

July 5, 2018

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
	)	
(Dewey-Burdock In Situ Uranium Recovery Facility)	)	ASLBP No. 10-898-02-MLA-BD01

MOTION TO SET FILING DEADLINE FOR SUMMARY DISPOSITION MOTIONS

On October 19, 2017, the Atomic Safety and Licensing Board (Board) issued a Memorandum and Order that set forth a litigation schedule for, *inter alia*, the filing of dispositive motions to resolve the remaining contention in this proceeding.<sup>1</sup> The Order required parties to submit any motion for summary disposition by April 20, 2018. On April 12, 2018, as a result of the U.S. Nuclear Regulatory Commission (NRC) Staff's selection and implementation of a new approach (March 2018 approach) to identify Lakota Sioux cultural resources, and Powertech's and the Oglala Sioux Tribe's expressed support for and willingness to participate in the Staff's selected approach, the Board issued an order suspending the litigation schedule, including the scheduled dates for dispositive motions.<sup>2</sup>

On June 12 and June 15, 2018, the Oglala Sioux Tribe presented the Staff with a cultural resources survey proposal for the Dewey-Burdock project. On July 2, 2018, the Staff informed the Oglala Sioux Tribe that the Tribe's proposal was fundamentally incompatible with the March 2018 approach, and, as a result, the Staff was discontinuing its efforts to implement

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<sup>1</sup> *Powertech (USA), Inc.* (Dewey-Burdock In Situ Uranium Recovery Facility), LBP-17-09, 86 NRC 167 (2017).

<sup>2</sup> Order (Suspending Scheduled Dates for Dispositive Motions and Evidentiary Hearing on Contention 1A) (Apr. 12, 2018) (unpublished) (ADAMS Accession No. ML18102A715).

the March 2018 approach. In its status update dated July 2, the Staff informed the Board and parties that the Staff believes it cannot reach alignment with the Tribe on an approach to resolve Contention 1A, the outstanding contention in this proceeding. Accordingly, the Staff respectfully requests that the Board institute a deadline for the filing of summary disposition motions to resolve Contention 1A.<sup>3</sup>

In accordance with 10 C.F.R. § 2.232(b), the Staff has consulted with counsel for the other parties to obtain their views on this motion. Powertech supports this motion. The Consolidated Intervenors oppose the motion.

The Oglala Sioux Tribe indicated that it would need more time to provide its position on the motion and therefore reserves the right to file in opposition. The Tribe observed that July is a very difficult month for coordinating with the Oglala Sioux Tribe cultural resource staff due to ceremonial obligations. The Tribe further stated that due to counsel's obligations in other court proceedings, as well as scheduled vacation plans, in order to allow the Tribe's counsel the opportunity to coordinate with the Tribal government and have adequate time for preparation, the Tribe would request that any motion propose a filing date no earlier than August 17.

Given the Staff's determination that it cannot move forward with the selected approach, for which schedule milestones had been previously negotiated among the parties, the Staff views the timely resolution of these issues as essential to determining the path forward in this proceeding. Accordingly, the Staff is prepared to support a filing date for summary disposition motions of July 23, 2018. Nevertheless, in light of the Tribe's representations about its schedule, the Staff would not oppose a revised deadline of August 17.

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<sup>3</sup> 10 C.F.R. § 2.323(a) specifies that motions must be filed no later than ten (10) days after the occurrence or circumstance from which the motion arises. Because Staff indicated to the Tribe its intent to discontinue efforts to implement the March 2018 approach on July 2, 2018, motions for summary disposition arguably would be due July 12, 2018, absent an alternative schedule.

Respectfully submitted,

***/Signed (electronically) by/  
Lorraine Baer***

Lorraine Baer  
Counsel for the NRC Staff

Dated at Rockville, Maryland  
this 5th day of July, 2018