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March 20, 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

Affiliated Interest Agreement between Laurel Pipe Line Company, L.P. and Buckeye Pipe Line Company, L.P.; Docket No. G-2017-2587567

Dear Secretary Chiavetta:

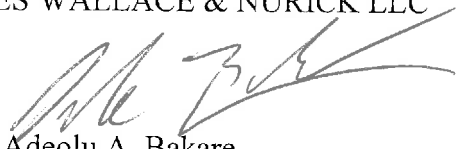
Enclosed for filing with the Pennsylvania Public Utility Commission is the Brief of Gulf Operating, LLC and Philadelphia Energy Solutions Refining & Marketing, LLC in Support of the Petition for Certification of a Material Question in the above-referenced proceeding.

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


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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Docket No. A-2016-2575829 and G-2017-2587567

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Dated this 20th day of March, 2017, in Harrisburg, Pennsylvania.

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Application of Laurel Pipe Line Company, L.P.	:	
For approval to change direction of petroleum	:	A-2016-2575829
products transportation service to delivery	:	
points west of Eldorado, Pennsylvania	:	
Affiliated Interest Agreement between	:	G-2017-2587567
Laurel Pipe Line Company, L.P. and	:	
Buckeye Pipe Line Company, L.P.	:	

**BRIEF OF GULF OPERATING, LLC AND PHILADELPHIA ENERGY
SOLUTIONS REFINING & MARKETING, LLC IN SUPPORT OF
THE PETITION FOR CERTIFICATION OF A MATERIAL QUESTION**

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I. INTRODUCTION

This brief is being filed in support of the request of Gulf Operating, LLC ("Gulf") and Philadelphia Energy Solutions Refining and Marketing, LLC ("PESRM") to the presiding Administrative Law Judge ("ALJ") in this proceeding to certify to the Pennsylvania Public Utility Commission ("PUC" or "Commission") a material question that has arisen in the initial stages of discovery. This question – and indeed the related dispute – are so fundamental to Gulf's and PESRM's due process rights to fully investigate the issues in this case, that they timely filed a Petition for Certification of a Material Question ("Petition") pursuant to 52 Pa. Code § 5.304(a)(2). Gulf and PESRM urge the ALJ to certify the material question described in the Petition so this critical threshold issue on the scope of permissible discovery in this proceeding can be clearly laid to rest.

II. PRODCEDURAL HISTORY

On November 14, 2016, the above-captioned Application was filed with the Commission. On February 3, 2017, Gulf served Gulf Set I Interrogatories to Laurel, to which Laurel submitted timely Objections on February 13, 2017.¹ On February 23, 2017, Gulf filed a Motion to Compel a response only with respect to 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.

On February 28, 2017, Laurel filed an Answer to Gulf's Motion to Compel alleging that information requested by Gulf Set I Interrogatory No. 28 was exempt from discovery on grounds of relevancy.

¹Laurel 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.

On February 6, 2017, PESRM served upon Laurel Set I of Interrogatories and Requests for Production of Documents to which Laurel submitted timely written Objections on February 16, 2017. On February 27, 2017, PESRM filed a Motion to Compel a response to PESRM Set I Interrogatory No. 1, which requested the same information and used the same language as Gulf Set I Interrogatory No. 28. On March 6, 2017, Laurel filed an Answer to PESRM's Motion to Compel.

On March 8, 2017, presiding ALJ Eranda Vero issued an order denying both Gulf's and PESRM's Motions to Compel ("March 8 Order").

On March 14, 2017, Gulf and PESRM filed a Petition for Certification of a Material Question ("Petition") pursuant to 52 Pa. Code § 5.304(a)(2). In the Petition, Gulf and PESRM requested that ALJ Vero certify a Material Question to the Commission regarding the information sought in Question No. 28 of Gulf's Set 1 Interrogatories and in Question No. 1 of PESRM's Set I Interrogatories (together, the "Discovery Request") pursuant to Section 5.304(a)(2) of the Commission's regulations. 52 Pa. Code § 5.304(a)(2).

Gulf and PESRM proposed the following Material Question and Answer:

Should Laurel Pipe Line Company ("Laurel"), which asserts in its Application that Commission approval for changes in flow direction is not required and seeks Commission confirmation that it may reinstate the direction of flow at its discretion in the future, be required to furnish the information intended to determine whether the proposal to reverse flows on its PUC-jurisdictional pipeline for points west of Altoona/Eldorado is a stand-alone proposal or an initial phase of a documented plan to reverse flows easterly to Philadelphia as requested by Gulf's Set I Interrogatory No. 28 and PESRM's Set I Interrogatory No. 1?

Proposed Answer: Yes.

Gulf and PESRM explained in the Petition that the Material Question relating to the Discovery Request involves important issues of law and policy, a resolution of which is necessary to expedite the conduct in this proceeding and to prevent irreparable harm and substantial

prejudice to Gulf and PESRM that would otherwise result from allowing the March 8 Order to remain in effect.

III. SUMMARY OF ARGUMENT

Laurel has proposed in its Application to reverse the direction of flow of petroleum products on its pipeline from Pittsburgh to the Altoona (Eldorado) area, which has been from east to west across Pennsylvania since it was certificated as a public utility over 50 years ago. Laurel contends that Commission approval of this flow reversal is not required, and only in the alternative seeks authorization for the reversal from the Commission.² Laurel has also indicated that its affiliate, Buckeye Pipeline, will utilize the portion of the pipeline where flow is reversed, to provide service that is subject to FERC jurisdiction and outside the Commission's jurisdiction. Clearly Laurel's position, if approved without modification by the Commission, sets up a scenario where it could implement further reversals of flow to the east of Eldorado that would not be subject to Commission review. In such circumstances it is imperative that there be a full investigation of the potential for further flow reversals and any work Laurel has done relative to considering or planning further west to east flow reversals from Eldorado to Philadelphia.

Unless the Commission answers the Material Question in the affirmative, Gulf and PESRM may realize irreparable harm and substantial prejudice and be deprived of essential due process rights by being prevented from conducting discovery on critical matters of law and policy extant in this proceeding. The Commission has a duty to fully investigate Laurel's Application, including permitting all relevant discovery. The March 8 Order erroneously characterizes Gulf and PESRM's Discovery Request as only a question of law and not a question pertaining to critical and relevant underlying facts in this proceeding. The March 8 Order further errs in

² Application p. 1.

finding that the factual issues raised by the Application are limited to the proposed change in service (*i.e.*, flow reversal) between Pittsburgh and Eldorado to the east. For these reasons, Gulf and PESRM respectfully request that ALJ Vero grant certification of the Material Question and that the Commission answer the Material Question in the affirmative.

IV. ARGUMENT

A. Certification of the Material Question is Necessary

Section 333(h) of the Public Utility Code ("Code") and Section 5.304(a)(2) of the Commission's regulations authorize the Commission to review the ruling of an ALJ on discovery matters where such ruling involves important questions of law or policy and interlocutory review will prevent substantial prejudice or expedite the conduct of the proceedings. *See* 66 Pa. C.S. § 333(h); *see also* 52 Pa. Code § 5.304(b), (c)(3).

In contrast to routine discovery requests, the question at issue directly relates to the scope of issues to be litigated before the ALJ in this proceeding and the validity of the detailed economic impact calculations relevant to issues raised in this proceeding. This matter presents an extraordinary question of law and policy necessitating immediate Commission resolution to expedite the course of the proceeding and to prevent substantial prejudice, as addressing scope issues of this magnitude through a later remand order would require the parties to entirely re-litigate the case. While the Commission has observed a general rule disfavoring interlocutory review, the Commission has specifically granted interlocutory review of matters related to discovery, where a remand after litigation was completed would have otherwise have been necessary. *See Pennsylvania Public Utility Commission v. Peoples Natural Gas Company*, 68 Pa. PUC 326 (October 17, 1988), slip op., p. 4. The Commission has also granted interlocutory review "to obviate the need for additional time and expense." *See Philadelphia Gas Works Universal Service and Energy Conservation Plan; Joint Petition for Interlocutory Review*,

Answer to a Material Question and Approval of a Settlement, 2009 Pa. PUC LEXIS 2238 (January 1, 2001), at *5.

As described below, the March 8 Order would prohibit the parties to the instant proceeding from propounding discovery addressing material factual claims raised in Laurel's Application. A resolution of the Material Question is necessary to ensure a reasonably timely resolution of the proceeding and preclude duplicative and expensive litigation efforts in a complex matter involving numerous parties and expert witnesses. Accordingly, Gulf and PESRM request that the presiding ALJ certify this Material Question to the Commission for interlocutory review.

B. The March 8 Order Applies an Overly Narrow Analysis and Fails to Reflect the Commission's Broad Duty to Investigate and Liberal Rules of Discovery

The Commission has a duty to fully investigate Laurel's Application, including permitting parties to obtain all relevant discovery. Code Section 501 establishes the Commission's general powers, providing the Commission with the "full power and authority" and "the duty to enforce, execute and carry out, by its regulations, orders, or otherwise..." the statute. 66 Pa. C.S. § 501. To carry out its duties, 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), at *25. Additionally, the Commission's regulations allow for discovery on relevant matters, and specifically establish that "[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." 52 Pa. Code § 5.321(c) (emphasis added). The Commonwealth Court has further reinforced this broad scope of discoverable information, stating that discovery is "liberally allowed" and "any doubts are to

be resolved in favor of relevancy."³ *Koken v. One Beacon Ins. Co.*, 911 A.2d 1021, 1025 (Pa. Commw. Ct. 2006) (emphasis added); *see also Ario v. Deloitte & Touche*, 934 A.2d 1290, 1293 (Pa. Cmmw. 2002).

Here, the March 8 Order fails to explain how the information sought by Gulf and PESRM is not reasonably calculated to lead to the discovery of admissible evidence. Instead, the March 8 Order narrowly construes the Application as raising only legal issues or, alternatively, factual concerns limited to a portion of the pipeline in areas west of Eldorado. *See* March 8 Order, at 3. This narrow interpretation conflicts with both the plain language in the Application and the Commission's duty to determine the actual impact of the Application beyond the representations of the Applicant. In determining whether Laurel was previously granted authority to change the direction of flows on its pipeline, the ALJ and the Commission will have to consider the factual representations made in Laurel's original application as well as any facts assumed by the Commission in granting Laurel's authority. In addition, the Commission should be aware of the factual consequences of its conclusions and findings, such as establishing precedent or providing a legal predicate for further flow reversals to effectuate greater west-to-east transfers. The issue of changes in flow direction is clearly a mixed question of law and fact. Accordingly, Gulf and PESRM respectfully submit that the Material Question must be certified to the Commission and answered in the affirmative.

³ The Commission has cited *Koken* to explain that the party objecting to discovery has the burden to establish that requested information is not relevant or discoverable. *Petition of the Borough of Cornwall*, P-2015-2476211, 2015 Pa. PUC LEXIS 433 at *10 (Order entered Sep. 11, 2015).

1. Contrary to the ALJ's Finding, the Requested Information must be Deemed Discoverable in Order to Address Material Facts at Issue in this Proceeding

The March 8 Order determines that the requested information is not relevant, in part, because the matter presented is "a question of law" to which such factual inquiry is "irrelevant." March 8 Order at 3. However, the Commission's analysis of the proposed reversal may be impacted by currently unknown facts, including conflicting statements in Laurel's Application.

For example, 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." *See* Gulf Motion to Compel p. 6 (citing Laurel Statement No. 3, p. 6); *see also* PESRM Motion to Compel p. 6. This constitutes a factual averment purporting to define the scope of Laurel's requested relief. The Application does not clarify whether this commitment to maintain westbound flows for points east of Eldorado is merely an expectation, a commitment for an as-yet undisclosed period of time, or a careful parsing of words intended to conceal the true practical impact of Laurel's proposal. Therefore, in addition to addressing the legal standards applicable to the request, Gulf and PESRM must be permitted to propound discovery intended to address the veracity of, and basis for, Laurel's factual representations.

Furthermore, Gulf has provided evidence directly contradicting the factual averments made in Laurel's Application. Laurel's Application references correspondence with shippers that can reasonably be expected to include information directly supporting or contradicting 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 flow reversal extending all the way to Philadelphia.⁴ Gulf and PESRM therefore reasonably believe 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 materially differ from those set forth in the Application or supporting testimony. The existence or non-existence of such evidence is directly relevant to the credibility of Laurel's representations and therefore relevant to the Commission's investigation of the Application.

In its Motion to Compel responses, Gulf and PESRM pointed out in Attachment 1 of the Motion, that shippers have publicly indicated interest in further flow reversals east of Eldorado. Laurel, in its response to the Motion, disparaged this information as hearsay.⁵ However, Laurel's defense misses the mark because the issue at hand is discoverability and not admissibility of evidence. Laurel dismisses the significance of shipper interest in reversing flows all the way to Philadelphia, yet it is this same shipper interest in the Pittsburgh to Eldorado flow reversal that Laurel cites to support its Application.⁶

As Laurel has itself interjected in its own testimony factual claims regarding its future plans for service east of Eldorado, Laurel cannot now seek to block discovery from parties interested in investigating its factual representations. Accordingly, the scope of discovery for

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

⁵ Laurel Answer p. 4.

⁶ Laurel's Application states that "[e]xpanding refining capacity in the Midwest, driven by increasing access to lower cost crude oil in that region, has led a number of shippers to indicate their interest in increased transportation options to reach additional destination points in Western and Central Pennsylvania ("Shippers")." Moreover, Laurel states Buckeye has received "sufficient interest" from Shippers to warrant their proposal. Application pp. 2, 9 Footnotes 9-10.

purposes of investigating the Application and supporting testimony necessarily includes discovery intended to address Laurel's claim that westbound service will continue for points east of Eldorado. Gulf and PESRM also have a right to evaluate whether existing documents support or contradict Laurel's representations.

2. The March 8 Order Errs in Finding that the Application Concerns Solely Areas West of Eldorado

In the March 8 Order, the ALJ also found that Gulf and PESRM's discovery requests seek irrelevant information because Laurel's "Application concerns only the proposed change in direction of a portion of the Applicant's intrastate service for points west of Eldorado." March 8 Order at 3. Importantly, this construct erroneously accepts Laurel's characterization of what is relevant while ignoring the legal standards applicable to the Application that must provide the contours for determining what is relevant for discovery purposes. Laurel has completely ignored the broad public interest standard for certificates of public convenience under Code Section 1103(a) that 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). The Commission must ensure that the Application and the relief requested therein satisfy this broad public interest standard. Many of the facts surrounding the scope of Laurel's proposal in the Application remain unclear and must be subjected to investigation through discovery in order to assess whether the legal requirements of Chapter 11 of the Code have been fully satisfied. Prematurely cutting off discovery on whether any evidence exists that the proposed flow reversal may be expanded east of Eldorado, at this early stage of the proceeding, jeopardizes Gulf's and PESRM's ability to litigate this

proceeding and calls into question whether their constitutional due process rights have been deprived.

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), at *43-44. Unreasonably foreclosing discovery on this critical threshold issue at the outset of discovery is inconsistent with the Commission's broad investigative powers in certificate of public convenience proceedings like this case.⁷ For example, discovery requested by Gulf and PESRM could elicit a document indicating Laurel's 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 and would call into question any weight accorded to the cost/benefit analyses in this proceeding, which are currently predicated on a reversal only to Eldorado.

Additionally, documents evidencing additional imminent reversals may impact the Commission's ultimate conclusion as to whether approval of the Application would serve the public interest or may warrant the Commission imposing limiting conditions on any approval of the Application. See *Joint Application for Approval of the Merger of GPU, Inc. with First Energy Corp.*, (June 20, 2001), at *2 (stating the Commission may impose conditions on granting a certificate of public convenience). In order to meet its duty to fully investigate the

⁷ Because appellate courts expect administrative agencies like the PUC to be the trier and finder of fact, appellate courts often defer to the factual findings of those administrative agencies unless a necessary factual finding is lacking in the record. See *Coalition for Affordable Util. Servs. & Energy Efficiency in Pa. v. Pa. PUC*, 120 A.3d 1087, 1094-1095 (Pa. Cmmw. 2015). In light of that deference, it is especially critical that the Commission have a full evidentiary record before it in order to allow it to effectively render its decision in this proceeding and support that decision with substantial evidence. Otherwise, an appellate court will remand and require an additional proceeding, which would exhaust more resources of the Commission and the affected parties.

Application prior to making a final determination, the Commission should have an opportunity to understand whether the Application establishes precedent for immediate reversals on additional segments of the Laurel pipeline. If Gulf, PESRM, and other parties are not permitted to seek discovery of such information, the Commission would be deprived of this opportunity, at this early stage of the proceeding.

Because the March 8 Order applies an overly narrow analysis in finding that the scope of discovery should be limited to points west of Eldorado, Gulf and PESRM respectfully submit that certification of the Material Question and an answer in the affirmative are warranted.

C. Stay of Proceedings


Due to the anticipation of significant discovery, the presiding ALJ previously approved a litigation schedule allowing for a robust discovery period. Under the current schedule, parties are required to file Direct Testimony in response to Laurel's Application on June 14, 2017. As the Commission's regulations allow 30 days from a grant of certification for consideration of the Material Question, Gulf and PESRM at this time do not believe a stay of proceedings is necessary to prevent substantial prejudice. *See* 52 Pa. Code § 5.304(d)(3). However, to the extent the Commission elects to extend its consideration period, a stay may become necessary at such time. Gulf and PESRM respectfully reserve the right to request a stay if such circumstances arise.

V. CONCLUSION

WHEREFORE, Gulf and PESRM respectfully request that (i) the ALJ grant certification as requested in the Petition, (ii) the Commission answer the Material Question in the affirmative and require Laurel to provide responsive documents to the Discovery Request, (iii) the Commission reverse the March 8 Order, and (iv) the Commission grant such other relief as may be just and reasonable under the circumstances.

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