

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION  
ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges:

William J. Froehlich, Chairman  
Dr. Richard F. Cole  
Dr. Mark O. Barnett

In the Matter of

POWERTECH (USA), INC.

(Dewey-Burdock In Situ Uranium Recovery  
Facility)

Docket No. 40-9075-MLA

ASLBP No. 10-898-02-MLA-BD01

August 5, 2010

ORDER  
(Denying Motion to Permit Untimely Filing)

On July 20, 2010, Consolidated Petitioners filed a motion with the Board requesting that they be permitted to file a letter and accompanying draft comments prepared by the South Dakota Department of Environment and Natural Resources (SD DENR) concerning the proposed Powertech project.<sup>1</sup> The SD DENR letter is addressed to Powertech and is dated April 19, 2010. The accompanying draft comments are 21 pages in length.

In the motion, Consolidated Petitioners state that they “do not seek to add petitioners or add or amend contentions under 2.309(f)(2).”<sup>2</sup> Rather, they assert, they “simply seek leave to file for consideration on their behalf, the DENR’s latest analysis of Applicant’s proposed mining and milling project application, which had not been issued and was therefore unavailable at the time [Consolidated Petitioners filed their contentions].”<sup>3</sup> Consolidated Petitioners filed their contentions on March 8, 2010,<sup>4</sup> and the SD DENR letter is dated April 19, 2010.

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<sup>1</sup> Motion to Permit Untimely Filing of or Alternatively, Taking Judicial Notice of the SD DENR Letter to Powertech Cited at 6/8-9/10 Hearing (July 20, 2010) (Motion).

<sup>2</sup> Id. at 3.

<sup>3</sup> Id.

<sup>4</sup> Consolidated Request for Hearing and Petition for Leave To Intervene (March 8, 2010).

On July 30, 2010, Powertech and the NRC Staff filed answers opposing the motion.<sup>5</sup>

The Board denies Consolidated Petitioners' motion. Section 2.309(c), which governs the filing of untimely requests, calls for the moving party to show "[g]ood cause . . . for the failure to file on time." The Commission has held "good cause" to be the most important of the eight non-timely filing factors set out at 10 C.F.R. § 2.309(c).<sup>6</sup> Consolidated Petitioners have not shown good cause for filing the motion more than three months after the SD DENR letter and comments were prepared. Further, as Consolidated Petitioners acknowledge, the Oglala Sioux Tribe appended this very letter and accompanying comments to their May 14, 2010 reply filing.<sup>7</sup> Consolidated Petitioners do not set forth any reasons or demonstrate good cause for why they did not submit the SD DENR letter and comments when their reply filing was due on June 4, 2010.<sup>8</sup>

Because Consolidated Petitioners have failed to demonstrate good cause, they must make a "compelling" showing on the seven remaining late-filing factors.<sup>9</sup> Consolidated Petitioners fail to do so. Most importantly, as noted above, the letter and accompanying comments that Consolidated Petitioners wish to place in the record were already filed before this Board as attachments to the Oglala Sioux Tribe's reply.<sup>10</sup> Accepting a duplicate copy of the letter and comments will not assist in developing a sound record.<sup>11</sup> The Oglala Sioux Tribe's filing sufficiently represents the interests expressed in Consolidated Petitioners' motion.<sup>12</sup>

In the event we determine that the SD DENR letter and comments should not be admitted as an untimely filing, Consolidated Petitioners ask that the Board take judicial notice of

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<sup>5</sup> Response to Consolidated Petitioners' Motion for Untimely Filing (July 30, 2010); NRC Staff's Opposition to Consolidated Petitioners' Motion to Permit Untimely Filing (July 30, 2010).

<sup>6</sup> See Dominion Nuclear Conn., Inc. (Millstone Nuclear Power Station, Units 2 and 3), CLI-05-24, 62 NRC 551, 564 (2005).

<sup>7</sup> Motion at 1.

<sup>8</sup> See Tr. at 381.

<sup>9</sup> See Millstone, CLI-05-24, 62 NRC at 565.

<sup>10</sup> Reply to the NRC Staff and Applicant Responses to the Petition to Intervene and Request for Hearing of the Oglala Sioux Tribe (May 14, 2010).

<sup>11</sup> See 10 C.F.R. § 2.309(c)(viii).

<sup>12</sup> See id. § 2.309(c)(vi).

these documents.<sup>13</sup> The Board denies this request as well. There is no need for the Board to take judicial notice of documents that already appear in the record of this proceeding as an attachment to another party's reply.

For the foregoing reasons, Consolidated Petitioners' motion is denied.

It is so ORDERED.

FOR THE ATOMIC SAFETY  
AND LICENSING BOARD<sup>14</sup>

/RA/

William J. Froehlich, Chairman  
ADMINISTRATIVE JUDGE

Rockville, MD  
August 5, 2010

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<sup>13</sup> Motion at 16.

<sup>14</sup> Copies of this memorandum and order were sent this date by the agency's E-Filing system to the counsel/representatives for (1) Consolidated Petitioners; (2) the Oglala Sioux Tribe; (3) the NRC Staff; and (4) Powertech USA, Inc.

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

In the Matter of	)	
	)	
POWERTECH (USA) INC.	)	Docket No. 40-9075-MLA
(Dewey-Burdock In Situ Recovery Facility	)	
Source Materials License Application)	)	

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Board **ORDER (Denying Motion to Permit Untimely Filing)**, dated August 5, 2010, have been served upon the following persons by Electronic Information Exchange.

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POWERTECH (USA) INC., DEWEY-BURDOCK IN SITU RECOVERY FACILITY  
DOCKET NO. 40-9075-MLA

**ORDER (Denying Motion to Permit Untimely Filing)**

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[Original signed by Linda D. Lewis ] \_\_\_\_\_  
Office of the Secretary of the Commission

Dated at Rockville, Maryland  
this 5<sup>th</sup> day of August 2010.