UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges:

William J. Froehlich, Chairman
Dr. Mark O. Barnett
G. Paul Bollwerk, III

In the Matter of POWERTECH USA, INC. (Dewey-Burdock In Situ Uranium Recovery Facility)	Docket No. 40-9075-MLA ASLBP No. 10-898-02-MLA-BD01 April 19, 2019

ORDER
(Scheduling Fourth Telephonic Conference Call)

On March 21, 2019, the Board held its third conference call with the parties to this proceeding to discuss the progress made by the NRC Staff in its efforts to resolve Contention 1A. At the March 21 teleconference, the NRC Staff announced that "the staff has not the reasonable expectation of agreement with the tribe on this matter" and that "the appropriate way to document this inability to reach an agreement would probably be on the record of an evidentiary hearing."[1] On April 3, 2019, the NRC Staff filed a motion to set a schedule for such an evidentiary hearing.[2] Responses were filed on April 17, 2019 by Powertech USA, Inc. and the NRC Staff,[3] and on April 18, 2019 by the Oglala Sioux Tribe.[4] The Oglala Sioux Tribe raises

[1] Tr. at 1619–20.

[2] [NRC Staff] Motion to Set Schedule for Evidentiary Hearing (Apr. 3, 2019) [hereinafter Staff Motion].

[3] Powertech (USA) Inc. Response to NRC Staff's Motion for Evidentiary Hearing (Apr. 17, 2019); NRC Staff Response to the Board's April 5, 2019 Order (Apr. 17, 2019).

[4] Oglala Sioux Tribe's Response in Opposition to NRC Staff's Motion to Set Schedule for Evidentiary Hearing (Apr. 18, 2019). Although Consolidated Intervenors did not file a responsive pleading by the April 18 filing deadline, the Staff's motion reported that Consolidated Intervenors opposed the motion. See Staff Motion at 2.

concerns with the ability to proceed to an evidentiary hearing, absent a Staff showing in a supplemental Environmental Impact Statement (EIS) that the NRC Staff's determination that the information it seeks to obtain from the proposed cultural resources site survey is unavailable in accord with 40 C.F.R. § 1502.22(b)(1). The parties have agreed to a fourth telephone conference to be held on Tuesday, April 23, 2019 beginning at 1:30 PM Eastern Daylight Time. The Board anticipates that this conference will last no more than one and a half hours.

The Board will establish a bridge line for this telephone conference, with three lines provided for each party. Listen-only telephone access will also be made available for members of the public. The Board's law clerk will contact the participants by email to provide the telephone number and passcodes for participation and listen-only access. Members of the public who wish to listen to the conference may also contact the Board's law clerk, Taylor Mayhall, at 301-415-3027 or Taylor.Mayhall@nrc.gov, for the necessary listen-only telephone access information.

During the conference, the Board would like to discuss the evidentiary hearing schedule as proposed in its Order issued on April 15 and attached hereto as Appendix A.[5] The Board will also consult each party about its answers to the questions posed in the Order issued on April 5 and attached hereto as Appendix B.[6] Additionally, the parties should be prepared to discuss the necessity for, and the timing associated with, a supplement to the EIS in this proceeding

[5] Licensing Board Order (Additional Information Relative to Pending Motion to Set Schedule for Evidentiary Hearing) at app. A (April 15, 2019) (unpublished).

[6] Licensing Board Order (Setting Procedures to Address Motion to Set Schedule for Evidentiary Hearing) at 3 (Apr. 5, 2019) (unpublished).

regarding the Staff's assertion that the information it seeks to obtain from the proposed cultural resources site survey is unavailable.

It is so ORDERED.

FOR THE ATOMIC SAFETY
AND LICENSING BOARD

/RA/

William J. Froehlich, Chairman
ADMINISTRATIVE JUDGE

Rockville, Maryland
April 19, 2019

APPENDIX A: SCHEDULE – Powertech USA, Inc. (Dewey-Burdock In Situ Uranium Recovery Facility) Proceeding

Event:	**Date:**
All Parties Status Conference	Week of April 22, 2019
Evidentiary Hearing Schedule	
Positions Statement/Prefiled Direct Testimony from NRC Staff	May 17, 2019
Response Positions Statements/Prefiled Direct Testimony Supporting NRC Staff's Prefiled Direct Testimony	May 22, 2019
Response Position Statements/Prefiled Response Testimony Opposing NRC Staff's Prefiled Testimony and any Supporting Prefiled Testimony	June 14, 2019
Reply Position Statement/Prefiled Reply Testimony from NRC Staff	June 28, 2019
Proposed Cross-Examination Questions Due	July 12, 2019
Evidentiary Hearing	Week of August 5, 2019[7]
Proposed Findings of Fact/Conclusions of Law Due	September 9, 2019
Reply Findings of Fact/Conclusions of Law Due	September 23, 2019
Licensing Board Initial Decision	November 15, 2019

[7] A final Board assessment regarding the length of the evidentiary hearing would await the receipt of the parties' direct, response, and reply testimony.

APPENDIX B: SCHEDULING QUESTIONS – Powertech USA, Inc. (Dewey-Burdock In Situ Uranium Recovery Facility) Proceeding

Question 1: Assuming the NRC Staff's motion to convene a hearing were granted, are there any specific objections to the attached proposed schedule? If so, what alternative schedule would the objecting party propose that would allow for completion of the hearing by no later than August 30, 2019, taking into account the previously-identified tribal religious ceremonies in July and maintaining the seriatim schedule for submitting prefiled testimony and supporting exhibits?

Question 2: Given the proposed schedule does not include an opportunity for submitting in limine motions, are there any specific objections to that approach? If so, what schedule would the objecting party propose for such motions that would maintain an August 2019 hearing schedule, taking into account the previously-identified tribal religious ceremonies in July and maintaining the seriatim schedule for submitting prefiled testimony and supporting exhibits?

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of	)	
	)	
POWERTECH (USA) INC.	)	Docket No. 40-9075-MLA
(Dewey-Burdock In Situ Recovery Facility)	)	
	)	

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing **ORDER (Scheduling Fourth Telephonic Conference Call)** have been served upon the following persons by Electronic Information Exchange, and by electronic mail as indicated by an asterisk (*).

U.S. Nuclear Regulatory Commission
Atomic Safety and Licensing Board (ASLB)
Mail Stop T-3F23
Washington, DC 20555-0001

William J. Froehlich, Chair
Administrative Judge
william.froehlich@nrc.gov

Mark O. Barnett
Administrative Judge
mark.barnett@nrc.gov

G. Paul Bollwerk, III
Administrative Judge
paul.bollwerk@nrc.gov

Taylor Mayhall, Law Clerk
Taylor.Mayhall@nrc.gov

Joseph D. McManus, Law Clerk
Joseph.McManus@nrc.gov

Molly Mattison, Law Clerk
Molly.Mattison@nrc.gov

U.S. Nuclear Regulatory Commission
Office of Commission Appellate Adjudication
Mail Stop O-16B33
Washington, DC 20555-0001
OCAA Mail Center
ocaamail@nrc.gov

U.S. Nuclear Regulatory Commission
Office of the Secretary of the Commission
Rulemakings & Adjudications Staff
Mail Stop O-16B33
Washington, DC 20555-0001
hearingdocket@nrc.gov

U.S. Nuclear Regulatory Commission
Office of the General Counsel
Mail Stop O-15 D21
Washington, DC 20555-0001
Emily Monteith, Esq.
emily.monteith@nrc.gov
Lorraine Baer, Esq.
Lorraine.Baer@nrc.gov
Carrie Safford, Esq.
Carrie.Safford@nrc.gov
Krupskaya T. Castellon, Paralegal
Krupskaya.Castellon@nrc.gov
OGC Mail Center:
RidsOgcMailCenter.Resource@nrc.gov

ORDER (Scheduling Fourth Telephonic Conference Call)

Counsel for the Applicant (Powertech)
Thompson & Pugsley, PLLC
1225 19th Street, NW, Suite 300
Washington, DC 20036
Christopher S. Pugsley, Esq.
cpugsley@athompsonlaw.com
Cynthia L. Seaton, Paralegal
cseaton@athompsonlaw.com
Anthony J. Thompson, Esq.
ajthompson@athompsonlaw.com

Consultant to Applicant (Powertech)
WWC Engineering
1849 Terra Ave.
Sheridan, WY 82801
Jack Fritz
jfritz@wwcengineering.com

Counsel for the Oglala Sioux Tribe
Western Mining Action Project
P. O. Box 349
Lyons, CO 80540
Jeffrey C. Parsons, Esq.
wmap@igc.org

Counsel for the Oglala Sioux Tribe
Energy & Conservation Law
1911 Main Avenue, Suite 238
Durango, CO 81301
Travis E. Stills, Esq.*
stills@frontier.net

Counsel for Consolidated Intervenors
David C. Frankel, Esq.
1430 Haines Ave., #108-372
Rapid City, SD 57701
E-mail: arm.legal@gmail.com

Counsel for Consolidated Intervenors
(Susan Henderson and Dayton Hyde)
Law Office of Bruce Ellison
P.O. Box 2508
Rapid City, SD 57709
Bruce Ellison, Esq.*
belli4law@aol.com

Counsel for Consolidated Intervenors
(Dayton Hyde)
Thomas J. Ballanco, Esq.*
945 Traval Street, #186
San Francisco, CA 94116
harmonicengineering@gmail.com

[Original signed by Herald M. Speiser]
Office of the Secretary of the Commission

Dated at Rockville, Maryland,
this 19th day of April, 2019