

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges:

William J. Froehlich, Chairman
Dr. Mark O. Barnett
G. Paul Bollwerk, III

In the Matter of

POWERTECH USA, INC.

(Dewey-Burdock
In Situ Uranium Recovery Facility)

Docket No. 40-9075-MLA

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

November 21, 2017

ORDER
(Scheduling Second Telephonic Conference Call)

On November 16, 2017, the Licensing Board held its first conference call with the parties to this proceeding since the issuance of LBP-17-09,¹ to discuss the NRC Staff's progress in resolving the sole remaining contention in this case.² The Commission, in CLI-16-20, specifically "direct[ed] that the proceeding remain open for the narrow issue of resolving the deficiencies identified in Contentions 1A and 1B."³ The Commission stated, "The Staff is free to select whatever course of action it deems appropriate to address the

¹ See LBP-17-09, 86 NRC __ (Oct. 19, 2017).

² The Partial Initial Decision resolved Contention 1A in favor of the Oglala Sioux Tribe and the Consolidated Intervenors. The Board found that the NRC Staff has not carried its burden of demonstrating that its FSEIS complies with NEPA and with 10 C.F.R. Part 40. The environmental documents did not satisfy the requirements of the NEPA, as they did not adequately address Sioux tribal cultural, historic and religious resources. The Board ruled that the FSEIS and the Record of Decision in this case must be supplemented, if necessary, to include any cultural, historic or religious sites identified and to discuss any mitigation measures necessary to avoid any adverse effects. LBP-15-16 81 NRC 618, 708 (2015), aff'd, CLI-16-20, 84 NRC 219 (2016).

³ CLI-16-20, 84 NRC 219, 222 (2016).

deficiencies identified in the Board's order, including, but not limited to further government-to-government consultation."⁴

At the November 16, 2017 telephone conference,⁵ the NRC Staff indicated that it is "in the midst of internal discussions regarding [its] options for [a] methodology to . . . further identify Lakota Sioux cultural resources."⁶ The NRC Staff stated, "[W]e're actively discussing this matter; we're hoping to achieve an understanding and alignment on the path forward, and at that time we would then I believe reach out to the licensee and to the tribe regarding that path. I think we can safely say that we intend to do that before the end of the year."⁷

The parties have agreed to a second telephone status conference to be held on December 12, 2017.⁸ The Board will arrange for this telephone status conference to be held on Tuesday, December 12, 2017 beginning at 1:00 p.m. Eastern Time. The Board will establish a bridge line for this telephone conference, with three lines provided for each party.⁹ The Board will contact the parties by email with instructions on how to access the telephone conference.

Listen-only telephone access will be made available for members of the public. The Board's law clerk will contact the participants by email to provide the telephone number and passcode for listen-only access to the call. Members of the public who wish to listen to the conference may also contact the Board's law clerk, Lindsay Simmons, at 301-415-6077 or

⁴ Id. at 250 (footnote omitted).

⁵ Tr. 1171–228.

⁶ Tr. 1188.

⁷ Tr. 1190.

⁸ Tr. 1120–21.

⁹ If any party requires additional lines, it should promptly contact Board law clerk Lindsay Simmons at Lindsay.Simmons@nrc.gov.

Lindsay.Simmons@nrc.gov, for the necessary listen-only telephone access information.

Based on comments and responses made by the parties at the November 16, 2017 telephone conference call, the Board would like the parties to address the following:

- (1) The status of the NRC Staff's internal discussions regarding adoption for a methodology to further identify Lakota Sioux cultural resources;
- (2) The relative efficacy, cost, and personnel commitments for any of the methodologies considered by the NRC Staff to further identify Lakota Sioux cultural resources;
- (3) The extent of the NRC Staff's consultations, if any, with other agencies with similar NEPA responsibilities regarding methodologies for identifying cultural resources;
- (4) The communications that have occurred among the NRC Staff, the Licensee, and the Intervenors to further identify Lakota Sioux cultural resources;
- (5) The extent to which the Licensee has internally considered alternatives to further identify Lakota Sioux cultural resources;
- (6) The extent of the NRC Staff's progress in arranging a possible Tribal Field Survey, and its parameters, at the site;
- (7) The extent of the NRC Staff's progress in arranging a meeting with tribal council(s) from Lakota Sioux tribes, or interviews with the tribal elders;
- (8) The extent to which the Oglala Sioux Tribe and the Consolidated Intervenors have discussed the procedures necessary for an NRC Staff meeting with the tribal council(s), other Lakota Sioux tribes, or interviews with tribal elders; and

- (9) The status of the NRC Staff's plan to prepare a supplement to the FSEIS regarding tribal cultural, historic, and religious resources of significance missing in the FSEIS.

It is so ORDERED.

FOR THE ATOMIC SAFETY
AND LICENSING BOARD

/RA/

William J. Froehlich, Chairman
ADMINISTRATIVE JUDGE

Rockville, Maryland

November 21, 2017

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of)
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POWERTECH (USA) INC.) Docket No. 40-9075-MLA
(Dewey-Burdock In Situ Recovery Facility))
)

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing **ORDER (Scheduling Second Telephonic Conference Call)** have been served upon the following persons by Electronic Information Exchange, and by electronic mail as indicated by an asterisk.

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POWERTECH (USA) INC., DEWEY-BURDOCK IN SITU RECOVERY FACILITY
DOCKET NO. 40-9075-MLA

ORDER (Scheduling Second Telephonic Conference Call)

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[Original signed by Clara Sola _____]
Office of the Secretary of the Commission

Dated at Rockville, Maryland
this 21st day of November, 2017