

STATE OF ALASKA

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REGULATORY COMMISSION OF ALASKA

Before Commissioners:

Robert M. Pickett, Chair
Stephen McAlpine
Antony G. Scott
Daniel A. Sullivan
Janis W. Wilson

In the Matter of the Joint Application for)
Approval of Transfer of BP Pipelines (Alaska))
Inc.'s Indirect 32.0% Ownership Interest in)
PTE Pipeline, LLC, Holder of Certificate of)
Public Convenience and Necessity No. 746,)
To Harvest Alaska, LLC)

Docket No. P-19-015

In the Matter of the Joint Application for)
Approval of Transfer of BP Pipelines (Alaska))
Inc.'s Indirect Controlling Interest in Milne)
Point Pipeline, LLC, Holder of Certificate of)
Public Convenience and Necessity Nos. 329)
And 638, to Harvest Alaska, LLC)

Docket No. P-19-016

In the Matter of the Joint Application for)
Approval of Transfer of Certificate of Public)
Convenience and Necessity No. 311 and)
Operating Authority thereunder from)
BP Pipelines (Alaska) Inc. to Harvest Alaska,)
LLC)

Docket No. P-19-017

JOINT RESPONSE OF HARVEST ALASKA, LLC AND BP PIPELINES (ALASKA)
INC. TO PUBLIC COMMENTS AND TO OPPOSITIONS TO PETITIONS FOR
CONFIDENTIAL TREATMENT OF FINANCIAL STATEMENTS AND TO MOTIONS
FOR WAIVER

I. INTRODUCTION

HARVEST ALASKA'S AND BPPA'S JOINT RESPONSES TO PUBLIC
COMMENTS AND TO OPPOSITIONS TO PETITIONS FOR CONFIDENTIAL
TREATMENT AND FOR WAIVER

P-19-015 P-19-016 P-19-017

Harvest Alaska, LLC (“Harvest Alaska”) and BP Pipelines (Alaska) Inc. (“BPPA”) (collectively, the “Applicants”) have reviewed the comments submitted to the Commission during the public comment period and hereby submit their joint response (the “Joint Response”) in order to clarify the record in the above-captioned dockets (the “Dockets”) by correcting certain misconceptions and misinformation set forth in certain public comments and to address and respond to recurring concerns reflected in the public comments.

II. SUMMARY OF RESPONSIVE COMMENTS

This Section contains a summary of the detailed responses on each of the subjects addressed in Section III below.

A. Scope and Standard of Review

Pursuant to by AS 42.06.140(a) and AS 42.06.305, the only issue before the Commission in the Dockets is whether the transfers of operating authority in Certificates of Public Convenience and Necessity (“CPCN”) issued by the Commission for the operation of the common carrier pipelines in this transaction, namely the Trans-Alaska Pipeline System (“TAPS”), the Milne Point Oil Pipeline and the Milne Point Products Pipeline (collectively the “Milne Point Pipelines”), and the Point Thomson Export

Pipeline (“PTEP”), are in the best interest of the public.¹ AS 42.06.140(a)(1) establishes the limits of the Commission’s authority as the regulation of “pipelines and pipeline carriers in the state.” Thus, the scope does not extend to the numerous matters outside this limited issue that were raised in the public comments, including but not limited to whether Hilcorp Alaska, LLC (“Hilcorp Alaska”) should be allowed to acquire the stock of BP Exploration (Alaska) Inc. (“BPXA”) and its interests in the Prudhoe Bay Unit, labor issues affecting the Prudhoe Bay field, corporate tax or royalty issues, oilfield or tanker operations, creation of additional regional citizens advisory councils, corporate giving policies, and/or climate change.

The relevant standard for transfers of a CPCN is whether Harvest Alaska is “able and willing” to operate the interests it is acquiring under the applicable laws and regulations, and whether the continued use of the pipelines at issue is required by public convenience and necessity.²

The Commission has repeatedly found that Harvest Alaska meets this standard for the approximately 320 miles of common carrier pipelines it already physically operates, including the Milne Point Pipelines and at least six other common carrier pipelines in Alaska. Harvest Alaska and BPPA submit that it should reach the same conclusion for

¹ AS 42.06.305.

² AS 42.06.270(a).

pipelines Harvest Alaska does not and will not physically operate, such as TAPS and PTEP.

B. Operation of the Trans-Alaska Pipeline System (“TAPS”)

Many of the public comments questioned Harvest Alaska’s ability to operate TAPS. However, it is important to note that Harvest Alaska will not physically operate TAPS. TAPS has since inception been, and will continue to be, physically operated by Alyeska Pipeline Service Company (“Alyeska Pipeline”). In its capacity as physical operator of TAPS, Alyeska Pipeline is responsible for hiring the employees and contractors that work on TAPS. The role of Alyeska Pipeline will not change upon the transfer of interest from BPPA to Harvest Alaska. Like BPPA before it, Harvest Alaska’s role as a partial owner of TAPS will be limited to management oversight, funding, tariffs, and accounting for pipeline nominations and movements in its portion of TAPS, with no ability to make decisions regarding Alyeska Pipeline and the operation of TAPS without the collective agreement of all TAPS owners, including ExxonMobil Pipeline Company (“EMPCo”) and ConocoPhillips Transportation Alaska, Inc. (“CPTAI”).

C. Dismantlement, Removal and Restoration (“DR&R”) Obligations

A number of commenters voiced concerns regarding whether DR&R obligations would be met when TAPS reaches the end of its useful life. These concerns are unfounded. With respect to the State of Alaska and other governmental entities, BPPA

will retain liability and remain primarily liable for approximately 49 percent of TAPS DR&R, as TAPS is configured at the closing of the acquisition. BPPA's obligations in this regard are ensured by the BPPA affiliate and parent company guarantees, which will remain in place and in full force and effect after BPPA's interest in TAPS has been transferred to Harvest Alaska.

In addition, it is important to note that the other owners of TAPS are also responsible for their share of the ultimate TAPS DR&R. By approving this transfer of the CPCN, the State of Alaska actually will be improving its situation with respect to TAPS DR&R, as liability for DR&R will expand from BPPA, EMPCo, and CPTAI today, to BPPA, EMPCo, CPTAI and Harvest Alaska (and each of their respective guaranty affiliates) in the future, if the transfer is approved. Thus, after the transfer of interest from BPPA to Harvest Alaska is complete, the State will be even better insulated from the burden of DR&R than it is currently.

D. Harvest Alaska's Request for Confidentiality of Financial Information and Financial Capability

Harvest Alaska and its affiliates routinely disclose their financial information to various regulatory agencies in the State of Alaska, including the Commission, which thoroughly review and analyze this information. Further, only a small portion of Harvest Alaska's and its affiliates' businesses are subject to economic regulation. Thus, the disclosure of financial information to the general public, beyond the Commission and

other regulatory agencies, would allow Harvest Alaska's and its affiliates' competitors, particularly those outside of Alaska, access to sensitive private information, creating an unfair competitive advantage that would be damaging to Harvest Alaska and its affiliates. For these reasons, dating back to 2011, the Commission has found in at least 19 different dockets that financial statements should be treated as confidential with respect to disclosure to the general public. However, the fact that this information has not been made public does not mean that Harvest Alaska is attempting to evade responsibility to prove that it is sufficiently well-capitalized to handle (together with the other TAPS owners and BPPA) any operational upset that could theoretically occur. Harvest Alaska has provided all relevant financial information to the appropriate regulatory agencies, which will use this information to make informed decisions and fulfill their statutory mandates to protect the State and its citizens.

E. Harvest Alaska's Operational Record and Workforce

As mentioned above, after BPPA's interest in TAPS is transferred to Harvest Alaska, Harvest Alaska will not physically operate TAPS; instead, operatorship of TAPS will remain in the experienced hands of Alyeska Pipeline. However, since some commentators have raised concerns regarding Harvest Alaska's operational and safety record, it is important to note that Harvest Alaska has an outstanding safety and environmental record in connection with its common carrier pipeline operations.

Numerous commenters recognize and appreciate that Harvest Alaska and its affiliates have distinguished themselves in Alaska by setting a high bar for work standards, environmental and safety practices, and strategic investments that will enhance both environmental and worker safety. Nevertheless, other commenters are attempting to highlight a small number of environmental and safety incidents, none of which involved any of the common carrier pipelines owned or operated by Harvest Alaska, as being endemic. Harvest Alaska's actual safety record speaks otherwise. Additionally, Harvest Alaska is committed to hiring Alaskans and Harvest Alaska and its affiliates employ Alaskans as approximately 90 percent of their Alaska workforce.

F. Alleged Overcollection of DR&R and External Funding of DR&R

At least two commenters have alleged that BPPA has, through its regulated pipeline tariff rates, overcollected the amount that will ultimately be required to fund its DR&R obligations at the end of TAPS' useful life. The same commenters also suggested that the Commission require BPPA to deposit the amount of DR&R it has collected through rates in an external fund, in order to ensure that BPPA's ultimate obligations for DR&R (including the potential obligation to refund alleged overcollected amounts to shippers), are met. However, these issues were long ago decided by both the Commission and the Federal Energy Regulatory Commission ("FERC"), and the transfer of the CPCN to Harvest Alaska does not present a basis for relitigating these issues, which are clearly

beyond the scope of these Dockets. Further, BPPA is not transferring any DR&R liability or funds to Harvest Alaska, and thus remains liable for its share of DR&R, making any issues raised relating to these funds outside of the scope of the transfers requested by these Dockets. In addition, as set forth in more detail below, BPPA's obligations in this regard (including any potential refund obligations to shippers) are ensured by the parent guaranties. Holding the transfers requested in the Applications hostage to efforts to re-litigate past decisions of the Commission that are beyond the scope of the issues presented in the instant dockets should not be permitted.

G. These Applications Should Be Approved Without a Hearing

While numerous comments were submitted during the public comment period, the Applications that initiated these Dockets were not protested. In past dockets involving transfers of interests in TAPS—even the transfer of significant interests--and dockets involving other major pipeline transfers, such as Harvest Alaska's acquisitions of its current interests in the Milne Point Pipelines, the Endicott Pipeline, the Northstar Oil Pipeline, and the Northstar Gas Pipeline, this Commission declined to hold public hearings. There is no requirement that a public hearing be held in connection with these Dockets. BPPA and Harvest Alaska submit that the Commission should follow the same process here, and move forward to a decision on the merits of the transfer of CPCN No. 311 without a public hearing. As a result, the Commission should rule on the

Applications in these Dockets within the usual six (6) month timeline³ for transfers of CPCNs or transfers of controlling interest prescribed in 3 AAC 48.661(c) and (d).

III. DETAILED RESPONSIVE COMMENTS

A. Standard and Scope of Review; Objections to the Greater BP-Hilcorp Transaction or Other Matters Not Directly Related to the Applications are Beyond the Scope of the Commission's Authority.

The Commission's jurisdiction in Docket P-19-017 is limited to considering whether the transfer of CPCN No. 311 granting BPPA the ability to operate a regulated common carrier pipeline in the State of Alaska is in the best interest of the public. AS 42.06.140(a)(1) states that the Commission "shall regulate pipelines and pipeline carriers in the state." AS 42.06.630(16) defines a "pipeline" as "all the facilities of a total system of pipe . . . in this state used by a pipeline carrier for transportation, for hire and as a common carrier, of oil [or] gas . . . for delivery, storage, or further transportation." Accordingly, the Commission's jurisdiction is limited to the regulation of common carrier oil and gas pipelines like TAPS, the Milne Point Pipelines, and PTEP. Such jurisdiction does not extend to facilities either upstream or downstream from the common carrier pipeline. The relevant standard of review is set forth in AS 42.06.305(b), which states that "[t]he commission's decision under this section shall be based on the best interest of the public."

³ The Applications in these Dockets were filed on September 27, 2019. The six month timeline would expire on March 27, 2020.

Some commenters wrote about aspects of the BP-Hilcorp transaction that are outside of the RCA's ambit. As such, any discussion about whether Hilcorp Alaska should be allowed to acquire the stock of BPXA and its interests in the Prudhoe Bay Unit, labor issues affecting the Prudhoe Bay field, corporate tax or royalty issues, oilfield or tanker operations, creation of additional regional citizens advisory councils, corporate giving policies, or climate change, are all beyond the scope of this proceeding and cannot be considered by the Commission in these Dockets. In Docket P-19-017, the Commission must focus solely on those issues directly related to Harvest Alaska's acquisition of BPPA's interest in CPCN 311 and BPPA's related operating authority of its portion of TAPS (collectively, the "TAPS Interest"). In Dockets P-19-015 and P-19-016, the Commission must focus on those issues directly related to Harvest Alaska's acquisitions of partial interests in PTE Pipeline, LLC ("PTE Pipeline") and Milne Point Pipeline, LLC ("MPPLLC").

In considering an application for approval to transfer a CPCN or a controlling interest in a pipeline carrier, the Commission is guided by the standard for issuance of an original CPCN found in AS 42.06.270(a):⁴

[A] certificate shall be issued to any qualified applicant, authorizing the whole or any part of the operation, service, construction, extension, or acquisition covered by the application, if it is found that the applicant is able and willing properly to do the acts and to

⁴ See *i.e.* Order P-18-012(3) dated December 10, 2018, at 4.

perform the service proposed and to conform to the provisions of this chapter and the requirements and regulations of the commission, and that the proposed service, operation, construction, extension, or acquisition, to the extent authorized by the certificate, is or will be required by the present or future public convenience and necessity; otherwise the application shall be denied. (Emphasis added.)

In determining whether an applicant is “able and willing,” the Commission considers technical and managerial expertise as well as financial fitness.⁵ The Applications contain significant discussion of Harvest Alaska’s and its affiliates background and expertise in managing and operating common carrier pipelines in Alaska and in other parts of the United States. They also have included significant amounts of financial information in the form of financial statements from Harvest Alaska and its guaranty affiliates demonstrating that they have the financial capability to own and operate the TAPS Interest, the other 50 percent of MPPLLC they do not yet own, and a 32 percent non-operating interest in PTE Pipeline.

The Commission also considers whether the continued service is consistent with public convenience and necessity.⁶ There is no question that the continued operation of TAPS, the Milne Point Pipelines and PTEP are required for public convenience and necessity, being essential to the safe and compliant transportation of oil and condensate to market from all over the North Slope, including the Prudhoe Bay Unit, the Milne Point Unit, the Point Thomson Unit, and all the other production facilities on the North Slope.

⁵ *Id.* at 5.

⁶ *Id.* at 7.

Commenter complaints about insufficient information on the larger BP-Hilcorp transaction, and commenter requests for legislative action in response to the larger transaction, are also misplaced and beyond the scope of these Dockets. All comments on these and other topics unrelated to the issues before this Commission must be disregarded.

B. Operation of TAPS

TAPS is and will continue to be physically operated by Alyeska Pipeline. Alyeska Pipeline will also remain responsible for hiring the employees and contractors that work on TAPS. Alyeska Pipeline's role will not change upon the transfer by BPPA to Harvest Alaska. Like BPPA before it, Harvest Alaska's role as a partial owner of TAPS would be limited to management oversight, funding, tariffs, and accounting for pipeline nominations and movements in its portion of TAPS. With regard to the oversight responsibilities Harvest Alaska will have as a partial owner, it is important to note that many of Harvest Alaska's personnel have been successfully working with Alaska common carrier pipelines, including TAPS, for decades. They form an experienced, dedicated and knowledgeable local team of Alaskans.

TAPS is one of the most closely regulated pipelines in the world. This does not change with this transfer. Alyeska Pipeline will continue to provide a separate layer of robust environmental and worker safety protections, all in compliance with the existing

extensive regulatory oversight of TAPS operations. The existing State and federal regulatory regime on TAPS makes it extremely difficult, and extremely undesirable, for any TAPS owner or Alyeska Pipeline to make any reductions in the safety standards applicable to TAPS. As a result, concerns expressed by some commenters about Harvest Alaska making dangerous budgetary cuts to TAPS staffing/safety programs are unfounded.

Requests on hiring or labor issues related to TAPS are outside the scope of the Commission's limited common carrier pipeline jurisdiction. In addition, because TAPS is operated by Alyeska Pipeline through the employees and contractors of Alyeska Pipeline, the transfer of the TAPS Interest in this Docket will not create or necessitate any sizable employment decisions by Harvest Alaska.

C. BPPA and its Guaranty Affiliates Remain Liable for and will Bear the Dismantlement, Removal and Restoration Burdens for TAPS Upon Cessation of its Service Life

Some commenters have also expressed concern that if BPPA is permitted to transfer its TAPS Interest to Harvest Alaska, the State of Alaska and local governments could ultimately bear the financial burdens of TAPS' eventual DR&R, suggesting that BPPA will be unwilling or unable to shoulder its DR&R responsibilities. These concerns are unfounded. As explained in the Application initiating Docket P-19-017, BPPA will continue to be liable for the ultimate DR&R of TAPS under its current configuration

(with Harvest Alaska having responsibility for the DR&R of any facilities that are added after the date on which the transaction closes), and BPPA's liability is insured by the existence of two separate guaranties issued by BPPA's parent company, which are unaffected by the transfer of BPPA's interest in TAPS to Harvest Alaska.

As explained in the Application initiating Docket P-19-017, BPPA's obligations to fully fund its DR&R liabilities are ensured not merely by the demonstrated financial stability of BPPA and its parent company, BP Corporation North America Inc. ("BPCNA"), but by the guaranties that BPPA and BPCNA have provided both to the federal government and to this Commission and the State of Alaska. At the time of TAPS' initial construction, each of the TAPS owners that was a subsidiary pipeline company was required to obtain from its parent company a guaranty guaranteeing each TAPS owner's obligation to pay money to the United States arising from breach of the federal right-of-way agreements.⁷ Under the federal guaranties, each guarantor is liable for "any and every breach of the terms and conditions of the Agreement for which monetary damages to the United States are ascertainable."⁸ The federal government found that these guaranties were sufficient to ensure that, at the end of TAPS' service life many decades in the future, the TAPS owners would ultimately perform any DR&R obligations on federal rights-of-way in an acceptable manner, thus justifying the grant of

⁷ The federal right-of-way agreement requires the rights of way to be restored in a manner that is acceptable to the government at the end of TAPS' service life.

⁸ Guaranty from The British Petroleum Company Limited dated August 1, 1974, at § 2.

the rights of way. The British Petroleum Company Limited provided this guaranty to the federal government in 1974, and it remains in place today. Similarly, in 2003, in order to resolve the pending disputes regarding DR&R in Docket Nos. P-97-007 and P-97-004, this Commission required each intrastate TAPS carrier to provide a guaranty satisfactory to the Commission guaranteeing all common carrier obligations of the TAPS owners to the Commission under AS 42.06, including the obligation to fully perform and fund DR&R when TAPS reaches the end of its service life. Like the federal government, this Commission determined that the guaranties were sufficient to ensure that each TAPS owner met its DR&R obligations to the State of Alaska, and to intrastate ratepayers (as discussed below) in the future. BPPA and BPCNA provided the guaranty to the Commission in 2003, and that guaranty remains in place today.

BPCNA has also provided a guaranty in favor of the State of Alaska dated October 24, 2002 of BPPA's obligations under the State's Right-of-Way Lease for the Trans-Alaska Pipeline and Associated Rights (ADL 63574) which, together with the guaranties supplied by EMPCo's and CPTAI's guarantors, remain in place today.

As this Commission is aware, neither the 1974 federal guaranty nor the 2002 or 2003 state guaranties will be affected by the transfer of BPPA's interest in TAPS to Harvest Alaska. Thus, just as BPPA's DR&R obligations will remain unchanged after the transfer of its interest in TAPS to Harvest Alaska, the protections that guarantee that

those obligations are ultimately fulfilled also remain in place, ensuring that DR&R will be fully funded and performed when TAPS reaches the end of its useful life. Indeed, even in the case of partial DR&R which occurs as certain facilities are retired prior to the ultimate end of the TAPS' service life, BPPA will be responsible to fund its share of those obligations on an ongoing basis as they arise. BPPA and its parent guarantors have been and will continue to be committed to funding BPPA's share of the full DR&R of TAPS when the time comes and will continue to stand behind BPPA's obligations to this Commission, the State of Alaska, and its citizens.

Additionally, the other owners of TAPS, namely EMPCo and CPTAI (and each of their respective guaranty affiliates) will each remain responsible for their share of the ultimate DR&R as well. This transaction does not decrease the DR&R obligation of the other TAPS owners, either in amount or scope.. Furthermore, by approving this transfer, the State of Alaska will be improving its situation with respect to DR&R as liability for DR&R will expand – from BPPA, EMPCo and CPTAI (and each of their respective guaranty affiliates) today, to BPPA, EMPCo, CPTAI and Harvest Alaska (and each of their respective guaranty affiliates) in the future. It is difficult to conceive of a scenario in which any state would be better insulated from the burden of DR&R than the State of Alaska is under the facts presented here.

D. Reply to Comments in Opposition to Petitions for Confidential Treatment of Financial Statements

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Harvest Alaska and its affiliates will suffer severe and irreparable competitive harm should their private financial information be publicly disclosed. Accordingly, their interest in preventing competitive harm outweighs the interest in public dissemination of that information, which is the conclusion the Commission has come to repeatedly in the past with respect to Harvest Alaska and its affiliates. The present case should be no different. As described in Harvest Alaska, LLC, Hilcorp Alaska, LLC and Harvest Midstream I, L.P.’s Petitions for Confidential Treatment of Financial Statements filed in these Dockets (“Petitions for Confidentiality”), 3 AAC 48.045(a) requires good cause to classify records as confidential. “Good cause” is defined in 3 AAC 48.045(b) as a showing that “disclosure of the record to the public might competitively or financially disadvantage or harm the person with confidentiality interest or might reveal a trade secret.”

In the Petitions for Confidentiality, Harvest Alaska, Hilcorp Alaska, and Harvest Midstream (collectively, “Petitioners”) set forth specific areas where disclosure of their private financial information would disadvantage or harm them. This Commission has repeatedly recognized their legitimate interests in maintaining the confidentiality of that private financial information, most recently in its Order No. 6 in Dockets P-19-007, P-19-008, P-19-009, P-19-010, P-19-011, and P-19-012 dated October 28, 2019. In Order No. 6, the Commission found that:

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disclosure of Harvest Midstream's 2016–2017 and 2017–2018 audited financial statements may competitively or financially disadvantage Harvest Midstream and, potentially, its affiliates. We further find that the potential competitive harm to Harvest Midstream of disclosure of the financial information outweighs the public interest in disclosure. We therefore find that the need for confidentiality outweighs the public interest in disclosure of the financial statements of Harvest Midstream.⁹

The Commission has made the same findings with respect to the confidential financial information of Hilcorp Alaska as recently as late 2017:

We find that disclosure of Hilcorp Alaska's financial information may competitively or financially disadvantage Hilcorp Alaska and potentially its affiliates. We further find that the potential competitive harm to Hilcorp Alaska by disclosure of the financial information outweighs the public interest in disclosure. We therefore find that the need for confidentiality outweighs the public interest in disclosure of the financial statements of Hilcorp Alaska.¹⁰

In total, the Commission has granted petitions for confidential treatment of the financial statements of Hilcorp Alaska, Harvest Alaska, Harvest Midstream, and Hilcorp Energy I, L.P., in at least 19 separate dockets over the past nine (9) years.¹¹ All of the orders granting confidential treatment were granted for exactly the same reasons as are sought here – significant competitive harm or disadvantage that would result from disclosure of the financial statements outweighing the public interest in disclosure.

⁹ P-19-007(6), P-19-008(6), P-19-009(6), P-19-010(6), P-10-011(6) and P-19-012(6) dated October 28, 2019 ("P-19-007 Order 6"), at 6.

¹⁰ P-17-007(1)/P-17-008(1)/P-17-009(1) dated November 3, 2017, at 7.

¹¹ P-11-015(1)/P-11-016(1)/P-11-017(1) dated October 21, 2011; P-12-007(1) dated July 20, 2012; P-14-014(2)/P-14-015(2)/P-14-016(2)/P-14-017(2)/P-14-018(2) dated July 22, 2014; P-15-011(2) dated July 22, 2015; P-17-007(1)/P-17-008(1)/P-17-009(1) dated November 3, 2017; P-19-007(6), P-19-008(6), P-19-009(6), P-19-010(6), P-10-011(6) and P-19-012(6) dated October 28, 2019.

Moreover, the Department of Natural Resources in a joint House and Senate Resources Committee hearing on December 16, 2019 stated that more than sufficient financial statements, information and insurance verifications have been submitted in regular intervals by Harvest Alaska and its affiliates to multiple agencies, in many instances dating back to 2011, thus giving the Commission and other regulatory agencies a full financial picture to make their analyses.

Harvest Alaska's financial and other confidential information is being closely reviewed by the Commission staff and the staffs of the other regulatory agencies charged with assessing the financial capability of Harvest Alaska and its affiliates for the benefit and protection of the State of Alaska.

Contrary to the beliefs of many commenters, the Petitioners do *not* seek to prevent disclosure of their audited and unaudited financial statements to the relevant oversight agencies like Commission, the State Pipeline Coordinator Section ("SPCS"), the Department of Natural Resources, Division of Oil and Gas ("DOG") and the United States Department of Interior - Bureau of Land Management ("BLM"). Similarly, the Petitioners have *not* requested, and do not intend to request, nondisclosure of any regulatory admonitions or fines, or any other information. They *are* requesting that their private financial information, which has not previously been required to be made public,

remain confidential in order to protect them from potential competitive harm or disadvantage.

As Senator Cathy Giessel explains in her comment, the State of Alaska should not require, as a condition for any type of company undertaking business on its land or with its resources, disclosure of confidential financial information that could adversely impact a company's competitive position as the State of Alaska seeks their investment dollars. It would be bad policy and send a poor signal to private businesses thinking of investing in Alaska if they see that their private, confidential information would need to become public, even when a large part of the overall company's business is elsewhere and it operates largely in unregulated markets, as outlined in the Petitions for Confidentiality.

Finally, there is no public interest requiring disclosure which outweighs the privacy interests of the Petitioners. Not one commenter stated that Harvest Alaska or any of its affiliates will suffer no competitive harm as a result of requiring disclosure. The Commission, the SPCS, DOG, the BLM, and their respective staffs, will all have the opportunity to review and analyze the information in full. They are already charged with making decisions for the benefit of the public and their opportunity to review and analyze the information in depth should provide comfort to the public that their interests are being fully represented and protected. As such, the public's interest in disclosure is scant where so many public agencies will have access to the information.

Petitioners are simply continuing with previous practice in keeping their private financial information confidential, just as this Commission has ruled they can in at least 19 previous dockets over the last nine years.

E. Reply to Opposition to Motions for Waiver of Requirement to File Audited Financial Statements

Both Hilcorp Alaska and Harvest Midstream's financial statements *are* audited and have been submitted to the relevant agencies. It is very common for subsidiary level entities to have unaudited financial statements because the subsidiary entities are captured within the audited financial statements of their parent companies. It is so common, in fact, that the Commission's regulations contemplate this exact situation in 3 AAC 48.625(a)(7)(D). That regulation sets forth the requirements for obtaining a waiver of the audited financial statement requirement of 3 AAC 48.625(a)(7)(B) or (C):

[A] request for waiver under this subparagraph must include (i) a certification that independent audits are not performed; (ii) financial statement consisting of, at a minimum, comparative balance sheets, income, and cash flow statements for the two most recent fiscal years preceding the date of the application, verified and certified for accuracy; and (iii) a description of how the public convenience and necessity requires the service.

Harvest Alaska has complied with each of the requirements to obtain the waivers and the waivers should be granted. The Commission has granted this type of waiver to

Harvest Alaska and its affiliates in at least five (5) dockets over the past three years and should do so again.¹²

F. Harvest Alaska's Operational Record and Workforce

As the Commission is aware but many of the commenters may not be, Harvest Alaska already owns, in whole or in part, and has a history of successfully operating, an extensive network of regulated common-carrier oil and gas pipelines throughout Cook Inlet and the North Slope, including the Milne Point Pipelines, the Endicott Pipeline, the Northstar Oil and Gas Pipelines, the Cook Inlet Pipe Line, the Swanson River Oil Pipeline, and the Kenai Beluga Pipeline. Harvest Alaska and its subsidiaries currently own and operate a total of approximately 320 miles of Alaska common carrier pipelines.

During the past eight years, Harvest Alaska and its common carrier subsidiaries have demonstrated themselves to be careful and compliant common carrier pipeline operators. As just one example, Harvest Alaska subsidiary Cook Inlet Pipe Line, LLC has recently completed a highly innovative reconfiguration of the oil and gas pipelines in Cook Inlet (the "Cross Inlet Project") using existing infrastructure to the maximum extent possible to achieve a true win-win for the State of Alaska. The Cross Inlet Project provided major environmental risk reduction by allowing for the decommissioning of the Drift River Oil Terminal, the Christy Lee Loading Platform, and a large section of the

¹² P-17-007(1)/P-17-008(1)/P-17-009(1) dated November 3, 2017; P-17-010(2) dated December 26, 2017; P-18-010(2) dated August 2, 2018.

Cook Inlet Pipeline, which are all located at the foot of an active volcano, Mt. Redoubt, whose regular eruptions have repeatedly interrupted operations and caused damage at the terminal.

The Cross Inlet Project also eliminated the need for tankers to move oil across the treacherous Cook Inlet to Nikiski, providing a much safer undersea pipeline path instead. It also increased safety of the local natural gas supply by separating transportation lines by miles that had formerly been immediately adjacent to one another and potentially subject to damage from a common incident. All of this has been done without raising rates on gas shippers and with significantly lowering total transportation rates for west side oil shippers.

On all of these issues, Harvest Alaska has extensive experience and expertise in Alaska and, through the combined experience and expertise of its affiliates like Harvest Midstream and Harvest Midstream Company (“HMC”), all over the U.S. as well.

Although many of the commenters have focused on TAPS, Harvest Alaska is also indirectly acquiring an additional 50% interest in MPPLLC and a 32% interest in PTE Pipeline. Harvest Alaska already owns the other 50% in MPPLLC and is the operator of the Milne Point Pipelines, and PTEP is majority-owned by EMPCo, which is the operator of that pipeline. In either case, no significant additional management or operational responsibility will result from this transfer.

Many commenters recognize and appreciate that Harvest Alaska and its affiliates have distinguished themselves in Alaska by setting a high bar for work standards, environmental and safety practices, and strategic investments that enhance both environmental and worker safety. This is particularly notable because some of the Cook Inlet assets, at the time Harvest Alaska obtained them, needed upgrades, maintenance, and in some cases, replacement. Harvest Alaska has spent tens of millions of dollars bringing those assets back up to current standards of modern pipeline operation. Harvest Alaska has a robust inspection and safety regime designed to minimize the inherent risks associated with transporting oil and gas. Nevertheless, some commenters misunderstand and misinterpret a small number of environmental and safety incidents, none of which involved any of the common carrier pipelines owned or operated by Harvest Alaska, as being endemic.¹³

Finally, Harvest Alaska, with the support and guaranties of its parent companies, possesses the financial and human resources necessary to own the TAPS Interest, own a minority interest in PTE Pipeline, continue to operate Milne Point pipelines and to respond to and remediate any environmental event which could reasonably be expected to arise from its partial TAPS ownership, its ownership of 100% of MPPLLC, or its 32% interest in PTEP. As explained in the Application in these Dockets, Harvest Alaska is

¹³ While the instances cited by some commenters do not apply to the common carrier pipelines, it is important to note that each such environmental or safety issue cited in the comments was investigated and completely resolved with the appropriate agency.

willing to provide affiliate guaranties ensuring that its responsibilities are backed up billions of dollars in assets. Harvest Alaska and its affiliates comprise a very substantial multi-billion dollar group of companies that operates in many areas of the United States. It can easily support Harvest Alaska's or its affiliates' abilities to respond to and remediate an environmental event here in Alaska, and the Commission and other State and federal regulators will have ample opportunity to confirm that is the case.¹⁴ In short, Harvest Alaska is able and willing to provide the service and there is no question that transportation service on TAPS, the Milne Point Pipelines, and PTEP are all still required for public convenience and necessity.

G. External Funding of DR&R is Not Necessary, Nor is Relitigating Decided DR&R Issues


Several commenters, including Tesoro Alaska Company ("Tesoro") and Petro Star, LLC ("Petro Star"), suggest that the Commission consider establishing an external fund to ensure that all TAPS DR&R obligations are met, including any potential refund obligations to shippers that may result from the alleged overcollection of DR&R costs in BPPA's TAPS rates. This issue is outside the scope of the instant Dockets, which are limited to examining whether the transfer of the CPCN 311 from BPPA to Harvest Alaska is in the best interest of the public.

¹⁴ For example, the Alaska Department of Natural Resources, the SPCS and the BLM, must approve the transfer of the applicable rights-of-way and the Alaska Department of Environmental Conservation will require Harvest Alaska to obtain a Certificate of Financial Responsibility.

Further, the Commission long ago heard and rejected exactly this request, and neither Tesoro nor Petro Star has presented any facts or arguments that would justify revisiting this issue or reaching a different conclusion in the instant docket.

BPPA notes that Tesoro suggests in its comments that any external fund ultimately established by the Commission include not only a portion of DR&R funds collected through BPPA's intrastate rates, but also the portion collected through BPPA's interstate rates. The portion of DR&R funds collected through TAPS interstate rates is not within the jurisdiction of this Commission but falls within the exclusive jurisdiction of the FERC. The fact that TAPS' interstate rates—and any DR&R refund obligations that may ultimately be ordered related to those interstate rates—are within the purview of the FERC rather than the RCA has previously been recognized by both the FERC and this Commission.¹⁵ In fact, in Opinion No. 502, the FERC acknowledged its jurisdiction over DR&R funds collected through interstate rates, and declined to reach the issue of whether refunds from any overcollection of DR&R are due until the ultimate cost of DR&R is known and final, at the end of TAPS' useful life.¹⁶ With respect to claims of potential overcollection refunds, the Commission rejected Tesoro's arguments that the DR&R amounts collected in intrastate rates before 1997 actually over-collected the expected

¹⁵ See FERC Docket No. IS05-82 and RCA Docket P-08-009.

¹⁶See BP Pipelines Alaska Inc., 123 FERC 61.287 at PP 161-63 (2008)(“Opinion 502”) 

amount of the ultimate cost.¹⁷ The rates in question were not timely protested by Tesoro or anyone else and, as a result, the Commission determined in its Order P-97-004(166)/P-97-007(125)/P-03-004(17) (“Order 125”) that the only issues it could address were the “management of the DR&R funds already collected and assurance that DR&R funds will be available to perform DR&R and pay refunds *if any* are due” (emphasis added).¹⁸ The Commission addressed that narrow issue in Order 125 and concluded unequivocally, like the FERC in Order 502, that it would not address potential refund liability for alleged DR&R overcollections until such time as all DR&R activities are actually completed and the total costs of DR&R are known.¹⁹ This finding was upheld on appeal to the Alaska Superior Court.²⁰

The Commission also addressed the issue of creating an external fund in Order 125, and concluded that establishing such a fund was unnecessary, finding that “[f]und management issues can be satisfactorily addressed by requiring each intrastate TAPS Carrier to file statements and guarantees.”²¹ The Commission’s decision not to require an external fund was also upheld on appeal to the Alaska Superior Court.²² BPCNA filed

¹⁷ No amounts have been collected in TAPS intrastate rates for DR&R costs since 1996.

¹⁸ Order 125 at 4, 9.

¹⁹ Order 125 at 9 (“If, however, a shipper has not protested the amount of DR&R that a carrier proposes to collect in rates, then the shipper must wait to challenge the amount collected as an overcollection when DR&R is complete and the final costs of DR&R are known. We, therefore, do not now address any possible pre-1997 DR&R overcollections.”)

²⁰ See Decision and Order dated September 17, 2010 in Case No. 3AN-04-0864CI, at 13.

²¹ Order 125 at 10.

²² See Decision and Order dated September 17, 2010 in Case No. 3AN-04-0864CI, at 14.

the requested guaranty on September 22, 2003 in Docket No. P-97-007, guaranteeing the “full and timely performance of all obligations of [BPPA] under AS 42.06, including the obligation, *if any*, to pay refunds to shippers for overcollection of DR&R amounts including overcollection caused by accumulated interest on and tax treatment of already collected DR&R amounts” (emphasis added). Thus, BPPA’s obligation to intrastate shippers such as Tesoro and Petro Star for refunds remains protected by the guaranty and reporting requirements, as it was in 2003 after the Commission issued Order 125. BPPA and its parent guarantors, together with EMPCo and CPTAI and their guarantors, retain and ensure the ultimate payment of the DR&R liability for all existing TAPS facilities, regardless of when the DR&R activities take place. BPPA and its guarantors will remain part of a large multi-national energy company with enormous resources. Just as the Commission found in Order 125, retained DR&R liability and guaranties provide sufficient protection for the State and the Commission.²³

Any evaluation of whether there should be a change in the management of intrastate TAPS DR&R funds already collected is beyond the scope of Docket P-19-017.²⁴ Note that Docket P-97-007 was initiated in 1997 but it was not decided on appeal

²³ As discussed above, BPPA’s obligations under the State of Alaska pipeline right-of-way lease are guaranteed by BPCNA. Its common carrier obligations to the Commission are also guaranteed by BPCNA. Its obligations under its federal right-of-way grant are guaranteed by both BPCNA and The British Petroleum Company, Limited.

²⁴ Such an evaluation would be very complex and could potentially extend for a number of years into the future while the Commission investigates alternate management structures and whether retroactive ratemaking will prevent any consideration of changed structure or overcollection liability. The duration of such proceedings would likely be extended by one or more appeals.

by the Superior Court (it was not appealed to the Supreme Court) until 2010, thirteen years later. Holding this proposed transfer hostage to efforts to relitigate past decisions of the Commission that are outside the scope of the instant Dockets should not be allowed.

H. No Hearing is Required in Order to Approve the Applications and the Commission Should Rule on the Applications Within the Six Month Period Set Forth in 3 AAC 48.661

There is no requirement that the Commission hold a hearing on the Applications before issuing an order and no hearing is necessary or appropriate in these Dockets.

Under 3 AAC 48.654(a), if an interested person wants to protest an application, that protest must be filed prior to the end of the public comment period. 3 AAC 48.654(b) requires that any such protest must include “(1) specific grounds for the protest, including a listing of facts in dispute; (2) any steps the applicant may take to mitigate the protest; (3) any conditions the commission should consider applying to the application if approved; and (4) a petition to intervene under 3 AAC 48.110.”

If a filing does not include the requirements for a protest, including a petition to intervene, the Commission “will consider the filing to be comments.”²⁵ No protests were filed under 3 AAC 48.654, nor were any petitions to intervene filed under 3 AAC 48.110 prior to the expiration of the public comment period. Even the City of Valdez, which is

²⁵ 3 AAC 48.654(c).

the only commenter to have indicated an intention to seek formal intervention later, failed to file a timely protest or petition to intervene.

Under 3 AAC 48.110(a), intervention will be considered “only in those cases that are to be decided upon an evidentiary record after notice and hearing.” Because no hearing is required for an application to transfer a CPCN or a controlling interest in a pipeline carrier, and no party filed a protest before the end of the public comment period, there is no reason for the Commission to hold a hearing in these Dockets.

Indeed, it has long been the practice of the Commission not to hold hearings on pipeline transfer applications, even for major transactions. For example, the transfer of Atlantic Richfield Company’s major interests in ARCO Transportation Alaska, Inc. (the holder of ARCO’s TAPS interest), Oliktok Pipeline Company, Alpine Pipeline Company, Cook Inlet Pipe Line Company, and Kuparuk Pipeline Company, was approved without a hearing.²⁶

Williams Alaska Pipeline Company’s (“WAPCO”) acquisition of Mobil Alaska Pipeline Company’s (“MAPC”) interest in TAPS was also accomplished without a hearing.²⁷ This transfer was particularly noteworthy because for the first time a TAPS interest was transferred to a company that was not one of the existing TAPS owners.²⁸ It is also noteworthy because, like this transaction, MAPC and its affiliate guarantor

²⁶ See Order P-00-010(1)/P-00-011(1)/P-00-012(1)/P-00-013(1)/P-00-014(1) dated July 26, 2000.

²⁷ See Order P-00-008(1)/P-00-016(1) dated June 20, 2000.

²⁸ *Id.* at 3.

retained MAPC's share of the DR&R liability and all liability for potential DR&R overcollections.²⁹ And yet, even though WAPCO had not filed an adequate affiliate guaranty, the Commission approved the transfer subject to the requirement that WAPCO supply a parent guaranty of its common carrier obligations under AS 42.06. Harvest Alaska has already offered to supply an affiliate guaranty of its common carrier obligations under AS 42.06, the proposed forms of which are attached as Exhibits G and H to each of its Applications in these Dockets. Like the WAPCO case, BPPA and its affiliate guarantors are retaining the DR&R liability and any liability for DR&R overcollections. Again, despite WAPCO's failure to supply an acceptable affiliate guaranty, the Commission approved the transfer without a hearing.

In the most recent transfer involving an interest in TAPS, the Commission approved Koch Alaska Pipeline Company's ("KAPCO") transfer of its TAPS interest to BPPA, EMPCo and CPTAI. Again, no hearing was required despite an unsuccessful attempt by Unocal Pipeline Company to intervene.³⁰ As with the WAPCO transfer, MAPC and its guaranty affiliate retained DR&R liability and potential DR&R overcollection liability.

In a more recent example of a major transaction that was approved without a hearing, in 2014 BP Transportation (Alaska) Inc. ("BPTA") transferred its entire interests

²⁹ *Id.* at 4.

³⁰ See Orders P-12-019(1) dated November 21, 2012 (order denying intervention) and P-12-019(2) dated December 14, 2012 (order approving transfer without a hearing).

in Northstar Pipeline Company, LLC (“NPC”) and Endicott Pipeline Company (“EPC”), and 50% of its interest in MPPLLC to Harvest Alaska.³¹ The Commission approved those transfers to Harvest Alaska without a hearing.

Even more recently, the Commission approved Harvest Alaska’s acquisition of EMPCo’s interest in EPC without a hearing (P-18-010(3) dated November 21, 2018) and Kuparuk Pipeline Company’s acquisition of BPTA’s interest in the Kuparuk Transportation Company, owner of the Kuparuk Pipeline (P-18-012(3) dated December 10, 2018), both without a hearing.

It is actually the norm for the Commission to decide on pipeline transfer applications *without* holding a hearing, even for transfers related to large transactions involving both upstream and midstream elements like this one. The Commission should follow its usual practice and decide this matter without a hearing.

Because no hearing is necessary, the Commission should adhere to its usual six (6) month timeline for issuing a ruling on applications for transfers of a CPCN, or of a controlling interest in the holder of a CPCN, set forth in 3 AAC 48.661(c) and (d). There are no issues in connection with these Applications that are materially different from previous transfers of interests in TAPS or other pipeline CPCNs or pipeline carrier controlling interests that it cannot be done within the timelines set forth in the rule.

³¹ See Order P-14-014(3)/P-14-015(3)/ P-14-016(3)/ P-14-017(3)/ P-14-018(3) dated November 7, 2014.

There are important policy reasons for adhering to the rule, not the least of which is predictability in connection with commercial transactions. Having a completely open-ended timeline would introduce significant uncertainty into transactions, requiring parties to hold transactions in abeyance for potentially long and uncertain periods of time. This is not a desirable outcome especially where, as here, the pipeline portion of the transaction is relatively small compared to the larger transaction, but where the closing of the larger transaction is conditioned on the Commission's approval of the pipeline portion.

The Commission has historically recognized the need to decide pipeline matters like these expeditiously. The five applications related to the ARCO transaction were filed with the Commission on May 12, 2000 and were approved by July 26, 2000, just three and half months later, despite involving large interests in TAPS, the Kuparuk Pipeline, and other Alaska pipelines.³² The WAPCO application to transfer a TAPS interest was filed on April 14, 2000 and approved on June 20, 2000, just over two months later.³³ The KAPCO application was filed on October 22, 2012 and approved on December 14, 2012, less than two months later.³⁴ Harvest Alaska's three applications to acquire EPC, NPC, and 50% of MPPLLC were filed on May 29, 2014 and were approved

³² See Order P-00-010(1)/P-00-011(1)/P-00-012(1)/P-00-013(1)/P-00-014(1) dated July 26, 2000, at 1.

³³ See Order P-00-008(1)/P-00-016(1) dated June 20, 2000, at 1.

³⁴ See Order P-12-019(2) dated December 14, 2012, at 2.

on November 7, 2014, just over five months later.³⁵ Harvest's application to acquire EMPCo's interest in EPC was filed on June 5, 2018 and approved on November 21, 2018, again in less than six months.³⁶ Finally, Kuparuk Pipeline Company's application to acquire BPTA's interest in Kuparuk Transportation Company was filed July 2, 2018 and approved on December 10, 2018, in just over five months.³⁷ The Commission should continue its historical practice by ruling on these Applications within the six months³⁸ set forth in 3 AAC 48.661(c) and (d).

III. CONCLUSION

With appropriate financial guaranties and other sureties, as required of all Alaska operators by several state and federal agencies and departments, Harvest Alaska is highly qualified, able and willing to hold the TAPS Interest, the half of MPPLLC it does not already own, and a 32% minority interest in PTEP. Harvest Alaska has strong financial and management resources, pipeline expertise, and desire to own the interests set forth above. Harvest Alaska has demonstrated itself to be a well-managed, innovative pipeline company with the knowledge and expertise necessary to continue succeeding in Alaska.

For the reasons stated above and in the Applications, BPPA and Harvest Alaska submit that the Commission should grant Harvest Alaska's Motions for Waiver, the

³⁵ See Order P-14-014(3)/P-14-015(3)/ P-14-016(3)/ P-14-017(3)/ P-14-018(3) dated November 7, 2014, at 3.

³⁶ See Order P-18-010(3) dated November 21, 2018, at 1.

³⁷ See Order P-18-012(3) dated December 10, 2018, at 1.

³⁸ The six month timeline would expire on March 27, 2020.

Petitioners' Petitions for Confidentiality, and the Applications, specifically including approving the transfer of BPPA's shares of TAPS, MPPLLC, and PTE Pipeline, to Harvest Alaska, without the need for a hearing and within the six month timeline set forth in 3 AAC 48.661(c) and (d).

DATED at Anchorage, Alaska this 20th day of December, 2019.

GUESS & RUDD P.C.
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VERIFICATION

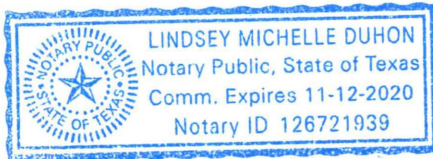
STATE OF TEXAS)
) ss.
COUNTY OF HARRIS)


Michael D. Fertitta, being first duly sworn, on oath deposes and states that he is the Vice President of Harvest Alaska, LLC; and that he has read the foregoing and is familiar with the contents thereof; and that the statements therein contained are true to the best of his knowledge, information and belief.



Michael D. Fertitta

SUBSCRIBED AND SWORN TO before me this 20th day of December, 2019.





Notary Public in and for the State of Texas
My commission Expires: 11/12/20

VERIFICATION

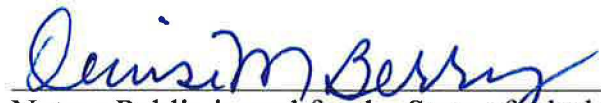
STATE OF ALASKA)
)
THIRD JUDICIAL DISTRICT) ss.

Rob Kinnear, being first duly sworn, on oath deposes and states that he is the Vice-President of BP Pipelines (Alaska) Inc.; and that he has read the foregoing and is familiar with the contents thereof; and that the statements therein contained are true to the best of his knowledge, information and belief.


Rob Kinnear

SUBSCRIBED AND SWORN TO before me this 20th day of December, 2019.




Notary Public in and for the State of Alaska
My commission Expires: 10-13-2022