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November 12, 2017

VIA ELECTRONIC FILING

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 Motion of Laurel Pipe Line Company, L.P. to Submit a Supplemental Affidavit or, Alternatively, Exclude Certain Cross Examination Exhibits and 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.

Very truly yours,

Anthony D. Kanagy

ADK/skr
Enclosure

cc: Honorable Eranda Vero
Certificate of Service

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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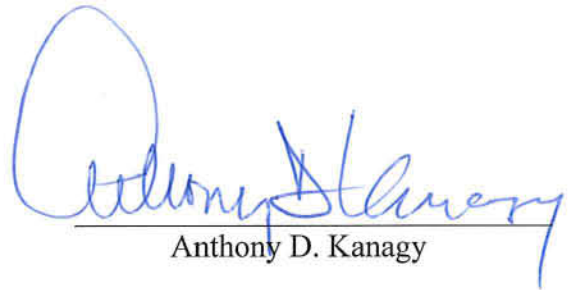
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Date: November 12, 2017



Anthony D. Kanagy

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. :

**MOTION OF LAUREL PIPE LINE COMPANY, L.P.
TO SUBMIT A SUPPLEMENTAL AFFIDAVIT OR, ALTERNATIVELY,
EXCLUDE CERTAIN CROSS EXAMINATION EXHIBITS AND TESTIMONY**

TO THE HONORABLE ADMINISTRATIVE LAW JUDGE ERANDA VERO:

Laurel Pipe Line Company, L.P. (“Laurel” or the “Company”) hereby files this Motion, pursuant to 52 Pa. Code §§ 5.103, 5.242 and 5.404, to Submit a Supplemental Affidavit or, Alternatively, Exclude Certain Cross Examination Exhibits and Testimony (“Motion”) by the Indicated Parties¹ related to a study produced in discovery on September 28, 2017, by petitioner Husky Marketing and Supply Company (“Husky”). The Indicated Parties’ Surrebuttal Testimony, served on October 6, 2017, did not include or reference the study. For the first time in this proceeding on Wednesday, November 6, 2017, the Indicated Parties suggested during the oral examination of witness Dr. Daniel S. Arthur that they would seek to admit into evidence 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”).

“Disputed Study” produced by Husky during the cross-examination of the Husky witness, Jerome P. Miller, on the final day of the evidentiary hearing, November 13, 2017.

The Indicated Parties have waited until the “eleventh hour” to submit information and data that easily could and should have been submitted as an exhibit to their Surrebuttal Testimony. If the Indicated Parties had submitted the Disputed Study as part of their Surrebuttal Testimony, Laurel would have had the opportunity to respond in Rejoinder Testimony. By seeking to enter the Disputed Study into evidence through the cross examination of Mr. Miller, the Indicated Parties would deprive Laurel of a fair opportunity to address and respond to the study. Fundamental principles of due process and fairness require Laurel, as the applicant with the burden of proof, be afforded an adequate opportunity to respond to the study. As explained below, it is not sufficient for Laurel, nor does it provide Laurel due process, to allow the Disputed Study into evidence with only allowing cross-examination of Husky’s witness. Therefore, and for the reasons more fully explained below, Laurel respectfully requests that Your Honor permit Laurel to enter the Highly Confidential Affidavit of Dr. Michael J. Webb, attached hereto as Appendix A, into evidence and allow the other parties to cross-examine Dr. Webb as to its contents. Alternatively, Laurel respectfully requests that Your Honor exclude the Disputed Study and all related testimony from the record.

I. BACKGROUND

1. On November 14, 2016, Laurel filed the above-captioned Application with the Pennsylvania Public Utility Commission at Docket No. A-2016-2575829.

2. Laurel served its Rebuttal Testimony on August 31, 2017. Husky also served the Rebuttal Testimony of Jerome P. Miller (Husky Statement No. 1).

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3. Importantly, members of the Indicated Parties—Gulf and Sheetz—submitted their Set I Discovery to Husky on September 8, 2017 (“Set I Discovery”).

4. Husky submitted its responses to the Set I Discovery on September 28, 2017.

5. The Indicated Parties served Surrebuttal Testimony on October 6, 2017. No statement served on behalf of the Indicated Parties, or its individual members, referenced the Disputed Study or included the study as an exhibit, even though the Indicated Parties had received it over a week before their Surrebuttal Testimony was due.

6. Laurel served written Rejoinder Testimony on October 20, 2017, and subsequently filed Supplemental Written Rejoinder Testimony on November 1, 2017.

7. On November 6, 2017, the Evidentiary Hearing scheduled in this proceeding began, and Laurel presented its case in chief and made certain of its witnesses available for cross examination. Laurel finished presenting its case in chief on the morning of November 8, 2017.

8. During the afternoon session of the November 8, 2017 hearing date, Indicated Parties’ witness Dr. Daniel S. Arthur referenced the Disputed Study for the first time in this proceeding during oral examination. Laurel noted that it desired an opportunity to have one of its witnesses respond to the study and that it should be afforded an opportunity to respond. The Indicated Parties then represented that they would submit the Disputed Study as an exhibit during the cross-examination of Husky witness Mr. Miller.

9. Mr. Miller is scheduled for cross examination on the final day of hearings, November 13, 2017.

II. ARGUMENT

A. Legal Standards.

10. As the applicant in this proceeding, Laurel bears the burden of proof. 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).

11. Section 5.242 of the Commission’s regulations, provides Laurel—the party having the burden of proof—the right to close. *See* 52 Pa. Code § 5.242(a) (“In a proceeding, the party having the burden of proof, shall open and close unless otherwise directed by the presiding officer.”). Generally, “[i]ntervenors shall follow the party on whose behalf the intervention is made.” 52 Pa. Code § 5.242(b). However, “[i]n proceedings when the evidence is peculiarly within the knowledge or control of another party, the order of presentation set forth in subsections (a) and (b) may be varied by the presiding officer.” 52 Pa. Code § 5.242(c).

12. Furthermore, Section 5.404(a) of the Commission’s regulations states that “[a]t any stage of the hearing or thereafter the Commission or the presiding officer may call for further admissible evidence upon an issue and require that the evidence be presented by the parties concerned, either at the hearing or at the adjournment thereof.” 52 Pa. Code § 5.404. In this regard, the party with the burden of proof is, and should be, afforded adequate opportunity to address all claims and evidence submitted during a proceeding.²

² For example, Laurel was properly afforded the opportunity to submit Rejoinder Testimony and thereafter Supplemental Written Rejoinder Testimony to address new evidence and information that was untimely produced in discovery, after the submission of its Rejoinder Testimony. *See* Order Regarding Monroe’s Petition to Withdraw

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13. Moreover, fundamental principles of due process require that the parties “must be apprised of the evidence submitted...and to offer evidence in explanation or rebuttal according to well understood rules. In no other way can a party maintain its rights, or make a defense, or test the sufficiency of the facts to support the finding.” *In re Shenandoah Suburban Bus Lines*, 46 A.2d 26, 29 (Pa. Super. 1946). Reasonable notice is a basic requirement of due process, enabling parties to present responses and objections accurately. *See ARIPPA v. Pa. Pub. Util. Comm’n*, 792 A.2d 636, 660 n.35 (Pa. Commw. 2002), *appeal denied*, 815 A.2d 634 (Pa. 2003). Generally, claims or evidence that is introduced at such a time when the opposing party would not have an adequate opportunity to respond must be rejected on due process grounds. *See, e.g., Application of PPL Electric Utilities Corp.*, 2009 Pa. PUC LEXIS 2323, *225-227 (Recommended Decision November 12, 2009) (rejecting a claim raised for the first time in reply briefs), *adopted with certain modifications*, 2010 Pa. PUC LEXIS 434 (Order Entered Feb. 12, 2010)

14. The Commission has specifically found that late-submitted exhibits deprive a party of due process. *See Pa. Pub. Util. Comm’n v. Duquesne Light Company*, 1985 Pa. PUC LEXIS 68, *10-11 (Order Entered Jan. 25, 1985) (“based upon the timing here we conclude that the presentation of these exhibits one week prior to the close of the record was insufficient time to constitute the due process to which the OCA was entitled.” (emphasis added)).

Motion for Extension of Timing to Comply With Order, Docket Nos. A-2016-2575829; G-2017-2587567, at p. 2 and Ordering Paragraph 2 (Order dated Oct. 25, 2017).

B. Due Process Requires The Party Bearing The Burden Of Proof Be Afforded An Adequate Opportunity To Respond To Late-Submitted Evidence.

15. Due process requires that Laurel, as the party bearing the burden of proof, be afforded adequate opportunity to respond to the Disputed Study or, alternatively, that the study and testimony regarding its contents must be excluded from the record. It is a fundamental principle of due process that parties are afforded a reasonable opportunity to respond to evidence. *See ARIPPA*, 792 A.2d at 660 n.35; *see also In re Shenandoah Suburban Bus Lines*, 46 A.2d at 29. That is especially the case for the party with the burden of proof.

16. The Disputed Study represents data, analysis and conclusions that were not the subject of testimony by any witness in this proceeding until the oral examination of the Indicated Parties' witness Dr. Daniel S. Arthur, and an exhibit that has not been and will not be offered into evidence until the cross-examination of a non-applicant witness on the final day of evidentiary hearings. Without further action by Your Honor, the timing of this document's introduction into evidence will deprive Laurel and its witnesses of any opportunity to respond and result in a denial of due process.

17. Husky produced the Disputed Study on September 28, 2017, in response to the Set I Discovery served by Gulf and Sheetz. The Indicated Parties had ample opportunity to include the study and the information contained therein in their Surrebuttal Testimony. However, the Indicated Parties elected not to do so, and served their Surrebuttal Testimony on October 6, 2017, without reference to the Disputed Study. As such, Laurel did not address the Disputed Study in its Rejoinder Testimony.

18. It is also important to note that Laurel has not acted in a similar manner with respect to studies conducted on behalf of the Indicated Parties. For instance, Laurel attached multiple studies produced by Gulf to its Rebuttal Testimony. *See Laurel Stmt. No. 5-R, (HC)*

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Laurel Exhibit MJW-11. Gulf responded to those studies in its Surrebuttal Testimony. *See* Gulf Stmt. No. 1-SR, 9:4-11:10.³ And both Laurel and Gulf were able to further address these studies at the hearing. Laurel did not act to “hide the ball” with respect to Gulf’s studies, and introduce them for the first time during oral examination at hearing. Rather, it timely included those studies in its Rebuttal Testimony and afforded Gulf an adequate opportunity to respond in surrebuttal and on redirect at the evidentiary hearing. Laurel has consistently acted in this manner with all adverse studies produced by the Indicated Parties, and the Indicated Parties should be held to the same standard.

19. Moreover, by delaying the introduction of the Disputed Study until oral examination during the hearings, the Indicated Parties appear to seek to eliminate Laurel’s opportunity to address the study in its testimony. Had the Indicated Parties properly introduced the study in their Surrebuttal Testimony, Laurel could have—and would have—addressed the study in its Rejoinder Testimony, the Indicated Parties would have had the opportunity to conduct additional, abbreviated discovery on Laurel’s Rejoinder Testimony regarding the study, and the parties would have had the opportunity to conduct oral examinations of the witnesses on their conclusions regarding the study. This process would have accommodated the interests of all parties, and afforded all parties the process that they are due. Instead, the Indicated Parties have once again waited until the proverbial eleventh hour to make their submission and have now created a situation with the potential to deny Laurel the process it is due and delay the completion of the evidentiary hearings.

³ Contrary to Gulf’s claims at the hearing, Gulf’s witness Mr. Johnston did have knowledge of the internal Gulf studies because he specifically responded to them in his Surrebuttal Testimony.

20. Yet, Laurel can still be provided the process that it is due by being afforded the opportunity to respond to the Indicated Parties' introduction of the Disputed Study that is described in Section II.D *infra*. The Commission's regulations empower Your Honor to "call for further admissible evidence upon an issue and require that the evidence be presented by the parties concerned" at "any stage in the proceeding." 52 Pa. Code § 5.404(a). The late-introduction of the Disputed Study is precisely the type of issue that requires Laurel to be afforded an opportunity by Your Honor to submit further admissible evidence.

21. Finally, as demonstrated by the Highly Confidential Affidavit of Dr. Michael J. Webb, attached hereto as Appendix A, the severe flaws associated with the inputs, analyses, and conclusions contained in the Disputed Study make clear that Laurel should be afforded an opportunity to respond. The study itself contains flawed assumptions and data regarding [BEGIN HIGHLY CONFIDENTIAL] [REDACTED] [END HIGHLY CONFIDENTIAL], and therefore cannot be relied upon as competent evidence in this proceeding.

22. Therefore, Laurel should be afforded the opportunity described in Section II.D to respond to the Disputed Study, or the study and all related testimony should be excluded from evidence.

C. Husky Cannot Adequately Address Laurel's Right to Respond to Adverse Evidence.

23. Husky cannot be assumed to be able to "stand in Laurel's shoes," to address the Disputed Study in a manner that addresses Laurel's due process rights. While Husky is an intervenor in support of Laurel's Application, it does not bear the burden of proof in this proceeding and at no point in this proceeding have Laurel and Husky jointly submitted or

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sponsored pleadings, discovery and/or testimony. Indeed, Laurel and Husky have individually submitted testimony, and Husky has presented testimony on a substantially narrower set of issues than Laurel.

24. Husky's witness also does not have access to certain highly confidential information upon which Laurel would base its response to the Disputed Study. For instance,

[BEGIN HIGHLY CONFIDENTIAL] [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] **[END HIGHLY**

CONFIDENTIAL] *See* (HC) Appendix A, Highly Confidential Affidavit of Dr. Michael J. Webb (attached hereto). This highly confidential information is essential to the evaluation of the Disputed Study, and Husky's witness is prohibited from accessing it by the Protective Order in this proceeding.

25. And finally, an adequate opportunity to respond to the Disputed Study requires the submission of expert analysis and conclusions. Mr. Miller has been presented as a company witness on behalf of Husky; he has not been presented as an expert witness. Therefore, he cannot be expected to adequately address the findings and conclusions contained in the study.

26. Laurel's own expert witness, Dr. Michael J. Webb, is uniquely positioned to respond to the data and information contained in the Disputed Study, and Husky's witness does not have access to the particular highly confidential information that is required to respond to the study.

D. The Affidavit Of Dr. Michael J. Webb Should Be Admitted Into Evidence, And The Indicated Parties Should Be Afforded The Opportunity To Cross Examine Dr. Webb On Its Contents.

27. In order to resolve the denial of due process that would result from the submission of the Disputed Study without affording Laurel an adequate opportunity to respond, Laurel proposes the following. First, Laurel proposes that the Highly Confidential Affidavit of Dr. Michael J. Webb, attached hereto as Appendix A, be admitted into evidence. In the Affidavit, Dr. Webb analyzes and interprets the Disputed Study in light of other evidence that has already been entered into the record. The study's flawed data and assumptions regarding [BEGIN HIGHLY CONFIDENTIAL] [REDACTED] [REDACTED] [END HIGHLY CONFIDENTIAL], include, in particular:

[BEGIN HIGHLY CONFIDENTIAL]

- | [REDACTED]
- | [REDACTED]
- | [REDACTED]

[END HIGHLY CONFIDENTIAL]

28. Second, Laurel proposes that Dr. Webb be made available for cross examination regarding the contents of his Affidavit and the Disputed Study on Monday, November 13, 2017, *i.e.* the final day of hearings. Laurel notes that both Husky and Laurel agreed to waive the cross examination of Mr. Michael E. Lorenz, subject to being permitted to ask any follow-up questions in response to Your Honor's questions, if any. As such, the schedule for November 13 should allow ample time for the Indicated Parties to cross examine Dr. Webb. In addition, the Indicated

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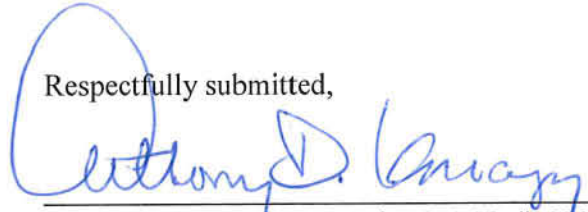
Parties should not be permitted to argue that they lack adequate to time prepare for and conduct the cross-examination of Dr. Webb on November 13; their decision to substantially delay the introduction of the Disputed Study and not include it in their Surrebuttal Testimony is the very cause of any such constraints.

29. To the extent that Laurel's proposal to submit the Affidavit of Dr. Webb into evidence and make Dr. Webb available for cross-examination on Monday, November 13, 2017, is not acceptable, Laurel respectfully requests that Your Honor exclude the Disputed Study and all related testimony from the record. For the reasons more fully explained above, the Indicated Parties action has created a situation that will result in a denial of due process if it is left unresolved. Such a result would substantially impair Laurel's right—as the party bearing the burden of proof—to close, be fundamentally unfair, and potentially result in additional delays in closing the record in this proceeding. Therefore, Laurel should either be afforded the opportunity to respond that is described above, or the Disputed Study and all related testimony should be excluded from the record.

III. CONCLUSION

WHEREFORE, Laurel Pipe Line Company, L.P. respectfully requests that Administrative Law Judge Eranda Vero grant its Motion to Submit a Supplemental Affidavit or, Alternatively, Exclude Certain Cross Examination Exhibits and Testimony.

Respectfully submitted,



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Date: November 12, 2017

Counsel for Laurel Pipe Line Company, L.P.

HIGHLY CONFIDENTIAL

Appendix A


(No Public Version Available)

**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-2017-2587567

AFFIDAVIT


I, Michael J. Webb, being duly sworn according to law, deposes and states that I am an External Consultant for Laurel Pipe Line Company, L.P., and that in this capacity, I am authorized to and do make this affidavit for them, and that the facts set forth in the foregoing are true and correct to the best of my knowledge, information and belief.


Michael J. Webb

Signed and sworn to before me on

November 12, 2017, by

Michael J. Webb making statement.


Notary Public

My commission expires 09-30-2020

(SEAL)

