

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

May 1, 2014

ORDER

(Scheduling Oral Argument on Motion to Stay Powertech's NRC License)

In the above-captioned matter two intervenors, the Oglala Sioux Tribe and the Consolidated Intervenors, challenged the application of Powertech (USA), Inc. (Powertech) to construct and operate an in-situ leach uranium recovery facility in Custer and Fall River Counties, South Dakota.¹ Following their initial petitions to intervene, Intervenors filed contentions in response to the NRC Staff's Draft Supplemental Environmental Impact Statement² and Final Supplemental Environmental Impact Statement (FSEIS),³ both of which

¹ LBP-10-16, 72 NRC 361 (2010).

² Supplement to the Generic Environmental Impact Statement for In-Situ Leach Uranium Milling Facilities, Draft Report, NUREG-1910 (Supp. 4 Nov. 2012) (ADAMS Accession No. ML12312A040).

³ Supplement to the Generic Environmental Impact Statement for In-Situ Leach Uranium Milling Facilities, Final Report, NUREG-1910 (Supp. 4 Jan. 2014) (ADAMS Accession Nos. ML14024A477 (Chapters 1–5) and ML14024A478 (Chapters 6–11 and Appendices)).

were prepared pursuant to the National Environmental Policy Act, 42 U.S.C. § 4332, and the agency's implementing regulations, 10 C.F.R. Part 51. The list of the admitted contentions scheduled for adjudication in August 2014 is available as part of the Board's recent ruling on proposed contentions related to the FSEIS⁴ and includes an admitted cultural resources contention.

On April 8, 2014 the NRC Staff issued NRC Source Materials License No. SUA-1600 to Powertech.⁵ The license allows Powertech to possess and use source and byproduct material in connection with the Dewey-Burdock Project.⁶ Pursuant to 10 C.F.R. § 2.1213 the Oglala Sioux Tribe and the Consolidated Intervenor filed motions to stay this license alleging, inter alia, "irreparable [harm] to its cultural resources."⁷ The Oglala Sioux Tribe also filed an answer in support of the Consolidated Intervenor's motion.⁸ On April 24, 2014 the NRC Staff and Powertech filed oppositions to both motions for a stay.⁹

⁴ Powertech USA, Inc. (Dewey-Burdock In Situ Uranium Recovery Facility), LBP-14-5, 79 NRC at ___ (slip op. at Appendix A) (Apr. 28, 2014).

⁵ Materials License, NRC Form 374 (Apr. 8, 2014) (ADAMS Accession No. ML14043A392). See also, ADAMS Accession Package Number ML14043A052, which includes the license transmittal letter, the license, and the Final Safety Evaluation Report. The NRC Staff also issued its Record of Decision for the Dewey-Burdock Uranium In-Situ Recovery (ISR) Project at ADAMS Accession No. ML14066A466. The Final Programmatic Agreement was executed April 7, 2014 and is available in ADAMS Accession Package No. ML14066A344.

⁶ Materials License, NRC Form 374 (Apr. 8, 2014) (ADAMS Accession No. ML14043A392) at 1.

⁷ Oglala Sioux Tribe's Motion for Stay of Effectiveness of License (Apr. 14, 2014) at 1; Consolidated Intervenor's Application for a Stay of the Issuance of License No. SUA-1600 Under 10 CFR Section 2.1213 (Apr. 14, 2014).

⁸ Oglala Sioux Tribe's Answer in Support of Consolidated Intervenor's Motion for Stay of Effectiveness of License (Apr. 24, 2014).

⁹ NRC Staff's Opposition to Application for a Stay (Apr. 24, 2014); Powertech (USA) Inc's Response to Consolidated Intervenor and the Oglala Sioux Tribe Motions for Stay of the Effectiveness of NRC License No. SUA-1600 (Apr. 24, 2014).

To preserve the status quo until it is able to rule on the motions for a stay, the Board issued a temporary stay to prevent any immediate and irreparable harm to any cultural or historic resources caused by earthwork or ground disturbance within the Dewey-Burdock sites.¹⁰

Intervenors' motions for a stay pled the necessary four elements of 10 C.F.R. § 2.1213, "(1) Whether the requestor will be irreparably injured unless a stay is granted; (2) Whether the requestor has made a strong showing that it is likely to prevail on the merits; (3) Whether the granting of a stay would harm other participants; and (4) Where the public interest lies."

Before ruling on these motions, the Board will hold a telephonic oral argument on Tuesday, May 13, 2014, at 2:00 PM EDT. The argument will focus primarily upon the irreparable injury element of 10 C.F.R. § 2.1213. The parties should be prepared to respond to questions concerning the extent to which earth disturbing activities are planned for the next seven months (i.e., the time period which it is likely to take the Board to resolve the merits of the admitted contentions), the potential effects these earth disturbing activities could have on cultural and historic resources, and the measures in place to prevent these planned activities from causing irreparable harm to such resources. Further, the parties should address which proposed earth disturbing activities are dependent upon possession of an issued NRC materials license and which activities can be undertaken without a NRC materials license.

The fair and reasonable settlement of issues proposed for litigation is encouraged.¹¹ The parties are also requested to discuss the possibility of a stipulation or agreement addressing the protection of cultural and historic resources and the earth disturbing activities proposed for the period before a final decision is rendered in this docket.

¹⁰ Order (Temporarily Granting Stay of Materials License Number SUA-1600) (Apr. 30, 2014) (unpublished).

¹¹ 10 C.F.R. § 2.338 ("The fair and reasonable settlement and resolution of issues proposed for litigation in proceedings subject to this part is encouraged."); see also Rockwell Int'l Corp. (Rocketdyne Division), CLI-90-5, 31 NRC 337, 340 (1990) ("Commission policy strongly favors settlement of adjudicatory proceedings.").

The Board's law clerk, Nicholas Sciretta, will contact the parties with the dial-in number and passcode for this oral argument. Members of the public or media who wish to listen to this oral argument 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
May 1, 2014

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of)	
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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 Oral Argument on Motion to Stay Powertech's NRC License)** have been served upon the following persons by Electronic Information Exchange, and by electronic mail as indicated by an asterisk*.

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

Nicholas Sciretta, Law Clerk
nicholas.sciretta@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

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

ORDER (Scheduling Oral Argument on Motion to Stay Powertech's NRC License)

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@igc.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 Intervenor
(Susan Henderson and Dayton Hyde)
David Frankel, Esq.*
P.O.B. 3014
Pine Ridge, SD 57770
arm.legal@gmail.com

Counsel for Consolidated Intervenor
(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 Sola]
Office of the Secretary of the Commission

Dated at Rockville, Maryland,
this 1st day of May 2014.