

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

THE ATOMIC SAFETY AND LICENSING BOARD PANEL

Before the Chief Administrative Judge:

In the Matter of)	
)	
POWERTECH (USA) INC.,)	Docket No. 40-9075-MLA
)	
(Dewey-Burdock In Situ Uranium Recovery)	
Facility))	

MOTION FOR ENTRY OF A PROTECTIVE ORDER

In accordance with the U.S. Nuclear Regulatory Commission (NRC) Order Imposing Procedures for Access to Sensitive Unclassified Non-Safeguards Information (SUNSI), published in the Federal Register on January 5, 2010, (75 Fed. Reg. 467), the NRC Staff hereby moves that the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel approve a Protective Order.¹ The Protective Order governs the access to and use of protected information designated by Powertech (USA) Inc. (Applicant) as SUNSI, under 10 C.F.R. §2.390. This information is SUNSI because it contains detailed descriptions of the locations of archaeological sites within the boundary of the proposed facility. The protected material detailing the locations of archaeological sites is referenced in "Attachment: Docket No. 40-9075-MLA, List of Documents Containing SUNSI Pertaining to Cultural Resources or Archeological Sites, January 25, 2010." The proposed Protective Order, which includes a Non-Disclosure

¹ Because a presiding officer has not yet been designated in this proceeding, the motion is properly filed with the Chief Administrative Judge. 75 Fed. Reg. at 470 n.2.

Affidavit to be executed by Ms. Theresa Two Bulls, as President of the Oglala Sioux Tribe, and the Tribe's designated legal counsel, Ms. Grace Dugan, is attached to this Motion².

Respectfully submitted,

*/Signed (electronically) by/
Patricia A. Jehle*

Patricia A. Jehle
Counsel for the NRC Staff

*/Signed (electronically) by/
Michael J. Clark*

Michael J. Clark
Counsel for the NRC Staff

Dated at Rockville, Maryland
this 16th day of February, 2010

² Although the consultation requirements in 10 C.F.R. § 2.323(b) do not apply to the Staff's motion because there are not yet parties in this proceeding, the Staff nonetheless forwarded a draft copy of the proposed protective order to counsel for the Applicant and counsel for the Oglala Sioux Tribe. Counsel for the Applicant stated that he does not object to the proposed order. Counsel for the Oglala Sioux Tribe stated that the Tribe may have some concern with respect to the breadth of the proposed order and would require additional time to fully ascertain its position. Counsel stated that the Tribe anticipates filing a response to the Staff's motion within the time period prescribed in 10 C.F.R. § 2.323(c).

Counsel for the Oglala Sioux Tribe further stated that the Tribe "is in the process of associating new counsel in this matter, which will be accomplished in the coming days." Because Ms. Dugan appears to remain counsel of record for the Tribe as of this date, the Staff has retained Ms. Dugan's name in the attached protective order.