March, 2015