

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD

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

Hearing Exhibit

Exhibit Number: Exhibit OST-057

Exhibit Title: March 7, 2013 NRC Staff Answer to Oglala Sioux
Tribe Statement of Contentions on Draft SEIS (excerpt)

March 7, 2013

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NRC STAFF'S ANSWER TO CONTENTIONS ON DRAFT SUPPLEMENTAL ENVIRONMENTAL IMPACT STATEMENT

The NRC Staff provides a single answer to the contentions the Consolidated Intervenors and the Oglala Sioux Tribe filed separately on January 25, 2013. The contentions challenge the Draft Supplemental Environmental Impact Statement the Staff prepared for Powertech (USA) Inc.'s proposed Dewey-Burdock facility. The Board should reject these contentions because each one fails to comply with NRC rules applying to new contentions.

Background

I. Powertech's Application

Powertech seeks an NRC license in order to operate the Dewey-Burdock in-situ uranium recovery (ISR) facility in Fall River and Custer Counties, South Dakota. Along with its application for an NRC license, Powertech submitted an Environmental Report addressing its proposed facility's impact on the environment. The Environmental Report, which is required by NRC regulations in 10 C.F.R. Part 51, helps inform the Staff's independent review of a license application and thereby helps the Staff meet the requirements of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. §§ 4321 *et seq.*

02-28, 56 NRC at 385; *Catawba*, CLI-83-19, 17 NRC at 1049.¹² This should not be surprising, because the Staff is currently consulting with numerous Indian tribes to obtain additional information on historic properties that may be affected by the Dewey-Burdock Project. The analysis in the DSEIS is therefore based on archeological survey results Powertech submitted as part of its application, and this information is not new. As the Staff explained when it issued the DSEIS, however, it is working to facilitate a field survey of the Dewey-Burdock site in order to obtain additional information on historic properties.¹³ When the survey is complete, the Staff will supplement its analysis in the DSEIS and circulate the new analysis for public comment. If the Intervenor disagree with the Staff's analysis, they will be able to submit comments or contentions on the supplement. There is, however, no basis for admitting the Intervenor's contentions at this time.

The Consolidated Intervenor further argue that the Staff's consultation with Indian tribes is lacking because the Staff failed to contact several tribes that are likely to have an interest in cultural resources in the Dewey-Burdock area. But this argument does not rest on any new information. In 2010, the Staff sent letters to numerous tribes inviting them to consult under Section 106 of the NHPA.¹⁴ Since then the Staff has regularly sent letters to consulting tribes informing them of the status of the Dewey-Burdock licensing review. These letters are publicly available, and they could have served as the basis for a contention arguing that the Staff overlooked an interested tribe. The Consolidated Intervenor's argument is therefore

¹² For example, at pages 5–6 of their contentions the Consolidated Intervenor challenge the methodology used in the archeological survey that Powertech submitted with its application. This information is not new, however, and the opinion of Dr. Redmond, upon which the Consolidated Intervenor rely, already formed part of the basis for admitted Contention K. *Dewey-Burdock*, LPB-06-16, 72 NRC at 417, 443.

¹³ Notice of Availability of DSEIS (November 15, 2012) (ADAMS Accession No. ML12320A623) at 1–2.

¹⁴ The Staff's first hearing file update (October 2010) shows the tribes to which the Staff sent consultation letters. The Staff's subsequent hearing file updates list other letters sent to consulting tribes.