

October 19, 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	)	ASLBP No. 08-867-02-OLA-BD01
Facility, Crawford, Nebraska	)	
	)	

NRC STAFF'S RESPONSE TO THE BOARD'S OCTOBER 13 ORDERS

In two Orders dated October 13, 2015, the Board provided CBR and the NRC Staff opportunities to object to Exhibits INT-084 and INT-085, as well as the revised testimony of Dr. Kreamer (Exhibit INT-082-R).<sup>1</sup> The Staff responds below with its objections.

First, the Staff reiterates its objections to Exhibits INT-084 and INT-085 based on timeliness. The Board's September 4 Order clearly stated:

“. . . the Board will not consider any new document if it is merely listed as a reference in a party's direct or rebuttal testimony. . . . Rather, any such new document will be considered only if it is formally offered as an exhibit filed on the EIE and a copy of same is provided to parties . . . within the deadlines established herein.”<sup>2</sup>

Therefore, as of September 4, 2015, all parties' counsel were on notice of this requirement, and no explanation was offered as to why this requirement could not be met.

In a hearing conducted under 10 C.F.R. Part 2, “[o]nly relevant, material, and reliable evidence . . . will be admitted,” and “[i]mmaterial or irrelevant parts of an admissible document

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<sup>1</sup> See Order (Memorializing Admitted Exhibits, Admitting Additional Exhibits, and Setting Filing Dates) at 2 (Oct. 13, 2015) (unpublished); Order (Admitting Additional Testimony) at 1 (Oct. 13, 2015) (unpublished).

<sup>2</sup> Order (Admitting Exhibits; Scheduling Supplemental Testimony and October Hearing Day) at 3 (Sept. 4, 2015) (unpublished) (“Board's September 4 Order”). The established deadlines were September 18, 2015, for direct testimony and September 28, 2015, for rebuttal testimony. *Id.* at 2.

will be segregated and excluded so far as is practicable.”<sup>3</sup> The regulations provide that “the presiding officer may, on motion or on the presiding officer’s own initiative, strike any portion of a written presentation . . . that is irrelevant, immaterial, unreliable, duplicative or cumulative”<sup>4</sup> and may “[r]estrict irrelevant, immaterial, unreliable, duplicative or cumulative evidence and/or arguments.”<sup>5</sup> The Staff objects to the testimony on pages 1-2 of Exhibit INT-082-R that discusses Exhibits BRD-010L and BRD-010D and the relationship between precipitation and excursion events because it is irrelevant. The issue related to Brule water levels that was identified for the supplemental hearing was “whether the water levels in the Brule aquifer have *lowered* due to mining activities.”<sup>6</sup> The relationship between excursions and increased groundwater levels due to excessive precipitation is a different issue that is outside the scope of the supplemental hearing. Therefore, this testimony is irrelevant. In addition, the Intervenors have raised this issue for the first time on rebuttal. This was improper because there was no discussion of the correlation between precipitation and excursion events, or Exhibits BRD-010A through S, in the Staff’s or CBR’s supplemental direct testimony.<sup>7</sup> Furthermore, there was no mention of this topic, or Exhibits BRD-010A through S, in the Intervenors’ supplemental direct testimony (Exhibits INT-079, INT-080, or INT-081). As a result, the Staff did not have an opportunity to respond to these assertions in its own written rebuttal testimony, or to provide rebuttal exhibits on this issue.

The Staff also objects to Exhibit INT-085 because the information in Exhibit INT-085 is unreliable. Exhibit INT-085 states that it provides climate data for Crawford, Nebraska, for the

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<sup>3</sup> 10 C.F.R. § 2.337(a).

<sup>4</sup> 10 C.F.R. § 2.319(d).

<sup>5</sup> 10 C.F.R. § 2.319(e).

<sup>6</sup> Board’s September 4 Order at 2 (emphasis added).

<sup>7</sup> Ex. NRC-095; Ex. CBR-067.

years 1961-1990. Exhibit INT-082-R uses those data to draw conclusions about climate conditions that occurred 20-25 years later (see Ex. INT-082-R at 1-2). The disclaimer provided on the website from which Exhibit INT-085 was obtained (provided as Attachment 1 to this pleading) states, “. . . we speak in terms of averages over a period of thirty years. Therefore, there is no guarantee whatsoever that the weather, at any given time in the future, will correspond with the data provided.” The disclaimer also states (see Attachment 1) that the information is “correct most of the time, but could also be wrong,” and that it should not be relied upon exclusively.

Furthermore, it appears that the precipitation data in Exhibits INT-084 and INT-085 are drawn from different sources. Computing the average precipitation for November for the years 1961-1990, based on the 18 reported values in Exhibit INT-084, gives a value of 0.44 inches.<sup>8</sup> This value is significantly different than the average precipitation for November of 0.83 inches provided in Exhibit INT-085 (also based on years 1961-1990). This difference calls into question the reliability of any comparisons between precipitation data in Exhibits INT-084 and INT-085. Because Exhibit INT-082-R contains statements based on such comparisons (see Ex. INT-082-R at 1-2), those statements cannot be considered reliable either. Thus, the data in Exhibit INT-085 cannot be considered reliable, and should be excluded, along with any statements in Exhibit INT-082-R that rely on those data.

Respectfully submitted,

**/signed (electronically) by/**

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Dated at Rockville, MD  
this 19th day of October, 2015.

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<sup>8</sup> The reported values in Ex. INT-084 are: 0.68, 0.25, 0.00, 0.20, 0.02, 0.05, 0.41, 0.27, 1.09, 0.59, 0.59, 0.30, 0.58, 0.00, 0.00, 0.10, 0.74, and 1.99 (see Ex. INT-084 at 1-2).

# ATTACHMENT 1

Temperature - Precipitation - Sunshine - Snowfall

US Climate Data on [f](#) [t](#)

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## Climate data

This data originates from a variety of sources (for example: The National Climatic Data Center from the NOAA). The information is correct most of the time, but could also be wrong. Therefore, do not rely on this information exclusively, and if at all possible, refrain from using same for professional services involving agriculture and energy.

The responsibility for the use and interpretation of this climate data is entirely yours. We cannot be held responsible for the nature of the climate data. With regard to the climate data, we speak in terms of averages over a period of thirty years. Therefore, there is no guarantee whatsoever that the weather, at any given time in the future, will correspond with the data provided.

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CERTIFICATE OF SERVICE

I hereby certify that copies of the "NRC STAFF'S RESPONSE TO THE BOARD'S OCTOBER 13 ORDERS" have been served in the above-captioned proceeding this 19th day of October, 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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