

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 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

May 17, 2010

ORDER
(Setting Oral Argument)

The Board will hear oral argument on standing and the admissibility of proposed contentions under 10 C.F.R. § 2.309¹, commencing at 9:00 am Mountain Daylight Time (MDT) on Tuesday and Wednesday, June 8 and 9, 2010. The oral argument will be held in Council Chambers of Custer City Hall, 622 Crook Street, in Custer, South Dakota. Only duly-authorized attorneys of the Consolidated Petitioners, the Oglala Sioux Tribe, Powertech USA, Inc. and the staff of the Nuclear Regulatory Commission (NRC Staff) who have entered an appearance pursuant to 10 C.F.R. § 2.314 will be entitled to participate. The Board plans to adjourn on Tuesday by 5:00 pm MDT and continue, if necessary, at 9:00 am MDT on Wednesday, June 9, 2010.

¹ In response to a January 5, 2010 notice of opportunity for hearing published in the Federal Register (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)), a Consolidated Request for Hearing and Petition for Leave to Intervene was received on March 8, 2010 from Theodore P. Ebert, David Frankel, Gary Heckenlaible, Susan Henderson, Dayton Hyde, Liliias C. Jones Jarding, the Clean Water Alliance and Aligning for Responsible Mining (hereinafter Consolidated Petitioners). On April 6, 2010 a Petition to Intervene and Request for Hearing of the Oglala Sioux Tribe was received.

The oral argument will proceed as follows. First, we will hear a short opening statement, limited to ten minutes, from each participant. Second, the Board will hear argument on the standing of the Petitioners. Third, we will hear argument on certain contentions, which we intend to specify either in a subsequent written order or at the commencement of the oral argument on June 8, 2010. Nonetheless, counsel for the parties must be prepared to answer questions concerning all issues raised in the pleadings. Fourth, we will hear a short closing statement, limited to five minutes, from each participant.

Except for the opening and closing statements, the sole purpose of the oral argument is to allow the Board to ask questions and receive answers, to clarify the Board's understanding of legal issues and factual points and assist it in deciding the standing and contention admissibility issues presented by the pleadings. Unless otherwise specified, no presentations or submission of additional materials by the parties will be entertained. Counsel should keep in mind that the Board has read their pleadings and are encouraged to be familiar with the relevant law on standing, contention admissibility, and 10 C.F.R. Parts 2 and 40. In preparing for the oral argument, counsel should focus on the critical points in controversy, as they have emerged in the pleadings.

No witnesses, other representatives of the parties, or members of the public will be heard at this time. However, members of the public and representatives of the media are welcome to attend and observe this proceeding. This is an adjudicatory proceeding and the Board intends to conduct an orderly oral argument. Signs, banners, posters, and displays are prohibited in accordance with NRC policy. See Procedures for Providing Security Support for NRC Public Meetings/Hearings, 66 Fed. Reg. 31,719 (June 12, 2001). All interested persons should arrive at least fifteen minutes early so as to allow sufficient time to pass through any security screening.

Limited appearance statements, pursuant to 10 C.F.R. § 2.315(a), will not be entertained at this time. If contentions are ultimately admitted, then the Board will accept written limited appearance statements and, at a later date, may hear oral limited appearance statements regarding admitted contentions.

It is so ORDERED.

FOR THE ATOMIC SAFETY
AND LICENSING BOARD²

/RA/

William J. Froehlich, Chairman
ADMINISTRATIVE JUDGE

Rockville, Maryland
May 17, 2010

² Copies of this order were sent this date by the agency's E-Filing system to the counsel/representatives for (1) Consolidated Petitioners; (2) the NRC Staff; 3) the Oglala Sioux Tribe; 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 **ORDER (Setting Oral Argument)**, dated May 17, 2010, have been served upon the following persons by Electronic Information Exchange.

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

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[Original signed by Linda D. Lewis]
 Office of the Secretary of the Commission

Dated at Rockville, Maryland
 this 17th day of May 2010.