

STATE OF SOUTH DAKOTA
DEPARTMENT OF AGRICULTURE & NATURAL RESOURCES

BOARD OF MINERALS AND ENVIRONMENT

IN THE MATTER OF CLEAN)	
NUCLEAR ENERGY CORP.)	
URANIUM EXPLORATION PERMIT)	MOTIONS FOR ORDERS AND
APPLICATION)	BRIEF IN SUPPORT BY
)	CHEYENNE RIVER SIOUX TRIBE
EXNI 453)	AND OGLALA SIOUX TRIBE
)	

COME NOW the Cheyenne River Sioux Tribe and the Oglala Sioux Tribe (collectively “Tribes”) and move the Board for the orders set forth herein:

MOTIONS

1. The Tribes move the Board to order Clean Nuclear Energy Corp. (“CNEC”) to produce all documents responsive to the Tribes’ third request for production directed to CNEC.
2. The Tribes move the Board to order CNEC to permit access to the exploration area and surrounding lands for the purpose of inspection, as requested in the Tribes’ fourth request for production directed to CNEC.
3. The Tribes move the Board to order CNEC to provide all information and documents that CNEC agreed to produce during the deposition of CNEC on November 6, 2025, as set forth herein below.
4. The Tribes move the Board to enter an order permitting the Tribes to call as a witness any person listed on the witness list of any other party or intervenor in this case and to introduce as an exhibit any exhibit listed on the exhibit list (or otherwise produced) by any other party or intervenor in this case.

BRIEF IN SUPPORT

1. The Board should order CNEC to produce all documents responsive to the Tribe’s third request for production, which seeks: “All surveys, case reports and other documents relating to archaeological resources, cultural resources, historic properties or traditional cultural or religious properties, that were prepared or consulted in relation to the application [by CNEC for a uranium exploration permit].” CNEC responded to this request by objecting on the grounds that “[t]he reports contain confidential information regarding the location and character of known archeological sites in South Dakota and [are] protected by SDCL § 1-20-21.2.”

Any reports prepared by CNEC or its agents are not protected by SDCL § 1-20-21.2. That statute provides, in relevant part, that: “Any records maintained pursuant to § 1-20-21 pertaining to the location of an archaeological site shall remain confidential to protect the integrity of the archaeological site.” That statute pertains to records maintained by the State Historical Society Board of Trustees, not records maintained by private entities such as CNEC. SDCL § 1-20-21, to which SDCL § 1-20-21.2 refers, provides that: “The state archaeologist, on behalf of the State Historical Society Board of Trustees shall conduct, as part of that board’s statewide survey of historic properties, a survey of archaeological sites located within the state and maintain records of such sites.”

CNEC has informed the Tribes that it retained Vantage Point (also known as Vantage Point Solutions) to prepare one or more reports concerning cultural resources on the exploration area and surrounding lands. During the deposition of CNEC on November 6, 2025, counsel for the Tribes, CNEC, and the South Dakota Department of Agriculture and Natural Resources (“DANR”) agreed to work together to craft a protective order that allows for the disclosure of the Vantage Point reports.

MR. GUNN: ... I think the parties would like to make a record concerning the Vantage reports and circumstances under which they might be shared either in total or with redactions.

MR. NAASZ: Thank you, Mr. Gunn. Mr. Gunn is correct. I think the parties have agreed to try to work together to craft a protective order that allows for the disclosure of the Vantage Point reports in a manner that does not violate state law and protects the respective interests of the parties, both the applicant, the tribes and intervenors and the state.

MR. GUNN: Correct, with the aim being to protect those resources –

MR. NAASZ: Absolutely.

MR. GUNN: -- in perpetuity. And we’ll work together to do that as best we can and, you know, attempt to resolve the issue and present our proposed resolution to the hearing chair. And, Steve, I understood that you’re also willing to participate with us in that process of trying to resolve it?

MR. BLAIR: Yeah. Mr. Gunn is correct. On behalf of the Department of Ag and Natural Resources, I’m willing to work to resolve that issue through a protective order.

CNEC Deposition Transcript at 113:10-114:8. (The CNEC Deposition Transcript has been filed with the Board, and provided electronically to all parties, as Exhibit No. 301/401.)

The Tribes expect to continue to work with counsel for CNEC and DANR on this matter. However, given the Board’s scheduling order, and today’s deadline for filing motions, the Tribes make this motion to compel in order to preserve the issue. They seek the production of the

Vantage Point reports, and any other reports or documents responsive to their third request for production, with or without a protective order.

2. The Board should order CNEC to permit access to the exploration area and surrounding lands for the purpose of inspection. The Tribes' fourth request for production states:

If and to the extent CNEC or its officers, directors, employees, agents or representatives are in possession or control of the exploration area or surrounding lands of the Project, or any part thereof, the Cheyenne River Sioux Tribe and the Oglala Sioux Tribe request that CNEC permit entry upon those lands for the purpose of inspection and measuring, surveying, photographing, testing, or sampling the property and any historic, archaeologic, geologic, scientific, recreational, cultural or religious aspects of the lands.

CNEC objected to this request on the grounds that it is not a request for production of documents and it seeks information that is not relevant to the criteria set forth in SDCL § 45-6D-29.

The Tribes styled this request a "request for production," not a request for production of "documents." The exploration area and surrounding lands are not documents. The rule concerning requests for production is SDCL § 15-6-34 and it expressly permits a party to request another party, "[t]o permit entry upon designated land or other property in the possession or control of the party upon whom the request is served for the purpose of inspection and measuring, surveying, photographing, testing, or sampling the property or any designated object or operation thereon ..." The Tribes' request falls within the scope of this rule.


The Tribes seek access for inspection in order to assess, among other things, "[t]he adverse effects of the proposed uranium exploration operation on the historic, archaeologic, geologic, scientific, or recreational aspects of affected or surrounding land," adverse effects on "public and domestic water wells ... or significant agricultural areas," and adverse effects on "threatened or endangered wildlife indigenous to the area." These are factors expressly set forth in SDCL § 45-6D-29.

3. The Tribes move the Board to order CNEC to provide all information and documents that CNEC agreed to produce during the deposition of CNEC on November 6, 2025. This includes: the revised map of the exploration area filed by CNEC with DANR, *see* CNEC Deposition Transcript at 45:9-45:15; CNEC's safety protocols for drilling for high-grade uranium, *id.* at 87:8-87:12; CNEC's contingency plan for handling hazardous material, *id.* at 91:17-91:18; the manner in which CNEC may prevent groundwater contamination, including any "additional options" referenced at the deposition, *id.* at 94:4-94:12; commissioned Forest Service ground Biological and Habitat Assessments, *id.* at 136:2-136:15; and any cultural resource reports prepared by or for CNEC after the State Historic Preservation Officer ("SHPO") letter, *id.* at 112:19-113:5. The Tribes are willing to work with counsel for CNEC on any objections he may interpose to the production of any of this information or any of these documents.

4. The Tribes move the Board to enter an order permitting the Tribes to call as a witness any person listed on the witness list of any other party or intervenor in this case and to introduce as an exhibit any exhibit listed on the exhibit list (or otherwise produced) by any other party or intervenor in this case. Such an order would prejudice no party and would not result in unfair surprise, since all witnesses and exhibits will have been disclosed well in advance of the hearing.

WHEREFORE, the Tribes move the Board to enter the orders set forth herein above.

Dated: December 1, 2025

By: 

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CERTIFICATE OF SERVICE

I certify that on December 1, 2025, I caused a true and correct copy of the foregoing to be served electronically and by U.S. mail, postage prepaid, for filing upon the following:

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I further certify that on December 1, 2025, I caused a true and correct copy of the foregoing to be served upon the following by electronic mail, facsimile, and U.S. mail, postage prepaid:

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