

Official Transcript of Proceedings
NUCLEAR REGULATORY COMMISSION

Title: Crow Butte Resources, Inc.

Docket Number: 40-8943-OLA

ASLBP Number: 08-867-02-OLA-BD01

Location: teleconference

Date: Tuesday, August 18, 2015

Work Order No.: NRC-1810

Pages 915-944

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UNITED STATES OF AMERICA

NUCLEAR REGULATORY COMMISSION

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ATOMIC SAFETY AND LICENSING BOARD PANEL

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PRE-HEARING CONFERENCE

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In the Matter of: : Docket No.

CROW BUTTE RESOURCES, INC. : 40-8943-OLA

(License Renewal for : ASLBP NO.

the In Situ Leach : 08-867-02-OLA-BD01

Facility, Crawford, :

Nebraska) :

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Tuesday, August 18, 2015

Teleconference

BEFORE:

MICHAEL M. GIBSON, Chair

DR. RICHARD E. WARDWELL, Administrative Judge

BRIAN K. HAJEK, Administrative Judge

1 APPEARANCES:

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P R O C E E D I N G S

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10:36 a.m.

CHAIR GIBSON: Good morning. This is Judge Gibson. Is the court reporter on the line?

COURT REPORTER: Yes, I'm here.

CHAIR GIBSON: Okay, great. With me today on the phone are Judges Richard Wardwell and Brian Hajek. Also here present are both of our clerks, Sachin Desai and Nick Sciretta, as well as Andy Welkie who is going to be handling the -- working on the tech issues in case any of those need to be addressed today.

We are here today on Atomic Safety and Licensing Board Panel Docket Number 40-8943 concerning the United States Regulatory Commission's renewal of a source material's license to Crow Butte Resources, Inc. for its In Situ Leach Mining Operation near Crawford, Nebraska.

The evidentiary hearing in this matter will begin next Monday, August 24 in the Crawford, Nebraska Community Building, and we are here today on this conference call to cover some of the pre-hearing issues so that we can cut to the chase and get right to the substance of the matters that are the subject of our hearing next week.

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1 First, I would like to have announcements
2 of counsel, beginning first with Crow Butte.

3 MR. SMITH: Good morning, Judge Gibson.
4 This is Tyson Smith for Crow Butte Resources.

5 CHAIR GIBSON: Counsel for the Nuclear
6 Regulatory Commission Staff?

7 MS. SIMON: Good morning. This is Marcia
8 Simon, and with me are my co-counsel, David Cylkowski
9 and Emily Monteith, and our paralegal, Sabrina Allen.

10 CHAIR GIBSON: Counsel for the Tribe?

11 MR. REID: Good morning. Andrew Reid from
12 the Ved Nanda Center for the Oglala Sioux Tribe.

13 CHAIR GIBSON: And counsel for Consolidated
14 Intervenors?

15 MR. FRANKEL: David Frankel for
16 Consolidated Intervenors.

17 CHAIR GIBSON: Mr. Ballanco, are you on the
18 call, as well?

19 MR. BALLANCO: Yes, Your Honor, good
20 morning. Tom Ballanco for Consolidated Intervenors.

21 CHAIR GIBSON: Okay. Did I miss anyone?
22 Very well.

23 I believe our first order of business will
24 be consideration of each party's evidence. Counsel for
25 Crow Butte, we have your exhibit list which indicates

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1 that you have CBR-001 to CBR-060. Is that correct?

2 MR. REID: Yes, Your Honor, it is.

3 CHAIR GIBSON: Okay. Counsel for the Staff,
4 we have your exhibit list which indicates that you
5 have exhibits NRC-001 through NRC-091, including
6 revisions to NRC-001 and NRC-076. Is that correct?

7 MS. SIMON: Actually, Your Honor, it should
8 be through NRC-092, if you have our exhibit list that
9 was revised on July 29th.

10 CHAIR GIBSON: Okay.

11 MS. SIMON: Other than that it is correct,
12 yes.

13 CHAIR GIBSON: Okay, thank you.

14 MS. SIMON: Oh, I'm sorry, Your Honor. Just
15 a note, two of the exhibits are listed on our list as
16 removed. I just want to make sure that was clear.

17 CHAIR GIBSON: Okay.

18 MS. SIMON: NRC-001F and NRC-007. Those had
19 to do with the witness who is not going to be able to
20 attend.

21 CHAIR GIBSON: Okay. Let me ask -- let's
22 just stop right there for a second. With respect to
23 001F, let me ask, does any party have an objection to
24 001F being withdrawn? Hearing none, we will assume
25 that that is acceptable to all parties.

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1 With respect to 007, does any party have
2 an objection to the withdrawal of that exhibit?
3 Hearing none, we will assume that is acceptable to all
4 parties to remove that exhibit, as well.

5 Now, let me ask you -- and I'll come back
6 to you, Mr. Smith. Ms. Simon, have you shared your
7 final corrected exhibit list with counsel for all of
8 the parties?

9 MS. SIMON: Your Honor, I believe they
10 would have received it in our most recent filing when
11 we filed the revised rebuttal testimony on July 29th.

12 CHAIR GIBSON: Okay, very well, very well.

13 And let me ask Mr. Smith, I assume you
14 shared your final exhibit list with counsel for all
15 parties. Correct?

16 MR. SMITH: Yes, Your Honor. It was filed
17 with our rebuttal testimony on June 8th.

18 CHAIR GIBSON: Very well, thank you.

19 Okay. Now, let's go to the --

20 JUDGE HAJEK: Judge Gibson --

21 CHAIR GIBSON: Yes.

22 JUDGE HAJEK: This is Judge Hajek, I
23 apologize for interrupting. I do not have NRC-092, and
24 it is not on the NRC's exhibit list that I have.

25 CHAIR GIBSON: Okay. All right. Well, we'll

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1 come back to that. Oh, wait a minute. It's in the
2 errata that was filed on July 29, 2015. Is that
3 correct, Ms. Simon?

4 MS. SIMON: Yes, Your Honor. That's when we
5 filed the revised rebuttal testimony --

6 CHAIR GIBSON: Okay.

7 MS. SIMON: -- and notice of errata.

8 CHAIR GIBSON: Okay. Well, Judge --

9 JUDGE HAJEK: I have that.

10 CHAIR GIBSON: Okay, very well. Judge
11 Hajek, when this call is over, we will be sure that
12 you have a copy of that. Being remote, you may have
13 just not gotten it.

14 JUDGE HAJEK: No, I do have it.

15 CHAIR GIBSON: Very well, okay. Well, then
16 we won't worry about that right now.

17 Okay, let's go to the Tribe. If I
18 understand correctly, you have Exhibit OST001. Is that
19 correct?

20 MR. REID: That is correct.

21 CHAIR GIBSON: Okay. And have you shared
22 your final exhibit list with counsel for all the other
23 parties, Mr. Reid?

24 MR. REID: Yes, I have.

25 CHAIR GIBSON: Okay. Mr. Frankel, we have

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1 your exhibit list which indicates that you have
2 Exhibits INT-001 through INT-071. Is that correct?

3 MR. FRANKEL: Yes, correct.

4 CHAIR GIBSON: Okay. And have you shared
5 your final exhibit list with counsel for all the
6 parties?

7 MR. FRANKEL: Yes.

8 CHAIR GIBSON: Okay, very well.

9 Now, are there any corrections or
10 deletions to any evidence filed in this case that you
11 have other than the ones that Ms. Simon just mentioned
12 about 001F and 007?

13 MR. REID: Your Honor, this is Andrew Reid
14 from the Tribe.

15 CHAIR GIBSON: Yes, sir.

16 MR. REID: First, the exhibits from the
17 Consolidated Intervenors were submitted as joint
18 submissions with the Tribe, so I just want to make
19 that clear, so it would include those INT-001 through
20 071.

21 CHAIR GIBSON: Thank you, Mr. Reid.

22 MR. REID: And there are six transcripts
23 from meetings that I'm not -- I didn't quite know how
24 to handle. They were provided to counsel pursuant to
25 the Board's order by the NRC Staff, and they are the

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1 transcripts of the various meetings, consultation
2 meetings and so forth that were referred to in the
3 other exhibits, and in the arguments of the parties.

4 It was our understanding that they were
5 already part of the administrative record and did not
6 need to be separately listed. To be safe, I had
7 contacted the other parties to determine whether or
8 not they were exhibits or not because of the confusion
9 there. They've all been filed with the Board, and they
10 have ADAMS number, accession numbers, and they're the
11 ones listed in Attachment 1 to the NRC Staff's
12 disclosures. And I just wanted -- I didn't quite know
13 how to handle them. I'm just trying to get some
14 clarification as to whether or not they're included as
15 part of the record, as would be, for example, the EA,
16 or whether or not they -- the Board is judicially
17 noticing them because the Board requested these
18 exhibits, or whether or not the Tribe needs to make
19 some kind of motion or request that they be included
20 in the record.

21 CHAIR GIBSON: Well, let me ask you first
22 Staff, do you have response to what Mr. Reid just said
23 about the transcripts?

24 MS. SIMON: Your Honor, this is Marcia
25 Simon. Yes, Mr. Reid emailed counsel asking whether or

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1 not it would be okay to include those on the
2 Intervenors' exhibit list, and both the Applicant and
3 NRC Staff responded to him. I'll speak for the Staff,
4 of course.

5 We basically said, no one has presented
6 testimony relying on the documents, no one has filed
7 them as exhibits. And, you know, the Board mentioned
8 them in the July 31st order that you issued, and as
9 Mr. Reid noted they were identified in the joint
10 response on August 10th.

11 Our position is if the Board decides to
12 ask questions about the documents during the hearing,
13 then the Board could admit them as exhibits at that
14 time. But, otherwise, we didn't feel it was
15 appropriate for the Intervenors to simply them as
16 exhibits to their list because, as we said, no one has
17 presented testimony on them, relying on them, and no
18 one has filed them as exhibits.

19 CHAIR GIBSON: Okay. Mr. Smith, do you wish
20 to add anything to what Ms. Simon just said?

21 MR. SMITH: No, Your Honor. I agree with
22 Ms. Simon, the statements she made. And I'll just add,
23 you know, there's no articulated basis for those
24 transcripts being relevant or material such that they
25 would warrant exhibits -- warrant being admitted as

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1 exhibits at this time.

2 CHAIR GIBSON: Okay. Well, let me just say
3 that if they have not been filed, they are not part of
4 the record. So, I don't believe that they're going to
5 be part of any exhibit that a party has referenced.
6 But let me give you two suggestions in that regard,
7 Mr. Reid.

8 First of all, to the extent that there are
9 issues raised in those transcripts that should be
10 addressed by the Board, I suggest that you listen to
11 the examination that the Board conducts of witnesses,
12 and to the extent that the issues raised in those
13 transcripts has a material bearing on testimony that
14 is adduced, you certainly should suggest additional
15 questions in your in camera submission when we have
16 concluded our examination of those witnesses.

17 Secondly, as you could tell from the order
18 we issued, the Board considers some of the information
19 in those transcripts does have a material bearing on
20 some of the things that have been raised in these --
21 particularly, Contention One, and the Board certainly
22 may be asking some questions based on those
23 transcripts. So, to that extent the -- I suspect the
24 information that you're seeking to have addressed can
25 be addressed in both of those ways. But in terms of

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1 having an actual exhibit by the parties at this point
2 in time, there is none, but both the Staff and the
3 Applicant are opposing it, and so from that
4 standpoint, at least, they're not going to be exhibits
5 by any party.

6 Does that address your concern, Mr. Reid?

7 MR. REID: Well, some -- it's my
8 understanding they have ADAMS numbers. It's my
9 understanding they were filed at some point and
10 they're part of the administrative record. Also, the
11 testimony of the Tribe's two witnesses, Mr. Dennis
12 Yellow Thunder, and Mr. Mike Catches Enemy, both
13 submitted written statements referring to these
14 meetings, and what occurred during the meetings. So,
15 it was simply that -- we didn't receive these exhibits
16 from the NRC Staff until August 10th, and it was our
17 understanding that because they had been filed with
18 the NRC that they were already part of the record.

19 I'm just confused as to what's considered
20 to be filed and what's considered not to be filed. I
21 mean, is the EA filed, is the -- or some of these
22 other records that -- you know, as part of the
23 preparation of the EA by the NRC Staff is conducting
24 in those consultations, and so forth. I'm confused
25 about how this occurred.

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1 CHAIR GIBSON: Mr. Reid, let me just say
2 the EA, for example, was submitted as an exhibit by
3 the Staff. And I suspect that as a practical matter,
4 the concern you're addressing, you're raising will be
5 addressed, but we're just not going to be adding any
6 exhibits by the parties at this point in time.

7 MR. REID: All right, thank you.

8 CHAIR GIBSON: Yes, sir.

9 Okay. Is there anything else? Okay. So,
10 let's just start with Crow Butte. You're offering all
11 of your exhibits. Is that correct?

12 MR. SMITH: Yes, Your Honor, we'd like to
13 move to have our exhibits admitted into the record.

14 CHAIR GIBSON: Okay, very well. Any
15 objection? Hearing none the Crow Butte Exhibits 001
16 through 060 will be admitted.

17 (Whereupon, the above-referred to
18 documents marked as Crow Butte Exhibits
19 001-060 were received in evidence.)

20 CHAIR GIBSON: Staff, other than -- the
21 exhibits that we previously identified that you have
22 on your list, are all of them being offered?

23 MS. SIMON: Your Honor, this is Marcia
24 Simon. All of the exhibits on the list dated July
25 29th, 2015, we're moving to have those admitted as

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1 evidence in the hearing.

2 CHAIR GIBSON: Okay, very well. Is there
3 any objection? Hearing none, Staff Exhibits 001
4 through 092, including revisions to 001 and 0676 will
5 be admitted. And to make the record clear, 001F and
6 007 were withdrawn, and no party had any objection to
7 the withdrawal of that exhibit.

8 (Whereupon, the above-referred to
9 documents marked as NRC Exhibits 001-092
10 were received in evidence.)

11 MS. SIMON: Your Honor, this Marcia Simon.
12 Could I just quickly mention that NRC0-001C and 001E
13 were also revised. Those are affidavits that were
14 updated when we submitted the revised testimony. I
15 just wanted to clarify that.

16 CHAIR GIBSON: Okay. Let's just make sure,
17 that's 001C and 001B?

18 MS. SIMON: E, E as in Edward.

19 CHAIR GIBSON: E as in Edward, okay. All
20 right. So, those have also been revised. Does any
21 party have any objection to admitting 001C and 001E,
22 as revised? Hearing none, those exhibits will be
23 admitted, as well.

24 The Consolidated Intervenors exhibits,
25 joint exhibits with the Tribe, INT-001 through 071,

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1 are you offering all of those, Mr. Frankel and Mr.
2 Reid?

3 MR. REID: Yes, Your Honor.

4 MR. FRANKEL: Yes, we are. We'd like to
5 move to have those put in the record.

6 CHAIR GIBSON: Any objection to any of
7 those exhibits?

8 MS. SIMON: Your Honor, this is Marcia
9 Simon from the Staff.

10 CHAIR GIBSON: Oh, yes. You've got a motion
11 in limine, don't you? Hold on just a minute. All
12 right. Let's go ahead and get to that, and then we'll
13 come back to -- I'll tell you what. Let's table that
14 for a second.

15 Let's just go to OST-001. Does anybody
16 have any objection to that exhibits?

17 MS. SIMON: Your Honor, this is Marcia
18 Simon. I believe that was covered --

19 CHAIR GIBSON: It's also in your motion in
20 limine, that's right. Okay. All right. Well, let's get
21 to the motion in limine and then we'll come back to
22 this.

23 In addition -- other than those set forth
24 in the motion in limine, are there any other
25 objections to any of these exhibits?

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1 MS. SIMON: Your Honor, Marcia Simon,
2 again. Just to clarify, we also have a motion to
3 strike for INT-071.

4 CHAIR GIBSON: Okay, got it. Okay, we'll
5 address that, as well.

6 Other than the motion to strike and the
7 motion in limine, are there any other objections to
8 these exhibits from the Consolidated Intervenors and
9 the Tribe? Very well.

10 All right. Let's talk about your motions,
11 Ms. Simon. The Staff has moved to strike exhibits INT-
12 001, 010, 012, and 051 on the ground that these
13 exhibits are pleadings that are already part of the
14 record. Is that correct?

15 MS. SIMON: Yes, Your Honor.

16 CHAIR GIBSON: The Board is convinced that
17 these filings are repetitive, and will be struck and
18 not admitted in this proceeding.

19 Now, the Staff has also moved to strike
20 Exhibit INT-030, which is background information on
21 Federal Indian Law on the ground that it is irrelevant
22 to the contentions in this case. Is that correct, Ms.
23 Simon?

24 MS. SIMON: Yes, Your Honor.

25 CHAIR GIBSON: Okay. The Board is convinced

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1 that this filing does not contain relevant material
2 evidence, and will be struck and not admitted.
3 However, I should add, Mr. Reid and Mr. Frankel, to
4 the extent that INT-030 contains legal research
5 potentially relevant to the Board's understanding of
6 Contention One, this information can be addressed in
7 the Tribe's post-trial legal pleadings such as
8 proposed conclusions of law, and if time allows for
9 closing argument to also address it in closing on
10 Contention One.

11 The Staff has also moved to strike
12 Exhibits INT-002, 004, 005, 023, 024, and 025 on the
13 grounds that they are unreliable because the authors
14 of these exhibits will not appear as witnesses. Is
15 that correct, Ms. Simon?

16 MS. SIMON: Your Honor, yes. And if I could
17 just add, it's also because none of the current
18 witnesses have adopted the statements or referred to
19 them in their testimony.

20 CHAIR GIBSON: Okay. The Staff has also
21 moved to strike Exhibits INT-027, portions of 028, and
22 029 as irrelevant material related to the PowerTech
23 licensing, not to the Crow Butte re-licensing. Is that
24 correct, Ms. Simon?

25 MS. SIMON: Yes, Your Honor.

1 CHAIR GIBSON: And the Staff has also moved
2 to strike portions of INT-046, 047, 048, 049, 069,
3 070, 071, and OST-001 as outside the scope of admitted
4 contentions. Is that correct, Ms. Simon?

5 MS. SIMON: I believe so, Your Honor. With
6 respect -- yes, that's correct.

7 CHAIR GIBSON: Okay. All right. Well, the
8 Board is permitted to make materiality decisions
9 before the hearing. It is not required to do so. here,
10 the Board is of the opinion that it will be better to
11 resolve these disputes upon consideration of the full
12 evidentiary record before us. Consequently, the Board
13 will defer its ruling until after the evidentiary
14 hearing on these disputed exhibits; specifically, INT-
15 2, 4, 5, 23, 24, 25, 27, portions of 28, 29, 46, 47,
16 48, 49, 69, 70, and 71, as well as OST-001.

17 All submitted exhibits except INT-001,
18 010, 012, 030, and 051 which have been stricken will
19 be admitted as marked.

20 MS. SIMON: Your Honor, this is Marcia
21 Simon. Could I just clarify, you're combing the motion
22 to strike INT-071 with the motion in limine. Is that
23 correct?

24 CHAIR GIBSON: That's correct.

25 MS. SIMON: Okay.

1 CHAIR GIBSON: And when I say that you've
2 moved to strike them, that's effectively what a motion
3 in limine is.

4 MS. SIMON: Yes. The reason I --

5 CHAIR GIBSON: I just asked if there were
6 some other considerations, as well.

7 MS. SIMON: Your Honor, yes, I understand.
8 The reason I was asking was because the basis for the
9 motion to strike INT-071 was because -- not just
10 because it was outside the scope, but because it was
11 not proper rebuttal. It was basically rebutting things
12 that had already been provided, that were in the
13 original rebuttal, as opposed to rebutting specific
14 things in the revised NRC Staff testimony.

15 CHAIR GIBSON: I understand, Ms. Simon.

16 MS. SIMON: Thank you.

17 CHAIR GIBSON: Okay. Now, a little
18 housekeeping. As mentioned in an email that Mr.
19 Sciretta sent yesterday, the Board is awaiting
20 Microsoft Word compatible exhibit lists from the
21 parties no later than COB tomorrow. I understand that
22 Crow Butte has already provided a Word version of its
23 exhibit list, but then we do not have the other
24 Microsoft Word compatible exhibit lists. So, we would
25 ask you to try to get that done, and once we -- these

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1 have been received but before the hearing begins, the
2 Board will issue an order memorializing all of the
3 admitted exhibits in this proceeding. That should
4 reflect essentially what we just covered.

5 MR. REID: Your Honor, this is Andrew Reid?

6 CHAIR GIBSON: Yes?

7 MR. REID: How would the Board like to have
8 that submitted, as a formal submission, or by email?

9 CHAIR GIBSON: By email.

10 MR. REID: Okay.

11 CHAIR GIBSON: You could sent it to Mr.
12 Sciretta and Mr. Desai, that would be just really
13 great.

14 MR. REID: Thank you.

15 CHAIR GIBSON: Okay? Okay. Is there
16 anything further that we need to address regarding
17 exhibits?

18 Okay. Our second order of business is
19 stipulations. Have the parties entered into any joint
20 stipulations under 10 CFR 2.330?

21 MR. FRANKEL: No, Your Honor.

22 CHAIR GIBSON: Okay. There being none, we
23 will proceed to our next order of business. The order
24 governing the evidentiary hearing issued on July 13
25 stated that a pre-trial conference would begin 9 a.m.

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1 on Monday, August 24. That notice of hearing also said
2 that the hearing will begin at 9:30. Because we have
3 covered the pre-hearing issues now, I think we can go
4 ahead and begin our hearing on Monday at 9 a.m.

5 MR. FRANKEL: Your Honor, David Frankel
6 with a quick question, please.

7 CHAIR GIBSON: Yes, sir?

8 MR. FRANKEL: To go back to this submitting
9 the finalized exhibits list in Microsoft Word, do you
10 include the entire Word suite; in other words,
11 Microsoft Excel within that, or must it be an actual
12 Word processing as opposed to spreadsheet form,
13 because mine can be converted to Excel, but it's a
14 spreadsheet, and I don't have it in Word.

15 CHAIR GIBSON: That's just fine. That's
16 just fine.

17 MR. FRANKEL: Great. Thank you, sir.

18 CHAIR GIBSON: If they can be read in
19 Excel, we're just fine.

20 MR. FRANKEL: Thank you, sir.

21 CHAIR GIBSON: Okay. Any -- my only
22 suggestion is that you try to get it in as quickly as
23 you can so that if there is any gremlin there, that we
24 can get that resolved in time that we have everything
25 set up. Okay?

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1 MR. FRANKEL: Yes, no problem. I can send
2 that to you while we're on the call.

3 CHAIR GIBSON: Okay, thank you. Thank you,
4 Mr. Frankel.

5 Are there any other matters that we need
6 to address before we commence the hearing on Monday?
7 Mr. Smith?

8 MR. SMITH: None from Crow Butte.

9 CHAIR GIBSON: Ms. Simon?

10 MS. SIMON: Your Honor, we just wanted to
11 request, we looked at the layout of the room that was
12 provided by the clerks, and the way -- our
13 understanding is that the four counsel tables that are
14 all in the, I guess the left side as you look from the
15 stage, and I guess we were a little concerned about
16 that given, you know, the desire to possibly discuss
17 something amongst ourselves, whether or not there
18 would be the ability to do that. And we wondered if
19 there was a way to possibly consider another
20 arrangement where the tables would not be two behind
21 two. I realize that it doesn't seem like the most
22 spacious room, so perhaps that's not possible, but we
23 just wanted to ask if there was any way to consider
24 that.

25 CHAIR GIBSON: Well, I would make two

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1 suggestions, Ms. Simon. First of all, I would suggest
2 that we just as a default accept what is here in this
3 diagram. However, you are more than welcome to consult
4 with the other parties and to make a joint proposal
5 that all of you are in agreement to that would be
6 different than this, and to submit that to Mr.
7 Sciretta and Mr. Desai by email.

8 They can then consult with the IT people
9 who are trying to set this room up, and we'll see if
10 there's a way we can accommodate that other proposal.
11 I make no promises, and I will tell you that this
12 arrangement was not merely -- had significant input
13 from a number of parties, including the Judges, and it
14 was their preference that we do it this way. However,
15 make the proposal and we'll see what we can do.

16 In addition to that, if you are going to
17 do your walkthrough to see the -- actually see the
18 site in person Sunday afternoon, you're also welcome
19 to, you know, see if there's a way it can be tweaked
20 a little bit if we can't accommodate your -- the major
21 surgery that it sounds like you're suggesting. But I
22 can't -- I make no promises, but we'll certainly
23 entertain another proposal. Fair enough?

24 MS. SIMON: Thank you, Your Honor, that's
25 quite fair. And the one other question I wanted to ask

1 is with regard to monitors for viewing the exhibits,
2 there was some discussion of that in our previous
3 conference call, and I just wanted to clarify, will
4 there be a monitor on each one of these tables, or how
5 will that be handled?

6 CHAIR GIBSON: Mr. Welkie is here. I will
7 let him speak to that. That's why I have him here at
8 our hearing.

9 MR. WELKIE: Yes, there will be a monitor
10 on each table, and at least two for each of the
11 witness tables.

12 MS. SIMON: Thank you very much.

13 CHAIR GIBSON: Okay.

14 MR. SMITH: This is Tyson Smith for Crow
15 Butte.

16 CHAIR GIBSON: Yes, sir?

17 MR. SMITH: A quick question. You identify
18 where these four tables are located, which table for
19 which party? Will that be laid out by the Judges,
20 presumably?

21 CHAIR GIBSON: Yes. But again, you know, I
22 will say this, if the four of you have a proposal to
23 make, you know, you're more than welcome to include
24 that in your email as sort of a modification to -- a
25 minor modification to this, as opposed to the major

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1 surgery that Ms. Simon seems to be proposing. You're
2 welcome to suggest well, we'd like to sit here, and
3 all four of us would like it to be this way. That's
4 fine. Please make that suggestion. We're not -- again,
5 we're not -- this is not some Procrustean bed. We're
6 just trying to get this hearing done, and there was a
7 limitation on what we could do considering the
8 configuration of the space.

9 Okay. Ms. Simon, is there anything else?

10 MS. SIMON: None from the Staff, Your
11 Honor. Thank you.

12 CHAIR GIBSON: Okay. Mr. Reid, is there
13 anything else that you have, sir?

14 MR. REID: A couple of things. First off,
15 I understand this issue has probably been dealt with
16 before I came on to this matter as counsel for the
17 Tribe, but I'd just like to make -- I understand this
18 is a Subpart L proceeding, and the parties will not be
19 permitted to examine or cross-examine the witnesses.
20 I would like to just make a formal request for the
21 record that the Tribe be permitted to examine and
22 cross-examine the witnesses.

23 CHAIR GIBSON: Okay. Well, as you said,
24 there's a lot of water under the bridge, and we'll
25 have to deny that motion, Mr. Reid. But, again, you

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1 may propose questions for the Board to answer in
2 camera and we will attempt to address those once we
3 receive them.

4 MR. REID: All right, thank you.

5 CHAIR GIBSON: Hopefully, whatever the
6 concern is could be addressed. What's your second
7 point?

8 MR. REID: Does the -- at any point you
9 need -- will the Board need hard copies of any of the
10 exhibits?

11 CHAIR GIBSON: If you provided them in
12 electronic form, I think we're in a good shape. We
13 won't need any hard copies of anything. In fact, I
14 would probably discourage hard copies because we've
15 got enough to try to -- and I think we've actually got
16 a pretty good handle on handling the stuff
17 electronically.

18 MR. REID: All right, thank you.

19 CHAIR GIBSON: Anything else, Mr. Reid?

20 MR. REID: No, thank you.

21 CHAIR GIBSON: Mr. Frankel?

22 MR. FRANKEL: No.

23 CHAIR GIBSON: Mr. Ballanco?

24 MR. BALLANCO: Your Honor, I just have one
25 question as regards that some of our witnesses have

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1 expressed an interest to have their laptops available
2 during testimony. I know at least at the PowerTech
3 chair we had kind of a, almost like a cherry box set
4 up for the witnesses where there was the front row had
5 a table and then the back row just had chairs. Do we
6 expect some form of guest or tabletop for each of the
7 witnesses?

8 CHAIR GIBSON: There will be a tabletop for
9 the witness, yes.

10 MR. BALLANCO: Thank you, Your Honor.

11 CHAIR GIBSON: And there will be, you know,
12 hookups. I do want to emphasize, it's a little
13 difficult for me to see the necessity of a witness
14 having a computer there because we're going to be
15 asking the witness questions based on their pre-filed
16 testimony, and I don't -- can't imagine why they would
17 need it there. I'm not going to make the categorical
18 statement that it can't happen. There may be something
19 I'm not anticipating, Mr. Ballanco, but I would expect
20 that the witness is going to be giving his or her
21 undivided attention to the question the Board asks,
22 and to the extent that we need a reference to an
23 exhibit, we will have Mr. Deutcher (phonetic) there,
24 and he will be able to bring up any exhibits and
25 project them so that, you know, we can have them

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1 discussed in that way. But, again, I'm not -- we won't
2 make the categorical prohibition that no one can have
3 a laptop there. It's just hard for me to understand
4 what necessity there would be for it. Does that make
5 sense to you, sir?

6 MR. BALLANCO: Thank you, Your Honor. Yes,
7 it does.

8 CHAIR GIBSON: Very well.

9 MR. BALLANCO: I think a few of them just
10 have their notes in electronic format. Obviously,
11 we're limited to the exhibits that have been filed.

12 CHAIR GIBSON: Correct. I mean, I can
13 appreciate, you know, as probing as the questions that
14 Judge Wardwell and Judge Hajek are going to ask about
15 math and science, it may well be that someone does
16 have to refer to some notes in order to answer one of
17 those penetrating questions, but short of that, I
18 really can't see the necessity of someone referring to
19 a computer, something on a computer. Okay?

20 MR. BALLANCO: Understand, Your Honor.
21 Thank you.

22 CHAIR GIBSON: All right. If there are no
23 other matters we need to address, then we will see you
24 all Monday at 9 a.m., and we'll get started on the
25 hearing. I hope you all have safe travels, and we will

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1 stand in recess until Monday. Good day.

2 (Whereupon, the above-entitled matter went
3 off the record at 11:16 a.m.)

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