UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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ATOMIC SAFETY AND LICENSING BOARD PANEL

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ORAL ARGUMENTS

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In the Matter of: PowerTech USA, Inc.:
Docket No. 40-9075-MLA
ASLB No. 10-898-02-MLA-BD01

(Dewey-Burdock:
in situ uranium:
recovery facility):

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Tuesday, May 13, 2014

Teleconference

BEFORE:

WILLIAM J. FROELICH, Chair
RICHARD F. COLE, Administrative Judge
MARK O. BARNETT, Administrative Judge
APPEARANCES:

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CHAIRMAN FROELICH: Good afternoon. Let us begin. This is a telephone oral argument in the matter of the Powertech USA Dewey-Burdock in situ uranium recovery facility case. Docket number 40-9075-MLA. ASLBP docket number 10-898-02-MLA-BD01.

(Comment off mic.)

CHAIRMAN FROELICH: All right. One moment. We’re just going to make sure that the public, which has a separate line, is able to connect and hear our oral argument.

(Pause in the proceedings.)

CHAIRMAN FROELICH: Okay. Good afternoon. We are going to take care of the public line so that parties who – the participants and people who are interested in the proceeding will be able to listen in. Our administrative assistant is going to take care of that.

I think in the meantime we’ll get started with the oral argument on motions for a stay of the effectiveness of the license filed on April 14th, 2014, by the Oglala Sioux Tribe and the Consolidated Intervenors.

This is Judge William Froelich here in
Rockville, Maryland, May 13th, 2014, at 2:00 p.m.

With me are Dr. Richard Cole. And by telephone, Dr. Mark Barnett.

Also present here with us in Rockville are our law clerk, Nicholas Sciretta, and our program analyst, Twana Ellis, who is actually out of the room at the moment checking to make sure that the public line is open and available.

At this point, could I ask and take the appearances of the parties and I’d like to make sure that the representatives of the staff, Powertech, Consolidated Intervenors and the Oglala Sioux are on the line and ready to begin.

Can we begin with the staff?

MR. CLARK: Hi. Good afternoon. For the NRC staff, this is Mike Clark, C-L-A-R-K.

MS. JEHLE: This is Patricia Jehle, J-E-H-L-E.

CHAIRMAN FROELICH: Thank you, counsel. And for Powertech, the applicant?

MR. PUGSLEY: Christopher Pugsley, Your Honor, for Powertech, P-U-G-S-L-E-Y.

CHAIRMAN FROELICH: Thank you, sir.

MR. THOMPSON: And Anthony Thompson for Powertech, although Mr. Pugsley is going to handle the
argument.

CHAIRMAN FROELICH: Thank you, sir.

For the Intervenor, Consolidated Intervenors, do we have Mr. Frankel, Mr. Ballanco or Mr. Ellison?

MR. FRANKEL: David Frankel, Your Honor, F-R-A-N-K-E-L, for Consolidated Intervenors.

MR. ELLISON: Bruce Ellison, E-L-L-I-S-O-N, Consolidated Intervenors.

MR. BALLANCO: Good morning from California, Your Honor. This is Thomas Ballanco for Dayton Hyde.

CHAIRMAN FROELICH: Thank you.

And for the Oglala Sioux Tribe?

MR. PARSONS: Thank you, Your Honor. Jeff Parsons on behalf of the Tribe.

CHAIRMAN FROELICH: Thank you.

MR. STILLIS: And good morning, Your Honor. Travis Stills on behalf of the Tribe. Jeff will be handling the argument though.

CHAIRMAN FROELICH: Okay. Are there any other party representatives on the line at this point?

All right. We’ll move onto background.

On April 8th, the NRC staff issued NRC source materials license number SUA1600 to Powertech.
This license allows Powertech to possess and use source and byproduct material in connection with the Dewey-Burdock project.

On April 14th, 2014, pursuant to 10 CFR 2.1213, the Oglala Sioux Tribe and the Consolidated Intervenors filed motions to stay this license alleging inter alia irreparable harm to its cultural resources. On April 24th, the NRC staff and Powertech filed oppositions to both motions for stay.

On April 30th, 2014, this Board issued a temporary stay of the license pending this oral argument.

On May 1st, 2014, the Board issued an order scheduling this oral argument. The order included areas upon which the Board desired exposition.

These include the likelihood – this includes the application of the four-part test from 10 CFR 2.1213 for the grant of the stay, the nature and likelihood of the alleged irreparable injury, the nature and extent of the planned earth-disturbing activities and the potential effect on cultural and historical resources.

The Board also encouraged the parties to discuss the possibility of a stipulation on agreement.
addressing the protection of cultural and historic resources and the earth-disturbing activities proposed for the period before a final decision is rendered in this docket.

As we begin today’s argument, please remember to identify yourself before speaking for the benefit of our court reporter and to ensure we have a clear transcript. The transcript of this oral argument will be made part of the record in this proceeding.

I’d like to ask the parties at this point if you’ve met or discussed the possibility of some sort of an agreement which would cover the period between now and the end of the year approximately when a decision on the merits would be issued.

MR. PARSON: Your Honor, this is Jeff Parsons on behalf of the Tribe. We have communicated via email several possibilities with respect to coming to some agreement. That is to say that Consolidated Intervenors and the Tribe proposed some possible solutions.

NRC staff also proposed some solutions and we have not been able to reach agreement with regard to a settlement whether it be holding the stay in abeyance or withdrawing the stay motion or having some
sort of notice provision for ground-disturbing activities that would allow us to stand back from the briefing as it exists.

And certainly Powertech and staff should comment as well.

CHAIRMAN FROELICH: All right. Mr. Pugsley, no success in reaching an agreement which would permit Powertech to go forward with project development in such a way that the Intervenors’ cultural and historic concerns are satisfied between now and the end of the year?

MR. PUGSLEY: Your Honor, Chris Pugsley for Powertech. No, sir, there has been no success on settlement.

Mr. Parsons is absolutely correct. There were proposals exchanged from Consolidated Intervenors, the Tribe and NRC staff and unfortunately Powertech does not - is not inclined to acquiesce to them.

CHAIRMAN FROELICH: Okay. Staff, do you care to be heard on your perspective or -

MR. CLARK: This is Mike Clark and I think the statements you heard are correct. The parties did discuss possible settlements. We weren’t able to reach any - we came, I think, close in some areas, but
we weren’t able to reach any agreement.

CHAIRMAN FROELICH: Okay. Thank you.

While I have you, Mr. Clark, what does the grant of an NRC license permit Powertech to do that couldn’t be done prior to the April 8th, the date that that license issued?

MR. CLARK: Well, the biggest thing, Your Honor, is through the lost use power projection use byproduct and/or source material, and also byproduct material that’s generated during its operations.

It’s a – unlike reactor licenses which are construction and operation licenses, Powertech’s license is a possession and use license.

But also related to that, it allows Powertech to engage in construction that has some nexus to radiological health and safety.

The NRC has a definition of “construction.” It’s in Title 10 of the Code of Federal Regulations Section 40.4. That defines activities that are considered construction and also defines activities that are not considered construction.

Now, some of the activities that are not construction are actually – have similarities to construction. There are things like excavation,
erecting certain structures.

The point is those are activities that an applicant or a licensee can engage in even without an NRC license.

Construction under the definition 10 CFR 40.4 refers to activities that they need an NRC license, or, in this case, an effective NRC license to engage in.

CHAIRMAN FROELICH: And those are related solely or primarily to the handling or the use of the radiological element?

MR. CLARK: They’re related to structures that are used to – in this case, in Powertech’s case they involve the wells which would be used to inject dry uranium from underneath the surface. They would also relate to the central processing plant.

So, those if we’re talking specific activities, drilling monitoring wells, I’m referring to the definition – Your Honor, I’m going to read from the definition, because I think it would be clearest for everyone.

Construction means the installation of wells associated with radiological operations, for example, production, injection or monitoring well networks associated with in situ recovery or other
facilities, installation of foundations that were in place, assembly, erection, fabrication or testing for any structure system or component of a facility or it could be subject to the regulations in this part.

So, essentially, they are drilling the wells that would be used during operations and building the central processing plant and maybe some of the header houses.

Activities beyond that generally will not be considered construction. And Powertech could proceed with those activities even without a license or while their license is stayed.

CHAIRMAN FROELICH: Thank you, Mr. Clark. That’s very helpful. Could I ask Mr. Pugsley if any of the activities that you just described involving the drilling of the wells, the injection, the foundations or whatever for the processing plant, are the types of activities that are contemplated between now and the end of the year?

MR. PUGSLEY: Your Honor, Chris Pugsley for Powertech. Just to give you a little background, Powertech is currently pursuing additional permits with the BLM, EPA and state of South Dakota.

There is a gray - there is a third area here with respect to activities that can be engaged in
with or without an NRC license.

I think the best way to answer your question is, really, what activities would Powertech plan to do by the end of the year that would be able to be done without an NRC license and without state permits, et cetera.

The answer to that is there are activities currently contemplated within the next, I guess, would be seven months.

And I guess the best example of that would be the drilling of additional sampling wells at the Dewey-Burdock site to gather additional – to gather additional monitoring data. And then, again, this is just sampling.

It could be sediment sampling and there could be groundwater sampling, but those activities can be engaged in without an NRC license and without the other requisite permits.

CHAIRMAN FROELICH: Okay.

MR. PARSONS: Your Honor, this is Jeff Parsons, if I may.

CHAIRMAN FROELICH: Yes, sir.

MR. PARSONS: Thank you. I understand the distinction that Mr. Pugsley is making. I guess from our perspective, we have not been provided with any
clarity with respect to the scope of the activities proposed.

There was some discussion amongst the parties in — as Mr. Pugsley just stated, it was indicated that the Tribe, that the Company has plans to proceed with what they term monitoring wells and other limited facilities.

We’re not exactly sure what that involves precisely. And given our reading when we read the definition of “construction,” it specifically references installation of wells, including monitoring well networks.

And so, it is not clear to us that those — the only activities that Powertech intends to engage in are things that would not require a license. And I think that’s part of our issue here not having that precise description of what’s planned.

MR. PUGSLEY: Your Honor, this is Chris Pugsley for Powertech. Let me be as clear as I can here on Mr. Parsons’ point.

It is typical at an in situ recovery facility even pre-license application submission, to drill sampling wells to gather data on groundwater.

That does not necessarily mean that those wells would in any way be used in the production
operation whether they be as an injection to
production or a monitor well.

It is distinctly possible in these
situations that those wells might be plugged and
abandoned in accordance with appropriate requirements
prior to the installation of a well field for NRC
either review, review and verification, review and
approval.

I believe, and I can say this with some
certainty, that the construction rule 40.4 and
40.32(e) when they talk about well installation,
they’re talking about the installation of an entire
well field, including when they say a monitor well
network.

And that is really defined as the entire
monitor well ring that would encompass the injection
and production wells in a given well field.

So, the answer to – the short answer to
the question is, does Powertech contemplate installing
an entire well field this year? The answer is, to the
best of my knowledge, no.

CHAIRMAN FROELICH: Okay. And just so that
I am crystal clear, the sampling and the activities
that you described in your prior answer are all things
that can be done without an NRC license. And,
therefore, staying an NRC license will have no effect on the company’s ability to drill the sampling wells and those other type of non-construction activities.

Is that correct from your perspective, Mr. Pugsley?

MR. PUGSLEY: Your Honor, Chris Pugsley for Powertech. Yes, that is our perspective. That’s our position that it can be done without an NRC license.

JUDGE COLE: Yeah, this is Judge Cole. You’ve already done a considerable amount of that already, haven’t you?

MR. PUGSLEY: I’m not – Judge Cole, Chris Pugsley for Powertech. We’ve done what was required under NRC regulations for a license application and to attain a license. But as in situ recovery operations are phased processes and you gather as much data as you can, it is important to have additional data in terms of sampling wells.

So, we’ve done what was required for a license, but this type of sampling is to move towards operations, but it’s nothing more than sampling and gathering data.

It is not an attempt to install a well field.

JUDGE COLE: I understand that, but you had
to do a lot of drilling to find out where the uranium was, didn’t you?

MR. PUGSLEY: Chris Pugsley for Powertech.

Yes, Judge Cole, we did have to do drilling at the site under whether it be an exploration permit or for the 12 months of data we were to gather prior to submission of a license application.

So, yes, we have done that.

JUDGE COLE: Okay. Well, what other tasks have to be done before you can start construction of a well field?

MR. PUGSLEY: Typically speaking there is a delineation drilling that is used to define the ore body completely to understand where your wells will be placed.

And, you know, NRC requires under performance-based licensing that we submit a well field package that includes all of these well data, location, well water data necessary to determine UCLs, upper control limits, and restoration target values and in order to set up appropriate excursion criteria, monitoring criteria.

So, really, I think that if we’re talking about the construction of a site, a lot of activities happen in parallel. I mean, you really would be
constructing your well fields the same time you’re putting your ancillary facilities together, including the central processing plant.

But at this time, Powertech’s approach to this project is to gather additional sampling data to better prepare itself for moving toward those activities that would require an NRC license.

JUDGE COLE: All right. Thank you.

MR. PUGSLEY: Yes, sir.

MR. FRANKEL: Your Honor, David Frankel. Can I make a comment?

JUDGE FROELICH: Yes, please.

MR. FRANKEL: This is David Frankel for Consolidated Intervenors. I’m interested as to whether this new phase that Powertech plans would somehow involve bringing up any radioactive water.

Any development water is typically – contains mobilized substances that are subject to the NRC license. So, I’d like to understand how close Powertech intends to come to that while we’re on this issue.

CHAIRMAN FROELICH: Mr. Pugsley, could you answer whether this is within the scope of the sampling that can be done without a license sort of to tie your last answer with the question, I guess, that
Mr. Frankel has raised?

MR. PUGSLEY: Yes, sir. Chris Pugsley for Powertech. By definition if the activity does not require an NRC license, it is not – it is not considered an Atomic Energy Act material.

It’s been stated in many documents including the FSEIS and other documents associated with this administrative record, for example, that even if Powertech were putting in an entire well field, and they are not, but even if they were drilling an entire well field, items such as the drill cuttings from the wells and any associated materials with that are considered to be technologically enhanced naturally occurring radioactive material, or TENORM, and that is not an Atomic Energy Act material.

Thus, that type of material would not be subject to an NRC license.

We have drilled many, many holes down there and taken up groundwater samples to provide NRC with the grounds to issue us a license.

It’s no different from the water we would bring up to sample in these wells, and that was done without an NRC license.

CHAIRMAN FROELICH: Thank you. Thank you. That answer was helpful. Thank you so much.
MR. FRANKEL: Your Honor, David Frankel for Consolidated Intervenors. Might I comment just one more time on that issue?

CHAIRMAN FROELICH: Sure. Make your comment brief.

MR. FRANKEL: Thank you, Your Honor. David Frankel for Consolidated Intervenors. The kind of activity that Mr. Pugsley was just referring to, though, all those sampling wells were done under some form of NRC regulations and as part of the application process.

I mean, I don’t think Mr. Pugsley is suggesting that any private land owner that has had no communication with the NRC can go drilling a bunch of holes like that.

So, isn’t that entire regulatory umbrella, the NRC regulations that culminates in the issuance of the license on April 8th?

And, therefore, wouldn’t all of those prior drillings have taken place under the auspices of NRC regulations?

MR. PUGSLEY: Your Honor, this is Chris Pugsley for Powertech. Would you like me to answer that?

CHAIRMAN FROELICH: Well, go ahead. And
then I think I have a short answer as well. Go ahead.

MR. PUGSLEY: Well, I would just say, Mr. Frankel, that I understand what you’re saying. However, all of the drilling, data gathering, air monitoring, meteorological data gathering, everything that went into that license application was not done under NRC’s regulatory oversight as granted to them under the Atomic Energy Act.

They were done in an effort to provide NRC with the data necessary to issue a license, because it is our position that NRC has no regulatory oversight over anyone unless they have a license. And at this time we have a license, but then we did not and we did not need one.

However, things like drilling wells – things like drilling wells all covered under typical State Engineer’s Office requirements and those sorts of things, but, no, there was no NRC regulatory oversight over our pre-license application drilling.

CHAIRMAN FROELICH: Thank you, Mr. Pugsley.

Mr. Frankel, I guess my next question goes to you. You’re asking or requesting a stay of a license. However, the activities that I understand to be taking place or to be taking place in the short term are all things that can go forward with or
without that license.

How would staying the license address your concerns about immediate irreparable injuries to potential sites that have cultural and historic significance?

MR. FRANKEL: Your Honor, David Frankel for Consolidated Intervenors. Your Honor, it seems to us that Powertech’s representations about their intentions has changed from what they communicated to us in their response which refers specifically to additional monitoring wells and other limited facilities. And today, you’re talking about sampling wells to get monitoring data.

And it’s just these kind of bending of the regulations that we’re concerned about. It always seem like they get bent in Powertech’s favor. Reference the motion I made today over their exceeding the 10-page limit. And so, you know, we don’t really trust Powertech’s view of the situation as being the definitive legal authority of things.

We believe that there is a legal obligation to protect and preserve cultural resources, including graves, and we think that their intentionally not looking for it or ignoring it and having a no-data-no-problem approach is completely
inappropriate and violates everything that’s involved.

If we get a ruling that says that, in fact, NRC has no authority and the stay and the license issuance are basically irrelevant to the kind of earth-moving activities that we feel threaten cultural resources, then we have what we need to go to a federal court and seek a remedy.

But I believe that the federal court is waiting for this administrative agency to take the position, and I think that’s the subject matter of this motion.

So, either the NRC has some authority over these activities in which case we want a stay, or they don’t, in which case we want a ruling that we can take to someone who does have authority.

MR. PARSONS: Your Honor, this is Jeff Parsons, if I may.

CHAIRMAN FROELICH: Yes, Mr. Parsons.

MR. PARSONS: Thank you. So, I think that based on the license, and Mr. Pugsley is talking about the well field packages, our position is that is a license requirement that they go out and gather that additional data and information and present it to the NRC staff for their review as a license condition.

And so, our view is that those activities
as part of a license condition, fall under the jurisdiction or authority of the NRC.

And also once you have an application submitted and a NEPA process engaged, NEPA requires an analysis of connected and cumulative impacts.

And so, where you have these activities even to the extent that they’re not directly regulated by the NRC, they fall under the obligation in the NEPA process to review the impacts associated with those activities.

And I think we lay this out in our briefing with respect to the NEPA requirements there appears to be some conflation of the NHPA phase approach, which the NRC has endorsed previously, and the NEPA requirements to have the analyses and information particularly as it relates to this issue, the cultural resources surveys and information up front prior to ground-disturbing activities or impacts that could occur including those that are undertaken by private parties not subject to – directly to the NRC.

So, we think that based on the connected action issues associated with NEPA, as well as the fact that these monitoring well drilling activities are required by the license, those activities are part
of that condition for Powertech to submit those data
that that brings it within the ambit of the license
and that irreparable harm based on the license is
still at play.

Further, just to clarify, I understand Mr.
Pugsley indicated that Powertech does not intend to
install a complete monitoring well network, but what
I did not hear, and I think what’s likely, is that
some of those wells that will be drilled will be part
of those networks.

And so, I think that it’s a little bit
unclear and I’m not sure Powertech can give us those
assurances that the monitoring wells that they’re
planning on drilling are not indeed part of a
monitoring well network that is subject to the NRC
regulation and within the ambit of the definition of
construction.

So, I think based on those points, the
stay of a license would have the – give the relief to
– at least in part to the Tribe and to the
Consolidated Intervenors to protect those cultural
resources from any further impact particularly without
having what we see as a competent cultural resources
inventory.

CHAIRMAN FROELICH: Mr. Parsons, I’m having
a little bit of trouble with connecting the dots in
your last answer.

In order to get a stay, it’s your burden
to come forward with immediate and irreparable
injuries or harm to your cultural and historic
materials.

And I don’t see how the sampling wells and
the preliminary activities which Powertech is engaging
in, activities which could be performed without a
license, how you can square that and meet the burden
of immediate and irreparable injury when the actions
that are taking place are things that could be done
without even before the NRC license had issued.

And if this Board were to stay the
license, they could still move forward with the
sampling and those activities which don’t require a
license.

I can’t make that connection. Can you
help me, please?

MR. PARSONS: Sure. I guess I’ll start
with the — I think the standard as noted by all the
parties is to reasonably demonstrate irreparable harm.
So, I don’t think we have to prove that, you know, I
think that’s less than a demonstration that it will
absolutely occur, reasonably demonstrate irreparable
harm. And I think we’ve done so in this case based on our declarations.

And as I stated a moment ago, the drilling of additional monitoring wells is contemplated - is referenced in the definition of “construction.”

Now, I understand that Powertech does not intend to construct entire monitoring well networks. But where they’re constructing additional monitoring wells and cannot demonstrate that those are not part of those networks, I think that is where that connection and those dots are connected.

CHAIRMAN FROELICH: And the immediacy of the harm that the test requires, could you speak to the immediacy of the harm to your client, to your position?

MR. PARSONS: Sure. Thank you. I think in this case, what we have is a cultural resources inventory that is not scientifically competent.

As was stated in our declarations and comes straight from Powertech’s environmental report in the original college study that was done to support the application, this is an environmental report at 3-179, that study noted the sheer volume of sites documented at the site - at the area, rather, was noteworthy. And the area has a high density of
cultural resources.

And so, where you have that high density and sheer number of cultural resources, our position is that additional drilling pursuant to the license where you have not had a comprehensive survey of the cultural resources at the site, presents the distinct reasonable demonstration, that is, that irreparable harm will occur. Once these sites are disturbed, our position is that that constitutes irreparable harm.

I understand that both Powertech and the NRC staff rely heavily on the programmatic agreement that’s been put in place, but I’ll note that the programmatic agreement, first of all, has not undergone any NEPA review. It was finalized after the NEPA process was completed in this case and it speaks to if there are unidentified – if there – it talks about if there are encounters with unevaluated properties that somehow we’ll have that study later.

So, I think the programmatic agreement recognizes that there are unevaluated properties out there, tries to make or take account of those, but in our view those studies should have been done prior and that allowing ground-disturbing activities pursuant to a license without having done that comprehensive study is contrary to law.
And, again, where those activities occur and to the extent they impact cultural resources at the site and given the sheer number that exist at that site, we think that that suffices for the reasonable demonstration of irreparable harm.

CHAIRMAN FROELICH: Actually, the question was to the immediacy of the irreparable harm. And if I understood your answer, you mentioned the programmatic agreement.

Why does not the programmatic agreement together with administrative condition 9.8 of the materials license address your underlying concern?

MR. PARSONS: Thank you, Your Honor. So, as to immediacy, I think we heard from Powertech that they intend to go out there in the intervening time and conduct additional ground-disturbing work. So, I think the immediacy is evident.

CHAIRMAN FROELICH: The kind of work that they described as I understood it, was the sampling and those type of things that don’t require an NRC license to begin with. They could do that whether or not the staff had issued the license.

So, I’m at a loss to understand how staying the license, which under the scenarios they laid out, they don’t need to do these things, will
address your concern and prevent any irreparable or immediate harm to cultural and historic resources.

MR. PARSONS: Thank you, Your Honor. It goes back to the definition of “construction” which explicitly identifies monitoring wells as construction under the NRC regulations. And so, those are activities that can only occur pursuant to a license.

Now, I understand, you know, there may be a disagreement there, but the 40.4 definition of construction specifically contemplates monitoring wells, which it – and although I understand it will not be the entire monitoring well network that will be put in place, those monitoring wells, our position, are the type of monitoring wells that fall within the definition of construction.

And as to the programmatic agreement, this gets obviously into the merits of the case. But having a programmatic agreement that says if we encounter cultural sites, we will stop and identify them, the problem is – our position is no competent survey has been completed of the site.

And so, it is unlikely in our view that – or likely, at least, that Powertech as they’re conducting their monitoring well construction, that they will not know that they’re ensuring cultural
resources, because no study has been done to
demonstrate where all those cultural resources are.

And so, that is our — that is our position
that without that knowledge on the front end of where
those sites exist, that it’s having a condition saying
that if we encounter some, we will stop, does not
provide the protection against irreparable harm that
it might appear to you on its face.

JUDGE COLE: Yeah, this is Judge Cole.
I’ve got a couple of concerns. The programmatic
agreement which was allegedly designed to avoid the
kind of problems the Tribe and the Consolidated
Intervenors are concerned with, why is the
programmatic agreement insufficient to protect the
cultural resources?

That’s what it’s designed to do.

MR. PARSONS: Thank you, Judge Cole. Jeff
Parsons again. To the extent that there were a
comprehensive survey of the site, the programmatic
agreement would be much more valuable.

The Tribe objected strenuously to the
programmatic agreement. The programmatic agreement
failed to note that.

It does indicate that the Oglala Sioux
Tribe provided input on the programmatic agreement,
but does not indicate the nature of that input, which was highly critical of that agreement.

And so, having a condition in the programmatic agreement that the company will stop its construction if it encounters cultural resources based on, I mean, based on what?

If there’s not a study done that identifies, comprehensively identifies the cultural resources, then having an agreement like that loses its meaning because there’s no way for Powertech to identify those sites without the scientific methodology, the professionalism involved in an archaeological study. And that’s what we contend should have been done from the start.

I can’t imagine that the well drillers are trained in a way that will allow them to do the kind of professional work that scientists would expect when they are conducting the comprehensive cultural resources inventory that we assert should have been done in this case.

JUDGE COLE: What is the main concern of the Indian tribes with respect to cultural resources? Is it graves, burials and ceremonial areas or - and what else if it’s not mainly that?

MR. PARSONS: I would say it is that, as
well as other cultural sites. The position of the Tribe is that where you have disturbance of cultural sites it impacts the Tribe.

It impacts their ability to ensure those sites are protected and conserved and treated with the respect that they deserve.

And so, without knowing where those are, it is - the problem is there’s no way for Powertech when they’re conducting their construction activities to recognize that they’re impacting those sites.

And, again, that’s what we think renders that programmatic agreement inept.

JUDGE COLE: Thank you. The area of concern here as the project area, it’s about 10,600 acres, right?

MR. PARSONS: As I understand it, yes, Your Honor.

JUDGE COLE: Yeah, that’s about four square miles. Not a very big area. And they’ve been studying this project from a cultural resources viewpoint since – for at least four or five years.

In fact, Augustana College had started in 2008 and there have been six studies of this area in four square miles.

Is it that difficult to do a kind of
cultural resource study in an area like that?

MR. PARSONS: Your Honor, our position is yes. To say that they have been studying it for four or five years I think is not quite an accurate portrayal.

There have been two rounds, essentially, as you referred to of review of this site. One was conducted by Augustana College, which although I have certainly nothing against Augustana College, it’s not a professional archaeological study.

In fact, the NRC staff itself in response to the contentions on the draft supplemental environmental impact statement promised in the Tribe’s view to conduct an additional independent review and to update and supplement that cultural resources study based on an agreed-to scientific methodology for identifying those sites.

That promise was not fulfilled. Instead, they abandoned the creation and implementation of a concrete and sufficient scientific methodology and allowed tribes to come out onto the site on their own without any established or reviewed methodology.

And what you ended up with was reviews by the – reports submitted by the tribes which were the Arapaho – northern Arapaho, northern Cheyenne,
Cheyenne-Arapaho tribes of Oklahoma and the Crow nation were the only tribes that submitted any reports.

And our contention is that the differences between those tribes is sufficient and significant enough that those tribes would not have the experience and have the knowledge that the Oglala Sioux tribe has as to what to look for and what are significant resources at the site.

So, I don’t think it’s been studied for four or five years. I think there have been two rounds of cultural resources review, neither of which rises to the level of what could be considered a competent scientific study.

So, we contend that that has yet to be done at this site. And, yes, it is a challenge and it’s something that the Tribe takes very seriously.

These are ancestral lands that have enormous cultural significance to the Tribe. And we expect that the cultural studies and impact studies be done with the utmost professionalism and scientific rigor.

And I think the records from our perspective, clearly indicates that that has not been done.
JUDGE COLE: Thank you.

MR. ELLISON: Judge Cole, this is Bruce Ellison, if I might just add one thing additional, sir.

JUDGE COLE: Sure.

MR. ELLISON: I would ask that it be noted that the tribes which are in the closest proximity to this area, the Oglala Sioux Tribe, the Rosebud Sioux Tribe, the Standing Rock Sioux Tribe, they have all not signed this agreement all for the same reasons that Mr. Parsons just mentioned and they are eager for a serious study to be done.

If the whole purpose of protecting cultural resources had some real validity, then these tribes certainly take the position that - and the tribal members who we represent as Consolidated Intervenors - that there should be the greatest amount of input done in a scientifically sound bases to protect these sites and these areas, because otherwise their opinions will be lost forever.

And so, the purpose of a stay would be to protect incidental or, as Mr. Parsons pointed out, equipment operators who really don’t know what they’re looking for and we would submit it as the tribal historic preservation officers say, the Augustana
College folks who, with all due respect to them, they did not really know what they were looking for, but what they were looking for was only a small portion of what actually exists. So, what could be the harm of a stay?

And in addition to that, Powertech in its applications to the DENR said it was not going to engage in any construction activities until they had all its permits.

They’re now coming to the NRC and saying, well, you gave us this license. Now, we can do everything.

And I wanted to point that out, because it’s a great concern to us that this license is being used as basically the go-ahead for construction activities that otherwise would need licenses for including even a Class III injection well, which it sounds like they want to build.

And if they are – some of these wells may, in fact, become part of well fields, that’s exactly what a Class III license would be.

So, I believe there’s no authority for Powertech to believe that the NRC by granting this license at this point really makes it basically supersede any other license that is needed and they
can just go ahead and see what happens later.

JUDGE COLE: Thank you.

MR. ELLISON: Thank you, sir.

JUDGE COLE: We have several in situ mines with licenses in the area and several applications pending, also.

Could maybe Mr. Pugsley or Mr. Clark or anybody else could answer this question: How do you handle cultural resource issues in in situ mine applications?

Now, we talked about this one. What about the other cases? How do they handle it?

MR. PUGSLEY: Your Honor, this is Chris Pugsley for –

JUDGE COLE: Do they accept the Level III cultural surveys?

MR. PUGSLEY: Judge Cole, this is Chris Pugsley for Powertech. Let me – I can’t speak to a ton of them, but I can speak to one that is the most current, which is the Strata Energy Ross Project in Northeastern Wyoming.

They are handling –

(Simultaneous speaking.)

MR. PUGSLEY: Okay. That’s true. They handle cultural resources the exact same way that it’s
been handled in Powertech.

They submit a Class III survey prior to the license application being submitted. Then NRC staff is the lead agency in this case, and in Strata’s case, conducts the Section 106 consultation process under the National Historic Preservation Act, and in Strata they are also going to be having — and staff can correct me if I’m wrong, but they’re going to also have a programmatic agreement — they have a programmatic agreement.

And the important thing is in both that case and in the Dewey-Burdock case the critical factor, Your Honor, is those signatories, two of the signatories, mandatory signatories to that agreement are the State of South Dakota’s State Historic Preservation Office and the Advisory Council on Historic Preservation. They both signed the programmatic agreement.

And given the fact that they are the expert agencies, they deal with cultural resources and they both signed it and the 106 process which the programmatic agreement was the final agreement document that was a product of that process was signed off on by the agency that implements the National Historic Preservation Act through its 36 CFR Part 800
regulations, it appears that Powertech got in both cases, Strata Ross and Dewey-Burdoc, that it’s been handled according to law.

MR. PARSONS: Your Honor, this is Jeff Parsons. I would only note that the basis for the Tribe’s motion for stay on likelihood of success on the merits dealt with the NEPA compliance.

Whether or not the National Historic Preservation Act allows for a phased compliance approach to the NHPA Section 106, that is wholly distinct and apart from the requirements under the National Environmental Policy Act which specifically requires these studies be done before decisions are made and before actions are taken.

I think that is an absolutely critical distinction that the Board understand that the Advisory Council on Historic Preservation and the South Dakota preservation officer have no responsibilities under NEPA with respect to this site.

And, in fact, in their signatures and comments, made no representations of any kind that NEPA had been satisfied.

And so, I think again we’re dealing with an issue of conflating compliance with the NHPA with the National Environmental Policy Act and they’re very
different standards. Thank you.

MR. FRANKEL: Your Honor, David Frankel, if I might make a comment.

JUDGE COLE: Okay. Go ahead, Mr. Frankel.

MR. FRANKEL: Thank you, Judge Cole. David Frankel for Consolidated Intervenors. I want to point out that we’ve submitted expert testimony in several letters and opinions from Dr. Lou Redman concerning the very unique nature of this specific part of land. That it has traditionally and since ancient times had valuable lithic resource materials, that it was a place that was transected and camped at especially in the low-lying areas near springs and intermittent springs probably exactly where the company wants to put its well fields, and that we have asserted from the beginning that there has been a lack, an intentional looking away of subsurface testing and that we believe that there are very significant cultural resources, graves right in those low-lying areas.

So, if they want to run over those areas with some ground-penetrating radar before they drive on them and drill on them and show there’s nothing under there, I’m sure that would satisfy us.

But to proceed blindly seems very
imprudent and a violation of their responsibilities and the federal government’s responsibilities if it lets them do that. Thank you, Your Honor.

JUDGE COLE: Thank you.

MR. CLARK: This is Mike Clark for the staff if I could just say a word or two.

CHAIRMAN FROELICH: Please, go ahead.

MR. CLARK: First, I just want to address Mr. Parsons’ last comment regarding conflating NEPA and NHPA.

The staff explained in its response to the stay motions that the final supplemental environmental impact statement is not the staff’s decision document. The decision document is our record of decision, which was not issued until the staff finalized the programmatic agreement.

Thus, the programmatic agreement and the protections in that agreement, those inform the staff’s NEPA review. So, it’s not a case of the staff segmenting NEPA and NHPA.

I also want to address what I think is an important point. Their license allows them to take certain actions. The license also requires that they take certain actions.

In one, I believe Judge Froelich here
referred to as license condition 9.8 requires compliance with the programmatic agreement.

As it stands right now, there’s no NRC enforcement action, at least administrative enforcement action available if Powertech were to violate the PA.

The parties of the PA could possibly pursue some remedy in federal court, but staying the license has the effect of also staying the protections afforded by various license conditions including 9.8.

In the staff’s view, having the license remain in effect is actually more protective of cultural resources not just because of the specific protections in the programmatic agreement, but also because the staff, if necessary, could take NRC enforcement action issuing a Notice of Violation and possibly taking other actions against Powertech if they were to violate the programmatic agreement.

The one other point I’d raise is I think as everybody is aware, there’s a – Judge Cole referred to a four or five-year history of working to identify sites. And the staff has been working for four years trying to consult under the National Historic Preservation Act to identify and assess impacts to properties of significance to tribes and other
persons. And before that, Powertech did investigations in their Class III survey.

The staff recently issued a document, a 17-page compilation of the results of its efforts. And I know the efforts haven’t always gone smoothly, but the staff is certainly expending substantial effort in consulting under Section 106 of the National Historic Preservation Act.

They also afforded interested tribes the opportunity to do field surveys of the geographic slate last April and May. Seven tribes took those opportunities and did their own surveys.

Now, I know we’ve heard complaints that those surveys lack methodology, but I want to read a quotation from input we received from Oglala Sioux Tribe.

And the quotation is – I believe this was from President Brewer. It is self-evident that each tribe will have expertise in recognizing its own sacred place. The Oglala Sioux Tribe strongly objects to the use of persons without any expertise in Sioux traditional cultural properties to identify Sioux traditional cultural properties.

The staff took those concerns seriously. And for that, it decided the best approach was to
invite those people with specialized expertise in
identifying sites of each tribe to the Dewey-Burdock
site. And that was done last April and May.

The Oglala Sioux Tribe did not participate
in the surveys. Nonetheless, the staff continued to
consult with the tribe and with other tribes. And as
a result, it was able to produce a programmatic
agreement which it includes — the programmatic
agreement is lengthy. It includes numerous sections
that protect different categories of resources.

And one important section is, I believe
Mr. Ellison said there’s no monitoring, but
Stipulation 13 of the programmatic agreement provides
for compliance monitoring.

So that when Powertech does construction
in areas where sites have not been located, there will
be people there to make sure it will not be just
construction operators who are responsible for
observing whether sites may be found.

So, there are serious protections in the
programmatic agreement. The programmatic agreement is
nothing new. It’s not a novel approach. As Judge
Cole mentioned, and I think as Mr. Pugsley followed
up, it’s been used in other NRC cases. More than
that, it’s been used in other cases by other federal
agencies.

And the Advisory Council on Historic Preservation, the staff would submit would not have entered into the programmatic agreement if it found it deviated significantly from the programmatic agreements used by other agencies.

That’s all I have. Thank you.

CHAIRMAN FROELICH: Thank you, Mr. Clark.

JUDGE COLE: Mr. Clark, I just wanted to follow up on your last answer. Because 10 CFR 2.1213 requires us to weigh the public interest, is it your argument that having the license in effect, i.e., not subject to a stay, having it in effect would protect the public more than staying the license at this point because of the ability of the staff to monitor the actions of Powertech, as well as enforce the conditions of the programmatic agreement?

Did I understand you correctly?

MR. CLARK: Yes, Your Honor. This is Mike Clark. The staff believes it would have additional enforcement options available if the license remains in effect because it could pursue administrative enforcement action against Powertech if they were to violate the PA.

If the license is stayed, then License
Condition 9.8 is also stayed. Although the programmatic agreement would remain in effect, there wouldn't be any NRC administrative enforcement remedies available and the parties would most likely have to pursue a violation of the PA in federal court.

CHAIRMAN FROELICH: Okay, thank you. And you had mentioned that there is precedent for this bifurcated approach of separating, you know, the NEPA aspects from the NHPA. I wondered if Mr. Parsons and Mr. Frankel could cite me to any federal court's decision which has disallowed or struck down the separation or the use of a programmatic agreement.

MR. PARSONS: Thank you, Your Honor. This is Jeff Parsons. I think that what I can cite you to is case law that says that while a programmatic agreement may be sufficient for, may go to, rather, National Historic Preservation Act compliance, it does not suffice for, on its own, National Environmental Policy Act compliance. And the National Environmental Policy Act compliance is separate and distinct and requires that those issues and impacts be reviewed as part of the NEPA process without regard to a bifurcation of the National Historic Preservation Act.

That is to say they're separate and distinct standards. Just because there's a

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bifurcation in a programmatic agreement does not suffice in itself for National Environmental Policy Act. And I will, I believe we cited that in our briefing and will pull it for you momentarily.

CHAIRMAN FROELICH: Okay.

MR. FRANKEL: Your Honor, David Frankel for Consolidated Intervenors. I don't have a cite about invalidating programmatic agreements generally. I would suggest that in this case where the Standing Rock Sioux Tribe and Oglala Sioux Tribe have both objected in writing concerning the nature and extent of the proceedings and fairness or unfairness of those proceeding that gave rise to the programmatic agreement, I can't imagine that it would hold up from the standpoint of protecting the Oglala Sioux Tribe's interests.

So I just want to reiterate that this is not an example of a programmatic agreement that's been meaningfully participated in as represented by those objection letters. If there were no objection letters then I think that the tribes and the tribal members would have a much more difficult argument in this case.

But here where it's been one-sided and basically implementation and imposition of this
federal programmatic agreement that's just one more dictate on the tribes and the tribal members, it's hard for us to see that that will be validated when held up against the responsibilities of the trust duty, which incidentally the NRC in their response to the motion to stay believes that it doesn't apply in these hearings.

And we object to that and submit that notwithstanding their old Court of Claims citation that our Supreme Court cases are still valid and there is a trust duty of the United States federal government to these people that goes back 100 years and is as valid now as it was then. Thank you.

MR. PARSONS: Your Honor, sorry. This is Jeff Parsons. I have found that citation. The quote is, "Compliance with the NHPA does not relieve a federal agency of the duty of complying with the impact statement requirement to the fullest extent possible." That's Lemon versus McHugh, 668 F. Supp. 2d, 133, at Page 144, District of D.C., 2009, quoting Preservation Council, Inc. versus Pierce, 667 F. 2d 851 out of the 9th Circuit, 1982. So we believe there's, and that's cited in the tribe's motion for summary disposition at Page 10.

CHAIRMAN FROELICH: Thank you. While I
have you, it seems to me as I've read the pleading
there's a dispute between the type of field surveys
that were conducted and the type of study that the
Intervenors and the Oglala Sioux Tribe would like to
have done. This is referred to, I guess, in the
pleadings as ethnographic study versus a field survey.

Could you just enlighten me as to the
difference between these two types of surveys?

MR. PARSONS: I will do my best, Your Honor. I think --

CHAIRMAN FROELICH: That this is at least
a pivot point for the Intervenors as to the type of
studies that were conducted versus the type of a study
that you believe should have been conducted.

MR. PARSONS: Sure. I think the
difference is, and in this case it deals with the
extent to which you employ a scientific methodology
that accounts for the particular people who use that
area and how they used those areas.

Mr. Frankel alluded to their expert's
report, Dr. Redmond talking about the use of low-lying
areas and how that the ancestors of the Sioux, of the
Oglala Sioux in particular, would have used that land
as opposed to another tribal group or people.

And so you would have to incorporate the
experiences and traditions of that group, of that tribe that had used the land, into that study in order to ensure that you're conducting the survey with sufficient scientific rigor.

And I would say that in this case we were going down that road, there was to be a scientific survey including an ethnographic study of that site with expert archeologists and the tribes together with an agreed upon methodology, and we thought that was an appropriate course.

Unfortunately there was not agreement. There was some disagreement, I guess I'd say, as to the scope and nature of that methodology which the tribe anticipated would be worked out and resolved. Instead the NRC staff decided to abandon that approach and simply allow whatever tribes wanted to come on the ground to do so and do whatever study they felt appropriate based on whatever methodology they preferred without those checks, without that established methodology that would have provided for a competent study.

So the fact that the NRC staff offered a tribe to come on the land, we strongly disagree that that somehow equates to or suffices for the kind of expert, scientifically designed study that was
anticipated and expected.

CHAIRMAN FROELICH: With that answer, I'm going to ask of Mr. Clark for the staff, I believe it was the staff pleading that cited the Board to the Narragansett Indian Tribe versus the Warwick Sewer Authority Court of Appeals case finding no irreparable harm in part because archeologists are monitoring work and will continue to do so.

I wonder if under the programmatic agreement or the license conditions whether there are archeologists monitoring the work going forward at the Dewey-Burdock site.

MR. CLARK: Your Honor, this is Mike Clark. And Stipulation 13 in the programmatic agreement is the one that is a stipulation addressing compliance monitoring, and Section C of Stipulation 13 actually addresses this issue.

And it says, monitor, or construction activities will meet the Secretary of the Interior's professional qualifications for archeology. Preference will be given to individuals meeting those qualifications where employed a tribal enterprises, especially during phases of the monitoring program when sites with religious and cultural significance to tribes might be affected.
MR. PARSONS: And Your Honor, of course we would say -- this is Jeff Parsons -- that without having that scientific study in the first place, how is the applicant to know when they're, or the staff for that matter, when they're engaged in an area of that nature? That is sort of the underlying problem we are encountering with this approach.

CHAIRMAN FROELICH: One of the points in 2.1213 is the harm to the various parties to the case if a stay were granted. I wonder if I could hear from Mr. Pugsley as to the potential harm to Powertech if a temporary stay were continued.

MR. PUGSLEY: Your Honor, Chris Pugsley for Powertech. As we brief, put in our pleadings, there will be harm to Powertech as a result of this. Because as you may or may not be aware, we have ongoing hearings in the state of South Dakota for large-scale mining permits and water right permits as well as we are in the process of obtaining a plan of operations from the Bureau of Land Management and permits from the EPA under the Safe Drinking Water Act and Underground Injection Control Program.

There is, as we said in our pleading, right now the state had essentially held the remainder of their hearings in abeyance ending the
determinations of NRC and to find out whether or not the license would indeed be issued.

And as we stated in our pleadings, it is that the uncertainty associated with this current temporary stay as well as if a permanent stay were to be imposed would potentially result in the further delay of those proceedings and would not allow Powertech to move forward with presenting its case to those adjudicatory bodies.

CHAIRMAN FROELICH: Okay. Yes?

MR. ELLISON: This is Bruce Ellison. I would just like to clarify a little bit what's going on in the state court proceedings. Both the Water Management Board and the Mining Board have not stayed pending the NRC license, they have stayed pending all other licenses. That would include the EPA, would include BLM approval. It would include any other state or county permits that would be necessary. Then we go back to state court.

So what part of our concern is, is the extensive operations, construction operations that Powertech seems to be contending it can engage in, many of which cover, are involved in some of these other permits which are not even going to get back to a hearing until we're all done at the federal level.
So it's not just the NRC, it's the EPA. And the EPA has sent a letter last month indicating that they don't know how long their process is going to take. So that's what our concern is.

This seems to be a carte blanche license to go forward with a lot of activities that other permits are really also needed for, and that this license should not be construed as superseding those other permits.

We're a long ways away from finality of Powertech having all of its licenses, and it promised the state in writing its applications it wouldn't do any construction until it had all of its permits. Now it's saying something very different, and they should be held to it.

MR. PUGSLEY: Your Honor, this is Chris Pugsley for Powertech. I'd like to note for the record that in no way on this telephone conference has Powertech said at any time that it was going to engage in site construction activities. All that was mentioned were sampling rights, and that a), does not meet the NRC definition of construction, and b), is not any construction of sample plants, well fields or anything, any activities that you would require a state, large-scale mine permit for or any other
The point here is that if you talk about sampling wells, I mean that is not within the construction rule. I also tend to disagree with the statement that the state of large-scale mine permit, et cetera, is holding this in abeyance until all federal and state and county, other state and county permits are issued. I believe that the case is that it's just federal permits.

And that's where some of the potential harm comes in because it was, and unless I'm mischaracterizing this, I think that EPA, and certainly the Bureau of Land Management because BLM was a cooperating agency on the Supplemental Environmental Impact Statement as well as a signatory to the programmatic agreement, they are developing their plan of operations.

And it is distinctly possible, well, not possible, it's really true that at least EPA was waiting for NRC's decision. And if the stay is maintained, those processes could be further delayed.

And regardless of whether the statement is that their hearing, they don't know how long their hearing process will take, it will be, I don't know how long the hearing process takes plus seven months.
So what Powertech is saying is that there is the great potential for the permitting process with these other agencies to be strung out in perpetuity pending the resolution of this, when we believe that the Intervenors have not met their burden under Part 2.1213.

MR. PARSONS: Your Honor, this is Jeff Parsons, if I may briefly. I think opposition is that Powertech's argument that a temporary stay for the hearing process in this case would string out other permits indefinitely is pure speculation.

And we would note that nowhere did Powertech provide any evidence of any harm. There are no declarations or affidavits incorporated into Powertech stay response, merely the assertions of counsel. We think that is in stark contrast to the affidavits submitted by both the tribe and Consolidated Intervenors.

CHAIRMAN FROELICH: Okay. I've exhausted the questions I have prepared. Judge Cole, do you have anything?

JUDGE COLE: No, I'm finished.

CHAIRMAN FROELICH: And Judge Barnett, you've been quiet there on the phone. Do you have any questions at this point?
JUDGE BARNETT: No, all my questions have been answered.

CHAIRMAN FROELICH: Okay. While we're all on the line and on this call, I'd like to address two or three procedural items that are pending, and also assure the parties that the Board will expeditiously issue its order on the request for stay within a matter of days I would hope.

But first we will formally grant the April 30th unopposed motion that the parties filed which would clarify the filing deadlines and will adopt the six filing deadlines that are listed in the procedural schedule.

Also at this point, I would note for the record that we received a motion from the Consolidated Intervenors seeking to strike, I guess, Pages 11 through 21 of the Powertech answer response. At this point in time the Board is going to deny the Consolidated Intervenors' motion to strike, not because we necessarily disagree with them.

I believe that the rules intend answers to be limited to ten pages for a motion for stay, but because the motion to strike was not in compliance with 10 CFR 2.32382 which requires all motions to be filed within ten days of the triggering event.
Since that 20-page Powertech answer of complaint of was filed on April 24th, the motion to strike was due on May 4th which would have been a Sunday. To be timely it would have had to have been filed by Monday, May 5th.

And at this point the Board is going to go forward based on the motion and answers that have been filed, plus the transcript and record made at this oral argument, and we'll issue its ruling, its order, within the next few days.

I also would like to apprise the parties that the Board has been moving forward on preparations for the oral limited appearance statements and the hearing scheduled for the week of August 18th, 2014.

Currently we are planning to hold a number of oral limited appearance sessions at the Mueller Civic Center in Hot Springs, South Dakota on Monday, August 18th. At this point we're just trying to figure out how many individual sessions and at what time of the day or evening to hold them to have the maximum amount of public participation possible.

The hearing in this case will be held beginning Tuesday, August 19th, and we are currently looking to hold it at the South Dakota School of Mines and Technology in Rapid City, South Dakota.
Are there any other matters that any of the parties wish to raise at this point concerning the motions for stay or any procedural matters involved in this case?

MR. PARSONS: On behalf of the tribe, Your Honor, this is Jeff Parsons. I would just like to thank the Board for obviously taking this under serious consideration.

CHAIRMAN FROELICH: Thank you.

MR. PUGSLEY: Your Honor, Chris Pugsley for Powertech. Nothing from the licensee.

CHAIRMAN FROELICH: And staff?

MR. CLARK: Mike Clark for the staff.

Nothing more. Thank you, Your Honor.

CHAIRMAN FROELICH: Okay. This then concludes the oral argument on the motions for stay. The Board will issue its order within the next few days. It's just a matter of getting back to our desks, conferring with one another and drafting it up. I thank the parties for their attention, for their arguments, and this session has been helpful to me and to the Board. We stand adjourned.

(Whereupon, the foregoing matter went off the record at 3:23 p.m.)