March 27, 2015

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of	)	
	)	
CROW BUTTE RESOURCES, INC.	)	Docket No. 40-8943-OLA
	)	
(License Renewal for the In Situ Leach Facility, Crawford, Nebraska)	)	ASLBP No. 08-867-02-OLA-BD01
	)	

NRC STAFF'S ANSWER TO CONSOLIDATED INTERVENORS' NEW CONTENTIONS BASED ON PROPOSED EPA RULE

INTRODUCTION

On March 16, 2015, Consolidated Intervenors (CI) filed 11 new contentions in the license renewal proceeding for the Crow Butte Resources, Inc. (CBR or Applicant) *in situ* recovery (ISR) facility.[1] The new contentions, which are based on a proposed rule published by the U.S. Environmental Protection Agency (EPA) on January 26, 2015,[2] challenge CBR's license renewal application (LRA) and the NRC Staff's Safety Evaluation Report (SER) and Environmental Assessment (EA). For the reasons discussed below, the Board should reject these contentions because they fail to meet the requirements for admission of new contentions in 10 C.F.R. § 2.309.

[1] "Consolidated Intervenors' Motion for Additional Contentions Based on EPA Proposed Rules" (Mar. 16, 2015) (CI EPA Contentions).

[2] Human and Environmental Protection Standards for Uranium and Thorium Mill Tailings, 80 Fed. Reg. 4156 (January 26, 2015) (proposed EPA rule).

BACKGROUND

Crow Butte Resources, Inc. (CBR or Applicant) holds NRC source materials license SUA-1534, which authorizes operation of an ISR facility in Dawes County, Nebraska.[3] On November 27, 2007, CBR submitted an application requesting renewal of NRC source materials license SUA-1534 for a 10-year period.[4] The environmental information in the license renewal application was provided to inform the Staff's independent environmental review of a license application and thereby to assist the Staff in meeting the requirements of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. §§ 4321 et seq.

In response to the Staff's *Federal Register* notice of the opportunity to request a hearing or petition to intervene in the license renewal proceeding,[5] CI and the Oglala Sioux Tribe (OST) filed timely hearing requests[6] and were admitted as parties to this proceeding.[7] After the Commission's decision on the parties' appeals of contention admissibility,[8] four contentions remained: CI Technical Contention F and OST Environmental Contentions A, C and D.[9]

[3] CBR currently possesses NRC Source Materials License SUA-1534 (Nov. 5, 2014) (ADAMS Accession No. ML13324A101) (CBR License).

[4] "Application for 2007 License Renewal, USNRC Source Materials License SUA-1534, Crow Butte License Area" (Nov. 27, 2007) (LRA) (ADAMS Accession Nos. ML073480266 & ML073480267).

[5] Notice of Opportunity for Hearing, Crow Butte Resources, Inc., Crawford, NE, 73 Fed. Reg. 30,426 (May 27, 2008).

[6] Request for Hearing and/or Petition to Intervene (July 28, 2008); Consolidated Request for Hearing and Petition for Leave to Intervene (July 28, 2008).

[7] *Crow Butte Resources, Inc*. (In Situ Leach Facility, Crawford, Nebraska), LBP-08-24, 68 NRC 691, 760 (2008).

[8] *Crow Butte Resources, Inc*. (In Situ Leach Facility, Crawford, Nebraska), CLI-09-9, 69 NRC 331 (2009).

[9] Order (Canceling Oral Argument, Ruling on Summary Disposition of Consolidated Petitioners' Miscellaneous Contention G, Requiring Filing of Affidavits), at 3 (May 27, 2009) (unpublished) (ADAMS Accession No. ML091470499).

In December 2012, the NRC Staff issued its Safety Evaluation Report (SER) on the license renewal application.[10] In October 2014, after conducting its NEPA review pursuant to the regulations in 10 C.F.R. Part 51, the Staff issued the final EA and Finding of No Significant Impact (FONSI).[11] On January 5, 2015, CI and the OST filed new contentions based on the EA, and on March 16, 2015, the Board issued a decision admitting, in whole or in part, several of the intervenors' new contentions.[12] As a result, there are presently nine contentions admitted for consideration at the evidentiary hearing.[13]

On February 17, 2015, during an oral argument held by the Board regarding the admissibility of the new EA contentions filed on January 5, the Board informed the parties of the recent issuance of the proposed EPA rule.[14] The Board instructed the intervenors that if they wished to submit new or amended contentions based on the proposed EPA rule, they were to inform the Board by February 24.[15] On February 24, CI notified the Board of their intent to file new or amended contentions, and on March 9, 2015 the Board issued an order setting a briefing schedule for the submission of and responses to the new contentions. On March 16, 2015, CI

[10] Safety Evaluation Report for License Renewal of the Crow Butte Resources ISR Facility, Dawes County, Nebraska, Materials License No. SUA-1534 (December 2012) (ADAMS Accession No. ML103470470). The SER was subsequently revised and reissued in August 2014 to revise several license conditions and the discussion of them in the SER. (ADAMS Accession No. ML14149A433). Subsequent references to the SER in this response refer to the revised (2014) SER.

[11] Final Environmental Assessment for the License Renewal of U.S. Nuclear Regulatory Commission License No. SUA–1534 (October 2014) (ADAMS Accession No. ML14288A517); License Renewal of Crow Butte ISR, Uranium In-Situ Recovery Project, 79 Fed. Reg. 64,629 (October 30, 2014).

[12] *Crow Butte Resources, Inc.* (License Renewal for the In Situ Leach Facility, Crawford, Nebraska), LBP-15-11, 81 NRC ___ (Mar. 16, 2015) (slip op.) (LBP-15-11).

[13] *Id.* at 5-6, 61 (Appendix A).

[14] Tr. at 598.

[15] *Id*. at 599.

timely filed 11 new contentions asserting violations of both the Atomic Energy Act (AEA) and NEPA.[16]

LEGAL STANDARDS

I. Requirements for Contention Admissibility

A contention cannot be admitted in an NRC proceeding unless it meets the criteria in 10 C.F.R. § 2.309(f)(1). This subpart requires that each contention:

(i) Provide a specific statement of the issue of law or fact to be raised or controverted;

(ii) Provide a brief explanation of the basis for the contention;

(iii) Demonstrate that the issue raised in the contention is within the scope of the proceeding;

(iv) Demonstrate that the issue raised in the contention is material to the findings the NRC must make to support the action that is involved in the proceeding;

(v) Provide a concise statement of the alleged facts or expert opinions which support the requestor's/petitioner's position on the issue . . . ; and

(vi) Provide sufficient information to show that a genuine dispute exists with the applicant/licensee on a material issue of law or fact.

The contention admissibility requirements are "strict by design"[17] and "do not permit . . . 'notice pleading, with details to be filled in later.'"[18] It is the intervenor's burden to come forward with support for its contention,[19] and the intervenor has an "ironclad obligation to examine the publicly available documentary material pertaining to the facility in question with sufficient care to enable the petitioner to uncover any information that could serve as the foundation for a

[16] CI EPA Contentions at 28-90.

[17] *Northeast Nuclear Energy Co.* (Millstone Nuclear Power Station, Units 2 and 3), CLI-01-24, 54 NRC 349, 359 (2001).

[18] *Duke Energy Corp.* (Oconee Nuclear Station, Units 1, 2, and 3), CLI-99-11, 49 NRC 328, 338 (1999).

[19] *Amergen Energy Company, LLC* (Oyster Creek Nuclear Generating Station), CLI-09-7, 69 NRC 235, 260-61 (2009); *see also Rules of Practice for Domestic Licensing Proceedings—Procedural Changes in the Hearing Process*, 54 Fed. Reg. 33,168, 33,171 (August 11, 1989) (final rule).

specific contention."[20] Finally, if an intervenor provides a document as a basis for a contention, the intervenor must explain the significance of the document and how it supports the contention.[21]

Further, an intervenor must do more than allege generally that there are deficiencies in a license application or the Staff's review document. Contentions must provide more than "bare assertion lacking any support and the requisite specificity."[22] An intervenor must read all pertinent portions of the document it is challenging and state both the challenged position and the intervenor's opposing view. [23] To demonstrate a genuine, material dispute, the intervenor must address the specific analysis in the document and explain how it is incorrect.[24] Or, in the case of an asserted omission, the intervenor must provide supporting reasons explaining why the missing information is required.[25] An expert opinion that merely concludes that the Staff's review document is deficient, inadequate, or incorrect, without providing a reasoned basis for that conclusion, is inadequate.[26]

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[20] *McGuire-Catawba*, CLI-02-28, 56 NRC at 386.

[21] *See USEC, Inc*. (American Centrifuge Plant), CLI-06-10, 63 NRC 451, 472 (2006) ("references to articles or correspondence, without 'explanation or analysis' of their relevance, [do] not provide an adequate basis" for admitting a contention); *id*. at 457 ("it is not up to the boards to search through pleadings or other materials to uncover arguments and support never advanced by the petitioners themselves; boards may not simply "infer" unarticulated bases of contentions"); *Fansteel, Inc.* (Muskogee, Oklahoma, Site), CLI-03-13, 58 NRC 195, 204-05 (2003) (stating that it is insufficient to refer generally to voluminous documents with no further analysis and supporting evidence showing why particular sections of those documents provide the basis for a contention).

[22] *Exelon Generation Co., LLC* (Early Site Permit for Clinton ESP Site), CLI-05-29, 62 NRC 801, 810 (2005).

[23] *Millstone*, CLI-01-24, 54 NRC at 358.

[24] 10 C.F.R. § 2.309(f)(1)(vi).

[25] *Id*.; *see also NextEra Energy Seabrook, LLC* (Seabrook Station Unit 1), CLI-12-05, 75 NRC 301, 307 (2012) ("contentions shall not be admitted if at the outset they are not described with reasonable specificity or are not supported by some alleged fact or facts demonstrating a genuine material dispute").

[26] *See USEC*, CLI-06-10, 63 NRC at 472.

II. Requirements for New and Amended Contentions

New or amended contentions submitted after the initial date for hearing requests must meet the requirements of 10 C.F.R. § 2.309(c)(1). To satisfy the requirements, a party must demonstrate good cause by showing that the following three conditions are met:

(i) The information upon which the filing is based was not previously available;

(ii) The information upon which the filing is based is materially different from information previously available;

(iii) The filing has been submitted in a timely fashion based on the availability of the subsequent information.

These standards apply to both environmental and safety contentions filed after the deadline in 10 C.F.R. § 2.309(b).[27] New environmental contentions must be "based on a significant difference between [the environmental information in the LRA] and the draft or final NRC NEPA document" and must also be "based on new information that is materially different from previously available information."[28] A contention based on the Staff's NEPA document cannot be admitted unless it rests on data or conclusions that "differ significantly" from those in the environmental information in the LRA.[29] Finally, a new NEPA contention is not an occasion to raise additional arguments that could have been raised previously.[30]

[27] Amendments to Adjudicatory Process Rules and Related Requirements, 77 Fed. Reg. 46,562, 46,566 (Aug. 3, 2012) (final rule).

[28] *Id*. at 46,567.

[29] *Duke Energy Corp.* (McGuire Nuclear Station, Units 1 & 2, Catawba Nuclear Station, Units 1 & 2), CLI-02-28, 56 NRC 373, 385 (2002).

[30] *Id.* at 385-86; *see also Private Fuel Storage, L.L.C*. (Independent Spent Fuel Storage Installation), LBP-00-27, 52 NRC 216, 223 (2000) (denying a late contention where the only assertion was that "certain concerns that were not dealt with in the ER have additionally not been dealt with in the DEIS," with no showing of "new or different data or conclusions" in the DEIS); *Cleveland Elec. Illuminating Co.* (Perry Nuclear Power Plant, Units 1 & 2), LBP-82-79, 16 NRC 1116, 1118 (1982) (finding no good cause for late filing where the DEIS contained no new information relevant to contention).

DISCUSSION

CI generally assert that each of their new contentions on the proposed EPA rule "raises issues with respect to the sufficiency of the LRA, SER and/or Final EA under applicable law and regulations, *as they would be modified assuming the Proposed Rules take effect in their current form* published for comment."[31] For the reasons discussed below, all of the new contentions should be rejected because they fail to meet the admissibility standards of 10 C.F.R. § 2.309(f)(1).

I. Overview of EPA and NRC Authority under Section 275 of the AEA

Section 275 of the AEA, as amended by Section 206 of the Uranium Mill Tailings Radiation Control Act (UMTRCA), grants the EPA authority to promulgate by rule "standards of general application for the protection of public health, safety, and the environment from hazards" associated with the possession, transfer, and disposal of 11e.(2) byproduct material at uranium milling sites.[32] The EPA was not given authority to enforce these standards, however. Rather, under Section 275 of the AEA, the NRC has the duty to regulate mill tailings, which includes conforming NRC regulations to the EPA's general standards,[33] as well as implementing and enforcing the EPA standards.[34] Section 275(b)(2) of the AEA allows EPA to periodically revise these general standards, and states that within three years after such a revision, "the NRC and Agreement States shall apply the revised standard in the case of any licensee for byproduct

[31] CI EPA Contentions at 27 (emphasis added).

[32] 42 U.S.C. § 2022(b)(1). More specifically, this authority extends to byproduct material that falls under the definition in section 11(e)(2) of the AEA "at sites at which ores are processed primarily for their source material content or which are used for the disposal of such byproduct material." *Id.* UMTRCA also expanded the definition of byproduct material in the AEA to include tailings and waste from uranium and thorium mills in the definition of byproduct material. *See* 42 U.S.C. § 2014(e)(2).

[33] 42 U.S.C. § 2114(a)(2).

[34] 42 U.S.C. § 2022(d); *Environmental Defense Fund v. NRC*, 866 F.2d 1263, 1264-65 (10th Cir. 1989) (EDF). Section 275(b)(2) of the AEA states that within three years after EPA revises a general standard promulgated under this authority, "the Commission and Agreement States shall apply the revised standard in the case of any licensee for byproduct material as defined in section 11e(2)."

material as defined in section 11e.(2)."[35] Finally, pursuant to Section 84(c) of the AEA, the NRC may, without EPA's concurrence, approve licenses containing site-specific alternatives to the EPA's general standards when compliance with those standards is not practicable.[36]

II. Responses to CI Contentions

As an initial matter, it is a well-established point of law that proposed rules have no legal effect.[37] In the context of NRC proceedings, as one licensing board has stated, a proposed rule "may not support an admissible contention" because "its ultimate effect is at best speculative."[38] At this point, as CI acknowledge, it is unclear when—or even if—a final rule will be published, or whether, if published, it would be published in its current form.[39] Because the proposed EPA rule is not legally binding, neither the NRC Staff nor CBR is bound to comply with or address its requirements. Thus, any contention asserting an omission from the LRA or the EA based on the

[35] 42 U.S.C. § 2022(b)(2).

[36] 42 U.S.C § 2114(c); *EDF*, 866 F.2d at 1269. In this regard, the "Introduction" to 10 C.F.R. Part 40, Appendix A, states as follows:

> Licensees or applicants may propose alternatives to the specific requirements in this appendix. The alternative proposals may take into account local or regional conditions, including geology, topography, hydrology, and meteorology. The Commission may find that the proposed alternatives meet the Commission's requirements if the alternatives will achieve a level of stabilization and containment of the sites concerned, and a level of protection for public health, safety, and the environment from radiological and nonradiological hazards associated with the sites, which is equivalent to, to the extent practicable, or more stringent than the level which would be achieved by the requirements of this appendix and the standards promulgated by the Environmental Protection Agency in 40 C.F.R. part 192, subparts D and E.

This language mirrors language in Section 84(c) of the AEA. 42 U.S.C. § 2114(c). While this language currently applies only to existing subparts D and E of 40 C.F.R. part 192, there is no basis to conclude that it would not be extended to the EPA's proposed subpart F, should it become a final rule.

[37] *U.S. v. Springer*, 354 F.3d 772, 776 (8th Cir. 2004); *Sweet v. Sheahan*, 235 F.3d 80, 87 (2d Cir. 2000); *see also Ctr. for Auto Safety v. Nat'l Highway Traffic Safety Admin.*, 710 F.2d 842, 846 (D.C.Cir.1983) (noting that "the issuance of a notice of proposed rulemaking ... often will not be ripe for review because the rule may or may not be adopted or enforced").

[38] *Nuclear Innovation North America LLC* (South Texas Project, Units 3 and 4), LBP-11-7, 73 NRC 254, 290 n.233 (2011).

[39] CI EPA Contentions at 2.

proposed EPA rule cannot show that the document lacks "information on a relevant matter as required by law," and thus will necessarily fail to raise a genuine dispute under 10 C.F.R. § 2.309(f)(1)(vi). Furthermore, as the Commission has observed, "an application-specific NEPA review represents a 'snapshot' in time" and NEPA does not require the Staff to "wait until inchoate information matures into something that later might affect [its] review."[40] Accordingly, any contentions asserting failure to comply with or address requirements of the proposed EPA rule or asserting that the Staff's EA must consider these requirements are inadmissible.

A. Contention F1: Failures Concerning Financial Assurances

In this contention, CI assert that the LRA, which was submitted in 2007, "omits to incorporate the new requirements and costs related to compliance with the Proposed Rules."[41] CI claim there has been no increase in the amount of financial surety to reflect the increased costs of stability and long-term monitoring required by the proposed rule.[42] This assertion fails to raise a genuine dispute with the application or the EA. With regard to the EA, financial assurance is addressed in the Staff's safety review, not its environmental review.[43] CI have not cited any requirement that financial assurance be addressed in the context of NEPA; therefore, the assertion that the EA does not discuss financial assurance does not support an admissible contention.

With regard to the LRA, because the proposed EPA rule is not legally binding, CBR is not required to account for any additional costs associated with the proposed rule in its surety

[40] *Luminant Generation Co.* (Comanche Peak Nuclear Power Plant, Units 3 and 4), *et al.*, CLI-12-7, 75 NRC 379, 391-92 (2012) (citing *Village of Bensenville v. Federal Aviation Admin.*, 457 F.3d 52, 71-72 (D.C. Cir. 2006); *Town of Winthrop v. Federal Aviation Admin.*, 535 F.3d 1, 9-13 (1st Cir. 2008); *Marsh v. Oregon Natural Resources Council*, 490 U.S. 360, 373 (1989)).

[41] CI EPA Contentions at 30.

[42] *Id*. at 31.

[43] The purpose of adjudicatory hearings is to address the adequacy of the LRA and the Staff's environmental review, not the adequacy of the Staff's safety review. Accordingly, contentions alleging deficiencies in the SER are not within the scope of the hearing. *Pa'ina Hawaii*, CLI-08-3, 67 NRC 151, 168 n.73 (2008); *Curators of the University of Missouri*, CLI-95-8, 41 NRC 386, 395-96 (1995).

estimates. CI have cited no other legal basis that would require CBR to account for any additional costs associated with the proposed EPA rule. Thus, CI have not shown that the LRA lacks "information on a relevant matter as required by law," and CI have failed to raise a genuine dispute with the application under 10 C.F.R. § 2.309(f)(1)(vi).

Even if the proposed EPA rule becomes effective in its current form, it contains no requirements pertaining to financial assurance. Rather, the governing financial assurance requirements are found in Criterion 9 of 10 C.F.R. Part 40, Appendix A.[44] CBR is also subject to a license condition (LC) to assure compliance with Criterion 9. Pursuant to these two requirements, CBR must provide annual surety updates to the NRC for review and approval.[45] Should the proposed EPA rule go into effect, when it is implemented by NRC, CBR's next annual surety update would have to reflect any additional costs associated with compliance. But at this point in time, CI have not demonstrated any omissions by CBR under NRC's financial assurance requirements. In particular, CI's assertion that the surety amount has not been updated since 2007 is incorrect. The most recent surety amount, approved by the Nebraska Department of Environmental Quality (NDEQ) in February 2015, is approximately $45,000,000.[46] Therefore, CI have failed to raise a genuine dispute with the LRA.

CI also claim that the LRA and SER do not address potential financial liability and insecurity associated with Cameco's disputes with taxing authorities, low uranium prices, and

[44] *See* 10 C.F.R. § 40.36; *see also* NUREG-1569, Standard Review Plan for In Situ Leach Uranium Extraction License Applications (June 2003) at Appendix C.

[45] Under LC 9.5, the surety estimate must cover costs of a third-party contractor completing decommissioning, decontamination, and ground-water restoration. CBR License at 3-4. LC 9.5 also requires CBR to provide proposed annual surety updates to the NRC by October 1 of each year, with supporting documentation. *Id*. at 3. Since submitting the license application, CBR has provided those updates, which are publicly available in ADAMS. The NRC reviews those updates and amends the license to reflect the increased surety amounts. And because the State of Nebraska holds the approved surety instrument, CBR is also required to submit an annual surety update to the state for review and approval, and to provide the state with an approved surety instrument reflecting the updated amount.

[46] *See* Letter from Marty Link, NDEQ, to Brent Berg, Cameco (Feb. 12, 2015) (ADAMS Accession No. ML15062A169).

the additional estimated costs of complying with the proposed rules.[47] These assertions fail to raise a genuine dispute because CI have not shown that the surety for the CBR facility is affected by those issues.[48] Indeed, the purpose of a surety instrument is to ensure that costs of decommissioning and reclamation are covered and that those tasks can be completed by a third party in the event that the licensee cannot fulfill its obligations.

Finally, CI assert that, under 10 C.F.R. § 40.9, CBR was required to notify the NRC of the tax disputes it is involved in "and that an adverse ruling would significantly impact its ability to continue as a going concern."[49] This claim fails to raise a genuine dispute with the LRA, because CI have not pointed to any requirement stating that CBR must provide such statements in the context of a license renewal proceeding. CI have not explained why, under 10 C.F.R. § 40.9(b), this information has a significant implication "for public health and safety or common defense and security." CI Exhibits B and C state that these disputes have not yet been resolved, so their assertion that there will even be an adverse ruling is premature and speculative at this point. Finally, CI have not explained why such a notification is material to the decision the Staff must make in this license renewal proceeding.[50]

B. Contention F2: Crow Butte Is Now in Restoration Per Its Plans

In this contention, CI assert generally that the AEA, NEPA and associated regulations require the Staff's review documents to accurately describe Crow Butte's activities and that Crow Butte follow its restoration and decommissioning schedule. CI cite Section 6.1.3.6 of the SER, originally published in 2012, which states that CBR expected to complete production by

[47] CI EPA Contentions at 31-33. In support of this claim, CI provide three exhibits (Exhibits A, B and C). The first of these, Exhibit A, states that a metric used for investors, "Probability of Bankruptcy," rates Cameco's stock at 27% and 52%, with 90% indicating a high risk of bankruptcy. Exhibits B and C are articles discussing Cameco's disputes with Canadian and U.S. taxing authorities.

[48] As noted above, NDEQ recently approved CBR's surety update for FY 2015.

[49] CI EPA Contentions at 32.

[50] If CI believe that CBR has not complied with a regulatory requirement, CI may file a petition for enforcement action under 10 C.F.R. § 2.206 explaining the basis for their concern.

2014,[51] and assert that "[s]ince Crow Butte expects to be completing production or has already done so at the end of 2014, it is reasonable to suggest it has moved into restoration and decommissioning already."[52] There is no factual basis for this claim, for although some of CBR's wellfields are in restoration, others continue to be in operation. As to the implication that the Staff's descriptions are inaccurate, that amounts to flyspecking of the Staff's EA.[53] For the above reasons, this claim fails to raise a genuine dispute with the LRA or the EA.

CI next assert, based on a statement in the preamble to the proposed EPA rule, that "standby" status is inappropriate and that, if extraction has ceased, restoration should be initiated for mine units 7 to 11.[54] But EPA included the discussion of "standby" status in order to seek input from stakeholders on their interpretation,[55] and, therefore, CI take the statement from the preamble out of context. Moreover, the statement is irrelevant because CI have provided no factual basis for concluding that CBR intends to stop recovery operations in a wellfield and resume operations at a later date, which is what the EPA's discussion of "standby status" refers to.

CI also claim that "it is likely under the proposed rules that further work on MU-1 will be required and the restoration schedules will be substantially extended; therefore, it is unlikely that CBR would ever commence production on MU-12 or others in the original licensed area."[56] This is a speculative assertion lacking factual or expert support. Because MU-1 went through

[51] The statement in the SER reflects CBR's expectation, and is not binding on the applicant. Also, section 2.1.2 of the EA explains that production was expected to continue "at current levels" until "approximately the end of 2014*,* although the exact date is to be determined." EA at 5.

[52] CI EPA Contentions at 33.

[53] *Clinton ESP*, CLI-05-29, 62 NRC at 810; *see also Grand Gulf ESP*, CLI-05-4, 61 NRC at 19 (stating that "boards do not sit to parse and fine-tune" the staff's NEPA documents).

[54] CI EPA Contentions at 35 (citing 80 Fed. Reg. at 4176).

[55] 80 Fed. Reg. at 4176.

[56] CI EPA Contentions at 35.

restoration and the restoration has been approved by the NRC, it will not be subject to the proposed EPA rule should it become effective.[57] Furthermore, the assertion regarding commencing production on "MU-12 or others in the original license area" does not raise a dispute with the application or the EA because there are no additional mine units planned for the main CBR facility.

Finally, CI claim that CBR has decided to permanently cease principal activities and thus they should notify the Commission and follow the regulatory requirements of 10 C.F.R. § 40.42.[58] Again, based on the fact that several wellfields are still in operation, this claim is factually inaccurate. Because it lacks factual support, this claim amounts to a bare assertion lacking in specificity and cannot support the admissibility of this contention.[59]

C. Contention F3: Failure of the NRC Staff to Complete EIS, Scoping Instead of EA

CI argue that the Staff violated "the AEA, NEPA, Part 40, Appendix A to Part 40, and Part 51 and CEQ regulations" by preparing an EA instead of an EIS.[60] To the extent that CI rely on the proposed EPA rule to support their assertion, their contention is inadmissible because "a proposed rule . . . may not support an admissible contention."[61] Regardless of whether the proposed EPA rule is relevant, CI fail to offer an adequate basis for the contention.

CI offer two regulatory avenues for their assertion that the Staff must prepare an EIS. First, CI claim that the renewal of CBR's license is a major federal action significantly affecting the quality of the human environment, and that an EIS is therefore required under 10 C.F.R. § 51.20(a)(1). But as the Board explained in LPB-15-11, "[i]ssuance of an EA is appropriate

[57] 80 Fed. Reg. at 4172.

[58] CI EPA Contentions at 36.

[59] *Clinton ESP*, CLI-05-29, 62 NRC at 810.

[60] CI EPA Contentions at 36. It is unclear—and CI do not explain—why preparing an EA instead of an EIS would violate the AEA.

[61] *South Texas*, LBP-11-7, 73 NRC at 290 n.233.

where the NRC Staff determines that the proposed project will result in no significant impacts, as the NRC Staff did here."[62] CI fail to identify a significant impact that would require the Staff to prepare an EIS. It is especially unclear how the proposed EPA rule, which would seek to impose stricter requirements regarding post-operation activities at ISR facilities, would result in a more significant environmental impact at the CBR facility than has been assessed in the Staff's EA.

Next, CI argue that the renewal of CBR's license involves "special circumstances" that "the Commission, in the exercise of its discretion, has determined should be covered by an [EIS] because of . . . unresolved conflicts concerning reasonable alternatives."[63] CI cite 10 C.F.R. § 51.22(c)(14)(xiii), which is a categorical exclusion for "[m]anufacturing or processing of source, byproduct, or special nuclear materials for distribution to other licensees, except processing of source material for extraction of rare earth and other metals."[64] CI, assuming incorrectly that the categorical exclusion applies to the CBR facility, then assert that 10 C.F.R. §§ 51.20(b)(14) and 51.22(b) provide for an EIS in the presence of special circumstances, which include "unresolved conflicts concerning alternative uses of available resources within the meaning of section 102(2)(E) of NEPA."[65] CI claim that "[s]ince [CI] have asserted that the NRC Staff has failed to consider all reasonable alternatives, including the alternative of simply allowing Crow Butte to commence the decommissioning that it has already scheduled itself to be on as of 2015, there exist special circumstances in this case justifying an EIS."[66]

CI are incorrect that the renewal of CBR's license falls within the categorical exclusion, because the CBR facility is not within the categories of facilities encompassed by the categorical

[62] LBP-15-11 at 16 (citations omitted).

[63] CI EPA Contentions at 38.

[64] *Id.*; 10 C.F.R. § 51.22(c)(14)(xiii).

[65] 10 C.F.R. § 51.22(b).

[66] CI EPA Contentions at 39.

exclusion. Further flawed is CI's suggestion that its previous assertions that the EA fails to consider reasonable alternatives are sufficient to demonstrate "unresolved conflicts concerning alternative uses of available resources." Not only has the Board dismissed those assertions in their entirety,[67] but CI's argument, if accepted, would have the consequence of effectively requiring the Staff to prepare an EIS for every license application in which the Staff's review of reasonable alternatives is contested. This result has no support in the regulations or case law, and the rejected prior contention cannot support an admissible contention now.

D. Contention F4: The Environmental Assessment Fails to Adequately Describe and Analyze Aquifer Restoration Goals in Light of New Standards for Determining Alternative Control Limits in the Proposed Rules

CI argue that the EA "fails to describe and analyze the environmental impacts, specifically related to water consumption, long term stability monitoring[,] and Alternative Control Limit determinations that are impacted by the Proposed Rules and the attendant 30-year monitoring period," and therefore that the finding of no significant impacts from restoration activities "cannot be supported given the new regulatory requirements."[68] CI also repeat the assertion that these concerns require the Staff to prepare an EIS.[69]

These assertions fail to raise a genuine dispute with the EA. First, an admissible contention cannot be based on a proposed rule, because the future effect of such a rule is necessarily speculative.[70] Second, as the Board explained in its March 16, 2015 ruling, "[i]ssuance of an EA is appropriate where the NRC Staff determines that the proposed project will result in no significant impacts, as the NRC Staff did here."[71] Even if the proposed EPA rule

[67] LBP-15-11 at 40-41.

[68] CI EPA Contentions at 40-41.

[69] *Id.* at 41.

[70] *South Texas*, LBP-11-7, 73 NRC at 290 n.233.

[71] LBP-15-11 at 16 (citations omitted).

were relevant here, CI have not identified a single significant impact from restoration due to the proposed rule. CI's chief argument is that the restoration procedures discussed in the EA "are likely to be insufficient to meet the more stringent requirements under the Proposed Rules."[72] But CI do not explain why "more stringent requirements" would lead to significant environmental impacts. Therefore, because it lacks the requisite factual support and does not present a genuine dispute with the EA, Contention F4 is inadmissible.

E. Contention F5: The EA, LRA, and Associated Monitoring Values and Restoration Goals Rely on Baseline Data Calculations that are Inadequate and Unacceptable Under the Proposed Rules

CI assert that "[b]ecause the baseline data is insufficient under the framework described in the proposed rules, there is no basis for the staff's conclusion that the license renewal will result in no significant impact" and a full EIS is therefore required.[73] The basis for this claim is that EPA has proposed new procedures for establishing baseline values prior to commencement of mining activities that were not employed when CBR facility was initially licensed in 1987.[74] Although CI acknowledge that it is "impossible to go back in time" and collect data according to the procedures in the proposed EPA rule, they nonetheless assert that "the impacts of that deficiency must still be addressed."[75]

This contention is inadmissible because it lacks factual support and fails to raise a genuine dispute with the LRA or the EA. CI have not provided any support for their assertions that the FONSI for this particular facility is invalid because the baseline data were obtained prior

[72] CI EPA Contentions at 40. The remainder of CI's arguments are duplicative of those proffered in support of Contention 6, which the Board has admitted in part. LBP-15-11 at 30.

[73] CI EPA Contentions at 43.

[74] *Id.* at 41-43.

[75] *Id*. at 43.

to the publication of the proposed EPA rule. And, as discussed in Section I *supra*, a proposed rule is not legally binding and cannot form a basis for an admissible contention.[76]

Moreover, even if the proposed EPA rule was in effect, an agency may not promulgate retroactive rules unless the statute granting rulemaking authority expressly provides such authority.[77] A regulation has a retroactive effect when it "impair[s] rights a party possessed when he acted, increase[s] a party's liability for past conduct, or impose[s] new duties with respect to transactions already completed."[78] CI have provided no evidence that UMTRCA or Section 275 of the AEA gives EPA express authority to promulgate retroactive health standards related to uranium milling facilities. Further, as CI themselves recognize, it is not possible to go back in time to collect baseline data for an operating ISR facility according to the procedures in the proposed EPA rule. Thus, the collection of the baseline data that CI call for clearly constitutes "past conduct" or "transactions already completed," and applying the proposed EPA rule to this past conduct would have a retroactive effect. CI have not provided any other support for their assertion that the FONSI is invalid.

Finally, CI assert that EPA concerns expressed at page 4174 of the proposed rule[79] are "virtually identical" to Dr. Abitz's statement that uranium and radium must be considered in preoperational monitoring. But in fact, there is no similarity between Dr. Abitz's statement and the cited EPA statement, which addresses the importance of allowing sufficient time to pass between well installation and sampling to allow any localized disturbances to dissipate. Further, this assertion does not raise a dispute with the LRA or the EA, and CI fail to explain how it supports the admission of this contention. Therefore, this claim is inadmissible.

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[76] *Springer*, 354 F.3d at 776; *South Texas*, LBP-11-7, 73 NRC at 290 n.233.

[77] *Bowen v. Georgetown University Hospital*, 488 U.S. 204, 208-09 (1988); *Hydro Resources, Inc*. (Crownpoint, NM), LBP-05-26, 62 NRC 442, 459 (2005).

[78] *Lansgraf v. UFI Film Products*, 511 U.S. 244, 280 (1994).

[79] 80 Fed. Reg. at 4174.

F. Contention F6: The EA Fails to Describe and Analyze the Environmental Impacts of New Porosity and Permeability in the Aquifer Caused by Mining Activity

CI assert that the EA should have described and analyzed "the existence . . . [and] potential impacts of new porosity pathways and permeability identified in the discussion of the proposed rules."[80] CI also assert that the EA must "describe and analyze the underground features that are altered" by ISR or else the FONSI should be rejected.[81] As support for this contention, CI quote three excerpts from preamble to the proposed EPA rule[82] regarding alteration of porosity and permeability of host rock. CI claim that these statements echo and confirm Dr. LaGarry's concerns that flow pathways along faults are being "uncorked" by the ISR activities.[83]

The issue of aquifer confinement and fluid migration through various pathways is already the subject of admitted OST Contentions C and D, which have migrated to the EA. This contention does not add anything new to the bases of those contentions. CI have simply reiterated Dr. LaGarry's statement, claimed that the proposed EPA rule "confirms" his statement, and have asserted, without further support, that an EIS is required. In LBP-15-11, the Board rejected the portion of a contention asserting that an EIS was required,[84] and CI have not provided any information here to suggest that there will be a significant impact that would require an EIS. Therefore, they have failed to support this contention and have failed to raise a genuine dispute with the EA.

[80] CI EPA Contentions at 44.

[81] *Id*. at 44-45.

[82] 80 Fed. Reg. at 4164-65.

[83] CI EPA Contentions at 44.

[84] LBP-15-11 at 16.

G. Contention F7: The Environmental Assessment Fails to Adequately Describe and Analyze the Impacts of Maintaining Post-Operational Wellfields as Long Term Hazardous Waste Facilities

CI argue that the EA fails to describe the long term monitoring requirements proposed by the EPA, and that post-operational wellfields at CBR "will have to be managed as Superfund sites" given the "pending . . . insolvency of CBR."[85] CI also repeat the assertion that these concerns require the Staff to prepare an EIS.[86]

First, CI cites no legal authority for its claim that failing to discuss a proposed rule places the EA in violation of NEPA. In fact, the opposite is true—a proposed rule cannot form the basis for a contention, as its ultimate legal effect is necessarily speculative.[87] Furthermore, because "an application-specific NEPA review represents a 'snapshot' in time," the Staff is not required to "wait until inchoate information matures into something that later might affect [its] review."[88] Therefore, insofar as the contention relies on potential future requirements in the proposed EPA rule, it is inadmissible.

Second, as explained previously, CI's argument that CBR's financial situation will affect restoration and decommissioning impacts fails to raise a genuine dispute of material fact.[89] CBR is required to maintain a surety instrument to ensure that decommissioning funds will be available, and CI do not explain why the surety is at risk or insufficient. Furthermore, CI's assertion that the Staff must prepare an EIS lacks sufficient support and cannot form the basis of an admissible contention. CI argue that an EIS must be prepared because the EA omits a discussion of the proposed EPA rule's long-term monitoring requirements. But as the Board has

[85] CI EPA Contentions at 45.

[86] *Id.* at 46.

[87] *South Texas*, LBP-11-7, 73 NRC at 290 n.233.

[88] *Comanche Peak*, CLI-12-7, 75 NRC at 391-92.

[89] *See supra* at 10.

explained, a contention asserting that an EIS must be prepared requires an intervenor to "provide[] sufficient information to identify significant impacts from the license renewal that would obligate the NRC Staff to prepare an EIS," not simply claim generally that the EA lacks a discussion of significant impacts.[90] As CI fail to identify any such significant impacts, this argument cannot support an admissible contention.

H. Contention F8: Failure to Consider All Reasonable Alternatives

CI argue that the EA fails to consider "[n]umerous unexplored and unreviewed alternatives . . . especially including those set forth by the EPA in the Proposed Rules."[91] While CI refer to the EPA's discussion of "standby" status, that discussion is both taken out of context and irrelevant to CBR's planned activities, as discussed above in the Staff's response to Contention F2.[92] Furthermore, it is not clear precisely what alternative the Staff is accused of omitting. As the Board has explained, an admissible contention may not "suggest that all or any unreviewed alternatives could be explored, but provide no support for the exploration of any specific alternatives."[93]

CI also argue that restoration and long-term monitoring under the proposed rules would likely result in positive employment opportunities, which the EA fails to describe as a reasonable alternative in Section 1.5.[94] It is unclear—and CI do not explain—why the impacts of the proposed rules are relevant to the EA's description of alternatives in Section 1.5. Furthermore, the EA discusses expected socioeconomic impacts appropriately. The Staff describes the likely socioeconomic impacts of the proposed action and the no-action alternative in Section 4.7, and

[90] LBP-15-11 at 16.

[91] CI EPA Contentions at 47.

[92] *See supra* at 12.

[93] LBP-15-11 at 41 n.214.

[94] CI EPA Contentions at 48.

describes the cumulative impacts to socioeconomics in Section 4.13.7.[95] To the extent that CI challenge this discussion based on the proposed EPA rule, their contention is inadmissible. A contention may not be based on a proposed rule, as the future effect of such a rule is necessarily speculative.[96] As the Commission has discussed, the Staff's NEPA review of an application is based on "a 'snapshot' in time," and the Staff is not required to "wait until inchoate information matures into something that later might affect [its] review."[97]

I. Contention F9: Failure to Take an Hard Look at Impacts Related to Restoration Standards and Alternate Standards Due to "Cozy" NRC Staff Relationship with Industry Compared to EPA

CI assert that the EA fails to take a hard look at "impacts associated with restoration standards, difficulty and cost in achieving them, and use of alternative standards permitted under the proposed rules."[98] However, because the proposed EPA rule is not legally binding, it cannot support an admissible contention.[99] Furthermore, contrary to what CI appear to be asserting, NEPA does not require the NRC to assess the environmental impacts of the proposed EPA rule in the EA for the CBR facility. This is because the proposed rule is (1) not, in and of itself, a proposed action being reviewed by NRC and (2) does not fall within the scope of the Staff's review of the CBR facility.[100] Such a claim is not material to this proceeding, falls outside the scope of the proceeding, and fails to raise a genuine dispute with the EA.

[95] EA at 85-86, 120.

[96] *South Texas*, LBP-11-7, 73 NRC at 290 n.233.

[97] *Comanche Peak*, CLI-12-7, 75 NRC at 391-92.

[98] CI EPA Contentions at 49.

[99] *Springer*, 354 F.3d at 776; *South Texas*, LBP-11-7, 73 NRC at 290 n.233.

[100] For the same reason, NRC is not required to look at environmental impacts of its current regulations in Part 40, Appendix A.

CI also assert that the NRC Staff did not take a hard look at these issues because of a "cozy relationship" with industry in general and CBR in particular.[101] As support, CI cites a Congressional report from 1987 on an investigation of several matters involving the NRC, one of which involved a Commissioner's alleged relationship with industry.[102] CI do not explain the relevance of this report from 1987 with respect to the present-day conduct of the NRC Staff in general and the Staff's hard look at the environmental consequences of the proposed action in this case. Nor do CI provide any additional support for their claim. As a result, CI's claim amounts to no more than a bare assertion that cannot support admission of a contention.[103]

Next, CI assert that "EPA makes reference to the 'confused' nature of NRC setting of baselines and restoration standards in ways overly favorable to industry."[104] But CI do not identify the specific statement they allude to. CI then quote extensively from the preamble to the proposed rule, providing excerpts from EPA's explanation as to why it believes the new standards are needed, and EPA's rationale for the proposed rule.[105] Although CI highlight several portions of these excerpts, they fail to explain why any of the quoted excerpts support their contention. In particular, nowhere in this collection of excerpts is there a statement indicating that the NRC has set baselines or standards in ways favorable to industry.[106] Rather, CI merely assert generally that the extensive quotes provide "many indications" that the Staff failed to take a hard look at restoration standards, set high-end values, and "otherwise allowed

[101] CI EPA Contentions at 50.

[102] *See* Exhibit D at 18-26.

[103] *Clinton ESP*, CLI-05-29, 62 NRC at 810.

[104] CI EPA Contentions at 50.

[105] *Id.* at 50-57, quoting excerpts from 80 Fed. Reg. at 4164-65, 4170-75.

[106] To the extent that CI are claiming that the NRC restoration standards in Criterion 5B(5) of 10 C.F.R. Part 40, Appendix A are inadequate, that is an impermissible attack on Commission regulations. 10 C.F.R. § 2.335(a).

easy and less rigorous and more confused [sic] than EPA have."[107] Merely referring to information without explaining how it supports a contention is not sufficient to satisfy the requirements for admission of this contention.[108] Moreover, the statements in the EPA rule about "high-end values" are general and do not refer to a specific facility,[109] and CI provide no specific examples of "high-end values" used at the CBR facility. As discussed in Section I, *supra*, the NRC has the legal authority to authorize site-specific alternatives to the EPA standards if it is not practicable for a licensee to meet them.[110]

Finally, CI assert that EPA issued the proposed rule in part because it was dissatisfied with how NRC regulates ISR operators.[111] CI do not cite specific language in the proposed EPA rule to support this interpretation of EPA's intentions with respect to this proposed rulemaking. Regardless of EPA's motivation for issuing this proposed rule, the fact remains that pursuant to UMTRCA and the AEA, the NRC, not the EPA, has the duty of regulating ISR facilities, including the duty to implement and enforce EPA's general standards. And, in any event, the motivation driving EPA to issue the proposed rule has no bearing on the decision that the NRC must make with respect to this particular licensing action. Thus, this assertion does not address an issue material to the proceeding as required by 10 C.F.R. § 2.309(f)(1)(iv).

J. Contention F10: Failure to Take a Hard Look or Adequately Analyze or Describe Restoration Standards and Schedules, Including Delays, Resulting from Proposed Rules

CI generally assert that the EA fails to take a hard look at "impacts of the Proposed Regulations . . ." and fails to describe such impacts.[112] But, as discussed in the response to

[107] CI EPA Contentions at 58.

[108] *See USEC, Inc*. (American Centrifuge Plant), CLI-06-10, 63 NRC at 457, 472.

[109] 80 Fed. Reg. at 4174, 4175.

[110] 42 U.S.C. § 2114(c); *EDF*, 866 F.2d at 1269.

[111] CI EPA Contentions at 58.

[112] *Id.*

Contention F9, the NRC is not required under NEPA to take a hard look at impacts of the proposed EPA rule. NRC's role under NEPA is to take a hard look at impacts of the proposed action.

CI claim that the proposed EPA rule will change items in Criteria 5 and 7 of Appendix A and thus "all schedules based on restoration and decommissioning set forth in the EA are now inaccurate and misleading and violate NEPA."[113] First, because the proposed rule is not legally binding, it does not support admission of this contention.[114] Also, the EA is a "snapshot in time" and the Staff is not required to "wait until inchoate information matures into something that later might affect [its] review."[115] Finally, CI do not specify the "schedules" they refer to. If CI are referring to information in Section 2.1.2 of the EA (cited on page 59 of the CI EPA Contentions), the EA specifically states that production "at current levels" would continue until "approximately the end of 2014, although the exact date is to be determined."[116] If CI are referring to Figure 4-4, which CI later assert "needs to be re-done,"[117] that figure is provided in the context of the EA's cumulative impact analysis. In neither case do CI explain how this information is insufficient for NEPA purposes. Therefore, they fail to raise a genuine dispute with the EA.

CI also assert, referring to an excerpt from Section 2.3.1 of the EA, that "there are more activities involved in restoration such as additional monitoring for stability as described in [the proposed EPA rule]."[118] But again, the proposed rule is not legally binding and thus does not support admission of this contention.[119]

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[113] *Id*.

[114] *Springer*, 354 F.3d at 776; *South Texas*, LBP-11-7, 73 NRC at 290 n.233.

[115] *Comanche Peak*, CLI-12-7, 75 NRC at 391-92.

[116] EA at 5.

[117] CI EPA Contentions at 65. Again, after making this assertion, CI quote 4 pages of the EA with no explanation of how that excerpt supports the assertion that the figure has to be redone. *Id*. at 65-68.

[118] CI EPA Contentions at 59-60.

CI next assert that "all aspects of the final EA concerning background concentrations, restoration standards, impacts on ground water quality and the like must be analyzed and re-done to describe the same in the context of the proposed regulations."[120] This claim fails to meet 10 C.F.R. §§ 2.309(f)(1)(v) and (vi) because it is an unsupported, bare assertion and fails to raise a genuine dispute with the EA.[121] First, because the proposed rule has no legal effect it cannot support an admissible contention.[122] Second, other than long excerpts from the EA, without any explanation of their significance, CI have provided no information (facts or expert opinion) to support their claims. And, as discussed previously, even if the rule were to become effective in its current form, it cannot be applied retroactively to the baseline (or background) concentrations.[123] Finally, in the proposed rule, EPA suggests that under its proposed new standards, expected impacts would be reduced.[124] Thus, the current analysis of impacts on water resources in the EA, which is based on the current EPA standards, would effectively serve to bound the impacts that might result should the standards in the proposed rule be implemented in the future.

K. Contention F11: In Light of the Proposed Rules, the SER Fails to Adequately Evaluate Adverse Impacts on Public Health and Safety

CI argue that the SER violates "the AEA, NEPA, Part 40, Appendix A to Part 40, and Part 51 regulations because each lacks an adequate description."[125] CI list several sections of

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[119] *Springer*, 354 F.3d at 776; *South Texas*, LBP-11-7, 73 NRC at 290 n.233

[120] CI EPA Contentions at 63.

[121] *Clinton ESP*, CLI-05-29, 62 NRC at 810.

[122] *Springer*, 354 F.3d at 776; *South Texas*, LBP-11-7, 73 NRC at 290 n.233.

[123] *See supra* at 17.

[124] *See* 80 Fed. Reg. at 4180.

[125] CI EPA Contentions at 69. It is unclear—and CI do not explain—why the SER would implicate NEPA or 10 C.F.R. Part 51.

the SER that they claim "are now inaccurate because of the Proposed Rules and all the new EPA standards."[126] This takes the form of a set of one- or two-sentence assertions about the SER being inaccurate or not complying with the proposed EPA rule, each followed by lengthy excerpts from the SER without explanation.[127]

First, because contentions may challenge the adequacy of the LRA and the Staff's environmental review—not the adequacy of the staff's safety review—allegations of deficiencies in the SER are not within the scope of the hearing.[128] Furthermore, CI's assertions treat the proposed rules as if they were currently effective legal requirements, when in fact they have no legal effect. A contention cannot rely on a proposed rule, because the final version of the rule (if any) is necessarily speculative.[129] Because each of CI's assertions relies on the proposed rule, they cannot support an admissible contention. Finally, even if CI's assertions were within the scope of this proceeding and based on authority with legal effect, they would still not support an admissible contention. CI's lengthy quotes from the SER, paired with bare assertions that the SER is inaccurate and lacking any meaningful explanation, fail to provide the required "sufficient information to show that a genuine dispute exists."[130] As the Commission has made clear, an intervenor must identify specific bases and explain why they support the contention—not simply rely on general references to voluminous text as a basis.[131] Contention F11 is therefore inadmissible.

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[126] CI EPA Contentions at 70-82.

[127] *See, e.g.*, CI EPA Contentions at 85-90.

[128] *Pa'ina Hawaii*, CLI-08-3, 67 NRC 151, 168 n.73 (2008); *Curators of the University of Missouri*, CLI-95-8, 41 NRC 386, 395-96 (1995).

[129] *South Texas*, LBP-11-7, 73 NRC at 290 n.233.

[130] 10 C.F.R. § 2.309(f)(1)(vi).

[131] *USEC*, CLI-06-10, 63 NRC at 457, 472; *Fansteel*, CLI-03-13, 58 NRC at 204-05.

CONCLUSION

For the reasons discussed above, the Board should reject Consolidated Intervenors' new contentions related to the proposed EPA rule.

Respectfully submitted,

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Dated at Rockville, Maryland
this 27th day of March 2015.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of	)	
	)	
CROW BUTTE RESOURCES, INC.	)	Docket No. 40-8943
	)	
(License Renewal for the In Situ Leach Facility, Crawford, Nebraska)	)	ASLBP No. 08-867-02-OLA-BD01
	)	

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing "NRC STAFF'S ANSWER TO CONSOLIDATED INTERVENORS' NEW CONTENTIONS BASED ON PROPOSED EPA RULE" in the above captioned proceeding have been served this 27th day of March, 2015, via the NRC's Electronic Information Exchange ("EIE"), and via e-mail to David Frankel and Thomas Ballanco, counsels for Consolidated Intervenors, 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

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