**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 LAUREL’S MOTION TO COMPEL PESRM TO PROVIDE

RESPONSES TO LAUREL SET I DISCOVERY REQUEST

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 2, 2017, Laurel served Set I Discovery on PESRM.

On March 13, 2017, PESRM submitted timely written Objections to Laurel Set I Discovery. PESRM objected to Laurel Set I Discovery Request Nos. 1, 2, 3, 4, 5, 6, 7, 9, and 10.

On March 23, 2017, Laurel filed a Motion to Compel responses to Laurel Set I Discovery Request Nos. 1, 2, 3, 4, 5, 6, 7, 9, and 10.

On March 28, 2017, PESRM filed its Answer to Laurel’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).

**Laurel – Set I, Request No. 1** provides as follows:

1. With reference to PESRM’s claim in paragraph 30 of its protest that there exists a lack of viable alternatives for Laurel’s current shippers:

a. Please provide records showing by the month quantity of refined petroleum products lifted by PESRM out of each terminal in Pennsylvania used by PESRM from January 1, 2012 to February 1, 2017.

b. Please ensure that all information provided in response to subpart (a) identifies the terminal the product originated from, and method of transportation used for the shipment.

c. Please identify the amount of refined product by month that PESRM has purchased from other parties who shipped this refined product on Laurel from January, 2011 to the Present.

d. Please identify the amount of refined product by month that PESRM has transported to terminals in Pennsylvania by either a non-Buckeye pipeline or by barge from January 1, 2012 to February 1, 2017

PESRM generally objected to Laurel – Set I, Request No. 1 on the grounds of burdensomeness with respect to the time frames over which information is sought. According to PESRM, it has only existed since it was formed and became owner of the refining complex on September 8, 2012. Objections at 2. At that time, PESRM entered into a financial intermediation agreement with J.P. Morgan Ventures Energy Corporation (JPMVEC), which gave to JPMVEC title to blendstocks and refined products that it purchased from PESRM and sold to various third parties. Under the terms of financial intermediation agreement, PESRM was neither the seller nor the shipper of these finished products. JPMVEC was later sold to Mercuria Energy Group and JPMVEC’s rights and obligations under the intermediation agreement were assigned to Merrill Lynch Commodities, Inc. (MLC). PESRM maintains that these events significantly limit PESRM’s current ability to access product sales and shipping information for the period January 1, 2012 to October 7, 2014 – when PESRM and MLC amended and restated the intermediation agreement to permit PESRM’s direct interface with customers and greater access to transaction sales and shipping information. Objections at 3.

In its Motion to Compel, Laurel defends its interrogatory by arguing that PESRM never claimed that it has absolutely no access product sales and shipping information for the period January 1, 2012 to October 7, 2014 – only that its access to transaction sales and shipping information increased after October 7, 2014. Motion to Compel, ¶ 12. In addition, Laurel argues that as a party to the financial intermediation agreement, PESRM is in a better position than Laurel to access the information requested in this interrogatory.

Next, PESRM generally objected to Laurel – Set I, Request No. 1 on the grounds of burdensomeness to the extent it seeks information on products sold by PESRM Freight on Board (FOB) to third parties who may elect to ship on Laurel pipeline. PESRM explained that it does not possess shipping information for FOB transactions. Furthermore, this information is already available to Laurel. Objections at 3.

In its Motion to Compel, Laurel argued that PESRM has and should provide data with regard to the products it sells to others at its refinery, as well an data on the transport of its the product on Laurel or other modes of transportation or other pipelines, even if it does not possess data as to the ultimate destination of such products. Motion to Compel, ¶ 14.

PESRM objected to subparts (a), (b), and (d) of Laurel – Set I, Request No. 1 on the grounds that they are overbroad and lack relevancy to the issues of this proceedings to the extent that seek information on all terminals associated with PESRM products in PA. PESRM explained that its business typically utilizes wholesale terminals which are connected to the Laurel pipeline. Objections at 2.

In turn, Laurel argued that information regarding the movements of petroleum products shipped by PESRM over Laurel’s pipeline system, or any other mode of transport, are directly related to the hardship that PESRM alleges it will suffer as a result of the proposal,[[1]](#footnote-1) as well as alternatives that PESRM alleges are inadequate.[[2]](#footnote-2) PESRM cannot claim that it will be negatively impacted by Laurel’s proposal and that certain alternatives are not adequate, but refuse to provide the basic shipment information that is necessary to evaluate these claims. Motion to Compel, ¶ 10.

PESRM objected to subpart (c) of Laurel – Set I, Request No. 1 on the grounds of relevancy and burdensomeness to the extent the question seeks information on incidental purchases of products not refined by PESRM and used to supplement its core refining business. Furthermore, to the extent this question seeks information on shipments made on Laurel, PESRM argues that Laurel already has access to this information. Objections at 3.

In its Motion to Compel, Laurel argued that PESRM’s claim of harm must be evaluated in light of its shipment and marketing not merely of its own production, but any other products that it purchases for transportation on Laurel or on other alternative outlets to its various markets. Motion to Compel, ¶ 13.

Finally, PESRM objects to subpart (d) of Laurel – Set I, Request No. 1 to the extent it seeks information on pipeline movements that occurred prior to the previous 11 months. PESRM argues that pipeline movements are managed for PESRM by Transport 4 system, which maintains data that is readily available to PESRM for a rolling 11 month period only. Information on prior pipeline movements for periods earlier that the prior eleven months can only be obtained by request and for a fee that in aggregate will be costly and burdensome for PESRM to incur. Moreover, to the extent movement occurred on the Laurel system, PESRM argues that that information is already available to the Applicant. Objections at 2.

Laurel’s Motion to Compel maintains that the costs and burdens associated with retrieving the information sought in subpart (d) of Laurel – Set I, Request No. 1 do not rise to the level of unreasonable burden that is required by Sections 5.361(a)(2) or 5.361(a)(4). 52 Pa. Code §§ 5.361(a)(2) and (4). Laurel acknowledges that has access to the requested information for movements that occurred over Laurel’s system, however Laurel also pointed out that it is not similarly situated with respect to information for other movements. Laurel argues that it is reasonable to expect a party to expend time and resources to provide relevant information to a requesting party, when the requesting party does not have access to that information. The information requested—primarily volumes and types of refined petroleum products moved from its refineries, by terminal and mode of transportation—is also very basic business data that a refinery will have readily available and will retain for historical analytic purposes. Motion to Compel, ¶ 11. Moreover, Laurel defends its chosen five-year time period as reasonable by pointing out that other parties, including PESRM, have requested that Laurel provide shipment data for a five-year period and Laurel has not objected to providing that data. Motion to Compel, ¶ 11.

After considering Laurel’s and PESRM’s respective positions, PESRM’s objections to Laurel – Set I, Request No. 1 on the grounds of relevancy are overruled. I find that the information sought in this discovery request is relevant to the subject matter of this proceeding as it relates to the claim or defense of the party seeking discovery. PESRM’s objections to Laurel – Set I, Request No. 1 is sustained to the extent this discovery request seeks information Laurel already has access to is sustained.

With regard to PESRM’s objections to Laurel – Set I, Request No. 1 on the grounds of unreasonable burdensomeness, I find that PESRM was first created in September of 2012 and is unable to provide any data prior to this date. I find that Laurel failed to explain why historical information on a five-year period of time was necessary to its case or preparation of its case, while a different period of time – like the 30-month period of time (October 2014 to the present) offered by PESRM – would be insufficient in view of PESRM’s averments of unreasonable burden. Upon careful consideration of both parties’ arguments, I shall instruct PESRM to provide the information sought in Laurel – Set I, Request No. 1 for the period January 1, 2014 to the present.

**Laurel – Set I, Request No. 2** provides as follows:

2. With reference to PESRM’s claim in paragraph 30 of its protest that there exists a lack of viable alternatives for Laurel’s current shippers:

a. Please provide records showing by the month quantity of refined petroleum products produced by PESRM and delivered to each terminal in Pennsylvania used by PESRM from January 1, 2012 to February 1, 2017.

b. Please ensure that all information provided in response to subpart (a) identifies the terminal to which the product was delivered, and method of transportation used for the shipment.

c. Please ensure that the information provided in response to subpart (a) provides the price at which product was sold and the methodology used to calculate the price.

d. Please identify the amount of refined product by month that PESRM has sold to other parties at the refinery gate who shipped this refined product on Laurel from January, 1 2012 to February 1, 2017.

e. Please ensure that all information provided in response to subpart (d) identifies the terminal to which the product was sold and the party to whom the product was sold.

f. Please ensure that the information provided in response to subpart (d) provides the price at which product was sold and the methodology used to calculate the price.

g. Please identify the amount of refined product by month that PESRM has sold to other parties at the refinery gate who shipped this refined product using some means other than Laurel from January, 1 2012 to February 1, 2017.

h. Please ensure that all information provided in response to subpart (g) identifies the terminal to which the product was sold and the party to whom the product was sold.

i. Please ensure that the information provided in response to subpart (g) provides the price at which product was sold and the methodology used to calculate the price.

PESRM objected to Laurel – Set I, Request No. 2 on the same grounds it stated in its objections to Laurel – Set I, Request No. 1. Objections at 4-6. In turn, Laurel sought to compel a response to Laurel – Set I, Request No. 2 on grounds similar to those stated in its Motion to Compel in support of its Laurel – Set I, Request No. 1. Motion to Compel, ¶¶ 17-24. Similarly, I shall grant, in part, and deny, in part, Laurel’s Motion to Compel a response to Laurel – Set I, Request No. 2, in accordance with my discussion on Laurel’s Motion to Compel a response to Laurel – Set I, Request No. 1, *supra* at 5-6.

**Laurel – Set I, Request No. 3** provides as follows:

3. Regarding PESRM’s reference in paragraph 30 to limiting PESRM’s access to markets:

a. Please identify all transportation methods by which product leaves PESRM’s refinery (e.g., pipeline, truck rack at the refinery, barge, etc.), and provide for each the location and capacity (in barrels per day) of each such transportation method.

b. Please identify any and all internal reviews, analyses, reports, or discussions undertaken or caused to be undertaken by PESRM regarding competitive threats to Philadelphia refineries, including but not limited to loss of transportation options and competition from other sources of supply.

PESRM objected to Laurel – Set I, Request No. 3(b) on the grounds that is overbroad and burdensome, because it is not bounded by any timeframe or limited to a type of competitive threat. Objections at 6. However, PESRM agrees to provide “written statements of position it has provided to forums with respect to the time period over which the Company has existed where it considers issues affecting its ability to compete were being address.” *See id.*

In its Motion to Compel, Laurel explained that this discovery request seeksany and all internal reviews, analyses, reports, or discussions undertaken or caused to be undertaken by PESRM regarding “*any* competitive threats” to its business in the markets in which PESRM operates,” and moved to compel PESRM to respond to Laurel – Set I, Request No. 3(b) on grounds similar to those stated in its Motion to Compel in support of its Laurel – Set I, Request No. 1. Motion to Compel, ¶ 28 (emphasis in the original).

In its Answer, PESRM states that despite its objection to the scope and breadth of Laurel Set I, No. 3(b), it filed responses to Laurel in the form of documents identified in the Privilege Log provided to Laurel with its response and further committed to providing additional reviews, analyses and reports when completed. According to PESRM, Laurel’s Motion to Compel is moot with respect to this question. Answer, ¶ 14.

I was not provided with a copy of PESRM’s response to Laurel Set I, No. 3(b), and Laurel did not amend its Motion to Compel after March 22, 2017. Therefore, I cannot conclude that Laurel’s Motion to Compel is moot with respect to this discovery request. Based on the pleadings before me, however, I find PESRM has failed to explain why, for an entity which has been in existence for little more than five years, the production of the information sought by Laurel –Set I, No. 3(b) is overly broad or unduly burdensome. Consequently, I shall grant Laurel’s Motion to Compel a response to Laurel – Set I, Request No. 3(b).

**Laurel – Set I, Request Nos. 4-7** provide as follows:

4. Regarding its claims that PESRM will be negatively affected by the Application:

a. Has PESRM performed any analysis and/or study (either quantified or qualitative) of how it will or may be affected economically if Laurel’s Application is approved? If so, provide a copy of all analyses and/or studies.

b. Please provide all documents, including emails, memoranda, letters, notes of phone calls, etc., which in any way address or relate to how PESRM will or may be affected economically if Laurel’s Application is approved, whether or not such documents constitute analyses or studies.

5. Regarding PESRM’s claims on the impact of additional Midwestern refined petroleum products supply on the consumers of Pennsylvania:

a. Has PESRM performed any analysis and/or study (either quantified or qualitative) of how it will or may be affected economically by competition from supply from the Midwest? If so, provide a copy of all analyses and/or studies.

b. Please provide all documents, including emails, memoranda, letters, notes of phone calls, etc., which in any way address or relate to how PESRM will or may be affected economically by competition from supply from the Midwest, whether or not such documents constitute analyses or studies.

6. With reference to the statement in paragraph 30 that the proposal would “increase the cost of gasoline and diesel in Pittsburgh, Altoona, and other Pennsylvania markets”:

a. Please provide all studies or analyses conducted by or on behalf of PESRM, or reviewed by PESRM, since January 1, 2012 discussing the cost of gasoline and diesel in the Pittsburgh market (at wholesale or retail).

b. Please provide all studies or analyses conducted by or on behalf of PESRM since January 1, 2012 discussing the cost of gasoline and diesel in the Altoona market (at wholesale or retail).

c. Please provide all studies or analyses conducted by or on behalf of PESRM since January 1, 2012 discussing the cost of gasoline and diesel in any other Pennsylvania markets (at wholesale or retail).

7. With reference to PESRM’s statements in paragraph 30 that consumers will lose reliability benefits, which will lead to price spikes and shortages:

a. Please provide all studies or analyses conducted by or on behalf of PESRM since January 1, 2012 discussing the benefit of supply alternatives.

b. Please provide all studies or analyses conducted by or on behalf of PESRM since January 1, 2012 discussing the benefit of reliability redundancies for the Pittsburgh market caused by Laurel’s east to west direction of flow.

c. Please provide all studies conducted by or on behalf of PESRM since January 1, 2012 discussing or showing that Pittsburgh would lose reliability benefits if Laurel did not flow in an east to west direction.

d. Please provide all studies or analyses conducted by or on behalf of PESRM since January 1, 2012 discussing pricing benefits to Pittsburgh customers resulting from having access to deliveries from the east by Laurel.

e. Please provide all studies or analyses conducted by or on behalf of PESRM since January 1, 2012 discussing price spikes to Pittsburgh customers.

f. Please provide all studies or analyses conducted by or on behalf of PESRM since January 1, 2012 discussing actual or potential supply shortages to Pittsburgh customers.

PESRM objected to Laurel – Set I, Request Nos. 4-7 only to the extent these discovery requests sought material and information that is otherwise protected from disclosure by the Attorney Client privilege and attorney work product doctrine. Objections at 7-9. In turn, Laurel insisted that Laurel – Set I, Request Nos. 4-7 did not seek privileged information. Motion to Compel, ¶¶ 32, 35, 40, 43. Finally, in its Answer PESRM averred that it has identified and included on the Privilege Log provided to Laurel any privileged documents responsive to these questions. PESRM argued that it has fully answered Laurel – Set I, Request Nos. 4-7 and that there is no further response to compel. Answer, ¶¶ 15-16.

I was not provided with a copy of PESRM’s response to Laurel – Set I, Request Nos. 4-7 and Laurel did not amend its Motion to Compel after March 22, 2017. Therefore, I cannot conclude that there is no further response to compel and that Laurel’s Motion to Compel is moot with respect to these discovery requests. Based on the pleadings before me, however, I shall deny Laurel’s Motion to Compel a response to Laurel – Set I, Request Nos. 4-7, only to the extent they seek privileged information.

**Laurel – Set I, Request No. 9** provides as follows:

9. Regarding PESRM’s claims in Paragraph 30 that it would lose markets that cannot be replaced at a similar margin:

a. Please provide all internal cost analysis undertaken by PESRM regarding potential alternative markets to the markets served by the destinations on Laurel located west of Altoona, including pricing information for selling petroleum products to those markets.

b. Please provide all internal cost analysis and data regarding the current profit margin PESRM receives from shipments on Laurel, by destination.

c. Please provide all internal cost analysis and data regarding the current profit margin PESRM receives from sales of product at the refinery gate.

PESRM objects to this interrogatory and its subparts to the extent they provide no specific time frame for the information requested. Notwithstanding the objection, PESRM offered to provide “a response utilizing the date of the interrogatory was served as the relevant timeframe.” Objections at 10. Laurel, in turn, agrees to reduce the time period for the response to cover the period from September 8, 2012 to the present. Motion to Compel, ¶ 47.

PESRM also objects to subparts (b) and (c) of Request No. 9 on the grounds of relevance and burdensomeness to the extent they seek information on a per-shipment or per-sale basis. PESRM states it will provide the requested information on an aggregated basis. Objections at 10. In its Motion to Compel, Laurel adopts and incorporates its arguments with respect to Request No. 1 of the Set I discovery, and adds that the information regarding margin on a per-shipment or per-sale basis offered by the Pittsburgh and any other market that PESRM is directly relevant to the evaluation of alternatives that PESRM alleges are inadequate. Motion to Compel, ¶ 48.

After considering Laurel’s and PESRM’s respective positions, I find that the period of time September 8, 2012 to the present is a reasonable time period for an interrogatory seeking information on cost analyses and profit margins from PESRM. PESRM failed to make any argument that the time period should be reduced any further. In addition, I find that the language of Laurel – Set I, Request No. 9 (b) and (c), as written by Laurel, allows PESRM to submit the requested information on an aggregated basis. Subparts (b) and (c) do not specify that they seek information regarding margin on a per-shipment or per-sale basis and Laurel cannot use its Motion to Compel to qualify or expand upon the language of the interrogatory as originally written. Laurel’s Motion to Compel a response to Laurel – Set I, Request No. 9 is granted, in part, and denied, in part, in accordance with the discussion above.

**Laurel – Set I, Request No. 10** provides as follows:

10. With reference to PESRM’s discussion of alternative markets in New York and New Jersey:

a. Please provide by month and product type the amount of product that PESRM has delivered to New York from January 1, 2012 to the present.

b. With regard to material provided in response to subpart (a) please ensure that each supply source and/or transportation route is listed separately (e.g. if a certain amount of gasoline was shipped to the New York City market using Colonial and a different amount was shipped to the New York City market via Harbor pipeline, via barge, or via exchange, please so state).

c. Please provide by month and product type the amount of product that PESRM has delivered to New Jersey from January 1, 2012 to the present.

d. With regard to material provided in response to subpart (c) please ensure that each supply source and/or transportation route is listed separately.

e. Please provide by month and product type the amount of product that PESRM has delivered to Central Pennsylvania from January 1, 2012 to the present.

f. With regard to material provided in response to subpart (e) please ensure that each supply source and/or transportation route is listed separately.

PESRM objected to Laurel – Set I, Request No. 10 on the same grounds it stated in its objections to Laurel – Set I, Request No. 1. Objections at 11-12. In turn, Laurel sought to compel a response to Laurel – Set I, Request No. 10 on grounds similar to those stated in its Motion to Compel in support of its Laurel – Set I, Request No. 1. Motion to Compel, ¶¶ 52-55. Similarly, I shall grant, in part, and deny, in part, Laurel’s Motion to Compel a response to Laurel – Set I, Request No. 10, in accordance with my discussion on Laurel’s Motion to Compel a to response Laurel – Set I, Request No. 1, *supra* at 5-6.

THEREFORE,

IT IS ORDERED:

1. That Laurel’s Motion to Compel responses to Laurel – Set I, Request Nos.1, 2, and 10 is granted, in part, and denied, in part.

2. That Laurel – Set I, Request Nos.1, 2, and 10 shall be amended to seek information regarding the period January 1, 2014 to the present.

3. That Laurel’s Motion to Compel responses to Laurel – Set I, Request Nos.1, 2, and 10 is denied, in part, to the extent they seek information already in Laurel’s possession.

4. That Laurel’s Motion to Compel a response to Laurel – Set I, Request No. 3(b) is granted.

5. That Laurel’s Motion to Compel responses to Laurel – Set I, Request Nos. 4-7 is denied to the extent these discovery requests seek privileged information.

6. That Laurel’s Motion to Compel responses to Laurel – Set I, Request No. 9 is granted, in part, and denied, in part.

7. That Laurel – Set I, Request No. 9 shall be amended to seek information regarding the period September 8, 2012 to the present.

8. That Laurel’s Motion to Compel responses to Laurel – Set I, Request No. 9 (b) and (c) on a per-shipment or per-sale basis is denied.

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| --- | --- | --- | --- |
| Date: | May 5, 2017 |  |  |
|  |  |  | Eranda Vero  Administrative Law Judge |

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

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1. *See, e.g.*, Protest of Philadelphia Energy Solutions Refining and Marketing, LLC, Docket No. A-2016-2575829, at pp. 10-13 (filed Feb. 1, 2017). [↑](#footnote-ref-1)
2. *See id*. [↑](#footnote-ref-2)