

Dated: May 3, 2019.

**Crystal Robinson,**

*Committee Management Officer.*

[FR Doc. 2019-09513 Filed 5-8-19; 8:45 am]

BILLING CODE 7555-01-P

## NUCLEAR REGULATORY COMMISSION

[Docket No. 40-9075-MLA; NRC-2019-0117]

### Atomic Safety and Licensing Board; in the Matter of Powertech USA, Inc.; Dewey-Burdock In Situ Uranium Recovery Facility

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Order; issuance.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC) is issuing an Order to set a schedule for an evidentiary hearing in the Powertech USA, Inc., Dewey-Burdock In Situ Uranium Recovery Facility proceeding. The Order for Granting NRC Staff Motion and Scheduling Evidentiary Hearing became effective on April 29, 2019.

**DATES:** The Order was issued on April 29, 2019.

**ADDRESSES:** Please refer to Docket ID NRC-2019-0117 when contacting the NRC about the availability of information regarding this document. You may obtain publicly-available information related to this document using any of the following methods:

- *Federal Rulemaking Website:* Go to <https://www.regulations.gov> and search for Docket ID NRC-2019-0117. Address questions about NRC Docket IDs in *Regulations.gov* to Jennifer Borges; telephone: 301-287-9127; e-mail: [Jennifer.Borges@nrc.gov](mailto:Jennifer.Borges@nrc.gov). For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at <https://www.nrc.gov/reading-rm/adams.html>. To begin the search, select "Begin Web-based ADAMS Search." For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1-800-397-4209, 301-415-4737, or by e-mail to [pdr.resource@nrc.gov](mailto:pdr.resource@nrc.gov).

- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1-F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

### FOR FURTHER INFORMATION CONTACT:

Taylor Mayhall, ASLBP, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001; telephone: 301-415-3027, e-mail: [Taylor.Mayhall@nrc.gov](mailto:Taylor.Mayhall@nrc.gov).

**SUPPLEMENTARY INFORMATION:** The text of the Order is attached.

Dated at Rockville, Maryland, this 6th day of May 2019.

For the Nuclear Regulatory Commission.

**William J. Froehlich,**

*Chairman, Administrative Judge.*

### Attachment—Order

## UNITED STATES OF AMERICA NUCLEAR REGULATORY COMMISSION

### ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges:

William J. Froehlich, Chairman

Dr. Mark O. Barnett

G. Paul Bollwerk, III

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, April 29, 2019.

### ORDER

(Granting NRC Staff Motion and Scheduling Evidentiary Hearing)

On April 3, 2019, the Nuclear Regulatory Commission Staff (NRC Staff) filed a motion to set a schedule for an evidentiary hearing in the above-captioned proceeding.<sup>1</sup> Responses to the NRC Staff's motion were filed on April 17, 2019, by licensee Powertech USA, Inc. (Powertech) and the NRC Staff,<sup>2</sup> and on April 18, 2019, by intervenor Oglala Sioux Tribe.<sup>3</sup> The Licensing Board conducted an all-parties telephone conference call on April 23, 2019, where issues raised by the NRC Staff's April 3, 2019 motion were aired.<sup>4</sup>

<sup>1</sup> [NRC Staff] Motion to Set Schedule for Evidentiary Hearing (Apr. 3, 2019) [hereinafter NRC Staff Motion].

<sup>2</sup> [Powertech] Response to NRC Staff's Motion for Evidentiary Hearing (Apr. 17, 2019); NRC Staff Response to the Board's April 5, 2019 Order (Apr. 17, 2019). The NRC Staff's response was authorized by the Board to permit the NRC Staff to answer two questions about which the Board indicated it wished to have party responses. See Licensing Board Order (Setting Procedures to Address Motion to Set Schedule for Evidentiary Hearing) (Apr. 5, 2019) at 2 n.6 (unpublished).

<sup>3</sup> Oglala Sioux Tribe's Response in Opposition to NRC Staff's Motion to Set Schedule for Evidentiary Hearing (Apr. 18, 2019) [hereinafter Oglala Sioux Tribe Response]. Although Consolidated Intervenor did not file a responsive pleading, the NRC Staff reported that Consolidated Intervenor opposed the motion. See NRC Staff Motion at 2.

<sup>4</sup> Tr. at 1628-73.

### I. Background

The Oglala Sioux Tribe first raised its concern about the protection of cultural and religious resources in a proposed contention filed in 2010.<sup>5</sup> This contention challenged the adequacy of the NRC Staff's assessment of the impacts to Native American cultural, religious, and historical resources from Powertech's Dewey-Burdock In Situ Uranium recovery facility. Pursuant to the National Environmental Policy Act (NEPA), the NRC Staff issued its Draft Supplemental Environmental Impact Statement (DSEIS) on November 26, 2012, and its Final Supplemental Environmental Impact Statement (FSEIS) on January 29, 2014. The Board then held an evidentiary hearing in Rapid City, South Dakota, from August 19-21, 2014, on this contention and six other admitted contentions.<sup>6</sup> On April 30, 2015, the Board issued a Partial Initial Decision on the merits of those contentions.<sup>7</sup> As relevant to this contention (now Contention 1A), the Board found that the NRC Staff failed to fulfill its NEPA obligation because the FSEIS did "not contain an analysis of the impacts of the project on the cultural, historical, and religious sites of the Oglala Sioux Tribe. . . ." <sup>8</sup> The Board concluded that "[w]ithout additional analysis as to how the Powertech project may affect the Sioux Tribes' cultural, historical, and religious connections with the area, NEPA's hard look requirement ha[d] not been satisfied, and potentially necessary mitigation measures ha[d] not been established."<sup>9</sup> The Commission affirmed the Board's Partial Initial Decision.<sup>10</sup>

On October 30, 2018, the Licensing Board issued LBP-18-5, which denied both the Oglala Sioux Tribe's and NRC Staff's motions for summary disposition of Contention 1A. LBP-18-5 presented the parties with the choice to either resume efforts to implement the site survey approach that had been previously agreed-upon by all parties (March 2018 Approach) or proceed to an evidentiary hearing.<sup>11</sup> On November 30, 2018, the NRC Staff informed the Board that it chose to renew its efforts to implement the March 2018 approach.<sup>12</sup> In periodic status calls, the parties

<sup>5</sup> Petition to Intervene and Request for Hearing of the Oglala Sioux Tribe (Apr. 6, 2010) at 12-17.

<sup>6</sup> LBP-15-16, 81 NRC 618, 633 (2016).

<sup>7</sup> *Id.* at 708-11.

<sup>8</sup> *Id.* at 655.

<sup>9</sup> *Id.*

<sup>10</sup> CLI-16-20, 84 NRC 219 (2016).

<sup>11</sup> See LBP-18-5, 89 NRC 95, 134-37 (2018).

<sup>12</sup> Letter from Lorraine Baer, NRC Staff Counsel, to Licensing Board (Nov. 30, 2018) (ADAMS Accession No. ML18334A295).

reported to the Licensing Board regarding their progress on efforts to implement the March 2018 Approach.<sup>13</sup> At the March 21, 2019 teleconference, the NRC Staff announced that “the staff has not the reasonable expectation of agreement with the tribe on this matter” and that “the appropriate way to document this inability to reach an agreement would probably be on the record of an evidentiary hearing.”<sup>14</sup> The NRC Staff’s April 3, 2019 motion requests an evidentiary hearing to resolve the disputed issues of fact as to the reasonableness of the NRC Staff’s proposed draft methodology for the conduct of a site survey to identify sites of historic, cultural, and religious significance to the Oglala Sioux Tribe and the reasonableness of the NRC

Staff’s determination that the information it seeks to obtain from the site survey is unavailable.<sup>15</sup>

## II. Ruling on Motion

Although a licensing board can identify a deficiency in the NRC Staff’s NEPA analysis that requires correction, it generally cannot direct the NRC Staff on a particular approach to rectify that deficiency.<sup>16</sup> Nor can a board require the NRC Staff to continue to negotiate with a party that may have some role in the NRC Staff’s efforts to meet its statutory obligations under NEPA. Here, the NRC Staff has concluded that further negotiation as to a methodology to resolve this contention is unlikely to be successful and has moved to proceed to an evidentiary hearing. The NRC Staff states:

the hearing should resolve the disputed issues of fact as to the reasonableness of the NRC Staff’s proposed draft methodology for the conduct of a site survey to identify sites of historic, cultural, and religious significance to the Oglala Sioux Tribe, and the reasonableness of the NRC Staff’s determination that the information it seeks to obtain from the site survey is unavailable.<sup>17</sup>

Up until very recently the NRC Staff had been pursuing a negotiated resolution to obtain the data missing from the EIS in this case. Now, apparently having reached what it considers a firm impasse with the Oglala Sioux Tribe in that negotiation process, the NRC Staff has decided to proceed to an evidentiary hearing regarding the circumstances associated with the absent information’s accessibility. Cognizant of the agency’s obligation to ensure the NEPA-required “hard-look” is taken or a legally sufficient explanation is placed in the record as to why the information required for such a “hard look” is missing from the EIS and was not reasonably available,<sup>18</sup> the NRC Staff has requested authority to proceed to an evidentiary hearing. Given the deference we generally must accord the NRC Staff in its choice of how to address identified NEPA deficiencies,<sup>19</sup> the motion to set a schedule for an evidentiary hearing is *granted*.

## III. Hearing Procedures

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 oral testimony and exhibits in this proceeding.<sup>20</sup> Parties to this proceeding shall provide evidentiary submissions in support of or in opposition to the merits of the disputed issues of fact. An evidentiary hearing is established to resolve the disputed issues of fact as to the reasonableness of the NRC Staff’s proposed draft methodology for the conduct of a site survey to identify sites of historic, cultural, and religious significance to the Oglala Sioux Tribe, and the reasonableness of the NRC Staff’s determination that the information it seeks to obtain from the site survey is unavailable. The evidence presented should address the criteria in

40 C.F.R. §1502.22 pertaining to incomplete or unavailable information.

The schedule for the submission of prepared testimony and other procedural dates leading up to the evidentiary hearing is attached as Appendix A to this Order.<sup>21</sup>

The Board will take oral testimony beginning on Wednesday, August 28, 2019, at 10:00 a.m. MDT and continue daily as necessary through Friday, August 30, 2019, at 5:00 p.m. MDT.

The evidentiary hearing will take place at the Hotel Alex Johnson, 523 Sixth Street, Rapid City, South Dakota 57701.

Members of the public and media are welcome to attend and observe the evidentiary hearing, which may involve technical, scientific, legal, and regulatory issues 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 hearing room.<sup>22</sup> Also, in line with the Board’s previous notice,<sup>23</sup> no firearms will be permitted in the hearing room.

It is so ORDERED.

THE ATOMIC SAFETY AND LICENSING BOARD

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William J. Froehlich, Chairman,  
*Administrative Judge.*

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Dr. Mark O. Barnett,  
*Administrative Judge.*

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G. Paul Bollwerk, III,  
*Administrative Judge.*  
Rockville, Maryland  
April 29, 2019.

**APPENDIX A: SCHEDULE—Powertech USA, Inc. (Dewey-Burdock In Situ Uranium Recovery Facility) Proceeding**

1658–60; see 10 C.F.R. § 2.1208, given such a request can only be entertained if there is unanimous consent of the parties, see *id.* § 2.1206, the objection of Consolidated Intervenors to this proposal, Tr. at 1662, precludes its further consideration.

<sup>21</sup> In the near term, the Licensing Board will amend its June 2, 2014 case management information Order in this case to provide the parties with updated procedures for marking their proposed exhibits. See Licensing Board Order (Providing Case Management Information) (June 2, 2014) (unpublished).

<sup>22</sup> See Procedures for Providing Security Support for NRC Public Meetings/Hearings, 66 Fed. Reg. 31,719 (June 12, 2001).

<sup>23</sup> Atomic Safety and Licensing Board; Notice (Regarding Weapons at Atomic Safety and Licensing Board Proceedings), 79 Fed. Reg. 45,849 (Aug. 6, 2014).

<sup>13</sup> Tr. at 1460–1517 (Dec. 6, 2018); Tr. at 1518–54 (Jan. 29, 2019); Tr. at 1555–1627 (Mar. 21, 2019); Tr. at 1628–73 (Apr. 23, 2019).

<sup>14</sup> Tr. at 1619–20.

<sup>15</sup> See LBP–18–5, 89 NRC at 128–30.

<sup>16</sup> See, e.g., *Carolina Power and Light Co.* (Shearon Harris Nuclear Power Plant, Units 1, 2, 3 and 4), CLI-80-12, 11 NRC 514 (1980) (explaining that adjudicatory boards do not have authority to “direct the staff in performance of their administrative functions”); *Duke Energy Corp.* (Catawba Nuclear Station, Units 1 & 2), CLI-04-6, 59 NRC 62 (2004) (“[L]icensing boards do not sit to correct NRC Staff misdeeds or to supervise or direct NRC Staff regulatory reviews.”); *Offshore Power Systems* (Floating Nuclear Power Plants), ALAB-489, 8 NRC 194 (1978) (clarifying the extent of NRC Staff’s “independent responsibility for preparing impact statements”).

<sup>17</sup> NRC Staff Motion at 2.

<sup>18</sup> See *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 350 (1989); 40 C.F.R. § 1502.22.

<sup>19</sup> In its response to the NRC Staff’s motion, the Oglala Sioux Tribe raised the issue of whether the NRC Staff is required, prior to any hearing, to issue an SEIS explaining its conclusion as to why the cultural resources information being sought is unavailable. See *Oglala Sioux Tribe Response* at 10–18. During the telephone conference, the NRC Staff indicated it considers the appropriate way to document this conclusion is in the context of its evidentiary hearing submissions, Tr. at 1636, although the prospect seemingly exists that, if issued in draft for comment contemporaneously with the NRC Staff’s initial evidentiary hearing submissions, such a supplement could be finalized prior to the scheduled beginning of the hearing, potentially resolving that concern altogether.

<sup>20</sup> Although Powertech suggested that the hearing be held using only written submissions, Tr. at

Event	Date
All Parties Status Conference .....	April 23, 2019.
<b>Evidentiary Hearing Schedule:</b>	
Position Statement/Prefiled Direct Testimony from NRC Staff .....	May 17, 2019.
Response Position Statements/Prefiled Direct Testimony Supporting NRC Staff's Prefiled Direct Testimony .....	May 22, 2019
Response Position Statements/Prefiled Response Testimony Opposing NRC Staff's Prefiled Testimony and any Supporting Prefiled Testimony.	June 28, 2019.
Reply Position Statement/Prefiled Reply Testimony from NRC Staff .....	July 12, 2019.
Proposed Cross-Examination Questions/Requests for Cross-Examination/In Limine Motions on Direct/Response/Reply Testimony Due.	August 2, 2019.
Responses to Requests for Cross-Examination and In Limine Motions on Direct/Response/Reply Testimony Due	August 9, 2019.
Licensing Board Ruling on Requests for Cross-Examination and In Limine Motions .....	August 19, 2019.
Evidentiary Hearing .....	August 28–30, 2019. <sup>24</sup>
Proposed Findings of Fact/Conclusions of Law Due .....	September 27, 2019.
Reply Findings of Fact/Conclusions of Law Due .....	October 11, 2019.
Licensing Board Initial Decision .....	November 29, 2019.

[FR Doc. 2019–09532 Filed 5–8–19; 8:45 am]

BILLING CODE 7590–01–P

## NUCLEAR REGULATORY COMMISSION

[NRC–2016–0190]

### Program-Specific Guidance About Commercial Radiopharmacy Licenses

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** NUREG; issuance.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC) has issued Revision 2 to NUREG–1556, Volume 13, “Consolidated Guidance About Materials Licenses: Program-Specific Guidance About Commercial Radiopharmacy Licenses.” Volume 13 of NUREG–1556 has been revised to include information on updated regulatory requirements, safety culture, security of radioactive materials, protection of sensitive information, and changes in regulatory policies and practices consistent with current regulations. This volume is intended for use by applicants, licensees, and the NRC staff.

**DATES:** NUREG–1556, Volume 13, Revision 2, was published in March 2019.

**ADDRESSES:** Please refer to Docket ID NRC 2016–0190, when contacting the NRC about the availability of information regarding this document. You may obtain publicly-available information related to this document using any of the following methods:

- *Federal Rulemaking Website:* Go to <http://www.regulations.gov> and search for Docket ID NRC–2016–0190. Address questions about NRC Docket IDs in [regulations.gov](http://www.regulations.gov) to Jennifer Borges; telephone: 301–287–9127; email: [Jennifer.Borges@nrc.gov](mailto:Jennifer.Borges@nrc.gov). For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at <http://www.nrc.gov/reading-rm/adams.html>. To begin the search, select “ADAMS Public Documents” and then select “Begin Web-based ADAMS Search.” For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to [pdr.resource@nrc.gov](mailto:pdr.resource@nrc.gov). NUREG–1556, Volumes 13, Revision 2, is located at ADAMS Accession Number ML18180A187. This document is also available on the NRC's public website at <http://www.nrc.gov/reading-rm/doc-collections/nuregs/staff/sr1556/> under “Consolidated Guidance About Materials Licenses (NUREG–1556).”

- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

**FOR FURTHER INFORMATION CONTACT:** Anthony McMurtray, Office of Nuclear Material Safety and Safeguards; U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2746; email: [Anthony.McMurtray@nrc.gov](mailto:Anthony.McMurtray@nrc.gov).

#### SUPPLEMENTARY INFORMATION:

##### I. Discussion

The NRC issued a revision to NUREG–1556, Volumes 13, to provide guidance to existing materials licensees covered under commercial radiopharmacy licenses and to applicants preparing an application for a commercial radiopharmacy license. This NUREG volume also provides the NRC staff with criteria for evaluating commercial radiopharmacy license applications. The purpose of this notice is to notify the public that the NUREG–1556 volume listed in this document was issued as a final report.

##### II. Additional Information

The NRC published a notice of the availability of the draft report for comment version of NUREG–1556, Volume 13, Revision 2 in the **Federal Register** on January 24, 2017 (82 FR 8227), with a public comment period of 59 days. The public comment period closed on March 24, 2017. Public comments and the NRC staff responses

<sup>24</sup> A final Board assessment regarding the length of the evidentiary hearing will await the receipt of the parties' direct, response, and reply testimony.