

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

In re:

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

Debtors.

FEDERAL ENERGY REGULATORY
COMMISSION

Appellant,

v.

EXTRACTION OIL & GAS, INC.,

Appellee.

CIVIL ACTION No. 20-cv-01412-CFC

Bankruptcy Case No. 20-11548 (CSS)

**THE FEDERAL ENERGY REGULATORY COMMISSION’S REPLY TO
EXTRACTION OIL & GAS, INC.’S RESPONSE TO THE AMENDED MOTION FOR
CERTIFICATION OF A DIRECT APPEAL OF BANKRUPTCY COURT ORDERS TO
THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT**

The Federal Energy Regulatory Commission (“**FERC**” or “**the Commission**”) submits this limited reply to the March 8, 2021 response in opposition (“**Response**”) of Extraction Oil & Gas, Inc. (“**Extraction**”) to the Commission’s February 23, 2021 amended motion for certification of a direct appeal to the United States Court of Appeals for the Third Circuit (“**Third Circuit**”) of four related rulings from the United States Bankruptcy Court for the District of Delaware

¹ The Debtors in these chapter 11 cases (collectively, “Debtors”) include Extraction Oil & Gas, Inc.; 7N, LLC; 8 North, LLC; Axis Exploration, LLC; Extraction Finance Corp.; Mountaintop Minerals, LLC; Northwest Corridor Holdings, LLC; Table Mountain Resources, LLC; XOG Services, LLC; and XTR Midstream, LLC.



(“**Bankruptcy Court**”). The Commission submits this limited reply solely to note that its original request for certification of its fourth appeal was filed on January 11, 2021.²

BACKGROUND

The Commission filed a notice of appeal for the Bankruptcy Court’s December 23, 2020, Confirmation Order, (D.I. 1509), resulting in Civ. No. 21-12-CFC.

On January 4, 2021, this Court issued an Oral Order directing FERC to submit a status report. On January 11, 2021, the Commission filed a Status Report, Renewed Motion for Certification, and Renewed Motion for Consolidation in its four appeals before this Court.³

On February 9, 2021, the Commission and Extraction filed a joint status report regarding consolidation and certification of the Commission’s appeals, noting February 23, 2021, to be the deadline for filing the Commission’s amended motion for certification.⁴ On February 23, 2021 the Commission filed its amended motion for certification.⁵ On March 8, 2021, Extraction filed its Response in opposition to the Commission’s amended motion for certification.⁶

² *FERC v. Extraction Oil & Gas, Inc.*, 1:20-cv-1412-CFC, Doc. No. 18; *FERC v. Extraction Oil & Gas, Inc.*, 1:20-cv-1506-CFC, Doc. No. 16; *FERC v. Extraction Oil & Gas, Inc.*, 1:20-cv-1564-CFC, Doc. No. 18; *FERC v. Extraction Oil & Gas, Inc.*, 1:21-cv-0012-CFC, Doc. No. 10.

³ *FERC v. Extraction Oil & Gas, Inc.*, 1:20-cv-1412-CFC, Doc. No. 18; *FERC v. Extraction Oil & Gas, Inc.*, 1:20-cv-1506-CFC, Doc. No. 16; *FERC v. Extraction Oil & Gas, Inc.*, 1:20-cv-1564-CFC, Doc. No. 18; *FERC v. Extraction Oil & Gas, Inc.*, 1:21-cv-0012-CFC, Doc. No. 10.

⁴ *FERC v. Extraction Oil & Gas, Inc.*, 1:20-cv-1412-CFC, Doc. No. 23; *FERC v. Extraction Oil & Gas, Inc.*, 1:20-cv-1506-CFC, Doc. No. 21; *FERC v. Extraction Oil & Gas, Inc.*, 1:20-cv-1564-CFC, Doc. No. 23; *FERC v. Extraction Oil & Gas, Inc.*, 1:21-cv-0012-CFC, Doc. No. 16.

⁵ *FERC v. Extraction Oil & Gas, Inc.*, 1:20-cv-1412-CFC, Doc. No. 25; *FERC v. Extraction Oil & Gas, Inc.*, 1:20-cv-1506-CFC, Doc. No. 23; *FERC v. Extraction Oil & Gas, Inc.*, 1:20-cv-1564-CFC, Doc. No. 24; *FERC v. Extraction Oil & Gas, Inc.*, 1:21-cv-0012-CFC, Doc. No. 18.

⁶ *FERC v. Extraction Oil & Gas, Inc.*, 1:20-cv-1412-CFC, Doc. No. 26.

ARGUMENT

In its Response, Extraction argues that the Commission’s request for certification of its fourth appeal is untimely.⁷ However, Extraction’s argument relies on the incorrect premise that the Commission’s request for certification was made on February 23, 2021.⁸ The Commission’s initial request for certification regarding its fourth appeal, originally docketed at Civ. No. 21-12-CFC, was made on January 11, 2021.⁹ The Commission’s request for certification was therefore made within the 60-day time frame prescribed by statute. *See* 28 U.S.C. § 158(d)(2)(E) (“Any request [to a district court] for certification shall be made not later than 60 days after the entry of the judgment, order, or decree.”); Fed. R. Bankr. P. 8006(f)(1) (“A request by a party for certification that a circumstance specified in 28 U.S.C. § 158(d)(2)(A)(i)-(iii) applies ... must be filed with the clerk of the court where the matter is pending within 60 days after the entry of the judgment, order, or decree.”).

For the foregoing reason and for the reasons stated in the Commission’s previous certification motions (the December 11, 2020 joint motion; the January 11, 2021 renewed motion; and the February 23, 2021 amended motion), the Commission respectfully requests that this Court grant certification of the Commission’s four appeals.

⁷ *Id.* at 8-10.

⁸ *Id.* at 9 (arguing “[t]hat 60-day deadline expired on February 22, 2021, but FERC elected not to file the Amended Certification Motion until February 23, 2021—one day late”).

⁹ *FERC v. Extraction Oil & Gas, Inc.*, 1:20-cv-1412-CFC, Doc. No. 18; *FERC v. Extraction Oil & Gas, Inc.*, 1:20-cv-1506-CFC, Doc. No. 16; *FERC v. Extraction Oil & Gas, Inc.*, 1:20-cv-1564-CFC, Doc. No. 18; *FERC v. Extraction Oil & Gas, Inc.*, 1:21-cv-0012-CFC, Doc. No. 10.

Dated: March 15, 2021

Respectfully submitted,

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