

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

February 20, 2014

MEMORANDUM

(Summarizing the February 12, 2014 Teleconference)

On January 31, 2014 the NRC Staff issued a notice of public availability of the final supplemental environmental impact statement (FSEIS) which was prepared in the above captioned docket. On February 5, 2014 the Board issued a notice of a telephone conference to discuss a procedural schedule leading up to the evidentiary hearing in this case.¹ On February 11, 2014 the NRC Staff sent a letter to the Board on behalf of the parties indicating the parties had agreed upon a schedule leading to an evidentiary hearing during the week of September 15, 2014. On February 12, 2014 at 9:00 AM EST the Board held a teleconference with the

¹ Order (Scheduling Telephone Conference Call) (Feb. 5, 2014). The time of the teleconference was originally scheduled for 1:00 PM EST but was later changed to 9:00 AM EST. Order (Granting Consolidated Intervenor's Motion to Reschedule Telephone Conference Call) (Feb. 6, 2014).

parties to discuss scheduling issues and six procedural questions outlined in the Board's February 5, 2014 Order. This Memorandum summarizes that discussion.²

A. Protective Order

The parties first addressed the Board's question whether the March 5, 2010 Protective Order issued by Chief Administrative Judge Hawkens is sufficient as it exists for the purposes of an evidentiary hearing.³ For the time being the parties indicated that the Protective Order was sufficient, but Intervenor's' counsels left open the possibility that the Protective Order may have to be expanded to protect the specific location of cultural sites based on the proposed well field locations.⁴ This issue would most likely emerge when testimony is filed.⁵

B. Potential Settlement

The Board encouraged the parties to keep an open mind towards settlement of the issues involved in this case, but did not set a date for formal settlement negotiations.⁶ The parties previously represented to the Board that they had engaged in good-faith discussions but had not been able to reach common ground.⁷

C. Filing timing of Statements of Position and Direct Testimony

The parties agreed, and the Board directs, that written statements of position and written testimony be filed simultaneously.⁸

D. Limited Appearance Statements

The parties were all in favor of allowing a period of time for the public to make oral limited appearance statements before the Board at the time the evidentiary hearing is held.⁹ Mr. Ellison, for the Consolidated Intervenor's, expressed to the Board the value of the flexibility to

² Tr. at 541-577.

³ Tr. at 551-553.

⁴ Tr. at 552.

⁵ Tr. at 553.

⁶ Tr. at 553.

⁷ Responses to Questions in Board's Scheduling Order (Feb. 11, 2014) at Appendix A.

⁸ Tr. at 554.

⁹ Tr. at 554-55.

hold limited appearance statements over multiple days in order to maximize public input.¹⁰ Mr. Pugsley, for Powertech, proposed allowing written statements for members of the public unable to attend in person to express their views before the Board.¹¹ The Board has already issued a Notice concerning written limited appearance statements,¹² and will provide an opportunity for oral limited appearance statements prior to the evidentiary hearing.¹³

E. Stay Motion Timing

If the NRC issues Powertech a federal license to operate its facility, under 10 C.F.R. § 2.1213(a) the Intervenor will have five days to request a stay. Since this application also relies on final state permit approvals before Powertech can begin operations, Intervenor proposed hinging the time when the Board rules on a § 2.1213(a) stay request by Intervenor from the point of final state permit approval.¹⁴ Powertech expressed a preference for § 2.1213(a) to apply only to the end of the NRC-specific licensing process.¹⁵ The NRC Staff agreed with Powertech's approach.¹⁶ The Board now denies any motion made to extend the timing of a stay request.

F. Procedural Schedule

Before the telephone conference the Board proposed a schedule to the parties which set the evidentiary hearing during the week of July 28, 2014.¹⁷ In response, the parties proposed a schedule which set the evidentiary hearing during the week of September 15, 2014.¹⁸ The Board expressed to the parties its desire to hold the evidentiary hearing in July or August at the latest, and the parties agreed to hold further discussions among themselves, shorten some filing

¹⁰ Tr. at 555.

¹¹ Tr. at 556.

¹² Notice (Corrected Version of Initial September 5, 2013, Notice Regarding the Opportunity to Submit Written Limited Appearance Statements) (Sept. 5, 2013).

¹³ Tr. at 556.

¹⁴ Tr. at 561.

¹⁵ Tr. at 562.

¹⁶ Tr. at 564.

¹⁷ Order (Scheduling Telephone Conference Call) (Feb. 5, 2014) at Appendix A.

¹⁸ Responses to Questions in Board's Scheduling Order (Feb. 11, 2014) at Appendix B.

time periods, and propose a revised schedule to the Board.¹⁹ On February 14 the parties proposed a revised schedule,²⁰ which was supplemented on February 18.²¹ The revised procedural schedule proposed by the parties contemplates an evidentiary hearing beginning during the week of August 18, 2014.

The Board adopts the proposed schedule submitted by the parties with the following minor adjustments. Motions for summary disposition on previously admitted contentions will be due no later than April 11, 2014, with answers due on April 25, 2014. This is so that the parties will begin to focus the preparation of their testimony and evidentiary submissions on the admitted contentions well in advance of the date for filing testimony on any potentially admitted new or amended contentions. The Board has also set July 22, 2014 as the deadline for any Motions for Cross-Examination, Motions in Limine, and Motions to Strike. A telephonic prehearing conference call is scheduled for August 5, 2014 with the evidentiary hearing set for August 19, 2014. The procedural schedule for this proceeding is attached as Appendix A.

G. Additional Procedural Matters

1. The Board will grant the unopposed motion to file by email, filed on February 7, 2014 by counsel for the Oglala Sioux Tribe and Consolidated Intervenors, by separate order issued this day.

2. The parties are reminded that this Board considers the ‘migration tenet’ to apply to contentions in this case. Therefore, admitted contentions challenging an applicant’s DSEIS may, in appropriate circumstances, function as challenges to similar portions of the Staff’s Final Environmental Impact Statement. This “migration tenet” applies when the information in the FSEIS is sufficiently similar to the information in the DSEIS. In this circumstance, a party need not file a new or amended contention; the previously admitted contention will simply be viewed

¹⁹ Tr. at 576.

²⁰ Proposed General Schedule (Revised) (Feb. 14, 2014) at Appendix A.

²¹ Update to Proposed General Schedule (Revised) (Feb. 18, 2014).

as applying to the relevant portion of the FSEIS. This is appropriate, however, only so long as the FSEIS analysis or discussion at issue is essentially in para materia with the DSEIS analysis or discussion that is the focus of the contention. Alternatively, an intervenor attempting to litigate an issue based on expressed concerns about the FSEIS may need to amend the admitted contention or submit a new contention if the information in the FSEIS is sufficiently different from the information in the DSEIS that supported the original contention's admission. A new or amended contention related to portions of the FSEIS that differ from the DSEIS must be timely filed under § 2.309(c) and meet the contention admissibility standards of § 2.309(f)(1) to be admitted.²²

It is so ORDERED

FOR THE ATOMIC SAFETY
AND LICENSING BOARD

/RA/

William J. Froehlich, Chairman
ADMINISTRATIVE JUDGE

Rockville, Maryland
February 20, 2014

²² See LBP-13-9, 78 NRC 37, 46-47, 57-58 (2013).

APPENDIX A: Procedural Schedule

Date: February 20, 2014

Event	Date
Final Supplemental Environmental Impact Statement (FSEIS) Available	January 31, 2014
New/Amended Contention Motions Due	March 17, 2014
Answers to New/Amended Contention Motions Due	April 4, 2014
Replies to Answers re New/Amended Contention Motions Due	April 11, 2014
*Motions for Summary Disposition of Admitted Contentions	April 11, 2014
*Answers to Motions for Summary Disposition	April 25, 2014
Licensing Board Ruling on New/Amended Contention Admission	Within 87–91 days of FSEIS issuance (week of April 28–May 2, 2014)
Admitted New/Amended Contention Mandatory Disclosure Updates/Updated Witness Lists	Within 14 days of Board Decision (May 16, 2014)
*Summary Disposition Motions on New or Amended Contentions/Motion to Invoke Subpart N Procedures	Within 14 days of Board Decision on New/Amended Contentions (May 16, 2014)
Answers to Summary Disposition Motions/ Motions to Invoke Subpart N Procedures	Within 14 days of the deadline for motions (May 30, 2014)
Position Statements/Prefiled Direct Testimony due on all contentions (parties file simultaneously)	49 days from Board Ruling on New/Amended Contentions (June 20, 2014)
Answering Statements/Answering Testimony	25 Days from the deadline for position statements and testimony (July 15, 2014)
Motions for Cross-Examination/ Motions in Limine/Motions to Strike	July 22, 2014
Responses to Motions for Cross-Examination/Motions in Limine/Motions to Strike	July 29, 2014
Proposed Cross-Examination Questions	17 days from the deadline for answering statements/testimony (August 1, 2014)
*Telephonic Prehearing Conference / Board Ruling on all Prehearing Motions	August 5, 2014
*Limited Appearance Statements	August 18, 2014
Evidentiary Hearing Begins	August 19, 2014
Findings of Fact/Conclusions of Law due	Within 30 days of close of evidentiary hearing
Licensing Board Initial Decision	Within 90 days of end of evidentiary hearing and closing of record

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 **MEMORANDUM (Summarizing the February 12, 2014 Teleconference)** 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

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

Dated at Rockville, Maryland,
this 20th day of February 2014.