

**UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION**

BEFORE THE COMMISSION

In the Matter of:)	
)	
)	Docket No.: 40-9075-MLA
POWERTECH (USA), INC.)	
)	Date: September 17, 2018
)	
(Dewey-Burdock In Situ Uranium Recovery)	
Facility))	
_____)	

**POWERTECH (USA), INC.'S REQUEST FOR THE COMMISSION TO TAKE
JUDICIAL NOTICE AND REQUEST FOR EXTENSION OF TIME TO FILE LEGAL
STANDARD PLEADINGS**

Powertech (USA), Inc. (Powertech), by its undersigned counsel of record, hereby submits this Request for the Members of the United States Nuclear Regulatory Commission (the “Commission”) to Take Judicial Notice of certain proceedings currently occurring at the Atomic Safety and Licensing Board (Licensing Board) in this proceeding. Further, based these actions by the Licensing Board, Powertech also respectfully requests that the Commission grant an extension of time to file certain pleadings regarding the legal standard governing further proceedings in accord with a July 20, 2018, United States Court of Appeals for the District of Columbia Circuit (DC Circuit) remanding an appeal to the Commission.

By way of background, the instant proceeding involves a combined source and 11e.(2) byproduct material license issued by NRC Staff to Powertech for the purpose of constructing and operating the proposed Dewey-Burdock in situ leach uranium recovery (ISR) project in the State of South Dakota. After several years of administrative litigation before the Licensing Board, the

Commission, and the DC Circuit, only one admitted contentions remains to be resolved which is Contention 1A addressing alleged inadequacies in NRC Staff's National Environmental Policy Act (NEPA) process and preparation of a Supplemental Environmental Impact Statement (SEIS) on the resource area of historic and cultural resources. This admitted contention has been the subject of multiple administrative decisions from each of the three adjudicatory bodies noted above and currently resides at the Licensing Board level for final determination.

In July of 2018, NRC Staff requested, and Powertech supported, that the Licensing Board set a schedule for the filing of potential motions for summary disposition of Contention 1A. The Licensing Board granted this request and set a filing schedule requiring affirmative motions for summary disposition to be filed on August 17, 2017 and, on said date, both NRC Staff and the Oglala Sioux Tribe (Tribe) filed affirmative motions for summary disposition. The Licensing Board also allowed parties to file motions in support of these affirmative motions by September 7, 2018. On that date, Powertech filed a motion in support of NRC Staff's motion for summary disposition. No motions were filed in support of the Tribe's motion. The Licensing Board also has scheduled the filing of motions opposing affirmative motions for summary disposition on September 21, 2018. While it is unaware of the plans of other parties, Powertech plans to file a motion opposing the Tribe's motion for summary disposition.

On July 20, 2018, the DC Circuit issued an opinion regarding the Tribe's appeal of the Commission's decision in CLI-16-20 stating that the alleged procedural defect in NRC Staff's NEPA process was significant and potentially could have warranted staying the effectiveness of Powertech's NRC license. However, the DC Circuit did not reach the question of whether the license should be stayed; but rather, the court remanded the case to the Commission for further consideration. On August 30, 2018, the Commission issued an order requesting that all parties

submit a pleading identifying the appropriate legal standard to be used in evaluating the DC Circuit's opinion and its applicability to whether Powertech's license should be stayed or vacated. Such pleading is due on September 24, 2018. In addition, the Commission has requested responding pleadings on these initial filings on October 19, 2018.

While the Commission has requested these pleadings, Powertech believes that the deadlines for these filings should be delayed. The delay should be imposed because, should the Licensing Board grant the summary disposition motion of either NRC Staff or the Tribe, Contention 1A will be resolved and the decision of the Licensing Board regarding Contentions 1A and 1B will be deemed final and then could be appealed to the Commission for its consideration. Further, should the Licensing Board rule in favor of NRC Staff, the DC Circuit's remand will be rendered moot and can be further resolved on appeal to the Commission with a showing that the alleged NEPA procedural defect has been remedied. Thus, for purposes of judicial efficiency, it would be prudent for the Commission to delay these filings. Therefore, Powertech asserts that the Commission should delay the filing deadlines for these pleadings until the Licensing Board has an opportunity to review and rule on the aforementioned motions for summary disposition.

Per the Commissions' hearing regulations at 10 CFR § 2.323(b), Powertech has consulted with all parties on this request and NRC Staff has taken no position on this request but has asked to reserve the right to respond if the substance of the request warrants. Both the Tribe and Consolidated Intervenors oppose the request.

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BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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POWERTECH (USA), INC.)	
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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing **“POWERTECH (USA) INC’S REQUEST FOR THE COMMISSION TO TAKE JUDICIAL NOTICE AND REQUEST FOR EXTENSION OF TIME TO FILE LEGAL STANDARD PLEADINGS”** in the above captioned proceeding have been served via the Electronic Information Exchange (EIE) this 17th day of September 2018, which to the best of my knowledge resulted in transmittal of the foregoing to those on the EIE Service List for the above captioned proceeding.

Respectfully Submitted,

**/Executed (electronically) by and in
accord with 10 C.F.R. § 2.304(d)/
Christopher S. Pugsley, Esq.**

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Dated: September 17, 2018