

Official Transcript of Proceedings
NUCLEAR REGULATORY COMMISSION

Title: Power Tech, USA (Dewey-Burdock
In-Situ Uranium Recovery Facility)

Docket Number: 40-9075-MLA

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

Location: teleconference

Date: Wednesday, February 12, 2014

Work Order No.: NRC-590

Pages 541-577

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UNITED STATES OF AMERICA

NUCLEAR REGULATORY COMMISSION

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ATOMIC SAFETY AND LICENSING BOARD PANEL

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PRE-HEARING TELECONFERENCE

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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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Wednesday, February 12, 2014

Teleconference

BEFORE :

WILLIAM J. FROEHLICH, Chair

DR. RICHARD F. COLE, Administrative Judge

DR. MARK O. BARNETT, Administrative Judge

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On Behalf of the Consolidated Intervenor (Susan
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ALSO PRESENT:
Nicholas Sciretta, Law Clerk, NRC

P R O C E E D I N G S

9:05 A.M.

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2
3 CHAIRMAN FROELICH: Thank you. Good
4 morning, all. This is William Froelich of the ASLBP
5 and this is a telephone prehearing conference in the
6 matter of Powertech USA, the Dewey-Burdock In Situ
7 Uranium Recovery Facility, docketed here at the NRC as
8 Docket No. 40-9075-MLA, bearing the ASLBP No. 10-898-
9 02-MLA-BD01.

10 With me here in Rockville, Maryland are
11 Judge Richard Cole; the Board's law clerk, Nicholas
12 Sciretta; and our administrative assistant, Twana
13 Ellis.

14 Let me confirm at this point that the
15 third member of our Board is on the line. Judge
16 Barnett, are you with us?

17 JUDGE BARNETT: Yes, I'm here.

18 CHAIRMAN FROELICH: Thank you. This call
19 is being transcribed by the court reporter, Mr. Sam
20 Wojack, who is also on the line. Therefore, when you
21 speak will you please identify yourself to assist in
22 the preparation of the transcript of this call.

23 As we stated in our public notice, members
24 of the public and consultants to the parties are free
25 to listen into these proceedings, but it's only

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1 counsel that may speak and participate in the
2 conference call.

3 At this point, I'd like to take the
4 appearances of those counsels and parties who are on
5 the transcribe line. For the applicant?

6 MR. PUGSLEY: Your Honor, Chris Pugsley,
7 Tony Thompson for Powertech.

8 CHAIRMAN FROELICH: Thank you, gentlemen.
9 And for the NRC staff?

10 MR. CLARK: For the staff, this is Mike
11 Clark.

12 MS. JEHLLE: And Patty Jehle.

13 CHAIRMAN FROELICH: Thank you. And for
14 the intervenor, the Oglala Sioux Tribe?

15 MR. PARSONS: For the Oglala Sioux Tribe,
16 this is Jeff Parsons.

17 MR. STILLIS: And Travis Stills.

18 CHAIRMAN FROELICH: And for the
19 consolidated intervenors?

20 MR. FRANKEL: This is David Frankel for
21 consolidated intervenors.

22 MR. ELLISON: And Bruce Ellison for
23 consolidated intervenors.

24 CHAIRMAN FROELICH: And Mr. Ballanco, are
25 you with us?

1 MR. BALLANCO: I am. This is Tom Ballanco
2 for Dayton Hide.

3 CHAIRMAN FROELICH: Thank you. The
4 purpose of this call is to discuss matters relating to
5 the management and scheduling of the evidentiary
6 hearing in this case. As you all know, the
7 application in this case was originally docketed in
8 October of 2009, publicly noticed in January 2010. We
9 held oral argument on contention admissibility and
10 standing in Custer, South Dakota in June 2010. And
11 the Board issued its decision on request for hearing
12 in an order designated LBP 10-16 August 5, 2010.

13 We have had a number of telephone
14 prehearing conferences since then, one in September
15 2010. Two scheduling orders have been issued, one
16 October 4, 2010 and a supplemental scheduling order
17 issued November 2, 2010.

18 After publication of the GEIS for this
19 proposed facility, after that was publicly noticed by
20 the NRC staff on November 15, 2012, both the
21 intervenors in this case, that's the Oglala Sioux
22 Tribe and the consolidated intervenors filed for post
23 contentions relating to the GSEIS. The Board then
24 issued its memorandum and order, LBP 13-09, July 22,
25 2013 and admitted three new contentions and ruled that

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1 seven contentions were admissible through migration
2 tenet.

3 All right, we held a telephone prehearing
4 conference call August 12, 2013 to discuss the lead
5 intervenor for the various admitted contentions and to
6 discuss a site visit which was held earlier this year.

7 That brings us just about to the present
8 because of January 31, 2014, the NRC staff issued a
9 Federal Register notice of the public availability of
10 the final supplemental environmental impact statement
11 which was prepared pursuant to NEPA and the Agency's
12 regulations. The Board issued notice of this
13 telephone conference on February 5th and it contained
14 six questions for the parties and a proposed
15 procedural schedule leading up to an evidentiary
16 hearing during the week of July 28, 2014.

17 Last night, the Board received a letter
18 from staff counsel Jehle indicating the parties had
19 discussed the six questions posed and have agreed upon
20 a schedule leading up to an evidentiary hearing during
21 the week of September 15, 2014. The NRC staff filed
22 two attachments. The first attachment provides
23 answers to the Board's six questions. The second
24 attachment is a revised schedule that is modeled on
25 the Board's proposed schedule.

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1 At this point, before we go further, the
2 Board would like to thank the parties for their
3 efforts to respond to the Board's questions beforehand
4 and for the efforts and discussions that they held to
5 come up with a proposed joint schedule which was filed
6 last night.

7 Before we go through the six points and
8 sort of compare the two schedules that are out there
9 and come up with our schedule leading up to hearing,
10 is there anything that any of the parties would like
11 to say before we go through the various questions and
12 the answers that were submitted last evening?

13 MR. CLARK: This is Mike Clark of NRC
14 staff. I was just going to mention that through
15 emails I think there's some interest in trying to move
16 up the hearing dates. I think probably Chris and
17 David can speak to that.

18 CHAIRMAN FROELICH: Okay. Mr. Pugsley or
19 Mr. Frankel?

20 MR. PUGSLEY: Well, Your Honor, Chris
21 Pugsley for Powertech. Mr. Clark is correct.
22 Powertech's interest is having the hearing date in the
23 month of August. We know Mr. Frankel through emails
24 made a very good point that after Labor Day weather
25 becomes an issue in South Dakota and we believe -- we

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1 concur -- we believe that if there's a way the parties
2 could work together post this conference call to deal
3 with some of the filing deadlines to move the hearing
4 date into August, we certainly as Powertech would like
5 to explore that option.

6 CHAIRMAN FROELICH: Okay. And Mr.
7 Frankel, I'd like to hear your perspective as well.

8 MR. FRANKEL: Your Honor, I believe that
9 all the parties and our schedules would be best served
10 if we could accomplish this perhaps by the last week
11 of August or no later than the week of September 8th.
12 I think if we get into the middle of September and
13 there's any slide of timing at all, then it puts us
14 into a more perilous situation concerning scheduling
15 and the weather. So if we could work together to have
16 occur either the last week before Labor Day or the
17 first week after Labor Day at the very latest, then I
18 think that would satisfy my concerns.

19 CHAIRMAN FROELICH: Thank you. Just an
20 off-hand and informal reaction, the Board also was a
21 bit concerned about having a hearing that was proposed
22 to start in middle of September and so from our
23 perspective moving towards something in July or August
24 is what we would prefer as well.

25 Let's please go through at this point the

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1 six questions that were posed. I think we can move
2 that fairly quickly and then let's take a look at the
3 two schedules side by side and see if we can figure
4 out some dates that work for everyone and still
5 include all the important procedural steps that have
6 to take place leading up to a hearing in this case.

7 The first question was the protective
8 order that's currently in existence in this case. I
9 believe parties responded saying that for the time
10 being at least there is no necessity to amend or
11 expand that protective order. I wonder how likely it
12 is during the hearing that we will have to modify our
13 protective order because of cultural resources or any
14 of the results from the cultural resources study or
15 the material that has previously been filed and been
16 labeled SUNSI. Is there a concern that those
17 materials, I guess the SUNSI materials, will be used
18 and made part of the hearing and that we would have to
19 expand or modify our protective order because of their
20 use?

21 MR. PARSONS: Your Honor, this is Jeff
22 Parsons for the Oglala Sioux Tribe.

23 CHAIRMAN FROELICH: Yes.

24 MR. PARSONS: I think my understanding of
25 the SUNSI materials having been subject to the

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1 protective order is that they deal primarily with maps
2 showing specific locations. At this point, although
3 we haven't filed contentions on the final, the
4 contentions deal more or less with more general issues
5 related to the scope of the analysis that has been
6 done heretofore and not necessarily with -- and also,
7 I guess with mitigation in a more general sense.

8 My thought at this point is this hearing
9 would not require discussion of particular locations
10 of particular cultural sites which is my understanding
11 most of the, if not all of the SUNSI material at this
12 point.

13 CHAIRMAN FROELICH: Thank you. That is
14 helpful. Does anyone else care to be heard on the
15 protective order issue, issue one?

16 MR. ELLISON: This is Bruce Ellison, the
17 only thing I could say would add to what Mr. Parsons
18 said was that I did see that it's possible that some
19 specific site locations may become an issue. I think
20 especially around sections of -- whether a site could
21 be properly protected if it's say 100 yards from a
22 proposed well field, 10 yards from a proposed well
23 field, and then there has to be some -- I could
24 foresee a situation where there could be some issues,
25 but I would suggest that we could address that as they

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1 come up.

2 CHAIRMAN FROELICH: Okay, and would this
3 issue most likely come up at the point where testimony
4 is filed? Is that where I guess your decision point
5 would come or when we would need to take another look
6 at the protective order?

7 MR. ELLISON: Well, I could see that it
8 could. It could come in.

9 CHAIRMAN FROELICH: Okay.

10 MR. ELLISON: Because we haven't finished
11 our responses to the SEIS, it's a little hard to be
12 more specific. I guess I would suggest that rather
13 than just a blanket no, they won't be of any use, the
14 SUNSI materials, I just wanted to leave open the
15 possibility that we may have to address that question,
16 the second point.

17 CHAIRMAN FROELICH: Okay. Thank you, Mr.
18 Ellison. I'd like to move on and note the Board
19 encourages the parties to keep an open mind toward
20 settlement of any of the issues outstanding in this
21 case. I don't see a need to have a formal date or
22 date set aside for settlement negotiations, but would
23 just like to remind the parties that settlement is
24 always better than litigating an issue and if there's
25 a possibility of settling any of the issues in the

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1 case, please try to do so.

2 Next, we move to item three which deals
3 with the written statements of position and written
4 testimony with supporting affidavits. I believe that
5 the decision that the parties have reached to file
6 simultaneously does make the most sense and I'd be
7 prepared to enter a schedule that provides for
8 simultaneous filing of testimony with the opportunity
9 for answering testimony and again I share the parties'
10 belief and hope that rebuttal testimony therefore
11 would not be necessary and we can get by with setting
12 dates for initial and reply testimony and move forward
13 from there.

14 Does anyone care to comment or be heard on
15 the issue of simultaneous testimony?

16 (No response.)

17 Moving right along. Opportunities for
18 limited appearance statement. In here, the parties
19 represent that they're in favor of having limited,
20 oral limited appearance statements. The Board, too,
21 is willing to conduct limited appearance statements
22 and it would be our desire to hold them prior to the
23 evidentiary hearing in this proceeding. Perhaps the
24 afternoon or the evening before the hearing would
25 begin in a convenient, public place and not -- I guess

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1 as the statement here reads, and not have limited
2 appearance statements the morning of or during the
3 actual evidentiary hearing itself.

4 Does anyone care to be heard on the issue
5 of oral, limited appearance statements and the Board's
6 decision to hold them before the evidentiary hearing
7 in this proceeding?

8 MR. ELLISON: This is Bruce Ellison. I
9 just want to make a comment based upon our experience
10 with regard to Powertech matters in front of the South
11 Dakota DENR where public comments with respect to
12 boards, the Water Management Board, you have a Board
13 of Minerals and Environment, deal with it slightly
14 differently. What both boards try to do once they
15 recognize that some people were working, some people
16 might not be able to make it on a specific date, but
17 could come the next day, I would just like to urge in
18 the interest of maximizing public input that the Board
19 be flexible and I appreciate that we don't want to
20 have public input taking away from time of the formal
21 hearing, but at the same time though what the
22 respective state boards did was sometimes in an effort
23 to accommodate we went over two, three, four days even
24 where there was an hour set aside earlier, a little
25 earlier in any given morning as opposed to late in the

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1 day. I guess I just want to urge flexibility.

2 MR. PUGSLEY: Your Honor, this is Chris
3 Pugsley for Powertech. I certainly understand Mr.
4 Ellison's point of view that we probably should
5 maximize public participation. The applicant is
6 certainly in favor of that.

7 A suggestion to allow this to happen would
8 be if the Board scheduled oral limited appearance
9 statements the afternoon/evening prior to the
10 evidentiary hearing, that the Board allow a certain
11 time frame for those who can't make the session to
12 submit limited appearance statements in writing.

13 CHAIRMAN FROELICH: Yes, the Board has
14 already issued an order inviting written limited
15 appearance statements and when we announce the dates
16 and times for the oral presentations, we'll remind
17 parties or reiterate the opportunity to file written
18 limited appearance statement sessions.

19 Anyone else care to be heard on this
20 issue?

21 (No response.)

22 There was also a -- I guess a question
23 about time limits. The Board would envision perhaps
24 five minutes or so for oral statements, thereby
25 maximizing the number of people that could be heard

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1 from at any session where limited oral appearance
2 statements are taken.

3 JUDGE COLE: This is Judge Cole. I think
4 we ought to have no page limits on the written. They
5 can put in whatever they want.

6 CHAIRMAN FROELICH: Okay. Let me just ask
7 then, Mr. Ellison, as far as the timing of the general
8 public, in the state proceedings where there were the
9 equivalent of limited appearance statements was the
10 big rush of people in the evening or in the afternoon
11 or did you get any sense for the convenience to the
12 people who might be interested in making oral limited
13 appearance statements?

14 MR. ELLISON: Yes, sir. Whether it was
15 held in the morning or the evening or the late
16 afternoon, there were some people whose work schedules
17 or what not made it difficult for them to appear.
18 What we did in our respective board hearings was they
19 were in the morning and I think the first day, I don't
20 want to get confused to which board, but one of the
21 boards we actually had a full day of public testimony
22 that went into an hour or so the following mornings.
23 With the other board, we had most folks the first
24 morning and then a few people here and there who
25 couldn't make it the first day were allowed to give a

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1 presentation the first thing in the morning
2 subsequent.

3 CHAIRMAN FROELICH: Okay.

4 COURT REPORTER: May I ask who that was?

5 MR. ELLISON: Bruce Ellison, I'm sorry.

6 Bruce Ellison.

7 CHAIRMAN FROELICH: Okay. Anyone have
8 anything else to say on limited appearance statements
9 before we move on to the filing of motions for cross
10 examination?

11 MR. ELLISON: May I ask a question? This
12 is Bruce Ellison.

13 CHAIRMAN FROELICH: Surely.

14 MR. ELLISON: My question is for the
15 public statements is that the state boards would
16 consider any public statements to actually be part of
17 the evidentiary record and of course, the board
18 members taking whatever weight of the testimony or the
19 statements that they deemed appropriate.

20 I guess I'm a little unclear and I
21 apologize. I've never been to a formal hearing yet in
22 front of the NRC, so I'm like a new babe in the woods.
23 If you could perhaps -- if someone could clarify for
24 me what -- how the Board would look at these public
25 statements?

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1 CHAIRMAN FROELICH: This is Judge Froelich
2 and I'll tell you that in NRC practice, the oral as
3 well as the written limited appearance statements are
4 not part of the formal evidentiary record upon which
5 the decision is based. They are an opportunity for
6 the public to present its views to the Board and to
7 sort of suggest issues or items of concern that the
8 Board will follow up on in the hearing. Many times,
9 these limited appearance statements or concerns are
10 raised by members of the public which suggest
11 questions to the Judges to bring forth at the hearing
12 coming up. That's why it's my preference, my strong
13 preference, to have any limited appearance statement
14 session held before we begin the hearing so if there
15 are parties or members of the public who have issues
16 or concerns that they want raised within the context
17 of the admitted contentions and the questions the
18 Board would have on those admitted contentions, we'd
19 have the benefit of that.

20 Does that put in perspective or clarify
21 the role of limited appearance statements in NRC
22 practice or does any other parties want to comment on
23 my definition or my interpretation of our regulations?

24 MR. ELLISON: I appreciate the
25 clarification, sir. Thank you. Bruce Ellison.

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1 CHAIRMAN FROELICH: Okay. I think the
2 fifth item on our list deals with the time limits for
3 filing motions for cross examination and as we work
4 through the actual schedule, a 14-day or 21-day limit,
5 we can work with those dates.

6 The final question dealt with issue of a
7 stay under 2.1213(a). I'm not sure I fully understood
8 or understood how the request for stay would work vis-
9 a-vis the regulation which speaks to this and gives
10 parties five days to seek that stay.

11 Can someone give me a little bit of a
12 background or the thought behind the response to
13 question six?

14 MR. PARSONS: This is Jeff Parsons. I
15 think I can speak to this a bit. I think Mr. Pugsley
16 will probably also want to chime in.

17 CHAIRMAN FROELICH: Okay.

18 MR. PARSONS: As we look at how the
19 overall picture is shaping up, as you may know, Mr.
20 Ellison referred to the state-conducted -- or began
21 anyway, a couple of different permitting hearings, one
22 before the Water Board and one before the Mining Board
23 in South Dakota. Both of those boards issued orders
24 staying those proceedings until a final decision from
25 the NRC or at least additional action from the NRC and

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1 then they would reconvene their hearings and then move
2 forward. The Tribe's suggestion was that instead of
3 litigating a motion for stay, that is presumably
4 triggered off of what's expected anyway, a license to
5 be issued by NRC staff during the tenancy of the
6 hearing process, that we would pin that date rather to
7 when the -- either when the state issues their permits
8 or otherwise noticed by Powertech to be attune to
9 proceed with on-the-ground activities.

10 As you know, one of the criteria for a
11 stay is essentially irreparable harm, immediate harm
12 and to the extent that the company would not be
13 authorized under state law to proceed with
14 construction activities, it seems that briefing and
15 litigating a motion for stay may be based on the
16 issuance of the license by NRC staff may be premature.
17 So that was where we were coming from in order to
18 maximize those efficiencies.

19 MR. ELLISON: This is Bruce Ellison. One
20 point of clarification. The state boards have
21 indefinitely continued their proceedings until after
22 the NRC and the EPA have finished their work with
23 regard to the licensing applications. The work had to
24 be done on the federal level and the way we're
25 interpreting it is through a final decision by the

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1 Commission itself before the state, would then return
2 to its proceeding. I think there are copies of the
3 orders that have been sent to the NRC. So I believe
4 they're before the Board.

5 CHAIRMAN FROELICH: Could I hear, please,
6 from Mr. Pugsley followed by the staff on this issue?

7 MR. PUGSLEY: Yes, sir. This is Chris
8 Pugsley for Powertech. Powertech believes that
9 application for a stay of the effectiveness of the
10 staff's action, which is the issuance of the license,
11 is clearly spelled out in 10 CFR 2.1213 because that
12 reg reads any application for a stay of the
13 effectiveness of the staff's action. Well, upon
14 issuance of that license, the licensee is free to move
15 forward with operations under that license including
16 construction, other types of activities, up and
17 including operating a facility. So as far as we're
18 concerned, the substance of a stay motion dealing with
19 the effectiveness of the staff's issuance of a license
20 is a wholly separate matter from a large-scale mine
21 permit in the state or water rights decision.

22 CHAIRMAN FROELICH: Mr. Pugsley, I don't
23 want to put words in your mouth. Your position is
24 that the reg, the reg that's in effect providing for
25 a short time limit, a five-day limit pegged to the

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1 date of the staff issuance of the license is the way
2 -- should be applied in this case and I take it you're
3 not in favor of this alternative that would tie it to
4 some other event at the state level?

5 MR. PUGSLEY: Chris Pugsley for Powertech.
6 Yes, Your Honor, that's correct. We are not in favor
7 of an alternate approach.

8 CHAIRMAN FROELICH: And from the
9 Commission staff, is there any precedent on this to
10 tie a request for a staff to anything other than
11 2.1213(a)?

12 MR. CLARK: For the staff, this is Mike
13 Clark. Judge Froelich, I wouldn't call it precedent.
14 There's an unreviewed Board decision in Pa'ina. I
15 believe it was a September 2, 2007 decision. It was
16 a case I worked on where the intervenor filed the
17 motion for a stay. Both the staff and the applicant,
18 well, at that time the licensee, opposed the stay.

19 What the Board did was it didn't rule on
20 the stay request. Instead, they noted that at the
21 time the NRC staff issued the license the licensee
22 still had not even signed a lease for the land on
23 which they intended to build their irradiator. So
24 rather than rule on the stay request, the Board
25 required that the licensee file monthly status reports

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1 on the state of the lease negotiations. Essentially,
2 I don't recall the Board saying so, but they held the
3 stay request in abeyance, under the view that there
4 was no harm because there was not even a lease signed
5 yet and thus no radioactive new byproduct material
6 could be moved to the site.

7 The staff disagreed with that rationale.
8 We didn't appeal it. As I said, it's an unreviewed
9 Board decision. So the NRC staff's interest in this
10 is that parties don't file, the intervenors don't file
11 a motion for a stay, and the staff and applicant don't
12 respond and we wind up in a position like we were in
13 Pa'ina where we file briefs, they interfere with the
14 hearing schedule, and there was no result. The
15 staff's view I think aligns with Powertech's view that
16 if a stay request is filed under 10 CFR 2.1213 that
17 the Board should rule on the stay request. But if
18 this Board is inclined to disagree and holding the
19 stay request in abeyance may be appropriate, I think
20 all the parties would be served by knowing that in
21 advance so that we can incorporate some idea like Mr.
22 Parsons has proposed into the schedule.

23 MR. PARSONS: If I may, Your Honor, this
24 is Jeff Parsons again.

25 CHAIRMAN FROELICH: Yes.

1 MR. PARSONS: Thank you. The concern we
2 have, obviously, is the additional permits are not in
3 place that allow, as Mr. Pugsley talks about,
4 construction and operation of a facility, we're
5 required to file a stay within five days. Their
6 argument in return is we're not authorized to go
7 forward with that construction so there's no imminent
8 harm. The stay ought to be denied. To the extent
9 that stay is denied and then those permits come
10 forward, we have essentially lost our ability
11 effectively to make use of those stay provisions
12 simply based on the timing of the other permits. If
13 the five days is our only opportunity to seek a stay,
14 it seems like that's a pretty easy way to defeat an
15 intervenor's ability to ever get a stay, just like
16 timing your permits in such a way. So that's
17 essentially our concern that we're being effectively
18 written out of being able to seek a stay.

19 MR. PUGSLEY: Your Honor, this is Chris
20 Pugsley for Powertech. We continue our position of
21 strict application of the reg in question. I would
22 note that when the Commission promulgated this rule,
23 it had to have envisioned the fact that fuel-cycle
24 facilities, no matter what stage of the fuel cycle
25 it's in, whether it be the front end, as this facility

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1 is for Powertech, or the back end which is a nuclear
2 power reactor, they had to envision that multiple
3 permits and authorizations were going to be required
4 in order to move forward with the project. I can't
5 envision any particular fuel-cycle facility where only
6 an NRC license is required. So our thoughts are that
7 this reg was written understanding that and because
8 other permits are a wholly separate matter under a
9 whole different set of jurisdictional authority, that
10 this reg should be applied to Commission proceedings.

11 CHAIRMAN FROELICH: Okay, I think at this
12 point the Board will just have to take this issue
13 under advisement. I would like to do a little bit of
14 research on this, of course, discuss with the other
15 members of the Board and so we'll just have to hold
16 this one in abeyance just for the time being. Hold
17 this one in abeyance.

18 That brings us, I guess, to the schedule.
19 What I have before me is the schedule that the Board
20 had proposed as a starting point for the parties to
21 consider as well as the proposed schedule that was
22 filed last night by the parties. I don't know if
23 there's anyone on the line who can address this, but
24 is there an overall theory or approach or principle
25 that went into the dates suggested here? Did you

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1 start from the hearing date in September and work
2 backwards or it just worked out that way? Can you
3 tell me a little bit about the theory behind the
4 schedule that was submitted?

5 MR. PARSONS: This is Jeff Parsons. I'm
6 happy to take an initial stab anyway. Obviously, the
7 other parties should chime in. Your Honor, we've
8 started working from the front end and that's where
9 the dates landed. I think we -- we had a very
10 productive conference call the other day and this
11 draft schedule was the result. I think on that
12 conference call we all anticipated or expected that we
13 would get this draft, essentially a second draft -- we
14 had a draft circulated before that call -- get this
15 draft and then the parties would see where we could
16 cut time out essentially. And I think that was
17 addressed at the beginning of the call was a strong
18 preference and I agreed to do the hearing in August.
19 I do believe that we could work that out.

20 One of the issues, obviously, is that the
21 back end dates, so to speak are triggered off of the
22 ruling on newer, amended contentions. And so in some
23 ways, you know, not to be presumptuous, but in some
24 ways the back end of the schedule is dependent on the
25 speed with which those contentions are dealt with or

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1 ruled on. So that may be a place -- I don't want to
2 put obviously additional work in the Board's hands
3 needlessly, but that did come to mind as one aspect.

4 I think some of the other deadlines could
5 be shortened. I think we talked about shortening the
6 60 days for position statements and pre-filed direct
7 testimony, maybe cutting a week and a half. I think
8 we talked about ten days off of that. Some of those
9 deadlines -- I think the 25 days on answering is -- I
10 think the ceiling was that was as tight as people were
11 comfortable with.

12 We did also try to eliminate some of the
13 duplicative filings, for instance, having direct and
14 rebuttal or answering testimony be filed on the
15 contentions that exist now and then to do so again
16 later. It seems given the nature of some of the
17 contentions being essentially NEPA based that those
18 are likely to either drop out entirely or be amended
19 based on the final documents. So spending a lot of
20 time on those at this point may be not the best or
21 most efficient use of time. So those are, I think,
22 some of the considerations that went into the
23 schedule.

24 In terms of the front end, I'll speak to
25 that. The Tribe has asked the parties to consider a

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1 two-week extension on the submission of final SEIS
2 contentions because of the significant intervening
3 factors. Primarily, one major issue is my co-counsel,
4 Mr. Stills, has recently had a cancer diagnosis in the
5 immediate family and has cancer surgery scheduled for
6 next week. So that has been a fairly all-consuming
7 issue for him. He obviously can speak to that if he
8 wished.

9 Also, I had a continuing legal education
10 conference of which I'm a speaker scheduled for the
11 last week of February and my expert or our expert, Dr.
12 Robert Moran, is scheduled to leave starting this
13 Saturday for a week in Colombia. So all of those
14 factors all coming to bear at the same time put, I
15 think, extraordinary pressure on that deadline. And
16 so we sought an extension.

17 The staff has agreed that they would
18 concede that extension. Powertech has not quite
19 finalized their position on that. But anyway, that I
20 think is the gist of the discussions we had.

21 CHAIRMAN FROELICH: Okay. Any other
22 parties care to address the philosophy or some of the
23 concerns that went into the proposed dates?

24 MR. PUGSLEY: Your Honor, Chris Pugsley
25 for Powertech. I'd like to add what I stated earlier

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1 which is I believe Mr. Parsons is correct that we have
2 had very productive discussions regarding the schedule
3 and that if we continue to work together over the next
4 few days, I think we can try to work to shave some
5 time off of this schedule to move the hearing into
6 August and Powertech is certainly open to every
7 parties' interpretation of what they want to do.

8 CHAIRMAN FROELICH: Okay, I would like to
9 ask other parties in general how much attention or how
10 much guidance did the parties take from the model
11 milestones for these type of hearings? I noticed that
12 some of the dates are extended beyond what was
13 suggested or recommended in the Commission's model
14 milestones. Did those dates provide any guidance or
15 help to the parties in setting the procedural dates
16 leading up to the hearing?

17 MR. CLARK: Your Honor, this is Mike Clark
18 for the NRC staff. We did look at model milestones in
19 proposing certain dates. They were taken into
20 account. We recognized that what happens with this
21 schedule is we want to get something before the Board
22 because we thought it would be useful in today's
23 teleconference. But as Jeff stated and David and
24 Bruce and Chris, we all recognize that we'd like to
25 narrow some of the dates or try to move up some of the

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1 filings. So we were aware of the model milestones and
2 we just didn't have time to fully incorporate them in
3 this proposed schedule.

4 CHAIRMAN FROELICH: For the benefit of the
5 parties, the Board did work from the model milestones
6 and pegged the beginning of the hearing at 175 days
7 from the issuance of the FSEIS which is how we got to
8 a hearing date at the end of July.

9 Now to the extent the parties can work
10 among themselves to get us a hearing date not too far
11 beyond July 25th in August as I guess is the goal all
12 around, I think that would work. A hearing that
13 begins in September is too late for all the reasons
14 stated earlier by the parties, but also because of the
15 schedule of the individual Judges on the Board. So I
16 don't know if it would be most productive to work
17 through dates on the phone or have the parties get
18 together and work on dates and come back with
19 something in August. I'll leave it to you, but I know
20 Judge Cole wants to speak to this.

21 JUDGE COLE: Yes, this is Judge Cole.
22 I've got four mining cases that I'm hoping to finish
23 by the end of the year and I don't think that's going
24 to be possible, but I'd like to try.

25 CHAIRMAN FROELICH: So let me -- rather

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1 than -- let me ask if it would be more productive from
2 the parties' perspective for the Board to work with
3 the parties now and go through and set dates working
4 backwards from a hearing at the end of July, early
5 August or whether it would be more productive for us
6 to adjourn this prehearing conference, have the
7 parties work among themselves and come back with a
8 revised schedule with a hearing in August.

9 MR. STILLLS: Your Honor, this is Travis
10 Stills.

11 CHAIRMAN FROELICH: Yes, sir.

12 MR. STILLLS: If I may make one request?

13 CHAIRMAN FROELICH: Yes, sir.

14 MR. STILLLS: There's still some ambiguity
15 on the amended contentions date and I thank NRC staff
16 very much for understanding the situation we find
17 ourselves in, both other professional scheduling and
18 with the personal stuff. It would be nice if we could
19 get consensus on the contentions date since that is of
20 some immediacy of March 17th. That way we can sort of
21 work between those two bookends before we get off that
22 call. So that's my input and I appreciate that.

23 CHAIRMAN FROELICH: Thank you. The Board
24 did notice the new and amended motion date being
25 somewhat greater than the 30 days the parties had

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1 agreed to in one of our earlier prehearing
2 conferences. And with the schedule and the regs, the
3 Board has no problem in moving that date because of
4 the professional and personal issues that are going on
5 among the parties to a date at or about March 17th as
6 was suggested in the parties' proposal.

7 However, I wouldn't want the opportunity
8 for new or amended contentions to push the hearing on
9 the already admitted contentions out into September
10 certainly and hopefully we could have the hearing on
11 the already admitted contentions in August. It would
12 be nice to have a single hearing where we have the
13 admitted contentions heard, as well as any new and
14 amended contentions. But if that's not possible, we
15 are open to bifurcating it should there be any new or
16 amended contentions arising from the FSEIS.

17 MR. PUGSLEY: Your Honor, Chris Pugsley
18 for Powertech. If I may just address the issue of the
19 extension date?

20 CHAIRMAN FROELICH: Sure.

21 MR. PUGSLEY: There is consensus on the
22 extension date. Powertech has no objection to March
23 17th. So I just wanted that to be on the record.

24 Secondly, we certainly would like to
25 engage all parties as soon as humanly possible to see

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1 what we can work out to have a single hearing in
2 August. We're certainly willing to do some creative
3 juggling and schedule making if we can. So we are
4 open to whenever the parties are available to begin
5 discussions.

6 CHAIRMAN FROELICH: Okay. Does the staff
7 have an issue with the slippage of the new or amended
8 contention motion date?

9 MS. JEHLER: This is Patty Jehle for the
10 staff. No, we do not have any issue with that. We
11 agree with the March 17th date being workable.

12 CHAIRMAN FROELICH: All right. Do you
13 think it would be more productive and I ask each of
14 the parties for the parties to go offline and try to
15 work out a new set of dates culminating in a hearing
16 hopefully in mid-August or is it something that the
17 Board should be involved in and we'll do now in this
18 conference call?

19 MR. CLARK: Judge Froehlich, this is Mike
20 Clark for the NRC staff. I think we could work it out
21 offline and probably file something at least from the
22 staff's perspective by Friday. But one thing I think
23 the staff would be interested in is nailing down a
24 week that we should strive for because if there are
25 some conflicts with say the last week of August or the

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1 second to last week of August, then I think the
2 parties won't want to try to advance the schedule only
3 to find there's a conflict either on the parties' part
4 or possibly on the Board's part. So maybe we could
5 leave this call with a firm idea of what we should be
6 striving to meet.

7 CHAIRMAN FROELICH: I think that's a good
8 suggestion, Mr. Clark. Certainly something early in
9 August or the week of August 11th would work for the
10 Board. I don't know what the conflicts are or what
11 the issues are that preclude later in that month, but
12 certainly earlier the better.

13 Like I said, the Board, in coming up with
14 its proposed schedule, was working from the model
15 milestones and envisioned us all getting together at
16 the end of July. We are certainly interested in a
17 date that works for everyone and so if that means
18 early August, that's fine from the Board's
19 perspective.

20 I wonder if the other parties, the Tribe
21 and the consolidated intervenors, feel it would be
22 productive to work with the staff and the applicant
23 offline and come up with a proposed schedule by the
24 end of the week or if there's anything the Board can
25 do at this point to nail down a schedule.

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1 MR. ELLISON: This is Bruce Ellison. We
2 had a very productive prehearing phone conference and
3 I think Mr. Stills is right. Locking in that date of
4 March 17th for the filing of new or amended
5 contentions gives us a starting point. And I just
6 think that we can be productive and out our dates
7 offline if that would be okay.

8 CHAIRMAN FROELICH: Okay, well, that being
9 said it is certainly our preference to have dates that
10 work for all the parties. If it culminates in a
11 hearing in early August, the Board wishes the parties
12 good luck in that endeavor and we would expect to have
13 a proposed schedule from the parties by Friday. We'll
14 hold off on our order summarizing this phone
15 conference until we receive that proposed order. Then
16 we'll include the schedule going forward. I do again
17 want to thank the parties for their cooperative
18 approach. I always think it's better the parties can
19 work out dates and take into account their concerns
20 rather than have a schedule imposed upon them that may
21 trample those concerns.

22 Is there anything else, any other concerns
23 from the parties that the Board can address at this
24 point? I would like to say that we will certainly
25 issue an order addressing the motion to efile for

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1 those parties who are having trouble with the Mac
2 machines and dealing with the Agency's EIE. So I
3 don't see that as being an issue.

4 Is there anything else that the Board can
5 address with the parties at this point?

6 (No response.)

7 I guess that's hearing none I would
8 conclude this prehearing conference with the
9 expectation that the Board will receive a unanimous
10 schedule proposal from the parties by Friday of this
11 week and that we will issue an order confirming dates
12 and summarizing this telephone conference early next
13 week, the goal being a hearing in the Powertech matter
14 in early August.

15 We note that Veterans Day is -- I'm sorry.
16 Valentine's Day, okay, we'll hear on Valentine's Day
17 and I hope that advances the spirit of cooperation,
18 the parties come up with a schedule for this case.

19 Is there anything further? Hearing none,
20 we'll stand adjourned and good luck. Thank you all
21 for your participation.

22 (Whereupon, at 9:55 a.m., the
23 teleconference was concluded.)

24

25