

Official Transcript of Proceedings
NUCLEAR REGULATORY COMMISSION

Title: Crow Butte Resources, Inc.
In-Situ Leach Facility, Crawford, Nebraska

Docket Number: 40-8943-OLA

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

Location: (teleconference)

Date: Thursday, October 8, 2015

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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, : 40-8943-OLA
INC. : ASLBP No.
(License Renewal for : 08-867-02-OLA-BD01
the In-Situ Leach :
Facility, Crawford, :
Nebraska) :

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Thursday, October 8, 2015

Via 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

1:00 p.m.

1
2
3 CHAIR GIBSON: We are here today on a
4 pre-trial conference for the final phase of the
5 evidentiary hearing concerning Docket No. 408943 for
6 the NRC's renewal of a source materials license for
7 Crow Butte Resources, Inc. The first phase of our
8 evidentiary hearing was held in Crawford on August 24
9 and 28.

10 The final phase will be held on October 23
11 in Rockville, with a video conference location set up
12 in Chadron, Nebraska, and with some of the parties'
13 witnesses calling in. With me on the phone today are
14 the other members of the board conducting the
15 evidentiary hearing, Judge Richard Wardwell and Judge
16 Brian Hajek. I would like to have announcements of
17 counsel, beginning first with Crow Butte.

18 MR. SMITH: Good morning, this is Tyson
19 Smith, counsel for Crow Butte Resources.

20 CHAIR GIBSON: Counsel for the NRC staff.

21 MS. SIMON: Hello, this is Marcia Simon
22 for the staff. With me are David Cylkowski and Emily
23 Monteith.

24 CHAIR GIBSON: Counsel for the Tribe?

25 MR. REID: Good morning, Andrew Reid from

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1 the Ved Nanda Center for the Oglala Sioux Tribe.

2 CHAIR GIBSON: For Consolidated
3 Intervenors?

4 MR. BALLANCO: Good morning, Your Honor.
5 This is Tom Ballanco for Consolidated Intervenors. I
6 know Mr. Frankel is joining us. He may not be through
7 the call line yet.

8 MR. FRANKEL: David Frankel for
9 Consolidated Intervenors. I'm here.

10 CHAIR GIBSON: Very well. Did I miss
11 anyone? Also on the phone with us today are our two
12 law clerks, Nick Sciretta and Sachin Desai, as well as
13 two members of the Board's IT staff, Joe Deucher, who
14 assisted the Board in Crawford during our August
15 hearing, and Andy Welkie, who has helped out
16 significantly, as well, on our evidence issues.

17 We'll begin with the admission of
18 evidence. First, we consider Applicant's exhibits CBR
19 065 to CBR 081. Crow Butte also filed revised
20 exhibits CBR 63R and CBR 64R. Is there any objection
21 to the admission of these exhibits? (No audible
22 response.) Hearing none, Applicant's Exhibits CBR 065
23 to 081, and CBR 063R and CBR 064R are admitted.

24 (Whereupon, the above-referred to
25 documents were admitted into evidence.)

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1 The Board strikes CBR 63 and CBR 64.
2 Next, we consider the NRC Staff's Exhibits NRC 95 to
3 NRC 111. The Staff also filed revised Exhibit NRC
4 96-R. Is there any objection to the admission of
5 these exhibits? (No audible response.) Hearing none,
6 NRC Staff's Exhibits NRC 95 to NRC 111, including NRC
7 096-R, but NRC 096, as originally filed, are admitted.

8 (Whereupon, the above-referred to
9 documents were admitted into evidence.)

10 Finally, we consider Intervenor's Exhibits
11 INT 79 to INT 83. Is there any objection to the
12 admission of these exhibits?

13 MS. SIMON: Your Honor, this is Marcia
14 Simon for the Staff. With regard to INT 082, with
15 regard to the Board's order that all testimony must be
16 confined to -- that the Board would not consider any
17 new document if it is merely listed as a reference but
18 must be submitted as an exhibit, there is testimony in
19 INT 082, on Pages 1 and 2, that refer to a website
20 regarding climate information. So we would move to
21 strike the testimony that relies on that information
22 from that website because that climate information was
23 not proffered as an exhibit.

24 CHAIR GIBSON: Okay. Let me just ask the
25 Intervenors, do you have any response to that?

1 MR. BALLANCO: This is Tom Ballanco for
2 Consolidated Intervenors, Your Honor. I do see what
3 Counsel's referencing here. We'd be happy to provide
4 that as an exhibit and proffer that if Counsel would
5 -- It's the recorded precipitation for Crawford,
6 Nebraska, during certain times in Dr. Kreamer's
7 testimony.

8 CHAIR GIBSON: Okay. Ms. Simon, is that
9 acceptable?

10 MS. SIMON: The Board was specific in the
11 September 4th order that those documents should be
12 provided within the deadlines established in the
13 order, so providing it now, there was no opportunity
14 to -- I'll leave that to the Board to decide.

15 CHAIR GIBSON: This is what we'll do. I
16 would like you to go ahead and -- how soon can you get
17 that to them, Mr. Ballanco?

18 MR. BALLANCO: I'm sure we can file them
19 no later than tomorrow, Your Honor.

20 CHAIR GIBSON: Why don't you do that? Ms.
21 Simon, then you can -- if you want to file a separate
22 objection -- your timeliness one has already been
23 noted. You can also file a separate objection to that
24 when that gets to you, but at least you'll have the
25 benefit of the document, and you can note any

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1 prejudice you suffer if you wish to at that time.
2 Fair enough?

3 MS. SIMON: Yes, that's fine. Thank you,
4 Your Honor.

5 CHAIR GIBSON: We will admit, at this
6 time, INT 079 to 083. Whether we need to excise part
7 of 082 we can address subsequently, once you have had
8 an opportunity to review that Ms. Simon, after you've
9 been provided with it.

10 (Whereupon, the above-referred to
11 documents were admitted into evidence.)

12 We will issue an order memorializing these
13 exhibits admitted, and to the extent that you guys can
14 get this evidentiary matter resolved, or at least put
15 together in some kind of formal objection for us, we'd
16 appreciate it, so we can get this resolved quickly.

17 With the evidentiary issues out of the
18 way, with that one exception, our next order of
19 business is to discuss a few of the technical
20 challenges that we're going to face as we prepare to
21 conduct this final day of hearing via video
22 conference. To let you know, we have a direct video
23 feed arranged between our courtroom here in Rockville,
24 Maryland, and a courtroom that will be set up in a
25 conference facility at Chadron State College in

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1 western Nebraska. In addition, those counsel and
2 witnesses who cannot make it to either of these
3 locations can call in. We have also been able to
4 create a new option through Citrix GoToMeeting that
5 will allow for a video link for those witnesses and
6 counsel who cannot attend the hearing in either place.

7 For those counsel, or for a witness
8 participating through this Citrix GoToMeeting option,
9 it will still be necessary to call in on the bridge
10 line, but you may participate visually in the hearing
11 through Citrix GoToMeeting. By using Citrix
12 GoToMeeting, they will be able to see what the Board
13 sees, and you will be able to be seen through their
14 computer's webcam when you're speaking, so if you're
15 at home, you don't want to just be sitting around in
16 your pajamas.

17 With respect to anyone who is neither
18 counsel nor a witness, he or she may view the
19 proceeding either at the NRC courtroom in Rockville or
20 at the courtroom we will set up at Chadron State
21 College, or if neither of those is possible, then we
22 will also have a separate bridge line set up that they
23 may access via telephone. Needless to say, with all
24 of these moving parts, it is imperative that we work
25 out in advance as many kinks as possible, especially

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1 with the Citrix GoToMeeting option. Mr. Deucher and
2 Mr. Welkie have run some initial tests on the systems,
3 and they have already alerted the Board to several of
4 the problems that we will face on October 23rd. If
5 you are participating via video link, you will notice
6 that there will be a slight delay in the video, so
7 that the lips are not synced with the audio.

8 I apologize for that, but simply, there is
9 a delay. We're just stuck with it. The second thing
10 is whenever anyone speaks, it will be critical to
11 speak directly into the microphone or the telephone,
12 and I would ask you to be very cognizant of that when
13 you're speaking. If you get too far away from the
14 microphone, we simply can't hear you. If you must use
15 a cell phone to participate, you will have to take it
16 off the speaker mode whenever you are speaking because
17 it will cut in and out. It was a terrible problem for
18 us when we experimented with that earlier.

19 Finally, as we did in Crawford, if you
20 speak, you need to say your name first, no matter how
21 short the response, and you need to make sure that you
22 do not interrupt anyone else who is speaking, or our
23 transcript will be a total mess. We have asked Mr.
24 Deucher and Mr. Welkie to be present at this pre-trial
25 conference for three reasons. First of all, so that

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1 they can give you a brief description of the IT tools
2 available in Chadron and via Citrix GoToMeeting,
3 secondly, to clarify anything I might have just
4 missed, and third, to answer any questions you may
5 have about the technical aspects of this hearing. I
6 should add if you will not be present in either of the
7 two courtrooms, we want you to arrange for a video and
8 audio test of your computer and telephone system.

9 I promise you it's very painful. It'll
10 just take a couple of minutes. But we need to make
11 sure that your system is totally compatible, and if
12 it's not, we need to work out whatever bugs there are
13 before we get this started. One other item to prepare
14 for the possibility that protected information might
15 be brought up on October 23rd -- I doubt it will, but
16 in the event it is, we might need to conduct a portion
17 of the hearing in a closed session.

18 What we have done in this regard is
19 arranged for a second telephone bridge line on the
20 23rd. The parties' attorneys should have already
21 received this number in an email from the clerks
22 earlier this week. The second bridge line is only
23 going to be used in the unlikely event that a closed
24 session is necessary, but we would ask that you please
25 keep it handy, so that you can quickly access it if

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1 needed. Any such closed session will have to be done
2 solely over the telephone and will not use any of our
3 video conference software. Previously, we had
4 indicated that we would be considering web streaming
5 from Rockville, this proceeding, if there was limited
6 interest in using the Chadron option, but we now
7 understand there are a number of people interested in
8 using the Chadron site, so we will not be web
9 streaming this proceeding.

10 Before we give the speaker over to Mr.
11 Deucher and Mr. Welkie, we would like to get an
12 initial overview from you of the location from which
13 each witness and attorney for each party will be
14 participating. Obviously, the sooner we know these
15 details, the better our IT team can plan for as smooth
16 a hearing as possible. We know that we gave you until
17 Monday, October 12, for you to tell us this.

18 Actually, it's going to be Tuesday,
19 October 13, because Monday, October 12 is a federal
20 holiday. But still, we would like for you to let us
21 know today because it will help them plan how we're
22 going to proceed. Every day they have will help them.
23 Let me start with Crow Butte. Do you know the
24 location from which you expect to be attending this
25 hearing and any of your witnesses, Mr. Smith?

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1 MR. SMITH: Yes, Your Honor, we will --
2 Crow Butte, its witnesses, and its counsel will all be
3 attending in Chadron.

4 CHAIR GIBSON: Very well. Staff?

5 MS. SIMON: Your Honor, Marcia Simon. The
6 staff and all its witnesses and attorneys will be
7 attending in Rockville.

8 CHAIR GIBSON: Okay, very well. Mr. Reid?

9 MR. REID: I will be in Oakland,
10 California, attending a lawyer's convention at a
11 Marriott Hotel, and I'll be appearing to the meeting
12 on my Apple laptop.

13 CHAIR GIBSON: Okay, very well. Are all
14 of the witnesses through you or through Mr. Ballanco
15 or Mr. Frankel?

16 MR. REID: They're through Consolidated
17 Intervenors.

18 CHAIR GIBSON: Okay, we'll get to that in
19 a minute then. Mr. Ballanco?

20 MR. BALLANCO: Yes, Your Honor. I'll be
21 participating through a call in and through the
22 GoToMeeting application, as will all of our witnesses.

23 CHAIR GIBSON: None of them are going to
24 be in Chadron?

25 MR. FRANKEL: David Frankel for

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1 Consolidated Intervenors, Your Honor. I would like to
2 explain that a little more detail. Dr. LaGarry will
3 be participating in Chadron. Dr. Kreamer and Mr.
4 Wireman will be calling in from home, and assuming
5 that we can get them connected to the GoToMeeting
6 without any undue cost or expense or complications,
7 they'll be doing that, as well. I had a follow-up
8 question for the IT folks when you're done asking us
9 our questions. Then I will likewise be calling in.
10 If I can connect to the GoToMeeting, I will do so,
11 just as Mr. Ballanco said he would.

12 CHAIR GIBSON: If I understand correctly,
13 the people participating from Chadron will be Dr.
14 LaGarry and all of the Crow Butte witnesses and Mr.
15 Smith. From Citrix GoToMeeting, we're going to have
16 Mr. Reid, Mr. Ballanco, Mr. Frankel, Mr. Kreamer, and
17 Mr. Wireman, is that correct?

18 MR. BALLANCO: Yes, he's technically Dr.
19 Kreamer. I'm sure he worked hard for that title.

20 CHAIR GIBSON: Yes, okay.

21 MR. BALLANCO: (Simultaneous speaking)
22 that's correct.

23 CHAIR GIBSON: Fair enough. Please extend
24 my apologies for not recognizing that.

25 MR. BALLANCO: He probably would not be

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1 offended (Simultaneous speaking).

2 CHAIR GIBSON: I didn't think he would.
3 He didn't strike me as the kind of guy that would, but
4 okay. That's where we are. You said you had a
5 question, Mr. Frankel.

6 MR. FRANKEL: Yes, sir, Your Honor, David
7 Frankel, Consolidated Intervenors. I went to the
8 GoToMeeting website, and I note that some of the
9 website talks about a free trial and a paid
10 subscription. There's one part on the website that
11 talks about being able to join someone else's meeting
12 using their meeting ID without subscribing or joining
13 GoToMeeting. Is that what we're doing here?

14 CHAIR GIBSON: It's not going to cost you
15 anything, Mr. Frankel. I hope you haven't spent any
16 money on it yet.

17 MR. FRANKEL: No, we haven't, just
18 exploring.

19 CHAIR GIBSON: That's fine. Is Mr.
20 Deucher on the phone?

21 MR. DEUCHER: Yes, I am, sir.

22 CHAIR GIBSON: I'm going to let Mr.
23 Deucher explain to you what's involved in getting
24 connected and how we can get your tests done and make
25 sure this proceeds with as few kinks as possible.

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1 MR. DEUCHER: Thank you Judge Gibson. Good
2 morning, everyone, or I should say good afternoon.
3 Basically, what we're going to be doing with Citrix
4 GoToMeeting, it is a cloud-based product that's
5 available by Citrix. It's available over the web.
6 It's a service that the NRC has purchased. In terms
7 of any subscriptions or any costs on the part of any
8 of the participants or the witnesses, there will be no
9 cost.

10 The only thing will need to be done,
11 because it is a cloud-based service, a piece of
12 software, either a web plugin, if you're using a
13 Microsoft Windows-based PC or an Apple computer, you
14 would need to download a -- and you can download it
15 from the website. The website's www.gotomeeting.com.
16 We'll certainly provide instructions and assistance
17 with you as a part of this test.

18 On the website, there is a web plugin that
19 you would download if you're going to use either a
20 notebook or desktop computer. Certain tablets and
21 certain other handheld devices, whether they are an
22 Apple iOS device or a Google Android device, or also
23 supported. However, what we will want to do is
24 whatever device that you chose to use as a part of the
25 test, we would walk through it just to make sure that

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1 it was compatible. What do you need in order to have
2 an effective GoToMeeting is you need a webcam whether
3 built into your laptop or maybe your handheld, or if
4 it's a desktop computer or a laptop without one, you
5 would need to have a USB or otherwise attached to that
6 computer, a web camera. That's all that you'll need
7 for this.

8 We're not going to use the audio portion
9 that's available within GoToMeeting over the Internet
10 because of potential quality issues. That's why we
11 have the bridge line set up. So your audio will be
12 coming over the telephone bridge, but the video that
13 you'll be seeing will be over the Citrix GoToMeeting.
14 At this point, that's pretty much what it entails.
15 We'll have a meeting ID that we will submit via the
16 law clerks to you for the hearing.

17 Then prior to the hearing starting, you'll
18 want to go ahead and enter that in either at the
19 GoToMeeting website, or if you're using either the
20 Apple or the Google app that Citrix has created, you
21 would enter in the meeting ID that we will give you
22 and it will bring you into the meeting. Then you'll
23 be able to see what the judges see. You'll be able to
24 see the other participants, as well. At this point,
25 I'll ask if there's any questions?

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1 (No audible response.)

2 CHAIR GIBSON: If there aren't any
3 questions, let me suggest that the clerks and the IT
4 staff will be in contact with you guys. They'll be
5 sending you out an email. You guys can arrange for us
6 to test your system and make sure what you need, so
7 that you can plug into this and participate. We don't
8 want to try to get that done today. That would be a
9 little crazy. I guess there's five of you that will
10 be on this, so they'll be in contact with the five of
11 you to make arrangements for this test, to make sure
12 that you've got everything you need to participate,
13 and it works well and is compatible with our system.

14 MR. FRANKEL: Your Honor, David Frankel
15 for Consolidated Intervenors with a question.

16 CHAIR GIBSON: Yes, sir.

17 MR. FRANKEL: Logistically, if it would be
18 possible to do the test run with myself and Mr.
19 Ballanco, or one of us, at least, prior to attempting
20 a test run with our experts, I think that would help
21 us coach our experts on the side, having gone through
22 it. I'm sure it'll be easy. I've participated in
23 video interviews and conferences over Skype. I'm sure
24 the software will be not all that different. I'm
25 happy to be a guinea pig. The only other logistical

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1 point is that Mr. Wireman is out of the country until
2 October 19th, so we need to schedule a test for him no
3 earlier than October 20th.

4 CHAIR GIBSON: Okay, very well. I'm sure
5 they can accommodate all those requests, Mr. Frankel.

6 MR. FRANKEL: Thank you, Your Honor.

7 MR. SMITH: This is Tyson Smith for Crow
8 Butte. If we're going to GoToMeeting questions, I did
9 have some questions about the video feed to Chadron
10 and what that will look like.

11 CHAIR GIBSON: Very well.

12 MR. SMITH: If this is the appropriate
13 time.

14 CHAIR GIBSON: I think Mr. Deucher can
15 answer those questions, as well.

16 (Simultaneous speaking.)

17 MR. SMITH: Okay, thank you.

18 MR. DEUCHER: Just to let you know what
19 our intention is the conference center there will have
20 a large screen, and we will connect via video
21 conference. It's technically a bridge video
22 conference between the college and the NRC via a
23 third-party bridging provider because they are two
24 different-type systems running on two different-type
25 networks, but we will have a third-party bridging

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1 software that we've already tested and have fully
2 operational. Similar to the GoToMeeting, you will see
3 what is being projected from the Rockville hearing
4 room, in terms of both documents and in terms of who
5 will be speaking, as well as you will see -- as
6 individuals on the GoToMeeting site are speaking,
7 they'll be projected, as well.

8 In terms of any physical activity from the
9 room, that's all going to be driven from the Rockville
10 hearing room. So any documents that will be displayed
11 will be displayed from Rockville. There won't be any
12 local display or local monitors, like what we saw in
13 our most recent evidentiary hearing. Everything will
14 be driven from the Rockville hearing room. But you
15 will have microphones in front of you, and you'll have
16 basically a table in front of the video screen, with
17 a camera on you that I will control.

18 MR. SMITH: There'll be, I guess, at least
19 two tables, one for our witnesses, and one for Dr.
20 LaGarry?

21 MR. DEUCHER: Correct. We were looking at
22 having a similar setup, if you will, as what we had
23 before, where the witnesses would be up front with
24 counsel behind. Again, in your case, that would be a
25 counsel table behind your witness table.

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1 MR. SMITH: When people in Rockville --
2 witnesses, let's say, for the NRC Staff are speaking
3 in Rockville, we will be able to see them speaking
4 from the video feed via Chadron, and when a judge is
5 speaking, we'll be able to see the judges speaking in
6 Rockville, and if I'm speaking in Chadron, everyone in
7 Rockville will be able to see me speaking, and same
8 for our witnesses?

9 MR. DEUCHER: Correct, and also our web
10 conference, as well, see you, and then hear you over
11 the phone.

12 MR. SMITH: So the Intervenors' experts,
13 we'll only be able to see them if they are able to get
14 the video piece set up for GoToMeeting?

15 MR. DEUCHER: That is correct. Otherwise,
16 you will hear them coming from Rockville.

17 CHAIR GIBSON: When you say coming from
18 Rockville, you mean coming to Chadron from where they
19 are via Rockville, correct?

20 MR. DEUCHER: That is correct. The
21 telephone conference is being established in
22 Rockville. We'll use the audio/video link that we
23 establish between Chadron and the Rockville hearing
24 room to deliver anything that would come over the
25 phone bridge line.

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1 MR. SMITH: Okay, thank you.

2 CHAIR GIBSON: Does that address your
3 concerns, Mr. Smith?

4 MR. SMITH: It does. I guess I would
5 appreciate understanding or knowing whether we're
6 going to be able to observe the witnesses who are
7 participating by GoToMeeting via video. I guess my
8 concern is that we won't be able to see them or judge
9 their reaction or their participation or see whether
10 they're, for instance, relying on other materials
11 that, perhaps, should be exhibits during the hearing.
12 I guess I would like to know that beforehand.

13 CHAIR GIBSON: It's everyone's intention
14 that we would be doing that. I will say when we had
15 originally envisioned this, we had talked about just
16 doing this via telephone, in which we wouldn't have
17 been able to see anyone and would've had the same
18 concerns you just raised, Mr. Smith. But we're doing
19 our best to try to eliminate all of those variables,
20 so that we're just going to be able to see a direct
21 video feed from the person while they're speaking,
22 albeit there will be a little bit of a delay on the
23 audio. Is there anything else?

24 MR. FRANKEL: Your Honor, David Frankel.
25 Go ahead, Ms. Simon, if you want. I just have one

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1 unrelated to technical things I wanted to raise.

2 MS. SIMON: Mine is unrelated to
3 technical, also. If we're done with technical -- I
4 guess it's quasi-technical. I was just wondering, in
5 the Board's September 24th order, the Board mentioned
6 that they were going to try to afford an opportunity
7 for parties to provide in-camera questions after the
8 main questioning is over, just as we did in the August
9 hearing. I was wondering if the Board has figured out
10 how that would be done, if all the parties would email
11 those in or how that would work?

12 CHAIR GIBSON: I think it's going to have
13 to be done via email. We will provide you with an
14 email address to which those would go. I assume it's
15 probably going to be to one of the clerks' email
16 addresses, but we'll be providing you with that so
17 that you can provide those. Because those are
18 incredibly helpful to us, and I think they afford a
19 complete record for the proceeding. Yes, we'll be
20 doing it that way.

21 MS. SIMON: Okay, thank you. Just to
22 clarify, even though the Staff will be in Rockville,
23 will it be okay if the Staff just submits it by email,
24 as well?

25 CHAIR GIBSON: Yes.

1 MS. SIMON: Okay, thank you.

2 CHAIR GIBSON: Okay, Mr. Frankel, you had
3 another question, sir?

4 MR. FRANKEL: Yes, it's actually a point
5 to make. We were advised by Dr. Kreamer about, maybe
6 -- the same day that the rebuttal statements were due,
7 we were advised -- after they were filed, we were
8 advised that he discovered what I would describe as an
9 imitative mistake in his testimony.

10 I want to describe the situation, and then
11 ask what you all would like to do about it, if
12 anything. You recall that the NRC Staff filed an
13 Exhibit 096, and then they subsequently withdrew that
14 and filed Exhibit 096-R. The difference was that they
15 had omitted to color the green area, which I believe
16 refers to Mine Unit 1 on the initial 096. They did
17 the coloring in because it referred to -- the green
18 area was referred to in their testimony in 095.

19 I have to admit that in the slew of emails
20 that went back and forth, myself and Mr. Ballanco
21 failed to forward the Exhibit 096-R to Dr. Kreamer.
22 So when Dr. Kreamer was preparing his rebuttal
23 testimony, he saw a reference to the green box. He
24 looked through his materials and the only green box
25 that he saw in any of his materials related to the

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1 North Trend area, and then he made some statements in
2 his rebuttal about there being a distance of several
3 miles between the green box area and the Brule water
4 levels or something like that. In fact, he was
5 referring to a different green box. He was not
6 referring to the same green box that the NRC Staff was
7 referring to.

8 If given an opportunity at the hearing,
9 he's probably going to explain that and recant the
10 small part of his testimony that relates to that green
11 box and that distance of miles. We don't feel that it
12 changes his basic opinions of what's going on and his
13 basic testimony, but we do have this issue. It was
14 based on the innocent mistake of our failure to
15 forward him that 096-R in a prompt way, so I'll take
16 responsibility for my part in that.

17 If the Board feels that we should file a
18 corrected testimony, and if no one objects to that,
19 we're happy to do that. If it seems simplest to
20 handle this on the record at the hearing, we think
21 that would be the easiest and simplest. But as of
22 now, there is a little bit of a disconnect between his
23 rebuttal testimony and what he meant and what the
24 exhibits support.

25 CHAIR GIBSON: Can you hold on just a

1 second, Mr. Frankel?

2 MR. FRANKEL: Sure.

3 CHAIR GIBSON: Mr. Frankel, I think the
4 simplest thing to do would just be to let us address
5 this at the hearing. It sounds like it's much ado
6 about nothing, but that will give us a chance to look
7 at it, okay? (Simultaneous speaking) addressed at the
8 hearing.

9 MR. SMITH: Your Honor, this is Tyson
10 Smith for Crow Butte. I think I would strongly prefer
11 to see a revised exhibit with the testimony that Dr.
12 Kreamer no longer supports struck out. I think that
13 would make for a more clear record, and certainly
14 would help us understand what we need to prepare for
15 at the hearing, in terms of being able to respond to
16 Dr. Kreamer's testimony.

17 I think it would be helpful -- I'm looking
18 at the exhibit that Mr. Frankel is referring to, and
19 it looks like it may be just striking one complete
20 paragraph, and it's as simple as that. It seems to me
21 it would be preferable to do that in advance, so that
22 we don't have to prepare to respond to that.

23 CHAIR GIBSON: Mr. Frankel, you can do
24 that, can't you?

25 MR. FRANKEL: Of course. No problem on

1 our side, if there's no objection.

2 CHAIR GIBSON: Just go ahead and do that.
3 Ms. Simon, you're okay with that?

4 MS. SIMON: Yes, Your Honor, that's fine.

5 CHAIR GIBSON: Okay, fine. Let's just do
6 that, Mr. Frankel.

7 MR. SMITH: Thank you, Your Honor. Thank
8 you, Mr. Frankel.

9 MR. FRANKEL: No problem.

10 CHAIR GIBSON: Is there anything else?
11 (No audible response.) Hearing nothing --

12 MR. SMITH: Judge, I apologize. Just one
13 quick moment, and just for planning purposes. Because
14 I know you'll be located in Rockville, is it safe to
15 assume that the hearing will end before, let's say,
16 7:00 p.m. Rockville time, likely sooner, but just for
17 planning purposes, for our witnesses who have to
18 travel on a Friday afternoon? It would be helpful to
19 have some idea of when you anticipate finishing up.

20 CHAIR GIBSON: I think that it's fair to
21 say that we anticipate finishing up by 7:00.

22 MR. SMITH: Okay, wonderful, thank you
23 very much.

24 CHAIR GIBSON: But that's not -- we never
25 know --

1 MR. SMITH: Understood.

2 CHAIR GIBSON: -- what's going to happen
3 when we start asking questions, okay, Mr. Smith?

4 MR. SMITH: Understood.

5 CHAIR GIBSON: Fair enough. Is there
6 anything else? We will look forward to seeing you all
7 on the 23rd. The clerks will be getting in contact
8 with you about doing a test with the IT staff. Thank
9 you so much. We stand adjourned.

10 (Whereupon, the above-entitled hearing was
11 concluded at 1:38 p.m.)

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