

**Official Transcript of Proceedings**  
**NUCLEAR REGULATORY COMMISSION**

Title: Powertech USA, Inc. (Dewey-Burdock  
In-Situ Uranium Recovery Facility)

Docket Number: 40-9075-MLA

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

Location: Teleconference

Date: January 29, 2019

Work Order No.: NRC-0118

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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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Tuesday, January 29, 2019

Teleconference

BEFORE:  
WILLIAM J. FROEHLICH, Chair  
MARK O. BARNETT, Administrative Judge  
G. PAUL BOLLWERK III, Administrative Judge

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CONTENTS

Page

Welcome and Opening Remarks . . . . . 1522

NRC Staff remarks, Lorraine Baer . . . . . 1526

Oglala Sioux Tribe remarks, Jeff Parsons . . . 1527

Consolidated Intervenors remarks,  
David Frankel . . . . . 1543

Applicant Remarks, Chris Pugsley . . . . . 1544

Adjourned . . . . . 1554

1 P-R-O-C-E-E-D-I-N-G-S

2 (3:18 p.m.)

3 JUDGE FROEHLICH: Good afternoon, all.  
4 It's just after 3:20 in the afternoon, Eastern Time.

5 This is Judge Froehlich in Rockville,  
6 Maryland, and with me is Judge Bollwerk. And on the  
7 telephone line is Judge Barnett.

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

12 This is a telephone status conference in  
13 the matter of Powertech USA, Inc. Docket Number 40-  
14 9075-MLA, concerning the Dewey-Burdock In Situ Uranium  
15 Recovery Facility.

16 Public notice scheduling this telephone  
17 conference was issued on January 24th. A provision  
18 has been made for a bridge line for the parties to  
19 this case, and for a listen only line for interested  
20 members of the public.

21 At this time, I'd like to take formal  
22 appearances of the parties to this proceeding. Is the  
23 Licensee, Powertech, and its counsel online?

24 MR. PUGSLEY: Yes, Judge Froehlich.  
25 Christopher Pugsley for Powertech.

1 JUDGE FROEHLICH: Thank you, Mr. Pugsley.  
2 And for the Intervenors, the Oglala Sioux Tribe.

3 MR. PARSONS: Yes, Your Honor. This is  
4 Jeff Parson on behalf of the Oglala Sioux Tribe. With  
5 me on the phone is Travis Stills.

6 JUDGE FROEHLICH: Thank you. And for the  
7 Consolidated Intervenors?

8 MR. FRANKEL: Yes, Your Honor. David  
9 Frankel for Consolidated Intervenors.

10 JUDGE FROEHLICH: Thank you.

11 MR. BALLANCO: And also, Tom Ballanco for  
12 Consolidated Intervenors, Your Honor.

13 JUDGE FROEHLICH: Thank you, Mr. Blanco.  
14 And for the Commission Staff?

15 MS. BAER: Good afternoon, Your Honor.  
16 This is Lorraine Baer for the NRC Staff. With me in  
17 the room I have Cinthya Roman and Jean Trefethen. And  
18 on the listen only line I've got Diana Diaz-Toro.

19 JUDGE FROEHLICH: Thank you very much. As  
20 we proceed through this call, if the parties would  
21 identify themselves before they speak it will make  
22 things easier for our court reporter and we'll have a  
23 better record of this conference call.

24 We're holding this telephone status call  
25 as a follow-up to the conference call held by the

1 Board on December 6th, 2018. During that December  
2 call, the NRC Staff provided the parties with a  
3 revised timeline for implementing the March 2018  
4 approach.

5 And Powertech and the Oglala Sioux Tribe  
6 confirmed that they would continue to work with the  
7 Staff towards implementations and approach. The NRC  
8 Staff suggested that monthly telephone status  
9 conference calls with the Board be re-instituted. And  
10 in response, we're meeting today.

11 In the NRC Staff's January 2, 2019 monthly  
12 status report to the Board, the NRC Staff indicated  
13 that Staff are continuing to prepare for negotiations  
14 on the site survey methodology, in anticipation of  
15 receiving input from the Tribe on January 11th.

16 Staff further indicated that it had  
17 arranged for support in its negotiation from the  
18 tribal liaison branch, as requested by the Tribe.

19 On January 11th, the Tribe submitted its  
20 response to the NRC Staff concerning the methodology  
21 for a cultural resource study. The Tribe states that  
22 the NRC Staff has not provided any description of a  
23 cultural resource's methodology.

24 The Tribe then raised questions about the  
25 qualifications of the NRC Staff contractor and

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1 identified what it considers defects in the literature  
2 review.

3 The Tribe also seeks to have the Staff  
4 prepare confidentiality agreements for the Tribes  
5 consideration and reiterates its request for a copy of  
6 the scope of work for the cultural resources study.

7 I understand that the NRC Staff responded  
8 to some of the concerns raised by the Tribe in letters  
9 to various other Tribes, as well as the Oglala Sioux,  
10 on January 25th, 2019. That letter included a  
11 statement of work and a lengthy vitae from Mr.  
12 Spangler.

13 We're here today for our second telephone  
14 status conference call. And in this call, I guess we  
15 would just like to hear from the parties, where we  
16 are, what progress has been made since our last  
17 conference call and how things look moving forward on  
18 the schedule, that the Staff had included in its  
19 November 21st, 2018 email to the parties.

20 Which has, as a target, March 1st, 2019,  
21 as the date to reach an agreement on the site survey  
22 methodology and the areas to be examined during the  
23 field survey.

24 I guess we could start with the Staff.  
25 And, Ms. Baer, could you sort of bring us up to speed

1 on where we are, or where the parties are, on their  
2 negotiations towards the methodology and your  
3 impression on the ability of the staff and the parties  
4 to keep to the proposed time table.

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

7 So, as you mentioned, we completed the on  
8 boarding processing for Mr. Jerry Spangler. And we  
9 shared an up to date copy of resume with the Tribe in  
10 our January 25th, response.

11 We've requested and arranged for support  
12 from the federal state and tribal liaison branch  
13 during upcoming methodology discussions. And that's  
14 individual's role will be to facilitate communication  
15 and aid in the discussion on a specific site survey  
16 methodology.

17 And as you also mentioned, the last couple  
18 of weeks we spent responding to the Tribe's January  
19 11th letter. And in that letter we, we remained  
20 hopefully that the schedule outlined in the November  
21 21st letter is still achievable.

22 And we, in the letter, proposed that  
23 perhaps moving forward into February we could have  
24 weekly meetings to begin discussions on the specific  
25 site survey methodology.

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1           The Staff is concerned, however, that we  
2           are only five weeks away from the March 1st milestone,  
3           so we would like to get those meetings started soon.  
4           Either this week next.

5           Specifically, the first meeting we would  
6           like to have introductions for the, to vote, for  
7           Spangler, the tribal liaison and to discuss the  
8           framework for future meetings.

9           And also, additionally, at the last  
10          teleconference, the Tribe Counsel mentioned  
11          difficulties with communication that have contributed  
12          to some misunderstandings between the parties. So, to  
13          facilitate understanding in the future, the Staff  
14          would prefer that these meetings be transcribed so  
15          that all parties can reference the transcript and  
16          build upon that for the next meeting.

17          Finally, the Tribe has invited the Staff  
18          to attend the meeting of the Tribal Historical  
19          Preservation Advisory Council on February 22nd, 2019  
20          in Pine Ridge.

21          The Staff anticipates attending that  
22          meeting and looks forward to a productive face-to-face  
23          discussion. However, given the March 1st milestone in  
24          the adjusted March 2018 approach timeline, we would  
25          just like to emphasize the substantive discussions

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1 regarding the methodology needs to take in advance of  
2 that meeting.

3 JUDGE FROEHLICH: Thank you, Ms. Baer.  
4 Can I just ask a few follow-up questions of you?

5 As part of the preparation for the weekly  
6 conference calls and the meetings in South Dakota, is  
7 Mr. Spangler working up a methodology, a proposal,  
8 that the Staff will elaborate upon or build upon when  
9 you do have these consultation as well as the meeting?

10 MS. BAER: Yes, Your Honor. Mr. Spangler  
11 had been working with the Staff building upon the  
12 proposal that was included in the November 21st letter  
13 from the Staff.

14 JUDGE FROEHLICH: Okay.

15 MS. BAER: And they're preparing for  
16 detailed discussions on the site survey methodology.

17 JUDGE FROEHLICH: Okay. All right, I  
18 guess I'd like to, let's switch now to the Counsel for  
19 Intervenors and gauge your response to the Staff's,  
20 their January 25th, 2019 letter, where they addressed  
21 some of the issues that you raised in your January  
22 11th response.

23 MR. PARSONS: Thank you, Your Honor. This  
24 is Jeff Parsons on behalf of the Oglala Sioux Tribe.  
25 We did receive a response from NRC Staff late in the

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1 day, in the evening of the 25th. Obviously that was  
2 Friday, this last Friday.

3 We've reviewed the letter, although it  
4 will take some time for us to fully sort of digest.  
5 So we do have some preliminary input or some  
6 preliminary reaction, but certainly we have not had a  
7 chance to fully vet its contents, I guess I would say.

8 The Tribe, I guess I would make four  
9 observations that sort of initially came to the  
10 Tribe's attention. The first is some of our concerns  
11 relating to qualifications of the contractor remain.

12 There was a CV, you as you mentioned,  
13 attached to the letter. However, our initial  
14 impression was that it did not, at least on its face,  
15 demonstrate really any, but for one, what appeared to  
16 be a small project more than 20 years ago, did not  
17 evidence very much in the way of any work on the Great  
18 Plains, or specifically with Lakota Tribes.

19 And so, I think the tribe remains  
20 concerned to the extent the contractor does not have  
21 the relevant experience. So that was one initial  
22 observation.

23 Secondly, as Ms. Baer indicated -- just to  
24 back up a moment. The Tribe has yet to have any  
25 contact with Mr. Spangler or any interaction with the

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1 tribal liaison branch. We do appreciate the fact that  
2 the tribal liaison branch has been brought on.

3 It is not entirely clear to us that that  
4 has occurred. We understood that the request had been  
5 made, but it does sound like that is a confirmed  
6 participation. So that's appreciated obviously.

7 Ms. Baer mentioned a moment ago that the  
8 contractor had started to work on the methodology.  
9 Based on the November 21st NRC Staff letter, we would  
10 remind NRC Staff, again, that the Tribe had put forth  
11 a detailed list of components for discussion purposes  
12 in June of 2018.

13 And we've requested, on multiple occasions  
14 at this point, that NRC Staff provide substantive  
15 response to that. The components in that, that were  
16 part of that dialogue back in June of 2018.

17 And it is a little difficult for the  
18 Tribe, you know, the NRC Staff, in its letter, appears  
19 to request that the Tribe provide input on a survey  
20 approach, even after the Tribe has repeatedly pointed  
21 to its communications from June of 2018 as  
22 incorporating that input.

23 And so, we would certainly hope that Mr.  
24 Spangler would be working, not just on the November  
25 21st input from NRC Staff, but also the June 2018

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1 input from the Oglala Sioux Tribe. So we note that.

2 We do appreciate that NRC Staff appears  
3 willing to attend the meeting on February 22nd. I  
4 would just make sure Ms. Baer is aware that, and NRC  
5 Staff is aware that, that meeting will be in Rapid  
6 City. There is an office of the Oglala Lakota College  
7 in Rapid City.

8 So, it won't be in Pine Ridge. I just  
9 noticed that in her initial statement and just want to  
10 make sure that we're clear on the location.

11 And certainly, although it was not  
12 confirmed in the letter or Ms. Baer's statement,  
13 whether Mr. Spangler would be in attendance for that  
14 meeting. I would assume that that would be the case.  
15 But I have not seen direct confirmation of that fact.

16 And then as far as timing, certainly we  
17 understand that NRC Staff has put forth a proposed  
18 timeline and the Tribe is certainly willing to engage  
19 in the coming weeks in discussions, but as the Tribe  
20 noted, on the December 6th conference call amongst the  
21 parties coordinated by the Board, the Tribe believed  
22 that the precise timing of the culture resources  
23 survey components, needs to be informed by the  
24 methodology that is determined and not go through an  
25 exercise of trying to fit the methodology in the

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1 predetermined, the Tribe might contend somewhat  
2 arbitrary timelines, without regard to the specific  
3 methodology.

4 So, the Tribe would note, sort of  
5 reiterate its discussion or its comments from the  
6 December 6th conference call, that this timing issue  
7 should be flexible to accommodate the methodology  
8 that's determined.

9 Lastly, with regard to the protective  
10 order, the Tribe has been back and forth on this a bit  
11 and, again, I think the consensus on the Tribes, from  
12 the Tribes perspective, is it difficult to frame out  
13 amendments to the protective order without having some  
14 idea as to the methodology.

15 In the Tribe's response on January 11th,  
16 the Tribe indicated that it would like to work on  
17 amendments to the protective order with the input of  
18 the contractor that NRC Staff had selected, presuming,  
19 of course, that the contractor has the relevant  
20 experience. One of the components would be, having  
21 experience in conducting oral interviews and site work  
22 that includes protective order.

23 So we would want to have that discussion  
24 and that protective order framed with input from the  
25 contractor and informed by the methodology that's

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1 determined so that we're not in an exercise of  
2 essentially working off hypothetical situations for  
3 framing the protective order.

4 So I think that's, those are the initial  
5 thoughts that the Tribe had, although as I mentioned,  
6 having just received it Friday, it is a fairly  
7 detailed letter. I just wanted to qualify that  
8 response. Thank you.

9 JUDGE FROEHLICH: Okay. Just let me ask  
10 you, Mr. Parson. I'm not sure I read your response to  
11 the November 21st Staff letter.

12 And in there I thought I read something to  
13 the effect that the Tribe was waiting for the Staff or  
14 Mr. Spangler to suggest the modifications to the  
15 protective order, whereas I thought the Tribe had  
16 concerns with the existing protective order.

17 As you prepare for your negotiations on  
18 the methodology that the concern that the Tribe had,  
19 would be presented to the Staff so that they could  
20 work with you on amendments to the, or additions to  
21 the protective order.

22 The Tribe must have something in mind here  
23 for what they believe is missing in the existing  
24 protective order that needs to be added. Will you be  
25 prepared, over the next five weeks, to present to the

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1 Staff, your ideas for those types of protection  
2 safeguards that you would like included in this  
3 protective order?

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

6 Yes. Obviously, we are interested in  
7 working on amending the protective order. For  
8 instance, the prior protective order had no  
9 consideration for things like oral interviews. For,  
10 just to give an example.

11 And so, those would be components that we  
12 believe would have to be incorporated. I think what  
13 we, and I apologize that it was not articulated  
14 precisely, but I think what we were hoping for was  
15 some input from a contractor whose got the, like I said,  
16 who presumably would have experience in crafting and  
17 working under these protective orders, to get input as  
18 well.

19 So, certainly we'll be interested and  
20 willing to work on that and provide our position on  
21 those things, but we would also expect that the  
22 contractor that NRC Staff has selected would also have  
23 input in that regard.

24 JUDGE FROEHLICH: Okay. In that regard,  
25 since you know that the methodology, whatever exact

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1 methodology the Staff and the parties come up with,  
2 that is likely to include oral interviews. So, I  
3 would suggest it would save time and be helpful to the  
4 Staff and the other parties, if the Tribe would  
5 collect that type of language that they would want in  
6 the protective order, to protect the information that  
7 would be coming from oral interviews.

8 It seems like this would be something that  
9 the Tribe would have special expertise, based on your  
10 regulations and how the tribal authorities work on  
11 what they want, what you want included in there. So  
12 I would hope that it would be the Tribe that would  
13 take the first steps towards, towards that, in the  
14 amendment that might be necessary to the protective  
15 order in this case.

16 MR. PARSONS: Understood, Your Honor. The  
17 Tribe will work to provide that information.

18 JUDGE FROEHLICH: Okay.

19 JUDGE BOLLWERK: This is Judge Bollwerk.  
20 Let's go back to the Staff for a second.

21 What do you see as Mr. Spangler's input  
22 into the first meeting, teleconference that you all  
23 had with the Tribe?

24 MS. BAER: Well, the first meeting that  
25 we're envisioning is more just sort of an introductory

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1 meeting. Introducing all the parties to each other,  
2 introducing the new players here and sort of working  
3 on a framework that will help facilitate future  
4 meetings.

5 JUDGE BOLLWERK: I take it Mr. Spangler  
6 will be involved, correct?

7 MS. BAER: Correct.

8 JUDGE BOLLWERK: So, I guess we didn't  
9 really hear anything from the Tribe about, so, Staff  
10 has proposed the first teleconference. I understood,  
11 was it next week that you wanted to have it or the  
12 week after, is that correct? Or earlier, you tell me.

13 MS. BAER: We were asking for either this  
14 week or next week, if possible.

15 JUDGE BOLLWERK: Okay. Have you had any,  
16 I guess I'll turn to the Tribe then, any response to  
17 that? I recognize you only got the letter on Friday,  
18 but any thoughts?

19 MR. PARSONS: Thank you, Your Honor. This  
20 is Jeff Parsons again.

21 We have had, I've had one conversation  
22 with my clients about potential dates. This week  
23 appears to be difficult to do. I have to get back  
24 with them with regard to next week.

25 I do know that February 8th was, indicated

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1 would be a potential opportunity, but it's possible we  
2 could do one next week. I will just have to  
3 coordinate and confirm with NRC Staff.

4 JUDGE BOLLWERK: All right.

5 JUDGE FROEHLICH: Mr. Parsons, this is  
6 Judge Froehlich, I just wanted to follow-up on that.  
7 When you confer with your clients, the Staff has  
8 proposed at least weekly meetings with the Tribe, and  
9 I would urge you to sensitize them to that desire and  
10 get the Staff a response on having at least weekly  
11 meetings between now, and I guess the 5th of March, at  
12 least going forward.

13 MR. PARSONS: Understood, Your Honor. And  
14 in that spirit, of course the Tribe has invited NRC  
15 Staff out to South Dakota to participate in a face-to-  
16 face meeting, which I think as the Tribe has indicated  
17 in these proceedings throughout, tends to be a much  
18 more productive and informative method of  
19 communication.

20 JUDGE FROEHLICH: I agree. And the more  
21 of these meetings and the more communication that  
22 takes place, I think more easily we'll be able to  
23 resolve this.

24 JUDGE BOLLWERK: This is Judge Bollwerk.  
25 It strikes me that the time to exchange letters has

1 ended now and it's time to engage. And I think you  
2 both understand that, all the parties understand that.  
3 But I think it's time to move forward and get people  
4 talking to each other.

5 That's face-to-face obviously, but if  
6 teleconferencing is the way to get, start the  
7 conversation, I hope you all will certainly consider  
8 doing that in the near-term. Over the next week to  
9 ten days, that would certainly be, seem to be, make  
10 more sense.

11 Let me ask a separate question. I guess,  
12 when the Staff expressed surprised about the  
13 literature review, and I guess I was a little  
14 surprised too since I read it, I thought it was very  
15 interesting but obviously the Tribe had some problems  
16 with. Is that something you're going to be talking  
17 with the Staff more about?

18 MR. PARSONS: This is Jeff Parsons again,  
19 thank you, Your Honor. Yes.

20 Just to clarify, that literature review  
21 was provided to the Tribe after discussion, after the  
22 NRC Staff had broken off discussions in June. And so,  
23 effectively there was no, at least inside of that  
24 process, after it ended in June, there was no  
25 convenient process setup for the Tribe to have direct

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1 conversations with NRC Staff.

2 And this was essentially our earliest  
3 formal opportunities to present those concerns. But,  
4 yes, that is certainly something the Tribe would like  
5 to discuss further with NRC Staff.

6 JUDGE BOLLWERK: All right. And let me go  
7 back to the Staff one second, again. Can you give us  
8 any more insight into Mr. Spangler's sort of  
9 background or experience in terms of dealing with the  
10 things that the Tribe is concerned about?

11 We recognize the curricula vitae. And as  
12 Mr. Parsons pointed out, he did have some experience,  
13 I guess back in the late 90s, early 2000s, doing some  
14 oral history with the Oglala Sioux.

15 Is the Staff satisfied Mr. Spangler is  
16 going to be able to kind of live up to, I guess what  
17 the Tribe's concerns are?

18 MS. BAER: Thank you, Your Honor. This is  
19 Lorraine Baer for the NRC Staff.

20 As you saw, we shared Mr. Spangler's  
21 resume. And the NRC Staff would like to reemphasize  
22 that although we hired a contractor at the request of  
23 the Tribe to help facilitate the approach, but we  
24 recognize that the Tribes are the ones that have the  
25 unique expertise to identify, interpret and ascribe

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1 significance to resources.

2 There's no substitution for their  
3 expertise. So, we awarded a contract to the company,  
4 expertise in planning, performing and recording  
5 surveys to, again, assist in developing and  
6 implementing the survey methodology. And did not  
7 request that the Tribe solely and voluntarily develop  
8 this survey methodology.

9 The intent is to develop a methodology in  
10 conjunction with the Tribe and to help take their  
11 input as we develop it.

12 JUDGE BOLLWERK: All right. So it sounds  
13 again like the engagement that I spoke about a minute  
14 or so ago, it's an important thing then to get this  
15 process moving?

16 MS. BAER: We would agree.

17 MR. PARSONS: This is Jeff Parsons, if I  
18 may, Your Honor. Attached to the letter on January  
19 25th was, appeared to be a scope of work not for this  
20 survey, specifically just this survey, but Mr.  
21 Spangler's, or I guess, his firms' scope of work in  
22 it.

23 It goes far beyond, in our view, it goes  
24 far beyond just sort of giving some input on the rote  
25 survey approach on the ground but includes significant

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1 participation in being NRC Staff experts in terms of  
2 writing the report.

3 There are discussions in that document  
4 about identifying, evaluating sites, historical and  
5 cultural significance of sites, and drafting reports  
6 and updating the EIS. And so, it included a pretty  
7 substantial body of work.

8 Certainly, the Tribe has the expertise in  
9 its own culture, but the Tribe would reiterate that  
10 the scope of work that's demonstrated in that document  
11 requires, in our view, in the Tribe's view, a person  
12 with a detailed working knowledge of the Lakota  
13 culture. And that's our concern all along.

14 And we've stated that several times.  
15 We've asked repeatedly for the ability to have input  
16 on the selection of contractor and have been not  
17 allowed that opportunity. So it remains a critical  
18 component from the Tribe's perspective.

19 JUDGE FROEHLICH: All right. This is  
20 Judge Froehlich. Just to get the status so it's  
21 clear.

22 The Tribe has not had input into creation  
23 or any kind of amendment to the statement of work,  
24 however, you have been provided with the statement of  
25 work the Staff solicited and you have a copy of that

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1 now. Is that correct?

2 MR. PARSONS: Yes, Your Honor. This Jeff  
3 Parsons. We were provided that on, just this last  
4 Friday evening, along with the letter.

5 So I would, with the same caveat that it's  
6 only been a couple days or a day, one work day that  
7 we've had an opportunity to review and try to digest  
8 that document.

9 JUDGE BOLLWERK: Okay. All right. Other  
10 question for the Staff.

11 The last phone call, phone conference we  
12 had, one of the things that I was concerned about, as  
13 I thought about it afterwards, was sort of, I guess,  
14 it was a signed plan that said that the definition of  
15 insanity, if you keep doing the same thing expecting  
16 to get more results.

17 And I heard some of that last time, I was  
18 concerned about it anyway. I think the tribal liaison  
19 office is something, it's different here.

20 How do you see them sort of working into  
21 this process? How is the Staff going to engage, use  
22 them to engage the Tribe?

23 MS. BAER: Thank you, Your Honor. This is  
24 Lorraine Baer for the NRC Staff. That individual's  
25 role will be to facilitate communication and to

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1 facilitate discussion during the upcoming meeting.

2 JUDGE BOLLWERK: Now, is this someone  
3 that's worked with the Tribe before, do you know?

4 MS. BAER: I'm not sure if she has  
5 specific experience with the Oglala Sioux Tribe, but  
6 she has worked with other tribes in the past.

7 JUDGE BOLLWERK: All right. Well, again,  
8 I think Mr. Parsons would agree, I don't want to put  
9 words in his mouth, but I think that's a very positive  
10 development. I appreciate the fact that the Staff did  
11 take that step.

12 JUDGE FROEHLICH: This is Judge Froehlich  
13 again. I want to, at this point, the Licensees  
14 Counsel for the Consolidated Intervenors, would like  
15 to hear them on the progress and the task forward.

16 MR. PUGSLEY: This is Chris Pugsley for  
17 Powertech. Mr. Frankel, if you'd like to speak go  
18 right ahead.

19 MR. FRANKEL: Sure. Thank you, Mr.  
20 Pugsley. David Frankel for consolidated Intervenors.  
21 I only just want to make a brief comment. Can  
22 everybody hear me okay?

23 JUDGE FROEHLICH: Yes.

24 MR. PUGSLEY: Yes.

25 MR. FRANKEL: My only comment is that I do

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1 appreciate that the NRC Staff took the time to  
2 apologize and acknowledge the inadvertence of its  
3 offense.

4 I think that things like that really help  
5 promote good faith interactions between the Tribe and  
6 the NRC Staff and the United States. And so, I  
7 applaud that and commend that.

8 I have an inclination to let the Tribe or  
9 continue for the Tribe to take the lead on this. We  
10 concur and support the Tribes divisions and goal, and  
11 we appreciate Mr. Parsons and Mr. Stills taking the  
12 lead on all these very significant issues.

13 With that, if Mr. Ballanco cares to make  
14 a comment I will turn it over to him. And I thank  
15 everybody for participating today.

16 MR. BALLANCO: I have nothing to add.  
17 This is Mr. Ballanco.

18 MR. FRANKEL: Okay.

19 JUDGE FROEHLICH: Mr. Pugsley, I anything  
20 that you care to comment on?

21 MR. PUGSLEY: Your Honor, Chris Pugsley  
22 from Powertech. Just two items.

23 Other than the fact that we certainly  
24 appreciate having these discussions. It's very  
25 informative, and pardon my voice, I had pneumonia for

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1 almost three weeks and my voice is kind of going in  
2 and out. But again, I'm a lawyer so they're happy  
3 when I don't have a voice.

4 (Laughter)

5 MR. PUGSLEY: Two items. One, it seems,  
6 based on the correspondence that has been exchanged  
7 between the parties recently, that March 1st seems to  
8 be a target date for a lot of different items.

9 And I would ask, if the Board or the  
10 Staff, or whoever would be the appropriate party to  
11 commit to this, would be willing to, every time there  
12 is a weekly discussion, it doesn't have to have  
13 substance to it, I mean, I understand that if the  
14 Agency talks to the Tribe, that there are things that  
15 might be, might require confidentiality, or things of  
16 that nature.

17 But to let us know that communications  
18 have happened, so that we can know there is progress  
19 being made, that would be greatly appreciated.

20 The second item is that we actually would  
21 like if, we appreciate receiving the correspondence  
22 that comes from all the parties, but as the Board  
23 knows and all the parties know, that Powertech made  
24 commitments in March of 2018 to certain things. Like  
25 compensation, honorariums, things of that nature.

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1           And if those things become part of a  
2 discussion between the Agency and the Oglala Sioux or  
3 other Native American Tribes in this proceeding, we  
4 would greatly appreciate being notified of those  
5 discussions. So that we can, you know, have our  
6 opinion solicited on it.

7           Because, while we stand by the commitments  
8 we've made, we would appreciate being notified of what  
9 discussions are being had and what commitments, if  
10 any, are being made. So that we can properly inform  
11 our board because, we are a publicly traded company  
12 and we have an obligation to our board and our  
13 shareholders to tell them of what is going on. And  
14 that's about all I have.

15           JUDGE FROEHLICH: Thank you, Mr. Pugsley.  
16 Staff, do you have any reaction or response to Mr.  
17 Pugsley's comments?

18           MS. BAER: Yes, Your Honor. This is  
19 Lorraine Baer for the Staff. Mr. Pugsley, in response  
20 to your first comments about letting you know that  
21 progress has been made after these weekly meetings  
22 we're certainly willing to do that.

23           And with regard to your second comment,  
24 we're sort of taking, it's the Staff's understanding  
25 that based on the Board's October 30th order that the

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1 only aspect of the approach that's open for discussion  
2 at these next couple of meetings is the specific  
3 scientific method that would fit into the two week  
4 period set out in the March 2018 approach.

5 So, I'm not certain that we foresee the  
6 things that you were referencing being a part of those  
7 discussions. But we would certainly be willing to  
8 share to the extent we can.

9 MR. PUGSLEY: Ms. Baer, Chris Pugsley from  
10 Powertech. I appreciate you saying that. As you  
11 know, it's my job, on behalf of my client, to make  
12 sure the i's are dotted. So I just wanted to make  
13 sure that was on the record.

14 Yes. I mean, your letter is plain on its  
15 face. So we understand where you're coming from. We  
16 just wanted to make sure we all understood each other  
17 and made sure that this was made clear. But  
18 certainly, we agree.

19 JUDGE FROEHLICH: All right. This is  
20 Judge Froehlich again. I too, the Board too would  
21 like to do whatever we can to ensure that progress is  
22 being made and that parties are engaging in dialogue  
23 and are working through the issues in this case.

24 I wonder, if these meetings,  
25 teleconferences with the Board, are helpful and if we

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1 should schedule one for sometimes after March 1st or  
2 March 8th, in that time frame, to sort of see what  
3 progress has been made on resolving methodology that  
4 will allow the Staff to move forward with the survey  
5 in this case.

6 What do the parties think about a follow-  
7 on telephone status conference in early March, after  
8 the meeting teleconferences has transpired?

9 JUDGE BOLLWERK: This is Judge Bollwerk.  
10 We all were going to meet in February but we think  
11 we're going to get in the middle of the things, so we  
12 started not to do that.

13 MR. PUGSLEY: Well, Your Honor, Judge  
14 Bollwerk, Judge Froehlich, it's Chris Pugsley for  
15 Powertech. I concur.

16 I think a status call a week after this,  
17 as we've labeled it a target date of March 1st, makes  
18 sense. Because, by the time we get to that point, not  
19 only will we have all the events that have happened up  
20 until March 1st, that have taken place, we will also  
21 have had adequate time to digest them.

22 And then that would make the most sense  
23 for us all to reconvene and figure out where do we go  
24 from there.

25 JUDGE FROEHLICH: How does that sound to

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1 the Staff and to the Tribe and Intervenors?

2 MS. BAER: Your Honor, this is Lorraine  
3 Baer for the Staff. That sounds, March, an early  
4 March teleconference sounds good to us as well.

5 JUDGE FROEHLICH: Okay. And, Mr. Parsons  
6 or Mr. Frankel?

7 MR. PARSONS: This is Jeff Parsons on  
8 behalf of the Tribe. That's acceptable to the Tribe.

9 MR. FRANKEL: David Frankel on behalf of  
10 Consolidated Intervenors. That works for us, Your  
11 Honor.

12 JUDGE FROEHLICH: All right. I just  
13 wanted to point out to the Staff that while we were on  
14 this status call, I got an email from the Office of  
15 the Secretary stating that, a commission affirmation  
16 session is scheduled for January 31st, 2019 at 1:25  
17 p.m. in the matter of Powertech USA Dewey-Burdock In  
18 Situ Uranium Recovery Facility's response to remand  
19 from D.C. Circuit in Oglala Sioux Tribe versus NRC.

20 I just wanted to point that out to the  
21 parties so that we're all aware of all the progress  
22 of, or lack therefore, being made on all the different  
23 tribes and all the actions that are in motion at this  
24 point.

25 Judge Barnett, do you have anything at

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1 this point?

2 JUDGE BARNETT: No.

3 JUDGE FROEHLICH: Judge Bollwerk?

4 JUDGE BOLLWERK: No, nothing further.

5 Thank you.

6 JUDGE FROEHLICH: Do any of the parties  
7 have anything they'd like to say or put on the record  
8 before we adjourn?

9 MR. PUGSLEY: Judge Froehlich, Chris  
10 Pugsley for Powertech. The only I'd like to say, and  
11 I've said this many times during this proceeding is,  
12 I understand that the relationship between the Tribe  
13 and the Agency is government-to-government and they're  
14 doing it this way.

15 But that doesn't mean that the parties  
16 can't talk to the Licensee about something that could  
17 make sense to make this matter satisfactory to their  
18 interests.

19 So, all I'm saying is, I'm putting on the  
20 table that, if there is a reason to have a discussion  
21 between Counsel, and Staff including, whatever, pick  
22 up the phone because I'm willing to have a discussion  
23 with our client here. And if there is something that  
24 makes sense to make this thing satisfy NEPA and the  
25 views of everyone, so be it.

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1           So, I'm not immune to that and I'd like to  
2 encourage, if the parties want to have a discussion  
3 about it, let's have a discussion.

4           JUDGE FROEHLICH: Thank you. Anyone else  
5 care to be heard before we adjourn?

6           MR. BALLANCO: Your Honor, this is Tom  
7 Ballanco for Consolidated Intervenors. Because this  
8 is a status conference, regrettable I have to inform  
9 the Board and the parties that the Consolidated  
10 Intervenors have been reduced by one in the last  
11 month.

12           The world lost a Treasury, Dayton Hyde,  
13 passed away at 93 years old. He was a stalwart  
14 advocate for the land and cared very much about this  
15 case, and this contention particularly.

16           His property, just twelve river miles  
17 southeast of the Dewey-Burdock site, was a treasure  
18 trove of resources, petroglyphs and encampments dating  
19 back to the Clovis people. And he kept his ranch as  
20 a small museum.

21           So, I just did want to acknowledge his  
22 passing. We certainly miss him. And there are enough  
23 Consolidated Intervenors remaining to proceed though.  
24 Thank you.

25           MR. PUGSLEY: This is, Mr. Ballanco, and

1 it's Chris Pugsley for Powertech, please, if you  
2 would, be so kind as to express my condolences to his  
3 family I would appreciate that.

4 MR. BALLANCO: I certainly will, thank  
5 you.

6 JUDGE FROEHLICH: Staff, any final  
7 comments? Anyone?

8 MS. BAER: Oh, I'm here. This is Lorraine  
9 Baer for the Staff. I just, I brought it up earlier,  
10 but I wanted to raise it again in response to some  
11 concerns that were raised at the last teleconference  
12 regarding miscommunication.

13 We would like to propose that one of the  
14 ways that we could best communicate is to transcribe  
15 the meetings we have upcoming regarding methodology.  
16 Just wanted to propose that now.

17 JUDGE FROEHLICH: Is there anything, in  
18 terms of the Tribe or Powertech, would agree or have  
19 an objection to that?

20 MR. PUGSLEY: No objection, sir.

21 MR. PARSONS: This is Jeff Parsons on  
22 behalf of the Tribe. This is the first time we've  
23 heard this request. I'll have to confer with my  
24 clients before I can take a position on that.

25 JUDGE BOLLWERK: This is Judge Bollwerk.

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1 I would strongly urge the tribal liaison be informed  
2 of that proposal and have that as part of the  
3 discussion as we come up in the next couple weeks.

4 COURT REPORTER: Excuse me, I have a brief  
5 --

6 MS. BAER: The tribal liaison will be  
7 informed, thanks.

8 JUDGE FROEHLICH: All right. Well, and  
9 you have no objection from the Licensee.

10 MR. PUGSLEY: I'm sure the court reporter  
11 won't object either, but that's a different issue.

12 JUDGE FROEHLICH: All right. This is  
13 Judge Froehlich. I hope the parties will all follow-  
14 up on the issues that were raised today, that the  
15 dialogue will continue, and I hope on a regular basis  
16 and in a meaningful manner.

17 The Board stands ready to do anything we  
18 can do to help the parties reach an agreement on the  
19 task going forward. And to the Consolidated  
20 Intervenors, I too express my sympathy to the family  
21 of Dayton Hyde.

22 I remember his testimony in the hearing,  
23 at the evidentiary hearing. Part of this case and his  
24 presence during the early years of this case. So  
25 please accept my condolences as well.

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1 MR. BALLANCO: Thank you for that.

2 JUDGE FROEHLICH: I'm sorry?

3 MR. BALLANCO: I said thank you, Your  
4 Honor.

5 JUDGE FROEHLICH: Oh. With that, we'll  
6 conclude at 4:10 in the afternoon. And I thank all  
7 the parties for their participation. We'll do this  
8 again in early March. Thank you.

9 MR. BALLANCO: Thank you.

10 MS. BAER: Thank you.

11 (Whereupon, the above-entitled matter went  
12 off the record at 4:06 p.m.)

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