

November 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 updated 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 indices 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. (Attachments 2 and 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.

The Staff will update its mandatory disclosures, hearing file, and privilege logs no later than December 1, 2010.

Sincerely,

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

Michael J. Clark
Counsel for NRC Staff

Enclosures: Attachment 1: Hearing File Index
Attachment 2: Deliberative Process Privilege Log
Attachment 3: Attorney-Client/Deliberative Process Privilege Log
Affidavit of Ronald Burrows
Declaration of Keith McConnell

cc: Electronic Information Exchange Service List

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

	Accession Number	Document Date	Title
00-337	ML102460395	09/10/2010	Letter to Oglala Sioux Tribe Invitation for Formal Consultation Under the Section 106 of the National Historic Preservation Act.
00-338	ML102720139	09/29/2010	Plan of Study for the Black Hills Hydrology Study, SD from website http://sd.water.usgs.gov/pubs/abstracts/ofr92-84.html
00-339	ML102720169	09/29/2010	Selected Hydrologic Data Through Water Year 1992, Black Hills, SD-website http://sd.water.usgs.gov/pubs/abstracts/ofr94-319.html .
00-340	ML102720185	09/29/2010	Selected Hydrologic Data, Black Hills Water Year 1994, website http://sd.water.usgs.gov/pubs/abstracts/ofr96-399.html .
00-341	ML102720742	09/29/2010	BLM Lands Map.
00-342	ML102720747	09/29/2010	Burdock Area Map.
00-343	ML102720757	09/29/2010	South Dakota Survey Townships.
00-344	ML102720763	09/29/2010	Lakota Isopach Map.
00-345	ML102720765	09/29/2010	Chilson Member Structure Map.
00-346	ML102720771	09/29/2010	Dewey Map.
00-347	ML102720777	09/29/2010	Fall River Isopach.
00-348	ML102720782	09/29/2010	Fusion Isopach Map.
00-349	ML102720784	09/29/2010	BLM Land Map.
00-350	ML102720785	09/29/2010	Site Aerial Photos.
00-351	ML102720792	09/29/2010	Site Aerial Photos.
00-352	ML102720795	09/29/2010	Morrison Shale Isopach.
00-353	ML102720796	09/29/2010	Jewel Caves Quadrangle Topo.
00-354	ML102720802	09/29/2010	Site Location Map.
00-355	ML102720804	09/29/2010	Dewey Location Map.
00-356	ML102720807	09/29/2010	Dewey Burdock Aerial Photos -2.
00-357	ML102720810	09/29/2010	More Dewey-Burdock Aerial Photo.
00-358	ML102720813	09/29/2010	Dewey-Burdock Aerial Photos-5.
00-359	ML102720877	09/29/2010	Aerial Photos-6.
00-360	ML102720880	09/29/2010	Aerial Photos-7.
00-361	ML102720882	09/29/2010	Aerial Photos-8.
00-362	ML102720884	09/29/2010	Dewey-Burdock Mine Units.
00-363	ML102720885	09/29/2010	Modeled Topo Data.

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

	Accession Number	Document Date	Title
00-364	ML102720886	09/29/2010	Modeled Topo Data-2.
00-365	ML102720887	09/29/2010	Modeled Topo Data-3.
00-366	ML102720888	09/29/2010	Modeled Topo Data-4.
00-367	ML102720891	09/29/2010	Modeled Topo Data-5.
00-368	ML102720892	09/29/2010	Modeled Topo Data-6.
00-369	ML102720894	09/29/2010	Burdock Mine Unit Maps.
00-370	ML102720895	09/29/2010	Dewey Mine Unit Maps.
00-371	ML102720899	09/29/2010	Survey Sections-2.
00-372	ML102720902	09/29/2010	Survey Townships-2.
00-373	ML102720904	09/29/2010	Twentyone Divide Topo Quad.
00-374	ML102720913	09/29/2010	Open-File Report 99-602, "Selected Hydrogeologic Data for the Inyan Kara, Minnekahta, Minnelusa, Madison, & Deadwood Aquifers in the Black Hills Area, South Dakota."
00-375	ML102730035	09/30/2010	Selected Hydrologic Data, Through Water Year 1998, Black Hills Hydrology Study, South Dakota - Powertech Hearing.
00-376	ML102730039	09/30/2010	Hydrology of the Black Hills Area, South Dakota - Powertech Hearing.
00-377	ML102730114	12/31/2007	Map of Earthquakes in South Dakota (1872 - 2007) - Powertech Hearing.
00-378	ML102730115	09/29/2010	Altitude of Top of Inyan Kara Group in Black Hills Area, SD by Janeet M. Carter, U.S. Geological Survey; and Jack A. Redden, SK School of Mines & Technology - Powertech Hearing.
00-379	ML102730129	09/30/2010	Hydrologic Conditions and Budgets for the Black Hills of South Dakota, Through Water Year 1998.
00-380	ML102730135	09/30/2010	Water-Quality Characteristics in the Black Hills Area, South Dakota
00-381	ML102730212	06/30/2002	The Black Hills Hydrology Study by Janet M. Carter, Daniel G. Driscoll, and Joyce E. Williamson - Powertech.
0-382	ML102730213	12/31/2001	Hydrologic Budgets for the Madison and Minnelusa Aquifers, Black Hills of SD and WY, Water Years 1987-96 - Powertech Hearing - Docket 04009075.
00-383	ML102780110	09/30/2010	2010/09/30 Powertech Dewey-Burdock LA - RAI Clarifications for RAI-WR2 (2).docx
00-384	ML103050026	10/01/2010	2010/10/01 Powertech Dewey-Burdock LA - Consultation

ATTACHMENT 2
POWERTECH HEARING FILE AND MANDATORY DISCLOSURES
DELIBERATIVE PROCESS LOG
Update — November 1, 2010

Certain documents otherwise subject to inclusion in the hearing file and mandatory disclosures for this proceeding have been determined by the NRC Staff to contain information subject to withholding from public disclosure as predecisional, deliberative information. Pursuant to 10 C.F.R. § 2.336(b)(5), the Staff is providing this log to identify the following documents withheld under the deliberative process privilege.

ID#	Accession Number	Author/ Affiliation	Title/Description	Document Date	Document Type	Addressee/ Affiliation	Comment	Page Count
DP-00-252	ML103050020	Yilma, Haimanot (NRC/FSME)	2010/10/12 Powertech Dewey-Burdock LA - tribal letter response	10/12/2010	E-Mail	Prikryl, James (CNWRA)	Email forwarding the Three Affiliated Tribes response to consultation letter and providing comment on draft SEIS	3

ATTACHMENT 3
POWERTECH HEARING FILE AND MANDATORY DISCLOSURES
ATTORNEY-CLIENT/DELIBERATIVE PROCESS PRIVILEGE LOG
Update — November 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.

	Accession Number	Author Name & Author Affiliation	Title	Document Date	Document Type	Addressee Name & Addressee Affiliation	Comment	Pages
AC-00-78	ML102780090	Jehle, Patricia (NRC/OGC)	2010/09/30 Powertech Dewey-Burdock LA - FW: NHPA Consultation Issues	09/20/2010	E-Mail	Yilma, Haimanot (NRC/FSME)	Raises legal questions concerning Tribal consultation	4
AC-00-79	ML102780092	Jehle, Patricia (NRC/OGC)	2010/09/30 Powertech Dewey-Burdock LA - FW: Tribal Consultation	9/15/2010	E-Mail	Yilma, Haimanot (NRC/FSME)	Raises legal questions concerning Tribal consultation	3
AC-00-80	ML102780093	Jehle, Patricia (NRC/OGC)	2010/09/30 Powertech Dewey-Burdock LA - FW: Powertech Application Fed Reg Notice?	09/30/2010	E-Mail	Yilma, Haimanot (NRC/FSME)	Raises legal questions concerning Tribal consultation	6
AC-00-81	ML103050021	Jehle, Patricia (NRC/OGC)	2010/10/13 Powertech Dewey-Burdock LA - RE: do you think we need to add anything else here - read the highlighted text.	10/13/2010	E-Mail	Yilma, Haimanot (NRC/FSME)	Provides NRC/OGC input regarding NRC/FSME's draft SEIS	7
AC-00-82	ML103050025	Jehle, Patricia (NRC/OGC)	2010/10/28 Powertech Dewey-Burdock LA - Cultural Resources with legal comments by PAJ.doc	10/28/2010	E-Mail	Yilma, Haimanot (NRC/FSME)	Provides NRC/OGC input regarding NRC/FSME's draft SEIS	16

November 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 1st day of November, 2010

November 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)

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Docket No. 40-9075-MLA

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 and Attachment 3 to the Staff's November Update to the Hearing File, which I understand will be filed on November 1, 2010.

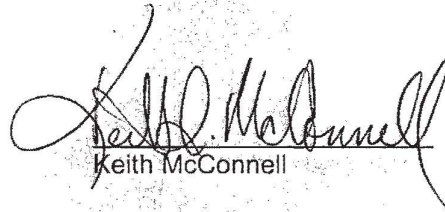
3. I have personally reviewed the documents identified as privileged in Attachment 2 and have determined, in accordance with the guidance set forth in Management Directive 3.4, that all documents contain predecisional information concerning the Staff's review of Powertech's license application. These 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 and Attachment 3 to the Staff's November Update to the Hearing File, dated November 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 November, 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: November 1, 2010
Facility))	

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing "NRC STAFF'S HEARING FILE UPDATE" in this proceeding have been served via the Electronic Information Exchange (EIE) this 1st day of November, 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***

Michael J. Clark
Counsel for the NRC Staff