



of uranium a public nuisance; and (3) the “[s]ignificant changes in the scope” of the Dewey-Burdock Project as “announced in regulatory documents filed by Powertech.” *Id.* at 1-2. The Region and Powertech (USA) Inc. each filed a response opposing the Tribe’s motion to amend the petition. *See* EPA Region 8 Response to Petitioner’s Motion to Amend Petition for Review (May 8, 2023); Powertech’s Response in Opposition to Petitioner’s Motion to Amend Petition (May 8, 2023).

The Board has determined that additional briefing would assist in its consideration of the motion to amend the petition. Accordingly, the Board directs the parties to:

1. Address the impact of the D.C. Circuit’s decision in *Oglala Sioux Tribe v. U.S. Nuclear Regulatory Commission*, 45 F.4th 291 (D.C. Cir. 2022), on the issues set forth in the petition for review filed on December 24, 2020, and identify what remains for resolution by the Board.
2. Explain, in light of the D.C. Circuit’s decision in *Oglala Sioux Tribe v. U.S. Nuclear Regulatory Commission*, 45 F.4th 291 (D.C. Cir. 2022), the relevance of the cultural resources survey protocol for the Crow Butte Resources Inc. In Situ Uranium Recovery Facility in Nebraska to the November 24, 2020, permitting decisions at issue here.
3. Explain how Board consideration of the November 2022 local ordinance referenced in the Tribe’s motion to amend is consistent with Board precedent addressing the scope of Board review of UIC permitting decisions. *See, e.g., In re Sammy-Mar, L.L.C.*, 17 E.A.D. 88, 98 (EAB 2016); *In re Envtl. Disposal Sys.*, 12 E.A.D. 254, 266-267 (EAB 2005); *In re Federated Oil & Gas*, 6 E.A.D. 722, 725 (EAB 1997).
4. Address how Board consideration of the three technical reports the Tribe identifies in its motion to amend (dated December 23, 2020, May 10, 2021, and August 10, 2021) comports with the regulations at 40 C.F.R. §§ 124.9, .18(b) and (c) that set forth the contents of the administrative record and deem it complete on the date the final permit is issued, as well as Board precedent on supplementing the administrative record as addressed in *In re Gen. Elec. Co.*, 18 E.A.D. 575, 610-11 (EAB 2022).

Each party’s response to this Order shall not exceed ten (10) pages in length and must be filed and served on or before **Friday, July 14, 2023**. The Region’s response to the petition, any response to the petition Powertech may wish to file, and responses by the parties to any other

pleadings including responses to the pending motions and pleadings filed on May 18, 2021, and May 28, 2021, remain stayed and held in abeyance 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. *See* 40 C.F.R. § 124.19(n).

So ordered.

Dated: June 30, 2023

**ENVIRONMENTAL APPEALS BOARD**

By:   
Wendy L. Blake  
Environmental Appeals Judge

## CERTIFICATE OF SERVICE

I certify that copies of the foregoing *Order Requiring Additional Briefing* 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: Jun 30, 2023

*Emilio Cortes*

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Clerk of the Board