

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

July 15, 2014

ORDER

(Granting Request to Withdraw and Motion to Dismiss Contentions 14A and 14B)

I. INTRODUCTION

On June 20, 2014, the Oglala Sioux Tribe, one of the intervenors in this proceeding, voluntarily withdrew two of its contentions - Contentions 14A and 14B.¹ The Oglala Sioux Tribe did not submit any testimony or exhibits on Contentions 14A and 14B. On June 30, 2014, Powertech, the applicant, filed a motion to dismiss Contention 14A and Contention 14B.² No timely answers to the Powertech motion to dismiss were received.³

¹ "In an effort to streamline the present proceedings, the Oglala Sioux Tribe voluntarily withdraws Contention 14A and 14B." Oglala Sioux Tribe's Statement of Position on Contentions (June 20, 2014) at 42.

² Powertech (USA), Inc. Motion to Dismiss Environmental Contention 14A/B (June 30, 2014).

³ 10 C.F.R. § 2.323(c) and the Board's scheduling orders in this proceeding require answers to motions to be filed within 10 days. Consolidated Intervenors filed a Response to Powertech Motion to Dismiss Contention 14 on July 14, 2014. No reason for this late filing was given nor did Consolidated Intervenors include a motion requesting their pleading be accepted out of time.

The request to withdraw and motion to dismiss are granted.⁴

It is so ORDERED.

THE ATOMIC SAFETY
AND LICENSING BOARD

/RA/

William J. Froehlich, Chair
ADMINISTRATIVE JUDGE

/RA/

Richard F. Cole
ADMINISTRATIVE JUDGE ⁵

Rockville, Maryland
July 15, 2014

⁴ On July 14, 2014, Consolidated Intervenors (CI), the other admitted intervenor, filed a response to Powertech's motion to dismiss Contention 14 asking "leave of the Board to present the limited evidence proffered by the Cis (sic) in their Opening Testimony and Exhibits." Consolidated Intervenors' Response to Powertech Motion to Dismiss Contention 14 (July 14, 2014) at 1. This request is out of order and is denied. First, the Oglala Sioux Tribe withdrew these contentions on June 20, 2014. Second, CI has not even attempted to adopt either of these contentions pursuant to 10 C.F.R. § 2.309(f)(3). See Houston Lighting & Power Co. (South Texas Project, Units 1 and 2), ALAB-799, 21 NRC 360, 383 (1985) ("An intervenor may ordinarily conduct additional cross-examination and submit proposed factual and legal findings on contentions sponsored by others. But that does not elevate the intervenor's status to that of a co-sponsor of the contentions. Because contentions can be withdrawn . . . a non-sponsoring party assumes at least some risk that the pursuit of its interests may not be wholly within its control."). Third, CI's opening written testimony (INT-010) on Contention 14 consists of three pages which do not contain a single question and answer in direct testimony, question and answer format. Having granted the Powertech motion to dismiss and the Oglala Sioux Tribe's request to withdraw these two contentions, they are now moot. No evidence or testimony will be accepted on them from CI.

⁵ Judge Barnett was unavailable to participate in this order. 10 C.F.R. § 2.321(c) ("Two members of an Atomic Safety and Licensing Board constitute a quorum if one of those members is the member qualified in the conduct of administrative proceedings.").

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NUCLEAR REGULATORY COMMISSION

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)

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing **ORDER (Granting Request to Withdraw and Motion to Dismiss Contentions 14A and 14B)** have been served upon the following persons by Electronic Information Exchange, and by electronic mail as indicated by an asterisk*.

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

ORDER (Granting Request to Withdraw and Motion to Dismiss Contentions 14A and 14B)

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

Dated at Rockville, Maryland,
This 15th day of July 2014.