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August 30, 2011

Kevin Hsueh, Branch Chief
United States Nuclear Regulatory Commission
Mail Stop T8F05
Washington DC, 20555-0001

THPO file# 11-73

RE: Letter to Powertech requesting a plan for identification of TCP's

Dear Mr. Hsueh

The Standing Rock Sioux Tribe's Tribal Historic Preservation Office (SRST-THPO) is in receipt of a letter addressed to Richard Blubagh of Powertech regarding the NRC's obligation to identify historic properties of cultural, traditional and religious significance to the tribes (TCP) and the subsequent request of a plan to identify TCP's to be made by Powertech. The SRST-THPO tribal archaeologist has reviewed this letter and would like to clarify a number of points addressed within it. First and foremost, it is the federal agencies responsibility to ensure that historic properties of cultural, traditional and religious significance to an Indian tribe are identified through consultation (36CFR800.4 (a) (4)), and identification (36CFR800.4 (b), 36CFR800.4 (b) (1) and 36 CFR 800.4 (b) (2)). It is also the federal agencies responsibility to recognize that the Indian tribes have special expertise when it comes to the evaluation of those sites (36CFR800.4 (c) (1)). This is not the applicant's responsibility. It is the NRC'S responsibility as the federal agency to ensure that these historic properties are accounted for when determining the results of the identification and evaluation of historic properties (36CFR800.4 (d)).

Through our consultation efforts on this project during the June 2011 meetings, the NRC was informed by the tribes that a TCP study needs to be conducted by the tribes to identify properties of cultural, traditional and religious significance to them. The SRST-THPO directs your attention to the transcript of that meeting on page 181 where Steve Vance, THPO from Cheyenne River Sioux Tribe specifically requested that tribes go in and conduct a survey for these properties. Additionally, page 184-188 of the transcript I also request that a TCP study be conducted by the tribes and outline the ways in which archaeologists have missed sites because they simply are not qualified to conduct TCP studies. Paige Olson with the South Dakota State Historic Preservation Office also agreed that a TCP study needed to be conducted for this project (page 188). In spite of these recommendations, in your letter to Powertech you state the following:

Although NRC believes that a traditional cultural property survey of the area of potential effect is an effective method to identify these properties; information on TCP's can also be obtained in a variety of ways. For example, site visits by tribal representatives could be used to identify

TCP's, or an applicant could hire an archaeologist with experience identifying and evaluating potential TCP's. Alternatively, an applicant could use a combination of these or other methods.

This is completely contrary to what was told to you by the tribes that were in attendance at the meeting in June. I do not believe that there is a single tribe that was in attendance at this meeting that would agree with your statement to Powertech concerning how to conduct TCP studies. I will reiterate again that there are no archaeologists who can properly identify or evaluate historic properties of traditional, cultural and religious significance to tribes. Hiring an archaeologist to conduct these surveys will not fulfill section 106 compliance for the identification of historic properties of significance to tribes. The SRST-THPO will never agree that a survey conducted in this manner addresses any of our concerns for our significant historic properties and I'm more than reasonably positive that every other tribe that was in attendance would agree. As I outlined in the earlier in this document, it is the federal agencies obligation to ensure that historic properties of significance to the tribes are consulted on, identified and evaluated. The NRC as the federal agency would be failing in its responsibilities under Section 106 if a survey by an archaeologist to identify TCP's is conducted. This survey can only be conducted by the tribes and if you will recall, during the site visit to the Dewey-Burdock APE we stopped at a site identified by the archaeologists and the tribes pointed out some of the features that were missed by the archaeologists. NRC staff accompanied the tribes and were shown exactly what was missed and that was just for one site identified by the archaeologists. I know for a fact that at least 6 features were identified on that site. These features were missed by archaeologists yet identified by tribes and you still recommend that a survey by an archaeologist would address the identification portion of historic properties of significance to tribes? This doesn't even begin to address the concerns with archaeologists making determination of eligibility for sites of significance to tribes. If the archaeologists cannot even begin to identify sites, they certainly cannot evaluate if they are significant. If the proponent wishes to hire more archaeologists to conduct surveys, they are welcome to do so as long as the NRC understands that they will not be conducting a TCP study to identify historic properties of cultural, traditional and religious significance to the tribes.

On a related note, the tribes specifically asked for copies of the Class III survey for this project and for the Crow Butte facility North Trend Expansion (page 180 of the transcript). The SRST-THPO is still waiting to see these documents which is your responsibility to provide as part of the consultation requirements of 36 CFR 800.4 (c) (1), 36 CFR 800 (d) (1) and 36 CFR 800.5.

Sincerely,

STANDING ROCK SIOUX TRIBE



Terry Clouthier
Tribal Archaeologist