

**SAFETY EVALUATION REPORT
TRANSFER OF CONTROL FOR LICENSE SUA-1600**

DATE: February 1, 2022

DOCKET NUMBER: 040-09075

LICENSE NUMBER: SUA-1600

LICENSEE: Powertech (USA) Inc.

PROJECT MANAGER: Ronald A. Burrows

TECHNICAL REVIEWER(S): Kenneth Kline, Ronald A. Burrows

SUMMARY AND CONCLUSIONS

By letter dated October 8, 2021, and supplemented by e-mails dated November 5, 16, and 30, 2021, Powertech submitted to the U.S. Nuclear Regulatory Commission (NRC) an application requesting written consent for an indirect change of control. The indirect change of control results from a transaction between Azarga Uranium Corp. (Azarga) and enCore Energy Corp. (enCore). The request for consent to the transfer is available in NRC's Agencywide Documents Access and Management System (ADAMS)¹ at Accession Nos. [ML21286A770](#), [ML21312A026](#), [ML21320A271](#), and [ML21334A413](#).

The request for written consent was reviewed by the NRC staff for an indirect transfer in control of a license issued under Title 10 of the *Code of Federal Regulations* (10 CFR) Part 40 using the guidance in NUREG-1556, Volume 15, Revision 1, "Consolidated Guidance About Materials Licenses - Guidance About Changes of Control and About Bankruptcy Involving Byproduct, Source, or Special Nuclear Materials Licenses," dated June 2016 (ADAMS Accession No. [ML16181A003](#)). The NRC staff finds that the information submitted by Powertech sufficiently describes and documents the transaction and transferee's understanding of the commitments made in Materials License No. SUA-1600.

As required by 10 CFR Section 40.46, "Inalienability of licenses," and Section 184 of the Atomic Energy Act of 1954, as amended (the Act), the NRC staff has reviewed the application and finds that the proposed change of control is in accordance with the Act. The staff finds that, after the change of control, Powertech will remain the licensee, and will remain qualified to use radioactive material for the purpose requested and will continue to have the equipment, facilities, and procedures necessary to protect public health and safety and to minimize danger to life or property.

¹ ADAMS is accessible from the NRC web site at: <https://www.nrc.gov/reading-rm/adams.html>.

INTRODUCTION

Powertech submitted a request to the NRC for written consent to the indirect change of control of Materials License No. SUA-1600 by letter dated October 8, 2021 and supplemented by e-mails dated November 5, 16, and 30, 2021 (ADAMS Accession Nos. [ML21286A770](#), [ML21312A026](#), [ML21320A271](#), and [ML21334A413](#)) (the application). The application contains: (1) a description of the transaction; (2) a discussion of changes in personnel; (3) a discussion of changes of location, equipment, and procedures; (4) a discussion of surveillance records; (5) a discussion of decommissioning records; (6) a discussion of the transferee's commitment to abide by the transferor's commitments in the license; and (7) current financial records of enCore.

LICENSE HISTORY

The NRC issued Source Material License No. SUA-1600 to Powertech in April 2014 for uranium production at the Dewey-Burdock Project (DBP). The DBP is located in Fall River and Custer Counties, South Dakota. While the DBP has a license, there are no active operations. On October 8, 2021, Powertech and enCore filed a request for approval for a transfer of control of license SUA-1600 (ADAMS Accession No. [ML21286A770](#)).

REGULATORY FRAMEWORK

License SUA-1600 was issued under 10 CFR Part 40, "Domestic Licensing of Source Material." The Commission is required by 10 CFR Section 40.46, "Inalienability of licenses," to determine if the change of control is in accordance with the provisions of the Act and give its consent in writing. 10 CFR Section 40.46 states:

No license issued or granted pursuant to the regulations of this part shall be transferred, assigned, or in any manner disposed of, either voluntarily or involuntarily, directly or indirectly, through transfer of control of any license to any person, unless the Commission shall after securing full information, find that the transfer² is in accordance with the provisions of this act, and shall give its consent in writing.

The staff's review is guided by regulations pertaining to specific licenses in 10 CFR Part 40 and acceptable methods for meeting the regulations, which are in NUREG-1556, Volume 15, Revision 1, "Consolidated Guidance About Materials Licenses – Guidance About Changes of Control and About Bankruptcy Involving Byproduct, Source, or Special Nuclear Material Licenses," dated June 2016, and Regulatory Issues Summary 2014-08, Revision 1, "Regulatory Requirements for Transfer of Control (Change of Ownership) of Specific Materials Licenses," dated May 5, 2016 (ADAMS Accession No. [ML15181A223](#)).

² As discussed in NUREG-1556, Vol. 15, Rev. 1, the NRC may use the term "change of control" rather than the statutory term "transfer" to describe the variety of events that could require prior notification and written consent of the NRC.

Requirements for public notice of the change of control application are specified in 10 CFR Part 2, "Agency Rules of Practice and Procedure," specifically, 10 CFR Section 2.1301, "Public Notice of Receipt of a License Transfer Application," and 10 CFR Section 2.1305, "Written Comments". The application was placed in ADAMS and noticed on NRC's public web site³ for opportunities for comment and to request a hearing on December 1, 2021. The 30-day comment period specified in 10 CFR Section 2.1305 closed on December 30, 2021. The NRC has not received any comments regarding this change of control.

DEFINITION OF A CHANGE OF CONTROL

Appendix E of NUREG-1556, Vol. 15, Rev. 1, defines control as:

Control of a license is in the hands of the person or persons who are empowered to decide when and how that license will be used. That control is to be found in the person or persons who, because of ownership or authority explicitly delegated by the owners, possess the power to determine corporate policy and, thus, the direction of the activities under the license.

Upon consummation of the transaction, described below, enCore will become the ultimate parent company of Powertech, providing enCore with indirect control over NRC Materials License No. SUA-1600. Although an indirect change of control, the proposed transaction still requires NRC written consent under Section 184 of the Act and 10 CFR Section 40.46.

DESCRIPTION OF TRANSACTION

Section 40.46 of Part 40 states that the Commission will give its consent in writing after securing full information, which includes the identity, technical, and financial qualifications of the proposed transferee and financial assurance for decommissioning information required by, in this instance, 10 CFR Section 40.36. Section 5.1 of NUREG-1556, Vol. 15, Rev. 1, states that licensees are should provide a complete, clear description of the transaction, including the identity and the technical and financial qualifications of the proposed transferee and the financial assurance for decommissioning information. The description should include any changes in the organization that exercises control over the licensed program, including, but not limited to the following:

- Any transfer of stocks, assets, or mergers
- New name of licensed organization or statement that no name change has occurred
- New licensee contact and telephone number, if applicable
- Pre- and post-organizational chart showing the corporate structure of the license holder and its parent companies, if any

³ Notices for opportunities for comment and request a hearing on change of control applications for materials licenses under 10 CFR Parts 30, "Rules of General Applicability to Domestic Licensing of Byproduct Material," and Part 40 can be found at <https://www.nrc.gov/about-nrc/regulatory/adjudicatory/hearing-license-applications.html#change>, under "Notice of Ownership Change" and "Notice of Application for Transfer of Control for Material Licenses under 10 CFR Part 30 and/or Part 40".

Powertech, in its application, states that all of the issued and outstanding common shares of Azarga will be exchanged for common shares of enCore at a closing exchange ratio. In addition, Powertech states that the indirect transfer of control will not result in any changes to the licensee's name, the internal organization of Powertech, or its NRC-licensed activities. The licensee, Powertech, will remain a subsidiary of Azarga, which will in turn become a subsidiary of enCore.

Based on the application, the NRC staff finds that after the transaction, Powertech will remain the NRC licensee for Materials License No. SUA-1600 and that the transaction will result in a change of control of the ultimate parent company of the licensee from Azarga to enCore. The NRC staff finds that Powertech, in its application, adequately provided a complete and clear description of the transaction. The information provided is consistent with the guidance in NUREG-1556, Vol. 15, Rev. 1.

Currently, enCore is a parent company of URI, Inc. (URI). URI holds an active radioactive material license for, in part the Kingsville Dome uranium recovery facility in South Texas,⁴ with the Texas Commission on Environmental Quality.⁵ Therefore, the NRC does not need to perform a pre-licensing visit to obtain reasonable assurance that the licensed material and/or activities will be used for its intended purpose and not for malevolent use.

CHANGES OF PERSONNEL

Per 10 CFR Section 40.46, the applicant is required to provide the identity and technical qualifications of the transferee. Section 5.2 of NUREG-1556, Vol. 15, Rev. 1, states that the licensee should provide any changes in personnel in order for NRC to review and approve the qualifications of the transferee. Changes in personnel that should be documented include those individuals having control over licensed activities. The documentation should include the training and experience of any new individuals to be listed on the NRC license.

Powertech, in its application, certifies that there are no proposed changes to personnel having control over licensed activities as a result of the change of control.

The NRC staff finds that Powertech adequately described that there will be no changes to key personnel that have control over licensed material as a result of the proposed transaction. The information provided is consistent with the guidance in NUREG-1556, Vol. 15, Rev. 1.

CHANGES OF LOCATION, EQUIPMENT AND PROCEDURES

In order to assess the technical qualifications and adequacy of the financial assurance for decommissioning of the proposed transferee required for 10 CFR Section 40.46, NUREG-1556, Vol. 15, Rev. 1, states the licensee should submit a complete description of any planned changes in location, facilities, equipment, or procedures.

⁴ <https://www.sec.gov/Archives/edgar/data/839470/000104746914003100/a2219292z10-k.htm#hl1> accessed November 17, 2021.

⁵ https://www15.tceq.texas.gov/crpub/index.cfm?fuseaction=iwr.pgmdetail&addn_id=351374062008039&re_id=38577212002150&lgcy_sys_cd=ARTS accessed November 17, 2021.

Powertech, in its application, states there are no planned changes in the organization of Powertech, location, facilities, equipment, or procedures under the license in connection with the proposed transaction.

Further, Powertech, in its application, states the following:

- The licensee has never operated under its NRC license as the licensee continues to await additional required permitting authorizations from the State of South Dakota and conclusions to litigation from Environmental Protection Agency (EPA), and does not currently use, possess, or store any licensed material under the license.
- There are no planned changes in the use, possession, location, or storage of licensed materials under the license that would occur in connection with the Proposed Transaction.

The NRC staff finds that there are no proposed changes in the location, equipment, and procedures for the site, the documentation submitted meets the requirements in 10 CFR Part 40 and is consistent with the guidance in NUREG-1556, Vol. 15, Rev. 1.

SURVEILLANCE RECORDS

In order to assess the technical qualifications of the transferee and adequacy of the financial assurance for decommissioning required for 10 CFR Section 40.46, Section 5.4 of NUREG-1556, Vol. 15, Rev. 1, states the licensee should submit a review of the status of all applicable surveillance requirements and records. This should include a statement that all required surveillance has been performed, documented, and reviewed, including the results, if appropriate. Also, if surveillance items are not or will not be completed, the application should include reasons, any corrective actions, and/or the date these corrective actions will be provided to NRC.

Powertech, in its application, states that the licensee “has never operated under its NRC License due to pending litigation involving EPA and outstanding permits from the State of South Dakota, and thus this section is not applicable, as no surveillance has been necessary under the NRC License to date. Regardless, all records will remain with the Licensee.”

The NRC staff finds that Powertech adequately described that all required surveillance has been performed, documented, reviewed, and will remain with the licensee as required by 10 CFR Part 40 and Material License No. SUA-1600 and Powertech’s certification as such is consistent with the guidance in NUREG-1556, Vol. 15, Rev. 1.

DECOMMISSIONING AND RELATED RECORDS TRANSFERS

In order to assess the financial assurance for decommissioning required for 10 CFR Section 40.46, Section 5.5 of NUREG-1556, Vol. 15, Rev. 1, states that licensees should arrange for the transfer and maintenance of records important to the safe and effective decommissioning of facilities involved in licensed activities. Similarly, licensees should submit a description of the status of the licensed facilities, specifically about ambient radiation levels and fixed and/or removable contamination resulting from NRC-licensed activities. The transferee should confirm, in writing, that they accept full responsibility for the decommissioning of the site, including any contaminated facilities and equipment.

Records Transfer

Powertech, in its application, states:

The Licensee has never operated under its NRC License and thus has no facility yet constructed or operated to decommission. In any event, all decommissioning and related records will remain with the Licensee.

The staff finds the commitment to retain all decommissioning and related records acceptable. The NRC staff finds that the application contains information on the maintenance of all records, consistent with the guidance in NUREG-1556, Volume 15, Rev. 1.

Contamination Status

Powertech, in its application, states:

The Licensee has never operated under its NRC License and thus there has been no contamination as licensed activities have not begun. In any event, the Licensee will continue to have all liability for any decontamination and decommissioning requirements. As part of the proposed transaction, the Licensee will retain all liabilities for the properties owned by Licensee.

The NRC staff finds that the submitted information sufficiently demonstrates that Powertech and enCore understand the current status of the contamination levels at the facilities, consistent with the guidance in NUREG-1556, Volume 15, Rev. 1.

Decommissioning Commitment

Powertech, in its application, states:

The Licensee has never operated under its NRC License and thus there is not currently in place an NRC-approved financial assurance arrangement to cover the estimated costs of decommissioning, reclamation, and groundwater restoration. See License Condition 9.5. Indeed, the financial assurance mechanism pursuant to 10 CFR Part 40, Appendix A, Criterion 9 is required to be in place only when pre-operational inspection is complete, and operations are prepared to begin. In any event, the Licensee will continue to be bound by License Condition 9.5 and the NRC requirements pertaining to decontamination plans, including financial surety arrangements.

The NRC staff finds that the application sufficiently describes Powertech's and enCore's commitment to decommissioning of the facilities, in accordance with NUREG-1556, Volume 15, Rev. 1. Staff notes that because this facility has never been constructed, financial assurance is not required at this time.

TRANSFeree'S COMMITMENT TO ABIDE BY THE TRANSFEROR'S COMMITMENTS

In order to assess the technical qualifications of the transferee and adequacy of the financial assurance for decommissioning required for 10 CFR Section 40.46, Section 5.6 of NUREG-1556, Vol. 15, Rev. 1, states the transferee should either: (i) commit to abide by all constraints, license conditions, requirements, representations, and commitments identified in and attributed to the existing license, or (ii) provide a description of its own program to comply with the license and all applicable regulations.

In the application, which was signed by John M. Mays, Chief Operating Officer of Powertech, and declared to be true and correct by W. Paul Goranson, Chief Executive Officer (CEO) and Director of enCore, the transferee agrees to abide by all constraints, license conditions, requirements, representations, and commitments identified in and attributed to the existing license including the Transferor's program to ensure compliance with the license and regulations.

The NRC staff finds the commitments made by the new parent company, enCore, signed by its CEO, provide certification from an authorized representative of the transferee to abide by commitments made by Powertech in its NRC Materials License No. SUA-1600 and is consistent with the guidance in NUREG-1556, Vol. 15, Rev. 1.

INIMICALITY REVIEW

Neither the NRC's regulations nor the Act prohibit issuance of a materials license to a licensee that is wholly, or majority owned by a foreign parent. Instead, under Section 69 of the Act and 10 CFR Section 40.32(d) the NRC must find that issuance of the license, among other things, will not be inimical to the common defense and security or to the health and safety of the public. At the conclusion of the initial licensing proceedings, the NRC staff determined that the requirements of 10 CFR Part 40, "Domestic Licensing of Source Material," and other applicable criteria have been satisfied. Based on those reviews, the NRC determined that the issuance of a Part 40 license to Powertech would not be inimical to the common defense and security or to the health and safety of the public. For the reasons indicated herein, the NRC staff has determined that approval of the indirect transfer of control of the NRC license SUA-1600 from Azarga to enCore would similarly not be inimical to the common defense and security or to the health and safety of the public.

In conducting this inimicality review, the NRC staff considered whether a Canadian corporation's indirect control of a uranium recovery facility in the United States would be inimical (adverse or hostile) to the common defense and security or the public health and safety. As an initial matter, the uranium recovery facilities at issue are only licensed to possess source material and byproduct material, specifically uranium and 11.e(2) byproduct material, at the licensed site and may not receive, possess, or use special nuclear material without first obtaining a specific license for such purposes from the NRC. Simply stated, the uranium recovery and milling process utilized at the facilities result in a uranium concentrate powder commonly called yellowcake, which does not pose a high security risk, is of low strategic significance, and does not impact the availability of special nuclear material for military needs. The parties to the proposed transaction have committed to abide by the NRC's regulations (including all security requirements applicable to In Situ Recovery facilities), license and previous commitments made by the licensee.

With respect to ensuring the public health and safety, as documented within this safety evaluation report, the parties to the proposed transactions have committed to abide by all applicable laws and NRC regulations with respect to the construction and operation of the licensed facilities. Upon conclusion of this transaction, the licensee will remain unchanged, as will the location of its facilities. The NRC staff has verified that the parties to the transaction have accepted full responsibility for decommissioning the licensed sites upon conclusion of licensed activities and have satisfied the NRC's financial assurance requirements.

For the reasons indicated herein, the NRC staff has determined that consent to the indirect transfer of the Powertech license from Azarga to enCore will not be inimical to the common defense and security or public health and safety.

ENVIRONMENTAL REVIEW

This NRC action is not subject to further environmental review. This action is categorically excluded from further environmental review pursuant to 10 CFR Section 51.22(c)(21), having been determined by the NRC to be within a category of actions that does not individually or cumulatively have a significant effect on the human environment.

CONCLUSIONS

The staff has reviewed the application submitted by Powertech regarding an indirect change of control of Materials License No. SUA-1600. The submitted information sufficiently describes the transaction; documents enCore's understanding of the license and commitments; and demonstrates that enCore, Powertech's new parent holding company, will abide by all existing commitments to the license.

Therefore, the NRC staff concludes that the proposed indirect change of control would not alter the previous findings, made pursuant to 10 CFR Section 40.32. The staff has determined that licensed operations will not be inimical to the common defense and security, or to the health and safety of the public, as the licensed facilities and materials will continue to be used and operated in accordance with the NRC's regulations and in a manner that ensures the common defense and security and the public health and safety.