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November 2, 2017

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor North
P.O. Box 3265
Harrisburg, PA 17105-3265

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 Nos. A-2016-2575829 and G-2017-2587567

Dear Secretary Chiavetta:

Enclosed please find the Public Version of the Answer of Laurel Pipe Line Company, L.P. to the Indicated Parties' Highly Confidential Motion to Strike Portions of Laurel Pipe Line Company, L.P. Rebuttal and Rejoinder Testimony in the above-referenced proceeding. A Highly Confidential version is also being provided in a sealed envelope. Copies will be provided as indicated on the Certificate of Service.

Respectfully submitted,

Anthony D. Kanagy, Esquire

ADK/skr
Enclosure

cc: Honorable Eranda Vero
Certificate of Service

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FRONT DESK

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Application of Laurel Pipe Line Company, :
L.P. for All Necessary Authority, Approvals, :
and Certificates of Public Convenience To : Docket No. A-2016-2575829
Change the Direction of Petroleum Products :
Transportation Service to Delivery Points :
West of Eldorado, Pennsylvania :
:
:
Pipeline Capacity Agreement Between :
Laurel Pipe Line Company, L.P. and : Docket No. G-2017-2587567
Buckeye Pipe Line Company, L.P. :

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ANSWER OF LAUREL PIPE LINE COMPANY, L.P.
TO THE INDICATED PARTIES' HIGHLY CONFIDENTIAL
MOTION TO STRIKE PORTIONS OF LAUREL PIPE LINE COMPANY, L.P.
REBUTTAL AND REJOINDER TESTIMONY

TO THE HONORABLE ADMINISTRATIVE LAW JUDGE ERANDA VERO:

Laurel Pipe Line Company, L.P. ("Laurel" or the "Company") hereby files this Answer, pursuant to 52 Pa. Code §§ 5.103(c), 5.243(e), 5.343(e) and Your Honor's Order dated October 27, 2017, to the Indicated Parties'¹ Motion to Strike Portions of Laurel Pipe Line Company, L.P.'s Rebuttal and Rejoinder Testimony filed October 26, 2017 ("Motion"). The Indicated Parties' Motion requests that Your Honor strike testimony and exhibits that either: (i) properly respond to the expansive claims raised in the Indicated Parties' Direct Testimony; (ii) address information and documents provided in response to discovery requests regarding Laurel's Application and Direct Testimony (*i.e.* Laurel's case-in-chief); and/or (iii) properly use the

¹ The Indicated Parties are collectively comprised of Gulf Operation, LLC ("Gulf"), Philadelphia Energy Solutions Refining and Marketing, LLC ("PESRM"), Sheetz, Inc. ("Sheetz"), Monroe Energy, Inc. ("Monroe"), and Giant Eagle, Inc. ("Giant Eagle").

deposition testimony of the officers, directors and/or managing agents of the individual Indicated Parties as substantive and impeachment evidence. The Motion is contrary to the Pennsylvania Public Utility Commission's ("Commission") regulations, applicable case law, and the record of this case. Granting the Indicated Parties' the relief they seek in the Motion would permit the Indicated Parties' to strike relevant evidence that rebuts their claims in this proceeding. As such, Laurel respectfully requests that Your Honor deny the Indicated Parties' Motion.

I. INTRODUCTION

1. In the Motion, the Indicated Parties request that Your Honor strike portions of Laurel's Rebuttal and Rejoinder Testimony that respond to, and demonstrate as incorrect or false, various claims raised in the Indicated Parties' joint and individual Direct and Surrebuttal Testimony. Throughout the Motion, the Indicated Parties attempt to argue that certain portions of Laurel's Rebuttal and Rejoinder testimony are improper. In addition, the Indicated Parties seek to improperly limit Laurel's use of the depositions of the officers, directors, managing agents, and/or designees of the individual Indicated Parties by arguing that the deponent-witnesses were neither designated to testify on behalf of their corporate employers nor required by law to testify on behalf of their corporate employers by the nature of their positions.

2. The Indicated Parties' Motion contains misleading characterizations and omissions of: (1) Laurel's direct case and the Indicated Parties' extensive discovery on Laurel's claims in its direct case; (2) the Indicated Parties' own direct case and the expansive claims raised therein; (3) Laurel's Rebuttal Testimony, which either directly responded to the claims raised by the Indicated Parties in their Direct Testimony or properly discussed documents and information provided in response to discovery requests regarding Laurel's direct case; (4) the Indicated Parties' Surrebuttal Testimony, which retreated from certain claims and theories in

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their Direct Testimony that were proven false by Laurel's Rebuttal Testimony; and (5) Laurel's Rejoinder Testimony, which properly addressed the claims and theories raised by the Indicated Parties in Surrebuttal.

3. On November 14, 2016, Laurel filed the above-captioned Application with the Pennsylvania Public Utility Commission at Docket No. A-2016-2575829. The Application sought all necessary, authority, approvals and Certificates of Public Convenience, to the extent required, authorizing Laurel to change the direction of its petroleum products transportation service over a portion of its system west of Eldorado, Pennsylvania, and confirming that Laurel may, in its discretion, reinstate the current direction of service in the future without further Commission approval.

4. Importantly, while Laurel's Application maintained that the above-described proposal did not require Commission approval or certificate authority, Laurel recognized that this case was "an issue of first impression." Application ¶ 25. As such, Laurel alternatively sought approval of the Application under Section 1102(a)(2) of the Public Utility Code, 66 Pa. C.S. § 1102(a)(2), recognizing that Pennsylvania's "Public Utility Law...does not define in detail the circumstances or conditions under which the Commission may permit abandonment by a carrier of a portion of its service." Application ¶ 26 (citing *Commuters' Committee v. Pa. Pub. Util. Comm'n*, 88 A.2d 420, 424 (Pa. Super. 1982)). Laurel also noted that "the primary consideration by the Commission is whether the proposed abandonment is in the public interest" under the non-exclusive evaluation of circumstances or conditions under which the Commission may permit an abandonment. Application ¶ 28 (emphasis added).

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5. Additionally, Laurel filed a Capacity Agreement at Docket No. G-2017-2857567 on February 6, 2017, and a Motion to Consolidate the Capacity Agreement with the Application pending at Docket No. A-2016-2575829 on February 7, 2017.

6. On February 3, 2017, Gulf served Gulf Set I interrogatories, and PESRM served PESRM Set I Interrogatories.

7. Laurel filed and served its prepared written Direct Testimony and Exhibits of six witnesses on February 7, 2017.

8. After filing its Direct Testimony and Exhibits, the individual members of the Indicated Parties served an additional eight (8) sets of discovery that, in substantial part, inquired into the information relied upon by Laurel to support its case-in-chief. Laurel provided full and complete responses to all discovery requests regarding its case-in-chief.

9. Additionally, on June 13, 2017, the Indicated Parties deposed Laurel witness David W. Arnold, and inquired into statements by Laurel in its Application and Direct Testimony, as well as information and documents produced in support of Laurel's case-in-chief during the course of discovery.

10. During the discovery process, the Indicated Parties sought to compel Laurel to produce information related to possible reversals to points east of Eldorado, *i.e.* reversals different from and outside the scope of Laurel's Application. The Indicated Parties would eventually seek interlocutory review of this discovery question. While this issue remains pending before this Commission, Laurel produced information responding to the disputed discovery requests and served a letter detailing its production of the documents on June 6, 2017, and stated its belief that the production of documents made the issue moot. The Indicated Parties

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served a letter in response on June, 8 2017, which detailed two conditions that would need to be satisfied for the review to be deemed moot.²

11. While the extensive discovery regarding Laurel's case-in-chief sought by the Indicated Parties was ongoing, the Indicated Parties sought, and received, an extension of the procedural schedule in order to review and incorporate the information produced by Laurel into their Direct Testimony. As such, the Indicated Parties were afforded an additional thirty (30) days to the information supporting Laurel's case-in-chief and submit their Direct Testimony.

12. On July 14, 2017, the Indicated Parties jointly and individually served the Direct Testimony and Exhibits of nine (9) witnesses.³ The Indicated Parties' Direct Testimony relied upon: (1) information produced by Laurel during discovery regarding its case-in-chief; (2) additional testimony by joint and individual Indicated Parties witnesses regarding petroleum products markets generally and the Pittsburgh and East Coast markets specifically; and (3) the deposition testimony and exhibits of Laurel witness David W. Arnold.

13. Thereafter, Laurel submitted discovery requests to the Indicated Parties jointly and individually regarding their Direct Testimony.

14. Laurel served its Rebuttal Testimony on August 31, 2017.

15. The Indicated Parties served Surrebuttal Testimony on October 6, 2017.

² The Commission issued a Secretarial Letter on October 26, 2017, asking the parties to serve correspondence detailing the status of this issue to the Commission. The Secretarial Letter asked the parties to file correspondence updating the Commission as to the second condition by November 2, 2017.

³ Indicated Parties Statement No. 1, the Direct Testimony of Daniel S. Arthur; Indicated Parties Statement No. 2, the Direct Testimony of A. Michael Schaal; Indicated Parties Statement No. 3, the Direct Testimony of Robert A. Rosenthal; Indicated Parties Statement No. 4, the Direct Testimony of Steven W. Rickard; Gulf Statement No. 1, the Direct Testimony of Todd O'Malley (Gulf subsequently filed an Errata substituting Greg Johnston as the witness sponsoring Gulf Statement No. 1); Sheetz Statement No. 1, the Direct Testimony of Michael E. Lorenz; PESRM Statement No. 1, the Direct Testimony of John J. Sadlowski; Monroe Statement No. 1, the Direct Testimony of Tracy Sadowski; and Giant Eagle Statement No. 1, the Direct Testimony of Richard Tomnay.

16. Laurel served its Rejoinder Testimony on October 20, 2017.

17. Finally, the Indicated Parties served and filed the instant Motion on October 26, 2017.

II. ARGUMENT

A. **Laurel's Rebuttal and Rejoinder Testimony Properly Respond to the Claims and Allegations Raised in the Indicated Parties' Direct and Surrebuttal Testimony.**

i. **Legal Standards.**

18. As the proponent of a rule or order, Laurel has the burden of proof in this proceeding. 66 Pa. C.S. § 332(a). In order to prevail in this proceeding, Laurel has the burden of showing that either: (i) that Commission approval is not required to reverse the flow of petroleum products to Eldorado; or (ii) that Laurel's proposal is in the public interest, if and only if the Commission determines that approval is required. *See* 66 Pa. C.S. § 1103(a).

19. Section 5.234(e) of the Commission's regulations provides that a party will not be permitted to introduce evidence during the rebuttal phase which: (1) is repetitive; (2) should have been included in the party's case-in-chief; or (3) substantially varies from the party's case-in-chief. 52 Pa. Code § 5.243(e). While the Commission has stated that Section 5.243(e) "reinforces a party's right to prevent the inappropriate abuse of presentation rights,"⁴ the Commission has expressed concern primarily where a new proposal is "entered far too late in the proceeding to permit a full examination of the proposal or for...[the proponent] to provide evidentiary support." *Pa. Pub. Util. Comm'n et. al v. The Peoples Natural Gas Co.*, Docket Nos.

⁴ *Final Rulemaking for the Revision of Chapters 1, 3 and 5 of Title 52 of the Pennsylvania Code Pertaining to Practice and Procedure Before the Commission*, Docket No. L-00020156 (Order Entered Jan. 4, 2006).

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R-20092088069; C-2009-2095740; C-2009-2096866, 2009 Pa. PUC LEXIS 1863, at *15 (Opinion and Order Entered Sept. 24, 2009); *see also Pa. Pub. Util. Comm'n v. City of Lancaster – Sewer Fund (Remand)*, 2007 Pa. PUC LEXIS 783, at *37-38 (Order entered Jan. 31, 2007) (granting a motion to strike where proponent attempted to enter evidence for the first time when the witness testified at hearing).

20. The Commission has not interpreted Section 5.234(e) to prohibit a party from using information in its rebuttal that was relied upon in its case-in-chief and disclosed to the parties during discovery. *See Pa. Pub. Util. Comm'n v. Total Environmental Solutions, Inc.*, Docket No. R-00072493, *et al.*, 2008 Pa. PUC LEXIS 1227, at *120-21 (Order Entered July 30, 2008) (“The ALJ noted that the data the Company provided as justification for this expense was not provided in its case-in-chief, nor was it provided in response to discovery requests asking for salary and wage information.” (emphasis added)).⁵ Additionally, to determine whether the information presented in a rebuttal phase is improperly “new,” it examines whether *any party* dealt with that information in their direct case. *Pa. Pub. Util. Comm'n v. UGI Utilities, Inc.*, 1994 Pa. PUC LEXIS 138, at *85-86 (“The two expenses at issue are surely new claims for no party had dealt with Account 571 expenses in its direct case.” (emphasis added)). It is proper for an applicant, such as Laurel, to present new information in rebuttal that is responsive to arguments raised in the other parties’ direct testimony. *See Allegheny Center Assocs. v. Pa. Pub. Util. Comm'n*, 570 A.2d 149, 153 (Pa.Cmwlt. 1990) (“While it is axiomatic that a utility has the burden of proving the justness and reasonableness of its proposed rates, it cannot be called upon

⁵ The discussion by the ALJ noted by the Commission, the ALJ further explained the applicable standard. *See Pa. Pub. Util. Comm'n v. Total Environmental Solutions, Inc.*, Docket Nos. R-00072493, *et al.*, 2008 Pa. PUC LEXIS 42, at *114-15, fn. 175 (Recommended Decision issued, 2008) (“If TESI had additional information available to it that information should have been included in its direct testimony or provided to the Parties in the form of discovery responses concerning salaries and wages which TESI was under an obligation to provide.” (emphasis added)).

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to account for every action absent prior notice that such action is to be challenged.”) (emphasis added).

21. Finally, the Indicated Parties’ proposal to strike Laurel’s Rebuttal and Rejoinder Testimony that either addresses information disclosed during discovery of its case-in-chief, or that addresses facts and claims raised by the Indicated Parties in their Direct Testimony would establish an entirely new and untenable burden on Laurel. Under the Indicated Parties’ proposal, an applicant seeking approval, to the extent such approvals are required, of its proposal would essentially be required to anticipate and disprove any and all possible alternative facts, even those unsupported, and/or potential claims regarding its proposal that opposing parties *could* raise against them. This would mean that an applicant would be required to not only introduce evidence to demonstrate that their proposal is in the public interest, they would also have to self-identify any and all facts and/or claims to the contrary and introduce evidence why the un-proposed and un-supported facts and/or claims should be disregarded. The Indicated Parties’ proposed standard for the evaluation of Laurel’s Rebuttal and Rejoinder Testimony is analogous to the insuperable difficulty inherent in proving a negative.⁶ As such, the Indicated Parties’ proposed standard is unreasonable, and should be denied.

⁶ See, e.g., *Tincher v. Omega Flex*, 104 A.3d 328, 409, 628 Pa. 296, 431 (2014) (“proving a negative is generally not desirable as a jurisprudential matter because of fairness concerns related to anticipating and rebutting allegations”); *Fazio v. Pittsburgh Rys. Co.*, 321 Pa. 7, 182 A. 696, 698 (1936) (“[i]t is a well-recognized principle of evidence that he who has the positive of any proposition is the party called upon to offer proof of it. It is seldom, if ever, the duty of a litigant to prove a negative until his opponent has come forward to prove the opposing positive”). In the rare circumstances a party is required to affirmatively prove a negative, a statute or regulation expressly states this burden and defines what the party must prove. See, e.g., *Commonwealth v. 1997 Chevrolet*, 106 A.3d 836 (Pa. Cmwlth. 2014) (noting that the Pennsylvania Forfeiture Act places the burden on a property owner to prove a negative, i.e. a lack of knowledge that is reasonable under the circumstances); *DOT v. Agric. Lands Condemnation Bd.*, 5 A.3d 821, 826 (Pa. Cmwlth. 2010) (noting that the Pennsylvania Agricultural Land Preservation Policy requires an applicant-condemnor to prove a negative, i.e. that no reasonable and prudent alternative to condemning lands within an agricultural security area exists under 71 P.S. § 106(b)).

ii. Laurel's Rebuttal and Rejoinder Testimony Are Proper And Should Be Entered Into The Record Without Modification.

22. Laurel's Rebuttal and Rejoinder Testimony is proper under the Commission's regulations because it: (i) utilizes information and evidence produced during discovery of Laurel's case-in-chief; (ii) rebuts facts and/or issues raised by the Indicated Parties' in their joint and/or individual Direct Testimony; and/or (iii) is necessary to correct mischaracterizations and misinformation contained in the Direct Testimony of the Indicated Parties' joint and individual witnesses.

23. Furthermore, at no point in the Motion do the Indicated Parties represent that they have not been afforded an adequate opportunity to conduct discovery on any aspect of Laurel's case. Indeed, they can make no such claim. Rather, the Indicated Parties have been provided ample opportunity to conduct extensive discovery on both Laurel's case-in-chief and rebuttal case, as well as prepare and submit testimony utilizing the information produced throughout this proceeding by Laurel. Having been afforded significant schedule extensions to conduct discovery and submit testimony, the Indicated Parties' claims that they have been "surprised" or "prejudiced" by information they have possessed are without foundation.

24. Despite the Indicated Parties' arguments otherwise, Laurel's Rebuttal and Rejoinder Testimony are proper and should be admitted without modification. The portions of Laurel's Rebuttal and Rejoinder Testimony referenced in paragraph 16 of the Motion, and Attachment Nos. 1-6 thereto, have been misrepresented by the Indicated Parties, in light of the information provided by Laurel in its case-in-chief and discovery thereof and the allegations levied by the Indicated Parties in their Direct and Surrebuttal Testimony. Laurel addresses each disputed piece of testimony below.

a. **The Rebuttal Testimony of David W. Arnold – Motion Attachment No. 1.**

25. Laurel first notes that the reference to Mr. Arnold's rebuttal testimony—Laurel Stmt. No. 1-R, 3:22-10:10—selected by the Indicated Parties omits the following questions and answers from the immediately preceding pages:

Q. Have you reviewed the testimony of those intervenor witnesses who addressed the purpose, the planning and the potential for future reversals east of Eldorado?

A. Yes. I will respond to claims made by Mr. Rosenthal, Prof. Arthur and Mr. Kistler, regarding the planning and decisional process leading to the development of the Project and the Application, and to claims by Mr. Schaal, Rosenthal and Sadlowski regarding the potential for future reversal of additional segments of the Laurel system.

Q. Do you agree with their characterization of the development and planning process of Laurel regarding the Project?

A. In crucial aspects, no, they have mischaracterized the facts and drawn invalid conclusions.

Q. Please explain why you reach that conclusion?

A. Broadly speaking, the opposing witnesses suggest that the decision by Laurel to enter into the Project with Buckeye and reverse service in part stems from a simplistic decision that it can charge higher rates for interstate service than for intrastate service. Although it is true that the ratemaking standards differ between the Federal Energy Regulatory Commission ("FERC") and the Commission, the decision to increase capacity from the Midwest and to reverse the pipeline to Eldorado reflected broad changes in refinery production and economics, changes in market demand, and persistent requests by Midwestern shippers in the face of declining requests for service from east to west. The opposing witnesses misstate the trends in volumes, and Dr. Webb addresses those incorrect claims in detail in his rebuttal testimony. Equally seriously, the opposing witnesses misconstrue the process by which Laurel/Buckeye made the decision. (*See e.g.*, Indicated Parties Statement No. 3, pp. 14, 27-29; Indicated Parties Statement No. 1, p. 11) Although the opposing witnesses had access to documents that support the narrative presented in my direct testimony (Laurel Statement No. 1) and that of other witnesses,

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such as Mr. Hollis (Laurel Statement No. 2), they selectively mischaracterize portions of my deposition and ignored the many documents that supported my testimony and focused on a few documents, which I will discuss in detail later in my rebuttal testimony.

Laurel Statement No. 1-R, 2:16-3:20 (emphasis added). Indeed, Mr. Arnold's Rebuttal Testimony generally references the Direct Testimony of Dr. Arthur, Mr. Schaal and Mr. Rosenthal, and specifically references the Direct Testimony of Dr. Arthur (Laurel Statement No. 1-R, 3:14-15) and Mr. Rosenthal (*Id.*, at 3:14).

26. The Indicated Parties' omission of the above-referenced questions and answers is misleading. Having omitted these questions and answers, the Indicated Parties represent in the Motion that Mr. Arnold "makes no references to statements of the Indicated Parties or other witnesses that he is rebutting." Motion ¶ 16(a). This representation is incorrect.

27. Moreover, for more precise references to the portions of the parties' testimony Mr. Arnold was rebutting, Laurel would direct Your Honor's attention to:

- Indicated Parties Statement No. 1, Section II (discussing Laurel's supposed motivations for the reversal);
- Indicated Parties Statement No. 2, 4:25-13:17 (discussing the background of certain petroleum products markets and Laurel's proposal);
- Indicated Parties Statement No. 2, 17:11-18:2 (discussing Laurel's consideration of alternative proposals, referencing information and documents provided by Laurel during discovery of its case-in-chief);
- Indicated Parties Statement No. 2, 30:3-32:3 (discussing Laurel's supposed understanding of the consequences of the reversal, referencing information and documents provided by Laurel during discovery of its case-in-chief);
- Indicated Parties Statement No. 3, 16:9-18:18 (discussing Laurel's supposed analysis of stakeholder interests, referencing information and documents provided by Laurel during discovery of its case-in-chief); and

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- Indicated Parties Statement No. 3, 20:1-23:13 (discussing Laurel's supposed reasoning for selecting Eldorado as the end-point for the reversal, referencing information and documents provided by Laurel during discovery of its case-in-chief).

Indeed, the Direct Testimony of the Indicated Parties is replete with references to the information that Laurel stated it had relied upon in its case-in-chief, and provided during the course of extensive discovery conducted under an extended schedule requested by the Indicated Parties.

28. Second, the Indicated Parties argue that Mr. Arnold is "expanding" on his Direct Testimony, and that Laurel should have included the "many documents" Mr. Arnold discusses in its case-in-chief. The Indicated Parties again omit statements in Laurel's Application and Direct Testimony that put the Indicated Parties on notice of these facts, and permitted the Indicated Parties to conduct extensive discovery of these facts.

- a) Laurel's Application states that "significant changes in the petroleum and petroleum products markets have recently occurred. In particular, increased production has created additional petroleum products supplies in the Midwest. These additional supplies have resulted in generally lower wholesale commodity prices for Midwestern petroleum products, which can benefit consumers in Western and Central Pennsylvania." Application ¶ 33.
- b) Laurel's Application states that "Several Shippers have approached Laurel to explore the feasibility of transporting lower-priced Midwestern petroleum products into and across Pennsylvania." Application ¶ 34.
- c) Laurel Statement No. 1, 16:7-12 states "Buckeye initiated the Broadway II [including the Laurel Application] in response to the strong desire of shippers to move what are projected to be generally lower-priced petroleum products from the Midwest to points east, including Western and Central Pennsylvania. As more fully described in the direct testimony of Dr. Michael Webb (Laurel St. No. 5, pp. 16-20), the availability of advantaged crude supply in the Midwest has created significant price advantages versus East Coast supplied products."
- d) The information and documents discussed in Laurel Statement No. 1-R, 3:22-10:10 were provided in response to discovery requests regarding Laurel's case-in-chief—*i.e.* PESRM-LAU-I-1 and GLF-LAU-I-28 (requesting information regarding possible reversals to points east of Eldorado), GLF-LAU-I-2 (requesting information related to the Broadway II open season), GLF-LAU-I-27 (requesting information regarding alternatives considered by Laurel), and GE-

LAU-I-15 (requesting information indications of interest in eastbound movements to points east of Pittsburgh)—and the May 4, 2017 Notice of Deposition and Request for Production of Documents that inquired into, among other things, “(i) the decision-making processing resulting in Laurel’s determination to implement the proposed pipeline reversal; (ii) the results of any economic or market impact analyses that were undertaken in support of or as part of the decision-making process;...(vii) communications between Laurel or its affiliates and prospective shippers about the proposed reversal, including communications regarding shippers’ expression of interest in additional eastbound movements of petroleum products to points east of Pittsburgh.” Appendix 1 ¶ 5 (attached hereto).

29. Laurel disclosed the facts and information it relied upon in its case-in-chief well in advance of the Indicated Parties’ Direct Testimony, in response to discovery conducted by the Indicated Parties regarding Laurel’s case-in-chief, and the Indicated Parties ultimately used this information to in their Direct Testimony. They cannot now, having requested and possessed information that was relied upon by Laurel during the formation of its case-in-chief claim “surprise.”

30. The disputed portion of Mr. Arnold’s Rebuttal Testimony utilizes information and evidence produced during discovery of Laurel’s case-in-chief and/or is directly responsive to arguments made in the Indicated Parties’ Direct Testimony. Moreover, Mr. Arnold’s Rebuttal Testimony is necessary to correct misinformation contained in the Direct Testimony of the Indicated Parties’ joint and individual witnesses. Therefore, it is proper rebuttal testimony and should be admitted into the record without modification.

b. The Rebuttal and Rejoinder Testimony of Scott T. Jones – Motion Attachment No. 2.

31. Laurel first notes that the referenced part of Mr. Jones’s Rebuttal Testimony and the cross-referenced exhibits therein—Laurel Stmt. No. 7-R, 6:20-32:18—specifically deals with the market forces underlying Laurel’s proposal. *See id.*, at 6:22-23 (“I respond to Intervenors’ claims that Laurel’s proposal is not supported by the underlying economic fundamentals of the

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marketplace.”). Laurel described these forces in its Application stating, “increased production has created additional petroleum products supplies in the Midwest. These additional supplies have resulted in generally lower wholesale commodity prices for Midwestern petroleum products, which can benefit consumers in Western and Central Pennsylvania.” Application ¶ 33. It also described these forces in its Direct Testimony. *See* Laurel Statement No. 5, 16:13-21:4.

32. In Direct Testimony, Indicated Parties’ witness A. Michael Schaal introduced new facts and issues related to the petroleum products markets in an attempt to rebut the claims raised by Laurel in its case-in-chief. *See* Indicated Parties Statement No. 2, Section II. Specifically, Mr. Schaal states he “reviewed the PADD 1B sub district of PADD 1 (“Central Atlantic”) and the Eastern Midwest region within PADD 2 (“Eastern Midwest”). *Id.*, at 5:1-2. He also presented new information regarding the role of the refinery centers of the U.S. Gulf Coast. *Id.*, at 5:14-8:2. And he goes on to provide an analysis of the various PADDs and how they allegedly interact. *Id.*, at 5:10-13:17. Additionally, Mr. Schaal testifies that Midwestern refineries do not have access to cost-advantaged crude oil. *Id.*, at 48:3-51:2.

33. Dr. Jones’ Rebuttal Testimony directly responds to Mr. Schaal’s description of petroleum products markets by discussing the “changes that have affected the crude oil and, therefore, the refined products marketplaces in the Midwest region of the United States – and by extension the Gulf Coast and Northeast regions.” Laurel Statement No. 5-R, 8:21-9:2. Specifically, Dr. Jones addresses:

- a) Changes in crude oil supplies, which have led to significant changes in the Midwestern, Gulf Coast, and East Coast petroleum products markets. *Id.*, 9:3-12:25. This testimony specifically rebuts Mr. Schaal’s claims about how these markets are supplied (Indicated Parties Statement No. 2, 5:10-13:17) and the supposed lack of cost-advantage possessed by Midwestern refineries due to their proximity to lower-cost crude oil supplies. *Id.*, at 48:3-51:2.

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- b) Impacts on Midwestern Refineries, due to increases in production from the Bakken oil field and Canadian tar sands, which profoundly affected how PADD 2, including the "Eastern Midwest" supplies itself and other PADDs. Laurel Statement No. 7-R, 12:26-16:8. This testimony specifically addresses Mr. Schaal's claims about how the Central Atlantic and Eastern Midwest currently meet demand (Indicated Parties Statement No. 2, 9:7-11:6), and claims that Midwestern refineries do not have access to discounted crude oil in the current market. *Id.*, at 48:3-51:2.
- c) Impacts on East Coast refineries, which altered the economics of transporting Bakken crude to the East Coast by rail and returned East Coast refineries to their prior dependence on more expensive, overseas crude imports. Laurel Statement No. 7-R, 17:1-20:21. This testimony addresses Mr. Schaal's description of the Central Atlantic's "ease of access" to overseas imports (Indicated Parties Statement No. 2, 7:2-4), and supposed improved economics over standalone refineries (*Id.*, at 7:5-7).
- d) Impacts on petroleum products generally, which detail the supply and demand trends currently affecting Midwestern refineries and the petroleum products transportation market in which Laurel operates. Laurel Statement No. 7-R, 20:22-32:19. This testimony not only addresses how Mr. Schaal's statements regarding how the Midwestern petroleum products market, PADD 2, the East Coast market, PADD 1, and the Gulf Coast market, PADD 3, would interact and would be affected post reversal (*see, e.g.*, Indicated Parties Statement No. 2, 5:10-11:1, 32:6-17, 37:12-38:8), but it also addresses claims by Gulf witness Greg Johnston and Sheetz witness Michael Lorenz that the Midwestern market cannot adequately supply Pittsburgh with refined products post-reversal. *See* Gulf Statement No. 1, 8:8-10:12; Sheetz Statement No. 1, 12:12-16:14.

34. Dr. Jones's Rebuttal Testimony and cross-referenced exhibits rebuts the claims and information presented for the first time in the Indicated Parties' joint and individual Direct Testimony regarding the interaction of the PADD 1, PADD 2, and PADD 3 petroleum products markets. He does so using many of the same market sources available to, and at times used by, the Indicated Parties' witnesses, as well as documents provided by the Indicated Parties in discovery that directly contradict statements made in their Direct Testimony.

35. Laurel also notes that the Indicated Parties' attempt to label this section of Dr. Jones's Rebuttal Testimony (Laurel Stmt. No. 7-R, 6:20-32:18) as simply "describe[ing] the Laurel pipeline reversal proposal, the alleged benefits thereof and the reasons why Laurel

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believes it is pro-consumer” again misrepresents the referenced testimony. As described above, Dr. Jones’s Rebuttal Testimony addresses the Indicated Parties’ attempts to dispute that certain market forces are driving Laurel’s proposals.

36. Finally, the disputed portions of Dr. Jones’s Rejoinder Testimony—Laurel Statement No. 7-RJ, 6 fn. 11, 12:3-4 & fn. 30, and 21:1-4 & fn. 51—specifically reference portions of Dr. Jones’ Rebuttal Testimony that directly address and refute claims by Dr. Arthur in his Surrebuttal Testimony. In order to avoid repetition, Dr. Jones simply referred to his Rebuttal Testimony where possible to dispute claims made in the Indicated Parties’ Surrebuttal Testimony.

- Footnote 11 on page 6 of Dr. Jones’s Rejoinder Testimony references Laurel Statement No. 7-R, 52:3-7, which refutes Dr. Arthur’s assumption in his Direct Testimony that Chicago is the only relevant alternative supply source for Pittsburgh.⁷ This footnote follows Dr. Jones’s testimony that in Surrebuttal “...Dr. Arthur ignores my [rebuttal] critiques of his model’s fatal flaws. In particular, he wrongly considers Chicago to be the only relevant Midwest source of supply which is incorrect and is contradicted by at least one of the intervenors sponsoring his testimony.” Laurel Statement No. 7-R, 5:22-6:1 (which immediately precedes footnote 11).
- Page 12, lines 3-4 and footnote 30 references Laurel Statement No. 7-R, 31:10-24, which discusses material facts disclosed for the first time by an individual member of the Indicated Parties (*i.e.* Gulf) during discovery. This testimony is directly related to Dr. Jones’s critique of Dr. Arthur’s new argument in Surrebuttal that:

The fact that the volumes that would have to replace the East Coast volumes displaced from Pittsburgh by a Laurel pipeline reversal are not currently supplying Pittsburgh means that a higher cost supply source than all existing supply sources to Pittsburgh would have to start supplying Pittsburgh as a result of a Laurel pipeline reversal. As discussed above, an increase in supply costs puts upward pressure on the market price, and bringing in a new supply

⁷ The referenced segment of Dr. Jones’s Rebuttal Testimony is not subject to the Indicated Parties’ Motion, so it is unclear how this disputed Rejoinder Testimony is improper.

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source to Pittsburgh that is more expensive than all existing supply sources will undoubtedly cause consumer prices to increase.

Indicated Parties Statement No. 1-SR, 12:12-18 (discussed by Dr. Jones in Laurel Statement No. 7-RJ, 10:19-12:20).

- And finally, page 21, lines 1-4 and footnote 51 reference Laurel Statement No. 7-R, 14:1-16 and Figure 3, which directly rebutted Mr. Schaal's claims regarding Midwestern refinery operations and ability to complete inter-PADD exports by detailing the de-bottlenecking projects that resulted from Midwestern refineries access to low-cost crude oil supplies. This testimony responds directly to Mr. Schaal's claim in surrebuttal that systematic changes in the nation's petroleum market "eroded the hoped-for price advantage for Eastern Midwest Region refiners." Indicated Parties Statement No. 2-SR, 16:12-13 (discussed by Dr. Jones in Laurel Statement No. 7-RJ, 20:22-21:14).

For the same reasons that Dr. Jones's Rebuttal Testimony is proper, so too is his Rejoinder Testimony.

37. The disputed portion of Mr. Jones's Rebuttal and Rejoinder Testimony rebuts facts and/or issues raised by the Indicated Parties' for the first time in their joint and/or individual Direct and Surrebuttal Testimony, respectively; and is necessary to correct misinformation (*i.e.* incomplete descriptions and projections of the East Coast and Midwest petroleum products markets) contained in the Direct and Surrebuttal Testimony of the Indicated Parties' joint and individual witnesses. Therefore, Dr. Jones's Rebuttal and Rejoinder Testimony is proper and should be admitted into the record without modification.

c. The Rebuttal of Glen R. Thomas – Motion Attachment No. 3.

38. Before addressing the disputed section of Mr. Thomas's rebuttal testimony—Laurel Statement No. 9-R, 5:15-10:17—Laurel first notes that it specifically represented that, to the extent that Laurel's Application requires Commission approval, the traditional abandonment standard should not be applied to its Application. Application ¶ 26 ("[o]ur Public Utility

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Law...does not define in detail the circumstances or conditions under which the Commission may permit abandonment by a carrier of a portion of its service.” (quoting *Commuters’ Committee v. Pa. Pub. Util. Comm’n*, 88 A.2d 420, 424 (Pa. Super. 1982)); *see also* Application ¶ 31 (“Unlike traditional changes in service, the proposed change in direction of service on the western portion of Laurel’s system will result in substantial public benefits without harming the public.”) (emphasis added). Laurel also represented that, “[t]o the best of the Company’s knowledge, however, this [approval of Laurel’s proposed change in direction of service] is an issue of first impression.”). While the Indicated Parties are free to argue, and have argued, that Laurel’s Application should be evaluated using the traditional “four-factor” test for abandonments, Laurel has not at any time in this proceeding sought approval of its Application under this four-factor standard. Laurel, however, stated that its reversal was not abandonment, and that the primary consideration the Commission evaluates in abandonments proceedings is the public interest. Application ¶ 28.

39. Mr. Thomas’s Rebuttal Testimony directly addresses Mr. Rosenthal’s attempt to argue Laurel’s Application should be evaluated the same as other public utilities, *i.e.* using the traditional “four-factor” test. *See* Indicated Parties Statement No. 3, 11:14-12:12. Mr. Thomas’s testimony rebuts this argument and specifically demonstrates why Laurel’s Application, to the extent Commission approval is required, should not be evaluated under that standard. He does so, in part, by referencing the Sunoco case and stating “in the Sunoco case the Commission did not apply the traditional abandonment analysis that is applied to gas, electric and water utilities as described by Mr. Rosenthal, but instead applied a more appropriate ‘public benefits’ standard.” Laurel Statement No. 9-R, 6:22-7:2. Such testimony is directly responsive to Mr.

Rosenthal, and does not present a new or substantially different argument from Laurel's position in its Application.

40. Moreover, Mr. Thomas's Rebuttal Testimony addresses Mr. Rosenthal's claims that providing Laurel the discretion to alter flows over its pipeline "is not sound policy." See Indicated Parties Statement No. 3, 19:11-14. Mr. Thomas discusses the policy reasons supporting Laurel's proposal, as well as the application of a different standard to that proposal. See Laurel Statement No. 9-R, 7:10-10:17. He specifically concludes this discussion by stating that:

Constraining Pennsylvania's energy infrastructure with regulatory approvals that are not legally required is the antithesis of the policy that the Commission should be promoting right now. Interpreting the definition of service so narrowly that Commission approval and all the attendant litigation is necessary to change the flow of a pipeline, as the Indicated Parties suggest, is exactly the wrong message and the wrong policy.

Id., at 10:10-14.

41. Finally, the Indicated Parties argue that Mr. Thomas "presents a new standard of review" for considering abandonment of common carrier service. This argument should not be accepted. Laurel argued in its Application that, if Commission approvals were required, the Commission should consider whether the proposed abandonment is in the public interest. Application ¶ 28. The standard of the *City of York* case is "substantial evidence of affirmative public benefit." *City of York*, 449 Pa. 136, 295 A.2d 825 (Pa. 1972) (followed in Application of Sunoco Pipeline, L.P., Docket Nos. A-2013-2371789, P-2013-2371775 (Order entered Aug. 29, 2013)). This is essentially the same standard set forth in the Company's Application. See, e.g., Application ¶ 45 ("Upon balance of the significant public benefits and *de minimis* harm that could occur, the proposed change in the direction of service is in the public interest...") (emphasis

added). Moreover, the appropriate standard to be applied in this case is a legal issue. An applicant is not required to fully set forth and explain all of its legal theories and cite all applicable case law in its application.

42. The Indicated Parties also argue that Mr. Thomas “presents a new ‘affirmative public benefit’, not cited in Laurel’s direct case, that of promoting Pennsylvania pipeline infrastructure to facilitate movement of Pennsylvania energy supplies.” Motion ¶ 16(c). While Mr. Thomas does testify regarding Pennsylvania’s current energy and pipeline infrastructure development policy, Mr. Thomas’s Rebuttal Testimony contains no such statement. Indeed, the Indicated Parties’ Motion contains no such quote because it does not exist. Rather, Mr. Thomas testifies as to the efficacy of pipeline reversals in bringing the “most economically efficient products to market.” See Laurel Statement No. 7-R, 9:12-14. In this regard, Mr. Thomas’s Rebuttal Testimony is responsive to the Indicated Parties’ claims that Laurel’s proposed reversal is not in the public interest.

43. The disputed portion of Mr. Thomas Rebuttal Testimony rebuts issues raised by the Indicated Parties in their joint Direct Testimony. Therefore, it is proper rebuttal testimony and should be admitted into the record without modification, and, in any event, the standard to be applied is a legal issue.

d. The Rebuttal Testimony of Andrew N. Kleit – Motion Attachment No. 4.

44. The disputed portions of Prof. Kleit’s Rebuttal Testimony—Laurel Statement No. 10-R, 4:11-17:4—provide background information regarding oil production and petroleum products markets and policy recommendations regarding proper application of regulation to Laurel’s proposal.

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45. Similar to the Rebuttal Testimony of Dr. Jones, Prof. Kleit's description of changes in production techniques and market dynamics provides context to Laurel's proposal. Laurel Statement No. 10-R, 4:11-9:14. This section of Prof. Kleit's Rebuttal Testimony directly responds to the Indicated Parties' own characterizations of the market, which were made for the first time during their Direct Testimony. *See, e.g.*, Indicated Parties Statement No. 2, Sections II and VII; Gulf Statement No. 1, 8:8-10:12;⁸ Sheetz Statement No. 1, 12:12-16:14.⁹

46. Prof. Kleit further testifies regarding how Laurel's proposed change in direction of flow fits these market trends, and also details evidence provided in Laurel's case-in-chief that demonstrates significant shipper interest underlies the proposal. Laurel Statement No. 10-R, 9:16-13:6. This section of Prof. Kleit's Rebuttal Testimony responds to claims made by the Indicated Parties regarding Laurel's motivation and decision-making behind the proposed reversal.

47. Finally, Prof. Kleit's testimony regarding the proper scope of regulation directly responds to the Indicated Parties' testimony that Laurel should be regulated in the same manner as electric, natural gas, water and wastewater utilities. *See, e.g.*, Indicated Parties Statement No. 3, 9:7-12:12.¹⁰ In particular, Prof. Kleit explains the competitive landscape in which oil

⁸ For example, Gulf states that "While there are multiple refineries in the Midwest, the pipeline system is largely interconnected, meaning that supply disruptions easily result in price spikes and volatility impacting the entire region... It is almost logistically impossible to move petroleum products from Chicago-area refineries to the Pittsburgh area due to pipeline capacity limitations." Gulf Statement No. 1, 9:9-14.

⁹ For example, Sheetz states that "...[I]ncreasing the demand on essentially fixed [Mid]western supplies will raise prices, according to basic supply/demand levels...[t]he Chicago market is generally a finely balanced market with very little trading activity and few major players, making it relatively illiquid and volatile as compared to markets in the east." Sheetz Statement No. 1, 16:3-11.

¹⁰ Specifically, Laurel notes the following question and answer:

Q. Should Commission regulation of intrastate petroleum product utilities differ from the regulation of other utilities?

pipelines operate, which has been documented by the Department of Justice and Federal Energy Regulatory Commission, and why competition between oil transportation providers necessitates a different type of regulation. *See* Laurel Statement No. 10-R, 13:8-17:4.

48. The disputed portion of Prof. Kleit's Rebuttal Testimony rebuts facts and/or issues raised by the Indicated Parties' in their joint and/or individual Direct Testimony and is necessary to correct mischaracterizations of market trends and Laurel's motivation for the proposed reversal contained in the Direct Testimony of the Indicated Parties' joint and individual witnesses. Therefore, it is proper rebuttal testimony and should be admitted into the record without modification.

e. The Rebuttal Testimony of Michael J. Webb – Motion Attachment No. 5.

49. The disputed portion of Dr. Webb's Rebuttal Testimony—Laurel Statement No. 5-R, 97:14-99:19—and the referenced Laurel Exhibit MJW-18 again address the representations made by the Indicated Parties regarding market forces in the petroleum products industry. In particular, Dr. Webb's testimony explains that pipeline reversals are an increasingly common method to respond to favorable cost-differentials, as well as alleviate regional constraints to efficiently respond to market changes. As such, this testimony directly rebuts Mr. Schaal's claims regarding the interactions between Midwestern, Gulf Coast, and East Coast petroleum products markets (Indicated Parties Statement No. 2, 5:10-13:17), and statements by Gulf and

A. No. Regardless of the type of public utility, services offered should be consistent with the Company's CPC, service should be adequate at just and reasonable rates, and customers' service should not be abandoned without prior Commission's authorization. I see no reason why Laurel should not be held to these fundamentals of public utility regulation in Pennsylvania.

Indicated Parties Statement No. 3, 9:7-14.

Sheetz that logistical constraints would prevent Midwestern refineries from supplying Pittsburgh. *See* Gulf Statement No. 1, 8:8-10:12; Sheetz Statement No. 1, 12:12-16:14.

50. The disputed portion of Dr. Webb's Rebuttal Testimony rebuts facts and/or issues raised by the Indicated Parties' for the first time in their joint and/or individual Direct Testimony; and is necessary to correct misrepresentations contained in the Direct Testimony of the Indicated Parties' joint and individual witnesses regarding the interplay between petroleum products markets. Therefore, it is proper rebuttal testimony and should be admitted into the record without modification.

e. The Rejoinder Testimony of Michael J. Webb – Motion Attachment No. 6.

51. The referenced portion of Dr. Webb's Rejoinder Testimony—Laurel Statement No. 5-RJ, 18:20-23:7—details how the issue of transit time increases will lead to significant operational issues for Laurel. The Indicated Parties incorrectly state that Laurel first included this claim as a "general statement" statement in its rebuttal testimony. Motion ¶ 16(f) Rather, Dr. Webb testified that Laurel's volumes were declining, and could decline to zero before 2025, stating:

Q. Is it possible that Laurel could approach zero volume before that?

A. Yes. As pipeline volumes decrease certain operational issues may occur. For example, transit times may increase such that shippers must wait an unacceptably long time for product. This may create a type of death spiral where long transit times cause shippers to leave such that transit time increases further. The linear trend [of Dr. Arthur's] ignores this.

Laurel Statement No. 5-R, 45:10-15. To the extent Dr. Webb elaborated on this issue, he did so in response to the updated position of Dr. Arthur regarding the evidence of Laurel's volume

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declines (Indicated Parties Statement No. 1-SR, 23:3-28:14) and Mr. Schaal's newly presented "Holt-Winters model" (Indicated Parties Statement No. 2-SR, 9:15-13:13), that was presented for the first time in the Indicated Parties' Surrebuttal Testimony.

52. Laurel further notes that the Indicated Parties have misrepresented a portion of the disputed segment of Dr. Webb's Rejoinder Testimony, *i.e.* Laurel Statement No. 5-RJ, 18:20-21:8. This portion of Dr. Webb's testimony specifically rebuts Dr. Arthur's surrebuttal analysis of Laurel's declining volumes (*see* Indicated Parties Statement No. 1-SR, 23:3-28:14), and uses information produced in Laurel's case-in-chief.¹¹ The Indicated Parties' attempt to characterize this volumes analysis as anything other than proper Rejoinder Testimony is improper and should be rejected.

53. The disputed portion of Dr. Webb's Rejoinder Testimony rebuts facts and/or issues raised by the Indicated Parties in their joint and/or individual Surrebuttal Testimony; and is necessary to correct misrepresentations regarding Laurel's declining volumes contained in the Surrebuttal Testimony of the Indicated Parties' joint witnesses. Therefore, it is proper Rejoinder Testimony and should be admitted into the record without modification.

¹¹ *See* Laurel Statement No. 5-RJ, 18:20-19:10, where Dr. Webb states:

Q. Does the issue of transit time have relevance to Dr. Arthur's discussion of peak volumes?

A. Yes. On Page 28 of his testimony, Indicated Parties Statement 1-S, Dr. Arthur states that during the summer months approximately 85,000 bpd were delivered to Pittsburgh. I would first note that this statement ignores the fact that average deliveries in 2016 were 65,000 bpd. This volume drop becomes even more pronounced when viewed seasonally. Figures 4-7 below present deliveries to Laurel's various markets on a quarterly basis...Dr. Arthur makes no attempt [in his surrebuttal testimony] to explain or address this issue.

B. Laurel's Use of the Depositions of Various Indicated Parties Witnesses as a Part of its Rebuttal Testimony is Proper and Permitted Under the Commission's Regulations and Pennsylvania Law.

54. Laurel properly attached the full deposition transcripts of PESRM witness John J. Sadlowski (Laurel Exhibit MJW-5), Sheetz witness Michael Lorenz (Laurel Exhibit MJW-6), Gulf witness Greg Johnston (Laurel Exhibit MJW-7), and Monroe witness Tracy Sadowski (Laurel Exhibit MJW-19) to its rebuttal testimony.

55. The Indicated Parties' arguments regarding Laurel's use of deposition transcripts rest entirely on an incorrect reading of the Commission's regulations applicable to the deposition of an entity through the deposition of the entity's officer(s), director(s), managing agent(s) or other person(s) designated by the entity to testify on its behalf. Essentially, the Indicated Parties argue that the Gulf Director of Terminal Operations, the Sheetz Executive Vice President of Petroleum Supply, the PESRM Vice President of Trading and Supply, and Monroe Financial Planning and Economics Leader who have: (a) been offered as witnesses in this proceeding, (b) presented testimony, (c) verified discovery responses and (d) been deposed on issues related to the claims of their corporate employers in this proceeding, are somehow not an "officer, director, managing agent, or designee" of the corporate parties on whose behalf they participate in this proceeding. The applicable Commission regulation, Pennsylvania Rule of Civil Procedure that the regulation is modeled after, and case law of Pennsylvania appellate courts confirm that the above-identified individuals were deposed as the officer, director, managing agent and/or designee of their respective corporate employers. The Indicated Parties' arguments to the contrary should be denied.

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- i. Throughout This Proceeding and at the Time of Deposition, Each Individual Member of the Indicated Parties' Witness Was, and Was Offered As, An Officer, Director, and/or Managing Agent of Their Corporate Employer.**

56. Pursuant to Section 5.343(e) of the Commission's regulations:

A party may in his notice and in a subpoena, if issued, name as the deponent a public or private corporation, a partnership or association or a governmental agency. In that event, the organization named shall file within 10 days of service a designation of one or more officers, directors or managing agents, or other persons who consent to testify on its behalf, and may set forth, for the persons designated, the matters on which he will testify.

52 Pa. Code § 5.343(e). Section 5.343(e) is a verbatim reproduction of Pa. R.C.P. Rule 4007.1(e), which also provides for the deposition of a corporation through an officer, director or managing agent of the corporation, or other persons designated by the corporation to testify on its behalf.

57. Importantly, the Explanatory Note to subdivision (e) of Rule 4007.1(e) states

Subdivision (e) is adapted, almost verbatim, from Fed. R.Civ.P. 30(b)(6). It provides, as an optional alternative to other forms of discovery, that the notice may name as a deponent a public or private corporation or a partnership or association or governmental agency. In this situation, however, the notice must describe with reasonable particularity the matters to be inquired into and the materials to be produced. The organization, if it is a party, is then required to serve on the inquirer a designation of the officers, directors, managing agents or other persons who will testify on its behalf. The purpose of the Rule is to avoid the wholesale subpoenaing of named directors, officers, and others where the inquirer does not know the identity of the exact person or persons who will be able to testify as to the requested information.

If it develops that the designated persons reveal others whose testimony may be relevant, they can also be deposed. The procedure is not exclusive and the inquirer may resort to any other method of discovery and subpoena available.

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The reference to the “consent to testify” is limited to persons other than officers, directors or managing agents. The latter may not frustrate the discovery by declining to testify; their position requires them to testify. A subordinate employee is not in the same position and the organization cannot designate such a subordinate employee unless it certifies that he will testify.

Pa. R.C.P. 4007.1(e) (Explanatory Note for Subdivision (e)) (emphasis added).

58. Section 5.364(a)(2) also governs the use of the deposition of an officer, director, managing agent, or designee of a corporate entity, and states:

The deposition of a party or of anyone who at the time of taking the deposition was an officer, director or managing agent of a party or a person designated under §§ 5.343(e) or 5.345(a)(2) (relating to procedures in deposition by oral examination; and procedure on depositions by written questions) to testify on behalf of a public or private corporation, partnership, association or governmental agency which is a party, may be used by an adverse party for any purpose.

52 Pa. Code § 5.364(a)(2) (emphasis added). As above, Section 5.364(a)(2) of the Commission’s regulations is also a verbatim reproduction of Pa. R.C.P. Rule 4020(a)(2).

59. Indeed, “[t]he synthesis of these rules regulating the depositions of corporate representatives is that an officer, director or managing agent of a corporation is obligated to appear at a deposition on behalf of the corporation because ‘their position requires them to testify.’” See *Healy v. Wells Fargo, N.A.*, 2015 Pa. Dist. & Cnty. Dec. LEXIS 21525, at *5-6 (Pa. C. May 12, 2015).

60. Importantly, the Pennsylvania Superior Court has recognized that a “managing agent...should not be given too literal an interpretation but rather should depend largely on whether the interests of the individual involved are identified with those of his principal and on the nature of his functions, responsibilities and authority...respecting the subject matter of the

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litigation.” *Rivera v. Phila. Theol. Seminary of St. Charles Borromeo*, 474 A.2d 605, 616 (Pa. Super. 1984) (internal quotations and citations omitted), *aff’d as modified on other grounds*, 507 A.2d 1 (Pa. 1986).¹² The Pennsylvania Superior Court went on to explain in *Rivera* that “[1] an individual’s interests are identified with those of his principal, and [2] the nature of the individual’s functions, responsibilities and knowledge pertain to the subject matter of the deposition and litigation, that individual is an appropriate ‘managing agent’ for purposes the Pennsylvania Rules of Civil Procedure.” *Id.*

61. Federal precedent related to the definition of “managing agent” is also instructive. “To determine whether an employee is a managing agent, courts consider whether the individual is: (1) invested with power to exercise his discretion and judgment in dealing with corporate matters, (2) can be depended upon to carry out employer’s direction to give required testimony, and (3) has an alignment of interests with the corporation rather than one of the other parties.” *Phila. Indem. Ins. Co. v. Fed. Ins. Co.*, 215 F.R.D. 492, 494 (E.D. Pa. April 23, 2003). The nature of each witness’s role and responsibilities in their employment clearly permits them to apply managerial discretion and judgment in corporate matters. The fact that each of the Indicated Parties’ individual deponent-witness already supplied testimony in this proceeding on behalf of their corporate employer demonstrates each can be depended to carry out their employer’s direction to give required testimony. And, finally, the Direct and Surrebuttal Testimony clearly indicates that each deponent-witness’s interests are aligned with that of their employer, rather than with Laurel or another party.

¹² See also *In Re Murzyn*, 831 A.2d 724, 727 (Pa. Super. 2003) (applying *Rivera*).

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62. As such, a managing agent's deposition may be introduced at trial "for any purpose" under Pa. R.C.P. 4020(a)(2)—*i.e.* the verbatim corollary to Section 5.364(a)(2) of the Commission's regulations, 52 Pa. Code § 5.364(a)(2).

63. Each witness offered by one of the individual members of the Indicated Parties is plainly an officer, director, managing agent and/or designee of their corporate employer. Your Honor need only examine each witness's position, responsibilities, and role in this proceeding, as described below, to reach this conclusion.

- a) PESRM witness John J. Sadlowski is the "Vice President of Trading and Supply" for PESRM. PESRM Stmt. No. 1, p. 1, lns. 7-8. In this position, he is "responsible for all commercial operations around PESRM's Philadelphia refining complex." *Id.*, p. 2, lns. 1-2 (emphasis added). He is "also responsible for the trading of derivatives as they relate to PESRM's risk management program." *Id.*, p. 2, lns. 3-5. Additionally, in his role as Vice President of Trading and Supply
- [BEGIN HIGHLY CONFIDENTIAL] [REDACTED]
- [REDACTED]
- [REDACTED] [END HIGHLY CONFIDENTIAL] See Laurel Exhibit MJW-5 (Tr. 17:1-15). Moreover, PESRM's responses to discovery requests have been provided and verified by Mr. Sadlowski. See, e.g., Laurel Exhibit MJW-12 (PESRM's Response to LAU-GLF-II-13, verified by Mr. Sadlowski). Clearly, throughout this proceeding and at the time of his deposition, Mr. Sadlowski was, and was offered as, an officer, director, managing agent, and/or designee of PESRM.

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- b) Sheetz witness Michael Lorenz is the “Executive Vice President of Petroleum Supply” at Sheetz. Sheetz Statement No. 1, p. 1, ln. 7. In that role, he is “responsible for strategic management and leadership for the supply, trading, distribution, and business development functions” of Sheetz. *Id.*, p. 1, lns. 9-11. He is also “accountable [to Sheetz] for the consistent negotiation, purchasing, and distribution of refined products through a diversified supply model.” *Id.*, p. 1, lns. 12-13. Furthermore, Sheetz’s responses to discovery requests have been provided and verified by Mr. Lorenz. *See, e.g.*, Sheetz Response to LAU-SI-II-1 (Appendix 2). Clearly, throughout this proceeding and at the time of his deposition, Mr. Lorenz was, and was offered as, an officer, director, managing agent, and/or designee of Sheetz.
- c) Gulf witness Greg Johnston is the “Director of Terminal Operations” for Gulf. Gulf Stmt. No. 1, p. 1, lns. 7 (emphasis added). In this position he is “responsible for all of Gulf’s terminal assets.” *Id.*, p. 1, ln. 12. He is [BEGIN HIGHLY CONFIDENTIAL] [REDACTED] [REDACTED] [END HIGHLY CONFIDENTIAL] Laurel Exhibit MJW-7 (Tr. 11:10-12). He also [BEGIN HIGHLY CONFIDENTIAL] [REDACTED] [REDACTED] [REDACTED] [END HIGHLY CONFIDENTIAL] Laurel Exhibit MJW-7 (Tr. 13:20-25). Moreover, Gulf’s responses to discovery requests have been provided

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and verified by Mr. Johnston.¹³ *See, e.g.*, Laurel Exhibit KMS-12 (Gulf's Response to LAU-GLF-II-13, verified by Mr. Johnston). Clearly, throughout this proceeding and at the time of his deposition, Mr. Johnston was, and was offered as, an officer, director, managing agent, and/or designee of Gulf.

d) Monroe witness Tracy Sadowski is the "Financial Planning and Economics Leader" for Monroe. Monroe Statement No. 1, p. 1, ln. 7. In this position, she "manage[s] the production of forward-looking financial information and analysis used to support key business and strategic decision-making at Monroe Energy." *Id.*, p. 1, lns. 10-11 (emphasis). This includes:

- i) "Developing, managing and maintaining models and analyses to support strategy initiatives and capital planning." *Id.*, p. 1, lns. 15-16 (emphasis added).
- ii) "Managing analysis of recurring internal management reporting, the short-term forecasting process, annual operating forecast, [and] the annual budget process..." *Id.*, p. 1, lns. 21-22 (emphasis added).
- iii) "Creating, evaluating and reviewing 3, 5 and 10-year business plans and initiatives." *Id.*, p. 2, ln. 1.

Moreover, Monroe's responses to discovery requests have been provided and verified by Ms. Sadowski. *See, e.g.*, Laurel Exhibit KMS-11 (Monroe's Response to LAU-ME-II-23, verified by Ms. Sadowski). Clearly, throughout this

¹³ To the extent that a discovery request was sponsored by Mr. Todd O'Malley, Gulf represented in its August 8, 2017 witness substitution letter that "All discovery responses and testimony previously submitted by Mr. O'Malley will be adopted, unchanged, by Mr. Johnston." *See* Appendix 3.

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proceeding and at the time of her deposition, Ms. Sadowski was, and was offered as, an officer, director, managing agent, and/or designee of Monroe.

64. To the extent that the above-identified witnesses are not conclusively an "officer" or "director" by virtue of their title and associated responsibilities, the individual members of the Indicated Parties have offered each of these witnesses as their respective "managing agent" for purposes of this litigation. Each witness's interests are clearly identified with the interests of their principal, because each witness has submitted testimony and responded to discovery requests defending the allegations and claims of their principals in this proceeding. And, each witness's "functions, responsibilities and knowledge pertain to the subject matter of the deposition and litigation," as each witness has offered testimony and responded to discovery requests on behalf of their principal, based on the functions, responsibilities and knowledge in their respective employment roles.

65. Relatedly, the Indicated Parties' attempt to argue that a known officer, director or managing agent of a party must be "designated" to be deposed on behalf of a party ignores the clear rationale behind Section 5.343(e) and Pa. R.C.P. 4007.1(e). "The purpose of the Rule is to avoid the wholesale subpoenaing of named directors, officers, and others where the inquirer does not know the identity of the exact person or persons who will be able to testify as to the requested information." Pa. R.C.P. 4007.1(e) (Explanatory Note for Subdivision (e)). In this case, the identities of the person or persons who would be able to testify at to the information requested in Laurel's Notice of Deposition have been known since the individual members of the Indicated Parties filed their Direct Testimony and named their officers, directors and/or managing agents as their witnesses. Indeed, an officer, director, or managing agent "may not

frustrate the discovery by declining to testify; their position requires them to testify." *Id.* (emphasis added).

66. The Indicated Parties' claim that Laurel's Notice of Deposition sought to depose each party witness as "an individual witness in this proceeding on behalf of each party" also misses the mark. *See* Motion ¶ 23. Each Notice of Deposition was addressed to the corporate entity. *See, e.g.,* Motion, Attachment 8, page 4 (internal page 1) (heading "LAUREL PIPE LINE COMPANY, L.P. NOTICE OF DEPOSITION AND REQUEST FOR PRODUCTION OF DOCUMENTS TO PHILADELPHIA ENERGY SOLUTIONS REFINING AND MARKETING, LLC" (emphasis added)). And each Notice of Deposition issued by Laurel specifically noted its intent to inquire into each corporate entity's operations, policies, practices, and economics, among other issues. For example, in "LAUREL PIPE LINE COMPANY, L.P. NOTICE OF DEPOSITION AND REQUEST FOR PRODUCTION OF DOCUMENTS TO PHILADELPHIA ENERGY SOLUTIONS REFINING AND MARKETING, LLC," Laurel stated that it intended to inquire into:

(i) the pricing of petroleum products sold by PESRM, including its margins on sales; (ii) the markets into which PESRM sells petroleum products, and the cost, availability and commercial feasibility of the transportation and/or exchange alternatives that PESRM or its customers have to reach such markets; (iii) how PESRM acquires crude supplies; (iv) crude supplies price volatility; (v) PESRM finances and economics; (vi) how and when PESRM determines to reduce or change refinery output; (vii) how PESRM has analyzed the results of the proposed reversal as well as the results of other projects proposed to bring refined petroleum products from the Midwest to Central or Eastern Pennsylvania; and (viii) other matters, including issues raised by PESRM in its Direct Testimony and/or responses to Laurel's interrogatories and requests for the production of documents.

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Id., pages 5-6 (internal pages 2-3), ¶ 5 (emphasis added). To the extent that the deponent-witnesses were not able to testify as to the areas of inquiry noticed in Laurel's Notice of Deposition, each party was required to identify and make available an individual that was able to so testify. *See, e.g.*, Motion, Attachment 8, page 4 (internal page 1). The Indicated Parties made the identified witnesses available to testify as to the identified subject areas on behalf of their corporate employers.

67. For the reasons more fully described above, the individual Indicated Parties witnesses were clearly an officer, director and or managing agent of their respective employer at the time of their deposition, and also are clearly designated party representatives by the mere fact that they submitted testimony in this proceeding on behalf of their respective companies. Therefore, the Indicated Parties' arguments that Laurel has improperly noticed and used the depositions of these witnesses under Sections 5.343(e) and 5.364(a)(2) of the Commission's regulations, 52 Pa. Code §§ 5.343(e) and 5.364(a)(2), should be denied.

ii. Because Each Individual Member of the Indicated Parties' Witness Was, and Was Offered As, An Officer, Director, Managing Agent, and/or Designee of Their Corporate Employer, Laurel May Use Their Deposition For Any Purpose Under Section 5.364(a)(2) of the Commission's Regulations.

68. As explained above, Section 5.364(a)(2) also governs the use of the deposition of an officer, director, managing agent, or designee of a corporate entity, and states that "the deposition of a party or of anyone who at the time of taking the deposition was an officer, director or managing agent of a party...may be used by an adverse party for any purpose." 52 Pa. Code § 5.364(a)(2) (emphasis added). In addition, the remaining subsections of Section 5.364(a) provide for limited use of the deposition of a non- officer, director, managing agent

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and/or designee. For the reasons explained in Section II.B.i. *supra*, Laurel has properly used the full deposition transcripts of PESRM witness John J. Sadlowski (Laurel Exhibit MJW-5), Sheetz witness Michael Lorenz (Laurel Exhibit MJW-6), Gulf witness Greg Johnston (Laurel Exhibit MJW-7), and Monroe witness Tracy Sadowski (Laurel Exhibit MJW-19) as exhibits to its rebuttal testimony.

69. The Indicated Parties argue that Laurel “has introduced these depositions through its rebuttal testimony for three disallowed purposes.” Motion ¶ 24. As a general matter, Laurel notes that each of these arguments fail because each deponent-witness was an officer, director, managing agent and/or designee of an individual member of the Indicated Parties at the time of their deposition, and under Section 5.364(a)(2) of the Commission’s regulations, that deponent-witness’s deposition transcript may be used by Laurel, as an adverse party, for any purpose. The first and third arguments fail for other reasons as well.

70. As to the first argument, the Indicated Parties state that Laurel attempts to have its own witnesses testify as to the credibility of the deponent. Motion at ¶ 25. Notably, none of the supposed “credibility determinations” pointed to by the Indicated Parties (Laurel (HC) Statement 5-R (Webb) at 4:6; Laurel (HC) Statement 8-R (Stern) at 62:21-23) refer to Laurel’s witnesses’ testimony regarding inconsistent statements made by the witnesses. Rather, the Indicated Parties simply point to statements by Laurel witnesses that, due to the inconsistent statements made by the Indicated Parties’ witnesses, their testimony “is not credible.” In these cases, the deposition is clearly being used “for the purpose of contradicting or impeaching the testimony of deponent as a witness.” 52 Pa. Code § 5.364(a)(1).¹⁴ Laurel’s witnesses are simply testifying to

¹⁴ The Indicated Parties cite to two cases to argue that Laurel’s use of deposition statements to testify to the credibility of certain witnesses is impermissible. Motion ¶ 25 (citing *Hall v. Owens Corning Fiberglass Corp.*, 779

PUBLIC VERSION - HIGHLY CONFIDENTIAL MATERIALS REDACTED

contradictory statements made by the Indicated Parties' deponent-witnesses in the existing record, and highlighting these statements for the fact-finder. Such testimony in no way encroaches upon the role of the ALJ as the fact-finder in this proceeding, and the Indicated Parties' arguments to the contrary should be disregarded. Therefore, even if these statements were not made by officers, directors, managing agents and/or designees of the Indicated Parties, Laurel has permissibly used the deposition testimony to impeach and/or contradict the written testimony of the Indicated Parties' deponent-witnesses.

71. As to the second argument, the Indicated Parties state that Laurel attempts to use the deposition transcripts to rebut the testimony of non-deponent witnesses. Motion at ¶ 26. As stated above, this argument by the Indicated Parties relies entirely on their flawed argument that the deponent-witnesses were not officers, directors, managing agents and/or designees of the members of the Indicated Parties at the time of their deposition.

72. As to the third argument, the Indicated Parties state Laurel uses deposition statements as support for factual allegations. Motion ¶ 27. This argument misses the mark. Depositions were one of several types of discovery that Laurel engaged in regarding the pleadings and Direct Testimony served by the Indicated Parties in this proceeding. However, in many cases, sworn deposition testimony was the only discovery method by which Laurel was

A.2d 1167, 1171 (Pa. Super. Ct. 2001); *Commonwealth v. Stasko*, 370 A.2d 350 (Pa. 1977). While the Indicated Parties represent that these cases stand for a "black-letter" proposition that "the credibility of witnesses is to be elicited at hearing via cross examination," these cases are inapposite. In *Hall v. Owens*, the Pennsylvania Superior Court analyzed the trial court erred by admitting the deposition testimony a deponent witness that was not shown to be unavailable. *Hall*, 7729 A.2d at 1169-70. Importantly, whether the deponent-witness in *Hall* was an officer, director, managing agent and/or designee of a corporation was not at issue. In addition, *Commonwealth v. Stasko* involved a criminal proceeding; it does not and indeed cannot involve the interpretation of a rule of *civil* procedure. See *Stasko*, 370 A.2d at 352. Indeed, the portion of *Stasko* quoted by the Indicated Parties regards the application of the constitutional right to confront one's criminal accuser that is enshrined in the Pennsylvania and United States Constitution. See *id.* at 353. As such, these two cases afford no guidance in the issue *sub judice*.

able to discover information directly related to its defenses in this proceeding, *e.g.* how parties price the petroleum products they sell. [BEGIN HIGHLY CONFIDENTIAL] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] [END HIGHLY CONFIDENTIAL] These

disclosures were made in deposition for the first time, despite the fact that Laurel had previously sought information regarding how Monroe and PESRM price their products at multiple points in the discovery process. *See* Appendix 4 (LAU-PESRM-II-4); *see also* (HIGHLY CONFIDENTIAL) Appendix 5 (response to LAU-ME-II-8). Even if these statements were not made by officers, directors, managing agents and/or designees of the individual members of the Indicated Parties, Laurel should be permitted to use statements made at deposition to support factual allegations where a party has previously attempted to avoid disclosure of facts that are highly relevant to one of Laurel's defenses in this proceeding.

73. In the alternative, the Indicated Parties finally argue:

If the ALJ does not strike the deposition transcript exhibits and testimony as requested above, in the alternative the Indicated Parties request that the ALJ strike the portions of the transcripts that Laurel has not directly cited in its rebuttal testimony, which are set forth in Attachment 7.

Motion ¶ 28. Initially, Laurel notes that the referenced Attachment 7 does not include references to "the portions of the transcripts that Laurel has not directly cited in its rebuttal testimony." Rather, Attachment 7 appears to include statements in Laurel's rebuttal testimony that the Indicated Parties argue should be struck under one of the three arguments discussed in

paragraphs 25 through 27 of the Motion. As explained above, these arguments are flawed and should be disregarded.¹⁵

74. For the reasons more fully explained above, Laurel has properly used the depositions of PESRM witness John J. Sadlowski (Laurel Exhibit MJW-5), Sheetz witness Michael Lorenz (Laurel Exhibit MJW-6), Gulf witness Greg Johnston (Laurel Exhibit MJW-7), and Monroe witness Tracy Sadowski (Laurel Exhibit MJW-19) in its rebuttal testimony. Therefore, Laurel should be permitted to admit these transcripts as exhibits without modification.

C. The ALJ Should Include The Disputed Rebuttal and Rejoinder Testimony and Deposition Transcripts to Ensure a Full and Complete Record.

75. In order to ensure a full and complete record, Your Honor should include all testimony and deposition transcripts as a part of the record at this time. The Commission, the parties, and the ALJ are best served by a complete record that includes all relevant facts that have been disclosed during the discovery process and the various rounds of testimony served in this proceeding. The ALJ and Commission can then attribute the appropriate amount of weight to all facts of record.¹⁶

76. Throughout this proceeding the Indicated Parties have sought to expand the field of issues to be resolved. For instance, the Indicated Parties sought discovery, filed motions to

¹⁵ For reasons also explained above, the Indicated Parties' attempt to distinguish between their use of the deposition transcript of Mr. David W. Arnold, and the transcripts of their deponent witnesses is flawed. *See* Motion ¶ 28, fn. 10. As the Indicated Parties' deponent-witnesses were the officer, director, managing agent and/or designee of their respective employers at the time of their deposition, Mr. Arnold was also an officer, director, managing agent and/or designee of Laurel at the time of his deposition. As such, an adverse party in this proceeding may use any of these deposition transcripts for any purpose. 52 Pa. Code § 5.364(a)(2).

¹⁶ Such a result is consistent with prior Commission rulings regarding Motion to Strike. *See, e.g., Application of MFS Intelenet of Pennsylvania, Inc.*, 1997 Pa. PUC LEXIS 50, at *50-51 (1997) (Interim Order dated April 10, 1997) (noting agreement with ALJ's decision to admit the disputed rebuttal testimony and that the Commission will "consider the arguments in this proceeding based on the totality of the record.")

PUBLIC VERSION - HIGHLY CONFIDENTIAL MATERIALS REDACTED

compel, and sought Interlocutory Review of discovery requests related to information about possible plans to reverse the Laurel pipeline to points further east of Eldorado—*i.e.* the Indicated Parties continuously sought to bring future potential reversals, market forces and facts outside the scope of Laurel's Application into the fold. Having so expanded the field of view, the Indicated Parties now claim that Laurel's Rebuttal and Rejoinder Testimony "goes too far" because it undermines the false factual and economic narrative the Indicated Parties sought to present in their Direct Testimony.

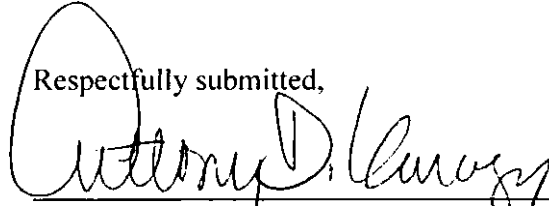
77. For the reasons explained herein, especially in light of the facts and issues that the Indicated Parties themselves have argued are relevant, Laurel should be permitted to enter its Rebuttal and Rejoinder Testimony into the record without modification.¹⁷

¹⁷ Laurel notes that if any of its Rebuttal Testimony in this proceeding is stricken, the other parties' responsive testimony should also be stricken. Appendix 6, attached hereto, provides a list of Surrebuttal Testimony filed by the other parties that responds to the disputed portions of Laurel's Rebuttal Testimony.

III. CONCLUSION

WHEREFORE, Laurel Pipe Line Company, L.P. respectfully requests that Administrative Law Judge Eranda Vero deny the Indicated Parties' Motion to Strike.

Respectfully submitted,



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Date: November 2, 2017

Counsel for Laurel Pipe Line Company, L.P.

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Appendix 1

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May 4, 2017

Administrative Law Judge Eranda Vero
Pennsylvania Public Utility Commission
801 Market Street, Suite 4063
Philadelphia, PA 19107

**VIA E-MAIL AND
FIRST CLASS MAIL**

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 Judge Vero:


Enclosed please find the Gulf Operating, LLC, Philadelphia Energy Solutions Refining & Marketing, LLC, Sheetz, Inc., Monroe Energy, Inc., and Giant Eagle, Inc. Notice of Deposition and Request for Production of Documents to Laurel Pipe Line Company in the above-referenced proceedings.

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


Adeolu A. Bakare

Counsel to Gulf Operating, LLC

Enclosure

c: Rosemary Chiavetta, Secretary (via Electronic Filing – Letter and Certificate of Service only)
Certificate of Service

www.McNeesLaw.com

Harrisburg, PA • Lancaster, PA • Scranton, PA • State College, PA • Columbus, OH • Philadelphia, PA • Washington, DC

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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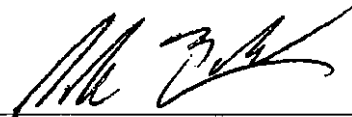
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Certificate of Service
Docket No. A-2016-2575829 and G-2017-2587567
Page 2

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Counsel to Gulf Operating, LLC and Sheetz, Inc.

Dated this 4th day of May, 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 products transportation service to delivery points west of Eldorado, Pennsylvania	:	A-2016-2575829
Affiliated Interest Agreement between Laurel Pipe Line Company, L.P. and Buckeye Pipe Line Company, L.P.	:	G-2017-2587567

**GULF OPERATING, LLC; PHILADELPHIA ENERGY SOLUTIONS REFINING & MARKETING, LLC; SHEETZ, INC.; MONROE ENERGY, INC.; AND GIANT EAGLE, INC.
NOTICE OF DEPOSITION AND REQUEST FOR PRODUCTION OF DOCUMENTS TO LAUREL PIPE LINE COMPANY**

TO THE ADMINISTRATIVE LAW JUDGE:

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 in this matter, hereby give notice of intent to depose Laurel Pipe Line Company ("Laurel" or "Applicant") and request the production of documents with respect to the above-captioned proceeding. **The Indicated Parties hereby request that Laurel, within ten days of service of this Notice, file with the Pennsylvania Public Utility Commission ("Commission") a designation of one or more officers, directors or managing agents, or other persons who consent to testify on behalf of Laurel and who are qualified and able to testify regarding the matters discussed in this Notice.** The Indicated Parties will cooperate with Laurel to agree upon an appropriate time and location for the depositions and document production. In support hereof, and consistent with the procedures set forth in Sections 5.343, 5.344, and 5.349 of the Commission's Regulations, 52 Pa. Code §§ 5.343, 5.344 & 5.349, the Indicated Parties state as follows:

1. On November 14, 2016, Laurel filed with the Commission, pursuant to various provisions of the Pennsylvania Public Utility Code, its Application for authority, approvals and Certificates of Public Convenience ("CPC") to change the direction of petroleum products transportation service 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 its capacity to 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 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, requires no approvals from the Commission and posits its Application as a backstop alternative to be addressed only if the Commission disagrees with Laurel's primary position. *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 the proposed Pipeline Capacity Agreement between itself and its affiliate, Buckeye ("Capacity Agreement").

5. The Indicated Parties intend to inquire into: (i) the decision-making process resulting in Laurel's determination to implement the proposed pipeline reversal; (ii) the results of any economic or market impact analyses that were undertaken in support of or as part of the

decision-making process; (iii) Laurel's determination of the available service alternatives to replace its current pipeline services for east-to-west shipments between Eldorado and Pittsburgh; (iv) efforts undertaken by Laurel to assess and consider the environmental impacts of the proposed reversal; (v) efforts undertaken by Laurel to consider the impacts of the proposed reversal on public safety, including risks attendant to alternative methodologies of transporting petroleum such as truck, barge, or rail; (vi) Laurel's findings with regard to available alternative destination markets for products originating in the Philadelphia area; and (vii) communications between Laurel or its affiliates and prospective shippers about the proposed reversal, including communications regarding shippers' expression of interest in additional eastbound movements of petroleum products to points east of Pittsburgh.

6. Pursuant to Sections 5.343(d) and 5.349 of the Commission's Regulations, 52 Pa. Code §§ 5.343(d) & 5.349, the Indicated Parties request that, prior to the deposition, the deponents provide copies of correspondence, corporate minutes, investor disclosures, e-mail messages, studies, and analyses that exist related to the subjects identified in Paragraph 5 that have not yet been provided to the Indicated Parties. All such documents prepared on or after January 1, 2015, should be provided. Depositions are necessary to clarify and complete answers to previously issued written discovery in an efficient manner.

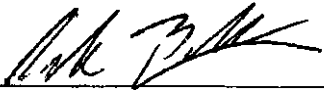
7. Depositions are anticipated to be held at the offices of McNees Wallace, & Nurick LLC at 100 Pine Street, Harrisburg, PA 17101. However, the Indicated Parties will work with Laurel to develop a mutually acceptable time and place, consistent with the procedural schedule established in this case, for the conduct of the depositions under this Notice.

8. As Laurel is a participant in the above-referenced proceeding, a formal subpoena is unnecessary. Therefore, for the reasons set forth above, the Indicated Parties request that Laurel submit to a deposition pursuant to this Notice.

Respectfully submitted,

McNEES WALLACE & NURICK LLC

By


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Counsel to Giant Eagle, Inc.

Dated: May 4, 2017

ORDER

Application granted.

So Ordered this _____ day of _____, 2017.

_____, Presiding Officer

Appendix 2

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**SHEETZ, INC. RESPONSES TO
LAUREL PIPE LINE COMPANY, L.P. INTERROGATORY REQUESTS – SET II**

DOCKET NO. A-2016-2575829

LAU-SI-II-1 Regarding Mr. Lorenz's testimony at p. 1, lines 7 through 22, please answer the following questions:

- (a) Please state how long the witness has held the current position described in this testimony, and state for his prior positions at Sheetz, Inc. ("Sheetz") the title of each prior position and the approximate dates between which he held such earlier position.
- (b) Please list Mr. Lorenz's "midstream and downstream" positions at Mobil Oil Corp, including the title of each, the approximate dates between which he held such each position, and the geographical scope of the responsibilities associated with each position at Mobil Oil Corp.

RESPONSE:

- a. Mr. Lorenz has held his current role of Executive Vice President of Petroleum Supply since 2007. Prior to 2007, Mr. Lorenz held the title of Vice President of Petroleum Supply for Sheetz.
- b. See Objections filed on August 4, 2017.

Response Provided by:

**Michael E. Lorenz
Executive Vice President of Petroleum Supply
Sheetz, Inc.**

Date: August 14, 2017

Appendix 3

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PA PUBLIC UTILITY COMMISSION
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August 8, 2017

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
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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

Dear Secretary Chiavetta:

On behalf of Gulf Operating, LLC ("Gulf"), this is an update of individuals previously identified as witnesses for Gulf in the Prehearing Memorandum of Gulf and Sheetz, Inc. ("Sheetz") and as updated by the letter filed on July 7, 2017, on behalf of Gulf, Sheetz, Philadelphia Energy Solutions Refining & Marketing LLC ("PESRM"), Monroe Energy, Inc. ("Monroe"), and Giant Eagle, Inc. ("Giant Eagle") (collectively the "Indicated Parties").

In addition to the various witnesses identified for Gulf as one of the Indicated Parties, Gulf also identified Mr. Todd O'Malley, Executive Vice President and Chief Commercial Officer for Gulf, as an individual witness presenting testimony solely on behalf of Gulf. Gulf also summarized the subject matter of Mr. O'Malley's testimony to include the Pittsburgh petroleum products market, post-reversal shipping alternatives and Pittsburgh air quality restrictions on gasoline blends.

This letter provides notice that, due to unanticipated constraints on Mr. O'Malley's availability, Gulf will present Mr. Greg Johnston, Director of Terminal Operations for Gulf, as a witness in place of Mr. O'Malley. All discovery responses and testimony previously submitted by Mr. O'Malley will be adopted, unchanged, by Mr. Johnston. Gulf will further file an Errata to Gulf Statement No. 1 substituting Mr. Johnston for Mr. O'Malley as the sponsoring witness.

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Rosemary Chiavetta, Secretary

August 8, 2017

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Gulf reserves the right to identify and present additional witnesses in this proceeding. The Presiding Officer of this proceeding, Administrative Law Judge Eranda Vero, is being provided a copy of this correspondence via email and first class mail. 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



Adeolu A. Bakare

Counsel to Gulf Operating, LLC
and Sheetz, Inc.

c: Administrative Law Judge Eranda Vero (via E-Mail and First-Class Mail)
Certificate of Service

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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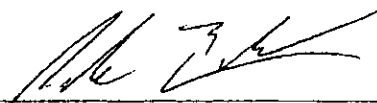
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Page 2

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Counsel to Gulf Operating, LLC and Sheetz, Inc.

Dated this 8th day of August, 2017, in Harrisburg, Pennsylvania.

Appendix 4

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SECRETARY'S BUREAU

Docket Nos. A-2016-2575829 and
G-2017-2587567

Respondent: John J. Sadlowski
Position: Vice President, Supply &
Trading

Respondent: Paula Fischer-Gressman
Position: Director Supply Chain

Philadelphia Energy Solutions Refining and Marketing LLC
Response to Laurel Pipe Line Company, L.P.
Interrogatories and Requests for Production
of Documents, Set II – 4

4. Regarding Mr. Sadlowski's testimony at p. 3, lines 18-19, stating that "a large portion of which marketers, wholesalers and retail owners purchased and shipped on the Laurel Pipeline," please answer the following questions:
- a) With respect to this statement, please answer the following questions:
- i) please provide a list by month of the overall 10 largest such customers, and the volumes of each product sold to them, in descending order of size, for the years 2012 through 2017;
 - ii) please provide a list by month of the largest 10 such customers at each point of sale, and the volumes of each product sold to them, by delivery point, whether at the PESRM refinery or at one of the connections between the refinery and mode of distribution (i.e. at the pipeline, or at the barge, etc.);
 - iii) please explain in detail the circumstances that determine whether PESRM sells to a counterparty at a pipeline interconnection near PESRM's refinery, or at a truck rack, rail car or barge, rather than transport itself as shipper; and
 - iv) for the period 2012 through 2017, please provide a list, by month, of the volumes sold by PESRM in its own name at a downstream terminal or delivery point not at or near the PESRM refinery.

RESPONSE:

- 4(a)(i) On October 7, 2014, PESRM entered into an Intermediation Agreement with Merrill Lynch Commodities, Inc. ("MLC") which, along with related ancillary agreements, has the effect of reducing the working capital investment required to operate our refining business and our exposure to inventory price volatility. Pursuant to the terms of the agreement and subject to certain conditions, MLC

supplies and hedges substantially all of the crude oil and non-crude oil feedstock requirements of the Philadelphia refining complex, and purchases these feedstocks from third parties that PESRM identifies based on pricing mechanisms that PESRM negotiates. Subject to certain conditions, MLC also purchases substantially all of the barrels processed through the Philadelphia refining complex under the Intermediation Agreement at market prices for the respective products, hedges and then sells these products to third parties that PESRM identifies based on pricing mechanisms that PESRM negotiates. In connection with these activities, PESRM pays MLC a fixed fee per barrel of feedstocks that MLC sells to PESRM and charges MLC a separate fixed fee for each barrel of products that MLC purchases from PESRM. Therefore, PESRM sells substantially all of the products produced at the refinery to MLC, regardless of the location to which the products are ultimately transferred. Although PESRM is not party to the contracts between MLC and third party purchasers of products produced at the Philadelphia refining complex, Highly Confidential Attachment LAU-PES-II-4(a)(i) contains the information responsive to this interrogatory.

- 4(a)(ii) See response to 4(a)(i) above and Highly Confidential Attachment LAU-PES-II-4(a)(ii).
- 4(a)(iii) PESRM sells product into the Laurel pipeline on both a delivered and Free on Board (FOB) basis. The determination for how product is sold in the bulk market is a function of the buyer's preference. The majority of bids we see in the bulk products market are on an FOB basis, not delivered. PESRM also operates a wholesale products business in four terminals along the Laurel pipeline. Sales at those terminals occur at the truck rack. There is no method by which PESRM conducts Laurel pipeline business via barge.
- 4(a)(iv) See Highly Confidential Attachment LAU-PES-II-4(a)(iv).

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**Appendix 5
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Appendix 6

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Appendix 6
Indicated Parties' Testimony to Be Stricken

<u>Indicated Parties Statement</u>	<u>Testimony to Strike</u>	<u>Referenced Laurel Testimony</u>
(HC) Indicated Parties 1-SR (Arthur)	3:5-8 and fn. 3	Laurel 7-R (Jones), 6
(HC) Indicated Parties 1-SR (Arthur)	4:1,4 and fn. 6 (references to Dr. Jones)	Laurel 7-R (Jones), 6
(HC) Indicated Parties 1-SR (Arthur)	7:1,4-9 and fn. 13 (references to Dr. Jones)	Laurel 7-R (Jones), 6
(HC) Indicated Parties 1-SR (Arthur)	9:17, 19, 21-24 and fn. 23	Laurel 7-R (Jones), 6
(HC) Indicated Parties 1-SR (Arthur)	12:12-18	Discussed in Laurel 7-RJ (Jones), 10:19-12:20
(HC) Indicated Parties 1-SR (Arthur)	17:11-14 and fn. 45	Laurel 7-R (Jones), 6
(HC) Indicated Parties 1-SR (Arthur)	20:23-22:13 and all footnotes	Laurel 10-R (Kleit), 13:8-17:4
(HC) Indicated Parties 1-SR (Arthur)	34:15-36:19 and all footnotes (discussing Laurel's motivation for the reversal)	Laurel 1-R (Arnold), 13-21 (which references documents and information discussed in 1-R 3:22-10:10, <i>i.e.</i> the disputed portion of Mr. Arnold's Rebuttal Testimony)
(HC) Indicated Parties 2-SR (Schaal)	15:20 and fn. 19 (reference to Kleit)	Laurel 10-R (Kleit), 4:11-7:15
(HC) Indicated Parties 2-SR (Schaal)	51:13-23 and fns. 119, 120	Laurel 10-R (Kleit), 7:19-8:6
Indicated Parties 3-SR (Rosenthal)	9:1-10:21	Laurel 9-R (Thomas), 5-6 and 9:9-11
Indicated Parties 3-SR (Rosenthal)	13:14-14:14	Laurel 10-R (Kleit), 17:1-4
Indicated Parties 5-SR	5:13-6:2	Laurel 9-R (Thomas), 5:15-

(Rosenthal)		7:13
Indicated Parties 5-SR (Lloyd)	6:5 (reference to Mr. Thomas)	Laurel 9-R (Thomas), 6:15
Indicated Parties 5-SR (Lloyd)	8:11-9:13	Laurel 9-R (Thomas), 7:10-10:17
Indicated Parties 5-SR (Lloyd)	9:16-11:14	Laurel 9-R (Thomas), 5:15 Laurel 10-R (Kleit), 16:15-17:4

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been served upon the following persons, in the manner indicated, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant).

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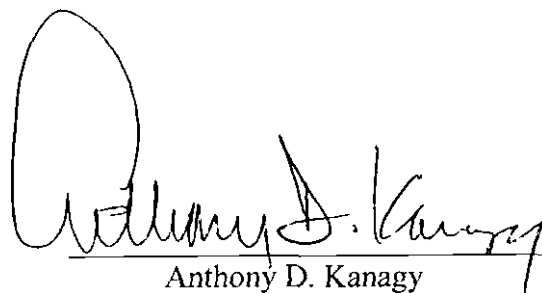
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