

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 16, 2014

NOTICE OF EVIDENTIARY HEARING

This proceeding arises from an application submitted by Powertech (USA), Inc. (Powertech) to the U.S. Nuclear Regulatory Commission (NRC) requesting a license to construct and operate a proposed In-Situ Uranium Recovery (ISR) facility in Custer and Fall River Counties, South Dakota.¹ This facility is to be known as the Dewey-Burdock ISR facility. Notice of the Powertech license application (Application) was published in the Federal Register on January 5, 2010.² That publication provided interested parties notice of the Application and the opportunity to request a hearing. On August 5, 2010, this Licensing Board granted two

¹ Powertech (USA) Inc.'s Submission of an Application for a Nuclear Regulatory Commission Uranium Recovery License for its Proposed Dewey-Burdock In Situ Leach Uranium Recovery Facility in the State of South Dakota (Feb. 25, 2009) (ADAMS Accession No. ML091030707).

² 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).

petitions to intervene and requests for hearing.³ The Board admitted the Oglala Sioux Tribe and the Consolidated Intervenors⁴ as intervenors in this proceeding. The Board also admitted a total of seven contentions proposed by the Oglala Sioux Tribe and the Consolidated Intervenors.⁵ On November 15, 2012, the Nuclear Regulatory Commission Staff (NRC Staff) notified the Board of the public availability of its Draft Supplemental Environmental Impact Statement (DSEIS) prepared pursuant to the National Environmental Policy Act (NEPA), 42 U.S.C. § 4332, and the agency's implementing regulations, 10 C.F.R. Part 51.⁶ On January 25, 2013, both the Oglala Sioux Tribe and the Consolidated Intervenors filed additional proposed contentions relating to the DSEIS.⁷ On July 22, 2013, the Board admitted three contentions proposed by the Oglala Sioux Tribe in response to the DSEIS.⁸ On January 29, 2014, the NRC Staff issued the Final Supplemental Environmental Impact Statement (FSEIS).⁹ On April 8, 2014 the NRC Staff

³ See LBP-10-16, 72 NRC 361 (2010).

⁴ Although originally called the Consolidated Petitioners, the Board now refers to Susan Henderson, Dayton Hyde, and Aligning for Responsible Mining (ARM) as the Consolidated Intervenors.

⁵ 72 NRC at 443–44.

⁶ Letter to Administrative Judges Froehlich, Cole, and Barnett, from Patricia Jehle, Counsel for NRC Staff (Nov. 15, 2012) (ADAMS Accession No. ML12320A623); see Supplement to the Generic Environmental Impact Statement for In-Situ Leach Uranium Milling Facilities, NUREG-1910 (Supp. 4, Nov. 2012) (ADAMS Accession Nos. ML12312A040 and ML12312A040) [hereinafter DSEIS].

⁷ See List of Contentions of the Oglala Sioux Tribe Based on the [DSEIS] (Jan. 25, 2013); Consolidated Intervenors' New Contentions Based on DSEIS (Jan. 25, 2013).

⁸ See LBP-13-09, 78 NRC 37, 114 (2013).

⁹ Supplement to the Generic Environmental Impact Statement for In-Situ Leach Uranium Milling Facilities, Final Report, NUREG-1910 (Supp. 4 Jan. 2014) (ADAMS Accession Nos. ML14024A477 (Chapters 1–5) and ML14024A478 (Chapters 6–11 and Appendices)) [hereinafter FSEIS].

issued NRC Source Materials License No. SUA-1600 to Powertech.¹⁰ On June 20, 2014, the Oglala Sioux Tribe voluntarily withdrew two of its admitted contentions.¹¹

Pursuant to 10 C.F.R. § 2.312, the Atomic Safety and Licensing Board hereby provides notice that it will hold an evidentiary hearing under 10 C.F.R. Part 2, Subpart L procedures to receive testimony and exhibits in this proceeding.¹² Parties to this proceeding (including the NRC Staff) have begun to provide evidentiary submissions in support of or in opposition to the merits of the admitted contentions.¹³

I. MATTERS TO BE CONSIDERED

Contentions 1A, 1B, 2, 3, 4, 6, and 9 will be at issue in the evidentiary hearing. These contentions generally concern the adequacy of 1) the project's protection of historical and cultural resources, and 2) the agency's FSEIS analysis of the project's impacts on the water and ecosystem of the surrounding area. Appendix A, which follows this order, contains the substance of each contention.

¹⁰ Materials License, NRC Form 374 (Apr. 8, 2014) (ADAMS Accession No. ML14043A392). See also ADAMS Accession Package Number ML14043A052, which includes the license transmittal letter, the license, and the Final Safety Evaluation Report. The NRC Staff also issued its Record of Decision for the Dewey-Burdock Uranium In-Situ Recovery (ISR) Project at ADAMS Accession No. ML14066A466. The Final Programmatic Agreement was executed April 7, 2014 and is available in ADAMS Accession Package No. ML14066A344.

¹¹ See Order (Granting Request to Withdraw and Motion to Dismiss Contentions 14A and 14B) (July 15, 2014) (unpublished).

¹² On July 3, 2014, in a separate Notice, the Board informed the parties and the public that, in accordance with 10 C.F.R. § 2.315(a), it will entertain oral and written limited appearance statements from members of the public in connection with this proceeding. 79 Fed. Reg. 39,413 (July 3, 2014).

¹³ Initial testimony and exhibits were filed on June 20, 2014 and answering testimony and exhibits were filed on July 15, 2014. See Order (Providing Case Management Information) (June 2, 2014) (unpublished).

II. DATE, TIME, AND LOCATION OF EVIDENTIARY HEARING

The Board will take oral testimony beginning Tuesday, August 19, 2014, at 9:00 AM, MDT and continue daily through Thursday, August 21, 2014 at 5:00 PM, MDT.

The evidentiary hearing will take place at the:

Hotel Alex Johnson
523 Sixth Street
Rapid City, South Dakota 57701

We anticipate addressing the admitted contentions in the following order:

Panel 1: Contentions 1A and 1B

Panel 2: Contentions 2, 3 and 4

Panel 3: Contentions 6 and 9

Members of the public and media are welcome to attend and observe the evidentiary hearing, which will involve technical, scientific and regulatory questions and testimony. Participation in the hearing will be limited to the parties, their lawyers, and witnesses. Please be aware that security measures may be employed at the entrance to the facility, including searches of hand-carried items such as briefcases or backpacks. No signs, banners, posters, or other displays will be permitted in the courtroom.¹⁴

III. AVAILABILITY OF DOCUMENTARY INFORMATION REGARDING THE PROCEEDING

Documents relating to Powertech's application are available on the NRC website at <http://www.nrc.gov/info-finder/materials/uranium/licensed-facilities/dewey-burdock.html> (last visited July 16, 2014). These documents are also available for public inspection at the

¹⁴ See Procedures for Providing Security Support for NRC Public Meetings/Hearings, 66 Fed. Reg. 31,719 (June 12, 2001).

Commission's Public Document Room (PDR), located in One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852 or electronically on the publicly available records component of the NRC's document system (ADAMS). ADAMS is accessible from the NRC website at <http://www.nrc.gov/reading-rm/adams.html> (last visited July 16, 2014).¹⁵ Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC PDR reference staff by telephone between 8:00 AM and 4:00 PM Eastern Time, Monday through Friday except federal holidays at (800) 397-4209 or (301) 415-4737 or by sending an email to pdr.resource@nrc.gov.

It is so ORDERED.

FOR THE ATOMIC SAFETY
AND LICENSING BOARD

/RA/

William J. Froehlich, Chair
ADMINISTRATIVE JUDGE

Rockville, Maryland
July 16, 2014

¹⁵ Documents which are determined to contain sensitive or proprietary information may only be available in redacted form. All non-sensitive documents are available in their complete form.

APPENDIX A

- Contention 1A:** Failure to Meet Applicable Legal Requirements Regarding Protection of Historical and Cultural Resources.
- Contention 1B:** Failure to Involve or Consult All Interested Tribes as Required by Federal Law.
- Contention 2:** The FSEIS Fails to Include Necessary Information for Adequate Determination of Baseline Ground Water Quality.
- Contention 3:** The FSEIS Fails to Include Adequate Hydrogeological Information to Demonstrate Ability to Contain Fluid Migration and Assess Potential Impacts to Groundwater.
- Contention 4:** The FSEIS Fails to Adequately Analyze Ground Water Quantity Impacts.
- Contention 6:** The FSEIS Fails to Adequately Describe or Analyze Proposed Mitigation Measures.
- Contention 9:** The FSEIS Fails to Consider Connected Actions.

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)

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing **NOTICE OF EVIDENTIARY HEARING** 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

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

Dated at Rockville, Maryland,
This 16th day of July 2014.