

October 1, 2010

William J. Froehlich, Chair  
Administrative Judge  
Atomic Safety and Licensing Board Panel  
Mail Stop T-3 F23  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555-0001

Mark O. Barnett  
Administrative Judge  
Atomic Safety and Licensing Board Panel  
Mail Stop T-3 F23  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555-0001

Richard F. Cole  
Administrative Judge  
Atomic Safety and Licensing Board Panel  
Mail Stop T-3 F23  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555-0001

In the Matter of  
POWERTECH (USA) INC.,  
Docket No. 40-9075-MLA; ASLBP No. 10-898-02-MLA-BD01

Dear Administrative Judges:

Pursuant to 10 C.F.R. §§ 2.336(b) and (c) and 2.1203, the Nuclear Regulatory Commission (NRC) Staff provides the Licensing Board and the parties with an index listing documents required to be disclosed by the Staff. (Attachment 1.) These documents may be viewed by accessing the hearing file for this proceeding that is maintained by the NRC's Office of the Secretary. The Staff is also attaching an index listing documents that, under 10 C.F.R. § 2.390, are exempt from disclosure and for which the Staff is asserting a privilege or immunity. (Attachment 2.) In addition, the Staff is attaching one publicly available document that, as of the date of this filing, has not yet been published in the NRC's Agencywide Documents Access Management System (ADAMS). (Attachment 3.)

Along with the attached lists, the Staff is providing affidavits (1) certifying that all relevant materials have been disclosed to the extent required by 10 C.F.R. § 2.336(c), and (2) formally invoking the deliberative process privilege for certain documents.

On September 23, 2010, the Board held a teleconference with the parties to discuss scheduling issues in this proceeding. During the teleconference the Board stated that it would allow the parties to update their mandatory disclosures, and the Staff to update the hearing file, by the first business day of each month. Accordingly, the Staff will provide the next updates to its mandatory disclosures, privilege logs and hearing file no later than Monday, November 1, 2010.

During the September 23, 2010 teleconference, the Board also asked that, with its hearing file updates, the Staff provide its current best estimates of the release dates for documents associated with its review of Powertech (USA) Inc.'s application for an NRC license. The Staff's current best estimates are:

Draft Supplemental Environmental Impact Statement (SEIS)  
*June 2011*

Final Safety Evaluation Report  
*October 2011*

Final SEIS  
*January 2012*

These are the same dates Staff Counsel provided to the Board and the parties during the September 23, 2010 teleconference. The Staff will provide updated estimates in its next hearing file/mandatory disclosure report.

Sincerely,

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

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Michael J. Clark  
Counsel for NRC Staff

Enclosures: Attachment 1: Hearing File Index  
Attachment 2: Attorney-Client/Deliberative Process Privilege Log  
Attachment 3: E-Mail with Attachment, RAI Clarifications for RAI-WR2 (2).docx  
Affidavit of Ronald Burrows  
Declaration of Keith McConnell

cc: Electronic Information Exchange Service List

**ATTACHMENT 1**  
**POWERTECH HEARING FILE AND MANDATORY DISCLOSURES**  
Update—October 1, 2010

| <b>ID No.</b> | <b>Accession Number</b>  | <b>Document Date</b> | <b>Title/Description</b>  |
|---------------|--------------------------|----------------------|---|
| 00-264        | ML100670232 <sup>1</sup> | 31-Mar-2008          | A Level III Cultural Resources Evaluation of Powertech (USA) Incorporated's Proposed Dewey-Burdock Uranium Project Locality within the Southern Black Hills, Custer and Fall River Counties, South Dakota, Volume V, Cover through Appendix F.        |
| 00-265        | ML100670240              | 31-Mar-2008          | A Level III Cultural Resources Evaluation of Powertech (USA) Incorporated's Proposed Dewey-Burdock Uranium Project Locality within the Southern Black Hills, Custer and Fall River Counties, South Dakota, Volume V, Page 5.107 through Page 5.155.   |
| 00-266        | ML100670250              | 31-Mar-2008          | A Level III Cultural Resources Evaluation of Powertech (USA) Incorporated's Proposed Dewey-Burdock Uranium Project Locality within the Southern Black Hills, Custer and Fall River Counties, South Dakota, Volume V, Page 5.157 through Page 5.205.   |
| 00-267        | ML100670255              | 31-Mar-2008          | A Level III Cultural Resources Evaluation of Powertech (USA) Incorporated's Proposed Dewey-Burdock Uranium Project Locality within the Southern Black Hills, Custer and Fall River Counties, South Dakota, Volume V, Page 5.206 through Page 5.232.   |
| 00-268        | ML100670257              | 31-Mar-2008          | A Level III Cultural Resources Evaluation of Powertech (USA) Incorporated's Proposed Dewey-Burdock Uranium Project Locality within the Southern Black Hills, Custer and Fall River Counties, South Dakota, Volume II, Cover through Page 5.243.       |
| 00-269        | ML100670258              | 31-Mar-2008          | A Level III Cultural Resources Evaluation of Powertech (USA) Incorporated's Proposed Dewey-Burdock Uranium Project Locality within the Southern Black Hills, Custer and Fall River Counties, South Dakota, Volume II, Page 5.244 through Page 5.303.  |
| 00-270        | ML100670259              | 31-Mar-2008          | A Level III Cultural Resources Evaluation of Powertech (USA) Incorporated's Proposed Dewey-Burdock Uranium Project Locality within the Southern Black Hills, Custer and Fall River Counties, South Dakota, Volume II, Page 5.304 through Page 5.365.  |
| 00-271        | ML100670261              | 31-Mar-2008          | A Level III Cultural Resources Evaluation of Powertech (USA) Incorporated's Proposed Dewey-Burdock Uranium Project Locality within the Southern Black Hills, Custer and Fall River Counties, South Dakota, Volume II, Pages 5.366 through Page 6.11.  |
| 00-272        | ML100670267              | 31-Mar-2008          | A Level III Cultural Resources Evaluation of Powertech (USA) Incorporated's Proposed Dewey-Burdock Uranium Project Locality within the Southern Black Hills, Custer and Fall River Counties, South Dakota, Volume II, Page 6.43 through Page 6.91.    |
| 00-273        | ML100670277              | 31-Mar-2008          | A Level III Cultural Resources Evaluation of Powertech (USA) Incorporated's Proposed Dewey-Burdock Uranium Project Locality within the Southern Black Hills, Custer and Fall River Counties, South Dakota, Volume II, Page 6.92 through Page 6.182.   |
| 00-274        | ML100670280              | 31-Mar-2008          | A Level III Cultural Resources Evaluation of Powertech (USA) Incorporated's Proposed Dewey-Burdock Uranium Project Locality within the Southern Black Hills, Custer and Fall River Counties, South Dakota, Volume III, Cover through Page 6.133.      |
| 00-275        | ML100670286              | 31-Mar-2008          | A Level III Cultural Resources Evaluation of Powertech (USA) Incorporated's Proposed Dewey-Burdock Uranium Project Locality within the Southern Black Hills, Custer and Fall River Counties, South Dakota, Volume III, Page 6.134 through Page 6.183. |
| 00-276        | ML100670289              | 31-Mar-2008          | A Level III Cultural Resources Evaluation of Powertech (USA) Incorporated's Proposed Dewey-Burdock Uranium Project Locality within the Southern Black Hills, Custer and Fall River Counties, South Dakota, Volume III, Page 6.184 through Page 6.237. |
| 00-277        | ML100670302              | 31-Mar-2008          | A Level III Cultural Resources Evaluation of Powertech (USA) Incorporated's Proposed Dewey-Burdock Uranium Project Locality within the Southern Black Hills, Custer and Fall River Counties, South Dakota, Volume I, Cover through Page 1.1.          |
| 00-278        | ML100670309              | 31-Mar-2008          | A Level III Cultural Resources Evaluation of Powertech (USA) Incorporated's Proposed Dewey-Burdock Uranium Project Locality within the Southern Black Hills, Custer and Fall River Counties, South Dakota, Volume I, Page 1.2 through Page 4.18.      |
| 00-279        | ML100670314              | 31-Mar-2008          | A Level III Cultural Resources Evaluation of Powertech (USA) Incorporated's   |

<sup>1</sup> Documents 00-264 through 00-293 are publicly available versions of the volumes contained in Powertech's Cultural Resources Evaluation for the Dewey-Burdock site. These documents were made publicly available in late March 2010, but they were inadvertently omitted from the Staff's September 13, 2010 list of publicly available documents in this proceeding.

**ATTACHMENT 1**  
**POWERTECH HEARING FILE AND MANDATORY DISCLOSURES**  
Update—October 1, 2010

| ID No. | Accession Number | Document Date | Title/Description   |
|--------|------------------|---------------|---|
|        |                  |               | Proposed Dewey-Burdock Uranium Project Locality within the Southern Black Hills, Custer and Fall River Counties, South Dakota, Vol. 1, Pages 5.1 through 5.52.  |
| 00-280 | ML100670318      | 31-Mar-2008   | A Level III Cultural Resources Evaluation of Powertech (USA) Incorporated's Proposed Dewey-Burdock Uranium Project Locality within the Southern Black Hills, Custer and Fall River Counties, South Dakota, Pages 5.53 through 5.106.                      |
| 00-281 | ML100670363      | 31-Mar-2008   | A Level III Cultural Resources Evaluation of Powertech (USA) Incorporated's Proposed Dewey-Burdock Uranium Project Locality within the Southern Black Hills, Custer and Fall River Counties, South Dakota, Pages 6.238 through 6.298.                     |
| 00-282 | ML100670365      | 31-Mar-2008   | A Level III Cultural Resources Evaluation of Powertech (USA) Incorporated's Proposed Dewey-Burdock Uranium Project Locality within the Southern Black Hills, Custer and Fall River Counties, South Dakota, Pages 6.299 through 6.360.                     |
| 00-283 | ML100670366      | 31-Mar-2008   | A Level III Cultural Resources Evaluation of Powertech (USA) Incorporated's Proposed Dewey-Burdock Uranium Project Locality within the Southern Black Hills, Custer & Fall River Counties, South Dakota, Pg. 6.361 - Pg. 8.23.                            |
| 00-284 | ML100670466      | 31-Mar-2008   | A Level III Cultural Resources Evaluation of Powertech (USA) Incorporated's Proposed Dewey-Burdock Uranium Project Locality within the Southern Black Hills, Custer and Fall River Counties, South Dakota, Addendum 2, Vol. 1, Cover Through Page 45.     |
| 00-285 | ML100670472      | 31-Mar-2008   | A Level III Cultural Resources Evaluation of Powertech (USA) Incorporated's Proposed Dewey-Burdock Uranium Project Locality within the Southern Black Hills, Custer and Fall River Counties, South Dakota, Addendum 2, Vol. 1, Page 46 Through Page 106.  |
| 00-286 | ML100670474      | 31-Mar-2008   | A Level III Cultural Resources Evaluation of Powertech (USA) Incorporated's Proposed Dewey-Burdock Uranium Project Locality within the Southern Black Hills, Custer and Fall River Counties, South Dakota, Addendum 2, Vol. 1, Page 107 Through Page 166. |
| 00-287 | ML100670478      | 31-Mar-2008   | A Level III Cultural Resources Evaluation of Powertech (USA) Incorporated's Proposed Dewey-Burdock Uranium Project Locality within the Southern Black Hills, Custer and Fall River Counties, South Dakota, Addendum 2, Vol. 2, Cover Through Appendix D.  |
| 00-288 | ML100670482      | 31-Mar-2008   | A Level III Cultural Resources Evaluation of Powertech (USA) Incorporated's Proposed Dewey-Burdock Uranium Project Locality within the Southern Black Hills, Custer and Fall River Counties, South Dakota, Vol. IV, Cover through Appendix A.             |
| 00-289 | ML100670483      | 31-Mar-2008   | A Level III Cultural Resources Evaluation of Powertech (USA) Incorporated's Proposed Dewey-Burdock Uranium Project Locality within the Southern Black Hills, Custer and Fall River Counties, South Dakota, Addendum 1, Vol. 1, Cover through Page 44.     |
| 00-290 | ML100670485      | 31-Mar-2008   | A Level III Cultural Resources Evaluation of Powertech (USA) Incorporated's Proposed Dewey-Burdock Uranium Project Locality within the Southern Black Hills, Custer and Fall River Counties, South Dakota, Addendum 1, Vol. 1, Page 45 through Page 104.  |
| 00-291 | ML100670487      | 31-Mar-2008   | A Level III Cultural Resources Evaluation of Powertech (USA) Incorporated's Proposed Dewey-Burdock Uranium Project Locality within the Southern Black Hills, Custer and Fall River Counties, South Dakota, Addendum 1, Vol. 1, Page 105 through Page 162. |
| 00-292 | ML100670490      | 31-Mar-2008   | A Level III Cultural Resources Evaluation of Powertech (USA) Incorporated's Proposed Dewey-Burdock Uranium Project Locality within the Southern Black Hills, Custer and Fall River Counties, South Dakota, Addendum 1, Vol. 2, Cover Through Appendix F.  |
| 00-293 | ML100670492      | 14-Jan-2009   | A Level III Cultural Resources Evaluation of Powertech (USA) Incorporated's Proposed Dewey-Burdock Uranium Project Locality within the Southern Black Hills, Custer and Fall River Counties, South Dakota, Volume 2, Cover through Appendix D.            |
| 00-294 | ML102450647      | 8-Sep-2010    | Letter to Oglala Sioux Tribe Invitation for Formal Consultation Under the Section 106 of the National Historic Preservation Act.  |
| 00-295 | ML102460395      | 10-Sep-2010   | Letter to Oglala Sioux Tribe Invitation for Formal Consultation Under the Section 106 of the National Historic Preservation Act.  |
| 00-296 | ML102520156      | 10-Sep-2010   | Letter to Crow Creek Sioux Tribe Invitation for Formal Consultation Under the Section 106 of the National Historic Preservation Act.  |
| 00-297 | ML102520194      | 10-Sep-2010   | Letter to Flandreau-Santee Sioux Tribe Invitation for Formal Consultation Under the Section 106 of the National Historic Preservation Act.  |
| 00-298 | ML102520220      | 10-Sep-2010   | Letter to Lower Brule Sioux Tribe Invitation for Formal Consultation Under the Section 106 of the National Historic Preservation Act.   |

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**POWERTECH HEARING FILE AND MANDATORY DISCLOSURES**  
Update—October 1, 2010

| ID No. | Accession Number                         | Document Date | Title/Description   |
|--------|--|---------------|---|
| 00-299 | ML102520239                              | 10-Sep-2010   | Letter to Cheyenne River Sioux Tribe Invitation for Formal Consultation under the Section 106 of the National Historic Preservation Act.  |
| 00-300 | ML102520282                              | 10-Sep-2010   | Letter to Rosebud Sioux Tribe Invitation for Formal Consultation Under the Section 106 of the National Historic Preservation Act.   |
| 00-301 | ML102520298                              | 10-Sep-2010   | Letter to Sisseton-Wahpeton Oyate Invitation for Formal Consultation Under the Section 106 of the National Historic Preservation Act.   |
| 00-302 | ML102520308                              | 10-Sep-2010   | Letter to Standing Rock Sioux Tribe Invitation for Formal Consultation Under the Section 106 of the National Historic Preservation Act.   |
| 00-303 | ML102520319                              | 10-Sep-2010   | Letter to Yankton Sioux Tribe Invitation for Formal Consultation Under the Section 106 of the National Historic Preservation Act.   |
| 00-304 | ML102520368                              | 10-Sep-2010   | Letter to Mandan, Hidatsa & Arikara Nation Invitation for Formal Consultation Under the Section 106 of the National Historic Preservation Act.  |
| 00-305 | ML102520393                              | 10-Sep-2010   | Letter to Spirit Lake Tribe Invitation for Formal Consultation Under the Section 106 of the National Historic Preservation Act.   |
| 00-306 | ML102520486                              | 10-Sep-2010   | Letter to Lower Sioux Indian Community Invitation for Formal Consultation Under the Section 106 of the National Historic Preservation Act.  |
| 00-307 | ML102520504                              | 10-Sep-2010   | Letter to Northern Cheyenne Tribe Invitation for Formal Consultation Under the Section 106 of the National Historic Preservation Act.   |
| 00-308 | ML102520520                              | 10-Sep-2010   | Letter to Northern Arapaho Tribe Invitation for Formal Consultation Under the Section 106 of the National Historic Preservation Act.  |
| 00-309 | ML102520553                              | 10-Sep-2010   | Letter to Eastern Shoshone Tribe Invitation for Formal Consultation Under the Section 106 of the National Historic Preservation Act.  |
| 00-310 | ML102530566                              |               | Fall River County Plates  |
| 00-311 | ML----- <sup>2</sup>                     | 30-Sep-2010   | RAI Clarifications for RAI-WR2 (2).docx   |
| 00-312 | (No ADAMS Accession Number) <sup>3</sup> |               | Compilation of selected hydrologic data, through water year 1992, Black Hills Hydrology Study, western South Dakota (Abstract)<br><a href="http://sd.water.usgs.gov/pubs/abstracts/ofr94-319.html">http://sd.water.usgs.gov/pubs/abstracts/ofr94-319.html</a> |
| 00-313 |  |               | Selected hydrologic data, through water year 1994, Black Hills Hydrology Study, South Dakota (Abstract)<br><a href="http://sd.water.usgs.gov/pubs/abstracts/ofr96-399.html">http://sd.water.usgs.gov/pubs/abstracts/ofr96-399.html</a>                        |
| 00-314 |  |               | Streamflow Characteristics for the Black Hills of South Dakota, through Water Year 1993<br><a href="http://pubs.water.usgs.gov/wri974288/">http://pubs.water.usgs.gov/wri974288/</a>  |
| 00-315 |  |               | Streamflow Losses in the Black Hills of Western South Dakota<br><a href="http://pubs.water.usgs.gov/wri984116/">http://pubs.water.usgs.gov/wri984116/</a>   |
| 00-316 |  |               | Selected Hydrologic Data, Through Water Year 1998, Black Hills Hydrology Study, South Dakota<br><a href="http://pubs.water.usgs.gov/ofr00-070/">http://pubs.water.usgs.gov/ofr00-070/</a>   |
| 00-317 |  |               | Altitude of the Top of the Inyan Kara Group in the Black Hills Area, South Dakota<br><a href="http://pubs.water.usgs.gov/ha744a/">http://pubs.water.usgs.gov/ha744a/</a>  |
| 00-318 |  |               | Altitude of the Top of the Minnelusa Formation in the Black Hills Area, South Dakota<br><a href="http://pubs.water.usgs.gov/ha744c/">http://pubs.water.usgs.gov/ha744c/</a>   |
| 00-319 |  |               | Altitude of the Top of the Madison Limestone in the Black Hills Area, South Dakota<br><a href="http://pubs.water.usgs.gov/ha744d/">http://pubs.water.usgs.gov/ha744d/</a>   |
| 00-320 |  |               | Selected Hydrogeologic Data for the Inyan Kara, Minnekahta, Minnelusa, Madison, and Deadwood Aquifers in the Black Hills Area, South Dakota<br><a href="http://pubs.water.usgs.gov/ofr99602/">http://pubs.water.usgs.gov/ofr99602/</a>                        |

<sup>2</sup> As of October 1, 2010, this document has not yet been assigned an ADAMS accession number.

<sup>3</sup> Documents 00-312 through 00-336 may contain copyrighted material and, for that reason, these documents have not been entered into ADAMS. The Staff is instead providing internet addresses for these documents. If the Board or other parties are unable to view the documents, the Staff will provide hard copies of the documents.

ATTACHMENT 1  
 POWERTECH HEARING FILE AND MANDATORY DISCLOSURES  
 Update—October 1, 2010

| ID No. | Accession Number | Document Date | Title/Description  |
|--------|------------------|---------------|--|
| 00-321 |                  |               | Distribution of Hydrogeologic Units in the Black Hills Area, South Dakota<br><a href="http://pubs.water.usgs.gov/ha743/">http://pubs.water.usgs.gov/ha743/</a>   |
| 00-322 |                  |               | Potentiometric Surface of the Inyan Kara Aquifer in the Black Hills Area, South Dakota<br><a href="http://pubs.water.usgs.gov/ha745a/">http://pubs.water.usgs.gov/ha745a/</a>  |
| 00-323 |                  |               | Potentiometric Surface of the Minnelusa Aquifer in the Black Hills Area, South Dakota<br><a href="http://pubs.water.usgs.gov/ha745c/">http://pubs.water.usgs.gov/ha745c/</a>   |
| 00-324 |                  |               | Potentiometric Surface of the Madison Aquifer in the Black Hills Area, South Dakota<br><a href="http://pubs.water.usgs.gov/ha745d/">http://pubs.water.usgs.gov/ha745d/</a>   |
| 00-325 |                  |               | Summary of Precipitation Data for the Black Hills Area of South Dakota, Water Years 1931–98<br><a href="http://sd.water.usgs.gov/pubs/abstracts/ofr00-329.html">http://sd.water.usgs.gov/pubs/abstracts/ofr00-329.html</a>   |
| 00-326 |                  |               | Estimated Recharge to the Madison and Minnelusa Aquifers in the Black Hills Area, South Dakota and Wyoming, Water Years 1931-98<br><a href="http://pubs.water.usgs.gov/wri004278/">http://pubs.water.usgs.gov/wri004278/</a> |
| 00-327 |                  |               | Hydrologic Budgets for the Madison and Minnelusa Aquifers, Black Hills of South Dakota and Wyoming, Water Years 1987-96<br><a href="http://pubs.water.usgs.gov/wri014119/">http://pubs.water.usgs.gov/wri014119/</a>         |
| 00-328 |                  |               | Water-quality characteristics in the Black Hills area, South Dakota<br><a href="http://pubs.water.usgs.gov/wri014194/">http://pubs.water.usgs.gov/wri014194/</a>   |
| 00-329 |                  |               | Hydrologic Conditions and Budgets for the Black Hills of South Dakota, Through Water Year 1998<br><a href="http://pubs.water.usgs.gov/wri014226/">http://pubs.water.usgs.gov/wri014226/</a>                                  |
| 00-330 |                  |               | Atlas of Water Resources in the Black Hills Area, South Dakota<br><a href="http://pubs.water.usgs.gov/ha747/">http://pubs.water.usgs.gov/ha747/</a>  |
| 00-331 |                  |               | Hydrology of the Black Hills Area, South Dakota<br><a href="http://pubs.water.usgs.gov/wri024094/">http://pubs.water.usgs.gov/wri024094/</a>   |
| 00-332 |                  |               | The Black Hills Hydrology Study<br><a href="http://pubs.water.usgs.gov/fs04602/">http://pubs.water.usgs.gov/fs04602/</a>   |
| 00-333 |                  |               | Hydrology of the Black Hills Area, South Dakota<br><a href="http://pubs.usgs.gov/wri/wri024094/pdf/mainbodyofreport-6.pdf">http://pubs.usgs.gov/wri/wri024094/pdf/mainbodyofreport-6.pdf</a>                                 |
| 00-334 |                  |               | Earthquakes in South Dakota (1872–2007)<br><a href="http://www.sdgs.usd.edu/publications/maps/earthquakes/earthquakes.pdf">http://www.sdgs.usd.edu/publications/maps/earthquakes/earthquakes.pdf</a>                         |
| 00-335 |                  |               | Altitude of the Top of the Inyan Kara Group in the Black Hills Area, South Dakota<br><a href="http://pubs.usgs.gov/ha/ha744a/ha744aIntro.html">http://pubs.usgs.gov/ha/ha744a/ha744aIntro.html</a>                           |
| 00-336 |                  |               | Plan of study for the Black Hills Hydrology Study, South Dakota (Abstract)<br><a href="http://sd.water.usgs.gov/pubs/abstracts/ofr92-84.html">http://sd.water.usgs.gov/pubs/abstracts/ofr92-84.html</a>                      |

**ATTACHMENT 2**  
**POWERTECH HEARING FILE AND MANDATORY DISCLOSURES**  
**ATTORNEY-CLIENT/DELIBERATIVE PROCESS PRIVILEGE LOG**  
**Update—October 1, 2010**

Certain documents otherwise subject to inclusion in the hearing file or mandatory disclosures for this proceeding contain communications between NRC Staff and legal counsel. Pursuant to 10 C.F.R. § 2.336(b)(5), the Staff is providing this log to identify the following documents withheld under the attorney-client privilege. Additionally, these documents have been determined by the NRC Staff to contain predecisional, deliberative information. As such, they are being withheld under the deliberative process privilege as well.

| ID#      | Accession Number | Author/<br>Affiliation     | Title  | Document Date | Document Type | Addressee/<br>Affiliation  | Comment  | Page Count |
|----------|------------------|----------------------------|--|---------------|---------------|--|--|------------|
| AC-00-72 |                  | Yilma, Haimanot (NRC/FSME) | Meeting to talk about consultation to the Oglala Sioux tribe | 09/28/2010    | E-Mail        | Jehle, Patricia; Klukan, Brett; Clark, Michael (all NRC/OGC); Hsueh, Kevin; Goodman, Nathan (both NRC/FSME)  | Raises legal questions concerning Tribal consultation  | 1          |
| AC-00-73 |                  | Burrows, Ronald (NRC/FSME) | RE: Powertech Scheduling Information                         | 09/22/2010    | E-Mail        | Jehle, Patricia; Clark, Michael (both NRC/OGC); Hsueh, Kevin; Cohen, Stephen; Yilma, Haimanot (all NRC/FSME) | Provides NRC/FSME input to NRC/OGC regarding progress of Staff reviews and release dates of associated documents | 3          |
| AC-00-74 |                  | Jehle, Patricia (NRC/OGC)  | NHPA Consultation Issues                                     | 09/20/2010    | E-Mail        | Yilma, Haimanot (NRC/FSME)   | Contains legal advice concerning Staff actions under the NHPA  | 2          |
| AC-00-75 |                  | Jehle, Patricia (NRC/OGC)  | Tribal Consultation  | 09/15/2010    | E-Mail        | Yilma, Haimanot (NRC/FSME)   | Contains legal advice concerning Staff actions under the NHPA  | 1          |
| AC-00-76 |                  | Jehle, Patricia (NRC/OGC)  | Consultation on Scheduling Issues                            | 09/17/2010    | E-Mail        | Yilma, Haimanot (NRC/FSME)   | Provides NRC/OGC input regarding timelines associated with NRC/FSME's review of application                      | 3          |

| ID#      | Accession Number | Author/<br>Affiliation       | Title                                    | Document Date | Document Type | Addressee/<br>Affiliation  | Comment   | Page Count |
|----------|------------------|------------------------------|--|---------------|---------------|----------------------------|---|------------|
| AC-00-77 |                  | Jehle, Patricia<br>(NRC/OGC) | Powertech Application<br>Fed Reg Notice? | 09/07/2010    | E-Mail        | Yilma, Haimanot (NRC/FSME) | Provides NRC/OGC input on Tribal consultation and advice on documenting consultation attempts | 3          |

**From:** Yilma, Haimanot  
**Sent:** Thursday, September 30, 2010 3:17 PM  
**To:** Richard Blubaugh  
**Cc:** DeweyBurdHrgFile Resource; Yilma, Haimanot  
**Subject:** RAI Clarifications for RAI-WR2 (2).docx  
**Attachments:** RAI Clarifications for RAI-WR2 (2).docx

Mr. Blubaugh

Here are the questions we would like clarification for per our conversation last Friday. Please let me know if you have any questions or concerns.

Haimanot

As part of its response to RAI-WR2, PowerTech (USA) Inc. provided electronic and hard copies of an updated isopach map of the Fuson member of the Lakota Formation (Supplemental Exhibit 3.2-3 - Revised). Included in the electronic files are four versions of the isopach map. These electronic files were labeled as:

- (i) Exhibit 3.2-3 Fuson Isopach (R644).pdf,
- (ii) Exhibit 3.2-3 Fuson Isopach (R645).pdf,
- (iii) Exhibit 3.2-3 Fuson Isopach (R646).pdf,
- (iv) R641\_Fuson Isopach Exhibit 3.2-3.pdf.

Versions R644, R645, and R646 appear to be similar to each other while version R641 appears to be substantially different from the other three files. The hard copy of the isopach map appears to be equivalent to the file "Exhibit 3.2-3 Fuson Isopach (R646).pdf" within the RAI response folder. Staff requires clarification of several aspects of the isopach maps provided and has a request for additional information.

1. The isopach map shown in "R641\_Fuson Isopach Exhibit 3.2-3.pdf" contains a greater number of TVA borehole locations/data (shown as black dots) than the isopach map shown in "Exhibit 3.2-3 Fuson Isopach (R646).pdf".
  - a) What is the basis for omitting or deleting the TVA borehole locations (shown on R641\_Fuson Isopach Exhibit 3.2-3.pdf) from "Exhibit 3.2-3 Fuson Isopach (R646).pdf"?
  - b) Both the TVA and the more recent PowerTech (USA) Inc. data appear to be important in constraining the interpretation of contour lines on the isopach maps. How can versions R641 and R646 have such similar contours given the missing TVA borehole data in version R646?
  - c) The 40 ft- contour in Section 3, T7S, R1E (the northwest portion of the Initial Burdock Unit 1) is closed in "Exhibit 3.2-3 Fuson Isopach (R646).pdf", whereas the same contour was left open in "R641\_Fuson Isopach Exhibit 3.2-3.pdf". Which interpretation is correct, and what is the basis for the difference between the two maps?
  - d) It is not clear why the applicant has omitted from version R646 several boreholes located in the southwest quadrant of Section 2 (T7S, R1E) and southeast quadrant of Section 3 (T7S, R1E). These boreholes are shown in R641 and appear to be in an area where there is large uncertainty in the thickness of the Fuson member. What is the basis for omitting these data?
2. Given that (i) the applicant has noted that the Fuson shale is thinnest in the Burdock area, (ii) there is a higher uncertainty in the thickness of the Fuson shale to the immediate north of the Initial Burdock Mine Unit, (iii) there is convergence of the potentiometric surface of the Fall River and Lakota aquifers in the Burdock area, and (iv) pump tests have indicated the potentially leaky nature of the Fuson shale in the Burdock area, it is important that staff develop a clear independent understanding of the thickness and extent of the Fuson shale in this region to adequately evaluate the potential environmental impacts from ISR activities.

Therefore, staff requests that the applicant provide the data used to construct isopach maps of the Fuson shale in the Burdock area (the Burdock area includes Sections 1, 2, 3, 10, 11, 12, 14, and 15 of T7S,

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R1E, and Sections 34 and 35 of T6S, R1E). The data should include that from TVA and PowerTech (USA) Inc. boreholes and any other data PowerTech (USA) Inc. has used to construct isopachs for the Fuson shale in Supplemental Exhibit 3.2-3 – Revised (all versions) and Supplemental Exhibit 3.2-13. An appropriate format for the requested data would include borehole identification numbers, location of boreholes, and the thickness of the Fuson Shale at the designated borehole location.

October 1, 2010

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of )

POWERTECH (USA) INC., )

(Dewey-Burdock In Situ Uranium Recovery  
Facility) )

Docket No. 40-9075-MLA

ASLBP No. 10-898-02-MLA-BD01


AFFIDAVIT OF RONALD BURROWS CONCERNING  
MANDATORY DISCLOSURE  
REQUIREMENT OF 10 C.F.R. § 2.336(c)

I, Ronald Burrows, do hereby state as follows:

1. I am employed as a Senior Health Physicist in the Nuclear Regulatory Commission's Office of Federal and State Materials and Environmental Management Programs, Division of Waste Management and Environmental Protection, Decommissioning and Uranium Recovery Licensing Directorate. Among my responsibilities, I serve as Project Manager for Powertech (USA) Inc.'s application for a license to be used in connection with the proposed Dewey-Burdock uranium recovery facility. In this capacity, I am managing the preparation of the NRC Staff's hearing file and mandatory disclosures in connection with Powertech's application.

2. I hereby certify that all materials the Staff must disclose in this proceeding under 10 C.F.R. § 2.336 (b) and (c) have been disclosed, and that the disclosures are accurate and complete as of the date of this certification.

3. I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information and belief.

  
Ronald Burrows

Executed in Rockville, MD  
this 1<sup>st</sup> day of October, 2010

October 1, 2010

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) | ) | ASLBP No. 10-898-02-MLA-BD01 |

DECLARATION OF KEITH McCONNELL

I, Keith McConnell, do hereby state as follows:

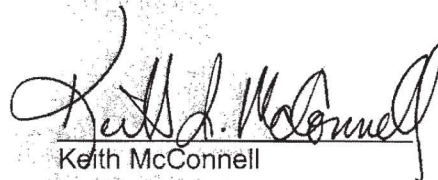
1. I am employed as Deputy Director in the Nuclear Regulatory Commission's Office of Federal and State Materials and Environmental Management Programs, Division of Waste Management and Environmental Protection, Decommissioning and Uranium Recovery Licensing Directorate. My supervisory responsibilities include oversight of the NRC Staff's review and evaluation of Powertech (USA) Inc.'s application for a license to be used in connection with the proposed Dewey-Burdock uranium recovery facility.
2. As part of their responsibilities in preparing the hearing file and mandatory disclosures for this proceeding, NRC staff members under my supervision identified a number of documents as privileged because they contain information concerning the Staff's deliberative process. Those documents are listed in Attachment 2 to the Staff's October Update to the Hearing File, which I understand will be filed on October 1, 2010.
3. I have personally reviewed the documents identified as privileged in Attachment 2 and have determined, in accordance with the guidance set forth in Management Directive 3.4, that all documents contain predecisional information concerning the Staff's review of Powertech's license application. These documents contain the Staff's analyses, recommendations, opinions or evaluations, and they may not necessarily reflect the final agency

position with respect to the matters discussed therein. Each of the documents comprises part of the deliberative process necessary to the Staff's review of Powertech's license application.

4. Further, I have determined that disclosure of the documents could result in harm to the agency, in that it would (a) prematurely disclose the preliminary views of individual Staff members or the Staff prior to reaching a final agency decision, potentially creating confusion as to the actual policy or views of the NRC Staff; (b) hinder the efficiency of the Staff, in that forced disclosure of its internal discussions on an unresolved issue would tend to chill all future deliberations and would interfere with the Staff's ability to engage in a free exchange of opinions and analyses prior to publishing its final review documents; and (c) imply or suggest incorrectly that the opinions of the Staff members involved in these communications are actually the final decisions of the agency, when no such final decision has yet been made.

5. Accordingly, I formally invoke the deliberative process privilege with respect to each of the documents listed in Attachment 2 to the Staff's October Update to the Hearing File, dated October 1, 2010.

6. I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information and belief.

  
Keith McConnell

Executed in Rockville, Maryland  
this 1st day of October, 2010

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 | ) | Date: October 1, 2010         |
| Facility)                               | ) |                               |

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing "NRC STAFF'S LETTER TO THE ATOMIC SAFETY AND LICENSING BOARD" in this proceeding have been served via the Electronic Information Exchange (EIE) this 1<sup>st</sup> day of October, 2010, which to the best of my knowledge resulted in transmittal of the copies to those on the EIE Service List for the above-captioned proceeding.

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

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Michael J. Clark  
Counsel for the NRC Staff