**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. :

ORDER REGARDING PESRM’S MOTION TO COMPEL RESPONSES TO

PESRM SET II, NO. 14 AND PESRM SET III, NO. 2

On November 14, 2016, Laurel Pipe Line Company, L.P. (Laurel or Applicant) filed with the Commission the above-captioned Application. On February 1, 2017, Philadelphia Energy Solutions Refining and Marketing LLC (PESRM) filed a formal Protest against the Application. On March 3, 2017, PESRM served Laurel with PESRM Interrogatories and Requests for Production of Documents-Set II (Set II), and PESRM Interrogatories and Requests for Production of Documents-Set III (Set III).

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.

On March 21, 2017, PESRM filed a Motion to Compel responses to PESRM Set II, No. 14 and PESRM Set III, No. 2.

On March 28, 2017, Laurel filed its Answer to PESRM’s Motion to Compel.

The Commission’s Rules of Administrative Practice and Procedure at 52 Pa. Code §5.321 permit a broad scope of discovery:

(c) Scope. Subject to this subchapter, a party may obtain discovery regarding any mater, 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 It is not ground for objection that the information sought will be inadmissible at hearing if the information sought is reasonably calculated to lead to the discovery of admissible evidence.

1. Pa. Code § 5.321(c).

**PESRM Set II, No. 14** provides as follows:

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.

In its Motion to Compel, PESRM interprets the present Application as an application to abandon service and argues that 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. Motion to Compel ¶ 6. According to PESRM, Laurel’s Objection 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). Motion to Compel ¶ 7.

PESRM argues that 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. Motion to Compel ¶ 8.

In its Answer, Laurel maintains that PESRM Set II, No. 14 seeks information that is not relevant to the issues and subject matter to be addressed in this proceeding, and is not likely to lead to the discovery of admissible evidence. Answer ¶ 4. In particular, Laurel objects to the information sought in PESRM Set II, No. 14 arguing that it is not seeking to construct a new pipeline as a part of this proceeding. According to Laurel, whether the Applicant considered this alternative business plan in addition to or in lieu of the proposed reversal of its system to Eldorado and points west is irrelevant to any of the material issues in this proceeding. Answer ¶ 5.

After considering the parties’ respective positions, I shall grant PESRM’s Motion to Compel a response to PESRM Set II, No. 14. I find that the discovery request seeks information which is “relevant to the subject matter [] involved in the pending action, as …it relates to the claim or defense of the party seeking discovery….” 52 Pa. Code § 5.321(c).

**PESRM Set III, No. 2** provides as follows:

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.

In its Motion to Compel, PESRM defends this discovery request by arguing that it inquires properly 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. Motion to Compel ¶ 9 (emphasis added). In addition, PESRM argues that “Laurel’s financial condition in connection with the Laurel pipeline is directly relevant to the service abandonment it is proposing in this proceeding.” Motion to Compel ¶ 14 (emphasis added). PESRM explains that 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.[[1]](#footnote-1) 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 maintains that it is 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, and that PESRM Set III, No. 2 goes directly to the issue of the profitability of Laurel’s current operations. Motion to Compel ¶ 14.

In its Answer, Laurel avers that PESRM’s Motion to Compel misrepresents Laurel’s objection[[2]](#footnote-2) to PESRM Set III, No. 2, which sought information related to the profitability of Buckeye’s terminal assets. Answer ¶ 14. Laurel specifically objected to this interrogatory because “[t]o the extent that this interrogatory seeks information related to Buckeye’s calculations of profitability for Buckeye’s terminal assets, the information sought is irrelevant, immaterial, and not likely to lead to the discovery of admissible evidence.” Answer ¶ 14 (emphasis in original). Laurel explained that Buckeye is an interstate petroleum products pipeline, whose rates, services, and facilities are not subject to the jurisdiction of the Commission. Moreover, Laurel argued that, to the extent that authorization for Laurel’s proposal to change the direction of flow over certain Laurel facilities is required, Laurel’s, *and not Buckeye’s*, profitability would be implicated by the Commission’s standard described in paragraph 14 of PESRM’s Motion. Regardless of whether certain Buckeye assets are connected to the Laurel pipeline system, the financial and cost information related to Buckeye’s assets are not related to a relevant issue in this proceeding, because Buckeye is neither the applicant in this proceeding nor a PUC-jurisdictional pipeline. Answer ¶ 14.

Interestingly, PESRM’s Motion to Compel does not address its discovery request regarding Buckeye’s calculations of profitability for Buckeye’s terminal assets. In fact, Buckeye is not mentioned at all in the entire seven-page document, except in the case caption and the language of PESRM Set III, No. 2. Also, Laurel does not appear to object to PESRM Set III, No. 2 to the extent it seeks information regarding Laurel’s calculation of profitability for Laurel’s terminal assets connected to Laurel pipeline. In view, of the above, I shall grant, in part, and deny, in part, PESRM’s Motion to Compel a response to PESRM Set III, No. 2. PESRM’s Motion to Compel shall be granted with regard to Laurel’s calculation of profitability for Laurel’s terminal assets connected to Laurel pipeline, and shall be denied with regard to Buckeye’s calculations of profitability for Buckeye’s terminal assets. I agree with Laurel that the financial and cost information on Buckeye’s assets are not related to relevant issues in this proceeding.

THEREFORE,

IT IS ORDERED:

1. That PESRM’s Motion to Compel a response to PESRM Set II, No. 14 is granted.

 2. That PESRM’s Motion to Compel a response to PESRM Set III, No. 2 is granted, in part, with regard to information concerning Laurel’s calculation of profitability for Laurel’s terminal assets connected to Laurel pipeline.

3. That PESRM’s Motion to Compel a response to PESRM Set III, No. 2 is denied, in part, with regard to information concerning Buckeye’s calculation of profitability for Laurel’s terminal assets connected to Laurel pipeline.

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| --- | --- | --- | --- |
| Date: | May 2, 2017 |  |  |
|  |  |  | Eranda VeroAdministrative Law Judge |

**A-2016-2575829 & G-2017-2587567APPLICATION OF LAUREL PIPE LINE COMPANY, L.P**

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1. *Application of CMV Sewage Company, Inc.,* Docket No. A-230056F2002 (Order Entered December 23, 2008). [↑](#footnote-ref-1)
2. Neither party submitted a copy of Laurel’s Objections to PESRM Set II, No. 14 and PESRM Set III, No. 2 for my review. [↑](#footnote-ref-2)