

**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
	)	
(Dewey-Burdock In Situ Uranium Recovery Facility)	)	Date: July 26, 2010
	)	
_____	)	

**RESPONSE TO CONSOLIDATED PETITIONERS' REGARDING INVITE TO  
LAKOTA CEREMONY**

Powertech (USA), Inc. (Powertech), by its undersigned counsel of record, hereby submits this Response to the Consolidated Petitioners Motion Regarding Invite to Lakota Ceremony in reference to Powertech's license application for a new combined source and 11e.(2) byproduct material license to construct and operate an in situ leach uranium recovery (ISR) facility in Custer and Fall River Counties in the State of South Dakota. For the reasons discussed below, Powertech respectfully requests that the Licensing Board deny Consolidated Petitioners' Motion.

**I. DISCUSSION**

Powertech opposes Consolidated Petitioners' Motion because it does not have adequate basis in law and is outside the scope of this proceeding. Consolidated Petitioners cite to 10 C.F.R. 2.319's grant of broad powers to a Presiding Officer/Licensing Board panel as a legal basis for its Motion. However, Consolidated Petitioners do not point out that the broad powers granted to the Presiding Officer are all adjudicatory in nature. Consolidated Petitioners neglect to mention the portion of the regulation that states:

“A presiding officer has the duty to conduct a fair and impartial hearing *according to law*, to take appropriate action to control the prehearing and hearing process, to avoid delay and to maintain order.”

10 C.F.R. § 2.319 (emphasis added).

Consolidated Petitioners cite to no provision of the Atomic Energy Act of 1954, as amended, (AEA) or NRC regulations that would categorize the proposed Lakota Ceremony as within the scope of an AEA-based licensing proceeding such as the instant case. Further, while Consolidated Petitioners cite to subsections (g, j, p, q, & r) of Part 2.319 as additional legal support, they offer no evidence from the proposed or final rulemaking administrative records for Part 2.319 that would include the proposed Lakota Ceremony as part of the “course of the [instant] hearing,” within the scope of a proper purpose for this hearing, an “order necessary to carry out the presiding officer’s duties and responsibilities under this part or “any other action consistent with the Act,” NRC regulations or the Administrative Procedure Act (APA). *See* 10 C.F.R. § 2.319(q) & (r).

Currently, the Commission has articulated its adjudicatory procedures for determining whether an actual dispute between a license applicant and other interested stakeholders exists in 10 C.F.R. § 2.309. Within these procedures, there do not appear to be any provisions of such procedures or, for that matter, any other 10 C.F.R. Part 2 regulation that would categorize the proposed Lakota Ceremony as part of the Commission’s adjudicatory processes. Based on this, Consolidated Petitioners’ Motion has no role in the Commission’s adjudicatory procedures.

Further, Consolidated Petitioners’ attempt to characterize the proposed Lakota Ceremony as within the scope of 10 C.F.R. § 2.319<sup>1</sup> and the APA’s version of settlement conferences is not supported by their Motion. Nowhere in Consolidated Petitioners’ Motion have they indicated

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<sup>1</sup> In the event that Consolidated Petitioners choose to pursue a Lakota Ceremony with Powertech as an attendee, it is Powertech’s position that such a request should be handled outside of the 10 C.F.R. Part 2 adjudicatory procedures.

that they would be open to settlement discussions; but rather, they merely state that the proposed Lakota Ceremony would allow the parties to understand the “dispute” before the Licensing Board. However, for the record, in the event that Consolidated Petitioners or other interested parties are interested in settlement discussions, Powertech would be willing to engage in such discussions so long as they do not delay the timely and orderly conduct of the current adjudicatory proceeding.

Finally, Consolidated Petitioners’ Motion is based on language stating that, “[i]n light of the current nature of *the dispute between the parties* and the lack of understanding between the Petitioners...and the Applicant [Powertech] and the NRC Staff...it would promote the interests of a just and fair hearing to grant the Motion and issue the requested Order.” However, because the Licensing Board has not yet ruled that either Consolidated Petitioners or the Oglala Sioux Tribe has standing for a hearing, it is Powertech’s position that there is no current “dispute” between the parties. Thus, even if the Licensing Board finds that there is a legal basis to their Motion, it appears that Consolidated Petitioners Motion is premature.

**II. CONCLUSION**

For the reasons discussed above, Powertech respectfully requests that the Licensing Board deny the Consolidated Petitioners' Motion.

Respectfully submitted,

**/Signed (electronically) by/  
Christopher S. Pugsley, Esq.**

Dated: July 26, 2010

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