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**BEFORE THE ENVIRONMENTAL APPEALS BOARD
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C.**

_____)	
In re:)	
)	
Shell Gulf of Mexico, Inc.)	
Frontier Discoverer Drilling Unit)	
OCS Permit No. R10OCS/PSD-AK-09-01)	OCS Appeal Nos. OCS 10-01, 10-02,
)	and 10-03
and)	
)	
Shell Offshore, Inc.)	
Frontier Discoverer Drilling Unit)	
OCS Permit No. R10OCS/PSD-AK-09-02)	
_____)	

**URGENT REQUEST OF SHELL GULF OF MEXICO, INC.
AND SHELL OFFSHORE, INC.
FOR LEAVE TO PARTICIPATE AND
MOTION FOR EXPEDITED AND COMBINED REVIEW**

TABLE OF CONTENTS

INTRODUCTION3

REQUEST FOR LEAVE TO PARTICIPATE.....5

I. THE SAME REASONS THAT WARRANTED SOI’S PARTICIPATION IN THE 2007 AND 2008 PROCEEDINGS CONCERNING THE KULLUK MINOR SOURCE PERMIT SUPPORT SGOMI’S AND SOI’S PARTICIPATION IN PROCEEDINGS CONCERNING THE CHUKCHI PERMIT AND THE BEAUFORT PERMIT......5

II. PERMIT HOLDERS ARE GENERALLY ALLOWED TO PARTICIPATE IN PERMIT APPEALS BEFORE THE BOARD......5

III. SHELL HAS A SIGNIFICANT PROTECTABLE INTEREST IN ITS CHUKCHI SEA AND BEAUFORT SEA OPERATIONS.6

IV. DISPOSITION OF THESE PETITIONS FOR REVIEW COULD IMPAIR SHELL’S INTERESTS......8

V. EPA’S INTEREST IS NOT IDENTICAL TO SHELL’S INTEREST.8

MOTION FOR EXPEDITED AND COMBINED REVIEW9

I. UNDER THE UNIQUE CIRCUMSTANCES OF ARCTIC DRILLING, EVEN THE STANDARD EAB REVIEW SCHEDULE FOR PSD PERMITS WILL CAUSE SGOMI AND SOI UNREASONABLE, DISPROPORTIONATE, AND IRREPARABLE HARM.10

A. Shell has made significant investments in the 2010 exploration season.10

B. Review under EAB’s typical schedule for PSD permits would cause Shell irreparable harm......12

II. COMBINED REVIEW OF THE CHUKCHI AND BEAUFORT PERMITS WILL CONSERVE JUDICIAL RESOURCES AND EXPEDITE REVIEW OF BOTH PERMITS.15

III. SHELL’S’ PROPOSED BRIEFING SCHEDULE.....16

IV. EXPEDITED AND COMBINED REVIEW WILL NOT PREJUDICE PETITIONERS......18

CONCLUSION18

INTRODUCTION

Pursuant to 40 C.F.R. Part 55, 40 C.F.R. Part 124, and Section III.D of the Environmental Appeals Board Practice Manual, permittees Shell Gulf of Mexico, Inc. ("SGOMI") and Shell Offshore, Inc. ("SOI") (sometimes referred to herein collectively as "Shell") hereby request leave to participate in proceedings on, respond to, and seek expedited review of the petitions for review filed in the above-captioned cases before the Environmental Appeals Board ("EAB" or "Board"). OCS Permit No. R10OCS/PSD-AK-09-01 ("Chukchi Permit") has been challenged in three separate petitions for review filed by the Center for Biological Diversity ("CBD") (No. 10-01), Natural Resources Defense Council, Native Village of Point Hope, Resisting Environmental Destruction on Indian Land, a Project of the Indigenous Environmental Network ("REDOIL"), Alaska Wilderness League, Audubon Alaska, Center for Biological Diversity, Northern Alaska Environmental Center, Ocean Conservancy, Oceana, Pacific Environment, and Sierra Club ("Conservation Groups") (No. 10-02), and the Inupiat Community of the Arctic Slope and the Alaska Eskimo Whaling Commission (No. 10-03) (collectively, "Petitioners"). CBD and the Conservation Groups have also challenged OCS Permit No. R10OCS/PSD-AK-09-02 ("Beaufort Permit") in their Petitions for Review.¹

The Chukchi and Beaufort Permits are Prevention of Significant Deterioration ("PSD") permits issued to SGOMI and SOI, respectively, by Region 10 of the Environmental Protection Agency ("EPA") pursuant to the Clean Air Act. The permits control air emissions from Shell's activities at drill sites authorized by the Mineral Management Service ("MMS") located on the Outer Continental Shelf ("OCS") in the Chukchi Sea and in the Beaufort Sea. Shell has invested hundreds of millions of dollars in its projects in the Chukchi Sea OCS and Beaufort Sea OCS,

¹ Petitions for review of the Beaufort Permit are due on May 12.

and its participation in these proceedings is therefore appropriate to protect its significant interests in this matter. SGOMI and SOI therefore respectfully request that the Board allow each of them to participate in all aspects of these proceedings and to respond to the petitions for review affecting their respective permits.

Both the Chukchi Permit and the Beaufort Permit authorize air emissions for Arctic exploration drilling. Shell seeks to begin operations under those permits in July of this year. Because the uniquely time-sensitive nature of Arctic exploration provides only a narrow window each year in which exploratory wells may be drilled, Shell respectfully requests that the Board expedite its resolution of these petitions for review, as well as any additional petitions that may be timely filed for review of the Beaufort Permit.

In the interests of judicial economy and to provide the most expeditious review of both permits, Shell agrees with the implicit request of both CBD and the Conservation Groups that the Board combine review of challenges to both permits. Thus, Shell suggests that the Board provisionally combine review of the pending petitions on the Chukchi Permit and Beaufort Permit, together with its consideration of any additional petitions that may hereafter be filed for review of the Beaufort Permit, and moves the Board for an order setting a provisional schedule for combined briefing and resolution of all petitions for review of either permit, subject to potential adjustment after additional petitions for review of the Beaufort Permit, if any, are filed. Shell has conferred with EPA, and we are authorized to state that EPA does not object to SGOMI's and SOI's request for participation and takes no position at this time on the remainder of this motion.

REQUEST FOR LEAVE TO PARTICIPATE

I. THE SAME REASONS THAT WARRANTED SOI'S PARTICIPATION IN THE 2007 AND 2008 PROCEEDINGS CONCERNING THE KULLUK MINOR SOURCE PERMIT SUPPORT SGOMI'S AND SOI'S PARTICIPATION IN PROCEEDINGS CONCERNING THE CHUKCHI PERMIT AND THE BEAUFORT PERMIT.

Recognizing SOI's appropriate and distinct interest in the matter, the Board granted SOI leave to respond to and fully participate in proceedings concerning the petitions filed in 2007 challenging a minor source permit previously issued to SOI by Region 10 for the Kulluk Drilling Unit, *In re Shell Offshore, Inc. (Kulluk Drilling Unit and Frontier Discoverer Drilling Unit)*, OCS Appeal Nos. 07-01 & 07-02, slip op. at 8 (EAB, Sept. 14, 2001) ("*Kulluk I*"), and in proceedings challenging the remand proceedings following that decision, *In re Shell Offshore, Inc. (Kulluk Drilling Unit)*, OCS Appeal Nos. 08-01, 08-02, & 08-03 ("*Kulluk II*") (Order Consolidating Petitions For Revise and Granting Leave to Participate, Aug. 6, 2008). As discussed below, the reasons that supported the Board's decision in those cases apply with equal force to support SGOMI's and SOI's participation in the resolution of the petitions for review challenging, respectively, the Chukchi Permit and the Beaufort Permit.

II. PERMIT HOLDERS ARE GENERALLY ALLOWED TO PARTICIPATE IN PERMIT APPEALS BEFORE THE BOARD.

The regulations governing OCS permitting, 40 C.F.R. Part 55, state that the Administrator will follow, for OCS air permits, the administrative procedures outlined in 40 C.F.R. Part 124 to process PSD permit applications. EPA takes the position that OCS permits are subject to the administrative procedures applicable to PSD permits outlined in Part 124, including the EAB appeal procedures.

The Board has recognized that permittees have a significant interest in defending challenged permits, and has consistently held that it is appropriate to allow permittees to participate in appeal proceedings and to file responses to petitions for review. *See, e.g., Kulluk I*, slip op. at 8; *In re ConocoPhillips Co.*, PSD Appeal No. 07-02, slip op. at 10 (EAB, June 2, 2008); *In re Christian County Generation, LLC*, PSD Appeal No. 07-01, slip op. at 10 (EAB, Jan. 28, 2008); *In re Newmont Nevada Energy Investments, LLC, TS Power Plant*, 12 E.A.D. 429, 437 (EAB 2005). The Board followed this policy when it granted SOI permission to participate in *Kulluk I*. *Kulluk I*, slip op. at 8. As discussed below, permittees SGOMI and SOI have a significant interest in defending, respectively, the Chukchi Permit and the Beaufort Permit, and therefore it would be appropriate for the Board to grant SGOMI's and SOI's request to participate fully in these proceedings.

III. SHELL HAS A SIGNIFICANT PROTECTABLE INTEREST IN ITS CHUKCHI SEA AND BEAUFORT SEA OPERATIONS.

The Chukchi and Beaufort Permits authorize air emissions from SGOMI's and SOI's exploration drilling operations utilizing the *Frontier Discoverer* drillship, to be conducted during the short Arctic open-water season (generally July through October).² Without the final OCS PSD air permits at issue here, SGOMI and SOI cannot proceed with the current plans of exploration for their Chukchi Sea and Beaufort Sea OCS leases. In addition to the initial OCS lease acquisitions costs totaling \$2.2 billion, Shell has devoted hundreds of millions of dollars

² Although both permits authorize drilling through December 31, Shell's operations will be limited by its authorizations from other agencies, which require activities to end by October 31, and by the ice conditions in a given season. The 2010 exploration season will end by October 31 per the limits of the Exploration Plans approved by MMS. Further, SOI's operations under the Beaufort Permit will be limited by the provision in SOI's Exploration Plan that SOI must suspend drilling operations and leave the area during the subsistence whale hunting that begins on August 25 and generally continues approximately 14-28 days.

and substantial amounts of internal resources to develop and prepare for these exploration activities. *See* Declaration of Peter E. Slaiby, April 2, 2010, ¶ 10 (“Slaiby Decl.” attached as Exhibit A).³ SGOMI and SOI therefore have a significant, protectable interest that is implicated by the current petitions for review.

Shell plans to conduct exploration drilling and related activities on some of its Chukchi Sea and Beaufort Sea leases on the OCS commencing on or about July 4 or July 10 of this year, respectively, provided it obtains necessary government approvals. Slaiby Decl. ¶¶ 11, 12. In preparation for these exploration activities, Shell has undertaken various efforts over the past four years and invested extremely significant financial and other resources in developing the technical capabilities and analyses to support a safe, environmentally responsible and successful exploration program. The actual cost for planned 2010 activities related to the exploration program alone exceeds \$300 million. *Id.* at ¶ 11. The Chukchi Permit and Beaufort Permit are necessary for SGOMI and SOI to operate the *Frontier Discoverer* and associated vessels that will carry out the planned exploration activities. SGOMI and SOI have a significant protectable interest meriting their participation in these proceedings. Moreover, the timing of these appeals is critical for the planning and execution of SGOMI’s and SOI’s operations, and both consequently have a compelling interest in expedited review of these petitions.

³ In support of this Request for Leave to Participate and Motion for Expedited and Combined Review, Shell is attaching the “Declaration of Peter E. Slaiby,” which was prepared on April 2, 2010, by Mr. Slaiby. Mr. Slaiby executed the declaration consistent with the requirements of 28 U.S.C. § 1746 for unsworn declarations made under the penalty of perjury. Mr. Slaiby’s declaration was previously provided to the EAB as an attachment to a letter from Shell’s counsel, Crowell & Moring LLP, to Ms. Eurika Durr dated April 2, 2010, advising that SGOMI intended to seek expedited resolution of petitions for review of the Chukchi Permit, which letter Shell incorporates herein by reference.

Shell is also attaching the “Supplemental Declaration of Peter E. Slaiby” (“Supp. Slaiby Decl.” attached as Exhibit B) which Mr. Slaiby prepared on April 14, 2010, consistent with same requirements as the Slaiby Decl. Crowell & Moring LLP submitted the Supp. Slaiby Decl. to Ms. Durr in a letter dated April 14, 2010, similarly advising Ms. Durr that SOI intended to seek expedited review for petitions challenging the Beaufort Permit. Shell further incorporates that letter by reference as well.

Further, Shell has a compelling interest in expedited review of *both* petitions because, due to ice conditions and weather, SGOMI or SOI may not be able to explore in one or the other sea. Shell cannot confidently predict which sea will be sufficiently ice-free by July to allow drilling. For this reason, as well as other contingencies, Shell needs the flexibility afforded by both permits in order to increase the chances of drilling and completing one or more wells in one or the other sea during the short 2010 drilling season. Supp. Slaiby Decl. at ¶ 4.

IV. DISPOSITION OF THESE PETITIONS FOR REVIEW COULD IMPAIR SHELL'S INTERESTS.

The petitions for review place at risk all of Shell's significant interest and investments in its current Chukchi Sea and Camden Bay⁴ Exploration Plans. While Shell is confident that EAB will ultimately uphold Region 10's issuance of the Chukchi and Beaufort Permits, any significant delay in EAB's resolution of the petitions for review could deny SGOMI or SOI part or all of its planned 2010 exploration season. Moreover, drilling objectives that SGOMI or SOI cannot achieve this summer will need to be completed in subsequent seasons, at additional cost. Further, each lost season adversely affects Shell's ability to conduct necessary exploratory activities during the limited term of its leases. It is therefore appropriate for SGOMI and SOI to participate at all stages of the process in order to defend against Petitioners' challenges.

V. EPA'S INTEREST IS NOT IDENTICAL TO SHELL'S INTEREST.

Shell's legitimate business interests are not represented by EPA's participation in this case as a Respondent. First, while Shell and EPA will both be defending the permit, EPA's interests are distinct from Shell's. EPA is required to represent the public's broad overall interest. While Shell broadly shares the Agency's interests in environmental protection,

⁴ SOI's Exploration Plan encompassing its Beaufort Sea leases is located in Camden Bay in the Beaufort Sea.

obviously Shell's interests are also specifically economic, and are properly based on its desire to protect its property and contractual rights associated with its OCS leases. EPA's representation of the public's general interest is different enough from Shell's particularized interest that the Agency simply (and understandably) is unable to give Shell's unique interests sufficient attention or weight. It is also unlikely that EPA's arguments in defense of the permits will be identical to Shell's.

Second, if SGOMI and SOI are allowed to participate in this case, they will likely present information and perspectives that might otherwise not be presented. SGOMI and SOI have specific useful information regarding the details of their respective Exploration Plans and permitting with other agencies that might otherwise not be presented. Consequently, SGOMI's and SOI's participation is vital to protecting their very substantial investment in their Chukchi Sea and Beaufort Sea leases.

Because Shell's private interests are distinct from those of the general public, EPA will not be in a position to fully represent those interests in defending the permits at issue in response to the petitions. It is therefore appropriate for the Board to grant SGOMI and SOI leave to participate fully in these proceedings.

MOTION FOR EXPEDITED AND COMBINED REVIEW

Shell appreciates the expeditious and thorough review the EAB provided in the face of an impending planned drilling season in *Kulluk I*. For similar reasons pertaining to the unique nature of Shell's drilling program and the extremely short open-water season in which SGOMI and SOI must operate, Shell requests that the EAB again provide expedited review of these challenges to the Chukchi and Beaufort Permits. Because the drill ship can enter the Chukchi and Beaufort Seas and operate there only during the brief open-water season, SGOMI's and

SOI's entire 2010 exploratory season must be compressed into that 14 to 16 week period. MMS has authorized Shell to operate in both seas from early July through October 31, 2010 – an effective potential drilling season of, at most, 120 days. Moreover, operations in the Beaufort Sea are further constrained by the provision in SOI's Camden Bay Exploration Plan that SOI will suspend operations during the subsistence whale hunt; this further curtails the Beaufort season to approximately 85-95 days. Consequently, unlike most prospective permittees, Shell is not simply in a position where a delay in permit issuance means little more than an equivalent delay in facility construction and startup. Here, any material delay could mean the forfeiture or significant impairment of the entire 2010 exploration program with concomitant delay in the completion of Shell's multi-year program for exploration and, potentially, in the initiation of production. *See* Slaiby Decl. at ¶ 12.

I. UNDER THE UNIQUE CIRCUMSTANCES OF ARCTIC DRILLING, EVEN THE STANDARD EAB REVIEW SCHEDULE FOR PSD PERMITS WILL CAUSE SGOMI AND SOI UNREASONABLE, DISPROPORTIONATE, AND IRREPARABLE HARM.

Good cause for expedited review exists because briefing under EAB's schedule for PSD permits could cause SGOMI and SOI irreparable harm. *Cf.* Fed. R. of App. P., Circuit Rule 27-12 (Ninth Circuit) ("good cause" justifying expedited review exists where "in the absence of expedited treatment, irreparable harm may occur"). Shell has made significant investments in the 2010 exploration season which could be irrevocably lost if EAB's review extends significantly into the drilling season.

A. Shell has made significant investments in the 2010 exploration season.

Shell has undertaken tremendous efforts over the past four years and invested hundreds of millions of dollars and huge amounts of other resources to develop a safe, environmentally responsible exploration program. Slaiby Decl. at ¶¶ 10, 11. First, Shell invested a total of over

\$2 billion to acquire OCS leases in the Chukchi and Beaufort Seas. *Id.* at 10. Shell further invested nearly \$870 million to prepare for its exploration programs by, *inter alia*, refurbishing available Arctic rigs, commissioning new ice-class spill response and anchor-handling vessels, conducting seismic exploration and scientific studies, and maintaining broad-based logistics activities and oil spill response capabilities. *Id.*

Shell has devoted considerable time and resources to obtain the federal and state permits and approvals necessary in order to explore for oil and gas in the Arctic. Shell's efforts just to obtain proper air permits from EPA have spanned over four years of active, good faith engagement with EPA and this Board. Subsequent to the permitting efforts that culminated in the *Kulluk I* and *Kulluk II* appeals to this Board, Shell began new permitting efforts with Region 10. At EPA's recommendation, Shell sought PSD major source air permits for its Chukchi Sea and Beaufort Sea programs. Slaiby Decl. at ¶ 6. Shell's overall PSD permitting process with EPA Region 10 was extensive, spanning over 15 months, during which time SGOMI and SOI worked with EPA to address all issues raised by Region 10 by providing requested, detailed supplemental information throughout the process.

Independent of the EPA permitting process, SGOMI and SOI have also taken the following steps to secure other required major federal and state authorizations:

- On October 16, 2009, MMS conditionally approved SOI's Camden Bay Exploration Plan, and on December 7, 2009, MMS conditionally approved SGOMI's Chukchi Sea Exploration Plan. The Exploration Plans proposed one year of exploration activities to evaluate the oil and gas potential of certain Chukchi Sea and Beaufort Sea leases. MMS's approvals of the Exploration Plans have been challenged in a consolidated proceeding in the Ninth Circuit. That appeal has been fully briefed on an expedited schedule, and oral argument will take place May 6. Slaiby Decl. at ¶ 16; *Native Village of Point Hope v. Salazar*, Nos. 09-73942, 09-73944, 10-70166, 10-70368 (9th Cir. Orders Jan. 15, 2010, Jan. 29, 2010, and Mar. 2, 2010) (Exhibit C).
- On January 22, 2010, obtained a determination from the State of Alaska under the federal Coastal Zone Management Act that the Camden Bay Exploration Plan is

consistent with the State's approved coastal zone management program. On March 2, 2010, SGOMI obtained a determination from the State of Alaska under the federal Coastal Zone Management Act that the Plan is consistent with the State's approved coastal zone management program. The period in which to appeal both decisions has passed without a challenge being filed. Letters from Nina Brudie, Oil & Gas Project Review Manager, State of Alaska Department of Natural Resources (Jan. 22, 2010 and Mar. 2, 2010) (Exhibit D).

- SGOMI and SOI expect to obtain all necessary authorizations from National Marine Fisheries Service and U.S. Fish & Wildlife Service to undertake activities that are determined to have only a negligible impact on protected marine species. *See id.* at ¶ 16.

Because the open-water season in the Arctic is so short, Shell's logistical preparation and upfront investment in exploratory drilling and support activities are extensive. Fixed costs to obtain and mobilize vessels, personnel, support services, fuel, supplies, and other goods and services necessary for the 2010 drilling season, the bulk of which will be irrevocably committed by May 31, substantially exceed \$300 million. *Id.* at ¶ 11.

B. Review under EAB's typical schedule for PSD permits would cause Shell irreparable harm.

Even a short delay that cuts into the 2010 season would materially diminish the available exploration season and would irreparably compromise investments made for that season, resulting in serious, unrecoverable losses to Shell. *See id.* at ¶ 11-14. As with delays to the 2007 season, the harm caused by a delay to the 2010 season would not be limited to 2010, and would implicate the public interest in development of the OCS resources, as well as Shell's interests.

Planning and preparations for the 2010 season are almost complete, and, consequently, Shell has made substantial commitments of resources. *Slaiby Decl.* at ¶¶ 11-12. By the end of May, Shell will have committed out-of-pocket expenses in excess of \$300 million to prepare for 2010 Arctic operations, which costs will be unrecoverable whether or not operations take place this summer. Thus, by May 31, 2010, SGOMI and SOI together will have incurred 2010 out-of-pocket costs of, on average, \$2.5 million for each day of the 120-day drilling season, whether or

not operations occur on any one of those days.⁵ Every day of delay in SGOMI's or SOI's ability to begin the drilling season in early July, will result in a lost day of potential operations in a finite drilling season, and the drilling that cannot be accomplished during this period of delay will have to be made up in a subsequent season, and paid for a second time, at roughly the same \$2.5 million per day cost, or higher. Slaiby Decl. at ¶ 12. Literally, every day of delay beyond early July in an EAB resolution of petitions for review of the Chukchi or Beaufort Permit could cost Shell millions of dollars.

The losses due to delay of 2010 operations would not be limited to monetary losses. Because exploration is a step-wise process, any drilling objectives Shell is not able to meet this summer must be made up in the future. *Id.* at ¶ 12. Any drilling objectives Shell is not able to meet this summer must be made up in the future, at additional cost. *Id.* at ¶ 12. Shell intends to drill two exploratory wells this season, time and conditions permitting. Even if Shell is able to drill one well this summer, Shell will be deprived of more than just the lost days of operation – when making future exploration decisions for 2011 and beyond it will not have access to the data that a second well would have produced. *Id.* at ¶ 13.

Moreover, there is a risk that Shell may not be able to make up the delays within the limited term of its leases, potentially depriving Shell of the benefit of its substantial investment in these leases. *Id.* at ¶ 10, 14. SGOMI's and SOI's leases have limited terms, and Arctic oil exploration and development necessarily depend on extended planning horizons. Therefore, any delay resulting in the loss of a season, or even a portion of a season, means the loss of a material portion of the lease term. Such a loss jeopardizes bringing any eventual hydrocarbon discoveries

⁵ Because the Beaufort Sea season is shortened by the subsistence whale hunt, costs per day in that sea are even higher. Supp. Slaiby Decl. at ¶ 5.

into production and threatens the entirety of Shell's investment in the leases involved. Slaiby Decl. at ¶ 14.

Moreover, there is a risk that Shell may not be able to make up the delays within the limited term of its leases. *Id.* at ¶¶ 10, 14. Shell's leases have limited terms, and Arctic oil exploration and development necessarily depend on extended planning horizons. Therefore, any delay resulting in the loss of a season, or even a portion of a season, means the loss of a material portion of the lease term. Such a loss jeopardizes bringing any eventual hydrocarbon discoveries into production and threatens the entirety of Shell's investment in the leases involved. *Id.* at ¶ 14.

These losses would be irreparable, and would injure not only SGOMI and SOI but the public interest as well. *See Amoco Production Co. v. Gambell*, 480 U.S. 531, 545 (1987) (in evaluating preliminary injunctive relief, the Supreme Court observed that resources committed to an exploration plan would be unrecoverably lost were exploration enjoined and that the public interest in oil and gas exploration supported allowing exploration to continue). If exploration is stopped because of such delays, hundreds of people employed by Shell and its contractors could lose their jobs. Further, the nation's interest in promoting domestic oil and gas exploration and development activities to enhance its energy security would suffer. *See* Remarks by the President on Energy Security at Andrews Air Force Base (Mar. 31, 2010)⁶ ("given our energy needs, in order to sustain economic growth, produce jobs, and keep our businesses competitive, we're going to need to harness traditional sources of fuel even as we ramp up production of new sources of renewable, homegrown energy . . . We'll continue to support development of leased areas off the North Slope of Alaska"). Notwithstanding the very unfortunate incident involving

⁶ Available at <http://whitehouse.gov/the-press-office/remarks-president-energy-security-andrews-air-force-base-3312010>.

the *Deepwater Horizon* drillship in the Gulf of Mexico, Shell is unaware of any indication that the Administration has altered, or will alter, its support for exploration of the Arctic OCS in the near term.

For all these reasons, any material delay of EPA's final decision on the permits at issue would work a disproportionate and irreparable harm, justifying expedition of the EAB appeal process. SGOMI and SOI therefore respectfully request that EAB expedite review and resolution of these petitions. We understand that, because the Chukchi Permit and Beaufort Permit are PSD permits, EAB will expedite the petitions ahead of other types of appeals. Shell respectfully requests that, for the reasons discussed above, EAB expedite these appeals by according them high priority among PSD appeals. As outlined herein, a material delay in the resolution of these permits could place an entire multi-year project at risk.

II. COMBINED REVIEW OF THE CHUKCHI AND BEAUFORT PERMITS WILL CONSERVE JUDICIAL RESOURCES AND EXPEDITE REVIEW OF BOTH PERMITS.

The Chukchi Permit is in most respects identical to the Beaufort Permit, which was issued just nine days later. Both permits cover operations of the same drillship, the *Frontier Discoverer*, and substantially the same associated fleet. Both permits are the first PSD permits to be issued for exploration on the Outer OCS (beyond 25 miles from the State's seaward boundary). Thus, many terms and conditions are common to both permits. Shell submits that combined review of petitions challenging these permits is appropriate to conserve judicial resources and facilitate expedited review of both permits.

CBD and the Conservation Group petitioners recognize this need and have implicitly sought combined review by submitting petitions for review seeking review of both the Chukchi Permit and the Beaufort Permit. Shell generally agrees with this approach. Otherwise the two permits – which are being challenged by CBD on a single common issue and by the

Conservation Groups on another single common issue – would be adjudicated on separate briefing schedules separated by just nine days, requiring extensive duplicative work by both the Board and the parties.

In the next section Shell proposes a provisional combined briefing schedule that would consolidate briefing, hearing and resolution of the challenges to both permits, subject to later de-coupling of the permits if it were to become apparent that an issue unique to one permit would require time-consuming consideration, thereby allowing the permit unaffected by that issue to continue on an expedited path.

III. SHELL'S' PROPOSED BRIEFING SCHEDULE

Because Shell seeks to begin its exploration season in early July and must close its exploration activities by October 31, the timing of the Board's review is critical to SGOMI's and SOI's operations, as detailed above. As previously described, even a short delay could deprive Shell of the ability to drill two wells this season, and a significant delay could deprive Shell of the ability to drill at all. For that reason, Shell proposes that, assuming its request for leave to participate is granted, the Board schedule a telephonic status conference and hearing on the instant motion for expedited review on May 6 or as soon as possible thereafter. Shell proposes that the Board adopt the following provisional schedule, under which briefing of the petitions for review of either the Chukchi Permit or Beaufort Permit will presumptively be combined, subject to review of the continued appropriateness of the schedule following the filing of any additional petitions challenging the Beaufort Permit and without in any way impacting the Board's discretion to de-couple proceedings on the two permits if one of them is deemed to present unique issues that will require a longer time for the Board to resolve:

- May 6 (conclusion of status conference): Entry of order (a) granting SGOMI's and SOI's motion for leave to participate, (b) requiring EPA and Shell each to

file a response brief to the three pending appeals within fifteen (15) days thereafter, on May 21, 2010, and (c) presumptively combining briefing on the now-pending petitions for review of the Chukchi Permit and/or Beaufort Permit with any subsequently filed petitions for review of the Beaufort Permit.

- May 13: Submission by SOI of motion for leave to participate in the resolution of any additional petitions for review of Beaufort Permit filed on or before May 12 and for combined briefing in accordance with the provisional schedule herein.
- May 14: Telephonic status conference including all parties to petitions for review of either permit to confirm or, if necessary, adjust briefing schedule and entry of final scheduling order.
- May 21 (provisional): Combined response briefs of EPA and of Shell on petitions for review of either permit due.
- Early June: Oral argument.

Because both permits have been subject to extended comment periods, and petitioners have had 30 days in which to prepare any petitions for review, said petitions currently numbering approximately 140 pages, Shell believes oral argument will provide the best and most expeditious forum for resolving any remaining issues presented by those petitions and the responses thereto. Therefore, Shell urges the Board to dispense with replies from the Petitioners and set oral argument immediately upon response briefs being filed. Alternatively, in the interest of expedition, Shell requests the Board to allocate no more than five (5) days for such replies on either permit, making them due under the provisional schedule on May 26, and to schedule oral argument immediately after such replies are due.

IV. EXPEDITED AND COMBINED REVIEW WILL NOT PREJUDICE PETITIONERS.

Any such expedition and combined review could not prejudice the Petitioners. EAB practice requires a petitioner to present all of its evidence and arguments in its petition, and reply briefing is not ordinarily taken. *See, e.g.*, Practice Manual at 30 (“The regulations further contemplate that, based on the EAB’s review of the petition alone, the EAB will then issue a decision either granting or declining review.”); *id.* at 31 (“Since the EAB frequently issues a decision that is dispositive of the matter based on the petitioner’s brief and the responses thereto, [footnote omitted] petitioners are advised that a petition for review should set forth, in detail, all of the issues and all of the arguments in their favor.”); *id.* at 36. By contrast, as discussed above, any material extension of the timeline for EAB review by providing for reply briefing is likely to severely and irreparably injure Shell.

Further, any potential additional challengers to the Beaufort Permit, who have not challenged the Beaufort Permit in the pending petitions, would not be disadvantaged by combined review, for many of the reasons stated above. In any event, Shell proposes that such “new” Beaufort petitioners – if any -- be provided an opportunity through the May 14 status conference to present any objections to the combined briefing. Further, Shell is providing courtesy copies of this motion to all commenters unique to the Beaufort Permit for whom contact information is available in the administrative record. Thus, any potential new challengers who are unique to the Beaufort Permit will suffer no prejudice should the Board adopt Shell’s provisional briefing schedule.

CONCLUSION

For the reasons discussed above, the extraordinary circumstances attendant on the Chukchi and Beaufort Permits justify expedited review of these petitions. SGOMI and SOI therefore respectfully request that the Board provide expedited review of these appeals, to be

combined with review of any additional petitions challenging the Beaufort Permit in accordance with the provisional schedule set out above.

DATED this 5th day of May 2010.

Respectfully submitted,



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Shell Gulf of Mexico, Inc.*

CERTIFICATE OF SERVICE

I herby certify that I caused a copy of the Urgent Request of Shell Gulf of Mexico, Inc. and Shell Offshore, Inc. for Leave to Participate and Motion for Expedited and Combined Review to be served by First-Class Mail and electronic mail upon:

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In addition, as a courtesy, I am providing copies of the Urgent Request of Shell Gulf of Mexico, Inc. and Shell Offshore, Inc. for Leave to Participate and Motion for Expedited and Combined Review by First-Class Mail to the following parties who submitted comments on the proposed Beaufort Sea permit:

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