

July 2, 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 C05
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 19, 2018, the Staff updated the Board on the status of its efforts to resolve Contention 1A. The Staff notified the Board that it was considering the next steps and options available to it in light of the Tribe's June 15, 2018 cultural resources survey proposal and the Staff's resulting decision to discontinue any June tribal field survey activities under the Staff's March 16, 2018 selected survey approach.

This morning, the Staff informed the Oglala Sioux Tribe that it cannot accept the Tribe's new cultural resources survey proposal.¹ Given how far apart the Tribe's new proposal is from the selected approach—an approach previously described by the Tribe as providing a reasonable path toward satisfying NEPA—the Staff believes it cannot reach alignment with the Tribe on an approach to resolve the outstanding contention in this proceeding. The Tribe's participation in the selected approach is essential to the success of the March 16, 2018 selected approach. As a result, the Staff has determined that it will discontinue its efforts to implement the selected approach.

¹ The Staff has determined that these proposals may contain proprietary information. Accordingly, the Staff is maintaining these documents as non-public in ADAMS and identifying them on a proprietary information log in the July 2018 hearing file update.

In the near term, the Staff plans to request that the Board set a schedule for filing summary disposition motions in this proceeding.

Respectfully submitted,

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

Emily Monteith
Counsel for NRC Staff

Enclosure: Letter from NRC to Oglala Sioux Tribe Re: Oglala Sioux Tribe's Proposed Cultural Resources Survey Methodologies (Jul. 2, 2018)



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

July 2, 2018

Mr. Kyle White, Interim Director
Oglala Sioux Tribe Natural
Resources Regulatory Agency
Oglala Sioux Tribe
P.O. Box 320
Pine Ridge, SD 57770

SUBJECT: U.S. NUCLEAR REGULATORY COMMISSION'S RESPONSE TO THE
OGLALA SIOUX TRIBE'S PROPOSED CULTURAL RESOURCES SURVEY
METHODOLOGIES AT THE DEWEY-BURDOCK IN SITU URANIUM
RECOVERY PROJECT IN FALL RIVER AND CUSTER COUNTIES, SOUTH
DAKOTA (DOCKET NUMBER: 40-9075)

Dear Mr. White:

This letter is in response to the Oglala Sioux Tribe's cultural resources survey proposal provided in draft form to the U.S. Nuclear Regulatory Commission (NRC) staff on June 12, 2018, and in revised form on June 15, 2018.

The Oglala Sioux Tribe's new cultural resources survey proposal outlines an approach that is fundamentally incompatible with implementation of the NRC staff's March 16, 2018, selected approach, which was previously negotiated with the Tribe and parties and presented to the Atomic Safety and Licensing Board Panel. The Tribe's proposal includes a wide range of activities and milestones that were not part of the negotiated approach. Specifically, the 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 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. Further, the Oglala Sioux Tribe's new proposal does not appear to contemplate the participation of other Tribes or the costs associated with involving those Tribes in such an approach.

The Tribe states in its new proposal that it is now NRC's task to accept the Tribe's proposal or propose an alternative approach that tailors the Tribe's proposal to meet what the NRC staff would consider to be a reasonable budget. For the reasons described above, the NRC is unable to accept the Oglala Sioux Tribe's new proposal. NRC considers the March 16, 2018 selected approach to be a reasonable approach that is not cost-prohibitive to implement. Moreover, the selected approach, which reflects a reasoned assessment of both scope and cost, is premised upon extensive previous discussions with the Tribe and the licensee.

The Tribe's participation in the March 16, 2018, selected approach is essential to the success of that approach. Given how far apart the Tribe's new proposal is from the selected approach—an approach previously described by the Tribe as providing a reasonable path toward satisfying National Environmental Policy Act of 1969 the NRC staff believes it cannot reach alignment with the Tribe on an approach to resolve the outstanding contention in this proceeding. Accordingly,

the NRC staff has determined that the appropriate course of action is to discontinue its efforts to implement the selected approach.

The NRC staff would again like to express its appreciation for the opportunity to meet with members of the Oglala Sioux Tribe last month at the Pine Ridge Reservation.

In accordance with Title 10 of the *Code of Federal Regulations*, Part 2.390, a copy of this letter will be available electronically for public inspection in the NRC Public Document Room or from the Publicly Available Records component of NRC's Agencywide Documents Access and Management System (ADAMS). ADAMS is accessible from the NRC Website at <http://www.nrc.gov/reading-rm/adams.html>.

If you have any questions or comments, please contact Ms. Kellee Jamerson of my staff. Ms. Jamerson can be reached at (301) 415-7408 or via e-mail at Kellee.Jamerson@nrc.gov.

Sincerely,

/RA/

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

Docket No. 40-9075
License No. SUA-1600

cc:

Mr. Troy "Scott" Weston, President
Oglala Sioux Tribe
Mr. Jeff C. Parsons, Counsel
for the Oglala Sioux Tribe
Mr. Travis E. Stills, Counsel
for the Oglala Sioux Tribe

K. White

SUBJECT: U.S. NUCLEAR REGULATORY COMMISSION'S RESPONSE TO THE OGLALA SIOUX TRIBE'S PROPOSED CULTURAL RESOURCES SURVEY METHODOLOGIES AT THE DEWEY-BURDOCK IN SITU URANIUM RECOVERY PROJECT IN FALL RIVER AND CUSTER COUNTIES, SOUTH DAKOTA (DOCKET NUMBER: 40-9075)

DATED: July 2, 2018

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*** via email**

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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: July 2, 2018
Facility))	

CERTIFICATE OF SERVICE

Pursuant to 10 C.F.R. § 2.305, I hereby certify that copies of the "NRC STAFF'S STATUS REPORT" in this proceeding have been served via the Electronic Information Exchange (EIE), the NRC's E-Filing System, this 2nd day of July, 2018. Counsel for the Staff served those representatives exempted from filing through the EIE with copies of its update by electronic mail, also on July 2, 2018.

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

Emily Monteith
Counsel for NRC Staff
U.S. Nuclear Regulatory Commission
Mail Stop O-14A44
Washington, DC 20555-0001
(301) 415-0926
Emily.Monteith@nrc.gov