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February 23, 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 Motion to Compel of Gulf Operating, LLC 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 'A. Bakare', written over a horizontal line.

Adeolu A. Bakare

Counsel to Gulf Operating, LLC

Enclosure

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

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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).

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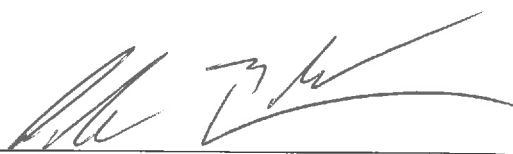
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Adeolu A. Bakare

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Dated this 23rd 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 :

**MOTION TO COMPEL OF
GULF OPERATING, LLC**

TO THE HONORABLE ERANDA VERO:

Pursuant to Section 5.342(g) of the Pennsylvania Public Utility Commission's ("PUC" or "Commission") regulations, 52 Pa. Code § 5.342(g), Gulf Operating, LLC ("Gulf") hereby files this Motion to Compel in the above-captioned proceeding.¹ In support of this Motion to Compel, Gulf avers as follows:

I. BACKGROUND

1. On February 13, 2017, Laurel Pipe Line Company, L.P. ("Laurel" or "Applicant") submitted timely Objections related to Gulf's Set I Interrogatories. Laurel objected to Gulf Set I, Instruction No. 13, Gulf Set I, Definitions Nos. 5 and 13, and Gulf Set I Interrogatories Nos. 3, 4, 19(iv), 21, 23, 24, 26, 28, 17, 32, 33, and 37 ("Objections"). Following discussions between both parties, Gulf is not moving to compel Laurel's responses, except with respect Gulf Set I Interrogatory No. 28, which requested the following:

GLF-LAU-I- 28 Provide all internal or external studies, analyses, reports, etc. prepared by or for Laurel within the last 5 years addressing in any way the possibility of extending the reversal of flow along the Laurel pipeline to any points further east of those described in the Application.

¹ Gulf has confirmed that Sheetz, Inc. joins in and fully supports the Motion to Compel.

2. Laurel alleges that Gulf Set I Interrogatory No. 28 is exempt from discovery on grounds of relevancy. As discussed more fully herein, Laurel has not met the high burden of proving that Gulf Set I Interrogatory No. 28 is irrelevant or beyond the proper scope of permissible discovery in this proceeding.

3. Under Section 5.342(g) of the Commission's regulations, "[w]ithin 10 days of service of an objection to interrogatories, the party submitting the interrogatories may file a motion requesting the presiding officer to dismiss an objection and compel that the interrogatory be answered." See 52 Pa. Code § 5.342(g). Accordingly, Gulf hereby files this Motion to Compel with regard to Gulf Set I Interrogatory No. 28.

II. MOTION TO COMPEL

1. As outlined in the Commission's regulations and repeatedly affirmed by the Commission, a party seeking to withhold discovery on grounds of relevancy must meet a high burden showing the requested information to be wholly irrelevant to the applicable subject matter. Under the Commission's regulations, "a party may obtain discovery **regarding any matter**, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of another party, including the existence, description, nature, content, custody, condition and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of a discoverable matter." 52 Pa. Code 5.321(c) (Emphasis added). Further, "**[i]t is not ground for objection that the information sought will be inadmissible at hearing if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.**" *Id.* (Emphasis added). The Commonwealth Court has further reinforced the broad scope of discoverable information, stating that "relevancy should be interpreted

broadly and liberally, and any doubts regarding the relevancy of subject matter should be resolved in favor of relevancy." *Koken v. One Beacon Ins. Co.*, 911 A.2d 1021, 1025 (Pa. Commw. Ct. 2006) (hereinafter "*Koken*"). As additionally emphasized by the Commonwealth Court, the party contending discovery is not relevant has the burden of proving irrelevancy. *Id.*

2. In its Objections, Laurel claims that Gulf's Set I Interrogatory No. 28, requests irrelevant information for purposes of the instant proceeding. The Objection further contends that information related to a possible extension of the proposed reversal of flow along the Laurel pipeline to any points further east of Eldorado is "irrelevant to Laurel's proposed change in direction of flow for points west of Eldorado that is pending before the Commission." Objections, p. 13.

3. The Commission has a clear duty and legal obligation to investigate all available evidence related to Laurel's proposal to reverse flow on a portion of its pipeline as requested in its Application filed on November 14, 2016 ("Application"). To the extent evidence exists indicating that the proposed reversal is only an initial component of an existing plan or overall strategy to complete a further reversal, the Commission must investigate the proposal on such grounds. Discovery intended to substantiate Laurel's claims with regard to the extent of its planned pipeline reversal must be disclosed as relevant to the Application. Indeed, this type of inquiry is essential to ensure that the Application and relief requested therein satisfies the broad public interest standard for certificates of public convenience under Section 1103(a) of the Public Utility Code ("Code") which requires, among other things, that a certificate of public convenience should be granted by the Commission "... only if the commission shall find or determine that the granting of such certificate is necessary or proper for the service, accommodation, convenience, or safety of the public." 66 Pa. C. S. § 1103(a). It is impossible

to understand the true public interest dimensions of the proposed flow reversal without inquiry as to what Laurel and its affiliates plan to do with an essential public utility facility under the Commission's jurisdiction that has been moving petroleum products from east to west within the Commonwealth and into Pittsburgh for almost fifty years. Unreasonably cutting off discovery on this critical threshold issue at literally the outset of discovery is inconsistent with the Commission's broad investigative powers in certificate of public convenience proceedings like this one.

4. Discovery on Laurel's intentions for reversing flow on its pipeline is necessary for the Commission to fulfill its investigative mandate. Code Section 501 establishes the Commission's general powers, providing the Commission with the "full power and authority" and conveying to it "the duty to enforce, execute and carry out, by its regulations, orders, or otherwise..." the Code. 66 Pa. C.S. § 501. To carry out its duty, the Commission must ensure the credibility of information obtained from public utilities. *See Margaret Peschka v. Equitable Gas Company*, 2002 Pa. PUC LEXIS 9 (February 26, 2002) *25. In this case, the Commission must permit discovery as to studies, analyses, and reports prepared for or by Laurel with regard to reversals east of Eldorado as a necessary means of assessing the credibility of Laurel's claims regarding its plans to reverse flows only to Eldorado. To the extent Laurel has developed or documented plans to effect a multi-phase reversal as opposed to the single reversal set forth in the Application, the credibility of the Application and the analyses therein becomes highly questionable. And, as noted above, the public interest demands review and investigation about the full context – present and proposed – for the reversal of flow on a portion of the Laurel pipeline. Therefore, Laurel must be directed to respond to discovery seeking documents related to pipeline reversals east of Eldorado.

5. The Commission should also consider that the Application itself raises the subject matter at issue in Gulf's Set I Interrogatory No. 28 in many respects, including: (1) seeking confirmation from the Commission that Laurel has authority to change the direction of its petroleum products transportation service now from Pittsburgh to Eldorado and to reverse flows at any point along its pipeline in the future without Commission approval;² (2) asserting that westbound service from Philadelphia to Eldorado will continue; and (3) referencing correspondence with shippers regarding the Pennsylvania reversal, where at least one such shipper has publicly supported extending the reversal east of Eldorado. Each of these averments must be investigated by reviewing any available documents indicating whether Laurel has developed plans to reverse flows east of Eldorado.

- a. First, the Commission must consider that Laurel continues to assert it does not require any Commission approval to reverse flows on its pipeline. *See* Laurel Statement No. 1, p. 20. Accordingly, the scope of the Application and supporting testimony necessarily includes all potential future pipeline reversals that could be implemented if the Commission grants the Application. To allow Laurel to reverse flows without Commission approval, while denying parties an opportunity to propound discovery addressing Laurel's future plans for such reversals is inconsistent with protecting the broad public interest and would deprive Gulf of its due process rights. *See Gaudenzia, Inc. v. Zoning Board of Adjustment of City of Philadelphia*, 287 A.2d 698, 701 (1972) (affirming applicability of due process rights to administrative proceedings; *see also Application of*

² Laurel's Application states that it seeks authorization "confirming that Laurel may, in its discretion, reinstate the current direction of service in the future without further Commission approval." Laurel Application p. 1.

Pickups Moving Company, LLC 2014 Pa. PUC LEXIS 39 (January 28, 2014) *13 (finding refusal to answer reasonable and relevant discovery to be prejudicial to due process rights).

- b. Second, Laurel has presented factual averments as to continued westbound service from Philadelphia to Eldorado, stating "the eastern portion of the system will continue to provide westbound service from points of origin in the Philadelphia area to western delivery points terminating in Eldorado." Laurel Statement No. 3, p. 6. As Laurel has itself interjected its future plans for service east of Eldorado in its own testimony, Laurel cannot now seek to block discovery from parties interested in the same subject matter.
- c. Third, the Application references correspondence with shippers that can reasonably be expected to include information directly supporting or discrediting Laurel's claims that westward service will continue between Philadelphia and Eldorado. *See* Laurel Statement No. 1, pp. 15-16. Laurel's testimony describes a Broadway II Project, where "Buckeye will increase the capacity of its pipeline system from source points in Michigan and Ohio to delivery points in Western and Central Pennsylvania." *See id.* Laurel further posits that the Broadway II Project includes "changing the direction of flow on Laurel's pipeline system from Coraopolis, Pennsylvania to Eldorado, Pennsylvania." *See id.* Laurel also indicates that it sought support from shippers for the Broadway II Project, at least one of which has publicly expressed support for a pipeline reversal

extending to Philadelphia.³ Gulf therefore reasonably expects that Laurel's correspondence with such shippers, and other documents, studies, and analyses prepared as part of the Broadway II Project, will include descriptions of Laurel's reversal plans that may materially differ from those set forth in the Application or supporting testimony with regard to reversals east of Eldorado.

6. Additionally, the fact that Laurel has not explicitly proposed in the Application to reverse flows east of Eldorado does not affect the relevance of such issues for purposes of discovery, even where Laurel may later argue that such materials may be inadmissible at hearings. 52 Pa. Code 5.321(c); *SBG Management Services, Inc./Fairmount Manor Realty Co., L.P. v. Philadelphia Gas Works*, 2014 Pa. PUC LEXIS 416 (August 21, 2014) *43-44. For example, the discovery could elicit a document indicating Laurel plans to complete a reversal to Harrisburg or other points east of Eldorado by 2018. Such information would be clearly relevant to the instant filing as an imminent timeframe for the next planned reversal would call into question any weight accorded to cost/benefit analyses predicated on a reversal only to Eldorado. Additionally, documents showing additional imminent reversals may warrant the Commission concluding that the public interest is not served by granting the proposed reversal to Eldorado, or may warrant the Commission imposing conditions on any approvals of the Application. *See Joint Application for Approval of the Merger of GPU, Inc. with First Energy Corp.*, (June 20, 2001) *2 (stating the Commission may impose conditions on granting a certificate of public convenience). At a minimum, the Commission needs to understand whether the Application establishes precedent for immediate reversals on additional segments of the Laurel pipeline. In

³ <http://www.altoonamirror.com/news/local-news/2017/02/pipeline-proposal-benefits-unclear/>.

either case, the discovery propounded by Gulf is reasonably calculated to produce admissible evidence.

7. Finally, Laurel's arguments cannot support a finding of irrelevancy in light of the Commission's duty to favor relevancy in cases of uncertainty. Laurel's objections present unpersuasive and circular reasoning in requesting that the disputed interrogatory be deemed irrelevant because Laurel "has not proposed nor is it seeking to change direction of to any points further east of Eldorado, Pennsylvania." *See* Objection, p. 13. Importantly, Laurel does not suggest that the general subject matter of its future plans for service on points east of Eldorado is irrelevant. Rather, it seeks to characterize Gulf's Set I Interrogatory No. 28 as irrelevant based on its conclusory statement that Laurel is not seeking to reverse flows east of Eldorado in this Application. *See id.* This statement by Laurel does not constitute evidence, but only a representation that must be vetted through discovery. One must question whether Laurel's assertion that it is not at this time seeking authorization of further flow reversals is even factually correct given that the Application requests that the Commission confirm two propositions: (i) that Commission authorization for the Pittsburgh to Eldorado reversal is not required, and (ii) that future changes in flow direction should be confirmed as being at Laurel's discretion. Therefore, Gulf has a clear right under the Commission's regulations to propound discovery necessary to evaluate whether existing documents support or contradict Laurel's representations, particularly in light of Commission precedent establishing that any uncertainty regarding relevancy shall be resolved in favor of a finding of relevancy. *See Koken*, 911 A.2d, at 1025.

III. CONCLUSION

WHEREFORE, Gulf Operating, LLC respectfully requests that the Pennsylvania Public Utility Commission reject Laurel Pipe Line Company, LLC's Objection to Gulf Interrogatory Set I, No. 28 and grant this Motion to Compel.

Respectfully submitted,

McNEES WALLACE & NURICK LLC

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