



UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
ATOMIC SAFETY AND LICENSING BOARD

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

Hearing Exhibit

Exhibit Number:

Exhibit Title:



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

March 16, 2018

Ms. Trina Lone Hill, Director
Cultural Affairs & Historic
Preservation Office
Oglala Sioux Tribe
P.O. Box 320
Pine Ridge, SD 57770

SUBJECT: U.S. NUCLEAR REGULATORY COMMISSION'S APPROACH TO IDENTIFY
HISTORIC, CULTURAL, AND RELIGIOUS SITES AT THE DEWEY-BURDOCK
IN SITU URANIUM RECOVERY PROJECT IN FALL RIVER AND CUSTER
COUNTIES, SOUTH DAKOTA (DOCKET NUMBER: 40-9075)

Dear Ms. Lone Hill:

The U.S. Nuclear Regulatory Commission (NRC) staff appreciates the information provided in the Oglala Sioux Tribe's letters dated January 19 and February 15, 2018 (Agencywide Documents Access and Management System [ADAMS] Accession Numbers ML18019B267 and ML18046A171, respectively), responding to the NRC staff's December 6, 2017, proposal (ADAMS Accession Number ML17340B365) to identify sites of historic, cultural, and religious significance to the Lakota Sioux Tribes and gather information to supplement the final supplemental environmental impact statement (FSEIS) for the Dewey-Burdock in situ (ISR) uranium recovery project in Fall River and Custer Counties, South Dakota.

The NRC staff has considered the information you provided as well as the responses from Powertech (USA) Inc. (Powertech or the licensee) dated January 19 and February 15, 2018 (ADAMS Accession Numbers ML18019B268 and ML18046B443, respectively) and Consolidated Intervenor dated January 19, 2018 (ADAMS Accession Numbers ML18024A812). The NRC staff is proceeding with the following activities to resolve Contention 1A¹ consistent with the Atomic Safety and Licensing Board Panel's (ASLBP's) Order dated October 19, 2017 (LPB-17-09, ADAMS Accession Number ML17292B298).

Based on the Oglala Sioux Tribe's statements that the NRC's December 2017 proposal would provide a reasonable likelihood of satisfying the National Environmental Policy Act (NEPA) and resolving Contention 1A, the NRC staff's selected approach incorporates the essential components of the December 2017 proposal. The selected approach includes: (i) onboarding a contractor to facilitate implementation of the approach; (ii) involving the Lakota Sioux Tribes; (iii) holding meetings with Tribal Leaders of the Lakota Sioux Tribes, to the extent possible; (iv) conducting oral history interviews with Tribal Elders of the Lakota Sioux Tribes; (v) providing an opportunity for a field survey of the Dewey-Burdock ISR project site; and (vi) supplementing the analysis in the FSEIS to account for information obtained concerning sites of historic, cultural, and religious significance to the Lakota Sioux Tribes.

¹ ASLBP's Partial Initial Decision LBP-15-16 dated April 30, 2015.

The details of the NRC's selected approach are presented below.

Field Survey

With the support and participation of the Lakota Sioux Tribes and Powertech, the NRC staff, with the assistance of a contractor, will conduct a field survey consisting of the following elements:

1. The Lakota Sioux Tribes who did not participate in the April 2013 tribal field survey of the Dewey-Burdock ISR project site will be invited to participate in a field survey with up to three tribal representatives per Tribe. Based on the information provided by the Oglala Sioux Tribe in its letter dated February 15, 2018 (ADAMS Accession Number ML18046A171), the NRC staff plans to invite the following Lakota Sioux Tribes to participate in the field survey: Oglala Sioux Tribe, Standing Rock Sioux Tribe, Cheyenne River Sioux Tribe, Rosebud Sioux Tribe of Indians, Yankton Sioux Tribe, and Flandreau Sioux Tribe. The NRC staff plans to invite the Crow Creek Sioux Tribe, which participated in the 2013 tribal field survey of the Dewey-Burdock ISR project site, to participate in the other elements of the NRC staff's approach (meeting with Tribal Leaders and oral history interviews with Tribal Elders, discussed in more detail below).
2. The field survey will be conducted using a survey methodology that will be established in coordination with the NRC, with the support of the contractor, and the Lakota Sioux Tribes in advance of the field survey.
3. The field survey will allow for the examination of areas of the Tribes' choosing within the Dewey-Burdock license area; however, tribal representatives are encouraged to focus their field survey efforts on those portions of the license area that would potentially be disturbed by project construction and operations. In an effort to carry out an effective and efficient field survey, it is the NRC staff's intent, to the extent possible, to identify potential areas to be examined in coordination with the Lakota Sioux Tribes and NRC contractor prior to the field survey.
4. The field survey will be conducted in two phases. Each phase will be two weeks in length. The first phase will be conducted in mid-June 2018 and the second phase will be conducted at the beginning of September 2018. This approach provides the greatest flexibility and broadest opportunity for tribal participation by providing Tribes time between each of the phases to discuss preliminary results and findings with their Tribal Leaders; an opportunity to revisit the site to examine different areas or re-examine previously-visited areas; and different dates to participate in the field survey if one of the phases conflicts with the Tribes' schedule.
5. During the field survey, the NRC staff and contractor will accompany the participating tribal representatives. The NRC contractor would facilitate the survey, and document findings and supporting information, as appropriate, to be considered in the development of the survey report.
6. The NRC contractor will document the results and findings of the first phase of the field survey, which will be shared with the participating Tribes for their review and comment in July 2018. Upon completion of the second phase of the survey, the NRC contractor will prepare a survey report documenting the results and findings of the first and second phases of the field survey. The survey report will include the following information:

- an identifying label for each identified site of historic, cultural, or religious significance to the Tribes (for example, OST-1, OST-2, etc.);
- a discussion of the fieldwork completed, including the survey methodology and license areas examined;
- a brief description of each individual site recorded;
- a National Register of Historic Places (NRHP) evaluation of each site recorded, including recommendations concerning the potential NRHP eligibility and basis;
- potential impacts to identified sites; and
- recommendations for appropriate avoidance buffers or possible mitigation measures, should any of the sites be impacted by the project.

Upon completion of the second phase of the field survey, the NRC will need the participating Lakota Sioux Tribes to provide information to support the development of the survey report. Site descriptions in the report need not include interpretive information that the Tribes may consider confidential. Information concerning the location of any identified sites of historic, cultural, or religious significance to the Tribes may be reported separately and directly to the NRC as a confidential appendix to the survey report so that this information would not be disclosed to the public. The NRC staff will provide the survey report in draft form to the participating Lakota Sioux Tribes for review and comment prior to finalizing the survey report. The NRC anticipates sharing the final survey report with the Lakota Sioux Tribes by the end of December 2018.

To carry out the field survey in a productive and timely manner, the NRC staff will depend upon Powertech to support the field survey by:

- providing site access;
- providing a safety briefing to the participants of the field survey (consistent with previous practices, each participating tribal representative would be expected to sign a release of liability);
- providing daily transportation from the Edgemont office to the Dewey-Burdock ISR project area;
- escorting tribal representatives to the areas to be surveyed and, to the extent possible, not directly accompanying the tribal representatives during their examination of the areas (if requested);
- providing GPS unit(s) to document the general boundaries of sites or features encountered and identified during the field survey; and
- signing a confidentiality agreement limiting use of this information to appropriate company personnel involved in the project design or operation.

In the spirit of the preservation and protection of the Tribes' historic and cultural resources, the NRC staff encourages the Tribes to participate in the field survey. The NRC recognizes that Powertech has not offered reimbursement to the Tribes for their participation in the survey under this approach. The NRC staff is asking Powertech to consider offering some reimbursement (ADAMS Accession Number ML18074A403) to facilitate tribal participation in recognition of the Oglala Sioux Tribe's statement that reimbursement for the Tribes' time and resources is appropriate.² Of note, with the selected approach outlined in this letter, the NRC staff and contractor efforts that will be recovered through fees directly billed to Powertech are

² Oglala Sioux Tribe's response to NRC dated February 15, 2018; ADAMS Accession Number ML18046A171.

estimated at approximately 1 Full Time Equivalent (FTE)³ and \$250,000, respectively. The total fee billable cost to Powertech is estimated to be about \$645,000.

Once the NRC staff brings its contractor on board, the NRC plans to hold a meeting with the Lakota Sioux Tribes interested in participating in the field survey to discuss and establish the survey methodology and potential areas to be examined during the field survey.

Meetings with Tribal Leaders and Oral History Interviews with Tribal Elders

The NRC staff plans to reach out to the Lakota Sioux Tribes to coordinate meetings with Tribal Leaders. The purpose of the meetings with the Tribal Leaders is to provide an opportunity for the Tribes and the NRC staff to have an open dialogue regarding the NRC staff's activities to gather information about historic, cultural and religious resources of significance to the Tribes that could be impacted by the Dewey-Burdock ISR project. Meetings with Tribal Leaders would be based on their availability and the timeframe for implementing this approach.

With the assistance of its contractor, the NRC will also request oral history interviews with the Tribal Elders of the Lakota Sioux Tribes. The oral history interviews would be focused on gathering information about resources of significance to the Lakota Sioux Tribes that could be impacted by the Dewey-Burdock ISR project. Information gathered through these interviews would be documented in a report to be developed by the NRC contractor in coordination with the Tribes. The NRC understands the importance of protecting the information gathered through these interviews. Accordingly, information that the Tribes consider confidential would be documented separately so that this information would not be disclosed to the public.

Based on the timeline for conducting the activities described in this letter, the NRC staff would carry out oral history interviews in August 2018, unless the Tribes would like to conduct them earlier. These meetings could also provide an opportunity for the Tribes and NRC staff to discuss preliminary results of the first part of the site survey.

The NRC staff anticipates sharing the documentation of the oral history interviews with participating Lakota Sioux Tribes by the end of October 2018 for review and comment. The NRC staff anticipates sharing the final documentation with participating Lakota Sioux Tribes by the end of December 2018.

Supplementing the Final SEIS

The NRC staff's supplemental analysis to the FSEIS for the Dewey-Burdock ISR project, Supplement 4 to NUREG-1910, will describe potential impacts to sites of historic, cultural, or religious significance to the Lakota Sioux Tribes using the information gathered through the field survey, meetings with Tribal Leaders, oral history interviews with Tribal Elders, and any other information provided by the Tribes. The NRC staff anticipates publishing a draft of the supplemental analysis for a 45-day public comment period by mid-February 2019. The NRC staff anticipates that after reviewing and considering comments, it will publish the final analysis by May 2019.

³ Based on the Fiscal Year 2017 Final Fee Rule, the staff estimates that 1 FTE cost approximately \$394,500. The FTE rate might change for Fiscal Year 2018, and the actual hours worked by the staff may vary from this estimate (See NRC's staff's response to the January 9, 2018, ASLBP Order ADAMS Accession Number ML18017B322, January 19, 2018).

Timeline

In an effort to be transparent and proactive, and to ensure that the NRC staff's approach can be carried out in a timely manner, the NRC has established the enclosed schedule and milestones. This timeline takes into consideration the schedule expectations discussed in the ASLPB's Order LBP-17-09, limited activities that can be accomplished during the winter months, and the Tribes' previous comments regarding schedules and interests. This timeline has been adjusted from the anticipated timeline included with the NRC staff's December 2017 proposed approach to reflect the additional month required to obtain the parties' feedback on the proposed approach. As a result, in order to ensure that the essential elements of that approach are preserved, the NRC staff proposes to hold the pre-field survey meeting with the Lakota Sioux Tribes by webinar and teleconference and to hold meetings with Tribal Leaders and oral history interviews with Tribal Elders in August 2018. Delays in this schedule will impact the NRC staff's ability to carry out the approach as described in this letter. Therefore, the NRC staff is requesting your cooperation in ensuring that the milestones are met.

The NRC is requesting your response regarding the Oglala Sioux Tribe's willingness to participate in the implementation of the NRC's approach and timeline as discussed in this letter no later than March 30, 2018. Further, the NRC staff greatly appreciates the Oglala Sioux Tribe's commitment in assisting the NRC staff with the coordination with the Lakota Sioux Tribes. In an effort to be open and proactive, the NRC is copying the Lakota Sioux Tribes in this letter. The NRC staff looks forward to the Oglala Sioux Tribe's participation.

In accordance with 10 CFR 2.390, a copy of this letter will be available electronically for public inspection in the NRC Public Document Room or from the Publicly Available Records component of NRC's ADAMS. ADAMS is accessible from the NRC Web site at <http://www.nrc.gov/reading-rm/adams.html>.

If you have any questions or comments, please contact Ms. Kellee Jamerson of my staff. Ms. Jamerson can be reached at (301) 415-7408 or via e-mail at Kellee.Jamerson@nrc.gov.

Sincerely,

/RA/

Cinthya I. Román, Chief
Environmental Review Branch
Division of Fuel Cycle Safety, Safeguards,
and Environmental Review
Office of Nuclear Material Safety
and Safeguards

Docket No. 40-9075
License No. SUA-1600

Enclosure:
Timeline for NRC Staff's Approach
for Obtaining Information on Lakota Sioux
Cultural Resources Potentially Impacted
by the Dewey-Burdock Project

cc w/enclosure:
Troy "Scott" Weston, President
Oglala Sioux Tribe
Jeff C. Parsons, Counsel
for the Oglala Sioux Tribe
Mr. Travis E. Stills, Counsel
for the Oglala Sioux Tribe
John Eagle, THPO
Standing Rock Sioux Tribe
Steven Vance, THPO
Cheyenne River Sioux Tribe
Russell Eagle Bear, THPO
Rosebud Sioux Tribe of Indians
Kip Spotted Eagle, Director, THPO
Yankton Sioux Tribe
Bonnie McGhee, THPO
Crow Creek Sioux Tribe
Garrie Kills-A-Hundred, THPO
Flandreau Sioux Tribe

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DATED: March 16, 2018

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***via email**

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DATE	03/14/2018	03/16/2018	03/16/2018

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