

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

July 31, 2013

ORDER
(Scheduling Telephone Conference Call)

On August 5, 2010, the Board in the above-captioned matter ruled on two petitions to intervene and requests for hearing.¹ The Board admitted the Oglala Sioux Tribe and the then designated Consolidated Petitioners² as intervenors in this proceeding challenging the application of Powertech (USA), Inc., (“Powertech” or “Applicant”) to construct and operate an in-situ leach uranium recovery (ISR) facility in Custer and Fall River Counties, South Dakota.³ The August 5, 2010 order admitted seven contentions proposed by the Oglala Sioux Tribe and the Consolidated Intervenors.⁴

On November 15, 2012, the Nuclear Regulatory Commission Staff (NRC Staff) notified the Board of the public availability of its Draft Supplemental Environmental Impact Statement

¹ Powertech (USA), Inc. (Dewey-Burdock In Situ Uranium Recovery Facility), LBP-10-16, 72 NRC 361 (2010).

² Consolidated Petitioners Susan Henderson, Dayton Hyde, David Frankel, Clean Water Alliance, and Aligning for Responsible Mining were found to have standing in this proceeding.

³ Powertech, LBP-10-16, 72 NRC at 380-93.

⁴ Id. at 443–44.

(DSEIS) prepared pursuant to the National Environmental Policy Act (NEPA), 42 U.S.C. § 4332, and the agency's implementing regulations, 10 C.F.R. Part 51.⁵ On January 25, 2013, both the Oglala Sioux Tribe and the Consolidated Intervenors filed proposed contentions relating to the DSEIS.⁶

On July 22, 2013 the Board issued a Memorandum and Order⁷ that admitted three new contentions relating to the DSEIS and ruled that seven DSEIS contentions were admissible because of the migration tenet. The admitted contentions in this case were listed in an Appendix to LBP-13-09.⁸ The Board also stated its intention to hold a telephone conference call with the parties to schedule a Limited Appearance Statement session and a site visit.

Therefore, the Licensing Board, in accordance with 10 C.F.R. § 2.329, will convene a telephone conference call on Monday, August 12, 2013, at 1:00 p.m. EDT. The purpose of the call is to discuss case-related administrative matters, including proposals by the parties on the following issues:

- 1) the designation under 10 C.F.R. § 2.316 of the lead intervenor that will be responsible for the litigation of each of the consolidated contentions, i.e., Contentions 1A, 1B, 2, and 3;
- 2) the most convenient date(s) during September 2013 for holding Limited Appearance Statement session(s) pursuant to 10 C.F.R. § 2.315(a);
- 3) the most convenient date(s) during September 2013 in which to conduct a site visit,⁹ together with a jointly agreed upon itinerary and listing of the sites to be visited;
- 4) preparation of a comprehensive, jointly agreed upon schedule leading up to the evidentiary

⁵ Letter to Administrative Judges Froehlich, Cole, and Barnett, from Patricia Jehle, Counsel for NRC Staff (Nov. 15, 2012) (ADAMS Accession No. ML12320A623); see Supplement to the Generic Environmental Impact Statement for In-Situ Leach Uranium Milling Facilities, NUREG-1910 (Supp. 4, Nov. 2012) (ADAMS Accession No. ML12312A040).

⁶ See List of Contentions of the Oglala Sioux Tribe Based on the [DSEIS] (Jan. 25, 2013); Consolidated Intervenors' New Contentions Based on DSEIS (Jan. 25, 2013).

⁷ Powertech (USA), Inc. (Dewey-Burdock In Situ Uranium Recovery Facility), LBP-13-09, 78 NRC____ (July 22, 2013).

⁸ That Appendix is attached to this Order as a convenience to the parties.

⁹ The Board would benefit from seeing both the area proposed to be developed by Powertech and, if possible, an operational ISL facility in the area.

hearing in this case based on the current projected Staff target of October 2013,¹⁰ as the date for the issuance of the final supplemental EIS;

- 5) The jointly agreed upon schedule leading up to the evidentiary hearing, described above, shall include dates for the potential filings contemplated by §§ 2.1202 and 2.1213¹¹ in response to the Staff's projection of "Licensing Action Completed" in November 2013.¹²
- 6) The jointly agreed upon schedule leading up to the evidentiary hearing, described above, may include dates for new and amended contentions in response to the FSEIS, but these dates shall not affect the start of the evidentiary hearing.¹³
- 7) Suggested venues for the Limited Appearance Statement session(s) and the evidentiary hearing.
- 8) Any other procedural matters the parties may wish to raise with the Board.

Prior to the conference call, the parties and the NRC Staff shall confer with one another for the purpose of discussing the foregoing procedural matters and, where possible, developing agreement, and joint proposals. It would be helpful if, for the purpose of the conference call, the parties and the NRC Staff agreed upon a lead spokesperson for areas where they are in agreement.

It is so ORDERED.

FOR THE ATOMIC SAFETY
AND LICENSING BOARD

/RA/

William J. Froehlich, Chairman
ADMINISTRATIVE JUDGE

Rockville, Maryland
July 31, 2013

¹⁰ Letter to Administrative Judges Froehlich, Cole, and Barnett, from Patricia Jehle, Counsel for NRC Staff (July 1, 2013).

¹¹ 10 C.F.R. § 2.1202 and 10 C.F.R. § 2.1213.

¹² <http://www.nrc.gov/materials/uranium-recovery/license-apps/dewey-burdock/dewey-burdock-schedule.html>

¹³ A bifurcated evidentiary hearing will be convened should additional contentions be admitted in response to the issuance of the FSEIS.

Appendix A

Contention 1A: Failure to Meet Applicable Legal Requirements Regarding Protection of Historical and Cultural Resources.

Contention 1B: Failure to Involve or Consult All Interested Tribes as Required by Federal Law.

Contention 2: The DSEIS Fails to Include Necessary Information for Adequate Determination of Baseline Ground Water Quality.

Contention 3: The DSEIS Fails to Include Adequate Hydrogeological Information to Demonstrate Ability to Contain Fluid Migration and Assess Potential Impacts to Groundwater.

Contention 4: The DSEIS Fails to Adequately Analyze Ground Water Quantity Impacts.

Contention 6: The DSEIS Fails to Adequately Describe or Analyze Proposed Mitigation Measures.

Contention 9: The DSEIS Fails to Consider Connected Actions.

Contention 14A: Whether an appropriate consultation was conducted pursuant to the Endangered Species Act and implementing regulations.

Contention 14B: Whether the DSEIS's impact analyses relevant to the greater sage grouse, the whooping crane, and the black-footed ferret are sufficient.

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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 (Scheduling Telephone 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 Conference Call)

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[Original signed by Brian Newell]
Office of the Secretary of the Commission

Dated at Rockville, Maryland,
this 31st day of July 2013.