UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

OGLALA SIOUX TRIBE, ALIGNING FOR RESPONSBLE MINING,	)	
Petitioners,	)	No. 20-1489
v.	)	
UNITED STATES NUCLEAR REGULATORY COMMISSION and UNITED STATES OF AMERICA,	)	
Respondents.	)	

PETITIONERS'
RESPONSE TO MOTION FOR LEAVE TO INTERVENE

On December 28, 2020, Powertech (USA) Inc. ("Powertech") filed a Motion for Leave to Intervene ("Motion") in this proceeding "[p]ursuant to Federal Rule of Appellate Procedure (FRAP) 15(d) and D.C. Circuit Rule 15(b)." Motion at 1. However, Powertech does not appear to have complied with D.C. Circuit Rule 15(c)(6) which requires that "[a]ny disclosure statement required by Circuit Rule 26.1 must accompany a motion to intervene…."

D.C. Circuit Rule 26.1(a) requires any proposed intervenor, such as Powertech, to file a corporate disclosure statement "identifying all parent companies and any publicly-held company that has a 10% or greater ownership

interest (such as stock or partnership shares) in the entity. A revised corporate disclosure statement must be filed any time there is a change in corporate ownership interests that would affect the disclosures required by this rule. For the purposes of this rule, 'parent companies' include all companies controlling the specified entity directly, or indirectly through intermediaries."

Powertech did not file a corporate disclosure statement. Absent a current corporate disclosure statement, Petitioners are unable to fully discern the interests of Powertech. Publicly available information suggests that Powertech's disclosure statement would reveal material information regarding the current ownership and control of the Dewey-Burdock Project and associate licenses. http://azargauranium.com/projects/usa/dewey-burdock/ (last visited January 5, 2021) ("Azarga Uranium owns 100% of the Dewey Burdock Uranium Project."). The Motion relies heavily on Powertech's role in the administrative procedings as the basis for Powertech's interests, but does not address current ownership or control of the license. Motion at 3 (asserting that Powertech was a "named party and the licensee in all phases of the administrative proceeding" and the previous litigation).

In any case, Petitioners suggest that should the Court permit intervention, it should impose reasonable restrictions on the intervention of the licensee(s) in order to ensure the efficient conduct of the proceedings.

Because F.R.A.P. 15(d) does not provide an explicit standard for resolving intervention questions, Circuit Courts rely upon the factors and policies underlying Federal Rule of Civil Procedure 24(a)(2) ("Rule 24") to decide Rule 15(d) motions. Synovus Fin. Corp. v. Board of Governors of Federal Reserve Sys., 952 F.2d 426, 431-434 (D.C. Cir. 1991); Canadian Tarpoly Co. v. U.S. Int'l Trade Commn., 649 F.2d 855, 856-857 (C.C.P.A. 1981). The U.S. Supreme Court has endorsed this approach, instructing that the standards to evaluate intervention in a U.S. District Court proceeding can serve as guidance for a Circuit Court considering a motion to intervene. *See* Int'l Union v. Scofield, 382 U.S. 205, 217 n. 10 (1965).

As held by the Supreme Court, "[a]n intervention of right under the amended Rule 24(a) may be subject to appropriate conditions or restrictions responsive among other things to the requirement of efficient conduct of proceedings." Stringfellow v. Concerned Neighbors in Action, 480 U.S. 370, 383 n.2 (1987). "The Advisory Committee Notes to the 1966 amendment to FRCP 24(a) states that intervention of right under the amended rule may be subject to appropriate conditions or restrictions responsive, among other things, to the requirements of efficient conduct of the proceedings." Federal Procedure, Lawyer's Edition, §59:442. 25 Fed. Proc., L.Ed. §59:442. *See also* Fund for Animals v. Norton, 322 F.3d at 737 n.11 (D.C. Cir. 2003) (citing the Advisory

Committee Note to support district court's authority to limit participation of intervenors).

Limiting intervention for reasons of judicial efficiency is "a firmly established principle" in the federal courts. Beauregard, Inc. v. Sword Servs., LLC, 107 F.3d 351, 352-53 (5th Cir. 1997); *see also* Stringfellow, 480 U.S. at 378 (limitations upon intervention do not constitute a denial of the right to participate); San Juan County v. U.S., 503 F.3d 1163, 1189 (10th Cir. 2007) (recognizing Rule 24 permits "limitations on the scope of intervention"); Southern v. Plumb Tools, 696 F.2d 1321, 1323 (11th Cir. 1983) ("It appears, therefore, that imposing certain conditions on either type of intervention, of right or permissive, poses no problem in the federal courts.").

Powertech's Motion does not indicate whether it seeks permissive intervention or intervention as of right or cite any case law. Regardless, Rule 24(b) grants this Court even broader discretion when considering a request for permissive intervention. "A district court's discretion to grant or deny permissive intervention is broad, and includes the discretion to limit intervention to particular issues or for limited purposes." Center for Biological Diversity v. Brennan, 571 F.Supp.2d 1105, 1130 (N.D.Cal. 2007), *citing* San Jose Mercury News v. U.S. Dist. Court—Northern Dist., 187 F.3d 1096, 1100 (9th Cir. 1999) and Van Hoomissen v. Xerox Corp., 497 F.2d 180, 181 (9th Cir. 1974). "When granting

an application for permissive intervention, a federal district court is able to impose almost any condition." Columbia-America Discovery Group v. Atlantic Mut. Ins. Co., 974 F.2d 450, 469 (4th Cir. 1992), *cert. denied*, 507 U.S. 1000 (1993). *See also* EDF v. Costle, 79 F.R.D. at 244 (limiting intervenors to the filing of briefs on a single issue).

On the incomplete record established by the Motion, intervention may be denied or conditioned. Should this Court allow Powertech to participate in this proceeding as a full party, it ought to set reasonable conditions on that participation. Petitioners suggest the Court require consolidation of Powertech's briefing with any other entities that may seek to join the litigation based on a similar interest. Further, Powertech should not be permitted to raise issues not germane to those identified by Petitioners in the Statement of Issues to be Raised, and should be instructed not to duplicate the legal or factual arguments presented by NRC and the United States of America.

Respectfully submitted,

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Filed this 6th day of January, 2021.

CERTIFICATE OF COMPLIANCE

I, Jeffrey C. Parsons, hereby certify that the foregoing Response to Motion for Leave to Intervene complies with the formatting and type-volume restrictions of the rules of the U.S. Court of Appeals for the District of Columbia Circuit. The motion was prepared in 14-point, double spaced, Times New Roman font in accordance with Fed. R. App. P. 32(a)(5) and Fed. R. App. P. 32(a)(6). The response contains 921 words and therefore complies with Fed. R. App. P. 27(d)(2)(A).

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CERTIFICATE OF SERVICE

I, Jeffrey C. Parsons, hereby certify that the foregoing Response to Motion for Leave to Intervene was served on all counsel of record in case number 20-1489 through the electronic filing system (CM/ECF) of the U.S. Court of Appeals for the District of Columbia Circuit.

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