

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

September 10, 2018

MEMORANDUM AND ORDER
(Concerning Party Late Filings and
Scheduling Prehearing Conference)

The Licensing Board is in receipt of the rebuttal statement of position, prefiled rebuttal testimony, and accompanying filings of applicant Crow Butte Resources, Inc. (CBR), and intervenor Oglala Sioux Tribe (OST), which were submitted on September 7, 2018. See, e.g., [CBR] Rebuttal Statement of Position (Sept. 7, 2018); [OST] Rebuttal Statement (Sept. 7, 2018). Under the general schedule for this proceeding, these submissions were due on September 5, 2018. See Licensing Board Memorandum and Order (License Amendment Effectiveness Stay Application, In Limine Motions, and Site Visit/Limited Appearance Session/Evidentiary Hearing Scheduling) (May 21, 2018) at 3–4 & app. A, at 2 (unpublished) [hereinafter May 2018 Board Order]. Unfortunately, this is the second recent instance in which the due date for a submission in this proceeding has been missed by a significant amount of time without any accompanying

motion that requests Board permission to submit the filing, time having expired, and an explanation about reasons for the filing's lateness.¹

These filings raise two concerns. The first, as was suggested above, is the current practice of submitting filings after the scheduled due date without first seeking an extension of time from the Board in accord with the directions in the Board's February 2013 initial prehearing order, see Licensing Board Memorandum and Order (Initial Prehearing Order) (Feb. 8, 2013) at 6 (unpublished) (indicating time extension motions must be submitted three business days prior to the filing date), or seeking Board authorization for such late-filing once the scheduled deadline has passed. This is not an acceptable practice. Accordingly, the Board advises the parties that any future filing submitted after the submission deadline for which an extension of time has not been timely requested previously or that is not accompanied by a request for leave to file, time having expired, that complies with the requirements of 10 C.F.R. § 2.323(b), including an explanation detailing why the filing deadline cannot/could not be met, will be subject to summary dismissal by the Board, regardless of whether any other party files a motion objecting to the pleading as untimely.

The second concern is the impact of these late filings on the various other filing deadlines now in place as this case moves toward an evidentiary hearing in late October 2018, as well as the Board's ability to consider and rule on such submissions in a timely manner. With this in mind, given the late-filed CBR and OST prefiled rebuttal submissions, we revise the current general schedule to allow the parties to timely file in limine motions regarding any of the submitted prefiled direct or rebuttal testimony, or supporting exhibits, on or before Wednesday,

¹ In submitting its initial statement of position, prefiled direct testimony, and accompanying filings, intervenor Oglala Sioux Tribe (OST) missed the August 17, 2018 filing deadline by some thirteen hours. See E-mail from Hearingdocket@nrc.gov to Crow Butte Marsland Proceeding Service List (Aug. 18, 2018 13:17 EDT) (notice of submission of OST initial statement of position and accompanying attachments).

September 12, 2018. Moreover, if any party wishes to submit a motion regarding the timeliness of CBR's and/or OST's rebuttal filings, it should do so by that date as well.² Thereafter, per the existing general schedule, the parties will have until Monday, September 17, 2018, within which to respond to any in limine motions, as well as any timeliness filings. Also, in accord with the existing general schedule, by Monday, September 24, 2018, the Board will endeavor to rule on any pending in limine or timeliness motions.

Finally, the Board wishes to schedule a telephone prehearing conference with the parties for Wednesday, October 10, 2018, beginning between 11:00 a.m. and 3:00 p.m. Eastern Time (ET) to discuss various matters associated with the upcoming limited appearance session, site visit, and evidentiary hearing. To that end, we request that one representative of the collective parties contact Board law clerk Sarah Ladin, at sarah.ladin@nrc.gov, by no later than 5:00 p.m. ET on Friday, September 14, 2018, and provide times (in Eastern Time) of availability for such a session, which will likely be no more than one hour in duration. Details regarding an

² The parties are reminded that in limine objections should be specific as to both prefiled testimony (e.g., down to the sentence or portion of sentence level, if appropriate) and supporting exhibits. See May 2018 Board Order at 3 n.2. Further, the Board will not entertain any request for an extension of time to file an in limine motion or response absent a showing of extraordinary circumstances (e.g., serious illness of counsel).

agenda and telephone connections for this conference will be provided in a subsequent scheduling order.

It is so ORDERED.

FOR THE ATOMIC SAFETY
AND LICENSING BOARD

/RA/

G. Paul Bollwerk, III, Chairman
ADMINISTRATIVE JUDGE

Rockville, Maryland

September 10, 2018

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,) ASLBP No. 13-926-01-MLA-BD01
Crawford, Nebraska)
)
(License Amendment –)
Marsland Expansion Area))

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing **MEMORANDUM AND ORDER (Concerning Party Late Filings and Scheduling Prehearing Conference)** have been served upon the following persons by Electronic Information Exchange.

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MEMORANDUM AND ORDER (Concerning Party Late Filings and Scheduling Prehearing Conference)

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

Dated at Rockville, Maryland
this 10th day of September, 2018