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

MOTION FOR LEAVE TO FILE NEW OR AMENDED CONTENTION ON BEHALF OF THE OGLALA SIOUX TRIBE

I. INTRODUCTION AND SPECIFIC STATEMENT OF LAW AND FACT

Pursuant to 10 C.F.R. § 2.309(c), Intervenor Oglala Sioux Tribe (Tribe) hereby submits this Motion for Leave to File New or Amended Contention. Pursuant to 10 C.F.R. § 2.309(c)(2)(ii), section 2.323 does not apply to this Motion, and as such the requirements for conferral do not apply. Further, as this Board has previously determined that the Tribe has standing in this proceeding,[1] pursuant to 10 C.F.R. § 2.309(c)(4), the Tribe is not required to address issues related to standing in this filing. Under the applicable rules, as restated in several Board Orders, the Tribe must demonstrate that the any new or amended contention meet both the requirements of 10 C.F.R. §§ 2.309(c)(1) and (f)(1). As discussed herein, the Tribe's proposed new or amended contention meets each of these requirements.

In this case, the Tribe seeks to admit two new contentions pertaining to: 1) the NRC Staff's recent testimony related to its review of the new Powertech borehole data disclosed pursuant to the Board's September 8, 2014 Post-Hearing Order; and, 2) the recently released

[1] See August 5, 2010 Memorandum and Order (Ruling on Petitions to Intervene and Requests for Hearing), LBP-10-16 at 25.

documents from the U.S. Environmental Protection Agency ("EPA") under its Comprehensive Environmental Remediation Compensation and Liability Act ("CERLCA") authority which present significant new information regarding soil, surface water, ground water, and local water well contamination at the Dewey-Burdock site and plans for EPA to conduct a remediation action at the site.

The first proposed contention involves the NRC Staff's review of the newly disclosed Powertech bore hole data. The Tribe asserts that the National Environmental Policy Act ("NEPA"), 42 U.S.C. §§ 4321, et seq., and implementing regulations of the Council on Environmental Quality and the U.S. NRC, require that these analyses and impacts be disclosed, reviewed, and analyzed within the context of the public NRC NEPA process. NRC Staff examined the borehole data outside the NEPA process. Further, NEPA requires a "hard look" at the environmental impacts. By conducting only a random "spot check" of the voluminous raw data, the agency failed to perform the required "hard look." The agency employed no acceptable scientific methodology in conducting its review. Lastly, where neither Powertech nor NRC Staff have produced any reports documenting a comprehensive review of the bore hole logs, the agency has failed to review all relevant information and present it in a manner that informs the decisionmakers and involves the public and other agencies, as required by NEPA and the federal Administrative Procedure Act.

The second proposed contention involves recently published EPA documents pertaining to its investigation of the site under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). The reports demonstrate EPA analysis, findings and conclusions that were not reviewed or analyzed in the FSEIS or any other public NEPA forum. Specifically, the EPA found that radiological and other contamination associated with the unreclaimed mines

on the Dewey-Burdock property are not just impacting the soil and surface waters at the site, but are also leaking into and through the groundwater so as to contaminate ground water wells at the site. EPA also concluded that the ongoing and uncontrolled contamination sources have the potential to impact additional ground water wells at the site. These are issues that should have been, but were not, disclosed and analyzed in an FSEIS, with EPA as a cooperating agency due to its jurisdiction and special expertise regarding uranium mines. Further, EPA states that it has determined that a CERCLA remediation action is recommended for the site and will proceed. This is thus a reasonably foreseeable future action that must be incorporated into the NRC Staff's FSEIS as a cumulative impact and action, but was not. The failure of NRC Staff to include analysis of these components of the EPA Preliminary Assessment in a NEPA document violates NEPA, and CEQ and NRC implementing regulations.

As set forth below, both of these contentions meet all of the criteria for admission in these proceedings. As such, the Tribe seeks to admit these new contentions in accordance with NRC regulations.

II. The Requirements of 10 C.F.R. § 2.309(c)(4) Are Met in This Case.

Pursuant to 10 C.F.R. § 2.309(c)(4), because the Tribe seeks to admit a new or amended contention after the deadline specified in the original Federal Register notice of agency action, it must demonstrate good cause by showing that:

> (i) the information upon which the filing is based was not previously available;
> (ii) the information upon which the filing is based is materially different from information previously available; and
> (iii) the filing has been submitted in a timely fashion based on the availability of the subsequent information.

In this case, the good cause test is satisfied for the Tribe's proposed contention related to the NRC Staff's analysis of the newly-disclosed bore hole data. The testimony submitted to this

Board on October 14, 2014 by NRC Staff describes and details the nature and extent of its review of the newly-disclosed Powertech bore hole data. The proffer was the first time NRC Staff had revealed that its analysis relied on a random "spot check" of raw data contained in thousands of bore hole logs that were not analyzed or otherwise presented via comprehensive maps, models, or other accepted methods of communicating the raw data found in bore hole logs. Further, the information in NRC Staff's testimony is materially different from information available previously, as it reviews and analyzes an entirely new set of data not previously available and relies on a novel scientific methodology ("spot check"). Lastly, this Motion is filed within the thirty (30) day deadline from the disclosure of the information, rendering it timely.[2]

The Tribe's proposed contention with respect to the EPA documents also satisfies the elements of 10 C.F.R. § 2.309(c)(4). The EPA documents were not previously available to any party or member of the public. Further, while NRC Staff and Powertech will no doubt point out that the data relied upon by the EPA was the same as contained in the FSEIS, the EPA documents contain materially different analysis and conclusions based on the agency's application of its special expertise to information previously available. Notably, although contamination at unclaimed uranium mines is within EPA's CERCLA jurisdiction and outside of NRC's jurisdiction and special expertise, NRC did not invite EPA to provide its expert analysis of the mine contamination within the project area as part of the NRC-led NEPA process.

[2] See November 2, 2010 Order (Supplementing Initial Scheduling Order), at 5 ("the Board directs that a new or amended contention shall be deemed timely under 10 C.F.R. § 2.309(f)(2)(iii) if filed within thirty (30) days from the time that a party receives notice of the availability of the new and material information on which it is based.").

EPA's analysis, based on its jurisdiction and experience with uranium mine contamination, documents for the first time the causation link not just between the unreclaimed surface mines and surface water contamination, but also ground water contamination. NRC Staff testimony submitted on October 24, 2014 (Ex. NRC-174) alleges that the FSEIS reviewed the impacts caused by the unreclaimed mines on surface water and wetlands (Ex. NRC-174 at 6-7), but the EPA documents now establish a causal link to the contamination of ground water and nearby ground water wells. Ex. OST-026 at 30. This new finding is materially different from the analysis contained in the FSEIS, which referenced only causation with respect to surface waters and wetlands.

This issue is especially important given the ongoing controversy related to connectivity and containment associated with the hydrogeology and aquifers at the site. Based on its expertise gained from CERCLA clean-up of other uranium mines, EPA concludes that additional data and sample collection for soils and surface waters is needed beyond what NRC Staff required. EPA states further that this data collection is necessary to better characterize and define source areas at the unclaimed uranium mines. Ex. OST-026 at 30. Importantly, these are the "source areas" for the "observed release to groundwater" that "has occurred at the site." *Id*. Thus, the fact that the proposed new sampling includes only soil and surface waters does not disconnect this issue from the "observed" ground water contamination.

Further, EPA's analysis reveals for the first time that "[s]ome significant data gaps exist within the information reported." Ex. OST-026 at 29. Based on special expertise and jurisdiction over uranium mines that NRC Staff lacks, EPA analysis reveals for the first time that while "[g]roundwater samples were collected within the area of the Site from various wells; however, lack of ground water sampling data from near and upgradient of the Site limited

availability of reliable background concentrations." *Id*. Also, EPA points out that although soil samples were collected at the site by Powertech, "of the 25 samples collected, only three were analyzed for additional radionuclides including uranium, Pb-210, and Th-230 – the other known contaminants on site." *Id.*

Lastly, the EPA documents represent the first time that EPA has issued a finding that a removal action is warranted to address radium-226 contamination in mine waste piles at the site. This finding represents the first revelation by the agency with jurisdiction and relevant expertise that a CERCLA removal action is a reasonably foreseeable future action at the site, which under NEPA is required to be included in the FSEIS analysis. The FSEIS makes no mention of any CERCLA removal action as a reasonably foreseeable future action. Thus, this is new material information not previously available.

With respect to timeliness, as has been described in other filings, the Tribe came into possession of the Preliminary Analysis for the first time on October 14, 2014. As such, this Motion is filed within the thirty (30) day deadline from the disclosure of the information, rendering it timely.[3]

III. The Requirements of 10 C.F.R. § 2.309(f)(1) Are Met in This Case.

A. New Contention 1: The NRC Staff's Review of Newly-Disclosed Borehole Data was Inadequate Under, and Failed to Comply with, the National Environmental Policy Act and Implementing Regulations.

The National Environmental Policy Act ("NEPA"), 42 U.S.C. §§ 4321, et seq. and implementing regulations of the Council on Environmental Quality and the U.S. NRC, require

[3] See November 2, 2010 Order (Supplementing Initial Scheduling Order), at 5 ("the Board directs that a new or amended contention shall be deemed timely under 10 C.F.R. § 2.309(f)(2)(iii) if filed within thirty (30) days from the time that a party receives notice of the availability of the new and material information on which it is based.").

that NRC Staff analyses, and the impacts of the proposals they consider for licensing, be disclosed, reviewed, and analyzed within the context of the public NRC NEPA process. In this case, NRC Staff's analyses were not. NEPA requires a "hard look" at the environmental impacts. By conducting only a random "spot check" of the voluminous raw data, the agency failed to perform the required "hard look." The agency employed no acceptable or reasonably described, documented, or sourced scientific methodology in conducting its review. Lastly, by neglecting to review the borehole logs in a comprehensive fashion, the agency has failed to review all relevant information, as required by NEPA and the federal Administrative Procedure Act. This contention is supported by the attached Supplemental Declaration of Dr. Hannan LaGarry.

NRC Staff must disclose and take a "hard look" at the foreseeable environmental consequences of its decision. *Kleppe v. Sierra Club*, 427 U.S. 390, 410 n.21, 96 S. Ct. 2718, 2730 n.21 (1976); 40 C.F.R. § 1502.16. Further, NRC Staff has a duty to use high quality information and accurate scientific analysis, with involvement of the public being critical to the analysis. 40 C.F.R. § 1500.1(b). Under these requirements, "NEPA requires that the public receive the underlying environmental data from which a[n agency] expert derived her opinion." *Idaho Sporting Congress v. Thomas*, 137 F.3d 1146, 1150 (9th Cir. 1998). This coincides with the NEPA mandate that "[a]gencies shall insure the professional integrity, including scientific integrity, of the discussions and analyses in environmental impact statements." 40 C.F.R. § 1502.24 Methodology and scientific accuracy. In addition, NRC Staff must "identify any methodologies used and shall make explicit reference by footnote to the scientific and other sources relied upon for conclusions in the statement." *Id*.

NEPA also forces on NRC Staff the fundamental requirement that information and its analysis be subject to public review. NEPA ensures that federal agencies (1) consider and evaluate all environmental impacts of their decisions, and (2) disclose and provide an opportunity for the public to comment on such environmental impacts. 40 C.F.R. §§ 1501.2, 1502.5; *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 350 (1989).

> NEPA does mandate that an agency "take a 'hard look' at the impacts of a proposed action." *Citizens' Comm. to Save Our Canyons*, 513 F.3d at 1179 (10th Cir. 2008) (quoting *Friends of the Bow v. Thompson*, 124 F.3d 1210, 1213 (10th Cir. 1997)). . . . This examination "must be taken objectively and in good faith, not as an exercise in form over substance, and not as a subterfuge designed to rationalize a decision already made."; *see also* 40 C.F.R. § 1502.2(g) ("Environmental impact statements shall serve as the means of assessing the environmental impact of proposed agency actions, rather than justifying decisions already made."); *id.* § 1502.5.

Wyoming v. U.S. Dep't of Agric., 661 F.3d 1209, 1263-64 (10th Cir. 2011). NEPA ensures that an "agency will not act on incomplete information only to regret its decision after it is too late to correct." *Marsh v. Oregon Natural Res. Council*, 490 U.S. 360, 371 (1990).

Lastly, under long-standing tenets of administrative law, NRC Staff cannot simply ignore volumes of data and proceed in its testimony based on a methodology that is not substantiated. See *Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto Ins. Co.*, 463 U.S. 29, 43 (1983) (agency cannot "fail[] to consider an important aspect of the problem," or "offer[] an explanation for its decision that runs counter to the evidence before the agency."). An agency's decision is "arbitrary and capricious" if it failed to "examine the relevant data and articulate a satisfactory explanation for its action including a 'rational connection between the facts found and the choice made.'" Id.

In this case, NRC Staff has proceeded with a review and analysis of the borehole data without involving the public and without a scientifically valid and sourced methodology. The

attached Supplemental Declaration of Dr. LaGarry supports the Tribe's contention that the NRC Staff failed to apply an acceptable methodology. For instance, Dr. LaGarry opines that "a 'spot check' of borehole logs is not proper where analysis has not been carried out and recorded by GIS/three-dimensional visualization and modeling or similar technique." Supplemental Declaration of Dr. LaGarry at 2. Further, Dr. LaGarry notes that the NRC Staff testimony "makes no mention of the information contained in the drillers' notes. Drillers' notes are an important source of interpretive information, often revealing information not disclosed by sliding logs." *Id.* Similarly, Dr. LaGarry opines that the "spot check" performed by NRC Staff "does not provide a statistically reliable testimony or basis for any conclusions regarding confinement or hydrology." *Id.* Dr. LaGarry's opinions conclude that, in his opinion, "NRC Staff's methodology is fundamentally flawed and the testimony based on the NRC Staff's review cannot be relied upon for any legitimate scientific purpose." *Id.*

A review of NRC Staff's testimony itself supports Dr. LaGarry's opinion that the methodology suffers from serious flaws. For instance, NRC Staff's testimony admits that "it is unknown which of the 3,076 drill hole logs on the CD are the approximately 1,400 logs recently acquired by Powertech." Ex. NRC-158 at 3. See also, at 5 ("As previously explained in A.5, because Powertech has not yet cataloged the drill hole logs on the CD, it is unknown which of the drill hole logs on the CD are the approximately 1,400 that were recently acquired by Powertech and referenced in Exhibit OST-019."). Further, NRC Staff testimony admits that "[t]he locations of the approximately 300 remaining digital drill holes [sic] logs could not be determined…." *Id.* at 4. Further, NRC Staff encountered problems in mapping the holes, stating that "[b]ecause the original locations of the TVA drill holes were recorded and mapped using a local coordinate system that is not associated with currently used coordinate systems or

projections, conversion to South Dakota State Plane coordinates is cumbersome." *Id*. at 7. NRC Staff then concludes that the maps used in the FSEIS and TR are "reasonably accurate" but without indicating what the NRC Staff consider "reasonable" or how they reached this conclusion. *Id*. at 8. Other examples of this same type of vague assumption-making include the use of "some of the recently acquired drill hole logs" (at 9), remarking that the elevations in were "generally consistent" with those previously reported (at 10), that NRC Staff analysis "did not reveal significant displacement or thickness variations" (at 11), and that observed changes in elevation of the Fuson "is likely due to a depositional feature and not due to fault displacement" (at 11). Importantly, all of these conclusions lack any citation to any scientific sources or other support for the methodology as required by NEPA, or explanation of how the NRC Staff determined what factors were considered when concluding its various conclusions were "reasonable," "generally consistent," "significant," or "likely."[4]

As described with the foregoing specific statement of the issues of law and fact, NRC Staff's analysis must comply with NEPA. As further described herein, based on the NEPA regulations and case law cited, the Tribe has demonstrated that the issues raised in this contention are material to compliance with NEPA and the NRC implementing regulations at 10 C.F.R. §§ 51.10, 51.70 and 51.71, which require NEPA-compliant analysis. As such, this contention is within the scope of this proceeding and should be admitted for adjudication.

[4] The Tribe also notes that the NRC Staff testimony includes opinions from two new experts that were not previously noticed in this proceeding and did not participate in the hearing conducted in South Dakota in August 2014. As with this new NRC Staff testimony generally, the result is the deprivation of any ability for the Tribe or the Board to propose or conduct any cross-examination, or otherwise determine the credibility of these witnesses. The Tribe submits that this situation weighs strongly in favor of admission of this contention so that all parties may be afforded their due rights to the standard adjudicatory process.

B. **New Contention 2: The NRC Staff NEPA Analysis Fails to Adequately Address or Review the Findings in the EPA's CERCLA Preliminary Assessment or the EPA's Reasonably Foreseeable CERLCA Removal Action.**

The Tribe contends that the newly-released EPA documents include findings and conclusions that were not reviewed or analyzed in the FSEIS or any other public NEPA forum, in violation of NEPA and NRC implementing regulations. Specifically, the EPA found that sources of radiological contamination associated with the unreclaimed uranium mines on the Dewey-Burdock property are not just impacting the soil and surface waters at the site, but are also leaking into and through the groundwater so as to contaminate ground water wells at the site, and have to potential to impact additional ground water wells at the site. These are issues that should have been, but were not, analyzed in the NRC Staff's NEPA review. Further, the EPA states that it has determined that a CERCLA removal action is recommended for the site and will proceed. This action is thus a reasonably foreseeable future action that must be incorporated into the NRC Staff's NEPA analysis as a cumulative impact and action, but was not. Moreover, EPA has special expertise and jurisdiction over these uranium mines, but was not invited or included as a cooperating agency to assist NRC Staff analysis of a mining issue lying outside NRC's jurisdiction and experience. The failure of NRC Staff to conduct NEPA analysis of these components of the EPA Preliminary Assessment violates NEPA, and CEQ and NRC implementing regulations. This contention is supported by the EPA documents, attached, and also previously submitted in this proceeding as Exhibits OST-025 and OST-026.

As discussed above, NEPA requires a "hard look." To comply with NEPA, the NRC Staff must consider all direct, indirect, and cumulative environmental impacts of the proposed action. 40 CFR § 1502.16; 40 CFR § 1508.8; 40 CFR § 1508.25(c). "Direct effects" are caused by the action and occur at the same time and place as the proposed project. 40 CFR § 1508.8(a).

"Indirect effects" are caused by the action and are later in time or farther removed in distance, but are still reasonably foreseeable. 40 CFR § 1508.8(b). All types of impacts include "effects on natural resources and on the components, structures, and functioning of affected ecosystems," as well as "aesthetic, historic, cultural, economic, social or health [effects]." *Id*. "Cumulative effects" are defined as:

> [T]he impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes such other actions. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time.

40 CFR § 1508.7. In a cumulative impact analysis, an agency must take a "hard look" at all actions.

> [A]nalysis of cumulative impacts must give a sufficiently detailed catalogue of past, present, and future projects, and provide adequate analysis about how these projects, and differences between the projects, are thought to have impacted the environment. … Without such information, neither the courts nor the public ... can be assured that the [agency] provided the hard look that it is required to provide.

Te-Moak Tribe of Western Shoshone v. U.S. Dept. of the Interior, 608 F.3d 592, 603 (9th Cir. 2010) (rejecting EA for mineral operation that had failed to include detailed analysis of impacts from nearby proposed mining operations).

Federal case law is replete with re-statements of this requirement. "The CEQ regulations require agencies to discuss the cumulative impacts of a project as part of the environmental analysis. 40 C.F.R. § 1508.7." *Davis v. Mineta*, 302 F.3d 1104, 1125 (10th Cir. 2002). "Of course, effects must be considered cumulatively, and impacts that are insignificant standing alone continue to require analysis if they are significant when combined with other impacts. 40 C.F.R. §1508.25(a)(2)." *New Mexico ex rel Richardson v. BLM*, 565 F.3d 683, 713, n. 36 (10th

Cir. 2009). See also *Wyoming Outdoor Council v. U.S. Army Corps of Eng'rs*, 351 F. Supp. 2d 1232, 1243 (D. Wyo. 2005) (failure to adequately review all cumulative impacts is arbitrary and capricious and violates NEPA).

A cumulative impact analysis must provide a "useful analysis" that includes a detailed and quantified evaluation of cumulative impacts to allow for informed decision-making and public disclosure. *Kern v. U.S. Bureau of Land Management*, 284 F.3d 1062, 1066 (9th Cir. 2002); *Ocean Advocates v. U.S. Army Corps of Engineers*, 361 F.3d 1108 1118 (9th Cir. 2004). The NEPA requirement to analyze cumulative impacts prevents agencies from undertaking a piecemeal review of environmental impacts. *Earth Island Institute v. U.S. Forest Service*, 351 F.3d 1291, 1306-07 (9th Cir. 2003).

The NEPA obligation to consider cumulative impacts extends to all "past," "present," and "reasonably foreseeable" future actions. *Blue Mountains Biodiversity Project v. Blackwood*, 161 F.3d 1208, 1214-15 (9th Cir. 1998); *Kern v. BLM*, 284 F.3d 1062, 1076 (9th Cir. 2002); *Hall v. Norton*, 266 F.3d 969, 978 (9th Cir. 2001) (finding cumulative analysis on land exchange for one development failed to consider impacts from other developments potentially subject to land exchanges); *Great Basin Mine Watch v. Hankins*, 456 F.3d 955, 971-974 (9th Cir. 2006) (requiring "mine-specific … cumulative data," a "quantified assessment of their [other projects] combined environmental impacts," and "objective quantification of the impacts" from other existing and proposed mining operations in the region). The cumulative impacts analysis must include "reasonably foreseeable future actions," which is a lower threshold than is used to determine whether an agency violates NEPA's segmentation prohibition. *Wilderness Workshop v. U.S. Bureau of Land Mgmt.*, 531 F.3d 1220, 1229 (10th Cir. 2008) quoting *O'Reilly v. U.S. Army Corps of Eng'rs*, 477 F.3d 225, 236 (5th Cir. 2007) (citing 40 C.F.R. § 1508.23)("While a

cumulative impact analysis requires the [reviewing agency] to include 'reasonably foreseeable' future actions in its review, improper segmentation is usually concerned with projects that have reached the proposal stage.").

Additionally, NEPA requires that NRC Staff must disclose and take a "hard look" at the foreseeable environmental consequences of its decision. *Kleppe v. Sierra Club*, 427 U.S. 390, 410 n.21, 96 S. Ct. 2718, 2730 n.21 (1976); 40 C.F.R. § 1502.16. Further, NRC Staff has a duty to use high quality information and accurate scientific analysis, with involvement of the public being critical to the analysis. 40 C.F.R. § 1500.1(b). In order for NRC, as lead agency, to satisfy the statutory public participation and informed decisionmaking purposes, the "hard look" must be carried out with the participation of agencies with special expertise and jurisdiction, which are known as "cooperating agencies." 40 C.F.R. §§ 1501.6, 1508.5 (setting out mandatory duties for the lead agency and cooperating agencies).

With respect to the FSEIS analyses that EPA determined was inadequate in the EPA documents, and the removal action, NRC Staff has not complied with NEPA, nor the implementing regulations at 10 C.F.R. §§ 51.10, 51.70 and 51.71, which require NEPA-compliant analysis prior to any license issuance. As such, these claims are material and within the scope of this proceeding. Nowhere in the existing NEPA analysis has the NRC Staff reviewed or analyzed the reasonably foreseeable CERCLA removal action proposed by EPA. Neither has NRC Staff reviewed or analyzed the "observed release to groundwater" that "has occurred at the site." Ex. OST-026 at 30. In addition, the FSEIS does not account for the "significant data gaps" found in the EPA analysis pertaining to Powertech's information that was relied upon in the FSEIS. *Id*. at 29. The inadequate NEPA analysis can be explained, in part, by NRC Staff's failure to employ federal expertise gained by EPA during several decades of

uranium mine characterization and remediation pursuant to CERCLA. The EPA analysis, conducted outside the NEPA process, confirms that FSEIS did not take the required "hard look" at unclaimed uranium mines within the project area.

As described herein, the Tribe has pled an admissible contention, meeting each of the elements of 10 C.F.R. § 2.309(f)(1), and this contention should be admitted.

III. CONCLUSION

For the foregoing reasons, the Tribe has demonstrated that both contentions pled herein are admissible and the Tribe is entitled to a hearing on these contentions.

Respectfully Submitted,

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Dated at Lyons, Colorado
this 7th day of November, 2014

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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POWERTECH (USA) INC.,	)	Docket No. 40-9075-MLA
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(Dewey-Burdock In Situ Uranium Recovery Facility)	)	
	)	

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Motion to Admit New Contentions in the captioned proceeding were served via the Electronic Information Exchange ("EIE") on the 7th 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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