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**NUCLEAR REGULATORY COMMISSION**

Title: Powertech USA

Docket Number: 40-9075-MLA

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

Location: teleconference

Date: Thursday, December 6, 2018

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UNITED STATES OF AMERICA

NUCLEAR REGULATORY COMMISSION

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ATOMIC SAFETY AND LICENSING BOARD PANEL

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SCHEDULING CONFERENCE CALL

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In the Matter of: : Docket No.  
POWERTECH USA, INC. : 40-9075-MLA  
: ASLBP No.  
(Dewey-Burdock In : 10-898-02-MLA-BD01  
Situ Uranium Recovery :  
Facility) :

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Thursday, December 6, 2018

Teleconference

BEFORE:

WILLIAM J. FROELICH, Chair  
MARK O. BARNETT, Administrative Judge  
G. PAUL BOLLWERK III, Administrative Judge

1 APPEARANCES:

2

3 Counsel for the Applicant

4 Christopher S. Pugsley, Esq.

5 Anthony J. Thompson, Esq.

6 of: Thompson & Pugsley, PLLC

7 1225 19th Street, NW

8 Suite 300

9 Washington, DC 20036

10 202-496-0780

11 cpugsley@athompsonlaw.com

12 athompson@athompsonlaw.com

13

14 On Behalf of the Nuclear Regulatory Commission

15 Lorraine Baer, Esq.

16 of: U.S. Nuclear Regulatory Commission

17 Office of the General Counsel

18 Mail Stop O-15D21

19 Washington, DC 20555-0001

20 301-415-4126

21 lorraine.baer@nrc.gov

22

23

24

25

1           On Behalf of the Oglala Sioux Tribe

2           Jeffrey C. Parsons, Esq.

3       of:   Western Mining Action Project

4           P.O. Box 349

5           Lyons, CO 80540

6           wmap@igc.org

7

8           Travis E. Stills, Esq.

9       of:   Energy & Conservation Law

10          1911 Main Avenue

11          Suite 238

12          Durango, CO 81310

13          970-259-8046

14          stills@frontier.net

15

16          On Behalf of the Consolidated Intervenors

17          David C. Frankel, Esq.

18       of:   Western Mining Action Project

19          1430 Haines Avenue, #108-372

20          Rapid City, CO 57701

21          arm.legal@gmail.com

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On Behalf of the Consolidated Intervenors

Thomas J. Ballanco, Esq.

945 Traval Street, #186

San Francisco, CA 94116

harmonicengineering@gmail.com

## P R O C E E D I N G S

(4:00 p.m.)

1  
2  
3 JUDGE FROELICH: Good afternoon, all.  
4 It's 4:00 p.m. Eastern Time. This is Judge Froelich  
5 in Rockville, Maryland. With me is Judge Bollwerk and  
6 on the telephone line is Judge Barnett.

7 Also with me here in Rockville are our law  
8 clerks, Ms. Taylor Mayhall and Joe McManus, who have  
9 been instrumental in helping the Board arrange today's  
10 teleconference.

11 This is a telephone status conference in  
12 the matter of Powertech USA, Inc., Docket Number  
13 409075MLA, concerning the Dewey-Burdock In Situ  
14 Uranium Recovery Facility.

15 Public notice scheduling this telephone  
16 conference was issued on December 3, 2018 and  
17 provisions have been made for a bridge line for the  
18 parties to this case and for a listen-only line for  
19 interested members of the public.

20 At this time, I would like take the  
21 appearances and poll the parties online. Is the  
22 licensee, Powertech, and its counsel on the line?

23 Powertech, are you on the line?

24 Are the intervenors, the Oglala Sioux  
25 Tribe or the Consolidated Intervenors on the line?

1 And the Commission staff, are you with us?

2 MS. BAER: Good afternoon, Your Honor.  
3 This is Lorraine Baer, counsel for the NRC staff.  
4 With me in the room is Cynthia Roman and Kelly  
5 Jamerson and on listen-only mode, we have Diana Diaz-  
6 Toro, Jean Trefethen, and my co-counsel, Emily  
7 Monteith.

8 JUDGE FROELICH: Thank you, Ms. Baer. I'm  
9 not quite sure what we should be doing at the moment,  
10 since we don't seem to have either of the intervenors  
11 or Powertech with us. Why don't we just hold for a  
12 moment and we'll see if we can get them onboard?

13 MS. BAER: Okay, thanks.

14 (Whereupon, the above-entitled matter went  
15 off the record at 4:03 p.m. and resumed at 4:07 p.m.)

16 JUDGE FROELICH: Good afternoon, all.  
17 It's almost ten after four Eastern Time. This is  
18 Judge Froelich in Rockville, Maryland and with me is  
19 Judge Bollwerk. On the telephone line is Judge  
20 Barnett.

21 Also here with me in Rockville are our law  
22 clerks, Ms. Taylor Mayhall and Joseph McManus, who  
23 have been instrumental in helping the Board arrange  
24 today's teleconference.

25 This is a teleconference status in the

1 matter of Powertech USA, Inc., Docket Number 40-  
2 9075MLA concerning the Dewey-Burdock In Site Uranium  
3 Recovery Facility.

4 Public notice scheduling this telephone  
5 conference as issued on December 3, 2018 and provision  
6 has been made for a bridge line, finally, for the  
7 parties to this case and for a listen-only line for  
8 interested members of the public.

9 At this time, I would like to formally  
10 take the appearances from the parties to this  
11 proceeding.

12 Is the licensee, Powertech, and its  
13 counsel online?

14 MR. PUGSLEY: Yes, Christopher Pugsley on  
15 behalf of Powertech, Your Honor.

16 MR. THOMPSON: And Anthony Thompson,  
17 counsel for Powertech.

18 JUDGE FROELICH: Thank you, gentlemen.

19 And for the intervenor the Oglala Sioux  
20 Tribe?

21 MR. PARSONS: This is Jeff Parsons on  
22 behalf of the Tribe.

23 MR. STILLS: And this is Travis Stills,  
24 also on behalf of the Tribe.

25 JUDGE FROELICH: Thank you, gentlemen.

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1 And for the Consolidated Intervenors?

2 MR. FRANKEL: David Frankel here for the  
3 Consolidated Intervenors.

4 MR. BALLANCO: This is Tom Ballanco for  
5 Consolidated Intervenors.

6 JUDGE FROELICH: Thank you, gentlemen.

7 And for the Commission staff?

8 MS. BAER: Hello, Your Honor. This is  
9 Lorraine Baer, counsel for the NRC staff. With me in  
10 the room is Cynthia Roman and Kelly Jamerson and on  
11 the listen-only line, my co-counsel Emily Monteith,  
12 Diana Diaz-Toro, and Jean Trefethen.

13 JUDGE FROELICH: Thank you very much.  
14 Thank you all.

15 As we proceed through this call, if the  
16 parties would identify themselves before they speak,  
17 it would make things easier for our court reporter and  
18 we'll have a better record of this conference call.

19 We are holding this telephone status call  
20 because the Board wants the parties to this proceeding  
21 to know that the Board will do everything it can to  
22 move this case to an expeditious resolution on the  
23 sole remaining contention in this case.

24 On March 16, 2018, the NRC staff notified  
25 the parties and the Board that it had selected an

1 approach to resolve Contention 1A. The staff has  
2 described the March 2018 approach as a reasonable  
3 means to remedy the deficiencies identified by the  
4 Board with respect to the staff environmental review  
5 of the Tribal Cultural Resources that may be affected  
6 by the Dewey-Burdock project.

7 From the Board's perspective, the March  
8 2018 approach represented a reasonable approach for  
9 identifying sites of significance to the Oglala Sioux  
10 Tribe and gathering information to supplement the NRC  
11 staff's analysis of the final supplemental  
12 environmental impact statement.

13 After a series of telephone conferences  
14 with the Board and discussions among the parties, the  
15 Oglala Sioux Tribe, Consolidated Intervenors, and  
16 Powertech USA, Inc. began the implementation of the  
17 March 2018 approach and all agreed that that approach  
18 was a reasonable approach to identify the sites and to  
19 gather information necessary for the staff to prepare  
20 a comprehensive cultural resource survey associated  
21 with the project.

22 The March 2018 approach incorporated  
23 elements that the Oglala Sioux Tribe had described in  
24 a May 31, 2017 letter to the staff as necessary for  
25 accomplishing a comprehensive cultural resource

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1 survey.

2 The March 2018 approach specifically  
3 incorporated the following five elements as part of  
4 the effort to cure the deficiency in the FSEIS: 1)  
5 hiring qualified contractors; 2) involving the Lakota  
6 Sioux Tribes; 3) providing iterative opportunities for  
7 a site survey; 4) involving tribal elders; and 5)  
8 conducting site surveys using a scientific methodology  
9 procurement by the contractor in collaboration with  
10 the tribes.

11 All parties agree that this is a  
12 reasonable method for the staff to satisfy its NEPA  
13 obligation.

14 We'd like to focus a discussion on the NRC  
15 staff decision to review implementation of the March  
16 2018 approach and any issues that may arise from the  
17 decision to resume work on an approach to identify  
18 historic, cultural, and religious sites at the Dewey-  
19 Burdock site.

20 Our order scheduling this conference  
21 included a number of questions for the parties. What  
22 I propose to do now is to go through, starting with  
23 the NRC staff, and address the issues and the concerns  
24 that the Board raised in its notice.

25 The first series of questions I have are

1 for the NRC staff. And I guess at this point, I'd  
2 like to know what specific measures the NRC has  
3 already taken in furtherance of the milestones laid  
4 out in its November 21 letters to Powertech and to the  
5 intervenor the Oglala Sioux Tribe.

6 MS. BAER: Thank you, Your Honor. This is  
7 Lorraine Baer for the NRC staff.

8 The majority of the staff's time last  
9 month was dedicated to determining the paths forward,  
10 finalizing that approach, and then issuing the letters  
11 to the parties. In addition to that, however, the  
12 staff has been actively working with SC&A and our  
13 colleagues in the Office of Administration at the NRC  
14 to secure a replacement for Dr. Nickens. And finally,  
15 we've been working to assure that the staff will be  
16 available over the course of the next three weeks to  
17 have conversations with the Tribe to better focus the  
18 discussions that are contemplated for January and  
19 February.

20 JUDGE FROELICH: Have you had -- is there  
21 progress on finding a replacement for Dr. Nickens?

22 MS. BAER: Yes, at this point the staff is  
23 actively working with SC&A and colleagues here at the  
24 NRC to ensure that the process is concluded as  
25 expeditiously as possible.

1           JUDGE FROELICH:    I noticed from the  
2           schedule, the time line, the revised time line that  
3           was attached to your letter that yesterday, December  
4           5th, was a date where you were anticipating responses  
5           from the Oglala Sioux Tribe and Powertech regarding  
6           their willingness to participate in further site  
7           survey methodology negotiations. Have you heard from  
8           them? Have you received responses from them, Ms.  
9           Baer?

10           MS. BAER: Yes, Your Honor. We received  
11           responses from both parties.

12           JUDGE FROELICH:    Okay and did both  
13           parties, in their responses, express a willingness to  
14           participate in further site survey methodology  
15           negotiations?

16           MS. BAER: Yes, Your Honor. This is  
17           Lorraine Baer. The Tribe is willing to continue  
18           discussions regarding a site survey methodology, per  
19           their response and Powertech is also willing to  
20           continue to support field survey efforts.

21           JUDGE FROELICH:    Have you been working  
22           with the staff on the revised timetable and what do  
23           you see as the largest potential challenges to  
24           implementation of the March 2018 approach?

25           MS. BAER: This is Lorraine Baer for the

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1 staff. At this point, the staff designed the  
2 scheduling keeping in mind the Board's direction that  
3 the only aspect of the approach that is open for  
4 discussion is the methodology. They have also tried  
5 to balance several key practical considerations, such  
6 as the Sundance Ceremonies in July and the limited  
7 activities that can take place during the winter  
8 months due to weather conditions. They have also  
9 taken into consideration time and resource constraints  
10 that have been raised by Powertech.

11 So with that in mind, the staff believes  
12 that this schedule is achievable. However, to answer  
13 your question, probably the biggest step that we have  
14 to -- the biggest hurdle to get through is an actual  
15 agreement on the methodology.

16 JUDGE FROELICH: Okay, thank you.

17 Do you, Judge Bollwerk or Judge Barnett,  
18 have any questions for the staff before I move on to  
19 the Oglala Sioux Tribe?

20 JUDGE BOLLWERK: Can you be more specific  
21 about a time line for resolving the question of who is  
22 going to be the staff's archeologist or the contractor  
23 archeologist?

24 MS. BAER: I'm not sure I can provide an  
25 estimate at this time, Your Honor. I can say the

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1 staff is doing everything within their ability to  
2 ensure that the process concludes as quickly as  
3 possible.

4 JUDGE BOLLWERK: All right, thank you.  
5 This is Judge Bollwerk, by the way.

6 JUDGE FROELICH: Judge Barnett, did you  
7 have anything for the staff, at this point?

8 JUDGE BARNETT: This is Judge Barnett. I  
9 don't have anything.

10 JUDGE FROELICH: Okay, thank you.

11 Let me move now to the Oglala Sioux Tribe  
12 and ask specifically will the Tribe work with the NRC  
13 staff towards implementation of the March 2018  
14 approach?

15 MR. PARSONS: Thank you, Your Honor. This  
16 is Jeff Parsons on behalf of the Oglala Sioux Tribe.

17 As Ms. Baer indicated, the Tribe  
18 communicated with NRC staff and counsel yesterday and  
19 indicated that the Tribe has determined that it's  
20 going to continue discussions regarding the site  
21 survey methodology. So, that was -- that is a yes.

22 Further in our communication with the  
23 staff, I'm happy to continue to move sort of into the  
24 second bullet point, if you would like, or we could  
25 stop there.

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1 JUDGE FROELICH: No, it probably would be  
2 appropriate for you to just go right into that second  
3 bullet, if you would, Mr. Parsons.

4 MR. PARSONS: Sure, thank you.

5 So the Oglala Sioux Tribe did, in its  
6 communication with NRC counsel and staff, indicate  
7 that there are some concerns with respect to -- on the  
8 front end, that is, with respect to the selection and  
9 bringing on of a contractor. I think the Tribe, in  
10 its experience last year, found that some of the  
11 problems with designing and creating a methodology  
12 derived, at least from the Tribe's view, in part from  
13 a lack of expertise and relevant experience from the  
14 NRC staff's selected contractor. And so that concerns  
15 the Tribe.

16 As Your Honor might recall, the Tribe, at  
17 several points in the negotiation leading up to the  
18 March 2018 approach, had requested and indicated that  
19 it was important for the Tribe to be involved in the  
20 selection of the contractor and also in the  
21 development of the scope of work for that contractor  
22 in order to ensure that a sound methodology could be  
23 determined.

24 At that time, NRC staff essentially  
25 declined the Tribe's request to have any input on the



1 contractor and also in fact never made the scope of  
2 work available to the Tribe to look at either before  
3 it was finalized or after. And those, I think,  
4 continue to be concerns that the tribe has that with  
5 a contractor without -- hiring a contractor without  
6 any input from the Tribe, without indication that the  
7 contractor has relevant experience with respect to the  
8 communities at issue, that we may have problems  
9 developing a methodology because that contractor may  
10 not have any sensitive input, which is essentially  
11 what occurred with Dr. Nickens. He had some very  
12 generalized procedures that he suggested but nothing  
13 that helps the Tribe to put together an actual  
14 methodology, a culturally relevant methodology for the  
15 process.

16 And given that it appears that NRC staff  
17 is moving forward again without input from the Tribe  
18 on selection of a contractor, I guess that would be  
19 one of the points of concerns I would just like to  
20 communicate, as we did in our communication to the  
21 Tribe -- excuse me -- to the NRC staff yesterday.

22 JUDGE FROELICH: And I guess, Ms. Baer,  
23 your response or your reaction to these concerns are  
24 the same as what happened in the first iteration  
25 before Dr. Nickens was selected. Is that correct?

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1 MS. BAER: Yes, Your Honor. As we  
2 explained in previous teleconferences, federal  
3 contracting law precludes us from involving outside  
4 parties in that process.

5 JUDGE FROELICH: Okay, the staff is aware  
6 of the concern that I guess the Tribe has raised that  
7 the individual selected have expertise in the creation  
8 or preparation of the cultural survey report that the  
9 staff will be looking for a person with its contractor  
10 to hire someone that will be able to address the  
11 problems that this case prevents.

12 MS. BAER: Yes, Your Honor. This is  
13 Lorraine Baer. The staff contract with SC&A remains  
14 in place and under the terms of that contract, they  
15 are required to provide us with a qualified  
16 replacement for Dr. Nickens.

17 MR. PARSONS: This is Jeff Parsons, again,  
18 if I may, Your Honor. Thank you.

19 JUDGE FROELICH: Sure.

20 MR. PARSONS: With all due respect, in  
21 previous iterations of trying to figure out a survey  
22 methodology, including the Board's ruling, initial  
23 ruling finding in favor of the Tribe on the NEPA,  
24 National Environmental Policy Act and National  
25 Historic Preservation Act issues that the NRC staff

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1 was entertaining contractors outside of their -- you  
2 know with the input of the Tribe and input of the  
3 parties. And so it appears to me that the past  
4 history in this case does contradict, at least in  
5 part, the concept that there can be no input from the  
6 Tribe. Indeed, the Tribe was given input, at least an  
7 opportunity to provide some input in that at one point  
8 in time.

9 And I will also note that there seems to  
10 be possibly a miscommunication or a lack of effective  
11 communication as to what constitutes a qualified  
12 contractor. And I think that's where the input of the  
13 Tribe could be particularly helpful to ensure that we  
14 don't end up with a contractor who, although the NRC  
15 staff and the contracting company believed he was  
16 qualified turns out does not appear to be so. And I  
17 think that's sort of the problem that we ran into last  
18 time.

19 JUDGE FROELICH: Okay. Beyond the  
20 qualified contractor concern that you raised, are  
21 there other concerns at the front end of the revised  
22 time line that you would like to raise at this point,  
23 Mr. Parsons?

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

1           One other point we raised in the  
2           communications to the NRC staff and counsel was a  
3           suggestion which we have raised multiple times before  
4           with NRC staff that the staff consider making use of  
5           the internal NRC staff resources, including the Office  
6           of Federal, State, and Tribal Liaison Branch, which,  
7           based on NRC materials, the Tribe understands has a  
8           mission of and experience in coordinating Tribal  
9           participation in NRC staff activities. That was one  
10          point that we raised. We think that it is conceivable  
11          that having someone with that expertise and experience  
12          within the agency might help with some of these  
13          communication problems.

14                 Further, with respect to the revised time  
15          line, I suppose in retrospect when that time line was  
16          agreed to and put out in March of 2018, it did seem to  
17          have a reasonable approach. However, what we  
18          discovered in attempting to implement that approach is  
19          that it appeared to be quite compressed, such that  
20          trying to develop the methodology in just a few short  
21          days before a field survey was to take place presented  
22          lots of challenges.

23                 And so I would just note that our  
24          experience now is that the better practice is to have  
25          the generalities laid out in terms of the time line

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1 but in order to have the process work, the  
2 methodology, the designed methodology should inform  
3 the specific dates and have an opportunity to inform  
4 the specific dates that are laid out.

5 JUDGE FROELICH: I see what the parties  
6 appear to have learned from, I guess, the earlier  
7 attempt. And the staff has put aside approximately  
8 three weeks to work with the Tribe to come up with  
9 this methodology or this -- yes, on the survey  
10 methodology. Is that correct? Am I reading the  
11 revised time line properly?

12 MS. BAER: Your Honor, this is Lorraine  
13 Baer for the NRC staff.

14 The conversations that the staff  
15 envisioned taking place during December 5th through  
16 28th would be sort of more focused on how to best  
17 effectively structure the interactions during the  
18 January and February time frame and to understand the  
19 Tribe's concerns before beginning negotiations on the  
20 actual site survey methodology.

21 So over the next three weeks would be an  
22 opportunity to reach alignment on negotiation  
23 positions and to better understand the specific  
24 objections or concerns of either party to maximize  
25 effectiveness of later conversations.

1           The time line that is envisioned for  
2           January and February would be the actual negotiations  
3           over the details of the site survey methodology so  
4           that the methodology is agreed upon and in writing  
5           before the site survey methodology actually takes  
6           place.

7           JUDGE FROELICH: So rather than spending  
8           the week before the site survey would begin, we have  
9           this three-week period in December and the months of  
10          January and February to come up with a mutually agreed  
11          upon survey methodology. Is that right, Ms. Baer?

12          MS. BAER: That's correct, Your Honor.

13          JUDGE FROELICH: Okay, thank you.

14          Does the Tribe have any comment about any  
15          of the other milestones in the NRC staff's November 21  
16          letter?

17          MR. PARSONS: Thank you, Your Honor. This  
18          is Jeff Parsons on behalf of the Tribe.

19          As I had just explained, the Tribe  
20          believes that the creation of the methodology ought to  
21          be able to inform, at least on some level, the  
22          schedule as well. So we would hope that there would  
23          be some flexibility to developing a methodology that  
24          could incorporate different time components. And I  
25          think that's -- it sounds like the process that Ms.

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1 Baer has laid out gives some opportunity for some  
2 negotiating on basic structure on the front end and  
3 perhaps that could be part of those discussions.

4 JUDGE FROELICH: Okay. While I have you,  
5 Mr. Parsons, there has been reference from time to  
6 time about the adequacy of the March 5, 2010  
7 protective order in this case. What changes,  
8 additions, or revisions does the Tribe seek to that  
9 protective order?

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

12 This issue also came up and was discussed  
13 during the June time frame. Essentially, the concern  
14 was that in addition to specific sites and on-the-  
15 ground components, which essentially is what the  
16 previous order dealt with, we're now talking about  
17 interviews with tribal elders, you know human  
18 subjects, essentially, and we believe that requires  
19 additional thought and protections. In addition,  
20 there are tribal customs and laws that need to be  
21 incorporated and put into practice essentially to  
22 ensure guarding of those traditional cultural  
23 properties and information to ensure that it is kept  
24 in the right hands, that is to say that the Tribe  
25 retains, to the extent possible retains control over

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1 it and who has access to it. And I think those are  
2 some of the issues that need to be addressed.

3 We have not gotten to a point where all of  
4 those specifics have been worked out but those are  
5 among the primary topics.

6 JUDGE FROELICH: May I ask either you or  
7 Ms. Baer what is the plan for formalizing these  
8 elements that we just outlined and either  
9 incorporating them into our existing protective order  
10 or taking some other measures so that this will not be  
11 an impediment to moving forward with the March 2018  
12 approach?

13 MS. BAER: If I could respond, Your Honor?  
14 This is Lorraine Baer for the staff.

15 JUDGE FROELICH: Sure.

16 MS. BAER: As the staff has already stated  
17 before, any information the Tribe elects to provide to  
18 the staff will be protected in accordance with  
19 applicable laws and regulations and in accordance with  
20 the protective order of this proceeding.

21 The staff maintains that the protective  
22 order that is already in place is sufficient.  
23 However, if the Tribe believes revisions of the  
24 protective order are necessary, we would make  
25 ourselves available to have those conversations.

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1           We also believe that the protective order  
2 draft we previously provided to counsel for the Tribe  
3 probably accounts for the concerns they just raised  
4 but the Tribe is free to propose other language it  
5 finds acceptable and we would be happy to work with  
6 them.

7           JUDGE FROELICH: Mr. Parsons and Ms. Baer,  
8 under the existing protective order are the changes or  
9 that discussions that you've had previously, is it  
10 contemplated that we're going to have to amend in some  
11 way the existing protective order or this is a new  
12 document that the parties are working on?

13           MS. BAER: This is Lorraine Baer for the  
14 NRC staff. The counsel for the staff previously  
15 provided a draft amendment of the protective order.  
16 I believe that it would just be an amendment, not  
17 something separate.

18           JUDGE FROELICH: I see. Under paragraph  
19 10 of the existing protective order, the Licensing  
20 Board may alter or amend the protective order and  
21 resolve disputes that arise in coming up with terms  
22 that parties need or believe they need to move  
23 forward. So I would encourage both the staff and the  
24 Tribe to work out whatever language needs to be put on  
25 paper but we can amend our protective order and so

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1 that we can go forward with the revised time table  
2 that is found in attachment to the November 21, 2018  
3 letter.

4 Mr. Parsons, will you be able to respond  
5 to the draft that Ms. Baer referred to? Where do we  
6 stand on that?

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

9 The Tribe is happy to review that again  
10 and provide a response with respect to the adequacy of  
11 the protective order and what changes might need to be  
12 incorporated.

13 I will note before we move on, we appear  
14 to be toward the end of the questions that were  
15 presented in the order -- Monday's order to the Oglala  
16 Sioux Tribe but one aspect in the third bullet point  
17 I think was not addressed. And we did, the Tribe in  
18 its response yesterday to NRC staff and counsel did  
19 indicate that there are some conflicts with the  
20 December 28th date, specifically, the Tribal Cultural  
21 Resources staff has leave that is occurring at the end  
22 of the year, as well as some tribal ceremonies that  
23 occur this time of year that will make it difficult  
24 for a full response by December 28th.

25 In addition, counsel for the Oglala Sioux

1 Tribe have commitments in addition to the need to  
2 respond. I believe the deadline is December 21st to  
3 respond to Powertech's petition for interlocutory  
4 review, which was a 25-page document and so will  
5 certainly require substantial work to prepare a  
6 response in that regard.

7 So we don't believe that the 28th of  
8 December is a feasible date to respond. We were  
9 anticipating a mid-January time line for that.

10 JUDGE FROELICH: I think it's important  
11 that the parties come to some understanding of the  
12 dates and the importance of maintaining a schedule  
13 that leads to a resolution of this contention.

14 As we had gone through before, I guess we  
15 have moved from a few days to come up with a  
16 methodology or an approach to basically three weeks  
17 followed by two months to nail this down. And I would  
18 urge the parties to try their very best to adhere to  
19 the proposed schedule, the revised time line that the  
20 NRC staff has proposed.

21 This case has gone on for quite a while  
22 now. Some of these issues are not brand new. There's  
23 been a lot of thought and a lot of preparation that  
24 has gone into the engagement of March 2018 approach  
25 and now we're getting down to the negotiations that

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1 are necessary to keep us on a schedule that will  
2 resolve this issue in a timely manner.

3 MS. BAER: Could I add on to that, Your  
4 Honor? This is Lorraine Baer for the NRC staff.

5 JUDGE FROELICH: Sure.

6 MS. BAER: I'd like to emphasize that some  
7 of the other milestones, particularly March 1st that  
8 were set forth in the schedule in the November 21st  
9 letter are dependent on the success of the milestones  
10 preceding them.

11 So we are concerned that the further the  
12 schedule flips in the beginning, the less likely we  
13 all are to reaching a resolution before practical  
14 considerations prevent the survey from taking place.  
15 And by delaying the response that was originally  
16 envisioned for December 28th would also shorten the  
17 window for negotiation discussions.

18 JUDGE FROELICH: Yes, thank you, Ms. Baer.

19 Mr. Parsons, are there any other Tribes  
20 that you foresee joining the process, other than the  
21 Oglala Sioux Tribe?

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

24 As the Tribe has, for the entirety of this  
25 process, we have attempted to engage other tribes

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1 throughout and will continue to do so. I do  
2 anticipate there will be interest and the Oglala Sioux  
3 Tribe can certainly keep NRC staff apprised as those  
4 efforts to communicate with other Tribes occur.

5 JUDGE FROELICH: Okay. Before I call upon  
6 the Consolidated Intervenors, does Judge Bollwerk or  
7 Judge Barnett have anything for the Oglala Sioux Tribe  
8 at this point?

9 JUDGE BOLLWERK: This is Judge Bollwerk.  
10 No.

11 JUDGE FROELICH: Judge Barnett?

12 JUDGE BARNETT: No.

13 JUDGE FROELICH: Okay.

14 MR. PARSONS: If I may, Your Honor. I  
15 apologize. Jeff Parsons again.

16 I just wanted to emphasize again that you  
17 know the communication sort of -- I don't want to call  
18 it lack of communication or miscommunication but sort  
19 of the difficulties that we have had, I guess I would  
20 reiterate that as we requested several times, the  
21 Tribe does believe that involvement of a Tribal  
22 liaison would be helpful and would certainly encourage  
23 NRC staff to reconsider. I'm not sure they've ever  
24 responded to those requests directly but we would ask  
25 them to consider involving a Tribal liaison so we

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1 might have a better chance of having a meaningful  
2 conversation.

3 Thank you, Your Honor.

4 JUDGE FROELICH: Is there a response to  
5 the concern Mr. Parsons raised about the involvement  
6 of the Office of Tribal Liaison?

7 MS. BAER: Thank you, Your Honor. As the  
8 November 21st letter, and the schedule, and the  
9 Board's October 30th order reflect, the scope of the  
10 negotiations moving forward is sufficiently narrow  
11 that we don't see that as a necessary addition at this  
12 point, even the focused purpose of the future  
13 conversations and we already have experienced staff  
14 and we will have a qualified employee of our  
15 contractor working with the Tribe.

16 So considering the time and resource  
17 constraints at play, we are trying to resolve this  
18 matter as efficiently and as effectively as possible.  
19 And adding another person or step in the process, at  
20 this point, could cause unnecessary delay and affect  
21 the schedule and, potentially, the budget.

22 Although we feel confident that we already  
23 have the necessary resources to bring resolution to  
24 the matter, we're not sure that we understand what the  
25 Tribe hopes to gain by involving this other party. So

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1 if we could ask the Tribe to elaborate a little bit  
2 more on the role they envision for the Tribal Liaison  
3 Branch to play in this proceeding, that would help as  
4 we consider this.

5 MR. PARSONS: This is Jeff Parsons on  
6 behalf of the Tribe.

7 I will say that it appears even in a  
8 conversation that the parties may be speaking past  
9 each other. The Tribe had indicated that they have  
10 concerns about what NRC staff deems to be qualified,  
11 both within their existing staff, as well as with the  
12 contractor and the NRC staff counsel has essentially  
13 asserted that they have qualified people without any  
14 regard to the Tribe's position on that matter.

15 And so when you have those types of  
16 problems in communicating ideas, it seems to the Tribe  
17 that having someone from NRC staff that actually has  
18 experience and has a mission, an expertise in  
19 coordinating with tribal governments and people, would  
20 go a long way to helping soothe those conversations so  
21 that we can talk in a way where ideas are clearly  
22 communicated. And I think the point was just well-  
23 demonstrated right there.

24 I will note that the Tribe has been asking  
25 for this for some time. Last June when we had the

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1 face-to-face meetings, the Tribe requested NRC staff  
2 to bring in a tribal liaison at that time. So this is  
3 hardly a new request.

4 Thank you, Your Honor.

5 JUDGE FROELICH: Thank you.

6 MS. BAER: Could I respond, Your Honor?  
7 This is Lorraine Baer.

8 JUDGE FROELICH: Sure, Ms. Baer.

9 MS. BAER: Thank you.

10 So we do have staff in the branch that are  
11 currently working with the Tribe that do all of the  
12 things that Mr. Parsons just mentioned and I'm not --  
13 to my knowledge, the Tribal Liaison Branch does not  
14 have NEPA experience or archeological experience.

15 I will also note that we've added Jean  
16 Trefethen to our team and she works with the Tribe and  
17 Strata.

18 JUDGE FROELICH: Okay, thank you.

19 I call now upon the Consolidated  
20 Intervenors and would like to hear from Mr. Frankel or  
21 Mr. Ballanco on what your response to the NRC staff  
22 letter yesterday and your reaction to their revised  
23 time line and proposal for implementing the March 2018  
24 approach.

25 Mr. Frankel?



1 MR. FRANKEL: Thank you, Your Honor.  
2 David Frankel here for Consolidated Intervenors. I  
3 will make a brief comment and then I would like to ask  
4 Mr. Ballanco to also add to that.

5 Number one, our clients are tribal members  
6 and so we appreciate Mr. Parsons' and Mr. Stills'  
7 position on behalf of the Tribe and we are in support  
8 of those positions.

9 I have an observation that from our  
10 perspective if people were taking perhaps a more  
11 cooperative attitude, they may be able to work out a  
12 definition of qualified replacement for Dr. Nickens  
13 that does not run afoul of federal contractor laws.  
14 That way, the Tribe and its members, including my  
15 clients, would feel more dignified in this process.  
16 And having input into the definition of qualification  
17 for a particular project, it would seem to us, is  
18 nowhere close to being involved in a selection  
19 process. But I think that's worth vetting, if  
20 necessary and I think it could go a long way to  
21 achieving some common ground.

22 I also have an observation that there have  
23 been a lot of deadlocks in this case, as you noted  
24 Judge, and we are in support of involving a tribal  
25 liaison, especially on the tight time frame. We

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1 believe that perhaps the expertise of a mediator of  
2 sorts that is recognized within the federal government  
3 would possibly lend traction to some of the Tribe's  
4 request within the NRC staff.

5 So with that, I'll conclude and ask Mr.  
6 Ballanco if he would like to add something further.

7 MR. BALLANCO: Thank you. Tom Ballanco  
8 for Consolidated Intervenors.

9 As Mr. Frankel mentioned, to the extent  
10 our clients are also tribal members, we have been  
11 following the lead of the Oglala Sioux Tribe as an  
12 entity and do support their position. I can only say,  
13 based on and I'm sure Judge Bollwerk can confirm, this  
14 is a very contentious issue with the Tribe. I know  
15 it's been difficult to get to where we are and I  
16 appreciate what Mr. Parsons and Mr. Stills are doing  
17 to keep this discussion alive and going.

18 I would just mention to staff that we  
19 can't emphasize enough the value of personal contact  
20 and time. As we get into development of a methodology  
21 and the actual survey itself, the more time and  
22 interaction staff and the consultant are able to have  
23 with tribal members, tribal elders especially, the  
24 better, keeping in mind that for many of the elders,  
25 English is their second language but Lakota is not a

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1 written language. So they are speakers, old  
2 tradition. Writing is not their first choice of  
3 communication. So the more we can spend in-person I  
4 think the better outcome we'll have.

5 But otherwise, we support the Oglala Sioux  
6 Tribe's position and to the extent that any of us can  
7 help bring that about, our clients are certainly happy  
8 to move in that direction as well.

9 JUDGE FROELICH: Thank you, Mr. Ballanco.

10 I'd like to turn now to counsel for  
11 Powertech and share with us your response to the NRC  
12 staff yesterday and the commitments -- commitment of  
13 Powertech to move forward with the March 2018  
14 approach.

15 MR. PUGSLEY: Judge Froelich, Chris  
16 Pugsley for Powertech.

17 I think, in short, our letter response  
18 which we shared with counsel for all parties earlier  
19 today speaks for itself, that Powertech is still  
20 committed to trying to implement the items under the  
21 previously agreed upon approach. I'm really not sure  
22 that there's much more left to say, other than the  
23 fact that the licensee is become increasingly  
24 frustrated with the continuously drawn out time line  
25 associated with this process and the fact that this

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1 has not been conclusively resolved.

2           However, that aside, the letter, as I said  
3 speaks for itself in that Powertech is still willing  
4 to cooperate with the staff and with other parties to  
5 implement those provisions within the confines of the  
6 previously agreed approach.

7           One thing, Your Honor, just that even  
8 though our client -- Mr. Thompson and my client's  
9 position is that they remain committed to implementing  
10 this approach. We believe that we think that -- we  
11 note for the record that based on the Board's previous  
12 ruling on summary disposition that outline two  
13 possible approaches to resolution of this contention,  
14 that we would like to note for the record that the  
15 licensee does reserve the right, if it may, to request  
16 an evidentiary hearing if and when the circumstances  
17 dictate it could be appropriate. I can't tell you  
18 what those circumstances are. I don't know what they  
19 are. Mr. Thompson and I have not discussed it but we  
20 just want to note for the record that we do reserve  
21 that right -- a representative of every party to hear  
22 this for a record that, again, our client's commitment  
23 is embodied in its December 5th letter that was  
24 distributed. And if any counsel has an issue with  
25 getting that letter or something, if they did not

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1 receive it or weren't able to open, I'm more than  
2 happy to do whatever it takes to get them a copy.

3 JUDGE FROELICH: Thank you, Mr. Pugsley.

4 From the perspective of Powertech, the  
5 licensee, what do you see as the largest potential  
6 challenge to this March 2018 approach?

7 MR. PUGSLEY: Chris Pugsley for Powertech,  
8 Your Honor.

9 The more there are hurdles to the approach  
10 -- at this time. I mean everything stems from what  
11 gets put down on paper and is done in terms of a  
12 schedule, in terms of what is done with the site  
13 survey, and what is done with other types of  
14 interviews with tribal elders, things of that nature.

15 I think NRC staff is correct that we have  
16 to have some form of path forward in order to  
17 understand exactly what the time line looks like  
18 because, as we have said on many occasions, this  
19 proceeding is an impediment to development of the  
20 project because -- by law to obtain. And we are  
21 anxious to engage and get these things taken care of  
22 in a way that is satisfactory to everyone and that we  
23 can understand what is required of the company  
24 because, at the end of the day, the entity that is  
25 providing the financial resources for these things is

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1 Powertech and Powertech needs to understand what  
2 financial commitments they have to make, what time  
3 arrangements they have to set in stone in terms as to  
4 the site, you know other items associated with  
5 implementation of the approach.

6 And frankly, at some point, this has to be  
7 locked down, understanding what is expected of the  
8 licensee to satisfy this contention. And until that  
9 comes, Your Honor, I have to be honest, I'm not sure  
10 I can answer your question.

11 JUDGE FROELICH: Okay, I appreciate your  
12 time.

13 At this point, in the Board's order that  
14 it issued is laid out and the staff has indicated that  
15 it wishes to reinvigorate, or revise, or reinstitute  
16 the March '18 approach, it would appear that it would  
17 be appropriate to us -- the last Board order for the  
18 hearing alternative, we're moving forward with the  
19 March 2018 approach.

20 I'm thinking just out loud and wonder if  
21 there is any -- are there any procedural mechanisms or  
22 instructions that the parties would like the Board to  
23 put forward in subsequent orders? Our procedure is  
24 created to keep people's approach moving forward.

25 We talked about today a number of the

1 possible impediments to deadlines being met but -- on  
2 what we should do -- as well as the Board should a  
3 deadline not be met, should elements in the proposal  
4 not be accomplished, where do we go? I don't know if  
5 anyone has any thoughts on it but I would be  
6 interested in hearing from you if there are -- if you  
7 have any thoughts or if you have given any thought or  
8 consideration if the responses, if the procedures, if  
9 the -- in the March approach aren't accomplished.

10 MR. PUGSLEY: Your Honor, Chris Pugsley  
11 for Powertech. I think that the best way to approach  
12 this is to make it simple, which is we have  
13 regulations at 10 CFR 2.323 on motions that if a  
14 party, whatever the party may be, desires an  
15 evidentiary hearing instead of moving forward with the  
16 implementation of the March 2018 approach, based on  
17 circumstances that may arise, those procedures are set  
18 forth in law. And I think that the Board -- it would  
19 be very efficient for the Board to simply adopt that  
20 as a procedure that if a party --

21 JUDGE FROELICH: Thank you -- parties to  
22 what you've just hear from counsel for Powertech?

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

25 You know I don't have a problem -- you

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1 know I think it's fine if a party wants to file a  
2 motion, I think that's -- I think Mr. Pugsley is right  
3 that that's in existing regulation and is always  
4 available at some level.

5 I would also note in the past that the  
6 Tribe has suggested and agreed to but the other  
7 parties were not inclined to discuss a potential for  
8 a mediator to help resolve some of these problems. I  
9 think that's what we were -- one of the roles --  
10 office, which we maintain that that would be a  
11 productive and effective way to go about it. But I  
12 know there are other procedures for involving another  
13 form of mediation through the NRC process. So that  
14 would be one other option that has been raised in the  
15 past.

16 JUDGE BARNETT: This is Judge Barnett --  
17 Judge -- was not needed during that discussion just  
18 now.

19 JUDGE FROELICH: Thank you.

20 Ms. Baer, have you given thought or has  
21 the staff given thought to what procedures or what  
22 route we should take, should the revised time line  
23 break down or any of the elements that are integral to  
24 it not be accomplished? Do you have a view on how to  
25 get it resolved, get this case wrapped up, should the

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1 March 2018 approach not get us where we'd all like to  
2 be?

3 MS. BAER: Thank you, Your Honor. This is  
4 Lorraine Baer for the NRC staff.

5 At this point -- previously during this  
6 proceeding, monthly teleconference calls were  
7 instituted and the staff felt that that was a  
8 productive, useful tool and they would like to make  
9 that suggestion in this proceeding again.

10 At this point, we feel that March 1st is  
11 sort of our main point at which we will consider  
12 whether this approach is still an achievable idea. So  
13 we wouldn't oppose what Powertech has suggested.

14 JUDGE FROELICH: Okay. I think that my  
15 reaction to this is that monthly teleconference would  
16 probably be of some utility going forward but if the  
17 parties see impasse or a particularly troublesome  
18 contention or element in the time line that you're not  
19 making any progress on, if the parties could alert the  
20 Board to that and that perhaps in advance of the  
21 monthly teleconference or in advance of the monthly  
22 report that the staff files with the Board, that the  
23 Board be looped in and perhaps it could be of  
24 assistance to the parties in resolving any potential  
25 or future problems that may arise, as we try to

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1 implement the March 2018 proposal.

2 How does that sound to you, staff or to  
3 the parties?

4 MR. PUGSLEY: Your Honor, Chris Pugsley  
5 for Powertech. I would think that we have a vehicle  
6 available to us at this time in the monthly  
7 disclosures filings, where it is possible that parties  
8 can update each other on progress. I mean obviously,  
9 Powertech does not have too much of a role in this  
10 other than to monitor what the parties or the staff  
11 and the Tribe and the Consolidated Intervenors agree  
12 upon in terms of path forward but at the same time, we  
13 think that's an adequate avenue for at least a  
14 briefing on what happens in the event that one or more  
15 than one of the parties deem it appropriate to bring  
16 the Board together for a teleconference, they are  
17 certainly free to request that.

18 JUDGE FROELICH: All right.

19 (Whereupon, the above-entitled matter went  
20 off the record at 5:05 p.m. and resumed at 5:06 p.m.)

21 JUDGE FROELICH: We'll be back on the  
22 record.

23 At this point I guess procedurally, we  
24 would like to hear from the staff in a teleconference  
25 shortly after the New Year. But in order for that to

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1 be meaningful or for anything to really come out of  
2 it, the deadline of December 28th for a response from  
3 the Oglala Sioux Tribe would probably be quite vital.

4 If we were to adjust the December 28th  
5 deadline for the response from the Tribe to January  
6 1st or 2nd, you know a few days' additional based on  
7 the concerns that Mr. Parsons raised so that we could  
8 have a meaningful conference among the parties and  
9 that the staff would have a response from the Sioux  
10 Tribe before that teleconference, would that work for  
11 the NRC staff and that the period between January and  
12 March would just be reduced by the number of days that  
13 we extend that December 28th deadline?

14 MS. BAER: Thank you, Your Honor. This is  
15 Lorraine Baer for the NRC staff. I believe the staff  
16 is amenable to that approach. A few extra days should  
17 be -- should work.

18 JUDGE BOLLWERK: Again, assuming Judge  
19 Froelich is talking about our schedule. It's not on  
20 our schedule. It's your schedule.

21 JUDGE FROELICH: Right.

22 JUDGE BOLLWERK: We haven't adopted the  
23 schedule. It's not our schedule.

24 But obviously if you could -- I guess my  
25 point -- this is Judge Bollwerk. If there needs to be

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1 a discussion about this, we need to know what that  
2 date is going to be before we can set the prehearing  
3 conference date, essentially.

4 JUDGE FROELICH: Right.

5 JUDGE BOLLWERK: Or unless you set it and  
6 you are going to then accommodate that in terms of how  
7 much time you guys are going to work. I don't know.  
8 That's sort of --

9 MS. BAER: I'm sorry. I'm not sure I  
10 understand. Are you asking the date by which we're  
11 expecting the Oglala Sioux Tribe's response?

12 JUDGE BOLLWERK: Well, so you're expecting  
13 it by the 28th. At least that's what I heard you say.  
14 I also heard the Tribe say they probably would need  
15 another couple of days, given the circumstances.

16 And obviously, us setting a schedule for  
17 the conference, I mean we shouldn't really be doing  
18 that until we know what the date is that you all  
19 anticipate hearing something from the Tribe.

20 So I guess the question is, what date are  
21 we talking about in terms of teleconference?

22 JUDGE FROELICH: I'm thinking, Mr.  
23 Parsons, if we could have your response to the NRC  
24 staff by the 4th of January, basically giving an extra  
25 week because of the concerns you raised, we would be

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1 able to hold a teleconference, status conference the  
2 week of January 7th and see where we're at.

3 MR. PUGSLEY: Your Honor, this is -- go  
4 ahead. I'm sorry.

5 JUDGE FROELICH: No, I was just going to  
6 ask if the staff would be amenable to moving that  
7 deadline on the time line to the 4th of January from  
8 the 28th of December, in order to facilitate a  
9 meaningful teleconference the week of January 7th, if  
10 that would be acceptable to the NRC staff.

11 Are you good with that? Would that work  
12 for you or that date we'd be giving an extra week to  
13 the Tribe to make their response and that that time  
14 they would come out of the discussions that would be  
15 conducted during January and February so that we would  
16 be able to adhere to the balance of the revised time  
17 line?

18 MS. BAER: Thank you, Your Honor. I was  
19 just conferring with my clients. They have no  
20 objections to that milestone. Of course, it will also  
21 depend on the content of the response.

22 JUDGE FROELICH: Absolutely.

23 And Mr. Parsons, moving that date from  
24 December 28th to the 4th of January, will you be able  
25 to respond in a meaningful manner to the NRC staff by

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1 the 4th of January?

2 MR. PARSONS: Thank you, Your Honor. This  
3 is Jeff Parsons.

4 My major problem is that I'm actually out  
5 of town from the 27th to the 2nd. So I don't -- the  
6 second of January. So the 4th would be extremely  
7 tight, especially given the factors I referenced  
8 earlier in the call with respect to Tribal Cultural  
9 Resources and Natural Resources staff being on leave  
10 and not available at the end of the -- toward the end  
11 of the year either. I'm worried that the 4th is  
12 simply too tight.

13 I can confer with my client, however, and  
14 communicate to the parties and the Board, if you'd  
15 like, a date that -- an alternate proposal. I just am  
16 not sure what constraints my client has in that  
17 regard. I know my constraints.

18 JUDGE FROELICH: Mr. Parsons, I can't  
19 emphasize enough that the staff, at this point, has  
20 put forward an approach that all parties had agreed to  
21 and what we actually need to be done at this point, is  
22 for the parties to begin those discussions or continue  
23 the discussions, if that's more appropriate, in order  
24 to come up with a methodology to move forward.

25 And the more time that we take and the

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1 more we adjust dates, the longer this proceeding will  
2 drag on and less likely that it will be resolved  
3 efficiently.

4 MR. PARSONS: I understand, Your Honor.  
5 I will note that the response came in the day before  
6 Thanksgiving and they want a response a couple days  
7 after Christmas, without regard to the fact that  
8 everyone has all their plans in place, including out  
9 of town travel, and the Tribe has ceremonies during  
10 the month of December and leave time that will prevent  
11 us from doing so.

12 So, I do certainly share the desire to get  
13 moving but, at the same time, just because NRC staff  
14 puts a date on a calendar and says though shalt  
15 respond by that time, it doesn't necessarily jibe with  
16 all of the commitments and cultural practices of the  
17 Tribe. And I mean that respectfully. It's just that  
18 it's very difficult for me to command the Tribe to  
19 drop what they are doing and work on this, despite  
20 their cultural, and professional, and personal  
21 obligations. I apologize.

22 MR. PUGSLEY: Your Honor, Chris Pugsley  
23 for Powertech. Could I please ask that the Board  
24 institute a deadline for all parties to inform the  
25 Board and all counsel as to when that date will be

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1 established for a response and when correspondence  
2 will be issued telling us when that will happen?

3 MR. PARSONS: That is perfectly  
4 reasonable, Mr. Pugsley. I would not object to a  
5 date. We can inform the Board by Monday the 24th --  
6 I'm sorry -- Monday the 10th as to exactly when we'll  
7 have that response.

8 MR. PUGSLEY: Thank you.

9 JUDGE FROELICH: All right, then. The  
10 Board will not, at this point, set a firm date. We  
11 will turn this back to the parties to come up with a  
12 date. And as you come up with a date, please keep in  
13 mind the balance of the schedule and the desire by  
14 this Board to move this case along in an efficient and  
15 expeditious manner.

16 The time you have taken from the very  
17 early parts of the time line will have to come out of  
18 the times that are later in the time line and I wish  
19 the parties good luck.

20 JUDGE BOLLWERK: This is Judge Bollwerk.

21 Again, we're not setting dates on this  
22 milestone. This is the parties' milestone. This is  
23 the staff's milestone. What we need to know is what  
24 the date is so we can set the prehearing conference.  
25 That's the bottom line.

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1 JUDGE FROELICH: All right, so then we  
2 will follow-up on I guess it was Mr. Pugsley's  
3 suggestion that the parties get together and discuss  
4 this, come up with a date where the Tribe will get  
5 back to the NRC staff and to inform the Board of that  
6 date. And shortly thereafter, we'll have a follow-on  
7 telephone conference moving forward from there.

8 Does Judge Bollwerk or Judge Barnett have  
9 any further matters they'd like to bring up?

10 JUDGE BOLLWERK: Judge Bollwerk. I don't  
11 have anything at this point.

12 JUDGE FROELICH: And Judge Barnett, do you  
13 have anything at this point?

14 JUDGE BARNETT: No, nothing.

15 JUDGE FROELICH: Do any of the parties  
16 have any issues or concerns they'd like to raise at  
17 this point?

18 MR. PUGSLEY: Judge Froelich, Chris  
19 Pugsley from Powertech. Nothing further.

20 JUDGE FROELICH: Thank you, Mr. Pugsley.  
21 Ms. Baer?

22 MS. BAER: I'm sorry, Your Honor, one  
23 moment while I confer with my clients.

24 JUDGE FROELICH: Sure, great.

25 MS. BAER: Okay, Your Honor, thank you for

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1 your patience. This is Lorraine Baer for the NRC  
2 staff.

3 I just wanted to clarify, just so that I  
4 understand, by December 10th we are -- the parties are  
5 going to give you the date by which the Oglala Sioux  
6 Tribe will give us their detailed response?

7 JUDGE BOLLWERK: So this is Judge  
8 Bollwerk. So what I heard from Mr. Parsons,  
9 initially, was that by the 10th he wanted to give, I  
10 guess, you all a date by which he believes the Tribe  
11 would be able to respond.

12 Frankly by the 10th, I would prefer to see  
13 the date by which the Tribe thinks they can respond,  
14 the staff has talked about it in concern with  
15 Powertech, and what that date is. So that would be my  
16 preference but I don't think that's what the original  
17 -- Mr. Parsons' original proposal was.

18 JUDGE BARNETT: I'm sorry, Judge, could  
19 you repeat that so I can understand that?

20 JUDGE BOLLWERK: Sure. What I heard  
21 originally was Mr. Parsons said by the 10th he would  
22 give us a date by which the Tribe felt it could  
23 respond or to give everyone a date. Frankly, we're  
24 glad to get the date but it doesn't -- we're not the  
25 one setting the date.

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1           And now I think what the staff is raising  
2           the question and actually what I would prefer is that  
3           by the 10th that the parties have discussed this and  
4           tell the Board what date they have agreed to by which  
5           the Tribe will file its response and then we can set  
6           the prehearing conference. That would certainly be  
7           preferable because if on the 10th we're only getting  
8           the initial date, then we're still talking about more  
9           discussion.

10           So can the parties do that by the 10th?  
11           Like I said it's a question.

12           And so now I'll turn it over to the staff.

13           Did I clarify that or make it more  
14           difficult? I apologize.

15           MS. BAER: Thank you. One more moment,  
16           while I confer with my client. Thank you.

17           Thank you, Your Honor. This is Lorraine  
18           Baer for the NRC staff.

19           If I may, I would like to suggest  
20           proposing that the Oglala Sioux Tribe provide a  
21           response by January 8th. That gives them a few extra  
22           days but does not push it out too far so that the  
23           future conversations set to take place in January  
24           won't be truncated too much.

25           We're just a little concerned that

1 conferring with the parties and providing you a  
2 response by the 10th only gives us basically two days.

3 JUDGE BOLLWERK: Right, I understand that.

4 Does the Oglala Sioux Tribe have any  
5 response?

6 MR. PARSONS: This is Jeff Parsons on  
7 behalf of the Tribe.

8 Only have two days to talk about when the  
9 Tribe can respond? Is that what you mean, Ms. Baer?

10 MS. BAER: Yes. Yes, thank you.

11 MR. PARSONS: We will -- I need to confer  
12 with my client. I will do so as quickly as I can and  
13 we will get back to the parties as soon as humanly  
14 possible.

15 MR. PUGSLEY: This is Chris Pugsley from  
16 Powertech. I think we're confusing two things here.  
17 All we asked for was a date certain that Mr. Parsons  
18 can confer with his client and communicate to the  
19 Board and to the parties when the formal response  
20 associated with the schedule that was put out by the  
21 staff for originally December 28th that a response  
22 would be received. That's all we're asking for.

23 MS. BAER: Yes, I apologize. I think I  
24 may have contributed to the confusion there.

25 What I was proposing was that rather than

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1 getting a response from the Oglala Sioux Tribe by  
2 December 28th, we decide that it is January 8th  
3 instead. Mr. Parsons can go back and confer with this  
4 client and maybe by December 10th let the parties know  
5 whether that date is feasible.

6 MR. PARSONS: This is Jeff Parsons. Thank  
7 you, Ms. Baer. I appreciate that. I was confused.

8 MR. STILLLS: This is -- sorry, Jeff. Go  
9 ahead.

10 MR. PARSONS: We can certainly do that.

11 Mr. Stills, go ahead.

12 MR. STILLLS: This is Travis Stills, Oglala  
13 Sioux Tribe. I do have one quick clarifying question  
14 I think will come up and will inform how much time it  
15 will take and what we should expect to get done by the  
16 date that has been discussed. And that is, whether or  
17 not NRC staff anticipates actually having a contractor  
18 onboard to join these discussions or whether these are  
19 just letters exchanged amongst counsel that we're  
20 talking about.

21 If a contractor, a qualified contractor,  
22 which is one of the lynchpins involved, that may  
23 change how we would view that going forward. Should  
24 we expect to have a contractor involved in the next  
25 week or so I guess is kind of what the question comes

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1 down to.

2 MR. PARSONS: And this is Jeff Parsons,  
3 just to clarify. The Tribe does have suggestions and  
4 specifics for contractors that could be available to  
5 take on this kind of work. So I would certainly want  
6 to make sure that the NRC staff is aware that the  
7 Tribe has thoughts on that and does want to have  
8 input.

9 MS. BAER: This is Lorraine Baer for the  
10 NRC staff just to respond to that. As I stated  
11 before, there are some restrictions in place, federal  
12 contracting laws that preclude us from having the  
13 Tribe involved in the contractor selection process.

14 That being said, the staff envisioned that  
15 the focus of the conversations that would happen  
16 during January and February would be on the site  
17 survey methodology.

18 And we are seeking the input of the Tribe  
19 in the response to our November 21st letter. We just  
20 need their specific objections or an alternative  
21 proposal by December 28th, January 8th, whatever date  
22 we decide on. So I'm not certain why a contractor  
23 would be needed at that point in order for them to  
24 provide that response.

25 MR. PARSONS: This is Jeff Parsons on

1       behalf of --

2                   MR. PUGSLEY:   This is Chris Pugsley --

3                   Go ahead, Mr. Parsons.

4                   MR. PARSONS:   -- the Tribe.   I do note  
5       that -- I understand why NRC staff would not need  
6       their contractor onboard for the Tribe to develop its  
7       response.  However, in order to create and develop a  
8       methodology, it has to be more than just sort of the  
9       lawyers passing paper back and forth.  And I think  
10      that's where we got into trouble last time was the  
11      lack of an NRC contractor with relevant expertise and  
12      experience to be able to work with the Tribe to  
13      develop a methodology.  That's why the Tribe is  
14      suggesting that it has suggestions for contractors  
15      that can perform those tasks and do have that relevant  
16      and necessary experience.

17                   I do foresee a problem if the NRC staff  
18      does not have a qualified contractor onboard and, at  
19      the same time, trying to develop the methodology.  
20      That seems to be walking us sort of into the same  
21      problems we had last time.

22                   MR. PUGSLEY:   So this is Chris Pugsley for  
23      Powertech.

24                   Can we agree for the time being that there  
25      will be a response telling all parties when we will

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1 know when the Oglala Sioux Tribe can respond to the  
2 staff's inquiry by Monday the 10th. Is that correct?

3 MR. PARSONS: That is sufficient for the  
4 Tribe from the Tribe's perspective.

5 MR. PUGSLEY: All right, thank you, Mr.  
6 Parsons.

7 MS. BAER: If I could clarify, I was under  
8 the impression that Mr. Parsons was going to confer  
9 with his client to determine whether January 8th was  
10 an acceptable date by which they'll provide that  
11 response.

12 MR. PUGSLEY: And the only question that  
13 I am asking is whether we will have an update on that  
14 by the 10th of December. Mr. Parsons has said that's  
15 adequate.

16 So our client is satisfied with that  
17 answer.

18 MS. BAER: Thanks for the clarification.

19 MR. PARSONS: This is Jeff Parsons. I'm  
20 sorry. I'll need to confer with my client with regard  
21 to deadlines. I apologize. And I will get back to  
22 the parties as soon as possible in all respects.

23 MR. PUGSLEY: Thank you, Mr. Frankel. I  
24 appreciate it.

25 MR. PARSONS: That was Mr. Parsons.



1 MR. PUGSLEY: Thank you, too, as well.

2 JUDGE FROELICH: All right. I'm sure when  
3 we read the transcript, this will all be crystal  
4 clear.

5 I don't have any other material, other  
6 than to remind a housekeeping matter, which I would  
7 like to raise with the parties right now. The Board  
8 has two new law clerks assigned to this case, as I  
9 mentioned in the introduction, Taylor Mayhall and Joe  
10 McManus.

11 It occurs to me that there probably have  
12 been changes to members of the staff that are assigned  
13 to this case, as well as I guess changes to the  
14 contact information from the parties to the case.

15 So I would like all the parties to make  
16 sure that any and all changes to their staff or to  
17 their contact information is up to date with the  
18 Office of the Secretary here at the agency and for  
19 purposes of the service at least in this case. I  
20 don't know to what extent there have been changes but  
21 if there have been changes to the people involved in  
22 the case or their location and contact information,  
23 would you please update the Commission's records and  
24 notify the Secretary?

25 MR. PUGSLEY: Yes, Your Honor. Chris

1 Pugsley for Powertech.

2 Judge Froelich, I'd also like to note for  
3 the record that we are -- the licensee is fully aware  
4 of some concerns that Consolidated Intervenors and the  
5 Oglala Sioux Tribe have raised about mandatory  
6 disclosures. We certainly are trying to be as  
7 attentive to that as possible, as of the parties have  
8 seen, when we disclosed our letter as quickly as we  
9 could have submitted, in terms of the response to the  
10 staff.

11 Given the fact that we are endeavoring to  
12 try and find a more efficient schedule for getting  
13 things wrapped up and to maintain communication and  
14 given the fact that the NEPA process, which is the  
15 subject of this contention, is a party to party -- I  
16 mean an NRC to licensee process and is not necessarily  
17 a cancel or cancel process, I can say for the record  
18 we are going to do our very best to make sure that  
19 things are not just disclosed in mandatory disclosures  
20 but, to the extent practicable, if and when submitted,  
21 we will endeavor to disclose to counsel these  
22 submissions between the agency and the licensee as  
23 soon as practicable.

24 JUDGE FROELICH: Thank you. I think that  
25 will be very helpful, Mr. Pugsley.

1 Does anyone have anything else to raise at  
2 this time?

3 JUDGE BOLLWERK: Nothing for Judge  
4 Bollwerk.

5 JUDGE FROELICH: Judge Barnett?

6 JUDGE BARNETT: No.

7 JUDGE FROELICH: Anything that any of the  
8 parties wish to raise at this time?

9 Hearing nothing, this status conference is  
10 adjourned. We're done. I thank all the parties for  
11 their attention and for their efforts and hope that we  
12 can move forward towards a resolution of this last  
13 contention.

14 Thank you all.

15 (Whereupon, the above-entitled matter went  
16 off the record at 5:33 p.m.)

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