

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

COMMISSIONERS:

Ho K. Nieh, Chairman
David A. Wright
Bradley R. Crowell
Matthew J. Marzano
Douglas W. Weaver

In the Matter of

POWERTECH (USA) INC.

(Dewey-Burdock In Situ Uranium Recovery
Facility)

Docket No. 40-9075-LR

CLI-26-6

MEMORANDUM AND ORDER

This decision addresses an appeal by Powertech (USA) Inc. (“Powertech”) of the Atomic Safety and Licensing Board’s (“Board”) decision partially granting a petition to intervene and request for a hearing in this license renewal proceeding.¹ For the reasons set forth below, we grant Powertech’s appeal in part.

¹ LBP-25-3, 101 NRC 56 (2025).

I. BACKGROUND

Powertech received its initial 10-year license to conduct in situ uranium recovery (ISR) at the Dewey-Burdock, South Dakota, site in 2014.² Construction of the project has not yet begun.³ In March 2024, Powertech applied to extend the license for 20 years.⁴ On August 9, 2024, the NRC Staff published a notice accepting the license renewal application for review and providing for an opportunity for interested members of the public to request a hearing and petition for leave to intervene.⁵

In response to the notice, the Oglala Sioux Tribe (“Tribe”), together with the Black Hills Clean Water Alliance (“Alliance”) and the NDN Collective (collectively, the “Organizational Petitioners”) submitted a timely hearing request and proposed four contentions.⁶ Both Powertech and the NRC Staff argued that none of the Organizational Petitioners’ contentions were admissible.⁷ After holding an oral argument and requesting additional briefing, the Board

² See Materials License SUA-1600, Powertech (USA) Inc. (Apr. 8, 2014) (ADAMS accession no. ML14043A392).

³ See Powertech (USA) Inc.; Dewey-Burdock In-Situ Uranium Recovery Facility; License Renewal Application, 89 Fed. Reg. 65,401 (Aug. 9, 2024) (Hearing Notice); see also Letter from Peter Luthiger, Chief Operating Officer, Powertech, to NRC Document Control Desk (Mar. 4, 2024), at 1 (LRA Cover Letter), Encl., Dewey-Burdock Project License Renewal Application for SUA-1600 Fall River and Custer Counties, South Dakota Combined Technical Report/Environmental Report (Mar. 2024), at 1-1 (TR/ER) (ML24081A108 (package)).

⁴ LRA Cover Letter at 1.

⁵ Hearing Notice at 65,402.

⁶ *Petition to Intervene and Request for Hearing of the Oglala Sioux Tribe* (Oct. 8, 2024) (Organizational Petitioners Petition). Susan Henderson, who operates a cattle ranch in the vicinity of the licensed project area, also sought to intervene, but the Board denied that request because it found that Ms. Henderson did not propose an admissible contention. LBP-25-3, 101 NRC at 113-18, *aff'd*, CLI-25-5, 102 NRC __ (July 15, 2025) (slip op.).

⁷ See *NRC Staff Consolidated Answer to Intervention Petition of Susan Henderson and Intervention Petition of the Oglala Sioux Tribe, Black Hills Clean Water Alliance, and NDN Collective* (Nov. 4, 2024), at 24-35 (Staff Answer); *Applicant Powertech (USA) Uranium Corporation’s Response to Consolidated Petitioners’ Request for a Hearing/Petition for Intervention* (Nov. 4, 2024), at 19-29 (Powertech Answer).

found that each of the Organizational Petitioners had demonstrated standing and that two of their contentions (as reformulated into three contentions) were admissible.⁸

The Board found that the Organizational Petitioners had raised admissible contentions concerning whether the application complied with our regulations implementing the National Environmental Policy Act of 1969, as amended (NEPA). The Board admitted in part and reformulated the Organizational Petitioners' Contention 1, which asserted that Powertech's Combined Technical Report/Environmental Report (TR/ER) did not contain an adequate description of cultural resources on the site and the TR/ER did not explain its conclusion that the project's impacts on cultural resources on the site would be "none."⁹ The Board also narrowed the Organizational Petitioners' Contention 2 and admitted the claim that the application failed to account for the cumulative effects of two related projects Powertech may pursue near the Dewey-Burdock site.¹⁰

Powertech has appealed the Board's decision and argues that the Board should have wholly denied the Organizational Petitioners' hearing request.¹¹ On May 30, 2025, Powertech filed a notice related to the Supreme Court's May 29, 2025, decision in *Seven County*

⁸ LBP-25-3, 101 NRC at 70, 73-74, 77-80 (standing), 101, 108 (admissible contentions); see also *id.* at 108-13, 118 (rejecting the Organizational Petitioners' other two proposed contentions).

⁹ *Id.* at 101.

¹⁰ *Id.* at 108.

¹¹ *Powertech (USA) Inc.'s Notice of Appeal of LBP-25-03, Licensing Board's Order of January 31, 2025, and Accompanying Brief* (Feb. 25, 2025), at 1 (Powertech Appeal); see also *Organizational Intervenors' Response in Opposition to Applicant Powertech (USA) Inc.'s Appeal of LBP-25-03* (Mar. 24, 2025) (Organizational Petitioners Response). The Staff neither appealed the Board's decision nor responded to Powertech's appeal but intends to participate as a party. See *NRC Staff Notice of Intent to Participate as a Party* (Feb. 12, 2025).

Infrastructure Coalition v. Eagle County.¹² Powertech asserts that *Seven County Infrastructure* is directly applicable to Powertech’s argument that the Board improperly applied NEPA.

Arguments relating to both the Tribe’s standing and two of its admitted contentions are tied to the long and complex history of the Staff’s attempts to identify Native American cultural resources—more specifically, traditional cultural places or properties (TCPs)—on the site during the initial licensing proceeding. The Department of the Interior explains TCPs as follows:

In National Register practice, a “traditional cultural place”—“TCP,” for short—is defined as a building, structure, object, site, or district that may be listed in (or determined eligible for listing in) the National Register for its significance to a living community because of its association with cultural beliefs, customs, or practices that are rooted in the community’s history and that are important in maintaining the community’s cultural identity.¹³

In the proceeding for the initial license, the Tribe was admitted as a party with four contentions, one of which claimed that the application did not adequately address protection of cultural and historic resources at the site.¹⁴ Following an evidentiary hearing in 2014, the initial licensing board ruled that the Final Supplemental Environmental Impact Statement (FSEIS) did not adequately assess the project’s impacts on Native American cultural resources, as required by NEPA, and the Staff had not satisfied its duty to consult with the Tribe under the National Historic Preservation Act (NHPA).¹⁵ The initial licensing board found that the Staff could not assess impacts to the Tribe’s cultural resources unless it identified them, and to identify the

¹² *Notice of Supplemental Authority* (May 30, 2025) (Notice of Supplemental Authority) (citing *Seven Cty. Infrastructure Coal. v. Eagle Cty., Colo.*, 605 U.S. 168 (2025)).

¹³ See National Park Service, U.S. Dep’t of the Interior, National Register Bulletin, “Identifying, Evaluating, and Documenting Traditional Cultural Properties” (Dec. 2024), at 1, <https://irma.nps.gov/DataStore/DownloadFile/713282>.

¹⁴ *Powertech (USA), Inc.* (Dewey-Burdock In Situ Uranium Recovery Facility), LBP-10-16, 72 NRC 361, 419-22, 444 (2010). These events are summarized in the initial licensing board’s Final Initial Decision, *Powertech (USA) Inc.* (Dewey-Burdock In Situ Uranium Recovery Facility), LBP-19-10, 90 NRC 287, 297-311 (2019), *rev. den’d*, CLI-20-9, 92 NRC 295 (2020).

¹⁵ *Powertech (USA), Inc.* (Dewey-Burdock In Situ Uranium Recovery Facility), LBP-15-16, 81 NRC 618, 653-57 (2015).

resources the Staff must conduct a survey in conjunction with the Tribe.¹⁶ After the initial licensing board's 2015 ruling, the Staff attempted to arrange with the Tribe a survey to identify TCPs on the site with the help of knowledgeable Tribal members, but the parties could not agree on a survey methodology.¹⁷ In 2017, the Staff moved for summary judgment on the two outstanding contentions.¹⁸ The initial licensing board found that although the Staff had satisfied its consultation responsibilities under the NHPA, the Staff still had not satisfied NEPA.¹⁹ Following the 2017 decision, the Staff renewed its efforts to conduct a survey of the site with the Tribe's cooperation.²⁰ In February, 2019, the Staff proposed to the Tribe a survey methodology that met the requirements that the Tribe had set forth in previous discussions on an adequate survey methodology (the February 2019 Methodology).²¹ But in a February 22, 2019 meeting, the Tribe objected to the methodology and asked that it be redrafted.²²

After this objection from the Tribe, the Staff moved to set a schedule for an evidentiary hearing to establish that the Staff's proposed methodology was reasonable and the information

¹⁶ *Id.* at 653.

¹⁷ See *Powertech*, LBP-19-10, 90 NRC at 300-01. TCPs are a subcategory of cultural resources that are significant to a particular ethnic group because of its association with a cultural practice of that ethnic group and are therefore best identified by persons belonging to that group. See *Powertech (USA), Inc.* (Dewey-Burdock In Situ Uranium Recovery Facility), Ex. NRC-214, Proposed Draft Cultural Resources Site Survey Methodology (Feb. 2019), at 2-3 (ML19137A432) (February 2019 Methodology).

¹⁸ See *Powertech (USA), Inc.* (Dewey-Burdock In Situ Uranium Recovery Facility), LBP-17-9, 86 NRC 167, 173 (2017).

¹⁹ See *id.* at 188-90, 194.

²⁰ See *Powertech*, LBP-19-10, 90 NRC at 301-06.

²¹ See *id.* at 308.

²² See *id.*

related to TCPs was “unavailable” under NEPA.²³ Following another evidentiary hearing, the initial licensing board found that the February 2019 Methodology the Staff had proposed to identify TCPs was reasonable and that the information concerning TCPs was unavailable because of the Tribe’s noncooperation.²⁴ We upheld the board’s ruling, and the U.S. Court of Appeals for the District of Columbia Circuit later held that the NRC’s efforts to gather cultural resources information under NEPA and to consult with the Tribe under the NHPA were reasonable.²⁵

II. DISCUSSION

A. Standard of Review

We afford substantial deference to the Board on threshold decisions such as standing and contention admissibility.²⁶ We will not disturb a licensing board’s ruling on contention admissibility unless an appeal demonstrates an error of law or abuse of discretion.²⁷ We review the Board’s rulings on legal issues *de novo* but defer to the Board on factual determinations.²⁸

²³ See *Motion to Set Schedule for Evidentiary Hearing* (Apr. 3, 2019) (ML19093B813); see also *Powertech*, LBP-19-10, 90 NRC at 310.

²⁴ See *Powertech*, LBP-19-10, 90 NRC at 318-29, 334 (discussing the 2019 Survey Methodology and Ex. NRC-192, NRC March 16, 2018 Letter to Oglala Sioux Tribe Transmitting NRC’s Approach to Identify Historic, Cultural, and Religious Sites (ML19137A408)).

²⁵ *Powertech*, CLI-20-9, 92 NRC at 306; *Oglala Sioux Tribe v. NRC*, 45 F.4th 291, 302, 306 (D.C. Cir. 2022).

²⁶ See, e.g., *Crow Butte Resources, Inc.* (Marsland Expansion Area), CLI-14-2, 79 NRC 11, 26 (2014) (Commission gives “substantial deference” to Board’s decision to admit contention even where it may consider support “weak” or the issue a “close question”); *NextEra Energy Seabrook, LLC* (Seabrook Station, Unit 1), CLI-12-5, 75 NRC 301, 326-27, 329 (2012).

²⁷ *Nuclear Fuel Services, Inc.* (License Amendment Application), CLI-23-3, 98 NRC 33, 36 (2023).

²⁸ *Entergy Nuclear Operations, Inc.* (Indian Point, Units 2 and 3), CLI-15-6, 81 NRC 340, 351 (2015).

B. Board's Ruling in LBP-25-3

On appeal, Powertech argues that the Board erred in its standing determination and in admitting any portion of the Organizational Petitioners' contentions. We address these arguments in turn below.

1. Standing

Both before the Board and on appeal, Powertech challenged the standing of all three Organizational Petitioners.²⁹ Under our rules, if even one of the Organizational Petitioners has demonstrated standing (and has proposed an admissible contention), the hearing must go forward.³⁰ Therefore, we need not re-examine the standing of all the petitioners if we find one has standing.³¹ Instead, we will first consider the Tribe's standing because it was admitted as a party to the initial licensing proceeding.³²

Before the Board the Tribe asserted that the project posed a threat to the "cultural, historic, economic, and conservation interests" of the Tribe and its members.³³ The Tribe provided the declaration of Reno Red Cloud, its Director of Water Resources, in support of its standing.³⁴ Mr. Red Cloud stated that the Tribe is interested in protecting cultural resources that are known to exist or may be found at the project site, including prehistoric artifacts, an Indian

²⁹ Powertech Appeal at 4-8.

³⁰ See 10 C.F.R. §§ 2.309(d)(1) and (f)(1).

³¹ See *Biden v. Nebraska*, 600 U.S. 477, 489 (2023) (holding that if at least one plaintiff has standing, the suit may proceed); see also *Susquehanna Nuclear, LLC* (Susquehanna Steam Electric Station, Units 1 and 2), CLI-23-1, 97 NRC 81, 84 n.17 (2023) (where a petitioner has not submitted an admissible contention, the Commission need not reach standing); *Entergy Nuclear Operations, Inc.* (Palisades Nuclear Plant and Big Rock Point Site), CLI-22-8, 96 NRC 1, 67 (2022) (same).

³² The Staff did not oppose the Tribe's standing before the Board. Staff Answer at 10-11.

³³ Organizational Petitioners Petition at 1.

³⁴ See *id.* at 10-11; see also *id.*, Ex. 7, *Declaration of Reno Red Cloud* (Oct. 8, 2024) (Red Cloud Decl.).

camp, and extinct water resources; and there is a “strong” likelihood that burial grounds exist there as well.³⁵ The Tribe also claimed standing based on its ownership of land “in proximity” to the project that may be affected by “air, water, and ground water” effects stemming from the project.³⁶

The Staff acknowledged that the Tribe had established organizational standing on the basis of its interest in cultural and historical resources on the project site, but the Staff argued that neither of the other two of the Organizational Petitioners had shown organizational or representational standing.³⁷ Powertech challenged the standing of all three of the Organizational Petitioners.³⁸ Specific to the Tribe, Powertech argued that there could be no harm to the Tribe’s cultural resources from the license renewal because a “Programmatic Agreement” protects cultural resources on the site.³⁹ Powertech further argued that to the extent the Tribe’s standing argument was based on its assertion that Powertech failed to include the Tribe in efforts to survey the site, the Tribe’s injury was self-inflicted.⁴⁰

The Board found that the Tribe had standing because the project area was undisputedly located on the Tribe’s aboriginal land.⁴¹ The Board noted that during oral argument, Powertech’s

³⁵ Red Cloud Decl. 6-8; *see also id.* 15 (“[T]he numbers and density of cultural resources at the site proposed for mining demonstrate that the mining activity is likely to adversely impact the cultural resources of the Oglala Sioux Tribe.”).

³⁶ Organizational Petitioners Petition at 11.

³⁷ *See* Staff Answer at 10-14.

³⁸ Powertech Answer at 9-17.

³⁹ *See id.* at 12; Programmatic Agreement Among U.S. Nuclear Regulatory Commission, U.S. Bureau of Land Management, South Dakota State Historic Preservation Office, Powertech (USA), Inc., and Advisory Council on Historic Preservation Regarding the Dewey-Burdock In Situ Recovery Project Located in Custer and Fall River Counties, South Dakota (Mar. 19, 2014) (ML14066A347) (Programmatic Agreement).

⁴⁰ Powertech Answer at 12-13.

⁴¹ LBP-25-3, 101 NRC at 73-74.

counsel acknowledged that the project area includes the Tribe's aboriginal land and that federal law recognizes that Native American tribes have a protected interest in cultural resources.⁴² The Board observed that in another ISR proceeding involving a different license applicant, the Tribe established standing by showing that

(i) the in-situ recovery operations were to be conducted on aboriginal lands of the Tribe; (ii) federal law protected a tribe's interest in the preservation of cultural traditions; (iii) the Tribe ascribed cultural and religious significance to the land; and (iv) it was likely that tribal artifacts would be found on the land at issue.⁴³

On appeal, Powertech reiterates its argument that the Tribe does not have standing because it was afforded an opportunity to consult with Powertech in the initial proceeding for this license and "refused to do so."⁴⁴ Powertech quotes the Supreme Court in asserting that litigants "cannot manufacture standing merely [by] inflicting harm on themselves."⁴⁵ Powertech also claims that the Board erred in relying on the *Crow Butte* decision because that proceeding was factually distinct in that the Staff had not consulted with the Tribe regarding cultural resources that were known to exist on its mining site.⁴⁶

We find no Board error. In *Crow Butte*, as here, the Board based the Tribe's standing on the Tribe's "substantive interest" in the presence of its cultural resources on the project site, the fact that the cultural resources could be damaged by licensed operations, and the Tribe's

⁴² *Id.* (citing Tr. at 17-18).

⁴³ *Id.* (citing *Crow Butte Resources, Inc. (In Situ Leach Facility, Crawford, Nebraska)*, LBP-08-24, 68 NRC 691, 713-14 (2008), *aff'd in part and rev'd in part on other grounds*, CLI-09-9, 69 NRC 331, 339 (2009)).

⁴⁴ Powertech Appeal at 5. See generally *Powertech*, LBP-19-10, 90 NRC at 334-38 (finding that the Staff's decision to discontinue working with the Tribe to obtain necessary cultural information was reasonable under the circumstances), *rev. den'd*, CLI-20-9, 92 NRC 295.

⁴⁵ Powertech Appeal at 5 (quoting *Clapper v. Amnesty Int'l USA*, 568 U.S. 398, 416 (2013)); see also Powertech Answer at 13.

⁴⁶ Powertech Appeal at 4, 6 (quoting *Crow Butte*, LBP-08-24, 68 NRC at 714-15).

procedural interest in consulting with the Staff.⁴⁷ In affirming the *Crow Butte* Board, we rejected the argument by the Staff and license applicant that the Tribe had no standing because its potential “injury”—a failure to consult—was not ripe. We held that the Staff’s and applicants’ arguments misconstrued the board’s ruling: “The Board found that the Tribe has a current, concrete interest in protecting the artifacts on the site, not simply a procedural interest.”⁴⁸ We do not see a material distinction between the proceedings, and we find no error in the Board citing the *Crow Butte* board’s reasoning and our affirmation of it.⁴⁹

We also decline to find that the Tribe has inflicted harm on itself and therefore cannot rely on that harm for standing. As an initial matter, the Board did not base standing even in part on the Tribe’s consultation interests. Instead, the Board’s holding concerned the Tribe’s substantive interest in the cultural resources that are present and may be discovered on the site.⁵⁰ Further, Powertech’s injury argument relates more to the substance of the Organizational Petitioners’ contentions in the initial licensing proceeding (i.e., the cultural resources information being “unavailable” under NEPA) than to the Tribe’s standing in this proceeding.

We conclude that Powertech has shown no Board error of law or abuse of discretion. We therefore defer to the Board’s ruling on standing. Because the Tribe has demonstrated standing, we need not undertake further inquiry into the standing of the other two Organizational Petitioners.

⁴⁷ *Crow Butte*, CLI-09-9, 69 NRC at 338; see *Crow Butte*, LBP-08-24, 68 NRC at 712-15.

⁴⁸ *Crow Butte*, CLI-09-9, 69 NRC at 338.

⁴⁹ Powertech appears to have abandoned the argument that the Programmatic Agreement will prevent any harm to cultural resources, as there is no reference to it in Powertech’s appeal.

⁵⁰ See LBP-25-3, 101 NRC at 73-74.

2. **Contentions**

In addition to standing, a petitioner must also propose at least one admissible contention to be granted a hearing.⁵¹ It is the petitioner's duty, not the Board's, to craft an admissible contention.⁵² On appeal, Powertech argues that the Board erred in admitting Contentions 1A, 1B, and 2.

a. *Contention 1A and 1B: Cultural Resources*

In Contention 1 as originally proposed, the Organizational Petitioners argued that the license renewal application violated both NEPA and the NHPA, as well as NRC regulations implementing NEPA, because NEPA requires an adequate description of the environment affected by the proposed action and the TR/ER's description of cultural resources was "incompetent."⁵³ They asserted that the TR/ER failed to account for the "lack of involvement by the Oglala Sioux Tribe" in surveying the site for cultural resources and challenged the TR/ER's conclusion that impacts to cultural resources would be "none."⁵⁴

The Board found aspects of Contention 1 admissible and reformulated it into two NEPA contentions, Contention 1A and Contention 1B:

Contention 1A: Powertech's Combined Technical Report and Environmental Report fails to comply with the NRC's regulations in that it contains an inadequate, inaccurate, or incomplete description of the cultural and historical resources as to the Oglala Sioux Tribe in the Dewey-Burdock Project area.

⁵¹ 10 C.F.R. § 2.309(f)(1).

⁵² See *USEC Inc. (American Centrifuge Plant)*, CLI-06-10, 63 NRC 451, 457 (2006) (stating it is the petitioner's responsibility to satisfy the basic contention admissibility requirements and boards should not have to search through a petition to "uncover" arguments and support for a contention, and "may not simply 'infer' unarticulated bases of contentions"); see also *Arizona Public Service Co. (Palo Verde Nuclear Generating Station, Units 1, 2, and 3)*, CLI-91-12, 34 NRC 149, 155 (1991).

⁵³ Organizational Petitioners Petition at 14 (citing TR/ER at §§ 2.4.1, 5.2.7, 7.2.4, 8.6).

⁵⁴ *Id.*

Contention 1B: Powertech's Combined Technical Report and Environmental Report fails to explain its conclusion that the impacts of the Dewey-Burdock Project on cultural and historic resources will be "none."⁵⁵

Both before the Board and on appeal, Powertech argues that the Board should not have admitted Contentions 1A or 1B because the issues raised by the Organizational Petitioners were issue precluded or governed by stare decisis.⁵⁶ Since the Board's decision was issued, the Staff and the Oglala Sioux Tribe have been engaged in consultation regarding cultural resources at the Dewey-Burdock site, and the Staff has represented that it expects to issue its environmental review document in June 2026, in which the results of this consultation will be documented.⁵⁷ Because issuance of the Staff's environmental review document will supersede the TR/ER, Powertech's issue preclusion and stare decisis arguments are imminently moot. Therefore, given the impending completion of the Staff's environmental review of the application, we deny Powertech's appeal of the Board's admission of Contentions 1A and 1B.

b. Contention 2: Cumulative Environmental Effects

Powertech argues that the Board erred in admitting Contention 2, which related to the application's consideration of the cumulative effects of potential projects connected to the Dewey-Burdock project. In Contention 2, the Organizational Petitioners argued that the application did not adequately consider the impacts of other mining activities in the area, including Powertech's plans to use the Dewey-Burdock central processing plant (CPP) to process material recovered from other projects that Powertech (and related companies) may

⁵⁵ LBP-25-3, 101 NRC at 101.

⁵⁶ Powertech Appeal at 8-9, 15 (issue preclusion), 9-10, 15 (stare decisis). In its appeal, Powertech also mentions, with no discussion, a separate legal doctrine, claim preclusion. See *id.* at 10; see also Powertech Answer at 13, 21.

⁵⁷ See *Parties' Joint Monthly Status Update 12* (May 14, 2026), at 1 (indicating completion of NHPA Section 106 review and issuance of NEPA environmental document projected for June 22, 2026).

develop in the future.⁵⁸ Specifically, the Organizational Petitioners argued that although the application acknowledges Powertech's plan to use the CPP to process resin from other ISR mine sites that may be developed in the future, it does not discuss environmental impacts from these sites.⁵⁹ Following oral argument on contention admissibility, the Board took additional briefs on the question of whether effects of the expansion projects, including the effect of processing resins from the expansion sites at the Dewey-Burdock site, are "reasonably foreseeable" under NEPA.⁶⁰

The Board concluded that the appropriate test for determining whether other actions were "reasonably foreseeable" was "whether the other action is in such a sufficiently advanced stage that a person of ordinary prudence would take it into account in reaching a decision."⁶¹ After considering information the Organizational Petitioners had attached to their petition, the Board concluded that they had supported their claim that two Powertech projects under consideration—Gas Hill and Dewey Terrace project areas—were reasonably foreseeable effects of the proposed action.⁶²

On appeal, Powertech argues that the Board erred in admitting Contention 2 because the Board misapplied NEPA's "reasonably foreseeable" standard by finding speculative projects

⁵⁸ See Organizational Petitioners Petition at 21-26. The applicant, Powertech, is a wholly owned subsidiary of enCore Energy Corp., a Canadian company, which also owns Azarga Uranium Corp. (formerly Powertech Uranium Corp.). TR/ER at 1-3.

⁵⁹ Organizational Petitioners Petition at 23.

⁶⁰ See Tr. at 141-44; *Organizational Petitioners' Supplemental Brief in Support of Petition to Intervene* (Dec. 17, 2024); *Applicant Powertech (USA) Uranium Corporation's Supplemental Response Following Oral Argument* (Dec. 17, 2024); *NRC Staff Response to Board Request for Additional Briefing* (Dec. 17, 2024).

⁶¹ LBP-25-3, 101 NRC at 105; see *EarthReports, Inc. v. FERC*, 828 F.3d 949, 955 (D.C. Cir. 2016); *Mid States Coal. for Progress v. Surface Transp. Bd.*, 345 F.3d 520, 549 (8th Cir. 2003).

⁶² LBP-25-3, 101 NRC at 108.

reasonably foreseeable⁶³ and because the Fiscal Responsibility Act of 2023's (FRA) amendments to NEPA "preclude consideration of future projects as effects of the current license renewal."⁶⁴ In support of both of these arguments, Powertech cites to the Supreme Court's March 29, 2025, decision in *Seven County Infrastructure*.⁶⁵

We find that the Board erred in admitting Contention 2. As discussed below, the Board's overbroad interpretation of what constitutes "reasonably foreseeable impacts" under NEPA conflicts with Commission and judicial precedent and NEPA as amended by the FRA. Our interpretation of NEPA's scope is consistent with the FRA and the Supreme Court's *Seven County Infrastructure* decision.⁶⁶

When considering whether an EIS should consider other projects related to the specific project referenced in the application, the Commission has long taken the view that, in keeping with the Supreme Court's ruling in *Kleppe v. Sierra Club*, a project must be in a sufficiently advanced stage to be considered a "proposal" as that term is used in NEPA.⁶⁷ The *Kleppe* Court rejected the argument by a group of environmental organizations that the Department of Interior must create a comprehensive EIS for coal development on federal land for the entire Northern Great Plains region—even though there was no proposal for a regional coal development

⁶³ Powertech Appeal at 16-19.

⁶⁴ *Id.* at 19.

⁶⁵ Notice of Supplemental Authority at 1 (arguing that *Seven County Infrastructure* is "directly applicable to arguments raised in Applicant's Brief at pages 15-22 that the [Board] improperly applied [NEPA's] 'reasonably foreseeable' standard and failed to consider 2023 amendments to NEPA in the [FRA].").

⁶⁶ *Seven Cty. Infrastructure*, 605 U.S. 168.

⁶⁷ See, e.g., *Strata Energy, Inc.* (Ross In Situ Uranium Recovery Project), CLI-16-13, 83 NRC 566, 575 (2016) (citing *Kleppe v. Sierra Club*, 427 U.S. 390, 410 & n.20 (1976)); *Duke Energy Corp.* (McGuire Nuclear Station, Units 1 and 2; Catawba Nuclear Station, Units 1 and 2), CLI-02-14, 55 NRC 278, 294-96 (2002) (citing *Kleppe*, 427 U.S. 390).

program.⁶⁸ The *Kleppe* Court acknowledged that a comprehensive EIS may be necessary “where several proposed actions are pending at the same time.”⁶⁹ This is a situation different from the one we consider here.

The application acknowledges that Powertech might pursue additional ISR projects in the region at some point in the future. But a variety of factors—such as changing market conditions—could affect its decision with respect to which projects to pursue and when. Notably, Powertech has not yet broken ground on the Dewey-Burdock project although it has had its license for ten years.

In keeping with *Kleppe*, the NRC has focused its environmental reviews on the application under consideration and has declined to consider the effects of less imminent projects. In *McGuire*, we overruled a board’s decision admitting a claim that the NRC must consider the impacts of the licensee using mixed oxide (MOX) fuel at its power reactor in the future, even though the license would not allow that use without an amendment.⁷⁰ We held that because the licensee had not submitted an application to amend its license to allow the use of MOX fuel, there was no “proposal” for us to evaluate—even though the licensee had signed a contract with the Department of Energy which would “oblige [it] to use such fuel at its McGuire and Catawba facilities” at some time in the future.⁷¹ Similarly, we affirmed a board’s decision in an ISR licensing proceeding to reject a contention similar to the Organizational Petitioners’ Contention 2.⁷² Relying on *Kleppe*, the *Strata* licensing board held that an environmental review need not consider the effects of possible future expansion projects by the same applicant in the

⁶⁸ *Kleppe*, 427 U.S. at 409-15.

⁶⁹ *Id.* at 409.

⁷⁰ *McGuire*, CLI-02-14, 55 NRC at 296-97.

⁷¹ *Id.* at 295-96.

⁷² *Strata*, CLI-16-13, 83 NRC at 577-78.

same region, even though the application expressly acknowledged the likelihood that the applicant would pursue them at some point.⁷³ The *Strata* board rejected the petitioners' argument that a single "multipart, interconnected ... project" had been improperly segmented into smaller projects for the purpose of evading NEPA.⁷⁴ It found that the proposed project had "independent utility" apart from any possible expansion projects that could be developed in the future.⁷⁵ The *Strata* board found that the petitioners had not supported their claim that the proposed project could not be economically viable unless the expansion projects were also approved.⁷⁶

Similarly, the Organizational Petitioners raised a segmentation argument in support of Contention 2.⁷⁷ The Eleventh Circuit recently reiterated that the "independent utility" test is the appropriate measure to determine if a project has been improperly segmented under NEPA.⁷⁸ In *Okeelanta Corp. v. U.S. Army Corps of Engineers*, the court considered whether the Army Corps of Engineers had improperly segmented its consideration of a 6500-acre stormwater treatment area that was part of a larger project including a connected reservoir.⁷⁹ The *Okeelanta* court explained that its first consideration is whether the project had independent utility apart from other connected actions.⁸⁰ The court upheld the Corps' decision to consider the stormwater

⁷³ See *id.* (denying review of *Strata Energy, Inc.* (Ross In Situ Uranium Recovery Project), LBP-13-10, 78 NRC 117, 144-50 (2013)).

⁷⁴ *Strata*, LBP-13-10, 78 NRC at 146-49.

⁷⁵ *Id.*

⁷⁶ *Id.* at 148.

⁷⁷ See Tr. at 58-61.

⁷⁸ *Okeelanta Corp. v. U.S. Army Corps of Eng'rs*, 132 F.4th 1320, 1345 (11th Cir. 2025).

⁷⁹ See *id.* at 1327, 1344-46.

⁸⁰ *Id.* at 1345-46.

treatment area project apart from the reservoir even though the two projects were intended to operate “in tandem” from the time they were first proposed. The court found no improper segmentation, reasoning that even without the reservoir, the stormwater treatment area would still purify water and thus “fully serve its original purpose.”⁸¹

The Organizational Petitioners have not provided any support for the proposition that the Dewey-Burdock project lacks independent utility, or is not economically viable, without the possible expansion projects. Powertech first sought this license more than ten years ago and even then anticipated that two expansion projects (including Dewey Terrace) were possible.⁸² To date, Powertech has not submitted applications for either project.

Given the NRC’s longstanding view that environmental reviews must focus on the application at hand and not on less imminent projects that the applicant may pursue in the future, we find that the Board’s use of the “person of ordinary prudence” test captured the need to consider a broader range of effects than NEPA requires. This view is consistent with the Supreme Court’s recent decision in *Seven County Infrastructure*, where it reversed an appeals court’s decision that would have required agencies to consider projects “separate in time or place” from the proposal in front of them.⁸³

In *Seven County Infrastructure*, the Supreme Court considered an agency’s NEPA obligation to consider separate but related projects. The Court vacated a decision of the U.S. Court of Appeals for the D.C. Circuit, which found that the U.S. Surface Transportation Board

⁸¹ *Id.* at 1345.

⁸² See *Powertech*, Ex. NRC-008-A-2, “Environmental Impact Statement for the Dewey-Burdock Project in Custer and Fall River Counties, South Dakota; Supplement to the Generic Environmental Impact Statement for *In-Situ* Leach Uranium Milling Facilities” (Final Report), NUREG-1920, Supplement 4 (Jan. 2014), at 5-5, tbl.5.1-1 (ML14246A326).

⁸³ *Seven Cty. Infrastructure*, 605 U.S. at 179, 186.

had impermissibly limited the scope of its environmental review of a proposed rail line.⁸⁴ The Court found that the D.C. Circuit erred in requiring the Transportation Board to consider the effects of “upstream and downstream projects that are separate in time or place from the Uinta Basin Railway.”⁸⁵ The Court agreed that the “textually mandated focus of NEPA is the ‘proposed action’—that is, the project at hand—not other future or geographically separate projects that may be built (or expanded) as a result of or in the wake of the immediate project under consideration.”⁸⁶ The Court emphasized that “a mere ‘but for’ causal relationship” or “foreseeability” that other projects will be “built or expanded in the wake of the current project does not, by itself, make the agency responsible for addressing the environmental effects of those other projects.”⁸⁷

The possible expansion projects, if Powertech pursues them, will require a separate NEPA review. At that time the Staff, the applicant, and any potential intervenors would be in a better place to evaluate the impacts of such a project. The focus in this proceeding is the proposed action—a “renewed license that, if granted, would authorize [Powertech] to operate the Dewey-Burdock Project for 20 years beyond the period specified in the current license.”⁸⁸ The Dewey-Burdock Project has independent utility apart from any other projects, including the future projects at issue in Contention 2.

⁸⁴*Id.* at 174 (reversing *Eagle Cty. v. Surface Transp. Bd.*, 82 F.4th 1152 (D.C. Cir. 2023)).

⁸⁵ *Id.* at 179.

⁸⁶ *Id.* at 186-87 (citing 42 U.S.C. § 4332(2)(C) (2018)).

⁸⁷ *Id.* at 189.

⁸⁸ Hearing Notice at 65,401.

In addition, the FRA's NEPA amendments support the view that the NEPA analysis must focus on the project at hand and not on separate projects that may not materialize.⁸⁹ Prior to the 2023 amendments, NEPA § 102(2)(C) included the requirements that environmental impact statements describe "(i) [the] environmental impact of the proposed action, (ii) any adverse environmental effects which cannot be avoided should the proposal be implemented, [and] (iii) alternatives to the proposed action."⁹⁰ The FRA amended these provisions to clarify that a rule of reason governs the scope of the statement: the "environmental impact" was changed to "reasonably foreseeable environmental effects" and "alternatives to the proposed action" was amended to "a reasonable range of alternatives." Although the Supreme Court in *Seven County Infrastructure* was interpreting the pre-FRA amendments NEPA language, the FRA amendments reinforce the view that a NEPA analysis must focus on the project for which the applicant is seeking approval and not on future projects that remain uncertain.

Based on the above considerations, we find that the Board erred in admitting Contention 2 in this proceeding.

⁸⁹ See Fiscal Responsibility Act of 2023, Pub. L. No. 118-5, 137 Stat. 38. Title III, Sec. 321, amends NEPA section 102(2) (42 U.S.C. § 4332(2)).

⁹⁰ 42 U.S.C. § 4332(C)(i).

III. CONCLUSION

For the reasons described above, we *deny* Powertech's appeal as to the Board's decision on standing and admission of Contentions 1A and 1B; we *grant* Powertech's appeal as to Contention 2; and we *reverse* the Board's admission of Contention 2.

IT IS SO ORDERED.

For the Commission




Carrie M. Safford
Secretary of the Commission

Dated at Rockville, Maryland,
this 15th day of June 2026

Chairman Nieh, dissenting in part

While I join the majority with respect to Contention 2, I dissent from the majority's denial of Powertech's appeal on Contentions 1A and 1B related to the TR/ER's cultural resources description. My dissent does not reflect on the collegiality and working relationships developed by the Commission. This Commission has worked well together to advance significant policy and rulemaking initiatives in recent months. However, I cannot join my colleagues here because there is no compelling safety or legal reason to extend these proceedings on Contentions 1A and 1B, which relitigate already resolved issues. Consequently, expending further resources on these issues conflicts with our commitment to efficiency in our Principles of Good Regulation. Rather than squarely address this appeal, the majority observes that the staff's forthcoming NEPA document, which will reflect further consultations between the parties, may resolve these issues. The majority may be "saved by the bell," but that bell may never ring.⁹¹ If consultation is again unsuccessful and the Staff's forthcoming environmental document relies on the initial EIS just as the TR/ER does, the agency will again face the question of whether the TR/ER's description of cultural resources is adequate. Given that the D.C. Circuit has already resolved that question, "kicking the can down the road" by conducting further proceedings on Contentions 1A and 1B is a fruitless endeavor, the adjudicatory equivalent of idling a car in the parking lot with no map, no direction, and no plan to go anywhere.

Contention 1A is Barred by Issue Preclusion

Issue preclusion applies to factual determinations as well as purely legal rulings and holds that "once an issue is actually and necessarily determined by a court of competent jurisdiction, that determination is conclusive in subsequent suits based on a different cause of

⁹¹ In light of the many years the parties spent trying to consult on the initial application without success, completing consultation in this proceeding is hardly a certainty. *Powertech*, CLI-20-9, 92 NRC at 306.

action involving a party to the prior litigation.”⁹² Powertech claims the “issue of the competency of the cultural resources survey was fully litigated by the parties to this present proceeding” and therefore cannot be raised again in a subsequent proceeding.⁹³ I agree.

Regarding Contention 1A, the Organizational Petitioners claim that the TR/ER for the license renewal “lacks an adequate description of either the affected environment or the impacts of the project on archaeological, historical, and traditional cultural resources.”⁹⁴ The TR/ER draws its cultural resources information from the EIS that was at issue in the initial licensing proceeding.⁹⁵ In challenging the EIS in the initial licensing proceeding, the Tribe similarly alleged that “the Commission failed to satisfy NEPA because it did not adequately address the Tribe’s cultural resources in the EIS.”⁹⁶ For more than a decade, that contention was thoroughly litigated before the board, the Commission, and the Court of Appeals for the D.C. Circuit. The adequacy of the description of cultural resources was central to all of their judgments. These rulings led to the 2022 order from the D.C. Circuit, which found that the NRC’s “efforts to gather

⁹² *Montana v. U.S.*, 440 U.S. 147, 153 (1979). Issue preclusion applies only where the issue decided in the prior action is identical to the issue to be decided in the current proceeding. See *David Geisen*, CLI-10-23, 72 NRC 210, 251-52 (2010). Moreover, the issue decided by the tribunal in the prior proceeding must be “necessary to [its] judgment.” See *Bobby v. Bies*, 556 U.S. 825, 829, 835 (2009).

⁹³ Powertech Appeal at 9.

⁹⁴ Petition at 13.

⁹⁵ The Organizational Petitioners have provided no information identifying new, previously unidentified cultural resources, and there is no evidence that the parties had occasion to utilize the Programmatic Agreement which could have afforded them with the opportunity to identify such resources. See, e.g., Programmatic Agreement at 9 (construction will be halted for all “unanticipated discoveries” until they can be evaluated), 10 (“human remains” will be protected), and 11 (disposition of artifacts). In fact, Powertech has not yet broken ground on the Dewey-Burdock project. In addition, the D.C. Circuit’s decision predated this application by only two years, leaving a limited time period between the end of the adjudicatory proceedings on the initial application and the start of the proceedings on the renewal application for new information on cultural resources at the Dewey-Burdock site to emerge.

⁹⁶ *Oglala Sioux Tribe v. NRC*, 45 F.4th at 300.

cultural resources information were reasonable” and that the NRC did not commit a clear error of judgment in concluding that additional cultural resources information was unavailable.⁹⁷

Consequently, the facts in this specific case present the rare scenario in which issue preclusion applies.⁹⁸ The Commission should not cycle the parties through another round of litigation on a controversy that has already been resolved.⁹⁹

⁹⁷ *Id.* at 302.

⁹⁸ The Organizational Petitioners argue that issue preclusion cannot apply here because the Alliance and the NDN Collective were not parties in the initial licensing proceeding and they have no privity with the Tribe. Organizational Petitioners Response at 8. But the only support the Organizational Petitioners cite for that argument is a 1982 Atomic Safety and Licensing Appeal Board decision, which questioned a licensing board’s hypothetical example that a matter litigated in 1973 by Sierra Club would be “foreclosed” from litigation by the Union of Concerned Scientists in a subsequent proceeding for the same facility eight years later. See *Southern California Edison Co.* (San Onofre Nuclear Generating Station, Units 2 and 3), ALAB-673, 15 NRC 688, 695-97 (1982). The *San Onofre* hypothetical is distinguishable from the situation here, where the Tribe is and was a party to both proceedings. The Organizational Petitioners cite no caselaw suggesting that a party can avoid the issue preclusive effect of an earlier judgment simply by joining with others in a later proceeding, particularly where those other parties provide no new information as is the case here.

⁹⁹ The Organizational Petitioners could raise claims under NEPA or NHPA regarding the sufficiency of the Staff’s actions to identify TCPs in the Staff’s forthcoming environmental review document; but, such claims are not ripe at this time. However, I note that the adequacy of the February 2019 Methodology has also been established so if the Staff proposes a similar methodology, and the Tribe once more rejects it, the Staff may presume that the Tribe’s TCP information remains unavailable. And, while the adequacy of the February 2019 Methodology has been established, it is not the only way for the Staff to satisfy NEPA and NHPA in this proceeding. In *Oglala Sioux Tribe v. NRC*, the court noted that NEPA is a purely procedural statute and held that under NEPA, “agencies have leeway to choose how to give appropriate consideration to environmental concerns and economic and technical considerations.” *Oglala Sioux Tribe v. NRC*, 45 F.4th at 302 (internal quotations omitted) (citing to 42 U.S.C. § 4332(2)(A)-(B)). The court did not hold that NEPA requires agencies to conduct a survey in any particular manner. Rather, NEPA requires agencies to “utilize a systematic, interdisciplinary approach to identify and analyze environmental concerns.” *Id.* Further, regarding NHPA, the court held that “an agency [may] conduct a survey as part of its efforts to identify historic properties, but agencies are free to use a survey or some other method to gather information. An agency may therefore satisfy its NHPA obligations without conducting a survey or conducting it in a specific way.” *Id.* at 306 (internal quotations omitted).

Contention 1B is also barred by Issue Preclusion

Powertech also asserts on appeal that Contention 1B, which relates to the impacts from the license renewal on cultural resources, is barred by issue preclusion.¹⁰⁰ Because I agree with Powertech that Contention 1B, similar to Contention 1A, is barred under issue preclusion, I would not reach the question of whether the Programmatic Agreement provides protection for the cultural resources. Issue preclusion (collateral estoppel) applies where the issue sought to be precluded was actually litigated in the prior proceeding and necessary to decide the merits of that proceeding.¹⁰¹ The issues in dispute before the board in the initial licensing proceeding were whether the Staff had proposed an adequate TCP survey methodology and whether the information concerning the Oglala Sioux Tribe's TCPs was unavailable.¹⁰² The findings of that survey, if it had been conducted, would have provided the information necessary to determine any potential impacts to cultural resources. Thus, whether impacts to cultural and historic resources on the site would be "none," as asserted in the TR/ER, was a direct outgrowth of the information's availability. As already discussed, the board, Commission, and Court of Appeals for the D.C. Circuit already found that the cultural resources information was unavailable.

Issue preclusion applies where the issue decided in the current action is "identical in all respects with that decided in the first proceeding . . . and where the controlling facts . . . remain unchanged."¹⁰³ Here, the underlying facts have not yet changed. As explained with respect to Contention 1A, the information previously deemed unavailable currently remains unavailable. Its availability may change as a result of the Staff's forthcoming actions to identify TCPs, but such

¹⁰⁰ See Powertech Appeal at 15.

¹⁰¹ See, e.g., *Janjua v. Neufeld*, 933 F.3d 1061, 1062-63 (9th Cir. 2019); *Sedlack v. Braswell Services Grp.*, 134 F.3d 219, 224 (4th Cir. 1998).

¹⁰² See *Powertech*, LBP-19-10, 90 NRC at 329, 334.

¹⁰³ *Comm'r of Internal Revenue v. Sunnen*, 333 U.S. 591, 599-600 (1948) (discussing "collateral estoppel"); see *Geisen*, CLI-10-23, 72 NRC at 251-52.

claims are not ripe at this time. Consequently, I would also find that Contention 1B as it pertains to the TR/ER is barred under the doctrine of issue preclusion and that the Board erred in admitting Contention 1B.

Conclusion

Neither the APA, the AEA, NEPA, nor NRC precedent requires us to relitigate the same issue time and again. That is a burden the majority assumes voluntarily. As noted above, allowing this issue to be relitigated is inconsistent with the Principle of Good Regulation for efficiency. And, it is all the more dispiriting when viewed against the backdrop of the major rulemakings we have undertaken to streamline our licensing proceedings in response to Executive Order 14300.¹⁰⁴ Collectively, these rulemakings are intended to facilitate NRC licensing decisions within 12 to 18 months of docketing, or faster.¹⁰⁵ Our rulemaking on contested hearings is critical to that effort. In that rulemaking we have proposed aggressive timelines for parties and the licensing Board and a challenging goal for ourselves to resolve appeals within 45 to 60 days.¹⁰⁶

I recognize this proceeding has been conducted under our existing procedures; but even though it is not yet concluded, it has already fallen well short of our future timeliness goals. Powertech filed its application 21 months ago; and this appeal of Contentions 1A and 1B has dragged on for well over a year. The majority's ruling on that appeal provides the parties with very little to show for their wait. Today's holding demonstrates that we must drastically modernize our approach to adjudications if we expect to meet the proposed 45-to-60-day goal for ruling on appeals.

¹⁰⁴ Executive Order 14300, Ordering the Reform of the Nuclear Regulatory Commission, 90 Fed. Reg. 22,587 (May 23, 2025).

¹⁰⁵ *Id.* at 22,588.

¹⁰⁶ Streamlining Contested Adjudications in Licensing Proceedings, 91 Fed. Reg. 10,450, 10,482, 10,484-85 (Mar. 3, 2026).

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of)
)
POWERTECH (USA) CORP.) Docket No. 40-9075-LR
)
)
(Dewey-Burdock In-Situ Uranium Recovery)
Facility))
)

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing **COMMISSION MEMORANDUM AND ORDER (CLI-26-6)** have been served upon the following persons by Electronic Information Exchange.

U.S. Nuclear Regulatory Commission
Office of Commission Appellate Adjudication
Mail Stop: O-16B33
Washington, DC 20555-0001
E-mail: ocaamail.resource@nrc.gov

U.S. Nuclear Regulatory Commission
Office of the Secretary of the Commission
Mail Stop: O-16B33
Washington, DC 20555-0001
E-mail: hearingdocket@nrc.gov

Atomic Safety and Licensing Board Panel
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
Jeremy A. Mercer, Chair
Nicholas G. Trikouros, Administrative Judge
Dr. Gary S. Arnold, Administrative Judge
Whitlee Dean, Law Clerk
Georgia Rock, Law Clerk
E-mail: Jeremy.Mercer@nrc.gov
Nicholas.Trikouros@nrc.gov
Gary.Arnold@nrc.gov
Whitlee.Dean@nrc.gov
Georgia.Rock@nrc.gov

U.S. Nuclear Regulatory Commission
Office of the General Counsel
Mail Stop - O-14A44
Washington, DC 20555-0001
Adam S. Gendelman, Esq.
Katerina Georgiev, Esq.
Mauri Lemoncelli, Esq.
Kevin C. Roach, Esq.
Anne Fream, Paralegal
Georgiann E. Hampton, Paralegal
E-mail: Adam.Gendelman@nrc.gov
Katerina.Georgiev@nrc.gov
Mauri.Lemoncelli@nrc.gov
Kevin.Roach@nrc.gov
Anne.Fream@nrc.gov
Georgiann.Hampton@nrc.gov

Powertech (USA) Inc.
101 N. Shoreline Blvd., Suite 560
Corpus Christi, TX 78401
Peter Luthiger, Chief Operating Officer
Robert Willette, Chief Legal Counsel
E-mail: pluthiger@encoreuranium.com
rwillette@encoreuranium.com

Powertech (USA) Inc., Docket No. 40-9075-LR
COMMISSION MEMORANDUM AND ORDER (CLI-26-6)

Counsel for Powertech (USA) Inc.
Holland & Knight LLP
800 17th Street NW, Suite 1100
Washington, DC 20006
Jason A. Hill, Esq.
Andrew J. Kriha, Esq.
E-mail: Jason.Hill@hklaw.com
Andrew.Kriha@hklaw.com

Counsel for Oglala Sioux Tribe,
Black Hills Clean Energy Alliance,
and NDN Collective
Jeffrey C. Parsons, Esq.
Western Mining Action Project
P.O. Box 349
Lyons, CO 80540
E-mail: jeff@wmaplaw.org

Counsel for Susan Henderson
James Sword, Esq.
702 Jennings Street
Hot Springs, SD 57747
E-mail: jim@swordlawoffice.com

Office of the Secretary of the Commission

Dated at Rockville, Maryland,
this 15th day of June 2026.