



CHIEF FINANCIAL
OFFICER

UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

August 27, 2018

Mr. John M. Mays
Chief Operating Officer
Azarga Uranium Corporation
Powertech (USA) Inc.
5575 DTC Parkway, Suite 140
Greenwood Village, CO 80111-3012

Dear Mr. Mays:

On behalf of the U.S. Nuclear Regulatory Commission (NRC), I am responding to your letter dated May 24, 2018 (Agencywide Documents Access and Management System [ADAMS] Accession Number ML18145A004), which disputes \$10,257.00 in licensing fees the NRC assessed to Powertech (USA), Inc. (Powertech) within invoice LFB-18-3369 dated April 26, 2018, and supplemented on August 13, 2018 (ADAMS Accession Number ML18226A049, which disputes \$76,445.97 in licensing fees within invoice LFB-18-4905. In addition, Powertech requests a full waiver of these charges and all future charges related to the NRC staff's environmental review efforts as a result of the Atomic Safety and Licensing Board Panel's (Board) decisions LBP-15-16 and LBP-17-09 (ADAMS Accession Numbers ML15120A299 and ML17292B298, respectively) for the Dewey-Burdock In Situ Uranium Recovery Facility. Furthermore, Powertech requests that the NRC suspend collection of any fees while the review takes place in accordance with Title 10 of the *Code of Federal Regulations* (10 CFR) 15.53, "Reasons for Suspending Collection Action."

The NRC has established regulations for the granting of fee exemptions under 10 CFR 170.11, "Exemptions," for which licensees may apply in accordance with 10 CFR 170.5, "Communications." Although your letter does not specifically cite a particular regulation requesting a fee waiver, the NRC has reviewed your request pursuant to the regulations at 10 CFR 170.11(a)(2) and 10 CFR 170.11(b):

10 CFR 170.11(a) No application fees, license fees, renewal fees, inspection fees, or special project fees shall be required for: (2) A contested hearing conducted by the NRC on a specific application or the authorizations and conditions of a specific NRC license, certificate, or other authorization, including those involving individual plant security modifications. This exemption does not apply to a contested hearing on a licensing action that the NRC determines directly involves a U.S. Government national security-related initiative, including those specifically associated with Presidentially-directed national security programs.

10 CFR 170.11(b) The Commission may, upon application by an interested person, or upon its own initiative, grant such exemptions from the requirements of this part as it determines are authorized by law and are otherwise in the public interest. Applications for exemption under this paragraph may include activities such as, but not limited to, the use of licensed materials for educational or noncommercial public displays or scientific collections.

On April 30, 2015, the Board issued a Partial Initial Decision on the admitted contentions in the Dewey-Burdock In Situ Uranium Recovery Project proceeding (LBP-15-16). In its Order, with respect to Contentions 1A and 1B, the Board ruled that the NRC staff had not complied with the National Environmental Protection Act (NEPA) because the NRC staff's Final Supplemental Environmental Impact Statement (FSEIS) did not adequately address Sioux tribal cultural, religious, and historic resources. The Board also ruled that the NRC staff had not complied with the National Historic Preservation Act (NHPA) because meaningful government-to-government consultations between the Oglala Sioux Tribe and the NRC staff had not taken place.

The NRC staff had previously concluded that activities to remedy Contentions 1A and 1B were not fee billable under 10 CFR Part 170, "Fees for Facilities, Materials, Import and Export Licenses, and Other Regulatory Services Under the Atomic Energy Act of 1954, as Amended." The NRC staff, however, revisited this matter and ultimately concluded that the work to remedy the Board's decisions in the contested hearing must be billed directly to Powertech under 10 CFR Part 170 (direct fee-billable work), because the costs relate to the NRC staff's environmental review of the application. The NRC informed Powertech of its determination in the aforementioned billing matter during a teleconference call on November 1, 2016, and via letter dated November 29, 2016 (ADAMS Accession Number ML16313A013). The NRC staff further informed Powertech that, consistent with the provisions in 10 CFR Part 170, Powertech would not be billed for any NRC staff activities that directly support the contested hearing. On October 19, 2017, the Board issued LBP-17-09, and subsequently ruled that the NRC had met its NHPA obligations, but still needed to fulfill its NEPA responsibility.

I have reviewed your request, and I determine that it does not meet the regulation at 10 CFR 170.11(a)(2) because the billed costs are not associated with the contested hearing itself, but rather with further activities related to the environmental review of the license application stemming from the Board's Partial Initial Decision. Requirements in 10 CFR 170.12(a) state that applicants must pay "licensing fees" to recover the "full costs" of the "review of applications for new licenses and approvals." Here, because the billed costs relate to the NRC staff's environmental review of your application, the NRC must directly bill Powertech for that work under 10 CFR Part 170. The costs referenced in your letters (\$10,257.00, \$76,445.97 and \$661,300.00) stem from the NRC staff's efforts to complete its environmental review, rather than stemming from the work that the NRC staff is expending on the actual contested hearing. Any costs associated with preparing for—or participating in—the contested hearing remain exempt from the 10 CFR Part 170 billing.

Furthermore, I find that your fee-waiver request does not meet the criteria for an exemption pursuant to 10 CFR Part 170.11(b) (the public-interest exemption). As noted above, the NRC staff is working to address the deficiencies identified by the Board on a site-specific NEPA review, related to the identification of historic, cultural, and religious sites at the Dewey-Burdock site. The NRC staff's effort—and those of its contractor—to address the Board's decision therefore only benefit Powertech and do not benefit the public at-large. Your letter suggests that these costs "should be borne by the NRC." But under the Omnibus Budget Reconciliation Act of 1990, the NRC must recover approximately ninety percent of its annual appropriation. These costs, therefore, would not be "borne" by the NRC if the NRC granted Powertech a fee waiver; rather, these review costs would be collected as annual fees under 10 CFR Part 171, "Annual Fees for Reactor Licenses and Fuel Cycle Licenses and Materials Licenses," to the uranium recovery fee class. Charging other uranium recovery licensees for NRC staff time spent *directly* reviewing your application would not be consistent with the notions of fairness and equity that undergird the NRC's fee regulations. Therefore, I find that granting Powertech a fee waiver would not be in the public interest.

J. Mays

- 3 -

I deny your requests dated May 24, 2018, and August 13, 2018, disputing the licensing fees assessed by the NRC; requesting a full waiver of these charges, and on all future charges related to the NRC staff's environmental review efforts as a result the Board's decisions to address the deficiencies identified in the NEPA review.

If you have any fee-related questions regarding this matter, please contact Ms. Jo Jacobs, of my staff, at (301) 415-8388.

Sincerely,

/RA/

Maureen E. Wylie
Chief Financial Officer

