

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
GREAT FALLS DIVISION**

NORTHERN PLAINS RESOURCE COUNCIL, et al.,

Plaintiffs,

v.

U.S. ARMY CORPS OF ENGINEERS, et al.,

Defendants,

TC ENERGY CORPORATION, et al.,

Intervenor-Defendants,

STATE OF MONTANA,

Intervenor-Defendant,

AMERICAN GAS ASSOCIATION, et al.,

Intervenor-Defendants.

CV-19-44-GF-BMM

ORDER

Edison Electric Institute and Utility Water Act Group (collectively “Electric Utility Amici”) filed a Motion for Leave to File an Amicus Brief in support of the United States Army Corps of Engineers, et al. (“Federal Defendants”) and the Intervenor-Defendants. (Doc. 79.) International Brotherhood of Electrical Workers (“IBEW”) subsequently filed a Motion for Leave to Join Electric Utility Amici’s Amicus Brief. (Doc. 84.) Northern Plains Resource Council, et al. (“Plaintiffs”) oppose Electric Utility Amici’s motion and IBEW’s motion. (Doc. 85.)

This Court’s local rules instruct movants seeking to file an amicus brief to “state why an amicus brief is desirable and relevant, including why the parties

cannot adequately address the matter.” Local Rule 7.5(b)(2)(D). District courts generally look to whether an amicus brief would be “timely and useful” when deciding whether to grant or deny leave to file an amicus brief. *U.S. ex rel. Gudur v. Deloitte Consulting LLP*, 512 F. Supp. 2d 920, 927 (S.D. Tex. 2007), *aff’d sub nom. U.S. ex rel. Gudur v. Deloitte & Touche*, No. 07-20414, 2008 WL 3244000 (5th Cir. Aug. 7, 2008). A district court may permit amici participation when “the amicus has unique information or perspective that can help the court beyond the help that lawyers for the parties are able to provide.” *Jin v. Ministry of State Sec’y*, 557 F. Supp. 2d 131, 137 (D.D.C. 2008) (quotation omitted). Courts generally should err on the side of granting leave to file an amicus brief. *Neonatology Assocs., P.A. v. Comm’r*, 293 F.3d 128, 132-33 (3d Cir. 2002).

Electric Utility Amici and IBEW assert that they have a strong interest in the outcome of this case because their members routinely engage in important activities that rely on Nationwide Permit 12. (Doc. 79 at 5, 9-12; Doc. 84 at 3.) Electric Utility Amici represent that their amicus brief will address the importance of Nationwide Permit 12 to routine work conducted by the electric utility sector and address the lawfulness of Nationwide Permit 12 to non-pipeline specific activities. (Doc. 79 at 5, 13.) Electric Utility Amici further assert that they will provide the Court with valuable and unique information to demonstrate that

Nationwide Permit 12 was issued in full compliance with the Clean Water Act and other applicable laws. (*Id.*)

Electric Utility Amici's and IBEW's views on the validity of Nationwide Permit 12 potentially will aid the Court in reconciling the legal issues in this case. Electric Utility Amici and IBEW timely filed their motions for leave to file an amicus brief at the outset of this case. The Court will err on the side of granting leave to file an amicus brief. *See Neonatology Assocs.*, 293 F.3d at 132-33.

ORDER

It is hereby **ORDERED** that Electric Utility Amici's Motion for Leave to File and Amicus Brief (Doc. 79) is **GRANTED**.

It is **FURTHER ORDERED** that IBEW's Motion for Leave to Join Proposed Amicus Brief (Doc. 84) is **GRANTED**.

Electric Utility Amici and IBEW may jointly file one amicus brief supporting Federal Defendants and Intervenor-Defendants, no longer than 5,000 words, on or before January 24, 2020.

DATED this 6th day of January, 2020.



Brian Morris
United States District Court Judge