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September 23, 2021

VIA ECF

The Honorable Colm F. Connolly
Chief Judge
United States District Court
for the District of Delaware
J. Caleb Boggs Federal Building
844 N. King Street
Unit 31
Room 4124
Wilmington, DE 19801-3555

Re: *In re Extraction Oil & Gas, Inc.*, Nos. 1:20-cv-01412-CFC, 1:20-cv-01506-CFC, 1:20-cv-01564-CFC, 1:21-cv-00012-CFC

Dear Chief Judge Connolly:

We write on behalf of Extraction Oil & Gas, Inc. (“Extraction”) to apprise the Court of a recent—and significant—development in the months-long campaign by the Federal Energy Regulatory Commission (“FERC”) to obtain direct appeal to the Third Circuit pursuant to 28 U.S.C. §158(d)(2) in the above-captioned consolidated bankruptcy appeals.

As the Court is aware, FERC first sought to obtain certification on December 11, 2020, when it filed a joint request to that effect with another party, Grand Mesa Pipeline, LLC (“Grand Mesa”). After Grand Mesa subsequently settled with Extraction and dismissed its appeals, FERC forged ahead, filing an amended request for certification on February 23, 2021. Each time, Extraction expended considerable estate resources explaining why direct appeal to the Third Circuit is inappropriate. After months of deliberation, this Court on August 23, 2021 granted FERC’s amended certification request in a 16-page opinion and stayed further briefing here. That certification decision also triggered a 30-day period for FERC to petition the Third Circuit to exercise its discretion to authorize a direct appeal. *See* 28 U.S.C. §158(d)(2); Fed. R. Bankr. P. 8006(g).

Yesterday—on the final day of that 30-day period—an attorney with the U.S. Department of Justice (“DOJ”) informed Extraction’s counsel via e-mail that DOJ is now representing FERC in these consolidated appeals and that, despite FERC’s longstanding insistence to the contrary,



September 23, 2021

Page 2

FERC/DOJ “will not seek direct review of the appeals from the Third Circuit” after all. The e-mail additionally explained that FERC/DOJ “are in the process of determining whether and, if so, how, to proceed with the appeals in District Court.” *See* Exhibit A.

As Extraction has consistently explained since last December, these consolidated appeals are exceedingly poor candidates for direct review by the Third Circuit. Extraction therefore appreciates that FERC/DOJ have now come to the belated realization (albeit after significant expenditure of resources by Extraction and this Court) that FERC should never have sought direct review in the first place. All that said, Extraction should not now have to wait for the government to “determin[e] whether and, if so, how, to proceed” with these consolidated appeals in this Court, which Extraction believes are meritless. Instead, this Court should issue an order that lifts the stay that it imposed when granting FERC’s amended certification request last month, and the Court should promptly establish a briefing schedule, with FERC’s opening brief presumptively due within 30 days of the Court’s order, *cf.* Fed. R. Bankr. P. 8018(a)(1)—as it presumably would have done if it had denied FERC’s request for certification. If, during the course of that briefing period, FERC/DOJ determine that they no longer wish to proceed with these appeals, they can dismiss the appeals and save Extraction and this Court from expending further resources on them.

Respectfully submitted,

/s/ Richard W. Riley

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¹ Whiteford, Taylor & Preston LLC operates as Whiteford Taylor & Preston LLP in jurisdictions outside of Delaware.

EXHIBIT A

From: [Lerman, Leah V. \(CIV\)](#)
To: [mabrams@wtplaw.com](#); [Hicks, George W.](#); [Aycock, Jamie Alan](#); [RRiley@wtplaw.com](#); [sgerald@wtplaw.com](#)
Cc: [Sacks, Marcus S. \(CIV\)](#)
Subject: FERC v. Extraction Oil & Gas, Inc.; District Court Case No. 20-1412-CFC
Date: Wednesday, September 22, 2021 12:07:44 PM

Good Afternoon Counsel,

I'm writing to let you know (as you've probably already seen from ECF) that I am/DOJ is now counsel of record for FERC in the consolidated appeals under case no. 20-1412-CFC.

As a courtesy, we wanted to inform you that we will not seek direct review of the appeals from the Third Circuit, and are in the process of determining whether and, if so, how, to proceed with the appeals in District Court.

We will update you in the near future.

Please let me know if you have any questions.

Thank you,
Leah

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