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Docket Number: 40-9075-MLA

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

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1 UNITED STATES OF AMERICA

2 NUCLEAR REGULATORY COMMISSION

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4 ATOMIC SAFETY AND LICENSING BOARD PANEL

5 + + + + +

6 HEARING

7 -----x

8 In the Matter of: :

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

10 : ASLBP No. 10-898-02-MLA-BD01

11 (Dewey-Burdock :)

12 In Situ Uranium :

13 Recovery Facility) :

14 -----x

15 Wednesday, January 24, 2018

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

1:59 p.m.

JUDGE FROEHLICH: Good afternoon, all. It is 2 p.m. Eastern Time, and this is Judge Froehlich in Rockland, Maryland. With me is Judge Bollwerk, and on the telephone line is Judge Barnett. Also with me are our law clerks, Ms. Lindsay Simmons and Ms. Sarah Ladin, who have been instrumental in helping the Board arrange today's teleconference.

Before we actually begin, I would just like to note who is on the line among the parties before we take appearances. I understand that a representative of Powertech is on the line. Is the staff on line?

MS. MONTEITH: Your Honor, this is Emily Monteith for the NRC staff.

JUDGE FROEHLICH: Thank you. And is the counsel for the Oglala Sioux Tribe online?

MR. PARSONS: Thank you, your Honor. This is Jeff Parsons on behalf of the Oglala Sioux Tribe.

JUDGE FROEHLICH: Thank you. And is there a representative of the -- well, we'll take appearances in a moment. Is there a representative on the line from the Consolidated Intervenor?

MR. BALLANCO: This is Tom Ballanco for

1 the Consolidated Intervenors.

2 JUDGE FROEHLICH: Okay, thank you. All
3 right. Let's go back to the conference and its
4 formality. We'll take appearances in a moment. This
5 is a telephone status conference in the matter of
6 Powertech USA, Inc., Docket Number 40-9075-MLA,
7 concerning the Dewey-Burdock In Situ Uranium Recovery
8 Facility. Public notice of this telephone conference
9 was issued on January 9th, and provision has been made
10 for a bridgeline for the parties to this case and for
11 a public listen-only line for interested members of
12 the public.

13 At this time, I'd like to take the formal
14 appearances of the parties to the proceeding. Is the
15 licensee, Powertech, and its counsel online?

16 MR. PUGSLEY: Yes, Judge Froehlich.
17 Christopher Pugsley and Anthony Thompson for
18 Powertech.

19 JUDGE FROEHLICH: Thank you, Mr. Pugsley.
20 And for the intervenor, the Oglala Sioux Tribe?

21 MR. PARSONS: Thank you, your Honor. This
22 is Jeff Parsons on behalf of the Oglala Sioux Tribe.
23 And with me on the phone, as well, is Travis Stills.

24 JUDGE FROEHLICH: Thank you. And for the
25 Consolidated Intervenors, is counsel on line?

1 MR. FRANKEL: David Frankel for
2 Consolidated Intervenors, and I possibly have Tom
3 Ballanco on the line with me.

4 MR. BALLANCO: Yes, your Honor, this is
5 Tom Ballanco for Consolidated Intervenors.

6 JUDGE FROEHLICH: Thank you very much.
7 And for the Commission staff?

8 MS. MONTEITH: Your Honor, this is Emily
9 Monteith for the NRC staff calling in remotely from
10 Chicago, Illinois. At headquarters is David
11 Cylkowski, also counsel for the NRC staff, with
12 Cinthya Roman and Kellee Jamerson present and Diana
13 Diaz-Toro on the listen-only line.

14 JUDGE FROEHLICH: Thank you very much. As
15 we proceed through this call, if the parties would
16 identify for themselves before they speak, it will
17 make things easier for our court reporter and we'll
18 have a better record of today's conference call. We
19 had our last telephone status conference call with the
20 parties on December 12, 2017 during which the NRC
21 staff described a December 2017 proposal and provided
22 further details and estimated costs. Both intervenors
23 responded favorably to the new proposal, calling it a
24 productive step forward that thoughtfully included
25 many of the suggestions that had been put forward by

1 the Oglala Sioux Tribe and the Consolidated
2 Intervenors over the course of this proceeding.

3 Powertech, on the other hand, believes the
4 proposal to be unacceptable due to its costs, among
5 other reasons, but stated that it was willing to
6 continue discussion and might even put forward a new
7 proposal on its own.

8 On Friday, January 19th, 2018, Powertech
9 and the Oglala Sioux Tribe provided their formal
10 responses to the staff's December 17th proposal. The
11 Oglala Sioux, mirroring its initial reaction, stated
12 that the proposal provides an outline of a plan that
13 the office believes will provide a reasonable
14 likelihood of satisfying NEPA and resolving the Oglala
15 Sioux Tribe's longstanding NEPA contention.

16 Although some details must still be worked
17 out, the Oglala Sioux believes that the components of
18 the basic structure of the plan are realistic,
19 logical, and coincide well with suggestions that the
20 intervenors had put forward. Powertech, on the other
21 hand, expressed several concerns regarding the NRC
22 staff's proposal, such as its cost and the amount of
23 time it would take to implement.

24 The Board has several questions for each
25 of the parties regarding their reactions to the NRC

1 staff's December 2017 proposal and the Oglala Sioux
2 Tribe's and Powertech's responses to that proposal.
3 We'd like to start with a few questions for the NRC
4 staff on their December 2017 proposal.

5 Ms. Monteith, given that the Tribe has a
6 generally favorable response to the proposal, will the
7 NRC staff continue moving forward with the proposal to
8 keep up with the time line that was envisioned?

9 MS. MONTEITH: Your Honor, to clarify, are
10 you requesting whether information or to continue the
11 time line we have or whether we intend to make a
12 decision to proceed with the proposal as issued in
13 December?

14 JUDGE FROEHLICH: Well, at this point,
15 probably your answer both would be helpful.

16 MS. MONTEITH: Okay. Thank you, your
17 Honor.

18 JUDGE FROEHLICH: Sure.

19 MS. MONTEITH: I think we have a lot to
20 consider right now. The staff received the input
21 provided by the parties on January 19th. The input
22 provided by the parties appears to reflect
23 disagreements about how the process should proceed.
24 So, currently, the staff is weighing that information
25 and considering how best to move forward with the

1 decision on methodology in the near term. The staff's
2 proposed schedule issued in December predicated on
3 moving forward with the proposal that we issued in
4 December contemplated that we would make a final
5 decision and notify the parties on a methodology
6 selection that February.

7 Right now, given the disparity and the
8 feedback that we received on Friday, we're still
9 considering whether that procedural deadline, although
10 we are certainly, I think, aiming to fulfill that time
11 line.

12 JUDGE FROEHLICH: Have the parties been in
13 contact with the staff beyond their formal, their
14 formal replies or responses to the staff proposal?
15 Has there been conversations among the parties?

16 MS. MONTEITH: Emily Monteith for the NRC
17 staff. No, your Honor, we reached out to counsel the
18 Oglala Sioux Tribe in December indicating our
19 willingness to meet with the Tribe to discuss our
20 proposal, and we reissued an email to all the parties
21 in the first week of January, I believe, it was,
22 indicating our willingness to discuss a proposal. The
23 first feedback we had from any of the parties was what
24 we received on Friday.

25 JUDGE BOLLWERK: Ms. Monteith, this is

1 Judge Bollwerk. As you're aware, I'm kind of big on
2 concrete deadlines, so let's talk a little more
3 specifically here. Do you contemplate in reaching
4 your decision about whether the proposal is going to
5 be changed in some way or adopted? Do you anticipate
6 getting together with a party beforehand to --

7 MS. MONTEITH: What we have in hand, your
8 Honor, as of, I believe, yesterday or the day before
9 was an invitation by counsel for Powertech to meet
10 with counsels for the parties to discuss their
11 feedback or potentially feedback of all the parties.
12 That was sent on Friday. Staff responded and
13 indicated that we are amenable to having that meeting
14 and we do request that it take place in the very near
15 term, probably within a week, as our intention to
16 gather the information that the parties are willing to
17 provide and to forward it as expeditiously as
18 possible.

19 JUDGE BOLLWERK: So you contemplate, at
20 this point, the potential for a meeting of all the
21 party counsel within the next week approximately?

22 MS. MONTEITH: I don't yet, your Honor.
23 Counsel for Powertech invited us to participate in
24 such a meeting. We, counsel for staff, indicated we
25 would like to do that within a short time frame, and

1 that's where it was left.

2 MR. PUGSLEY: Judge Bollwerk, Chris
3 Pugsley for Powertech. Yes, we did extend that
4 invitation and we did receive the correspondence from
5 NRC staff, the electronic message. And we are
6 certainly amenable to that time frame. If they would
7 like to have, if all of the parties would like to have
8 a discussion, we are certainly open to that.

9 JUDGE FROEHLICH: While we have all the
10 parties in the room or on the line, does this present
11 any problems for the Consolidated Intervenor of the
12 Oglala Sioux Tribe, that is having a meeting within a
13 week, staff and the Powertech on the December 2017
14 proposal and the alternative that Powertech set forth.

15 MR. PARSONS: Thank you, your Honor. This
16 is Jeff Parsons on behalf of the Oglala Sioux Tribe.
17 We did receive Powertech's email yesterday and saw the
18 staff's response this morning, and we would also be
19 amenable to a call on that time frame that staff
20 suggested, yes.

21 JUDGE FROEHLICH: And counsel for the
22 Consolidated Intervenor?

23 MR. FRANKEL: David Frankel for
24 Consolidated Intervenor. And, Judge, at the outset,
25 I'd like to mention that we also filed a response, a

1 response to the staff on Friday, but it echoed,
2 basically, the Oglala Sioux Tribe's response. And
3 then in response to your question, I think we could
4 schedule that over the next week, depending on what
5 day and time.

6 JUDGE FROEHLICH: While you raise the
7 subject, Mr. Frankel, are you saying that you did file
8 a written response last Friday to the staff's
9 proposal?

10 MR. FRANKEL: That's correct, your Honor.
11 I just sent it to the counsels and parties. I didn't
12 file it with the Board. I wasn't aware that it
13 required a Board filing.

14 JUDGE FROEHLICH: Mr. Frankel, would you
15 please file that pleading so that it is in the formal
16 docket of this case and so that the Board has, I
17 guess, the positions of all the parties as we move
18 through the settlement of this issue.

19 MR. FRANKEL: Yes, your Honor. Apologies
20 for that procedural issue.

21 JUDGE FROEHLICH: Okay. And since I
22 haven't had the benefit of hearing your views on it,
23 was there anything of consequence, other than
24 agreement with the position, that was filed by the
25 Oglala Sioux Tribe?

1 MR. FRANKEL: Your Honor, we basically
2 took a shorter form position to indicate that we
3 thought the NRC staff's proposal was basically on the
4 right track.

5 JUDGE FROEHLICH: Okay, all right. Thank
6 you, Mr. Frankel. Mr. Parsons, Powertech has
7 expressed concern in its response that the survey
8 proposed in the staff's December 2017 proposal, like
9 the surveys that were proposed, would not be
10 acceptable to the Tribe. And in your responses, the
11 Oglala Sioux Tribe appears to view the staff proposal
12 as fairly positive. It raises two questions. If the
13 staff were to continue forward and finalize the
14 proposal resembling the one circulated, what is the
15 likelihood that the Oglala Sioux Tribe will agree to
16 participate in the staff's execution of that proposal?

17 MR. PARSONS: Thank you, your Honor. Jeff
18 Parsons on behalf of the Tribe. As we stated in our
19 letter, we think the components that have been put
20 forth align with the issues we've raised and have been
21 raising for some time. So should the staff propose to
22 move forward as proposed, we would participate.

23 JUDGE FROEHLICH: And while I have you,
24 Mr. Parsons, has the Oglala Sioux Tribe reached out to
25 the other Lakota Sioux Tribes to find out the

1 likelihood that the other tribes would be
2 participating in such a survey or to garner their
3 reaction to the December staff proposal?

4 MR. PARSONS: Thank you, your Honor. This
5 is Jeff Parsons again. We have been in touch with
6 other tribes and circulated the NRC letter. We
7 stressed our positive reaction to the proposal, and
8 that was acknowledged by some of the other tribes,
9 although I have not, we have not gone so far as to
10 follow up with detailed discussions on the extent or
11 nature of their participation. However, as noted in
12 our letter to NRC staff last Friday, the Oglala Sioux
13 Tribe does commit to soliciting that input and helping
14 to coordinate and arrange NRC staff's engagement with
15 those other tribes.

16 JUDGE FROEHLICH: Mr. Pugsley, I note in
17 the Powertech response it seems that Powertech
18 indicates that it can't accept the proposal that the
19 Oglala Sioux Tribe has not first vetted and accepted.
20 After reading the Tribe's response and hearing Mr.
21 Parsons' response just a moment ago and they seem to
22 generally accept the proposal and desire to move
23 forward to resolve this one remaining contention, how
24 does this affect Powertech's position on the staff's
25 offer?

1 MR. PUGSLEY: Judge Froehlich, Chris
2 Pugsley for Powertech. Two points here. One, the
3 word generally accept is indicative here because we've
4 had general acceptance in the past from the Oglala
5 Sioux Tribe about an open-site survey at the Dewey-
6 Burdock site which they agreed they would participate
7 in previously and then declined at the last minute and
8 also did not participate in while the ASLB was viewing
9 their site walkover before the hearing.

10 Secondly, we are very hesitant too, it's
11 not just -- the statement that we don't want to enter
12 into an agreement that does not resemble something
13 that the Oglala Sioux Tribe would agree to, that's one
14 aspect of this. That's not just the only aspect.
15 It's that we've already spend more than \$2 million on
16 the environmental review process and the NEPA process
17 under Part 51 for this site, and we've done the work
18 and I think you have seen in our filing from last
19 Friday that we have testimony from NRC's environmental
20 review branch project manager, Haimanot Yilma, who has
21 said that they basically, that we've done certain
22 things that things have been completed.

23 Our problem is that when the Board said
24 that we needed to provide you with information saying
25 this is cost prohibitive, it is, number one, because

1 we've spent so much money already on this effort to
2 satisfy the NEPA/10 CFR Part 41 process but also the
3 fact that, going forward, the scope of what would have
4 to be done going forward has been greatly enlarged by
5 the staff's proposal to over, I'm not sure the number,
6 and Ms. Monteith can correct me if I'm wrong, but it's
7 around 10,000 acres, if I'm not mistaken. And it's
8 the point where we are now getting into a realm of
9 analysis that is, frankly, under federal case law, not
10 necessary. And we think that the cost estimate of the
11 staff, while we very much appreciate the work they put
12 in to put the FTE in place, to understand what the
13 costs going forward are, our experience and mine and
14 Mr. Thompson's experience with the entire uranium
15 recovery industry has those cost estimates are never
16 accurate. They're always higher, and we are going to
17 get into the millions of dollars range, considering
18 that previous proposals to address the Oglala Sioux
19 Tribe's concerns with respect to this under the
20 National Historic Preservation Act, not under NEPA,
21 was around a million dollars. We're now talking about
22 involving more tribes in this, and now we're getting
23 into serious money.

24 And what we wanted to do and the reason we
25 extended the invitation that was identified earlier in

1 this conference call to have a discussion amongst
2 counsel is to find a proper approach to this that
3 satisfies NEPA. And we'd like to have those
4 discussions, we plan to have those discussions, and we
5 want to roll up our sleeves and get into the details
6 and get this thing taken care of.

7 But the fact that the Oglala Sioux Tribe's
8 counsel has noted that they would be willing to
9 participate is in no way indicative to the licensee
10 that the other tribes would participate, number one;
11 number two, that it would not take a significant
12 amount of time to then to agree, these tribes to agree
13 to parameters associated with NRC's proposal. And at
14 the end, what indication does the licensee have that
15 this process is not going to turn into what has
16 happened over the past seven - eight years? And the
17 longer this process continues the more cost it incurs
18 because NRC, by statute, is a fee recovery agency. We
19 have to pay them and we have to pay for opening the
20 site, the per diems, and all the other parameters that
21 had been proposed by the NRC staff.

22 So while we commend NRC for its efforts in
23 putting a proposal together, that was the reason that
24 we are having an issue and that is the reason that we
25 filed what we filed on Friday.

1 JUDGE FROEHLICH: Thank you, Mr. Pugsley.
2 I guess, I guess that I'd like to hear from -- I'm
3 sorry? Oh, go ahead. My question, I guess, to follow
4 on what Mr. Pugsley has just said would go to Ms.
5 Monteith. I'd like to hear your reaction to Mr.
6 Pugsley's statement, as well as his filed comments of
7 last Friday. You know, based on the experience that
8 I assume the staff has in preparing, you know,
9 environmental impact statements that address the
10 cultural and religious issues that are present in our
11 case.

12 MS. MONTEITH: Your Honor, Emily Monteith
13 for the NRC staff. That's a rather broad question,
14 and I'll try to answer that the best I can, and, if
15 you have further specific questions hearing from what
16 I say, please feel free to jump in.

17 JUDGE FROEHLICH: Thank you.

18 MS. MONTEITH: We very much appreciate the
19 feedback provided by all of the parties, including
20 Powertech, and we appreciate their addition of
21 information on our cost estimates for the proposal, as
22 they were able to identify aspects of that that we,
23 ourselves, could not.

24 I think that one thing I might raise is
25 Powertech's response indicates perhaps two potentially

1 divergent views about our proposal. The first is an
2 expression of willingness to discuss further the
3 parameters of the proposal we put forward in December.
4 The second is an expression that that proposal is, in
5 fact, cost prohibitive. So we wonder if there is any
6 area within the uncertainties that they've identified
7 in in the proposal that we issued in December that,
8 once firmed up, would enable the licensee to determine
9 that they could support financially, in terms of a
10 financial cost and time, the implementation of that
11 proposal.

12 MR. PUGSLEY: Your Honor, Chris Pugsley
13 for Powertech. In answer to Ms. Monteith's question,
14 the statement about being open to discussion is
15 reflected in our invitation to have a conference call
16 with counsel that we are looking for a solution to
17 this issue, to resolve the contention, and satisfy
18 NEPA. The point to be made here is, based on the
19 parameters put forth by the staff in December and our
20 analysis of it in our filing last Friday, we cannot
21 accept it. And we're basically re-doing the NHPA
22 process for NEPA, and we can't do that. The estimate
23 from the staff is not going to end up there because
24 the proposal is open-ended in nature, it has no firm
25 milestones in terms of deadlines, and they can stretch

1 out and there's no guarantee that there's going to be
2 a satisfactory result as far as we're concerned.

3 That is the reason why we believe that the
4 best course of action here is to get on the phone with
5 counsel and talk this through and find out where we
6 stand because, if we are diametrically opposed in our
7 viewpoints, then we need to just come to that
8 realization. And if there is middle ground, we're
9 certainly willing to talk about it. But at the same
10 time, the way the staff's proposal is currently
11 outlined, I apologize, our client cannot accept it.

12 JUDGE BOLLWERK: Mr. Pugsley, this is
13 Judge Bollwerk. Let me ask you one question. As I
14 look at the figures that you've put forth, and I
15 recognize there's a lot of things in there and maybe
16 Ms. Monteith wants to comment on some of the
17 specifics, like the sustaining cost and things like
18 that, the FTEs involved, but, in looking at the
19 proposal that you have a concern about now and
20 actually looking back at the staff's April proposal,
21 while you supported that in your summary disposition
22 motion, it's not clear to me, given the concerns
23 you're raising now, if you would even support what the
24 staff was proposing back in April.

25 MR. PUGSLEY: Well, Judge Bollwerk, Chris

1 Pugsley for Powertech. Frankly, sir, the proposals
2 that we were talking about previously were not nearly
3 as, at least in my opinion, as detailed as they are
4 now in terms of as many steps are required, as well as
5 the fact that many of the steps recommended in the
6 proposal were resisted previously by the Oglala Sioux
7 Tribe. So what we have in front of us right now, sir,
8 is something that we have, A, no certainty on in terms
9 of progress; B, something we have no certainty on in
10 terms of cost; and, C, no certainty on in terms of
11 completion.

12 So for our company, as we've noted in our
13 pleadings which you've taken judicial notice of, much
14 of but some not, and maybe, you know, we filed with
15 you with our proposal a letter we got from the BLM
16 that says, basically, the only alternative they have
17 other than hanging their hat on what NRC does in their
18 SEIS, is to do their own EIS, which would cost a lot
19 of extra money, as well.

20 I mean, one of the Board parameters here
21 was cost, and the way we look at this right now is, I
22 mean, to have the Tribes out to have an, to have the
23 Oglala Sioux Tribe out to have a site survey is one
24 thing. But if you look at the proposal from the staff
25 in December, that is completely different. And we're

1 talking now about reinventing the NHPA process to
2 satisfy NEPA, and the law doesn't require that.

3 So what we're saying is you're not, what
4 the Board is asking us to do -- well, not the Board,
5 I'm sorry. What the NRC staff is asking us to do is
6 to satisfy NEPA. We have to now spend more than the
7 two-some-odd million dollars we've already spent on
8 the SEIS, we now have to drop another million dollars
9 plus into this effort which, frankly, the staff
10 already did the work to satisfy NEPA on this issue, in
11 our opinion.

12 So, I mean, like I said, I think that it
13 is prudent for the counsel to get on the phone and
14 talk about this and figure out whether or not there is
15 a common ground we can occupy. And if we can, great.
16 We can report back to the Board and say we've found
17 common ground, we have a solution, we're ready to go.
18 And if we can't, then we tell you the same thing, that
19 we can't find common ground.

20 JUDGE BOLLWERK: This is Judge Bollwerk
21 again. Just so I understand the proposal you have put
22 out, how is the literature search that you're
23 suggesting different than what's already been done?

24 MR. PUGSLEY: It's not terribly different,
25 your Honor. But it is something that we are willing

1 to do in terms of supplementing the record. And we
2 think that, you know, as we told you on previous
3 status calls that we were soliciting experts to give
4 us quotes on what we can get done in terms of a cost
5 and time frame and getting the information to NRC
6 staff in a formal submission and, of course, providing
7 it to the Board and everything, and we've been doing
8 that. And we believe that that would be adequate, and
9 that's the reason we put it in our filing because it's
10 something that the licensee is willing to do to make
11 sure that adequate information is acquired.

12 JUDGE BOLLWERK: So is your supposition
13 that the original literature search wasn't adequate or
14 there's something that was, in terms of something
15 being missed or that there's been new information
16 that's developed since that search was done?

17 MR. PUGSLEY: Judge Bollwerk, Chris
18 Pugsley for Powertech. No, we are not, our
19 supposition is not that the original work done by NRC
20 staff was inadequate. I think our appeal to the
21 Commission speaks for itself on that. But at the same
22 time, we have put this forward because we think that
23 it's something we can do to help alleviate the
24 concerns of the Tribe and Consolidated Intervenors to
25 supplement the record to make the SEIS have a little

1 more information. It's something we're willing to do,
2 but we do, as we've said on the December conference
3 call, we stand by our appeal and we stand by our
4 proposal on Friday. But at the same time, we still
5 believe what NRC staff did up until the license was
6 issued. And then after the Board issued LBT, I think
7 it was 15, 19, or I can't remember the name, that the
8 efforts done by NRC staff after that more than
9 satisfied the record and more than satisfied NEPA.

10 JUDGE BOLLWERK: We're going to go off the
11 record for one second.

12 (Whereupon, the foregoing matter went off
13 the record at 2:30 p.m. and went back
14 on the record at 2:31 p.m.)

15 JUDGE FROEHLICH: Okay. Since it is the
16 staff's responsibility to supplement the EIS with the
17 deficiencies that were identified by the Board in
18 which the Commission has reviewed, I'd like to hear
19 the staff's response and reaction to the proposal that
20 Powertech submitted last Friday.

21 MS. MONTEITH: Your Honor, Emily Monteith
22 for the NRC staff. We're still assessing that
23 proposal. It came in late Friday. We've only had a
24 couple of days with it, so I'm not in a position right
25 now to state definitively that this would be

1 acceptable or this is the route that we would take
2 with it.

3 I think I would just add that we have the
4 position of, my takeaway from the submission of
5 Powertech is that a site survey is unaffordable to
6 them. And my takeaway from the input of the Oglala
7 Sioux Tribe and the Consolidated Intervenors is that
8 a site survey would be necessary in order to identify
9 this information. In the context of all of that, we
10 have a Board determination that the staff would need,
11 in order to satisfy NEPA, to provide either a site
12 survey or conduct a study of Lakota cultural
13 resources.

14 So we wonder if there is middle ground.
15 As it stands, it's not apparent that we have, it
16 appears that there may be a sticking point over at
17 least the site survey aspect of this. Beyond that, I
18 don't think that I'm able to confirm on behalf of that
19 client that we have arrived at a position on
20 Powertech's silence.

21 MR. PUGSLEY: Your Honor, Chris Pugsley
22 for Powertech. One thing I'd like to note is that the
23 scope of the efforts provided, and Ms. Monteith can
24 correct me if I'm wrong, but in the time frame between
25 the original, it's LBT-15-16 -- I finally got the

1 numbers right -- and the past Board decision last
2 year, the efforts were made toward trying to bring the
3 Oglala Sioux Tribe and that tribe only to the site to
4 survey. The Board's order changed the scope of that
5 dramatically, which is what Ms. Monteith has noted
6 here, which is we're talking about more than one
7 tribe. We're talking about, I believe, and correct me
8 if I'm wrong, I believe five.

9 And the thing is that you have a lot of
10 working parts here. You have, as Mr. Parsons properly
11 pointed out, he said he would be willing to coordinate
12 with the tribes, the other tribes, to get them to talk
13 about participation in a survey and things, you know,
14 interviews with tribal elders and other things. And
15 that's all well and good, but, at the same time, now,
16 while Powertech, and to your question, Judge Bollwerk,
17 while it is correctly supported, the survey, the site
18 survey for the Oglala, where the cost prohibitive
19 aspect of the Board's decision comes into play is now
20 the scope has been largely widened and now we're
21 talking about real money here. We're talking about
22 serious expense and time. And one of the things that
23 we tried to make clear to the Board, and I hope we did
24 in our pleading previously is that the longer this
25 takes, the longer that other permits cannot be

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1 evaluated by other agencies, cannot be open to the
2 public for comment, for litigation, whatever it may
3 be, and the harder it is on the licensee to, frankly,
4 remain active.

5 So what I'm saying here is, yes, I agree
6 with Ms. Monteith. We need to find a common ground,
7 and that's why we want to have a discussion with
8 counsel and we're pushing this. But at the same time,
9 if we can't, then we have to evaluate this under the
10 Board's parameters, which were specifically is this
11 cost prohibitive. And per our filing of last Friday,
12 as it currently stands, it is.

13 JUDGE FROEHLICH: Mr. Parsons, I'd like to
14 hear the reaction of the Oglala Sioux Tribe to the
15 proposal that Powertech set forth last Friday and
16 their offer to meet with the intervenors and staff to
17 discuss further, the common ground and alternative in
18 between the proposal that has thus far been filed.

19 MR. PARSONS: Thank you, your Honor. Jeff
20 Parsons on behalf of the Oglala Sioux Tribe.
21 Obviously, Mr. Pugsley has made a series of
22 assertions, allegations, I guess, legal
23 interpretations that, for the record, we disagree
24 with, to say that we're re-hashing and having to re-do
25 the entire National Historic Preservation Act process

1 in lieu or as a substitute for the NEPA process, those
2 kinds of comments are, I think, wrong. To say that
3 the Tribe has been engaged in agreeing to and then
4 reneging agreement to participate in various endeavors
5 I think is a mischaracterization of the record.

6 I could go on, but I did want to note for
7 the Board that we have some serious disagreements with
8 the way Mr. Pugsley has characterized our activities
9 and what's in the record and what we think what was
10 established by the Board in its partial initial ruling
11 in 2015. And from our perspective, the money that
12 Powertech has spent is not, going forward, frankly, is
13 not a relevant, as relevant of a consideration as Mr.
14 Pugsley would like it to be. The fact is that there's
15 a federal law that requires analysis of the impacts to
16 cultural resources at the site. We've been raising
17 this argument consistently since the beginning. When
18 this process began in 2010, Powertech could have spent
19 its money and its time doing that work, as we
20 suggested and insisted upon from the beginning,
21 instead of litigating through to today and then to
22 complain when they're actually required to do the work
23 that they should have done on the front end. So
24 that's how the Tribe sees this situation.

25 I would say that the letter that Powertech

1 submitted on Friday, I guess I'm confused a little
2 bit. It said that there were details that needed to
3 be established prior to the company being able to take
4 a position on NRC staff's approach. There were
5 several references to a perceived lack of clarity as
6 to what exactly would occur and that, based on that
7 clarity being or lack of clarity being resolved,
8 Powertech could then make an assessment of whether it
9 could support this approach or not.

10 What I'm hearing today is an unequivocal
11 rejection of the approach regardless of the detail
12 that might be added to the proposal. I was going to
13 suggest that the Tribe is certainly willing to work
14 through those issues that the company has identified
15 as lacking clarity enough to take a position, but I
16 certainly don't want to engage in that to the extent
17 that Powertech says that, as I think I just heard,
18 that the proposal on its face is unacceptable sort of
19 in any form.

20 As to the alternative proposal that
21 Powertech has put forward regarding a literature
22 review, the Tribe does see that as inadequate. I will
23 note that the rulings in this case have been
24 consistent since in LBT-15-16 this Board ruled the
25 NEPA violation occurred because the cultural,

1 historic, and religious sites had not been adequately
2 cataloged. I think that's -- obviously, we agreed
3 with that ruling. It does not appear that a
4 literature review would do anything to catalog sites
5 at the proposed mine.

6 Similarly, in the final ruling from the
7 NRC in December of 2016, the Commission noted that,
8 characterizing the Board's ruling, that the Board
9 found insufficient, the staff analysis of the
10 environmental effects on the Dewey-Burdock project on
11 Native American cultural, historic, and religious
12 resources. And so we understand that there's language
13 also referencing a study, but our interpretation of
14 that, when combined with a more detailed discussion in
15 both this Board's rulings and the NRC's final
16 decision, is that what we're talking about is the
17 cataloging of religious, cultural, and historic sites
18 and not simply a literature review.

19 So while we're certainly always willing to
20 discuss details, that does seem to be, the proposal
21 that Powertech has put forth to simply conduct a
22 literature review does come across to us as a
23 departure and inconsistent with what's been determined
24 in this case as necessary to comply with the National
25 Environmental Policy Act.

1 And as far as other tribes go, again, the
2 rulings in this case do discuss impacts to Native
3 American cultural resources. The Oglala Sioux Tribe
4 works very closely with several of the other tribes.
5 That has been, similarly been a consistent position of
6 the Tribe throughout the proceeding. And, indeed, in
7 our May 31st letter from last year that sort of formed
8 the basis of our discussion now when we're talking
9 about our acceptance and our positive feeling towards
10 the recent December NRC proposal, consistency with
11 that May letter, one of the central points that we
12 made sure to reiterate again, as we have from the
13 beginning, is that coordination with those other
14 tribes is how the tribe conducts its business. That
15 leaves a central cultural tenet for the Oglala Sioux
16 Tribe is to be engaged with and working with its other
17 Sioux tribes up there. So that is something that the
18 Oglala Sioux Tribe will always have high on their list
19 and want to be part of.

20 Now, we can't make them engage, the other
21 tribes engage all the time or to be sent all that's
22 requested, but what the Oglala Sioux Tribe did commit
23 to is to put its effort to coordinating that approach
24 for NRC staff so they could have those conversations
25 and that engagement facilitated for them, and we're

1 certainly willing to do so. We're willing to talk
2 with the counsel and try to find an agreement, but if
3 Mr. Pugsley and Powertech are saying that a site
4 survey that would catalog the historic, religious, and
5 cultural sites on the proposed mine property is not
6 something that's on the table, then I guess is have
7 trouble seeing where that middle ground might be
8 approached. Again, we're more than willing to work
9 with NRC staff and others to pin down the details to
10 clarity that Powertech asserted that was missing that
11 hampered their ability to make an accurate assessment.

12 So I'll stop there. I appreciate the
13 opportunity to express those thoughts.

14 MR. PUGSLEY: Judge Bollwerk, this is
15 Chris Pugsley for Powertech. With your permission, I
16 would like to answer Mr. Parsons' comments here.
17 First of all, if his characterization of Powertech
18 having an unequivocal opposition to NRC staff's
19 proposal as it currently stands, the answer is, yes,
20 we are unequivocally opposed to it, number one.

21 Number two, Mr. Parsons is wrong on the
22 facts and wrong on the law here. Number one, on the
23 law, his characterization that Powertech should have
24 spent its money on other things is grossly
25 inconsistent with federal law. Powertech doesn't

1 spend the money on NHPA process, doesn't spend the
2 money on the NEPA process. It gets billed by NRC to
3 us, so NRC staff conducts the process; hence, the
4 reason we answered Judge Froehlich's and Judge
5 Bollwerk's question about do we think that the staff's
6 inquiry into this issue is adequate, and the answer,
7 we think, is yes, as is embodied in our appeal to the
8 Commission.

9 I would also like to note that it has
10 never been disputed in the record, that the Oglala
11 Sioux Tribe committed to coming to an open-site survey
12 and then declined at the end, which is fine. It is
13 their right under federal law. They're allowed to do
14 that. That's not a problem. Powertech had no problem
15 with that. We supported an open-site survey for the
16 Oglala Sioux Tribe at Dewey-Burdock up until Judge
17 Bollwerk correctly characterized that we were fine
18 with it. We had no problem. It was never agreed
19 upon.

20 What we are saying right now, and I am, I
21 can't, I don't think I can think of a person who can
22 find that the NRC staff's proposal does not resemble
23 an NHPA process because we're talking about items that
24 involve consultation, that involve discussions with
25 tribal elders, discussions with experts, discussions

1 with open-site surveys, things of that nature. We
2 put, we believe, a proposal that at least lays the
3 foundation for a discussion with counsel, and, as I've
4 said a million times on this phone call, we would like
5 to have that discussion.

6 The fact that Mr. Parsons can sit on his
7 phone and characterize Powertech as the party that is
8 impeding progress in this sequence of events I think
9 is ridiculous. And I think Powertech was open to
10 having the Oglala Sioux Tribe out to categorize and
11 catalog whatever they felt was historic and cultural
12 resources or traditional cultural properties at the
13 site and not only after the initial Board decision but
14 before it. And the opportunity was afforded. The per
15 diems were put up. All of the structure was in place,
16 but it was refused. And it had never been disputed,
17 and if it has been someone tell me because I don't see
18 it.

19 So what I would like to see happen is that
20 we, we're on the record here with the Board. Can the
21 counsel just get together on the phone and have a
22 discussion and talk about this? And if we come to a
23 stalemate, then we come to a stalemate. But maybe
24 there's room for discussion here, so let's just do
25 that.

1 JUDGE FROEHLICH: Mr. Pugsley, I think
2 that it is important for the parties to discuss it,
3 but the Board would like to just, I guess, clarify in
4 our own mind the unequivocal opposition that you just
5 articulated. Am I correct to understand that the
6 Powertech is, at this point in time, unequivocally
7 opposed to a field survey or an additional opportunity
8 for the Tribe to come upon the land and make the
9 inquiry and the search for cultural, historic, and
10 religious objects?

11 MR. PUGSLEY: Judge Froehlich, Chris
12 Pugsley for Powertech. May I ask you a question,
13 please?

14 JUDGE FROEHLICH: Sure.

15 MR. PUGSLEY: When you make the statement
16 about a survey for the Tribe to come out, are you
17 referring simply to Mr. Parsons' client or the five
18 tribes that have been identified?

19 JUDGE FROEHLICH: I'm actually, I'd like
20 to take that maybe in both terms because, as I
21 understood it, the April 2017 proposal from the staff
22 included an opportunity for one tribe or tribal
23 representatives from one tribe to come upon the land,
24 and I had understood Powertech to be supportive of
25 that position, at least from the pleadings on the

1 motion for summary disposition that the staff had
2 filed. And I realize that the current proposal may be
3 more than one tribe.

4 So maybe I'd like to hear the answer to
5 both inquiries: whether that the Powertech Corporation
6 is unequivocally opposed to a field survey of the
7 Oglala Sioux Tribe, the one tribe contemplated, I
8 guess, in the April 2017 proposal, or it's
9 unequivocally opposed to multiple tribes coming upon
10 the land?

11 MR. PUGSLEY: Judge Froehlich, Chris
12 Pugsley for Powertech. That's a very fair question.
13 I have to speak with our client regarding the position
14 on the approach we supported previously versus what is
15 currently in the staff's proposal now. I'm certainly
16 willing to do so in short order, and, if we get a call
17 with counsel, we can talk to them and we'll certainly
18 let the Board know what the licensee's position is.

19 But if we're talking about my statement
20 earlier about what are we unequivocally opposed to, it
21 is the NRC staff's proposal as it is currently issued
22 to the parties.

23 JUDGE FROEHLICH: Okay. And Mr. Frankel
24 or Mr. Ballanco, if you want to be heard on the
25 subject of the parties moving forward or your reaction

1 to Powertech's submission last Friday.

2 MR. FRANKEL: David Frankel for
3 Consolidated Intervenor. Thank you, your Honor. We
4 echo each and every one of the statements made by Mr.
5 Parsons. We believe that Powertech's statement of the
6 law is a form of advocacy and that Powertech is
7 incorrect along the lines that Mr. Parsons described.
8 We are not surprised that Powertech objects in the
9 fashion that it does; and, again, we suggest that, had
10 it proceeded cooperatively with the Tribe and the
11 tribal members instead of combatively with the Tribe
12 and the tribal members, then it would not have wasted
13 all that money in the past and it would have a budget
14 to do it properly at this time. Besides that, we have
15 no further comment at this time.

16 JUDGE FROEHLICH: Okay. Ms. Monteith,
17 after, I guess, hearing from all these parties, do you
18 have any comment or impression on the prospects for
19 the parties to come together and discuss this and come
20 up with a middle ground or a path forward that will
21 resolve this remaining contention?

22 MS. MONTEITH: Yes. Thank you for the
23 opportunity, your Honor. Emily Monteith for the NRC
24 staff. We appreciate hearing further input from the
25 parties today on this teleconference, and we think

1 that's been of great value to us.

2 It appears to us that there may be room
3 for discussion on the matter of the site survey. It
4 would be a value to us to hear the Tribe's input and
5 the Consolidated Intervenor's input in our counsel-to-
6 counsel teleconference about whether the Tribe feels
7 that there may be any other way to identify their TCPs
8 other than a site survey, if it turns out that
9 Powertech is unable to support the cost of such a
10 survey.

11 I would note in that regard we are a fee
12 recovery-based agency, so we don't feel currently that
13 we are able to completely disregard the
14 representations of Powertech with respect to what is
15 cost prohibitive to them. However, we are considering
16 that going forward and how we might contend with that
17 in terms of satisfying our NEPA obligations.

18 I sort of had, like, another piece of
19 information that would be useful for us is our
20 proposal from December 2017 is predicated on the
21 involvement of the Lakota Sioux Tribe. And to that
22 end, we requested the input or the confirmation of the
23 Oglala Sioux Tribe that we had appropriately
24 identified the full scope of the Tribe with whom the
25 staff would need to engage or whose cultural resources

1 the staff would need to identify. So we would
2 appreciate as quickly as possible having a firm
3 understanding of the scope of those Tribe, the
4 parameters of what we're looking at.

5 And, finally, one thing that wasn't noted
6 that I would just add for the contemplation of the
7 parties is that the proposed schedule for our December
8 2017 proposal was predicated on the NRC alone
9 identifying and selecting a contractor and working
10 through that contracting process. We have standing
11 contracts in place that allow us to move quickly. It
12 seems, from the input of the overall Sioux Tribe, that
13 they contemplate that the Tribe would also be involved
14 in the identification of the contracting scope of work
15 and the selection of a contractor. So we would note
16 that, if that is, in fact, a requirement of the Tribe,
17 that would potentially greatly affect the time frame
18 with which we are working here.

19 So if the Tribe's counsel can identify
20 whether that, in fact, is an essential component of
21 the Tribe's participation and the identification of
22 their cultural properties, that would probably be of
23 value to us in understanding the cost of the work to
24 be conducted in the future and the time frame for
25 that.

1 I think those are my comments. I'm
2 willing to respond to any other questions you have,
3 your Honor.

4 JUDGE FROEHLICH: You noted that this is
5 a fee recovery agency. When the staff has, I guess,
6 come forward with there proposals to resolve this
7 remaining issue, both proposals leading up to the
8 motion for summary disposition, is there an exchange
9 that took place between the NRC staff and Powertech as
10 to the costs involved, or how did that work going up
11 to the motion for summary disposition and the type of
12 survey that was contemplated in that, I guess,
13 proposal?

14 MS. MONTEITH: To my recollection, your
15 Honor, there was, in about the November of 2016 time
16 frame, there was a conversation with Powertech about
17 the fact that this work would, in fact, be feasible.
18 If you recall, that had not been fully communicated
19 and there was some confusion on the part of another
20 licensee regarding the recovery matter. So during
21 that call we communicated the need to see about a
22 contract to carry out this activity to satisfy
23 contentions.

24 Our exchanges with the licensee are
25 documented in our updated disclosures. And I think

1 the point of discussion was primarily on the per diem
2 and other select funding matters, the matters that
3 would be directly funded, reimbursed, I should say, to
4 the Tribes at Powertech.

5 JUDGE BOLLWERK: We're going to go off the
6 record for a second.

7 (Whereupon, the foregoing matter went off
8 the record at 2:59 p.m. and went back on
9 the record at 3:01 p.m.)

10 JUDGE BOLLWERK: All right. This is Judge
11 Bollwerk. Thank you for being patient with us. So I
12 think, from what we've heard, the next step it sounds
13 like is for counsel to have a teleconference of some
14 kind and talk among yourselves. I heard approximately
15 a week and also a possibility then that there would be
16 a status report. So can someone, obviously we want a
17 joint status report, if ever possible, where we
18 discuss all the party views. When do you think you
19 can have your conference and provide us with a status
20 report?

21 MR. PUGSLEY: Judge Bollwerk, Chris
22 Pugsley. NRC staff is kind enough to respond to us
23 via email that they would like to have the call within
24 a week. Whenever Mr. Parsons, Mr. Frankel, and Mr.
25 Ballanco are available to have this call, we'd like to

1 do it as soon as possible. And what our plan is is to
2 draft up from our end a status report of the call,
3 circulate it to the parties for their approval, and
4 then file it with the Board. I would hope we might be
5 able to accomplish that within 48 hours after the
6 conference call. I'll leave that to the parties to
7 determine that time frame, but Powertech's schedule is
8 wide open whenever they would like to have the call.

9 JUDGE BOLLWERK: Well, today is the 24th.
10 A week is the 31st. Do you think you could provide us
11 a report by the 5th of February?

12 MR. PUGSLEY: Your Honor, Chris Pugsley
13 for Powertech. I'd be happy to do it, assuming we can
14 schedule the call within the appropriate time frame.

15 JUDGE BOLLWERK: Let's find out. The
16 other parties, does that sound reasonable? Staff?

17 MS. MONTEITH: Yes, your Honor, I'm just
18 checking the calendar, but I think that sounds
19 reasonable, yes.

20 JUDGE BOLLWERK: The Oglala Sioux Tribe?

21 MR. PARSONS: Jeff Parsons --

22 MR. STILLS: I'm sorry. Your Honor, this
23 is Travis Stills, the Oglala Sioux Tribe. I do have
24 an out-of-town in-court circuit court obligations that
25 will have me out of town and out of the office for the

1 first half of next week, so that does cramp my
2 availability quite a bit.

3 MS. MONTEITH: Your Honor, this is Emily
4 Monteith for the staff. We are able to support a
5 conference call as early as tomorrow and also on
6 Friday, if that is of any assistance to Mr. Parsons.
7 I'm not sure if it is.

8 MR. PARSONS: This is Jeff Parsons for the
9 Tribe. I could be available end of this week or end
10 of next week to meet that deadline of the 5th.

11 MR. FRANKEL: Your Honor, David Frankel
12 for Consolidated Intervenors. Likewise, I can be
13 available on this Friday or towards the end of next
14 week.

15 JUDGE BOLLWERK: We had, I think, one --
16 Mr. Stills, could you do it by the end of this week,
17 Mr. Stills, so you can keep your commitment out next
18 week?

19 MR. STILLIS: Yes, I followed Mr. Parsons'
20 lead. I do think this is one that I should definitely
21 be on. I do have conflicts on Friday, so if we're
22 narrowing down I think Thursday would be a --

23 JUDGE BOLLWERK: Can everyone get together
24 tomorrow? That's what we're looking at, I think.

25 MR. PUGSLEY: Judge Bollwerk, Chris

1 Pugsley for Powertech. The only issue we would have
2 with tomorrow is that we have a client that is based
3 in Australia, so the time difference is, you know,
4 somewhat troublesome. But we can make something work,
5 if necessary. The only conflict we have tomorrow is
6 in the mid-afternoon. But if folks wanted to get
7 together on Friday of this week, although, if you set
8 a deadline of February 5th for a status report which
9 falls on two weeks from this past Monday, if we did
10 the call late next week to assure that Mr. Stills and
11 Mr. Parsons don't have conflicts and if Mr. Frankel
12 has any conflicts, which I guess I heard, I thought he
13 might have some, late next week we can get together
14 and have a conference call and we could have a status
15 report filed by the 5th.

16 JUDGE BOLLWERK: That's certainly, if
17 that's acceptable to the parties, that's certainly
18 acceptable to the Board.

19 MR. FRANKEL: David Frankel for
20 Consolidated Intervenor, your Honor. So what date
21 now are we actually talking about for a call?

22 JUDGE BOLLWERK: I think you're looking at
23 the 1st or 2nd of February, probably the 1st so you
24 have some time to draft the status report, I would
25 think.

1 MR. FRANKEL: I'm free on that day most of
2 the day. So as soon as we have the time, I'll put it
3 on my calendar.

4 MR. PARSONS: Any time that works for you,
5 Mr. Frankel, is fine with us on the 1st.

6 MR. FRANKEL: So anytime between 9:30 and
7 5:00 on California time will do it.

8 MR. PARSONS: Yes, as long as I'm not in
9 my afternoon nap, it will be fine.

10 JUDGE BOLLWERK: What about Mr. Parsons
11 and Mr. Stills?

12 MR. PARSONS: Thank you, your Honor. This
13 is Jeff Parsons. We're similarly available. I'm
14 available after 10 Mountain Time on that day.

15 JUDGE BOLLWERK: All right. And then Ms.
16 Monteith?

17 MS. MONTEITH: Your Honor, the staff can
18 support a call on February 1st any time.

19 JUDGE BOLLWERK: All right. We have an
20 agreement.

21 MR. PARSONS: May I propose, to meet
22 everyone's schedule based on time difference, 2 p.m.,
23 February 1st, and I will circulate a dial-in number
24 tomorrow morning.

25 JUDGE BOLLWERK: What time zone?

1 MR. PARSONS: 2 p.m. Eastern, please.

2 MR. FRANKEL: All right. David Frankel
3 here for Consolidated Intervenor. That works for me.

4 MS. MONTEITH: Emily Monteith for the NRC
5 staff. That works for us, as well.

6 JUDGE BOLLWERK: Anybody else want to say
7 anything about that date and time? All right. Then
8 it sounds like we have an agreement, you all have an
9 agreement, rather, to talk Thursday, the 1st of
10 February, at, I believe it was 2 p.m. Eastern Time.

11 MR. PUGSLEY: Yes, sir.

12 JUDGE BOLLWERK: And we then will receive
13 a status report, a joint status report no later than
14 Monday the 1st, I'm sorry, Monday the 5th of February
15 from the parties.

16 MR. PUGSLEY: Your Honor, Chris Pugsley
17 for Powertech. Just want to let everyone on the phone
18 know I will have a draft of the status report to you
19 for review no later than close of business Friday, the
20 2nd of February, for your review over the weekend, and
21 we will file with the Board on the 5th.

22 JUDGE BOLLWERK: All right. Judge
23 Barnett?

24 JUDGE BARNETT: I don't have anything.

25 JUDGE BOLLWERK: All right.

1 MR. STILLS: Your Honor, this is Travis
2 Stills again. I do have a fairly well-booked weekend
3 that weekend. Would it be unreasonable to ask that
4 that be moved out so we could have workweek time to
5 deal with that and not have to be forced into
6 responding to the draft on the weekend?

7 JUDGE BOLLWERK: How about February 6th?

8 MR. STILLS: That would be greatly
9 appreciated.

10 JUDGE BOLLWERK: All right. So the draft
11 report, the draft status report will be going out by
12 COB on the 2nd, and the response back to the Board
13 will be due on February 6th.

14 MR. PUGSLEY: Yes, sir.

15 JUDGE BOLLWERK: So, hopefully, small
16 things start some things moving forward. I heard a
17 lot of discussion today, some strong views, but I
18 hope, in moving forward, that you all will make your
19 best efforts to try to find common ground, if that's
20 possible.

21 JUDGE FROEHLICH: And after receipt of the
22 joint report of the conference call, the Board will
23 issue an order either scheduling another telephone
24 status conference or other procedures going forward.
25 I think it probably would be best that we wait to see

1 what progress can be made and how the proposals are
2 shaped on the conference call since that's to take
3 place, and we'll take it from there.

4 JUDGE BOLLWERK: And, again, to the degree
5 there is agreement or something that we discussed, any
6 schedules you can provide us will be useful, as well.

7 MR. PUGSLEY: Yes, sir, we will do so.

8 JUDGE FROEHLICH: Yes. And I might just
9 add to that. If, in the course of the discussions
10 among the parties, there is a suggestion or a proposal
11 for how we should move forward, what the next steps
12 should be, please include that in the report of the
13 discussion so that we can come up with a procedure or
14 procedures that will move this case forward and
15 hopefully lead to a resolution of the sole remaining
16 contention in this case.

17 MS. MONTEITH: Your Honor, Emily Monteith
18 for the NRC staff. May I ask a clarifying question?

19 JUDGE FROEHLICH: Surely.

20 MS. MONTEITH: Do you mean with respect to
21 an alternative, a schedule for an alternative
22 proposal, procedures for an alternative proposal, or
23 further teleconferences, or for --

24 JUDGE FROEHLICH: I was anxious to see
25 what would be proposed by the parties for the next

1 step after the discussions. It may be to refine one
2 of the existing proposals, it may be to come up with
3 a different new proposal that includes certain
4 elements that have been included in one or both of the
5 current proposals, or some alternative to that. So I
6 was just looking to see what the parties had in mind
7 should be the next step moving forward after the
8 discussions based on the discussions, which direction
9 this will flow. Ms. Monteith, was I clear or . . .

10 MS. MONTEITH: Yes, I think so, your
11 Honor. I guess we'll see.

12 JUDGE FROEHLICH: I mean, not knowing what
13 will be discussed or, you know, which avenues, which
14 parameters, which components of a resolution are going
15 to come from this call, if the parties are able to
16 come up with sort of a path forward or suggestions for
17 a path forward based upon the discussions, based on
18 the methodology that's being discussed, that would be
19 helpful to the Board because I think any schedule, any
20 path that the parties can agree to to move this along
21 will help, you know, get us to a quicker resolution
22 rather than just, you know, monthly status reports or
23 monthly status phone calls. So if you could include
24 it in the report the parties' suggestions as to the
25 path forward, I think that would be helpful.

NEAL R. GROSS

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1 MS. MONTEITH: Thank you, your Honor.

2 JUDGE FROEHLICH: Thank you.

3 JUDGE BOLLWERK: Does anyone have anything
4 else that they'd like to say or state before we close
5 this conference?

6 MR. PUGSLEY: Your Honor, Chris Pugsley
7 for Powertech. I just want to note for all the
8 parties if anyone on the phone has any issues with the
9 dial-in coordinates for the call next week or if
10 there's any scheduling conflicts that come up, please
11 let me know and we will make as many accommodations as
12 we can to make sure that this discussion happens.

13 JUDGE FROEHLICH: It's appreciated, Mr.
14 Pugsley. Thank you. Anyone else? Judge Barnett,
15 anything?

16 JUDGE BARNETT: Nothing, no.

17 JUDGE FROEHLICH: Judge Bollwerk?

18 JUDGE BOLLWERK: No.

19 JUDGE FROEHLICH: All right. This
20 telephone status conference call is concluded. I
21 thank the parties for their participation and wish you
22 good luck in the conversations going forward.

23 (Whereupon, the foregoing matter went off
24 the record at 3:13 p.m.)

25