

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD PANEL

Before Administrative Judges:

Jeremy A. Mercer, Chair  
Nicholas G. Trikouros  
Dr. Gary S. Arnold

In the Matter of:

POWERTECH (USA) INC.,

(Dewey-Burdock In Situ Uranium Recovery  
Facility)

Docket No. 40-9075-LR

ASLBP No. 25-987-01-LR-BD01

July 28, 2026

**MEMORANDUM AND ORDER**

**(Protective Order Governing Disclosure of Sensitive Cultural Resource  
Information Designated as Sensitive Unclassified Non-Safeguards Information (SUNSI))**

In its July 15, 2026 Second Amended Case Scheduling and Management Order, this Board directed that (i) any party seeking entry of a protective order must file a motion for same by July 16, 2026, and (ii) any party who intended to file an answer thereto must do so within three business days thereafter.<sup>1</sup> The Organizational Intervenors (comprised of the Oglala Sioux Tribe, the Black Hills Clean Water Alliance, and the NDN Collective) filed a motion for protective order on July 16, 2026, noting Powertech (USA) Inc. and the NRC Staff did “not oppose the entry of a protective order for the purposes described but reserve[d] the right to provide proposed edits to the proposed protective order language proposed” by the Organizational Intervenors.<sup>2</sup> Neither Powertech nor the NRC Staff filed an answer within three business days of July 16, 2026, so the Board presumes neither entity desires to exercise the right they purported to reserve to provide proposed edits to the protective order language.

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<sup>1</sup> Licensing Board Order (Second Amended Case Scheduling and Management Order) at 5–6 (July 15, 2026) (unpub.).

<sup>2</sup> Unopposed Motion of the Organizational Intervenors for Entry of a Protective Order Governing Sensitive Cultural Resource Information at 1 (July 16, 2026).

Accordingly, and for good cause shown, upon consideration of the Unopposed Motion of the Organizational Intervenors for Entry of a Protective Order Governing Sensitive Cultural Resource Information, the motion is GRANTED. **The Board added Footnote 3 to the language the Organizational Intervenors submitted. The parties are directed to ensure they review that language and act in compliance therewith.** Therefore, this Protective Order is issued, the terms of which are as follows:

1. This Protective Order governs access to and use of information designated as Sensitive Unclassified Non-Safeguards Information (SUNSI) by Powertech (USA) Inc. (Applicant) or the NRC Staff in this proceeding that contains detailed descriptions of the locations of archaeological sites, burial sites, or other cultural resources within the boundary of the proposed Dewey-Burdock facility ("Protected Information"). The Applicant withheld this information from the public record pursuant to 10 C.F.R. § 2.390. This Protective Order shall remain in effect until specifically terminated by the Atomic Safety and Licensing Board or the Commission.

2. All persons shall execute and file the attached Non-Disclosure Affidavit in order to gain access to Protected Information.

3. Other than the filing deadlines set forth in this Order and the provisions of Paragraphs 4 and 5, the terms of this Protective Order do not apply to the NRC Staff, NRC contractors, or NRC legal counsel. The NRC Staff's use of Protected Information is governed by NRC regulations and policies as well as other applicable law.

4. Nothing in this Order, including Paragraph 3, relieves the NRC Staff of its independent obligations under Section 304 of the National Historic Preservation Act, 54 U.S.C. § 307103, and 36 C.F.R. § 800.11(c), to withhold from public disclosure information about the location, character, or ownership of historic properties, including burial sites, where disclosure may cause a significant invasion of privacy, risk harm to the historic property, or impede the use of a traditional religious site by practitioners; nor of any applicable obligations under the

Archaeological Resources Protection Act, 16 U.S.C. § 470hh, the Native American Graves Protection and Repatriation Act, 25 U.S.C. §§ 3001–3013, or S.D.C.L. § 1-20-21.2.

5. The NRC Staff and the Applicant shall not provide Protected Information to an NRC or Applicant contractor unless the contractor has executed the attached Non-Disclosure Affidavit or, for NRC Staff, unless the NRC Staff has certified in writing to the Board and the parties that the contractor is subject to contractual confidentiality obligations no less protective than the terms of this Order.

6. Protected Information shall be treated as confidential by all parties. Protected Information shall not be used except as necessary for the conduct of a proceeding on the Application. Covered persons may make copies of and take notes on Protected Information, but such copies and notes become Protected Information subject to the terms of this Order. All parties shall take reasonable precautions to ensure that Protected Information is not distributed to unauthorized persons.

7. All parties shall maintain all Protected Information in a secure location and shall not provide Protected Information to anyone not authorized to receive it pursuant to this Order.

8. Counsel for parties may allow legal staff under their supervision access to Protected Information as necessary in the course of their representation. All counsel shall be responsible for ensuring that their staff complies with the terms of this Order and the Non-Disclosure Affidavit and will be subject to sanctions for any violations by their staff.

9. Parties shall maintain a log of all copies or materials that contain Protected Information within their possession or control. Upon the termination of a proceeding on the Application, or upon order of the Atomic Safety and Licensing Board or the Commission, the parties shall: (1) return all materials containing Protected Information to the Applicant or destroy the materials, except that copies of filings, official transcripts, exhibits, and notes may be redacted so that only those portions containing Protected Information are destroyed; and (2) submit a Non-Disclosure Affidavit stating that the Protected Information within their possession

or control has been returned or destroyed, and shall serve a copy of the executed Non-Disclosure Affidavit on the Applicant and the NRC Staff.

10. If the parties have reason to suspect that Protected Information may have been lost or misplaced, or that Protected Information has otherwise become available to unauthorized persons, the parties shall promptly notify the Licensing Board of those suspicions and the reason for them.

11. The Licensing Board may alter or amend this Protective Order and resolve disputes. The Organizational Intervenors, the Applicant, or the NRC Staff may seek amendments to this Order or the Non-Disclosure Affidavits by filing a motion for amendment.

12. Pleadings or other documents for filing that contain Protected Information shall be filed electronically using the E-Filing system.<sup>3</sup> The person filing the document must properly choose the option to prevent the document from being filed in the public docket. Only members of the Board, NRC Staff counsel, the Applicant's counsel, and authorized persons shall be designated as recipients on the electronic service list. If any party to a proceeding on this Application intends to submit an exhibit, testimony, or pleading containing Protected Information without using the E-Filing system, the party shall notify the Licensing Board prior to such filing. Nothing in this Order shall preclude a party from objecting to the use of an exhibit, testimony, or a pleading because it contains Protected Information. The Licensing Board may issue additional orders concerning the use of Protected Information at a hearing.

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<sup>3</sup> If a party files or submits a document containing Protected Information, it shall ensure the document containing that information is marked "Filed Pursuant to Protective Order – Contains SUNSI – Protected Cultural Resource Information" in a conspicuous manner in the document header and footer on every page. Additionally, the Protected Information shall be identified within the document by way of yellow highlighting or by paragraph/line markings in the left margin. See 10 C.F.R. § 2.390(b)(1)(i)(B). The Board will presume that any information not so identified (by yellow highlighting or paragraph/line markings) is NOT Protected Information. See 10 C.F.R. § 2.390(b)(1).

13. Nothing in this Order shall preclude any person from seeking public disclosure of Protected Information in accordance with NRC regulations and applicable federal law. Nothing in this Order shall preclude any person from seeking, through discovery in any other administrative or judicial proceeding, information protected by this Order.

14. Any violation of this Protective Order or of a Non-Disclosure Affidavit executed in accordance with this Order may result in the imposition of sanctions as the Licensing Board or the Commission may deem appropriate. Nothing in this Order restricts or waives the parties' rights to pursue any other legal or equitable remedies that may be available in the event of actual or anticipated disclosure of Protected Information.

15. This Protective Order does not apply to information that the Atomic Safety and Licensing Board or the Commission determines not to be Protected Information. Before the NRC Staff or the Applicant makes a determination that information previously designated as Protected Information under this Order is no longer Protected Information, or otherwise discloses such information to the public, the NRC Staff or the Applicant shall provide written notice to all parties at least twenty (20) days before any public disclosure, identifying the information at issue. Within that twenty-day period, any party may file a motion with the Board seeking to maintain the protected status of the information, and the information shall remain subject to the terms of this Order pending the Board's resolution of any such motion.

16. Persons seeking access to protected information must file executed Non-Disclosure Affidavits within seven (7) days after service of this Order.

IT IS SO ORDERED.

FOR THE ATOMIC SAFETY AND  
LICENSING BOARD

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Jeremy A. Mercer, Chair  
Administrative Judge

Rockville, Maryland  
July 28, 2026

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

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In the Matter of:

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Docket No. 40-9075-LR

ASLBP No. 25-987-01-LR-BD01

**NON-DISCLOSURE AFFIDAVIT**

I, \_\_\_\_\_, being duly sworn, state:

1. I have read the July 28, 2026 Memorandum and Order of the Atomic Safety and Licensing Board issuing a protective order in connection with the Powertech (USA) Inc., Dewey-Burdock In Situ Uranium Recovery Facility proceeding, Docket No. 40-9075-LR. I will comply in all respects with the protective order's terms and conditions. I will protect and keep confidential all Protected Information, as defined in the protective order, in accordance with the terms of this Non-Disclosure Affidavit. Archaeological reports and data in the public record are not subject to the Board's protective order or the restrictions described in this affidavit.

2. I will not disclose Protected Information to anyone except an authorized person. I will protect documents containing or revealing Protected Information in written or recorded form (including any portions of transcripts of in camera hearings, filed testimony, or any other documents that contain or reveal Protected Information), so that the Protected Information contained therein remains at all times under the control of an authorized person and is not revealed to anyone else.

3. When not under my direct control or the direct control of another authorized person, I will keep and protect all documents containing or revealing Protected Information

(including, without limitation, transcripts, pleadings that I may generate, and any notes and copies that I may make) in a secure locked place such as a filing cabinet, closet, or other storage container, or in encrypted electronic storage accessible only to authorized persons. I will not transmit by facsimile any material containing Protected Information.

4. Each document that contains or reveals Protected Information shall be marked "Contains SUNSI – Protected Cultural Resource Information" in a conspicuous manner.

5. Neither during nor after this proceeding will I publicly reveal any Protected Information that I receive by virtue of this proceeding, as long as the information remains protected and is not otherwise a matter of public record.

6. I acknowledge that any violation of the terms of this affidavit or of the Atomic Safety and Licensing Board's protective order, which incorporates the terms of this affidavit, may result in the imposition of such sanctions as the Atomic Safety and Licensing Board or the Commission may deem appropriate.

WHEREFORE, I do solemnly agree to protect and keep confidential such Protected Information as may be disclosed to me in this proceeding, in accordance with the terms of this affidavit.

\_\_\_\_\_  
(Name)

Subscribed to and sworn before me this \_\_\_\_ day of \_\_\_\_\_, 2026.

\_\_\_\_\_  
Notary Public

My commission expires: \_\_\_\_\_

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

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|-----------------------------------------|---|-----------------------|
| 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 **MEMORANDUM AND ORDER (Protective Order Governing Disclosure of Sensitive Cultural Resource Information Designated as Sensitive Unclassified Non-Safeguards Information (SUNSI))** have been served upon the following persons by Electronic Information Exchange.

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Powertech (USA) Inc., Docket No. 40-9075-LR

**MEMORANDUM AND ORDER (Protective Order Governing Disclosure of Sensitive Cultural Resource Information Designated as Sensitive Unclassified Non-Safeguards Information (SUNSI))**

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Office of the Secretary of the Commission

Dated at Rockville, Maryland,  
this 28<sup>th</sup> day of July 2026.