



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:



POWERTECH (USA) INC.

December 5, 2018

John Mays
Powertech (USA) Inc.
5575 DTC Parkway, Suite 140
Greenwood Village, CO 80111

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

RE: RESUMING IMPLEMENTATION OF THE 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 (DOCKET NUMBER: 40-9075): RESPONSE TO NOVEMBER 21, 2018 LETTER

Dear Ms. Román,

Thank you for your letter dated November 21, 2018 regarding your proposal to resume the March 2018 Approach (the "Approach") to identify historic, cultural, and religious sites at the Dewey-Burdock Project.

Powertech (USA) Inc. ("Powertech") will continue to provide reimbursement and support for the field survey as discussed in its letter dated April 11, 2018 (ADAMS Accession Number ML18101A223) for the Approach. Powertech would request that the United States Nuclear Regulatory Commission ("NRC") staff confirm that the expected costs to resume and complete the Approach are consistent with the previous budget provided by NRC staff on January 17, 2018 (ADAMS ML 18017B322) less amounts incurred to date by Powertech to support this Approach.

Further, as the timeline has been extended by almost one year from the initial schedule provided to complete the Approach, Powertech would like to request that NRC staff take steps to optimize this new schedule. Powertech provides the following suggestions and comments:

- 1.) The time allotted for agreeing on a site survey methodology is significantly greater than in the initial schedule. Powertech would request that NRC staff work proactively with



POWERTECH (USA) INC.

the Lakota Sioux Tribes to agree a site survey methodology in advance of March 1, 2019. Powertech understands that weather, such as snow, may prevent necessary visibility of the ground for conducting the first phase of the Tribal field survey, but weather conditions that allow for this portion of the Approach to be commenced may exist before the April 1-12, 2019 first phase of the Tribal field survey. Instead of waiting until April 1-12, 2019, Powertech would suggest adding some additional windows, consisting of earlier dates, for completing the first phase of the Tribal field survey should weather permit.

- 2.) Oral history interviews with Tribal elders be conducted over the winter months in early 2019 before completing the first phase of the Tribal field survey and after a site survey methodology has been agreed. We understand that the current work plan envisions oral history interviews after the first phase of the Tribal field survey; however, preliminary discussion with Tribal Elders at the point suggested above may improve the efficiency of the first phase of the Tribal field survey. Further, it would compress the schedule on the backend as the oral history interviews scheduled for May 20-31, 2019 could be compressed, as the initial oral history interviews will already have provided significant information.
- 3.) Firm dates should be adopted in the schedule. As opposed to using “mid” for certain months, please define this as the 15th of the applicable month. As opposed to using “beginning” for certain months, please define this as the 1st of the applicable month.
- 4.) As previously requested, Powertech would like clarification on how the Advisory Council on Historic Preservation involvement and National Historic Preservation Act requirements will be addressed by the Approach if there are new eligible discoveries made while completing the Approach. Given the existing programmatic agreement that is in place, Powertech would like to know how NRC staff will update the existing programmatic agreement for data gathered if there are new eligible discoveries made while completing the Approach and how this is accounted for in the timeline.

Though Powertech will continue to support the Approach, as noted above, Powertech would like to restate its concern to the Atomic Safety and Licensing Board (“ASLB”) and NRC staff regarding the amount of time spent attempting to resolve Contention 1A. Powertech would respectfully request that all parties involved in this process make a good faith effort to resolve



POWERTECH (USA) INC.

Contention 1A in accordance with the updated schedule, taking into consideration the requests made above by Powertech. As a licensee, Powertech is not directly involved in this process and has been frustrated by the actions taken by both the Oglala Sioux Tribe and NRC staff in attempting to resolve Contention 1A. Efforts to resolve Contention 1A have been ongoing since April 2014 and Powertech stands by willing to assist in whatever capacity necessary to execute the Approach within the defined scope. The prolongation of Contention 1A being resolved continues to strain the financial resources of Powertech. Further, as documented to the ASLB and NRC staff, the fact that Contention 1A continues to remain unresolved directly prevents the completion of the regulatory process and the finalization of regulatory approvals from at least three other agencies that would allow construction and operation of the Dewey-Burdock Project. NRC staff is now on a fourth attempt to complete a "site survey" with the Oglala Sioux Tribe. Two of these attempts included the original April/May 2013 survey, which was successfully conducted with other Native American Tribes, but rejected by the Oglala Sioux Tribe and the previous attempt to complete the Approach, in which the Oglala Sioux Tribe's alternative approach, according to the NRC staff's motion for summary disposition, would be at least three (3) times the cost of the previously offered Makoche Wawopi proposal that the ASLB previously stated was "patently unreasonable" in its Partial Initial Decision, LPB-15-16 of April 2015.

Regardless, as it has repeatedly done before, Powertech stands ready to provide full cooperation to execute the Approach and looks forward to working constructively with all parties to resolve the outstanding contention.

Sincerely,

John Mays
Chief Operating Officer

CC: Blake Steele, President and CEO
John Tappert, NRC
Diana Diaz Toro, NRC
Lorraine Baer, NRC
Emily Montieth, NRC
Kellee Jamerson, NRC
Bill Von Till, NRC
U.S. Senator, Mike Rounds, South Dakota (R)
U.S. Senator, John Thune, South Dakota (R)
U.S. Representative, Kristi Noem, South Dakota (R)

