

DeweyBurdPubEm Resource

From: Yilma, Haimanot
Sent: Friday, November 08, 2013 4:56 PM
To: Yilma, Haimanot
Cc: Jamerson, Kellee; 'Withrow, Randy' (rwithrow@louisberger.com)
Subject: Teleconference to discuss the development of the PA for the Dewey Burdock project is scheduled for Friday November 15, 2013.
Attachments: Draft PA Outline -11-8-13 clean version.docx; Draft PA Outline -11-8-13.docx

All,

The NRC staff is holding a teleconference to discuss the development of a PA for the Dewey-Burdock Project on **Friday, November 15, 2013 from 9:00am to 11:00am (MDT)**. Consulting parties will also be able to follow changes to the draft PA outline during the call by logging on the webinar link that is included in this email.

Dial in Numbers:
888-913-9205

Participant Passcode:
67889

Link to webinar:
<https://www1.gotomeeting.com/register/942527593>

The NRC staff requested feedback on the draft PA outline from all consulting parties when it was first distributed on August 30, 2013. To date, the staff has only received comments from Powertech, Inc. The NRC staff has now reviewed Powertech's comments and developed a revised draft PA outline in preparation for the November 15, 2013 call. The NRC staff has included a clean version as well as a marked-up version of the revised draft PA outline for your review. Should you have any question or feedback on the revised draft PA outline, please forward them to me.

Sincerely,

Haimanot Yilma
Project Manager
FSME/DWMEP/EPPAD/ERB
U.S Nuclear Regulatory Commission
Phone: 301-415-8029
email: haimanot.yilma@nrc.gov
Mail Stop : T8F05

Hearing Identifier: Powertech_Uranium_Dewey_Burdock_LA_Public
Email Number: 296

Mail Envelope Properties (2C5246E2C48F77418DF2EE22F3C7DE972E28504B90)

Subject: Teleconference to discuss the development of the PA for the Dewey Burdock project is scheduled for Friday November 15, 2013.
Sent Date: 11/8/2013 4:56:17 PM
Received Date: 11/8/2013 4:56:18 PM
From: Yilma, Haimanot

Created By: Haimanot.Yilma@nrc.gov

Recipients:
"Jamerson, Kellee" <Kellee.Jamerson@nrc.gov>
Tracking Status: None
""Withrow, Randy" (rwithrow@louisberger.com)" <rwithrow@louisberger.com>
Tracking Status: None
"Yilma, Haimanot" <Haimanot.Yilma@nrc.gov>
Tracking Status: None

Post Office: HQCLSTR02.nrc.gov

Files	Size	Date & Time
MESSAGE	1333	11/8/2013 4:56:18 PM
Draft PA Outline -11-8-13 clean version.docx		48705
Draft PA Outline -11-8-13.docx	56621	

Options
Priority: Standard
Return Notification: No
Reply Requested: No
Sensitivity: Normal
Expiration Date:
Recipients Received:

This is an incomplete outline developed for the purpose of discussion and consultation. A complete draft with formal language will be prepared based on comments received from all consulting parties.

**PROGRAMMATIC AGREEMENT
AMONG
U.S. NUCLEAR REGULATORY COMMISSION
U.S. BUREAU OF LAND MANAGEMENT
SOUTH DAKOTA STATE HISTORIC PRESERVATION OFFICE
POWERTECH USA, INC.
[TRIBES]
AND
ADVISORY COUNCIL ON HISTORIC PRESERVATION
REGARDING THE
DEWEY BURDOCK IN-SITU RECOVERY PROJECT
LOCATED IN CUSTER AND FALL RIVER COUNTIES
SOUTH DAKOTA**

Date

WHEREAS CLAUSES:

- identify the U.S. Nuclear Regulatory Commission (NRC) as the lead federal agency (cite NRC's licensing authority)
- define NRC's undertaking as a licensing action encompassing the entire 10,580-acre license area
- define the area of potential effects (APE) for the undertaking (possibly attach a map depicting the APE)
- identify why the PA is required for this undertaking
- identify U.S. Bureau of Land management (BLM) as consulting federal agency (BLM to provide statement describing the nature of its undertaking and involvement)
- cite consultation with BLM, ACHP, State Historic Preservation Office (SHPO), Tribes, Applicant and other parties (each should have its own Whereas Clause)
- Identify each tribe that has been invited to participate in consultation
- Identify each tribe that has accepted the invitation and participated in the development of the PA
- acknowledge tribes special expertise 36 CFR 800.4(c)(1)
- identify legal authorities that apply (National Historic Preservation Act (NHPA) - 16 U.S.C. § 470f; Advisory Council on Historic Preservation (ACHP) Regulations 36 CFR §800)

-reference coordinated preparation of a Supplemental Environmental Impact Statement (SEIS) for the project in accordance with National Environmental Policy Act (NEPA) (42 U.S.C. 4321 et seq.)

-cite findings regarding the undertaking's effect on historic properties

-this agreement does not waive signatory responsibilities under other federal laws

-cite invitations to sign or concur

NOW, THEREFORE, (insert list of concurring parties) agree that.

STIPULATIONS:

- 1) The NRC will withhold issuing a license to the Applicant until the Section 106 process is completed.
- 2) The NRC shall require as a condition of any license issued to Powertech that Powertech complies with all stipulations and other provisions in this Programmatic Agreement (PA).

3) Identification of Historic Properties:

- a) Powertech Inc. (along with its contractor Augustana College) conducted Class III Cultural Resources evaluation to identify archaeology sites and historic structures within the license boundary and submitted the results of this study as part of the license application. Appendix A of this PA will provide details of sites that were identified during the Class III survey.
- b) The Dewey-Burdock project site was made available in spring 2013 (between April and May 2013) for each consulting Tribe to identify properties of religious and cultural significance to them. Seven Tribes elected to participate in these surveys: the Northern Arapaho Tribe, Northern Cheyenne Tribe, Turtle Mountain Band of Chippewa Indians, Crow Creek Sioux Tribe, Cheyenne and Arapaho Tribes of Oklahoma, Crow Nation, and Santee Sioux Tribe. NRC received reports with eligibility recommendations from the Northern Arapaho Tribe, the Northern Cheyenne Tribe, and the Cheyenne and Arapaho Tribes of Oklahoma as well as field notes from the Crow Nation.
- c) The NRC staff reviewed the results of the applicant's Class III survey, Tribal Survey, and the light-of-sight analysis and developed the staff's initial eligibility recommendation. Appendix A of this PA will provide the staff's initial recommendation.

4) Future Identification Surveys:

- a) Powertech will sponsor identification of historic properties for any land areas located outside the license boundary that may be affected by the installation of electrical transmission lines necessary to provide power to the project area. All identification efforts shall be conducted in accordance with 36 CFR 800.4. Identification surveys will be conducted by qualified personnel in accordance with applicable federal and state guidelines (include citations for federal/state survey guidelines)
- b) The NRC will consult with interested tribes to identify and evaluate places of religious and cultural significance to tribes.

- c) Powertech will offer to provide funding to tribal representatives for the purpose of completing identification of properties of religious and cultural significance to them.
- d) Procedures for consultation and review of survey reports are provided in Stipulation 8.

5) Unevaluated Properties:

- a) All unevaluated properties will be treated as if they have been found to be eligible to the National Register of Historic Places (NRHP) and will be protected in place until a determination is made as to whether each property meets the criteria for NRHP listing in 36 CFR Part 60.4.
- b) Powertech shall protect in place all properties that have not been fully evaluated for listing in the NRHP.
- c) In the event that changes in the design or operation of the project, including the changing of the wellfield configurations, have the potential to affect unevaluated properties, Powertech will sponsor any needed supplemental research and/or field investigations to gather information necessary for the NRC, BLM, and SD SHPO staff to evaluate the NRHP eligibility of the affected properties.
- d) Once evaluation of NRHP eligibility has been completed, determination of effects and the development of proposals to resolve any adverse effects will be carried out in accordance with stipulations 6 and 7 of this agreement.
- e) Procedures for consultation and review of research and field investigations are provided in Stipulation 8.

6) Assessing Effects:

- a) Based on the results of the Class III and tribal surveys, a number of historic properties (including archeological sites, historic structures, and properties of religious and cultural significances) have been found within the areas of land disturbance and will be subject to an effects determination. (see Appendix A).
- b) The NRC is conducting a line-of-sight analysis to assess the potential for adverse visual effects on all known historic properties located within 3 miles of the tallest part of the installation (both Dewey and Burdock facilities). Procedures for consultation and review of the line-of-sight analysis are provided in Stipulation 8.
- c) The NRC will assess adverse effects the Dewey-Burdock project will have on these historic properties in accordance with 36 CFR 800.5. If adverse effects are found, the NRC will consult with signatories and concurring parties to develop proposals to resolve these effects in accordance with 36 CFR 800.6 and Stipulation 7.

7) Resolution of Adverse Effects:

- a) Powertech will draft written treatment plans, which identify measures to avoid, minimize or mitigate adverse effects to historic properties in accordance with 36 CFR 800.6. Draft treatment plans will be submitted for NRC review and approval.

- b) The NRC will review and approve draft treatment plans developed by the Powertech for each affected historic property in consultation with all signatories and concurring parties. A meeting or teleconference may be held to develop and review alternative measures to avoid or minimize adverse effects to individual properties or groups of related properties.
- c) The NRC will submit draft treatment plans to all signatories and concurring parties for review and comment to be completed within 30 days.
- d) The NRC may revise draft treatment plans as appropriate based on comments received from the consulting parties. The NRC will forward revisions to draft treatment plans with a request for a second review by signatories and concurring parties to be completed within 30 days. .

8) Procedures for Consultation and Review of Reports:

- a) The NRC will notify signatories and concurring parties when additional surveys or studies under Stipulations 4 or 5 are needed and provide all parties an opportunity to comment on the definition of the Areas of Potential Effect (APE), investigation methods, and reporting requirements.
The NRC will submit survey reports and other identification and evaluation studies to the federal agencies and tribes and will request their review and comments to be completed within 30 days.
- b) The NRC may request revisions to the reports or additional investigations as appropriate based on comments received from federal agencies and tribes. The NRC will provide revisions to federal agencies and tribes and will request a second review with comments to be completed within 30 days.
- c) The NRC will submit final reports with determinations of eligibility and effect to SD SHPOs for review and comment to be completed within 30 days.
- d) Objections regarding NRC determinations of eligibility or effect will be addressed in accordance with the appropriate 36 CFR Part 800 regulations.

9) Confidentiality:

- a) All signatories and concurring parties agree to ensure that information concerning the location of historic properties, including properties of religious and cultural significance to tribes, is protected from public disclosure to the fullest extent permitted by law in conformance with Section 304 of the NHPA, the ACHP regulations at 36 CFR 800.4(b)(i) and 36 CFR 800.11(c)(1), Section 9 of the ARPA, and Executive Order on Indian Sacred Sites 13007 (61 FR 26771; May 29, 1996).
- b) All signatories and concurring parties agree to safeguard information about the location and content of historic properties, unevaluated archaeological sites, properties of religious and cultural significance to tribes, and Indian sacred sites to the fullest extent permitted by law.

10) Unanticipated Discoveries:

This section will outline a procedure for consultation, evaluation and treatment of unanticipated discoveries that may occur during construction consistent with 36 CFR 800.13.

11) Human Remains:

This section will detail procedures to be followed if human remains or associated or unassociated funerary objects are discovered during archaeological testing or project construction. Provisions will detail procedures for securing the location of discovery and notifying consulting parties and civil authorities in accordance with federal, state and local laws. It will detail procedures for the respectful treatment and disposition of human remains and/or funerary objects discovered on federal and private land consistent with Native American Grave Protection and Repatriation Act (NAGPRA) and appropriate state laws.

12) Disposition of Archaeological Collections:

This section will describe procedures to ensure proper disposition of artifacts and other archaeological materials recovered from federal and private lands during the course of the archaeological investigations.

13) Qualifications:

- a) This section will define minimum qualification standards for private consultants that may be hired to complete the identification surveys and other site investigations described in this PA (for example, the Secretary of Interior Qualification Standards for archaeologists provided at 36 CFR 61).
- b) In recognition of the special expertise tribal experts have concerning properties of religious and cultural significance, the standards of 36 CFR 61 will not be applicable to participating tribes.

14) Monitoring Plan:

This stipulation will detail procedures for developing a plan to monitor project construction, implementation of treatment plans (including measures for site avoidance), and overall implementation of the PA.

15) Dispute Resolution:

Should any signatory to this PA object in writing within 30 days to any actions proposed or the manner in which the terms of this PA are implemented, the NRC shall consult with such party to resolve the objection. If the NRC determines that such objection cannot be resolved, the NRC will forward all documentation relevant to the dispute, including the NRC's proposed resolution, to the ACHP.

- a) The ACHP shall provide the NRC with its advice on the resolution of the objection within thirty (30) days of receiving adequate documentation. Prior to reaching a final decision on the dispute, the NRC shall prepare a written response that takes into account any timely advice or comments regarding the dispute from the ACHP, signatories, and concurring parties. The NRC shall provide all signatories, concurring parties, and the ACHP with a copy of this written response. The NRC will then proceed according to its final decision.
- b) If the ACHP does not provide its advice regarding the dispute within thirty (30) days of receiving adequate documentation, the NRC may assume ACHP's concurrence with the NRC's proposed resolution and make a final decision. Prior to reaching such a final decision, the NRC shall

prepare a written response that takes into account any timely comments regarding the dispute from the signatories and concurring parties to the PA and shall provide all signatories, concurring parties, and the ACHP with a copy of such written response. The NRC will then proceed according to its final decision.

16) Amendment:

A signatory to this agreement may request that it be amended, whereupon the signatory parties will consult to reach a consensus on the proposed amendment. Concurring parties will be provided an opportunity to participate in consultation and comment on the proposed amendment. The amendment will be effective on the date a copy is signed by all of the signatories to this PA. The amendment shall be appended to the PA as an Appendix.

17) Termination:

- a) Any signatory to this PA may initiate termination by providing written notice to the signatories and concurring parties of their intent. After notification by the initiating signatory, the remaining signatories and concurring parties shall have thirty (30) days to consult to seek agreement on amendments or any other actions that would address the issues and avoid termination. If such consultation fails, the termination will go into effect at the end of the thirty (30) days, unless all the signatories agree to a longer period.
- b) In the event of termination, the NRC will comply with any applicable requirements of 36 CFR §§ 800.4 through 800.7 with regard to this individual undertaking covered by this PA.

18) Duration:

Implementation of the stipulations included in this agreement must begin within five (5) years from the date of its execution. During that time, the NRC may consult with the signatories and concurring parties to amend the agreement in accordance with Stipulation 16. The agreement will be in place until the termination of the license.

19) Anti-Deficiency Act:

The stipulations of this Agreement are subject to the provisions of the Anti-Deficiency Act (31 U.S.C. §1341). If compliance with the Anti-Deficiency Act alters or impairs the ability of the NRC to implement this Agreement, the NRC will consult in accordance with the amendment and termination procedures in this Agreement.

Execution of this PA by the NRC, BLM, SHPO, ACHP, and Powertech and implementation of its terms evidences that the NRC and BLM have taken into account the effects of the undertaking on Historic Properties and afforded the ACHP an opportunity to comment.

Signatories:

United States Nuclear Regulatory Commission

United States Bureau of Land Management

Draft Outline
November 8, 2013

South Dakota State Historic Preservation Office

Advisory Council on Historic Preservation

Powertech USA, Inc.

Concurring Parties:

Tribes

Draft Outline

~~November 8~~^{August 30}, 2013

This is an incomplete outline developed for the purpose of discussion and consultation. A complete draft with formal language will be prepared based on comments received from all consulting parties.

**PROGRAMMATIC AGREEMENT
AMONG
U.S. NUCLEAR REGULATORY COMMISSION
U.S. BUREAU OF LAND MANAGEMENT
SOUTH DAKOTA STATE HISTORIC PRESERVATION OFFICE
POWERTECH USA, INC.
[TRIBES]
AND
ADVISORY COUNCIL ON HISTORIC PRESERVATION
REGARDING THE
DEWEY BURDOCK IN-SITU RECOVERY PROJECT
LOCATED IN CUSTER AND FALL RIVER COUNTIES
SOUTH DAKOTA**

Date

WHEREAS CLAUSES:

-identify the U.S. Nuclear Regulatory Commission (NRC) as the lead federal agency (cite NRC's licensing authority)

-define NRC's undertaking as a licensing action encompassing the entire 10,580-acre license area

~~-define the area of potential effects (APE) for the undertaking (possibly attach a map depicting the APE)~~

~~-identify why the PA is required for this undertaking~~

-identify U.S. Bureau of Land management (BLM) as ~~cooperating~~ consulting federal agency (BLM to provide statement describing the nature of its undertaking and involvement)

~~-cite consultation with BLM, ACHP, State Historic Preservation Office (SHPO), Tribes, Applicant and other parties (each should have its own Whereas Clause)~~

~~-Identify each tribe that has been invited to participate in consultation~~

~~-Identify each tribe that has accepted the invitation and participated in the development of the PA~~

~~-acknowledge tribes special expertise 36 CFR 800.4(c)(1)~~

-identify legal authorities that apply (National Historic Preservation Act (NHPA) - 16 U.S.C. § 470f; Advisory Council on Historic Preservation (ACHP) Regulations 36 CFR §800)

Draft Outline

~~November 8~~ August 30, 2013

-reference coordinated preparation of a Supplemental Environmental Impact Statement (SEIS) for the project in accordance with National Environmental Policy Act (NEPA) (42 U.S.C. 4321 et seq.)

~~-this agreement does not waive signatory responsibilities under other federal laws~~

-cite findings regarding the undertaking's effect on historic properties

~~-acknowledge tribes special expertise 36 CFR 800.4(e)(1)~~

~~-cite consultation with BLM, ACHP, State Historic Preservation Office (SHPO), Tribes, Applicant and other parties~~

~~-this agreement does not waive signatory responsibilities under other federal laws~~

-cite invitations to sign or concur

NOW, THEREFORE, (insert list of concurring parties) agree that.

STIPULATIONS:

1) The NRC will withhold issuing a license to the Applicant until the Section 106 process is completed.

2) The NRC shall require as a condition of any license issued to Powertech that Powertech complies with all stipulations and other provisions in this Programmatic Agreement (PA).

3) Identification of Historic Properties:

a) -Powetech Inc. (along with its contractor Augustana College) conducted Class III Cultural Resources evaluation to identify -archaeology sites and historic structures within the license boundary and submitted the results of this study as part of the license application. Appendix A of this PA will provide details of sites that were identified during the Class III survey.

b) The Dewey-Burdock project site was made available in spring 2013 (between April and May 2013) for each consulting Tribe to identify properties of religious and cultural significance to them. Seven Tribes elected to participate in these surveys: the Northern Arapaho Tribe, Northern Cheyenne Tribe, Turtle Mountain Band of Chippewa Indians, Crow Creek Sioux Tribe, Cheyenne and Arapaho Tribes of Oklahoma, Crow Nation, and Santee Sioux Tribe. NRC received reports with eligibility recommendations from the Northern Arapaho Tribe, the Northern Cheyenne Tribe, and the Cheyenne and Arapaho Tribes of Oklahoma as well as field notes from the Crow Nation.

c) The NRC staff reviewed the results of the applicant's Class III survey, Tribal Survey, and the light-of-sight analysis and developed the staff's initial eligibility recommendation. Appendix A of this PA will provide the staff's initial recommendation.

4) Future Identification Surveys:

a) Powertech will sponsor identification ~~of historic properties surveys~~ for any land areas located outside the license boundary that may be affected by the installation of electrical transmission lines necessary to provide power to the project area. All identification efforts shall be conducted

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Draft Outline

~~November 8~~August 30, 2013

in accordance with 36 CFR 800.4. ~~Identification surveys will be conducted by qualified personnel in accordance with applicable federal and state guidelines (include citations for federal/state survey guidelines)~~

- b) The NRC will consult with interested tribes to identify and evaluate places of religious and cultural significance to tribes.
- c) Powertech will offer to provide funding to tribal representatives for the purpose of completing ~~these~~ identification of properties of religious and cultural significance to them, surveys. Identification surveys will be conducted by qualified personnel in accordance with applicable federal and state guidelines (include citations for federal/state survey guidelines).
- d) Procedures for consultation and review of survey reports are provided in Stipulation 8.

5) **Unevaluated Properties:**

- a) All unevaluated properties ~~will~~ould be treated as if they have been found to be eligible to the National Register of Historic Places (NRHP) and historic properties and will be protected in place until a determination is made as to on whether each property meets they meet the criteria for NRHP listing in 36 CFR Part 60.4. ~~in 36 CFR Part 63 for listing in the National Register of Historic Places (NRHP).~~
- b) ~~Powertech shall The Applicant agrees to~~ protect in place all properties that have not been fully evaluated for listing in the NRHP.
- c) In the event that changes in the design or operation of the project, including the changing of the wellfield configurations, ~~at the facility have~~has the potential to affect ~~eligible or listed historic properties or~~ unevaluated properties, Powertech will sponsor any needed supplemental research and/or field investigations to gather information necessary for the ~~signatories~~NRC, BLM, and SD SHPO staff to evaluate the NRHP eligibility of the affected properties.
- ~~e)d) Once The~~ evaluation of NRHP eligibility has been completed, determination of adverse effects and the development of proposals to ~~address resolve potential any~~ adverse effects will be carried out in accordance with ~~the appropriate regulations in 36 CFR Part 800 stipulations 6 and 7 of this agreement.~~
- ~~e)e) Procedures for consultation and review of research and field investigations, surveys and other studies are provided in Stipulation 8.~~

6) **Assessing Effects ~~and Development of Proposals to Address Adverse Effects:~~**

- a) Based on the results of the Class III and tribal surveys, a number of historic properties (including archeological sites, historic structures, and properties of religious and cultural significances) have been found within the areas of land disturbance and will be subject to an effects determination. (see Appendix A).
- b) ~~The NRC will assess adverse effects to historic properties in accordance with 36 CFR 800.5. If an adverse effect is found, the NRC will consult with signatories and concurring parties to develop proposals to address potential adverse effects in accordance with 36 CFR 800.6 and Stipulation 6.~~

Draft Outline

~~November 8~~ August 30, 2013

b) The NRC ~~will complete~~ is conducting a line-of-sight analysis to assess the potential for adverse visual effects on all known historic properties located within 3 miles of the tallest part of the installation (both Dewey and Burdock facilities). Procedures for consultation and review of the line-of-sight analysis are provided in Stipulation 8.

c) The NRC will assess adverse effects the Dewey-Burdock project will have on these historic properties in accordance with 36 CFR 800.5. If adverse effects are found, the NRC will consult with signatories and concurring parties to develop proposals to resolve these effects in accordance with 36 CFR 800.6 and Stipulation 7.

7) ~~Treatment of Adverse Effects:~~ Resolution of Adverse Effects:

a) Powertech will draft written treatment plans, which identify –measures to avoid, minimize or mitigate adverse effects to historic properties in accordance with 36 CFR 800.6. Draft treatment plans will be submitted ~~for~~ NRC review and approval.

~~b) Procedures for consultation and review of treatment plans are provided in Section 8.~~

b) The NRC will review and approve draft treatment plans developed by the Powertech for each affected historic property in consultation with all signatories and concurring parties. A meeting or teleconference may be held to develop and review alternative measures to avoid or minimize adverse effects to individual properties or groups of related properties.

c) The NRC will submit draft treatment plans to all signatories and concurring parties for review and comment to be completed within 30 days.

d) The NRC may revise draft treatment plans as appropriate based on comments received from the consulting parties. The NRC will forward revisions to draft treatment plans with a request for a second review by signatories and concurring parties to be completed within 30 days.

8) **Procedures for Consultation and Review of Reports:**

a) The NRC will notify signatories and concurring parties when additional surveys or studies under Stipulations 4 or 5 are needed and provide ~~–all~~ parties an opportunity to comment on the definition of the Areas of Potential Effect (APE), investigation methods, and reporting requirements.

The NRC will submit survey reports and other identification and evaluation studies to the federal agencies and tribes and will request their review and comments to be completed within 30 days.

b) The NRC may request revisions to the reports or additional investigations as appropriate based on comments received from federal agencies and tribes. The NRC will provide revisions to federal agencies and tribes and will request ~~–a~~ second review with comments to be completed within 30 days.

c) The NRC will submit final reports with determinations of eligibility and effect to SD SHPOs for review and comment to be completed within 30 days.

d) Objections regarding NRC determinations of eligibility or effect will be addressed in accordance with the appropriate 36 CFR Part 800 regulations.

9) ~~Procedures for Consultation and Review of Treatment Plans:~~

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- ~~a) The NRC will approve treatment plans for each affected historic property in consultation with all signatories and concurring parties. A meeting or teleconference may be held to develop and review alternative measures to avoid or minimize adverse effects to individual properties or groups of related properties.~~
- ~~b) The NRC will submit draft treatment plans to all signatories and concurring parties for review and comment (30 days).~~
- ~~c) The NRC may revise draft treatment plans as appropriate based on comments received from the consulting parties. In this case, the NRC will forward the revised draft treatment plans for a second review (30 days).~~

9) Confidentiality:

- a) All signatories and concurring parties agree to ensure that information concerning the location of historic properties, including properties of religious and cultural significance to tribes, is protected from public disclosure to the fullest extent permitted by law in conformance with Section 304 of the NHPA, the ACHP regulations at 36 CFR 800.4(b)(i) and 36 CFR 800.11(c)(1), Section 9 of the ARPA, and Executive Order on Indian Sacred Sites 13007 (61 FR 26771; May 29, 1996).
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10) Unanticipated Discoveries:

This section will outline a procedure for consultation, evaluation and treatment of unanticipated discoveries that may occur during construction consistent with 36 CFR 800.13.

11) Human Remains:

This section will detail procedures to be followed if human remains or associated or unassociated funerary objects are discovered during archaeological testing or project construction. Provisions will detail procedures for securing the location of discovery and notifying consulting parties and civil authorities in accordance with federal, state and local laws. It will detail procedures for the respectful treatment and disposition of human remains and/or funerary objects discovered on federal and private land consistent with Native American Grave Protection and Repatriation Act (NAGPRA) and appropriate state laws.

12) Disposition of Archaeological Collections:

This section will describe procedures to ensure proper disposition of artifacts and other archaeological materials recovered from federal and private lands during the course of the archaeological investigations.

13) Qualifications:

Draft Outline

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a) This section will define minimum qualification standards for private consultants that may be hired to complete the identification surveys and other site investigations described in this PA (for example, the Secretary of Interior Qualification Standards for archaeologists provided at 36 CFR 61).

b) In recognition of the special expertise tribal experts have concerning properties of religious and cultural significance, the standards of 36 CFR 61 will not be applicable to participating tribes.

14) Monitoring Plan:

This stipulation will detail procedures for developing a plan to monitor project construction, implementation of treatment plans (including measures for site avoidance), and overall implementation of the PA.

15) Dispute Resolution:

Should any signatory to this PA object in writing within 30 days to any actions proposed or the manner in which the terms of this PA are implemented, the NRC shall consult with such party to resolve the objection. If the NRC determines that such objection cannot be resolved, the NRC will forward all documentation relevant to the dispute, including the NRC's proposed resolution, to the ACHP.

a) The ACHP shall provide the NRC with its advice on the resolution of the objection within thirty (30) days of receiving adequate documentation. Prior to reaching a final decision on the dispute, the NRC shall prepare a written response that takes into account any timely advice or comments regarding the dispute from the ACHP, signatories, and concurring parties. The NRC shall provide all signatories, concurring parties, and the ACHP with a copy of this written response. The NRC will then proceed according to its final decision.

b) If the ACHP does not provide its advice regarding the dispute within thirty (30) days of receiving adequate documentation, the NRC may assume ACHP's concurrence with the NRC's proposed resolution and make a final decision. Prior to reaching such a final decision, the NRC shall prepare a written response that takes into account any timely comments regarding the dispute from the signatories and concurring parties to the PA and shall provide all signatories, concurring parties, and the ACHP with a copy of such written response. The NRC will then proceed according to its final decision.

16) Amendment:

A signatory to this agreement may request that it be amended, whereupon the signatory parties will consult to reach a consensus on the proposed amendment. Concurring parties will be provided an opportunity to participate in consultation and comment on the proposed amendment. The amendment will be effective on the date a copy is signed by all of the signatories to this PA. The amendment shall be appended to the PA as an Appendix.

17) Termination:

a) Any signatory to this PA may initiate termination by providing written notice to the signatories and concurring parties of their intent. After notification by the initiating signatory, the remaining signatories and concurring parties shall have thirty (30) days to consult to seek agreement on amendments or any other actions that would address the issues and avoid

Draft Outline

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termination. If such consultation fails, the termination will go into effect at the end of the thirty (30) days, unless all the ~~s~~Signatories agree to a longer period.

- b) In the event of termination, the NRC will comply with any applicable requirements of 36 CFR §§ 800.4 through 800.7 with regard to this individual undertaking covered by this PA.

18) Duration:

Implementation of the stipulations included in this agreement must begin within five (5) years from the date of its execution. During that time, the NRC may consult with the signatories and concurring parties to amend the agreement in accordance with Stipulation 16. The agreement will be in place until the termination of the license.

19) Anti-Deficiency Act:

The stipulations of this Agreement are subject to the provisions of the Anti-Deficiency Act (31 U.S.C. §1341). If compliance with the Anti-Deficiency Act alters or impairs the ability of the NRC to implement this Agreement, the NRC will consult in accordance with the amendment and termination procedures in this Agreement.

~~20) General Provisions:~~

~~This section will include general provisions agreed upon by all of the signatories to this PA.~~

Execution of this PA by the NRC, BLM, SHPO, ACHP, and Powertech and implementation of its terms evidences that the NRC and BLM have taken into account the effects of ~~covered the~~ undertaking on Historic Properties and afforded the ACHP an opportunity to comment.

Signatories:

United States Nuclear Regulatory Commission

United States Bureau of Land Management

South Dakota State Historic Preservation Office

Advisory Council on Historic Preservation

Powertech USA, Inc.

Concurring Parties:

Tribes