

June 19, 2018

William J. Froehlich, Chair
Administrative Judge
Atomic Safety and Licensing Board Panel
Mail Stop T-8 C05
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Mark O. Barnett
Administrative Judge
Atomic Safety and Licensing Board Panel
Mail Stop T-8 C04
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

G. Paul Bollwerk, III
Administrative Judge
Atomic Safety and Licensing Board Panel
Mail Stop T-8 C05
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

In the Matter of
POWERTECH (USA) INC.,
Docket No. 40-9075-MLA; ASLBP No. 10-898-02-MLA-BD01

Dear Administrative Judges:

On June 1, 2018, the Staff submitted its monthly status report regarding the progress of its efforts to resolve Contention 1A. Therein, the Staff described its efforts to involve the invited Tribes in the selected survey approach¹ up to the date of the first webinar/teleconference to discuss the areas to be examined and the survey methodology to be implemented during the tribal field survey scheduled for June and September 2018.

On June 1, June 4, and June 5, 2018, the Staff conducted webinar/teleconferences with the participation of the Oglala Sioux Tribe (the Tribe) or its counsel.² On June 11 and 12, 2018, at the request of the Tribe, Ms. Diana Diaz-Toro of the Staff and Dr. Paul Nickens of SC&A (the Staff's contractor) met with Mr. Kyle White and Tribal representatives at the Tribal Historic Preservation Office in Pine Ridge, South Dakota, to continue discussions and reach agreement on the methodology for the tribal field survey to be conducted the weeks of June 11 and June 18.³

¹ See Letter from E. Monteith, Counsel for the Staff, to the Administrative Judges (Mar. 16, 2018) (informing the Board of the selected survey approach). The approach not only considered the information provided by the Tribe and Powertech, but incorporated the essential elements of the Staff's December 2017 proposal, which the Tribe represented provided a reasonable likelihood of resolving Contention 1A. Letter from C. Roman, NRC, to T. Lone Hill, Oglala Sioux Tribe (Mar. 16, 2018) (appended to the Staff's March 16 letter to the Administrative Judges).

² Mr. Ben Rhodd, Tribal Historic Preservation Officer of the Rosebud Sioux Tribe, also participated in the June 5, 2018 webinar/teleconference.

³ None of the other invited Tribes either communicated to the Staff an intent to participate in the Staff's Phase I field survey effort or participated in the discussions held in Pine Ridge with the Oglala Sioux Tribe during the week of June 11, 2018. No Tribes appeared at the designated gathering place for the field survey on June 11.

On the evening of Tuesday, June 12, 2018, the Tribe provided Ms. Diaz-Toro and Dr. Nickens with a new cultural resources survey proposal for the Dewey-Burdock project independently developed by the Oglala Sioux Tribe and its consultants. On Wednesday, June 13, the Oglala Sioux Tribe Cultural Affairs and Historic Preservation Advisory Council met to discuss a Dewey-Burdock cultural resources survey approach. At the request of the Tribe, Ms. Diaz-Toro and Dr. Nickens attended the meeting to answer questions about the Staff's selected approach. On Friday, June 15, the Tribe provided to Ms. Diaz-Toro and Dr. Nickens an updated survey proposal, which is substantially similar to the Tribe's June 12 proposal.⁴

After reviewing the Tribe's cultural resources survey proposal, the Staff has determined that the Tribe's proposal is fundamentally incompatible with implementation of the selected approach. The Tribe's proposal contemplates a wide range of activities and milestones that were not part of the approach previously negotiated with the Tribe and parties and presented to the Board – the Tribe's proposal is significantly larger in scope and would entail costs and completion times that differ dramatically from the selected approach. This contrast is highlighted by the Tribe's description of the activities to be conducted during the June tribal field survey effort, an integral part of the selected approach, as no more than preliminary work under the Tribe's new proposed approach.

Given how far apart the Tribe's new proposal is from what the Staff expected going into the June field survey, the Staff has determined that neither a response to the proposal nor alignment with the Tribe would be feasible before the end of the second week of the June field survey. The Tribe's proposal entails structural differences from the selected approach, rather than minor details that could be promptly resolved. Without having confidence that the Staff could reach alignment with the Tribe on the fundamental parameters of a cultural resources survey within this timeframe, the Staff was not prepared to continue incurring day-to-day staff and contractor costs at the Dewey-Burdock site. Accordingly, the Staff informed the Tribe and Powertech on Friday, June 15, 2018, that the Staff had discontinued any June tribal field survey activities.

The Staff is considering the next steps and options available to it in light of the Tribe's June 15 proposal. The Staff will update the Board and parties on the status of its deliberations on or before July 2, 2018.

Respectfully submitted,

***/Signed (electronically) by/
Emily Monteith***

Emily Monteith
Counsel for NRC Staff

⁴ Both the June 12 and June 15 versions of the Tribe's proposal seek to impose significant restrictions on further sharing of the proposals, including with other NRC employees. The Staff has not yet determined whether the proposals may be withheld from public disclosure, in whole or in part, consistent with applicable law (including applicable federal records requirements). Pending that determination, the Staff is maintaining the proposals as non-public. In the meantime, if the Board considers it appropriate to view the proposals, the Staff requests that such viewing be accomplished through an *in camera* filing or similar approach.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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)	Date: June 19, 2018
Facility))	

CERTIFICATE OF SERVICE

Pursuant to 10 C.F.R. § 2.305, I hereby certify that copies of the "LETTER TO BOARD" in this proceeding have been served via the Electronic Information Exchange (EIE), the NRC's E-Filing System, this 19th day of June, 2018. Counsel for the Staff served those representatives exempted from filing through the EIE with copies of its update by electronic mail, also on June 19, 2018.

***/Signed (electronically) by/
Emily Monteith***

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