

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 21, 2012

ORDER
(Concerning Changes to 10 C.F.R. Part 2)

On August 3, 2012, the U.S. Nuclear Regulatory Commission published in the Federal Register a notice of the adoption of a final rule that discusses changes to its 10 C.F.R. Part 2 rules of practice, effective September 4, 2012.¹ The section entitled Effectiveness of the Final Rule states that in open proceedings, “if there is a dispute over an adjudicatory obligation or situation arising prior to the effective date of the new rule, the former rule provisions would be used. However, the new or amended requirements will be effective and govern all obligations and disputes that arise after [September 4, 2012].”² Moreover, “[t]he new and amended requirements in the final rule will not be retroactively applied to presiding officer determinations and decisions issued prior to the effective date of the final rule.”³ The Commission also

¹ Amendments to Adjudicatory Process Rules and Related Requirements, 77 Fed. Reg. 46,562 (Aug. 3, 2012) [Federal Register Notice].

² Id.

³ Id.

instructed that “Licensing Boards should be aware of the effective date of the final rule and take the necessary steps to notify parties of their obligations once the final rule becomes effective.”⁴

While the Board urges the parties to study the new rules, the new rule provisions have limited impacts on the Board’s previous scheduling orders in this case.⁵ The changes are as follows:

1) Both Scheduling Orders address the filing of new and amended contentions.⁶ The new rules consolidate the former provisions of 10 C.F.R §§ 2.309(c)(1) and (f)(2) into 10 C.F.R. § 2.309(b) and (c).⁷ This change will not impact the deadlines for filing new and amended contentions set forth in our Supplemental Scheduling Order, but it does alter the standard used to evaluate contentions filed after the established deadlines.⁸

2) The new rules alter the scope of the NRC Staff’s disclosure obligations, but do not impact the disclosures by all parties that are due on the first business day of every month, as addressed in Section B of the October 4, 2010 Initial Scheduling Order.⁹

In all other respects, the Initial and Supplemental Scheduling Orders will continue to govern this proceeding.

⁴ Id.

⁵ See Licensing Board Order (Prehearing Conference Call Summary and Initial Scheduling Order) (Oct. 4, 2010) (unpublished) [hereinafter Initial Scheduling Order]; Licensing Board Order (Supplementing Initial Scheduling Order) (Nov. 2, 2010) (unpublished) [hereinafter Supplemental Scheduling Order].

⁶ Initial Scheduling Order at 6-7; Supplemental Scheduling Order at 3-6.

⁷ Federal Register Notice at 46,571.

⁸ Supplemental Scheduling Order at 5-6. The new rule states that new or amended contentions filed after the deadlines established by the Board “will not be entertained absent a determination by the presiding officer that a participant has demonstrated good cause by showing that: (i) The information upon which the filing is based was not previously available; (ii) The information upon which the filing is based is materially different from information previously available; and (iii) The filing has been submitted in a timely fashion based on the availability of the subsequent information.” Federal Register Notice at 46,591.

⁹ Federal Register Notice at 46,593. See also Initial Scheduling Order at 3.

It is so ORDERED.

FOR THE ATOMIC SAFETY
AND LICENSING BOARD

/RA/

William J. Froehlich, Chairman
ADMINISTRATIVE JUDGE

Rockville, Maryland
August 21, 2012

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 **ORDER (Concerning Changes to 10 C.F.R., Part 2)**, dated August 21, 2012, 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
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
ace1@nrc.gov
Kirsten Stoddard, Law Clerk
kirsten.stoddard@nrc.gov

Anne Siarnacki, Law Clerk
anne.siarnacki@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
Catherine Scott, Esq.
catherine.scott@nrc.gov
Michael Clark, Esq.
michael.clark@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
ORDER (Concerning Changes to 10 C.F.R., Part 2)

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
 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

Counsel for the Oglala Sioux Tribe
 Gonzalez Law Firm
 522 Seventh Street, Suite 202
 Rapid City, SD 57701
 W. Cindy Gillis, Esq.
cindy@mariogonzalezlaw.com

Counsel for Consolidated Intervenor
 (Susan Henderson and Dayton Hyde)
 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

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

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

Dated at Rockville, Maryland
 this 21st day of August 2012