

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

September 12, 2014

ORDER

(Granting Joint Motion to Amend Protective Order)

In March 5, 2010 the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel issued a Protective Order and Non-Disclosure Agreement<sup>1</sup> for the purpose of providing for nondisclosure of sensitive unclassified, non-safeguards information (SUNSI) related to historic and cultural resources in this case. By Order issued September 8, 2014,<sup>2</sup> the Licensing Board ruled that certain data and documents identified in the Oglala Sioux Tribe's Exhibit OST-019 and their motion dated August 16, 2014,<sup>3</sup> must be disclosed immediately. The Protective Order does not address these data and documents.

---

<sup>1</sup> Memorandum and Order (Protective Order Governing the Disclosure of Sensitive Unclassified Non-Safeguards Information (SUNSI)), (Mar. 5, 2010) (unpublished) (ADAMS Accession No. ML100640405) (Protective Order).

<sup>2</sup> Licensing Board Order (Post Hearing Order) (Sept. 8, 2014) (unpublished).

<sup>3</sup> Oglala Sioux Tribe's Motion to Enforce Mandatory Disclosure Duties Under 10 C.F.R. § 2.336 (Aug. 16, 2014).

On September 11, 2104 Powertech USA, Inc. (Powertech) filed a motion to amend the Protective Order.<sup>4</sup> Powertech states that all parties jointly request that the Board modify the Protective Order and Non-Disclosure Agreement to include the identified data and documents requested by the Oglala Sioux Tribe. Powertech further states that the parties request that the following language be added to the Protective Order:

“This Protective Order shall also apply to borehole data and documents or other information ordered to be disclosed by the Licensing Board in its September 8, 2014 Order. Any and all copies or other duplicates of information in these data and documents must be returned to Powertech no later than ten (10) days after the close of the administrative record for this proceeding.”

“In the event that copies or other duplicates of information in these data and documents are to be used in evidence in this proceeding or associated NRC-related legal proceedings, such copies or duplicates shall be returned to Powertech no later than ten (10) after exhaustion of all legal proceedings associated with this current administrative proceeding such as Commission or federal court appeals.”

“All references in the Non-Disclosure Affidavit to 'SUNSI' shall also refer to the borehole data and documents or other information ordered to be disclosed by the Licensing Board in its September 8, 2014 Order and it shall not be necessary for said Non-Disclosure Affidavit to be notarized provided it is signed by the person receiving the SUNSI or the borehole data and documents or other information ordered to be disclosed by the Licensing Board in its September 8, 2014 Order, as applicable.”

Powertech further states that it has consulted with all parties on the Joint Motion and there were no objections.<sup>5</sup>

Powertech also notes that it plans to effectuate disclosure of all aforementioned data and documents covered by the Protective Order, as well as all other non-confidential documents identified in the Licensing Board's September 8, 2014 Order beginning Friday, September 12, 2014. CD copies of digitized data will be sent via overnight mail on that same day and

---

<sup>4</sup> Joint Motion to Amend Protective Order to Include Documents to Be Disclosed Under September 10, 2014 (sic) Licensing Board Order (Sept. 11, 2014) (Joint Motion).

<sup>5</sup> See 10 C.F.R. § 2.323(b).

electronic copies of other identified documents will be sent via electronic mail.<sup>6</sup>

For good cause shown, the Joint Motion is GRANTED. The following three paragraphs will be added to the Protective Order:

“This Protective Order shall also apply to borehole data and documents or other information ordered to be disclosed by the Licensing Board in its September 8, 2014 Order. Any and all copies or other duplicates of information in these data and documents must be returned to Powertech no later than ten (10) days after the close of the administrative record for this proceeding.”

“In the event that copies or other duplicates of information in these data and documents are to be used in evidence in this proceeding or associated NRC-related legal proceedings, such copies or duplicates shall be returned to Powertech no later than ten (10) after exhaustion of all legal proceedings associated with this current administrative proceeding such as Commission or federal court appeals.”

“All references in the Non-Disclosure Affidavit to 'SUNSI' shall also refer to the borehole data and documents or other information ordered to be disclosed by the Licensing Board in its September 8, 2014 Order and it shall not be necessary for said Non-Disclosure Affidavit to be notarized provided it is signed by the person receiving the SUNSI or the borehole data and documents or other information ordered to be disclosed by the Licensing Board in its September 8, 2014 Order, as applicable.”

It is so ORDERED.

FOR THE ATOMIC SAFETY  
AND LICENSING BOARD

*/RA/*

---

William J. Froehlich, Chair  
ADMINISTRATIVE JUDGE

Rockville, Maryland  
September 12, 2014

---

<sup>6</sup> Inasmuch as the borehole data and documents or other information ordered to be disclosed by the Licensing Board in its September 8, 2014 Order are “disclosure/discovery material” these materials need not be served on the Licensing Board. See generally, 10 C.F.R. § 2.336.

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)	)	
	)	

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing **ORDER (Granting Joint Motion to Amend Protective Order)** have been served upon the following persons by Electronic Information Exchange, and by electronic mail as indicated by an asterisk.

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](mailto:william.froehlich@nrc.gov)

Richard F. Cole  
Administrative Judge  
[richard.cole@nrc.gov](mailto:richard.cole@nrc.gov)

Mark O. Barnett  
Administrative Judge  
[mark.barnett@nrc.gov](mailto:mark.barnett@nrc.gov)

Anthony C. Eitrem, Esq., Chief Counsel  
[anthony.eitrem@nrc.gov](mailto:anthony.eitrem@nrc.gov)

Nicholas Sciretta, Law Clerk  
[nicholas.sciretta@nrc.gov](mailto:nicholas.sciretta@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](mailto: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](mailto:hearingdocket@nrc.gov)

U.S. Nuclear Regulatory Commission  
Office of the General Counsel  
Mail Stop O-15 D21  
Washington, DC 20555-0001  
Mary Spencer, Esq.  
[mary.spencer@nrc.gov](mailto:mary.spencer@nrc.gov)  
Michael Clark, Esq.  
[michael.clark@nrc.gov](mailto:michael.clark@nrc.gov)  
Patricia Jehle, Esq.  
[patricia.jehle@nrc.gov](mailto:patricia.jehle@nrc.gov)  
Sabrina Allen, Paralegal  
[sabrina.allen@nrc.gov](mailto:sabrina.allen@nrc.gov)  
OGC Mail Center:  
[OGCMailCenter@nrc.gov](mailto:OGCMailCenter@nrc.gov)

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

**ORDER (Granting Joint Motion to Amend Protective Order)**

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

Consultant to Applicant (Powertech)  
WWC Engineering  
1849 Terra Ave.  
Sheridan, WY 82801  
Jack Fritz  
[jfritz@wwcengineering.com](mailto:jfritz@wwcengineering.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](mailto:wmap@igc.org)

Counsel for the Oglala Sioux Tribe  
Energy & Conservation Law  
1911 Main Avenue, Suite 238  
Durango, CO 81301  
Travis E. Stills, Esq.  
[stills@frontier.net](mailto:stills@frontier.net)

Counsel for Consolidated Intervenor  
Aligning for Responsible Mining (ARM)  
David Frankel, Esq.\*  
P.O.B. 3014  
Pine Ridge, SD 57770  
[arm.legal@gmail.com](mailto: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](mailto:belli4law@aol.com)  
Roxanne Andre, Paralegal\*  
[roxanneandre@yahoo.com](mailto:roxanneandre@yahoo.com)

Counsel for Consolidated Intervenor  
(Dayton Hyde)  
Thomas J. Ballanco, Esq.\*  
945 Traval Street, #186  
San Francisco, CA 94116  
[harmonicengineering@gmail.com](mailto:harmonicengineering@gmail.com)

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

Rockville, Maryland  
September 12, 2014