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February 27, 2017

VIA E-FILING

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

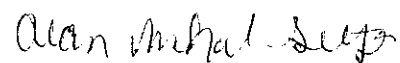
Re: Application of Laurel Pipe Line Company L.P for All Necessary Authority,
Approvals, and Certificates of Public Convenience to Change the Direction of
Petroleum Products Transportation Service to Delivery Points West of Eldorado,
Pennsylvania
Docket No. A-2016-2575829

Dear Secretary Chiavetta:

On behalf of Philadelphia Energy Solutions Refining and Marketing LLC, I have enclosed for electronic filing a Motion to Compel in the above-captioned proceeding.

Copies have been served on all parties as indicated in the attached Certificate of Service.

Very truly yours,



Alan M. Seltzer

AMS/bb
Enclosure
cc: Certificate of Service

**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
PHILADELPHIA ENERGY SOLUTIONS REFINING AND MARKETING 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), Philadelphia Energy Solutions Refining and Marketing LLC ("PESRM") hereby files this Motion to Compel ("Motion") in the above-captioned proceeding. In support of this Motion, PESRM represents as follows:

I. INTRODUCTION AND BACKGROUND

1. On November 14, 2016, Laurel Pipe Line Company, L.P. ("Laurel") filed with the Commission an Application for All Necessary Authority, Approvals, and Certificates of the Public Convenience to Change the Direction of Petroleum Products Transportation Service to Delivery Points West of Eldorado, Pennsylvania pursuant to various provisions of the Pennsylvania Public Utility Code ("Application"). 66 Pa. C. S. §§ 101, *et seq.* PESRM served Interrogatories and Requests for Production of Documents-Set I ("Set I Interrogatories"), directed to Laurel on February 6, 2017.

2. On February 1, 2017, Laurel submitted timely written Objections to certain of PESRM Set I Interrogatories. Laurel objected to Set I Interrogatories Instruction No. 13, Definition Nos. 5 and 13, and Set I Interrogatories Nos. 1, 5, 22 and 23. Laurel's Objections to

Instruction No. 13 and Definition No. 5 are identical to those it asserted against Gulf Operating LLC and Sheetz Inc (“Gulf and Sheetz”) with respect to discovery that was served on Laurel the day before PESRM’s interrogatories. Since Laurel, Gulf and Sheetz have resolved Laurel’s Objections to Instruction No. 13 and Definition No. 5, PESRM and Laurel have agreed that they will abide by that informal resolution and no Motion to Compel will be filed with respect to these items.

3. On the other hand, PESRM and Laurel have attempted to resolve their differences with respect to PESRM Set I Interrogatories Nos. 1, 5, 22 and 23, but this effort has not been fully successful. Laurel has withdrawn its objection to Set I Interrogatory No. 5. In addition, PESRM has agreed to withdraw Set I Interrogatories Nos. 22 and 23. Accordingly, PESRM hereby files this Motion and requests that Laurel be directed to timely respond to PESRM Set I Interrogatories No. 1 for the reasons specified below.

II. ARGUMENT

PESRM-LAU-I-1 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.

4. Laurel alleges that PESRM Set I Interrogatory No. 1 is exempt from discovery on the grounds that it is irrelevant, immaterial and not likely to lead to admissible evidence because it contends that it has “not proposed nor is it seeking to change the direction of [flow] to any points further east of Eldorado, Pennsylvania.”. The dispute regarding this Interrogatory is similar to the one with respect to Gulf and Sheetz Interrogatory Set I, No. 28 that is currently the subject of Gulf and Sheetz’s Motion to Compel pending before Your Honor. Gulf and Sheetz Interrogatory Set I, No. 28 is similar *to* Laurel’s interrogatory, i.e., both seek information regarding the change the direction of the Laurel pipeline to points east of the currently asserted end point in Eldorado, Pennsylvania. 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. Accordingly, and for the same reasons, Laurel has not met its burden with respect to PESRM Set I Interrogatory No. 1 either.

5. 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.* 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.*

6. The Commission has a clear duty and legal obligation to investigate all available evidence related to the Laurel's proposal to reverse flow on a portion of its pipeline as requested in its Application filed on November 14, 2016 Application. In its Application Laurel is seeking confirmation from the Commission that it has authority to reverse flows at any point along its pipeline in the future without Commission approval¹; and is asserting that Commission approval

¹ 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.

to change the direction of its petroleum products transportation service now from Pittsburgh to Eldorado “is not required”;² 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.

7. 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

² *Id.*

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.

8. The Commission should also consider that the Application itself raises the subject matter at issue in PESRM's Set I Interrogatory No. 1 in many respects, including: (1) seeking confirmation from the Commission that Laurel has authority to reverse flows at any point along its pipeline in the future without Commission approval; (2) asserting that Commission approval to change the direction of its petroleum products transportation service now from Pittsburgh to Eldorado "is not required";³ (3) asserting that westbound service from Philadelphia to Eldorado will continue; and (4) referencing correspondence with shippers regarding the Pennsylvania reversal. At least one shipper has publicly supported extending the reversal east of Eldorado. *See* the language highlighted in Attachment 1 regarding the reported shipper interest in additional flow reversals extending east beyond Eldorado (*Oil Price Information Service, November 14, 2016*, "Marathon Petroleum, a major refiner with significant Midwest refining capacity, has said that it would back a full reversal of Laurel Pipeline for Midwest products delivery to the East

³ *Id.*

Coast”); (*Oil Price Information Service, October 27, 2016, “Heminger [Marathon Petroleum CEO] said a Midwest products move to Altoona, Pa., would be the first step, and in the longer run, he expects Midwest products to go all the way to the East Coast”*). 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 PESRM 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 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.⁴ PESRM 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.

9. 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.*,

⁴ <http://www.altoonamirror.com/news/local-news/2017/02/pipeline-proposal-benefits-unclear/>.

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

10. 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 PESRM's Set I Interrogatory No. 1 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 characterization that the Application is not at this time seeking authorization of further flow reversals is 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, PESRM 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, PESRM respectfully requests that Your Honor reject Laurel Pipe Line Company, LLC's Objection to PESRM Set I Interrogatories No. 1, and grant this Motion to Compel and such other relief as may be just and reasonable under the circumstances.

Respectfully submitted,

Buchanan Ingersoll & Rooney PC

By Alan M. Seltzer

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Counsel to Philadelphia Energy Solutions Refining
and Marketing LLC

Dated: February 27, 2017

ATTACHMENT 1

Monday, November 14, 2016 3:54:17 PM

Midwest Refiners, Buckeye Eye Products Markets Beyond Altoona, Pa.

Buckeye Partners and Midwest refiners are eyeing oil products markets beyond Altoona, Pa., following the approval of the second phase of the company's Michigan-Ohio-West Pennsylvania pipeline expansion project, industry sources told OPIS on Monday.

The near-term goal is to ultimately deliver products to Harrisburg, the capital city of Pennsylvania, and a comparatively larger market and delivery hub than Altoona. In the second phase, Buckeye will reverse oil products flow on the Laurel Pipeline segment from Pittsburgh to Altoona. The distance between Pittsburgh and Altoona is about 100 miles, and Altoona is about 130 miles west of Harrisburg.

In the longer run, Midwest refiners, including Marathon Petroleum, are aiming to deliver Midwest oil products all the way to Philadelphia on the East Coast. It is noted that this would take a full reversal of Laurel Pipeline and it would be at least several years down the road if it were to be approved.

The Midwest products push eastward from Pittsburgh is expected to reach Altoona by end-2018, but sources said that this pipeline reversal could be completed in the third quarter of 2018 if everything runs smoothly.

Laurel Pipeline, which runs from Philadelphia to Pittsburgh, has a capacity of about 250,000-300,000 b/d. Pittsburgh is now a swing market, which buys products from both Midwest and the East Coast.

However, following the full completion of the first phase of Buckeye's Michigan-Ohio pipeline expansion project by early 2017, the Pittsburgh products market is expected to be owned by Midwest refiners, especially in winter, due to arbitrage economics and an acute supply overhang in the Midwest.

After the completion for the second phase of this project -- for products delivery to Altoona in 2018, the Altoona market is expected to belong to Midwest refiners, a switch from the 100% supply from Northeast refiners.

A Pennsylvania market share gain by Midwest refiners will come at expense of the Northeast refiners, and possibly fuel importers on the East Coast.

The arbitrage economics for gasoline delivery into Pittsburgh from the Midwest and the East Coast contain several moving parts, including competing regional prices, seasonality, pipeline capacities and low-RVP production capability. The Midwest, with an expanded capacity and much stronger refining margins, is poised to push products outward to the East and the South. The East Coast and Gulf Coast markets are expected to see more backing up of barrels, possibly a ripple impact on European imports into the those markets' push to increase exports.

While winter gasoline economics favor the Midwest for Pittsburgh delivery, the tables are expected to be turned in summer when the east-to-west deliveries of RBOB low RVP gasoline from Philadelphia ramp up.

Many Midwest markets are using a 9.0 RVP gasoline in summer, compared with a 7.8 RVP requirement in Pittsburgh. While some Midwest refiners produce 7.8 RVP summer gasoline for Chicago, these lower RVP fuel stays in Chicago, partly due to local consumption and inability to compete with the East Coast on RFG gasoline pricing.

Midwest refiners benefiting from this market trend in Pittsburgh include BP, PBF Energy, Marathon Petroleum, CITGO and ExxonMobil, and the main refiner in Philadelphia is Philadelphia Energy Solutions. It is noted that other Northeast refiners, including Monroe, Phillips 66 and PBF Energy, could sell products into the Laurel pipeline.

Besides Laurel, Pittsburgh is also receiving fuel from Buckeye 521L pipeline and Sunoco Logistics' Allegheny Access pipeline. Allegheny Access has an initial capacity to deliver 85,000 b/d with the ability to scale up to 110,000 b/d. It delivers products from Ohio to western Pennsylvania.

Buckeye 521L delivers products from Lima, Findlay and Toledo, Ohio, to Pittsburgh, but the pipeline's products delivery volume into the Pennsylvania city is sharply lower than the maximum pipeline capacity due to deliveries to Midwest regional markets along the way.

Going East

Buckeye Partners said recently that it had received sufficient 10-year commitments from shippers to move forward with the second phase of its Michigan-Ohio-West Pennsylvania pipeline expansion project for pushing Midwest products farther east beyond Pittsburgh to Altoona, after completing its open season.

The second phase will further expand Buckeye's capabilities to move more refined product barrels from Midwestern refineries to Pittsburgh and to destinations in central Pennsylvania, the company said.

This is a significant multiyear project that includes the partial reversal of its existing Laurel pipeline, which now delivers products from Philadelphia to Pittsburgh. It is important to note that this expansion requires no new pipeline construction, the company said.

"We continue to move through the approval process, including working with regulatory authorities, and completion is expected in 2018," Buckeye said in reference to the partial Laurel pipeline reversal for products delivery from Pittsburgh to Altoona.

Marathon Petroleum, a major refiner with significant Midwest refining capacity, had said that it would back a full reversal of Laurel Pipeline for Midwest products delivery to the East Coast.

A full reversal of Laurel Pipeline would be bad news for Northeast and Mid-Atlantic refiners and fuel importers as more Midwest products, which could be more competitively priced especially in winter due to seasonal oversupply in the Midwest, would slash PADD 1 refining margins and possibly back out some imported volumes.

This could pile on more challenges for some Northeast refiners, who are already reeling from high RINs and RFS compliance costs. Earlier this year, Northeast refiners, like the rest of the country, faced a significant products supply overhang, which weighed down heavily on crack spreads.

However, it is noted that market conditions, regulations and fundamentals may change over the next few years.

--Edgar Ang, eang@opisnet.com

Thursday, October 27, 2016 6:56:06 PM

Marathon Expects Burgeoning MW Pdts. Supply to Penetrate EC Mkt Eventually

Marathon Petroleum said Thursday that it expects to see a Midwest products supply push all the way to the East Coast, eventually, with the help a Laurel pipeline reversal.

OPIS notes that Laurel Pipeline, which can pump about 250,000-300,000 b/d of oil products, is flowing in an east-west direction from Philadelphia to Pittsburgh. A Midwest products push to the East Coast would extend the battleground between Midwest and Philadelphia from Pittsburgh, a swing market, eastward. Pittsburgh has the luxury of picking up products from the cheaper supplier between Midwest and Philadelphia. Midwest refiners include Marathon, CITGO, BP, PBF Energy and ExxonMobil, and the main refiner in Philadelphia is Philadelphia Energy Solutions.

Marathon said that it would participate in a move to bring Midwest products to the East Coast and making Pittsburgh an exclusive buyer of Midwest products.

Midwest has a lot of refining capacity, and in the winter, gasoline demand in Midwest falls. Midwest refiners have gasoline and distillates that need to seek new market outlets, said C. Michael Palmer, senior vice president of supply, distribution and-planning at Marathon, during the company's third-quarter earnings call.

"We've been looking at a number of opportunities, but the reversing Laurel, such that Pittsburgh becomes primarily a pipeline supplied from the Midwest market is certainly big for us and we would participate in that," he said.

Marathon CEO Gary Heminger said the company was one of the catalysts of the Laurel pipeline reversal idea.

"It really makes sense to go west to east and starting to supply the PADD 1 market and it further balances all of PADD 2. So, We won't get specific yet into how many barrels we might move. I just say that this open season that has been just completed ... is going to be a big event for the entire PADD 2 industry because it has another outlet for us to balance the Midwest," he said.

Heminger said a Midwest products move to Altoona, Pa., would be the first step, and in the longer run, he expects Midwest products to go all the way to the East Coast. Altoona is about 100 miles east of Pittsburgh.

In December 2015, OPIS reported that the Midwest and Philadelphia were duking it out for gasoline market share in Pittsburgh, but the Midwest appeared to be winning this battle.

Pittsburgh has become a swing market for both Midwest and Philadelphia gasoline supplies since the startup of Sunoco Logistics' Allegheny Access pipeline in 2014. The western Pennsylvania market enjoys the best of both worlds, drawing supplies from the cheaper supply source if arbitrage economics and logistics work. In December 2015, the Midwest was seen pushing more gasoline barrels to the east, with Pittsburgh slowing down its supply pull from Philadelphia via the Laurel pipeline.

--Edgar Ang, eang@opisnet.com

**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 :

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true and correct copy of the Prehearing Conference Memorandum of Philadelphia Energy Solutions Refining and Marketing LLC upon the parties and in the manner listed below:

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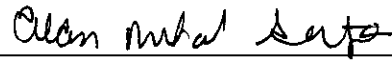
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Dated this 27th day of February, 2017.



Alan M. Seltzer, Esq.