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**NUCLEAR REGULATORY COMMISSION**

Title: Powertech USA, Inc.

Docket Number: 40-9075-MLA

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

Location: Teleconference

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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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HEARING

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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) :

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Wednesday, January 24, 2018

Teleconference

BEFORE:  
WILLIAM J. FROEHLICH, Chair  
DR. MARK O. BARNETT, Administrative Judge  
G. PAUL BOLLWERK, III, Administrative Judge

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## P R O C E E D I N G S

1:59 p.m.

1  
2  
3 JUDGE FROEHLICH: Good afternoon, all. It  
4 is 2 p.m. Eastern Time, and this is Judge Froehlich in  
5 Rockland, Maryland. With me is Judge Bollwerk, and on  
6 the telephone line is Judge Barnett. Also with me are  
7 our law clerks, Ms. Lindsay Simmons and Ms. Sarah  
8 Ladin, who have been instrumental in helping the Board  
9 arrange today's teleconference.

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

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

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

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

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

25 MR. BALLANCO: This is Tom Ballanco for

1 the Consolidated Intervenors.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

18 JUDGE FROEHLICH: Sure.

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

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

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

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

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

25 JUDGE BOLLWERK: Ms. Monteith, this is

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

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

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

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

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1 that's where it was left.

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

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

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

21 JUDGE FROEHLICH: And counsel for the  
22 Consolidated Intervenors?

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

17 JUDGE FROEHLICH: Thank you.

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

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

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

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

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

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

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

25 MR. PUGSLEY: Well, Judge Bollwerk, Chris

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25 I would say that the letter that Powertech

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

14 JUDGE FROEHLICH: Sure.

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

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

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

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

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

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

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

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1 to Powertech's submission last Friday.

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

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

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

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1 that's been of great value to us.

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

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

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

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

5 And, finally, one thing that wasn't noted  
6 that I would just add for the contemplation of the  
7 parties is that the proposed schedule for our December  
8 2017 proposal was predicated on the NRC alone  
9 identifying and selecting a contractor and working  
10 through that contracting process. We have standing  
11 contracts in place that allow us to move quickly. It  
12 seems, from the input of the overall Sioux Tribe, that  
13 they contemplate that the Tribe would also be involved  
14 in the identification of the contracting scope of work  
15 and the selection of a contractor. So we would note  
16 that, if that is, in fact, a requirement of the Tribe,  
17 that would potentially greatly affect the time frame  
18 with which we are working here.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

20 JUDGE BOLLWERK: The Oglala Sioux Tribe?

21 MR. PARSONS: Jeff Parsons --

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

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

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

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

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

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

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

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

25 MR. PUGSLEY: Judge Bollwerk, Chris

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

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

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

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

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

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

6 MR. FRANKEL: So anytime between 9:30 and  
7 5:00 on California time will do it.

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

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

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

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

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

19 JUDGE BOLLWERK: All right. We have an  
20 agreement.

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

25 JUDGE BOLLWERK: What time zone?

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

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

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

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

11 MR. PUGSLEY: Yes, sir.

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

16 MR. PUGSLEY: Your Honor, Chris Pugsley  
17 for Powertech. Just want to let everyone on the phone  
18 know I will have a draft of the status report to you  
19 for review no later than close of business Friday, the  
20 2nd of February, for your review over the weekend, and  
21 we will file with the Board on the 5th.

22 JUDGE BOLLWERK: All right. Judge  
23 Barnett?

24 JUDGE BARNETT: I don't have anything.

25 JUDGE BOLLWERK: All right.

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

7 JUDGE BOLLWERK: How about February 6th?

8 MR. STILLS: That would be greatly  
9 appreciated.

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

14 MR. PUGSLEY: Yes, sir.

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

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

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

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

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

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

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

19 JUDGE FROEHLICH: Surely.

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

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

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

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

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

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1 MS. MONTEITH: Thank you, your Honor.

2 JUDGE FROEHLICH: Thank you.

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

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

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

16 JUDGE BARNETT: Nothing, no.

17 JUDGE FROEHLICH: Judge Bollwerk?

18 JUDGE BOLLWERK: No.

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

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

25