



May 13, 2021

*Via electronic correspondence*

The Honorable Dr. Hubert Minnis  
Prime Minister of the Commonwealth of the Bahamas  
Office of the Prime Minister  
Sir Cecil Wallace Whitfield Centre  
P O Box CB 10980  
Nassau, N.P., The Bahamas

The Honorable Romauld Ferreira  
Minister of the Environment and Housing  
Charlotte House, Second Floor  
Shirley & Charlotte Street  
P.O. Box N-4849  
Nassau, N.P., The Bahamas

Re: Bahamas Petroleum Company PLC License Renewal Application

Dear Prime Minister Minnis and Minister Ferreira:

As an entity committed to using the law to protect our oceans, marine wildlife, and the people who depend on them, Earthjustice is working to end new offshore oil and gas leasing and development in our oceans. This work has included stopping oil and gas seismic airgun surveys along the U.S. Atlantic coast in 2020 and is currently concentrated in the Gulf of Mexico, where ongoing offshore oil production is a significant source of U.S. carbon emissions and pollution that harms this complex ecosystem and communities throughout the region. We support your positions against oil drilling in the waters of The Bahamas. It is against this background that we offer our analysis of relevant law and documents regarding the recent application from the Bahamas Petroleum Company PLC (“BPC”)<sup>1</sup> to renew its licenses. Based on this review, we encourage the Government of The Bahamas to exercise its legal authority and discretion to deny BPC’s request.

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<sup>1</sup> BPC has indicated that it will seek shareholder approval to change its name to Challenger Energy Group PLC at an Extraordinary General Meeting to be held on May 17, 2021. See Bahamas Petroleum Company PLC, Notice of Extraordinary General Meeting and Circular relating to Proposed Open Offer and Placing, Change of Name, Share Consolidation, General Share Issuance Authority and Amendments to Conditional Convertible Note Facility; changes to Board and Management (Apr. 23, 2021), [https://polaris.brighterir.com/public/bahamas\\_petroleum\\_company/news/rns\\_widget/story/xzm547w](https://polaris.brighterir.com/public/bahamas_petroleum_company/news/rns_widget/story/xzm547w) (hereinafter “BPC Notice”).

In conducting our legal analysis, we have reviewed the Licence Agreement No. 2 (Area “Cooper”) entered into in 2007 between The Commonwealth of The Bahamas and Bahamas Offshore Petroleum Limited (“2007 Licence Agreement”). We have also reviewed relevant provisions in the Petroleum Act and its accompanying regulations.<sup>2</sup> Based on these available authorities, we conclude that the Government of The Bahamas has broad discretion under the law to deny BPC’s request for renewal of its licenses and that BPC has no right of renewal.<sup>3</sup> In addition, such denial is not only within the lawful authority of The Bahamas, but it is also consistent with the Government of The Bahamas’ public opposition to offshore drilling activities as well as its nationally determined commitments under the Paris Agreement.<sup>4</sup>

### **The Government of The Bahamas Has the Authority and Discretion to Deny the Renewal Request**

BPC’s most recent renewal request to the Government of The Bahamas is for a third exploration period under the license.<sup>5</sup> Unlike the first renewal request on or about 2012 (for a second exploration period), where renewal was non-discretionary provided that BPC met certain requirements, subsequent renewals are discretionary.<sup>6</sup> Specifically, paragraph 43 of the 2007 Licence Agreement sets out this discretion, providing:

Where the Licensee applies for a renewal and has complied with the Act, the Regulations and the terms and conditions contained in this Licence, the Governor-General shall, not less than three months before the date of expiry of this Licence, renew this Licence for a further period of three (3) years as to the whole of the original Licensed areas **and thereafter may, in his discretion, renew this Licence** for two (2) successive periods each not exceeding three (3) years as to fifty percent (50%) of the original total Licensed areas.<sup>7</sup>

This discretion is reiterated through the Petroleum Act, where “[t]he term for which a licence **may be further renewed** by the Minister, shall not exceed a period of three years.”<sup>8</sup> The Petroleum Regulations further reaffirm this discretion, using language similar to the 2007 Licence Agreement when referring to a request for a second renewal: “and **thereafter may, in his discretion, renew** for two successive periods each not exceeding three years as to fifty per

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<sup>2</sup> Petroleum Act, 2016: An Act to Provide for the Exploration and Production of Petroleum and for Matters Incidental Thereto ¶¶ 22-23 (Bah.) (hereinafter “Petroleum Act”). References will be to the relevant provisions in the Petroleum Act unless the regulations provide additional insight. See Petroleum Regulations 2001, Ch. 219, ¶ 24 (Bah.).

<sup>3</sup> To the extent additional documents bear on this analysis, we would welcome the opportunity to review them.

<sup>4</sup> The Government of the Bahamas, *Intended Nationally Determined Contribution (INDC) Under the United Nations Framework Convention on Climate Change* (Nov. 2015), [https://www4.unfccc.int/sites/ndcstaging/PublishedDocuments/Bahamas%20First/Bahamas\\_COP-22%20UNFCCC.pdf](https://www4.unfccc.int/sites/ndcstaging/PublishedDocuments/Bahamas%20First/Bahamas_COP-22%20UNFCCC.pdf).

<sup>5</sup> BPC Notice.

<sup>6</sup> 2007 Licence Agreement ¶ 43; Petroleum Act ¶ 22.

<sup>7</sup> 2007 Licence Agreement ¶ 43 (emphasis provided).

<sup>8</sup> Petroleum Act ¶ 22(8).

centum of the original licensed area.”<sup>9</sup> Neither the license itself, nor the subsequently enacted provisions of the Petroleum Act and its regulations, place any limitations on the Minister’s discretion to deny a subsequent renewal. Additionally, we evaluated the Minister’s discretion to consider either a general extension or an extension due to *force majeure*. In both cases, we similarly concluded that the Minister retains the discretion to deny both requests; we are happy to provide more information on these analyses, should you require.

### **The Government of The Bahamas Should Deny the Renewal Request**

There are multiple reasons for the Minister to exercise this broad discretion to deny BPC’s renewal request. First, in order to be eligible for a renewal, both the 2007 Licence Agreement and Petroleum Act require BPC’s compliance with “the Act, the Regulations, and terms and conditions in [the licence].”<sup>10</sup> Judging by statements by both BPC and the Government of The Bahamas, it seems that there has been a failure to pay rents under the existing license agreement.<sup>11</sup> In addition, the post-well technical analysis remains to be submitted and BPC indicates that various other amounts remain in dispute.<sup>12</sup> BPC cannot renew its license without meeting these threshold obligations..

Second, BPC has recently made abundantly clear that it lacks the ability to fulfill the future obligations that would attach to a renewal. It is notable that for any operations under a renewal license, BPC currently seeks “a funding and operating partner for the next stage of exploration activity in The Bahamas,” demonstrating through its efforts to farm-out the license agreements<sup>13</sup> that it does not have the assets or operational capacity to utilize the licenses.<sup>14</sup> In fact, BPC’s incoming Chief Executive Officer, directly expressed that the company needs more capital and 2021 will be a financially tight year for the company.<sup>15</sup> This is further supported by

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<sup>9</sup> See Petroleum Regulations 2001, Ch. 219, ¶ 24 (Bah.).

<sup>10</sup> 2007 Licence Agreement ¶ 43; Petroleum Act ¶ 22.

<sup>11</sup> See Paige McCartney, *We need more money, says incoming BPC CEO*, THE NASSAU GUARDIAN (May 5, 2021), <https://thenassauguardian.com/we-need-more-money-says-incoming-bpc-ceo/> (“BPC also remains in reconciliation with the government over past license fees.”); Neil Hartnell, *Gov’t And Bpc ‘Dispute’ Outstanding Licence Fees*, THE TRIBUNE (Jan. 15, 2021), <http://www.tribune242.com/news/2021/jan/15/govt-and-bpc-dispute-outstanding-licence-fees/>.

<sup>12</sup> See BPC Notice (“[BPC] is currently in the process of both completing the post well technical analysis, and in parallel finalising payment terms and schedule for remaining amounts invoiced, as well as resolving various items in dispute, which process it expects to complete in due course, thereby fully “closing out” the drilling program for Perseverance #1.”); see Paige McCartney, *supra* n.11 (noting that BPC needs to “settle up what we owe in Perseverance #1, complete all those negotiations. We do not believe that some of these things should be entirely to our account and we are in a series of negotiations and in some cases disputes with various providers, but we’ll get through all of that.”).

<sup>13</sup> See BPC Notice (“Given these technical results, since announcing the outcome of the well the Company has had a number of discussions with industry counterparties in relation to a potential farm-out of the licences, and the Company has now formally launched an entirely new farm-out process via Gneiss Energy. The farm-out is seeking to introduce a funding and operating partner for the next stage of exploration activity in The Bahamas.”).

<sup>14</sup> BPC indicates that it requires capital “in order to execute on its planned 2021 work programs, the Company requires the infusion of fresh capital.” See BPC Notice. Even more concerning is that the work programs in relation to The Bahamas include no operational activities, only activities to reconcile and make payments. *Id.* BPC acknowledges that the cost of drilling the first exploratory well was beyond what they expected. *Id.*

<sup>15</sup> See Paige McCartney, *supra* n.11.

the costs (both expected and unexpected) associated with the drilling of the exploratory well,<sup>16</sup> potential legal costs,<sup>17</sup> a specific reliance on discounts and issuance of shares to lessen and meet the pressure of their liabilities,<sup>18</sup> and the incredible decrease in value of BPC's stock.<sup>19</sup> And this has been further confirmed by BPC's plans to restructure, cut costs, and shift its near-term strategic focus to existing development in other nations.<sup>20</sup> The Petroleum Act requires both the technical and financial capability of the applicant be taken into consideration in the initial application for the license<sup>21</sup> and further requires the Minister to consider "any other particulars which the Minister may deem appropriate"<sup>22</sup> when considering a renewal request. It is axiomatic and prudent that the Government of The Bahamas weigh BPC's technical and financial capacity as part of its discretionary consideration of the renewal request. The Government of The Bahamas has no obligation to take on or accommodate problems caused by BPC's past miscalculations. BPC must demonstrate its own capabilities and not rely upon a future potential farm-out to fulfill its obligations under a renewed license agreement.

Third, even if BPC can demonstrate that it does in fact have the capacity and finances necessary to operationalize the license, its plan to farm out indicates that it does not have continuing interest or commitment to The Bahamas. This runs contrary to the essence of both the 2007 Licence Agreement and Petroleum Act, which include provisions requiring licensees to expend sums on exploration and prospecting and to commit to drilling within the term of the license indicating an intent for a licensee to actively utilize the asset rather than engage in speculation.<sup>23</sup> This also creates potential additional complications and expenses related to considering the inevitable request from BPC to assign or transfer its rights if the government grants a renewal. Rather than put off that decision until some point in the future, the Government of The Bahamas should exercise its discretion to consider whether it is in the best interest of the country to grant a renewal to a company that is currently seeking to farm out its licenses to an undetermined entity.

Finally, denying a renewal is not only within the Minister's authority, it is consistent with its economic, environmental, and ethical commitments to protect the marine resources of The Bahamas. The Government of The Bahamas has asserted that it is "totally against" drilling for oil

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<sup>16</sup> See BPC Notice ("Technical issues while drilling the well also meant that the ultimate cost of the well will be considerably more than planned."); *Id.* (indicating \$18 million in payments related to the drilling of the exploratory well coming due in 2021).

<sup>17</sup> Identifying as an unknown, the "incremental costs associated with renewal of the Company's licences in The Bahamas, including community programs, and ongoing legal costs as may be required to continue to successfully defend the Company's licences in the event of ongoing environmental challenges in The Bahamas." BPC Notice.

<sup>18</sup> BPC Notice (noting that "the Company expects to achieve a discount/reductions [to a \$14 million dollar liability] as a result of commercial negotiations and agreed resolutions to items in dispute and/or be able to satisfy part of this amount in the form of shares, and has assumed an aggregate 20 per cent. - 30 per cent. reduction in cash required for settlements on this basis").

<sup>19</sup> BPC's share price continues to fall. In 2006, it reached heights of over £ 30.00 to currently, as of May 13, 2021, coming in at £ 0.39. See Google Finance, Bahamas Petroleum Company, <https://www.google.com/finance/quote/BPC:LON?sa=X&ved=2ahUKewib08LhpaHwAhVKGzQIHcFvBm4Q3ecFMAB6BAgDEBo&window=MAX>.

<sup>20</sup> See generally, BPC Notice.

<sup>21</sup> Petroleum Act ¶ 16.

<sup>22</sup> Petroleum Act ¶ 22.

<sup>23</sup> See Petroleum Regulations 2001, Ch. 219, ¶¶ 29, 35 (Bah.); 2007 Licence Agreement ¶ 5, 10.

in the waters of The Bahamas, but that its hands were tied due to the legal relationship with BPC.<sup>24</sup> That relationship has come to an end; the Government now has the complete discretion and authority to stop drilling in The Bahamas by denying the renewal request. Furthermore, denial of the renewal request supports The Bahamas' commitments and nationally determined contribution (NDC) under the Paris Agreement, which it ratified in August 2016. In its NDC, The Bahamas presented itself as a "non-oil producing nation" that would develop and diffuse renewable energy resources "to realize important economic, environmental and social objectives."<sup>25</sup> The Bahamas committed in its NDC to develop renewables and mitigate carbon emissions as its mitigation strategy, and to conserve marine areas as its adaptation strategy. We recognize that these NDC commitments are not efforts The Bahamas must undertake alone; however, denial of the renewal request would demonstrate strong leadership and commitment towards these goals to partners. In addition, The Bahamas has committed under both the Paris Agreement (adaptation strategy) and Caribbean Challenge Initiative to protect 20 percent of its marine and coastal environment. The current licenses are adjacent to and even within areas designated and proposed as marine protected areas, which could devastate these areas identified as biologically significant.<sup>26</sup> Lastly, the Bahamian economy relies upon healthy marine ecosystems. The risk of loss due to oil exploration and production activities far outweigh any benefits that discovery of oil could bring.<sup>27</sup>

## **Conclusion**

We share with you the commitments to protect our ocean environment and to combat the existential threat of climate change. We understand and support the Government of The Bahamas' opposition to drilling in its waters and its commitments to a future of clean energy and pristine oceans. We support the Government's exercise of its clear legal authority and discretion to deny BPC's renewal request. Should you have any questions or desire further information, we remain at your disposal. Thank you for your consideration.

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<sup>24</sup> Krystel Brown, *PM says he is 'totally against oil drilling'*, THE NASSAU GUARDIAN (Dec. 11, 2020), <https://thenassauguardian.com/pm-says-he-is-totally-against-oil-drilling/>.

<sup>25</sup> The Government of The Bahamas, *Intended Nationally Determined Contribution (INDC) Under the United Nations Framework Convention on Climate Change* (Nov. 2015), [https://www4.unfccc.int/sites/ndcstaging/PublishedDocuments/Bahamas%20First/Bahamas\\_COP-22%20UNFCCC.pdf](https://www4.unfccc.int/sites/ndcstaging/PublishedDocuments/Bahamas%20First/Bahamas_COP-22%20UNFCCC.pdf). The INDCs became a Nationally Determined Contribution ("NDC") upon ratification of the Paris Agreement in August 2016.

<sup>26</sup> In addition, any exploratory drilling under a renewed license would be required to take into account The Bahamas' obligations under international law in relation to the Cartagena Convention, the Ramsar Convention, and the World Heritage Convention, an obligation which BPC failed to undertake when performing its Environmental Impact Analysis for drilling the Perseverance #1 well. See Bahamas Petroleum Company, *Environmental Impact Assessment for Exploratory Drilling in the Cooper Block, Offshore The Bahamas*, 4-67 to 4-69 (Feb. 14, 2020).

<sup>27</sup> Sea Change Economics, LLC, *The Value of the Coastal Economy in The Bahamas at Risk from Offshore Oil Drilling* (Aug. 2020).

Respectfully,

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cc: Hon. Carl Bethel, QC, Attorney General and Minister of Legal Affairs  
Hon. Michael Clifton Pintard, Minister of Agriculture and Marine Resources