

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

August 6, 2014

ORDER

(Question Following Prehearing Hearing Conference)

On August 5, 2014 the Licensing Board held a telephonic prehearing conference with the parties. Among the issues discussed was the closing of the evidentiary record and the timing of the Board's decision at the conclusion of the evidentiary hearing scheduled to begin on August 19, 2014.¹ The Board also heard argument concerning the ability of the Intervenors and the NRC Staff to review certain recently acquired data by Powertech that was referenced in a July 16, 2014 Powertech press release identified as Exhibit OST-019.

I. BACKGROUND

The Oglala Sioux Tribe has proposed, and the Board has admitted, Contention 3 which alleges that the Final Environmental Impact Statement (FSEIS) failed to include adequate hydrogeological information to demonstrate the ability to contain fluid migration. More

¹ Item 14 of [Joint] Proposed Topics for August 5, 2014 Prehearing Teleconference (Aug. 5, 2014).

specifically, Contention 3 alleges that Powertech's application includes, "unsubstantiated assumptions as to the isolation of the aquifers in the ore-bearing zones and failure to account for natural and man-made hydraulic conductivity through natural breccias pipe formations and the historic drilling of literally thousands of drill holes in the aquifers and ore-bearing zones in question, which were not properly abandoned."² Testimony has been filed by Staff,³ Powertech⁴ and the intervenors⁵ on the issue of whether or not the historic drilling in the area affects the intermingling of aquifer waters.

Intervenor expert witness Dr. Moran's direct testimony states: "Dewey-Burdock uranium ore zones are not hydraulically-isolated from other geologic units, other aquifers or zones outside the project area."⁶ His expert opinion is that "potential groundwater-flow pathways in and near the project area are critical to analyzing the proposal and impacts from operations."⁷ Dr. Moran's opinion is based on "-inter-fingering sediments; -fractures and faults; -breccia pipes and/or collapse structures; -4000 to 6000 exploration boreholes" and oil test wells.⁸

In contrast, Applicant expert witness Lawrence has testified, "all available site-specific data collected to date refute Dr. Moran's expert opinion that there are collapse features in the Dewey-Burdock Project area. Nor is there evidence that faults, fractures or leaky boreholes are significantly affecting the hydrogeology within the project area."⁹ Powertech witness Lawrence

² Petition to Intervene and Request for Hearing of the Oglala Sioux Tribe (Apr. 6, 2010) at 22.

³ See, e.g., NRC-005; NRC-006; NRC-083–NRC-088.

⁴ See, e.g., APP-016–APP-028.

⁵ See, e.g., OST-001 (Moran).

⁶ Id. at 18.

⁷ Id. at 19.

⁸ Id. at 20.

⁹ APP-066 at 6.

continues, “since features such as faults, fractures, breccia pipes and open boreholes are not present or if at all only present in very limited instances across the site, they were not included in the development of the February 2012 numerical groundwater model (Exhibit APP-025), which provides a reasonable representation of site hydrologic conditions without introducing such unsubstantiated features.”¹⁰

The NRC Staff witnesses Lancaster and Prikryl testify that, “historic exploration borings, abandoned mine pits, and breccia pipes are potential pathways for groundwater movement at the Dewey-Burdock site. The Staff reviewed each of these potential pathways. The Staff presents information on historic exploration borings in the ‘Artificial Penetrations’ section of the FSEIS at page 3-20 of the FSEIS. As the Staff explains in this section, Powertech cannot confirm that all historic borings were properly plugged and abandoned. However, as the Staff documents in FSEIS Section 4.5.2.1.1.2.2 at page 4-64, Powertech has committed to plugging abandoned boreholes before beginning operations in specific wellfields. The Staff discusses breccia pipes in the ‘Breccia Pipes’ subsection in FSEIS Section 3.5.3.1, at page 3-19 of the FSEIS. As the Staff explains, according to USGS Professional Paper 763, breccia pipes do not occur at the Dewey-Burdock site (Ex. NRC-081).”¹¹

II . EXHIBIT OST-019

On July 16, 2014 Powertech announced in a press release that “it has entered into a Transfer, Bill of Sale and Assignment Agreement dated May 9, 2014 (the “Data Purchase Agreement”) with Energy Fuels Resources (USA) Inc. (“Energy Fuels”), whereby the Company has agreed to purchase certain data (the “Data”) concerning the Dewey Burdock uranium property located in Fall River and Custer Counties, South Dakota from Energy Fuels.”¹² The

¹⁰ Id. at 7.

¹¹ NRC-001 at 44.

¹² OST-019 at 1.

press release concludes, “The data being acquired consists of historical drill hole logs and maps prepared by the Tennessee Valley Authority from the 1970’s and 1980’s when the Dewey Burdock uranium deposit was originally discovered as well as digitized data generated from this work. This data is expected to assist Powertech’s planning of wellfields for the Dewey Burdock uranium property by providing additional quality data to complement Powertech’s existing database.”¹³

The data purchased by Powertech and described in Exhibit OST-019 is relevant to the issues in Contention 3, is similar to other TVA data referenced in the testimony of a number of expert witnesses scheduled to be heard at the upcoming evidentiary hearing,¹⁴ and is subject to mandatory disclosure as defined in 10 C.F.R. § 2.336(a). Mandatory disclosure requires, “A copy, or a description by category and location, of all documents and data compilations in the possession, custody, or control of the party that are relevant to the contentions, provided that if only a description is provided of a document or data compilation, a party shall have the right to request copies of that document and/or data compilation.”¹⁵

The NRC Staff is required to provide, “All documents (including documents that provide support for, or opposition to, the application or proposed action) that both support the NRC staff’s review of the application or proposed action that is the subject of the proceeding and are relevant to the admitted contentions.”¹⁶

¹³ Id.

¹⁴ OST-001 (Moran) at 18, 20, 21; APP-066 (Lawrence) at 3, 8, 9; NRC-001 (Prikryl, Lancaster) at 26.

¹⁵ 10 C.F.R. § 2.336 (a)(2)(i).

¹⁶ 10 C.F.R. § 2.336 (b)(3).

III. BOARD QUESTION for POWERTECH

The ability to review the so called “additional quality data” by the parties to this proceeding may affect the questions to be asked at the hearing, the date for the closing of the record on Contention 3, and the timing of the release of the Board’s decision on this issue. This data is relevant and would appear to provide support for, or opposition to, the application or proposed action. Therefore, the Board is reluctant to close the record in this proceeding without the expert witnesses for the parties having an opportunity to review this data. Instead, the Board is prepared to hold the record open until this data has been disclosed and reviewed by the parties. Powertech shall respond to this Order within 3 days, concerning when this data will be disclosed to the parties.

It is so ORDERED.

THE ATOMIC SAFETY
AND LICENSING BOARD

/RA/

William J. Froehlich, Chair
ADMINISTRATIVE JUDGE

/RA/

Richard F. Cole
ADMINISTRATIVE JUDGE

/RA/

Mark O. Barnett
ADMINISTRATIVE JUDGE

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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(Dewey-Burdock In Situ Recovery Facility))
)

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing **Order (Question Following Prehearing Hearing Conference)** 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
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Office of the Secretary of the Commission

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