

Draft PA
Dewey-Burdock Project
November 22, 2013

A draft PA with formal language has been prepared based on comments received from all consulting parties during the November 15, 2013 webinar.

**PROGRAMMATIC AGREEMENT
AMONG
U.S. NUCLEAR REGULATORY COMMISSION
U.S. BUREAU OF LAND MANAGEMENT
SOUTH DAKOTA STATE HISTORIC PRESERVATION OFFICE
POWERTECH USA, INC.
[TRIBES]
AND
ADVISORY COUNCIL ON HISTORIC PRESERVATION
REGARDING THE
DEWEY BURDOCK IN-SITU RECOVERY PROJECT
LOCATED IN CUSTER AND FALL RIVER COUNTIES
SOUTH DAKOTA**

Date

WHEREAS CLAUSES:

WHEREAS, this Programmatic Agreement (PA) addresses the federal undertaking regarding the issuance of a license for the Dewey-Burdock In-Situ Recovery [ISR] Project pursuant to the authority of the U.S. Nuclear Regulatory Commission (NRC) under the Atomic Energy Act of 1954 (AEA), 42 U.S.C. §§ 2011 *et. seq.* for purposes of NRC compliance with Section 106 of the National Historic Preservation Act (NHPA), 16 U.S.C. §§ 470 *et. seq.*; and

WHEREAS, the NRC received an application from Powertech Inc. (Powertech or applicant) for a new radioactive source materials license to develop and operate the Dewey-Burdock Project located near Edgemont, South Dakota in Fall River and Custer Counties (Project) pursuant to NRC's license authority under the Atomic Energy Act of 1954 (AEA), 42 U.S.C. §§ 2011 *et. seq.*; and

WHEREAS, if licensed, the proposed undertaking will use an In-Situ Recovery (ISR) methodology to extract uranium and process it into yellowcake at the Dewey-Burdock site. The proposed undertaking boundary consists of approximately 10,580 acres (4,282 ha) located on both sides of Dewey Road (County Road 6463) and portions of Sections 1-5, 10-12, 14, and 15, in Township 7 South, Range 1 East and portions of Sections 20, 21, 27, 28, 29, and 30-35 in Township 6 South, Range 1 East, Black Hill Meridian, (see Appendix A, Figure 1.0); and

WHEREAS, under the terms of the General Mining Act of 1872 Powertech has filed Federal Lode mining claims and secured mineral rights on 97 ha [240 ac] of public lands open to mineral entry and administered by the U.S. Department of the Interior, Bureau of Land Management (BLM), and has the right to develop the mining claims as long as it can be accomplished without causing unnecessary or undue degradation to public lands, and is in accordance with pertinent laws and regulations under 43 CFR Subpart 3809; and

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WHEREAS, BLM will utilize the environmental analysis presented in the Final SEIS document in its determination of whether or not to approve Powertech's POO; and

WHEREAS, the BLM-South Dakota Field Office will draft a Record of Decision approving an acceptable Plan of Operations (POO) that meets the requirements of 43 CFR Subpart 3809;

WHEREAS, the BLM, by letter dated April 7, 2011, has designated the NRC as the lead agency for compliance with requirements of the National Environmental Policy Act and Section 106 of the National Historic Preservation Act regarding the Dewey-Burdock Project (ML11116A091); and

WHEREAS, the area of potential effects (APE) for the Undertaking is the area at the Dewey-Burdock Project site and its immediate environs, which may be directly or indirectly impacted by ground disturbance activities associated with the proposed undertaking, as described in Appendix A; and

WHEREAS, in accordance with 36 CFR § 800.6(a)(1)(i)(C), the NRC by letter dated April 24, 2013, invited the Advisory Council on Historic Preservation (Council) to participate in Section 106 consultation and in the preparation of this PA and the Council by letter dated October 28, 2013, accepted the invitation and is a consulting party; and

WHEREAS, the NRC invited the South Dakota State Historic Preservation Officer (SD SHPO) to participate in Section 106 consultation and preparation of this PA; and

WHEREAS, the NRC invited the Powertech Inc. to participate in Section 106 consultation and preparation of this PA; and

WHEREAS, the Environmental Protection Agency (EPA) may use this agreement to satisfy its Section 106 requirement by agreeing in writing to the terms of this PA and notifying and consulting with SHPO and ACHP; and (EPA to provide agreement to this WHEREAS clause)

WHEREAS, the NRC invited the Cheyenne and Arapaho Tribes of Oklahoma, the Cheyenne River Sioux Tribe, the Crow Nation, the Crow Creek Sioux Tribe, the Eastern Shoshone Tribe, the Flandreau Santee Sioux Tribe, the Fort Peck Assiniboine and Sioux Tribes, the Lower Brule Sioux Tribe, the Lower Sioux Indian Community, the Northern Arapaho Tribe, the Northern Cheyenne Tribe, the Oglala Sioux Tribe, the Omaha Tribe of Nebraska, the Pawnee Nation of Oklahoma, the Ponca Tribe of Nebraska, the Rosebud Sioux Tribe, the Santee Sioux Tribe of Nebraska, the Sisseton-Wahpeton Oyate, the Spirit Lake Sioux Tribe, the Standing Rock Sioux Tribe, the Three Affiliated Tribes (Mandan, Hidatsa & Arikara Nations), the Turtle Mountain Band of Chippewa Indians, and the Yankton Sioux Tribe (collectively referred to as tribes) to each be a consulting party by letters dated March 19, 2010 (ML100331999) and September 8, 2010 (ML102450647); and

WHEREAS, identification of cultural and historic properties have been completed for the Undertaking including Class III Archeological Surveys, Tribal Survey (i.e. Traditional Cultural Property surveys), and line-of-sight analysis (indirect effects), as discussed in Appendix B; and

WHEREAS, the NRC received Tribal Survey reports with eligibility recommendations from the Northern Arapaho Tribe, the Northern Cheyenne Tribe, and the Cheyenne and Arapaho Tribes of Oklahoma, as well as field notes from the Crow Nation; and

WHEREAS, the NRC staff reviewed and evaluated the results of the applicant's Class III Archeological Surveys, Tribal Survey, and the line-of-sight analysis in the development of the staff's initial eligibility

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recommendation. The data and analysis are presented in Appendix B – Cultural Resource Identification and Consultation Efforts; and

WHEREAS, the NRC made initial determinations of eligibility for the National Register of Historic Places (NRHP) found within the APE and is seeking concurrence from the SD SHPO on these findings as discussed in Appendix B; and,

WHEREAS, additional investigations may be required to fully evaluate the eligibility of potential historic properties located within the Project's APE; and

WHEREAS, additional investigations may be required to identify historic properties that could be affected by future utility line construction related to development of the Project.

WHEREAS, the NRC determined a phased process for compliance with Section 106 of the NHPA is appropriate for the Undertaking, as specifically permitted under 36 CFR 800.4(b)(2), such that completion of the evaluation of historic properties, determinations of effect on historic properties, and consultation concerning measures to avoid, minimize, or mitigate any adverse effects will be carried out in phases, as set forth in this Programmatic Agreement (PA); and

WHEREAS, the NRC acknowledges that Tribes possess special expertise in assessing the eligibility of historic properties that may possess religious and cultural significance to tribes in accordance with 36 CFR 800.4(c)(1); and

WHEREAS, the applicable requirements of the NHPA, the American Indian Religious Freedom Act, 42 U.S.C. 1996 *et. seq.* (AIRFA), and the Native American Graves Protection and Repatriation Act, 25 U.S.C. 3001 *et. seq.* and 43 CFR 10 (NAGPRA), have been considered in the development of this Agreement, and this Agreement does not waive the responsibilities of the Signatories under these regulations; and,

WHEREAS, the NRC, as lead Federal agency, in conjunction with the BLM (as a cooperating agency), prepared a Supplemental Environmental Impact Statement (SEIS) in accordance with the requirements of the National Environmental Policy Act (NEPA) to evaluate the potential impacts of the Undertaking on a variety of human and natural resources; and

WHEREAS, the SEIS will include an analysis of potential impacts to historic and cultural resources taking into account requirements set forth in Section 106 of the National Historic Preservation Act (NHPA), 16 U.S.C. §§ 470 *et. Seq.*; and

WHEREAS, the NRC invited the Cheyenne and Arapaho Tribes of Oklahoma, the Cheyenne River Sioux Tribe, the Crow Nation, the Crow Creek Sioux Tribe, the Eastern Shoshone Tribe, the Flandreau Santee Sioux Tribe, the Fort Peck Assiniboiné and Sioux Tribes, the Lower Brule Sioux Tribe, the Lower Sioux Indian Community, the Northern Arapaho Tribe, the Northern Cheyenne Tribe, the Oglala Sioux Tribe, the Omaha Tribe of Nebraska, the Pawnee Nation of Oklahoma, the Ponca Tribe of Nebraska, the Rosebud Sioux Tribe, the Santee Sioux Tribe of Nebraska, the Sisseton-Wahpeton Oyate, the Spirit Lake Sioux Tribe, the Standing Rock Sioux Tribe, the Three Affiliated Tribes (Mandan, Hidatsa & Arikara Nations), the Turtle Mountain Band of Chippewa Indians, and the Yankton Sioux Tribe (collectively referred to as tribes) to participate in the development of this PA as a concurring parties; and

WHEREAS, the following Tribes participated in the preparation of this PA: [REDACTED] and are, therefore, considered Concurring Parties for the purposes of this PA; and

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WHEREAS, the BLM, as a cooperating agency, participated in consultation and was invited by the NRC pursuant to 36 CFR § 800.6(c)(2) to sign this Programmatic Agreement (PA) as an invited signatory; and

WHEREAS, the Environmental Protection Agency (EPA), participated in consultation and has asked to join the PA discussion; and (EPA to provide language for this WHEREAS Clause)

WHEREAS, the SD SHPO is authorized to enter into this PA in order to fulfill its role of advising and assisting federal agencies in carrying out their Section 106 of the NHPA responsibilities pursuant to 36 CFR §§ 800.2(c)(1)(i) and is a required signatories; and

WHEREAS, the PA will be entered as a condition on the NRC license, if granted; and

WHEREAS, the PA will be entered as a condition of Powertech Inc's Plan of Operations, if approved by the BLM; and

WHEREAS, pursuant to 36 CFR Section 800.13, the NRC, with concurrences of the SHPO and the ACHP, developed procedures in this PA that ensure the identification and evaluation of historic properties, assessment of effects, consideration of avoidance alternatives, and development of treatment and mitigation plans for unforeseen effects to previously identified historic properties and/or historic properties discovered during implementation of the undertaking are properly coordinated; and,

NOW, THEREFORE, the NRC and other signatories to this PA, agree that that the Undertaking will be implemented in accordance with the following stipulations in order to take into account the effect of the Undertaking on historic properties.

STIPULATIONS:

- 1) The NRC shall ensure that a license will not be granted to Powertech until all required signatories have executed this PA. Upon receipt of a fully executed PA, the NRC will issue the license.
- 2) The BLM will insure that a Record of Decision on an acceptable Plan of Operations (POO) will not be signed until this PA has been executed by all required signatories).
- 3) The NRC shall include as a condition of any license issued to Powertech, the requirement that Powertech comply with all stipulations and provisions in this PA.
- 4) **Future Identification Surveys:**
 - a) Powertech will notify the NRC when additional surveys or studies are required on lands outside the license boundary that may be affected by the installation of electrical transmission lines necessary to provide power to the project area, X months prior to commencing work. Powertech will provide the NRC with a draft APE, proposed investigation methods, and proposed reporting requirements for the survey(s).

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- b) The NRC will notify signatories and concurring parties when additional surveys or studies are needed and provide all parties an opportunity to comment on the definition of the APE, investigation methods, and reporting requirements.
- c) Powertech will sponsor any required surveys to make NRHP eligibility determinations and assess effects.
- d) The NRC will consult with interested tribes to identify and evaluate places of religious and cultural significance to tribes.
- e) Powertech will offer to provide funding to tribal representatives for the purpose of completing identification of properties of religious and cultural significance to them.
- f) The NRC will submit survey reports and other identification and evaluation studies to the BLM, SHPO, and Tribes and will request their review and comments to be completed within 45 days.
- g) The NRC may request revisions to reports or additional investigations, as appropriate, based on comments made by BLM, SHPO and Tribes. The NRC will provide revised documents to federal agencies, SHPO, and Tribes. A second review period with comments to be completed within 30 days may be requested, if necessary.
- h) If no historic properties are identified, then no further work will be required.
- i) The NRC will submit final reports with determinations of eligibility and effect to SD SHPOs for review and concurrence to be completed within 30 days.
- j) If the surveys identify NRHP-eligible site(s), then avoidance will be the preferred option. If avoidance is not possible and an adverse effect will result, Powertech will develop a mitigation plan in accordance with stipulation 7 and provide it to the NRC for review and consultation with other consulting parties. This mitigation plan will include a section evaluating design modifications for minimizing effects to historic properties.
- k) Objections regarding the NRC determinations of eligibility or effect will be addressed in accordance with the appropriate 36 CFR Part 800 regulations.

5) Unevaluated Properties:

- a) All unevaluated properties will be treated as if they have been found to be eligible for the National Register of Historic Places (NRHP) and will be protected in place by Powertech until an eligibility determination is fully evaluated, in accordance with 36 CFR Part 60.4 (the criteria for NRHP listing).
- b) In the event changes in the design or operation of the project, including the changing of the wellfield configurations, have the potential to affect unevaluated properties, Powertech will sponsor necessary supplemental research and/or field investigations to gather information necessary for the NRC, BLM, consulting tribes, and SD SHPO staff to evaluate the NRHP eligibility of the affected properties, prior to commencing any ground disturbance activities.
- c) The NRC will notify signatories and concurring parties when additional surveys or studies are needed and will provide all parties an opportunity to comment on the definition of the APE, investigation methods, and reporting requirements.

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- d) The NRC will submit survey reports and evaluations to BLM, SHPO, and Tribes and will request their review and comments to be completed within 45 days.
- e) The NRC may request revisions to the reports or additional investigations, as appropriate, based on comments received from BLM, SHPO, and Tribes. The NRC will provide revisions to BLM, SHPO, and Tribes and will request a second review with comments to be completed within 30 days, as necessary.
- f) The NRC will submit final reports with determinations of eligibility and effect to SD SHPO for review and concurrence to be completed within 30 days.
- g) If the surveys identify NRHP-eligible site(s), then avoidance will be the preferred option. If avoidance is not possible and an adverse effect will result, Powertech will develop a mitigation plan in accordance with stipulation 7 and provide the plan to the NRC for review and consultation with other consulting parties. This mitigation plan will include a section evaluating design modifications for minimizing effects to historic properties.
- h) Objections regarding NRC determinations of eligibility or effect will be addressed in accordance with the appropriate 36 CFR Part 800 regulations.

6) Assessing Effects:

- a) Based on the results of the Class III archeological surveys and Tribal surveys, a number of historic properties (including archeological sites, historic structures, and properties of religious and cultural significances) have been found within the areas of land disturbance and an effects determination has been made by the NRC and is presented in Appendix B).
- b) The NRC conducted a line-of-sight analysis to assess the potential for adverse visual effects on all known historic properties located within 3 miles of the tallest buildings on both the Dewey and Burdock facilities.
- c) The NRC will assess adverse effects the Dewey-Burdock project will have on these historic properties, in accordance with 36 CFR 800.5. If adverse effects are found, the NRC will consult with signatories and concurring parties to develop proposals to resolve these effects in accordance with 36 CFR 800.6 and Stipulation 7.

7) Resolution of Adverse Effects:

- a) Powertech will draft written mitigation plans, which identify measures to avoid, minimize, or mitigate adverse effects to historic properties, in accordance with 36 CFR 800.6. Draft treatment plans will be submitted for NRC review and approval.
- b) The NRC will review and approve draft mitigation plans developed by the Powertech for each affected historic property in consultation with all signatories and concurring parties. A meeting or teleconference may be held to develop and review alternative measures to avoid, minimize, or mitigate adverse effects to individual properties or groups of related properties.
- c) The NRC will submit draft mitigation plans to all signatories and concurring parties for review and comment to be completed within 45 days.

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- d) The NRC may revise draft mitigation plans as appropriate based on comments received from the consulting parties. The NRC will forward revisions to draft treatment plans with a request for a second review by signatories and concurring parties to be completed within 30 days.
- e) The NRC shall direct Powertech to implement the mitigating plan once the SHPO concurs with the plan.
- f) If, after consultation, NRC and the SHPO cannot agree on appropriate terms for the mitigation plan, NRC will refer the matter to the ACHP pursuant to Stipulation 14 (Dispute Resolution).

8) Coordination with Other Federal Reviews:

In the event that the [applicant] or other agency applies for additional federal funding or approvals for the [undertaking] and the undertaking remains unchanged, such funding or approving agency may comply with Section 106 by agreeing in writing to the terms of this PA and notifying and consulting with SHPO and ACHP. Any necessary modifications will be considered in accordance with Stipulation 16 (amendments).

9) Confidentiality:

- a) All signatories and concurring parties shall restrict disclosure of information concerning the location of historic properties, including properties of religious and cultural significance to tribes, to the fullest extent permitted by law in conformance with Section 304 of the NHPA, South Dakota Codified Laws (SDCL), § 1-20-21.2, Section 9 of the ARPA, and Executive Order on Indian Sacred Sites 13007 (61 FR 26771; May 29, 1996). (Tribes to provide input for this stipulation, if needed).

10) Unanticipated Discoveries:

If previously unknown historic properties or cultural resources are discovered during the implementation of the Dewey-Burdock project, all ground disturbance activities shall halt within 200 ft of the area of discovery to avoid or minimize impact until the discovery is properly evaluated by qualified personnel. The following steps should be followed:

- a) All ground disturbance activity within 200 ft of the discovered artifact should cease until the site is properly evaluated.
- b) Powertech will notify the NRC, the BLM (if the site is on BLM land), and the SD SHPO of the discovery within 48 hours.
- c) Powertech will have the discovered material evaluated for NRHP eligibility by a professional who meets the Secretary of Interior's Standard for Archaeology and applicable SD state laws. Powertech will provide results of evaluation and initial eligibility recommendation for NRC's review and consideration promptly.
- d) If the NRC determines there are adverse impacts to the historic or cultural property(ies) identified, the NRC will follow steps in stipulation 7, Resolution of Adverse Effect assessment.
- e) Human remains identified during ground disturbance activities will be evaluated in accordance with Stipulation 11.

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- f) Work may continue in other areas of the site; however, ground disturbance activities will not resume in the area of discovery unless the NRC and/or BLM has issued a written notice to proceed.

11) Human Remains:

- a) The NRC, BLM, and Powertech recognize that human remains, funerary objects, sacred objects, and items of cultural patrimony encountered during ground disturbance activities should be treated with dignity and respect.
- b) Native American human remains, funerary objects, sacred objects, or items of cultural patrimony found on BLM land will be handled according to Section 3 of the Native American Graves Protection and Repatriation Act (NAGPRA) and its implementing regulations (43 CFR PART 10). BLM will be responsible for compliance with the provisions of NAGPRA on Federal land.
- c) Native American human remains, funerary objects, sacred objects, or items of cultural patrimony found on state or private land will be handled in accordance with applicable law as described in Appendix D– Treatment of Human Remains. Non-Native American human remains found on federal, state, or private land will also be treated in accordance with applicable state law.

12) Disposition of Archaeological Collections:

- a) BLM will curate any artifacts, materials or records resulting from archaeological identification and mitigation conducted on BLM land under its jurisdiction, in accordance with 36 CFR Part 79, "*Curation of Federally-Owned and Administered Archaeological Collections.*" BLM will consult with Indian tribes as required in 36 CFR 79.
- b) Powertech shall ensure that all records and materials (collections) produced during the course of archaeological surveys and/or excavation on federal lands are curated at a facility, preferably in-state, that meets the standards of, and in accordance with the applicable provisions of 36 CFR Part 79, "Curation of Federally Owned and Administered Archaeological Collections," and applicable State law and guidelines.
- c) Where surveys are conducted on private land, any recovered collections remain the property of the land owner. Powertech will return the collections to landowners with the assistance of the SHPO. Powerech will encourage land owners to donate the collection(s) to an appropriate public or Tribal entity, in coordination with the NRC, SHPO, and/or participating Tribes Where a property owner declines to accept responsibility for the collection(s) and agrees to transfer ownership of the collection(s) to a public or Tribal entity, Powertech will ensure curation of the collection(s) in accordance with this Stipulation.

13) Qualifications:

All cultural resource work carried out pursuant to this PA shall be performed by or under the direct supervision of qualified individuals in the appropriate historic preservation discipline meeting, at a minimum, the appropriate standards set forth in 36 CFR 61.

In recognition of the special expertise tribal experts have concerning properties of religious and cultural significance, the standards of 36 CFR 61 will not be applicable to consulting tribes.

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14) Monitoring Plan:

NRC affirms that avoidance of adverse effects to historic properties remains the preferred course of action. To avoid, minimize, or mitigate adverse effects to historic properties, project activities may be changed, as long as any redesign is in compliance with the NRC license and its conditions and the BLM POO conditions.

- a) Powertech will ensure employees and/or contractors involved in all phases of the undertaking are aware of and comply with the requirements of the PA. Compliance with this PA is a condition on the NRC license and a condition of the BLM POO.
- b) Powertech will develop a Monitoring Program specific to this project that requires the engagement of a Monitor with specific responsibilities to coordinate the requirements of this agreement during project construction.
 - i) The Monitor will meet the professional qualifications outlined in Stipulation 13. Preference for the involvement of tribal enterprises in conducting a monitoring plan is encouraged where sites with religious and cultural significance to the tribes might be encountered.
 - ii) The Monitor will cooperate with Powertech, its contractors, the NRC, BLM, SHPO and the Tribes during the construction phases of the Project.
 - iii) Once a Monitoring Program is completed, Powertech should distribute the monitoring report to all consulting parties for a 30-day review and concurrence.
 - iv) The Monitoring Plan will be effective 10 days after the review period unless a revision to the plan is warranted.
- c) Powertech will provide periodic updates to all consulting parties on the status of the monitoring plan as specified in Appendix C.

15) Dispute Resolution:

Should any signatory to this PA object in writing within 30 days to any actions proposed or the manner in which terms of this PA are implemented, the NRC shall consult with such party to resolve an objection. When the NRC determines an objection cannot be resolved, the NRC will forward all documentation relevant to the dispute, including the NRC's proposed resolution, to the ACHP.

- a) Within thirty (30) days after receipt of all pertinent documentation, the ACHP shall exercise one of the following options: Advise the NRC the ACHP concurs in the NRC proposed final decision, whereupon the NRC shall respond accordingly;
- b) Provide the NRC with recommendations, which the NRC will consider in reaching a final decision on the objection; or

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- c) Notify the NRC the objection will be referred to the ACHP membership for formal comment and refer the objection to the ACHP membership for comment within thirty (30) days. The NRC will consider comments in accordance with 36 CFR §800.7(c)(4).
- d) Should the ACHP not exercise one of the above options within thirty (30) days after receipt of all pertinent documentation, the NRC may assume the ACHP concurs in its proposed response.

Prior to making a final decision on the dispute, the NRC will prepare a written response that addresses timely comments from signatories and concurring parties to the PA. The NRC will provide signatories, concurring parties, and the ACHP with a copy of its written response. The NRC may implement its final decision.

The NRC will consider recommendations and comments made by the ACHP that are related to the objection. NRC responsibilities under this Agreement, which are not the subject of the objection, shall remain unchanged.

16) Amendment:

A signatory to this agreement may request it be amended, whereupon the signatory parties will consult to reach a consensus on the proposed amendment. Concurring parties will be provided an opportunity to consult and comment on the proposed amendment. An amendment will be effective on the date the amended PA is signed by all of the signatories to this PA. The amendment shall be appended to the PA as an Appendix. If the signatories cannot agree to appropriate terms to amend the PA, any one of these parties unilaterally may terminate the agreement in accordance with Stipulation 17 below.

17) Termination:

- a) Any signatory to this PA may initiate termination by providing written notice to the signatories and concurring parties of their intent. After notification by the initiating signatory, the remaining signatories and concurring parties shall have thirty (30) days to seek agreement on an amendment or other actions and avoid termination. If such consultation fails, the termination will go into effect at the end of the thirty (30) days, unless all the signatories agree to a longer period.
- b) In the event of termination, the NRC will comply with any applicable requirements of 36 CFR §§ 800.4 through 800.7 for the undertaking covered by this PA.

18) Duration:

Implementation of the stipulations in this agreement must begin within five (5) years from the date of its execution. During that time, the NRC may consult with the signatories and concurring parties to amend the agreement in accordance with Stipulation 16. The agreement will be in place until the termination of the license.

19) Anti-Deficiency Act:

The stipulations of this Agreement are subject to the provisions of the Anti-Deficiency Act (31 U.S.C. §1341). If compliance with the Anti-Deficiency Act alters or impairs the ability of the NRC to implement this Agreement, the NRC will consult in accordance with the amendment and termination procedures in this Agreement.

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Execution of this PA by the NRC, BLM, SHPO, ACHP, and Powertech and the implementation of its terms is evidence the NRC and BLM have taken into account the effects of this undertaking on historic properties and afforded the ACHP an opportunity to comment.

Signatories:

United States Nuclear Regulatory Commission

By: _____ Date: _____

Title: Larry W. Camper, Director

Division of Waste Management and Environmental Protection

United States Bureau of Land Management

By: _____ Date: _____

Title: _____

Advisory Council on Historic Preservation

By: _____ Date: _____

Title: John Fowler, Executive Director

South Dakota State Historic Preservation Office

By: _____ Date: _____

Title: Paige Olsen, State Historic Preservation Officer

South Dakota Attorney General's Office Approval as to Form:

By: _____ Date: _____

Title: _____

Invited Signatories:

Powertech USA, Inc.

By: _____ Date: _____

Title: _____

Concurring Parties:

Participating Tribes