



VIA EMAIL ONLY
(rca.mail@alaska.gov)

November 12, 2019

Robert Pickett, Chair
Regulatory Commission of Alaska
701 West Eighth Avenue, Suite 300
Anchorage, Alaska 99501-3469

RE: COMMENTS ON HILCORP-BP ASSET SALE (RCA P-19-015, P-19-016, P-19-017)

Dear Chairman Pickett:

I. Introduction

Cook Inletkeeper (Inletkeeper) is a community-based nonprofit working to protect the Cook Inlet watershed and the life it sustains. Inletkeeper has a long history working on oil and gas issues in Alaska, and has closely observed Hilcorp's operations in Cook Inlet since late 2011. Please accept these comments on behalf of Inletkeeper more than 8500 members and supporters around Alaska on the above-referenced matters.

The issues currently before the RCA have profound implications for Alaska for many decades to come. BP is a large, public, well-resourced company with considerable experience in Alaska generally, and with the TransAlaska Pipeline System (TAPS) specifically. On the other hand, Hilcorp¹ is a mid-sized, private company with a documented track-record of worker safety and environmental violations during its relatively short tenure in Alaska, and because it refuses to disclose publicly its financial information, Alaskans have no idea if Hilcorp has the financial or operational wherewithal to safely manage the TAPS line and other BP assets. As a result, the decisions before the RCA today deserve careful scrutiny, including a detailed inquiry into whether this transfer of assets is truly in the public interest pursuant to AS 42.06.305(b).

¹ Hilcorp operates a number of affiliates involved in this transaction, including but not limited to Hilcorp Alaska, Harvest Alaska, and Harvest Midstream, and any references herein to "Hilcorp" encompasses all Hilcorp affiliates and subsidiaries.

II. Comments

A. Need for a More-Deliberative Public Process

As a threshold matter, there has been little time for the public, regulators and legislators to consider this important and complex matter. Furthermore, available documents provide little detail on the actual transactions involved, or the people, capital and plans needed to implement them. While Inletkeeper appreciates RCA's efforts to add 21 days to the original comment period, the issues implicated here require more extended information and deliberation. As a result, the RCA should open a docket and a public hearing process, with clear timelines and information for public stakeholders to intervene, testify, acquire and examine relevant evidence and participate in deliberations in a meaningful way. Furthermore, this inquiry cannot fall only to the limited resources of the RCA; the Alaska Legislature must also engage in this issue, similar to its involvement with the BP/Arco Merger.

B. Alaskans Deserve Accountability & Transparency

Hilcorp has asked the RCA to waive the requirement to submit audited financial data, and to keep its financial data secret from the public. The RCA should summarily reject both these requests. Financial audits provide objective, third party assurances that the numbers provided conform with generally accepted accounting practices, and reflect some semblance of fiscal reality. Simply because Hilcorp chooses not to audit its financials should in no way affect RCA's decision to require audited financial data. Otherwise, Hilcorp is simply saying to the RCA, "trust us" – and that's no way to proceed with one of the biggest business deals in Alaska history.

Numerous questions arise from the lack of transparency to date. How can Hilcorp acquire all BP assets for just \$5.6 billion, when oil field valuations would seem to put the number much higher? How much debt will Hilcorp assume, from whom, and how will it repay it? What resources can Hilcorp commit to operations and regulatory compliance? Does Hilcorp have the financial capacity to address a large oil spill? How will Hilcorp bring its oil to market? And on a related matter, how does Hilcorp's corporate structure, and its desire to shield its principals and investors from liability, play out for Alaskans in the event of a bankruptcy?

Furthermore, Hilcorp's financial data must be made public. The public interest in disclosing Hilcorp's financials greatly outweighs Hilcorp's private interests in maintain secrecy around their financials. Alaskans need to see Hilcorp's financials to understand if it is fit, willing and able to safely and effectively take-over BP's oil fields, pipelines and other assets. There is no way for the public to understand if this transaction meet's RCA's public interest mandate without full disclosure of Hilcorp's financials.

Finally, any agreement allowing Hilcorp to purchase BP assets must contain provisions requiring Hilcorp to report publicly its annual revenues, expenses and profits on its Alaska assets.

Otherwise, there's no mechanism for Alaskans to understand in one or five or ten years whether this transaction truly resulted in "maximum benefit" to all Alaskans as required by Article VIII, Section 2 of the Alaska Constitution.

C. Hilcorp's Business Model Has Resulted in Numerous Violations

Inletkeeper has had a front-row seat for Hilcorp operations since late 2011, when it swept into Cook Inlet on a wave of state subsidies designed to induce more production. Throughout its operations in Cook Inlet – and later on the North Slope – Hilcorp's business model has become clear: buy-up aging oil and gas assets and wring-out remaining profits by slashing worker safety and environmental costs. In fact, Hilcorp's singular focus on maximizing its bottom line and cutting costs appears unique across the Alaska oil and gas industry.

As a result, it's no surprise Hilcorp has tallied a long string of environmental and worker safety violations in its relatively short tenure in Alaska. On the worker safety front, three workers nearly died at a Hilcorp facility in 2015, leading the Alaska Oil & Gas Conservation Commission to release a surprisingly strong statement that "[t]he disregard for regulatory compliance is endemic to Hilcorp's approach to its Alaska operations. Yet despite this severe admonishment and a sizable penalty, a worker still died in a pipe-handling accident on a Hilcorp rig in 2018.

On the environmental front, Hilcorp has been responsible for more than 90 crude oil spills or discharges in Alaska since 2012, according to the ADEC spills database. In 2014, Hilcorp's Baker platform caught fire and had to be shut-down, and in 2017, Hilcorp allowed a natural gas leak to endure for several months so it would not have to shut-in production from Platform A. In 2018, Hilcorp asked ADEC to increase the volume and amount of toxic pollution it could discharge from its Trading Bay facility in Cook Inlet, despite the fact technology exists to reinject these wastes. Also in 2018, Hilcorp converted a 40-plus year old, subsea natural gas line to an oil line, yet refused to install shut-off valves under Cook Inlet due to cost concerns.

These and other violations paint a telling picture of Hilcorp's corporate philosophy and a business model centered around cost-cutting. As a result, all Hilcorp's legal violations and regulatory compliance problems should be made publicly available, so Alaskans can make a more-objective call on whether Hilcorp's acquisition of BP's assets is in the public interest.

D. The RCA Must Scrutinize Hilcorp's Political Activities

In order to understand whether this transaction is in the public interest, the RCA should review Hilcorp's political spending and lobbying activities to better understand the company's efforts to influence the political landscape in Alaska, and perhaps even this transaction. For example, in January 2019, Hilcorp's Executive Chairman and Founder, Jeff Hildebrand, funneled \$25,000 to an "independent expenditure group" supporting Mike Dunleavy. While such donations typically arrive before an election, Hildebrand's support for the pro-Dunleavy group came three months after Dunleavy's gubernatorial election, when Hilcorp was engaged with BP in

conversations around the sale of BP's assets. As a result, Alaskans need more transparency to understand if this or other political contributions from Hilcorp have any bearing on this or any related transactions.

E. DR&R Obligations Must Be Spelled-Out

The available documents provide vague assurances that BP will address dismantlement, removal and restoration (DR&R) activities on the TAPS line, Milne Point and Point Thompson lines up to the time of the transfer of assets, after which Hilcorp would assume liabilities. Yet this generalized commitment provides none of the detail needed for Alaskans to understand if this transaction is in the public interest. Furthermore, the proposed transaction includes no discussion about DR&R related to gathering lines, pump stations, the Valdez Marine Terminal and other related assets. In order to satisfy the public interest, the documents supporting this asset transfer must spell-out in considerably more detail who retains DR&R liability, how much money is available for it, and what agencies will retain jurisdiction over it.

D. TAPS Regional Citizens Advisory Council

In light of Hilcorp's consistent record of noncompliance in Alaska, and its business model focused on cost-cutting, the RCA should use its considerable discretion to install a citizen-oversight mechanism into this transaction. After the *Exxon Valdez* oil spill, the Oil Pollution Act of 1990 created Regional Citizens Advisory Councils (RCAC) to provide citizen oversight of oil and gas operations in Prince William Sound and Cook Inlet. These RCAC's have been routinely re-certified by the U.S. Coast Guard, and they've served an invaluable role providing an additional set of eyes on oil and gas operations in their respective jurisdictions. Accordingly, in order to meet its public interest mandates – and as a condition for transferring any certificate of public convenience on the TAPS line - the RCA should require an RCAC for the pipeline from Prudhoe Bay to Valdez. Among other things, this method of private oversight would help reduce environmental and worker safety problems, and reduce government spending on compliance and oversight activities.

E. This Transaction Must Address Climate Change

The record heatwave this past summer – and the lack of traditional winter in southcentral Alaska today – provide stark evidence the effects of climate change will increasingly play-out across our state. Melting permafrost on the North Slope has already been implicated in various well head failures and the subsidence of roads and infrastructure. Looking forward, the costs to produce oil from the North Slope will only increase, and these costs and considerations must be factored into this transaction.

Furthermore, recognizing that our climate crisis cannot begin to abate until we transition away from the production and use of fossil fuels, RCA's approval here should contain a climate compliance schedule, whereby the TAPS line becomes carbon-neutral by a date certain. In other words, RCA should embrace a schedule under which Hilcorp must offset the carbon it

puts into the TAPS line. The realities of rapid climate change are now apparent to all Alaskans, and it would be impossible for the RCA to satisfy the public interest without addressing it in a meaningful way in this transaction.

F. The Need for a Statewide Charter

In 1999, Governor Tony Knowles presented the proposed BP/Arco merger to Alaskans as a *fait accompli*. Fortunately, Alaskans united, legislators responded and the parties agreed to a comprehensive “charter” to guide and direct the merger process. Under that charter, the State “determined therefore that its support for the merger must be conditioned upon ... substantial marketplace and community commitments to Alaska.”

Today, Alaskans deserve the very same commitments to satisfy the public interest and Article VIII of the Alaska Constitution. Alaskans need to know if Hilcorp has the capacity to operate BP’s assets in a safe and effective manner. We need to know Hilcorp’s financial fitness, and its ability to address the costs from large spills or climate change. And we need to understand the implications of DR&R costs and liabilities, and the potentialities of bankruptcies down the road. For these and other reasons, the RCA should look to capture its public interest mandates in a central charter or contract, which provides enforceable assurances to Alaskans that this transaction will truly be in the public interest and for the “maximum benefit” of the people.

III. Conclusion

Thank you for your attention to this matter, and I hope you agree the magnitude of this transaction – and its implications for Alaska in the decades to come – warrants more serious debate and scrutiny.

Very truly yours,



Bob Shavelson
Inletkeeper

Cc: (VIA EMAIL ONLY)
Alaska House & Senate Finance & Resource Committees