

**UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION**

**BEFORE THE COMMISSION**

In the Matter of:	)	
	)	
POWERTECH (USA) INC.	)	Docket No.: 40-9075-MLA
	)	
(Dewey-Burdock In Situ Uranium Recovery Facility)	)	Date: December 17, 2019
	)	
_____	)	

**LICENSEE POWERTECH (USA) INC. RESPONSE IN OPPOSITION TO  
CONSOLIDATED INTERVENORS AND OGLALA SIOUX TRIBE MOTION  
FOR EXTENSION OF TIME**

By this Response, the licensee Powertech (USA) Inc. (Powertech) hereby opposes the Consolidated Intervenors' (CI) and the Oglala Sioux Tribe's (Tribe) motion for extension of time to submit a Petition for Review to the Commission of the Atomic Safety and Licensing Board's (Board) Final Initial Decision in LBP-19-10 issued on December 12, 2019, from its original due date of January 6, 2020, to January 21, 2020. On December 16, 2019, CI and the Tribe submitted a motion for extension time to the Commission in accordance with 10 CFR € 2.323 and 2.307(a). Per these regulations, counsel for the Tribe consulted with all parties on their position(s) on this motion prior to its submission. Powertech does not, in any way, dispute that CI and the Tribe complied with this portion of the regulation.

However, after being consulted via electronic message on December 13, 2019, Powertech responded that it would oppose such a motion and, while that position was accurately reflected in CI's and the Tribe's December 16, 2019, motion, these parties failed to present to the Commission Powertech's reasons for its opposition. Powertech communicated to the Tribe's

counsel that its opposition was based on the fact that the instant case has lasted for over ten (10) years and proceedings at the Board level have finally been terminated. It is worth noting that at least nine (9) years of Board proceedings through the Commission and the United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit) were based mainly on two remaining contentions that were not under the direct control of Powertech, but rather were the express responsibility of the United States Nuclear Regulatory Commission Staff (NRC Staff). Thus, Powertech has indeed suffered extreme prejudice during this proceeding due to delays which have resulted in delays to other permitting processes, including those before the State of South Dakota. This prejudice is implicitly reflected in two separate opinions rendered by Chairman Svinicki who has stated that this proceeding should never have reached this point. *See In the Matter of Powertech (USA) Inc.*, CLI-19-9, slip op. at Additional Views at 1 (2019); *see also In the Matter of Powertech (USA) Inc.*, CLI-18-07, 88 NRC 1, Additional Views (2018). Indeed, in CLI-19-9, Chairman Svinicki even stated that: “[w]hile I concur...that the Commission has not historically found concerns related to delay...sufficient to warrant interlocutory review, Powertech’s appeal illustrates to me that extreme cases of adjudicatory delay might.” *See* CLI-19-9, slip op. at Additional Views at 2. Given that the Commission’s standard for interlocutory review is far more stringent than that of review of an initial decision, it stands to reason that the considerable delay here should be sufficient grounds for no additional delay, especially a delay as long as fifteen (15) days.

CI and the Tribe’s motion also did not provide the Commission with additional information regarding Powertech’s opposition to this motion which was offered in its response to counsel for the Tribe. Powertech expressly noted that, per 10 CFR € 2.341(b)(2), Commission petitions for review are strictly page limited to twenty-five (25) pages and, in the instant case, the

issues on appeal are narrowly focused as was the scope of the August, 2019 evidentiary hearing before the Board. This sole remaining contention (Contention 1A), which has now been resolved, has been repeatedly litigated over the course of the past several years and the arguments both in support and in opposition already are well-documented in the administrative record. CI and the Tribe's references to their experts are irrelevant as the argument on appeal are based on arguments of law and not fact and, to the extent facts are warranted, the complete administrative record has written testimony from these experts and transcribed oral testimony from two (2) separate evidentiary hearings. Thus, there is no reason that this potential appeal/petition for review is any different from any other similar situation.

Thus, the sole ground for CI and the Tribe's motion is the upcoming holidays. But, LBP-19-10 was issued on December 12, 2019, which accords CI and the Tribe twelve (12) full days before Christmas Eve and an additional ten (10) days after Christmas Day, taking into account New Year's Day, to prepare and submit its petition for review, if it sees fit to submit one. Given the extraordinary nature of the time associated with this proceeding and the multiple appeals already heard before and decided by the Commission and the DC Circuit, Powertech believes that the time has come for this matter to be dispensed with in the timeframe delineated in Commission regulations.

For these reasons, Powertech requests that the Commission deny CI and the Tribe's motion.

Respectfully Submitted,

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

Dated: December 17, 2019

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**CERTIFICATE OF SERVICE**

I hereby certify that copies of the foregoing “**LICENSEE POWERTECH (USA) INC. RESPONSE IN OPPOSITION TO CONSOLIDATED INTERVENORS AND OGLALA SIOUX TRIBE MOTION FOR EXTENSION OF TIME**” in the above captioned proceeding have been served via the Electronic Information Exchange (EIE) this 17th day of December 2019, 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: December 17, 2019