WESTERN MINING ACTION PROJECT

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October 30, 2017

Mark J. Langer, Clerk
United States Court of Appeals
for the District of Columbia Circuit
United States Courthouse
333 Constitution Avenue, NW
Washington, DC 20001

Re: Oglala Sioux Tribe v. NRC, No. 17-1059 (not yet scheduled for oral argument)

Dear Mr. Langer:

Pursuant to Rule 28(j) of the Federal Rules of Appellate Procedure, Petitioner Oglala Sioux Tribe hereby responds to the Rule 28(j) letter submitted by Respondent Nuclear Regulatory Commission (NRC) on October 23, 2017.

In its Rule 28(j) letter, NRC submitted the October 19, 2017 Atomic Safety and Licensing Board Memorandum and Order LBP-17-09 ("Board Order"). NRC asserts that "review in this Court is incurably premature in this case because it was filed while the NRC administrative proceeding remained ongoing to resolve these two contentions." However, the Board Order does not support NRC's attempt to indefinitely postpone Hobbs Act review of a final NRC license.

Specifically, the Board Order confirms that NRC took final action by issuing a uranium processing license despite ongoing violations of the National Environmental Policy Act ("NEPA"). Board Order at 4 (final license issued to Powertech on April 14, 2014 "authorizing it to possess and use source and byproduct material"); at 39 ("the FSEIS does not contain an analysis of Sioux tribal cultural resources"). The Board Order thus supports jurisdiction in this Court. *See* Tribe Final Reply at 2–8.

This Court's invalidation of the license will not disrupt any planned administrative proceedings that attempt to remedy NEPA violations. Further, blanket deferral by this Court to further administrative proceedings prejudices the Tribe. According to the Board, NRC has failed to timely comply with its own document disclosure duties, failed to contact counsel for a represented party, and failed to meaningfully confer on the merits of a survey approach. Board

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Order at 41–46. Despite having already issued a final and effective license, NRC's argument inappropriately attempts to deprive this Court's jurisdiction, keep the license in place, and burden the sovereign Oglala Sioux Tribe with the time and expense of a post-licensing hearing process that finds no support in NRC regulations when legal violations remain extant. *Id.* at 46–53.

The Board Order confirms NRC's issuance of a final license is "final action" for purposes of Hobbs Act review.

Respectfully submitted,

/s/ *Jeffrey C. Parsons*

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Counsel for Petitioner Oglala Sioux Tribe

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CERTIFICATE OF SERVICE

I, Jeffrey C. Parsons, hereby certify that the foregoing Response to Rule 28(j) letter submitted by Oglala Sioux Tribe was served on all counsel of record in case number 17-1059 through the electronic filing system (CM/ECF) of the U.S. Court of Appeals for the District of Columbia Circuit.

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