

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the matter of)	
)	
POWERTECH (USA) INC.)	Docket No. 40-9075-MLA
)	ASLBP No. 10-898-02-MLA-BD01
(Dewey-Burdock In Situ Uranium)	
Recovery Facility))	

**CONSOLIDATED INTERVENERS' RESPONSE TO POWERTECH
MOTION TO DISMISS CONTENTION 14**

The Consolidated Intervenors (CI) hereby respond to the Motion by Powertech to Dismiss Environmental Contention 14B (Motion) before this Board, the Oglala Sioux Tribe (OST) having voluntarily withdrawn its intention to offer evidence regarding this Contention.

The CIs agree with the references to the statement of facts in the record by Applicant, as far as presented in its Motion, p. 2. However, the CIs ask leave of the Board to present the limited evidence proffered by the CIs in their Opening Testimony and Exhibits.

By 4/28/14 Memorandum and Order - Ruling on Proposed Contentions Related to the Final Supplemental Environmental Impact Statement, the Board migrated and continued the admission of Contention 14B in these proceedings.

Ibid, p. 21 [noting Contention 14 is a “contention of adequacy,..“As a result, as long as **intervenors**’ concerns (not solely Intervenor-OST) over the adequacy of the FSEIS remain,..the contention may migrate”], p. 22 [“Except for changing DSEIS to FSEIS, ...Contention 14B, as previously admitted, remain unchanged and will be adjudicated in the evidentiary hearing”]; p. 27 (noting “Consolidated Intervenor incorporated by reference the detailed discussion of contentions of the [Oglala Sioux] Tribe’s Statement of Contentions dated March 17, 2014”). The various admitted Contentions of the OST and Consolidated Intervenor were listed as admitted, without regard for who initially raised the issue, and thus joined for opportunity of proof during the evidentiary proceedings. *See, Ibid*, “VI. BOARD ORDER, p. 30; Appendix A, attached to Memorandum and Order.

Subsequent to that joinder, in an effort to secure evidence for all of the Contentions being heard by the Board, the below-signed Counsel received the proffered evidence of wildlife biologist Peggy Detmers, which was noticed and submitted to this Board with the CIs’ Opening Testimony regarding Contention 14B (Exhibits INT-010, 010b-q). However, Counsel for another member of the Consolidated Intervenor apparently informally advised Counsel for Powertech that there would be no objection to Contention 14B being withdrawn, despite the submission of substantive evidence on this Contention on behalf of all

Consolidated Intervenors.¹

Respectfully, the Consolidated Intervenors hereby request leave to continue to be able to present the testimony of Ms Detmers and her exhibits.

Contrary to any suggestion, no prejudice would accrue by the Board accepting CIs' evidence in support of issues raised by Contention 14B. Indeed, Powertech has noticed this Board that it intends to introduce the testimony of Gwyn McKee of Thunderbird Wildlife Consulting and Exhibits App 015A-015V and 040D-040EE regarding "all Contentions," and Exhibits App 058-062 specifically on Contention 14. Similarly, the NRC Staff noticed the testimony of H. Yilma and A. Hestor on the wildlife issues of Contention 14 in its Initial Testimony (p. 3, 108-111), as well as its submission of Exhibits NRC 129-131 and references to various parts of the DSEIS and the FSEIS (p. 108-111).

In the absence of prejudice, the NRC Staff and Applicant, together with the Consolidated Intervenors, are ready and prepared to present substantive testimony regarding the specific questions and issues raised in Contention 14B, which remain ripe and important for review.

¹ Perhaps this situation is reflective of the complications and coordination issues that can sometimes arise by combining separate parties with separate counsel into one for administrative/judicial economy purposes.

Dated this 13th day of July, 2014.

Respectfully submitted,

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