Regulatory Concerns of the Proposed British Petroleum-Hilcorp Deal

On August 27th, 2019, British Petroleum—arguably the most important oil company in Alaskan history—announced it was selling all of its Alaskan assets to Hilcorp, Energy. As part of this unprecedented deal, Hilcorp is purchasing BP’s dominant stake (48.44% ownership) in the Trans-Alaska Pipeline System (TAPS). TAPS is a regulated common-carrier pipeline that is especially vital to the public interest. The Regulatory Commission of Alaska is currently reviewing the proposed transfer of TAPS-related assets from BP to Hilcorp. These assets include BP’s 48.44% ownership interest of TAPS, its 47.59% ownership of Valdez Marine Terminal tankage, its stock ownership interest in Alyeska (TAPS operating company) and its interests in the Prince William Sound Oil Spill Response Corporation.

The Regulatory Commission of Alaska (RCA) is currently accepting comments on the proposed transfer of TAPS assets from BP Pipelines (Alaska) to Harvest, Alaska—Hilcorp’s pipeline subsidiary. Hilcorp’s relatively small size, lack of transparency as a private company, and history of safety and environmental violations should prompt questions from all Alaskans. This sale raises several pressing issues that Alaskans should be aware of, and that regulators and legislators should act upon.

BP (and soon Hilcorp) effectively controls the management of Alyeska, the service company responsible for the operations and safety of the pipeline system and its tankers. As the dominant owner of TAPS, Hilcorp would play the single largest role in determining how much money is spent maintaining the pipeline, the safety culture of Alyeska, and how vigilant the organization is to maintenance problems.

Hilcorp’s new role in overseeing Alyeska and TAPS raises significant environmental, regulatory, and public interest issues. Hilcorp has one of the worst safety and environmental records of any oil company operating in Alaska. Among its three most egregious incidents was an accident in 2015 that nearly killed three workers, an aging and poorly-maintained Hilcorp underwater pipeline that ruptured in the Cook Inlet and leaked methane for months during the winter of 2017, and death of a worker on the North Slope in late 2018. The Alaska Oil and Gas Conservation Commission (AGOCC) concluded that, “The disregard for regulatory compliance is endemic to Hilcorp’s approach to its Alaska operations…Hilcorp’s conduct is inexcusable.”

The acquisition of BP’s assets will cost Hilcorp $5.6 billion dollars, but what will it ultimately cost Alaskans?
Four issues of BP’s transfer of TAPS assets to Hilcorp are especially pertinent:

**Timing**

Hilcorp and BP have likely been negotiating this deal for over a year, yet Alaskans are only being given a mere 21 days to comment on this tremendously consequential sale of TAPS assets. The RCA rarely oversees such a large sale of assets, much less assets so central to Alaska’s political economy. It is prudent to ensure both the RCA and the Alaskan public have ample time to review what is perhaps the most important business deal in Alaska in a generation. The RCA should extend the comment period 45 days, so that all Alaskans have an opportunity to express their concerns.

**Transparency**

Hilcorp argues it should not have to disclose its audited financial returns because it is a private corporation and such a disclosure might reveal competitive information from lease sales. Hilcorp claims “potential competitive harm” to its interests “outweighs public interest in disclosure.”

The public has an overriding interest in Hilcorp disclosing its audited financial returns as part of securing a stake in Alaska’s most important economic artery. A majority of the state’s unrestricted general funds are derived from taxes that are produced from petroleum moved to market by TAPS. The public has a compelling interest in ensuring the financial stability of the corporate entity which will have a dominant stake in TAPS. Serious issues with TAPS—maintenance, security, environmental protection—can have a dramatic effect on all Alaskans. Hilcorp wants Alaskans to trust a private, out-of-state oil company with their most important energy asset, but it will not allow Alaskans to verify its financial credentials. Hilcorp should not be allowed to own and operate such vital energy assets if it is not open and honest with the Alaskan people.

The need to ensure Hilcorp’s financial health is further compelled by environmental and liability concerns laid out below.

**Our Environment**

The Trans-Alaska Pipeline System traverses 800-miles across our state and, as demonstrated in 1989, its tankers can impact thousands of miles of our coastline. It moves oil from the North Slope, across the Yukon River, through Fairbanks and Interior Alaska, throughout the Copper River watershed, to Valdez and onto tankers through Prince William Sound and the Gulf of Alaska. The proper operation of TAPS and safe movement of its oil are of vital concern to all Alaskans. If approved, this deal will make
Hilcorp the most important corporation in ensuring the environmental success or failure of TAPS.

The proposed BP-Hilcorp deal occurs at a moment when the Prince William Sound Regional Citizens’ Advisory Council (PWSRCAC) is already warning of, “a steady erosion in regulatory oversight, staffing, funding, and coordination among many of the federal and state agencies responsible for enforcing the strong laws and regulations.”

The failure of TAPS in the past has been catastrophic for the people and environment of Alaska. In 1989, the Exxon Valdez ran aground on Bligh Reef in Prince William Sound. Alyeska was responsible for spill response, but thanks to decisions by its owner companies, namely British Petroleum, spill response was abysmal. The failure of Alyeska meant that the single greatest opportunity for cleaning up the oil was lost; the oil spill devastated the environment of Prince William Sound, led to the functional extinction of the AT1 Orca pod, and produced widespread human suffering among the peoples of the region. Alaskans must be vigilant to ensure this never happens again, beginning with asking pressing questions of Hilcorp’s proposed deal

What happens if another Exxon Valdez occurs, but Hilcorp is the owner company responsible? What if a TAPS spill were to impact a major riparian system—like the Yukon or Copper River? Does Hilcorp (as primary owner of Alyeska) have the financial ability to remediate the problem and compensate Alaskans for the damage? Does Hilcorp have access to at least $7.5 billion dollars (the amount of 2019 dollars Exxon spent to remediate the Exxon Valdez spill)?

One of the many reasons BP is departing Alaska involves its raising capital to restore its balance sheets after paying over $63 billion in liabilities from the Deepwater Horizon disaster. That these kind of environment liabilities exceeded the value of Alaska’s prized Permanent Fund should alarm all Alaskans.

**Liability Issues**

The most important liability issue pertaining to the proposed BP-Hilcorp deal is TAPS’ Dismantlement, Removal, and Restoration (DR&R) Fund. When TAPS is no longer in service, its owners are legally required to remove all equipment and restore the right-of-way. Over $1.5 billion dollars have been collected in tariffs by TAPS owners for the purposes of DR&R. Yet these funds are not required to be held in escrow or trust accounts. Alaskans are essentially trusting that TAPS owner companies will always have the capital to pay the billions of dollars required to clean up TAPS. This is a major assumption with tremendous public interest implications.
As TAPS expert Dr. Richard Fineberg contends, “Because TAPS passes through numerous and diverse regions generally recognized to be of great environmental value, and since DR&R for TAPS includes the Valdez Marine Terminal and associated facilities, the public interest requires assurance that these extraordinary sums of money will in fact be available for their intended environmental purposes.”

The most curious facet of BP’s proposed sale of assets to Hilcorp is that BP will retain its DR&R obligations. This raises numerous questions. Why is BP retaining the liability for dismantling, removing, and restoring TAPS? How can BP—a company that is trying to liquidate its assets in Alaska—be held responsible for the billions of dollars in cleanup it owes the State?

The uncertainty around BP’s retention of TAPS DR&R liabilities suggests that the RCA should enact regulations requiring TAPS owners to establish external trust accounts for the receipt of all past and future TAPS DR&R collections.

**Recommendations**

Considering these significant issues of timing, transparency, environmental protection, and billion-dollar liabilities, we recommend that:

- the RCA should allow significantly more time for public comment. Alaskans citizens deserve at least another 45 days to comment on this extraordinary business deal infused with the public interest
- the RCA should not allow Hilcorp to hide its audited financial statements. The RCA should ensure transparency for this critically important sale
- Hilcorp should be able to demonstrate that it carries insurance to cover oil spills that cause up to $7.5 billion dollars in damage (the cost of the *Exxon Valdez* spill in 2019 dollars)
- Hilcorp should be required to undergo annual environmental compliance reviews and quarterly financial disclosures to ensure it always has the assets to cover its liabilities.
- The RCA should require BP and all other TAPS DR&R owners to place these essential cleanup funds in an escrow account.