



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

In re:
Powertech (USA) Inc.
Permit Nos. SD31231-00000 & SD52173-00000
UIC Appeal No. 20-01

ORDER CONTINUING STAY SUBJECT TO CONDITIONS

Pursuant to the Environmental Appeals Board ("Board") August 25, 2022, Order Extending Stay Subject to Conditions, the parties in the above-captioned appeal filed a joint status report on December 23, 2022. Joint Status Report (Dec. 23, 2022). Subsequently, on January 4, 2023, the parties filed a set of recommendations "for orderly resolution of the present petition." Recommendations (Jan. 4, 2023). The Joint Status Report informs the Board that on December 21, 2022, the Clerk of the Court for the D.C. Circuit Court of Appeals issued a formal mandate in Oglala Sioux Tribe, et al. v. U.S. Nuclear Regulatory Comm'n, 45 F.4th 291 (D.C. Cir. 2022) and the Court's Mandate is attached to the joint status report. Joint Status Report at 2, 3, Attach. 1. The Joint Status Report states that Petitioner, the Oglala Sioux Tribe, has ninety days, until March 13, 2023, to file a Petition for Certiorari with the U.S. Supreme Court, and that "[w]hile Petitioners did not file for a stay of the mandate, they are reviewing their options with respect to whether to file a Petition for Certiorari." Id. at 3. The Joint Status Report further represents that in November 2022, the Oglala Sioux Tribe elected a new President and that given the new administration the Tribe will require additional time to assess its options. Id.

The parties' recommendations document states that "[t]he parties have conferred, but have not been able to arrive at one set of joint recommendations," and accordingly, each party's recommendations are presented separately, but to the extent one party agrees with another's recommendation, this is noted in the document. Recommendations at 1. The Board appreciates the parties' thoughtful recommendations and clear presentation of their considerations in proposing next steps for the orderly resolution of this appeal. For its part, the Oglala Sioux Tribe represents that its government is in a "significant transition period" with a new President and Tribal Council and recommends that the Board maintain the stay at least long enough for them to evaluate their options and develop positions on various aspects of the litigation in federal court and their Petition before the Board. Recommendations at 2-3. The Tribe represents that they anticipate completing this by March 13, 2023, the deadline for filing a Petition for Certiorari to the U.S. Supreme Court and further recommends that the Board "order the Tribe to coordinate with the other parties and file a report to the Board no later than March 13, 2023, with a proposal for the efficient resolution of this appeal." *Id.* at 3. In support of this recommendation, the Tribe states that for a number of reasons following the new Tribal President taking office in December 2022, "the Tribal Council and President's Office have not yet been able to devote sufficient time to fully evaluate and formulate the Tribe's formal positions related to the recent D.C. Circuit Court of Appeals ruling or the Environmental Appeals Board proceedings related to the proposed Dewey-Burdock uranium mine." *Id.* at 2. For its part, the Region states in its recommendation that it "does not oppose the Tribe's recommendation for an extension of the stay, to the extent that the extension is limited to the period within which the Tribe may seek certiorari from the D.C. Circuit's decision." *Id.* at 5. And Permittee Powertech states that it "does not oppose a limited continuation of the stay for thirty days to allow for [the Tribe's] evaluations to be made *

* * with a report due from the Petitioner by February 3, 2023 on the status of its position.” *Id.* at

4. Powertech notes that “the D.C. Circuit’s mandate has issued and that no stay of the mandate has been requested” and that “[o]nce Petitioner has decided how it was to proceed, * * * Petitioner can seek whatever relief it considers appropriate at that time * * *.” *Id.*

The parties also make recommendations on various steps and scheduling matters following the lifting of the stay. The Board will not address those recommendations at this time, but will address them, as appropriate, at a later date.

Upon consideration of the information and recommendations the parties provided regarding the continuation of the stay, the Board concludes that a continuation of the current stay of proceedings, with conditions, is reasonable and appropriate in this case. The facts and circumstances of this matter, including the Tribe’s leadership transition and the principles of judicial and administrative economy, counsel in favor of continuation of the stay. *See* 40 C.F.R. § 124.19(n). And as we have stated previously, we stay this matter mindful of Powertech’s interest in securing its permits and proceeding with its Dewey-Burdock Project. The Board is committed to adjudicating the claims before it in an expeditious and fair manner, and our conclusion is that a stay at this time will result in a more efficient and fair resolution of the pending petition for review.

The parties are hereby directed to provide the Board with an updated joint status report no later than **Monday, March 13, 2023**, or within seven days of the Tribe’s filing of a Petition for Certiorari with the U.S. Supreme Court, whichever comes first. As appropriate, to the extent the parties wish to revise the recommendations for orderly resolution of this appeal presented in the Recommendations filed on January 4, 2023, the parties may provide such recommendations in the updated joint status report. This revised recommendation may, as necessary, be presented

as separate recommendations from each party. The parties are also directed to apprise the Board of any other issues potentially affecting the Board's adjudication of the pending petition.

The briefing schedule in this matter continues to be stayed and 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, 2021 and May 28, 2021, until directed otherwise by the Board. Notwithstanding this order, the Board may lift the stay or take other appropriate action in this matter at any time in accordance with the Board's responsibility to manage its docket.

So ordered.

ENVIRONMENTAL APPEALS BOARD

Dated: Jan 10, 2023

By: 
Mary Kay Lynch
Environmental Appeals Judge

CERTIFICATE OF SERVICE

I certify that copies of the foregoing *Order Continuing Stay Subject to Conditions* in the matter of Powertech (USA) Inc., UIC Appeal No. 20-01, were sent to the following persons in the manner indicated.

By Email:

Attorney for Petitioner
Jeffrey C. Parsons, Senior Attorney
Roger Flynn, Managing Attorney
Western Mining Action Project
P.O. Box 349
Lyons, CO 80540
(303) 823-5738
wmap@igc.org

Attorneys for Powertech (USA) Inc.
Barton Day
Law Offices of Barton Day, PLLC
10645 N. Tatum Blvd.
Suite 200-508
Phoenix, AZ 85028
(703) 795-2800
bd@bartondaylaw.com

Travis E. Stills
Managing Attorney
Energy & Conservation Law
227 E. 14th St., #201
Durango, CO 81301
(970) 375-9231
stills@eclawoffice.org

Robert F. Van Voorhees
Van Voorhees PLLC
1155 F Street, N.W.
Suite 700
Washington, DC 20004-1357
(202) 365-3277
bob.vanvoorhees@gmail.com

*Attorney for Amicus Curiae Great Plains
Tribal Water Alliance, Inc.*
Peter Capossela, PC
Attorney at Law
Post Office Box 10643
Eugene, OR 97440
(541) 505-4883
pcapossela@nu-world.com

Attorneys for EPA
Lucita Chin, Senior Assistant Regional Counsel
Michael Boydston, Senior Assistant Regional Counsel
Environmental Protection Agency, Region 8
1595 Wynkoop St.
Mail Codes: 8ORC-LC-M, 8ORC-LC-G
Denver, CO 80202
chin.lucita@epa.gov
boydston.michael@epa.gov

Katie Spidalieri
Attorney-Advisor
Water Law Office, Office of General Counsel
U.S. Environmental Protection Agency
spidalieri.katie@epa.gov

Dated: Jan 10, 2023



Emilio Cortes
Clerk of the Board