

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 20, 2010

NOTICE OF HEARING

This proceeding concerns the application of Powertech (USA), Inc. for a license to construct and to operate a proposed in-situ leach uranium recovery (ISL) facility, to be known as the Dewey-Burdock ISL facility, in Custer and Fall River Counties, South Dakota. In response to a January 5, 2010 notice of opportunity for hearing,¹ several individuals and organizations filed petitions to intervene and requests for hearing on the Powertech application. On March 8, 2010, a petition setting forth ten contentions was filed by Theodore P. Ebert, Gary Heckenlaible, Susan Henderson, Dayton Hyde, Liliias C. Jones Jarding, the Clean Water Alliance (CWA), and Aligning for Responsible Mining (ARM) (together, Consolidated Petitioners).² On April 6, 2010,

¹ Notice of Opportunity for Hearing, License Application Request of Powertech (USA), Inc. Dewey-Burdock In Situ Uranium Recovery Facility in Fall River and Custer Counties, SD, and Order Imposing Procedures for Access to Sensitive Unclassified Non-Safeguards Information (SUNSI) for Contention Preparation, 75 Fed. Reg. 467 (Jan. 5, 2010).

² Consolidated Request for Hearing and Petition for Leave to Intervene (Mar. 8, 2010). Consolidated Petitioners subsequently filed an additional contention, based on newly available sensitive unclassified non-safeguards information (SUNSI). Petitioners' Request for Leave to File a New Contention Based on SUNSI Material (Apr. 30, 2010).

a petition was filed by the Oglala Sioux Tribe, which also set forth ten contentions.³ On March 12, 2010, this Board was established to preside over the instant proceeding, and on June 8 and 9, 2010, the Board held an oral argument in Custer, South Dakota, on standing and contention admissibility.⁴

In an August 5, 2010 memorandum and order,⁵ the Board ruled that the Oglala Sioux Tribe and five of the seven Consolidated Petitioners (now, Consolidated Intervenors) had standing to intervene in this proceeding and admitted seven of their contentions, as merged and reworded by the Board.⁶ The Board admitted three contentions proffered by Consolidated Intervenors:

Contention D – Powertech’s presentation and analysis of baseline water quality data in its Application is inadequate. Further, Powertech’s analysis of aquifer confinement fails to include an analysis of how artesian and horizontal flow could impact surrounding aquifers and surface waters.

Contentions E (merged with J) – The lack of adequate confinement of the host Inyan Kara aquifer makes the proposed operation inimical to public health and safety in violation of Section 40.31(d) (sic).⁷ Further, Applicant’s failure to describe faults and fractures between aquifers, through which the groundwater can spread uranium, thorium, radium 226 and 228, arsenic, and other heavy metals, violates Section 51.45(c) and (e).

Contention K – The Application is not in conformance with 10 C.F.R. § 40.9 and 10 C.F.R. § 51.45 because the Application does not provide analyses that are adequate, accurate, and complete in all material respects to demonstrate that cultural and historic resources . . . are identified and protected pursuant to Section 106 of the National Historic Preservation Act. As a result, the Application fails to comply with Section 51.60

³ Petition to Intervene and Request for Hearing of the Oglala Sioux Tribe (Apr. 6, 2010).

⁴ See Tr. at 1-405.

⁵ Powertech (USA), Inc. (Dewey-Burdock In Situ Uranium Recovery Facility), LBP-10-16, 72 NRC __ (slip op.) (Aug. 5, 2010). The NRC Staff subsequently filed a motion requesting clarification of the Board’s memorandum and order. Motion for Clarification Regarding Scope of Admitted Contentions (Aug. 16, 2010). This motion remains pending before the Board.

⁶ The five admitted Consolidated Petitioners were Susan Henderson, Dayton Hyde, David Frankel, CWA, and ARM.

⁷ The section cited should be 40.32(d).

The Board also admitted four contentions proffered by the Oglala Sioux Tribe:

Contention 1 – Powertech’s Application is deficient because it fails to address adequately protection of historical and cultural resources.

Contention 2 – Failure to include necessary information for adequate determination of baseline ground water quality.

Contention 3 – Failure to include adequate hydrogeological information to demonstrate ability to contain fluid migration.

Contention 4 – Inadequate analysis of Ground Water Quantity Impacts.

The Board ruled that the procedures of Subpart L shall be used for these admitted contentions.⁸

Additionally, the Board directed two of the Consolidated Petitioners, David Frankel and Susan Henderson, to elect whether they wished to participate as individuals or as represented members of ARM and CWA, respectively.⁹ In an August 13, 2010 filing, Mr. Frankel elected to proceed as a represented member of ARM, while Ms. Henderson chose to proceed as an individual intervenor, rather than authorize CWA to represent her. Accordingly, the Board ruled that CWA and Mr. Frankel, in his individual capacity, were no longer parties to this proceeding.¹⁰

In light of the foregoing, please take notice that a hearing will be conducted in this proceeding. The Board may conduct an oral argument,¹¹ hold pre-hearing conferences,¹² and conduct evidentiary hearings.¹³ Unless otherwise ordered by the Commission, the public is invited to attend any oral argument, prehearing conference, or evidentiary hearing.¹⁴ Notices of these sessions will be published in the Federal Register and/or made available to the public at

⁸ Powertech, LBP-10-16, 72 NRC at ___ (slip op. at 87-88).

⁹ Id. (slip op. at 21).

¹⁰ Licensing Board Order (Accepting Elections Regarding Representation) (Aug. 17, 2010).

¹¹ See 10 C.F.R. § 2.331.

¹² See id. § 2.329.

¹³ See id. §§ 2.327-2.328, 2.1206-2.1208.

¹⁴ Id. § 2.328.

the NRC Public Document Room, located at One White Flint, 11555 Rockville Pike (first floor), Rockville, MD, and through the NRC website, www.nrc.gov.

The Administrative Dispute Resolution Act of 1996¹⁵ encourages the use of alternative dispute resolution by Federal agencies. The parties are encouraged to explore voluntary processes, including settlement talks with or without a neutral, to resolve the issues in this case. Upon request, a settlement judge from the Atomic Safety and Licensing Board Panel (ASLBP) could be appointed.¹⁶

Additionally, as provided in 10 C.F.R. § 2.315(a), any person not a party to the proceeding may submit a written limited appearance statement setting forth his or her position on the issues in this proceeding. These statements do not constitute evidence but may assist the Board and/or parties in defining the issues being considered. Persons wishing to submit a written limited appearance statement should send it to the Office of the Secretary by one of the methods prescribed below:

Mail to: Office of the Secretary
Rulemakings and Adjudications Staff
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Fax to: (301) 415-1101 (verification (301) 415-1966)

Email to: hearing.docket@nrc.gov

In addition, a copy of the limited appearance statement should be sent to the Licensing Board Chairman using the same method at the address below:

Mail to: Administrative Judge William J. Froehlich
Atomic Safety and Licensing Board Panel
Mail Stop T-3F23
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Fax to: (301) 415-5599 (verification (301) 415-7550)

¹⁵ 5 U.S.C. §§ 571-584.

¹⁶ 10 C.F.R. § 2.338(b).

Email to: william.froehlich@nrc.gov

At a later date, the Board may entertain oral limited appearance statements at a location or locations in the vicinity of the proposed Dewey-Burdock ISL facility. Notice of any oral limited appearance sessions will be published in the Federal Register and/or made available to the public at the NRC Public Document Room and on the NRC website, www.nrc.gov.

Documents relating to this proceeding are available for public inspection at the NRC's Public Document Room or electronically from the publicly available records component of NRC's document system (ADAMS).¹⁷ ADAMS is accessible from the NRC website at www.nrc.gov/reading-rm/adams.html. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS may contact the NRC Public Document Room reference staff by telephone at (800) 397-4209 or (301) 415-4737, or by email to pdr@nrc.gov.

It is so ORDERED.

FOR THE ATOMIC SAFETY
AND LICENSING BOARD¹⁸

/RA/

William J. Froehlich, Chairman
ADMINISTRATIVE JUDGE

Rockville, MD
August 20, 2010

¹⁷ In making documents available to the affected community in this proceeding, the Board anticipates that the Staff will adhere to the letter and spirit of the "U.S. Nuclear Regulatory Commission's Strategy for Outreach and Communication with Indian Tribes Potentially Affected by Uranium Recovery Sites" (ADAMS Accession No. ML092110101).

¹⁸ Copies of this notice were sent this date by the agency's E-Filing system to the counsel/representatives for (1) Consolidated Intervenors; (2) the Oglala Sioux Tribe; (3) the NRC Staff; and (4) Powertech (USA), Inc.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of)
)
POWERTECH (USA) INC.) Docket No. 40-9075-MLA
(Dewey-Burdock In Situ Recovery Facility)
Source Materials License Application))

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Board **NOTICE OF HEARING**, dated August 20, 2010, have been served upon the following persons by Electronic Information Exchange.

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
wjf1@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
ace1@nrc.gov
Megan Wright, Law Clerk
megan.wright@nrc.gov

U.S. Nuclear Regulatory Commission
Office of Commission Appellate Adjudication
Mail Stop O-16C1
Washington, DC 20555-0001
OCA 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
Catherine Scott, Esq.
clm@nrc.gov
Michael Clark, Esq.
mjc1@nrc.gov
Brett Klukan, Esq.
brett.klukan@nrc.gov
Patricia Jehle, Esq.
patricia.jehle@nrc.gov

OGC Mail Center:
OGCMailCenter@nrc.gov

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

NOTICE OF HEARING

Counsel for the Applicant (Powertech)
Thompson & Pugsley, PLLC
1225 19th Street, NW, Suite 300
Washington, DC 20036
Christopher Pugsley, Esq.
cpugsley@athompsonlaw.com
Cynthia L. Seaton, Paralegal
cseaton@athompsonlaw.com
Anthony J. Thompson, Esq.
ajthompson@athompsonlaw.com

Counsel for the Oglala Sioux Tribe
Gonzales Law Firm
522 7th Street, Suite 202
Rapid City, SD 57701
Grace Dugan, Esq.
dugan@wavecom.net

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 Minerals Law Center
1911 Main Avenue, Suite 238
Durango, CO 81301
Travis E. Stills, Esq.
stills@frontier.net

Consolidated Petitioner
Aligning for Responsible Mining (ARM)
P.O.B. 3014
Pine Ridge, SD 57770
David Frankel, Esq., Legal Director
arm.legal@gmail.com

Counsel for Consolidated Petitioners
(Susan Henderson and Dayton Hyde)
David Frankel, Esq.
P.O.B. 3014
Pine Ridge, SD 57770
arm.legal@gmail.com

Counsel for Consolidated Petitioners
(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 Petitioners
(Dayton Hyde)
Thomas J. Ballanco, Esq.
945 Traval Street, #186
San Francisco, CA 94116
harmonicengineering1@mac.com

[Original signed by Christine M. Pierpoint]
Office of the Secretary of the Commission

Dated at Rockville, Maryland
this 20th day of August 2010