

**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 29, 2014
(Dewey-Burdock In Situ Uranium Recovery)	
Facility))	
_____)	

**POWERTECH (USA), INC. RESPONSE TO NRC STAFF'S, CONSOLIDATED
INTERVENORS', AND THE OGLALA SIOUX TRIBE'S 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 Response to NRC Staff's, Consolidated Intervenors' and the Oglala Sioux Tribe's 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 seven (7) admitted contentions (Contentions 1A/B, 2, 3, 4, 6, and 9) 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 Intervenors" (hereinafter "CI") and the Oglala Sioux Tribe (hereinafter the "Tribe"). As set forth below,

Powertech respectfully requests that the Licensing Board grant NRC Staff's motion as submitted on July 22, 2014, and deny each of CI's and the Tribe's motions as submitted on July 22, 2014.

II. LEGAL STANDARD

Even though it provided a statement of applicable legal standards in its July 22, 2014 submission, Powertech deems it appropriate to restate such standards as they are equally applicable to the argument offered below. 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 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 requirements for co-sponsoring 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).

With respect to motions for cross-examination, such motions are permitted to be filed pursuant to 10 CFR § 2.1204(b). The scope of cross-examination and the parties that may engage in it in particular circumstances are matters of Licensing Board discretion. *Pub. Serv. Co. of Ind.* (Marble Hill Nuclear Generating Station, Units 1 and 2), ALAB-461, 7 NRC 313, 316 (1978). This regulation requires that such motions must be accompanied by:

- (i) A brief description of the issue or issues on which cross-examination will be conducted;
- (ii) The objective to be achieved by cross-examination; and
- (iii) The proposed line of questions that may logically lead to achieving the objective of the cross-examination.

10 CFR § 2.1204(b).

Under the Commission's regulations for Subpart L administrative hearings, a Licensing Board "shall allow cross-examination by the parties only if the presiding officer determines that cross-examination by the parties is necessary to ensure the development of an adequate record for decision." 10 CFR § 2.1204(b)(3). The Commission's adoption of Subpart L procedures identifies cross-examination as permissible where "cross-examination by the parties is the only reasonable action to ensure the development of an adequate record." *Changes to Adjudicatory process*, 69 Fed. Reg. 2182, 2196 (January 14, 2004).

Further, with respect to expert witness qualifications and as discussed by NRC Staff in its July 22, 2014 Motion, Powertech hereby incorporates its legal standard presentation by reference. In summary, parties to this proceeding must demonstrate that their witnesses have adequate expertise to offer expert testimony on the substance of any contention in this proceeding. The burden of demonstrating these expert qualifications rests with the proffering party. *Duke Energy Corp.* (Catawba Nuclear Station, Units 1 and 2), CLI-04-21, 60 NRC 21, 27-28 (2004).

III. ARGUMENT

A. NRC STAFF'S MOTION IN LIMINE

In its July 22, 2014 Motion, NRC Staff offers five (5) separate requests: (1) that the Licensing Board exclude CI's evidence on Contentions 4 and 6 for failure to offer and have admitted substance on either Contention; (2) that the Licensing Board exclude Dr. Moran's testimony on Contentions 2 and 3 that the use of license conditions to gather additional data violates NEPA; (3) that the Licensing Board exclude Ms. Henderson's testimony on Contention 2 except to the extent that she discusses possible contamination from the Black Hills Army Depot; (4) that the Licensing Board exclude Ms. Henderson's, Mr. Hyde's, Dr. Kelley's, and Ms. McLean's testimony on Contention 3 as outside the scope of the Contention; and (5) that the Licensing Board exclude Ms. Henderson's, Mr. Hyde's, Dr. Kelley's, and Ms. McLean's testimony on Contention 3 for failure to show adequate expertise on hydrogeological issues in this proceeding. *See In the Matter of Powertech (USA), Inc.*, (Dewey-Burdock ISR Project), NRC Staff's Motion in Limine (July 22, 2014). Powertech fully supports NRC Staff's requests and, to the extent that NRC Staff's previously offered argument in its July 22, 2014 Motion comports with argument offered in this Response, Powertech incorporates such argument by reference. Thus, Powertech respectfully requests that the Licensing Board grant NRC Staff's July 22, 2014, Motion *in Limine*.

B. OGLALA SIOUX TRIBE MOTIONS

The Tribe's motion *in limine* is comprised of two separate requests: (1) a motion to cross-examine Powertech's expert witnesses, including but not limited to Mr. Hal Demuth, Mr. Errol Lawrence, and Mr. Doyl Fritz regarding a July 16, 2014 Powertech press release on the acquisition of additional Dewey-Burdock site-specific data from Energy Fuels Resources (USA),

Inc. and (2) a motion to strike various identified portions of Powertech's expert testimony regarding several admitted contentions ("portions of the testimony and argument submitted by both NRC Staff and Powertech go beyond the analysis contained in the FSEIS"). *See In the Matter of Powertech (USA), Inc.* (Dewey-Burdock ISR Project), Oglala Sioux Tribe Motion to Strike and Cross-Examination Motion (July 22, 2014). For the following reasons, Powertech respectfully requests that the Licensing Board deny the Tribe's motions in their entirety. However, in the event that the Licensing Board sees fit to grant the Tribe's Cross-Examination Motion, Powertech hereby reserves the right to cross-examine all Tribe experts on any Contention where cross-examination is permitted.

First, with respect to the Tribe's Cross-Examination Motion, Powertech objects to this Motion based on the lack of relevance of the data acquired by Powertech as discussed in the Tribe's offered press release. The Tribe specifically cites to a portion of this press release where Powertech states that, "[t]his data is expected to assist Powertech's *planning of wellfields for the Dewey Burdock uranium property by providing additional quality data to complement Powertech's existing database.*" *See* Tribe Cross-Examination Motion at Exhibit 3. The relevancy of the data purchased by Powertech to this proceeding has not been adequately shown by the Tribe.

Initially, Powertech objects to the Tribe's initial claim that it intentionally has "taken steps" to acquire this additional data so as to "deny review by its witnesses, the parties, and this tribunal" and that dismissal of Powertech's application might be appropriate. *See* Tribe Motion at 3. However, the substance of the data acquired by Powertech in this most recent transaction is nothing more than data designed to, as the Tribe has cited, supplement its existing database and has not been relied upon by Powertech in any submission to NRC Staff that was reviewed in this

licensing process and does not deal with groundwater quality (Contention 2 & 3) or quantity (Contention 4) nor has it been addressed by any of Powertech's experts in preparation of their initial or rebuttal testimony. Accordingly, it is entirely irrelevant to this proceeding.

Moreover, the quality or quantity of the acquired data bears no relevance to the questions raised by Dr. Moran and cited by the Tribe, as they relate to adequacy of Criterion 7 "baseline" groundwater quality and to NRC Staff's assessment of potential impacts prior to license issuance in the SER¹ and the FSEIS. The data also have no relevance to the "procedures" for determining Criterion 5 "Commission-approved background" as those procedures is described in the Safety Evaluation Report (SER) and FSEIS such that all parties before the Licensing Board have had the opportunity to address them. Further, Dr. Moran's questions regarding groundwater quality data are, by their nature, threshold factual and legal issues as to whether or not adequate data were provided in accordance with NRC regulations and Commission-approved guidance and are not relevant to the type of data Powertech has subsequently acquired. Dr. Moran's questions regarding the *type of data that are required* have not been impeded by Powertech's possession of any particular type of groundwater quality or hydrogeologic data, as is evidenced by his testimony on this point. Regardless of what type of data Powertech has now purchased, the determination of whether Dr. Moran's concerns adequately implicate a need to supplement or modify the ROD to require more data for his definition of "baseline" pre-license issuance has nothing whatsoever to do with the recently acquired data. Rather, the question is did Powertech submit adequate data to support NRC Staff's initial licensing decision? Based on the ROD and pleadings submitted thus far, the Licensing Board has sufficient information to evaluate Dr. Moran's concerns, cross-examination of Powertech's witnesses regarding information that has

¹ As stated repeatedly in Powertech's July 15, 2014 Rebuttal Statement of Position, NRC's SER is not subject to challenge in this proceeding. See Powertech Rebuttal Statement of Position at 2, 5, 20, 27-28, 33, & 36-37.

nothing to do with water quality or quantity are played no role in Powertech's submissions to date in this licensing process or regarding their testimony in this proceeding would add nothing to the record. The decision to allow cross-examination should not be based on the fact that new information is available when that information has nothing to do with the admitted contentions. Given that the new information will not be useful in supplementing the record and, thus, the Tribe's Cross-Examination Motion should be denied.

Second, the Tribe's Motion to Strike is entirely based on a claim that NRC Staff and Powertech cannot offer "*post-hoc*" testimony to "rehabilitate" NRC Staff's Final Supplemental Environmental Impact Statement (FSEIS). *See* Tribe Motion to Strike at 2. This motion alleges that NRC Staff and Powertech are attempting to "fix problems with the NEPA process itself" by offering such testimony and that such testimony should not be offered outside the NEPA process. *See id.*

The Tribe's Motion does not account for the fact that Powertech's and NRC Staff's expert testimony in this proceeding is merely "explanatory" in nature. Both parties have offered substantial initial and rebuttal testimony explaining how NRC Staff's FSEIS and the analyses and conclusions therein are adequate under NEPA and the Commission's implementing regulations at 10 CFR Part 51. Here, both parties' expert testimony is intended to demonstrate a number of items in an explanatory fashion, including but not limited to: (1) compliance with NRC regulations and Commission-approved guidance for groundwater quality data gathering and analyses pursuant to 10 CFR Part 40, Appendix A, Criteria 7 and 5; (2) compliance with 36 CFR Part 800 National Historic Preservation Act (NHPA)/Advisory Council on Historic Preservation (ACHP) regulations for the Section 106 Tribal Consultation process; (3) compliance with NEPA analyses for FSEIS mitigation measures; and (4) compliance with NRC

regulations and Commission-approved guidance for hydrogeological confinement and groundwater quantity analyses. *See generally* Powertech Exhibits APP-001 at ¶¶ A.4-A.7, Exhibit APP-013 at ¶¶ A.12-A.29, Exhibit APP-037 at ¶¶ at A.8-A.26 & A.38-A.43, & Exhibit APP-046 at ¶¶ A.21-A.25. This testimony is intended to demonstrate to the Licensing Board that the FSEIS does not require any supplementation or major modification and that the record of decision (ROD) is adequate to support NRC Staff’s initial licensing decision. Thus, this testimony does not amount to *post-hoc* rationalizations in an effort to cure alleged defects in the FSEIS or the ROD as a whole.

Additionally, even if this testimony were determined to be *post-hoc* rationalizations,² there is no precedent for striking the testimony offered by NRC Staff or Powertech. As a general matter, federal courts have determined that administrative agencies are the best source of initial evaluation of evidentiary matters, especially within the ambit of an agency’s expertise (such as NRC on matters of Atomic Energy Act materials and protection of public health and safety):

“Administrative agencies deal with technical questions, and it is imprudent for the generalist judges of the federal district courts and courts of appeals to consider testimonial and documentary evidence bearing on those questions unless the evidence has first been presented to and considered by the agency.”

Cronin v. United States Dep’t of Agriculture, 919 F.2d 439, 444 (7th Cir. 1990).

In the instant case, this Licensing Board is uniquely positioned to have expertise on matters involving AEA licensing and would also be in a position to evaluate any “*post-hoc rationalizations*” offered in this proceeding. This legal argument was further supported by the Licensing Board in *In the Matter of Pa’ina Hawaii*, where the Licensing Board denied an intervenor’s motion to strike testimony offered by NRC Staff in a proceeding regarding a

² The Tribe’s reference to the *Hodel* case on Page 3 of its Motion alleges that the case applies to “administrative adjudicatory hearing[s],” which it does not. The Tribe’s cited precedent does not apply here as it involves federal agencies attempting to supplement the administrative record before federal district or circuit courts of appeals.

commercial irradiator license. *See generally In the Matter of Pa'ina Hawaii* (Material License Application), Order Ruling on Intervenor's Motion to Strike Testimony, Releasing Previously Reserved Hearing Dates, and Directing Parties to Submit Scheduling Information for Hearing (December 4, 2008).³ Based on this argument and precedent, Powertech argues that the Tribe's Motion should be denied.

C. CONSOLIDATED INTERVENORS' MOTIONS

CI's motion *in limine* consists of two requests to exclude expert testimony offered by Powertech's expert witnesses. These two requests consist of itemized lists of lines of testimony offered by two (2) of Powertech's witnesses who have offered both initial and rebuttal testimony: (1) Dr. Lynne Sebastian offering initial and rebuttal testimony on Contentions 1A/B and (2) Mr. Errol Lawrence offering initial and rebuttal testimony on Contentions 2, 3, and 4. *See generally In the Matter of Powertech (USA), Inc.* (Dewey-Burdock ISR Project), Consolidated Intervenor's Motion *in Limine* (July 22, 2014). For the following reasons, CI's Motion should be denied in its entirety.

CI's entire Motion is dependent on its argument that both Dr. Sebastian and Mr. Lawrence are offering "legal opinions" on matters within the scope of the Contentions on which they offer expert testimony. *See* CI Motion at 5. Indeed, CI claims that the identified portions of Dr. Sebastian's and Mr. Lawrence's expert testimony fall "outside their area of expertise and must be excluded from this proceeding" as "irrelevant, immaterial, unreliable, confusing and a waste of time..."⁴ *Id.* However, in both instances, CI fails to understand that the expert

³ For cases where the Commission or the Licensing Board allowed NRC Staff testimony, *please see In the Matter of Hydro Resources, Inc.*, (Crownpoint Uranium Project), LBP-05-17, 62 NRC 77 (2005), *review denied* CLI-06-01 (January 11, 2006); *see also In the matter of Dominion Nuclear North Anna* (Early Site Permit for North Anna ESP Site), CLI-07-27, 66 NRC 215, 230 n. 79 (November 20, 2007).

⁴ CI cites to Rule 702 of the Federal Rules of Civil Procedure entitled *Testimony by Expert Witnesses* as support for its arguments. However, in NRC administrative proceedings, the Federal Rules of Civil

testimony offered in the identified portions of these witnesses' expert testimony does not constitute legal opinion; but rather, expert interpretation of their agency's promulgated regulations and/or agency guidance in support of legal opinion offered by counsel.

First, with respect to Dr. Sebastian's expert testimony and the passages identified by CI in its motion, each passage is claimed to be either an opinion on what must occur pursuant to an ACHP regulation (36 CFR Part 800) or what is not required under such regulations. However, CI completely ignores the fact that Dr. Sebastian currently serves in several expert positions with respect to cultural resources, including as an expert member of the ACHP, which is the federal agency responsible for the implementation of the NHPA's requirements and for the promulgation of regulations pursuant to the NHPA currently found at 36 CFR Part 800. Dr. Sebastian's expert opinion on the substance and implementation of the NHPA and its 36 CFR Part 800 regulations are indeed based on her past experience, including the typical use of programmatic agreements (PA) for projects using phased identification such as the Dewey-Burdock ISR Project. For example, CI's citation to ¶ A.9 of Powertech's Exhibit APP-001 is a representative example of CI's ignorance of the ACHP process. Pursuant to 36 CFR § 800.2(b)(2), a federal agency evaluating an undertaking is free to request the involvement of the ACHP in the evaluation of its Section 106 Tribal Consultation process' adequacy. In the instant case, the ACHP was involved in NRC's Section 106 process and determined it to be adequately complete based on its execution of the Dewey-Burdock ISR Project PA. However, while Dr. Sebastian recused herself

Procedure do not directly apply. *See Duke Power Co.* (William B. McGuire Nuclear Station, Units 1 & 2), ALAB-669, 15 NRC 453, 475 (1982), *quoting* Fed. R. Evid. 702; *Carolina Power & Light Co.* (Shearon Harris Nuclear Power Plant), LBP-01-9, 53 NRC 239, 250 (2001) (Although the Federal Rules of Evidence are not directly applicable to Commission proceedings, NRC presiding officers often look to the rules for guidance, including Federal Rule 702, which allows a witness to be qualified as an expert "[i]f scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or determine a fact in issue.") *see also GE-Hitachi Global Laser Enrichment LLC* (GLE Commercial Facility), 76 NRC 218, 248 (2012).

from this ACHP evaluation due to her work as Powertech's expert consultant, this does not diminish her ability to evaluate the adequacy of NRC's Section 106 process which she would have been charged with had it involved a licensee for whom she did not perform consulting work. Moreover, in this specific example, Dr. Sebastian makes it clear that it is her expert opinion and not a legal conclusion: "This *opinion* is expanded in my responses to the Section 106 allegations below." Powertech Exhibit APP-001 at ¶ A.9 (emphasis added). This argument applies equally to all identified portions of Dr. Sebastian's expert testimony where evaluation of compliance with ACHP regulations is implicated. Thus, CI has failed to demonstrate that Dr. Sebastian's expert opinion in CI's identified passages is outside the scope of her expertise,⁵ which is the crux of its argument. Therefore, CI's motion to strike Dr. Sebastian's testimony based on a lack of expertise should be denied.

CI also improperly claims that specific opinions offered by Dr. Sebastian are not based on her experience; however, her experience as the State of New Mexico's State Historic Preservation Officer (SHPO), which is responsible for implementation of the State's program for NHPA/ACHP regulations for federal undertakings within its boundaries, and her membership on the ACHP are specifically noted in her *curriculum vitae* (Powertech Exhibit APP-002) and in Powertech's June 20, 2014 initial statement of position (Page 16-17). These expert opinions are offered based on her expertise *and experience* in the variety of positions that she has held in the past and present. To say otherwise would be to discount such experience as not directly relevant to the substance of her expert testimony, a conclusion which would result in the discounting of

⁵ CI also cannot claim Dr. Sebastian's expert opinion is not "relevant," as they even concede in one identified passage (Powertech Exhibit APP-001 at Page 5, ¶ A.9) that "[s]uch is a legal opinion made by a person who is not a lawyer *which goes to an ultimate issue in this case and therefore is objectionable and must be excluded.*" CI Motion at 5 (emphasis added).

all expert credentials offered in support of expert testimony. Thus, CI's motion to strike Dr. Sebastian's expert testimony as not being based on her past experience should be denied.

Second, with respect to the expert testimony of Mr. Errol Lawrence, CI once again claims that the expert witness is offering legal conclusions regarding issues associated with groundwater, in particular adequacy of baseline groundwater quality data pursuant to 10 CFR Part 40, Appendix A, Criterion 7 for "baseline" and Criterion 5 for "Commission-approved background." *See* CI Motion at 7. However, Mr. Lawrence's expert testimony on these items is not presented as a legal conclusion; but rather, it is presented as a discussion of how an expert hydrologist such as himself works with ISR projects, including the Dewey-Burdock ISR Project, and his experience with what NRC Staff requires for groundwater quality data and analyses in a license application (Criterion 7) and post-license issuance (Criterion 5) in a wellfield hydrogeologic package. All legal arguments regarding this issue are presented by counsel for Powertech in its initial position statement. *See In the Matter of Powertech (USA), Inc.* (Dewey-Burdock ISR Project), Powertech Initial Statement of Position at 9-11. However, Mr. Lawrence's opinions on these matters are offered as evaluations of past experience which conform with Powertech's legal interpretation of these Criteria. Further, Mr. Lawrence opines in a number of places that his opinion is based on interpretation of NRC's Commission-approved guidance at NUREG-1569 entitled *Standard Review Plan for In Situ Leach Uranium Extraction Facilities* (hereinafter "NUREG-1569"). This agency guidance is NRC Staff's legal interpretation of Commission regulations, including those for groundwater quality data gathering pursuant to Criteria 7 and 5 and not Mr. Lawrence's. Mr. Lawrence's expert testimony merely opines that his past experience dictates that the groundwater quality data offered by Powertech in its license application and the types of data to be gathered post-license issuance are consistent

with NUREG-1569 and *de facto* with Criteria 7 and 5. Thus, CI cannot claim that Mr. Lawrence is offering a legal opinion in the cited passages nor can it claim that his opinion is not based on his past experience. Therefore, CI's claim that Mr. Lawrence is offering legal opinions cannot serve as grounds for its motion and, as such, it should be denied.

IV. CONCLUSION

Based on the argument above, Powertech respectfully requests that the Licensing Board grant NRC Staff's July 22, 2014 Motion and deny CI's and the Tribe's July 22, 2014 Motions.

Respectfully Submitted,

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

Dated: July 29, 2014

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**UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION**

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing **“POWERTECH (USA), INC.’S RESPONSE TO NRC STAFF’S, CONSOLIDATED INTERVENORS’ AND THE OGLALA SIOUX TRIBE’S MOTIONS IN LIMINE, MOTION FOR CROSS-EXAMINATION, AND MOTIONS TO STRIKE”** in the above captioned proceeding have been served via the Electronic Information Exchange (EIE) this 29th 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)/
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Dated: July 29, 2014