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May 1, 2017

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor
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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, Philadelphia Energy Solutions Refining & Marketing, LLC, Sheetz, Inc., Monroe Energy, Inc., and Giant Eagle, Inc. in Support of 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

A handwritten signature in black ink, appearing to read 'Adeolu A. Bakare', is written over a horizontal line.

Adeolu A. Bakare

Counsel to Gulf Operating, LLC
and Sheetz, Inc.

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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**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; PHILADELPHIA ENERGY SOLUTIONS
REFINING & MARKETING, LLC; SHEETZ, INC.; MONROE ENERGY, INC.;
AND GIANT EAGLE, INC.
IN SUPPORT OF
PETITION FOR CERTIFICATION OF A MATERIAL QUESTION**

Dated: May 1, 2017

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I. INTRODUCTION

Gulf Operating, LLC ("Gulf"), Philadelphia Energy Solutions Refining & Marketing, LLC ("PESRM"), Sheetz, Inc. ("Sheetz"), Monroe Energy, Inc. ("Monroe"), and Giant Eagle, Inc. ("Giant Eagle") (collectively "Indicated Parties") hereby file this brief with the Pennsylvania Public Utility Commission ("PUC" or "Commission") in support of the Petition for Interlocutory Review filed on April 20, 2017 ("Petition"). In the Petition, the Indicated Parties asked the Commission to review the following Material Question that has arisen in the above-captioned proceeding ("Material Question"):

In reviewing the Application of Laurel Pipe Line Company ("Laurel") filed on November 14, 2016 ("Application"), which avers that Commission approval for changes in flow direction of an intrastate petroleum pipeline certificated previously by the Commission as a public utility, is not required and seeks Commission confirmation that Laurel may reinstate the initial direction of flow at Laurel's discretion in the future, is data and information about any plans to further reverse flows easterly beyond the point referenced in the Application (*i.e.*, Eldorado) relevant to the Commission's determination that the relief requested in the Application is in the public interest?

See Petition, p. 1. The Material Question is fundamental to a thorough investigation of the issues in this case and should be answered by the Commission in the affirmative. To ensure this critical threshold matter of the scope of issues to be addressed by the parties in this proceeding can be clearly laid to rest, the Indicated Parties respectfully request that the Commission grant interlocutory review and answer the Material Question in the affirmative.

II. PRODCEDURAL HISTORY

On November 14, 2016, Laurel filed the Application with the PUC proposing to implement a partial reversal of flow on its PUC-jurisdictional petroleum products pipeline. On February 1, 2017, each of the Indicated Parties filed a Protest and/or Petition to Intervene in response to the Application and all of them are actively participating in this proceeding.

On February 3 and 6, 2017, Gulf and PESRM, respectively, submitted Set I Interrogatories to Laurel.

Laurel Objected to answering the following question:

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.

Gulf and PESRM filed Motions to Compel and on March 8, 2017, the presiding Administrative Law Judge ("ALJ") issued Prehearing Order No. 3 denying Gulf's and PESRM's Motions to Compel ("March 8 Order"). Consistent with the PUC's regulations, Gulf and PESRM filed a Petition for Certification of a Material Question ("Petition for Certification") asking the ALJ to certify her ruling on the Motion to Compel to the Commission for review. On March 27, 2017, the ALJ issued an Order denying the Petition for Certification ("Order on Certification").

On April 20, 2017, the Indicated Parties filed the Petition. As set forth therein, the Indicated Parties do not contest the ALJ's resolution of the discovery matters disposed of in Prehearing Order No. 2 and the Order on Certification. Rather, they seek to clarify the scope of the above-captioned proceeding in order to ensure the efficient conduct of further discovery, preparation of testimony, and presentation of witnesses at an evidentiary hearing.

III. SUMMARY OF ARGUMENT

In the Application, Laurel proposes to reverse the direction of flow of petroleum products on its pipeline ("Laurel pipeline") from Pittsburgh to the Altoona (Eldorado) area, which has been from east to west across Pennsylvania since Laurel 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.¹ Laurel has also indicated that its affiliate, Buckeye Pipeline Company, L.P. ("Buckeye"), will utilize the portion

¹ Application p. 1.

of the pipeline where flow is reversed, to provide service that is subject to Federal Energy Regulatory Commission ("FERC") jurisdiction and outside the Commission's jurisdiction.

Regardless of Laurel's representations, the parties impacted by the Application must be permitted to determine and assess the accuracy and credibility of Laurel's factual averments. Although the Application directly references a reversal on the Laurel pipeline extending no further east than Eldorado, public comments from at least one shipper expected to utilize the post-reversal pipeline indicate that Laurel has already disseminated plans to reverse flows to Philadelphia. The Indicated Parties and the Commission have an interest in testing the veracity of Laurel's claims, particularly where public statements appears to contradict Laurel's positions.

Additionally, Laurel has asserted it can reverse flows from Pittsburgh to Eldorado on the Laurel pipeline without any Commission approval. This proposal necessarily impacts other points on the pipeline because Laurel operates the Pittsburgh – Eldorado segment under the same PUC Certificate authorizing the remaining segments of the Laurel pipeline. So an Order approving Laurel's request to reverse flows to Eldorado without PUC approval would very likely be relied upon by Laurel to implement reversals on additional segments of the Laurel pipeline without PUC approval.

Finally, Laurel has alternatively argued that, if the Commission deems the reversal to be subject to some level of PUC approval, that it find the proposed flow reversal along the Laurel pipeline to be in the public interest. Such a public interest determination requires a review of the impact of the proposed reversal upon the affected stakeholders and the public, which cannot be accurately determined absent a comprehensive understanding of Laurel's ultimate purpose.

In such circumstances it is imperative that there be a full investigation of any commitments to flow reversals and any work Laurel has done relative to considering or planning

further west to east flow reversals of the Laurel pipeline from Eldorado to Philadelphia. Unless the Commission answers the Material Question in the affirmative, the Indicated Parties may realize irreparable harm and substantial prejudice and be deprived of essential due process rights both now and in the future by being prevented from conducting discovery on critical matters of law and policy extant in this proceeding. Accordingly, the Indicated Parties respectfully request that the Commission grant this Petition and answer the Material Question in the affirmative.

IV. ARGUMENT

A. Interlocutory Review of the Material Question is Necessary

Section 5.302(a) of the Commission's regulations authorize the Commission to review the ruling of an ALJ where such review will prevent substantial prejudice or expedite the conduct of the proceeding. *See also* 52 Pa. Code § 5.302(a). While the Commission has observed a general rule disfavoring interlocutory review, the Commission has specifically granted interlocutory review 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.

Further, the Commission has specifically found interlocutory review to be necessary, even without prior certification by an ALJ, to resolve matters of scope arising from ALJ rulings on discovery matters. *Re Structural Separation of Bell Atlantic-Pennsylvania, Inc. Retail and Wholesale Operations*, 2000 Pa. PUC LEXIS 49, *12 (July 20, 2000) ("*Bell Atlantic*"); *see also Investigation Regarding Intrastate Access Charges and IntraLATA Toll Rates of Rural Carriers*

and the Pennsylvania Universal Service Fund; AT&T Communications of Pennsylvania, LLC, et al.; v.; Armstrong Telephone Company-Pennsylvania et al., 2009 Pa. PUC LEXIS 2061, *21 (January 1, 2001) ("*Intrastate Access*"). While the Commission generally limits interlocutory review of discovery matters to Material Questions certified by the presiding ALJ, the Commission addressed the necessity for interlocutory review absent certification in *Bell Atlantic* as follows:

In particular, it appears that the language used in the ALJ's Order Denying Motion to Compel has created some uncertainty as to the proper scope of this proceeding and, therefore, to avoid a subsequent remand in the event the scope is improperly circumscribed, we have determined that the questions stated in the petition should be answered.

The Commission is also of the opinion that this is an "exceptional situation" and, in accordance with 52 Pa. Code § 5.304(a), will permit interlocutory review absent certification by the presiding officer in this proceeding. Accordingly, we shall grant the Petition for Interlocutory Review and Answer to Material Question--Scope of Hearing and address the merits of the Material Question below.

Bell Atlantic, at *12. Similar to the circumstances addressed by the Commission in *Bell Atlantic*, the question of whether information and documents pertaining to Laurel's plans to reverse flows on the Laurel pipeline east of Eldorado fundamentally affects the parties' assessments of the harm and benefits accruing from Laurel's proposed reversal. The question compels 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 issue additional discovery, revise prior testimony and supporting exhibits, and entirely re-litigate the case.

To avoid duplicative and expensive litigation efforts in a complex matter involving numerous parties and expert witnesses, resolution of the Material Question must be granted.

Accordingly, the Indicated Parties request that the Commission grant interlocutory review and answer the Material Question in the affirmative.

B. The Material Question Must be Answered in the Affirmative in Order to Assess the Credibility of Material Factual Averments in the Application

Section 501 of the Public Utility Code (the "Code") establishes the Commission's general powers, providing it 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 investigative 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) *25.

Laurel has presented factual averments about continued westbound service on the Laurel pipeline 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* Laurel Statement No. 3, p. 6. This factual averment purports to define the scope of Laurel's requested relief. Laurel has not clarified 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, the Indicated Parties must assess the veracity of, and basis for, Laurel's factual representations.

Furthermore, the Indicated Parties have provided evidence directly contradicting the factual averments made in the Application. The 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. *See id.* Importantly, at least one of the shippers contacted by Laurel subsequently expressed support for a pipeline flow reversal extending all the way to Philadelphia.²

The Indicated Parties 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 the Indicated Parties have a right to evaluate whether existing documents support or contradict Laurel's representations.

C. The Material Question Must be Answered in the Affirmative to Allow Parties to Fully Address Issues Raised in the Application

In the March 8 Order, the ALJ observed that 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. The ALJ's finding reflects a narrow view of the issues raised by the Application. The Application relates to changes in direction for points east of Eldorado in at least two respects. First, Laurel's representation that it can reverse flows between Pittsburgh and Eldorado without a Certificate of Public Convenience ("CPC") may result in a Commission finding that would apply with equal force to reversals on any segments of the Laurel pipeline currently operated under Laurel's CPC. Second, Laurel's request for Commission approval of its

² *See* <http://www.altoonamirror.com/news/local-news/2017/02/pipeline-proposal-benefits-unclear>.

proposed reversal, whether evaluated as a request for abandonment or a request to modify its tariff, requires a public interest determination that cannot be made without a full understanding of Laurel's ultimate objectives, especially given Laurel's position that PUC approval is not required.

1. Laurel's Primary Argument Implicates the Entirety of Its Pennsylvania Operations

While Laurel styles the Application as a request for approval of a reversal of flows for points west of Eldorado, the requested relief poses a far broader question with significant consequences for the market participants and the consuming public that currently benefit from Laurel's current services across Pennsylvania. Laurel has asked for nothing less than a determination that it can reverse service along any origin or destination points on its pipeline without Commission approval. The Indicated Parties and the Commission therefore must be permitted to address full scope of Laurel's proposal.

Notwithstanding Laurel's request to reverse flows west of Eldorado, the actual question posed to the Commission is whether Laurel may reverse flows on any origin or destination point along the Laurel pipeline without Commission approval. Laurel bases its request for relief not on any characteristics unique to its services west of Eldorado, but on the claims that it "has no defined exclusive geographic service territory and no obligation to serve any specific origin or destination points." *See* Application, p. 12. A Commission decision concurring in Laurel's assessment would establish precedent that could apply with equal force to both Laurel's stated intention to reverse flows for points west of Eldorado and any unstated intention to reverse flows east of Eldorado.

The Commission has previously encouraged parties to develop a broad record in proceedings anticipated to establish important precedent. In *Re Pennsylvania Electric Company*,

Docket No. P-00052149 (Order entered Mar. 23, 2005) ("*Penelec*"), the Commission made the following observations in response to a Petition for Declaratory Order regarding ownership of non-utility generation facilities:

The Commission strongly encourages all interested parties to participate in this proceeding. We invite the parties to present **all relevant issues as well as any related issues for all necessary factual and legal development before the OALJ**. The Commission anticipates that this proceeding will establish important and binding precedent on the issue of ownership of AECs and attributes from NUG facilities.

See Penelec, at 3 (Emphasis added). Similar to the *Penelec* proceeding, the Commission's disposition of Laurel's de facto Petition for Declaratory Order may impact customers along the entirety of Laurel's pipeline, regardless of Laurel's purported intent to reverse flows only to Eldorado.

For the above reasons, the Commission should grant the Petition and answer the Material Question in the affirmative.

2. To Rule on the Application, the Commission Must Determine and Weigh the Total Impacts of the Relief Requested in the Application upon the Commonwealth and All Relevant Stakeholders

Notwithstanding its primary proposal that a CPC is not required to effect the proposed reversal of the Laurel pipeline, Laurel alternatively asks the Commission to grant such approvals as deemed necessary. Under the Code, regulated public utilities undertake an obligation to serve, and they may cease or "abandon" service only upon approval from the Commission. 66 Pa. C.S. § 1102(a)(2). Section 1102(a)(2) mandates receipt of a CPC in order "[f]or any public utility to abandon or surrender, in whole or in part, any service, except that this provision is not applicable to discontinuance of service to a patron for nonpayment of a bill, or upon request of a patron." 66 Pa. C.S § 1102(a)(2).

Pursuant to Code Section 1103(a), a CPC 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).³ 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 in order to assess whether the legal requirements of Code Chapter 11 have been fully satisfied. Among other things, the Indicated Parties remain concerned that Laurel is merely the alter ego of Buckeye, which is attempting to usurp jurisdiction over the Laurel pipeline from the Commission to the detriment of the public and all the key stakeholders represented by the Indicated Parties. Limiting the scope of this proceeding to points west of Eldorado puts the rabbit back into the hat, and risks development of a record with understated or otherwise inaccurate findings regarding the ultimate economic, environmental, public safety, or other impacts of Laurel's proposed reversal.

As discussed in the various Petitions to Intervene and Protests filed by the Indicated Parties, Laurel's Application raises a broad range of public interest concerns. The Indicated Parties intend to address all public interest considerations raised by the Application, including the impacts on wholesale and retail pricing of gasoline and diesel in western Pennsylvania, the impacts on Philadelphia-area refineries and market participants currently benefiting from Laurel's east-to-west pipeline service, the lack of viable alternative transportation options, safety

³ As discussed in Gulf's Protest, approval of a Tariff Modification also requires a public interest determination. *See* Gulf Protest, pp. 19-20.

implications of converting pipeline petroleum products movements to trucking petroleum pipeline movements, and other empirical and data-driven issues.

To allow parties to present a full record on the potential impacts of the Application on the Commonwealth and all stakeholders, the Commission should define the scope of this proceeding broadly, in order to assure parties are not precluded from obtaining information that could challenge or refute the assertions in its Application. 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 the parties' investigation, 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.

For example, discovery or depositions 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 all currently predicated on a reversal only to Eldorado. Absent clear direction as to the scope of this proceeding now, the parties may conduct and submit detailed analyses only to find they may need to be entirely recalculated and re-litigated if the scope proceeding is deferred for later resolution by the Commission through the normal litigation process.

Furthermore, documents evidencing additional imminent reversals of the flow along the Laurel pipeline 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 Application prior to making a final determination, the Commission should have an opportunity to understand whether the Application is intended to serve as precedent binding upon and tying the Commission's hands when Laurel begins to implement unchecked reversals of the Laurel pipeline as Phase II or III of a broader plan.

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, the Indicated Parties respectfully submit that interlocutory review of the Material Question and an answer in the affirmative are warranted.

D. 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, the 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, the Indicated Parties at this time do not believe a stay of proceedings is necessary to prevent substantial prejudice provided the parties are to agree to timely depositions of Laurel's representatives in advance of the June 14, 2017 testimony deadline. *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. The Indicated Parties respectfully reserve the right to request a stay if such circumstances arise.

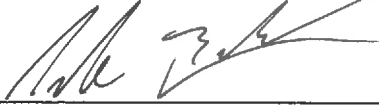
V. CONCLUSION

WHEREFORE, the Indicated Parties respectfully request that: (i) the Commission grant interlocutory review; (ii) answer the Material Question in the affirmative; and (iii) grant such other relief as may be just and reasonable under the circumstances.

Respectfully submitted,

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