UNITED STATES OF AMERICA
BEFORE THE NUCLEAR REGULATORY COMMISSION

In the Matter of	)	
	)	Docket No. 40-8943
CROW BUTTE RESOURCES INC.	)	ASLBP No. 08-867-02-OLA-BD01
	)	
(License Renewal for the	)	July 14, 2016
In Situ Leach Facility, Crawford, Nebraska)	)	

CONSOLIDATED INTERVENORS ANSWER TO PETITION FOR REVIEW

Pursuant to 10 CFR 2.341(b)(3), Consolidated Intervenors[1] hereby timely file this Answer to the Petition for Review filed by Licensee Crow Butte Resources, Inc. ("CBR") on June 20, 2016 ("Petition for Review"). Consolidated Intervenors hereby join in any answer to the Petition for Review filed by Intervenor Oglala Sioux Tribe.

For the reasons stated below, the requirements of 10 CFR 2.341(b)(4) have not been satisfied and, therefore, the Petition for Review should be denied. Consolidated Intervenors note that the burden of compliance with NEPA and NHPA is on the Nuclear Regulatory Commission ("NRC") which has accepted the Board's ruling on Contention 1 and has not filed a petition for review. Since the burden is not on Licensee CBR to comply with NEPA or NHPA, it lacks standing to seek Commission review on the NEPA and NHPA compliance issues where, as here, NRC has accepted the ruling.

Further, Consolidated Intervenors, CBR and the Oglala Sioux Tribe were

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[1] Western Nebraska Resources Council ("WNRC"), Owe Aku/Bring Back the Way, Debra White Plume, Beatrice Long Visitor Holy Dance (deceased), Joe American Horse & Tiospaye, Thomas Cook, Loretta Afraid-of-Bear Cook & Tiwahe. Debra White Plume, Joe American Horse and Loretta Afraid-of-Bear Cook are members of the Oglala Sioux Tribe (the "Tribe") at Pine Ridge Indian Reservation.

informed by NRC on July 12, 2016 that NRC has commenced corrective action to address the deficiencies identified by the Board in LBP-16-07 at the cost of the NRC, not at Licensee's cost. Therefore, any arguments made by Licensee CBR concerning the impacts of the cost to it of compliance with NEPA or NHPA are now moot and should be disregarded.[2]

A. Timeliness. CBR has argued this timeliness issue before and wants another bite at the apple. CLI-09-09 included guidance, correctly acted upon by the Board, to the effect that Intervenors were required to wait until the publication of the Environmental Assessment for the filing deadline to be triggered.

The Board in LBP-15-11 was correct in ruling that the release by NRC Staff of the final Environmental Assessment in October 2014, "triggered the deadline for filing new/ amended contentions" based on that document. LBP-15-11, 4. *See generally, Pac. Gas & Elec. Co.*, (Diablo Canyon Power Plant Independent Fuel Storage Installation), CLI-08-1, 6.

The Commission has already spoken to this point in its earlier ruling in this case. In overruling this Board's admission of one of the Oglala Sioux Tribe's contentions in CLI-09-09, the Commission addressed the Board's concern about subsequent NEPA based contentions being subject to the more stringent "late-filing standards," ruling that,

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[2] See Footnote 6 of the Petition for Review at 3-4. Consolidated Intervenors note that the dollar amount cited by CBR is reasonable considering that TCP surveys were NOT done in the 1980s during initial licensing or in the 1990s during the first renewal and also that such dollar amount is in line with estimates for proper TCP surveys at uranium mines in traditional Lakota territory.

> [O]ur rules of procedure explicitly allow the filing of new contentions based on the draft or final environmental impact statement where that document contains information that differs 'significantly' from the information that was previously available.

CLI-09-09, 24, fn 104 ("In such a case, the 'late filing' standards are no bar to properly supported contentions."). In its Petition for Review, CBR argues for effective removal of the "or final" clause from the 10 C.F.R. § 2.309(f)(2) regulatory language regarding "draft or final environmental impact statement." If the Commission accepted CBR's interpretation it likely would result in "no end to NRC licensing procedures" in a proceeding because Intervenors would have been required to file new contentions based on every single new or amended document issued by the NRC, and then would have to file again based on any amended versions of those documents if they change in between drafts or iterations. Such an interpretation would also impose unreasonable burdens on intervenors to file contentions with each iteration of a NEPA document with knowledge that the NRC could make substantial changes to the NEPA document, in its sole and absolute discretion, at any time. It is much more efficient and makes more sense logically to require a bright line moment for filing within the specified time after publication of the final NEPA document. Clearly the Board had the authority under 10 CFR 2.319 to regulate the proceeding efficiently and to establish the filing date it did in LBP-15-11 to create a bright line filing date for NEPA contentions based on the Environmental Assessment. This is consistent with the Commission's guidance in CLI-09-09 and, in any case, results in no further cost or impairment to CBR whatsoever because corrective actions have been undertaken by NRC at no cost to CBR.

Even if the Commission agreed with CBR's onerous interpretation of the rules of admissibility, in the present case, Intervenors relied on the Board's direction in LBP-15-11 as they "were constrained to await the issuance of the EA" to file new or amended environmental contentions. LBP-15-11 at 27. To dismiss Contention 1 at this point after all the parties have relied on the Commission's guidance and the Board's direction would be a total waste. Intervenors respectfully suggest that if the Commission had wanted to impose the additional burdens then it would have taken up LBP-15-11 on interlocutory appeal. Instead, the matter was allowed to proceed to conclusion and the Board's ruling on timeliness should be respected.

As a side note, Consolidated Intervenors object to the Licensee CBR's use of highly inappropriate culturally insensitive language in the Petition for Review when it accuses Lakota intervenors of being allowed to 'lie in wait' until the Final Environmental Assessment was issued.[3] Use of that phrase 'lie in wait' conveys sinister intentions that evoke imagery of Indian ambushes in the old West and should be disregarded along with the arguments surrounding it. In fact, Licensee CBR and NRC Staff have often engaged in coordinated attacks and tactics against Intervenors in this proceeding and are the ones who 'lie in wait' if anyone does.

The Commission and the Board gave Intervenors the understanding that there would be one opportunity to file on the Environmental Assessment and that the deadline would be 30 days after the publication of that final Environmental Assessment. Fundamental fairness, substantive and procedural due process and the Administrative

[3] Petition for Review at 8.

Procedure Act as well as the trust responsibility owed to the tribal Intervenors require that such intervenors in agency proceedings have a clear and visible opportunity to file contentions after bright line events such as the publication of a final Environmental Assessment which is what happened in this case. Therefore, CBR's timeliness arguments must fail.

B. Failure to Meet Requirements of 2.341(b)(4). Despite re-hashing old arguments, Licensee CBR has failed to identify substantial questions with regard to any of the following:

(1) A specified finding of material fact is clearly erroneous;

(2) A specified finding of material fact is in conflict with a finding as to the same fact in a different proceeding;

(3) A necessary legal conclusion is without governing precedent;

(4) A necessary legal conclusion is a departure from or country to established law;

(5) A substantial and important question of law has been raised;

(6) A substantial and important question of policy has been raised;

(7) A substantial and important question of discretion has been raised; or

(8) Any other consideration which the Commission may deem to be in the public interest.

Licensee CBR does not specifically explain how and why the purported errors by the Board constitute 'substantial questions' involving one or more of the items specified

in 2.341(b)(4). Licensee CBR has failed to identify any specific findings of fact that would implicate 2.341(b)(4)(i). Licensee CBR disagrees with the Board's ruling on timeliness of the filing of Contention 1 but fails to state how and why the legal conclusions with which it disagrees creates a 'substantial question' when the parties and the Board were simply following Commission guidance stated in CLI-09-09.

Conclusion

The Petition for Review should be denied.

Dated this 14th day of July, 2016.

Respectfully submitted,

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CERTIFICATE OF SERVICE

Pursuant to 10 C.F.R. § 2.305 (as revised), I certify that, on this date, copies of the foregoing were served upon the Electronic Information Exchange (the NRC's E-Filing System), in the above-captioned proceeding.

Dated: July 14, 2016.

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