

2. Defendant Hilcorp Alaska LLC (with Hilcorp Energy I L.P., jointly referred to as “Hilcorp”) is a limited liability company formed under the laws of Delaware, with its office and principal place of business located at 3800 Centerpoint Drive, Suite 100, Anchorage, Alaska 99503. Hilcorp owns and operates facilities and other assets in Cook Inlet for the exploration, development, production, transportation, and sale of oil and natural gas. Hilcorp is a wholly-owned subsidiary of defendant Hilcorp Energy I, L.P., a limited partnership formed under the laws of the State of Texas, with its offices and principal place of business located at 1201 Louisiana Street, Suite 1400, Houston, Texas 77002.

3. Defendant Marathon Oil Company (with Marathon Alaska Production LLC, jointly referred to as “Marathon”) is a corporation organized under the laws of Ohio with its principal place of business at 5555 San Felipe Road, Houston, Texas 77056. Marathon Alaska Production LLC is a limited liability company formed under the laws of Delaware, with its principal place of business located at 5555 San Felipe Road, Houston, Texas 77056. Marathon owns and operates facilities and other assets in Cook Inlet for the exploration, development, production, transportation and sale of oil and natural gas.

II. JURISDICTION AND VENUE

4. Jurisdiction is conferred upon this Court by AS 45.50.582. Venue is proper because each defendant maintains an office, transacts business, has an agent, or is found within the Third Judicial District at Anchorage, wherein this claim arises.

III. BACKGROUND

5. Alaska's first commercially viable oil was discovered in the Cook Inlet in 1957 at Swanson River. Following this discovery, exploration in Cook Inlet for oil resulted in the discovery of large natural gas (simply "gas" for convenience throughout this Complaint) fields.¹ South Central Alaska relies on production from Cook Inlet gas fields for electrical power generation, space heating, and industrial use.

6. Peak gross natural gas production occurred in 1994 with approximately 311 Bcf (billion cubic feet) of gas produced that year. The surplus of natural gas available in Cook Inlet over an extended period of time created a buyer's market. This resulted in long-term (as much as 20 year) contracts at prices favorable to buyers, and at a discount compared to lower 48 prices.

7. The primary purchasers of Cook Inlet natural gas are local utilities. Other buyers of gas include local industrial users like Tesoro's Cook Inlet refinery, other oil and gas companies that use gas for field operations, Conoco Phillip's Liquefied Natural Gas (LNG) facility, and at one time the Agrium fertilizer plant (which is no longer in operation).

8. Utility demand for natural gas usually varies, or "swings" throughout the year. Generally, less gas is needed in summer and more gas is needed in winter to meet increased demand for space heat and electric power production. This

¹ Nine of the biggest natural gas fields in the Inlet were discovered while exploring for oil. With the discovery of oil at Prudhoe Bay in 1968, exploration in Cook Inlet has declined, and remains at reduced levels.

demand swing has recently resulted in some utility gas contract terms that price “base gas” at one level, and “swing” gas at another level to account for variable utility deliverability needs. To help manage winter demand, the Cook Inlet Natural Gas Storage Alaska (CINGSA) facility is in the final stages of completion which should allow utilities to store gas in the summer when it is more readily available for extraction later in the winter.

9. The Cook Inlet market structure started to change about 10 years ago. Long term utility gas supply contracts entered in the 1970’s and 80’s, which largely closed the market to new gas suppliers, began to expire and were replaced by shorter term contracts.

10. The Cook Inlet market has now changed from a buyer’s market to a seller’s market. Natural gas prices have increased dramatically. Cook Inlet gas reserves are no longer sufficient to meet Cook Inlet demand for more than a few years, and new production is necessary to meet projected shortfalls.

IV. COOK INLET NATURAL GAS COMPETITORS

11. There are ten companies that produce natural gas in Cook Inlet.² Two of these companies are related (Conoco Phillips Company and Conoco Phillips Alaska) leaving nine actual producers for competitive purposes.

12. Hilcorp and Marathon compete for many of the same customers, and bid on some of the same contracts.

² Hilcorp, Marathon, Conoco Phillips, Aurora Gas LLC, Armstrong, Cook Inlet Energy, XTO Energy, Buccaneer Energy, and Pioneer.

13. The large volumes of gas demanded by some utility customers cannot be met by any one producer. This requires that the utility negotiate with at least two or more producers to meet its needs. This has allowed gas producers to obtain favorable gas prices. Contracts that previously committed 20 years of gas supplies to utilities have been replaced by one or two year contracts with higher pricing structures. These gas costs are ultimately passed directly through to consumers by the utilities.

14. Hilcorp has notified the State that it intends to purchase Marathon's Cook Inlet assets. If allowed without conditions, the acquisition will leave Hilcorp in control of over 70% of the proven gas reserves in the Cook Inlet.

V. TRADE AND COMMERCE

15. The relevant line of commerce (*i.e.*, the product market) in which to analyze the antitrust implications of the acquisition described herein is the sale and delivery of natural gas.

16. The relevant sections of the state (*i.e.* geographic market) in which to analyze the acquisition described herein include all areas to which economic and profitable sales of natural gas can be made in the same manner as provided by the current competitors. This geographic market consists primarily of South Central Alaska where the largest utility purchasers of gas are located.

17. The relevant market is highly concentrated. The acquisition would substantially increase concentration in the market in which Hilcorp and Marathon directly compete for sale and delivery of natural gas.

18. Entry by other potential competitors would not be timely, likely, or sufficient to prevent potential anticompetitive effects in the Cook Inlet.

19. Hilcorp and Marathon are actual and direct competitors in the relevant market.

COUNT I

UNLAWFUL ACQUISITION UNDER AS 45.50.568.

20. Paragraphs 1 – 19 are incorporated herein.

21. Continued, new, or expanded competition in the relevant markets for production and sale of natural gas in the Cook Inlet is limited by the existing market conditions including the cost of exploration, development and production, the availability of assets, and the uncertainty of discovering proven natural gas reserves.

22. The effect of the proposed acquisition will be to completely eliminate competition between Hilcorp and Marathon, two of the three primary competitors for sales of natural gas in the relevant market.

23. The proposed acquisition will result in Hilcorp obtaining market power, and will substantially lessen competition in the relevant line of commerce in the relevant sections of the state in violation of AS 45.50.568 for the relevant product by (a) eliminating Marathon as a substantial and independent competitor in the relevant product market in the relevant geographic markets, (b) increasing the likelihood that Hilcorp will unilaterally exercise market power, and (c) increasing the likelihood of, or facilitating, collusion or coordinated interaction.

COUNT II

MONOPOLIZATION OR ATTEMPTED MONOPOLIZATION, AS 45.50.564.

24. Paragraphs 1 – 23 are incorporated herein.
25. The acquisition of Marathon’s assets by Hilcorp will eliminate one of Hilcorp’s competitors for the sale of natural gas.
26. Hilcorp’s acquisition of Marathon’s assets will eliminate competition in the relevant market.
27. As a result of the acquisition, Hilcorp will obtain control in the relevant market such that it will be in a position to exercise monopoly power for the relevant product in violation of AS 45.50.564.

COUNT III

UNFAIR TRADE PRACTICE, AS 45.50.471.

28. Paragraphs 1 – 27 are incorporated herein.
29. The conduct described in this complaint constitutes an unfair method of competition in violation of AS 45.50.471 in that the acquisition, without conditions, could, result in Hilcorp obtaining monopoly power and potentially increasing prices for the relevant product above competitive levels.

VI. PRAYER FOR RELIEF

WHEREFORE, the State respectfully requests that this Court:

1. Enter an order finding that the effect of the proposed Acquisition may substantially lessen competition for the production and sale of natural gas in the Cook Inlet, in violation of AS 45.50.568 and .564;
2. Issue an injunction under AS 45.50.580, permanently barring the Defendants from consummating the proposed acquisition;
3. Order an award of Plaintiff's costs and attorney's fees incurred in bringing this action; and
4. Grant such other relief that this Court deems just and equitable.

DATED this _____ day of November, 2012, at Anchorage, Alaska.

MICHAEL C. GERAGHTY
ATTORNEY GENERAL

By:

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