

[ORAL ARGUMENT NOT YET SCHEDULED]

No. 20-1489

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

OGLALA SIOUX TRIBE and ALIGNING FOR RESPONSIBLE MINING,

Petitioners,

v.

UNITED STATES NUCLEAR REGULATORY COMMISSION and the
UNITED STATES OF AMERICA,

Respondents,

and POWERTECH (USA), INC.,

Intervenor.

PETITION FOR REVIEW OF FINAL ORDER OF THE UNITED STATES
NUCLEAR REGULATORY COMMISSION

**JOINT APPENDIX
VOLUME 1**

Jeffrey C. Parsons
Roger Flynn
Western Mining Action Project
P.O. Box 349
Lyons, Colorado 80540
303-823-5738
wmap@igc.org

Travis Stills
Energy & Conservation Law
1911 Main Avenue, Suite 238
Durango, Colorado 81301
970-375-9231
stills@frontier.net

Counsel for Petitioners

JEAN E. WILLIAMS
Acting Assistant Attorney General
JUSTIN D. HEMINGER
Attorney
Appellate Section
Environment and Natural
Resources Division
U.S. Department of Justice
P.O. Box 7415
Washington, D.C. 20044-7415
(202) 514-5442
justin.heminger@usdoj.gov

MARIAN L. ZOBLER
General Counsel
ANDREW P. AVERBACH
Solicitor
JAMES E. ADLER
Senior Attorney
Office of the General Counsel
U.S. Nuclear Regulatory Commission
11555 Rockville Pike
Rockville, MD 20852
(301) 287-9173
james.adler@nrc.gov

Counsel for Respondents

Christopher S. Pugsley
Anthony J. Thompson

1912 Sunderland Place
Washington, DC 20036
(571) 328-6299
cpugsley@athompsonlaw.com
ajthompson@athompsonlaw.com

Counsel for Intervenor

TABLE OF CONTENTS

VOLUME 1

Certified Record Index 1

Orders of the Nuclear Regulatory Commission

CLI-16-20, 84 NRC 219 (2016).....329

CLI-18-07, 88 NRC 1 (2018).....381

CLI-19-1, 89 NRC 1 (2019).....392

CLI-19-9, 90 NRC 121 (2019).....406

CLI-20-09, Slip. Op. (2020)423

VOLUME 2

Orders of the Atomic Safety and Licensing Board

Memorandum and Order (Ruling on Petitions to Intervene and Requests for Hearing), LBP-10-16, 72 NRC 361 (2010)467

Memorandum and Order (Ruling on Proposed Contentions Related to the Draft Supplemental Environmental Impact Statement), LBP-13-9, 78 NRC 37 (2013).....557

| | |
|---|-----|
| Memorandum and Order (Ruling on Proposed Contentions Related to the Final Supplemental Environmental Impact Statement), LBP-14-5, 79 NRC 377 (2014)..... | 637 |
| Order (Removing Temporary Stay and Denying Motions for Stay of Materials License Number SUA-1600)(unpublished)(May 20, 2014)..... | 664 |
| Partial Initial Decision, LBP-15-16, 81 NRC 618 (2015) | 676 |
| Memorandum and Order (Granting Summary Disposition as to Contention 1B, Denying Summary Disposition as to Contention 1A, and Establishing Further Procedures), LBP-17-9, 86 NRC 167 | 770 |
| Memorandum and Order (Denying Motions for Summary Disposition as to Contention 1A), LBP-18-5, 88 NRC 95 (2018)..... | 817 |
| Final Initial Decision, LBP-19-10, 90 NRC 287 (2019) | 855 |

VOLUME 3

NEPA Documents

| | |
|--|------|
| Generic EIS for In-Situ Leach Uranium Milling Facilities (May 2009)(excerpts)..... | 926 |
| Draft Supplemental EIS for the Dewey-Burdock Project (November 2012)(excerpts) | 982 |
| Final Supplemental EIS for the Dewey-Burdock Project (January 2014)(excerpts)..... | 1013 |

VOLUME 4

Record Materials

| | |
|---|------|
| Record of Decision for the Dewey-Burdock Project (April 8, 2014)..... | 1433 |
|---|------|

| | |
|---|------|
| Materials License SUA-1600 for the Dewey-Burdock Project (April 8, 2014)..... | 1439 |
| Updated Record of Decision for the Dewey-Burdock Project (December 3, 2020)..... | 1454 |
| Materials License SUA-1600 for the Dewey-Burdock Project Amendment No. 3 (October 7, 2020) | 1461 |
| Exhibit NRC-018-A Programmatic Agreement (March 19, 2014) | 1476 |
| Exhibit NRC-018-B Appendices to Programmatic Agreement (March 19, 2014)..... | 1490 |
| Exhibit NRC-018-D Letter from Advisory Council on Historic Preservation to NRC Staff (April 7, 2014) | 1544 |
| Hearing Transcript August 19, 2014 (excerpts)..... | 1546 |
| Hearing Transcript August 20, 2014 (excerpts)..... | 1552 |
| Hearing Transcript August 21, 2014 (excerpts)..... | 1574 |
| Hearing Transcript August 29, 2019 (Closed Session, redacted public version)(excerpts) | 1585 |
| Exhibit OST-001 Expert Testimony of Dr. Robert Moran (excerpts)..... | 1637 |
| Exhibit OST-022 Letter from U.S. BLM to Powertech (July 8, 2014) | 1643 |
| Exhibit OST-023 Draft Avian Monitoring and Mitigation Plan | 1645 |
| Exhibit OST-024 Powertech Application to U.S. FWS | 1681 |
| Exhibit OST-027 Letter from U.S. FWS to Powertech (October 10, 2014) | 1702 |

| | |
|--|------|
| Exhibit OST-028 Letter from Powertech to State of South Dakota (October 7, 2014)..... | 1705 |
| Exhibit OST-029 Supplemental Expert Testimony of Dr. Hannan LaGarry (excerpts)..... | 1707 |
| Exhibit INT-023 Affidavits – Testimony Re: Lakota Cultural Resources..... | 1709 |
| Exhibit NRC-016 Oglala Sioux Tribe Comments on Programmatic Agreement with Attachment (February 5, 2014)..... | 1793 |
| Exhibit NRC-186 Summary of May 19, 2016 Meeting with the Oglala Sioux Tribe..... | 1823 |
| Exhibit NRC-188 Summary of 2017 Teleconference with the Oglala Sioux Tribe..... | 1825 |
| Exhibit NRC-189 NRC Staff Letter Dated April 14, 2017 | 1827 |
| Exhibit NRC-190 Oglala Sioux Tribe Letter Dated May 31, 2017..... | 1831 |
| Exhibit NRC-192 NRC Staff Letter Dated March 16, 2018 | 1840 |
| Exhibit NRC-204 NRC Staff Letter Dated January 25, 2019 | 1847 |
| Exhibit NRC-210 Powertech Letter Dated April 11, 2018..... | 1854 |
| Exhibit NRC-211 Oglala Sioux Tribe Letter Dated March 12, 2019..... | 1857 |
| Exhibit NRC-214 NRC Staff February 2019 Draft Methodology | 1864 |
| Exhibit NRC-215 NRC Staff Letter Dated March 1, 2019 | 1888 |
| Oglala Sioux Tribe Petition to Intervene (excerpts)..... | 1895 |
| Oglala Sioux Tribe Contentions of Draft EIS (excerpts)..... | 1900 |

| | |
|---|------|
| Oglala Sioux Tribe Contentions on Final EIS (excerpts) | 1912 |
| Oglala Sioux Tribe Petition for Review of LBP-15-16 | 1920 |
| Oglala Sioux Tribe Reply in Support of Petition for Review of LBP-15-16 | 1949 |
| NRC Staff’s Response to Petition for Review of LBP-15-16 (excerpts) | 1957 |
| NRC Staff’s Motion for Summary Disposition of Contention 1A (excerpts)..... | 1962 |
| NRC Staff ‘s Statement of Position on Contention 1A (excerpts) | 1968 |
| Advisory Council on Historic Preservation Consultation Handbook November 2008 (excerpts)..... | 1971 |
| J.K. Otton, S.Hall, U.S. Geological Survey, “In-Situ recovery uranium mining in the United States: Overview of production and remediation issues,” IAEA-CN- 175/87 (2009) | 1980 |
| S.Hall, U.S. Geological Survey, “Groundwater Restoration at Uranium In-Situ Recovery Mines, South Texas Coastal Plain, Open-File Report 2009-1143 (2009) (excerpts) | 1981 |
| Letter from U.S. EPA to NRC Staff (March 3, 2010) | 1983 |
| U.S. NRC Office of Inspector General Audit Report, OIG-13-A-20 (August 20, 2013) (excerpts) | 1991 |

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

OGLALA SIOUX TRIBE, ALIGNING)
 FOR RESPONSIBLE MINING,)
)
 Petitioners,)
)
 v.)
)
 UNITED STATES NUCLEAR)
 REGULATORY COMMISSION and)
 UNITED STATES OF AMERICA,)
)
 Respondents.)

No. 20-1489

CERTIFIED INDEX OF THE RECORD

I hereby certify that the documents listed and described below in the Certified Index of the Record constitute the record of the administrative proceeding of the U.S. Nuclear Regulatory Commission (NRC) associated with the issuance of the NRC order *In the Matter of Powertech (USA), Inc.* (Dewey-Burdock *In Situ* Uranium Recovery Facility), Docket No. 40-9075-MLA, CLI-20-09 (October 8, 2020). This order is the final NRC order issued in the administrative proceeding in question and the most recent order listed in the petition for review. The ML numbers listed after each document reflect the document’s accession number in the NRC’s ADAMS public online database (<http://www.nrc.gov/reading-rm/adams.html>).

Respectfully Submitted,



Annette L. Vietti-Cook
Secretary of the Commission

Dated at Rockville, Maryland
this 22nd day of January 2021

**CERTIFIED INDEX OF RECORD FOR POWERTECH (USA) INC. LICENSE APPLICATION (DEWEY
BURDOCK IN SITU URANIUM RECOVERY FACILITY)
NRC DOCKET NO. 40-9075-MLA**

**OGLALA SIOUX TRIBE AND ALIGNING FOR RESPONSIBLE MINING V.
U.S. NUCLEAR REGULATORY COMMISSION AND UNITED STATES OF AMERICA
(NO. 20-1489)**

| ID NO. | DESCRIPTION | DOCUMENT DATE | ACCESSION NUMBER |
|---------------|---|--------------------------|-----------------------------|
| 1 | NUREG-0706, Vol. I, Final Generic Environmental Impact Statement on Uranium Milling, Project M-25, Summary and Text. | 09/30/1980 | ML032751663 |
| 2 | NUREG-0706, Vol II, Final Generic Environmental Impact Statement on Uranium Milling, Project M-25, Appendices A-F. | 09/30/1980 | ML032751667 |
| 3 | NUREG-0706, Vol III, Final Generic Environmental Impact Statement on Uranium Milling, Project M-25, Appendices G-V. | 09/30/1980 | ML032751669 |
| 4 | Powertech (USA), Inc.'s - Submission of Application for a Nuclear Regulatory Commission Uranium Recovery License for its Proposed Dewey-Burdock In Situ Leach Uranium Recovery Facility in the State of South Dakota. | 02/25/2009 | ML091030707 |
| 5 | NUREG-1910, Vol. 2, "Generic Environmental Impact Statement for In-Situ Leach Uranium Milling Facilities: Chapters 5 through 12 and Appendices A through G," Final Report. | 05/31/2009 | ML091480188 |
| 6 | NUREG-1910, Vol. 1, "Generic Environmental Impact Statement for In-Situ Leach Uranium Milling Facilities, Chapters 1 Through 4, Final Report". | 05/31/2009 | ML091480244 |

| | | | |
|----|---|------------|-------------|
| 7 | PowerTech (USA) Inc.'s Resubmission of License Application for Proposed Dewey-Burdock, ISL Uranium Recovery Facility. | 08/10/2009 | ML092870153 |
| 8 | "Dewey-Burdock Project Supplement to Application for NRC Uranium Recovery License Dated February 2009." | 08/31/2009 | ML092870155 |
| 9 | Map, "Isopach of the Upper Confining Graneros Unit (Mowry and Skull Creek Shales)." Plate 315. | 08/09/2009 | ML092870223 |
| 10 | Map, "Land Application Cross Sections Burdock." Plate 335. | 08/09/2009 | ML092870224 |
| 11 | Map, "Facilities Cross Section Index." Plate 337. | 08/09/2009 | ML092870225 |
| 12 | Map, "Land Application Cross Sections Dewey." Plate 338. | 08/09/2009 | ML092870226 |
| 13 | Appendix A, "Regulatory Requirements." | 08/10/2009 | ML092870227 |
| 14 | Map, "Isopach of the Chilson Member of the Lakota Formation," Supplemental Exhibit 3.2-5. | 08/05/2009 | ML092870230 |

| | | | |
|----|---|------------|-------------|
| 15 | Map, "Ore Cross Section H-H" Fall River and Custer Counties," Supplemental Exhibit 3.2-6. | 08/05/2009 | ML092870231 |
| 16 | Map, "Ore Cross Section J-J" Fall River and Custer Counties," Supplemental Exhibit 3.2-7. | 08/05/2009 | ML092870232 |
| 17 | Map, "Structure Map - Top of the Chilson Member of the Lakota Formation Dewey Mine Unit 1," Supplemental Exhibit 3.2-8. | 08/07/2009 | ML092870233 |
| 18 | Map, "Aquifer Exemption Boundaries." Supplemental Exhibit 2.1-1. | 08/05/2009 | ML092870234 |
| 19 | Map, "Isopach of the Underlying Unit (Morrison Shale)." Supplemental Exhibit 2.1-2. | 08/04/2009 | ML092870235 |
| 20 | Map, "Cross Sections Dewey Mine Unit 1." Supplemental Exhibit 2.1-3. | 08/07/2009 | ML092870236 |
| 21 | Map, "Cross Sections Burdock Mine Units 1." Supplemental Exhibit 2.1-4. | 08/04/2009 | ML092870237 |
| 22 | Map, "Location of Breccia Pipe or Collapse Structure Southern Black Hills, South Dakota." Supplemental Exhibit 2.2.-1. | 08/06/2009 | ML092870238 |

| | | | |
|----|---|------------|-------------|
| 23 | Map, "Structure Map - Top of the Fall River Formation." Supplemental Exhibit 2.2-2 | 08/04/2009 | ML092870239 |
| 24 | Map, "Structure Map - Top of the Fuson Formation." Supplemental Exhibit 2.2-3 | 08/04/2009 | ML092870240 |
| 25 | Map, "Dewey-Burdock Project Area of Review Map." Supplemental Exhibit 3.1-1. | 08/06/2009 | ML092870241 |
| 26 | Map, "Proposed Facilities and Well Fields Land Application Option." Supplemental Exhibit 3.1-2. | 08/06/2009 | ML092870242 |
| 27 | Map, "Proposed Facilities and Well Fields Deep Disposal Well Option." Supplemental Exhibit 3.1-3. | 08/06/2009 | ML092870243 |
| 28 | Map, "Future Mine Units Custer and Fall River Counties." Supplemental Exhibit 3.1-4. | 08/05/2009 | ML092870244 |
| 29 | Map, "Cross Section Index Fall River and Custer Counties," Supplemental Exhibit 3.1-5. | 08/05/2009 | ML092870245 |
| 30 | Map, "100 foot Grid Dewey Mining Unit Well Detail - Fall River - Sections 20 and 32 Custer County, South Dakota," Supplemental Exhibit 3.1-6. | 08/07/2009 | ML092870246 |

| | | | |
|----|---|------------|-------------|
| 31 | Map, "100 Foot Grid Burdock Mining Unit Well Detail - Lakota - Section 11 Fall River County, South Dakota," Supplemental Exhibit 3.1-7. | 08/07/2009 | ML092870247 |
| 32 | Map, "100 foot Grid Deway Mining Unit, Sections 29 and 32 Custer County, South Dakota," Supplemental Exhibit 3.1-8. | 08/07/2009 | ML092870248 |
| 33 | Map, "100 foot Grid Burdock Mining Unit, Section 11 Fall River County, South Dakota," Supplemental Exhibit 3.1-9. | 08/07/2009 | ML092870249 |
| 34 | Map, "Location of the Historical Mines and Overburden Piles," Supplemental Exhibit 3.1-10. | 08/05/2009 | ML092870250 |
| 35 | Map, "Proposed Well Fields," Supplemental Exhibit 3.2-1. | 08/06/2009 | ML092870251 |
| 36 | Map, "Structure Map - Top of the Chilson member of the Lakota Formation," Supplemental Exhibit 3.2-2. | 08/05/2009 | ML092870252 |
| 37 | Map, "Isopach of the Fuson Member of the Lakota Formation," Supplemental Exhibit 3.2-3. | 08/06/2009 | ML092870253 |
| 38 | Map, "Isopach of the Fall River Formation," Supplemental Exhibit 3.2-4. | 08/05/2009 | ML092870254 |

| | | | |
|----|--|------------|-------------|
| 39 | Map, "Isopach of the Fall River Formation Dewey Mine Unit 1," Supplemental Exhibit 3.2-9. | 08/07/2009 | ML092870255 |
| 40 | Map, "Isopach of the Fuson Member of the Lakota Formation Dewey Mine Unit 1," Supplemental Exhibit 3.2-10. | 08/07/2009 | ML092870256 |
| 41 | Map, "Structure Map - Top of the Chilson Member of the Lakota Formation Burdock Mine Unit1," Supplemental Exhibit 3.2-11. | 08/07/2009 | ML092870257 |
| 42 | Map, "Isopach of the Chilson Member of the Lakota Formation Burdock Mine Unit 1," Supplemental Exhibit 3.2-12. | 08/07/2009 | ML092870258 |
| 43 | Map, "Isopach of the Fuson Member of the Lakota Formation Burdock Mine Unit 1." Supplemental Exhibit 3.2-13. | 08/10/2009 | ML092870259 |
| 44 | Dewey-Burdock Project Application for NRC Uranium Recovery License Fall River and Custer Counties, South Dakota Technical Report, Page 2-149 through Page 2-379. | 02/28/2009 | ML092870295 |
| 45 | Dewey-Burdock Project Application for NRC Uranium Recovery License Fall River and Custer Counties, South Dakota Technical Report, Cover Page through Page 2-148. | 02/28/2009 | ML092870298 |
| 46 | Dewey-Burdock Project Application for NRC Uranium Recovery License Fall River and Custer Counties, South Dakota Technical Report, Page 3-1 through Page 10-2. | 02/28/2009 | ML092870299 |

| | | | |
|----|---|------------|-------------|
| 47 | Map, "Structure Map, Top of the Unkpapa," Plate 2.6-4. | 02/28/2009 | ML092870305 |
| 48 | Map, "Generalized Cross Section Fall River County," Plate 2.6-5. | 02/28/2009 | ML092870306 |
| 49 | Map, "Isopach of the Chilson Member of the Lakota Formation," Plate 2.6-6. | 02/28/2009 | ML092870307 |
| 50 | Map, "Isopach of the Fuson Member of the Lakota Formation," Plate 2.6-7. | 02/28/2009 | ML092870309 |
| 51 | Map, "Isopach of the Fall River Formation," Plate 2.6-8. | 07/31/2008 | ML092870310 |
| 52 | Map, "Isopach of the Overlying Aquitard (Mowry & Shull Creek Shales)," Plate 2.6-9. | 07/31/2008 | ML092870311 |
| 53 | Map, "Cross Section Index Fall River & Custer Counties," Plate 2.6-10. | 12/03/2008 | ML092870312 |
| 54 | Map, "Mineral Ownership Fall River & Custer Counties," Plate 1.5-1. | 02/28/2009 | ML092870313 |

| | | | |
|----|---|------------|-------------|
| 55 | Map, "Surface Use Agreements Fall River & Custer Counties," Plate 1.5-2. | 02/28/2009 | ML092870314 |
| 56 | Map, "Sampling Locations," Plate 2.5-1. | 02/28/2009 | ML092870315 |
| 57 | Drawing PR-7 3655, "Dewey-Burdock Typical Log, Fall River and Custer Counties, South Dakota," Plate 2.6.4. | 11/05/2008 | ML092870316 |
| 58 | Map, "Fall River Structure, Dewey-Burdock Project, Fall River and Custer Counties South Dakota," Plate 2.6-2. | 02/28/2009 | ML092870317 |
| 59 | Map, "Structure Map, Top of the Chilson Member of the Lakota Formation," Plate 2.6-3. | 02/28/2009 | ML092870318 |
| 60 | Map, "Ore Cross Section A-A," Plate 2.6-11. | 11/12/2008 | ML092870320 |
| 61 | Map, "Ore Cross Section F-F'," Plate 2.6-12. | 11/12/2008 | ML092870321 |
| 62 | Map, "Ore Cross Section H-H'," Plate 2.6-13. | 11/11/2008 | ML092870322 |

| | | | |
|----|---|------------|-------------|
| 63 | Map, "Ore Cross Section J-J'," Plate 2.6-14. | 11/11/2008 | ML092870323 |
| 64 | Map, "Soil Map," Plate 2.6-15. | 11/11/2008 | ML092870324 |
| 65 | Map, "Vegetation Communities Map," Plate 2.8-1. | 11/11/2008 | ML092870325 |
| 66 | Map, "Wetland Assessment," Plate 2.8-2. | 11/04/2008 | ML092870326 |
| 67 | Map, "Wildlife Features," Plate 2.8-3. | 10/16/2008 | ML092870327 |
| 68 | Map, "Map #2 Typical Layout-Mining Unit (100' Grid) Fall River Well Detail, Sec 29&32, T1E-R6S," Plate 3.1-1. | 12/05/2008 | ML092870328 |
| 69 | Map, "Typical Header House 100' and 70' Mining Unit," Plate 3.1-2. | 11/14/2008 | ML092870329 |
| 70 | Appendix 4.2-A, "Spaw Model Results," Spaw Model Results Dewey Field. | 08/10/2009 | ML092870343 |

| | | | |
|----|--|------------|-------------|
| 71 | 40CFR190 Annual Dose Commitments Computed for this Location, MREM/YR. | 08/10/2009 | ML092870344 |
| 72 | Application for NRC Uranium Recovery License Proposed Action Fall River and Custer Counties South Dakota Environmental Report. | 02/28/2009 | ML092870345 |
| 73 | Dewey-Burdock Environmental Report - 3.4.2.1.2 Pass Creek Watershed through 3.12 Waste Management. | 02/28/2009 | ML092870346 |
| 74 | Appendix 2.2-A, "Well Location Data". | 08/10/2009 | ML092870350 |
| 75 | Appendix 2.6-C, "Soil Series Descriptions". | 08/10/2009 | ML092870351 |
| 76 | Appendix 2.7-G, "Groundwater Quality Data". | 08/10/2009 | ML092870354 |
| 77 | Photographs - W23, R3 P17: Upstream, Wetland through W45, R8 P5: Downstream, Wetland. | 08/10/2009 | ML092870357 |
| 78 | Appendix 2.8-G Draft, "Wetland Determination Data Forms-Great Plains Region". | 08/10/2009 | ML092870358 |

| | | | |
|----|---|------------|-------------|
| 79 | Dewey-Burdock Environmental Report, 4.0 Potential Environmental Impacts through End. | 02/28/2009 | ML092870360 |
| 80 | Knight Piesold Consulting - 6.0 Laboratory Core Data. | 08/10/2009 | ML092870370 |
| 81 | Map, "Surface Use Agreements Fall River & Custer Counties," Plate 3.1-1. | 02/11/2009 | ML092870380 |
| 82 | Plate 3.3-1, Dewey-Burdock Typical Log, Fall River and Custer Counties South Dakota, to Application for NRC Uranium Recovery License Proposed Action Fall River and Custer Counties South Dakota Environmental Report. | 02/28/2009 | ML092870381 |
| 83 | Plate 3.3-2, Fall River Structure Dewey-Burdock Project, Fall River and Custer Counties South Dakota, to Application for NRC Uranium Recovery License Proposed Action Fall River and Custer Counties South Dakota Environmental Report. | 02/28/2009 | ML092870382 |
| 84 | Plate 3.3-3, Structure Map, Top of the Chilson Member of the Lakota Formation, to Application for NRC Uranium Recovery License Proposed Action Fall River and Custer Counties South Dakota Environmental Report. | 02/28/2009 | ML092870383 |
| 85 | Plate 3.3-5, Generalized Cross Section, Fall River County to Application for NRC Uranium Recovery License Proposed Action Fall River and Custer Counties South Dakota Environmental Report. | 02/28/2009 | ML092870386 |
| 86 | Plate 3.3-6, Isopach of the Chilson Member of the Lakota Formation to Application for NRC Uranium Recovery License Proposed Action Fall River and Custer Counties South Dakota Environmental Report. | 02/28/2009 | ML092870387 |

| | | | |
|----|--|------------|-------------|
| 87 | Plate 3.3-7, Isopach of the Fusion Member of the Lakota Formation to Application for NRC Uranium Recovery License Proposed Action Fall River and Custer Counties South Dakota Environmental Report. | 02/28/2009 | ML092870388 |
| 88 | Plate 3.3-8, Isopach of the Fall River Formation to Application for NRC Uranium Recovery License Proposed Action Fall River and Custer Counties South Dakota Environmental Report. | 02/28/2009 | ML092870389 |
| 89 | Plate 3.3-9, Isopach of the Overlying Aquitard (Mowry & Shull Creek Shales) to Application for NRC Uranium Recovery License Proposed Action Fall River and Custer Counties South Dakota Environmental Report. | 02/28/2009 | ML092870390 |
| 90 | Plate 3.3-15, Soil Map, Dewey-Burdock Project, South Dakota to Application for NRC Uranium Recovery License Proposed Action Fall River and Custer Counties South Dakota Environmental Report. | 02/28/2009 | ML092870394 |
| 91 | Plate 3.5-1, Vegetation Communities Map, Dewey-burdock Project, South Dakota to Application for NRC Uranium Recovery License Proposed Action Fall River and Custer Counties South Dakota Environmental Report. | 02/28/2009 | ML092870395 |
| 92 | Plate 3.5-2, Wetland Assessment, Dewey-Burdock Project, South Dakota to Application for NRC Uranium Recovery License Proposed Action Fall River and Custer Counties South Dakota Environmental Report. | 02/28/2009 | ML092870397 |
| 93 | Appendix 3.5-J, Compiled Habitat Data Forms to Application for NRC Uranium Recovery License Proposed Action Fall River and Custer Counties South Dakota Environmental Report. | 02/28/2009 | ML092870407 |
| 94 | Appendix 4.6-A, Spaw Model Results to Application for NRC Uranium Recovery License Proposed Action Fall River and Custer Counties South Dakota Environmental Report. | 02/28/2009 | ML092870409 |

| | | | |
|-----|--|------------|-------------|
| 95 | Appendix 3.3-A, Exploration Drill Holes within One Mile Perimeter Around the Dewey-Burdock Project to Application for NRC Uranium Recovery License Proposed Action Fall River and Custer Counties South Dakota Environmental Report. | 02/28/2009 | ML092870411 |
| 96 | Appendix 4.14-C Radium Benchmark Dose Assessment. | 02/28/2009 | ML092870413 |
| 97 | Appendix 3.4-B, Well Completion Reports to Dewey-Burdock Project Application for NRC Uranium Recovery License Fall River and Custer Counties, South Dakota Technical Report. | 02/28/2009 | ML092870414 |
| 98 | Appendix 3.5-A, Submitted Methodology to Application for NRC Uranium Recovery License Proposed Action Fall River and Custer Counties South Dakota Environmental Report. | 02/28/2009 | ML092870416 |
| 99 | Appendix 3.3-F, Site Photographs to Application for NRC Uranium Recovery License Proposed Action Fall River and Custer Counties South Dakota Environmental Report. | 02/28/2009 | ML092870421 |
| 100 | Appendix 3.5-F, Wetland Photographs - Appendix 3.5-I, Application for NRC Uranium Recovery License Proposed Action Fall River and Custer Counties South Dakota Environmental Report. | 02/28/2009 | ML092870422 |
| 101 | Plate 3.3-11, Ore Cross Section A-A" Fall River County for Dewey-Burdock Project. | 11/12/2008 | ML093370586 |
| 102 | Plate 3.3-12, Ore Cross Section F-F' Fall River County for Dewey-Burdock Project. | 11/12/2008 | ML093370588 |

| | | | |
|-----|--|------------|-------------|
| 103 | Plate 3.3-13, Ore Cross Section H-H" Fall River & Custer Counties for Dewey-Burdock Project. | 11/11/2008 | ML093370589 |
| 104 | Plate 3.3-14, Ore Cross Section J-J' Fall River & Custer Counties for Dewey-Burdock Project. | 11/11/2008 | ML093370590 |
| 105 | Plate 3.3-4, Structure Map, Top of the Unkpapa. | 11/30/2008 | ML093370591 |
| 106 | Plate 3.3-10, Cross Section Index Fall River & Custer Counties for Dewey-Burdock Project. | 12/03/2008 | ML093370592 |
| 107 | Plate 6.1-1, Sampling Locations for Dewey-Burdock Project. | 01/13/2009 | ML093370593 |
| 108 | Dewey-Burdock Project, Submittal of 7 Replacement Plates Without the Confidential Markings Found in the Environmental Report, Per NRC Request. | 11/24/2009 | ML093370652 |
| 109 | Kevin Hsueh memo re: Informal Information Gathering Meetings Trip Summary Report for the Proposed Dewey-Burdock ISR Facility. | 12/09/2010 | ML093631627 |
| 110 | 2010/01/15 Powertech Dewey-Burdock LA - Dewey Burdock SUNSI Request | 01/15/2010 | ML100190028 |

| | | | |
|-----|--|------------|-------------|
| 111 | 2010/01/15 Powertech Dewey-Burdock LA - SUNSI Request, Powertech | 01/15/2010 | ML100190029 |
| 112 | 2010/01/19 Powertech Dewey-Burdock LA - SUNSI requests(2) | 01/19/2010 | ML100190051 |
| 113 | 2010/01/15-Email Request from David Cory Frankel, Legal Director for Aligning for Responsible Mining et al.,for access to Sensitive Unclassified Non-Safeguards Information (SUNSI). | 01/15/2010 | ML100192098 |
| 114 | 2010/01/15-Email Request from Grace Dugan, Counsel for The Oglala Sioux Tribe requesting access to Sensitive Unclassified Non-Safeguards Information (SUNSI) regarding the License Application Request of Powertech (USA) Inc. | 01/15/2010 | ML100210203 |
| 115 | 2010/01/25-NRC Staff Response to David Frankel Denying Request for Access to SUNSI Information. | 01/25/2010 | ML100252219 |
| 116 | 2010/01/25-Notice of Appearance of Patricia A. Jehle on Behalf of the U.S. Nuclear Regulatory Commission in the Matter of Powertech USA Dewey-Burdock Facility.. | 01/25/2010 | ML100252220 |
| 117 | 2010/01/25-NRC Staff Response to Grace Dugan Granting Request for Access to SUNSI Information. | 01/25/2010 | ML100252221 |
| 118 | 2010/01/25-Notice of Appearance of Michael J. Clark on Behalf of the U.S. Nuclear Regulatory Commission in the Matter of Powertech USA Dewey-Burdock Facility. | 01/25/2010 | ML100252222 |

| | | | |
|-----|---|------------|-------------|
| 119 | 2010/02/02-Notice of Appearance of Anthony Thompson and Christopher Pugsley on Behalf of the Applicant Powertech USA.. | 02/02/2010 | ML100330580 |
| 120 | Letter Re: Request for Information Regarding Endangered or Threatened Species and Critical Habitat for the Powertech Inc Proposed Dewey-Burdock In-Situ Recovery Facility Near Edgemont South Dakota (Docket 040-0 9075). | 03/15/2010 | ML100331503 |
| 121 | 2010/02/16-Attachment-Proposed Non-Disclosure Affidavit. | 02/16/2010 | ML100471143 |
| 122 | 2010/02/16-Attachment-Proposed Memorandum and Order (Protective Order Governing the Disclosure of Sensitive Unclassified Non-Safeguards Information (SUNSI)). | 02/16/2010 | ML100471144 |
| 123 | 2010/02/16-Attachment: Docket No. 40-9075-MLA, List of Documents Containing SUNSI Pertaining to Cultural Resources or Archeological Sites, January 25, 2010. | 02/16/2010 | ML100471145 |
| 124 | 2010/02/16-NRC Staff Motion for Entry of Protective Order. | 02/16/2010 | ML100471146 |
| 125 | 2010/02/19-Notice of Appearance of Grace Dugan on Behalf of the Oglala Sioux Tribe in the Matter of Powertech USA. | 02/19/2010 | ML100501645 |
| 126 | 2010/02/19-Notice of Appearance of Travis E. Stills on Behalf of the Oglala Sioux Tribe in the Matter of Dewey-Burdock In Situ Uranium Recovery Facility. | 02/19/2010 | ML100530128 |

| | | | |
|-----|--|------------|-------------|
| 127 | 2010/02/19-Notice of Appearance of Jeffrey C. Parsons on Behalf of the Oglala Sioux Tribe In the Matter of Dewey-Burdock In Situ Uranium Recovery Facility. | 02/19/2010 | ML100530207 |
| 128 | 2010/02/26-Oglala Sioux Tribe Unopposed Motion for Extension of Time to File An Answer to Motion for Entry of Protective Order. | 02/26/2010 | ML100570478 |
| 129 | 2010/02/26-[Oglala Sioux Tribe Proposed] Memorandum and Order [Granting Motion for Extension of Time to File Answer]. | 02/26/2010 | ML100570479 |
| 130 | 2010/02/26-Oglala Sioux Tribe Request for 90-Day Extension of Time to File Request for Hearing on License Application Request of Powertech (USA) Inc. Dewey-Burdock In Situ Uranium Recovery Facility in Fall River and Custer Counties, SD. | 02/26/2010 | ML100570481 |
| 131 | 2010/03/01-Board Memorandum and Order [granting Motion for extension of time to file an answer for entry of Protective Order submitted by the Oglala Sioux Tribe. | 03/01/2010 | ML100601127 |
| 132 | 2010/03/02-Request for Extension of Time to File Requests/Petitions and Request for Three (3) Additional Public Copies. | 03/02/2010 | ML100610001 |
| 133 | 2010/03/02-Response to Oglala Sioux Tribe Motion for Extension of Time to File a Request for Hearing. | 03/02/2010 | ML100610625 |
| 134 | 2010/03/02-NRC Staff's Opposition to Oglala Sioux Tribe's Request to Extend the Deadline for Submitting Hearing Requests. | 03/02/2010 | ML100610688 |

| | | | |
|-----|--|------------|-------------|
| 135 | 2010/03/02-Attachment to 3-2-10 Answer of Oglala Sioux Tribe - Memorandum and Order (Protective Order Governing the Disclosure of Sensitive Unclassified Non-Safeguards Information (SUNSI)). | 03/02/2010 | ML100620002 |
| 136 | 2009/08/03-Attachment to 3-2-10 Answer of Oglala Sioux Tribe - Order of U.S.District Court (CO) [Granting BHP's Motion (Doc. 75) in Part and Granting Dine's Cross-Motion (Doc. 79) in Part]. | 08/03/2009 | ML100620003 |
| 137 | 2010/03/02-Answer of the Oglala Sioux Tribe to Motion for Entry of a Protective Order. | 03/02/2010 | ML100620004 |
| 138 | 2010/03/03-Response to Proposed Intervenors' Motion for Extension of Time to File a Request for Hearing. | 03/03/2010 | ML100621054 |
| 139 | 2010/03/03-NRC Staff's Opposition to Request from David Frankel to Extend the Deadline for Submitting Hearing Requests. | 03/03/2010 | ML100621143 |
| 140 | 2010/03/05-Board Memorandum and Order (Protective Order Governing the Disclosure of Sensitive Unclassified Non-Safeguards Information (SUNSI)). | 03/05/2010 | ML100640405 |
| 141 | 2010/03/05-Order of the Secretary. | 03/05/2010 | ML100640426 |
| 142 | A Level III Cultural Resources Evaluation of Powertech (USA) Incorporated's Proposed Dewey-Burdock Uranium Project Locality within the Southern Black Hills, Custer and Fall River Counties, South Dakota, Volume V, Cover through Appendix F. | 03/31/2008 | ML100670232 |

- | | | | |
|-----|--|------------|-------------|
| 143 | A Level III Cultural Resources Evaluation of Powertech (USA) Incorporated's Proposed Dewey-Burdock Uranium Project Locality within the Southern Black Hills, Custer and Fall River Counties, South Dakota, Volume V, Page 5.107 through Page 5.155. | 03/31/2008 | ML100670240 |
| 144 | A Level III Cultural Resources Evaluation of Powertech (USA) Incorporated's Proposed Dewey-Burdock Uranium Project Locality within the Southern Black Hills, Custer and Fall River Counties, South Dakota, Volume V, Page 5.157 through Page 5.205. | 03/31/2008 | ML100670250 |
| 145 | A Level III Cultural Resources Evaluation of Powertech (USA) Incorporated's Proposed Dewey-Burdock Uranium Project Locality within the Southern Black Hills, Custer and Fall River Counties, South Dakota, Volume V, Page 5.206 through Page 5.232. | 03/31/2008 | ML100670255 |
| 146 | A Level III Cultural Resources Evaluation of Powertech (USA) Incorporated's Proposed Dewey-Burdock Uranium Project Locality within the Southern Black Hills, Custer and Fall River Counties, South Dakota, Volume II, Cover through Page 5.243. | 03/31/2008 | ML100670257 |
| 147 | A Level III Cultural Resources Evaluation of Powertech (USA) Incorporated's Proposed Dewey-Burdock Uranium Project Locality within the Southern Black Hills, Custer and Fall River Counties, South Dakota, Volume II, Page 5.244 through Page 5.303. | 03/31/2008 | ML100670258 |
| 148 | A Level III Cultural Resources Evaluation of Powertech (USA) Incorporated's Proposed Dewey-Burdock Uranium Project Locality within the Southern Black Hills, Custer and Fall River Counties, South Dakota, Volume II, Page 5.304 through Page 5.365. | 03/31/2008 | ML100670259 |
| 149 | A Level III Cultural Resources Evaluation of Powertech (USA) Incorporated's Proposed Dewey-Burdock Uranium Project Locality within the Southern Black Hills, Custer and Fall River Counties, South Dakota, Volume II, Pages 5.366 through Page 6.11. | 03/31/2008 | ML100670261 |
| 150 | A Level III Cultural Resources Evaluation of Powertech (USA) Incorporated's Proposed Dewey-Burdock Uranium Project Locality within the Southern Black Hills, Custer and Fall River Counties, South Dakota, Volume II, Page 6.43 through Page 6.91. | 03/31/2008 | ML100670267 |

- | | | | |
|-----|---|------------|-------------|
| 151 | A Level III Cultural Resources Evaluation of Powertech (USA) Incorporated's Proposed Dewey-Burdock Uranium Project Locality within the Southern Black Hills, Custer and Fall River Counties, South Dakota, Volume II, Page 6.92 through Page 6.182. | 03/31/2008 | ML100670277 |
| 152 | A Level III Cultural Resources Evaluation of Powertech (USA) Incorporated's Proposed Dewey-Burdock Uranium Project Locality within the Southern Black Hills, Custer and Fall River Counties, South Dakota, Volume III, Cover through Page 6.133. | 03/31/2008 | ML100670280 |
| 153 | A Level III Cultural Resources Evaluation of Powertech (USA) Incorporated's Proposed Dewey-Burdock Uranium Project Locality within the Southern Black Hills, Custer and Fall River Counties, South Dakota, Volume III, Page 6.134 through Page 6.183. | 03/31/2008 | ML100670286 |
| 154 | A Level III Cultural Resources Evaluation of Powertech (USA) Incorporated's Proposed Dewey-Burdock Uranium Project Locality within the Southern Black Hills, Custer and Fall River Counties, South Dakota, Volume III, Page 6.184 through Page 6.237. | 03/31/2008 | ML100670289 |
| 155 | A Level III Cultural Resources Evaluation of Powertech (USA) Incorporated's Proposed Dewey-Burdock Uranium Project Locality within the Southern Black Hills, Custer and Fall River Counties, South Dakota, Volume I, Cover through Page 1.1. | 03/31/2008 | ML100670302 |
| 156 | A Level III Cultural Resources Evaluation of Powertech (USA) Incorporated's Proposed Dewey-Burdock Uranium Project Locality within the Southern Black Hills, Custer and Fall River Counties, South Dakota, Volume I, Page 1.2 through Page 4.18. | 03/31/2008 | ML100670309 |
| 157 | A Level III Cultural Resources Evaluation of Powertech (USA) Incorporated's Proposed Dewey-Burdock Uranium Project Locality within the Southern Black Hills, Custer and Fall River Counties, South Dakota, Vol. 1, Pages 5.1 through 5.52. | 03/31/2008 | ML100670314 |
| 158 | A Level III Cultural Resources Evaluation of Powertech (USA) Incorporated's Proposed Dewey-Burdock Uranium Project Locality within the Southern Black Hills, Custer and Fall River Counties, South Dakota, Pages 5.53 through 5.106. | 03/31/2008 | ML100670318 |

| | | | |
|-----|---|------------|-------------|
| 159 | A Level III Cultural Resources Evaluation of Powertech (USA) Incorporated's Proposed Dewey-Burdock Uranium Project Locality within the Southern Black Hills, Custer and Fall River Counties, South Dakota, Pages 6.238 through 6.298. | 03/31/2008 | ML100670363 |
| 160 | A Level III Cultural Resources Evaluation of Powertech (USA) Incorporated's Proposed Dewey-Burdock Uranium Project Locality within the Southern Black Hills, Custer and Fall River Counties, South Dakota, Pages 6.299 through 6.360. | 03/31/2008 | ML100670365 |
| 161 | A Level III Cultural Resources Evaluation of Powertech (USA) Incorporated's Proposed Dewey-Burdock Uranium Project Locality within the Southern Black Hills, Custer & Fall River Counties, South Dakota, Pg. 6.361 - Pg. 8.23. | 03/31/2008 | ML100670366 |
| 162 | A Level III Cultural Resources Evaluation of Powertech (USA) Incorporated's Proposed Dewey-Burdock Uranium Project Locality within the Southern Black Hills, Custer and Fall River Counties, South Dakota, Addendum 2, Vol. 1, Cover Through Page 45. | 03/31/2008 | ML100670466 |
| 163 | A Level III Cultural Resources Evaluation of Powertech (USA) Incorporated's Proposed Dewey-Burdock Uranium Project Locality within the Southern Black Hills, Custer and Fall River Counties, South Dakota, Addendum 2, Vol. 1, Page 46 Through Page 106. | 03/31/2008 | ML100670472 |
| 164 | A Level III Cultural Resources Evaluation of Powertech (USA) Incorporated's Proposed Dewey-Burdock Uranium Project Locality within the Southern Black Hills, Custer and Fall River Counties, South Dakota, Addendum 2, Vol. 1, Page 107 Through Page 166. | 03/31/2008 | ML100670474 |
| 165 | A Level III Cultural Resources Evaluation of Powertech (USA) Incorporated's Proposed Dewey-Burdock Uranium Project Locality within the Southern Black Hills, Custer and Fall River Counties, South Dakota, Addendum 2, Vol. 2, Cover Through Appendix D. | 03/31/2008 | ML100670478 |
| 166 | A Level III Cultural Resources Evaluation of Powertech (USA) Incorporated's Proposed Dewey-Burdock Uranium Project Locality within the Southern Black Hills, Custer and Fall River Counties, South Dakota, Vol. IV, Cover through Appendix A. | 03/31/2008 | ML100670482 |

| | | | |
|-----|---|------------|-------------|
| 167 | A Level III Cultural Resources Evaluation of Powertech (USA) Incorporated's Proposed Dewey-Burdock Uranium Project Locality within the Southern Black Hills, Custer and Fall River Counties, South Dakota, Addendum 1, Vol. 1, Cover through Page 44. | 03/31/2008 | ML100670483 |
| 168 | A Level III Cultural Resources Evaluation of Powertech (USA) Incorporated's Proposed Dewey-Burdock Uranium Project Locality within the Southern Black Hills, Custer and Fall River Counties, South Dakota, Addendum 1, Vol. 1, Page 45 through Page 104. | 03/31/2008 | ML100670485 |
| 169 | A Level III Cultural Resources Evaluation of Powertech (USA) Incorporated's Proposed Dewey-Burdock Uranium Project Locality within the Southern Black Hills, Custer and Fall River Counties, South Dakota, Addendum 1, Vol. 1, Page 105 through Page 162. | 03/31/2008 | ML100670487 |
| 170 | A Level III Cultural Resources Evaluation of Powertech (USA) Incorporated's Proposed Dewey-Burdock Uranium Project Locality within the Southern Black Hills, Custer and Fall River Counties, South Dakota, Addendum 1, Vol. 2, Cover Through Appendix F. | 03/31/2008 | ML100670490 |
| 171 | A Level III Cultural Resources Evaluation of Powertech (USA) Incorporated's Proposed Dewey-Burdock Uranium Project Locality within the Southern Black Hills, Custer and Fall River Counties, South Dakota, Volume 2, Cover through Appendix D. | 01/14/2009 | ML100670492 |
| 172 | 2010/03/09-Attachment - Summary [authored by Liliias Jarding] of Geology and Hydrology in Uranium Areas in the Southern Black Hills. | 03/09/2010 | ML100680002 |
| 173 | 2010/02/26-Attachment - Affidavit of Dayton O. Hyde. | 02/26/2010 | ML100680003 |
| 174 | 2010/03/05-Attachment - Affidavit of Susan Henderson. | 03/05/2010 | ML100680004 |

| | | | |
|-----|--|------------|-------------|
| 175 | 2010/03/08-Attachment - Affidavit of Liliias Jarding Executive Director, Clean Water Alliance. | 03/08/2010 | ML100680005 |
| 176 | 2010/03/05-Attachment - Petitioner Declaration [Gary Heckenlaible]. | 03/08/2010 | ML100680006 |
| 177 | 2010/03/07-Attachment - Petitioner Declaration [Liliias C. Jones Jarding]. | 03/07/2010 | ML100680007 |
| 178 | 2010/03/08-Attachment - Petitioner Declaration [David Frankel as Legal Director and on behalf of Aligning for Responsible Mining]. | 03/08/2010 | ML100680008 |
| 179 | 2010/03/05-Attachment - Petitioner Declaration [Theodore P. Ebert]. | 03/05/2010 | ML100680009 |
| 180 | 2010/03/08-Consolidated Request for Hearing and Petition for Leave to Intervene. | 03/08/2010 | ML100680010 |
| 181 | 2010/03/04-Attachment - [LaGarry] Curriculum Vitae. | 03/04/2010 | ML100680011 |
| 182 | 2010/02/23-Attachment - [Moran] Expert Opinion-Need for 60-Day Extension, Dewey-Burdock License Application Expert Review. | 02/23/2010 | ML100680012 |

| | | | |
|-----|---|------------|-------------|
| 183 | 2010/03/08-Attachment - [Moran] Curriculum Vitae. | 03/09/2010 | ML100680013 |
| 184 | 2010/01/14-Attachment - [Redmond] Expert Opinion. | 01/14/2010 | ML100680014 |
| 185 | 2010/03/08-Attachment - [Redmond] Curriculum Vitae. | 03/08/2010 | ML100680015 |
| 186 | 2010/03/08-Attachment - [LaGarry] Expert Opinion Regarding The Proposed Dewey-Burdock Project ISL Mine Near Edgemont, South Dakota. | 03/08/2010 | ML100680016 |
| 187 | 2010/03/08-Attachment - Petitioner Declaration [David Frankel]. | 03/08/2010 | ML100680017 |
| 188 | 2010/03/08-Notice of Appearance of David Frankel on behalf of multiple petitioners. | 03/08/2010 | ML100680018 |
| 189 | 2010/03/09-Non-Disclosure Affidavit [Jeffrey C. Parsons]. | 03/09/2010 | ML100680434 |
| 190 | 2010/03/09-Non-Disclosure Affidavit [Grace Dugan]. | 03/09/2010 | ML100680535 |

| | | | |
|-----|--|------------|-------------|
| 191 | 2010/03/11-Memorandum of the Secretary to the Chief Administrative Judge, referring to the Board the Consolidated Request for Hearing and Petition for Leave to Intervene, submitted by David Frankel et al. | 03/11/2010 | ML100700526 |
| 192 | 2010/03/11-NRC Staff Notification of Sensitive Unclassified Non-Safeguards Information (SUNSI) Mailing. | 03/11/2010 | ML100700703 |
| 193 | 2010/03/12-Establishment of Atomic Safety and Licensing Board (to Preside Over the Powertech (USA) Inc. (Dewey-Burdock In Situ Uranium Recovery Facility proceeding). | 03/12/2010 | ML100710413 |
| 194 | 2010/03/12-Non-Disclosure Affidavit of Travis Stills. | 03/12/2010 | ML100730028 |
| 195 | 2010/03/12-Notice of Filing of Non-Disclosure Affidavit for Travis E. Stills. | 03/12/2010 | ML100730029 |
| 196 | 2010/03/15-NRC Staff Notification of Sensitive Unclassified Non-Safeguards Information (SUNSI) Mailing | 03/15/2010 | ML100740357 |
| 197 | 2010/03/22-Notice of Appearance of Bruce Ellison on behalf of multiple petitioners. | 03/22/2010 | ML100810081 |
| 198 | 2010/03/31-Joint Motion for Extension of Time for Late-Filed Contentions and to Respond to Request for a Hearing. | 03/31/2010 | ML100900058 |

| | | | |
|-----|--|------------|-------------|
| 199 | 2010/04/01-Board Order (Granting Motion for Extention of Time to Powertech USA, Inc.) | 04/01/2010 | ML100910251 |
| 200 | 2010/04/04-Exhibit 10 - Declaration of Dr. Robert E. Moran. | 04/04/2010 | ML100960635 |
| 201 | 2010/04/06-Exhibit 3 - (Abstract) USGS 2009 IAEA-CN-175/871SL, In-Situ Recovery Uranium Mining in the US: Overview of Production & Remediation Issues. | 04/06/2010 | ML100960636 |
| 202 | 2010/03/03-Exhibit 6 - EPA Comments on NUREG-1910, Suppl. 1, 2 & 3 (Draft SEIS for Three Wyoming Uranium ISR Projects), with transmittal email from James Hanley, US EPA Region 8. | 03/03/2010 | ML100960637 |
| 203 | 2010/02/26-Exhibit 9 - Affidavit of Dayton Hyde. | 02/26/2010 | ML100960638 |
| 204 | 2010/04/02-Exhibit 8 - Declaration of Denise Mesteth. | 04/02/2010 | ML100960639 |
| 205 | 2010/04/06-Exhibit 4 - USGS Open File Report 2009-1143, "Groundwater Restoration at Uranium In-Situ Recovery Mines, South Texas Coastal Plain." | 04/06/2010 | ML100960640 |
| 206 | 2007/11/21-Exhibit 2 - State of WY Department of Environmental Quality Report of Investigation of Power Resources, Inc. | 11/21/2007 | ML100960641 |

| | | | |
|-----|---|------------|-------------|
| 207 | 2010/04/01-Exhibit 7 - Declaration of Wilmer Mesteth. | 04/01/2010 | ML100960642 |
| 208 | 2010/03/02-Exhibit 5 - Transcript of NRC Commission Briefing on Uranium Recovery. | 03/02/2010 | ML100960643 |
| 209 | 2008/03/07-Exhibit 1 - State of WY Department of Environmental Quality Notice of Violation Issued to Power Resources, Inc. | 03/07/2008 | ML100960644 |
| 210 | 2010/04/06-Petition to Intervene and Request for Hearing of the Oglala Sioux Tribe. | 04/06/2010 | ML100960645 |
| 211 | 2010/04/05-Exhibit 11 - NOAA National Weather Service Severe Thunderstorms & Tornadoes Forecast Announcement, Rapid City, SD. | 04/05/2010 | ML100960646 |
| 212 | S. Larson ltr. re: Environmental Comments on Powertech Dewey-Burdock Project, Custer and Fall River County, South Dakota. | 03/29/2010 | ML100970556 |
| 213 | 2010/04/12-Applicant Powertech (USA) Uranium Corporation's Response to Consolidated Petitioner's Request for a Hearing/Petition for Intervention. | 04/12/2010 | ML101020722 |
| 214 | 2010/04/12-NRC Staff's Response to Hearing Request of Consolidated Petitioners. | 04/12/2010 | ML101020723 |

| | | | |
|-----|---|------------|-------------|
| 215 | 2010/04/12-Certification of Service for NRC Staff's Response to Hearing Request of Consolidated Petitioners. | 04/12/2010 | ML101030079 |
| 216 | 2010/04/13-Erratum to NRC Staff's Response to Hearing Request of Consolidated Petitioners. | 04/13/2010 | ML101031406 |
| 217 | 2010/04/19-Petitioner's Consolidated Reply to Applicant and NRC Staff Answers to Hearing Request/Petition to Intervene. | 04/19/2010 | ML101100001 |
| 218 | 2010/04/21-Petitioners Certificate of Service [for "Petitioner's Consolidated Reply to Applicant and NRC Staff Answers to Hearing Request/Petition to Intervene", submitted 4/19/10]. | 04/21/2010 | ML101110751 |
| 219 | Letter re: Summary of April 8, 2010 Teleconference Regarding Request for Additional Information, Powertech (USA), Inc. Proposed Dewey-Burdock In Situ Recovery Facility. | 05/19/2010 | ML101120080 |
| 220 | 2010/01/14-Attachment to 4/30/10 Petitioners' Request - Louis Redmond Opinion Letter (review of areas or neighboring areas of concern dealing with current mining projects in the areas of the Black Hills and adjoining counties). | 01/14/2010 | ML101200674 |
| 221 | 2010/04/30-Petitioners' Request for Leave to File a New Contention Based on SUNSI Material. | 04/30/2010 | ML101200675 |
| 222 | 2010/04/21-Attachment to 4/30/10 Petitioners' Request - Louis Redman Opinion Letter (Evaluation of a Report by Augustana College for Powertech, Inc., dated 3/2008). | 04/21/2010 | ML101200676 |

| | | | |
|-----|---|------------|-------------|
| 223 | 2010/04/30-Attachment to 4/30/10 Petitioners' Request - Louis Redmond CV. | 04/30/2010 | ML101200677 |
| 224 | 2010/05/03-Applicant Powertech (USA) Inc.'s Response to Petitioner Oglala Sioux Tribe's Request for a Hearing/Petition for Intervention. | 05/03/2010 | ML101230722 |
| 225 | 2010/05/03-NRC Staff's Response to Oglala Sioux Tribe's Hearing Request. | 05/03/2010 | ML101230726 |
| 226 | Letter from S. Dakota Re: Underground Injection Control Permit Application for Powertech's Dewey-Burdock Project. | 04/19/2010 | ML101260024 |
| 227 | 2010/05/07-Proposed Memorandum and Order [Granting Motion for Extension of Time for the Oglala Sioux Tribe to Reply to NRC Staff and Applicant Responses to the Tribe's Request for Hearing]. | 05/07/2010 | ML101290019 |
| 228 | 2010/05/07-Unopposed Motion for Extension of Time for the Oglala Sioux Tribe to Reply to NRC Staff and Applicant Responses to the Tribe's Request for Hearing. | 05/07/2010 | ML101290020 |
| 229 | 2010/05/10-Board Order (Granting Unopposed Motion for Extension of Time). | 05/10/2010 | ML101300718 |
| 230 | 2010/05/12-Attachment to Oglala Sioux Tribe Reply - NCDC Query Results for Custer County, South Dakota, between 01/01/1950 and 01/31/2010. | 05/12/2010 | ML101340868 |

| | | | |
|-----|---|------------|-------------|
| 231 | 2010/04/14-Attachment to Oglala Sioux Tribe Reply - Letter to Powertech from NRC re Request for Additional Information to Support Environmental Review of Proposed License Application for Powertech (USA) Inc. Dewey-Burdock Uranium Recovery Project. | 05/14/2010 | ML101340869 |
| 232 | 2010/05/14-Reply to NRC Staff and Applicant Responses to the Petition to Intervene and Request for Hearing of the Oglala Sioux Tribe. | 05/14/2010 | ML101340870 |
| 233 | 2010/05/14-Attachment to Oglala Sioux Tribe Reply - NCDC Query Results for Fall River County, between 01/01/1950 and 01/31/2010. | 05/14/2010 | ML101340871 |
| 234 | 2010/04/19-Attachment to Oglala Sioux Tribe Reply - Letter from SD DENR to Powertech re Underground Injection Control Permit Application, Dewey-Burdock Project, Fall River and Custer Counties, South Dakota. | 04/19/2010 | ML101340872 |
| 235 | 2010/05/17-Board Order (Setting Oral Argument). | 05/17/2010 | ML101370310 |
| 236 | 2010/05/21-NRC Staff's Response to Consolidated Petitioners' Contention Filed April 30, 2010. | 05/21/2010 | ML101410541 |
| 237 | 2010/05/23-Applicant Powertech (USA) Uranium Corporation's Response to Consolidated Petitioners' Request for Leave to File a New Contention Based on SUNSI Material. | 05/23/2010 | ML101430009 |
| 238 | 2010/03/28-Declaration [of Dayton Hyde authorizing Thomas Ballanco to represent him]. | 03/28/2010 | ML101470181 |

| | | | |
|-----|--|------------|-------------|
| 239 | 2010/03/28-Notice of Appearance of Thomas J Ballanco [on behalf of Dayton Hyde]. | 03/28/2010 | ML101470182 |
| 240 | 2010/06/01-Board Order (Providing Details for Oral Argument). | 06/01/2010 | ML101520443 |
| 241 | 2010/06/01-Certificate of Service [for Notice of Appearance of Thomas Ballanco on behalf of Dayton Hyde, dated 3/28/10]. | 06/01/2010 | ML101520651 |
| 242 | 2010/06/08-Transcript of Oral Argument held Tuesday, June 8, 2010, in Custer, SD, Pages 1 - 273. | 06/08/2010 | ML101660721 |
| 243 | 2010/06/09-Transcript of Oral Argument held Wednesday, June 9, 2010, in Custer, SD, Pages 274-405. | 06/09/2010 | ML101670389 |
| 244 | 2010/06/23-Board Order (Establishing Date for Proposed Transcript Corrections). | 06/23/2010 | ML101740221 |
| 245 | 2010/06/28-NRC Staff's Proposed Transcript Corrections. | 06/28/2010 | ML101790258 |
| 246 | 2010/06/28-Certificate of Service for NRC Staff's Proposed Transcript Corrections. | 06/28/2010 | ML101790259 |

| | | | |
|-----|--|------------|-------------|
| 247 | 2010/07/02-Notice of Appearance: Change of Law Firm Name. | 07/02/2010 | ML101830201 |
| 248 | 2010/07/02-Powertech (USA) Uranium Corporation's Proposed Transcript Corrections. | 07/02/2010 | ML101830210 |
| 249 | 2010/07/02-Certificate of Service for Powertech (USA) Uranium Corporation's Proposed Transcript Corrections. | 07/02/2010 | ML101830228 |
| 250 | 2010/07/02-Certificate of Service for Notice of Appearance; Change of Law Firm Name. | 07/02/2010 | ML101830237 |
| 251 | 2010/07/09-Board Order (Adopting Transcript Corrections). | 07/09/2010 | ML101900439 |
| 252 | 2010/07/09-Board Memorandum (Notice Pursuant to 10 C.F.R. Section 2.309(i)). | 07/09/2010 | ML101900442 |
| 253 | 2010/07/16-Exhibit A to Petitioners Ebert's Motion Re: Invite to Lakota Ceremony. Handwritten Invitation from Theodore P. Ebert. | 07/16/2010 | ML101970569 |
| 254 | 2010/07/16-Petitioners Ebert's Motion Re: Invite to Lakota Ceremony. | 07/16/2010 | ML101970570 |

| | | | |
|-----|--|------------|-------------|
| 255 | 2010/07/20-Certificate of Service for Motion to Permit Untimely Filing. | 07/20/2010 | ML102010743 |
| 256 | 2010/07/20-Motion to Permit Untimely Filing of or Alternatively, Taking Judicial Notice of the SD DENR Letter to Powertech Cited at 6/8-9/10 Hearing. | 07/20/2010 | ML102010744 |
| 257 | 2010/04/19-Exhibit for Motion to Permit Untimely Filing - DENR Letter to Powertech re Underground Injection Control Permit Application, Dewey-Burdock Project, Fall River and Custer Counties, South Dakota. | 04/19/2010 | ML102010745 |
| 258 | 2010/07/26-Response to Consolidated Petitioners' Regarding Invite to Lakota Ceremony. | 07/26/2010 | ML102070429 |
| 259 | 2010/07/26-Certificate of Service for Response to Consolidated Petitioners' Regarding Invite to Lakota Ceremony. | 07/26/2010 | ML102070434 |
| 260 | 2010/07/26-NRC Staff's Opposition to Petitioner Theodore Ebert's Motion for the Board to Convene a Traditional Lakota Ceremony. | 07/26/2010 | ML102070506 |
| 261 | 2010/07/30-NRC Staff's Opposition to Consolidated Petitioners' Motion to Permit Untimely Filing. | 07/30/2010 | ML102110327 |
| 262 | 2010/07/30-Response to Consolidated Petitioners' Motion for Untimely Filing. | 07/30/2010 | ML102110477 |

| | | | |
|-----|--|------------|-------------|
| 263 | 2010/08/05-Board Memorandum and Order (Ruling on Petitions to Intervene and Requests for Hearing) (LBP-10-16). | 08/05/2010 | ML102170300 |
| 264 | 2010/08/05-Board Order (Denying Motion to Permit Untimely Filing). | 08/05/2010 | ML102170312 |
| 265 | 2010/08/05-Board Order (Denying Motion Re: Invite to Lakota Ceremony). | 08/05/2010 | ML102170316 |
| 266 | 2010/08/13-Board Order (Scheduling Initial Telephone Prehearing Conference Call). | 08/13/2010 | ML102250319 |
| 267 | 2010/08/13-NRC Staff's Notification Under 10 C.F.R. Section 2.1202(b)(2). | 08/13/2010 | ML102250489 |
| 268 | 2010/08/13-Intervenors' Response to Memorandum and Order Requiring Election of Petitioners Henderson and Frankel to Proceed Individually or Through CWA and ARM Respectively. | 08/13/2010 | ML102270001 |
| 269 | 2010/08/15-Certificate of Service for Intervenors' Response to Memorandum and Order Requiring Election of Petitioners Henderson and Frankel to Proceed Individually or Through CWA and ARM Respectively. | 08/15/2010 | ML102270002 |
| 270 | 2010/08/16-[NRC Staff] Motion For Clarification Regarding Scope Of Admitted Contentions. | 08/16/2010 | ML102280595 |

| | | | |
|-----|--|------------|-------------|
| 271 | 2010/08/17-Board Order (Accepting Elections Regarding Representation). | 08/17/2010 | ML102290244 |
| 272 | 2010/08/20-Board Notice of Hearing | 08/20/2010 | ML102320175 |
| 273 | 2009/04/07 Powertech Dewey-Burdock LA - FW: Emailing: H1601-1 Land Use Planning Handbook.pdf, H1790-1 2008 NEPA Handbook.pdf | 04/07/2009 | ML102320588 |
| 274 | 2010/08/20 Powertech Dewey-Burdock LA - Public email H1601-1 Land Use Planning Handbook.pdf, H1790-1 2008 NEPA Handbook.pdf | 08/20/2010 | ML102320589 |
| 275 | 2009/03/03 Powertech Dewey-Burdock LA - Forest Service contact for Powertech | 03/03/2009 | ML102320729 |
| 276 | 2010/08/20 Powertech Dewey-Burdock LA - public email Forest Service contact for Powertech | 08/20/2010 | ML102320730 |
| 277 | 2009/10/06 Powertech Dewey-Burdock LA - RE: Powertech's Dewey-Burdock letter | 10/06/2009 | ML102320731 |
| 278 | 2009/10/06 Powertech Dewey-Burdock LA - Powertech's Dewey-Burdock letter | 10/06/2009 | ML102320732 |

| | | | |
|-----|--|------------|-------------|
| 279 | 2010/08/20 Powertech Dewey-Burdock LA - public email Powertech acceptance | 08/20/2010 | ML102320733 |
| 280 | 2009/08/21 Powertech Dewey-Burdock LA - FW: Dewey- Burdock NRC License Application Supplement | 08/21/2009 | ML102320734 |
| 281 | 2010/08/20 Powertech Dewey-Burdock LA - public email Dewey-Burdock NRC License Application Supplement | 08/20/2010 | ML102320735 |
| 282 | 2009/06/25 Powertech Dewey-Burdock LA - RE: List of supplemental documents | 06/25/2009 | ML102320736 |
| 283 | 2009/06/25 Powertech Dewey-Burdock LA - Re: List of supplemental documents | 06/25/2009 | ML102320737 |
| 284 | 2009/06/25 Powertech Dewey-Burdock LA - List of supplemental documents | 06/25/2009 | ML102320738 |
| 285 | 2009/06/22 Powertech Dewey-Burdock LA - RE: Powertech letter and list of supplemental information | 06/22/2009 | ML102320739 |
| 286 | 2009/06/19 Powertech Dewey-Burdock LA - FW: Powertech letter and list of supplemental information | 06/19/2009 | ML102320740 |

| | | | |
|-----|--|------------|-------------|
| 287 | 2010/08/20 Powertech Dewey-Burdock LA - public emails Powertech response to acceptance public meeting | 08/20/2010 | ML102320741 |
| 288 | 2010/08/16 Powertech Dewey-Burdock LA - Powertech files Part 3 from Varughese | 08/16/2010 | ML102320743 |
| 289 | 2010/08/16 Powertech Dewey-Burdock LA - Powertech files Part2 from Varughese | 08/16/2010 | ML102320744 |
| 290 | 2010/08/20 Powertech Dewey-Burdock LA - | 08/20/2010 | ML102320747 |
| 291 | 2010/08/20 Powertech Dewey-Burdock LA - | 08/20/2010 | ML102320748 |
| 292 | 2010/08/20 Powertech Dewey-Burdock LA - NEIC: Earthquake Search Results | 08/20/2010 | ML102320749 |
| 293 | 2010/08/20 Powertech Dewey-Burdock LA - South Dakota Geological Survey Earthquakes in South Dakota | 08/20/2010 | ML102320750 |
| 294 | 2010/08/20 Powertech Dewey-Burdock LA - | 08/20/2010 | ML102320751 |

| | | | |
|-----|--|------------|-------------|
| 295 | 2010/08/20 Powertech Dewey-Burdock LA - USGS WRIR 02-4094: Hydrology of the Black Hills Area, South Dakota | 08/20/2010 | ML102320752 |
| 296 | 2010/08/20 Powertech Dewey-Burdock LA - Uranium mining in the United States - Wikipedia, the free encyclopedia | 08/20/2010 | ML102320753 |
| 297 | 2010/08/20 Powertech Dewey-Burdock LA - | 08/20/2010 | ML102320754 |
| 298 | 2010/08/20 Powertech Dewey-Burdock LA - Wind Cave National Park - Abstract - Geology of the Jewel Cave SW Quadrangle, Custer County, South Dakota (U.S. National Park Service) | 08/20/2010 | ML102320755 |
| 299 | 2010/08/20 Powertech Dewey-Burdock LA - Hydro website references | 08/20/2010 | ML102320756 |
| 300 | 2010/04/05 Powertech Dewey-Burdock LA - Public teleconference with Powertech on April 8, 2010 | 04/05/2010 | ML102350710 |
| 301 | 2010/08/23 Powertech Dewey-Burdock LA - FW: Public email Public teleconference with Powertech on April 8, 2010 | 08/23/2010 | ML102350711 |
| 302 | 2010/01/05 Powertech Dewey-Burdock LA - RE: Dewey-Burdock Review Status | 01/05/2010 | ML102350712 |

| | | | |
|-----|--|------------|-------------|
| 303 | 2010/08/17 Powertech Dewey-Burdock LA - | 08/17/2010 | ML102350713 |
| 304 | 2010/08/20 Powertech Dewey-Burdock LA - Emailing: Public Hydro Units.pdf | 08/20/2010 | ML102360030 |
| 305 | 2010/08/20 Powertech Dewey-Burdock LA - Emailing: Public Hydro.pdf | 08/20/2010 | ML102360033 |
| 306 | 2010/08/20 Powertech Dewey-Burdock LA - Emailing: Public hydrology.pdf | 08/20/2010 | ML102360035 |
| 307 | 2010/08/20 Powertech Dewey-Burdock LA - Emailing: Public Stream Loss.pdf | 08/20/2010 | ML102360036 |
| 308 | 2010/04/01 Powertech Dewey-Burdock LA - Powertech Dewey-Burdock Teleconference Details | 04/01/2010 | ML102360045 |
| 309 | 2009/11/24 Powertech Dewey-Burdock LA - FW: Action Request: Environmental Report Plates | 11/24/2009 | ML102360046 |
| 310 | 2009/06/19 Powertech Dewey-Burdock LA - Powertech letter and list of supplemental information | 06/19/2009 | ML102360047 |

| | | | |
|-----|---|------------|-------------|
| 311 | 2009/05/28 Powertech Dewey-Burdock LA - Request for Meeting Re: Proposed Dewey-Burdock Project | 05/28/2009 | ML102360049 |
| 312 | 2009/09/02 Powertech Dewey-Burdock LA - FW: September 16, 2009 Visit to Powertech Dewey-Burdock Site | 09/02/2009 | ML102360080 |
| 313 | 2009/09/02 Powertech Dewey-Burdock LA - RE: September 16, 2009 Visit to Powertech Dewey-Burdock Site | 09/02/2009 | ML102360083 |
| 314 | 2009/09/03 Powertech Dewey-Burdock LA - FW: September 16, 2009 Visit to Powertech Dewey-Burdock Site | 09/03/2009 | ML102360086 |
| 315 | 2010/08/24 Powertech Dewey-Burdock LA - NUREG.CR-6419 Solubility Testing of Actinides.pdf - Adobe Reader | 08/24/2010 | ML102370307 |
| 316 | 2010/08/24 Powertech Dewey-Burdock LA - Yellowcake Dissolution and Half.times.pdf - Adobe Reader | 08/24/2010 | ML102370308 |
| 317 | 2010/08/24 Powertech Dewey-Burdock LA - ANSI Standard Surface and Volume Clearance Standards.pdf - Adobe Reader | 08/24/2010 | ML102370309 |
| 318 | 2010/08/24 Powertech Dewey-Burdock LA - ISL Presentation by UEC (Primer).pdf - Adobe Reader | 08/24/2010 | ML102370312 |

| | | | |
|-----|---|------------|-------------|
| 319 | 2010/08/24 Powertech Dewey-Burdock LA - Crow Butte Monthly Hearing File Updates | 08/24/2010 | ML102370319 |
| 320 | 2010/08/24 Powertech Dewey-Burdock LA - Radiological_Site_Characterizations__Gamma.7[1].pdf - Adobe Reader | 08/24/2010 | ML102370325 |
| 321 | 2010/08/24 Powertech Dewey-Burdock LA - ANSI Standard Bioassay Programs for Uranium.pdf - Adobe Reader | 08/24/2010 | ML102370329 |
| 322 | 2010/08/24 Powertech Dewey-Burdock LA - Abelquist MARSSIM overview.pdf - Adobe Reader | 08/24/2010 | ML102370331 |
| 323 | 2010/08/24 Powertech Dewey-Burdock LA - Emailing: REACT.TS Internal Contam presentation see UO4.ppt | 08/24/2010 | ML102370335 |
| 324 | 2010/08/24 Powertech Dewey-Burdock LA - Uranium Solubility in Human Fluids Journal Article.pdf - Adobe Reader | 08/24/2010 | ML102370339 |
| 325 | 2010/08/24 Powertech Dewey-Burdock LA - UO4 solubility.pdf - Adobe Reader | 08/24/2010 | ML102370340 |
| 326 | 2010/08/24 Powertech Dewey-Burdock LA - ASTM Specs for U Ore Concentrates.pdf - Adobe Reader | 08/24/2010 | ML102370341 |

| | | | |
|-----|---|------------|-------------|
| 327 | 2010/08/24 Powertech Dewey-Burdock LA - yellowcake dryer temps.pdf - Adobe Reader | 08/24/2010 | ML102370342 |
| 328 | 2010/08/24 Powertech Dewey-Burdock LA - Uranium solubility classifications.pdf - Adobe Reader | 08/24/2010 | ML102370346 |
| 329 | 2010/08/24 Powertech Dewey-Burdock LA - NUREG CR-6733 Risk Informed ISL.pdf - Adobe Reader | 08/24/2010 | ML102370354 |
| 330 | 2010/08/24 Powertech Dewey-Burdock LA - Australian rad protection for mining.pdf - Adobe Reader | 08/24/2010 | ML102370357 |
| 331 | 2010/08/24 Powertech Dewey-Burdock LA - Human Toxicology Article on U Solubility.pdf - Adobe Reader | 08/24/2010 | ML102370867 |
| 332 | 2010/08/24 Powertech Dewey-Burdock LA - Kusnetz radon paper.pdf - Adobe Reader | 08/24/2010 | ML102370869 |
| 333 | 2010/08/24 Powertech Dewey-Burdock LA - National Academies Reiview of DU Risk.pdf - Adobe Reader | 08/24/2010 | ML102370870 |
| 334 | 2010/08/24 Powertech Dewey-Burdock LA - NUREG-0859 40 CFR 190 EPA compliance.pdf - Adobe Reader | 08/24/2010 | ML102370871 |

| | | | |
|-----|---|------------|-------------|
| 335 | 2010/08/24 Powertech Dewey-Burdock LA - NCRP 118 Effluent Monitoring.pdf - Adobe Reader | 08/24/2010 | ML102370874 |
| 336 | 2010/08/24 Powertech Dewey-Burdock LA - Johnson U Mill Nat Charact article.pdf - Adobe Reader | 08/24/2010 | ML102370876 |
| 337 | 2010/08/24 Powertech Dewey-Burdock LA - Whicker Nat Mobile Soils Lab article.pdf - Adobe Reader | 08/24/2010 | ML102371071 |
| 338 | 2010/08/24 Powertech Dewey-Burdock LA - EPA FEIS Uranium Processing Sites.pdf - Adobe Reader | 08/24/2010 | ML102371079 |
| 339 | 2010/08/24 Powertech Dewey-Burdock LA - NUREG-1400 Workplace Air Sampling.pdf - Adobe Reader | 08/24/2010 | ML102371083 |
| 340 | 2010/08/24 Powertech Dewey-Burdock LA - DOE- Radiological Control Standard 1098-2008.pdf - Adobe Reader | 08/24/2010 | ML102371089 |
| 341 | 2010/08/24 Powertech Dewey-Burdock LA - Good HP Practices in U Facilities - DOE Standard.pdf - Adobe Reader | 08/24/2010 | ML102371093 |
| 342 | 2010/08/24 Powertech Dewey-Burdock LA - Rad Tech Position on Surface Contamination.pdf - Adobe Reader | 08/24/2010 | ML102371097 |

| | | | |
|-----|--|------------|-------------|
| 343 | 2010/08/24 Powertech Dewey-Burdock LA - Risk assessment of release standards - Chen.pdf - Adobe Reader | 08/24/2010 | ML102371102 |
| 344 | 2010/08/24 Powertech Dewey-Burdock LA - ANSI Std Effluent Monitoring at Nuclear Facilities (1999).pdf - Adobe Reader | 08/24/2010 | ML102371105 |
| 345 | 2010/08/24 Powertech Dewey-Burdock LA - DOE.EH-0173T Environmental Monitoring Guidance.pdf - Adobe Reader | 08/24/2010 | ML102371113 |
| 346 | 2010/08/24 Powertech Dewey-Burdock LA - 10 CFR 835 2007 Fed Register.pdf - Adobe Reader | 08/24/2010 | ML102371123 |
| 347 | 2010/08/24 Powertech Dewey-Burdock LA - Uranium Lung Solubility Class Selection.pdf - Adobe Reader | 08/24/2010 | ML102371127 |
| 348 | 2010/08/24 Powertech Dewey-Burdock LA - 10 CFR 835 Fed Register.pdf - Adobe Reader | 08/24/2010 | ML102371130 |
| 349 | 2010/08/24 Powertech Dewey-Burdock LA - 5400.5 Release memo 11.1995.pdf - Adobe Reader | 08/24/2010 | ML102371137 |
| 350 | 2010/08/24 Powertech Dewey-Burdock LA - DOE Guide 441.1.9 Rad Contam Control Guide.pdf - Adobe Reader | 08/24/2010 | ML102371144 |

| | | | |
|-----|--|------------|-------------|
| 351 | 2010/08/24 Powertech Dewey-Burdock LA - DOE Hanbook for Releasing Non-Real Property.pdf - Adobe Reader | 08/24/2010 | ML102371146 |
| 352 | 2010/08/24 Powertech Dewey-Burdock LA - DOE Order 5400.5.pdf - Adobe Reader | 08/24/2010 | ML102371148 |
| 353 | 2010/08/24 Powertech Dewey-Burdock LA - analysis of radiation exposures on or near uranium .pdf - Adobe Reader | 08/24/2010 | ML102371151 |
| 354 | 2010/08/24 Powertech Dewey-Burdock LA - HP Manual of Good Practices for U Facilities 2000.pdf - Adobe Reader | 08/24/2010 | ML102371155 |
| 355 | 2010/08/24 Powertech Dewey-Burdock LA - HP Manual of Good Practices for U Facilities 2004.pdf - Adobe Reader | 08/24/2010 | ML102371158 |
| 356 | 2010/08/24 Powertech Dewey-Burdock LA - Public HP references Powertech | 08/24/2010 | ML102371160 |
| 357 | 2010/05/24 Powertech Dewey-Burdock LA - NMA/NRC U wokshop - Our Slides | 05/24/2010 | ML102371167 |
| 358 | 2010/01/21 Powertech Dewey-Burdock LA - Denver HP Workshop Presentation 11/09 | 01/21/2010 | ML102371172 |

| | | | |
|-----|---|------------|-------------|
| 359 | 2008/08/14 Powertech Dewey-Burdock LA - JOM Yellowcake article (Vol 50, December 1998) | 08/14/2008 | ML102371175 |
| 360 | 2009/01/07 Powertech Dewey-Burdock LA - RE: ICEM '07 Paper | 01/07/2009 | ML102371177 |
| 361 | 2009/09/21 Powertech Dewey-Burdock LA - HPS Ask the Expert Q8456 | 09/21/2009 | ML102371219 |
| 362 | 2008/09/11 Powertech Dewey-Burdock LA - Energy Response for Ludlum Model 44-10 | 09/11/2008 | ML102371221 |
| 363 | 2008/09/15 Powertech Dewey-Burdock LA - NaI Gamma Monitoring: The two papers | 09/15/2008 | ML102371225 |
| 364 | 2010/08/25 Powertech Dewey-Burdock LA - EPA Prescribed Procedures for Measurement of Radioactivity in Drinking Water.pdf - Adobe Reader | 08/25/2010 | ML102371227 |
| 365 | 2010/08/25 Powertech Dewey-Burdock LA - FW: EPA Prescribed Procedures for Measurement of Radioactivity in Drinking Water.pdf - Adobe Reader | 08/25/2010 | ML102371228 |
| 366 | 2010/08/25 Powertech Dewey-Burdock LA - approved analytical methods_radionuclides.pdf - Adobe Reader | 08/25/2010 | ML102371231 |

| | | | |
|-----|---|------------|-------------|
| 367 | 2010/08/25 Powertech Dewey-Burdock LA - EPA test method 909.o Lead-210.pdf - Adobe Reader | 08/25/2010 | ML102371233 |
| 368 | 2010/08/25 Powertech Dewey-Burdock LA - EPA SW-846 Testing Method 6020a | 08/25/2010 | ML102371234 |
| 369 | 2010/08/25 Powertech Dewey-Burdock LA - EPA Calculating Fugitive Air Emissions.pdf - Adobe Reader | 08/25/2010 | ML102371237 |
| 370 | 2008/09/16 Powertech Dewey-Burdock LA - Ludlum Model 44-10 | 09/16/2008 | ML102371243 |
| 371 | 2010/08/25 Powertech Dewey-Burdock LA - ASTM Standard Dealing with Ouliers.pdf - Adobe Reader | 08/25/2010 | ML102371244 |
| 372 | 2010/08/25 Powertech Dewey-Burdock LA - Ludlum Model 44-10 manual.pdf | 08/25/2010 | ML102371298 |
| 373 | 2010/08/25 Powertech Dewey-Burdock LA - NIST/SEMATECH e-Handbook of Statistical Methods | 08/25/2010 | ML102371300 |
| 374 | 2010/08/25 Powertech Dewey-Burdock LA - Energy Labs_2010_RadChem_v0-1.pdf - Adobe Reader | 08/25/2010 | ML102371301 |

| | | | |
|-----|---|------------|-------------|
| 375 | 2010/08/25 Powertech Dewey-Burdock LA - FW: Dewey-Burdock NOI | 08/25/2010 | ML102371335 |
| 376 | 2010/08/25 Powertech Dewey-Burdock LA - FW: Dewey-Burdock NOI | 08/25/2010 | ML102371336 |
| 377 | 2010/08/25 Powertech Dewey-Burdock LA - FW: UIC application issues for Dewey Burdock Project | 08/25/2010 | ML102371365 |
| 378 | 2010/08/25 Powertech Dewey-Burdock LA - Intro to Statistical Methods R.L. Ott and M. Longnecker.pdf | 08/25/2010 | ML102380024 |
| 379 | 2010/08/26-Certificate of Service for [Powertech's] Response to NRC Staff's Motion for Clarification. | 08/26/2010 | ML102380598 |
| 380 | 2010/08/26-[Powertech's] Response to NRC Staff Motion for Clarification. | 08/26/2010 | ML102380606 |
| 381 | 2009/11/24 Powertech Dewey-Burdock LA - RE: Proposed meeting to discuss Powertech Inc. plans to extract uranium | 11/24/2009 | ML102380609 |
| 382 | 2010/08/26 Powertech Dewey-Burdock LA - FW: South Dakota Tribal Chairman and Tribal Historic Preservation Offices | 08/26/2010 | ML102380613 |

| | | | |
|-----|---|------------|-------------|
| 383 | 2010/08/26 Powertech Dewey-Burdock LA - FW: Section 106 MOAs | 08/26/2010 | ML102380618 |
| 384 | 2010/08/26 Powertech Dewey-Burdock LA - FW: Section 106 MOAs | 08/26/2010 | ML102380619 |
| 385 | 2010/08/31-Board Order (Rescheduling Conference Call). | 08/31/2010 | ML102430431 |
| 386 | 2010/09/02 Powertech Dewey-Burdock LA - FW: NRC Staff Correspondence with Oglala Sioux Tribal Officials | 09/02/2010 | ML102450109 |
| 387 | 2010/09/01-Consolidated Intervenors' Unopposed Motion for Leave to Reply to Applicant's Response to NRC Staff Motion for Clarification. | 09/01/2010 | ML102450202 |
| 388 | 2010/09/01-Consolidated Intervenors' Unopposed Motion to Make Filings by E-Mail. | 09/01/2010 | ML102450203 |
| 389 | 2010/09/02-Joint Motion for Extension of Time to Provide Initial Discovery. | 09/02/2010 | ML102450351 |
| 390 | 2010/09/02-Board Order (Granting Joint Motion for Extension of Time). | 09/02/2010 | ML102450625 |

| | | | |
|-----|--|------------|-------------|
| 391 | Letter to Oglala Sioux Tribe Invitation for Formal Consultation Under the Section 106 of the National Historic Preservation Act. | 09/08/2010 | ML102450647 |
| 392 | 2010/01/29 Powertech Dewey-Burdock LA - RE: Ad (newspaper) for Dewey-Burdock SEIS. | 01/29/2010 | ML102460159 |
| 393 | 2009/12/09 Powertech Dewey-Burdock LA - RE: Powertech Application Fed Reg Notice? | 12/09/2009 | ML102460176 |
| 394 | 2010/09/02-Notice of Withdrawal by Grace Dugan as Counsel for Oglala Sioux Tribe. | 09/02/2010 | ML102460314 |
| 395 | 2010/04/08 Powertech Dewey-Burdock LA - FW: USGS HA-745-A Introduction | 04/08/2010 | ML102460351 |
| 396 | Letter to Oglala Sioux Tribe Invitation for Formal Consultation Under the Section 106 of the National Historic Preservation Act. | 09/10/2010 | ML102460395 |
| 397 | 2010/09/03-Notice of Appearance of Grace Dugan as Co-Counsel for Aligning for Responsible Mining. | 09/03/2010 | ML102460585 |
| 398 | 2010/09/03-Intervenor Declaration by David Frankel (re authorization of Grace Dugan to represent Aligning for Responsible Mining as Co-Counsel). | 09/03/2010 | ML102460586 |

| | | | |
|-----|---|------------|-------------|
| 399 | 2010/09/07 Powertech Dewey-Burdock LA - FW: Proposed meeting to discuss Powertech Inc. plans to extract uranium | 09/07/2010 | ML102500560 |
| 400 | 2010/09/08 Powertech Dewey-Burdock LA - 2010/02/09 Dewey-Burdock_SEIS_Comments Resource | 09/08/2010 | ML102510118 |
| 401 | 2010/09/07 Powertech Dewey-Burdock LA - | 09/07/2010 | ML102510201 |
| 402 | 2010/09/07 Powertech Dewey-Burdock LA - | 09/07/2010 | ML102510213 |
| 403 | 2010/09/08 Powertech Dewey-Burdock LA - | 09/08/2010 | ML102510214 |
| 404 | 2010/09/08-Board Order (Granting in Part and Denying in Part Motion for Clarification). | 09/08/2010 | ML102510353 |
| 405 | 2010/09/08 Powertech Dewey-Burdock LA - | 09/08/2010 | ML102510492 |
| 406 | 2010/09/08 Powertech Dewey-Burdock LA - | 09/08/2010 | ML102510496 |

| | | | |
|-----|--|------------|-------------|
| 407 | 2010/09/08 Powertech Dewey-Burdock LA - | 09/08/2010 | ML102510501 |
| 408 | 2010/09/08 Powertech Dewey-Burdock LA - 02/17/2010 Notice of Intent to prepare a SEIS for the proposed Powertech, Inc. Uranium In Situ Recovery Facility in Fall River and Custer Counties SD | 09/08/2010 | ML102510502 |
| 409 | 2010/09/08 Powertech Dewey-Burdock LA - 02/17/2010 Notice of Intent to prepare a SEIS for the proposed Powertech, Inc. Uranium In Situ Recovery Facility in Fall River and Custer Counties SD | 09/08/2010 | ML102510504 |
| 410 | 2010/09/08 Powertech Dewey-Burdock LA - FW: 02/17/2010 Notice of Intent to prepare a SEIS for the proposed Powertech, Inc. Uranium In Situ Recovery Facility in Fall River and Custer Counties SD | 09/08/2010 | ML102510506 |
| 411 | 2010/09/08 Powertech Dewey-Burdock LA - 02/17/2010 Notice of Intent to prepare a SEIS for the proposed Powertech, Inc. Uranium In Situ Recovery Facility in Fall River and Custer Counties SD | 09/08/2010 | ML102510507 |
| 412 | 2010/09/08 Powertech Dewey-Burdock LA - 02/17/2010 Notice of Intent to prepare a SEIS for the proposed Powertech, Inc. Uranium In Situ Recovery Facility in Fall River and Custer Counties SD | 09/08/2010 | ML102510509 |
| 413 | 2010/09/08 Powertech Dewey-Burdock LA - 03/03/2010 Dewey-Burdock_SEIS_Comments Resource ML102380604 | 09/08/2010 | ML102510590 |
| 414 | 2010/09/08 Powertech Dewey-Burdock LA - March 03, 2010 Dewey-Burdock_SEIS_Comments Resource | 09/08/2010 | ML102510597 |

| | | | |
|-----|--|------------|-------------|
| 415 | 2010/09/08 Powertech Dewey-Burdock LA - 02/09/2010 Dewey-Burdock_SEIS_Comments Resource | 09/08/2010 | ML102510600 |
| 416 | 2010/09/08 Powertech Dewey-Burdock LA - 03/03/2010 Email forwarding Dewey-Burdock_SEIS_Comments Resource | 09/08/2010 | ML102510601 |
| 417 | 2010/09/08 Powertech Dewey-Burdock LA - February 03, 2010 Dewey-Burdock_SEIS_Comments Resource ML102380601 | 09/08/2010 | ML102520061 |
| 418 | 2010/09/08 Powertech Dewey-Burdock LA - November 19, 2009 Proposed meeting to discuss Powertech Inc. plans to extract uranium ML102380614 | 09/08/2010 | ML102520065 |
| 419 | 2010/09/08 Powertech Dewey-Burdock LA - February 25, 2010 Dewey-Burdock_SEIS_Comments Resource ML102380603 | 09/08/2010 | ML102520067 |
| 420 | Letter to Crow Creek Sioux Tribe Invitation for Formal Consultation Under the Section 106 of the National Historic Preservation Act. | 09/10/2010 | ML102520156 |
| 421 | Letter to Flandreau-Santee Sioux Tribe Invitation for Formal Consultation Under the Section 106 of the National Historic Preservation Act. | 09/10/2010 | ML102520194 |
| 422 | Letter to Lower Brule Sioux Tribe Invitation for Formal Consultation Under the Section 106 of the National Historic Preservation Act. | 09/10/2010 | ML102520220 |

| | | | |
|-----|--|------------|-------------|
| 423 | Letter to Cheyenne River Sioux Tribe Invitation for Formal Consultation under the Section 106 of the National Historic Preservation Act. | 09/10/2010 | ML102520239 |
| 424 | Letter to Rosebud Sioux Tribe Invitation for Formal Consultation Under the Section 106 of the National Historic Preservation Act. | 09/10/2010 | ML102520282 |
| 425 | Letter to Sisseton-Wahpeton Oyate Invitation for Formal Consultation Under the Section 106 of the National Historic Preservation Act. | 09/10/2010 | ML102520298 |
| 426 | Letter to Standing Rock Sioux Tribe Invitation for Formal Consultation Under the Section 106 of the National Historic Preservation Act. | 09/10/2010 | ML102520308 |
| 427 | Letter to Yankton Sioux Tribe Invitation for Formal Consultation Under the Section 106 of the National Historic Preservation Act. | 09/10/2010 | ML102520319 |
| 428 | Letter to Mandan, Hidatsa & Arikara Nation Invitation for Formal Consultation Under the Section 106 of the National Historic Preservation Act. | 09/10/2010 | ML102520368 |
| 429 | Letter to Spirit Lake Tribe Invitation for Formal Consultation Under the Section 106 of the National Historic Preservation Act. | 09/10/2010 | ML102520393 |
| 430 | Letter to Lower Sioux Indian Community Invitation for Formal Consultation Under the Section 106 of the National Historic Preservation Act. | 09/10/2010 | ML102520486 |

| | | | |
|-----|---|------------|-------------|
| 431 | Letter to Northern Cheyenne Tribe Invitation for Formal Consultation Under the Section 106 of the National Historic Preservation Act. | 09/10/2010 | ML102520504 |
| 432 | Letter to Northern Arapaho Tribe Invitation for Formal Consultation Under the Section 106 of the National Historic Preservation Act. | 09/10/2010 | ML102520520 |
| 433 | Letter to Eastern Shoshone Tribe Invitation for Formal Consultation Under the Section 106 of the National Historic Preservation Act. | 09/10/2010 | ML102520553 |
| 434 | 2010/09/13 Powertech Dewey-Burdock LA - Burdock Topo Map | 09/13/2010 | ML102560037 |
| 435 | 2010/09/13 Powertech Dewey-Burdock LA - Stratigraphy of Inyan Kara | 09/13/2010 | ML102560038 |
| 436 | 2010/09/13 Powertech Dewey-Burdock LA - Uranium Deposits in Fall River County SD 1955 | 09/13/2010 | ML102560160 |
| 437 | 2010/09/13 Powertech Dewey-Burdock LA - Selected Well Data in Black Hills Area, SD | 09/13/2010 | ML102560202 |
| 438 | 2010/09/13 Powertech Dewey-Burdock LA - Selected Hydro Data Plates | 09/13/2010 | ML102560203 |

| | | | |
|-----|--|------------|-------------|
| 439 | 2010/09/13 Powertech Dewey-Burdock LA - Maps of worldwide uranium deposits | 09/13/2010 | ML102560205 |
| 440 | 2010/09/13 Powertech Dewey-Burdock LA - Geology of the Dewey Quad Wyoming-SD | 09/13/2010 | ML102560206 |
| 441 | 2010/09/13 Powertech Dewey-Burdock LA - Geology of Burdock Quad Fall River and Custer Counties SD | 09/13/2010 | ML102560208 |
| 442 | 2010/09/13 Powertech Dewey-Burdock LA - Fall River County Plates | 09/13/2010 | ML102560209 |
| 443 | 2010/09/13 Powertech Dewey-Burdock LA - NUREG-1569 Standard Review Plan for ISL uranium extraction license applications | 09/13/2010 | ML102560212 |
| 444 | 2010/09/13 Powertech Dewey-Burdock LA - NRC Regulatory Guides 4.15, 3.46, 3.50, 3.56, 3.59, 3.63, 4.14 | 09/13/2010 | ML102560257 |
| 445 | 2010/09/13 Powertech Dewey-Burdock LA - NRC Regulatory Guides 8.36, 8.10, 8.13, 8.22, 8.25, 8.26, 8.29, 8.30, 8.31, 8.34 | 09/13/2010 | ML102560310 |
| 446 | 2010/09/13 Powertech Dewey-Burdock LA - Burdock Quad Plate 2 | 09/13/2010 | ML102560312 |

| | | | |
|-----|--|------------|-------------|
| 447 | 2010/09/13 Powertech Dewey-Burdock LA - Dewey-Burdock GIS Model, Public Land Survey File | 09/13/2010 | ML102560321 |
| 448 | 2010/09/13-Applicant Powertech (USA) Uranium Corporation's Initial Mandatory Disclosures. | 09/13/2010 | ML102560549 |
| 449 | 2010/09/13-Attachment A to Applicant Powertech Corp's Initial Mandatory Disclosures - First Update Scheduled for 30 Sept. 2010. | 09/13/2010 | ML102560551 |
| 450 | 2010/09/13-Attachment B to Applicant Powertech Corp's Initial Mandatory Disclosures - A Level III Cultural Resources Evaluation of Powertech (USA) Incorporated's Proposed Dewey-Burdock Uranium Project Locality within the Southern Black Hills. | 09/13/2010 | ML102560553 |
| 451 | 2010/09/13-Letter from NRC to Board transmitting initial mandatory disclosures, privilege logs and hearing file, with related affidavits. | 09/13/2010 | ML102560555 |
| 452 | 2010/09/13-Intervenor's Joint Initial Disclosures Under 10 CFR 2.336. | 09/13/2010 | ML102560562 |
| 453 | 2010/09/13-Applicant Powertech (USA) Inc.'s Initial Mandatory Disclosures: Affidavit of Richard E. Blubaugh. | 09/13/2010 | ML102571455 |
| 454 | 2010/09/14-Consolidated Intervenor's Withdrawal of Unopposed Motion to Make Filings by E-mail. | 09/14/2010 | ML102571925 |

| | | | |
|-----|---|------------|-------------|
| 455 | 2010/09/16-Board Order (Granting Withdrawal of Motion to File by E-mail). | 09/16/2010 | ML102590128 |
| 456 | Plan of Study for the Black Hills Hydrology Study, SD from website http://sd.water.usgs.gov/pubs/abstracts/ofr92-84.html | 09/29/2010 | ML102720139 |
| 457 | Selected Hydrologic Data Through Water Year 1992, Black Hills, SD-website http://sd.water.usgs.gov/pubs/abstracts/ofr94-319.html . | 09/29/2010 | ML102720169 |
| 458 | Selected Hydrologic Data, Black Hills Water Year 1994, website http://sd.water.usgs.gov/pubs/abstracts/ofr96-399.html . | 09/29/2010 | ML102720185 |
| 459 | BLM Lands Map. | 09/29/2010 | ML102720742 |
| 460 | Burdock Area Map. | 09/29/2010 | ML102720747 |
| 461 | South Dakota Survey Townships. | 09/29/2010 | ML102720757 |
| 462 | Lakota Isopach Map. | 09/29/2010 | ML102720763 |

| | | | |
|-----|-------------------------------|------------|-------------|
| 463 | Chilson Member Structure Map. | 09/29/2010 | ML102720765 |
| 464 | Dewey Map. | 09/29/2010 | ML102720771 |
| 465 | Fall River Isopach. | 09/29/2010 | ML102720777 |
| 466 | Fusion Isopach Map. | 09/29/2010 | ML102720782 |
| 467 | BLM Land Map. | 09/29/2010 | ML102720784 |
| 468 | Site Aerial Photos. | 09/29/2010 | ML102720785 |
| 469 | Site Aerial Photos. | 09/29/2010 | ML102720792 |
| 470 | Morrison Shale Isopach. | 09/29/2010 | ML102720795 |

| | | | |
|-----|----------------------------------|------------|-------------|
| 471 | Jewel Caves Quadrangle Topo. | 09/29/2010 | ML102720796 |
| 472 | Site Location Map. | 09/29/2010 | ML102720802 |
| 473 | Dewey Location Map. | 09/29/2010 | ML102720804 |
| 474 | Dewey Burdock Aerial Photos -2. | 09/29/2010 | ML102720807 |
| 475 | More Dewey-Burdock Aerial Photo. | 09/29/2010 | ML102720810 |
| 476 | Dewey-Burdock Aerial Photos-5. | 09/29/2010 | ML102720813 |
| 477 | Aerial Photos-6. | 09/29/2010 | ML102720877 |
| 478 | Aerial Photos-7. | 09/29/2010 | ML102720880 |

| | | | |
|-----|---------------------------|------------|-------------|
| 479 | Aerial Photos-8. | 09/29/2010 | ML102720882 |
| 480 | Dewey-Burdock Mine Units. | 09/29/2010 | ML102720884 |
| 481 | Modeled Topo Data. | 09/29/2010 | ML102720885 |
| 482 | Modeled Topo Data-2. | 09/29/2010 | ML102720886 |
| 483 | Modeled Topo Data-3. | 09/29/2010 | ML102720887 |
| 484 | Modeled Topo Data-4. | 09/29/2010 | ML102720888 |
| 485 | Modeled Topo Data-5. | 09/29/2010 | ML102720891 |
| 486 | Modeled Topo Data-6. | 09/29/2010 | ML102720892 |

| | | | |
|-----|---|------------|-------------|
| 487 | Burdock Mine Unit Maps. | 09/29/2010 | ML102720894 |
| 488 | Dewey Mine Unit Maps. | 09/29/2010 | ML102720895 |
| 489 | Survey Sections-2. | 09/29/2010 | ML102720899 |
| 490 | Survey Townships-2. | 09/29/2010 | ML102720902 |
| 491 | Twentyone Divide Topo Quad. | 09/29/2010 | ML102720904 |
| 492 | Open-File Report 99-602, "Selected Hydrogeologic Data for the Inyan Kara, Minnekahta, Minnelusa, Madison, & Deadwood Aquifers in the Black Hills Area, South Dakota." | 09/29/2010 | ML102720913 |
| 493 | Selected Hydrologic Data, Through Water Year 1998, Black Hills Hydrology Study, South Dakota - Powertech Hearing. | 09/30/2010 | ML102730035 |
| 494 | Hydrology of the Black Hills Area, South Dakota - Powetech Hearing. | 09/30/2010 | ML102730039 |

| | | | |
|-----|---|------------|-------------|
| 495 | Map of Earthquakes in South Dakota (1872 - 2007) - Powertech Hearing. | 12/31/2007 | ML102730114 |
| 496 | Altitude of Top of Inyan Kara Group in Black Hills Area, SD by Janeet M. Carter, U.S. Geological Survey; and Jack A. Redden, SK School of Mines & Technology - Powertech Hearing. | 09/29/2010 | ML102730115 |
| 497 | Hydrologic Conditions and Budgets for the Black Hills of South Dakota, Through Water Year 1998. | 09/30/2010 | ML102730129 |
| 498 | Water-Quality Characteristics in the Black Hills Area, South Dakota | 09/30/2010 | ML102730135 |
| 499 | The Black Hills Hydrology Study by Janet M. Carter, Daniel G. Driscoll, and Joyce E. Williamson - Powertech. | 06/30/2002 | ML102730212 |
| 500 | Hydrologic Budgets for the Madison and Minnelusa Aquifers, Black Hills of SD and WY, Water Years 1987-96 - Powertech Hearing - Docket 04009075. | 12/31/2001 | ML102730213 |
| 501 | 2010/09/23-Transcript of Pre-Hearing Telephone Conference held Thursday, September 23, 2010, Pages 406-473. | 09/23/2010 | ML102740042 |
| 502 | 2010/10/01-Applicant Powertech (USA) Uranium Corporation's Monthly Update to Initial Mandatory Disclosures. | 10/01/2010 | ML102740567 |

| | | | |
|-----|---|------------|-------------|
| 503 | 2010/10/01-Attachment to Applicant Powertech (USA) Uranium Corporation's Monthly Update to Initial Mandatory Disclosures. | 10/01/2010 | ML102740576 |
| 504 | 2010/10/01-Letter from NRC to Board transmitting hearing file update [mandatory disclosures, privilege logs and hearing file, with related affidavits]. | 10/01/2010 | ML102740578 |
| 505 | 2010/10/04-Board Order (Prehearing Conference Call Summary and Initial Scheduling Order). | 10/04/2010 | ML102770545 |
| 506 | 2010/09/30 Powertech Dewey-Burdock LA - RAI Clarifications for RAI-WR2 (2).docx | 09/30/2010 | ML102780110 |
| 507 | 2010/10/05-Board Order (Establishing Date for Proposed Transcript Corrections). | 10/05/2010 | ML102780424 |
| 508 | 2010/10/15-Joint Notice to Atomic Safety and Licensing Board Regarding Outstanding Scheduling Issues. | 10/15/2010 | ML102880808 |
| 509 | 2010/10/01 Powertech Dewey-Burdock LA - Consultation | 10/01/2010 | ML103050026 |
| 510 | 2010/11/01-Applicant Powertech (USA) Uranium Corporation's Monthly Update to Initial Mandatory Disclosures. | 11/01/2010 | ML103050507 |

| | | | |
|-----|---|------------|-------------|
| 511 | 2010/11/01-Letter from Counsel for NRC Staff to Board Providing NRC Staff's Estimates of Issuance Dates for Draft/Final SEIS and SER Documents Associated with Review of Powertech's Application. | 11/01/2010 | ML103050570 |
| 512 | 2010/11/01-Letter from Counsel for NRC Staff to Board Transmitting Hearing File Update. | 11/01/2010 | ML103050572 |
| 513 | 2010/11/02-Board Order (Supplementing Initial Scheduling Order). | 11/02/2010 | ML103060353 |
| 514 | K. Hsueh Ltr Re: Invitation for Formal Consultation Under the National Preservation Act; Proposed Dewey Burdock in Situ Recovery Facility near Edgemont South Dakota. | 11/02/2010 | ML103200287 |
| 515 | E-mail, with Powertech's Clarification of Assumptions Regarding Drilling Emissions for DDWS. | 11/17/2010 | ML103220208 |
| 516 | Powertech Inc. Proposed Dewey-Burdock In-situ Recovery Facility near Edgemont, South Dakota (Docket 040-09075). | 12/15/2010 | ML103270171 |
| 517 | K. Hsueh ltr. re: Invitation for Formal Consultation Under the National Historic Preservation Act; Proposed Dewey Burdock In Situ Recovery Facility. | 11/07/2010 | ML103270443 |
| 518 | 2010/11/12 Powertech Dewey-Burdock LA - | 11/12/2010 | ML103330215 |

| | | | |
|-----|---|------------|-------------|
| 519 | 2010/11/19 Powertech Dewey-Burdock LA - Request for submitting the culture resources survey | 11/19/2010 | ML103330216 |
| 520 | 2010/11/19 Powertech Dewey-Burdock LA - RE: Request for submitting the culture resources survey | 11/19/2010 | ML103330217 |
| 521 | 2010/11/22 Powertech Dewey-Burdock LA - NRC's Consultation letter for proposed Dewey-Burdock ISR facility near Edgemont, SD | 11/22/2010 | ML103330220 |
| 522 | 2010/11/22 Powertech Dewey-Burdock LA - FW: Transmittal of Cultural Report | 11/22/2010 | ML103330221 |
| 523 | 2010/11/17 Powertech Dewey-Burdock LA - Clarification of Assumptions regarding Drilling Emissions for DDWs | 11/17/2010 | ML103330300 |
| 524 | 2010/11/29 Powertech Dewey-Burdock LA - FW: Request for submitting the culture resources survey | 11/29/2010 | ML103330301 |
| 525 | 2010/11/22 Powertech Dewey-Burdock LA - News article FYI | 11/22/2010 | ML103330304 |
| 526 | K. Hsueh ltr. re: Lower Brule Sioux Tribe Response to Formal Section 106 Consultation. | 11/15/2010 | ML103340146 |

| | | | |
|-----|--|------------|-------------|
| 527 | Powertech (USA), Inc.'s Response to the U.S. Nuclear Regulatory Commission (NRC) Staff's Verbal Request for Clarification of Response Regarding Inclusion of Emissions from Drilling Disposal Wells; Dewey-Burdock Uranium Project Environmental Review. | 11/17/2010 | ML103340197 |
| 528 | 2010/12/01-Letter from Counsel for NRC Staff to Board Transmitting Hearing File Update. | 12/01/2010 | ML103350712 |
| 529 | 2010/12/01-Letter from Counsel for NRC Staff to Board Providing NRC Staff's Estimates of Issuance Dates for Draft/Final SEIS and SER Documents Associated with Review of Powertech's Application. | 12/01/2010 | ML103350713 |
| 530 | 2010/12/01-Applicant Powertech (USA) Uranium Corporation's Monthly Update to Initial Mandatory Disclosures. | 12/01/2010 | ML103350726 |
| 531 | 2010/12/01-Intervenor Update to Disclosures Under 10 CFR 2.336. | 12/01/2010 | ML103350728 |
| 532 | Technical RAI Response Date for Powertech's Dewey-Burdock ISR Facility. | 12/02/2010 | ML103400005 |
| 533 | NRC Rejection of Powertech (USA), Inc., Request for Withholding Information from Public Disclosure for the Proposed Dewey-Burdock in Situ. | 02/10/2011 | ML103440513 |
| 534 | 2010/12/13-Letter from Counsel for NRC Staff Submitting Supplement to December 1, 2010 Hearing File Update. | 12/13/2010 | ML103470717 |

| | | | |
|-----|--|------------|-------------|
| 535 | K. Hsueh Ltr. re: Yankton Sioux Tribe Request for Consultation on Past and Current Projects. | 12/03/2010 | ML110030430 |
| 536 | 2010/12/08 Powertech Dewey-Burdock LA - Dewey-Burdock Project | 12/08/2010 | ML110030700 |
| 537 | Covers for Drawings | 12/23/2010 | ML110030731 |
| 538 | Drawing, Exhibit 2.2-1, Energy-Related Activities in the Vicinity of the Dewey-Burdock PAA. | 12/17/2010 | ML110030732 |
| 539 | Drawing, Plate 2.5-1 - Revised, Sampling Locations. | 12/20/2010 | ML110030733 |
| 540 | Map, Exhibit 2.7-1, Cross Section Index Map. | 12/20/2010 | ML110030734 |
| 541 | Drawing, Exhibit 2.7-1a, Cross Section A-A'. | 12/20/2010 | ML110030735 |
| 542 | Drawing, Exhibit 2.7-1b, Cross Section B-B'. | 12/20/2010 | ML110030736 |

| | | | |
|-----|---|------------|-------------|
| 543 | Drawing, Exhibit 2.7-1c, Cross Section C-C'. | 12/20/2010 | ML110030737 |
| 544 | Drawing, Exhibit 2.7-1d, Cross Section D-D'. | 12/20/2010 | ML110030738 |
| 545 | Drawing, Exhibit 2.7-1e, Cross Section E-E'. | 12/20/2010 | ML110030740 |
| 546 | Drawing, Exhibit 2.7-1f, Cross Section F-F'. | 12/20/2010 | ML110030741 |
| 547 | Drawing, Exhibit 2.7-1g, Cross Section G-G'. | 12/20/2010 | ML110030742 |
| 548 | Drawing, Exhibit 2.7-1h, Cross Section H-H'. | 12/20/2010 | ML110030743 |
| 549 | Drawing, Exhibit 2.7-1j, Cross Section J-J'. | 12/20/2010 | ML110030744 |
| 550 | Map, Exhibit 2.7-2, Top of Fuson, Structure Contour Map Dewey Well Field 1 Custer County, South Dakota. | 12/20/2010 | ML110030745 |

| | | | |
|-----|---|------------|-------------|
| 551 | Drawing, Exhibit 2.7.3, Aerial Extent of 100-Year Flood and Proposed Well Fields. | 12/20/2010 | ML110030746 |
| 552 | Map, Supplemental Exhibit 3.1-1 - Revised, Dewey-Burdock Project Area of Review Map. | 12/20/2010 | ML110030747 |
| 553 | Drawing, Supplemental Exhibit 3.1-2, Proposed Facilities and Well Fields Land Application Well Option. | 12/17/2010 | ML110030748 |
| 554 | Drawing, Supplemental Exhibit 3.1-3, Proposed Facilities and Well Fields Deep Disposal Well Option. | 12/17/2010 | ML110030749 |
| 555 | Drawing, Supplemental Exhibit 3.1-4, Proposed Well Fields. | 12/17/2010 | ML110030786 |
| 556 | 2011/01/03-Applicant Powertech (USA) Uranium Corporation's Monthly Update to Initial Mandatory Disclosures. | 01/03/2011 | ML110030885 |
| 557 | 2011/01/03-Letter from Counsel for NRC Staff to Board Transmitting Hearing File Update - January 3, 2011 Index. | 01/03/2011 | ML110030959 |
| 558 | 2011/01/03-Letter from Counsel for NRC Staff to Board Providing NRC Staff's Estimates of Issuance Dates for Draft/Final SEIS and SER Documents Associated with Review of Powertech's Application. | 01/03/2011 | ML110030961 |

| | | | |
|-----|---|------------|-------------|
| 559 | Powertech (USA) Inc.'s Response to the NRC Staff's Requests for Additional Information Concerning the Dewey-Burdock Project, Custer and Fall River Counties, South Dakota. | 12/23/2010 | ML110050467 |
| 560 | Dewey-Burdock Project Application for NRC Uranium Recovery License Fall River and Custer Counties, South Dakota TR RAI Response Volume I. | 12/23/2010 | ML110050468 |
| 561 | Response to NRC RAI re Dewey-Burdock Uranium Project - Source Material License Application; Surface Water Quality Sites Statistics. | 12/23/2010 | ML110050471 |
| 562 | Dewey-Burdock Project Application for NRC Uranium Recovery License Fall River and Custer Counties, South Dakota TR RAI Response Volume II. | 12/23/2010 | ML110050472 |
| 563 | Response to NRC RAI re Dewey-Burdock Uranium Project - Source License Application; Management Control Program 5.2. | 12/23/2010 | ML110050473 |
| 564 | Response to NRC RAI re Dewey-Burdock Uranium Project - Source Material License Application, Topical Report RSI-2008, Meteorological Characterization. | 12/23/2010 | ML110130328 |
| 565 | 2011/02/01-Letter from Counsel for NRC Staff to Board Transmitting Hearing File Update - February 1, 2011 Index. | 02/01/2011 | ML110320295 |
| 566 | 2011/02/01-Letter from Counsel for NRC Staff to Board Providing NRC Staff's Estimates of Issuance Dates for Draft/Final SEIS and SER Documents Associated with Review of Powertech's Application. | 02/01/2011 | ML110320298 |

| | | | |
|-----|---|------------|-------------|
| 567 | 2011/02/01-Applicant Powertech (USA) Uranium Corporation's Monthly Update to Initial Mandatory Disclosures. | 02/01/2011 | ML110320618 |
| 568 | Exhibit 3-1 - Anthropogenic Induced Redox Disequilibrium in Uranium Ore Zones. | 02/01/2011 | ML110320697 |
| 569 | Exhibit 2 - Predictive Modeling Strategies for Proposed Uranium In-Situ Recovery Mines. | 02/01/2011 | ML110320698 |
| 570 | Exhibit 4 - E-mail, Subject: Article from 09/04/09 Inside EPA (Agency Seeks Close Oversight of NRC Reviews at Uranium Milling Sites). | 02/01/2011 | ML110320699 |
| 571 | Exhibit 3 - Anthropogenic Induced Redox Disequilibrium in Uranium ORE Zones. | 02/01/2011 | ML110320700 |
| 572 | Exhibit 1 - Identifying Mineral Schemes for Aquifer Restoration after Uranium in-Situ Recovery. | 02/01/2011 | ML110320701 |
| 573 | Intervenor Update to Disclosures Under 10 CFR Section 2.336. | 02/01/2011 | ML110320702 |
| 574 | Oglala Sioux Tribe - Response to Section 106 letter Re: Dewey-Burdock Project. | 01/31/2011 | ML110340107 |

| | | | |
|-----|---|------------|-------------|
| 575 | R. Blubaugh Ltr Re: Results of Acceptance Review for Responses to Request for Additional Information for Powertech (USA), Inc.'s Proposed Dewey-Burdock In Situ Recovery Facility (TAC No. J00606). | 05/06/2011 | ML110470245 |
| 576 | Letter to Santee Sioux Tribe of Nebraska re: Invitation for Formal Consultation Under the Section 106 of the National Historic Preservation Act. | 03/04/2011 | ML110550172 |
| 577 | Letter to Ponca Tribe of Nebraska re: Invitation for formal Consultation under the Section 106 of the National Historic Preservation Act. | 03/04/2011 | ML110550372 |
| 578 | Letter to Crow Tribe re: Invitation for formal Consultation under the Section 106 of the National Historic Preservation Act. | 03/04/2011 | ML110550535 |
| 579 | RSO Refresher Training - Powertech. | 02/23/2011 | ML110550750 |
| 580 | Dewey-Burdock Project Application for NRC Uranium Recovery License Fall River and Custer Counties, South Dakota Technical Report RAI Question and Answer Responses For February 2011. | 02/28/2011 | ML110590639 |
| 581 | Powertech (USA) Inc.'s Responses, in Question / Answer Format, to the U.S. Nuclear Regulatory Commission (NRC) Staff's Request for Additional Information Regarding the Technical Review for the Proposed Dewey-Burdock Uranium Project Docket No. 40-9075. | 02/18/2011 | ML110590641 |
| 582 | 2011/02/08 Powertech Dewey-Burdock LA - South Dakota Tribal Chairman and Tribal Historic Preservation Offices | 02/08/2011 | ML110591222 |

| | | | |
|-----|--|------------|-------------|
| 583 | Letter from Counsel for NRC Staff to Board Transmitting Hearing File Update - March 1, 2011 Index. | 03/01/2011 | ML110601235 |
| 584 | Letter from Counsel for NRC Staff to Board Providing NRC Staff's Estimates of Issuance Dates for Draft/Final SEIS and SER Documents Associated with Review of Powertech's Application. | 03/01/2011 | ML110601253 |
| 585 | E-Mail to Richard Blubaugh at Powertech Re: Acceptance Review Issues on Dewey-Burdock Application - Docket 04009075. | 03/07/2011 | ML110670272 |
| 586 | Crow Tribe response to NRC's invitation to Section 106 consultation regarding Dewey-Burdock Project. | 03/10/2011 | ML110690166 |
| 587 | 04/07/2011 - 04/08/2011 Notice of Public Meeting with Powertech (USA) Inc. to Discuss Responses to NRC Staff's Request for Additional Information. | 03/15/2011 | ML110740011 |
| 588 | PowerTech Ltr. re: Responses to NRC Requests for Clarification of Selected Issues Related to Dewey-Burdock Uranium Project Review. | 11/04/2010 | ML110820582 |
| 589 | 04/07-08/2011 - Revised Notice of Meeting with Powertech (USA) to Discuss Responses to NRC Staff's Request for Additional Information. | 03/29/2011 | ML110880030 |
| 590 | Letter from Counsel for NRC Staff to Board Transmitting Hearing File Update - April 1, 2011 Index. | 04/01/2011 | ML110910418 |

| | | | |
|-----|--|------------|-------------|
| 591 | Letter from Counsel for NRC Staff to Board Providing NRC Staff's Estimates of Issuance Dates for Draft/Final SEIS and SER Documents Associated with Review of Powertech's Application. | 04/01/2011 | ML110910428 |
| 592 | Larry W. Campbell ltr. re: Invitation for Informal Information Gathering Meeting Pertaining to Dewey Burdock, Crow Butte North Trend, Crow Butte License Renewal, and Crow Butte Three Crow In Situ Uranium Recovery Projects. | 05/12/2011 | ML110950627 |
| 593 | E-mail re: Clarification of RAI 6.4-7 - Dewey Burdock. | 04/08/2011 | ML111020007 |
| 594 | Letter From South Dakota Bureau of Land Management Field Office Re: Cooperating Agency Status on Powertech's Dewey-Burdock ISR Project Plan of Operations. | 04/07/2011 | ML11116A091 |
| 595 | Intervenor Update to Disclosures Under 10 CFR Section 2.336. | 05/02/2011 | ML111220637 |
| 596 | Attachment to Intervenor Update to Disclosures Under 10 CFR 2.336 - "Uranium Mining in Texas: Why Is it Done That Way?," Report by Ronald L. Sass, March 28, 2011 | 03/28/2011 | ML111220638 |
| 597 | Letter from Counsel for NRC Staff to Board Transmitting Hearing File Update - May 2, 2011 Index. | 05/02/2011 | ML111220657 |
| 598 | Letter from Counsel for NRC Staff to Board Providing NRC Staff's Estimates of Issuance Dates for Draft/Final SEIS and SER Documents Associated with Review of Powertech's Application. | 05/02/2011 | ML111220670 |

| | | | |
|-----|--|------------|-------------|
| 599 | Powertech (USA), Inc., Intent to Submit Revised Responses to the Request for Additional Information for Technical/Safety Review for Proposed Dewey-Burdock Project. | 04/22/2011 | ML11123A228 |
| 600 | 05/24/11 - Notice of Meeting With Powertech (USA), Inc. Regarding the Review of Its Proposed Dewey-Burdock ISR Facility Application. | 05/10/2011 | ML111300266 |
| 601 | A. Morse Ltr. re: Invitation for Informal Information-Gathering Meeting Pertaining to Dewey-Burdock, Crow Butte North Trend, and Crow Butte License Renewal. | 05/12/2011 | ML111320035 |
| 602 | Hubert Two Leggings Ltr. re: Invitation for Informal Information Gathering Meeting Pertaining to Dewey Burdock, Crow Butte North Trend, Crow Butte License Renewal In Situ Uranium Recovery Projects. | 05/12/2011 | ML111320087 |
| 603 | Letter to Steve Vance of Cheyenne River Sioux re: Invitation for Informal Information Gathering Meeting Pertaining to Dewey Burdock, Crow Butte North Trend, Crow Butte License Renewal, and Crow Butte Three Crow In Situ Uranium Recovery. | 05/12/2011 | ML111320116 |
| 604 | C. Youpee Ltr. re: Invitation for Informal Information Gathering Meeting Pertaining to Dewey Burdock, Crow Butte North Trend and Crow Butte License Renewal In Situ Uranium Recovery Projects. | 05/12/2011 | ML111320117 |
| 605 | C. Fisher Ltr. re: Invitation for Informal Information Gathering Meeting Pertaining to Dewey Burdock, Crow Butte North Trend and Crow Butte License Renewal In Situ Uranium Recovery Projects. | 05/12/2011 | ML111320127 |
| 606 | Wanda Wells of Crow Creek Sioux re: Invitation for Informal Information Gathering Meeting Pertaining to Dewey Burdock, Crow Butte North Trend and Crow Butte License Renewal In Situ Uranium Recovery Projects. | 05/12/2011 | ML111320145 |

| | | | |
|-----|--|------------|-------------|
| 607 | D. Conrad Ltr. re: Invitation for Informal Information Gathering Meeting Pertaining to Dewey Burdock, Crow Butte North Trend and Crow Butte License Renewal In Situ Uranium Recovery Projects. | 05/12/2011 | ML111320180 |
| 608 | Letter to Franky Jackson of Flandreau Santee Sioux re: Invitation for Informal Information Gathering Meeting Pertaining to Dewey Burdock, Crow Butte North Trend and Crow Butte License Renewal In Situ Uranium Recovery Projects. | 05/12/2011 | ML111320183 |
| 609 | A. Chalepah Ltr. re: Invitation for Informal Information Gathering Meeting Pertaining to Dewey Burdock, Crow Butte North Trend and Crow Butte License Renewal In Situ Uranium Recovery Projects. | 05/12/2011 | ML111320201 |
| 610 | L. Gray Ltr. re: Invitation for Informal Information Gathering Meeting Pertaining to Dewey Burdock, Crow Butte North Trend and Crow Butte License Renewal In Situ Uranium Recovery Projects. | 05/12/2011 | ML111320221 |
| 611 | Invitation for Informal Information Gathering Meeting Pertaining to Dewey Burdock, Crow Butte North Trend and Crow Butte License Renewal In Situ Uranium Recovery Projects. | 05/12/2011 | ML111320232 |
| 612 | W. Ferris ltr. re: Invitation for Informal Information Gathering Meeting Pertaining to Dewey Burdock, Crow Butte North Trend and Crow Butte License Renewal In Situ Uranium Recovery Projects. | 05/12/2011 | ML111320251 |
| 613 | Letter to Clair Green of Lower Brule Sioux. re: Invitation for Informal Information Gathering Meeting Pertaining to Dewey Burdock, Crow Butte North Trend and Crow Butte License Renewal In Situ Uranium Recovery Projects. | 05/12/2011 | ML111320264 |
| 614 | J. Arterberry Ltr. re: Invitation for Informal Information Gathering Meeting Pertaining to Dewey Burdock, Crow Butte North Trend and Crow Butte License Renewal In Situ Uranium Recovery Projects. | 05/12/2011 | ML111320280 |

| | | | |
|-----|---|------------|-------------|
| 615 | Letter to Russell Eagle Bear of Rosebud Sioux Tribe re: Invitation for Informal Information Gathering Meeting Pertaining to Dewey Burdock, Crow Butte North Trend and Crow Butte License Renewal In Situ Uranium Recovery Projects. | 05/12/2011 | ML111320299 |
| 616 | D. Topfi Ltr. re: Invitation for Informal Information Gathering Meeting Pertaining to Dewey Burdock, Crow Butte North Trend and Crow Butte License Renewal In Situ Uranium Recovery Projects. | 05/12/2011 | ML111320309 |
| 617 | Letter to Dianne Desrorisers of Sisseton-Wahpeton Oyate Tribe re: Invitation for Informal Information Gathering Meeting Pertaining to Dewey Burdock, Crow Butte North Trend and Crow Butte License Renewal In Situ Uranium Recovery Projects. | 05/12/2011 | ML111320342 |
| 618 | F. Tippeconnie Ltr. re: Invitation for Informal Information Gathering Meeting Pertaining to Dewey Burdock, Crow Butte North Trend and Crow Butte License Renewal In Situ Uranium Recovery Project. | 05/12/2011 | ML111320343 |
| 619 | Invitation for Informal Information Gathering Meeting Pertaining to Dewey Burdock, Crow Butte North Trend and Crow Butte License Renewal In Situ Uranium Recovery Projects. | 05/12/2011 | ML111320375 |
| 620 | Letter to Lana Gravatt of Yankton Sioux Tribe re: Invitation for Informal Information Gathering Meeting Pertaining to Dewey Burdock, Crow Butte North Trend and Crow Butte License Renewal In Situ Uranium Recovery Projects. | 05/12/2011 | ML111320395 |
| 621 | Letter to Gary Robinette of Ponca Tribe re: Invitation for Informal Information Gathering Meeting Pertaining to Dewey Burdock, Crow Butte North Trend and Crow Butte License Renewal In Situ Uranium Recovery Projects. | 05/12/2011 | ML111320446 |
| 622 | Letter to Myra Pearson of Spirit Lake Tribe re: Invitation for Informal Information Gathering Meeting Pertaining to Dewey Burdock, Crow Butte North Trend and Crow Butte License Renewal In Situ Uranium Recovery Projects. | 05/12/2011 | ML111320496 |

| | | | |
|-----|--|------------|-------------|
| 623 | Standing Rock Sioux Tribe Response Letter to Section 106 Tribal Consultation for Crow and Dewey Burdock Projects. | 05/17/2011 | ML111440410 |
| 624 | Letter from Counsel for NRC Staff to Board Providing NRC Staff's Estimates of Issuance Dates for Draft/Final SEIS and SER Documents Associated with Review of Powertech's Application. | 06/01/2011 | ML111520590 |
| 625 | Letter from Counsel for NRC Staff to Board Transmitting Hearing File Update - June 1, 2011 Index. | 06/01/2011 | ML111520592 |
| 626 | 2011/05/24 Powertech Dewey-Burdock LA - RE: Powertech article in yesterday's paper | 05/24/2011 | ML11152A024 |
| 627 | 2011/05/13 Powertech Dewey-Burdock LA - Invitation letter to June 7, 8, and 9 information gathering and site visit meeting | 05/13/2011 | ML11152A025 |
| 628 | 2011/05/13 Powertech Dewey-Burdock LA - Invitation letter to June 7, 8, and 9 information gathering and site visit meeting | 05/13/2011 | ML11152A026 |
| 629 | 2011/05/13 Powertech Dewey-Burdock LA - Invitation letter to June 7, 8, and 9 information gathering and site visit meeting | 05/13/2011 | ML11152A028 |
| 630 | 2011/05/13 Powertech Dewey-Burdock LA - Invitation letter to June 7, 8, and 9 information gathering and site visit meeting | 05/13/2011 | ML11152A029 |

| | | | |
|-----|--|------------|-------------|
| 631 | 2011/05/13 Powertech Dewey-Burdock LA - Invitation letter to June 7, 8, and 9 information gathering and site visit meeting | 05/13/2011 | ML11152A031 |
| 632 | 2011/05/13 Powertech Dewey-Burdock LA - Invitation Letter to June 7, 8, and 9 Information Gathering and Site Visit Meeting. | 05/13/2011 | ML11152A032 |
| 633 | 2011/05/13 Powertech Dewey-Burdock LA - Invitation letter to June 7, 8, and 9 information gathering and site visit meeting | 05/13/2011 | ML11152A033 |
| 634 | 2011/05/25 Powertech Dewey-Burdock LA - Re: Invitation letter to June 7, 8, and 9 information gathering and site visit meeting | 05/25/2011 | ML11152A034 |
| 635 | 2011/05/11 Powertech Dewey-Burdock LA - RE: Draft Agenda 5-6-11.docx | 05/11/2011 | ML11152A035 |
| 636 | 2011/05/09 Powertech Dewey-Burdock LA - RE: June Information Gathering meeting at the Oglala Sioux Reservation regarding Dewey-Burdock project | 05/09/2011 | ML11152A036 |
| 637 | 2011/05/03 Powertech Dewey-Burdock LA - Itinerary for Tribal Visit | 05/03/2011 | ML11152A045 |
| 638 | 2011/05/06 Powertech Dewey-Burdock LA - Draft Agenda 5-6-11.docx | 05/06/2011 | ML11152A046 |

| | | | |
|-----|--|------------|-------------|
| 639 | 2011/06/01 Powertech Dewey-Burdock LA - FW: Information Regarding the June 7,8, and 9 meeting | 06/01/2011 | ML11152A260 |
| 640 | Attachment 3 - Powertech Presentation. | 05/25/2011 | ML111670891 |
| 641 | Board Order (Postponing Discussions Regarding Site Visit). | 06/16/2011 | ML111671927 |
| 642 | Transcript for June 8, 2011 Informal Information Gathering Meeting Regarding Crow Butte Inc. and Powertec Inc. Proposed ISR Facilities. Pages 1-195. | 06/08/2011 | ML111721938 |
| 643 | Meeting Summary Report for the Meeting with NRC and Dr. L. Jarding for the Proposed Dewy-Burdock ISR Facility. | 06/24/2011 | ML111750271 |
| 644 | 2011/06/07 Powertech Dewey-Burdock LA - RE: Reminder to the June informal information gathering/ consultation /site visit meeting | 06/07/2011 | ML11181A240 |
| 645 | 2011/06/03 Powertech Dewey-Burdock LA - Possible meeting on June 10, 2011 | 06/03/2011 | ML11181A241 |
| 646 | 2011/06/01 Powertech Dewey-Burdock LA - RE: Dewey Burdock Crow Butte Informal Information Gathering at Pine Ridge Jun 7,8,9 | 06/01/2011 | ML11181A242 |

| | | | |
|-----|--|------------|-------------|
| 647 | Letter from Counsel for NRC Staff to Board Transmitting Hearing File Update - July 1, 2011 Index. | 07/01/2011 | ML11182C078 |
| 648 | Letter from Counsel for NRC Staff to Board Providing NRC Staff's Estimates of Issuance Dates for Draft/Final SEIS and SER Documents Associated with Review of Powertech's Application. | 07/01/2011 | ML11182C079 |
| 649 | Memo to Kevin Hsueh re: Transcript for June 8, 2011 Informal Information Gathering Meeting Held in Pine Ridge, SD. | 07/08/2011 | ML111870623 |
| 650 | Attendee List - Informal Information Gathering Meeting Held in Pine Ridge, SD. | 07/08/2011 | ML111870624 |
| 651 | R. Blubaugh ltr. re: Revised Archaeological Map (Exhibit RAI CH-1) for Proposed Dewey-Burdock Project. | 07/12/2011 | ML112010514 |
| 652 | Revised Responses to the Request for Additional Information (RAI) for the Technical Report (TR); Powertech (USA) Inc.'s Proposed Dewey-Burdock Project. | 06/28/2011 | ML11207A711 |
| 653 | Dewey-Burdock Project Application for NRC Uranium Recovery License Fall River and Custer Counties, South Dakota Technical Report RAI Responses Volume 1 of 4 - Cover thru TR RAI MI-6 Response. | 06/30/2011 | ML11208B712 |
| 654 | Dewey-Burdock Project Application for NRC Uranium Recovery License Fall River and Custer Counties, South Dakota Technical Report RAI Responses Volume 1 of 4 - 2.9 - Ref, Background Radiological Characteristics. | 06/30/2011 | ML11208B714 |

| | | | |
|-----|--|------------|-------------|
| 655 | Dewey-Burdock Project Application for NRC Uranium Recovery License Fall River and Custer Counties, South Dakota Technical Report RAI Responses Volume 2 of 4 - Cover 2.6-1 thru 2.6-4. | 06/30/2011 | ML11208B716 |
| 656 | Dewey-Burdock Project Application for NRC Uranium Recovery License Fall River and Custer Counties, South Dakota Technical Report RAI Responses Volume 1 of 4 - 2.5 - 2.7, Meterology. | 06/30/2011 | ML11208B719 |
| 657 | Dewey-Burdock Project Application for NRC Uranium Recovery License Fall River and Custer Counties, South Dakota Technical Report RAI Responses Volume 2 of 4 - Exhibit 2.6-6 thru 3.1-1, Top of Fuson, Structure Contor Map Dewey Field 1 Township6S, Range1E. | 06/21/2011 | ML11208B764 |
| 658 | Dewey-Burdock Project Application for NRC Uranium Recovery License Fall River and Custer Counties, South Dakota Technical Report RAI Responses Volume 3 of 4 - Cover 2.5-D thru 2.6-G. | 06/30/2011 | ML11208B765 |
| 659 | Dewey-Burdock Project Application for NRC Uranium Recovery License Fall River and Custer Counties, South Dakota Technical Report RAI Responses Volume 3 of 4 - Appendix 2.6H, Page 2.6-H-i through Page 2.6-H-10. | 06/30/2011 | ML11208B766 |
| 660 | Dewey-Burdock Project Application for NRC Uranium Recovery License Fall River and Custer Counties, South Dakota Technical Report RAI Responses Volume 3 of 4 - Appendix 2.6H, Page 2.6-H-11 through Page 2.6-H-18. | 06/30/2011 | ML11208B769 |
| 661 | Dewey-Burdock Project Application for NRC Uranium Recovery License Fall River and Custer Counties, South Dakota Technical Report RAI Responses Volume 3 of 4 - Appendix 2.6H, Page 2.6-H-19 through Page 2.6-H-26. | 06/30/2011 | ML11208B770 |
| 662 | Dewey-Burdock Project Application for NRC Uranium Recovery License Fall River and Custer Counties, South Dakota Technical Report RAI Responses Volume 3 of 4 - Appendix 2.7-B through Appendix 2.7-G. | 06/30/2011 | ML11208B771 |

| | | | |
|-----|--|------------|-------------|
| 663 | Dewey-Burdock Project Application for NRC Uranium Recovery License Fall River and Custer Counties, South Dakota Technical Report RAI Responses Volume 3 of 4 - Appendix 2.7-H, Page 2.7-H-1 through Page 2.7-H-624. | 06/30/2011 | ML11208B777 |
| 664 | Dewey-Burdock Project Application for NRC Uranium Recovery License Fall River and Custer Counties, South Dakota Technical Report RAI Responses Volume 3 of 4 - Appendix 2.7-H, Page 2.7-H-625 through Page 2.7-H-1277. | 06/30/2011 | ML11208B778 |
| 665 | Dewey-Burdock Project Application for NRC Uranium Recovery License Fall River and Custer Counties, South Dakota Technical Report RAI Responses Volume 3 of 4 - Appendix 2.7-H, Page 2.7-H-1278 through Page 1899. | 06/30/2011 | ML11208B784 |
| 666 | Dewey-Burdock Project Application for NRC Uranium Recovery License Fall River and Custer Counties, South Dakota Technical Report RAI Responses Volume 3 of 4 - Appendix 2.7-H, Page 2.7-H-1900 through Page 2369. | 06/30/2011 | ML11208B827 |
| 667 | Dewey-Burdock Project Application for NRC Uranium Recovery License Fall River and Custer Counties, South Dakota Technical Report RAI Responses Volume 3 of 4 - Appendix 2.7-K. | 06/30/2011 | ML11208B832 |
| 668 | Dewey-Burdock Project Application for NRC Uranium Recovery License Fall River and Custer Counties, South Dakota Technical Report RAI Responses Volume 4 of 4, Cover. | 06/30/2011 | ML11208B870 |
| 669 | Dewey-Burdock Project Application for NRC Uranium Recovery License Fall River and Custer Counties, South Dakota Technical Report RAI Responses Volume 4 of 4, Appendix 2.7-M Through Exhibit 2.7-M-3. | 06/30/2011 | ML11208B872 |
| 670 | Dewey-Burdock Project Application for NRC Uranium Recovery License Fall River and Custer Counties, South Dakota Technical Report RAI Responses Volume 4 of 4, Appendix 6.1-A Through 7.3-C-3. | 06/30/2011 | ML11208B925 |

| | | | |
|-----|---|------------|-------------|
| 671 | R. Blubaugh Email Re: Acknowledgement of Receipt of Technical Report RAI Responses for the Proposed Dewey-Burdock Uranium Recovery Facility in Fall River and Custer Counties, South Dakota. | 07/25/2011 | ML112130388 |
| 672 | Letter from Counsel for NRC Staff to Board Transmitting Hearing File Update - August 1, 2011 Index. | 08/01/2011 | ML11213A348 |
| 673 | Letter from Counsel for NRC Staff to Board Providing NRC Staff's Estimates of Issuance Dates for Draft/Final SEIS and SER Documents Associated with Review of Powertech's Application. | 08/01/2011 | ML11213A349 |
| 674 | Applicant Powertech (USA) Uranium Corporation's Monthly Update to Initial Mandatory Disclosures. | 08/01/2011 | ML11213A352 |
| 675 | R. Blubaugh E-mail Re: Acknowledgment of Receipt of Technical Report RAI Responses for Proposed Dewey-Burdock Uranium Project. | 07/25/2011 | ML112140045 |
| 676 | Dewey-Burdock Project Application for NRC Uranium Recovery License Fall River and Custer Counties, South Dakota Technical Report RAI Responses Volume 4 of 4, Appendix 2.9-B Through Exhibit 2.9-K-2. | 06/30/2011 | ML112150229 |
| 677 | Letter to Richard Blubaugh of Powertech (USA) Inc. re: NRC Information Request Relating to Section 106 and NEPA Reviews for the Proposed Dewey-Burdock Project. | 08/12/2011 | ML112170237 |
| 678 | 2011/07/29 Powertech Dewey-Burdock LA - RE: 106 Process (TCP) | 07/29/2011 | ML11241A093 |

| | | | |
|-----|---|------------|-------------|
| 679 | Thank you Letter to James Laysbad of Oglala Sioux Tribe Enclosing the Transcript of the Information-Gathering Meeting and Unredacted Survey Pertaining to Dewey-Burdock North Trend and Crow Butte. | 10/20/2011 | ML112440097 |
| 680 | Response Letter to Standing Rock Sioux Tribe's Question. | 09/09/2011 | ML112440166 |
| 681 | Letter from Counsel for NRC Staff to Board Transmitting Hearing File Update - September 1, 2011 Index. | 09/01/2011 | ML11244A082 |
| 682 | Letter from Counsel for NRC Staff to Board Providing NRC Staff's Estimates of Issuance Dates for Draft/Final SEIS and SER Documents Associated with Review of Powertech's Application. | 09/01/2011 | ML11244A083 |
| 683 | Letter from Powertech (USA) Inc., re: Response to NRC request for National Historic Preservation Act Section 106 Information. | 08/31/2011 | ML112700464 |
| 684 | Response to Powertech's Proposed Formatting for Revised Technical Report. | 09/27/2011 | ML112710011 |
| 685 | Letter from Counsel for NRC Staff to Board Transmitting Hearing File Update - October 3, 2011 Index. | 10/03/2011 | ML11276A124 |
| 686 | Letter from Counsel for NRC Staff to Board Providing NRC Staff's Estimates of Issuance Dates for Draft/Final SEIS and SER Documents Associated with Review of Powertech's Application. | 10/03/2011 | ML11276A126 |

| | | | |
|-----|--|------------|-------------|
| 687 | Proposed Formatting for Revised Technical Report for Powertech (USA), Inc. | 09/29/2011 | ML112770012 |
| 688 | Appreciation Letter to Steve Vance of Cheyenne River Sioux Tribe Enclosing the Transcript of the Information-gathering Meeting and Unredacted Survey Pertaining to Dewey-burdock North Trend and Crow Butte. | 10/20/2011 | ML112870601 |
| 689 | Appreciation Letter to Jimmy Arterberry of Comanche Nation Tribe enclosing the Transcript of the Information-gathering Meeting and Unredacted Survey Pertaining to Dewey-Burdock North Trend and Crow Butte. | 10/20/2011 | ML112870614 |
| 690 | Thank you letter to Dale Old Horn of CrowTribe enclosing the Transcript of the Information-gathering meeting and unredacted survey pertaining to Dewey-Burdock North Trend and Crow Butte. | 10/20/2011 | ML112900075 |
| 691 | Appreciation letter to Wanda Wells of Crow Creek Sioux Tribe Enclosing the Transcript of the Information-gathering Meeting and Unredacted Survey Pertaining to Dewey-Burdock North Trend and Crow Butte. | 10/20/2011 | ML112900095 |
| 692 | Appreciation Letter to Wilfred Ferris of Eastern Shoshone Tribe Enclosing the Transcript of the Information-Gathering Meeting and Unredacted Survey Pertaining to Dewey-Burdock North Trend and Crow Butte. | 10/20/2011 | ML112900109 |
| 693 | Thank you letter to Darrell Youpee of Fort Peck Tribe enclosing the Transcript of the Information-gathering Meeting and Unredacted Survey Pertaining to Dewey-Burdock North Trend and Crow Butte. | 10/20/2011 | ML112900120 |
| 694 | Thank you letter to Clarie Green of Lower Brule Sioux Tribe enclosing the Transcript of the Information-gathering Meeting and Unredacted Survey Pertaining to Dewey-Burdock North Trend and Crow Butte. | 10/20/2011 | ML112900189 |

- 695 Thank you letter to Darlene Conrad of Northern Arapaho Business Committee enclosing the Transcript of the Information-gathering Meeting and Unredacted Survey Pertaining to Dewey-Burdock North Trend and Crow Butte. 10/20/2011 ML112900197
- 696 Thank you letter to Conrad Fisher of Northern Cheyenne Tribe enclosing the Transcript of the Information-gathering Meeting and Unredacted Survey Pertaining to Dewey-Burdock North Trend and Crow Butte. 10/20/2011 ML112900265
- 697 Thank you letter to Gordon Adams of Pawnee Nation of Oklahoma Enclosing the Transcript of the Information-gathering Meeting and Unredacted Survey Pertaining to Dewey-burdock North Trend and Crow Butte. 10/20/2011 ML112900279
- 698 Thank you letter to Gary Robinette of Ponca Tribe of Nebraska Enclosing the Transcript of the Information-gathering Meeting and Unredacted Survey Pertaining to Dewey-burdock North Trend and Crow Butte. 10/20/2011 ML112901070
- 699 Thank you letter to Russell Eagle Bear of Rosebud Sioux Tribe Enclosing the Transcript of the Information-gathering Meeting and Unredacted Survey pertaining to Dewey-Burdock North Trend and Crow Butte. 10/20/2011 ML112901149
- 700 Thank you letter to Rick Thomas of Santee Sioux Tribe of Nebraska enclosing the Transcript of the Information-gathering Meeting and Unredacted Survey Pertaining to Dewey-Burdock North Trend and Crow Butte. 10/20/2011 ML112901168
- 701 Thank you letter to Waste Win Young of Standing Rock Sioux Tribe Enclosing the Transcript of the Information-gathering Meeting and Unredacted survey Pertaining to Dewey-Burdock North Trend and Crow Butte. 10/20/2011 ML112901186
- 702 Thank You Letter to Elgin Crows Breast of Three Affiliated Tribes Enclosing the Transcript of the Information-Gathering Meeting and Unredacted Survey Pertaining to Dewey-Burdock North Trend and Crow Butte. 10/20/2011 ML112901200

| | | | |
|-----|---|------------|-------------|
| 703 | Thank You Letter to Lana Gravatt of Yankton Sioux Tribe Enclosing the Transcript of the Information-Gathering Meeting and Unredacted Survey Pertaining to Dewey-Burdock North Trend and Crow Butte. | 10/20/2011 | ML112901218 |
| 704 | Thank You Letter to James B. Weston of Flandrea-Santee Sioux Tribe Enclosing the Transcript of the Information-gathering Meeting and Unredacted Survey Pertaining to Dewey-burdock North Trend and Crow Butte. | 10/20/2011 | ML112901334 |
| 705 | Thank you letter to Anthony Morse of Lower Sioux Tribe enclosing the Transcript of the Information-gathering Meeting and Unredacted Survey pertaining to Dewey-Burdock North Trend and Crow Butte. | 10/20/2011 | ML112901353 |
| 706 | Appreciation Ltter to Dianne Desrosiers of Sisseton-Wahpeton Lakota Tribe Enclosing the Transcript of the Information-gathering Meeting and Unredacted Survey Pertaining to Dewey-Burdock North Trend and Crow Butte. | 10/20/2011 | ML112901367 |
| 707 | Thank you letter to Ardis Shaw of Spirit Lake Tribe enclosing the Transcript of the Information-gathering meeting and unredacted survey pertaining to Dewey-Burdock North Trend and Crow Butte | 10/20/2011 | ML112901376 |
| 708 | Letter from PowerTech (USA) Inc. Transmitting the Revised Exhibit RAI CH-1(2): Proposed Facilities & Wellfields Land App & Deep Disposal Showing ARC Sites. | 09/15/2011 | ML112920159 |
| 709 | J. Laysbad ltr. re: Information Related to Traditional Cultural Properties; Dewey-Burdock, Crow Butte North Trend, and Crow Butte License Renewal ISR Projects. | 10/28/2011 | ML112980555 |
| 710 | SRIF Lead Researchers. | 10/28/2011 | ML112980561 |

| | | | |
|-----|--|------------|-------------|
| 711 | Lyman Guy Ltr. re: Information Related to Traditional Cultural Properties; Dewey-Burdock, Crow Butte North Trend, and Crow Butte License Renewal ISR Projects. | 10/28/2011 | ML112990285 |
| 712 | Lynette Gray Ltr. re: Information Related to Traditional Cultural Properties; Dewey-Burdock, Crow Butte North Trend, and Crow Butte License Renewal ISR Projects. | 10/28/2011 | ML113000084 |
| 713 | Steve Vance Ltr. re: Information Related to Traditional Cultural Properties; Dewey-Burdock, Crow Butte North Trend, and Crow Butte License Renewal ISR Projects. | 10/28/2011 | ML113000088 |
| 714 | Jimmy Arterberry Ltr. re: Information Related to Traditional Cultural Properties; Dewey-Burdock, Crow Butte North Trend, and Crow Butte License Renewal ISR Projects. | 10/28/2011 | ML113000093 |
| 715 | Dale Old Horn Ltr. re: Information Related to Traditional Cultural Properties; Dewey-Burdock, Crow Butte North Trend, and Crow Butte License Renewal ISR Projects. | 10/28/2011 | ML113000098 |
| 716 | Wanda Wells Ltr. re: Information Related to Traditional Cultural Properties; Dewey-Burdock, Crow Butte North Trend, and Crow Butte License Renewal ISR Projects. | 10/28/2011 | ML113000128 |
| 717 | Wilfred Ferris Ltr. re: Information Related to Traditional Cultural Properties; Dewey-Burdock, Crow Butte North Trend, and Crow Butte License Renewal ISR Projects. | 10/28/2011 | ML113000142 |
| 718 | Darrell "Curley" Youpee Ltr. re: Information Related to Traditional Cultural Properties; Dewey-Burdock, Crow Butte North Trend, and Crow Butte License Renewal ISR Projects. | 10/28/2011 | ML113000151 |

| | | | |
|-----|---|------------|-------------|
| 719 | Jamie Eskew Ltr. re: Information Related to Traditional Cultural Properties; Dewey-Burdock, Crow Butte North Trend, and Crow Butte License Renewal ISR Projects. | 10/28/2011 | ML113000160 |
| 720 | Clarie Green Ltr. re: Information Related to Traditional Cultural Properties; Dewey-Burdock, Crow Butte North Trend, and Crow Butte License Renewal ISR Projects. | 10/28/2011 | ML113000168 |
| 721 | Darlene Conrad Ltr. re: Information Related to Traditional Cultural Properties; Dewey-Burdock, Crow Butte North Trend, and Crow Butte License Renewal ISR Projects. | 10/28/2011 | ML113010031 |
| 722 | Conrad Fisher Ltr. re: Information Related to Traditional Cultural Properties; Dewey-Burdock, Crow Butte North Trend, and Crow Butte License Renewal ISR Projects. | 10/28/2011 | ML113010034 |
| 723 | Gordon Adams Ltr. re: Information Related to Traditional Cultural Properties; Dewey-Burdock, Crow Butte North Trend, and Crow Butte License Renewal ISR Projects. | 10/28/2011 | ML113010046 |
| 724 | Gary Robinette Ltr. re: Information Related to Traditional Cultural Properties; Dewey-Burdock, Crow Butte North Trend, and Crow Butte License Renewal ISR Projects. | 10/28/2011 | ML113010054 |
| 725 | Russell Eagle Bear Ltr. re: Information Related to Traditional Cultural Properties; Dewey-Burdock, Crow Butte North Trend, and Crow Butte License Renewal ISR Projects. | 10/28/2011 | ML113010057 |
| 726 | Rick Thomas Ltr. re: Information Related to Traditional Cultural Properties; Dewey-Burdock, Crow Butte North Trend, and Crow Butte License Renewal ISR Projects. | 10/28/2011 | ML113010062 |

| | | | |
|-----|---|------------|-------------|
| 727 | Waste Win Young Ltr. re: Information Related to Traditional Cultural Properties; Dewey-Burdock, Crow Butte North Trend, and Crow Butte License Renewal ISR Projects. | 10/28/2011 | ML113010079 |
| 728 | Elgin Crows Breast Ltr. re: Information Related to Traditional Cultural Properties; Dewey-Burdock, Crow Butte North Trend, and Crow Butte License Renewal ISR Projects. | 10/28/2011 | ML113010094 |
| 729 | L. Gravatt ltr. re: Information Related to Traditional Cultural Properties; Dewey-Burdock, Crow Butte North Trend, and Crow Butte License Renewal ISR Projects. | 10/28/2011 | ML113010101 |
| 730 | James B. Weston Ltr. re: Information Related to Traditional Cultural Properties; Dewey-Burdock, Crow Butte North Trend, and Crow Butte License Renewal ISR Projects. | 10/28/2011 | ML113010110 |
| 731 | Anthony Morse ltr. re: Information Related to Traditional Cultural Properties; Dewey-Burdock, Crow Butte North Trend, and Crow Butte License Renewal ISR Projects. | 10/28/2011 | ML113010118 |
| 732 | Dianne Desrosiers Ltr. re: Information Related to Traditional Cultural Properties; Dewey-Burdock, Crow Butte North Trend, and Crow Butte License Renewal ISR Projects. | 10/28/2011 | ML113010129 |
| 733 | Ardis Shaw ltr. re: Information Related to Traditional Cultural Properties; Dewey-Burdock, Crow Butte North Trend, and Crow Butte License Renewal ISR Projects. | 10/28/2011 | ML113010134 |
| 734 | Letter from Counsel for NRC Staff to Board Transmitting Hearing File Update - November 1, 2011 Index. | 11/01/2011 | ML11305A252 |

| | | | |
|-----|--|------------|-------------|
| 735 | Letter from Counsel for NRC Staff to Board Providing NRC Staff's Estimates of Issuance Dates for Draft/Final SEIS and SER Documents Associated with Review of Powertech's Application. | 11/01/2011 | ML11305A255 |
| 736 | 12/07/2011-Notice of Public Meeting With Powertech to Discuss Hydrological Model for Its Dewey-Burdock Project. | 11/15/2011 | ML113190011 |
| 737 | E-mail from Ronald Burrows re: Information For December 7, 2011 Public Meeting. | 11/15/2011 | ML113200821 |
| 738 | Acceptance of Technical Report RAI Responses For Proposed Dewey-Burdock Uranium Recovery Facility. | 11/28/2011 | ML113330015 |
| 739 | Information Needed for December 7 Meeting with Powertech. | 11/30/2011 | ML113350004 |
| 740 | Letter from Counsel for NRC Staff to Board Transmitting Hearing File Update - December 1, 2011 Index. | 12/01/2011 | ML11335A216 |
| 741 | Letter from Counsel for NRC Staff to Board Providing NRC Staff's Estimates of Issuance Dates for Draft/Final SEIS and SER Documents Associated with Review of Powertech's Application. | 12/01/2011 | ML11335A219 |
| 742 | January 2012 NRC Staff Hearing File Update. | 01/03/2012 | ML12003A292 |

| | | | |
|-----|---|------------|-------------|
| 743 | January 2012 NRC Staff Status Report with COS. | 01/03/2012 | ML12003A294 |
| 744 | NRC Staff Hearing File Update February 2012. | 02/01/2012 | ML12032A306 |
| 745 | NRC Staff Status Report February 2012. | 02/01/2012 | ML12032A307 |
| 746 | 2012/03/01 NRC Staff Hearing File Update with COS. | 03/01/2012 | ML12061A456 |
| 747 | NRC Staff 02/01/2012 Monthly Status Report in the Matter of Powertech (USA), Inc. Regarding Issuance Dates for Draft and Final Documents. | 03/01/2012 | ML12061A457 |
| 748 | Notice of Availability of Report "Numerical Modeling of Hydrogeological Conditions, Dewey-Burdock Project, South Dakota." | 03/06/2012 | ML12066A231 |
| 749 | April 2012 NRC Staff Hearing File Update. | 04/02/2012 | ML12093A360 |
| 750 | April 2012 Status Report with Certificate of Service. | 04/02/2012 | ML12093A362 |

| | | | |
|-----|--|------------|-------------|
| 751 | NRC Staff Transmittal of Powertech Hearing File and Mandatory Disclosures, Update - May 1, 2012 Index. | 05/01/2012 | ML12122B011 |
| 752 | NRC Staff Estimate of the Safety Evaluation Report, Draft Supplemental Environmental Impact Statement and Final SEIS in the Matter of Powertech (USA) Inc. | 05/01/2012 | ML12122B012 |
| 753 | Staff Status Report. | 06/04/2012 | ML12156A222 |
| 754 | Staff Hearing File Update. | 06/04/2012 | ML12156A223 |
| 755 | NRC Staff Hearing File July 2012 Update. | 07/02/2012 | ML12184A337 |
| 756 | July 2012 NRC Staff Status Report with COS. | 07/02/2012 | ML12184A339 |
| 757 | NRC Staff Transmittal of PowerTech Hearing File and Mandatory Disclosures, August 1, 2012 Update. | 08/01/2012 | ML12214A499 |
| 758 | NRC Staffs Status Report in the Matter of Powertech's Application. | 08/01/2012 | ML12214A500 |

| | | | |
|-----|---|------------|-------------|
| 759 | Order Concerning Changes to 10 CFR Part 2. | 08/21/2012 | ML12234A527 |
| 760 | Submittal of NRC Staff Hearing File and Mandatory Disclosures File Index, September 2012. | 09/04/2012 | ML12248A399 |
| 761 | NRC Staff Last Status Report Regarding the Powertech Application. | 09/04/2012 | ML12248A400 |
| 762 | NRC Supplemental Status Report. | 09/28/2012 | ML12272A086 |
| 763 | Order (Scheduling Telephone Status Conference Call). | 09/28/2012 | ML12272A269 |
| 764 | NRC Staff Hearing File and Mandatory Disclosures Update October 2012. | 10/01/2012 | ML12275A581 |
| 765 | NRC Staff Status Report October 2012. | 10/01/2012 | ML12275A583 |
| 766 | Notice of Appearance for Waonsilawin C. Gillis on behalf of the Oglala Sioux Tribe. | 10/02/2012 | ML12276A490 |

| | | | |
|-----|--|------------|-------------|
| 767 | Notice of Updated Contact Information for Travis Stills. | 10/02/2012 | ML12278A274 |
| 768 | Transcript of the Dewey-Burdock In Situ Uranium Recovery Facility, Thursday, October 4, 2012 teleconference, Pages 474-502. | 10/09/2012 | ML12283A364 |
| 769 | ORDER (Second Prehearing Conference Call Summary and Supplemental Initial Scheduling Order). | 10/16/2012 | ML12290A200 |
| 770 | NRC Staff Transmittal of Powertech Hearing File and Mandatory Disclosures Update. | 11/01/2012 | ML12306A560 |
| 771 | NRC Staff Monthly Status Report in the Matter of Powertech (USA), Inc. | 11/01/2012 | ML12306A564 |
| 772 | NRC Staff Notification of Draft Supplemental Environmental Impact Statement for Powertech (USA) Inc.'s Proposed Dewey-Burdock Project is Publicly Available. | 11/15/2012 | ML12320A623 |
| 773 | Powertech NRC Staff Hearing File Update. | 12/03/2012 | ML12338A299 |
| 774 | NRC Staff Status Report December 2012. | 12/03/2012 | ML12338A301 |

| | | | |
|-----|---|------------|-------------|
| 775 | Unopposed Joint Motion for Extension of Time for the Oglala Sioux Tribe and Consolidated Intervenor to Submit Contentions Based on the Draft Supplemental Environmental Impact Statement. | 12/14/2012 | ML12349A413 |
| 776 | Order (Granting Unopposed Joint Motion for Extension of Time to File Contentions). | 12/18/2012 | ML12353A321 |
| 777 | NRC Staff Transmittal of Powertech Hearing File and Mandatory Disclosures, January 2, 2013 Update (Publicly Available Documents). | 01/02/2013 | ML13002A477 |
| 778 | Status Report in the Matter of Powertech (USA) Inc. | 01/02/2013 | ML13002A479 |
| 779 | List of Contentions of the Oglala Sioux Tribe Based on the Draft Supplemental Environmental Impact Statement. | 01/25/2013 | ML13026A004 |
| 780 | Letter from John Yellow Bird Steele, President of the Ogalala Sioux Tribe re: Refusal to Accept Dewey-Burdock In Situ Recovery Project Proposal. | 11/05/2012 | ML13026A005 |
| 781 | Consolidated Intervenor's New Contentions Based on DSEIS. | 01/25/2013 | ML13026A010 |
| 782 | Ex 1 Dr Redmond Opinion 11292012. | 11/29/2012 | ML13026A011 |

| | | | |
|-----|--|------------|-------------|
| 783 | Ex 2 Dr Moran Opinion 01242013. | 01/24/2013 | ML13026A012 |
| 784 | Comments on Docket ID NRC-2012-0277; Draft Supplemental Environmental Impact Statement, Proposed Dewey-Burdock In Situ Leach Uranium Mine, South Dakota. | 01/10/2013 | ML13029A366 |
| 785 | Supplemental Declaration of Dr. Robert E. Moran in the Matter of Dewey-Burdock In Situ Uranium Recovery Facility. | 01/24/2013 | ML13029A368 |
| 786 | NRC Staff Hearing File Update February 2013. | 02/01/2013 | ML13032A545 |
| 787 | NRC Staff Status Report February 2013. | 02/01/2013 | ML13032A546 |
| 788 | Joint Motion for Extensions of Time. | 02/13/2013 | ML13044A574 |
| 789 | Order (Granting Joint Motion for Extensions of Time). | 02/14/2013 | ML13045A398 |
| 790 | NRC Staff Estimate of the Issuance of the Safety Evaluation Report for Proposed Dewey-Burdock Project. | 02/25/2013 | ML13056A608 |

| | | | |
|-----|---|------------|-------------|
| 791 | Certificate of Service for Joint Motion For Extension of Time for Responding to Consolidated Intervenor's and the Oglala Sioux Tribe's New and Amended Contentions. | 03/01/2013 | ML13060A249 |
| 792 | Joint Motion for Extension of Time for Responding to Consolidated Intervenor's and the Oglala Sioux Tribe's New and Amended Contentions. | 03/01/2013 | ML13060A250 |
| 793 | Staff Clarification That Staff is not Seeking an Extension of Time & Will File its Answers to DSEIS Contentions by March 6, 2013. | 03/01/2013 | ML13060A330 |
| 794 | NRC Staff Transmittal of Powertech Hearing File and Mandatory Disclosures, March 1, 2013 Update (Publicly Available Documents). | 03/01/2013 | ML13060A431 |
| 795 | NRC Staff Estimate of SER and SEIS for Powertech (USA) Inc., Application. | 03/01/2013 | ML13060A433 |
| 796 | Order (Granting Second Motion for Extensions of Time). | 03/04/2013 | ML13063A155 |
| 797 | NRC Staff's Answer to Contentions on Draft Supplemental Environmental Impact Statement. | 03/07/2013 | ML13066B030 |
| 798 | Applicant Powertech (USA) Uranium Corporation's Response to Consolidated Petitioners' Request for a Hearing/Petition for Intervention. | 03/11/2013 | ML13070A378 |

| | | | |
|-----|--|------------|-------------|
| 799 | Notice of Availability of Safety Evaluation Report (SER) for Powertech (USA) Inc.'s Proposed Dewey-Burdock Project. | 03/20/2013 | ML13079A409 |
| 800 | Consolidated Reply of the Oglala Sioux Tribe. | 03/25/2013 | ML13084A453 |
| 801 | Consolidated Intervenor's Consolidated Reply Re: DSEIS. | 03/25/2013 | ML13086A523 |
| 802 | NRC Staff Transmittal of Powertech (USA) Inc., Hearing File and Mandatory Disclosures, April 1, 2013 Update. | 04/01/2013 | ML13091A352 |
| 803 | NRC Staff Status Report on the Final Supplemental Environmental Impact Statement in the Matter of Powertech (USA) Inc, Dewey-Burdock Project. | 04/01/2013 | ML13091A358 |
| 804 | Applicant Powertech (USA) Uranium Corporations's Response to NRC Staff's April 1, 2013 Status Report. | 04/04/2013 | ML13094A410 |
| 805 | NRC Staff Submittal of Powertech Hearing File and Mandatory Disclosures, May 1, 2013 Update. | 05/01/2013 | ML13121A485 |
| 806 | NRC Staff Status Report on Best Estimates of the Issuance Dates for Draft and Final Documents Associated with Review of Powertech's Application. | 05/01/2013 | ML13121A486 |

| | | | |
|-----|---|------------|-------------|
| 807 | NRC Staff Transmittal of Attachment 1, Powertech Hearing File and Mandatory Disclosures, June 3, 2013 Update (Publicly Available Documents). | 06/03/2013 | ML13154A490 |
| 808 | NRC Staff's June 2013 Status Report Regarding Best Estimates of the Issuance Dates for Draft and Final Documents Associated with Review of Powertech's Application. | 06/03/2013 | ML13154A496 |
| 809 | Notice (Pursuant to 10CFR2.309) of Draft Supplemental Environmental Impact Statement Availability. | 06/27/2013 | ML13178A272 |
| 810 | NRC Staff PowerTech Hearing File and Mandatory Disclosures, 07/1,2013 Update. | 07/01/2013 | ML13182A706 |
| 811 | Status Report for July 2013 with COS. | 07/01/2013 | ML13182A707 |
| 812 | Federal Correspondence - E-mail re: Need SD Contact for Questions about Land Application of Industrial Waste. | 06/28/2012 | ML13183A003 |
| 813 | Hydrogeologic Framework for the Madison and Minnelusa Aquifers in the Black Hills Area. | 07/02/2013 | ML13183A004 |
| 814 | Intervenor Update to Disclosures Under 10 CFR 2.336, In the Matter of Powertech USA, Inc. (Dewey-Burdock In Situ Uranium Recovery Facility). | 07/01/2013 | ML13184A351 |

| | | | |
|-----|--|------------|-------------|
| 815 | Memorandum to the Parties Re Commissioner Magwood's Upcoming Tour of the Powertech Dewey Burdock Site on July 16 2013. | 07/12/2013 | ML13193A351 |
| 816 | Memorandum and Order (Ruling on Proposed Contentions Related to the Draft Supplemental Environmental Impact Statement). | 07/22/2013 | ML13203A244 |
| 817 | Order (Scheduling Telephone Conference Call). | 07/31/2013 | ML13212A342 |
| 818 | Staff Hearing File Update August 2013. | 08/01/2013 | ML13213A325 |
| 819 | Staff Status Report for August 2013. | 08/01/2013 | ML13213A340 |
| 820 | Order Regarding August 12, 2013, Telephone Conference Call. | 08/06/2013 | ML13218A296 |
| 821 | Transcript of Pre-Hearing Teleconference in the Matter of Powertech USA, Inc. (Dewey-Burdock in Situ Uranium Recovery Facility) on August 12, 2013, Pages 503-540. | 08/12/2013 | ML13227A029 |
| 822 | Memorandum (Summarizing the August 12, 2013, Teleconference). | 08/16/2013 | ML13228A172 |

| | | | |
|-----|---|------------|-------------|
| 823 | Order (Scheduling Site Vist). | 08/21/2013 | ML13233A330 |
| 824 | Hearing File Update September 2013. | 09/03/2013 | ML13246A482 |
| 825 | Staff Status Report dated September 3, 2013, specifying its best estimates of the issuance dates for draft and final documents associated with its review of Powertech?s application. | 09/03/2013 | ML13246A484 |
| 826 | Intervenor Update to Disclosures Under 10 CFR 2.336. | 09/03/2013 | ML13246A527 |
| 827 | Notice of Opportunity to Submit Written Limited Appearance Statements, in the Matter of Powertech USA, Inc. (Dewey-Burdock In Situ Uranium Recovery Facility). | 09/05/2013 | ML13248A110 |
| 828 | Notice (Corrected Version of Initial September 5, 2013, Notice Regarding the Opportunity to Submit Written Limited Appearance Statements). | 09/05/2013 | ML13248A470 |
| 829 | Order Amending Site Visit Schedule, in the Matter of Powertech USA, Inc. (Dewey-Burdock In Situ Uranium Recovery Facility). | 09/05/2013 | ML13248A490 |
| 830 | Consolidated Intervenor's Notice Re: Site Visit Participants. | 09/13/2013 | ML13256A461 |

| | | | |
|-----|---|------------|-------------|
| 831 | Order (Site Visit Information and Schedule). | 09/17/2013 | ML13260A524 |
| 832 | Intervenor Update to Disclosures Under 10 CFR Sec. 2.336, Reactive transport modeling at uranium in situ recovery sites: uncertainties in uranium sorption on iron hydroxides, Reliable Mine Water Technology, IMWA 2013. | 09/03/2013 | ML13266A411 |
| 833 | Memorandum (Memorializing Site Visit). | 09/24/2013 | ML13267A169 |
| 834 | Staff Hearing File October 2013. | 10/01/2013 | ML13274A564 |
| 835 | Staff Status Report for October 2013 in the Matter of Powertech (USA) Inc. | 10/01/2013 | ML13274A566 |
| 836 | Notice of the Secretary Regarding Agency Shutdown. | 10/10/2013 | ML13283A118 |
| 837 | Notice of the Secretary Lifting Suspension in the Matter of Dewey-Burdock In Situ Uranium Recovery Facility. | 10/17/2013 | ML13290A512 |
| 838 | NRC Staff Transmittal of Powertech Hearing File and Mandatory Disclosures, November 1, 2013 Update. | 11/01/2013 | ML13305B049 |

| | | | |
|-----|--|------------|-------------|
| 839 | NRC Staff Notification of Issuance Dates, or Estimated Dates for Document Associated with Staff Review in the Matter of PowerTech (USA) Inc. | 11/01/2013 | ML13305B050 |
| 840 | NRC Staff Transmittal of Powertech Hearing File and Mandatory Disclosures, December 2, 2013 Update. | 12/02/2013 | ML13336A701 |
| 841 | NRC Staff Status Report December 2013. | 12/02/2013 | ML13336A703 |
| 842 | Hearing File Update in the Matter of Powertech (USA) Inc. | 01/02/2014 | ML14002A284 |
| 843 | NRC Staff Transmittal of Powertech Hearing File and Mandatory Disclosures, January 2, 2014 Update. | 01/02/2014 | ML14002A285 |
| 844 | Notice of Availability of the Final SEIS in the Matter of Dewey-Burdock Project. | 01/29/2014 | ML14029A663 |
| 845 | Notification of NRC Staff's Dewey-Burdock Final SEIS was Issued in the Federal Regulation on January 31, 2014. | 01/31/2014 | ML14031A310 |
| 846 | NRC Staff Transmittal of Powertech Hearing File and Mandatory Disclosures, February 3, 2014 Update. | 02/03/2014 | ML14034A386 |

| | | | |
|-----|---|------------|-------------|
| 847 | Staff Status Report wCOS February 2014. | 02/03/2014 | ML14034A389 |
| 848 | Order(Scheduling Telephone Conference Call). | 02/05/2014 | ML14036A286 |
| 849 | Consolidated Intervenors' Motion to Reschedule Call. | 02/05/2014 | ML14037A201 |
| 850 | Order (Granting Consolidated Intervenors' Motion to Reschedule Telephone Conference Call). | 02/06/2014 | ML14037A310 |
| 851 | Consolidated Intervenors' Motion to Make Filings by E-mail. | 02/07/2014 | ML14041A266 |
| 852 | Limited Appearance Statement from James Petersen Regarding Powertech (USA) Inc.'s License Application for an In-Situ Uranium Recovery Facility. | 02/08/2014 | ML14042A308 |
| 853 | Limited Appearance Statement from Edward Harvey Regarding Powertech (USA) Inc.'s License Application for an In-Situ Uranium Recovery Facility. | 02/09/2014 | ML14042A309 |
| 854 | Limited Appearance Statement from Jerry Wilson Regarding Powertech (USA) Inc.'s License Application for an In-Situ Uranium Recovery Facility. | 02/10/2014 | ML14042A317 |

| | | | |
|-----|--|------------|-------------|
| 855 | Limited Appearance Statement from Kathy Durrum Regarding Powertech (USA) Inc.'s License Application for an In-Situ Uranium Recovery Facility. | 02/10/2014 | ML14042A323 |
| 856 | NRC Staff Proposed Hearing Schedule in the Matter of Powertech (USA), Inc. | 02/11/2014 | ML14042A517 |
| 857 | Transcript of Powertech (USA) Inc. (Dewey-Burdock In-Situ Uranium Recovery Facility), Prehearing Teleconference February 12, 2014, Pages 541-577. | 02/12/2014 | ML14045A132 |
| 858 | Limited Appearance Statement from the Fall River Conservation District Board of Hot Springs, South Dakota Regarding Powertech (USA) Inc.'s License Application for an In-Situ Uranium Recovery Facility. | 02/11/2014 | ML14045A207 |
| 859 | Limited Appearance Statement from Gardner Gray Regarding Powertech (USA) Inc.'s License Application for an In-Situ Uranium Recovery Facility. | 02/12/2014 | ML14045A213 |
| 860 | Limited Appearance Statement from Nancy Gregory Regarding Powertech (USA) Inc.'s License Application for an In-Situ Uranium Recovery Facility. | 02/13/2014 | ML14045A216 |
| 861 | NRC Staff Proposed Hearing Schedule in the Matter of POWERTECH, (USA), Inc. | 02/14/2014 | ML14045A408 |
| 862 | Limited Appearance Statement from Gardner Gray dated February 15, 2014, Regarding Powertech (USA) Inc.'s License Application for an In-Situ Uranium Recovery Facility. | 02/15/2014 | ML14049A101 |

- 863 Update to Board in the Matter of POWERTECH, (USA), Inc. (Dewey-Burdock in Situ Uranium Recovery Facility). 02/18/2014 ML14049A473

- 864 Limited Appearance Statement from Sarah Peterson Regarding Powertech (USA) Inc.'s License Application for an In-Situ Uranium Recovery Facility. 02/10/2014 ML14051A353

- 865 Memorandum (Summarizing the February 12, 2014 Teleconference). 02/20/2014 ML14051A561

- 866 Order (Granting Motion to File by Email). 02/20/2014 ML14051A625

- 867 Limited Appearance Statement from Rebecca Leas Regarding Powertech (USA) Inc.'s License Application for an In-Situ Uranium Recovery Facility. 02/14/2014 ML14055A289

- 868 Limited Appearance Statement from Cathy Sotherland Regarding Powertech (USA) Inc.'s License Application for an In-Situ Uranium Recovery Facility. 02/21/2014 ML14055A294

- 869 Limited Appearance Statement from Linea Sundstrom Regarding Powertech (USA) Inc.'s License Application for an In-Situ Uranium Recovery Facility. 02/22/2014 ML14055A306

- 870 Transcript of Teleconference with Power Tech, USA (Dewey-Burdock In-Situ Uranium Recovery Facility) on February 12, 2014 PP. 541-577. 02/12/2014 ML14056A439

| | | | |
|-----|--|------------|-------------|
| 871 | E-Mail from Standing Rock Sioux Tribe Providing Comments on Final Draft PA Dewey-Burdock SRST-THPO. | 02/20/2014 | ML14059A199 |
| 872 | NRC Staff Status Report - In the Matter of Powertech (USA) Inc. | 03/04/2014 | ML14063A676 |
| 873 | NRC Staff Transmittal of Attachment 1, Powertech Hearing File and Mandatory Disclosures, March 4, 2014 Update. | 03/04/2014 | ML14063A677 |
| 874 | Submittal of Comments on Draft Programmatic Agreement for the Proposed Dewey-Burdock ISR Uranium Mining Project. | 02/05/2014 | ML14077A002 |
| 875 | Second Supplemental Declaration of Dr. Robert E. Moran in the Matter of Powertech (USA) Inc., (Dewey-Burdock in Situ Uranium Recovery Facility). | 03/17/2014 | ML14077A003 |
| 876 | Statement of Contentions of the Oglala Sioux Tribe Following Issuance of Final Supplemental Environmental Impact Statement. | 03/17/2014 | ML14077A004 |
| 877 | Limited Appearance Statement from Sylvia Lambert Regarding Powertech (USA) Inc.'s License Application for an In-Situ Uranium Recovery Facility. | 03/05/2014 | ML14077A277 |
| 878 | Limited Appearance from Stephanie Anise Regarding Powertech (USA) Inc.'s License Application for an In-situ Uranium Recovery Facility. | 03/03/2014 | ML14077A284 |

| | | | |
|-----|--|------------|-------------|
| 879 | Limited Appearance Statement from Jon and Cheryl Fair Regarding Powertech (USA) Inc.'s License Application for an In-Situ Uranium Recovery Facility. | 03/03/2014 | ML14077A288 |
| 880 | Limited Appearance Statement from Dahl McLean Regarding Powertech (USA) Inc.'s License Application for an In-Situ Uranium Recovery Facility. | 03/03/2014 | ML14077A294 |
| 881 | Limited Appearance Statement from Liliias Jarding Regarding Powertech (USA) Inc.'s License Application for an In-situ Uranium Recovery Facility. | 03/02/2014 | ML14077A310 |
| 882 | Limited Appearance Statement from Don Kelley Regarding Powertech (USA) Inc.'s License Application for an In-Situ Uranium Recovery Facility. | 03/03/2014 | ML14077A313 |
| 883 | Limited Appearance Statement from Jerri Baker Regarding Powertech (USA) Inc.'s License Application for an In-Situ Uranium Recovery Facility. | 02/22/2014 | ML14077A498 |
| 884 | Limited Appearance Statement from Jerri Baker Regarding Powertech (USA) Inc.'s License Application for an In-Situ Uranium Recovery Facility. | 03/24/2014 | ML14083A207 |
| 885 | NRC Staff Hearing File Update with Certificate of Service. | 04/01/2014 | ML14091B173 |
| 886 | NRC Staff Status Report April 2014 with Certificate of Service. | 04/01/2014 | ML14091B174 |

| | | | |
|-----|--|------------|-------------|
| 887 | Applicant Powertech (USA) Inc's Response To Consolidated Petitioners' Request For Admission Of New Or Amended Contentions On NUREG-1910, Supplement 4. | 04/04/2014 | ML14094A619 |
| 888 | NRC Staff's Answer to Contentions on Final Supplemental Environmental Impact Statement. | 04/04/2014 | ML14095A001 |
| 889 | Email from David Frankel submitting the "Consolidated Intervenor's Statement of Contentions, in the Matter of Powertech USA,Inc." | 03/17/2014 | ML14098A112 |
| 890 | Consolidated Intervenor's Statement of Contentions. | 03/17/2014 | ML14098A116 |
| 891 | NRC Staff's Notice of License Issuance in the Powertech (USA) Inc. | 04/08/2014 | ML14098A492 |
| 892 | Limited Appearance Statement from Joseph Lessar Regarding Powertech (USA) Inc.'s License Application for an In-Situ Uranium Recovery Facility. | 04/10/2014 | ML14100A451 |
| 893 | NRC Staff's Motion for Summary Disposition on Safety Contentions 2 and 3. | 04/11/2014 | ML14102A001 |
| 894 | Reply of the Oglala Sioux Tribe Regarding Contentions Following Issuance of Final Supplemental Environmental Impact Statement. | 04/11/2014 | ML14102A002 |

| | | | |
|-----|--|------------|-------------|
| 895 | Oglala Sioux Tribe's Motion For Summary Disposition National Environmental Policy Act Contentions 1A And 6 - Mitigation Measures. | 04/11/2014 | ML14102A004 |
| 896 | Statement of Undisputed Material Facts. | 04/11/2014 | ML14102A005 |
| 897 | Consolidated Intervenors' Consolidated Reply to Applicant and NRC Staff Answers to Contentions on Final Supplemental Environmental Impact Statement. | 04/11/2014 | ML14104A081 |
| 898 | Exhibit 1 to Consolidated Intervenors' Consolidated Reply to Applicant and NRC Staff Answers to Contentions on Final Supplemental Environmental Impact Statement - Letter dated April 11 2014 from Dr Redmond. | 04/11/2014 | ML14104A146 |
| 899 | Email from David Frankel Submitting the Consolidated Intervenor's Consolidated Reply to Applicant and NRC Staff Answers to Contentions on Final Supplemental Environmental Impact Statement. | 04/11/2014 | ML14104A152 |
| 900 | Declaration of Michael Catches Enemy in the Matter of Dewey-Burdock In Situ Uranium Recovery. | 04/14/2014 | ML14105A002 |
| 901 | Declaration of Wilmer Mesteth in the Matter of Dewey-Burdock In Situ Uranium Recovery Facility. | 04/14/2014 | ML14105A003 |
| 902 | Oglala Sioux Tribe's Motion for Stay of Effectiveness of License. | 04/14/2014 | ML14105A004 |

| | | | |
|-----|---|------------|-------------|
| 903 | Consolidated Intervenor's Application for a Stay of the Issuance of License No. SUA-1600 Under 10 CFR Section 2.1213 | 04/14/2014 | ML14105A336 |
| 904 | Exhibit 1 - Declaration of Debra White Plume in Support of Motion to Stay | 04/14/2014 | ML14105A337 |
| 905 | Exhibit 1 - Debra White Plume Declaration Exhibit A1 - Summary of Research on South Gobi Resources Mongolia Coal Mining Human Rights Abuses | 04/14/2014 | ML14105A339 |
| 906 | Exhibit 1 - Debra White Plume Declaration Exhibit A2 - Blumont Press Release | 04/14/2014 | ML14105A348 |
| 907 | Exhibit 2 - April 1, 2010 Declaration of Wilmer Mesteth | 04/01/2010 | ML14105A353 |
| 908 | Exhibit 3 - Oglala Sioux Tribe Letter to Haimanot Yilma (FSME) re Submittal of Comments on Draft Programmatic Agreement for the Proposed Dewey-Burdock ISR Uranium Mining Project | 02/05/2014 | ML14105A361 |
| 909 | Exhibit 4 - E-mail from Waste Win Young to NRC Staff re SRST Comments - Final Draft PA Dewey-Burdock SRST-THPO Comments | 02/20/2014 | ML14105A367 |
| 910 | Exhibit 5 - 01/14/2010 Letter from Louis Redmond (Red Feather Archeology) to David Frankel, Counsel for Consolidated Intervenor's, re Disturbance of Cultural Materials | 01/14/2010 | ML14105A370 |

| | | | |
|-----|---|------------|-------------|
| 911 | Exhibit 6 - Red Feather Archeology Report - Evaluation of a Report by Augustana College for Powertech Inc. dated 3/2008 | 04/21/2010 | ML14105A374 |
| 912 | Exhibit 7 - Letter from Louis Redmond (Red Feather Archeology) to Thomas Cook (Aligning for Responsible Mining) re Project Area Cultural Impacts | 11/29/2012 | ML14105A381 |
| 913 | Exhibit 8 - Letter from Louis Redmond (Red Feather Archeology) to Dave Frankel, Counsel for Consolidated Intervenors, re Subsurface Testing | 04/11/2014 | ML14105A397 |
| 914 | Exhibit 9 - Declaration of Charmaine White Face | 04/12/2014 | ML14105A400 |
| 915 | Exhibit 10 - Letter from Stan Michaels, Energy and Minerals Coordinator (South Dakota Department of Game, Fish and Parks) re Powertech Inc. Exploration Notice of Intent Fall River Custer Counties | 10/17/2008 | ML14105A407 |
| 916 | Exhibit 11 - Powertech Uranium Corp. - News Release Archive - "NRC Issues License to Operate Dewey-Burdock Project" | 04/08/2014 | ML14105A411 |
| 917 | Declaration of the Oglala Sioux Tribe Invoking the Treaties of 1851 and 1868. | 04/24/2014 | ML14114A503 |
| 918 | Oglala Sioux Tribe's Answer in Support of Consolidated Intervenors' Motion for Stay of Effectiveness of License. | 04/24/2014 | ML14114A504 |

| | | | |
|-----|---|------------|-------------|
| 919 | NRC Staff's Opposition to Applications for a Stay. | 04/24/2014 | ML14114A767 |
| 920 | Powertech (USA) Inc's Response to Consolidated Intervenor and the Oglala Sioux Tribe Motions for Stay of the Effectiveness of NRC License No. SUA-1600. | 04/24/2014 | ML14114A768 |
| 921 | NRC Staff's Response to Oglala Sioux Tribe's Motion for Summary Disposition. | 04/25/2014 | ML14115A313 |
| 922 | Powertech (USA) Inc's Response to Oglala Sioux Tribe and NRC Staff Motions for Summary Disposition. | 04/25/2014 | ML14115A454 |
| 923 | Oglala Sioux Tribe's Response to NRC Staff's Motion for Summary Disposition. | 04/25/2014 | ML14116A001 |
| 924 | Consolidated Intervenor's Answer to NRC Staff's Motion for Summary Disposition on Contentions 2 and 3. | 04/25/2014 | ML14118A020 |
| 925 | Memorandum and Order (Ruling on Proposed Contentions Related to the Final Supplemental Environmental Impact Statement)(LBP-14-05). | 04/28/2014 | ML14118A125 |
| 926 | Order (Temporarily Granting Stay of Materials License Number SUA-1600). | 04/30/2014 | ML14120A193 |

| | | | |
|-----|--|------------|-------------|
| 927 | Joint Motion to Clarify Filing Deadlines. | 04/30/2014 | ML14120A499 |
| 928 | Order (Scheduling Oral Argument on Motion to Stay Powertech's NRC License). | 05/01/2014 | ML14121A458 |
| 929 | NRC Staff Hearing File Update May 2014. | 05/01/2014 | ML14121A494 |
| 930 | NRC Staff Status Report May 2014. | 05/01/2014 | ML14121A496 |
| 931 | Response to 05/01/2014 Email to Licensing Board. | 05/06/2014 | ML14126A512 |
| 932 | Powertech (USA), Inc. Motion for Clarification of Ground for Temporary Stay of NRC License No. SUA-1600. | 05/06/2014 | ML14126A771 |
| 933 | Order (Denying Motion for Clarification). | 05/07/2014 | ML14127A155 |
| 934 | Consolidated Intervenors Motion to Strike Pages 11-21 of Powertech Response to Stay. | 05/13/2014 | ML14133A389 |

- 935 Limited Appearance Statement from Nate Cortney, President, Edgemont Area Chamber of Commerce, Regarding Powertech (USA) Inc.'s License Application for an In-Situ Uranium Recovery Facility. 05/08/2014 ML14133A565
- 936 Transcript of Teleconference with Power Tech, USA (Dewey-Burdock In-Situ Uranium Recovery Facility) on May 13, 2014 Pages 578-637. 05/13/2014 ML14134A218
- 937 Limited Appearance Statement from Carl A. Shaw, Mayor, City of Edgemont, South Dakota, Regarding Powertech (USA) Inc.'s License Application for an In-Situ Uranium Recovery Facility. 05/08/2014 ML14134A310
- 938 Intervenor Update to Disclosures. 05/16/2014 ML14138A094
- 939 Powerpoint - Robert E. Moran, PhD. Hydrogeology / Geochemistry Michael-Moran Assoc., LLC Colorado, U.S.A. 05/16/2014 ML14138A097
- 940 WR28-1-520-109, "Analysis Of Aquifer Tests Conducted At The Proposed Burdock Uranium Mine Site Burdock, South Dakota." 05/31/1980 ML14138A100
- 941 Order (Removing Temporary Stay and Denying Motions for Stay of Materials License Number SUA-1600). 05/20/2014 ML14140A470
- 942 NRC Staff Hearing File Update June 2014. 06/02/2014 ML14153A418

| | | | |
|-----|---|------------|-------------|
| 943 | Notice of Withdrawal, Woansilawin C. Gillis. | 05/29/2014 | ML14153A429 |
| 944 | Order (Providing Case Management Information). | 06/02/2014 | ML14153A605 |
| 945 | Memorandum and Order (Requesting Scheduling Information). | 06/02/2014 | ML14153A608 |
| 946 | Order (Denying Motions for Summary Disposition). | 06/02/2014 | ML14153A615 |
| 947 | Licensee Powertech (USA) Uranium Corporation's Update to Initial Mandatory Disclosures. | 06/02/2014 | ML14153A694 |
| 948 | Attachment F Document: Transcript of Proceedings. | 02/19/2009 | ML14153A695 |
| 949 | Attachment E Document: Transcript of Proceedings. | 01/17/2007 | ML14153A696 |
| 950 | Attachment D Document: Uranium Mining Concern on Cancer Mortality and Incidence. | 05/04/2006 | ML14153A697 |

| | | | |
|-----|---|------------|-------------|
| 951 | Attachment B Document: Letter from Richard F. Clement Response to Letter of 01/12/2007 Powertech (USA), Inc. | 01/12/2007 | ML14153A698 |
| 952 | Attachment G Document: Draft Environmental Statement: Edgemont Uranium Mine. | 06/02/2014 | ML14153A699 |
| 953 | Attachment C Document: Letter from Stan J. Adelstein re: Concerns about Radioactive Pollution in the State and for the Opportunity to Address the State-Tribal Relations Committee. | 05/15/2006 | ML14153A700 |
| 954 | Attachment H Document: Briefing on Uranium Recovery Program Activities, Part 1. | 12/11/2008 | ML14153A701 |
| 955 | Attachment A Chart: Power (USA) Inc. Disclosure Documents; Non-Protected re: Dewey-Burdock Project. | 06/02/2014 | ML14153A702 |
| 956 | Joint Report on Limited Appearance Statement Sessions. | 06/10/2014 | ML14161A703 |
| 957 | APP-013 - Hal Demuth Initial Testimony. | 06/20/2014 | ML14171A687 |
| 958 | APP-008 - South Dakota State Historic Preservation Office, Guidelines for Cultural Resource Surveys and Survey Reports in South Dakota (For Review and Compliance), 2005. | 09/30/2005 | ML14171A688 |

| | | | |
|-----|--|------------|-------------|
| 959 | APP-009 - Level III Cultural Resources Evaluation of Powertech (USA) Inc.'s Proposed Dewey-Burdock Uranium Project (Public Version), Vol. 3 Part 6; ML100670366. | 03/31/2008 | ML14171A689 |
| 960 | APP-002 - Dr. Lynne Sebastian CV. | 06/20/2014 | ML14171A690 |
| 961 | APP-011 - Michael Fosha CV. | 06/20/2014 | ML14171A691 |
| 962 | APP-007 - National Park Service, Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation, 1983 | 06/14/2014 | ML14171A692 |
| 963 | APP-014 - Hal Demuth CV. | 06/20/2014 | ML14171A693 |
| 964 | APP-003 - Dr. Adrien Hannus Initial Testimony. | 06/20/2014 | ML14171A694 |
| 965 | APP-004 - Dr. Adrien Hannus CV. | 06/20/2014 | ML14171A695 |
| 966 | APP-005 - Representative Sample of ALAC Projects. | 06/20/2014 | ML14171A696 |

| | | | |
|-----|--|------------|-------------|
| 967 | APP-010 - Michael Fosha Initial Testimony. | 06/20/2014 | ML14171A697 |
| 968 | APP-012 - February 11, 2013 letter from Michael Fosha to SDDENR. | 02/11/2013 | ML14171A698 |
| 969 | APP-019 - National Mining Association's (NMA) Generic Environmental Report in Support of the Nuclear Regulatory Commission's Generic Environmental Impact Statement for In Situ Uranium Recovery Facilities; ML080170159 | 11/30/2007 | ML14171A699 |
| 970 | APP-025 - Numerical Modeling of Hydrogeologic Conditions, Dewey-Burdock Project, February 2012; ML12062A096. | 02/28/2012 | ML14171A700 |
| 971 | APP-017 - Figures to Accompany Demuth Initial Testimony. | 04/25/2011 | ML14171A701 |
| 972 | APP-023 - Uranium In-Situ Recovery and the Proposed Dewey Burdock Site, Edgemont, South Dakota, Public Meeting Talk Given by Dr. Raymond Johnson, U.S. Geological Survey, in Hot Springs, SD on Feb. 7, 2013 and Custer, SD on May 22, 2013. | 05/22/2013 | ML14171A702 |
| 973 | APP-024 - Pre-Licensing Well Construction, Lost Creek ISR Uranium Recovery Project; ML091520101. | 07/24/2009 | ML14171A703 |
| 974 | APP-018 - USGS Water-Supply Paper 2220, Basic Ground-Water Hydrology, 1983. | 12/31/2004 | ML14171A704 |

| | | | |
|-----|--|------------|-------------|
| 975 | APP-022 - Geochemical Data from Groundwater at the Proposed Dewey Burdock Uranium In-situ Recovery Mine, Edgemont, South Dakota: U.S. Geological Survey Open-File Report 2012-1070. | 12/31/2012 | ML14171A705 |
| 976 | APP-026 - Update on USGS research at the proposed Dewey Burdock uranium in-situ recovery mine, Edgemont, South Dakota, presentation to EPA Region 8 in Denver, CO on Feb. 22, 2012, based on USGS OFR 2012-1070. | 02/22/2012 | ML14171A706 |
| 977 | APP-027-B - Report to Accompany Madison Water Right Permit Application, June 2012, Appendix A; ML12193A234. | 06/20/2014 | ML14171A734 |
| 978 | APP-028 - Report to the Chief Engineer on Water Permit Application No. 2685-2 [Madison Aquifer], ADAMS Accession No. ML13165A160, November 2, 2012. | 11/02/2012 | ML14171A735 |
| 979 | Powertech (USA), Inc. Initial Statement of Position. | 06/20/2014 | ML14171A736 |
| 980 | APP-027-C - Report to Accompany Madison Water Right Permit Application, June 2012, Appendix B; ML12193A235. | 12/31/2012 | ML14171A737 |
| 981 | APP-029 - Letter Agreement between Powertech and Fall River County Commission. | 01/12/2007 | ML14171A738 |
| 982 | Powertech (USA) Inc. Witness List. | 06/20/2014 | ML14171A739 |

| | | | |
|-----|--|------------|-------------|
| 983 | APP-038 - Errol Lawrence CV. | 06/20/2014 | ML14171A748 |
| 984 | APP-054 - Gwyn McKee CV. | 06/20/2014 | ML14171A749 |
| 985 | APP-046 - Doyl Fritz Initial Testimony. | 06/20/2014 | ML14171A750 |
| 986 | APP-047 - Doyl Fritz CV. | 06/20/2014 | ML14171A751 |
| 987 | APP-034 - Safety Evaluation Report for the Nichols Ranch In Situ Recovery Project in Johnson and Campbell Counties, Wyoming, Material License No. SUA-1597; ML102240206. | 07/31/2011 | ML14171A752 |
| 988 | APP-031 - Decision of the TCEQ Executive Director regarding Uranium Energy Corporation's Permit No. UR03075. | 11/06/2008 | ML14171A753 |
| 989 | APP-053 - Gwyn McKee Initial Testimony. | 06/20/2014 | ML14171A754 |
| 990 | APP-033 - Safety Evaluation Report for the Moore Ranch ISR Project in Campbell County, Wyoming, Materials License No. SUA-1596; ML101310291. | 09/30/2010 | ML14171A755 |

| | | | |
|-----|---|------------|-------------|
| 991 | APP-037 - Errol Lawrence Initial Testimony. | 06/20/2014 | ML14171A756 |
| 992 | APP-032 - In-Situ Leach Uranium Mining in the United States of America: Past, Present and Future, by D.H. Underhill, in IAEA TECDOC-720, Uranium In Situ Leaching, Proceedings of a Technical Committee Held in Vienna, 5-8 October 1992, September 1993. | 10/08/1992 | ML14171A757 |
| 993 | APP-043 - Revised Response to TR RAI 5.7.8-3(b), June 27, 2012, ML12179A534. | 06/27/2012 | ML14171A762 |
| 994 | APP-041 - Using Groundwater and Solid-phase Geochemistry for Reactive Transport Modeling at the Proposed Dewey Burdock Uranium In-situ Recovery Site, Edgemont, South Dakota, presentation given to EPA on April 11, 2012. | 06/20/2014 | ML14171A763 |
| 995 | APP-048 - Report to the Chief Engineer on Water Permit Application No. 2686-2 [Inyan Kara Aquifer], ADAMS Accession No. ML13165A168, November 2, 2012. | 11/02/2012 | ML14171A764 |
| 996 | APP-059 - Frequently Asked Questions on ESA Consultations, USFWS. | 06/12/2014 | ML14171A765 |
| 997 | APP-039 - Materials License SUA-1597 for the Nichols Ranch ISR Project, July 2011; ML111751649. | 07/19/2011 | ML14171A766 |
| 998 | APP-035 - Safety Evaluation Report for the Lost Creek Project in Sweetwater County, Wyoming, Materials License No. SUA-1598; ML112231724. | 08/31/2011 | ML14171A767 |

| | | | |
|------|---|------------|-------------|
| 999 | OST-13 - OST Statement of Undisputed Facts submitted with OST Motion for Summary Disposition. | 04/11/2014 | ML14171A771 |
| 1000 | OST-6 - Boggs, Jenkins, ?Analysis of Aquifer Tests Conducted at the Proposed Burdock Uranium Mine Site, Burdock, South Dakota, ? Tennessee Valley Authority, Report No. WR28-1-520-109, May 1980. | 09/30/2012 | ML14171A772 |
| 1001 | OST-10 - OST Petition to Intervene, with Exhibits. | 04/06/2010 | ML14171A773 |
| 1002 | OST-2 - U.S. EPA, 2007, TENORM Uranium Occupational and Public Risks Associated with In- Situ Leaching; Append. III, PG 1-11. | 06/20/2014 | ML14171A774 |
| 1003 | OST-8 - Keene, Ground-water Resources of the Western Half of Fall River County, S.D., Dept. of Natural Resource Development Geological Survey, Univ. S.D., Report of Investigations No. 109 (1973). | 12/31/1973 | ML14171A775 |
| 1004 | Oglala Sioux Tribe's Statement of Position on Contentions. | 06/20/2014 | ML14171A776 |
| 1005 | OST-3 - US EPA, 2008, Technical Report on Technologically Enhanced Naturally Occurring Radioactive Materials from Uranium Mining, Volume 1: Mining and Reclamation Background: Previously published on-line and printed as Vol. 1 of EPA 402-R-05-007.... | 06/07/2007 | ML14171A777 |
| 1006 | OST-7 - Boggs, Hydrogeologic Investigations at Proposed Uranium Mine Near Dewey, South Dakota (1983). | 09/30/2012 | ML14171A778 |

| | | | |
|------|--|------------|-------------|
| 1007 | OST-5 - Powerpoint presentation prepared by Dr. Robert E. Moran. | 06/20/2014 | ML14171A779 |
| 1008 | OST exhibit and witness list. | 06/20/2014 | ML14171A780 |
| 1009 | OST-4 - U.S. EPA, 2011 (June), CONSIDERATIONS RELATED TO POST-CLOSURE MONITORING OF URANIUM IN-SITU LEACH/IN-SITU RECOVERY (ISL/ISR) SITES, Draft Technical Report; [Includes Attachment A: Development of the Groundwater Baseline for Burdock ISL Site.... | 06/30/2011 | ML14171A781 |
| 1010 | OST-14 - Declaration of Michael CatchesEnemy. | 04/14/2014 | ML14171A782 |
| 1011 | OST-9 - TVA, Draft Environmental Statement, Edgemont Uranium Mine. | 06/20/2014 | ML14171A783 |
| 1012 | OST-12 - OST Statement of Contentions on FSEIS, with Exhibits. | 03/17/2014 | ML14171A784 |
| 1013 | OST-1 - Opening Written Testimony of Dr. Robert E. Moran. | 06/20/2014 | ML14171A785 |
| 1014 | OST-11 - OST Statement of Contentions on DSEIS, with Exhibits. | 01/25/2013 | ML14171A786 |

| | | | |
|------|---|------------|-------------|
| 1015 | APP-039 - Materials License SUA-1597 for the Nichols Ranch ISR Project, July 2011; ML111751649. | 07/19/2011 | ML14171A787 |
| 1016 | APP-052 - Dewey-Burdock BLM Site Determinations; January 10, 2014 letter from BLM to SD SHPO; ML14014A303. | 01/10/2014 | ML14171A788 |
| 1017 | NRC Staff Hearing Exhibits for Powertech USA, Inc., Dewey-Burdock In Situ Uranium Recovery Facility. | 06/20/2014 | ML14171A795 |
| 1018 | NRC Staff's Initial Statement of Position. | 06/20/2014 | ML14171A796 |
| 1019 | APP-055 - Greater Sage-Grouse Management Plan, South Dakota, 2008-2017; ML12241A215. | 12/31/2008 | ML14171A798 |
| 1020 | APP-057 - Greater Sage-grouse (Centrocercus urophasianus) Conservation Objectives: Final Report. | 03/22/2013 | ML14171A799 |
| 1021 | APP-060 - Whooping Crane (Grus americana) 5-Year Review: Summary and Evaluation, USFWS. | 06/20/2014 | ML14171A800 |
| 1022 | APP-058 - Endangered Species Act Consultation Handbook, Procedures for Conducting Section 7 Consultations and Conferences, U.S. Fish and Wildlife Service and National Marine Fisheries Service, 1998 | 03/31/1998 | ML14171A801 |

| | | | |
|------|---|------------|-------------|
| 1023 | APP-061 - Division of Migratory Bird Management, Important Information for Sandhill Hunters, Fall Whooping Crane Sightings 1943-1999. | 06/12/2014 | ML14171A802 |
| 1024 | APP-056 - A Report on National Greater Sage-Grouse Conservation Measures. | 12/21/2011 | ML14171A803 |
| 1025 | NRC-005 - Statement of Professional Qualifications of Thomas Lancaster | 06/20/2014 | ML14171A804 |
| 1026 | NRC-001 - Initial Testimony and Affidavits from Haimanot Yilma, Kellee L. Jamerson, Thomas Lancaster, James Prikryl, and Amy Hester | 06/20/2014 | ML14171A805 |
| 1027 | NRC-006 - Statement of Professional Qualifications of James Prikryl | 06/20/2014 | ML14171A806 |
| 1028 | NRC-007 - Statement of Professional Qualifications of Amy Hester | 06/20/2014 | ML14171A807 |
| 1029 | NRC-004 - Statement of Professional Qualifications of Kellee L. Jamerson | 06/20/2014 | ML14171A808 |
| 1030 | NRC-003 - Statement of Professional Qualifications of Haimanot Yilma | 06/20/2014 | ML14171A809 |

- 1031 APP-015-C - Revised TR for the Dewey-Burdock Project; Part 3 of 22; Text Sec. 2.9 through 10.2; ML14035A030. 12/31/2013 ML14171A810
- 1032 APP-015-D - Revised TR for the Dewey-Burdock Project; Part 4 of 22; Plates 1.5-1 through 2.6-8; ML14035A031. 12/31/2013 ML14171A817
- 1033 APP-015-F - Revised TR for the Dewey-Burdock Project; Part 6 of 22; Plates 2.6-13 through 2.6-15; ML14035A033. 12/31/2013 ML14171A818
- 1034 NRC-021 - 3/19/2010 NRC sent initial Section 106 invitation letters to 17 tribes requesting their input on the proposed action. ADAMS Accession No. ML100331999. 03/19/2010 ML14172A000
- 1035 NRC-018-D - Letter from ACHP finalizing Section 106. (ADAMS Accession No. ML14099A025). 04/07/2014 ML14172A001
- 1036 NRC-018-G - South Dakota SHPO PA Signature Page. (ADAMS Accession No. ML14098A107). 03/24/2014 ML14172A002
- 1037 NRC-018-B - Final Appendix for the Dewey-Burdock Project PA. (ADAMS Accession No. ML14066A350). 06/20/2014 ML14172A003
- 1038 NRC-022 - Letter to Oglala Sioux Tribe Re: Request for Updated Tribal Council Members Consultation (Sep. 8, 2010) ADAMS Accession No. ML102450647). 09/08/2010 ML14172A004

| | | | |
|------|--|------------|-------------|
| 1039 | NRC-012 - Materials License SUA-1600, Powertech (USA), Inc. (Apr. 8, 2014) (ADAMS Accession No. ML14043A392). | 04/08/2014 | ML14172A005 |
| 1040 | NRC-024 - NRC Staff Letter Postponing fall 2012 tribal survey. (12/14/2012). ADAMS Accession No. ML12335A175. | 12/14/2012 | ML14172A006 |
| 1041 | NRC-015 - Dewey-Burdock ISR Project Summary of Tribal Outreach Timeline (Apr. 8, 2014) (ADAMS Accession No. ML14099A010). | 04/08/2014 | ML14172A007 |
| 1042 | NRC-020 - NRC Letter transmitting the Applicant's Statement of Work to all consulting parties. (May 7,2012). (ADAMS Accession No. ML121250102). | 05/07/2012 | ML14172A008 |
| 1043 | NRC-019 - Summary Report Regarding the Tribal Cultural Surveys Completed for the Dewey-Burdock Uranium In Situ Recovery Project. (Dec. 16, 2013) (ADAMS Accession No. ML13343A142). | 06/20/2014 | ML14172A009 |
| 1044 | NRC-023 - Powertech Dewey-Burdock Draft Scope of Work and Figures - Identification of Properties of Religious and Cultural Significance (Mar.07,2012) (ADAMS Accession No. ML120870197). | 03/07/2012 | ML14172A010 |
| 1045 | NRC-011 - Dewey-Burdock Record of Decision (Apr. 8, 2014) (ADAMS Accession No. ML14066A466). | 04/08/2014 | ML14172A011 |
| 1046 | NRC-016 - Submittal of Comments on Draft Programmatic Agreement for the Proposed Dewey-Burdock ISR Uranium Mining Project. (ADAMS Accession No. ML14077A002) | 02/05/2014 | ML14172A012 |

- 1047 NRC-018-E - ACHP PA Signature Page. (ADAMS Accession No. ML4098A1550). 04/07/2014 ML14172A013

- 1048 NRC-017 - Dewey-Burdock ISR Project Documents Pertaining to Section 106 of the National Historic Preservation Act (June 10, 2014), available at <http://www.nrc.gov/info-finder/materials/uranium/licensed-facilities/dewey-burdock/section-106-docs.html> 06/20/2014 ML14172A014

- 1049 NRC-018-F - BLM signature on PA; (Mar. 25, 2014) (ADAMS Accession No. ML14098A102). 03/25/2014 ML14172A015

- 1050 NRC-018-H - Powertech PA Signature Page. (ADAMS Accession No. ML14098A110). 03/24/2014 ML14172A016

- 1051 NRC-018-A - Final PA for the Dewey-Burdock Project. (ADAMS Accession Nos. ML14066A347). 03/19/2014 ML14172A017

- 1052 NRC-028 - Email from Waste Win Young to NRC Staff re SRST Comments Final Draft PA Dewey-Burdock SRST THPO Comments (Feb. 20, 2014) (ADAMS Accession No. ML14105A367). 02/20/2014 ML14172A021

- 1053 NRC-038-A - Invitation for Informal Information-Gathering Meeting Pertaining to the Dewey-Burdock, Crow Butte North Trend, and Crow Butte License Renewal, In-Situ Uranium Recovery Projects (May 12, 2011)(ADAMS Accession No. ML111320251). 05/12/2011 ML14172A022

- 1054 NRC-033 - 09/13/2012 Summary of August 30,2012 Public Meeting with Powertech Inc, to Discuss Powertech's Proposed Environmental Monitoring Program related to the proposed Dewey-Burdock Project. ADAMS Accession No. ML12255A258. 09/13/2012 ML14172A023

| | | | |
|------|--|------------|-------------|
| 1055 | NRC-026 - WY SHPO (Wyoming State Historic Preservation Office). "Dewey-Burdock Line of Sight Analysis." Email (September 4) from R. Currit, Senior Archaeologist, Wyoming State Historic Preservation Office to H. Yilma,NRC. September 4,2013.... | 09/04/2013 | ML14172A024 |
| 1056 | NRC-036 - Letter to Crow Tribe of Montana Re: Invitation for Formal Consultation Under Section 106 of the national Historic Preservation Act (Mar. 04,2011) (ADAMS Accession No. ML110550535). | 03/04/2011 | ML14172A025 |
| 1057 | NRC-037 - 12/3/2010 Yankton Sioux tribe requests face-to-face meeting to discuss past and current project as well as request for TCP survey. Sisseton Wahpeton and Fort Peck tribes also asked for face-to-face meeting via phone.... | 12/03/2010 | ML14172A026 |
| 1058 | NRC-034 - Letter to Ponca Tribe of Nebraska Re: Invitation for Formal Consultation Under Section 106 of the National Historic Preservation Act (Mar. 4, 2011) (ADAMS Accession No. ML110550372). | 03/04/2011 | ML14172A027 |
| 1059 | NRC-030 - Standing Rock Sioux Tribe Comments - Final Draft PA Dewey-Burdock SRST-THPO Comments (Feb. 05, 2014) (ADAMS Accession No. ML14055A513). | 02/05/2014 | ML14172A028 |
| 1060 | NRC-029 - Letter to Cheyenne River Sioux Tribe re: Response Received Regarding Tribal Survey for Dewey-Burdock (Dec. 14, 2012) (ADAMS Accession No. ML12335A175). | 12/14/2012 | ML14172A029 |
| 1061 | NRC-035 - Letter to Santee Sioux Tribe of Nebraska Re: Invitation for Formal Consultation Under Section 106 of the National Historic Preservation Act (Mar. 4, 2011) (ADAMS Accession No. ML110550172). | 03/04/2011 | ML14172A030 |
| 1062 | NRC-031 - 04/07/2014 Letter from the Advisory Council on Historic Preservation to the Standing Rock Sioux Tribe Concerning the Dewey- Burdock ISR Project, SD. ADAMS Accession No. ML14115A448. | 04/07/2014 | ML14172A031 |

| | | | |
|------|--|------------|-------------|
| 1063 | NRC-027 - ACHP, National Register Evaluation Criteria, Advisory Council on Historic Preservation. (Mar. 11, 2008) (2012 ADAMS Accession No. ML12262A055). | 08/28/2012 | ML14172A032 |
| 1064 | APP-015-K- Revised TR for the Dewey-Burdock Project; Part 11 of 22; App. 2.6-H through 2.7-E; ML14035A038. | 06/30/2011 | ML14172A040 |
| 1065 | APP-015-I - Revised TR for the Dewey-Burdock Project; Part 9 of 22; App. 2.2-A through 2.5-F; ML14035A036. | 12/31/2013 | ML14172A041 |
| 1066 | NRC-039 - Meeting Agenda for Informal Information Gathering Pertaining to Dewey-Burdock, Crow Butte. Accompanying NRC letter with map of the proposed project boundary and digital copies of the Class III | 06/07/2011 | ML14172A042 |
| 1067 | NRC-047 - Meeting the "Reasonable and Good Faith" Identification Standard in Section 106 Review (ACHP), available at http://www.achp.gov/docs/reasonable_good_faith_identification.pdf . | 06/20/2014 | ML14172A043 |
| 1068 | NRC-048 - NEPA and NHPA, A Handbook for Integrating NEPA and Section 106 (CEQ and ACHP), available at http://www.achp.gov/docs/NEPA NHPA Section 106 Handbook Mar2013.pdf . | 03/31/2013 | ML14172A044 |
| 1069 | NRC-040 - Letter to Richard Blubaugh, Powertech, Re: NRC Information Request Relating to Section 106 and NEPA Reviews for the Proposed Dewey-Burdock Project (Aug. 12, 2011) (ADAMS Accession No. ML112170237). | 08/12/2011 | ML14172A045 |
| 1070 | NRC-038-F - Presentation Slides for the Section 106 Consultation Meeting Pertaining to the Proposed Dewey-Burdock, Crow Butte North Trend, and Crow Butte LR In-Situ Uranium Recovery Projects (June 8, 2011) (ADAMS Accession No. ML111661428). | 06/08/2011 | ML14172A046 |

| | | | |
|------|--|------------|-------------|
| 1071 | NRC-042 - 10/20/2011 NRC provided copies of the 6/8/2011 meeting transcripts to all the Tribes. Thank you Letter to James Laysbad of Oglala Sioux Tribe Enclosing the Transcript of the Information-Gathering Meeting and Unredacted Survey Pertaining.... | 10/20/2011 | ML14172A047 |
| 1072 | NRC-038-E - Transcript Re: Informal Information-Gathering Meeting Pertaining to Crow Butte Inc. and Powertech Inc. Proposed ISR Facilities (June 8, 2011) (ADAMS Accession No. ML111721938) (Pages 1-195). | 06/08/2011 | ML14172A048 |
| 1073 | NRC-045 - 2/01/2012 (February 14-15, 2012 meeting agenda). (ADAMS Accession No. ML120320436). | 02/14/2012 | ML14172A049 |
| 1074 | NRC-049 - Letter to Crow Creek Sioux Tribe Re: Transmittal of Applicant's Draft Statement of Work (May 7, 2012) (ADAMS Accession No. ML 121250102). | 05/07/2012 | ML14172A050 |
| 1075 | NRC-050, Letter to Oglala Sioux Tribe Re: Transmittal of Transcript from Teleconference Conducted on April 24, 2012 (June 26, 2012) (ADAMS Accession No. ML12177A109). | 06/26/2012 | ML14172A051 |
| 1076 | NRC-038-D - Attendee List - Informal Information Gathering Meeting Held in Pine Ridge, SD (July 8, 2011) (ADAMS Accession No. ML111870624). | 06/20/2014 | ML14172A052 |
| 1077 | NRC-044 - 1/19/2012 NRC invitation letters to all THPOs for a planned Feb 2012 meeting to discuss how best to conduct the TCP survey. (ADAMS Accession No. ML12031A280). | 01/19/2012 | ML14172A053 |
| 1078 | NRC-046 - 3/28/2012 - NRC transmitted transcripts of the NRC face-to-face meeting in Rapid City, SD to discuss how best to conduct the TCP survey. (ADAMS Accession Nos. ML120670319). | 03/26/2012 | ML14172A054 |

| | | | |
|------|--|------------|-------------|
| 1079 | NRC-038-C - Memo to Kevin Hsueh Re: Transcript for the June 8, 2011 Informal Information - Gathering Meeting Held in Pine Ridge, SD (July 8, 2011) (ADAMS Accession No. ML111870623). | 07/08/2011 | ML14172A055 |
| 1080 | APP-015-L - Revised TR for the Dewey-Burdock Project; Part 12 of 22; App 2.7-F through 2.7-G; ML14035A039. | 06/30/2011 | ML14172A056 |
| 1081 | APP-015-O - Revised TR for the Dewey-Burdock Project; Part 15 of 22; App. 2.7-H 3 of 3; ML14035A042. | 06/30/2011 | ML14172A057 |
| 1082 | NRC-060 - STB Finance Docket No. 33407, Dakota, Minnesota & Eastern Railroad Corporation Construction into the Powder River Basin: Request for Review and Comment on 21 Archaeological Sites, Surface Transportation Board.... | 02/08/2013 | ML14172A059 |
| 1083 | NRC-055 - Letter to Tribal Historic Preservation Officers Re: Request for a Proposal with Cost Estimate for Dewey Burdock Project (Sep. 18, 2012) (ADAMS Accession No. ML12264A594). | 09/18/2012 | ML14172A060 |
| 1084 | NRC-070 - Letter to J. Fowler, ACHP, Re: Notification of Intention to Separate the NHPA Section 106 Process from NEPA Review for Dewey-Burdock IS Project (Nov. 13, 2013) (ADAMS Accession No. ML13311B184). | 11/13/2013 | ML14172A061 |
| 1085 | NRC-069 - Letter to Oglala Sioux Tribe Re: Notification of Intention to Separate the NHPA Section 106 Process from NEPA Review for Dewey-Burdock ISR Project (Nov. 6, 2013) (ADAMS Accession No. ML13308B524). | 11/06/2013 | ML14172A062 |
| 1086 | NRC-058 - Draft Appendix A for Dewey-Burdock Project PA (Nov. 22, 2013) (ADAMS Accession No. ML13329A468). | 11/22/2013 | ML14172A063 |

- 1087 NRC-051 - NRC Email Re: August 9, 2012
Teleconference Invitation and Revised Statement of Work
Transmittal (Aug. 07, 2012) (ADAMS Accession No.
ML12261A375). 08/07/2012 ML14172A064
- 1088 NRC-062 - NRC Overall Determinations of Eligibility and
Assessments of Effects (Dec. 16, 2013) (ADAMS
Accession No. ML13343A155). 06/21/2014 ML14172A065
- 1089 NRC-071 - Letter from Department of State Re: Keystone
XL Pipeline Project Traditional Cultural Property (TCP)
Studies (Aug. 4, 2009). 08/04/2009 ML14172A066
- 1090 NRC-063 - Draft NRC NRHP Determinations - Table 1.0
for Draft PA (Dec. 13, 2013) (ADAMS Accession No.
ML13354B948). 06/20/2014 ML14172A067
- 1091 NRC-072 - A Level III Cultural Resources Evaluation of
Powertech (USA) Incorporated's Proposed Dewey-
Burdock Uranium Project Locality within the Southern
Black Hills, Custer and Fall River Counties, South Dakota,
Vol. I, (Page 1.2 through Page 4.18).... 03/31/2008 ML14172A068
- 1092 NRC-066 - Letter from Standing Rock Sioux Tribe Re:
Tribal Survey Using Persons Without Sioux TCP Expertise
to Identify Sioux TCP (Nov. 5, 2012) (ADAMS Accession
No. ML13036A110). 11/05/2012 ML14172A069
- 1093 NRC-068 - Email Re: Transmittal of a Follow-up Email
Pertaining to an Upcoming Field Survey for the Dewey-
Burdock Project (Feb. 08, 2013) (ADAMS Accession No.
ML13039A336). 02/08/2013 ML14172A070
- 1094 NRC-064 - Letter from John Yellow Bird Steele, President
of the Oglala Sioux Tribe Re: Refusal to Accept Dewey-
Burdock In Situ Project Proposal (Nov. 5, 2012) (ADAMS
Accession No. ML13026A005). 11/05/2012 ML14172A071

| | | | |
|------|--|------------|-------------|
| 1095 | NRC-067 - Email from Standing Rock Sioux Tribe Providing Comments on Final Draft PA Dewey-Burdock SRST-THPO (Feb. 20, 2014) (ADAMS Accession No. ML14059A199). | 02/20/2014 | ML14172A072 |
| 1096 | NRC-056 - H. Yilma Email Re: Draft PA for Dewey-Burdock Project (Nov. 22, 2013) (ADAMS Accession No. ML13329A420). | 11/22/2013 | ML14172A073 |
| 1097 | NRC-057 - Dewey-Burdock Project Draft Programmatic Agreement (Nov. 22, 2013) (ADAMS Accession No. ML13329A466). | 11/22/2013 | ML14172A074 |
| 1098 | NRC-052 - NRC Request Re: Scope of Work with Coverage Rate, Start Date, Duration, and Cost (Aug 30, 2012) (ADAMS Accession No. ML12261A470). | 08/30/2012 | ML14172A075 |
| 1099 | NRC-073 - A Level III Cultural Resources Evaluation of Powertech (USA) Incorporated's Proposed Dewey-Burdock Uranium Project Locality within the Southern Black Hills, Custer and Fall River Counties, South Dakota (Pages 5.53 through 5.106).... | 03/31/2008 | ML14172A076 |
| 1100 | NRC-061 - Letter to Oglala Sioux Tribe Re: Transmittal of TCP Survey Report for Dewey-Burdock Project (Dec. 23, 2013) (ADAMS Accession No. ML13357A234). | 12/23/2013 | ML14172A077 |
| 1101 | NRC-059 - Table 1.0 - NRC NRHP Determinations for Dewey-Burdock Draft PA (Nov. 22, 2013) (ADAMS Accession No. ML13329A470). | 11/22/2013 | ML14172A078 |
| 1102 | NRC-065 - Letter from Sisseton Wahpeton Oyaye Tribe Re: Refusal to Accept Dewey-Burdock In Situ Recovery Project Proposal (Nov. 6, 2012) (ADAMS Accession No. ML13036A104). | 11/06/2012 | ML14172A079 |

| | | | |
|------|--|------------|-------------|
| 1103 | NRC-053 - Letter to Tribal Historic Preservation Officer Re: Transmittal of Tribes' Proposal and Cost Estimate of the Dewey-Burdock ISR Project (Oct. 12, 2012) (ADAMS Accession No. ML12286A310). | 10/12/2012 | ML14172A080 |
| 1104 | APP-015-S - Revised TR for the Dewey-Burdock Project; Part 19 of 22; App 2.7-N through 2.8-H; ML14035A046. | 06/21/2014 | ML14172A081 |
| 1105 | NRC-038-B - Informal Information Gathering Meeting - Pine Ridge, SD Invitation to Section 106 Consultation Regarding Dewey-Burdock Project (ADAMS Accession No. ML111870622) (Package). | 07/08/2011 | ML14172A082 |
| 1106 | NRC-083 - Braddock, W.A. Geology of the Jewel Cave SW Quadrangle Custer County, South Dakota. U.S. Geological Survey Bulletin 1063-G. (08 April 2013).... | 06/20/2014 | ML14172A083 |
| 1107 | NRC-078 - 09/13/2012 NRC Staff RAI: Summary of August 30, 2012 Public Meeting with Powertech Inc, to Discuss Powertech's Proposed Environmental Monitoring Program related to the proposed Dewey-Burdock Project. (ADAMS Accession No. ML12255A258). | 09/13/2012 | ML14172A084 |
| 1108 | NRC-089 - NUREG-1910, Final Report, Supplement 3, Environmental Impact Statement for the Lost Creek ISR Project in Sweetwater County, Wyoming. Supplement to the Generic Environmental Impact Statement for In-Situ Leach Uranium Milling Facilities.... | 06/30/2011 | ML14172A085 |
| 1109 | NRC-081 - Gott, G.B., D.E. Wolcott, and C.G. Bowles. Stratigraphy of the Inyan Kara Group and Localization of Uranium Deposits, Southern Black Hills, South Dakota and Wyoming. ML120310042. U.S. Geological Survey Water Resources Investigation Report.... | 12/31/1974 | ML14172A086 |
| 1110 | NRC-076 - NUREG/CR-6705, Historical Case Analysis of Uranium Plume Attenuation.. (Feb. 28, 2001) (ADAMS Accession No. ML010460162). | 02/28/2001 | ML14172A087 |

| | | | |
|------|---|------------|-------------|
| 1111 | NRC-082 - Driscoll, D.G., J.M. Carter, J.E. Williamson, and L.D. Putnam. Hydrology of the Black Hills Area, South Dakota. U.S. Geological Survey Water Resources Investigation Report 02-4094. (ADAMS Accession No. ML12240A218). 2002. | 06/20/2014 | ML14172A088 |
| 1112 | NRC-077 - 05/28/2010 NRC Staff Request for Additional Information for Proposed Dewey-Burdock In Situ Recovery Facility (ADAMS Accession No. ML101460286). | 05/28/2010 | ML14172A089 |
| 1113 | NRC-080 - 12/09/2013 NRC Staff RAI: NRC Staff review of revised statistical analysis of the Radium 226 (soil) and gamma radiation correlation for screening surveys at the proposed Dewey-Burdock Project requesting additional information.... | 12/09/2013 | ML14172A090 |
| 1114 | NRC-074 - NRC (1980). Regulatory Guide 4.14, Radiological Effluent and Environmental Monitoring at Uranium Mills. ADAMS Accession No. ML003739941. | 04/25/1980 | ML14172A091 |
| 1115 | NRC-075 - NRC, 2009. Staff Assessment of Ground Water Impacts from Previously Licensed In-Situ Uranium Recovery Facilities, Memorandum from C. Miller to Chairman Jaczko , et al. Washington DC: USNRC, July 10, 2009d ADAMS Accession No. ML091770385. | 06/20/2014 | ML14172A092 |
| 1116 | APP-016-B - Revised TR RAI Response; Text Part 1: ML11208B712. | 06/30/2011 | ML14172A093 |
| 1117 | APP-016-AA - Revised TR RAI response; Appendices Part 19; App. 3.1-A 2 of 2; ML11208B924. | 06/21/2014 | ML14172A094 |
| 1118 | APP-015-V - Revised TR for the Dewey-Burdock Project; Part 22 of 22; App. 3.1-B through 7.3-D; ML14035A049. | 06/21/2014 | ML14172A095 |

| | | | |
|------|--|------------|-------------|
| 1119 | APP-016-A - Revised Response to the Request for Additional Information (RAI) for the Technical Report (TR) for the Dewey-Burdock Project; Cover Letter; ML11207A711. | 06/21/2014 | ML14172A096 |
| 1120 | APP-016-C - Revised TR RAI response; Text Part 2; ML11208B719. | 06/21/2014 | ML14172A097 |
| 1121 | APP-016-D - Revised TR RAI response; Text Part 3; ML11208B714. | 06/21/2014 | ML14172A106 |
| 1122 | APP-016-BB - Revised TR RAI response; Appendices Part 20; App. 6.1-A through 7.3-C; ML11208B925. | 06/21/2014 | ML14172A107 |
| 1123 | APP-016-J - Revised TR RAI response; Appendices Part 2; App. 2.6-H 1 of 3; ML11208B766. | 06/21/2014 | ML14172A108 |
| 1124 | APP-016-V, Revised TR RAI response; Appendices Part 14; App. 2.7-L 4 of 4; ML11208B865. | 06/21/2014 | ML14172A109 |
| 1125 | APP-016-R - Revised TR RAI response; Appendices Part 10; App. 2.7-K; ML11208B832. | 06/21/2014 | ML14172A110 |
| 1126 | APP-016-W, Revised TR RAI response; Appendices Part 15; App. Vol. 4 Cover; ML11208B870. | 06/21/2014 | ML14172A111 |

| | | | |
|------|---|------------|-------------|
| 1127 | APP-016-F - Revised TR RAI response; Exhibits Part 2; Exh. 2.6-5; ML11208B763. | 06/21/2011 | ML14172A112 |
| 1128 | APP-016-L - Revised TR RAI response; Appendices Part 4; App. 2.6-H 3 of 3; ML11208B770. | 06/21/2014 | ML14172A113 |
| 1129 | APP-016-K - Revised TR RAI response; Appendices Part 3; App. 2.6-H 2 of 3; ML11208B769. | 06/30/2011 | ML14172A114 |
| 1130 | APP-016-E - Revised TR RAI Response; Exhibits Part 1; Exh. 2.6-1 through 2.6-4; ML11208B716. | 06/30/2011 | ML14172A115 |
| 1131 | APP-016-H - Revised TR RAI Responses; Exhibits Part 4; Exh. 3.1-2 through 5.7-1; ML11208B767. | 06/22/2011 | ML14172A118 |
| 1132 | APP-016-Q - Revised TR RAI Response; Appendices Part 9; App 2.7-H 4 of 4; ML11208B827. | 04/14/2009 | ML14172A119 |
| 1133 | APP-016-O - Revised TR RAI response; Appendices Part 7; App. 2.7-H 2 of 4; ML11208B778. | 06/21/2014 | ML14172A122 |
| 1134 | APP-016-N - Revised TR RAI response; Appendices Part 6; App. 2.7-H 1 of 4; ML11208B777. | 06/21/2014 | ML14172A123 |

| | | | |
|------|---|------------|-------------|
| 1135 | APP-021-E - Dewey-Burdock Project TR; re-submitted August 2009; Part 5; Plate 1.5-2; ML092870314. | 06/21/2014 | ML14172A124 |
| 1136 | APP-016-Y - Revised TR RAI response; Appendices Part 17; App.2.9-B through 2.9-K; ML112150229. | 06/21/2014 | ML14172A125 |
| 1137 | NRC-097 - Request for Information Regarding Endangered or Threatened Species and Critical Habitat for the Powertech Inc. Proposed Dewey-Burdock In-Situ Recovery Facility Near Edgemont South Dakota (Mar. 15, 2010).(ADAMS Accession No. ML100331503). | 03/15/2010 | ML14172A126 |
| 1138 | NRC-095 - Letter to P. Strobel Re: EPAs Response Comment to FSEIS (Mar. 25, 2014) (ADAMS Accession No. ML14078A044). | 06/21/2014 | ML14172A127 |
| 1139 | NRC-103 - FWS. "Species Profile, Whooping Crane (Grus Americana)". | 06/21/2014 | ML14172A128 |
| 1140 | NRC-105 - BLM. "Final Statewide Programmatic Biological Assessment: Black-Footed Ferret (Mustela nigripes)." August, 2005. Cheyenne, Wyoming: U.S. Bureau of Land Management, Wyoming State Office. | 08/25/2005 | ML14172A129 |
| 1141 | NRC-099 - Avian Power Line Interaction Committee. "Suggested Practices for Avian Protection on Power Lines: The State of the Art in 2006" (ADAMS Accession No. ML12243A391). | 06/21/2014 | ML14172A130 |
| 1142 | NRC-101 - Email from Mitchell Iverson of BLM. (June 25, 2012) & Wildlife Stipulations in the Current 1986 South Dakota Resource Management Plan. (ADAMS Accession No. ML12249A030). | 06/28/2012 | ML14172A131 |

| | | | |
|------|---|------------|-------------|
| 1143 | NRC-094 - NRC Regulatory Guide 3.11, Rev. 3, Design, Construction, and Inspection of Embankment Retention Systems at Uranium Recovery Facilities, November 2008, (ADAMS Accession No. ML082380144). | 11/30/2008 | ML14172A132 |
| 1144 | NRC-091 - NRC. "Staff Assessment of Groundwater Impacts from Previously Licensed In-Situ Uranium Recovery Facilities." Memorandum to Chairman Jaczko, Commissioner Klein, and Commissioner Svinicki, NRC from C. Miller.... | 07/10/2009 | ML14172A133 |
| 1145 | NRC-098 - FWS. Whooping Cranes and Wind Development - An Issue Paper. (Apr. 2009).... | 04/30/2009 | ML14172A134 |
| 1146 | NRC-111 - Dewey-Burdock Record of Decision (Apr. 8, 2014) (ADAMS Accession No. ML14066A466). | 06/02/2014 | ML14172A135 |
| 1147 | NRC-090 - SDDENR. "Report to the Chief Engineer on Water Permit Application No. 2686-2, Powertech (USA) Inc., November 2, 2012." November 2012a. ADAMS Accession No. ML13165A168. | 11/02/2012 | ML14172A136 |
| 1148 | NRC-104 - BLM. "Draft Environmental Impact Statement, Dewey Conveyor Project." DOI-BLM-MT-040-2009-002-EIS. (Jan. 2009b) (ADAMS Accession No. ML12209A089). | 01/31/2009 | ML14172A137 |
| 1149 | NRC-100 - Informal Information-Gathering Meetings Trip Summery (Dec. 9, 2010) (ADAMS Accession No. ML093631627). | 12/09/2010 | ML14172A138 |
| 1150 | NRC-102 - USGS. "Fragile Legacy, Endangered, Threatened, and Rare Animals of South Dakota, Black-footed Ferret (<i>Mustela nigripes</i>)." (2006), available at http://www.npwrc.usgs.gov/resource/wildlife/sdrare/species/mustnigr.htm . | 06/13/2014 | ML14172A139 |

| | | | |
|------|---|------------|-------------|
| 1151 | NRC-106 - FWS. "South Dakota Field Office, Black-footed Ferret," (Sep. 9, 2013), available at http://www.fws.gov/southdakotafieldoffice/b-fferret.htm . | 06/13/2014 | ML14172A140 |
| 1152 | NRC-096 - Comment (14) of Robert F. Stewart on Behalf of the Dept. of the Interior, Office of Environmental Policy and Compliance on Draft Supplemental Environmental Impact Statement (DSEIS), Dewey-Burdock Project..... | 01/04/2013 | ML14172A141 |
| 1153 | APP-016-T - Revised TR RAI Response; Appendices Part 12; App. 2.7-L 2 of 4; ML11208B868. | 06/30/2011 | ML14172A144 |
| 1154 | APP-016-P - Revised TR RAI Response; Appendices Part 8; App. 2.7-H 3 of 4; ML11208B784. | 10/03/2008 | ML14172A145 |
| 1155 | APP-021-B, Dewey-Burdock Project TR; re-submitted August 2009; Part 2; Text Sec. 2.7.2 thru 2.9; ML092870295. | 06/21/2014 | ML14172A146 |
| 1156 | APP-021-BB - Dewey-Burdock Project TR; re-submitted August 2009; Part 28; App. 2.6-C thru 2.7-B(partial); ML092870351 | 06/21/2014 | ML14172A150 |
| 1157 | APP-021-EE - Dewey-Burdock TR; Re-submitted August 2009; Part 31; App. 2-8.F (Partial); ML092870357. | 06/21/2014 | ML14172A151 |
| 1158 | APP-021-I - Dewey-Burdock Project TR; Re-submittal August 2009; Part 9; Plate 2.6-3; ML092870318. | 06/30/2009 | ML14172A152 |

- 1159 APP-021-D - Dewey-Burdock Project TR; Re-submitted August 2009; Part 4; Plate 1.5-1; ML092870313. 06/21/2014 ML14172A153

- 1160 APP-021-J - Dewey-Burdock Project TR; Re-submittal August 2009; Part 10; Plate 2.6-4; ML092870305. 08/31/2009 ML14172A154

- 1161 APP-021-E - Dewey-Burdock Project TR; Re-submitted August 2009; Part 5; Plate 1.5-2; ML092870314. 06/21/2014 ML14172A155

- 1162 APP-021-C - Dewey Burdock Project TR; Re-submittal August 2009, Part 3; Text Sec 3 thru End; ML092870299. 06/21/2014 ML14172A156

- 1163 APP-021-CC - Dewey-Burdock Project TR; Re-submittal August 2009; Part 29, App. 2.7-B (Partial) thru 2.7-F; ML092870370. 06/21/2014 ML14172A157

- 1164 APP-021-H - Dewey-Burdock Project TR; Re-submitted August 2009; Part 8; Plate 2.6-2; ML092870317. 06/21/2014 ML14172A158

- 1165 APP-021-K - Dewey-Burdock Project TR; re-submitted August 2009; Part 11; Plate 2.6-5; ML092870306. 06/21/2014 ML14172A159

- 1166 APP-021-O - Dewey-Burdock Project TR; Re-submitted August 2009; Part 15; Plate 2.6-9; ML092870311. 07/31/2008 ML14172A160

| | | | |
|------|--|------------|-------------|
| 1167 | APP-021-L - Dewey-Burdock Project TR; re-submitted August 2009; Part 12; Plate 2.6-6; ML092870307. | 07/31/2008 | ML14172A161 |
| 1168 | APP-021-N - Dewey-Burdock Project TR; re-submitted August 2009; Part 14; Plate 2.6-8; ML092870310. | 06/21/2014 | ML14172A162 |
| 1169 | APP-021-F - Dewey-Burdock Project TR; Re-submittal August 2009; Part 6; Plate 2.5-1; ML092870315. | 08/31/2009 | ML14172A163 |
| 1170 | APP-021-M - Dewey-Burdock Project TR; Re-submitted August 2009; Part 13; Plate 2.6-7; ML092870309. | 06/21/2014 | ML14172A164 |
| 1171 | APP-021-G - Dewey-Burdock Project TR; re-submitted August 2009; Part 7; Plate 2.6-1; ML092870316. | 05/19/1982 | ML14172A165 |
| 1172 | NRC-131, E-mail from Terry Quesinberry, Fish and Wildlife Biologist, U.S. Fish and Wildlife Service, to Haimanot Yilma, Environmental Project Manager for Dewey-Burdock, Office of Federal and State Materials and Environmental.... | 06/21/2014 | ML14172A166 |
| 1173 | NRC-129 - S. Larson, FWS letter re Environmental Comments on Powertech Dewey-Burdock Project, Custer and Fall River County, South Dakota. (Mar. 29, 2010) (ADAMS Accession No. ML1009705560). | 03/29/2010 | ML14172A167 |
| 1174 | NRC-112 - Travsky, A., Beauvais, G.P. "Species Assessment for the Whooping Crane (Grus Americana) in Wyoming." October 2004. Cheyenne, Wyoming: United States Department of the Interior, Bureau of Land Management,.... | 10/31/2004 | ML14172A168 |

| | | | |
|------|---|------------|-------------|
| 1175 | NRC-123 - SDGFP. "Sage Grouse Population Dynamics."(Nov. 20, 2009), available at http://gfp.sd.gov/hunting/small-game/sage-grouse-population-dynamics.aspx | 06/21/2014 | ML14172A169 |
| 1176 | NRC-119 - BLM. Email Subject "Wildlife and Special Status Stipulations in the 1896 South Dakota Resource Management Plan" and attachment. From M. Iverson, BLM, Acting Field Manager, South Dakota Field Office, to H. Yilma, Project Manager.... | 06/21/2014 | ML14172A170 |
| 1177 | NRC-126 - U.S. Fish and Wildlife Service. "Greater sage-grouse (<i>Centrocercus urophasianus</i>) Conservation Objectives: Final Report"(Feb. 2013), available at http://www.fws.gov/mountain-prairie/ea/03252013_COT_Report.pdf | 06/21/2014 | ML14172A171 |
| 1178 | NRC-114 - Habitat Assessment and Conservation Strategy for Sage Grouse and Other Selected Species on Buffalo Gap National Grassland, U.S. Department of Agriculture, Forest Service (Sep. 2005) (ADAMS Accession No..... | 06/20/2014 | ML14172A172 |
| 1179 | NRC-118 - BLM. Email Subject "Appendix E Wildlife Stipulations" and attachments. From M. Iverson, BLM, Acting Field Manager, South Dakota Field Office, to A. Hester, CNWRA, Southwest Research Institute. (June 25, 2012.) | 04/02/2012 | ML14172A173 |
| 1180 | NRC-120 - Peterson, R.A. "The South Dakota Breeding Bird Atlas." Jamestown, North Dakota: Northern Prairie Wildlife Research Center. 1995. http://www.npwrc.usgs.gov/%20%20resource/birds/sdatlas/index.htm | 06/21/2014 | ML14172A174 |
| 1181 | NRC-130, E-mail from Terry Quesinberry, Fish and Wildlife Biologist, U.S. Fish and Wildlife Service, to Amy Hester, Research Scientist, Center for Nuclear Waste Regulatory Analyses, Southwest Research Institute..... | 08/27/2012 | ML14172A175 |
| 1182 | NRC-115 - Email with Attachments from Mitchell Iverson, BLM, RE: Meeting at 11:30 EST(June 25, 2012) (ADAMS Accession No. ML12250A802). | 06/25/2012 | ML14172A176 |

| | | | |
|------|---|------------|-------------|
| 1183 | NRC-116 - Attachment 1, Appendix C, South Dakota Field Office Mitigation Guidelines (June 25, 2012) (ADAMS Accession No. ML12250A827). | 06/20/2014 | ML14172A177 |
| 1184 | NRC-117 - Appendix D South Dakota Field Office Reclamation Guidelines. | 06/21/2014 | ML14172A178 |
| 1185 | NRC-127 - Department of Environment And Natural Resources Recommendation Powertech (USA) Inc. Large Scale Mine Permit Application. (April 15, 2013), available at http://denr.sd.gov/des/mm/documents/Powertech1/DENRRec4-15-13.pdf . | 06/20/2014 | ML14172A179 |
| 1186 | NRC-121 - BLM. "Newcastle Resource Management Plan."(2000) (ADAMS Accession No. ML12209A101). | 06/21/2014 | ML14172A180 |
| 1187 | NRC-113 - Endangered and Threatened Wildlife and Plants; 12-Month Findings for Petitions to List the Greater Sage-Grouse (<i>Centrocercus urophasianus</i>) as Threatened or Endangered. 75 Fed. Reg. 13,909-13,959.... | 03/23/2010 | ML14172A181 |
| 1188 | NRC-136-A - Palmer, L. and J.M. Kruse. "Evaluative Testing of 20 Sites in the Powertech (USA) Inc. Dewey-Burdock Uranium Project Impact Areas." Black Hills Archaeological Region. Volumes I and II. Archaeological Contract Series No. 251.... | 06/21/2014 | ML14172A182 |
| 1189 | NRC-136-B - Palmer, L. and J.M. Kruse Evaluative Testing of 20 Sites in the Powertech (USA) Inc. Dewey-Burdock Uranium Project Impact Areas Black Hills Archaeological Region Volumes I and II.... | 04/13/2012 | ML14172A183 |
| 1190 | NRC-134, Safety Evaluation Report for the Dewey-Burdock Project Fall River and Custer Counties, South Dakota. Materials License No. SUA-1600 (April 2014) ADAMS Accession No. ML14043A347. | 04/30/2014 | ML14172A184 |

- 1191 NRC-132 - Improving the Process for Preparing Efficient and Timely Environmental Reviews under NEPA. 03/06/2012 ML14172A185

- 1192 NRC-137 - Department of Environment and Natural Resources, Recommendation, Powertech (USA) Inc, Large Scale Mine Permit Application at 6 (April 15, 2013), available at <http://denr.sd.gov/des/mm/documents/Powertech1/DENRRec4-15-13.pdf>. 04/15/2013 ML14172A186

- 1193 NRC-136-C - Palmer, L. and J.M. Kruse. "Evaluative Testing of 20 Sites in the Powertech (USA) Inc. Dewey-Burdock Uranium Project Impact Areas." Black Hills Archaeological Region. Volumes I and II. Archaeological 04/13/2012 ML14172A187

- 1194 NRC-135, Safety Evaluation Report for the Dewey-Burdock Project Fall River and Custer Counties, South Dakota, Materials License No. SUA-1600, Docket No. 40-9075 (March 2013), ADAMS Accession No. ML13052A182. 04/30/2014 ML14172A188

- 1195 APP-016-U - Revised TR RAI response; Appendices Part 13; App. 2.7-L 3 of 4; ML11208B864. 06/30/2011 ML14172A189

- 1196 APP-021-P - Dewey-Burdock Project TR; Re-submitted August 2009; Part 16; Plate 2.6-10; ML092870312. 08/31/2009 ML14172A190

- 1197 APP-021-Q - Dewey-Burdock Project TR; re-submitted August 2009; Part 17; Plate 2.6-11; ML092870320. 06/21/2014 ML14172A191

- 1198 APP-021-Y - Dewey-Burdock Project TR; re-submitted August 2009; Part 25; Plate 3.1-1; ML092870328. 06/21/2014 ML14172A192

| | | | |
|------|---|------------|-------------|
| 1199 | APP-021-W - Dewey-Burdock Project TR; re-submitted August 2009; Part 23; Plate 2.8-2; ML092870326. | 06/21/2014 | ML14172A193 |
| 1200 | APP-021-T - Dewey-Burdock Project TR; Re-submitted August 2009; Part 20; Plate 2.6-14; ML092870323. | 08/31/2009 | ML14172A194 |
| 1201 | APP-021-S - Dewey-Burdock Project TR; re-submitted August 2009; Part 19; Plate 2.6-13; ML092870322. | 06/21/2014 | ML14172A195 |
| 1202 | APP-040-F - ER Plate 3.3-1; ML092870381. | 07/31/2008 | ML14172A196 |
| 1203 | APP-040-J - ER Plate 3.3-6; ML092870387. | 07/31/2008 | ML14172A197 |
| 1204 | APP-040-A - Dewey-Burdock Project Environment Report (ER); Re-submittal August 2009; Part 1; Cover thru Sec. 3.4.2.1.1; ML09270345. | 02/28/2009 | ML14172A198 |
| 1205 | APP-040-I - ER Plate 3.3-5; ML092870386. | 11/11/2008 | ML14172A199 |
| 1206 | APP-021-Z - Dewey-Burdock Project TR; re-submitted August 2009; Part 26; Plate 3.1-2; ML092870329. | 06/11/2008 | ML14172A200 |

| | | | |
|------|--|------------|-------------|
| 1207 | APP-040-D - ER Plate 3.1-1; ML092870380. | 06/21/2014 | ML14172A201 |
| 1208 | APP-021-R - Dewey-Burdock Project TR; re-submitted August 2009; Part 18; Plate 2.6-12; ML092870321. | 06/21/2014 | ML14172A202 |
| 1209 | APP-021-V - Dewey-Burdock Project TR; re-submitted August 2009; Part 22; Plate 2.8-1; ML092870325. | 06/21/2014 | ML14172A203 |
| 1210 | APP-040-E - ER Plate 3.3-1; ML0921870381. | 06/21/2014 | ML14172A204 |
| 1211 | APP-021-X - Dewey-Burdock Project TR; re-submitted August 2009; Part 24; Plate 2.8-3; ML092870327. | 06/21/2014 | ML14172A205 |
| 1212 | APP-030 - NUREG/CR-6733, A Baseline Risk-Informed, Performance-Based Approach for In Situ Leach Uranium Extraction Licensees - Final Report, July 2001; ML012840152. | 09/30/2001 | ML14172A206 |
| 1213 | APP-021-U - Dewey-Burdock Project TR; re-submitted August 2009; Part 21; Plate 2.6-15; ML092870324. | 06/21/2014 | ML14172A207 |
| 1214 | APP-040-L - ER Plate 3.3-8; ML092870389. | 07/31/2008 | ML14172A208 |

| | | | |
|------|--|------------|-------------|
| 1215 | APP-040-Q - ER Plate 3.3-13; ML092870589. | 06/21/2014 | ML14172A209 |
| 1216 | APP-040-N - ER Plate 3.3-10; ML092870592. | 12/03/2008 | ML14172A210 |
| 1217 | APP-040-U - ER Plate 3.5-2; ML092870397. | 11/04/2008 | ML14172A211 |
| 1218 | APP-040-C - Dewey-Burdock Project Environmental Report (ER); re-submitted August 2009; Part 1; Sec. 4 thru end; ML092870360. | 06/21/2014 | ML14172A212 |
| 1219 | APP-040-V - ER Plate 6.1-1; ML092870593. | 01/15/2009 | ML14172A213 |
| 1220 | APP-040-S - ER Plate 3.3-15; ML092870394. | 11/11/2008 | ML14172A214 |
| 1221 | APP-040-K - ER Plate 3.3-7; ML092870388. | 07/31/2008 | ML14172A215 |
| 1222 | APP-040-W - ER Replacement Plates; ML093370652. | 06/21/2014 | ML14172A216 |

| | | | |
|------|--|------------|-------------|
| 1223 | APP-040-T - ER Plate 3.5-1; ML092870395. | 11/11/2008 | ML14172A217 |
| 1224 | APP-040-H - ER Plate 3.3-4; ML092870591. | 11/14/2008 | ML14172A218 |
| 1225 | APP-040-R - ER Plate 3.3-14; ML092870590. | 06/21/2014 | ML14172A219 |
| 1226 | APP-040-M - ER Plate 3.3-9; ML092870390. | 07/31/2008 | ML14172A220 |
| 1227 | APP-040-O - ER Plate 3.3-11; ML092870586. | 06/21/2014 | ML14172A221 |
| 1228 | APP-040-P - ER Plate 3.3-12; ML092870588. | 06/21/2014 | ML14172A222 |
| 1229 | APP-040-Z - ER App. 3.4-B thru 3.4-E; ML092870414. | 06/21/2014 | ML14172A224 |
| 1230 | APP-040-Y - ER App. 3.3-F thru 3.4-A; ML092870421. | 06/21/2014 | ML14172A225 |

| | | | |
|------|---|------------|-------------|
| 1231 | APP-040-X - ER App. 3.3-A thru 3.3-E; ML092870411. | 06/21/2014 | ML14172A226 |
| 1232 | APP-042-A - Dewey-Burdock Project Revised Class III Underground Injection Control Permit Application, Revised July 2012, Cover Letter; ML12244A519. | 08/01/2012 | ML14172A227 |
| 1233 | NRC-139 - U.S. Geological Survey, 2006, Quaternary fault and fold database for the United States, accessed June 20, 2014, from USGS web site: http://earthquakes.usgs.gov/regional/qfaults/ . | 06/20/2014 | ML14172A228 |
| 1234 | NRC-144 - SRI (SRI Foundation). "Overview of Places of Traditional and Cultural Significance, Cameco/Powertech Project Areas." Rio Rancho, New Mexico: SRI Foundation. (June 8, 2012) (ADAMS Accession No. ML12262A113). | 06/08/2014 | ML14172A229 |
| 1235 | NRC-147 - 2013/03/13 Powertech Dewey-Burdock LA - RE: field survey for Dewey-Burdock. (Mar. 13, 2013) (ADAMS Accession No. ML13078A384). | 03/13/2014 | ML14172A230 |
| 1236 | NRC-108 - South Dakota State University. "South Dakota GAP Analysis Project." Brookings, South Dakota: South Dakota State University, Department of Wildlife and Fisheries Sciences (Jan. 13, 2012), available at http://www.sdstate.edu/nrm/gap/index.cfm . | 06/13/2014 | ML14172A231 |
| 1237 | NRC-085 - Darton, N.H. Geology and Water Resources of the Northern Portion of the Black Hills and Adjoining Regions of South Dakota and Wyoming. U.S. Geological Survey Professional Paper 65. 1909.... | 06/21/2014 | ML14172A232 |
| 1238 | NRC-150 - 2013/11/14 Powertech Dewey-Burdock LA - Reminder: Teleconference to discuss the development of the PA for the Dewey Burdock project is scheduled for Friday. (Nov. 15, 2013. (ADAMS Accession No. ML13322B658). | 11/14/2013 | ML14172A233 |

| | | | |
|------|---|------------|-------------|
| 1239 | NRC-125 - U.S. Fish and Wildlife Service Press Release and Draft Report to Help Sage-Grouse Conservation Objectives (August 23, 2012) (ADAMS Accession No. ML12276A248).... | 06/21/2014 | ML14172A235 |
| 1240 | NRC-143 - Letter to Oglala Sioux Tribe re: Invitation for Government-to-Government Meeting Concerning Licensing Actions for Proposed Uranium Recovery Projects. (Mar. 12, 2013) (ADAMS Accession No. ML13071A653). | 03/12/2013 | ML14172A236 |
| 1241 | NRC-149 - 2013/08/30 Powertech Dewey-Burdock LA - Request for Availability to discuss development of a PA for the Dewey Burdock Project. (Aug. 30, 2013) (ADAMS Accession No. ML13267A221). | 08/30/2013 | ML14172A237 |
| 1242 | NRC-109 - South Dakota State University. "Suitable Habitat Predicted for the Black-Footed Ferret in South Dakota." available at http://www.sdstate.edu/nrm/gap/mammals/upload/blfootferret-model.pdf . | 06/20/2014 | ML14172A238 |
| 1243 | NRC-138 - Jack R. Keene (1973). Ground-Water Resources of the Western Half of Fall River County, South Dakota. South Dakota Department of Natural Resource Development, Geological Survey, Report of Investigations, No. 109, 90 pg.... | 12/31/1973 | ML14172A239 |
| 1244 | NRC-142 - Submittal of Comments on Draft Programmatic Agreement for the Proposed Dewey-Burdock ISR Uranium Mining Project. (Mar. 17, 2014) (ADAMS Accession No. ML14077A002. Pages 5-1 | 02/05/2014 | ML14172A240 |
| 1245 | NRC-093 - EPA comments on FSEIS; (ADAMS Accession No. ML14070A230). | 03/10/2014 | ML14172A241 |
| 1246 | NRC-146 - 2013/03/13 Powertech Dewey-Burdock LA - RE: field survey in the spring of 2013. (Mar. 13, 2013) (ADAMS Accession No. ML13078A388). | 06/21/2014 | ML14172A242 |

| | | | |
|------|---|------------|-------------|
| 1247 | NRC-088 - NUREG-1910, Final Report, Supplement 1, Environmental Impact Statement for the Moore Ranch ISR Project in Campbell County, Wyoming, Supplement to the Generic Environmental Impact Statement for In-Situ Leach Uranium Milling Facilities.... | 01/31/2011 | ML14172A243 |
| 1248 | NRC-087 - NUREG-1910, Final Report, Supplement 1, Environmental Impact Statement for the Moore Ranch ISR Project in Campbell County, Wyoming, Supplement to the Generic Environmental Impact Statement for In-Situ Leach Uranium Milling Facilities.... | 08/31/2010 | ML14172A244 |
| 1249 | APP-042-C - Dewey-Burdock Project Revised Class III Underground Injection Control Permit Application, Revised July 2012, Text Sec. 5 thru 8; ML12244A520. | 07/12/2012 | ML14172A245 |
| 1250 | APP-050 - ER RAI Responses, transmittal letter and text; ML102380516. | 08/12/2010 | ML14172A246 |
| 1251 | APP-040-DD - ER App. 4.6-A; ML092870409. | 06/21/2014 | ML14172A247 |
| 1252 | APP-040-BB - ER App. 3.5-F thru 3.5-I; ML092870422. | 06/21/2014 | ML14172A248 |
| 1253 | APP-042-D - Dewey-Burdock Project Revised Class III Underground Injection Control Permit Application, Revised July 2012, Text Sec. 9 thru end; ML12244A521. | 07/31/2012 | ML14172A249 |
| 1254 | APP-045 - Responses to Technical Review Comments for Dewey-Burdock Large Scale Mine Permit Application; ML13144A182. | 04/01/2013 | ML14172A250 |

| | | | |
|------|--|------------|-------------|
| 1255 | APP-051 - Groundwater Discharge Plan (GDP) permit application, as updated with replacement pages through November 2012. | 03/31/2012 | ML14172A251 |
| 1256 | APP-015-R - Revised TR for the Dewey-Burdock Project; Part 18 of 22; App. 2.7-M; ML14035A045. | 06/30/2011 | ML14172A255 |
| 1257 | NRC-025-A - HDR, Engineering Inc., "Assessment of the Visual Effects of the Powder River Basin Project, New Build Segment, on Previously Identified Historic Properties in South Dakota and Wyoming".... | 10/20/2009 | ML14172A256 |
| 1258 | NRC-013 - NUREG-1569, Standard Review Plan for In-Situ Leach Uranium Extraction License Applications (June 4, 2003) (ADAMS Accession No. ML031550272). | 06/30/2003 | ML14172A257 |
| 1259 | NRC-025-B - HDR, Engineering Inc. "Assessment of the Visual Effects of the Powder River Basin Project, New Build Segment, on Previously Identified Historic Properties in South Dakota and Wyoming.".... | 10/31/2009 | ML14172A258 |
| 1260 | APP-021-FF - Dewey-Burdock Project TR; re-submitted August 2009; Part 32; App. 2.8-G thru 2.9-A; ML092870358. | 06/21/2014 | ML14172A260 |
| 1261 | APP-021-GG - Dewey-Burdock Project TR; re-submitted August 2009; Part 33; App. 4.2-A thru 7.3-A (partial); ML092870343. | 06/21/2014 | ML14172A261 |
| 1262 | APP-016-Z - Revised TR RAI response; Appendices Part 18; App. 3.1-A 1 of 2; ML11208B922. | 07/31/2010 | ML14172A262 |

| | | | |
|------|---|------------|-------------|
| 1263 | NRC-008-A-2 - NUREG-1910, Supplement 4, Vol. 1, Final Report, Environmental Impact Statement for the Dewey-Burdock Project in Custer and Fall River Counties, South Dakota: Supplement to the Generic Environmental.... | 06/21/2014 | ML14172A263 |
| 1264 | NRC-008-B-1 - NUREG-1910, Supplement 4, Vol. 2, Final Report, Environmental Impact Statement for the Dewey-Burdock Project in Custer and Fall River Counties, South Dakota: Supplement to the Generic Environmental | 01/31/2014 | ML14172A264 |
| 1265 | NRC-010-A-1 - NUREG-1910, Vol. 1, Final Report, Generic Environmental Impact Statement for In-Situ Leach Uranium Milling Facilities (Chapters 1 through 4) (May 2009) (ADAMS Accession No. | 05/31/2009 | ML14172A265 |
| 1266 | NRC-009-A-2 - NUREG-1910, Supplement 4, Vol. 1, Draft Report for Comment, Environmental Impact Statement for the Dewey-Burdock Project in Custer and Fall River Counties, South Dakota: Supplement to the Generic | 11/30/2012 | ML14172A266 |
| 1267 | NRC-009-B-1 - NUREG-1910, S4, V2, DFC, EIS for the Dewey-Burdock Project in Custer and Fall River Counties, South Dakota: Suppl to the GEIS for In-Situ Leach Uranium Milling Facilities (Chapter 5 to 11 and Appendices).... | 11/30/2012 | ML14172A267 |
| 1268 | NRC-009-B-2 - NUREG-1910, Supplement 4, Vol. 2, Draft Report for Comment, Environmental Impact Statement for the Dewey-Burdock Project in Custer and Fall River Counties, South Dakota: Supplement to the Generic | 11/30/2012 | ML14172A268 |
| 1269 | NRC-010-B-1 - NUREG-1910, Vol. 2, Final Report, Generic Environmental Impact Statement for In-Situ Leach Uranium Milling Facilities (Chapters 5 through 12 and Appendices) (May 2009) (ADAMS Accession No. ML091480188). Pages 1-272. | 05/31/2009 | ML14172A269 |
| 1270 | NRC-010-A-3 - NUREG-1910, Vol. 1, Final Report, Generic Environmental Impact Statement for In-Situ Leach Uranium Milling Facilities (Chapters 1 through 4) (May 2009) (ADAMS Accession No. ML091480244) Pages 513-704. | 08/31/2003 | ML14172A270 |

- | | | | |
|------|--|------------|-------------|
| 1271 | NRC-141-B - Dewey-Burdock Project Supplement to Application for NRC Uranium Recovery License Dated February 2009, Prepared by Powertech (USA) Inc. Greenwood Village, Colorado, CO. (Aug 31, 2009) (ADAMS Accession | 08/31/2009 | ML14172A271 |
| 1272 | NRC-141-A - Dewey-Burdock Project Supplement to Application for NRC Uranium Recovery License Dated February 2009, Prepared by Powertech (USA) Inc. Greenwood Village, Colorado, CO. (Aug 31, 2009) (ADAMS Accession No. ML092870155). Pages 1-42 | 06/20/2014 | ML14172A272 |
| 1273 | NRC-141-C - Dewey-Burdock Project Supplement to Application for NRC Uranium Recovery License Dated February 2009, Prepared by Powertech (USA) Inc. Greenwood Village, Colorado, CO. (Aug 31, 2009) (ADAMS Accession No. ML092870155). Pages 124-132 | 06/21/2014 | ML14172A273 |
| 1274 | NRC-141-D - Dewey-Burdock Project Supplement to Application for NRC Uranium Recovery License Dated February 2009, Prepared by Powertech (USA) Inc. Greenwood Village, Colorado, CO. (Aug 31, 2009) (ADAMS Accession No. ML092870155). Pages 133-143 | 06/21/2014 | ML14172A274 |
| 1275 | NRC-145-A - Guidelines for Evaluation and Documenting Traditional Cultural Properties. National Register Bulletin, U.S. Department of the Interior. National Park Service. (ADAMS Accession No. ML12240A371). Pages 1-14 | 12/31/1998 | ML14172A275 |
| 1276 | NRC-128 - SDGFP. "Colony Acreage and Distribution of the Black-Tailed Prairie Dog in South Dakota, 2008" (Aug. 2008), available at http://gfp.sd.gov/wildlife/docs/prairedog-distribution-report.pdf | 06/21/2014 | ML14172A276 |
| 1277 | NRC-084-D - Butz, T.R., N.E. Dean, C.S. Bard, R.N. Helgerson, J.G. Grimes, and P.M. Pritz. Hydrogeochemical and Stream Sediment Detailed Geochemical Survey for Edgemont, South Dakota, Wyoming. National Uranium Resource Evaluation (NURE) Program.... | 06/21/2014 | ML14172A277 |

| | | | |
|------|---|------------|-------------|
| 1278 | NRC-084-B - Butz, T.R., N.E. Dean, C.S. Bard, R.N. Helgerson, J.G. Grimes, and P.M. Pritz. Hydrogeochemical and Stream Sediment Detailed Geochemical Survey for Edgemont, South Dakota, Wyoming. National Uranium Resource Evaluation (NURE) Program,.... | 06/21/2014 | ML14172A278 |
| 1279 | NRC-084-A - Butz, T.R., N.E. Dean, C.S. Bard, R.N. Helgerson, J.G. Grimes, and P.M. Pritz. Hydrogeochemical and Stream Sediment Detailed Geochemical Survey for Edgemont, South Dakota, Wyoming. National Uranium Resource Evaluation (NURE) Program.... | 05/31/1980 | ML14172A279 |
| 1280 | NRC-084-E - Butz, T.R., N.E. Dean, C.S. Bard, R.N. Helgerson, J.G. Grimes, and P.M. Pritz. Hydrogeochemical and Stream Sediment Detailed Geochemical Survey for Edgemont, South Dakota, Wyoming. National Uranium Resource Evaluation (NURE) Program.... | 06/21/2014 | ML14172A280 |
| 1281 | NRC Staff Revised Exhibit List. | 06/21/2014 | ML14172A281 |
| 1282 | Certificate of Service of Patricia A. Jehle. | 06/21/2014 | ML14172A282 |
| 1283 | Consolidated Intervenors Prefiled Hearing Exhibits. | 06/20/2014 | ML14174B144 |
| 1284 | APP-001 - Dr. Lynne Sebastian Initial Testimony. | 06/20/2014 | ML14174B226 |

| | | | |
|------|---|------------|-------------|
| 1285 | APP-006 - ACHP Section 106 Regulations: Text of ACHP's Regulations, "Protection of Historic Properties: (36 CFR Part 800) (incorporates amendments effective Aug. 5, 2004)". | 06/20/2014 | ML14174B230 |
| 1286 | Consolidated Intervenor's Pre-Filed Hearing Witness List. | 06/21/2014 | ML14174B240 |
| 1287 | NRC-084-F - Butz, T.R., N.E. Dean, C.S. Bard, R.N. Helgerson, J.G. Grimes, and P.M. Pritz. Hydrogeochemical and Stream Sediment Detailed Geochemical Survery for Edgemont, South Dakota, Wyoming. National Uranium | 06/21/2014 | ML14175B588 |
| 1288 | APP-021-DD - Dewey-Burdock Project TR; re-submitted August 2009; Part 30; App. 2.7-G thru 2.8-F (partial); ML092870354. | 06/21/2014 | ML14175B595 |
| 1289 | NRC-008-A-1 - NUREG-1910, Supplement 4, Vol. 1, Final Report, Environmental Impact Statement for the Dewey-Burdock Project in Custer and Fall River Counties, South Dakota: Supplement to the Generic Environmental Impact | 01/31/2014 | ML14175B597 |
| 1290 | NRC-010-B-2 - NUREG-1910, Vol. 2, Final Report, Generic Environmental Impact Statement for In-Situ Leach Uranium Milling Facilities (Chapters 5 through 12 and Appendices) (May 2009) (ADAMS Accession No. ML091480188). Pages 273-612. | 06/21/2014 | ML14175B598 |
| 1291 | NRC-141-E - Dewey-Burdock Project Supplement to Application for NRC Uranium Recovery License Dated February 2009, Prepared by Powertech (USA) Inc. Greenwood Village, Colorado, CO. (Aug 31, 2009) (ADAMS Accession No. ML092870155). | 06/21/2014 | ML14175B599 |
| 1292 | NRC-145-B - Guidelines for Evaluation and Documenting Traditional Cultural Properties. National Register Bulletin, U.S. Department of the Interior. National Park Service. (ADAMS Accession No. ML12240A371). Pages 15-18 | 06/21/2014 | ML14175B601 |

| | | | |
|------|---|------------|-------------|
| 1293 | NRC-084-C - Butz, T.R., N.E. Dean, C.S. Bard, R.N. Helgerson, J.G. Grimes, and P.M. Pritz. Hydrogeochemical and Stream Sediment Detailed Geochemical Survey for Edgemont, South Dakota, Wyoming. National Uranium.... | 06/21/2014 | ML14175B603 |
| 1294 | APP-044 - Results of Acceptance Review for TR RAI Responses; ML110470245. | 06/20/2014 | ML14175B604 |
| 1295 | APP-036 - Safety Evaluation Report for the Strata Energy, Inc. Ross ISR Project, Crook County, Wyoming, Materials License No. SUA-1601; ML14002A107. | 06/20/2014 | ML14175B605 |
| 1296 | APP-015-B - Revised TR for the Dewey-Burdock Project; Part 2 of 22; Text through Sec. 2.8.5.7; ML14035A029. | 06/20/2014 | ML14175B606 |
| 1297 | APP-015-G - Revised TR for the Dewey-Burdock Project; Part 7 of 22; Plates 2.6-16 through 2.7-2; ML14035A034. | 06/20/2014 | ML14175B607 |
| 1298 | NRC-018-C - NRC PA Signature Page. (ADAMS Accession No. ML14098A464). | 03/19/2014 | ML14175B608 |
| 1299 | APP-015-H - Revised TR for the Dewey-Burdock Project; Part 8 of 22; Plates 2.8-1 through 5.7-1; ML14035A035. | 11/11/2008 | ML14175B609 |
| 1300 | APP-015-J - Revised TR for the Dewey-Burdock Project; Part 10 of 22; App. 2.6-A through 2.6-G; ML14035A037. | 12/31/2013 | ML14175B610 |

- | | | | |
|------|--|------------|-------------|
| 1301 | NRC-041 - 8/31/2011 NRC letter from Powertech letter and proposal in response to the Aug 12, 2011 request for NHPA Section 106 info. This letter enclosed a proposal which outlined a phased approach to | 08/31/2011 | ML14175B611 |
| 1302 | APP-015-M - Revised TR for the Dewey-Burdock Project; Part 13 of 22; App. 2.7-H 1 of 3; ML14035A040. | 06/21/2014 | ML14175B613 |
| 1303 | APP-015-N - Revised TR for the Dewey-Burdock Project; Part 14 of 22; App. 2.7-H 2 of 3; ML14035A041. | 07/29/2008 | ML14175B614 |
| 1304 | APP-015-P - Revised TR for the Dewey-Burdock Project; Part 16 of 22; App. 2.7-J through 2.7-L 1 of 2; ML14035A043. | 06/21/2014 | ML14175B615 |
| 1305 | NRC-122 - Sage-Grouse Working Group (Northeast Wyoming Sage-Grouse Working Group). "Northeast Wyoming Sage-Grouse Conservation Plan." (2006) (ADAMS Accession No. ML12240A374). | 08/15/2006 | ML14175B619 |
| 1306 | APP-040-B - Dewey-Burdock Project Environmental Report (ER); re-submitted August 2009; Part 2; Sec. 3.4.2.1.2 thru 3.12; ML092870346. | 02/28/2009 | ML14175B621 |
| 1307 | NRC-148 - Letter from Oglala Sioux Tribe in response to February 8, 2013 letter to Tribal Historic Preservation Officer March 23, 2013 (ADAMS Accession No. ML13141A362). | 03/22/2013 | ML14175B622 |
| 1308 | NRC-086 - Epstein, J.B. "Hydrology, Hazards, and Geomorphic Development of Gypsum Karst in the Northern Black Hills, South Dakota and Wyoming. "U.S. Geological Survey Water-Resource Investigation Report 01-4011.... | 12/31/2001 | ML14175B625 |

| | | | |
|------|---|------------|-------------|
| 1309 | APP-015-T - Revised TR for the Dewey-Burdock Project; Part 20 of 22; App. 2.8-I through 2.9-L; ML14035A047. | 12/31/2013 | ML14175B627 |
| 1310 | NRC-014 - NUREG-1748, Final Report, Environmental Review Guidance for Licensing Actions Associated with NMSS Programs (Aug. 2003) (ADAMS Accession No. ML032450279). | 08/31/2003 | ML14175B628 |
| 1311 | Erratum to NRC Staff's Statement of Position. | 06/24/2014 | ML14175B630 |
| 1312 | APP-040-EE - ER App. 4.14-C thru 6.1-G; ML092870413. | 10/01/2008 | ML14175B632 |
| 1313 | APP-015-E - Revised TR for the Dewey-Burdock Project; Part 5 of 22; Plates 2.6-9 through 2.6-12; ML14035A032. | 06/21/2014 | ML14175B633 |
| 1314 | APP-021-AA - Dewey-Burdock Project TR; Re-submitted August 2009; Part 27; App. 2.2-A thru 2.6-B; ML092870350. | 10/01/2008 | ML14175B634 |
| 1315 | APP-016-G - Revised TR RAI response; Exhibits Part 3; Exh. 2.6-6 through 3.1-1; ML11208B764. | 06/21/2014 | ML14175B635 |
| 1316 | NRC-008-B-2 - NUREG-1910, Supplement 4, Vol. 2., Final Report, 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.... | 01/31/2014 | ML14175B636 |

| | | | |
|------|---|------------|-------------|
| 1317 | APP-027-A - Report to Accompany Madison Water Right Permit Application, June 2012; ML12193A239. | 06/30/2012 | ML14176B019 |
| 1318 | OST-15 - Declaration of Wilmer Mesteth. | 04/01/2010 | ML14176B032 |
| 1319 | NRC-079 - 09/09/2013 NRC Staff RAI: Email Concerning Review of Powertech's Additional Statistical Analysis of Radium-226 Soil Sampling Data and Gamma Measurements and Request for Information. ADAMS (Accession No. | 09/09/2013 | ML14176B052 |
| 1320 | APP-015-U - Revised TR for the Dewey-Burdock Project; Part 21 of 22; App. 2.9-M through 3.1-A; ML14035A048. | 12/31/2013 | ML14176B072 |
| 1321 | APP-016-I - Revised TR RAI response; Appendices Part 1; App. 2.5-D through 2.6-G; ML11208B765. | 06/30/2011 | ML14176B079 |
| 1322 | APP-016-M - Revised TR RAI response; Appendices Part 5; App. 2.7-B through 2.7-G; ML11208B771. | 06/21/2014 | ML14176B094 |
| 1323 | APP-016-S - Revised TR RAI Response; Appendices Part 11; App. 2.7-L 1 of 4; ML112088833. | 06/30/2011 | ML14176B117 |
| 1324 | NRC-107 - FWS. "Black-Footed Ferret Draft Recovery Plan." Second Revision, (Feb. 2013), available at.... | 02/28/2013 | ML14176B137 |

| | | | |
|------|--|------------|-------------|
| 1325 | APP-021-A - Dewey-Burdock Project Technical Report (TR); re-submitted August 2009; Part 1; Text thru Sec. 2.7.1; ML092870298 | 02/28/2009 | ML14176B145 |
| 1326 | APP-040-G - ER Plate 3.3-3; ML092870383. | 07/31/2008 | ML14176B152 |
| 1327 | APP-049 - Water Right Permit No. 2626-2 Application and Permit. | 06/21/2014 | ML14176B162 |
| 1328 | NRC-010-A-2 - NUREG-1910, Vol. 1, Final Report, Generic Environmental Impact Statement for In-Situ Leach Uranium Milling Facilities (Chapters 1 through 4)(May 2009) (ADAMS Accession No. ML091480244 Page 153-512 | 06/21/2014 | ML14176B166 |
| 1329 | APP-040-CC - ER App. 3.5-J thru 3.6-C; ML092870407. | 06/21/2014 | ML14176B178 |
| 1330 | NRC-054 - Letter to James Laysbad, Oglala Sioux Tribe, Re: Information Related to Traditional Cultural Properties; Dewey-Burdock, Crow Butte North Trend, and Crow Butte LR ISP Projects (Oct. 28, 2011) (ADAMS Accession No. ML112980555) | 10/28/2011 | ML14177A564 |
| 1331 | APP-016-X - Revised TR RAI response; Appendices Part 16; App. 2.7-M; ML11208B872. | 06/30/2011 | ML14177A565 |
| 1332 | APP-021-HH - Dewey-Burdock Project TR; re-submitted August 2009; Part 34; App. 7.3-A (partial) thru 7.3-B; ML092870344. | 08/21/2008 | ML14177A566 |

| | | | |
|------|--|------------|-------------|
| 1333 | NRC-009-A-1 - NUREG-1910, Supplement 4, Vol. 1, Draft Report for Comment, Environmental Impact Statement for the Dewey-Burdock Project in Custer and Fall River Counties, South Dakota: Supplement to the Generic Environmental Impact Statement.... | 06/20/2014 | ML14177A568 |
| 1334 | Powertech (USA), Inc., Notice of Errata for Initial Statement of Position. | 06/27/2014 | ML14178B367 |
| 1335 | Powertech (USA), Inc. Motion to Dismiss Environmental Contention 14A/B. | 06/30/2014 | ML14181B367 |
| 1336 | Consolidated Intervenors' Opening Statement. | 06/26/2014 | ML14182A604 |
| 1337 | Powertech (USA) Inc. Hearing Exhibits. | 06/20/2014 | ML14182A615 |
| 1338 | Powertech (USA) Inc. Witness List. | 06/20/2014 | ML14182A616 |
| 1339 | Applicant Powertech (USA) Uranium Corporations Updated Mandatory Disclosures. | 07/01/2014 | ML14182A617 |
| 1340 | Consolidated Intervenors Amended Prefiled Hearing Exhibits. | 06/26/2014 | ML14182A618 |

| | | | |
|------|--|------------|-------------|
| 1341 | Consolidated Intervenor's Amended Prefiled Hearing Witness List. | 06/26/2014 | ML14182A623 |
| 1342 | NRC Staff Hearing File Update for July 2014: In the Matter of Powertech (USA) Inc. | 07/01/2014 | ML14182A690 |
| 1343 | Order (Rejecting Filings, Directing Compliance with Case Management Order and Providing Opportunity for Resubmission of Rejected Materials). | 07/02/2014 | ML14183B590 |
| 1344 | Notice (Of Opportunity To Make Oral And Written Limited Appearance Statements). | 07/03/2014 | ML14184B095 |
| 1345 | INT-013 - Testimony of Dr. Hannon LaGarry a geologic stratigrapher regarding fractures, faults, and other geologic features not adequately considered by Powertech or NRC staff. | 06/20/2014 | ML14189A206 |
| 1346 | INT-014 - Testimony of Linsey McLane, a Bio-chemist Regarding Bioaccumulation of Heavy Metals in Plant and Animal Species. | 06/20/2014 | ML14189A207 |
| 1347 | INT-012 - Testimony of Dayton Hyde, Owner/Operator of Black Hills Wild Horse Sanctuary, on Potential Impacts and Concerns about Proposed ISL Mine on Downflow Surface and Underground Water Resources. | 02/26/2010 | ML14189A208 |
| 1348 | INT-001 - Testimony of Dr. Louis Redmond regarding Lakota Cultural Resources. | 11/29/2012 | ML14189A340 |

| | | | |
|------|---|------------|-------------|
| 1349 | INT-002 - 10/31/09 Report of Dr. Richard Abitz on Powertech Baseline Report. | 10/31/2009 | ML14189A341 |
| 1350 | Consolidated Intervenors Amended Hearing Witness List. | 07/07/2014 | ML14189A344 |
| 1351 | Consolidated Intervenor' Opening Statement. | 07/07/2014 | ML14189A345 |
| 1352 | Consolidated Intervenors' Amended Hearing Exhibits. | 07/07/2014 | ML14189A346 |
| 1353 | INT-006 - Declaration of Wilmer Mesteth regarding Lakota Cultural Resources. | 06/20/2014 | ML14189A438 |
| 1354 | INT-007 - Testimony of Susan Henderson regarding water resources issues and concerns of downflow rancher. | 06/20/2014 | ML14189A439 |
| 1355 | INT-008 - Testimony of Dr. Donald Kelley a former forensic pathologist regarding the radiological impact on humans and other animals. | 06/20/2014 | ML14189A440 |
| 1356 | INT-009 - Statement of Qualifications of Dr. Kelley. | 06/20/2014 | ML14189A441 |

| | | | |
|------|---|------------|-------------|
| 1357 | INT-004 - Statement of Professional Qualifications of Dr. Hannan LaGarry | 03/04/2010 | ML14189A442 |
| 1358 | INT-005 - Statement of Professional Qualifications of Dr. Richard Abitz. | 06/20/2014 | ML14189A443 |
| 1359 | INT-011 - Testimony of Marvin Kammera, a rancher, on potential impacts on down flow ranchers as to Inyan Kara water quantity and quality. | 06/20/2014 | ML14189A566 |
| 1360 | INT-016 - Petition to Intervene, with Exhibits. | 03/08/2010 | ML14189A587 |
| 1361 | INT-017 - Statement of Contentions on DSEIS, with Exhibits. | 01/25/2013 | ML14189A589 |
| 1362 | INT-010b - Map - Beaver Creek Watershed. | 06/20/2014 | ML14189A620 |
| 1363 | INT-010c - Map - Central Flyway. | 06/20/2014 | ML14189A621 |
| 1364 | INT-010d - Map - Whooping Crane Route. | 06/20/2014 | ML14189A622 |

| | | | |
|------|--|------------|-------------|
| 1365 | INT-010 - Testimony of Peggy Detmers a Wildlife Biologist Regarding the D-B Site and Endangered Species. | 06/20/2014 | ML14189A623 |
| 1366 | INT-010a - Statement of Qualifications of Peggy Detmers. | 06/20/2014 | ML14189A624 |
| 1367 | INT-010g - Google Photo - Dewey Project - Medium Height. | 06/20/2014 | ML14189A636 |
| 1368 | INT-010h - Google Photo - Dewey Project - Wide. | 06/20/2014 | ML14189A637 |
| 1369 | INT-010i - Map - 5 state area - D-B Project. | 06/20/2014 | ML14189A638 |
| 1370 | INT-010e - Map - D-B Project Site. | 05/29/2012 | ML14189A639 |
| 1371 | INT-010f - Google Photo - Dewey Project - close. | 06/20/2014 | ML14189A640 |
| 1372 | INT-010l - GPS Google Photo - D-B Project - wideshot. | 09/08/2012 | ML14189A654 |

| | | | |
|------|--|------------|-------------|
| 1373 | INT-010m - Map - D-B area. | 06/20/2012 | ML14189A655 |
| 1374 | INT-010j - GPS Google Photo - D-B Project - Close-up. | 09/08/2012 | ML14189A656 |
| 1375 | INT-010k - GPS Google Photo - D-B Project - Drainage. | 09/08/2012 | ML14189A657 |
| 1376 | INT-010o - Diagram - Whooping Crane Bioaccumulaton. | 06/20/2014 | ML14189A683 |
| 1377 | INT-010p - Beaver Creek Final Fecal Coliform. | 01/31/2010 | ML14189A684 |
| 1378 | INT-010n - GPS Google Photo - D-B Project - triangle. | 10/15/2013 | ML14189A685 |
| 1379 | INT-018 - INT Statement of Contentions on FSEIS, with Exhibits. | 03/17/2014 | ML14189A689 |
| 1380 | INT-003 - Statement of Professional Qualifications of Dr. Louis Redmond. | 06/20/2014 | ML14190B072 |

| | | | |
|------|--|------------|-------------|
| 1381 | APP-040-AA - ER App.3.5-A thru 3.5-F; ML092870416. | 06/20/2014 | ML14190B142 |
| 1382 | APP-042-B - Dewey-Burdock Project Revised Class III Underground Injection Control Permit Application, Revised July 2012, Text thru Sec. 4; ML12244A522. | 07/31/2012 | ML14190B143 |
| 1383 | APP-062 - Black-Footed Ferret Recovery Plan, Second Revision, Nov. 2013. | 11/30/2013 | ML14190B144 |
| 1384 | APP-015-A - Revised Technical Report (TR) for the Dewey-Burdock Project; Part 1 of 22; Transmittal Letter, Change Index and Revised TR RAI Responses; ML14035A052. | 01/06/2014 | ML14190B145 |
| 1385 | APP-015-Q - Revised TR for the Dewey-Burdock Project; Part 17 of 22; App.2.7-L 2 of 2; ML14035A044 | 06/20/2014 | ML14190B146 |
| 1386 | APP-020 - ISR animation (Video of ISR Operation). | 06/20/2014 | ML14191B264 |
| 1387 | Consolidated Intervenor's Response to Powertech Motion to Dismiss Contention 14. | 07/13/2014 | ML14195A181 |
| 1388 | Powertech (USA), Inc. Objection to Consolidated Intervenor's Response to Motion to Dismiss Contention 14. | 07/14/2014 | ML14195A500 |

| | | | |
|------|---|------------|-------------|
| 1389 | Order (Granting Request to Withdraw and Motion to Dismiss Contentions 14A and 14B). | 07/15/2014 | ML14196A353 |
| 1390 | Notice of Limited Availability of Dr. Louis Redmond. | 07/15/2014 | ML14196A436 |
| 1391 | APP-068 - Doyl Fritz Answering Testimony. | 07/15/2014 | ML14196A562 |
| 1392 | Powertech (USA), Inc. Rebuttal Of Consolidated Intervenors And Oglala Sioux Tribe Initial Statements Of Position. | 07/15/2014 | ML14196A563 |
| 1393 | APP-064 - Dr. Adrien Hannus Answering Testimony. | 07/13/2014 | ML14196A564 |
| 1394 | APP-071 - 2013 Wildlife Monitoring Report for the Dewey-Burdock Project. | 07/02/2014 | ML14196A565 |
| 1395 | APP-069 - Figures to Accompany Doyl Fritz Answering Testimony. | 07/15/2014 | ML14196A566 |
| 1396 | APP-065 - Hal Demuth Answering Testimony. | 07/14/2014 | ML14196A567 |

| | | | |
|------|--|------------|-------------|
| 1397 | APP-067 - Figure to Accompany Errol Lawrence Answering Testimony. | 07/15/2014 | ML14196A568 |
| 1398 | APP-066 - Errol Lawrence Answering Testimony. | 07/15/2014 | ML14196A569 |
| 1399 | Powertech (USA) Inc., Hearing Exhibits List (Full). | 07/15/2014 | ML14196A570 |
| 1400 | APP-063 - Answering Testimony of Dr, Lynne Sebastian. | 07/15/2014 | ML14196A571 |
| 1401 | Certificate of Service for NRC Staff's Rebuttal Statement of Position, Revised Exhibit List, Dated July 15, 2014, and Exhibits NRC-002 and NRC-151 through NRC-156. | 07/15/2014 | ML14196A573 |
| 1402 | NRC-152 - Statement of Professional Qualifications of Hope E. Luhman. | 07/15/2014 | ML14196A574 |
| 1403 | NRC-156 - Johnson, R. H. "Reactive Transport Modeling for the Proposed Dewey-Burdock Uranium In-Situ Recovery Mine, Edgemont, South Dakota, USA." International Mine Water Association, Mine Water- Managing the Challenges. 2011. | 07/15/2014 | ML14196A575 |
| 1404 | Revised NRC Staff Hearing Exhibits. | 07/15/2014 | ML14196A576 |

| | | | |
|------|---|------------|-------------|
| 1405 | NRC-151 - NRC Staff Rebuttal Testimony. | 07/15/2014 | ML14196A577 |
| 1406 | NRC Staff's Rebuttal Statement of Position. | 07/15/2014 | ML14196A578 |
| 1407 | NRC-154 - Excerpt from Bates, R. and J. Jackson. Dictionary of Geological Terms 3rd Edition. (1984). | 07/15/2014 | ML14196A579 |
| 1408 | NRC-155 - Letter from South Dakota Historical Society re: Dewey-Burdock Project, (Jan. 2014). | 07/15/2014 | ML14196A580 |
| 1409 | NRC-153 - Excerpt from Parker, P. and T. King. Guidelines for Evaluating and Documenting Traditional Cultural Properties, National Register of Historic Places Bulletin 38. (1990) (ADAMS Accession No. ML12240A371). | 07/15/2014 | ML14196A581 |
| 1410 | NRC-002 - Statement of Professional Qualifications of Po Wen (Kevin) Hsueh. | 07/15/2014 | ML14196A582 |
| 1411 | Oglala Sioux Tribes Rebuttal Statement. | 07/15/2014 | ML14197A000 |
| 1412 | OST-016 - February 20, 2013 letter from Standing Rock Sioux to NRC Staff. | 02/20/2013 | ML14197A002 |

- | | | | |
|------|--|------------|-------------|
| 1413 | OST-017 - March 22, 2013 letter from Oglala Sioux Tribe to NRC Staff. | 07/16/2014 | ML14197A003 |
| 1414 | Oglala Sioux Tribe Hearing Exhibits List. | 07/16/2014 | ML14197A004 |
| 1415 | OST-018 - Rebuttal Testimony of Dr. Robert E. Moran. | 07/15/2014 | ML14197A005 |
| 1416 | APP-070 - Gwyn McKee Answering Testimony. | 07/15/2014 | ML14197A211 |
| 1417 | Notice of Evidentiary Hearing. | 07/16/2014 | ML14197A315 |
| 1418 | INT-019 - Dr. Redmond Rebuttal Letter. | 07/13/2014 | ML14197A375 |
| 1419 | INT-020 - Rebuttal Written Testimony of Dr. Hannan LaGarry. | 07/15/2014 | ML14197A376 |
| 1420 | INT-020A - Expert Opinion Regarding the Proposed Dewey-Burdock Project ISL Mine Near Edgemont, South Dakota. | 07/15/2014 | ML14197A377 |

| | | | |
|------|--|------------|-------------|
| 1421 | Rebuttal to Opening Positions of Applicant and NRC Staff. | 07/15/2014 | ML14197A559 |
| 1422 | Order (Rejecting Filings, Directing Compliance with Case Management Order and Providing Opportunity for Resubmission of Rejected Materials). | 07/16/2014 | ML14197A578 |
| 1423 | Powertech (USA), Inc. Notice of Errata for Rebuttal Statement of Position. | 07/17/2014 | ML14198A650 |
| 1424 | INT-021A - Violation History - Crow Butte ISL mine in Crawford, Nebraska. | 01/10/2000 | ML14199A775 |
| 1425 | INT-021B - Violation History - Crow Butte ISL mine in Crawford, Nebraska. | 10/26/2012 | ML14199A776 |
| 1426 | INT021C - Violation History - Crow Butte ISL mine in Crawford, Nebraska. | 08/13/2013 | ML14199A777 |
| 1427 | INT-022C - Violation History - Smith Highland Ranch. | 05/25/2012 | ML14200A000 |
| 1428 | INT-022B - Violation History - Smith Highland Ranch. | 12/21/2011 | ML14200A001 |

| | | | |
|------|--|------------|-------------|
| 1429 | INT-022A - Violation History - Smith Highland Ranch. | 07/22/2012 | ML14202A113 |
| 1430 | Consolidated Intervenor's Amended Hearing Exhibits. | 07/18/2014 | ML14202A303 |
| 1431 | Rebuttal to Opening Positions of Applicant and NRC Staff. | 07/18/2014 | ML14202A306 |
| 1432 | NRC Staff's Motion in Limine. | 07/22/2014 | ML14203A657 |
| 1433 | Powertech (USA), Inc. Motions in Limine, Motion for Cross-Examination, and Motion to Strike/Exclude. | 07/22/2014 | ML14203A667 |
| 1434 | Powertech (USA), Inc. Amended Motions In Limine, Motion For Cross Examination, And Motion To Strike/Exclude. | 07/22/2014 | ML14203A672 |
| 1435 | OST-19 - Powertech Press Release. | 07/16/2014 | ML14203A673 |
| 1436 | Oglala Sioux Tribe's Cross Examination Motion. | 07/22/2014 | ML14203A674 |

| | | | |
|------|---|------------|-------------|
| 1437 | Oglala Sioux Tribe's Motion to Strike. | 07/22/2014 | ML14203A676 |
| 1438 | Consolidated Intervenors' Motion in Limine. | 07/22/2014 | ML14204A200 |
| 1439 | NRC Staff's Response to Prehearing Motions. | 07/29/2014 | ML14210A671 |
| 1440 | Powertech (USA), Inc., Response to NRC Staff's, Consolidated Intervenors' and the Oglala Sioux Tribe's Motions in Limine, Motion for Cross-Examination, and Motion to Strike/Exclude. | 07/29/2014 | ML14210A672 |
| 1441 | Oglala Sioux Tribe's Consolidated Response to Powertech and NRC Staff Motions in Limine and Strike/Exclude. | 07/29/2014 | ML14210A674 |
| 1442 | Conolidated Intervenors' Response to Powertech and NRC Staff Motions in Limine and to Strike/Exclude. | 07/29/2014 | ML14211A215 |
| 1443 | Order (Scheduling Telephonic Prehearing Conference Call). | 07/31/2014 | ML14212A363 |
| 1444 | Notice (Regarding Weapons at Atomic Safety and Licensing Board Proceedings). | 07/31/2014 | ML14212A709 |

| | | | |
|------|---|------------|-------------|
| 1445 | Order (Ruling on Motions in Limine: Motions to Strike and for Cross-Examination). | 08/01/2014 | ML14213A352 |
| 1446 | Limited Appearance Statement from Rodney G. Knudson Regarding Powertech (USA), Inc.'s License Application for an In-Situ Uranium Recovery Facility. | 08/05/2014 | ML14217A284 |
| 1447 | Order (Question Following Prehearing Hearing Conference). | 08/06/2014 | ML14218A743 |
| 1448 | Proceedings Transcript: Powertech USA, Inc. Dewey-Burdock In Situ Uranium Recovery. | 08/05/2014 | ML14219A165 |
| 1449 | Order (Directing Parties to File Legal Memoranda on Newly Acquired Powertech Data). | 08/08/2014 | ML14220A273 |
| 1450 | Declaration of Donald Kelley. | 08/11/2014 | ML14224A077 |
| 1451 | Declaration of Linsey McLain Testimony. | 08/11/2014 | ML14224A080 |
| 1452 | Affidavit of Richard Clement Regarding Data Acquired and yet to be Acquired from Energy Fuels Resources (USA) Inc. | 08/12/2014 | ML14224A647 |

| | | | |
|------|--|------------|-------------|
| 1453 | Powertech (USA), Inc.'s Response to Licensing Board Order Regarding Data Disclosure. | 08/12/2014 | ML14224A648 |
| 1454 | NRC Staff's Response to Board's August 8, 2014 Order. | 08/12/2014 | ML14224A672 |
| 1455 | OST-020 - E-Mail from Chris Pugsley, Powertech, re NRC Proceeding. | 08/07/2014 | ML14224A675 |
| 1456 | Oglala Sioux Tribe's Response to the Board's August 8, 2014 Order. | 08/12/2014 | ML14224A676 |
| 1457 | Request by Powertech Counsel for Clarification of Licensing Board Order dated August 6, 2014. | 08/07/2014 | ML14225A107 |
| 1458 | Consolidated Intervenors' Memorandum Regarding Powertech's Newly Purchased TVA Drilling Logs and Data for the Dewey-Burdock Sites. | 08/12/2014 | ML14225A134 |
| 1459 | NRC Staff's Motion to Admit Exhibit NRC-002-R. | 08/13/2014 | ML14225A848 |
| 1460 | NRC-002-R - Revised Statement of Professional Qualifications of Po Wen (Kevin) Hsueh. | 08/13/2014 | ML14225A850 |

- 1461 Limited Appearance Statement from Stephanie Strong Regarding Powertech (USA) Inc.'s License Application for an In-Situ Uranium Recovery Facility. 08/14/2014 ML14226A765

- 1462 Limited Appearance Statement from Oleta Mednansky Regarding Powertech (USA), Inc.'s License Application for an In-Situ Uranium Recovery Facility. 08/09/2014 ML14227A280

- 1463 Limited Appearance Statement from Marvin Lewis Regarding Powertech (USA), Inc.'s License Application for an In-Situ Uranium Recovery Facility. 08/15/2014 ML14227A917

- 1464 OST-021 - Powertech Quarterly Management Discussion and Analysis. 08/11/2014 ML14228A105

- 1465 Oglala Sioux Tribe's Motion to Enforce Mandatory Disclosure Duties Under 10 C.F.R. 2.336. 08/16/2014 ML14228A106

- 1466 Limited Appearance Statement from Ruth Thomas Regarding Powertech (USA), Inc.'s License Application for an In-Situ Uranium Recovery Facility. 08/15/2014 ML14230A040

- 1467 Limited Appearance Statement from Laura Burden Regarding Powertech (USA), Inc.'s License Application for an In-Situ Uranium Recovery Facility. 08/17/2014 ML14230A081

- 1468 Limited Appearance Statement from Linea Sundstrom Regarding Powertech (USA), Inc.'s License Application for an In-Situ Uranium Recovery Facility. 08/18/2014 ML14231A630

| | | | |
|------|---|------------|-------------|
| 1469 | INT-010Q - IPAC. | 06/17/2014 | ML14231A963 |
| 1470 | Limited Appearance Statement from Kevin Weiland Regarding Powertech (USA), Inc.'s License Application for an In-Situ Uranium Recovery Facility. | 08/19/2014 | ML14231B271 |
| 1471 | Limited Appearance Hearing 18 August 2014 Evening Session. | 08/18/2014 | ML14234A067 |
| 1472 | Limited Appearance Hearing 18 August 2014 Morning Session. | 08/18/2014 | ML14234A068 |
| 1473 | Transcript of Teleconference with PowerTech, USA, Inc., Dewey-Burdock In-Situ Uranium Recovery Facility on August 19, 2014 Pages 692-920. | 08/19/2014 | ML14234A449 |
| 1474 | Transcript of Teleconference with Powertech, USA, Inc., Dewey-Burdock In-Situ Uranium Recovery Facility on August 20, 2014 Pages 921-1170. | 08/25/2014 | ML14237A336 |
| 1475 | Transcript of Powertech USA, Inc., Dewey-Burdock in Situ Uranium Recovery Facility on August 21, 2014, Pages 1171-1328. | 08/21/2014 | ML14238A184 |
| 1476 | NRC Staff's Response to Oglala Sioux Tribes's August 16, 2014 Motion. | 08/26/2014 | ML14238A504 |

| | | | |
|------|--|------------|-------------|
| 1477 | Powertech (USA), Inc. Response To Oglala Sioux Tribe's Motion For Mandatory Disclosures. | 08/26/2014 | ML14239A135 |
| 1478 | Affidavit Of John Mays. | 08/26/2014 | ML14239A136 |
| 1479 | OFFICIAL EXHIBIT - APP-013-00-BD01 - Hal Demuth Initial Testimony. | 06/20/2014 | ML14240A415 |
| 1480 | OFFICIAL EXHIBIT - APP-008-00-BD01 - South Dakota State Historic Preservation Office, Guidelines for Cultural Resource Surveys and Survey Reports in South Dakota (For Review and Compliance), 2005. | 09/30/2005 | ML14240A417 |
| 1481 | OFFICIAL EXHIBIT - APP-009-00-BD01 - Level III Cultural Resources Evaluation of Powertech (USA) Inc.'s Proposed Dewey-Burdock Uranium Project (Public Version), Vol. 3 Part 6; ML100670366. | 03/31/2008 | ML14240A418 |
| 1482 | OFFICIAL EXHIBIT - APP-002-00-BD01 - Dr. Lynne Sebastian CV. | 06/20/2014 | ML14240A419 |
| 1483 | OFFICIAL EXHIBIT - APP-011-00-BD01 - Michael Fosha CV. | 06/20/2014 | ML14240A420 |
| 1484 | OFFICIAL EXHIBIT - APP-007-00-BD01 - National Park Service, Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation, 1983 | 06/14/2014 | ML14240A421 |

| | | | |
|------|---|------------|-------------|
| 1485 | OFFICIAL EXHIBIT - APP-014-00-BD01 - Hal Demuth CV. | 06/20/2014 | ML14240A422 |
| 1486 | OFFICIAL EXHIBIT - APP-003-00-BD01 - Dr. Adrien Hannus Initial Testimony. | 06/20/2014 | ML14240A423 |
| 1487 | OFFICIAL EXHIBIT - APP-004-00-BD01 - Dr. Adrien Hannus CV. | 06/20/2014 | ML14240A424 |
| 1488 | OFFICIAL EXHIBIT - APP-005-00-BD01 - Representative Sample of ALAC Projects. | 06/20/2014 | ML14240A425 |
| 1489 | OFFICIAL EXHIBIT - APP-010-00-BD01 - Michael Fosha Initial Testimony. | 06/20/2014 | ML14240A427 |
| 1490 | OFFICIAL EXHIBIT - APP-012-00-BD01 - February 11, 2013 letter from Michael Fosha to SDDENR. | 02/11/2013 | ML14240A428 |
| 1491 | OFFICIAL EXHIBIT - APP-019-00-BD01 - National Mining Association's (NMA) Generic Environmental Report in Support of the Nuclear Regulatory Commission's Generic Environmental Impact Statement for In Situ Uranium Recovery Facilities; ML080170159 | 11/30/2007 | ML14240A429 |
| 1492 | OFFICIAL EXHIBIT - APP-025-00-BD01 - Numerical Modeling of Hydrogeologic Conditions, Dewey-Burdock Project, February 2012; ML12062A096. | 02/28/2012 | ML14240A430 |

| | | | |
|------|---|------------|-------------|
| 1493 | OFFICIAL EXHIBIT - APP-017-00-BD01 - Figures to Accompany Demuth Initial Testimony. | 04/25/2011 | ML14240A431 |
| 1494 | OFFICIAL EXHIBIT - APP-023-00-BD01 - Uranium In-Situ Recovery and the Proposed Dewey Burdock Site, Edgemont, South Dakota, Public Meeting Talk Given by Dr. Raymond Johnson, USGS, in Hot Springs, SD on Feb. 7, 2013 and Custer, SD on May 22, 2013. | 05/22/2013 | ML14240A432 |
| 1495 | OFFICIAL EXHIBIT - APP-024-00-BD01 - Pre-Licensing Well Construction, Lost Creek ISR Uranium Recovery Project; ML091520101. | 07/24/2009 | ML14240A433 |
| 1496 | OFFICIAL EXHIBIT - APP-018-00-BD01 - USGS Water-Supply Paper 2220, Basic Ground-Water Hydrology, 1983. | 12/31/2004 | ML14240A435 |
| 1497 | OFFICIAL EXHIBIT - APP-022-00-BD01 - Geochemical Data from Groundwater at the Proposed Dewey Burdock Uranium In-situ Recovery Mine, Edgemont, South Dakota: U.S. Geological Survey Open-File Report 2012-1070. | 12/31/2012 | ML14240A436 |
| 1498 | OFFICIAL EXHIBIT - APP-026-00-BD01 - Update on USGS research at the proposed Dewey Burdock uranium in-situ recovery mine, Edgemont, South Dakota, presentation to EPA Region 8 in Denver, CO on Feb. 22, 2012, based on USGS OFR 2012-1070. | 02/22/2012 | ML14240A437 |
| 1499 | OFFICIAL EXHIBIT - APP-027-B-00-BD01 - Report to Accompany Madison Water Right Permit Application, June 2012, Appendix A; ML12193A234. | 06/20/2014 | ML14240A438 |
| 1500 | OFFICIAL EXHIBIT - APP-028-00-BD01 - Report to the Chief Engineer on Water Permit Application No. 2685-2 [Madison Aquifer], ADAMS Accession No. ML13165A160, November 2, 2012. | 11/02/2012 | ML14240A439 |

- 1501 OFFICIAL EXHIBIT - APP-027-C-00-BD01 - Report to Accompany Madison Water Right Permit Application, June 2012, Appendix B; ML12193A235. 12/31/2012 ML14240A441

- 1502 OFFICIAL EXHIBIT - APP-029-00-BD01 - Letter Agreement between Powertech and Fall River County Commission. 01/12/2007 ML14240A442

- 1503 OFFICIAL EXHIBIT - APP-038-00-BD01 - Errol Lawrence CV. 06/20/2014 ML14240A443

- 1504 OFFICIAL EXHIBIT - APP-054-00-BD01 - Gwyn McKee CV. 06/20/2014 ML14240A444

- 1505 OFFICIAL EXHIBIT - APP-046-00-BD01 - Doyl Fritz Initial Testimony. 06/20/2014 ML14240A445

- 1506 OFFICIAL EXHIBIT - APP-047-00-BD01 - Doyl Fritz CV. 06/20/2014 ML14240A446

- 1507 OFFICIAL EXHIBIT - APP-034-00-BD01 - Safety Evaluation Report for the Nichols Ranch In Situ Recovery Project in Johnson and Campbell Counties, Wyoming, Material License No. SUA-1597; ML102240206. 07/31/2011 ML14240A447

- 1508 OFFICIAL EXHIBIT - APP-031-00-BD01 - Decision of the TCEQ Executive Director regarding Uranium Energy Corporation's Permit No. UR03075. 11/06/2008 ML14240A448

| | | | |
|------|--|------------|-------------|
| 1509 | OFFICIAL EXHIBIT - APP-053-00-BD01 - Gwyn McKee Initial Testimony. | 06/20/2014 | ML14240A450 |
| 1510 | OFFICIAL EXHIBIT - APP-033-00-BD01 - Safety Evaluation Report for the Moore Ranch ISR Project in Campbell County, Wyoming, Materials License No. SUA-1596; ML101310291. | 09/30/2010 | ML14240A451 |
| 1511 | OFFICIAL EXHIBIT - APP-037-00-BD01 - Errol Lawrence Initial Testimony. | 06/20/2014 | ML14240A452 |
| 1512 | OFFICIAL EXHIBIT - APP-032-00-BD01 - In-Situ Leach Uranium Mining in the USA: Past, Present and Future, by D.H. Underhill, IAEA TECDOC-720, Uranium In Situ Leaching, Proceedings of a Technical Committee Held in Vienna, 5-8 October 1992, September 1993. | 10/08/1992 | ML14240A454 |
| 1513 | OFFICIAL EXHIBIT - APP-043-00-BD01 - Revised Response to TR RAI 5.7.8-3(b), June 27, 2012, ML12179A534. | 06/27/2012 | ML14240A455 |
| 1514 | OFFICIAL EXHIBIT - APP-041-00-BD01 - Using Groundwater and Solid-phase Geochemistry for Reactive Transport Modeling at the Proposed Dewey Burdock Uranium In-situ Recovery Site, Edgemont, South Dakota, presentation given to EPA on April 11, 2012. | 06/20/2014 | ML14240A456 |
| 1515 | OFFICIAL EXHIBIT - APP-048-00-BD01 - Report to the Chief Engineer on Water Permit Application No. 2686-2 [Inyan Kara Aquifer], ADAMS Accession No. ML13165A168, November 2, 2012. | 11/02/2012 | ML14240A457 |
| 1516 | OFFICIAL EXHIBIT - APP-035-00-BD01 - Safety Evaluation Report for the Lost Creek Project in Sweetwater County, Wyoming, Materials License No. SUA-1598; ML112231724. | 08/31/2011 | ML14240A458 |

| | | | |
|------|--|------------|-------------|
| 1517 | OFFICIAL EXHIBIT - OST-013-00-BD01 - OST Statement of Undisputed Facts submitted with OST Motion for Summary Disposition. | 04/11/2014 | ML14240A459 |
| 1518 | OFFICIAL EXHIBIT - OST-006-00-BD01 - Boggs, Jenkins, ?Analysis of Aquifer Tests Conducted at the Proposed Burdock Uranium Mine Site, Burdock, South Dakota,? Tennessee Valley Authority, Report No. WR28-1-520-109, May 1980. | 09/30/2012 | ML14240A460 |
| 1519 | OFFICIAL EXHIBIT - OST-010-00-BD01 - OST Petition to Intervene, with Exhibits. | 04/06/2010 | ML14240A461 |
| 1520 | OFFICIAL EXHIBIT - OST-002-00-BD01 - U.S. EPA, 2007, TENORM Uranium Occupational and Public Risks Associated with In- Situ Leaching; Append. III, PG 1-11. | 06/20/2014 | ML14240A463 |
| 1521 | OFFICIAL EXHIBIT - OST-008-00-BD01 - Keene, Ground-water Resources of the Western Half of Fall River County, S.D., Dept. of Natural Resource Development Geological Survey, Univ. S.D., Report of Investigations No. 109 (1973). | 12/31/1973 | ML14240A464 |
| 1522 | OFFICIAL EXHIBIT - OST-003-00-BD01 - US EPA 2008, Technical Report on Technologically Enhanced Naturally Occurring Radioactive Materials from Uranium Mining, Vol.1: Mining and Reclamation Background: Previously published Vol. 1 of EPA 402-R-05-007. . . . | 06/07/2007 | ML14240A466 |
| 1523 | OFFICIAL EXHIBIT - OST-007-00-BD01 - Boggs, Hydrogeologic Investigations at Proposed Uranium Mine Near Dewey, South Dakota (1983). | 09/30/2012 | ML14240A468 |
| 1524 | OFFICIAL EXHIBIT - OST-005-00-BD01 - Powerpoint presentation prepared by Dr. Robert E. Moran. | 06/20/2014 | ML14240A469 |

| | | | |
|------|---|------------|-------------|
| 1525 | OFFICIAL EXHIBIT - OST-014-00-BD01 - Declaration of Michael CatchesEnemy. | 04/14/2014 | ML14241A446 |
| 1526 | OFFICIAL EXHIBIT - OST-009-00-BD01 - TVA, Draft Environmental Statement, Edgemont Uranium Mine. | 06/20/2014 | ML14241A447 |
| 1527 | OFFICIAL EXHIBIT - OST-012-00-BD01 - OST Statement of Contentions on FSEIS, with Exhibits. | 03/17/2014 | ML14241A448 |
| 1528 | OFFICIAL EXHIBIT - OST-001-00-BD01 - Opening Written Testimony of Dr. Robert E. Moran. | 06/20/2014 | ML14241A450 |
| 1529 | OFFICIAL EXHIBIT - OST-011-00-BD01 - OST Statement of Contentions on DSEIS, with Exhibits. | 01/25/2013 | ML14241A452 |
| 1530 | OFFICIAL EXHIBIT - APP-039-00-BD01 - Materials License SUA-1597 for the Nichols Ranch ISR Project, July 2011; ML111751649. | 07/19/2011 | ML14241A453 |
| 1531 | OFFICIAL EXHIBIT - APP-052-00-BD01 - Dewey-Burdock BLM Site Determinations; January 10, 2014 letter from BLM to SD SHPO; ML14014A303. | 01/10/2014 | ML14241A455 |
| 1532 | OFFICIAL EXHIBIT - NRC-005-00-BD01 - Statement of Professional Qualifications of Thomas Lancaster | 06/20/2014 | ML14241A457 |

| | | | |
|------|---|------------|-------------|
| 1533 | OFFICIAL EXHIBIT - NRC-018-G-00-BD01 - South Dakota SHPO PA Signature Page. (ADAMS Accession No. ML14098A107). | 03/24/2014 | ML14241A461 |
| 1534 | OFFICIAL EXHIBIT - NRC-028-00-BD01 - Email from Waste Win Young to NRC Staff re SRST Comments Final Draft PA Dewey-Burdock SRST THPO Comments (Feb. 20, 2014) (ADAMS Accession No. ML14105A367). | 06/21/2014 | ML14241A462 |
| 1535 | OFFICIAL EXHIBIT - NRC-038-A-00-BD01 - Invitation for Informal Information-Gathering Meeting Pertaining to the Dewey-Burdock, Crow Butte North Trend, and Crow Butte License Renewal, In-Situ Uranium Recovery Projects (May 12, 2011). | 05/12/2011 | ML14241A464 |
| 1536 | OFFICIAL EXHIBIT - NRC-030-00-BD01 - Standing Rock Sioux Tribe Comments - Final Draft PA Dewey-Burdock SRST-THPO Comments (Feb. 05, 2014) (ADAMS Accession No. ML14055A513). | 02/05/2014 | ML14241A470 |
| 1537 | OFFICIAL EXHIBIT - NRC-029-00-BD01 - Letter to Cheyenne River Sioux Tribe re: Response Received Regarding Tribal Survey for Dewey-Burdock (Dec. 14, 2012) (ADAMS Accession No. ML12335A175). | 12/14/2012 | ML14241A471 |
| 1538 | OFFICIAL EXHIBIT - NRC-035-00-BD01 - Letter to Santee Sioux Tribe of Nebraska Re: Invitation for Formal Consultation Under Section 106 of the National Historic Preservation Act (Mar. 4, 2011) (ADAMS Accession No. ML110550172). | 03/04/2011 | ML14241A472 |
| 1539 | OFFICIAL EXHIBIT - NRC-031-00-BD01 - 04/07/2014 Letter from the Advisory Council on Historic Preservation to the Standing Rock Sioux Tribe Concerning the Dewey-Burdock ISR Project, SD. ADAMS Accession No. ML14115A448. | 04/07/2014 | ML14241A473 |
| 1540 | OFFICIAL EXHIBIT - NRC-027-00-BD01 - ACHP, National Register Evaluation Criteria, Advisory Council on Historic Preservation. (Mar. 11, 2008) (2012 ADAMS Accession No. ML12262A055). | 08/28/2012 | ML14241A474 |

| | | | |
|------|---|------------|-------------|
| 1541 | OFFICIAL EXHIBIT - APP-015-K-00-BD01 - Revised TR for the Dewey-Burdock Project; Part 11 of 22; App. 2.6-H through 2.7-E; ML14035A038. | 06/30/2011 | ML14241A475 |
| 1542 | OFFICIAL EXHIBIT - APP-015-I-00-BD01 - Revised TR for the Dewey-Burdock Project; Part 9 of 22; App. 2.2-A through 2.5-F; ML14035A036. | 12/31/2013 | ML14241A476 |
| 1543 | OFFICIAL EXHIBIT - NRC-047-00-BD01 - Meeting the "Reasonable and Good Faith" Identification Standard in Section 106 Review (ACHP), available at http://www.achp.gov/docs/reasonable_good_faith_identification.pdf . | 06/20/2014 | ML14241A530 |
| 1544 | OFFICIAL EXHIBIT - NRC-048-00-BD01 - NEPA and NHPA, A Handbook for Integrating NEPA and Section 106 (CEQ and ACHP), available at http://www.achp.gov/docs/NEPA NHPA Section 106 Handbook Mar2013.pdf . | 03/31/2013 | ML14241A531 |
| 1545 | OFFICIAL EXHIBIT - NRC-040-00-BD01 - Letter to Richard Blubaugh, Powertech, Re: NRC Information Request Relating to Section 106 and NEPA Reviews for the Proposed Dewey-Burdock Project (Aug. 12, 2011) (ADAMS Accession No. ML112170237). | 08/12/2011 | ML14241A532 |
| 1546 | OFFICIAL EXHIBIT - NRC-038-F-00-BD01 - Presentation Slides for the Section 106 Consultation Meeting Pertaining to the Proposed Dewey-Burdock, Crow Butte North Trend, and Crow Butte LR In-Situ Uranium Recovery Projects (June 8, 2011). | 06/08/2011 | ML14241A533 |
| 1547 | OFFICIAL EXHIBIT - NRC-034-00-BD01 - Letter to Ponca Tribe of Nebraska Re: Invitation for Formal Consultation Under Section 106 of the National Historic Preservation Act (Mar. 4, 2011) (ADAMS Accession No. ML110550372). | 03/04/2011 | ML14241A534 |
| 1548 | OFFICIAL EXHIBIT - APP-015-C-00-BD01 - Revised TR for the Dewey-Burdock Project; Part 3 of 22; Text Sec. 2.9 through 10.2; ML14035A030. | 12/31/2013 | ML14241A539 |

| | | | |
|------|--|------------|-------------|
| 1549 | OFFICIAL EXHIBIT - APP-015-D-00-BD01 - Revised TR for the Dewey-Burdock Project; Part 4 of 22; Plates 1.5-1 through 2.6-8; ML14035A031. | 12/31/2013 | ML14241A540 |
| 1550 | OFFICIAL EXHIBIT - APP-015-F-00-BD01 - Revised TR for the Dewey-Burdock Project; Part 6 of 22; Plates 2.6-13 through 2.6-15; ML14035A033. | 12/31/2013 | ML14241A541 |
| 1551 | OFFICIAL EXHIBIT - NRC-021-00-BD01 - NRC sent initial Section 106 invitation letters to 17 tribes requesting their input on the proposed action. ADAMS Accession No. ML100331999. | 03/19/2010 | ML14241A542 |
| 1552 | OFFICIAL EXHIBIT - NRC-042-00-BD01 - NRC provided copies of the 6/8/2011 meeting transcripts to all the Tribes. Letter to James Laysbad of Oglala Sioux Tribe Enclosing the Transcript of the Information-Gathering Meeting and Unredacted Survey. . . . | 10/20/2011 | ML14245A237 |
| 1553 | OFFICIAL EXHIBIT - NRC-038-E-00-BD01 - Transcript Re: Informal Information-Gathering Meeting Pertaining to Crow Butte Inc. and Powertech Inc. Proposed ISR Facilities (June 8, 2011) (ADAMS Accession No. ML111721938) (Pages 1-195). | 06/08/2011 | ML14245A238 |
| 1554 | OFFICIAL EXHIBIT - NRC-045-00-BD01 - 2/01/2012 (February 14-15, 2012 meeting agenda). (ADAMS Accession No. ML120320436). | 02/14/2012 | ML14245A239 |
| 1555 | OFFICIAL EXHIBIT - NRC-049-00-BD01 - Letter to Crow Creek Sioux Tribe Re: Transmittal of Applicant's Draft Statement of Work (May 7, 2012) (ADAMS Accession No. ML 121250102). | 05/07/2012 | ML14245A240 |
| 1556 | OFFICIAL EXHIBIT - NRC-050-00-BD01 - Letter to Oglala Sioux Tribe Re: Transmittal of Transcript from Teleconference Conducted on April 24, 2012 (June 26, 2012) (ADAMS Accession No. ML12177A109). | 06/26/2012 | ML14245A241 |

| | | | |
|------|---|------------|-------------|
| 1557 | OFFICIAL EXHIBIT - NRC-038-D-00-BD01 - Attendee List - Informal Information Gathering Meeting Held in Pine Ridge, SD (July 8, 2011) (ADAMS Accession No. ML111870624). | 06/20/2014 | ML14245A242 |
| 1558 | OFFICIAL EXHIBIT - NRC-044-00-BD01 - 1/19/2012 NRC invitation letters to all THPOs for a planned Feb 2012 meeting to discuss how best to conduct the TCP survey. (ADAMS Accession No. ML12031A280). | 01/19/2012 | ML14245A244 |
| 1559 | OFFICIAL EXHIBIT - NRC-046-00-BD01 - 3/28/2012 - NRC transmitted transcripts of the NRC face-to-face meeting in Rapid City, SD to discuss how best to conduct the TCP survey. (ADAMS Accession Nos. ML120670319). | 03/26/2012 | ML14245A245 |
| 1560 | OFFICIAL EXHIBIT - NRC-038-C-00-BD01 - Memo to Kevin Hsueh Re: Transcript for the June 8, 2011 Informal Information - Gathering Meeting Held in Pine Ridge, SD (July 8, 2011) (ADAMS Accession No. ML111870623). | 07/08/2011 | ML14245A247 |
| 1561 | OFFICIAL EXHIBIT - APP-015-L-00-BD01 - Revised TR for the Dewey-Burdock Project; Part 12 of 22; App 2.7-F through 2.7-G; ML14035A039. | 06/30/2011 | ML14245A248 |
| 1562 | OFFICIAL EXHIBIT - APP-015-O-00-BD01 - Revised TR for the Dewey-Burdock Project; Part 15 of 22; App. 2.7-H 3 of 3; ML14035A042. | 06/30/2011 | ML14245A250 |
| 1563 | OFFICIAL EXHIBIT - NRC-060-00-BD01 - STB Finance Docket No. 33407, Dakota, Minnesota & Eastern Railroad Corporation Construction into the Powder River Basin: Request for Review and Comment on 21 Archaeological Sites, Surface Transportation | 02/08/2013 | ML14245A252 |
| 1564 | OFFICIAL EXHIBIT - NRC-055-00-BD01 - Letter to Tribal Historic Preservation Officers Re: Request for a Proposal with Cost Estimate for Dewey Burdock Project (Sep. 18, 2012) (ADAMS Accession No. ML12264A594). | 09/18/2012 | ML14245A253 |

- 1565 OFFICIAL EXHIBIT - NRC-070-00-BD01 - Letter to J. Fowler, ACHP, Re: Notification of Intention to Separate the NHPA Section 106 Process from NEPA Review for Dewey-Burdock IS Project (Nov. 13, 2013) (ADAMS Accession No. ML13311B184). 11/13/2013 ML14245A254
- 1566 OFFICIAL EXHIBIT - NRC-069-00-BD01 - Letter to Oglala Sioux Tribe Re: Notification of Intention to Separate the NHPA Section 106 Process from NEPA Review for Dewey-Burdock ISR Project (Nov. 6, 2013) (ADAMS Accession No. ML13308B524). 11/06/2013 ML14245A255
- 1567 OFFICIAL EXHIBIT - NRC-058-00-BD01 - Draft Appendix A for Dewey-Burdock Project PA (Nov. 22, 2013) (ADAMS Accession No. ML13329A468). 11/22/2013 ML14245A257
- 1568 OFFICIAL EXHIBIT - NRC-051-00-BD01 - NRC Email Re: August 9, 2012 Teleconference Invitation and Revised Statement of Work Transmittal (Aug. 07, 2012) (ADAMS Accession No. ML12261A375). 08/07/2012 ML14245A258
- 1569 OFFICIAL EXHIBIT - NRC-062-00-BD01 - NRC Overall Determinations of Eligibility and Assessments of Effects (Dec. 16, 2013) (ADAMS Accession No. ML13343A155). 06/21/2014 ML14245A260
- 1570 OFFICIAL EXHIBIT - NRC-071-00-BD01 - Letter from Department of State Re: Keystone XL Pipeline Project Traditional Cultural Property (TCP) Studies (Aug. 4, 2009). 08/04/2009 ML14245A262
- 1571 OFFICIAL EXHIBIT - NRC-063-00-BD01 - Draft NRC NRHP Determinations - Table 1.0 for Draft PA (Dec. 13, 2013) (ADAMS Accession No. ML13354B948). 06/20/2014 ML14245A263
- 1572 OFFICIAL EXHIBIT - NRC-072-00-BD01 - A Level III Cultural Resources Evaluation of Powertech USA Inc.'s Proposed Dewey-Burdock Uranium Project Locality within the Southern Black Hills, Custer and Fall Rivers, Vol. I, (Page 1.2 through Page 4.18). . . . 03/31/2008 ML14245A265

| | | | |
|------|--|------------|-------------|
| 1573 | OFFICIAL EXHIBIT - NRC-066-00-BD01 - Letter from Standing Rock Sioux Tribe Re: Tribal Survey Using Persons Without Sioux TCP Expertise to Identify Sioux TCP (Nov. 5, 2012) (ADAMS Accession No. ML13036A110). | 11/05/2012 | ML14245A266 |
| 1574 | OFFICIAL EXHIBIT - NRC-068-00-BD01 - Email Re: Transmittal of a Follow-up Email Pertaining to an Upcoming Field Survey for the Dewey-Burdock Project (Feb. 08, 2013) (ADAMS Accession No. ML13039A336). | 02/08/2013 | ML14245A267 |
| 1575 | OFFICIAL EXHIBIT - NRC-064-00-BD01 - Letter from John Yellow Bird Steele, President of the Oglala Sioux Tribe Re: Refusal to Accept Dewey-Burdock In Situ Project Proposal (Nov. 5, 2012) (ADAMS Accession No. ML13026A005). | 11/05/2012 | ML14245A268 |
| 1576 | OFFICIAL EXHIBIT - NRC-067-00-BD01 - Email from Standing Rock Sioux Tribe Providing Comments on Final Draft PA Dewey-Burdock SRST-THPO (Feb. 20, 2014) (ADAMS Accession No. ML14059A199). | 02/20/2014 | ML14245A269 |
| 1577 | OFFICIAL EXHIBIT - NRC-056-00-BD01 - H. Yilma Email Re: Draft PA for Dewey-Burdock Project (Nov. 22, 2013) (ADAMS Accession No. ML13329A420). | 11/22/2013 | ML14245A270 |
| 1578 | OFFICIAL EXHIBIT - NRC-057-00-BD01 - Dewey-Burdock Project Draft Programmatic Agreement (Nov. 22, 2013) (ADAMS Accession No. ML ML13329A466). | 11/22/2013 | ML14245A271 |
| 1579 | OFFICIAL EXHIBIT - NRC-052-00-BD01 - NRC Request Re: Scope of Work with Coverage Rate, Start Date, Duration, and Cost (Aug 30, 2012) (ADAMS Accession No. ML12261A470). | 08/30/2012 | ML14245A272 |
| 1580 | OFFICIAL EXHIBIT - NRC-073-00-BD01 - A Level III Cultural Resources Evaluation of Powertech USA Inc.'s Proposed Dewey-Burdock Uranium Project Locality within the Southern Black Hills, Custer and Fall River Counties (Pages 5.53 through 5.106). . . . | 03/31/2008 | ML14245A273 |

| | | | |
|------|---|------------|-------------|
| 1581 | OFFICIAL EXHIBIT - NRC-061-00-BD01 - Letter to Oglala Sioux Tribe Re: Transmittal of TCP Survey Report for Dewey-Burdock Project (Dec. 23, 2013) (ADAMS Accession No. ML13357A234). | 12/23/2013 | ML14245A274 |
| 1582 | OFFICIAL EXHIBIT - NRC-059-00-BD01 - Table 1.0 - NRC NRHP Determinations for Dewey-Burdock Draft PA (Nov. 22, 2013) (ADAMS Accession No. ML13329A470). | 11/22/2013 | ML14245A275 |
| 1583 | OFFICIAL EXHIBIT - NRC-065-00-BD01 - Letter from Sisseton Wahpeton Oyaya Tribe Re: Refusal to Accept Dewey-Burdock In Situ Recovery Project Proposal (Nov. 6, 2012) (ADAMS Accession No. ML13036A104). | 11/06/2012 | ML14245A278 |
| 1584 | OFFICIAL EXHIBIT - NRC-053-00-BD01 - Letter to Tribal Historic Preservation Officer Re: Transmittal of Tribes' Proposal and Cost Estimate of the Dewey-Burdock ISR Project (Oct. 12, 2012) (ADAMS Accession No. ML12286A310). | 10/12/2012 | ML14245A279 |
| 1585 | OFFICIAL EXHIBIT - APP-015-S-00-BD01 - Revised TR for the Dewey-Burdock Project; Part 19 of 22; App 2.7-N through 2.8-H; ML14035A046. | 06/21/2014 | ML14245A282 |
| 1586 | OFFICIAL EXHIBIT - NRC-038-B-00-BD01 - Informal Information Gathering Meeting - Pine Ridge, SD Invitation to Section 106 Consultation Regarding Dewey-Burdock Project (ADAMS Accession No. ML111870622) (Package). | 07/08/2011 | ML14245A283 |
| 1587 | OFFICIAL EXHIBIT - NRC-078-00-BD01 - 09/13/2012 NRC Staff RAI: Summary of August 30, 2012 Public Meeting with Powertech Inc, to Discuss Powertech's Proposed Environmental Monitoring Program related to the proposed Dewey-Burdock Project. | 09/13/2012 | ML14245A285 |
| 1588 | OFFICIAL EXHIBIT - NRC-089-00-BD01 - NUREG-1910, Final Report, Supplement 3, EIS for the Lost Creek ISR Project in Sweetwater County, Wyoming. Supplement to the Generic Environmental Impact Statement for In-Situ Leach Uranium Milling Facilities. . . . | 06/30/2011 | ML14245A286 |

- 1589 OFFICIAL EXHIBIT - NRC-081-00-BD01 - Gott, G.B., D.E. 12/31/1974 ML14245A287
 Wolcott, and C.G. Bowles. Stratigraphy of the Inyan Kara Group and Localization of Uranium Deposits, Southern Black Hills, South Dakota and Wyoming. U.S. Geological Survey Water Resources

- 1590 OFFICIAL EXHIBIT - NRC-076-00-BD01 - NUREG/CR- 02/28/2001 ML14245A288
 6705, Historical Case Analysis of Uranium Plume Attenuation.. (Feb. 28, 2001) (ADAMS Accession No. ML010460162).

- 1591 OFFICIAL EXHIBIT - NRC-082-00-BD01 - Driscoll, D.G., 06/20/2014 ML14245A289
 J.M. Carter, J.E. Williamson, and L.D. Putnam. Hydrology of the Black Hills Area, South Dakota. U.S. Geological Survey Water Resources Investigation Report 02-4094. 2002.

- 1592 OFFICIAL EXHIBIT - NRC-077-00-BD01 - 05/28/2010 05/28/2010 ML14245A290
 NRC Staff Request for Additional Information for Proposed Dewey-Burdock In Situ Recovery Facility (ADAMS Accession No. ML101460286).

- 1593 OFFICIAL EXHIBIT - NRC-080-00-BD01 - NRC Staff RAI: 12/09/2013 ML14245A291
 NRC Staff review of revised statistical analysis of the Radium 226 (soil) and gamma radiation correlation for screening surveys at the proposed Dewey-Burdock Project requesting additional. . . .

- 1594 OFFICIAL EXHIBIT - NRC-074-00-BD01 - NRC (1980). 04/25/1980 ML14245A293
 Regulatory Guide 4.14, Radiological Effluent and Environmental Monitoring at Uranium Mills. ADAMS Accession No. ML003739941.

- 1595 OFFICIAL EXHIBIT - NRC-075-00-BD01 - NRC, 2009. 06/20/2014 ML14245A294
 Staff Assessment of Ground Water Impacts from Previously Licensed In-Situ Uranium Recovery Facilities, Memorandum from C. Miller to Chairman Jaczko , et al. Washington DC: USNRC, July 10, 2009d .

- 1596 OFFICIAL EXHIBIT - APP-016-B-00-BD01 - Revised TR 06/30/2011 ML14245A295
 RAI Response; Text Part 1: ML11208B712.

| | | | |
|------|---|------------|-------------|
| 1597 | OFFICIAL EXHIBIT - APP-016-AA-00-BD01 - Revised TR RAI response; Appendices Part 19; App. 3.1-A 2 of 2; ML11208B924. | 06/21/2014 | ML14245A296 |
| 1598 | OFFICIAL EXHIBIT - APP-015-V-00-BD01 - Revised TR for the Dewey-Burdock Project; Part 22 of 22; App. 3.1-B through 7.3-D; ML14035A049. | 06/21/2014 | ML14245A297 |
| 1599 | OFFICIAL EXHIBIT - APP-016-A-00-BD01 - Revised Response to the Request for Additional Information (RAI) for the Technical Report (TR) for the Dewey-Burdock Project; Cover Letter; ML11207A711. | 06/21/2014 | ML14245A299 |
| 1600 | OFFICIAL EXHIBIT - APP-016-C-00-BD01 - Revised TR RAI response; Text Part 2; ML11208B719. | 06/21/2014 | ML14245A300 |
| 1601 | OFFICIAL EXHIBIT - APP-016-D-00-BD01 - Revised TR RAI response; Text Part 3; ML11208B714. | 06/21/2014 | ML14245A301 |
| 1602 | OFFICIAL EXHIBIT - APP-016-BB-00-BD01 - Revised TR RAI response; Appendices Part 20; App. 6.1-A through 7.3-C; ML11208B925. | 06/21/2014 | ML14245A302 |
| 1603 | OFFICIAL EXHIBIT - APP-016-J-00-BD01 - Revised TR RAI response; Appendices Part 2; App. 2.6-H 1 of 3; ML11208B766. | 06/21/2014 | ML14245A303 |
| 1604 | OFFICIAL EXHIBIT - APP-016-V-00-BD01 - Revised TR RAI response; Appendices Part 14; App. 2.7-L 4 of 4; ML11208B865. | 06/21/2014 | ML14245A304 |

- 1605 OFFICIAL EXHIBIT - APP-016-R-00-BD01 - Revised TR RAI response; Appendices Part 10; App. 2.7-K; ML11208B832. 06/21/2014 ML14245A305

- 1606 OFFICIAL EXHIBIT - APP-016-W-00-BD01 - Revised TR RAI response; Appendices Part 15; App. Vol. 4 Cover; ML11208B870. 06/21/2014 ML14245A307

- 1607 OFFICIAL EXHIBIT - APP-016-F-00-BD01 - Revised TR RAI response; Exhibits Part 2; Exh. 2.6-5; ML11208B763. 06/21/2011 ML14245A308

- 1608 OFFICIAL EXHIBIT - APP-016-L-00-BD01 - Revised TR RAI response; Appendices Part 4; App. 2.6-H 3 of 3; ML11208B770. 06/21/2014 ML14245A309

- 1609 OFFICIAL EXHIBIT - APP-016-K-00-BD01 - Revised TR RAI response; Appendices Part 3; App. 2.6-H 2 of 3; ML11208B769. 06/30/2011 ML14245A310

- 1610 OFFICIAL EXHIBIT - APP-016-E-00-BD01 - Revised TR RAI Response; Exhibits Part 1; Exh. 2.6-1 through 2.6-4; ML11208B716. 06/30/2011 ML14245A311

- 1611 OFFICIAL EXHIBIT - APP-016-H-00-BD01 - Revised TR RAI Responses; Exhibits Part 4; Exh. 3.1-2 through 5.7-1; ML11208B767. 06/22/2011 ML14245A312

- 1612 OFFICIAL EXHIBIT - APP-016-Q-00-BD01 - Revised TR RAI Response; Appendices Part 9; App 2.7-H 4 of 4; ML11208B827. 04/14/2009 ML14245A313

| | | | |
|------|--|------------|-------------|
| 1613 | OFFICIAL EXHIBIT - APP-016-O-00-BD01 - Revised TR RAI response; Appendices Part 7; App. 2.7-H 2 of 4; ML11208B778. | 06/21/2014 | ML14245A314 |
| 1614 | OFFICIAL EXHIBIT - APP-016-N-00-BD01 - Revised TR RAI response; Appendices Part 6; App. 2.7-H 1 of 4; ML11208B777. | 06/21/2014 | ML14245A315 |
| 1615 | OFFICIAL EXHIBIT - APP-016-Y-00-BD01 - Revised TR RAI response; Appendices Part 17; App.2.9-B through 2.9-K; ML112150229. | 06/21/2014 | ML14245A316 |
| 1616 | OFFICIAL EXHIBIT - NRC-095-00-BD01 - Letter to P. Strobel Re: EPA's Response Comment to FSEIS (Mar. 25, 2014) (ADAMS Accession No. ML14078A044). | 06/21/2014 | ML14245A318 |
| 1617 | OFFICIAL EXHIBIT - NRC-094-00-BD01 - NRC Regulatory Guide 3.11, Rev. 3, Design, Construction, and Inspection of Embankment Retention Systems at Uranium Recovery Facilities, November 2008, (ADAMS Accession No. ML082380144). | 11/30/2008 | ML14245A319 |
| 1618 | OFFICIAL EXHIBIT - NRC-091-00-BD01 - NRC. "Staff Assessment of Groundwater Impacts from Previously Licensed In-Situ Uranium Recovery Facilities." Memorandum to Chairman Jaczko, Commissioner Klein, and Commissioner Svinicki, NRC from C. Miller | 07/10/2009 | ML14245A320 |
| 1619 | OFFICIAL EXHIBIT - NRC-090-00-BD01 - SDDENR. "Report to the Chief Engineer on Water Permit Application No. 2686-2, Powertech (USA) Inc., November 2, 2012." November 2012a. ADAMS Accession No. ML13165A168. | 11/02/2012 | ML14245A321 |
| 1620 | OFFICIAL EXHIBIT - NRC-096-00-BD01 - Comment (14) of Robert F. Stewart on Behalf of the Dept. of the Interior, Office of Environmental Policy and Compliance on Draft Supplemental Environmental Impact Statement (DSEIS), Dewey-Burdock Project | 01/04/2013 | ML14245A322 |

| | | | |
|------|--|------------|-------------|
| 1621 | OFFICIAL EXHIBIT - APP-016-T-00-BD01 - Revised TR RAI Response; Appendices Part 12; App. 2.7-L 2 of 4; ML11208B868. | 06/30/2011 | ML14245A323 |
| 1622 | OFFICIAL EXHIBIT - APP-016-P-00-BD01 - Revised TR RAI Response; Appendices Part 8; App. 2.7-H 3 of 4; ML11208B784. | 10/03/2008 | ML14245A325 |
| 1623 | OFFICIAL EXHIBIT - APP-021-B-00-BD01 - Dewey-Burdock Project TR; re-submitted August 2009; Part 2; Text Sec. 2.7.2 thru 2.9; ML092870295. | 06/21/2014 | ML14245A326 |
| 1624 | OFFICIAL EXHIBIT - APP-021-BB-00-BD01 - Dewey-Burdock Project TR; re-submitted August 2009; Part 28; App. 2.6-C thru 2.7-B(partial); ML092870351 | 06/21/2014 | ML14245A328 |
| 1625 | OFFICIAL EXHIBIT - APP-021-EE-00-BD01 - Dewey-Burdock TR; Re-submitted August 2009; Part 31; App. 2-8.F (Partial); ML092870357. | 06/21/2014 | ML14245A329 |
| 1626 | OFFICIAL EXHIBIT - APP-021-I-00-BD01 - Dewey-Burdock Project TR; Re-submittal August 2009; Part 9; Plate 2.6-3; ML092870318. | 06/30/2009 | ML14245A330 |
| 1627 | OFFICIAL EXHIBIT - APP-021-D-00-BD01 - Dewey-Burdock Project TR; Re-submitted August 2009; Part 4; Plate 1.5-1; ML092870313. | 06/21/2014 | ML14245A331 |
| 1628 | OFFICIAL EXHIBIT - APP-021-J-00-BD01 - Dewey-Burdock Project TR; Re-submittal August 2009; Part 10; Plate 2.6-4; ML092870305. | 08/31/2009 | ML14245A332 |

| | | | |
|------|--|------------|-------------|
| 1629 | OFFICIAL EXHIBIT - APP-021-E-00-BD01 - Dewey-Burdock Project TR; Re-submitted August 2009; Part 5; Plate 1.5-2; ML092870314. | 06/21/2014 | ML14245A333 |
| 1630 | OFFICIAL EXHIBIT - APP-021-C-00-BD01 - Dewey Burdock Project TR; Re-submittal August 2009, Part 3; Text Sec 3 thru End; ML092870299. | 06/21/2014 | ML14245A334 |
| 1631 | OFFICIAL EXHIBIT - APP-021-CC-00-BD01 - Dewey-Burdock Project TR; Re-submittal August 2009; Part 29, App. 2.7-B (Partial) thru 2.7-F; ML092870370. | 06/21/2014 | ML14245A335 |
| 1632 | OFFICIAL EXHIBIT - APP-021-H-00-BD01 - Dewey-Burdock Project TR; Re-submitted August 2009; Part 8; Plate 2.6-2; ML092870317. | 06/21/2014 | ML14245A336 |
| 1633 | OFFICIAL EXHIBIT - APP-021-K-00-BD01 - Dewey-Burdock Project TR; re-submitted August 2009; Part 11; Plate 2.6-5; ML092870306. | 06/21/2014 | ML14245A337 |
| 1634 | OFFICIAL EXHIBIT - APP-021-O-00-BD01 - Dewey-Burdock Project TR; Re-submitted August 2009; Part 15; Plate 2.6-9; ML092870311. | 07/31/2008 | ML14245A338 |
| 1635 | OFFICIAL EXHIBIT - APP-021-L-00-BD01 - Dewey-Burdock Project TR; re-submitted August 2009; Part 12; Plate 2.6-6; ML092870307. | 07/31/2008 | ML14245A339 |
| 1636 | OFFICIAL EXHIBIT - APP-021-N-00-BD01 - Dewey-Burdock Project TR; re-submitted August 2009; Part 14; Plate 2.6-8; ML092870310. | 06/21/2014 | ML14245A341 |

- 1637 OFFICIAL EXHIBIT - APP-021-F-00-BD01 - Dewey-Burdock Project TR; Re-submittal August 2009; Part 6; Plate 2.5-1; ML092870315. 08/31/2009 ML14245A343

- 1638 OFFICIAL EXHIBIT - APP-021-M-00-BD01 - Dewey-Burdock Project TR; Re-submitted August 2009; Part 13; Plate 2.6-7; ML092870309. 06/21/2014 ML14245A344

- 1639 OFFICIAL EXHIBIT - APP-021-G-00-BD01 - Dewey-Burdock Project TR; re-submitted August 2009; Part 7; Plate 2.6-1; ML092870316. 05/19/1982 ML14245A345

- 1640 OFFICIAL EXHIBIT - NRC-136-A-00-BD01 - Palmer, L. and J.M. Kruse. "Evaluative Testing of 20 Sites in the Powertech USA Inc. Dewey-Burdock Uranium Project Impact Areas." Black Hills Archaeological Region. Vols. I and II. Archaeological Contract 06/21/2014 ML14245A346

- 1641 OFFICIAL EXHIBIT - NRC-134-00-BD01 - Safety Evaluation Report for the Dewey-Burdock Project Fall River and Custer Counties, South Dakota. Materials License No. SUA-1600 (April 2014) ADAMS Accession No. ML14043A347. 04/30/2014 ML14245A347

- 1642 OFFICIAL EXHIBIT - NRC-132-00-BD01 - Improving the Process for Preparing Efficient and Timely Environmental Reviews under NEPA. 03/06/2012 ML14245A348

- 1643 OFFICIAL EXHIBIT - NRC-137-00-BD01 - Dept. of Environment and Natural Resources, Recommendation, Powertech USA Inc, Large Scale Mine Permit Application at 6 (April 15, 2013), available at <http://denr.sd.gov/des/mm/documents/Powertech1/DENRRec4-15-13.pdf>. 04/15/2013 ML14245A350

- 1644 OFFICIAL EXHIBIT - NRC-135-00-BD01 - Safety Evaluation Report for the Dewey-Burdock Project Fall River and Custer Counties, South Dakota, Materials License No. SUA-1600, Docket No. 40-9075 (March 2013), ADAMS Accession No. ML13052A182. 04/30/2014 ML14245A352

| | | | |
|------|--|------------|-------------|
| 1645 | OFFICIAL EXHIBIT - APP-016-U-00-BD01 - Revised TR RAI response; Appendices Part 13; App. 2.7-L 3 of 4; ML11208B864. | 06/30/2011 | ML14245A353 |
| 1646 | OFFICIAL EXHIBIT - APP-021-P-00-BD01 - Dewey-Burdock Project TR; Re-submitted August 2009; Part 16; Plate 2.6-10; ML092870312. | 08/31/2009 | ML14245A354 |
| 1647 | OFFICIAL EXHIBIT - APP-021-Q-00-BD01 - Dewey-Burdock Project TR; re-submitted August 2009; Part 17; Plate 2.6-11; ML092870320. | 06/21/2014 | ML14245A355 |
| 1648 | OFFICIAL EXHIBIT - APP-021-Y-00-BD01 - Dewey-Burdock Project TR; re-submitted August 2009; Part 25; Plate 3.1-1; ML092870328. | 06/21/2014 | ML14245A356 |
| 1649 | OFFICIAL EXHIBIT - NRC-083-00-BD01 - Braddock, W.A. Geology of the Jewel Cave SW Quadrangle Custer County, South Dakota. U.S. Geological Survey Bulletin 1063-G. (08 April 2013) | 06/20/2014 | ML14245A367 |
| 1650 | OFFICIAL EXHIBIT - NRC-136-B-00-BD01 - Palmer, L. and J.M. Kruse Evaluative Testing of 20 Sites in the Powertech (USA) Inc. Dewey-Burdock Uranium Project Impact Areas Black Hills Archaeological Region Volumes I and II | 04/13/2012 | ML14245A368 |
| 1651 | OFFICIAL EXHIBIT - NRC-136-C-00-BD01 - Palmer, L. and J.M. Kruse. "Evaluative Testing of 20 Sites in the Powertech (USA) Inc. Dewey-Burdock Uranium Project Impact Areas." Black Hills Archaeological Region. Volumes I and II. Archaeological | 04/13/2012 | ML14245A369 |
| 1652 | Powertech (USA), Inc. Motion for Reconsideration of the Licensing Board's August 20, 2014 Ruling on Relevancy for Mandatory Disclosures. | 09/02/2014 | ML14245A650 |

- 1653 OFFICIAL EXHIBIT - OST-004-00-BD01 - U.S. EPA, 2011 06/30/2011 ML14246A216
 (June), CONSIDERATIONS RELATED TO POST-CLOSURE MONITORING OF URANIUM IN-SITU LEACH/IN-SITU RECOVERY SITES, Draft Technical Report [Includes Attachment A: Development of the Groundwater
- 1654 OFFICIAL EXHIBIT - APP-021-W-00-BD01 - Dewey-Burdock Project TR; re-submitted August 2009; Part 23; Plate 2.8-2; ML092870326. 06/21/2014 ML14246A258
- 1655 OFFICIAL EXHIBIT - APP-021-T-00-BD01 - Dewey-Burdock Project TR; Re-submitted August 2009; Part 20; Plate 2.6-14; ML092870323. 08/31/2009 ML14246A259
- 1656 OFFICIAL EXHIBIT - APP-021-S-00-BD01 - Dewey-Burdock Project TR; re-submitted August 2009; Part 19; Plate 2.6-13; ML092870322. 06/21/2014 ML14246A260
- 1657 OFFICIAL EXHIBIT - APP-040-F-00-BD01 - ER Plate 3.3-1; ML092870381. 07/31/2008 ML14246A261
- 1658 OFFICIAL EXHIBIT - APP-040-J-00-BD01 - ER Plate 3.3-6; ML092870387. 07/31/2008 ML14246A262
- 1659 OFFICIAL EXHIBIT - APP-040-A-00-BD01 - Dewey-Burdock Project Environment Report (ER); Re-submittal August 2009; Part 1; Cover thru Sec. 3.4.2.1.1; ML09270345. 02/28/2009 ML14246A263
- 1660 OFFICIAL EXHIBIT - APP-040-I-00-BD01 - ER Plate 3.3-5; ML092870386. 11/11/2008 ML14246A264

| | | | |
|------|---|------------|-------------|
| 1661 | OFFICIAL EXHIBIT - APP-021-Z-00-BD01 - Dewey-Burdock Project TR; re-submitted August 2009; Part 26; Plate 3.1-2; ML092870329. | 06/11/2008 | ML14246A265 |
| 1662 | OFFICIAL EXHIBIT - APP-040-D-00-BD01 - ER Plate 3.1-1; ML092870380. | 06/21/2014 | ML14246A266 |
| 1663 | OFFICIAL EXHIBIT - APP-021-R-00-BD01 - Dewey-Burdock Project TR; re-submitted August 2009; Part 18; Plate 2.6-12; ML092870321. | 06/21/2014 | ML14246A267 |
| 1664 | OFFICIAL EXHIBIT - APP-021-V-00-BD01 - Dewey-Burdock Project TR; re-submitted August 2009; Part 22; Plate 2.8-1; ML092870325. | 06/21/2014 | ML14246A268 |
| 1665 | OFFICIAL EXHIBIT - APP-040-E-00-BD01 - ER Plate 3.3-1; ML0921870381. | 06/21/2014 | ML14246A269 |
| 1666 | OFFICIAL EXHIBIT - APP-021-X-00-BD01 - Dewey-Burdock Project TR; re-submitted August 2009; Part 24; Plate 2.8-3; ML092870327. | 06/21/2014 | ML14246A270 |
| 1667 | OFFICIAL EXHIBIT - APP-030-00-BD01 - NUREG/CR-6733, A Baseline Risk-Informed, Performance-Based Approach for In Situ Leach Uranium Extraction Licensees - Final Report, July 2001; ML012840152. | 09/30/2001 | ML14246A271 |
| 1668 | OFFICIAL EXHIBIT - APP-021-U-00-BD01 - Dewey-Burdock Project TR; re-submitted August 2009; Part 21; Plate 2.6-15; ML092870324. | 06/21/2014 | ML14246A272 |

- 1669 OFFICIAL EXHIBIT - APP-040-L-00-BD01 - ER Plate 3.3-8; ML092870389. 07/31/2008 ML14246A273

- 1670 OFFICIAL EXHIBIT - APP-040-Q-00-BD01 - ER Plate 3.3-13; ML092870589. 06/21/2014 ML14246A275

- 1671 OFFICIAL EXHIBIT - APP-040-N-00-BD01 - ER Plate 3.3-10; ML092870592. 12/03/2008 ML14246A276

- 1672 OFFICIAL EXHIBIT - APP-040-U-00-BD01 - ER Plate 3.5-2; ML092870397. 11/04/2008 ML14246A277

- 1673 OFFICIAL EXHIBIT - APP-040-C-00-BD01 - Dewey-Burdock Project Environmental Report (ER); re-submitted August 2009; Part 1; Sec. 4 thru end; ML092870360. 06/21/2014 ML14246A278

- 1674 OFFICIAL EXHIBIT - APP-040-V-00-BD01 - ER Plate 6.1-1; ML092870593. 01/15/2009 ML14246A279

- 1675 OFFICIAL EXHIBIT - APP-040-S-00-BD01 - ER Plate 3.3-15; ML092870394. 11/11/2008 ML14246A280

- 1676 OFFICIAL EXHIBIT - APP-040-K-00-BD01 - ER Plate 3.3-7; ML092870388. 07/31/2008 ML14246A282

| | | | |
|------|---|------------|-------------|
| 1677 | OFFICIAL EXHIBIT - APP-040-W-00-BD01 - ER Replacement Plates; ML093370652. | 06/21/2014 | ML14246A283 |
| 1678 | OFFICIAL EXHIBIT - APP-040-T-00-BD01 - ER Plate 3.5-1; ML092870395. | 11/11/2008 | ML14246A284 |
| 1679 | OFFICIAL EXHIBIT - APP-040-H-00-BD01 - ER Plate 3.3-4; ML092870591. | 11/14/2008 | ML14246A285 |
| 1680 | OFFICIAL EXHIBIT - APP-040-R-00-BD01 - ER Plate 3.3-14; ML092870590. | 06/21/2014 | ML14246A286 |
| 1681 | OFFICIAL EXHIBIT - APP-040-M-00-BD01 - ER Plate 3.3-9; ML092870390. | 07/31/2008 | ML14246A287 |
| 1682 | OFFICIAL EXHIBIT - APP-040-O-00-BD01 - ER Plate 3.3-11; ML092870586. | 06/21/2014 | ML14246A288 |
| 1683 | OFFICIAL EXHIBIT - APP-040-P-00-BD01 - ER Plate 3.3-12; ML092870588. | 06/21/2014 | ML14246A290 |
| 1684 | OFFICIAL EXHIBIT - APP-040-Z-00-BD01 - ER App. 3.4-B thru 3.4-E; ML092870414. | 06/21/2014 | ML14246A291 |

| | | | |
|------|--|------------|-------------|
| 1685 | OFFICIAL EXHIBIT - APP-040-Y-00-BD01 - ER App. 3.3-F thru 3.4-A; ML092870421. | 06/21/2014 | ML14246A292 |
| 1686 | OFFICIAL EXHIBIT - APP-040-X-00-BD01 - ER App. 3.3-A thru 3.3-E; ML092870411. | 06/21/2014 | ML14246A294 |
| 1687 | OFFICIAL EXHIBIT - APP-042-A-00-BD01 - Dewey-Burdock Project Revised Class III Underground Injection Control Permit Application, Revised July 2012, Cover Letter; ML12244A519. | 08/01/2012 | ML14246A295 |
| 1688 | OFFICIAL EXHIBIT - NRC-139-00-BD01 - U.S. Geological Survey, 2006, Quaternary fault and fold database for the United States, accessed June 20, 2014, from USGS web site: http://earthquakes.usgs.gov/regional/qfaults/ . | 06/20/2014 | ML14246A296 |
| 1689 | OFFICIAL EXHIBIT - NRC-144-00-BD01 - SRI (SRI Foundation). "Overview of Places of Traditional and Cultural Significance, Cameco/Powertech Project Areas." Rio Rancho, New Mexico: SRI Foundation. (June 8, 2012) (ADAMS Accession No. ML12262A113). | 06/08/2014 | ML14246A298 |
| 1690 | OFFICIAL EXHIBIT - NRC-147-00-BD01 - Powertech Dewey-Burdock LA - RE: field survey for Dewey-Burdock. (Mar. 13, 2013) (ADAMS Accession No. ML13078A384). | 03/13/2014 | ML14246A299 |
| 1691 | OFFICIAL EXHIBIT - NRC-085-00-BD01 - Darton, N.H. Geology and Water Resources of the Northern Portion of the Black Hills and Adjoining Regions of South Dakota and Wyoming. U.S. Geological Survey Professional Paper 65. 1909 | 06/21/2014 | ML14246A300 |
| 1692 | OFFICIAL EXHIBIT - NRC-150-00-BD01 - Powertech Dewey-Burdock LA - Reminder: Teleconference to discuss the development of the PA for the Dewey Burdock project is scheduled for Friday. (Nov. 15, 2013. (ADAMS Accession No. ML13322B658). | 11/14/2013 | ML14246A301 |

| | | | |
|------|---|------------|-------------|
| 1693 | OFFICIAL EXHIBIT - NRC-143-00-BD01 - Letter to Oglala Sioux Tribe re: Invitation for Government-to-Government Meeting Concerning Licensing Actions for Proposed Uranium Recovery Projects. (Mar. 12, 2013) (ADAMS Accession No. ML13071A653). | 03/12/2013 | ML14246A302 |
| 1694 | OFFICIAL EXHIBIT - NRC-149-00-BD01 - Powertech Dewey-Burdock LA - Request for Availability to discuss development of a PA for the Dewey Burdock Project. (Aug. 30, 2013) (ADAMS Accession No. ML13267A221). | 08/30/2013 | ML14246A303 |
| 1695 | OFFICIAL EXHIBIT - NRC-138-00-BD01 - Jack R. Keene. Ground-Water Resources of the Western Half of Fall River County, South Dakota. South Dakota Dept. of Natural Resource Development, Geological Survey, Report of Investigations, No. 109, 90 pg. . . . | 12/31/1973 | ML14246A304 |
| 1696 | OFFICIAL EXHIBIT - NRC-142-00-BD01 - Submittal of Comments on Draft Programmatic Agreement for the Proposed Dewey-Burdock ISR Uranium Mining Project. (Mar. 17, 2014) (ADAMS Accession No. ML14077A002. Pages 5-1 | 02/05/2014 | ML14246A306 |
| 1697 | OFFICIAL EXHIBIT - NRC-093-00-BD01 - EPA comments on FSEIS; (ADAMS Accession No. ML14070A230). | 03/10/2014 | ML14246A307 |
| 1698 | OFFICIAL EXHIBIT - NRC-146-00-BD01 - Powertech Dewey-Burdock LA - RE: field survey in the spring of 2013. (Mar. 13, 2013) (ADAMS Accession No. ML13078A388). | 06/21/2014 | ML14246A308 |
| 1699 | OFFICIAL EXHIBIT - NRC-088-00-BD01 - NUREG-1910, Final Report, Supplement 1, EIS for the Moore Ranch ISR Project in Campbell County, Wyoming, Supplement to the Generic Environmental Impact Statement for In-Situ Leach Uranium Milling Facilities | 01/31/2011 | ML14246A309 |
| 1700 | OFFICIAL EXHIBIT - NRC-087-00-BD01 - NUREG-1910, Final Report, Supplement 1, EIS for the Moore Ranch ISR Project in Campbell County, Wyoming, Supplement to the Generic Environmental Impact Statement for In-Situ Leach Uranium Milling Facilities. . . . | 08/31/2010 | ML14246A310 |

| | | | |
|------|--|------------|-------------|
| 1701 | OFFICIAL EXHIBIT - APP-042-C-00-BD01 - Dewey-Burdock Project Revised Class III Underground Injection Control Permit Application, Revised July 2012, Text Sec. 5 thru 8; ML12244A520. | 07/12/2012 | ML14246A311 |
| 1702 | OFFICIAL EXHIBIT - APP-050-00-BD01 - ER RAI Responses, transmittal letter and text; ML102380516. | 08/12/2010 | ML14246A312 |
| 1703 | OFFICIAL EXHIBIT - APP-040-DD-00-BD01 - ER App. 4.6-A; ML092870409. | 06/21/2014 | ML14246A313 |
| 1704 | OFFICIAL EXHIBIT - APP-040-BB-00-BD01 - ER App. 3.5-F thru 3.5-I; ML092870422. | 06/21/2014 | ML14246A314 |
| 1705 | OFFICIAL EXHIBIT - APP-042-D-00-BD01 - Dewey-Burdock Project Revised Class III Underground Injection Control Permit Application, Revised July 2012, Text Sec. 9 thru end; ML12244A521. | 07/31/2012 | ML14246A315 |
| 1706 | OFFICIAL EXHIBIT - APP-045-00-BD01 - Responses to Technical Review Comments for Dewey-Burdock Large Scale Mine Permit Application; ML13144A182. | 04/01/2013 | ML14246A316 |
| 1707 | OFFICIAL EXHIBIT - APP-051-00-BD01 - Groundwater Discharge Plan (GDP) permit application, as updated with replacement pages through November 2012. | 03/31/2012 | ML14246A317 |
| 1708 | OFFICIAL EXHIBIT - APP-015-R-00-BD01 - Revised TR for the Dewey-Burdock Project; Part 18 of 22; App. 2.7-M; ML14035A045. | 06/30/2011 | ML14246A318 |

| | | | |
|------|---|------------|-------------|
| 1709 | OFFICIAL EXHIBIT - NRC-025-A-00-BD01 - HDR, Engineering Inc., "Assessment of the Visual Effects of the Powder River Basin Project, New Build Segment, on Previously Identified Historic Properties in South Dakota and Wyoming". . . . | 10/20/2009 | ML14246A319 |
| 1710 | OFFICIAL EXHIBIT - NRC-013-00-BD01 - NUREG-1569, Standard Review Plan for In-Situ Leach Uranium Extraction License Applications (June 4, 2003) (ADAMS Accession No. ML031550272). | 06/30/2003 | ML14246A320 |
| 1711 | OFFICIAL EXHIBIT - NRC-025-B-00-BD01 - HDR, Engineering Inc. "Assessment of the Visual Effects of the Powder River Basin Project, New Build Segment, on Previously Identified Historic Properties in South Dakota and Wyoming.". . . . | 10/31/2009 | ML14246A321 |
| 1712 | OFFICIAL EXHIBIT - APP-021-FF-00-BD01 - Dewey-Burdock Project TR; re-submitted August 2009; Part 32; App. 2.8-G thru 2.9-A; ML092870358. | 06/21/2014 | ML14246A322 |
| 1713 | OFFICIAL EXHIBIT - APP-021-GG-00-BD01 - Dewey-Burdock Project TR; re-submitted August 2009; Part 33; App. 4.2-A thru 7.3-A (partial); ML092870343. | 06/21/2014 | ML14246A323 |
| 1714 | OFFICIAL EXHIBIT - APP-016-Z-00-BD01 - Revised TR RAI response; Appendices Part 18; App. 3.1-A 1 of 2; ML11208B922. | 07/31/2010 | ML14246A324 |
| 1715 | OFFICIAL EXHIBIT - NRC-008-A-2-00-BD01 - NUREG-1910, Supplement 4, Vol. 1, Final Report, Environmental Impact Statement for the Dewey-Burdock Project in Custer and Fall River Counties, South Dakota: Supplement to the Generic Environmental. . . . | 06/21/2014 | ML14246A326 |
| 1716 | OFFICIAL EXHIBIT - NRC-008-B-1-00-BD01 - NUREG-1910, Supplement 4, Vol. 2, Final Report, Environmental Impact Statement for the Dewey-Burdock Project in Custer and Fall River Counties, South Dakota: Supplement to the Generic Environmental. . . . | 01/31/2014 | ML14246A327 |

| | | | |
|------|---|------------|-------------|
| 1717 | OFFICIAL EXHIBIT - NRC-010-A-1-00-BD01 - NUREG-1910, Vol. 1, Final Report, Generic Environmental Impact Statement for In-Situ Leach Uranium Milling Facilities (Chapters 1 through 4) (May 2009) (ADAMS Accession No. . . . | 05/31/2009 | ML14246A328 |
| 1718 | OFFICIAL EXHIBIT - NRC-009-A-2-00-BD01 - NUREG-1910, Supplement 4, Vol. 1, Draft Report for Comment, Environmental Impact Statement for the Dewey-Burdock Project in Custer and Fall River Counties, South Dakota: Supplement to the Generic | 11/30/2012 | ML14246A329 |
| 1719 | OFFICIAL EXHIBIT - NRC-009-B-1-00-BD01 - NUREG-1910, S4, V2, DFC, EIS for the Dewey-Burdock Project in Custer and Fall River Counties, South Dakota: Suppl to the GEIS for In-Situ Leach Uranium Milling Facilities (Chapter 5 to 11 and Appendices). . . . | 11/30/2012 | ML14246A330 |
| 1720 | OFFICIAL EXHIBIT - NRC-009-B-2-00-BD01 - NUREG-1910, Supplement 4, Vol. 2, Draft Report for Comment, Environmental Impact Statement for the Dewey-Burdock Project in Custer and Fall River Counties, South Dakota: Supplement to the Generic | 11/30/2012 | ML14246A331 |
| 1721 | OFFICIAL EXHIBIT - NRC-010-B-1-00-BD01 - NUREG-1910, Vol. 2, Final Report, Generic Environmental Impact Statement for In-Situ Leach Uranium Milling Facilities (Chapters 5 through 12 and Appendices) (May 2009). Pages 1-272. | 05/31/2009 | ML14246A332 |
| 1722 | OFFICIAL EXHIBIT - NRC-010-A-3-00-BD01 - NUREG-1910, Vol. 1, Final Report, Generic Environmental Impact Statement for In-Situ Leach Uranium Milling Facilities (Chapters 1 through 4) (May 2009) (ADAMS Accession No. ML091480244) Pages 513-704. | 08/31/2003 | ML14246A333 |
| 1723 | OFFICIAL EXHIBIT - NRC-141-B-00-BD01 - Dewey-Burdock Project Supplement to Application for NRC Uranium Recovery License Dated February 2009, Prepared by Powertech (USA) Inc. Greenwood Village, Colorado, CO. (Aug 31, 2009) (ADAMS Accession | 08/31/2009 | ML14246A334 |
| 1724 | OFFICIAL EXHIBIT - NRC-141-A-00-BD01 - Dewey-Burdock Project Supplement to Application for NRC Uranium Recovery License Dated February 2009, Prepared by Powertech (USA) Inc. Greenwood Village, Colorado, CO. (Aug 31, 2009) Pages 1-42 | 06/20/2014 | ML14246A335 |

| | | | |
|------|---|------------|-------------|
| 1725 | OFFICIAL EXHIBIT - NRC-141-C-00-BD01 - Dewey-Burdock Project Supplement to Application for NRC Uranium Recovery License Dated February 2009, Prepared by Powertech (USA) Inc. Greenwood Village, Colorado, CO. (Aug 31, 2009) Pages 124-132 | 06/21/2014 | ML14246A336 |
| 1726 | OFFICIAL EXHIBIT - NRC-141-D-00-BD01 - Dewey-Burdock Project Supplement to Application for NRC Uranium Recovery License Dated February 2009, Prepared by Powertech (USA) Inc. Greenwood Village, Colorado, CO. (Aug 31, 2009) Pages 133-143 | 06/21/2014 | ML14246A338 |
| 1727 | OFFICIAL EXHIBIT - NRC-145-A-00-BD01 - Guidelines for Evaluation and Documenting Traditional Cultural Properties. National Register Bulletin, U.S. Department of the Interior. National Park Service. (ADAMS Accession No. ML12240A371). Pages 1-14 | 12/31/1998 | ML14246A339 |
| 1728 | OFFICIAL EXHIBIT - NRC-084-D-00-BD01 - Butz, T.R., N.E. Dean, C.S. Bard, R.N. Helgerson, J.G. Grimes, and P.M. Pritz. Hydrogeochemical and Stream Sediment Detailed Geochemical Survey for Edgemont, South Dakota, Wyoming. National Uranium Resource | 06/21/2014 | ML14246A341 |
| 1729 | OFFICIAL EXHIBIT - NRC-084-B-00-BD01 - Butz, T.R., N.E. Dean, C.S. Bard, R.N. Helgerson, J.G. Grimes, and P.M. Pritz. Hydrogeochemical and Stream Sediment Detailed Geochemical Survey for Edgemont, South Dakota, Wyoming. National Uranium Resource. . . . | 06/21/2014 | ML14246A342 |
| 1730 | OFFICIAL EXHIBIT - NRC-084-A-00-BD01 - Butz, T.R., N.E. Dean, C.S. Bard, R.N. Helgerson, J.G. Grimes, and P.M. Pritz. Hydrogeochemical and Stream Sediment Detailed Geochemical Survey for Edgemont, South Dakota, Wyoming. National Uranium Resource. . . . | 05/31/1980 | ML14246A343 |
| 1731 | OFFICIAL EXHIBIT - NRC-084-E-00-BD01 - Butz, T.R., N.E. Dean, C.S. Bard, R.N. Helgerson, J.G. Grimes, and P.M. Pritz. Hydrogeochemical and Stream Sediment Detailed Geochemical Survey for Edgemont, South Dakota, Wyoming. National Uranium Resource. . . . | 06/21/2014 | ML14246A344 |
| 1732 | OFFICIAL EXHIBIT - APP-001-00-BD01 - Dr. Lynne Sebastian Initial Testimony. | 06/20/2014 | ML14246A346 |

| | | | |
|------|---|------------|-------------|
| 1733 | OFFICIAL EXHIBIT - APP-006-00-BD01 - ACHP Section 106 Regulations: Text of ACHP's Regulations, "Protection of Historic Properties: (36 CFR Part 800) (incorporates amendments effective Aug. 5, 2004)". | 06/20/2014 | ML14246A347 |
| 1734 | OFFICIAL EXHIBIT - NRC-084-F-00-BD01 - Butz, T.R., N.E. Dean, C.S. Bard, R.N. Helgerson, J.G. Grimes, and P.M. Pritz. Hydrogeochemical and Stream Sediment Detailed Geochemical Survey for Edgemont, South Dakota, Wyoming. National Uranium | 06/21/2014 | ML14246A348 |
| 1735 | OFFICIAL EXHIBIT - APP-021-DD-00-BD01 - Dewey-Burdock Project TR; re-submitted August 2009; Part 30; App. 2.7-G thru 2.8-F (partial); ML092870354. | 06/21/2014 | ML14246A349 |
| 1736 | OFFICIAL EXHIBIT - NRC-008-A-1-00-BD01 - NUREG-1910, Supplement 4, Vol. 1, Final Report, Environmental Impact Statement for the Dewey-Burdock Project in Custer and Fall River Counties, South Dakota: Supplement to the Generic Environmental Impact | 01/31/2014 | ML14246A350 |
| 1737 | OFFICIAL EXHIBIT - NRC-010-B-2-00-BD01 - NUREG-1910, Vol. 2, Final Report, Generic Environmental Impact Statement for In-Situ Leach Uranium Milling Facilities (Chapters 5 through 12 and Appendices) (May 2009). Pages 273-612. | 06/21/2014 | ML14246A351 |
| 1738 | OFFICIAL EXHIBIT - NRC-141-E-00-BD01 - Dewey-Burdock Project Supplement to Application for NRC Uranium Recovery License Dated February 2009, Prepared by Powertech (USA) Inc. Greenwood Village, Colorado, CO. (Aug 31, 2009) . | 06/21/2014 | ML14246A352 |
| 1739 | OFFICIAL EXHIBIT - NRC-145-B-00-BD01 - Guidelines for Evaluation and Documenting Traditional Cultural Properties. National Register Bulletin, U.S. Department of the Interior. National Park Service. (ADAMS Accession No. ML12240A371). Pages 15-18 | 06/21/2014 | ML14246A353 |
| 1740 | OFFICIAL EXHIBIT - NRC-084-C-00-BD01 - Butz, T.R., N.E. Dean, C.S. Bard, R.N. Helgerson, J.G. Grimes, and P.M. Pritz. Hydrogeochemical and Stream Sediment Detailed Geochemical Survey for Edgemont, South Dakota, Wyoming. National Uranium. . . . | 06/21/2014 | ML14246A354 |

| | | | |
|------|---|------------|-------------|
| 1741 | OFFICIAL EXHIBIT - APP-044-00-BD01 - Results of Acceptance Review for TR RAI Responses; ML110470245. | 06/20/2014 | ML14246A355 |
| 1742 | OFFICIAL EXHIBIT - APP-036-00-BD01 - Safety Evaluation Report for the Strata Energy, Inc. Ross ISR Project, Crook County, Wyoming, Materials License No. SUA-1601; ML14002A107. | 06/20/2014 | ML14246A356 |
| 1743 | OFFICIAL EXHIBIT - APP-015-B-00-BD01 - Revised TR for the Dewey-Burdock Project; Part 2 of 22; Text through Sec. 2.8.5.7; ML14035A029. | 06/20/2014 | ML14246A357 |
| 1744 | OFFICIAL EXHIBIT - APP-015-G-00-BD01 - Revised TR for the Dewey-Burdock Project; Part 7 of 22; Plates 2.6-16 through 2.7-2; ML14035A034. | 06/20/2014 | ML14246A358 |
| 1745 | OFFICIAL EXHIBIT - NRC-018-C-00-BD01 - NRC PA Signature Page. (ADAMS Accession No. ML14098A464). | 06/20/2014 | ML14246A359 |
| 1746 | OFFICIAL EXHIBIT - APP-015-H-00-BD01 - Revised TR for the Dewey-Burdock Project; Part 8 of 22; Plates 2.8-1 through 5.7-1; ML14035A035. | 11/11/2008 | ML14246A360 |
| 1747 | OFFICIAL EXHIBIT - APP-015-J-00-BD01 - Revised TR for the Dewey-Burdock Project; Part 10 of 22; App. 2.6-A through 2.6-G; ML14035A037. | 12/31/2013 | ML14246A361 |
| 1748 | OFFICIAL EXHIBIT - NRC-041-00-BD01 - 8/31/2011 NRC letter from Powertech letter and proposal in response to the Aug 12, 2011 request for NHPA Section 106 info. This letter enclosed a proposal which outlined a phased approach to | 08/31/2011 | ML14246A362 |

| | | | |
|------|--|------------|-------------|
| 1749 | OFFICIAL EXHIBIT - APP-015-M-00-BD01 - Revised TR for the Dewey-Burdock Project; Part 13 of 22; App. 2.7-H 1 of 3; ML14035A040. | 06/21/2014 | ML14246A363 |
| 1750 | OFFICIAL EXHIBIT - APP-015-N-00-BD01 - Revised TR for the Dewey-Burdock Project; Part 14 of 22; App. 2.7-H 2 of 3; ML14035A041. | 06/21/2014 | ML14246A364 |
| 1751 | OFFICIAL EXHIBIT - APP-015-P-00-BD01 - Revised TR for the Dewey-Burdock Project; Part 16 of 22; App. 2.7-J through 2.7-L 1 of 2; ML14035A043. | 06/21/2014 | ML14246A366 |
| 1752 | OFFICIAL EXHIBIT - APP-040-B-00-BD01 - Dewey-Burdock Project Environmental Report (ER); re-submitted August 2009; Part 2; Sec. 3.4.2.1.2 thru 3.12; ML092870346. | 02/28/2009 | ML14246A367 |
| 1753 | OFFICIAL EXHIBIT - NRC-148-00-BD01 - Letter from Oglala Sioux Tribe in response to February 8, 2013 letter to Tribal Historic Preservation Officer March 23, 2013 (ADAMS Accession No. ML13141A362). | 03/22/2013 | ML14246A368 |
| 1754 | OFFICIAL EXHIBIT - NRC-001-00-BD01-Initial Testimony and Affidavits from Haimanot Yilma, Kellee L. Jamerson, Thomas Lancaster, James Prikryl and Amy Hester. | 06/20/2014 | ML14246A400 |
| 1755 | OFFICIAL EXHIBIT - NRC-006-00-BD01 - Statement of Professional Qualifications of James Prikryl | 06/20/2014 | ML14246A401 |
| 1756 | OFFICIAL EXHIBIT - NRC-007-00-BD01 - Statement of Professional Qualifications of Amy Hester | 06/20/2014 | ML14246A402 |

| | | | |
|------|--|------------|-------------|
| 1757 | OFFICIAL EXHIBIT - NRC-004-00-BD01 - Statement of Professional Qualifications of Kellee L. Jamerson | 06/20/2014 | ML14246A403 |
| 1758 | OFFICIAL EXHIBIT - NRC-003-00-BD01 - Statement of Professional Qualifications of Haimanot Yilma | 06/20/2014 | ML14246A404 |
| 1759 | OFFICIAL EXHIBIT - NRC-018-D-00-BD01 - Letter from ACHP finalizing Section 106. (ADAMS Accession No. ML14099A025). | 04/07/2014 | ML14246A405 |
| 1760 | OFFICIAL EXHIBIT - NRC-018-B-00-BD01 - Final Appendix for the Dewey-Burdock Project PA. (ADAMS Accession No. ML14066A350). | 06/20/2014 | ML14246A406 |
| 1761 | OFFICIAL EXHIBIT - NRC-022-00-BD01 - Letter to Oglala Sioux Tribe Re: Request for Updated Tribal Council Members Consultation (Sep. 8, 2010) ADAMS Accession No. ML102450647). | 09/08/2010 | ML14246A407 |
| 1762 | OFFICIAL EXHIBIT - NRC-012-00-BD01 - Materials License SUA-1600, Powertech (USA), Inc. (Apr. 8, 2014) (ADAMS Accession No. ML14043A392). | 04/08/2014 | ML14246A408 |
| 1763 | OFFICIAL EXHIBIT - NRC-024-00-BD01 - NRC Staff Letter Postponing fall 2012 tribal survey. (12/14/2012). ADAMS Accession No. ML12335A175. | 12/14/2012 | ML14246A409 |
| 1764 | OFFICIAL EXHIBIT - NRC-015-00-BD01 - Dewey-Burdock ISR Project Summary of Tribal Outreach Timeline (Apr. 8, 2014) (ADAMS Accession No. ML14099A010). | 04/08/2014 | ML14246A410 |

| | | | |
|------|---|------------|-------------|
| 1765 | OFFICIAL EXHIBIT - NRC-020-00-BD01 - NRC Letter transmitting the Applicant's Statement of Work to all consulting parties. (May 7,2012). (ADAMS Accession No. ML121250102). | 05/07/2012 | ML14246A411 |
| 1766 | OFFICIAL EXHIBIT - NRC-019-00-BD01 - Summary Report Regarding the Tribal Cultural Surveys Completed for the Dewey-Burdock Uranium In Situ Recovery Project. (Dec. 16, 2013) (ADAMS Accession No. ML13343A142). | 06/20/2014 | ML14246A412 |
| 1767 | OFFICIAL EXHIBIT - NRC-023-00-BD01 - Powertech Dewey-Burdock Draft Scope of Work and Figures - Identification of Properties of Religious and Cultural Significance (Mar.07,2012) (ADAMS Accession No. ML120870197). | 03/07/2012 | ML14246A413 |
| 1768 | OFFICIAL EXHIBIT - NRC-011-00-BD01 - Dewey-Burdock Record of Decision (Apr. 8, 2014) (ADAMS Accession No. ML14066A466). | 04/08/2014 | ML14246A414 |
| 1769 | OFFICIAL EXHIBIT - NRC-016-00-BD01 - Submittal of Comments on Draft Programmatic Agreement for the Proposed Dewey-Burdock ISR Uranium Mining Project. (ADAMS Accession No. ML14077A002) | 02/05/2014 | ML14246A415 |
| 1770 | OFFICIAL EXHIBIT - NRC-018-E-00-BD01 - ACHP PA Signature Page. (ADAMS Accession No. ML4098A1550). | 04/07/2014 | ML14246A417 |
| 1771 | OFFICIAL EXHIBIT - NRC-017-00-BD01 - Dewey-Burdock ISR Project Documents Pertaining to Section 106 of the National Historic Preservation Act (June 10, 2014) | 06/20/2014 | ML14246A418 |
| 1772 | OFFICIAL EXHIBIT - NRC-018-F-00-BD01 - BLM signature on PA; (Mar. 25, 2014) (ADAMS Accession No. ML14098A102). | 03/25/2014 | ML14246A419 |

| | | | |
|------|--|------------|-------------|
| 1773 | OFFICIAL EXHIBIT - NRC-018-H-00-BD01 - Powertech PA Signature Page. (ADAMS Accession No. ML14098A110). | 03/24/2014 | ML14246A420 |
| 1774 | OFFICIAL EXHIBIT - NRC-018-A-00-BD01 - Final PA for the Dewey-Burdock Project. (ADAMS Accession Nos. ML14066A347). | 03/19/2014 | ML14246A421 |
| 1775 | OFFICIAL EXHIBIT - NRC-033-00-BD01 - Summary of August 30,2012 Public Meeting with Powertech Inc, to Discuss Powertech's Proposed Environmental Monitoring Program related to the proposed Dewey-Burdock Project. ADAMS Accession No. ML12255A258. | 09/13/2012 | ML14246A422 |
| 1776 | OFFICIAL EXHIBIT - NRC-026-00-BD01 - WY SHPO (Wyoming State Historic Preservation Office). "Dewey-Burdock Line of Sight Analysis." Email (September 4) from R. Currit, Senior Archaeologist, Wyoming State Historic Preservation Office to H. Yilma,NRC. . . . | 09/04/2013 | ML14246A423 |
| 1777 | OFFICIAL EXHIBIT - NRC-036-00-BD01 - Letter to Crow Tribe of Montana Re: Invitation for Formal Consultation Under Section 106 of the national Historic Preservation Act (Mar. 04,2011) (ADAMS Accession No. ML110550535). | 03/04/2011 | ML14246A424 |
| 1778 | OFFICIAL EXHIBIT - NRC-037-00-BD01 - Yankton Sioux tribe requests face-to-face meeting to discuss past and current project as well as request for TCP survey. Sisseton Wahpeton and Fort Peck tribes also asked for face-to-face meeting via phone. . . . | 12/03/2010 | ML14246A425 |
| 1779 | OFFICIAL EXHIBIT - NRC-039-00-BD01 - Meeting Agenda for Informal Information Gathering Pertaining to Dewey-Burdock, Crow Butte. Accompanying NRC letter with map of the proposed project boundary and digital copies of the Class III | 06/07/2011 | ML14246A427 |
| 1780 | OFFICIAL EXHIBIT - NRC-086-00-BD01 - Epstein, J.B. "Hydrology, Hazards, and Geomorphic Development of Gypsum Karst in the Northern Black Hills, South Dakota and Wyoming. "U.S. Geological Survey Water-Resource Investigation Report 01-4011. . . . | 12/31/2001 | ML14247A326 |

| | | | |
|------|--|------------|-------------|
| 1781 | OFFICIAL EXHIBIT - APP-015-T-00-BD01 - Revised TR for the Dewey-Burdock Project; Part 20 of 22; App. 2.8-I through 2.9-L; ML14035A047. | 06/21/2014 | ML14247A328 |
| 1782 | OFFICIAL EXHIBIT - NRC-014-00-BD01 - NUREG-1748, Final Report, Environmental Review Guidance for Licensing Actions Associated with NMSS Programs (Aug. 2003) (ADAMS Accession No. ML032450279). | 06/21/2014 | ML14247A329 |
| 1783 | OFFICIAL EXHIBIT - APP-040-EE-00-BD01 - ER App. 4.14-C thru 6.1-G; ML092870413. | 10/01/2008 | ML14247A330 |
| 1784 | OFFICIAL EXHIBIT - APP-015-E-00-BD01 - Revised TR for the Dewey-Burdock Project; Part 5 of 22; Plates 2.6-9 through 2.6-12; ML14035A032. | 06/21/2014 | ML14247A331 |
| 1785 | OFFICIAL EXHIBIT - APP-021-AA-00-BD01 - Dewey-Burdock Project TR; Re-submitted August 2009; Part 27; App. 2.2-A thru 2.6-B; ML092870350. | 10/01/2008 | ML14247A332 |
| 1786 | OFFICIAL EXHIBIT - APP-016-G-00-BD01 - Revised TR RAI response; Exhibits Part 3; Exh. 2.6-6 through 3.1-1; ML11208B764. | 06/21/2014 | ML14247A333 |
| 1787 | OFFICIAL EXHIBIT - NRC-008-B-2-00-BD01 - NUREG-1910, Supplement 4, Vol. 2., Final Report, EIS for the Dewey-Burdock Project in Custer and Fall River Counties, South Dakota: Supplement to the Generic Environmental Impact Statement for In-Situ Leach. . . . | 01/31/2014 | ML14247A334 |
| 1788 | OFFICIAL EXHIBIT - APP-027-A-00-BD01 - Report to Accompany Madison Water Right Permit Application, June 2012; ML12193A239. | 06/30/2012 | ML14247A335 |

| | | | |
|------|--|------------|-------------|
| 1789 | OFFICIAL EXHIBIT - OST-015-00-BD01 - Declaration of Wilmer Mesteth. | 04/01/2010 | ML14247A336 |
| 1790 | OFFICIAL EXHIBIT - NRC-079-00-BD01 - 09/09/2013 NRC Staff RAI: Email Concerning Review of Powertech's Additional Statistical Analysis of Radium-226 Soil Sampling Data and Gamma Measurements and Request for Information. | 09/09/2013 | ML14247A337 |
| 1791 | OFFICIAL EXHIBIT - APP-015-U-00-BD01 - Revised TR for the Dewey-Burdock Project; Part 21 of 22; App. 2.9-M through 3.1-A; ML14035A048. | 12/31/2013 | ML14247A338 |
| 1792 | OFFICIAL EXHIBIT - APP-016-I-00-BD01 - Revised TR RAI response; Appendices Part 1; App. 2.5-D through 2.6-G; ML11208B765. | 06/30/2011 | ML14247A339 |
| 1793 | OFFICIAL EXHIBIT - APP-016-M-00-BD01 - Revised TR RAI response; Appendices Part 5; App. 2.7-B through 2.7-G; ML11208B771. | 06/21/2014 | ML14247A340 |
| 1794 | OFFICIAL EXHIBIT - APP-016-S-00-BD01 - Revised TR RAI Response; Appendices Part 11; App. 2.7-L 1 of 4; ML112088833. | 06/30/2011 | ML14247A341 |
| 1795 | OFFICIAL EXHIBIT - APP-021-A-00-BD01 - Dewey-Burdock Project Technical Report (TR); re-submitted August 2009; Part 1; Text thru Sec. 2.7.1; ML092870298 | 02/28/2009 | ML14247A342 |
| 1796 | OFFICIAL EXHIBIT - APP-040-G-00-BD01 - ER Plate 3.3-3; ML092870383. | 06/21/2014 | ML14247A343 |

- 1797 OFFICIAL EXHIBIT - APP-049-00-BD01 - Water Right Permit No. 2626-2 Application and Permit. 06/21/2014 ML14247A344

- 1798 OFFICIAL EXHIBIT - NRC-010-A-2-00-BD01 - NUREG-1910, Vol. 1, Final Report, Generic Environmental Impact Statement for In-Situ Leach Uranium Milling Facilities (Chapters 1 through 4)(May 2009) (ADAMS Accession No. ML091480244 Page 153-512 06/21/2014 ML14247A345

- 1799 OFFICIAL EXHIBIT - APP-040-CC-00-BD01 - ER App. 3.5-J thru 3.6-C; ML092870407. 06/21/2014 ML14247A346

- 1800 OFFICIAL EXHIBIT - NRC-054-00-BD01 - Letter to James Laysbad, Oglala Sioux Tribe, Re: Information Related to Traditional Cultural Properties; Dewey-Burdock, Crow Butte North Trend, and Crow Butte LR ISP Projects (Oct. 28, 2011) 10/28/2011 ML14247A347

- 1801 OFFICIAL EXHIBIT - APP-021-HH-00-BD01 - Dewey-Burdock Project TR; re-submitted August 2009; Part 34; App. 7.3-A (partial) thru 7.3-B; ML092870344. 08/21/2008 ML14247A349

- 1802 OFFICIAL EXHIBIT - NRC-009-A-1-00-BD01 - NUREG-1910, Supplement 4, Vol. 1, Draft Report for Comment, Environmental Impact Statement for the Dewey-Burdock Project in Custer and Fall River Counties, South Dakota: Supplement to the Generic EIS. . . . 06/20/2014 ML14247A350

- 1803 OFFICIAL EXHIBIT - INT-013-00-BD01 - Testimony of Dr. Hannon LaGarry a geologic stratigrapher regarding fractures, faults, and other geologic features not adequately considered by Powertech or NRC staff. 06/20/2014 ML14247A351

- 1804 OFFICIAL EXHIBIT - INT-014-00-BD01 - Testimony of Linsey McLane, a Bio-chemist Regarding Bioaccumulation of Heavy Metals in Plant and Animal Species. 06/20/2014 ML14247A352

| | | | |
|------|---|------------|-------------|
| 1805 | OFFICIAL EXHIBIT - INT-012-00-BD01 - Testimony of Dayton Hyde, Owner/Operator of Black Hills Wild Horse Sanctuary, on Potential Impacts and Concerns about Proposed ISL Mine on Downflow Surface and Underground Water Resources. | 02/26/2010 | ML14247A353 |
| 1806 | OFFICIAL EXHIBIT - INT-001-00-BD01 - Testimony of Dr. Louis Redmond regarding Lakota Cultural Resources. | 11/29/2012 | ML14247A354 |
| 1807 | OFFICIAL EXHIBIT - INT-002-00-BD01 - 10/31/09 Report of Dr. Richard Abitz on Powertech Baseline Report. | 10/31/2009 | ML14247A355 |
| 1808 | OFFICIAL EXHIBIT - INT-006-00-BD01 - Declaration of Wilmer Mesteth regarding Lakota Cultural Resources. | 06/20/2014 | ML14247A356 |
| 1809 | OFFICIAL EXHIBIT - INT-007-00-BD01 - Testimony of Susan Henderson regarding water resources issues and concerns of downflow rancher. | 06/20/2014 | ML14247A357 |
| 1810 | OFFICIAL EXHIBIT - INT-004-00-BD01 - Statement of Professional Qualifications of Dr. Hannan LaGarry | 03/04/2010 | ML14247A358 |
| 1811 | OFFICIAL EXHIBIT - INT-011-00-BD01 - Testimony of Marvin Kammera, a rancher, on potential impacts on down flow ranchers as to Inyan Kara water quantity and quality. | 06/20/2014 | ML14247A359 |
| 1812 | OFFICIAL EXHIBIT - INT-016-00-BD01 - Petition to Intervene, with Exhibits. | 03/08/2010 | ML14247A360 |

- 1813 OFFICIAL EXHIBIT - INT-017 -00-BD01 - Statement of Contentions on DSEIS, with Exhibits. 01/25/2013 ML14247A361

- 1814 OFFICIAL EXHIBIT - INT-010b-00-BD01 - Map - Beaver Creek Watershed. 06/20/2014 ML14247A362

- 1815 OFFICIAL EXHIBIT - INT-010c-00-BD01 - Map - Central Flyway. 06/20/2014 ML14247A363

- 1816 OFFICIAL EXHIBIT - INT-010d-00-BD01 - Map - Whooping Crane Route. 06/20/2014 ML14247A364

- 1817 OFFICIAL EXHIBIT - INT-010-00-BD01 - Testimony of Peggy Detmers a Wildlife Biologist Regarding the D-B Site and Endangered Species. 06/20/2014 ML14247A365

- 1818 OFFICIAL EXHIBIT - INT-010a-00-BD01 - Statement of Qualifications of Peggy Detmers. 06/20/2014 ML14247A366

- 1819 OFFICIAL EXHIBIT - INT-010g-00-BD01 - Google Photo - Dewey Project - Medium Height. 06/20/2014 ML14247A367

- 1820 OFFICIAL EXHIBIT - INT-010h-00-BD01 - Google Photo - Dewey Project - Wide. 06/20/2014 ML14247A368

- 1821 OFFICIAL EXHIBIT - INT-010i-00-BD01 - Map - 5 state area - D-B Project. 06/20/2014 ML14247A369

- 1822 OFFICIAL EXHIBIT - INT-010e-00-BD01 - Map - D-B Project Site. 05/29/2012 ML14247A370

- 1823 OFFICIAL EXHIBIT - INT-010f-00-BD01 - Google Photo - Dewey Project - close. 06/20/2014 ML14247A371

- 1824 OFFICIAL EXHIBIT - INT-010l-00-BD01 - GPS Google Photo - D-B Project - wide shot. 09/08/2012 ML14247A372

- 1825 OFFICIAL EXHIBIT - INT-010m-00-BD01 - Map - D-B area. 06/20/2012 ML14247A373

- 1826 OFFICIAL EXHIBIT - INT-010j-00-BD01 - GPS Google Photo - D-B Project - Close-up. 09/08/2012 ML14247A375

- 1827 OFFICIAL EXHIBIT - INT-010k-00-BD01 - GPS Google Photo - D-B Project - Drainage. 09/08/2012 ML14247A376

- 1828 OFFICIAL EXHIBIT - INT-010o-00-BD01 - Diagram - Whooping Crane Bioaccumulaton. 06/20/2014 ML14247A377

| | | | |
|------|---|------------|-------------|
| 1829 | OFFICIAL EXHIBIT - INT-010p-00-BD01 - Beaver Creek Final Fecal Coliform. | 01/31/2010 | ML14247A378 |
| 1830 | OFFICIAL EXHIBIT - INT-010n-00-BD01 - GPS Google Photo - D-B Project - triangle. | 10/15/2013 | ML14247A379 |
| 1831 | OFFICIAL EXHIBIT - INT-018 -00-BD01 - Intervenor Statement of Contentions on FSEIS, with Exhibits. | 03/17/2014 | ML14247A380 |
| 1832 | OFFICIAL EXHIBIT - INT-003 -00-BD01 - Statement of Professional Qualifications of Dr. Louis Redmond. | 06/20/2014 | ML14247A381 |
| 1833 | OFFICIAL EXHIBIT - APP-040-AA-00-BD01 - ER App.3.5-A thru 3.5-F; ML092870416. | 06/20/2014 | ML14247A382 |
| 1834 | OFFICIAL EXHIBIT - APP-042-B-00-BD01 - Dewey-Burdock Project Revised Class III Underground Injection Control Permit Application, Revised July 2012, Text thru Sec. 4; ML12244A522. | 07/31/2012 | ML14247A383 |
| 1835 | OFFICIAL EXHIBIT - APP-015-A-00-BD01 - Revised Technical Report (TR) for the Dewey-Burdock Project; Part 1 of 22; Transmittal Letter, Change Index and Revised TR RAI Responses; ML14035A052. | 01/06/2014 | ML14247A384 |
| 1836 | OFFICIAL EXHIBIT - APP-015-Q-00-BD01 - Revised TR for the Dewey-Burdock Project; Part 17 of 22; App.2.7-L 2 of 2; ML14035A044 | 06/20/2014 | ML14247A385 |

| | | | |
|------|---|------------|-------------|
| 1837 | OFFICIAL EXHIBIT - APP-020-00-BD01 - ISR animation (Video of ISR Operation). | 06/20/2014 | ML14247A386 |
| 1838 | OFFICIAL EXHIBIT - APP-068-00-BD01 - Doyl Fritz Answering Testimony. | 07/15/2014 | ML14247A387 |
| 1839 | OFFICIAL EXHIBIT - APP-064-00-BD01 - Dr. Adrien Hannus Answering Testimony. | 07/13/2014 | ML14247A388 |
| 1840 | OFFICIAL EXHIBIT - APP-071-00-BD01 - 2013 Wildlife Monitoring Report for the Dewey-Burdock Project. | 07/02/2014 | ML14247A389 |
| 1841 | OFFICIAL EXHIBIT - APP-069-00-BD01 - Figures to Accompany Doyl Fritz Answering Testimony. | 07/15/2014 | ML14247A390 |
| 1842 | OFFICIAL EXHIBIT - APP-065-00-BD01 - Hal Demuth Answering Testimony. | 07/14/2014 | ML14247A391 |
| 1843 | OFFICIAL EXHIBIT - APP-067-00-BD01 - Figure to Accompany Errol Lawrence Answering Testimony. | 07/15/2014 | ML14247A392 |
| 1844 | OFFICIAL EXHIBIT - APP-066-00-BD01 - Errol Lawrence Answering Testimony. | 07/15/2014 | ML14247A393 |

| | | | |
|------|--|------------|-------------|
| 1845 | OFFICIAL EXHIBIT - APP-063-00-BD01 - Answering Testimony of Dr, Lynne Sebastian. | 07/15/2014 | ML14247A394 |
| 1846 | OFFICIAL EXHIBIT - NRC-152-00-BD01 - Statement of Professional Qualifications of Hope E. Luhman. | 07/15/2014 | ML14247A395 |
| 1847 | OFFICIAL EXHIBIT - NRC-156-00-BD01 - Johnson, R. H. "Reactive Transport Modeling for the Proposed Dewey-Burdock Uranium In-Situ Recovery Mine, Edgemont, South Dakota, USA." International Mine Water Association, Mine Water-Managing the Challenges. 2011. | 07/15/2014 | ML14247A396 |
| 1848 | OFFICIAL EXHIBIT - NRC-151-00-BD01 - NRC Staff Rebuttal Testimony. | 07/15/2014 | ML14247A397 |
| 1849 | OFFICIAL EXHIBIT - NRC-154-00-BD01 - Excerpt from Bates, R. and J. Jackson. Dictionary of Geological Terms 3rd Edition. (1984). | 07/15/2014 | ML14247A398 |
| 1850 | OFFICIAL EXHIBIT - NRC-155-00-BD01 - Letter from South Dakota Historical Society re: Dewey-Burdock Project, (Jan. 2014). | 07/15/2014 | ML14247A399 |
| 1851 | OFFICIAL EXHIBIT - NRC-153-00-BD01 - Excerpt from Parker, P. and T. King. Guidelines for Evaluating and Documenting Traditional Cultural Properties, National Register of Historic Places Bulletin 38. (1990) (ADAMS Accession No. ML12240A371). | 07/15/2014 | ML14247A400 |
| 1852 | OFFICIAL EXHIBIT - OST-016-00-BD01 - February 20, 2013 letter from Standing Rock Sioux to NRC Staff. | 02/20/2013 | ML14247A401 |

- 1853 OFFICIAL EXHIBIT - OST-017-00-BD01 - March 22, 2013 letter from Oglala Sioux Tribe to NRC Staff. 07/16/2014 ML14247A402

- 1854 OFFICIAL EXHIBIT - OST-018-00-BD01 - Rebuttal Testimony of Dr. Robert E. Moran. 07/15/2014 ML14247A403

- 1855 OFFICIAL EXHIBIT - APP-070-00-BD01 - Gwyn McKee Answering Testimony. 07/15/2014 ML14247A404

- 1856 OFFICIAL EXHIBIT - INT-019-00-BD01 - Dr. Redmond Rebuttal Letter. 07/13/2014 ML14247A405

- 1857 OFFICIAL EXHIBIT - INT-020-00-BD01 - Rebuttal Written Testimony of Dr. Hannan LaGarry. 07/15/2014 ML14247A406

- 1858 OFFICIAL EXHIBIT - INT-020A-00-BD01 - Expert Opinion Regarding the Proposed Dewey-Burdock Project ISL Mine Near Edgemont, South Dakota. 07/15/2014 ML14247A407

- 1859 OFFICIAL EXHIBIT - INT-021A-00-BD01 - Violation History - Crow Butte ISL mine in Crawford, Nebraska. 07/18/2014 ML14247A408

- 1860 OFFICIAL EXHIBIT - INT-021B-00-BD01 - Violation History - Crow Butte ISL mine in Crawford, Nebraska. 10/26/2012 ML14247A409

- 1861 OFFICIAL EXHIBIT - INT-021C-00-BD01 - Violation History - Crow Butte ISL mine in Crawford, Nebraska. 07/18/2014 ML14247A410

- 1862 OFFICIAL EXHIBIT - INT-022C-00-BD01 - Violation History - Smith Highland Ranch. 05/25/2012 ML14247A411

- 1863 OFFICIAL EXHIBIT - INT-022B -00-BD01 - Violation History - Smith Highland Ranch. 07/18/2014 ML14247A412

- 1864 OFFICIAL EXHIBIT - INT-022A-00-BD01 - Violation History - Smith Highland Ranch. 07/22/2012 ML14247A414

- 1865 OFFICIAL EXHIBIT - OST-019-00-BD01 - Powertech Press Release. 07/22/2014 ML14247A415

- 1866 OFFICIAL EXHIBIT - INT-014b-00-BD01 - Declaration of Linsey McLain Testimony. 08/11/2014 ML14247A416

- 1867 OFFICIAL EXHIBIT - OST-020-00-BD01 - E-Mail from Chris Pugsley, Powertech, re NRC Proceeding. 08/12/2014 ML14247A417

- 1868 OFFICIAL EXHIBIT - NRC-002-R-00-BD01 - Revised Statement of Professional Qualifications of Po Wen (Kevin) Hsueh. 08/13/2014 ML14247A418

| | | | |
|------|---|------------|-------------|
| 1869 | OFFICIAL EXHIBIT - OST-021-00-BD01 - Powertech Quarterly Management Discussion and Analysis. | 08/11/2014 | ML14247A419 |
| 1870 | OFFICIAL EXHIBIT - INT-010q-00-BD01 - US Dept of Interior, Fish & Wildlife Service | 06/17/2014 | ML14247A420 |
| 1871 | NRC Staff's Proposed Transcript Corrections. | 09/04/2014 | ML14247A637 |
| 1872 | NRC Staff's Errata List for Hearing Transcript. | 09/04/2014 | ML14247A638 |
| 1873 | Post Hearing Order. | 09/08/2014 | ML14251A377 |
| 1874 | Joint Motion to Amend Protective Order to Include Documents to be Disclosed Under September 10, 2014 Licensing Board Order. | 09/11/2014 | ML14254A503 |
| 1875 | Order Granting Joint Motion to Amend Protective Order. | 09/12/2014 | ML14255A147 |
| 1876 | NRC Staff Hearing File Update 09.15.2014 with COS. | 09/15/2014 | ML14258B229 |

| | | | |
|------|---|------------|-------------|
| 1877 | Powertech Water Use Permit from NRC by Georgia Holmes - Presented at the Powertech Limited Appearance Hearing, Monday, August 18, 2014. | 08/18/2014 | ML14259A072 |
| 1878 | NRC Hearing Narrative by Don Kelley, M.D. - Presented at the Powertech Limited Appearing Hearing, August 18, 2014. | 08/18/2014 | ML14259A073 |
| 1879 | Statement Submitted by Nancy Gregory at the Powertech Limited Appearance Hearing, Monday, Aug. 18, 2014. | 08/18/2014 | ML14259A075 |
| 1880 | Comments by Kathleen Jaruis - Presented at the Powertech Limited Appearance Hearing, Monday, Aug. 18, 2014. | 08/18/2014 | ML14259A076 |
| 1881 | Comments by Ben Sharp Presented at the Limited Appearance Hearing, August 18, 2014. | 08/18/2014 | ML14259A077 |
| 1882 | Petition Submitted at the Powertech Limited Appearance Hearing, Aug 18, 2014. | 08/18/2014 | ML14259A078 |
| 1883 | Presentation Given by Jerri Baker at the Powertech Limited Appearance Hearing, August 18, 2014. | 08/18/2014 | ML14259A079 |
| 1884 | Limited Appearance Statement of Don Kelley on Exposure: This is the Theory of "Hermesis", Presented at the Powertech Limited Hearing, Aug 18, 2014. | 08/18/2014 | ML14259A080 |

| | | | |
|------|--|------------|-------------|
| 1885 | Argentine Township, South Dakota Comments Presented at the Powertech Limited Appearance Hearing, Aug 18, 2014. | 08/29/2013 | ML14259A081 |
| 1886 | Comments by Mary Ellen Goulet Presented at the Powertech Limited Appearance Hearing August 18, 2014. | 08/18/2014 | ML14259A082 |
| 1887 | Limited Appearance Statement of Cindy Brunson. | 08/18/2014 | ML14259A083 |
| 1888 | Comments Given by Sylvia Lambert During the Powertech Limited Appearance Hearing, Aug 18, 2014. | 08/18/2014 | ML14259A084 |
| 1889 | Comments by Rod Knudson at the Powertech Limited Appearance Hearing, Aug. 18, 2014. | 08/18/2014 | ML14259A085 |
| 1890 | Comments Submitted by Dr. Perry Rahn, Presented at the Powertech Limited Appearance Hearing, Aug 18, 2014. | 08/18/2014 | ML14259A086 |
| 1891 | Comments Submitted During the Powertech Limited Appearance Hearing, Aug, 18, 2014. | 08/18/2014 | ML14259A087 |
| 1892 | Federal Register Submission by Nancy Hilding During the Powertech Limited Appearance Hearing, Aug 18, 2014. | 08/18/2014 | ML14259A088 |

| | | | |
|------|---|------------|-------------|
| 1893 | Comments Given by Kevin Weiland, MD, Powertech Limited Appearance Hearing, Aug 18, 2014. | 08/18/2014 | ML14259A089 |
| 1894 | Comments Submitted by Edward Harvey at the Powertech Limited Appearance Hearing, Aug 18, 2014. | 08/18/2014 | ML14259A090 |
| 1895 | Limited Appearance Statement of Multiple Authors on Wind Cave Trip Reports - 2007, Presented at the Powertech Limited Appearance Hearing, Aug 18, 2014. | 08/18/2014 | ML14259A091 |
| 1896 | Submission Presented by Nancy Hiding at the Powertech Limited Appearance Hearing, Aug 18, 2014. | 08/18/2014 | ML14259A272 |
| 1897 | Submissions Presented by Nancy Hilding at the Powertech Limited Appearance Hearing, Aug 18, 2014. | 08/18/2014 | ML14259A273 |
| 1898 | Submissions Presented by Nancy Hilding at the Powertech Limited Appearance Hearing, Aug 18, 2014. | 08/18/2014 | ML14259A274 |
| 1899 | OFFICIAL EXHIBIT - APP-016-X-00-BD01 - Revised TR RAI response; Appendices Part 16; App. 2.7-M; ML11208B872. | 06/30/2011 | ML14261A102 |
| 1900 | Oglala Sioux Tribe's Hearing Transcript Corrections. | 09/19/2014 | ML14262A307 |

| | | | |
|------|---|------------|-------------|
| 1901 | Powertech (USA), Inc., Proposed Transcript Corrections. | 09/19/2014 | ML14262A426 |
| 1902 | Order (Adopting Transcript Corrections). | 09/30/2014 | ML14273A366 |
| 1903 | NRC Staff Transmittal of Attachment 1, Powertech Hearing File and Mandatory Disclosures, October 1, 2014 Update. | 10/01/2014 | ML14274A568 |
| 1904 | Letter to Board Regarding Errata List. | 10/06/2014 | ML14279A620 |
| 1905 | Order (Requiring Status Report on Outstanding Mandatory Disclosures). | 10/09/2014 | ML14282A277 |
| 1906 | Oglala Sioux Tribe and Consolidated Intervenors' Motion to Extend Deadline for Submission of Testimony and Amend or File New Contentions. | 10/09/2014 | ML14282A869 |
| 1907 | Declaration of Dr Hannan LaGarry. | 10/09/2014 | ML14282A870 |
| 1908 | Powertech (USA), Inc., NRC Staff, and OGLAL Sioux Tribe Update on Status of Mandatory Disclosures. | 10/14/2014 | ML14287A284 |

| | | | |
|------|--|------------|-------------|
| 1909 | Consolidated Intervenor's Update on Status of Mandatory Disclosures. | 10/14/2014 | ML14287A445 |
| 1910 | Affidavit of Elizabeth A. Scheinost on Behalf of Powertech (USA) Inc., In the Matter of Dewey-Burdock In Situ Uranium Recovery Facility. | 10/14/2014 | ML14287A724 |
| 1911 | Powertech (USA), Inc.'s Response to Consolidated Intervenor's and Oglala Sioux Tribe Motion for Extension of Time. | 10/14/2014 | ML14287A725 |
| 1912 | Affidavit of Frank Lichnovsky on Behalf of Powertech (USA) Inc., in the Matter of Dewey-Burdock In Situ Uranium Recovery Facility. | 10/14/2014 | ML14287A726 |
| 1913 | NRC-169 - Transect 2 Fence Diagram of Drill Hole Resistivity Logs NON-PUBLIC / PROPRIETARY INFORMATION. | 10/14/2014 | ML14287A801 |
| 1914 | NRC-166 - Drill Hole Log Spot Check Elevation of Top of Fuson Shale NON-PUBLIC / PROPRIETARY INFORMATION. | 10/14/2014 | ML14287A802 |
| 1915 | NRC-172 - Fence Diagram of Resistivity Profiles for Selected Drill Holes near Proposed Sinkhole. NON-PUBLIC / PROPRIETARY INFORMATION. | 10/14/2014 | ML14287A803 |
| 1916 | NRC-168 - Transect 1 Fence Diagram of Drill Hole Resistivity Logs NON-PUBLIC / PROPRIETARY INFORMATION. | 10/14/2014 | ML14287A804 |

| | | | |
|------|---|------------|-------------|
| 1917 | NRC-173 - Table 2. Drill Hole Logs Used for Spot Checking. | 10/14/2014 | ML14287A805 |
| 1918 | NRC-158 - Supplemental Testimony Regarding NRC Staff's Analysis of TVA Well Log Data. | 10/14/2014 | ML14287A806 |
| 1919 | NRC-165 - USDA NAIP Orthographic Image for Fall River County (2012). | 10/14/2014 | ML14287A807 |
| 1920 | NRC-171-Locations of Drill Holes and Suspected Sinkhole. | 10/14/2014 | ML14287A808 |
| 1921 | NRC-167-Location of Drill Hole Transects. | 10/14/2014 | ML14287A809 |
| 1922 | Letter to the Board in the Matter of Powertech (USA) Inc. | 10/14/2014 | ML14287A810 |
| 1923 | NRC-003-R - Revised Statement of Professional Qualifications of Haimanot Yilma. | 10/14/2014 | ML14287A811 |
| 1924 | NRC-160 - Resume of Ronald McGinnis. | 10/14/2014 | ML14287A812 |

| | | | |
|------|---|------------|-------------|
| 1925 | NRC-161-Location of Historic TVA Drill Holes. | 10/14/2014 | ML14287A813 |
| 1926 | NRC-005-R - Revised Statement of Professional Qualifications of Thomas Lancaster. | 10/14/2014 | ML14287A814 |
| 1927 | NRC-163 - USGS Topographic Map for the Dewey-Burdock Area. | 10/14/2014 | ML14287A815 |
| 1928 | NRC-162 - Figure 2.6-2a from Powertech's Technical Report (2014). | 06/17/2013 | ML14287A816 |
| 1929 | NRC-004-R - Revised Statement of Professional Qualifications of Kellee L. Jamerson. | 10/14/2014 | ML14287A817 |
| 1930 | NRC-170 - Transect 1 and Transect 2 Drill Holes. | 10/14/2014 | ML14287A818 |
| 1931 | NRC-157 - NRC Staff's Supplemental Testimony on Take Permit Application, Draft Avian Monitoring Plan, and BLM Letter. | 10/14/2014 | ML14287A819 |
| 1932 | NRC-159-Resume of Paul Bertetti. | 10/14/2014 | ML14287A820 |

| | | | |
|------|---|------------|-------------|
| 1933 | NRC Staff's Motion to Admit Testimony and Exhibits Addressing Powertech's September 14, 2014 Disclosures. | 10/14/2014 | ML14287A821 |
| 1934 | NRC-164-USGS Digital Elevation Model (30-m grid) for the Dewey-Burdock Area. | 10/14/2014 | ML14287A822 |
| 1935 | NRC Revised Exhibit List for Powertech USA, Inc, 2014 Evidentiary Hearing. | 10/14/2014 | ML14287A823 |
| 1936 | Certificate of Service. | 10/14/2014 | ML14287A824 |
| 1937 | OST-24 - January 10 2014 USFWS take permit application. | 01/10/2014 | ML14287A825 |
| 1938 | OST-26 - USEPA CERCLA Preliminary Assessment. | 09/24/2014 | ML14287A826 |
| 1939 | OST-25 - USEPA CERCLA PA announcement. | 10/14/2014 | ML14287A827 |
| 1940 | OST-23 - Draft Avian Mitigation Plan. | 09/30/2014 | ML14287A828 |

| | | | |
|------|--|------------|-------------|
| 1941 | OST-22 - July 8 2014 letter from BLM. | 07/08/2014 | ML14287A829 |
| 1942 | Oglala Sioux Tribe Motion to Admit Additional Exhibits. | 10/14/2014 | ML14287A830 |
| 1943 | NRC'S Staff Response to Request For Extension of Time. | 10/16/2014 | ML14289A504 |
| 1944 | Order (Granting in Part Motion to Extend Deadline). | 10/22/2014 | ML14295A420 |
| 1945 | NRC Staff Revised Hearing Exhibit List in the Matter of Dewey-Burdock In Situ Uranium Recovery Facility. | 10/24/2014 | ML14297A556 |
| 1946 | NRC Staff's Response To Oglala Sioux Tribe's Motion To Admit Additional Exhibits. | 10/24/2014 | ML14297A557 |
| 1947 | NRC-174 - NRC Staff's Responsive Testimony. | 10/24/2014 | ML14297A558 |
| 1948 | NRC Staff's Motion to Admit Revised Exhibit NRC-171-R. | 10/24/2014 | ML14297A561 |

| | | | |
|------|---|------------|-------------|
| 1949 | NRC-171-R - Revised Maps Showing Locations of Drill Holes and Suspected Sinkhole With Contour Intervals. | 10/24/2014 | ML14297A562 |
| 1950 | Powertech Revised Hearing Exhibit List in the Matter of Dewey-Burdock In Situ Uranium Recovery Facility. | 10/24/2014 | ML14297A593 |
| 1951 | APP-072 - Answering Testimony Regarding NRC Staff's Analysis of TVA Well Log Data. | 10/24/2014 | ML14297A594 |
| 1952 | Powertech (USA), Inc. Response to Oglala Sioux Tribe and NRC Staff Supplemental Testimony and Exhibits. | 10/24/2014 | ML14297A595 |
| 1953 | APP-073 - Frank Lichnovsky CV. | 10/24/2014 | ML14297A596 |
| 1954 | Motion for Leave to File a Reply to NRC Staff and Powertech Responses to Motion to Admit Additional Exhibits Filed on Behalf of the Oglala Sioux Tribe. | 10/30/2014 | ML14303A389 |
| 1955 | Reply to NRC Staff and Powertech Responses to Motion to Admit Additional Exhibits Filed on Behalf of the Oglala Sioux Tribe. | 11/01/2014 | ML14305A028 |
| 1956 | November 2014 Hearing File Update. | 11/03/2014 | ML14307B727 |

| | | | |
|------|--|------------|-------------|
| 1957 | Fifth Annual Report Pursuant to September 15, 2008 Memorandum of Agreement (MOA) Concerning the Dewey-Burdock Project Located in Fall River and Custer Counties. | 10/07/2014 | ML14307B766 |
| 1958 | U.S. Fish and Wildlife Service, Region 6 Additional Information Request for Eagle Take Permit Application for the Dewey-Burdock Project. | 11/03/2014 | ML14307B767 |
| 1959 | Licensee Powertech (USA) Uranium Corporation's Updated Mandatory Disclosures. | 11/03/2014 | ML14307B768 |
| 1960 | NRC Staff's Response to Oglala Sioux Tribe's Motion for Leave to Submit Reply Brief. | 11/04/2014 | ML14308A316 |
| 1961 | NRC Staff Transmittal of Powertech Hearing File and Mandatory Disclosures, Sensitive Information Log, Update-November 5, 2014. | 11/05/2014 | ML14309A771 |
| 1962 | Powertech (USA), Inc. Response to Oglala Sioux Tribe Motion for Leave to Submit a Reply and Reply Brief. | 11/07/2014 | ML14311A610 |
| 1963 | Oglala Sioux Tribe Unopposed Motion to Admit Additional Exhibits. | 11/07/2014 | ML14311A926 |
| 1964 | OST-028 - Powertech Letter to South Dakota Historical Society. | 10/07/2014 | ML14311A927 |

| | | | |
|------|---|------------|-------------|
| 1965 | OST-027 - Fish and Wildlife Service Email Letter. | 11/03/2014 | ML14311A928 |
| 1966 | Supplemental Declaration of Dr Hannan LaGarry. | 11/05/2014 | ML14311B006 |
| 1967 | OST-26 - Darrow Freezeout Triangle Uranium Mine PA Report | 09/24/2014 | ML14311B007 |
| 1968 | OST-25 - Dewey Burdock CERCLA PA announcement. | 11/07/2014 | ML14311B008 |
| 1969 | Motion for Leave to File New or Amended Contention on Behalf of the Oglala Sioux Tribe. | 11/07/2014 | ML14311B009 |
| 1970 | Order Admitting New Exhibits and Closing the Evidentiary Record on Contentions 1A 1B 2 4 6 and 9. | 11/13/2014 | ML14317A241 |
| 1971 | Oglala Sioux Tribe Motion to Admit Additional Testimony and Exhibits. | 11/21/2014 | ML14325A853 |
| 1972 | OST-038 - Exhibit TRR17. | 11/21/2014 | ML14325A857 |

| | | | |
|------|---------------------------|------------|-------------|
| 1973 | OST-034 - Exhibit DS392. | 11/21/2014 | ML14325A858 |
| 1974 | OST-036 - Exhibit IHM32. | 11/21/2014 | ML14325A859 |
| 1975 | OST-041 - Exhibit TRJ111. | 11/21/2014 | ML14325A860 |
| 1976 | OST-040 - Exhibit FBM95. | 11/21/2014 | ML14325A861 |
| 1977 | OST-033 - Exhibit DS178. | 11/21/2014 | ML14325A862 |
| 1978 | OST-035 - Exhibit IHK2. | 11/21/2014 | ML14325A863 |
| 1979 | OST-039 - Exhibit TRT16. | 11/21/2014 | ML14325A864 |
| 1980 | OST-037 - Exhibit IHM62. | 11/21/2014 | ML14325A865 |

| | | | |
|------|---|------------|-------------|
| 1981 | OST-029 - Written Supplemental Testimony of Dr LaGarry. | 11/21/2014 | ML14325A866 |
| 1982 | OST-030 - Exhibit SNT25. | 11/21/2014 | ML14325A867 |
| 1983 | OST-031 - Exhibit TRT44. | 11/21/2014 | ML14325A868 |
| 1984 | OST-032 - Exhibit ELT4. | 11/21/2014 | ML14325A869 |
| 1985 | Joint Motion for Extension of Time and Clarification of Filing Deadlines. | 11/25/2014 | ML14329A445 |
| 1986 | Order (Granting Unopposed Motion for Extension of Time and Clarifying Filing Dates). | 11/26/2014 | ML14330A357 |
| 1987 | NRC Staff Transmittal of Powertech Hearing File and Mandatory Disclosures, December 1, 2014 Update. | 12/01/2014 | ML14335A751 |
| 1988 | NRC Staff's Response To Oglala Sioux Tribe's Motion To Admit New Contentions. | 12/02/2014 | ML14336A673 |

| | | | |
|------|---|------------|-------------|
| 1989 | Powertech (USA), Inc., Response to the Oglala Sioux Tribe Motion for Leave to Submit New or Amended Contentions. | 12/02/2014 | ML14336A697 |
| 1990 | APP-087 (P) - Geophysical Log Header without Drift Survey. | 12/04/2014 | ML14338A891 |
| 1991 | APP-078(P) - IHK2 Borehole South-North Cross Section. | 12/04/2014 | ML14338A892 |
| 1992 | APP-079 (P), IHK2 Borehole West-East Cross Section. | 12/04/2014 | ML14338A893 |
| 1993 | APP-088, Powertech, Inc. Responses to NRC Staff's Verbal and Email Requests for Clarification of Selected Issues Related to the Dewey-Burdock Uranium Project Environmental Review. | 11/04/2010 | ML14338A894 |
| 1994 | APP-077 - Boreholes Evaluated in Cross Sections. | 12/03/2014 | ML14338A895 |
| 1995 | APP-075 - Powertech (USA), Inc., Silver King Mines, Inc. Probe Log. | 12/04/2014 | ML14338A896 |
| 1996 | APP-074(P) - Answering Testimony Regarding Dr. Lagarry's Analysis of Borehole Log Data. | 12/04/2014 | ML14338A897 |

| | | | |
|------|--|------------|-------------|
| 1997 | APP-085 (P) - TRT16 Borehole West-East Cross Section. | 12/03/2014 | ML14338A898 |
| 1998 | APP-082(P) - TRR17 Borehole South-North Cross Section. | 12/04/2014 | ML14338A899 |
| 1999 | APP-083(P) - TRR17 Borehole West-East Cross Section. | 12/03/2014 | ML14338A900 |
| 2000 | APP-084 (P) - TRT16 Borehole South-North Cross Section. | 12/04/2014 | ML14338A901 |
| 2001 | APP-076(P) - DS178 Lithology Log. | 12/04/2014 | ML14338A902 |
| 2002 | John Mays Affidavit for Listed Exhibits Containing Proprietary Information, Exempt from Disclosure. | 12/04/2014 | ML14338A903 |
| 2003 | Powertech (USA), Inc. Response to the Oglala Sioux Tribe's November 21, 2014, Motion to Admit Additional Testimony and Exhibits. | 12/04/2014 | ML14338A904 |
| 2004 | Revised Powertech Exhibit List. | 12/04/2014 | ML14338A905 |

| | | | |
|------|--|------------|-------------|
| 2005 | APP-080(P) - IHM61 Borehole South-North Cross Section. | 12/03/2014 | ML14338A906 |
| 2006 | APP-086 (P) - Powertech (USA), Inc., TRJ111 Geophysical Log Header, Non-Public / Proprietary Information. | 12/04/2014 | ML14338A907 |
| 2007 | APP-081 (P) - IHM61 Borehole West-East Cross Section Non-Public/Proprietary Information. | 12/03/2014 | ML14339A353 |
| 2008 | NRC Staff's Brief in Support of Answering Testimony. | 12/09/2014 | ML14343A979 |
| 2009 | NRC Staff Revised Exhibit List. | 12/09/2014 | ML14343A980 |
| 2010 | NRC-175 - NRC Staff's Answering Testimony. | 12/09/2014 | ML14343A981 |
| 2011 | Order (Admitting Additional Exhibits Closing the Record on Contention 3 and Setting Briefing Dates). | 12/10/2014 | ML14344A620 |
| 2012 | OFFICIAL EXHIBIT - NON-PUBLIC - NRC-169-00-BD01 - Transect 2 Fence Diagram of Drill Hole Resistivity Logs - PROPRIETARY INFORMATION. | 10/14/2014 | ML14344A882 |

| | | | |
|------|--|------------|-------------|
| 2013 | OFFICIAL EXHIBIT - NRC-160-00-BD01 - Resume of Ronald McGinnis. | 10/14/2014 | ML14344A884 |
| 2014 | OFFICIAL EXHIBIT - NRC-161-00-BD01 - Location of Historic TVA Drill Holes. | 10/14/2014 | ML14344A885 |
| 2015 | OFFICIAL EXHIBIT - NRC-005-R-00-BD01 - Revised Statement of Professional Qualifications of Thomas Lancaster. | 10/14/2014 | ML14344A886 |
| 2016 | OFFICIAL EXHIBIT - NRC-163-00-BD01 - USGS Topographic Map for the Dewey-Burdock Area. | 10/14/2014 | ML14344A887 |
| 2017 | OFFICIAL EXHIBIT - NRC-162-00-BD01 - Figure 2.6-2a from Powertech's Technical Report (2014). | 06/17/2013 | ML14344A888 |
| 2018 | OFFICIAL EXHIBIT - NRC-004-R-00-BD01 - Revised Statement of Professional Qualifications of Kellee L. Jamerson. | 10/14/2014 | ML14344A889 |
| 2019 | OFFICIAL EXHIBIT - NRC-170-00-BD01 - Transect 1 and Transect 2 Drill Holes. | 10/14/2014 | ML14344A890 |
| 2020 | OFFICIAL EXHIBIT - NRC-157-00-BD01 - NRC Staff's Supplemental Testimony on Take Permit Application, Draft Avian Monitoring Plan, and BLM Letter. | 10/14/2014 | ML14344A892 |

| | | | |
|------|--|------------|-------------|
| 2021 | OFFICIAL EXHIBIT - NRC-159-00-BD01 - Resume of Paul Bertetti. | 10/14/2014 | ML14344A896 |
| 2022 | OFFICIAL EXHIBIT - NRC-164-00-BD01 - USGS Digital Elevation Model (30-m grid) for the Dewey-Burdock Area. | 10/14/2014 | ML14344A899 |
| 2023 | OFFICIAL EXHIBIT - NON-PUBLIC - NRC-166-00-BD01 - Drill Hole Log Spot Check Elevation of Top of Fuson Shale - PROPRIETARY INFORMATION. | 10/14/2014 | ML14344A903 |
| 2024 | OFFICIAL EXHIBIT - OST-024-00-BD01 - January 10 2014 USFWS take permit application. | 01/10/2014 | ML14344A907 |
| 2025 | OFFICIAL EXHIBIT - OST-023-00-BD01 - Draft Avian Mitigation Plan. | 09/30/2014 | ML14344A911 |
| 2026 | OFFICIAL EXHIBIT - OST-022-00-BD01 - July 8 2014 letter from BLM. | 07/08/2014 | ML14344A914 |
| 2027 | OFFICIAL EXHIBIT - NRC-174-00-BD01 - NRC Staff's Responsive Testimony. | 10/24/2014 | ML14344A917 |
| 2028 | OFFICIAL EXHIBIT - NRC-171-R-00-BD01 - Revised Maps Showing Locations of Drill Holes and Suspected Sinkhole With Contour Intervals. | 10/24/2014 | ML14344A921 |

| | | | |
|------|--|------------|-------------|
| 2029 | OFFICIAL EXHIBIT - APP-072-00-BD01 - Answering Testimony Regarding NRC Staff's Analysis of TVA Well Log Data. | 10/24/2014 | ML14344A922 |
| 2030 | OFFICIAL EXHIBIT - APP-073-00-BD01 - Frank Lichnovsky CV. | 10/24/2014 | ML14344A923 |
| 2031 | OFFICIAL EXHIBIT - OST-028-00-BD01 - Powertech Letter to South Dakota Historical Society. | 10/07/2014 | ML14344A924 |
| 2032 | OFFICIAL EXHIBIT - OST-027 -00-BD01 - Fish and Wildlife Service Email Letter. | 11/03/2014 | ML14344A925 |
| 2033 | OFFICIAL EXHIBIT - OST-026-00-BD01 - Darrow Freezeout Triangle Uranium Mine PA Report | 09/24/2014 | ML14344A926 |
| 2034 | OFFICIAL EXHIBIT - NON-PUBLIC - NRC-172 -00-BD01 - Fence Diagram of Resistivity Profiles for Selected Drill Holes near Proposed Sinkhole. - PROPRIETARY INFORMATION. | 10/14/2014 | ML14344A927 |
| 2035 | OFFICIAL EXHIBIT - OST-025-00-BD01 - Dewey Burdock CERCLA PA announcement. | 11/07/2014 | ML14344A928 |
| 2036 | OFFICIAL EXHIBIT - NON-PUBLIC - NRC-168-00-BD01 - Transect 1 Fence Diagram of Drill Hole Resistivity Logs - PROPRIETARY INFORMATION. | 10/14/2014 | ML14344A929 |

| | | | |
|------|--|------------|-------------|
| 2037 | OFFICIAL EXHIBIT - NON-PUBLIC - NRC-173 -00-BD01 - Table 2. Drill Hole Logs Used for Spot Checking. | 10/14/2014 | ML14344A930 |
| 2038 | OFFICIAL EXHIBIT - NRC-158-00-BD01 - Supplemental Testimony Regarding NRC Staff's Analysis of TVA Well Log Data. | 10/14/2014 | ML14344A931 |
| 2039 | OFFICIAL EXHIBIT - NRC-165-00-BD01 - USDA NAIP Orthographic Image for Fall River County (2012). | 10/14/2014 | ML14344A932 |
| 2040 | OFFICIAL EXHIBIT - NRC-167-00-BD01 - Location of Drill Hole Transects. | 10/14/2014 | ML14344A934 |
| 2041 | OFFICIAL EXHIBIT - NRC-003-R-00-BD01 - Revised Statement of Professional Qualifications of Haimanot Yilma. | 10/14/2014 | ML14344A937 |
| 2042 | NRC Staff's Response to Board's December 10, 2014 Order. | 12/19/2014 | ML14353A353 |
| 2043 | Powertech (USA), Inc., Response to the Atomic Safety and Licensing Board's Request for Argument on Potential Non-Public Status of Oglala Sioux Tribe's Exhibits. | 12/19/2014 | ML14353A455 |
| 2044 | Oglala Sioux Tribe's Memorandum of Law in Response to the Board's December 9, 2014 Order Regarding Public Disclosure of Admitted Testimony and Exhibits. | 12/19/2014 | ML14353A467 |

| | | | |
|------|---|------------|-------------|
| 2045 | Exhibit 1 - Dewey Burdock Project Plan of Operations. | 01/02/2015 | ML15002A330 |
| 2046 | Licensee Powertech (USA) Uranium Corporation's Updated Mandatory Disclosures. | 01/02/2015 | ML15002A331 |
| 2047 | Exhibit 2 - Powertech (USA) Inc.'s Request to Suspend Alluvial Well Sampling for the Dewey-Burdock Ground Water Discharge Plan. | 01/02/2015 | ML15002A332 |
| 2048 | Powertech Proposed Findings of Fact and Conclusions of Law. | 01/09/2015 | ML15010A044 |
| 2049 | NRC Staff's Response to Post-Hearing Order. | 01/09/2015 | ML15010A046 |
| 2050 | NRC Staff's Proposed Findings of Fact and Conclusions of Law. | 01/09/2015 | ML15010A047 |
| 2051 | Oglala Sioux Tribe's Post-Hearing Initial Brief with Findings of Fact and Conclusions of Law. | 01/09/2015 | ML15010A048 |
| 2052 | Order Ruling on Confidentiality of Exhibits OST 029 through OST 041. | 01/12/2015 | ML15012A372 |

| | | | |
|------|--|------------|-------------|
| 2053 | Consolidated Intervenor's Proposed Findings of Fact and Conclusions of Law and Response to Post-Hearing Order. | 01/09/2015 | ML15012A472 |
| 2054 | Notice Pursuant to 10 CFR 2 309j1. | 01/14/2015 | ML15014A205 |
| 2055 | OFFICIAL EXHIBIT - NON-PUBLIC - OST-038 -00-BD01 - Exhibit TRR17. | 11/21/2014 | ML15020A393 |
| 2056 | OFFICIAL EXHIBIT - NON-PUBLIC - OST-034-00-BD01 - Exhibit DS392. | 11/21/2014 | ML15020A394 |
| 2057 | OFFICIAL EXHIBIT - NON-PUBLIC - OST-036-00-BD01 - Exhibit IHM32. | 11/21/2014 | ML15020A395 |
| 2058 | OFFICIAL EXHIBIT - NON-PUBLIC - OST-041-00-BD01 - Exhibit TRJ111. | 11/21/2014 | ML15020A396 |
| 2059 | OFFICIAL EXHIBIT - NON-PUBLIC - OST-040-00-BD01 - Exhibit FBM95. | 11/21/2014 | ML15020A397 |
| 2060 | OFFICIAL EXHIBIT - NON-PUBLIC - OST-033-00-BD01 - Exhibit DS178. | 11/21/2014 | ML15020A398 |

| | | | |
|------|--|------------|-------------|
| 2061 | OFFICIAL EXHIBIT - NON-PUBLIC - OST-035-00-BD01 - Exhibit IHK2. | 11/21/2014 | ML15020A399 |
| 2062 | OFFICIAL EXHIBIT - NON-PUBLIC - OST-039-00-BD01 - Exhibit TRT16. | 11/21/2014 | ML15020A400 |
| 2063 | OFFICIAL EXHIBIT - NON-PUBLIC - OST-037-00-BD01 - Exhibit IHM62. | 11/21/2014 | ML15020A401 |
| 2064 | OFFICIAL EXHIBIT - OST-029-00-BD01 - Written Supplemental Testimony of Dr LaGarry. | 11/21/2014 | ML15020A402 |
| 2065 | OFFICIAL EXHIBIT - NON-PUBLIC - OST-030-00-BD01 - Exhibit SNT25. | 11/21/2014 | ML15020A404 |
| 2066 | OFFICIAL EXHIBIT - NON-PUBLIC - OST-031-00-BD01 - Exhibit TRT44. | 11/21/2014 | ML15020A406 |
| 2067 | OFFICIAL EXHIBIT - NON-PUBLIC - OST-032-00-BD01 - Exhibit ELT4. | 11/21/2014 | ML15020A407 |
| 2068 | OFFICIAL EXHIBIT - NON-PUBLIC - APP-087-00-BD01 - Geophysical Log Header without Drift Survey. | 12/04/2014 | ML15020A408 |

- 2069 OFFICIAL EXHIBIT - NON-PUBLIC - APP-078-00-BD01 - 12/04/2014 ML15020A409
IHK2 Borehole South-North Cross Section.

- 2070 OFFICIAL EXHIBIT - NON-PUBLIC - APP-079-00-BD01 - 12/04/2014 ML15020A410
IHK2 Borehole West-East Cross Section.

- 2071 OFFICIAL EXHIBIT - APP-077-00-BD01 - Boreholes 12/03/2014 ML15020A411
Evaluated in Cross Sections.

- 2072 OFFICIAL EXHIBIT - NON-PUBLIC - APP-075-00-BD01 - 12/04/2014 ML15020A412
Powertech (USA), Inc., Silver King Mines, Inc. Probe Log.

- 2073 OFFICIAL EXHIBIT - NON-PUBLIC - APP-074-00-BD01 - 12/04/2014 ML15020A413
Answering Testimony Regarding Dr. Lagarry's Analysis of
Borehole Log Data.

- 2074 OFFICIAL EXHIBIT - NON-PUBLIC - APP-085-00-BD01 - 12/03/2014 ML15020A414
TRT16 Borehole West-East Cross Section.

- 2075 OFFICIAL EXHIBIT - NON-PUBLIC - APP-082-00-BD01 - 12/04/2014 ML15020A415
TRR17 Borehole South-North Cross Section.

- 2076 OFFICIAL EXHIBIT - NON-PUBLIC - APP-083-00-BD01 - 12/03/2014 ML15020A416
TRR17 Borehole West-East Cross Section.

| | | | |
|------|---|------------|-------------|
| 2077 | OFFICIAL EXHIBIT - NON-PUBLIC - APP-084-00-BD01 - Powertech, Inc., TRT16 Borehole South-North Cross Section. | 12/04/2014 | ML15020A417 |
| 2078 | OFFICIAL EXHIBIT - NON-PUBLIC - APP-076-00-BD01 - DS178 Lithology Log. | 12/04/2014 | ML15020A418 |
| 2079 | OFFICIAL EXHIBIT - NON-PUBLIC - APP-080-00-BD01 - IHM61 Borehole South-North Cross Section. | 12/03/2014 | ML15020A420 |
| 2080 | OFFICIAL EXHIBIT - NON-PUBLIC - APP-086-00-BD01 - Powertech (USA), Inc., TRJ111 Geophysical Log Header, Non-Public / Proprietary Information. | 12/04/2014 | ML15020A421 |
| 2081 | OFFICIAL EXHIBIT - NON-PUBLIC - APP-081-00-BD01 - IHM61 Borehole West-East Cross Section Non-Public/Proprietary Information. | 12/03/2014 | ML15020A422 |
| 2082 | OFFICIAL EXHIBIT - NRC-175-00-BD01 - NRC Staff's Answering Testimony. | 12/09/2014 | ML15020A423 |
| 2083 | OFFICIAL EXHIBIT - APP-088-00-BD01 - Powertech, Inc. Responses to NRC Staff's Verbal and Email Requests for Clarification of Selected Issues Related to the Dewey-Burdock Uranium Project Environmental Review. | 11/04/2010 | ML15020A734 |
| 2084 | Powertech (USA), Inc's Reply to Proposed Findings of Fact and Conclusions of Law. | 01/29/2015 | ML15029A708 |

| | | | |
|------|--|------------|-------------|
| 2085 | Consolidated Intervenor's Reply to Post-Hearing Briefs. | 01/29/2015 | ML15030A055 |
| 2086 | NRC Staff's Reply Brief. | 01/29/2015 | ML15030A066 |
| 2087 | Oglala Sioux Tribe's Post-Hearing Reply Brief | 01/29/2015 | ML15030A068 |
| 2088 | Biodiversity Conservation Alliance V. BU. of L. MGT - Order Affirming IBLA Final Decision. | 06/10/2010 | ML15030A070 |
| 2089 | Hearing File Update. | 02/02/2015 | ML15033A387 |
| 2090 | Errata to Post Hearing Briefs. | 02/02/2015 | ML15033A388 |
| 2091 | March 2015 Staff Hearing File Update. | 03/02/2015 | ML15061A305 |
| 2092 | Notice Regarding Expected Issuance of Initial Decision. | 03/09/2015 | ML15068A281 |

| | | | |
|------|---|------------|-------------|
| 2093 | Exhibit 1 - NI 43-101 Technical Report Preliminary Economic Assessment Dewey-Burdock Uranium ISR Project South Dakota, USA. | 04/01/2015 | ML15091A612 |
| 2094 | Licensee Powertech (USA) Uranium Corporations Updated Mandatory Disclosures. | 04/01/2015 | ML15091A618 |
| 2095 | Exhibit 2 - Dewey Burdock. | 04/01/2015 | ML15091A620 |
| 2096 | April 2015 Staff Hearing File Update with COS. | 04/01/2015 | ML15092A253 |
| 2097 | Partial Initial Decision (LBP-15-16). | 04/30/2015 | ML15120A299 |
| 2098 | Memorandum and Order (Providing Parties' Proposed Questions for the Official Record). | 04/30/2015 | ML15120A308 |
| 2099 | May 2015 Staff Hearing File Update with COS. | 05/01/2015 | ML15121A932 |
| 2100 | Limited Appearance Statement from Elizabeth H. Wiley Regarding Powertech (USA) Inc.'s License Application for an In-Situ Uranium Recovery Facility. | 05/07/2015 | ML15127A617 |

| | | | |
|------|--|------------|-------------|
| 2101 | Brief of Powertech (USA), Inc., Petition for Review of LBP-15-16. | 05/26/2015 | ML15146A494 |
| 2102 | Brief of Licensee Powertech (USA), Inc. Petition for Review of LBP-15-16. | 05/26/2015 | ML15146A495 |
| 2103 | Powertech (USA), Inc., Notice of Appeal of LBP-15-16. | 05/26/2015 | ML15146A496 |
| 2104 | Powertech (USA), Inc., Notice of Appeal of LBP-15-16 - Table of Contents. | 05/26/2015 | ML15146A497 |
| 2105 | Powertech (USA), Inc., Notice of Appeal of LBP-15-16 - Table of Authorities. | 05/26/2015 | ML15146A498 |
| 2106 | Staff Petition for Review of LBP-15-16. | 05/26/2015 | ML15146A499 |
| 2107 | Oglala Sioux Tribe's Petition for Review of LPB-15-16 and Decisions Finding Tribal Contentions Inadmissible. | 05/26/2015 | ML15146A500 |
| 2108 | Consolidated Intervenors' Petition for Review of LBP 15-16. | 05/26/2015 | ML15147A069 |

| | | | |
|------|--|------------|-------------|
| 2109 | Status Report re: In the Matter of Powertech (USA) Inc., Docket No. 40-9075-MLA; ASLBP No. 10-898-02-MLA-BD01. | 06/01/2015 | ML15152A525 |
| 2110 | Hearing File I Update re: In the Matter of POWERTECH (USA) INC., Docket No. 40-9075-MLA; ASLBP No. 10-898-02-MLA-BD01. | 06/01/2015 | ML15152A526 |
| 2111 | Notice Of Atomic Safety And Licensing Board Reconstitution. | 06/09/2015 | ML15160A359 |
| 2112 | Powertech Response to CI Appeal Caption. | 06/22/2015 | ML15173A475 |
| 2113 | Powertech Response to CI Appeal Table of Contents. | 06/22/2015 | ML15173A476 |
| 2114 | Powertech Response to CI Appeal Table of Authorities. | 06/22/2015 | ML15173A477 |
| 2115 | Powertech Response to CI Appeal Text. | 06/22/2015 | ML15173A478 |
| 2116 | Powertech Response to Tribe Appeal Caption. | 06/22/2015 | ML15173A479 |

| | | | |
|------|--|------------|-------------|
| 2117 | Powertech Response to Tribe Appeal Table of Contents. | 06/22/2015 | ML15173A480 |
| 2118 | Powertech Response to Tribe Appeal Table of Authorities. | 06/22/2015 | ML15173A481 |
| 2119 | Powertech Response to Tribe Appeal Text. | 06/22/2015 | ML15173A482 |
| 2120 | Oglala Sioux Tribe's Consolidated Response to Petitions to Review of LBP-15-16. | 06/22/2015 | ML15173A483 |
| 2121 | NRC Staff's Response To Oglala Sioux Tribe's Petition For Review of LBP-15-16. | 06/22/2015 | ML15173A485 |
| 2122 | NRC Staff's Response To Consolidated Interveners Petition For Review of LBP-15-16. | 06/22/2015 | ML15173A486 |
| 2123 | NRC Staff's Response To Powertech's Petition For Review Of LBP-15-16. | 06/22/2015 | ML15173A487 |
| 2124 | NRC Staff Notice to the Board. | 06/24/2015 | ML15175A411 |

| | | | |
|------|--|------------|-------------|
| 2125 | July 2015 Staff Hearing File Update with COS. | 07/01/2015 | ML15182A195 |
| 2126 | Status Report 07.01.2015 with COS. | 07/01/2015 | ML15182A196 |
| 2127 | NRC Staff's Reply to Oglala Sioux Tribe's Response Brief. | 07/01/2015 | ML15182A221 |
| 2128 | Powertech Reply to NRC Staff's Response to Powertech's Petition for Review of LBP-15-16. | 07/02/2015 | ML15183A491 |
| 2129 | Powertech Reply Brief to Oglala Sioux Tribe Response Brief. | 07/02/2015 | ML15183A492 |
| 2130 | Oglala Sioux Tribe's Reply in Support of Petition for Review of LBP-15-16 and Decisions Finding Tribal Contentions Inadmissible. | 07/02/2015 | ML15183A493 |
| 2131 | Oglala Sioux Tribe's Response Letter to the NRC Staff Response Letter June 23, 2015 in the Matter of Powertech USA, Inc. | 07/15/2015 | ML15196A100 |
| 2132 | August 2015 Hearing File Index with COS. | 08/03/2015 | ML15215A657 |

| | | | |
|------|--|------------|-------------|
| 2133 | Status Report 2015.08.03 with COS. | 08/03/2015 | ML15215A658 |
| 2134 | Letter to the Board re Oglala Sioux Tribe's Questions on Meeting Invitation Sent in June 2015. With COS and Attachments. | 08/27/2015 | ML15239B340 |
| 2135 | NMSS Letter to the Oglala Sioux Tribe re Consultation Under Section 106 of the National Historic Preservation Act re Dewey-Burdock In-Situ Uranium Recovery Project. | 08/26/2015 | ML15239B341 |
| 2136 | NMSS Organization Chart ML15238B238. | 08/27/2015 | ML15239B342 |
| 2137 | September 2015 Hearing File Index with COS. | 09/01/2015 | ML15244B131 |
| 2138 | Status Report 2015.09.01 with COS | 09/01/2015 | ML15244B132 |
| 2139 | ORDER OF THE SECRETARY (Extending Time for Commission Review). | 09/21/2015 | ML15264B131 |
| 2140 | Notice of September 24 2015 Letter from OST to NRC Staff. | 09/24/2015 | ML15267A377 |

| | | | |
|------|---|------------|-------------|
| 2141 | October 2015 Hearing File Index with Certificate of Service. | 10/01/2015 | ML15274A506 |
| 2142 | Status Report 2015.10.01 with Certificate of Service. | 10/01/2015 | ML15274A517 |
| 2143 | November 2015 Hearing File Index with Certificate of Service. | 11/02/2015 | ML15306A353 |
| 2144 | November 2015 Status Report with Certificate of Service. | 11/02/2015 | ML15306A354 |
| 2145 | Notice of Withdrawal for Michael J. Clark. | 11/04/2015 | ML15308A425 |
| 2146 | Notice of Appearance of Christopher Hair. | 12/01/2015 | ML15335A521 |
| 2147 | NRC Staff Consultation Status Update. | 12/01/2015 | ML15335A539 |
| 2148 | NRC Staff Hearing File Update. | 12/01/2015 | ML15335A547 |

| | | | |
|------|--|------------|-------------|
| 2149 | Notice of Appearance of Shelbie R. Lewman. | 12/03/2015 | ML15337A425 |
| 2150 | NRC Staff Hearing File Update. | 01/04/2016 | ML16004A280 |
| 2151 | NRC Staff Consultation Status Report. | 01/04/2016 | ML16004A311 |
| 2152 | Staff Hearing File Update February 2016. | 02/01/2016 | ML16033A100 |
| 2153 | Status Report February 2016. | 02/01/2016 | ML16033A101 |
| 2154 | NRC Staff's Hearing File Update. | 03/01/2016 | ML16061A078 |
| 2155 | NRC Staff's Consultation Update. | 03/01/2016 | ML16061A079 |
| 2156 | Powertech Request For Status Report On Petition For Review Of LBP-15-16. | 03/28/2016 | ML16088A113 |

| | | | |
|------|---|------------|-------------|
| 2157 | April 1, 2016, Consultation Status Report. | 04/01/2016 | ML16092A104 |
| 2158 | NRC Staff's April 1, 2016 Hearing File Update. | 04/01/2016 | ML16092A109 |
| 2159 | NRC Staff's May 2016 Hearing File Update. | 05/02/2016 | ML16123A160 |
| 2160 | Notice of Change in Contact Information for NRC Staff Counsel | 05/02/2016 | ML16123A161 |
| 2161 | NRC Staff's Tribal Consultation Status Update. | 05/02/2016 | ML16123A162 |
| 2162 | NRC Staff's 6-1-16 Hearing File Update. | 06/01/2016 | ML16153A447 |
| 2163 | NRC Staff's 6-1-16 Consultation Status Report. | 06/01/2016 | ML16153A448 |
| 2164 | NRC Staff July Hearing File Update. | 07/01/2016 | ML16183A259 |

| | | | |
|------|---|------------|-------------|
| 2165 | NRC Staff Consultation Status Update. | 07/01/2016 | ML16183A260 |
| 2166 | NRC Staff's Hearing File Update. | 08/01/2016 | ML16214A320 |
| 2167 | NRC Staff's Consultation Status Update. | 08/01/2016 | ML16214A322 |
| 2168 | NRC Staff Hearing File Update. | 09/01/2016 | ML16245A787 |
| 2169 | NRC Staff Status Report Update. | 09/01/2016 | ML16245A791 |
| 2170 | NRC Staff Hearing File Update. | 10/03/2016 | ML16277A529 |
| 2171 | NRC Staff Updated Status Report. | 10/03/2016 | ML16277A530 |
| 2172 | Memorandum and Order (Requesting Scheduling Information for Telephone Conference Call). | 10/13/2016 | ML16287A631 |

| | | | |
|------|--|------------|-------------|
| 2173 | Notice of Appearance for Emily Monteith. | 10/24/2016 | ML16298A179 |
| 2174 | Order (Scheduling Telephonic Status Conference). | 10/24/2016 | ML16298A331 |
| 2175 | NRC Staff Status Report Update | 11/01/2016 | ML16306A427 |
| 2176 | NRC Staff Hearing File Update. | 11/01/2016 | ML16306A428 |
| 2177 | 7 November 2016 Hearing Transcript for Scheduling Telephonic Status Conference | 11/09/2016 | ML16314A843 |
| 2178 | NRC Staff Hearing File Update (December 2016). | 12/01/2016 | ML16336A814 |
| 2179 | NRC Staff Status Report Update (December 2016). | 12/01/2016 | ML16336A815 |
| 2180 | Commission Memorandum and Order (CLI-16-20). | 12/23/2016 | ML16358A434 |

| | | | |
|------|---|------------|-------------|
| 2181 | NRC Staff Status Report (January 2017). | 01/03/2017 | ML17005A266 |
| 2182 | Notice of Withdrawal For Patricia A. Jehle | 01/30/2017 | ML17030A277 |
| 2183 | Notice of Appearance for David Cylkowski. | 02/01/2017 | ML17032A178 |
| 2184 | NRC Staff Hearing File Update (February 2017) | 02/01/2017 | ML17032A361 |
| 2185 | NRC Staff Status Report (February 2017). | 02/01/2017 | ML17032A362 |
| 2186 | NRC Staff Hearing File Update (March 2017). | 03/01/2017 | ML17060A683 |
| 2187 | NRC Staff Status Update (March 2017). | 03/01/2017 | ML17060A685 |
| 2188 | NRC Staff Hearing File Update (April 2017). | 04/03/2017 | ML17093A567 |

| | | | |
|------|---|------------|-------------|
| 2189 | NRC Staff Status Update (April 2017). | 04/03/2017 | ML17093A568 |
| 2190 | NRC Staff Hearing File Update (May 2017) | 05/01/2017 | ML17121A554 |
| 2191 | NRC Staff Status Report (May 2017) | 05/01/2017 | ML17121A555 |
| 2192 | NRC Staff Hearing File Update (June 2017). | 06/01/2017 | ML17152A408 |
| 2193 | NRC Staff Status Report (June 2017). | 06/01/2017 | ML17152A409 |
| 2194 | NRC Staff Hearing File Update (July 2017). | 06/30/2017 | ML17181A504 |
| 2195 | NRC Staff Status Report (July 2017). | 06/30/2017 | ML17181A505 |
| 2196 | NRC Staff Hearing File Update (August 2017) | 08/01/2017 | ML17213A679 |

| | | | |
|------|--|------------|-------------|
| 2197 | NRC Staff Status Report (August 2017) | 08/01/2017 | ML17213A682 |
| 2198 | NRC Staff Motion for Summary Disposition of Contentions 1A and 1B. | 08/03/2017 | ML17215B356 |
| 2199 | NRC Staff Final Status Report. | 08/03/2017 | ML17215B358 |
| 2200 | Unopposed Motion for Extension of Time to Submit Responses to NRC Staff's Motion for Summary Disposition. | 08/07/2017 | ML17219A724 |
| 2201 | Order (Granting Motion for Extension of Time). | 08/08/2017 | ML17220A192 |
| 2202 | NRC Staff Hearing File Update (September 2017). | 09/01/2017 | ML17244A040 |
| 2203 | Oglala Sioux Tribe Response in Opposition to NRC Staff Motion for Summary Disposition of Contentions 1A and 1B. | 09/01/2017 | ML17244A910 |
| 2204 | Powertech (USA), Inc. Rersponse in Support of NRC Staff Motion for Summary Disposition of Contentions 1A and 1B. | 09/01/2017 | ML17244A932 |

| | | | |
|------|---|------------|-------------|
| 2205 | Consolidated Intervenor's Opposition to Motion for Summary Disposition of Contentions 1A and 1B. | 09/01/2017 | ML17244A945 |
| 2206 | NRC Staff Hearing File Update (October 2017) | 09/28/2017 | ML17271A108 |
| 2207 | MEMORANDUM AND ORDER (Granting Summary Disposition as to Contention 1B, Denying Summary Disposition as to Contention 1A, and Establishing Further Procedures) (LBP-17-09) | 10/19/2017 | ML17292B298 |
| 2208 | Memorandum and Order (Requesting Scheduling Information for Conference Call). | 10/24/2017 | ML17297B518 |
| 2209 | NRC Staff Hearing File Update (November 2017). | 11/01/2017 | ML17305B449 |
| 2210 | NRC Staff Status Report (November 2017). | 11/01/2017 | ML17305B451 |
| 2211 | Order (Scheduling Telephonic Conference Call). | 11/02/2017 | ML17306A158 |
| 2212 | Notice of Appearance: Change of Law Firm. | 11/04/2017 | ML17310A252 |

| | | | |
|------|--|------------|-------------|
| 2213 | Brief of Licensee Powertech (USA), Inc. Petition for Review of LBP-17-09. | 11/13/2017 | ML17317B565 |
| 2214 | Transcript of Hearing on November 16, 2017. | 11/16/2017 | ML17324A616 |
| 2215 | Order (Scheduling Second Telephonic Conference Call). | 11/21/2017 | ML17325B679 |
| 2216 | NRC Staff Hearing File Update (December 2017) | 12/01/2017 | ML17335A050 |
| 2217 | NRC Staff Status Report (December 2017) | 12/01/2017 | ML17335A051 |
| 2218 | Notice of Withdrawal for Shelbie Lewman. | 12/05/2017 | ML17339A423 |
| 2219 | Oglala Sioux Tribe Response in Opposition to Powertech Petition for Review of LBP-17-09. | 12/08/2017 | ML17342B441 |
| 2220 | Consolidated Intervenors Answer to Petition for Review. | 12/08/2017 | ML17342B442 |

| | | | |
|------|---|------------|-------------|
| 2221 | Powertech (USA), Inc.'s Request to Take Judicial Notice. | 12/11/2017 | ML17345B130 |
| 2222 | Transcript of December 12, 2017 Teleconference. | 12/12/2017 | ML17348B174 |
| 2223 | Reply To Oglala Sioux Tribe's And Consolidated Intervenor's Opposition To The Petition For Review Of LBP-17-09. | 12/18/2017 | ML17352B256 |
| 2224 | Consolidated Intervenor's Opposition to Applicant Request to Take Judicial Notice. | 12/31/2017 | ML17365A033 |
| 2225 | NRC Staff January 2018 Hearing File Update. | 01/02/2018 | ML18002A578 |
| 2226 | NRC Staff January 2018 Status Update. | 01/02/2018 | ML18002A580 |
| 2227 | Licensee Powertech (USA), Inc.'s Reply to Consolidated Intervenor's Opposition to Notice Pleading. | 01/09/2018 | ML18009A209 |
| 2228 | Order (Scheduling Third Telephonic Conference Call). | 01/09/2018 | ML18009A745 |

| | | | |
|------|--|------------|-------------|
| 2229 | ORDER (Granting in Part and Denying in Part Request to Take Judicial Action). | 01/09/2018 | ML18009A776 |
| 2230 | NRC Staff Response to January 9, 2018 Order (Scheduling Third Telephonic Conference Call). | 01/17/2018 | ML18017B322 |
| 2231 | Oglala Sioux Tribe Response to NRC Staff December 6 2017 letter. | 01/19/2018 | ML18019B267 |
| 2232 | Powertech Response to Board Request. | 01/19/2018 | ML18019B268 |
| 2233 | Hearing Transcript of January 24, 2018 Proceedings. | 01/26/2018 | ML18026A688 |
| 2234 | NRC Staff Hearing File Update (Feb. 2018). | 02/01/2018 | ML18032A417 |
| 2235 | NRC Staff Status Report (Feb. 2018) | 02/01/2018 | ML18032A419 |
| 2236 | Notice of Summary Report of Counsel Conference Call. | 02/06/2018 | ML18037B127 |

| | | | |
|------|---|------------|-------------|
| 2237 | ORDER (Requesting Information for Fourth Telephonic Conference Call). | 02/08/2018 | ML18039A792 |
| 2238 | ORDER (Scheduling Fourth Telephonic Conference Call) | 02/14/2018 | ML18045A418 |
| 2239 | Notice of Oglala Sioux Tribe Responses to NRC Staff Questions | 02/15/2018 | ML18046A171 |
| 2240 | NRC Submission of Billing Documentation in Response to February 8, 2018 Order | 02/15/2018 | ML18046B427 |
| 2241 | Powertech's Responses to Board Order. | 02/15/2018 | ML18046B443 |
| 2242 | 23 February 2018 Hearing Transcript | 02/27/2018 | ML18058B785 |
| 2243 | Order (Requesting Information for Fifth Telephonic Conference Call). | 03/01/2018 | ML18060A103 |
| 2244 | NRC Staff Hearing File Update (March 2018). | 03/01/2018 | ML18060A328 |

| | | | |
|------|---|------------|-------------|
| 2245 | NRC Staff Status Report (March 2018). | 03/01/2018 | ML18060A329 |
| 2246 | ORDER (Scheduling Fifth Telephonic Conference Call) | 03/13/2018 | ML18072A253 |
| 2247 | ORDER (Extending Time for Commission Review). | 03/13/2018 | ML18072A363 |
| 2248 | Letter to Board regarding Staff's Approach to Identify Lakota Sioux TCPs. | 03/16/2018 | ML18075A498 |
| 2249 | Letter to Oglala Sioux Tribe from NRC Staff regarding NRC's Approach to Identify Historic, Cultural and Religious Sites. | 03/16/2018 | ML18075A499 |
| 2250 | Letter to Powertech from NRC Staff regarding NRC's Approach to Identify Historic, Cultural and Religious Sites. | 03/16/2018 | ML18075A500 |
| 2251 | Letter to Consolidated Intervenors from NRC Staff regarding NRC's Approach to Identify Historic, Cultural and Religious Sites. | 03/16/2018 | ML18075A501 |
| 2252 | Enclosure to Letters regarding Timeline for Staff's Approach to Obtaining Information on Lakota Sioux Cultural Resources Potentially Impacted | 03/16/2018 | ML18075A502 |

| | | | |
|------|---|------------|-------------|
| 2253 | 27 March 2018 Hearing Transcript | 03/28/2018 | ML18087A744 |
| 2254 | ORDER (Requesting Information for the Sixth Telephonic Conference Call). | 03/29/2018 | ML18088A285 |
| 2255 | Oglala Sioux Tribe's Response to NRC Staff's March 16, 2018 Cultural Resources Survey Proposal. | 03/30/2018 | ML18089A655 |
| 2256 | Letter Response to NRC Staff March 2018 Approach to Identify Historic Cultural & Religious Sites at Dewey-Burdock In-Situ Uranium Recovery Project in Fall River and Custer Counties. | 03/30/2018 | ML18089A656 |
| 2257 | NRC Staff Hearing File Update (April 2018). | 04/02/2018 | ML18092B613 |
| 2258 | NRC Staff Status Report (April 2018). | 04/02/2018 | ML18092B614 |
| 2259 | Order (Scheduling Sixth Telephonic Conference Call). | 04/04/2018 | ML18094A972 |
| 2260 | 6 April 2018 Hearing Transcript. | 04/06/2018 | ML18100A912 |

| | | | |
|------|--|------------|-------------|
| 2261 | Final Response of Powertech to NRC Staff Proposal to Identify Historic, Cultural, and Religious Sites at the Dewey-Burdock In Situ Uranium Recovery Project. | 04/11/2018 | ML18101A223 |
| 2262 | Letter to Board re Staff Action on Approach. | 04/11/2018 | ML18101B100 |
| 2263 | ORDER (Suspending Scheduled Dates for Dispositive Motions and Evidentiary Hearing on Contention 1A). | 04/12/2018 | ML18102A715 |
| 2264 | Notice of Appearance: Change of Law Firm. | 04/18/2018 | ML18108A538 |
| 2265 | NRC Staff Hearing File Update (May 2018) | 05/01/2018 | ML18121A207 |
| 2266 | NRC Staff Status Report (May 2018) | 05/01/2018 | ML18121A208 |
| 2267 | Notice of Appearance of Lorraine Baer. | 06/01/2018 | ML18152A677 |
| 2268 | NRC Staff Hearing File Update (June 2018) | 06/01/2018 | ML18152B224 |

| | | | |
|------|---|------------|-------------|
| 2269 | NRC Staff Status Report (June 2018) | 06/01/2018 | ML18152B226 |
| 2270 | NRC Staff Letter to the Board dated June 19, 2018. | 06/19/2018 | ML18170A352 |
| 2271 | Notice of Withdrawal for David Cylkowski. | 06/22/2018 | ML18173A317 |
| 2272 | NRC Staff Hearing File Update (July 2018) | 07/02/2018 | ML18183A578 |
| 2273 | NRC Staff Status Report (July 2018) | 07/02/2018 | ML18183A579 |
| 2274 | Motion to Set Filing Deadlines for Summary Disposition Motions. | 07/05/2018 | ML18186A684 |
| 2275 | ORDER (Suspending Deadline to File Motions for Summary Disposition). | 07/11/2018 | ML18192A785 |
| 2276 | Powertech (USA), Inc., Response to NRC Staff's Motion to Impose Filing Deadlines for Summary Disposition Motions for Contention 1A. | 07/16/2018 | ML18197A336 |

| | | | |
|------|--|------------|-------------|
| 2277 | Oglala Sioux Tribe Response to NRC Staff Motion to Set Filing for Summary Disposition Motions. | 07/19/2018 | ML18200A183 |
| 2278 | Order (Establishing Procedures for Filing Motions for Summary Disposition). | 07/19/2018 | ML18200A329 |
| 2279 | Commission Memorandum and Order (CLI-18-07). | 07/24/2018 | ML18205A474 |
| 2280 | NRC Staff Hearing File Update (August 2018) | 08/01/2018 | ML18213A457 |
| 2281 | NRC Staff Status Report (August 2018) | 08/01/2018 | ML18213A458 |
| 2282 | Notice of Appointment of Adjudicatory Employee. | 08/15/2018 | ML18227B300 |
| 2283 | Oglala Sioux Tribe's Motion for Summary Disposition. | 08/17/2018 | ML18229A341 |
| 2284 | Oglala Sioux Tribe Statement of Undisputed Material Facts. | 08/17/2018 | ML18229A342 |

| | | | |
|------|--|------------|-------------|
| 2285 | NRC Staff's Motion for Summary Disposition of Contention 1A. | 08/17/2018 | ML18229A343 |
| 2286 | Attachment 3 to NRC Staff's Motion for Summary Disposition of Contention 1A. | 08/17/2018 | ML18229A351 |
| 2287 | Attachment 4 to NRC Staff's Motion for Summary Disposition of Contention 1A. | 08/17/2018 | ML18229A352 |
| 2288 | Order of the Secretary. | 08/30/2018 | ML18242A428 |
| 2289 | Powertech (USA) Inc's Response In Support Of NRC Staff Motion For Summary Disposition Of Contention 1A. | 08/31/2018 | ML18243A458 |
| 2290 | NRC Staff's Hearing File Update. | 09/04/2018 | ML18247A348 |
| 2291 | NRC Staff's Status Report. | 09/04/2018 | ML18247A349 |
| 2292 | Powertech (USA), Inc.'s Request for the Commission to Take Judicial Notice and Request for Extension of Time to File Legal Standard Pleadings. | 09/17/2018 | ML18260A340 |

| | | | |
|------|--|------------|-------------|
| 2293 | Order of the Secretary. | 09/19/2018 | ML18262A369 |
| 2294 | NRC Staff's Response to Oglala Sioux Tribe's Motion for Summary Disposition of Contention 1A. | 09/21/2018 | ML18264A234 |
| 2295 | Powertech (USA) Inc.'s Response in Opposition to the Oglala Sioux Tribe's Motion for Summary Disposition of Contention 1A. | 09/21/2018 | ML18264A266 |
| 2296 | Oglala Sioux Tribe's Response in Opposition to NRC Staff's Motion for Summary Disposition of Contention 1A. | 09/21/2018 | ML18264A346 |
| 2297 | Declaration of Kyle White. | 09/21/2018 | ML18264A347 |
| 2298 | Oglala Sioux Tribe's Response to the Commission's August 30, 2018 Order. | 09/24/2018 | ML18267A080 |
| 2299 | NRC Staff's Response to Order Dated August 30, 2018. | 09/24/2018 | ML18267A336 |
| 2300 | Powertech (USA), Inc.'s Response to Commission Inquiry on Legal Standards. | 09/24/2018 | ML18267A372 |

| | | | |
|------|--|------------|-------------|
| 2301 | Consolidated Intervenor's Views on Agency Response to U.S. Court of Appeals (D.C. Cir) Remand. | 09/24/2018 | ML18267A398 |
| 2302 | NRC Staff Hearing File Update (October 2018). | 10/01/2018 | ML18274A204 |
| 2303 | NRC Staff Status Report (October 2018). | 10/01/2018 | ML18274A205 |
| 2304 | Powertech (USA), Inc's Response To Pleadings on Legal Standards. | 10/19/2018 | ML18293A000 |
| 2305 | Oglala Sioux Tribe's Response to Parties' Views Regarding The Commission's August 30 2018 Order. | 10/19/2018 | ML18293A001 |
| 2306 | Consolidated Intervenor's Response To Powertech And NRC Staff Views. | 10/19/2018 | ML18293A002 |
| 2307 | Memorandum And Order (Denying Motions for Summary Disposition as to Contention 1A) (LBP-18-05) | 10/30/2018 | ML18303A233 |
| 2308 | NRC Staff Hearing File Update (10-31-18) | 10/31/2018 | ML18304A470 |

| | | | |
|------|---|------------|-------------|
| 2309 | NRC Staff Status Update (10-31-18) | 10/31/2018 | ML18304A471 |
| 2310 | NRC Staff Hearing File Update 11.1.2018 | 11/01/2018 | ML18305B438 |
| 2311 | Brief Of Licensee Powertech (USA), Inc. Petition for Interlocutory Review Of LBP-18-05. | 11/26/2018 | ML18330A297 |
| 2312 | NRC Staff Hearing File Update 11-30-2018. | 11/30/2018 | ML18334A293 |
| 2313 | NRC Staff Status Report 11-30-2018. | 11/30/2018 | ML18334A295 |
| 2314 | Order (Scheduling Telephonic Conference Call). | 12/03/2018 | ML18337A370 |
| 2315 | 6 December 2018 Hearing Transcript. | 12/10/2018 | ML18344A509 |
| 2316 | December 6, 2018 Hearing Transcript - Revised. | 12/12/2018 | ML18346A090 |

| | | | |
|------|---|------------|-------------|
| 2317 | Letter to Board Re: Scheduling of Tribe's Response to Staff's November 21, 2018 Letter. | 12/12/2018 | ML18346A697 |
| 2318 | Memorandum (Summarizing December 6, 2018 Teleconference and Requesting Scheduling Information). | 12/14/2018 | ML18348B105 |
| 2319 | Oglala Sioux Tribe's Response in Opposition to Powertech (USA) Inc.'s Petition for Interlocutory Review of LBP-18-05. | 12/20/2018 | ML18354B514 |
| 2320 | Consolidated Intervenors Response In Response To Powertech (USA) Inc. Petition For Interlocutory Review. | 12/21/2018 | ML18355B070 |
| 2321 | NRC Staff Hearing File Update (01/02/2019). | 01/02/2019 | ML19002A440 |
| 2322 | NRC Staff Status Update (01-02-19). | 01/02/2019 | ML19002A442 |
| 2323 | Oglala Sioux Tribe's Response to NRC Staff's November 21, 2018 Letter. | 01/11/2019 | ML19011A459 |
| 2324 | CV for Jerry D. Spangler. | 01/11/2019 | ML19011A460 |

| | | | |
|------|---|------------|-------------|
| 2325 | Powertech Dewey-Burdock December 21 2018 Resource Estimate. | 12/21/2018 | ML19011A461 |
| 2326 | ORDER (Scheduling Second Telephonic Conference Call). | 01/24/2019 | ML19024A518 |
| 2327 | Transcript of January 29, 2019 Telephone Conference. | 01/30/2019 | ML19030A497 |
| 2328 | Commission Memorandum and Order (CLI-19-01). | 01/31/2019 | ML19031C810 |
| 2329 | NRC Staff Hearing File Update. | 01/31/2019 | ML19031C924 |
| 2330 | NRC Staff Status Report | 01/31/2019 | ML19031C925 |
| 2331 | NRC Staff Hearing File Update 03.01.19. | 03/01/2019 | ML19060A292 |
| 2332 | NRC Staff Status Report 03.01.19. | 03/01/2019 | ML19060A293 |

| | | | |
|------|--|------------|-------------|
| 2333 | Order (Extending Time of Commission Review). | 03/18/2019 | ML19077A302 |
| 2334 | Order (Scheduling Third Telephonic Conference Call). | 03/18/2019 | ML19077A329 |
| 2335 | Oglala Sioux Tribe Hearing File Update March 20, 2019. | 03/20/2019 | ML19079A397 |
| 2336 | Oglala Sioux Tribe Edits to February 8, 2019 Conference Call Notes. | 03/20/2019 | ML19079A398 |
| 2337 | NRC Staff Draft Notes from February 19, 2019 Conference Call. | 03/20/2019 | ML19079A399 |
| 2338 | Oglala Sioux Tribe Edits to February 19, 2019 Conference Call Notes. | 03/20/2019 | ML19079A400 |
| 2339 | Oglala Sioux Tribe Draft Notes from February 22, 2019 Meeting. | 03/20/2019 | ML19079A401 |
| 2340 | E-Mail Thread Between NRC Staff and Oglala Sioux Tribe Culminating in March 15, 2019 NRC Staff E-Mail Discontinuing Discussions. | 03/20/2019 | ML19079A402 |

| | | | |
|------|--|------------|-------------|
| 2341 | Transcript of March 21, 2019 Telephone Conference. | 03/21/2019 | ML19084A260 |
| 2342 | NRC Staff Hearing File Update 04.01.2019. | 04/01/2019 | ML19091A289 |
| 2343 | NRC Staff Status Update 04.01.2019. | 04/01/2019 | ML19091A290 |
| 2344 | NRC Staff's Motion to Set Schedule for Evidentiary Hearing. | 04/03/2019 | ML19093B813 |
| 2345 | Order (Setting Procedures to Address Motion to Set Schedule for Evidentiary Hearing). | 04/05/2019 | ML19095B492 |
| 2346 | Oglala Sioux Tribe Motion for Extension of Time to File Responses. | 04/11/2019 | ML19101A465 |
| 2347 | Order (Granting OST's Motion for Extension of Time to Submit Responses). | 04/12/2019 | ML19102A257 |
| 2348 | Order (Additional Information Relative to Pending Motion to Set Schedule for Evidentiary Hearing). | 04/15/2019 | ML19105B238 |

| | | | |
|------|--|------------|-------------|
| 2349 | PowerTech (USA) Inc. Response to NRC Staff's Motion for Evidentiary Hearing. | 04/17/2019 | ML19107A255 |
| 2350 | NRC Staff Response to the Board's April 5, 2019 Order. | 04/17/2019 | ML19107A501 |
| 2351 | Oglala Sioux Tribe Response to NRC Staff Motion to Set Adjudicatory Hearing. | 04/18/2019 | ML19108A492 |
| 2352 | Order (Scheduling Fourth Telephonic Conference Call). | 04/19/2019 | ML19109A207 |
| 2353 | Notice of Withdrawal of Emily Monteith. | 04/24/2019 | ML19114A478 |
| 2354 | Transcript of April 23, 2019 Telephone Conference. | 04/25/2019 | ML19115A391 |
| 2355 | Order (Granting NRC Staff Motion and Scheduling Evidentiary Hearing). | 04/29/2019 | ML19119A322 |
| 2356 | NRC Staff Hearing File Update 05-01-19. | 05/01/2019 | ML19121A596 |

| | | | |
|------|--|------------|-------------|
| 2357 | NRC Staff Status Report 05-01-19. | 05/01/2019 | ML19121A597 |
| 2358 | Order (Providing Case Management Information). | 05/02/2019 | ML19122A221 |
| 2359 | Order (Adopting Transcript Corrections). | 05/02/2019 | ML19122A381 |
| 2360 | Notice of Appearance - Carpenter. | 05/02/2019 | ML19122A427 |
| 2361 | Unopposed Motion for Extension of Time. | 05/09/2019 | ML19129A406 |
| 2362 | Order (Granting NRC Staff's Motion for Extension of Time). | 05/10/2019 | ML19130A140 |
| 2363 | NRC Staff Response to Case Management Order. | 05/10/2019 | ML19132A148 |
| 2364 | Order (Providing Additional Case Management Information). | 05/13/2019 | ML19133A232 |

| | | | |
|------|--|------------|-------------|
| 2365 | Licensee Powertech (USA) Inc. Request for Clarification of Board Scheduling Order. | 05/15/2019 | ML19135A601 |
| 2366 | Memorandum (Responding to Powertech's Request for Clarification). | 05/16/2019 | ML19136A233 |
| 2367 | NRC-177 - Statement of Professional Qualifications of Diana Diaz-Toro | 05/17/2019 | ML19137A392 |
| 2368 | NRC-178 - Statement of Professional Qualifications of Jerry Spangler. | 05/17/2019 | ML19137A393 |
| 2369 | NRC-179 - U.S. Department of Interior, National Park Services, National Register Bulletin 15, "How to Apply the National Register Criteria for Evaluation" (Rev. 1997). | 05/17/2019 | ML19137A394 |
| 2370 | NRC-180 - Branam, Kelly M., et al., "Survey to Identify and Evaluate Indian Sacred Sites and Traditional Cultural Properties in the Twin Cities Metropolitan Area" (August 2010). | 05/17/2019 | ML19137A395 |
| 2371 | NRC-181 - Stoffle, Richard W., et al., "The Land Still Speaks: Traditional Cultural Property Eligibility Statements for Gold Strike Canyon, Nevada and Sugarloaf Mountain, Arizona" (2000). | 05/17/2019 | ML19137A396 |
| 2372 | NRC-182 - Toupal, Rebecca S., et al., "Cultural Landscapes and Ethnographic Cartographies: Scandinavian-American and American Indian Knowledge of the Land," Environmental Science and Policy 4:171-184 (August 2001). | 05/17/2019 | ML19137A397 |

| | | | |
|------|--|------------|-------------|
| 2373 | NRC-183 - North Dakota Department of Transportation, "Design Manual," Chapter II, "Environmental and Public Involvement," Section 5, "Cultural Resources," Revised March 6, 2017. | 05/17/2019 | ML19137A398 |
| 2374 | NRC-184 - Ball, David, et al., "A Guidance Document for Characterizing Tribal Cultural Landscapes," Outer Continental Shelf (OCS) Study BOEM 2015-047, Bureau of Ocean Energy Management (2015). | 05/17/2019 | ML19137A399 |
| 2375 | NRC-185 - Odess, Daniel, "A Landscape-Scale Approach to Mitigating Adverse Effects on Historic Properties," U.S. Department of the Interior Draft Document, June 6, 2016. | 05/17/2019 | ML19137A400 |
| 2376 | NRC-186 - Summary of May 19, 2016, Meeting with the Oglala Sioux Tribe. | 05/17/2019 | ML19137A401 |
| 2377 | NRC-187 - NRC November 23, 2016 Letter to the Oglala Sioux Tribe Regarding an Invitation for Teleconference and Continued Consultation | 05/17/2019 | ML19137A402 |
| 2378 | NRC-196 - Summary of Tribal Cultural Heritage Resources Data Acquired in June 2018 at the Dewey-Burdock In Situ Uranium Recovery Project - Fall River and Custer Counties, South Dakota. | 05/17/2019 | ML19137A403 |
| 2379 | NRC-188 - Summary of NRC Staff and Oglala Sioux Tribe Teleconference Call on January 31, 2017. | 05/17/2019 | ML19137A404 |
| 2380 | NRC-189 - NRC Staff April 14, 2017 Letter to Oglala Sioux Tribe - Coordination of Tribal Survey to Identify Cultural Resources | 05/17/2019 | ML19137A405 |

- 2381 NRC-190 - Oglala Sioux Tribe May 31, 2017 Letter Responding to NRC's April 14, 2017 Letter. 05/17/2019 ML19137A406

- 2382 NRC-191 - NRC Staff December 6, 2017 Letter to Trina Lone Hill, Oglala Sioux Tribe, Regarding US Nuclear Regulatory Commission Proposal to Identify Historic, Cultural, and Religious Sites 05/17/2019 ML19137A407

- 2383 NRC-192 - NRC March 16, 2018 Letter to Oglala Sioux Tribe Transmitting NRC's Approach to Identify Historic, Cultural, and Religious Sites. 05/17/2019 ML19137A408

- 2384 NRC-193 - Oglala Sioux Tribe January 19, 2018 Response to NRC's December 6, 2018 Letter 05/17/2019 ML19137A409

- 2385 NRC-194 - Oglala Sioux Tribe's February 15, 2018 Responses to NRC Counsel Questions. 05/17/2019 ML19137A410

- 2386 NRC-195 - NRC November 21, 2018 Letter to Oglala Sioux Tribe Resuming Implementation of the NRC Staff March 16, 2018 Approach 05/17/2019 ML19137A411

- 2387 NRC-197 - Oglala Sioux Tribe's June 12, 2018, Cultural Resources Survey Methodologies Proposal. 05/17/2019 ML19137A413

- 2388 NRC-198 - Oglala Sioux Tribe's June 15, 2018 Updated Cultural Resources Survey Methodologies Proposal. 05/17/2019 ML19137A414

| | | | |
|------|---|------------|-------------|
| 2389 | NRC-199 - Makoche Wowapi / Mentz-Wilson Consultants, Proposal with Cost Estimate for Traditional Cultural Properties Survey for Proposed Dewey-Burdock Project (2012) (Public redacted version) | 05/17/2019 | ML19137A417 |
| 2390 | NRC-200 - NRC Staff July 2, 2018 Letter to the Oglala Sioux Tribe Regarding June 2018 Proposals | 05/17/2019 | ML19137A418 |
| 2391 | NRC-201 - NRC's Timeline for March 2018 Approach | 05/17/2019 | ML19137A419 |
| 2392 | NRC-202 - Powertech's December 5, 2018 Response to NRC Staff's November 21, 2018 Letter Confirming Reimbursement and Honoraria | 05/17/2019 | ML19137A420 |
| 2393 | NRC-203 - Oglala Sioux Tribe's January 11, 2019 Response to NRC's November 21, 2018 Letter Proposing to Resume Negotiations | 05/17/2019 | ML19137A421 |
| 2394 | NRC-204 - NRC January 25, 2019 Letter in Response to Oglala Sioux Tribe Letter dated January 11, 2019 | 05/17/2019 | ML19137A422 |
| 2395 | NRC-205 - February 8, 2019 Teleconference Call Summary with Oglala Sioux Tribe Comments | 05/17/2019 | ML19137A423 |
| 2396 | NRC-206 - LeBeau, Sebastian, "Reconstructing Lakota Ritual in the Landscape: The Identification and Typing System for Traditional Cultural Property Sites" (2009). | 05/17/2019 | ML19137A424 |

| | | | |
|------|--|------------|-------------|
| 2397 | NRC-207 - July 22, 2015 Letter from Dennis Yellow Thunder, Oglala Sioux Tribe, Responding to NRC's June 23, 2015 Letter. | 05/17/2019 | ML19137A425 |
| 2398 | NRC-208 - June 8, 2018 Letter from Travis Stills, Oglala Sioux Tribe, to the NRC Staff, Proposed Schedule for Cultural Resources Survey | 05/17/2019 | ML19137A426 |
| 2399 | NRC-209 - January 29, 2019 Letter from President Julian Bear Runner, Oglala Sioux Tribe, "Invitation to February 22, 2019, Meeting of the Tribe's Tribal Historic Preservation Advisory Council" | 05/17/2019 | ML19137A427 |
| 2400 | NRC-210 - April 11, 2018 Powertech Response to NRC Staff's March 16, 2018 Letter Confirming Reimbursement and Honoraria. | 05/17/2019 | ML19137A428 |
| 2401 | NRC-211 - Oglala Sioux Tribe March 12, 2019 Response to NRC's March 1, 2019 Letter | 05/17/2019 | ML19137A429 |
| 2402 | NRC-212 - September 24, 2015 Letter from Oglala Sioux Tribe ML15267A377 | 05/17/2019 | ML19137A430 |
| 2403 | NRC-213 - Oglala Sioux Tribe's Counsel December 5, 2018 E-mail to NRC Counsel | 05/17/2019 | ML19137A431 |
| 2404 | NRC-214 - Proposed Draft Cultural Resources Site Survey Methodology ML19058A153; ML19058A154; ML19058A155 | 05/17/2019 | ML19137A432 |

- 2405 NRC-215 - NRC's March 1 Letter to Oglala Sioux Tribe - Negotiations Regarding Development of a Methodology for a Tribal Site Survey to Identify Historic, Cultural, and Religious Sites 05/17/2019 ML19137A433
- 2406 NRC-216 - NRC Staff's March 15, 2019 E-mail to Oglala Sioux Tribe Regarding No Additional Meetings. 05/17/2019 ML19137A434
- 2407 NRC-217 - February 19, 2019 Teleconference Call Summary with Oglala Sioux Tribe Comments (Draft). 05/17/2019 ML19137A435
- 2408 NRC-218 - Oglala Sioux Tribe's Summary of the Meeting with NRC Staff on February 22, 2019 in Pine Ridge, SD. 05/17/2019 ML19137A436
- 2409 NRC-219 - Oglala Sioux Tribe's March 30, 2018 Response to NRC Staff's March 16, 2018 Approach. 05/17/2019 ML19137A437
- 2410 NRC-220 - NRC Staff Comments on February 22, 2019 Meeting Summary. 05/17/2019 ML19137A438
- 2411 NRC-221 - Oglala Sioux Tribe's March 29, 2013 Letter, Invitation for Government to Government Consultation. 05/17/2019 ML19137A439
- 2412 NRC-222 - Patricia L. Parker, Traditional Cultural Properties: What You Do and How We Think, CRM, Vol. 16 (1993). 05/17/2019 ML19137A440

| | | | |
|------|---|------------|-------------|
| 2413 | NRC-223 - Oglala Sioux Tribe's January 31, 2011 Letter. | 05/17/2019 | ML19137A441 |
| 2414 | NRC-224 - Nickens, Paul, Literature Review of Lakota Historic, Cultural, and Religious Resources for the Dewey-Burdock ISR Project. | 05/17/2019 | ML19137A442 |
| 2415 | NRC-176 - Prefiled Direct Testimony of Diana Diaz-Toro and Jerry Spangler. | 05/17/2019 | ML19137A443 |
| 2416 | NRC Staff Exhibit List. | 05/17/2019 | ML19137A444 |
| 2417 | NRC Staff's Initial Statement of Position on Contention 1A. | 05/17/2019 | ML19137A446 |
| 2418 | NRC Staff COS. | 05/17/2019 | ML19137A447 |
| 2419 | SUNSI Non-Disclosure Affidavit of David Frankel. | 05/21/2019 | ML19141A417 |
| 2420 | SUNSI Non-Disclosure Affidavit of Thomas Ballanco. | 05/21/2019 | ML19141A418 |

| | | | |
|------|--|------------|-------------|
| 2421 | NRC-176-R - Prefiled Direct Testimony of NRC Staff. | 05/21/2019 | ML19142A057 |
| 2422 | NRC-199-R - Makoche Wowapi / Mentz-Wilson Consultants, Proposal with Cost Estimate for Traditional Cultural Properties Survey for Proposed Dewey-Burdock Project (2012) (Public redacted version). | 05/21/2019 | ML19142A059 |
| 2423 | Licensee PowerTech (USA) Inc. Initial Statement of Position Regarding Contention 1A. | 05/22/2019 | ML19142A444 |
| 2424 | NRC Staff Hearing File Update | 05/31/2019 | ML19151A567 |
| 2425 | NRC Staff Status Report | 05/31/2019 | ML19151A571 |
| 2426 | NRC Staff Hearing File Update 06-27-19 | 06/27/2019 | ML19178A230 |
| 2427 | NRC Staff Status Report 06-27-19 | 06/27/2019 | ML19178A232 |
| 2428 | Consolidated Intervenors' Response Position Statement | 06/28/2019 | ML19179A334 |

| | | | |
|------|---|------------|-------------|
| 2429 | INT-023 - Affidavit - Testimony re Oglala Lakota Cultural Resources. | 06/28/2019 | ML19179A335 |
| 2430 | Consolidated Intervenors Exhibit List. | 06/28/2019 | ML19179A336 |
| 2431 | Oglala Sioux Tribe Response Statement of Position | 06/28/2019 | ML19179A337 |
| 2432 | OST-042, Declaration of Kyle White | 06/28/2019 | ML19179A338 |
| 2433 | OST-043 - Declaration of Dr Kelly Morgan. | 06/28/2019 | ML19179A339 |
| 2434 | OST-044 - January 11, 2019 Oglala Sioux Tribe Response to NRC Staff November 21, 2018 Letter. | 01/11/2019 | ML19179A340 |
| 2435 | OST-046 - Statement of Professional Qualifications of Dr. Craig Howe. | 06/28/2019 | ML19179A342 |
| 2436 | OST-047 - April 6, 2018 Conference Call Transcript. | 04/06/2018 | ML19180A000 |

| | | | |
|------|---|------------|-------------|
| 2437 | OST-048 - February 15, 2018 Notice of Oglala Sioux Tribe's Responses to NRC Staff Questions. | 02/15/2018 | ML19180A001 |
| 2438 | OST-049 - January 11, 2019 Oglala Sioux Tribe Response to NRC Staff November 21, 2018 Letter. | 01/11/2019 | ML19180A002 |
| 2439 | OST-050 - December 6, 2018 Conference Call Transcript. | 12/06/2018 | ML19180A003 |
| 2440 | OST-051 - January 29, 2019 Conference Call Transcript. | 01/29/2019 | ML19180A004 |
| 2441 | OST-052 - June 5, 2018 Open Site Survey "Methodology" Prepared by Dr. Nickens. | 06/05/2018 | ML19180A005 |
| 2442 | OST-053 - September 21, 2018 Oglala Sioux Tribe Response to Motion for Summary Disposition. | 09/21/2018 | ML19180A006 |
| 2443 | OST-054 - August 19, 2014 Transcript of Hearing with NRC Staff Corrections. | 08/19/2014 | ML19180A007 |
| 2444 | OST-055 - February 15, 2018 NRC Staff Billing Summary Data. | 02/15/2018 | ML19180A008 |

| | | | |
|------|--|------------|-------------|
| 2445 | OST-056 - January 17, 2018 NRC Staff Response to January 9, 2018 Order. | 01/17/2018 | ML19180A009 |
| 2446 | Oglala Sioux Tribe Exhibit List. | 06/29/2019 | ML19180A010 |
| 2447 | Order (Providing Case Management Information Regarding Exhibits) | 07/08/2019 | ML19189A149 |
| 2448 | Oglala Sioux Tribe Revised Exhibit List. | 07/12/2019 | ML19193A238 |
| 2449 | OST-042-R - Declaration of Kyle White. | 07/12/2019 | ML19193A239 |
| 2450 | OST-043-R - Declaration of Dr. Kelly Morgan | 07/12/2019 | ML19193A240 |
| 2451 | OST-044-R - Statement of Professional Qualifications of Dr. Kelly Morgan | 07/12/2019 | ML19193A241 |
| 2452 | OST-045-R, Declaration of Dr. Craig Howe | 07/12/2019 | ML19193A242 |

| | | | |
|------|---|------------|-------------|
| 2453 | OST-057, March 7, 2013 NRC Staff Answer to Oglala Sioux Tribe Statement of Contentions on Draft SEIS (Excerpt) | 03/07/2013 | ML19193A243 |
| 2454 | OST-058 - April 13, 2018 Enclosure 1 to Letter from NRC Staff to Oglala Sioux Tribe | 04/13/2018 | ML19193A244 |
| 2455 | OST-059, June 15, 2018 Email from NRC Staff Counsel to Oglala Sioux Tribe Counsel; June 15, 2018 Email from NRC Staff to Kyle White, Oglala Sioux Tribe | 07/12/2019 | ML19193A245 |
| 2456 | NRC Staff's Reply Statement of Position. | 07/17/2019 | ML19198A336 |
| 2457 | NRC Staff's Revised Exhibit List for August 2019 Evidentiary Hearing for Powertech USA, Inc. | 07/17/2019 | ML19198A337 |
| 2458 | Exhibit NRC-225 - NRC Staff's Prefiled Reply Testimony. | 07/17/2019 | ML19198A338 |
| 2459 | Certificate of Service. | 07/17/2019 | ML19198A339 |
| 2460 | Order (Scheduling Pre-Hearing Teleconference) | 07/29/2019 | ML19210C701 |

| | | | |
|------|--|------------|-------------|
| 2461 | NRC Staff Hearing File Update 08-01-19 | 08/01/2019 | ML19213A249 |
| 2462 | NRC Staff Status Report 08-01-19. | 08/01/2019 | ML19213A251 |
| 2463 | Oglala Sioux Tribe's Motion to Strike. | 08/03/2019 | ML19215A001 |
| 2464 | Transcript Of August 1, 2019 Pre-Hearing Teleconference re PowerTech USA, Inc. Dewey-Burdock in Situ Uranium Recovery Facility, Pages 1674-1701. | 08/05/2019 | ML19217A309 |
| 2465 | NRC Staff's Answer in Opposition to Oglala Sioux Tribe's Motion to Strike. | 08/09/2019 | ML19221B476 |
| 2466 | Powertech (USA), Inc., Response to the Oglala Sioux Tribe's Motion to Strike | 08/09/2019 | ML19221B745 |
| 2467 | Order (Denying Oglala Sioux Tribe Motion to Strike) | 08/12/2019 | ML19224B885 |
| 2468 | Memorandum (Regarding Board Exhibits for Evidentiary Hearing on Contention 1A and Opportunity to Address Recent Judicial Decision). | 08/20/2019 | ML19232A381 |

| | | | |
|------|--|------------|-------------|
| 2469 | BRD-001 - Color Version of Figure 3.9-1 from Environmental Impact Statement for the Dewey-Burdock Project in Custer and Fall River Counties, South Dakota, NUREG-1910, Supplement 4, Vol. 1 (Jan. 2014) (Ex. NRC-008-A-1). | 08/20/2019 | ML19232A406 |
| 2470 | BRD-002 - Excerpt from Environmental Impact Statement for the Ross ISR Project in Crook County, Wyoming, NUREG-1910, Supplement 5 (Feb. 2014). | 08/20/2019 | ML19232A407 |
| 2471 | BRD-003 - Strata Energy, Inc., Ross ISR Project, NRC Docket #040-09091, Scope of Work for Assessment of Properties of Religious and Cultural Significance (Aug. 31, 2012). | 08/20/2019 | ML19232A408 |
| 2472 | BRD-004 - Excerpt from Enterprise Wide IDIQ Contract for Technical Assistance in Support of NRC Environmental and Reactor Programs. | 08/20/2019 | ML19232A409 |
| 2473 | BRD-005 - Enclosure 2 to NRC Staff January 25, 2019 Letter (NRC- 204) in Response to Oglala Sioux Tribe January 11, 2019 Letter (NRC-203). | 08/20/2019 | ML19232A410 |
| 2474 | BRD-006 - February 6, 2018 Notice of Summary Report of Counsel Conference Call with Attached Summary of Counsel-to-Counsel Meeting Held on February 1, 2018. | 08/20/2019 | ML19232A411 |
| 2475 | BRD-007 - NRC Staff February 20, 2018 Letter to Powertech. | 08/20/2019 | ML19232A412 |
| 2476 | BRD-008 - NRC Staff April 12, 2018 Letter to Crow Creek Sioux Tribe. | 08/20/2019 | ML19232A413 |

| | | | |
|------|--|------------|-------------|
| 2477 | BRD-009 - NRC Staff December 12, 2018 E-Mail Response to Oglala Sioux Tribe December 10, 2018 E-Mail. | 08/20/2019 | ML19232A415 |
| 2478 | BRD-010 - Oglala Sioux Tribe June 8, 2018 E-Mail Response to NRC Staff June 8, 2018 E-Mail. | 08/20/2019 | ML19232A416 |
| 2479 | BRD-011 - Kadrmas, Lee & Jackson, Inc., Scope and Fee for the U.S. Nuclear Regulatory Commission and Powertech (USA) (Oct. 2012) (Nonpublic). | 08/20/2019 | ML19232A422 |
| 2480 | BRD-012 - Makoche Wowapi / Mentz-Wilson Consultants, Proposal with Cost Estimate for Traditional Cultural Properties Survey for Proposed Dewey-Burdock Project (2012) (Nonpublic). | 08/20/2019 | ML19232A423 |
| 2481 | Order (Regarding Submission of Non-disclosure Agreements, Motion to Permit Statement by Tribal President, and Additional Board Exhibit for Evidentiary Hearing on Contention 1A) | 08/22/2019 | ML19234A238 |
| 2482 | BRD-013 - NRC Staff October 31, 2012 E-Mail to Tribal Historic Preservation Officers Forwarding October 31, 2012 NRC Staff Letter and Enclosed Revised Proposal for Dewey-Burdock Traditional Cultural Properties Study. | 08/22/2019 | ML19234A239 |
| 2483 | Non Disclosure Agreement Executed by Dr Craig Howe | 08/23/2019 | ML19235A210 |
| 2484 | SUNSI Affidavit of Christopher Pubsley | 08/23/2019 | ML19235A216 |

| | | | |
|------|--|------------|-------------|
| 2485 | NRC Staff Hearing File Update 08-26-19 | 08/26/2019 | ML19238A034 |
| 2486 | NRC Staff Status Report 08-26-19 | 08/26/2019 | ML19238A035 |
| 2487 | SUNSI Non-Disclosure Affidavit of Bruce Ellison | 08/27/2019 | ML19239A212 |
| 2488 | Non-Disclosure Affidavit of Dr Kelly Morgan. | 08/27/2019 | ML19239A467 |
| 2489 | Non-Disclosure Affidavit of Kyle White. | 08/28/2019 | ML19240A309 |
| 2490 | OFFICIAL EXHIBIT - NRC-177-00-BD01 - Statement of Professional Qualifications of Diana Diaz-Toro | 05/17/2019 | ML19241A384 |
| 2491 | OFFICIAL EXHIBIT - NRC-178-00-BD01 - Statement of Professional Qualifications of Jerry Spangler. | 05/17/2019 | ML19242C066 |
| 2492 | OFFICIAL EXHIBIT - NRC-179-00-BD01 - U.S. Department of Interior, National Park Services, National Register Bulletin 15, "How to Apply the National Register Criteria for Evaluation" (Rev. 1997). | 05/17/2019 | ML19242C067 |

| | | | |
|------|---|------------|-------------|
| 2493 | OFFICIAL EXHIBIT - NRC-180-00-BD01 - Branam, Kelly M., et al., "Survey to Sites and Traditional Cultural Properties in the Twin Cities Metropolitan Area" (August 2010). | 05/17/2019 | ML19242C074 |
| 2494 | OFFICIAL EXHIBIT - NRC-181-00-BD01 - Stoffle, Richard W., et al., "The Land Still Speaks: Traditional Cultural Property Eligibility Statements for Gold Strike Canyon, Nevada and Sugarloaf Mountain, Arizona" (2000). | 05/17/2019 | ML19242C079 |
| 2495 | OFFICIAL EXHIBIT - NRC-182-00-BD01 - Toupal, Rebecca S., et al., "Cultural Landscapes and Ethnographic Cartographies: Scandinavian-American and American Indian Knowledge of the Land," Environmental Science and Policy 4:171-184 (August 2001). | 05/17/2019 | ML19242C081 |
| 2496 | OFFICIAL EXHIBIT - NRC-183-00-BD01 - North Dakota Department of Transportation, "Design Manual," Chapter II, "Environmental and Public Involvement," Section 5, "Cultural Resources," Revised March 6, 2017. | 05/17/2019 | ML19242C085 |
| 2497 | OFFICIAL EXHIBIT - NRC-184-00-BD01 - Ball, David, et al., "A Guidance Document for Characterizing Tribal Cultural Landscapes," Outer Continental Shelf (OCS) Study BOEM 2015-047, Bureau of Ocean Energy Management (2015). | 05/17/2019 | ML19242C088 |
| 2498 | OFFICIAL EXHIBIT - NRC-185-00-BD01 - Odess, Daniel, "A Landscape-Scale Approach to Mitigating Adverse Effects on Historic Properties," U.S. Department of the Interior Draft Document, June 6, 2016. | 05/17/2019 | ML19242C090 |
| 2499 | OFFICIAL EXHIBIT - NRC-186-00-BD01 - Summary of May 19, 2016, Meeting with the Oglala Sioux Tribe. | 05/17/2019 | ML19242C093 |
| 2500 | OFFICIAL EXHIBIT - NRC-187-00-BD01 - NRC November 23, 2016 Letter to the Oglala Sioux Tribe Regarding an Invitation for Teleconference and Continued Consultation | 05/17/2019 | ML19242C096 |

| | | | |
|------|--|------------|-------------|
| 2501 | OFFICIAL EXHIBIT - NRC-196-00-BD01 - Summary of Tribal Cultural Heritage Resources Data Acquired in June 2018 at the Dewey-Burdock In Situ Uranium Recovery Project - Fall River and Custer Counties, South Dakota. | 05/17/2019 | ML19242C098 |
| 2502 | OFFICIAL EXHIBIT - NRC-188-00-BD01 - Summary of NRC Staff and Oglala Sioux Tribe Teleconference Call on January 31, 2017. | 05/17/2019 | ML19242C101 |
| 2503 | OFFICIAL EXHIBIT - NRC-189-00-BD01 - NRC Staff April 14, 2017 Letter to Oglala Sioux Tribe - Coordination of Tribal Survey to Identify Cultural Resources | 05/17/2019 | ML19242C103 |
| 2504 | OFFICIAL EXHIBIT - NRC-190-00-BD01 - Oglala Sioux Tribe May 31, 2017 Letter Responding to NRC's April 14, 2017 Letter. | 05/17/2019 | ML19242C105 |
| 2505 | OFFICIAL EXHIBIT - NRC-191-00-BD01 - NRC Staff December 6, 2017 Letter to Trina Lone Hill, Oglala Sioux Tribe, Regarding US Nuclear Regulatory Commission Proposal to Identify Historic, Cultural, and Religious Sites | 05/17/2019 | ML19242C108 |
| 2506 | OFFICIAL EXHIBIT - NRC-192-00-BD01 - NRC March 16, 2018 Letter to Oglala Sioux Tribe Transmitting NRC's Approach to Identify Historic, Cultural, and Religious Sites. | 05/17/2019 | ML19242C110 |
| 2507 | OFFICIAL EXHIBIT - NRC-193-00-BD01 - Oglala Sioux Tribe January 19, 2018 Response to NRC's December 6, 2017 Letter | 05/17/2019 | ML19242C113 |
| 2508 | OFFICIAL EXHIBIT - NRC-194-00-BD01 - Oglala Sioux Tribe's February 15, 2018 Responses to NRC Counsel Questions. | 05/17/2019 | ML19242C115 |

- 2509 OFFICIAL EXHIBIT - NRC-195-00-BD01 - NRC November 21, 2018 Letter to Oglala Sioux Tribe Resuming Implementation of the NRC Staff March 16, 2018 Approach 05/17/2019 ML19242C118

- 2510 OFFICIAL EXHIBIT - NRC-197-00-BD01 - NON-PUBLIC - Oglala Sioux Tribe's June 12, 2018, Cultural Resources Survey Methodologies Proposal. 05/17/2019 ML19242C120

- 2511 OFFICIAL EXHIBIT - NRC-198-00-BD01 - NON-PUBLIC - Oglala Sioux Tribe's June 15, 2018 Updated Cultural Resources Survey Methodologies Proposal. 05/17/2019 ML19242C122

- 2512 OFFICIAL EXHIBIT - NRC-200-00-BD01 - NRC Staff July 2, 2018 Letter to the Oglala Sioux Tribe Regarding June 2018 Proposals 05/17/2019 ML19242C130

- 2513 OFFICIAL EXHIBIT - NRC-202-00-BD01 - Powertech's December 5, 2018 Response to NRC Staff's November 21, 2018 Letter Confirming Reimbursement and Honoraria 05/17/2019 ML19242C131

- 2514 OFFICIAL EXHIBIT - NRC-203-00-BD01 - Oglala Sioux Tribe's January 11, 2019 Response to NRC's November 21, 2018 Letter Proposing to Resume Negotiations 05/17/2019 ML19242C133

- 2515 OFFICIAL EXHIBIT - NRC-204-00-BD01 - NRC January 25, 2019 Letter in Response to Oglala Sioux Tribe Letter dated January 11, 2019 05/17/2019 ML19242C135

- 2516 OFFICIAL EXHIBIT - NRC-205-00-BD01 - February 8, 2019 Teleconference Call Summary with Oglala Sioux Tribe Comments 05/17/2019 ML19242C137

| | | | |
|------|---|------------|-------------|
| 2517 | OFFICIAL EXHIBIT - NRC-206-00-BD01 - LeBeau, Sebastian, "Reconstructing Lakota Ritual in the Landscape: The Identification and Typing System for Traditional Cultural Property Sites" (2009). | 05/17/2019 | ML19242C140 |
| 2518 | OFFICIAL EXHIBIT - NRC-207-00-BD01 - July 22, 2015 Letter from Dennis Yellow Thunder, Oglala Sioux Tribe, Responding to NRC's June 23, 2015 Letter. | 05/17/2019 | ML19242C142 |
| 2519 | OFFICIAL EXHIBIT - NRC-208-00-BD01 - June 8, 2018 Letter from Travis Stills, Oglala Sioux Tribe, to the NRC Staff, Proposed Schedule for Cultural Resources Survey | 05/17/2019 | ML19242C144 |
| 2520 | OFFICIAL EXHIBIT - NRC-209-00-BD01 - January 29, 2019 Letter from President Julian Bear Runner, Oglala Sioux Tribe, "Invitation to February 22, 2019, Meeting of the Tribe's Tribal Historic Preservation Advisory Council" | 05/17/2019 | ML19242C146 |
| 2521 | OFFICIAL EXHIBIT - NRC-210-00-BD01 - April 11, 2018 Powertech Response to NRC Staff's March 16, 2018 Letter Confirming Reimbursement and Honoraria. | 05/17/2019 | ML19242C149 |
| 2522 | OFFICIAL EXHIBIT - NRC-211-00-BD01 - Oglala Sioux Tribe March 12, 2019 Response to NRC's March 1, 2019 Letter | 05/17/2019 | ML19242C151 |
| 2523 | OFFICIAL EXHIBIT - NRC-212-00-BD01 - September 24, 2015 Letter from Oglala Sioux Tribe ML15267A377 | 05/17/2019 | ML19242C154 |
| 2524 | OFFICIAL EXHIBIT - NRC-213-00-BD01 - Oglala Sioux Tribe's Counsel December 5, 2018 E-mail to NRC Counsel | 05/17/2019 | ML19242C156 |

- 2525 OFFICIAL EXHIBIT - NRC-214-00-BD01 - Proposed Draft Cultural Resources Site Survey Methodology ML19058A153; ML19058A154; ML19058A155 05/17/2019 ML19242C158

- 2526 OFFICIAL EXHIBIT - NRC-215-00-BD01 - NRC's March 1 Letter to Oglala Sioux Tribe - Negotiations Regarding Development of a Methodology for a Tribal Site Survey to Identify Historic, Cultural, and Religious Sites 05/17/2019 ML19242C161

- 2527 OFFICIAL EXHIBIT - NRC-216-00-BD01 - NRC Staff's March 15, 2019 E-mail to Oglala Sioux Tribe Regarding No Additional Meetings. 05/17/2019 ML19242C163

- 2528 OFFICIAL EXHIBIT - NRC-217-00-BD01 - February 19, 2019 Teleconference Call Summary with Oglala Sioux Tribe Comments (Draft). 05/17/2019 ML19242C165

- 2529 OFFICIAL EXHIBIT - NRC-218-00-BD01 - Oglala Sioux Tribe's Summary of the Meeting with NRC Staff on February 22, 2019 in Pine Ridge, SD. 05/17/2019 ML19242C168

- 2530 OFFICIAL EXHIBIT - NRC-219-00-BD01 - Oglala Sioux Tribe's March 30, 2018 Response to NRC Staff's March 16, 2018 Approach. 05/17/2019 ML19242C170

- 2531 OFFICIAL EXHIBIT - NRC-220-00-BD01 - NRC Staff Comments on February 22, 2019 Meeting Summary. 05/17/2019 ML19242C173

- 2532 OFFICIAL EXHIBIT - NRC-221-00-BD01 - Oglala Sioux Tribe's March 29, 2013 Letter, Invitation for Government to Government Consultation. 05/17/2019 ML19242C175

| | | | |
|------|---|------------|-------------|
| 2533 | OFFICIAL EXHIBIT - NRC-222-00-BD01 - Patricia L. Parker, Traditional Cultural Properties: What You Do and How We Think, CRM, Vol. 16 (1993). | 05/17/2019 | ML19242C177 |
| 2534 | OFFICIAL EXHIBIT - NRC-223-00-BD01 - Oglala Sioux Tribe's January 31, 2011 Letter. | 05/17/2019 | ML19242C179 |
| 2535 | OFFICIAL EXHIBIT - NRC-224-00-BD01 - Nickens, Paul, Literature Review of Lakota Historic, Cultural, and Religious Resources for the Dewey-Burdock ISR Project. | 05/17/2019 | ML19242C182 |
| 2536 | OFFICIAL EXHIBIT - NRC-176-R-00-BD01 - Prefiled Direct Testimony of NRC Staff. | 05/21/2019 | ML19242C185 |
| 2537 | OFFICIAL EXHIBIT - NRC-199-R-00-BD01 - Makoche Wowapi / Mentz-Wilson Consultants, Proposal with Cost Estimate for Traditional Cultural Properties Survey for Proposed Dewey-Burdock Project (2012) (Public redacted version). | 05/21/2019 | ML19242C187 |
| 2538 | OFFICIAL EXHIBIT - INT-023-00-BD01 - Affidavit - Testimony re Oglala Lakota Cultural Resources. | 06/28/2019 | ML19242C189 |
| 2539 | OFFICIAL EXHIBIT - OST-046-00-BD01 - Statement of Professional Qualifications of Dr. Craig Howe. | 06/28/2019 | ML19242C192 |
| 2540 | OFFICIAL EXHIBIT - OST-047-00-BD01 - April 6, 2018 Conference Call Transcript. | 04/06/2018 | ML19242C195 |

| | | | |
|------|--|------------|-------------|
| 2541 | OFFICIAL EXHIBIT - OST-050-00-BD01 - December 6, 2018 Conference Call Transcript. | 12/06/2018 | ML19242C198 |
| 2542 | OFFICIAL EXHIBIT - OST-051-00-BD01 - January 29, 2019 Conference Call Transcript. | 01/29/2019 | ML19242C202 |
| 2543 | OFFICIAL EXHIBIT - OST-052-00-BD01 - June 5, 2018 Open Site Survey "Methodology" Prepared by Dr. Nickens. | 06/05/2018 | ML19242C203 |
| 2544 | OFFICIAL EXHIBIT - OST-053-00-BD01 - September 21, 2018 Oglala Sioux Tribe Response to Motion for Summary Disposition. | 09/21/2018 | ML19242C206 |
| 2545 | OFFICIAL EXHIBIT - OST-054-00-BD01 - August 19, 2014 Transcript of Hearing with NRC Staff Corrections. | 08/19/2014 | ML19242C209 |
| 2546 | OFFICIAL EXHIBIT - OST-055-00-BD01 - February 15, 2018 NRC Staff Billing Summary Data. | 02/15/2018 | ML19242C211 |
| 2547 | OFFICIAL EXHIBIT - OST-056-00-BD01 - January 17, 2018 NRC Staff Response to January 9, 2018 Order. | 01/17/2018 | ML19242C216 |
| 2548 | OFFICIAL EXHIBIT - OST-042-R-00-BD01 - Declaration of Kyle White. | 07/12/2019 | ML19242C219 |

| | | | |
|------|---|------------|-------------|
| 2549 | OFFICIAL EXHIBIT - OST-043-R-00-BD01 - Declaration of Dr. Kelly Morgan | 07/12/2019 | ML19242C221 |
| 2550 | OFFICIAL EXHIBIT - OST-044-R-00-BD01 - Statement of Professional Qualifications of Dr. Kelly Morgan | 07/12/2019 | ML19242C224 |
| 2551 | OFFICIAL EXHIBIT - OST-045-R-00-BD01 - Declaration of Dr. Craig Howe | 07/12/2019 | ML19242C227 |
| 2552 | OFFICIAL EXHIBIT - OST-057-00-BD01 - March 7, 2013 NRC Staff Answer to Oglala Sioux Tribe Statement of Contentions on Draft SEIS (Excerpt) | 03/07/2013 | ML19242C228 |
| 2553 | OFFICIAL EXHIBIT - OST-058-00-BD01 - April 13, 2018 Enclosure 1 to Letter from NRC Staff to Oglala Sioux Tribe | 04/13/2018 | ML19242C231 |
| 2554 | OFFICIAL EXHIBIT - OST-059-00-BD01 - June 15, 2018 Email from NRC Staff Counsel to Oglala Sioux Tribe Counsel; June 15, 2018 Email from NRC Staff to Kyle White, Oglala Sioux Tribe | 07/12/2019 | ML19242C234 |
| 2555 | OFFICIAL EXHIBIT - NRC-225-00-BD01 - NRC Staff's Prefiled Reply Testimony. | 07/17/2019 | ML19242C236 |
| 2556 | OFFICIAL EXHIBIT - BRD-001-00-BD01 - Color Version of Figure 3.9-1 from Environmental Impact Statement for the Dewey-Burdock Project in Custer and Fall River Counties, South Dakota, NUREG-1910, Supplement 4, Vol. 1 (Jan. 2014) (Ex. NRC-008-A-1). | 08/20/2019 | ML19242C238 |

| | | | |
|------|---|------------|-------------|
| 2557 | OFFICIAL EXHIBIT - BRD-002-00-BD01 - Excerpt from Environmental Impact Statement for the Ross ISR Project in Crook County, Wyoming, NUREG-1910, Supplement 5 (Feb. 2014). | 08/20/2019 | ML19242C240 |
| 2558 | OFFICIAL EXHIBIT - BRD-003-00-BD01 - Strata Energy, Inc., Ross ISR Project, NRC Docket #040-09091, Scope of Work for Assessment of Properties of Religious and Cultural Significance (Aug. 31, 2012). | 08/20/2019 | ML19242C243 |
| 2559 | OFFICIAL EXHIBIT - BRD-004-00-BD01 - Excerpt from Enterprise Wide IDIQ Contract for Technical Assistance in Support of NRC Environmental and Reactor Programs. | 08/20/2019 | ML19242C246 |
| 2560 | OFFICIAL EXHIBIT - BRD-005-00-BD01 - Enclosure 2 to NRC Staff January 25, 2019 Letter (NRC- 204) in Response to Oglala Sioux Tribe January 11, 2019 Letter (NRC-203). | 08/20/2019 | ML19242C248 |
| 2561 | OFFICIAL EXHIBIT - BRD-006-00-BD01 - February 6, 2018 Notice of Summary Report of Counsel Conference Call with Attached Summary of Counsel-to-Counsel Meeting Held on February 1, 2018. | 08/20/2019 | ML19242C251 |
| 2562 | OFFICIAL EXHIBIT - BRD-007-00-BD01 - NRC Staff February 20, 2018 Letter to Powertech. | 08/20/2019 | ML19242C253 |
| 2563 | OFFICIAL EXHIBIT - BRD-008-00-BD01 - NRC Staff April 12, 2018 Letter to Crow Creek Sioux Tribe. | 08/20/2019 | ML19242C255 |
| 2564 | OFFICIAL EXHIBIT - BRD-009-00-BD01 - NRC Staff December 12, 2018 E-Mail Response to Oglala Sioux Tribe December 10, 2018 E-Mail. | 08/20/2019 | ML19242C256 |

| | | | |
|------|---|------------|-------------|
| 2565 | OFFICIAL EXHIBIT - BRD-010-00-BD01 - Oglala Sioux Tribe June 8, 2018 E-Mail Response to NRC Staff June 8, 2018 E-Mail. | 08/20/2019 | ML19242C258 |
| 2566 | OFFICIAL EXHIBIT - BRD-011-00-BD01 - NON-PUBLIC - Kadrmas, Lee & Jackson, Inc., Scope and Fee for the U.S. Nuclear Regulatory Commission and Powertech (USA) (Oct. 2012) (Nonpublic). | 08/20/2019 | ML19242C260 |
| 2567 | OFFICIAL EXHIBIT - BRD-012-00-BD01 - NON-PUBLIC - Makoche Wowapi / Mentz-Wilson Consultants, Proposal with Cost Estimate for Traditional Cultural Properties Survey for Proposed Dewey-Burdock Project (2012) (Nonpublic). | 08/20/2019 | ML19242C262 |
| 2568 | OFFICIAL EXHIBIT - BRD-013-00-BD01 - NRC Staff October 31, 2012 E-Mail to Tribal Historic Preservation Officers Forwarding October 31, 2012 NRC Staff Letter and Enclosed Revised Proposal for Dewey-Burdock Traditional Cultural Properties Study. | 08/22/2019 | ML19242C265 |
| 2569 | OFFICIAL EXHIBIT - NRC-179-00-BD01 - U.S. Department of Interior, National Park Services, National Register Bulletin 15, "How to Apply the National Register Criteria for Evaluation" (Rev. 1997). | 05/17/2019 | ML19242C286 |
| 2570 | Transcript of August 28, 2019 Proceedings in Rapid City, South Dakota re Dewey-Burdock in Situ Uranium Recovery Facility. | 08/28/2019 | ML19248C541 |
| 2571 | Transcript of August 29, 2019 Proceedings re Dewey-Burdock in Situ Uranium Recovery Facility. | 08/29/2019 | ML19248C650 |
| 2572 | Transcript of Closed Session on August 29, 2019 in Rapid City, South Dakota re Dewey-Burdock in situ Uranium Recovery Facility. | 08/29/2019 | ML19249B745 |

| | | | |
|------|---|------------|-------------|
| 2573 | Post-Evidentiary Hearing Order | 09/06/2019 | ML19249B759 |
| 2574 | Joint Motion for Proposed Transcript Corrections. | 09/13/2019 | ML19256C666 |
| 2575 | Joint Motion for Proposed Closed Transcript Redactions | 09/13/2019 | ML19256D388 |
| 2576 | Memorandum and Order (Adopting Transcript Corrections and Redacted Version of Transcript for Closed Hearing Session and Closing the Evidentiary Record) | 09/18/2019 | ML19261B330 |
| 2577 | 29 August 2019 Hearing Transcript - Redacted | 08/29/2019 | ML19261C250 |
| 2578 | Commission Memorandum and Order (CLI-19-09) | 09/26/2019 | ML19269D378 |
| 2579 | NRC Staff Hearing File Update 10-01-19 | 10/01/2019 | ML19274C606 |
| 2580 | NRC Staff Status Report 10-01-19 | 10/01/2019 | ML19274C607 |

| | | | |
|------|---|------------|-------------|
| 2581 | Oglala Sioux Tribe's Proposed Findings of Fact and Conclusions of Law. | 10/04/2019 | ML19277J128 |
| 2582 | NRC Staff's Proposed Findings of Fact and Conclusions of Law. | 10/04/2019 | ML19277J459 |
| 2583 | Powertech (USA), Inc's Proposed Findings Of Fact And Conclusions Of Law For Remaining Contention 1A. | 10/04/2019 | ML19277J460 |
| 2584 | Powertech (USA), Inc's Reply To Proposed Reply Findings Of Fact And Conclusions Of Law For Remaining Contention 1A. | 10/11/2019 | ML19284F764 |
| 2585 | NRC Staff's Reply Findings of Fact and Conclusions of Law | 10/18/2019 | ML19291D499 |
| 2586 | Oglala Sioux Tribe's Reply Findings of Fact and Conclusions of Law | 10/18/2019 | ML19291F692 |
| 2587 | Hearing File Update 11-01-2019 | 11/01/2019 | ML19305C935 |
| 2588 | Status Update 11-01-2019 | 11/01/2019 | ML19305C942 |

| | | | |
|------|---|------------|-------------|
| 2589 | NRC Staff Hearing File Update 12-02-19 | 12/02/2019 | ML19336A357 |
| 2590 | NRC Staff Status Report 12-02-19 | 12/02/2019 | ML19336A375 |
| 2591 | Memorandum (Revised Contention 1A Post-Evidentiary Hearing Schedule) | 12/02/2019 | ML19336C118 |
| 2592 | Final Initial Decision (LBP-19-10) | 12/12/2019 | ML19346F926 |
| 2593 | Memorandum and Order (Providing Parties' Proposed Questions for the Official Record) | 12/13/2019 | ML19347B169 |
| 2594 | Joint Motion for Extension of Time to File Any Appeal of LBP-19-10. | 12/16/2019 | ML19350E627 |
| 2595 | Licensee Powertech (USA) Inc. Response In Opposition To Consolidated Intervenors And Oglala Sioux Tribe Motion For Extension Of Time. | 12/17/2019 | ML19351F195 |
| 2596 | Order (Granting Intervenors' Joint Motion for Extension of Time to Appeal) | 12/20/2019 | ML19354C481 |

| | | | |
|------|--|------------|-------------|
| 2597 | Oglala Sioux Tribe's Petition for Review of LBP-19-10, LBP-17-09, and Board Ruling on Motion to Strike. | 01/21/2020 | ML20021A376 |
| 2598 | Consolidated Intervenors Petition for Review of LBP-19-10, LBP-17-09 and Board Ruling on Motion to Strike. | 01/21/2020 | ML20023B549 |
| 2599 | NRC Staff's Answer Opposing Petitions for Review | 02/13/2020 | ML20044E399 |
| 2600 | Brief of Powertech (USA), Inc. in Opposition to the Oglala Sioux Tribe's and Consolidated Intervenors' Petition for Review of LBP-19-10 | 02/18/2020 | ML20049J051 |
| 2601 | Brief Of Powertech (USA), Inc. in Opposition to the Oglala Sioux Tribe's and Consolidated Intervenors, Petition for Review of LBP-19-10. Powertech Tables of Contents and Authorities. | 02/18/2020 | ML20049J053 |
| 2602 | Oglala Sioux Tribe's Reply to NRC Staff's Answer in Opposition to Petition for Review of LBP-19-10, LBP-17-09, and Board Ruling on Motion to Strike. | 02/24/2020 | ML20055H355 |
| 2603 | Oglala Sioux Tribe's Reply To Powertech's Answer In Opposition To Petition For Review Of LBP-19-10, LBP-17-09, And Board Ruling On Motion To Strike. | 02/28/2020 | ML20059N967 |
| 2604 | Order (Extending Time for Commission Review) | 05/14/2020 | ML20135H290 |
| 2605 | Commission Memorandum and Order (CLI-20-09) | 10/08/2020 | ML20282A597 |

Cite as 84 NRC 219 (2016)

CLI-16-20

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION**COMMISSIONERS:****Stephen G. Burns, Chairman**
Kristine L. Svinicki
Jeff Baran**In the Matter of****Docket No. 40-9075-MLA****POWERTECH (USA), INC.**
(Dewey-Burdock *In Situ* Uranium
Recovery Facility)**December 23, 2016****STANDARD OF REVIEW**

The Commission will grant a petition for review at its discretion, upon a showing that the petitioner has raised a substantial question as to whether (i) a finding of material fact is clearly erroneous or in conflict with a finding as to the same fact in a different proceeding; (ii) a necessary legal conclusion is without governing precedent or is a departure from or contrary to established law; (iii) a substantial and important question of law, policy, or discretion has been raised; (iv) the conduct of the proceeding involved a prejudicial procedural error; or (v) any other consideration that the Commission may deem to be in the public interest.

STANDARD OF REVIEW

The Commission reviews questions of law *de novo*, but it defers to the Board's findings with respect to the underlying facts unless they are "clearly erroneous." The standard for showing "clear error" is a difficult one to meet: petitioners must demonstrate that the Board's determination is "not even plausible" in light of the record as a whole. For this reason, where a petition for review relies primarily on claims that the Board erred in weighing the evidence in a merits decision, the Commission seldom grants review.

STANDARD OF REVIEW

The Commission gives substantial deference to the Board on issues of contention admissibility and will affirm admissibility determinations absent a showing of an error of law or abuse of discretion.

CONTENTIONS; ENVIRONMENTAL ISSUES

Although it is true that “the ultimate burden with respect to NEPA lies with the NRC Staff,” our regulations require that intervenors file environmental contentions on the applicant’s environmental report.

CONTINUED STORAGE RULE

Neither the waste confidence rule nor the continued storage rule applies to 11e.(2) byproduct material. These rules only apply to environmental impacts of spent fuel storage at power reactors and spent fuel storage facilities after the end of a reactor’s license term and before disposal in a deep geologic repository.

SUPPLEMENTAL ENVIRONMENTAL IMPACT STATEMENT

Section 51.92(d) of 10 C.F.R. states: “[t]he supplement to a *final environmental impact statement* will be prepared in the same manner as the *final environmental impact statement* except that a scoping process need not be used.” This provision provides an exception from the scoping process for supplements to *final* EISs.

NATIONAL ENVIRONMENTAL POLICY ACT

It is well settled that parties challenging an agency’s NEPA process are not entitled to relief unless they demonstrate harm or prejudice. Federal case law makes clear that procedural violations of NEPA do not automatically void an agency’s ultimate decision.

NATIONAL HISTORIC PRESERVATION ACT; NATIONAL ENVIRONMENTAL POLICY ACT

Federal case law supports the legal principle that NHPA and NEPA compliance do not necessarily mirror one another.

NATIONAL HISTORIC PRESERVATION ACT

The NHPA imposes several obligations on federal agencies, which proceed in a step-by-step manner. The consultation requirement continues throughout the steps. The first step is identifying any historic properties that might be affected by the federal undertaking (here licensing), and in doing so, making a reasonable and good faith effort to seek information from consulting parties, including Native American Tribes, to aid in that identification. But, as discussed by the Board, the identification of historic properties is not the end of the NHPA consultation process. After it identifies eligible sites that might be affected by the project, an agency must assess and resolve potential adverse effects in consultation with tribes that attach religious and cultural significance to those sites.

LICENSING BOARDS, AUTHORITY

NRC regulations provide the Board with the authority to “take appropriate action to control the hearing . . . process,” “[r]egulate the course of the hearing and the conduct of the participants,” and “[i]ssue orders necessary to carry out the presiding officer’s duties and responsibilities under [10 C.F.R. Part 2].”

STANDARD OF REVIEW

The Commission’s deference to the Board is particularly great when it comes to weighing the credibility of witnesses.

MEMORANDUM AND ORDER

This decision addresses four petitions for review relating to a materials license application for an *in situ* uranium recovery facility filed by Powertech (USA), Inc.¹ All parties to the proceeding — the Oglala Sioux Tribe, Consolidated Intervenors, Powertech, and the NRC Staff — have filed petitions for review of the Atomic Safety and Licensing Board’s Partial Initial Decision and in the case

¹ Powertech (USA) Inc.’s Submission of an Application for a Nuclear Regulatory Commission Uranium Recovery License for Its Proposed Dewey-Burdock In Situ Leach Uranium Recovery Facility in the State of South Dakota (Feb. 25, 2009) (ADAMS accession no. ML091030707).

of the Oglala Sioux Tribe and Consolidated Intervenors, earlier Board decisions finding several of their proffered contentions inadmissible.²

As discussed below, we take review of these petitions in part. We grant each party's petition with respect to the finality of the Board's ruling on Contentions 1A and 1B, find that these contentions should be considered "final" for the purposes of the petitions for review at issue here, and, pursuant to our inherent supervisory authority over agency adjudications, direct that the proceeding remain open for the narrow issue of resolving the deficiencies identified in Contentions 1A and 1B. We deny the remainder of Consolidated Intervenors' petition for review. With respect to Powertech's and the Staff's petitions for review, we also take review of the Board's direction to the Staff to address the deficiencies identified in Contentions 1A and 1B and we affirm the Board's direction to the Staff to submit monthly status reports and to file an agreement between the parties or a motion for summary disposition to resolve the deficiencies identified by the Board. We deny the remainder of Powertech's and the Staff's petitions for review. With respect to the Tribe's petition for review, we take review of the Board's rejection of Contention 8 as inadmissible. We find that the Board erred in its reasoning for dismissing Contention 8, but we affirm the Board's decision. We deny the remainder of the Tribe's petition for review.

I. BACKGROUND

In situ uranium recovery involves injecting a solution, called lixiviant, into an ore body through an injection well. As it flows through the ore body, the lixiviant dissolves the underground uranium. A separate production well extracts the uranium-containing solution from the ground. The uranium is then extracted from the solution through a process called ion exchange. After extraction, the lixiviant is recycled and reinjected into the ore body to dissolve more uranium.³ The *in situ* uranium recovery process is used widely throughout

² LBP-15-16, 81 NRC 618 (2015); see Oglala Sioux Tribe's Petition for Review of LBP-15-16 and Decisions Finding Tribal Contentions Inadmissible (May 26, 2015) (Tribe's Petition); Consolidated Intervenors' Petition for Review of LBP-15-16 (May 26, 2015) (Consolidated Intervenors' Petition); Brief of Powertech (USA), Inc. Petition for Review of LBP-15-16 (May 26, 2015) (Powertech's Petition); NRC Staff's Petition for Review of LBP-15-16 (May 26, 2015) (Staff's Petition).

The Board has referred to Susan Henderson, Dayton Hyde, and Aligning for Responsible Mining as Consolidated Intervenors, although it originally called them Consolidated Petitioners. See LBP-14-5, 79 NRC 377, 379 n.3 (2014); LBP-13-9, 78 NRC 37, 42 n.2 (2013).

³ Ex. APP-021-A, "Powertech (USA), Inc., Dewey-Burdock Project Application for NRC Uranium Recovery License Fall River and Custer Counties, South Dakota Technical Report" (Feb. 2009), at 1-6 (ML14247A342).

Wyoming, South Dakota, Nebraska, and New Mexico to recover subterranean uranium for enrichment and later use in nuclear power plants.

In order to comply with its National Environmental Policy Act (NEPA) obligations and recognizing the widespread use of this technology in this region of the country, the Staff prepared a generic environmental impact statement (GEIS) to address certain aspects of the environmental analysis for these facilities that tend to be similar across sites.⁴ The GEIS also identifies resource areas that require site-specific information to fully analyze the environmental impacts. It also notes that subsequent site-specific environmental review documents may summarize and incorporate by reference information from the GEIS.⁵ Any subsequent site-specific environmental impact analysis must also include new and significant information necessary to evaluate the *in situ* recovery license application.⁶

This proceeding began in February 2009, when Powertech filed an application for an *in situ* uranium recovery facility in Custer and Fall River Counties, South Dakota. In response, the Oglala Sioux Tribe and Consolidated Intervenors challenged the license application.⁷ The Board granted their hearing requests in August 2010.⁸ On November 26, 2012, the Staff issued the Draft Supplemental Environmental Impact Statement (DSEIS) for public comment.⁹ The NRC

⁴ Exs. NRC-010-A-1 to NRC-010-B-2, “Generic Environmental Impact Statement for In-Situ Leach Uranium Milling Facilities” (Final Report), NUREG-1910, vols. 1-2 (May 2009) (ML14246-A328, ML14247A345, ML14246A333, ML14246A332, ML14246A351) (GEIS).

⁵ Ex. NRC-010-A-1, GEIS, at xxxvii.

⁶ *Id.*

⁷ Petition to Intervene and Request for Hearing of the Oglala Sioux Tribe (Apr. 6, 2010) (Tribe’s Petition to Intervene); Consolidated Request for Hearing and Petition for Leave to Intervene (Mar. 8, 2010) (Consolidated Intervenors’ Petition to Intervene).

⁸ LBP-10-16, 72 NRC 361, 443-44 (2010).

⁹ Exs. NRC-009-A-1 to NRC-009-B-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” (Draft Report for Comment), NUREG-1910, Supplement 4, vols. 1-2 (Nov. 2012) (ML14247A350, ML14246A329, ML14246-A330, ML14246A331) (DSEIS).

Both the Tribe and individual members of Consolidated Intervenors (Susan Henderson and Dayton Hyde) commented on the DSEIS and later filed proposed contentions relating to the DSEIS. Exs. NRC-008-A-1 to NRC-008-B-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-1910, Supplement 4, vols. 1-2 (Jan. 2014), app. E, at E-5 to E-6 (ML14246A350, ML14246A326, ML14246A327, ML14247A334) (FSEIS); *see* Consolidated Intervenors’ New Contentions Based on DSEIS (Jan. 25, 2013) (Consolidated Intervenors’ DSEIS Contentions); List of Contentions of the Oglala Sioux Tribe

(Continued)

Staff issued a Safety Evaluation Report (SER) in March 2013.¹⁰ On January 29, 2014, the Staff issued the FSEIS.¹¹ The Staff issued the license to Powertech on April 8, 2014.¹² The Board held an evidentiary hearing on all nine admitted contentions in August 2014. In November 2014, the Tribe moved to file two new environmental contentions.¹³

The Board decision, LBP-15-16, resolved seven contentions in favor of Powertech and the Staff but found deficiencies in the Staff's NEPA analysis and NHPA consultation.¹⁴ The Board upheld the license with an additional license condition, ruled inadmissible the two post-hearing contentions proffered by the Tribe, and directed the Staff to submit monthly reports regarding its progress in resolving the identified deficiencies.¹⁵

Our decision today involves four petitions for review that were filed by the parties to this proceeding. We summarize each petition below, along with the relevant procedural history for each set of issues. A full procedural history can be found in the Board's various decisions on this matter.¹⁶

A. The Oglala Sioux Tribe's and Consolidated Intervenor's Petitions for Review

The Oglala Sioux Tribe appeals the Board's resolution of several of its admit-

Based on the Draft Supplemental Environmental Impact Statement (Jan. 25, 2013) (Tribe's DSEIS Contentions). On July 22, 2013, the Board admitted three of the new contentions and migrated seven of the originally admitted contentions. LBP-13-9, 78 NRC at 113-15.

¹⁰ Ex. NRC-135, "Safety Evaluation Report for the Dewey-Burdock Project Fall River and Custer Counties, South Dakota" (Mar. 2013) (ML13052A182). The Staff issued a revised SER in April 2014 to correct certain technical references. Ex. NRC-134, "Safety Evaluation Report (Revised) for the Dewey-Burdock Project Fall River and Custer Counties, South Dakota" (Apr. 2014) (ML14245-A347).

¹¹ Exs. NRC-008-A-1 to NRC-008-B-2, FSEIS. On March 17, 2014, the Tribe and Consolidated Intervenor filed additional contentions related to the FSEIS. Consolidated Intervenor's Statement of Contentions (Mar. 17, 2014) (Consolidated Intervenor's FSEIS Contentions); Statement of Contentions of the Oglala Sioux Tribe Following Issuance of Final Supplemental Environmental Impact Statement (Mar. 17, 2014) (Tribe's FSEIS Contentions). The Board ruled that the contentions previously admitted in reference to the DSEIS migrated to the FSEIS and held inadmissible the remaining proposed contentions. LBP-14-5, 79 NRC at 401.

¹² Ex. NRC-012, License Number SUA-1600, Materials License for Powertech (USA) Inc. (Apr. 8, 2014) (ML14246A408) (License).

¹³ Motion for Leave to File New or Amended Contention on Behalf of the Oglala Sioux Tribe (Nov. 7, 2014) (Tribe's Motion for New Contentions).

¹⁴ LBP-15-16, 81 NRC at 657-58, 708-10.

¹⁵ *Id.* at 708-10.

¹⁶ *See id.* at 626-35; *see also* LBP-14-5, 79 NRC at 379-81; LBP-13-9, 78 NRC at 43-45; LBP-10-16, 72 NRC at 376-78.

ted contentions in favor of Powertech and the Staff.¹⁷ The Tribe also seeks review of the Board's ruling on two of its admitted contentions that left the license in place and required the Staff to conduct additional consultation.¹⁸ Consolidated Intervenor's petition for review of the Board's decision resolving their admitted contentions in favor of Powertech and the Staff.¹⁹ They further challenge the Board's ruling that left the license in place despite ruling in Consolidated Intervenor's favor on two of their admitted contentions.²⁰

In Contentions 1A and 1B, the Tribe and Consolidated Intervenor's challenged the NEPA analysis of cultural resources in the FSEIS and the Staff's compliance with the National Historic Preservation Act (NHPA).²¹ The Board concluded that the Staff had fulfilled its NHPA obligations with respect to identification of historic properties. It nonetheless held that the Staff's analysis in the FSEIS did not satisfy NEPA's hard look requirement regarding cultural resources and that the Staff's consultation with the Tribe had been insufficient to comply with the Staff's additional obligations under the NHPA.²² The Board retained jurisdiction over these contentions and required the Staff to "promptly initiat[e] a government-to-government consultation with the Oglala Sioux Tribe" to address the deficiencies identified in the Board's decision.²³ The Tribe and Consolidated Intervenor's seek review of the Board's decision to leave the license in place pending resolution of Contentions 1A and 1B.²⁴

In Contention 2, the Tribe and Consolidated Intervenor's argued that the FSEIS did not contain sufficient background groundwater characterization.²⁵ The

¹⁷ Tribe's Petition at 19-25.

¹⁸ *Id.* at 18-19.

¹⁹ Consolidated Intervenor's Petition at 2 & n.3, 4-7.

²⁰ *Id.* at 3, 6-7.

Consolidated Intervenor's have requested that we set a briefing schedule for any issues that we accept for review. *Id.* at 8-9. In accordance with 10 C.F.R. § 2.341(c)(2), we have decided these matters on the basis of the petitions for review, and therefore deny Consolidated Intervenor's request to establish a briefing schedule.

Consolidated Intervenor's also challenge the Board's ruling in LBP-10-16 that "certain petitioners" lacked standing to intervene. *Id.* at 2. In their petition, Consolidated Intervenor's do not identify which petitioners they are referencing. We therefore deny review of that portion of their petition.

²¹ Oglala Sioux Tribe's Post-Hearing Initial Brief with Findings of Fact and Conclusions of Law (Jan. 9, 2015), at 12, 27 (Tribe's Post-Hearing Brief); Consolidated Intervenor's Proposed Findings of Fact and Conclusions of Law and Response to Post-Hearing Order (Jan. 9, 2015), at 1-2, 14 (Consolidated Intervenor's Post-Hearing Brief).

²² LBP-15-16, 81 NRC at 653-57.

²³ *Id.* at 657-58, 708, 710.

²⁴ Tribe's Petition at 18-19; Consolidated Intervenor's Petition at 6-7.

²⁵ Tribe's Post-Hearing Brief at 38; Consolidated Intervenor's Post-Hearing Brief at 21.

Board resolved this contention in favor of Powertech and the Staff, and the Tribe seeks review of the Board's decision.²⁶

In Contention 3, the Tribe and Consolidated Intervenors argued that the FSEIS insufficiently analyzed certain geological and manmade features that may permit groundwater migration.²⁷ The Board resolved this contention in favor of Powertech and the Staff but added a license condition regarding the proper treatment of unplugged boreholes.²⁸ Both the Tribe and Consolidated Intervenors seek review of the Board's decision.²⁹

In Contention 6, the Tribe and Consolidated Intervenors challenged the FSEIS's analysis of mitigation measures and argued that it impermissibly deferred the development of additional mitigation measures.³⁰ The Board resolved this contention in favor of Powertech and the Staff, and the Tribe seeks review of the Board's decision.³¹

Additionally, the Tribe challenges the Board's decision in LBP-15-16 to reject as inadmissible new contentions submitted after the hearing regarding borehole data and an Environmental Protection Agency (EPA) Preliminary Assessment regarding potential Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) cleanup.³² Further, it seeks review of earlier Board decisions that found two of its contentions (Contentions 7 and 8) inadmissible.³³ In proposed Contention 7, the Tribe argued that the application was deficient because it did not include a reviewable plan for disposal of byproduct material or discuss the environmental effects of such disposal.³⁴ The Tribe resubmitted this contention on both the DSEIS and the FSEIS, and the Board dismissed it as inadmissible each time.³⁵ In proposed Contention 8, the Tribe argued that the DSEIS had been issued without the requisite scoping process.³⁶ The Board held this contention inadmissible, finding that it did not articulate a material dispute, as required by the contention admissibility standards.³⁷

Finally, Consolidated Intervenors challenge the Board's decision at the outset

²⁶ LBP-15-16, 81 NRC at 666, 708-09; *see* Tribe's Petition at 19-21.

²⁷ Tribe's Post-Hearing Brief at 43; Consolidated Intervenors' Post-Hearing Brief at 28, 47.

²⁸ LBP-15-16, 81 NRC at 681, 709.

²⁹ Tribe's Petition at 22-23; Consolidated Intervenors' Petition at 2 n.3, 4-7.

³⁰ Tribe's Post-Hearing Brief at 61-62; Consolidated Intervenors' Post-Hearing Brief at 53-56.

³¹ LBP-15-16, 81 NRC at 697, 709; Tribe's Petition for Review at 23-25.

³² Tribe's Petition at 8-11; *see* LBP-15-16, 81 NRC at 704-06, 709.

³³ Tribe's Petition at 3-8.

³⁴ Tribe's Petition to Intervene at 31-34.

³⁵ Tribe's FSEIS Contentions at 33-39; Tribe's DSEIS Contentions at 27-30, *see* LBP-14-5, 79 NRC at 396-97; LBP-13-9, 78 NRC at 71-72.

³⁶ Tribe's DSEIS Contentions at 30-33.

³⁷ LBP-13-9, 78 NRC at 74-75.

of the proceeding finding one of their contentions inadmissible.³⁸ In proposed Contention D, Consolidated Intervenors argued that Powertech's application was so disorganized that it violated 10 C.F.R. § 40.9, and the Board rejected this portion of the contention as inadmissible.³⁹

B. Powertech's and the NRC Staff's Petitions for Review

On appeal, the Staff and Powertech challenge the Board's resolution of Contentions 1A and 1B in favor of the Tribe and Consolidated Intervenors.⁴⁰ Additionally, both parties seek review of the Board's retention of jurisdiction over these contentions.⁴¹ Finally, Powertech challenges the Board's imposition of an additional license condition in resolving Contention 3 that requires Powertech to locate and properly abandon unplugged boreholes within each wellfield prior to operations.⁴²

II. DISCUSSION

A. Standard of Review

We will grant a petition for review at our discretion, upon a showing that the petitioner has raised a substantial question as to whether

- (i) A finding of material fact is clearly erroneous or in conflict with a finding as to the same fact in a different proceeding;
- (ii) A necessary legal conclusion is without governing precedent or is a departure from or contrary to established law;
- (iii) A substantial and important question of law, policy, or discretion has been raised;
- (iv) The conduct of the proceeding involved a prejudicial procedural error; or
- (v) Any other consideration that we may deem to be in the public interest.⁴³

³⁸ Consolidated Intervenors' Petition at 2 n.3, 3-4, 7.

³⁹ Consolidated Intervenors' Petition to Intervene at 36; *see* LBP-10-16, 72 NRC at 402.

⁴⁰ Powertech's Petition at 6-22; Staff's Petition at 17, 23. The Tribe filed a response to both petitions on June 22, 2015. Oglala Sioux Tribe's Consolidated Response to Petitions for Review of LBP-15-16 (June 22, 2015) (Tribe's Response).

⁴¹ Powertech's Petition at 5-6, 6 n.9; Staff's Petition at 13-16, 16 n.73.

⁴² Powertech's Petition at 22-25; *see* LBP-15-16, 81 NRC at 709.

⁴³ 10 C.F.R. § 2.341(b)(4).

We review questions of law *de novo*, but we defer to the Board's findings with respect to the underlying facts unless they are "clearly erroneous."⁴⁴ The standard for showing "clear error" is a difficult one to meet: petitioners must demonstrate that the Board's determination is "not even plausible" in light of the record as a whole.⁴⁵ For this reason, where a petition for review relies primarily on claims that the Board erred in weighing the evidence in a merits decision, we seldom grant review.⁴⁶ In addition, we give substantial deference to the Board on issues of contention admissibility and will affirm admissibility determinations absent a showing of an error of law or abuse of discretion.⁴⁷ In *Pa'ina Hawaii, LLC* (Materials License Application) we said the following about our standard of review:

We refrain from exercising our authority to make *de novo* findings of fact in situations where a Licensing Board has issued a plausible decision that rests on carefully rendered findings of fact. As we have stated many times, while we have discretion to review all underlying factual issues *de novo*, we are disinclined to do so where a Board has weighed arguments presented by experts and rendered reasonable, record-based factual findings. Our standard of "clear error" for overturning a Board's factual findings is quite high. We defer to a board's factual findings, correcting only clearly erroneous findings — that is, findings not even plausible in light of the record viewed in its entirety — where we have strong reason to believe that a board has overlooked or misunderstood important evidence.⁴⁸

B. Contentions Rejected Prior to Hearing

The Tribe and Consolidated Intervenors seek review of three Board decisions that found several of their proposed contentions inadmissible.

⁴⁴ *Honeywell International, Inc.* (Metropolis Works Uranium Conversion Facility), CLI-13-1, 77 NRC 1, 18-19 (2013); *David Geisen*, CLI-10-23, 72 NRC 210, 224-25, 242 (2010).

⁴⁵ *Honeywell*, CLI-13-1, 77 NRC at 18 n.102; *Geisen*, CLI-10-23, 72 NRC at 224-25.

⁴⁶ *See, e.g., DTE Electric Co.* (Fermi Nuclear Power Plant, Unit 3), CLI-14-10, 80 NRC 157, 162-63 (2014); *Entergy Nuclear Generation Co. and Entergy Nuclear Operations, Inc.* (Pilgrim Nuclear Power Station), CLI-12-1, 75 NRC 39, 46 (2012) (stating "where a Board's decision rests on a weighing of extensive fact-specific evidence presented by technical experts, we generally will defer"); *Entergy Nuclear Vermont Yankee, LLC and Entergy Nuclear Operations, Inc.* (Vermont Yankee Nuclear Power Station), CLI-10-17, 72 NRC 1, 30 (2010) (noting that the Commission is "generally disinclined to upset fact-driven Licensing Board determinations") (internal quotations omitted).

⁴⁷ *Entergy Nuclear Operations, Inc.* (Indian Point, Units 2 and 3), CLI-15-6, 81 NRC 340, 354-55 (2015); *Calvert Cliffs 3 Nuclear Project, LLC, and UniStar Nuclear Operating Services, LLC* (Calvert Cliffs Nuclear Power Plant, Unit 3), CLI-09-20, 70 NRC 911, 914 (2009); *Southern Nuclear Operating Co.* (Vogtle Electric Generating Plant, Units 3 and 4), CLI-09-16, 70 NRC 33, 35 (2009).

⁴⁸ *Pa'ina Hawaii, LLC*, CLI-10-18, 72 NRC 56, 72-73 (2010) (internal quotations and citations omitted).

1. The Tribe's Proposed Contention 7

In proposed Contention 7, the Tribe challenged the lack of a reviewable plan for disposal of byproduct material as defined in Section 11e.(2) of the Atomic Energy Act of 1954, as amended (byproduct material).⁴⁹ The Tribe submitted this contention three times: with respect to the environmental report, the DSEIS, and the FSEIS.⁵⁰ In each case, the Tribe provided a different basis for the contention, and the Board dismissed each iteration as inadmissible.⁵¹ In its petition for review, the Tribe argues that the Board “erred at law and abused its discretion” each time it found Contention 7 inadmissible.⁵² We do not find that the Tribe raises a substantial question regarding the admissibility of this contention. With respect to each Board decision, the Tribe provides a separate basis to support its petition.

a. Proposed Contention and Board Orders LBP-10-16, LBP-13-9, and LBP-14-5

The Board rejected Contention 7 in LBP-10-16, finding that the Tribe did not show that Powertech had failed to comply with any NRC or other federal regulation.⁵³ The Tribe argued that 10 C.F.R. § 40.31(h) and Criterion 1 in Appendix A to 10 C.F.R. Part 40 require Powertech to provide a specific plan for disposal of byproduct material in its application. The Board rejected this argument and explained that — per our case law — these provisions apply to uranium mills, not *in situ* recovery sites.⁵⁴ Additionally, the Tribe argued that NEPA required that the application contain a specific disposal plan. The Board

⁴⁹Tribe's Petition to Intervene at 31-34. Section 11e.(2) of the Atomic Energy Act of 1954, as amended, defines “byproduct material” as “the tailings or wastes produced by the extraction or concentration of uranium or thorium from any ore processed primarily for its source material content.” 42 U.S.C. § 2014(e)(2).

⁵⁰Tribe's FSEIS Contentions at 33-39; Tribe's DSEIS Contentions at 27-30; Tribe's Petition to Intervene at 31-34.

⁵¹See Tribe's FSEIS Contentions at 33-39; Tribe's DSEIS Contentions at 27-30; Tribe's Petition to Intervene at 31-34; see also LBP-14-5, 79 NRC at 397; LBP-13-9, 78 NRC at 71-72; LBP-10-16, 72 NRC at 434-35.

⁵²Tribe's Petition at 3.

⁵³LBP-10-16, 72 NRC at 434. The Tribe called this Contention 7 in its initial petition and its DSEIS Contentions. It refers to the same contention as FSEIS Contention 2 in its FSEIS Contentions. To minimize confusion, we will refer to this contention as Contention 7 throughout this decision.

⁵⁴*Id.* (citing *Hydro Resources, Inc.* (2929 Coors Road, Suite 101, Albuquerque, NM 87120), CLI-99-22, 50 NRC 3, 8 (1999) (“We agree with the Presiding Officer's general conclusion that section 40.31(h) and Part 40, Appendix A, ‘were designed to address the problems related to mill tailings and not problems related to [*in situ*] mining.’”)).

disagreed, holding that the Staff, not the applicant, is bound by NEPA.⁵⁵ But the Board noted that the Tribe would have the opportunity, if it were not satisfied with the treatment of this issue in the Staff's environmental documents, to renew this contention after issuance of those documents.⁵⁶

The Tribe did just that when it filed a similar contention with respect to the analysis in the DSEIS, which the Board ruled inadmissible in LBP-13-9.⁵⁷ The Board determined that the Staff had addressed impacts related to byproduct material in both the DSEIS and the GEIS.⁵⁸ The Board observed that, insofar as the Tribe claimed that the contention was one of "omission," the contention was moot because the DSEIS contained the information the Tribe claimed was missing.⁵⁹ The Board stated that

because the Oglala Sioux Tribe neither substantively disputes the analysis of impacts related to disposal of byproduct material in relevant sections of the DSEIS and the GEIS, nor addresses the license condition related to disposal of byproduct material, the Board rejects this contention as failing to comply with the admissibility dictates of 10 C.F.R. § 2.309(f)(1)(vi).⁶⁰

Upon issuance of the FSEIS, the Tribe refiled an identical contention alleging inadequate analysis of direct, indirect, and cumulative impacts of disposal of byproduct material.⁶¹ The Board found the contention inadmissible and explained that the section of the FSEIS the Tribe cited did not differ materially from the parallel section in the DSEIS. Accordingly, the Board held that the Tribe failed to meet the requirements of 10 C.F.R. § 2.309(c)(1)(ii) for the filing of a new contention.⁶²

b. The Tribe's Petition for Review

On appeal, the Tribe challenges the Board's ruling, supported by both the plain language of the regulation and our precedent, that 10 C.F.R. § 40.31(h) and

⁵⁵ *Id.* at 435.

⁵⁶ *Id.*

⁵⁷ Tribe's DSEIS Contentions at 27-30; *see* LBP-13-9, 78 NRC at 71-72.

⁵⁸ LBP-13-9, 78 NRC at 71.

⁵⁹ *Id.*

⁶⁰ *Id.* at 71-72.

⁶¹ Tribe's FSEIS Contentions at 33-39.

⁶² LBP-14-5, 79 NRC at 397. Additionally, the Board noted that Powertech's draft license contained license conditions requiring that "Powertech [have a] byproduct material disposal contract in place prior to the commencement of operations." *Id.*

Part 40 Appendix A, Criterion 1, are inapplicable to *in situ* recovery facilities. We disagree — this point is well settled and we see no reason to revisit it here.⁶³

Further, the Tribe argues that Part 40 Appendix A, Criterion 2, which is applicable to *in situ* uranium recovery facilities, requires a plan for waste disposal in the application. Based on the plain language of Criterion 2, we disagree. Criterion 2 states that “byproduct material from [*in situ*] extraction operations . . . must be disposed of at existing large mill tailings disposal sites”⁶⁴ This provision mandates that disposal of byproduct material take place at an existing disposal site — it does not require that the application include a waste disposal plan or designate which waste disposal site will be used.

Next, the Tribe argues that the Standard Review Plan “specifically discusses the need for a . . . waste disposal plan.”⁶⁵ But the Tribe’s argument regarding the Standard Review Plan does not demonstrate Board error. The Standard Review Plan is not a regulation; it is guidance for the Staff in reviewing an application, and it provides one way to comply with our regulations.⁶⁶ Additionally, as the Board explained in LBP-10-16, the Staff’s standard practice allows applicants *either* to identify a waste disposal site in their applications *or* to implement a license condition regarding waste disposal.⁶⁷ As discussed below, Powertech’s license includes two conditions related to waste disposal.⁶⁸ The Tribe has not identified any regulation to the contrary.

Additionally, the Tribe takes issue with the Board’s statement that an applicant is not bound by NEPA.⁶⁹ The Board had stated that although “[t]he Tribe also argue[d] that a specific disposal plan must be included in Powertech’s Application in order to comply with NEPA. . . . It is settled law that an applicant is not bound by NEPA, but by NRC regulations in Part 51.”⁷⁰ Insofar as it could be interpreted as implying that the Tribe was premature in filing its environmental contentions on the application, the Board’s decision was incorrect. Although it is true that “the ultimate burden with respect to NEPA lies with the NRC Staff,” our regulations require that intervenors file environmental contentions on the applicant’s environmental report.⁷¹ In any case, any Board error here was

⁶³ *Hydro Resources, Inc.*, CLI-99-22, 50 NRC at 8.

⁶⁴ 10 C.F.R. pt. 40, app. A, Criterion 2.

⁶⁵ Tribe’s Petition at 4.

⁶⁶ *Crow Butte Resources, Inc.* (Marsland Expansion Area), CLI-14-2, 79 NRC 11, 23 n.70 (2014) (citing *Curators of the University of Missouri*, CLI-95-1, 41 NRC 71, 98 (1995)).

⁶⁷ LBP-10-16, 72 NRC at 435.

⁶⁸ See Ex. NRC-012, License, at 6, 12.

⁶⁹ Tribe’s Petition at 4.

⁷⁰ LBP-10-16, 72 NRC at 435.

⁷¹ *Progress Energy Florida, Inc.* (Levy County Nuclear Power Plant, Units 1 and 2), CLI-10-2, 71 NRC 27, 34 (2010); see 10 C.F.R. § 2.309(f)(2).

harmless because it also stated that the Tribe would have the opportunity to formulate a contention regarding disposal of byproduct material on the DSEIS, and indeed, the Tribe did so.⁷²

The Tribe asserts that the Board's recognition that planning for waste disposal is an important aspect of our regulations necessarily raises a substantial question for our review.⁷³ In support of this argument, the Tribe refers to concerns the Board expressed regarding whether waste disposal would be addressed in Powertech's license.⁷⁴ In LBP-10-16, the Board noted that "if a condition dealing with . . . byproduct material is not included in the license, the Tribe has no recourse because it cannot challenge the license at that time."⁷⁵ However, Powertech's license contains multiple conditions regarding disposal of byproduct material. License Condition 12.6 requires Powertech to submit to the NRC a disposal agreement with a licensed disposal site before beginning operations.⁷⁶ License Condition 9.9 requires Powertech to maintain such a disposal agreement; if the agreement expires or otherwise terminates, Powertech must halt operations.⁷⁷

Although the Board held that Contention 7 was rendered moot by the analysis of the impacts of the disposal of byproduct material in the DSEIS, the Tribe argues that the DSEIS only identified a possible site for the disposal of byproduct material; the Tribe reiterates its argument that the DSEIS's analysis of the impacts of byproduct material disposal was lacking.⁷⁸ On appeal, the Tribe argues that the Board erred in rejecting Contention 7 as a contention of omission.⁷⁹ But, as explained above, the Board found that the DSEIS and the GEIS analyzed the impacts of the disposal of byproduct material, and it pointed to specific sections of both documents.⁸⁰ The Board's ruling did not rest on the

⁷² LBP-10-16, 72 NRC at 435. See Tribe's DSEIS Contentions at 27-30; see also *Geisen*, CLI-10-23, 72 NRC at 245 ("[T]o prevail on appeal, [a party] must show not only that the majority erred but also that the error had a prejudicial effect on the [party's] case." (citations omitted)).

⁷³ The Tribe argues that "[a]lthough the [Board] excluded Contention 7, the Board recommended 'that this issue be considered by the Commission (or Board) when it conducts the mandatory review and hearing that must be held in this case.'" Tribe's Petition at 4 (quoting LBP-10-16, 72 NRC at 435). The Board cited 10 C.F.R. § 51.107(a), which refers to issuance of a combined license for a nuclear power reactor; it has no applicability to *in situ* leach facilities. Mandatory hearings are not held in materials licensing proceedings like this one.

⁷⁴ Tribe's Petition at 4.

⁷⁵ LBP-10-16, 72 NRC at 435.

⁷⁶ Ex. NRC-012, License, at 12.

⁷⁷ *Id.* at 6.

⁷⁸ Tribe's Petition at 5; see LBP-13-9, 78 NRC at 71.

⁷⁹ Tribe's Petition at 5. As the Board noted, the Tribe itself characterized this contention as one of omission. See Tribe's DSEIS Contentions at 28; see also LBP-13-9, 78 NRC at 71.

⁸⁰ LBP-13-9, 78 NRC at 71.

distinction between a contention of omission and one of inaccuracy — it found that the Tribe’s proposed contention failed to challenge or address the information in the DSEIS and the draft license condition related to waste disposal.⁸¹ On appeal, the Tribe argues that the discussion of waste disposal in the GEIS was insufficient to fulfill the Staff’s responsibilities, but the Tribe fails to consider that, as the Board noted, both the DSEIS and the draft license condition also addressed waste disposal.⁸² The Tribe does not identify any error regarding the Board’s ruling on this point; therefore it does not raise a substantial question for our review.

Next, the Tribe argues that the Board dismissed Contention 7 as inadmissible “simply because the draft license contained a provision requiring the applicant to establish a disposal plan at some point in the future.”⁸³ But the Tribe misstates the Board’s basis for its ruling. The Board based its ruling on the Staff’s analysis in the GEIS, the DSEIS, and expectation that the license would include conditions regarding waste disposal.⁸⁴ Given the Board’s reliance on the Staff’s analysis and the expected license conditions — which are indeed present in Powertech’s license — we see no substantial question for review here.

The Tribe’s final argument in its petition for review with respect to Contention 7 invokes the United States Court of Appeals for the District of Columbia Circuit’s decision vacating the waste confidence rule, now called the continued storage rule (10 C.F.R. § 51.23).⁸⁵ The Tribe argues that the court’s vacatur of the former waste confidence rule confirms that the Tribe has raised a substantial question regarding the Board’s dismissal of its proposed Contention 7 in LBP-14-5 and is analogous to this proceeding.⁸⁶

But the court’s decision regarding continued storage has no bearing on this issue. Neither the waste confidence rule nor the continued storage rule applies to 11e.(2) byproduct material. These rules only apply to environmental impacts of spent fuel storage at power reactors and spent fuel storage facilities after the end of a reactor’s license term and before disposal in a deep geologic repository.⁸⁷ Moreover, License Condition 12.6 expressly prevents Powertech from beginning operations — and therefore producing byproduct material — before it has in

⁸¹ *Id.* at 71-72.

⁸² Tribe’s Petition at 5; *see* LBP-13-9, 78 NRC at 71-72.

⁸³ Tribe’s Petition at 5.

⁸⁴ LBP-13-9, 78 NRC at 71-72.

⁸⁵ Tribe’s Petition at 5-6; *see New York v. NRC*, 681 F.3d 471 (D.C. Cir. 2012).

⁸⁶ In a decision issued on June 3, 2016, the U.S. Court of Appeals for the District of Columbia Circuit denied the petitions for review challenging the NRC’s updated continued storage rule. *New York v. NRC*, 824 F.3d 1012 (D.C. Cir. 2016), *reh’g denied*, 2016 U.S. App. LEXIS 14584 (D.C. Cir. Aug. 8, 2016).

⁸⁷ *See* 10 C.F.R. § 51.23.

place an agreement with a licensed waste disposal site. And License Condition 9.9 prevents Powertech from continuing to operate if the waste disposal agreement expires or is otherwise terminated. In sum, the continued storage rule is inapplicable to Powertech's facility and Powertech's license is conditioned to ensure that it will not produce byproduct material without a plan for disposal. Accordingly, the Tribe does not raise a substantial question for review.

2. *The Tribe's Proposed Contention 8*

The Tribe petitions for review of the Board's rejection of its proposed Contention 8, in which it argued that the DSEIS had been issued without the requisite scoping process.⁸⁸ The Board rejected the contention for failing to demonstrate that a "genuine dispute exists with the applicant/licensee on a material issue of law or fact."⁸⁹ The Board held that 10 C.F.R. §§ 51.26(d) and 51.92(d) both exempt the Staff from conducting a scoping process for a "supplemental" EIS based on a plain language reading of the regulation.⁹⁰ Further, the Board found that the Staff had engaged in a scoping process when it developed the GEIS and had conducted additional outreach during development of the SEIS, thereby satisfying the scoping requirement.⁹¹ Therefore, the Board concluded that the Tribe's contention was inadmissible.⁹²

In its petition for review, the Tribe argues that the exceptions to the scoping requirements in 10 C.F.R. §§ 51.26(d) and 51.92(d) do not apply to site-specific EISs that tier off of a GEIS merely because the Staff may describe them as supplements.⁹³ In support of this argument, the Tribe refers to an Office of Inspector General (OIG) Audit Report from August 2013.⁹⁴ With respect to scoping, the Audit Report concluded that

⁸⁸Tribe's Petition at 7; *see* Tribe's DSEIS Contentions at 30-33; LBP-13-9, 78 NRC at 74-75. In Contention 8, which the Tribe submitted on both the application and the DSEIS, the Tribe also challenged the requirement to submit environmental contentions before the Staff's completion of its NEPA analysis. The Board rejected — in both LBP-10-16 and LBP-13-9 — the Tribe's argument that this requirement violates NEPA. LBP-13-9, 78 NRC at 74; LBP-10-16, 72 NRC at 437-38. The Board explained that the challenge "could be properly characterized as 'an impermissible attack on NRC regulations, in contravention of 10 C.F.R. § 2.335.'" LBP-13-9, 78 NRC at 74 (quoting LBP-10-16, 72 NRC at 436). The Tribe has not challenged the Board's reasoning on this portion of Contention 8.

⁸⁹LBP-13-9, 78 NRC at 74-75 (quoting 10 C.F.R. § 2.309(f)(1)(vi)).

⁹⁰*Id.* at 75.

⁹¹*Id.*

⁹²*Id.*

⁹³Tribe's Petition at 7.

⁹⁴"Audit of NRC's Compliance with 10 CFR Part 51 Relative to Environmental Impact State-
(Continued)

NRC did not fully comply with the scoping regulations because of incorrect understanding of the regulations related to scoping for EISs that tier off of a generic EIS. Specifically, NRC staff refer to the tiered site-specific EIS as a “supplement” to the generic EIS, leading to the belief that the exception in 10 [C.F.R.] § 51.26(d) applies to tiered EISs. Some NRC managers assert that the public scoping process for the generic EIS for [*in situ*] uranium recovery suffices for subsequent, site-specific uranium recovery applications.

However, during that generic EIS scoping process in 2007, NRC staff emphasized in response to public comments that all applications would receive a site-specific review. Staff also emphasized that there would be a request for public input on scoping through a “scoping meeting” on site-specific issues if an EIS were prepared for a future application.⁹⁵

The Audit Report specifically identified the DSEIS for this project as deficient because it lacked a formal scoping process.⁹⁶

We take review of the Board’s denial of the Tribe’s proposed Contention 8 with respect to scoping pursuant to 10 C.F.R. § 2.341(b)(4)(ii).⁹⁷ The Tribe’s contention identifies an issue of law with respect to our NEPA scoping process. We find that the Board’s reasoning was flawed because it relied on a section of our NEPA regulations (10 C.F.R. § 51.92) that is not applicable here. Despite this error on the part of the Board, we affirm the Board’s ruling and find that, even without a separate scoping process on the SEIS, the Staff provided the Tribe with ample opportunities at an early stage in the process to participate in the development of the site-specific, supplemental EIS. The Tribe had the opportunity to participate in the NEPA process from the beginning, and it has not demonstrated harm or prejudice resulting from the lack of a separate, formal scoping process on the site-specific SEIS; thus, the Board’s error was harmless.

We agree with the Staff’s observation that tiering and supplementing are not mutually exclusive concepts.⁹⁸ However, we agree with the petitioners that the exception in 10 C.F.R. § 51.92(d) does not apply to a supplemental, site-specific EIS that tiers off a GEIS. Section 51.92(d) states: “[t]he supplement to a *final environmental impact statement* will be prepared in the same manner as the *final environmental impact statement* except that a scoping process need not

ments,” OIG-13-A-20 (Aug. 20, 2013) (ML13232A192) (Audit Report). The OIG published the Audit Report after the Board’s dismissal of the scoping portion of the Tribe’s proposed Contention 8 in LBP-13-9.

⁹⁵ *Id.* at 24.

⁹⁶ *Id.* at 22; *see* Tribe’s Petition at 7.

⁹⁷ We review questions of law *de novo*. *See Geisen*, CLI-10-23, 72 NRC at 242.

⁹⁸ NRC Staff’s Response to Oglala Sioux Tribe’s Petition for Review of LBP-15-16 (June 22, 2015), at 8 (Staff’s Response to Tribe).

be used.”⁹⁹ This provision provides an exception from the scoping process for supplements to *final* EISs. The GEIS is not a final EIS for the purpose of the specific federal action here — the proposed licensing of Powertech’s *in situ* uranium recovery facility. The Powertech site-specific SEIS is not a supplement in the sense meant by 10 C.F.R. § 51.92(d). The Staff’s reference to the SEIS for this project as a supplement does not change the applicability of the exception in 10 C.F.R. § 51.92(d) — it applies to supplements to final EISs, not site-specific supplements to a GEIS.

Because we determine that the Tribe is correct that 10 C.F.R. § 51.92 does not apply here, we now turn to the effect of the Board’s error. After considering the Staff’s involvement with the Tribe and other interested stakeholders throughout the NEPA process, we find that the Tribe has not shown that the lack of scoping resulted in harm or prejudice. Despite the fact that the Staff did not engage in a separate, formal scoping process in preparing the DSEIS, the Staff provided the Tribe with ample opportunities at an early stage in the process to participate in the development of the site-specific EIS.¹⁰⁰ For example, the Staff states that in 2009 it proposed a meeting with the Tribe to discuss the project, but that the Tribe was unable to attend.¹⁰¹ Further, “[i]n early 2010, the Staff placed advertisements in six newspapers with circulation in the Dewey-Burdock area, including the Lakota Country Times and the Native Sun, inviting the public to comment on the Dewey-Burdock Project.”¹⁰² This public outreach demonstrates that the Tribe and the public had sufficient opportunity to provide input to the Staff regarding the scope of the Staff’s environmental analysis. Moreover, the Staff conducted full scoping for the GEIS, which considered specific features of the Black Hills and identified Dewey-Burdock on maps and figures. The GEIS also specified that it would serve as part of Dewey-Burdock’s environmental analysis.¹⁰³

It is well settled that parties challenging an agency’s NEPA process are not entitled to relief unless they demonstrate harm or prejudice — and the Tribe has not done so here.¹⁰⁴ Federal case law makes clear that procedural violations of NEPA do not automatically void an agency’s ultimate decision.¹⁰⁵ For ex-

⁹⁹ 10 C.F.R. § 51.92(d) (emphasis added).

¹⁰⁰ See, e.g., Staff’s Response to Tribe at 8-9 (listing opportunities for the Tribe’s participation).

¹⁰¹ *Id.* at 8-9; see Tr. at 771.

¹⁰² Staff’s Response to Tribe at 9; see Ex. NRC-008-A-1, FSEIS § 1.4.2.

¹⁰³ See Staff’s Response to Tribe at 9.

¹⁰⁴ *Nw. Coal. for Alts. to Pesticides v. Lyng*, 844 F.2d 588, 594-95 (9th Cir. 1988); *Cty. of Del Norte v. United States*, 732 F.2d 1462, 1467 (9th Cir. 1984); *Cent. Delta Water Agency v. U.S. Fish & Wildlife Serv.*, 653 F. Supp. 2d 1066, 1086-87 (E.D. Cal. 2009); *Muhly v. Espy*, 877 F. Supp. 294, 300-01 (W.D. Va. 1995).

¹⁰⁵ *Lyng*, 844 F.2d at 595.

ample, in *Northwest Coalition for Alternatives to Pesticides v. Lyng*, although the Bureau of Land Management had not properly notified the plaintiff during the scoping process, the Ninth Circuit upheld the District Court's determination that the plaintiff was unable to demonstrate prejudice after having participated in the development of the EIS.¹⁰⁶ Also in *Lyng*, the court, discussing the high bar for overturning a federal administrative decision, referred to a Fourth Circuit case holding that individuals not given notice of public hearings on a proposed wastewater treatment plant did not suffer prejudice, even though they were not provided the opportunity to participate until "the eleventh hour" of the NEPA process.¹⁰⁷ Here, by contrast, the Tribe was involved from the beginning of the process, despite the acknowledged lack of formality in the scoping for this EIS.

Further, the scoping process is intended to provide notice to individuals potentially affected by the proposed federal action.¹⁰⁸ Here, although the Staff did not conduct a formal scoping process for the DSEIS for the Dewey-Burdock project, the Tribe had ample notice of the project and numerous opportunities throughout the process to participate in the development of the DSEIS. The Tribe argues that it was "deprived . . . of the opportunity to present its concerns at the proper time," but it has not argued that any particular section of the site-specific EIS is deficient because of the lack of a formal scoping process.¹⁰⁹

We are satisfied that the Tribe had the opportunity to provide input on the development of the DSEIS in this case; therefore, the Tribe has not demonstrated harm or prejudice resulting from the lack of a formal scoping process. We find that any error by the Board was harmless and decline to order a hearing on the merits of this contention.¹¹⁰

¹⁰⁶ *Id.* at 594-95.

¹⁰⁷ *Id.* at 595 (citing *Providence Rd. Cmty. Ass'n v. EPA*, 683 F.2d 80, 82 (4th Cir. 1982)).

¹⁰⁸ *Kootenai Tribe of Idaho v. Veneman*, 313 F.3d 1094, 1116 (9th Cir. 2002) ("The primary purpose of the scoping period is to notify those who may be affected by a proposed government action which is governed by NEPA that the relevant entity is beginning the EIS process; this notice requirement ensures that interested parties are aware of and therefore are able to participate meaningfully in the entire EIS process, from start to finish." (citing *Lyng*, 844 F.2d at 594-95)), *abrogated on other grounds by Wilderness Soc'y v. U.S. Forest Serv.*, 630 F.3d 1173 (9th Cir. 2011).

¹⁰⁹ Tribe's Petition at 8.

¹¹⁰ Notably, the Tribe has not articulated a request for any specific relief regarding the Board's dismissal of this portion of Contention 8 on the DSEIS. Because the Staff has revised its guidance to provide for scoping for future supplemental EISs that tier off of a generic EIS, we decline to delve into the underlying legal issue. Memorandum from Catherine Haney, NMSS, to Stephen D. Dingbaum, OIG (June 30, 2015), at 2 (ML15166A406).

3. *Consolidated Intervenors' Proposed Contention D*

a. *Proposed Contention and Board Order*

Consolidated Intervenors challenge the Board's partial denial of their proposed Contention D in LBP-10-16.¹¹¹ In the dismissed part of Contention D, Consolidated Intervenors argued that Powertech's application violated 10 C.F.R. § 40.9 "by being disorganized"¹¹² In denying this portion of Contention D, the Board found that the application was not "so incomprehensible as to be useless to the public" and stated that "issues of disorganization in an application cannot be said to be germane to the licensing process."¹¹³

b. *Consolidated Intervenors' Petition for Review*

On appeal, Consolidated Intervenors argue that the Board created "new standards for accuracy and completeness under [10 C.F.R. § 40.9]" and held "that [a]pplications must be 'incomprehensible' and 'useless to the public' to be deficient under [10 C.F.R. § 40.9]."¹¹⁴ They claim that the Board's decision "undermines the entire purpose of having an [a]pplication if the standard is so low that it will pass muster if it is barely comprehensible and a hair better than 'useless.'"¹¹⁵ Finally, Consolidated Intervenors argue that "[t]he public has a strong interest in the standard for accuracy and completeness of source material license applications being higher than that set by the Board ('incomprehensible[;] 'useless to the public')."¹¹⁶

We find that Consolidated Intervenors have not identified a substantial question for our review here. They have not demonstrated that the Board erred at law or abused its discretion in dismissing this portion of Contention D. Consolidated Intervenors have misconstrued the Board's holding; the Board did not adopt or create a new standard for an application to be deemed deficient under 10 C.F.R.

¹¹¹ Consolidated Intervenors' Petition at 2 n.3, 3-4, 7. In their petition for review, Consolidated Intervenors cite LBP-15-16 as the Board order that dismissed portions of their proposed Contention D. *Id.* at 2 n.3. To clarify, the Board actually held inadmissible the relevant portions of Contention D in LBP-10-16. *See* LBP-10-16, 72 NRC at 402-03.

¹¹² Consolidated Intervenors' Petition to Intervene at 36; *see* LBP-10-16, 72 NRC at 400-01. The Board only denied Consolidated Intervenors' Contention D with respect to the comprehensibility of the application. LBP-10-16, 72 NRC at 402-03. The Board admitted portions of the contention that related to the technical adequacy of baseline water quality and adequate confinement of the host aquifer. *Id.* at 403.

¹¹³ *Id.* at 402-03 (quoting *Hydro Resources, Inc.* (2929 Coors Road, Suite 101, Albuquerque, NM 87120), LBP-98-9, 47 NRC 261, 280 (1998)).

¹¹⁴ Consolidated Intervenors' Petition at 2 n.3, 7.

¹¹⁵ *Id.* at 3-4.

¹¹⁶ *Id.* at 7.

§ 40.9. Rather, the Board determined that Powertech's application was sufficiently comprehensible for compliance with our regulations. That is, the Board simply disagreed with Consolidated Intervenors' argument that the application was incomprehensible and useless. Pursuant to 10 C.F.R. § 2.341(b)(4)(i), we will take review of a Board's factual findings when those findings are clearly erroneous or in conflict with a finding regarding the same fact in a different proceeding.¹¹⁷ Consolidated Intervenors have not raised a substantial question with respect to the Board's factual conclusions here. Therefore, we deny Consolidated Intervenors' petition for review.

C. New Contentions Held Inadmissible

The Tribe has petitioned for review of the Board's ruling in LBP-15-16 finding its two newly proposed contentions inadmissible.¹¹⁸ The Tribe filed these two contentions after the conclusion of the evidentiary hearing in August 2014 in response to the Board's post-hearing order directing Powertech to disclose to all parties additional information regarding borehole log data concerning the project site.¹¹⁹ The Staff reviewed the data and determined that it did not contradict the findings in the FSEIS.¹²⁰ Thereafter, the Tribe proposed two new contentions: the first related to the Staff's October 2014 submissions regarding the data and the second related to EPA documents regarding potential CERCLA cleanup at the Powertech site.¹²¹

1. The Tribe's New Contention 1

a. Proposed Contention and Board Order

In its first new contention, the Tribe argued that the Staff was required to evaluate the well log data as part of the NEPA process, and that the methodology the Staff used to evaluate the well logs (by conducting a "spot check") was unacceptable.¹²²

¹¹⁷ See *Honeywell*, CLI-13-1, 77 NRC at 18-19; *Geisen*, CLI-10-23, 72 NRC at 224-25.

¹¹⁸ Tribe's Petition at 8-11; see LBP-15-16, 81 NRC at 704-06.

¹¹⁹ Post Hearing Order (Sept. 8, 2014), at 19 (unpublished) (Post-Hearing Order); see Ex. OST-19, Press Release, Powertech Uranium Corp., Powertech Uranium (Azarga Uranium) Enters into Data Purchase Agreement for Dewey-Burdock Project (July 16, 2014) (ML14247A415).

¹²⁰ NRC Staff's Motion to Admit Testimony and Exhibits Addressing Powertech's September 14, 2014 Disclosures (Oct. 14, 2014), at 1; Ex. NRC-158, Supplemental Testimony Regarding NRC Staff Analysis of TVA Well Log Data (Oct. 14, 2014) at 12 (ML14344A931) (Staff's Supplemental Testimony).

¹²¹ Tribe's Motion for New Contentions at 2-3.

¹²² *Id.* at 6-9.

The Board found that the contention did not meet the requirements of 10 C.F.R. § 2.309(c)(1)(ii) because the information in the well logs was not materially different from information already in the record.¹²³ The Board also noted that the Tribe failed to meet the requirements of 10 C.F.R. § 2.309(f)(1)(vi) because it had not raised a genuine dispute on a material issue of law or fact — the Staff’s method for evaluating borehole data by reviewing representative borehole logs had not changed throughout the proceeding.¹²⁴ Further, the Board noted that the Tribe had not met the requirements in 10 C.F.R. § 51.92 for demonstrating the need to supplement a FSEIS — in particular that the information in question was “new and significant.”¹²⁵

b. The Tribe’s Petition for Review

On appeal, the Tribe argues that the Board’s denial of the Tribe’s request to develop and present its contention presents a substantial question for review.¹²⁶ It challenges the Board’s factual determinations that new well log data did not present materially different information and that the NRC’s “spot check” methodology has been used throughout the Staff’s review and issuance of Powertech’s license.¹²⁷ But this challenge does not show how the Board’s determination here is in error. The Board determined that the Tribe did not present

¹²³ LBP-15-16, 81 NRC at 704-05. See 10 C.F.R. § 2.309(c)(1)(i)-(iii); see also Amendments to Adjudicatory Process Rules and Related Requirements, 77 Fed. Reg. 46,562, 46,571 (Aug. 3, 2012) (clarifying the requirements governing hearing requests, intervention petitions, and motions for leave to file new or amended contentions). Although this proceeding began in 2009, the Board ruled on the Tribe’s proposed new contentions in 2015 and had previously adopted the 2012 amendments to 10 C.F.R. Part 2 for this proceeding. Order (Concerning Changes to 10 C.F.R. Part 2) (Aug. 21, 2012) (unpublished).

¹²⁴ LBP-15-16, 81 NRC at 705.

¹²⁵ *Id.* The Tribe objects to the Board’s discussion of this point in its petition for review. The Tribe argues that the Board “conflate[d] the contention admissibility standard with the substantive standard of whether the new information would require a supplement to the NEPA documents.” Tribe’s Petition at 9. Regardless, the Tribe’s challenge does not raise a substantial question for review, because the Tribe’s New Contention 1 did not meet the requirements of 10 C.F.R. §§ 2.309(c)(1)(ii) and 2.309(f)(1)(vi). If the information is not materially different from previously available information, it stands to reason that it does not “paint a seriously different picture of the environmental landscape” for this proceeding. *Hydro Resources, Inc.*, CLI-99-22, 50 NRC at 14 (quoting *Sierra Club v. Froehlke*, 816 F.2d 205, 210 (5th Cir. 1987)).

¹²⁶ The Tribe argues that the Board’s post-hearing order provides support for its argument that rejection of this contention presents a substantial question for review. Tribe’s Petition at 10. There, the Board ordered disclosure of various documents. Post-Hearing Order at 10-12, 19. The Board denied the Tribe’s request for sanctions, and denied Powertech’s motion for reconsideration. *Id.* at 12, 16. While the Tribe’s description of the Board’s post-hearing order is accurate, those rulings do not support its petition for review.

¹²⁷ Tribe’s Petition at 8-10.

any information that was materially different than what was previously available.¹²⁸ The Tribe raised this contention after the hearing was complete and the Board had the benefit of hearing from all of the parties on the borehole information and the Staff's review methodology. On appeal, the Tribe does not give us a reason to find that the Board, which was familiar with the information available throughout the pendency of the proceeding, committed an error or abuse of discretion. Therefore, we decline to take review of the Board's dismissal of this contention as inadmissible.

2. *The Tribe's New Contention 2*

a. *Proposed Contention and Board Order*

In its second new contention, the Tribe argued that the Staff had not considered in its NEPA analysis information in a newly released EPA assessment regarding a historic hardrock uranium mine site within the Dewey-Burdock project area.¹²⁹ The Tribe argued that "the EPA states that it has determined that a CERCLA removal action is recommended for the site and will proceed."¹³⁰ In its contention, the Tribe asserted that the CERCLA removal action was therefore reasonably foreseeable, and that the Staff should have considered the action in the cumulative impacts analysis in the EIS.¹³¹

The Board held this contention inadmissible because the Tribe "fail[ed] to present sufficient information to show a genuine dispute exists on a material issue of law or fact, as required by 10 C.F.R. § 2.309(f)(1)(vi)."¹³² Moreover, the Board found that the Tribe disregarded the analysis in the FSEIS of the environmental concerns raised in the EPA Preliminary Assessment, as well as the EPA Preliminary Assessment's repeated references to the FSEIS.¹³³ Given that the EPA documents themselves referred to the Staff's analysis in both the DSEIS and FSEIS, the Board concluded that the Tribe had not met the contention admissibility requirements, specifically 10 C.F.R. § 2.309(f)(1)(vi).¹³⁴

¹²⁸ See LBP-15-16, 81 NRC at 704-05; see also Ex. NRC-158, Staff's Supplemental Testimony, at 9-13.

¹²⁹ Tribe's Motion for New Contentions at 11; see also Ex. OST-026, Letter from Ryan M. Lunt, Task Order Project Manager, Seagull Env'tl. Techs., Inc., to Victor Ketellapper, Site Assessment Team Leader, U.S. Env'tl. Prot. Agency, Region 8 (Sept. 24, 2014), attach. "Preliminary Assessment Report Regarding the Darrow/Freezeout/Triangle Uranium Mine Site Near Edgemont, South Dakota" (ML14344A926).

¹³⁰ Tribe's Motion for New Contentions at 11.

¹³¹ *Id.*

¹³² LBP-15-16, 81 NRC at 706.

¹³³ *Id.*

¹³⁴ *Id.*

b. The Tribe's Petition for Review

In its petition for review, the Tribe argues that the Board erred because it “glossed over” the fact that “[t]he EPA identified a new contamination pathway with implications for pollution containment at the site that is not addressed in the application, any NRC materials, or the FSEIS.”¹³⁵ The Tribe asserts that the FSEIS discusses the unreclaimed mines but does not address “the contamination pathway from the unreclaimed mines to the groundwater” and argues that this presents a substantial question for our review.¹³⁶

Contrary to the Tribe’s argument on appeal, the Board did not overlook the Tribe’s arguments regarding environmental concerns related to the abandoned mines. In finding New Contention 2 inadmissible, the Board determined that the Tribe had “fail[ed] to show that the Preliminary Assessment is or contains significant new information” and therefore did not demonstrate a genuine dispute on a material issue of law or fact.¹³⁷ The Board’s ruling was based on its determination that the information in the Preliminary Assessment, including information regarding groundwater contamination, did not differ significantly from that in the FSEIS so as to demonstrate that a genuine dispute existed on a material issue of law or fact.¹³⁸ The Tribe’s petition does not raise a substantial question regarding the Board’s finding that the information in the Preliminary Assessment about unreclaimed mines was insufficient to meet the requirements of 10 C.F.R. § 2.309(f)(1)(vi). Therefore, we deny review of the Board’s dismissal of New Contention 2.

We now turn to the parties’ claims with respect to the Board’s merits decision.

D. Contentions Decided on the Merits

1. Contentions 1A and 1B

As we discuss in detail below, we find that the Board’s ruling on Contentions 1A and 1B is final, and consideration of the petitions for review under 10 C.F.R. § 2.341(b)(4) is appropriate at this time. We deny each party’s petition for review with respect to Contentions 1A and 1B — thus leaving in place the Board’s ruling in favor of the Tribe and Consolidated Intervenors. Further, under our inherent supervisory authority over agency adjudications, we leave the proceeding open for the narrow issue of resolving the deficiencies identified by the Board.

¹³⁵ Tribe’s Petition at 11.

¹³⁶ *Id.*

¹³⁷ LBP-15-16, 81 NRC at 706.

¹³⁸ *Id.*

a. Partial Initial Decision

First, we must clarify the appropriate standard of review of the Board's decision on these contentions. By its terms, the Board presented LBP-15-16 as a "partial initial decision" that left the ultimate resolution of Contentions 1A and 1B for a future decision.¹³⁹ Under this approach, the Board retained jurisdiction pending the Staff's remedy of the deficiencies the Board identified in the Board's ruling on Contentions 1A and 1B.¹⁴⁰ Each party, in turn, questioned the Board's decision to retain jurisdiction.¹⁴¹

The Board received full briefing and held oral argument and a merits hearing on the issues raised in Contentions 1A and 1B. The Board found in favor of the Tribe and Consolidated Intervenors and identified deficiencies in the Staff's efforts to comply with NEPA and the NHPA.¹⁴² With briefing on these issues completed and the Board's having found in favor of the Tribe and Consolidated Intervenors, we find that the Board's resolution of Contentions 1A and 1B is final and consideration of the petitions for review of these contentions is appropriate at this time.¹⁴³

b. Contentions and Board Order

In Contention 1A, the Tribe and Consolidated Intervenors challenged the FSEIS's treatment of historic and cultural resources under the NHPA and NEPA.¹⁴⁴ In Contention 1B, the Tribe and Consolidated Intervenors challenged the adequacy of the Staff's NHPA consultation process.¹⁴⁵

With respect to Contention 1A, the Board held that the Staff had complied with the NHPA requirement to "make a good faith and reasonable effort to

¹³⁹ *Id.* at 658, 710.

¹⁴⁰ *Id.*

¹⁴¹ Consolidated Intervenors' Petition at 2 & n.3, 3, 6-7; Powertech's Petition at 5-6, 6 n.9; Staff's Petition at 13-16; *see also* Tribe's Petition at 18-19 (arguing that the "proper remedy" is to "vacate the [licensing] decision and remand back to the agency for further proceedings").

¹⁴² *See* LBP-15-16, 81 NRC at 708.

¹⁴³ *See* 10 C.F.R. § 2.341(b)(4); *Pa'ina*, CLI-10-18, 72 NRC at 69-74 (fully reviewing appeals from a licensing board order on an issue where the board ruled in favor of the intervenor on the merits but directed further corrective action); *Vermont Yankee*, CLI-10-17, 72 NRC at 4-9 (same).

¹⁴⁴ Tribe's FSEIS Contentions at 5-9; Consolidated Intervenors' FSEIS Contentions at 6-14. The Tribe and Consolidated Intervenors previously filed similar contentions on the application and the DSEIS. *See* Tribe's DSEIS Contentions at 4-10; Consolidated Intervenors' DSEIS Contentions at 2-7; Petitioners' Request for Leave to File a New Contention Based on SUNSI Material (April 30, 2010), at 1-6; Tribe's Petition to Intervene at 12-17.

¹⁴⁵ Tribe's FSEIS Contentions at 9-14; Consolidated Intervenors' FSEIS Contentions at 14-20. The Tribe previously filed similar contentions on the application and the DSEIS. Tribe's DSEIS Contentions at 4-10; Tribe's Petition to Intervene at 12-17.

identify properties . . . eligible for inclusion in the National Register of Historical Places within the Dewey-Burdock [*in situ* leach] project area.”¹⁴⁶ The Board found that the Staff had largely complied with Advisory Council on Historic Preservation (ACHP) guidance on identification of historic properties.¹⁴⁷ However, with respect to the Staff’s NEPA responsibilities, the Board found insufficient the Staff’s analysis of the environmental effects of the Dewey-Burdock project on Native American cultural, historic, and religious resources.¹⁴⁸ Accordingly, it held that the Record of Decision was incomplete because the Staff “did not give this issue its required hard look in the FSEIS.”¹⁴⁹ Regarding Contention 1B, section 106 consultation, the Board acknowledged that it could not definitively determine whether the Staff or the Tribe bore responsibility for what the Board considered a breakdown in consultation. But the Board found that the NHPA consultation process between the Staff and the Tribe was inadequate because it did not provide sufficient opportunity for the Tribe to articulate its views on the Dewey-Burdock project’s effects on historic properties and participate in the resolution of adverse effects.¹⁵⁰

The Board directed the Staff to conduct additional consultation with the Tribe “to satisfy the hard look at impacts required by NEPA . . . [and] to satisfy the consultation requirements of the NHPA.”¹⁵¹ By the terms of its order, the Board issued a partial initial decision with respect to these contentions and, therefore, retained jurisdiction over the proceeding pending the Staff’s curing of the deficiencies in the FSEIS and consultation with the Tribe.¹⁵² On appeal, each party challenged the Board’s issuance of a partial initial decision and retention of jurisdiction.¹⁵³

¹⁴⁶ LBP-15-16, 81 NRC at 654.

¹⁴⁷ *Id.*

¹⁴⁸ *Id.* at 655. More specifically, the Board found a deficiency in the analysis of sites that might be significant to the Oglala Sioux Tribe.

¹⁴⁹ *Id.*

¹⁵⁰ *Id.* at 656-57.

¹⁵¹ *Id.* at 657. The Board noted that it could have suspended Powertech’s license, and it attributed its decision to leave the license in place to the Tribe’s incomplete participation in the consultation process. *Id.* at 658.

¹⁵² *Id.* at 710.

¹⁵³ Consolidated Intervenor’s Petition at 2 & n.3, 3, 6-7; Powertech’s Petition at 5-6, 6 n.9; Staff’s Petition at 13-16; *see also* Tribe’s Petition at 18-19 (arguing that the “proper remedy” is to “vacate the [licensing] decision and remand back to the agency for further proceedings”).

c. *Petitions for Review*

(1) THE TRIBE'S AND CONSOLIDATED INTERVENORS' PETITIONS FOR REVIEW

Although the Board found in favor of the Tribe and Consolidated Intervenors, both parties have appealed the relief the Board granted with respect to these contentions.

(a) *The Tribe's Petition for Review*

The Tribe challenges the Board's decision to leave the license in place, despite finding that the NRC Staff's analysis did not comply with NEPA or the NHPA.¹⁵⁴ Given the Board's decision, the Tribe argues that NEPA and the NHPA prohibit the Board from leaving the license in place and asserts that "the proper remedy is that employed by federal courts up[on] a finding of a violation of NEPA: to vacate the decision and remand back to the agency for further proceedings necessary to achieve compliance."¹⁵⁵

We disagree. It is well settled that a failure to comply with every aspect of procedural statutes like those at issue here does not necessarily void agency action; federal courts have required that parties demonstrate harm or prejudice to disturb an agency's decision.¹⁵⁶ Here, the Tribe has not articulated any harm or prejudice; in fact, it did not request a stay of the effectiveness of the license, despite the Board's invitation for it to do so.¹⁵⁷ Nor has the Tribe raised a substantial question that would merit granting its petition for review with respect to this issue.¹⁵⁸ Therefore, we deny this portion of the Tribe's petition for review and its request that we vacate Powertech's license.

(b) *Consolidated Intervenors' Petition for Review*

Consolidated Intervenors argue that "the Board improperly withheld an initial decision and refused to rule on Contentions 1A [and] 1B thereby depriving the Tribe and tribal members . . . an opportunity to appeal the Board's decision."¹⁵⁹ Despite their argument that the Board's decision deprived them of an opportunity to appeal the decision, Consolidated Intervenors challenge the Board's

¹⁵⁴ Tribe's Petition at 19.

¹⁵⁵ *Id.* (citing *New York*, 681 F.3d at 471).

¹⁵⁶ *Lyng*, 844 F.2d at 594-95; *Cty. of Del Norte*, 732 F.2d at 1467; *Cent. Delta Water Agency*, 653 F. Supp. 2d at 1086-87; *Muhly*, 877 F. Supp. at 300-01.

¹⁵⁷ See LBP-15-16, 81 NRC at 658.

¹⁵⁸ See *Pa'ina*, CLI-10-18, 72 NRC at 69-74 (noting that the board ruled in favor of the intervenor after a merits hearing but directed the parties to undertake additional action to cure identified deficiencies); *Vermont Yankee*, CLI-10-17, 72 NRC at 4-9 (same).

¹⁵⁹ Consolidated Intervenors' Petition at 2.

decision to leave the license in place — tying their objection to the NRC’s federal trust responsibility.¹⁶⁰ But they do not articulate why the federal trust responsibility precludes the Board from finding as it did; nor do Consolidated Intervenor attempt to demonstrate the existence of a substantial question that would merit granting their petition for review. Instead, they argue that the Board misconstrued the trust responsibility federal agencies owe to the Tribe by “presuming that the Tribe will act ‘[u]nreasonably.’”¹⁶¹ This argument misconstrues the Board’s decision and does not raise a legal question or demonstrate factual error on the part of the Board. In ruling on Contentions 1A and 1B, the Board did not presume that the Tribe would act unreasonably. Rather, the Board stated that “[e]ven after a thorough review of the record . . . [it was] not able to decide definitively which party or specific actions led to the impasse preventing an adequate tribal cultural survey.”¹⁶² Therefore, the Board directed the Staff to resume consultation with the Tribe, but it reminded the Tribe of its obligation to engage in a meaningful manner with the Staff.¹⁶³ We do not see how this statement presumes any unreasonable action or misconstrues the NRC’s trust responsibility, nor does it satisfy our standards for granting a petition for review. Therefore, we deny Consolidated Intervenor’s petition for review with respect to these contentions.

(2) POWERTECH AND THE STAFF’S PETITIONS FOR REVIEW

Powertech and the Staff appeal the Board’s rulings on Contentions 1A and 1B as well as the Board’s retention of jurisdiction.¹⁶⁴

(a) *Powertech’s Petition for Review*

On appeal, Powertech argues, at length, that the Board’s ruling on Contentions 1A and 1B was inconsistent, legally flawed, and factually incorrect. Specifically, Powertech claims that the Board erred in finding the Staff’s NHPA analysis deficient by committing clear error of law, ignoring the ACHP’s determinations regarding the propriety of the Staff’s analysis, providing “special treatment” to the Tribe as a litigant and consulting party, and ignoring critical facts regarding the nature of the government-to-government consultation between the NRC Staff and the Tribe.¹⁶⁵ With respect to the Board’s NEPA determination, Powertech argues that the Board erred in finding that the Staff’s

¹⁶⁰ *Id.* at 3.

¹⁶¹ *Id.*; *see also id.* at 6.

¹⁶² LBP-15-16, 81 NRC at 656.

¹⁶³ *Id.* at 657-58, 658 n.236.

¹⁶⁴ Powertech’s Petition at 6-22; Staff’s Petition at 14-25.

¹⁶⁵ Powertech’s Petition at 7, 9-11, 16.

analysis does not comply with NEPA. In Powertech's view, the NRC Staff has satisfied its NEPA obligation to assess the impacts to historic and cultural resources by considering and evaluating all the available information or information that could reasonably be obtained.¹⁶⁶ Powertech asserts that in requiring more from the Staff, the Board has committed a clear error of law.¹⁶⁷ We disagree. At bottom, Powertech's dispute with the Board's decision is factual, not legal. When assessing a petition for review on factual issues, we typically defer to a Board's findings, absent a showing of clear error.¹⁶⁸ Here, Powertech challenges the Board's weighing of the evidence to find that the Staff's NEPA and NHPA analyses do not satisfy the NRC's statutory obligations. For example, with respect to the Staff's NEPA analysis, Powertech claims that the Staff considered and evaluated "all available information or information that reasonably could be obtained"¹⁶⁹ Yet none of Powertech's claims show clear error on the part of the Board, absent which we will not reconsider the Board's resolution of factual issues.¹⁷⁰ We therefore deny Powertech's petition for review with respect to the Board's findings in Contentions 1A and 1B.

(b) The Staff's Petition for Review

On appeal, the Staff argues that the Board misapplied NEPA's hard-look standard as a matter of law, under which the Board should assess whether the Staff "made reasonable efforts" to obtain complete information on the cultural resources at issue here.¹⁷¹ In its brief, the Staff describes the efforts it undertook and argues that these efforts were sufficient to meet the hard-look standard.¹⁷² The Staff asks us to view the Board's application of the hard look standard as a legal issue under 10 C.F.R. § 2.341(b)(4)(ii).¹⁷³ But the fundamental issue here — whether Staff complied with NEPA — is inherently factual.

¹⁶⁶ *Id.* at 20-22.

¹⁶⁷ *Id.* at 17.

¹⁶⁸ 10 C.F.R. § 2.341(b)(4)(i).

¹⁶⁹ Powertech's Petition at 21-22.

¹⁷⁰ We recognize that, as Powertech notes, the ACHP participated in the section 106 process and concluded that the NRC Staff's process complies with the "content and spirit" of the section 106 process. Ex. NRC-031, Letter from John Fowler, ACHP, to Waste Win Young, Standing Rock Sioux Tribe, at 3 (Apr. 7, 2014) (ML14241A473); see Powertech's Petition at 3, 9, 11, 15-16. The Staff likewise asks us to treat the ACHP's and North Dakota SHPO's views as dispositive of the fact that it complied with the NHPA. Staff's Petition at 24. Here, where the Board has weighed the relevant facts, including the cited exhibits, and determined that the Staff has not satisfied its obligations under the NHPA and NEPA, we will not disturb the Board's findings absent clear error.

¹⁷¹ Staff's Petition at 17-18.

¹⁷² *Id.* at 19-20.

¹⁷³ *Id.* at 17.

As a general matter, we defer to the Board's findings with respect to the underlying facts unless they are "clearly erroneous."¹⁷⁴ Here, the Board weighed the evidence and determined that the analysis of the environmental effects on cultural resources in the FSEIS was insufficient.¹⁷⁵ The Staff challenges this determination, describing the efforts it made to gather information on cultural resources, but the Staff has not demonstrated that the Board's findings are clearly erroneous.¹⁷⁶ Given the complexity of this proceeding, which involved hundreds of exhibits and over five years of litigation, we are not inclined to second guess the Board's fact-finding.

The Staff next challenges the Board's determination that, on the one hand, the Staff complied with the NHPA regarding identification of historic properties, but the Staff's analysis of cultural, religious, and historic resources under NEPA was insufficient. It argues that the Board's finding that it had complied with the NHPA in identifying historic properties compels the Board to conclude that the Staff also complied with NEPA with respect to cultural resources.¹⁷⁷ The Staff acknowledges that the Board relied on precedent in stating that NEPA compliance does not necessarily follow from NHPA compliance.¹⁷⁸ But it challenges the Board's application of that legal principle to the facts in this case, stating that it had taken a hard look at cultural resources in the FSEIS and arguing that "[t]he Board did not cite any authority supporting its divergent findings on whether the Staff complied with a common requirement of both statutes"¹⁷⁹ The Staff's challenge to the Board's alleged failure to cite authority for its findings is misplaced. Federal case law supports the legal principle that NHPA and NEPA compliance do not necessarily mirror one another.¹⁸⁰ The Board found that NEPA requires an analysis of the effects on all of the cultural resources present at the site, not only those properties eligible for listing on the National Register of Historic Places, which is the standard for further analysis under the NHPA.¹⁸¹ The Staff does not demonstrate that the Board's factual finding was implausible. Therefore, we decline to disturb the Board's finding here.

¹⁷⁴ *Honeywell*, CLI-13-1, 77 NRC at 18-19; *Geisen*, CLI-10-23, 72 NRC at 224-25.

¹⁷⁵ LBP-15-16, 81 NRC at 644-55.

¹⁷⁶ Staff's Petition at 19-20.

¹⁷⁷ *Id.* at 21-22.

¹⁷⁸ *Id.*; see LBP-15-16, 81 NRC at 654-55 (citing *Te-Moak Tribe of W. Shoshone of Nev. v. U.S. Dep't of Interior*, 608 F.3d 592, 606, 610 (9th Cir. 2010); *Hydro Resources, Inc.* (P.O. Box 777, Crownpoint, New Mexico 87313), LBP-05-26, 62 NRC 442, 472 (2005)).

¹⁷⁹ Staff's Petition at 22.

¹⁸⁰ See *Te-Moak*, 608 F.3d at 606-07, 610.

¹⁸¹ See 36 C.F.R. § 800.4 (requiring agencies to identify "historic properties"); *id.* § 800.16 (defining historic properties as "districts, sites, buildings, structures, or objects included in or eligible for inclusion in, the National Register of Historic Places"); see generally *id.* § 60.4 (providing the criteria for inclusion in the National Register of Historic Places).

Next, the Staff seeks review of the Board's ruling on Contention 1B that the Staff failed to adequately consult with the Tribe under the NHPA.¹⁸² The Staff argues that the Board's holdings on Contentions 1A and 1B are contradictory because in Contention 1A the Board held "that the Staff complied with the NHPA when identifying cultural resources" while in Contention 1B, the Board held that the NHPA consultation process was inadequate.¹⁸³ But the Board's rulings on compliance with the NHPA are not contradictory; its rulings on NHPA compliance in Contentions 1A and 1B relate to different obligations.

The NHPA imposes several obligations on federal agencies, which proceed in a step-by-step manner.¹⁸⁴ The consultation requirement continues throughout the steps. The first step is identifying any historic properties that might be affected by the federal undertaking (here licensing), and in doing so, making a reasonable and good faith effort to seek information from consulting parties, including Native American Tribes, to aid in that identification.¹⁸⁵ In ruling on Contention 1A, the Board determined that the Staff had satisfied the NHPA's consultation requirements with respect to identifying historic properties.¹⁸⁶ In other words, the Board determined that the Staff had satisfactorily completed the first step in the process.

But, as discussed by the Board, the identification of historic properties is not the end of the NHPA consultation process. After it identifies eligible sites that might be affected by the project, an agency must assess¹⁸⁷ and resolve¹⁸⁸ potential adverse effects in consultation with tribes that attach religious and cultural significance to those sites.¹⁸⁹ In its ruling on Contention 1B, the Board found that the Staff had not adequately consulted with the Tribe on the second and third steps; that is, despite its good faith effort to consult in order to identify historic properties, the Staff had not demonstrated that it provided the Tribe with the opportunity to identify concerns about those properties and participate in the resolution of any adverse effects.¹⁹⁰ The Board, after a merits hearing, reasonably concluded that the Staff's consultation with the Tribe was insufficient to meet these requirements. Thus, the Staff has not raised a substantial question for review. For the reasons stated above, we deny review of the Staff's petition with respect to Contentions 1A and 1B.

¹⁸² Staff's Petition at 23.

¹⁸³ *Id.* Compare LBP-15-16, 81 NRC at 654, with *id.* at 657.

¹⁸⁴ *Id.* at 638-41.

¹⁸⁵ 36 C.F.R. § 800.4.

¹⁸⁶ LBP-15-16, 81 NRC at 654.

¹⁸⁷ 36 C.F.R. § 800.5.

¹⁸⁸ *Id.* § 800.6.

¹⁸⁹ *Id.* § 800.2(c)(2)(ii)(A).

¹⁹⁰ LBP-15-16, 81 NRC at 656-57. See also 36 C.F.R. § 800.2(c)(2)(ii)(A).

(3) RETENTION OF JURISDICTION

Both the Staff and Powertech appeal the Board's retention of jurisdiction pending resolution of the deficiencies identified in Contentions 1A and 1B.¹⁹¹ In retaining jurisdiction, the Board directed the Staff to: (1) initiate government-to-government consultation with the Tribe; (2) file monthly status reports; and (3) submit "an agreement reflecting the parties' settlement . . . or a motion for summary disposition of Contentions 1A and 1B."¹⁹² Both the Staff and Powertech argue that in each instance the Board "exceeded its authority" by retaining jurisdiction over the proceeding and prescribing "a process for the Staff to resolve" the deficiencies identified in Contentions 1A and 1B.¹⁹³ Consolidated Intervenor also questioned the Board's retention of jurisdiction over these contentions. Consolidated Intervenor argue that doing so constitutes prejudicial procedural error.¹⁹⁴

With respect to the Board's specific direction to the Staff to initiate "government-to-government" consultation, we agree in principle with the Staff and Powertech. To the extent that the Board's ruling can be viewed as providing specific direction to the Staff, the Board overstepped its authority.¹⁹⁵ But, based upon our review of the Board's decision, the Board has not stated that it will direct or oversee the Staff's review of cultural resources; instead, it leaves it to the Staff — either by agreement among the parties or by motion for summary disposition — to determine when it has addressed the deficiencies identified by the Board.¹⁹⁶ All the Board has required is that the Staff provide reports regarding its consultation efforts in a manner similar to that in which it reports on the progress of its review and the Board's directions to the parties in this respect do not exceed the bounds of its authority. Our regulations provide the Board with the authority to "take appropriate action to control the . . . hearing process," "[r]egulate the course of the hearing and the conduct of the participants," and "[i]ssue orders necessary to carry out the presiding officer's duties and responsibilities under [10 C.F.R. Part 2]."¹⁹⁷ In circumstances like these, we have made it clear that a Board has relative latitude to fashion appropriate

¹⁹¹ Staff's Petition at 15-16; Powertech's Petition at 6.

¹⁹² LBP-15-16, 81 NRC at 708, 710.

¹⁹³ Staff's Petition at 15-16; *see also* Powertech's Petition at 5-6, 6 n.9.

¹⁹⁴ Consolidated Intervenor's Petition at 6-7.

¹⁹⁵ *See, e.g., Duke Energy Corp. (Catawba Nuclear Station, Units 1 and 2), CLI-04-6, 59 NRC 62, 74 (2004)* ("NRC Staff Reviews, which frequently proceed in parallel to adjudicatory proceedings, fall under the direction of Staff management and the Commission itself, not the licensing boards.").

¹⁹⁶ LBP-15-16, 81 NRC at 710.

¹⁹⁷ 10 C.F.R. § 2.319.

remedies regarding issues properly before it.¹⁹⁸ The Staff is free to select whatever course of action it deems appropriate to address the deficiencies identified in the Board's order, including, but not limited to further government-to-government consultation.¹⁹⁹ For these reasons, we decline to disturb the Board's approach — the Staff must still file monthly reports, along with an agreement or a motion for summary disposition — depending on the outcome of its efforts to address the deficiencies. Therefore, we deny Powertech's, the Staff's, and Consolidated Intervenors' petitions for review of the Board's retention of jurisdiction over these contentions.

2. *Contention 2*

a. *Contention and Board Order*

The Tribe seeks review of the Board's resolution of Contention 2 in favor of Powertech and the Staff. In Contention 2, the Tribe argued that

the FSEIS violates 10 C.F.R. Part 40, Appendix A, Criterion 7, 10 C.F.R. §§ 51.10, 51.70 and 51.71, and the National Environmental Policy Act, and implementing regulations . . . in that it fails to provide an adequate baseline groundwater characterization or demonstrate that ground water samples were collected in a scientifically defensible manner, using proper sample methodologies.²⁰⁰

The Tribe also challenged the fact that “while the FSEIS contains data from 2007-2009, the background water quality for use in the actual regulatory process for the facility will be established [at] a future date, outside of the NEPA process, and outside of the public's review.”²⁰¹ The Tribe objected to the collection of additional background groundwater quality data after issuance of the license,

¹⁹⁸ *Pa'ina*, CLI-10-18, 72 NRC at 96 (affirming the Board's decision to require an additional period for written public comment on a supplemental EA); see also *Offshore Power Systems* (Floating Nuclear Power Plants), ALAB-489, 8 NRC 194, 206 (1978) (“[T]he boards have broad and strong discretionary authority to conduct their functions with efficiency and economy. However, they must exercise it with fairness to all the parties” (citation omitted)); *Wisconsin Electric Power Co.* (Point Beach, Unit 2), ALAB-82, 5 AEC 350, 351 (1972) (“Administrative agencies and courts have long been accepted as ‘collaborative instrumentalities of justice.’” (quoting *United States v. Morgan*, 313 U.S. 409, 422 (1941))); *Duke Power Co., et al.* (Catawba Nuclear Station, Units 1 and 2), LBP-83-24A, 17 NRC 674, 680 (1983).

¹⁹⁹ We note, however, that in licensing reviews such as this one, where Native American Tribes could be affected by the NRC's licensing action, we expect the Staff's actions to be guided by the principles outlined in the NRC's Tribal Protocol Manual. “Tribal Protocol Manual,” NUREG-2173 (2014) (ML14274A014).

²⁰⁰ Tribe's Post-Hearing Brief at 38.

²⁰¹ *Id.* at 39.

but before the facility begins operating, and argued that the practice violates NEPA.²⁰²

In ruling on Contention 2, the Board noted that NRC case law supports the industry practice of definitively establishing groundwater quality baselines after licensing but before operation.²⁰³ Additionally, the Board noted that it found the testimony offered by the Staff's and Powertech's witnesses more detailed and persuasive than the testimony offered by the Tribe's witness.²⁰⁴ In reaching its decision, the Board examined the Tribe's exhibits regarding the EPA's Preliminary Assessment to determine that document's relevance to this contention.²⁰⁵ The Board found unavailing the Tribe's argument that the conclusions in the Preliminary Assessment translated to an insufficient discussion of historic mining operations in the FSEIS.²⁰⁶

b. The Tribe's Petition for Review

On appeal, the Tribe challenges the Board's ruling, claiming that the Board erred as a matter of law when it permitted Powertech to defer collection of groundwater data to after licensing but before operation.²⁰⁷ Based on our review of the record, we find that the Tribe has not raised a substantial question of law with respect to the applicable standards for site characterization. The Tribe mischaracterizes the Board's ruling when it claims that the Board allowed the Staff and Powertech to defer gathering groundwater data until after licensing.²⁰⁸ The Board did not rule that "meaningful" baseline characterization may be deferred until the post-licensing period. Rather, it held that the pre-licensing groundwater monitoring used to describe the site for NEPA purposes need not conform to the post-licensing, pre-operation groundwater monitoring requirements applicable to a licensed facility because the monitoring activities at these two stages serve

²⁰² *Id.* at 38-39.

²⁰³ LBP-15-16, 81 NRC at 665 (quoting *Hydro Resources, Inc.* (P.O. Box 777, Crownpoint, New Mexico 87313), CLI-06-1, 63 NRC 1, 6 (2006)).

²⁰⁴ *Id.* at 666.

²⁰⁵ *Id.*

²⁰⁶ *Id.* The Board reasoned that the conclusion in the Preliminary Assessment that lack of groundwater sampling data limited the availability of background concentrations did not force a conclusion that the FSEIS's discussion of background water quality data was insufficient. It explained that the Preliminary Assessment was focused on CERCLA and the FSEIS was focused on our environmental regulations and the CEQ regulations. CERCLA's objectives are different from NEPA's objectives. With respect to CERCLA, it is important to determine the background levels to assess the impact of *past* mining activities on the site. By contrast, for NEPA purposes, the site's current baseline is important to determine the potential future impacts of the proposed project on the site.

²⁰⁷ Tribe's Petition at 19-20.

²⁰⁸ *Id.* at 20.

different purposes.²⁰⁹ We see no substantial question of law relating to NEPA's site characterization requirements.

The Tribe further asserts that the Board "committed . . . error and abused its discretion" by not requiring the Staff to account for past mining activity in its baseline water quality data.²¹⁰ In support of this argument, the Tribe argues that "[t]he Board even ignored evidence from the EPA Preliminary Assessment . . . confirming the lack of meaningful data as to the impacts associated with historic mining at the site and how that impacts current water quality and future impacts from the Dewey-Burdock site."²¹¹ Contrary to the Tribe's assertions, the Board did not disregard the Preliminary Assessment; it specifically addressed the Tribe's argument regarding the Preliminary Assessment in its decision.²¹² The Board found that due to the different objectives of NEPA and CERCLA, the Preliminary Assessment's finding regarding background data did not impact the adequacy of the analysis in the FSEIS.²¹³ The Tribe does not explain how the Board's determination on this point constitutes clear error or abuse of discretion.²¹⁴ The Tribe does not present a substantial question for review with respect to the Board's ruling on Contention 2; therefore, we decline to take review.²¹⁵

3. Contention 3

a. Contention and Board Order

In Contention 3, the Tribe and Consolidated Intervenors argued that the Dewey-Burdock site contains numerous geological and man-made features that will permit groundwater migration.²¹⁶ Overall, the Board resolved this contention

²⁰⁹ LBP-15-16, 81 NRC at 665 (quoting *Strata Energy, Inc. (Ross In Situ Uranium Recovery Project)*, LBP-15-3, 81 NRC 65, 91-92 (2015)). In the *Strata* proceeding, we recently denied review of the Board's decision on a contention that was substantially similar to the Tribe's Contention 2, on the same grounds. *Strata Energy, Inc. (Ross In Situ Uranium Recovery Project)*, CLI-16-13, 83 NRC 566, 583-84 (2016) ("[T]he groundwater monitoring used to describe the environmental conditions at the site for NEPA purposes need not conform to the groundwater monitoring requirements applicable to an operating facility. The two standards serve different purposes.") (citations omitted).

²¹⁰ Tribe's Petition at 20.

²¹¹ *Id.*

²¹² LBP-15-16, 81 NRC at 666.

²¹³ *Id.*

²¹⁴ See Tribe's Petition at 20.

²¹⁵ The Tribe also argues that the Board abused its discretion in disregarding the Tribe's argument that Regulatory Guide 4.14 is outdated. *Id.* at 20-21. The Tribe's dissatisfaction with Regulatory Guide 4.14 does not demonstrate Board error presenting a substantial question for our review, particularly since, as the Staff points out, the Regulatory Guide did not form a basis for the Board's decision. See LBP-15-16, 81 NRC at 665-66; see also Staff's Response to Tribe at 17-18.

²¹⁶ See Tribe's Post-Hearing Brief at 43-56.

in favor of Powertech and the Staff.²¹⁷ The Board carefully and extensively considered evidence presented by all four parties, and it concluded that the Staff had taken the required hard look at the confinement of the overall ore zone.²¹⁸ Because of the numerous issues covered by this contention, the Board explained its ruling on each specific technical issue related to fluid containment separately.²¹⁹

In its ruling on Contention 3, the Board conditioned Powertech's license as follows:

Prior to conducting tests for a wellfield data package, the licensee will attempt to locate and properly abandon all historic drill holes located within the perimeter well ring for the wellfield. The licensee will document, and provide to the NRC, such efforts to identify and properly abandon all drill holes in the wellfield data package.²²⁰

The Board explained that it conditioned the license because “despite the NRC Staff's claim that ‘because there are a number of improperly plugged or abandoned boreholes at the Dewey-Burdock site, as a condition of its license Powertech must address these boreholes before beginning operations,’ [the Board] did not find any such explicit condition in the license.”²²¹ It concluded that with the additional license condition, the FSEIS and the record contain “adequate hydrogeological information to demonstrate the ability to contain fluid migration and assess potential impacts to groundwater.”²²²

b. Petitions for Review

Both the Tribe and Consolidated Intervenors have petitioned for review of the Board's ruling on this contention.²²³ Additionally, Powertech has petitioned for review of the license condition the Board imposed as part of its ruling.²²⁴ As explained below, none of the petitions for review regarding this contention raise a substantial question.

(1) THE TRIBE'S PETITION FOR REVIEW

Although the Tribe characterizes its challenges to the Board's ruling on Con-

²¹⁷ LBP-15-16, 81 NRC at 681.

²¹⁸ *Id.* at 676.

²¹⁹ *See id.* at 676-81.

²²⁰ *Id.* at 679, 709.

²²¹ *Id.* at 679 (quoting NRC Staff's Reply Brief (Jan. 29, 2015), at 26).

²²² *Id.* at 681.

²²³ Tribe's Petition at 22-23; Consolidated Intervenors' Petition at 2 & n.3, 4-7.

²²⁴ Powertech's Petition at 22-25.

tention 3 as legal arguments, the arguments generally relate to how the Board weighed the evidence.²²⁵ With respect to those challenges, based upon our review of the record, we find that none of the Tribe's arguments demonstrate a substantial question for review regarding the Board's factual findings.

The Tribe argues that the Board committed legal error in holding that, while "small faults and joints may be present in the project area, their presence does not support Intervenor's assertions [regarding the impacts of the faults and joints.]"²²⁶ The Tribe asserts that the Board "appl[ie]d an inappropriate legal standard when it effectively placed the burden on the Tribe to demonstrate the impacts associated with these faults and fractures."²²⁷ We disagree — the Board has neither shifted the burden of proof nor applied an inappropriate legal standard. In its ruling, the Board made clear that "[t]his is not simply a question of whether faults and joints are present, but rather whether they are large and open enough to produce a substantial breach in the confining layers"²²⁸ The Board carefully weighed the evidence and made a factual finding that the faults and joints would not provide pathways for groundwater migration.²²⁹ We defer to the Board's findings with respect to the underlying facts unless they are "clearly erroneous."²³⁰ Here, the Tribe has not raised a substantial question of clear error on the part of the Board.

Next, the Tribe objects to the Board's imposition of a license condition requiring Powertech to attempt to locate and abandon boreholes.²³¹ The Tribe characterizes the license condition imposed by the Board as the sole means of achieving compliance and preventing leakage.²³² We disagree. In addition to the license condition imposed by the Board, License Condition 11.5 requires Powertech to monitor for excursions and take corrective action — including potentially terminating injection of lixiviant within the wellfield until the excursion is corrected.²³³ This requirement provides incentive for Powertech to locate and abandon the boreholes. Moreover, the Board's additional license condition requires Powertech to "document its efforts" to find and fill the boreholes, enabling the Staff to assess whether Powertech's efforts are undertaken in good

²²⁵ See Tribe's Petition at 22.

²²⁶ LBP-15-16, 81 NRC at 678.

²²⁷ Tribe's Petition at 23.

²²⁸ LBP-15-16, 81 NRC at 677.

²²⁹ *Id.* at 671-73; 677-78.

²³⁰ *Honeywell*, CLI-13-1, 77 NRC at 18-19; *Geisen*, CLI-10-23, 72 NRC at 224-25.

²³¹ Tribe's Petition at 22-23.

²³² *Id.* at 22.

²³³ Ex. NRC-012, License, at 10-11.

faith.²³⁴ Additionally, absent evidence to the contrary, we assume at the licensing stage that a licensee will comply with its obligations.²³⁵

The Tribe argues that the Board “relie[d] entirely” on a license condition outside the NEPA process.²³⁶ But the Tribe’s assertion is inaccurate. As explained above, the Board relied on much more than one license condition; it weighed all parties’ evidence and testimony on this contention, along with the information in the FSEIS and the record.²³⁷ We see no clear error in the Board’s reasonable conclusion that the additional license condition will ensure Powertech’s compliance with the requirement to attempt to find and plug historic boreholes. Accordingly, we deny the Tribe’s petition for review with respect to Contention 3.

(2) CONSOLIDATED INTERVENORS’ PETITION FOR REVIEW

Like the Tribe, Consolidated Intervenors challenge the Board’s weighing of the evidence in its ruling on Contention 3. Consolidated Intervenors argue that the Board shifted the burden of proof and instituted “a new ‘compelling’ standard”; they refer to the Board’s findings with respect to whether leakage was caused by unplugged boreholes or by naturally occurring fissures and joints.²³⁸

Contrary to Consolidated Intervenors’ argument, the Board’s decision contains careful consideration of the parties’ evidence regarding several subjects in dispute.²³⁹ The Board neither shifted the burden of proof nor created a new standard of proof. It appropriately weighed the evidence presented by the parties and made factual determinations based on that evidence.²⁴⁰

Additionally, Consolidated Intervenors argue that the Board erred when it accepted a witness’s “unsubstantiated opinion,” and they argue generally that the Board committed factual error regarding leakage at the site.²⁴¹ Consolidated Intervenors argue that the Board should not have credited an expert witness proffered by Powertech because that witness was “speaking from the perspective of the mining industry” rather than in the interest of public health and safety.²⁴² The witness the Board cited is an experienced engineer and hydrolo-

²³⁴ LBP-15-16, 81 NRC at 679, 709.

²³⁵ See *Curators of the University of Missouri*, CLI-95-8, 41 NRC 386, 400 (1995); cf. *Pacific Gas and Electric Co.* (Diablo Canyon Nuclear Power Plant, Units 1 and 2), CLI-03-2, 57 NRC 19, 29 (2003).

²³⁶ Tribe’s Petition at 22.

²³⁷ LBP-15-16, 81 NRC at 676-81; Ex. NRC-008-A-2, FSEIS § 4.5.2.1.1.2.2.

²³⁸ Consolidated Intervenors’ Petition at 2 & n.3, 4, 6-7; see LBP-15-16, 81 NRC at 677.

²³⁹ LBP-15-16, 81 NRC at 676-81.

²⁴⁰ *Id.*

²⁴¹ Consolidated Intervenors’ Petition at 2 & n.3, 4-6.

²⁴² *Id.* at 5.

gist.²⁴³ Consolidated Intervenors have raised no objection to his qualifications aside from the fact that he testified for the applicant. Our deference to the Board is particularly great when it comes to weighing the credibility of witnesses.²⁴⁴ Our review of the record demonstrates that the Board examined the exhibits, questioned witnesses, and considered the parties' pleadings and statements of position in making its decision.²⁴⁵ Because Consolidated Intervenors have not raised a substantial question regarding the Board's findings of fact, we deny their petition with respect to this contention.

(3) POWERTECH'S PETITION FOR REVIEW

Powertech seeks review of the Board's imposition of an additional license condition regarding location and abandonment of historic boreholes. It argues that the Board's addition of this license condition constituted clear error of fact because Powertech had already committed to plugging historic boreholes.²⁴⁶ We find that any factual error in the Board's determination that the license did not contain an explicit condition regarding historic boreholes was harmless. While Powertech is bound by License Condition 9.2 to its commitment to plug boreholes, we do not see the inherent conflict between that commitment and the Board's additional license condition that Powertech and the Staff assert exists. The Board's general license condition can be implemented through the more specific procedures contained in Powertech's commitment. We also see little in the way of additional burden here, particularly if, as Powertech asserts, the Dewey-Burdock site's artesian conditions make it easier to identify improperly plugged boreholes, and it has documentation that historical boreholes were plugged according to State regulations.²⁴⁷

Next, Powertech asserts that the Board committed factual and legal error in imposing the license condition *sua sponte*.²⁴⁸ Powertech argues that because "[n]one of the argument or testimony pertained to plugging and abandoning *all* boreholes prior to the commencement of licensed operations in a given well-field," the Board imposed the license condition *sua sponte*.²⁴⁹ But as the record reflects, historical boreholes were one of the issues raised in Contention 3; the Board imposed this license condition in ruling on that contention, which was the

²⁴³ See Ex. APP-014, Curriculum Vitae of Hal. P. Demuth, M.S., Petrotek Engineering Corporation (ML14240A422).

²⁴⁴ See, e.g., *Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-03-8, 58 NRC 11, 26 (2003) (citations omitted).

²⁴⁵ See, e.g., LBP-15-16, 81 NRC at 667-81.

²⁴⁶ Powertech's Petition at 22-23.

²⁴⁷ *Id.* at 25 n.57.

²⁴⁸ *Id.* at 23-25.

²⁴⁹ *Id.* at 24.

subject of a full evidentiary hearing.²⁵⁰ Moreover, as the Staff points out in its response to Powertech's petition, "[the Tribe's and Consolidated Intervenors'] arguments could reasonably be construed as claiming that, in order to ensure adequate containment, Powertech must properly abandon all boreholes within the perimeter of each wellfield."²⁵¹ The Board ruled on a matter properly before it in imposing an additional license condition on Powertech. Powertech's argument that the license condition was imposed *sua sponte* does not raise a substantial question for review. We deny review of Powertech's petition regarding Contention 3.

4. Contention 6

In Contention 6, the Tribe argued that discussion of mitigation measures in the FSEIS was inadequate for two reasons. First, the Tribe asserted that the FSEIS's discussion and evaluation of mitigation measures was insufficiently detailed.²⁵² Second, it argued that the Staff erroneously deferred development of further mitigation measures until after the issuance of the FSEIS and the Record of Decision.²⁵³ In its petition, the Tribe challenges the Board's ruling by asserting that the Board failed to address several of its arguments and that the Board's ruling on Contention 6 is inconsistent with its ruling on Contention 1A.

a. Contention and Board Order

With respect to the portion of its contention that challenged the discussion of mitigation measures in the FSEIS, the Tribe argued before the Board that NEPA requires an EIS to "detail[] with [a] specific description, supporting data, and analysis of process and effectiveness" each mitigation measure.²⁵⁴ The Tribe asserted that the Dewey-Burdock project FSEIS merely listed potential mitigation measures and lacked scientific evidence or analysis regarding the effectiveness of each measure.²⁵⁵

The Board, after a merits hearing and review of the record, determined that

²⁵⁰ See LBP-15-16, 81 NRC at 674-75, 679.

²⁵¹ NRC Staff's Response to Powertech's Petition for Review of LBP-15-16 (June 22, 2015), at 7 n.16.

²⁵² Oglala Sioux Tribe's Statement of Position on Contentions (June 20, 2014), at 27-28 (Tribe's Statement of Position). Consolidated Intervenors adopted the Tribe's arguments with respect to Contention 6. Consolidated Intervenors' Opening Statement (July 7, 2014), at 9.

²⁵³ Tribe's Statement of Position at 28.

²⁵⁴ *Id.* at 38.

²⁵⁵ *Id.* at 30-32.

the Staff's discussion and evaluation of mitigation measures was sufficient.²⁵⁶ The Board agreed with the Tribe's arguments regarding NEPA's requirements for analysis of mitigation measures, but it found that the Staff had met those requirements.²⁵⁷ In its holding, the Board determined that the Tribe completely overlooked Chapter 4 of the FSEIS, which contained extensive analysis of mitigation measures.²⁵⁸ Further, the Board stated that the FSEIS "fully evaluated the impacts and mitigation strategies detailed under other [expert agency] permits."²⁵⁹ Finally, the Board concluded that Powertech's license requires compliance with mitigation and monitoring measures described in the FSEIS, the Record of Decision, and the license.²⁶⁰ Accordingly, the Board found that Powertech would be required to comply with mitigation strategies analyzed in the FSEIS from initial, pre-licensing activities through decommissioning.²⁶¹

In the second portion of Contention 6, the Tribe argued that the Staff violated NEPA by deferring development of certain mitigation measures — particularly mitigation of adverse effects on cultural resources — until after issuance of the FSEIS.²⁶² The Tribe also challenged the Staff's analysis of the proposed monitoring well network, historical well hole plugging, and wildlife protections and monitoring.²⁶³

Regarding the development of mitigation measures after FSEIS completion, the Board ruled that "[t]he release of an FSEIS does not mark the completion of the NEPA review process."²⁶⁴ The Board noted that the FSEIS referenced the yet-to-be-issued Programmatic Agreement and explained that mitigation measures adopted in the Programmatic Agreement could mitigate impacts on historic or cultural resources.²⁶⁵ Further, the Board determined that the FSEIS included analysis of certain mitigation measures to be implemented post-licensing.

In finding the FSEIS's analysis adequate, the Board relied upon the generally accepted presumption that Powertech will comply with its obligations as listed in the license, the FSEIS, and associated documents.²⁶⁶ The Board noted that monitoring programs are "a principal aid" to the Staff and the licensee in

²⁵⁶ LBP-15-16, 81 NRC at 690-91.

²⁵⁷ *Id.* at 690.

²⁵⁸ *Id.* at 690-91.

²⁵⁹ *Id.* at 692.

²⁶⁰ *Id.* at 691.

²⁶¹ *Id.*

²⁶² Tribe's Statement of Position at 28.

²⁶³ *Id.* at 33-34.

²⁶⁴ LBP-15-16, 81 NRC at 694.

²⁶⁵ *Id.*

²⁶⁶ *Id.* at 695.

determining whether mitigation measures are effective.²⁶⁷ Moreover, it stated that several of Powertech's license conditions require Powertech to document, maintain, and submit to NRC its monitoring results.²⁶⁸ In sum, the Board held that the mitigation and monitoring plans in the FSEIS, while not final, complied with NEPA.²⁶⁹ Accordingly, the Board resolved Contention 6 in favor of Powertech and the Staff.

b. The Tribe's Petition for Review

On appeal, the Tribe argues that it had identified significant analytical gaps in the agency's review of mitigation measures, and that the Board failed to address all of its arguments when ruling on Contention 6.²⁷⁰ We disagree. The Board, after a careful examination of the record, determined that the FSEIS contained sufficient analysis of mitigation measures.²⁷¹ Absent clear error, which the Tribe has not demonstrated, we decline to disturb the Board's determination that the FSEIS's analysis of mitigation measures was sufficient for NEPA compliance. Therefore, we deny the Tribe's petition with respect to this point.

The Tribe also seeks review of the Board's decision regarding deferral of development of mitigation measures and argues that the Board erred at law and abused its discretion.²⁷² For the reasons stated below, we deny the Tribe's petition for review with respect to this issue.

First, the Tribe argues that future development of mitigation measures through the Programmatic Agreement violated NEPA.²⁷³ The Tribe asserts that the Board's ruling disregarded the Tribe's claim that the Programmatic Agreement failed to include "any actual mitigation [measures]," in violation of NEPA.²⁷⁴ We disagree with the Tribe's argument regarding lack of analysis in the Programmatic Agreement. Our examination of the record reveals that the Programmatic Agreement and the FSEIS contain discussion of mitigation measures for cultural resources, and the Board did not find deficiencies in those discussions.²⁷⁵ Be-

²⁶⁷ *Id.*

²⁶⁸ *Id.* at 695-97.

²⁶⁹ *Id.* at 694 (quoting *Hydro Resources, Inc.* (P.O. Box 777, Crownpoint, NM 87313), CLI-06-29, 64 NRC 417, 426-27 (2006)).

²⁷⁰ Tribe's Petition at 24 (citing LBP-15-16, 81 NRC at 689).

²⁷¹ LBP-15-16, 81 NRC at 690-92.

²⁷² Tribe's Petition at 24.

²⁷³ *Id.*

²⁷⁴ *Id.*

²⁷⁵ See, e.g., Ex. NRC-018-A, "Programmatic Agreement Among U.S. Nuclear Regulatory Commission, U.S. Bureau of Land Management, South Dakota State Historic Preservation Office,

(Continued)

cause the Tribe fails to address these discussions, it does not raise a substantial question for review of the Board's finding that they are adequate for NEPA compliance.

Next, the Tribe challenges the Board's ruling regarding the FSEIS's discussion of mitigation measures in numerous areas, including wildlife protection, wellfield testing, air impacts, and historical well hole plugging and abandonment.²⁷⁶ It argues that "the [Board's] ruling also substantially ignore[d] the Tribe's arguments regarding other mitigation issues," which, in the Tribe's view, the Staff did not sufficiently describe or analyze in the FSEIS.²⁷⁷

We disagree. In ruling on these points, the Board did not disregard the Tribe's arguments; it determined — based on precedent and its review of the record — that the mitigation and monitoring plans discussed in the FSEIS and Programmatic Agreement contained the level of detail required by NEPA.²⁷⁸ The Tribe's petition does not articulate a substantial question for review with respect to this portion of the Board's decision.

Finally, the Tribe asserts that the Board's ruling with respect to Contention 6 is "internally inconsistent" because it conflicts with the Board's ruling on Contention 1A where it found, in part, that the Staff's analysis of mitigation measures for cultural resources did not satisfy NEPA.²⁷⁹ The Board found generally that the Staff's analysis of mitigation was sufficient. Specifically regarding mitigation of cultural resources, the Board ruled that

[t]he FSEIS . . . explains that mitigation measures adopted in the Programmatic Agreement "could reduce an adverse impact to a historic or cultural resource." . . . Therefore, the Board finds that the NRC Staff completing the Programmatic Agreement after the FSEIS was released, but before the issuance of the Record of Decision or the license, adequately satisfied NEPA.²⁸⁰

Regarding Contention 6, the Board concluded that the Staff's analysis of miti-

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. 3, 2014), at 5 (requiring Powertech to protect all unevaluated properties until National Register-eligibility determinations are completed), at 10 (requiring Powertech to halt ground-disturbing activities within a 150-foot area and take numerous additional steps if a previously unknown cultural resource is discovered during the implementation of the Dewey-Burdock Project) (ML14246A401) (Programmatic Agreement); Ex. NRC-008-A-2, FSEIS § 4.9.1.1.1. The Staff's mitigation recommendations appear in the far-right columns of Tables 4.9-1 through 4.9-6.

²⁷⁶ Tribe's Petition at 25.

²⁷⁷ *Id.*

²⁷⁸ LBP-15-16, 81 NRC at 694-95.

²⁷⁹ Tribe's Petition at 25; *see* LBP-15-16, 81 NRC at 655.

²⁸⁰ LBP-15-16, 81 NRC at 694.

gation measures for cultural resources fulfilled NEPA's requirements. We agree with the parties, however, that this statement is inconsistent with the Board's ruling on Contention 1A. Specifically, there the Board stated that "the FSEIS does not include mitigation measures sufficient to protect [the Tribe's] cultural, historical, and religious sites that may be affected by the Powertech project."²⁸¹ With this statement, the Board appears to be mixing the requirements of NEPA and the NHPA — NEPA does not require the adoption of mitigation measures, only a discussion of their potential effects. Regardless, by pointing out these inconsistent Board statements, the Tribe has demonstrated only harmless error because the mitigation measures for cultural resources are covered by Contentions 1A and 1B. Thus, a separate ruling on this specific issue under Contention 6 is not necessary. Therefore, we find that the Tribe does not raise a substantial question for our review with respect to Contention 6.

III. CONCLUSION

For the foregoing reasons, we *deny* in part each party's petition for review. We *grant* each party's petition with respect to the finality of the Board's ruling on Contentions 1A and 1B and find that these contentions should be considered "final" for the purposes of the petitions for review at issue here. We *grant* the Staff's and Powertech's petitions for review with respect to the Board's direction to the Staff regarding the resolution of Contentions 1A and 1B. Pursuant to our inherent supervisory authority over agency adjudications, we *direct* that the proceeding remain open for the narrow purpose of resolving the deficiencies identified by the Board in Contentions 1A and 1B and *affirm* the Board's direction to the Staff to submit monthly status reports and the Board's direction to file an agreement between the parties or a motion for summary disposition to resolve the deficiencies identified by the Board. We *grant* the Tribe's petition for review with respect to proposed Contention 8 and dismiss that contention.

IT IS SO ORDERED.

For the Commission

ANNETTE L. VIETTI-COOK
Secretary of the Commission

Dated at Rockville, Maryland,
this 23d day of December 2016

²⁸¹ *Id.* at 655.

Commissioner Svinicki, dissenting in part.

I fully join the majority's order today with one exception: the Staff's and Powertech's appeals of Contentions 1A and 1B. For the reasons expressed below, I would take review of these petitions because the Board applied the wrong legal standards to these contentions. Moreover, when considered under the correct legal standards, the evidentiary record supports resolving Contentions 1A and 1B in favor of the Staff. Therefore, I would enter judgment in favor of the Staff and direct the Board to terminate this proceeding.

A. Contention 1A

On appeal, the Staff argues that the Board's ruling on Contention 1A constitutes legal error because it misapplied NEPA's hard look standard, under which the Board should assess whether the Staff "made reasonable efforts" to obtain adequate information on the cultural resources at issue here.¹ In its brief, the Staff describes the efforts it undertook and argues that these efforts were sufficient to meet the hard look standard.² The Staff asks us to view the Board's application of the hard look standard as a legal issue under 10 C.F.R. § 2.341(b)(4)(ii).³ I would take review of the Staff's petition for review of Contention 1A and reverse the Board's ruling that the Staff's environmental analysis did not adequately address the environmental effects of the Dewey-Burdock project on Native American cultural, religious, and historic resources.

We have previously acknowledged that for some NEPA reviews, necessary data may "prove to be unavailable, unreliable, inapplicable, or simply not adaptable."⁴ In such cases, we have directed the Staff to provide a reasonable analysis of the available information with a "disclosure of incomplete or unavailable information."⁵ Likewise, Federal courts have upheld agency determinations not to analyze impacts "for which there are not yet standard methods of measurement or analysis."⁶ Moreover, the NRC looks for guidance to the Council on Environmental Quality's implementing regulations for NEPA, which specify that an

¹ Staff's Petition at 17-18.

² *Id.* at 19-20.

³ *Id.* at 17.

⁴ *Entergy Nuclear Generation Co. and Entergy Nuclear Operations, Inc.* (Pilgrim Nuclear Power Station), CLI-10-22, 72 NRC 202, 208 (2010).

⁵ *Id.*

⁶ *Town of Winthrop v. F.A.A.*, 535 F.3d 1, 13 (1st Cir. 2008).

agency need not include relevant information if “the overall costs of obtaining it are exorbitant.”⁷

While the Board cited to these principles in its discussion of legal standards, it did not apply these rules to the FSEIS.⁸ Instead of responding to the Staff’s argument that “it complied with NEPA by making repeated attempts to obtain information on cultural resources,”⁹ the Board examined whether the FSEIS “adequately catalogued” the “cultural, historical, and religious sites of the Oglala Sioux Tribe.”¹⁰ Because it found that the FSEIS did not contain this information, the Board concluded that the “NRC Staff did not give this issue its required hard look in the FSEIS.”¹¹ Consequently, the Staff is correct that the Board’s ruling on Contention 1A constitutes legal error. Instead of considering whether the Staff could reasonably obtain the information it acknowledged was missing, the Board invalidated the FSEIS simply because the information was missing in the first place.¹² This approach is facially inconsistent with our precedent, Federal case law, and the CEQ regulations, which recognize that in some instances information relevant to an EIS will not be reasonably available and direct the agency to proceed in accord with NEPA’s rule of reason in the face of such lacunae.¹³ Therefore, the Board’s ruling on Contention 1A rests on a legal error.¹⁴

While the Commission would normally hesitate to wade through such a detailed factual record ourselves, particularly when we have not had the advantage of observing testimony first hand,¹⁵ in this case other findings from the Board indicate that the missing information was not reasonably available. Specifically, upon reviewing the record in its entirety, the Board concluded that the amount of “funds requested to collect tribal cultural information” by the Oglala Sioux was “patently unreasonable.”¹⁶ If information is only available at a patently unreasonable cost, here potentially four million dollars to conduct one part of the cultural survey (itself only one part of the larger NEPA review), it follows that

⁷ 40 C.F.R. § 1502.22; *see also Pacific Gas and Electric Co.* (Diablo Canyon Nuclear Power Plant, Units 1 and 2), CLI-11-11, 74 NRC 427, 443-44 (2011) (observing that while the NRC is not bound by CEQ regulations, it looks to them for guidance).

⁸ LBP-15-16, 81 NRC at 638 (noting that “an environmental impact statement is not intended to be a research document” (internal quotation marks omitted)).

⁹ *Id.* at 652.

¹⁰ *Id.* at 655.

¹¹ *Id.*

¹² *Id.*

¹³ *Pilgrim*, CLI-10-22, 72 NRC at 208; *Town of Winthrop*, 535 F.3d at 13; 40 C.F.R. § 1502.22.

¹⁴ 10 C.F.R. § 2.341(b)(4)(ii).

¹⁵ *Northern Indiana Public Service Co.* (Bailly Generating Station, Nuclear 1), ALAB-303, 2 NRC 858, 867 (1975) (noting that “Licensing Boards are the Commission’s primary fact finding tribunals”).

¹⁶ LBP-15-16, 81 NRC at 657 & n.229.

such information is not reasonably available.¹⁷ Moreover, because this information missing from the FSEIS was not reasonably available, its absence from the FSEIS analysis cannot be a basis upon which the FSEIS fails to meet NEPA's hard look standard.

In its Response, the Tribe argues that the precedents cited by Staff do not stand for the legal principle that when relevant information to an EIS is unavailable, the agency must only make reasonable efforts to obtain the information.¹⁸ Specifically, the Tribe argues that many of the cases relied on by the Staff only hold that agencies need not consider remote and speculative impacts in an EIS.¹⁹ But, it appears that the Staff only cited to these precedents to establish NEPA's general rule of reason.²⁰ Moreover, several of the authorities relied on by the Staff appear to support the position that agencies need only undertake reasonable efforts to acquire missing information, such as 40 C.F.R. § 1502.22, *Town of Winthrop*, and *Pilgrim*.²¹ For the most part, the Tribe did not discuss these authorities in its response.²² While the Tribe asserts that *Pilgrim* "simply confirmed" that an EIS is "not intended to be a research document,"²³ these quotations from *Pilgrim* support the Staff's position because they indicate that an agency need not take extraordinary efforts to obtain or create missing information.

B. Contention 1B

Powertech advances a similar argument with respect to Contention 1B — that the Board did not apply the correct standard for tribal consultation under the NHPA implementing regulations.²⁴ I would take review of Powertech's petition with respect to Contention 1B and reverse the Board's ruling that the consultation process between the Staff and the Tribe was inadequate.

¹⁷ Staff's Petition at 6 (citing Tr. at 804, 807).

¹⁸ Tribe's Response at 15-17.

¹⁹ *Id.* (citing *Ground Zero Ctr. for Non-Violent Action v. U.S. Dep't of the Navy*, 383 F.3d 1082 (9th Cir. 2004); *Warm Springs Dam Task Force v. Gribble*, 621 F.2d 1017 (9th Cir. 1980); *Entergy Nuclear Generation Co. (Pilgrim Nuclear Power Station)*, CLI-10-11, 71 NRC 287 (2010)).

²⁰ Staff's Petition at 17-18.

²¹ *Id.* (citing *Pilgrim*, CLI-10-22, 72 NRC at 208; *Town of Winthrop*, 535 F.3d at 13; 40 C.F.R. § 1502.22).

²² Tribe's Response at 16.

²³ *Id.* (quotation marks omitted).

²⁴ See Powertech's Petition at 9-11 ("[T]he Licensing Board's attempt to distinguish between the characterizations of consultation as 'reasonable' versus 'meaningful' is not part of the NHPA statutory framework or regulatory regime.").

Under the NHPA's implementing regulations, the NRC must provide every tribe "a reasonable opportunity to identify its concerns about historic properties, advise on the identification and evaluation of historic properties, including those of traditional religious and cultural importance, articulate its view on the undertaking's effects on such properties, and participate in the resolution of such adverse effects."²⁵ While the "Tribe is entitled to 'identify its concerns,' to 'advise,' to 'articulate,' and to 'participate,'" courts have warned that "consultation is not the same thing as control over a project."²⁶ Even if a party's involvement is limited, if that limited involvement is by choice, the agency has provided the party with a reasonable opportunity to participate.²⁷

With regard to Contention 1B, the Board initially stated the correct legal standard, whether the Staff provided a "reasonable opportunity" for consultation.²⁸ However, in evaluating Contention 1B, rather than apply that standard, the Board sought to determine "which party or specific action led to the impasse preventing an adequate tribal cultural survey."²⁹ Ultimately, the Board determined that the "NRC Staff is at least partly at fault for the failed consultation process" largely because it never "held a single consultation session, on a government-to-government basis, solely with members of the Oglala Sioux Tribe."³⁰ Likewise, the Board concluded that the "Oglala Sioux Tribe does share some responsibility for the . . . lack of meaningful consultation."³¹ Therefore, because the Board focused its attention on apportioning culpability for what became an impasse, instead of determining whether the opportunity for consultation itself was a reasonable one, the Board's decision constituted legal error.³²

As noted above, the Commission generally hesitates to make factual findings in the first instance, but again the record developed by the Board is sufficient to answer the question posed: here, whether the Staff provided a reasonable opportunity for consultation. One of the most striking aspects of this record is that the ACHP, the agency expert in implementing the NHPA, signed the NRC's Programmatic Agreement for the Dewey-Burdock project, and in so do-

²⁵ 36 C.F.R. § 800.2(c)(2)(ii)(A).

²⁶ *Narragansett Indian Tribe v. Warwick Sewer Authority*, 334 F.3d 161, 168 (1st Cir. 2003).

²⁷ *Montana Wilderness Ass'n v. Connell*, 725 F.3d 988, 1009 (9th Cir. 2013).

²⁸ LBP-15-16, 81 NRC at 639 (quoting 36 C.F.R. § 800.2(c)(2)(ii)(A)).

²⁹ *Id.* at 656.

³⁰ *Id.* And the Tribe's status as a litigant in this proceeding does not alter its role as a consulting party. To be sure, the ACHP's regulations list various consulting parties, including both Indian tribes and "[c]ertain individuals and organizations with a demonstrated interest in the undertaking . . . due to their legal or economic relation to the undertaking or affected properties." See 36 C.F.R. § 800.2(c)(2) and (5). But the Board's implication that the Tribe's status as an intervenor somehow elevates its status as a consulting party is incorrect. See LBP-15-16, 81 NRC at 656.

³¹ LBP-15-16, 81 NRC at 656.

³² 10 C.F.R. § 2.341(b)(4)(ii).

ing, found that it set forth a phased process for compliance with section 106.³³ While the ACHP's agreement is not binding on the Commission, its findings are entitled to considerable weight.³⁴ On balance, the record demonstrates that the Staff has committed to phased compliance with section 106, as endorsed by the ACHP. I fully expect the Staff to satisfy its obligations under the Programmatic Agreement, which include consultation. Accordingly, I would conclude that the Staff has provided the Tribe with a reasonable opportunity to consult and will continue to take appropriate actions under the Programmatic Agreement.

In its Response, the Tribe argues that the factual record contains sufficient information to rebut the Staff's and Powertech's efforts to "blame the Tribe for the problems with NRC Staff's NHPA compliance."³⁵ But, as noted above, the correct standard is not whether there is sufficient evidence to apportion blame, but whether the opportunity to consult was reasonable. While the Tribe may well be disappointed with how the consultation unfolded, courts have consistently held that "a reasonable opportunity to consult" does not guarantee any specific results.³⁶ Consequently, this argument is not persuasive.

Next, the Tribe argues that Federal case law supports the reasonableness of the Board's holding.³⁷ But, it appears that these cases involve very different

³³ Ex. NRC-018-D, Letter from Charlene Dwin Vaughn, Advisory Council on Historic Preservation, to Kevin Hsueh, NRC (Apr. 7, 2014) (ML14246A405); see Ex. NRC-18-E, Advisory Council on Historic Preservation Signature Page of 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 (Apr. 7, 2014) (ML14246A417); see also Ex. NRC-018-A, Programmatic Agreement, at 2; Ex. NRC-018-B, Appendices Related to the 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, app. A, at 2-7 (ML14246A406); 36 C.F.R. § 800.4(b)(2).

³⁴ *Public Service Co. of New Hampshire, et al.* (Seabrook Station, Units 1 and 2), CLI-77-8, 5 NRC 503, 527 (1977).

³⁵ Tribe's Response at 19.

³⁶ *Narragansett Indian Tribe*, 334 F.3d at 168. While some courts have determined that agency shortcomings, such as misrepresenting important facts or only relying on written communications, may render an opportunity to consult unreasonable, *Pueblo of Sandia v. United States*, 50 F.3d 856, 860-62 (10th Cir. 1995), on balance the record does not support such findings here.

³⁷ Tribe's Response at 19-21 (citing *Quechan Indian Tribe of Fort Yuma Indian Reservation v. Dep't of the Interior*, 755 F. Supp. 2d 1104 (D. Ariz. 2008); *Attakai v. United States*, 746 F. Supp. 1395 (D. Ariz. 1990); *Slockish v. U.S. Federal Highway Admin.*, 682 F. Supp. 2d 1178 (D. Or. 2010); *Pueblo of Sandia*, 50 F.3d at 856).

factual backgrounds.³⁸ Indeed, the Tribe concedes that many of the cases have distinguishing characteristics from the instant case.³⁹ Finally, some aspects of these cases appear to be unfavorable to the Tribe's position; for example one district court noted, "None of this analysis is meant to suggest federal agencies must acquiesce to every tribal request."⁴⁰ Consequently, I am not persuaded by the Tribe's efforts to rehabilitate the Board's legal analysis.

Therefore, because the Board applied the incorrect legal standards to Contentions 1A and 1B, I would overturn the Board's determinations with respect to those two contentions and find (1) that the Staff's NEPA analysis of the environmental effects of the Dewey-Burdock project on Native American cultural, religious, and historic resources was adequate and (2) the Staff has provided the Tribe with a reasonable opportunity to consult under the NHPA. Consequently, I would find in favor of the Staff on these two contentions and direct the Board to terminate this proceeding.

³⁸ *Quechan Tribe*, 755 F. Supp. 2d at 1119 (noting that the Tribe was not provided with adequate information or time); *Slockish*, 682 F. Supp. 2d at 1197 (stating that in deciding whether the NHPA claim was moot, the court "must begin by assuming . . . that the defendants have violated the NHPA").

³⁹ Tribe's Response at 21-22 (observing that *Attakai* and *Pueblo of Sandia* involved cases in which the agency wholly failed to consult with an affected Tribe).

⁴⁰ *Quechan Tribe*, 755 F. Supp. 2d at 1119.

Commissioner Baran, dissenting in part.

I join in the Commission's decision except for the portion of the decision that denies review of the Tribe's claim that the Board erred by not vacating the license for failure to complete an adequate NEPA review. I respectfully dissent on this issue.

As I stated in my partial dissent in the *Strata* proceeding and my dissent in the *Turkey Point* proceeding, a core requirement of NEPA is that an agency decisionmaker must consider an adequate environmental review *before* making a decision on a licensing action.¹ If the Commission allows a Board to supplement and cure an inadequate NEPA document *after* the agency has already made a licensing decision, then this fundamental purpose of NEPA is frustrated.

In this case, the Board found that the Staff's FSEIS did not meet the requirements of NEPA because the FSEIS was deficient with respect to the effects of the licensing action on Native American cultural, religious, and historic resources.² Thus, the agency did not have an adequate environmental analysis at the time it decided whether to issue the license. In fact, the deficiencies in the NEPA analysis remain unaddressed today, and therefore the Staff still cannot make an adequately informed decision on whether to issue the license. The Staff's licensing decision was based on (and continues to rest on) an inadequate environmental review. As a result, the Staff has not complied with NEPA.

The Commission should suspend the license until the Staff has, in accordance with the Board's order, filed its final monthly status report demonstrating that the FSEIS complies with NEPA and our regulations. Once the Staff had satisfied the Board's order and completed an adequate NEPA analysis on which to base its decision, the Staff would then be in a position to decide whether to modify, reinstate, condition, or revoke the license.

¹ *Strata Energy*, CLI-16-13, 83 NRC at 604 (citing *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 349 (1989)), *appeal docketed*, No. 16-1298 (D.C. Cir. Aug. 24, 2016); *Florida Power & Light Company* (Turkey Point Nuclear Generating Units 3 and 4), CLI-16-18, 84 NRC 167 (2016).

² LBP-15-16, 81 NRC at 708, 655-58. The Board also identified a NEPA deficiency with respect to hydrogeological information, the subject of Contention 3, and conditioned Powertech's license to cure this deficiency. *See id.* at 679, 681, 709.

Cite as 88 NRC 1 (2018)

CLI-18-7

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

COMMISSIONERS:

Kristine L. Svinicki, Chairman
Jeff Baran
Stephen G. Burns
Annie Caputo
David A. Wright

In the Matter of

Docket No. 40-9075-MLA

POWERTECH (USA) INC.
(Dewey-Burdock *In Situ* Uranium
Recovery Facility)

July 24, 2018

SUMMARY DISPOSITION

APPEALS, INTERLOCUTORY

A board's denial of a motion for summary disposition is an interlocutory decision. *See Progress Energy Florida, Inc.* (Levy County Nuclear Power Plant, Units 1 and 2), CLI-11-10, 74 NRC 251 (2011); *Nuclear Innovation North America LLC* (South Texas Project, Units 3 and 4), CLI-11-6, 74 NRC 203 (2011); *see also Entergy Nuclear Operations, Inc.* (Indian Point, Units 2 and 3), CLI-11-14, 74 NRC 801, 810-11 (2011); *Entergy Nuclear Generation Co. and Entergy Nuclear Operations, Inc.* (Pilgrim Nuclear Power Station), CLI-08-2, 67 NRC 31, 34 (2008) (grant of summary disposition motion, where other contentions are pending in the proceeding, is interlocutory).

APPEALS, INTERLOCUTORY

The Commission has uniformly rejected the argument that expenses associated with additional litigation constitute "irreparable injury" warranting interlocutory review. *See Entergy Nuclear Operations, Inc.* (Indian Point, Units 2 and 3), CLI-09-6, 69 NRC 128, 135 (2009) ("Indeed, we have found *no in-*

stance in this agency's jurisprudence where either we or our boards have ruled that expenses of any kind constituted 'irreparable injury.' . . . [I]n situations where, as here, a movant for a stay or interlocutory review claims 'irreparable injury' based on excessive or unnecessary litigation expenses[, w]e have uniformly rejected such arguments."); *see also Entergy Nuclear Operations, Inc.* (Indian Point, Units 2 and 3), CLI-10-30, 72 NRC 564, 569 (2010) (increased litigation and delay do not justify interlocutory review); *Connecticut Yankee Atomic Power Co.* (Haddam Neck Plant), CLI-01-25, 54 NRC 368, 373-74 (2001) (increased litigation resulting from the admission of a contention does not constitute serious or irreparable harm); *Sequoyah Fuels Corp. and General Atomic* (Gore, Oklahoma Site), CLI-94-11, 40 NRC 55, 61-62 (1994) (denial of motion for summary disposition or dismissal).

SUMMARY DISPOSITION

The question whether an Indian Tribe unreasonably failed to cooperate with the Staff in its efforts to identify cultural resources went to the merits of a contention arguing that an environmental assessment failed to adequately identify cultural resources potentially impacted by the proposed license. Therefore the Board acted within its discretion when it declined to rule on that question on summary disposition.

MEMORANDUM AND ORDER

Powertech (USA) Inc. (Powertech) petitions for review of the Atomic Safety and Licensing Board's decision denying in part and granting in part the Staff's motion for summary disposition of Contentions 1A and 1B challenging the issuance of an *in situ* uranium recovery license to Powertech.¹ Powertech requests that we reverse the Board's partial denial of summary disposition and direct the Staff to supplement the Final Supplemental Environmental Impact Statement (FSEIS), thereby ending this proceeding.² For the reasons described below, we deny Powertech's petition for review.

¹ Brief of Licensee Powertech (USA), Inc. Petition for Review of LBP-17-09 (Nov. 13, 2017) (Petition); *see also* LBP-17-9, 86 NRC 167 (2017).

² Petition at 1-2, 16, 20.

I. BACKGROUND

This proceeding has been pending since 2009, when Powertech first applied for a license for the Dewey-Burdock *In Situ* Uranium Recovery Facility. The Oglala Sioux Tribe (“Tribe”) and Consolidated Intervenors (together, “Intervenors”) were admitted as intervenors in 2010.³ The Staff issued the FSEIS in January 2014 and issued the license to Powertech in April 2014, while Intervenors’ admitted contentions were still pending before the Board.⁴ The Board held an evidentiary hearing on the Intervenors’ contentions in August 2014.

In April 2015, the Board issued a partial initial decision finding in favor of the Staff and Powertech on all contentions except Contentions 1A and 1B, both of which concerned the Staff’s consideration of the potential impacts of the proposed project on Native American cultural resources at the project site.⁵ Specifically, the Board found “that the FSEIS [had] not adequately addressed the environmental effects of the Dewey-Burdock project on Native American cultural, religious, and historic resources” (Contention 1A) and “that the consultation process between the NRC Staff and the Oglala Sioux Tribe was inadequate” (Contention 1B).⁶ Despite these findings, the Board did not determine that suspension of the license was warranted.⁷ Instead, it found that the Staff should work to remedy the two identified deficiencies, report to the Board on its progress, and eventually resolve the contention with a settlement agreement, or if not able to reach a settlement, with a motion for summary disposition.⁸

All parties appealed the Board’s various rulings in LBP-15-16 (as well as various interlocutory rulings), but we affirmed the Board in all respects relevant to this appeal.⁹ We specifically rejected Powertech’s argument that the Staff had already considered all information pertaining to cultural resources that was rea-

³ LBP-10-16, 72 NRC 361, 376 (2010).

⁴ See Exs. NRC-008-A-1 to NRC-008-B-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-1910, Supplement 4, vols. 1-2 (Jan. 2014) (ADAMS Accession Nos. ML14246A350, ML14246A329, ML14246A330, ML14246A331) (FSEIS); Ex. NRC-012, License Number SUA-1600, Materials License for Powertech (USA) Inc. (Apr. 8, 2014) (ML14246A408) (License).

⁵ LBP-15-16, 81 NRC 618 (2015).

⁶ *Id.* at 655, 657.

⁷ See *id.* at 657-58.

⁸ *Id.* at 710.

⁹ See CLI-16-20, 84 NRC 219, 262 (2016). We affirmed the Board’s decisions on the merits but we disagreed with the characterization that its ruling with respect to Contentions 1A and 1B rendered the decision non-final. We explained that the Board’s decision was final and appealable, although we ultimately approved the Board’s approach in retaining jurisdiction over the matter until the deficiencies identified in the FSEIS were resolved. See *id.* at 242-43, 250-51.

sonably available and had therefore satisfied the National Environmental Policy Act (NEPA) as a matter of law.¹⁰ Instead, we found that “Powertech’s dispute with the Board’s decision [was] factual, not legal” and, in the absence of clear error, deferred to the Board’s factual determinations concerning the adequacy of the FSEIS.¹¹

Over the course of the following two years, the Staff made several attempts to adequately consult with the Tribe, including correspondence and email, one face-to-face meeting, and a January 31, 2017, teleconference.¹² However, during this period, the Tribe and the Staff could not agree upon a method to survey cultural, historic, and religious resources at the site or assess the possible impact of the project on such resources.¹³ During the January 2017 teleconference, the Staff proposed an “open-site” survey method that would involve representatives of the Tribe walking over the site for a period of time in exchange for mileage reimbursement, a per diem, and an honorarium of \$10,000.¹⁴ The open site survey proposal would have been similar to a survey performed in 2013 in which the Tribe declined to participate.¹⁵ According to the Staff’s summary of the teleconference, the Tribe did not accept this proposal and instead “expressed its preference to develop a survey methodology similar in nature to the Makoche Wowapi survey proposal that was submitted to the NRC in 2012.”¹⁶ As a result of the parties’ failure to reach an agreement on the survey methodology, no

¹⁰ See Brief of Licensee Powertech (USA), Inc. Petition for Review of LBP-15-16, at 20-22 (May 26, 2015).

¹¹ CLI-16-20, 84 NRC at 247. The Tribe has filed a petition for review of CLI-16-20 in the United States Court of Appeals for the District of Columbia. *Oglala Sioux Tribe v. NRC* (D.C. Cir. No. 17-1059). On July 20, 2018, the court issued a decision remanding the case for further proceedings concerning the status of the license in light of the NEPA deficiency that has been identified.

¹² See NRC Staff’s Motion for Summary Disposition of Contentions 1A and 1B (Aug. 3, 2017) (Staff Motion), attach. 1, NRC Staff’s Statement of Material Facts to Support Motion for Summary Disposition of Contentions 1A and 1B (Aug. 3, 2017); *id.*, attach. 2, Affidavit of Kellee L. Jamerson Concerning the NRC Staff’s Motion for Summary Disposition of Contentions 1A and 1B (Aug. 3, 2017); see also LBP-17-9, 86 NRC at 173.

¹³ See NRC Staff Final Status Report (Aug. 3, 2017) (Final Status Report).

¹⁴ See Summary of Teleconference with the Oglala Sioux Tribe Regarding the Dewey-Burdock In situ Uranium Recovery Project (Jan. 31, 2017) (ML17060A260) (Teleconference Summary).

¹⁵ See Ex. NRC-008-A, FSEIS § 1.7.3.5, at 1-24 to 1-26.

¹⁶ Teleconference Summary at 1. The Makoche Wowapi proposal included a professional survey with established protocols for identification of historical sites with Makoche Wowapi/Mentz-Wilson Consultants, LLP, acting as contractor to conduct the survey. This approach was estimated to cost \$818,000. See Ex. NRC-008-A, FSEIS § 1.7.3.5, at 1-23; LBP-17-9, 86 NRC at 181 n.66; see also Letter from Trina Lone Hill, Oglala Lakota Cultural Affairs & Historic Preservation, to Cinthya I. Román, NRC, at 8 (May 31, 2017) (ML17152A109); Staff Motion at 28-29.

additional information about cultural resources at the site was able to be gathered from the Tribe.¹⁷

On August 3, 2017, the Staff moved for summary disposition of Contentions 1A and 1B, arguing that further attempts at consultation with the Tribe would be unlikely to result in an acceptable settlement.¹⁸ With respect to its obligations under NEPA, the Staff argued that its efforts satisfied the statute because “[u]nder NEPA’s ‘hard look’ standard, the proper inquiry is not whether the Staff obtained complete information on the sites of cultural, historical, and religious [significance] to the Oglala Sioux Tribe, but whether the Staff made reasonable efforts to do so.”¹⁹

Powertech filed a brief in support of the Staff’s motion, and the Intervenor’s opposed it.²⁰ With respect to the adequacy of the survey that had been proposed, the Tribe asserted that the proposed open site survey was not scientific or methodical, and that the survey should be conducted by professionals, in consultation with the Oglala and other Sioux Tribes. The Tribe argued that an open site survey conducted solely by Tribal representatives would essentially place the onus on the Tribe to survey the site and catalogue cultural resources there.²¹

The Board found that there was no remaining material issue of fact regarding the Staff’s consultation with the Tribe. It found that the Staff’s attempts at consultation had satisfied the requirements of the National Historic Preservation Act and, therefore, granted summary disposition of Contention 1B.²² But with respect to Contention 1A, the Board noted that no additional survey had been performed (such that the deficiencies in the FSEIS remained) and found that there was still a disputed fact issue as to whether the Staff’s effort to characterize cultural resources at the site was reasonable.²³ More specifically, the Board found that the

Tribe’s challenge to (1) the scientific integrity and lack of a trained surveyor or

¹⁷ Final Status Report at 2.

¹⁸ See Staff Motion; Final Status Report.

¹⁹ Staff Motion at 34 (citing *Ground Zero Ctr. for Non-Violent Action v. U.S. Dept. of the Navy*, 383 F.3d 1082, 1089-90 (9th Cir. 2004); *Warm Springs Dam Task Force v. Gribble*, 621 F.2d 1017, 1026-27 (9th Cir. 1980)).

²⁰ Brief of Powertech (USA) Inc. in Support of the United States Nuclear Regulatory Commission Staff’s Motion for Summary Disposition of Contentions 1A and 1B (Sept. 1, 2017); Oglala Sioux Tribe Response in Opposition to NRC Staff’s Motion for Summary Disposition of Contentions 1A and 1B (Sept. 1, 2017) (Tribe Response in Opposition); Consolidated Intervenor’s Opposition to Motion for Summary Disposition of Contentions 1A and 1B (Sept. 1, 2017).

²¹ See LBP-17-9, 86 NRC at 193 (citing Tribe Response in Opposition at 33).

²² *Id.* at 188-90.

²³ *Id.* at 194.

ethnographer coordinating the survey; (2) the number of tribal members invited to participate in the survey; (3) the length of time provided for the survey; and (4) the tribes invited to participate in the survey — establish a significant material factual dispute as to the reasonableness of the NRC Staff’s proposed terms for an open-site survey to assess the identified deficiencies in this FSEIS.²⁴

Powertech appealed the denial of the Staff’s motion with respect to Contention 1A. Powertech requests that we “direct NRC Staff to supplement the [FSEIS] with all data and information for activities conducted to date by NRC Staff on historic and cultural resources and order the closure of Contention 1A upon completion of such supplement.”²⁵ Powertech also asks for “expedited review” because, it claims, the State of South Dakota and the U.S. Environmental Protection Agency and Bureau of Land Management are waiting for the NRC to approve the FSEIS supplement and end this proceeding before they grant approvals necessary for Powertech to begin operations.²⁶ Powertech also contended, in support of this request, that the Commission’s expedited consideration of its petition could have rendered moot certain issues in the Tribe’s petition for review before the D.C. Circuit.²⁷

II. DISCUSSION

A. Powertech’s Petition Does Not Meet the Standard for Interlocutory Review

A board’s denial of a motion for summary disposition is an interlocutory decision.²⁸ We generally disfavor interlocutory review; our rules of procedure provide for such review only where the petitioner can show that it is threatened

²⁴ *Id.* at 198.

²⁵ Petition at 1-2. The Staff continues to work to resolve the outstanding issues identified in LBP-15-16 and LBP-17-9. See Letter from Cinthya I. Román, NRC, to John M. Mays, Chief Operating Officer, Azarga Uranium Corp. (Dec. 6, 2017) (ML17340B374) (Proposal) (describing proposal to identify historic, cultural, and religious sites at the Dewey-Burdock site). Powertech is a wholly-owned subsidiary of Azarga.

²⁶ Petition at 20; see also Reply to Oglala Sioux Tribe’s and Consolidated Interveners’ Opposition to the Petition for Review of LBP-17-09, at 5 (Dec. 18, 2017).

²⁷ Petition at 20-21.

²⁸ See *Progress Energy Florida, Inc.* (Levy County Nuclear Power Plant, Units 1 and 2), CLI-11-10, 74 NRC 251 (2011); *Nuclear Innovation North America LLC* (South Texas Project, Units 3 and 4), CLI-11-6, 74 NRC 203 (2011); see also *Entergy Nuclear Operations, Inc.* (Indian Point, Units 2 and 3), CLI-11-14, 74 NRC 801, 810-11 (2011), *Entergy Nuclear Generation Co. and Entergy Nuclear Operations, Inc.* (Pilgrim Nuclear Power Station), CLI-08-2, 67 NRC 31, 34 (2008) (grant of summary disposition motion, where other contentions are pending in the proceeding, is interlocutory).

with “immediate and serious irreparable impact” or the board’s decision “affects the basic structure of the proceeding in a pervasive and unusual manner.”²⁹

Powertech does not address the standard for interlocutory review in its petition. Nonetheless, we find, based on the record, that the standard, as stated in 10 C.F.R. § 2.341(f)(2), has not been met.³⁰ First, we find that Powertech will face no immediate and serious irreparable harm as a result of the Board’s ruling. Powertech’s request for “expedited review” claims that it will be harmed by delay and expense.³¹ But we have “uniformly rejected” arguments that “expenses of any kind” constitute irreparable injury.³² And, although Powertech suggests that other state and federal approvals depend on the outcome of this litigation, we do not view that assertion, even if we deemed it accurate, to warrant deviation from our standard process here. In addition, it is not apparent that the Board’s ruling has any effect on the “structure of the proceeding,” let alone a “pervasive and unusual” one.³³ This proceeding will continue as it has since 2015, when the Board ruled in favor of the Tribe on Contention 1A.³⁴

Although Powertech’s failure to meet the standard for interlocutory review

²⁹ See 10 C.F.R. § 2.341(f)(2)(i)-(ii). Absent a finding that these circumstances are present, intervenors would have to wait until the disposition of Contention 1A before they could seek review of the Board’s summary disposition of Contention 1B.

³⁰ Powertech addresses the standard provided in 10 C.F.R. § 2.341(b), which governs petitions for review of final Board decisions, but, as noted above, LBP-17-9 is not a final decision.

³¹ Petition at 20.

³² *Entergy Nuclear Operations, Inc.* (Indian Point, Units 2 and 3), CLI-09-6, 69 NRC 128, 135 (2009) (“Indeed, we have found *no instance* in this agency’s jurisprudence where either we or our boards have ruled that expenses of any kind constituted ‘irreparable injury.’ . . . [I]n situations where, as here, a movant for a stay or interlocutory review claims ‘irreparable injury’ based on excessive or unnecessary litigation expenses[, w]e have uniformly rejected such arguments.”); see also *Entergy Nuclear Operations, Inc.* (Indian Point, Units 2 and 3), CLI-10-30, 72 NRC 564, 569 (2010) (increased litigation and delay do not justify interlocutory review); *Connecticut Yankee Atomic Power Co.* (Haddam Neck Plant), CLI-01-25, 54 NRC 368, 373-74 (2001) (increased litigation resulting from the admission of a contention does not constitute serious or irreparable harm); *Sequoyah Fuels Corp. and General Atomics* (Gore, Oklahoma Site), CLI-94-11, 40 NRC 55, 61-62 (1994) (denial of motion for summary disposition or dismissal).

³³ The expansion of issues for resolution and the continuation of litigation that results from admitting a contention (see *Haddam Neck*, CLI-01-25, 54 NRC at 374) or denying summary disposition (see *Sequoyah Fuels*, CLI-94-11, 40 NRC at 62-63) does not necessarily have a “pervasive and unusual” effect on the litigation. It is simply part of the ebb and flow that characterizes complex adjudication.

³⁴ Powertech’s petition does not elaborate on how a favorable Commission ruling would have “moot[ed]” the Tribe’s petition for review of CLI-16-20 before the D.C. Circuit, see Petition at 2, 5, 20-21, and it is not apparent to us that interlocutory review would necessarily have had that result. Because this argument is not fully developed, we do not rule on whether potentially mooted a petition for review would present appropriate grounds for interlocutory review.

is a sufficient reason to deny its petition, we also find, as described below, that it has failed to show that the Board erred in denying its motion.

B. Powertech Has Not Shown that the Board Erred in Denying Summary Disposition

Summary disposition is appropriate where there is no remaining material issue of fact. The standards governing summary disposition are set forth at 10 C.F.R. § 2.710(a) and “are based upon those the federal courts apply to motions for summary judgment under Rule 56 of the Federal Rules of Civil Procedure.”³⁵ Under those standards, the moving party has the initial burden of showing that no genuine issue of material fact remains in the proceeding.³⁶ If the nonmoving party opposes the motion, it cannot rest on the allegations or denials of a pleading; instead, it must “go beyond the pleadings and . . . designate specific facts showing that there is a genuine issue for trial.”³⁷

Powertech’s Petition does not address the standard for granting summary disposition, that is, the standard under which the Board ruled on Contention 1A. But Powertech does argue that there is a logical contradiction in the Board simultaneously finding that the Staff had complied with its consultation obligations under the NHPA while at the same time falling short in its duties under NEPA.³⁸ To this end, Powertech asserts that the Board’s logic in LBP-17-9 clashes with its interpretation of the same statutes in LBP-15-16.³⁹ In LBP-15-16, the Board found with respect to Contention 1A that

the FSEIS has not adequately addressed the environmental effects of the Dewey-Burdock project on Native American cultural, religious, and historic resources. Without additional analysis as to how the Powertech project may affect the Sioux Tribes’ cultural, historical, and religious connections with the area, NEPA’s hard look requirement has not been satisfied[.]⁴⁰

Powertech points out that (in a separate section of LBP-15-16), the Board stated that “[t]his additional consultation is required in order (1) to satisfy the hard look at impacts required by NEPA and to supplement the FSEIS, if necessary; and (2)

³⁵ *Entergy Nuclear Generation Co. and Entergy Nuclear Operations, Inc.* (Pilgrim Nuclear Power Station), CLI-10-11, 71 NRC 287, 297 (2010); *see also Advanced Medical Systems, Inc.* (One Factory Row, Geneva, Ohio 44041), CLI-93-22, 38 NRC 98, 102-03 (1993).

³⁶ *See Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986).

³⁷ *Id.* at 324 (internal quotation marks omitted).

³⁸ Petition at 12-16.

³⁹ *Id.*

⁴⁰ LBP-15-16, 81 NRC at 655.

to satisfy the consultation requirements of the NHPA.”⁴¹ Powertech interprets these statements to mean that additional consultation alone is sufficient to satisfy both NHPA and NEPA.⁴² Therefore, it argues, it is “legally illogical that you can conduct adequate consultation with a Native American Tribe on one hand and then be deemed to have failed to “[satisfy]” another statute with similar requirements on the other hand.”⁴³

We disagree. We do not interpret the Board’s language in LBP-15-16 to indicate that the Staff would necessarily satisfy its NEPA obligations simply through consultation with the Tribe. Rather, the Board explained that consultation was necessary to achieve the *end* of meeting NEPA’s “hard look” requirement; it did not suggest that the mere act of consultation would in and of itself be sufficient. And, in any event, NHPA and NEPA are separate statutes imposing different obligations on the Staff. It is thus not “legally illogical” for the Board to grant summary disposition with respect to one contention while denying it with respect to the other.

Nor do we find that the Board erred in holding that there was an unresolved dispute of material facts. The Board held that “there remains a material factual dispute as to whether the NRC Staff’s chosen methodology for obtaining information on the tribal cultural resources was reasonable.”⁴⁴ As the Board noted and the Staff acknowledged, the parties continued to dispute what would constitute a reasonable method to assess cultural resources at the site. We find that the Board did not err in its application of the standards for summary disposition.

Finally, much of Powertech’s Petition and Reply is devoted to arguing that the Tribe has unreasonably refused to cooperate in the consultation process. For example, Powertech argues that the Staff has satisfied NEPA because it has made reasonable efforts to obtain the missing information and therefore, the information is not “reasonably available.”⁴⁵ To the extent Powertech argues that the FSEIS was already sufficient before the 2014 evidentiary hearing, it is a challenge to the Board’s findings in LBP-15-16 and essentially a late-filed motion for reconsideration of CLI-16-20. We previously found that these argu-

⁴¹ *Id.* at 657.

⁴² Petition at 12 n.17.

⁴³ *Id.* at 16.

⁴⁴ LBP-17-9, 86 NRC at 194.

⁴⁵ *See* Petition at 13 (arguing that the Board ignored Powertech’s expert witness statement and Powertech and Staff witness testimony at the 2014 evidentiary hearing), 15-16, 19 (arguing that site identification requirements were satisfied by the participation of other tribes and by the binding Programmatic Agreement), 17-18 (urging the Commission to adopt the arguments in then-Commissioner Svinicki’s partial dissent); *see also* Brief of Powertech (USA), Inc. in Support of United States Nuclear Regulatory Commission Staff’s Motion for Summary Disposition of Contentions 1A and 1B (Sept. 7, 2017), at 10-11.

ments did not establish “clear error” by the Board.⁴⁶ Powertech does not provide a compelling reason to revisit those issues at this time. To the extent Powertech argues that the Tribe unreasonably failed to cooperate following the Board’s ruling in LBP-15-16, we note that the reasonableness of the Tribe’s efforts to help identify cultural resources at the site goes to the merits of Contention 1A. We discern no error in the Board’s identification of a dispute with respect to this issue, and we leave it to the Board to resolve it in the first instance.

III. CONCLUSION

For the foregoing reasons, we deny review of the Board’s decision in LBP-17-9.⁴⁷

IT IS SO ORDERED.

For the Commission

Annette L. Vietti-Cook
Secretary of the Commission

Dated at Rockville, Maryland,
this 24th day of July 2018.

⁴⁶ See CLI-16-20, 84 NRC at 246-47.

⁴⁷ Because we decline review, Powertech’s request for expedited review is moot.

Chairman Svinicki, Additional Views

I fully join with the majority's order today as it comports with well-established Commission precedent on the issues of interlocutory appeals and summary disposition. Given the posture of this proceeding, these strict standards are controlling. However, my position with respect to the underlying issues surrounding Contentions 1A and 1B in this proceeding has not changed. If anything, recent developments in this proceeding reinforce my conclusion that the Board's legal errors created an unworkable framework by requiring the parties to take measures beyond those reasonable efforts required by NEPA and the NHPA. As expressed in my earlier dissent with respect to Contention 1A, instead of considering the Staff's argument that it could not reasonably obtain the information it acknowledged was missing, the Board invalidated the FSEIS simply because the information was missing in the first place.¹ For Contention 1B, the Board sought to determine "which party or specific action led to the impasse preventing an adequate tribal cultural survey"² instead of determining whether the Staff had provided the Tribe a "reasonable opportunity" for consultation as required by statute.³ Because the Board applied the legal standards to Contentions 1A and 1B incorrectly, the Board's decision should have been overturned with respect to those two contentions and the proceeding terminated at that time. Now, almost two years later, this proceeding remains ongoing.

¹ LBP-15-16, 81 NRC 618, 655 (2015). Several authorities relied on by the Staff supported the position that agencies need only undertake reasonable efforts to acquire missing information. *See* 40 C.F.R. § 1502.22; *Town of Winthrop v. FAA*, 535 F.3d 1 (1st Cir. 2008); *Entergy Nuclear Generation Co. and Entergy Nuclear Operations, Inc.* (Pilgrim Nuclear Power Station), CLI-10-22, 72 NRC 202, 208 (2010).

² LBP-15-16, 81 NRC at 656.

³ 36 C.F.R. § 800.2(e)(2)(ii)(A).

Cite as 89 NRC 1 (2019)

CLI-19-1

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Kristine L. Svinicki, Chairman
Jeff Baran
Stephen G. Burns
Annie Caputo
David A. Wright

In the Matter of

Docket No. 40-9075-MLA

POWERTECH (USA), INC.
(Dewey-Burdock *In Situ* Uranium
Recovery Facility)

January 31, 2019

NATIONAL ENVIRONMENTAL POLICY ACT**REMAND**

The U.S. Court of Appeals for the D.C. Circuit's ruling precluded the NRC from applying the standards governing a stay to the question whether a license should be suspended while a NEPA deficiency is cured by the agency. The appeals court described the scope of its ruling against the NRC as follows: "To be clear, today we hold only that, once the NRC determines there is a significant deficiency in its NEPA compliance, it may not permit a project to continue in a manner that puts at risk the values NEPA protects simply because no intervenor can show irreparable harm." *Oglala Sioux Tribe v. NRC*, 896 F.3d 520, 538 (D.C. Cir. 2018).

NATIONAL ENVIRONMENTAL POLICY ACT**REMAND**

The U.S. Court of Appeals for the D.C. Circuit did not hold that the NRC could never leave a license in place after a post-license-issuance adjudication finds a NEPA deficiency. The appeals court recognized that a NEPA deficiency could be harmless error or that the Commission could impose "protective conditions" during an administrative remand intended to cure a NEPA deficiency.

NATIONAL ENVIRONMENTAL POLICY ACT

REMAND

The Commission decided to leave the license in place while the NEPA deficiency is under remand to the Licensing Board, based on licensee's representation that it cannot get other necessary approvals while the NRC adjudication is pending. The Commission ordered the licensee, while the Board proceeding is pending, to notify the Board and the parties no later than 60 days prior to performing any activities at the license site.

MEMORANDUM AND ORDER

We have received the views of the parties to this proceeding regarding how the agency should respond to the remand from the U.S. Court of Appeals for the District of Columbia Circuit in *Oglala Sioux Tribe v. NRC*, 896 F.3d 520 (D.C. Cir. 2018). For the reasons explained below, we leave the license previously issued to Powertech (USA), Inc. (Powertech) in place for now, consistent with the court's choice of remedy. We also order Powertech to notify the Atomic Safety and Licensing Board (Board) and the parties 60 days in advance of conducting any activities at the site under its NRC license should this adjudication still be pending at that time. This notification will allow the Board to take any necessary action regarding Powertech's license before such activities at the site would commence.

I. BACKGROUND

At the time the Board issued its Partial Initial Decision in this proceeding, the NRC Staff had already issued a license to Powertech for an *in situ* uranium recovery facility in Custer and Fall River Counties, South Dakota. The Staff took this action, consistent with NRC regulations, after completing its review of Powertech's application — a review that included a full safety review and the issuance of a draft site-specific environmental impact statement for public comment, a final site-specific environmental impact statement, and a record of decision.¹ In its Partial Initial Decision, the Board found that the Staff had not sufficiently considered the potential impacts of the proposed facility on Oglala

¹ See LBP-15-16, 81 NRC 618, 630-32 (2015); CLI-16-20, 84 NRC 219, 223-24 (2016). Under 10 C.F.R. §§ 2.1202(a) and 2.340(e)(2)(ii), for certain types of applications, the NRC Staff may "issue its approval or denial" of an application before the Presiding Officer has issued an Initial Decision. Applications for uranium recovery facilities are one such type of application.

Sioux Tribe (Tribe) cultural resources under the National Environmental Policy Act (NEPA).²

The Board, despite identifying this NEPA-analysis deficiency (and one other related deficiency, under a different statute),³ chose not to suspend Powertech's license, but it did retain jurisdiction to ensure the deficiency would be properly addressed.⁴ On appeal, we left undisturbed both the Board's finding and its remedy.⁵

The Tribe petitioned for review of the Commission's order in the D.C. Circuit and challenged, *inter alia*, the Commission's decision not to order immediate vacatur of Powertech's license in light of the Board's findings. Of relevance here, the D.C. Circuit held that it was inconsistent with NEPA for the NRC to allow Powertech's "project to continue in a manner that puts at risk the values NEPA protects simply because no intervenor can show irreparable harm," once the NRC had identified, during the adjudicatory hearing process, "a significant deficiency" in the NRC's NEPA compliance.⁶

The court did not, however, vacate Powertech's license. Instead, the court remanded the case to the Commission "for further proceedings consistent with [the court's] opinion," basing its choice of remedy on the court's remand-without-vacatur doctrine under *Allied-Signal, Inc. v. NRC*, 988 F.2d 146 (D.C. Cir. 1993).⁷ In analyzing the pertinent facts under *Allied-Signal*, the court explained that it had "not been given any reason to expect that the agency will be unable to correct [the Board-identified NEPA] deficiencies," and it also cited Powertech's reliance on NRC's "ruling and settled practice" permitting the license to remain in place and Powertech's representations regarding financial harm that would

² LBP-15-16, 81 NRC at 653-55; *see also* CLI-16-20, 84 NRC at 243-44.

³ The Tribe and the Consolidated Intervenors also originally prevailed on the merits before the Board on a related contention (Contention 1B) regarding the Staff's consultations with the Tribe under the National Historic Preservation Act (NHPA). *See* CLI-16-20, 84 NRC at 244. The Board has since granted summary disposition on that contention in favor of the Staff and found that additional efforts subsequent to the initial ruling cured the NHPA deficiency. LBP-17-9, 86 NRC 167, 188-90 (2017).

⁴ LBP-15-16, 81 NRC at 658; *see also* CLI-16-20, 84 NRC at 244 ("[T]he Board . . . retained jurisdiction over the proceeding pending the Staff's curing of the deficiencies in the FSEIS and consultation with the Tribe."); *id.* at 244 n.151 ("The Board noted that it could have suspended Powertech's license, and it attributed its decision to leave the license in place to the Tribe's incomplete participation in the consultation process.").

⁵ CLI-16-20, 84 NRC at 245-51.

⁶ 896 F.3d at 538. Based on the Board's summary disposition ruling on Contention 1B, the court in *Oglala Sioux Tribe* limited its holding to Contention 1A. 896 F.3d at 527 n.4. The court also declined to decide the remainder of the issues the Tribe raised in its review petition and found that it lacked jurisdiction to review those issues because "the Commission's order did not end the agency proceeding as to all issues." *Id.* at 527.

⁷ *Id.* at 538-39.

befall it should action be taken against its license.⁸ Further, and “[m]ore important,” the court referenced Powertech’s representation “that a South Dakota permitting requirement independently bars it from moving forward with construction on the site until the NRC completes its compliance with NEPA.”⁹ Based on the latter consideration, the court concluded that “it appears that the Tribe will not suffer harm — irreparable or otherwise — from a disposition that leaves the license in effect *for now*.”¹⁰

In response to this remand from the court, the Commission issued an order inviting the parties to provide their views on how the agency should proceed.¹¹ The order specifically requested that “[t]he parties should address, at a minimum, the question of what legal standard the NRC should use” when considering the status of Powertech’s license, “to ensure consistency with the court’s opinion going forward.”¹² The parties have provided their views in response to that order, and the Tribe, Powertech, and the Consolidated Intervenors have also filed responses to those initial filings.¹³

The Tribe relies on 5 U.S.C. § 706, which generally provides the standard for judicial review of agency action, and related federal court precedent to argue that, unless an analysis undertaken pursuant to *Allied-Signal* warrants rebutting the presumption of vacatur, the Commission should vacate Powertech’s license based on the finding of a NEPA violation.¹⁴ That *Allied-Signal* analysis, the Tribe asserts, would look to “the seriousness of the order’s deficiencies (and thus the extent of doubt whether the agency chose correctly) and the disruptive consequences of an interim change that may itself be changed.”¹⁵ The Tribe argues that the record in this proceeding does not currently support any remedy other than vacating the license, and it therefore recommends principally that the

⁸ *Id.* at 538.

⁹ *Id.*

¹⁰ *Id.*

¹¹ Order of the Secretary (Aug. 30, 2018) (unpublished).

¹² *Id.* at 1.

¹³ Oglala Sioux Tribe’s Response to the Commission’s August 30, 2018 Order (Sept. 24, 2018) (Tribe’s Views); Powertech (USA), Inc’s Response to Commission Inquiry on Legal Standards (Sept. 24, 2018) (Powertech’s Views); NRC Staff’s Response to Order Dated August 30, 2018 (Sept. 24, 2018) (Staff’s Views); Consolidated Intervenors’ Views on Agency Response to U.S. Court of Appeals (D.C. Cir) Remand (Sept. 24, 2018) (Consolidated Intervenors’ Views); Oglala Sioux Tribe’s Response to the Parties’ Views Regarding the Commission’s August 30, 2018 Order (Oct. 19, 2018) (Tribe’s Responsive Views); Powertech (USA), Inc’s Response to Pleadings on Legal Standards (Oct. 19, 2018) (Powertech’s Responsive Views); Consolidated Intervenors Response to Powertech & NRC Staff Views (Oct. 19, 2018) (Consolidated Intervenors’ Responsive Views).

¹⁴ Tribe’s Views at 2-4.

¹⁵ *Id.* at 2 (quoting *Allied-Signal*, 988 F.2d at 151).

Commission vacate the license now.¹⁶ The Tribe also argues in the alternative that “should the Commission consider leaving the license in effect, any such decision should be preceded by briefing and an opportunity for the parties (through the ASLB or otherwise) to establish competent evidence on all [*Allied-Signal*] considerations, especially Powertech and NRC Staff’s burden to demonstrate disruptive effect.”¹⁷ The Consolidated Intervenors expressly adopt the Tribe’s views and reiterate their support for 5 U.S.C. § 706 and *Allied-Signal* as supplying the appropriate legal standard.¹⁸ The Staff similarly supports relying on *Allied-Signal* and also cites to *Public Employees for Environmental Responsibility v. Hopper*, 827 F.3d 1077 (D.C. Cir. 2016), another case in which the D.C. Circuit remanded without vacating the underlying agency action, though in that case the court did require the agency to supplement the relevant EIS before the project moved forward.¹⁹

Powertech presents an alternative view, arguing that the Commission should apply the stay standard set forth at 10 C.F.R. § 2.1213(d).²⁰ That standard considers: (1) irreparable injury to the stay requestor; (2) the likelihood of the stay requestor prevailing on the merits in the adjudication; (3) the harm a stay would inflict on the other participants in the adjudication; and (4) the public interest.²¹ Powertech also references the “no harm, no foul” rationale utilized in another recent D.C. Circuit *in situ* uranium recovery licensing case — involving the Strata Ross facility — and describes that case as “provid[ing] a good substantive comparison” to this one.²²

¹⁶ *Id.* at 2-4.

¹⁷ *Id.* at 4.

¹⁸ Consolidated Intervenors’ Views at 1-2.

¹⁹ Staff’s Views at 3-4; *Hopper*, 827 F.3d at 1084. Elaborating on its recommendation, the Staff suggests that the proper analysis could “consider and weigh, among other factors, the significance of the remaining NEPA deficiency, the prospects for its timely resolution, the potential disruptive consequences to the parties (including consequences to Powertech in light of its representations both about economic harm and its inability to move forward with licensed activities until the contention is resolved), the nature of the cultural-resource protections that the license imposes on Powertech, and the public interest.” Staff’s Views at 3-4.

²⁰ Powertech’s Views at 4-8.

²¹ *Id.* at 4; 10 C.F.R. § 2.1213(d).

²² Powertech’s Views at 7-8 (discussing *Nat. Res. Def. Council v. NRC*, 879 F.3d 1202 (D.C. Cir. 2018) (*NRDC*)). Both Powertech and the Staff also argued that the Commission should await the outcome of motions for summary disposition of Contention 1A that, at the time of their filings, were still pending before the Board. They reasoned that the Board could potentially grant summary disposition in response to the motions and terminate the proceedings, thereby mooted the question of interim action on Powertech’s license. *Id.* at 8; Staff’s Views at 2-3. The Board, however, has since ruled on those motions and denied all requests for summary disposition. LBP-18-5, 88 NRC 95 (2018).

The Tribe asserts in its responsive filing that the Staff bears the burden of demonstrating that a remedy other than vacatur is warranted.²³ The Tribe also argues that the D.C. Circuit's *Oglala Sioux Tribe* decision already considered and rejected the applicability of Powertech's recommendations to the instant case.²⁴ Lastly, the Tribe supports the Staff's reference to the D.C. Circuit's *Hopper* decision, and it also cites an earlier D.C. Circuit decision — *Public Utilities Commission v. FERC*, 900 F.2d 269 (D.C. Cir. 1990) — in which the court upheld an agency's issuance of a conditional approval before completing a hearing on environmental issues, based on the agency not allowing that conditional approval to take effect until completion of the environmental hearing.²⁵

II. DISCUSSION

Our analysis of how to proceed on remand in light of the parties' views necessarily begins with the D.C. Circuit's opinion in *Oglala Sioux Tribe*. In its opinion, the D.C. Circuit provided only limited direction as to how the NRC should determine proper remedies if NEPA deficiencies are found in post-license-issuance adjudications. Of particular importance here, given the legal-standard recommendations of the Tribe, the Consolidated Intervenors, and the Staff, we observe that the court expressly declined to decide whether the NRC may itself lawfully fashion remedies for NEPA violations based on an analysis of equitable factors in accordance with *Allied-Signal*.²⁶ This was the case even though the court *itself* relied expressly on *Allied-Signal* in reaching its own decision to remand the case to the NRC without vacating Powertech's license. Consequently, although we see parallels between the question a court faces when it considers remanding without vacatur and the question we face here, *Oglala Sioux Tribe* did not resolve whether, as a general matter, it would be permissible for the NRC to model its own legal analysis in this context after *Allied-Signal*. As discussed below, we need not resolve the question here to proceed in accordance with the remand.

As to Powertech's recommendation to apply the stay standard at 10 C.F.R. § 2.1213(d), we agree with the Tribe that *Oglala Sioux Tribe* plainly precludes

²³ Tribe's Responsive Views at 2.

²⁴ *Id.* at 3-6.

²⁵ See 900 F.2d at 282; see also *Oglala Sioux Tribe*, 896 F.3d at 538 (citing that decision).

²⁶ See 896 F.3d at 536 (stating that "the agency fails to identify any statute that authorizes it not to comply with NEPA on equitable grounds" but declining, after determining that the NRC had not yet performed an analysis akin to a D.C. Circuit remand-without-vacatur analysis, to decide "whether the absence of statutory authority is sufficient to reject the analogy to judicial remand-without-vacatur").

us from adopting that recommendation.²⁷ The court described the scope of its ruling against the NRC as follows: “To be clear, today we hold only that, once the NRC determines there is a significant deficiency in its NEPA compliance, it may not permit a project to continue in a manner that puts at risk the values NEPA protects simply because no intervenor can show irreparable harm.”²⁸ In light of the clear import of the court’s opinion, we decline to employ a standard that, like 10 C.F.R. § 2.1213(d), turns on the existence of irreparable injury.

We also agree with the Tribe that the D.C. Circuit’s “no harm, no foul” rationale in *NRDC* (involving the Strata Ross facility) cannot govern our analysis here. In that case, the D.C. Circuit declined to impose a remedy for an NRC-identified NEPA-compliance deficiency on the ground that the NRC had already corrected the deficiency itself through the adjudicatory hearing process.²⁹ Here, in contrast, the NEPA deficiency has not been corrected, and the Board has recently determined that summary disposition of the outstanding NEPA contention is not warranted.³⁰ Moreover, the D.C. Circuit in *Oglala Sioux Tribe* expressly cited its prior holding in *NRDC*, but it then held the Powertech scenario to be distinguishable.³¹ Therefore, we decline to treat the facts before us regarding Powertech as analogous to the facts that supported the D.C. Circuit’s decision in *NRDC*.

Although providing some specific direction on what the NRC must not do, the *Oglala Sioux Tribe* opinion does not expressly set forth what the NRC *should* do, whether on remand in this case or generally for future cases. We have, however, identified certain principles in the court’s opinion that we believe should guide our path forward. First, the court identified Powertech’s near-term inability to move ahead with the project due to the absence of another required permit as the key factor supporting the court’s decision to leave Powertech’s license in place “for now.”³² The court’s reasoning there squared with the court’s earlier description of the “problem” posed by the NRC action under review.³³

²⁷ See *id.* at 538; 10 C.F.R. § 2.1213(d)(1) (requiring the presiding officer to consider “[w]hether the [stay] requestor will be irreparably injured unless a stay is granted”).

²⁸ *Oglala Sioux Tribe*, 896 F.3d at 538.

²⁹ 879 F.3d at 1211-12.

³⁰ LBP-18-5, 88 NRC at 133-34.

³¹ 896 F.3d at 534 n.10 (citing *NRDC*, 879 F.3d at 1211-12) (“This circuit has also sometimes regarded deviations from NEPA as harmless when an agency subsequently completed a comprehensive environmental review before the matter reached our court. . . . In this case, however, the agency has not yet completed a valid review.”).

³² *Id.* at 538 (emphasis omitted).

³³ See *id.* at 533 (“[T]he nature of the agency action in this case puts the problem in high relief. . . . The Tribe is concerned that mining, as well as the construction and other land disturbances that precede mining, will damage those resources. The purpose of an EIS is, in part, to determine

(Continued)

The court also described its holding as a restriction on the NRC “permit[ting] a project to continue in a manner that puts at risk the values NEPA protects,” and it clarified immediately thereafter that the court was not holding that the NRC’s identification of a NEPA deficiency during a post-license-issuance hearing process necessarily requires that the NRC vacate the license.³⁴ Specifically, the court declined to hold that the NRC could never, after finding a NEPA deficiency in a post-license-issuance adjudication, permissibly leave a license in place based on a harmless error finding or based on “protective conditions the Commission might impose . . . during an administrative remand intended to cure a NEPA deficiency.”³⁵ Thus, of particular concern to the court in this case was the potential that the license might actually be used to the detriment of resources before the NRC has remedied the Board-identified NEPA deficiency.

Second, the court’s choice of remedy suggests to us that vacating Powertech’s license will continue to remain inappropriate unless there is some material change in the circumstances the court considered under its *Allied-Signal* analysis. While the court declined to specify whether the NRC may consider equitable factors in the first instance when determining a remedy for a NEPA deficiency, we view our task here as implementing the court’s remedy — which was expressly based on equitable considerations — rather than performing our own equitable analysis *de novo*.

Lastly, the court determined that the NRC “placing the burden on the Tribe to show harm” in order to obtain vacatur of the license was “especially inappropriate” here, “because the inadequate EIS may well make doing so impossible.”³⁶ Accordingly, whatever approach we adopt on remand must not require, as a prerequisite to NRC action regarding Powertech’s license, that the Tribe identify specific risks to cultural resources before the NRC has met its own legal burden under NEPA to identify such risks.

Applying the principles discussed above in light of the parties’ filings, we find the proper course to be to preserve the court’s choice of remedy by continuing to leave the license in place for now, while imposing a protective measure to prevent harm to the Tribe’s cultural resources while the identified NEPA deficiency is remedied. Based on the parties’ statements of views, the key facts supporting the court’s choice of remedy do not appear to have changed substantially since the court decided *Oglala Sioux Tribe*, which counsels, in our view, for continuing the court’s remedy for the time being. Powertech continues

whether the land contains such resources and where they are located, so that damage to them can be avoided or mitigated. If the project is permitted to go forward without the necessary land survey, such damage may well be done.” (citation omitted).

³⁴ *Id.* at 538.

³⁵ *Id.*

³⁶ *Id.* at 534-35.

to represent that action taken against its license would cause Powertech financial harm and that it cannot, in any event, make use of its NRC license yet, given the absence of necessary permits from the U.S. Environmental Protection Agency (EPA) and the State of South Dakota.³⁷ According to Powertech, South Dakota “awaits action by both NRC and EPA to continue its large-scale mine permit and water rights administrative proceedings, which were stayed pending these two outcomes.”³⁸ The Tribe disputes Powertech’s assertions regarding the potential financial consequences of the NRC altering the status of the license.³⁹ But the Tribe does not take specific issue with what the court viewed — and we view — as the more important point: that leaving the license in place for now poses no harm to the Tribe because Powertech is not yet in a position to use its NRC license.⁴⁰ Until Powertech can lawfully use its NRC license, the risk of harm occurring to any Tribal cultural resources that is traceable to the identified NEPA deficiency will remain hypothetical. And it may never mature into a non-hypothetical risk, if Powertech is correct that South Dakota’s permitting process is stayed pending the outcome of the NRC adjudicatory proceeding. Continuing to leave Powertech’s license in place for now thus appears to us to be the approach most consistent with the court’s opinion.

We must also account for the possibility that these circumstances could change. The court’s determination that Powertech’s project cannot currently move forward because South Dakota is waiting for the NRC’s NEPA proceedings to conclude was based on representations made by Powertech’s counsel. We consider it fair and appropriate to hold Powertech to these representations. In addition, the burden naturally should rest with Powertech to notify the NRC and the parties if there are material new developments. And to safeguard the NRC’s interest in faithfully and fully complying with NEPA and the court’s ruling, this notice must occur before Powertech engages in any activity at the Dewey-Burdock site under its NRC license that could potentially put Tribal resources at risk.⁴¹

³⁷ Powertech’s Views at 7-8; Powertech’s Responsive Views at 2-5; *see also* Staff’s Views at 2 (“The license is not currently (and to date, has never been) in use.”). Powertech also added, in its Responsive Views, that a necessary Bureau of Land Management approval for the project is still outstanding. Powertech’s Responsive Views at 3-4.

³⁸ Powertech’s Views at 7.

³⁹ Tribe’s Views at 2-4.

⁴⁰ *See generally* Tribe’s Views; Tribe’s Responsive Views. Relatedly, we note that Powertech’s NRC license itself prohibits operations at any production area at the site until Powertech has “obtain[ed] all necessary permits, licenses, and approvals from the appropriate regulatory authorities.” Ex. NRC-12 at 12 (Standard Condition 12.1).

⁴¹ We recognize that not all activities Powertech might undertake at the site would necessarily require an NRC license. *See* LBP Order (Removing Temporary Stay and Denying Motions for

(Continued)

Accordingly, we order Powertech to notify the Board and the parties no later than 60 days prior to performing any activities at the Dewey-Burdock site that would require an NRC license, unless this adjudicatory proceeding is no longer pending at the time. Upon receipt of such a notice, the Board is directed to proceed expeditiously in soliciting the parties' views and considering, in light of the proceeding's status and consistent with this order, whether the Board must take action regarding Powertech's NRC license to preserve the environmental status quo.⁴²

Finally, we observe that our decision in this matter is tied to the particular facts before us. Certainly, we consider it a key element of our task on remand to monitor the facts the court identified, under *Allied-Signal*, as supporting its decision not to vacate Powertech's license so that we can take prompt action consistent with the court's opinion if those facts materially change. Yet, we do not address today the question, left expressly open by the court, of whether, or under what circumstances, an NRC presiding officer should perform an *Allied-Signal*-style equitable analysis in the first instance upon finding a significant NEPA deficiency.⁴³ We also are not questioning today — and the court expressly did not opine upon — the propriety of relying on a harmless error standard in different circumstances.⁴⁴ This order also does not revisit the remedial approach employed in the Strata Ross proceeding, under a different factual scenario, that the D.C. Circuit upheld in *NRDC*. In sum, we do not attempt here to set forth a comprehensive formula for addressing any future circumstances in which significant NEPA deficiencies are found through our hearing process after staff

Stay of Materials License Number SUA-1600) (May 20, 2014), at 7 (unpublished) (ML14140A470) (Board's Stay Denial Order) ("At oral argument, counsel for Powertech stated, without contradiction, that the ground disturbing work contemplated for the next few months could be accomplished without the NRC license."). Powertech is, however, still bound by its NRC license so long as that license remains in effect, including the license's requirement to comply with the Programmatic Agreement entered into under the NHPA. *See* Ex. NRC-12 at 5-6 (License Condition 9.8 addressing "Cultural Resources"); *see also* CLI-16-20, 84 NRC at 260 (referencing the Programmatic Agreement's protections for cultural resources discovered during project activities).

⁴² Because the outstanding NEPA contention may be resolved before Powertech obtains all other necessary permits to proceed with the project — meaning that the eventuality requiring Powertech to provide notice may never come to pass — we decline to order the addition of an express new condition to Powertech's license. Nonetheless, Powertech's license already states that it is "subject to all applicable rules, regulations, and orders of the Nuclear Regulatory Commission now or hereafter in effect," Ex. NRC-12 at 1 (emphasis added), which would include the order we issue today.

⁴³ *See Oglala Sioux Tribe*, 896 F.3d at 536.

⁴⁴ *See id.* at 538 ("[W]e do not decide that there is no version of a harmless error rule that the Commission may apply."); CLI-16-20, 84 NRC at 235-37 (finding harmless error in connection with Tribe's contention challenging lack of site-specific scoping, where Tribe received comparable notice and participation opportunities via other means).

issuance of a license under 10 C.F.R. § 2.1202(a).⁴⁵ Nonetheless, we expect that the principles discussed in this order, and in the court's *Oglala Sioux Tribe* opinion, will help to frame and inform consideration of any future questions regarding remedy that may arise in those limited categories of NRC hearings for which post-license-issuance hearings are permissible under § 2.1202(a).

III. CONCLUSION

For the foregoing reasons, we leave Powertech's license in place for now, but we order Powertech to notify the Board and the parties no less than 60 days prior to commencing any activities at the Dewey-Burdock site under its NRC license, if the adjudicatory proceeding regarding Contention 1A remains pending at the time, so that the Board may consider expeditiously whether action is necessary to ensure full compliance with NEPA.

IT IS SO ORDERED.

For the Commission

Annette L. Vietti-Cook
Secretary of the Commission

Dated at Rockville, Maryland
this 31st day of January 2019.

⁴⁵ Further, while *Oglala Sioux Tribe* and this order plainly restrict the use of the 10 C.F.R. § 2.1213(a) stay standard where a significant NEPA deficiency has already been found through our hearing process, neither we nor the court in *Oglala Sioux Tribe* has deemed that standard, or its associated burdens, inapplicable to the scenario for which it is traditionally used — i.e., for requests to stay a staff action taken under 10 C.F.R. § 2.1202(a) that are filed *before* the presiding officer has decided the pertinent contention(s) on the merits. *See, e.g.*, Board's Stay Denial Order (denying Tribe's request to stay Powertech's license after license issuance but before the Board decided Contentions 1A and 1B on the merits).

Commissioner Baran, Dissenting

As the Commission has observed many times, NEPA is a procedural statute.¹ It establishes a process to ensure that, when an agency makes a decision that could affect the environment, that decision is informed by a thorough evaluation of the expected environmental impacts. A basic premise of the statute is that informed decisionmaking will help protect the environment by forcing agencies to consider the consequences of potential actions as well as alternatives that could be less environmentally damaging. That commonsense approach simply does not work if the agency decision precedes the environmental review. Thus, a core requirement of NEPA is that an agency decisionmaker must consider an adequate environmental review *before* making a decision on a licensing action.² When the Commission allows a Board to correct an inadequate NEPA document through augmentation *after* the agency has already made a licensing decision, then this fundamental purpose of NEPA is frustrated.

In two recent cases, the D.C. Circuit made it clear that it does not approve of the Commission's current practice of allowing for the augmentation of an inadequate NEPA environmental review after the decision to issue a license has already been made. In *NRDC v. NRC*, the Court examined this practice. While the Court of Appeals found that there was no concrete harm in that particular case, the Court stated:

We do not mean to imply the procedure the Board followed was ideal or even desirable. Certainly it would be preferable for the FEIS to contain all relevant information and the record of decision to be complete and adequate before the license is issued.³

The second case is the one before us now on remand. In *Oglala Sioux Tribe*, the Court of Appeals went even further than it had in *NRDC v. NRC* in broadly criticizing the agency's practice. The Court explained:

The National Environmental Policy Act, however, obligates every federal agency to prepare an adequate environmental impact statement *before* taking any major action, which includes issuing a uranium mining license. The statute does not permit an agency to act first and comply later. Nor does it permit an agency to condition performance of its obligation on a showing of irreparable harm.⁴

¹ See e.g., *Entergy Nuclear Operations, Inc.* (Indian Point, Units 2 and 3), CLI-11-14, 74 NRC 801, 813 (2011).

² *Oglala Sioux Tribe v. NRC*, 896 F.3d 520 (D.C. Cir. 2018).

³ *NRDC v. NRC*, 879 F.3d 1202, 1212 (D.C. Cir. 2018).

⁴ *Oglala Sioux Tribe v. NRC*, 896 F.3d 520, 523 (D.C. Cir. 2018).

The Court added:

The agency's decision in this case and its apparent practice are contrary to NEPA. The statute's requirement that a detailed environmental impact statement be made for a "proposed" action makes clear that agencies must take the required hard look *before* taking that action.⁵

The Court of Appeals held that "once the NRC determines there is a significant deficiency in its NEPA compliance, it may not permit a project to continue in a manner that puts at risk the values NEPA protects simply because no intervenor can show irreparable harm."⁶ It then remanded the case to the Commission to decide whether to leave Powertech's license in place. In order to allow the Commission time to make that decision, the Court weighed the equitable factors and opted to leave "the license in effect *for now*."⁷

The Commission's decision states that our task is "implementing the court's remedy . . . rather than performing our own equitable analysis *de novo*."⁸ I disagree. Performing a *de novo* review of whether to vacate, suspend, modify, or leave in place Powertech's license is precisely our role on remand. Though the Court did not immediately vacate the Commission's prior ruling that the license should remain in effect, the Commission can and should further consider the appropriate remedy for the agency's violation of NEPA in this case. That is the very purpose of the remand.

In my view, we should not make a determination about the appropriate remedy based solely on the representations of the parties. Unlike the Court of Appeals, we are in a position to hold an evidentiary hearing, at which the parties could provide evidence of the real-world consequences of each of the potential remedies. The development of a factual record would enable the Commission to weigh the equities at stake and make a fact-based decision about whether to leave the license in place prior to the NRC Staff's completion of an adequate NEPA analysis.

Therefore, I respectfully dissent from the Commission's decision. Instead of making a decision about whether to leave Powertech's license in place without the benefit of a full factual record, I believe the Commission should find that a focused evidentiary hearing is necessary.

The Commission's decision also should address the broader question of how the agency will ensure that it is complying with NEPA in cases where the adjudicatory process occurs after the issuance of a license. The Court of Appeals

⁵ *Id.* at 532.

⁶ *Id.* at 538.

⁷ *Id.*

⁸ Memorandum and Order at 9.

decisions are a strong signal that the Commission must act to bring the agency's doctrine and practice into compliance with NEPA. The Staff's practice has been to issue materials licenses before the completion of contested hearings on environmental matters. Our regulations governing materials licenses provide:

During the pendency of any hearing under this subpart, consistent with the NRC staff's findings in its review of the application or matter which is the subject of the hearing and as authorized by law, the NRC Staff is expected to promptly issue its approval or denial of the application⁹

The Staff has read this provision to require it to issue a license once it completes its safety review and issues a final NEPA environmental analysis. This interpretation of the regulation has been paired with a Commission adjudicatory doctrine that permits the NEPA environmental analysis to be augmented by adjudicatory decisions occurring *after* issuance of a materials license. By allowing the significant deficiencies of NEPA analyses to be corrected by adjudicatory proceedings *after* a license has already been issued, the Commission has put NRC on course to repeatedly and predictably violate a core requirement of NEPA.

We have a responsibility to avoid this result. There are at least two ways to address this problematic interaction between our regulation and our augmentation doctrine: we could initiate a rulemaking to change the regulation or refine the adjudicatory doctrine. This case is not the appropriate venue for a decision about whether to initiate a rulemaking, but it is the proper vehicle for revising the augmentation doctrine. We should take this opportunity to change the Commission's current practice of allowing for the augmentation and correction of a significantly inadequate NEPA environmental review after the decision to issue a license has already been made. The Commission should hold that the Board cannot correct any significant deficiencies of a NEPA environmental review through the hearing process after a licensing action has already been taken in reliance on the deficient NEPA analysis.¹⁰

⁹ 10 C.F.R. § 2.1202(a).

¹⁰ This approach would not require completing the hearing before making a licensing decision, and it would not change Commission jurisprudence allowing for augmentation of the environmental record *before* a licensing action is taken. Rather, if a licensing decision is based on an environmental review that the Board or Commission later finds to be significantly deficient, then after-the-fact augmentation of the environmental review with the hearing record would not be available as an option to correct the deficiency.

Cite as 90 NRC 121 (2019)

CLI-19-9

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

COMMISSIONERS:

Kristine L. Svinicki, Chairman
Jeff Baran
Annie Caputo
David A. Wright

In the Matter of

Docket No. 40-9075-MLA

POWERTECH (USA), INC.
(Dewey-Burdock In Situ Uranium
Recovery Facility)

September 26, 2019

INTERLOCUTORY REVIEW

A ruling denying a motion for summary disposition is an interlocutory decision. The Commission disfavors interlocutory review.

INTERLOCUTORY REVIEW

A delay in the time a licensee may start operations due to pending adjudication is not immediate and irreparable harm warranting interlocutory Commission review.

INTERLOCUTORY REVIEW

Unsubstantiated claims that a licensee will suffer harm to its credit rating, ability to obtain financing and its ability to carry on its work will not support interlocutory review. *Sequoyah Fuels Corp. and General Atomics* (Gore, Oklahoma Site), CLI-94-11, 40 NRC 55, 61 (1994); *Entergy Nuclear Operations, Inc.* (Indian Point, Units 2 and 3), CLI-09-6, 69 NRC 128, 133-36 (2009).

INTERLOCUTORY REVIEW

A claim of “protracted litigation” will not in itself support interlocutory review of a decision denying summary disposition. Prolonged litigation is not a “pervasive and unusual effect” on litigation warranting interlocutory review.

BOARD AUTHORITY

A Board has no authority to direct the manner in which the Staff conducts its safety and environmental reviews. *Powertech (USA), Inc.* (Dewey-Burdock In Situ Uranium Recovery Facility), CLI-16-20, 84 NRC 219, 262 (2016); *Entergy Nuclear Operations, Inc.* (Indian Point, Units 2 and 3), CLI-11-14, 74 NRC 801, 813 n.70 (2011); *Shaw Areva MOX Services, LLC*, CLI-09-2, 69 NRC 55, 63 (2009).

REFERRED RULING: NOVEL ISSUE

The Board or presiding officer may refer its ruling to the Commission under 10 C.F.R. § 2.323(f)(1) where the ruling presents a significant and novel issue of law. In the alternative, a party may petition the presiding officer to refer its ruling to the Commission under 10 C.F.R. § 2.323(f)(2). But our rules of procedure do not provide a party the right to solicit Commission review directly on a claim of a novel issue of law. *Carolina Power & Light Co.* (Shearon Harris Nuclear Power Plant), CLI-00-11, 51 NRC 297, 299 (2000); *Connecticut Yankee Atomic Power Co.* (Haddam Neck Plant), CLI-01-25, 54 NRC 368, 374-75 (2001); *Indian Point*, CLI-09-6, 69 NRC at 138.

MEMORANDUM AND ORDER

Powertech (USA), Inc. (Powertech) petitions for review of the Atomic Safety and Licensing Board’s decision denying the Staff’s motion for summary disposition of Contention 1A.¹ Powertech requests that we reverse the Board’s denial of summary disposition and terminate this proceeding.² For the reasons described below, we deny Powertech’s petition for review.

I. BACKGROUND

¹Brief of Licensee Powertech (USA), Inc. Petition for Review of LBP-18-05 (Nov. 26, 2018) (Petition); *see also* LBP-18-5, 88 NRC 95 (2018).

²Petition at 1-2, 25.

A. The Litigation Prior to LBP-18-5

The Board described the history of this proceeding in its decision.³ Briefly, this proceeding commenced when the Oglala Sioux Tribe (Tribe) and Consolidated Intervenors (together, Intervenors) were granted intervention and a hearing concerning Powertech's 2009 license application.⁴ The Staff issued a Final Supplemental Environmental Impact Statement (FSEIS) in January 2014 and issued the license to Powertech in April 2014.⁵ An evidentiary hearing followed in August 2014.

In 2015, the Board issued a partial initial decision, which found in favor of the Staff and Powertech on all contentions except Contentions 1A and 1B, both of which concerned the Staff's consideration of the potential impacts of the proposed project on Native American cultural resources at the project site.⁶ With respect to Contention 1A, the Board found that the FSEIS "does not contain an analysis of the impacts of the project on the cultural, historical, and religious sites of the Oglala Sioux Tribe and the majority of the other consulting Native American tribes," without which the National Environmental Policy Act's (NEPA) "hard look requirement has not been satisfied."⁷ The Board found that suspension of the license was not necessary, but it held that the Staff should work to remedy the deficiencies in the FSEIS, report to the Board on its progress, and eventually resolve the contention with a settlement agreement or, if not able to reach a settlement, with a motion for summary disposition.⁸ In 2016, we affirmed the Board decision in LBP-15-16 in all respects relevant to this appeal.⁹

Over the course of the following three years, the Staff sought the Tribe's participation in properly characterizing cultural resources at the site. In April 2017, the Staff offered the Oglala Sioux Tribe an opportunity to participate in

³ LBP-18-5, 88 NRC at 101-07.

⁴ LBP-10-16, 72 NRC 361, 376 (2010).

⁵ See Exs. NRC-008-A-1 to NRC-008-B-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-1910, Supplement 4, vols. 1-2 (Jan. 2014) (ADAMS accession nos. ML14246A350, ML14246A329, ML14246A330, ML14246A331); Ex. NRC-012, License Number SUA-1600, Materials License for Powertech (USA) Inc. (Apr. 8, 2014) (ML14246A408).

⁶ LBP-15-16, 81 NRC 618, 708-10 (2015).

⁷ *Id.* at 655.

⁸ *Id.* at 657-58, 710.

⁹ See CLI-16-20, 84 NRC 219, 262 (2016). We affirmed the Board's decision on the merits, but we disagreed that its ruling rendered the decision non-final. We held that the Board's decision was final and appealable, although we ultimately approved the Board's approach in retaining jurisdiction over the matter until the deficiencies identified in the FSEIS were resolved. See *id.* at 242-43, 250-51.

a cultural resources survey, but in May 2017, the Tribe declined, providing a list of specific conditions for its participation.¹⁰ In August 2017, the Staff filed its first motion for summary disposition of Contentions 1A and 1B and argued that further efforts to consult with the Tribe would be unlikely to result in an agreement.¹¹ The Board granted summary disposition of Contention 1B but denied it with respect to Contention 1A.¹² Although Powertech sought the Commission's review of the Board's decision with respect to Contention 1A, the Staff continued to work with the Tribe to find an acceptable method to identify cultural resources at the site.¹³ We declined Powertech's petition for interlocutory review of the Board's denial of summary disposition.¹⁴

B. The March 2018 Approach

In March 2018, the Staff proposed a survey approach that appeared to potentially satisfy the Tribe's specific requests for a cultural resources site survey as stated in the Tribe's May 2017 response to the Staff's April 2017 proposal.¹⁵ This approach involved hiring a contractor to facilitate a new survey, inviting other Lakota Sioux Tribes that had not participated in an earlier survey, obtaining oral histories from tribal elders, allowing more than one opportunity to examine the site, and allowing the participating Tribes to comment on the field survey report.¹⁶ According to the proposal, the precise survey methodology would be worked out in consultation among the Staff, the contractor, and the Tribe in the weeks before the initial phase of the survey.¹⁷

After some initial disagreement, Powertech and the Tribe eventually agreed to the March 2018 Approach.¹⁸ With the parties in agreement, the Staff performed

¹⁰ See NRC Staff's Motion for Summary Disposition of Contention 1A (Aug. 17, 2018) (Staff Motion), Attach. 1, NRC Staff's Statement of Material Facts to Support Motion for Summary Disposition of Contention 1A, at 2 (Statement of Facts).

¹¹ NRC Staff's Motion for Summary Disposition of Contentions 1A and 1B (Aug. 3, 2017).

¹² LBP-17-9, 86 NRC 167 (2017). Contention 1B concerned whether the Staff had satisfied its obligation under the National Historic Preservation Act (NHPA) to consult with the Tribe.

¹³ See Staff Motion, Attach. 1, Statement of Facts at 3-12.

¹⁴ CLI-18-7, 88 NRC 1 (2018).

¹⁵ See Letter from Cinthya I. Román, Chief, Environmental Review Branch, NRC, to Trina Lone Hill, Director, Cultural Affairs & Historic Preservation Office, Oglala Sioux Tribe (Mar. 16, 2018) (ML18075A499) (March 2018 Approach), Encl. 1 — Timeline for NRC Staff's Approach for Obtaining Information on Lakota Sioux Cultural Resources Potentially Impacted by the Dewey-Burdock ISR Project (Mar. 16, 2018) (ML18075A502) (Timeline).

¹⁶ Staff Motion, Attach. 1, Statement of Facts at 10-11.

¹⁷ See March 2018 Approach at 2; *id.*, Encl. 1, Timeline.

¹⁸ See Oglala Sioux Tribe's Response to NRC Staff's March 16, 2018 Cultural Resources Survey
(Continued)

various activities in preparation for the first phase of the onsite survey, scheduled to take place during the two-week period of June 11-22, 2018.¹⁹ On June 1 and 4, 2018, the contractor, Dr. Paul Nickens, and the Staff held webinars and teleconference calls to discuss the survey methodology with the invited Tribes.²⁰ During a June 5 teleconference, Dr. Nickens presented a proposed work plan and requested comments from the Tribes.²¹

On June 8, however, counsel for the Tribe informed the Staff that the Tribe would not participate in the field survey scheduled to start on June 11.²² On June 12, the Tribe provided the Staff and Dr. Nickens with a document entitled “Discussion Draft — Cultural Resources Survey Methodology” (June 12 Discussion Draft), which proposed numerous additions to Dr. Nickens’s proposed survey methodology.²³ The June 12 Discussion Draft proposed bringing several dozen tribal elders, spiritual leaders, warrior society leaders, and technical staff to visit the site over several days in each of the seasons of the year and a field survey performed at 10-meter intervals throughout the site (approximately 10,500 acres).²⁴ These additions would cause the survey to take more than a year to complete and, by the Tribe’s estimate, cost over \$2 million to perform.²⁵ On June 13, 2018, the Tribe held an emergency meeting of its Cultural Affairs and Historic Preservation Advisory Council to discuss the survey methodology, with the NRC Staff and Dr. Nickens in attendance.²⁶ The Tribe provided an updated “discussion draft” on June 15, 2018 (June 15 Discussion Draft), which, in addition to the conditions stated in the June 12 Discussion Draft, also called for examining areas over 20 miles from the Dewey-Burdock site.²⁷ The June 15

Proposal (Mar. 30, 2018), at 1 (Tribe’s Response to March 2018 Approach); Letter from John Mays, Chief Operating Officer, Powertech USA, Inc., to Cinthya I. Román, Chief, Environmental Review Branch, NRC (Apr. 11, 2018), at 1 (unnumbered) (ML18101A223).

¹⁹ Staff Motion, Attach. 1, Statement of Facts at 15-18.

²⁰ See *id.*, Attach. 1, Statement of Facts at 17; see also Summary of NRC Webinar and Teleconference Call Sessions to Discuss Survey Methodology for the Dewey-Burdock In Situ Uranium Recovery (ISR) Project (June 29, 2018) (ML18164A241) (Summary of Survey Methodology Sessions). Although other Tribes were invited to participate, only the Oglala Sioux Tribe participated on June 1 and 4. *Id.* at 1. On the June 5 teleconference, the Rosebud Sioux Tribe participated, along with the Oglala Sioux Tribe. *Id.*

²¹ See Staff Motion, Attach. 1, Statement of Facts at 18; see also “Proposed Initial Work Plan for Phase 1 Tribal Field Survey at the Dewey-Burdock ISR Project Area, June 11-22, 2018” (ML18157-A092).

²² See Email from Travis Stills, Oglala Sioux Tribe Counsel, to Diana Diaz-Toro, Project Manager, NRC (June 8, 2018) (ML18159A585).

²³ See LBP-18-5, 88 NRC at 119-21.

²⁴ See *id.*

²⁵ *Id.* at 121.

²⁶ Staff Motion, Attach. 1, Statement of Facts at 21.

²⁷ *Id.*, Attach. 1, Statement of Facts at 21-22.

Discussion Draft further stated that the Tribe was aware that the Staff expected the budget to be much lower than the Tribe's proposal and that it was "now NRC's task to either accept the [Tribe's] proposal or to propose an approach that limits the [Tribe's] proposed survey methodology to meet what NRC considers a reasonable budget."²⁸

Soon afterwards, the Staff informed the Tribe that it was discontinuing survey efforts.²⁹ Counsel for the Staff explained via email that the Tribe's proposal was "far apart . . . from what the staff expected" preparing for the first phase of the survey and that it represented "structural differences, rather than minor details that could be promptly resolved" before the second week of the scheduled phase one survey.³⁰ Staff counsel stated that Staff was not prepared to continue to incur day-to-day costs at the site and considered it necessary to discontinue the activities scheduled for the following week.³¹

The Tribe disagreed with the Staff's decision to terminate all field work.³² During the June 15 email exchange, counsel for the Tribe claimed that the plan Dr. Nickens had presented in the webinars was simply an "open site survey," to which the Tribe had long objected and which included "no plan for protecting the Tribes' confidential cultural resources information."³³ The Tribe stated that, nonetheless, progress had been made toward "a viable survey methodology."³⁴ The Tribe's counsel also stated that the Tribe was prepared to continue with a planned "windshield tour" and fieldwork scheduled for the second week of phase one.³⁵ Despite the Tribe's response, the fieldwork remained discontinued.

C. The Staff's Motion

On August 17, 2018, the Staff moved a second time for summary disposition of Contention 1A and argued that the Staff had done all that it reasonably could to remedy the NEPA deficiencies identified by the Board in LBP-15-16. Therefore, the Staff argued, the information should be deemed "not reasonably

²⁸ LBP-18-5, 88 NRC at 121.

²⁹ See Email exchange between Emily Monteith, NRC Staff Counsel, and Travis Stills, Oglala Sioux Tribe Counsel (June 15, 2018), at 2 (unnumbered) (ML18173A266) (Email Exchange).

³⁰ *Id.* at 1, 2 (unnumbered).

³¹ *Id.* at 1 (unnumbered).

³² *Id.*

³³ *Id.* at 3 (unnumbered). The Board explained that the term "open site survey" has been used throughout the proceeding to mean "a survey 'where there is no support from NRC staff or contractor . . . [a]nd it is essentially opening the site to the tribes to go out and do what they will do and be totally responsible for providing all the data and the analysis with no set protocol or methodology.'" LBP-18-5, 88 NRC at 116-17 (quoting Tr. at 1431 (Apr. 6, 2018)).

³⁴ Email Exchange at 3 (unnumbered).

³⁵ *Id.* at 1 (unnumbered).

available” as described by Council on Environmental Quality (CEQ) regulations:³⁶

(b) If the information relevant to reasonably foreseeable significant adverse impacts cannot be obtained because the overall costs of obtaining it are exorbitant . . . the agency shall include within the environmental impact statement: (1) A statement that such information is incomplete or unavailable; (2) a statement of the relevance of the incomplete or unavailable information to evaluating reasonably foreseeable significant adverse impacts on the human environment; (3) a summary of existing credible scientific evidence which is relevant to evaluating the reasonably foreseeable significant adverse impacts on the human environment, and (4) the agency’s evaluation of such impacts based upon theoretical approaches or research methods generally accepted in the scientific community.³⁷

The Staff acknowledged in its motion that no new cultural resources information had been obtained.³⁸ The Staff maintained that the March 2018 Approach was reasonable because it included the elements that the Tribe had previously identified as necessary for a sufficient survey, including involving other tribes, hiring a qualified contractor, involving tribal elders, and providing two opportunities to view the site.³⁹ The Staff argued that the cost to obtain more complete information with the Tribe’s help would be exorbitant due to the Tribe’s conditions set forth in the June 12 Discussion Draft and June 15 Discussion Draft.⁴⁰ It argued that the Tribe’s discussion drafts constituted constructive repudiation of the previously agreed-upon March 2018 Approach.⁴¹ Therefore, the Staff argued that obtaining the Tribe’s cooperation to identify additional cultural resources was not reasonably feasible.⁴²

Powertech filed a brief in support of the Staff’s motion, and the Tribe both opposed the Staff’s motion and filed a cross-motion for summary disposition.⁴³

³⁶ Staff Motion at 33-34.

³⁷ 40 C.F.R. § 1502.22. Although CEQ regulations do not bind the NRC, we give their regulations substantial deference, subject to certain conditions. *See* 10 C.F.R. § 51.10(a); *see also Dominion Nuclear North Anna, LLC* (Early Site Permit for North Anna ESP Site), CLI-07-27, 66 NRC 215, 222 n.10 (2007).

³⁸ Staff Motion at 15.

³⁹ *Id.* at 18-24.

⁴⁰ *Id.* at 13, 17-35.

⁴¹ *Id.* at 16, 29-33.

⁴² *Id.* at 33.

⁴³ Powertech (USA) Inc.’s Response in Support of NRC Staff Motion for Summary Disposition of Contention 1A (Aug. 31, 2018); Oglala Sioux Tribe’s Response in Opposition to NRC Staff’s Motion for Summary Disposition of Contention 1A (Sept. 21, 2018) (Tribe Response); Oglala Sioux Tribe Motion for Summary Disposition (Aug. 17, 2018) (Tribe Motion for Summary Disposition).

In opposing the Staff's Motion, the Tribe argued that the Staff never prepared a scientific methodology as contemplated by the March 2018 Approach.⁴⁴ According to the Tribe, Dr. Nickens's proposed methodology amounted to an "open site survey," which the Tribe has repeatedly rejected as inadequate and unscientific.⁴⁵ The Tribe claimed that during the June 5, 2018, teleconference, Dr. Nickens acknowledged that the survey was "not the type of approach he would recommend."⁴⁶ The Tribe maintained that its discussion drafts were intended "to facilitate the discussions" about the type of methodology to use, and that it had expected the NRC Staff to "continue working on the methodology" instead of abruptly discontinuing field activities.⁴⁷

The Tribe, in its own motion for summary disposition, argued that the Staff had abandoned its attempts to comply with NEPA.⁴⁸ It therefore renewed its request for the Board to "vacate the license and remand the matter to the NRC Staff to comply with NEPA."⁴⁹ It also argued that, in the alternative, the Board "should vacate [Powertech's] license, enter a final decision in the Tribe's favor on Contention 1A, and dismiss Powertech's license application."⁵⁰

D. The Board's Ruling in LBP-18-5

The Board rejected both motions for summary disposition and found that there were material facts in dispute that could not be resolved without an evidentiary hearing.⁵¹ With respect to the Staff's motion, the Board recognized that had the March 2018 Approach been carried out, it might well have satisfied NEPA's hard look requirement.⁵² The Board found that all parties had accepted the March 2018 Approach as reasonable by the time the contractor began its survey in June 2018.⁵³ The Board also found that the approach attempted to address each of the Tribe's concerns, including hiring a qualified contractor, involving other Lakota Sioux Tribes, providing iterative opportunities to view the

⁴⁴ Tribe Response at 5-6.

⁴⁵ See Tribe Response, Attach., "Declaration of Kyle White" (Sept. 21, 2018), at 6-7 (White Declaration). Mr. White is the Director of the Oglala Sioux Tribe's Natural Resources Regulatory Agency and its Acting Tribal Historic Preservation Officer. *Id.*, Attach., White Declaration at 1.

⁴⁶ *Id.*, Attach., White Declaration at 7. This statement is not included in the Summary of Survey Methodology Sessions, but that summary does not purport to be a verbatim transcript of the participants' statements.

⁴⁷ *Id.*

⁴⁸ Tribe Motion for Summary Disposition at 9.

⁴⁹ *Id.* at 10.

⁵⁰ *Id.*

⁵¹ LBP-18-5, 88 NRC at 100, 133-34.

⁵² *Id.* at 126.

⁵³ *Id.* at 111.

site, involving tribal elders, and using a scientific methodology.⁵⁴ But the Board held that although the March 2018 Approach “could constitute a valid path for resolving Contention 1A,” there was still a factual dispute over whether the Staff had acted reasonably in its attempts to implement that approach.⁵⁵ Therefore, it could not grant summary disposition in the Staff’s favor.

Specifically, the Board found that the reasonableness of Dr. Nickens’s proposed survey methodology was a material fact in dispute.⁵⁶ The Board noted that the March 2018 Approach did not stipulate a survey methodology but called for the contractor and the Tribe to agree on an appropriate methodology before the field survey.⁵⁷ In addition, the Board found a question of fact concerning the reasonableness of the Staff’s decision to discontinue efforts to implement the March 2018 Approach.⁵⁸ The Board noted that the Staff could have conducted other planned aspects of the March 2018 Approach, such as conducting interviews with tribal elders, while it continued to work with the Tribe to identify an acceptable methodology.⁵⁹ The Board concluded that a material fact remained in dispute regarding whether the Staff’s decision not to implement the March 2018 Approach — or any other approach — was reasonable.⁶⁰ Therefore, the Board found that material factual disputes existed regarding the Staff’s explanation that the information is “not reasonably available.”⁶¹

The Board also found that the material factual dispute about the reasonableness of the Staff’s actions likewise precluded it from granting summary disposition to the Tribe.⁶²

The Board concluded that the Staff had two choices: either resume implementation of the March 2018 Approach or prepare for another evidentiary hearing.⁶³ The Board observed that the Tribe had agreed to the timeframes for the survey, that is, two phases of two weeks each.⁶⁴ The Board cautioned the Tribe that, if the Staff chose to move forward with the survey, “the *only* aspect

⁵⁴ *Id.* at 112-19.

⁵⁵ *Id.* at 100.

⁵⁶ *Id.* at 130.

⁵⁷ *Id.* at 126.

⁵⁸ *Id.* at 132-34.

⁵⁹ *Id.* at 133.

⁶⁰ *Id.* at 128.

⁶¹ *Id.* at 129-30. Despite the Board’s section heading, the Board concluded here that summary disposition at this time would be “wholly inappropriate,” due to the existence of material factual disputes.

⁶² *Id.* at 130.

⁶³ *Id.* at 134-35.

⁶⁴ *Id.* at 136.

of the Approach that is open for discussion is the site survey methodology.”⁶⁵ Therefore, “any tribal negotiating position or proposal should *only* encompass the specific scientific method that would fit into the two week periods set out in the March 2018 Approach.”⁶⁶ The Board stated that if the Staff were to choose to go to evidentiary hearing, then the Staff must show that the March 2018 Approach “contained a reasonable methodology,” that the Staff acted reasonably in discontinuing all work, and that the Tribe’s proposed alternatives were cost prohibitive.⁶⁷ The order concluded with a schedule for an evidentiary hearing that would take place in late February 2019 and an instruction for the Staff to notify the Board of its choice by November 30, 2018.⁶⁸ The Staff initially chose to continue to work toward implementing a new survey of the site.⁶⁹

On February 15, 2019, Staff provided the Tribe with another proposal for survey methodology.⁷⁰ The parties met on February 22, 2019, to further negotiate the proposed survey methodology within the limitations set by the Board in LBP-18-5.⁷¹ During a subsequent teleconference with the Board, the Staff stated that the February 22 negotiation was not productive and that it planned to file a motion requesting a schedule for an evidentiary hearing on the reasonableness of the Staff’s February 22, 2019, proposal.⁷² The Board granted the Staff’s motion and scheduled a hearing on this issue for August 28-30, 2019.⁷³

II. DISCUSSION

A. Standard for Interlocutory Review

A ruling denying a motion for summary disposition is an interlocutory decision, and we generally disfavor interlocutory review.⁷⁴ Our rules of procedure allow interlocutory review only where the party requesting review can show that it is threatened with “immediate and serious irreparable impact” or the board’s

⁶⁵ *Id.* at 135.

⁶⁶ *Id.* at 135.

⁶⁷ *Id.* at 136.

⁶⁸ *Id.* at 139.

⁶⁹ See Letter from Lorraine Baer, NRC Staff Counsel, to Administrative Judges (Nov. 30, 2018) (ML18334A295).

⁷⁰ See Proposed Draft Cultural Resources Site Survey Methodology for the Dewey Burdock *In-Situ* Uranium Recovery Project in Fall River and Custer Counties, South Dakota (Feb. 15, 2019) (ML19046A443).

⁷¹ Tr. at 1563.

⁷² Tr. at 1563-65, 1619-21; see Motion to Set Schedule for Evidentiary Hearing (April 3, 2019).

⁷³ Order (Granting NRC Staff Motion and Scheduling Evidentiary Hearing) (Apr. 29, 2019) (unpublished).

⁷⁴ See CLI-18-7, 88 NRC at 6.

decision “affects the basic structure of the proceeding in a pervasive and unusual manner.”⁷⁵

Powertech acknowledges that its petition addresses a non-final Board decision and is therefore interlocutory, but it asserts that it can meet our standard for interlocutory review.⁷⁶ Powertech argues that the Board “committed legal error with pervasive effect” when it found that there was still a genuine issue of material fact in the litigation and when it found that the Staff had not shown that further Native American cultural resources information is “unavailable” as that term is used in CEQ regulations. It argues further that these errors will cause Powertech immediate and irreparable harm.⁷⁷

B. Powertech Has Not Met the Standard for Interlocutory Review

1. Irreparable Harm

Powertech claims that the “series of erroneous decisions” by the Board have “prolonged” the proceeding with “no end in sight.”⁷⁸ Powertech argues that, as long as the proceeding drags on, Powertech cannot start operations and generate income, and it is increasingly difficult for Powertech to raise investment capital.⁷⁹ Therefore, Powertech claims that it will suffer immediate and irreparable harm in the form of financial collapse.

We are not persuaded by this argument. We have rejected claims that delay constitutes immediate and irreparable harm that warrants our interlocutory review.⁸⁰ We have also specifically rejected unsubstantiated claims that risks to a licensee’s “credit rating, ability to obtain financing and ability to carry on its work” constituted irreparable harm.⁸¹ Aside from the assertions in its petition, Powertech’s claims are not supported by any evidence, such as affidavits or declarations.

⁷⁵ *Id.*; see also 10 C.F.R. § 2.341(f)(2)(i)-(ii).

⁷⁶ Petition at 6.

⁷⁷ See *id.* at 2.

⁷⁸ *Id.* at 16.

⁷⁹ *Id.* at 17-18.

⁸⁰ See CLI-18-7, 88 NRC at 7.

⁸¹ See *Sequoyah Fuels Corp. and General Atomics* (Gore, Oklahoma Site), CLI-94-11, 40 NRC 55, 61 (1994); see also *Entergy Nuclear Operations, Inc.* (Indian Point, Units 2 and 3), CLI-09-6, 69 NRC 128, 133-36 (2009) (rejecting the argument that “truly exceptional delay or expense,” resulting from contention potentially requiring production of thousands of documents, constituted “irreparable harm” warranting interlocutory review).

2. *Pervasive and Unusual Effect on the Structure of the Proceeding*

Powertech next argues that the Board “committed legal error with pervasive effect” in its rulings⁸² and therefore affected the “basic structure of the proceeding in a pervasive and unusual manner.”⁸³ We have found such an effect in rare situations, as where a board splits a proceeding among two boards or admits a contention conditionally.⁸⁴ We have found no examples, however, where we took interlocutory review on the bases Powertech argues here and Powertech has not provided any examples.

a. *Protracted Litigation*

Powertech argues that the Board’s decision will affect this proceeding in a pervasive manner by prolonging it indefinitely.⁸⁵ Elsewhere in its petition, Powertech argues that if the Tribe can create a material issue of fact simply by “chang[ing] its perspective at . . . will,” the proceeding could never come to a conclusion.⁸⁶ But Powertech supplies no example in our case law where we have found that protracted litigation in itself provides grounds for our immediate review. In fact, we have specifically rejected such arguments in the past.⁸⁷ Indeed, prolonging litigation is a likely result when a board denies a motion for summary disposition.

Moreover, while we do not need to decide whether “indefinite” litigation warrants interlocutory review as a “pervasive and unusual effect,” we find that this case does not present that scenario. The challenged Board ruling did *not* find that the proceeding would continue until the Tribe’s cooperation was finally secured — it found only that the reasonableness of the Staff’s efforts was still in dispute.⁸⁸

The Board’s ruling did not give the Tribe free reign to change its perspective, as Powertech claims. The Board stated that the Tribe was bound by the terms

⁸² Petition at 2, 20-22.

⁸³ 10 C.F.R. § 2.341(f)(2)(ii).

⁸⁴ See, e.g., *Shaw Areva MOX Services, LLC* (Mixed Oxide Fuel Fabrication Facility), CLI-09-2, 69 NRC 55, 62-63 (2009) (conditional dismissal of contention); *Duke Cogema Stone & Webster* (Savannah River Mixed Oxide Fuel Fabrication Facility), CLI-02-7, 55 NRC 205, 213-14 (2002) (decision to adjudicate construction permit separately from operating permit); *Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-98-7, 47 NRC 307, 310 (1998) (establishment of separate board for different contentions).

⁸⁵ Petition at 20-21.

⁸⁶ *Id.* at 16.

⁸⁷ See, e.g., *Connecticut Yankee Atomic Power Co.* (Haddam Neck Plant), CLI-01-25, 54 NRC 368, 373-74 (2001).

⁸⁸ LBP-18-5, 88 NRC at 130-34.

it had agreed to in accepting the March 2018 Approach, including the two two-week periods allotted to accomplish the survey.⁸⁹ We also observe that summary disposition is not the only option for ending this proceeding. The Board was prepared to proceed to an evidentiary hearing to establish whether further cultural resources information was reasonably obtainable. That hearing occurred in August 2019.

b. Claim That the Board Overstepped Its Role

Powertech also argues that the Board's ruling alters the structure of the proceeding in a pervasive and unusual manner in that it "appears . . . to dictate the terms of satisfaction of Contention 1A."⁹⁰ Powertech argues that the Board apparently will accept nothing "short of implementation of the March 2018 Approach as dispositive" of the contention.⁹¹

It is well-established that a Board has no authority to direct the manner in which the Staff conducts its safety and environmental reviews,⁹² and we do not find that the Board inappropriately dictated the Staff's non-adjudicatory activities. The question of whether NEPA could be satisfied through an approach other than the March 2018 Approach was not before the Board. The Staff's Motion for Summary Disposition did not ask the Board to sanction some alternative approach for gathering cultural resources information. And the Board's decision suggested that an alternative approach might work as well to gather information about cultural resources.⁹³ In addition, the Board had no role in the development of the March 2018 Approach. The Staff proposed the approach, and Powertech and the Tribe agreed to it; Powertech's own petition for review acknowledges that it agreed to the March 2018 Approach.⁹⁴ And there were details still to be worked out within that approach — the survey methodology — that the Board did not purport to dictate or disturb. Therefore, we do not find that the Board has dictated the Staff's non-adjudicatory activities.

⁸⁹ *Id.* at 135-36.

⁹⁰ Petition at 21.

⁹¹ *Id.*

⁹² See CLI-16-20, 84 NRC at 250; *Entergy Nuclear Operations, Inc.* (Indian Point, Units 2 and 3), CLI-11-14, 74 NRC 801, 813 n.70 (2011); *Shaw Areva MOX Services*, CLI-09-2, 69 NRC at 63.

⁹³ See LBP-18-5, 88 NRC at 127 ("The NRC Staff has not implemented the mutually agreed-upon March 2018 Approach or any alternative approach . . .").

⁹⁴ Petition at 4.

3. *Novelty of Issue*

Powertech further argues that the Commission should take review because “historic and cultural resources in NEPA processes present a novel issue that warrants Commission review.”⁹⁵ Our regulations provide that a presiding officer (or board) may refer a ruling to the Commission for immediate review if *in the presiding officer’s judgment*, the ruling presents “significant and novel legal or policy issues.”⁹⁶ And a party may request that the board certify a ruling for our immediate review.⁹⁷ We may also take review on our own initiative. But as the case Powertech cites for the Commission’s authority to take review points out, a petitioner may not solicit Commission review on that basis.⁹⁸ Therefore, Powertech’s request is procedurally improper.

Moreover, Powertech does not explain why it would be advantageous for the Commission to take review at this point in the litigation as opposed to waiting until the litigation is complete and the record fully developed. Powertech argues that this proceeding, in addition to another *in situ* uranium recovery project case posing similar cultural resources issues, poses “unique challenges for the Commission and NRC Staff to develop a uniform policy for addressing both NHPA and associated NEPA reviews.”⁹⁹ However, we are not convinced that the creation of a uniform policy regarding cultural resources would benefit from our involvement before the Board issues a final ruling.

While we do not find that Powertech’s concerns related to duration meet our high standards for interlocutory review, we are mindful of these considerations. As noted above, the Staff has now elected to terminate this adjudication through an evidentiary hearing, and the Board has established a schedule to complete this adjudication in the coming months.¹⁰⁰ We anticipate that the Board will use the available case management tools to close this proceeding consistent with the established schedule.¹⁰¹ We also expect the parties to support the Board in reaching this goal.¹⁰²

⁹⁵ *Id.* at 23.

⁹⁶ 10 C.F.R. § 2.323(f)(1).

⁹⁷ *Id.* § 2.323(f)(2).

⁹⁸ Petition at 7 (citing *Carolina Power & Light Co.* (Shearon Harris Nuclear Power Plant), CLI-00-11, 51 NRC 297, 299 (2000)); *see also Haddam Neck*, CLI-01-25, 54 NRC at 374-75; *Indian Point*, CLI-09-6, 69 NRC at 138 (Commission will not entertain requests from a party that we take review in the exercise of our inherent supervisory authority).

⁹⁹ Petition at 23.

¹⁰⁰ Order (Granting NRC Staff Motion and Scheduling Evidentiary Hearing) (Apr. 29, 2019) (establishing November 29, 2019, as the deadline for a decision from the Board).

¹⁰¹ *Statement of Policy on Conduct of Adjudicatory Proceedings*, CLI-98-12, 48 NRC 18, 20-21 (1998).

¹⁰² *Id.* at 21-22.

To further these objectives, we offer the following observation. To clarify our stance on 40 C.F.R. § 1502.22, the Board suggests that we previously accepted “the procedural requirements included in section 1502.22(b), so their applicability in these circumstances continues to be appropriate” for addressing a situation where the agency has incomplete or unavailable information in the NEPA context.¹⁰³ On the contrary, we have recently reiterated that as an independent regulatory agency we are not bound by section 1502.22 and reformulated a contention to remove references to that regulation’s requirements for developing a NEPA analysis when information was incomplete or unavailable.¹⁰⁴ Rather, we have consistently directed the Staff to undertake reasonable efforts to obtain unavailable information.¹⁰⁵ As Chairman Svinicki noted in her earlier dissent in this proceeding, section 1502.22 can be a useful guide in determining what is reasonable, but it is not controlling.¹⁰⁶ To the extent the Board has focused its analysis on whether the Staff advanced a reasonable proposal to conduct the survey and whether its determination to discontinue the survey was reasonable, we do not see a legal error with respect to section 1502.22. We offer this clarification to prevent overreliance on section 1502.22 throughout the remainder of this adjudicatory proceeding.

III. CONCLUSION

For the foregoing reasons, we deny review of the Board’s decision in LBP-18-5.

IT IS SO ORDERED.

For the Commission

Annette L. Vietti-Cook
Secretary of the Commission

Dated at Rockville, Maryland,
this 26th day of September 2019.

¹⁰³ LBP-18-5, 88 NRC at 129 (citation omitted).

¹⁰⁴ *Pacific Gas and Electric Co.* (Diablo Canyon Nuclear Power Plant, Units 1 and 2), CLI-11-11, 74 NRC 427, 438, 444 (2011).

¹⁰⁵ *Entergy Nuclear Generation Co. and Entergy Nuclear Operations, Inc.* (Pilgrim Nuclear Power Station), CLI-10-22, 72 NRC 202, 208-09 (2010).

¹⁰⁶ CLI-16-20, 84 NRC at 264 & n.7 (Svinicki, dissenting in part).

Additional Views of Chairman Svinicki

Today's ruling marks the third time in four years the Commission has entered an order regarding Contention 1A in this proceeding. When the Commission initially upheld the Board's determination to admit Contention 1A, in CLI-16-20, I dissented.¹ I found that the Board insufficiently addressed the Staff's claim that it met the National Environmental Policy Act's (NEPA) requirement to undertake reasonable efforts to obtain the information on cultural resources that Contention 1A asserted was lacking.² Subsequently, I joined the majority in rejecting Powertech's appeal from a Board order denying summary disposition on Contention 1A in CLI-18-7.³ However, I again wrote separately to emphasize that while I found our standards for interlocutory appeal unmet, my views on the admissibility of Contention 1A were unchanged.⁴

Regarding the current appeal, I agree with the majority that Powertech's filing falls short of our high standards for interlocutory review. Nonetheless, I continue to believe that a stricter application of NEPA at the time of contention admissibility may have saved the agency many years of litigation. As I observed in my previous additional views accompanying CLI-18-7, the order upheld in CLI-16-20 led to an unworkable adjudicatory proceeding resulting in now three years of adjudicatory delay.⁵ That delay, and associated expense, forms the basis for much of Powertech's instant appeal. While I concur with the majority that the Commission has not historically found concerns related to delay and expense sufficient to warrant interlocutory review, Powertech's appeal illustrates to me that extreme cases of adjudicatory delay might. Nonetheless, as the majority observes, the parties are now pursuing an evidentiary hearing that should complete this proceeding in the coming months. I join the majority in offering my expectation that the Board and parties will work together to meet the established schedule.

¹ CLI-16-20, 84 NRC 219 (2016).

² *Id.* at 263-64.

³ CLI-18-7, 88 NRC 1 (2018).

⁴ *Id.* at 11.

⁵ *Id.*

Additional Views of Commissioner Baran

While I agree with the Commission's decision to deny review of the Board's conclusions in LBP-18-5, I write separately because I do not believe the "observation" about the NRC Staff's compliance with the National Environmental Policy Act made in the final paragraph of II.B.3. is necessary to reach a decision in this case. My agreement with the overall decision should not be read as an endorsement of this unnecessary dicta.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

COMMISSIONERS:

Kristine L. Svinicki, Chairman
Jeff Baran
Annie Caputo
David A. Wright
Christopher T. Hanson

In the Matter of

POWERTECH (USA) INC.

(Dewey-Burdock *In Situ* Uranium Recovery
Facility)

Docket No. 40-9075-MLA

CLI-20-09

MEMORANDUM AND ORDER

On December 12, 2019, the Atomic Safety and Licensing Board issued its Final Initial Decision in this proceeding on Powertech (USA) Inc.'s (Powertech) application for an *in situ* uranium recovery license for the Dewey-Burdock site in South Dakota.¹ The Oglala Sioux Tribe (Tribe) and a group of individuals and organizations referred to as the "Consolidated Petitioners" (together, Petitioners) seek review of the Board's decision as well as two interlocutory Board orders.² In LBP-19-10, the Board ruled that the NRC Staff had fulfilled its responsibilities under the National Environmental Policy Act (NEPA) to characterize cultural resources at the

¹ LBP-19-10, 90 NRC 287 (2019).

² *Oglala Sioux Tribe's Petition for Review of LBP-19-10, LBP-17-09, and Board Ruling on Motion to Strike* (Jan. 21, 2020) (Tribe Petition); *Consolidated Intervenor's Petition for Review of LBP-19-10, LBP-17-09 and Board Ruling on Motion to Strike* (Jan. 21, 2020) (Consolidated Intervenor's Petition)

proposed site using reasonably available information. For the reasons described below, we decline to review the challenged decisions.

I. BACKGROUND

A. Procedural History

In 2010, Petitioners sought and were granted a hearing in this proceeding on several contentions.³ In 2015, after an evidentiary hearing, the Board ruled in favor of the Staff and Powertech with respect to all contentions except for Contentions 1A and 1B.⁴ With respect to Contention 1A, the Board ruled that the Staff had not fulfilled its responsibilities under NEPA to assess the proposed facility's impacts on cultural resources because an adequate cultural resources survey of the site had not been performed.⁵ In so holding, the Board pointed to the Staff's testimony that identifying cultural resources of significance to Native American tribes would require the tribes' participation.⁶ With respect to Contention 1B, the Board held that the Staff had not adequately consulted with the Tribe as required by the National Historic Preservation Act (NHPA).⁷ The Board's decision left the license in place while the Staff worked to remedy the NEPA and NHPA violations. The Staff and Powertech petitioned for review of the Board's ruling on both contentions as did the Tribe and Consolidated Intervenors (with respect

³ See LBP-10-16, 72 NRC 361 (2010).

⁴ See LBP-15-16, 81 NRC 618, 653-57 (2015).

⁵ *Id.* at 655.

⁶ *Id.* at 653-54.

⁷ *Id.* at 655-57; see 54 U.S.C. §§ 300101-307108.

to the remedy offered).⁸ We denied all four petitions with respect to the Board's ruling and remedy for Contentions 1A and 1B.⁹

Following the Board's ruling, the Staff resumed its efforts to consult with the Tribe and to arrange for additional surveys of the Dewey-Burdock site with the Tribe's participation.¹⁰ After two years of efforts to coordinate an additional cultural resources survey with the Tribe, the Staff concluded that further consultation would be fruitless and moved for summary disposition of Contentions 1A and 1B. In LBP-17-9, the Board ruled that the Staff had fulfilled its obligations to consult with the Tribe and granted summary disposition of Contention 1B. But the Board found, with respect to Contention 1A, that there was still a material question of fact concerning the reasonableness of the Staff's efforts to characterize cultural resources at the site.¹¹ We declined to review the Board's decision at that time because the ruling was not final.¹²

The Staff again resumed its efforts to organize a site survey with the Tribe's participation. On March 16, 2018, the Staff sent the Tribe a revised proposal for identifying historical, cultural, and religious resources on the site (March 2018 Approach).¹³ The Staff understood that it had the Tribe's agreement to participate in the March 2018 Approach, and it hired a contractor and provided representatives to participate in the survey in mid-June 2018.¹⁴ On June 12, 2018 and June 15, 2018, however, the Tribe sent the Staff proposals containing

⁸ See CLI-16-20, 84 NRC 219 (2016).

⁹ *Id.* at 242-51.

¹⁰ See LBP-17-9, 86 NRC 167, 179-83 (2017).

¹¹ See *id.* at 194-201.

¹² CLI-18-7, 88 NRC 1 (2018).

¹³ Ex. NRC-192, Letter from Cinthya I Román, NRC to Trina Lone Hill, Oglala Sioux Tribe (Mar. 6, 2018) (ADAMS accession no. ML18075A499) (March 2018 Approach).

¹⁴ See LBP-18-5, 88 NRC 95, 116-23 (2018).

additional conditions for the Tribe's participation in the surveys.¹⁵ The Tribe's June 2018 proposals would take over a year to complete and cost more than \$2 million.¹⁶ The Staff viewed these counterproposals as "fundamentally incompatible" with the March 2018 Approach, and on June 15, 2018, it discontinued efforts to survey the site.¹⁷

The parties then filed cross-motions for summary disposition, both of which the Board denied.¹⁸ The Board explained that because the Staff had not adequately identified Native American cultural resources on the site, in order to comply with NEPA the Staff would have to show that the information was "not reasonably available" under 40 C.F.R. § 1502.22, a Council on Environmental Quality (CEQ) regulation.¹⁹ In LBP-19-10, the Board noted that the NRC is not bound by this regulation, but nonetheless such regulations can serve as guidance in carrying out our NEPA responsibilities:

CEQ regulations generally are not controlling on the NRC, at least to the extent that they have not been incorporated by the agency into 10 C.F.R. Part 51, and the unadopted provisions of 40 C.F.R. § 1502.22 are not binding on the NRC Staff in this case. Nevertheless, the Commission has recognized that such CEQ regulations can be useful guides for determining what actions are reasonable under NEPA.²⁰

Consistent with our case law and past practice, we consider this regulation as guidance.²¹

¹⁵ See *id.* at 119-21.

¹⁶ See *id.* at 120-21.

¹⁷ Ex. NRC-200, Letter from Cinthya I. Román, NRC, to Kyle White, Oglala Sioux Tribe (July 2, 2018) (ML18183A304).

¹⁸ See LBP-18-5, 88 NRC at 130-32.

¹⁹ *Id.* at 128-29.

²⁰ LBP-19-10, 90 NRC at 339 (internal citations omitted).

²¹ See, e.g., *Pacific Gas & Electric Co.* (Diablo Canyon Nuclear Power Plant, Units 1 and 2), CLI-11-11, 74 NRC 427, 443-44 (2011).

In LBP-18-5, the Board considered various elements of the March 2018 Approach and found that if the Staff had implemented that approach, its duty to take a “hard look” at cultural effects “might well have been satisfied.”²² But the Board held that there remained a question whether the Staff’s decision to discontinue all efforts to follow that approach was reasonable. It held that the parties could either continue their efforts to agree on a survey, or they could proceed to a second evidentiary hearing on the following questions: (1) whether the March 2018 Approach contained a reasonable methodology for the conduct of the site survey; (2) whether the Staff’s decision to discontinue all work on June 15, 2018, was reasonable; and (3) whether the Tribe’s proposed alternatives to the March 2018 Approach were cost-prohibitive.²³ We denied Powertech’s request for interlocutory review of the Board’s ruling.²⁴

The Staff elected to continue its efforts to conduct a survey with the Tribe’s cooperation and developed a plan that the Board refers to as the February 2019 Methodology.²⁵ On February 22, 2019, the Staff met with the Oglala Sioux Tribal Historic Preservation Officer (THPO) and with THPOs from the Standing Rock, Rosebud, and Cheyenne River Sioux Tribes at the Pine Ridge Reservation in South Dakota.²⁶ After discussions again broke down, the Staff determined that it would not be able to reach an agreement with the Tribe and elected to proceed to a second evidentiary hearing.²⁷

²² LBP-18-5, 88 NRC at 126.

²³ *Id.* at 136.

²⁴ CLI-19-9, 90 NRC 121 (2019).

²⁵ See LBP-19-10, 90 NRC at 306-10; Ex. NRC-214, Proposed Draft Cultural Resources Site Survey Methodology (Feb. 2019) (ML19058A153) (February 2019 Methodology).

²⁶ See LBP-19-10, 90 NRC at 308.

²⁷ *Motion to Set Schedule for Evidentiary Hearing* (Apr. 3, 2019).

In April 2019, the Board granted the Staff's motion for a hearing on "the reasonableness of the NRC Staff's proposed draft methodology for the conduct of a site survey to identify sites of historic, cultural, and religious significance to the Oglala Sioux Tribe, and the reasonableness of the NRC Staff's determination that the information it seeks to obtain from the site survey is unavailable."²⁸ That is, the Board limited the scope of the hearing to whether the Staff had shown that the information on cultural resources was not reasonably available to the Staff under NEPA.

The NRC Staff filed an initial position statement and exhibits on May 17, 2019.²⁹ On July 17, the Staff filed reply testimony.³⁰ On August 2, 2019, the Tribe filed a motion to strike the Staff's prefiled testimony and exhibits in whole or in part.³¹ The Board denied the Tribe's motion in an unpublished order on August 12, 2019.³²

The hearing took place in Rapid City, South Dakota on August 28 and 29, 2019.

B. Board Decision in LBP-19-10

In LBP-19-10, the Board found that the Staff's proposals in the March 2018 Approach and the February 2019 Methodology were reasonable.³³ The Board noted that the Staff's approaches satisfied all five features the Tribe had described in May 2017 as important to an adequate survey, namely: "(1) hiring a qualified contractor; (2) involving other Tribes; (3)

²⁸ Order (Granting NRC Staff Motion and Scheduling Evidentiary Hearing) (Apr. 29, 2019) (unpublished) (Order Granting Hearing).

²⁹ *NRC Staff's Initial Statement of Position on Contention 1A* (May 17, 2019); Ex. NRC-176, Prefiled Direct Testimony of NRC Staff (May 17, 2019) (refiled on May 21, 2019, as NRC-176-R) (ML19242C185).

³⁰ Ex. NRC-225, NRC Staff's Prefiled Reply Testimony (July 17, 2019) (ML19242C236).

³¹ See *Oglala Sioux Tribe's Motion to Strike* (Aug. 2, 2019) (Motion to Strike).

³² Order (Denying Oglala Sioux Tribe Motion to Strike) (Aug. 12, 2019) (unpublished) (August 12, 2019, Order).

³³ LBP-19-10, 90 NRC at 318.

providing iterative opportunities for a site survey; (4) engaging Tribal elders; and, most critically, (5) conducting a site survey using scientific methodology in collaboration with the Tribes.”³⁴

The Board further found that the Tribe’s lack of cooperation resulted in the cultural resources information being not reasonably available.³⁵ It held that the Tribe’s “last-minute attempts in June 2018 to renegotiate fundamental elements of the March 2018 Approach” were not reasonable.³⁶ The Board noted that it had already found, in its 2018 ruling on the motions for summary disposition, that the Tribe’s June 2018 counterproposal involved “expanding timeframes and exorbitant costs.”³⁷ As a result, it found that the Staff’s decision to discontinue its efforts to obtain the Tribe’s participation was reasonable.³⁸ It concluded that the Staff had satisfied NEPA’s requirements relating to unavailable information, guided by CEQ regulations, and that the Staff had therefore satisfied NEPA’s requirement to take a “hard look” at environmental impacts.³⁹

The Board further observed that there is an existing Programmatic Agreement that governs how Powertech will protect any cultural resources that it may encounter as it undertakes construction and operation of its facility.⁴⁰ Compliance with the Programmatic

³⁴ *Id.* at 318-29; see Ex. NRC-190, Oglala Sioux Tribe May 31, 2017, Letter Responding to NRC’s April 14, 2017, Letter, at 3-8 (ML17152A109).

³⁵ LBP-19-10, 90 NRC at 329-34.

³⁶ *Id.* at 335.

³⁷ *Id.* at 331 & n.227.

³⁸ *Id.* at 334-38.

³⁹ *Id.* at 338-41, 345-48.

⁴⁰ *Id.* at 341-45; see also Ex. NRC-018-A, 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) (ML14246A421) (Programmatic Agreement).

Agreement is a condition of Powertech's license.⁴¹ Among its provisions, the Programmatic Agreement requires that prior to commencing construction activities, Powertech will develop a monitoring plan and employ a qualified archeologist, with preference to employees of tribal enterprises, to serve as a monitor.⁴² Citing the Staff's testimony, the Board amended the license to add a condition requiring that, prior to new construction activities, Powertech provide to the affected Tribes and signatories to the Programmatic Agreement thirty days advance notice of the identity of the monitor who will observe construction activities.⁴³

Finally, the Board held that it was not necessary for the Staff to publish a supplement to its final supplemental environmental impact statement (FSEIS) for the project.⁴⁴ The Board relied on longstanding agency practice that a deficiency in an EIS identified during the hearing process can be rectified by the hearing record.⁴⁵

The Tribe and the Consolidated Intervenors have sought review of LBP-19-10, the Board's summary disposition of Contention 1B (LBP-17-9) and its decision denying the Tribe's

⁴¹ See Ex. NRC-018-A, Programmatic Agreement, at 4 (Condition 1 (a)); see also LBP-19-10, 90 NRC at 341-42.

⁴² See Ex. NRC-018-A, Programmatic Agreement, at 13 (Condition 13 (c)); see also *id.* at 10-11 (Condition 9).

⁴³ LBP-19-10, 90 NRC at 344-45; see also Tr. at 2037-42, 2047-51, 2075.

⁴⁴ LBP-19-10, 90 NRC at 348-49; see Exs. NRC-008-A-1 through NRC-008-B-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 (supp. 4 Jan. 2014) (ML14246A350, ML14246A326, ML14246A327, ML14247A334) (FSEIS).

⁴⁵ LBP-19-10, 90 NRC at 350-52 (citing, among others, *NRDC v. NRC*, 879 F.3d 1202, 1209-12 (D.C. Cir. 2018) (upholding the agency practice of curing a deficiency in an EIS using the hearing record)).

motion to strike (August 12, 2019, Order).⁴⁶ The Staff and Powertech oppose the petitions for review.⁴⁷

II. DISCUSSION

A. Standard of Review

We may grant review, in our discretion, where the petitioner raises a substantial question with respect to the following considerations:

- (i) A finding of material fact is clearly erroneous or in conflict with a finding as to the same fact in a different proceeding;
- (ii) A necessary legal conclusion is without governing precedent or is a departure from or contrary to established law;
- (iii) A substantial and important question of law, policy or discretion has been raised;
- (iv) The conduct of the proceeding involved a prejudicial procedural error; or
- (v) Any other consideration which the Commission may deem to be in the public interest.⁴⁸

We show a high degree of deference to the Board as factfinder. Therefore, a petition claiming that the Board's findings of fact are "clearly erroneous" requires the petitioner to show that the Board's findings are "not even plausible in light of the record viewed in its entirety."⁴⁹

⁴⁶ See Tribe Petition, Consolidated Intervenors Petition.

⁴⁷ *NRC Staff's Answer Opposing Petitions for Review* (Feb. 13, 2020) (Staff Answer Opposing Review); *Brief of Powertech (USA), Inc. in Opposition to the Oglala Sioux Tribe's and Consolidated Intervenors' Petition for Review of LBP-19-10* (Feb. 18, 2020) (Powertech Answer Opposing Review); see also *Oglala Sioux Tribe's Reply to NRC Staff's Answer in Opposition to Petition for Review of LBP-19-10, LBP-17-09, and Board Ruling on Motion to Strike* (Feb. 24, 2020) (Tribe Reply to Staff); *Oglala Sioux Tribe's Reply to Powertech's Answer in Opposition to Petition for Review of LBP-19-10, LBP-17-09, and Board Ruling on Motion to Strike* (Feb. 28, 2020) (Tribe Reply to Powertech).

⁴⁸ 10 C.F.R. § 2.341(b)(4).

⁴⁹ *Kenneth G. Pierce* (Sherwood, Illinois), CLI-95-6, 41 NRC 381, 382 (1995) (quoting *Anderson v. Bessemer City*, 470 U.S. 564, 573-74 (1985)); see also *In the Matter of David Geisen*,

We are highly deferential, “particularly where much of [the] evidence is subject to interpretation.”⁵⁰ And we give the highest deference to findings of fact that turn on witness credibility.⁵¹ We review the Board’s legal rulings *de novo*, but we only take review, as explained in the regulation, where the petitioner shows that the Board’s rulings on a substantial and important question of law is without precedent or contrary to precedent.⁵² In addition, we defer to the Board in its procedural case management decisions.⁵³

B. The Tribe’s Petition for Review

1. Final Initial Decision: LBP-19-10

The Board’s ruling in LBP-19-10 centers on the question of whether additional information on cultural resources is unavailable, or too costly to obtain. Although as an independent agency the NRC is not bound by CEQ regulations unless adopted into Part 51, we “look to [them] for guidance, including section 1502.22.”⁵⁴ That regulation, which pertained to unavailable information, provided the following:

When an agency is evaluating reasonably foreseeable significant adverse effects on the human environment in an environmental impact statement and there is incomplete or unavailable information, the agency shall always make clear that such information is lacking.

(a) If the incomplete information relevant to reasonably foreseeable significant adverse impacts is essential to a reasoned choice among alternatives and the overall costs of obtaining it are

CLI-10-23, 72 NRC 210, 224-25 (2010); *Tennessee Valley Authority* (Watts Bar Nuclear Plant, Unit 1), CLI-04-24, 60 NRC 160, 189 (2004).

⁵⁰ *Geisen*, CLI-10-23, 72 NRC at 225.

⁵¹ *Id.*

⁵² *Entergy Nuclear Vermont Yankee, LLC and Entergy Nuclear Operations, Inc.* (Vermont Yankee Nuclear Power Station), CLI-10-17, 72 NRC 1, 11 (2010).

⁵³ *Id.* at 47; *Louisiana Energy Services, L.P.* (National Enrichment Facility), CLI-04-35, 60 NRC 619, 629 (2004).

⁵⁴ *Diablo Canyon*, CLI-11-11, 74 NRC at 443-44.

not exorbitant, the agency shall include the information in the environmental impact statement.

(b) If the information relevant cannot be obtained because the overall costs of obtaining it are exorbitant or the means to obtain it are not known, the agency shall include within the environmental impact statement:

(1) A statement that such information is incomplete or unavailable;

(2) A statement of the relevance of the incomplete or unavailable information to evaluating the reasonably foreseeable significant adverse impacts on the human environment;

(3) a summary of existing credible scientific evidence which is relevant to evaluating the reasonably foreseeable significant adverse impacts on the human environment, and

(4) the agency's evaluation of such impacts based upon theoretical approaches or research methods generally accepted in the scientific community.⁵⁵

In promulgating the regulation, the CEQ stated that the "term 'overall costs' encompasses financial costs and other costs such as costs in terms of time (delay) and personnel."⁵⁶

Recently, the CEQ revised this regulation to replace "the term 'exorbitant' with 'unreasonable'" because 'unreasonable' is "consistent with CEQ's description of 'overall cost' considerations in

⁵⁵ 40 C.F.R. § 1502.22.

⁵⁶ See Council on Environmental Quality, National Environmental Policy Act Regulations; Incomplete or Unavailable Information, Final Rule, 51 Fed. Reg. 15,618, 15,622 (Apr. 25, 1986).

its 1986 promulgation of amendments to this provision.”⁵⁷ The CEQ’s rulemaking reiterates that the term “overall cost” includes financial costs and other costs such as delay.⁵⁸

a. *Whether the Board Erred in Finding Additional Cultural Resources Information “Unavailable”*

The Tribe raises several related challenges to the Board’s factual finding that additional cultural resources information is not reasonably available.⁵⁹ First, the Tribe argues that it never agreed to the March 2018 Approach and that the approach was flawed.⁶⁰ The Tribe further asserts that the amount of compensation it was offered for its participation in the proposed survey was inadequate.⁶¹ And it claims that the Staff’s contractor did not have the required expertise to design and carry out an adequate cultural resources survey.⁶² The Tribe also argues that it negotiated in good faith, whereas the Staff did not.⁶³

The Board considered each of these arguments. With respect to whether the Tribe ever agreed to the March 2018 Approach, the Board found that the Tribe’s THPO at the time, Trina Lone Hill, had agreed that the March 2018 Approach was reasonable but that Lone Hill’s

⁵⁷ See Council on Environmental Quality, Update to the Regulations Implementing the Procedural Provisions of the National Environmental Policy Act, Final Rule, 85 Fed. Reg. 43,304, 43,332, 43,366 (Jul. 16, 2020). The revised regulation was also redesignated as § 1502.21. See also 51 Fed. Reg. 15,618 at 15,622 (stating that in using the term “overall costs” the CEQ “does not intend that the phrase be interpreted as a requirement to weigh the cost of obtaining the information against the severity of the impacts, or to perform a cost-benefit analysis. Rather, it intends that the agency interpret “overall costs” in light of overall program needs”).

⁵⁸ 85 Fed. Reg. at 43,332.

⁵⁹ Tribe Petition at 6-14, 15-17.

⁶⁰ *Id.* at 6-7.

⁶¹ *Id.* at 8-9.

⁶² *Id.* at 9-10.

⁶³ *Id.* at 10-13.

successor, Kyle White, withdrew the Tribe's agreement.⁶⁴ Moreover, the question before the Board was not whether the Tribe had agreed to the March 2018 Approach but whether the approach was reasonable.⁶⁵ In evaluating whether the approach was reasonable, the Board thoroughly discussed the five criteria that the Tribe had identified as necessary for a competent survey.⁶⁶ The Board's assessment of these factors reflects factual determinations that warrant deference.

The Board also discussed, at length, the parties' interactions on which it relied for its determination that the Tribe's lack of cooperation resulted in the unavailability of additional cultural resources information.⁶⁷ The Tribe has not shown that the Board's findings were implausible in light of the record as a whole.

The Tribe further argues that the Staff could have taken other steps to gather additional cultural resources information even if it had not completed a site survey, for example, through oral interviews.⁶⁸ It also argues that Staff could have procured information by hiring a competent contractor to perform a survey even without the Tribe's involvement.⁶⁹ And the Tribe argues that the information was available from tribal members, community members, and other Tribes.⁷⁰ But pursuing the Tribe's suggested options would have been a significant departure from the long path the Staff had taken in trying to resolve the Tribe's Contention 1A. These methods would not have satisfied all five criteria that the parties agreed would be necessary to

⁶⁴ See LBP-19-10, 90 NRC at 330.

⁶⁵ See Order Granting Hearing at 4.

⁶⁶ LBP-19-10, 90 NRC at 318-29.

⁶⁷ *Id.* at 329-34.

⁶⁸ Tribe Petition at 15-16.

⁶⁹ *Id.* at 16-17.

⁷⁰ *Id.* at 17.

complete a satisfactory survey. The Board also discussed the Staff's reasons for not pursuing other information-gathering options that would not involve the Tribe and found that the Staff's decision was reasonable.⁷¹

We find that the Board's conclusion that the cultural resources information it found lacking in LBP-15-16 was not available due to the Tribe's non-cooperation was reasonable. The Tribe's arguments do not therefore show a clear error of fact in the Board's findings.

b. Need for FSEIS Supplementation

The Tribe argues that the Board erred in ruling that there was no need for the Staff to issue a supplement to the FSEIS.⁷² According to the Tribe, without a supplement, the public does not have the opportunity to assess and comment on the Staff's finding that additional cultural resources information is unavailable.⁷³ Relatedly, it claims that the Board erred in denying its motion to strike the Staff's prefiled testimony.⁷⁴

The Board relied on longstanding agency practice allowing the adjudicatory record to augment existing environmental analyses in considering whether the Staff should have to issue a supplement to the FSEIS.⁷⁵ The Board noted that federal courts of appeals cases have "accepted the validity" of the NRC's approach.⁷⁶ The Board also stated that in some situations

⁷¹ LBP-19-10, 90 NRC at 334-35.

⁷² Tribe Petition at 14-15.

⁷³ *Id.* at 15.

⁷⁴ *Id.* The Tribe's argument is more fully explained in its Motion to Strike, where it asserted that any information not discussed or referenced in the FSEIS is not relevant or material and the Staff's attempts to "rehabilitate its FSEIS through post-hoc written testimony of witnesses . . . should be struck by the Board." Motion to Strike at 3.

⁷⁵ See LBP-19-10, 90 NRC at 350-53 (citing *Strata Energy, Inc.* (Ross In Situ Uranium Recovery Project), CLI-16-13, 83 NRC 566, 595 (2016); *Maine Yankee Atomic Power Co.* (Maine Yankee Atomic Power Station), ALAB-161, 6 AEC 1003, 1013 (1973)).

⁷⁶ *Id.* at 351 & n.315 (citing *NRDC v. NRC*, 879 F.3d 1202, 1209-12 (D.C. Cir. 2018); *New England Coal. on Nuclear Pollution v. NRC*, 582 F.2d 87, 94 (1st Cir. 1978); *Citizens for Safe*

publishing a supplemental environmental analysis would be appropriate, for example when the information developed during the adjudication represents a “fundamental . . . omission,” where the “proposed project has been so changed by the Board’s decision as not to have been fairly exposed to public comments during the initial circulation” of the FSEIS, or where the NRC Staff’s evidence at hearing varies “markedly” from the information in the FSEIS.⁷⁷ It noted that our regulations in Part 51 require supplementation when the scope of the project has changed or there is significant new information.⁷⁸

The Board also looked to 40 C.F.R. § 1502.22(b) and determined that all the elements of the CEQ regulation were met in its decision and the supporting record.⁷⁹ The Board observed that the original FSEIS stated that cultural resources information was limited in part because the Tribe, after initially agreeing to participate in the 2013 cultural resources survey, “withdrew its acceptance because the tribal council had not been briefed before the survey was scheduled to begin.”⁸⁰ The Board found that because the Staff had not been able to conduct an additional cultural resources survey, the only potentially supplemental information was “the reasons why such additional cultural resources information still has not been obtained by the NRC Staff.”⁸¹ The Board concluded that a statement of “why this information was unavailable . . . does not

Power v. NRC, 524 F.2d 1291, 1294 n.5 (D.C. Cir. 1975); *Ecology Action v. AEC*, 492 F.2d 998, 1001-02 (2d Cir. 1974)).

⁷⁷ *Id.* at 352-53.

⁷⁸ *Id.* at 352 n.316 (citing 10 C.F.R. § 51.92).

⁷⁹ *See id.* at 340, 348-55.

⁸⁰ *Id.* at 354 (quoting FSEIS at F-2).

⁸¹ *Id.*

appear to us to constitute the type of significant discussion that warrants employing the supplementation process.”⁸²

In its petition for review, the Tribe argues that it is improper for an environmental analysis to be augmented informally through the record of adjudication.⁸³ But the Tribe’s arguments are insufficient to meet our standard for taking review; that is, they do not demonstrate to us that “a necessary legal conclusion [that the Board made] is without governing precedent or is a departure from or contrary to established law” or that the Board’s decision raises a “substantial and important question of law, policy, or discretion.”⁸⁴ It appears that in all respects the Board followed applicable law, both within our agency case law and federal court decisions.

The Tribe attempts to distinguish the Circuit Court for the District of Columbia’s ruling in *NRDC v. NRC*, which rejected a challenge to our practice of augmenting an environmental analysis with the publicly available adjudicatory record.⁸⁵ The Tribe points out that in *NRDC v. NRC*, the analysis missing from the environmental document had been performed before the case had reached the court of appeals; therefore, remand to the agency for formal supplementation would be “pointless.”⁸⁶ The Tribe argues that *NRDC v. NRC* is inapposite to this proceeding because no additional information has been gathered and no additional analysis has taken place.⁸⁷ In connection with this argument, the Tribe claims that the Board’s August

⁸² *Id.* at 355.

⁸³ Tribe Petition at 14-15.

⁸⁴ See 10 C.F.R. § 2.341(b)(4).

⁸⁵ Tribe Petition at 14-15 (citing *NRDC v. NRC*, 879 F.3d at 1212).

⁸⁶ *Id.*

⁸⁷ *Id.*

12, 2019, ruling on its motion to strike also violates NEPA.⁸⁸ In its motion to strike Staff's prefiled testimony, the Tribe argued that the Staff was improperly trying to rehabilitate a deficient NEPA document with extraneous information.⁸⁹

The Tribe does not raise a substantial question warranting our review because it misconstrues the purpose of the second evidentiary hearing. The Board and the parties knew at the outset of the hearing that no additional cultural resources information would be gathered in that process. The question before the Board was only whether the information was properly considered "unavailable" under NEPA. And under CEQ regulations, which we look to for guidance, "unavailable" information includes information the cost of which to gather would be "unreasonable" in terms of both money and time.⁹⁰ Therefore, we see no factual, procedural, or legal error in the Board's conclusion that the testimony it received at the hearing specifically convened for the purpose of determining whether information was unavailable eliminated the need for formal supplementation to the FSEIS to reflect that information's unavailability.

c. *Board License Amendment Concerning the Programmatic Agreement*

The Tribe raises three arguments with respect to the Board's license amendment concerning the Programmatic Agreement. The Tribe's arguments do not present an error warranting our review.

The Tribe first argues that the license condition was not "subject to notice and comment or otherwise incorporated into any NEPA document," so it cannot remedy a NEPA deficiency.⁹¹

⁸⁸ *Id.*

⁸⁹ See Motion to Strike at 1-9.

⁹⁰ See 40 C.F.R. § 1502.21; see also Council on Environmental Quality, Update to the Regulations Implementing the Procedural Provisions of the National Environmental Policy Act, Final Rule, 85 Fed. Reg. at 43,332.

⁹¹ Tribe Petition at 18.

But as we have explained above, the FSEIS is properly augmented by the entire adjudicatory record, including the Board's decision. The Board appropriately found that no formal supplementation, including notice and comment, was necessary to comply with NEPA.

The Tribe additionally states that the Board's first initial decision in the case (LBP-15-16, which we affirmed in CLI-16-20) found the Programmatic Agreement to be insufficient to protect cultural resources.⁹² It therefore argues that the Programmatic Agreement has been "invalidated by prior rulings."⁹³ But neither the Board decision in LBP-15-16 nor our decision affirming it found the Programmatic Agreement deficient for purposes for which it was entered, and those decisions did not invalidate the Programmatic Agreement.

We are not convinced by the Tribe's argument that because the Programmatic Agreement is "purely a creature of [the] NHPA," it has no role in satisfying NEPA.⁹⁴ The Tribe argues that the NHPA only protects sites eligible for inclusion within National Register of Historic Places; therefore, it asserts, "any cultural resources not eligible require no analysis under the NHPA or Programmatic Agreement, providing no basis to meet NEPA duties."⁹⁵ But the Programmatic Agreement provides means for protecting a variety of cultural objects or archeological finds beyond listing on the National Register.⁹⁶

Moreover, with respect to all three arguments, the Tribe mischaracterizes the Board's ruling. The Board did not rely on the license amendment as a basis for its ruling that additional

⁹² *Id.* at 18.

⁹³ *Id.*

⁹⁴ *Id.* at 17.

⁹⁵ *Id.* at 17-18.

⁹⁶ See, e.g., Ex. NRC-018-A, Programmatic Agreement ¶ 9 (construction will be halted for all "unanticipated discoveries" until they can be evaluated), ¶ 10 ("human remains" will be protected), ¶ 11 (disposition of artifacts).

cultural resources information is unavailable under NEPA. The license amendment provides that the signatories to the Programmatic Agreement and interested Tribes, even if not signatories, will receive thirty days prior notice of who will be monitoring future groundbreaking activities.⁹⁷ This notice provision does not alter the substantive rights of the signatories to the Programmatic Agreement or of the Tribe.

Therefore, the Tribe's arguments concerning the Programmatic Agreement-related license amendment do not raise a substantial question of fact, law, or policy, and we do not accept them for review.

d. The Board's Application of NEPA's "Rule of Reason"

Next, the Tribe challenges the Board's ruling because it claims that NEPA's "rule of reason" only applies to exclude a discussion of "remote and speculative" effects.⁹⁸ The Tribe argues that because there are certainly some Native American cultural resources on the site (some of which have already been identified) that could be adversely affected by this project, adverse impacts to them are not remote and speculative. Therefore, the Tribe contends, the rule of reason does not apply to the issues it raised in Contention 1A.⁹⁹

We disagree with the Tribe's argument. In promulgating 40 C.F.R. § 1502.22, CEQ explained that the new regulation "requires that analysis of impacts in the face of unavailable information be grounded in the 'rule of reason.'"¹⁰⁰ Moreover, reviewing courts have applied the rule of reason to evaluate agencies' compliance throughout the NEPA process. For example, in

⁹⁷ See LBP-19-10, 90 NRC at 344-45.

⁹⁸ Tribe Petition at 18-19.

⁹⁹ *Id.*

¹⁰⁰ 51 Fed. Reg. at 15,621; see also Council on Environment Quality, Update to the Regulations Implementing the Procedural Provisions of the National Environmental Policy Act, Final Rule, 85 Fed. Reg. 43,304, 43,332 (Jul. 6, 2020) (reiterating that the rule of reason applies when discussing incomplete or unavailable information).

Marsh v. Oregon Natural Resource Council, the U.S. Supreme Court found that an agency must use a rule of reason to decide whether new information warrants a supplemental environmental impact statement.¹⁰¹ Similarly, the Court ruled in *Department of Transportation v. Public Citizen* that the rule of reason should govern the decision to prepare an environmental impact statement, where the statement would serve no purpose because the agency was required by law to undertake the action in question.¹⁰² Thus, the Tribe's "rule of reason" argument does not raise a substantial question of law.

e. *Whether the Board Improperly "Inserted Itself" into Negotiations or Was Biased in Staff's Favor*

The Tribe argues that the Board improperly involved itself in settlement negotiations, used the Tribe's confidential settlement negotiations against the Tribe, and was biased in favor of the Staff.¹⁰³ The Tribe argues that it was improper for the Board to admit its own exhibits.¹⁰⁴ We find that these arguments do not present a prejudicial procedural error.

The Tribe's arguments that the Board improperly involved itself in settlement negotiations or improperly used settlement negotiations against the Tribe are unavailing.¹⁰⁵ The Board did not act as a settlement judge and in fact offered at several points in this proceeding to

¹⁰¹ 490 U.S. 360, 373 (1989).

¹⁰² 541 U.S. 752, 767 (2004); *see also Utahns for Better Transp. v. Dept. of Transp.*, 305 F.3d 1152, 1163 (10th Cir. 2002) (reviewing court applies "rule of reason" in deciding whether claimed deficiencies in NEPA document are significant or merely "flyspecks").

¹⁰³ Tribe Petition at 20-21; *see also* Tribe Reply to the Staff at 4-5; Tribe Reply to Powertech at 4-5.

¹⁰⁴ Tribe Petition at 21-22.

¹⁰⁵ The Tribe argues that the Board forced it to participate in alternative dispute resolution (ADR), which is inaccurate. Tribe Petition at 21. However, the record does not reflect that the parties used ADR.

appoint a settlement judge.¹⁰⁶ In 2015, in its first initial decision, the Board acknowledged that it had no authority to direct the Staff in its NEPA duties, and it required monthly status updates from the Staff.¹⁰⁷ More than a year later, after the Staff's status reports showed no significant progress in the Staff's efforts to resolve its differences with the Tribe, the Board arranged for telephonic status calls.¹⁰⁸ Between October 2016 and April 2019, the Board held eleven on-the-record teleconferences with the parties concerning the status of the proceeding.¹⁰⁹ The Tribe's only specific argument challenging the Board's actions is that the Board forced the Tribe to accept the March 2018 Approach when it ruled on the parties cross-motions for summary disposition.¹¹⁰ But the Board did not act inappropriately in ruling on the motions for summary disposition or in its underlying findings of fact that the Tribe had at one time accepted the March 2018 Approach. Ruling on motions, making findings of fact, and holding status conferences are within the scope of a Board's core responsibilities.

We disagree that the Board improperly "based its opinion regarding the reasonableness of the Tribe's negotiating position on letters exchanged during negotiations."¹¹¹ The Tribe argues that the Board's actions contravened Federal Rule of Evidence 408, which prohibits the admission of settlement negotiations into evidence in order "to prove or disprove the validity or

¹⁰⁶ See, e.g., LBP-18-5, 88 NRC at 135 n.255 (reminding the parties that they may request the appointment of a Settlement Judge and noting that the Board had suggested they do so in "a number of telephone conferences" as well as in LBP-17-9, 86 NRC at 209); see also Staff Answer Opposing Review at 21; Powertech Answer Opposing Review at 21.

¹⁰⁷ LBP-15-16, 81 NRC at 658.

¹⁰⁸ See Memorandum and Order (Requesting Scheduling Information for Telephone Conference Call) (Oct. 13, 2016), at 2 (unpublished).

¹⁰⁹ The transcripts of these teleconferences are publicly available in ADAMS.

¹¹⁰ Tribe Petition at 20, 23 (citing LBP-18-5, 88 NRC at 135-36).

¹¹¹ *Id.* at 22.

amount of a disputed claim.”¹¹² The Federal Rules of Evidence do not apply directly to our proceedings, although the boards look to them as guidance.¹¹³ In any event, the Board did not violate the principle behind the federal rule. Rule 408 also provides that statements made during negotiations may be admitted for “another purpose,” such as proving bias or prejudice.¹¹⁴ The “another purpose” exception has been interpreted to include showing that a party acted in bad faith during the negotiations and establishing the intent of the settlement reached.¹¹⁵ Here, the Board considered the communications between the parties not to establish the validity of a disputed claim but to determine whether the Tribe had unjustifiably refused to cooperate during the negotiations and whether Staff reasonably abandoned further negotiations as futile. In our view, the Board did not err in considering the parties’ communications in that context.

The Tribe also does not show prejudicial procedural error in the Board’s admission and reliance on its own exhibits.¹¹⁶ The Board provided a list of twelve exhibits in an August 20, 2019, pretrial order, and the Tribe did not object to the admission of any of them.¹¹⁷ The Tribe does not discuss the substance of the Board’s exhibits or describe specifically how it was prejudiced by them. In our proceedings, the Board has an “inquisitorial role” in the development

¹¹² See Fed. R. Evid. 408(a).

¹¹³ *Southern California Edison Co.* (San Onofre Nuclear Generating Station Units 2 and 3), ALAB-717, 17 NRC 346, 365 n.32 (1983); see, e.g., *Carolina Power & Light Co.* (Shearon Harris Nuclear Power Plant), LBP-01-9, 53 NRC 239, 250 (2001).

¹¹⁴ See Fed. R. Evid. 408(b).

¹¹⁵ See, e.g., *Athey v. Farmers Ins. Exch.*, 234 F.3d 357, 362 (8th Cir. 2000) (proof of bad faith); *Coakley & Williams Const., Inc. v. Structural Concrete Equip., Inc.*, 973 F.2d 349, 353-54 (4th Cir. 1992) (intent of settlement).

¹¹⁶ Tribe Petition at 21-22.

¹¹⁷ See Memorandum (Regarding Board Exhibits for Evidentiary Hearing on Contention 1A and Opportunity to Address Recent Judicial Decision) (Aug. 20, 2019) (unpublished).

of a complete record.¹¹⁸ Our rules of procedure grant the Board the authority to receive evidence; examine witnesses; strike irrelevant, immaterial, unreliable, duplicative, or cumulative evidence; and take “any other action consistent” with applicable law in its conduct of proceedings.¹¹⁹ We therefore disagree with the Tribe’s argument that the Board’s admission of its own exhibits constituted prejudicial procedural error.

3. LBP-17-9: Summary Disposition of Contention 1B

In LBP-17-9, the Board found that the Staff had made reasonable efforts under the NHPA to consult with the Tribe concerning the project’s effects on cultural resources that may be located on the site, and it granted summary disposition to the Staff on Contention 1B. According to the Tribe, the Board concluded that the Staff had met its duty to consult based on “a single . . . face to face meeting that occurred on May 16, 2016, one follow up conference call on January 31, 2017, and an exchange of letters [that] even the Board characterized as lacking substance.”¹²⁰ The Tribe also argues that the “events that have transpired since . . . confirm the inadequate effort to address historic and cultural resources under NEPA that flow from the failure to satisfy NHPA standards.”

As an initial matter, the Tribe’s arguments that the Staff had not identified historic properties in compliance with the NHPA, challenges the Board’s finding in LBP-15-16, not its ruling in LBP-17-9.¹²¹ The argument is therefore impermissibly late.

¹¹⁸ *Vermont Yankee*, CLI-10-17, 72 NRC at 47-48.

¹¹⁹ 10 C.F.R. § 2.319(d), (g), (s).

¹²⁰ Tribe Petition at 24 (citing LBP-17-9, 86 NRC at 190).

¹²¹ *Id.* In LBP-15-16, the Board found that “NRC Staff has complied with the NHPA requirement to make a good faith and reasonable effort to identify properties that are eligible for inclusion in the National Register of Historic Places within the Dewey-Burdock ISL project area.” LBP-15-16, 81 NRC at 654.

Whether the Staff's attempts to consult with the Tribe adequately fulfilled its NHPA consultation duties is a question of fact subject to the "clear error" standard of review. Moreover, the Tribe's references to the Staff's actions subsequent to the summary disposition ruling are irrelevant to the Board's conclusion regarding summary disposition. The Tribe does not meet the "clear error" standard; it does not explain how the Board's findings of fact "are not plausible." We therefore decline to take review of this claim.

C. Consolidated Intervenor's Petition for Review

The Consolidated Intervenor's seek review of the Board's merits decision in LBP-19-10, its summary disposition ruling in LBP-17-9, and its August 12, 2019, order with a single argument. They argue that the Staff has a responsibility under NEPA to "preserve important historic, cultural, and natural aspects of our national heritage" regardless of whether a "federally recognized tribe appears to assert and prosecute a claim."¹²² They argue that the Staff's approach, "now adopted by the Board[,] makes the consideration of cultural resources values entirely dependent upon the active participation of the [Oglala Sioux Tribe]."¹²³

Contrary to these claims, the Staff and the Board have not put the onus of identifying cultural resources on a single Native American tribe. Powertech submitted a Class III cultural resources survey with its application.¹²⁴ As the Board recognized in its first initial decision, a Class III survey can identify a property's eligibility to be included on the National Register of Historic Places but "wouldn't necessarily identify all of the [Native American cultural and religious] resources primarily because some knowledge [must be] provided by the Native

¹²² Consolidated Intervenor's Petition at 1-2 (quoting *Oglala Sioux Tribe v. NRC*, 896 F.3d 520, 530 (D.C. Cir. 2018)).

¹²³ *Id.* at 2.

¹²⁴ Ex. APP-009, Level II Cultural Resources Evaluation of Powertech (USA) Incorporated's Proposed Dewey-Burdock Locality within the Southern Black Hills, Custer and Fall River Counties, South Dakota (Mar. 2008) (ML14240A418).

American groups themselves.”¹²⁵ The Staff began its efforts to consult with various affected Tribes in 2011, and a field survey was conducted on the site with three Tribes (although not the Oglala Sioux Tribe) participating.¹²⁶ And the March 2018 Approach that the Staff proposed would have involved qualified archeologists, not solely tribal members, to complete the survey, and it would have provided an opportunity for other tribes to participate.¹²⁷ Therefore, Consolidated Intervenors’ assertions that consideration of cultural resources was entirely dependent on the Tribe are inconsistent with the record.

Accordingly, we find no clear error in the Board’s ruling that the Staff has satisfied its NEPA responsibilities, and we deny the Consolidated Intervenors’ petition for review.

III. CONCLUSION

For the foregoing reasons, we *deny* the petitions for review.

IT IS SO ORDERED.

For the Commission



Annette L. Vietti-Cook
Secretary of the Commission

Dated at Rockville, Maryland,
this 8th day of October 2020.

¹²⁵ LBP-15-16, 81 NRC at 653 (quoting Tr. at 762-63).

¹²⁶ See *id.* at 644-49.

¹²⁷ See Ex. NRC-192, March 2018 Approach, at 2-3.

Additional Views of Chairman Svinicki and Commissioner Caputo

We fully agree with the majority's determination that neither petitioner provided a sufficient reason to take review of the Board's holding in this proceeding. The Board's holding rests on the observation that "NEPA's rule of reason acknowledges that in certain cases an agency may be unable to obtain information to support a complete analysis."¹ In such circumstances, the agency must "undertake reasonable efforts to obtain unavailable information."² The Board found that "although unsuccessful, the NRC Staff acted reasonably in seeking to obtain information from the Tribe regarding the location and significance of Tribal cultural resources on the Dewey-Burdock site for the purpose of its NEPA impacts analysis."³ We write separately to emphasize that the Staff's efforts went far beyond what was required by any "rule of reason" worthy of the name.⁴

The conclusion to this proceeding illustrates the fruitlessness of compelling the Staff to take extraordinary measures to gather missing information under NEPA when clearly reasonable steps have failed. This quixotic search for more information followed from the Board's and Commission's failure to articulate clearly the attributes of a reasonable effort to obtain missing information. The details of the failed consultation, adjudication, and NEPA process in the instant case are worth examining because they demonstrate significant and recurring flaws in our process. Until agency adjudicators effectively address these short

¹ LBP-19-10, 90 NRC at 314 (citing National Environmental Policy Act Regulations; Incomplete or Unavailable Information, 51 Fed. Reg. 15,618, 15,621 (Apr. 25, 1986)).

² *Id.* at 316.

³ *Id.* at 356.

⁴ Chairman Svinicki has made this point many times over the course of this now ten-year proceeding. CLI-19-09, 90 NRC 121, 136 (2019) (Additional Views of Chairman Svinicki); CLI-18-7, 88 NRC at 11 (Chairman Svinicki, Additional Views); CLI-16-20, 84 NRC at 263-68 (Commissioner Svinicki, dissenting in part).

comings, efficiency and balance will elude our NEPA reviews when the agency lacks complete information.

A. The Staff's Efforts to Obtain Information on Cultural Resources

1. Four Years of Consultation

The Staff began its search for information regarding cultural resources many years ago. In early 2010, the Staff contacted the South Dakota State Historic Preservation Officer, who identified twenty Native American Tribes "that might attach historic, cultural, and religious significance to historic properties within the Dewey-Burdock ISL Project area."⁵ The Staff sent letters to these Tribes that asked for assistance in identifying cultural resources on March 19, 2010, September 10, 2010, and March 4, 2011.⁶ On June 8, 2011, at the Prairie Winds Casino and Hotel on Pine Ridge Reservation, the Staff held a meeting with six Tribes to gather information informally.⁷ The Staff held a follow up meeting on February 14-15, 2012, in Rapid City, South Dakota; thirteen Tribes attended.⁸ In the following months, the Staff continued to exchange letters and emails with tribal entities.⁹

Between June 19, 2012, and October 19, 2012, the Staff received and considered a variety of proposals to conduct a survey of the site.¹⁰ As part of this effort, on September 5, 2012, the Staff held a meeting in Bismarck, North Dakota, with representatives from seven Tribes to further discuss "a statement of work to identify religious and cultural properties within

⁵ LBP-15-16, 81 NRC at 644.

⁶ *Id.*

⁷ *Id.* at 645.

⁸ *Id.*

⁹ *Id.* at 646.

¹⁰ *Id.* at 646-47.

the area of potential effects.”¹¹ Notably, the Board found that the survey approach favored by the Oglala Sioux Tribe, which would have cost over one million dollars to survey a fraction of the site, was “patently unreasonable.”¹² At the end of the year, the NRC Staff stated that it intended to conduct an alternate field survey in the spring.¹³ On February 8, 2013, the Staff “invited twenty-three tribes to participate in a field survey between April 1 and May 1, 2013, and described procedures for site access, and compensation for survey participation.”¹⁴

The Oglala Sioux Tribe objected to the terms of the survey, which began on April 1, 2013; nonetheless, seven Tribes participated in the survey, and three of those Tribes ultimately provided survey reports to the NRC.¹⁵ “The survey reports documented sites of religious and cultural significance identified during site surveys [and] mitigation measures recommended for each identified site.”¹⁶ The Staff issued the final Environmental Impact Statement in January of 2014, which contained the three reports arising from the April 2013 survey.¹⁷

2. Is Four Years Enough?

Before the Board, the Staff did not argue that the Final Environmental Impact Statement catalogued and provided mitigation measures for all potential cultural resources that could be present on site. Instead, the Staff contended that it complied with NEPA by making “a reasonable and good faith effort – an effort that lasted almost 4 years – to obtain information on

¹¹ *Id.* at 646.

¹² *Id.* at 657 & n.229; LBP-19-10, 90 NRC at 331 n.227).

¹³ LBP-15-16, 81 NRC at 648.

¹⁴ *Id.*

¹⁵ *Id.* at 648-49, 652.

¹⁶ *Id.* at 649.

¹⁷ *Id.*

religious and cultural resources that are significant to the tribes.”¹⁸ However, rather than consider the Staff’s plea, the Board simply concluded, “the FSEIS in this proceeding does not contain an analysis of the impacts of the project on the cultural, historical, and religious sites of the Oglala Sioux Tribe and the majority of other consulting Native American tribes.”¹⁹ Thus, the Board found the Staff’s review did not comport with NEPA.²⁰ The Board noted that the Staff “can remedy this deficiency . . . by promptly initiating a government-to-government consultation with the Oglala Sioux Tribe to identify any adverse effects to cultural, historic, or religious sites of significance to the Oglala Sioux Tribe that may be impacted by the Powertech Dewey-Burdock project.”²¹ However, the Board provided no guidance to the Staff or parties about what efforts would be sufficient to comply with NEPA’s rule of reason in the event that the parties held to their clearly established positions and no additional survey occurred.

On appeal, the Staff argued that “the Board misapplied NEPA’s hard-look standard as a matter of law, under which the Board should assess whether the Staff ‘made reasonable efforts’ to obtain complete information on the cultural resources at issue here.”²² The Staff’s appeal posed a critical legal question, which the Commission reviews *de novo*: whether the Board applied the appropriate legal standards in considering if four years of work to obtain cultural resources information was a sufficient effort under NEPA’s “rule of reason.” Rather than answer, the majority sidestepped this foundational inquiry entirely and, over Chairman Svinicki’s dissent, simply observed, “the fundamental issue here – whether the Staff complied with NEPA

¹⁸ *Id.* at 651 (quoting *NRC Staff’s Reply Brief* (Jan. 29, 2015) at 5).

¹⁹ *Id.* at 655.

²⁰ *Id.*

²¹ *Id.* at 657-58.

²² CLI-16-20, 84 NRC at 247 (quoting *NRC Staff’s Petition for Review of LBP-15-16* (May 26, 2015) at 17-18).

– is inherently factual.”²³ Moreover, as Chairman Svinicki noted in her dissenting opinion, the Board’s holding that the Oglala Sioux Tribe’s proposal for a cultural resources was “patently unreasonable” logically entailed a conclusion that the information that would be gleaned from that survey was not reasonably available.²⁴ Thus, the result of the Commission’s and Board’s rulings left the Staff with no recourse but to double down on the same unavailing efforts with the Tribe when the Tribe had already indicated that the information sought was not reasonably available. Unsurprisingly, the ensuing four years of consultation would prove no more productive than the first four years.

3. Four More Years

The Staff renewed its efforts to obtain information on cultural resources on June 23, 2015, when the Staff sent a letter to the Oglala Sioux Tribes asking to reinstate government-to-government consultations.²⁵ The parties exchanged correspondence and held another meeting in Pine Ridge, South Dakota on May 19, 2016.²⁶ Concerned by the lack of progress in consultation, the Board convened the first of a series of teleconferences on November 7, 2016; shortly afterwards, on November 23, 2016, the Staff invited the Tribe to join a teleconference on the parameters of a cultural survey.²⁷ The teleconference occurred on January 31, 2017, but the Staff and Tribe were again unable to agree on a survey methodology.²⁸ Thereafter, the parties exchanged letters through the spring of 2017, which culminated in a letter from the Tribe on May 31, 2017, that detailed the Tribe’s ongoing objections to the Staff’s proposed

²³ *Id.*

²⁴ *Id.* at 264-65 (Commissioner Svinicki, dissenting in part).

²⁵ LBP-17-9, 86 NRC at 179.

²⁶ LBP-19-10, 90 NRC at 300.

²⁷ *Id.* at 301.

²⁸ LBP-17-9, 86 NRC at 181.

methodology.²⁹ After receipt of the letter, the Staff concluded that additional consultation would be “unlikely to result in a mutually acceptable settlement of the dispute.”³⁰ Thus, the Staff moved for summary disposition, which the Board denied with respect to the Staff’s NEPA obligations.³¹

Thereafter, the Board continued to hold teleconferences with the parties to monitor progress on resolving the contention.³² At a November 16, 2017, teleconference the Staff “revealed that it was working on a path forward that it hoped to present to the other parties in the next several weeks.”³³ On December 6, 2017, the Staff sent a new proposed approach to the Tribe and Consolidated Intervenors, who expressed a “tentative approval” of the proposal in a follow-on December 12, 2017, teleconference with the Board. On January 19, 2018, the other parties provided written responses to the Staff proposal, which the Staff took into account in the finalized approach it provided to the parties on March 16, 2018, the “March 2018 Approach.”³⁴ At a further teleconference with the Board, all parties expressed comfort with the parameters of the March 2018 Approach.³⁵

Among other things, the March 2018 Approach called for the parties to begin “the field survey process in mid-June 2018 for a two week period” and also provided for a follow-on

²⁹ *Id.* at 182.

³⁰ *Id.* (quoting Letter from Cinthya I Román, Chief, Environmental Review Branch, Division of Fuel Cycle, Safety, Safeguards, and Environmental Review, to Trina Lone Hill, THPA, Oglala Sioux Tribe at 2 (July 24, 2017)).

³¹ *Id.* at 201.

³² LBP-19-10, 90 NRC at 301.

³³ *Id.*

³⁴ *Id.* at 302-03.

³⁵ *Id.* at 303.

survey in September of that year.³⁶ Under the March 2018 Approach, the Staff would prepare a draft survey report in October of 2018, with an opportunity for Tribal review through late December, followed by publication of a draft supplement to the FSEIS in February 2019 and a final supplement in May.³⁷ Shortly before the June survey period began, “the Oglala Sioux Tribe presented the NRC Staff with an alternative survey proposal.”³⁸ The alternate proposal called for visits by tribal elders “over several days during the different seasons of the year”; field work that would last over a year; and a budget of over \$2 million.³⁹ The Staff “responded by indicating that it considered the Tribe’s alternative survey methodology to be a constructive rejection of the March 2018 Approach and terminated implementation of the March 2018 Approach.”⁴⁰ In light of the failed survey attempt, the Staff and Oglala Sioux Tribe both moved for summary disposition; but the Board again declined to grant summary disposition and provided two options to resolve the contention: further negotiation to implement the March 2018 Approach or an evidentiary hearing.⁴¹

Once more, the Staff sought to obtain the missing information through further discussions with the Oglala Sioux Tribe. On November 21, 2018, the Staff sent the Oglala Sioux Tribe and other Tribes a letter indicating that the Staff would resume efforts to complete the March 2018 Approach.⁴² The Tribe responded on January 11, 2019, in a letter that raised concerns with the Staff’s approach. The following month, the Staff developed a Proposed Draft

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Id.*

³⁹ *Id.* at 304.

⁴⁰ *Id.* at 305.

⁴¹ *Id.* at 305-06.

⁴² *Id.* at 307.

Cultural Resources Site Survey Methodology (February 2019 Methodology), which it provided to the Oglala Sioux Tribe for review.⁴³ The Staff met at the Pine Ridge Reservation in South Dakota with the Oglala Sioux Tribal Historic Preservation Advisory Council and THPOs from other Sioux Tribes to discuss the February 2019 Methodology.⁴⁴ During the meeting, the Tribes voiced concerns with the February 2019 Methodology as well as the March 2018 Approach.⁴⁵ Once more, the parties exchanged letters in which the Staff committed to working within the framework of the March 2018 Approach and the Tribe cautioned that it did not agree to a rigid application of the March 2018 Approach.⁴⁶ Once again at impasse, the Staff advised the Board during a subsequent teleconference on March 21, 2019, that “the differences that remain were so fundamental that it was not feasible to have further negotiation meetings” and that the Staff would pursue the option for an evidentiary hearing.⁴⁷ The evidentiary hearing that is the subject of the instant appeal followed.

⁴³ *Id.* at 308.

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ *Id.* at 308-09.

⁴⁷ *Id.* at 309-10 (quoting Tr. 1564-65, 1619-20 (Mar. 21, 2019)).

B. Analysis

The Council on Environmental Quality recently issued a final rule to update its regulations on NEPA compliance.⁴⁸ Although we are not bound by CEQ regulations, the NRC gives them “substantial deference” in applying NEPA.⁴⁹ The CEQ rule added a new provision specifying a presumptive two year time limit for preparing Environmental Impact Statements.⁵⁰ While this would not be an inflexible rule, allowing a senior agency official to waive its applicability for a given project, it demonstrates the relative amount of time and effort expected of agencies in preparing an EIS.⁵¹

This is in keeping with Federal Court’s descriptions of NEPA’s limited requirements. The Supreme Court has clarified that NEPA is a procedural statute: it “does not mandate particular results, but simply prescribes the necessary process.”⁵² The purpose of the EIS is (1) to ensure that the agency “in reaching its decision, will have available, and will carefully consider, detailed information concerning significant environmental impacts” and (2) to guarantee “that the relevant information will be made available to the larger audience.”⁵³ The Supreme Court has also cautioned, “The scope of the agency’s inquiries must remain manageable if NEPA’s goal of ensuring a fully informed and well considered decision is to be accomplished.”⁵⁴ Likewise, the

⁴⁸ Council on Environmental Quality, Update to the Regulations Implementing the Procedural Provisions of the National Environmental Policy Act, Final Rule, 85 Fed. Reg. 43,304 (Jul. 16, 2020).

⁴⁹ *Dominion Nuclear North Anna, LLC* (Early Site Permit for North Anna ESP Site), CLI-07-27, 66 NRC 215, 222 n.21 (2007).

⁵⁰ 85 Fed. Reg. at 43,362-63.

⁵¹ *Id.*

⁵² *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 350 (1989).

⁵³ *Id.* at 349.

⁵⁴ *Metropolitan Edison Co. v. People Against Nuclear Energy*, 460 U.S. 766, 776 (1983) (quotations omitted).

First Circuit has emphasized that an environmental impact statement “is not, after all, a research document.”⁵⁵

A ten-year adjudicatory process to comply with NEPA in this proceeding is difficult to reconcile with these interpretations of NEPA. Clearly, the additional efforts at negotiating a survey methodology came to nothing, and the Oglala Sioux Tribe remained consistent in its position that a satisfactory survey would require resources deemed unreasonable by the Board.⁵⁶ When the Staff, tasked with preparing the EIS and reasonably presumed to have the competency and expertise in NEPA matters sufficient for the job, advised us that it believed it could not obtain information on cultural resources despite having undertaken what it considered reasonable efforts, it should have rung alarm bells for agency decisionmakers. In essence, the Staff was informing the Commission that it did not know how to find the missing information through reasonable efforts. Repeatedly, the Board and Commission response to the Staff argument that it could not obtain information on cultural resources consisted of no more than ordering the Staff to try again. Obviously, a successful survey would have discharged the agency’s NEPA obligations; but completion of that survey was never fully in the agency’s hands. The agency could only control the effort it took to complete the survey. A more appropriate response would have considered whether the initial effort at consultation was a reasonable one and if not, what the Staff could have done differently that would have been reasonable (even if it never led to the hoped for survey). Without such guidance, it is unsurprising that the parties wandered aimlessly through nearly a decade of discussion. Ultimately, the agency is left with nothing to show for the ten years of the parties’ wasted time and resources.

⁵⁵ *Town of Winthrop v. Federal Aviation Administration*, 535 F.3d 1, 13 (1st Cir. 2008).

⁵⁶ Compare LBP-19-10, 90 NRC at 331 n.227) *with id.* at 12.

The NRC has frequently addressed the difficulties of producing an Environmental Impact Statement while missing information.⁵⁷ Most recently, the Commission considered this issue in a companion case to this order, *Crow Butte*. *Crow Butte* also involved the Staff's efforts to secure the Oglala Sioux Tribe's assistance to identify TCPs impacted by uranium recovery operations. We dissented from a similarly aimless remand in *Crow Butte* and instead would have found the Staff's efforts met NEPA's rule of reason because the Staff 1) identified the source of the missing information, 2) undertook reasonable efforts to acquire the information from that source, and 3) discontinued those efforts upon learning that the information could not be reasonably obtained.⁵⁸ In our view, the Staff's initial efforts to obtain cultural resources information in this proceeding would also meet these basic requirements. First, the Staff identified the source that was most likely to be able to provide the missing information by contacting the South Dakota SHPO to identify Tribes with a connection to the site.⁵⁹ Second, the Staff took steps that were likely to lead to obtaining the missing information, in this case by seeking to conduct an on-site cultural resources survey.⁶⁰ Third, the Staff discontinued further

⁵⁷ *E.g. Pacific Gas and Elec. Co.* (Diablo Canyon Nuclear Power Plant, Units 1 and 2), CLI-11-11, 74 NRC 427, 438-44 (2011) (considering claim that applicant must provide a probabilistic analysis of new seismic information or show that the cost of such analysis would be exorbitant); *Pacific Gas and Elec. Co.* (Diablo Canyon Nuclear Power Plant Independent Spent Fuel Storage Installation), CLI-08-1, 67 NRC 1 (2008) (considering claim that NRC did not fully disclose potential radiological impacts of a terrorist attack in its supplemental environmental impact statement); *North Anna*, CLI-07-27, 66 NRC at 235-36 (discussing the extent to which missing information constitutes a "fatal flaw" to a NEPA analysis for an Early Site Permit).

⁵⁸ *Crow Butte Resources Inc.* (In Situ Leach Uranium Recovery Facility), CLI-20-___, 92 NRC at ___ (slip op. at ___) (2020) (Chairman Svinicki and Commissioner Caputo, dissenting).

⁵⁹ LBP-15-16, 81 NRC at 644.

⁶⁰ See *supra* notes 5-17 and accompanying text.

efforts upon learning that the information could not be reasonably obtained.⁶¹ Had the majority simply invoked such a straightforward application of NEPA's rule of reason earlier in this proceeding, years of wasted effort and resources may have been averted.

Moreover, as discussed by us in our *Crow Butte* dissenting opinion, the Commission perpetuates a veil of mystery around the question of what level of effort to acquire missing information is reasonable. As a result, licensing applicants and the NRC staff face the ongoing prospect that a demand for additional detail in NEPA documents may give rise to a years-long sojourn with no clear destination. Thus, our adjudicatory process remains vulnerable to the type of profoundly regrettable, decade-long delay demonstrated by this proceeding. Given the complex and time-sensitive applications on the agency's licensing horizon, we can ill-afford to sustain this persistent trap for those who wander into our jurisprudence.

⁶¹ LBP-19-10, 90 NRC at 331 & n. 227) (noting that the Tribe's suggested survey approach in 2012 entailed "unreasonable" costs); LBP-15-16, 81 NRC at 657 (finding aspects of the Tribe's proposed survey to be "patently unreasonable").

Commissioner Baran, Dissenting in Part

I agree with the majority that it was reasonable for the Board to conclude that the cultural resources information it found lacking in LBP-15-16 is not available for National Environmental Policy Act (NEPA) purposes. However, I dissent from the majority's holding that the Staff need not issue a supplement to the Final Supplemental Environmental Impact Statement (FSEIS). The Oglala Sioux Tribe contends that it is improper for a NEPA environmental analysis to be augmented after the fact through the record of adjudication. The Commission should grant review of this aspect of the petition because the Tribe has raised a substantial and important question of law and policy. We should conclude that the Staff must supplement the FEIS with an explanation of its determination that additional cultural resources information is unavailable. The Board previously found that the Staff's FSEIS did not meet the requirements of NEPA because the FSEIS was deficient with respect to the effects of the licensing action on Native American cultural, religious, and historic resources.¹ Without a supplement explaining why this information is unavailable, the significant deficiency will remain uncorrected and the agency will not meet its NEPA obligations.

NRC cannot avoid supplementing the FEIS by allowing the significant deficiencies of the environmental review to be corrected by adjudicatory proceedings conducted *after* the Powertech license was issued. As the Commission has observed many times, NEPA is a procedural statute.² It establishes a process to ensure that, when an agency makes a decision that could affect the environment, that decision is informed by a thorough evaluation of the expected environmental impacts. A basic premise of the statute is that informed

¹ LBP-15-16, 81 NRC at 708, 655-58. The Board also identified a NEPA deficiency with respect to hydrogeological information, the subject of Contention 3, and conditioned Powertech's license to cure this deficiency. See *id.* at 679, 681, 709.

² See *e.g.*, *Entergy Nuclear Operations, Inc.* (Indian Point, Units 2 and 3), CLI-11-14, 74 NRC 801, 813 (2011).

decisionmaking will help protect the environment by forcing agencies to consider the consequences of potential actions as well as alternatives that could be less environmentally damaging. That commonsense approach simply does not work if the agency decision precedes the environmental review. Thus, a core requirement of NEPA is that an agency decisionmaker must consider an adequate environmental review *before* making a decision on a licensing action.³ When the Commission allows a Board to correct a significantly inadequate NEPA document through augmentation *after* the agency has already made a licensing decision, then this fundamental purpose of NEPA is frustrated.

Here, the licensing decision was made on April 8, 2014, when the Staff issued a Part 40 source material license to Powertech. There was nothing provisional about that license. After Powertech received the license, it was authorized by NRC to possess source material. Like many agency decisions – whether they be licenses, orders, or rulemakings – issuance of the Powertech license could be challenged in an agency adjudicatory proceeding and in federal court. But the possibility of judicial (or quasi-judicial) review does not change the fact that the licensing decision was made on April 8, 2014. The Board's hearing on whether the information was unavailable did not take place until August 2019 – more than five years *after* the agency's licensing decision was made. The Board's final initial decision finding the information unavailable was not issued until four months later, on December 12, 2019. Relying on the Board's August 2019 hearing and December 2019 decision to cure the significant deficiencies of a March 2014 FSEIS that the Staff relied on to issue an April 2014 license would not comply with the basic requirements of NEPA.

In two recent cases, the D.C. Circuit Court of Appeals made it clear that it does not approve of the Commission's current practice of allowing for the augmentation of an inadequate NEPA environmental review after the decision to issue a license has already been made.

³ *Oglala Sioux Tribe v. NRC*, 896 F.3d 520 (D.C. Cir. 2018).

In *NRDC v. NRC*, the Court examined this practice. While the Court of Appeals found that there was no concrete harm in that particular case, the Court stated:

We do not mean to imply the procedure the Board followed was ideal or even desirable. Certainly it would be preferable for the FEIS to contain all relevant information and the record of decision to be complete and adequate before the license is issued.⁴

The second case is the very one before us now. In *Oglala Sioux Tribe*, the Court of Appeals went even further than it had in *NRDC v. NRC* in broadly criticizing the agency's practice. The Court explained:

The National Environmental Policy Act, however, obligates every federal agency to prepare an adequate environmental impact statement *before* taking any major action, which includes issuing a uranium mining license. The statute does not permit an agency to act first and comply later. Nor does it permit an agency to condition performance of its obligation on a showing of irreparable harm.⁵

The Court added:

The agency's decision in this case and its apparent practice are contrary to NEPA. The statute's requirement that a detailed environmental impact statement be made for a "proposed" action make clear that agencies must take the required hard look *before* taking that action.⁶

The Court of Appeals held that "once the NRC determines there is a significant deficiency in its NEPA compliance, it may not permit a project to continue in a manner that puts at risk the values NEPA protects simply because no intervenor can show irreparable harm."⁷ It then remanded the case to the Commission to decide whether to leave Powertech's license in place.

The Court of Appeals decisions are a strong signal that the Commission must act to bring the agency's doctrine and practice into compliance with NEPA. The Board is correct that,

⁴ *NRDC v. NRC*, 879 F.3d 1202, 1212 (D.C. Cir. 2018).

⁵ *Oglala Sioux Tribe*, 896 F.3d at 523.

⁶ *Id.* at 532.

⁷ *Id.* at 538.

for many years, the Commission has permitted NEPA environmental reviews to be augmented by adjudicatory decisions occurring after issuance of a materials license. But by allowing the significant deficiencies of NEPA analyses to be corrected by adjudicatory proceedings *after* a license has already been issued, the Commission has put NRC on course to repeatedly and predictably violate a core requirement of NEPA. We have a responsibility to avoid this result.

Therefore, we should now hold that the Board cannot correct significant deficiencies of a NEPA environmental review through the hearing process after a licensing action has already been taken in reliance on the deficient NEPA analysis.⁸

Aside from bringing the agency into compliance with NEPA, requiring the Staff to supplement the FSEIS would also provide interested stakeholders with the opportunity to comment on the Staff's determination that additional cultural resources information is unavailable. Although adjudicatory hearings can provide for "more rigorous public scrutiny" of a NEPA environmental review that a public comment period, they are also much more restrictive.⁹ Many interested stakeholders likely would be unable to demonstrate standing to intervene or to submit a contention that meets NRC's stringent admissibility standards. Or they may lack the financial resources to participate in an adjudicatory hearing. Yet, these stakeholders may offer insightful and valuable comments for the agency to consider as part of a public comment period on a supplement to the FSEIS.

For these reasons, I would grant review of this aspect of the Oglala Sioux Tribe's petition and direct the Staff to supplement the FEIS with an explanation of (1) its determination that

⁸ This approach would not require completing the hearing before making a licensing decision, and it would not change Commission jurisprudence allowing for augmentation of the environmental record *before* a licensing action is taken. Rather, if a licensing decision is based on an environmental review that the Board or Commission later finds to be significantly deficient, then after-the-fact augmentation of the environmental review with the hearing record is not available as an option to correct the deficiency.

⁹ *Hydro Res., Inc.* (Rio Rancho, NM), CLI-01-4, 53 NRC 31, 53 (2001).

additional cultural resources information is unavailable and (2) the relevance of the unavailable information to evaluating the reasonably foreseeable significant adverse impacts on the human environment.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

| | | |
|---|---|------------------------|
| In the Matter of |) | |
| |) | |
| POWERTECH (USA) INC. |) | Docket No. 40-9075-MLA |
| (Dewey-Burdock In Situ Recovery Facility) |) | |
| |) | |

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing **COMMISSION MEMORANDUM AND ORDER (CLI-20-09)** have been served upon the following persons by Electronic Information Exchange, and by electronic mail as indicated by an asterisk (*).

U.S. Nuclear Regulatory Commission
Atomic Safety and Licensing Board (ASLB)
Mail Stop T-3F23
Washington, DC 20555-0001

William J. Froehlich, Chair
Administrative Judge
william.froehlich@nrc.gov

G. Paul Bollwerk, III
Administrative Judge
paul.bollwerk@nrc.gov

Molly Mattison, Law Clerk
Molly.Mattison@nrc.gov

Ian R. Curry, Law Clerk
ian.curry@nrc.gov

Stephanie B. Fishman, Law Clerk
Stephanie.Fishman@nrc.gov

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

U.S. Nuclear Regulatory Commission
Office of the Secretary of the Commission
Rulemakings & Adjudications Staff
Mail Stop O-16B33
Washington, DC 20555-0001
hearingdocket@nrc.gov

U.S. Nuclear Regulatory Commission
Office of the General Counsel
Mail Stop O-15 D21
Washington, DC 20555-0001
Lorraine J. Baer, Esq.
Lorraine.Baer@nrc.gov
Robert G. Carpenter, Esq.
Robert.Carpenter@nrc.gov
Esther R. Houseman, Esq.
Esther.Houseman@nrc.gov
Carrie M. Safford, Esq.
Carrie.Safford@nrc.gov

OGC Mail Center:
RidsOgcMailCenter.Resource@nrc.gov

POWERTECH (USA) INC., DEWEY-BURDOCK IN SITU RECOVERY FACILITY
DOCKET NO. 40-9075-MLA
COMMISSION MEMORANDUM AND ORDER (CLI-20-09)

Counsel for the Applicant (Powertech)
Thompson & Pugsley, PLLC
1225 19th Street, NW, Suite 300
Washington, DC 20036
Christopher S. Pugsley, Esq.
cpugsley@athompsonlaw.com
Cynthia L. Seaton, Paralegal
cseaton@athompsonlaw.com
Anthony J. Thompson, Esq.
ajthompson@athompsonlaw.com

Consultant to Applicant (Powertech)
WWC Engineering
1849 Terra Ave.
Sheridan, WY 82801
Jack W. Fritz
jfritz@wwcengineering.com

Counsel for the Oglala Sioux Tribe
Western Mining Action Project
P. O. Box 349
Lyons, CO 80540
Jeffrey C. Parsons, Esq.
wmap@iqc.org

Counsel for the Oglala Sioux Tribe
Energy & Conservation Law
1911 Main Avenue, Suite 238
Durango, CO 81301
Travis E. Stills, Esq.*
stills@frontier.net

Counsel for Consolidated Intervenors
David C. Frankel, Esq.
1430 Haines Ave., #108-372
Rapid City, SD 57701
E-mail: arm.legal@gmail.com

Counsel for Consolidated Intervenors
(Susan Henderson and Dayton Hyde)
Law Office of Bruce Ellison
P.O. Box 2508
Rapid City, SD 57709
Bruce Ellison, Esq.*
belli4law@aol.com

Counsel for Consolidated Intervenors
(Dayton Hyde)
Thomas J. Ballanco, Esq.*
945 Traval Street, #186
San Francisco, CA 94116
harmonicengineering@gmail.com

Office of the Secretary of the Commission

Dated at Rockville, Maryland,
This 8th day of October 2020.