

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

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

**POWERTECH RESPONSE TO
RESPONDENT’S MOTION FOR STAY OF PROCEEDINGS**

Powertech (USA) Inc. (Powertech) opposes the duration of the requested 120-day stay of proceedings on the grounds that it is excessive to comply with Executive Order 13,990, 86 Fed. Reg. 7037 (Jan. 25, 2021), and will prejudice Powertech by unnecessarily delaying progress on the Dewey-Burdock uranium in-situ recovery (ISR) site in Custer and Fall River Counties in South Dakota. Powertech requests that a stay of proceedings be limited to 60 days and further requests that the Board clarify that the basis for any stay granted is solely “to allow discussions with the new Administration and review of the matter by newly appointed Agency decision makers” and does not represent any determination by the Board at this time regarding potential relevance to this proceeding of litigation pending in the D.C. Circuit Court of Appeals in *Oglala Sioux Tribe v. United States Nuclear Regulatory Comm’n*, No. 20-1489 (D.C. Cir. Dec. 4, 2020).

Powertech does not object to providing EPA Region 8 with sufficient time to “allow discussions with the new Administration and review of the matter by newly appointed Agency decision makers.” Powertech submits that a stay for 120 days to accomplish that objective is excessive and that 60 days should be sufficient, especially considering EPA Region 8 already received a 30-day extension expressly for that purpose. Moreover, Powertech notes that the Government has requested stays of only sixty days in other proceedings to comply with Executive Order 13,990. *See, e.g.*, Motion for 60-Day Stay in *West Virginia v. Council on Env’tl Quality*, Case No. 3:20-cv-00045-JPJ-PMS (W.D. VA, filed Feb. 18, 2021) (Exhibit 1 to this response).

Powertech disagrees with EPA Region 8’s assertion that “Powertech will not be prejudiced by a stay because they have not secured necessary permits from the State of South Dakota and cannot proceed with the project until this occurs.” Powertech is indeed prejudiced by any further delays in this case because this proceeding is preventing the permits at issue (which Powertech has been seeking since 2013) from becoming effective, and Powertech’s efforts to obtain all other necessary approvals, including those before the State of South Dakota, may be hindered by any

delays in the effectiveness of those permits. For example, Powertech was advised yesterday that the Petitioner and EPA Region 8 will jointly move to hold in abeyance until the Board completes action in this case an appeal of a related EPA Region 8 action in the U.S. Court of Appeals for the Eight Circuit. *Oglala Sioux Tribe v. EPA*, No. 21-1167, filed Jan. 22, 2021. Excessive delay in this case will prejudice Powertech by unduly delaying action in other proceedings. The regulations under which the Board operates are designed to protect the interests of permittees against being encumbered by excessive delays. Accordingly, Powertech requests that any stay granted be limited to sixty days.

If any longer stay is granted, Powertech requests that the Board require EPA Region 8 to report to the Board and the parties every thirty (30) days on the progress of its efforts to engage in its discussions with the new Administration. That will allow the Board to determine whether the stay can be lifted at an earlier time to allow this matter to proceed.

In response to the references in Respondents Motion to the proceedings in the D.C. Circuit case, Powertech submits that those proceedings and the ultimate decision in that case, regardless of the outcome, would not affect the issues that are properly before the Board in this Petition for Review. Accordingly, Powertech requests that the Board clarify that any action in response to this motion does not represent any determination by the Board, one way or the other, with respect to EPA Region 8's suggestion that "a final D.C. Circuit decision as to the sufficiency of NRC's NHPA compliance may affect the Board's consideration of EPA's compliance" in this case.

Respectfully submitted,

/s/ Robert F. Van Voorhees

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Dated: February 19, 2021

CERTIFICATE OF SERVICE

I hereby certify that, on February 19, 2021, I served the foregoing document on the following persons by e-mail in accordance with the Environmental Appeals Board's September 21, 2020 Revised Order Authorizing Electronic Service of Documents in Permit and Enforcement Appeals:

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