
***IN THE UNITED STATES COURT OF APPEALS FOR THE
DISTRICT OF COLUMBIA CIRCUIT***

**OGLALA SIOUX TRIBE,)
ALIGNING FOR RESPONSIBLE)
MINING)**

Petitioners

**MOTION FOR LEAVE TO
INTERVENE**

CASE FILE NO. 20-1489

**UNITED STATES NUCLEAR)
REGULATORY COMMISSION)
AND THE UNITED STATES OF)
AMERICA)**

Respondents

Powertech (USA), Inc. (“Powertech”), by its undersigned counsel of record, hereby petitions the United States Court of Appeals for the District of Columbia Circuit (hereinafter the “Court”) for leave to intervene in its review of the final agency action taken by the United States Nuclear Regulatory Commission (the “Commission”) granting Powertech an Atomic Energy Act of 1954, as amended by the Uranium Mill Tailings radiation Control Act of 1978 (hereinafter the “AEA”), combined source and 11e.(2) byproduct material license to conduct *in situ* leach

uranium recovery (ISR) operations pursuant to applicable Commission regulations at 10 CFR Part 40, Appendix A and other applicable regulations at its proposed Dewey-Burdock Project in the State of South Dakota. Pursuant to Federal Rule of Appellate Procedure (FRAP) 15(d) and D.C. Circuit Rule 15(b), Powertech hereby serves notice to the Court that it wishes to intervene in this proceeding as an intervenor/respondent in support of Respondent (NRC) and its final agency actions/orders below applicable to the Dewey-Burdock Project.

Powertech concurs with Petitioners that the Court has jurisdiction over this matter under the Hobbs Act (28 U.S.C. §§ 2341-2351). Powertech further asserts that this motion for intervention is timely pursuant to FRAP Rule 15(d).

Petitioners' Petition for Review was received and filed with this Court on December 4, 2020, and it was not received by Powertech until December 9, 2020 from Petitioners. Given the twenty-four (24) day interval between these filings and the nineteen (19) day interval between actual service of the Petition on Respondents and the licensee, Powertech's Motion has been submitted in accordance with FRAP Rule 15(d).

Pursuant to FRAP Rule 15(d), Powertech asserts it has a substantial interest in the final determination of this matter before the Court. Powertech has been a named party for the entire administrative litigation that resulted in this now second appeal to this Court. Powertech was granted intervenor status in the initial appeal

and actively participated in briefing and oral argument. Initially, Powertech participated in an administrative hearing before the United States Nuclear Regulatory Commission's (NRC) Atomic Safety and Licensing Board (ASLB), sought by Petitioners, to prevent Powertech from receiving or acting under its current NRC license. Thus, as a named party and the licensee in all phases of the administrative proceeding, including all appeals to the Commission and the initial appeal before this Court, Powertech asserts that it has a substantial interest in the outcome of Petitioners' appeal.

Further, even though the Commission, as a named party to this appeal, is the issuer of the license in question, Powertech has an even larger interest in the outcome of Petitioners' appeal from a number of perspectives. First, as the applicant for a license under the AEA, Powertech bears the burden of presenting a license application for uranium milling activities that is adequately protective of public health and safety and the environment, as well as being consistent with the AEA and the Commission's implementing regulations. As a result, while the Commission's final agency action is the focus of this proceeding, Powertech is primarily responsible for the safe and effective management of activities under its NRC license. Second, Powertech stands to lose considerable past and future financial resources should there be any change in the status of Powertech's NRC license. Third, Powertech has expended considerable financial and human

resources throughout the entirety of this proceeding, including after this Court's initial ruling, to fully participate in these administrative and appellate proceedings. Throughout this proceeding, up to and after this Court's initial decision, Powertech had to retain counsel and present technical experts at considerable cost to address issues raised by Petitioners, all of which have been resolved in the Commission's and Powertech's favor. Powertech sees this Court's review as a final resolution of how NRC's administrative processes operate. Further, this Court's review comes after final issuance of required United States Environmental Protection Agency (EPA) permits under the federal Safe Drinking Water Act.

In addition, pursuant to FRAP Rule 15(d), Powertech asserts that the Commission cannot adequately protect Powertech's interests in this proceeding and contributions from Powertech and its counsel will be informative to this Court. The reason for this is that the administrative record below, which is an integral part of this appeal, is rife with expert technical arguments submitted by Powertech's expert employees and witnesses/consultants' testimony and can be best explained by them. Lastly, NRC, which is an independent regulatory agency, does not represent the financial or policy interest of uranium milling companies such as Powertech, but rather represents the validity of its licensing decisions. Thus, Powertech asserts that it is the only party that can represent its fundamental corporate interests in this proceeding.

For the foregoing reasons, Powertech respectfully requests that the Court grant its motion to intervene as a respondent in the appeal to argue, *inter alia*, that the validity of its NRC license should be upheld based on the extensive administrative record below and find that the Commission's review of Powertech's license application is consistent with federal law.

Additionally, Powertech has consulted with both Petitioners' and Respondents on this Motion. Respondents the Commission and the United States have indicated they have no objection. Counsel for Petitioner Consolidated Intervenors have indicated they do not have an objection. Counsel for the Oglala Sioux Tribe have taken no position on this Motion and reserve to right to file a response.

Dated this 28th day of December, 2020.

Respectfully Submitted,

By: _____/s/_____

Anthony J. Thompson, Esq.
Christopher S. Pugsley, Esq.
THOMPSON & PUGSLEY, PLLC
1225 19th Street, NW
Suite 300
Washington, DC 20036
(202) 496-0780
(202) 496-0783 (facsimile)
ajthompson@athompsonlaw.com
cpugsley@athompsonlaw.com

CERTIFICATE OF SERVICE

I, Christopher S. Pugsley, hereby certify that I caused a true and correct copy of Powertech (USA), Inc.'s Motion For Leave to Intervene to be served electronic mail via the Court's electronic filing system and separate electronic mail transmission on the following this 28th day of December, 2020:

United States Nuclear Regulatory Commission
Office of the General Counsel
Mail Stop: O-15 D21
Washington, D.C. 20555

Hon. Annette Vietti-Cook, Secretary
United States Nuclear Regulatory Commission
11555 Rockville Pike
Rockville, MD 20852-2738
secy@nrc.gov

Hon. William Barr, Attorney General, U.S. Department of Justice
Justine Herminger, Esq.
950 Pennsylvania Avenue, NW
Washington, D.C. 20530
Justin.Heminger@usdoj.gov

Andrew Averbach, Solicitor
James Adler, Attorney
Office of the General Counsel
United States Nuclear Regulatory Commission
Mail Stop O-15 D21
Washington, D.C. 20555-00
Andrew.Averbach@nrc.gov
James.Adler@nrc.gov

Jeffrey C. Parsons
Travis Stills
Western Mining Action Project
P.O. Box 349
440 Main Street, Suite 2
Lyons, CO 80540
wmap@igc.org
stills@frontier.net

David C. Frankel, Esq.
1430 Haines Avenue, #108-372
Rapid City, SD 57701
Arm.legal@gmail.com

Law Office of Bruce Ellison
P.O. Box 2508
Rapid City, SD 57709
Belli4law@aol.com

Thomas J. Ballanco, Esq.
945 Traval Street, #186
San Francisco, CA 94116
Harmonicengineeing@gmail.com

Dated this 28th day of December, 2020:

By: _____/s/_____

Anthony J. Thompson, Esq.
Christopher S. Pugsley, Esq.
THOMPSON & PUGSLEY, PLLC
1225 19th Street, NW
Suite 300
Washington, DC 20036
(202) 496-0780
ajthompson@athompsonlaw.com
cpugsley@athompsonlaw.com

