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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. FROEHLICH, Chair  
MARK O. BARNETT, Administrative Judge  
G. PAUL BOLLWERK III, Administrative Judge

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

(4:00 p.m.)

1  
2  
3 JUDGE FROEHLICH: Good afternoon, all.  
4 It's 4:00 p.m. Eastern Time. This is Judge Froehlich  
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 FROEHLICH: Thank you, Ms. Baer.  
9 I'm not quite sure what we should be doing at the  
10 moment, since we don't seem to have either of the  
11 intervenors or Powertech with us. Why don't we just  
12 hold for a moment and we'll see if we can get them  
13 onboard?

14 MS. BAER: Okay, thanks.

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

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

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

1                   This is a teleconference status in the  
2 matter of Powertech USA, Inc., Docket Number 40-  
3 9075MLA concerning the Dewey-Burdock In Site Uranium  
4 Recovery Facility.

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

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

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

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

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

19                   JUDGE FROEHLICH: Thank you, gentlemen.

20                   And for the intervenor the Oglala Sioux  
21 Tribe?

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

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

1 JUDGE FROEHLICH: Thank you, gentlemen.

2 And for the Consolidated Intervenors?

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

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

7 JUDGE FROEHLICH: Thank you, gentlemen.

8 And for the Commission staff?

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

14 JUDGE FROEHLICH: Thank you very much.  
15 Thank you all.

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

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

25 On March 16, 2018, the NRC staff notified

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

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

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

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

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1 accomplishing a comprehensive cultural resource  
2 survey.

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

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

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

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

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

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

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

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

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

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1 expeditiously as possible.

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

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

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

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

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

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

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

17 JUDGE FROEHLICH: Okay, thank you.

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

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

25 MS. BAER: I'm not sure I can provide an

1 estimate at this time, Your Honor. I can say the  
2 staff is doing everything within their ability to  
3 ensure that the process concludes as quickly as  
4 possible.

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

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

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

11 JUDGE FROEHLICH: Okay, thank you.

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

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

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

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

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1 stop there.

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

5 MR. PARSONS: Sure, thank you.

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

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

25 At that time, NRC staff essentially

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

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

23 JUDGE FROEHLICH: And I guess, Ms. Baer,  
24 your response or your reaction to these concerns are  
25 the same as what happened in the first iteration

1 before Dr. Nickens was selected. Is that correct?

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

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

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

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

20 JUDGE FROEHLICH: Sure.

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

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

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

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

25 MR. PARSONS: Thank you, Your Honor. Jeff

1 Parsons, again, on behalf of the Tribe.

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

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

24 And so I would just note that our  
25 experience now is that the better practice is to have

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

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

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

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

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

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1 effectiveness of later conversations.

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

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

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

14 JUDGE FROEHLICH: Okay, thank you.

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

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

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

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1 think that's -- it sounds like the process that Ms.  
2 Baer has laid out gives some opportunity for some  
3 negotiating on basic structure on the front end and  
4 perhaps that could be part of those discussions.

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

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

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

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1 retains, to the extent possible retains control over  
2 it and who has access to it. And I think those are  
3 some of the issues that need to be addressed.

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

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

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

16 JUDGE FROEHLICH: Sure.

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

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

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1 ourselves available to have those conversations.

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

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

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

20 JUDGE FROEHLICH: I see. Under paragraph  
21 10 of the existing protective order, the Licensing  
22 Board may alter or amend the protective order and  
23 resolve disputes that arise in coming up with terms  
24 that parties need or believe they need to move  
25 forward. So I would encourage both the staff and the

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1 Tribe to work out whatever language needs to be put on  
2 paper but we can amend our protective order and so  
3 that we can go forward with the revised time table  
4 that is found in attachment to the November 21, 2018  
5 letter.

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

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

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

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

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1 for a full response by December 28th.

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

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

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

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

23 This case has gone on for quite a while  
24 now. Some of these issues are not brand new. There's  
25 been a lot of thought and a lot of preparation that

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1 has gone into the engagement of March 2018 approach  
2 and now we're getting down to the negotiations that  
3 are necessary to keep us on a schedule that will  
4 resolve this issue in a timely manner.

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

7 JUDGE FROEHLICH: Sure.

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

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

20 JUDGE FROEHLICH: Yes, thank you, Ms.  
21 Baer.

22 Mr. Parsons, are there any other Tribes  
23 that you foresee joining the process, other than the  
24 Oglala Sioux Tribe?

25 MR. PARSONS: Thank you, Your Honor. Jeff

1 Parsons on behalf of the Tribe.

2 As the Tribe has, for the entirety of this  
3 process, we have attempted to engage other tribes  
4 throughout and will continue to do so. I do  
5 anticipate there will be interest and the Oglala Sioux  
6 Tribe can certainly keep NRC staff apprised as those  
7 efforts to communicate with other Tribes occur.

8 JUDGE FROEHLICH: Okay. Before I call  
9 upon the Consolidated Intervenors, does Judge Bollwerk  
10 or Judge Barnett have anything for the Oglala Sioux  
11 Tribe at this point?

12 JUDGE BOLLWERK: This is Judge Bollwerk.  
13 No.

14 JUDGE FROEHLICH: Judge Barnett?

15 JUDGE BARNETT: No.

16 JUDGE FROEHLICH: Okay.

17 MR. PARSONS: If I may, Your Honor. I  
18 apologize. Jeff Parsons again.

19 I just wanted to emphasize again that you  
20 know the communication sort of -- I don't want to call  
21 it lack of communication or miscommunication but sort  
22 of the difficulties that we have had, I guess I would  
23 reiterate that as we requested several times, the  
24 Tribe does believe that involvement of a Tribal  
25 liaison would be helpful and would certainly encourage

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1 NRC staff to reconsider. I'm not sure they've ever  
2 responded to those requests directly but we would ask  
3 them to consider involving a Tribal liaison so we  
4 might have a better chance of having a meaningful  
5 conversation.

6 Thank you, Your Honor.

7 JUDGE FROEHLICH: Is there a response to  
8 the concern Mr. Parsons raised about the involvement  
9 of the Office of Tribal Liaison?

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

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

25 Although we feel confident that we already

1 have the necessary resources to bring resolution to  
2 the matter, we're not sure that we understand what the  
3 Tribe hopes to gain by involving this other party. So  
4 if we could ask the Tribe to elaborate a little bit  
5 more on the role they envision for the Tribal Liaison  
6 Branch to play in this proceeding, that would help as  
7 we consider this.

8 MR. PARSONS: This is Jeff Parsons on  
9 behalf of the Tribe.

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

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

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1 demonstrated right there.

2 I will note that the Tribe has been asking  
3 for this for some time. Last June when we had the  
4 face-to-face meetings, the Tribe requested NRC staff  
5 to bring in a tribal liaison at that time. So this is  
6 hardly a new request.

7 Thank you, Your Honor.

8 JUDGE FROEHLICH: Thank you.

9 MS. BAER: Could I respond, Your Honor?  
10 This is Lorraine Baer.

11 JUDGE FROEHLICH: Sure, Ms. Baer.

12 MS. BAER: Thank you.

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

18 I will also note that we've added Jean  
19 Trefethen to our team and she works with the Tribe and  
20 Strata.

21 JUDGE FROEHLICH: Okay, thank you.

22 I call now upon the Consolidated  
23 Intervenors and would like to hear from Mr. Frankel or  
24 Mr. Ballanco on what your response to the NRC staff  
25 letter yesterday and your reaction to their revised

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1 time line and proposal for implementing the March 2018  
2 approach.

3 Mr. Frankel?

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

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

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

25 I also have an observation that there have

1 been a lot of deadlocks in this case, as you noted  
2 Judge, and we are in support of involving a tribal  
3 liaison, especially on the tight time frame. We  
4 believe that perhaps the expertise of a mediator of  
5 sorts that is recognized within the federal government  
6 would possibly lend traction to some of the Tribe's  
7 request within the NRC staff.

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

10 MR. BALLANCO: Thank you. Tom Ballanco  
11 for Consolidated Intervenors.

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

21 I would just mention to staff that we  
22 can't emphasize enough the value of personal contact  
23 and time. As we get into development of a methodology  
24 and the actual survey itself, the more time and  
25 interaction staff and the consultant are able to have

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1 with tribal members, tribal elders especially, the  
2 better, keeping in mind that for many of the elders,  
3 English is their second language but Lakota is not a  
4 written language. So they are speakers, old  
5 tradition. Writing is not their first choice of  
6 communication. So the more we can spend in-person I  
7 think the better outcome we'll have.

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

12 JUDGE FROEHLICH: Thank you, Mr. Ballanco.

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

18 MR. PUGSLEY: Judge Froehlich, Chris  
19 Pugsley for Powertech.

20 I think, in short, our letter response  
21 which we shared with counsel for all parties earlier  
22 today speaks for itself, that Powertech is still  
23 committed to trying to implement the items under the  
24 previously agreed upon approach. I'm really not sure  
25 that there's much more left to say, other than the

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1 fact that the licensee is become increasingly  
2 frustrated with the continuously drawn out time line  
3 associated with this process and the fact that this  
4 has not been conclusively resolved.

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

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

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1 is embodied in its December 5th letter that was  
2 distributed. And if any counsel has an issue with  
3 getting that letter or something, if they did not  
4 receive it or weren't able to open, I'm more than  
5 happy to do whatever it takes to get them a copy.

6 JUDGE FROEHLICH: Thank you, Mr. Pugsley.

7 From the perspective of Powertech, the  
8 licensee, what do you see as the largest potential  
9 challenge to this March 2018 approach?

10 MR. PUGSLEY: Chris Pugsley for Powertech,  
11 Your Honor.

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

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

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1 can understand what is required of the company  
2 because, at the end of the day, the entity that is  
3 providing the financial resources for these things is  
4 Powertech and Powertech needs to understand what  
5 financial commitments they have to make, what time  
6 arrangements they have to set in stone in terms as to  
7 the site, you know other items associated with  
8 implementation of the approach.

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

14 JUDGE FROEHLICH: Okay, I appreciate your  
15 time.

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

23 I'm thinking just out loud and wonder if  
24 there is any -- are there any procedural mechanisms or  
25 instructions that the parties would like the Board to

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1 put forward in subsequent orders? Our procedure is  
2 created to keep people's approach moving forward.

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

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

24 JUDGE FROEHLICH: Thank you -- parties to  
25 what you've just hear from counsel for Powertech?

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

3 You know I don't have a problem -- you  
4 know I think it's fine if a party wants to file a  
5 motion, I think that's -- I think Mr. Pugsley is right  
6 that that's in existing regulation and is always  
7 available at some level.

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

19 JUDGE BARNETT: This is Judge Barnett --  
20 Judge -- was not needed during that discussion just  
21 now.

22 JUDGE FROEHLICH: Thank you.

23 Ms. Baer, have you given thought or has  
24 the staff given thought to what procedures or what  
25 route we should take, should the revised time line

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1 break down or any of the elements that are integral to  
2 it not be accomplished? Do you have a view on how to  
3 get it resolved, get this case wrapped up, should the  
4 March 2018 approach not get us where we'd all like to  
5 be?

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

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

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

17 JUDGE FROEHLICH: Okay. I think that my  
18 reaction to this is that monthly teleconference would  
19 probably be of some utility going forward but if the  
20 parties see impasse or a particularly troublesome  
21 contention or element in the time line that you're not  
22 making any progress on, if the parties could alert the  
23 Board to that and that perhaps in advance of the  
24 monthly teleconference or in advance of the monthly  
25 report that the staff files with the Board, that the

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1 Board be looped in and perhaps it could be of  
2 assistance to the parties in resolving any potential  
3 or future problems that may arise, as we try to  
4 implement the March 2018 proposal.

5 How does that sound to you, staff or to  
6 the parties?

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

21 JUDGE FROEHLICH: All right.

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

24 JUDGE FROEHLICH: We'll be back on the  
25 record.

1           At this point I guess procedurally, we  
2 would like to hear from the staff in a teleconference  
3 shortly after the New Year. But in order for that to  
4 be meaningful or for anything to really come out of  
5 it, the deadline of December 28th for a response from  
6 the Oglala Sioux Tribe would probably be quite vital.

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

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

21           JUDGE BOLLWERK: Again, assuming Judge  
22 Froehlich is talking about our schedule. It's not on  
23 our schedule. It's your schedule.

24           JUDGE FROEHLICH: Right.

25           JUDGE BOLLWERK: We haven't adopted the

1 schedule. It's not our schedule.

2 But obviously if you could -- I guess my  
3 point -- this is Judge Bollwerk. If there needs to be  
4 a discussion about this, we need to know what that  
5 date is going to be before we can set the prehearing  
6 conference date, essentially.

7 JUDGE FROEHLICH: Right.

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

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

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

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

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

25 JUDGE FROEHLICH: I'm thinking, Mr.

1 Parsons, if we could have your response to the NRC  
2 staff by the 4th of January, basically giving an extra  
3 week because of the concerns you raised, we would be  
4 able to hold a teleconference, status conference the  
5 week of January 7th and see where we're at.

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

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

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

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

25 JUDGE FROEHLICH: Absolutely.

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

5           MR. PARSONS: Thank you, Your Honor. This  
6           is Jeff Parsons.

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

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

21          JUDGE FROEHLICH: Mr. Parsons, I can't  
22          emphasize enough that the staff, at this point, has  
23          put forward an approach that all parties had agreed to  
24          and what we actually need to be done at this point, is  
25          for the parties to begin those discussions or continue

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1 the discussions, if that's more appropriate, in order  
2 to come up with a methodology to move forward.

3 And the more time that we take and the  
4 more we adjust dates, the longer this proceeding will  
5 drag on and less likely that it will be resolved  
6 efficiently.

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

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

25 MR. PUGSLEY: Your Honor, Chris Pugsley

1 for Powertech. Could I please ask that the Board  
2 institute a deadline for all parties to inform the  
3 Board and all counsel as to when that date will be  
4 established for a response and when correspondence  
5 will be issued telling us when that will happen?

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

11 MR. PUGSLEY: Thank you.

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

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

23 JUDGE BOLLWERK: This is Judge Bollwerk.

24 Again, we're not setting dates on this  
25 milestone. This is the parties' milestone. This is

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1 the staff's milestone. What we need to know is what  
2 the date is so we can set the prehearing conference.  
3 That's the bottom line.

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

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

13 JUDGE BOLLWERK: Judge Bollwerk. I don't  
14 have anything at this point.

15 JUDGE FROEHLICH: And Judge Barnett, do  
16 you have anything at this point?

17 JUDGE BARNETT: No, nothing.

18 JUDGE FROEHLICH: Do any of the parties  
19 have any issues or concerns they'd like to raise at  
20 this point?

21 MR. PUGSLEY: Judge Froehlich, Chris  
22 Pugsley from Powertech. Nothing further.

23 JUDGE FROEHLICH: Thank you, Mr. Pugsley.  
24 Ms. Baer?

25 MS. BAER: I'm sorry, Your Honor, one

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1 moment while I confer with my clients.

2 JUDGE FROEHLICH: Sure, great.

3 MS. BAER: Okay, Your Honor, thank you for  
4 your patience. This is Lorraine Baer for the NRC  
5 staff.

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

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

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

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

23 JUDGE BOLLWERK: Sure. What I heard  
24 originally was Mr. Parsons said by the 10th he would  
25 give us a date by which the Tribe felt it could

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1 respond or to give everyone a date. Frankly, we're  
2 glad to get the date but it doesn't -- we're not the  
3 one setting the date.

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

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

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

16 Did I clarify that or make it more  
17 difficult? I apologize.

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

20 Thank you, Your Honor. This is Lorraine  
21 Baer for the NRC staff.

22 If I may, I would like to suggest  
23 proposing that the Oglala Sioux Tribe provide a  
24 response by January 8th. That gives them a few extra  
25 days but does not push it out too far so that the

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1 future conversations set to take place in January  
2 won't be truncated too much.

3 We're just a little concerned that  
4 conferring with the parties and providing you a  
5 response by the 10th only gives us basically two days.

6 JUDGE BOLLWERK: Right, I understand that.

7 Does the Oglala Sioux Tribe have any  
8 response?

9 MR. PARSONS: This is Jeff Parsons on  
10 behalf of the Tribe.

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

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

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

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

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

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

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

11 MR. STILLLS: This is -- sorry, Jeff. Go  
12 ahead.

13 MR. PARSONS: We can certainly do that.

14 Mr. Stills, go ahead.

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

24 If a contractor, a qualified contractor,  
25 which is one of the lynchpins involved, that may

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1 change how we would view that going forward. Should  
2 we expect to have a contractor involved in the next  
3 week or so I guess is kind of what the question comes  
4 down to.

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

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

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

21 And we are seeking the input of the Tribe  
22 in the response to our November 21st letter. We just  
23 need their specific objections or an alternative  
24 proposal by December 28th, January 8th, whatever date  
25 we decide on. So I'm not certain why a contractor

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1 would be needed at that point in order for them to  
2 provide that response.

3 MR. PARSONS: This is Jeff Parsons on  
4 behalf of --

5 MR. PUGSLEY: This is Chris Pugsley --  
6 Go ahead, Mr. Parsons.

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

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

25 MR. PUGSLEY: So this is Chris Pugsley for

1 Powertech.

2 Can we agree for the time being that there  
3 will be a response telling all parties when we will  
4 know when the Oglala Sioux Tribe can respond to the  
5 staff's inquiry by Monday the 10th. Is that correct?

6 MR. PARSONS: That is sufficient for the  
7 Tribe from the Tribe's perspective.

8 MR. PUGSLEY: All right, thank you, Mr.  
9 Parsons.

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

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

19 So our client is satisfied with that  
20 answer.

21 MS. BAER: Thanks for the clarification.

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

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1 MR. PUGSLEY: Thank you, Mr. Frankel. I  
2 appreciate it.

3 MR. PARSONS: That was Mr. Parsons.

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

5 JUDGE FROEHLICH: All right. I'm sure  
6 when we read the transcript, this will all be crystal  
7 clear.

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

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

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

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1 would you please update the Commission's records and  
2 notify the Secretary?

3 MR. PUGSLEY: Yes, Your Honor. Chris  
4 Pugsley for Powertech.

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

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

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1 soon as practicable.

2 JUDGE FROEHLICH: Thank you. I think that  
3 will be very helpful, Mr. Pugsley.

4 Does anyone have anything else to raise at  
5 this time?

6 JUDGE BOLLWERK: Nothing for Judge  
7 Bollwerk.

8 JUDGE FROEHLICH: Judge Barnett?

9 JUDGE BARNETT: No.

10 JUDGE FROEHLICH: Anything that any of the  
11 parties wish to raise at this time?

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

17 Thank you all.

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

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