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VIA ECF

The Honorable Christopher S. Sontchi
United States Bankruptcy Court
District of Delaware
824 N. Market Street, 5th Floor
Wilmington, DE 19801

Re: Extraction Oil & Gas, Inc., Case No. 20-11548 (CSS);
Extraction Oil & Gas, Inc. v. Grand Mesa Pipeline, LLC, Adv. Proc. No. 20-50816 (CSS)

Dear Chief Judge Sontchi:

On behalf of Grand Mesa Pipeline, LLC ("Grand Mesa"), we submit this letter regarding the Debtors' serious case management delinquencies for Your Honor's consideration in advance of the status conference scheduled for today at 12:00 pm (ET).

Grand Mesa is party to two oil transportation agreements (the "TSAs") with the Debtors, which constitute "filed rates" subject to Federal Energy Regulatory Commission ("FERC") jurisdiction. On June 15, 2020, the Debtors filed a first-day, omnibus rejection motion (the "Rejection Motion") seeking to reject various agreements, including the TSAs. D.I. 14. On August 4, 2020, Grand Mesa filed an objection to the Rejection Motion [D.I. 363] (the "Objection") and contemporaneously filed a motion for relief from the automatic stay requesting entry of an order (i) that the declaratory petition Grand Mesa seeks to commence at FERC does not implicate the automatic stay or, in the alternative, (ii) granting relief from the automatic stay to allow Grand Mesa to petition FERC regarding whether modification of the TSAs due to any rejection thereof is consistent with the public interest and the Interstate Commerce Act [D.I. 364] (the "Lift-Stay Motion"). Thereafter, on August 19, 2020, the Debtors commenced an adversary proceeding (the "Adversary Proceeding") seeking a declaratory judgment that the covenants running with the land granted to Grand Mesa under one of the TSAs – the Bayswater TSA (as defined in the Objection and the Lift-Stay Motion) – are invalid and unenforceable under Colorado law. That same day, the Debtors filed a summary judgment motion in respect of the relief sought in their adversary complaint. In sum, Grand Mesa is presently party to three contested matters with the Debtors.

Notably, the Lift-Stay Motion and Objection implicate issues that go beyond the private parties and involve public interest analyses and FERC jurisdictional questions.[1] Given the complexity and scope of these issues, we expect significant witness testimony (including multiple experts).[2]

Although the Debtors may wish to proceed with a hearing on the aforementioned contested matters on September 30, 2020, they have no acted in a manner to make that feasible. Despite having had ongoing discussions with Grand Mesa regarding a discovery and briefing schedule, the parties never reached closure and the Debtors now seek to deprive Grand Mesa of the ability to fairly develop a comprehensive record and expert opinions. Indeed, it is telling that the Debtors only began – far too late and far too slow – to make disclosures after various of the parties involved in contested matters with the Debtors contacted the Court to raise concerns on September 10, 2020. For further context, below is a summary of key discovery-related exchanges:

- Wednesday, August 5, 2020: Grand Mesa serves requests for production of documents on Debtors.
    - Tuesday, August 18, 2020: Debtors' counsel indicates intention to produce documents on a rolling basis – which is a commitment on which Grand Mesa relied.
    - Monday, September 7, 2020: Debtors serve responses and objections to Grand Mesa's requests for production **(33 days after receipt thereof)**.
    - Saturday, September 12 and Sunday, September 13, 2020: With **no** advance notice, Debtors provide Grand Mesa with initial document production. **(38 days after receipt of Grand Mesa's RFPs and 25 days after Debtors' counsel indicates intention to produce documents on a rolling basis)**.
    - The production begins **only 3** business days **before** the parties had discussed making **expert reports** due, which is no longer tenable.

- August 28, 2020: Debtors send Grand Mesa a draft form of confidentiality and protective order between the Debtors and the Creditors' Committee, requesting Grand Mesa's execution of a joinder thereto.
    - September 1, 7, 8, and 9, 2020: Counsel to Grand Mesa repeatedly raises reasonable client access issues in respect of the draft confidentiality and protective order. Despite Grand Mesa's efforts, no accommodation or document production by Debtors.

[1] *See, e.g.*, *In re Ultra Petroleum Corp.*, Case No. 20-32631 (Bankr. S.D. Tex.); *In re Chesapeake Energy Corporation*, Case No. 20-33233 (DRJ) (Bankr. S.D. Tex.); *FERC v. FirstEnergy Sols., Corp. (In re FirstEnergy Sols. Corp.)*, 945 F.3d 431 (6th Cir. 2019) *Calif. Dep't of Water Res. v. Calpine Corp. (In re Calpine Corp.)*, 337 B.R. 27, 39 (S.D.N.Y. 2006); *In re Mirant Corp.*, 378 F.3d 511, 524 (5th Cir. 2004) ("*FERC v. FirstEnergy Sols., Corp. (In re FirstEnergy Sols. Corp.)*, 945 F.3d 431 (6th Cir. 2019).

[2] Moreover, the Adversary Proceeding also may involve the presentation of evidence and the application of technical Colorado real property law. The Debtors have also commenced adversary proceedings and filed summary judgment motions on similar grounds against approximately four other parties. Each proceeding would require an interpretation of the terms of the specific agreement(s) between the parties and application of applicable state law.

- September 8, 2020: Again raising its concerns about being jammed by Debtors since no documents had been produced, Grand Mesa as a compromise states it will abide by the terms of the draft confidentiality and protective order on an interim basis until resolution of outstanding client access issues. **Still, not a single document is produced** by Debtors for 4 days and production **only begins** after the parties sought the Court's intervention in case management issues.
- September 10, 2020: Debtors **only** agreed to provide client access to documents produced to Grand Mesa after the parties sought the Court's intervention.

As Debtors' counsel itself stated as recently as September 9, the parties had not "closed out" the dates on the schedule that was under discussion.[3] While the timing of certain filings (including Debtors' reply papers in respect of the Rejection Motion) and the dates for expert depositions has not been agreed upon (Grand Mesa submits expert depositions should occur after Debtors have filed their Rejection Motion reply papers), it is clear that the current targeted timeline makes little practical sense given where discovery and briefing currently stand. For example, under the timeframe that the parties had been discussing, the parties would be required to exchange expert reports on September 17, 2020, or only 3 business days after the start of Debtors' rolling production of documents. As Grand Mesa has expressed to the Debtors, an attempt to push through such a large volume of document discovery, expert reports and briefing in the short period left before September 30 is not only impractical, but it will prejudice Grand Mesa's ability to develop an appropriate record to present to the Court. The Debtors should not be allowed to jam too much by way of discovery and other proceedings in too short of a time, which can only benefit the Debtors, and prejudice Grand Mesa.

Given the status of these proceedings, Grand Mesa does not see the feasibility of holding an evidentiary hearing on September 30, 2020 – a mere 16 days from now – with significant discovery, expert analyses and briefing left to accomplish. At best, Grand Mesa believes that certain predicate legal arguments may be able to proceed on September 30 (including on the Lift-Stay Motion) but witness testimony on the Rejection Motion would likely need to occur at a subsequent date. Accordingly, it is Grand Mesa's view that additional time will afford the parties an opportunity to develop an appropriate record given the numerous complex legal and factual issues impacting these contested matters.

We sincerely appreciate Your Honor's consideration of this matter.

Sincerely,

/s/ Hal S. Shaftel

Cc: Christopher Marcus

[3] Reflecting how unsettled the target dates are, the Debtors **today** (to Grand Mesa's surprise) in their letter to the Court appear to take the position that Grand Mesa's response to the Debtors' summary judgment motion in the Adversary Proceeding is due today (another today) even though Grand Mesa specifically stated it should be due September 18 – while Grand Mesa expressed a willingness to compromise, no date, and certainly not **today**, was agreed to. This is but another example of a schedule in disarray.

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