

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 21, 2012

ORDER  
(Concerning Changes to 10 C.F.R. Part 2)

On August 3, 2012, the U.S. Nuclear Regulatory Commission published in the Federal Register a notice of the adoption of a final rule that discusses changes to its 10 C.F.R. Part 2 rules of practice, effective September 4, 2012.<sup>1</sup> The section entitled Effectiveness of the Final Rule states that in open proceedings, “if there is a dispute over an adjudicatory obligation or situation arising prior to the effective date of the new rule, the former rule provisions would be used. However, the new or amended requirements will be effective and govern all obligations and disputes that arise after [September 4, 2012].”<sup>2</sup> Moreover, “[t]he new and amended requirements in the final rule will not be retroactively applied to presiding officer determinations and decisions issued prior to the effective date of the final rule.”<sup>3</sup> The Commission also

---

<sup>1</sup> Amendments to Adjudicatory Process Rules and Related Requirements, 77 Fed. Reg. 46,562 (Aug. 3, 2012) [Federal Register Notice].

<sup>2</sup> Id.

<sup>3</sup> Id.

instructed that “Licensing Boards should be aware of the effective date of the final rule and take the necessary steps to notify parties of their obligations once the final rule becomes effective.”<sup>4</sup>

While the Board urges the parties to study the new rules, the new rule provisions have limited impacts on the Board’s previous scheduling orders in this case.<sup>5</sup> The changes are as follows:

1) Both Scheduling Orders address the filing of new and amended contentions.<sup>6</sup> The new rules consolidate the former provisions of 10 C.F.R §§ 2.309(c)(1) and (f)(2) into 10 C.F.R. § 2.309(b) and (c).<sup>7</sup> This change will not impact the deadlines for filing new and amended contentions set forth in our Supplemental Scheduling Order, but it does alter the standard used to evaluate contentions filed after the established deadlines.<sup>8</sup>

2) The new rules alter the scope of the NRC Staff’s disclosure obligations, but do not impact the disclosures by all parties that are due on the first business day of every month, as addressed in Section B of the October 4, 2010 Initial Scheduling Order.<sup>9</sup>

In all other respects, the Initial and Supplemental Scheduling Orders will continue to govern this proceeding.

---

<sup>4</sup> Id.

<sup>5</sup> See Licensing Board Order (Prehearing Conference Call Summary and Initial Scheduling Order) (Oct. 4, 2010) (unpublished) [hereinafter Initial Scheduling Order]; Licensing Board Order (Supplementing Initial Scheduling Order) (Nov. 2, 2010) (unpublished) [hereinafter Supplemental Scheduling Order].

<sup>6</sup> Initial Scheduling Order at 6-7; Supplemental Scheduling Order at 3-6.

<sup>7</sup> Federal Register Notice at 46,571.

<sup>8</sup> Supplemental Scheduling Order at 5-6. The new rule states that new or amended contentions filed after the deadlines established by the Board “will not be entertained absent a determination by the presiding officer that a participant has demonstrated good cause by showing that: (i) The information upon which the filing is based was not previously available; (ii) The information upon which the filing is based is materially different from information previously available; and (iii) The filing has been submitted in a timely fashion based on the availability of the subsequent information.” Federal Register Notice at 46,591.

<sup>9</sup> Federal Register Notice at 46,593. See also Initial Scheduling Order at 3.

It is so ORDERED.

FOR THE ATOMIC SAFETY  
AND LICENSING BOARD

*/RA/*

---

William J. Froehlich, Chairman  
ADMINISTRATIVE JUDGE

Rockville, Maryland  
August 21, 2012

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 **ORDER (Concerning Changes to 10 C.F.R., Part 2)**, dated August 21, 2012, have been served upon the following persons by Electronic Information Exchange.

U.S. Nuclear Regulatory Commission  
Atomic Safety and Licensing Board (ASLB)  
Mail Stop T-3F23  
Washington, DC 20555-0001

William J. Froehlich, Chair  
Administrative Judge  
[william.froehlich@nrc.gov](mailto:william.froehlich@nrc.gov)

Richard F. Cole  
Administrative Judge  
[richard.cole@nrc.gov](mailto:richard.cole@nrc.gov)

Mark O. Barnett  
Administrative Judge  
[mark.barnett@nrc.gov](mailto:mark.barnett@nrc.gov)

Anthony C. Eitrem, Esq., Chief Counsel  
[ace1@nrc.gov](mailto:ace1@nrc.gov)  
Kirsten Stoddard, Law Clerk  
[kirsten.stoddard@nrc.gov](mailto:kirsten.stoddard@nrc.gov)

Anne Siarnacki, Law Clerk  
[anne.siarnacki@nrc.gov](mailto:anne.siarnacki@nrc.gov)

U.S. Nuclear Regulatory Commission  
Office of Commission Appellate Adjudication  
Mail Stop O-16C1  
Washington, DC 20555-0001  
OCA Mail Center  
[ocaamail@nrc.gov](mailto:ocaamail@nrc.gov)

U.S. Nuclear Regulatory Commission  
Office of the Secretary of the Commission  
Rulemakings & Adjudications Staff  
Mail Stop O-16C1  
Washington, DC 20555-0001  
[hearingdocket@nrc.gov](mailto:hearingdocket@nrc.gov)

U.S. Nuclear Regulatory Commission  
Office of the General Counsel  
Mail Stop O-15 D21  
Washington, DC 20555-0001  
Catherine Scott, Esq.  
[catherine.scott@nrc.gov](mailto:catherine.scott@nrc.gov)  
Michael Clark, Esq.  
[michael.clark@nrc.gov](mailto:michael.clark@nrc.gov)  
Brett Klukan, Esq.  
[brett.klukan@nrc.gov](mailto:brett.klukan@nrc.gov)  
Patricia Jehle, Esq.  
[patricia.jehle@nrc.gov](mailto:patricia.jehle@nrc.gov)  
OGC Mail Center:  
[OGCMailCenter@nrc.gov](mailto:OGCMailCenter@nrc.gov)

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

**ORDER (Concerning Changes to 10 C.F.R., Part 2)**

Counsel for the Applicant (Powertech)  
Thompson & Pugsley, PLLC  
1225 19<sup>th</sup> Street, NW, Suite 300  
Washington, DC 20036  
Christopher Pugsley, Esq.  
[cpugsley@athompsonlaw.com](mailto:cpugsley@athompsonlaw.com)  
Cynthia L. Seaton, Paralegal  
[cseaton@athompsonlaw.com](mailto:cseaton@athompsonlaw.com)  
Anthony J. Thompson, Esq.  
[ajthompson@athompsonlaw.com](mailto:ajthompson@athompsonlaw.com)

Counsel for the Oglala Sioux Tribe  
Western Mining Action Project  
P. O. Box 349  
Lyons, CO 80540  
Jeffrey C. Parsons, Esq.  
[wmap@igc.org](mailto:wmap@igc.org)

Counsel for the Oglala Sioux Tribe  
Energy Minerals Law Center  
1911 Main Avenue, Suite 238  
Durango, CO 81301  
Travis E. Stills, Esq.  
[stills@frontier.net](mailto:stills@frontier.net)

Counsel for the Oglala Sioux Tribe  
Gonzalez Law Firm  
522 Seventh Street, Suite 202  
Rapid City, SD 57701  
W. Cindy Gillis, Esq.  
[cindy@mariogonzalezlaw.com](mailto:cindy@mariogonzalezlaw.com)

Counsel for Consolidated Intervenors  
(Susan Henderson and Dayton Hyde)  
David Frankel, Esq.  
P.O.B. 3014  
Pine Ridge, SD 57770  
[arm.legal@gmail.com](mailto:arm.legal@gmail.com)

Counsel for Consolidated Intervenors  
(Susan Henderson and Dayton Hyde)  
Law Office of Bruce Ellison  
P.O. Box 2508  
Rapid City, SD 57709  
Bruce Ellison, Esq.  
[belli4law@aol.com](mailto:belli4law@aol.com)  
Roxanne Andre, Paralegal  
[roxanneandre@yahoo.com](mailto:roxanneandre@yahoo.com)

Counsel for Consolidated Intervenor  
(Dayton Hyde)  
Thomas J. Ballanco, Esq.  
945 Traval Street, #186  
San Francisco, CA 94116  
[harmonicengineering1@mac.com](mailto:harmonicengineering1@mac.com)

Consolidated Intervenor  
Aligning for Responsible Mining (ARM)  
P.O.B. 3014  
Pine Ridge, SD 57770  
David Frankel, Esq., Legal Director  
[arm.legal@gmail.com](mailto:arm.legal@gmail.com)

[Original signed by Christine M. Pierpoint]  
Office of the Secretary of the Commission

Dated at Rockville, Maryland  
this 21<sup>st</sup> day of August 2012