

New Submission May Be Path Out of Impasse for Powertech

By Nancy E. Roth, Managing Editor

This has been one tough year for Powertech (TSX:PWE). Ever since it received a Request for Additional Information (RAI) from the Nuclear Regulatory Commission in May 2010 on the company's application for a license to develop an in-situ recovery mine on its Dewey-Burdock uranium property in South Dakota, it has been trying to produce a set of responses that the agency would accept.

Conversations with Powertech and agency officials along with an examination of documents on NRC's website detailing the company's interactions with regulators make it clear that Powertech has had difficulty understanding what agency staff wanted of them at many points in the application process. This held true also in the company's response to the RAI, which contained hundreds of detailed queries and requests for data about the proposed facility.

Consequently Powertech submitted RAI responses that NRC staff repeatedly found insufficient. The first response went in on Dec. 13, 2010. NRC staff started communicating their concerns in February, and followed up with a detailed email on March 7 from the NRC project manager, Ronald Burrows, laying out more than 100 deficiencies in the RAI responses. It also gave the company notice that NRC staff had stopped evaluating the health and safety section of the application.

Powertech and NRC staff then held a public meeting at NRC headquarters for two full days, April 7-8, to discuss what the staff needed to continue the evaluation, plus give Powertech a

chance to answer the major questions NRC had included in the RAI package.

“We were very clear as to what was necessary to get in to us,” William Von Till, chief of NRC’s Uranium Recovery Licensing Branch, told FCW this week. “We gave them two days of discussion with the goal of getting them back on track.”

Von Till noted that at the meeting Powertech had “pulled in additional consultants” to help them complete the RAI response, which Von Till thought was a positive development. “The meeting was very productive,” he told FCW.

In an April 22 letter Powertech Vice President Richard Blubaugh told Burrows that the meeting had been “both instructional and clarifying” and that Powertech planned to submit “the complete and revised responses” to the remaining RAI questions on or about June 29.

Press Distorts, Investors Punish

On May 6, NRC, following normal procedure, sent the company a formal letter identifying the four “critical issues” discussed at the meeting that required more detailed information. The letter also repeated the notice that the staff had put aside the health and safety evaluation until the company provided the needed information. But the letter made it clear that NRC would continue reviewing the environmental section of the application as well as the Section 106 tribal consultations on the proposed in-situ facility (FCW #429, June 16).

Agency staff told FCW last month that they could have decided to stop all work on the application, sending Powertech’s project to the back of the license-application queue. Instead, FCW was

told, the staff had taken the most lenient corrective path because “we are confident that Powertech can deliver the information we need.”

But what the popular press relayed to the public was very nearly the opposite.

“Powertech operations have been suspended,” said the headline in the *Coloradoan* on May 10, although Powertech was not operating anything. NRC was “suspending the permitting process because Powertech was unable to answer public health and safety questions about the Dewey-Burdock mine” [FCW emphasis].

By implying that Powertech could not answer the questions, the reporter subtly introduced the idea that the project itself had serious health and safety issues that Powertech might not want to reveal.

The *Rapid City Journal* account of May 14 offered a more accurate headline but did not compare inaccurate assertions by project opponents with the text of the letter. Nor did the reporter apparently ask NRC staff about their intent.

Powertech’s share price fell from \$0.27 on May 3 to \$0.17 on May 16, a 37% drop. It subsequently recovered to \$0.21, a net loss of 33%. Whether investors were reacting to the NRC letter or the flurry of negative coverage is hard to say. Vol. 10 • No. 431 • June 30, 2011 <http://fuelcycleweek.com> 4

Inconsistent Instruction?

Dick Clement, company president and CEO, told FCW last month that he was confident that the new submission, which went in on Wednesday, would restart the full license application process, and affirmed that Powertech was not quitting.

“Dewey-Burdock is the best uranium project in the U.S.,” he

said.

Asked about the company's difficulty in responding to the RAI, Clement said the initial effort was made needlessly laborious, not because of the number or nature of the questions, but because NRC staff had instructed the company to format its response according to NUREG 1569 guidance. This was cumbersome and time-consuming for the staff, he said. After they submitted the document, said Clement, they heard from other NRC officials that they should have used a simpler, question-and-answer format.

Asked for evidence that it had received varying instructions, Clement sent FCW the May 28, 2010, RAI document, which includes a request to "please submit all appropriate page changes that incorporate the response" with the RAI response. Blubaugh followed up with a telephone call to the project manager asking if the staff wanted replacement pages (in compliance with the guidance) and was told yes, according to Clement.

A senior NRC official insisted that the staff had passed along no such formatting instruction, and that Powertech should have checked other examples of RAI submissions, had they been uncertain. In fact, said the official, the format of Powertech's document was "problematic" for the reviewers.

In February Powertech resubmitted the response in a question-and-answer format.

FCW understands from another license applicant that a similar miscommunication may have happened before.

In that case the applicant had assembled its application according to the NUREG-1569 guidance, with the approval of its NRC project manager, FCW was told.

The 255-page guidance document itself reveals in an introductory section that although the style and format it sets out “may be considered complex or redundant” it was “consistent with NRC practice for standard review plan style and format” and would “preserve consistency with other NRC standard review plans.” “We spent quite a lot of money putting it together,” the applicant told FCW. “Then [the application] comes back six months later and we’re told it’s unacceptable. They didn’t like our format.”