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Sent: Friday, September 5, 2025 3:43 PM
To: Diana Diaz Toro; Kevin Roach
Cc: rwillette@encoreuranium.com; Andrew.Kriha@hklaw.com
Subject: [External_Sender] Dewey-Burdock In Situ Uranium Recovery Facility License Renewal Application - Significant and Unwarranted Schedule Delays

Ms. Diaz Toro:

We represent Powertech (USA) Inc. ("Powertech") as legal counsel, and write on its behalf to address the U.S. Nuclear Regulatory Commission ("NRC") staff's unilateral decision to substantially delay the environmental and historic preservation reviews for the Dewey-Burdock In Situ Uranium Recovery Facility ("Project") License Renewal Application ("LRA"). These delays are inconsistent with NRC's statutory obligations under the National Environmental Policy Act ("NEPA"), and we request prompt and meaningful consultation regarding establishment of a reasonable schedule, including milestones to ensure timely completion, consistent with NRC's legal obligations under NEPA. Powertech remains committed to assisting NRC in meeting its NEPA obligations, but this also means ensuring that NRC fully complies with *all* its obligations, including recent amendments setting deadlines for completion of environmental reviews.

As you know, Congress amended NEPA in 2023 to include new provisions ensuring that agencies complete their environmental reviews in a timely manner. Specifically, Congress added a new Section 107 to the statute. Most significantly, Congress imposed statutorily mandated, judicially enforceable, deadlines for the completion of environmental reviews. *See* 42 U.S.C. § 4336a(g). When an agency determines that it cannot meet a statutory deadline under this section, it may only extend the deadline "*in consultation with the applicant,*" and set a new deadline "*that provides only so much additional time as is necessary to complete [the environmental document].*" *Id.* at (g)(2) (emphasis added). In addition, a lead agency must develop a schedule, *in consultation with the applicant* for completion of any environmental review. *See* 42 U.S.C. § 4336a(a)(2)(D) (emphasis added). NRC's unilateral delay is inconsistent with these statutory obligations.

In the LRA, Powertech indicated that it was targeting construction in two to three years, *i.e.*, March 2026 to March 2027. Such a schedule provided more than enough time for the NRC to meet its statutory obligations and issue a license with time available for Powertech to obtain necessary state and local licenses that cannot be issued until after issuance of the federal license. While market conditions have changed such that Powertech now wishes to accelerate its construction schedule (something that would be achievable with a reasonable licensing process carried out in compliance with NEPA's statutory deadlines), the NRC staff's delay now puts even the original schedule in jeopardy. With the NRC staff's new schedule, the two-year goal is unachievable, even to obtain the federal license, and with the need to obtain state and local licenses, even the three-year goal may not happen. Consultation between the agency and Powertech, as required by NEPA, is imperative to getting the LRA review back on track.

NRC Staff's Unilateral Schedule Changes

Powertech submitted its LRA on March 4, 2024, and NRC staff accepted it for docketing on June 24, 2024, meaning NRC staff's statutory deadline for completing an environmental assessment ("EA") for the LRA has already passed. *See* 42 U.S.C. § 4336a(g). During a June 13, 2025 call, NRC staff announced, without prior consultation of any kind, a substantial delay to the original schedule:

- NEPA review completion delayed from June 25, 2025 to April 24, 2026;
- NHPA review completion delayed from November 19, 2025 to April 24, 2026.

Powertech did not agree to these delays during that call, yet on June 24, 2025, NRC staff sent a letter formally announcing these delays. Please be clear that this single one-sided call, and subsequent notification letter, do not legally constitute consultation with Powertech under NEPA Section 107(g)(2).

The staff has cited four justifications: (1) project staff resources spent on the contested portion of the proceeding, (2) project staff's additional National Historic Preservation Act ("NHPA") Section 106 work, (3) coordination of the NEPA and the NHPA Section 106 reviews to occur together, and (4) Powertech's delay in responding to the requests for additional information ("RAI"). The purported justifications simply do not align with the history of the proceeding, and the NRC's statutory responsibilities.

Further, despite knowing that Powertech is represented by counsel, NRC staff did not invite Powertech's counsel to the June call or copy Powertech's counsel with this letter. In fact, NRC provided no notice of the new dates to Powertech's counsel until the afternoon of July 8, 2025 when it provided a draft status update to all parties, a mere two days before the filing deadline for that status update.

Statutory Obligations Under NEPA Section 107

Powertech acknowledges and supports the NRC's obligation to conduct thorough tribal consultation under both NEPA and the NHPA. It is concerning, however, that the NRC seems to be placing substantial weight on intimations of how the Atomic Safety and Licensing Board ("Board") may rule on the merits in the contested portion of the proceeding at the expense of its overriding concrete legal obligations to comply with statutory deadlines.

In the Board's order on standing and contention admissibility it indicated, without actually ruling on the merits, that it may consider the Oglala Sioux Tribe's willingness to engage in a survey with respect to a different project in a different state under vastly different procedural circumstances when determining the level of consultation required by the NRC in this case. For the reasons stated in its appeal, Powertech disagrees with the Board on this issue. By

proceeding as if it is obligated to conduct such a level of consultation at the expense of NRC's obligations to meet statutory deadlines, the NRC is causing material harm to Powertech.

NRC has not shown that a ten-month delay is necessary. *See* 42 U.S.C. § 4336a(g)(2) (Any new deadline established by NRC may only provide "so much additional time as is necessary" to complete NRC's review.). Further, NRC staff have failed to meaningfully consult with Powertech on the need for or length of the delay. *Id.* (Any new deadline NRC establishes must be "in consultation with the applicant.").

The reasons NRC staff have provided for why it failed to complete its NEPA review on time revolve almost entirely around the NRC staff's own unilateral resource allocation decisions, and only partially on an NRC staff-approved six-week extension for Powertech to submit a reply to unnecessarily lengthy and complex RAIs. Critically, however, NRC staff have entirely failed to provide any reason for why it requires a ten-month extension, or how the short extension to allow for a thorough response to its RAIs necessitates NRC staff to delay completing its review by nearly double the time allowed by statute. NEPA sets a deadline of 90 days from the date of any court order establishing a schedule, unless the agency can demonstrate that more time is necessary. *See* 42 U.S.C. § 4336a(g)(3)(B). Thus, there should be a presumption based on the statute that any extension should be limited to no more than 90 days, absent a showing that more time is necessary.

Powertech's request is simple. We ask that the NRC staff meaningfully engage in the required consultation to establish a reasonable deadline for completing its NEPA review that is firmly grounded in the actual remaining work, and that it establish and provide Powertech with interim deadlines to ensure continuous movement toward any ultimate deadline.

In discussions with NRC attorneys, we understand that the NRC staff believe interim milestones constitute deliberative process and do not need to be shared with Powertech. Any such assertion is wholly unwarranted and not supported by the standard for asserting the privilege, which includes demonstrating that disclosure would harm the agency's ability to make future decisions by chilling candid discussions among its employees, as well as a balancing of any potential harm against the need for disclosure. *See, e.g., U.S. Fish and Wildlife Service v. Sierra Club, Inc.*, 592 U.S. 261, 267 (2021). Here, such a position runs contrary to the clear statutory obligation of the lead agency to consult with applicant when establishing a schedule for completion of its review. *See* 42 U.S.C. § 4336a(a)(2)(D). Moreover, the privilege must be formally invoked by the head of the agency or an authorized subordinate, which has not yet been demonstrated.

Request for Immediate Consultation

Powertech respectfully insists that NRC staff comply with *all* its NEPA obligations, and immediately engage in meaningful consultation with the applicant to determine a timeline that sets forth realistic milestones to ensure completion of NEPA review in accordance with statutory obligations of extending NRC's missed statutory deadline "that provides only so much

time as is necessary” to complete its review. 42 U.S.C. § 4336a(g)(2). This consultation should include:

- A detailed determination of the amount of time actually necessary to complete the cultural resources review and other NEPA activities;
- Development of a revised schedule with firm intermediate milestones; and
- Establishment of a process for regular check-ins on schedule adherence.

Powertech remains committed to providing any information needed to facilitate the NRC’s review, but cannot accept unilateral, unexplained, and unwarranted delays that harm Powertech and threaten the viability of this important Project.

Please contact me at your earliest convenience, but no later than September 12, 2025, to engage in this consultation.

Respectfully,

Jason Hill | Holland & Knight

Partner

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