

**UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION**

**BEFORE THE ATOMIC SAFETY AND LICENSING BOARD**

In the Matter of: )  
)  
) Docket No.: 40-9075-MLA  
POWERTECH (USA), INC. )  
) Date: July 22, 2014  
(Dewey-Burdock In Situ Uranium Recovery )  
Facility) )  
)  
\_\_\_\_\_ )

**POWERTECH (USA), INC. MOTIONS IN LIMINE, MOTION FOR CROSS-  
EXAMINATION, AND MOTION TO STRIKE/EXCLUDE**

**I. INTRODUCTION**

Pursuant to the Atomic Safety and Licensing Board’s (Licensing Board) Scheduling Order dated February 20, 2014, Powertech (USA), Inc. (Powertech) hereby submits its Motions *in Limine*, Motion for Cross-Examination, and Motion to Strike/Exclude regarding statements of position, written testimony, and pre-filed exhibits in this proceeding. This proceeding involves consideration of initial and rebuttal position statements, written initial and rebuttal testimony, and exhibits for now six (6) admitted contentions (Contentions 1A/B, 2, 3, 4, 6, and 9)<sup>1</sup> regarding Powertech’s currently active United States Nuclear Regulatory Commission (NRC) combined source and 11e.(2) byproduct material license for the Dewey Burdock *in situ* leach uranium recovery (ISR) Project in the State of South Dakota. These admitted contentions were proffered on behalf of several intervening parties later classified as “Consolidated Intervenor” (hereinafter “CI”) and the Oglala Sioux Tribe (hereinafter the “Tribe”). As set forth below, Powertech

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<sup>1</sup> By Order dated July 15, 2014, the Licensing Board accepted the Tribe’s request to withdraw and granted Powertech’s Motion to Dismiss Contention 14A/B and held that no testimony or exhibits will be received and heard on such Contention. *See In the Matter of Powertech (USA), Inc. (Dewey Burdock ISR Project), Order Granting Request to Withdraw and Motion to Dismiss Contentions 14A and 14B*, (July 15, 2014).

respectfully requests that the Licensing Board grant Powertech's Motions to Exclude and Strike listed below. Powertech also informs the Licensing Board that it does not intend to submit a Motion for Cross-Examination of any witness for CI, the Tribe or NRC Staff for the evidentiary hearing set for August 19, 2014. Per 10 CFR § 2.323, Powertech has consulted on these proffered motions and the answers from other parties were as follows: (1) NRC Staff does not oppose and/or does not take a position on the motions and (2) CI and the Tribe oppose Powertech's motions.

## **II. BACKGROUND AND PROCEDURAL HISTORY**

A complete recitation of the background and procedural history of this proceeding is discussed in Section I of Powertech's Initial Statement of Position and Section II of Powertech's Initial and Rebuttal Statement of Position. On June 20, 2014 and July 7 respectively, all parties filed initial statements of position, written testimony, and pre-filed exhibits.<sup>2</sup> On July 15, 2014, all parties filed rebuttal statements of position, rebuttal testimony, and supporting exhibits. The following motions *in limine* apply directly to CI and the Tribes initial and rebuttal submissions. Powertech does not seek to exclude or modify any of NRC Staff's initial or rebuttal submissions.

## **III. LEGAL STANDARD**

As a general rule, an evidentiary hearing may receive and hear argument on "[o]nly relevant, material, and reliable evidence which is not unduly repetitious....Immaterial or irrelevant parts of an admissible document will be segregated and excluded so far as is practicable." 10 CFR § 2.337(a). During the course of an administrative proceeding under 10

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<sup>2</sup> CI did file their initial submissions on June 20, 2014; however, the Licensing Board rejected such filings as non-compliant with the Licensing Board's Order addressing compliance with pre-filed evidentiary material dated June 2, 2014. CI re-filed its initial submissions on July 7, 2014 and no Licensing Board ruling on their compliance has been issued. The Licensing Board also rejected CI's Rebuttal Statement and Testimony in an Order dated July 16, 2014. No Licensing Board ruling on CI's re-submission dated July 18, 2014.

CFR Part 2, Licensing Boards may “on motion or on the presiding officer’s own initiative, strike any portion of a written presentation or a response to a written question that is irrelevant, immaterial, unreliable, duplicative or cumulative.” 10 CFR § 2.319(d); *see also* 10 CFR § 2.319(e).

With respect to the scope of an NRC administrative hearing, such hearings are limited to the scope of the admitted contentions and, if an intervening party seeks to proffer testimony or evidence outside their scope, it will be excluded. *See Southern Nuclear Operating Co.* (Early Site Permit for Vogtle ESP Site), CLI-10-05, 71 NRC 90, 100 (2010). In this decision, the Commission stated:

“The scope of a contention is limited to issues of law and fact pled with particularity in the intervention petition, including its stated bases, unless the contention is satisfactorily amended in accordance with our rules. Otherwise, NRC adjudications quickly would lose order...Our procedural rules on contentions are designed to ensure focused and fair proceedings.”

*Southern Nuclear Operating Co.*, CLI-10-05, 71 NRC at 100.

With respect to testimony offered for admitted contentions, admitted contentions and their disposition are addressed in 10 CFR Part 2 and, more specifically, under 10 CFR § 2.309. Part 2.309(f)(3) addresses the co-sponsoring of contentions in an NRC proceeding and states that:

“[i]f two or more requestors/petitioners seek to co-sponsor a contention, the requestors/petitioners shall jointly designate a representative who shall have the authority to act for the requestors/petitioners with respect to that contention. If a requestor/petitioner seeks to adopt the contention of another sponsoring requestor/petitioner, the requestor/petitioner who seeks to adopt the contention must either agree that the sponsoring requestor/petitioner shall act as the representative with respect to that contention, or jointly designate with the sponsoring requestor/petitioner a representative who shall have the authority to act for the requestors/petitioners with respect to that contention.”

*See* 10 CFR § 2.309(f)(3).

Current NRC case law on this subject provides additional insight. Initially, a particular intervenor's status as a party in a proceeding does not render them a spokesman for others. *See Public Service Co. of New Hampshire* (Seabrook Station Units 1 & 2), LBP-86-34, 24 NRC 549, 550 n.1 (1986), *aff'd* ALAB-854, 24 NRC 783 (1986), *citing Puget Sound Power and Light Co.* (Skagit Nuclear Power Project, Units 1 & 2), ALAB-556, 10 NRC 30, 33 (1979). Intervenor status does not automatically elevate any intervenor to be a co-sponsor of other intervenor contentions. As Commission regulations require each intervenor to submit a "list of contentions which it seeks to have litigated," it logically follows that one intervenor may not introduce affirmative evidence on issues raised by another intervenor's contentions. *See Northern States Power Co.* (Prairie Island Nuclear Generating Plant, Units 1 & 2), ALAB-244, 8 AEC 857, 869 n.17 (1974); *see also Houston Lighting and Power Co.* (South Texas Project, Units 1 & 2), ALAB-799, 21 NRC 360, 383 n. 102 (1985).

#### **IV. MOTIONS IN LIMINE, MOTION FOR CROSS-EXAMINATION, AND MOTION TO EXCLUDE, PRECLUDE AND STRIKE**

The following subsections discuss the motions submitted by Powertech for the Licensing Board's consideration in this pleading. The following items will be addressed in separate subsections: (1) motion for cross-examination pursuant to 10 CFR § 2.1204(b); (2) motion to exclude portions of CI's and the Tribe's initial and rebuttal statements of position, initial and rebuttal testimony and/or pre-filed exhibits submitted on June 20, July 7, July 15, and July 18, 2014; and (3) motion to strike portions of CI's and the Tribe's initial and rebuttal statements of position, initial and rebuttal testimony and/or pre-filed exhibits submitted on June 20, July 7, July 15, and July 18, 2014.

##### **A. 10 CFR § 2.1204(b) Motion for Cross-Examination**

Pursuant to 10 CFR § 2.1204(b), a party is permitted to submit a motion to the Licensing Board requesting the ability to cross-examine witnesses from other parties to the proceeding. At this time, Powertech does not plan to submit such a motion. Thus, no further discussion of this type of motion will be included here.

**B. Motion to Exclude Written Statements of Position, Testimony, and/or Pre-Filed Exhibits**

Pursuant to 10 CFR § 2.319(d & e), a Licensing Board (Presiding Officer) is permitted to rule on the admissibility of evidence, including motions to exclude submissions on specific contentions and on aspects of such contentions. As will be shown below, the Licensing Board should grant Powertech's Motion to Exclude on all counts.

**1. Motion to Exclude Argument on Technical/Safety Analyses and Conclusions in NRC Staff's Safety Evaluation Report**

First, Powertech seeks to exclude any and all arguments offered by CI and the Tribe regarding any analyses or conclusions offered in NRC Staff's Safety Evaluation Report (SER). This motion to exclude applies equally to any technical/safety challenges offered by CI and the Tribe directly challenging the SER and any use of such analyses or conclusions in NRC Staff's FSEIS or final license conditions. This Motion is relevant to this proceeding as there are two (2) contentions that have been determined to have a "safety" component (i.e., Contentions 2 and 3), and there are environmental contentions that factor "safety-related" items in the FSEIS' analyses and conclusions (i.e., Contentions 2-4, and 6).

As stated in Powertech's Rebuttal Statement of Position, neither CI nor the Tribe attempted to proffer contentions for the Licensing Board's consideration within the allotted timeframe post-SER issuance. As a result, at no time did either CI or the Tribe successfully migrate an existing admitted contention or offer a new or amended contention to challenge the

SER's analyses or conclusions. The lack of such a challenge results in no challenge to the SER's final conclusion that the Dewey-Burdock ISR Project is adequately protective of public health and safety and not inimical to the common defense and security. Thus, Powertech respectfully requests that the Licensing Board grant Powertech's Motion to Exclude further argument on NRC Staff's SER and its analyses and conclusions.

**2. Motion to Exclude All Portions of Pre-Trial Submissions and Preclude Further Argument on Previously Dismissed Contention 14A/B**

Second, Powertech seeks to exclude all portions of pre-trial submissions and preclude any further argument in any form regarding Contention 14A/B. By Order dated July 15, 2014, the Licensing Board granted Powertech's motion to dismiss Contention 14A/B based on two factors: (1) the Tribe's voluntary withdrawal of Contention 14A/B in its initial statement of position and (2) despite efforts to submit evidence on such contention, CI's failure to abide by Commission regulations regarding co-sponsoring or adopting contentions offered by another party. Based on the grant of this motion to dismiss, Powertech respectfully requests that the Licensing Board grant its Motion to Exclude all components of initial and rebuttal submissions in the record regarding Contention 14A/B and preclude further argument on such Contention going forward.

**3. Motion to Exclude All Portions of Pre-Trial Submissions and Preclude Argument From Consolidated Intervenors on Contentions 4, 6, and 9 For Failure to Co-Sponsor or Adopt**

Third, Powertech seeks to exclude all portions of pre-trial submissions and preclude any further argument in any form from CI regarding Contentions 4, 6, and 9, based on a failure to follow Commission regulations regarding co-sponsoring or adopting admitted contentions proffered by another party.

As was the case in Powertech's June 30, 2014 Motion to Dismiss, which was granted by the Licensing Board, CI has utterly failed to follow the Commission's 10 CFR § 2.309(f)(3) regulations for co-sponsoring or adopting contentions. With respect to Contentions 4, 6, and 9, the Tribe proffered Environmental Contentions 4, 6, and 9 as part of its list of contentions for litigation and followed appropriate NRC regulations in its submissions, thus resulting in admission of these Contentions by the Licensing Board. However, while CI continues to believe that they may offer affirmative evidence on these Contentions, there is no evidence in the judicial or administrative record that they followed Part 2.309(f)(3) procedures to adopt or co-sponsor any of these contentions. In addition, it is far too late in this proceeding for CI to attempt to adopt or co-sponsor Environmental Contentions 4, 6, and 9, especially considering that initial and rebuttal statements of position have been filed without supporting testimony and exhibits *and* it has been seven (7) days since all such filings have been delivered.

A review of the pleadings offered by CI in this case demonstrates that there was no attempt to adopt or co-sponsor the Tribe's Environmental Contentions 4, 6, and 9. CI's March 8, 2010, initial hearing request and proffer of contentions offered a request for admission of a Contention F on groundwater consumption, though this request was denied by the Licensing Board and removed from active consideration in this proceeding. CI attempted to discuss Contention 4 in its contentions offered on the FSEIS. However, nowhere in CI's submissions did they make any attempt to invoke Part 2.309(f)(3) procedures to adopt or co-sponsor this Contention. *See generally In the Matter of Powertech (USA), Inc.* (Dewey-Burdock ISR Project), Consolidated Intervenors' List of Contentions on DSEIS at 26-29, (January 25, 2013) (ML13026A010); *see also In the Matter of Powertech (USA), Inc.* (Dewey-Burdock ISR Project), Consolidated Intervenors' List of Contentions on FSEIS at 25 (March 17, 2014).

Lastly, on March 17, 2014 and in response to the issuance of NRC Staff's FSEIS for the Project, the Tribe once again submitted Environmental Contentions 4, 6, and 9 for migration to the FSEIS, while CI once again did not mention the Contentions' substance, nor did they attempt to adopt or co-sponsor the Contention. *See generally In the Matter of Powertech (USA), Inc.* (Dewey-Burdock ISR Project), Consolidated Intervenors' List of Contentions on FSEIS (March 17, 2014) (ML14098A116). Based a review of these pleadings and the Licensing Board's decisions on such pleadings, CI has not made any attempt to co-sponsor or adopt Contentions 4, 6 or 9 pursuant to 10 CFR § 2.309(f)(3). Thus, based on this, Powertech respectfully requests that the Licensing Board exclude all portions of pre-trial submissions and preclude any further argument in any form from CI regarding Contentions 4, 6, and 9, based on a failure to follow Commission regulations regarding co-sponsoring or adopting admitted contentions proffered by another party.

**C. Motion to Strike Written Statements of Position, Testimony, and/or Pre-Filed Exhibits**

In Section IV above, Powertech identifies general matters of substance that should be stricken from the current administrative record of pre-trial statements of position, written testimony, and exhibits. Here, in Section IV(C), Powertech will offer its Motion to Strike specific portions of pre-trial testimony and/or exhibits due to them being outside the scope of a contention, irrelevant or outside the scope of the witness' expertise. To the extent practicable, Powertech will include specific references to portions of CI and Tribe submissions that should be stricken.

**1. CI Exhibit INT-005: Statement of Professional Qualifications of Dr. Richard Abitz**

Powertech moves to strike CI Exhibit INT-005 which is entitled *Statement of Qualifications of Dr. Richard Abitz* for failure to submit any pre-trial testimony and/or supporting affidavit as required by the Licensing Board's June 2, 2014 Case Management Order.

**2. CI Exhibit INT-002: October 2009 Report from Dr. Richard Abitz to Coloradoans Against Resource Destruction**

Powertech moves to strike CI Exhibit INT-002 entitled *October 2009 Report from Dr. Richard Abitz to Coloradoans Against Resource Destruction* for a variety of reasons. Initially, the exhibit does not include a supporting affidavit as required by the Licensing Board's Case Management Order and 10 CFR §2.1207(a)(1), which is a procedural violation that should not be allowed to remedied at this late date. For this reason, CI Exhibit INT-002 should not be considered admissible written testimony. Next, this Report is not referenced in any of CI's expert witness testimony and does not appear relevant due to this lack of reference. This lack of reference is augmented by the fact that it appears to have been offered to a group in the State of Colorado regarding another Powertech project in Centennial, Colorado without any specific reference to the Dewey-Burdock ISR Project. Each of the comments raised in this report are not specifically tailored to any aspect of Powertech's license application, the SER (which cannot be challenged in this proceeding), the FSEIS or the final license conditions. Further, many of the comments rendered in this report address issues such as air quality monitoring that are outside the scope of any admitted contentions. Given the lack of nexus to the Project and the failure of CI to satisfy relevant Commission requirements for testimony and/or exhibits, Powertech respectfully requests that this exhibit be stricken in its entirety.

**3. CI Exhibit INT-008: Opening Testimony of Dr. Donald Kelley**

Powertech seeks to strike the entirety of CI Exhibit INT-008 entitled *Opening Testimony of Dr. Donald Kelley* for a variety of reasons. As with CI Exhibit INT-002, this exhibit does not contain a supporting affidavit as required by the Licensing Board's June 2, 2014 Case Management Order and 10 CFR § 2.1207(a)(1), which is a procedural violation that should not be allowed to be remedied at this late date. CI also fails to comply with the June 2, 2014 Case Management Order by failing to show in its position statements how the testimony relates to any of the admitted contentions. CI's position statements contain one sentence in their initial statement (Page 7) where the testimony is referenced, but they do not comply with the instructions in the Case Management Order. Case Management Order at 2. Further, CI references that Dr. Kelley will address the potential "health risk" of the Dewey-Burdock ISR Project, a reference which is not subject to challenge in this proceeding since health risks were evaluated in the SER and is not subject to challenge.<sup>3</sup>

Dr. Kelley's testimony also references many issues that are outside the scope of this proceeding's admitted contentions. Examples of these references (all at Page 1 of the Exhibit except as noted) include: (1) "settling-pond accumulation, surface spraying...and processing of metallic-ion-enriched fluids;" (2) "atmospheric (evaporative and particulate) dissemination;" (3) "soil/crop/livestock incorporation;" (4) "[r]adiation –induces abnormalities;" (5) "toxic effects of particular metallic elements;" and (6) "[b]ioaccumulation of these elements through the food web." (Page 2). None of these references are relevant to the admitted contentions and, the only reference that could be considered relevant (a single reference to "inter-aquifer connection"

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<sup>3</sup> See Section IV(B)(1) *infra*.

(Page 1, First Paragraph)), has no supporting evidence in any of the pre-trial submissions. Thus, Powertech respectfully requests that this Exhibit be stricken in its entirety.<sup>4</sup>

**4. CI Exhibit INT-014: Opening Written Testimony of Ms. Linsey McLean**

Powertech seeks to strike the entirety of CI Exhibit INT-014 entitled *Opening Written Testimony of Linsey Mclean*. Again, as stated above with respect to other exhibits, this exhibit does not contain a supporting affidavit (and is not even signed) as required by the Licensing Board's June 2, 2014 Case Management Order or 10 CFR § 2.1207(a)(1), which is a procedural violation that should not be allowed to be remedied at this late date. This testimony does not contain any supporting evidence for claims regarding hydrogeological opinions offered in the testimony nor is there any attempt to provide expert qualifications demonstrating that this testimony should be accepted by the Licensing Board. Indeed, a proper summary of this testimony deals with a failure "to properly account for impacts to wildlife resulting from land application of ISL wastes;" but however, this was part of the formerly proposed Tribe Contention 13 on the DSEIS which was rejected by the Licensing Board. *See In the Matter of Powertech (USA), Inc.* (Crownpoint Uranium Project), LBP-13-09 at 69-71. The testimony also contains factually incorrect references to support its substance including a reference to a "Larimer County Environmental Advisory Board, in WY" (Page 2 of the Exhibit), which does not exist because there is no Larimer County in the State of Wyoming, nor is the Dewey-Burdock ISR Project located in Wyoming. Thus, based on the above argument, Powertech respectfully requests that the Licensing Board strike this Exhibit in its entirety.<sup>5</sup>

**5. CI Exhibit INT-010: Opening Written Testimony of Peggy Detmers**

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<sup>4</sup> For the same reasons in Section IV(C)(3) above, Powertech moves to strike CI Exhibit INT-009 entitled *Statement of Qualifications of Dr. Kelley*.

<sup>5</sup> Powertech also requests that the Licensing Board strike CI's reference to CI Exhibit INT-014a as it was never received by Powertech.

Powertech seeks to strike the entirety of CI Exhibit INT-010 entitled *Opening Written Testimony of Peggy Detmers*. Again, as stated above with respect to other exhibits, this exhibit does not contain a supporting affidavit as required by the Licensing Board's June 2, 2014 Case Management Order or 10 CFR § 2.1207(a)(1), which is a procedural violation that should not be allowed to be remedied at this late date. Ms. Detmers testimony is tailored towards claims associated with the previously dismissed Contention 14A/B, as evidenced by statements in CI's initial statement of position (at Page 9) that "the Opening Testimony of wildlife biologist Peggy Detmers discussed the failure to the FSEIS to adequately address the existence of the whooping cranes during migration and other endangered animals..." This statement characterizes Ms. Detmers' testimony as within the scope of the previously dismissed Contention 14A/B and, thus, outside the scope of the admitted contentions.<sup>6</sup> For these reasons, Powertech respectfully requests that the Licensing Board strike this Exhibit in its entirety, as well as any accompanying exhibits (INT-010-a-p) with INT-010-q having never been submitted.

**6. CI Exhibit INT-11: Opening Written Testimony of Marvin Kammera**

Powertech seeks to strike several portions of CI Exhibit INT-11 entitled *Opening Written Testimony of Marvin Kammera*. As a general matter, CI's initial statement of position alleges that Mr. Kammera's testimony applies to Contentions 3 and 4 (CI testimony on Contention 4 should be precluded), none of which has been connected to such contentions in any document submitted by CI. Further, Powertech requests that the Licensing Board strike the following specific portions of this testimony: (1) Page 1, ¶ 2 addressing "a regional processing plant" and "ore obtained from the Inyan Kara upstream from my water supply" on the eastern slope of the

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<sup>6</sup> Two references by Ms. Detmers, one to unspecified "other threatened and endangered species" (Page 2) and "bio-accumulative toxins that the Dewey Chilsin [sic] Wellfield mining activities will leave within this watershed" have no relevance to the admitted contentions. Much of Ms. Detmers' testimony also relies on an IPAC study, which was listed in CI's July 7, 2014 Exhibit List as CI Exhibit INT-010q but never provided to Powertech and is not available on NRC's Electronic Hearing Docket.

Black Hills, as the Dewey-Burdock Project is on the southwestern slope of the Black Hills, none of which has any supporting evidence in CI's submissions; (2) Pages 1-2, ¶ 4 alleging 8,000 gpm of water usage which is not supported by any references or citations; and (3) Page 2, 1<sup>st</sup> full ¶, addressing "[a] foreign corporation simply expecting to make a profit," which is not within the scope of any of the admitted contentions.

**7. CI Exhibit INT-020: Dr. Hannan LaGarry Rebuttal Testimony**

Powertech seeks to exclude the following portions of CI Exhibit INT-020 entitled *Dr. Hannan LaGarry Rebuttal Testimony*: (1) strike Page 2, 2<sup>nd</sup> full ¶, as it raises "periodic releases of water from storage ponds," which was not raised in Powertech initial testimony and, after review of the cited reference (Powertech Exhibit APP-015-A), shows that its Table at Page 6 notes that "[d]eleted paragraph describing periodic releases of water from storage ponds" which will not occur at the Dewey-Burdock ISR Project and (2) strike hyperlink cited at Page 4 of the testimony, the contents of which were not submitted as evidence.

**8. CI Exhibit INT-012: Affidavit of Dayton Hyde**

Powertech seeks to strike the following portions of CI Exhibit INT-012 entitled *Affidavit of Dayton Hyde*: (1) strike Page 3, ¶ 11 alleging that "[t]he land here is highly fractured" without providing any supporting evidence or offering Mr. Hyde's expert credential or expertise on subsurface geology or hydrology; (2) strike Page 3, ¶ 12 alleging that "[t]here is no way the uranium can be extracted safely" and that "[p]resent mining operations have a history of accidents and spills." Again, there is no offer of alleged FSEIS or other ROD deficiencies or of Mr. Hyde's credentials or expertise on subsurface geology or hydrology; and (3) Page 3, ¶ 13 describing issues such as foreign ownership, jobs, and where produced yellowcake will be sold, which is not relevant to the admitted contentions.

**9. Tribe Exhibit OST-1: Opening Testimony of Dr. Robert Moran**

Powertech seeks to strike all aspects of Tribe Exhibit OST-1 entitled *Opening Testimony of Dr. Robert Moran* associated with allegations on the adequacy of baseline surface water quality, as such allegations are not within the scope of the admitted contentions which relate to groundwater quality. Such allegations include Page 16, Item B.2., 1<sup>st</sup> sentence, which discusses baseline surface water quality in the context of historical mining. These allegations should be excluded under 10 CFR § 2.319(d) as irrelevant and outside the scope of the admitted contentions. Powertech also requests that the Licensing Board strike Slides 2-9, 12, 18-20 and 22-31 from Tribe Exhibit OST-018 entitled *Dr. Moran PowerPoint Presentation* as there is no explanation provided in the Tribe's submission as to how the information relates to the Dewey-Burdock ISR Project. Further Powertech requests that the Licensing Board strike CI's Rebuttal Statement of Position reference to CI Exhibit INT-023 as it was not submitted as evidence.

**10. CI Exhibit INT-007: Opening Testimony of Susan Henderson**

Powertech seeks to strike all aspects of CI Exhibit INT-007 entitled *Opening Testimony of Susan Henderson* for failure to demonstrate that the witness has the relevant expert credentials to opine on the safety/environmental issues identified in her testimony. In this Exhibit, Ms. Henderson offers no evidence of her expertise on ISR recovery, groundwater, geology or hydrology. Ms. Henderson does not reference the FSEIS or allege specific deficiencies with NRC Staff's FSEIS and does not provide any supporting evidence for claims on Wind Cave, groundwater flow direction, and other related topics. Further, Ms. Henderson offers opinions on issues well outside the scope of the admitted contentions, including issues such as Safe Drinking Water Act (SDWA) aquifer exemptions and foreign corporations. Thus, Powertech requests that

the Licensing Board strike all aspects of Ms. Henderson's testimony in CI Exhibit INT-007 that relate to these issues.

**V. CONCLUSION**

Based on the argument above, Powertech respectfully requests that the Licensing Board grant Powertech's motions offered herein. Powertech also respectfully requests that the Licensing Board grant NRC Staff's motions to the extent that they identify additional portions of CI's and the Tribe's position statements, testimony, and exhibits not identified herein.

Respectfully Submitted,

**/Executed (electronically) by and in  
accord with 10 C.F.R. § 2.304(d)/  
Christopher S. Pugsley, Esq.**

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Dated: July 22, 2014

**UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION**

**BEFORE THE ATOMIC SAFETY AND LICENSING BOARD**

In the Matter of:	)	
	)	
	)	Docket No.: 40-9075-MLA
POWERTECH (USA), INC.	)	
	)	Date: July 22, 2014
	)	
(Dewey-Burdock In Situ Uranium Recovery	)	
Facility)	)	
_____	)	

**CERTIFICATE OF SERVICE**

I hereby certify that copies of the foregoing **“POWERTECH (USA), INC.’S MOTION IN LIMINE, MOTION FOR CROSS-EXAMINATION, AND MOTIONS TO STRIKE STATEMENTS OF POSITION”** in the above captioned proceeding have been served via the Electronic Information Exchange (EIE) this 22nd day of July 2014, 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)/  
Christopher S. Pugsley, Esq.**

Dated: July 22, 2014

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