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February 13, 2017

VIA ELECTRONIC FILING

Rosemary Chiavetta, Secretary
PA Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

Re: Application of Laurel Pipeline Company, L.P.
Docket No. A-2016-2575829

Dear Secretary Chiavetta:

Enclosed for electronic filing please find the Prehearing Conference Memorandum of Giant Eagle, Inc. with regard to the above-referenced matter. Copies will be served in accordance with the attached Certificate of Service.

Respectfully submitted,



Daniel J. Stuart
Counsel for Intervenor and Protestor
Giant Eagle, Inc.

**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 CONFERENCE MEMORANDUM OF
INTERVENOR AND PROTESTOR GIANT EAGLE, INC.**

TO THE HONORABLE ADMINISTRATIVE LAW JUDGE VERO:

Pursuant to the February 7, 2017 Prehearing Conference Order (“Order”) of Administrative Law Judge Eranda Vero, Intervenor and Protestor Giant Eagle, Inc. respectfully submits this prehearing conference memorandum. *See* Order at ¶ 2.c. Also pursuant to the Order, Giant Eagle incorporates herein the Answer of Indicated Parties Opposing Laurel’s Motion to Consolidate the Commission’s consideration of a Capacity Agreement between Laurel and Buckeye Pipe Line Company, L.P. (Docket No. G-2017-2587567) (“Motion to Consolidate”).

SERVICE OF DOCUMENTS

1. Giant Eagle is represented by Marcus & Shapira LLP and requests that Jonathan Marcus and Daniel Stuart be listed as recipients for service. Their contact information is:

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HISTORY OF THE PROCEEDING

2. On November 14, 2016, Laurel Pipe Line Company, L.P. (“Laurel” or “Applicant”) filed its Application 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, with the Commission pursuant to various provisions of the Pennsylvania Public Utility Code (“Application”). *See* 66 Pa. C.S. § 101, *et seq.*

3. On November 16, 2016, the Commission issued a Secretarial Letter directing Laurel to publish notice of the Application in a newspaper having general circulation in the area involved and file proof of publication with the Commission by December 19, 2016. The Secretarial Letter also confirmed the Commission would publish notice of the Application in the *Pennsylvania Bulletin* on December 3, 2016, with formal protests and petitions to intervene due to the Commission by December 19, 2016.

4. On November 22, 2016, Gulf Operating, LLC (“Gulf”) filed its Petition to Intervene and Motion to Extend the Deadline for Protests. On December 6, 2016, the Commission granted Gulf’s motions and rescheduled the deadline for submitting interventions and protests for February 1, 2017. On December 6, 2016, the Commission also issued a Secretarial Letter reflecting its decision on Gulf’s motions.

5. Giant Eagle filed a Petition to Intervene and Protest on February 1, 2017.

ISSUES GIANT EAGLE INTENDS TO PRESENT

6. Giant Eagle intends to present evidence on the following issues:
- a. The market for petroleum products in Western Pennsylvania.

- b. The importance of a competitive marketplace for sourcing petroleum products.
- c. The impact of the proposed pipeline reversal on the cost of petroleum products for retailers and, in turn, end-use consumers.
- d. Seasonal differences in the market for petroleum products in Western Pennsylvania.
- e. The impact of the proposed pipeline reversal on tariff rates.
- f. The infeasibility, high cost, and unreliability of proposed alternative methods of obtaining petroleum products in the event of a pipeline reversal.

PROPOSED WITNESSES AND THE SUBJECT OF THEIR TESTIMONY

- 7. Giant Eagle intends to present the following witnesses:
 - a. Polly Flinn, Senior Vice President / General Manager, GetGo Café + Market by Giant Eagle. The subject of Ms. Flinn’s testimony will be on the issues identified above.
- 8. Giant Eagle reserves the right to call additional witnesses to address issues raised during the course of the proceedings and will identify such witnesses within a reasonable time prior to the commencement of hearings.

PROPOSED LITIGATION SCHEDULE

- 9. Giant Eagle proposes the Litigation Schedule attached hereto as Exhibit A.

ANSWER TO MOTION TO CONSOLIDATE

Pursuant to Sections 5.61 and 5.103 of the Pennsylvania Public Utility Commission’s (“PUC” or “Commission”) regulations, 52 Pa. Code §§ 5.61, 5.103, and the ALJ’s Prehearing Conference Order of February 7, 2017, Giant Eagle answers Laurel Pipe Line Company L.P.’s (“Laurel”) Motion to Consolidate by joining and incorporating herein the Answer of Indicated Parties Opposing Laurel’s Motion to Consolidate. For reference, that Answer is attached hereto as Exhibit B.

Respectfully submitted,



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Counsel for Giant Eagle, Inc.

Dated: February 13, 2017

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 Pa. Code § 1.54.

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EXHIBIT A

**LAUREL PIPELINE APPLICATION FOR TO REVERSE FLOW OF PENNSYLVANIA PIPELINE
PROPOSED LITIGATION SCHEDULE**

FEBRUARY 9, 2017

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 Advocate 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.

EXHIBIT B



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February 13, 2017

VIA ELECTRONIC FILING

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building, Filing Room
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Harrisburg, PA 17101

RE: Application of Laurel Pipe Line Company, L.P.; Docket No. A-2016-2575829
**ANSWER OF INDICATED PARTIES OPPOSING LAUREL'S MOTION
TO CONSOLIDATE**

Dear Secretary Chiavetta:

Enclosed for electronic filing with the Pennsylvania Public Utility Commission ("Commission") is the Answer of Indicated Parties¹ Opposing Laurel's Motion to Consolidate in the above-captioned proceeding. Hard copies will follow in accordance with the attached Certificate of Service.

Thank you for your attention to this matter. Please contact me with any questions concerning this filing.

Very truly yours,

Kevin J. McKeon
Todd S. Stewart
Whitney E. Snyder

Counsel for Monroe Energy, LLC

Enclosure

cc: Per Certificate of Service

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.

**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,

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Dated: February 13, 2017

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing document upon the parties, listed below, in the manner indicated below, and in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a party).

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