

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

October 9, 2014

ORDER

(Requiring Status Report on Outstanding Mandatory Disclosures)

The Licensing Board held an evidentiary hearing on August 19, 20 and 21, 2014, at the Hotel Alex Johnson in Rapid City, SD concerning seven contentions raised by the Oglala Sioux Tribe and the Consolidated Intervenors. On September 8, 2014 the Board issued a post hearing order which, inter alia, established a post-hearing procedural schedule and ordered mandatory disclosure of well data logs, correspondence with BLM, and a take permit application filed with the U.S. Fish and Wildlife Service.¹

The parties were further directed to notify the Board when the disclosures were completed so that the Staff and Intervenors could decide whether or not to file supplemental testimony and exhibits on the issues heard by the Board at the evidentiary hearing.² The record

¹ Post Hearing Order (Sept. 8, 2014) at 11, 19 (unpublished).

² Id. at 19.

in this proceeding has been held open pending receipt by the Board of the notification of when disclosure was completed and motions, if any, to file additional evidence.

On September 11, 2014 Powertech USA, Inc. (Powertech) filed a joint motion to amend the Protective Order³ in this case. The Board granted this motion on September 12, 2014.⁴ The Joint Motion represented that Powertech planned to effectuate disclosure of all data and documents covered by the Protective Order, as well as all other non-confidential documents identified in the Licensing Board's September 8, 2014 Order beginning Friday, September 12, 2014.⁵ Powertech stated, "CD copies of digitized data will be sent via overnight mail on that same day and electronic copies of other identified documents will be sent via electronic mail."⁶ In the NRC Staff's September 15, 2014 Hearing File Update, the Staff listed three documents "Powertech recently disclosed to all parties: a January 2014 take permit application, a BLM letter regarding Powertech's proposed Plan of Operations, and a draft avian management plan."⁷

From this information the Board is currently under the impression that the avian take application, BLM letter, and draft avian management plan have been disclosed, but is unaware (1) what date this disclosure occurred, and (2) whether the well data has been disclosed. As a result, the Board is unable to determine whether the 30 day filing dead-line for any potential motions to admit additional testimony/exhibits has expired.

³ Joint Motion to Amend Protective Order to Include Documents to Be Disclosed Under September 10, [sic] 2014 Licensing Board Order (Sept. 11, 2014) (Joint Motion).

⁴ Order (Granting Joint Motion to Amend Protective Order) (Sept. 12, 2014) at 3 (unpublished).

⁵ Joint Motion at 2.

⁶ Id.

⁷ Hearing File Update, Letter from Patricia Jehle, NRC Staff Counsel, to Board Administrative Judges (Sept. 15, 2014) at 1.

The Board now directs the parties to file by **Tuesday, October 14, 2014**, a status report alerting the Board as to the current state of the disclosures ordered in the Board's September 8, 2014 Post Hearing Order. In this report the parties are to specify exactly what material has been disclosed, the date it was disclosed, and if any material has not yet been disclosed.

It is so ORDERED.

FOR THE ATOMIC SAFETY
AND LICENSING BOARD

/RA/

William J. Froehlich, Chair
ADMINISTRATIVE JUDGE

Rockville, Maryland
October 9, 2014

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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POWERTECH (USA) INC.) Docket No. 40-9075-MLA
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)

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing **ORDER (Requiring Status Report on Outstanding Mandatory Disclosures)** 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 (Requiring Status Report on Outstanding Mandatory Disclosures)

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[Original signed by Clara Sola]
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Rockville, Maryland
October 9, 2014