

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

In re:

EXTRACTION OIL & GAS, INC., *et al.*,¹

Debtors.

GRAND MESA PIPELINE, LLC,

Appellant,

v.

EXTRACTION OIL & GAS, INC.,

Appellee.

FEDERAL ENERGY REGULATORY
COMMISSION,

Appellant,

v.

EXTRACTION OIL & GAS, INC.,

Appellee.

CIVIL ACTION No. 20-cv-01411

CIVIL ACTION No. 20-cv-01521

CIVIL ACTION No. 20-cv-01412

CIVIL ACTION No. 20-cv-01506

CIVIL ACTION No. 20-cv-01564

Bankruptcy Case No. 20-11548 (CSS)

Bankruptcy BAP No. 20-53

**JOINT MOTION TO CONSOLIDATE BANKRUPTCY APPEALS AND CONFORM
BRIEFING SCHEDULES AND INCORPORATED MEMORANDUM OF LAW**

Appellants, Grand Mesa Pipeline, LLC (“Grand Mesa”) and the Federal Energy Regulatory Commission (“FERC”) (collectively, “Appellants”), pursuant to Federal Rule of Civil Procedure 42(a)(2), respectfully move the Court for consolidation of the five related bankruptcy appeals in

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are: Extraction Oil & Gas, Inc. (3923); 7N, LLC (4912); 8 North, LLC (0904); Axis Exploration, LLC (8170); Extraction Finance Corp. (7117); Mountaintop Minerals, LLC (7256); Northwest Corridor Holdings, LLC (9353); Table Mountain Resources, LLC (5070); XOG Services, LLC (6915); and XTR Midstream, LLC (5624). The location of the Debtors’ principal place of business is 370 17th Street, Suite 5300, Denver, Colorado 80202.



this matter, docketed as: No. 20-cv-01411 (the “Grand Mesa Lift-Stay Appeal”); No. 20-cv-01521 (the “Grand Mesa Rejection Appeal”); No. 20-cv-01412 (the “FERC Lift-Stay Appeal”); Nos. 20-cv-01506 and 20-cv-01564 (collectively, the “FERC Rejection Appeals”).² As will be set forth below, consolidation of the Appeals is appropriate because it would create no risk of inconvenience, delay, or expense. Given the common factual and legal issues predominant in the Appeals, consolidation would avoid significant repetitive briefing and argument involving overlapping factual and legal issues, and preserve the resources of both the Court and the parties. In support of this motion, Appellants state as follows:

1. Debtor-Appellee Extraction Oil & Gas, Inc. (“Extraction”) moved to reject transportation service agreements (“TSAs”) between it and Grand Mesa in the bankruptcy court. (D.I. 14). The TSAs relate to an interstate crude oil pipeline—the Grand Mesa Pipeline—that is regulated by FERC under the Interstate Commerce Act, 49 U.S.C. §§ 1 *et seq.* (the “ICA”). (D.I. 363). Grand Mesa opposed this motion, in significant part on the grounds that FERC’s consideration of whether rejection of the TSAs would advance the “public interest,” as evaluated by FERC, is required because rejection, as Extraction seems to understand it, would involve non-compliance with FERC-approved rates, terms and conditions, and the public-interest test under the ICA accordingly applies. (D.I. 363). Ultimately, the bankruptcy court granted rejection. (D.I. 942; D.I. 1038). The bankruptcy court’s bench ruling and order granting the motion to reject, *id.*, are the basis of the Grand Mesa Rejection Appeal and the FERC Rejection Appeals, docketed in this Court as Nos. 20-cv-01521, 20-cv-01506 and 20-cv-01564.

2. Relatedly, prior to the bankruptcy court’s granting of the rejection of the TSAs, Grand Mesa filed the Motion for Order Confirming that the Automatic Stay Does Not Apply or,

² All five appeals shall collectively be referred to herein as “the Appeals.”

in the alternative, For Relief from the Automatic Stay, in which Grand Mesa requested the bankruptcy court to enter an order: (i) confirming that the declaratory proceeding that Grand Mesa seeks to commence at FERC to conduct a public interest analysis with regard to Debtors' non-compliance with the TSAs does not implicate the automatic stay or is subject to the police and regulatory exception of 11 U.S.C. § 362(b)(4); or, in the alternative, (ii) granting relief from the automatic stay to allow Grand Mesa to petition for an order from FERC regarding whether rejection of the TSAs is consistent with the public interest and ICA. (D.I. 364). FERC joined Grand Mesa's motion, and provided a separate statement to the bankruptcy court seeking similar relief. (D.I. 653). Extraction opposed Grand Mesa's motion (D.I. 507), and the bankruptcy court denied it. (D.I. 831). The bankruptcy court's order denying Grand Mesa's motion, *id.*, is the basis of the Grand Mesa Lift-Stay Appeal and the FERC Lift-Stay Appeal, docketed in this Court as Nos. 20-cv-01411 and 20-cv-01412.

3. Under Federal Rule of Civil Procedure 42(a), a district court may consolidate actions that "involve a common question of law or fact." Fed. R. Civ. P. 42(a); *accord In re Mock*, 398 F. App'x 716, 718 (3d Cir. 2010) (noting application of Rule 42(a) to bankruptcy appeals before the district court); *Waste Distillation Tech., Inc. v. Pan Am. Res., Inc.*, 775 F. Supp. 759, 761 (D. Del. 1991). Indeed, this Court has "broad discretion" to grant consolidation. *In re Mock*, 398 F. App'x at 718.

4. Similarly, under Federal Rule of Bankruptcy Procedure 8003(b)(2), "[w]hen parties have separately filed timely notices of appeal, the district court . . . may join or consolidate the appeals." Fed. R. Bankr. P. 8003(b)(2). Indeed, this rule "allows the district court . . . to consolidate appeals taken separately by two or more parties." Fed. R. Bankr. P. 8003(b) advisory committee's note to 2014 amendments.

5. Here, the Appeals involve substantially interrelated appellate issues from the same bankruptcy case, which results in a near-identical factual and legal basis for both appeals. Specifically, the Appeals relate to the statutory role and jurisdiction of FERC, among other related issues. In turn, the orders on appeal (D.I. 942; D.I. 1038; D.I. 831) implicate overlapping legal precedent and principles concerning administrative agency procedures and jurisdiction. Indeed, in its bench ruling granting Extraction's rejection motion, the bankruptcy court cross-referenced the letter clarifying its bench ruling denying Grand Mesa's lift-stay motion. (D.I. 942 at 20 & n.63). Against this backdrop, the burden on the parties and judicial resources would be greatly lessened by consolidation of the Appeals. Moreover, because the Appeals arise from identical bankruptcy proceedings, the risk of inconsistent adjudications of identical factual and legal issues is great, should consolidation not occur. These factors outweigh any slim risk of prejudice.³

6. Because "[t]he proper administration of justice requires that issues be resolved without unnecessary cost or delay," this Court must weigh "savings of time and effort gained through consolidation" as "balanced against the inconvenience, delay or expense that might result from simultaneous disposition of the separate actions." *Waste Distillation Tech., Inc.*, 775 F. Supp. at 761. Consolidation is appropriate to "save . . . time and expense, avoid duplicitous filings, and eliminate the risk of inconsistent results between two proceedings." *Id.*

7. Thus, under Federal Rule of Civil Procedure 42(a)(2), consolidation of the Appeals should occur. Additionally, Appellants request that the consolidated appeal's briefing schedule be conformed to that of the Grand Mesa Lift-Stay Appeal.

³ See also *In re FirstEnergySols. Corp.*, 945 F.3d 431, 436-37 (6th Cir. 2019) (in an appeal implicating similar issues to the present appeal, where FERC was an appellant, the Sixth Circuit—after granting certification—consolidated several appeals that arose from the rejection and injunction orders in that case).

WHEREFORE, for the foregoing reasons, Appellants respectfully request that the Court consolidate the appeals in Nos. 20-cv-01411, 20-cv-01521, 20-cv-01412, 20-cv-01506, and 20-cv-01564,⁴ conform the briefing schedules therewith, and the grant of such other and further relief as it deems just and proper.

Dated: December 7, 2020

Federal Energy Regulatory Commission

/s/ Daniel M. Vinnik

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Respectfully submitted,

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⁴ All five appeals shall collectively be referred to herein as “the Appeals.”

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on December 7, 2020, I electronically filed the foregoing document using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record on the service list below, via transmission of Notices of Electronic Filing generated by CM/ECF, electronic mail, and/or first-class U.S. mail.

/s/ Daniel M. Vinnik

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