Official Transcript of Proceedings

NUCLEAR REGULATORY COMMISSION

Title: Powertech USA, Inc.

Docket Number: 40-9075-MLA

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

Location: Teleconference

Date: January 24, 2018

Work Order No.: NRC-3476 Pages 1260-1310

NEAL R. GROSS AND CO., INC.
Court Reporters and Transcribers
1323 Rhode Island Avenue, N.W.
Washington, D.C. 20005
(202) 234-4433

UNITED STATES OF AMERICA

NUCLEAR REGULATORY COMMISSION

+ + + + +

ATOMIC SAFETY AND LICENSING BOARD PANEL

+ + + + +

HEARING

----------x

In the Matter of: :

POWERTECH (USA), INC. : Docket No. 40-9075-MLA

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

(Dewey-Burdock :

In Situ Uranium :

Recovery Facility) :

----------x

Wednesday, January 24, 2018

Teleconference

BEFORE:

WILLIAM J. FROEHLICH, Chair

DR. MARK O. BARNETT, Administrative Judge

G. PAUL BOLLWERK, III, Administrative Judge

APPEARANCES:

Counsel for the Applicant

Christopher S. Pugsley, Esq.

Anthony J. Thompson, Esq.

of: Thompson & Pugsley, PLLC

1225 19th Street NW

Suite 300

Washington, D.C. 20036

202-496-0780

cpugsley@athompsonlaw.com

On Behalf of the Nuclear Regulatory Commission

Emily Monteith, Esq.

David Cylkowski, Esq.

of: U.S. Nuclear Regulatory Commission

Office of the General Counsel

Mail Stop O-15D21

Washington, DC 20555-0001

301-415-4126

emily.monteith@nrc.gov

On Behalf of the Oglala Sioux Tribe

Jeffrey C. Parsons, Esq.

Western Mining Action Project

P.O. Box 349

Lyons, Colorado 80540

303-823-5738

wmap@igc.org

Travis E. Stills, Esq.

Energy & Conservation Law

1911 Maine Avenue

Suite 238

Durango, Colorado 81301

970-375-9231

stills@frontier.net

On Behalf of Consolidated Intervenors

David C. Frankel, Esq.

Greenspoon Marder, LLP

202 Providence Mine Road

Suite 107

Nevada City, California 95959

530-470-8509

arm.legal@gmail.com

On Behalf of Consolidated Intervenors (cont'd)
Thomas J. Ballanco, Esq.
945 Traval Street #186
San Francisco, California 94116
650-296-9782
harmonicengineering@gmail.com

P R O C E E D I N G S

1:59 p.m.

JUDGE FROEHLICH: Good afternoon, all. It is 2 p.m. Eastern Time, and this is Judge Froehlich in Rockland, Maryland. With me is Judge Bollwerk, and on the telephone line is Judge Barnett. Also with me are our law clerks, Ms. Lindsay Simmons and Ms. Sarah Ladin, who have been instrumental in helping the Board arrange today's teleconference.

Before we actually begin, I would just like to note who is on the line among the parties before we take appearances. I understand that a representative of Powertech is on the line. Is the staff on line?

MS. MONTEITH: Your Honor, this is Emily Monteith for the NRC staff.

JUDGE FROEHLICH: Thank you. And is the counsel for the Oglala Sioux Tribe online?

MR. PARSONS: Thank you, your Honor. This is Jeff Parsons on behalf of the Oglala Sioux Tribe.

JUDGE FROEHLICH: Thank you. And is there a representative of the -- well, we'll take appearances in a moment. Is there a representative on the line from the Consolidated Intervenors?

MR. BALLANCO: This is Tom Ballanco for

the Consolidated Intervenors.

JUDGE FROEHLICH: Okay, thank you. All right. Let's go back to the conference and its formality. We'll take appearances in a moment. This is a telephone status conference in the matter of Powertech USA, Inc., Docket Number 40-9075-MLA, concerning the Dewey-Burdock In Situ Uranium Recovery Facility. Public notice of this telephone conference was issued on January 9th, and provision has been made for a bridgeline for the parties to this case and for a public listen-only line for interested members of the public.

At this time, I'd like to take the formal appearances of the parties to the proceeding. Is the licensee, Powertech, and its counsel online?

MR. PUGSLEY: Yes, Judge Froehlich. Christopher Pugsley and Anthony Thompson for Powertech.

JUDGE FROEHLICH: Thank you, Mr. Pugsley. And for the intervenor, the Oglala Sioux Tribe?

MR. PARSONS: Thank you, your Honor. This is Jeff Parsons on behalf of the Oglala Sioux Tribe. And with me on the phone, as well, is Travis Stills.

JUDGE FROEHLICH: Thank you. And for the Consolidated Intervenors, is counsel on line?

MR. FRANKEL: David Frankel for Consolidated Intervenors, and I possibly have Tom Ballanco on the line with me.

MR. BALLANCO: Yes, your Honor, this is Tom Ballanco for Consolidated Intervenors.

JUDGE FROEHLICH: Thank you very much. And for the Commission staff?

MS. MONTEITH: Your Honor, this is Emily Monteith for the NRC staff calling in remotely from Chicago, Illinois. At headquarters is David Cylkowski, also counsel for the NRC staff, with Cinthya Roman and Kellee Jamerson present and Diana Diaz-Toro on the listen-only line.

JUDGE FROEHLICH: Thank you very much. As we proceed through this call, if the parties would identify for themselves before they speak, it will make things easier for our court reporter and we'll have a better record of today's conference call. We had our last telephone status conference call with the parties on December 12, 2017 during which the NRC staff described a December 2017 proposal and provided further details and estimated costs. Both intervenors responded favorably to the new proposal, calling it a productive step forward that thoughtfully included many of the suggestions that had been put forward by

the Oglala Sioux Tribe and the Consolidated Intervenors over the course of this proceeding.

Powertech, on the other hand, believes the proposal to be unacceptable due to its costs, among other reasons, but stated that it was willing to continue discussion and might even put forward a new proposal on its own.

On Friday, January 19th, 2018, Powertech and the Oglala Sioux Tribe provided their formal responses to the staff's December 17th proposal. The Oglala Sioux, mirroring its initial reaction, stated that the proposal provides an outline of a plan that the office believes will provide a reasonable likelihood of satisfying NEPA and resolving the Oglala Sioux Tribe's longstanding NEPA contention.

Although some details must still be worked out, the Oglala Sioux believes that the components of the basic structure of the plan are realistic, logical, and coincide well with suggestions that the intervenors had put forward. Powertech, on the other hand, expressed several concerns regarding the NRC staff's proposal, such as its cost and the amount of time it would take to implement.

The Board has several questions for each of the parties regarding their reactions to the NRC

staff's December 2017 proposal and the Oglala Sioux Tribe's and Powertech's responses to that proposal. We'd like to start with a few questions for the NRC staff on their December 2017 proposal.

Ms. Monteith, given that the Tribe has a generally favorable response to the proposal, will the NRC staff continue moving forward with the proposal to keep up with the time line that was envisioned?

MS. MONTEITH: Your Honor, to clarify, are you requesting whether information or to continue the time line we have or whether we intend to make a decision to proceed with the proposal as issued in December?

JUDGE FROEHLICH: Well, at this point, probably your answer both would be helpful.

MS. MONTEITH: Okay. Thank you, your Honor.

JUDGE FROEHLICH: Sure.

MS. MONTEITH: I think we have a lot to consider right now. The staff received the input provided by the parties on January 19th. The input provided by the parties appears to reflect disagreements about how the process should proceed. So, currently, the staff is weighing that information and considering how best to move forward with the

decision on methodology in the near term. The staff's proposed schedule issued in December predicated on moving forward with the proposal that we issued in December contemplated that we would make a final decision and notify the parties on a methodology selection that February.

Right now, given the disparity and the feedback that we received on Friday, we're still considering whether that procedural deadline, although we are certainly, I think, aiming to fulfill that time line.

JUDGE FROEHLICH: Have the parties been in contact with the staff beyond their formal, their formal replies or responses to the staff proposal? Has there been conversations among the parties?

MS. MONTEITH: Emily Monteith for the NRC staff. No, your Honor, we reached out to counsel the Oglala Sioux Tribe in December indicating our willingness to meet with the Tribe to discuss our proposal, and we reissued an email to all the parties in the first week of January, I believe, it was, indicating our willingness to discuss a proposal. The first feedback we had from any of the parties was what we received on Friday.

JUDGE BOLLWERK: Ms. Monteith, this is

Judge Bollwerk. As you're aware, I'm kind of big on concrete deadlines, so let's talk a little more specifically here. Do you contemplate in reaching your decision about whether the proposal is going to be changed in some way or adopted? Do you anticipate getting together with a party beforehand to --

MS. MONTEITH: What we have in hand, your Honor, as of, I believe, yesterday or the day before was an invitation by counsel for Powertech to meet with counsels for the parties to discuss their feedback or potentially feedback of all the parties. That was sent on Friday. Staff responded and indicated that we are amenable to having that meeting and we do request that it take place in the very near term, probably within a week, as our intention to gather the information that the parties are willing to provide and to forward it as expeditiously as possible.

JUDGE BOLLWERK: So you contemplate, at this point, the potential for a meeting of all the party counsel within the next week approximately?

MS. MONTEITH: I don't yet, your Honor. Counsel for Powertech invited us to participate in such a meeting. We, counsel for staff, indicated we would like to do that within a short time frame, and

that's where it was left.

MR. PUGSLEY: Judge Bollwerk, Chris Pugsley for Powertech. Yes, we did extend that invitation and we did receive the correspondence from NRC staff, the electronic message. And we are certainly amenable to that time frame. If they would like to have, if all of the parties would like to have a discussion, we are certainly open to that.

JUDGE FROEHLICH: While we have all the parties in the room or on the line, does this present any problems for the Consolidated Intervenors of the Oglala Sioux Tribe, that is having a meeting within a week, staff and the Powertech on the December 2017 proposal and the alternative that Powertech set forth.

MR. PARSONS: Thank you, your Honor. This is Jeff Parsons on behalf of the Oglala Sioux Tribe. We did receive Powertech's email yesterday and saw the staff's response this morning, and we would also be amenable to a call on that time frame that staff suggested, yes.

JUDGE FROEHLICH: And counsel for the Consolidated Intervenors?

MR. FRANKEL: David Frankel for Consolidated Intervenors. And, Judge, at the outset, I'd like to mention that we also filed a response, a

response to the staff on Friday, but it echoed, basically, the Oglala Sioux Tribe's response. And then in response to your question, I think we could schedule that over the next week, depending on what day and time.

JUDGE FROEHLICH: While you raise the subject, Mr. Frankel, are you saying that you did file a written response last Friday to the staff's proposal?

MR. FRANKEL: That's correct, your Honor. I just sent it to the counsels and parties. I didn't file it with the Board. I wasn't aware that it required a Board filing.

JUDGE FROEHLICH: Mr. Frankel, would you please file that pleading so that it is in the formal docket of this case and so that the Board has, I guess, the positions of all the parties as we move through the settlement of this issue.

MR. FRANKEL: Yes, your Honor. Apologies for that procedural issue.

JUDGE FROEHLICH: Okay. And since I haven't had the benefit of hearing your views on it, was there anything of consequence, other than agreement with the position, that was filed by the Oglala Sioux Tribe?

MR. FRANKEL: Your Honor, we basically took a shorter form position to indicate that we thought the NRC staff's proposal was basically on the right track.

JUDGE FROEHLICH: Okay, all right. Thank you, Mr. Frankel. Mr. Parsons, Powertech has expressed concern in its response that the survey proposed in the staff's December 2017 proposal, like the surveys that were proposed, would not be acceptable to the Tribe. And in your responses, the Oglala Sioux Tribe appears to view the staff proposal as fairly positive. It raises two questions. If the staff were to continue forward and finalize the proposal resembling the one circulated, what is the likelihood that the Oglala Sioux Tribe will agree to participate in the staff's execution of that proposal?

MR. PARSONS: Thank you, your Honor. Jeff Parsons on behalf of the Tribe. As we stated in our letter, we think the components that have been put forth align with the issues we've raised and have been raising for some time. So should the staff propose to move forward as proposed, we would participate.

JUDGE FROEHLICH: And while I have you, Mr. Parsons, has the Oglala Sioux Tribe reached out to the other Lakota Sioux Tribes to find out the

likelihood that the other tribes would be participating in such a survey or to garner their reaction to the December staff proposal?

MR. PARSONS: Thank you, your Honor. This is Jeff Parsons again. We have been in touch with other tribes and circulated the NRC letter. We stressed our positive reaction to the proposal, and that was acknowledged by some of the other tribes, although I have not, we have not gone so far as to follow up with detailed discussions on the extent or nature of their participation. However, as noted in our letter to NRC staff last Friday, the Oglala Sioux Tribe does commit to soliciting that input and helping to coordinate and arrange NRC staff's engagement with those other tribes.

JUDGE FROEHLICH: Mr. Pugsley, I note in the Powertech response it seems that Powertech indicates that it can't accept the proposal that the Oglala Sioux Tribe has not first vetted and accepted. After reading the Tribe's response and hearing Mr. Parsons' response just a moment ago and they seem to generally accept the proposal and desire to move forward to resolve this one remaining contention, how does this affect Powertech's position on the staff's offer?

MR. PUGSLEY: Judge Froehlich, Chris Pugsley for Powertech. Two points here. One, the word generally accept is indicative here because we've had general acceptance in the past from the Oglala Sioux Tribe about an open-site survey at the Dewey-Burdock site which they agreed they would participate in previously and then declined at the last minute and also did not participate in while the ASLB was viewing their site walkover before the hearing.

Secondly, we are very hesitant too, it's not just -- the statement that we don't want to enter into an agreement that does not resemble something that the Oglala Sioux Tribe would agree to, that's one aspect of this. That's not just the only aspect. It's that we've already spend more than $2 million on the environmental review process and the NEPA process under Part 51 for this site, and we've done the work and I think you have seen in our filing from last Friday that we have testimony from NRC's environmental review branch project manager, Haimanot Yilma, who has said that they basically, that we've done certain things that things have been completed.

Our problem is that when the Board said that we needed to provide you with information saying this is cost prohibitive, it is, number one, because

we've spent so much money already on this effort to satisfy the NEPA/10 CFR Part 41 process but also the fact that, going forward, the scope of what would have to be done going forward has been greatly enlarged by the staff's proposal to over, I'm not sure the number, and Ms. Monteith can correct me if I'm wrong, but it's around 10,000 acres, if I'm not mistaken. And it's the point where we are now getting into a realm of analysis that is, frankly, under federal case law, not necessary. And we think that the cost estimate of the staff, while we very much appreciate the work they put in to put the FTE in place, to understand what the costs going forward are, our experience and mine and Mr. Thompson's experience with the entire uranium recovery industry has those cost estimates are never accurate. They're always higher, and we are going to get into the millions of dollars range, considering that previous proposals to address the Oglala Sioux Tribe's concerns with respect to this under the National Historic Preservation Act, not under NEPA, was around a million dollars. We're now talking about involving more tribes in this, and now we're getting into serious money.

And what we wanted to do and the reason we extended the invitation that was identified earlier in

this conference call to have a discussion amongst counsel is to find a proper approach to this that satisfies NEPA. And we'd like to have those discussions, we plan to have those discussions, and we want to roll up our sleeves and get into the details and get this thing taken care of.

But the fact that the Oglala Sioux Tribe's counsel has noted that they would be willing to participate is in no way indicative to the licensee that the other tribes would participate, number one; number two, that it would not take a significant amount of time to then to agree, these tribes to agree to parameters associated with NRC's proposal. And at the end, what indication does the licensee have that this process is not going to turn into what has happened over the past seven - eight years? And the longer this process continues the more cost it incurs because NRC, by statute, is a fee recovery agency. We have to pay them and we have to pay for opening the site, the per diems, and all the other parameters that had been proposed by the NRC staff.

So while we commend NRC for its efforts in putting a proposal together, that was the reason that we are having an issue and that is the reason that we filed what we filed on Friday.

JUDGE FROEHLICH: Thank you, Mr. Pugsley. I guess, I guess that I'd like to hear from -- I'm sorry? Oh, go ahead. My question, I guess, to follow on what Mr. Pugsley has just said would go to Ms. Monteith. I'd like to hear your reaction to Mr. Pugsley's statement, as well as his filed comments of last Friday. You know, based on the experience that I assume the staff has in preparing, you know, environmental impact statements that address the cultural and religious issues that are present in our case.

MS. MONTEITH: Your Honor, Emily Monteith for the NRC staff. That's a rather broad question, and I'll try to answer that the best I can, and, if you have further specific questions hearing from what I say, please feel free to jump in.

JUDGE FROEHLICH: Thank you.

MS. MONTEITH: We very much appreciate the feedback provided by all of the parties, including Powertech, and we appreciate their addition of information on our cost estimates for the proposal, as they were able to identify aspects of that that we, ourselves, could not.

I think that one thing I might raise is Powertech's response indicates perhaps two potentially

divergent views about our proposal. The first is an expression of willingness to discuss further the parameters of the proposal we put forward in December. The second is an expression that that proposal is, in fact, cost prohibitive. So we wonder if there is any area within the uncertainties that they've identified in in the proposal that we issued in December that, once firmed up, would enable the licensee to determine that they could support financially, in terms of a financial cost and time, the implementation of that proposal.

MR. PUGSLEY: Your Honor, Chris Pugsley for Powertech. In answer to Ms. Monteith's question, the statement about being open to discussion is reflected in our invitation to have a conference call with counsel that we are looking for a solution to this issue, to resolve the contention, and satisfy NEPA. The point to be made here is, based on the parameters put forth by the staff in December and our analysis of it in our filing last Friday, we cannot accept it. And we're basically re-doing the NHPA process for NEPA, and we can't do that. The estimate from the staff is not going to end up there because the proposal is open-ended in nature, it has no firm milestones in terms of deadlines, and they can stretch

out and there's no guarantee that there's going to be a satisfactory result as far as we're concerned.

That is the reason why we believe that the best course of action here is to get on the phone with counsel and talk this through and find out where we stand because, if we are diametrically opposed in our viewpoints, then we need to just come to that realization. And if there is middle ground, we're certainly willing to talk about it. But at the same time, the way the staff's proposal is currently outlined, I apologize, our client cannot accept it.

JUDGE BOLLWERK: Mr. Pugsley, this is Judge Bollwerk. Let me ask you one question. As I look at the figures that you've put forth, and I recognize there's a lot of things in there and maybe Ms. Monteith wants to comment on some of the specifics, like the sustaining cost and things like that, the FTEs involved, but, in looking at the proposal that you have a concern about now and actually looking back at the staff's April proposal, while you supported that in your summary disposition motion, it's not clear to me, given the concerns you're raising now, if you would even support what the staff was proposing back in April.

MR. PUGSLEY: Well, Judge Bollwerk, Chris

Pugsley for Powertech. Frankly, sir, the proposals that we were talking about previously were not nearly as, at least in my opinion, as detailed as they are now in terms of as many steps are required, as well as the fact that many of the steps recommended in the proposal were resisted previously by the Oglala Sioux Tribe. So what we have in front of us right now, sir, is something that we have, A, no certainty on in terms of progress; B, something we have no certainty on in terms of cost; and, C, no certainty on in terms of completion.

So for our company, as we've noted in our pleadings which you've taken judicial notice of, much of but some not, and maybe, you know, we filed with you with our proposal a letter we got from the BLM that says, basically, the only alternative they have other than hanging their hat on what NRC does in their SEIS, is to do their own EIS, which would cost a lot of extra money, as well.

I mean, one of the Board parameters here was cost, and the way we look at this right now is, I mean, to have the Tribes out to have an, to have the Oglala Sioux Tribe out to have a site survey is one thing. But if you look at the proposal from the staff in December, that is completely different. And we're

talking now about reinventing the NHPA process to satisfy NEPA, and the law doesn't require that.

So what we're saying is you're not, what the Board is asking us to do -- well, not the Board, I'm sorry. What the NRC staff is asking us to do is to satisfy NEPA. We have to now spend more than the two-some-odd million dollars we've already spent on the SEIS, we now have to drop another million dollars plus into this effort which, frankly, the staff already did the work to satisfy NEPA on this issue, in our opinion.

So, I mean, like I said, I think that it is prudent for the counsel to get on the phone and talk about this and figure out whether or not there is a common ground we can occupy. And if we can, great. We can report back to the Board and say we've found common ground, we have a solution, we're ready to go. And if we can't, then we tell you the same thing, that we can't find common ground.

JUDGE BOLLWERK: This is Judge Bollwerk again. Just so I understand the proposal you have put out, how is the literature search that you're suggesting different than what's already been done?

MR. PUGSLEY: It's not terribly different, your Honor. But it is something that we are willing

to do in terms of supplementing the record. And we think that, you know, as we told you on previous status calls that we were soliciting experts to give us quotes on what we can get done in terms of a cost and time frame and getting the information to NRC staff in a formal submission and, of course, providing it to the Board and everything, and we've been doing that. And we believe that that would be adequate, and that's the reason we put it in our filing because it's something that the licensee is willing to do to make sure that adequate information is acquired.

JUDGE BOLLWERK: So is your supposition that the original literature search wasn't adequate or there's something that was, in terms of something being missed or that there's been new information that's developed since that search was done?

MR. PUGSLEY: Judge Bollwerk, Chris Pugsley for Powertech. No, we are not, our supposition is not that the original work done by NRC staff was inadequate. I think our appeal to the Commission speaks for itself on that. But at the same time, we have put this forward because we think that it's something we can do to help alleviate the concerns of the Tribe and Consolidated Intervenors to supplement the record to make the SEIS have a little

more information. It's something we're willing to do, but we do, as we've said on the December conference call, we stand by our appeal and we stand by our proposal on Friday. But at the same time, we still believe what NRC staff did up until the license was issued. And then after the Board issued LBT, I think it was 15, 19, or I can't remember the name, that the efforts done by NRC staff after that more than satisfied the record and more than satisfied NEPA.

JUDGE BOLLWERK: We're going to go off the record for one second.

(Whereupon, the foregoing matter went off the record at 2:30 p.m. and went back on the record at 2:31 p.m.)

JUDGE FROEHLICH: Okay. Since it is the staff's responsibility to supplement the EIS with the deficiencies that were identified by the Board in which the Commission has reviewed, I'd like to hear the staff's response and reaction to the proposal that Powertech submitted last Friday.

MS. MONTEITH: Your Honor, Emily Monteith for the NRC staff. We're still assessing that proposal. It came in late Friday. We've only had a couple of days with it, so I'm not in a position right now to state definitively that this would be

acceptable or this is the route that we would take with it.

I think I would just add that we have the position of, my takeaway from the submission of Powertech is that a site survey is unaffordable to them. And my takeaway from the input of the Oglala Sioux Tribe and the Consolidated Intervenors is that a site survey would be necessary in order to identify this information. In the context of all of that, we have a Board determination that the staff would need, in order to satisfy NEPA, to provide either a site survey or conduct a study of Lakota cultural resources.

So we wonder if there is middle ground. As it stands, it's not apparent that we have, it appears that there may be a sticking point over at least the site survey aspect of this. Beyond that, I don't think that I'm able to confirm on behalf of that client that we have arrived at a position on Powertech's silence.

MR. PUGSLEY: Your Honor, Chris Pugsley for Powertech. One thing I'd like to note is that the scope of the efforts provided, and Ms. Monteith can correct me if I'm wrong, but in the time frame between the original, it's LBT-15-16 -- I finally got the

numbers right -- and the past Board decision last year, the efforts were made toward trying to bring the Oglala Sioux Tribe and that tribe only to the site to survey. The Board's order changed the scope of that dramatically, which is what Ms. Monteith has noted here, which is we're talking about more than one tribe. We're talking about, I believe, and correct me if I'm wrong, I believe five.

And the thing is that you have a lot of working parts here. You have, as Mr. Parsons properly pointed out, he said he would be willing to coordinate with the tribes, the other tribes, to get them to talk about participation in a survey and things, you know, interviews with tribal elders and other things. And that's all well and good, but, at the same time, now, while Powertech, and to your question, Judge Bollwerk, while it is correctly supported, the survey, the site survey for the Oglala, where the cost prohibitive aspect of the Board's decision comes into play is now the scope has been largely widened and now we're talking about real money here. We're talking about serious expense and time. And one of the things that we tried to make clear to the Board, and I hope we did in our pleading previously is that the longer this takes, the longer that other permits cannot be

evaluated by other agencies, cannot be open to the public for comment, for litigation, whatever it may be, and the harder it is on the licensee to, frankly, remain active.

So what I'm saying here is, yes, I agree with Ms. Monteith. We need to find a common ground, and that's why we want to have a discussion with counsel and we're pushing this. But at the same time, if we can't, then we have to evaluate this under the Board's parameters, which were specifically is this cost prohibitive. And per our filing of last Friday, as it currently stands, it is.

JUDGE FROEHLICH: Mr. Parsons, I'd like to hear the reaction of the Oglala Sioux Tribe to the proposal that Powertech set forth last Friday and their offer to meet with the intervenors and staff to discuss further, the common ground and alternative in between the proposal that has thus far been filed.

MR. PARSONS: Thank you, your Honor. Jeff Parsons on behalf of the Oglala Sioux Tribe. Obviously, Mr. Pugsley has made a series of assertions, allegations, I guess, legal interpretations that, for the record, we disagree with, to say that we're re-hashing and having to re-do the entire National Historic Preservation Act process

in lieu or as a substitute for the NEPA process, those kinds of comments are, I think, wrong. To say that the Tribe has been engaged in agreeing to and then reneging agreement to participate in various endeavors I think is a mischaracterization of the record.

I could go on, but I did want to note for the Board that we have some serious disagreements with the way Mr. Pugsley has characterized our activities and what's in the record and what we think what was established by the Board in its partial initial ruling in 2015. And from our perspective, the money that Powertech has spent is not, going forward, frankly, is not a relevant, as relevant of a consideration as Mr. Pugsley would like it to be. The fact is that there's a federal law that requires analysis of the impacts to cultural resources at the site. We've been raising this argument consistently since the beginning. When this process began in 2010, Powertech could have spent its money and its time doing that work, as we suggested and insisted upon from the beginning, instead of litigating through to today and then to complain when they're actually required to do the work that they should have done on the front end. So that's how the Tribe sees this situation.

I would say that the letter that Powertech

submitted on Friday, I guess I'm confused a little bit. It said that there were details that needed to be established prior to the company being able to take a position on NRC staff's approach. There were several references to a perceived lack of clarity as to what exactly would occur and that, based on that clarity being or lack of clarity being resolved, Powertech could then make an assessment of whether it could support this approach or not.

What I'm hearing today is an unequivocal rejection of the approach regardless of the detail that might be added to the proposal. I was going to suggest that the Tribe is certainly willing to work through those issues that the company has identified as lacking clarity enough to take a position, but I certainly don't want to engage in that to the extent that Powertech says that, as I think I just heard, that the proposal on its face is unacceptable sort of in any form.

As to the alternative proposal that Powertech has put forward regarding a literature review, the Tribe does see that as inadequate. I will note that the rulings in this case have been consistent since in LBT-15-16 this Board ruled the NEPA violation occurred because the cultural,

historic, and religious sites had not been adequately cataloged. I think that's -- obviously, we agreed with that ruling. It does not appear that a literature review would do anything to catalog sites at the proposed mine.

Similarly, in the final ruling from the NRC in December of 2016, the Commission noted that, characterizing the Board's ruling, that the Board found insufficient, the staff analysis of the environmental effects on the Dewey-Burdock project on Native American cultural, historic, and religious resources. And so we understand that there's language also referencing a study, but our interpretation of that, when combined with a more detailed discussion in both this Board's rulings and the NRC's final decision, is that what we're talking about is the cataloging of religious, cultural, and historic sites and not simply a literature review.

So while we're certainly always willing to discuss details, that does seem to be, the proposal that Powertech has put forth to simply conduct a literature review does come across to us as a departure and inconsistent with what's been determined in this case as necessary to comply with the National Environmental Policy Act.

And as far as other tribes go, again, the rulings in this case do discuss impacts to Native American cultural resources. The Oglala Sioux Tribe works very closely with several of the other tribes. That has been, similarly been a consistent position of the Tribe throughout the proceeding. And, indeed, in our May 31st letter from last year that sort of formed the basis of our discussion now when we're talking about our acceptance and our positive feeling towards the recent December NRC proposal, consistency with that May letter, one of the central points that we made sure to reiterate again, as we have from the beginning, is that coordination with those other tribes is how the tribe conducts its business. That leaves a central cultural tenet for the Oglala Sioux Tribe is to be engaged with and working with its other Sioux tribes up there. So that is something that the Oglala Sioux Tribe will always have high on their list and want to be part of.

Now, we can't make them engage, the other tribes engage all the time or to be sent all that's requested, but what the Oglala Sioux Tribe did commit to is to put its effort to coordinating that approach for NRC staff so they could have those conversations and that engagement facilitated for them, and we're

certainly willing to do so. We're willing to talk with the counsel and try to find an agreement, but if Mr. Pugsley and Powertech are saying that a site survey that would catalog the historic, religious, and cultural sites on the proposed mine property is not something that's on the table, then I guess is have trouble seeing where that middle ground might be approached. Again, we're more than willing to work with NRC staff and others to pin down the details to clarity that Powertech asserted that was missing that hampered their ability to make an accurate assessment.

So I'll stop there. I appreciate the opportunity to express those thoughts.

MR. PUGSLEY: Judge Bollwerk, this is Chris Pugsley for Powertech. With your permission, I would like to answer Mr. Parsons' comments here. First of all, if his characterization of Powertech having an unequivocal opposition to NRC staff's proposal as it currently stands, the answer is, yes, we are unequivocally opposed to it, number one.

Number two, Mr. Parsons is wrong on the facts and wrong on the law here. Number one, on the law, his characterization that Powertech should have spent its money on other things is grossly inconsistent with federal law. Powertech doesn't

spend the money on NHPA process, doesn't spend the money on the NEPA process. It gets billed by NRC to us, so NRC staff conducts the process; hence, the reason we answered Judge Froehlich's and Judge Bollwerk's question about do we think that the staff's inquiry into this issue is adequate, and the answer, we think, is yes, as is embodied in our appeal to the Commission.

I would also like to note that it has never been disputed in the record, that the Oglala Sioux Tribe committed to coming to an open-site survey and then declined at the end, which is fine. It is their right under federal law. They're allowed to do that. That's not a problem. Powertech had no problem with that. We supported an open-site survey for the Oglala Sioux Tribe at Dewey-Burdock up until Judge Bollwerk correctly characterized that we were fine with it. We had no problem. It was never agreed upon.

What we are saying right now, and I am, I can't, I don't think I can think of a person who can find that the NRC staff's proposal does not resemble an NHPA process because we're talking about items that involve consultation, that involve discussions with tribal elders, discussions with experts, discussions

with open-site surveys, things of that nature. We put, we believe, a proposal that at least lays the foundation for a discussion with counsel, and, as I've said a million times on this phone call, we would like to have that discussion.

The fact that Mr. Parsons can sit on his phone and characterize Powertech as the party that is impeding progress in this sequence of events I think is ridiculous. And I think Powertech was open to having the Oglala Sioux Tribe out to categorize and catalog whatever they felt was historic and cultural resources or traditional cultural properties at the site and not only after the initial Board decision but before it. And the opportunity was afforded. The per diems were put up. All of the structure was in place, but it was refused. And it had never been disputed, and if it has been someone tell me because I don't see it.

So what I would like to see happen is that we, we're on the record here with the Board. Can the counsel just get together on the phone and have a discussion and talk about this? And if we come to a stalemate, then we come to a stalemate. But maybe there's room for discussion here, so let's just do that.

JUDGE FROEHLICH: Mr. Pugsley, I think that it is important for the parties to discuss it, but the Board would like to just, I guess, clarify in our own mind the unequivocal opposition that you just articulated. Am I correct to understand that the Powertech is, at this point in time, unequivocally opposed to a field survey or an additional opportunity for the Tribe to come upon the land and make the inquiry and the search for cultural, historic, and religious objects?

MR. PUGSLEY: Judge Froehlich, Chris Pugsley for Powertech. May I ask you a question, please?

JUDGE FROEHLICH: Sure.

MR. PUGSLEY: When you make the statement about a survey for the Tribe to come out, are you referring simply to Mr. Parsons' client or the five tribes that have been identified?

JUDGE FROEHLICH: I'm actually, I'd like to take that maybe in both terms because, as I understood it, the April 2017 proposal from the staff included an opportunity for one tribe or tribal representatives from one tribe to come upon the land, and I had understood Powertech to be supportive of that position, at least from the pleadings on the

motion for summary disposition that the staff had filed. And I realize that the current proposal may be more than one tribe.

So maybe I'd like to hear the answer to both inquiries: whether that the Powertech Corporation is unequivocally opposed to a field survey of the Oglala Sioux Tribe, the one tribe contemplated, I guess, in the April 2017 proposal, or it's unequivocally opposed to multiple tribes coming upon the land?

MR. PUGSLEY: Judge Froehlich, Chris Pugsley for Powertech. That's a very fair question. I have to speak with our client regarding the position on the approach we supported previously versus what is currently in the staff's proposal now. I'm certainly willing to do so in short order, and, if we get a call with counsel, we can talk to them and we'll certainly let the Board know what the licensee's position is.

But if we're talking about my statement earlier about what are we unequivocally opposed to, it is the NRC staff's proposal as it is currently issued to the parties.

JUDGE FROEHLICH: Okay. And Mr. Frankel or Mr. Ballanco, if you want to be heard on the subject of the parties moving forward or your reaction

to Powertech's submission last Friday.

MR. FRANKEL: David Frankel for Consolidated Intervenors. Thank you, your Honor. We echo each and every one of the statements made by Mr. Parsons. We believe that Powertech's statement of the law is a form of advocacy and that Powertech is incorrect along the lines that Mr. Parsons described. We are not surprised that Powertech objects in the fashion that it does; and, again, we suggest that, had it proceeded cooperatively with the Tribe and the tribal members instead of combatively with the Tribe and the tribal members, then it would not have wasted all that money in the past and it would have a budget to do it properly at this time. Besides that, we have no further comment at this time.

JUDGE FROEHLICH: Okay. Ms. Monteith, after, I guess, hearing from all these parties, do you have any comment or impression on the prospects for the parties to come together and discuss this and come up with a middle ground or a path forward that will resolve this remaining contention?

MS. MONTEITH: Yes. Thank you for the opportunity, your Honor. Emily Monteith for the NRC staff. We appreciate hearing further input from the parties today on this teleconference, and we think

that's been of great value to us.

It appears to us that there may be room for discussion on the matter of the site survey. It would be a value to us to hear the Tribe's input and the Consolidated Intervenors' input in our counsel-to-counsel teleconference about whether the Tribe feels that there may be any other way to identify their TCPs other than a site survey, if it turns out that Powertech is unable to support the cost of such a survey.

I would note in that regard we are a fee recovery-based agency, so we don't feel currently that we are able to completely disregard the representations of Powertech with respect to what is cost prohibitive to them. However, we are considering that going forward and how we might contend with that in terms of satisfying our NEPA obligations.

I sort of had, like, another piece of information that would be useful for us is our proposal from December 2017 is predicated on the involvement of the Lakota Sioux Tribe. And to that end, we requested the input or the confirmation of the Oglala Sioux Tribe that we had appropriately identified the full scope of the Tribe with whom the staff would need to engage or whose cultural resources

the staff would need to identify. So we would appreciate as quickly as possible having a firm understanding of the scope of those Tribe, the parameters of what we're looking at.

And, finally, one thing that wasn't noted that I would just add for the contemplation of the parties is that the proposed schedule for our December 2017 proposal was predicated on the NRC alone identifying and selecting a contractor and working through that contracting process. We have standing contracts in place that allow us to move quickly. It seems, from the input of the overall Sioux Tribe, that they contemplate that the Tribe would also be involved in the identification of the contracting scope of work and the selection of a contractor. So we would note that, if that is, in fact, a requirement of the Tribe, that would potentially greatly affect the time frame with which we are working here.

So if the Tribe's counsel can identify whether that, in fact, is an essential component of the Tribe's participation and the identification of their cultural properties, that would probably be of value to us in understanding the cost of the work to be conducted in the future and the time frame for that.

I think those are my comments. I'm willing to respond to any other questions you have, your Honor.

JUDGE FROEHLICH: You noted that this is a fee recovery agency. When the staff has, I guess, come forward with there proposals to resolve this remaining issue, both proposals leading up to the motion for summary disposition, is there an exchange that took place between the NRC staff and Powertech as to the costs involved, or how did that work going up to the motion for summary disposition and the type of survey that was contemplated in that, I guess, proposal?

MS. MONTEITH: To my recollection, your Honor, there was, in about the November of 2016 time frame, there was a conversation with Powertech about the fact that this work would, in fact, be feasible. If you recall, that had not been fully communicated and there was some confusion on the part of another licensee regarding the recovery matter. So during that call we communicated the need to see about a contract to carry out this activity to satisfy contentions.

Our exchanges with the licensee are documented in our updated disclosures. And I think

the point of discussion was primarily on the per diem and other select funding matters, the matters that would be directly funded, reimbursed, I should say, to the Tribes at Powertech.

JUDGE BOLLWERK: We're going to go off the record for a second.

(Whereupon, the foregoing matter went off the record at 2:59 p.m. and went back on the record at 3:01 p.m.)

JUDGE BOLLWERK: All right. This is Judge Bollwerk. Thank you for being patient with us. So I think, from what we've heard, the next step it sounds like is for counsel to have a teleconference of some kind and talk among yourselves. I heard approximately a week and also a possibility then that there would be a status report. So can someone, obviously we want a joint status report, if ever possible, where we discuss all the party views. When do you think you can have your conference and provide us with a status report?

MR. PUGSLEY: Judge Bollwerk, Chris Pugsley. NRC staff is kind enough to respond to us via email that they would like to have the call within a week. Whenever Mr. Parsons, Mr. Frankel, and Mr. Ballanco are available to have this call, we'd like to

do it as soon as possible. And what our plan is is to draft up from our end a status report of the call, circulate it to the parties for their approval, and then file it with the Board. I would hope we might be able to accomplish that within 48 hours after the conference call. I'll leave that to the parties to determine that time frame, but Powertech's schedule is wide open whenever they would like to have the call.

JUDGE BOLLWERK: Well, today is the 24th. A week is the 31st. Do you think you could provide us a report by the 5th of February?

MR. PUGSLEY: Your Honor, Chris Pugsley for Powertech. I'd be happy to do it, assuming we can schedule the call within the appropriate time frame.

JUDGE BOLLWERK: Let's find out. The other parties, does that sound reasonable? Staff?

MS. MONTEITH: Yes, your Honor, I'm just checking the calendar, but I think that sounds reasonable, yes.

JUDGE BOLLWERK: The Oglala Sioux Tribe?

MR. PARSONS: Jeff Parsons --

MR. STILLS: I'm sorry. Your Honor, this is Travis Stills, the Oglala Sioux Tribe. I do have an out-of-town in-court circuit court obligations that will have me out of town and out of the office for the

first half of next week, so that does cramp my availability quite a bit.

MS. MONTEITH: Your Honor, this is Emily Monteith for the staff. We are able to support a conference call as early as tomorrow and also on Friday, if that is of any assistance to Mr. Parsons. I'm not sure if it is.

MR. PARSONS: This is Jeff Parsons for the Tribe. I could be available end of this week or end of next week to meet that deadline of the 5th.

MR. FRANKEL: Your Honor, David Frankel for Consolidated Intervenors. Likewise, I can be available on this Friday or towards the end of next week.

JUDGE BOLLWERK: We had, I think, one -- Mr. Stills, could you do it by the end of this week, Mr. Stills, so you can keep your commitment out next week?

MR. STILLS: Yes, I followed Mr. Parsons' lead. I do think this is one that I should definitely be on. I do have conflicts on Friday, so if we're narrowing down I think Thursday would be a --

JUDGE BOLLWERK: Can everyone get together tomorrow? That's what we're looking at, I think.

MR. PUGSLEY: Judge Bollwerk, Chris

Pugsley for Powertech. The only issue we would have with tomorrow is that we have a client that is based in Australia, so the time difference is, you know, somewhat troublesome. But we can make something work, if necessary. The only conflict we have tomorrow is in the mid-afternoon. But if folks wanted to get together on Friday of this week, although, if you set a deadline of February 5th for a status report which falls on two weeks from this past Monday, if we did the call late next week to assure that Mr. Stills and Mr. Parsons don't have conflicts and if Mr. Frankel has any conflicts, which I guess I heard, I thought he might have some, late next week we can get together and have a conference call and we could have a status report filed by the 5th.

JUDGE BOLLWERK: That's certainly, if that's acceptable to the parties, that's certainly acceptable to the Board.

MR. FRANKEL: David Frankel for Consolidated Intervenors, your Honor. So what date now are we actually talking about for a call?

JUDGE BOLLWERK: I think you're looking at the 1st or 2nd of February, probably the 1st so you have some time to draft the status report, I would think.

MR. FRANKEL: I'm free on that day most of the day. So as soon as we have the time, I'll put it on my calendar.

MR. PARSONS: Any time that works for you, Mr. Frankel, is fine with us on the 1st.

MR. FRANKEL: So anytime between 9:30 and 5:00 on California time will do it.

MR. PARSONS: Yes, as long as I'm not in my afternoon nap, it will be fine.

JUDGE BOLLWERK: What about Mr. Parsons and Mr. Stills?

MR. PARSONS: Thank you, your Honor. This is Jeff Parsons. We're similarly available. I'm available after 10 Mountain Time on that day.

JUDGE BOLLWERK: All right. And then Ms. Monteith?

MS. MONTEITH: Your Honor, the staff can support a call on February 1st any time.

JUDGE BOLLWERK: All right. We have an agreement.

MR. PARSONS: May I propose, to meet everyone's schedule based on time difference, 2 p.m., February 1st, and I will circulate a dial-in number tomorrow morning.

JUDGE BOLLWERK: What time zone?

MR. PARSONS: 2 p.m. Eastern, please.

MR. FRANKEL: All right. David Frankel here for Consolidated Intervenors. That works for me.

MS. MONTEITH: Emily Monteith for the NRC staff. That works for us, as well.

JUDGE BOLLWERK: Anybody else want to say anything about that date and time? All right. Then it sounds like we have an agreement, you all have an agreement, rather, to talk Thursday, the 1st of February, at, I believe it was 2 p.m. Eastern Time.

MR. PUGSLEY: Yes, sir.

JUDGE BOLLWERK: And we then will receive a status report, a joint status report no later than Monday the 1st, I'm sorry, Monday the 5th of February from the parties.

MR. PUGSLEY: Your Honor, Chris Pugsley for Powertech. Just want to let everyone on the phone know I will have a draft of the status report to you for review no later than close of business Friday, the 2nd of February, for your review over the weekend, and we will file with the Board on the 5th.

JUDGE BOLLWERK: All right. Judge Barnett?

JUDGE BARNETT: I don't have anything.

JUDGE BOLLWERK: All right.

MR. STILLS: Your Honor, this is Travis Stills again. I do have a fairly well-booked weekend that weekend. Would it be unreasonable to ask that that be moved out so we could have workweek time to deal with that and not have to be forced into responding to the draft on the weekend?

JUDGE BOLLWERK: How about February 6th?

MR. STILLS: That would be greatly appreciated.

JUDGE BOLLWERK: All right. So the draft report, the draft status report will be going out by COB on the 2nd, and the response back to the Board will be due on February 6th.

MR. PUGSLEY: Yes, sir.

JUDGE BOLLWERK: So, hopefully, small things start some things moving forward. I heard a lot of discussion today, some strong views, but I hope, in moving forward, that you all will make your best efforts to try to find common ground, if that's possible.

JUDGE FROEHLICH: And after receipt of the joint report of the conference call, the Board will issue an order either scheduling another telephone status conference or other procedures going forward. I think it probably would be best that we wait to see

what progress can be made and how the proposals are shaped on the conference call since that's to take place, and we'll take it from there.

JUDGE BOLLWERK: And, again, to the degree there is agreement or something that we discussed, any schedules you can provide us will be useful, as well.

MR. PUGSLEY: Yes, sir, we will do so.

JUDGE FROEHLICH: Yes. And I might just add to that. If, in the course of the discussions among the parties, there is a suggestion or a proposal for how we should move forward, what the next steps should be, please include that in the report of the discussion so that we can come up with a procedure or procedures that will move this case forward and hopefully lead to a resolution of the sole remaining contention in this case.

MS. MONTEITH: Your Honor, Emily Monteith for the NRC staff. May I ask a clarifying question?

JUDGE FROEHLICH: Surely.

MS. MONTEITH: Do you mean with respect to an alternative, a schedule for an alternative proposal, procedures for an alternative proposal, or further teleconferences, or for --

JUDGE FROEHLICH: I was anxious to see what would be proposed by the parties for the next

step after the discussions. It may be to refine one of the existing proposals, it may be to come up with a different new proposal that includes certain elements that have been included in one or both of the current proposals, or some alternative to that. So I was just looking to see what the parties had in mind should be the next step moving forward after the discussions based on the discussions, which direction this will flow. Ms. Monteith, was I clear or . . .

MS. MONTEITH: Yes, I think so, your Honor. I guess we'll see.

JUDGE FROEHLICH: I mean, not knowing what will be discussed or, you know, which avenues, which parameters, which components of a resolution are going to come from this call, if the parties are able to come up with sort of a path forward or suggestions for a path forward based upon the discussions, based on the methodology that's being discussed, that would be helpful to the Board because I think any schedule, any path that the parties can agree to to move this along will help, you know, get us to a quicker resolution rather than just, you know, monthly status reports or monthly status phone calls. So if you could include it in the report the parties' suggestions as to the path forward, I think that would be helpful.

MS. MONTEITH: Thank you, your Honor.

JUDGE FROEHLICH: Thank you.

JUDGE BOLLWERK: Does anyone have anything else that they'd like to say or state before we close this conference?

MR. PUGSLEY: Your Honor, Chris Pugsley for Powertech. I just want to note for all the parties if anyone on the phone has any issues with the dial-in coordinates for the call next week or if there's any scheduling conflicts that come up, please let me know and we will make as many accommodations as we can to make sure that this discussion happens.

JUDGE FROEHLICH: It's appreciated, Mr. Pugsley. Thank you. Anyone else? Judge Barnett, anything?

JUDGE BARNETT: Nothing, no.

JUDGE FROEHLICH: Judge Bollwerk?

JUDGE BOLLWERK: No.

JUDGE FROEHLICH: All right. This telephone status conference call is concluded. I thank the parties for their participation and wish you good luck in the conversations going forward.

(Whereupon, the foregoing matter went off the record at 3:13 p.m.)