STATE OF ALASKA
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

HARVEST ALASKA, LLC AND BP PIPELINES (ALASKA) INC.’S PETITION FOR CONFIDENTIAL TREATMENT OF CERTAIN COMPLIANCE FILINGS SUBMITTED PURSUANT TO ORDER 7

Pursuant to AS 42.06.445(c) and (d), and 3 AAC 48.045, Harvest Alaska, LLC ("Harvest Alaska") and BP Pipelines (Alaska) Inc. ("BPPA") (collectively the

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“Petitioners”) hereby petition for confidential treatment of those certain compliance filings identified herein, which Petitioners submit to the Regulatory Commission of Alaska (the “Commission”) in compliance with Commission Order P-19-015(7)/P-19-016(7)/P-19-017(7) dated April 2, 2020 (hereinafter “Order 7”).

**LEGAL STANDARDS**

Alaska Statute 42.06.445(c) broadly states that:

(c) A document filed with the commission that relates to the finances or operations of a pipeline subject to federal jurisdiction and that is in addition to or other than the copy of a document required to be filed with the appropriate federal agency is open to inspection only by an appropriate officer or official of the state for relevant purposes of the state.¹

(Emphasis added.) In addition, Alaska Statute 42.06.445(d) alternatively provides that:

(d) A person may make written objection to the public disclosure of information contained in a record filed under the provisions of this chapter or of information obtained by the commission or by the attorney general under the provisions of this chapter, stating the grounds for the objection. When an objection is made, the commission shall order the information withheld from public disclosure if the information adversely affects the interest of the person making written objection and disclosure is not required in the interest of the public.²

(Emphasis added.) As the Commission again re-affirmed in late 2017:

Records filed with us are presumed to be public under AS 42.06.445 and 3 AAC 48.040(a). We make exceptions for certain categories of documents including records classified as confidential for “good cause” under 3 AAC 48.045. A party seeking confidential treatment must demonstrate the need for confidential status according to the standard set out in 3 AAC

¹ Emphasis added. No petition for confidential treatment is required for a claim of confidentiality under 3 AAC 48.445(c).
² Emphasis added.

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48.045(b). This standard requires that we balance the interests of the party seeking confidential treatment with the public interest in disclosure.³

The procedure for obtaining confidential classification of information and records submitted to the Commission is spelled out in 3 AAC 48.045, which states in relevant part that:

(a) A person wishing to protect a record filed with, served upon, or otherwise made available to the commission must file with the commission a petition identifying the record to be protected and setting out good cause, including facts, reasons, or other grounds, for the commission to classify that record as confidential. If, at the time of filing, the person wishes to protect a record under this section, that person must stamp or otherwise mark the record as "confidential," and must file that record separately from any public record. . . .

(b) Good cause to classify a record as confidential under this section includes a showing that

(1) 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; and

(2) the need for confidentiality outweighs the public interest in disclosure.

(e) Pending the commission's action on a petition filed under (a) of this section, the record identified in the petition will be treated as confidential.

(f) Upon a determination by the commission that good cause exists under [subsection] (b) of this section, an order will be issued by the commission that classifies the record as confidential and restricts access to the record or sets out other reasonable terms or conditions regarding access to it.

(Emphasis added.)

ARGUMENT

³ See Order P-17-007(1)/P-17-008(1)/P-17-009(1), dated November 3, 2017, at pp. 5-6.
The Petitioners have provided narrative and documentary responses to many of the requests included in Order 7 without asserting confidentiality and thereby making the responses and documents public. Some of the documentation and narrative responses requested by the Commission in Order 7 should be classified as confidential under AS 42.06.445(c) or (d) or both. Others should also be kept confidential pursuant to applicable federal laws. Petitioners specifically identify the following documents and narratives filed concurrently herewith in response to Order 7 which should be kept confidential once submitted to the Commission, along with the various legal bases for the same.

**Operational Requests**

**Request No. 1**

Petitioners seek to protect and keep confidential all operational risk assessments (the “Risk Assessments”) performed for the Trans-Alaska Pipeline System (“TAPS”), Milne Point Pipeline, LLC (“MPPLLC”), and PTE Pipeline, LLC (“PTEP”) (collectively the “Pipelines”) submitted to the Commission in response to Order 7. Similarly, Petitioners seek to protect and keep confidential all of the minutes of the TAPS Owners’ committee meetings (the “Minutes”) submitted in response to Commission staff’s April 16, 2020 responses to Petitioners’ April 14, 2020 request for clarification of portions of Order 7.

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4 BP Pipelines (Alaska) Inc., ConocoPhillips Transportation Alaska, Inc., and ExxonMobil Pipeline Company are collectively referred to herein as the “TAPS Owners.”

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First and foremost, both the Risk Assessments and the Minutes are confidential under AS 42.06.445(c). Again, any document filed with the Commission that relates to the finances or operations of a pipeline subject to federal jurisdiction and that is in addition to or other than the copy of a document required to be filed with the appropriate federal agency is “open to inspection only by an appropriate officer or official of the state for relevant purposes of the state.” Here, the Risk Assessments and the Minutes plainly relate to the operations and finances of the Pipelines, each of which are subject to federal jurisdiction. Since neither the Risk Assessments nor the Minutes are required to be filed with the Federal Energy Regulatory Commission (“FERC”), these materials, once filed, are open to inspection only by an appropriate State officer for relevant State purposes and must not be made publicly available.

Further, good cause exists to keep the Risk Assessments and Minutes confidential under AS 42.06.445(d) and 3 AAC 48.045. The Risk Assessments constitute Critical Energy Infrastructure Information (“CEII”) protected under 18 CFR §388.113. As defined in that regulation, CEII includes information about potential vulnerabilities of critical infrastructure which “(i) relates details about the production, generation, transportation, transmission, or distribution of energy; (ii) could be useful to a person in planning an attack on critical infrastructure; (iii) is exempt from mandatory disclosure under the Freedom of Information Act, 5 U.S.C. 552; and (iv) does not simply give the general location of the critical infrastructure.” As is apparent upon review, the Risk

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Assessments contain detailed information about the vulnerability of specific pieces of TAPS, PTEP and MPPLLC infrastructure which could indeed be useful to anyone seeking to plan an attack.\(^5\)

The Risk Assessments relating to TAPS are also defined by 49 CFR §1520.5 as sensitive security information relating to a maritime facility (the Valdez Marine Terminal) and protected under 49 CFR §1520.9 and should be kept confidential for that reason.

The Minutes also address certain areas that have traditionally been considered confidential, such as attorney-client privileged communications. These items have been redacted. A Vaughn index, attached hereto as Exhibit A, has been prepared describing the nature of each redaction. Also, public disclosure of this information would competitively and financially disadvantage and harm the Petitioners. The Risk Assessments and Minutes reveal the Petitioners’ and the other TAPS Owners’ proprietary management decisions and decision-making processes, including information about commercial negotiation strategy, positions and progress. A potential counter party to a negotiation could glean valuable information about the TAPS Owners commercial negotiating strategy by reading these minutes. Potential and actual competitors of the TAPS Owners and their affiliates could gain a very useful understanding of how the TAPS Owners and their affiliates structure and manage their respective companies. The

\(^5\) The information is exempt from automatic disclosure under 5 U.S.C. 552(b)(4) and (9).
TAPS Owners go to great lengths to keep these materials and the information contained within them confidential.

In addition, the Risk Assessments and Minutes constitute “trade secrets” within the meaning of AS 45.50.910, et seq. Alaska Statute 45.50.940(3) defines a “trade secret” as information that:

(A) derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; and

(B) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

As explained above, the competitors and contract counter parties of the TAPS Owners and their affiliates, and of the members of PTEP and MPPLLC and their respective affiliates, could derive actual independent economic value by using the information contained Risk Assessments and Minutes, which are neither generally known to those competitors or others, nor ascertainable to them by proper means, to develop competing business, management, and pricing strategies that would damage the businesses of the TAPS Owners and the members of PTEP and MPPLLC, and give these competitors or others an unfair advantage, or subject the Owners’ businesses to unfair disadvantage if the contents were publicly available. Examples of possible harm include development of competing bidding, acquisition, and divestment strategies.
Further, both the Risk Assessments and Minutes are the subject of the TAPS Owners’, PTEP’s and MPPLLC’s reasonable efforts to maintain their secrecy. Thus, the Risk Assessments and Minutes constitute “trade secrets” which should not be publicly disclosed.

For all these reasons, the need to maintain the confidentiality of the Risk Assessments and Minutes outweighs the public interest in their disclosure, and good cause exists to keep them confidential under AS 42.06.445(d) and 3 AAC 48.045.

**Request No. 3**

Petitioners seek to protect and keep confidential the document submitted by the TAPS Owners in response to the Request No. 3, which asks for, *inter alia*, details regarding known pipeline repairs, replacements, improvements currently scheduled, underway, or not currently scheduled (the “TAPS Work Plan”).

The TAPS Work Plan should be kept confidential under AS 42.06.445(c). This document plainly relates to the operations and finances of TAPS, which is subject to federal jurisdiction. Since the TAPS Work Plan is not required to be filed with the FERC, this document is open to inspection only by appropriate State officials for relevant State purposes.

Further, good cause exists to keep the TAPS Work Plan confidential under AS 42.06.445(d) and 3 AAC 48.045. Just like the Risk Assessments and Minutes, disclosure of the TAPS Work Plan would competitively and financially disadvantage and harm the
Petitioners. The TAPS Work Plan reveal the TAPS Owners’ proprietary business plan, decisions about prioritization of projects, potential vulnerabilities of TAPS, and decision-making processes.

For all these reasons, the need to maintain the confidentiality of the TAPS Work Plans outweighs the public interest in their disclosure, and good cause exists to keep them confidential under AS 42.06.445(d) and 3 AAC 48.045.

**Request No. 4**

Petitioners seek to protect and keep confidential the Long Range Plan document for TAPS submitted in response to the Request No. 4 (the “Long Range Plan”).

The Long Range Plan should be kept confidential under AS 42.06.445(c). This document relates directly to the present and future operations and finances of TAPS, which is subject to federal jurisdiction. Since the Long Range Plan is not required to be filed with the FERC, these materials should only be open to inspection by appropriate State officials for relevant State purposes.

Further, good cause exists to keep the Long Range Plan confidential under AS 42.06.445(d) and 3 AAC 48.045. Just like the Risk Assessments, Minutes, and Work Plans, disclosure of the Long Range Plan would competitively and financially disadvantage and harm the Petitioners, and would also reveal trade secrets. The TAPS Owners put in much effort to keep the Long Range Plan confidential, as they reveal the TAPS Owners’ proprietary long-term strategic plans, future capital projects, purchases,
financial goals and projections, and business objectives, and because they reveal the actions necessary for the TAPS Owners to achieve each of the same. The public disclosure of any of this information would be anti-competitive, and should the TAPS Owners’ potential contractors have access to the Long Range Plan they could use that information to develop pricing, acquisition, divestment, and bidding strategies that would harm the TAPS Owners’ businesses and unfairly advantage potential contractors. The TAPS Owners would be placed at a competitive disadvantage if their Long Range Plan became known to competitors or potential contractors.

In addition, the Long Range Plan constitutes “trade secrets” as defined by 45.50.940(3). As explained above, the Owners’ potential contractors could derive actual independent economic value by using the information contained the Long Range Plan to develop anti-competitive pricing strategies that would damage the TAPS Owners’ businesses and give their competitors and prospective contractors an unfair competitive advantage. Since the Long Range Plan is the subject of the TAPS Owners’ reasonable efforts to maintain their secrecy, it constitutes “trade secrets” which should not be publicly disclosed.

For all these reasons, the need to maintain the confidentiality of the Long Range Plan outweighs the public interest in its disclosure, and good cause exists to keep it confidential under AS 42.06.445(d) and 3 AAC 48.045.

Request No. 6
Petitioners seek to protect and keep confidential all copies of insurance policies and part of the narrative response\(^6\) for Request No. 6, which asks for, *inter alia*, broad details regarding Petitioners’ insurance coverage which provide direct or indirect protection to Petitioners or their affiliates and that cover operational upsets on the Pipelines, and Harvest Alaska’s plans to insure Pipeline Operations in the future (the documents and the redacted narrative are referred to collectively as the “Insurance Policy Information”).

The Insurance Policy Information should be kept confidential under AS 42.06.445(c). This information relates directly to the present and future operations and finances of the Pipelines, which are subject to federal jurisdiction. Since the Insurance Policy Information is not required to be filed with the FERC, once submitted this information should only be open to inspection by appropriate State officials for relevant State purposes.\(^7\)

Further, good cause exists to keep the Insurance Policy Information confidential under AS 42.06.445(d) and 3 AAC 48.045. The Insurance Policy Information contains proprietary pricing and coverage information which, if disclosed, could competitively and financially disadvantage and harm the Petitioners or reveal trade secrets. The Petitioners keep the Insurance Policy Information confidential, as they reveal valuable and

\(^{6}\) A portion of the response to Request No. 6 containing coverage details has been redacted from the public version of the responses to Order 7.

\(^{7}\) See also the discussion of Order 6 and protection of financial information requested by the Commission, *infra*, at Requests 12-15.
proprietary pricing information and coverages and endorsements obtained and exclusions accepted. The Insurance Policy Information also reveals business decisions and decision-making processes about all of the above. The public disclosure of the Insurance Policy Information would be anti-competitive since it would contain information about Petitioners’ respective insurance costs, coverages and exclusions. This information would be visible not only to the public but also to other TAPS Owners who compete with BPPA now and will compete with Harvest Alaska once the transfer is approved. Should the Petitioners’ competitors have access to the Insurance Policy Information they could use that information to develop tariff pricing strategies that would harm the Petitioners’ businesses, giving their competitors an unfair competitive advantage since the same information about the competitors would not be available to the Petitioners. This could be a violation of at least the spirit of Section 1 of the federal Sherman Act (15 U.S.C §1 et seq.), if not the statute itself, which is generally understood to prohibit the sharing of cost information among competitors because of its tendency to negatively affect competition.

The Petitioners would be placed at a competitive disadvantage if their Insurance Policy Information became known to potential future insurers who would have access to the prices the Petitioners were willing to pay for each type of coverage, and what kinds of exclusions and coverages the Petitioners were willing to accept at various price points. For the Petitioners and their affiliates, who are engaged in the insurance market at a very
sophisticated level, obtaining insurance products is a highly competitive and negotiated business and the insurance that is obtained is considered and treated as confidential and proprietary. As such, they are very much akin to negotiations of other types of transactions. The negotiation of insurance contracts reflect the give and take between the parties involved over the premiums, the coverages to be included, specific endorsements, and exclusions each party is willing and able to accept. The parties to such insurance contracts are concerned that if the terms of any given product are disclosed, other parties with whom they are engaged in subsequent negotiations will take selected portions of the insurance contracts and expect the same treatment or pricing. Great effort is made to prevent such information from being disseminated. The Commission has repeatedly found that similarly negotiated agreements in highly competitive environments like the insurance industry deserve to remain confidential.8

In addition, the Insurance Policy Information may also constitute “trade secrets” as defined by 45.50.940(3) because, as discussed above, competitors and future insurers could derive actual independent economic value by using the information contained the Insurance Policy Information to develop anti-competitive pricing and coverage strategies that would damage the Petitioners’ businesses and give their competitors and possible future insurers an unfair competitive advantage. Since the Insurance Policy Information

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8 See the discussion of Order 5 in these Dockets, and of Order U-16-012(14), infra, at Request 33.
is the subject of the Petitioners’ reasonable efforts to maintain their secrecy, it constitutes “trade secrets” which should not be publicly disclosed.

For all these reasons, the need to maintain the confidentiality of the Insurance Policy Information outweighs the public interest in their disclosure, and good cause exists to keep them confidential under AS 42.06.445(d) and 3 AAC 48.045.

Request Nos. 2 and 8

Petitioners seek to protect and keep confidential all documents produced in response to Request No. 8 and the partial narrative description of the contents of those documents in response to Request No. 2. Request No. 8 seeks “all operating agreements and all amendments to those agreements between or among the owners and operators of both the MPPLLCC and PTEP pipelines.”9 Request No. 2 seeks “the process for establishing work plans and budgets” for PTEP and MPPLLCC.10 In response to these requests, both MPPLLCC and PTEP have provided their limited liability company agreements and their agreements with the entities providing operator services to those pipelines (collectively referred to as the “MPP/PTEP Operating Agreements”), and described processes for allocating expenses among the owners set forth in the limited liability company agreements. However, none of the MPP/PTEP Operating Agreements has ever been made public before and all of them should be kept confidential.

9 Order 7 at 10.
10 Order 7 at 8.
The MPP/PTEP Operating Agreements should be kept confidential under AS 42.06.445(c). These documents relate directly to the present and future operations and finances of their respective pipelines, which are both subject to federal jurisdiction. Since the MPP/PTEP Operating Agreements are not required to be filed with the FERC, these materials should only be open to inspection by appropriate State officials for relevant State purposes.

Further, good cause exists to keep the MPP/PTEP Operating Agreements confidential under AS 42.06.445(d) and 3 AAC 48.045. Disclosure of the MPP/PTEP Operating Agreements and the confidential narratives in response to Request No. 2 would competitively and financially disadvantage and harm the Petitioners as well as, in the case of PTEP, other owners not affiliated with the Petitioners, and would also reveal trade secrets. The owners of PTEP and MPPLLCC put much effort into keeping the MPP/PTEP Operating Agreements and the information contained therein confidential, as they reveal their respective proprietary governance, management structure and authority, tax elections, and operator arrangements and costs.

The public disclosure of any of the operator agreements would also be an anti-competitive disclosure of their respective costs paid to their operators. The owners of both PTEP and MPPLLCC would be placed at a competitive disadvantage if the MPP/PTEP Operating Agreements became known to competitors or potential contractors because of the insight it would give into what they are paying for operator services and
what terms and conditions they are willing to accept in such agreements. Contracting for services on the North Slope is highly competitive with many oil field service companies providing a wide range of services that are similar in nature to operator services covered in the operator agreements. Much like the insight gained from seeing another party’s acquisition agreements, this disclosure would create an unequal playing field as between those with the information about their competitors and contract counterparties and those without such information.11

In addition, the MPP/PTEP Operating Agreements constitute “trade secrets” as defined by 45.50.940(3). As explained above, the potential contractors and competitors of PTEP and MPPLLC could derive actual independent economic value by using the information contained the MPP/PTEP Operating Agreements to develop anti-competitive pricing and negotiation strategies that would damage PTEP’s and MPPLLC’s businesses and give their competitors and prospective contract counter parties an unfair competitive advantage. It is also the type of information that is not usually disclosed to the public. Knowing the tax elections and governance structures and limitations included in the limited liability operating agreements of PTEP and MPPLLC is private, proprietary information that is not revealed voluntarily by any company for the very reason that it can be exploited by unscrupulous actors. Since the MPP/PTEP Operating Agreements

are the subject of the owners of PTEP’s and MPPLLC’s reasonable efforts to maintain their secrecy, they constitute “trade secrets” which should not be publicly disclosed.

For all these reasons, the need to maintain the confidentiality of the MPP/PTEP Operating Agreements and the explanation of those agreements contained in the response to Request No. 2 outweighs the public interest in their disclosure, and good cause exists to keep them confidential under AS 42.06.445(d) and 3 AAC 48.045.

**Request No. 9**

The Petitioners request that a portion of the narrative in response to Request No. 9 be kept confidential. Request No. 9 asks whether BP has agreed to provide a backstop to any interested entity for Harvest Alaska’s operational liability. In response, part of the narrative contains a reference to the terms of the PSA already found to be confidential in Order 5 in these dockets (the “PSA Narrative”). For the same reasons as set forth in Order 5, and as discussed in this petition relating to the response to Request No. 33, *infra*, good cause under AS 42.06.445(d) and 3 AAC 48.045 exists to keep the PSA Narrative description of the PSA confidential as well.

The PSA Narrative should be kept confidential under AS 42.06.445(c). The PSA Narrative relates directly to the present and future operations and finances of the Petitioners’ respective pipelines, which are all subject to federal jurisdiction. Since the PSA has not been required to be filed with the FERC, the PSA Narrative should only be open to inspection by appropriate State officials for relevant State purposes.
Questions Regarding Financial Fitness of Hilcorp

Request Nos. 12 through 15

Petitioners seek to protect and keep confidential all of the narratives and the Harvest Alaska Financial Assurances Agreement (“FAA”) submitted in response to Request Nos. 12 through 15. These requests ask for, *inter alia*, broad details and documentation regarding Harvest Alaska, Hilcorp Alaska, LLC (“Hilcorp Alaska”), Harvest Midstream I, LP (“Harvest Midstream”), and their respective affiliates’ (collectively the “Hilcorp Entities”) views of the current state of the capital markets, their own financial statuses in relation to capital markets, abilities to access capital, financial reserves, and the scope of any FAAs, including copies of the FAAs, entered into by and between any of the Hilcorp Entities and the State of Alaska Department of Natural Resources “to ensure they have the financial resources necessary to meet their obligations for their Alaskan pipelines” (collectively the “FAA Information”).

The FAA Information should be kept confidential under AS 42.06.445(c). This information obviously relates to finances of the Pipelines, but also relates to the operations of the Pipelines. Again, the Pipelines are subject to federal jurisdiction. Since the FAA Information is not required to be filed with the FERC, pursuant to AS 42.06.445(c), once the FAA Information is submitted to the Commission it should only be open to inspection by appropriate State officials for relevant State purposes. This information is very similar to the financial information kept confidential under AS

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42.06.445(c) in Order P-19-015(6)/P-19-016(6)/P-19-017(6)/P-19-019(3) (“Order 6”).

There, the Commission ruled that AS 42.06.445(c) applied broadly to financial information filed in support of the applications in these Dockets, including when the Commission itself requested the information:

> We have previously stated that “[i]n the abstract, it is hard to think of a document that a pipeline carrier would file with this Commission that does not relate to its finances or operations.” [Footnote omitted.] The documents in dispute here are not an exception. The financial statements filed by affiliates of the pipeline owners in these dockets relate to both the finances and the operations of the Point Thomson Pipeline, the Milne Point Pipelines, and TAPS. The financial statements were filed by Harvest Alaska and BPPA either because they determined those financial statements were needed to support their transfer applications or because we determined they were needed to support the applications. . . The documents relate to the operation and finances of the pipelines because they concern how the proposed change in ownership affects the ability of the pipeline to satisfy all common carrier obligations.¹²

Further, good cause exists to keep the FAA Information confidential under AS 42.06.445(d) and 3 AAC 48.045. The Hilcorp Entities are privately held companies which participate in upstream and midstream oil and gas transactions, transportation, and investment projects all over the country. None of the Hilcorp Entities disclose information like the FAA Information to the public because they are privately held companies. Further, they will remain privately held companies even after this transaction has closed and fully intend to continue keeping information such as the FAA Information private.

¹² Order 6 at 13 (emphasis added).
Among other things, several of the Hilcorp Entities manage and own upstream petroleum exploration and production companies which invest directly in hydrocarbon projects in other states. Some of the Hilcorp Entities also directly obtain oil and gas leases in other states. The upstream petroleum industry in which the Hilcorp Entities conduct their businesses is not regulated. It is with respect to this unregulated business that Hilcorp Entities are most at risk of having competitors and potential contractors have access to their financial information.

Both oil and gas leasing and the sale of petroleum products are highly competitive industries. The FAA Information reveals sensitive proprietary information about many things, including but not limited to the Hilcorp Entities’ financial positions, resources, revenues, capital costs, capital cost structures, and confidential negotiated agreements. Such information would be highly relevant to any company wanting to compete or contract with the Hilcorp Entities.

During its life cycle, every company is faced with the choice of being publicly or privately held. There are advantages and disadvantages to each. For multiple decades, the Hilcorp Entities have developed a business model that has relied on their competitive advantage of being private, while forgoing many of the advantages their peers enjoy by being public (such as increased access to the capital markets). The trade-off the Hilcorp Entities have made by choosing to remain private and to keep their financial, operational and strategic information private is what allows the companies to be purchasers and
operators of late-life, mature fields and assets, much like what Hilcorp Alaska and Harvest Alaska have done to date in the Cook Inlet, at Milne Point, Endicott and Northstar, and intend to do at Prudhoe Bay. Being private allows the Hilcorp Entities to execute on their primary growth strategy and core business strength of making acquisitions at prices that reflect their ability to apply a lower cost-structure after acquisition while remaining a safe pair of hands for the future ownership and operations of the asset. The choice the Hilcorp Entities have made to remain privately held is what allows their cost structures and capitalization to remain undisclosed to their competitors. As a result, the Hilcorp Entities have a competitive advantage to make the type of acquisitions and to inject the kind of capital into the fields and assets they own in states like Alaska. The private nature of the Hilcorp Entities’ financial, operational and strategic data is also what shields the companies from the public shareholder and market analyst pressures that many of their public peers in Alaska are facing, which is causing them to either exit the State of Alaska or reduce their activity. By forcing public disclosure of this otherwise private information, the Commission would be negating (i) one of the largest competitive advantages the Hilcorp Entities have in acquiring late-life, mature fields in Alaska and other states and (ii) one of the primary reasons the Hilcorp Entities are able create value for themselves, the states they operate in, and the citizens of those states. While the Hilcorp Entities welcome competition in the acquisition markets, public disclosure of the FAA Information would provide a roadmap to the Hilcorp

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Entities’ competitors on how to outbid them for the next acquisition. Such a decision would essentially saddle the Hilcorp Entities with the disadvantages of being a publicly-held company without conveying any of the advantages.

The vast majority of Harvest Midstream’s business is conducted outside of the State of Alaska in the highly competitive, largely unregulated gathering and processing markets of Colorado, New Mexico, Texas, Louisiana, Ohio and Pennsylvania. Only approximately 10% of Harvest Midstream’s earnings are attributable to Alaska and only approximately 6% of the miles of pipelines it owns are located in Alaska. Approximately 77% of Harvest Midstream’s overall pipeline mileage is unregulated.

The midstream acquisition business is extremely competitive due to the more predictable but lower margin nature of gathering and processing assets. Harvest Midstream is only able to execute its strategy by implementing a lower cost-structure and realizing higher margins than the sellers from which it acquires assets. The detail contained in the FAA Information would provide acquisition counterparties and competitors with information about its capitalization and debt costs. Access to this information would provide acquisition counterparties and competitors the ability to more closely estimate the value the Hilcorp Entities could create by owning the targeted assets, which would significantly harm the Hilcorp Entities’ negotiating position and adversely impact the Hilcorp Entities’ ability to transact and grow their businesses. Moreover, the Hilcorp Entities are actively engaged in discussions and negotiations with counterparties.
outside of the State of Alaska for potential acquisitions, and the release by the Commission of the Hilcorp Entities’ private financial, capitalization and strategic information during these discussions and negotiations will likely interfere with those potential acquisitions, causing significant harm to the Hilcorp Entities.

In sum, “good cause” exists to classify the FAA Information as confidential under AS 42.06.445(d) and 3 AAC 48.045 because making that information public will damage Hilcorp Entities’ abilities to remain competitive in their unregulated businesses and would potentially be anti-competitive. The Hilcorp Entities would be placed at a competitive disadvantage if their private financial, capitalization and strategic information were made available to competitors or potential contractors. The public dissemination of the information contained in the FAA Information would adversely affect the Hilcorp Entities’ interests, and protecting against the public dissemination of such information outweighs the public interest in disclosure of the same. Accordingly, the Commission should order the FAA Information withheld from public disclosure.

The Commission has on several previous occasions ruled that the confidential financial information of one or more Hilcorp Entities should be kept confidential under AS 42.06.445(d) and 3 AAC 48.045. For example, in Order P-12-007(1), dated July 20, 2012, the Commission ruled:

We find that disclosure of the financial information may competitively or financially disadvantage Hilcorp Energy I, L.P. and its affiliate Hilcorp Alaska. We further find that the potential competitive harm to Hilcorp Energy I, L.P. and 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 information]. Accordingly, good cause exists to classify the information as confidential. We grant the petition for confidential treatment of Hilcorp Energy I, L.P.’s 2011 audited financial information and the 2011 financial statement of Hilcorp Alaska. Accordingly, good cause exists to classify the information as confidential.13

In Order P-14-014(2)/P-14-015(2)/P-14-016(2)/P-14-017(2)/P-14-018(2), dated July 22, 2014, the Commission similarly ruled in favor of protecting the financial statements of Hilcorp Alaska for the years 2011, 2012, and 2013:

We find that disclosure of Hilcorp Alaska’s 2011, 2012, and 2013 financial statements may competitively or financially disadvantage Hilcorp Alaska and, potentially its affiliates. We further find that the potential competitive harm to Hilcorp Alaska 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 Hilcorp Alaska. Accordingly, good cause exists to classify the information as confidential. We grant the petitions for confidential treatment of the 2011, 2012, and 2013 financial statements of Hilcorp Alaska.14

In Order P-15-011(2), dated July 22, 2015, the Commission granted confidential treatment for the financial statements of Hilcorp Alaska for the years 2012, 2013 and 2014 in connection with the application for approval of the transfer of ownership of the

13 Order P-12-007(1), Granting Petition for Confidential Treatment, Addressing Timeline for Decision, Designating Commission Panel, and Appointing Administrative Law Judge, at 4. Hilcorp Alaska had previously submitted the 2009 and 2010 audited financial statements for HEI in Dockets P-11-015, P-11-016, and P-11-017, involving the acquisition by Hilcorp Alaska of certain pipeline assets from Union Oil Company of California. The Commission likewise granted confidential treatment in those dockets. See Order P-11-015(1)/P-11-016(1)/P-11-017(1).

14 Order P-14-014(2)/P-14-015(2)/P-14-016(2)/P-14-017(2)/P-14-018(2), Order Granting Petitions for Confidential Treatment and Addressing Timeline for Decision, at 5.
Swanson River Oil Pipeline from co-petitioner Hilcorp Alaska to its wholly-owned subsidiary, Swanson River Oil Pipeline, LLC. The Commission again granted confidential treatment for the financial statements of Hilcorp Alaska for 2013-2014 and 2014-2015 that were filed in connection with the ownership transfer application proceeding for CIPL’s transfer from Hilcorp Alaska to Harvest Alaska in Docket No. P-17-002.15

The Commission granted confidential treatment for the financial statements of Hilcorp Alaska for 2014-2015 and 2015-2016 that were filed in connection with the applications of Cook Inlet Pipe Line Company (now Cook Inlet Pipe Line, LLC) to Extend, Modify, and Reconfigure its Oil Pipeline System and for a Certificate of Public Convenience and Necessity (“CPCN”) for Natural Gas Pipeline Transportation, and the application of Kenai Beluga Pipeline Company (now Kenai Beluga Pipeline, LLC) for a CPCN for Oil Pipeline Transportation, in Docket Nos. P-17-007, P-17-008, and P-17-009:

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. Accordingly, good cause exists to classify the information as confidential. We grant the petitions for confidential treatment of Hilcorp

15 See Order P-17-002(2), dated March 13, 2017.
Alaska’s 2014/2015 financial statement and its 2015/2016 financial statement.\(^{16}\)

Most recently, the Commission granted confidential treatment for the 2016-2017 and 2017-2018 audited financial statements of Harvest Midstream I, LP (“Harvest Midstream”) in connection with Hilcorp Alaska and Harvest Midstream’s joint applications seeking to transfer Hilcorp Alaska’s indirect controlling interests in Cook Inlet Pipe Line, LLC; Swanson River Oil Pipeline, LLC; Northstar Pipeline Company, LLC; Endicott Pipeline Company; Kenai Beluga Pipeline, LLC; and Milne Point Pipeline, LLC to Harvest Midstream in Docket Nos. P-19-007, P-19-008, P-19-009, P-19-010, P-19-011 and P-19-012:

Based on the record before us we find that 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. Accordingly, good cause exists to classify the information as confidential. We grant the petitions requesting confidential treatment of Harvest Midstream’s 2016–2017 and 2017–2018 audited financial statements.\(^{17}\)

In total, the Commission has granted AS 42.06.445(d) and 3 AAC 48.045 confidential status to the financial information of one or more Hilcorp Entities or their

\(^{16}\) See Order P-17-007(1)/P-17-008(1)/P-17-009(1), dated November 3, 2017, at p. 7.

affiliates in 24 separate dockets over the past nine years.\(^{18}\) The Commission’s prior confidentiality determinations the Hilcorp Entities and their affiliates remain applicable here as to the Hilcorp Entities. The potential competitive harm to the Hilcorp Entities by disclosure of the information contained within the FAA Information outweighs the public interest in disclosure. Accordingly, the need for confidentiality outweighs the public interest in disclosure of any of the FAA Information, and good cause exists to classify it as confidential.

Importantly, as explained to the Commission earlier in the present dockets, the fact that the FAA Information has not been made public does not mean that any Hilcorp Entity is attempting to evade responsibility to prove that it is sufficiently well-capitalized. The Hilcorp Entities have provided all relevant financial information to the appropriate regulatory agencies on a confidential basis with the expectations that such information will be used by those agencies to make informed decisions and fulfill their statutory mandates to protect the State and its citizens.

**Questions Regarding Responsibilities Among Oversight Agencies**

**Dismantlement, Removal, and Restoration**

**Request Nos. 20 and 32**

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\(^{18}\) 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, and in Orders 5 and 6 in these dockets.
Petitioners seek to protect and keep confidential several documents submitted in
response to the Request Nos. 20 and 32, and the narrative descriptions of the confidential
documents contained in the responses to Order 7. These requests seek, *inter alia*, copies
of all studies and updates of TAPS, PTEP and MPPLLC DR&R studies, along with
explanations of relevant performance standards, expected performance cost, and the year
the performance cost dollars are estimated in for each such study (collectively the
“DR&R Studies”). The DR&R Studies, except the TAPS 2005 Fluor study and its 2006
update produced as a non-confidential documents and narrative description thereof,
should be kept confidential under AS 42.06.445(c) because all such information and
documentation relates directly to the present and future operations and finances of TAPS,
PTEP and MPPLLC, which are all subject to federal regulation. Since the DR&R Studies
are not required to be filed with the FERC, once submitted to the Commission the DR&R
Studies should only be open to inspection by appropriate State officials for relevant State
purposes.

Further, good cause exists to keep the DR&R Studies other than the 2005 Fluor
study and its 2006 update confidential under AS 42.06.445(d) and 3 AAC 48.045. Just
like the Long Range Plan, the Risk Assessments, the Minutes, and the Work Plans,
disclosure of the DR&R Studies would competitively and financially disadvantage and
harm the Petitioners, and would also reveal confidential trade secrets. The TAPS
Owners, PTEP and MPPLLC put in much effort to keep the DR&R Studies confidential,
as they reveal their respective proprietary long-term strategic plans, future capital and cost projections, and business objectives, and because they reveal the actions necessary for the TAPS Owners, PTEP and MPPLLC to achieve each of the same. The public disclosure of any of this information would be anti-competitive, and should the TAPS Owners’, PTEP’s and MPPLLC’s potential contractors have access to the DR&R Studies they could use that information to develop strategies that would harm the TAPS Owners’ businesses and unfairly advantage potential contractors.

In addition, the DR&R Studies constitute “trade secrets” as defined by AS 45.50.940(3). As explained above, the TAPS Owners’, PTEP’s and MPPLLC’s potential contractors and competitors could derive actual independent economic value by using the information contained the DR&R Studies to develop anti-competitive pricing strategies that would damage the TAPS Owners’, PTEP’s and MPPLLC’s businesses and give their competitors and prospective contractors an unfair competitive advantage. Since the DR&R Studies are the subject of the TAPS Owners’, PTEP’s and MPPLLC’s reasonable efforts to maintain their secrecy, they constitute “trade secrets” which should not be publicly disclosed.

Finally, the 2019 Avante Services, LLC study relating to MPPLLC (“Avante Study”) should also be kept confidential because it constitutes CEII and because it includes a large amount of information about other pipelines and upstream onshore and offshore assets other than the Pipelines at issue in these Dockets. The Avante Study
contains extensive engineering details and drawings about the production, generation, transportation, transmission, or distribution of energy, could be useful to a person in planning an attack on critical infrastructure, and does not simply give the general location of the critical infrastructure. It should clearly be protected as CEII and SSI.

For all these reasons, the need to maintain the confidentiality of the DR&R Studies outweighs the public interest in its disclosure, and good cause exists to keep them confidential under AS 42.06.445(d) and 3 AAC 48.045, and the Avante Study for the additional reasons that it constitutes CEII and SSI.

**Request No. 21**

Petitioners seek to protect and keep confidential a document submitted in response to the Request No. 21 detailing the costs of certain DR&R work performed to date (the “ARO Summary”). The ARO Summary should be kept confidential under AS 42.06.445(c) because all such information and documentation relates directly to the present and future operations and finances of TAPS, which is subject to federal regulation. Since the ARO Summary is not required to be filed with the FERC, once submitted to the Commission the ARO Summary should only be open to inspection by appropriate State officials for relevant State purposes.

Further, good cause exists to keep the ARO Summary confidential under AS 42.06.445(d) and 3 AAC 48.045. Just like the DR&R Studies, the Long Range Plan, the Risk Assessments, the Minutes, and the Work Plans, disclosure of the ARO Summary
would competitively and financially disadvantage and harm the Petitioners and the other TAPS Owners, and would also reveal trade secrets. The TAPS Owners have put in much effort to keep the ARO Summary confidential, as it reveals their proprietary cost information. The public disclosure of any of this information would be anti-competitive, and should the TAPS Owners’ potential contractors have access to the ARO Summary they could use that information to develop strategies that would harm the TAPS Owners’ businesses and unfairly advantage potential contractors because they can see what the TAPS Owners were willing to pay for certain types of work.

In addition, the ARO Summary constitute “trade secrets” as defined by AS 45.50.940(3). As explained above, the TAPS Owners’ potential contractors and competitors could derive actual independent economic value by using the information contained the ARO Summary to develop anti-competitive pricing strategies that would damage the TAPS Owners’ businesses and give their competitors and prospective contractors an unfair competitive advantage. Since the ARO Summary is the subject of the TAPS Owners’ reasonable efforts to maintain its secrecy, it constitutes “trade secrets” which should not be publicly disclosed.

For all these reasons, the need to maintain the confidentiality of the ARO Summary outweighs the public interest in its disclosure, and good cause exists to keep it confidential under AS 42.06.445(d) and 3 AAC 48.045.
In an email dated April 28, 2020, the Commission requested “a copy of the renegotiated Asset Purchase and Sales Agreement, if available, be include with the responses to the questions listed in Order P-19-015(7)/P-19-016(7)/P-19-017(7) due on May 4, 2020.” The Petitioners have provided a copy of the requested documents (the “PSA Amendment”) but request that they be kept confidential for the same reasons the original Purchase and Sale Agreement dated August 26, 2019 (“PSA”) was kept confidential in Order 5 in these Dockets.

Good cause exists to protect the PSA Amendment as confidential. Just like with the original PSA, the PSA Amendment reflects a negotiated transaction containing information and terms of agreement reached by all parties thereto on a variety of subjects that each party desires to maintain as confidential. The parties have agreed to keep the exact terms of the PSA confidential. The PSA Amendment does not change that. As a result, the parties’ agreement on confidentiality applies equally to the PSA Amendment.

The information contained within the PSA Amendment goes far beyond that related to the transfers of the regulated pipeline infrastructure at issue in these Dockets. The PSA Amendment involves, among many other things, the terms and conditions of the entire transaction under which BP is exiting Alaska (collectively the “Greater BP-

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19 See Section 17.4 of the PSA.
Hilcorp Transaction”), including, but not limited to, Standard Oil Company’s sale of its entire stock ownership interest in BP Exploration (Alaska) Inc. to Hilcorp Alaska.

In the oil and gas industry, companies like the Petitioners regularly engage in acquisitions and divestitures. Larger companies like BPPA and its affiliates engage in disposing of interests in properties that no longer meet their investment profiles, but which may have more value to other companies. Companies such as Harvest Alaska and its affiliates engage in the acquisition of such properties because they see opportunities to restore and expand production and otherwise enhance the value of such properties.

To companies like the Petitioners and their affiliates, who are engaged in the acquisition and divestiture of oil and gas property interests, the terms of any given transaction are considered and treated as confidential and proprietary. Parties to such transactions regularly include confidentiality provisions in their agreements and maintain the terms of such transactions as confidential. The terms of such agreements are heavily negotiated and reflect the give and take between the parties involved and the various forms of consideration each party is willing and able to provide.

Nearly always, the parties to such agreements are concerned that if the terms of any given transaction are disclosed, the parties with whom they are engaged in subsequent negotiations will take selected portions of the agreement and expect the same treatment, or, using the terms of a prior agreement, demand the same economic value.
thereby weakening the disclosing party’s bargaining position. Accordingly, great effort is made to prevent such information from being disseminated.

By having access to such agreements, competitors also gain valuable insight into the disclosing party’s negotiating strategy and economic valuations of interests in oil and gas properties. The disclosure of such negotiated contract terms not only competitively and financially disadvantages the disclosing party, but also generally undermines competition within the greater oil and gas industry.

The PSA Amendment is no exception. Within the context of the competitive oil and gas industry, the disclosure of the information contained in even a redacted version of the PSA Amendment would harm the Petitioners’ and their affiliates’ competitive and financial interests and undermine competition. The Petitioners view the information contained in the PSA Amendment as confidential and proprietary information that constitutes trade secrets. Because the BP-Hilcorp Transaction is primarily focused on upstream production interests not subject to Commission regulation, the PSA Amendment reflects consideration and terms appropriate to such interests, disclosure of which would adversely affect the Petitioners’ and their affiliates’ financial and competitive interests.

Like the PSA, the PSA Amendment contains competitively sensitive financial and other information for largely nonregulated operations. For this and all of the above-
discussed reasons, the Petitioners urge that the Commission maintain the redacted PSA Amendment as confidential.

The Commission has ruled under analogous circumstances that the need to maintain the confidentiality of a purchase and sale agreement outweighed the public interest in disclosure of the same such that it should be protected under 3 AAC 48.045. In Docket U-16-012, Municipal Light & Power (“ML&P”) and Chugach Electric (“Chugach”) filed a joint request to acquire ConocoPhillips Alaska, Inc.’s (“CPAI”) interest in the Beluga River Unit and for related approvals.20 ML&P and Chugach petitioned for confidential treatment of the operative purchase and sale agreement (“OPSA”) to protect the confidentiality interests of CPAI and to comply with the requirements of the OPSA.21 ML&P and Chugach argued that unrestricted public disclosure of the OPSA might cause competitive and financial harm by revealing information regarding CPAI’s consideration, contract terms and conditions, concessions, and negotiating strategy, which if made public would unfairly impair the bargaining position of CPAI and its subsidiaries in other current and future oil and gas asset transactions.22 During hearing, the Commission granted the petition for confidentiality from the bench, and later affirmed the same by written order:

On April 18, 2016, we issued a bench ruling granting the petition for confidential treatment under 3 AAC 48.045. We determined that disclosure

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20 See Order U-16-012(14), dated April 21, 2016, at p. 2.
21 Id. at p. 9.
22 Id.
of the [O]PSA might competitively or financially disadvantage or harm a person with a confidentiality interest or reveal a trade secret. We further determined that the need for confidentiality outweighs the public interest in disclosure. We affirm our bench ruling granting the Petition for Confidential Treatment.23

The present petition should be granted and the PSA Amendment should be withheld from public disclosure. Like the OPSA in Docket U-16-012 and the PSA in Order 5 in these Dockets, public disclosure of the PSA Amendment would competitively and financially disadvantage or harm Petitioners and reveal one or more trade secrets. Further, confidentiality is required to comply with the requirements of the PSA as amended by the PSA Amendment. Just as the Commission found in Docket U-16-012 in regard to the OPSA and in Order 5 in these Dockets in relation to the PSA, the need to classify the PSA Amendment as confidential outweighs the public interest in disclosing the same.

The PSA Amendment should also be kept confidential under AS 42.06.445(c). The PSA Amendment relates directly to the present and future operations and finances of the Petitioners’ respective pipelines, which are all subject to federal jurisdiction. Since the PSA Amendment has not been required to be filed with the FERC, the PSA Amendment should only be open to inspection by appropriate State officials for relevant State purposes.

23 Id. (emphasis added).
CONCLUSION

For the reasons stated above, the Petitioners request that the Commission find that good cause exists and that an order be issued by the Commission that (a) classifies the narratives and documentation identified above as confidential, and (b) restricts access to all such information to only those within the Commission and its staff with the need to review such information in connection with the Commission’s review of the applications pending in the present dockets.

DATED at Anchorage, Alaska this 4th day of May, 2020.

GUESS & RUDD P.C.
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VERIFICATION

STATE OF ALASKA

THIRD JUDICIAL DISTRICT

Richard W. Novcaski, being first duly sworn, on oath deposes and says that he is the Vice President and Pipeline Manager of Harvest Alaska, LLC ("Harvest Alaska"), one of the petitioners herein; and that he has read the foregoing petition and is familiar with the contents thereof as they pertain to Harvest Alaska and its affiliates; and that the statements relating to Harvest Alaska and its affiliates therein contained are true to the best of his knowledge, information, and belief.

Richard W. Novcaski

SUBSCRIBED AND SWORN TO before me this 4th day of May, 2020.

Michele K. Brown
Notary Public in and for the State of Alaska
My commission Expires: 7-9-2023
VERIFICATION

STATE OF ALASKA ) ) ss.
THIRD JUDICIAL DISTRICT )

Damian Bilbao, being first duly sworn, on oath deposes and says that he is the President of BP Pipelines (Alaska) Inc. ("BPPA"), one of the petitioners herein; and that he has read the foregoing petition and is familiar with the contents thereof as they pertain to BPPA and its affiliates; and that the statements relating to BPPA and its affiliates therein contained are true to the best of his knowledge, information, and belief.

Damian Bilbao

SUBSCRIBED AND SWORN TO before me this 4th day of May, 2020.

Denise M. Berry
Notary Public in and for the State of Alaska
My commission Expires: 10.13.2022

Harvest Alaska and BPPA's Petition for Confidential Treatment of Certain Compliance Filings Submitted Pursuant to Order 7
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