

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

In re:

Powertech (USA) Inc.

Permit Nos. SD31231-0000 and  
SD52173-0000

UIC Appeal No. 20-01

**FIRST JOINT STATUS REPORT**

On June 10, 2021, the Environmental Appeals Board granted the Environmental Protection Agency Region 8’s Motion to Stay in the above-captioned case. The Board stayed this matter, subject to conditions, “until such time as the D.C. Circuit renders a decision disposing of the challenge to NHPA compliance in connection with the Dewey-Burdock Project that is pending before the Court.” Order Granting Motion to Stay Subject to Conditions at 5 (June 10, 2021). The Board conditioned the stay on the parties’ filing periodic joint status reports addressing the status of the D.C. Circuit litigation, “including the status of the NHPA issues under review and any other information that the parties believe may be relevant to the petition pending before the Board.” *Id.* at 5-6. The first of these joint status reports is due August 5, 2021. Further, the parties are to “apprise the Board within two weeks of any decision by the D.C. Circuit relevant to the NHPA issue or other issues potentially affecting the Board adjudication of the pending petition,” or “of any settlement involving issues presented in the petition pending before the Board.” *Id.* at 6. The Order further stated: “the Board may lift the stay or take other

appropriate action in this matter prior to conclusion of the D.C. Circuit litigation, or at any other time in accordance with the Board’s responsibility to manage its docket.” *Id.*

The parties in the D.C. Circuit litigation filed their final briefs on July 22, 2021. The Oglala Sioux Tribe (Petitioner), Nuclear Regulatory Commission (Respondent), and Powertech (USA) Inc. (Intervenor-Respondent) briefs all address National Historic Preservation Act (NHPA) issues. Oral argument has not yet been scheduled.

On June 24, 2021, in the state permit proceedings, the State of South Dakota’s Department of Agriculture and Natural Resources Water Management Board issued an order stating that Powertech’s contested Motion to Amend Procedural Order will be argued at the Board’s meeting on October 6-7, 2021. The filings in that matter may be accessed at the agency website: <https://denr.sd.gov/ccdocs.aspx?CCID=CCID95>.

The parties have not come to settlement on any of the issues presented in the petition, and do not have any new information relevant to the petition to report to the Board.

Respectfully submitted,

*EPA Region 8:*

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## CERTIFICATE OF SERVICE

I certify that the foregoing First Joint Status Report in the matter of Powertech (USA) Inc., Appeal No. UIC 20-01, was filed electronically with the Environmental Appeals Board's E-filing System and served by email on the following persons on August 4, 2021.

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