

DeweyBurdPubEm Resource

From: Yilma, Haimanot
Sent: Friday, November 01, 2013 4:31 PM
To: Yilma, Haimanot
Cc: Jamerson, Kellee; Hsueh, Kevin; '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 -08-30-13.docx

All,

As the result of the government shutdown, the NRC had to cancel the October 1, 2013 teleconference scheduled to discuss the development of the Programmatic Agreement (PA) for the proposed Dewey-Burdock project. The staff is now rescheduling this call for **November 15, 2013 from 9:00 am to 11:00 am (MST).**

The 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 staff has reviewed Powertech's comments and plans to incorporate them, as appropriate, before the call on November 15, 2013.

The staff encourages other consulting parties to provide feedback on the draft PA outline before the call. The staff plans to send out a revised draft PA outline on November 8, 2013, one week before the call, and appreciates any feedback prior to that date. Please provide your feedback to me. For your information, the staff has attached the original draft PA outline to this email.

Sincerely,

Haimanot Yilma
Project Manager
FSME/DWMEP/EPPAD/ERB
U.S Nuclear Regulatory Commission
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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
- identify U.S. Bureau of Land management (BLM) as cooperating federal agency (BLM to provide statement describing the nature of its undertaking and involvement)
- 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.)
- 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(c)(1)
- cite consultation with BLM, ACHP, State Historic Preservation Office (SHPO), Tribes, Applicant and other parties
- 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) Future Identification Surveys:

- a) Powertech will sponsor identification 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 in accordance with 36 CFR 800.4.
- 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 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 7.

4) Unevaluated Properties:

All unevaluated properties would be treated as eligible historic properties and protected until a determination is made on whether they meet the criteria in 36 CFR Part 63 for listing in the National Register of Historic Places (NRPH).

- a) The Applicant agrees to protect in place properties that have not been fully evaluated for listing in the NRHP.
- b) In the event that changes in the operation, including the changing of the wellfield configurations, at the facility has the potential to affect eligible or listed historic properties or unevaluated properties, Powertech will sponsor supplemental research and/or field investigations to gather information necessary for the signatories to evaluate the NRHP eligibility of the affected properties. The evaluation of adverse effects and the development of proposals to address potential adverse effects will be carried out in accordance with the appropriate regulations in 36 CFR Part 800.
- c) Procedures for consultation and review of research, field investigations, surveys and other studies are provided in Stipulation 7.

5) Assessing Effects and Development of Proposals to Address Adverse Effects:

- a) 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.
- b) The NRC will complete 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 7.

6) Treatment of Adverse Effects:

- a) Powertech will prepare draft written treatment plans to describe measures that will be used to avoid, minimize or mitigate adverse effects to historic properties in accordance with 36 CFR 800.5 for archeological sites. The draft treatment plans would be submitted to the NRC for review and approval.
- b) Procedures for consultation and review of treatment plans are provided in Section 8.

7) Procedures for Consultation and Review of Reports:

- a) The NRC will notify signatories and concurring parties when additional surveys or studies under Stipulations 3 or 4 are needed so that all parties have an opportunity to provide comment on definition of the Areas of Potential Effect (APE), investigation methods, and reporting requirements.
- b) The NRC will submit survey reports and other identification and evaluation studies to federal agencies and tribes for review and comment (30 days).
- c) The NRC may request revisions to the reports or additional investigations as appropriate based on comments received from federal agencies and tribes. In this case, the NRC will provide any revisions to federal agencies and tribes for a second review (30 days).
- d) The NRC will submit final reports with determinations of eligibility and effect to SHPOs for review and comment (30 days).
- e) Objections regarding NRC's determinations of eligibility or effect will be addressed in accordance with the appropriate 36 CFR Part 800 regulations.

8) Procedures for Consultation and Review of Treatment Plans:

- 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).

- 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:

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 (e.g., Secretary of Interior Qualification Standards for archaeologists – 36 CFR 61). These standards will not be required for participating tribes; as recognized in 36 CFR 800.4(c)(1), tribes possess special expertise regarding properties of religious and cultural significance to them.

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 and 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 30 business 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 30-day period, 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 reconsider the terms of the agreement and amend it in accordance with Stipulation 16 above. 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 NRC's ability to implement the stipulations of this Agreement, the NRC will consult in accordance with the amendment and termination procedures found in this Agreement.

Draft Outline
August 30, 2013

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 evidence that the NRC has taken into account the effects of covered undertakings 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