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March 21, 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 Approval to change direction of Petroleum Products Transportation Service to Delivery Points West of Eldorado, Pennsylvania, Docket No. A-2016-2575829

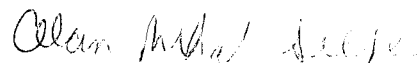
Affiliated Interest Agreement between Laurel Pipe Line Company, L.P. and Buckeye Pipe Line Company, L.P., Docket No. G-2017-2587567

Dear Secretary Chiavetta:

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

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

Very truly yours,



Alan M. Seltzer

AMS/tlg
Enclosure

cc: Certificate of Service

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Application of Laurel Pipe Line Company, L.P.	:	
for Approval to Change Direction of Petroleum	:	Docket No. A-2016-2575829
Products Transportation Service to Delivery	:	
Points West of Eldorado, Pennsylvania	:	
Affiliated Interest Agreement between	:	
Laurel Pipe Line Company, L.P. and	:	Docket No. G-2017-2587567
Buckeye Pipe Line Company, L.P.	:	

**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 II ("Set II"), directed to Laurel and Interrogatories and Requests for Production of Documents-Set III ("Set III"), directed to Laurel on March 3, 2017.

2. On March 13, 2017, Laurel submitted timely written Objections to certain interrogatories in Set II and III (“Objections”). Laurel objected to Set II, No. 14 and Set III, No. 2 on relevancy grounds, and Set III, No. 12 on the ground that the information sought involves Laurel’s legal research, theories and conclusions. PESRM is not challenging at this time Laurel’s objection to Set III, No. 12.

3. Accordingly, PESRM hereby files this Motion and requests that Laurel be directed to timely respond to PESRM Set II, No. 14 and Set III Nos. 2 for the reasons specified below. Laurel’s Objections to these interrogatories are meritless.

II. ARGUMENT

PESRM-LAU-II-14

To what extent has Laurel or any of its affiliates considered building a new pipeline to carry liquid petroleum products eastward from Pittsburgh across Pennsylvania in addition to or in lieu [of] reversing the flow on portion of the Laurel pipeline as proposed in the Application? Explain and provide all non-privileged Documents in support of or relating to your Answer.

PESRM-LAU-III-2

Explain in detail how Laurel and Buckeye calculates the profitability of their terminal assets, specifically those connected to the Laurel pipeline. Explain and provide all Documents in support of or relating to your Answer

4. Laurel alleges that PESRM Set II No. 14 and PESRM Set III, No. 2 are both exempt from discovery on the grounds they seek information not relevant to the issues to be addressed in this proceeding and not likely to lead to the discovery of admissible evidence. As discussed more fully herein, Laurel has not met the high burden of proving that PESRM Set II, No 14 and PESRM Set III, No. 2 are irrelevant or beyond the proper scope of permissible discovery in this proceeding.

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 that 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 the Application. In addition to the flow reversal between Altoona and Pittsburgh, Laurel is also 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 to change the direction of its petroleum products transportation service now from

¹ Laurel asserts in its Application that "Commission approval for this change in service either is not required, or if required" should be granted by the Commission pursuant to 66 Pa.C.S. § 1103(a). Furthermore, 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 pp. 1-2.

Pittsburgh to Eldorado “is not required”.² The Commission must also examine in this proceeding whether the standards justifying the abandonment of service have been met since, in PESRM’s view, a utility can only abandon an existing and certificated service when properly supported and consistent with the public interest pursuant to Chapter 11 of the Public Utility Code (“Code”), 66 Pa.C.S. § 1102.

7. In its Objections, Laurel has completely ignored the broad public interest standard for certificates of public convenience under Code Section 1103(a) 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). The Commission must ensure that the Application and the relief requested therein satisfy this broad public interest standard.

8. In the context of this Motion, it is impossible to understand the true public interest dimensions of the proposed flow reversal without inquiry as to what alternatives Laurel and its affiliates may have reviewed (i.e., PESRM Set II, No. 14) before proposing the relief sought in the Application.

9. Similarly, PESRM Set III, No. 2 properly inquires into whether the existing operation of the Laurel pipeline from east to west (i.e., from Altoona to Pittsburgh) is financially robust for Laurel in order to determine if there is any economic or financial justification for abandoning the current westerly flow along the Laurel pipeline

10. It is clear even in the early stages of this proceeding that the Laurel pipeline is 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

² *Id.*

fifty years. Laurel should not be able to define what is relevant for discovery merely by its own unilateral characterization of what it claims to be seeking in the Application without reference to the broad legal standards under Code Chapter 11, both with respect to the provision of a new service from Pittsburgh to Altoona, and also with respect to the abandonment of the existing westerly flow of product between Altoona and Pittsburgh.

11. Unreasonably cutting off discovery on the issues addressed by these two interrogatories is inconsistent with the Commission's broad investigative powers in certificate of public convenience proceedings like this one.

12. Discovery on Laurel's consideration of reasonable alternatives to reversing flow on its pipeline is necessary for the Commission to fulfill its investigative mandate in this proceeding, including whether the change in service along the Laurel pipeline as proposed is consistent with the public interest. If, for example, Laurel considered building a new pipeline and chose not to pursue that option because of cost or other considerations, PESRM, the other parties, the ALJ and ultimately the Commission have a right in assessing the public interest to know about and evaluate the reasonableness and propriety of that decision. Indeed, constructing a pipeline into Altoona as a reasonable alternative to the proposed flow reversal could be viewed as a reasonable component of Laurel's obligation to serve the public and to meet anticipated public need. At a minimum, PESRM should be permitted in *discovery* to investigate these issues, independent of whether the information is ultimately deemed relevant for evidentiary purposes at *hearing*.

13. Laurel has already presented facts regarding 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, PESRM is entitled to conduct discovery on other plans Laurel may have considered in lieu of the flow reversal, such as building a new pipeline (PESRM Set II, No. 14).

14. With respect PESRM Set III, No. 2, Laurel's financial condition in connection with the Laurel pipeline is directly relevant to the service abandonment it is proposing in this proceeding. Under existing law, the Commission considers the following factors in determining if a proposed abandonment of service and facilities by a jurisdictional utility is in the public interest: 1) the extent of the loss to the utility; 2) the prospects of the system being used in the future; 3) the balancing of the utility's loss with the hardship on the public; and 4) the availability of alternate service.³ In this standard, the "loss to the utility" is the negative financial impact on the utility from the abandonment request being denied. The "balancing" role played by the Commission is its weighing of the relative harm to the public (including PESRM) versus the utility if the abandonment is permitted. PESRM is surely entitled to conduct discovery into the potential financial impacts of the current operations of the Laurel pipeline and related facilities in support of the legal standard relating to the "loss to the utility" in connection with the service and facilities it is proposing to abandon. PESRM Set III, No. 2 goes directly to the issue of the profitability of Laurel's current operations.

15. Finally, Laurel's arguments in the Objections cannot support a finding of irrelevancy for either PESRM Set II, No. 14 and PESRM Set III, No. 2, in light of the Commission's duty to favor relevancy in cases of uncertainty. *See Koken*, 911 A.2d, at 1025.


³ *Application of CMV Sewage Company, Inc.*, Docket No. A-230056F2002 (Order Entered December 23, 2008).

III. CONCLUSION

WHEREFORE, PESRM respectfully requests that Your Honor reject Laurel Pipe Line Company, LLC's Objection to PESRM Set II Interrogatories No. 14 and Set III Interrogatories No. 2, and grant this Motion to Compel and such other relief as may be just and reasonable under the circumstances.

Respectfully submitted,

Dated: March 21, 2017



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Buckeye Pipe Line Company, L.P. :

CERTIFICATE OF SERVICE

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

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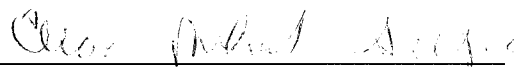
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Dated this 21st day of March, 2017.



Alan M. Seltzer, Esq.