

---

**From:** Dugan [dugan@wavecom.net]  
**Sent:** Wednesday, February 24, 2010 1:44 PM  
**To:** Burrows, Ronald  
**Subject:** Errata  
**Attachments:** OST Request for Extension of Time to Request Hearing, 2.23.10.doc

Mr. Burrows:

I have just learned from Patricia Jahle that the above-referenced letter request I sent you yesterday evening must instead be filed with the secretary of the Commission through the EIE. I will do that today.

In the meantime, I have become aware of two typos in the request I sent you, one in the body and one in the header. Although I understand you are not the proper recipient of this letter, because I did send you a copy with errors, I am now sending, with apologies, a corrected copy.

Sincerely,

Grace Dugan

Received: from mail1.nrc.gov (148.184.176.41) by TWMS01.nrc.gov  
(148.184.200.145) with Microsoft SMTP Server id 8.1.393.1; Wed, 24 Feb 2010  
13:44:19 -0500

X-Ironport-ID: mail1

X-SBRS: 5.3

X-MID: 11759686

X-fn: OST Request for Extension of Time to Request Hearing, 2.23.10.doc

X-IronPort-Anti-Spam-Filtered: true

X-IronPort-Anti-Spam-Result:

AsABAHSChUvRwUgFmWdsb2JhbACIYIQvA41+FQEBAQEBCAsKBxMivEOEcgSDFg

X-IronPort-AV: E=Sophos;i="4.49,533,1262581200";

d="doc'32?scan'32,208,217,32";a="11759686"

Received: from sodium.vcn.com ([209.193.72.5]) by mail1.nrc.gov with ESMTP;  
24 Feb 2010 13:44:19 -0500

Received: from toshibauser (174-16-64-141.hlrn.qwest.net [174.16.64.141]) by  
sodium.vcn.com (Postfix) with ESMTP id 033F3A7BB5 for

<Ronald.Burrows@nrc.gov>; Wed, 24 Feb 2010 11:44:20 -0700 (MST)

Message-ID: <53C79523546948D595D4A46B93458EE0@toshibauser>

From: Dugan <dugan@wavecom.net>

To: "Burrows, Ronald" <Ronald.Burrows@nrc.gov>

Subject: Errata

Date: Wed, 24 Feb 2010 11:44:02 -0700

MIME-Version: 1.0

Content-Type: multipart/mixed;

boundary="-----=\_NextPart\_000\_00B3\_01CAB546.A962E7D0"

X-Priority: 3

X-MSMail-Priority: Normal

X-Mailer: Microsoft Outlook Express 6.00.2900.5843

Disposition-Notification-To: "Dugan" <dugan@wavecom.net>

X-MimeOLE: Produced By Microsoft MimeOLE V6.00.2900.5579

Return-Path: dugan@wavecom.net

Gonzalez Law Firm  
522 7<sup>th</sup> Street  
Rapid City, SD 57701  
307.202.0703  
[dugan@wavecom.net](mailto:dugan@wavecom.net)

February 23, 2010

Via Electronic and First Class Mail

Ronald A. Burrows  
Project Manager, Uranium Recovery Licensing Branch  
Division of Waste Management and Environmental Protection  
Office of Federal and State Materials and Environmental Management Programs  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555

**RE: Request for 90-day extension of time to file request for hearing on License Application Request of Powertech (USA) Inc. Dewey-Burdock In Situ Uranium Recovery Facility in Fall River and Custer Counties, SD, Docket No.: 040-09075; NRC-2009-0575**

Dear Mr. Burrows:

The Oglala Sioux Tribe of the Pine Ridge Indian Reservation respectfully requests a 90-day extension of time to file a request for hearing in the above-referenced License Application Request. As indicated in the Tribe's recent request for Sensitive Unclassified Non-Safeguards Information (SUNSI), Powertech's proposed Dewey-Burdock in situ leach uranium recovery facility project has the potential to directly and negatively impact the interests of the Tribe and its members.

The bases for the Tribe's request for an extension of time include: (1) the need to fully review the voluminous environmental and technical reports (with appendices and attachments) submitted by the applicant, much of which presents relevant data in a disordered manner; (2) the need to fully review the SUNSI documents and coordinate any contentions the Tribe may wish to raise; (3) the need for Tribal Government review and approval of any intervention application and associated contentions; and (4) the fact that the Tribe has associated new legal counsel in this matter, who need additional time to review the application and advise the Tribe.

First, with respect to the need for additional time to review the technical information in the applicant's license application documents, the attached letter from our expert, Dr. Robert Moran, describes the difficulty in conducting such a review, given the format of the application. A copy of Dr. Moran's letter and his curriculum vitae are attached. As Dr. Moran notes in his letter:

After reviewing a large portion of the approximately 6000 pages of relevant documents [Technical Report is 3103 pg.; Environmental Report is 2615 pg.; Supplement is 66 pg.], I find it is not possible to provide a meaningful expert review and technical comment on the adequacy of the documents within the time provided because they are quite disorganized, often with little consistency between the various documents, and frequently presenting information and interpretations in a technically inadequate manner. More importantly, the reports fail to provide the most important information necessary to commenting intelligently on these matters. Further details are presented below.

As such, in my professional judgment, in order for a qualified expert to have a meaningful opportunity to fully review, assess, and provide technical comment on the submitted Application, a minimum of an additional 90 days past the current contention submission deadline of March 8, 2010 is required. Failure to provide such an extension of the submittal date for contentions would effectively deprive the public of the required opportunity for review.

Moran letter at 1. Significantly, as far as the Tribe is aware, no paper copies of the materials have been made available for review on the Pine Ridge Reservation, or anywhere in Custer or Fall River Counties. A significant proportion of the public in this part of the country has no regular access to computer technology or high speed internet service. The sole alternative, copying several thousand pages of printed material exacts a financial burden few persons in this area could meet. For these reasons, there has been little or no meaningful public access to the materials for a large number of those who could be affected by the project if permitted. Given the volume of materials, the technical nature of the material, and the lack of physical access to that material, the Tribe respectfully requests an extension of time. This extension will allow the NRC to provide us with physical copies of the materials in a location readily available to the affected public and the Tribal membership. Only in this way will the Tribe be able to undertake a comprehensive review of the application in light of the preliminary concerns our expert raised during his attempt to review the application.

Second, as the NRC is aware, the Tribe has been granted access to documents from the license application materials which the NRC staff has designated as SUNSI. A resolution on the contours of a protective order has not been achieved, however, and the Tribe has not yet obtained access to these documents. While the Tribe is aware that the NRC's Notice of Opportunity for Hearing in this matter, published in the Federal Register, provides a 25-day period for the filing of what it terms "SUNSI contentions" after the grant of access to this information, this timeline will not be adequate, given the necessary detailed review of this information. As the matter stands, the 25-day period will extend beyond the date specified in the Notice of Opportunity for Hearing for submission of contentions (March 8, 2010). Given the extensive and careful review necessary to adhere to the strict pleading requirements of NRC regulations, comity and respect for the efficient use of the Tribe's scarce resources dictates that the filing of all contentions be

coordinated, rather than piecemealed as would occur without the extension requested herein. In fact, the extra burden of preparing and coordinating two separate tribal government reviews of any potential contentions would prejudice the Tribe by causing the unnecessary expenditure of extremely limited Tribal government resources.

Third, and related, is the need for coordination and approval within the Tribal government of any contentions that may be filed in this matter. The current date set for the filing of contentions provides inadequate time for the Tribe to conduct the necessary internal review. The issues raised by the proposed project involve sensitive matters to the Tribe, especially where the proposal may impact cultural issues and properties, human health, environmental, and water quality protection. These are matters the Tribe considers with the utmost care, and the time provided simply does not allow for the careful and meaningful review needed.

Fourth, as indicated by the recent notices of appearance, the Tribe has retained new counsel in this matter as of February 21, 2010. The attorneys require additional time to become familiar with the extensive license application materials, and to advise the Tribe as to the filing of contentions, should the Tribe decide to do so. Absent an extension as requested herein, the Tribe suffers prejudice in effectively limiting its ability to obtain complete legal counsel and advice.

For the reasons cited above, the Oglala Sioux Tribe respectfully requests that the NRC grant a 90-day extension of time for all persons, including the Tribe, to request a hearing in this matter, to include SUNSI-related contentions. This relatively short extension will afford the Tribe and the public the meaningful opportunity to review the voluminous application materials, assuming physical copies will also have been distributed in Custer, Fall River and Shannon (Pine Ridge Indian Reservation) Counties, SD.

We note that the NRC, as an agency of the United States, owes a trust responsibility to the Tribe and its members. We submit that this trust responsibility can be recognized and honored by the NRC's prompt grant of this reasonable extension request.

We would appreciate your response by March 1, 2010, so in the event this extension request is not granted, the Tribe will have time to take the matter up with the Commission and/or a federal court as appropriate. Your reply by email or telephone will be fine.

Please contact me with any questions or comments.

Sincerely,

GRACE DUGAN  
Gonzalez Law Firm  
Attorney for Oglala Sioux Tribe