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Title: Powertech USA, Inc.
Dewey-Burdock In-Situ Uranium
Recovery Facility

Docket Number: 40-9075-MLA

ASLBP Number: 10-898-02-MLA-BD01

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1 UNITED STATES OF AMERICA

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4 ATOMIC SAFETY AND LICENSING BOARD PANEL

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6 HEARING

7 -----x

8 In the Matter of: : Docket No.

9 POWERTECH USA, INC. : 40-9075-MLA

10 : ASLBP No.

11 (Dewey-Burdock : 10-898-02-MLA-BD01

12 In Situ Uranium :

13 Recovery Facility) :

14 -----x

15 Tuesday, December 12, 2017

16
17 Teleconference18
19 BEFORE:

20 William J. Froehlich, Chair

21 Dr. Mark O. Barnett, Administrative Judge

22 G. Paul Bollwerk III, Administrative Judge

23

24

25

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P R O C E E D I N G S

1:01 p.m.

JUDGE FROEHLICH: Good afternoon, all. It's 1:02 p.m. at eastern time. This is Judge Froehlich in Rockville, Maryland. With me is Judge Bollwerk and on the telephone line is Judge Barnett. Also with me are our law clerks, Lindsey Simmons and Sarah Ladin, who have been helpful in setting up today's teleconference. This is a telephone -- this is a telephone status conference in the matter of Powertech USA, Inc., Docket Number 40-9075-MLA, concerning the Dewey-Burdock In Situ Uranium Recovery Facility.

Public notice scheduling this telephone conference was issued on November 21st and provision has been made for a bridge line for the parties to this case and for a public listen-only line for interested members of the public. At this time I would like to take the appearances formally for the parties to the proceeding. Is the Licensee, Powertech, and its counsel online?

MR. PUGSLEY: Yes, Judge Froehlich, this is Christopher Pugsley, along with me Anthony J. Thompson for Powertech.

JUDGE FROEHLICH: Thank you, Mr. Pugsley.

1 And for the Intervener, the Oglala Sioux Tribe?

2 MR. PARSONS: Yes, Your Honor, this is
3 Jeff Parsons and with me on the call is Travis Stills.

4 JUDGE FROEHLICH: Thank you. Is the -- is
5 the -- are the Consolidated Intervenor online?

6 MR. FRANKEL: Yes, Your Honor. David
7 Frankel for Consolidated Intervenor, and we might
8 have Tom Ballanco as well.

9 MR. BALLANCO: Yes, Your Honor. This is
10 Tom Ballanco, Officer for Consolidated Intervenor.

11 JUDGE FROEHLICH: Thank you. And most
12 importantly for the purposes of this conference call,
13 the Commission staff?

14 MS. MONTEITH: This is Emily Monteith for
15 the NRC staff. And I would just like to let you know
16 I am calling in from Chicago, Illinois. I will let
17 Mr. Cylkowski introduce himself.

18 MR. CYLKOWSKI: Thank you. This is David
19 Cylkowski for the NRC staff here at Headquarters.
20 Also with me in the room, I have Cinthya Roman and
21 Kellee Jamerson from the NRC staff, and also Sabrina
22 Allen, our paralegal.

23 JUDGE FROEHLICH: Thank you so much. As
24 we proceed through this call, if the parties would
25 identify themselves before they speak, I think it will

1 make things easier for our court reporter, and we will
2 have a better record of this conference call. The
3 Board held a telephone status conference call with the
4 parties on November 16th, 2017. At that conference
5 call the NRC staff reported that the staff was in the
6 midst of internal discussions regarding the options
7 for a methodology to resolve to further identify
8 Lakota Sioux cultural resources.

9 The NRC staff further stated that until it
10 achieved alignment internally on that path forward, it
11 has held off on formal communications with the tribe
12 and with the Licensee on that path forward. I
13 understand that the NRC staff on December 6th sent a
14 detailed letter to the parties outlining its proposal
15 to identify historic cultural and religious sites at
16 the Dewey-Burdock In Situ Uranium Recovery project.

17 Together with a preliminary time table for
18 discussion in support of this approach for obtaining
19 information on Lakota Sioux cultural resources
20 potentially impacted by the Dewey-Burdock ISR project.
21 That staff letter is available in its form to
22 Powertech at ML17340b374, a copy to the Consolidated
23 Intervener, ML17340b376, and a copy to the Oglala
24 Sioux Tribe, ML173403b365. If that's correct, I
25 wonder if staff counsel could explain -- perhaps,

1 briefly -- the nature of this proposed path forward to
2 resolve Contention 1A.

3 MS. MONTEITH: Yes, Your Honor, I can. I
4 -- this is Emily Monteith for the NRC staff. I would
5 begin by noting that the staff considered the
6 information provided by the Oglala Sioux Tribe in its
7 May 31st letter, as well as other information in the
8 record of this proceeding provided by the parties in
9 developing this proposed approach. And I would also
10 note that the describing of the approach as proposed
11 at the time because we're seeking further information
12 and interest in the parties before finalizing a
13 methodology.

14 Now with that, the key elements in the
15 approach would be as follows. First the staff
16 proposes to meet with the tribal councils, which, I
17 believe is the Lakota Sioux Tribe. Second, the staff
18 proposes to reach out to the Lakota Sioux Tribe so
19 they can hopefully interview some tribal elders who
20 are willing to participate and provide information on
21 the cultural resources that may be affected by the
22 project. Finally, the staff proposes to facilitate a
23 Tribal Field Survey at the Dewey-Burdock Project area
24 for those Lakota Sioux Tribes who have not already
25 participated in a survey of the site.

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1 The staff is proposing approximately four
2 weeks for a field survey, which could be divided into
3 two separate phases to accommodate the Tribe's desire
4 to conduct a few at a time. The Tribal Council --
5 their tribal elders -- or -- in different seasons.
6 Each of these elements in the proposed approach,
7 including the oral history interviews and the Tribal
8 Field Survey would be supported or facilitated by a
9 contractor hired by the staff. The contractor would
10 also develop a survey report based on information
11 provided during implementation of the methodology and
12 would assist the staff in the development of the draft
13 and final supplement to the FSEIS.

14 Well, as you noted you know that the staff
15 has accepted a time frame that anticipates this
16 approach would involve and we included an outline of
17 that schedule. And I have noticed to the parties
18 starting from activities that we hoped would be done
19 this month through the issuance of the final
20 supplement, the FSEIS.

21 Much of the anticipated scheduled is
22 driven by considerations such as Sun Dances is in the
23 summer. Ground conditions at the site in the late
24 fall through early spring as well as the time it would
25 take to on-board a contractor, implement the preferred

1 methodology and to effectuate the supplement to the
2 FSEIS.

3 So I can run through that schedule with
4 you if you -- if you'd like, but we anticipate that in
5 order to have a contractor prepared to carry out a
6 methodology that's indisputable, it would be necessary
7 to ignore the contract in February. It would defer
8 the time frame, the staff is seeking the input of the
9 parties on the proposed methodology by January 19th.
10 Subsequent to that we to the extent possibly, the
11 staff anticipates that we think the tribal councils
12 and leaders and oral history interviews would have to
13 take place between March and May 2018. And meetings
14 related to a Tribal Field Survey and at least the
15 first phase would start taking place in May or June.

16 But during late June and July the staff
17 understands that the Sun Dances will take priority for
18 the Lakota Sioux tribes. During this time it may be
19 possible, based on the conduct of activities up to
20 this time frame, that the contractor could begin
21 outlining survey report based on the information that
22 may already have been gathered. And the second --
23 staff, is the Field Survey it's requested and staff
24 anticipates that that would occur up in August of
25 2018. And after that the contractor would draft a

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1 survey report based on information developed. And the
2 staff would also afford 30 days for the tribe to
3 provide written input for the inclusion in the report.

4 The contractor would draft the survey
5 report in October and provide it for the Tribe to read
6 and comment. The staff projects that it would like to
7 have final survey report in hand in December. And
8 then the draft -- to supplement the FSEIS from
9 December 2018 through February -- the end of February
10 2019. The staff anticipates we would then publish the
11 draft, supplement the FSEIS for a 45-day public review
12 and comment period in February. And after
13 consideration of public comments and any necessary
14 revisions to the supplement, final -- publish the
15 final supplement to the FSEIS in April 2019.

16 I just want to reiterate that that is a
17 preliminary schedule based upon what at this time is
18 only a proposed methodology and could change as a
19 result of input provided by the parties in the next
20 several months and -- or other unforeseen
21 circumstances. I think those are the key points of --
22 of the proposal that we achieved to honor the parties.
23 So I am happy to answer any further questions on that.

24 JUDGE FROEHLICH: I think we will have a
25 few more for you in -- in just a moment. But thank

1 you, Ms. Monteith. Mr. Pugsley, has your client
2 received this letter?

3 MR. PUGSLEY: Your Honor, Chris Pugsley
4 for Powertech. Yes, we have received it.

5 JUDGE FROEHLICH: And recognizing that the
6 NRC staff in its letter requested a formal response
7 from Powertech and the Intervenors by no later than
8 January 19th, at this juncture what is Powertech's
9 thinking or reaction to the NRC staff's proposed path
10 forward?

11 MR. PUGSLEY: Christ Pugsley for
12 Powertech, Your Honor. First and foremost, we are
13 planning on providing a formal written response to the
14 staff by no later than the requested date -- hopefully
15 much sooner than that. Secondly, I can say that
16 Powertech's -- while Powertech has not developed an
17 official position on this, as of now the -- the
18 Licensee's position is that the proposal is
19 unacceptable and that it is going -- it is planning to
20 provide a response detailing the issues associated
21 with it, most specifically that what the staff is
22 requiring here in this proposal meets what the Board
23 had put in its letter of LBP-17-09 of being cost
24 prohibitive based on the work done to date.

25 JUDGE FROEHLICH: Thank you, Mr. Pugsley.

1 Not the answer I was anticipating from Powertech, but
2 it is so noted. Mr. Parsons, has the Oglala Sioux
3 Tribe received the letter from the NRC staff?

4 MR. PARSONS: Yes, this is Jeff Parsons on
5 behalf of the Tribe. Yes, Your Honor, the Tribe has
6 received the letter.

7 JUDGE FROEHLICH: To the extent that you
8 have reviewed the staff's proposal, how does the NRC
9 staff proposal compare to the -- the letter I believe
10 that the Tribe sent to the staff back on November 31st
11 -- I am sorry, May 31st, 2017?

12 MR. PARSONS: Thank you, Your Honor. Jeff
13 Parsons again. I have to say I can't receive --
14 several of the elements that we had in that May letter
15 incorporated into the staff's proposal. As you noted,
16 we haven't had an opportunity yet to fully sort of
17 digest the components, but certainly it appears to be
18 a positive and encouraging step in moving the
19 discussion along.

20 JUDGE FROEHLICH: To the extent that you
21 have reviewed the staff proposal at this point, are
22 there any -- any portions of it -- elements of it, as
23 Monteith described, that are consistent with your
24 approach? Or your -- your -- your belief on how this
25 should proceed? Or any things that are missing from

1 the staff proposal?

2 MR. PARSONS: Thank you, Your Honor. This
3 is Jeff Parsons again. In terms of consistency with
4 the proposals and ideas that the Tribe incorporated
5 into its May 31st letter, certainly meeting with the
6 tribal councils, coordinating oral histories and
7 involving elders of the -- of the tribe -- travel
8 groups. The Field Survey component -- incorporating
9 a contractor to help facilitate and also the -- the
10 components discussed about supplement and allowing
11 public comment consistent with NEPA. I think all of
12 those components are very welcome and consistent with
13 what the Tribe had sought in -- in -- to discuss in
14 its -- through its May 31st letter.

15 As Ms. Monteith I think explained, there
16 are some issues that are not fully developed, which is
17 understandable given that we haven't had a -- full
18 conversations about it. But -- for instance, some
19 questions remain as to the specific methodology that
20 would be employed. But it certainly provides a
21 framework that the Tribe believes is productive and
22 has good potential.

23 JUDGE FROEHLICH: Okay. And will you be
24 able to respond formally to the NRC staff on or before
25 January 19th as they have requested?

1 MR. PARSONS: Jeff Parsons again, Your
2 Honor, yes we will be responding by their deadline.
3 In addition, the letter the Tribe received suggested
4 that if the Tribe has questions or wants clarification
5 on any elements, the Tribe -- or, excuse me, the staff
6 would be allowed -- or available -- to make itself
7 available, that is, for a conference call with the
8 tribal government officials. Even -- even yet in
9 December, which we will be exploring as well.

10 JUDGE FROEHLICH: Okay. Could I ask Mr.
11 Frankel or Mr. Ballanco the reception to which the
12 staff's letter was received by the Consolidated
13 Intervenors?

14 MR. FRANKEL: Yes, Your Honor, David
15 Frankel for Consolidated Intervenors. I sent the
16 information to our clients and I haven't heard back
17 from them yet as far as being able to describe their
18 response. But I -- I personally and as counsel for
19 them have a favorable response. And I communicated
20 that to them so that we could gather any comments that
21 we do have and comply with the NRC staff's requested
22 January 19th reply date.

23 Just an observation, I -- I feel that the
24 staff took time and energy to thoughtfully review many
25 of the -- many of the suggestions that we,

1 Consolidated Intervenor, put forth both in this case
2 and in the -- the Crow Butte case. And I am hopeful
3 that -- that this process would lead to a promising
4 path for resolving the outstanding issues. So, unless
5 you have further questions on that, or unless Mr.
6 Ballanco wants to add on to that, that would be our
7 statement.

8 JUDGE FROEHLICH: Okay, and I take it from
9 your statement that you will be able to respond to the
10 NRC staff on or before January 19th as they requested?

11 MR. FRANKEL: Yes, Your Honor.

12 JUDGE FROEHLICH: Thank you.

13 JUDGE BOLLWERK: This is Judge Bollwerk.
14 Let's go back to Ms. Monteith, please, if we could,
15 from the staff. Do you have an estimate of what you
16 think this is going to cost?

17 MS. MONTEITH: Yes, Your Honor.

18 JUDGE BOLLWERK: What is that, please --
19 you're willing to share it with us?

20 MS. MONTEITH: Well, it would be -- our
21 estimate is -- as far as personnel commitments
22 approximately one full-time equivalent employee, or
23 one FTE, whatever that is valued. In addition, the
24 cost of the contractor to support the proposed
25 methodology from -- from on-boarding the contractor

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1 through the final supplementation of the FSEIS is
2 estimated to cost approximately \$250,000.

3 In addition to that would be any
4 reimbursements provided by Powertech to tribes when
5 they participate in the Field Survey. And the staff
6 has requested their specific input on whether they
7 would be willing to do that at the rates we had
8 previously considered or otherwise. In addition,
9 there would be some cost associated with staff travel
10 and supported activities in South Dakota.

11 And we've broken this down, I don't think
12 they amount to much more than \$20,000 I believe. But
13 it would be hard for me to estimate that on the fly.

14 JUDGE BOLLWERK: And what are you valuing
15 the FTE at?

16 MS. MONTEITH: We estimate the FTE at
17 \$300,000. But I -- I can't speak with authority at --
18 for that explanation.

19 JUDGE BOLLWERK: Okay. Well that tends to
20 change from time to time, so --

21 MS. MONTEITH: Yes, Your Honor, that's my
22 understanding.

23 (Pause.)

24 (Simultaneous speaking.)

25 MS. MONTEITH: And of course the cost

1 could be adjusted, but this is based on our proposed
2 approach. It would be subject to change based upon
3 the ultimate awarding of the contract or any
4 adjustment in the proposed methodology results -- as
5 a result of input we received from the other parties.

6 JUDGE BOLLWERK: So whatever -- putting
7 aside the travel reimbursement via Powertech, what
8 I've got -- about almost \$600,000?

9 MS. MONTEITH: I think that is a
10 reasonable estimate, Your Honor. With -- I have a
11 calculation in front of me that estimates, again one
12 FTE -- so that's -- \$250,000 for a contractor and
13 \$300,00 if you were to estimate that for an FTE. Plus
14 Powertech reimbursement depending upon the involvement
15 of the tribes and their ability to support that. And
16 then about maybe \$20,000 or so -- and that's a very
17 rough estimate -- for staff travel and support.

18 JUDGE BOLLWERK: Okay, so approximately
19 600k, then? \$600,000, I am sorry?

20 MS. MONTEITH: Estimates, perhaps, Your
21 Honor.

22 JUDGE BOLLWERK: All right.

23 JUDGE FROEHLICH: Could I -- could I just
24 interrupt, Judge Bollwerk?

25 (Simultaneous speaking.)

1 JUDGE BOLLWERK: Go ahead.

2 JUDGE FROEHLICH: Ms. Monteith, as I
3 understand cost for supplementing FSEIS are divided
4 between certain costs that are spread over the
5 materials program and other costs that are billed
6 directly to the Licensee. Do you have a breakdown of
7 that \$600,000 between, you know, the program costs --
8 the ones that are spread over materials, Licensees --
9 and those costs that would be charged directly to
10 Powertech?

11 MS. MONTEITH: I believe that we estimate
12 the entirety of that cost to be fee billable to
13 Powertech. And we just wanted -- I just received
14 information from the staff, we want to clarify that
15 the one FTE would include the staff time it would
16 require to supplement the FSEIS. So some of that
17 contracting cost and FTE cost would be devoted to
18 supplementing the FSEIS. I think notwithstanding the
19 approach that would be ultimately implemented as a
20 methodology.

21 But my -- my understanding is that in
22 terms of cost recovery it would be fees billable to
23 the Licensee.

24 JUDGE FROEHLICH: Okay, thank you.

25 JUDGE BOLLWERK: So, Mr. Pugsley, I take

1 it -- that's the source of your objection? More or
2 less? Or -- is your estimate in the same ball park?
3 Or are we -- or you have something else?

4 MR. PUGSLEY: Judge Bollwerk, Chris
5 Pugsley for Powertech. That is a component of our
6 objection, sir. We have other objections to the
7 proposal, some of which rest in the substance of our
8 appeal to the Commission and some of which rest in
9 what potentially could be an alternative that could be
10 developed, if there is one, which we are currently
11 evaluating.

12 JUDGE BOLLWERK: All right, so you're --
13 what I -- I think a part of your response to the staff
14 is going to be an alternative proposal?

15 MR. PUGSLEY: It is possible there might
16 be a -- I am sorry, Chris Pugsley for Powertech --
17 Judge Bollwerk, it is possible we may have an
18 alternative developed. We are not sure of that at
19 this time, which is why unfortunately I am not in a
20 position to represent that on behalf of my client.

21 JUDGE BOLLWERK: Okay. You mentioned --
22 you plan on responding potentially much sooner. By
23 the end of the calendar year? Or were -- are you
24 still looking at January?

25 MR. PUGSLEY: Chris Pugsley for Powertech

1 -- Judge Bollwerk, I think that we are aiming to try.
2 And I am not saying that it is going to happen, but we
3 are aiming to try to get something to the staff by the
4 end of the calendar year. We're not sure whether
5 that's going to happen, but we are trying.

6 JUDGE BOLLWERK: All right.

7 MR. PUGSLEY: That's our goal.

8 JUDGE BOLLWERK: Okay. And so let me turn
9 it back to Ms. Monteith, then. Assuming that Mr.
10 Pugsley were able to get back to you by the end of the
11 calendar year, and again he's expressed his -- his
12 definite --

13 (Simultaneous speaking.)

14 -- about that, but I understand. Would
15 you anticipate that that -- and I am assuming that
16 would be given to all the other parties. Would you
17 anticipate that that would be something you'd want to
18 hear from the other parties about in terms of their
19 response by the end of -- by, I'm sorry, January 19th?
20 Or how would that affect the schedule?

21 MS. MONTEITH: Well we anticipated that we
22 might receive some information about possible other
23 methodologies, so that's why we built in that time
24 between now and January 19th to obtain that
25 information. I think probably any input provided by

1 the parties would be welcome on anything Powertech
2 proposes and likewise. We -- we are willing to -- and
3 my understanding is that we are happy to support
4 teleconference amongst other parties, but also to
5 facilitate furthering discussions from each individual
6 party, we are also happy to speak on an individual
7 basis with them as well.

8 It is hard to kind of project at this
9 point how things will play out. But we're just trying
10 to obtain feedback as reasonably and quickly as we can
11 because we do have the constraint with weather at the
12 site and with Sun Dances in the summer, they limit the
13 time that we have to perform activities out in South
14 Dakota to generally the spring and the fall -- or,
15 early summer, late summer potentially. So any further
16 -- any longer the discussions go on, I should say, the
17 -- the risk is the further this gets pushed back. And
18 then -- obviate -- weather obviates our ability to do
19 more. But I -- again, it's difficult to project, but
20 we had built in this time frame for discussions for
21 this purpose.

22 JUDGE BOLLWERK: All right. Let me turn
23 to the Tribe and to the Consolidated Intervenor just
24 to see if you have any response given what you just
25 heard from Ms. Monteith and Mr. Pugsley. And maybe we

1 could do the Tribe first, please.

2 MR. PARSONS: This is Jeff Parsons on
3 behalf of the Tribe. This is -- this is information
4 that was not included in the letter, obviously, so it
5 would be the first time that we heard the -- the cost
6 estimates. I do think that it is necessary to conduct
7 a competent cultural resources surveys. And I think
8 those -- as well as the supplementation of the FSEIS,
9 so if the staff says that's a -- an accurate estimate,
10 we have no basis -- at least I don't personally have
11 a basis to dispute that at the moment.

12 JUDGE BOLLWERK: All right. Mr. Frankel,
13 anything you want to add? This is Judge Bollwerk,
14 sorry.

15 MR. FRANKEL: Yes, Your Honor. David
16 Frankel for Consolidated Intervenors. We note that
17 the \$600,000 cost is -- is about 40 percent less than
18 the \$1 million cost estimate that was revealed at our
19 hearing concerning this matter. So it appears that
20 based on that \$1 million estimate, this \$600,000
21 estimated cost is a -- is a reasonable cost. And we
22 further note that maintaining a uranium mine implies
23 certain cost of doing business and licensing, and so
24 we would suggest this is simply one of those costs.

25 JUDGE BOLLWERK: All right, thank you sir.

1 Judge Froehlich?

2 JUDGE FROEHLICH: No, actually. At this
3 point I would -- I would like us to think of when it
4 would be best for us to have the next status call
5 given that the staff won't have responses until
6 approximately January 19th. I was considering the
7 week of January 22nd through the 29th. Perhaps
8 January 24th or 25th -- would that date work for the
9 parties?

10 MR. PUGSLEY: Your Honor, Chris Pugsley
11 for Powertech. Those dates work fine.

12 JUDGE FROEHLICH: And for the Consolidated
13 Intervenors?

14 MR. FRANKEL: Your Honor, David Frankel
15 for Consolidated Intervenors. Those dates work fine.

16 JUDGE FROEHLICH: Ms. Monteith, would --
17 would January 24th or January 25th be a reasonable
18 date to set for a follow-on telephone conference given
19 that you'll have -- answers from the parties by then
20 -- by the 19th?

21 MR. MONTEITH: Yes, Your Honor. I just
22 have word that we can support the -- was it the 24th
23 or the 25th?

24 (Simultaneous speaking.)

25 JUDGE FROEHLICH: Wednesday the 24th of

1 January or Thursday the 25th would probably be best.

2 JUDGE BOLLWERK: Likely in the afternoon
3 I think.

4 JUDGE FROEHLICH: Yes.

5 MS. MONTEITH: Yes, as an initial matter
6 we can support a teleconference during those times.
7 We would anticipate, again, having feedback by the
8 19th. We may not have fully processed the path
9 forward based on that feedback at that time. But,
10 knowing that, if that is acceptable to the Board, we
11 are available those days.

12 JUDGE FROEHLICH: Okay. I would like to
13 suggest then that we have a follow-on status
14 conference call on Wednesday, January 24th at 2:00
15 p.m. if that -- if that works for all the parties and
16 for -- eastern time. And if that works for Judge
17 Barnett?

18 JUDGE BARNETT: Yes.

19 JUDGE FROEHLICH: Okay.

20 MR. PUGSLEY: Judge Froehlich, Chris
21 Pugsley for Powertech. Just one additional matter, if
22 was are as Licensee successful in getting a response
23 in as Judge Bollwerk had noted earlier, sooner rather
24 than later -- by the end of the calendar year -- in
25 the event that there is room for discussion -- and I

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1 am not saying that there is -- but if there is room
2 for discussion we would be -- I know my firm would be
3 happy to provide a dial-in number to all the parties
4 to discuss possible solutions to proposals, counter
5 proposals, whatever there may be. So I just wanted to
6 make clear to all counsel on the phone that Powertech,
7 while it has its -- when it has its position, it is
8 open to discussion.

9 JUDGE FROEHLICH: Thank you, Mr. Pugsley,
10 I hope that you will come through with -- with that
11 offer to facilitate additional dialogue among the
12 parties and hope that the parties will have some
13 success in discussing the issues, I guess, that your
14 -- your response to the staff outline engenders.

15 While I have you, Mr. Pugsley, I note that
16 you filed with the Board a request yesterday to take
17 judicial notice. And I did read that pleading and
18 within it I note at pages two, eight and nine you make
19 reference to Contention 1A and if I am reading it
20 correctly I think you're suggesting that Contention 1A
21 has been recently resolved. I believe that the -- the
22 discussions that are taking place are ones that will
23 be -- have a goal of resolving the remaining
24 Contention 1A. It was 1B that was resolved by the --
25 the last LBP.

1 MR. PUGSLEY: Yes, Judge Froehlich, Chris
2 Pugsley for Powertech. I sincerely apologize for
3 that. That is a typo on my part and we plan on filing
4 a quick errata in short order to make sure that that
5 is corrected. I appreciate you giving us notice on
6 that. But again, that is a -- my error, and I do
7 apologize to all the parties. But you are correct in
8 your assessment.

9 JUDGE FROEHLICH: Thank you.

10 JUDGE BOLLWERK: But we'd have to admit
11 that we've had the same problems here talking about
12 these sometimes in terms of which is in and which is
13 out.

14 (Laughter.)

15 JUDGE BOLLWERK: But I think we all know
16 what is -- but the substance of it is maybe the number
17 isn't right.

18 MR. PUGSLEY: I appreciate that, Judge
19 Bollwerk. But like I said, I do apologize from a
20 procedural perspective. I did not intend -- there was
21 no intent to confuse the -- the Board or the parties.
22 That is simply my -- my error and I take full
23 responsibility for it.

24 MR. PARSONS: Your Honors, this is Jeff
25 Parsons on behalf of the Tribe, just with respect to

1 the notice of -- or the filing for judicial notice.
2 The Tribe does note that the rules with respect to
3 filing judicial notice at 10 CFR 2.337f do contemplate
4 an opportunity for other parties to be given an
5 opportunity to controvert any facts. Now we obviously
6 just received this -- this filing and can't say that
7 I've had time to fully process it.

8 But I would note that the Tribe would like
9 to reserve a right -- if the Board would like to put
10 a time limit on that, I think that's appropriate. But
11 we would like to reserve a right to respond if you
12 deem it appropriate.

13 JUDGE FROEHLICH: If you deem is
14 appropriate to respond, file your pleading and the
15 Board will take it up if and when we receive anything.
16 This is a request for judicial notice, we take notice
17 -- but -- use their, I guess, documents and
18 transcripts of matters that have been heard before --
19 other licensing tribunals and that -- that's where it
20 looks -- if there's anything that's incorrect in there
21 or anything you believe, you know, would supplement
22 those materials, file them and we'll take -- we'll
23 take --

24 (Simultaneous speaking.)

25 MR. BOLLWERK: How soon do you -- this is

1 Judge Bollwerk -- how soon do you think you can get it
2 in?

3 MR. PARSONS: Thank you, Your Honor. I
4 think we can get it in -- certainly before the close
5 of the year. Obviously things are starting to get
6 complicated by the holiday schedules.

7 MR. BOLLWERK: Right. So the 29th, then?

8 MR. PARSONS: Sure. Thank you, I think
9 that's reasonable.

10 MR. BOLLWERK: All right.

11 MR. PUGSLEY: Yes, and Judge -- Judge
12 Bollwerk, Chris Pugsley for Powertech, and just noting
13 -- if we're noting things for the record, we just
14 wanted to note that the reason we filed this even
15 though we said it was a request to take judicial
16 notice was a specific response to Judge Bollwerk's
17 request for information on the previous telephonic
18 hearing call regarding how delays have impacted
19 things. Just wanted to note that for the record
20 because we were trying to provide the information that
21 was requested.

22 JUDGE FROEHLICH: Thank you, Mr. Pugsley.

23 MR. FRANKEL: Your Honor, David Frankel
24 for Consolidated Intervenors, we likewise reserve our
25 right to object and we do object. We don't think that

1 the filing complies with Section 2.337f-1. And so we
2 are going to join -- not -- not join, we are going to
3 file our own pleading by December 29th with respect to
4 yesterday's request for judicial notice filing.

5 JUDGE FROEHLICH: Okay, thank you.

6 MR. FRANKEL: I guess -- would that date
7 apply to the staff as well if they had anything they
8 wanted to say?

9 JUDGE FROEHLICH: Of course. All right.
10 Judge Bollwerk, anything further?

11 JUDGE BOLLWERK: The only thing I would
12 note is that I think that the -- the staff has made an
13 effort here to put a -- an alternative option on the
14 table with a lot of thought behind it. I would agree
15 that it looks like they've looked at this carefully.
16 Having said that, the parties are going to find some
17 things they don't like and some things they do like.
18 And it sounds like the -- both -- certainly the Tribe
19 and the Consolidate Intervenors are already thinking
20 about talking with the staff. We certainly encourage
21 you to do that.

22 Same with Powertech, whether you do it
23 before or after you put out your formal response.
24 Keeping the lines of communication open is very
25 important. Hopefully this will in some way -- end up

1 in some resolution of this -- other than going to an
2 evidentiary hearing. But we'll just have to see how
3 that happens. But I -- but I think there has been an
4 effort here to begin the -- to begin the ball moving
5 forward. But again, it's up to the parties as to
6 where exactly that goes. So we will simply be
7 watching at this point. And I take it -- did Barnett
8 have anything he wants to say?

9 JUDGE FROEHLICH: I was just going to ask
10 him that. Judge Barnett, any -- any questions or
11 comments?

12 JUDGE BARNETT: No.

13 MR. PUGSLEY: Judge Froehlich, Chris
14 Pugsley for Powertech -- very quickly. To the extent
15 that the Consolidated Intervenors and/or the Oglala
16 Sioux Tribe choose to invoke 10 CFR 2.337 and file
17 evidence at a hearing in objecting to our providing of
18 information as was requested by the Board, we would
19 respectfully ask an opportunity to reply to that
20 objection. And I can guarantee the members of the
21 Board that our reply will come very, very quickly
22 after any objection is filed.

23 JUDGE FROEHLICH: Thank you, Mr. Pugsley.
24 I guess I hadn't had anything further to say on either
25 the additional material that was provided or the going

1 -- the path forward. But I think I will take this
2 opportunity to urge the parties to concentrate their
3 effort on constructive dialogue in the coming weeks
4 and to focus on the proposals -- the proposal that the
5 staff has put forward and any alternative or
6 variations to that proposal that may come from
7 Powertech or other parties and to concentrate their
8 efforts on coming up with a constructive path forward
9 -- hopefully one that all parties can agree with --
10 and not to let the -- the supplemental material that
11 was filed be a distraction or take away from the
12 efforts at resolving Contention 1A.

13 And with that I want to thank the parties
14 and especially the staff for getting a concrete
15 proposal on the table in short order -- ahead of its
16 deadline. The Board was pleased to see that a -- an
17 offer -- a comprehensive offer was put forward in
18 advance of the dates that we were talking about in our
19 last status conference. So I would urge all the
20 parties to work diligently at this and hopefully do it
21 as quickly and expeditiously as possible. With that
22 -- that, I don't think there's anything further and we
23 will adjourn today's session. Thank you all.

24 (Whereupon, the above-entitled matter went
25 off the record at 1:37 p.m.)