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June 1, 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 Motion for Modification and Extension of Procedural Schedule of Gulf Operating, LLC, Philadelphia Energy Solutions Refining & Marketing, LLC, Sheetz, Inc., Monroe Energy, Inc., and Giant Eagle, Inc., 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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Adeolu A. Bakare

Counsel to Gulf Operating, LLC and Sheetz, Inc.

Dated this 1st day of June, 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.	:	

**GULF OPERATING, LLC; PHILADELPHIA ENERGY
SOLUTIONS REFINING & MARKETING, LLC; SHEETZ, INC.;
MONROE ENERGY, INC.; AND GIANT EAGLE, INC.
MOTION FOR MODIFICATION AND EXTENSION OF PROCEDURAL SCHEDULE**

TO THE HONORABLE ADMINISTRATIVE LAW JUDGE ERANDA VERO:

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"), by and through their counsel, hereby request that Administrative Law Judge ("ALJ") Eranda Vero modify and extend the procedural schedule set forth in the Prehearing Order No. 2 issued on March 2, 2017. **To facilitate a prompt resolution of this Motion, the Indicated Parties additionally request that responses to this Motion be required to be filed within 5 calendar days of service.** In support hereof, and consistent with the procedures set forth in Section 5.103, of the Pennsylvania Public Utility Commission's ("Commission") Regulations, 52 Pa. Code § 5.103, the Indicated Parties state as follows:

1. On November 14, 2016, Laurel Pipe Line Company, L.P. ("Laurel") filed with the Commission, pursuant to various provisions of the Pennsylvania Public Utility Code, an Application seeking Commission authority, approvals and Certificates of Public Convenience

("CPC") to change the direction of petroleum products transportation service along Laurel's existing pipeline to delivery points west of Eldorado, Pennsylvania ("Application").

2. As set forth in the Application, Laurel currently transports petroleum products from points of origin near Philadelphia, Pennsylvania, to destination points across the Commonwealth, terminating west of Pittsburgh, Pennsylvania. *See* Application, p. 2. In addition to the intrastate shipments, Laurel assigns a portion of the capacity on the pipeline to its affiliate Buckeye Pipe Line Company, L.P. ("Buckeye") for interstate transportation service from origin points in New Jersey and Delaware to destination points in Pennsylvania. *See id.* at 2.

3. The Application proposes to eliminate Commission jurisdictional pipeline transport service for all points west of Eldorado (near Altoona). *See id.* at 9. Laurel further claims that the proposed reversal, and any future flow reversals it wishes to pursue on the existing pipeline, requires no approvals from the Commission. In fact, Laurel claims to have filed the Application solely as a backstop alternative to be addressed only if the Commission disagrees with Laurel's primary position that no such Commission authorization is needed to reverse the flow along the Laurel pipeline as proposed in this proceeding. *See id.* at 12.

4. Post-reversal, Laurel proposes that Buckeye will use the pipeline facilities west of Eldorado for future receipt of interstate deliveries originating from origin points in the Midwest and in the Pittsburgh area to Eldorado. *See id.* The Application claims that these deliveries would be "on Laurel's pipeline at FERC-approved interstate rates." *Id.* at 9. On February 6, 2017, at Docket Number G-2017-2587567, Laurel submitted to the Commission a proposed Pipeline Capacity Agreement between itself and its affiliate, Buckeye ("Capacity Agreement").

5. On February 7, 2017, ALJ Vero presided over a Prehearing Conference attended by all parties. At the Prehearing Conference, the ALJ heard oral arguments in favor of conflicting

proposed schedules presented by Laurel and the Indicated Parties. Tr. 17-26. Notably, the Indicated Parties advised the ALJ that expectations of extensive discovery and depositions favored postponing establishment of a procedural schedule until conclusion of discovery. Tr. 21-23, 25-26. The ALJ recognized the benefits of the Indicated Parties' recommendation to conclude discovery before setting the remaining litigation deadlines because "[i]t allows time for the depositions to be conducted in a thorough fashion, and I'd rather go slowly and do it right than do it in a hurried way and then have to re-do it all over again or file supplemental testimonies on anything that might come up." Tr. 16. Following the oral arguments, the ALJ directed all parties to attempt to reach a consensus schedule. Tr. 29. Consistent with the ALJ's directive, the parties engaged in further negotiations and subsequently presented a mutually agreed upon schedule to the ALJ. Following the Prehearing Conference, the ALJ approved the following procedural schedule in Prehearing Order No. 2:

Settlement Conference – May 25, 2017
Other Parties Direct – June 14, 2017
Rebuttal – August 1, 2017
Surrebuttal – September 6, 2017
Written Rejoinder – September 22, 2017
Hearings – October 2 to October 6, 2017
Main Brief – October 30, 2017
Reply Brief – November 20, 2017

However, the ALJ issued an important caveat regarding the litigation schedule. In light of the discovery concerns raised by the Indicated Parties, the ALJ clarified that "...if it turns out that more discovery is needed, I am not particularly against amending the litigation schedule as many times as is needed when it's needed, but it gives people deadlines and goals to keep an eye on." Tr. 30.

6. As anticipated, the parties have engaged in extensive discovery since issuance of Prehearing Order No. 2. Unfortunately, as detailed below, the parties have not concluded initial

discovery because of delays resulting from contested discovery questions, protracted negotiation of an appropriate Protective Order, inconsistent written responses to discovery questions, delay in scheduling depositions, and a pending request filed by the Indicated Parties seeking Commission direction on the proper scope of the proceeding. Pursuant to Section 5.223(a) of the Commission's regulations and consistent with the ALJ's comments at the Prehearing Conference, the presiding ALJ may modify a previously approved procedural schedule for good cause shown. *See* 52 Pa. Code § 5.223(a); *see also* Tr. 30. For the reasons summarized above and detailed below, the Indicated Parties respectfully request that the presiding ALJ grant this Motion to modify and extend the current procedural schedule.

7. Because this proceeding raises issues of first impression, the parties have engaged in extensive discovery. Each of the Indicated Parties, Laurel, and the Commission's Bureau of Investigation have propounded discovery in this proceeding. In total, parties have issued approximately thirteen (13) interrogatory sets. Of these interrogatory sets, eight (8) were the subject of objections from the responding party, each of which resulted in Motions to Compel, including five (5) Motions to Compel filed by Laurel. As a result, the ALJ has issued eight (8) separate Orders granting or denying Motions to Compel. Notwithstanding the parties' rights under the Commission's regulations to object to discovery and to file Motions to Compel where necessary, the contested discovery responses and numerous Motions to Compel have severely limited the amount of information Laurel has made available to the Indicated Parties leading up to the pending June 14, 2017, deadline for submission of Other Party Direct Testimony.

8. In addition to the numerous contested discovery disputes and related responses, the provision by Laurel of confidential and highly confidential material sought through discovery was delayed due to extensive negotiations on the terms for an appropriate Protective Order. Because

initial discovery requested information deemed confidential or highly confidential, the Indicated Parties and Laurel agreed that a Protective Order was necessary prior to production of confidential discovery responses. As Gulf, Sheetz, Monroe, PESRM, Giant Eagle, Laurel, and Husky Marketing and Supply Company are all participants in a highly competitive petroleum fuels market, each party actively engaged in the Protective Order negotiations. While the parties eventually reached consensus, the mutually agreed-upon Protective Order was not presented to the presiding ALJ until April 25, 2017, upon which the ALJ promptly approved the document on April 26, 2017. Although eventually resolved, the Protective Order negotiations also served to prevent the Indicated Parties from receiving prompt discovery responses.¹

9. Further, the Indicated Parties also received inconsistent discovery responses from Laurel, which hinders efficient discovery and necessitates further discovery in order to resolve such factual inconsistencies. For example, Laurel's response to PESRM Interrogatory Set I, No. 13 presented the following information:

Q.13. Did Laurel consider and evaluate environmental impacts, including but not limited to increased emissions resulting from increased truck traffic, as a result of the proposed change in service direction? If yes, please explain. Provide studies and Documents relating thereto.

A.13. Laurel does not expect the proposal, if implemented, to result in materially increased truck traffic, and thus the answer is "no."

However, despite explicitly stating that it did not consider environmental impacts in response to PESRM Set I, Interrogatory No. 13, Laurel furnished a completely contradictory response to PESRM's Set I, Request for Admission No 1. There, Laurel affirmed the following:

Q.1. Prior to filing its Application or Direct Testimony with the Pennsylvania Public Utility Commission ("PaPUC") in this proceeding, Laurel did not consider and evaluate

¹ Of course, the protracted Protective Order negotiations also impacted Laurel's receipt of confidential discovery responses from the Indicated Parties. However, under the existing procedural schedule, Laurel is not facing an imminent testimony deadline at this time.

environmental impacts, including but not limited to increased emissions resulting from increased truck traffic, as a result of the proposed change in service direction of the Laurel pipeline being approved.

A.1. Laurel denies that it did not consider and evaluate "environmental impacts" that would be "resulting from increased truck traffic" due to the proposed change in service direction, because no such increased traffic is expected or likely to result from the proposed change in direction of service.

Such facially contradictory responses greatly impede the parties' ability to compile a credible evidentiary record. Without clear discovery responses to basic questions, the submission of Other Party Direct Testimony – currently scheduled to be filed on June 14, 2017 – would be both premature and prejudicial to the Indicated Parties. In order to present the Commission with meaningful and reliable Direct Testimony, the parties must be permitted to continue the initial discovery process.

10. Consistent with the Commission's regulations, the Indicated Parties have elected to conduct formal depositions in addition to written discovery, in order to, among other things, clarify Laurel's conflicting statements offered to date, follow-up on recently received Confidential and Highly Confidential discovery responses, and expedite the discovery process in a contested proceeding with numerous and complex issues to explore. With the depositions scheduled by mutual agreement of Laurel and the Indicated Parties for June 7, 2014, it is not realistically possible for the Indicated Parties to meet their current June 14, 2017, testimony deadline.

11. Gulf initially issued a Notice of Deposition to Laurel on May 4, 2017. Laurel informally responded to the Indicated Parties on May 11, 2017, affirming that David Arnold would appear for depositions on either May 23, 2017 or May 31, 2017. Following the informal notice, Laurel filed a letter with the Commission on May 15, 2017, formally notifying the ALJ and all parties that Mr. Arnold would be made available for depositions. However, while the Indicated Parties were deliberating the request, Laurel advised counsel for Gulf and Sheetz to relay that the

May 23 date would no longer be feasible. This withdrawal of the May 23 deposition date had the effect of postponing depositions, as various conflicts precluded proceeding with the alternative May 31 date. As a result, the Indicated Parties and Laurel mutually agreed to hold depositions on June 7, 2017, which falls just seven (7) days before the June 14, 2017, deadline. In order to allow for a reasonable amount of time to obtain and review the transcript from the depositions and update testimony positions as may be necessary, the current date for Other Party Direct testimony must be modified and extended.

12. Finally, the Indicated Parties' preparation of Other Party Direct Testimony could also be significantly impacted by Commission action on the Indicated Parties' Petition for Interlocutory Review, which was filed with the Commission on April 20, 2017.² The Petition for Interlocutory Review arose out of a discovery dispute that called into question the scope of issues to be addressed in this proceeding.

13. Importantly, the Indicated Parties did not request a stay of the proceeding in the Petition for Interlocutory Review, reasoning that a Commission Order within the standard 30-day timeframe for resolution of a Petition for Interlocutory Review would result in a dispositive Order by the Commission's May 18 Public Meeting. However, on May 15, 2017, the Commission's Secretary Bureau issued a letter extending the standard 30-day period for review of the Petition for Interlocutory Order. Therefore, the earliest date on which the Commission could rule on the Petition for Interlocutory Order is June 14, 2017, the same day on which the Indicated Parties are currently required to submit Direct Testimony. The pending Commission determination on the Petition for Interlocutory Review regarding the permissible scope of issues in this proceeding

² On May 1, 2017, the Indicated Parties filed a supporting brief in connection with the Petition for Interlocutory Review, and thereafter Laurel filed an opposing brief.

constitutes good cause for modifying the procedural schedule to allow for review and consideration of any action by or order from the Commission prior to submission of Other Party Direct Testimony.

14. Based on the facts stated above, "good cause" exists for modification of the procedural schedule previously established by the ALJ. Consistent with the concerns expressed by Gulf and PESRM at the prehearing conference, discovery on the novel issues posed by Laurel's Application has generated significant controversy among the parties and impeded the Indicated Parties' ability to develop direct testimony in response to Laurel. Accordingly, the Indicated Parties request that the ALJ modify the procedural schedule to establish a deadline for Other Party Direct Testimony of August 14, 2017 (60 days from the current June 14 deadline) or such other date as deemed reasonable under the circumstances. Rather than determine firm deadlines for the remaining deadlines and hearing dates, the Indicated Parties propose that all parties be directed to informally convene and develop a revised procedural schedule substantially preserving the intervals and hearing days from the schedule approved in Prehearing Order No. 2.

15. In deciding the Motion, the Indicated Parties request that the ALJ consider efforts to negotiate a modification of the schedule with Laurel prior to filing this Motion. On May 18, 2017, the Indicated Parties contacted Laurel to propose a modification to the procedural schedule. These negotiations continued until May 31, 2017. Only after engaging in earnest, but unsuccessful, informal discussions did the Indicated Parties seek formal relief from the Commission through this Motion.

16. To facilitate a timely resolution of this Motion, **the Indicated Parties request that Laurel be required to answer the Motion within 5 business days.** To the extent necessary, the


Indicated Parties are willing to participate in a further prehearing conference, either telephonic or in-person, to address the issues raised in this Motion.³

WHEREFORE, Gulf Operating, LLC, Philadelphia Energy Solutions Refining & Marketing, LLC, Sheetz, Inc., Monroe Energy, Inc, and Giant Eagle, Inc. respectfully request that Administrative Law Judge Eranda Vero grant this Motion for Modification and Extension of Procedural Schedule.

Respectfully submitted,

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Dated: June 1, 2017

³ To the extent necessary, the Indicated Parties would suggest a telephonic prehearing conference on June 8, 2017.