

July 15, 2015

William J. Froelich, Chair  
Administrative Judge  
Atomic Safety Licensing Board Panel  
Mail Stop T-3 F23  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555-0001

Mark O. Barnett  
Administrative Judge  
Atomic Safety Licensing Board Panel  
Mail Stop T-3 F23  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555-0001

G. Paul Bollwerk, III  
Administrative Judge  
Atomic Safety Licensing Board Panel  
Mail Stop T-3 F23  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555-0001

In the Matter of  
POWERTECH (USA) INC.  
Docket No. 40-9075-MLA; ASLBP No. 10-898-02-MLA-BD01

Dear Administrative Judges:

On July 24, 2015, the NRC Staff informed the Board of a letter sent June 23, 2015 to the Oglala Sioux Tribe regarding the Dewey-Burdock Project. In similar fashion, the Tribe hereby informs the Board that on July 14, 2015, the Oglala Sioux Tribe sent the attached letter to the NRC Staff in response to the June 23, 2015 letter sent from the NRC Staff to the Oglala Sioux Tribe.

Sincerely,

/signed (electronically) by/  
Jeffrey C. Parsons

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Counsel for Oglala Sioux Tribe



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### Advisory Council:

Jhon Goes In Center – Member/Chair  
Garvard Good Plume, Jr. – Founding Member  
Francis 'Chubbs' Thunder Hawk – Ex-Officio Member  
Dr. Hannan LaGarry – Ex-Officio Member

### In Honor

(In Spirit) Elaine Quiver – Founding Member  
(In Spirit) Wilmer Mesteth – Founding Member

### Personnel:

Dennis Yellow Thunder – Director / THPO  
Mike CatchesEnemy – Tribal Archaeologist  
Joni Tobacco – Project Review Specialist  
Sara Buckman – Historic Preservation Assistant  
Loni Weston – Cultural Resource Specialist  
Lisa White Eyes – Cultural Resource Monitor  
Jacob Ferguson – Cultural Resource Monitor

Marissa G. Bailey, Director  
Division of Fuel Cycle Safety, Safeguards and Environmental Review  
Office of Nuclear Material Safety and Safeguards  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555-0001

Dear Ms. Bailey,

In compliance with our Tribal Historic Preservation Office mandates as required under Section 106 of the National Historic Preservation Act we formally respond to NRC Staff's letter dated June 23, 2015 purporting to "reiterate" that the consultation between the Nuclear Regulatory Commission and the Oglala Sioux Tribe under the National Historic Preservation Act "is an ongoing effort" and pledging to "continue to consult with the Oglala Sioux Tribe and other interested Tribes on the implementation of the Dewey-Burdock ISR Programmatic Agreement (PA)." Reading the letter in light of the statements made by NRC Staff in its Petition for Review to the Commission, the Tribe is left to question whether the letter provides a good faith attempt to remedy the problems identified by the April 30, 2015 ruling of the Atomic Safety Licensing Board ("ASLB" or "Board").

At the outset, the Tribe observes that the letter's characterization of the current posture of the consultation process is in conflict with the April 30, 2015 ASLB ruling, but consistent with the arguments NRC Staff presented on appeal. Specifically, the Board expressly held that the NRC Staff had failed to comply with both the National Environmental Policy Act (NEPA) and the National Historic Preservation Act (NHPA) and that "procedures must be put into place to assure that the required NEPA hard look is taken, the NRC's Part 51 environmental regulations are satisfied, and an opportunity for meaningful consultation is provided." LBP-15-16 at 42-43. Thus, a mere "reiteration" of the NRC Staff's view of its obligations fails to properly account for the ASLB ruling, and appears to effectively disregard the Board's order and engage in nothing more than a continuation of the inadequate and insufficient *status quo*. Notably, NRC Staff did not seek a stay of the ASLB ruling, and is therefore required to comply with that ruling, without regard to NRC Staff's pending legal arguments that question the ASLB's authority.

Despite the lack of endorsement by any Tribe of the PA and the Board's decision finding the PA insufficient to meet NRC's NHPA or NEPA duties, your June 23, 2015 letter focuses exclusively on this

document. As NRC Staff is aware, the Oglala Sioux Tribe, along with several other tribes, took great exception to the PA and the process through which it was promulgated – so much so, in fact, that not a single Tribe saw fit to sign on to that document. These issues and objections were presented in detail throughout the ASLB adjudicatory process. See LBP-15 16 at 32-34; letter dated February 5, 2014 to from Oglala Sioux President Bryan Brewer to Ms. Haimanot Yilma, NRC Staff.

Moreover, the letter fails to even mention the ASLB's finding of a separate and distinct violation of the National Environmental Policy Act (NEPA) associated with NRC Staff's inadequate analysis of both impacts to cultural resources at the site and proposed mitigation measures for those impacts. On this point, the ASLB held "the FSEIS in this proceeding does not contain an analysis of the impacts of the project on the cultural, historic, and religious sites of the Oglala Sioux Tribe and the majority of the other consulting Native American tribes." LBP-15-16 at 40 (emphasis supplied). The lack of any reference to this issue, or even the NEPA violations at all, in the letter is disconcerting to the Tribe, as it may be construed as NRC Staff's open defiance of the ASLB and the federal laws requiring NRC Staff to analyze and address these serious and substantial cultural resource impacts. Given the stilted tone and lack of information in the letter, and in order to allow the Tribe to begin the NHPA-mandated consultation process, the Tribe hereby expressly requests that NRC Staff address this issue and provide a letter confirming exactly what steps NRC Staff plans to take to meet its NEPA and NHPA duties as set out in the ASLB ruling. Such a letter would provide the Tribe with the assurance that NRC Staff is sincere in its effort, and would help to ensure that a competent survey and analysis of cultural resources, impacts, and potential mitigation measures is conducted at the site.

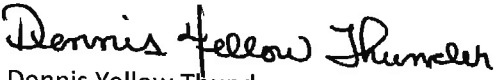
The Tribe appreciates the offer from NRC Staff to meet with NRC Staff to discuss these important issues further. However, we admit some lack of familiarity with the hierarchy and responsibilities of the members of NRC Staff's bureaucracy, including those offered as consulting parties, namely yourself, Mr. Erlinger, and Ms. Chang. The Tribal representatives involved most closely with this unusually problematic project do not recall any of these officials being called as witnesses or even being present at the recent formal hearing in Rapid City, South Dakota, and are therefore rightfully concerned about each official's familiarity with the severity of the issues at hand. In order to make an informed decision, we request further clarification as to the roles, responsibilities, duties, prior experience engaging in consultation under the NHPA, as well as past and anticipated future involvement of each of the NRC Staff's proposed officiants with the proposed Dewey-Burdock project.

Although we are glad that multiple NRC Staff are assigned and look forward to working with them, the Tribe requests the identity of the NRC Staff person who is ultimately responsible for the renewed efforts. The Tribe also requests confirmation that the person with authority to ensure NRC Staff carries out the NEPA/NHPA duties is the federal government's formal point of contact as we move into government-to-government consultation. The Tribe has been disappointed in the previous efforts and experience of the NRC Staff's selection of consulting parties and their apparent inability to meaningfully incorporate the Tribe's input into the project analysis, and is consequently not willing at this time to commit to a single consulting party.

Lastly, your June 23, 2015 letter comes at a time when the many members of the Tribe are making preparations for, and conducting, Sun Dance ceremonies, perhaps the most highly significant cultural event of the year for the Tribe and its members. This ceremonial season lasts through the month of July and necessarily draws many of the Tribal government staff out of the office. As a result, we do not expect to be able to engage this process until the Sun Dance ceremonial season has completed. Although it would be fine for NRC Staff to provide its response during this period, out of

respect for the cultural significance of the Sun Dance, please do not seek or expect further response or meetings until after Sun Dance ceremonies conclude and we have the opportunity to fully consider NRC Staff's proposal.

Respectfully,

  
Dennis Yellow Thunder  
Director/THPO OST

Cc: Honorable Oglala Sioux Tribal President John Yellow Bird Steele  
Executive Director, Tiger Brown Bull.  
Jhon Goes In Center, OSTHPAC Member  
Garvard Good Plume, Jr., OSTHPAC Member  
Mike Catches Enemy, Tribal Archeologist

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