



UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION  
ATOMIC SAFETY AND LICENSING BOARD

In the Matter of

POWERTECH USA, INC.

(Dewey-Burdock  
In Situ Uranium Recovery Facility)

Docket No. 40-9075-MLA

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

Hearing Exhibit

Exhibit Number:

Exhibit Title:

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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 SUMMARY REPORT OF COUNSEL CONFERENCE CALL

Pursuant to the commitments made by the parties to this proceeding during the conference call held before the Atomic Safety and Licensing Board (ASLB) on January 24, 2018, attached is a summary report, agreed to by the parties, of the conference call held between counsel for the parties on February 1, 2018. Also attached, by agreement of the parties, is a list of questions developed in advance of the conference call by counsel for NRC Staff to help facilitate the parties' efforts to work toward a resolution to Contention 1A.

Respectfully Submitted this 6<sup>th</sup> Day of February 2018,

/s/ Jeffrey C. Parsons

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Counsel for Oglala Sioux Tribe

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing NOTICE OF SUMMARY REPORT OF COUNSEL CONFERENCE CALL in the above-captioned proceeding were served via the Electronic Information Exchange ("EIE") on the 6<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

## Summary of Counsel-to-Counsel Meeting Held on February 1, 2018

Counsel for NRC Staff offered counsel for the parties a list of items for discussion (attached) to help structure the counsel-to-counsel teleconference. The list of questions guided the discussion.

The first set of questions were directed toward counsel for Powertech. In response, counsel for Powertech indicated that the approach proposed by NRC Staff in December 2017 to resolve Contention 1A was cost-prohibitive, given the expenses the applicant had accrued to date on the environmental review. Counsel for Powertech stated that they would need to discuss with the client as to whether the applicant could support any site survey proposal in the framework proposed by NRC Staff. Similarly, counsel for Powertech stated they would need to discuss with the client as to whether there were any components of the NRC Staff-proposed framework that would be acceptable to the licensee or any components that the licensee believes would need to be eliminated, or time-frames that would need to be established, to resolve the licensee's cost objections. Counsel for Powertech committed to report back to the parties within seven days as to these questions.

Counsel for NRC Staff inquired as to whether Powertech can specify the bases or thresholds that it uses in its assessment that an approach or component thereof is cost-prohibitive. Counsel for the licensee committed to providing the parties a better guideline for how it is making this determination.

The second and third sets of questions were directed to the counsel for the Tribe and Consolidated Intervenors. Both confirmed that a physical site survey remains a fundamental requirement for resolution of the outstanding contention. Both agreed that a literature review, as proposed by the licensee in its January 19, 2018 response to NRC Staff, could play a role in the NEPA impacts review. Both agreed that a literature review cannot substitute for a physical site survey described by NRC Staff's December 2017 proposal.

Counsel for the Tribe agreed to provide the parties within seven days a list of the other Tribes that it contemplated being part of any survey approach, including involvement via Tribal Council meetings and interviews with elders. Counsel for the Tribe agreed that in order to facilitate a timely and efficient process of meeting with identified Tribal Councils, the Tribe would work diligently to facilitate as much engagement with the identified Tribes within a matter of some two weeks (presumably in the May timeframe) to minimize NRC Staff and consultant travel time.

Counsel for the Tribe stated that although NRC Staff and the Tribe had reached an agreement in principle on the general methodology, the questions addressing specific methodology for site-surveys should be finalized with the aid and involvement of the NRC Staff contractor. Counsel for 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 to identify and prioritize certain areas of the entire site based on reviews of existing maps, archaeological surveys, sensitive cultural use information (subject to SUNSI), and considering those areas proposed for direct disturbance.

Counsel for the Tribe committed to responding to the parties within seven days as to whether limiting the site-survey solely to representatives from the Oglala Sioux Tribe would be acceptable or not, and as to whether the Oglala Sioux Tribe would agree to support oral history interviews of Tribal elders even if a site survey could not be conducted. Counsel for the Tribe

expressed difficulty forming a position on potential reimbursement requirements without information from the applicant on any commitment to pay for costs the Tribe could start incurring within a matter of weeks.

Counsel for Powertech stated that whether additional Tribes were to participate in the survey or not would be necessary information for Powertech to formalize any such offer. Counsel for the Tribe requested that NRC Staff allow the Tribe the ability to give input on the selection of the contractor to insure no unexpected problems or conflict would arise as a result of NRC Staff's choice. Counsel for NRC Staff indicated that it may be prohibited from allowing the Tribe to be involved in any way with the selection of the contractor or the development of the statement of work that would guide the contractor's work. Counsel for the Tribe asked counsel for NRC Staff to provide specific citations to law, regulation, or otherwise that would so prohibit the Tribe's involvement to ensure the contractor did not have conflicts or to define the contractor's scope of work as applied to cultural resource impact analysis.

Counsel for the Tribe indicated that it will be difficult for any agreement to be reached on any specifics of the survey approach without information from the applicant as to whether any site-survey approach or components as proposed by NRC Staff would be acceptable to the company. Counsel for NRC Staff reiterated that this input must be received in the short term as the Staff must make a decision in the near term regarding a path forward to proceed on the timetable projected in its December 2017 proposal.

#### Additional Comments of Counsel for the Tribe

Powertech's stated opposition to the NRC Staff proposal was based on a representation that expenditures already incurred made the NRC Staff's proposal exorbitantly expensive. Counsel for the Tribe asserted that the Powertech arguments – made to the Board and on the call, confirm that the NRC Staff billing statements and Powertech records documenting costs and billing, including those between NRC Staff and Powertech, have become relevant and must be disclosed to assess Powertech's position in this proceeding. Counsel for the Tribe stated that it has not been provided this documentation and asserted that NRC Staff and Powertech must now disclose all records relevant to the "exorbitant cost" argument under the applicable rules of ASLB practice so these can be made part of the record.

#### Additional Comments of Counsel for Powertech

Counsel for Powertech believes that counsel for the Tribe's characterization of the cost nature of this proposal needs to reflect the fact that we stated that it was based on the costs of the NEPA process to date, given that this is a NEPA contention, and the fact that the NRC Staff's proposal is essentially a re-initiation of the NHPA process.

#### Additional Comments of Counsel for NRC Staff

Counsel for NRC Staff inquired as to whether, if all parties agreed on a path forward for resolving Contention 1A, the Tribe would be willing to settle the contention, as this may relieve Powertech of some of its concerns related to the length of the process as proposed in the Staff's December 2017 approach. Counsel for the Tribe indicated that the Tribe would not be amenable to settlement at that stage as the adequacy of the information in the supplement to the EIS would not be knowable until the supplement is issued.

### 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

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?
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?
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?
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?