



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 EXTENDING STAY SUBJECT TO CONDITIONS

Pursuant to the Environmental Appeals Board’s (“Board”) June 10, 2021, Order Granting Motion to Stay Subject to Conditions, the parties in the above-captioned appeal filed a joint status report on August 22, 2022, notifying the Board that the D.C. Circuit Court of Appeals had issued a decision in Oglala Sioux Tribe v. U.S. Nuclear Regulatory Commission, No. 20-148, litigation with the potential to affect the proceedings before the Board. Joint Report and Recommendations (Aug. 22, 2022).¹ The August 2022 joint status report states that the parties agree that an extension of the current stay is appropriate and recommends next steps for the Board’s consideration of this petition. Id. at 3-4. In support of extending the current stay, the

¹ The matter before the D.C. Circuit—Oglala Sioux Tribe v. U.S. Nuclear Regulatory Commission, No. 20-1489—involves challenges by the Oglala Sioux Tribe, and others, to the Nuclear Regulatory Commission (“NRC”) licensing decision that granted Powertech (USA) Inc. a Source Materials License for its Dewey-Burdock Project. Challenges before the D.C. Circuit include a claim that the NRC failed to comply with the National Historic Preservation Act (“NHPA”). Compliance with the NHPA is an issue raised in the petition pending before the Board. As discussed in the Board’s June 2021 Order, the D.C. Circuit litigation involves the adjudication of overlapping issues by the same parties, in the same time frame, in two different forums.

parties note that the D.C. Circuit decision is not yet final, because “the D.C. Circuit will not issue the mandate in *Oglala Sioux Tribe* ‘until seven days after disposition of any timely petition for rehearing or petition for rehearing en banc.’” *Id.* at 2. For its part, the Oglala Sioux Tribe represents that it is assessing the D.C. Circuit opinion and “considering its options and next steps, which may include, but are not limited to, filing a petition for panel rehearing or rehearing en banc and/or seeking a stay of the mandate pending the filing of a petition for a writ of certiorari in the Supreme Court.” *Id.* at 3 (citations omitted). As for next steps, the parties make the following recommendations for the Board to consider:

- 1) The parties will file a report to the Board within seven days after any of the following events:
 - a. The issuance of the mandate in the D.C. Circuit matter;
 - b. The filing of any petition for rehearing in the D.C. Circuit matter;
 - c. The filing of any motion to stay the mandate in the D.C. Circuit matter pending the filing of a petition for a writ of certiorari;
 - d. The resolution of any petition for rehearing or motion to stay the mandate in the D.C. Circuit matter.
- 2) If any petition for rehearing or motion to stay the mandate is filed, the Board may require further status reports from the parties as appropriate.
- 3) After receiving a report concerning the issuance of the mandate, the Board may issue a revised scheduling order with deadlines for the parties to make their required filings in this matter.

Id. at 3-4.

Upon consideration of the information the parties provided and their recommendations, the Board concludes that an extension of the current stay of proceedings, with conditions, is reasonable and appropriate in this case. *See* 40 C.F.R. § 124.19(n). This matter continues to be stayed. The parties are hereby directed to file a report with the Board within seven days after any of the following events: 1) issuance of the mandate in the D.C. Circuit matter; 2) filing of

any petition for rehearing in the D.C. Circuit matter; 3) filing of any motion to stay the mandate in the D.C. Circuit matter pending the filing of a petition for a writ of certiorari; 4) resolution of any petition for rehearing or motion to stay the mandate in the D.C. Circuit matter. The parties are also directed to apprise the Board within seven days of any other issues potentially affecting the Board's adjudication of the pending petition, including settlement of any issues pending before the Board.

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. The Board may require further status reports from the parties, and 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.

Dated: Aug 25, 2022

ENVIRONMENTAL APPEALS BOARD

By: 
Mary Kay Lynch
Environmental Appeals Judge

CERTIFICATE OF SERVICE

I certify that copies of the foregoing *Order Extending 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.

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Dated: Aug 25, 2022



Emilio Cortes
Clerk of the Board