

**UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION**

**BEFORE THE ATOMIC SAFETY AND LICENSING BOARD**

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In the Matter of )	Docket No. 040-08502
COGEMA MINING, INC. )	License No. SUA-1341
(Irigaray & Christensen Ranch Facilities) )	June 2, 2009
_____ )	

**COGEMA’S BRIEF REGARDING THE IMPACT AND SIGNIFICANCE OF CLI-09-09**

**I. INTRODUCTION**

On April 10, 2009, the Oglala Delegation of the Great Sioux Nation Treaty Council (“Delegation”) and the Powder River Basin Resource Council (“PRBRC”) each requested a hearing on COGEMA Mining, Inc.’s (“COGEMA’s”) May 30, 2008 application to renew Source Material License SUA-1341. On May 5, 2009, COGEMA filed its answers opposing the requests and the Delegation replied on May 12, 2009. PRBRC did not file a reply. Thereafter, on May 18, 2009, the Commission issued CLI-09-09 in response to appeals in another license renewal proceeding for an in situ leach mining facility.<sup>1</sup>

COGEMA submits this brief in response to the Licensing Board’s Order providing an opportunity to explain the impact and significance of CLI-09-09 on the standing and admissibility of contentions in this proceeding.<sup>2</sup> As demonstrated below, CLI-09-09 supports COGEMA’s arguments that the Delegation and PRBRC have not demonstrated standing in this

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<sup>1</sup> *Crow Butte Resources, Inc.* (License Renewal for In Situ Leach Facility, Crawford, Nebraska), CLI-09-09, 69 NRC \_\_ (May 18, 2009).

<sup>2</sup> Order (Setting Oral Argument and Briefing of Specified Issues), at 5 (May 21, 2009) (unpublished).

proceeding. Additionally, CLI-09-09 supports rejection of contentions submitted by the Delegation and PRBRC.

## II. IMPACT AND SIGNIFICANCE OF CLI-09-09

### A. Standing

In CLI-09-09, the Commission reviewed the standing of three groups in the *Crow Butte* proceeding: the Oglala Sioux Tribe (“Tribe”); the Delegation; and a group designated the “Consolidated Petitioners.”<sup>3</sup> The Commission’s holdings in CLI-09-09 confirm that both the Delegation and PRBRC lack standing in COGEMA’s license renewal proceeding.

#### 1. Delegation Standing

The Commission’s decision in CLI-09-09 confirms that the Delegation lacks standing in this proceeding.

First, the Commission affirmed the *Crow Butte* licensing board’s rejection of the Delegation’s claim of standing based on the 1851 and 1868 Fort Laramie Treaties.<sup>4</sup> Similar to the arguments regarding the COGEMA facility, the Delegation claimed ownership of the land on which the Crow Butte facility sits.<sup>5</sup> In fact, the Delegation claims that pursuant to 10 C.F.R. § 2.309(d)(2) it does not need to separately demonstrate standing in this proceeding because the COGEMA facility is located on the Delegation’s land.<sup>6</sup> Aside from Section 2.309(d)(2) not applying to the Delegation because it is not a “Federally-recognized Indian Tribe,”<sup>7</sup> CLI-09-09 also concludes that the Delegation cannot rely upon the 1851 and 1868 Fort Laramie Treaties for

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<sup>3</sup> *Crow Butte*, CLI-09-09, slip op. at 5-18.

<sup>4</sup> *Id.* at 5-6.

<sup>5</sup> *Id.* at 5.

<sup>6</sup> See Request for Hearing and Petition for Leave to Intervene, Oglala Delegation of the Great Sioux Nation Treaty Council, at 11-12 (Apr. 10, 2009) (“Delegation Petition”).

<sup>7</sup> See COGEMA’s Answer Opposing Oglala Delegation of the Great Sioux Nation Treaty Council Request for Hearing and Petition for Leave to Intervene, at 8-10 (May 5, 2009) (“COGEMA Answer to Delegation”).

standing.<sup>8</sup> The Commission concluded that the *Crow Butte* licensing board “correctly relied on the Supreme Court’s ruling that the Fort Laramie Treaty is no longer in effect.”<sup>9</sup> As explained in COGEMA’s answer, the same conclusion applies to the Delegation in the COGEMA license renewal proceeding and its standing should be rejected.<sup>10</sup>

The Commission also upheld the *Crow Butte* licensing board’s determination that the Tribe had shown standing based on its interest in preserving cultural resources or artifacts on the Crow Butte site.<sup>11</sup> The Crow Butte application identified eight archaeological sites in the project area that were Native American in origin and 21 cultural resources sites, including six that were “potentially eligible for the National Register of Historic Places [NRHP].”<sup>12</sup> In contrast, although COGEMA conducted an extensive study to evaluate historic and prehistoric sites in the Christensen Ranch project area, no sites were found to be eligible for the NRHP; nor are there any archaeological sites in the Irigaray project area.<sup>13</sup> Thus, unlike the Tribe in *Crow Butte*, the Delegation has not established the existence of any specific artifacts on the site, such that it would have a “concrete interest in protecting” such artifacts.<sup>14</sup>

Finally, the Commission deferred to the *Crow Butte* licensing board’s ruling that the Delegation “may participate as an interested government entity.”<sup>15</sup> The *Crow Butte* licensing

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<sup>8</sup> *Crow Butte*, CLI-09-09, slip op. at 5-6.

<sup>9</sup> *Id.* at 6.

<sup>10</sup> COGEMA Answer to Delegation at 9-10.

<sup>11</sup> *Crow Butte*, CLI-09-09, slip op. at 6-8.

<sup>12</sup> *Id.* at 6-7 (quoting Crow Butte license renewal application).

<sup>13</sup> See Environmental Assessment for the Renewal of Source Material License No. SUA-1341, at 16 (1998), available at ADAMS Accession No. ML081060063 (COGEMA Attachment 1); see also COGEMA Answer to Delegation at 11-13.

<sup>14</sup> *Crow Butte*, CLI-09-09, slip op. at 8. Moreover, unlike the situation in *Crow Butte*, there is no “past failure of the Staff to consult,” *id.* at 8, with potentially affected tribal organizations at the COGEMA facilities. COGEMA Answer to Delegation at 11 n.66, 53-54.

<sup>15</sup> *Crow Butte*, CLI-09-09, slip op. at 6.

board's ruling was based solely on the lack of objection from the NRC staff and Crow Butte.<sup>16</sup> The Delegation makes no such request in this proceeding, nor would it be entitled to such status under 10 C.F.R. § 2.315(c), because it is not an affected, Federally-recognized Indian Tribe.<sup>17</sup> Moreover, such an opportunity would not be available if no hearing is held in this proceeding.<sup>18</sup>

Therefore, CLI-09-09 supports rejecting the Delegation's standing in this proceeding. The Delegation's standing must also be rejected for the additional reasons provided in COGEMA's answer.<sup>19</sup>

## 2. PRBRC Standing

Although CLI-09-09 does not present any holdings regarding standing that uniquely apply to PRBRC, it confirms general standing principles that support rejection of PRBRC's standing. For example, regarding representational standing the Commission stated: "Our case law requires an organization to submit written authorization from a member whose interests it purports to represent in order to have a 'concrete indication' that the member wishes to have the organization represent his interests there."<sup>20</sup> PRBRC has not identified any member that has authorized PRBRC to represent him or her in this proceeding.<sup>21</sup> Thus, PRBRC has not

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<sup>16</sup> *Id.*; see also *Crow Butte Resources, Inc.* (License Renewal for In Situ Leach Facility, Crawford, Nebraska), LBP-08-24, 68 NRC \_\_, slip op. at 25 n.120 (Nov. 21, 2008).

<sup>17</sup> COGEMA Answer to Delegation at 9.

<sup>18</sup> See 10 C.F.R. § 2.315(c) (granting interested States, local governmental bodies, and affected, Federally-recognized Indian Tribes the "opportunity to participate in a *hearing*") (emphasis added); *South Carolina Electric & Gas Co.* (Virgil C. Summer Nuclear Station, Units 2 and 3), LBP-09-02, 69 NRC \_\_, slip op. at 5 (Feb. 18, 2009) ("because no petitioner has submitted an admissible contention, [a request for interested governmental status] must be denied as moot").

<sup>19</sup> COGEMA Answer to Delegation at 8-18.

<sup>20</sup> *Crow Butte*, CLI-09-09, slip op. at 13 (quoting *Consumers Energy Co.* (Palisades Nuclear Plant), CLI-07-18, 65 NRC 399, 409-10 (2007)).

<sup>21</sup> See Powder River Basin Resource Council Request for Hearing (Apr. 10, 2009) ("PRBRC Petition").

demonstrated representational standing. PRBRC’s standing must also be rejected for the additional reasons provided in COGEMA’s answer.<sup>22</sup>

**B. Contention Admissibility**

The *Crow Butte* licensing board admitted ten contentions, including five from the Tribe and five from the Consolidated Petitioners.<sup>23</sup> The following discussion follows the format used by the Commission in CLI-09-09 by discussing the Tribe’s admitted contentions first and then the Consolidated Petitioners’ admitted contentions. As demonstrated below, most of the contentions reviewed by the Commission make arguments similar to contentions submitted by the Delegation and PRBRC in this proceeding. The following table identifies the similar contentions in the two proceedings:

<b><i>Crow Butte</i> Contentions</b>	<b>Delegation and PRBRC Contentions</b>
Tribe’s Environmental Contention A	Delegation Contention VIII.B
Tribe’s Environmental Contention B	Delegation Contention VI
Tribe’s Environmental Contention C	Delegation Contention VIII.C; PRBRC Contention 4
Tribe’s Environmental Contention D	Delegation Contention VIII.E
Tribe’s Environmental Contention E	None
Consolidated Petitioners’ Environmental Contention E	Delegation Contention VIII.H
Consolidated Petitioners’ Technical Contention F	Delegation Contention VIII.G (part); PRBRC Contention 1(A)
Consolidated Petitioners’ Miscellaneous Contentions G and K	Delegation Contention IV; PRBRC Contention 2
Consolidated Petitioners’ Safety Contention A	Delegation Contention VIII.F

The Commission’s rejection in CLI-09-09 of six of the ten admitted contentions in *Crow Butte* supports rejection of the similar contentions in this proceeding. On the other hand, the Commission’s decision not to overturn the *Crow Butte* licensing board’s admission of the remaining four contentions does not support admission of similar contentions here. The

<sup>22</sup> COGEMA’s Answer Opposing Powder River Basin Resource Council Request for Hearing, at 8-10 (May 5, 2009) (“COGEMA Answer to PRBRC”).

<sup>23</sup> *Crow Butte*, CLI-09-09, slip op. at 2-4.

Commission’s decision regarding each of these four contentions relied upon the expert support provided by the Tribe and the Consolidated Petitioners, whereas the Delegation and PRBRC have provided no expert opinion whatsoever.<sup>24</sup> Additionally, the principles applied by the Commission in CLI-09-09 are consistent with COGEMA’s position on the other contentions not discussed herein.

**1. Tribe’s Environmental Contention A (Non-Radiological and Radiological Health Impacts)**

Tribe’s Environmental Contention A alleged that the Crow Butte application failed to substantiate its claim that there are no non-radiological health impacts, and the *Crow Butte* licensing board admitted a narrower contention regarding the sufficiency of Crow Butte’s spill contingency plan and the monitoring frequency for contaminants.<sup>25</sup> The Commission rejected the appeals to overturn the *Crow Butte* licensing board’s admission of this contention.<sup>26</sup> The Commission deferred to the licensing board’s ruling, including its ruling that the contention was supported by the expert opinions of Dr. LaGarry and Dr. Abitz.<sup>27</sup> The Commission stated that “[t]he Tribe explained its position in reasonable detail and provided expert reports to support that position.”<sup>28</sup>

Delegation Contention VIII.B makes allegations remarkably similar to those in Tribe’s Environmental Contention A, and challenges the discussion of non-radiological impacts in

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<sup>24</sup> Additionally, the standard used by the Commission to review appeals of licensing board decisions is very high. “The Commission defers to a Board’s rulings on standing and contention admissibility in the absence of clear error or abuse of discretion.” *Id.* at 4. Therefore, even if a contention raises an identical issue with respect to this proceeding that is not distinguishable on other grounds, this Licensing Board could permissibly reject a contention that the *Crow Butte* licensing board found admissible.

<sup>25</sup> *Id.* at 18-19.

<sup>26</sup> *Id.* at 19-20.

<sup>27</sup> *Id.*

<sup>28</sup> *Id.* at 20.

COGEMA's application.<sup>29</sup> However, there is a fatal difference between the two contentions. While Tribe's Environmental Contention A provided support from two experts, the Delegation provides no expert opinion for Delegation Contention VIII.B.<sup>30</sup> Thus, while the Commission did not overturn the admission of Tribe's Environmental Contention A, the Commission's reliance on the proffered expert opinion for that contention highlights why the similar Delegation Contention VIII.B should be rejected for failing to provide adequate support. Delegation Contention VIII.B also fails for other reasons set forth in COGEMA's answer to this contention.<sup>31</sup>

## **2. Tribe's Environmental Contention B (Failure to Consult)**

Tribe's Environmental Contention B alleged that the NRC staff failed to consult with the Tribe as required by the National Historic Preservation Act ("NHPA") regarding cultural artifacts found on the Crow Butte site.<sup>32</sup> The Commission concluded that this contention is inadmissible because it is not ripe.<sup>33</sup> The obligation to consult with an Indian Tribe belongs to the NRC staff, not the applicant, and this issue will not ripen until the NRC staff completes its National Environmental Policy Act review.<sup>34</sup>

Delegation Contention VI in this proceeding is similar to this rejected contention. Similar to the Tribe, the Delegation argues that contrary to the NHPA, there has not yet been any opportunity for consultation.<sup>35</sup> While the Delegation references other statutes and various legal

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<sup>29</sup> Compare *Crow Butte*, CLI-09-09, slip op. at 18-20 with Delegation Petition at 74-83.

<sup>30</sup> See Delegation Petition at 74-83.

<sup>31</sup> COGEMA Answer to Delegation at 62-66. For example, the Delegation ignores the monitoring specified in the application for uranium and other heavy metals. *Id.* at 65.

<sup>32</sup> *Crow Butte*, CLI-09-09, slip op. at 20.

<sup>33</sup> *Id.* at 24-25.

<sup>34</sup> *Id.* at 22, 24. A petitioner would have an opportunity to file a contention at a later date. *Id.* at 24-25.

<sup>35</sup> Delegation Petition at 59-61.

documents, it provides no justification for why these impose any additional rights that are not found in the NHPA.<sup>36</sup>

For the same reasons the Commission rejected Tribe’s Environmental Contention B, the Licensing Board should reject Delegation Contention VI. Assuming, *arguendo*, that the NHPA applies to the Delegation, any consultation under the NHPA would not be ripe for the reasons explained by the Commission.<sup>37</sup> Thus, Delegation Contention VI should be rejected. Delegation Contention VI also fails for other reasons set forth in COGEMA’s answer to this contention.<sup>38</sup>

### **3. Tribe’s Environmental Contention C (Impact on Surface Waters from Accidents)**

Tribe’s Environmental Contention C alleged that the Crow Butte application fails to evaluate potential environmental harm to the White River.<sup>39</sup> The Commission rejected the appeals to overturn the *Crow Butte* licensing board’s admission of this contention.<sup>40</sup> The Commission deferred to the licensing board’s ruling, including its finding that the contention was supported by the expert opinions of Dr. LaGarry, an engineering firm, and a third expert.<sup>41</sup> The Commission relied upon the conclusion by the *Crow Butte* licensing board that based on the three expert reports, “the Tribe has supplied sufficient expert opinion to draw into question whether these aquifers are interconnected and so could be the potential pathway for contaminant migration to surface waters.”<sup>42</sup>

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<sup>36</sup> *Id.*

<sup>37</sup> *Crow Butte*, CLI-09-09, slip op. at 20-25.

<sup>38</sup> COGEMA Answer to Delegation at 56-58.

<sup>39</sup> *Crow Butte*, CLI-09-09, slip op. at 25.

<sup>40</sup> *Id.* at 26.

<sup>41</sup> *Id.* at 25-26.

<sup>42</sup> *Id.* at 26.



Delegation Contention VIII.C and PRBRC Contention 4 make a similar allegation as Tribe's Environmental Contention C, claiming that COGEMA fails to address the potential for environmental harm to local surface water.<sup>43</sup> However, there is a fatal difference between the Delegation and PRBRC contentions and Tribe's Environmental Contention C. While Tribe's Environmental Contention C provided support from three experts, the Delegation and PRBRC provide no support for their contentions.<sup>44</sup> Thus, while the Commission did not overturn the admission of Tribe's Environmental Contention C, the Commission's reliance on the proffered expert opinion for that contention highlights why the similar Delegation Contention VIII.C and PRBRC Contention 4 should be rejected for failing to provide any support. Additionally, as explained in COGEMA's answers to these contentions, the Delegation and PRBRC only provide speculation and ignore the support in COGEMA's application for the contrary position. Delegation Contention VIII.C and PRBRC Contention 4 also fail for other reasons set forth in COGEMA's answers to these contentions.<sup>45</sup>

#### **4. Tribe's Environmental Contention D (Communication Among the Aquifers)**

Tribe's Environmental Contention D alleged that, contrary to the Crow Butte application, the aquifer in which mining occurs communicates with the aquifer used for drinking water by the Tribe.<sup>46</sup> The Commission rejected the appeals to overturn the *Crow Butte* licensing board's admission of this contention.<sup>47</sup> The Commission deferred to the licensing board's ruling,

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<sup>43</sup> Delegation Petition at 83-90; PRBRC Petition at 6.

<sup>44</sup> Compare Delegation Petition at 83-90 and PRBRC Petition at 6 with *Crow Butte*, CLI-09-09, slip op. at 25-26.

<sup>45</sup> COGEMA Answer to Delegation at 66-73; COGEMA Answer to PRBRC at 33-35.

<sup>46</sup> *Crow Butte*, CLI-09-09, slip op. at 26-27.

<sup>47</sup> *Id.* at 28.

including that the contention was supported by the expert opinion of Dr. LaGarry and a letter from the Nebraska Department of Environmental Quality.<sup>48</sup>

Delegation Contention VIII.E makes an allegation similar to Tribe's Environmental Contention D, claiming that there is communication among aquifers in the area of COGEMA's facility.<sup>49</sup> However, there is a fatal difference between the two contentions. While Tribe's Environmental Contention D provided support from an expert and a letter from a state agency, the Delegation provides no support for Delegation Contention VIII.E.<sup>50</sup> The Delegation relies solely upon one quotation from COGEMA's application, but as explained in COGEMA's answer to this contention, this quotation does not support the Delegation's allegations.<sup>51</sup> Thus, while the Commission did not overturn the admission of Tribe's Environmental Contention D, the Commission's reliance on the proffered expert opinion for that contention highlights why the similar Delegation Contention VIII.E should be rejected for failing to provide any support. Delegation Contention VIII.E also fails for other reasons set forth in COGEMA's answer to this contention.<sup>52</sup>

#### **5. Tribe's Environmental Contention E (Wastes Remain on Site)**

The Delegation and the PRBRC do not appear to have submitted a contention that makes arguments similar to Tribe's Environmental Contention E.

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<sup>48</sup> *Id.* at 27-28.

<sup>49</sup> Delegation Petition at 95-98.

<sup>50</sup> *Compare id. with Crow Butte*, CLI-09-09, slip op. at 27-28.

<sup>51</sup> COGEMA Answer to Delegation at 78-80.

<sup>52</sup> *Id.*

**6. Consolidated Petitioners' Environmental Contention E (Failure to Consider Economic Value of Wetlands in Cost/Benefit Analysis)**

Consolidated Petitioners' Environmental Contention E alleged that the Crow Butte application failed to consider the economic value of wetlands in a cost/benefit analysis.<sup>53</sup> The Commission concluded that this contention is inadmissible because it does not raise a genuine dispute with the application, and reversed the *Crow Butte* licensing board's decision to admit it.<sup>54</sup> The Commission stated that "Consolidated Petitioners provided no support for the underlying premise of this contention, which seems to be that the ongoing operation has or will drain or contaminate wetlands such that they can no longer provide the economic benefits that a well-functioning wetland could."<sup>55</sup>

Delegation Contention VIII.H in this proceeding is remarkably similar to this rejected contention.<sup>56</sup> Both contentions reference the same University of Adelaide study, repeat similar sections of the license renewal applications, and make statements about failure to consider the economic benefits of wetlands.<sup>57</sup>

For the same reasons the Commission rejected Consolidated Petitioners' Environmental Contention E, the Licensing Board should reject Delegation Contention VIII.H. The Delegation provided no support to demonstrate that operation of COGEMA's facility has or will impact wetlands such that they can no longer provide the economic benefits that a well-functioning wetland could.<sup>58</sup> In fact, the Delegation has not identified any wetlands at the COGEMA facility, much less any wetlands that are potentially endangered by continued mining operations.

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<sup>53</sup> *Crow Butte*, CLI-09-09, slip op. at 31-32.

<sup>54</sup> *Id.* at 32.

<sup>55</sup> *Id.*

<sup>56</sup> Compare Delegation Petition at 117-19 with *Crow Butte*, LBP-08-24, slip op. at 31-32.

<sup>57</sup> *Id.*

<sup>58</sup> See Delegation Petition at 117-19.

Thus, Delegation Contention VIII.H does not raise a genuine dispute with COGEMA's application and should be rejected. Delegation Contention VIII.H also fails for other reasons set forth in COGEMA's answer to this contention.<sup>59</sup>

**7. Consolidated Petitioners' Technical Contention F (Failure to Include Recent Research)**

Consolidated Petitioners' Technical Contention F alleged that the Crow Butte application does not include up-to-date research on geology and seismology.<sup>60</sup> The Commission rejected the appeals to overturn the *Crow Butte* licensing board's admission of this contention.<sup>61</sup> The Commission deferred to the licensing board's ruling, including that the contention was supported by the expert opinion of Dr. LaGarry, a letter from the Nebraska Department of Environmental Quality, and a report from Dr. Robinson.<sup>62</sup>

A portion of Delegation Contention VIII.G and all of PRBRC Contention 1(A) make allegations similar to those in Consolidated Petitioners' Technical Contention F, claiming that the COGEMA application does not provide current data on geology and seismology.<sup>63</sup> However, there is a fatal difference between these two contentions and Consolidated Petitioners' Technical Contention F. While Consolidated Petitioners' Technical Contention F provided support from two experts and a letter from a state agency, the Delegation and PRBRC provide no support for their contentions.<sup>64</sup> The Delegation and PRBRC do not cite or discuss any expert opinion or other support for why the discussion of geology and seismology in the COGEMA application is

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<sup>59</sup> COGEMA Answer to Delegation at 94-97.

<sup>60</sup> *Crow Butte*, CLI-09-09, slip op. at 32.

<sup>61</sup> *Id.* at 34.

<sup>62</sup> *Id.* at 32-34.

<sup>63</sup> Delegation Petition at 110-13; PRBRC Petition at 3.

<sup>64</sup> Compare Delegation Petition at 110-13 and PRBRC Petition at 3 with *Crow Butte*, CLI-09-09, slip op. at 32-34.

insufficient.<sup>65</sup> Thus, while the Commission did not overturn the admission of Consolidated Petitioners' Technical Contention F, the Commission's reliance on the proffered expert opinion for that contention highlights why the similar Delegation Contention VIII.G and PRBRC Contention 1(A) should be rejected for failing to provide any support. Delegation Contention VIII.G and PRBRC Contention 1(A) also fail for other reasons set forth in COGEMA's answers to these contentions.<sup>66</sup>

**8. Consolidated Petitioners' Miscellaneous Contentions G and K (Foreign Ownership)**

Consolidated Petitioners' Miscellaneous Contention G alleged that Crow Butte failed to disclose its foreign ownership in its application and Consolidated Petitioners' Miscellaneous Contention K alleged that the NRC has no authority to issue a renewed license to a foreign-owned entity.<sup>67</sup> The Commission concluded that the issues in Consolidated Petitioners' Miscellaneous Contention G are moot because Crow Butte revised its application.<sup>68</sup> Additionally, the Commission concluded that Consolidated Petitioners' Miscellaneous Contention K is inadmissible because it is legally deficient, stating:

As for Consolidated Petitioners' Miscellaneous Contention K, there is no statutory or regulatory bar on a foreign ownership or control of a source materials license, whether as a licensee or as a parent entity. In addition, we find the admission of the second "issue" of Miscellaneous Contention K to be unsupported. Consolidated Petitioners failed to show any basis why renewing the license would be "inimical" to the common defense and security. Each of Consolidated Petitioners' arguments relating to inimicality relates to various scenarios wherein Crow Butte, at the behest of Cameco, sells the unprocessed uranium to an "enemy of the United States." But, as the Staff and Crow Butte pointed out in subsequent briefs before the Board, any export of uranium would

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<sup>65</sup> Delegation Petition at 110-13; PRBRC Petition at 3.

<sup>66</sup> COGEMA Answer to Delegation at 85-89; COGEMA Answer to PRBRC at 20-22.

<sup>67</sup> *Crow Butte*, CLI-09-09, slip op. at 34-35.

<sup>68</sup> *Id.* at 37-39.

require a separate application for an export license. Such an export license application carries with it an opportunity to seek to intervene and request a hearing. The instant proceeding involves only renewal of the existing license to possess and use source material, not the export of source material to any country outside the United States.<sup>69</sup>

Thus, the Commission concluded (1) there is no bar on foreign ownership of a source materials license; (2) issues related to uranium export are addressed in an export license proceeding, not in a license renewal proceeding; and (3) to prevail, a petitioner must provide a basis, unrelated to export issues, for why the license action would be inimical to the common defense and security.

Both Delegation Contention IV and PRBRC Contention 2 in this proceeding raise issues encompassed within the Commission's rejection of Consolidated Petitioners' Miscellaneous Contentions G and K in CLI-09-09. PRBRC Contention 2 raises a narrow issue claiming that "[t]he NRC may not issue a license to a corporation that is 'owned, controlled, or dominated by an alien, a foreign corporation, or a foreign government.' [10] CFR § 40.38(a)."<sup>70</sup> As noted above, the Commission has rejected this argument, holding that "there is no statutory or regulatory bar on a foreign ownership or control of a source materials license, whether as a licensee or as a parent entity."<sup>71</sup> Thus, PRBRC Contention 2's argument fails, and the contention must be rejected.

Delegation Contention IV raises some additional arguments, but they too must fail. Similar to the PRBRC, the Delegation claims that the NRC cannot renew the license for a company that is "owned, controlled and dominated by foreign interests."<sup>72</sup> As discussed above, the Commission held in CLI-09-09 that this is incorrect. Therefore, this portion of Delegation

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<sup>69</sup> *Id.* at 38 (citation omitted).

<sup>70</sup> PRBRC Petition at 6.

<sup>71</sup> *Crow Butte*, CLI-09-09, slip op. at 38.

<sup>72</sup> Delegation Petition at 23, 27.

Contention IV fails.<sup>73</sup> The Delegation makes additional allegations regarding the export of the source material produced at COGEMA's facility and problems that could occur if the material is exported.<sup>74</sup> However, as noted above, the Commission has rejected these arguments related to exports because they are covered by a separate licensing proceeding.<sup>75</sup> The remainder of the Delegation's arguments consists of general concerns over production of source material and related possible harms, but the Delegation does not provide any arguments on non-export issues that demonstrate that granting the license renewal application to COGEMA would be inimical.<sup>76</sup> As discussed above, a petitioner must provide a specific basis, unrelated to export issues, for why the licensing action would be inimical to the common defense and security.<sup>77</sup> Thus, all of the Delegation's arguments have been rejected by the Commission in CLI-09-09, and Delegation Contention IV should be rejected.

Delegation Contention IV and PRBRC Contention 2 also fail for other reasons set forth in COGEMA's answers to these contentions.<sup>78</sup>

#### **9. Consolidated Petitioners' Safety Contention A (Arsenic)**

Consolidated Petitioners' Safety Contention A alleged that the Crow Butte facility releases arsenic which threatens the health and safety of the public because it contributes to an increase in diabetes and pancreatic cancer.<sup>79</sup> The Commission concluded that this contention was inadmissible because it lacked adequate support and did not raise a genuine dispute with the

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<sup>73</sup> *Crow Butte*, CLI-09-09, slip op. at 38.

<sup>74</sup> See Delegation Petition at 26-53.

<sup>75</sup> *Crow Butte*, CLI-09-09, slip op. at 38.

<sup>76</sup> See Delegation Petition at 26-53.

<sup>77</sup> *Crow Butte*, CLI-09-09, slip op. at 38.

<sup>78</sup> COGEMA Answer to Delegation at 29-51; COGEMA Answer to PRBRC at 29-32.

<sup>79</sup> *Crow Butte*, CLI-09-09, slip op. at 39-40.

application, and reversed the *Crow Butte* licensing board’s decision to admit it.<sup>80</sup> The Commission stated that the contention “mischaracterizes” the application, “is fundamentally unsupported,” and contains “gaps” in its reasoning.<sup>81</sup>

Delegation Contention VIII.F in this proceeding is remarkably similar to this rejected contention.<sup>82</sup> Both contentions reference the same reports and studies, including a study by the Johns Hopkins Bloomberg School of Public Health and articles from the Journal of the American Medical Association, Pancreatic Cancer UK, and Journal of the Institute of the American Gastroenterological Association.<sup>83</sup>

For the same reasons the Commission rejected Consolidated Petitioners’ Safety Contention A, the Licensing Board should reject Delegation Contention VIII.F. The Delegation’s contention lacks adequate support and does not demonstrate a genuine dispute with COGEMA’s application. Similar to the Commission’s reason for stating that Consolidated Petitioners’ Safety Contention A did not demonstrate a genuine dispute, the Delegation provides no basis for its claims that operations at the facility will leak arsenic into drinking water, that COGEMA’s application does not provide for filtering or monitoring for arsenic, or that COGEMA does not comply with Part 40, Appendix A.<sup>84</sup> Because Delegation Contention VIII.F fails to show that COGEMA’s operations expose the Delegation or others to arsenic, the contention is flawed.<sup>85</sup> As the Commission held regarding Consolidated Petitioners’ Safety Contention A, Delegation Contention VIII.F does not provide any facts or expert opinion to

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<sup>80</sup> *Id.* at 40-43.

<sup>81</sup> *Id.* at 40-42.

<sup>82</sup> Compare Delegation Petition at 98-110 with *Crow Butte Resources, Inc.* (License Renewal for In Situ Leach Facility, Crawford, Nebraska), LBP-08-27, 68 NRC \_\_\_, slip op. at 2-3 (Dec. 10, 2008).

<sup>83</sup> Delegation Petition at 99, 103; *Crow Butte*, LBP-08-27, slip op. at 2.

<sup>84</sup> See *Crow Butte*, CLI-09-09, slip op. at 40-41.

<sup>85</sup> See *id.* at 41.



buttress the arguments in the cited generic studies, does not exclude other factors that may cause diabetes, and does not form the basis for a litigable contention.<sup>86</sup> For these reasons, Delegation Contention VIII.F should be rejected. Delegation Contention VIII.F also fails for other reasons set forth in COGEMA's answer to this contention.<sup>87</sup>

### III. CONCLUSION

For the foregoing reasons, CLI-09-09 supports COGEMA's earlier positions that the Delegation and PRBRC have not demonstrated standing and have submitted no admissible contentions.

Respectfully submitted,

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Dated in Washington, D.C.  
this 2nd day of June 2009

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<sup>86</sup> See *id.* at 41-42.

<sup>87</sup> COGEMA Answer to Delegation at 81-85.

**UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION**

**BEFORE THE ATOMIC SAFETY AND LICENSING BOARD**

_____ )	
In the Matter of )	Docket No. 040-08502
COGEMA MINING, INC. )	License No. SUA-1341
(Irigaray & Christensen Ranch Facilities) )	June 2, 2009
_____ )	

**CERTIFICATE OF SERVICE**

I hereby certify that on June 2, 2009 a copy of “COGEMA’s Brief Regarding the Impact and Significance of CLI-09-09” was served by the Electronic Information Exchange on the following recipients:

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