

**UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION**

**BEFORE THE ATOMIC SAFETY AND LICENSING BOARD**

In the Matter of: )

POWERTECH (USA), INC. )

(Dewey-Burdock In Situ Uranium Recovery )  
Facility) )

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) Docket No.: 40-9075-MLA

) Date: July 30, 2010

**RESPONSE TO CONSOLIDATED PETITIONERS' MOTION FOR UNTIMELY  
FILING**

Powertech (USA), Inc. (Powertech), by its undersigned counsel of record, hereby submits this Response to the Consolidated Petitioners Motion for Untimely Filing regarding Powertech's license application for a new combined source and 11e.(2) byproduct material license to construct and operate an in situ leach uranium recovery (ISR) facility in Custer and Fall River Counties in the State of South Dakota. For the reasons discussed below, Powertech respectfully requests that the Licensing Board deny Consolidated Petitioners' Motion.

**I. DISCUSSION**

Consolidated Petitioners' Motion seeks to admit two items as exhibits in this proceeding: (1) comments from the State of South Dakota's Department of Environment and Natural Resources (DENR) regarding Powertech's application for a Safe Drinking Water Act (SDWA) Class III Underground Injection Control (UIC) permit and (2) an accompanying cover letter from South Dakota DENR. These items were not filed by Consolidated Petitioners in their initial request for a hearing and, upon requesting the opportunity to submit such items as exhibits at the

June 8-9, 2010 oral argument, the Licensing Board stated that it would not accept the submission and would base its initial decision on the record currently before it. Thus, in order to receive leave of the Licensing Board to submit

Consolidated Petitioners' Motion does not satisfy 10 C.F.R. § 2.309(c)(i)'s requirement for "good cause, if any, for the failure to file on time...." 10 C.F.R. § 2.309(c)(i). In its Motion, Consolidated Petitioners concede that the items sought to be admitted "are...already a part of the record, but filed on behalf of the Oglala Sioux Tribe." Consolidated Petitioners' Motion at 2. Based on this fact, Consolidated Petitioners were made aware of the information contained in the documents that they seek to admit on May 14, 2010. The documents Consolidated Petitioners are seeking to admit were made publicly available by NRC Staff on May 6, 2010, which provided Consolidated Petitioners ample opportunity to file the instant Motion with the Licensing Board. In addition to this, Consolidated Petitioners also waited an additional forty-two (42) days to file the instant Motion. Given that Consolidated Petitioners were fully aware of the Licensing Board's Order stating that an initial decision on standing and admissible contentions would be issued "no later than August 20, 2010," any motion for untimely filing should have been submitted well before July 20, 2010. Thus, Powertech asserts that Consolidated Petitioners' Motion does not meet 10 C.F.R. 2.309(c)(i)'s requirement for good cause to file.<sup>1</sup>

Moreover, the documents sought to be admitted by Consolidated Petitioners are completely irrelevant to this instant proceeding. Under the Atomic Energy Act of 1954, as

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<sup>1</sup> Powertech also notes that this aspect of Consolidated Petitioners' Motion does not satisfy 10 C.F.R. § 2.309(c)(vii)'s requirement that the Motion should not "delay the proceeding." Consolidated Petitioners did not file their Motion until forty-one (41) days after the completion of the oral argument where the issues denoted in the Motion were first raised. By filing this Motion on July 20, 2010 and assuming the allotted ten (1) days for Powertech and NRC Staff responses, this Motion provides the Licensing Board with a mere twenty five (25) days to consider the submittals and issue its initial decision within the timeframe allotted in its July, 2010 Order.

amended (AEA), the Licensing Board is charged with reviewing an NRC-specific license application to determine whether the proposed action is adequately protective of public health and safety. The Licensing Board's mandate does not include the consideration of application for licenses or permits that are outside the defined boundaries of NRC's jurisdiction. Consideration of any materials regarding Powertech's Class III UIC permit application would offer no meaningful contribution to the evaluation of the aspects of the NRC combined source and 11e.(2) byproduct material application before the Licensing Board at this time because EPA's mandate under the SDWA is different from NRC's under the AEA. While issues addressed in each application may be related in some manner, such applications submitted to NRC and EPA do not have any impacts on each other. Thus, Consolidated Petitioners' Motion also fails to satisfy 10 C.F.R. § 2.309(c)(viii)'s requirement for demonstrating that a sound record would be developed due to the admission of the aforementioned documents.

Lastly, Powertech has reviewed the brief filed by NRC Staff and concurs with the arguments set forth therein.

**II. CONCLUSION**

For the reasons discussed above, Powertech respectfully requests that the Licensing deny Consolidated Petitioners' Motion.

Respectfully submitted,

**/Signed (electronically) by/  
Christopher S. Pugsley, Esq.**

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Dated: July 30, 2010

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**CERTIFICATE OF SERVICE**

I hereby certify that copies of the foregoing “RESPONSE TO CONSOLIDATED PETITIONERS’ MOTION FOR UNTIMELY FILING” in the above captioned proceeding have been served via the Electronic Information Exchange (EIE) this 30<sup>h</sup> day of July 2010, 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.

Respectfully Submitted,

**/Executed (electronically) by and in  
accord with 10 C.F.R. § 2.304(d)/  
Christopher S. Pugsley, Esq.**

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Dated: July 30, 2010