

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	)	
Facility)	)	November 7, 2014

**OGLALA SIOUX TRIBE UNOPPOSED MOTION TO ADMIT ADDITIONAL EXHIBITS**

Intervenor Oglala Sioux Tribe (“Tribe”) submits this Motion to Admit Additional Exhibits. Pursuant to 10 C.F.R. § 2.323(b), counsel for the Tribe has conferred with counsel for all parties and no party opposes the admission of the two exhibits into evidence.

The exhibits include two documents disclosed for the first time in the applicant Powertech (USA) Inc.’s (“Powertech”) November 2014 monthly disclosures. Specifically, the Tribe seeks to admit as relevant evidence: 1) an October 10, 2014 email letter from the U.S. Fish and Wildlife Service to Powertech requesting additional information related to Powertech’s January 10, 2014 bald eagle take application and the status of any avian monitoring and mitigation plans (OST-027); and, 2) an October 7, 2014 letter from Powertech to the South Dakota State Historical Society providing an update on the status of the Dewey-Burdock Project, including an update on the federal permitting processes for the mine proposal (OST-028).

The Tribe respectfully submits that exhibits OST-027 and OST-028 satisfy the 10 C.F.R. § 2.336 standard for the admissibility of evidence in this hearing. In relevant part, the rule provides:

- (a) Admissibility. Only relevant, material, and reliable evidence which is not unduly repetitious will be admitted. Immaterial or irrelevant parts of an admissible document will be segregated and excluded so far as is practicable.

Although the motion to admit these two exhibits is unopposed, as a proffer of relevance, the Tribe submits that the U.S. Fish and Wildlife Service email/letter is relevant to Contention 6 in that it discusses the lack of completeness of the application, including the avian monitoring and mitigation plan associated with the Take application. OST-027 at 1 (“We have conducted a thorough review of Powertech’s [application], and determined that we are in need of additional information.”). Specifically, the Fish and Wildlife Service identifies a lack of identification of location of infrastructure and an avian monitoring and mitigation plan that has not been completed. The email letter inquires about opportunities for Fish and Wildlife Service to provide input and confirms that the take application filed in January 2014 does not provided adequate information about the nature of the foraging and nesting activity of the bald eagle activity in the project area.

Further, the letter email also adds evidence relevant to the claim that NRC Staff violated the standards set out in admitted Contention 9, including deferring analysis of the avian impacts and mitigation measures to another agency (the Fish and Wildlife Service in this instance), as well as the NRC requirement that “[t]o the fullest extent practicable, environmental impact statements will be prepared concurrently or integrated with environmental impacts analyses and related surveys and studies required by other Federal law.” 10 C.F.R. § 51.70(a).

The proposed mitigation discussed in the email letter, including the avian monitoring and mitigation plan, involves the avian impacts and mitigation measures that the Tribe asserted was lacking and inadequately described and analyzed in the FSEIS. As a result, because this email letter discusses the plan and identifies gaps and inadequacies, including inadequacies in the description of the mitigation measures proposed by Powertech, it is relevant, material, and reliable so as to warrant admission in this proceeding.

The letter from Powertech to the State of South Dakota is relevant to Contentions 1A, 1B and 6. For instance, the letter bears on the Tribe's contention that cultural resource impacts were not adequately reviewed in the FSEIS, and in fact, the mitigation has yet to be developed despite the issuance of a Final EIS (Contention 1A). OST-028 at 2 ("The PA specifically calls for a treatment plan for all archaeological and tribal sites that may be impacted by the project. The treatment plan is currently being developed by the consulting parties."). The letter is also relevant to the Tribe's contention that consultation under the National Historic Preservation Act (NHPA) was inadequate (Contention 1B), and that the Programmatic Agreement is not sufficient and does not close the consultation process. OST-028 at 1 ("The execution of the PA completes the Section 106 process."). Lastly, the letter is relevant to the Tribe's contention that cultural resource mitigation practices have yet to be developed, and thus could not have been adequately described, reviewed, and analyzed as required by the National Environmental Policy Act (NEPA) (Contention 6).

Based on the forgoing, the Tribe respectfully submits that both documents are reliable, material, and relevant to Contentions 1A, 1B, 6 and 9, and are therefore admissible pursuant to 10 C.F.R. § 2.336(a).

/s/ Jeffrey C. Parsons

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Attorneys for Oglala Sioux Tribe

Dated at Lyons, Colorado  
this 7<sup>h</sup> day of November, 2014

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Motion to Admit Additional Exhibits in the captioned proceeding were served via the Electronic Information Exchange (“EIE”) on the 7<sup>th</sup> day of November, 2014, which to the best of my knowledge resulted in transmittal of same to those on the EIE Service List for the captioned proceeding.

/s/ signed electronically by \_\_\_\_\_

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