

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 16, 2014

ORDER

(Rejecting Filings, Directing Compliance with Case Management  
Order and Providing Opportunity for Resubmission of Rejected Materials)

On June 2, 2014 this Board issued an order establishing procedures for the orderly and efficient filing of the testimony and exhibits for the upcoming evidentiary hearing in the above captioned proceeding.<sup>1</sup> We directed the parties to file position statements, prefiled direct testimony and exhibits simultaneously on June 20, 2014, with answering statements, testimony and exhibits due on July 15, 2014. The Board's Case Management Order included specific instructions for the filing, formatting and numbering of the prefiled testimony and exhibits.

I. The July 15, 2014 Filings

The parties to this proceeding are the applicant, Powertech USA Inc. (Powertech), the Nuclear Regulatory Commission Staff (Staff) and intervenors, the Oglala Sioux Tribe and the

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<sup>1</sup> Order (Providing Case Management Information) (June 2, 2014) (unpublished) [hereinafter Case Management Order].

Consolidated Intervenors.<sup>2</sup> Answering testimony and exhibits were filed in substantial compliance with the Case Management Order by Powertech, Staff, and the Oglala Sioux Tribe on July 15, 2014. Some of the material tendered for filing by Consolidated Intervenors, however, is not in compliance with the Case Management Order or the Commission's regulations.

## II. The Consolidated Intervenors Filing

The Consolidated Intervenors have been granted leave to file by email materials which would otherwise be required to be submitted to the agency and all parties by the Electronic Information Exchange.<sup>3</sup> On July 15, 2014 the Consolidated Intervenors tendered by email materials which they seek to file with the Commission and be made part of the record of the evidentiary hearing before this Board. Some of the materials tendered for filing by Consolidated Intervenors do not comply with the requirements set forth in our Case Management Order.<sup>4</sup>

Specifically, materials contained within the submitted hyperlink (in the Consolidated Intervenors' transmittal email) at (<http://sdcleanwateralliance.org/belli4law/exhibits.zip>), are not marked with a three character party designation (INT), are not sequentially numbered (INT-001, INT-002, etc.), and are not properly described or given a name or marking identifying what the document purports to be in a completed exhibit list which indicates which witness sponsors which document and a description of the document as indicated in Attachment A to the Case Management Order. Further, INT-Exhibit 020 at page 4 and a document entitled "CI-Rebuttal

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<sup>2</sup> LBP-10-16, 72 NRC 361 (2010) admitted the Oglala Sioux Tribe and Consolidated Intervenors (comprised of Susan Henderson, Dayton Hyde, David Frankel, Clean Water Alliance, and Aligning for Responsible Mining) as parties to this proceeding, and granted a hearing with respect to a limited set of contentions.

<sup>3</sup> Order (Granting Motion to File by Email) (Feb. 20, 2014) (unpublished).

<sup>4</sup> Email from David Frankel to Hearing Docket@NRC.gov, Tue. 07/15/2014 11:30 pm consisting of four attached .pdf documents and containing a hyperlink to a .zip file.

Submission.pdf' contain hyperlinks to webpages. Consolidated Intervenors are on notice that the Board will not open such links and if the Consolidated Intervenors want material from the internet to be part of the record they must file the contents of the webpage in conformance with the Board's Case Management Order.

### III. Board Rulings

The Board rejects those materials tendered by the Consolidated Intervenors which are within the compressed file hyperlinked in the July 15, 2014 email for failure to comply with the Case Management Order. The tendered materials will not be added to the ADAMS record system nor will they be included in the Electronic Hearing Docket (EHD) which is the basis for the evidentiary hearing.

Instead of submitting folders with an exhibit number (for instance, INT-021 – Crow Butte) each individual Portable Document File (PDF) within the folder (for example, CB\_2000.01.10\_Mine Unit 1 Restoration Report\_ML003677938.pdf) must have its own description and exhibit number and the exhibit number must be on the first page of the exhibit. This applies to all 192 PDFs submitted in the three folders. The HyperText Markup Language (HTML) documents which were submitted in the folder numbered INT-023 must be re-submitted as individual PDFs each with its own exhibit number on the first page. Any other information referenced as a hyperlink, a HTML document, or a hyperlinked PDF must be submitted on its own as a PDF, with its own exhibit number, in order to be considered in this proceeding. An updated exhibit list which incorporates all of these filing requirements as indicated in Attachment A to the Case Management Order must also be filed.

The Consolidated Intervenors have until July 18, 2014 to refile their testimony, exhibits, rebuttal submission, and exhibit list in conformance with the Case Management Order and the

Commission's regulations.<sup>5</sup> This opportunity to refile materials previously tendered for filing does not permit Consolidated Intervenor to change or to expand the scope or substance of materials previously tendered.

It is so ORDERED.

FOR THE ATOMIC SAFETY  
AND LICENSING BOARD

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William J. Froehlich, Chair  
ADMINISTRATIVE JUDGE

Rockville, Maryland  
July 16, 2014

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<sup>5</sup> 10 C.F.R. § 2.1207. See also Guidance for Electronic Submissions to the NRC, rev. 6.1 (May 27, 2011), available at <http://www.nrc.gov/site-help/e-submittals/guide-electronic-sub.pdf>.

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NUCLEAR REGULATORY COMMISSION

In the Matter of )  
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POWERTECH (USA) INC. ) Docket No. 40-9075-MLA  
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)

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing **Order (Rejecting Filings, Directing Compliance with Case Management Order and Providing Opportunity for Resubmission of Rejected Materials)** have been served upon the following persons by Electronic Information Exchange, and by electronic mail as indicated by an asterisk\*.

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

**Order (Rejecting Filings, Directing Compliance with Case Management Order and Providing Opportunity for Resubmission of Rejected Materials)**

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

Dated at Rockville, Maryland,  
This 16<sup>th</sup> day of July 2014.