

**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 SCHEDULING BRIEFING AND ORAL ARGUMENT

Today, the Environmental Appeals Board issued an order denying the Oglala Sioux Tribe’s motion to amend its petition for review, denying review of the petition’s National Historic Preservation Act section 106 issue, and identifying the issues remaining for Board resolution. Order Denying Motion to Amend Petition for Review, Denying Review on the Petition’s National Historic Preservation Act Section 106 Issue, and Identifying Issues in the Petition Remaining for Resolution (Nov. 16, 2023) (“November 2023 Order”).

By this scheduling order, the Board lifts the current stay in proceedings and directs the parties to brief the issues remaining for resolution identified in the November 2023 Order, as follows:

- The Region’s response to the petition for review (along with a certified index and the relevant portions of the administrative record) and Powertech’s response to the petition, if it chooses to file one, are to be filed and served on or before **Monday, December 18, 2023.**
- The Tribe’s reply brief, if it chooses to file one, is to be filed and served on or before **Monday, January 8, 2024.**

In terms of the three pending motions, which were filed at a time when proceedings in the case were stayed, the Board has determined that it would be more effective and efficient for the parties to address the issues raised in those motions through their respective response and reply briefs, and not through further briefing on the motions.¹ *See* 40 C.F.R. § 124.19(n). This approach is consistent with the Board’s June 2, 2021 order on the pending motions. *See* Order Regarding Additional Pleadings 2 (June 2, 2021) (“Parties will have an opportunity to address the issues in the pending pleadings once a briefing schedule for this matter has been established.”).

As to the Tribe’s request for oral argument, *see* Petition for Review at 53, the Board has determined that argument would be of assistance in its deliberations on the issues remaining for Board resolution, as identified in the November 2023 Order. Accordingly, the Board will hold oral argument on **Thursday, February 29, 2024**, beginning at **1:30 p.m.** Eastern Time. The Board has allocated a total of sixty (60) minutes for oral argument, divided as follows and in the following order:

- Thirty (30) minutes for the Oglala Sioux Tribe
- Twenty (20) minutes for the Region
- Ten (10) minutes for Powertech

¹ The three pending motions include: Powertech Motion to Strike National Environmental Policy Act [“NEPA”] Challenges (May 18, 2021); Powertech Motion to Strike the Brief Amicus Curiae of The Great Plains Tribal Water Alliance, Inc. (May 28, 2021); and the Tribe’s Motion to Hold Responses to Permit Applicant’s Motion to Strike in Abeyance (May 28, 2021) (“Tribe’s Motion”). The Board rejects the Tribe’s request to treat Powertech’s motion to strike the NEPA challenges as Powertech’s response to the petition. Tribe’s Motion at 2, 4-5. The Tribe’s remaining requests, *id.* at 1, 6, are now moot.

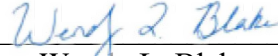
- The Tribe may reserve up to ten (10) minutes of its thirty-minute time allocation for rebuttal.

An order addressing the logistics for oral argument will follow in January 2024.

So ordered.

ENVIRONMENTAL APPEALS BOARD

Dated: Nov 16, 2023

By: 
Wendy L. Blake
Environmental Appeals Judge

CERTIFICATE OF SERVICE

I certify that copies of the foregoing *Order Scheduling Briefing and Oral Argument* 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: Nov 16, 2023

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