

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 5, 2013

NOTICE

(Corrected Version of Initial September 5, 2013, Notice Regarding the  
Opportunity to Submit Written Limited Appearance Statements)

This Atomic Safety and Licensing Board hereby gives notice that it will accept written limited appearance statements from members of the public regarding the application submitted by Powertech (USA), Inc. (Powertech) to the U.S. Nuclear Regulatory Commission (NRC) requesting a license to construct and operate a proposed In-Situ Uranium Recovery (ISR) facility in Custer and Fall River Counties, South Dakota.<sup>1</sup> This facility is to be known as the Dewey-Burdock ISR facility. Notice of the Powertech license application (Application) was published in the Federal Register on January 5, 2010.<sup>2</sup> That publication provided interested parties notice of the Application and the opportunity to request a hearing.

---

<sup>1</sup> Powertech (USA) Inc.'s Submission of an Application for a Nuclear Regulatory Commission Uranium Recovery License for its Proposed Dewey-Burdock In-Situ Leach Uranium Recovery Facility in the State of South Dakota (Feb. 25, 2009) (ADAMS Accession No. ML091030707).

<sup>2</sup> Notice of Opportunity for Hearing, License Application Request of Powertech (USA), Inc. Dewey-Burdock In Situ Uranium Recovery Facility in Fall River and Custer Counties, SD, and

I. Background of this Proceeding

On August 5, 2010, this Licensing Board granted two petitions to intervene and requests for hearing.<sup>3</sup> The Board admitted the Oglala Sioux Tribe and the Consolidated Intervenor<sup>4</sup> as intervenors in this proceeding. The Board also admitted a total of seven contentions proposed by the Oglala Sioux Tribe and the Consolidated Intervenor<sup>5</sup>.

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 (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.<sup>6</sup> On January 25, 2013, both the Oglala Sioux Tribe and the Consolidated Intervenor<sup>7</sup> filed additional proposed contentions relating to the DSEIS.<sup>7</sup> On July 22, 2013, the Board admitted three contentions proposed in response to the DSEIS.<sup>8</sup>

---

Order Imposing Procedures for Access to Sensitive Unclassified Non-Safeguards Information (SUNSI) for Contention Preparation, 75 Fed. Reg. 467 (Jan. 5, 2010).

<sup>3</sup> See LBP-10-16, 72 NRC 361 (2010).

<sup>4</sup> Although originally called the Consolidated Petitioners, the Board now refers to Susan Henderson, Dayton Hyde, and Aligning for Responsible Mining (ARM) as the Consolidated Intervenor<sup>4</sup>.

<sup>5</sup> Id. at 443–44.

<sup>6</sup> 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) [hereinafter DSEIS].

<sup>7</sup> See List of Contentions of the Oglala Sioux Tribe Based on the [DSEIS] (Jan. 25, 2013) [hereinafter Oglala Sioux Tribe's Proposed Contentions]; Consolidated Intervenor<sup>7</sup> New Contentions Based on DSEIS (Jan. 25, 2013) [hereinafter Consolidated Intervenor<sup>7</sup> Proposed Contentions].

<sup>8</sup> See LBP-13-09, 78 NRC\_\_\_ (slip op.) (July 22, 2013).

## II. Scope of this Proceeding

The scope of this contested adjudicatory proceeding, and thus the appropriate scope of any limited appearance statements, is defined by the admitted contentions. The admitted contentions in this case are as follows:

**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.<sup>9</sup>

---

<sup>9</sup> LBP-13-09, 78 NRC at \_\_\_\_ (slip op. at 98).

### III. Procedures for Submitting Written Limited Appearance Statements

The purpose of written limited appearance statements is to allow members of the public who are not parties to the adjudication to provide the Board with statements setting forth their positions or concerns on matters relating to the admitted contentions.<sup>10</sup> Persons submitting written limited appearance statements should be aware, however, that the jurisdiction of this Licensing Board and the scope of this adjudicatory proceeding are limited to the Powertech application, and, more particularly, to the admitted contentions listed in Section II above.<sup>11</sup>

Limited appearance statements enable members of the public to alert the Board to issues relating to the Powertech application and the admitted contentions, and they assist the Board in its consideration of these matters. Limited appearance statements will be considered by the Board, but are not under oath or affirmation and do not constitute formal testimony or evidence.

All written limited appearance statements should be sent to the Office of the Secretary using the methods prescribed below, along with a copy to the Board Chairman. Submit statements to the Office of the Secretary via one of the following:

Mail:	Office of the Secretary Rulemakings and Adjudications Staff U.S. Nuclear Regulatory Commission Washington, D.C. 20555-0001
Fax:	(301) 415-1101 (verification (301) 415-1966)
E-Mail:	hearingdocket@nrc.gov

---

<sup>10</sup> See 10 C.F.R. § 2.315 (describing participation by a person who is not a party).

<sup>11</sup> The parties to the adjudication (acting via their officers, directors, lawyers, pro-se representatives, experts, and other witnesses) have the opportunity to file formal motions and other pleadings and to submit testimony and other evidence in the adjudication. Thus, the parties are not entitled to make limited appearance statements. See 10 C.F.R. § 2.315(a). In contrast, limited appearance statements offer the opportunity for members of the public to provide input.

Using the same method of service, a copy of written limited appearance statements should be sent to the Chairman of this Licensing Board as follows:

Mail: William J. Froehlich, Chairman  
c/o: Nicole Picard, Law Clerk  
Atomic Safety and Licensing Board Panel  
Mail Stop T-3 F23  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555-0001

Fax: (301) 415-5599 (verification (301) 415-7405)

E-Mail: Nicole.Picard@nrc.gov and Twana.Ellis@nrc.gov

The Board encourages early submission of written limited appearance statements so that Board members will be able to consider issues raised in such statements while addressing the issues in the evidentiary proceeding.

#### IV. Availability of Documentary Information Regarding the Proceeding

Documents relating to this proceeding are available for public inspection at the Commission's Public Document Room (PDR) or electronically from the publicly available records component of NRC's Agencywide Documents Access and Management System (ADAMS). ADAMS is accessible by clicking "Begin Web-based ADAMS Search" on the NRC website at <http://www.nrc.gov/reading-rm/adams.html>. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC PDR reference staff by telephone at (800) 397-4209 or (301) 415-4737, or by e-mail to [pdrr@nrc.gov](mailto:pdrr@nrc.gov).

V. Oral Limited Appearance Statement Sessions

Should the Board schedule an oral limited appearance statement session, notice will be given by Board order and will be posted on the NRC website.

It is so ORDERED.

FOR THE ATOMIC SAFETY  
AND LICENSING BOARD

***/RA/***

---

William J. Froehlich  
ADMINISTRATIVE JUDGE

Rockville, Maryland  
September 5, 2013

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 **NOTICE (Corrected Version of September 5, 2013 Notice Regarding the Opportunity to Submit Written Limited Appearance Statements)** 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)

Nicole Picard, Law Clerk  
[nicole.picard@nrc.gov](mailto:nicole.picard@nrc.gov)

U.S. Nuclear Regulatory Commission  
Office of Commission Appellate Adjudication  
Mail Stop O-16C1  
Washington, DC 20555-0001  
OCAA 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  
Mary Spencer, Esq.  
[mary.spencer@nrc.gov](mailto:mary.spencer@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)  
Sabrina Allen, Law Clerk  
[sabrina.allen@nrc.gov](mailto:sabrina.allen@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

**NOTICE (Corrected Version of September 5, 2013 Notice Regarding the Opportunity to  
Submit Written Limited Appearance Statements)**

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)  
Alison Bimba, Legal Assistant  
[abimba@thompsonlaw.com](mailto: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](mailto: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](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 Clara I. Sola]  
Office of the Secretary of the Commission

Dated at Rockville, Maryland,  
this 5<sup>th</sup> day of September 2013.