

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

| | | |
|---|---|------------------------------|
| In the Matter of |) | |
| |) | Docket No. 40-9075-MLA |
| POWERTECH (USA) INC., |) | ASLBP No. 10-898-02-MLA-BD01 |
| |) | |
| (Dewey-Burdock In Situ Uranium Recovery |) | August 17, 2018 |
| Facility) |) | |

STATEMENT OF UNDISPUTED MATERIAL FACTS

I. STANDARDS APPLIED TO THE PRESENT MATTER

This matter involves the 2009 Powertech request for the Nuclear Regulatory Commission to issue an operating license and an 11e.(2) Byproduct license necessary to conduct In Situ Leach uranium processing on lands that remain culturally and religiously important to the Oglala Sioux Tribe and other Tribes.

The licensing hearing is subject to Subpart L, which contains a summary disposition provision that incorporates the standards set out in Subpart G. 10 C.F.R § 2.1205(c). Both provisions require “a short and concise statement of material facts for which the moving party contends that there is no genuine issue to be heard.” *Id.* § 2.1205(c). The operative summary disposition rule provision states, in relevant part:

The presiding officer shall render the decision sought if the filings in the proceeding, depositions, answers to interrogatories, and admissions on file, together with the statements of the parties and the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a decision as a matter of law.

10 C.F.R. § 2.710(d)(2). The present statement of undisputed material facts relies on the filings in the proceeding, including previously filed party statements and affidavits, which establish that there is no genuine issue as to any material fact involving Contention 1A. *Id.*

II. STATEMENT OF MATERIAL FACTS

1. The Tribe has concrete and particularized interests that will be impacted by the issuance of the license. *See* Affidavit of Wilmer Mesteth (Apr. 1, 2010), Affidavit of Denise Mesteth (Apr. 1, 2010), Petition to Intervene and Request for Hearing of the Oglala Sioux Tribe (Apr. 6, 2010) (ADAMS Accession No. ML100960645).
2. The impacts to the Tribe's interests are further injured where NRC does not adhere to the required NEPA disclosure and analysis of the effectiveness of mitigation measures that may avoid, reduce, or mitigate impacts to the cultural interests of the Tribe. *See e.g.* Exh. 2 to Oglala Sioux Tribe FSEIS Contentions at 2 (President Bryan V. Brewer, President, Oglala Sioux Tribe).
3. The Board, Commission, and D.C. Circuit have confirmed that the NEPA process used to date by NRC Staff does not meet NEPA's "hard look" mandate. *See* Partial Initial Decision, LBP-15-16, 81 NRC 618 (2015); Memorandum and Order, LBP-17-09 (October 19, 2017); Memorandum and Order, CLI-16-20, 84 NRC 219 (2016); Memorandum and Order, CLI-18-07 (July 24, 2018); *Oglala Sioux Tribe v. NRC, et al.* ____ F.3d. ____ (D.C. Cir., July 20, 2018).
4. NRC Staff has abandoned the March 2018 schedule to develop and implement a scientifically sound cultural resources methodology to inform its NEPA duties.
5. NRC Staff has not prepared any NEPA document since the FSEIS for the Dewey-Burdock proposal was finalized in January 2014, nor any supplement to the FSEIS.
6. NRC Staff has not sought public comment on any NEPA document since January 2013 when NRC Staff sought input on the Draft SEIS for the Dewey-Burdock Project.
7. NRC Staff has not prepared any NEPA document that could provide the "hard look" at cultural resource impacts, alternatives, and mitigation measures required by the Board and Commission rulings.

Respectfully Submitted,

/s/ Jeffrey C. Parsons

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Attorneys for Oglala Sioux Tribe

Dated at Lyons, Colorado
this 17th day of August, 2018

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Statement of Undisputed Material Facts in the captioned proceeding were served via the Electronic Information Exchange (“EIE”) on the 17th day of August 2018, 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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