



**ENVIRONMENTAL APPEALS BOARD
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C.**

In re Powertech (USA) Inc.

Permit Nos. SD31231-00000 & SD52173-00000

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) UIC Appeal No. 20-01
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ORDER SETTING DEADLINE FOR ANY MOTION TO AMEND THE PETITION

This matter has been stayed at the request of the U.S. Environmental Protection Agency Region 8 (“Region”) in light of the potential for this action to be affected by litigation pending in the D.C. Circuit Court of Appeals in *Oglala Sioux Tribe v. U.S. Nuclear Regulatory Commission*, No. 20-1489. In that litigation, the Oglala Sioux Tribe (“Tribe”) challenged the Nuclear Regulatory Commission (“Commission”)’s issuance of a license for the Dewey-Burdock uranium mining project, in part based on arguments that the Commission had not adequately complied with applicable National Historic Preservation Act requirements. On August 9, 2022, the D.C. Circuit Court of Appeals issued a decision in *Oglala Sioux Tribe v. U.S. Nuclear Regulatory Commission*, 45 F.4th 291 (D.C. Cir. 2022). Pursuant to the Environmental Appeals Board (“Board”)’s January 10, 2023, Order Continuing Stay Subject to Conditions, the parties in the above-captioned appeal filed a joint status report on March 13, 2023. Joint Status Report (Mar. 13, 2023). The Joint Status Report informs the Board that the Tribe has declined to file a Petition for a Writ of Certiorari in the United States Supreme Court to review the D.C. Circuit Court of Appeals decision in *Oglala Sioux Tribe v. U.S. Nuclear Regulatory Commission*, 45 F.4th 291 (D.C. Cir. 2022). Joint Status Report at 3.

In the Joint Status Report, the Tribe requests “a 30-day period following the lifting of the stay to review and potentially amend its Petition for Review in this matter in light of the changed circumstances since the stay was entered, including but not limited to the D.C. Circuit Court of Appeals ruling.” *Id.* at 3-4. Permittee Powertech (USA) Inc. (“Powertech”) states that it “takes no position at this time on the Tribe’s request for an additional 30 days to consider filing a motion to amend its petition, provided any such motion is filed in accordance with 40 C.F.R. § 124.19(f).” *Id.* at 4. Similarly, the Region states that it “takes no position at this time on the Tribe’s request for an additional 30 days to consider amending its petition.” *Id.* at 5. The Region recommends “that any such amendment be filed as a motion in accordance with 40 C.F.R. § 124.19(f) and not through a status report, nor through additional recommendations for the orderly resolution of this matter.” *Id.*

Given that the Region and Powertech do not oppose the Tribe’s request for thirty days to review and potentially file a motion to amend the petition in this matter, the Board hereby grants the Tribe’s request, subject to the following conditions. If the Tribe decides to seek to amend its petition, the Tribe must file a motion to amend the petition in accordance with 40 C.F.R. § 124.19(f). The deadline for filing and serving such a motion is no later than **Friday, April 21, 2023**, thirty days from this order’s issuance. In accordance with the applicable regulations, any party may file and serve a response to such a motion within fifteen days after service of that motion. 40 C.F.R. § 124.19(f)(3). And any reply to a response to that motion, if applicable, must be filed within ten days after service of any response. *Id.* § 124.19(f)(4).

In the Joint Status Report, the parties also make recommendations on various steps and scheduling matters following the thirty-day period for the Tribe to seek leave to amend its petition. The Board will not address those recommendations at this time, but will address them,


as appropriate, in a further scheduling order when (1) briefing and resolution of any motion to amend the petition filed by the Tribe is complete, or (2) the thirty-day time period has come to a close and the Tribe has not filed such a motion.

At this time, the briefing schedule in this matter continues to be held in abeyance for the Region's response to the petition, any response to the petition Powertech may wish to file, and other pleadings including responses to the pending motions and pleadings filed on May 18 and May 28, 2021, until directed otherwise by the Board. The Board does not request any further recommendations from the parties for the orderly resolution of this appeal at this time. No motions or other issues, aside from the Tribe's potential motion to amend its petition and any responses or reply to that motion, will be addressed by the Board at this time. The Board continues to be committed to adjudicating the claims before it in this case in an expeditious and fair manner.

So ordered.

Dated: March 22, 2023

ENVIRONMENTAL APPEALS BOARD

By: 
Mary Kay Lynch
Environmental Appeals Judge

CERTIFICATE OF SERVICE

I certify that copies of the foregoing *Order Setting Deadline for Any Motion to Amend the Petition* in the matter of Powertech (USA) Inc., UIC Appeal No. 20-01, were sent to the following persons in the manner indicated.

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Dated: Mar 22, 2023

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Clerk of the Board