

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 16, 2013

MEMORANDUM

(Summarizing the August 12, 2013, Teleconference)

On August 12, 2013, at 1:00 p.m. EDT, the Board convened a teleconference with the parties in the above-captioned matter to discuss issues outlined in the Board's July 31, 2013, Order.¹ This Memorandum summarizes the August 12 discussion.

A. Lead Intervenor for Admitted Contentions

In its July 22, 2013, Memorandum and Order (Ruling on Proposed Contentions Related to the Draft Supplemental Environmental Impact Statement), the Board admitted new contentions and consolidated and reworded admitted contentions that were migrated to reference the Draft Environmental Impact Statement.² In so doing, the Board stated that the parties would have to select a lead intervenor to handle contentions 1A, 1B, 2, and 3 in accordance with 10 C.F.R. § 2.316.³ During the teleconference, the parties stated that the

¹ Order (Scheduling Telephonic Conference Call) at 2–3 (July 31, 2013) (unpublished).

² LBP-13-09, 78 NRC __, __ (slip op. at 94–96) (July 22, 2013).

³ Id. at 96. These contentions were submitted by both intervenors and were combined and admitted by the Board. See id. Table at 94.

Oglala Sioux Tribe will serve as lead intervenor on contentions 1A and 1B, and Consolidated Intervenors will serve as lead intervenor on contentions 2 and 3.⁴ The Oglala Sioux Tribe also stated that it would handle contentions 4, 9, 14A, and 14B.⁵

B. Limited Appearance Session

On the issue of whether the Board should conduct a limited appearance session in September 2013, Consolidated Intervenors explained that various state proceedings that are time and effort intensive are scheduled to occur during September.⁶ These proceedings involve many individuals and organizations that would likely participate in a limited appearance session.⁷ As a result, Consolidated Intervenors suggested that a limited appearance session be conducted in the days leading up to the evidentiary hearing, which will likely be held in April or May 2014.⁸ Powertech, the Nuclear Regulatory Commission (NRC) Staff, and the Oglala Sioux Tribe did not object to the limited appearance session being held in September 2013 or at a date closer to the evidentiary hearing.⁹

C. Potential Site Visit

Despite time and resource constraints regarding a potential limited appearance session, Consolidated Intervenors stated that they would be able to support a site visit in September 2013 if the Board wishes to conduct one.¹⁰ The other parties did not object to a September 2013 site visit. The Board will investigate the possibility of conducting a site visit in this case

⁴ Tr. at 508.

⁵ Id. at 509. Contentions 4, 9, 14A and 14B were proposed solely by the Oglala Sioux Tribe and admitted by the Board. See LBP-13-09, 78 NRC at ___ (slip op. at 94).

⁶ Tr. at 510–15.

⁷ Id.

⁸ Id. at 513–15.

⁹ See id. at 515–17. Also briefly discussed was the potential of supporting video conferencing during a limited appearance session. Id. at 512. The Board stated the parties could make a motion requesting such at the appropriate time. Id. at 513.

¹⁰ Id. at 510–11.

early in the week of September 23, consistent with the availability of the parties as articulated during the telephone conference.¹¹

With regard to the substance of a site visit, Powertech suggested that the most important area for the Board to view is the specific location of the project, which would include observing the well fields; the topography and slope of the land; and the site's proximity to wetlands, roads, and other similar structures.¹² Consolidated Intervenors suggested that, in addition to the aforementioned, the Board should focus on the location of the proposed mills and holding ponds, the old mine and existing pit mines, and the observation wells.¹³ They also proposed considering the Beaver and Pass Creek draining areas and their interrelationship with the Cheyenne River, as well as the location of the abandoned bore holes.¹⁴ Ultimately, the parties agree that the Board should observe the entire site in order to gain a full understanding of the area at issue.¹⁵ The Board also expressed interest in visiting the site of an operational In Situ Recovery facility in the vicinity of the proposed Dewey-Burdock facility.¹⁶ In advance of a site visit, the Board will provide a specific itinerary so that the parties may prepare accordingly.¹⁷

D. Potential Schedule

The parties next discussed the potential schedule leading up to and including an evidentiary hearing in this case.¹⁸ NRC Staff explained that, because of administrative demands, the Final Supplemental Environmental Impact Statement would likely be released in

¹¹ Id. at 516–17.

¹² Id. at 521–22.

¹³ Id. at 523.

¹⁴ Id.

¹⁵ Id. at 524. Consolidated Intervenors and the Oglala Sioux Tribe also proposed that the Board consider speaking with people knowledgeable about the legacy related to uranium mining as well as with Tribal Historic Preservation Officers to gain an understanding of the larger potential impact of the project. Id. at 525. They also suggested viewing burial and sacred sites as well as horse sanctuaries. Id. at 525–26.

¹⁶ The closest In Situ Recovery facility that is in operation is the Cameco Resources Crow Butte site. Id. at 522–23.

¹⁷ Id. at 526–27.

¹⁸ See id. at 527–29.

November 2013, as opposed to the originally projected October 2013.¹⁹ The Staff agreed that April/May 2014 would be the likely time frame for the evidentiary hearing.²⁰ The Board encouraged the parties to communicate with each other to establish a proposed schedule leading up to the evidentiary hearing.²¹ That schedule should follow the 10 C.F.R. Appendix B model milestones as closely as possible.²²

With respect to the location of the evidentiary hearing, the parties agreed that the hearing should be held in Custer, Hot Springs, or Rapid City, South Dakota.²³ The Board proposed several options, including the Custer County Courthouse, the Fall River County Courthouse, the Federal District Court, and the Mueller Civic Center.²⁴ The parties also suggested the Best Western Ramkota Hotel and Conference Center as a potential venue.²⁵ The Board will review each of these locations.

E. Safety and Environmental Contentions

The parties discussed the possibility that some of the admitted contentions regard both safety and environmental concerns.²⁶ The specific contentions at issue are contentions 2, 3, 4, and 6.²⁷ The Board will review these contentions and revisit past transcripts and documents where the nature of these contentions has been discussed. It will notify the parties when it determines how this issue should be handled.

FOR THE ATOMIC SAFETY
AND LICENSING BOARD

/RA/

William J. Froehlich, Chairman
ADMINISTRATIVE JUDGE

Rockville, Maryland
August 16, 2013

¹⁹ Id. at 528, 534–35.

²⁰ Id. at 529.

²¹ Id. at 534.

²² Id.

²³ Id. at 530.

²⁴ Id.

²⁵ Id. at 532–33.

²⁶ Id. at 535.

²⁷ Id. at 535–37.

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 **MEMORANDUM (Summarizing the August 12, 2013, Teleconference)** 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

Richard F. Cole
Administrative Judge
richard.cole@nrc.gov

Mark O. Barnett
Administrative Judge
mark.barnett@nrc.gov

Anthony C. Eitrem, Esq., Chief Counsel
ace1@nrc.gov

Nicole Picard, Law Clerk
nicole.picard@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

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

U.S. Nuclear Regulatory Commission
Office of the General Counsel
Mail Stop O-15 D21
Washington, DC 20555-0001
Mary Spencer, Esq.
mary.spencer@nrc.gov
Michael Clark, Esq.
michael.clark@nrc.gov
Brett Klukan, Esq.
brett.klukan@nrc.gov
Patricia Jehle, Esq.
patricia.jehle@nrc.gov
Sabrina Allen, Law Clerk
sabrina.allen@nrc.gov
OGC Mail Center:
OGCMailCenter@nrc.gov

POWERTECH (USA) INC., DEWEY-BURDOCK IN SITU RECOVERY FACILITY
DOCKET NO. 40-9075-MLA
MEMORANDUM (Summarizing the August 12, 2013, Teleconference)

Counsel for the Applicant (Powertech)
Thompson & Pugsley, PLLC
1225 19th Street, NW, Suite 300
Washington, DC 20036
Christopher Pugsley, Esq.
cpugsley@athompsonlaw.com
Cynthia L. Seaton, Paralegal
cseaton@athompsonlaw.com
Anthony J. Thompson, Esq.
ajthompson@athompsonlaw.com
Alison Bimba, Legal Assistant
abimba@thompsonlaw.com

Counsel for the Oglala Sioux Tribe
Western Mining Action Project
P. O. Box 349
Lyons, CO 80540
Jeffrey C. Parsons, Esq.
wmap@iqc.org

Counsel for the Oglala Sioux Tribe
Energy & Conservation Law
1911 Main Avenue, Suite 238
Durango, CO 81301
Travis E. Stills, Esq.
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

Counsel for Consolidated Intervenors
(Susan Henderson and Dayton Hyde)
David Frankel, Esq.
P.O.B. 3014
Pine Ridge, SD 57770
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
Roxanne Andre, Paralegal
roxanneandre@yahoo.com

Counsel for Consolidated Intervenor
(Dayton Hyde)
Thomas J. Ballanco, Esq.
945 Traval Street, #186
San Francisco, CA 94116
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

[Original signed by Clara I. Sola]
Office of the Secretary of the Commission

Dated at Rockville, Maryland,
this 16th day of August 2013.