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NUCLEAR REGULATORY COMMISSION

Title: Powertech USA, Inc.
Dewey-Burdock In Situ Uranium
Recovery Facility

Docket Number: 40-9075-MLA

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

Location: teleconference

Date: Tuesday, March 27, 2018

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4 ATOMIC SAFETY AND LICENSING BOARD PANEL

5 + + + + +

6 HEARING

7 -----x

8 In the Matter of: : Docket No.

9 POWERTECH (USA), INC. : 40-9075-MLA

10 (Dewey-Burdock : ASLBP No.

11 In Situ Uranium : 10-898-02-MLA-BD01

12 Recovery Facility) :

13 -----x

14 Tuesday, March 27, 2018

15
16 Teleconference17
18 BEFORE:

19 WILLIAM J. FROEHLICH, Chair

20 DR. MARK O. BARNETT, Administrative Judge

21 G. PAUL BOLLWERK, III, Administrative Judge

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23

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P R O C E E D I N G S

1:36 p.m.

JUDGE FROEHLICH: We'll be on the record.

Good afternoon, all. It's about 1:37 Eastern Time.

This is Judge Froehlich in Rockville, Maryland. And, with me is Judge Bollwerk.

On the telephone line, we have Judge Barnett.

Also with us here in Rockville, Lindsay Simmons and Sarah Ladin who have been helpful in setting up this conference call for today.

This is a telephone status conference call in the matter of Powertech USA, Inc., Docket Number 40-9075-MLA concerning the Dewey-Burdock In Situ Uranium Recovery Facility.

Public Notice scheduling this telephone conference was issued on March 13th, 2018 and provision has been made for a bridge line 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 appearances of the parties to the proceeding. Is the licensee, Powertech and its counsel on the line?

MR. PUGSLEY: Yes, Your Honor. Chris

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WASHINGTON, D.C. 20005-3701

1 Pugsley for Powertech.

2 MR. THOMPSON: Tony Thompson for
3 Powertech.

4 JUDGE FROEHLICH: Thank you.

5 And, for the Intervenor, the Oglala Sioux
6 Tribe?

7 MR. PARSONS: Yes, Your Honor, Jeff
8 Parsons for the Tribe.

9 MR. STILLIS: And, Travis Stills, also for
10 the Tribe. Good morning.

11 JUDGE FROEHLICH: Thank you.

12 And, for the Consolidated Intervenors?

13 MR. FRANKEL: Hello, Your Honor, David
14 Frankel for Consolidated Intervenors.

15 JUDGE FROEHLICH: Thank you.

16 And, for the Commission staff?

17 MR. MONTEITH: Your Honor, Emily Monteith
18 for the NRC staff calling from Chicago, Illinois.

19 At Headquarters is my co-counsel, David
20 Cylkowski with Cinthya Roman and Kellee Jamerson of
21 the NRC staff and Diana Diaz-Toro on the listen only
22 line.

23 JUDGE FROEHLICH: Thank you. Thank you
24 all.

25 As we proceed through this call, if the

1 parties would kindly identify themselves before they
2 speak. It'll make things easier for our court
3 reporter and we'll have a better record of this
4 conference call.

5 This is the fifth telephone status
6 conference with the parties. We held the last call on
7 February 28th, 2018.

8 On March 16th, 2018, the NRC staff settled
9 on an approach to satisfy its responsibilities under
10 NEPA and to resolve the sole remaining contention in
11 this case.

12 And, disseminated its approach in letters
13 sent to all parties.

14 The NRC staff's March 2018 approach relies
15 on the support and participation of both the Licensee
16 and the Intervenors.

17 While we recognize that the parties have
18 been given until March 30th, this Friday, to provide
19 the NRC staff with their official responses, we'd like
20 to begin this conference by taking note of any initial
21 responses and actions the parties have taken.

22 I'd like to start with staff counsel, Ms.
23 Monteith, has the staff received any questions,
24 clarifications or had any communications with the
25 parties after sending out their March 16th letter?

1 MS. MONTEITH: Emily Monteith for the NRC
2 staff.

3 We received an acknowledgment from
4 Powertech that they have received our communication.
5 Other than that, we have received no input or
6 communications from the parties.

7 JUDGE FROEHLICH: Ms. Monteith, what other
8 actions has the staff undertaken during the past month
9 beyond the March 16th letter to prepare to resolve
10 Contention 1A?

11 MS. MONTEITH: Well, the bulk of the last
12 month was engaged in finalizing this approach and
13 issuing it to the parties.

14 The staff, I believe, they can confirm,
15 have also taken steps to obtain a contractor to
16 support implementation of the approach, and they have
17 confirmed that they have already begun that process.

18 JUDGE FROEHLICH: They have begun the
19 process? Okay.

20 Let me move on and inquire of Mr. Parsons,
21 can you tell me, at this point, whether the Oglala
22 Sioux Tribe is willing and ready to move forward to
23 implement the staff's March 2018 approach?

24 MR. PARSONS: Thank you, Your Honor, this
25 is Jeff Parsons on behalf of the Tribe.

1 We did receive the letter on the evening
2 of March 16th. We had previously scheduled travel
3 plans and a court hearing in the middle of the week of
4 the 19th.

5 And, due to that commitment, have been
6 unable to yet come to a clear vision of our response,
7 which we'll, of course, provide on March 30th, as
8 requested.

9 So, it's a little premature for me at this
10 point, I think, to sort of go into the details with
11 respect to our response.

12 I did note -- the Tribe did note that the
13 letter did reflect a substantial similarity to the
14 previous proposal, although there are some outstanding
15 issues that I think the Tribe will address in its
16 March 30th letter.

17 Sorry, I do not have more detail for you,
18 Your Honor.

19 JUDGE FROEHLICH: Mr. Parsons, in your
20 February 15th response to the NRC staff, you mentioned
21 some communication or outreach to the Rosebud Sioux
22 Tribe and the Standing Rock Sioux Tribe.

23 Have you conveyed the contents of the
24 March staff proposal to those parties?

25 MR. PARSON: I would have to check with my

1 client with respect to that fact, Your Honor. I
2 thought, and it looked like, looking at the letter
3 now, that there was an extensive cc list. So, while
4 it does look like the letter was sent to those
5 parties, I have yet to confirm with my client at to
6 that -- those conversations.

7 And, of course, the Tribe is, as it had
8 previously committed to reaching out to those Tribes,
9 I think one of the issues we're likely to address in
10 our March 30th letter deals with issues related to
11 compensation for the time that those Tribes and their
12 Tribal Historic Preservation Offices will need.

13 That was previously a component of the
14 proposal and it looks like there may be some -- that
15 it may not be quite as confirmed as it was previously.
16 And so, I do worry that that might cause some problems
17 in that regard.

18 JUDGE FROEHLICH: Okay. And, can I assume
19 that your communications will be to the other Sioux
20 Tribes that even beyond the Rosebud Sioux and the
21 Standing Rock Sioux Tribes as we go forward?

22 MR. PARSONS: Yes, Your Honor.

23 JUDGE FROEHLICH: Mr. Frankel, has there
24 been any response from the Consolidated Intervenors
25 regarding the staff's March 2018 approach?

1 MR. FRANKEL: Your Honor, David Frankel
2 for Consolidated Intervenors.

3 No, Your Honor, we haven't made any formal
4 response. We reviewed and it seemed consistent to the
5 prior staff statement of position.

6 And, in general, we view it favorably.

7 JUDGE FROEHLICH: Okay, thank you.

8 Now, I guess to Mr. Pugsley or Mr.
9 Thompson. Has Powertech formulated its response to
10 the staff's proposal to their March 2018 approach?

11 MR. PUGSLEY: Judge Froehlich, Chris
12 Pugsley for Powertech.

13 As is similar to Mr. Parsons case, we
14 received the communication from the staff on the 16th
15 of March. And, we were in the process of preparing
16 for oral arguments at D.C. Circuit Court of Appeals at
17 the time.

18 We have not had an opportunity to fully
19 vet the proposal and make any recommendations.

20 However, one thing that we think is
21 important and it's important for us to be able to make
22 a recommendation to our client is to ask a couple of
23 questions.

24 And, certainly, we don't expect that, you
25 know, the questions may be able to be answered at this

1 time, but these are things that we do think are
2 important.

3 One is that, we know that the staff in
4 their proposal had set out a time line for tasks to be
5 completed and milestones to be met. And, that, at
6 some point, there was a discussion of what the budget
7 associated with the proposal would be.

8 One -- the first question have is, which
9 party to this case or would it be the Board that would
10 be responsible for implementing and enforcing the
11 proposal?

12 And, two, what type of recourse is
13 available to any of the parties in this proceeding if
14 portions of that approach and budget are not met?

15 And, we just -- we just, you know, this is
16 a -- this is different from litigation. It's
17 different from an evidentiary hearing. So, we just --
18 we're not a 100 percent familiar with how these things
19 are conducted.

20 So, something, I mean, we would pose to
21 the staff as in terms of a question to be able to give
22 an informed recommendation to our client.

23 JUDGE BOLLWERK: This is Judge Bollwerk.

24 Ms. Monteith, do you want to respond to
25 that?

1 MS. MONTEITH: To the extent I'm able,
2 Your Honor.

3 We have set forth a time line associated
4 with this vested approach. And, I would note at the
5 outset that the time line is specific. We have given
6 over an extra month to obtain the, we hope, was the
7 specific input of the parties on our December 2017
8 proposal.

9 And, accordingly, we have make some
10 certain aspects of the time line in order to
11 effectuate a site survey in this year.

12 So, we would expect that -- we would hope
13 certainly that the Tribes would work within that time
14 frame. We've already reached out to the Tribes, the
15 Oglala Sioux Tribe previously to ask if they could
16 support a specific time line in this regard. And, we
17 received what we believed to be a positive response to
18 that.

19 With respect to the question about the
20 budget, we made no exact representation as to
21 compliance with the budget. We provided an estimate
22 what we thought the cost of implementing this approach
23 would be.

24 Our cost, and it's a large cost, is the
25 staff's time represented by one FTE and the cost of

1 the contractor at approximately \$250,000.

2 The rest of the estimate, no doubt, may
3 vary depending on the work involved.

4 And, this is comparable, this approach, in
5 terms of time frame to the December 2017 proposal in
6 that it shifts by approximately one month to
7 completion to account, again, for the extra month that
8 was taken up by obtaining input from the parties on
9 the December proposal.

10 As to who is responsible for holding
11 people accountable under -- in the framework of the
12 litigative proceeding, I would have to defer to the
13 Board on that.

14 JUDGE FROEHLICH: Right. This is Judge
15 Froehlich.

16 I'm not certain to what extent the staff
17 proposal will need enforcing nor am I certain, at this
18 point, what power the Board would have to enforce the
19 schedule.

20 It's the hope of the Board that we can all
21 approach this staff proposed schedule, and if seems
22 reasonable, that we will -- that all parties will do
23 their best to adhere to that schedule.

24 MS. MONTEITH: Your Honor, and may I
25 interject also --

1 JUDGE FROEHLICH: Sure.

2 MR. MONTEITH: -- on a related note to the
3 schedule?

4 I would emphasize that it is not likely
5 to be gainful for the staff to accommodate further
6 back and forth discussions about the merits of the
7 overall selected approach giving the very tight time
8 frame for implementing the approach involving site
9 survey this year.

10 So, there is time in the schedule to
11 discuss with the Tribes their input over a methodology
12 for a site survey, for example, it's built into the
13 schedule.

14 However, what we expect to hear from the
15 parties is a positive response that they will support
16 this approach. Beyond that, additional time to
17 discuss it further is likely to cause us to be unable
18 to support both the material elements of the approach
19 such as the site survey in June.

20 And, may affect the overall cost of the
21 approach significantly.

22 JUDGE FROEHLICH: Thank you.

23 I agree with your perspective on this, Ms.
24 Monteith. And, I do urge all the parties to speak up
25 as soon as possible and for the parties to discuss

1 with the staff any concerns they may have, you know,
2 at the earliest possible date and to move forward so
3 that we can adhere to the proposed schedule that is
4 part of the March 2018 approach that the staff has
5 proposed.

6 Mr. Pugsley, were there other questions,
7 I guess, that Powertech might have that we can get out
8 for and give the staff a heads up on what those
9 concerns are? And, maybe sort of get the parties to
10 focus on those concerns so that we can get it to a
11 schedule agreed to it and move forward?

12 MR. PUGSLEY: Your Honor, Chris Pugsley
13 for Powertech.

14 Essentially, the main concern of our --
15 mine and Mr. Thompson's client here is to better
16 understand exactly how this -- these procedures can be
17 followed because we've had -- we've gone through a
18 very, very long licensing process here.

19 And, the longer that we -- longer amount
20 of time we spend, the more it costs. And, that we
21 think that if we're -- if we can make an informed
22 recommendation to our client, it's going to have to be
23 based on the fact that the schedule implemented would
24 be adhered to.

25 And, you know, nothing, you know, nothing

1 is ever certain in a regulatory process. But, at the
2 same time, you know, the longer a process goes, and
3 the more you rely on best efforts versus adhering to
4 a schedule, the more it costs.

5 So, what we're basically saying is, you
6 know, if the staff has any thoughts or comments or
7 anything, not necessarily today, but perhaps in the
8 next day or two, that they think is worth sharing with
9 the parties in terms of how that can be done, that
10 certainly would help us get a, you know, make a
11 recommendation to our client.

12 And then, seeing what can be done moving
13 forward.

14 MS. MONTEITH: Your Honor, Emily Monteith
15 for the NRC staff.

16 JUDGE FROEHLICH: Thank you.

17 MS. MONTEITH: Maybe I can respond to this
18 to a certain level of satisfaction for counsel for
19 Powertech.

20 We specified the date for the date for the
21 site survey aspect of this approach because felt that
22 those were essential dates in order to facilitate the
23 entire approach.

24 There may be some questions early in the
25 second half of the site survey in terms of making it

1 earlier at the Tribes' request.

2 But, again, that's not something we
3 specifically discussed. But, I would say that, the
4 essential elements, in order -- in terms of preserving
5 the integrity of the overall approach would be to hold
6 the site survey on the dates the we indicate are the
7 dates necessary under this approach.

8 The other aspects of it in terms of timing
9 of meeting with Tribal councils, we've noted that we
10 would do that if feasible and consistent with the time
11 frame for this approach and also Tribal Elder
12 interviews, which we also submitted there could be
13 some flexibility in that if they wish to meet earlier
14 that the time frame as set forth.

15 But, if you look at the schedule as firmly
16 setting out what would be necessary in terms of the
17 timing in order to effectuate all of the elements that
18 we have included in order to meet the requests of the
19 overall Sioux Tribe and to provide them a reasonable
20 opportunity to obtain this information.

21 If the Tribes are unable to support the
22 time frame for the survey, that may affect our ability
23 to carry it out altogether.

24 JUDGE FROEHLICH: Thank you, Ms. Monteith.

25 Since you have, you know, raised this, the

1 dates of the site survey, I would like to ask of Mr.
2 Parsons if the dates of the time frames that the staff
3 has put forward are consistent with what the Tribes
4 was expecting or anticipated in hearing, indeed, that
5 these dates aren't significantly different from the
6 proposal -- the earlier proposal at the end of last
7 year?

8 How do those dates strike you, Mr. Parsons
9 or the Tribes?

10 MR. PARSONS: Thank you, Your Honor. Jeff
11 Parsons on behalf of the Tribe.

12 The dates are consistent with -- generally
13 consistent with the previous proposal. Again, I
14 think, you know, Ms. Monteith indicates that she sees
15 this proposal as very firm and I appreciate that.

16 But, there are some outstanding issues
17 with respect, for instance, to compensation for the
18 Tribes' time. I mean, we're talking about a fairly
19 extensive effort here and the Tribal Historic
20 Preservation Office, you know, runs on a budget and
21 has commitments to manage itself.

22 Without -- I wanted to flag, as Your Honor
23 indicated, was an important thing to do, I wanted to
24 flag that that's a significant issue for the Tribe to
25 essentially be in the position of taking -- having --

1 the prospect of having to take it upon itself to
2 support with its resources which are not extensive,
3 the survey effort without having any compensation for
4 its time, which had previously been a part of all of
5 the other proposals, that's a problem. I will not
6 sort of mince words in that regard.

7 And, that has not been resolved in this
8 last formal letter. So, that causes me some concern
9 with respect to having to commit the Tribe's resources
10 knowing or without knowing the extent to which their
11 time will be compensated.

12 I guess in a similar vein, in previous
13 conversations with staff, particularly in the
14 telephone conference call amongst the parties, the
15 Tribe indicated that it would like to have input on
16 the contractor as well as the scope for the work for
17 the contractor which was a component of the process in
18 prior years.

19 And the first sort of go-round, there was
20 discussion about who would be the contractor and what
21 the scope of work for that contractor would be.

22 Counsel for NRC staff indicated to us that
23 there was some legal impediment for them to provide us
24 that. And, we asked specifically for them to provide
25 us the basis for which we would be -- the Tribe would

1 be unable to give input on to who the contractor was
2 and what the scope of work for that contractor is.

3 And, to date, we have not received any of
4 that information. So, that would be another aspect
5 that causes us some concern with regard to the
6 proposal.

7 So, while I understand that it has a fair
8 amount of detail and is being firmed up, it does seem
9 to us there's significant components that are not
10 resolved from previous conversations.

11 MS. MONTEITH: Your Honor, Emily Monteith
12 for the NRC staff. If I may have an opportunity --

13 JUDGE FROEHLICH: Please.

14 MS. MONTEITH: Thank you.

15 With regard to the latter concern about
16 the involvement of the Tribe in the selection of the
17 contractor, it is our understanding, in consultation
18 with our counterpart in the Office of General Counsel
19 that Section 170(a) of the Atomic Energy Act, that
20 there are some organizational conflicts on interest
21 precludes us from involving the Tribe in the
22 contracting process under these circumstances.

23 There's also operation that precludes
24 providing the Tribe with information on the pool of
25 contractors available.

1 This is consistent with the way that we've
2 approached even with contractors to facilitate travel,
3 site surveys in every, I believe, occasion, we ever
4 have conducted Tribal site surveys, some of which the
5 Tribe has participated in.

6 The other point, the one that the Tribe
7 raised with respect to direct reimbursement of Tribal
8 expenses, we acknowledge that there are expenses that
9 made it difficult for the Tribe.

10 And, accordingly, with respect to the
11 Tribes that consider offering some reimbursement along
12 those lines.

13 I would note, though, that the
14 circumstances surrounding the direct reimbursement of
15 travel expenses are the same as they were under the
16 December proposed approach.

17 The Tribe has acknowledged that these
18 reimbursements are in conflict when the Tribe stated
19 that they believed reimbursement for the time and
20 effort is appropriate in their response to our
21 specific questions when we were consulting on the 2017
22 proposed approach.

23 Which, they did not rate this as an
24 impediment for participation.

25 So, I would also note there are real costs

1 associated in implementing this approach, most notably
2 the cost of the licensee and cost time and the cost of
3 having the contractors implement the approach and
4 facilitate the site survey.

5 The staff believes that this approach is
6 a reasonable one in light of the overall feedback on
7 costs provided by both of the parties. And, we hope
8 that the overall Sioux Tribe and other courtesy Tribes
9 participate in this approach given the Tribe itself
10 viewed the December 2017 proposal which is comparable
11 and essential with respect to this approach is a
12 reasonable methodology for resolving their concerns.

13 Finally, I would note that they did not do
14 the proposal, this is staff's collective approach for
15 resolving Contention 1A.

16 JUDGE FROEHLICH: Thank you, Ms. Monteith.

17 What is the status, I guess, of the
18 compensation for Tribal time or for direct
19 reimbursement or any monies from Powertech to the
20 Tribe? What is the position, I guess, of Powertech on
21 that issue at this point?

22 MR. PUGSLEY: Your Honor, Chris Pugsley
23 for Powertech.

24 We currently do not have a position on
25 this at this time because we have not had an

1 opportunity to fully vet the March 16th communication
2 from the staff.

3 JUDGE FROEHLICH: Okay.

4 JUDGE BOLLWERK: This is Judge Bollwerk.

5 So, we're coming up on a date on Friday
6 when there's supposed to be formal responses made to
7 the staff's March 16th letter.

8 I've heard from the Oglala Sioux that they
9 have two concerns they're probably going to be putting
10 into that letter which we've heard some response from
11 Ms. Monteith about.

12 Will Powertech be in a position on Friday
13 to say something about the things that they haven't
14 said anything about to this point that obviously seem
15 to be concerns?

16 MR. PUGSLEY: Your Honor, Chris Pugsley
17 for Powertech.

18 We're going to do our best to come up with
19 a formal response by that point. That's our goal.
20 But, you know, as I've said previously, we've -- we
21 haven't had a chance to fully go through this because
22 it is a -- you know, we were tied up in the D.C.
23 Circuit and we had -- it's a large financial
24 commitment. So, it has to be run through all channels
25 of the corporate chain.

1 So, we are working toward that goal. Our
2 goal is to have a response and if we have any concerns
3 to articulate those in the communication to the staff.

4 So, that is what our objective is.

5 JUDGE FROEHLICH: Okay, can we go off the
6 record one second, please?

7 Thank you.

8 (Whereupon, the above-entitled matter went
9 off the record at 2:02 p.m. and resumed at 2:03 p.m.)

10 JUDGE FROEHLICH: We'll be back on the
11 record. This is Judge Froehlich.

12 From what we've heard from the parties, I
13 would like to try to put some procedures in place so
14 that the parties have a chance to discuss this in a
15 meaningful manner and that so the Commission staff
16 will get all the input they need or responses so they
17 can go forward with their approach and adhere to the
18 proposed schedule which is a part of that approach.

19 It seems that, at this point, the parties
20 still haven't put their formal responses together.
21 And, if they are -- they will, I hope, have those
22 responses formalized by the end of the week.

23 And, I would propose that the parties
24 discuss this among themselves early next week, Monday,
25 Tuesday, Wednesday, and by the end of the week, I

1 think we should have a follow up telephone status
2 conference with the Board to see where we all are and
3 whether there are enough assurances among the parties
4 to gauge their support for it so that the staff can
5 make a decision it must make to go forward with its
6 proposed schedule.

7 MS. MONTEITH: Your Honor, if I may
8 comment?

9 JUDGE FROEHLICH: Please.

10 MS. MONTEITH: Emily Monteith for the
11 staff.

12 We are at a point where we do need to
13 disseminate a statement of oneness to participate
14 within approximately one, maybe at the very outset,
15 two weeks. And, at that time, we would have to
16 determine where we would go from there.

17 But, there just isn't built into this, at
18 this point, with the additional month that it took
19 even to get the feedback from the parties that we have
20 received.

21 This is running up to a point where there
22 just simply may not be the possibility of carrying out
23 the survey as we described it in this approach.

24 So, I'm hesitant to suggest that we
25 continue to consult on these questions if we think

1 that they aren't minor issues that would allow the
2 parties to reach an alignment within the next handful
3 of days.

4 To the extent I am able to address those
5 concerns proactively in this teleconference, I am
6 happy to do so. I think I have responded to Mr.
7 Parsons questions about the legal impediment to
8 involving the Tribe in a site survey -- in the
9 selection of a contractor.

10 And, the fact that we defer to Powertech
11 on the provision of the direct reimbursement, maybe
12 the Tribe can engage with Powertech directly on that
13 question.

14 If there's any other information that we
15 can provide that may enable us to -- provide that
16 information that they can carry back to their clients
17 in for them to support the 31st deadline for response,
18 I would like to attempt that here.

19 JUDGE BOLLWERK: This is Judge Bollwerk.

20 Again, there's nothing that precludes the
21 parties having a conference later in the week among
22 themselves, but it will have to be before Friday. And,
23 maybe you can forego a formal response altogether.

24 I just hear people that are simply saying
25 that, they haven't heard enough from their clients and

1 they're not going to have anything until Friday.

2 But, if you all can talk before Friday and
3 settle this all among yourselves without exchanging
4 paper, that's okay, too.

5 But, we're just trying to bring this to
6 closure in some way, shape or form. And, within the
7 near-term, not within three weeks or two weeks like
8 next week. So, get a memo.

9 MS. MONTEITH: Thank your, Your Honor.

10 And, I appreciate it and I apologize, I
11 didn't mean to step on your toes with that.

12 I'm just trying to see to what extent we
13 can kind of, with you, facilitate the information for
14 any legal concerns that I can address, and I'm happy
15 to do so.

16 And, just to note that, you know, a
17 response that indicates further concerns don't align
18 is not effectively be your response that is, in
19 effect, a rejection of the approach and our inability
20 to carry it out.

21 That's all.

22 JUDGE FROEHLICH: I'm just struggling at
23 this point to see what conversations should be held
24 and what processes can be put in place so that these
25 concerns or whatever that the parties have raised can

1 be addressed by the staff and the staff can, you know,
2 make the decisions it must make in order to go forward
3 in conformity with its proposed schedule.

4 Is there any reason why the parties can't
5 being that discussion before Friday so that the
6 responses that come to the staff on Friday will have,
7 you know, positions or responses and the firm
8 indication of their willingness to participate by
9 Friday? Is there any reason why the parties can't
10 engage in this conversation before Friday?

11 Parsons, are you available to speak with
12 Powertech?

13 MR. PARSONS: I have some travel this
14 week, so I have to manage around that, but I'm
15 certainly willing to make time.

16 JUDGE FROEHLICH: Okay.

17 And, Mr. Pugsley, is your schedule such
18 that you can engage conversation with Mr. Parsons and
19 the Tribes in advance of Friday's staff deadline?

20 MR. PUGSLEY: Your Honor, Chris Pugsley
21 for Powertech.

22 It will -- that will, obviously, depend on
23 what input we receive from our client regarding this.
24 But, in the event that we are to receive a directive
25 from them, then we certainly will -- would be happy to

1 reach out to Mr. Parsons and talk to him about it
2 about it.

3 But, I, unfortunately, can't give you a
4 firm date and I know I know Mr. Parsons is trying to
5 communicate with his clients. So, I, you know, at
6 this time, I can't offer a date, but I certainly can
7 notify all parties if we have an input from our client
8 and then if discussions are to be had, they would be
9 had.

10 JUDGE FROEHLICH: Okay.

11 MR. PARSONS: This is Mr. Parsons again.

12 Mr. Pugsley, I can accommodate to your
13 schedule. So, if you let me know when you're
14 available and I will make it happen.

15 MR. PUGSLEY: All right. Well, I
16 appreciate that and I think that Mr. Thompson and I
17 will talk to our client and figure out what their
18 position is, and then we'll get in touch with you as
19 soon as we can.

20 And, what we -- what I can commit to, Your
21 Honor, is that in the event that we can't formulate a
22 position prior to -- because the proposal requested a
23 response by Friday.

24 JUDGE FROEHLICH: Right.

25 MR. PUGSLEY: But, you know, but in the

1 event that it can't be done by Friday, but could be
2 done by the beginning of next week, we would be more
3 than happy to notify all the parties that -- of when
4 we will have a directive.

5 And, that we certainly, you know, if Mr.
6 Parsons would like to have a conversation, we're more
7 than open to that.

8 JUDGE FROEHLICH: Okay.

9 MS. MONTEITH: And, Your Honor, this is
10 Emily Monteith for the NRC staff again.

11 I've spoken with the staff, and it's if we
12 receive something next week, I think that will be
13 acceptable as long as it is an affirmative response or
14 I should say a definitive response.

15 JUDGE FROEHLICH: Ms. Monteith, is there
16 anything else that comes to mind that the staff --
17 that the Board could do to, I guess, help you get
18 those definitive responses or otherwise take action
19 that will allow you to adhere to the proposed schedule
20 for the December approach?

21 MS. MONTEITH: Your Honor, I appreciate
22 your previous suggestion. Aside from that, I have no
23 other ideas myself except that we rely upon the good
24 faith of the parties to either provide us a response
25 by Friday or indicate that they're going to provide

1 one by a date certain next week, within a few days of
2 the next week.

3 We can -- anything that we've done to add
4 support we can file with you and, perhaps if the other
5 parties file their responses can currently just send
6 them into us, you'll be informed as to the status of
7 that.

8 And, you can determine whether to set a
9 further teleconference next week and abate this. Is
10 that feasible?

11 JUDGE FROEHLICH: I think that would be
12 helpful, that in the beginning of the week or the
13 early part of the week, we'll hear something from the
14 staff.

15 JUDGE BOLLWERK: This is Judge Bollwerk.
16 Monday or Tuesday hopefully.

17 JUDGE FROEHLICH: Right. And, I think
18 that the parties should expect on short notice a
19 follow up status call with the Board towards the end
20 of next week based on the input from the staff and
21 responses that they receive from the parties.

22 I don't know if there's anything else that
23 the Board can do at this stage other than to remind
24 the parties that this is the -- it looks like the last
25 best approach to resolving the remaining contention

1 and that the parties should take this opportunity to
2 work with the staff to resolve this outstanding
3 contention.

4 Judge Bollwerk, any thoughts or --

5 JUDGE BOLLWERK: No, I just echo what
6 Judge Froehlich said. I think you're at a point now,
7 all of you, where you're -- this is the critical time
8 to sit down and really think about it seriously and
9 try to move this forward.

10 I think the staff has made a good faith
11 effort and I hope the other parties will respond to
12 that in good faith as well.

13 JUDGE FROEHLICH: Judge Barnett?

14 JUDGE BARNETT: I have nothing else.

15 JUDGE FROEHLICH: All right.

16 So, any of the parties have anything
17 further they'd like to say before we conclude today's
18 status conference?

19 How about a commitment to work diligently
20 on resolving the outstanding concerns and to meet in
21 good faith early in the week?

22 JUDGE BOLLWERK: If not this week.

23 JUDGE FROEHLICH: If not this week.

24 All right, thank you.

25 All right, hearing nothing further, we'll

1 leave it at that. I expect to hear from the staff
2 early next week and we'll come up with further
3 procedures based on that report from the staff.

4 Thank you.

5 (Whereupon, the above-entitled matter went
6 off the record at 2:15 p.m.)

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