



POWERTECH (USA) INC.

February 15, 2018

John Mays
Powertech USA Inc.
5575 DTC Parkway, Suite 140
Greenwood Village, CO 80111

Cinthya I. Román - Cuevas, Chief
Environmental Review Branch
Division of Fuel Cycle Safety, Safeguards, and Environmental Review
Office of Nuclear Material Safety and Safeguards

RE: PROPOSED DISCUSSION QUESTIONS FOR FEBRUARY 1 COUNSEL CALL

Please see Powertech's Responses to the following questions presented by the NRC in advance of the February 1 Counsel Call.

- 1.) *Would it be cost-prohibitive for Powertech to support the Staff's December 2017 proposal if the terms and timeframes for the site survey are made firm?*

As noted in Powertech's January 19, 2018 response to the Staff's December 2017 proposal, Powertech determined the Staff's proposal to be cost-prohibitive and presented an alternative proposal that enables the resolution of the FSEIS deficiencies identified by the ASLB and that is not cost-prohibitive. Powertech's response included an enclosure titled "Powertech (USA) Inc. Cost Estimates of Proposed Methodologies, January 19, 2018", in which it provided forecast cost estimates for various scenarios, including the Staff's December 2017 proposal. These cost estimates were prepared making various assumptions, which included the assumption that the timeline presented in the Staff's December 2017 proposal was adhered to. Further, the Staff's recommended approach provides no guarantee of successfully resolving the FSEIS deficiencies. Two previous attempts to satisfy NEPA through a site survey approach have failed. What happens if timeframes are not upheld? How do the FSEIS deficiencies then get resolved?

As noted by the ASLB in LBP-17-09, "Even if the NRC Staff selects a methodology without further input from the Oglala Sioux Tribe, we do note that the Oglala Sioux Tribe will have additional meaningful opportunities to consult during future phases of the



POWERTECH (USA) INC.

project pursuant to the Programmatic Agreement.” Further, as noted by the ASLB in LBP-17-09, “the NRC staff is “free to select whatever course of action it deems appropriate to address the deficiencies [in the FSEIS]...”.

Also as noted in LBP-17-09, “Moreover, the Oglala Sioux Tribe maintains that the NRC Staff “is free to select whatever course of action it deems appropriate to address the [FSEIS] deficiencies,”¹⁵⁵ so long as its chosen method utilizes a “systematic, interdisciplinary approach which will insure the integrated use of the natural and social sciences.”¹⁵⁶”.

Although Powertech would view firm terms and timelines as a necessary part of the proposal, it cannot commit to a site survey proposal that is cost-prohibitive and is not guaranteed to resolve the FSEIS deficiencies. Powertech believes that it has presented a reasonable alternative that is not cost prohibitive and will address the FSEIS deficiencies.

- 2.) *Would it be cost-prohibitive for Powertech to support the Staff’s December 2017 proposal if the site survey opportunity were adjusted in some form?*
- a. *If not, can Powertech describe the elements of a site survey that it can support*

It would be possible for Powertech to support a site survey approach, provided the concerns outlined in its January 19, 2018 response to the Staff’s December 2017 proposal were addressed (for example, Powertech would need to be certain this approach would resolve the FSEIS deficiencies) and the proposal was not cost-prohibitive. Powertech has supported previous site survey proposals. Cost estimates for various proposals have been included in Powertech’s January 19, 2018 response letter, as well as a cost proposal for Powertech’s alternative proposal, which it believes will satisfy the FSEIS deficiencies and is the most appropriate path forward. Also, Powertech cannot support a site survey approach without assurances that upon completion of the work covered by such an approach, the approach will be deemed adequate to satisfy contention 1A.

- 3.) *Would it be cost-prohibitive for Powertech to support the Tribal Council meeting and tribal elder interview components of the Staff’s December 2017 proposal.*

As noted in Powertech’s January 19, 2018 response to the Staff’s December 2017 proposal, Powertech’s alternative proposal included supplementing the ethnographic study with interviews from Tribal Elders, Councils and Leaders, if possible. However,



POWERTECH (USA) INC.

these interviews would need to have firm deadlines and Powertech would also need to understand the number of participants and scope to determine the overall costs.

- 4.) *In taking a position on whether the Staff's proposal (or any component of it) is cost-prohibitive, are there specific bases or thresholds that Powertech uses for that determination? If so, can Powertech provide that criteria.*

Determining a specific basis or threshold is not an exact science; however, when evaluating reasonable alternatives that exist to satisfy NEPA requirements, that the Tribes will have additional meaningful opportunities to consult during future phases of the project pursuant to the Programmatic Agreement and that the NRC staff is free to select whatever course of action it deems appropriate to address the deficiencies [in the FSEIS], Powertech has presented an alternative approach in its January 19, 2018 response to the Staff's December 2017 proposal which it believes addresses the FSEIS deficiencies and is not cost-prohibitive. As disclosed in Powertech's January 19, 2018 response, the difference in cost estimates between the alternative approach presented by Powertech and the Staff's December 2017 proposal, which is cost-prohibitive, is very substantial.

Also, looking at it another way, Powertech envisions the criteria for cost-prohibitive as being such that there is no conclusion or end that can reasonably be guaranteed by the process. This would equate essentially to endless costs while prohibiting sufficient completion of the collection of data ordered by the ASLB to be collected and resolution of contention 1A. The ASLB or NRC have provided no assurances that Staff can complete the process necessary for resolution of contention 1A or that the ASLB will approve the results. As such, and as based on previous history, such a proposal can readily have no successful conclusion and costs will continue to be incurred.

At this time, Powertech has no clear indication of what costs associated with the NRC staff proposal or any identified alternative, other than the alternative that Powertech has proposed, will be. Powertech's experience in the licensing process, especially the NEPA process, is that costs end up being more than originally anticipated. Powertech appreciates NRC efforts to put together a proposal that the NRC believes will satisfy Contention 1A, but Powertech has no certainty that this estimate will be adhered to, and



POWERTECH (USA) INC.

based on its experiences, has no reason to believe that delays and cost overruns will not be encountered.

With respect to the ASLB Order dated February 8, 2018, Powertech believes that the ASLB's request for documentation of the NRC's billings to Powertech from April 30, 2015 to the present, does not provide the appropriate scope for costs incurred by Powertech under the NEPA process. All NRC costs incurred by Powertech throughout the NEPA process need to be considered. Further, NRC costs do not take into account other costs including, but not limited to, legal and consulting costs.

Powertech has provided an alternative proposal in its January 19, 2018 response to the Staff's December 2017 proposal, which it believes is the most appropriate path forward, and will contain information specific to the Dewey Burdock project location and Tribes in question and is sufficient for meeting criteria under NEPA. Further, this alternative proposal is not cost prohibitive.

Sincerely,

/s/ John Mays

John Mays
Chief Operating Officer

CC: Blake Steele, President and CEO