

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD PANEL

Before Administrative Judges:

Jeremy A. Mercer, Chair
Nicholas G. Trikouros
Dr. Gary S. Arnold

In the Matter of:

POWERTECH (USA) INC.,

(Dewey-Burdock In Situ Uranium Recovery
Facility)

Docket No. 40-9075-LR

ASLBP No. 25-987-01-LR-BD01

August 6, 2026

ORDER
(Scheduling Video Pre-Hearing Argument)

After reviewing the (i) Organizational Intervenor's July 17, 2026, Motion for Leave to File New and Amended Contentions Based on the NRC Staff's Final Environmental Assessment, Finding of No Significant Impact, and Executed Section 106 Programmatic Agreement, as well as the proposed New and Amended Contentions attached thereto, (ii) the Staff's August 4, 2026, Answer to Organizational Intervenor's New and Amended Contentions, and (iii) Powertech's August 4, 2026, Response in Opposition to Organizational Intervenor's New and Amended Contentions, **the Board hereby schedules a video pre-hearing argument on the Motion for August 13, 2026, at 2:00 p.m. Eastern.** The argument will be transcribed. While the Board is not certain how long the argument will last, we will endeavor to conclude the argument within 2 hours at most.

On or before **noon Eastern on Monday, August 10, 2026**, counsel for each of the Staff, Powertech, and the Organizational Intervenor shall send an email to the Board's law clerk, Ms. Dean (whitlee.dean@nrc.gov), identifying the name(s) and email address(es) of the counsel who will be presenting on behalf of that party. Those so-identified counsel ("presenting

counsel”) will be the only party representatives given video access to the status conference.¹

The Board’s law clerk, Ms. Dean, will contact presenting counsel, via email, prior to the scheduled argument to provide log-in information.

The oral argument’s primary purpose is to allow the Board to ask questions and obtain answers concerning contention admissibility under 10 C.F.R. § 2.309(c), (f)(1). Prior to questions from the Board, one presenting counsel for each of the Organizational Intervenors, the Staff, and Powertech will have the opportunity to make a five-minute opening statement about the issues in the case. Oral argument will be limited generally to Contentions 1A, 6, 7, and 9; however, presenting counsel may address whatever contentions they believe necessary in their opening statements. After the Board has completed its questioning, one presenting counsel for each of the Organizational Intervenors, the Staff, and Powertech will be allotted 5 minutes for a closing statement. Presenting counsel for Organizational Intervenors may request to reserve a portion of its closing statement time for rebuttal.

Presenting counsel hereby are advised that *some* of the questions the Board intends to ask at the oral argument relate to the following issues:

- How, if at all, does item “c” in proposed Amended Contention 1A differ from the substance of already-admitted Contention 1A?
- How, if at all, does proposed Contention 6, specifically the statement therein that National Environmental Policy Act (“NEPA”) was violated because the Staff “declined to obtain reasonably available information essential to its analysis of impacts on the Oglala Sioux Tribe’s traditional cultural places,” differ from the substance of already-admitted Contention 1A?

¹ If a party believes it needs video access to the argument for additional persons for consultation purposes, **by noon Eastern on Monday, August 10, 2026**, it should provide a separate e-mail to Ms. Dean, with a copy to all other counsel, identifying the name(s) and e-mail address(es) of the additional individual(s) who should be given video access and explaining why such access is necessary. If granted, though, that video access will not provide counsel with the ability to communicate privately with the designated individual(s). Thus, counsel should make other arrangements to allow for prompt and private consultation in formulating a response to a Board question.

- Other than arising under the National Historic Preservation Act (“NHPA”), rather than NEPA, how, if at all, does item “a” in proposed Contention 7 differ from the substance of already-admitted Contention 1A?
- In connection with proposed Contention 9:
 - The governing regulations for the Native American Graves Protection and Repatriation Act (“NAGPRA”) have been revised since the Commission issued the decision cited by the Staff in footnote 88 of its Answer. What impact, if any, does that have on the continuing ability to rely on the cited decision for its cited proposition?
 - Does 43 C.F.R. § 10.4 require a Plan of Action to be completed for this project? If so, what agency (the NRC, the Bureau of Land Management, both, a different agency) constitutes a “Federal agency” for purposes of that section relative to this project?
 - If a Plan of Action is required, has one been completed here? Is the Plan of Action different from the Programmatic Agreement? Does or can the Programmatic Agreement serve as the Plan of Action?
 - When is a contention based upon NAGPRA ripe (e.g., is it akin to an NHPA contention that must await the Staff’s issuance of its environmental document or is it akin to a NEPA contention that must be raised in response to an applicant’s environmental report)?

The Board also notes that its first scheduled standing telephonic status conference to “address issues, should they arise, in a timely and efficient manner” is scheduled for August 19, 2026.² Given that date is less than one week after the now-scheduled oral argument, the Board hereby cancels that status conference but will leave time at the end of the oral argument to address any issues that the parties had intended to address at the status conference.

For those members of the public who wish to listen to the oral argument, the Nuclear Regulatory Commission has set up a **listen-only telephone line** that can be accessed on August 13, 2026, by **dialing (301) 576-2978 and entering access code 493 835 159#**. After successful entry of the access code, you will hear the following message: “You are not allowed to unmute. To raise your hand press *5.” ***Please note, though, this conference line will not be monitored and pressing *5 will not allow you to participate in the conference.***

² Licensing Board Order (Second Amended Case Scheduling and Management Order) at 3 (July 15, 2026) (unpub.).

IT IS SO ORDERED.

FOR THE ATOMIC SAFETY AND
LICENSING BOARD

/RA/

Jeremy A. Mercer, Chair
Administrative Judge

Rockville, Maryland
August 6, 2026

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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	)	
	)	
(Dewey-Burdock In-Situ Uranium Recovery	)	
Facility)	)	
	)	

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing **ORDER (Scheduling Video Pre-Hearing Argument)** have been served upon the following persons by Electronic Information Exchange.

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Powertech (USA) Inc., Docket No. 40-9075-LR
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Office of the Secretary of the Commission

Dated at Rockville, Maryland,
This 6th day of August 2026.