

**UNITED STATES COURT OF APPEALS****DISTRICT OF COLUMBIA CIRCUIT**333 Constitution Avenue, NW  
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**AGENCY DOCKETING STATEMENT***Administrative Agency Review Proceedings (To be completed by appellant/petitioner)*

1. CASE NO. 17-1059 2. DATE DOCKETED: 02-21-2017
3. CASE NAME (lead parties only) Oglala Sioux Tribe v. Nuclear Regulatory Commission
4. TYPE OF CASE:  Review  Appeal  Enforcement  Complaint  Tax Court
5. IS THIS CASE REQUIRED BY STATUTE TO BE EXPEDITED?  Yes  No  
If YES, cite statute
- 
6. CASE INFORMATION:
- a. Identify agency whose order is to be reviewed: Nuclear Regulatory Commission
- b. Give agency docket or order number(s): 040-9075-MLA
- c. Give date(s) of order(s): CLI-16-20 (12/23/16); License and ROD SUA 1600 (4/8/2014)
- d. Has a request for rehearing or reconsideration been filed at the agency?  Yes  No  
If so, when was it filed? By whom?
- Has the agency acted?  Yes  No If so, when? \_\_\_\_\_
- e. Identify the basis of appellant's/petitioner's claim of standing. See D.C. Cir. Rule 15(c)(2): Petitioner is a sovereign Tribal government, whose interests and that of its members will suffer adverse cultural, environmental, and other impacts from the project. See attached decl. and 4/1/10, 4/14/14.
- f. Are any other cases involving the same underlying agency order pending in this Court or any other?  Yes  No If YES, identify case name(s), docket number(s), and court(s)
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- g. Are any other cases, to counsel's knowledge, pending before the agency, this Court, another Circuit Court, or the Supreme Court which involve *substantially the same issues* as the instant case presents?  Yes  No If YES, give case name(s) and number(s) of these cases and identify court/agency:
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- h. Have the parties attempted to resolve the issues in this case through arbitration, mediation, or any other alternative for dispute resolution?  Yes  No If YES, provide program name and participation dates.
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Signature Date 03-24-2017Name of Counsel for Appellant/Petitioner Jeffrey C. ParsonsAddress P.O. Box 349, Lyons, CO 80540E-Mail wmap@igc.orgPhone ( 303 ) 823-5738 Fax (        )       **ATTACH A CERTIFICATE OF SERVICE**

**Note:** If counsel for any other party believes that the information submitted is inaccurate or incomplete, counsel may so advise the Clerk within 7 calendar days by letter, with copies to all other parties, specifically referring to the challenged statement.

**UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

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OGLALA SIOUX TRIBE,	)	
	)	
Petitioner,	)	No. 17-1059
	)	
v.	)	
	)	
UNITED STATES NUCLEAR	)	
REGULATORY COMMISSION and	)	
UNITED STATES OF AMERICA,	)	
	)	
Respondents.	)	
	)	

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**DECLARATION OF TRINA LONE HILL**

1. My name is Trina Lone Hill. I am the Tribal Historic Preservation Officer (“THPO”) for the Oglala Sioux Tribe of the Pine Ridge Reservation.
2. The Oglala Sioux Tribe is a body politic comprised of approximately 41,000 citizens with territory of over 4,700 square miles in the southwestern portion of South Dakota. The Oglala Sioux Tribe is the freely and democratically-elected government of the Oglala Sioux people, with a governing body duly recognized by the Secretary of Interior. The Oglala Sioux Tribe is the successor in interest to the Oglala Band of the Teton Division of the Sioux Nation, and is a protectorate nation of the United States of America. The Oglala Band reorganized in 1936 as the “Oglala Sioux Tribe of the Pine Ridge Indian Reservation” (“Oglala Sioux Tribe” or “Tribe”) under section 16 of the Indian Reorganization Act of June 18, 1934, ch. 576, 48 Stat. 987, 25 U.S.C. § 476, and enjoys all of the rights and privileges guaranteed under its existing treaties with the United States in accordance with 25 U.S.C. § 478b. Its address is P.O. Box 2070, Pine Ridge, South Dakota 57770-2070.

3. In 1992 the U.S. Congress adopted amendments to the National Historic Preservation Act (P.L. 102-575) that allow federally recognized Indian tribes to take on more formal responsibility for the preservation of significant historic properties on tribal lands. Specifically, Section 101(d)(2) allows tribes to assume any or all of the functions of a State Historic Preservation Officer (“SHPO”) with respect to tribal land.
4. I am familiar with the license application submitted to the Nuclear Regulatory Commission (NRC) by the Canadian company Powertech Uranium Corp., doing business as Powertech (USA) Inc. (“Powertech” or “Applicant”) for the proposed Dewey-Burdock in-situ leach uranium mine in southwest South Dakota.
5. The lands encompassed by the Powertech proposal are within the Oglala Sioux Tribe’s aboriginal lands. As a result, the cultural resources, such as burials, items of cultural patrimony, artifacts, sites, and other material culture, etc., belong to and/or could be associated with the Tribe upon proper identification, documentation, evaluation, and recordation. By enacting NEPA (42 U.S.C. §§ 4231 *et seq.*), NAGPRA, (25 U.S.C. §§ 3001 *et seq.*), NHPA (16 U.S.C.S. §§ 470 *et seq.*) and other statutes, the United States Government has assured that the cultural resources of a tribe will be protected, even when they are not within reservation boundaries. Since there are cultural resources identified in the license application, and there may well be more that only the Tribe can identify and ensure that they are properly protected, the Tribe has a protected interest here. Any harm done to these cultural resources, especially to burials and artifacts, perhaps because the Applicant and NRC Staff did not properly judge the significance of certain artifacts or other resources, will be an irreparable injury to the very identity of the Tribe, caused by the actions of the Applicant, and condoned by the NRC Staff, the Tribe’s trustee.
6. In any case, the discovery of significant cultural resources and prehistoric artifacts in the Tribe’s treaty and aboriginal territory implicates important tribal interests such that the Tribe’s rights are threatened by the Applicant’s proposed construction and mining activity in its aboriginal territory.
7. The Oglala Sioux Tribe has taken, and continues to take, the necessary course of action to participate fully as a party in the NRC proceeding and

in bringing this lawsuit in part in order to safeguard its interests in the protection of cultural, historic, and natural resources, including ground water, at and in the vicinity of the mine site.

8. The Nuclear Regulatory Commission (“NRC”) upheld the Atomic Safety Licensing Board’s (“ASLB”) rulings that NRC Staff failed to comply with the National Environmental Policy Act (NEPA) with respect the Staff’s failure to conduct an adequate survey for, and analysis of impacts to, cultural resources at the proposed mine site and the NRC Staff failed to comply with its government to government consultation duties with the National Historic Preservation Act (NHPA). Despite these acknowledged illegalities, the Commission nevertheless affirmatively confirmed the issuance of the disputed license. The NRC’s action in doing so harms the Tribe’s interests in ensuring the protection of its cultural, historic, and natural resources
9. The Tribe was granted standing in the hearing process before the Nuclear Regulatory Commission over the actively litigated objections of the applicant. NRC Staff did not object to the Tribe’s standing. The ASLB found that the “Oglala Sioux Tribe has shown it has standing to participate in this proceeding....” *In the Matter of Powertech (USA), Inc.* (Dewey-Burdock In-Situ Uranium Recovery Facility), LPB-10-16, 72 NRC 361 (2010), at 3. Specifically, the ASLB found that the substantive injuries to the Tribe resulting from the proposed project as well as the procedural injuries resulting from the lack of compliance with NEPA and the NHPA confer standing on the Tribe. LPB-10-16, at 22-25.
10. During the evidentiary hearings held in August of 2014, Mr. Mesteth and Mr. CatchesEnemy testified in detail as to the ongoing harm to the Tribe’s substantive and procedural interests as a result of the lack of analysis as to the cultural and water impacts associated with the proposed project.
11. Included within the territory the Powertech proposal would impact are current or extinct water resources. Such resources are known to have been favored camping sites of indigenous peoples, both historically and prehistorically, and the likelihood that cultural artifacts and evidence of burial grounds exist in these areas is strong.
12. While the Powertech application includes some evidence of a cultural resource study, no comprehensive study identifying all such

resources has been adequately conducted by either the Applicant or NRC Staff, nor incorporated into the FSEIS. No such study has been conducted by the Tribe. While some other tribes have reviewed the site, these surveys are not sufficient to identify cultural and historic resources significant to the Oglala Sioux Tribe. The FSEIS does not describe any uniform or scientifically-verified methodology employed by these surveys, nor explain any methodology or scientific basis for the selection of certain cultural resources as significant or eligible for listed on the national register of historic places, while others are not granted such status or protections.

13. Powertech's Environmental Report accompanying the license application indicates that personnel from the Archaeology Laboratory at Augustana College ("Augustana"), Sioux Falls, South Dakota, conducted on-the-ground field investigations between April 17 and August 3, 2007. To my knowledge, the Tribe was not involved in this study, and has not made a similar study of the proposed mining area. This study remains the primary basis for the NRC Staff's analysis of cultural resources in its FSEIS. NRC Staff committed in its Draft Supplemental Environmental Impact Statement to conduct additional scientifically-valid cultural resource surveys within the mine project area, and distribute such surveys for public comment as required by NEPA. Despite these express commitments, NRC Staff failed to conduct any such surveys or solicit any additional public comment.
14. As stated in the Powertech Environmental Report, at 3-179, the Augustana study found that "the sheer volume of sites documented in the area [was] noteworthy," and the area proposed for mining was found to have a "high density" of cultural resources. As also recognized in the environmental report, this indicates that use of the area by indigenous populations was, and has been, extensive.
15. The Powertech Environmental Report also states, at 3-178, Augustana documented 161 previously unrecorded archaeological sites and revisited 29 previously recorded sites during the current investigation. Among these were some 200 hearths within 24 separate sites. Significantly, however, twenty-eight previously recorded sites were not relocated during the current investigation.

16. Powertech asserts in its Environmental Report, at page 2-9, Table 2.11-1, that impacts to cultural resources will be “none.” However, the Memorandum of Agreement (with amendments) entered into between Powertech and the Archaeological Research Center (ARC), a program of the South Dakota State Historical Society, reproduced in the Environmental Report at Appendix 4.10-B, specifically recognizes that “Powertech has determined that the Project may have an affect on archaeological or historic sites that contain or are likely to contain information significant to the state or local history or prehistory....”
17. The NRC Staff’s Final Supplemental Environmental Impact Statement (FSEIS) relies heavily on the Augustana study and a “Programmatic Agreement” (PA) developed outside of the NRC Staff’s National Environmental Policy Act (NEPA) review. As a result, the FSEIS defers its analysis of the impacts of the project construction, and development of mitigation plans and protocols to a later time.
18. Significantly, Powertech has not entered into any Memorandum of Agreement with the Tribe. Similarly, the “Programmatic Agreement” was finalized by NRC Staff without agreement, and over the official objections of, the Oglala Sioux Tribe. The NRC Staff has not obtained the Tribe’s participation in the development of any mitigation measures or other stipulations purported to result in the diminishment of impacts to the Tribe’s cultural and historic resources at the site. Nor has Powertech sought to include the Tribe in any of the “Dispute Resolution” procedures through which it purports to remedy disagreements regarding the significance of cultural resources on the site, or the impact of any mining operations on these cultural resources. As a result, NRC Staff and Powertech have failed to adequately include the Tribe in this process, and leaves the Tribe’s cultural resources at significant risk.
19. In February of 2014, then Oglala Sioux President Brian V. Brewer submitted a letter to the NRC setting forth in some detail the significant problems with the NRC Staff’s approach to both compliance with NEPA and the National Historic Preservation Act (NHPA). The issues identified in that letter have not been resolved, and the Tribe believes that significant historic and cultural resources remain at risk from the proposed mine project as a result.

- 20.The Oglala Sioux Tribe submitted declarations in the NRC administrative process in 2010 signed by then-THPO Wilmer Mesteth and Director of the Oglala Sioux Tribal Land Office Denise Mesteth, and in 2014 signed by then-THPO Michael CatchesEnemy. Because no scientifically-defensible site-wide cultural resources study or inventory has been conducted for the project area since the filing of those declarations, the criticisms and critiques of the cultural resources studies conducted with respect to the mine project area remain valid and current.
- 21.The NRC has failed to conduct or provide an adequate review of the environmental impacts associated with the production and disposal of radioactive wastes at the proposed mine site. The lack of such an analysis negatively impacts the Tribe's interests in the protection of the natural environment within its aboriginal lands as well as the Tribe's procedural interests in being able to participate and ensure a complete and adequate environmental review of the impacts from the proposed project.
- 22.Similarly, NRC has failed to conduct or provide an adequate review of the environmental impacts associated with thousands of historic abandoned boreholes at the proposed mine site. The extensive expert testimony submitted during the NRC administrative process demonstrated that these boreholes create hydraulic connections between aquifers below the mine site that could result in contamination of groundwater supplies. The Tribe owns properly in the vicinity of the mine site that may be impacted by any such contamination.
- 23.I have received letters confirming that NRC Staff is still trying to identify cultural resources and still has not obtained the Tribe's participation in the development of any mitigation measures or other plans purported to result in the diminishment of impacts to the Tribe's cultural and historic resources at the site.
- 24.The Oglala Sioux Tribe has a concrete interest in a lawful and complete NEPA process. Using the NEPA process ensures Tribal members are able to engage the cultural resources decisions being made by NRC Staff and work to ensure that cultural and natural resources are protected from desecration and destruction.

25. The FSEIS, Record of Decision, and license were issued before Powertech or NRC Staff completed a Programmatic Agreement (“PA”) to establish the newly segregated cultural resources analysis. The Oglala Sioux Tribe is not a signatory to any PA concerning the Powertech proposal.
26. The NRC’s December 23, 2016 ruling approved the effectiveness of Powertech’s license without first properly surveying for or mitigating impacts on both identified and unidentified cultural resources.
27. Should the license remain active or construction go forward without first completing a proper survey and developing a lawful plan mitigating the impacts to sites and their setting, opportunities to implement mitigation options such as moving facility features and prohibiting disturbance of sensitive areas would be forever lost.
28. As detailed in Mr. Mesteth’s and Mr. CatchesEnemy’s Declarations, the numbers and density of cultural resources at the site proposed for mining demonstrate that any mining activity, including ground-disturbing construction activity, is likely to irreparably adversely impact the cultural resources of the Oglala Sioux Tribe. The failure to meaningfully involve the Tribe in the analysis of these sites, or to conduct any ethnographic studies in concert with a field study designed with credible scientific methodology as part of the NEPA or NHPA processes further exacerbate the impacts on the Tribe’s interests as a procedural matter causing irreparable harm by negatively affecting the Tribe’s ability to protect its cultural resources. If the project were not to go forward as planned, the interests of the Oglala Sioux Tribe would be protected as the potential for impact to the Tribe’s cultural resources would be diminished or outright eliminated.

This Affidavit is submitted in accordance with 28 U.S.C. Section 1746. I declare under penalty of perjury that the foregoing is true and correct.

Executed on March 22, 2017 at Pine Ridge Indian Reservation.



Trina Lone Hill

**CERTIFICATE OF SERVICE**

I, Jeffrey C. Parsons, hereby certify that the foregoing Docketing Statement was served on all counsel of record in case number 17-1059 through the electronic filing system (CM/ECF) of the U.S. Court of Appeals for the District of Columbia Circuit.

/s/ Jeffrey C. Parsons

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