

**Official Transcript of Proceedings**  
**NUCLEAR REGULATORY COMMISSION**

Title: Dewey-Burdock In Situ  
Uranium Recovery Facility

Docket Number: 40-9075-MLA

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

Location: (teleconference)

Date: Thursday, October 4, 2012

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UNITED STATES OF AMERICA

NUCLEAR REGULATORY COMMISSION

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ATOMIC SAFETY AND LICENSING BOARD

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PRE-HEARING CONFERENCE

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IN THE MATTER OF: : Docket No.  
POWERTECH USA, INC. : 40-9075-MLA  
: ASLBP No.  
(Dewey-Burdock In Situ : 10-898-02-MLA-BD01  
Uranium Recovery Facility):

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Thursday, October 4, 2012

Via Teleconference

The above-entitled matter came on for pre-  
hearing conference, pursuant to notice, at 1:00 p.m.

BEFORE:

WILLIAM J. FROEHLICH, Chairman, Administrative Judge  
DR. RICHARD F. COLE, Administrative Judge  
DR. MARK O. BARNETT, Administrative Judge

1 APPEARANCES :

2 On Behalf of the Applicant, Powertech USA, Inc.:

3 CHRISTOPHER PUGSLEY, ESQ.

4 ANTHONY THOMPSON, ESQ.

5 Thompson & Pugsley, PLLC

6 1225 19th Street, NW, Suite 300

7 Washington, DC 20036

8

9 On Behalf of the Consolidated Intervenors (Susan

10 Henderson and Dayton Hyde) :

11 DAVID FRANKEL, ESQ.

12 P.O. Box 3014

13 Pine Ridge, SD 57770

14

15 On Behalf of Consolidated Intervenor (Dayton

16 Hyde) :

17 THOMAS BALLANCO, ESQ.

18 945 Traval Street, #186

19 San Francisco, CA 94116

20

21

22

23

24

25 On Behalf of the Oglala Sioux Tribe:

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WASHINGTON, D.C. 20005-3701

1 W. CINDY GILLIS, ESQ.  
2 Gonzalez Law Firm  
3 522 Seventh Street, Suite 202  
4 Rapid City, SD 57701

5 JEFFREY PARSONS, ESQ.  
6 Western Mining Action Project  
7 P.O. Box 349  
8 Lyons, CO 80540

9 TRAVIS STILLIS, ESQ.  
10 Energy Minerals Law Center  
11 1911 Main Avenue, Suite 238  
12 Durango, CO 81301

13  
14

15 On behalf of the NRC Staff:

16 MICHAEL CLARK, ESQ.  
17 PATRICIA JEHLE, ESQ.  
18 U.S. Nuclear Regulatory Commission  
19 Office of the General Counsel  
20 Mail Stop O-15 D21  
21 Washington, DC 20555-001

22  
23

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1:05 p.m.

JUDGE FROEHLICH: Thank you. Again, good afternoon, all. We'll be on the record.

Today, we're conducting a telephone conference in the matter of Powertech USA case. Docket No. 40-9075MLA, Materials License Application. And this concerns the application of Powertech to develop the Dewey Burdock In Situ Uranium Recovery Facility. The application was docketed back in October of 2009 and noticed in January 2010.

It's now about 5 minutes after 1, Eastern Time, Thursday, October 4th.

With me here in Rockville in the room is Ms. Twana Ellis who is the coordinator for this call and our program analyst. Also, we have a new law clerk assigned to this case, Ms. Nicole Picard. Ms. Picard is a new law clerk assigned to this case. She replaces Kristin Stoddard who replaced Megan Wright back when we started this proceeding.

Judges Barnett and Cole are with us also telephonically.

Judge Cole, can you hear me?

JUDGE COLE: Loud and clear.

JUDGE FROEHLICH: And Judge Barnett?

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1 JUDGE BARNETT: Yes.

2 JUDGE FROEHLICH: Although we already did  
3 this once in the coordination part, I just wanted to  
4 confirm the participants who are on line. I  
5 understand for the Applicant, Powertech, we have Chris  
6 Pugsley and Tony Thompson?

7 MR. PUGSLEY: Yes.

8 JUDGE FROEHLICH: Thank you. And for the  
9 Consolidated Intervenors, we have Mr. Frankel and Mr.  
10 Ballanco for Mr. Dayton Hyde?

11 MR. FRANKEL: Yes.

12 MR. BALLANCO: Yes.

13 JUDGE FROEHLICH: And for the Oglala Sioux  
14 Tribe, we have Ms. Gillis, Mr. Parsons, and Mr.  
15 Stills.

16 MR. PARSONS: Yes.

17 MS. GILLIS: Yes.

18 JUDGE FROEHLICH: Okay, thank you. And  
19 for the NRC Staff, we have Michael Clark and Patty  
20 Jehle.

21 MR. CLARK: Correct.

22 JUDGE FROEHLICH: Thank you. Then let us  
23 begin. This call is being transcribed by the court  
24 reporter who is also on the line. Therefore, when you  
25 speak would you please identify yourself to assist in

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1 the preparation of the transcript. As we stated in  
2 our public notice, members of the public and  
3 consultants to the parties are free to listen in to  
4 these proceedings, but it's only the counsel that we  
5 just ran through who may speak and participate  
6 actually in the conference call.

7 The purpose of this call is to discuss  
8 matters relating to the management and the scheduling  
9 of this case. As I mentioned, the application was --  
10 this case was docketed in October 2009 and publicly  
11 noticed in January 2010.

12 We held oral argument in Custer, South  
13 Dakota in June of 2010 and the Board issued its order  
14 on request for hearing, designated LBP 10-16 on August  
15 5, 2010.

16 There was a telephone prehearing  
17 conference call held September 23, 2010. Two  
18 scheduling orders have been issued: the initial  
19 scheduling order which was issued two years ago on  
20 October 4, 2010, and a supplemental scheduling order  
21 which was issued in November, on November 2, 2010.

22 Since it has been two years to the day  
23 since the initial scheduling order was issued, the  
24 Board called this status of prehearing conference call  
25 to gauge where things stand in the case and what a

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1 future hearing schedule might look like. Notice of  
2 this status conference was issued on September 28,  
3 2012 which identified a number of specific discussion  
4 topics. These aren't exhaustive. However, unless  
5 there's an objection, I would propose that we just  
6 sort of catch up with where we are on this case, that  
7 we hear from each of the parties as to their actions  
8 over the past two years, especially as it perhaps to  
9 the preparation and the operation of the mandatory  
10 disclosure process, the required consultations under  
11 NEPA or the National Historic Preservation Act, and  
12 most importantly, the progress of the staff on the  
13 preparation of the SER Draft Environmental Impact  
14 Statement and Final Supplemental Environmental Impact  
15 Statement.

16 After we've heard a short status report  
17 from each of the parties, I think we can go through  
18 the items that the Board designated in its September  
19 28th order.

20 Is that acceptable to the parties?

21 MR. PUGSLEY: This is Chris from  
22 Powertech, yes.

23 MR. FRANKEL: David Frankel for  
24 Intervenors, yes.

25 JUDGE FROEHLICH: Okay, then why don't we

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1 start with the Applicant. From the Applicant's  
2 perspective, what has happened in this proceeding  
3 since we last met?

4 MR. PUGSLEY: It's Chris Pugsley, Your  
5 Honor. Basically, Powertech is continuing to follow  
6 the NRC licensing process for its proposed Dewey-  
7 Burdock project in South Dakota. It is essentially as  
8 is the case in all of these licensing proceedings, the  
9 Applicant is awaiting issuance of the Draft  
10 Supplemental Environmental Impact Statement by NRC  
11 staff for public comment so that it may review it as  
12 well as the Safety Evaluation Report which is not  
13 issued for public comment, but we do await the  
14 production of that.

15 Other than that, the only things that have  
16 occurred, we are currently working with the staff on  
17 draft license conditions for the project and other  
18 than that, we simply await NRC Staff's release of  
19 those previously identified documents.

20 JUDGE FROEHLICH: Thank you, Mr. Pugsley.  
21 If we could move now to the Intervenors. Perhaps Mr.  
22 Frankel, first?

23 MR. FRANKEL: David Frankel for  
24 Intervenors. Your Honor, in the past two years, we've  
25 also been waiting for the NRC reports that are being

1 prepared. We have suffered drought and wildfire and  
2 watched some of those fires creep dangerously close to  
3 the proposed site. But other than that, we have  
4 conferred and consulted with counsel when requested  
5 and we're not part of most of the processes that are  
6 going on right now, although we have conferred among  
7 the Intervenors and the Tribe several times. And we  
8 are prepared to continue to do that and to coordinate  
9 any contentions that we might see coming out of the  
10 draft safety report and the environmental reports when  
11 they come out.

12 JUDGE FROEHLICH: Okay, could I hear from  
13 a representative of the Tribe at this point?

14 MR. PARSONS: Sure. This is Jeff Parsons.  
15 I think we've been in a similar situation in reviewing  
16 the request for additional information and responses  
17 Powertech has submitted, as well as waiting for the  
18 draft environmental document which should, according  
19 to the latest schedule, be out in the next couple of  
20 months.

21 There has been some consultation occurring  
22 under the National Historic Preservation Act. Some of  
23 those issues are still -- I'm not sure they've been  
24 totally resolved, but that process has continued as  
25 well.

1 JUDGE FROEHLICH: And have there been any  
2 issues with the mandatory disclosure process to date?

3 MR. PUGSLEY: Chris Pugsley for Powertech.  
4 None that we're aware of.

5 JUDGE FROEHLICH: Mr. Ballanco, from your  
6 perspective, any changes in the past two years?

7 MR. BALLANCO: No, Your Honor, other than  
8 that my 84-year-old client continues to be very  
9 concerned about the potential impact to what has  
10 become his life's work on the wild horse sanctuary.  
11 He does always encourage a sense of urgency dealing  
12 with these issues.

13 JUDGE FROEHLICH: Okay, now probably most  
14 important and actually from what I've heard from all  
15 the parties, many of the dates of our proceedings here  
16 are going to be triggered by the staff documents that  
17 are in progress.

18 Could I hear from staff counsel as to the  
19 progress being made and the dates that are currently  
20 projected for the SER, DEIS, and FSEIS?

21 MR. CLARK: Sure. Judge Froehlich, this  
22 is Mike Clark for the staff. For the benefit of any  
23 members of the public who might be listening, the  
24 staff has been filing monthly status reports with the  
25 Board in this proceeding. And the most recent report

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1 we filed last -- October 1st, this past Monday. In  
2 that report, we revised slightly the dates for  
3 issuance of our documents. The next document or the  
4 first document, staff document to be issued is the  
5 Draft Supplemental Environmental Impact Statement  
6 which the staff intends to issue either later this  
7 month or in early November. That will be followed by  
8 the staff's Safety Evaluation Report which we fully  
9 expect to be issued in December of 2012.

10 Following the 45-day public comment period  
11 on the Draft SEIS and after receiving comments from  
12 other agencies, the staff will finalize what will be  
13 the final Environmental Impact Statement for this  
14 proceeding and we expect -- our current estimate for  
15 releasing that document is May 13.

16 JUDGE FROEHLICH: Mr. Clark, can I put you  
17 on the spot just a bit and can you tell me how  
18 confident you are about these dates? Is it highly  
19 likely that the DEIS will be out this month or next or  
20 is that sort of an optimistic goal?

21 MR. CLARK: Because Patty Jehle and I are  
22 at this point involved quite a bit in the review, Your  
23 Honor, I'd say highly confident that the release dates  
24 for the Draft SEIS and SER will hold. Because the  
25 final SEIS date is farther out, I wouldn't speak with

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1 the same degree of confidence. I'd say we're still  
2 confident that we'll release that Board by May 2013.  
3 But as the Board knows, that will depend, in part, on  
4 what the number and nature of comments we received on  
5 the Draft SEIS. So I'd say highly confident for the  
6 first two documents and confident, but I wouldn't  
7 overstate that confidence for the final SEIS.

8 JUDGE FROEHLICH: Okay, thank you, Mr.  
9 Clark and I appreciate the caveats and the qualifiers  
10 that you gave with those dates.

11 Has there been among the parties any  
12 discussion of the -- well, what I was going to do now  
13 is turn to the items that we had listed in our notice  
14 of this conference and perhaps with the schedule now  
15 articulated, see if we are able to firm up any of the  
16 decisions or thoughts that we had earlier as to the  
17 other elements that have to be taken care of leading  
18 up to the hearing in this case, if there's been any  
19 progress on any of those issues, unless anyone has  
20 anything they'd like to say before we sort of get into  
21 the enumerated items from the September 28th notice?

22 MR. PARSONS: This is Jeff Parsons. I  
23 just wanted to let the Board know that the parties did  
24 have a conference call yesterday and we worked through  
25 all these items and we all agreed that Mike Clark

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1 would basically summarize the positions. We've sort  
2 of all agreed on most everything. So it shouldn't be  
3 too much to run through.

4 JUDGE FROEHLICH: Great. Thank you very  
5 much.

6 Mr. Clark, do you want to run through them  
7 as they were enumerated or have you lumped them  
8 together to report on the discussions among the  
9 parties?

10 MR. CLARK: Your Honor, it would probably  
11 be best to just run through them individually.

12 JUDGE FROEHLICH: Okay.

13 MR. CLARK: Bruce Ellison was part of the  
14 discussion yesterday and I understand he was  
15 representing the position of the Consolidated  
16 Intervenors, but if Mr. Frankel or Mr. Ballanco has  
17 anything else to add, we would certainly welcome the  
18 input there.

19 I can run through them. The first issue  
20 raised by the Board relates to contentions. Is there  
21 any change in the agreement previously reached by the  
22 parties as to which contention should be viewed as  
23 safety contentions or environmental contentions?  
24 Briefly, no. The parties still have the same  
25 understanding that was stated at the prior

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1 teleconference.

2 If you'd like me to summarize what we  
3 stated previously for the benefit of anybody who  
4 wasn't there, I can do that.

5 JUDGE FROEHLICH: Let me read from my  
6 notes of the September 23rd conference and if you can  
7 just confirm that that is how it stands currently, I  
8 think we'll get there.

9 Contentions D and E were primarily safety  
10 with an environmental component.

11 MR. CLARK: That's correct.

12 JUDGE FROEHLICH: Contention K1 and 4 were  
13 environmental. And Contentions 2 and 3 were safety.

14 MR. CLARK: With one caveat, I think Jeff  
15 Parsons wanted to say something. We have for the  
16 Tribe, we have 2 and 3 safety, but with an  
17 environmental component.

18 JUDGE FROEHLICH: Okay, thank you. Did  
19 any of the Intervenors want to add or comment at least  
20 tentative --

21 MR. FRANKEL: David Frankel, Your Honor.  
22 I did run -- I did have a conversation with Jeff on  
23 the email before and after the call, so I'm not going  
24 to add anything unless I hear something that conflicts  
25 with my understanding. So please consider that the

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1 conversation yesterday, as I understand it, reflects  
2 my understanding. I hope that wasn't a confusing  
3 statement, but Your Honor, I'm not expecting to add  
4 anything, but I will chime in if I need to.

5 JUDGE FROEHLICH: Understood. Thank you.

6

7 Mr. Clark, please continue.

8 MR. CLARK: Okay, Your Honor, for the  
9 second issue: Is it the desire of the parties to  
10 convene a single hearing to address both the safety  
11 and environmental contentions? The agreement is that  
12 the parties believe it would be best to revisit this  
13 issue after the Board rules on any new or amended  
14 contentions challenging the staff documents.

15 JUDGE FROEHLICH: That statement, Mr.  
16 Clark, the staff documents, the DEIS and SER, which  
17 are fairly close or do you contemplate after the final  
18 SER? Because there's likely to be contentions,  
19 there's a potential for contentions after the DEIS and  
20 the SER.

21 MR. CLARK: We didn't discuss that precise  
22 question, Your Honor, so I would say for the staff  
23 once you receive and resolve or rule on any  
24 contentions on the SER, the staff would suggest that  
25 it might be revisited then because we'll know what

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1 issues, what safety issues are in play, but certainly  
2 the staff would welcome the input of everyone else on  
3 that.

4 JUDGE FROEHLICH: Does anyone care to be  
5 heard on the timing of the DSEIS or the SER, new  
6 contentions, if there be any?

7 MR. PUGSLEY: Your Honor, Chris Pugsley.  
8 Okay, Tony, go ahead.

9 MR. THOMPSON: I was on the phone call,  
10 this is Tony Thompson for Powertech. Basically, Your  
11 Honor, I think we feel that with respect to -- at this  
12 point in time, it's premature with respect to either  
13 or any, all.

14 JUDGE FROEHLICH: Okay. If no one else is  
15 commenting, Mr. Clark, please continue.

16 MR. CLARK: Okay, for the third issue:  
17 whether the parties are willing to consent to handling  
18 any specific contention under the Subpart N  
19 procedures. I guess for anybody from the public,  
20 Subpart N provides for oral hearings. The subpart  
21 we're presently under, Subpart L, provides for written  
22 submissions of testimony followed by an oral hearing.

23 The parties had all previously agreed to  
24 proceed under Subpart L and yesterday we confirmed  
25 that agreement.

1 JUDGE FROEHLICH: Okay, thank you. All  
2 right, timing issues, I think you've already  
3 addressed, Item 4. And we'll postpone the decision on  
4 a unified or bifurcated hearing until after we've  
5 received at least the DSEIS and the SER.

6 As to question 5, have the parties had an  
7 opportunity to discuss any changes that might have  
8 been -- that might be envisioned because of the --  
9 that would have to be made for those that are  
10 specified in the initial supplemental ISO?

11 MR. CLARK: This is Mike Clark again, Your  
12 Honor. We aren't proposing any changes in this area.

13 JUDGE FROEHLICH: Okay, and then let me  
14 just confirm my understanding of the previously agreed  
15 to understanding among the parties following the  
16 issuance of the DSEIS, that would be 45 days to file  
17 a new or amended contention timely after the issuance  
18 of the staff SER, a 30-day deadline and after the  
19 FSEIS, a 30-day deadline.

20 MR. CLARK: That's correct.

21 JUDGE FROEHLICH: Thank you. Oh, while we  
22 are on this question, Mr. Clark, just a follow up from  
23 the oral argument. Other than the publication, I  
24 guess, of the notice that these documents are  
25 available, are there any special arrangements that

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1 have been made to get these documents or at least to  
2 make the parties to the proceeding aware that they've  
3 been issued? Have any special arrangements been made  
4 as to notice so that the clock starts there's no  
5 confusion as to when that clock starts?

6 MR. CLARK: Well, actually just yesterday  
7 we discussed that and Patty Jehle and I agreed to  
8 email the Intervenors' attorneys the staff documents  
9 as soon as we could in public forum. So we committed  
10 to doing that as soon as we can.

11 JUDGE FROEHLICH: Okay, thank you. I was  
12 hoping the staff would take that initiative and I  
13 commend you for doing that. It's appreciated.

14 MR. CLARK: Your Honor, I would just like  
15 to raise the point, would the Board prefer to be -- we  
16 could do it more formally and give the Board notice  
17 that we've emailed these documents to the attorneys if  
18 you think that would be easier to track?

19 JUDGE FROEHLICH: I think for the record  
20 and to prevent any confusion as to the trigger date or  
21 the starting date of the periods that have been agreed  
22 to, it would be fine if you wanted to either send a  
23 separate notification to the Board that that's been  
24 done or to cc the Board on the form of notification  
25 that you issue to the parties.

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1 MR. CLARK: Okay, thank you.

2 JUDGE FROEHLICH: Thank you. Mr. Clark,  
3 are there any changes that we need to address to the  
4 dates of procedures that we've set in place based on  
5 the amendments to the Part 2 rules that were recently  
6 issued by the Commission?

7 MR. CLARK: Well, one change we discussed  
8 through email was there maybe needs to be slight  
9 changes to the supplemental initial scheduling order  
10 of the proceeding just because it refers to the old  
11 criteria for new or amended contentions. I think  
12 that's the first full paragraph.

13 JUDGE FROEHLICH: Right.

14 MR. CLARK: There's language near the end  
15 of the first full paragraph on page five of the  
16 supplemental initial scheduling order, but that's a  
17 minor change.

18 JUDGE FROEHLICH: Right.

19 MR. CLARK: The other issue we discussed  
20 through email was just the staff's discovery  
21 obligations have changed as a result of the changes to  
22 the NRC's rules of procedure. Now instead of having  
23 to disclose all documents that provide support for or  
24 opposition to the staff's review, the staff only has  
25 to disclose documents that are relevant to admitted

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1 contentions.

2 What the staff proposed to the other  
3 parties, however, is for continuity and because at  
4 this point relatively huge staff documents are going  
5 to be released. Staff is willing to continue under  
6 the old discovery rules.

7 JUDGE FROEHLICH: Which provides for  
8 greater discovery than -- well, the disclosure, I  
9 think, than under the amended rules. Is my  
10 understanding correct?

11 MR. CLARK: Correct.

12 JUDGE FROEHLICH: Okay, that is  
13 commendable and I think that is an appropriate way to  
14 proceed in this case, then sort of overlaps the old  
15 rules and the new rules.

16 MR. CLARK: I don't know if anybody had  
17 any thoughts on that issue because I don't recall that  
18 we discussed that specifically in the teleconference  
19 we had yesterday, but we did raise the issue by email.

20 JUDGE FROEHLICH: Anyone care to be heard  
21 on Mr. Clark's commitments?

22 Hearing none, if they're accepted I think  
23 we can move on.

24 Oh, the next item, Mr. Clark, were there  
25 any changes to the notices of appearances since our

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1 last conference. Have there been any changes to  
2 office phone numbers, addresses, email accounts or  
3 appearances per se?

4 MR. CLARK: None for the staff. I believe  
5 for other parties, however, there have been.

6 JUDGE FROEHLICH: For the Tribe, I noticed  
7 there was a recent notice of Ms. Gillis. Is that  
8 correct?

9 MS. GILLIS: Yes.

10 JUDGE FROEHLICH: Were there any other  
11 changes to the representation of the Tribe?

12 MS. GILLIS: No.

13 MR. CLARK: And Ms. Gillis, it appears  
14 that the information that is in there isn't up to  
15 date. For myself I was making the minute notice to  
16 make sure all my contact information is up to date.

17 JUDGE FROEHLICH: If you would file that  
18 with the Agency, serve on all parties, we'll make sure  
19 everyone has the current, most up-to-date information.

20 Any changes from the Applicant or anyone  
21 else in this case?

22 MR. PUGSLEY: Chris Pugsley for Powertech,  
23 Your Honor. No changes here.

24 JUDGE FROEHLICH: Okay. All right, Mr.  
25 Clark, back to you.

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1 MR. CLARK: Well, for Issue 8, Your Honor,  
2 the parties agree that no change would be needed at  
3 this time. That any motions or any date for  
4 clarification or simplification of issues will  
5 probably be best set after the Board rules on any new  
6 or amended contentions or at least after new or  
7 amended contentions challenging the documents that  
8 should issue this year.

9 JUDGE FROEHLICH: Okay. So that would  
10 take care of probably 8, 9, and 10. Is that right?

11 MR. CLARK: I believe so, Your Honor.

12 JUDGE FROEHLICH: And I think if we hold  
13 11 also in abeyance until after the SER and the DSEIS  
14 are issued at that point we can explore or at least  
15 discuss the potential for settlement of any of the  
16 issues that are in this case.

17 Did the parties have an opportunity to  
18 discuss the site visit and whether that's still the  
19 belief of the parties that that would be helpful to  
20 the Board in the resolution of the contentions in this  
21 case?

22 MR. CLARK: We did and all parties  
23 continue to agree it would be helpful.

24 JUDGE FROEHLICH: Let me ask you and the  
25 parties, because of the change in dates and also the

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1 weather, I guess, at certain times of the year in that  
2 area, how do the new projected dates sort of affect  
3 when a site visit would be scheduled? Is that  
4 contemplated after the Board's orders on admitted  
5 contentions or just prior to the hearing? Was there  
6 any discussion as to when a site visit might be  
7 appropriate?

8 MR. CLARK: We did discuss that and the  
9 representatives for parties who actually are out there  
10 in that area, including the Applicant, agree weather  
11 would be a greater consideration than the timing of  
12 staff documents.

13 JUDGE FROEHLICH: Okay.

14 MR. CLARK: But they might want to provide  
15 more input on that. Bruce Ellison had some input in  
16 that area regarding weather patterns and the best  
17 dates to visit the site. And I think Tony Thompson  
18 did as well.

19 MR. FRANKEL: David Frankel. I note to  
20 everybody that I believe it's going to snow or it's  
21 about to snow. In any case, we would love to have a  
22 site visit probably April is the earliest time people  
23 can count on easier travel. There tend to be late  
24 spring storms. Now February, March storms are quite  
25 common, so April would be a more safe bet.

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1 JUDGE FROEHLICH: Okay, thank you. Anyone  
2 else on the timing of such a site visit?

3 MR. ELLISON: This is Bruce Ellison. I  
4 think the Tribe had raised the question that the  
5 ground was free of snow and I therefore would agree  
6 that there are storms in April but they are infrequent  
7 and they end quickly.

8 JUDGE FROEHLICH: Okay. Thank you. I  
9 appreciate that. Anyone else on the timing of a  
10 potential site visit?

11 All right, the last item we had was  
12 potential venues. And my recollection is the last  
13 time we discussed this that there was a new courthouse  
14 that was under construction. Can one of the parties  
15 bring the Board up to date on the status of that  
16 construction?

17 MR. FRANKEL: This is David Frankel. I  
18 can talk a little bit about the Custer Courthouse.  
19 It's absolutely beautiful. It's LEED certified  
20 environmental. It's a really great space. I think  
21 that there's plenty of room in there. I don't know  
22 what the logistics are in different rooms, but it's a  
23 very modern, well lit, climate controlled space that  
24 a lot of people in the county are very proud of and I  
25 think it will be an excellent venue.

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1           Also an excellent venue is the Mueller  
2 Civic Center in Hot Springs which is a central  
3 location for people who are in the Fall River County  
4 area.

5           JUDGE FROEHLICH: I think at least the  
6 last time we discussed it, there was also a courthouse  
7 available in Hot Springs, is that correct?

8           MR. ELLISON: There is a courthouse. This  
9 is Bruce Ellis. There is a courthouse in Hot Springs.  
10 Its availability would depend upon the court's  
11 schedule.

12          JUDGE FROEHLICH: Right.

13          MR. ELLISON: It's the only county-wide  
14 courthouse for Hot Springs.

15          JUDGE FROEHLICH: Mr. Ellison, may I ask,  
16 the courthouse that we've been referring to in Custer,  
17 is that the County Courthouse, that the new courthouse  
18 is a County Courthouse?

19          MR. ELLISON: Yes, yes, sir. It is.

20          MR. FRANKEL: Yes, Your Honor.

21          JUDGE FROEHLICH: And the courthouse in  
22 Hot Springs is also a County Courthouse?

23          MR. ELLISON: Yes, although that is quite  
24 an antiquated structure at this point.

25          JUDGE FROEHLICH: Okay.

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1 MR. ELLISON: The Mueller Building would  
2 have much better facilities than a courthouse would.

3 JUDGE COLE: This is Judge Cole. The Old  
4 courthouse in Custer, are they still using it?

5 MR. ELLISON: It seemed turned into  
6 administrative offices and I know the new courthouse  
7 is just about done inside. I have not in the last  
8 couple of months seen the old one, so I don't know if  
9 they're going to leave the courtroom or if they've  
10 already started to change that. But that can be  
11 checked out.

12 JUDGE FROEHLICH: Okay, is there anything  
13 else that any of the parties feel we should discuss at  
14 this juncture as we await the staff documents and move  
15 forward with this case?

16 MR. ELLISON: Your Honor, if I may, just  
17 -- this is Bruce Ellison. If I may add just one  
18 thing? Last night's discussions with everybody, the  
19 Tribe had also raised the possibility of the casino on  
20 the Pine Ridge Indian Reservation. There was some  
21 discussion about it being somewhat remote, but that's  
22 a good facility. I believe -- I actually have had  
23 been to that facility as well and we're familiar.  
24 They have a hotel and they have a large conference  
25 room in the basement. So I just wanted to bring that

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1 up as a fourth possible site.

2 JUDGE FROEHLICH: Okay, does anyone have  
3 any other comments about the potential venues that  
4 have been listed?

5 MR. FRANKEL: David Frankel, Your Honor,  
6 if I may. If Pine Ridge is being considered, then  
7 it's very common for official events to be held in the  
8 SuAnne Big Crow Boys & Girls facility. There have  
9 been events there between the Tribe and the State of  
10 South Dakota. It's more of a gymnasium area, but it  
11 can be set up with tables and chairs. I'm not sure of  
12 all of the requirements that the Board has for  
13 logistics, but I thought I would just make the Board  
14 aware of that as well.

15 JUDGE FROEHLICH: I'll keep that on the  
16 list of potential sites and we do have people from  
17 facilities who check these things out and help us pick  
18 the most appropriate venue.

19 Any other thoughts on a venue for a  
20 hearing?

21 MR. CLARK: This is Mike Clark. One venue  
22 or one city was Rapid City. That was mentioned in the  
23 last call. I believe Ms. Gillis mentioned Rapid City  
24 yesterday as well.

25 JUDGE FROEHLICH: Okay, could I ask how

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1 far is Rapid City from the facility?

2 MR. ELLISON: Ninety miles, I believe, sir.

3 JUDGE FROEHLICH: Ninety miles. Okay.

4 Thank you, Mr. Clark, Mr. Ellison.

5 Were there any other procedural or  
6 scheduling matters or any other matters that any of  
7 the parties wish to raise at this point?

8 Hearing none, any questions from Judge  
9 Cole or Judge Barnett?

10 JUDGE COLE: No, nothing here.

11 JUDGE BARNETT: Nothing from Judge Barnett.

12 JUDGE FROEHLICH: Okay, at this point I  
13 think we've gone through all the things that the Board  
14 was interested in discussing. I guess the Board and  
15 the parties will await the staff documents and I would  
16 expect at some point after they're issued we'll have  
17 another telephone conference call or scheduling  
18 conference to proceed along with the next steps.

19 I want to thank all of the parties for  
20 their preparation and for addressing the issues that  
21 we had put forward in our September 28th notice.

22 Any other matters? Then we stand  
23 adjourned. Thank you.

24 (Whereupon, at 1:40 p.m., the  
25 teleconference was concluded.)

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