

ALASKA STATE LEGISLATURE

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August 14, 2024

Office of Policy & Coordination
Bureau of Competition
Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20580
<Delivered Electronically>

To Whom it May Concern:

Alaska is on the brink of an acute gas supply crisis. Hilcorp, Alaska, LLC, the dominant Cook Inlet region gas producer, is legally required under commitments to the State of Alaska to produce gas when it is commercially viable to do so. Presentations to the Alaska Legislature earlier this year by State analysts and expert consultants show that new gas development projects in Cook Inlet very likely meet the acceptable threshold for economic recoverability.

This letter urges the U.S. Federal Trade Commission to open an investigation into this matter and its surrounding circumstances to determine whether Hilcorp has engaged in illegal anticompetitive practices in Alaska leading to the supply shortage, potentially by manipulating regional and statewide markets in attempt to induce private benefits or gain leverage over state policy affecting the company.

In 2012 the FTC initiated an investigation into Hilcorp's acquisition of Marathon Oil's Cook Inlet assets based on concerns that the sale would result in anticompetitive conditions unfavorable to Alaskan consumers. Today Hilcorp controls nearly 90% of the Cook Inlet gas supply, all of which is consumed in-state along Alaska's Railbelt Corridor to meet the residential and commercial power and heating needs of about 70% of the state's population.

At that time, the FTC was concerned that the acquisition could "lessen the negotiating strength of utility and industrial customers."¹ The FTC was additionally troubled that as a consequence of the merger, Hilcorp would also "control all of the proprietary gas storage capacity" in the region

¹ Federal Trade Commission, *Statement Concerning Hilcorp Alaska's Proposed Acquisition of Natural Gas Production, Transmission, and Storage Assets from Marathon Oil*, FTC File No. 121-0113 (Nov. 7, 2012).

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and “the majority of pipeline infrastructure” needed to transport gas to customers—which “could impair efforts to bolster natural gas production [in Cook Inlet] from sources other than Hilcorp.”²

However, on November 7, 2012, the FTC terminated its investigation based on the Alaska Attorney General’s filing in state court of a negotiated consent decree between the State of Alaska and Hilcorp.³ The AG recommended that the merger proceed unchallenged. The FTC announced that it would defer to the State in the matter for three reasons: (1) The effects of the merger would be confined to Alaska consumers; (2) the State concluded that the consent decree “substantially allay[ed]” competitive concerns stemming from the merger; and (3) because the State concluded that the merger would actually *mitigate* energy security concerns.⁴

In fact, on January 2, 2013, in support of the consent decree and urging approval of the merger, the Alaska Department of Natural Resources commissioner contended by letter to the court that the acquisition was in the state’s best interest because it would enable Hilcorp “to continue this *upward trend of investment and exploration* in Cook Inlet,” which he stated was “critically important to Alaska’s domestic energy supply and security.”⁵ [Attachment A] The commissioner further declared Hilcorp to be “a company poised to contribute significantly to Cook Inlet exploration and production *for years to come.*”⁶

The court approved the consent decree in 2013. Unfortunately, the AG and DNR commissioner were wrong; the FTC’s concerns have been proven valid today—with even more dire consequences emerging from the monopolistic conduct than were foreseen just a decade ago.

While Hilcorp did undertake some development activities to deliver needed gas supplies to Southcentral Alaska and up the Railbelt, it failed to perform or administer necessary exploratory work to sufficiently meet further development obligations of the consent decree and its lease terms. Hilcorp purchased BP Alaska’s assets in 2019, at which time Hilcorp apparently shifted focus and investment to its new, more highly profitable North Slope endeavors.

Hilcorp’s exploitation of its dominant producer status in Cook Inlet by failing to meet its contractual duties—creating scarcity of supply—has resulted in a gas shortage crisis of catastrophic proportions, placing the safety of Alaskans and the state’s energy security in clear risk.

To make matters worse, the failures of Hilcorp in Cook Inlet imperil the power and heat supply to U.S. military installation Joint Base Elmendorf-Richardson (JBER). As situated in Alaska, JBER is critical to protecting and supporting U.S. interests in the Arctic, Asia-Pacific, and around the world. JBER’s surveillance capabilities, command functions, operations, and its exceptional military personnel enable capable, unique, unmatched national defense readiness. Consequently, the Cook Inlet gas supply shortage poses a very concerning, grave threat to

² *Id.*

³ Consent Decree, *Alaska v. Hilcorp Alaska, LLC, et al.*, Case No. 3AN-12-10858CI, Alaska Sup. Ct. (Jan. 17, 2013).

⁴ Federal Trade Commission, *supra*, n.1.

⁵ Daniel S. Sullivan, Commissioner, Dept. of Natural Resources, *Comment on Consent Decree in the Matter of the State of Alaska v. Hilcorp Alaska, LLC, et al.*, Case No. 3AN-12-10858, at 2 (Jan. 7, 2013) (emphasis added).

⁶ *Id.* (emphasis added).

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national security. JBER’s heavy reliance on Cook Inlet gas was in fact starkly highlighted last February, when unusually cold regional weather strained winter gas supplies; the JBER commander was forced to direct reduced thermostat temperatures and disconnection of unused electronics to assist in decreasing burdens on the supply.

In spring 2023, Hilcorp called a meeting with energy and gas utility stakeholders to warn that beginning in 2024 and for the coming decade, no gas supply contracts with utilities would be renewed. This meeting prompted four utility companies to send a letter to Governor Dunleavy to ensure that Hilcorp acts in a manner “consistent with its leases.”⁷ [Attachment B] The furthest north gas utility affected by the Cook Inlet shortage had to re-establish a new supply contract with Hilcorp to truck gas from its North Slope facilities at increased costs to the utility.

Although multiple requests have been sent to the AG and DNR commissioner to examine this matter and if necessary, take action against Hilcorp to compel exploration and production or to relinquish or cancel its leases, neither the AG nor DNR commissioner have pursued a remedy. [Attachments C, D, E, and F]

Hilcorp’s ability to abuse its virtual monopoly Cook Inlet position was recently underscored in the policymaking arena. In 1980 Alaska repealed its personal income tax. As a result, companies not incorporated as C-corporations under the Internal Revenue Code pay no taxes in Alaska, at either the entity-level or the owner-level. Hilcorp is owned by one Texas resident and is organized as an S-corporation. Alaska is therefore unable to capture any corporate income tax from Hilcorp.

Last May 3 a committee of the Alaska Legislature voted to close the loophole and amend the law to establish an S-corp tax on Alaska oil and gas producers, annually raising over \$100 million in revenue to the state.⁸ But Hilcorp promptly sent letters to the chief officers of Southcentral Alaska electric and gas supply utilities threatening to cease investment and development in Cook Inlet, and stating the tax could jeopardize supply contracts, future gas storage, and availability of a Hilcorp jack-up rig for the region, and warning that the new tax would “lead to higher energy prices” for Alaskans.⁹ Paid lobbyists and others representing Hilcorp’s interests arrived in Juneau seeking to pressure lawmakers to eliminate the tax from consideration.

The tax was immediately struck from the bill by the next legislative committee. Alaska’s largest newspaper bluntly opined that Hilcorp’s actions were “tantamount to saying: [i]f you tax us, we’ll turn off the gas to Alaska.”¹⁰

⁷ Golden Valley Electric, et. al, Letter to Governor Mike Dunleavy, at 1 (April 3, 2023) (requesting enforcement of Hilcorp’s Cook Inlet lease obligations).

⁸ See Conceptual Amendment #D.45 to CSHB 50(Fin) by Senator Wielechowski (May 3, 2024), available at https://www.akleg.gov/basis/get_documents.asp?session=33&docid=45285.

⁹ See Luke Saugier, Hilcorp Alaska, Letter to Heads of Southcentral Utilities (May 5, 2024), available at <https://twitter.com/alaskalandmine/status/1787541655408759237>.

¹⁰ Editorial Board, *Hilcorp’s \$100 million warning shot to Alaskans*, Anchorage Daily News (May 11, 2024), available at <https://www.adn.com/opinions/editorials/2024/05/11/editorial-hilcorps-100-million-warning-shot-to-alaskans/>.

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Moreover, it is well understood that Cook Inlet is still the most feasible option to serve the Railbelt's gas supply needs. But the impending supply shortage could force utility companies into contracts for barge imports of natural gas from Canada, at a roughly 300% increase in delivery price that would be borne by the consumers. To avoid this costly possibility, last session the legislature considered several proposals to establish new subsidies to spur more investment in the inlet and induce more gas production—changes in law applying to Cook Inlet that would have adversely affected state revenue while further benefitting Hilcorp's profit margins and bottom line. While the most significant of these proposed incentive programs eventually stalled in the waning days of the regular session, it is likely that the legislature will be forced to confront similar proposals during the upcoming 2025 session starting in January,

This summer the urgency of the situation caused the state's largest public utility company, serving the vast majority of Southcentral Alaska homes and businesses, to initiate steps toward implementing gas imports from Canada in an effort to uphold its statutory obligations to its customers. The gas utility faces a gap in supply under its portfolio beginning next year.¹¹ The company sought expedited approval from the State for construction of a 16-mile large diameter high pressure gas pipeline extension to Cook Inlet's Port MacKenzie for eventual connection to a new import facility.¹² State regulators recently approved the application for the expansion.¹³

Yet where importing gas from Canada may become any part of a future solution, as the FTC previously observed, Hilcorp's Cook Inlet leases also cover the overwhelming majority share of Alaska's needed gas storage in the area. Of a total available Cook Inlet storage capacity of 74 Bcf, Hilcorp controls 56 Bcf, along with its pipeline delivery system. Reports suggest that Hilcorp has sought modifications to lease terms to permit third-party storage, which DNR has accommodated. Concerns have also arisen that Hilcorp may be seeking exorbitant fees for this gas storage.

It is clear then that while potentially causing the gas supply shortage, Hilcorp also stands to reap benefits from that problem in the long-run through third-party storage contracts and transportation charges. With its dominant status as gas producer, in failing to increase gas reserves, Hilcorp could experience a new source of profits while maintaining dominance and anticompetitive conduct in the related realm of gas storage.

While the price caps of the Hilcorp consent decree expired in 2017, significant and relevant terms of the agreement were extended in 2016 and are still effective until December 31, 2024, including the AG's auditing rights to ensure Hilcorp's compliance.¹⁴ The AG has refused to exercise this authority, and time is almost up.

¹¹ See Order Conditionally Approving Application to Expand Authorized Service Area, Requiring Filings, Denying Motion for Expedited Consideration as Moot, Granting Petition for Confidential Treatment, Addressing Timeline for Decision, Designating Commission Panel, and Appointing Administrative Law Judge, In the Matter of the Application Filed by Alaska Pipeline Company, LLC to Amend Certificate of Public Convenience and Necessity No. 141, Matter No. U-24-013, Reg'y Comm'n of Alaska, at 5 (July 22, 2024), available at <https://rca.alaska.gov/RCAWeb/ViewFile.aspx?id=f2d4c5de-72d0-41f0-8180-544b3a7e1310>.

¹² *Id.* at 1.

¹³ *Id.* at 1. The State's approval was subject to conditions of the order. *Id.* at 17-19.

¹⁴ Extension of Consent Decree, *Alaska v. Hilcorp Alaska, LLC, et al.*, Case No. 3AN-12-10858CI, Alaska Sup. Ct. (Sept. 28, 2016).

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We are grateful for your attention on this serious issue. With the considerable majority of Alaskans reliant on Cook Inlet gas to meet their most basic of daily needs, we believe these circumstances warrant the FTC's scrutiny. We are hopeful you will re-initiate an investigation into Hilcorp's anticompetitive, exploitative business practices in Cook Inlet in order to protect our economy, our businesses, and individual Alaskans.

If you have questions or need our assistance by phone, please contact 907-269-0120.

Sincerely,



Senator Cathy Giessel



Senator Bill Wielechowski

Attachments: As stated