

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

Before the Chief Administrative Judge:

In the Matter of  POWERTECH USA (In Situ Leach Facility, Crawford, NE)
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Docket No. 40-9075-MLA

March 2, 2010

**REQUEST FOR EXTENSION OF TIME TO FILE REQUESTS/PETITIONS  
AND REQUEST FOR THREE (3) ADDITIONAL PUBLIC COPIES**

Pursuant to 10 CFR §2.307 and 10 CFR §2.346(j), the undersigned<sup>1</sup> respectfully requests an extension of time within which to file a consolidated request for hearing/petition to intervene on behalf of himself and other petitioners including the parties referred to in footnote 1 herein. Currently, the deadline for filing is March 8, 2010.<sup>2</sup> A ninety (90) day extension to June 9, 2010 is requested in order to provide time for public review and expert analysis of the current version of the Application which is itself found to be jumbled, confusing, and hard to understand.

The undersigned understands that the Oglala Sioux Tribe has likewise made a formal request for a ninety (90) day extension of time dated February 26, 2010 (the “OST

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<sup>1</sup> On his own behalf and on behalf of other parties intending to file requests for a hearing and petitions to intervene therein, including Dayton Hyde (Black Hills Wild Horse Sanctuary, Hot Springs, SD), Joseph American Horse, Sr. (OST-Pine Ridge, SD), Thomas Kanatakeniate Cook (Pine Ridge, SD/Chadron, NE), Loretta Afraid of Bear Cook (OST-Pine Ridge, SD/Chadron, NE), Ted P. Ebert (Hot Springs, SD), Debra White Plume (OST-Manderson, SD), Owe Aku (Bring Back the Way) (OST-Manderson, SD), Aligning for Responsible Mining (Pine Ridge, SD).

<sup>2</sup> See 75 Fed. Reg. No. 2 (Tuesday, January 5, 2010).

Request”), which refers to and attaches the expert opinion dated February 23, 2010 of Robert E. Moran, Ph.D; which expert opinion is hereby incorporated by reference as if set forth at length herein. Several of the potential petitioners listed in footnote 1 above are members of the Oglala Sioux Tribe and, therefore, are owed the same duties and trust responsibilities as are owed to the tribal government. Accordingly, these potential petitioners join in the request for extension filed by the Oglala Sioux Tribe.

In addition and on behalf of the undersigned and those potential petitioners that are not members of the Oglala Sioux Tribe, the undersigned respectfully requests that the deadline be extended ninety (90) days. The bases for the requested extension are that there are a very large number of pages (over 6,000) in the Application; there is extreme difficulty that most local people in Custer County and Fall River County have in accessing the NRC website due to a combination of lack of high-speed internet and winter power outages; and difficult winter road conditions have made it difficult for interested parties to meet with others and obtain electronic copies by hand.

Therefore, the undersigned further requests that the Applicant and/or NRC Staff be required to provide at no charge to the public at least three (3) printed copies of the entire Application, as revised to date, and deposit one (1) copy at the public library or county courthouse in Custer, SD, and in Hot Springs, SD and at Oglala Lakota College (Kyle, SD).

## DISCUSSION

1. Timeliness. This document is filed before the deadline; accordingly, it is timely.
2. Need for Extension. Petitioners would be severely prejudiced in the event that the time for filing is not extended. This is because the Application itself (as re-submitted after initially being rejected by NRC Staff) is disorganized and almost incomprehensible. As Dr. Moran notes in his expert opinion:

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.*<sup>3</sup>

The undersigned also notes that with 6,000 pages to review within the sixty (60) day review period provided by the Federal Register Notice, each member of the public is expected to review 100 pages of highly technical material per day. The undersigned submits that if our expert is unable to wade through the Technical Report and Environmental Report within the prescribed time, it would be impossible for a layman member of the public to do so.

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<sup>3</sup> Moran letter at 1 (emphasis added).

3. Need for Additional Hard Copies. As noted in the OST Request, there was a February 25, 2010 telephone conference which neither the undersigned nor any of the potential petitioners referred to in footnote 1 attended. OST Counsel reported to the undersigned that during the February 25, 2010 telephone conference, the NRC Staff Counsel offered to provide two (2) additional copies when three (3) such copies had been requested. The undersigned submits that effective citizen review of the Application is not possible in these rural counties and that it is manifestly unfair to require local people to drive several hours each way to view a public copy of the Application. A significant proportion of the public in Western South Dakota 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. In addition, due to an extraordinarily snowy Winter, several local meetings have been canceled due to inability of people to get off their ranches which has severely impaired people's ability to share electronic copies of the Application.

For these reasons, there has been little or no meaningful public access to the materials for those who would be affected by the project if permitted. Therefore, fairness requires that a separate public copy of the entire Application and all appendices and exhibits be made available to the public in each of Custer, SD (Custer County), Hot Springs, SD (Fall River County), and Pine Ridge Indian Reservation (Shannon County).

Further, the undersigned respectfully suggests that if NRC Staff is willing to make two (2) copies for the public in three (3) counties, it should likewise be willing to make the additional copy so that each county can have at least one (1) complete public copy.

There is no material additional cost, expense or delay associated with making the one extra copy beyond what the NRC Staff has already agreed to provide. Accordingly, the undersigned respectfully requests the Commission order the Staff to provide at least three (3) complete printed copies; one for each of Custer County, Fall River County and Pine Ridge Indian Reservation (Shannon County).

4. No Prejudice to Other Parties. The Dewey-Burdock project is proposed to occur years in the future. Powertech has had years to prepare, revise, submit, and re-submit the Application. Despite all the time and experts and substantial NRC Staff guidance, Powertech's Application is disorganized and difficult for our experts to comprehend. To the extent that Powertech does bear any burden or prejudice due to the extension, it is rightfully so because it is the one party that could have ensured that the Application would be understandable by the public.

5. Other Factors. While not binding, the undersigned notes that granting the extension and additional copies as requested herein would comport with the NRC Organizational Values and Principles of Good Regulation<sup>4</sup> Finally, while relevant to determinations as to whether to grant a request for hearing and/or petition to intervene, concepts related to standing are not relevant to a determination of extending time or providing copies for public review. If concepts related to standing were found to be relevant, they would in any case be required to be viewed in the light most favorable to

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<sup>4</sup> <http://www.nrc.gov/about-nrc/values.html#values> (particularly, "Service to the public, responsive, accountable, proactive; Cooperation in planning, helpful, sharing, team-oriented, engaged...." and "Openness: Nuclear regulation is the public's business, and it must be transacted publicly and candidly. The public must be informed about and have the opportunity to participate in the regulatory processes as required by law. Open channels of communication must be maintained with Congress, other government agencies, licensees, and the public, as well as with the international nuclear community.")

the potential petitioners at this early stage of the proceeding.<sup>5</sup>

### **CONCLUSION**

There is already a high degree of distrust for this project among local people; especially in light of the terrible legacy of the open pit uranium mining from past decades that continue to spew radioactive waste from leaking tailings pilings. The people of Custer County, Fall River County and at Pine Ridge Indian Reservation have lived through a generation of uranium mining and the fallout. They deserve a chance to look at and read the entire Application and have a meaningful opportunity to ask questions of experts and to request a hearing and/or petition to intervene as they deem appropriate.

For all the foregoing reasons, the Commission should extend the deadline for filing to June 9, 2010 and should provide at least three (3) complete copies of the Application, as requested by the undersigned herein.

Dated this 2<sup>nd</sup> day of March, 2010.

Respectfully submitted,

/s/ - electronically signed by

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<sup>5</sup> Should the Commission determine that concepts of standing are relevant, the undersigned maintains that such standing is satisfied because the persons referred to in footnote 1 above are resident in the affected counties and use the water from the affected aquifers described in the Application, and/or from aquifers connected thereto.