

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION  
ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges:

William J. Froehlich, Chairman  
Dr. Mark O. Barnett  
G. Paul Bollwerk, III

In the Matter of  POWERTECH USA, INC.  (Dewey-Burdock In Situ Uranium Recovery Facility)
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Docket No. 40-9075-MLA  
  
ASLBP No. 10-898-02-MLA-BD01  
  
May 2, 2019

ORDER  
(Providing Case Management Information)

This Order supplements the Case Management Order issued June 2, 2014<sup>1</sup> in the above-captioned proceeding. This Order provides instruction to the parties on new procedures concerning the addition of a cover/title page to prefiled testimony and exhibits, as well as other matters related to the evidentiary hearing scheduled for August 28–30, 2019 in Rapid City, South Dakota.<sup>2</sup>

I. Schedule for Party Filings

Party prefiled testimony, supporting evidentiary materials,<sup>3</sup> and proposed Board cross-examination questions shall be filed in accordance with the schedule set forth in the Board's

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<sup>1</sup> Licensing Board Order (Providing Case Management Information) (June 2, 2014) (unpublished) [hereinafter 2014 Case Management Order].

<sup>2</sup> Licensing Board Order (Granting NRC Staff Motion and Scheduling Evidentiary Hearing) (Apr. 29, 2019) (unpublished). See also Licensing Board Order; Granting NRC Staff Motion and Scheduling Evidentiary Hearing, 84 Fed. Reg. \_\_\_\_ (2019).

<sup>3</sup> In the context of this 10 C.F.R. Part 2, Subpart L proceeding, the Board generally does not anticipate accepting into evidence any documentary material that is not discussed or cited in support of a party's prefiled direct, response, or reply testimony. Citations in witness testimony to documentary material (other than citations to legal authorities, such as statutes, regulations,

April 29, 2019 scheduling order. Further, the Board encourages the parties to attempt to arrive at stipulations regarding factual information and/or the authenticity and admissibility of prefiled evidentiary materials. Stipulations regarding factual information should be filed at the same time as parties' initial prefiled testimony. The authenticity and admissibility of evidentiary materials (including prefiled direct, response, or reply testimony) will be presumed to be agreed to by all the parties (and any objection to the evidentiary materials' authenticity and/or admissibility will be deemed waived) absent a filing submitted on the date provided in the Board's general schedule for in limine motions. Any objection as to authenticity and/or admissibility must (a) designate which specific portions of any prefiled materials are the subject of an authenticity and/or admissibility objection; and (b) provide the legal/factual basis for the objection.

## II. Initial Written Statements of Position and Written Responses

The parties' initial written statements of position, in accord with 10 C.F.R. § 2.1207(a)(1), should be in the nature of a trial brief that provides a road map of the party's case. Each party should, at a minimum, provide the Board with a brief summary or outline of (1) the key points made in the testimony of each witness or panel proffered by the party; (2) any important legal issues in controversy; and (3) the relief and/or determinations sought from the Board. Written responses prepared pursuant to section 2.1207(a)(2) should, at minimum, provide a brief summary or outline of (1) the key points made in the testimony of each witness or witness panel proffered by the party in response or reply to the direct testimony provided by the other parties, identifying the particular witness or witness panel to which the response or reply testimony is directed; (2) the party's response to any important legal issues identified by the other parties in

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and NRC Issuances), including information referenced as a hyperlink, a hypertext markup language (HTML) document, or a hyperlinked portable document format (PDF) document, must be accompanied by a PDF evidentiary exhibit, submitted with its own exhibit number, that includes the relevant portions of the referenced supporting material.

their initial written statements; and (3) the party's response to the relief and/or determinations sought from the Board by the other parties in their initial written statements.

### III. Form of Evidentiary Materials

The Board intends to utilize electronic exhibit display during this evidentiary hearing. As such, assuming that the witness testimony and supporting exhibits are properly prefiled using the agency's E-Filing system,<sup>4</sup> it should not be necessary for the parties to provide the Board or counsel for the other parties with any paper copies of their evidentiary materials (including their direct, response, and reply testimony).<sup>5</sup>

Additionally, while the format for a simplified hearing under 10 C.F.R. Part 2, Subpart L, does not generally contemplate the provision of additional "rebuttal" evidentiary material during an evidentiary hearing, see supra note 3, if any of the parties has documentary material that it does not wish to provide in support of its direct, response, or reply prefiled testimony, but nonetheless contemplates might become relevant in the context of Board questioning of any of the witnesses, it should ensure that it has that "ad hoc" material available in the hearing room both electronically (on a compact disk/digital versatile disk (CD/DVD)<sup>6</sup> in a PDF format that

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<sup>4</sup> If a party contemplates submitting non-documentary material (e.g., computer simulations) or any physical items (e.g., rock samples) as prefiled evidentiary material supporting a party's prefiled testimony, it should contact the Board's law clerk Taylor Mayhall (taylor.mayhall@nrc.gov) at least ten days before the filing date to discuss arrangements for the submission and service of that material.

For assistance with the agency's E-filing system, please contact the Electronic Filing Helpdesk by visiting their webpage (<https://www.nrc.gov/site-help/e-submittals/contact-us-eie.html>), calling (866) 672-7640 between the hours of 9:00 am to 6:00 pm Eastern time, Monday through Friday (excluding Government holidays), or sending an e-mail to [MSHD.Resource@nrc.gov](mailto:MSHD.Resource@nrc.gov). Additional help regarding form and format of electronically submitted documents can be found in the "Guidance for Electronic Submission to the NRC" document (<https://www.nrc.gov/docs/ML1303/ML13031A056.pdf>).

<sup>5</sup> Consistent with the provisions of Subpart L, see 10 C.F.R. § 2.1207(b)(3), direct, response, and reply witness testimony should be submitted as a prefiled exhibit that is numbered in accordance with the guidance in section IV.B infra.

<sup>6</sup> Please note that USB drives and sticks cannot be used to provide the material for hearing room display.

complies with the agency's E-Filing guidance), for potential electronic display purposes, and via hard copy with enough paper copies to provide to counsel for the other parties, the three Board members, and the Board's law clerk. Additionally, a party seeking to submit such material should be prepared to file it, properly marked as a prefiled exhibit, via the agency's E-Filing system after, but on the same day as, the material is marked for identification by the Board.

#### IV. Filing of Prefiled Exhibits

##### A. Duplicate Exhibits.

Only one copy of each item of documentary material should be offered as evidence in this proceeding. For example, if the NRC Staff offers (and has admitted) a certain portion of a report, licensee Powertech USA, Inc. (Powertech) or intervenor Oglala Sioux Tribe (OST) should not then offer into evidence the same portion of the report. Instead, the other parties would rely on the document already proffered by the NRC Staff.

To this end, the parties should consult with one another prior to the submission of their prefiled evidentiary materials and determine whether any of the prefiled exhibits a party intends to offer into evidence in support of its proffered testimony would otherwise be duplicated by another party in the proceeding. In each instance this is found to be the case, the parties should determine which party will sponsor the exhibit for admission into evidence initially,<sup>7</sup> while the other party intending to use that material as an exhibit should revise its evidentiary submissions to reference the initial submitting party's exhibit number.<sup>8</sup> Additionally, the parties

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<sup>7</sup> If all three parties intend to use the same exhibit or portions of an exhibit, they may also designate one party to proffer the exhibit as a joint exhibit, with the numbering designation (per section IV.B infra) "JNTXXX."

<sup>8</sup> When duplicate prefiled party exhibits have been identified, the party that is designated as the one that initially will offer the document must, if it subsequently decides not to offer the item, provide timely notice of its intent to all other parties who identified the item as a duplicate document or thereafter evidenced an intent to rely upon it in prefiled response or reply testimony.

should follow this practice relative to any exhibits utilized for prefiled response or reply testimony or any evidentiary material introduced in the first instance during the evidentiary hearing itself.

B. Exhibit Ordering and Numbering.

To expedite electronic processing, for the contested proceeding each party must number their prefiled exhibits in a format that consists of a three-character party designation, followed by a three-character zero-filled number.<sup>9</sup> Consistent with the previous evidentiary submissions in this proceeding, the three-character designation to be used by each of the parties is as follows: NRC Staff – NRC, Powertech – APP, Oglala Sioux Tribe – OST, Consolidated Intervenor – INT. Exhibit numbering should be consecutive beginning with the next number after the last admitted exhibit from the 2014 phase of the hearing. Consequently, the parties should start with the following numbers to label their new exhibits:

NRC-176

APP-088

OST-042

INT-023

To the extent possible, the parties should order and number their prefiled exhibits in the sequence the parties plan to reference those exhibits in their prefiled direct, response, or reply testimony. Additionally, any exhibit previously admitted during the 2014 phase of the hearing can be referenced in a party's direct, response, or reply testimony, but should not be resubmitted as it is already part of the evidentiary record in this proceeding.

C. Exhibit Cover Sheet.

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<sup>9</sup> In establishing this numbering protocol, the Board is assuming that none of the parties anticipates having more than 999 evidentiary hearing exhibits in total between the 2014 phase of the evidentiary hearing and this 2019 phase of the hearing. If this is not the case, the Board should be informed in the filing permitted by section IV.C infra.

In this proceeding, the Board will employ a new prefilled exhibit marking system.<sup>10</sup> Each prefilled exhibit must have a cover sheet, the templates for which will be provided by the Board's law clerk. In the case of the initial version of an exhibit, the cover sheet is a fillable PDF form with fields for an exhibit number and exhibit title that should be appended to the front of the exhibit so that it is part of the PDF file for that exhibit when it is submitted via the E-Filing system. With the exhibit number on the cover sheet, it is no longer necessary to place the exhibit number on the first page of the exhibit.

D. Large File-Sized Exhibits.

If a party finds that it needs to break a document into several segments to ensure it does not exceed the agency's guidance on recommended file sizes for submissions,<sup>11</sup> each of the segments should be labeled by placing an alpha designation next to the number of the exhibit in a way that will reflect the relationship of that part to the other parts of the document. For example, if a NRC Staff exhibit that would otherwise have the number NRC301 were submitted in three parts because of the file size, each portion would have a different exhibit number in the following sequence: NRC301A, NRC301B, and NRC301C.

E. Revised Exhibits.

If a party needs to provide a revised version of a previously prefilled exhibit, using the cover sheet template for a revised exhibit that will be supplied by the Board's law clerk, the exhibit should be refiled with the designation "-R" placed after the exhibit number in the revised exhibit number field. Thus, for example, a revised version of NRC Staff exhibit NRC301 would be designated NRC301-R. In addition, the cover sheet fields for the exhibit revision date (which

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<sup>10</sup> Any questions about this new marking system should be directed to Board law clerk Taylor Mayhall at [taylor.mayhall@nrc.gov](mailto:taylor.mayhall@nrc.gov) or 301-415-3027.

<sup>11</sup> See NRC, Guidance for Electronic Submissions to the NRC at 6 (rev. 8 May 18, 2017) (ADAMS Accession No. ML13031A056),

would generally be the date when the revised exhibit is submitted to the proceeding's docket) and the revised exhibit title should be completed.

If a subsequent revision is necessary, the exhibit should be refiled using the revised exhibit cover sheet with the revised exhibit number field reflecting a sequential number immediately after the letter "R," e.g., NRC301-R2.

F. Exhibit List

At the time it submits the prefiled exhibits associated with its prefiled testimony, each party should also submit a list of its prefiled exhibits via (1) the E-Filing system in PDF format; and (2) an e-mail in Word format to Board law clerk Taylor Mayhall (taylor.mayhall@nrc.gov) and the NRC Office of the Secretary (SECY) (hearing.docket@nrc.gov). In addition, concurrent with the filing of any additional or revised evidentiary materials, each party should file an updated exhibit list in PDF format via the E-Filing system as well as provide Ms. Mayhall and SECY with a Word version of the revised list via e-mail.

The parties should utilize the exhibit list template included as Attachment B to this issuance, which Ms. Mayhall will make available in Word format upon request. For each exhibit listing, the parties must provide (1) the party exhibit number; (2) the ADAMS accession number, to the extent an ADAMS accession number is available for the document (or portion of the document) that is being proffered; (3) the witness/panel that is sponsoring the exhibit; and (4) the exhibit title (consistent with the guidance in the next section).<sup>12</sup> Also, for any exhibit having a confidential/sensitive status that would preclude public disclosure, the listed information should be set forth in **bold** type.<sup>13</sup> And as was noted above, in each instance when a party

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<sup>12</sup> Parties should not add the ADAMS Accession Number to the exhibit title.

<sup>13</sup> None of the parties has indicated up to this point that it intends to rely upon any nonpublic information in support of its case. If that is not the case, however, that party needs to inform the Board of such an eventuality promptly, including indicating whether the protective order already in place in this proceeding requires any revisions. See Memorandum and Order (Protective Order Governing the Disclosure of Sensitive Unclassified Non-Safeguards Information (SUNSI))

submits an additional/revised exhibit, the party should also provide Ms. Mayhall and SECY with a revised electronic copy of its prefiled exhibit list that reflects the change.

G. E-Filing and Exhibit List Document Titles

The agency's E-Filing system that will be used by the parties to submit their prefiled testimony and supporting materials only supports a document title of up to 200 characters. Accordingly, document titles must not exceed 200 characters. Further, to ensure continuity and ease of identification, the document title assigned to any particular prefiled testimony/exhibit in an E-Filing submission (and on its cover sheet) and the description provided for that document in the exhibit list, submitted in accordance with section IV.F infra, must be identical and should reflect as close as practicable the actual title of the document (rather than a short-hand reference).

V. Document Handling at the Evidentiary Hearing

At the evidentiary hearing, the parties should present their documentary materials in the form specified below:

The Board will handle the admission of all direct, response, and reply witness testimony and any supporting exhibits relating to that testimony at the time the witness/witness panel associated with that testimony is sworn in, based on an exhibit list that will be provided by the Board for party review several days before the evidentiary hearing is convened.

Assuming the versions provided via E-Filing are complete and correct, the parties need not provide any additional hard copies of their witnesses' prefiled testimony or supporting exhibits at the hearing. Although strongly discouraged, if a party sees a compelling need to make any revisions to the prefiled testimony or the supporting exhibits that were not submitted to the Board and the other parties prior to the hearing, consistent with the instructions in

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(Mar. 5, 2010) (unpublished); Licensing Board Order (Granting Joint Motion to Amend Protective Order) (Sept. 12, 2014) (unpublished).



section III supra regarding the submission of “ad hoc” materials, the party must be prepared to provide that properly numbered revised testimony and/or any new/revised supporting exhibit at the hearing session both electronically (on a CD/DVD in PDF format that conforms to the agency’s E-Filing guidance) for electronic display and in hard copy with a sufficient number of copies for counsel for the other parties, three copies for the Board members, and one copy for the Board’s law clerk, and to file that revised exhibit via the agency’s E-Filing system after, but on the same day as, the revised exhibit is identified for the record.

The Board anticipates that prefiled direct, response, and reply testimony, that in the case of a witness panel identifies the witness(es) sponsoring each answer, will be identified for the record and adopted by the witness(es) prior to being admitted as an exhibit. This testimony should be in question-and-answer format.

For other exhibits that have been prefiled via the agency’s E-Filing system, the sponsoring party should be prepared to affirm that the exhibit list circulated by the Board correctly catalogues which exhibits support each prefiled testimony. This affirmation should occur when the sponsoring party first seeks to have the exhibit identified (i.e., at the time a party is seeking to have the prefiled testimony that relies upon that exhibit admitted into the record).

## VI. Miscellaneous Matters

### A. Copies of Transcripts

The Board does not anticipate using overnight transcript service for this hearing. The Board will, however, request that each hearing session be transcribed within three business days.

### B. Submission of Proposed Cross-Examination Questions

#### 1. Pre-Hearing Proposed Questions

To maintain the confidentiality of each party’s proposed cross-examination questions pending a Board initial decision, see 10 C.F.R. § 2.1207(a)(3)(iii), those questions should not be filed into the agency docket for this proceeding using the E-Filing system’s “Public Submission”

or “Non-Pubic Submission” functionalities. Instead, the proposed questions should be submitted directly to the Board by employing the E-Filing system’s “In Camera Submission” functionality.

2. Proposed Questions Submitted during Ongoing Hearing

The Board contemplates breaking at appropriate intervals to allow the parties to compile and submit proposed examination questions based on the information the Board elicits during its questioning of a particular witness or witness panel. The parties should come to the hearing prepared logistically to generate their proposed questions in a manner that will be both efficient (e.g., will not require extended breaks) and effective (e.g., decipherable by the Board).

C. Opening Statements by Counsel

To the extent a party wishes to do so, at the outset of the hearing the Board will afford one counsel for each of the parties making an evidentiary presentation a total of ten minutes to present a summary of that party’s anticipated evidentiary presentation. The order of party opening statements will be NRC Staff, licensee Powertech, intervenor OST, intervenor Consolidated Intervenors.

D. Page Number References in Prefiled Testimony and at Hearing

When referring to/citing page numbers for exhibits, parties should reference the actual page number of the document and not the page number of the electronic document (i.e., not the PDF page number, which would have the party-appended cover sheet as the “first” page). If the document lacks pagination, the PDF page number can be referenced. The Board anticipates that all prefiled direct, response, and reply testimony will employ pagination, beginning with page one on the first page of the testimony.

Party comments regarding any aspect of this issuance should be filed on or before Friday, May 10, 2019. Additionally, if any party believes a telephone prehearing conference would be useful in the near term to discuss any of the provisions of this order or any other matters regarding the upcoming evidentiary hearing, it should so indicate in a comments filing.

The Board does contemplate a telephone prehearing conference in early August to review the logistics associated with the evidentiary hearing.

It is so ORDERED.

FOR THE ATOMIC SAFETY  
AND LICENSING BOARD

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William J. Froehlich, Chairman  
ADMINISTRATIVE JUDGE

Rockville, Maryland  
May 2, 2019

**APPENDIX A: SCHEDULE – Powertech USA, Inc. (Dewey-Burdock In Situ Uranium Recovery Facility) Proceeding**

<b>Event:</b>	<b>Date:</b>
All Parties Status Conference	April 23, 2019
<b>Evidentiary Hearing Schedule</b>	
Position Statement/Prefiled Direct Testimony from NRC Staff	May 17, 2019
Response Position Statements/Prefiled Response Testimony Supporting NRC Staff's Prefiled Direct Testimony	May 22, 2019
Response Position Statements/Prefiled Response Testimony Opposing NRC Staff's Prefiled Direct Testimony and any Supporting Prefiled Response Testimony	June 28, 2019
Reply Position Statement/Prefiled Reply Testimony from NRC Staff	July 12, 2019
Proposed Cross-Examination Questions/Requests for Cross-Examination/In Limine Motions on Direct/Response/Reply Testimony Due	August 2, 2019
Responses to Requests for Cross-Examination and In Limine Motions on Direct/Response/Reply Testimony Due	August 9, 2019
Licensing Board Ruling on Requests for Cross-Examination and In Limine Motions	August 19, 2019
Evidentiary Hearing	August 28–30, 2019 <sup>14</sup>

<sup>14</sup> A final Board assessment regarding the length of the evidentiary hearing will await the receipt of the parties' prefiled direct, response, and reply testimony.

Proposed Findings of Fact/Conclusions of Law Due	September 27, 2019
Reply Findings of Fact/Conclusions of Law Due	October 11, 2019
Licensing Board Initial Decision	November 29, 2019

**APPENDIX B:** Powertech USA, Inc., Docket No. 40-9075-MLA  
August 2019 Evidentiary Hearing Exhibits

<b>[Party] Exh. No.</b>	<b>Witness/ Panel</b>	<b>Exhibit Title*</b>	<b>ADAMS Accession No. (If Applicable)</b>

\* Exhibit titles should be no more than 200 characters.

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

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

**ORDER (Providing Case Management Information)**

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[Original signed by Diane B. Garvin]  
Office of the Secretary of the Commission

Dated at Rockville, Maryland,  
this 2<sup>nd</sup> day of May, 2019