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

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

Petitioners

**REVISED 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, as revised, in its review of the final agency action taken by the United States Nuclear Regulatory Commission (the “Commission” or “NRC”) 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 Respondents (NRC and the United States) 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). 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 NRC’s Atomic Safety and Licensing Board (Board), 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 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 now have been resolved in the Commission's and Powertech's favor. Powertech sees this Court's review as a proceeding that would

benefit from Powertech's counsels' legal knowledge. 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 (SDWA). Powertech also has additional matters pending before the State of South Dakota that are relying heavily on the actions of NRC and EPA. Therefore, there is no question Powertech has a vested interest in participating in this proceeding.

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.

CORPORATE DISCLOSURE STATEMENT

As a matter of corporate disclosure, Azarga Uranium Corp. (Azarga) is a Canadian corporation, incorporated under the laws of British Columbia, Canada. Azarga is a publicly traded company and its common shares are traded on the Toronto Stock Exchange (Symbol: AZZ), the Frankfurt Stock Exchange (Symbol: P8AA), and the OTCQB Venture Market (Symbol: AZZUF). Azarga owns one hundred (100) percent of Powertech, which holds a one hundred (100) percent interest in the Dewey-Burdock Project. Thus, Azarga is Powertech's parent company and Powertech is a wholly owned subsidiary of Azarga. This ownership structure has not changed any of the interests Powertech has in this proceeding from when it was first admitted as an intervenor-respondent in this case. Powertech's general nature and purpose is to identify uranium exploration and development projects in the United States, in this specific case, the Dewey-Burdock uranium project in the State of South Dakota. Azarga, through Powertech and its other subsidiaries, also owns additional uranium-bearing properties in the United States.

Lastly, Per D.C. Circuit Rule 15(b):

“A motion to intervene in a case before this court concerning direct review of an agency action will be deemed a motion to intervene in all cases before this court involving the same agency action or order, including later filed cases, unless the moving party specifically states otherwise, and an order granting such motion has the effect of granting intervention in all such cases.”

Therefore, Powertech’s reasons for intervention have been vetted and approved in the previous proceeding before this Court, and NRC and the United States should be permitted to allow for Powertech counsel to participate in written briefing and oral argument to the extent permissible.

In summary, Powertech applied for the NRC license that is the subject of this appeal, and it engaged NRC in a detailed and elongated review process, including compliance with NRC regulations for safety and environmental reviews and compliance with other relevant statutes, including the National Historic Preservation Act (NHPA). Powertech received the NRC license and then proceeded to be a named party in the litigation through the Board and the Commission through three (3) lower administrative Board hearings and several Commission appeals. As stated above, Powertech intervened in the original D.C. Circuit appeal which was remanded to the Commission for further considerations.

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 not consulted with any of the other parties as this filing was directed by this Court. Previously, counsel for NRC, the United States, and Aligning for Responsible Mining did not object to Powertech's intervention in this proceeding. Counsel for the Oglala Sioux Tribe previously took no position on Powertech's motion for leave to intervene and reserved the right to file a response. The Oglala Sioux Tribe's counsel was also responsible for the pleading before this Court indicating the need for a corporate disclosure statement.

Dated this 8th day of February, 2021.

Respectfully Submitted,

By: _____/s/_____

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CERTIFICATE OF SERVICE

I, Christopher S. Pugsley, Esq. 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 8th day of February, 2021:

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