

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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

MOTION FOR CLARIFICATION REGARDING SCOPE OF ADMITTED CONTENTIONS

INTRODUCTION

On August 5, 2010, the Board issued its Memorandum and Order granting the hearing requests of the Consolidated Intervenor<sup>1</sup> and the Oglala Sioux Tribe. In its Order, the Board admitted three of the Consolidated Intervenor's contentions and four of the Tribe's contentions. The NRC Staff respectfully requests that, for six of the seven admitted contentions, the Board clarify which of the specific bases in the contentions are admitted for litigation. The Staff also asks the Board to clarify that, under Commission precedent, the scope of the admitted contentions is limited to the bases pled with particularity in the hearing requests. Finally, the Staff asks the Board to clarify the regulatory bases for its rulings on two issues.

BACKGROUND

The Consolidated Intervenor filed their hearing request on March 8, 2010, and on April 30, 2010 they submitted a late-filed contention. The Board admitted four of the Consolidated Intervenor's eleven total contentions but merged two contentions, so that the Intervenor actually have three admitted contentions. These contentions—labeled D, E and K—allege

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<sup>1</sup> Because their hearing requests were granted, the Staff will refer to Dayton Hyde, Susan Henderson, and Aligning for Responsible Mining (ARM) as the "Consolidated Intervenor." Although David Frankel and Clean Water Alliance (CWA) were also admitted as parties, Mr. Frankel has elected to be represented by ARM, and Ms. Henderson has elected *not* to be represented by CWA, but rather to proceed in her individual capacity. Intervenor's Response to Memorandum and Order Requiring Election of Petitioners Henderson and Frankel Individually or through CWA and ARM Respectively (August 13, 2010).

deficiencies in Powertech (USA) Inc.'s analyses of baseline water quality, artesian groundwater flow and horizontal groundwater flow (Contention D); confinement of the host aquifer and potential pathways resulting from faults and fractures (Contention E, merged with Contention J); and cultural and historic resources that may be present at Powertech's proposed site (Contention K).

The Oglala Sioux Tribe filed its hearing request on April 6, 2010. The Board admitted four of the Tribe's ten contentions. The admitted contentions challenge Powertech's assessment of cultural and historic resources (Contention 1), the adequacy of information on baseline groundwater quality (Contention 2), the adequacy of information relevant to determining whether Powertech can contain fluid migration (Contention 3), and Powertech's assessment of impacts relating to the quantity of water it will use (Contention 4). Among the Tribe's six contentions that the Board rejected was Contention 7, which argued that Powertech's application is deficient because it does not include a plan for disposal of 11e.(2) byproduct material.

Both the Consolidated Intervenor and the Tribe included with their hearing requests several affidavits or declarations from individuals they identified as experts. The Consolidated Intervenor relied on the opinion of Hannan LaGarry, Ph.D., and Robert Moran, Ph.D., for contentions D, E and J; and the opinion of Louis Redmond, Ph.D., for Contention K. The Tribe relied on the opinion of Wilmer Mesteth, its Tribal Historic Preservation Officer, for Contention 1; and the opinion of Dr. Moran for Contentions 2, 3 and 4. Each of these opinions raised numerous arguments as to why Powertech's application fails to comply with NRC requirements or other applicable law. For example, the Consolidated Intervenor's Contention K includes a section titled "Bases," which sets forth six arguments drawn from Dr. Redmond's opinion. As another example, the Tribe's Contention 3 reprints eleven paragraphs from Dr. Moran's opinion.

In these eleven paragraphs, each of which relates to Powertech's analyses of fluid migration, Dr. Moran makes a number of distinct arguments as to why Powertech's analyses are deficient.

### DISCUSSION

In ruling on the hearing requests, the Board narrowed the scope of certain admitted contentions. For example, the Board rejected the portion of the Consolidated Intervenor's Contention D alleging organizational deficiencies in Powertech's application. The Board also rejected as unripe the portion of the Tribe's Contention 1 alleging the application is deficient because Powertech has not consulted with the Tribe regarding cultural and historic resources. In other cases, however, the Board did not clarify whether it was admitting the entire contention set forth in the hearing request, or only a portion of the contention. For reasons discussed below, the Staff believes the Board may not, in fact, have concluded that all the bases in the admitted contentions are suitable for litigation. The Staff would therefore ask the Board to clarify the scope of the admitted contentions. The Staff would also ask the Board to clarify several other matters related to its Order.

#### I. The Board Should Clarify Which Bases in the Admitted Contentions are Subject to Litigation

Commission precedent confirms that it is important to define adequately the scope of any admitted contention. Because a contention's scope is defined by its bases, a Board's failure to identify clearly which bases are admissible—and which bases are not—has been found to be error. *Crow Butte Resources, Inc.* (North Trend Expansion Project), CLI-09-12, 69 NRC 535, 553–54 (2009). *See also Progress Energy Florida, Inc.* (Combined License Application, Levy County Nuclear Power Plant, Units 1 and 2), CLI-10-02, 70 NRC \_\_ (January 7, 2010) (slip op. at 6) (explaining that in *Crow Butte* the Board erred because it “fail[ed] to identify clearly which of the diffuse and, in some cases, unsupported claims were admitted for hearing[,]” such that “the parties were left without a clear roadmap as to which elements of several broadly worded claims were, in fact, admissible.”) On the other hand, Board rulings

have been affirmed where, in cases involving contentions with multiple subparts, the Board considered each individual subpart, such that it “left no doubt as to which matters were and were not admitted for hearing.” *Levy County*, CLI-10-02, 70 NRC at \_\_\_\_ (slip op. at 7).

In the present case, the Staff requests clarification regarding the scope of the Consolidated Intervenor’s Contentions D and K and the Tribe’s Contentions 1–4.<sup>2</sup> The Staff respectfully submits that ruling on the admissibility of the specific bases offered in support of these contentions will focus the issues for litigation in this proceeding and serve the goals identified in Commission precedent. For example, even if the Board were to determine that *all* bases in the admitted contentions are subject to litigation, the Staff would benefit from better understanding the issues it will need to address in its statements of position and testimony.

Below the Staff identifies the contentions for which it seeks clarification. The Staff also explains why, under Commission precedent, it is appropriate for the Board to narrow the scope of each contention.

#### Consolidated Intervenor’s Contention D

In the portion of Contention D admitted by the Board, the Intervenor argued that Powertech’s application is deficient because “[n]o coordinated, statistically-sound data set for all Baseline Water Quality (both surface and ground water) is presented in [the application] as is required in NURGEG—1569 [sic].” Petition at 37 (citing Moran Opinion dated February 23, 2010). It is well established, however, that a NUREG sets forth only the Staff’s *guidance* on how an applicant or licensee may comply with NRC regulations. *The Curators of the University*

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<sup>2</sup> The Staff is not requesting clarification regarding the scope of the Consolidated Intervenor’s Contention E, as the Staff believes, based on the language of the contention and the Board’s Order, that the scope of the admitted contention is reasonably clear. The Staff would note, however, that Contention E contains one clear misstatement. The Intervenor claim “the Application states that so much is unknown about the [Dewey-Burdock] area and its hydrology, and the inter-connection between aquifers that it is not possible to provide assurance that the confinement will be adequate to protect public health and safety.” Petition at 40. Such a statement appears nowhere in the application. To the extent this is Dr. LaGarry’s *opinion* based on his review of the application, that opinion would appear to merely repeat the overarching claim made in Contention E regarding an alleged lack of confinement.

of Missouri (TRUMP-S Project) (Byproduct License No. 24-00513-32; Special Nuclear Materials License No. SNM-247), CLI-95-1, 41 NRC 71, 98 (1995). *See also Carolina Power & Light Co. and North Carolina Eastern Municipal Power Agency* (Shearon Harris Nuclear Power Plant), ALAB-852, 24 NRC 532, 544 (1986) (“We need only remind the intervenors that NUREG-0654 is not a Commission regulation that compels obedience, as the intervenors seemingly believe.”); *Metropolitan Edison Co.* (Three Mile Island Nuclear Station, Unit 1), ALAB-698, 16 NRC 1290, 1298–99 (1982) (“NUREG-0654 is not a regulation. It is guidance.”).<sup>3</sup> The Petitioner’s claims based on the NUREG therefore cannot be admitted as a contention. Accordingly, the Staff would ask the Board to clarify that this particular basis within Contention D is not appropriate for litigation.

Also in Contention D, the Intervenor’s argue that Powertech “further confuse[s]” baseline groundwater quality issues because the data presented in the application “will not actually be used to determine baseline” quality. Petition at 37. As evidence, the Intervenor’s point to a section of the Supplement to Powertech’s application that discusses plans to install eight water quality wells in the ore zone. The Intervenor’s contend that these wells will be used to determine baseline water quality, demonstrating that the data in the application is incomplete. The wells the Intervenor’s identify, however, will not be used to gather background baseline information, but *operational* baseline information that will allow Powertech to develop the groundwater restoration standards required by Criterion 5B.<sup>4</sup> A brief look at the Supplement page cited by

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<sup>3</sup> NUREG-1569, which Dr. Moran cites, makes this clear. See NUREG-1569, page xviii (“It is important to note that the acceptance criteria laid out in this standard review plan are for the guidance of NRC staff responsible for the review of applications to operate *in situ* leach facilities. Review plans are not substitutes for the Commission’s regulations, and compliance with a particular standard review plan is not required. . . . Methods and solutions different from those set out in the standard review plan will be acceptable if they provide a basis for the findings requisite to the issuance or continuance of a license by NRC.”).

<sup>4</sup> Powertech’s proposed wells are relevant to meeting requirements imposed by the second sentence in Criterion 7 of 10 C.F.R. Part 40, Appendix A. This sentence states, “Throughout the construction and operating phases of the mill, an operational monitoring program must be conducted to measure or (continued. . . )

the Intervenor, page 3-3, makes this clear. “[W]here a contention is based on a factual underpinning in a document that has been essentially repudiated by the source of that document, the contention may be dismissed unless the intervenor offers another independent source.” *Public Service Co. of New Hampshire* (Seabrook Station, Units 1 and 2), CLI-89-3, 29 NRC 234, 241 (1989). Here, the Board should clarify that Powertech’s plans for operational monitoring wells are not relevant to the admitted contention, which challenges Powertech’s background baseline information.

#### Consolidated Intervenor’s Contention K

Contention K contains six bases pertaining to Powertech’s Cultural Resources Evaluation for the Dewey-Burdock site. The first basis merely summarizes the regulations upon which the Consolidated Intervenor is relying, however, while the sixth basis merely summarizes the arguments made in bases two through five. It is the middle four bases where the Intervenor actually present their arguments. The Intervenor’s core argument, raised in bases 3 and 5, is that the Cultural Resources Evaluation is deficient because Powertech’s contractor, the Archeology Laboratory of Augustana College (ALAC), did not conduct sub-surface testing of all sites within the Dewey-Burdock boundary. The Staff would ask the Board to clarify that this issue—whether ALAC needs to conduct additional sub-surface testing—defines the scope of the admitted contention.

The Staff would further ask the Board to clarify that other concerns the Intervenor raise are not part of the admitted contention. Specifically, the Intervenor’s claim that the eleven-

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(. . .continued)

evaluate compliance with applicable standards and regulations; to evaluate performance of control systems and procedures; to evaluate environmental impacts of operation; and to detect potential long-term effects.” The baseline information the Intervenor are challenging, on the other hand, is required by the *first* sentence in Criterion 7.

volume, 2,000-page<sup>5</sup> Cultural Resources Evaluation is “merely an inventory of sites based on previously existing information . . .” (Basis 2) clearly lacks the support necessary to admit this issue under 10 C.F.R. § 2.309(f)(1)(v). See *Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), LBP-98-7, 47 NRC 142, 181 (1988) (“ . . . the Board is not to accept uncritically the assertion that a document or other factual information or an expert opinion supplies the basis for a contention.”).<sup>6</sup> The Board should clarify that there is no need for the parties to litigate this issue. The Board should also clarify that, contrary to the Intervenor’s arguments in Basis 4, not all “unknowns must be resolved” and not all sites must be at this time be determined eligible or ineligible for inclusion on the National Register of Historic Places. Rather, a phased approach to archeological investigations is generally acceptable under Commission precedent. *Hydro Resources, Inc.* (P.O. Box 777, Crownpoint, New Mexico 87313), CLI-06-11, 63 NRC 483, 489 (2006) (explaining that “the NHPA regulations continue to expressly *permit* a phased approach to cultural resource review”) (emphasis in original). See also *Hydro Resources, Inc.* (2929 Coors Road, Suite 101, Albuquerque, NM 87120) CLI-99-22, 50 NRC 3, 13 (1999) (“phased compliance [with the NHPA] is acceptable under applicable law”). The Board should therefore clarify that Basis 4 is not within the scope of the admitted contention.

#### Oglala Sioux Tribe’s Contention 1

As admitted by the Board, the Tribe’s Contention 1 is supported almost entirely by the affidavit of Wilmer Mesteth. Petition at 12. More specifically, Contention 1 is supported by

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<sup>5</sup> By the Staff’s count, the Cultural Resources Evaluation is 2,091 pages long.

<sup>6</sup> Rather than being an “inventory . . . based on previously existing information,” the Cultural Resources Evaluation reflects fieldwork that included a pedestrian survey covering 100% of the area of potential effect at Dewey-Burdock. Along with the pedestrian survey, ALAC conducted limited subsurface shovel tests as needed. See Evaluation at 4.9–4.11, 4.16–4.18 (discussing project objectives, field methodology and implementation, data recordation procedures, laboratory analysis, cataloging, and curation methodology) (ADAMS Accession No. ML100670309).

paragraphs 13–14 and 16–19 of the Mesteth Affidavit, the paragraphs where he sets forth his specific claims of deficiencies in Powertech’s Cultural Resources Evaluation.

The Staff requests that the Board clarify which claims in Mr. Mesteth’s affidavit form the bases for the admitted contention. Mr. Mesteth’s claims in paragraphs 13–14 and 16–19 of his affidavit are both specific and distinct, lending themselves to individual rulings. Further, several of his claims are clearly lacking in factual support. The evidence of Native American grave sites to which Mr. Mesteth refers in paragraph 16—testimony from a February 19, 2009 hearing before the State of South Dakota Department of Environment and Natural Resources (DENR), Board of Minerals and Environment—is contradicted by the findings of the DENR Board, which concluded there is no evidence of such graves at Dewey-Burdock.<sup>7</sup> Paragraph 18 is also clearly lacking in support, as Mr. Mesteth overlooks studies from 2008 that are part of the Cultural Resources Evaluation and which were included with Powertech’s application. Further, paragraph 19 lacks support, as the discrepancy alleged in this paragraph results from a miscalculation on Mr. Mesteth’s part.<sup>8</sup>

In asking the Board to clarify the admitted bases, the Staff is not seeking a ruling on the merits of Contention 1. Rather, the Staff is asking only that the Board briefly examine the support the Tribe has offered for its contention. It is entirely appropriate for the Board to engage in this type of inquiry at the contention admissibility stage.

With respect to documentary or other factual information or expert opinion alleged to provide the basis for a contention, the Board is not to accept uncritically the assertion that a document or other factual information or an expert opinion supplies the basis for a contention. In the case of a document, the Board

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<sup>7</sup> The hearing cited by the Tribe related to petitions by the Tribe and others to include the Dewey-Burdock site on South Dakota’s preliminary list of special, exceptional, critical or unique lands. On April 20, 2009, DENR denied those petitions. <http://denr.sd.gov/powertech/PTSUFindingsofFact.pdf> Among its findings of fact, DENR concluded “[t]here is no evidence of Native American burials on the nominated lands.” *Id.* at ¶ 20.

<sup>8</sup> See NRC Staff’s Response to Oglala Sioux Tribe’s Hearing Request at 18 (addressing Mr. Mesteth’s claim that the Cultural Resources Evaluations omits references to 27 sites).

should review the information provided to ensure that it does indeed supply a basis for the contention.

*Private Fuel Storage*, LBP-98-7, 47 NRC at 181. See also *USEC, Inc.* (American Centrifuge Plant), LBP-05-28, 62 NRC 585, 596-97 (2005) ("Determining whether a contention is adequately supported by a concise allegation of the facts or expert opinion is not a hearing on the merits. . . . [S]upporting material provided by a petitioner, including those portions of the material that are not relied upon, is subject to Board scrutiny."). In the present case, the Staff asks only that the Board review Mr. Mesteth's claims to verify whether the factual information upon which he relies forms a basis for the admitted contention. The Staff respectfully submits that, for at least several of the bases in Mr. Mesteth's affidavit, the requisite factual support is lacking.

#### Tribe's Contention 2

The Tribe relies on Dr. Moran's opinion as support for Contention 2. Dr. Moran sets forth his concerns in six paragraphs from his affidavit. These paragraphs are reprinted in the Tribe's Petition. Petition at 18–21 (citing Moran Affidavit at paragraphs 16, 22–24, 29, 62). The Staff would ask the Board to clarify which of Dr. Moran's concerns form the bases for the admitted contention. In particular, the Staff would ask the Board to clarify that certain claims Dr. Moran makes in paragraphs 22 and 24 are outside the scope of the admitted contention. In these paragraphs Dr. Moran claims that Powertech's application is deficient because it does not adhere to NUREG-1569 and because Powertech's plan to install eight operational monitoring wells undermines its current baseline data. These claims are the very same claims raised in the Consolidated Intervenor's Contention D, which also relies on Dr. Moran's opinion. For the same reasons the Board should reject the claims in the context of Contention D, the Board should clarify that Dr. Moran's claims based on NUREG-1569 and Powertech's proposed monitoring wells are outside the scope of Contention 2.

### Tribe's Contention 3

The Tribe cites eleven paragraphs from Dr. Moran's Declaration as support for Contention 3. Petition at 22–24 (citing Moran Declaration at paragraphs 36–46). Many of these paragraphs raise distinct concerns with Powertech's evaluation of hydrogeological pathways. For example, paragraph 41 refers to breccia pipes and potential thinning of geologic confining units, while paragraph 46 concerns public data on the use of aquifers in Fall River and Custer Counties. The concerns raised in these paragraphs thus are appropriately addressed as separate bases offered in support of Contention 3. Further, at least some of these bases are clearly inadmissible. Paragraph 44, for example, rests on the misunderstanding that Powertech will bleed leachate in order to maintain a cone of depression in its well fields. Paragraph 45, on the other hand, is based on no more than Dr. Moran's unsupported claim that an aquifer exemption boundary is necessarily a "ground water sacrifice zone." See *Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), LBP-98-7, 47 NRC 142, 181 (1988) (explaining that "an expert opinion that merely states a conclusion . . . without providing a reasoned basis or explanation for that conclusion is inadequate because it deprives the Board of the ability to make the necessary, reflective assessment of the opinion as it is alleged to provide a basis for the contention."). It is appropriate for the Board to rule on these issues, so that the parties will know precisely which of the eleven bases in Contention 3 are within the scope of the admitted contention.

### Tribe's Contention 4

The Board appears to have admitted Contention 4 based on claims Dr. Moran made in paragraphs 12 and 14 of his Declaration. However, in Contention 4 the Tribe also relied on paragraph 13 in Dr. Moran's Declaration, which alleged that Powertech's application provides inconsistent estimates of water usage. Dr. Moran's claim in paragraph 13 was based on a

misreading of the application, however, as the allegedly inconsistent estimates he cited refer to different activities with different water usage requirements. Because the claim in paragraph 13 is obviously lacking in support, the Staff asks the Board to clarify that this claim does not form part of the admitted contention.

II. The Board Should Affirm that the Scope of the Contentions is Limited to those Bases Pled with Particularity in the Hearing Requests

It is well established that the scope of an admitted contention is limited to the specific arguments raised in the hearing request. As the Commission recently explained, this rule is designed to ensure that the NRC's adjudicatory process remains fair and efficient.

The scope of a contention is limited to issues of law and fact pled with particularity in the intervention petition, including its stated bases, unless the contention is satisfactorily amended in accordance with our rules. . . . Parties and licensing boards must be on notice of the issues being litigated, so that parties and boards may prepare for summary disposition or for hearing. Our procedural rules are designed to ensure focused and fair proceedings.

*Southern Nuclear Operating Co.* (Early Site Permit for Vogtle ESP Site), CLI-10-05, 70 NRC \_\_ (Jan. 7, 2010) (slip op. at 14). See also *Entergy Nuclear Generation Company and Entergy Nuclear Operations, Inc.* (Pilgrim Nuclear Power Station), CLI-10-15, 70 NRC \_\_ (June 17, 2010) (slip op. at 4) (affirming that, under the NRC's rules, petitioners must set forth their contentions "with particularity"); *Duke Energy Corporation* (Catawba Nuclear Station, Units 1 and 2), LBP-04-12, 59 NRC 388, 391 (2004) (explaining that "the bases clarify the 'reach' and 'focus' of a contention, which may not be changed absent an appropriate amendment to a contention").

Here, the Staff is concerned that the language of certain admitted contentions makes them susceptible to broad claims of deficiencies in Powertech's application—claims going far beyond those presented in the hearing requests. For example, Contentions K and 1 relate to Powertech's Cultural Resources Evaluation. This Evaluation contains eleven volumes and is over 2,000 pages long. Although the Consolidated Intervenors and the Tribe both argued that

the Evaluation is deficient, their arguments were limited to several pages of text. Indeed, the Consolidated Intervenor's arguments were set forth in a one-page letter from Dr. Redmond, while the Tribe's arguments were for the most part limited to paragraphs 13–14 and 16–19 of Mr. Mesteth's affidavit. The Staff's concern is that focusing on the language of the admitted contentions themselves, rather than the bases pled with particularity in support of those contentions, could lead to wide-ranging testimony that departs from the proper scope of this proceeding. The Staff would therefore ask the Board to clarify that, under Commission precedent, the scope of the admitted contentions is limited to those bases set forth in the hearing requests.

III. The Board Should Clarify Its Recommended Approach to Contention 7

In Contention 7, the Tribe argued that Powertech's application is deficient because Powertech does not presently have a plan for disposal of 11e.(2) byproduct material generated during operations at Dewey-Burdock. The Board rejected this contention, noting that NRC guidance allows an applicant to deal with the issue of waste disposal in one of two ways: either in its application or as a license condition. The Board expressed concern, however, that the Tribe may have no recourse if Powertech is granted a license and there is neither an 11e.(2) disposal plan in place nor a license condition requiring such a plan. The Board therefore 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." Order at 78.

The Staff would ask the Board to clarify that, because there will not be a mandatory hearing in this case, there is no basis for the Board retaining oversight of the 11e.(2)-disposal issue raised in Contention 7.<sup>9</sup> At the same time, the Staff wishes to assure the Board that the

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<sup>9</sup> 10 C.F.R. § 51.107, which the Board cites in footnote 406 of its Order, applies to "Public hearings in proceedings for issuance of combined licenses; limited work authorizations." This regulation does not appear to apply to hearings on uranium recovery applications.

Tribe will have recourse if, assuming Powertech does not already have an 11e.(2) disposal plan in place, the Staff were to issue Powertech a license without a necessary license condition. The Tribe will have recourse because, after the Staff completes its safety and environmental reviews related to Powertech's application, the Staff "is expected to issue its approval or denial of the application promptly[.]" 10 C.F.R. § 2.1202(a). This means that if the Staff's findings support granting Powertech's application, the Staff will issue Powertech a license at approximately the same time the Staff releases the later of either the final safety evaluation report (SER) or final supplemental environmental impact statement (SEIS). In the event the Staff failed to include a necessary license condition regarding an 11e.(2) disposal plan, the Tribe could challenge the Staff's action in the same manner it could challenge perceived deficiencies in the SER or SEIS; that is, the Tribe could submit a late-filed contention based on Powertech's license.

#### IV. Miscellaneous

As admitted by the Board, part of the Consolidated Intervenor's Contention E is whether "[t]he lack of adequate confinement of the host Inyan Kara aquifer makes the proposed operation inimical to public health and safety in violation of Section 40.31(d)." Order at 42, 88. Based on the language of the contention, it appears the Board may have intended to refer to Section 40.32(d). The Staff would ask for clarification on this issue.<sup>10</sup>

#### CONCLUSION

The NRC Staff respectfully asks that the Board clarify which of the specific bases in the admitted contentions are within the scope of this proceeding. The Staff also asks the Board to clarify that, under Commission precedent, the scope of the admitted contentions is limited to the

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<sup>10</sup> As required by 10 C.F.R. § 2.323(b), the Staff has contacted counsel for the other parties in this proceeding to obtain their views on the Staff's motion. The Consolidated Intervenor's support the request for clarification in Section IV above, but take no position on the remainder of the Staff's motion and will respond to the motion as appropriate. Powertech supports the Staff's motion and plans to respond accordingly. The Oglala Sioux Tribe opposes the Staff's motion to the extent it seeks to narrow the scope of the admitted contentions, but takes no position on the request for clarification in Section IV.

bases pled with particularity in the hearing requests. Further, the Staff asks the Board to clarify its recommended approach with respect to the Tribe's Contention 7 and the regulatory basis for admitting Contention E.

Respectfully submitted,

*/Signed (electronically) by/  
Michael J. Clark*

Michael J. Clark  
Patricia A. Jehle  
Counsel for the NRC Staff

Dated at Rockville, Maryland  
this 16 day of August, 2010

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of	)	
	)	
POWERTECH (USA) INC	)	Docket No. 40-9075-MLA
	)	ASLBP No. 10-898-02- MLA-BD01
	)	
(Dewey-Burdock In Situ Uranium Recovery	)	Date: August 16, 2010
Facility)	)	

CERTIFICATE OF SERVICE

I hereby certify that copies of the NRC Staff's "MOTION FOR CLARIFICATION REGARDING SCOPE OF ADMITTED CONTENTIONS" in this proceeding have been served via the Electronic Information Exchange (EIE) this 16<sup>th</sup> day of August, 2010, which to the best of my knowledge resulted in transmittal of the copies to those on the EIE Service List for the above-captioned proceeding.

*/Signed (electronically) by/*

*Michael J. Clark*

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Michael J. Clark  
Counsel for the NRC Staff