

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	)	
Facility)	)	November 21, 2014

**OGLALA SIOUX TRIBE MOTION TO ADMIT ADDITIONAL TESTIMONY AND EXHIBITS**

Pursuant to the Board’s Order dated October 22, 2014, Intervenor Oglala Sioux Tribe (“Tribe”) submits this Motion to Admit Additional Testimony and Exhibits. Counsel for the Tribe has consulted with the other parties regarding this Motion. The Tribe’s understanding is that the parties have mutually agreed to not oppose supplemental testimony and exhibits addressing how Powertech’s September 14, 2014 disclosures are relevant to the admitted contentions. The parties do, however, reserve their rights to respond to any new evidence as appropriate and file motions directed toward any other party’s supplemental testimony or exhibits.

10 C.F.R. § 2.336 provides the standard for the admissibility of evidence in this hearing.

In relevant part, the rule provides:

(a) Admissibility. Only relevant, material, and reliable evidence which is not unduly repetitious will be admitted. Immaterial or irrelevant parts of an admissible document will be segregated and excluded so far as is practicable.

At the hearing in Rapid City, the Board ruled that the borehole data and maps that underpin the testimony submitted herewith were relevant at least to Contention 3. The Board reiterated this finding of relevance in its September 8, 2014 Post-Hearing Order. The Written Supplemental Testimony of Dr. LaGarry sought to be admitted through the present Motion is

based on his review of this relevant data. As discussed in the Testimony, Dr. LaGarry opines that the information contained in the recently-disclosed borehole data demonstrate a lack of competent analysis in the FSEIS of the ability of the applicant to contain fluid migration and a lack of containment, as the Tribe and Consolidated Intervenors argue in Contention 3. Further, the testimony demonstrates that the NRC Staff's review of the borehole data purporting to support NRC Staff's FSEIS analysis, was not done in a scientifically competent or sound manner.

Further, the exhibits sought to be admitted through the present Motion are accurate scanned reproductions of materials included in the relevant borehole log data disclosed by Powertech. In its November 13, 2014 Order (at 3), the Board instructed the Tribe to reproduce and reference such exhibits in testimony, and it has done so. Dr. LaGarry's Written Supplemental Testimony refers to these exhibits using the nomenclature from the original files he reviewed at Powertech's offices in Edgemont. Attached to this Motion is a list of these Exhibits correlating each of them to an "OST-####" number consecutively numbered as the Tribe has done in previous submissions.

The Tribe requests that the Board admit Dr. LaGarry's Written Supplemental Testimony (OST-029) and each of the Exhibits that he refers to and relies on in his Testimony (OST-030 through OST-041).

The Tribe does not believe or concede that Dr. LaGarry's testimony, the borehole logs, or the driller's notes can qualify as confidential under federal laws applicable to these proceedings. The testimony and exhibits are offered to address inadequacies and omissions in NRC Staff and Powertech analyses and conclusions that are based on borehole logs and information Powertech provided in its application and which are already included in the hearing record. However, in an

abundance of caution, the testimony and exhibits are being filed under seal to allow Powertech and/or NRC Staff the opportunity to file a motion seeking protected status. To the extent no such protections are sought, the Tribe requests the testimony and exhibits be posted in the NRC ADAMS public database.

/s/ Jeffrey C. Parsons

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Attorneys for Oglala Sioux Tribe

Dated at Lyons, Colorado  
this 21<sup>st</sup> day of November, 2014

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Motion to Admit Additional Testimony and Exhibits in the captioned proceeding were served via the Electronic Information Exchange (“EIE”) on the 21<sup>st</sup> day of November 2014, which to the best of my knowledge resulted in transmittal of same to those on the EIE Service List for the captioned proceeding.

/s/ signed electronically by \_\_\_\_\_

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## **LIST OF SUPPLEMENTAL EXHIBITS**

OST-029 – Written Supplemental Testimony of Dr. Hannan LaGarry

OST-030 – Exhibit SNT25

OST-031 – Exhibit TRT44

OST-032 – Exhibit ELT4

OST-033 – Exhibit DS178

OST-034 – Exhibit D392

OST-035 – Exhibit IHK2

OST-036 – Exhibit IHM32

OST-037 – Exhibit IHM62

OST-038 – Exhibit TRR17

OST-039 – Exhibit TRT16

OST-040 – Exhibit FBM95

OST-041 – Exhibit TRJ111