

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

February 5, 2014

ORDER
(Scheduling Telephone Conference Call)

In the above-captioned matter two sets of intervenors, the Oglala Sioux Tribe and the Consolidated Intervenors, have challenged the application of Powertech (USA), Inc. to construct and operate an in-situ leach uranium recovery (ISR) facility in Custer and Fall River Counties, South Dakota.¹ After the Draft Supplemental Environmental Impact Statement (DSEIS) for this facility was publicly issued by the Nuclear Regulatory Commission Staff (NRC Staff) on November 15, 2012,² both Intervenors filed proposed contentions relating to the DSEIS.³ The

¹ LBP-10-16, 72 NRC 361 (2010).

² 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).

³ 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).

Board then issued a Memorandum and Order that admitted three new contentions and ruled that seven contentions were admissible because of the migration tenet.⁴

On January 31, 2014, the NRC Staff issued a Federal Register notice of the public availability of the Final Supplemental Environmental Impact Statement (“FSEIS”) which was 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 The issuance of the FSEIS triggered filing deadlines which the Board now reaffirms. As the Board previously stated, “a new or amended contention based on new and material information contained in the FEIS shall be deemed timely if filed within thirty (30) days of when the FEIS first becomes available.”⁶

The Board also wishes to establish a procedural schedule leading up to the evidentiary hearing in this proceeding. To discuss a proposed schedule, the Board will hold a telephone conference call on Wednesday, February 12, 2014, at 1:00 PM EST. Attached to this Order is a proposed procedural schedule leading up to a hearing during the week of July 28, 2014.

Among other matters, the parties should be prepared to address the following subjects during the conference call:

1. Is the Protective Order issued by Chief Administrative Judge Hawkens on March 5, 2010 sufficient for purposes of an evidentiary hearing, or are any amendments required?
2. Is there potential for settlement of any of the issues in this proceeding?
3. Whether the parties should be required to file their respective initial written statements of position and written testimony with supporting affidavits pursuant to 10 C.F.R. § 2.1207(a)(1) simultaneously or sequentially and, if sequentially, in what order.

⁴ LBP-13-09, 78 NRC 37 (2013).

⁵ Final supplemental environmental impact statement; issuance, 79 Fed. Reg. 5,468 (Jan. 31, 2014).

⁶ Order (Supplementing Initial Scheduling Order) (Nov. 2, 2010) at 6. See also Order (Second Prehearing Conference Call Summary and Supplemental Initial Scheduling Order) (Oct. 16, 2012) at 3 (restating the due date for new or amended contentions as “30 days following the issuance of the FSEIS”).

4. Statements as to the desirability of affording an opportunity for members of the public to present limited appearance statements in accord with 10 C.F.R. § 2.315(a).

5. Suggested time limits for the filing of motions for cross-examination under 10 C.F.R. § 2.1204(b).

6. Any other suggested intermediate procedural dates leading up to the evidentiary hearing.

Before the conference call, the parties shall confer in good faith for the purpose of reaching agreement on the foregoing issues, insofar as practicable. The Board's law clerk, Nicholas Sciretta, will contact the parties with the dial-in number and passcode. Members of the public or media who wish to listen to this conference call may do so, and should contact Mr. Sciretta at Nicholas.Sciretta@nrc.gov with any questions regarding the call.

It is so ORDERED.

FOR THE ATOMIC SAFETY
AND LICENSING BOARD

/RA/

William J. Froehlich, Chairman
ADMINISTRATIVE JUDGE

Rockville, Maryland
February 5, 2014

APPENDIX A :

Dated: 02/05/2014

PROPOSED GENERAL SCHEDULE

POWERTECH USA, INC. (Dewey-Burdock In Situ Recovery Uranium Project) Proceeding

Event	Proposed Date
Final Supplemental Environmental Impact Statement (SEIS) Available	January 31, 2014
New/Amended Contention Motions Due	March 3, 2014
Motions for Summary Disposition of Previously Admitted contentions	March 3, 2014
Answers to New/Amended Contention Motions Due	
Replies to Answers re New/Amended Contention Motions Due	
Licensing Board Ruling on New/Amended Contention Admission	Within 85 days of FSEIS issuance
Admitted New/Amended Contention Mandatory Disclosure Updates	Within 14 days of Board Decision
Summary Disposition Motions on New/Amended Contentions/ Motion to Invoke Subpart N Procedures	Within 21 days of Board Decision
Position Statements/Prefiled Direct Testimony due on previously admitted contentions	60 days from FSEIS April 1, 2014
Position Statement/Prefiled Direct Testimony due on newly admitted contentions, if any	60 days from Board Ruling on New/Amended Contentions
Answering Statements/Testimony	
Rebuttal Statements/Testimony	
Proposed Cross-Examination Questions/Requests for Cross-Examination Due	
Evidentiary Hearing	Week of July 28, 2014
Findings of Fact/Conclusions of Law due	August 29, 2014
Licensing Board Initial Decision	Within 90 days of end of evidentiary hearing and closing of record

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 (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 Clara Sola]
Office of the Secretary of the Commission

Dated at Rockville, Maryland,
this 5th day of February 2014.