

May 10, 2019

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
)
(Dewey-Burdock)
In Situ Uranium Recovery Facility))

NRC STAFF RESPONSE TO CASE MANAGEMENT ORDER

In its Order dated May 2, 2019, the Board provided additional direction regarding case management procedures for the evidentiary hearing.¹ The Board provided that if any party wished to comment on any aspect of the Order, it should do so by May 10, 2019.² The NRC Staff submits the following comments on two provisions in the Order.

First, in connection with its direction regarding exhibit lists, the Board stated that if any party intends to rely upon any non-public information it should inform the Board and also indicate whether the protective order already in place in this proceeding requires any revisions.³ The NRC Staff does intend to rely on two documents that have been maintained as non-public in ADAMS because, based on representations by the Oglala Sioux Tribe, the documents may contain proprietary information.⁴ The status of the documents was explained in the NRC Staff's monthly status report letter to the Board dated July 2, 2018.⁵ The documents are already in the

¹ See Licensing Board Order (Providing Case Management Information) (May 2, 2019) ("Order").

² *Id.* at 10.

³ *Id.* at 7 n.13.

⁴ Memorandum from Kyle White, Acting THPO, Oglala Sioux Tribe, to Diana Diaz-Toro, NRC, and Paul Nickens, SC&A (ADAMS Accession No. ML18170A140) (June 12, 2018) (non-public); Memorandum from Kyle White, Acting THPO, Oglala Sioux Tribe, to Diana Diaz-Toro, NRC, Emily Monteith, NRC, and Paul Nickens, SC&A (June 15, 2018) (ADAMS Accession No. ML18170A155) (non-public).

⁵ Letter from Emily Monteith, NRC Staff Counsel, to Administrative Judges (July 2, 2018) (ML18183A579).

record of this proceeding, as they were subsequently submitted as non-public attachments in support of the NRC Staff's motion for summary disposition filed on August 17, 2018; as explained in that motion, the attachments were filed with the Board and Oglala Sioux Tribe via non-public Electronic Information Exchange.⁶ Both documents were subsequently referenced and discussed in the Board's ruling in LBP-18-5.⁷ For the evidentiary hearing, therefore, the NRC Staff would likewise file the documents via non-public EIE and identify them on the exhibit list as non-public. The NRC Staff anticipates that in its prefiled direct testimony, descriptions of the documents' contents would be limited to what has already been summarized in the NRC Staff's public summary disposition motion and accompanying statement of material facts and again in the Board's decision in LBP-18-5. Accordingly, no revisions are necessary to the protective order already in place in this proceeding.

Second, the Board provided that if exhibits might otherwise be duplicated by other parties in the proceeding, the parties should determine which party will sponsor the exhibit for admission into evidence initially, with other parties revising their submissions and exhibit lists accordingly, or designating a joint exhibit.⁸ The NRC Staff submits that as the first party to file (with the consequence that the other parties' decisions regarding their own exhibits may depend in part on first seeing the NRC Staff's position), and given the imminence of the May 17 deadline, it would be most efficient for the NRC Staff to file as "NRC Staff" exhibits all of the exhibits on which it intends to rely, other than those that have been submitted by other parties and are already in the evidentiary record. Once the other parties have determined whether those exhibits would be duplicative of their own intended exhibits, if another party seeks to

⁶ NRC Staff's Motion for Summary Disposition of Contention 1A, at Attachment 4 cover page (Aug. 17, 2018).

⁷ *Powertech USA, Inc.* (Dewey-Burdock In Situ Uranium Recovery Facility), LBP-18-5, 88 NRC 95, 119-21 (2018).

⁸ Order at 4-5.

sponsor a particular exhibit as its own (or jointly), the NRC Staff is willing to confer and adjust its exhibit list accordingly.

Respectfully submitted,

Executed in Accord with 10 CFR 2.304(d)

Robert Carpenter
Counsel for the NRC Staff
U.S. Nuclear Regulatory Commission
Office of the General Counsel
Mail Stop: O-14 A44
Washington, D.C. 20555-0001
(301) 287-9118
Robert.Carpenter@nrc.gov

Dated at Rockville, Maryland
this 10th day of May, 2019.

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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 Facility))	Date: May 10, 2019

CERTIFICATE OF SERVICE

Pursuant to 10 C.F.R. § 2.305 and the Board's Orders, I hereby certify that copies of the foregoing "NRC STAFF RESPONSE TO CASE MANAGEMENT ORDER" in this proceeding have been served via the Electronic Information Exchange (EIE), the NRC's E-Filing System, this 10th day of May, 2019. Counsel for the Staff served those representatives exempted from filing through the EIE with copies of its motion by electronic mail, also on May 10, 2019.

Signed (electronically) by

Robert Carpenter
Counsel for the NRC Staff
U.S. Nuclear Regulatory Commission
Office of the General Counsel
Mail Stop: O-14 A44
Washington, D.C. 20555-0001
(301) 287-9118
Robert.Carpenter@nrc.gov