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In the Matter of:)	
)	Docket No.: 40-9075-MLA
POWERTECH (USA), INC.)	
)	Date: June 22, 2015
(Dewey-Burdock In Situ Uranium Recovery)	
Facility))	
)	
)	

I. INTRODUCTION

¹ See *Powertech (USA), Inc.* (Dewey-Burdock ISR Project), LBP-15-16, 81 NRC __ (April 30, 2015) (slip op.).

II. BACKGROUND AND PROCEDURAL HISTORY

Pursuant to the Commission's 10 CFR Part 40 and Appendix A uranium recovery regulatory program and associated guidance, Powertech submitted a license application for the Dewey-Burdock ISR Project to NRC for its review and approval on February 25, 2009.

After its license application was made publicly available, on January 5, 2010, NRC Staff issued a Federal Register notice providing interested stakeholders and other members of the public with an opportunity to request a hearing on the application. On March 12, 2010, the Commission established the Licensing Board. On March 8, 2010, and April 6, 2010, Consolidated Intervenorors (CI) and the Tribe submitted requests for a hearing and proposed contentions. On August 5, 2010, the Licensing Board issued LBP-10-16² in which CI and the Tribe each were granted standing to intervene and several contentions for both parties were admitted. Over the course of this proceeding, the Licensing Board issued additional decisions on contention admissibility regarding NRC Staff's draft supplemental environmental impact statement (DSEIS) and final supplemental environmental impact statement (FSEIS). *See Powertech (USA), Inc. (Dewey-Burdock ISR Project)*, LBP-13-09, 78 NRC 37 (July 22, 2013); *see also Powertech (USA), Inc. (Dewey-Burdock ISR Project)*, LBP-14-05, 79 NRC 377 (April 28, 2014).

On March 18, 2013, NRC Staff issued its Safety Evaluation Report (SER) detailing the analyses and conclusions of its safety review for all resource areas for the Project which stated that, absent an environmental concern to the contrary, Powertech's requested license should be issued.³ Neither the Tribe nor CI raised any contentions in opposition to the content or conclusions of the SER. On January 29, 2014, NRC Staff issued the Final Supplemental Environmental Impact Statement (FSEIS) which recommended that, absent a safety-related concern to the contrary,

² *See Powertech (USA), Inc., (Dewey-Burdock ISR Project)*, LBP-10-16, 72 NRC 361, (August 5, 2010).

³ *See Exs. NRC-134 and NRC-135.*

Powertech's requested license should be issued.⁴ On April 8, 2014, NRC Staff issued notice to the Licensing Board that it had issued Powertech NRC License No. SUA-1600, stating that "the Staff finds that the application complies with the Atomic Energy Act and the NRC's regulations...."⁵ The final record of decision (ROD) included a Programmatic Agreement (PA),⁶ which was the culmination of the National Historic Preservation Act (NHPA)⁷ Section 106 compliance process under 36 CFR Part 800 *et seq.* for which NRC served as the lead agency.

On August 19-21, 2014, the Licensing Board held an evidentiary hearing on the seven admitted contentions in Rapid City, South Dakota. On January 9, 2015, all parties submitted proposed findings of fact and conclusions of law to the Licensing Board. On January 29, 2015, all parties submitted replies to the previously submitted proposals.

On April 30, 2015, the Licensing Board issued LBP-15-16 in which five (5) of the seven (7) admitted contentions were resolved in favor of Powertech and NRC Staff. More specifically, the Licensing Board found in favor of Powertech and NRC Staff on all contentions related to groundwater protection (Contentions 2-4) and on National Environmental Policy Act (NEPA) issues related to mitigation measures and connected actions (Contentions 6 and 9). The Licensing Board also retained jurisdiction over the resolution of its ruling on Contentions 1A and 1B relating to historic and cultural resources and compliance with Section 106 of the NHPA. For the reasons discussed below, Powertech respectfully requests that the Commission deny the Tribe's Petition for Review in its entirety and find that Powertech's NRC License SUA-1600 should be upheld.

⁴ See NRC Staff Exhibits NRC-008-A & 008-B.

⁵ See ML14098A492.

⁶ The PA and associated correspondence from the ACHP was executed by the Advisory Council on Historic Preservation (ACHP) on April 7, 2014, and signed by NRC Staff, BLM, the South Dakota State Historic Preservation Office (SHPO) and Powertech. See Exs. NRC-018-A-(18-H).

⁷ See 16 U.S.C. § 470.

III. STANDARD OF REVIEW

As a general matter, the Commission conducts review in response to a petition for review filed pursuant to 10 C.F.R. § 2.341 (formerly 2.786). In determining whether to grant, as a matter of discretion, a petition for review of a Licensing Board Order, the Commission gives due weight to the existence of a substantial question with respect to the considerations set forth in 10 C.F.R. § 2.341(b). The Commission may, as a matter of discretion, grant review of Licensing Board orders based on whether a “substantial question” exists in light of the following considerations:

- (1) A finding of material fact is clearly erroneous or in conflict with a finding as to the same fact in a different proceeding;
- (2) A necessary legal conclusion is without governing precedent or is a departure from or contrary to established law;
- (3) A substantial and important question of law, policy or discretion has been raised;
- (4) The conduct of the proceeding involved a prejudicial procedural error; or
- (5) Any other consideration which the Commission may deem to be in the public interest.

10 C.F.R. § 2.341(b) (formerly § 2.786(b)(4)); *see also Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-05-16, 62 NRC 1, 3 (2005); *Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-05-19, 62 NRC 403, 410 (2005); *Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-04-10, 61 NRC 131, 132 (2004).

The Commission may dismiss its grant of review even though the parties have briefed the issues. *Tennessee Valley Authority*, (Browns Ferry Nuclear Plant, Units 1, 2, & 3), CLI-82-26, 16 NRC 880, 881 (1982), *citing Jones v. State Board of Education*, 397 U.S. 31 (1970). 10 C.F.R. § 2.341 (formerly § 2.786) describes when the Commission “may” grant a petition for review but does not mandate any circumstances under which the Commission must take review. *Louisiana Energy Services* (Claiborne Enrichment Center), CLI-97-12, 46 NRC 52, 53 (1997).

NRC precedent further addresses when the Commission may review the Board’s contention admissibility and merits determinations. For contention admissibility determinations, the Commission accords substantial deference to the Board’s rulings. *Amergen Energy Company, LLC* (Oyster Creek Nuclear Generating Station), CLI-06-24, 64 NRC 111, 121 (2006). More specifically,

the Commission defers to the Board's contention admissibility rulings unless the appeal points to an "error of law or abuse of discretion." *Crow Butte Resources, Inc.* (North Trend Expansion Area), CLI-09-12, 69 NRC 535, 543 (2009). Furthermore, while a party may petition for review of the Board's rulings on contention admissibility, the party must do more than simply restate its contention and cite additional support for the contention. In order for the party's petition to be granted, it must show that the Board committed an error of law or abuse of discretion when ruling on the contention. *Shieldalloy Metallurgical Corp.* (Newfield, New Jersey Facility), CLI-07-20, 65 NRC 499, 503-05 (2007).

The Commission also accords substantial deference to the Board's rulings on the merits of admitted contentions. Where the Board's decision rests on carefully made factual findings, the Commission typically will not disturb the decision. *Hydro Resources, Inc.* (Crownpoint Uranium Project), CLI-01-04, 53 NRC 31, 45 (2001); *see also id.* at 45–46 (holding that where the Presiding Officer has reviewed an extensive record in detail, with the assistance of a technical advisor, the Commission is generally disinclined to upset his findings and conclusions, particularly on matters involving fact-specific issues or where the affidavits or submissions of experts must be weighed). The Commission standard of "clear error" for overturning a Board's factual findings is quite high, particularly with respect to intricate factual findings based on expert witness testimony and credibility determinations. *Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-03-08, 58 NRC 11, 26-27 (2003). In particular, the fact that the Board accorded greater weight to one party's evidence than to the others' is not a basis for overturning the Board's decision. *David Geisen*, CLI-10-23, 72 NRC 210, 241 (2010).

Licensing Board findings may be rejected or modified if, after giving the Licensing Board's decision the probative force it intrinsically demands, the record compels a different result. *See e.g., General Public Utilities Nuclear Corp.* (Three Mile Island Nuclear Station, Unit 2), ALAB-926, 31 NRC 1, 13-14 (1990). However, a finding by a Licensing Board will not be overturned simply

because a different result could have been reached. *See Pacific Gas & Electric Co.* (Diablo Canyon Nuclear Power Plant, Unit 2), ALAB-254, 8 AEC 1184, 1187-1188 (1975). Generally, as stated in this proceeding, the Commission normally attaches “significance to [the presiding officer’s] evaluation of the evidence.” *Hydro Resources, Inc.* (Crownpoint Uranium Project), CLI-00-12, 52 NRC 1, 3 (citations omitted). Thus, the Commission generally does not “second-guess” a Presiding Officer’s “reasonable findings.” *Id.*

The Commission’s denial of review of a particular decision simply indicates that the appealing party “identified no ‘clearly erroneous’ factual finding or important legal error requiring Commission correction.” *Hydro Resources, Inc.* (Crownpoint Uranium Project), LBP-06-01, 63 NRC 41, 59 n.15 (2006), *aff’d*, CLI-06-14, 63 NRC 510 (2006) (*citing Hydro Resources, Inc.* (P.O. Box 15910, Rio Rancho, NM 87174), CLI-00-12, 52 NRC 1, 3 (2000) (*quoting* 10 C.F.R. § 2.786(b)(4), now § 2.341(b)(4))). Where the Presiding Officer has reviewed an extensive record in detail, with the assistance of a technical advisor, the Commission is generally disinclined to upset his findings and conclusions, particularly on matters involving fact-specific issues or where the affidavits or submissions of experts must be weighed. *Hydro Resources, Inc.* (Crownpoint Uranium Project), CLI-01-04, 53 NRC 31, 45-46 (2001).

IV. ARGUMENT

A. Claims on Previously Denied Contentions and Contentions Denied in LBP-15-16

The Tribe’s Petition offers a series of arguments regarding previously denied contentions throughout the course of this proceeding. Powertech will address each of these arguments hereinafter.

1. Contentions on 11e.(2) Byproduct Material Disposal

With respect to the Licensing Board’s August 2010 ruling in LBP-10-16 on the Tribe’s contention alleging that the application failed to include an 11e.(2) byproduct material disposal plan

(Tribe original Contention 7), the Tribe alleges that “somehow the applicant in this case was not required to provide any plan in the application for 11e2 Byproduct Material disposal.”⁸ Tribe May 26, 2015, Petition for Review (hereinafter “Tribe Petition”) at 4. This allegation fails to acknowledge that the Licensing Board’s finding in LBP-10-16 shows that the Tribe failed to point to any regulatory authority for requiring the presence of an 11e.(2) byproduct material disposal plan in a license application. *See* LBP-10-16 at 78. Further, NUREG-1569, which by Commission precedent is to be accorded “special weight,”⁹ allows *either* the 11e.(2) disposal agreement to be provided in the license application or for it to be required by license condition. *Id.* The Tribe also ignores the fact that Powertech’s license application included a plan for managing and disposing of 11e.(2) byproduct material; however, it did not include a specific disposal agreement with a licensed 11e.(2) disposal facility, which is not required under NUREG-1569. *See* Powertech Exhibit APP-040-C at 90-91. The Tribe has offered no case law or regulatory authority showing that the Licensing Board erred in denying this contention and, thus, its holding in LBP-10-16 should not be disturbed.

With respect to the Licensing Board’s July 2013 ruling in LBP-13-09 that this contention was not admissible when levied against the DSEIS, the Tribe again alleges that the Board erred when dismissing the contention since “the alleged deficiency not only involved the failure to confirm an available location for disposal or generalized impacts, but the necessary site-specific analysis of the direct, indirect, and cumulative environmental impacts associated with the transportation, care, and disposal of the waste from this proposed mine.” Tribe Petition at 5. This is a mischaracterization of LBP-13-09 wherein the Licensing Board found that the Tribe failed to “substantively dispute[] the

⁸ The Tribe alleges that the Board erred when ruling that “an applicant is not bound by NEPA, but by NRC Regulations in Part 51.” Tribe Petition at 4, *citing* LBP-10-16 at 78. However, the Tribe ignores the fact that 10 CFR Part 51 regulations are the Commission’s interpretation of the Council on Environmental Quality’s NEPA regulations.

⁹ While they are not binding on the Licensing Board, the Commission has stated in its decisions in *Seabrook* and *Private Fuel Storage* that Commission guidance documents are nonetheless entitled to special weight. *See Nextera Energy Seabrook, LLC* (Seabrook Station, Unit 1), CLI-12-05, 75 NRC 301, 314, n.78 (2012); *see also In the Matter of Private Fuel Storage* (Independent Spent Fuel Storage Installation), CLI-01-22, 54 NRC 255, 264 (2001).

analysis of impacts related to disposal of byproduct material in relevant sections of the DSEIS and the GEIS” or to address “the license condition related to disposal of byproduct material.”¹⁰

Therefore, contrary to the Tribe’s allegation, the DSEIS did provide the site-specific analysis of potential impacts of 11e.(2) byproduct material disposal but the Tribe failed to identify specific areas where this analysis was deficient. Thus, the Licensing Board’s denial of this contention should be upheld.

The Tribe also alleges with regard to the Licensing Board’s ruling in LBP-13-09 on this contention that “the ASLB found the contention inadmissible simply because the draft license contained a provision requiring the applicant to establish a disposal plan at some point in the future.” Tribe Petition at 5. It is inaccurate to state that the “disposal plan” would be established a point in the future. While a specific disposal agreement with White Mesa or another appropriately permitted facility was not provided in the DSEIS, the DSEIS describes the plan for accumulating and temporarily storing 11e.(2) byproduct material at the Dewey-Burdock site and transporting the material to a licensed disposal facility. *See* DSEIS Section 4.14, NRC Staff Exhibit NRC-009-A-2 at 193-212. The DSEIS also describes how NRC staff evaluated the distance from the Dewey-Burdock site to White Mesa and found that it is less than the distance for transporting yellowcake to the conversion facility in Metropolis, Illinois; it further notes that it relied on the GEIS risk analysis for yellowcake transportation to Metropolis, Illinois. *See id.* at 21-22. Thus, the Licensing Board had ample evidence to deny the Tribe’s proffered contention on this issue and the Commission should defer to that finding.

The Tribe also seeks to challenge the Licensing Board’s April 2014 ruling in LBP-14-5 with regard to this same contention on the FSEIS. Again, the Tribe misrepresents the Licensing Board’s evaluation in LBP-14-5. Specifically, the Tribe alleges that: “The Tribe raised this important issue

¹⁰ *See* LBP-13-09 at 42. The Licensing Board also found that the DSEIS and NUREG-1910 (GEIS) specifically addressed potential impacts associated with 11e.(2) byproduct material disposal on a programmatic and site-specific basis. *See id.*

yet again in association with the Final SEIS, but the ASLB summarily rejected that contention as not based on materially different information, finding that because the DSEIS had identified the White Mesa Uranium Mill as a possible waste disposal site, the issue was not preserved.” Tribe Petition at 6, *citing* LBP-14-5 at 24. The Tribe’s argument fails to acknowledge that the Licensing Board’s decision in LBP-14-5 was not based on the probable use of the White Mesa Mill as a licensed 11e.(2) disposal site, but rather on the following: (1) the Tribe’s failure to identify any information that differs materially from the information available when the DSEIS was issued; (2) the Tribe’s failure to identify where the FSEIS differs in any way from the license application (3) the Tribe’s failure to challenge relevant sections of the environmental analysis in the FSEIS; and (4) Tribe’s failure to challenge comment responses in the FSEIS where the NRC Staff provides relevant information.¹¹ LBP-14-5 at 24-25. These factors demonstrate that the Tribe’s contention here should have been denied and the Commission should defer to the Licensing Board’s finding as such.

2. Contention Regarding Additional Borehole Log Data

With respect to Powertech’s disclosure of borehole log data following the evidentiary hearing, the Tribe states that “it was established [during the hearing] that Powertech had failed to disclose a substantial amount of geological data in the form of borehole logs from thousands of holes and wells drilled in the project area.” Tribe Petition at 2. But, this statement ignores the fact that Powertech disclosed in its license application that it had geophysical logs from thousands of historical exploration boreholes and used these logs to construct the geologic cross sections for the application. Further, it ignores the testimony of then-Powertech President Richard Clement that all companies maintain files of hundreds or thousands of geophysical logs, yet none have put all of them

¹¹ The Tribe also inaccurately states that the White Mesa Mill does not have the capacity to accept 11e.(2) byproduct material from Powertech. Tribe Petition at 6. As stated by Powertech in its reply to the Tribe’s FSEIS contentions, “Energy Fuels (the licensee operating the White Mesa Mill) has a license condition (10.5) authorizing acceptance of such waste.” Powertech April 4, 2014, response to FSEIS contentions at 23, *citing* Utah Radioactive Materials License #UT1900479, License Condition 10.5 (ML14094A619).

into a license application to justify license issuance.¹² The Tribe also claims it was given “a narrow opportunity for additional testimony related to the newly-disclosed information.” Tribe Petition at 2. This fails to account for the initial thirty (30) day period accorded to all parties to review the data, some of which was provided virtually immediately electronically and some of which was provided at the Tribe’s convenience in Powertech’s Edgemont office, and there was an additional one (1) month extension granted by the Licensing Board (on the whole, over two (2) months to review the data).¹³ Per the Commission’s hearing regulations at 10 CFR § 2.319(g & k), a Presiding Officer is allowed to conduct an administrative proceeding in a manner he/she sees fit with regards to and at 10 CFR § 2.309(f)(2)(iii), which accords parties receiving mandatory disclosures thirty (30) (not sixty (60)) days to review such disclosures and offer new or amended contentions or, in this case, new testimony and exhibits regarding previously admitted Contention 3. Thus, the Commission should not disturb the Licensing Board’s findings in LBP-15-16 on this matter.

The Commission also should not disturb LBP-15-16’s finding that the new borehole log data did not undergo what the Tribe calls the “hearing process.” Tribe Petition at 9. As stated in the Licensing Board’s September 8, 2014, Post Hearing Order, the new borehole log data’s potential applicability to the hearing is relevant to Contention 3, and LBP-15-16 shows that the Licensing Board considered such data in its evaluation of all argument and testimony within the scope of that contention. *See* LBP-15-16 at 62-71. The same is true for the statement that the Licensing Board erred in its conclusion that the newly-disclosed data did not “paint a seriously different picture of the

¹² *See* August 12, 2014, Affidavit of Richard Clement Regarding Data Acquired and Yet to Be Acquired from Energy Fuels Resources (USA) Inc. at 4 (ML14224A647).

¹³ Indeed, the extension until from October 22, 2014, to November 21, 2014 was granted based on an October 9, 2014 declaration by intervenor witness Dr. LaGarry that claimed that the data “may provide a sufficient number of data points for me to create stratigraphic cross sections and geologic maps that support the Oglala Sioux Tribe and Consolidated Intervenor’s position that there is a lack of adequate containment.” October 22, 2014 Licensing Board ruling at 5 (ML14295A420). Based on this testimony, the Board found that a 30-day extension was “reasonable under the circumstances presented.” *Id.* at 7. In fact, it is noteworthy that Dr. LaGarry failed to produce any stratigraphic cross sections or geologic maps in his supplemental testimony and exhibits filed by the Tribe on November 21, 2014.

environmental landscape,” even in light of the additional testimony and exhibits submitted by Dr. LaGarry following his review of the borehole log data. Tribe Petition at 9, *citing* LBP-15-16 at 108. However, both Powertech and NRC Staff addressed each of Dr. LaGarry’s allegations, most of which addressed only “drillers notes” and not geophysical logs, in their answering testimony, which the Licensing Board considered in LBP-15-16. *See* LBP-15-16 at 60-68 and 74, *citing* Powertech Exhibit APP-074 (Answering Testimony Regarding Dr. LaGarry’s Analysis of Borehole Log Data) and NRC Staff Exhibit NRC-175 (NRC Staff’s Answering Testimony).

The Tribe also claims that the Licensing Board erred in “its factual conclusion that the random ‘spot check’ methodology employed by NRC Staff in reviewing the new-disclosed borehole data is supportable because the NRC Staff allegedly ‘spot checked’ data earlier in the proceedings.” Tribe Petition at 10. To the contrary, the Licensing Board found that the methodology of “reviewing *representative* borehole logs ...was reasonable to support issuance of the license application, and is reasonable for review of the additional borehole log data.” LBP-15-16 at 108 (emphasis added). Additionally, NRC Staff’s review was much more than a “spot-check,” as it included additional review steps as identified by Powertech in its Proposed Findings of Fact at 96, ¶ 10.182¹⁴. The Licensing Board also directed NRC Staff in its review to determine whether the borehole log data reinforces what they already reviewed in the FSEIS and for the proposed license, which NRC Staff did and found nothing to change their original license conditions. *See* Tr. at 1321-1322. Thus, this allegation does not adequately demonstrate that the Licensing Board erred when making this factual determination and the Commission should defer to this determination.

¹⁴ These included (1) evaluating the thickness and continuity of the Fuson Shale confining unit in 34 randomly selected drill hole logs, (2) comparing the results of this evaluation with a structure contour map in the license application, (3) constructing and analyzing four transects using geophysical logs from closely spaced drill holes to evaluate potential displacement due to faulting, and (4) constructing and analyzing a fifth transect in an area alleged by Intervenor witness Dr. Moran to contain a “sinkhole.”

3. Contention Regarding EPA Preliminary Assessment

With respect to the EPA Preliminary Assessment, the Tribe alleges that “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.” Tribe Petition at 11. However, the Licensing Board correctly notes that the “Preliminary Assessment acknowledges that the NRC Staff evaluated these issues in the FSEIS, and that the EPA refers to the NRC Staff’s conclusions throughout its Preliminary Assessment.” LBP-15-16 at 109. In fact, the issue of potential migration of contaminants from the historical mine pits was a key focus of the NRC staff’s review of Powertech’s license application, and the culmination of this review is summarized in the SER (which, as noted above, was not challenged by the Tribe): “the staff is reasonably assured that the proposed ISR operations at the Dewey-Burdock Project will not be affected by the presence of historic surface and underground mines.” *See* NRC Staff Exhibit NRC-134 at 42. The Tribe’s allegation also fails, as Powertech’s expert witnesses offered a variety of testimony demonstrating that, as a factual matter, the potential for contaminant migration from the historical mine pits, which are the focus of EPA’s Preliminary Assessment, is addressed extensively in the license application, FSEIS and SER.¹⁵ *See* Powertech Ex. APP-013 at 28-9, ¶¶ A.55-A.58, *citing* NRC Staff Ex. NRC-008-B-2 at 365-366 (explaining how the FSEIS evaluates potential impacts from historical mining and concludes that “mitigation measures will be in place to ensure that drawdown-induced migration of potential contaminants does not affect aquifer restoration goals”); *see also* Powertech Ex. APP-037 at 31, ¶ A.72, *citing* NRC Staff Ex. NRC-134 at 42 (explaining how the SER documents NRC Staff’s evaluation of the potential impacts from historical mining). Based on these facts and the

¹⁵ It is important to note that all of the groundwater quality data and other environmental data summarized in the PA are taken directly from Powertech’s license application, so no new EPA data are available. *See* Preliminary Assessment, Exhibit OST-026 at 8 (“The technical report completed by Powertech included results of baseline sampling within the [project area] ... Sampling data from the area of the Site obtained during that effort were used for this PA to evaluate conditions at the Site.”)

Licensing Board's evaluation of such facts, the finding in LBP-15-16 on this matter is reasonable and should not be disturbed.

4. Claims Regarding Scoping

Lastly, the Tribe claims that the Board erred in LBP-13-09 when finding that a scoping process was not required for a supplement to an EIS according to 10 CFR § 51.26(d). Tribe Petition at 7. The Tribe's claim is based on an NRC Office of Inspector General (OIG) Report (OIG 13-A-20 dated August 2013). However, as discussed in the *Strata Energy, Inc.* proceeding, the Licensing Board there found that the contention involving scoping did not meet the standards for timely submission because it relied on the August 2013 OIG report but was not submitted until the FSEIS was issued in 2014. *See* Memorandum and Order Ruling on Motion to Migrate/Amend Existing Contentions and Admit New Contentions Regarding Final Supplement to Generic Environmental Impact Statement at 17-18 (May 23, 2014) (ML14143A184). Similarly, the Tribe did not raise issue with the August 2013 OIG report until its May 26, 2015 Petition for Review and never raised it as a basis for a new or amended contention. Thus, the Commission should dismiss this argument as untimely.

Further, NUREG-1910 was developed by NRC Staff on a programmatic basis with tiered SEISs and was the subject of three (3) public scoping meetings and eight (8) public meetings to solicit comments on the draft version, including one in Spearfish, South Dakota. *See* Powertech's March 11, 2013 Response to Tribe DSEIS Contentions at 20 (ML13070A378). The Tribe also erroneously claims that the OIG report made the statement that "NRC did not fully comply with the scoping regulations" with "specific reference to the Dewey-Burdock Project." Tribe Petition at 7. However, this statement in the OIG report was not made specifically in reference to the Dewey-Burdock Project. Furthermore, the OIG report is inaccurate when it states in reference to the Dewey-Burdock Project that NRC staff merely "planned to place ads in newspapers requesting information and comments from the public regarding the proposed action" and that there was "[n]o invitation for

broad public comment.” OIG Report at 22. In fact, NRC Staff *did* publish advertisements in five local papers in January and February 2010 soliciting public comments on the proposed action. *See* NRC Staff Exhibit NRC-008-A-1 at 63-64. Additionally, the OIG Report is merely an opinion and does not rest on defensible legal grounds or extensive NEPA-based experience, as evidenced by the detailed rebuttal comments provided by NRC Staff and other interested parties. *See* NRC OIG Report at Appendix D. Thus, the Tribe’s claims on scoping are without merit and should be dismissed.

B. Claims on Contentions 1A and 1B

With respect to Contentions 1A and 1B, which the Licensing Board resolved in its favor, the Tribe alleges that the Licensing Board’s finding that the FSEIS “has not adequately addressed the environmental effects of the Dewey-Burdock project on Native American cultural, religious, and historic resources, and the required meaningful consultation between the Oglala Sioux Tribe and the NRC Staff has not taken place” should result in revocation of Powertech’s license.¹⁶ Tribe Petition at 18. However, the Tribe presents no case law, regulation or other guidance or policy from NRC or the ACHP that requires consultation in a 10 CFR Part 51 environmental review document, such as an FSEIS. On the contrary, as stated multiple times by Powertech in its pleadings before the Licensing Board, the Council on Environmental Quality’s regulations *encourage* performing NHPA Section 106 activities in conjunction with an agency’s NEPA review¹⁷ but do not require it:

“To the fullest extent possible, agencies shall prepare draft environmental impact statements concurrently with and integrated with environmental impact analyses and related surveys and studies required by the Fish and Wildlife Coordination Act (16 U.S.C. 661 *et seq.*), the National Historic Preservation Act of 1966 (16 U.S.C.

¹⁶ The Tribe claims that the license should be revoked in cases “where the licensed activity has not commenced and wastes requiring perpetual care have not been created...” Tribe Petition at 19. The Tribe fails to acknowledge that ISR wastes as 11e.(2) byproduct material are disposed of at a licensed 11e.(2) disposal facility which is subject to Section 83 of the AEA’s long-term surveillance and monitoring (LTSM) requirements. *See* 42 USC § 2113. But, there are no wastes disposed of at ISR sites that require perpetual care.

¹⁷ It is important to note that there are no NEPA regulations that require Tribal consultation.

470 *et seq.*), the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*), and other environmental review laws and executive orders.”¹⁸

This regulation does not mean that consultation needs to be included in the FSEIS itself; but rather, such information needs to be documented in the ROD. However, as stated in Powertech’s May 26, 2015, Petition for Review, all of the information obtained through the NHPA Section 106 process from its inception was included, as it became available and assessed, in the DSEIS, the FSEIS, and the final ROD. This procedure followed by NRC Staff is consistent with CEQ regulations and is sufficient to satisfy NEPA procedural requirements.

Further, the Tribe’s claim that the Licensing Board should have revoked Powertech’s license is not supported by the fact that it did not avail itself of the opportunity to file for a stay of the effectiveness of such license within ten (10) days of the issuance of LBP-15-16. The Tribe did not attempt to petition the Commission or the Licensing Board to stay the effectiveness of Powertech’s license and, thus, the Licensing Board’s judgment to maintain the effectiveness of the license remains valid. Additionally, as stated in its request for expedited review of its May 26, 2015, Petition, Powertech still cannot proceed with development of the Dewey-Burdock ISR Project until it obtains additional permits from the United States Environmental Protection Agency (EPA) and the State of South Dakota. These agencies essentially have stated that they do not plan to issue final permits or to complete administrative hearings until NRC action on Powertech’s license is itself substantially complete. Thus, even if the Tribe had petitioned for a stay of the effectiveness of Powertech’s license, there could be no showing of irreparable harm to cultural resources. Therefore, the Licensing Board’s action to maintain the effectiveness of Powertech’s license was not in error.

The Tribe also alleges that Section 106 of the NHPA requires NRC to take into account the effect of the undertaking prior to issuance of the license. Tribe Petition at 18. This statement is true and the fully and properly executed PA in the ROD is evidence that an agency has met its burden

¹⁸ 40 C.F.R. § 1502.25(a).

under Section 106. *See* Exhibits NRC-018-A-(18-H). More specifically, the execution statement of the PA specifically states that NRC Staff took into account the effect of the undertaking:

“Execution of this PA by the NRC, BLM, SD SHPO, ACHP, and Powertech and the implementation of its terms is evidence the NRC and BLM *have taken into account the effects of this Undertaking* on historic properties and afforded the ACHP an opportunity to comment.”

Ex. NRC-018-A at 14 (emphasis added).

Additionally, the ACHP’s execution of the PA and its conclusion that NRC Staff met the content and spirit of the Section 106 process indicates that the Staff met the Section 106 requirements.¹⁹ Thus, the Tribe’s allegation here does not rest on valid legal ground and should be dismissed.

C. Claims on Contention 2

On Contention 2, the Tribe alleges that the Licensing Board’s determination on the adequacy of groundwater quality data was in error, because LBP-15-16 did not properly address regulatory requirements for collection and analysis of “baseline” groundwater quality data. *See* Tribe Petition at 19-20. But, the Tribe’s Petition is rife with legal and factual errors, as well as gross mischaracterizations of the administrative record, and is not adequate to support a reversal of LBP-15-16.

Initially, the Tribe inaccurately states that the “ASLB committed additional error and abused its discretion in endorsing the NRC Staff position that ‘it was unnecessary to account for past mining activity in its baseline water quality data.’”²⁰ Tribe Petition at 20, *citing* LBP-15-16 at 48. The Tribe also alleges that the “Board even ignored evidence from the EPA Preliminary Assessment (Tribe Exhibit OST-026)(ML14311B007) confirming the lack of meaningful data as to the impacts

¹⁹ *See* NRC Staff Exhibit NRC-031 at 3. This issue is also addressed in detail in Powertech’s and NRC Staff’s May 26, 2015, Petitions for Review.

²⁰ The Tribe’s Petition misapplies 10 CFR Part 40, Appendix A, Criterion 5 as requiring “complete” baseline data. Tribe Petition at 19. The Commission’s requirements for pre-license issuance groundwater quality data and analysis are found at 10 CFR Part 40, Appendix A, Criterion 7. The Tribe also mischaracterizes Criterion 7 as to what requires “additional data gathering in the future.” Tribe Petition at 20. Criterion 5B(5) represents the Commission’s requirements for post-license issuance groundwater quality and determination of Commission-approved background (CAB).

associated with historic mining at the site and how that impacts current water quality and future impacts from the Dewey-Burdock project.” *Id.* at 20. These statements mischaracterize NRC Staff’s position and the Licensing Board’s findings on this issue, as its expert witnesses testified that the affected environment evaluated in the FSEIS and for the proposed license is the baseline groundwater quality as it exists *today* in order that changes from current baseline levels resulting from the project may be detected and corrected, while impacts from historical mining, although not directly relevant to the license application, nevertheless were considered under the FSEIS’ cumulative impact sections. *See* LBP-15-16 at 50-51, *citing* NRC Staff Ex. NRC-001 at 19-20. These statements also mischaracterize NRC Staff’s evaluation of the EPA Preliminary Assessment, as it determined, based on EPA’s assertions in the document that it has a different objective than NRC uranium recovery and 10 CFR Part 51 NEPA regulations. Under the latter, the site’s current baseline is important in assessing potential future impacts. *See* LBP-15-16 at 55. Further, the EPA document is nothing more than a “preliminary” assessment and provides no hard and fast conclusions upon which the Tribe can base its claims. The Tribe offers no information from the EPA document demonstrating that the Licensing Board did not make a reasonable factual finding regarding the adequacy of “baseline” groundwater quality data. Therefore, the Tribe’s allegations on this issue should not result in reversal of LBP-15-16.

The Tribe also levies a number of claims pertaining to NRC Staff’s application of uranium recovery guidance documents and premises to the Dewey-Burdock ISR Project. First, the Tribe claims that NRC Staff improperly relied on Regulatory Guide 4.14 in requiring wells to be sampled within two (2) kilometers of future wellfields and states that such reliance is “unsupportable in the context of ISR mining.” Tribe Petition at 20. However, as explained by NRC Staff in its expert testimony, such guidance is applied “as appropriate” to ISR projects, such as the Dewey-Burdock ISR Project, by assuming that each wellfield is a “temporary source area” of groundwater contamination during the production and restoration phases. *See* NRC Staff Exhibit NRC-001 at 29-

30. NRC Staff also testified that the temporary nature of ISR operations in a given wellfield does not represent the same threat to groundwater as a continuing source of contamination at a mill tailings facility. *Id.* NRC Staff further testified that the two (2) kilometer distance, “is in fact a conservative distance for assessing impacts related to ISR projects.” *Id.* at 35. The Licensing Board based its conclusions in LBP-15-16 on this testimony and made a reasonable finding that supported NRC Staff use of this guidance “as appropriate.” Thus, given that the Tribe offers no evidence to the contrary, the Licensing Board’s factual finding here was reasonable and does not approach the level of a clear factual error.

The Tribe further presses the issue on the aforementioned 2 kilometer radius by claiming that there is “unrebutted evidence in the record that the 2 kilometer radioactive plume ‘rule’ is inapplicable to and unreliable in the context of ISR.” Tribe Petition at 21, *citing* LBP-15-16 at 52. It is further alleged that the Licensing Board did not find a specific mention of a “2 kilometer radius” in NRC Staff’s exhibits.²¹ *See id.* at 21, *citing* LBP-15-16 at 53, fn. 284. The Tribe also alleges that the Licensing Board erred when “finding that NRC Staff properly relied on 35-year old, pre-UMTRCA, conventional milling guidance for setting 2 kilometer limits on baseline water quality data collection.” *Id.* None of these allegations represent a clear error on a factual finding that would result in a reversal of LBP-15-16.

First, NRC Exhibit NRC-076 describes the “anomalous long outlier” plume associated with the Konigstein mine in Germany, which used a sulfuric acid leaching solution that is not, in any way, analogous to the Dewey-Burdock ISR Project or any other current NRC-licensed ISR project. *See* NRC Staff Exhibit NRC-076 at 25-26. In contrast, the Exhibit shows that the Crow Butte ISR project has a maximum plume length of 0.63 kilometers, which is considerably less than the 2

²¹ The Tribe’s statement here fails to acknowledge that the Licensing Board’s findings on this issue did not apply to NRC Staff’s exhibits generally, but rather they apply to one (1) NRC Staff exhibit (NRC Staff Exhibit NRC-075) which documents NRC’s finding that there has never been a documented off-site impact to groundwater from an ISR facility.

kilometer sampling radius specified in Regulatory Guide 4.14. *See id.* at 26. The Licensing Board also did not accept NRC Staff's use of this "2 kilometer rule" simply because it is listed in the guidance; but rather, because it found that it "has been shown to be sufficient based on historical and current monitoring data from NRC licensed sites." *See* LBP-15-16 at 53, *citing* NRC Staff Exhibits NRC-001 at 29-30 & NRC-075. As stated above, NRC Staff also testified that application of this guidance to ISR facilities is conservative as compared with conventional mills due to a wellfield being a temporary source of potential contamination and the requirement to maintain a net inward hydraulic gradient during operations.²² Since the Commission has determined that NRC Staff guidance is to be accorded "special weight," NRC Staff's use of Regulatory Guide 4.14 here should be treated as such and the Licensing Board's determination that the application of this guidance was appropriate should be upheld. *See e.g., Nextera Energy Seabrook, LLC* (Seabrook Station, Unit 1), CLI-12-05, 75 NRC 301, 314, n.78 (2012); *see also In the Matter of Private Fuel Storage* (Independent Spent Fuel Storage Installation), CLI-01-22, 54 NRC 255, 264 (2001). Therefore, the Tribe has not offered any argument sufficient to demonstrate a clear factual error in LBP-15-16 and, thus, the Licensing Board's determinations on Contention 2 should be upheld.

D. Claims on Contention 3

With respect to Contention 3, the Tribe challenges the Licensing Board's findings with respect to potential fluid migration from Project wellfields to adjacent water sources. Given that the Tribe offers multiple allegations on this issue, Powertech will address each allegation in turn below.

First, the Tribe claims that "no analysis was presented in the FSEIS or otherwise that details the impacts and effects associated with the abandoned boreholes on lixiviant migration and

²² The requirement for a net inward hydraulic gradient is a mandatory requirement per license condition. Since the Commission has determined that it is presumed that a licensee will not violate its license conditions, this requirement controls and is an adequate basis for the Licensing Board's factual conclusions. *See Private Fuel Storage* (Independent Spent Fuel Storage Installation), 53 NRC 232, 235-36 (2001); *see also GPU Nuclear Inc.* (Oyster Creek Nuclear Generating Station), CLI-00-06, 51 NRC 193, 207 (2000).

contamination.” Tribe Petition at 22. However, the Tribe ignores the fact that NRC Staff expert witnesses testified that the FSEIS expressly considered potential groundwater flow through exploration boreholes when assessing the potential environmental impacts of the Project. *See* NRC Staff Exhibit NRC-151 at 30-31, ¶ A.3.5, *citing* NRC Staff Exhibit NRC-008-A-2 at 64. The presence of this information in the FSEIS and in NRC Staff’s expert testimony directly refutes the Tribe’s claim that “no analysis was presented in the FSEIS or otherwise” and cannot serve as grounds to reverse LBP-15-16.

Second, the Tribe alleges that, “[n]or does the FSEIS explain or provide other information to demonstrate the ability of the applicant to successfully identify and abandon thousands of boreholes, nor how these efforts would be undertaken and accomplished.” Tribe Petition at 22. The Tribe alleges that the Board “relies entirely on a license condition that simply requires Powertech to ‘attempt’ to locate these problems while carrying out NRC-licensed activities and outside of any NEPA process.” *Id.* The Tribe’s allegation is inaccurate, as the FSEIS explains how Powertech will identify unplugged or improperly plugged boreholes and the procedures for same:

“The applicant will use available information and best professional practices—including historical records, color infrared imagery, field investigations, and potentiometric surface evaluation—to locate or detect improperly plugged boreholes or wells in the vicinity of potential wellfield areas. In addition, the applicant will use pumping test results conducted as part of routine wellfield hydrogeologic package development to identify improperly plugged wells and exploration boreholes (Powertech, 2011).”

See NRC Staff Exhibit NRC-008-A-2 at 4-64.

Yet again, the Tribe has mischaracterized the administrative record on both counts and such allegations represent a factual error on the Tribe’s part and not in LBP-15-16.

The Tribe alleges that the Commission should review the conclusions since the ASLB found that “‘all parties acknowledge that thousands of historical boreholes penetrate the Dewey-Burdock site’ and that ‘it is apparent that some boreholes on the site have not been adequately plugged’ and are causing leakage within the supposedly confining layers.” Tribe Petition at 22, *citing* LBP-15-16

at 72. It is undisputed that there are thousands of historical boreholes at the Project site, which is typical of all ISR project sites. *See* Powertech Exhibit APP-021-AA at 233-372; *see also* Powertech Exhibit APP-037 at 25, ¶ A.56. However, Powertech already has committed to plugging or mitigating any boreholes with the potential to affect the control and containment of wellfield solutions and, the known presence of an isolated area where historical boreholes potentially could cause leakage does not demonstrate that there is leakage generally amongst the confining layers in the proposed production zone. The administrative record is rife with evidence demonstrating that the Tribe's allegations are inaccurate including a complete summary of such evidence in the FSEIS. *See e.g.*, NRC Staff Exhibit NRC-008-A-1 at 192; *see also* Powertech Exhibit APP-037 at 25, ¶ A.57, *citing* Powertech Exhibit APP-45 at 166-168. Further, Powertech has fully committed, as part of its approved license, to identifying through pump testing and other methods and to plugging and abandoning or mitigating any boreholes with the potential to impact the control and containment of wellfield solutions. *See* Powertech Exhibit APP-016-B at 55-57. All of this evidence was analyzed by the Licensing Board and compared with the testimony from CI and the Tribe and it was determined that the presence of these historical boreholes does not warrant modification of Powertech's license.²³ *See* LBP-15-16 at 66-68 & 72-73. Thus, absent some additional evidence that such boreholes will cause fluid migration from site wellfields that cannot be controlled, the Licensing Board's holding in LBP-15-16 is factually reasonable and should be upheld.

Also, with respect to historical boreholes, the Tribe alleges that:

“nowhere does the ASLB address this argument [regarding how old boreholes will be identified and the methodology by which the effectiveness of plugging and abandoning will be assessed] in its ruling or identify any authority that contemplates how a future promise to ‘attempt’ to identify and properly close and abandon boreholes could satisfy NEPA requirements.”

Tribe Petition at 22-23.

²³ The minor modification to Powertech's license under Contention 3 to impose a new license condition on borehole plugging and abandonment is currently on appeal to the Commission in Powertech's May 26, 2015, Petition for Review.

The Tribe also alleges that the Licensing Board improperly “deferr[ed] ... the analysis necessary to an undetermined point in the future.” *Id.* at 22. Initially, in *Hydro Resources, Inc.*, the Commission affirmed the Licensing Board’s ruling in LBP-05-17 concluding that the assessment of groundwater quality data and wellfield development per 10 CFR Part 40, Appendix A, Criteria 7 and 5B(5) may be conducted in a phased manner. *See* CLI-06-01, 63 NRC 1, (2006). Further, the administrative record contains numerous discussions of how historical boreholes that could impact fluid control in site wellfields are identified, plugged, and abandoned in accordance with State requirements or otherwise mitigated. *See* NRC Staff Exhibit NRC-008-A-1 at 136. Powertech’s license also has a condition that requires wellfield hydrologic test packages for each wellfield that require demonstration that the production zone is adequately isolated from overlying and underlying aquifers to safely conduct ISR; such wellfield packages must be submitted to NRC Staff for review and are subject to pre-operational inspection and future inspections over time. *See* NRC Staff Exhibit NRC-012 at 8-9 (License Condition 10.10); *see also* Powertech Proposed Findings of Fact at 104-108, ¶¶ 10.206-10.212. By upholding Powertech’s license and issuing the additional license condition (which is on appeal), the Licensing Board’s decision on Contention 3 is *prima facie* evidence that this issue was thoroughly evaluated, contrary to the Tribe’s assertions. Thus, these allegations do not rise to the level of a clear factual error and should not result in reversal of LBP-15-16.

Finally, The Tribe alleges that “the Board correctly found the evidence demonstrates faults and fractures do exist at the site.” Tribe Petition at 23, *citing* LBP-15-16 at 71. Similarly, the Tribe alleges that “the ASLB ruled that faults and fractures do exist.” *Id.* These allegations are inconsistent with the findings in LBP-15-16. First, the Licensing Board actually determined that “none of the analyses of borehole logs performed by witnesses for Powertech, the NRC Staff, or the Intervenors have demonstrated that faults produced any significant displacements within the geophysically distinctive Fuson Shale.” *See* LBP-15-16 at 70-71. The Licensing Board also determined that “fence diagrams based on logs from closely spaced drill holes that transect the purported faults identified by

[intervenor witness] Dr. Moran provide particularly convincing evidence for a lack of significant faulting in that part of the project area.” *Id.* at 71. The Licensing Board also determined that “Powertech and the NRC Staff witness testimony about differences in the potentiometric surfaces in paired wells in the Chilson and Fall River aquifers is compelling evidence that these aquifers are not freely connected by natural pathways.” *Id.* at 69. The scope of Contention 3 is not whether there are *any* faults or fractures present at the Project site, but rather whether any such faults and fractures will result in uncontrolled fluid migration from site wellfields, given the licensed system of controls.²⁴ In its evaluation of this issue, the Licensing Board concluded that no such fluid migration is likely to occur. *See* LBP-15-16 at 71. Thus, the entirety of the Licensing Board’s assessment of the Tribe arguments in Contention 3 resulted in reasonable factual findings that fluid migration from site wellfields will not occur under Powertech’s license. Therefore, the Tribe has not proffered any evidence or legal argument demonstrating that the Commission’s standards for a Petition for Review have been satisfied and that should result in reversal of LBP-15-16’s findings on Contention 3.

E. Claims on Contention 6

The Tribe alleges that the Licensing Board erred by failing “to address the Tribe’s argument that the failure to specify any actual mitigation in the Programmatic Agreement, other than an intent to design them in the future, also violated NEPA’s requirement that mitigation be discussed in a FSEIS.” Tribe Petition at 24. First, this allegation is not factual; for example, the ACHP and SHPO-approved PA includes tables recommending specific mitigation measures such as establishing avoidance buffers for sites with potential adverse effect, unanticipated discovery license conditions, training for protection of cultural resources, and on-site monitors. *See* NRC Staff Exhibit NRC-018-

²⁴ The only evidence the Board found for the presence of faults is the opinion of authors of historical TVA documents that faults may be present and one “driller’s remark” for one historical exploration borehole regarding a description of a fault exposed in the wall of a mine pit that “seems credible.” *See* LBP-15-16 at 70.

B at 25-46; *see also* NRC Staff Exhibit NRC-018-A at 10-13. In addition, the FSEIS includes Tables 4.9-1 through 4.9-6, which similarly list recommended mitigation measures. *See* NRC Staff Exhibit NRC-008-A-2 at 160-180. Moreover, this allegation is contradicted by Powertech's expert testimony that there is no requirement that a Section 106 agreement document (such as a PA) must be analyzed in a NEPA document such as the FSEIS. *See* Powertech Exhibit APP-001 at 5, ¶ A.11. The Tribe offers no case law or regulatory authority showing that such specific mitigation measures need to be discussed in the FSEIS. Nevertheless, the FSEIS does indeed contain a discussion of specific mitigation measure recommendations for the protection of historic and cultural resources, as described above, and NRC Staff's NEPA review took into account mitigation measures in the PA. *See* Powertech Exhibit APP-046 at 12, ¶ A.22; *see also* NRC Staff Exhibit NRC-001 at 88, ¶ A.6.14. Further, the Tribe completely mischaracterizes the PA's provisions for mitigation measures as such measures are not "intent-based" but rather are *requirements* moving forward. The Tribe also has the authority to continue to consult with all parties to the PA, whether mandatory or invited signatories, on the development of such mitigation measures in the future as the Project is developed. Further, as stated in ¶ 5.11 of Powertech's proposed findings of fact and conclusions of law:

"NEPA does not require 'a fully developed plan that will mitigate environmental harm before an agency can act,' rather, NEPA requires only that 'mitigation be discussed in sufficient detail to ensure that environmental consequences have been evaluated.'"

Holy Cross Wilderness Fund v. Madigan, 960 F.2d 1515, 1522 (10th Cir. 1992), *quoting* *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 352-53 (1989); *see also* *Hydro Resources, Inc.* (Crownpoint Uranium Project), CLI-06-29, 64 NRC 417, 427 (2006) (discussing that an EIS need not contain "a complete mitigation plan" or even "a detailed explanation of specific [mitigation] measures which will be employed" and stating that mitigation measures "need not be legally enforceable, funded or even in final form to comply with NEPA's procedural requirements.").

Thus, the Tribe has not demonstrated that the Licensing Board has erred in LBP-15-16 on this issue.

The Tribe also alleges that the Licensing Board should not have ruled in favor of Powertech and NRC Staff on Contention 6, because its holding for Contention 1A makes such a ruling internally inconsistent. In short, the Tribe's argument is a distinction without a difference, as the substance of

potential mitigation measures for historic and cultural resources and their adequacy was addressed within the context of Contention 1A. Thus, the Tribe gains nothing by arguing that Contention 6 should have been ruled in favor of the Tribe, and the Commission should ignore this argument.

Lastly, the Tribe alleges that the Licensing Board ignored its arguments regarding other mitigation issues including the “draft” Avian Plan, wellfield hydrologic data packages, land application mitigation plans, borehole plugging and abandonment plans, monitoring network plans, best management practices (BMP) for storm-water control and other items. *See* Tribe Petition at 25. However, the Licensing Board considered all of these issues in its partial initial decision. *See* LBP-15-16 at 93 (explaining the Licensing Board’s finding that “the other mitigation measures designated in the FSEIS for post-licensing development, including monitoring well networks, historical well hole plugging, and wildlife protections and monitoring, have been adequately explained and satisfy NEPA requirements”).

V. CONCLUSION

For the reasons discussed above, Powertech respectfully requests that the Commission deny the Tribe’s Petition for Review in its entirety and find that Powertech’s NRC License SUA-1600 should be upheld.

Respectfully Submitted,

**/Executed (electronically) by and in accord
with 10 C.F.R. § 2.304(d)/
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Dated: June 22, 2015

**UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION**

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of:

POWERTECH (USA), INC.

(Dewey-Burdock In Situ Uranium Recovery
Facility)

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) Docket No.: 40-9075-MLA
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) Date: June 22, 2015
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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing “**BRIEF OF POWERTECH (USA), INC. IN OPPOSITION TO THE OGLALA SIOUX TRIBE’S PETITION FOR REVIEW OF LBP-15 16**” in the above captioned proceeding have been served via the Electronic Information Exchange (EIE) this 22nd day of June 2015, which to the best of my knowledge resulted in transmittal of the foregoing to those on the EIE Service List for the above captioned proceeding.

Respectfully Submitted,

**/Executed (electronically) by and in accord
with 10 C.F.R. § 2.304(d)/
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