



100 Pine Street • PO Box 1166 • Harrisburg, PA 17108-1166
Tel: 717.232.8000 • Fax: 717.237.5300

Adeolu A. Bakare
Direct Dial: 717.237.5290
Direct Fax: 717.260.1712
abakare@mcneeslaw.com

February 13, 2017

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor
Harrisburg, PA 17120

VIA ELECTRONIC FILING

RE: Application of Laurel Pipe Line Company, L.P. for All Necessary Authority, Approvals, and Certificates of Public Convenience To Change the Direction of Petroleum Products Transportation Service to Delivery Points West of Eldorado, Pennsylvania; Docket No. A-2016-2575829

Dear Secretary Chiavetta:

Enclosed for filing with the Pennsylvania Public Utility Commission is the Prehearing Conference Memorandum of Gulf Operating, LLC ("Gulf") and Sheetz, Inc. ("Sheetz") in the above-referenced proceeding.

As shown by the attached Certificate of Service, all parties to this proceeding are being duly served. Thank you.

Respectfully submitted,

McNEES WALLACE & NURICK LLC

By

A handwritten signature in black ink, appearing to read 'Adeolu A. Bakare', is written over a horizontal line.

Adeolu A. Bakare

Counsel to Gulf Operating, LLC, and Sheetz, Inc.

/leh

Enclosure

c: Administrative Law Judge Eranda Vero (via E-Mail and First-Class Mail)
Certificate of Service

www.mwn.com

HARRISBURG, PA • LANCASTER, PA • SCRANTON, PA • STATE COLLEGE, PA • COLUMBUS, OH • WASHINGTON, DC

CERTIFICATE OF SERVICE

I hereby certify that I am this day serving a true copy of the foregoing document upon the participants listed below in accordance with the requirements of Section 1.54 (relating to service by a participant).

VIA E-MAIL AND FIRST CLASS MAIL

Lillian S. Harris, Esq.
Garrett P. Lent, Esq.
Post & Schell, P.C.
17 North Second Street, 12th Floor
Harrisburg, PA 17101-1601
lharris@postshell.com
glent@postschell.com
Laurel Pipe Line Company LP

David B. MacGregor, Esq.
Post & Schell, P.C.
Four Penn Center
1600 John F. Kennedy Boulevard
Philadelphia, PA 19103-2808
dmacgregor@postschell.com
Laurel Pipe Line Company LP

Adam D. Young, Esq.
Michael Swindler, Esq.
Bureau of Investigation and Enforcement
Pennsylvania Public Utility Commission
P. O. Box 3265
Harrisburg, PA 17105-3265
adyoung@pa.gov
mwindler@pa.gov

Christopher A. Ruggiero, Esq.
Vice President, General Counsel & Secretary
Monroe Energy, LLC
4101 Post Road
Trainer, PA 19061
christopher.ruggiero@monroe-energy.com

Carl Shultz, Esq.
Karen O. Moury, Esq.
Eckert Seamans Cherin & Mellott LLC
213 Market Street 8th Floor
Harrisburg, PA 17101
cshultz@eckertseamans.com
kmoury@eckertseamans.com
Husky Marketing and Supply Company

John F. Povilaitis, Esq.
Alan Michael Seltzer, Esq.
Buchanan Ingersoll & Rooney
409 North Second Street Suite 500
Harrisburg, PA 17101-1357 Yes
John.Povilaitis@BIPC.com
Alan.Seltzer@BIPC.com
Philadelphia Energy Solutions

Steven Ohl, President
Better Home Heat Council of Lehigh Valley
PO Box 613
Emmaus, PA 18049
steve@rfohl.com

Kevin Steele Sr., Vice President
H.B. Steele & Son, Inc.
PO Box 375
Orwigsburg, PA 17961
kevin@hbsteeleoil.com

Leonard Zvorsky, Director
South Central PA Energy Association
1265 Tumblestone Drive
Mt. Joy, PA 17552
scpea4@gmail.com

Joseph Otis Minott, Esq.
Ernest Logan Welde, Esq.
Clean Air Council
135 S. 19th Street, Suite 300
Philadelphia, PA 19103
joe_minott@cleanair.org
lwelde@cleanair.org
via e-mail only

Andrew Levine, Esq.
Stradley Ronon
2600 One Commerce Square
Philadelphia, PA 19103
alevine@stradley.com
Sunoco LLC

Jonathan Marcus, Esq.
Daniel J. Stuart, Esq.
Marcus & Shapira
One Oxford Centre 35th Floor
301 Grant Street
Pittsburgh, PA 15219
jmarcus@marcus-shapira.com
stuart@marcus-shapira.com
Giant Eagle Inc.

Douglas Woosnam
The Delaware Valley Fuel Dealers' Association
1866 Leithsville Road, #227
Hellertown, PA 18055
dew.dvfa@gmail.com

Whitney E. Snyder, Esq.
Todd S. Stewart, Esq.
Kevin J. McKeon Esq.
Hawke McKeon & Sniscak LLP
100 North Tenth Street
Harrisburg, PA 17101
wesnyder@hmslegal.com
tsstewart@hmslegal.com
kjmckeon@hmslegal.com

VIA FIRST CLASS MAIL

Todd J. Russo Sr., Esq.
Buckeye Partners LP
Five Tek Park
9999 Hamilton Boulevard
Breinigsville, PA 18031

Thomas C. Martin
Martin Oil Company
528 North First Street
Bellwood, PA 16617

Ed Shahady
BP Products North America
30 South Wacker Drive, Suite 900
Chicago, IL 60606

C. Mike Palmer Sr. VP
Marathon Petroleum Company
539 South Main Street
Findlay, OH 45840

John Sabatina Jr. Senator
Room 457 Main Capitol
Senate Box 203005
Harrisburg, PA 17120

Senator John C. Rafferty Jr.
20 East Wing
Harrisburg, PA 17120-3044

Honorable John T. Yudichak
Majority Chairperson Se Env/Energy
458 Main Capitol Bldg
Senate Box 203014
Harrisburg, PA 17120-3014

Senator Gene Yaw
Senate Box 203023
Harrisburg, PA 17120-3023

Honorable John Gordner
Senate of Pennsylvania
Main Capitol Building
Senate Box 203027
Harrisburg, PA 17120-3027

Tom Killion Senator
Senate Box 203009
Harrisburg, PA 17120-3009

Honorable Scott Wagner Senator
Senate Box 203028
Harrisburg, PA 17120-3028

Honorable Anthony Hardy Williams
Senate Box 208008
The State Capitol
Harrisburg, PA 17120-3008

Honorable John M Disanto Senator
Senate Box 203015
Harrisburg, PA 17120-3015

Travis Gery
Senate Consumer Protection &
Professional Licensure Com
Main Capital Building Room 281
Harrisburg, PA 17120-3306

Thomas J. McGarrigle Senator
Senate of Pennsylvania
Senate Box 203026
Harrisburg, PA 17120-3026

Robert M. Tomlinson
Senate of PA - 6th District
Senate Box 203006
Room 362 Main Capitol Building
Harrisburg, PA 17120-3006

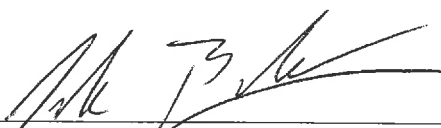
Honorable Lisa Boscola
Senate of Pennsylvania
The State Capitol
Senate Box 203018
Harrisburg, PA 17120-3018

Camera Bartolotta Senator
Senate of Pennsylvania
Senate Box 203046
Harrisburg, PA 17120-3046

Thomas J. McGarrigle Senator
Senate of Pennsylvania
Senate Box 203026
Harrisburg, PA 17120-3026

Robert M. Tomlinson
Senate of PA - 6th District
Senate Box 203006
Room 362 Main Capitol Building
Harrisburg, PA 17120-3006

Jerry Livingston Exec Director
Minority Chair
Senate Consumer Protection Comm
Main Capitol Building Room 458
Harrisburg, PA 17120


Adeolu A. Bakare

Counsel to Gulf Operating, LLC
and Sheetz, Inc.

Dated this 13th day of February, 2017, in Harrisburg, Pennsylvania.

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Application of Laurel Pipe Line Company, :
L.P. for All Necessary Authority, Approvals, :
and Certificates of Public Convenience To : Docket No. A-2016-2575829
Change the Direction of Petroleum Products :
Transportation Service to Delivery Points :
West of Eldorado, Pennsylvania :

**PREHEARING MEMORANDUM OF
GULF OPERATING, LLC, AND SHEETZ, INC.**

Pursuant to Administrative Law Judge ("ALJ") Eranda Vero's February 7, 2017, Prehearing Conference Order, Gulf Operating, LLC ("Gulf") and Sheetz, Inc. ("Sheetz") hereby submit this Prehearing Memorandum in the above-captioned proceeding.

I. HISTORY OF THE PROCEEDING

On November 14, 2016, Laurel Pipe Line Company, L.P. ("Laurel" or "Applicant"), filed with the Pennsylvania Public Utility Commission ("PUC" or "Commission"), pursuant to various provisions of the Pennsylvania Public Utility Code, its Application for authority, approvals and Certificates of Public Convenience ("CPC") to change the direction of petroleum products transportation service to delivery points west of Eldorado, Pennsylvania ("Application").

As set forth in the Application, Laurel currently transports petroleum products from points of origin near Philadelphia, Pennsylvania, to destination points across the Commonwealth, terminating west of Pittsburgh, Pennsylvania. *See* Application, p. 2. In addition to the intrastate shipments, Laurel assigns a portion of its capacity to Buckeye Pipe Line Company, L.P. ("Buckeye"), for interstate transportation service from origin points in New Jersey and Delaware to destination points in Pennsylvania. *See id.* at 2.

The Application proposes to fundamentally change the jurisdictional pipeline transportation service currently provided by Laurel by eliminating jurisdictional service to all points west of Eldorado (near Altoona). *See id.* at 9. Laurel proposes that Buckeye will use the pipeline facilities west of Eldorado for future receipt of interstate deliveries originating from origin points in the Midwest and in the Pittsburgh area to Eldorado. *See id.* Importantly, the Application claims that these deliveries would be "on Laurel's pipeline at FERC-approved interstate rates." *Id.* at 9. The Application also claims that Laurel "will submit for approval a new capacity agreement whereby Buckeye will use a portion of Laurel's post-project capacity" for these interstate shipments. *See id.* On February 6, 2017, at Docket Number G-2017-2587567, Laurel submitted the proposed Pipeline Capacity Agreement between itself and its affiliate, Buckeye ("Capacity Agreement").

On November 22, 2016, Gulf filed a Petition to Intervene and Motion to Extend Deadline for Protests. The Commission issued a Secretarial Letter on December 6, 2016, extending the deadline for filing formal protests and petitions to intervene in this proceeding to February 1, 2017.

On December 8, 2016, Philadelphia Energy Solutions Refining and Marketing LLC ("PESRM") filed a Petition to Intervene.

On December 20, 2017, the Commission's Bureau of Investigation & Enforcement ("I&E") filed a Notice of Intervention.

On January 3, 2017, Monroe Energy, LLC ("Monroe") filed a Petition to Intervene.

On January 31, 2017, Husky Marketing & Supply Co. ("Husky") filed a Petition to Intervene.

On February 1, 2017, Sheetz filed a Petition to Intervene in this proceeding. On that same date, both Gulf and Sheetz filed Protests to Laurel's Application. On that same day, Giant Eagle

Inc. ("Giant Eagle"), Clean Air Council, and Sunoco LLC filed Petitions to Intervene. Giant Eagle's Petition to Intervene included a Protest.

On February 7, 2017, Laurel filed a Motion to Consolidate the Commission's consideration of the Capacity Agreement with Laurel's Application.

On February 13, 2017, Gulf, Sheetz, Monroe, PERSM, and Giant Eagle filed a Joint Answer to Laurel's Motion to Consolidate.

A Prehearing Conference has been scheduled in this proceeding for February 14, 2017.

II. SERVICE LIST

For purposes of service in the above-captioned proceeding, please direct all communications to:

Robert A. Weishaar, Jr. (Pa. I.D. No. 74678)
McNees Wallace & Nurick LLC
1200 G Street, NW, Suite 800
Washington, DC 20005
Phone: (202) 898-0688
Fax: (717) 260-1765

Susan E. Bruce (Pa. I.D. No. 80146)
Adeolu A. Bakare (Pa. I.D. No. 208541)
Kenneth R. Stark (Pa. I.D. No. 312945)
McNees Wallace & Nurick LLC
100 Pine Street, P.O. Box 1166
Harrisburg, PA 17108-1166
Phone: (717) 232-8000
Fax: (717) 237-5300

III. ANTICIPATED ISSUES AND SUB-ISSUES

Based on the limited information and evidence that Laurel has provided to date, Gulf and Sheetz anticipate that the hearing will need to address the following issues and sub-issues regarding Laurel's Application:

- (1) Does Laurel's proposed reversal of service on the pipeline constitute an abandonment of service in the Commonwealth of Pennsylvania requiring PUC approval?
- (2) If Laurel's proposed reversal of service on the pipeline constitutes an abandonment of service in the Commonwealth of Pennsylvania requiring PUC approval, has Laurel met the Commission's standards for an abandonment of service?
 - a. Has Laurel demonstrated an inability to earn adequate revenue from its jurisdictional pipeline operations?
 - b. Has Laurel provided evidence of insufficient demand for its pipeline service?
 - c. Would Laurel's customers be significantly disadvantaged if Laurel's proposed reversal of service on the pipeline is approved?
 - d. Do Laurel's shippers have reasonable alternatives available to them to replace shipped volumes on Laurel's pipeline if Laurel's proposed reversal of service on the pipeline is approved?
- (3) What is the overall economic impact of the proposed reversal of service on the pipeline on the Philadelphia petroleum products market, including but not limited to the impact on competition, wholesale commodity prices for petroleum products, jobs, and gasoline and diesel prices for consumers?
- (4) What is the overall economic impact of the proposed reversal of service on the pipeline on the Pittsburgh petroleum products market, including but not limited to the impact on competition, wholesale commodity prices for petroleum products, and gasoline and diesel prices for consumers?
- (5) What is the overall impact of the proposed reversal of service on citizens of Pennsylvania and potential stakeholders, such as customers, shippers, refiners, and affected municipalities (*e.g.*, Altoona) in the Commonwealth?
- (6) Has Laurel met its burden to demonstrate that its proposed reversal of service on the pipeline is in the public interest?

- (7) Are Laurel's proposed tariff changes just and reasonable, specifically with respect to the increased reliance on trucking services for petroleum products transportation in Pennsylvania anticipated to occur if the Application is granted?
- (8) Would Laurel's proposed reversal of service on the pipeline cause adverse safety and environmental impacts in the Commonwealth of Pennsylvania?

Gulf and Sheetz anticipate the need for extensive discovery of Laurel's Application and direct testimony. Through the course of that discovery, Gulf and Sheetz may discover additional issues that need to be addressed during this proceeding. Gulf and Sheetz reserve their rights to raise further issues and to respond to all matters raised by other parties.

IV. PROPOSED WITNESSES

Preliminarily, Gulf anticipates presenting testimony sponsored by the following witnesses:

Daniel S. Arthur
Principal
Brattle Group

Todd O'Malley
Executive Vice President and Chief Commercial Officer
Gulf Oil, LP

Sheetz preliminarily anticipates presenting testimony sponsored by the following witness:

Mike Lorenz
Executive Vice President of Petroleum Supply
Sheetz, Inc.

Both Gulf and Sheetz are in the process of evaluating the extent to which they will present additional witnesses to address concerns such as adverse petroleum products pricing impacts, adverse environmental impacts, and adverse safety impacts. In the event that Gulf or Sheetz decide to present additional witnesses, Gulf and/or Sheetz will inform the ALJ and the other parties of any intended witnesses and topics of testimony. Gulf and Sheetz also intend to participate actively in this proceeding by conducting extensive discovery, by cross-examining other parties' witnesses,

and by submitting briefs and reply briefs, and, if necessary, by submitting exceptions and reply exceptions.

V. MOTION TO CONSOLIDATE

Gulf and Sheetz oppose Laurel's Motion to Consolidate and have attached hereto, as Appendix A, the Joint Answer to the Motion for Consolidation filed on behalf of Gulf, Sheetz, Monroe, PESRM, and Giant Eagle.

VI. PROPOSED SCHEDULE AND DISCOVERY RULES

The parties expect significant discovery in this proceeding due to the complexity of issues raised in the initial pleadings and because Laurel's proposal represents a fundamental change to the jurisdictional service it has been providing in the Commonwealth for more than 50 years. Gulf and Sheetz propose that the initial prehearing conference address only the limited scheduling that is necessary to allow intervenors and protesting parties to conduct thorough discovery regarding Laurel's Application, and recommend that the parties convene a second prehearing conference to develop a schedule for further litigation after the initial discovery phase is complete. Accordingly, Gulf and Sheetz propose the following schedule to govern the initial phase of this proceeding:

February 7, 2017	Laurel files Direct Testimony ^[1]
February 14, 2017	Prehearing Conference
March 15, 2017	Settlement Conference
March 22, 2017	Intervenors and Public Advocates must serve their initial set of interrogatories/data requests by this date
March 23, 2017	Intervenors and Public Advocates to Notify Parties of any Need for Depositions
March 24 – May 12, 2017	Complete Depositions of Laurel Representatives if Requested
Week of May 15, 2017	Second Prehearing Conference to Complete Procedural Schedule (convene week of March 27, 2017 if no depositions)

^[1] Written interrogatories and requests for production of documents may be served and answered throughout the schedule until the ALJ closes the evidentiary record.

VII. PUBLIC INPUT HEARINGS

Gulf and Sheetz would support scheduling of public input hearings in the Philadelphia and Pittsburgh areas. Gulf and Sheetz remain open to discussing additional locations for public input hearings that may be proposed by other parties.

VIII. POSSIBILITY OF SETTLEMENT

Gulf and Sheetz are willing to participate in discussions with the other parties to amicably resolve the issues in this proceeding, subject to Commission approval.

Respectfully submitted,

McNEES WALLACE & NURICK LLC

By



Robert A. Weishaar, Jr. (Pa. I.D. No. 74678)
1200 G Street, NW, Suite 800
Washington, DC 20005
Phone: (202) 898-0688
Fax: (717) 260-1765
bweishaar@mcneeslaw.com

Susan E. Bruce (Pa. I.D. No. 80146)
Adeolu A. Bakare (Pa. I.D. No. 208541)
Kenneth R. Stark (Pa. I.D. No. 312945)
100 Pine Street
P. O. Box 1166
Harrisburg, PA 17108-1166
Phone: (717) 232-8000
Fax: (717) 237-5300
sbruce@mcneeslaw.com
abakare@mcneeslaw.com
kstark@mcneeslaw.com

Counsel to Gulf Operating, LLC and Sheetz, Inc.

Dated: February 13, 2017

Appendix A

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Application of Laurel Pipe Line Company, L.P. for All Necessary Authority, Approvals, and Certificates of Public Convenience To Change the Direction of Petroleum Products Transportation Service to Delivery Points West of Eldorado, Pennsylvania	:	
	:	Docket No. A-2016-2575829
	:	
	:	
Laurel Pipe Line Company, L.P. – Pipeline Capacity Agreement with Buckeye Pipe Line Company, L.P.	:	
	:	Docket No. G-2017-2587567
	:	

**ANSWER OF INDICATED PARTIES OPPOSING
LAUREL'S MOTION TO CONSOLIDATE**

TO THE PENNSYLVANIA PUBLIC UTILITY COMMISSION:

Pursuant to 52 Pa. Code §§ 5.61(a)(1) and 5.81, the Indicated Parties¹ hereby answer and oppose Laurel Pipe Line Company, L.P.'s ("Laurel") Motion to Consolidate filed in the above-captioned matters on February 7, 2017 ("Motion").

1. On November 14, 2016, in Docket No. A-2016-2575829, Laurel filed an application seeking a certificate of public convenience to reverse the flow on a portion of its petroleum pipeline that traverses the Commonwealth of Pennsylvania ("Application"). On February 6, 2017, in Docket No. G-2017-2587567, Laurel filed and sought approval of an affiliated interest agreement ("AIA") with Buckeye Pipe Line Company ("Buckeye"). Laurel's Motion seeks to consolidate these two proceedings.

2. However, a critical threshold question is the appropriate entity – the presiding Administrative Law Judge ("ALJ") or the Pennsylvania Public Utility Commission

¹ The Indicated Parties is an *ad hoc* group of parties united in their opposition to the flow reversal/abandonment proposed by Laurel. For purposes of this Answer, the Parties include: Gulf Operating, LLC; Philadelphia Energy Solutions Refining and Marketing LLC; Monroe Energy, LLC; Giant Eagle, Inc.; and Sheetz, Inc.

("Commission") itself – to decide the Motion. The Indicated Parties believe it would be premature and inconsistent with the Commission's regulations on consolidation for the ALJ to decide whether the Application and AIA proceedings should be consolidated as Laurel requested. Laurel filed the two matters separately with the Commission, the proceedings seek different relief and, as noted further below, the AIA proceeding could easily be mooted or obviated by a final Commission decision denying the relief sought in the Application. It is therefore important for the Commission – and with all due respect to the Presiding ALJ – to decide initially the Motion given the procedural posture of the two separate and distinct proceedings that are the subject to the Motion. That the Commission and not the ALJ should decide the Motion is clear based on the Commission's regulations at 52 Pa. Code § 5.81(a) that note that the Commission or the presiding officer may grant consolidation. However, since no presiding officer (including the ALJ) has been assigned to the AIA proceeding, the only entity that can and should decide the Motion is the Commission itself.²

3. Even if the ALJ elects to decide the Motion despite the Indicated Parties' position to the contrary, the Commission's regulations support the denial of consolidation. The Commission's regulations at 52 Pa. Code § 5.81 only allow for consolidation of proceedings "involving a common question of law or fact." *Id.* Laurel concedes there are no common issues

² In addition, interjecting the AIA into the Application proceeding is inconsistent with the Commission's historic treatment of affiliated interest agreements, which typically are handled administratively by Commission staff and not by the Office of Administrative Law Judge. See, e.g., *Securities certificate of Columbia Gas of Pennsylvania, Inc. for the issuance of promissory notes in an aggregate principal amount not to exceed \$130 million. Affiliated interest agreement concerning the issuance of promissory notes between Columbia Gas of Pennsylvania, Inc. and NiSource Finance Corporation*; Docket Nos. S-2015-2515414, and G-2015-2515982, 2016 WL 406524 (Pa. PUC 2016); *Affiliated Interest Agreement between UGI Utilities, Inc. and UGI Central Penn Gas, Inc. et al.*, Docket Nos. G-2015-2489752 et al., 2015 WL 5011607 (Pa. PUC 2015); *Securities certificate and affiliated interest agreement of Peoples Natural Gas Company LLC for the issuance of an intercompany promissory note to its parent, PNG Companies LLC, in an aggregate principal amount not to exceed \$118,125,000*, Docket Nos. S-2015-2465675, and G-2015-2465691, 2015 WL 965767 (Pa. PUC 2015); *Affiliated Interest Agreement between D&E Communications, Inc. and D&E Telephone Company, et al.*, Docket No. G-00010865, 2001 WL 36258619 (Pa. PUC 2001).

of law. Motion at P 9. Laurel's assertion that there are common issues of fact (Motion at P 9) is unsupported and unsupportable.

3. The Application proceeding will determine whether it is in the public interest for Laurel to reverse the flow of its half of its pipeline under 66 Pa. C.S. § 1103(a)-(b). Material considerations of fact included in that determination are:

- (a) whether the proposed reversal will in fact abandon intrastate service to Pittsburgh;
- (b) whether the proposed reversal will in fact conflict with Laurel's current certificate of public convenience;
- (c) the extent of the loss to Laurel of its current pipeline service;
- (d) the current and ongoing high demand for Laurel's pipeline service;
- (e) the extensive harm to the public, including, shippers, refiners, consumers, and Pennsylvania's infrastructure and environment in the event of abandonment;
- (f) the lack of harm to Laurel if the abandonment is not approved; and
- (g) lack of available alternatives to replace Laurel's current pipeline service.

4. In contrast, the AIA proceeding will determine whether the agreement between two affiliates (*i.e.*, Laurel and Buckeye) is reasonable under Chapter 21 of the Public Utility Code. 66 Pa. C.S. § 2101, et seq. Material considerations of fact in that proceeding will include the payments between the parties and market prices for similar goods and/or services provided under the agreement, which allows for Buckeye to use a portion of Laurel's pipeline capacity if the flow of the pipeline is reversed pursuant to Commission approval of the Application. Thus, if Laurel prevails in the Application proceeding, review of the AIA will be required, but will involve different factual and legal issues that are not relevant to the relief sought in the Application and indeed do not need be addressed at all if the Application is denied. This is the only common thread between the proceedings.

5. 52 Pa. Code § 5.81 also allows the Commission or ALJ to "make orders concerning the conduct of the proceeding as may avoid unnecessary costs or delay." *Id.* Contrary to Laurel's assertions, consolidation here will not avoid unnecessary costs or delay. Regarding delay, filing

the AIA almost three months after the Application was Laurel's choice. Regarding costs, the only party that will avoid additional costs is Laurel, and only if its Application is approved. Given that Laurel had control over when it filed the Application and AIA, it should not be allowed to unduly burden other parties by essentially requiring them to protest and litigate an AIA that may be moot or that the parties may choose not to challenge at all if the Application were approved.

6. Should the Commission approve Laurel's Application, it would be appropriate for it to also order *at that time* the filing of any affiliated agreements with the Commission that are necessary given the approval. This would make eminent sense because the AIA Laurel has already filed is based on the Application *as filed*. However, if the Application were to be approved (over the objections of numerous opposing parties), Laurel may be required to modify the AIA based on conditions the Commission may place on any Application approval. It would be a waste of time and resources to adjudicate in this proceeding an AIA that has become moot because it must be revised in some manner based on the outcome of the Application proceeding.

7. Because there are no common issues of law or fact between the Application and AIA proceedings, the express requirement for consolidation under the Commission's regulations, Laurel's citation to and application of the factors ALJ Buckley discussed in *Pa. Pub. Util. Comm'n v. City of Lancaster Sewer Fund*, Docket No. R-2012-2310366 (Second Prehearing Order Nov. 26, 2012) are not relevant to consolidation here. Moreover, these factors, even if considered, counsel against consolidation:

- (1) whether additional issues exist that could cloud the determination of common issues;
 - here, there are no common legal or factual issues, so every issue the AIA adds will be an additional issue to decide;
- (2) whether consolidation will reduce litigation costs and decision-making for the parties and the Commission;

- here, consolidation will increase litigation costs and increase the parties', Your Honor's and the Commission's decision making efforts by requiring unnecessary litigation and consideration of an AIA that is moot if the Application is denied;
- (3) whether the issues in one proceeding go to the heart of an issue in the other proceeding;
 - here, again, there are no common questions of law or fact;
- (4) whether consolidation will unduly protract a hearing or produce a disorderly or unwieldy record;
 - here, consolidation will both protract the hearing and create an unwieldy record given the myriad, distinct, and complex issues involved in each proceeding;
- (5) whether different statutory and legal issues are involved;
 - here, the statutory and legal issues are different because the AIA proceeding involves 66 Pa. C.S. § 2101, et seq, and the Application proceeding involves 66 Pa. C.S. § 1103(a)-(b);
- (6) whether the party with the burden of proof differs in the proceedings;
 - here, while Laurel bears the burden of proof in both proceedings, the factual proof to meet that burden in each proceeding is different;
- (7) whether consolidation will unduly delay the resolution of one of the proceedings;
 - here, consolidation may delay resolution of both proceedings because new AIA issues will be added to the Application proceeding, and because the AIA filing could otherwise be handled on an entirely different non-litigation track, and could be avoided altogether in the event the Commission denies the Application; and
- (8) whether supporting data in both proceedings will be repetitive;
 - here, repetitive supporting data is unlikely because there are no common questions of law or fact.

8. It is evident from the number of protests and petitions to intervene that numerous parties oppose the relief Laurel seeks in the Application. Those pleadings further underscore the complexity of the issues and the many and varied stakeholders who will be adversely affected if Laurel's proposal to reverse the flow on a portion of the Laurel pipeline is approved. Because the issues in the Application proceeding are complex and involve a large and diverse group of potentially impacted parties, there are compelling reasons to avoid adding another set of issues for

the parties to address and the ALJ to adjudicate that are clearly marginal and unrelated to the Application. The Indicated Parties anticipate substantial discovery on the issues in the Application proceeding and believe no useful purpose would be served by adding AIA issues into the matters to be addressed, especially if – as the Indicated Parties will argue – the relief sought in the Application should be denied in its entirety.

WHEREFORE, the Indicated Parties respectfully request that Your Honor deny Laurel's Motion to Consolidate.

Respectfully submitted,

/s/ Robert A. Weishaar, Jr.

Robert A. Weishaar, Jr. (PA ID 74678)
McNees Wallace & Nurick LLC
1200 G Street, NW, Suite 800
Washington, DC 20005
Phone: (202) 898-0688
Fax: (717) 260-1765

Susan E. Bruce (PA ID 80146)
Adeolu A. Bakare (PA ID 208541)
Kenneth R. Stark (PA ID 312945)
McNees Wallace & Nurick LLC
100 Pine Street, PO Box 1166
Harrisburg, PA 17108-1166
Phone: (717) 232-8000
Fax: (717) 232-5300

*Attorneys for Gulf Operating, LLC and
Sheetz, Inc.*

/s/ Alan Michael Seltzer

Alan Michael Seltzer (PA ID 27890)
John F. Povilaitis (PA ID 28944)
Buchanan Ingersoll & Rooney PC
409 N. Second Street, Suite 500
Harrisburg, PA 17101-1357
Phone: (717) 237-4862
Fax: (717) 237-4825

*Attorneys for Philadelphia Energy Solutions
Refining and Marketing LLC*

/s/ Kevin J. McKeon

Kevin J. McKeon (PA ID 30428)
Todd S. Stewart (PA ID 75556)
Whitney E. Snyder (PA ID 316625)
Hawke McKeon & Sniscak LLP
100 North Tenth Street
Harrisburg, PA 17101
Phone: (717) 236-1300
Fax: (717) 236-4841

Christopher A. Ruggiero (PA ID 80775)
Vice President, General Counsel & Secretary
Monroe Energy, LLC
4101 Post Road
Trainer, PA 19061
Phone: (610) 364-8409
Fax: (610) 364-8404

Richard E. Powers, Jr.
Venable LLP
575 7th Street, NW
Washington, D.C. 20004
repowers@Venable.com
(Pro Hac Vice Admission Application Pending)

Attorneys for Monroe Energy, LLC

/s/ Jonathan D. Marcus

Jonathan D. Marcus (PA ID 312829)
Daniel J. Stuart (PA ID 321011)
Marcus & Shapira LLP
One Oxford Centre, 35th Floor
301 Grant Street
Pittsburgh, PA 15219-6401
Phone: (412) 471-3490
Fax: (412) 391-8758

Attorneys for Giant Eagle, Inc.

Dated: February 13, 2017