CONFIDENTIAL TREATMENT REQUESTED

PETITION FOR PRIOR APPROVAL OF XCL RESOURCES HOLDINGS, LLC'S PROPOSED ACQUISITION OF ALTAMONT ENERGY, LLC

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I. EXECUTIVE SUMMARY

XCL Resources Holdings, LLC ("XCL") plans to acquire Altamont Energy, LLC ("Altamont" and, together with XCL, the "Parties"), an oil and gas operator in the Uinta Basin. XCL seeks prior approval from the Federal Trade Commission (the "FTC" or the "Commission") to complete this proposed transaction pursuant to the agreement reached with the FTC in the EnCap/EP Energy matter.

The Proposed Transaction will not increase the capacity or share of XCL in any relevant market in any appreciable way; nor will it alter in any negative way the competitive landscape for supply of waxy crude oil to Salt Lake City refiners (or to any other refiner). It will provide Altamont, a small operator [redacted], the access to capital it needs. The transaction will allow the combined entity to increase production, execute drilling of new wells at a lower cost, and allow for other cost-lowering enhancements, ultimately offering more production at competitive prices downstream to buyers in and out of Salt Lake City.

II. INTRODUCTION

A. Background on the Order

Pursuant to Section 2.41(f) of the FTC Rules of Practice and Procedure[1] and Section X(A) of the September 13, 2022, final decision and order *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*

[1] 16 C.F.R. § 2.41(f).

limited liability company (the "Order"),[2] XCL hereby petitions the Commission to approve its proposed acquisition of Altamont (the "Proposed Transaction").

As part of the Order, the Commission required that EnCap Investments L.P., EnCap Energy Capital Fund XI, L.P., Verdun Oil Company II LLC and XCL (collectively, "EnCap") obtain prior approval before acquiring any other producer of waxy crude oil with an output of over 2,000 barrels per day in any of the following Utah counties: Duchesne, Uintah, Utah, Grand, Emery, Carbon and Wasatch.[3]

B. The Proposed Transaction

On August 24, 2023, XCL signed a non-disclosure agreement with Altamont in contemplation of the Proposed Transaction. XCL subsequently began due diligence and negotiation of initial terms. On October 31, 2023, XCL and Altamont signed a deal term sheet and entered into an exclusivity agreement. XCL notified the FTC of the Proposed Transaction on November 5, 2023. On January 16, 2024, XCL and Altamont executed a Purchase and Sale Agreement in contemplation of the Proposed Transaction, which [redacted] makes closing conditional on obtaining approval from the Commission.[4]

Given that Altamont is a waxy crude oil producer in the Uinta Basin with an output of approximately [redacted] barrels per day, the Proposed Transaction is subject to the

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2 *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*, Decision and Order, Docket No. C-4760, (F.T.C. Sept. 13, 2022), https://www.ftc.gov/system/files/ftc_gov/pdf/C4760EnCapEPEnergyOrder.pdf (hereinafter, "Order"), at §X(A).

3 Order §X(A).

4 An executed copy of the Purchase and Sale Agreement between Altamont Energy LLC and Altamont Minerals LLC, collectively, as Seller and XCL AssetCo, LLC as Buyer, has been provided to the Commission in connection with this application.

requirement for prior approval under the Order; and XCL hereby seeks such approval prior to closing the Proposed Transaction. As outlined *infra* in Section IV, the Proposed Transaction is procompetitive and does not raise any competitive concerns.

III. THE PARTIES AND THE TRANSACTION RATIONALE

A. The Parties

1. XCL

XCL is a privately held, Houston-based independent oil and gas company focused on the acquisition and development of liquids-rich basins in the United States. XCL owns and operates approximately 135 horizontal wells across approximately 45,900 net acres in Duchesne and Uintah Counties, Utah, where it extracts black and yellow waxy crude oil and natural gas.

XCL's low-cost, efficient operations strategy focuses on the development of horizontal wells and pioneering new production methods in the Uinta Basin. The company has three active rigs and is drilling 70 new wells per year on average in the Uinta Basin.

XCL became a subsidiary of EnCap Investments L.P. ("EnCap Investments") in 2018, and EnCap Investments has provided the majority of the financial backing for XCL's projects and investments to date. EnCap Investments is a private equity firm specializing in investments in the energy industry, particularly oil and gas.

2. Altamont

In 2018, Altamont acquired oil and gas assets from LINN Energy, Inc., an oil and gas exploration and production company. Altamont focused its operations in and around the Wasatch and Green River stacked formations in the Uinta Basin. Altamont completed drilling operations for four vertical wells in 2018 and 2019.

In 2021, Altamont [redacted] to drill eight horizontal wells. Those wells were begun in 2022 completed in 2023, with five wells beginning production in March and three wells beginning production in June, [redacted]

Altamont hired Houlihan Lokey as its investment banker and began marketing itself for a sale in August 2023. Altamont and its bankers reached out to over 300 parties in search of potential bidders. [redacted] As the highest bidder, XCL was selected as buyer; and discussions kicked off shortly thereafter for the Potential Transaction. *See supra,* Section II(B).

Altamont is a small operator with no active rigs and no material growth plans it can achieve without access to capita[redacted]

[redacted]

[redacted]

[redacted]

Altamont produces [redacted] barrels of waxy crude oil per day on average, and nearly all of that is purchased by Salt Lake City refiners. [redacted] A majority of XCL's production is exported to refiners on the U.S. Gulf Coast, due to supply saturation in Salt Lake City. *See infra*, Section IV(A).

B. The Transaction Rationale

With the acquisition of Altamont, XCL expects to realize substantial economic efficiencies in the development and production of oil in the Uinta Basin. XCL projects that the Proposed Transaction will not have any significant impact on its own growth or investment plans, but it will enable XCL to apply capital and its superior operating capabilities to Altamont properties, further XCL's cost-reduction objectives, and ultimately bring more product at competitive prices to its customers.

As the owner of acreage adjacent to Altamont's and an efficient, low-cost operator, XCL is uniquely positioned to generate numerous efficiencies from combining the contiguous acreage. For example, XCL will be able to lower operating costs by combining its water and gas infrastructure with Altamont's. Additionally, XCL will be able to optimize development plans to limit downtime in drilling and completion operations on the contiguous acreage. Reduced operating costs will enhance economic viability (*i.e.*, ability to maintain production and investment in lower commodity price environments) and increase competitive downstream pricing without adding significantly to XCL's share of the Uinta Basin production, output to the Sale Lake City refiners or the like. *See infra*, Section IV. [redacted]

For Altamont specifically, the Proposed Transaction will provide an opportunity to generate value for their assets [redacted] XCL plans to change this with the goal of tripling Altamont's production.

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[7] Altamont acreage shapefiles provided to XCL in the course of diligence. XCL acreage shapefiles created by XCL internally in the ordinary course.

[redacted]

IV. COMPETITIVE ANALYSIS OF THE TRANSACTION

A. Changes in the Market Structure

Since the FTC investigated the EPE Transaction, the competitive landscape in the Uinta Basin, including its supply into the Salt Lake City refiners, has changed significantly.[8]

Critically for purposes of the FTC's concern in 2021, the increase in waxy crude oil production in the Uinta Basin has saturated supply to the Salt Lake City refiners. Current production levels dramatically exceed the capacity of the refiners, and Uinta Basin producers are selling a growing portion (in XCL's case, a majority) of their output outside the Salt Lake City area (primarily to the U.S. Gulf Coast). The Salt Lake City's refiners' demand for waxy crude oil remains capped at approximately 90,000 barrels per day[9], while Uinta Basin waxy crude oil production has reached 140,000 barrels per day and is continuing to grow.[10] In addition, Salt Lake City refiners also source other types of crude from outside of the Uinta Basin. Moreover, three different owners of Salt Lake City refineries also source Uinta waxy crude for their other

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[8] Please note that, for the purposes of this submission only, XCL adopts the view of the market set forth by the Commission in the EnCap/EP Energy matter. *See 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 (F.T.C. Mar. 25, 2022), https://www ftc.gov/system/files/ ftc_gov/pdf/2110158C4760EnCapEPEComplaint.pdf (hereinafter, "Complaint") ¶ 15.

[9] Based on Utah Geological Survey data for 2022, available at https://geology.utah.gov/docs/ statistics/petroleum3.0/pdf/T3.13a.pdf. The Complaint estimated the capacity of the Salt Lake City refineries at 80,000 barrels per day. *See* Complaint ¶ 21.

[10] Refinery Demand Data extracted by XCL from Utah Geological Survey. Production Data supplied to XCL by Utah Division of Oil Gas and Mining.

refineries outside of Utah. Both in Salt Lake City and at refineries on the Gulf Coast, waxy crude competes with various other crude grades as refineries optimize their crude feedstocks to maximize profits by producing the combination of products dictated by the market.[11]

In the Complaint, the Commission expressed concern that increased concentration in the Uinta Basin would result in higher prices and decreased supply to the Salt Lake City refiners.[12] But the supply today from the Uinta Basin well exceeds the demand for waxy crude oil from the Salt Lake refiners. This puts the Salt Lake City refiners in the position of driving prices, rather than the Uinta Basin oil producers doing so. Because the Uinta Basin oil producers need to pay higher transportation and other costs to access customers other than the Salt Lake City refiners, the refiners are able to demand low prices.

The Salt Lake City refiners also charge high prices for their finished product—higher than in most of the United States—and realize the highest profits in the nation as compared to refiners in other locations. Finished product prices in Salt Lake City are independent of the sales price of waxy crude oil.[13]

As described above, the production of waxy crude oil in the Uinta Basin has grown (well beyond the demand of Salt Lake City refiners) and continues to grow, creating opportunities for entry and growth. In the last 24 months, at least four new oil producers, Scout Energy Partners, Wasatch Energy Management Operating ("WEM Operating")[14], Anschutz

[11] Based on U.S. Geological Survey, Table 3.13a "Utah Refinery Receipts of Crude Oil by State of Origin, 1980-2022", available at https://geology.utah.gov/energy-minerals/info/energy-mineral-statistics/#toggle-id-3.

[12] Complaint ¶ 24.

[13] Data obtained from Utah Office of Energy Development 2022 Utah Gasoline Prices Report https://energy.utah.gov/wp-content/uploads/Utah-Gasoline-Prices.pdf

[redacted] WEM Operating began drilling in the Uinta Basin as an independent operator in 2023 and are not yet listed on the UDOGM website as an active producer yet (expected to be listed in 2024).

Corporation and Vaquero Energy have entered the Uinta Basin, initiated drilling operations and have wells that are producing. Additionally, several formerly dormant operators have resumed drilling activities, including Berry Corporation[15], Caerus Uinta, and KGH Operating. Ovintiv, Inc., Uinta Wax Operating and Crescent Energy Company (the company that ultimately acquired EPE) remain large producers, while other competitors, including Middle Fork Energy Partners[16] as well as the new entrants mentioned above, have also built a significant presence, as measured by crude production.

[15] Primarily drilling vertical wells (so not included in the chart below).

[16] Listed in the chart below as Koda Resources.

The below chart shows the number of new horizontal wells that have been drilled by year since 2020 per producer, with a notable increase for most producers in 2023.

Producer	**2020**	**2021**	**2022**	**2023**
Altamont Energy	0	0	8	0
Anschutz Corp	0	0	0	2
Crescent Energy	9	41	30	24
Finley Resources	2	0	0	0
KGH Operating Co.	0	0	1	1
Koda Resources	0	0	0	9
Ovintiv	3	26	14	54
Scout Energy	0	0	0	20
Uinta Wax	10	16	23	37
WEM Operating	0	0	0	6
XCL Resources	4	48	70	61
Total	**28**	**131**	**146**	**214**

Source: Enverus Data [redacted]

The emergence of at least four new entrants in the last 24 months, combined with formerly small producers increasing their shares, indicates that competition is robust in the region.

B. Size and Positioning of the Target

As outlined *supra* in Section II(A)(2), Altamont is a small producer with limited capacity and output. Altamont's limited acreage is contiguous to XCL's, and the Parties' infrastructure is complementary, allowing XCL to optimize the combined entity's processes and lower costs. While XCL expects to realize significant cost savings from the Potential Transaction, the increase to XCL's production and share of the Uinta Basin will be modest. *See supra*, Section IV(A). XCL expects that the addition of Altamont's current production will only increase XCL's total production by 9% and market share of waxy crude oil supply to Salt Lake City by 4%, and not materially affect its development or investment plans.

The Parties also expect the Proposed Transaction to have a limited effect, if any, on the supply of waxy crude oil to the Salt Lake City refiners. As outlined *supra* in Section IV(A), the production of waxy crude oil in the Uinta Basin well exceeds the demand from the Salt Lake City refiners. Although XCL's waxy crude oil production has quadrupled since 2022, its supply to Salt Lake City refiners remains unchanged, at approximately [redacted] barrels per day. The Salt Lake City refiners have indicated to XCL that they do not intend to purchase any more oil from XCL, and XCL does not expect to increase its sales to them in any significant measure, even with the acquisition of Altamont. [redacted] the incremental output from Altamont is only 4% of the waxy crude oil sold to Salt Lake City refiners.

XCL estimates that the HHI index in the market for the supply of waxy crude oil to Salt Lake City refiners is currently 1,549 (pre-Proposed Transaction) and would increase to 1,647 (post-Proposed Transaction), for an HHI delta of 98 points.[17] The chart below shows the pre and post-Proposed Transaction market shares and corresponding HHI components for the 12 top producers for supply of waxy crude to Salt Lake City refiners.[18]

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[17] Calculations based on latest available Utah Division of Oil, Gas and Mining (UDOGM) data as of January 2024 (July 2023), using production data for a 12-month period (August 2022-July 2023). Calculations use XCL actual sales to SLC and UDOGM production data for other Uinta Basin producers. Estimates assume 100% of production in the Uinta Basin is supplied to Salt Lake City for most producers, except for Ovintiv and Uinta Wax, which XCL is aware also supply a portion (which, for the purposes of this estimate XCL has assumed to be 10,000 barrels per day) to the Gulf Coast. XCL is not aware of Uinta Basin producers other than itself, Ovintiv, and Uinta Wax that supply outside of Salt Lake City in any significant manner. SLC demand for waxy crude (for total size of market) obtained from UDOGM. [redacted]

[18] Note the remaining (smaller) producers have a market share and HHI component that rounds to 0 and so have not been displaye[redacted]

Producer	Share of Waxy Crude Supply to SLC (pre-Transaction)	HHI Component (pre-Transaction)	Share of Waxy Crude Supply to SLC (post-Transaction)	HHI Component (post-Transaction)
XCL AssetCo, LLC	[redacted]	311	[redacted]	475
Javelin Energy Partners Management, LLC	[redacted]	654	[redacted]	654
Ovintiv USA, Inc.	[redacted]	189	[redacted]	189
Uinta Wax Operating, LLC	[redacted]	178	[redacted]	178
FINLEY RESOURCES, INC.	[redacted]	80	[redacted]	80
Scout Energy Management, LLC	[redacted]	29	[redacted]	29
Altamont Energy Operating LLC	[redacted]	17	[redacted]	N/A
Berry Petroleum Company LLC	[redacted]	16	[redacted]	16
MIDDLE FORK ENERGY UINTA, LLC	[redacted]	9	[redacted]	9
Vaquero Uinta, LLC	[redacted]	2	[redacted]	2
Greylock Production, LLC	[redacted]	1	[redacted]	1
Caerus Uinta, LLC	[redacted]	1	[redacted]	0
Total[19]	**100%**	**1,549**	**100%**	**1,647**

Neither the starting nor ending HHI figures indicate a highly concentrated market and the delta from the transaction is not a significant increase under the 2023 Merger Guidelines; instead, the delta reflects only a marginal increase in concentration. [redacted]

[19] Note that the percentages and HHI numbers are rounded and <1% is accounted for by the small producers not listed.

[redacted]

Additionally, the HHI calculations do not take into account the ample oversupply of waxy crude oil available to Salt Lake City refiners. The estimated HHIs also only include waxy crude oil sold to Salt Lake City (90,000 barrels per day) and not all crude oil sold to Salt Lake City (200,000 barrels per day).

C. Expected Competitive Effects

The Proposed Transaction will have no negative competitive effect on any relevant market. Since the Commission issued the Order, the competitive landscape has shifted in favor of Salt Lake City refiners, due to the increase in local output from existing suppliers (XCL and others) and the entry of new waxy crude oil producers; while the emergence of these producers shows that barriers to entry have weakened. Given the ample choice Salt Lake City refiners have, the small increase in capacity and output XCL would receive from the Altamont assets would have little effect.[21] Additionally, both the size of the target and the value of the Proposed Transaction are a small fraction of the size of the EPE Transaction that resulted in the Order.

The Potential Transaction will, however, result in pro-competitive effects, allowing XCL to lower costs, grow production, and optimize its processes to deliver high-

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[20] A typical horizontal well in Utah can make anywhere between 800-2,000 barrels per day in its first several months of production. However, by month 12, this typically will fall to under 500 barrels per day, and typically will fall below 300 barrels per day by month 24. *See* Appendix A (showing average daily production for Uinta Basin horizontal wells with first production since 2019). [redacted]

[21] As noted above, for the purposes of this submission, XCL has adopted the Complaint's view of the market. However, XCL believes that market activity and competitive dynamics have demonstrated that waxy crude is not its own product market. It is a crude grade that is fungible with and competes with various other crude grades as refineries optimize their feedstock to align with what the market dictates. Waxy crude has been run at many refineries outside of Salt Lake City and in the process, displaced alternative crude oils at those destinations. When analyzed in this broader market lens, the transaction has negligible impacts on any refining markets.

quality, competitively priced products to the downstream markets in Salt Lake City, the Gulf Coast, and elsewhere. XCL has demonstrated its desire and ability to significantly grow production on its existing position for the benefit of customers (and consumers) in all regions, and it is uniquely positioned to employ the same strategy on Altamont.

V. REQUEST FOR CONFIDENTIAL TREATMENT

This petition, including its related documents, contains certain confidential and competitively sensitive business information relating to XCL, Altamont and the Proposed Transaction. Disclosure of such confidential information may prejudice XCL and Altamont, and cause harm to the ongoing competitiveness of both companies. Pursuant to Sections 2.41(f)(4) and 4.9(c) of the FTC's Rules of Practice and Procedure,[22] XCL has redacted such information from the public version of this application, and requests confidential treatment for such redacted information under Section 4.10(a)(2) of the FTC's Rules of Practice and Procedure[23] and Sections 552(b)(4) and (b)(7) of the Freedom of Information Act.[24] In the event that a determination is made that any material marked as confidential is not subject to confidential treatment, XCL requests that the FTC provide prompt notice of that determination and adequate opportunity to appeal such a decision.

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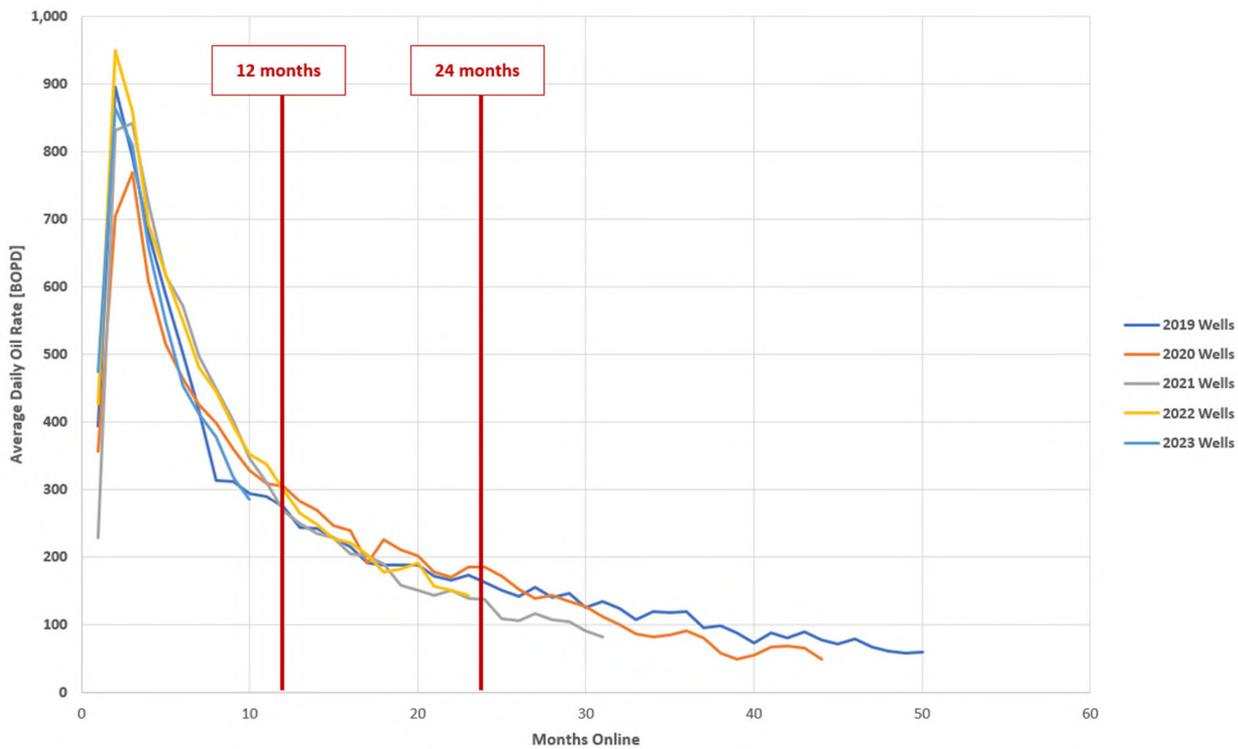
[22] 16 C.F.R. §§ 2.41(f)(4), 4.9(c).

[23] 16 C.F.R. § 4.10(a)(2).

[24] 5 U.S.C. §§ 552(b)(4), 552(b)(7).

APPENDIX A

<u>Average daily production 2019-2023 for Uinta Basin horizontal wells with first production in 2019[25]</u>



[25] A minimum of 10 wells is required to produce a monthly average reducing noise in outer years. Data sourced from Enverus. [redacted]