

February 11, 2014

William J. Froehlich, Chair  
Administrative Judge  
Atomic Safety and Licensing Board Panel  
Mail Stop T-3 F23  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555-0001

Mark O. Barnett  
Administrative Judge  
Atomic Safety and Licensing Board Panel  
Mail Stop T-3 F23  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555-0001

Richard F. Cole  
Administrative Judge  
Atomic Safety and Licensing Board Panel  
Mail Stop T-3 F23  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555-0001

In the Matter of  
POWERTECH (USA) INC.,  
Docket No. 40-9075-MLA; ASLBP No. 10-898-02-MLA-BD01

Dear Administrative Judges:

In advance of tomorrow's telephone conference call, counsel for the parties consulted on the six questions raised in the Board's February 5, 2014 Order.<sup>1</sup> Counsel also consulted on the proposed schedule the Board included as Appendix A to its Order.

The NRC Staff is filing two attachments that reflect these consultations. The first attachment provides answers to the Board's six questions. The second attachment is a revised schedule that is modeled on the Board's proposed schedule.<sup>2</sup>

Although the parties appear to be in general agreement over the types of filings to be included in the schedule, during tomorrow's teleconference the parties will likely want to discuss further the deadlines for certain filings. The parties also understand that the Board may have questions about the attached schedule. The Staff is submitting the attached schedule so that it might serve as a starting point for tomorrow's discussions.

Sincerely,

***/Signed (electronically) by/  
Patricia Jehle***

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Patricia Jehle  
Counsel for NRC Staff

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<sup>1</sup> Order (Scheduling Telephone Conference Call) (February 5, 2014).

<sup>2</sup> Counsel for the NRC Staff has contacted counsel for the other parties, and the other parties do not object to the Staff filing the attached documents.

## RESPONSES TO QUESTIONS IN BOARD'S SCHEDULING ORDER

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

**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?**

The parties agree that the existing Protective Order is sufficient at this time. If necessary, the Protective Order could be revised to address any new or amended contentions that require access to confidential information.

**2. Is there potential for settlement of any of the issues in this proceeding?**

The parties are open to settlement of issues. The parties have engaged in good-faith discussions concerning settlement, but we have not been able to reach common ground. The parties would be open to continuing settlement discussions, but we believe such discussions should not delay the hearing schedule.

**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.**

Although the parties previously discussed sequential filing, we now believe simultaneous filing would provide the most straightforward approach to submitting testimony. In the proposed schedule, the parties include dates for initial position statements and testimony, as well as answering position statements and testimony. Assuming the parties file simultaneously and are allowed to submit cross-examination questions and prehearing motions (e.g., motions for cross examination, motions in limine), the parties believe rebuttal position statements and testimony will be unnecessary.

**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).**

The parties support the Board allowing the public an opportunity to make limited appearance statements during the week of the oral hearing. The parties would like more information on how the limited appearance session would be held, including whether there would be time limits for making statements. The parties would also be interested in knowing whether a session would be held the evening before the hearing, or whether there would be brief sessions before each day of the hearing.

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

The parties suggest that this time limit be combined with the time limit for filing other prehearing motions, and possibly with the time limit for cross-examination questions, and that either a 14-day or 21-day time limit apply to these pleadings.

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

If the NRC Staff issues Powertech a license, the Intervenor will have five days to ask the Board to stay the effectiveness of the license. 10 C.F.R. § 2.1213(a). Because Powertech still needs to obtain certain state permits in order to conduct full operations at the Dewey-Burdock site, the parties discussed tying the deadline for a stay request to some event other than the Staff's licensing action. However, the parties have not been able to reach agreement on this issue.

APPENDIX B:

Dated: 02/11/2014

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 17, 2014
Answers to New/Amended Contention Motions Due	April 11, 2014
Replies to Answers re New/Amended Contention Motions Due	April 22, 2014
Licensing Board Ruling on New/Amended Contention Admission	Within 105 days of FSEIS issuance (week of May 12–16, 2014)
Admitted New/Amended Contention Mandatory Disclosure Updates	Within 14 days of Board Decision (May 30, 2014)
Summary Disposition Motions on Contentions/ Motion to Invoke Subpart N Procedures	Within 21 days of Board Decision on New/Amended Contentions (June 6, 2014)
Answers to Summary Disposition Motions/ Motions to Invoke Subpart N Procedures	Within 14 days of the deadline for motions (June 20, 2014)
Position Statement/Prefiled Direct Testimony due on all pending contentions (parties file simultaneously)	60 days from Board Ruling on New/Amended Contentions (July 15, 2014)
Answering Statements/Testimony	25 Days from the deadline for position statements and testimony (August 9, 2014)
Requests for Cross-Examination/ Motions in Limine/ Motions to Strike	14 days from the deadline for answering statements/testimony (August 23, 2014)
Proposed Cross-Examination Questions	21 days from the deadline for answering statements/testimony (August 30, 2014)
Responses to Motions for Cross-Examination/Motions in Limine/Motions to Strike	7 days from the deadline for filing motions (September 2, 2014)
Evidentiary Hearing	Week of September 15–19, 2014

Findings of Fact/Conclusions of Law due	Within 30 days of close of evidentiary hearing
Licensing Board Initial Decision	Within 90 days of end of evidentiary hearing and closing of record

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of	)	
	)	
POWERTECH (USA) INC	)	Docket No. 40-9075-MLA
	)	ASLBP No. 10-898-02- MLA-BD01
	)	
(Dewey-Burdock In Situ Uranium Recovery	)	Date: February 11, 2014
Facility)	)	

CERTIFICATE OF SERVICE

Pursuant to 10 C.F.R § 2.305 (revised), I certify that copies of the "PROPOSED SCHEDULING ORDER" in this proceeding have been served via the Electronic Information Exchange (EIE), the NRC's E- Filing System, in this proceeding today, February 11, 2014.

***/Signed (electronically) by/  
Patricia Jehle***

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Date of Signature: February 11, 2014