

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. 40-0975-MLA  
ASLBP No. 10-898-02-MLA-BD01

July 16, 2010

**PETITIONERS EBERT'S MOTION RE: INVITE TO LAKOTA CEREMONY**

Pursuant to 10 CFR §2.323(a), Petitioner Theodore P. Ebert, through counsel, hereby files this motion to formally invite the Board, all parties and counsels to a Lakota Ceremony, as described in Petitioner Ebert's Letter to the Board, attached hereto as Exhibit A, and incorporated herein by reference as if set forth at length. The undersigned certifies that the movant has made a sincere effort to contact other parties in the proceeding and resolve the issue(s) raised in the motion, and that the movant's efforts to resolve the issue(s) have been unsuccessful.<sup>1</sup>

Petitioners hereby move that this Board issue an Order: (1) convening the Board, parties and counsels at a conference at which a traditional Lakota ceremony will take place at a time/date and place (which may include the Black Hills Wild Horse Sanctuary)

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<sup>1</sup> By email dated July 9, 2010, the undersigned proposed the substance of this Motion to Counsel for Applicant and Counsel for the NRC Staff; by separate emails dated July 12, 2010, Counsel for Applicant stated Applicant would be opposed to the Motion, and Counsel for the NRC Staff stated that

“The Staff would oppose the motion because the request appears to raise issues that are not directly related to the legal issues before the Board. Furthermore, at this time the Staff is unable to determine whether attending such a ceremony would conflict with prior Staff commitments. The Staff encourages participation from the public and the petitioners in other fora and does not rule out participation in a Lakota ceremony in another context.

Counsel for the Tribe stated that it did not take a position on this Motion.

set by the Board; (2) selecting the type of Lakota ceremony (*inipi* (sweat lodge), *hunkapi* (making relatives), and/or *canupa* (peace pipe)) to be conducted at such conference; and (3) such other Orders as the Board finds to be necessary or appropriate in the interests of justice and developing a sound record in this proceeding, as contemplated below.

### **DISCUSSION**

1. Description of Invitation to Lakota Ceremony. In the event this Motion is granted, the time and place will be selected by the Board and the ceremony and those involved in it will be asked to respect NRC rules concerning *ex parte* communications and will be asked to not discuss the case, its issues, the dispute or uranium generally. Also, although Mr. Ebert's letter is addressed only to the Board it is intended to include all parties and their counsels.

Mr. Ebert writes, "[w]hen there are differences amongst people they go and live with each other till they see each other in a respectfull [sic] way." When Mr. Ebert refers to "Grandfather" in the last sentence of his letter, he is referring to the "Creator," in other words, he would leave the nature of the exact ceremony in the hands of God.

Mr. Ebert states,

Though I am in disagreement with your venture, I invite you to join us at a cerimonie [sic]. I prayed hard as to which cerimonie [sic] and were [sic - 'where'], for this reason I would choose that for the best result for all concerned that Grandfather should deside [sic] this.

There are seven central Lakota ceremonies plus the *Canupa* (Peace Pipe) ceremony<sup>2</sup>. Some of the ceremonies are not appropriate for a group setting and some are

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<sup>2</sup> *Inipi* (Sweat Lodge), *Tapa Wankayeyapi* (Youth Tossing of the Sacred Ball), *Isnati Ca Lowan* (Girl Coming of Age Ceremony), *Hanble'ceya* (Vison Quest), *Hunkapi*, (Making of Relations), *Wana'gi Yuahapi* (Keeping and Releasing the Soul), and *Wiwanyag Wachapi* (Sun Dance).

specific to certain rites of passage. The remaining ceremonies are:

*Inipi*, the sweat lodge, is a traditional purification ceremony involving heating up rocks and pouring *Mni Wiconi*, sacred water, on the rocks to create a purifying steam. Prayers, songs, and drums are a part of the ceremony. The ceremony is led by the water pourer through four parts known as “doors.”

*Hunkapi*, Making of Relations, involves the participants publicly acknowledging that all living things are members of the same family and, often, that the participants are by that ceremony adopting each other into their respective families (*Tiwahe* or *Tiospaye*). Prayers, songs, and drums are a part of the ceremony.

*Canupa*, Peace Pipe Ceremony, usually accompanies by a drum and songs, the loading of the sacred *Canupa* with prayers and the smoking of the *Canupa* by the participants. The *Canupa* is usually loaded with a non-tobacco material called *Shanshasha*, dried red willow bark, which is non-psychoactive, non-addictive, and generally considered safe for people of all ages.

We invite the Board to convene a conference of the Board, the parties and counsels at which one of the foregoing Lakota ceremonies may be conducted; perhaps, whichever one is previously scheduled to occur on or about the date set by the Board. Alternatively, the invitation could be for *Inipi* (Sweat Lodge) to be held at the Black Hills Wild Horse Sanctuary – there is a lodge already set up at the spot where The Cheyenne River crosses Petitioner Dayton Hyde’s Wild Horse Sanctuary. There are also sweat lodges set up at various locations at Pine Ridge Indian Reservation that could be used for an *Inipi*.

As another alternative, we invite the Board, parties and counsels to participate in a *Canupa* (Peace Pipe) ceremony which could be held at any place and time determined by the Board. In the event that the Board would like to convene a *Hunkapi* (Making Relatives) ceremony, the undersigned and Petitioner Ebert will use best efforts to provide the necessary location, materials and intercessor for such a ceremony.

2. Board Powers to Convene the Parties. The Board clearly has the power to convene the parties, counsels and Board as proposed herein. Section 2.319 gives the presiding officer wide latitude and broad discretion in order to conduct a fair and impartial hearing and “has all the powers necessary to those ends, including the powers to:...(g) regulate the course of the hearing and the conduct of the participants;...(j) hold conferences before or during the hearing for...any other proper purpose; (p) dispose of motions by written order...or prehearing conference; (q) issue orders necessary to carry out the presiding officer’s duties and responsibilities under this part; and (r) take any other action consistent with the Atomic Energy Act, the NRC Regulations and 5 U.S.C. 551-558 (the Administrative Procedure Act).<sup>3</sup>

3. The Board Should Exercise Its Powers to Convene a Conference for a

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<sup>3</sup> Section 554(c)(1) of the Administrative Procedure Act provides that “[t]he agency shall give all interested parties opportunity for – (1) the submission of facts, arguments, offers of settlement, or proposals of adjustment when time, the nature of the proceeding, and the public interest permit. 5 U.S.C. §554(c)(1). Section 555(b) of the Administrative Procedure Act provides that “[s]o far as the orderly conduct of public business permits, an interested person may appear before an agency...for the presentation, adjustment, or determination of an issue, request or controversy in a proceeding, whether interlocutory, summary, or otherwise, or in connection with an agency function. 5 U.S.C. §555. Section 556(c) of the Administrative Procedure Act provides that the presiding officer “may -- ...(5) regulate the course of the hearing; (6) hold conferences for the settlement or simplification of the issues by consent of the parties or by the use of alternative dispute resolution; (7) inform the parties as to the availability of one or more alternative means of dispute resolution, and encourage the use of such methods; (8) require the attendance at any conference held pursuant to paragraph 6 of at least one representative of each party who has authority to negotiate concerning resolution of issues in controversy; (9) dispose of procedural requests or similar matters; and...(11) take other action authorized by agency rule consistent with [that subchapter of the Administrative Procedure Act.] 5 U.S.C. §556.

Lakota Ceremony. In light of the current nature of the dispute between the parties and the lack of understanding between the Petitioners, on the one hand, and the Applicant and the NRC Staff, on the other hand, it would promote the interests of a just and fair hearing to grant the Motion and issue the requested Order. Further, it would promote the interests of the Administrative Procedure Act, and specifically those public interests described in the Sections referred to in footnote 3 above concerning alternative dispute resolution, and conferences for settlement and/or simplification of the issues.

### **CONCLUSION**

For all the foregoing reasons, the Board should issue the order requested by Petitioner Ebert as described above.

Dated this 16<sup>th</sup> day of July, 2010.

Respectfully submitted,

**/s/ - electronically signed by**

David Frankel, Counsel for Petitioner Ebert  
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CERTIFICATE OF SERVICE

I hereby certify that copies "PETITIONER EBERT'S MOTION RE: INVITE TO LAKOTA CEREMONY" in the above captioned proceeding has been served on the following persons listed on the EIE Service List by electronic mail and via the EIE system; on the 16<sup>th</sup> day of July, 2010:

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