

December 5, 2022

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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

NRC STAFF'S MOTION TO TERMINATE PROCEEDING

INTRODUCTION

In accordance with 10 C.F.R. § 2.323, the staff of the U.S. Nuclear Regulatory Commission (NRC) files this motion to terminate this license renewal proceeding. As discussed below, after the staff issued its final environmental assessment (EA) supplement, neither the Oglala Sioux Tribe nor Consolidated Intervenors submitted new or amended contentions challenging the EA supplement's descriptions of curative actions, analyses, or conclusions. Accordingly, because there are no actual or potential contested matters for the Board to address, the staff respectfully requests that the Board issue an order terminating this proceeding.¹

¹ As required by 10 C.F.R. § 2.323(b), counsel for the NRC staff consulted with the other parties by email on November 30, 2022, regarding this motion. On November 30, Ms. Leidich, counsel for Crow Butte Resources (CBR) replied that CBR supports the staff's motion. On December 2, Mr. Ballanco, counsel for Consolidated Intervenors, replied that his clients have no objection to the motion. On the morning of December 5, Mr. Reid, counsel for the Tribe, replied that he "ha[d] not yet received a position from the Tribe and therefore cannot state any position at this time." Mr. Reid explained that he has been on travel for more than a week and has not been able to contact his clients by phone. He stated that he will be back in his office on December 8 and asked if the staff could delay filing the motion for a week to "provide [him] an opportunity to better follow-up with the Tribe's representatives."

In this case, filing a motion is necessary because it is a request to terminate the proceeding, which requires the Board's action. And because the circumstance from which this motion arises is the deadline for submitting new contentions, which was November 25, 2022, the motion must be submitted on or before December 5, 2022 (i.e., within 10 days of that deadline). See 10 C.F.R. § 2.323(a). Because the Tribe may file an answer to the motion under 10 C.F.R. § 2.323(c), there is no prejudice or unfairness to

BACKGROUND

On November 27, 2007, Crow Butte Resources, Inc. (CBR) filed an application to renew NRC source material license SUA-1534 for the operation of the CBR *in-situ* uranium recovery (ISR) facility in Dawes County, Nebraska.² Subsequently, the Tribe and Consolidated Intervenor requested hearings on the license renewal application and were admitted as parties to the proceeding.³ In August 2015, the Board held an evidentiary hearing on nine admitted contentions. Contention 1 challenged the staff's environmental review of historic and cultural resources, as documented in the original 2014 EA, and the staff's tribal consultation efforts.⁴ On December 3, 2015, the Board closed the evidentiary record for the proceeding.⁵

On May 26, 2016, the Board issued a partial initial decision that resolved Contention 1 in favor of the intervenors.⁶ The Board found that the staff had failed to meet its identification obligations under the National Historic Preservation Act (NHPA), and that the staff's 2014 EA was deficient under the National Environmental Policy Act (NEPA) because it failed to take a

the Tribe in this instance if its position cannot be obtained prior to filing. For these reasons, the staff is proceeding to file the motion.

² Request for License Renewal of Source Materials License SUA-1534 – Crow Butte Resources, Inc. (Nov. 27, 2007) (Agencywide Documents Access and Management System (ADAMS) Accession No. ML073470645).

³ *Crow Butte Resources, Inc.* (In Situ Leach Facility, Crawford, Nebraska), LBP-08-24, 68 NRC 691, 760 (2008). The Commission subsequently dismissed the Tribe's original Contention B, which concerned cultural resources and consultation, as premature. See *Crow Butte*, CLI-09-9, 69 NRC 331, 350-351 (2009). After the NRC Staff issued its 2014 EA, the Tribe and Consolidated Intervenor filed new contentions related to cultural resources and consultation, which the Board admitted in part and combined into a single contention (Contention 1). See *Crow Butte*, LBP-15-11, 81 NRC 401, 411-415, 449 (2015).

⁴ See *Crow Butte*, LBP-16-7, 83 NRC 340, 349 (2016).

⁵ Order (Adopting Transcript Corrections and Closing Evidentiary Record) at 2 (Dec. 3, 2015) (unpublished).

⁶ See *Crow Butte*, LBP-16-7, 83 NRC at 415.

“hard look” at potential impacts from renewing the license for the CBR ISR facility on sites of significance to the Tribe within the license area.⁷

In October 2020, the Commission denied CBR’s petition for review of LBP-16-7.⁸ Shortly thereafter, the Staff resumed work on curative actions to address the deficiencies identified in the Board’s decision. From November 2020 to September 2021, the Staff worked with the Tribe and CBR to develop a methodology for a tribal cultural survey of the CBR license area that would identify sites of historic, cultural, or religious significance to the Tribe. Subsequently, in the fall of 2021, the Tribe hired a contractor to conduct the survey, which included a field investigation, oral interviews of tribal elders, and preparation of a report to be submitted to the NRC. Using the results of the survey, as presented in the final survey report, the staff conducted additional NHPA and NEPA analyses and prepared a supplement to the 2014 EA describing the staff’s additional activities, analyses, and conclusions.

In June 2022, the staff provided the Tribe with a preliminary draft of the EA supplement for review and comment. In August 2022, after considering the Tribe’s initial comments, the staff issued a revised draft of the EA supplement and draft finding of no significant impact (FONSI) for public review and comment.⁹ Finally, on October 25, 2022, the staff issued the final EA supplement, including an appendix addressing all comments received, along with an updated FONSI.¹⁰

⁷ *Id.* at 411. With regard to the “consultation” portion of Contention 1, the Board found that the Staff had met its consultation obligations under the NHPA. *Id.* at 383.

⁸ See *Crow Butte*, CLI-20-8, 92 NRC 255, 279 (2020).

⁹ *Crow Butte Resources, Inc.; In Situ Uranium Recovery Facility*, 87 Fed. Reg. 52,597 (Aug. 26, 2022).

¹⁰ *Crow Butte Resources, Inc.; In Situ Uranium Recovery Facility*, 87 Fed. Reg. 64,524 (Oct. 25, 2022). The *Federal Register* notice also provided the ADAMS accession number for the final EA supplement (ML22278A108).

DISCUSSION

As described in LBP-16-7, the Board retained jurisdiction over this proceeding while the staff worked to remedy the identified NHPA and NEPA deficiencies.¹¹ The Board's decision included the following statement concerning potential future adjudicatory activities:

. . . once the NRC Staff revises or supplements its EA, Intervenor will be afforded an opportunity to file new contentions to contest the adequacy of the NRC Staff's chosen actions, including any revised EA (or EA supplement), and any new information that may result from the NRC Staff's actions, with additional adjudication before the Board thereafter as is necessary to resolve any admitted contentions. Any new contentions must comply with applicable timeliness and contention admissibility requirements set forth in 10 C.F.R. § 2.309.¹²

More recently, in May 2022, after the staff had informed the parties that it was nearing completion of the draft EA supplement, the Board issued an order setting forth a briefing schedule for new contentions on the EA supplement.¹³ This order specified that "any potential new and/or amended contentions based on the NRC Staff's [EA supplement] shall be filed within thirty (30) days after Federal Register publication of a notice of availability of that final EA supplement."¹⁴

In a subsequent order issued in September 2022, the Board reiterated the deadline for filing new or amended contentions and asked the staff to "notify the Board and parties of the ADAMS accession number for the final EA supplement contemporaneous with Federal Register

¹¹ See LBP-16-7, 83 NRC at 414.

¹² *Id.*

¹³ Order (Establishing a Briefing Schedule for New and/or Amended Contentions) (May 12, 2022) (unpublished).

¹⁴ *Id.*

publication of the notice of issuance of that document.”¹⁵ On October 25, 2022, the staff provided the requested notification.¹⁶

Based on the final EA supplement’s October 25 issuance date, the deadline for new or amended contentions was November 25, 2022.¹⁷ Neither the Tribe nor Consolidated Intervenors filed new or amended contentions by the deadline. Because the intervenors did not file any new contentions, there are no actual or potential contested matters before the Board. Accordingly, because there are no issues remaining to be litigated, the staff requests that the Board issue an order terminating this proceeding.

CONCLUSION

For the reasons discussed above, the Staff requests that the Board issue an order terminating this proceeding.

Respectfully submitted,

/Signed (electronically) by/

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Dated at Rockville, Maryland
this 5th day of December, 2022.

¹⁵ Order (Requesting Notice of Publication of Final Environmental Assessment Supplement and Public Availability of Party Comments on Draft Environmental Assessment Supplement) at 1-2 (Sept. 13, 2022) (unpublished).

¹⁶ See Letter from Marcia Simon, Counsel for NRC Staff, to the Administrative Judges at 1 (Oct. 25, 2022).

¹⁷ Because 30 days after the notice of issuance of the final EA supplement fell on November 24, which was a Federal holiday, the due date became November 25. 10 C.F.R. § 2.306(a).

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing "NRC STAFF'S MOTION TO TERMINATE PROCEEDING" in the above-captioned proceeding have been served via the Electronic Information Exchange ("EIE"), the NRC's E-Filing System, this 5th day of December 2022, which to the best of my knowledge resulted in transmittal of the foregoing to those on the EIE Service List for the above-captioned proceeding.

/Signed (electronically) by/

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