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Title: Powertech USA, Inc.: Dewey-Burdock
In Situ Uranium Recovery

Docket Number: 40-9075-MLA

ASLBP Number: 10-898-02-MLA-BD01

Location: teleconference

Date: Tuesday, August 5, 2014

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UNITED STATES OF AMERICA

NUCLEAR REGULATORY COMMISSION

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ATOMIC SAFETY AND LICENSING BOARD PANEL

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HEARING

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In the Matter of: : Docket No.

POWERTECH USA, INC. : 40-9075-MLA

: ASLBP No.

(Dewey-Burdock In Situ : 10-898-02-MLA-BD01

Uranium Recovery) :

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Tuesday, August 5, 2014

Teleconference

BEFORE:

WILLIAM J. FROELICH, Chair

DR. RICHARD F. COLE, Administrative Judge

DR. MARK O. BURNETT, Administrative Judge

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P-R-O-C-E-E-D-I-N-G-S

(1:02 p.m.)

JUDGE FROEHLICH: Good afternoon all.

This is a prehearing telephone conference in the matter of Powertech USA, Docket Number 40-9075-MLA, ASLBP Number 10-898-02-MLA-BD01. It's August 5th, about four minutes after 1:00 in the afternoon.

Pursuant to notice we're holding a prehearing telephonic conference to discuss all procedural matters that have arisen or may arise in the upcoming hearing to take place beginning at 9:00 a.m. in Rapid City, South Dakota a week from today.

Could we go quicky please, for the record, and could you tell me please who's on the line and the party you represent? Okay. Here in Rockville I have with me Judge Cole, and by telephone link Judge Barnett.

Also with me is the board's law clerk, Nick Sciretta, Andrew Welkie who will be the clerk of the court when we are in Rapid City as well as there's a limited appearance statement in Hot Springs along with our program analyst, Twanna Ellis. Who do we have on the line please?

MR. PARSONS: This is Jeff Parsons on behalf of the Oglala Sioux Tribe.

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1 MR. STILLS: Travis Stills on behalf of
2 the Oglala Sioux Tribe.

3 MR. ELLISON: Bruce Ellison on behalf of
4 the Consolidated Intervenors.

5 MR. BALLANCO: Tom Ballanco on behalf of
6 Dayton Hyde, a consolidated intervenor.

7 MR. FRANKEL: David Frankel on behalf of
8 Aligning for Responsible Mining.

9 JUDGE FROEHLICH: And do we have a
10 representative from staff?

11 MR. CLARK: Your Honor, this is Mike Clark
12 for the NRC staff.

13 MS. JEHLE: Patty Jehle for the NRC staff.
14 (Simultaneous speaking)

15 JUDGE FROEHLICH: This is Judge Froehlich.
16 This is the last introduction.

17 MR. THOMPSON: Tony Thompson for
18 Powertech.

19 MR. PUGSLEY: And Christopher Pugsley for
20 Powertech.

21 JUDGE FROEHLICH: Okay. I think we're all
22 here and ready to go. I want to thank the parties
23 initially for submitting a list of proposed topics and
24 concerns that you had leading up to and including the
25 hearing and limited appearance statement sessions that

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1 are scheduled.

2 We actually have an agenda which covers
3 some of the items there, and what I would propose to
4 do is go through a number of the board's concerns and
5 things that we've thought about before and then go
6 through the 14 topics that were sent in.

7 It was a great help, and I want to thank
8 the parties for getting together and giving us just
9 one list of topics that we could work from. As you
10 all know, we have two events coming up.

11 The first being a limited appearance
12 statement session, actually two sessions at the
13 Mueller Civic Center in Hot Spring on Monday. There
14 will be two sessions, the first being from 11:00 a.m.
15 until 2:00 p.m. and the second from 5:00 p.m. until
16 8:00 p.m.

17 I was going to ask the parties if they had
18 any feeling or expectations for the size of the crowd
19 that we might expect at the limited appearance
20 sessions, if anyone has any insight or has read
21 anything in the local paper or heard from either their
22 clients or constituents.

23 MR. ELLISON: This is Ellison on behalf of
24 the consolidated intervenors. We have, I mean it's
25 hard to know. When we had the state hearings there

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1 were quite a few people.

2 I am concerned that there will not be
3 enough time as set forth currently to handle all of
4 the people who do want to make presentations.

5 JUDGE FROEHLICH: Really? From the, any
6 of the other participants of this call have a feel for
7 the likely attendance of size of the crowd that we
8 might expect Monday?

9 MR. ELLISON: Judge Froehlich?

10 JUDGE FROEHLICH: Yes?

11 MR. ELLISON: The only thing, this is
12 Bruce Ellison again. The only thing that I would add
13 is that if the crowd is somewhat limited in Hot
14 Springs it may be because of the fact that there would
15 be, difficult for people to get to Hot Springs.

16 But they could get to Rapid City, so I
17 just wanted to mention that so maybe people who are,
18 would like to participate but for whom can't make it
19 at that day at that time in the location.

20 JUDGE COLE: This is Judge Cole. Just a
21 time limit on the limited appearance statements. I
22 hope that everybody got that information. We're
23 recommending five minutes or less.

24 JUDGE FROEHLICH: Per person so that
25 everyone who does want to speak could be heard. In

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1 that regard, it might be helpful to the extent that
2 you're able to alert your followers or supporters on
3 one side or the other that these limited appearance
4 statement sessions are focused and limited to the
5 contentions that are going to be heard the following
6 day at the hearing.

7 And so to the extent you have influence or
8 are speaking with these people to encourage them to
9 stick to the contentions and the issues that are
10 actually the subject of the hearings that start
11 Tuesday.

12 Similarly, the board did issue a notice in
13 conjunction with the local law enforcement there that
14 there won't be any guns or weapons allowed.

15 There will be screening of the people
16 entering both the Mueller Civic Center and the hotel
17 for the hearing to screen for weapons, knives,
18 whatever.

19 So to the extent you and other
20 participants to the subject matter of the limited
21 appearance sessions and the hearing ultimately, that
22 would probably be helpful.

23 In that regard, I wanted to --

24 MR. FRANKEL: Your Honor?

25 JUDGE FROEHLICH: Yes.

1 MR. FRANKEL: My name is David Frankel
2 with Frankel speaking.

3 JUDGE FROEHLICH: Yes, Mr. Frankel.

4 MR. FRANKEL: The consolidated
5 intervenors. First I want to thank you for that no
6 weapons notice. That has been posted on the Facebook
7 page and has been emailed.

8 And that notice has been sent around, so
9 I expect full 100 percent compliance from at least the
10 people who are part of consolidated intervenors and
11 who are there, supporters.

12 There was one question on that, and I
13 don't mean to seem to be focusing on only one issue.
14 I realize it was my email question that prompted that
15 clarification, so please forgive this further
16 question.

17 One of our experts brought up most people
18 carry a pocketknife or a penknife. Is that a problem?
19 I actually asked the security at our last hearing
20 about it because I didn't want to offend any no
21 weapons policies.

22 And they laughed at me and said no. It's
23 pretty much expected that you carry a pocketknife
24 around here. I don't know, judges, if that's your
25 expectation.

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1 I'm happy to tell people to leave their
2 pocket knives at home and try to really make that
3 clear. I just wanted to pass that. Is that within
4 your definition of a "weapon" because that's not how
5 most people feel about small pocket knives?

6 JUDGE FROEHLICH: I don't think a small
7 pocketknife will be a problem. The screenings that
8 will take place there will be by the local law
9 enforcement, the sheriff's office of Fall River, the
10 police department of Hot Springs and the Rapid City
11 Police Department.

12 So whatever the moree is, I guess, in the
13 area that'll be enforced. At least from my
14 perspective, I don't think small pocket knives will be
15 a problem.

16 MR. FRANKEL: Thank you, Your Honor. I
17 just didn't want there to be any strange
18 misunderstandings. And every posting that we have has
19 included a request to respect the decorum of the
20 proceedings and to address the judges as Your Honor or
21 however you introduce yourselves.

22 So we have communicated these
23 expectations. We can't guarantee the conduct of
24 individuals, but we expect full compliance with these
25 requests, Your Honor.

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1 JUDGE FROEHLICH: Okay. Thank you, Mr.
2 Frankel and thank you for getting the word out to the
3 parties. On a related subject, related to the limited
4 appearance sessions, I would expect that all parties,
5 the applicant, the staff, would be in attendance at
6 the limited appearance statement sessions.

7 Is that correct? Are you expecting to be
8 there, parties?

9 MR. PUGSLEY: This is Chris Pugsley from
10 Powertech. Yes, Your Honor, we will be represented
11 there.

12 JUDGE FROEHLICH: And the NRC staff?

13 MR. CLARK: This is Mike Clark for the
14 staff. Yes, the staff expects to be there.

15 JUDGE FROEHLICH: Okay. The way we have
16 the limited appearance session set up at the moment is
17 that the board will be, I guess, on a stage-like area.
18 And we have a reserved space at tables for counsel for
19 the parties.

20 This is voluntary. You're not required to
21 be there, but the way we had the room set up is that
22 there would be a special area reserved for the counsel
23 for the parties at the limited appearance sessions at
24 a table in the front of the room.

25 Is that acceptable to all, or is there a

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1 strong preference that counsel be somewhere else in
2 the room as opposed to center stage?

3 MR. PUGSLEY: Chris Pugsley from
4 Powertech, Your Honor. No, that's acceptable.

5 MR. CLARK: For the staff, this is Mike
6 Clark. That's fine with the staff.

7 MR. PARSONS: This is Jeff Parsons.
8 That's fine for the tribe as well.

9 JUDGE FROEHLICH: Okay. And the
10 consolidated intervenors?

11 MR. ELLISON: Yes, that'll be fine, Your
12 Honor.

13 JUDGE FROEHLICH: Okay. I didn't want you
14 to be surprised when you arrived those evenings that
15 we had a place reserved for you.

16 Are there any other issues or concerns
17 that the parties might have concerning the limited
18 appearance sessions scheduled for Monday, aside from
19 the one comment that there may not be enough time?

20 MR. ELLISON: This is Bruce Ellison. The
21 only other thing that I would mention is that I know
22 people, at least the people that I have been in
23 communication with, which is only a number of people,
24 most people would be able to do five minutes without
25 a problem.

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1 There are some people who have more of a
2 handle on this, more expertise, some personal insight.
3 And I guess I would ask that there be a certain
4 flexibility that maybe some people, one, two, three or
5 four who might actually need ten minutes to get
6 through or maybe even just a little bit longer.

7 And I just ask that the board consider at
8 least a certain amount of latitude perhaps the person
9 explain why they need a little more time might be just
10 coming in to say I feel this way or that way.

11 JUDGE FROEHLICH: Mr. Ellison, we would
12 like to try to hear from as many folks as want to be
13 heard and as we could fit into the time period we've
14 set aside.

15 I would suggest if there are numbers of
16 people who have a great deal to say or that they file
17 written limited appearance statements that will be
18 included in the record of the limited appearance
19 sessions.

20 And then give a five minute or less
21 synopsis of their major point. That way, all of their
22 concerns will end up in the limited appearance
23 statement record. And they will have an opportunity
24 within that five minutes so that more people can be
25 heard.

1 MR. ELLISON: I understand, sir. For as
2 many people we're able to get the word out for that,
3 we'll certainly try and do that.

4 JUDGE FROEHLICH: Okay. Anything else
5 that we should discuss or you care to discuss about
6 the limited appearance statements on Monday?

7 MR. PUGSLEY: Chris Pugsley for Powertech,
8 nothing from the licensee.

9 JUDGE FROEHLICH: Thank you. Staff,
10 anything?

11 MR. CLARK: Nothing for the staff.

12 JUDGE FROEHLICH: And any of the other
13 intervenors, any other comments or concerns about the
14 limited appearance statements?

15 MR. ELLISON: Judge Froehlich, just this
16 is Bruce Ellison again. I don't have so much of a
17 comment in that. I just wanted to mention that I am
18 on the road.

19 And I may drop out at some point in terms
20 of my cell phone reception. So if I'm gone, that's
21 why.

22 JUDGE FROEHLICH: I have one last comment,
23 I guess, to make about the limited appearance
24 sessions. We have received word from the Mueller
25 Civic Center that at the present time the air

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1 conditioning is not functioning properly.

2 So it may be somewhat warmer than you
3 might expect in the Mueller Civic Center the Monday of
4 our sessions. They're working to repair it and get it
5 in order.

6 But there's no guarantees. And at the
7 present time, some part of their air conditioning
8 system is not working. Moving on to concerns about
9 the hearing itself, just a couple points that I'd like
10 to go over.

11 And then we'll go to the 14 points that
12 parties submitted. The hearings will begin at 9:00
13 a.m. There will be security screening at the door.
14 The board presently contemplates hearing the witnesses
15 in three panels.

16 The first panel being those witnesses that
17 discussion Contentions 1A and 1B. The second panel,
18 those witnesses that discuss Contentions 2, 3 and 4,
19 and a third panel of those witnesses who address
20 Contentions 6 and 9.

21 The board would propose to take the
22 contentions in order sequentially, starting with
23 Contention 1A and then moving through the other
24 admitted contentions.

25 The board is contemplating at this point

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1 allotting to counsel five minutes before each panel
2 for each counsel to make an opening statement, which
3 will focus hopefully the witnesses and the board's
4 attention to the issues in the contention and what
5 those witnesses or what that party will present on the
6 individual contentions.

7 So we have contemplated allotting just
8 five minutes per party, per panel to give a brief
9 opening for each panel.

10 The other sort of procedural issue that
11 the board had been contemplating, and this actually
12 arises and tailors to a number of the points that the
13 parties raised, is that a number of the contentions
14 seem to have their crux a legal sort of argument or a
15 legal theory that holds that contention together.

16 The board was considering the opportunity
17 to file post hearing brief from the party, which would
18 focus the legal questions that were raised during the
19 testimony with whatever testimony comes in at the
20 hearing, to sort of finalize the end of the
21 evidentiary hearing, the legal arguments on the
22 contentions.

23 And I wanted to sound out the parties on
24 whether they think this would be helpful to them, to
25 getting their points and sort of wrapping it all up.

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1 And I welcome your comments to such a suggestion.

2 MR. PUGSLEY: Your Honor, this is Chris
3 Pugsley from Powertech. I would say that the licensee
4 is certainly open to providing such a filing.

5 I would say that if the board were to
6 approve that sort of approach that that argument be
7 part of the findings of fact and conclusions of law
8 pleading that is required 30 days after the hearing is
9 over just to preserve the current schedule.

10 JUDGE FROEHLICH: Oh, that's a good point.
11 That certainly would work out timing wise. Do I have
12 a reaction from the other parties to the proceeding,
13 including in the findings of fact and conclusions of
14 law legal post hearing brief?

15 MR. PARSONS: This is Jeff Parsons on
16 behalf of the tribe. I think that suggestion works
17 well. I have a little concern just in terms of
18 scheduling to be able to do that on a different time
19 line than the proposed findings of fact and
20 conclusions of law.

21 So Mr. Pugsley's suggestion would be the
22 most convenient, for me at least.

23 JUDGE FROEHLICH: I'm glad to hear that.
24 Thank you. Staff or any of the other parties?

25 MR. CLARK: For the staff, this is Mike

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1 Clark. I think the staff agrees with both Mr. Pugsley
2 and Mr. Parsons that if we could combine it with the
3 proposed findings of fact and conclusions of law, that
4 would be ideal.

5 But one suggestion we would have is if
6 there are particular issues, legal issues that the
7 board would like to see addressed in the proposed
8 conclusions of law, would it be possible for the board
9 to issue some very brief, I guess briefing notice at
10 some time maybe one or two weeks after the hearing.

11 If the board identified certain legal
12 issues during the hearing that it would like to hear
13 further from the parties on, that may allow for a more
14 focused brief if we file essentially briefs along with
15 the proposed conclusions of law. So that's our only
16 suggestion.

17 JUDGE FROEHLICH: It's a good suggestion.
18 I think that would be helpful, and I think by the end
19 of the hearing the board will have a pretty good idea
20 of which contentions sort of turn on a more legal
21 point as opposed to a factual basis.

22 And I would be able to give direction as
23 to those legal issues that should be including in a
24 post hearing brief. That's a good suggestion. Thank
25 you, Mr. Clark.

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1 All right, now there are just two or three
2 small points in the list of items that the board had
3 before we turn to the 14 points from the parties.

4 I am correct, am I not that, and this is
5 for Mr. Parsons, that the Oglala Sioux Tribe has
6 offered no witnesses or filed prefile testimony on
7 Contentions 6 and 9? Is that correct?

8 MR. PARSONS: That's generally correct,
9 Your Honor. I think that there's some overlap with
10 respect to Contention 1A. That is to say that wrapped
11 sort of in Contention 1A is an issue regarding
12 mitigation for and review of mitigation for cultural
13 resources.

14 So with that exception, your
15 characterization is correct.

16 JUDGE FROEHLICH: Okay. And I guess I
17 have also a follow on question for you, Mr. Parsons.
18 And that deals with Exhibit OST 19, which came in
19 late.

20 What is it that I guess that the tribe is
21 attempting to show with that I guess press release
22 from Powertech? It addresses additional quality data.

23 MR. PARSONS: Sure. Thank you, Your
24 Honor. Jeff Parsons on behalf of the tribe. I would
25 note just at the outset that that press release was

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1 not made public until July 16th.

2 So there was no opportunity for the tribe
3 to submit that any earlier. That is to say not an
4 opportunity to submit it with its opening or rebuttal
5 testimony.

6 We believe that that exhibit is evidence
7 that correlates directly with arguments and testimony
8 made with respect to Contentions 2 and 3 about
9 information and data and analysis that was not
10 included in the application material or the final
11 supplemental environmental impact statement that
12 should have been.

13 And so it relates to both of those
14 contentions.

15 JUDGE FROEHLICH: All right, and I take it
16 since this is material I guess that was not relied
17 upon by Powertech in its environmental report, in its
18 filing leading up to the grant of this license by the
19 staff, I guess this data further has not been reviewed
20 by the staff or made part of their decision making
21 process in granting the license.

22 This is material which you argue, which
23 the tribe argues should have been reviewed. Is that
24 where you're going with that, counsel?

25 MR. PARSONS: That's correct, Your Honor.

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1 Our testimony and arguments throughout this
2 proceeding, even back to our initial contentions, was
3 that there is additional data out there that needed to
4 be accumulated and assessed and incorporated that was
5 not.

6 And so this is a glaring example, I would
7 say, of that sort of evidence and that sort of data
8 and information.

9 MR. ELLISON: This is Bruce Ellison for
10 consolidated intervenors. We also raised the issue of
11 the duly acquired drilling thoughts and paths. We're
12 talking about substantial amount of data that has not
13 been seen by NRC staff or the parties.

14 And we feel this is a really significant
15 issue because of the thousands of boreholes right in
16 the area where Powertech wants to conduct one of its
17 operations.

18 And there should be a tremendous amount of
19 data that according to our experts be contained in
20 those civil logs.

21 And if anything, we would submit,
22 consolidated intervenors would submit, that the
23 acquisition of these materials, the late acquisition
24 of these materials, actually they warrant us to halt
25 what we're doing to allow for the staff to be

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1 presented with this data, to allow for our experts to
2 be presented with this data.

3 Because there may be very significant
4 geological information that is imperative to
5 Contentions 2 and 3 and this board making a recent
6 decision upon the best information and evidence that
7 would be available, this is now available. It's just
8 not available to all.

9 JUDGE FROEHLICH: The board is I guess
10 wrestling at this point determining what relevance
11 this material has to the issues in the case or whether
12 this is a tangent that is unnecessary for us to deal
13 with at hearing.

14 I don't know if any of the parties,
15 Powertech or the staff, cares to be heard on this
16 what's called additional quality data, which is the
17 subject of the OST Exhibit 19.

18 MR. PUGSLEY: Your Honor, Chris Pugsley
19 for Powertech. I think that the vast majority of the
20 licensee's position on this issue was detailed in our
21 opposition to the tribe's request for cross-
22 examination, which was already ruled on by the board.

23 I would say, however, that the decision or
24 at least the scope of review that the board is
25 conducting here in the licensee's opinion, is whether

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1 or not the data available submitted to NRC, whether in
2 the application or in requests for additional
3 information responses, evaluated in NRC's record of
4 decision is compliant with NRC regulations.

5 And it's basically, the question is, is
6 the data currently present in the record to support an
7 initial licensing decision by the staff to issue the
8 license under regulations and applicable guidance.

9 JUDGE FROEHLICH: I think that's a fair
10 statement of the issue, counsel. Staff, what is your
11 view on the relevance of the material I guess referred
12 to in OST 19 to the issues not be heard?

13 MR. THOMPSON: Your Honor, this is Anthony
14 Thompson. The data submitted to NRC in the
15 application, this data is just backup data. All of
16 the data, this just supports all that was given to the
17 staff.

18 This is just more data to fill in behind
19 it. Everything is there.

20 MR. PARSONS: Your Honor, this is Jeff
21 Parsons. I'd have to object to that argument. That
22 data has not been shared with anyone. Counsel's
23 characterization of the data, I think, is self serving
24 certainly but also based on speculation.

25 We've just heard that no one from

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1 Powertech has reviewed this data, including their
2 experts. So I think --

3 (Simultaneous speaking)

4 MR. PARSONS: Excuse me. Any
5 characterization of that data at this time only lends
6 itself to the relevance with respect to our
7 contentions that we've ben arguing from the beginning
8 that this is the precise data that needs to be
9 reviewed and assessed, particularly with regard to
10 these thousands of boreholes at the site.

11 JUDGE FROEHLICH: Okay. Thank you, Mr.,
12 staff?

13 MR. CLARK: Judge Froehlich, this is Mike
14 Clark for the staff. The staff's view is that it is
15 not relevant to the contentions before the board.

16 As we noted in our response to the motion
17 for cross-examination from the tribe, the existing of
18 these data has been an issue, as Mr. Parsons had,
19 since the tribe filed its hearing request.

20 Everybody has known that Powertech
21 intended to acquire additional data, and I don't have
22 the brief in front of me, but the staff quotes
23 language from Powertech's application from 2009 in
24 which they explain the plan to acquire additional data
25 after they receive a license, if they do receive a

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1 license.

2 So this has been a longstanding issue in
3 the case, and we agree with Powertech that the
4 existence of the additional data isn't relevant to the
5 issues currently before the board.

6 Now once the staff receives that
7 information, it will review that information. And if
8 the staff determines it's new and significant
9 information that falls into question, the findings in
10 the EIS and under 10-CFR-5192 the staff will have an
11 imminent obligation to supplement the EIS.

12 But the staff right now is not at that
13 point. The staff, when it receives the information,
14 it will review it carefully and determine if, as Mr.
15 Ellison suggests, that it's new and significant
16 information that requires additional environmental
17 analysis or as Mr. Thompson and Mr. Pugsley have said,
18 it's merely confirmatory data.

19 Staff has an idea what category it falls
20 into but can't state definitively right now. For the
21 contentions before the board, the staff position as
22 stated in both the SER and the final EIS is that there
23 is sufficient data available now to make the findings
24 required under NEPA.

25 The intervenors obviously challenged that.

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1 In the staff's view, that's the issue presented to the
2 board for this particular hearing.

3 JUDGE FROEHLICH: Okay. Thank you Mr.
4 Clark. Yes?

5 MR. ELLISON: This is Bruce Ellison. I
6 guess I, we are talking about so much potential data
7 with such specific, site specific information that's
8 going to come out of these drill logs.

9 I'm really concerned that it is an attempt
10 to minimize any significance and to disregard it just
11 beyond. I mean it's one thing to say well, of the
12 data we've received it's look okay so far in terms of
13 granting of a license.

14 And here's a huge pile of data that we
15 don't know what is in there right in the specific area
16 that Powertech wants to mine that could dramatically
17 change.

18 One of the issues that we have been
19 focusing in on, this fact that there are faults that
20 are there, there are fractures that are there. There
21 are brachia pipes that are there.

22 This kind of information can be very
23 helpful in ascertaining that whereas Powertech and the
24 staff seem to think that well, we haven't found
25 anything yet so therefore it must not exist.

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1 And so I very strongly object on behalf of
2 the consolidated intervenors that the suggestion that
3 you submit a little bit and it looks okay.

4 But even if there's a lot more data
5 sitting out there that should really, could add
6 dramatically to the site characteristics of areas that
7 were questioning about, I can't, I must object any
8 minimizing of this.

9 And I guess I want to urge disclosure. My
10 thought is to suggest staff will look at and make
11 their own decision. What about the public? What
12 about intervenors?

13 What about us being able to have our
14 experts look at because obviously we're looking at the
15 same data now and having different interpretations?
16 This is not the same data.

17 JUDGE FROEHLICH: Okay. The arguments
18 that have been raised and the discussions held are
19 noted by the board. We're going to move forward with
20 the hearing as scheduled.

21 At this point we have an exhibit which
22 refers to a press release and the contents of that
23 data, whether it supports or comes to a conclusion
24 opposite of what the staff and the applicant has
25 deemed to say is still up in the air.

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1 This data is in the possession of
2 Powertech, and they'll make use of it as they would in
3 any licensing case. And as it moves through the
4 review process, the staff will have the opportunity to
5 review this data in the normal course.

6 MR. ELLISON: I'm sorry to interrupt.
7 This is Bruce Ellison again. Is there a way for us to
8 one, make sure that the data gets to the staff?

9 Secondly, to make sure that it is part of
10 our proffer as part of our objection so that there, I
11 would like to urge that there be some mechanism that
12 we get a chance to look at it so that we can properly
13 prove what is demonstrated and sufficient remedies be
14 able to have input for this mass of data. Is there
15 someway to do that?

16 JUDGE FROEHLICH: Your proffer at this
17 point is that Powertech is in possession of certain
18 well logs from the TVA, and they contain or are
19 alleged to contain data relevant to the area.

20 Beyond that, there's no further right that
21 the parties have to this data. It I guess will be
22 analyzed and to the extent it supports their proposal
23 to drill in a particular area or begin operations in
24 a certain area.

25 That will be reviewed by the staff

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1 consistent with the regulation.

2 MR. ELLISON: But then we get no ability
3 to have input even if it dramatically would affect the
4 evidence in any of the contentions.

5 JUDGE FROEHLICH: At this point in time,
6 this is data which is in the possession of Powertech.
7 It's Powertech's data. As I understand it, that data,
8 this particular amount of data was not used, not
9 reviewed in the proposal, in the application for the
10 license.

11 Likewise, it was not reviewed in the
12 decision by the staff to grant the license. To that
13 extent, it's not really part of the record that we
14 will be reviewing in the hearing.

15 MR. ELLISON: Judge Froehlich, would it be
16 possible for Powertech to make a record as to why it
17 was, data was obtained and announced a month after we
18 had to get the evidence in and why it wasn't obtained
19 before, six months before, a year before so that we
20 have a nice clear record as to whether Powertech is
21 simply holding this information until after it dotted
22 all it's I's and crossed its T's as far as the staff
23 is concerned and then withheld this significant data
24 until it was too late for it to be part of these
25 proceedings to be supported?

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1 JUDGE FROEHLICH: At this point, the board
2 has a very, very limited number of questions that
3 relate to this after acquired data. At the hearing we
4 may have testimony that will address this in some way
5 or maybe not.

6 There's really nothing that the board can
7 do with the data that the applicant that comes into
8 the possession unless its used to supplement the
9 record or unless its used in their decision on where
10 to begin the drilling and such, in which case it would
11 have to be submitted to the staff for its review and
12 analysis.

13 MR. FRANKEL: Your Honor, might I ask a
14 question, David Frankel for the consolidated
15 intervenors? Your Honor, is this not data from the
16 Tennessee Valley Authority that generated the data?

17 JUDGE FROEHLICH: I beg your pardon.

18 MR. FRANKEL: Your Honor, I'm asking a
19 question. This is David Frankel for consolidated
20 intervenors.

21 JUDGE FROEHLICH: Yes, sir. I don't
22 understand the question that you posed.

23 MR. FRANKEL: This so called TVA borehole
24 data, Tennessee Valley Authority is the TVA, correct.

25 JUDGE FROEHLICH: Yes, that's correct.

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1 MR. FRANKEL: And that was a federal
2 agency, was it not?

3 JUDGE FROEHLICH: It is and remains a
4 federal agency, yes.

5 MR. FRANKEL: Okay. So this is data
6 generated by the federal government, which means
7 there's no private copyright on that data. So I don't
8 understand how this can be said to be Powertech's data
9 when there's no copyright. It's public domain data
10 under federal law.

11 JUDGE FROEHLICH: I don't know that it is
12 or it isn't.

13 MR. FRANKEL: Well, I think it could be a
14 subject of briefing or discussion, but the state of
15 the law as I know it is that data generated by data of
16 the federal government is not protected by copyright.
17 It's public domain by definition, unless it's
18 classified, of course.

19 JUDGE FROEHLICH: Your comments are noted.
20 Like I say, I don't think it affects, at this stage,
21 the matters that we have going to hearing in a week.

22 MR. FRANKEL: Thank you, Your Honor, for
23 noting my comment.

24 JUDGE FROEHLICH: The last item that we
25 had on our list before we go to the individual items

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1 from the party was that the law clerk for the board
2 has circulated via email to all parties I guess
3 yesterday, the exhibit list as it's currently
4 understood by the board and on file with the agency.

5 I would ask if the parties either at this
6 time or at the hearing be prepared to tell us whether
7 this is an accurate representation of the filed
8 material so that when we begin the hearing we can move
9 the exhibits into evidence.

10 I don't know if the parties have had an
11 opportunity to review the 34 page document that Nick
12 Sciretta circulated and if it appears to be accurate
13 or if there's any corrections that need to be made to
14 the pre-filed material before the hearing.

15 MR. PUGSLEY: Your Honor, Chris Pugsley
16 for Powertech. Our team is currently reviewing the
17 submission that your clerk was kind enough to send
18 around. I think that Powertech will be in the
19 position to respond to the board within the next 48
20 hours.

21 JUDGE FROEHLICH: Okay. Have the other
22 parties had an opportunity to review the compilation
23 that was circulated?

24 MR. CLARK: For the staff, this is Mike
25 Clark. We have reviewed it. It looks entirely

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1 accurate. We would ask for just until tomorrow, and
2 we'd be happy to send an email to the board verifying
3 that it's an accurate statement of the staff's
4 exhibits.

5 JUDGE FROEHLICH: And have the intervenors
6 had an opportunity to review the material?

7 MR. ELLISON: This is Bruce Ellison. I
8 have been on the road. I will not be able to look at
9 it until tomorrow morning.

10 JUDGE FROEHLICH: Okay. And any of the
11 other counsel for intervenors?

12 MR. PARSONS: This is Jeff Parsons on
13 behalf of the tribe. It did appear accurate on my
14 initial review. I guess I would ask the same latitude
15 as the other parties to confirm my initial review.

16 JUDGE FROEHLICH: Okay. This is a good
17 segue to the proposed topics because what the board
18 would propose to do is to come up with a single
19 document.

20 And we at the board and its law clerk and
21 the clerk of the court would be glad to compile it so
22 that we can take all the pre-filed exhibits and move
23 them into evidence at the beginning of the hearing so
24 that while we conduct the hearing we'll be able to
25 refer to those exhibits.

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1 Everyone will be working from the same
2 material, and those are the materials that will appear
3 and will remain in the commissioned file for this
4 proceeding.

5 We can get back to that in greater detail
6 as we move through your enumerated items. But that
7 was the intent in pulling together a single list of
8 the exhibits and moving it into the record at the
9 beginning of the hearing.

10 Now, turning to the proposed topics that
11 the parties had sent in. We'll address the
12 contentions in order, one by one. Contention 1A and
13 then Contention 1B, although they follow back to back
14 and be the same basic panel addressing it.

15 Will there be an order of presentations?
16 Based on the exhibit list it appears since this is,
17 there won't really be a presentation on who goes
18 first, second, third.

19 The board will have questions of the
20 witnesses on the panel, and then depending on which
21 questions were submitted by what parties, we will ask
22 those questions of the witnesses.

23 Was there something else intended by Item
24 3 on the list, on the order of presentation?

25 MR. ELLISON: This is, go ahead Mike, I

1 guess.

2 MR. CLARK: Sure. This is Mike Clark for
3 the staff. Do I understand the board correctly that
4 you're going to be calling a panel of different
5 witnesses from different parties to appear on the
6 stand at the same time?

7 JUDGE FROEHLICH: Yes, I thought if we had
8 all the people who addressed the various contentions
9 one by one in the same place at the same time by us
10 directing our questions to the individual panel
11 members, we'd be able to compare and contrast I guess,
12 the varying views of the same data.

13 MR. PARSONS: Your Honor, this is Jeff
14 Parsons, sort of a related question. So it seems
15 like, based on that format, the parties would not as
16 a typical trial setting, the parties would not be
17 presenting direct testimony at the outset and then
18 have the board essentially cross based on that.

19 It would rather just be the witnesses up
20 there, and the board would conduct the session.

21 JUDGE FROEHLICH: Yes. Our view is that
22 the pre-filed testimony is the direct testimony of the
23 witnesses and of the parties.

24 I assume that they will adopt their pre-
25 file testimony on the morning in the beginning of the

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1 hearing and then we'll begin with their cross-
2 examination by the board. Did I answer your question,
3 counsel?

4 MR. PARSONS: You did. Thank you, Your
5 Honor.

6 MR. ELLISON: Judge Froehlich, Bruce
7 Ellison, consolidated intervenors. Is there, and I
8 apologize. This is my first proceeding at this stage.

9 Is there a procedure that is involved that
10 should counsel for any of the parties based upon a
11 question from board or a response by a panel member,
12 is there a mechanism for us to be able to ask
13 supplemental questions or to present supplemental
14 questions to be asked while the panel is still
15 sitting?

16 JUDGE FROEHLICH: Yes, I would hope that
17 at the conclusion of the board's cross-examination of
18 the witnesses there would be an opportunity for
19 counsel to write down, suggest questions that they
20 believe would be necessary to follow up with those
21 witnesses to complete the record on that particular
22 contention.

23 So yes, indeed there will be an
24 opportunity for the counsel for the party to have
25 whatever follow on questions they believe appropriate.

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1 They'll be able to submit that to the board for the
2 board to ask individuals on that panel.

3 MR. ELLISON: And this is of the record
4 sir. Is, if say I propose a question and the board
5 decides not to ask it or asks it in a way that I feel
6 doesn't fully get at the crux of what I'm trying to
7 get a response to, is it considered for the record
8 just automatically to be an objection or do I have to
9 raise an objection and state my reasons?

10 I just want to make sure that the record
11 is completed in the manner in which, as it should.

12 JUDGE FROEHLICH: This is a Subpart L
13 proceeding so that the questioning is done primarily
14 by the board. Any questions that are submitted that
15 are not asked or asked in a different format than the
16 way they were submitted is made part of the record at
17 the close of the hearing.

18 The board will take questions that were
19 submitted by the parties that we declined to ask or
20 that we asked in a different way. And they'll be
21 filed in the record, and you'll get a copy of what we
22 didn't ask that you wanted asked.

23 MR. ELLISON: And that will be considered
24 to be a standing objection?

25 JUDGE FROEHLICH: Your objection or your

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1 objection to what the board did or how the board
2 conducted the cross.

3 MR. ELLISON: Thanks for clarifying.

4 JUDGE COLE: I don't know whether we're
5 going to take the list of questions submitted to us
6 and take out the ones that we asked and put the others
7 in the back of the page. We might keep them all
8 together.

9 JUDGE FROEHLICH: Right. We'll keep them
10 all together, but there will be a record of questions
11 that counsel wanted to ask that weren't asked or that
12 were asked differently.

13 MR. PUGSLEY: Your Honor, this is Chris
14 Pugsley of Powertech. Just a procedural question on
15 this.

16 JUDGE FROEHLICH: Sure.

17 MR. PUGSLEY: If the board envisions that
18 questions would be given to the board at the hearing
19 as "follow up questions," how does the board envision
20 those being submitted to the panel, to the judges,
21 during the hearing.

22 JUDGE FROEHLICH: Hopefully, neatly
23 handwritten on little index cards through our clerk.

24 MR. PUGSLEY: I may have to hire a
25 handwriting specialist then because my handwriting's

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1 terrible.

2 JUDGE FROEHLICH: I suppose they could be
3 typed up or whatever, but the way I have seen it done
4 in other hearings in my experience if they are written
5 on index cards and are clear and legible and relevant,
6 the board will ask them and they'll be made part of
7 the record.

8 MR. PARSONS: And, Your Honor, this is
9 Jeff Parsons. One last follow up, would one expect or
10 should we expect that those questions would be subject
11 to the same in camera restriction? That is to say
12 that they'd be presented to the board but not the
13 parties.

14 JUDGE FROEHLICH: Absolutely. These are
15 follow on to the proposed questions that have already
16 been submitted based on the testimony given live
17 during cross-examination at the hearing.

18 MR. STILLIS: And, Your Honor, this is
19 Travis Stills. I do have a follow up question on,
20 that came out just sort of on more general procedure.

21 Is it to be expected that counsel will not
22 be making oral objections as the proceeding goes
23 forward as is so common in other settings? Or am I
24 misunderstanding what you had said before?

25 JUDGE FROEHLICH: It would be unusual for

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1 counsel to make an objection to board question in a
2 Subpart L proceeding. I suppose if you want to raise
3 a standing objection you can make that objection and
4 make it part of the record.

5 MR. STILLLS: Thank you.

6 JUDGE FROEHLICH: Did I answer your
7 question, Counsel Stills?

8 MR. STILLLS: Yes, I believe you did.
9 Thank you very much.

10 JUDGE FROEHLICH: All right, does the
11 board intend to call witnesses as of now? The answer
12 is yes, and we will focus our questions individually
13 on members of that panel as the need exists.

14 So it's likely that on a particular
15 subject we'll have questions for certain witnesses,
16 let's say for the applicant.

17 And then we will follow those questions
18 almost immediately by cross-examination of let's say
19 the tribe or the consolidated intervenors witness on
20 that same topic so that we can, in the record, have
21 the different perspectives, the points of view on a
22 particular subject in the same place in the transcript
23 to make it easier for us to come up with our decision
24 in the matter.

25 So the witnesses will be called on panels

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1 but will be questioned individually to keep the topics
2 consistent and in the same place in the transcript.
3 Okay. There will be the opportunity for opening,
4 closing statements.

5 We have at this point only discussed among
6 ourselves a brief opening statement on a panel by
7 panel basis and had not actually come to any decision
8 as to the order in which those opening or closing
9 statements would be given.

10 It would seem to me that an opening
11 statement on a contention, an individual contention,
12 would begin by having the proponent of that contention
13 go forward and give the opening statement first
14 followed by the staff and Powertech.

15 MR. PARSONS: Your Honor, this is Jeff
16 Parsons. I would note that under NRC regulations the
17 applicant bears the ultimate burden in this
18 proceeding.

19 And our case law submitted in our rebuttal
20 argues that NRC staff has the burden with respect to
21 its NEPA compliance. I understand the board has
22 discretion with respect to the order of proceedings.

23 I guess we would ask that Powertech and
24 NRC staff be placed first based on that ultimate
25 burden.

1 In the alternative would ask that to the
2 extent there are responses, the parties or the, to the
3 extent that the intervenors go forward on a, first on
4 a particular contention with regard to an opening
5 statement that they be given an opportunity to have
6 some time for any response that might be appropriate.

7 JUDGE FROEHLICH: Mr. Parsons, I'll take
8 that under advisement, especially the rebuttal. We
9 had actually in the first go round contemplated not
10 having either opening or closing statements.

11 We felt it would be helpful to the parties
12 and to focus the hearing on the contentions if we had
13 brief statements of them.

14 Getting into a big debate as to who bears
15 the burden or going first or last, we will just take
16 that under advisement.

17 And at the hearing we will further clarify
18 opening statements and closing. Like I said, I didn't
19 view this as a ultimate burden of proof question, just
20 a matter of focusing the concern that underlies each
21 of the contentions at the beginning of the discussion
22 of that contention.

23 MR. PARSONS: I understand, Your Honor,
24 thank you very much. I would just, I guess to the
25 extent that as you noted earlier, some of the issues

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1 here are fairly legalistic as opposed to factual to
2 the extent that the board feels it would aid their
3 review to have some presentation by counsel with
4 regard to the legal aspects, I would certainly be
5 interested in you presenting that.

6 JUDGE FROEHLICH: Okay. I thank you for
7 that suggestion. Moving on, Question 6 posed by the
8 parties, there will be a visual display so that
9 witnesses or counsel can call up exhibits during
10 testimony.

11 This has a caveat, however. During the
12 hearing, if we are going to make reference to various
13 materials we'll have to one, refer to them by their
14 exhibit number.

15 That's the three letter designation with
16 the number following, and to the extent it's going to
17 displayed or you want it viewed, in order for our
18 clerk of the court to call it up, you'll have to have
19 the exhibit number and the PDF page number.

20 And so to the extent you will be referring
21 to or care to refer to, or a witness refers to from
22 the stand a particular exhibit, they'll refer to it
23 with the exhibit number and the PDF page number, we
24 can have that displayed so that everyone in the room
25 can follow along.

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1 And hopefully it'll be helpful that the
2 witness will have it before him or her and the counsel
3 and parties will be able to see, follow along and
4 better participate.

5 So a visual display will be available.
6 Like I said, the only thing that's important to
7 remember is that the documents and the materials have
8 to be referred to by their official exhibit number,
9 which we'll move into evidence at the beginning of the
10 hearing, and the PDF page number.

11 Again, counsel would be certainly able to
12 refer to any kind of visual display during their brief
13 opening or closing statement, assuming we have them
14 and we figure out which order they're going to be
15 given, as long as they, again, let the clerk know the
16 exhibit number and the PDF page number.

17 Number 8, witnesses bring to the witness
18 table. They are certainly able to bring their direct
19 testimony with them, copies of the regs or the FSEIS
20 or any exhibits that they're likely to refer to.

21 They're free to bring it with them. Keep
22 in mind that these are, they will sitting in a panel,
23 so there may not be a lot of room at the table for
24 voluminous documents.

25 But they certainly can bring their

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1 prepared direct testimony with them to the stand.
2 Okay. How does it work, plan to deliver the pre-file
3 exhibits into evidence?

4 We'll enter them all at once at the
5 beginning of the hearing assuming we get through and
6 there is agreement among all the parties that these
7 are the exhibits that we will be working from, and
8 there's no further objection to their admission.

9 Does the board intend to discharge
10 witnesses when they provide, yes? When each panel is
11 completed, those witnesses, to the extent they don't
12 appear on a subsequent panel, will be excused.

13 I'm hoping that we can go through the
14 contentions in seriatim and that we won't have to
15 backtrack. So witnesses will be discharged when their
16 panel concludes.

17 Does the board expect to have questions
18 for Powertech and staff witnesses on Contentions 6 and
19 9? We're in the process of coming up with some
20 questions. At the present time, Powertech and staff
21 should expect some questions from the board on six and
22 nine.

23 Legal argument, I think, will best be
24 addressed in the post-hearing brief and as the parties
25 had suggested, if they were filed in conjunction with

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1 the findings of fact and conclusions of law.

2 I think we can at the end of the hearing
3 state which legal questions probably should be
4 addressed and then work that into the existing
5 schedule so that counsel will be able to address them
6 in writing as opposed to orally.

7 Will seats be reserved for the parties in
8 the audience? We hadn't really considered reserving
9 seats. I would suggest that parties who expect, this
10 is the for parties.

11 How many seats will be reserved for the
12 parties in the audience? We have not made any
13 reservations for parties or members of the public in
14 the audience seating.

15 It's a large room, and the number of
16 chairs, we're not really limited by the number of
17 chairs that we can bring in depending on the number of
18 people attending.

19 So I guess the simple answer is that we
20 haven't reserved seats for parties in the audience.
21 How many seats at counsel table will each party be
22 given? Nick? He's not here.

23 We have at this point, it looks like three
24 counsel at each of the tables, but four total for the
25 intervenor.

1 MR. ELLISON: Judge Froehlich, this is
2 Bruce Ellison. I have a quick question about that.
3 When we talk about parties, I think it'd be something
4 relevant to the intervenors standpoint.

5 We have two main petitioners or
6 intervenors, and one of them, Dave Hyde, for the wild
7 boar sanctuary, he is currently disabled.

8 And if there could be some arrangements
9 for and consideration perhaps just behind our table so
10 Dave certainly can be in their wheelchair, so we are
11 going to talk about two additional chairs possibly we
12 need to bring.

13 JUDGE FROEHLICH: I don't think it would
14 be any problem with getting extra chairs if we need to
15 put them at the ends of the table, and we'll certainly
16 be able to accommodate any wheelchair or ADA type
17 issues in the hearing room as we have it configured.

18 MR. ELLISON: Thank you, sir.

19 JUDGE FROEHLICH: Sure. Okay. Let me
20 see. While I have the consolidated intervenors in
21 this prehearing, counsel I would like to know how many
22 counsel we should expect from the consolidated
23 intervenors.

24 MR. ELLISON: I believe three.

25 MR. PARSONS: Three of us, Your Honor, I

1 think.

2 JUDGE FROEHLICH: Okay. Yes?

3 MR. ELLISON: And not including the tribe.
4 That's separate.

5 JUDGE FROEHLICH: And the tribe, Mr.
6 Parsons, in addition to yourself?

7 MR. PARSONS: Mr. Stills.

8 JUDGE FROEHLICH: Mr. Stills, okay. The
9 seating for counsel should be no problem at the
10 hearing at all. We have a larger table for the
11 intervenors than we do for the staff and applicant.

12 And so we'll be able to accommodate all
13 counsel at the table. Okay.

14 MR. STILLLS: If you may, this is Travis
15 Stills.

16 JUDGE FROEHLICH: Yes, sir.

17 MR. STILLLS: Will there be room for party
18 representatives at the counsel table?

19 JUDGE FROEHLICH: And party
20 representatives, you're talking about?

21 MR. STILLLS: To sit with counsel during
22 the hearing.

23 JUDGE FROEHLICH: As it's currently
24 configured, the counsel table is reserved, counsel
25 tables for all parties are reserved to counsel.

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1 There have been no preparation made or
2 seating for consultants, witnesses, secretarial
3 support, handwriting helpers or anything like that at
4 counsel table.

5 But because it's a large table, I mean as
6 you care to or whatever locate in an individual
7 advisor for some point, you're free to do that within
8 the number of counsel chairs at the table.

9 MR. ELLISON: Judge Froehlich, Bruce
10 Ellison, a quick question. Is there arrangement being
11 made for power strips at counsel seating?

12 JUDGE FROEHLICH: Yes, each of the tables
13 will have a power strip beneath it where there will be
14 multiple outlets so that you can plug in your
15 computers and whatever other electronic devices you
16 might have. It shouldn't be a problem whatsoever.

17 MR. ELLISON: Thank you, sir.

18 JUDGE FROEHLICH: All right, the final
19 item on the list of proposed topics is that the board
20 stated that it would issue its decision within 90
21 days, and that's still our intent from the closing of
22 the record.

23 And the 90 days, I guess, would start once
24 the board adopts the transcript corrections, I would
25 assume. It's our intent to roll up our sleeves at the

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1 end of the evidentiary hearing and expeditiously issue
2 a decision in this case.

3 So we'll start the 90 days when we receive
4 the transcript corrections as opposed to pushing it
5 out further. I think I covered the 14 points that
6 were in the topics that the parties submitted.

7 Are there any other issues that anyone
8 wishes to raise dealing with any portion of the
9 upcoming hearing?

10 MR. PUGSLEY: No, Your Honor, Chris
11 Pugsley for Powertech, nothing from the licensee.

12 JUDGE FROEHLICH: Thank you.

13 MR. PARSONS: Your Honor, this is Jeff
14 Parsons. I'm just trying to, it may not be possible,
15 but in the interest of time to schedule witnesses it
16 would seem to me that it would be fairly likely at
17 least that Contentions 1A and 1B would be concluded by
18 the end of the day on Tuesday, the 19th.

19 That is the first day of the hearing. Is
20 there any way the board sees to gauge that, or should
21 we prepare the witnesses to stay around so to speak?

22 JUDGE FROEHLICH: I think that's a
23 reasonable assumption that we will be able to go
24 through all the preliminary matters of getting all the
25 exhibits into the record and all of the procedural

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1 matters as well as at least the first panel on the
2 first day.

3 I'd note that Dr. Redmond would be
4 available Tuesday and Wednesday only, so I don't see
5 any problem with his schedule being accommodated.

6 I think it's reasonable to assume that the
7 first day will be the procedural matters, the
8 evidence, the exhibits moved into evidence and getting
9 through Contention 1A and 1B. I think that's
10 reasonable. But you never know.

11 MR. PARSONS: Understood. Thank you very
12 much for that, Your Honor.

13 JUDGE FROEHLICH: Do you have any other
14 procedural concerns for the upcoming hearing, Mr.
15 Parsons?

16 MR. PARSONS: I do not.

17 JUDGE FROEHLICH: Okay. Thank you. Any
18 of the other parties or staff have any issues they
19 wish to raise?

20 MR. CLARK: Nothing more from the staff,
21 Your Honor.

22 JUDGE FROEHLICH: Thank you, Mr. Clark.
23 And consolidated intervenors, any concerns that we can
24 address today?

25 MR. ELLISON: Bruce Ellison, Judge, I just

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1 perhaps am a little bit unclear. I had raised the
2 question before about drill logs about somehow being
3 able, making an exhibit at least for purposes of the
4 exhibit at some point.

5 And perhaps we can address this further at
6 the time of hearing, but I pretty much would like to
7 have those drill logs as part of the record,
8 especially if the board is not going to be considered
9 for the purposes of these proceedings or unless
10 something comes up.

11 JUDGE FROEHLICH: Your concern is noted,
12 and at this point Judge Barnett do you have anything
13 that you wish to raise with the parties before we
14 conclude?

15 JUDGE BARNETT: No.

16 JUDGE FROEHLICH: No sir. Judge Cole,
17 anything from you? All right, I thank the parties for
18 their preparations leading up to this hearing,
19 especially for the cooperation this late between and
20 among the counsel in coming up with the proposed
21 topics for today's prehearing conference.

22 The board looks forward to seeing everyone
23 in Hot Springs on Monday, the 18th for hearing
24 beginning Tuesday, the 19th in Rapid City.

25 I thank you all. If any concerns do

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1 arise, please contact the law clerk, and we'll get
2 back to you just as quickly as we can. I thank you
3 all. We stand adjourned.

4 (Whereupon, the above-entitled matter went
5 off the record at 2:15 p.m.)

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