

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)	
)	
POWERTECH (USA) INC.,)	Docket No. 40-9075-MLA
)	ASLBP No. 10-898-02-MLA-BD01
(Dewey-Burdock In Situ Uranium Recovery)	
Facility))	October 14, 2014

OGLALA SIOUX TRIBE MOTION TO ADMIT ADDITIONAL EXHIBITS

Pursuant to the Board's Post-Hearing Order dated September 8, 2014, Intervenor Oglala Sioux Tribe ("Tribe") submits this Motion to Admit Additional Exhibits.

10 C.F.R. § 2.336 provides the standard for the admissibility of evidence in this hearing.

In relevant part, the rule provides:

(a) Admissibility. Only relevant, material, and reliable evidence which is not unduly repetitious will be admitted. Immaterial or irrelevant parts of an admissible document will be segregated and excluded so far as is practicable.

There is no dispute among the parties that Categories 1 and 2 referenced below are admissible.

Pursuant to 10 C.F.R. § 2.323, counsel for the Tribe has conferred with counsel for all parties and no party opposes admission of the documents and data contained in Categories 1 and 2, both of which were disclosed by Powertech after the hearing in response to this Board's September 8, 2014 Post-Hearing Order. The third category involves federal agency records obtained by counsel for the Tribe only today where the other parties have understandably not yet had a proper opportunity to respond to the Tribe's attempt at conferral.

Based on the Tribe's unopposed proffer of the Category 1 and 2 documents, as was the practice at the recent hearing, these exhibits in Category 1 (Exhibits OST-22, OST-23, and OST-

24) and Category 2 (borehole data, maps) should be accepted by the Board and entered into evidence.

Category 1 - Unopposed

Three (3) documents disclosed by the applicant Powertech (USA) Inc. (“Powertech”) on September 12, 2014 consisting of: a July 8, 2014 letter from the Bureau of Land Management (“BLM”) to Powertech RE: Dewey Burdock Project Plan of Operations (Exh. OST-22); a September 2013 Draft Avian Monitoring and Mitigation Plan for Powertech (USA) Inc.’s Dewey-Burdock Project (Exh. OST-23); and a January 10, 2014 submittal by Powertech to the U.S. Fish and Wildlife Service captioned as “USFWS Application 3-200-71; Eagle Take to Protect an Interest in a Particular Locality (Eagle Non-purposeful Take – 50 CFR 22.26) for the Dewey Burdock Project.” (Exh. OST-24).¹

Category 2 - Unopposed

All data, maps, logs, and information disclosed to the Tribe on or about September 12, 2014 that relate to the geological bore hole logs and which are subject to the SUNSI Protective Order established by the Board in this proceeding.

A copy of each of the documents in Category 1 is attached as an exhibit to this motion.

An open question remains regarding the best method of submitting the relatively large volume of SUNSI information contained in Category 2 to the Board for inclusion in the record. Upon approval, the Tribe proposes to send one of the Powertech-created DVDs to the Board, after making a copy for counsel for use in the proceedings pursuant to the Protective Order. The Tribe proposes that the remaining paper files produced by Powertech remain available to the Board, its attorneys and agents, at Powertech offices in Edgemont, S.D. or at a location in Rapid City, S.D. Alternatively, once the Tribe’s and Consolidated Intervenors’ experts have concluded review of the files in conformance with the Board’s resolution of the Tribe’s pending Motion for

¹ The Tribe was unable to format Exhibits OST-23 and OST-24 with a header indicating the exhibit number, or any page numbers, because these documents were disclosed by Powertech in a format containing security features that prohibit any alteration.

Extension of Time, selected relevant files could be submitted by the parties via the non-public submittal process as appropriate.

A third category of evidence has come to light involving a U.S. Environmental Protection Agency analysis involving the project area that is relevant to and supports the Tribe's contentions that additional sampling and additional data is necessary to competently characterize the existing environment. Specifically, the Tribe seeks to admit two (2) recently discovered documents produced by the U.S. EPA: (1) a September 2014 two-page announcement from U.S. EPA stating that it has completed a Preliminary Assessment (PA) of the Darrow/Freezeout/Triangle abandoned uranium mines located within the area of the proposed Dewey-Burdock project (Exh. OST-25); and (2) a September 24, 2014 document from Seagull Environmental Technologies captioned as "Preliminary Assessment Report regarding the Darrow/Freezeout/Triangle Uranium Mine Site near Edgemont, South Dakota, EPA ID: SDN000803095." (Exh. OST-26).

This evidence supports a common component of Contentions 2, 3, 4, and 6, that alleges Powertech and NRC Staff both relied on inadequate data and analysis in the Environmental Report and National Environmental Policy Act documents, respectively. The EPA documents evidence the type of analysis and conclusions that should have been conducted by Powertech and NRC Staff. Moreover, the EPA analysis confirms data gaps in the materials used by Powertech and NRC Staff, which corroborates the expert testimony of Dr. Robert Moran, Dr. Hannan LaGarry and the Tribe's and Consolidated Intervenors' arguments on these contentions.

The Tribe respectfully submits that review of the EPA documents will confirm they are reliable, material, and relevant to Contentions 2, 3, 4, and 6 and are therefore admissible. 10 C.F.R. § 2.336(a).

/s/ Jeffrey C. Parsons

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Attorneys for Oglala Sioux Tribe

Dated at Lyons, Colorado
this 14^h day of October, 2014

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Motion to Admit Additional Exhibits in the captioned proceeding were served via the Electronic Information Exchange (“EIE”) on the 14th day of October 2014, which to the best of my knowledge resulted in transmittal of same to those on the EIE Service List for the captioned proceeding.

/s/ signed electronically by _____

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