

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

July 3, 2014

NOTICE

(Of Opportunity To Make Oral And Written Limited Appearance Statements)

This Atomic Safety and Licensing Board hereby gives notice that it will accept oral and written limited appearance statements from members of the public regarding the application of Powertech, USA, Inc. (Powertech) to the United States Nuclear Regulatory Commission (NRC) for a license to construct and operate an in-situ leach uranium recovery facility in Custer and Fall River Counties, South Dakota. Two sessions to hear oral limited appearance statements will be held on August 18, 2014, in Hot Springs, South Dakota.

I. BACKGROUND AND SCOPE OF PROCEEDING

On January 5, 2010, the NRC published a notice in the Federal Register that any interested person could file a challenge to Powertech's application to construct and operate an in-situ leach uranium recovery facility and could request an adjudicatory hearing thereon.¹ In response to that Notice, two groups, the Oglala Sioux Tribe and the Consolidated Intervenors,

¹ 75 Fed. Reg. 467 (Jan. 5, 2010) (ADAMS Accession No. ML100060051).

challenged Powertech's application and requested a hearing.² On March 12, 2010, this Board was established to handle the matter and to preside over any contested adjudicatory proceeding relating to the Powertech application.³ On August 5, 2010, this Board granted the Intervenors' requests, ruling that they had shown standing and had raised at least one admissible contention.⁴ The scope of this contested adjudicatory proceeding, and thus the appropriate scope of any limited appearance statements, is defined by the contentions that have been raised by the Intervenors and that have been admitted, i.e., have been ruled to satisfy the requirements set forth in the relevant NRC regulation, 10 C.F.R. § 2.309(f)(1).

II. MATTERS TO BE CONSIDERED

Contentions 1A, 1B, 2, 3, 4, 6, 9, 14A, and 14B have been admitted and will be at issue in the evidentiary hearing. These contentions generally concern the adequacy of 1) the project's protection of historical and cultural resources, and 2) the agency's Final Supplemental Environmental Impact Statement (FSEIS) analysis of the project's impacts on the water and ecosystem of the surrounding area. The Board seeks public input on these issues, specifically:

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 FSEIS Fails to Include Necessary Information for Adequate Determination of Baseline Ground Water Quality.

² Consolidated Request for Hearing and Petition for Leave to Intervene (Mar. 8, 2010) (ADAMS Accession No. ML100680010); Petition to Intervene and Request for Hearing of the Oglala Sioux Tribe (Apr. 6, 2010) (ADAMS Accession No. ML100960645).

³ Establishment of Atomic Safety and Licensing Board (Mar. 12, 2010) (unpublished) ADAMS Accession No. ML100710413); see also Powertech (USA) Inc.; Establishment of Atomic Safety and Licensing Board, 75 Fed. Reg. 13,141 (Mar. 18, 2010).

⁴ See LBP-10-16, 72 NRC 361 (2010) (ADAMS Accession No. ML102170300).

Contention 3: The FSEIS Fails to Include Adequate Hydrogeological Information to Demonstrate Ability to Contain Fluid Migration and Assess Potential Impacts to Groundwater.

Contention 4: The FSEIS Fails to Adequately Analyze Ground Water Quantity Impacts.

Contention 6: The FSEIS Fails to Adequately Describe or Analyze Proposed Mitigation Measures.

Contention 9: The FSEIS 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 FSEIS's impact analyses relevant to the greater sage grouse, the whooping crane, and the black-footed ferret are sufficient.

As specified below, members of the public are invited to submit oral or written statements, referred to as "limited appearance statements" related to the contentions listed above.⁵

III. DATE, TIME, AND LOCATION OF ORAL LIMITED APPEARANCE STATEMENT SESSIONS

The purpose of 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 on matters related to the admitted contentions. Such statements may be presented orally during the limited appearance sessions or may be submitted in writing. As suggested by the parties,⁶ two oral limited appearance statement sessions will be held. Both will take place on Monday, August 18, 2014 at the Mueller Civic Center, 801 S. 6th Street, Hot Springs, South Dakota. The first limited appearance session will be held from 11:00 AM to 2:00 PM MDT and the second limited appearance session will be held from 5:00 PM to 8:00 PM MDT.

⁵ 10 C.F.R. § 2.315(a).

⁶ Joint Report on Limited Appearance Statement Sessions (June 11, 2014) at 1.

IV. PARTICIPATION GUIDELINES FOR ORAL LIMITED APPEARANCE STATEMENTS

Any person not a party, representative of a party, counsel to a party or witness who has filed testimony in this evidentiary hearing will be permitted to make a brief oral statement of his or her position on a matter of concern relating to the proceeding. Speakers should be aware, however, that the jurisdiction of this Board and the scope of this proceeding are limited to the Powertech application, and, more particularly, to the admitted contentions.⁷

Limited appearance statements enable members of the public to alert the Board to areas relating to the Powertech application and the admitted contentions where evidence may need to be adduced, and to assist the Board in its consideration of these issues. Oral limited appearance statements will be transcribed but are not under oath or affirmation and do not constitute formal testimony or evidence. Though these statements do not constitute testimony or evidence, they nonetheless may aid the Board and the parties in their consideration of the issues involved in this evidentiary hearing.

Oral limited appearance statements will be entertained during the hours specified above. In the event that all scheduled and unscheduled speakers present at the session have made a presentation, the Board reserves the right to terminate a session prior to the ending time listed above. The Board also reserves the right to extend a session if it determines this is required by the number of speakers present.

The time allotted for each limited appearance statement will be five minutes, but may be further limited depending on the number of written requests to make an oral statement or the number of persons present at the designated time, in order to ensure that everyone will have an opportunity to speak.

⁷ The scope of this proceeding is the admitted contentions. The admitted contentions are attached to this order as Appendix A.

V. SUBMITTING A REQUEST
TO MAKE AN ORAL LIMITED APPEARANCE STATEMENT

A request to make an oral limited appearance statement may be submitted either prior to or at the limited appearance sessions. Those who have submitted timely written requests prior to the limited appearance sessions will be given priority over those who have not filed such requests. To be considered timely, a written request to make an oral limited appearance statement must be mailed, faxed or sent by email so as to be received before 5:00 PM EDT on Friday, August 8, 2014. The request should specify the session (afternoon or evening) during which the requester wishes to make an oral statement.

Written requests to make an oral statement should be submitted by one of the following methods:

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

In addition, using the same method of service, a copy of the written request to make an oral statement should be sent to the Chairman of this Licensing Board as follows:

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

Fax: (301) 415-5599 (verification (301) 415-4128)

Email: Nicholas.Sciretta@nrc.gov and Twana.Ellis@nrc.gov

VI. SUBMITTING WRITTEN LIMITED APPEARANCE STATEMENTS

As provided in 10 C.F.R. § 2.315(a), any person not a party, or a representative of a party, to the proceeding may submit a written statement setting forth his or her position on

matters of concern related to this proceeding. Although these statements do not constitute testimony or evidence, they nonetheless may assist the Board or the parties in their consideration of the issues in this proceeding. The Board encourages early submission of written limited appearance statements so that the Board members will be able to consider issues raised in such statements while addressing the issues in the evidentiary proceeding.

Written limited appearance statements may be submitted at any time, and should be sent by mail, fax, or email both to the Chairman of this Licensing Board and also to the Office of the Secretary. This contact information is listed above.

VII. AVAILABILITY OF DOCUMENTARY INFORMATION REGARDING THE PROCEEDING

Documents relating to Powertech's application are available on the NRC website at <http://www.nrc.gov/info-finder/materials/uranium/licensed-facilities/dewey-burdock.html> (last visited July 2, 2014). These documents are also available for public inspection at the Commission's Public Document Room (PDR), located in One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852 and electronically on the publicly available records component of the NRC's document system (ADAMS). ADAMS is accessible from the NRC website at <http://www.nrc.gov/reading-rm/adams.html> (last visited July 2, 2014).⁸ 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 between 8:00 AM and 4:00 PM Eastern Time, Monday through Friday except federal holidays at (800) 397-4209 or (301) 415-4737 or by sending an email to pdr.resource@nrc.gov.

VIII. POTENTIAL UPDATED/REVISED INFORMATION

Any updated/revised information regarding the limited appearance sessions can be found on the NRC website at <http://www.nrc.gov/reading-rm/doc->

⁸ Documents which are determined to contain sensitive or proprietary information may only be available in redacted form. All non-sensitive documents are available in their complete form.

collections/aslbp/proceedings/2014/ (last visited July 2, 2014) or by calling the NRC's Public Affairs Office at (301) 415-8200.

It is so ORDERED.

FOR THE ATOMIC SAFETY
AND LICENSING BOARD

/RA/

William J. Froehlich, Chair
ADMINISTRATIVE JUDGE

Rockville, Maryland
July 3, 2014

APPENDIX A

- 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 FSEIS Fails to Include Necessary Information for Adequate Determination of Baseline Ground Water Quality.
- Contention 3:** The FSEIS Fails to Include Adequate Hydrogeological Information to Demonstrate Ability to Contain Fluid Migration and Assess Potential Impacts to Groundwater.
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POWERTECH (USA) INC.) Docket No. 40-9075-MLA
(Dewey-Burdock In Situ Recovery Facility))
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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing **NOTICE (Of Opportunity to Make Oral and Written Limited Appearance Statements)** 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
anthony.eitrem@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
Patricia Jehle, Esq.
patricia.jehle@nrc.gov
Sabrina Allen, Paralegal
sabrina.allen@nrc.gov
OGC Mail Center:
OGCMailCenter@nrc.gov

POWERTECH (USA) INC., DEWEY-BURDOCK IN SITU RECOVERY FACILITY
DOCKET NO. 40-9075-MLA

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Counsel for the Applicant (Powertech)
Thompson & Pugsley, PLLC
1225 19th Street, NW, Suite 300
Washington, DC 20036
Christopher S. 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
Timothy Donis, Legal Assistant
tdonis@athompsonlaw.com

Consultant to Applicant (Powertech)
WWC Engineering
1849 Terra Ave.
Sheridan, WY 82801
Jack Fritz
jfritz@wwcengineering.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 Consolidated Intervenor
Aligning for Responsible Mining (ARM)
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

[Original signed by Clara Sola]
Office of the Secretary of the Commission

Dated at Rockville, Maryland,
this 3rd day of July 2014.