

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of	)	
	)	
POWERTECH (USA) INC.,	)	Docket No. 40-9075-MLA
	)	
(Dewey-Burdock In Situ Uranium Recovery	)	
Facility)	)	

NOTICE OF OGLALA SIOUX TRIBE'S RESPONSES  
TO NRC STAFF QUESTIONS

Pursuant to this Board's Order dated February 8, 2018, counsel for Oglala Sioux Tribe hereby submits the attached Oglala Sioux Tribe's Responses to the questions developed in advance of the February 1, 2018 counsel conference call by counsel for NRC Staff to help facilitate the parties' efforts to work toward a resolution to Contention 1A.

Respectfully Submitted this 15<sup>th</sup> Day of February 2018,

/s/ Jeffrey C. Parsons

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing NOTICE OF OGLALA SIOUX TRIBE'S RESPONSES TO NRC STAFF QUESTIONS in the above-captioned proceeding were served via the Electronic Information Exchange ("EIE") on the 15<sup>th</sup> day of February 2018, which to the best of my knowledge resulted in transmittal of same to those on the EIE Service List for the captioned proceeding.

/s/ signed electronically by \_\_\_\_\_

Jeffrey C. Parsons  
Western Mining Action Project  
Counsel for Oglala Sioux Tribe

### Proposed Discussion Questions for February 2 Counsel Call

To help structure the upcoming counsel-to-counsel teleconference, we have proposed some items for discussion. Based on the parties' January 19 filings and the January 25 call with the Board, it would be particularly valuable for the Staff to understand the parties' views on the following topics.

#### Powertech

1. Would it be cost-prohibitive for Powertech to support the Staff's December 2017 proposal if the terms and timeframes for the site survey are made firm?
2. Would it be cost-prohibitive for Powertech to support the Staff's December 2017 proposal if the site survey opportunity were adjusted in some form?
  - a. If not, can Powertech describe the elements of a site survey opportunity that it can support?
3. Would it be cost-prohibitive for Powertech to support the Tribal Council meeting and tribal elder interview components of the Staff's December 2017 proposal?
4. In taking a position on whether the Staff's proposal (or any component of it) is cost-prohibitive, are there specific bases or thresholds that Powertech uses for that determination? If so, can Powertech provide those criteria?

#### Oglala Sioux Tribe and Consolidated Intervenors

1. Can the Oglala Sioux Tribe and Consolidated Intervenors confirm the identities of the Native American (Lakota Sioux) tribes they believe the Staff must involve in the effort to identify Lakota Sioux cultural properties that may be affected by the Dewey-Burdock project?

#### Oglala Sioux Tribe Response:

On the conference call held by counsel for all parties on February 1, 2018, counsel for the Oglala Sioux Tribe provided a preliminary list of tribes that the Tribe believes should be involved in the effort to identify cultural resources at the Dewey-Burdock site. Counsel for the Tribe was unable to finalize any list, however, without conferring with the client. That list has now been confirmed.

The Tribe believes the most appropriate framework to deal with this question is to consider the cultural relation of the various Sioux tribes to each other. Generally speaking, while there are separate reservations for the different tribes, these political divisions do not necessarily correspond to distinct cultural divisions. Instead, from the cultural perspective, the Sioux tribes collectively refer to what is known as Oceti Sakowin [oh-CHEH-tee SHAW-koh-we], roughly translated to "Seven Council Fires". In this context, it is difficult for the Oglala Sioux Tribe to be put in a position of being the 'gate keeper' to pick which Tribes may or may not participate. The Oglala Sioux Tribe Historical Preservation Office has been working diligently to make contact with its colleagues. At present, the Rosebud Sioux Tribal Historic Preservation Office and the Standing Rock Sioux Tribal Historic Preservation Office are prepared to participate. The Oglala Sioux Tribe Historic Preservation Office will continue with this outreach.

The Oglala Sioux Tribe is willing to assist the NRC Staff meet NRC's NEPA duty to ensure that the Sioux tribal governments are invited, and therefore are allowed their own decision on whether or not to be involved in the survey, or the NEPA process more generally. These include the Oglala Sioux Tribe, the Standing Rock Sioux Tribe, the Rosebud Sioux Tribe, the Cheyenne River Sioux Tribe, Yankton Sioux Tribe, Crow Creek Sioux Tribe, Flandreau Sioux Tribe. In addition, NRC Staff should consider expanding the scope to include other Native American peoples that have historical and significant ties to the area at issue, including Tribes such as the Crow, Arapahoe, Upper Sioux, Lower Sioux, Sisseton Wahpeton Oyate (Lake Traverse Reservation), Spirit Lake Tribe, and any others whose cultural resources may be identified during a cultural resources survey. These distinctions should also be part of the efforts of the qualified cultural resources contractor.

Lastly, NEPA's interdisciplinary analysis requirement and public involvement purpose offers an opportunity for NRC Staff (and the contractor) to identify and include any other persons with interest in this matter during the public comment process.

#### Oglala Sioux Tribe

1. Does the Oglala Sioux Tribe support the timeframe specified by the Staff in its December 2017 proposal for Tribal Council meetings, interviews of tribal elders, and dates/duration of site surveys? If not, is the Tribe currently able to provide specific alternative timeframes for such events?

#### Oglala Sioux Tribe Response:

As discussed on the February 1, 2018 counsel conference call, the Tribe supports the timeframe set forth in the Staff's December 2017 proposal.

2. If a methodology for a site survey contains one or more of the following elements, is the Oglala Sioux Tribe prepared to finalize the selection of that survey methodology?
  - a. Targeting the survey to potential areas of disturbance within the APE
  - b. Targeting the survey to topographical features within the APE that may be more likely to be associated with sites of historic, cultural, or religious significance to the Lakota Sioux
  - c. Reviewing the archaeological information developed from the Class III survey to identify targeted areas of focus for the survey
  - d. Are there any other specific elements the Oglala Sioux Tribe deems essential to a site survey methodology?

#### Oglala Sioux Tribe Response:

As discussed on the February 1, 2018 counsel conference call, the Tribe confirmed that it believes the entire permit area should be open for survey given the nature of the cultural impacts that could include landscape level considerations. Counsel for the Tribe pointed out that for efficiency's sake, the Tribe would work with the contractor and NRC Staff to identify and

prioritize certain areas of the entire site based on initial reviews of existing maps, archaeological surveys, sensitive cultural use information (subject to SUNSI), and considering those areas proposed for direct disturbance. As communicated to the parties, the Tribe believes that having a qualified contractor oversee and manage the process, providing opportunities for engagement of tribal elders and councils, allowing time and opportunity for repeat visits to the site spaced out over time, as well as the ability to review and comment on the resulting reports are essential components.

3. If a site survey were only offered to the Oglala Sioux Tribe, would the Tribe participate if the Staff also:
  - a. Offered to meet with the Tribal Councils of the other Lakota Sioux Tribes;
  - b. Sought to interview the elders of the other Lakota Sioux Tribes prior to the site survey, which may develop information of assistance to the Oglala Sioux Tribe for the purposes of its participation in the site survey;
  - c. Ensured that the Oglala Sioux Tribe would still have the opportunity to discuss the results of the site survey with the other Lakota Sioux Tribes and provide input on the survey report; and/or
  - d. Provided the draft FSEIS supplement to the other Lakota Sioux Tribes for review and comment?

Oglala Sioux Tribe Response:

The Tribe believes that it would not be acceptable to limit the site survey to only the Oglala Sioux Tribe, and therefore the tribe could not participate. As discussed in these responses, while the Oglala Sioux Tribe is an independent sovereign government, as a cultural matter, its cultural existence and that of its people are intertwined with the Oceti Sakowin [oh-CHEH-tee SHAW-koh-we]. Involving the relevant Tribes, as set out above, is necessary to address the Oglala Sioux Tribe's cultural perspective.

The dozens of combinations presented by Questions ## 3a-3d make it impossible to answer Question 3 in the abstract. All the components represented in these subparts are important. The Tribe looks forward to working with NRC Staff to address such questions in a holistic and productive manner with the involvement of a qualified cultural resources contractor.

4. Is the Oglala Sioux Tribe prepared to share its view on what direct reimbursement from Powertech would be necessary to support the Tribe's participation in a site survey?

Oglala Sioux Tribe Response:

The Tribe believes that reimbursement is appropriate for its valuable staff time and resources. As communicated on the February 1, 2018 counsel conference call, it is difficult to respond precisely without knowing what Powertech is prepared to offer and without input on methodology from a qualified contractor. The Tribe would anticipate that an amount on the order of what was proposed previously would be appropriate.