

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

September 28, 2012

ORDER
(Scheduling Telephone Status Conference Call)

On August 5, 2010, the Licensing Board issued an order¹ granting requests by several individuals and organizations - collectively "Consolidated Petitioners"² - and the Oglala Sioux Tribe for a hearing and admitting seven of their contentions. These petitioners, now parties, challenge the application of Powertech (USA) Inc. for a license to construct and to operate a proposed in-situ leach uranium recovery facility in Custer and Fall River counties, South Dakota. In the August 5, 2010 order, the Board determined that a subpart L hearing process will be held for the contentions admitted in this case.³

The Licensing Board, in accordance with 10 C.F.R. §§2.329 and 2.332, is convening a status conference call on Thursday, October 4, 2012 at 1:00 P.M. E.D.T. The purpose of the call is to discuss the current status of this proceeding, the projected issuance dates of the Staff Safety Evaluation Report (SER) and the Supplemental Environmental Impact Statements, the

¹ Powertech (USA), Inc, (Memorandum and Order Ruling on Petitions to Intervene and Requests for Hearing), LBP-10-16 (August 5, 2010) (August 5, 2010 Order).

² Consolidated Petitioners Susan Henderson, Dayton Hyde, David Frankel, CWA and ARM were found to have standing in this proceeding.

³ August 5, 2010 Order at 85-86.

timing, location and procedures for the hearing to be held in this proceeding and other case management issues.

Pursuant to 10 C.F.R. § 2.332(d), the Board will consider the NRC Staff's projected schedule for completion of its safety and environmental evaluations in developing the hearing schedule. Accordingly, the NRC Staff is directed to be prepared to state on the record its projected schedule for completion of such safety and environmental evaluations, including but not limited to its current best good faith estimate of the dates when it expects to issue the SER, the Draft Supplemental Environmental Impact Statement (DSEIS) and the Final Supplemental Environmental Impact Statement (FSEIS).

The parties and the Staff should be prepared to address the following matters at the status conference call:

Contentions:

1. Is there any change to the agreement previously reached by the parties as to which admitted contentions should be viewed as safety contentions and which should be viewed as environmental contentions;
2. Is it the desire of the parties for the Board to convene a single hearing to address both the safety and environmental contentions;
3. Whether, pursuant to 10 C.F.R. § 2.310(h), the parties and the Staff are currently willing to consent to handling of any specific contention under Part 2 Subpart N and, if not at this time, whether to establish a later time for reconsideration of this issue;

Timing Issues:

4. What is the current best estimate by the Commission Staff of the dates for release of the Safety Evaluation Report (SER), the Draft Supplemental Environmental Impact Statement (DSEIS) and the Final Supplemental Environmental Impact Statement (FSEIS);

5. Are there any proposed changes to the deadlines for new or amended contentions from those specified in the Initial Scheduling Order (ISO) or the Supplemental ISO in response to the issuance of the SER, the DEIS or the FSEIS;
6. Are there any changes necessary to the ISO or the Supplemental ISO in response to the NRC's August 3, 2012, amendments to the regulations related to Part 2 adjudicatory proceedings;⁴
7. Are there any changes to the Notices of Appearance since our last telephone conference;
8. Should a date be set for the parties to consider any clarification, simplification, or specification of the issues in accordance with 10 C.F.R. § 2.329(c)(1);
9. Should a date be set for the parties to consider the necessity or desirability of amending the pleadings in accordance with 10 C.F.R. § 2.329(c)(2);
10. Should a date be set for the parties to consider opportunities to develop stipulations or admissions of fact in accordance with 10 C.F.R. § 2.329(c)(3);
11. Should a date be set for the parties to consider opportunities for the settlement of issues or contentions, including the utility of appointing a settlement judge pursuant to 10 C.F.R. § 2.338;

Miscellaneous:

12. Whether the parties still believe a site visit would be appropriate and helpful to the Board in the resolution of the contentions;
13. Implications of the dates set forth by the NRC Staff for the issuance of the SER, the DSEIS and the FSEIS on the timing of any proposed site visit and the hearing in this case;
14. A potential venue for the hearing;
15. Any other procedural or scheduling matters that the Board may deem appropriate.

⁴Amendments to Adjudicatory Process Rules and Related Requirements, Final Rule, 77 Fed. Reg. 46,561 (Aug. 3, 2012).

On or before October 4, 2012, the parties and the Staff shall confer with one another for the purpose of discussing the foregoing procedural matters and, where possible, developing agreement, joint positions, or proposals. It would be helpful if, for the purpose of the status call, the parties and the Staff agreed upon a lead spokesperson for areas where they are in agreement. If disagreement occurs on a significant issue, the Board may call for the submission of briefs or separate written proposals on relevant issues after the status conference call. The parties should also consider a joint proposed schedule leading up to the hearing in this case beginning with the issuance of the Staff safety and environmental documents.

On or before October 3, 2012, counsel for each of the parties and the Staff should contact Ms. Twana Ellis at 301-415-1107 to obtain the telephone number and pass code for the October 4, 2012, status conference call. Members of the public or media who wish to listen to this conference call may do so, and should contact Ms. Ellis at the above number for the requisite information. The conference call is expected to last approximately 60 minutes.

It is so ORDERED.

FOR THE ATOMIC SAFETY
AND LICENSING BOARD⁵

/RA/

William J. Froehlich, Chairman
ADMINISTRATIVE JUDGE

Rockville, Maryland
September 28, 2012

⁵ Copies of this order were sent this date by the agency's E-Filing system to the counsel/representatives for (1) Powertech USA, Inc.; (2) Consolidated Petitioners; (3) the Oglala Sioux Tribe; and (4) NRC Staff.

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NUCLEAR REGULATORY COMMISSION

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

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing **ORDER (Scheduling Telephone Status Conference Call)** 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 (Scheduling Telephone Status Conference Call)

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[Original signed by Herald M. Speiser _____]
Office of the Secretary of the Commission

Dated at Rockville, Maryland
this 28th day of September 2012