


United States Nuclear Regulatory Commission Official Hearing Exhibit	
In the Matter of: POWERTECH USA, INC. (Dewey-Burdock In Situ Uranium Recovery Facility)	
	ASLBP #: 10-898-02-MLA-BD01
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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:



UNITED STATES  
NUCLEAR REGULATORY COMMISSION  
WASHINGTON, D.C. 20555-0001

November 21, 2018

Mr. Tom Brings  
Tribal Historic Preservation Office  
Oglala Sioux Tribe  
PO Box 320  
Pine Ridge, SD 57770

SUBJECT: RESUMING IMPLEMENTATION OF THE U.S. NUCLEAR REGULATORY COMMISSION'S MARCH 2018 APPROACH TO IDENTIFY HISTORIC, CULTURAL, AND RELIGIOUS SITES AT THE DEWEY-BURDOCK *IN SITU* URANIUM RECOVERY PROJECT IN FALL RIVER AND CUSTER COUNTIES, SOUTH DAKOTA (DOCKET NUMBER: 40-9075)

Dear Mr. Brings:

The U.S. Nuclear Regulatory Commission (NRC) staff remains committed to an open dialogue to finalize the methodology to be used for conducting a physical site survey to identify sites of historic, cultural, and religious significance to the Oglala Sioux Tribe and Lakota Sioux Tribes that could be affected by the Dewey-Burdock *in situ* uranium recovery (ISR) project. The NRC staff would like to build upon progress that has been achieved to date regarding an approach for identifying sites of significance to the Lakota Sioux Tribes and gathering information to supplement the NRC staff's analysis in the final supplemental environmental impact statement (FSEIS, NUREG-1910 Supplement 4). Earlier this year, the NRC staff developed an approach that the Oglala Sioux Tribe, Consolidated Intervenor, and Powertech (USA), Inc., accepted as reasonable. This approach (the March 2018 Approach; (Agencywide Documents Access and Management System [ADAMS] Accession Number ML18074A393)) incorporated elements that the Oglala Sioux Tribe described in its May 31, 2017, letter (ADAMS Accession Number ML17152A109) to the NRC staff as necessary for accomplishing a comprehensive cultural resource survey. The March 2018 Approach specifically incorporated the following elements:

- A contractor with the necessary experience and training to facilitate the site survey and implementation of the approach.
- Involvement of other Lakota Sioux Tribes.
- Iterative opportunities to survey the site by providing two non-contiguous, two-week periods for conducting the site survey.
- Involvement of Tribal elders via oral history interviews and during the site survey, as appropriate.

The March 2018 Approach was constructed such that all elements of a cultural resource survey would work in harmony rather than in a compartmentalized manner, a design that was based on the Oglala Sioux Tribe's input and recommendations in its May 31, 2017, letter. Specifically, all elements are connected and play a key role in the execution of the approach in an integrated

and comprehensive manner. For example, the preliminary findings of the first phase of the site survey would inform the oral history interviews, and Tribes would have the opportunity to discuss these preliminary findings with Tribal elders and spiritual leaders. Consequently, the success of the second phase of the physical site survey is directly connected to the success of the first phase of the physical site survey and the oral history interviews.

Building upon the previous agreements among the parties embodied in the March 2018 Approach, the NRC staff is proposing to resume discussions with the Oglala Sioux Tribe and the participating Tribes on the site survey methodology in an open and consultative process. As discussed in the Atomic Safety and Licensing Board's (Board's) October 30, 2018, decision, however, "...the only aspect of the Approach that is open for discussion is the site survey methodology. That is, any tribal negotiating position or proposal should encompass the specific scientific method that would fit into the two-week periods set out in the March 2018 Approach for visiting the physical site, i.e., how the contractor and the Tribe members will walk the site and mark or record located Tribal resources."

Accordingly, it will be essential for the reinstituted negotiations to remain focused on ensuring the site survey methodology can be accomplished within the two two-week periods and the cost parameters outlined in the March 2018 Approach, and the Board's October 30, 2018, Order. To provide additional context for those negotiations, the NRC staff would like to provide information on the background of the proposed methodology for surveying the site that was discussed during the June 1, 4, and 5, 2018 teleconference calls and webinars.

In developing its proposal, the NRC staff and contractor considered previous concerns raised by the Tribes. The Tribes had previously expressed concerns about the NRC staff proposing methodologies so detailed that there was no room for discussion and negotiation. The Oglala Sioux Tribe also objected to methodologies that lacked scientific integrity and has reiterated that the expertise of the Tribes is essential in the development and implementation of a meaningful and comprehensive tribal cultural survey. Therefore, the NRC contractor developed a methodology at a level of detail that provided ample room for discussion and negotiation with Tribal experts. Accordingly, the NRC staff and contractor solicited and encouraged the input, comments, and modifications from the invited Tribes on the proposed plan.

The physical site survey would have started with a "windshield tour" of the entire site to familiarize the Tribes with the Dewey-Burdock ISR site, the landscape, and scope of the proposed construction and operation activities. To focus the survey efforts in a systematic manner that would fit within the bounds of the agreed-upon March 2018 Approach, the NRC staff and contractor proposed a method to prioritize the areas to be traversed based on the likelihood of potential effects. That is, the survey team would have first visited previously identified Tribal resources to fully document them, giving priority to places and features located in the project areas where construction and operation activities would occur, and then on those resources outside the area of direct impact. When determining additional project areas to be traversed, the survey team would have further focused its efforts on the project areas surrounding the previously identified resources as well as additional areas of interest to the participating Tribes. The proposal did not identify the length of transects to be used for traversing the project areas because the expectation was to discuss and negotiate such details with the participating Tribes. The length of transects would have been informed by factors such as terrain, visibility, landscape, and topographical features. The NRC staff and contractor repeatedly emphasized that the plan did not intend to limit the project areas of the proposed ISR site to be surveyed.

In addition, the project site maps provided to the Oglala Sioux Tribe on June 11, 2018, and the literature review report developed by the NRC contractor, provided valuable information about the site, landscape, and geographic region to inform the site survey methodology. The NRC contractor also developed documentation forms, shared with the Oglala Sioux Tribe the week of June 11, 2018, to be used during the site survey to record (i) the geographic location and physical description of the Tribal sites and (ii) the ethnographic description and context. Oral history interviews would have been conducted by the NRC contractor after the first phase of the physical site survey. Phase 2 of the physical site survey would have been informed by the preliminary findings of Phase 1 and oral history interviews, and the methodology would have been adjusted accordingly, if necessary.

The NRC staff maintains that the proposed methodology discussed above is reasonable and scientific, as it employs a systematic method for surveying the site, but also provides the parties with the opportunity to discuss and incorporate matters that the Oglala Sioux Tribe, as the experts, find important.

The Oglala Sioux Tribe has not provided specific objections to the NRC staff's proposed methodology, but instead proposed its own alternative site survey methodology. In particular, the Tribe proposed a 10-meter interval field survey of the entire Dewey-Burdock ISR site by trained Tribal members, which would require more than a year to complete. Similarly, with respect to oral history interviews, the Oglala Sioux Tribe proposed that the NRC contractor provide training to the Oglala Sioux Tribe on the methodology to be used for the oral history interviews, and the Tribe itself would conduct the interviews. The interviews would take a year to complete, plus additional time to prepare the oral history report. Those aspects of the methodology proposed by the Tribe would not fit into the timeframe or cost parameters set out in the March 2018 Approach and in accordance with the Board's October 30, 2018, Order.

In order to implement the site survey as outlined in the March 2018 Approach, recognizing the Tribe's expertise for developing and implementing a tribal cultural site survey, the NRC staff needs additional input from the Oglala Sioux Tribe. Specifically, if the Tribe objects to the NRC staff methodology proposal outlined above, the NRC staff respectfully requests that the Tribe document its specific concerns in writing so that the NRC staff can assess how those might be addressed within the bounds of the March 2018 Approach, including the budget, the two two-week periods for a physical site survey, and the overall timeline. Alternatively, the NRC staff requests that the Tribe propose a site survey methodology of the Dewey-Burdock ISR license area that the Tribe would consider scientific and reasonable but that would also fit within those same parameters of the March 2018 Approach. The Tribe's response would be used to effectively focus discussions and negotiations with the goal of reaching an agreement on a site survey methodology. Consistent with previous discussions with the Tribe, the NRC staff looks to the Oglala Sioux Tribe's leadership role in coordinating with the other Lakota Sioux Tribes on the implementation of the March 2018 Approach, gathering input on the site survey methodology, facilitating meetings, and coordinating the input for the survey report.

With respect to sensitive unclassified non-safeguards information (SUNSI) and confidentiality matters, in its June 8, 2018, letter to the NRC staff, the Oglala Sioux Tribe identified a "...list of prerequisites that must precede any field work or other revelation of cultural resource information," including an updated SUNSI Protective Order, NRC/SC&A/Powertech execution of Oglala Sioux Tribe-required confidentiality agreements, and executed "Authorized Persons" affidavits and agreements protecting intellectual property of Tribes (ADAMS Accession Number ML18159A621). The Tribe's participation in the March 2018 Approach is essential to the successful implementation of the approach. Based on these representations from the Tribe,

however, the NRC staff is under the impression that the Tribe will not conduct any field surveys and oral history interviews until these confidentiality concerns are resolved. The NRC staff has previously explained that it will protect sensitive and confidential information associated with the Tribal field survey and oral history interviews consistent with applicable federal laws and regulations. In accordance with the Board's October 30, 2018, decision, if the Tribe believes that revisions to the protective order are necessary, a coordinated motion to modify the Order filed with the Board would be an appropriate mechanism.

If the Tribe is willing to continue discussions regarding the site survey methodology based on the information provided in this letter, we request that you so inform the NRC staff by December 5, 2018. If so, to most effectively focus the next steps in these negotiations, the NRC staff also respectfully requests that the Tribe share its specific objections to the NRC's survey methodology outlined in this letter, or the Tribe's alternative survey methodology proposal, by December 28, 2018. In an effort to be open and proactive, the NRC is copying the Lakota Sioux Tribes in this letter and appreciates the Oglala Sioux Tribe's assistance in coordinating with the Lakota Sioux Tribes. The NRC staff looks forward to the Tribe's response.

Finally, consistent with the Board's October 30, 2018, decision, if the Tribe is willing to resume negotiations, the NRC staff has identified corresponding adjustments to the March 2018 Approach schedule (see Enclosure 1). These milestones reflect key near-term steps for outreach, negotiations, and decisions points. The NRC staff is already taking measures within its control in furtherance of these milestones; in particular, the NRC staff is working actively with its contractor SC&A to select a replacement for Dr. Paul Nickens, who is no longer with SC&A. Therefore, as part of resuming negotiations, the NRC staff is requesting your cooperation in ensuring that the milestones are met, particularly the target date for reaching agreement on a site survey methodology (March 1, 2019). Because the initial milestones affect the feasibility of the overall schedule, as discussed above, if an agreement cannot be reached by March 1, 2019, the NRC staff will pause the negotiation process to determine next steps.

The NRC staff is also corresponding with Powertech to seek to confirm its willingness to continue to provide the reimbursement proposed in its letter to the NRC dated April 11, 2018, (ADAMS Accession Number ML18101A223) to facilitate tribal participation.

In accordance with 10 CFR 2.390, a copy of this letter will be available electronically for public inspection in the NRC Public Document Room or from the Publicly Available Records component of NRC's ADAMS. ADAMS is accessible from the NRC website at <http://www.nrc.gov/reading-rm/adams.html>.

If you have any questions or concerns, please contact Ms. Diana Diaz-Toro of my staff. Ms. Diaz-Toro can be reached at (301) 415-0930 or via e-mail at [Diana.Diaz-Toro@nrc.gov](mailto:Diana.Diaz-Toro@nrc.gov).

Sincerely,

**/RA/**

Cinthy I. Román, Chief  
Environmental Review Branch  
Division of Fuel Cycle Safety, Safeguards,  
and Environmental Review  
Office of Nuclear Material Safety  
and Safeguards

Docket No. 40-9075  
License No. SUA-1600

Enclosure:

Revised Timeline for NRC Staff's March 2018 Approach for Obtaining Information on Lakota Sioux Cultural Resources Potentially Impacted by the Dewey-Burdock ISR Project

cc w/enclosure:

Mr. Troy "Scott" Weston, President  
Oglala Sioux Tribe  
Jeff C. Parsons, Counsel  
Travis E. Stills, Counsel  
Steve Vance, THPO  
Cheyenne River Sioux Tribe  
Garrie Kills A Hundred, THPO  
Flandreau-Santee Sioux Tribe  
Ben Rhodd, THPO  
Rosebud Sioux Tribe of Indians  
Jon Eagle, THPO  
Standing Rock Sioux Tribe  
Clair Green, Cultural Resources Office  
Lower Brule Sioux Tribe  
Kip Spotted Eagle, Director/ THPO  
Yankton Sioux Tribe  
Mr. Merle Marks, THPO  
Crow Creek Sioux Tribe

**Revised Timeline for NRC Staff's March 2018 Approach for Obtaining Information on Lakota Sioux Cultural Resources Potentially Impacted by the Dewey-Burdock ISR Project**  
November 21, 2018

By November 21, 2018	NRC staff sends letters to Oglala Sioux Tribe and Powertech seeking to confirm their willingness to continue discussions and negotiations on a site survey methodology within the overall parameters of March 2018 Approach.
By December 5, 2018	Responses from Oglala Sioux Tribe and Powertech regarding their willingness to participate in further site survey methodology negotiations.
Between December 5 and December 28, 2018	The NRC staff is willing and open to have discussions with the Oglala Sioux Tribe on a site survey methodology prior to the submittal of the specific objections to the NRC's proposal as outlined in this letter, or its alternative proposal.
By December 28, 2018	Response from Oglala Sioux Tribe regarding specific objections to the NRC staff's proposal as outlined in the NRC staff's November 20, 2018, letter to the Oglala Sioux Tribe, or its alternative proposal.
Between January and February 2019	Conduct webinars/teleconference calls with Oglala Sioux Tribe and Lakota Sioux Tribes to discuss, negotiate, and agree on a site survey methodology and areas to be examined during the field survey.
By March 1, 2019	Reach agreement on the site survey methodology and areas to be examined during the field survey.
By March 8, 2019	NRC staff will transmit the final methodology to the Lakota Sioux Tribes.
April 1-12, 2019	Conduct first phase of Tribal field survey.
Mid-May, 2019	Provide preliminary findings and results of first phase of the field survey to participating Lakota Sioux Tribes for a 30 day review and comment period.
May 20-31, 2019	NRC staff and contractor conduct oral history interviews with Tribal elders. Opportunity to discuss preliminary findings and results of first phase of the field survey.
June 10, 2019	Responses from participating Tribes on preliminary results of first phase of field survey.
June 17-28, 2019	Conduct second phase of Tribal field survey.
July 2019	Sun Dance ceremonies.
Mid-August 2019	Send draft survey report and draft oral history interviews document to participating Lakota Sioux Tribes for a 30-day review and comment period.
Mid-September 2019	Responses from participating Tribes on the survey report and oral history interviews.
Beginning of November 2019	Share final survey report and oral history interviews document with participating Tribes.
Mid-December 2019	NRC staff publishes draft supplemental analysis to the FSEIS for 45-day public review and comment period.
January 2020	NRC staff considers public comments and revises supplemental analysis to the FSEIS, as appropriate.
February 2020	NRC staff publishes final supplemental analysis to the FSEIS.

Enclosure

**SUBJECT:** RESUMING IMPLEMENTATION OF THE U.S. NUCLEAR REGULATORY COMMISSION'S MARCH 2018 APPROACH TO IDENTIFY HISTORIC, CULTURAL, AND RELIGIOUS SITES AT THE DEWEY-BURDOCK IN SITU URANIUM RECOVERY PROJECT IN FALL RIVER AND CUSTER COUNTIES, SOUTH DAKOTA (DOCKET NUMBER: 40-9075)

**DATED:** November 21, 2018

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