

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

January 09, 2018

ORDER
(Scheduling Third Telephonic Conference Call)

On December 12, 2017, the Licensing Board held its second conference call with the parties to this proceeding since the issuance of LBP-17-09¹ to discuss the NRC Staff's efforts to resolve Contention 1A.² On December 6, 2017, in letters to the parties, the NRC Staff proposed a newly developed approach to identify of Lakota Sioux Tribe historic, cultural, and religious resources, which has the potential to resolve the final remaining contention in this proceeding.³ The NRC Staff requested party comments on this new proposal by no later than

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

² Tr. at 1229–59.

³ Letter from Cinthya I. Román, Chief, Environmental Review Branch, to John M. Mays, Chief Operating Officer, Azarga Uranium Corp. (Dec. 6, 2017) (ADAMS Accession No. ML17340B374); Letter from Cinthya I. Román, Chief, Environmental Review Branch, to Trina Lone Hill, Director, Cultural Affairs & Historic Preservation Office, Oglala Sioux Tribe (Dec. 6, 2017) (ADAMS Accession No. ML17340B365); Letter from Cinthya I. Román, Chief, Environmental Review Branch, to Consolidated Intervenors (Dec. 6, 2017) (ADAMS Accession No. ML1730B376) [hereinafter December 6 Proposal].

January 19, 2018.⁴

At the December 12, 2017 teleconference, indicating that they would not provide a formal response to the NRC Staff's new proposal until January 2018, the Oglala Sioux Tribe and Consolidated Intervenors nonetheless expressed the tentative view that the proposal⁵ contained many of the elements that the Oglala Sioux Tribe had requested in its May 31, 2017 letter to the NRC Staff, and the proposal was favorably received by the Intervenors.⁶ While the Oglala Sioux Tribe and Consolidated Intervenors thus expressed general approval of the NRC Staff's proposed approach, Powertech, while clarifying that it likewise intended to provide a formal response at a later date, stated that "as of now . . . [Powertech]'s position is that the proposal is unacceptable," based on its estimated cost.⁷ The NRC Staff estimated that the proposal would cost approximately \$600,000.⁸

During the conference, Powertech's counsel stated that Powertech hoped to put forward its own proposal for resolution of Contention 1A and respond to the NRC Staff's letter by the

⁴ December 6 Proposal at 4.

⁵ The current proposal includes (1) meetings with tribal councils; (2) interviews with tribal elders to compile oral histories; (3) a Tribal Field Survey, which would last four weeks and "could be divided into two separate phases"; (4) facilitation of the oral histories, field survey, the survey report, and the supplementation of the Final Supplemental Environmental Impact Statement (FSEIS) by a contractor. Tr. at 1235–36.

⁶ See Tr. at 1241. Counsel for the Oglala Sioux Tribe stated this was a "positive and encouraging step," and that he viewed the proposal as "productive and ha[ving] good potential." Tr. at 1240–41. Counsel for the Consolidated Intervenors noted he believed the NRC Staff had taken "time and energy to thoughtfully review many of the . . . suggestions . . . put forth both in this case and in . . . the Crow Butte case" in fashioning the proposal. Tr. at 1242–43.

⁷ Tr. at 1239.

⁸ Tr. at 1245. Specifically, the NRC Staff estimated that the breakdown of the costs would include (1) the cost of the contractor, estimated at approximately \$250,000; (2) personnel costs equating to one full-time NRC employee, estimated at approximately \$300,000; (3) costs for travel and support activities in South Dakota, estimated at approximately \$20,000; and (4) the costs for any reimbursements Powertech would provide to any participating tribes. Tr. at 1243–44.

end of the year.⁹ Counsel also noted that Powertech would be willing to set up calls between the parties to discuss potential solutions.¹⁰ Thus far, the Board is unaware of any Powertech alternative proposal, other response from Powertech to the NRC Staff about the NRC Staff's proposal, or any effort by Powertech to set up a conference call with the parties regarding the NRC Staff's proposal.

The parties have agreed to a third telephone status conference to be held on January 24, 2018.¹¹ The Board will arrange for this telephone status conference to be held on Wednesday, January 24, 2018, beginning at 2:00 p.m. Eastern Time. The Board will establish a bridge line for this telephone conference, with three lines provided for each party.¹² 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, Sarah Ladin, at 301-415-5277 or Sarah.Ladin@nrc.gov, for the necessary listen-only telephone access information.

Furthermore, given Powertech's objections to the cost of the NRC Staff's proposal for assessing Lakota Sioux Tribal historic, cultural, and religious resources, the Board requests that, by no later than January 19, 2018, Powertech submit to the Board (1) an estimate of what the NRC Staff's originally proposed methodology, discussed in LBP-17-09,¹³ would have cost;

⁹ Tr. at 1247–48, 52.

¹⁰ Tr. at 1252–53.

¹¹ Tr. at 1252.

¹² If any party requires additional lines, it should promptly contact Board law clerk Sarah Ladin at Sarah.Ladin@nrc.gov.

¹³ See LBP-17-09, 86 NRC at ___ (slip op. at 33).

and (2) the details and cost estimate of any method for resolving Contention 1A Powertech proposes as an alternative to the NRC Staff's newly proposed method. The Board further requests that the NRC Staff provide, by no later than January 19, 2018, an estimate of cost for its originally proposed methodology, discussed in LBP-17-09. Having these cost estimates from Powertech and the NRC Staff will enable the parties to discuss the real differences between the cost estimate of the NRC Staff's originally proposed methodology, its newly proposed methodology, and any alternate approach proposed by Powertech.

It is so ORDERED.

FOR THE ATOMIC SAFETY
AND LICENSING BOARD

/RA/

William J. Froehlich, Chairman
ADMINISTRATIVE JUDGE

Rockville, Maryland

January 09, 2018

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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POWERTECH (USA) INC.) Docket No. 40-9075-MLA
(Dewey-Burdock In Situ Recovery Facility))
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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing **ORDER (Scheduling Third 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 Third Telephonic Conference Call)

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

Dated at Rockville, Maryland
this 9th day of January, 2018