

**UNITED STATES OF AMERICA
BEFORE THE NUCLEAR REGULATORY COMMISSION**

In the Matter of)	
)	Docket No. 40-0975-MLA
POWERTECH (USA), INC.)	ASLBP No. 10-898-02-MLA-BD01
)	
(Dewey-Burdock)	December 8, 2017
In Situ Leach Facility))	

CONSOLIDATED INTERVENORS ANSWER TO PETITION FOR REVIEW

Pursuant to 10 CFR 2.341(b)(3), Consolidated Intervenors¹ hereby timely file this Answer to the Petition for Review filed by Powertech (USA), Inc. (“Powertech”) on November 13, 2017 (“Petition”). Since the subject of the Petition involves the treatment of cultural resources and a number of Consolidated Intervenors are also enrolled members of the Oglala Sioux Tribe, Consolidated Intervenors hereby join in the Answer to Petition for Review filed by Intervenor Oglala Sioux Tribe and expressly adopt all arguments and assertions filed therein.

At the outset, it is worth noting that Powertech appeals the Atomic Safety and Licensing Board Panel’s ruling in LBP-17-09 relating specifically to the adequacy of the NRC Staff’s compliance with the requirements under the National Environmental Policy Act (“NEPA”). As the federal agency approving the project, compliance with NEPA is the responsibility of the NRC Staff, not the applicant and NRC Staff has neither petitioned for Commission review, nor joined in Powertech’s Petition. Instead, as of this writing, NRC Staff is engaged in an effort to comply with the Board’s ruling in LBP-17-09 and to meet its obligations under NEPA.

¹ Susan Henderson, Dayton Hyde and Aligning for Responsible Mining.

In LBP-17-09, the Board found that in the two years since its ruling in LBP-15-16, the NRC Staff had “at a bare minimum” fulfilled its obligations for consultation with the Oglala Sioux Tribe under the National Historic Preservation Act (“NHPA”). LBP-17-09 at 2. Powertech would have this bare minimum consultation under the NHPA also satisfy NRC Staff’s distinct requirements for assessing the project’s impacts to cultural, religious and historic resources under NEPA.

In LBP-17-09, the Board reminded the parties that in its ruling in LBP-15-16, subsequently affirmed on review in CLI-16-20, it determined that, “to the agency’s NEPA...responsibilities to protect and preserve cultural, religious and historic sites important to the Native American tribal cultures in the Powertech project area, **the NRC Staff must conduct a study or survey of tribal cultural resources** before granting a license.” Id. at 5, quoting LBP-15-16, 81 NRC 618 (2015) at 653 (emphasis added). As the Board further pointed out, no such survey or study has yet been conducted and there remains a material dispute between the parties as to the efficacy of the measures then proposed by NRC Staff.² LBP-17-09 at 31.

In its Petition, Powertech argues that the NRC Staff’s “minimally sufficient” fulfillment of its consultation obligations under NHPA somehow address the deficiencies in the FSEIS identified by the Board in LBP-15-16. Id. at 25. No survey or study has been conducted, nor has an acceptable methodology been agreed upon between NRC

² On December 6, 2017, NRC Staff circulated a new proposal for identifying cultural, religious and historic resources in the Dewey-Burdock project area that Consolidated Intervenor have not yet evaluated.

Staff and the Oglala Sioux Tribe, thus the FSEIS remains incomplete, and, as such, inadequate to fulfill NRC Staff's obligations under NEPA.

The Board was correct in determining that material facts remain in dispute between the parties and that summary judgment under these circumstances is inappropriate. Accordingly, the Commission should deny Powertech's Petition for Review, affirm the Board's ruling in LBP-17-09 and allow NRC Staff to continue to fulfill its obligation to take a "hard look" towards protecting and preserving cultural, religious and historic resources in the Dewey-Burdock project area.

CONCLUSION

The Petition for Review should be denied.

Dated this 8th day of December, 2017.

Respectfully submitted,

Thomas J. Ballanco
Counsel for Consolidated Intervenors
P.O. Box 585
Douglas City, CA 96024
(650) 296-9782
E-mail: HarmonicEngineering@gmail.com

Bruce Ellison
Counsel for Consolidated Intervenors
P.O. Box 2508
Rapid City, SD 57709
Tel: 605-348-9458
Email: belli4law@aol.com

David Frankel
Counsel for Consolidated Intervenors
202 Providence Mine Road, Suite 107
Nevada City, CA 95959
Tel: 530-470-8509
E-mail: David.Frankel@gmlaw.com

CERTIFICATE OF SERVICE

Pursuant to 10 C.F.R. § 2.305 (as revised), I certify that, on this date, copies of the foregoing were served upon the Electronic Information Exchange (the NRC's E-Filing System), in the above-captioned proceeding.

Dated: December 8, 2017.

Signed (electronically) by David C. Frankel

David Frankel
Counsel for Consolidated Intervenors
202 Providence Mine Road, Suite 107
Nevada City, CA 95959
Tel: 530-470-8509
E-mail: David.Frankel@gmlaw.com