UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA

FRIENDS OF THE EARTH, et al., *Plaintiffs,* v. DEBRA A. HAALAND, et al., *Defendants*, and STATE OF LOUISIANA, *Intervenor-Defendant.*	Case No. 21-cv-02317-RC

PLAINTIFFS' OPPOSITION TO CHEVRON'S MOTION TO INTERVENE

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INTRODUCTION

Plaintiffs Friends of the Earth, et al. oppose Chevron U.S.A., Inc.'s ("Chevron") motion to intervene as Defendants. Chevron's Mot. Intervene, ECF No. 53. This Court should deny Chevron's motion to intervene by right because both the State of Louisiana and American Petroleum Institute ("API") adequately represent Chevron's interests and Chevron's motion is untimely. Chevron's specific objective in intervening is to oppose remedy. Both Louisiana and API—a trade association of which Chevron is a member, and which expressly sought to intervene in this case to represent its members—already have intervened or sought to intervene for the same specific objective: to oppose Plaintiffs' proposed remedy. In fact, Chevron's proposed motion for summary judgement contains identical substantive arguments on remedy that Louisiana and API have already raised. In addition, Chevron filed its motion after Plaintiffs filed their final merits brief and only a couple weeks before expedited briefing on the merits is scheduled to end. The parties proposed and this Court ordered a carefully crafted, expedited schedule in order to ensure this Court can reach a decision before any leases sold will become effective. Chevron provided no valid reason why it could not have filed its motion sooner.

This Court should also deny Chevron's request for permissive intervention. Allowing Chevron to intervene will cause potential delays without providing any benefits. Chevron's intervention will not serve any practical purpose or contribute to the adjudication of the legal issues in this case. If anything, the Court should instead allow Chevron to file its proposed brief on remedy as amicus curiae.

BACKGROUND

This case challenges the Bureau of Ocean Energy Management's decision to hold offshore Lease Sale 257, the largest offering of land by area for oil and gas development in U.S. history, in reliance on an unlawful and inadequate EIS. Plaintiffs filed this litigation on August

31, 2021, the same day that the Department of the Interior signed the record of decision for Lease Sale 257. Compl., ECF No. 1. Shortly thereafter, Plaintiffs filed a notice requesting a pre-motion conference to file an early summary judgment motion and expedite consideration of the legal merits. Pls.' Req. Pre-Mot. Conf., ECF No. 11. Plaintiffs explained that once leases are issued and effective, "procedural hurdles make it more complicated for the Bureau to voluntarily cancel the leases." *Id*. at 5–6. At the pre-motion conference, this Court agreed that good cause existed to expedite proceedings, noting that "the rules do say that someone can move for summary judgment anytime up until 30 days after the close of discovery . . . and the rules give [Plaintiffs] the right to [move for summary judgment] very early in the case." Pre-Mot. Conf. Tr. 21–22, ECF No. 18; *see also id*. at 17 ("[I]t sounds to me like you [Defendants] can't tell me that delay would not prejudice the plaintiffs, it might."). In accordance with this discussion, the parties proposed an expedited schedule that would allow an opportunity for this Court to decide on the merits before any of the leases sold in Lease Sale 257 become effective. Joint Status R. 1, ECF No. 22. This Court adopted the parties' proposed expedited schedule that now governs these proceedings "[i]n light of . . . the federal government's representation that (according to its best estimate) the earliest date a lease would be issued and effective is January 1, 2022." Order 4, ECF No. 24. The Court ordered that briefing would be completed on or before December 10, 2021. *Id*.

On September 13, 2021, the State of Louisiana timely filed a motion to intervene in the case to protect its economic interests in Lease Sale 257. La.'s Mot. Intervene 15–16, ECF No. 13. The Court noted that the motion was timely because it was filed only two weeks after Plaintiffs sued. *Id*. at 3. On October 8, 2021, American Petroleum Institute ("API") also timely moved to intervene in this case, within six weeks after Plaintiffs filed the initial complaint and

before merits briefing in the case commenced. API's Mot. Intervene, ECF No. 31. API is "the primary national trade association of the oil and natural gas industry." *Id.* at 6. API claimed an interest in the litigation because its "members include leaseholders that have expended millions of dollars to obtain leases" and "it is certain that multiple of API members will bid on leases in Lease Sale 257." *Id*. at 13. API further asserted that it "can represent the interests of its members by intervening in this action." *Id*. at 16. Plaintiffs and Federal Defendants did not oppose API's intervention. Pls.' Resp. API's Mot. Intervene, ECF No. 37. The Court has yet to rule on API's motion.

Chevron, a member of API, now separately moves to intervene in this litigation, only a couple of weeks before merits briefing will end. Chevron first approached the parties about its intention to file a motion to intervene late in the evening before the Thanksgiving holiday, and hours after Plaintiffs filed their final opposition and reply on the merits. Ex. A, attached herewith. In its motion, Chevron states that the specific purpose of intervention is to "present argument on the remedy Plaintiffs seek and its impact on Chevron." Chevron's Mot. Intervene 5.

STANDARD OF REVIEW

I. Intervention as of Right.

Under Federal Rule of Civil Procedure 24(a), the D.C. Circuit applies the following four-part test to evaluate motions to intervene as of right: "(1) the application to intervene must be timely; (2) the applicant must demonstrate a legally protected interest in the action; (3) the action must threaten to impair that interest; and (4) no party to the action can be an adequate representative of the applicant's interests." *SEC v. Prudential Sec. Inc*., 136 F.3d 153, 156 (D.C. Cir. 1998). If an applicant fails to satisfy any one factor, intervention must be denied. *See Fund for Animals, Inc. v. Norton*, 322 F.3d 728, 731 (D.C. Cir. 2003) ("qualification for intervention as of right depends on the . . . four factors").

"Adequacy of representation must be assessed in relation to the specific purpose that intervention will serve" in the specific case at hand. *United States v. AT&T*, 642 F.2d 1285, 1293 (D.C. Cir. 1980). While the burden on an applicant of showing adequate representation is "not onerous," *Fund for Animals*, 322 F.3d at 735 (quoting *Dimond v. Dist. of Columbia*, 792 F.2d 179, 192 (D.C. Cir. 1986)), it is not satisfied when "it is clear that [an existing] party will provide adequate representation for the absentee." *AT&T*, 642 F.2d at 1293 (citation omitted). A presumption of adequate representation arises where an absent party and an existing party share the same "ultimate objective." *Cobell v. Jewell*, Civ. A. No. 96-01285, 2016 WL 10704595, at *2 (D.D.C. Mar. 30, 2016) (citing *Atl. Refinishing & Restoration, Inc. v. Travelers Cas. and Sur. Co. of Am.*, 272 F.R.D. 26, 30 (D.D.C. 2010); *see also Sevier v. Lowenthal*, 302 F. Supp. 3d 312, 323 (D.D.C. 2018) (citing *Perry v. Proposition 8 Off. Proponents*, 587 F.3d 947, 951 (9th Cir. 2009)). Rebutting a presumption of adequate representation requires a showing of special circumstances. *Cobell*, 2016 WL 10704595, at *2 (citing *Moosehead Sanitary Dist. v. S.G. Phillips Corp.*, 610 F.2d 49 54 (1st Cir. 1979); *Com. of Va. v. Westinghouse Elec. Corp.*, 542 F.2d 214, 216 (4th Cir. 1976); *Travelers*, 272 F.R.D. at 30). "A difference in litigation strategies does not always demonstrate an insufficiently coterminous relationship between a potential intervenor and an existing party." *Cal. Valley Miwok Tribe v. Salazar*, 281 F.R.D. 43, 48 (D.D.C. 2012).

The timeliness requirement is "aimed primarily at preventing potential intervenors from unduly disrupting litigation, to the unfair detriment of the existing parties." *Roane v. Leonhart*, 741 F.3d 147, 151 (D.C. Cir. 2014). In determining timeliness through a "context-specific inquiry . . . courts should take into account (a) the time elapsed since the inception of the action, (b) the probability of prejudice to those already party to the proceedings, (c) the purpose for

which intervention is sought, and (d) the need for intervention as a means for preserving the putative intervenor's rights." *WildEarth Guardians v. Salazar*, 272 F.R.D. 4, 12 (D.D.C. 2010) (citation omitted); *see also Nat'l Wildlife Fed'n v. Burford*, 878 F.2d 422, 434 (D.C. Cir. 1989), *rev'd on other grounds sub nom. Lujan v. Nat'l Wildlife Fed'n*, 497 U.S. 871 (1990) (finding that "the relevant time from which to assess [a] right of intervention is when [the movant] knew or should have known that any of its rights would be directly affected by th[e] litigation").

II. Permissive Intervention.

Under Federal Rule of Civil Procedure 24(b), the court may grant permissive intervention to anyone who files a timely motion and "has a claim or defense that shares with the main action a common question of law or fact." Fed. R. Civ. P. 24(b)(1)(B). "'[P]ermissive intervention is an inherently discretionary enterprise' and the court enjoys considerable latitude under Rule 24(b)." *Sierra Club v. Van Antwerp*, 523 F. Supp. 2d 5, 10 (D.D.C. 2007) (citation omitted).

In exercising its discretion, the court must consider "whether the intervention will unduly delay or prejudice the adjudication of the original parties' rights." Fed. R. Civ. P. 24(b)(3). Even where a common question of law or fact exists, a court may deny permissive intervention if it "would cause undue delay, complexity, or confusion in a case." *Stellar IT Sols., Inc. v. U.S. Citizenship and Immigr. Servs.*, Civ. A. No. 18-2015, 2019 WL 3430746, at *3 (D.D.C. July 30, 2019). Courts in this district have also considered "whether parties seeking intervention will significantly contribute to . . . the just and equitable adjudication of the legal question presented." *Ctr. for Biological Diversity v. EPA*, 274 F.R.D. 305, 313 (D.D.C. 2011) (citation omitted). Where "no practical purpose" would be served, "permissive intervention is inappropriate" because it would not "further resolution of the case." *Voltage Pictures, LLC v. Vazquez*, 277 F.R.D. 28, 33 (D.D.C. 2011).

ARGUMENT

I. Because API and Louisiana Adequately Represent Chevron's Interests on Remedy and Because Chevron's Motion is Untimely, Chevron is Not Entitled to Intervene as of Right.

Chevron is only seeking limited intervention—to address the issue of remedy. But both the State of Louisiana and API—the trade association of which Chevron is a member—already adequately represent Chevron's interests in remedy. Both parties presented identical substantive arguments on remedy in their opposition briefs on the merits. As a result, Chevron does not have the right to intervene under Rule 24(a). Chevron's motion to intervene is also untimely. Chevron waited until the eleventh hour, when merits briefing is nearly complete and after Plaintiffs submitted their final brief on the merits to seek intervention. Chevron does not provide any valid reason that prevented it from moving to intervene sooner and preventing unnecessary delay.

A. API and the State of Louisiana and Adequately Represent Chevron's Interests.

API and Louisiana both adequately represent Chevron's interests in opposing Plaintiffs' requested remedy. "The original burden of showing inadequate representation rests on the applicant for intervention." *Dimond*, 792 F.2d at 192. Chevron has not met that burden here. In its motion for intervention, Chevron claims an interest in protecting its investments in any leases it might acquire and future operations on those leases. Chevron's Mot. Intervene 9. Specifically, Chevron seeks to oppose Plaintiffs' requested remedy to protect those interests. *Id*. at 5. Because API and Louisiana share this same "ultimate objective," there is a presumption of adequate representation. *Sevier*, 302 F. Supp. 3d at 323. Chevron provides no reason why API and Louisiana will not adequately represent Chevron's identical interest in opposing Plaintiffs' requested remedy. *AT&T*, 642 F.2d at 1292. To the contrary, in its proposed brief, Chevron confirms that it merely seeks to present the same arguments raised by these other parties.

Here, Chevron, Louisiana, and API all share the same economic interests and ultimate objective: to avoid vacatur of the lease sale. In seeking intervention, Louisiana stated it had an interest related to the property rights at issue in Lease Sale 257 and sought to protect Louisiana's economic interests in the sale. La.'s Mot. Intervene 13. Louisiana claimed that Plaintiffs' requested remedy would cause the State irreparable harm. *Id.* at 15–16. Likewise, API claimed injury because an unfavorable decision would remove benefits to its members from the lease sale and its "members are actively involved in the process leading to offshore lease sales." API's Mot. Intervene 10. It also noted that API "regularly represents the interests of its members throughout the leasing process, including with respect to Lease Sale 257." *Id*. at 13. And API specifically sought intervention in order to oppose the requested relief by Plaintiffs, which it alleged would cause harm to API's members' economic and business interests, if granted. *Id*. at 14–15.

These are the same interests and objectives in opposing remedy that Chevron also seeks to present. Chevron's Mot. Intervene 6, 10. By claiming it need only make a "minimal" showing of inadequate representation, Chevron ignores that a presumption of adequate representation exists—Chevron shares the same "ultimate objective" with other existing and proposed parties in the case (API and Louisiana). *Id*. at 11–12. And Chevron has not demonstrated that it has overcome that presumption. *Cobell*, 2016 WL 107044595, at *2. Instead, Chevron claims that the State of Louisiana's interests are broader. Chevron's Mot. Intervene 12. But that misses the point. Adequacy of representation must be assessed in the context of the purpose for intervention. *AT&T*, 642 F.2d at 1293. Here, Chevron has not sought to intervene for any reason specifically related to the details or particulars of the 34 leases for which it bid, but rather to oppose Plaintiffs' requested remedy. Chevron's Mot. Intervene 6, 10. Louisiana has intervened

specifically to oppose remedy and did so in its opposition briefing, so there is no divergence of interests, as Chevron claims. *See id*. at 12.

Likewise, Chevron's claims that API's representation is inadequate because API does not have specific interests or knowledge about the leases upon which Chevron bid rings hollow. Chevron does not claim any interest that is related to the specific lease areas upon which it submitted bids and does not present any arguments in its proposed motion specifically related to those 34 lease areas. API intervened specifically to represent the interests of Chevron and other API members—specifically, their interests in opposing remedy. API asserted that it "can represent the interests of its members by intervening in this action." *Id*. at 16; *see also id*. at 10–11 (asserting standing on behalf of its members because API "can protect the interest of its members against Plaintiffs' claims"); *id*. at 12 ("API's involvement in this litigation is critical to preserve the rights of API and its members.").[1]

Moreover, the arguments that Chevron makes on remedy in its proposed motion for summary judgment are identical in substance to those that Louisiana and API already raised. *NYC C.L.A.S.H., Inc. v. Carson*, Civ. A. No. 18-1711, 2019 WL 2357534, at *3 (D.D.C. June 4,

[1] Plaintiffs do not argue that API will adequately represent Chevron in every litigation, but that Chevron has not shown API's representation to be inadequate in *this* litigation. Thus, Chevron's reference to other cases in which both an API member and API intervened does nothing to prove that Chevron's intervention is proper here. Chevron's Mot. Intervene 12–13. Three of the orders Chevron cites found that API's members' interests might diverge in the circumstances of those cases. *See* Order Granting Mot. Intervene 10–11, *Gulf Restoration Network v. Zinke*, No. 1:18-cv-01674 (D.D.C. Dec. 7, 2018), ECF No. 35; Order Granting Mot. Intervene at 2–3, *Oceana v. BOEM*, No. 1:12-cv-00981 (D.D.C. Dec. 4, 2012), ECF No. 38; *Healthy Gulf v. Bernhardt*, Case No. 1:19-cv-000707 (D.D.C. May 28, 2019), ECF No. 22. In *Defenders of Wildlife v. Salazar*, the court determined that "the surviving claims may implicate the individual characteristics of the leased tracts," so the interests in specific leased areas may diverge. Case No. 1:10-cv-816 (D.D.C. Nov. 30, 2011), ECF No. 61, at 6. In the other order Chevron cites, intervention was unopposed, and the court did not address the adequacy of API's representation. *See* Order Granting Mot. Intervene, *Oceana v. BOEM*, No. 1:11-cv-02208 (D.D.C. May 25, 2012), ECF No. 21.

2019) (denying intervention because applicant "need not intervene in order to have his position seriously considered by the Court"). Courts should consider "whether the party on whose side the applicant seeks intervention is capable of and willing to make the intervenor's arguments." *Idaho Farm Bureau Fed. v. Babbitt*, 58 F.3d 1392, 1398 (9th Cir. 1995).

Chevron's limited discussion of remedy largely repeats API's attempt to conflate the statutory remedy of vacatur with the common-law remedy of an injunction. *Compare* Chevron's [Proposed] Mem. Supp. ("Chevron Proposed Br.") 5–7, ECF No. 55-1 *with* [Proposed] Intervenor-Def. API's Mem. Supp. ("API Br.") 42–45, ECF No. 43-1. Plaintiffs have already explained this argument is a straw man, constructed by mischaracterizing the relief Plaintiffs seek and the case law. Pls.' Opp. & Reply Mem. ("Pls. Reply Br.") 53–54, ECF No. 51.

Contrary to Chevron's repetitive arguments about injunctive relief, Plaintiffs seek to vacate the decision to hold the lease sale, the default remedy under the APA for NEPA violations. The relief Plaintiffs seek focuses on the agency, not the plaintiff, and the party opposing vacatur, not the plaintiff, bears the burden of establishing the need for any departure. *Id*. (citing *Nat'l Parks Conservation Ass'n v. Semonite*, 422 F. Supp. 3d 92, 99 (D.D.C. 2019) (defendant bears the burden of demonstrating that vacatur is unwarranted). No party has made those showings here and Chevron offers no new arguments or facts that demonstrate otherwise.

Further, what Chevron characterizes as its unique and unrepresented interest in the details of its bids is neither unique nor unrepresented. *Compare* Chevron Proposed Br. 4, 6 (asserting that Chevron's competitors have an advantage if the lease sale is held again) *with* API Br. 44 (same). Moreover, this argument mistakenly presumes that that the Bureau can simply complete some additional paperwork and reflectively "auction the leases at a later date." Chevron Proposed Br. 4, 6. But "NEPA's purpose is not to generate paperwork—even excellent

paperwork—but to foster excellent action." 40 C.F.R. § 1500.1(c). The statute requires an agency to take a "hard look" at the consequences of its actions and alternatives before it moves ahead and to allow it to make choices that avoid environmental harms. *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 349 (1989) (NEPA's "action-forcing" purpose requires agencies to carefully "consider[] detailed information concerning significant environmental impacts" before committing to a decision).

As Plaintiffs have explained, simply repeating the lease sale is anathema to these purposes and is completely untethered to the Bureau's serious NEPA violations in this case. *See* Pls. Reply Br. 50; *Standing Rock Sioux Tribe v. U.S. Army Corps of Eng'rs*, 985 F.3d 1032, 1052 (D.C. Cir. 2021) (finding that assuming a legally-complaint EIS would support the same underlying choice "would subvert NEPA's purpose by giving substantial ammunition to agencies seeking to build first and conduct comprehensive reviews later" and that the D.C. Circuit "still instructs that a failure to prepare a required EIS should lead us to doubt that the ultimate action will be approved"); *see also id*. at 1052–53 (stating, for NEPA violations, "courts should harbor substantial doubt that 'the agency chose correctly' regarding the *substantive* action at issue" and that "NEPA violations are serious notwithstanding an agency's argument that it might ultimately be able to justify the challenged action") (citation omitted).

Indeed, based on the seriousness of the Bureau's NEPA violations, it is equally—if not more—likely that the Bureau would make a different decision altogether, including potentially rejecting a sale. Pls. Reply Br. 50. Where there is no guarantee that this same lease sale will be offered after the Bureau complies with the law, Chevron's complaints about competitive disadvantage are pure speculation and are no different than API's. API Br. 44. As Plaintiffs have

explained, even if Chevron is correct in portraying this as a disadvantage, that is a product of its own actions, not a consequence of vacatur. Pls. Reply Br. 52–53.

B. Chevron's Motion is Untimely.

Chevron's untimely intervention motion will prejudice Plaintiffs by adding undue delay to the resolution of this case on the merits. Timeliness is a threshold matter for all intervention inquiries. *Amador Cnty. v. U.S. Dep't of the Interior*, 772 F.3d 901, 903 (D.C. Cir. 2014). If a motion is untimely, "intervention must be denied." *Id*. (quoting *NAACP v. New York*, 413 U.S. 345, 365 (1973)); *see also AT&T*, 642 F.2d at 1294 ("We have held that an untimely motion for intervention . . . must be denied."). "[A]ny delay in adjudicating the rights of the parties is undue if there is no good reason for it." *NYC C.L.A.S.H., Inc.*, 2019 WL 2357534, at *4.

Chevron contacted the parties about its intention to move for intervention late in the evening on November 24, 2021, hours after Plaintiffs filed their final merits brief and a full week after Chevron submitted its bids on Lease Sale 257. *See* Ex. A; Pls. Reply Br. By waiting until after Plaintiffs submitted their final brief on the merits to move for intervention, Chevron is forcing the parties to accommodate additional briefing on an expedited schedule, potentially delaying resolution of the merits of this case. Chevron provides no good reason for its delay. This Court has already recognized the need for expedited proceedings in this case. Pre-Mot. Conf. Tr. 17–18, 21–22; Order, ECF No. 24. Allowing Chevron to intervene will only serve to undermine this Court's ability to reach a decision on the merits before the leases become effective. *See* Joint Status R.; Order.

Chevron's argument that its brief is timely because it was filed before merits briefing is complete holds no water. *See* Chevron's Mot. Intervene 6. "The timeliness of a motion to intervene must 'be judged in consideration of all the circumstances.'" *100Reporters LLC v. U.S. Dep't of Just.*, 307 F.R.D. 269, 274 (D.D.C. 2014) (citation omitted). Those circumstances

include weighing "whether any delay in seeking intervention unfairly disadvantaged the original parties." *Id*. at 275. "[T]he relevant time from which to assess [an applicant's] right of intervention is when [the applicant] knew or should have known that any of its rights would be directly affected by th[e] litigation." *Nat'l Wildlife Fed'n*, 878 F.2d at 434. Chevron does not provide any valid reason why it could not have moved to intervene sooner and briefed the merits concurrently with other intervenors. *E.g., Save Our Springs Alliance Inc. v. Babbitt*, 115 F.3d 346, 347 (5th Cir. 1997) (denying intervention as untimely when the motion came one day ***before*** merits briefing started and the applicant gave no reason for waiting until the last minute).

Like Plaintiffs, Chevron was "well aware" that its interests in prospective leases "could be affected by the litigation," long before placing its bids. *See* Chevron's Mot. Intervene 6–7. Chevron has "for many decades engaged in oil and gas exploration and production," "is one of the largest leaseholders and one of the largest producers in the Gulf of Mexico," and has "leaseholds [] interests in hundreds of leases in the Gulf of Mexico." Gallman Decl. ¶ 3, ECF 53-2; *see also* ¶ 6 ("In many prior Gulf of Mexico lease sales in which Chevron participated, the Department of the Interior ultimately awarded Chevron leases on the vast majority of parcels for which it was the high bidder."); O'Scannlain Decl. ¶ 15, ECF No. 31-1 ("API members include leaseholders that have expended billions of dollars to obtain leases from the Government to explore for and develop valuable oil and gas resources."). Indeed, API noted in its motion to intervene that it "is certain that multiple of API members will bid on leases in Lease Sale 257." API's Mot. Intervene 13. There is no reason why Chevron could not have moved to protect its purported interests even before the lease sale.

Chevron's motion indicates that it was aware or should have been aware that its interest in acquiring leases would be directly affected by this litigation much earlier, but that it waited to

intervene until those interests became "sufficiently concrete to support intervention." Chevron's Mot. Intervene 4–6. Ripeness is not the appropriate question here. Tellingly, Chevron provides no authority to support its proposition that a proposed intervenor must wait for its interests to fully ripen before moving to intervene. And, in fact, this Court has indicated that forcing proposed intervenors to wait until their injury is ripe would place them in a "precarious position under Rule 24(a), which demands the ***timely*** filing of motions to intervene," so "ripeness [is] an unsuitable tool for resolving motions to intervene." *100Reporters*, 307 F.R.D. at 282.[2]

Moreover, even if ripeness was the correct standard, Chevron's interests are not even now "concrete" or "ripe," as the company claims. Chevron's Mot. Intervene 4, 5. Although Chevron submitted bids during Lease Sale 257, the Bureau has not accepted any of Chevron's bids and Chevron does not possess any executed or effective leases. The state of its interests today is identical to the state of its interests the day, the week, or the month before the lease sale. Even if Chevron preferred to wait until after it entered its bids, there is no reason why it could not have moved for intervention on November 17, 2021, the date of the lease sale, before Plaintiffs' final merits brief was due, avoiding its request for additional briefing. Chevron clearly knew long before that date that it would submit bids and could have prepared to seek intervention immediately thereafter. Instead, Chevron's motion, here, will require Plaintiffs to submit additional briefing and potentially extend the briefing schedule. Chevron even admits that its motion will result in "minor prejudice," but claims that prejudice should be outweighed by Chevron's need to intervene. *Id*. at 7. However, because Chevron has not demonstrated a

[2] For the same reasons, Chevron's assertions that no existing parties adequately represent its interest because the expedited briefing schedule limits the time that successful bidders may participate is misplaced. *See* Chevron's Mot. Intervene 11.

compelling need to intervene, as described in detail above, any prejudice to Plaintiffs outweighs Chevron's desire to intervene.[3]

II. The Court Should Deny Permissive Intervention.

"Whether intervention be claimed of right or as permissive, it is at once apparent, from the initial words of both Rule 24(a) and Rule 24(b), that the application must be 'timely.' If it is untimely, intervention must be denied." *NAACP*, 413 U.S. at 365. Requests for permissive intervention, in fact, face heightened timeliness scrutiny to prevent substantial disruption of the litigation process. *League of United Latin Am. Citizens v. Wilson*, 131 F.3d 1297, 1308 (9th Cir. 1997). As described above, Chevron's untimely motion fails this threshold test.

In addition, this Court may deny permissive intervention when an applicant has not shown that its participation will significantly contribute to full development of the underlying factual issues in the suit. *Spangler v. Pasadena City Bd. of Educ.,* 552 F.2d 1326, 1329 (9th Cir. 1977). Chevron has not alleged that it will bring anything factually different to the table or sought to raise any substantive arguments that differ from those the existing parties have already presented. Here, Chevron's participation as a party in this matter is not essential for the "just and equitable adjudication of the legal question[s] presented." *Sierra Club v. McCarthy*, 308 F.R.D. 9, 12 (D.D.C. 2015) (citation omitted). Chevron seeks intervention to oppose Plaintiffs' requested remedy. As described above, Chevron has not given the Court sufficient reason to believe that the existing parties and existing proposed intervenor will not vigorously oppose this remedy. *See Cigar Ass'n of Am. v. U.S. Food & Drug Admin.*, 323 F.R.D. 54, 66 (D.D.C. 2017).

[3] The recent extension to the schedule does not change this calculation because Chevron still waited until Plaintiffs submitted their final merits brief before moving for intervention, seeking additional briefing and potential further delays— prejudice that could have been avoided had Chevron instead moved in a timelier fashion.

If anything, this Court should grant Chevron the opportunity to submit its proposed motion (ECF No. 55-1) as amicus curiae. That would provide Chevron ample opportunity to present its views, while avoiding the prejudice of granting its untimely and duplicative intervention.

CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court deny Chevron's motion to intervene under both Fed. R. Civ. P. 24(a) and (b).

Respectfully submitted this 8th day of December 2021.

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