

**UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION**

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of:)

POWERTECH (USA) INC.)

(Dewey-Burdock In Situ Uranium Recovery)
Facility))

) Docket No.: 40-9075-MLA

) Date: April 17, 2019

**POWERTECH (USA) INC. RESPONSE TO NRC STAFF’S MOTION FOR
EVIDENTIARY HEARING**

Powertech (USA) Inc. (Powertech), by its undersigned counsel of record, hereby submits this Response to the United States Nuclear Regulatory Commission Staff’s (NRC Staff) Motion for evidentiary hearing in the above-captioned matter and regarding resolution of one (1) remaining admitted contention (Contention 1A) based on satisfaction of the National Environmental Policy Act (NEPA) process with respect to historic and cultural resources. This pleading is intended to provide the Atomic Safety and Licensing Board (hereinafter the “Board”) with answers to two (2) questions issued in an Order dated April 5, 2019 and address the proposed evidentiary hearing schedule in an Order dated Aril 15, 2019.

With respect to the first question regarding the proposed filing and hearing schedule, Powertech has no specific objections to the schedule itself other than to suggest that, given the limited scope of the proceeding (i.e., one remaining contention) and the fact that much of the evidence and related information associated with resolution of this contention is already contained in the administrative record, the dates for filings and the holding of the hearing be moved up several weeks so that resolution of this matter may occur expeditiously. It is

understandable that the previous hearing, which involved several contentions over a broad range of resource areas with multiple expert witnesses required more time for filings; however, in the instant case, this limited contention already has been litigated and the administrative record contains substantial expert testimony from all parties. Given the agency's practice of incorporating items by reference in license applications and, by implication, in administrative hearings, the filings schedule could be compressed to shorten the timeframe within which the Board may resolve this contention. Further, Powertech continues to wait for the United States Environmental Protection Agency (EPA) and the State of South Dakota to issue additional permits and to re-commence administrative hearings and a prolonged timeframe in this hearing process further inhibits Powertech from resolving these items.

With respect to the Board's second question regarding *in limine* motions, Powertech does not have any objections to excluding such *in limine* motions from the proposed hearing and filing schedule. However, pursuant to 10 CFR Part 2 regulations, Powertech reserves its right to file motions, if necessary, addressing items including, but not limited to motions to strike testimony or portions of position statements prior to the hearing.

Powertech also requests that the Board hold the "all parties" call immediately following the filing of these motions early the week of April 22nd.

Respectfully Submitted,

**/Executed (electronically) by and in
accord with 10 C.F.R. § 2.304(d)/
Christopher S. Pugsley, Esq.**

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COUNSEL TO POWERTECH

Dated: April 17, 2019

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing **“POWERTECH (USA) INC.’S RESPONSE TO NRC STAFF’S MOTION FOR EVIDENTIARY HEARING”** in the above captioned proceeding have been served via the Electronic Information Exchange (EIE) this 17th day of April 2019, which to the best of my knowledge resulted in transmittal of the foregoing to those on the EIE Service List for the above captioned proceeding.

Respectfully Submitted,

**/Executed (electronically) by and in
accord with 10 C.F.R. § 2.304(d)/
Christopher S. Pugsley, Esq.**

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