

April 3, 2019

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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

MOTION TO SET SCHEDULE FOR EVIDENTIARY HEARING

On March 21, 2019, the Atomic Safety and Licensing Board (Board) held a teleconference with all parties to this proceeding to discuss the progress made by the U.S. Nuclear Regulatory Commission (NRC) Staff in its efforts to resolve Contention 1A. During the teleconference, the Board and parties discussed the NRC Staff's efforts to negotiate a methodology for carrying out a site survey of the Dewey-Burdock project area to identify sites of historic, cultural and religious significance to the Oglala Sioux Tribe and, in particular, the views documented in the NRC Staff's letter dated March 1, 2019, and the Oglala Sioux Tribe's response dated March 12, 2019. The teleconference made it apparent that the Tribe's concerns and objections to the NRC Staff's proposed draft methodology for a tribal site survey would entail renegotiating the parameters of the March 2018 Approach – which all parties had previously agreed was reasonable – and the scope of negotiations established by Board's October 30, 2018 order.

The Board's October 30, 2018 order defined two alternative avenues to expeditiously conclude the litigation, either resuming the implementation of the March 2018 Approach and narrowing the scope of further negotiations to "the specific scientific method that would fit into the two-week periods set out in the March 2018 Approach for visiting the physical site," or

preparing for a prompt evidentiary hearing.¹ In light of the developments described above, the NRC Staff now moves to proceed to an evidentiary hearing. Consistent with the Board's October 30, 2018 order, the hearing should resolve the disputed issues of fact as to the reasonableness of the NRC Staff's proposed draft methodology for the conduct of a site survey to identify sites of historic, cultural, and religious significance to the Oglala Sioux Tribe, and the reasonableness of the NRC Staff's determination that the information it seeks to obtain from the site survey is unavailable.² The NRC Staff also moves that the hearing schedule proceed with milestones consistent with the expeditious schedule set forth in the Board's October 30, 2018 order.

In accordance with 10 C.F.R. § 2.323(b), the NRC Staff has consulted with counsel for the other parties to obtain their views on this motion. Powertech supports the motion. The Consolidated Intervenor's oppose the motion. Counsel for the Oglala Sioux Tribe stated that the recent flooding and ongoing recovery efforts on the Pine Ridge Reservation have complicated counsel's ability to discuss NRC Staff's proposed motion with relevant Tribal officials. The Tribe will reserve its position on the NRC Staff's motion, as well as any proposed schedule for any adjudicatory hearing, for the response brief.³

¹ Powertech USA, Inc. (Dewey-Burdock In Situ Uranium Recovery Facility), LBP-18-5, 88 NRC 95, 134-35 (2018).

² See *id.* at 128-30.

³ In light of the views expressed by the parties in consultations regarding the motion, in particular the Tribe's description of the implications of ongoing recovery efforts from flooding on the Pine Ridge Reservation, the NRC staff would support a scheduling teleconference in conjunction with any Board determination on the motion.

Respectfully submitted,

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

Lorraine Baer
Counsel for the NRC Staff

Dated at Rockville, Maryland
This 3rd day of April, 2019

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CERTIFICATE OF SERVICE

Pursuant to 10 C.F.R. § 2.305, I hereby certify that copies of the "NRC Staff's Motion to Set Schedule for Evidentiary Hearing" in this proceeding have been served via the Electronic Information Exchange (EIE), the NRC's E-Filing System, this 3rd day of April, 2019. Counsel for the Staff served those representatives exempted from filing through the EIE with copies of its motion by electronic mail, also on April 3, 2019.

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

Lorraine Baer
Attorney
Office of the General Counsel
U.S. Nuclear Regulatory Commission
Mail Stop O-14A44
(301) 287-9111
Lorraine.Baer@nrc.gov