211-0158

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

COMMISSIONERS: **Lina M. Khan, Chair**
Noah Joshua Phillips
Rebecca Kelly Slaughter
Christine S. Wilson

In the Matter of **EnCap Investments L.P.,** a limited partnership, **EnCap Energy Capital Fund XI, L.P.,** a limited partnership, **Verdun Oil Company II LLC,** a limited liability company, **XCL Resources Holdings, LLC**, a limited liability company, **EP Energy Corporation,** a corporation, and **EP Energy LLC,** a limited liability company.	**Docket No. C-4760**

COMPLAINT

Pursuant to the Clayton Act and the Federal Trade Commission Act ("FTC Act"), and its authority thereunder, the Federal Trade Commission ("Commission"), having reason to believe that Respondents EnCap Investments L.P. and EnCap Energy Capital Fund XI, L.P., through its subsidiary Respondent Verdun Oil Company II LLC, entered into an agreement to acquire Respondent EP Energy LLC from Respondent EP Energy Corporation (collectively, "EPE"), that such acquisition, if consummated, would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45, and that a proceeding in respect thereof would be in the public interest, hereby issues this Complaint, stating its charges as follows.

I. RESPONDENTS

EnCap

1. Respondent EnCap Investments L.P. is a limited partnership organized, existing, and doing business under, and by virtue of, the laws of the State of Texas, with its office and principal place of business located in Houston, Texas.

2. Respondent EnCap Energy Capital Fund XI, L.P. is a limited partnership organized, existing, and doing business under, and by virtue of, the laws of the State of Texas, with its office and principal place of business located in Houston, Texas.

3. Respondent Verdun Oil Company II LLC is a limited liability company organized, existing, and doing business under, and by virtue of, the laws of the State of Texas, with its office and principal place of business located in Houston, Texas.

4. Respondent XCL Resources Holdings LLC ("XCL") is a limited liability company organized, existing, and doing business under, and by virtue of, the laws of the State of Delaware, with its office and principal place of business located in Houston, Texas.

5. EnCap Investments L.P., EnCap Energy Capital Fund XI, L.P., Verdun Oil Company II LLC, and XCL (collectively, "EnCap") are, and at all times relevant herein have been, engaged in, among other things, the development, production, and sale of crude oil in the United States.

6. EnCap and the corporate entities under its control are, and at all times relevant herein have been, engaged in commerce, as "commerce" is defined in Section 1 of the Clayton Act, as amended, 15 U.S.C. § 12, and Section 4 of the FTC Act, as amended, 15 U.S.C. § 44.

EPE

7. Respondent EP Energy Corporation is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located in Houston, Texas.

8. Respondent EP Energy LLC is a limited liability company organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located in Houston, Texas.

9. EPE is, and at all times relevant herein has been, engaged in, among other things, the development, production, and sale of crude oil in the United States.

10. EPE and the corporate entities under its control are, and at all times relevant herein have been, engaged in commerce, as "commerce" is defined in Section 1 of the Clayton Act, as amended, 15 U.S.C. § 12, and Section 4 of the FTC Act, as amended, 15 U.S.C. § 44.

I. THE PROPOSED ACQUISITION

11. On July 26, 2021, EnCap (through controlled entity Verdun Oil Company II LLC) and EP Energy (through controlled entity EPE Acquisition, LLC) entered into a Membership Interest Purchase Agreement, pursuant to which EnCap will acquire the issued and outstanding membership interests in various EPE holdings for $1.445 billion.

12. The Acquisition is subject to Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18.

II. NATURE OF THE CASE

13. EnCap's subsidiary, XCL, and EPE are two of four significant oil and gas development and production companies in northeast Utah's Uinta Basin. Uinta Basin waxy crude possesses distinct qualities that make it both difficult to transport and especially valuable for producing transportation fuel and other petroleum products.

14. Because Uinta Basin waxy crude is produced relatively close to Salt Lake City and has valuable refining properties, Salt Lake City area refiners have invested capital to optimize their equipment (and plants generally) to best utilize a certain percentage of Uinta Basin waxy crude. Uinta Basin producers recognize that while Salt Lake City refiners purchase other crude oil types, these alternatives often have limited availability or less attractive economics for Salt Lake City refiners. Indeed, the price differential between Uinta Basin waxy crude and alternative crude oils has fluctuated considerably in response to changes in Uinta Basin waxy crude production. If, after the EPE acquisition, EnCap reduced the volume of crude oil that it supplied to Salt Lake City, Salt Lake City area refiners would be forced to pay more for Uinta Basin waxy crude.

III. THE RELEVANT MARKET

15. The relevant product market is no broader than the development, production, and sale of Uinta Basin waxy crude to Salt Lake City area refiners.

16. Uinta Basin waxy crude is classified as yellow or black. Yellow wax has lower levels of sulfur and asphalt and subsequently requires less processing to refine into petroleum products the refiners value. A narrower product market exists for the development, production, and sale of Uinta Basin yellow waxy crude to Salt Lake City area refiners.

17. Uinta Basin waxy crude possesses distinct characteristics that make it a desirable crude oil from which to refine petroleum products. It is a relatively "light" crude oil and has low levels of sulfur and other undesirable impurities, requiring less processing to make valuable transportation fuels and other petroleum-based products than other crude oil. Its high paraffin wax content makes it good for production of wax products. Unlike many other crudes, Uinta Basin waxy crude's paraffin content makes it almost solid at ambient temperatures (depicted below), requiring heat to liquify the resource for transport into or out of truck, rail, or storage.

18. Salt Lake City area refiners have made significant investments in plant and equipment to optimize their refineries to run Uinta Basin yellow and black waxy crudes. Although other crudes are available to Salt Lake City area refiners, those crudes will not sufficiently constrain the price of waxy crude to the relevant customers.

19. The relevant geographic market in which to analyze the Acquisition is no broader than the Uinta Basin. Almost all sales of Uinta Basin waxy crude to the Salt Lake City refineries occur in the Uinta Basin, with customers providing transportation to their locations.

20. Alternatively, the relevant geographic market is the Salt Lake City area. Producers currently can, and do, charge higher net prices for Uinta Basin waxy crude sold to Salt Lake City refineries than for sales to other customers. The Salt Lake City refineries cannot evade price discrimination because producers sell Uinta Basin waxy crude to other customers on a delivered basis. High transportation costs make it cost prohibitive for a Salt Lake City refiner to purchase Uinta Basin waxy crude delivered to refineries located outside the Salt Lake City area.

IV. MARKET STRUCTURE

21. Utah has five oil refineries, all of which are located in the Salt Lake City area. Each refinery may rely on a combination of waxy crude and other types of crude oil shipped into Salt Lake City to produce end products. Each refinery determines the type and volume of each crude input needed to maximize the profitability and efficiency of the refinery, and adjusts purchases periodically depending on current prices and availability. Public trade press estimates the Salt Lake City area refineries' collective maximum waxy crude capacity at approximately 80,000 barrels of Uinta Basin waxy crude per day, although capacity utilization can fluctuate.

22. Four producers—EPE, EnCap's subsidiary XCL, Ovintiv, and Uinta Wax/Finley Resources (Uinta Wax is a joint venture between Finley Resources and CH4 Energy Six)—account for over 80 percent of all Uinta Basin production. No other producer accounts for a significant amount of Uinta Basin development and production.

23. Waxy crude is typically priced as a percentage of NYMEX West Texas Intermediate ("WTI") Light Sweet Crude Oil Futures Contract. The percentage of WTI is determined through bilateral discussions between the Salt Lake City refineries and Uinta Basin producers. Salt Lake City refineries purchase most Uinta Basin waxy crude, which they

receive from insulated tanker trucks. A small, but increasing, amount of Uinta Basin waxy crude is sold to Gulf Coast refineries through rail exports.

24. The Acquisition, if consummated, would eliminate substantial head-to-head competition between EnCap and EPE for the development, production, and sale of Uinta Basin waxy crude to targeted Salt Lake City area refiners. By dramatically increasing the size of EnCap's Uinta Basin waxy crude business and taking the market from four significant players to three, the Acquisition would increase the incentive and ability of EnCap to reduce supply to these refiners and increase prices. In addition, the smaller number of significant players would increase the risk of coordination; there are many opportunities through industry associations for Uinta Basin producers to meet and discuss development and production plans, demand for Uinta Basin waxy crude, and the potential for exports to the Gulf Coast.

25. XCL's internal, high-level analysis and strategy documents acknowledged the likely competitive effects from the Acquisition from the beginning of the process up to and including during the Commission's investigation. During a January 15, 2021 meeting, an XCL Board member noted that a combination with EPE would create $35-75 million in marketing synergies and that it was a "[d]efensive move with EP currently communicating 20+ wells per year to SLC refiners. Go from 14% of wax supply to 30-40%."[1] A May 18, 2021 XCL Technical Meeting presentation, attended by most of the XCL Board members, stated that the Acquisition would result in "Increasing Scale in our Basin – taking out 1 of 4 major producers, 40%+ of Wax Market, Driver's seat."[2] An August 25, 2021 memorandum to the Advisory Board of EnCap XI similarly emphasized the small number of significant players, stating that the "… the Uinta is … largely controlled by three operators."[3] XCL's strategy is simply expressed in its July 2021 cartoon below.[4]

[1] ENC-FTC-200034640 (Jan. 17, 2021); *see also* EnCap 4(c)-4 (Jan. 15, 2021).
[2] EnCap 4(c)-8 at 63 (May 18, 2021); EnCap Resp. to VRL Req. 12 (Feb. 21, 2022).
[3] ENC-FTC-201680452, at ENC-FTC-201680453 (Aug. 25, 2021).
[4] ENC-FTC-200689720, at slide 2, XCL, *Utah Expansion Strategy and CCS Hub* (July 2021).

V. BARRIERS TO ENTRY

26. A new producer would face significant barriers to entering the Uinta Basin. Entry into the relevant market would not be timely, likely, or sufficient to deter or counteract the anticompetitive effects arising from the Acquisition.

VI. EFFECTS OF THE ACQUISITION

27. The effects of the Acquisition may be to substantially lessen competition or to tend to create a monopoly in each of the relevant markets, with each constituting an independent violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the FTC Act, as amended, 15 U.S.C. § 45, by:

a. increasing the likelihood that EnCap would unilaterally exercise market power in each relevant market; and

b. increasing the likelihood of collusive or coordinated interaction between any remaining competitors in each relevant market.

VII. VIOLATIONS CHARGED

28. The Acquisition, if consummated, would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the FTC Act, as amended, 15 U.S.C. § 45.

29. The Membership Interest Purchase Agreement entered into by EnCap and EPE constitutes a violation of Section 5 of the FTC Act, as amended, 15 U.S.C. § 45.

IN WITNESS WHEREOF, the Federal Trade Commission, having caused this Complaint to be signed by the Secretary and its official seal affixed, at Washington, D.C., this twenty-fifth day of March, 2022, issues its Complaint against Respondents.

By the Commission.

April J. Tabor
Secretary