I. Background

The Oglala Sioux Tribe first raised its concern about the protection of cultural and religious resources in a proposed contention filed in 2010.5 This contention challenged the adequacy of the NRC Staff’s assessment of the impacts to Native American cultural, religious, and historical resources from Powertech’s Dewey-Burdock In Situ Uranium recovery facility. Pursuant to the National Environmental Policy Act (NEPA), the NRC Staff issued its Draft Supplemental Environmental Impact Statement (DSEIS) on November 26, 2012, and its Final Supplemental Environmental Impact Statement (FSEIS) on January 29, 2014. The Board then held an evidentiary hearing in Rapid City, South Dakota, from August 19–21, 2014, on this contention and six other admitted contentions.6 On April 30, 2015, the Board issued a Partial Initial Decision on the merits of those contentions.7 As relevant to this contention (now Contention 1A), the Board found that the NRC Staff failed to fulfill its NEPA obligation because the FSEIS did “not contain an analysis of the impacts of the project on the cultural, historical, and religious sites of the Oglala Sioux Tribe.”8 The Board concluded that “[w]ithout additional analysis as to how the Powertech project may affect the Sioux Tribes’ cultural, historical, and religious connections with the area, NEPA’s hard look requirement ha[d] not been satisfied, and potentially necessary mitigation measures ha[d] not been established.”9 The Commission affirmed the Board’s Partial Initial Decision.10

On October 30, 2018, the Licensing Board issued LBP–18–5, which denied both the Oglala Sioux Tribe’s and NRC Staff’s motions for summary disposition of Contention 1A. LBP–18–5 presented the parties with the choice to either resume efforts to implement the site survey approach that had been previously agreed-upon by all parties (March 2018 Approach) or proceed to an evidentiary hearing.11 On November 30, 2018, the NRC Staff informed the Board that it chose to renew its efforts to implement the March 2018 approach.12 In periodic status calls, the parties

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5 Petition to Intervene and Request for Hearing of the Oglala Sioux Tribe (Apr. 6, 2010) at 12–17.
7 Id. at 708–11.
8 Id. at 655.
9 Id.
12 Letter from Lorraine Baer, NRC Staff Counsel, to Licensing Board (Nov. 30, 2018) (ADAMS Accession No. ML18334A295).
II. Ruling on Motion

Although a licensing board can identify a deficiency in the NRC Staff’s NEPA analysis that requires correction, it generally cannot direct the NRC Staff on a particular approach to rectify that deficiency.16 Nor can a board require the NRC Staff to continue to negotiate with a party that may have some role in the NRC Staff’s efforts to meet its statutory obligations under NEPA. Here, the NRC Staff has concluded that further negotiation as to a methodology to resolve this contention is unlikely to be successful and has moved to proceed to an evidentiary hearing. The NRC Staff states:

the hearing should resolve the disputed issues of fact as to the reasonableness of the NRC Staff’s proposed draft methodology for the conduct of a site survey to identify sites of historic, cultural, and religious significance to the Oglala Sioux Tribe, and the reasonableness of the NRC Staff’s determination that the information it seeks to obtain from the site survey is unavailable.15

III. Hearing Procedures

Pursuant to 10 C.F.R. § 2.312, the Atomic Safety and Licensing Board hereby provides notice that it will hold an evidentiary hearing under 10 C.F.R. Part 2, Subpart L procedures to receive oral testimony and exhibits in this proceeding.20 Parties to this proceeding shall provide evidentiary submissions in support of or in opposition to the merits of the disputed issues of fact. An evidentiary hearing is established to resolve the disputed issues of fact as to the reasonableness of the NRC Staff’s proposed draft methodology for the conduct of a site survey to identify sites of historic, cultural, and religious significance to the Oglala Sioux Tribe, and the reasonableness of the NRC Staff’s determination that the information it seeks to obtain from the site survey is unavailable.19

The evidentiary hearing will take place at the Hotel Alex Johnson, 523 Sixth Street, Rapid City, South Dakota 57701. Members of the public and media are welcome to attend and observe the evidentiary hearing, which may involve technical, scientific, legal, and regulatory issues and testimony. Participation in the hearing will be limited to the parties, their lawyers, and witnesses. Please be aware that security measures may be employed at the entrance to the facility, including searches of hand-carried items such as briefcases or backpacks. No signs, banners, posters, or other displays will be permitted in the hearing room.22

It is so ORDERED.

THE ATOMIC SAFETY AND LICENSING BOARD

William J. Froehlich, Chairman, Administrative Judge.

Dr. Mark O. Barnett, Administrative Judge.

G. Paul Bollwerk, III, Administrative Judge.

Rockville, Maryland April 29, 2019.

APPENDIX A: SCHEDULE—Powertech USA, Inc. (Dewey-Burdock In Situ Uranium Recovery Facility) Proceeding

40 C.F.R. §1502.22 pertaining to incomplete or unavailable information.

The schedule for the submission of prepared testimony and other procedural dates leading up to the evidentiary hearing is attached as Appendix A to this Order.21

The Board will take oral testimony beginning on Wednesday, August 28, 2019, at 10:00 a.m. MDT and continue daily as necessary through Friday, August 30, 2019, at 5:00 p.m. MDT. The evidentiary hearing will take place at the Hotel Alex Johnson, 523 Sixth Street, Rapid City, South Dakota 57701.

APPENDIX A: SCHEDULE—Powertech USA, Inc. (Dewey-Burdock In Situ Uranium Recovery Facility) Proceeding

1658–60; see 10 C.F.R. § 2.1208, given such a request can only be entertained if there is unanimous consent of the parties, see id. § 2.1206, the objection of Consolidated Intervenors to this proposal, Tr. at 1662, precludes its further consideration.

21 In the near term, the Licensing Board will amend its June 2, 2014 case management information Order in this case to provide the parties with updated procedures for marking their proposed exhibits. See Licensing Board Order (Providing Case Management Information) (June 2, 2014) (unpublished).


15 Tr. at 1619–20.

16 See, e.g., Carolina Power and Light Co. (Shenando Harris Nuclear Power Plant, Units 1, 2, 3 and 4), CLI-80-12, 11 NRC 514 (1980) (explaining that adjudicatory boards do not have authority to “direct the staff in performance of their administrative functions”); Duke Energy Corp. ( Catawba Nuclear Station, Units 1 & 2), CLI-04-6, 59 NRC 62 (2004) (“[L]icensing boards do not sit to correct NRC Staff misdeeds or to supervise or direct NRC Staff regulatory reviews.”); Offshore Power Systems (Floating Nuclear Power Plants), ALAB-489, 8 NRC 194 (1978) (clarifying the extent of NRC Staff’s “independent responsibility for preparing impact statements”).

17 NRC Staff Motion at 2.
**Evidentiary Hearing Schedule:**

<table>
<thead>
<tr>
<th>Event</th>
<th>Date</th>
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<tbody>
<tr>
<td>All Parties Status Conference</td>
<td>April 23, 2019.</td>
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<tr>
<td>Proposed Findings of Fact/Conclusions of Law Due</td>
<td>September 27, 2019.</td>
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<tr>
<td>Reply Findings of Fact/Conclusions of Law Due</td>
<td>October 11, 2019.</td>
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<tr>
<td>Licensing Board Initial Decision</td>
<td>November 29, 2019.</td>
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</tbody>
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**FOR FURTHER INFORMATION CONTACT:**

Jennifer.Borges@nrc.gov. For technical questions, contact the individual listed under the NRC staff responses.

**ADDRESS:** Please refer to Docket ID NRC 2016–0190, when contacting the NRC about the availability of information regarding this document. You may obtain publicly-available information related to this document using any of the following methods:

- **Federal Rulemaking Website:** Go to [http://www.regulations.gov](http://www.regulations.gov) and search for Docket ID NRC–2016–0190. Address questions about NRC Docket IDs in regulations.gov to Jennifer Borges; telephone: 301–287–9127; email: Jennifer.Borges@nrc.gov. For technical questions, contact the individual listed in the FOR FURTHER INFORMATION CONTACT section of this document.


- **NRC’s PDR:** You may examine and purchase copies of public documents at the NRC’s PDR, Room O1–F21, One White Flint North, 1155 Rockville Pike, Rockville, Maryland 20852.

**FOR FURTHER INFORMATION CONTACT:**


**SUPPLEMENTARY INFORMATION:**

I. Discussion

The NRC issued a revision to NUREG–1556, Volumes 13, to provide guidance to existing materials licensees covered under commercial radiopharmacy licenses and to applicants preparing an application for a commercial radiopharmacy license. This NUREG volume also provides the NRC staff with criteria for evaluating commercial radiopharmacy license applications. The purpose of this notice is to notify the public that the NUREG–1556 volume listed in this document was issued as a final report.

II. Additional Information

The NRC published a notice of the availability of the draft report for comment version of NUREG–1556, Volumes 13, Revision 2 in the Federal Register on January 24, 2017 (82 FR 8227), with a public comment period of 59 days. The public comment period closed on March 24, 2017.