

DRAFT

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT ANCHORAGE

STATE OF ALASKA,)	
)	
Plaintiff,)	
)	
v.)	
)	
HILCORP ALASKA, LLC; HILCORP)	
ENERGY I, L.P.; MARATHON OIL)	
COMPANY; and MARATHON ALASKA)	
PRODUCTION LLC,)	
)	
Defendants.)	
)	Case No.: 3AN-12- _____ CIV
)	
)	

CONSENT DECREE

Preamble

Plaintiff State of Alaska (“State”) filed its Complaint herein and defendants, HILCORP ALASKA, LLC; HILCORP ENERGY I, L.P.; MARATHON OIL COMPANY; and MARATHON ALASKA PRODUCTION LLC were duly served with the Summons and Complaint. The State and the Hilcorp Defendants, by and through their undersigned attorneys or officers, have consented to the entry of this Consent Decree without trial or adjudication of any issue of fact or law herein. This Consent Decree does not constitute any evidence against or admission by any party with respect to any issue of law or fact herein or in the Complaint.

RECITALS

WHEREAS, Marathon owns and operates assets in the Cook Inlet, Alaska (“Marathon Assets”) used for the exploration, development, production, transportation, and sale of crude oil and natural gas, which the State alleges account for approximately 35% of the natural gas produced in the Cook Inlet annually;

WHEREAS, Hilcorp also owns and operates assets in the Cook Inlet, Alaska (“Hilcorp Assets”) used in the exploration, development, production, transportation, and sale of crude oil and natural gas, which the State alleges account for approximately 35% of the natural gas produced in the Cook Inlet;

WHEREAS, the State alleges that Marathon and Hilcorp compete directly with the other for the sale of natural gas within the same market;

WHEREAS, the Defendants have executed an agreement dated April 5, 2012 (the “Purchase Agreement”), pursuant to which Marathon has agreed to sell, and Hilcorp has agreed to purchase, all or substantially all of the Marathon Assets (the “Acquisition”), subject to certain conditions set forth therein;¹

WHEREAS, the Acquisition will combine under Hilcorp’s sole ownership all of Hilcorp’s Assets and Marathon’s Assets, and the Attorney General believes that these combined assets will constitute a significant portion of all assets currently located and available in the Cook Inlet that are necessary to compete in the relevant markets for the production and sale of natural gas;

¹ The Acquisition will also require approvals from the Regulatory Commission of Alaska for the transfer of certain pipelines under AS 42.06.305.

WHEREAS, the State alleges that the Acquisition will result in Hilcorp obtaining increased market power over the sale of natural gas in the Cook Inlet;

WHEREAS, Hilcorp believes the Acquisition will create efficiencies and achieve meaningful synergies, including but not limited to, by (1) allowing Hilcorp to use its expertise, experience, and capital to substantially increase reserves and production of natural gas in the Cook Inlet; (2) eliminating certain inefficiencies caused by the joint operation of certain assets by combining those assets under the common control and direction of a single owner to enable more streamlined and efficient discovery, development and production of natural gas in a timely fashion; (3) eliminating redundancies in operations and allowing for the opportunity to utilize resources more efficiently; (4) encouraging increased investment in the exploration, development and production of natural gas resources by removing conflicting company policies, objectives, business models and strategies; (5) stimulating the growth and development of the oil and gas support services industry in the Cook Inlet as the result of Hilcorp's exploration, development and production efforts in the Cook Inlet; and (6) providing geographic alignment for Hilcorp's onshore fields on the east side of Cook Inlet.

WHEREAS, the State, through its Attorney General, alleges in its complaint that the Acquisition may be unlawful under Alaska antitrust law (the allegations in the State's complaint are re-alleged and incorporated herein);

WHEREAS, the State has brought this action against Defendants on behalf of the people of Alaska, and in the State's capacity in *parens patriae*;

WHEREAS, the State has taken considerable steps to incentivize and encourage increased investment, exploration, and competition in the Cook Inlet natural gas market. Without increased exploration and production of Cook Inlet natural gas, there is a risk that existing supplies of natural gas might be insufficient to meet projected demand for Cook Inlet natural gas in the future; increased exploration and production of Cook Inlet natural gas is the most time and cost efficient option for addressing this issue;

WHEREAS, it is in the best interest of Alaska to encourage as much exploration, development and production of existing and new natural gas reserves as possible while at the same time preserving competition and competitive pricing to the greatest extent possible;

WHEREAS, the State has undertaken an aggressive campaign to expedite natural gas storage capabilities and seek investors and companies that will increase investment and production of gas in Cook Inlet;

WHEREAS, the State believes any anticompetitive effects of this Acquisition will be substantially mitigated through the terms of this Consent Decree, and that the Acquisition will result in beneficial effects for the State;

WHEREAS, Hilcorp has pledged to act in good faith to ensure not only that the terms of this Consent Decree are complied with promptly, but to conduct its business as a reasonable and prudent operator in accordance with its lease obligations and by utilizing commercially reasonable efforts to increase the production and development of natural gas from Hilcorp's Cook Inlet Basin Properties;

WHEREAS, Hilcorp and the State do not believe that the terms of this Consent Decree will prevent Hilcorp from accomplishing the efficiencies and mutual benefits described above;

WHEREAS, neither the execution nor entry of this Consent Decree nor the terms hereof are intended to alter, modify, supplement, nor rescind in any way the respective rights or obligations of the Defendants related to the Acquisition;

WHEREAS, Defendants do not admit, and continue to deny, that such transaction is unlawful;

WHEREAS, the Court has made no determination of any violation of law;

WHEREAS, the State and the Hilcorp Defendants wish to avoid litigation and to resolve the controversy on mutually acceptable terms;

WHEREAS, the State and the Hilcorp Defendants have agreed to be bound by the provisions of this Consent Decree;

WHEREAS, the Attorney General believes the terms of this Consent Decree are fair and reasonable and in the public's interest;

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED as follows:

I. JURISDICTION

This Court has jurisdiction over the subject matter of this action pursuant to AS 45.50.582 and over each of the parties hereto. Venue is proper in this Judicial District pursuant to Alaska Civil Rule 3. The Complaint states a claim upon which relief may be granted against the Defendants under Alaska antitrust law. The Attorney

General of the State of Alaska has authority to bring this action pursuant to AS 45.50.580.

II. DEFINITIONS

As used in this Consent Decree:

A. “Acquisition” means the purchase of Marathon’s Assets by Hilcorp as set forth in the Purchase Agreement.

B. “Alaska Customers” means Utilities and other Industrial Use customers that consume natural gas by combustion or processing.

C. “Attorney General” means the Alaska Attorney General.

D. “Available Uncommitted Gas” means gas production allocated to Hilcorp Cook Inlet Basin Properties that is not used for field operations and that is not committed under Existing Contracts for sale during the Consent Decree’s term.

E. “Base Load Gas” means the average daily contract quantity of Available Uncommitted Gas for a contract year sold to an Alaska Customer.

F. “Cook Inlet” means the Cook Inlet Basin both on land and in waters from the Gulf of Alaska to the south and reaching to Anchorage to the north, including both the Knik and Turnagain Arms, and as further defined in AS 43.55.900(5) and 11 AAC 83.1049(2).

G. “Defendants” means the defendants listed in the State’s complaint filed in this matter.

H. “Discovered Reserves” means, for purposes of this Consent Decree, quantities of oil or natural gas which geological and engineering data

demonstrate to be more likely than not recoverable in the future from known oil and gas reservoirs under existing economic and operating conditions.

I. “Effective Date” means the date this Consent Decree is approved by the court.

J. “Emergency Load Gas” means Available Uncommitted Gas sold to an Alaska Customer in excess of the Base Load Gas and Swing Load Gas sold to such Alaska Customer to meet the short-term (one-month or less) extraordinary or emergency gas supply needs of that Alaska Customer.

K. “Existing Contracts” means all contracts that are fully executed by the contracting parties before the Effective Date of this Consent Decree for the sale of natural gas produced from or attributable to Marathon Assets or the Hilcorp Assets.

L. “Hilcorp” means Hilcorp Alaska.

M. “Hilcorp Energy” means Hilcorp Energy I, L.P., the parent company of Hilcorp.

N. “Hilcorp Defendants” means Hilcorp and Hilcorp Energy.

O. “Hilcorp Cook Inlet Basin Properties” means all oil and gas properties in the Cook Inlet (1) currently owned by Hilcorp (2) to be acquired from Marathon upon closing of the Acquisition, or (3) acquired by Hilcorp from third parties during the Consent Decree’s term. This includes Discovered Reserves and any other existing or new natural gas reserves allocated to Hilcorp Cook Inlet Basin Properties resulting from exploration and development activities performed during the Consent

Decree's term and to Hilcorp's interest in any oil and gas properties in which Hilcorp owns or acquires a partial interest.

P. "Industrial Use" means any use other than use to meet the gas supply needs of the Utilities and specifically includes, but is not limited to, Hilcorp's use of its own gas production for field operations and maintenance, gas dehydration, gas treatment, and refinery use, or sales of Hilcorp gas to other purchasers for this purpose, but only to the extent the purchaser does not have sufficient gas production from its own reserves to meet these needs. "Industrial Use" does not mean, and specifically excludes, use of natural gas for conversion to LNG for purposes of export to foreign nations.

Q. "LNG" means Liquefied Natural Gas.

R. "Marathon" means Marathon Oil Company and Marathon Alaska Production LLC.

S. "Mcf" means one thousand (1,000) cubic feet of natural gas measured at 60 degrees Fahrenheit at 14.65 pounds per square inch (absolute) as provided in 11 AAC 83.295(20).

T. "Other Gas Sales" means Available Uncommitted Gas sold to an Alaska Customer that does not constitute Base Load Gas, Swing Load Gas or Emergency Load Gas.

U. "RCA" means the Regulatory Commission of Alaska.

V. "Swing Load Gas" means Available Uncommitted Gas sold to an Alaska Customer on any given day in excess of the Base Load Gas sold to such Alaska Customer on such day. "Swing Load Gas" does not include "Emergency Load Gas."

W. “Utilities” means ENSTAR Natural Gas Company, Alaska Pipeline Company, Chugach Electric Association, Inc., Alaska Electric and Energy Cooperative, Inc., Municipal Light and Power, Matanuska Electric Association, Inc., Fairbanks Natural Gas, LLC, and Cook Inlet Natural Gas Storage Alaska, LLC, and any other utilities that have a certificate of public convenience and necessity issued by the RCA now or in the future.

III. APPLICABILITY

After the Closing of the Acquisition, this Consent Decree shall apply to (i) Hilcorp; (ii) to Hilcorp Energy and any other current and future affiliate of Hilcorp; and (iii) to any successors or assigns of Hilcorp’s Cook Inlet Basin Properties or interests in those Properties and production from those Properties during the term of this Consent Decree.

This Consent Decree shall not apply to third party interests in any oil and gas lease, pool, participating area or unit in which the third party jointly owns an interest with Hilcorp, including any interests conveyed by Hilcorp to a third party as part of a cross-assignment with respect to such pool, unit or participating area provided, however, that such cross-assignment does not diminish Hilcorp's volume of Discovered Reserves or Available Uncommitted Gas.

This Consent Decree does not apply to Existing Contracts.

Upon written application by Hilcorp to the Attorney General, the Attorney General, in his sole discretion, may waive the applicability of this Consent Decree for

transfers or assignments of Hilcorp Cook Inlet Basin Properties constituting no more than 5% of Hilcorp's total Discovered Reserves.

IV. TERM

The term of this Consent Decree will be five years, beginning January 1, 2013 and ending December 31, 2017.

V. TERMS AND CONDITIONS

Hilcorp agrees to the following terms and conditions:

1. Closing. Unless otherwise agreed to writing by the Attorney General, Hilcorp will not close on the Acquisition prior to approval of the Consent Decree by the court.

2. Properties. After the closing of the Acquisition, this Consent Decree applies to all Hilcorp Cook Inlet Basin Properties.

3. Gas Disposition.

A. After the closing of the Acquisition, Hilcorp agrees to offer for sale all Available Uncommitted Gas to Alaska Customers during the Consent Decree's term subject to the price caps and other conditions set forth in this Consent Decree.

B. After the closing of the Acquisition, Hilcorp agrees to utilize commercially reasonable efforts to increase the production and development of natural gas from Hilcorp's Cook Inlet Basin Properties.

C. After the closing of the Acquisition, Hilcorp will not sell Available Uncommitted Gas for LNG export to foreign nations during the Consent Decree's term unless the Attorney General agrees to the sale. This provision also applies to Hilcorp

gas sales to any third party for resale for LNG export to foreign nations during the Consent Decree’s term as long as any Alaska Customer has unmet gas supply needs outstanding.

4. Price. After the closing of the Acquisition, all Available Uncommitted Gas sold during the Consent Decree’s term is subject to the following price caps effective January 1, 2013:

Year	Base Gas Price Cap	Swing Gas (125% of Base Gas Price Cap)	Emergency Gas (150% of Base Gas Price Cap)	Other Gas Sales Price Cap
2013	6.60	8.25	9.90	6.60
2014	6.86	8.58	10.29	6.86
2015	7.13	8.91	10.70	7.13
2016	7.42	9.28	11.13	7.42
2017	7.72	9.65	11.58	7.72

Hilcorp and any Alaska Customer are free to negotiate for gas prices below any effective price cap.

5. Negotiable Costs. A. After the closing of the Acquisition and subject to negotiation and agreement by the contracting parties, the following Negotiable Costs may be allocated between Hilcorp and Alaska Customers during the term of this Consent Decree:

1. Transportation costs on common carrier pipelines at RCA-approved tariff rates and conditions; and
2. Excess Royalties (which means royalties in excess of those payable on the sale of the gas at the price stated in the specific contract due to a value attributed

to the gas under the applicable oil and gas lease which is higher than the contract price and that are assessed after the effective date of the Consent Decree) and Excess Taxes (which means taxes in excess of those payable under current tax law on the production or severance of the gas that are assessed after the effective date of the Consent Decree).

B. Hilcorp may not seek to recover from any Alaska Customer:

1. Royalties or taxes (or interest or penalties thereon) which are determined after audit to be due on the sale of the gas at the price stated in the applicable contract and, with respect to taxes, under current tax law; or

2. Any other costs incurred to deliver gas to an Alaska Customer, including but not limited to costs incurred for gas dehydration, gas treatment to meet pipeline compression or other specifications, or facilities operations and maintenance.

6. RCA Approval. Hilcorp agrees that all gas supply agreements it executes subject to the Consent Decree's terms that are also subject to the RCA's review, will remain subject to the RCA's approval process.

VI. OTHER REMEDIAL PROVISIONS

It is the purpose and goal of this Consent Decree to mitigate the anticompetitive effects of the Acquisition alleged by the State, while also facilitating increased investment and development of natural gas in the Cook Inlet. After the closing of the Acquisition, Hilcorp shall not engage in any conduct that directly or indirectly interferes with its obligations under this Consent Decree, and will not take any action to manipulate or circumvent the terms of this Consent Decree.

VII. ATTORNEY GENERAL AUDIT

A. For the purpose of determining or securing compliance with this Consent Decree, and subject to any legally recognized privilege, authorized representatives of the State, including consultants and other persons, shall, upon the written request of the Attorney General, and on reasonable notice to Hilcorp, be permitted:

1. Access during office hours to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of Hilcorp, which may have counsel present, relating to compliance with this Consent Decree; and

2. Subject to the reasonable convenience of Hilcorp and without restraint or interference from them, to interview directors, officers, employees, and agents of Hilcorp, which may have counsel present, regarding compliance with this Consent Decree.

B. No information nor any documents obtained by the means provided in this paragraph nor the Purchase Agreement shall be divulged by any representative of the State to any person other than a duly authorized representative of the Alaska Attorney General, except for the purpose of enforcing compliance with this Consent Decree, or as otherwise required by law or directed by the court.

VIII. NOTICES

Any notices required by this Consent Decree shall be delivered to the parties at the following addresses:

A. For the State of Alaska:

Attorney General's Office
Attn: Clyde E. Sniffen, Jr.
Assistant Attorney General
1031 W. 4th Avenue, #200
Anchorage, Alaska 99501
(907) 269-5200
(907) 276-8554 (fax)

B. For the Hilcorp Defendants:

Hilcorp Energy
Attn: William P. Swenson
General Counsel
1201 Louisiana Street
Suite 1400
Houston, Texas 77002
(713) 209-2400
(713) 209-2475 (fax)

IX. RETENTION OF JURISDICTION

Jurisdiction is retained by this court for the purpose of enabling any of the parties to this Consent Decree to apply to this court at any time for such further orders and directions as may be necessary or appropriate for the construction, implementation, or modification of any of the provisions of this Consent Decree, for the enforcement of compliance herewith, and for the punishment of any violations hereof.

X. OTHER RELIEF

A. If Defendants fail to comply with the terms of this Consent Decree, the Court may order appropriate relief pursuant to AS 45.50.580 on motion of the State for cause and upon appropriate notice to Defendants and with an opportunity for Defendants to respond as provided in the Alaska Rules of Civil Procedure.

XI. VOLUNTARY ACT OF THE PARTIES

The parties hereto expressly acknowledge and agree that this Consent Decree is voluntarily entered into as the result of arm's-length negotiation, and all parties hereto were represented by counsel in deciding to enter into this Consent Decree.

XII. PUBLIC COMMENT

This Consent Decree is being submitted by the parties hereto to the court for approval pursuant to AS 45.50.584. In accordance with this procedure, the Consent Decree does not become final until it is approved by the court which cannot happen until 60 days after its filing. During this 60-day period, interested persons may file verified exceptions to the form or substance of the Consent Decree, and after a hearing on such exceptions, the court may approve or refuse to enter the Consent Decree. Copies of all such verified exceptions shall be served by the submitting person on the parties to the Consent Decree for their review, and each party may respond to such exceptions at or prior to the hearing as each party deems appropriate or as directed by the court. The Hilcorp Defendants agree to publish, at the Hilcorp Defendants' expense, notice, the form and contents of which are subject to the State's approval, of the execution and terms of the Consent Decree, the place or places at which members of the public may obtain copies of the Consent Decree and/or any summaries thereof or comments thereon prepared by the parties hereto, and the procedure for submitting verified exceptions thereto. Such notice shall be published in the Anchorage Daily News, Kenai Peninsula Clarion, Fairbanks Daily News-Miner, and the Juneau Empire on two occasions, the first being within ten (10) days after the lodging of this Consent

Decree with the court, and the second between ten (10) and twenty (20) days after the lodging of this Consent Decree with the court. Other notice as necessary to inform residents in Western Alaska may also be required by the court.

XIII. CLOSING OF ACQUISITION

Unless otherwise agreed to in writing by the Attorney General, the Acquisition may not be closed prior to entry of an order by the court approving this Consent Decree.

XIV. PUBLIC INTEREST

The terms of this Consent Decree are fair and reasonable and the entry thereof is in the public's interest.

STATE OF ALASKA

DATED: _____

By: _____
MICHAEL C. GERAGHTY
ATTORNEY GENERAL
Alaska Bar No.: 7811097

HILCORP ALASKA, LLC

DATED: _____

By: _____
JOHN BARNES
SENIOR VICE PRESIDENT

HILCORP ENERGY I, L.P.
By: Hilcorp Energy Company,
its general partner

DATED: _____

By: _____
GREG LALICKER
PRESIDENT

[PROPOSED] ORDER

IT IS SO ORDERED.

Dated: _____

Alaska Superior Court Judge