

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

July 29, 2019

ORDER
(Scheduling Pre-Hearing Teleconference)

On April 29, 2019, the Board issued an order scheduling an evidentiary hearing for the above-captioned proceeding to take place beginning on Wednesday, August 28, 2019, at 10:00 a.m. Mountain Daylight Time (MDT) and continuing daily as necessary through Friday, August 30, 2019, at 5:00 p.m. MDT.¹ The purpose of the hearing is to 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 history, 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 parties have agreed to a pre-hearing telephone conference to be held on Thursday, August 1, 2019, beginning at 1:30 p.m. Eastern Daylight Time.

¹ See Licensing Board Order (Granting NRC Staff Motion and Scheduling Evidentiary Hearing) (Apr. 29, 2019) at 5 (unpublished).

² See id. at 4.

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 e-mail 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:

1. **Non-Disclosure Agreements.** The Board anticipates asking some questions about cost and cultural resources that may concern nonpublic information identified by one or more of the parties to the proceeding so as to require parts of the hearing to be closed to the public. Only counsel and witnesses who, pursuant to the March 5, 2010 Protective Order in this case and its September 12, 2014 revision,³ are required to execute and file non-disclosure agreements will be allowed to remain in the hearing room during such a closed session. Thus, any counsel or witness who has not signed and filed a non-disclosure agreement in accord with the Board's protective orders must do so.
2. **Duplicate Exhibits.** In its May 2, 2019 case management order, the Board instructed the parties to coordinate with each other so that no duplicate exhibits would be filed.⁴ However, three duplicate exhibits were filed: NRC-194 and OST-048; NRC-201 and OST-058; and NRC-203 and OST-049. The NRC Staff filed these exhibits first but only referred to NRC-194 and NRC-203 in its prefiled testimony. Therefore, absent some

³ See Licensing Board Order (Granting Joint Motion to Amend Protective Order) (Sept. 12, 2014) (unpublished); Licensing Board Memorandum and Order (Protective Order Governing the Disclosure of Sensitive Unclassified Non-Safeguards Information (SUNSI)) (Mar. 5, 2010) (unpublished).

⁴ See Licensing Board Order (Providing Case Management Information) (May 2, 2019) at 4 (unpublished).

objection that is sustained, NRC-194 and NRC-203 will be admitted as NRC Staff exhibits and all future references to those exhibits should use the NRC exhibit numbers. Because the NRC Staff did not refer to NRC-201 in its prefiled testimony, that exhibit will, if identified and admitted, be referenced as OST-058 and all future references to that item should use that number.⁵ The complete prefiled exhibit list as it currently exists is attached as Appendix A.

3. **Consolidated Intervenors' Affidavits.** The Board will consult with counsel about the twenty-two affidavits prefiled as exhibit INT-023 and whether and how they should be used in this proceeding.
4. **Hearing Logistics.** The evidentiary hearing is scheduled to begin at 10:00 a.m. MDT on Wednesday, August 28, 2019, at the Hotel Alex Johnson, 523 Sixth Street, Rapid City, South Dakota 57701. The Board will solicit preferences from the parties as to starting times on Thursday, August 29 and, if necessary, Friday, August 30, 2019. The Board will also inquire as to whether the parties' counsel would like to give brief opening statements before questioning starts on August 28, and if the parties' counsel would like an opportunity to provide oral argument on the legal issue of whether a supplemental environmental impact statement is needed.

It is so ORDERED.

FOR THE ATOMIC SAFETY
AND LICENSING BOARD

/RA/

William J. Froehlich, Chairman
ADMINISTRATIVE JUDGE

Rockville, Maryland
July 29, 2019

⁵ See *id.* at 1 n.3.

APPENDIX A: LIST OF PREFILED EXHIBITS

IN THE MATTER OF POWERTECH (USA) INC.
(DEWEY-BURDOCK IN SITU URANIUM RECOVERY FACILITY)
DOCKET NO. 40-9075-MLA

NRC Staff Exhibits	
Exhibit Number	Title
NRC-176-R	Prefiled Direct Testimony of Diana Diaz-Toro and Jerry Spangler.
NRC-177	Statement of Professional Qualifications of Diana Diaz-Toro.
NRC-178	Statement of Professional Qualifications of Jerry Spangler.
NRC-179	U.S. Department of Interior, National Park Services, National Register Bulletin 15, "How to Apply the National Register Criteria for Evaluation" (Rev. 1997).
NRC-180	Branam, Kelly M., et al., "Survey to Identify and Evaluate Indian Sacred Sites and Traditional Cultural Properties in the Twin Cities Metropolitan Area" (August 2010).
NRC-181	Stoffle, Richard W., et al., "The Land Still Speaks: Traditional Cultural Property Eligibility Statements for Gold Strike Canyon, Nevada and Sugarloaf Mountain, Arizona" (2000).
NRC-182	Toupal, Rebecca S., et al., "Cultural Landscapes and Ethnographic Cartographies: Scandinavian-American and American Indian Knowledge of the Land," <i>Environmental Science and Policy</i> 4:171–184 (August 2001).
NRC-183	North Dakota Department of Transportation, "Design Manual," Chapter II, "Environmental and Public Involvement," Section 5, "Cultural Resources," revised March 6, 2017.
NRC-184	Ball, David, et al., "A Guidance Document for Characterizing Tribal Cultural Landscapes," Outer Continental Shelf (OCS) Study BOEM 2015-047, Bureau of Ocean Energy Management (2015).

NRC-185	Odess, Daniel, "A Landscape-Scale Approach to Mitigating Adverse Effects on Historic Properties," U.S. Department of the Interior draft document, June 6, 2016.
NRC-186	Summary of May 19, 2016 meeting with the Oglala Sioux Tribe.
NRC-187	NRC November 23, 2016 Letter to the Oglala Sioux Tribe Regarding an Invitation for Teleconference and Continued Consultation.
NRC-188	Summary of NRC Staff and Oglala Sioux Tribe Teleconference Call on January 31, 2017.
NRC-189	NRC Staff April 14, 2017 Letter to Oglala Sioux Tribe - Coordination of Tribal Survey to Identify Cultural Resources.
NRC-190	Oglala Sioux Tribe May 31, 2017 Letter Responding to NRC's April 14, 2017 Letter.
NRC-191	NRC Staff December 6, 2017 Letter to Trina Lone Hill, Oglala Sioux Tribe, Regarding US Nuclear Regulatory Commission Proposal to Identify Historic, Cultural, and Religious Sites.
NRC-192	NRC March 16, 2018 Letter to Oglala Sioux Tribe Transmitting NRC's Approach to Identify Historic, Cultural, and Religious Sites.
NRC-193	Oglala Sioux Tribe January 19, 2019 Response to NRC's December 6, 2018 Letter.
NRC-194	Oglala Sioux Tribe's February 15, 2018 Responses to NRC Counsel Questions.
NRC-195	NRC November 21, 2018 Letter to Oglala Sioux Tribe Resuming Implementation of the NRC Staff March 16, 2018 Approach.
NRC-196	Summary of Tribal Cultural Heritage Resources Data Acquired in June 2018 at the Dewey-Burdock In Situ Uranium Recovery Project – Fall River and Custer Counties, South Dakota.
NRC-197	Oglala Sioux Tribe's June 12, 2018, Cultural Resources Survey Methodologies Proposal (Non-Public).
NRC-198	Oglala Sioux Tribe's June 15, 2018 Updated Cultural Resources Survey Methodologies Proposal (Non-Public).

NRC-199-R	Makoche Wowapi / Mentz-Wilson Consultants, Proposal with Cost Estimate for Traditional Cultural Properties Survey for Proposed Dewey-Burdock Project (2012) (Public redacted version).
NRC-200	NRC Staff July 2, 2018 Letter to the Oglala Sioux Tribe Regarding June 2018 Proposals.
NRC-201	WILL BE REMOVED FROM THE FINAL EXHIBIT LIST AS NOT ELIGIBLE FOR IDENTIFICATION AND ADMISSION TO AVOID DUPLICATION
NRC-202	Powertech's December 5, 2018 Response to NRC Staff's November 21, 2018 Letter Confirming Reimbursement and Honoraria.
NRC-203	Oglala Sioux Tribe's January 11, 2019 Response to NRC's November 21, 2018 Letter Proposing to Resume Negotiations.
NRC-204	NRC January 25, 2019 Letter in Response to Oglala Sioux Tribe Letter dated January 11, 2019.
NRC-205	February 8, 2019 Teleconference Call Summary with Oglala Sioux Tribe Comments.
NRC-206	LeBeau, Sebastian, "Reconstructing Lakota Ritual in the Landscape: The Identification and Typing System for Traditional Cultural Property Sites" (2009).
NRC-207	July 22, 2015 Letter from Dennis Yellow Thunder, Oglala Sioux Tribe, Responding to NRC's June 23, 2015 Letter.
NRC-208	June 8, 2018 Letter from Travis Stills, Oglala Sioux Tribe, to the NRC Staff, Proposed Schedule for Cultural Resources Survey.
NRC-209	January 29, 2019 Letter from President Julian Bear Runner, Oglala Sioux Tribe, "Invitation to February 22, 2019, Meeting of the Tribe's Tribal Historic Preservation Advisory Council."
NRC-210	April 11, 2018 Powertech Response to NRC Staff's March 16, 2018 Letter Confirming Reimbursement and Honoraria.
NRC-211	Oglala Sioux Tribe March 12, 2019 Response to NRC's March 1, 2019 Letter.
NRC-212	September 24, 2015 Letter from Oglala Sioux Tribe.

NRC-213	Oglala Sioux Tribe's Counsel December 5, 2018 E-mail to NRC Counsel.
NRC-214	Proposed Draft Cultural Resources Site Survey Methodology.
NRC-215	NRC's March 1 Letter to Oglala Sioux Tribe - Negotiations Regarding Development of a Methodology for a Tribal Site Survey to Identify Historic, Cultural, and Religious Sites.
NRC-216	NRC Staff's March 15, 2019 E-mail to Oglala Sioux Tribe Regarding No Additional Meetings.
NRC-217	February 19, 2019 Teleconference Call Summary with Oglala Sioux Tribe Comments (Draft).
NRC-218	Oglala Sioux Tribe's Summary of the Meeting with NRC Staff on February 22, 2019 in Pine Ridge, SD.
NRC-219	Oglala Sioux Tribe's March 30, 2018 Response to NRC Staff's March 16, 2018 Approach.
NRC-220	NRC Staff Comments on February 22, 2019 Meeting Summary.
NRC-221	Oglala Sioux Tribe's March 29, 2013 Letter, Invitation for Government to Government Consultation.
NRC-222	Patricia L. Parker, Traditional Cultural Properties: What You Do and How We Think, CRM, Vol. 16 (1993).
NRC-223	Oglala Sioux Tribe's January 31, 2011 Letter.
NRC-224	Nickens, Paul, Literature Review of Lakota Historic, Cultural, and Religious Resources for the Dewey-Burdock ISR Project.
NRC-225	NRC Staff's Reply Testimony.

Oglala Sioux Tribe Exhibits	
Exhibit Number	Title
OST-042-R	Declaration of Kyle White.
OST-043-R	Declaration of Dr. Kelly Morgan.
OST-044-R	Statement of Professional Qualifications of Dr. Kelly Morgan.
OST-045-R	Declaration of Dr. Craig Howe.
OST-046	Statement of Professional Qualifications of Dr. Craig Howe.
OST-047	April 6, 2018 conference call transcript.
OST-048	WILL BE REMOVED FROM THE FINAL EXHIBIT LIST AS NOT ELIGIBLE FOR IDENTIFICATION AND ADMISSION TO AVOID DUPLICATION
OST-049	WILL BE REMOVED FROM THE FINAL EXHIBIT LIST AS NOT ELIGIBLE FOR IDENTIFICATION AND ADMISSION TO AVOID DUPLICATION
OST-050	December 6, 2018 conference call transcript.
OST-051	January 29, 2019 conference call transcript.
OST-052	June 5, 2018 open site survey "methodology" prepared by Dr. Nickens.
OST-053	September 21, 2018 Oglala Sioux Tribe Response to Motion for Summary Disposition.
OST-054	August 19, 2014 Transcript of Hearing with NRC Staff corrections.
OST-055	February 15, 2018 NRC Staff billing summary data.
OST-056	January 17, 2018 NRC Staff Response to January 9, 2018 Order.
OST-057	March 7, 2013 NRC Staff Answer to Oglala Sioux Tribe Statement of Contentions on Draft SEIS (excerpt).

OST-058	April 13, 2018 Enclosure 1 to Letter from NRC Staff to Oglala Sioux Tribe.
OST-059	June 15, 2018 Email from NRC Staff counsel to Oglala Sioux Tribe counsel; June 15, 2018 Email from NRC Staff to Kyle White, Oglala Sioux Tribe.

Consolidated Intervenors Exhibit	
Exhibit Number	Title
INT-023	Affidavits – Testimony Re: Oglala Lakota Cultural Resources

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 Pre-Hearing Teleconference)** have been served upon the following persons by Electronic Information Exchange, and by electronic mail as indicated by an asterisk (*).

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POWERTECH (USA) INC., DEWEY-BURDOCK IN SITU RECOVERY FACILITY
DOCKET NO. 40-9075-MLA
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[Original signed by Clara Sola _____]
Office of the Secretary of the Commission

Dated at Rockville, Maryland,
this 29th day of July, 2019