

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD PANEL

Before the Licensing Board:

G. Paul Bollwerk, III, Chairman
Dr. Richard E. Wardwell
Dr. Thomas J. Hirons

In the Matter of

CROW BUTTE RESOURCES, INC.

(Marsland Expansion Area)

Docket No. 40-8943-MLA-2

ASLBP No. 13-926-01-MLA-BD01

February 3, 2017

MEMORANDUM AND ORDER
(Requesting Status Information)

By letter dated February 1, 2017, the Nuclear Regulatory Commission (NRC) staff advised the Licensing Board about changes to the current schedule for issuance of the staff's final safety evaluation report (SER) and its draft and final environmental assessment (EA) relative to the proposed Marsland Expansion Area in situ recovery (ISR) facility. Specifically, the staff indicated that in a January 10, 2017 letter, applicant Crow Butte Resources (CBR) stated that its responses to pending staff requests for additional information (RAI) regarding non-health physics-related matters will now be provided by the end of the second quarter of calendar year 2017 (i.e., June 30, 2017) rather than by February 2017. See Letter from Emily Monteith, NRC Staff Counsel, to Licensing Board at 1 (Feb. 1, 2017) [hereinafter Staff Letter] (citing Letter from Mike Thomas, Cameco Resources, to Director, Division of Decommissioning, Uranium Recovery, and Waste Programs, NRC Office of Nuclear Material Safety and Safeguards at 1 & n.3 (Jan. 10, 2017) (ADAMS Accession No. ML17025A075) [hereinafter CBR Letter]). In addition, the staff in its letter declared that "CBR also stated that further discussions

with the Staff would be needed to provide additional information necessary for the Staff to complete its review on health physics related issues. CBR did not provide a specific date for its response on these issues.” Id. And given this lack of a specific date, the staff stated that it “does not have sufficient information at this time to provide an updated review schedule and estimated dates for issuing the draft EA, final EA, and SER.” Id.

In reviewing the January 10 CBR letter, CBR’s failure to provide a date for its health physics-related RAI responses clearly involves more than the usual uncertainty about when sufficient applicant resources can be brought to bear to complete staff-requested RAI response work. According to CBR, the staff’s 2011 radon guidance document is still in draft and, despite three NRC-approved radon monitoring plans and two years of industry performance under the new plans, there has been no NRC discussion with the industry on whether the effectiveness or additional requirements of the new monitoring plans has resulted in meaningful “as low as reasonably achievable” (ALARA) reductions. See CBR Letter at 1. In the letter, CBR further states that, given the monitoring plans, the NRC should be able to produce “results and ways” for all uranium recovery companies to perform a monitoring program without each company having to address the issue individually, which results in significant expense and resource commitment. Id. CBR concludes the letter by expressing its support for an NRC workshop in the first half of 2017 to discuss health physics areas in which NRC and the industry differ as well as the continuation of open dialogue between the NRC and the industry on this subject. See id. at 2.

The current general schedule for this proceeding, which was based on the information provided by the staff in July 2016 relative to a nine-month slippage in its SER/EA review schedule, calls for an evidentiary hearing in early March 2018 on intervenor Oglala Sioux Tribe’s (Tribe) sole admitted issue statement, Contention 2, “Failure to Include Adequate

Hydrogeological Information to Demonstrate Ability to Contain Fluid Migration.” See Licensing Board Memorandum and Order (Revised General Schedule) (July 26, 2016) at 1-2, app. A at 3 (unpublished). In light of this new staff and CBR information, it seems clear that schedule will slip at least another four months. Yet precisely how much that delay might be is subject to considerable uncertainty, given CBR’s suggestion in its letter that additional interaction with, and guidance from, the staff is needed regarding radon monitoring programs before CBR will be in a position to respond to the staff’s outstanding health physics-related RAI. Thus, an indeterminate delay of substantially more than four months may be in order if the hearing must await the completion of the staff’s technical review process.

Under 10 C.F.R. § 2.332(d), in setting a hearing schedule a licensing board is to ensure that its schedule does not adversely affect the staff’s completion of its safety and environmental reviews in a timely manner. This regulation does, however, allow a licensing board, upon a finding that the proceeding would be expedited, to go to hearing on an admitted safety issue prior to the completion of the staff’s SER. But it also precludes a licensing board from convening a hearing on an admitted environmental issue until staff’s final environmental document, in this case an EA, has been issued.

As has been observed previously, see Licensing Board Memorandum and Order (Initial Prehearing Conference and Scheduling Order) (June 14, 2013) at 7 n.6 (unpublished) [hereinafter Initial Scheduling Order], there is a basis for denoting the Tribe’s admitted Contention 2 as raising both safety/SER-related and environmental/EA-related concerns. As a consequence, consistent with section 2.332(d), we will continue to await the completion of the staff’s safety and environmental reviews before proceeding to hearing on that issue.*

* We note that, unlike the longstanding CBR license renewal proceeding regarding its existing Crawford, Nebraska central processing facility, until the staff’s safety and environmental
(continued...)

Of course, the staff has an ongoing obligation to keep the Board informed of any changes to the staff's technical review schedule. See Initial Scheduling Order at 12; see also Staff Letter at 2. Nonetheless, the current circumstances, at least as outlined in the staff and CBR letters described above, create a great deal of uncertainty for both the Board and intervenor Tribe about when that review will be completed so this proceeding can go to hearing. As a consequence, we request that on or before Wednesday, March 15, 2017, the staff and CBR provide the Board with a joint report that outlines the status of efforts to resolve CBR's radon monitoring program concerns such that CBR can provide a response to the staff's pending health physics-related RAI. And to the degree possible, the report should also provide any estimates or other information, including information regarding the status of CBR's outstanding non-health physics-related RAI responses, pertinent to the issue of the staff establishing a schedule for completing its safety and environmental reviews for this proceeding.

It is so ORDERED.

FOR THE ATOMIC SAFETY
AND LICENSING BOARD

/RA/

G. Paul Bollwerk, III, Chairman
ADMINISTRATIVE JUDGE

Rockville, Maryland

February 3, 2017

[^](...continued)
reviews are completed CBR will be unable to obtain authorization to begin constructing and operating the proposed Marsland Extension Area ISR facility. See 10 C.F.R. § 2.1202(a); see also id. § 40.32(e).

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of)	
)	
CROW BUTTE RESOURCES, INC.)	Docket No. 40-8943-MLA-2
)	
In-Situ Leach Uranium Recovery Facility, Crawford, Nebraska)	ASLBP No. 13-926-01-MLA-BD01
)	
(License Amendment – Marsland Expansion Area))	

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing **MEMORANDUM AND ORDER (Requesting Status Information)** have been served upon the following persons by Electronic Information Exchange.

Office of Commission Appellate
Adjudication
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
E-mail: ocaamail@nrc.gov

U.S. Nuclear Regulatory Commission
Office of the Secretary of the Commission
Mail Stop O-4F00
Washington, DC 20555-0001
Hearing Docket
E-mail: hearingdocket@nrc.gov

Atomic Safety and Licensing Board Panel
U.S. Nuclear Regulatory Commission
Mail Stop T-3F23
Washington, DC 20555-0001

U.S. Nuclear Regulatory Commission
Office of the General Counsel
Mail Stop O-14A44
Washington, DC 20555-0001
Susan Vrahoretis, Esq.
Marcia J. Simon, Esq.
Emily Monteith, Esq.
David Cylkowski, Esq.
Sabrina Allen, Paralegal

G. Paul Bollwerk, III, Chair
Administrative Judge
E-mail: paul.bollwerk@nrc.gov

E-mail:
susan.vrahoretis@nrc.gov
marcia.simon@nrc.gov
emily.monteith@nrc.gov
david.cylkowski@nrc.gov
sabrina.allen@nrc.gov

Dr. Richard E. Wardwell
Administrative Judge
E-mail: richard.wardwell@nrc.gov

Dr. Thomas J. Hiron
Administrative Judge
E-mail: thomas.hirons@nrc.gov

OGC Mail Center : OGCMailCenter@nrc.gov

Cooper J Strickland
Law Clerk
E-mail. cooper.strickland@nrc.gov

Crow Butte Resources, Inc., Docket No. 40- 8943-MLA-2
MEMORANDUM AND ORDER (Requesting Status Information)

W. Cindy Gillis, Esq.
522 Seventh Street, Suite 202
Rapid City, S.D. 57701-2756
Counsel for Oglala Sioux Tribe
Email: cindy@mariogonzalezlaw.com

McGuire Law Firm
625 South 14th Street, Suite C
Lincoln, Nebraska 68508
Mark D. McGuire
Counsel for Crow Butte Resources, Inc.
E-mail: mdmcguire46@gmail.com

Winston & Strawn, LLP
101 California Street
San Francisco, CA 94111
Tyson R. Smith, Esq.
Counsel for Crow Butte Resources, Inc.
E-mail: trsmith@winston.com

Winston & Strawn, LLP
1700 K Street
Washington, DC 20006
Carlos Sisco, Paralegal
Counsel for Crowe Butte Resources, Inc.
E-mail: csisco@winston.com

Ved Nanda Center for International and
Comparative Law
1075 Waite Drive
Boulder, CO 80303
Andrew Reid, Esq.
Counsel for Oglala Sioux Tribe
E-mail: lawyerreid@gmail.com

[Original signed by Brian Newell]
Office of the Secretary of the Commission

Dated at Rockville, Maryland
this 3rd day of February, 2017