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November 3, 2017

VIA HAND DELIVERY

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building, Filing Room
400 North Street
Harrisburg, PA 17101

RE: Application of Laurel Pipe Line Company, L.P.; Docket No. A-2016-2575829;
**HIGHLY CONFIDENTIAL VERSION AND PUBLIC VERSION OF MONROE
ENERGY, LLC'S OBJECTION AND MOTION TO STRIKE**

Dear Secretary Chiavetta:

Please find enclosed for filing with the Commission the **HIGHLY CONFIDENTIAL VERSION AND PUBLIC VERSION** of Monroe Energy, LLC's Objection and Motion to Strike Portions of Laurel Pipe Line Company's Highly Confidential Statement Nos. 5-R and 6-RJ as Hearsay in the above-referenced matter. Copies of the foregoing document have been served in accordance with the attached Certificate of Service.

Thank you for your attention to this matter. If you have any questions related to this filing, please do not hesitate to contact me.

Very truly yours,



Kevin J. McKeon
Todd S. Stewart
Whitney E. Snyder
Counsel for Monroe Energy, LLC

TSS/jld

Enclosure

cc: Administrative Law Judge Eranda Vero (email and first-class mail)
Per Certificate of Service

**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 Change the Direction of Petroleum Products Transportation Service to Delivery Points West of Eldorado, Pennsylvania	:	:	Docket No. A-2016-2575829
Pipeline Capacity Agreement Between Laurel Pipe Line Company, L.P. and Buckeye Pipe Line Company, L.P.	:	:	Docket No. G-2017-258756

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**MONROE ENERGY, LLC'S OBJECTION
AND MOTION TO STRIKE
PORTIONS OF LAUREL PIPE LINE COMPANY, L.P.'S
HIGHLY CONFIDENTIAL STATEMENT NOS. 5-R AND 6-RJ AS HEARSAY**

PUBLIC VERSION

1. Pursuant to 52 Pa. Code § 5.103, Monroe Energy, LLC (Monroe Energy) objects the introduction of hearsay testimony in Witness Webb's Rebuttal Testimony, Laurel (HC) St. 5-R at 83:34-35 [**BEGIN HIGHLY CONFIDENTIAL**]

[END HIGHLY

CONFIDENTIAL] and Witness Vah Hoecke's Rejoinder Testimony, Laurel St. 6-RJ at 6:16-20 ("I am informed by Buckeye operational personnel that after the Laurel reversal, existing tankage at Booth currently used to supply gasoline to the Pittsburgh market will be converted to allow substantially increased capacity to gasoline shipments moving through Booth to access upstate New York markets via the new capacity linking Laurel to Buckeye."). Witnesses Webb and Van Hoecke are obviously attempting to prove facts –

whether capacity is available on the Harbor and Colonial Pipelines and whether Buckeye will provide additional capacity for gasoline shipments to upstate New York – via the out of court statement of another, in direct violation of the rule against hearsay. *See*, Pa.R.E. 801(c), 802. Moreover, these statements do not fit within any hearsay exceptions, and thus should not be admitted into the record in this proceeding.

2. The Commission's Rules vest the Presiding Officers with the authority to control the receipt of evidence, including ruling on the admissibility of evidence, 52 Pa. Code § 5.403(a)(1), and directs them to "actively employ these powers to direct and focus the proceedings consistent with due process," *id.* § 5.403(b). The Rules further provide: "Written testimony is subject to the same rules of admissibility and cross-examination of the sponsoring witness as if it were presented orally in the usual manner." 52 Pa. Code § 5.412(c). "While the [Public Utility Commission] as an administrative agency having quasi-judicial functions is not limited by the strict rules relating to the admissibility or exclusion of evidence and actions at law, the essential principles should be observed."¹ Accordingly, while not strictly bound by the rules of evidence, the essential principles thereof can be relied upon in proceedings before the Commission.²

3. As a statement that (i) was not made while testifying at the hearing in this matter, and (ii) is being offered to prove the truth of the matters asserted, this statement is plainly hearsay. Pa. R.E. 801(c). Since these statements do not fall within any of the exceptions to the rule against hearsay, they are inadmissible and must be stricken from Witnesses Webb's and Van Hoecke's testimonies. *See* Pa. R.E. 802.

¹*Pittsburgh and Lake Erie Railroad Company v. Pennsylvania Public Utility Commission*, 85 A.2d 646, 653 (Pa. Super. Ct. 1952).

²*Bleilevens v. Commonwealth State Civil Service Commission*, 312 A.2d 109, 111 (Pa. Commw. 1973).

4. In *Durkin v. Equine Clinics, Inc.*, 546 A.2d 665 (Pa. Super 1988), the Court quoted Justice Musmanno in his decision in *Commonwealth v. Baez*, 494 Pa. 388, 431 A.2d 909 (1981):

The primary object of a trial in American courts is to bring to the tribunal . . . those persons who know of their own knowledge the facts to which they testify. If it were not for this absolute sine qua non, trials could be conducted on paper without the presence of a single flesh and blood witness. But with such a pen-and-ink procedure, there would be no opportunity to check on testimonial defects such as fallacious memory, limited observation, purposeful distortions, and outright fabrication. The great engine of cross-examination would lie unused while error and perjury would travel untrammelled to an unreliable and often tainted judgment. Accordingly, nothing is more adamantly established in American trial procedure than that no one may testify to what someone else told him. He may only relate what is within his own memory brought to him by the couriers of his own senses.³

5. These considerations apply with no less force here: "The Hearsay Rule is not a technical rule of evidence but a basic, vital and fundamental rule of law which ought to be followed by administrative agencies at those points in their hearings when facts crucial to the issue are sought to be placed upon the record."⁴ The rule regarding the admission of hearsay evidence in administrative proceedings can be summed up as follows:

With respect to the evidentiary effect to be given hearsay evidence in administrative proceedings, . . . this court has established a rule that hearsay evidence, properly objected to, is not competent to support a finding of the board, but hearsay evidence, admitted without objection, will be given its natural and probative effect and may support a finding of the board, if it is corroborated by any competent evidence in the record.⁵

³ 546 A.2d at 668-669.

⁴ *Bleilevens v. Com. State Civil Serv. Comm'n*, 312 A.2d 109, 111 (Pa. Commw. Ct. 1973)

⁵ *Bracie v. Commonwealth Unemployment Compensation Board of Review*, 382 A.2d 1295, 1297 (Pa. Commw. 1978) (citing *Walker v. Unemployment Compensation Board of Review*, 367 A.2d 366 (Pa. Commw. 1976)).

6. Here, Witness Webb stated: **[BEGIN HIGHLY CONFIDENTIAL]**

[END HIGHLY

CONFIDENTIAL]

7. Given that this statement is clearly an out of court statement by Mr. Zeth, who is not a witness in this proceeding, and Dr. Webb is using this statement to attempt to prove a fact – whether or not the Colonial and Harbor pipelines are constrained, this is inadmissible hearsay and should not be admitted into the record of this proceeding.

8. Likewise, Witness Van Hoecke stated without any reference to further support that “I am informed by Buckeye operational personnel that after the Laurel reversal, existing tankage at Booth currently used to supply gasoline to the Pittsburgh market will be converted to allow substantially increased capacity to gasoline shipments moving through Booth to access upstate New York markets via the new capacity linking Laurel to Buckeye.”

9. Given that this statement is clearly an out of court statement by an unnamed and unknown declarant, and Witness Van Hoecke is using this statement to attempt to prove a fact –

whether or not Buckeye will provide increased capacity for shipments of gasoline to upstate New York, this is inadmissible hearsay and should not be admitted into the record of this proceeding.

WHEREFORE, Monroe Energy respectfully requests Your Honor strike Webb Rebuttal Testimony, Laurel (HC) St. 5-R at 83:34-35 and Van Hoecke Rejoinder Testimony, Laurel St. 6-R at 6:16-20.

Respectfully submitted,

DATED: November 3, 2017



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CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing document upon the parties, listed below, in the manner indicated below, and in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a party).

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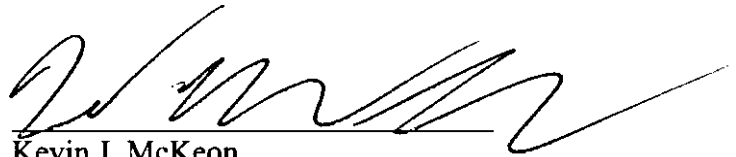
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