No. ____

In The

Supreme Court of the United States

MERIT ENERGY COMPANY, LLC, MERIT HUGOTON, L.P., AND OXY USA INC.,

Applicants,

v.

CHERRY RIDER, TRUSTEE OF THE CHERRY RIDER FAMILY TRUST, AND R.W. AND CATHY LUCAS, CO-TRUSTEES OF THE R.W. LUCAS AND CATHY LUCAS LIVING TRUST, *individually and on behalf of all others similarly situated*,

Respondents.

APPLICATION FOR AN EXTENSION OF TIME WITHIN WHICH TO FILE A PETITION FOR CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

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RULE 29.6 DISCLOSURE STATEMENT

Applicant Merit Energy Company, LLC is a limited liability company. Applicant Merit Hugoton, L.P. is a limited partnership.

Applicant OXY USA, Inc. is wholly owned by Occidental Petroleum Corporation (NYSE: OXY). Berkshire Hathaway Inc. (NYSE: BRK.B) owns more than 10% of Occidental Petroleum Corporation's stock.

TO THE HONORABLE NEIL GORSUCH, ASSOCIATE JUSTICE OF THE SUPREME COURT AND CIRCUIT JUSTICE FOR THE TENTH CIRCUIT:

Pursuant to Supreme Court Rule 13.5, Merit Energy Company, LLC, Merit Hugoton, L.P., and OXY USA Inc. (collectively "Applicants") respectfully apply for a 29 day extension of time, to and including November 6, 2026, within which to file a petition for certiorari in this matter. Unless an extension is granted, the deadline for filing the petition for certiorari will be October 8, 2026.

In support of this request, Applicants state as follows:

1. The United States Court of Appeals for the Tenth Circuit rendered its decision in this matter on May 5, 2026 (Exhibit 1), and denied a timely filed petition for rehearing en banc on July 10, 2025 (Exhibit 2). This Court has jurisdiction under 28 U.S.C. § 1254(1).

2. In 2008, applicant OXY USA, Inc. ("Oxy") settled a state court class action case with mineral interest owners in a large natural gas field in Kansas, who had alleged that Oxy underpaid their royalties. In 2014, applicant Merit Energy Company ("Merit") acquired Oxy's assets and leases in the area. Nine years later, in 2023, Plaintiffs-Respondents filed this putative class action alleging that Merit and Oxy breached the 2008 settlement agreement. They initially proposed a class defined by membership in the settlement class, but later sought to certify a broader class comprising everyone Merit paid on a lease it acquired from Oxy. The district court denied class certification. It held, *inter alia*, (1) that the class was not

"ascertainable" because determining class membership "is not administratively feasible," and (2) that the "proposed class may include individuals without standing" but individualized inquiries going to that issue defeated certification under Federal Rule of Civil Procedure 23. *Rider v. OXY USA, Inc.*, No. CV 23-1274-KHV, 2025 WL 1707377, at *8, *9-11 (D. Kan. June 18, 2025).

3. The Tenth Circuit, exercising review under Federal Rule of Civil Procedure 23(f), reversed the denial of certification. That decision implicates two different circuit splits on important class certification issues on which Applicants will be petitioning for certiorari. First, the Tenth Circuit reversed the district court's non-ascertainability finding by relying on its recent decision in *Cline* v. *Sunoco, Inc. (R&M)*, 159 F.4th 1171 (10th Cir. 2025), which "rejected the 'administrative feasibility' requirement" and instead held that for class membership to be ascertainable, the class definition need only be clear and objective, with members identifiable using "reasonable" accuracy. Op., Exh. 1, at 11-12. Second, in rejecting Applicants' arguments relating to standing, the Tenth Circuit held that it sufficed that some members of the putative class had standing. *Id*. at 20. Even though it acknowledged that "each class member will need an ownership interest that connects to the *Littell* settlement," and that Applicants posited a "fraught situation of indeterminable ownership," the court held that "the mechanics of this determination are best left for the damages stage." *Id*. at 28.

4. Applicants' petition will present this Court with an ideal opportunity to resolve two longstanding circuit splits. In denying certification for lack of ascertainability, the district court expressly noted the conflict on that standard and relied on the Third Circuit's test requiring a showing that identification of class members be administratively feasible. *Rider*, 2025 WL 1707377, at *8-9. The Tenth Circuit reversed under *Cline*, which "rejected" the Third Circuit's test and instead followed the contrary rule adopted by the "majority" of circuits. Op., Exh. 1, at 11-12. Likewise, the Tenth Circuit has now deepened a longstanding circuit split as to whether, and if so when, a damages class can be certified when it is defined to include members without standing. *Compare*, *e.g.*, *Denney v. Deutsche Bank AG*, 443 F.3d 253, 264 (2d Cir. 2006), *with In re Asacol Antitrust Litig.*, 907 F.3d 42, 53-54, 58 (1st Cir. 2018). This Court has twice granted certiorari to resolve this acknowledged disagreement on an important issue, but has been unable to do so for procedural reasons. *See Lab'y Corp. of Am. Holdings v. Davis*, 145 S. Ct. 1133, *dismissed*, 605 U.S. 327 (2025); *Tyson Foods, Inc. v. Bouphakeo*, 577 U.S. 442, 460 (2016). The Tenth Circuit has now exacerbated that conflict by taking the extreme position that not only can a class be certified when it is defined to include countless members without standing, but that the identification of those members can be deferred indefinitely even after a liability judgment.

3. An extension is requested because additional time is needed to prepare a petition that fully takes account of pending developments in this Court. In *Sunoco, Inc. (R&M) et al.* v. *Cline*, No. 26-1 (U.S. filed June 26, 2026), a petition for certiorari has been filed seeking review of the Tenth Circuit's decision in *Cline*, *supra*, and that petition raises similar issues to those that Applicants intend to present in their petition. The *Sunoco* petition has not yet been circulated but is anticipated to be scheduled for consideration at the conference of the Justices to be held on September 28, 2026. Given the potential overlap between the two cases, Applicants believe that the Court's consideration of their petition would benefit if the petition can take account of the Court's disposition in *Sunoco*. It is unclear, however, whether a decision on that petition will issue before Applicants must finalize their petition in advance of their current filing deadline. An extension is therefore requested to allow for the Court to issue its decision in *Sunoco* and therefore allow Applicants to address the important issues raised by the decision below in a manner that will be most helpful to the Court.

4. An extension is also sought because undersigned counsel will be traveling on long-scheduled family vacations from September 4-13 and October 2-November 1. Given that travel schedule and the likelihood that a decision in *Sunoco* will issue in October, counsel would benefit from the requested extension. In addition, counsel is responsible for preparing a response to a petition for

certiorari in *Federal Express Corp. v. Qualcomm, Inc.*, No. 26-170, which is presently due on September 28, 2026.

5. Respondents will not be prejudiced by the requested 29-day extension. Respondents did not file this case until nine years after Merit was assigned Oxy's leases in 2014 and began paying the allegedly incorrect royalties. Respondents also agreed to a stay of district court proceedings pending their appeal to the Tenth Circuit. Applicants have a pending motion before the district court, which Respondents have opposed, seeking to extend that stay of class proceedings pending the filing and consideration of a petition for certiorari. Should this Court grant the requested extension, Applicants will promptly inform the district court. Respondents will be able, if they desire, to respond in that forum.

WHEREFORE, for the foregoing reasons, Applicants respectfully request that an extension of time to and including November 6, 2026, be granted within which Applicants may file a petition for a writ of certiorari.

Respectfully submitted,

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September 2, 2025

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