

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD PANEL

In the Matter of
POWERTECH, INC.
(Dewey-Burdock In-Situ Uranium Recovery
Facility)

Docket No. 40-9075-MLA
ASLBP No. 10-898-02-MLA-BD01

July 20, 2010

**MOTION TO PERMIT UNTIMELY FILING OF OR ALTERNATIVELY,
TAKING JUDICIAL NOTICE OF THE SD DENR LETTER TO POWERTECH
CITED AT 6/8-9/10 HEARING**

The Consolidated Petitioners hereby move this Board, pursuant to 10 CFR§ 2.309(a),¹
and the relevant factors in 10 CFR§ 2.309(c)(2) and (f)(2), to permit the otherwise untimely

¹ By e-mail dated July 18, 2010, the below-signed Counsel proposed the substance of this Motion to Counsel for Applicant, Counsel for the NRC Staff, and Counsel for the Oglala Sioux Tribe (OST). By e-mail dated July 19, 2010, Counsel for NRC Staff stated:

Thank you for consulting the Staff regarding your proposed motion to permit an untimely filing of the April 19, 2010, South Dakota Department of Environment and Natural Resources Cover Letter and Draft Comments. The Staff's recollection is that, on the first day of the oral argument in Custer, June 8, 2010, the Board stated that it would not accept supplemental pleadings and that it would base its decision on the record before it. The Staff would therefore oppose the proposed motion.

By e-mail dated July 20, 2010, Counsel for Applicant stated, "I have consulted with Powertech and we have decided that we would oppose the motion. Thanks again for your assistance."

By e-mail dated July 19, 2010, Counsel for the OST stated it "does not oppose the Motion – particularly since the document at issue is already in the record for this case, as it was submitted by the Tribe on reply and referenced by all parties at the June hearing."

filing on their behalf of the attached April 19, 2010 Cover Letter and accompanying Draft Comments on the Powertech (USA) Inc. Revised Dewey-Burdock Project, Underground Injection Control Permit Application, dated February 2010, from South Dakota Department of Environment and Natural Resources (DENR) hydrologist to Richard Blubaugh, Vice President, Environmental, Health, and Safety for Powertech, Inc.”²

The DENR Cover Letter and Draft Comments sought to be filed on behalf of Consolidated Petitioners, was raised and sought to be timely filed by Counsel during the June 8-9, 2010 Hearings held in Custer by Counsel for Consolidated Petitioners. Transcript of June 8-9, 2010 Hearing, p. 89-90 (hereinafter, “Tr. __”) (copy obtained “couple” of weeks prior, provided notice to parties, oral motion for untimely filing); Tr.357-358 (addressing issue of existence of potable water within PAA). The Cover Letter and Draft Comments address and supports many of the same concerns raised by Consolidated Petitioners about Powertech’s proposed mine and processing mill operation, particularly Consolidated Petitioners’ Contentions A, B, D-F, H-J.

The Cover Letter and Draft Comments are also already a part of the record, but filed on behalf of the Oglala Sioux Tribe. *See*, Ex.2, Reply to NRC Staff and Applicant Responses to the Petition to Intervene and Request for hearing of Oglala Sioux Tribe, Docket No. 40-

² April 19, 2010 Cover Letter from Brian Walsh (DENR) to Richard Blubaugh (Powertech), accompanying SD DENR Draft Comments on Powertech (USA) Inc. Revised Dewey-Burdock Project Underground Injection Control Permit Application Dated February 2010, p 1-21, attached hereto as an Exhibit. To the extent that this Motion, when orally presented at the June 8, 2010 Hearing, was denied, this pleading is respectfully submitted as a request for reconsideration of that decision.

9075-MLA, May 14, 2010, p. 17. *See*, Tr. 90.

Consolidated Petitioners, by this Motion, do not seek to add petitioners or add or amend contentions under 2.309(f)(2). They simply seek leave to file for consideration on their behalf, the DENR's latest analysis of Applicant's proposed mining and milling project application, which had not been issued and was therefore unavailable at the time of the filing of the Consolidated Petition to be cited in support thereof.

The Consolidated Petitioner's Petition was filed on or about March 8, 2010. As evidenced by the April 19, 2010 date of the Cover Letter, it was not created and therefore not potentially accessible by Consolidated Petitioners until after the 60 day period permitted for filing of the Petition and supporting bases therefore. It thus did not exist at the time of the filing of Consolidated Petitioner's Petition to Intervene and was unknown by Consolidated Petitioners until weeks later.

The issue and circumstances herein are similar to that faced by the Licensing Board in, *In the Matter of Crow Butte Resources, Inc (License Amendment for the North Trend Expansion Project)* [hereinafter, "*Crow Butte* (New Mine)"], Docket No. 40-8943, ASLBP No. 07-859-03-MLA-BD01, wherein the petitioners sought to file a Nebraska Department of Environmental Quality (NDEQ) rejection of Crow Butte's application for a permanent exemption from Safe Drinking Water Act requirements. There, the NDEQ review was issued shortly before the filing of a Petition to Intervene, but unknown to Petitioners until months later and shortly before that Board's hearing on the issues of standing and admissible

contentions. The NDEQ report was referenced as “Exhibit B.” See, Memorandum and Order dated April 29, 2008, In the Matter of Crow Butte Resources, Inc (License Amendment for the North Trend Expansion Project), Docket No. 40-8943, ASLBP No. 07-859-03-MLA-BD01, p. 13 [hereinafter, “Memorandum and Order, Crow Butte (New Mine), p. __”].

The Crow Butte (New Mine) Board admitted the NDEQ report after the hearing, finding good cause for the untimely filing and that the report was relevant to the issues of standing and contentions sought to be heard. See discussion, 4/28/08 Memorandum and Order, Crow Butte (New Mine), pp. 13-23. In the instant proceeding, the primary difference in circumstance from that in Crow Butte (New Mine) is that the SD DENR’s second rejection of Powertech’s application for a Class III UIC license (including aquifer exemption), which Consolidated Petitioners seek to file, was issued after the date for the filing of Petitions seeking intervention and less than a month prior to the Hearing herein on issues of standing and contentions. The Consolidated Petitioners therefore respectfully submit that this Motion is made in good faith.

As in Crow Butte (New Mine) and other proceedings involving motions seeking untimely filing of supporting records, the threshold issue is whether the party acted in “good faith” as to the timeliness of the filing of the evidence in issue. At the outset, the Board in Crow Butte (New Mine) noted, and Consolidated Petitioners urge this Board to find that the DENR Letter and Comments in the instant proceeding, “consist primarily of fairly extensive original analysis” of the Company’s State application which was essentially the same as the

application pending before the NRC. 4/28/08 Memorandum and Order, Crow Butte (New Mine), p. 17-18. The Board also concluded that from the timing of the release of the NDEQ review and it becoming known to petitioners shortly before the hearing on standing and contentions, that the petitioners acted in good faith since the document was “not ‘previously available’,” *citing*, 10 CFR §2.309(f)(2) and had “good cause to file it when they did and that no other criteria under §2.309© militate against it.”³ 4/28/08 Memorandum and Order, Crow Butte (New Mine), p. 14. The Board in Crow Butte (New Mine) also noted “good cause” existed, as would be the situation here, where the document sought to be filed would likely be the subject of future disclosure of relevant materials containing “such information” by the parties to whom it was sent, once requirements regarding disclosures came into play. 4/28/08 Memorandum and Order, Crow Butte (New Mine), p. 15. The Board ultimately ruled that “a balancing of the other relevant factors under either 10 CFR §2.309(c)(2) and (f)(2), supports Petitioners position.” *Ibid*.

In this latter regard, the Crow Buttes (New Mine) Board, as this Board is encouraged to do herein, conducted an analysis of the document in issue and found, as mentioned that it was relevant to the issues of standing and some of the contentions of the petitioners.

In discussion of the relevancy of the NDEQ review, the Board in Crow Butte (New

³ “[T]he test [for “Good Cause for Late Filing”] is when the information became available[,...]when *Petitioners should have become aware of that information*,’ and whether Petitioners ‘acted promptly *after learning of the new information*’.” 4/28/08 Memorandum and Order, Crow Butte (New Mine), p. 14 [*quoting* NRC Staff *quoting*, Texas Utilities Electric Company, et al. (Comanche Peak Steam Electric Station, Unit 2), CLI-93-4, 37 NRC 156, 164 (1993), (emphasis in Board Memorandum)].

Mine) observed, after noting the similarities between the information provided the State agency and the NRC, that the NDEQ review contained “significant analysis and criticism of the information submitted to NDEQ by Application as being ‘unsupported and misleading’.” Crow Butte (New Mine), p. 17. In the SD DENR Cover Letter, the DENR similarly was finding the Company’s supplemental application insufficient since it **cumulatively “lacks sufficient detail** to address fundamental questions related to whether Powertech can conduct the project in a controlled manner to protect ground water resources.”⁴ (Emphasis added). As referenced further below, the DENR used similar phrases to describe the deficiencies in Powertech’s plans.

In its Letter, the DENR hydrology specialist noted the Company **failed to “adequately respond”** to DENR queries about the proposed mine and mills project. As revealed by the attached Draft Comments from the DENR, these included: **deficiencies** in Powertech’s February 2010 “Revised Dewey-Burdock Project” Application including its proposed plans for “water quality monitoring,” “spill contingency,” well maintenance, “for replugging improperly plugged water wells, former monitor wells, abandoned wells, and exploration holes, disposal of drill cuttings,” “all shut-ins and well failures,” “remedial action for excursion,” drill hole plugging and well repair, plugging and conversion,” and for “corrective action...for improperly sealed wells.”⁵

⁴ April 19, 2010 Cover Letter.

⁵ April 19, 2010 SD DENR Draft Comments on Powertech (USA) Inc. Revised Dewey-Burdock Project Underground Injection Control Permit Application Dated February 2010

By way of specific example, the DENR noted that in the “application as a whole, there is a **lack of baseline water quality data** from the non-production zones. In addition, for the production areas, there is a **lack of water quality monitoring data** in the sand units above and below the production zone strata.”⁶ (Emphasis added). After filing of the pending Petition, the DENR staff further found Powertech’s Application **lacked required “local on-site geology** and regional geology” and **failed “to depict** discrete sand and shale units within the Inyan Kara Group and (to the fullest extent possible) the complex, channelized nature of the Inyan Kara sediments.”⁷

The DENR also found deficiencies in Powertech’s “hydrologic description of the production zone,” including “what Powertech considers aquitards within the Inyan Kara group and the role those aquitards will play during mining operations.”⁸ The Company failed to submit maps depicting “each of the eight (8) proposed well fields,” “known boreholes and wells,” respective “bore/well log” to “identify the discrete shale/clay units Powertech plans to use as upper and lower production pressure cell barriers,” or “to address area-wide characterization” which identifies “all potential barrier units within each of the proposed well fields” as well as “the vertical and horizontal hydraulic conductivity of each” such “shall/clay

(Exhibit A), p. 1 (hereinafter, “4/10/10 DENR Draft Comments, p. __”).

⁶ 4/19/10 DENR Draft Comments (Ex. A), p. 1-2.

⁷ 4/19/10 DENR Draft Comments (Ex. A), p. 2.

⁸ 4/19/10 DENR Draft Comments (Ex. A), p. 2.

unit.”⁹

Regarding possible excursions, the DENR found that Powertech’s Application “**does not address** excursion monitoring, reporting, and remedial action in detail” required by regulation and did not include a “proposed excursion control procedure” as required. (Emphasis added). A promise “to develop a single, coordinated procedure with all four agencies during the permitting and licensing process” was rejected by the DENR as an insufficient submission of an actual plan to limit contamination of water resources.¹⁰

The DENR also felt Powertech’s most recent submissions **failed to “specifically address** restoration sampling procedures and reporting regarding ground water restoration” or provide a “proposed restoration table for all ground water quality restoration values based on the geochemistry of the production and chemistry of the injection solutions.”¹¹

The DENR also found that Powertech failed to address the existence of all “four wells historically used for drinking water with the AOR,” rather than just one.¹² The DENR further at one point claimed only “a single domestic well” was completed into the Lakota formation within the proposed mining area, while an exhibit submitted by the Company showed “at least 3 domestic wells.”¹³ It also corrected the Company’s claim that “there may

⁹ *Ibid.*

¹⁰ *Ibid*, p. 3.

¹¹ *Ibid.*

¹² *Ibid*, p. 5.

¹³ *Ibid*, p. 13.

not be an underlying aquifer,” found: “**This statement is incorrect,**” since “[t]here is an underlying aquifer throughout the proposed mine area.”¹⁴

Questions were also raised by the DENR about whether the Morrison Formation was really a confining layer, as claimed by Powertech, and observed different claims submitted by the Company as to its purported thickness.¹⁵ The location of “channels” within the proposed mining/milling areas was found to not be “depicted in sufficient detail in the cross sections, structure maps or the isopach maps” submitted and there was a need for “more detail about the channels,” as well as “their affect on the local hydro-geology.”¹⁶ The DENR also questioned the source of data submitted as to the “horizontal hydraulic conductivity” of the Dewey Fall River sandstone unit and the “high horizontal permeabilities” of the Lakota Formation, noting it was not based upon site specific data, and from a study conducted of the “northern Black Hills,” not the southern.¹⁷

On the subject of “Regional Hydraulic Connection of Aquifers,” the DENR noted Powertech’s data suggesting a pathway between aquifers served by breccia pipes which “originate within the Minnelusa Formation and extend upward as high as the Inyan Kara,” but challenged the basis for Powertech’s conclusion that “breccia pipes are not present within

¹⁴ *Ibid*, p. 5.

¹⁵ *Ibid*.

¹⁶ *Ibid*, p. 5.

¹⁷ *Ibid*, p. 6.

the project area.” The DENR questioned Powertech’s reliance upon a “pumping test” for its conclusion, and found the Company “**incorrectly reproduced**” some of the geology from the study by Gott and others (1974). The DENR found that Gott and others “(1974, p. 33-35),” based their conclusion as to the likely existence of hydrological connection between aquifers based upon “the water budget, water chemistry, and water temperature” which “collectively provides compelling evidence of recharge to the Inyan Kara sediments from deeper ground water. If it is Powertech’s conclusion that breccia pipes are absent and are not a source of water movement in the subsurface, revise the application to present an alternative explanation...”¹⁸

The DENR Draft Comment continued: “Although the Gott, et al., report presents a thorough and comprehensive set of groundwater geochemical data, the presented interpretations related to Inyan Kara aquifer recharge and groundwater velocity are **not verified** by Burdock site specific geologic and hydro geologic investigations conducted by Powertech.”¹⁹ (Emphasis added). The DENR found the “**discussion in Gott and others (1974) of the hydraulic connection and the supporting data provided by them are more comprehensive and scientifically sound than alternatives provided by Powertech.**”²⁰

The DENR further found “**inappropriate**” Powertech’s use of an unpublished masters thesis

¹⁸ *Ibid*, p. 7.

¹⁹ *Ibid*, p. 10.

²⁰ *Ibid*, p. 11.

to characterize a “regional estimate of effective porosity” and from that regional estimate, “calculate site-specific groundwater velocity.”²¹

The Company’s conclusions regarding the permeability of the Fall River, Morrison, and other formations were based upon data from “only parts of five holes in the approximately 15 square miles of proposed mine area.” The DENR noted, for example, that the permeability of the Fall River sandstone in the Dewey area “was determined using only one sample from the test hole DB 07-32-4C” and that “[t]his permeability was then used to characterize the Fall River sand throughout the entire proposed mine area.” It also **challenged the “quantity and quality of data to support”** the Company’s contention that its “core data” was “generally consistent with and therefore independently confirming, the pumping test results.”²²

Similarly, Powertech calculated ground water flow velocity for the entire Inyan Kara formation within the proposed mining/milling area, from “data specific to the Fall River Sandstone in just the Burdock area.” The DENR characterized as “**inappropriate,**” Powertech’s use of “a gradient from a localized portion (stratigraphically and geographically) of the Inyan Kara suite of sediments..and then apply that gradient to the entire proposed mine area inclusive of all stratigraphic portions of the Inyan Kara Group.”²³

²¹ *Ibid*, p. 10.

²² *Ibid*, p. 8.

²³ *Ibid*, p. 11.

Amongst further deficiencies, the DENR noted Powertech’s contention in its State Application that “[t]hroughout the region, the Fusion is expected to be an effective confining unit,” while in its NRC Application, the Company asserted: “Where the Fusion is an ineffective confining unit, water could flow upward into the Fall River Formation. Because of this uncertain connectivity, the Fall River and Lakota Formations are considered to be one aquifer (the Inyan Kara aquifer) in this report.”²⁴

The DENR also noted that “five out of 12 data points” on maps presented by Powertech to “characterize the hydraulic gradients of the Lakota Formation and the Fall River Sandstone, head difference between the two units, and possible ground-water flow directions,...appear to be **contoured incorrectly** with one point being a proximately 60 feet out of sync with the adjacent contours.”²⁵

Similar criticism of Powertech’s use of limited data to make generalized assumptions and site specific characterizations was made regarding the compatibility of the lixiviant with the ore body. The DENR noted that only four samples were tested with the lixiviant. Of these, only one was with samples obtained from the Lakota formation, while three were from the Fall River. To the DENR, this made little sense since “the majority of the uranium ore within this area seems to be located within the Lakota formation.”²⁶ Perhaps reflecting a

²⁴ *Ibid*, p. 9. *See, also*, p. 10.

²⁵ *Ibid*, p. 9.

²⁶ *Ibid*, p. 15.

pattern, the DENR also found that although asked to address the mineralogy of the ore body, Powertech limited its data to uranium. Said the DENR: “This section must contain a full discussion of the various minerals that occur within the ore body because minerals other than those already mentioned within the section may also affect the reaction of the lixiviant in the ore.”²⁷

Further on the subject of injection fluid compatibility, while Powertech expressed “no concern with oxidizing the reduced zone because the parameters within the reduced zone are already present within the oxygenated zone,” the DENR noted that “the concentration of the parameters within the reduced zone may be much higher as the area essentially acts as a trap and concentrates the constituents into solid form.” The DENR wants to know and Powertech failed to address “which parameters will become mobile as a result of introducing an oxidizing lixiviant into the reduced zone.”²⁸ See, similarities with and discussion thereon, Memorandum and Order, Crow Butte (New Mine), pp. 18-22.

As in Crow Butte (New Mine) and as Consolidated Petitioners respectfully submit in their Petition, “the essential thrust of Petitioners’ water related arguments are that they may be injured by contamination of ground and surface water resulting from Applicant’s proposed...mining operations, through the mixing of waters directly affected by such operations with waters used by Petitioners.” Memorandum and Order, Crow Butte (New

²⁷ *Ibid*, p. 15.

²⁸ *Ibid*, p. 15.

Mine), p. 17.

The Consolidated Petitioners contend, as petitioners contended in Crow Butte (New Mine), that various claims in the Company's Application that the proposed mining/milling operation involves no possible mixing of aquifers and will have no negative environmental or safety impacts, "are contradicted by other portions of the Application, in which a lack of relevant knowledge about faults, fractures [or other features] that might allow for mixing of water in different aquifers is essentially acknowledged." *Ibid.* It follows, and Consolidated Petitioners contend, as in Crow Buttes (New Mine), "that there is a possibility that any water within a mined aquifer that is in any way contaminated might mix with water in aquifers from which Petitioners draw and use water, and that this, as well as spills and leaks into surface water, endanger their safety and health and pose the possibility of negative impacts on the environment." *Ibid.* The Crow Buttes (New Mine) Board noted that the petitioner's concerns, as here, are "bolstered" by the State agency's critique of the Company's proposed operation. *See, Ibid.*

As shown above, the DENR Letter and Comments address some of the same concerns that Consolidated Petitioners have put forward, including, e.g., hydraulic conductivity and communication among aquifers and the Cheyenne River. *See*, Memorandum and Order, Crow Butte (New Mine), p. 18.

The Crow Butte (New Mine) Board found that the State agency's challenge "of the sufficiency of the information provided by Applicant, would clearly be relevant and material

additional support for Petitioner's standing arguments and for their Contentions [], and the information provided in it would be within the scope of the proceeding." *Ibid.* Consolidated Petitioners respectfully submit the same would be true with the DENR Cover Letter and Draft Comments.

The DENR Letter and Draft Comments of a State Hydrologist are therefore relevant to support the Contentions raised by Consolidated Petitioners Susan Henderson and Dayton Hyde, who feel their property, financial, and personal interests are potential endangered by Powertech's proposed mining and milling projects due to the disastrous impact contamination of their surface and subsurface water supplies would have on their lives and livelihoods. It will also be of assistance to the Board in developing a sound record as to the merits of permitting Consolidated Petitioner's Standing and to a hearing on Contentions A, B, D-F, H-J. *See also* February 2009 Powertech Technical Report 10.1 and Figure 10.1-1 (aquifer exemptions pending before SD DENR and EPA, Region 8); April 2009 Powertech Underground Injection Control Permit Application, §17.2 Aquifer Exemption Basis and Figure 17.1, Aquifer Exemption Boundary. *See, ARSD 74:55:01:01(57); 74:55:01:24.*

The relevance and materiality of the DENR Letter and Comments are further evident from the requirement that the Company obtain SD DENR approved Class III (UIC) Injection permit before it can proceed with its mining and milling proposal. Thus, anything SD DENR issues in writing regarding its analysis of Powertech's application for in-situ mining and milling permits would be relevant to the record and should be included – especially

pertaining to the subject matter and issues raised by Consolidated Petitioners in this proceeding.

The Consolidated Petitioners therefore respectfully submit that a balancing of the applicable factors in 10 CDR§ 2.309(c)(2), warrant a granting of leave to file the DENR's April 19, 2010 Letter and Draft Comments raising many of the same concerns as they do before this Board on their behalf, as been similarly expressed by the State's hydrology expert about the deficiencies in Applicant's submissions about its proposed Dewey-Burdock project in the water resources of the southern Black Hills.

Judicial Notice

In the alternative, the Consolidated Petitioners request the Board take judicial notice of the DENR Cover Letter and Draft Comments in further support of their Standing and respective Contentions.

As also referenced at the Hearing by Counsel, both the Company, to whom the Cover Letter was sent and the NRC staff, to whom the Letter was cc'd, have received a copy of the Cover Letter and the Draft Comments.²⁹ Therefore, in the alternative, the Consolidated Petitioners respectfully submit that with such notice to the other Parties, it would be appropriate for Board taking 'judicial notice' of the April Cover Letter and Draft Comments since both NRC Staff and the Company have had it before Consolidated Petitioners, and it is in the Board's power to include the highly relevant State expert's analysis within the

²⁹ "Cc:...Ronald Burrows, NRC, Washington, D.C. (w/enclosure)." April 19, 2010 Cover Letter.

record of these proceedings under 5 CFR §2.319® and the Administrative Procedure Act, 5 USC §§551-558.

The Board make take judicial notice of “any fact of which a court of the United States may take judicial notice or of any technical or scientific fact within the knowledge of the Commission as an expert body.” In the Matter of Long Island Lighting Co. (Shoreham Nuclear Power Station Unit 1, 29 NRC 247, 253 n.26, Docket No. 50-322, March 13, 1989). [quoting, 10 CFR §2.743(I)]. The Consolidated Petitioners respectfully submit that DENR Cover Letter and Draft Comments would certainly be admissible in an appropriate federal court proceeding, under any number of the Federal Rules of Evidence. *See, e.g.*, Rule 201(b) [Judicial Notice of Adjudicative Facts]³⁰; Rule 201(f) [“Judicial notice may be taken at any stage of the proceeding”]; Rule 803(6) [Records of Regularly Conducted Activity]: Rule 803(8) [Public records and reports].

The Board has the authority to take judicial notice of the DENR records as an alternative to supplementing the record. In the Matter of Hyydro Resources, Inc., 52 NRC 1, 7, Docket No. 40-8968-ML, July 10, 2000. Indeed, in deciding an issue, the Board can take into consideration “‘a matter beyond reasonable controversy’ and one that is ‘capable of immediate and accurate determination by resort to easily accessible sources of indisputable accuracy’.” In the Matter of Long Island Lighting Co. (Shoreham Nuclear Power Station

³⁰ “A judicially noticed fact must be one not subject to reasonable dispute in that it is either (1) generally known within the territorial jurisdiction of the trial court or (2) capable of accurate and ready determination by resort to resources whose accuracy cannot reasonably be questioned.” Rule 102(b), Kind of Facts.

Unit 1, 33 NRC 61, Docket No. 50-322, February 22, 1991) [*quoting*, Government of Virgin Islands v. Gereau, 523 F.2d 140, 147 (3rd Cir. 1975)].

The Consolidated Petitioners therefore respectfully submit that leave should be granted to permit filing of the Cover Letter and attached Draft Comments in support of their standing and for a hearing on pertinent contentions in their Petition.

Dated this 20th day of July, 2010.

Respectfully submitted,

/s/ Bruce Ellison (Executed electronically)
Bruce Ellison
Counsel for Consolidated Petitioners
P.O. Box 2508
Rapid City, SD 57709
(605) 348-9458
belli4law@aol.com