

**Official Transcript of Proceedings**  
**NUCLEAR REGULATORY COMMISSION**

Title: Crowe Butte Resources, Inc.  
Marsland Expansion Area

Docket Number: 40-8943-MLA-2

ASLBP Number: 13-926-01-MLA-BD01

Location: Teleconference

Date: Tuesday, January 26, 2016

Work Order No.: NRC-2156

Pages 61-141

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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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SCHEDULING PREHEARING CONFERENCE

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In the Matter of: : Docket No.  
CROW BUTTE RESOURCES, : 40-8943-MLA-2  
INC. : ASLBP No.  
(Marsland Expansion : 13-926-01-MLA-BD01  
Area) :

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Tuesday, January 26, 2016

Teleconference

BEFORE:

G. PAUL BOLLWERK III, Chair  
DR. RICHARD E. WARDWELL, Administrative Judge  
DR. THOMAS J. HIRONS, Administrative Judge

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## P R O C E E D I N G S

1:05 p.m.

CHAIRMAN BOLLWERK: Can we go on the record, please?

Good afternoon. Today, we're here to conduct a prehearing conference in this proceeding under Part 40 of Title 10 of the Code of Federal Regulations which Applicant, Crow Butte Resources, Inc. requests authorization to operate a satellite in situ uranium recovery facility, the Marsland Expansion Area, sometimes called the MEA, which is located in Dawes County, Nebraska, some 11 miles to the southeast of Crow Butte's Crawford central processing facility.

This prehearing conference has been convened following the Licensing Board's receipt of a December 24, 2015 letter from the NRC staff indicating that, as a result of Crow Butte Resources having provided response plus standing Requests for Additional Information, or RAIs, staff was proceeding with the Environmental and Safety Review proceeding with an eye toward issuing its final Environmental Assessment and Safety Evaluation reports by November 2016.

So, the Board, at a June 2013 prehearing conference with the parties had discussed various

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1 procedural matters associated with conducting this  
2 proceeding including procedures attendant to  
3 conducting an evidentiary hearing and establishing an  
4 initial general schedule and included various filing  
5 dates and the dates for an evidentiary hearing.

6 Postponements in the staff's review  
7 schedule, including the most recent REI response  
8 related delay, mandates that the general schedule be  
9 updated to reflect the current circumstances.

10 To that end, and given the two and a half  
11 years that have passed since the Board last discussed  
12 such matters with the parties, and during which time,  
13 Intervenor, Oglala Sioux Tribe has acquired new  
14 counsel, the Board felt that a telephone conference  
15 with the parties regarding procedural matters would be  
16 useful, hence, today's prehearing conference.

17 Before turning to those matter, however,  
18 I would like to introduce the Board Members.

19 Administrative Judge Richard Wardwell, an  
20 Atomic Safety and Licensing Board Panel Technical  
21 Member is a civil engineer who specializes in  
22 environmental geoscience engineering and is a full-  
23 time Member of the Licensing Board Panel. He's  
24 participating by phone.

25 Also participating by telephone is Dr.

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1 Thomas Hiron. Mr. Hiron, a nuclear engineer is a  
2 part-time Member of the Panel.

3 My name is Paul Bollwerk. I am an  
4 attorney and the Chairman of this Licensing Board and  
5 I am participating by phone as well.

6 Also, with Judge Wardwell and me here in  
7 the Rockville, Maryland area is our law clerk, Cooper  
8 Strickland.

9 Judge Hiron is participating from his  
10 home in New Mexico.

11 At this point, I'd like to have counsel  
12 for the various parties identify themselves for the  
13 record. Why don't we start with the Applicant, Crow  
14 Butte, and move on to the NRC staff and, finally, the  
15 Tribe?

16 And, again, you should identify anybody  
17 you should identify anybody you anticipate might be  
18 speaking in today's conference.

19 Crow Butte?

20 MR. SMITH: This is Tyson Smith. I'm an  
21 attorney from the law firm of Winston & Strawn and I'm  
22 counsel for Crow Butte Resources.

23 CHAIRMAN BOLLWERK: Thank you.

24 NRC staff?

25 MS. SIMON: Good afternoon. This is

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1 Marcia Simon. I'm an attorney in the Office of  
2 General Counsel at the NRC.

3 And, participating with me are David  
4 Cylkowski and Emily Monteith, also attorneys.

5 CHAIRMAN BOLLWERK: All right, thank you.

6 And, for the Tribe, Please?

7 MR. REID: My name is Andrew Reid. I'm an  
8 attorney associated with the Ved Nanda Center at the  
9 Stern College of Law in Denver, Colorado representing  
10 the Oglala Sioux Tribe.

11 CHAIRMAN BOLLWERK: All right, thank you  
12 very much.

13 I would note that prior to beginning this  
14 call, I asked all the participants to try to remember  
15 that, as they start to speak, they identify themselves  
16 so it will be clear to the Court Reporter who is  
17 speaking.

18 And, again, if the Court Reporter has any  
19 difficulties in that regard, he should feel free to  
20 interrupt and let us clarify the record as to who is  
21 speaking.

22 I will also be available after this  
23 conference call if he has any questions about any of  
24 the terms that were used, the acronyms, et cetera.

25 In the first instance, I would like to

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1       thank the parties for making themselves available for  
2       this conference.

3               As you are aware, we had some snowy  
4       weather in the Washington, D.C. area over the weekend.  
5       Fortunately, we had this set up as a telephone  
6       conference and so, while it would have been difficult  
7       for Judge Wardwell, Cooper Strickland, our law clerk,  
8       and me to get into the office today and, in fact, the  
9       Agency's Headquarters offices are closed, as well as  
10      the NRC staff attorneys' potentially to get into the  
11      office, because of the bridge line, we're able to  
12      carry this conference forward and I hope we'll make  
13      some progress today with respect to the schedule.

14              So, again, thank you all for making  
15      yourselves available.

16              One thing I would note is with the counsel  
17      for the Tribe expressed some concern about the timing  
18      of the conference, given his desire to consult before  
19      the conference with his client in person in Nebraska.

20              And, Mr. Reid, I wanted to check, were you  
21      able to do that or not?

22              MR. REID: Not officially. I contacted  
23      some staff members at the Tribe but was unable to get  
24      a formal consultation with the Tribe. But, I think I  
25      have enough information to proceed today.

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1                   CHAIRMAN BOLLWERK:       All right, we  
2 appreciate that.

3                   And, again, if there's something you feel  
4 that you need to talk with more about, the things we  
5 discuss today, we'll also have an opportunity after we  
6 -- if we do issue a schedule on the basis of the  
7 prehearing conference, you'll have an opportunity to  
8 comment on that as well subsequent to its issuance.

9                   So, hopefully, we'll be able to make some  
10 progress today in terms of the schedule and also if  
11 your client feels the need, you feel the need for your  
12 client to provide us some more information, we can  
13 certainly take that into account.

14                  MR. REID: Thank you.

15                  CHAIRMAN BOLLWERK: All right.

16                  Additionally, I would note that we hope  
17 that all the members of the public or any others who  
18 wish to listen to this conference have been able to  
19 access the bridge line this morning.

20                  I would note as well that a transcript of  
21 this conference will be prepared and should be  
22 available in the NRC's Electronic Hearing Docket by  
23 next week.

24                  Before we begin talking to the parties  
25 about the various items the Board indicated it wished

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1 to discuss in the conference which were listed in our  
2 January 13th scheduling issuance, because this  
3 proceeding has been a little slow in developing, I'd  
4 like to briefly review how we go to this point in the  
5 proceeding so that everyone will have a common  
6 understanding of what has transpired previously and  
7 what forms the basis for the items we'll discuss this  
8 afternoon.

9 And, again, just briefly, back in February  
10 of 2013, this Licensing Board was established. Then,  
11 in May of 2013, there was a Board establishment,  
12 obviously, followed the filing of an Intervention  
13 Petition by the Oglala Sioux Tribe as well as by what  
14 were then called the Consolidated Petitioners.

15 Back in May of 2013, the Board issued a  
16 Standings and Contentions ruling. We admitted two  
17 contentions of the Tribe, one regarding cultural  
18 resources matters and one raising hydrogeological  
19 issues in LBP-13-6.

20 I would also note that the Consolidated  
21 Petitioners were not admitted as a party as a result  
22 of that ruling.

23 Then, in June 2013, we had an  
24 administrative prehearing conference and issued an  
25 initial scheduling order.

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1           Then, in February of 2014, the Commission  
2           issued CLI14-2 which affirmed the Board rulings on the  
3           Oglala Sioux Tribes Standings and the admission of the  
4           two contentions.

5           At that point, there was no request for  
6           review from the Consolidated Petitioners with respect  
7           to their dismissal from the proceeding.

8           Then, in October of -- I'm sorry -- in  
9           June 2014, excuse me, June 2014, the staff issued the  
10          cultural resources portions of the Environmental  
11          Assessment which we'll also refer to from time to time  
12          as the EA.

13          Then, in October of 2014, the Board  
14          granted an unopposed Summary Disposition Motion  
15          regarding the admitted cultural resources contention  
16          and issues a Show Cause Order regarding the Tribes  
17          there to potentially prosecute the proceeding.

18          Then, in February 2015, the Board declined  
19          to issue a Show Cause Order. The staff advised the  
20          Board about delays in the License Amendment Review  
21          process because of outstanding Crow Butte resources,  
22          Request for Additional Information, RAI, responses.

23          And, in March of 2015, the staff advised  
24          the Board it hopes to provide updated license  
25          amendment review schedule by June of 2015.

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1           Then, in June of 2015, the Board  
2           acknowledged a staff suspension of the license review  
3           process pending receipt of RAI responses and setting  
4           a schedule for the status report on when that review  
5           might be reinstated.

6           And then, in December of 2015, the end of  
7           the month, the staff advised the Licensing Board that  
8           the review had been reinstated with the final  
9           Environmental Assessment, EA, and the Safety  
10          Evaluation report for this proceeding to be issued by  
11          November of 2016.

12          And so, that's where we stand today as we  
13          move forward into this prehearing conference.

14          Let's turn then to the individual agenda  
15          items in the Board's January 13th Order. And, I would  
16          note my Order dated January 21st, we did indicate to  
17          the parties that we hoped that they would have  
18          reviewed the transcript of the June 2013 prehearing  
19          conference, the June 14, 2013 initial prehearing  
20          conference and scheduling order as well as the August  
21          19, 2013 Protective Order as we talk today about the  
22          various matters we're going to discuss.

23          First of all, let me ask a question to the  
24          staff about the RAI health physics responses. Per the  
25          statement in your December 28th letter that the EA SER

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1 schedule is contingent on the sufficiency of Crow  
2 Butte's health physics RAI response information.

3 As that becomes apparent when review of  
4 that information starts in March of 2016, at what  
5 point does the staff anticipate it will know whether  
6 this information is sufficient or will engender  
7 another delay?

8 MS. SIMON: Your Honor, this is Marcia  
9 Simon for the staff.

10 Our Safety Project Manager, Mr. Lancaster,  
11 is on sick leave right now. So, he was unable to  
12 attend this prehearing conference. So, I can't give  
13 you a definitive answer.

14 My suspicion would be, just as it was a  
15 30-day review for the previous set of RAIs, it should  
16 be no more than 30 days, I would imagine, for these.  
17 Especially since it's a small subset of information  
18 than before.

19 CHAIRMAN BOLLWERK: So then, based on what  
20 you know now, we, in theory, should hear something by  
21 the end of April if there's going to be a further  
22 delay based on those RAI responses?

23 MS. SIMON: Yes, Your Honor.

24 CHAIRMAN BOLLWERK: All right.

25 Let me see if either of the other Board

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1 Members have any questions about that at this point.

2 Mr. Hirons?

3 JUDGE HIRONS: No, I do not.

4 CHAIRMAN BOLLWERK: All right.

5 Judge Wardwell?

6 JUDGE WARDWELL: None from here.

7 CHAIRMAN BOLLWERK: All right, great.

8 Well, that sort of gives us a baseline  
9 then as we move forward with the schedule. And,  
10 again, this is contingent on the staff's review  
11 schedule. If that schedule, which is now, we've been  
12 told, hopefully, will be completed by the end of  
13 November of 2016 slips, what we're talking about  
14 today, could slip further.

15 But, at this point, I think it's best that  
16 we use that date and move forward and talk about these  
17 things and begin to try to come to some resolution and  
18 some scheduling with the understanding that,  
19 obviously, if the staff schedule, review schedule,  
20 slips, then, in theory, the other things are going to  
21 slip because of that.

22 So, I think the first item we had in our  
23 Order, we talked about the staff plans for the public  
24 availability of the balance of this draft  
25 Environmental Assessment, finding of no significant

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1 impact, the EA and FONSI as they are called, and the  
2 filing of new and amended contentions.

3 As we noted during the previous prehearing  
4 conference, the Board's February 2013 initial  
5 prehearing Order specifies that new or amended  
6 contention Motions are to be filed within 30 days of  
7 the date when the information that is the basis of the  
8 Motion becomes available to the Tribe, then with 14  
9 days for staff and CBR responses, Crow Butte  
10 responses, and seven days for a Tribe reply.

11 During that conference, the Board also  
12 discussed with the parties various scenarios for  
13 filing new and amended contentions based on the timing  
14 of the public availability of this draft, the staff,  
15 excuse me, draft and final Environmental Assessments  
16 and the final Safety Evaluation report.

17 Just as well with the fact that the Tribes  
18 admitted hydrogeology contention, that's Contention 2  
19 which is still pending before the Board, had both  
20 environmental and safety aspects so that it  
21 potentially could be impacted by either the EA or the  
22 SER.

23 In its January 19th letter to the Board,  
24 the staff has clarified that the balance of its draft  
25 Environmental Assessment when published by the end of

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1 August 2016 will be publically available.

2 As a consequence, as was the case with the  
3 portion of the draft EA regarding cultural resources  
4 that was issued back in June of 2014, we -- our plan  
5 at this point is to move the EA related -- excuse me,  
6 to move with the Environmental Assessment related new  
7 or admitted contentions by teeing off of that draft  
8 with respect to the environmental side.

9 At this point, let me throw it open to  
10 party comments on that plan. Let's hear first from  
11 the Applicant if they have anything say about that.

12 MR. SMITH: This is Tyson Smith for Crow  
13 Butte.

14 We have no objection to that schedule.  
15 The only other comment I would make regarding that is,  
16 that to the extent the information the staff's draft  
17 Environmental Assessment on cultural resources is the  
18 same as that in the draft cultural resources section  
19 that's been issued previously.

20 There wouldn't be a basis for a new or  
21 admitted contention. You know, the timeliness of  
22 those contentions would be key to the availability of  
23 the original draft section on cultural resources.

24 CHAIRMAN BOLLWERK: Your raise an  
25 interesting question. Let me raise it -- well, talk

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1 with the staff about this.

2 Would the staff, obviously, that draft EA  
3 came out over a year ago, would it be the staff's  
4 intention to, when it comes out with the balance of  
5 the EA, to basically just reissue that or is the draft  
6 going to change in some way?

7 MS. SIMON: Your Honor, this is Marcia  
8 Simon for the staff.

9 My understanding is that the staff plans  
10 to issue the draft cultural resources section that was  
11 issued before in the same form as it was. And, the  
12 balance of the Environmental Assessment, obviously,  
13 would be new but it will be an entire document  
14 including the cultural resources section, but that  
15 section will be the same.

16 CHAIRMAN BOLLWERK: Okay. Then, any  
17 comments you have about having the initial new and  
18 admitted contentions teeing off the EA draft?

19 MS. SIMON: We have no objection to that.

20 CHAIRMAN BOLLWERK: All right.

21 Mr. Reid, then let me turn to you.  
22 Anything you want to say in that regard?

23 MR. REID: Well, I'm, as you know, I'm new  
24 to this and it sounds like this just got going in  
25 December.

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1           The -- on the cultural resources  
2 contention, it's -- I don't know if the Board is  
3 aware, but there has been two proceedings, one with an  
4 opinion already, the Powertech proceeding, which  
5 considered the same procedures that were used in  
6 Marsland in regards to an in situ project up in South  
7 Dakota.

8           They were handled jointly by the NRC along  
9 with the License Renewal proceeding that was recently  
10 concluded and we're waiting for a decision on that.

11           The cultural resources issue was a major  
12 -- the procedures that were employed by the NRC was a  
13 major part of that hearing, evidentiary hearing.

14           And, we are hopeful to get a decision soon  
15 on that one as well.

16           So, it's our position, anyway, that  
17 there's some real issues, something that occurred  
18 subsequent to the issuance of the June 2014 EA on  
19 cultural resources that clearly bring new evidence and  
20 new issues in regards to that contention.

21           So, it's our position, I guess at this  
22 point, is that we are considering either moving to  
23 reopen that contention or waiting for the -- first  
24 off, we would like to wait for the decision from the  
25 Renewal License because it involved essentially the

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1 same survey process and almost the same surveys as  
2 conducted in the Marsland. And, the same procedural  
3 defects or problems would occur in both.

4 And, it would be a subsequent ruling,  
5 second subsequent ruling on those procedures. And, we  
6 would like to see what the Board's stance is going to  
7 be on that.

8 And then, potentially either move to  
9 reopen or re-raise that contention as part of the  
10 response to the EA that's issued sometime around  
11 August of 2016.

12 CHAIRMAN BOLLWERK: All right.

13 Well, you actually raised something I was  
14 going to talk about a little later, but we can talk  
15 about it now.

16 And, obviously, as you pointed out, there  
17 are a couple of potential actually Commission  
18 decisions relating to in situ recovery facilities.

19 One, as you point out, is the Powertech  
20 proceeding. I am a Member of that Board, actually,  
21 although I was appointed to the Board after the  
22 initial decision had been issued.

23 But, as you noted, the Commission now has  
24 that pending before it on appeal. It's raised the  
25 cultural resources issues and I think, as you're

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1 aware, Judge Wardwell is a Member of the Crow Butte  
2 License Renewal Board. So, he's well aware of that  
3 and what's going on with that case.

4 I think the -- then the third case I would  
5 mention is the Strata case which I was a Member of.  
6 I was the Chairman of that Board. That doesn't have  
7 cultural resources issues in it, but does have some  
8 other hydrogeology related issues potentially could  
9 raise -- have matters involved -- that might involve  
10 this case.

11 What I think was going to suggest is that  
12 the parties all pay attention to those cases and if  
13 you see something that arises based on whether a  
14 Commission decision or a Board decision, you certainly  
15 should bring those to the attention of this Board  
16 promptly if you believe that it has some impact on  
17 what's already been decided in this case one way or  
18 another.

19 Obviously, particularly anything from the  
20 decision given that would be potentially binding on  
21 us, depending on what it says and in what context it  
22 is decided.

23 Let me, however, throw that anything  
24 that's part of my general statement, let me go to Crow  
25 Butte to see if there's anything you all want to say

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1 about that.

2 MR. SMITH: This is Tyson Smith for Crow  
3 Butte.

4 We're tracking those as well and are aware  
5 of those decisions. But, obviously, if the  
6 Intervenors had an issue with the procedures that were  
7 employed by the staff in this case and an obligation  
8 to raise those and propose contention, which they did,  
9 and that was subsequently dismissed and terminated by  
10 the Board.

11 So, you know, I don't see any of the --  
12 the fact that anything is pending before the  
13 Commission or these other Boards isn't going to  
14 directly affect the admissibility of any contentions  
15 based on the prior cultural resources contention  
16 decision in this case.

17 And, it may change what the staff needs to  
18 do to respond to the Commission, but it shouldn't  
19 affect contention admissibility in this case.

20 CHAIRMAN BOLLWERK: All right.

21 Anything the staff wants to say?

22 MS. SIMON: Your Honor, this is Marcia  
23 Simon.

24 I would just echo, we would agree with Mr.  
25 Smith from the legal standpoint that there is

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1 currently no contentions in this proceeding regarding  
2 cultural resources. So, any Motion to file a new  
3 contention or an amended contention would be subject  
4 to the timeliness requirements and any other  
5 requirements, you know, in the Commission's  
6 regulations.

7 And, certainly, you know, the staff is  
8 also monitoring those other proceedings and if the  
9 Commission issues an Order that is binding on the  
10 staff in this case, then we will, obviously, follow  
11 whatever the Commission issues us to do.

12 CHAIRMAN BOLLWERK: All right.

13 Mr. Reid, anything further you want to  
14 say?

15 MR. REID: Not at this time. I think the  
16 Board is aware that the Tribes essentially had no  
17 attorney at the time that the Contention 1 was  
18 dismissed.

19 I came in shortly after that and all of  
20 the matters that I've mentioned, the new matters are  
21 new matters that occurred after that.

22 Maybe I could get some direction from the  
23 Board, but we could go ahead and file the Motion to  
24 Reopen at this time based on the Powertech and License  
25 Renewal proceedings, but we don't have a decision out

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1 of the License Renewal proceeding and that's the  
2 closest one to the Marsland matter.

3 And so, I was thinking that it made more  
4 sense for us to wait until after that.

5 I understand our burden and the issues  
6 regarding waiver and the contention. The contention  
7 was in regards to the ER and not the EA.

8 I do understand that the EA was issued and  
9 that there was no subsequent contention filed by my --  
10 by the Tribe prior to my coming on by the prior  
11 counsel, but I think that there are extenuating  
12 circumstances that may support a Motion to Reopen and  
13 vacate that previous dismissal or to allow us to  
14 simply file a renewed contention at the time, either  
15 at the time that the License Renewal decision comes  
16 out or at the time -- or a Commission decision in the  
17 Powertech case or at the time that the EA is issued in  
18 August of 2016.

19 So, that's just our position. If the  
20 Board feels like it would be helpful for us to go  
21 ahead and file a Motion to Reopen at this time rather  
22 than wait for the License Renewal decision or the EA,  
23 we would certainly consider that.

24 CHAIRMAN BOLLWERK: All right.

25 Well, let me just make two observations.

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1 One is that I think we know -- well, I know we noted  
2 this and granted the Summary Disposition Motion. We  
3 did that on the basis of not the fact that there was  
4 not counsel or no response, but we assessed the  
5 situation relative to the questions that were  
6 presented in the Summary Disposition Motion and felt  
7 that we had enough information.

8 We could not -- we did not grant it  
9 because it was unopposed, we granted it because we  
10 felt it was appropriate on the merits.

11 Having said that, as it was the case with  
12 any other interlocutory ruling in this proceeding, if  
13 a party's unhappy with that, they certainly can appeal  
14 it to the Commission at the end of the proceeding.

15 The other thing that I would -- is that  
16 goes as well, frankly, for any of the contentions that  
17 were dismissed in this case that have not been the  
18 subject of an appeal with the Commission before or any  
19 other interlocutory ruling.

20 The other thing I will note, I think as  
21 you already have indicated, is that if there's new  
22 information you believe is the basis for some kind of  
23 action on your part, that your best course of action  
24 in the case is to bring that to the Board's attention  
25 as soon as you think is appropriate in whatever form

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1 you think is appropriate.

2 I'm not necessarily suggesting you file  
3 any new Motions, but obviously, the standing rule on  
4 these cases is new information, if there's new  
5 information that would cause a new or amended  
6 contention, something else that you feel needs to be  
7 brought to our attention, then it's certainly your  
8 responsibility to do that promptly and bring it to the  
9 Board's attention.

10 And, I think I will leave it with that  
11 unless you have any other questions, Mr. Reid.

12 MR. REID: No, thank you. I understand.

13 CHAIRMAN BOLLWERK: Okay, thank you very  
14 much.

15 All right, just let me check, any of the  
16 other Board Members who have anything you want to say  
17 about this question about teeing the new and amended  
18 contentions off the draft Environmental Assessment?

19 JUDGE WARDWELL: This is Judge Wardwell.

20 I have none.

21 CHAIRMAN BOLLWERK: All right.

22 Mr. Hirons?

23 JUDGE HIRONS: This is Judge Hirons.

24 I have none.

25 CHAIRMAN BOLLWERK: Okay, so I think we

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1 probably -- I think the Board's preference is, and  
2 consistent with what we did with the draft EA,  
3 portions relating to cultural resources will be to the  
4 balance of the EA. That's when the time for filing  
5 new and amended contentions would arise.

6 I would note that there would be an  
7 appropriate opportunity after the final Environmental  
8 Assessment comes out as well as the final SER to file  
9 additional new or amended contentions, although, I  
10 would think with respect to the EA, depending on how  
11 it's generally the way it's drafted that that would be  
12 the main opportunity to file any contentions at that  
13 point.

14 Although it's a draft EA, there's a  
15 comment period after it. It could change to some  
16 degree. That draft EA is, I think, what the Tribe  
17 would do well to focus on in terms of any new or  
18 amended contentions relating to the Environmental  
19 Assessment.

20 Any questions you have about that, Mr.  
21 Reid?

22 MR. REID: No, thank you.

23 CHAIRMAN BOLLWERK: All right.

24 Let's talk for a second about something we  
25 just had a little discussion about which is Summary

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1 Disposition Motion.

2 During the 2013 prehearing conference, we  
3 discussed Summary Disposition Motion with the parties  
4 and at that time, the Board indicated a willingness to  
5 entertain such Motion which, in fact, we did regarding  
6 the cultural resources contention, as we just  
7 discussed.

8 Looking broadly at the remaining  
9 Contention 2 and its hydrogeology focus, it now seems  
10 that this has a natural event that would make Summary  
11 Disposition problematic.

12 As a consequence, it's probably the  
13 Board's preference at this point to forego dispositive  
14 Motion regarding this contention and move on to an  
15 evidentiary hearing.

16 But, we wanted to hear any party comments  
17 regarding that. Let me -- perhaps we can hear from  
18 Crow Butte.

19 MR. SMITH: This is Tyson Smith, counsel  
20 for Crow Butte.

21 Judge Bollwerk, I have no objection. I  
22 don't think we would plan to file a Summary  
23 Disposition Motion based on if Contention 2 is the  
24 only admitted contention, my only caveat to that is,  
25 that if addition contentions are admitted, some of

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1 those may be amenable to Summary Disposition either in  
2 the SER or the final EA.

3 And so, I wouldn't want to fully eliminate  
4 that possibility at this point in time but, as I  
5 noted, at this point, we do not anticipate filing a  
6 Summary Disposition Motion related to Contention 2 as  
7 currently admitted.

8 CHAIRMAN BOLLWERK: All right, thank you.

9 Anything the staff wants to say on this?

10 MS. SIMON: Your Honor, Marcia Simon for  
11 the staff.

12 Similarly, the staff feels it's unlikely  
13 that we would file a Summary Disposition Motion on  
14 Contention 2 as currently admitted. But, we would  
15 also echo Mr. Smith's concern that, given any  
16 potential new or amended contentions, we wouldn't want  
17 to completely forego the possibility of Summary  
18 Disposition for those, should they be admitted.

19 CHAIRMAN BOLLWERK: All right.

20 Mr. Reid, anything you want to say with  
21 respect to Summary Disposition Motion?

22 MR. REID: Just that I -- it's the Tribe's  
23 position that it's not appropriate under the  
24 circumstances.

25 CHAIRMAN BOLLWERK: All right.

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1 Well, a point that's been raised by the  
2 staff and the Applicant about possible post-SER --  
3 final SER EA Summary Disposition Motion based on new  
4 contentions is one that the Board will take into  
5 account.

6 Obviously, if we were to admit a new  
7 contention, the filing of a Summary Disposition Motion  
8 might be something to take into account, although  
9 granting such a request could have the obvious effect  
10 of delaying the hearing.

11 It's not something we want to do but we  
12 will bear that in mind as we move forward with the  
13 schedule and that may be something we need to explore  
14 further once we get to the point where we actually  
15 have something concrete in front of us in terms of a  
16 new contention and we can talk about it further at  
17 that point.

18 Anything either of the Board Members want  
19 to say with respect to Summary Disposition Motion?

20 Judge Wardwell?

21 JUDGE WARDWELL: Nothing.

22 CHAIRMAN BOLLWERK: All right.

23 Judge Hiron?

24 JUDGE HIRONS: Nothing right now.

25 CHAIRMAN BOLLWERK: All right, thank you

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1 very much.

2 All right, let's move on then to the  
3 question of pretrial testimony and position statements  
4 should be filed seriatim or simultaneously.

5 This was discussed by the parties both  
6 during and after the June 2013 prehearing conference.  
7 And they arrived at an agreement to have seriatim  
8 filings with the Tribe filing its pretrial testimony  
9 and position statement first followed by a staff an  
10 Applicant -- Crow Butte filing and then a reply filing  
11 by the Tribe.

12 Recent experience for me in the Strata  
13 case and I think for Judge Wardwell a in the Crow  
14 Butte License Renewal case suggested simultaneous  
15 filings may work just as well while saving some  
16 scheduling time.

17 But, we wanted to revisit this with the  
18 parties to see if they had any thoughts about this.  
19 And, Mr. Reid, obviously, this was -- there was an  
20 agreement reached by prior counsel but we're certainly  
21 subject to revisiting that.

22 But, let's start with Crow Butte which, if  
23 I recall at the time, had indicated they didn't really  
24 have a preference.

25 MR. SMITH: This is Tyson Smith, counsel

1 for Crow Butte.

2 I think we would prefer the seriatim  
3 approach. I think that leads to clarification of the  
4 issues that are really contested in an earlier manner  
5 and it keeps the filings of all the parties and the  
6 testimony more focused on the specific issues that are  
7 in dispute rather than, you know, for a contention --  
8 my contention to this based on hydrogeology, it sort  
9 of triggers the Applicant to put in everything under  
10 the sun into their filings to make sure they cover all  
11 the bases.

12 So, we support seriatim and think that's  
13 a more efficient use of the Board and the parties'  
14 resources.

15 CHAIRMAN BOLLWERK: So, I'm hearing you'd  
16 like to stick with what's already been agreed to?

17 MR. SMITH: Correct.

18 CHAIRMAN BOLLWERK: Okay, thank you very  
19 much.

20 Staff, please?

21 MS. SIMON: Your Honor, this is Marcia  
22 Simon for the staff.

23 The staff doesn't have a strong  
24 preference, but we do agree with Mr. Smith that the  
25 issues would probably be best defined by having the

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1       seriatim. And so, we would vote for seriatim.

2                   CHAIRMAN BOLLWERK: All right.

3                   So, you want to stick with the existing  
4       schedule -- I mean with the existing agreement as  
5       well?

6                   MS. SIMON: Yes, Your Honor.

7                   CHAIRMAN BOLLWERK: All right.

8                   And, Mr. Reid?

9                   MR. REID: I think the Tribe's position is  
10       that after the experience that we had with the License  
11       Renewal proceeding, we would prefer the simultaneous  
12       filings. We think that's more efficient and it gets  
13       through things quicker.

14                   CHAIRMAN BOLLWERK: All right.

15                   So, you now would like to switch, again,  
16       I believe the Tribe was a strong proponent last time  
17       of seriatim, but you now have, based on your  
18       experience with the License Renewal, would prefer to  
19       use simultaneous?

20                   MR. REID: That's correct.

21                   CHAIRMAN BOLLWERK: Okay.

22                   Let me just go back to Crow Butte to see  
23       if there's anything further you want to say on this  
24       subject.

25                   MR. SMITH: I mean, my only subject is I

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1 certainly don't feel that the simultaneous approach is  
2 the most efficient way to do this. I think it leads  
3 to over-briefing by the staff and the Applicant and  
4 inefficient because we don't know exactly what the  
5 specific issues that the Intervenors are interesting  
6 in or focused in in their testimony.

7 And so, we end up having two large filings  
8 in order to -- the first one to cover all the bases  
9 and the second one to address the specific issues that  
10 were raised. It seems abundantly clear to me that it  
11 is more efficient to have the Intervenors identify the  
12 specific issues of the concern and then have the  
13 Applicant and the NRC staff respond to those in their  
14 testimony so that that testimony is focused only on  
15 those issues that are actually in dispute rather than  
16 the broader licensing action -- defending the broader  
17 licensing action that's proposed.

18 CHAIRMAN BOLLWERK: All right.

19 Staff, do you have anything you want to  
20 offer?

21 MS. SIMON: Your Honor, this is Marcia  
22 Simon for the staff.

23 We don't have anything further other than  
24 what's already been stated.

25 Thank you.

1 CHAIRMAN BOLLWERK: All right.

2 Mr. Reid?

3 MR. REID: As you know with the procedures  
4 implied by the NRC in the evidentiary hearings, all of  
5 the -- at least the fundamentals of the testimony are  
6 all disclosed well prior to the hearing in the  
7 briefing including the statements of experts and  
8 witnesses and so forth.

9 I don't see -- I don't share the concerns  
10 of Crow Butte that it's that big of a problem. And,  
11 I don't think we experienced that in the License  
12 Renewal proceeding.

13 Also, I think Crow Butte and the staff  
14 are, I think, assuming they're not going to have any  
15 issues in regards to their positions, you know, on the  
16 License Application.

17 Are we assuming is there going to be a  
18 FONSI issued at this point when there hasn't even been  
19 a draft EA and there won't be some issues in terms of  
20 information and other things that the staff needs or  
21 has been requesting?

22 I think it's premature at this point to  
23 assume that there aren't any issues between Crow Butte  
24 and the NRC on this.

25 So, anyway, I just think it worked well

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1 before and we should stick with it.

2 CHAIRMAN BOLLWERK: All right, thank you  
3 very much.

4 Let me see if anything that Judge Wardwell  
5 wants to offer based on his experience or Judge  
6 Hirons.

7 Judge Wardwell?

8 JUDGE WARDWELL: No, I have nothing at  
9 this time.

10 CHAIRMAN BOLLWERK: Okay.

11 Judge Hirons?

12 JUDGE HIRONS: No, not at this time.

13 CHAIRMAN BOLLWERK: All right.

14 I thank you very much then for your views  
15 on that, we'll take that into account as we move  
16 forward with the schedule.

17 Let's move next to the subject of in  
18 limine Motions. These are obviously Motions that are  
19 filed by one of other parties to have certain  
20 testimony during the pretrial testimony stricken from  
21 the record as being irrelevant or for some other  
22 reason inadmissible.

23 After discussing the Motions at the June  
24 2013 prehearing conference, the Board indicated it  
25 would accommodate the parties' desire for Motions in

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1       limine.

2                       We noted that, at the time that these  
3 Motions could add several weeks to the schedule. It  
4 didn't seem particularly useful in Subpart L  
5 proceedings such as this one where the Judges are both  
6 asking the questions and determining the relevance or  
7 admissibility or any relevant and admissibility of any  
8 information.

9                       Subsequent experience in Strata, a case  
10 that I was involved with where they weren't used and  
11 the Crow Butte License Renewal proceedings where they  
12 were allowed and where Judge Wardwell was involved,  
13 suggests that this, too, may have some merit to it.

14                      In its June 14, 2013 Order, the Board  
15 indicated it would likely would revisit this item as  
16 things got closer and that they were now inclined not  
17 to allow such Motions, particularly in a case with  
18 only one contention.

19                      But, we did want to get the comments of  
20 the parties, obviously. And, we'll start with Crow  
21 Butte.

22                      MR. SMITH: This is Tyson Smith for Crow  
23 Butte.

24                      I guess my initial thought is that I  
25 believe it's something that should still be

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1 accommodated for in the schedule, but I don't believe  
2 that it necessarily should add or lead to a delay in  
3 the schedule primarily because, as you pointed out, it  
4 is a Subpart L proceeding and the Judges have the  
5 opportunity to speak with the witnesses and ask  
6 questions and --

7 But, in any event, they can make the  
8 determination as to the Motion in limine in their, you  
9 know, partial initial decision rather than having to  
10 decide that in advance of the hearing.

11 But, I do think it's important for the  
12 parties to be able to put forth Motions in limine to  
13 make sure that there's a clear record, particularly on  
14 the scope of the contention or on the scope of  
15 evidence that's presented, whether it falls within  
16 that contention.

17 So, I think it's an important procedural  
18 -- an important tool for ensuring the accuracy of the  
19 record, but it's not one that I think should lead to  
20 delay in conducting any hearings.

21 CHAIRMAN BOLLWERK: So, as I hear what  
22 you're saying, and I don't want to put words in your  
23 mouth, but you're basically saying that the Motions be  
24 filed but we should defer ruling on them until we  
25 issue the initial decision?

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1           MR. SMITH: I think as a practical matter,  
2           that's what my experience with other Licensing Boards  
3           has been. And, I don't have any problem with that  
4           approach.

5           My concern with eliminating it entirely is  
6           then there's no opportunity for the parties who may be  
7           prejudiced by an improper expansion of the issues to  
8           actually raise that or raise those issues and get  
9           their concerns with that in the record.

10          So, I am concerned more with the ultimate  
11          record in the proceeding rather than the testimony and  
12          evidence that's considered during the evidentiary  
13          hearing.

14          CHAIRMAN BOLLWERK: All right, thank you.  
15          Let's turn to the staff next.

16          MS. SIMON: Your Honor, this is Marcia  
17          Simon for the staff.

18          I guess I would have a similar concern  
19          regarding any potential -- preserving objections for  
20          appeal, for example, if there's absolutely no  
21          possibility of even filing a Motion in limine then it  
22          makes, as Mr. Smith said, it makes things a little  
23          more nebulous on appeal for, you know, did you waive  
24          your opportunity to object or not?

25          And so, I also -- the staff would not

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1 object to basically what happened in License Renewal  
2 where Motions were filed and then the ultimate  
3 decision is occurring with the Board's initial  
4 decision.

5 So, for that reason, we would say, as long  
6 as it's not going to cause any significant delay in  
7 the proceeding, which I don't think it would under  
8 that mechanism, it would be fine with us to -- in  
9 fact, we would want to maintain it at least as a  
10 possibility.

11 CHAIRMAN BOLLWERK: All right, thank you  
12 very much.

13 Mr. Reid, anything you'd like to say on  
14 this point?

15 MR. REID: I basically agree with Ms.  
16 Simon that I'm not sure -- I think that the rulings  
17 are reserved until after the Board has had an  
18 opportunity to hear the evidence, I think it makes the  
19 most sense.

20 Having a protracted or involved Motions in  
21 limine proceeding prior to the evidentiary hearing I  
22 think is distractive.

23 I think it's restrictive. I don't think  
24 it's necessary in an administering the hearing.

25 You know, this is not a jury, it's a Board

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1 that is, I think, well qualified to make those  
2 determinations on the evidence as to the reliability  
3 of the evidence. So, I don't see it as a real  
4 problem.

5 Another, perhaps an option would be to put  
6 that decision off until after the EA comes out and we  
7 find out what the contentions are and so forth.

8 But, I obviously, in my mind anyway, as I  
9 understand it, the Board could make that decision as  
10 to whether or not Motions in limine would be allowed  
11 at a point sometime quite a bit later on if we're  
12 going to have an evidentiary hearing in 2017.

13 CHAIRMAN BOLLWERK: All right, thank you,  
14 sir.

15 Anything, Judge Wardwell or Judge Hirons  
16 on Motions in limine?

17 Judge Wardwell?

18 JUDGE WARDWELL: Yes, I'd like to -- I  
19 guess I'd like to start with Mr. Smith, if I might,  
20 and Ms. Simon both. You talk about no delay on the  
21 hearing process, but I wonder if you consider the  
22 considerable resources of Judges' time right in the  
23 heat of battle and when we're trying to read to mounds  
24 of evidence and that type of thing?

25 Or, if I can get some clarification of

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1 what real practical use these are for an L proceeding  
2 where you're asking us to review something and decide  
3 whether or not we should throw it out because we  
4 shouldn't be seeing it?

5 Mr. Smith?

6 CHAIRMAN BOLLWERK: Mr. Smith, why don't  
7 you go ahead and start first?

8 MR. SMITH: This is Tyson Smith.

9 And, obviously, I am sensitive to the --  
10 this is Tyson Smith for Crow Butte Resources.

11 And, obviously, I am sensitive to the  
12 Judges' resources as well. And, I think that's why,  
13 for instance, a lot of thought goes into whether it's  
14 necessary to file a Motion in limine in the first  
15 place and I think it's not something that Crow Butte  
16 has actively pursued in other proceedings in which its  
17 been involved.

18 But, I do, nevertheless, think that it's  
19 an important procedural protection for the parties for  
20 -- so that there's a clear record on appeal either to  
21 the Commission or to the Federal Courts of Appeal.  
22 And, there is sometimes issues of whether certain  
23 testimony, whether an issue was raised or relevant to  
24 a contention and were considered and can be critical.

25 And so, for that reason, I don't think --

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1 I wouldn't want to waive the opportunity for the  
2 parties to ask the Judges to weigh in on whether  
3 potential evidence or testimony is within the scope of  
4 a contention.

5 But, I do recognize that that's something  
6 that does have consequences for the Judges and,  
7 therefore, wouldn't do that unless I thought that it  
8 was important and necessary for our position in the  
9 case or to support my client's position.

10 And, I'd like to just add -- I'm sorry,  
11 I'd like to add my reference to the schedule is  
12 primarily to the schedule leading up to the hearing  
13 itself. I didn't believe that that's something that  
14 we need to build time in for the Judges to issue a  
15 decision on the Motion in limine before the  
16 evidentiary hearing.

17 But, you're absolutely right to point out  
18 the fact that it doesn't eliminate that resource  
19 burden, it just shifts it until after that evidentiary  
20 hearing. So, I do appreciate that.

21 JUDGE WARDWELL: Thank you, Mr. Smith.

22 Ms. Simon, I was going to ask you more  
23 about the waiving of the appeal, but I thought Mr.  
24 Smith covered it quite nicely. Would you like to add  
25 anything to it because I think you first really raised

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1 this, as far as what I heard?

2 MS. SIMON: Thank you, Your Honor. This  
3 is Marcia Simon for the staff.

4 I don't really have anything to add to  
5 that particular aspect of it. And, I would also  
6 acknowledge, certainly, that, you know, reviewing  
7 these Motions is an additional burden on the Judges.  
8 I guess my hope would be that it would help, you know,  
9 point to reasons why, perhaps, the Judges don't have  
10 to spend so much time on certain aspects of testimony  
11 if it is indeed out of scope. So, that would be the,  
12 you know, the benefit that I would see in it.

13 But, I do understand that there is  
14 additional time involved.

15 JUDGE WARDWELL: Thank you.

16 That's all for me.

17 CHAIRMAN BOLLWERK: Mr. Reid, is there  
18 anything you want to say in what you've heard?

19 MR. REID: No, no, thank you.

20 CHAIRMAN BOLLWERK: All right.

21 Judge Hiron, anything you want to say on  
22 Motions in limine?

23 JUDGE HIRONS: Well, I would piggyback a  
24 little bit on what Judge Wardwell said.

25 I've very sensitive to anything that would

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1 delay the schedule even further. So, I guess that's  
2 my main thought on the issue.

3 CHAIRMAN BOLLWERK: All right.

4 Well, I think the parties have given us  
5 something to think about and discuss among ourselves.  
6 And, something to consider for the schedule.

7 I would note, as what I think we talked  
8 about back in 2013 that time for filing these is  
9 generally pretty brief in cases I've been the before  
10 Chair, generally about five days, not very long at  
11 all, not the usual ten days for a Motion.

12 So, given where we're at at that point, I  
13 really think we need to move along and if we do it,  
14 the parties will have an opportunity, but it's not  
15 going to be an extensive one to file such Motions. I  
16 would just note that for the record.

17 All right, the next thing I think we had  
18 on our list of items was questions about our party and  
19 witness availability for a one to three day hearing  
20 during the April to September 2017 time frame.

21 And, I recognize that it's a broad time  
22 frame, but I think we wanted to begin to have you all  
23 think about and talk with us about the possibility of  
24 a hearing in that time frame.

25 Assuming the staff review schedule holds,

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1 that's always an important point.

2 We note that we are still a year away from  
3 a hearing but the Board's also aware that the Crow  
4 Butte License Renewal Board had problems establishing  
5 a hearing date during that same approximate time frame  
6 because of a party and a witness conflict.

7 We are aware that the Crow Butte License  
8 Renewal proceeding from that proceeding that holding  
9 a hearing in July generally would not be a successful  
10 because of religious observances during that month.

11 And, we wanted to see at this point if  
12 there were any other items of that sort that the  
13 parties were aware of that would be an issue for them  
14 or their potential witnesses.

15 And so, let me begin with Crow Butte and  
16 see if you have anything you want to say in that  
17 regard.

18 MR. SMITH: This is Tyson Smith, counsel  
19 for Crow Butte.

20 Crow Butte, it's counsel and its witnesses  
21 can be available whenever the Board decides to  
22 schedule the hearing. At this time, there are no  
23 conflicts for 2017.

24 CHAIRMAN BOLLWERK: All right, thank you.

25 Staff?

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1 MS. SIMON: Your Honor, Marcia Simon for  
2 the staff.

3 The only conflict that I can note at this  
4 time for the staff is I have a personal conflict the  
5 first three weeks in August of 2017. That should not  
6 -- if that turned out to be the only time to hold a  
7 hearing then, you know, I would try to make other  
8 arrangements.

9 But, other than that, as far as I'm aware,  
10 the staff attorneys and witnesses should be available  
11 any time during that April to September time frame.

12 CHAIRMAN BOLLWERK: All right, thank you.

13 Mr. Reid?

14 MR. REID: Thank you, this is Andrew Reid.

15 I'll be teaching probably that semester  
16 through the end of April, so May is actually a good  
17 month for me as well as the Tribe.

18 As you mentioned, for the Tribe, a large  
19 number of our witnesses as well as some other -- a  
20 large number of the interested members of the Tribe  
21 will be engaged in sundance ceremonies in the months  
22 of July and August.

23 Late August, I think, would work as it did  
24 in the Licensing Renewal proceeding. And but, I  
25 think, generally, the months of April, June and

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1 September would not work well for us and July. That  
2 leaves May and late August would be the months,  
3 perhaps April. I could have somebody fill in for my  
4 class and maybe the beginning of July would be the  
5 best times for us.

6 CHAIRMAN BOLLWERK: I think I heard some  
7 things that aren't jiving, let me make sure that I --

8 So, April because of class is not a good  
9 month for you generally?

10 MR. REID: That's right.

11 CHAIRMAN BOLLWERK: Although possible?

12 MR. REID: The last class is April 24th.

13 CHAIRMAN BOLLWERK: I'm sorry?

14 MR. REID: My last day of class is April  
15 24, 2017.

16 CHAIRMAN BOLLWERK: Okay.

17 And then, in terms of the month on May?

18 MR. REID: It's good.

19 CHAIRMAN BOLLWERK: It's good.

20 In terms of the month of June?

21 MR. REID: I'm potentially -- we're  
22 potentially bringing in co-counsel in the month of  
23 June. It's bad for him, but, if necessary, we could  
24 go with June.

25 CHAIRMAN BOLLWERK: All right.

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1                   And, in terms of the month of July, we've  
2 already been made aware in the Crow Butte License  
3 Renewal case that that has religious observances and  
4 that's a bad month overall.

5                   MR. REID: Except for, perhaps, the first  
6 week of July.

7                   CHAIRMAN BOLLWERK: The first week of  
8 July? Okay.

9                   MR. REID: But, that's the holiday, so I'm  
10 not sure that's really an option for people.

11                   CHAIRMAN BOLLWERK: Well, yes, and  
12 depending on the number of days we need, it might be  
13 an opportunity to get it in or not, depending on the  
14 number of contentions and what we felt was required.

15                   But, and in terms of August?

16                   MR. REID: Late August like we did in the  
17 License Renewal proceeding.

18                   CHAIRMAN BOLLWERK: So, you potentially  
19 have the same conflict that Ms. Simon has --

20                   MR. REID: That's right.

21                   CHAIRMAN BOLLWERK: -- in August? Okay.  
22 And then, you said September is not good?

23                   MR. REID: It's not good for the person  
24 that we are considering as bringing in as co-counsel.  
25 But, again, if we have to, we can make September work.

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1 CHAIRMAN BOLLWERK: All right.

2 Again, I would mention that we're talking  
3 about a one day, two day, three day hearing, again,  
4 depending on the number of contentions, probably with  
5 one contention, past experience would suggest that two  
6 days would be enough, but I'm going to let Judge  
7 Wardwell or Judge Hiron chime in here on a second on  
8 that regard.

9 If we have additional contentions, then it  
10 could go longer.

11 And, one thing I do want to talk about,  
12 not right this second, but in a couple of minutes, is  
13 the potential for a site visit and limited  
14 appearances. So, we'll work that into the process as  
15 well.

16 Given what we've heard here, does Crow  
17 Butte have anything else they want to say on this  
18 subject?

19 MR. SMITH: On the subject of schedule,  
20 Crow Butte does not have anything else to add.

21 Thank you.

22 CHAIRMAN BOLLWERK: All right.

23 MR. SMITH: I'm sorry, this is Tyson Smith  
24 for Crow Butte.

25 CHAIRMAN BOLLWERK: Thank you.

1 Ms. Simon?

2 MS. SIMON: Your Honor, Marcia Simon for  
3 the staff.

4 No, we don't have anything to add.

5 Thanks.

6 CHAIRMAN BOLLWERK: All right.

7 And, I guess, Mr. Reid, we heard from you.

8 And, we appreciate very much your  
9 forthrightness on the schedule. That gives us some  
10 useful information to work with and we'll bear all  
11 those dates in mind as we're looking at this.

12 All right, at this point, I think I'm  
13 going to open it to Judge Wardwell if he has anything  
14 he wants to say about scheduling or about which --

15 JUDGE WARDWELL: Yes, I think I would echo  
16 that if it is one contention, it's probably two days'  
17 worth of hearing.

18 But, to really fix that better, I guess  
19 I'd question what people have in mind as far as their  
20 witness list and probably the best to start with is --  
21 let me go with Mr. Reid in regards to whether your --  
22 do you have any ideas of what -- how extensive your  
23 witness list will be and who will it include in  
24 regards to and compared to those people that you used  
25 during the contention admissibility stage, which I

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1 believe was only Dr. LaGarry, if I remember correctly,  
2 but correct me if I'm wrong?

3 MR. REID: Right. On the hydrogeological  
4 issues, we would probably use the same witnesses, or  
5 at least at this point. And, if not, then we would  
6 try to replace them that we used in the License  
7 Renewal proceeding.

8 So, I think on that issue, we had three or  
9 four -- there were two witnesses from the Tribe, you  
10 may recall, and there were three witnesses that were  
11 associated with universities and so forth that -- Dr.  
12 LaGarry, Dr. Warman and the third one escapes my mind  
13 right now.

14 And, I think they testified for -- as I  
15 recall, the testimony lasted about three days.

16 JUDGE WARDWELL: Thank you.

17 MR. REID: And, there were numerous  
18 hydrogeological issues. This is a broad contention,  
19 so, at this point, until we get a little further along  
20 in the proceeding and we see how the EA looks, it's  
21 hard for us to really define the scope of the  
22 testimony that would be needed by us.

23 But, that, hopefully, that can give you  
24 some idea of what we're looking at.

25 JUDGE WARDWELL: Yes, I understand the

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1 difficulties in projecting the length of time,  
2 especially since you don't know.

3 And, there were questions that'll be  
4 asked, so that's why the number of witnesses is very  
5 helpful.

6 Thank you.

7 Mr. Smith?

8 MR. SMITH: I mean, at this point, I  
9 imagine our witnesses would include a Crow Butte  
10 geologist, a Crow Butte -- Regulatory Affairs is  
11 responsible for permitting and then likely either a  
12 contract modeler who's in the hydrogeologic modeler  
13 and then another contractor who's done a lot of the  
14 geologic modeling and analysis.

15 So, I think imagining something similar to  
16 what you saw for the Crow Butte License Renewal  
17 proceeding, perhaps one or two less people based on  
18 that experience and a slightly different range of  
19 contentions.

20 JUDGE WARDWELL: And, Ms. Simon?

21 MS. SIMON: Your Honor, assuming that  
22 there's just the hydrogeological contention, the staff  
23 witnesses would probably be a similar number to what  
24 was in License Renewal, I would say three, possibly  
25 four people.

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1 JUDGE WARDWELL: I guess we just should  
2 have delayed the License Renewal until we did this.

3 Thank you.

4 CHAIRMAN BOLLWERK: All right.

5 This is Judge Bollwerk. Judge Hirons,  
6 anything that you'd like to say in this regard?

7 JUDGE HIRONS: No. As far as  
8 availability, that time frame is good for me whichever  
9 is chosen.

10 CHAIRMAN BOLLWERK: All right.

11 JUDGE HIRONS: And, I think that Judge  
12 Wardwell covered the witness question. So, I have  
13 nothing else.

14 CHAIRMAN BOLLWERK: All right.

15 In that regard, let me bring up one thing  
16 I think I had mentioned before and was sort of hinted  
17 at with respect to these statements that we're making,  
18 this was, at one point, I guess, had the potential to  
19 be classified as both an environmental and a safety  
20 contention.

21 I'm not sure that that makes a difference  
22 in terms of the way it's tried, but let me see if the  
23 staff, the Applicant or the Tribe have anything they  
24 want to say in that regard.

25 Obviously, it may have some impact in

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1 terms of amending the contention based on the EA  
2 versus the SER, but let me just throw the floor open  
3 to see if anybody has anything they want to say about  
4 that.

5 Crow Butte?

6 MR. SMITH: Yes, Judge Bollwerk, thank you  
7 for raising that.

8 That was the one item I had on my list  
9 that I still wanted to raise. So, you're -- thank you  
10 for flagging it.

11 I think our view is that it is important  
12 primarily for the matter of the timeliness of any new  
13 or amended contentions. And, I wanted to, you know,  
14 raise that point here.

15 You know, if there is the same topic as  
16 addressed in the draft EA and it's also addressed in  
17 the final SER, under the Commission's rule, I don't  
18 believe that there should be two chances to file new  
19 contentions based on the same sort of set of facts.

20 And, I think this is a little bit unique  
21 to ISR facilities where the safety review and the  
22 environmental review are, at least with respect to  
23 hydrogeology and environmental impacts from mining  
24 operations more or less co-extensive.

25 And so, I did want to raise that and, I

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1 guess, my -- Crow Butte's perspective would be that,  
2 if the subject matter of a particular issue is  
3 addressed in the Environmental Assessment, that's the  
4 appropriate time to raise any concerns about  
5 environmental impacts and the like as based on the  
6 draft EA and not waiting until the final SER and  
7 addressing sort of the same factual information there.

8 CHAIRMAN BOLLWERK: All right, thank you.

9 Anything else you want to say? Okay.

10 Anything the staff wants to say in that  
11 regard?

12 MS. SIMON: Your Honor, this is Marcia  
13 Simon for the staff.

14 The staff's Environmental and Safety  
15 Review do overlap in the hydrogeology area. So, I  
16 think our position back in when we had the previous  
17 teleconference was that this does seem to have  
18 elements of a hybrid contention.

19 And, I guess we would still look at it  
20 that way. Certainly, when we get to the point of  
21 filing testimony and issues are clarified, perhaps it  
22 would go one way or the other. But, at this point, we  
23 feel that it's possible that both documents might come  
24 into play.

25 CHAIRMAN BOLLWERK: All right.



1           Mr. Reid, anything you want to say based  
2 on what you've heard?

3           MR. REID: Just two things, the first one  
4 being the amount of time that has elapsed between the  
5 SER and I guess the projected date for the EA and the  
6 time in which the evidentiary hearing will be held is,  
7 in my mind, a huge amount of time.

8           It's -- I have -- I don't think, at least  
9 it's our position anyway, that the Tribe should not be  
10 held to something -- to the proceedings that were  
11 conducted several years ago and then suspended and  
12 then reopened and then a new assessment's issued.

13           I understand the differences, but we're  
14 not willing to concede the -- that the final SER and  
15 the whatever requirements are required in terms of  
16 responding to that forecloses the -- necessarily  
17 forecloses the issues that can be brought up in  
18 response to the EA.

19           So, I guess our position is, until we  
20 actually see the EA and see how these things are being  
21 treated, that we can't really respond at this point  
22 other than to note the passage of time and that we  
23 don't think that there is necessarily that large of an  
24 overlap between the two because of that.

25           CHAIRMAN BOLLWERK: All right.

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1           Let me just make two observations.  
2           Obviously, look at the case law, if you receive new  
3           information, the best time to raise it is sooner  
4           rather than later. That's certainly been the  
5           Commission's position.

6           And also, there is also the possibility,  
7           again, of migration, which you may have heard that  
8           term referred to where basically something that's been  
9           accepted into a contention is very -- for instance,  
10          the Environmental Report is very similar in the  
11          Environmental Assessment and, therefore, the  
12          contention can simply migrate from the ER to the draft  
13          EA and potentially to the final EA.

14          While migration is generally not something  
15          that is thought to reach across to the SER from an EA  
16          contention, nonetheless, given the way this one is  
17          drafted, I don't know if that would be appropriate or  
18          not. That's something to think about as well.

19          But, I think, you know, the main thing you  
20          need to keep in mind is that if you see something you  
21          don't like, it's better to raise it sooner rather than  
22          later.

23                       MR. REID: Thank you.

24                       CHAIRMAN BOLLWERK: All right.

25                       Let me turn to Judge Wardwell and see if

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1 you have anything you want to say on that subject.

2 JUDGE WARDWELL: No, I don't believe so.

3 CHAIRMAN BOLLWERK: All right.

4 Judge Hiron?

5 JUDGE HIRONS: No, I don't.

6 CHAIRMAN BOLLWERK: All right.

7 We've been at this a little over an hour.

8 I've got a couple of additional points. I think we're  
9 going to wrap this up probably within the next 15, 20  
10 minutes, so we'll stay well within the time frame we  
11 said.

12 I think I've already discussed the fact  
13 there are a couple pending cases before the  
14 Commission, Strata and Powertech. I think we've  
15 covered that. Everybody seems aware of those as well  
16 as the Crow Butte License Renewal Board rulings that  
17 could be coming out.

18 Maybe we'll see something from the  
19 Commission by the springtime. The Commission does  
20 what it does on the time frame that it's operating in.

21 The Crow Butte License Renewal cases are  
22 in front of that Board and they will -- I'm sorry, the  
23 cases in front of that Board and they're working  
24 diligently to issue their decisions. And, I'm sure  
25 we'll see that in a timely manner.

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1           But, again, if you see something with  
2           respect to any of those issuances that you think needs  
3           to be brought to our attention, again, sooner rather  
4           than later is generally the better approach.

5           In terms of hearing location, consistent  
6           with longstanding Agency policy, the Board's current  
7           plan is to conduct any evidentiary hearing in the  
8           Chadron/Crawford area.

9           If the evidentiary hearing, I should  
10          mentioned, however, begins to slip beyond the end of  
11          September 2017, the chances increase that the Board  
12          may hold any hearing in our Rockville hearing room  
13          rather than Nebraska given the difficulties with the  
14          weather and the logistics of getting our equipment out  
15          to hold the hearing and make the safety information  
16          available to the public.

17          So, that's one thing to think about. I  
18          know with the Crow Butte License Renewal case, you all  
19          were able to use our new Rockville hearing room that's  
20          been upgraded which includes the Internet connectivity  
21          and it has web streaming as well. So, that's a  
22          possibility.

23          I'm not going to say we're going to do  
24          anything or not going to do anything at this point,  
25          but obviously, the further we get past September, the

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1 likelihood -- the possibility increases that we may,  
2 in fact, end up holding the hearing in Rockville  
3 rather than out in the Nebraska area.

4 And, not something I want to do but  
5 something we will be considering if that's the case.  
6 And, wanted to make you aware of that.

7 Again, we're thinking with our Internet  
8 connectivity and web streaming is a potential to let  
9 the public out in the Nebraska area know what's going  
10 on.

11 In terms of, I had mentioned, as possible  
12 site visit, that, I think, is something that would be  
13 useful if we can arrange that probably in conjunction  
14 with the hearing, depending on how that plays out.

15 It's possible we could come at a separate  
16 time. We need to see how the staff's review schedule  
17 goes and what the Board's availability of it is.

18 One thing I would mention is that I'm also  
19 the Chairman of the North Trend Board and the  
20 possibility exists that we might actually, for any  
21 site visit, have that in conjunction with the North  
22 Trend Board, depending on the availability of the  
23 Judges and what we set up for this particular Marsland  
24 proceeding.

25 So, that would be something to be taking

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1 into account.

2 Again, it could be done in conjunction  
3 with the Marsland evidentiary hearing or separately,  
4 depending on how things work out.

5 Also, the Marsland Board and, again,  
6 potentially in conjunction with the North Trend Board,  
7 may do some Section 2.315A limited appearance  
8 sessions, again, either along with the evidentiary  
9 hearing or separately.

10 Let me see if the parties have any  
11 comments about either hearing location or the  
12 possibility of site visits and/or limited appearance  
13 sessions.

14 Crow Butte?

15 MR. SMITH: This is Tyson Smith, counsel  
16 for Crow Butte.

17 Regarding the location of the hearing,  
18 Crow Butte strongly prefers to hold the hearing in the  
19 Crawford/Chadron area so that the member of the public  
20 who are interested in hearing about the case and  
21 seeing the NRC as the Atomic Licensing and Licensing  
22 Board at work can participate and attend.

23 And also, frankly, because that's where  
24 our -- a number of our witnesses will be located and  
25 it's significantly less costly to hold it in the

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1 vicinity of the plant site.

2           Regarding the site visit, you know, Crow  
3 Butte would, obviously, support a site visit if the  
4 Board decides that they wanted to do one. We would  
5 prefer to do it in conjunction with the hearing.  
6 Again, primarily for the purpose of conserving  
7 resources.

8           I would note that we have had -- we did  
9 hold site visit previously for the License Renewal  
10 Board and, at that site visit, the members, at the  
11 time of the North Trend Board also attended. So, I  
12 would just note that as well.

13           So, if there's, obviously, there's a new  
14 make up for that Board and to the extent those want to  
15 attend, that's, of course, okay. But, I just wanted  
16 to note that for you, Judge Bollwerk.

17           And then, your last question was about the  
18 limited appearance sessions. I mean, Crow Butte  
19 doesn't have a view one way or the other. I don't  
20 find them particularly helpful, but I certainly  
21 understand the desire for the members of the public to  
22 offer their thoughts to the Board and to the NRC and  
23 so, I'm sort of agnostic on that issue.

24           CHAIRMAN BOLLWERK: All right, thank you.

25           One thing I would note, as you're

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1 certainly aware, the North Trend Board is currently  
2 one member short. So, when that Board is  
3 reconstituted to add a third member, that's a  
4 potentially, obviously, another individual who may or  
5 may not have seen, depending on who is appointed, what  
6 goes on out in that area.

7 And so, that's why I'm thinking of maybe  
8 something we want to consider again.

9 But, you're right, we'll have to see what  
10 the construct of the Board is at the time.

11 MR. SMITH: And, this is Tyson Smith, I'm  
12 sorry, counsel for Crow Butte, and I'm sorry, I have  
13 one other point to make about the site visit.

14 I do believe that if we have a site visit  
15 and that should be limited to visiting the Marsland  
16 site and/or the North Trend site if they're part of  
17 that visit as well as, perhaps, a brief trip to the  
18 main processing plant since the Marsland site is a  
19 satellite facility. I don't believe that a regional  
20 site visit would be appropriate.

21 CHAIRMAN BOLLWERK: As part of the Strata  
22 proceeding, I know I was able to see a central  
23 processing facility, obviously, not a Strata, but one  
24 of the other locations in the region, the Wyoming  
25 region, and I found that very useful and I think the

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1 other Board Members would as well if they haven't seen  
2 a central processing facility. So, I would hope that  
3 that can be made part of the site visit.

4 MR. SMITH: Absolutely. This is Tyson  
5 Smith for Crow Butte.

6 And, of course, I would expect that to be  
7 part of any site visit. I guess my point was that it  
8 should be limited to the sites that are -- where Crow  
9 Butte is proposing to do work as opposed to a more  
10 general visit area of interest to the parties.

11 CHAIRMAN BOLLWERK: All right. Thank you.

12 Staff have anything they want to say with  
13 respect to that?

14 MS. SIMON: Your Honor, this is Marcia  
15 Simon for the staff.

16 Just briefly, the staff believes that the  
17 License Renewal hearing in Crawford and certainly the  
18 possibility of having a hearing in Chadron would be  
19 fine. We think that would work well. It worked well  
20 last August and so we would support that.

21 We think a site visit would be fine and we  
22 certainly have no objection to limited appearance  
23 sessions.

24 CHAIRMAN BOLLWERK: All right.

25 Mr. Reid?

1 MR. REID: As with the License Renewal  
2 proceeding, the Tribe's position is that these are on  
3 treaty lands, that the Tribe's never given up their  
4 claim to these lands or this area or the resources  
5 that are found on them.

6 And, the Tribe would request and renew its  
7 request that all of these proceedings including the  
8 one in Marsland be held on the reservation.

9 The Board has not, in the past, granted  
10 that request. And so, we recognize that and that,  
11 under those circumstances, and the Crawford and  
12 Chadron area would be preferable because it would  
13 enable members from the reservation to visit the  
14 proceedings on the treaty lands at that time.

15 That also relates, I guess, to the limited  
16 appearance question that you had. We strongly favor  
17 limited appearances. These matters are -- have some  
18 level of controversy within the Panhandle community  
19 and certainly a lot within the Tribe.

20 And, we think it's important for the --  
21 that there be limited appearances allowed in this and  
22 that it be done -- that it be freely granted anyway.  
23 And, we should specifically set aside some time for  
24 them.

25 On the site visit, we are big proponents

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1 of site visits and I think that that makes sense. It  
2 would be -- I think it might even be good if -- I know  
3 the Board, it may not be possible, but it's a long  
4 time between now and the evidentiary, so if the Board  
5 could get out before that, that would be great. But,  
6 certainly, we're not going to request that any unusual  
7 amounts of time or money be spent on that. A site  
8 visit at the time of the hearing is fine.

9 CHAIRMAN BOLLWERK: All right.

10 Let's see if Judge Wardwell or Judge  
11 Hirons has anything to say about that.

12 Judge Wardwell?

13 JUDGE WARDWELL: Yes, Mr. Reid, you made  
14 the statement freely granted, what were you referring  
15 to by that?

16 MR. REID: Just that if, as you recall  
17 from the License Renewal proceeding that members of  
18 the Tribe were allowed to submit comments on paper.

19 For members of the Tribe, it's difficult  
20 for them sometimes to convey their comments in  
21 writing. I suppose we could submit oral testimony  
22 through recordings or tapes or whatever.

23 But, mostly, that's what I'm suggesting is  
24 that, since these are administrative proceedings being  
25 conducted by the federal government, that it impacts

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1 the historic and spiritual interest of the Tribe.

2 I also understand that we're limited to  
3 this one contention, but there are issues, even within  
4 the use of they hydrogeological resources that I'm  
5 sure members of the Tribe, my clients, would be  
6 interested in commenting on and making it as  
7 accessible as possible, I think, is what I'm referring  
8 to.

9 JUDGE WARDWELL: Okay. So, you weren't  
10 necessarily referring to the length of time available  
11 for each individual to speak? Is that a fair  
12 assessment?

13 MR. REID: That's right, as long as it's  
14 not too restrictive. Like, one or two minutes might  
15 be pretty short, but certainly limiting the time to  
16 five or ten minutes I think is reasonable.

17 JUDGE WARDWELL: Okay, I just wanted to  
18 verify you did mentioned a long lengths.

19 MR. REID: No, we're not proposing  
20 filibusters by the Tribe.

21 JUDGE WARDWELL: There we go, that's a  
22 good word.

23 MR. REID: Thank you.

24 CHAIRMAN BOLLWERK: All right, anything  
25 else, Judge Wardwell?

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1 JUDGE WARDWELL: No.

2 CHAIRMAN BOLLWERK: All right, Judge  
3 Hirons?

4 JUDGE HIRONS: Just I would certainly  
5 support the -- what's been the preferred location for  
6 the hearing in the Crawford/Chadron area given weather  
7 permitting and so forth. But, I would strongly  
8 support that.

9 CHAIRMAN BOLLWERK: All right.

10 But, I should say, if it's January, having  
11 it here or having it there probably doesn't make any  
12 difference given there's two feet of snow outside my  
13 driveway right now. But, we'll hopefully have it done  
14 well before that.

15 So, all right, a couple of other things  
16 briefly I wanted to raise.

17 Something for the parties to think about  
18 and start talking about among themselves and that's  
19 the possibility of a stay.

20 For the Powertech and the Crow Butte  
21 License locations, the Board would note the  
22 possibility, depending on how the staff -- what the  
23 staff's positions are relative to its Environmental  
24 Assessment and its SER about the Crow Butte  
25 Application, contemporaneous with the issuance of the

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1 staff's final EA and FONSI in its SER, and not  
2 withstanding the pendency of this adjudication, the  
3 staff may issue the CBR requested License Amendment,  
4 thereby triggering the Tribe's right to seek a stay of  
5 that staff action.

6 And, I'm referring here to rules 10 Code  
7 of Federal Regulation Section 2.1202(a) and 2.1213.

8 It seems to the Board that well prior to  
9 the issuance of the staff's final EA, FONSI and SER,  
10 the parties may wish to submit to the Board a joint  
11 proposal regarding the schedule for filing any Stay  
12 Motion and any responses.

13 In the absence of a timely request  
14 regarding such a schedule, the filing deadline set  
15 forth in 2.1213 will apply, which are basically five  
16 days for a Stay Motion and ten days to respond.

17 So, what I'm -- I think what we're  
18 suggesting is this is not anything that needs to be  
19 done imminently, but think about it, talk among  
20 yourselves. If you can arrive at a schedule that  
21 suits your -- each of the parties better than the one  
22 in the rules, we're certainly willing to listen and  
23 take that into account.

24 Anything Crow Butte wants to say with  
25 respect to that?

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1 MR. SMITH: This is Tyson Smith for Crow  
2 Butte.

3 No, we have nothing to add on that.

4 CHAIRMAN BOLLWERK: All right.

5 Staff?

6 MS. SIMON: This is Marcia Simon for the  
7 staff.

8 We don't have anything to add.

9 CHAIRMAN BOLLWERK: Okay.

10 And, Mr. Reid?

11 MR. REID: Andrew Reid for the Tribe.

12 Nothing to add.

13 CHAIRMAN BOLLWERK: Okay.

14 Last couple of items, there's a  
15 possibility of settlement of the remaining contention.  
16 I always raise this at prehearing conferences.

17 Obviously, this was raised when the last  
18 one, the parties came back and told the Board that it  
19 didn't think there was any possibility of a settlement  
20 or a need for a Settlement Judge.

21 If for any reason you all have changed  
22 your minds or want to talk further, that would be  
23 something we, obviously, would encourage.

24 And, if you want to have the possibility  
25 of having a Settlement Judge appointed, that's

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1 something we would certainly be willing to take to the  
2 Chief Administrative Judge.

3 So, I raise that possibility and, if you  
4 think it's appropriate, you can certainly discuss that  
5 among yourselves.

6 Let me see if Crow Butte has anything they  
7 want to say about that.

8 MR. SMITH: This is Tyson Smith for Crow  
9 Butte.

10 We do not have any comments on settlement  
11 at this time.

12 CHAIRMAN BOLLWERK: Okay.

13 Staff?

14 MS. SIMON: This is Marcia Simon for the  
15 staff.

16 The staff would certainly be amenable to  
17 discussing settlement at some point, but other than  
18 that, we don't have anything to add right now.

19 CHAIRMAN BOLLWERK: All right.

20 And, Mr. Reid?

21 MR. REID: Andrew Reid for the Tribe.

22 Without having the EA, I don't think  
23 there's any possibility for a settlement in regards to  
24 the existing contention. We don't know what's going  
25 to happen with the EA. So, we might want to revisit

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1 this after the EA. We would be open to settlement  
2 discussions with the parties at any time, but at this  
3 point, it's a little premature.

4 CHAIRMAN BOLLWERK: All right, well, thank  
5 you for your comments.

6 And, I would simply note that maybe after  
7 the EA is issued in August, that may be something the  
8 parties would like to do among themselves. I don't  
9 know who starts that conversation, but I would  
10 encourage somebody to at least send an email around  
11 and see if there's any interest.

12 All right, anything, Judge Wardwell, you  
13 want to say about that?

14 JUDGE WARDWELL: No, I don't have  
15 anything.

16 CHAIRMAN BOLLWERK: Judge Hirons?

17 JUDGE HIRONS: No, no.

18 CHAIRMAN BOLLWERK: All right, very good.

19 I had mentioned the fact that we'd issued  
20 a Protective Order in this case back in August of  
21 2013. I just wanted to note that that Protective  
22 Order is still in effect. That would govern how we  
23 handle nonpublic information that might be exchanged  
24 among the parties or entered into the record of the  
25 proceeding.

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1           One thing I would note is that the process  
2           for accessing that information is right now, there is  
3           no -- there are no Protective Order filed documents in  
4           this proceeding. But, if that should arise, you would  
5           now need to go into the electronic hearing docket to  
6           find those.

7           At the time we originally entered the  
8           Order, I believe they were filed through the e-filing  
9           system. They are now through the electronic hearing  
10          docket.

11          If you're familiar with, I know there's  
12          some in the Powertech case, there may well be some in  
13          the Crow Butte License Renewal case as well, but if  
14          you go in and look at the docket, the documents in the  
15          docket, you'll see a little lock on them.

16          If the lock is open, that means you have  
17          access because the Office of the Secretary, based on  
18          your compliance with the Protective Order, has granted  
19          you that access.

20          If it doesn't, then you haven't taken the  
21          proper steps and you would need to do so.

22          If it does become apparent that Protective  
23          Order materials are going to be involved in this case,  
24          that would be something we need to review again in the  
25          future. But, just for your own interest, again, the

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1 EHD is where you would find those materials if, in  
2 fact, there are any that are ever entered into the  
3 record of this proceeding.

4 All right, a couple of final things,  
5 mandatory disclosure, we do have some requirements on  
6 that. Those requirements continue and I would note  
7 that the subject -- that they are subject to a  
8 shortened time frame once the final EA and the SER are  
9 issued, per the Board's June 2013 Order.

10 So, just remember that. Once those  
11 documents issue, then the time frame for any document  
12 disclosure -- mandatory document disclosures becomes  
13 shorter.

14 I believe it's every month, now I think  
15 it's less if my recollection is it then will go to  
16 every two weeks.

17 Per the discussion in the June 2103  
18 prehearing conference and the June 2013 Order that we  
19 issued, a final list of potential witnesses for each  
20 contention is required pursuant to 10 CFR Section  
21 2.336(a)(1).

22 There is also a provision in the rule that  
23 talks about copies of pertinent witness analyses.  
24 We're assuming that the parties have talked about what  
25 they want to exchange with respect to those -- when

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1 and where they want to exchange those -- excuse me,  
2 when they want to exchange those lists as well as any  
3 analyses.

4 Obviously, the last time to exchange them  
5 would be when the pretrial testimony is filed, the  
6 initial round. But, if there's a point which prior to  
7 that time you'd like to see those witness lists  
8 exchanged, let the Board know. We can set another  
9 schedule for that or for the analyses that are  
10 required under the rules.

11 So, just bear that in mind.

12 Let me see if the Applicant has anything  
13 they want to say about.

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

16 I don't have anything to add to the  
17 witness list.

18 Thank you.

19 CHAIRMAN BOLLWERK: All right.

20 Staff?

21 MS. SIMON: Your Honor, this is Marcia  
22 Simon.

23 We don't have anything to add.

24 CHAIRMAN BOLLWERK: Okay.

25 And, Mr. Reid?

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1 MR. REID: Andrew Reid for the Tribe.

2 It's premature for us. We don't have  
3 anything to add at this time.

4 CHAIRMAN BOLLWERK: Okay.

5 Also, I would note, as we did in the last  
6 prehearing conference, that if there's a unanimous  
7 request pursuant to 10 CFR Section 2.310(h) to handle  
8 any specific contention under Subpart N, which is  
9 everything written, nothing oral, we will provide that  
10 for that in the rule.

11 I don't think there's ever been a Subpart  
12 N proceeding that's been held. But, nonetheless, if  
13 the parties would want to use that, that would be the  
14 opportunity to raise that. But, again, it has to be  
15 a request is made by the entire group. It has to be  
16 unanimous.

17 Also, I would note that we will provide  
18 Motions for Cross Examination under Section 2.1204(b).  
19 You should note that there's a difference between the  
20 public Motion for Cross Examination and the in-camera  
21 filing that is required for a cross examination plan  
22 if we were to grant cross examination or for proposed  
23 Board questions.

24 Please remember this for any kind of a  
25 cross examination plan. If cross examination were to

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1 be allowed or for proposed Board questions under  
2 Subpart L proceeding or the Board is asking the  
3 questions.

4 Those need to be filed through the in-  
5 camera process in the e-filing process -- of the e-  
6 filing website that the Agency has so that they only  
7 go to the Board and not to the Office of the Secretary  
8 or the other parties.

9 Those are supposed to be documents that  
10 are shared only with the Board and we want to make  
11 sure those stay secure.

12 Any questions with respect to Crow Butte  
13 on that?

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

16 No, we have no questions on that.

17 CHAIRMAN BOLLWERK: Anything for the  
18 staff?

19 MS. SIMON: Your Honor, this is Marcia  
20 Simon for the staff.

21 We don't have any questions.

22 CHAIRMAN BOLLWERK: Okay.

23 And, Mr. Reid?

24 MR. REID: Andrew Reid for the Tribe.

25 No questions.

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1 CHAIRMAN BOLLWERK: All right.

2 At this point, let me see if either of the  
3 other Judges have anything they want to raise with the  
4 parties.

5 Judge Wardwell?

6 JUDGE WARDWELL: I do not have anything.

7 CHAIRMAN BOLLWERK: All right.

8 Judge Hiron?

9 JUDGE HIRONS: No, I don't have anything  
10 else.

11 CHAIRMAN BOLLWERK: All right.

12 Is there anything the parties want to  
13 raise for the Board?

14 Crow Butte?

15 MR. SMITH: Tyson Smith for Crow Butte.  
16 No, we have nothing more to raise for the Board.

17 Thank you.

18 CHAIRMAN BOLLWERK: The staff?

19 MS. SIMON: Your Honor, Marcia Simon for  
20 the staff. No, we don't have anything further.

21 Thank you.

22 CHAIRMAN BOLLWERK: Okay.

23 And, Mr. Reid?

24 MR. REID: The only thing I would ask is,  
25 are we still on -- are we still looking at August of

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1 2016 for the issuance of the EA? Is that what we're  
2 going on at this point?

3 CHAIRMAN BOLLWERK: Correct. That's what  
4 my understanding from the staff is that the draft EA  
5 will be issued by the end of August 2016.

6 But, let me turn to Ms. Simon and see if  
7 she has anything she wants to add about that.

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

10 Yes, that's correct. The current  
11 estimated date is August 31, 2016 for the draft.

12 MR. REID: Thank you, that's all I have.

13 CHAIRMAN BOLLWERK: All right.

14 Well, at this point, we're going to take  
15 all the very useful information you've given us, kind  
16 of look, talk among ourselves.

17 I think what we may well end up doing is  
18 issuing at least a general schedule that begins to set  
19 some dates and outline how the proceeding will move  
20 forward.

21 We will provide you all with an  
22 opportunity to comment about that schedule. And, if  
23 someone feels strongly based on the comments, object,  
24 you'd also like to have another conference with the  
25 Board, we can certainly do that.

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1           We do have a lot of time in this  
2 proceeding, I recognize that. On the other hand, I  
3 think it's best that we begin to -- now that we have  
4 at least a somewhat firm staff schedule, hoping very  
5 firm staff schedule for going forward with the EA and  
6 the SER, we can begin to set the dates and begin to  
7 line things up in this case so that we can get this  
8 case, which is among the three Crow Butte cases, it's  
9 probably the newest, nonetheless, it's one that I do  
10 not want to have linger around because partly, we also  
11 have the North Trend case behind it and we can jump  
12 into that one on a prompt basis once this one is  
13 completed.

14           Let me go again, once more, to the  
15 parties. Anything Crow Butte has?

16           MR. SMITH: This is Tyson Smith.

17           No, Your Honor.

18           CHAIRMAN BOLLWERK: All right.

19           The staff?

20           MS. SIMON: This is Marcia Simon.

21           No, Your Honor.

22           CHAIRMAN BOLLWERK: All right.

23           Mr. Reid?

24           MR. REID: No, Your Honor, Andrew Reid for  
25 the Tribe.

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1 We have nothing else.

2 Thank you.

3 CHAIRMAN BOLLWERK: All right.

4 Again, let me see, Judge Wardwell?

5 JUDGE WARDWELL: Nothing here.

6 CHAIRMAN BOLLWERK: Judge Hirons?

7 JUDGE HIRONS: No, nothing here.

8 CHAIRMAN BOLLWERK: All right.

9 Cooper Strickland, do you have anything  
10 you want to say?

11 No? All right.

12 At this point then, again, I express my  
13 appreciation for making yourselves available. We've  
14 received a lot of good information, a lot for us to  
15 consider. We will keep talking about it and hopefully  
16 within the not too distant time, we'll be issuing  
17 something that you all can look at and potentially  
18 comment on in terms of a schedule going forward.

19 Again, I wish all of you a good day.  
20 Hopefully to those that are in the D.C. area going to  
21 get dug out at some point. I'm certainly hoping you  
22 have that happen.

23 And, at this point, then we can adjourn.

24 (Whereupon, the above-entitled matter went  
25 off the record at 2:31 p.m.)

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