PUBLIC VERSION - HIGHLY CONFIDENTIAL MATERIALS REDACTED

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
Laurel Pipe Line Company, L.P. – Pipeline Capacity Agreement with Buckeye Pipe Line Company, L.P.	:	Docket No. G-2017-2587567

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I. INTRODUCTION

Laurel Pipe Line Company, L.P. ("Laurel" or the "Company") filed the above-captioned Application on November 14, 2016, to change the direction of transportation service over a portion of its pipeline system. Therein, Laurel sought Commission approval, to the extent required and within the Commission's jurisdiction, to cease the westbound flow of petroleum products over its pipeline system from Eldorado to Coraopolis and to initiate the eastbound flow of petroleum products from origin points in the Midwest to Eldorado.

As a preliminary matter, it is undisputed that all of the service provided on the reversed segment will be in interstate commerce, over which the Commission has no jurisdiction. The only issue in this proceeding is whether Commission approval is required for the eastbound interstate service to supplant westbound intrastate service. As to this issue, the Commission has no power to prevent Laurel from providing interstate service under federal law. In addition, Laurel's 1957 certificate of public convenience does not limit or restrict the direction of petroleum products transportation service; nor does it prescribe any specific origin or destination points of service. Rather, the broad language of the certificate authorizes Laurel to provide petroleum products transportation service in and across Pennsylvania, consistent with Laurel's status as both a common carrier and public utility. Laurel operates in a competitive marketplace, without an exclusive, geographically defined service territory. Laurel therefore has the authority under its existing certificate to implement the proposed reversal to meet changing market conditions without additional approvals from the Commission.

Laurel's proposal will provide Pennsylvania with increased access to lower-cost Midwestern petroleum products supplies. This increased access will result in: (1) lower gasoline prices in Western, Central and Eastern Pennsylvania; (2) increased supply security and reliability in Central Pennsylvania; and (3) decreased reliance on foreign oil imports that currently make up a significant portion of Pennsylvania’s supplies. In addition to these substantial public benefits, the proposed reversal will allow Laurel to efficiently repurpose a segment of its petroleum products pipeline system that has experienced substantial, consistent declines in westbound volumes since 2006.

The driving force behind Laurel’s Application is the ongoing development of the “Shale Revolution.” Pennsylvania, and the Pennsylvania Public Utility Commission (“PUC” or “Commission”) in particular, already have substantial experience in evaluating and approving long lead time projects related to the transportation and distribution of Marcellus Shale natural gas and natural gas liquids. The development of the Marcellus Shale and the transportation infrastructure necessary to bring this gas to market together have produced massive benefits to Pennsylvania’s businesses and residents, including a 60% decline in natural gas prices. Similarly, increased production of lower-cost shale crude oils in the North Central United States and South Central Canada has spurred Midwestern refineries to make substantial capital investments in their refining capabilities and connectivity to these supplies. As a result, Midwestern refineries now have access to lower-cost crude oil supplies, and thereby produce lower-cost refined petroleum products. Midwest consumers have already seen the benefits of this lower-cost supply. Yet, transportation constraints have prevented these benefits from fully reaching Pennsylvania. Laurel’s consolidated Application and Capacity Use Agreement are designed to help relieve these transportation constraints, which, as a part of a larger project by its affiliate Buckeye Pipe Line Company, L.P. (“Buckeye”), will significantly increase Pennsylvania’s access to lower-cost Midwestern supplies without the construction of a new greenfield pipeline, thereby avoiding the environmental impacts associated with new construction.

Despite these self-evident facts of record, Philadelphia Energy Solutions Refining and Marketing, LLC ("PESRM"), Monroe Energy, Inc. ("Monroe"), Gulf Operating, LLC ("Gulf"), Sheetz, Inc. ("Sheetz") and Giant Eagle, Inc. ("Giant Eagle")—collectively the "Indicated Parties"—protest Laurel's proposal. The Indicated Parties contend that Laurel's certificate of public convenience does not permit it to change the direction of service over its pipeline system, that Laurel's proposal constitutes an abandonment of service, and that Laurel has failed to demonstrate the proposal in the public interest. As explained in detail below, the Indicated Parties' arguments: (1) ignore the plain language of Laurel's certificate of public convenience; (2) rely on a flawed, backward-looking analysis that is entirely inconsistent with fundamental economic principles, the internal analyses of their own members, well-documented market trends and basic principles of long-term planning; and (3) would block free market competition in order to protect their own profits and deprive Pennsylvania's citizens of the many benefits associated with Laurel's proposal. For these reasons and the many other reasons addressed below, the Indicated Parties' arguments should be rejected and Laurel's Application should be approved.

II. STATEMENT OF THE QUESTIONS INVOLVED

1. Whether the Commission has jurisdiction over the proposed reversal where all service on the reversed segment will be provided in interstate commerce.

   Suggested answer: *in the negative.*

2. To the extent that the Commission has any jurisdiction over the proposed reversal, whether Laurel must obtain a certificate of public convenience from the Commission in order to implement the proposed change in direction of service.

   Suggested answer: *in the negative.*

3. Assuming the Commission has jurisdiction over the reversal and a certificate of public convenience is required, is the proposed change in direction of service necessary or proper for the convenience, accommodation or safety of the public, and is therefore in the public interest.

   Suggested answer: *in the affirmative.*

4. Whether the proposed capacity use agreement is reasonable and in the public interest.

   Suggested answer: *in the affirmative*.

III. PROCEDURAL HISTORY

On November 14, 2016, Laurel filed the above-captioned Application with the 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 the 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.

On November 19, 2016, the Commission: (1) issued a Secretarial letter that acknowledged receipt of the Application; (2) directed Laurel to publish notice of the application in a newspaper of general circulated in the area involved and file proof of such publication with the Commission by December 19; (3) confirmed that the Commission would publish notice of the Application in the Pennsylvania Bulletin on December 3; and (4) set the deadline for protests and petitions to intervene as December 19.

On November 22, 2016, Gulf filed a petition to intervene and a motion to extend the deadline for filing protests. Laurel filed its Answer on November 29, 2016.

On December 6, 2016, the Commission issued a second Secretarial letter extending the deadline for filing formal protests and petitions to intervene to February 1, 2017.

Also on December 6, 2016, PESRM filed a Petition to Intervene. Laurel filed its Answer on December 27, 2016.

Notice of Laurel’s Application was published in the Pennsylvania Bulletin on December 17, 2016.

On December 22, 2016, the Commission's Bureau of Investigation and Enforcement ("I&E") filed a Petition to Intervene.

On January 3, 2017, Monroe filed a Petition to Intervene. Laurel filed its Answer on January 23, 2017.

On January 31, 2017, Husky Marketing and Supply Company ("Husky") filed a Petition to Intervene in support of the Application. Sunoco, LLC ("Sunoco") filed a Petition to Intervene in opposition to the Application.

On February 1, 2017, Gulf, Monroe, PESRM and I&E filed formal Protests in this proceeding. Giant Eagle and Sheetz both filed Petitions to Intervene and Protests. Clean Air Council also filed a Petition to Intervene.

Discovery in this proceeding began on February 3, 2017, when Gulf served Gulf Set I interrogatories and PESRM served PESRM Set I Interrogatories. Throughout the proceeding, the parties have filed numerous sets of interrogatories and requests for production of documents and requests for admission and related motions to compel, which Laurel does not repeat herein.[1]

On February 6, 2017, Laurel filed a Capacity Agreement at Docket No. G-2017-2857567.

On February 7, 2017, Administrative Law Judge Eranda Vero (the "Presiding Officer") issued a Prehearing Order and scheduled the first prehearing conference for February 14, 2017.

In addition, Laurel served the following Direct Testimony: (1) Laurel Statement No. 1, Direct Testimony of David W. Arnold (and related exhibits); (2) Laurel Statement No. 2, Direct Testimony of William J. Hollis (and related exhibit); (3) Laurel Statement No. 3, Direct

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[1] Notably, however, on March 13, 2017, Gulf and PESRM filed a Petition for Certification of a Material Question, requesting that the ALJ certify a material question regarding discovery issues for review by the Commission. The parties filed briefs regarding the Petition for Certification of a Material Question on March 20, 2017. On March 27, 2017, the ALJ issued an Order Denying Certification. On April 20, 2017, the Indicated Parties filed a Petition for Interlocutory Review of a material question that did not substantially differ from the material question raised in the prior petition for certification filed by Gulf and PESRM. The Petition remained pending with the Commission until November 2, 2017, when Laurel filed a letter advising the Commission that all parties considered the Petition for Interlocutory Review to be moot.

Testimony of Michael J. Kelly (and related exhibits); (4) Laurel Statement No. 4, Direct Testimony of T. Scott Collier (and related exhibit); (5) Laurel Statement No. 5, Direct Testimony of Michael J. Webb (and related exhibits); and (6) Laurel Statement No. 6, Direct Testimony of Robert G. Van Hoecke (and related exhibit). Laurel also filed a Motion to Consolidate the Capacity Agreement with the Application pending at Docket No. A-2016-2575829 on February 7, 2017.

On March 2, 2017, the Presiding Officer issued a Second Prehearing Order, which granted Laurel's Motion to Consolidate the Application and Capacity Agreement and set forth a litigation schedule for the proceeding.

On April 26, 2017, the Presiding Officer issued a Protective Order.

Two public input hearings were conducted on May 16, 2016, in Harrisburg, PA. The two hearings were "smart hearings" and live-streamed via the Commission's website.

On June 1, 2017, the Indicated Parties filed a Motion for Modification and Extension of the Procedural Schedule. Laurel filed its Answer on June 8, 2017.

On June 20, 2017, the Presiding Officer issued an Order Regarding the Motion for Modification and Extension of the Procedural Schedule and modified the litigation schedule by thirty (30) days. Subsequent modification of the briefing schedule occurred, and the litigation schedule proceeded as follows:

Non-Company Direct Testimony	July 14, 2017
Rebuttal Testimony	August 31, 2017
Surrebuttal Testimony	October 6, 2017
Written Rejoinder	October 20, 2017
Evidentiary Hearings (in Harrisburg)	November 6-13, 2017
Main Briefs	December 4, 2017
Reply Briefs	December 21, 2017

On July 14, 2017, the Indicated Parties served their joint Direct Testimony: Indicated Parties Statement Nos. 1 through 4 (and related exhibits). PESRM, Monroe, Gulf, Sheetz, and Giant Eagle also individually served Direct Testimony, respectively Statement No. 1 (and related exhibits) for each entity. Husky served its Direct Testimony, I&E served its Direct Testimony, I&E Statement No. 1 (and related appendices) and Sunoco served its Direct Testimony, Sunoco Statement No. 1 (and related exhibit).[2]

On August 31, 2017, Laurel served the following Rebuttal Testimony: (1) Laurel Statement No. 1-R, Rebuttal Testimony of David W. Arnold (and related exhibits); (2) Laurel Statement No. 2-R, Rebuttal Testimony of William J. Hollis; (3) Laurel Statement No. 4-R, Rebuttal Testimony of T. Scott Collier (and related exhibit); (4) Laurel Statement No. 5-R, Rebuttal Testimony of Michael J. Webb (and related exhibits); (5) Laurel Statement No. 7-R, Rebuttal Testimony of Scott T. Jones (and related exhibits); (6) Laurel Statement No. 8-R, Rebuttal Testimony of Kenneth M. Stern (and related exhibits); (7) Laurel Statement No. 9-R, Rebuttal Testimony of Glen R. Thomas; (8) Laurel Statement No. 10-R, Rebuttal Testimony of Andrew N. Kleit (and related exhibit) and (9) Laurel Statement No. 11-R, Rebuttal Testimony of Mark L. Hereth (and related exhibits).

On October 6, 2017, the Indicated Parties served their joint Surrebuttal Testimony, Indicated Parties Statement Nos. 1-SR through 5-SR (and related exhibits). Monroe, Gulf, Sheetz and Giant Eagle also individually served Surrebuttal Testimony, respectively Statement No. 1-SR (and related exhibits) for each entity. PESRM served both PESRM Statement No. 1-SR and Statement No. 2-SR. In addition, I&E served its Surrebuttal Testimony, I&E Statement No. 1-SR (and related exhibits).

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[2] Laurel advised the Commission on September 7, 2017, that Sunoco agreed to withdraw its Direct Testimony and not submit any additional testimony in this proceeding.

On October 20, 2017, Laurel served the following Rejoinder Testimony: (1) Laurel Statement No. 4-RJ, Rejoinder Testimony of T. Scott Collier; (2) Laurel Statement No. 5-RJ, Rejoinder Testimony of Michael J. Webb (and related exhibits); (3) Laurel Statement No. 6-RJ, Rejoinder Testimony of Robert G. Van Hoecke (and related exhibits); (4) Laurel Statement No. 7-RJ, Rejoinder Testimony of Scott T. Jones; (5) Laurel Statement No. 8-RJ, Rejoinder Testimony of Kenneth M. Stern; and (6) Laurel Statement No. 9-RJ, Rejoinder Testimony of Glen R. Thomas.

On October 26, 2017, the Indicated Parties filed a Motion to Strike portions of Laurel's Rebuttal and Rejoinder Testimony.

On October 27, 2017, the Presiding Officer set the deadline for Laurel's Answer to the Motion to Strike for November 2, 2017, and notified that parties that oral arguments would be provided on the first day of evidentiary hearings, November 6, 2017.

On November 1, 2017, Laurel served Laurel Statement No. 5-SRJ, Supplemental Rejoinder of Michael J. Webb, which addressed certain untimely produced documents by Monroe.

On November 2, 2017, Laurel filed its Answer to the Indicated Parties' Motion to Strike.

On November 3, 2017, Laurel filed a Stipulation in Settlement between the Company and I&E, resolving all issues as between these parties.

Evidentiary hearings began on November 6, 2017. On November 6, 2017, the Presiding Officer denied the Indicated Parties' Motion to Strike and notified the parties that a written order would be issued after the termination of hearings.

During the evidentiary hearings, thirteen (13) witnesses were subject to cross-examination. Cross-examination of all other witnesses was waived and the pre-served Direct, Rebuttal, Surrebuttal, Rejoinder and Supplemental Rejoinder Testimony of the parties was admitted into the record.

Evidentiary hearings ended on November 13, 2017, and the record was closed at that time.

IV. STATEMENT OF FACTS

Laurel's Proposed Findings of Fact, Proposed Conclusions of Law and Proposed Ordering Paragraphs are attached to this Brief as Appendices A, B and C, respectively.

V. BURDEN OF PROOF

Section 332(a) of the Public Utility Code, 66 Pa. C.S. § 332(a), provides that the party seeking a rule or order from the Commission has the burden of proof in that proceeding. A litigant's burden of proof before administrative tribunals as well as before most civil proceedings is satisfied by establishing a preponderance of evidence, which is substantial and legally credible. *Se-Ling Hosiery v. Margulies*, 364 Pa. 45, 70 A.2d 854 (Pa. 1950); *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n*, 578 A.2d 600, 602 (Pa. Cmwlth. 1990). The preponderance of evidence standard requires proof by a greater weight of the evidence. *Cmwlth. v. Williams*, 557 Pa. 207, 732 A.2d 1167 (Pa. 1999). If Laurel presents evidence found to be of greater weight than the other parties, then the Company will have carried its burden of proof. *Morrissey v. Commonwealth of Pennsylvania*, 424 Pa. 87, 225 A.2d 895 (Pa. 1986); *Burleson v. Pa. P.U.C.*, 501 Pa. 433, 436, 641 A.2d 1234, 1236 (Pa. 1983); *V.J.R. Bar Corp. v. P.L.C.B.*, 480 Pa. 322, 390 A.2d 163 (Pa. 1978); *Milkie v. Pa. P.U.C.*, 768 A.2d 1217, 1220 (Pa. Cmwlth. 2001). Consequently, as the party seeking relief, Laurel bears the burden of proving that its proposed reversal is necessary or proper for the convenience, accommodation or safety of the public and is therefore in the public interest[3]—to the extent that any approvals of its Application are required and within the regulatory jurisdiction of the Commission.

Although Laurel bears the burden of proving that its proposed reversal is in the public interest, a party that makes a proposal that is not included in a public utility's case bears the burden of proof as to its proposal. For example, in *Pa. P.U.C. v. Metropolitan Edison Company, et al.*, Docket Nos. R-00061366, et al., 2007 Pa. PUC LEXIS 5 (Order Entered Jan. 11, 2007), a party offered proposals that were not included in the public utilities' filings. The ALJ held that, as the proponent of a Commission order with respect to the offered proposals, the party bears the burden of proof as to proposals that are not included in the companies' filings. The Commission agreed and adopted the ALJ's conclusion that the Public Utility Code cannot reasonably be read to place the burden of proof on the utility with respect to a proposal that the utility did not include in its filing and which, frequently, the utility would oppose. *Id.*, at *184-87. *See also Joint Default Service Plan for Citizens' Electric Company of Lewisburg, PA and Wellsboro Electric Company for the Period of June 1, 2010 through May 31, 2013*, Docket Nos. P-2009-2110798, et al., 2010 WL 1259684 at *2, 19-20 (Order Entered Feb. 25, 2010) (the companies had the burden of proof as to the proposed plan, but other parties that had submitted their own proposals bore the burden of proof with respect to their proposals).[4]

Additionally, any finding of fact necessary to support an adjudication of the Commission must be based upon substantial evidence. *Met-Ed Indus. Users Group v. Pa. Pub. Util. Comm'n*,

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[3] The "substantial public interest" standard is satisfied by a simple preponderance of the evidence of benefits and such burden can be met by showing a likelihood or probability of public benefits that need not be quantified or guaranteed. *Popowsky v. Pa. Pub. Util. Comm'n*, 594 Pa. 583, 611, 937 A.2d 1040, 1057 (Pa. 2007). Further, the substantial public benefit test does not require that every customer of a utility benefit from the utility's proposal. *Popowsky*, at 617-18, 937 A.2d at 1061.

[4] At various points in this proceeding, the Indicated Parties have argued that Laurel could have taken actions (*e.g.*, constructed a new pipeline, sought binding commitments from existing shippers) other than the proposed reversal to address the consistent, substantial decline in volumes over its system. With respect to each of these proposed alternatives, the Indicated Parties bear the burden of proof.

960 A.2d 189, 193 n.2 (Pa. Cmwlth. 2008) (citing 2 Pa. C.S. § 704). Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. *Borough of E. McKeesport v. Special/Temporary Civil Serv. Comm'n*, 942 A.2d 274, 281 (Pa. Cmwlth. 2008). The "presence of conflicting evidence in the record does not mean that substantial evidence is lacking." *Allied Mechanical and Elec., Inc. v. Pa. Prevailing Wage Appeals Bd.*, 923 A.2d 1220, 1228 (Pa. Cmwlth. 2007) (citation omitted). Moreover, the credibility of witnesses in an evidentiary hearing falls within the purview of the ALJ. *See Application of Scranton Transportation, LLC*, 2015 Pa. PUC LEXIS 282, at *14 (Opinion and Order Entered June 19, 2014).[5] The role of the ALJ in assessing the credibility of witnesses and the evidence presented is especially important where, as here, the Indicated Parties have provided evidence that is internally inconsistent and therefore not credible.

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[5] Indeed, "the credibility of witnesses is best assessed by the presiding fact-finder who is able to observe the demeanor of a witness and determine what weight, if any, should be placed on his/her testimony." *See Application of the Audobon Water Company*, 1989 Pa. PUC LEXIS 67, at *13 (Order Entered April 6, 1989)

VI. SUMMARY OF ARGUMENT

Jurisdiction.[6] Laurel plans to change the direction and jurisdiction of service between Pittsburgh and Altoona. All transportation service on the reversed segment will be in interstate commerce, over which the Commission has no jurisdiction. No Commission approval is required for Laurel to offer interstate service on the reversed segment, and the Commission will have no jurisdiction over interstate service on the reversed segment.

Service on the reversed segment will be solely and exclusively regulated by the Federal Energy Regulatory Commission ("FERC") under the Interstate Commerce Act. The fact that intrastate service will be supplanted by interstate service as a result of the reversal is immaterial. Interstate service preempts intrastate service under both the Commerce Clause of the United States Constitution and federal preemption under the Supremacy Clause and the Interstate Commerce Act. Any action by the Commission to forestall the offering of interstate service on the reversed segment would be a direct and unconstitutional interference with interstate commerce.

No Certificate Of Public Convenience Is Required.[7] Laurel is a common carrier. It has no exclusive monopoly geographic service territory. It operates in a highly competitive market and must be able to change and adapt its service offerings to meet changing market conditions. This common carrier status is reflected in Laurel's certificate of public convenience, which provides no exclusive geographic service territory, does not specify a direction of service and does not specify any origin or destination points of service. This is completely different from fixed utilities, *e.g.*, electric, gas and water, that have exclusive monopoly service territories and a corresponding obligation to serve. The Indicated Parties improperly seek to read limiting

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[6] *See* Section VII.A.1 *infra.*

[7] *See* Section VII.A.2 *infra.*

conditions into Laurel's certificate that do not exist and would be completely inconsistent with Laurel's status and operations as a common carrier.

Laurel does not directly transport any products to end users; ultimate delivery to the consumer almost always occurs by truck. All origin points and all destination points will continue to receive service after the reversal and all consumers will continue to receive product after the reversal. No certificated service will be abandoned; there will simply be a change in the direction of service to meet market demands and changing market conditions, for which no certificate should be required.

Standard of Review.[8] To the extent additional certificate authority is required, the standard of review is set forth by the legislature in Section 1103 of the Code, as follows: "A certificate of public convenience shall be granted by order of the commission, only if the commission shall find or determine that the granting of such certificate is necessary or proper for the service, accommodation, convenience, or safety of the public." 66 Pa C.S. § 1103(a). In oil pipeline abandonment proceedings, the Commission has consistently applied the "affirmative public benefits test." *See Application of Sunoco Pipeline, L.P.*, Docket Nos. A-2013-2371789, P-2013-2371775 (Order entered Aug. 29, 2013); *Application of Buckeye Pipe Line Company, L.P.*, Docket No. A-140110F2000 (Order Entered March 7, 2005). Case decisions applying Section 1103 and the affirmative public benefits test provide important guidance in reviewing Laurel's application in this proceeding. Specifically, there is no requirement for absolute necessity; future need and future benefits are sufficient to demonstrate that a project is in the public interest; and the applicant is not required to quantify the benefits of a project.

The Indicated Parties contend that the Commission should apply what they characterize as the "four-part" abandonment test. This test should not be applied in an oil pipeline

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[8] *See* Section VII.B. *infra*.

abandonment proceeding, because oil pipelines do not have exclusive geographic service territories and no corresponding obligation to serve, face extensive competition and their shippers have many alternatives. And, even if this test were applied, it is not a “four-part” test; it is a multi-factor analysis under which Laurel’s Application would be approved as in the public interest.

Finally, regardless of what standard is applied, the ultimate issue, by statute, is whether the project is in the public interest.

The Proposed Change In Direction Of Service Is In The Public Interest. The United States is in the midst of a “shale revolution,” which is fundamentally changing where and how the United States obtains its energy supplies. Pennsylvania has already seen the benefits of the shale revolution through the development and delivery of natural gas from the Marcellus Shale. Natural gas utilities, which used to buy virtually all of their natural gas supplies in Texas and Louisiana and transport these supplies to Pennsylvania via long line, interstate pipelines, now purchase gas produced from the Marcellus Shale through new and reversed pipelines, resulting in a dramatic and unprecedented decline of over 60%, in natural gas prices for consumers.[9]

Pennsylvania is now poised to benefit from the further development of the shale revolution. Increased production of lower cost shale oil from the Dakotas and petroleum from the growing oil sands production in South Central Canada is being processed by Midwest refineries who have invested billions of dollars to increase their ability to refine and process this lower cost crude oil. The cost of crude oil is the “overwhelming” factor in the determining the retail cost of gasoline, *i.e.*, lower cost crude oil equates to lower cost gasoline.[10] These benefits are already being reaped by consumers in the Midwest. Midwest refineries now have excess

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[9] *See* Section VII.C.1.d. *infra*.

[10] *See* Section VII.C.1.b.i.1. *infra*.

capacity and are seeking alternative markets for their lower-cost gasoline to the south and the east. Some of these low-cost supplies are already reaching Pittsburgh—shipments to Pittsburgh from the east have already declined by over 55%, are expected to decline further after the reversal and reach zero or near zero in the intermediate term future.[11]

Currently, however, transportation constraints prevent this lower-cost Midwest-refined gasoline from reaching Central and Eastern Pennsylvania. The reversal and associated debottlenecking work on Buckeye will expand overall refined petroleum supplies into the state of Pennsylvania. After the reversal, for the first time, lower-cost Midwest supplies and corresponding lower-priced gasoline will be able to reach Central Pennsylvania by pipeline, including Johnstown, Altoona, State College and Harrisburg. The opposing parties concede, as they must, that the reversal will reduce gasoline prices in Central Pennsylvania.

And, as more volumes move east from the Midwest, they will push out generally higher cost supplies on the East Coast, particularly overseas supplies, which are the marginal (highest cost) supply to the East Coast.[12] This, in turn, will reduce gasoline prices in Eastern Pennsylvania, including Philadelphia. Again, the Indicated Parties concede, as they must, that the reversal will result in lower gasoline prices in Eastern Pennsylvania, including Philadelphia.[13]

Finally, it is uncontested that Laurel's proposed project will reduce overseas imports and further promote energy independence. The United States became a net exporter of petroleum products in 2010, for the first time since 1949.[14] However, a substantial portion of East Coast

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[11] *See* Section VII.C.1.a. *infra.*
[12] *See* Section VII.C.2.b *infra*.
[13] *See* Section VII.C.1.2.b.iv. *infra*.
[14] *See* Laurel Statement No. 8-R, p. 30.

gasoline is made from imported crude oil. The proposed reversal will further reduce reliance on overseas oil and provide important national security benefits.[15]

These overwhelming benefits demonstrate that Laurel's proposed change in direction of service is in the public interest and should be approved.

Alleged Harms.[16] The Indicated Parties do not seriously dispute any of the above-referenced benefits. They acknowledge the reversal will reduce gasoline prices in Central and Eastern Pennsylvania, with one witness testifying that the reversal will result in a **[BEGIN HIGHLY CONFIDENTIAL]** [redacted] **[END HIGHLY CONFIDENTIAL]**

The Indicated Parties, however, present three broad arguments against the reversal, including: (1) the reversal is not needed; (2) the reversal will increase Pittsburgh gasoline prices; and (3) the reversal will result in lost profits for East Coast refineries.

Each of these arguments and related ancillary arguments presented by the Indicated Parties are addressed in detail in the body of this Brief. There are, however, two overarching flaws in these arguments. First, their arguments are based entirely on current or past conditions and do not reflect the full impact of the shale revolution and current transportation constraints. The Indicated Parties simply "plug in" the reversal to their models, assume nothing else will change and argue that they and the public will be harmed. This is a fundamentally flawed approach. Oil markets are dynamic, not static. The need for the proposed reversal, like all long-term projects, is based on forecasted future conditions, not past conditions. Energy and infrastructure companies must plan for the future if they are to meet demand at a reasonable cost. The Commission and the courts have repeatedly held that future benefits can and must be

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[15] *See* Section VII.C.1.d. *infra*.

[16] *See* Section VII.C.2. *infra*.

considered in determining whether a project is in the public interest.[17] Otherwise, no new energy or infrastructure project would ever be approved and, in the context of this proceeding, the opposing parties would continue to be protected from free market competition with the public footing the bill through higher gasoline prices.

Second, the testimony and documents presented by the Indicated Parties are, to a remarkable degree, internally inconsistent. In fact, all of the major arguments presented by the Indicated Parties on the key factual issues in this case are flatly contradicted by their own documents and their own testimony. Three key examples are provided below.

- **Excess capacity from the Midwest to Pittsburgh.** Dr. Arthur, testified at hearing that "There is excess capacity from the Midwest to Pittsburgh" on existing pipelines (Hearing Tr. 757:23). Gulf's witness, Mr. Johnston, directly contradicted this testimony and stated that "It is almost logistically impossible to move petroleum products from Chicago-area refineries to the Pittsburgh area due to pipeline capacity limitations." (Gulf St. No. 1, p. 12) Gulf is a terminal owner in Pennsylvania and is uniquely positioned to know if there are constraints on pipelines reaching Pittsburgh. Yet, Dr. Arthur disregarded the facts and testimony of his own client.

- **Midwestern refinery cost advantages.** Indicated Parties witness, Mr. Schaal, testified that the Midwestern refineries' crude oil cost advantage is not projected to continue in the future. (IP St. No. 2-SR, pp. 5-6, 15.) However, Monroe's **[BEGIN HIGHLY CONFIDENTIAL]** [redacted] **[END HIGHLY CONFIDENTIAL]**[18] Gulf **[BEGIN HIGHLY CONFIDENTIAL]** [redacted] **[END HIGHLY CONFIDENTIAL]**[19] And Mr. Schaal's testimony in this proceeding is contradicted by his own, independent projections. **[BEGIN HIGHLY CONFIDENTIAL]** [redacted] **[END HIGHLY CONFIDENTIAL]**[20] These documents confirm

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[17] *See* Section VII.B.1. *infra*.
[18] *See* Section VII.C.1.b.v. *infra*.
[19] *See* Section VII.C.1.b.v. *infra*.
[20] *See* Section VII.C.1.b.v. *infra*.

that, contrary to Mr. Schaal's surrebuttal testimony, Midwestern refineries will continue to enjoy a significant crude oil cost advantage over East Coast refineries for the indefinite future.

- **East Coast refinery alternatives.** The Indicated Parties testified that the East Coast refineries do not have adequate alternatives if Laurel's proposed reversal is approved. (PESRM St. No. 1, pp. 6-7; Monroe St. No. 1, p. 6) However, public and highly confidential documents produced by the refineries directly contradict their testimony. PESRM is interconnect to a vast network of pipelines and markets, and publically touts to its investors that "a vast network of truck loading racks, pipelines, barges, refined product storage terminals and docks located at, or downstream of the Philadelphia refining complex that enable [Philadelphia Energy Solutions] Refining to market and distribute its refined products throughout PADD I and internationally."[21] Monroe is similarly connected to a vast network of pipelines and markets, and regularly utilizes these options.[22] In fact, **[BEGIN HIGHLY CONFIDENTIAL]** [redacted] **[END HIGHLY CONFIDENTIAL]**[23]

One of the important tasks of an Administrative Law Judge is to judge the credibility of witnesses, and the clearest proof of a lack of credibility is inconsistency. These are just three examples in which the Indicated Parties' case is inconsistent and not credible. Therefore, their case should be given no weight.

Need. Citing current "excess transportation capacity" available from the Midwest, the Indicated Parties appear to contend that the Laurel reversal is not presently needed.[24] This argument should be summarily rejected. First, the total capacity on a pipeline is not an accurate measure of its ability to deliver product to a particular destination point. Testimony demonstrates that geographic, operational, terminal capacity and other factors combine to currently constrain deliveries from the Midwest into Pittsburgh.

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[21] (Laurel Exhibit MJW-9, pp. 167–168 (internal pages 153–154) (emphasis added).)

[22] *See* Section VII.C.2.b.iii.2. *infra*.

[23] *See* Section VII.C.2.b.iii.2. *infra*.

[24] *See* Sections VII.C.1.b.i.8. and VII.C.2.a.iii.1. *infra*.

Second, the Indicated Parties improperly seek to narrow the focus of this project to Pittsburgh. Yet, the primary purpose of this project is to provide low-cost Midwest refineries access to Central Pennsylvania by allowing product to be delivered to Altoona from the west, from where it can be delivered by truck to Johnstown, State College and Harrisburg.

Third, the need for the Laurel reversal is fully demonstrated by the committed shippers who have entered into ten-year agreements committing to ship product on the reversed line. If there were already available transportation capacity to Pennsylvania, these shippers surely would not commit millions of dollars and make long-term commitments to increase their access to Pennsylvania markets.

Finally, as noted above, the Indicated Parties' argument that deliveries to Pittsburgh from the Midwest are unconstrained is diametrically opposed to the testimony of their own witness, Mr. Greg Johnston, who testified that it is "almost logistically impossible" to transport refined petroleum products from the Midwest to Pittsburgh.[25] Mr. Johnston is a terminal operator and perhaps in the best position to actually know whether or not there are delivery constraints to particular locations on the pipeline systems connecting Midwestern supplies to Pittsburgh. His testimony is fully consistent with the Laurel and Husky testimony demonstrating that transportation from the Midwest is constrained and that the Laurel reversal is needed and in the public interest.[26]

Pittsburgh Gasoline Prices. Modern, efficient, Midwest refineries are making lower-cost gasoline from lower-cost crude oil.[27] Midwest consumers currently enjoy the benefits of lower cost supplies, and the Indicated Parties concede that the reversal will result in lower prices

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[25] *See* Section VII.C.2.a.iii.1. *infra*.
[26] *See* Section VII.C.1.b.i.8 *infra*.
[27] *See* Section VII.C.1.a.i. *infra*.

in Central and Eastern Pennsylvania.[28] Yet, they somehow contend that prices in Pittsburgh will be higher after the reversal.[29] As explained by Laurel witness Dr. Scott T. Jones, basic laws of supply and demand dictate that replacing higher cost supply from East with lower cost supply from the Midwest will result in lower gasoline prices in Pittsburgh—approximately $0.05 to $0.08 cents per gallon, or approximately $80,000 per day.[30]

In the face of this evidence, the Indicated Parties contend, through the testimony of Dr. Arthur and Mr. Schaal, that the proposed reversal will increase gasoline prices in Pittsburgh.[31] The many flaws in Dr. Arthur's conclusions, which defy common sense and basic economics, are discussed in the body of this Brief. However their analyses must fail for two overarching reasons. First, they are based entirely on historical data before the reversal is completed and, therefore, project nothing about the impact of the reversal on future Pittsburgh gasoline prices. Second, their conclusions make no sense. Under their analyses, one is supposed to believe that lower cost gasoline produced by Midwest refiners has reduced Midwest gasoline prices, will reduce gasoline prices in Central Pennsylvania, will reduce gasoline prices in Eastern Pennsylvania, but somehow will increase prices in Pittsburgh and Western Pennsylvania.[32] Dr. Arthur and Mr. Schaal do not and presumably cannot explain this fundamental inconsistency in their analyses.

Finally, and again, the Indicated Parties' own documents fully refute Dr. Arthur's and Mr. Schaal's analyses. **[BEGIN HIGHLY CONFIDENTIAL]** [redacted]

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[28] *See* Section VII.C.1.b.ii.2*infra*.
[29] *See* Section VII.C.2.a.i-ii. *infra*.
[30] *See* Section VII.C.1.b.ii.3. *infra*.
[31] *See* Section VII.C.2.a.i-ii *infra*.
[32] *See* Section VII.C.1.b.ii.2. *infra* (reducing Central and Eastern Pennsylvania gasoline prices); *see also* Section VII.C.2.a.i-ii. (claiming Pittsburgh prices will increase).

[redacted] **[END HIGHLY CONFIDENTIAL]** Dr. Arthur's and Mr. Schaal's analyses is flawed and inconsistent with all credible record evidence and should be rejected.

Refinery Profits.[34] Citing lost sales from the "highly profitable" Pittsburgh market, the Philadelphia refineries predict lost profits, financial harm and lost jobs. There are several fundamental problems with this argument. First, Pittsburgh is not a highly profitable market for the Philadelphia refineries. The Philadelphia refineries sell virtually all of their output at a Philadelphia posted price. They do not make more money if the product goes to Pittsburgh, versus any other destination. The destination is irrelevant; the profit is the same. In fact, the Philadelphia refineries do not even know how much of their product goes to Pittsburgh.

Second, the refineries' argument that Pittsburgh is an important market is belied by the fact that they and their customers ship very little of their product to Pittsburgh and are shipping less and less all the time. Shipments from Philadelphia to Pittsburgh have declined by over 55% in the last ten years and continue to decline at a substantial and consistent rate. The lack of importance of the Pittsburgh market is further shown by the Indicated Parties own testimony and documents. The Pittsburgh market's lack of importance is best shown by PESRM's own testimony.[35] **[BEGIN HIGHLY CONFIDENTIAL]** [redacted] **[END HIGHLY CONFIDENTIAL]**[36]

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[33] **[BEGIN HIGHLY CONFIDENTIAL]** [redacted] **[END HIGHLY CONFIDENITAL]**

[34] *See* Section VII.C.2.b.iv. *infra*.

[35] *See* Section VII.C.2.b.i-ii.*infra*.

[36] *See* Section VII.C.2.b.i. *infra*.

Third, any loss of the Pittsburgh market will not cause the Philadelphia refineries to lose any sales; rather overseas suppliers, which are the highest-cost (*i.e.* marginal) supplier, will be backed out of the East Coast market and the Philadelphia refineries will step in and make those sales.[37] The Indicated Parties also assert they have no alternative outlets for their product. This is simply not true. By their own admission, these refineries have many alternatives to get their product to market, which they have been using, are actually using today and will continue to use in the future to make up for their ever declining shipments to Pittsburgh.[38] As PESRM itself has candidly stated, in direct contradiction to its sworn testimony in this proceeding: "a vast network of truck loading racks, pipelines, barges, refined product storage terminals and docks located at, or downstream of the Philadelphia refining complex that enable [Philadelphia Energy Solutions] Refining to market and distribute its refined products throughout PADD I and internationally."[39] Moreover, as a part of the proposed Laurel reversal, PESRM has been afforded an additional alternative to move additional volumes into Upstate New York.[40]

While the Philadelphia refineries will not lose any sales, all parties agree the proposed reversal will increase competition and reduce gasoline prices in Central and Eastern Pennsylvania. This may result in reduced profits for the Indicated Parties and could broadly be characterized as a "harm" from the proposed reversal. However, this so-called "harm" results directly from the affirmative public benefit of lower gasoline prices and provides no basis for rejecting the proposed reversal.

The Commission must regulate in the public interest, not the private interest. Laurel's proposed change in direction of service will benefit every Pennsylvanian through greater access

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[37] *See* Section VII.C.2.b.iv. *infra*.
[38] *See* Section VII.C.2.b.iii. *infra*.
[39] (Laurel Exhibit MJW-9, pp. 167–168 (internal pages 153–154) (emphasis added).)
[40] *See* Section VII.C.2.b.iii.4. *infra*.

to lower-cost Midwest supplies, lower gasoline prices, increased reliability of supply and decreased imports of overseas oil. The Indicated Parties ask the Commission to reject the reversal and deny all of these public benefits in order to insulate themselves from competition and preserve their profitability. This is not an acceptable result. The Commission should promote the public interest and promote competition—not protect the interest and profits of individual competitors. This project is clearly and obviously in the public interest and should be approved.

VII. ARGUMENT

A. Commission Approval Is Not Required For The Reversal.

1. Federal Law Precludes The Commission From Impeding Laurel's Interstate Transportation Of Petroleum Products.

Two aspects of federal law preclude the Commission from impeding Laurel's attempt to provide interstate service. First, the Commission's authority to approve or deny the reversal is preempted by Congress' clear intent that entry into and exit from the interstate transportation business be determined by market forces, as in this case, and not by public utility-type regulation. Second, the dormant Commerce Clause of the United States Constitution would be violated by a Commission order preventing Laurel from providing interstate service and, instead, requiring that service be reserved for in-state refineries.

These federal limitations on the Commission's authority apply regardless of any Pennsylvania law to the contrary, but the Public Utility Code itself recognizes such limitations. *See* 66 Pa. C.S. § 104 ("The provisions of this part, except when specifically so provided, shall not apply, or be construed to apply, to commerce with foreign nations, or among the several states, except insofar as the same may be permitted under the provisions of the Constitution of the United States and the acts of Congress."). Either ground prohibits the Commission from impeding reversal of the pipeline.[41]

a. Federal Law Preempts The Commission's Authority To Prevent Reversal Of The Pipeline.

The Commission's ability to require approval of reversal of the pipeline is preempted by federal law. "The Supremacy Clause of the United States Constitution, U.S. Const. art. VI, cl. 2, invalidates state law that interferes with or is contrary to federal law." *Farina v. Nokia, Inc.*, 625 F.3d 97, 115 (3d Cir. 2010). "Preemption can apply to all forms of state law," including state agency rulings. *Id.* Preemption takes various forms, but here, we deal with conflict preemption, which nullifies state law that "stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress." *Crosby v. Nat'l Foreign Trade Council*, 530 U.S. 363, 373 (2000).

In determining whether state law is preempted, "the purpose of Congress is the ultimate touch-stone." *Medtronic, Inc. v. Lohr*, 518 U.S. 470, 485 (1996). The United States Supreme Court has made clear that Congress' intent is discerned not only from Congress' express statements, but also from "the structure and purpose of the statute as a whole, as revealed not only in the text, but through the reviewing court's reasoned understanding of the way in which Congress intended the statute and its surrounding regulatory scheme to affect business, consumers, and the law." *Id.* When confronted with obstacle conflict preemption, the court must make "a broader inquiry into the purposes underlying a federal statute, and whether a state law stands as an obstacle to effectuation of those purposes." *Lozano v. City of Hazleton*, 620 F.3d 170, 204 (3d Cir. 2010), *vacated on other grounds by* 563 U.S. 1030 (2011). Determining

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[41] An improper impedance of interstate by the Commission in this case would include, but not be limited to: denying or imposing unreasonable conditions upon granting Laurel's Application; failing to approve the proposed capacity agreement between Laurel and Buckeye Pipe Line Company, L.P.; or failing to approve Laurel's proposed tariff cancelling westbound service to points west of Eldorado.

"[w]hat is a sufficient obstacle is a matter of judgment, to be informed by examining the federal statute as a whole and identifying its purpose and intended effects:

> For when the question is whether a Federal act overrides a state law, the entire scheme of the statute must of course be considered and that which needs must be implied is of no less force than that which is expressed. If the purpose of the act cannot otherwise be accomplished -- if its operation within its chosen field else must be frustrated and its provisions be refused their natural effect -- the state law must yield to the regulation of Congress within the sphere of its delegated power.

Crosby, 530 U.S. at 373 (citations omitted).

Importantly for present purposes, and consistent with the requirement that the entire purpose and structure of the federal regulatory scheme be considered in any preemption analysis, the Supreme Court has made clear that "a federal decision to forgo regulation in a given area may imply an authoritative federal determination that the area is best left *un*regulated, and in that event would have as much pre-emptive force as a decision *to* regulate." *Transcontinental Gas Pipe Line Corp. v. State Oil & Gas Bd.*, 474 U.S. 409, 422 (1986) (emphasis in original).

Here, the federal law governing oil pipelines indicates a clear congressional intent to permit free entry into and exit from the interstate transportation business, as market forces dictates and that public utility regulation should not govern this decision. A ruling by the Commission that impedes Laurel from reversing the pipeline in order to provide interstate service, in response to market forces, would stand as an obstacle to this federal purpose and, therefore, would be preempted.

The federal government has had strong regulatory interests in oil pipelines since soon after they came to prevalence in the late 19th Century. The 1906 Hepburn Act applied the federal Interstate Commerce Act ("ICA") to oil pipelines and gave the Interstate Commerce Commission jurisdiction over pipelines. Pub. L. No. 59-337, § 1, 34 Stat. 584, 584. In 1977, the

Department of Energy Reorganization Act transferred responsibility for oil pipeline regulation to the newly created FERC. Pub. L. No. 95-91, § 402(b), 91 Stat. 565, 584. The following year, Congress comprehensively revised and recodified the ICA, but provided that its 1977 provisions would continue to govern FERC's regulation of oil pipelines.[42] Pub L. No. 95-473, § 4(c), 92 Stat. 1337, 1470. The ICA declares oil pipelines to be common carriers, 49 U.S.C. § 1(3) and imposes on pipelines many of the same obligations as other common carriers, including the duties to: provide and furnish transportation service upon reasonable request, *id.* § 1(4); establish, file, and publish just, reasonable and nondiscriminatory rates subject to federal approval, *id.* §§ 1(5), 3(1), 6, 15(1), 15(7); avoid certain pooling relationships, *id.* § 5(1); and file certain financial reports and use certain accounting procedures subject to federal specifications, *id.* §§ 20(1), (2), (4), (5).

However, Congress did not impose on oil pipelines the ICA's restrictions on common carriers' entry into a market, acquisitions, or commencement and abandonment of service. *Farmers Union Cent. Exch. v. FERC*, 584 F.2d 408, 413 (D.C. Cir. 1978) ("*Farmers Union I*"). Federal courts have concluded that this conspicuous omission indicates a clear congressional intent that entry and exit of oil pipelines should be free from the typical regulation imposed on public utilities and, instead, be determined by market forces:

> [W]e may infer a congressional intent to allow a freer play of competitive forces among oil pipeline companies than in other common carrier industries and, as such, we should be especially loath uncritically to import public utilities notions into this area without taking note of the degree of regulation and of the nature of the regulated business.

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[42] As a result, the 1977 version of the ICA was reprinted in the appendix to Title 49 of the United States Code. However, the 1988 U.S. Code was the last edition to contain this reprinting. Therefore, all citations to the ICA refer to the 1988 U.S. Code.

Id. FERC concurs with this assessment. *See, e.g.*, *Revisions to Oil Pipeline Regulations Pursuant to the Energy Policy Act of 1992*, 65 F.E.R.C. ¶ 61,109 (Oct. 22, 1993) ("Many constraints commonly associated with utility-type regulation, such as review and approval of construction or acquisition and abandonment or sale of facilities, were not imposed on oil pipelines. This has been interpreted as reflecting a Congressional intent to allow market forces freer play within the oil pipeline industry than was allowed for other common carrier industries."); *Plantation Pipe Line Co. v. Colonial Pipeline Co.*, 104 F.E.R.C. ¶ 61,271 (Sept. 11, 2003) ("The history of oil pipeline regulation since this Commission assumed jurisdiction over the pipelines shows a continuing Congressional intent that such regulation should be less stringent than the regulation of other common carriers.").

Significantly, federal courts have specified that the conduct like that at issue here is precisely where Congress intended for market forces to have "freer play," without the restrictions of typical public utility regulation:

> Competitive forces are given freer play by permitting companies to decide for themselves whether to enter a geographic territory already served by another pipeline company (which would be unlawful without regulatory consent in a utility industry having exclusive service territories). Similarly, pipeline companies may abandon service at will (which would be unlawful for many other utilities).

Farmers Union Cent. Exch. v. FERC, 734 F.2d 1486, 1509 n.51 (D.C. Cir. 1984) (emphasis added) ("*Farmers Union II*").

Thus, however Laurel's proposed reversal is characterized – incorrectly, as an abandonment of service or provision of new service or, correctly, as a change in service in response to changing economics – it is clear that Congress intended pipelines to be able to make such decisions in response to market forces, free from public utility-type regulation. Any purported requirement of Commission approval for the reversal would stand as an impassable obstacle to the realization of this congressional purpose and, therefore, must be preempted. Simply stated: the clear congressional intent that pipeline companies enter and exit markets based on competitive forces precludes the Commission from imposing a *de facto* certificate requirement on Laurel's entry into the interstate market.

This conclusion finds strong support in the United States Supreme Court's decision in *Transcontinental Gas Pipe Line Corp. v. State Oil & Gas Board*, 474 U.S. 409 (1986). There, the State Oil and Gas Board of Mississippi ("Gas Board") ordered a pipeline to purchase gas from all parties owning interests in a common gas pool in proportion to the owners' respective interests, even though the pipeline had preexisting contracts with less than all the owners. The pipeline argued that the order was preempted by federal law. It was conceded that under the Natural Gas Act of 1938 ("NGA"), which imposed "utility-type ratemaking" control over the price and supply of gas, the order would have been preempted. But the Gas Board contended that the order was not preempted because the Natural Gas Policy Act of 1978 ("NGPA") had stripped FERC of jurisdiction over the wellhead sale of gas. The Supreme Court disagreed.

The Court noted that the intent of the NGPA was to replace the "artificial pricing scheme" of the NGA with a market-based regulatory scheme. *Id.* at 420-21. The Court held that the removal of FERC's jurisdiction over wellhead sales simply reflected this new federal policy and that the new market-based federal scheme still preempted the Gas Board's order:

> That FERC can no longer step in to regulate directly the prices at which pipelines purchase high-cost gas … has little to do with whether state regulations that affect a pipeline's costs and purchasing patterns impermissibly intrude upon federal concerns. Mississippi's action directly undermines Congress' determination that the supply, the demand, and the price of high-cost gas be determined by market forces. To the extent that Congress denied FERC the power to regulate affirmatively particular aspects of the first sale of gas, it did so because it wanted to leave determination of supply and first-sale price to the market. A federal decision to

> forgo regulation in a given area may imply an authoritative federal determination that the area is best left unregulated, and in that event would have as much pre-emptive force as a decision to regulate.
>
> The proper question in this case is not whether FERC has affirmative regulatory power over wellhead sales of … gas, but whether Congress, in revising a comprehensive federal regulatory scheme to give market forces a more significant role in determining the supply, the demand, and the price of natural gas, intended to give the States the power it had denied FERC. The answer to the latter question must be in the negative. … In light of Congress' intent to move toward a less regulated national natural gas market, its decision to remove jurisdiction from FERC cannot be interpreted as an invitation to the States to impose additional regulations.

Id. at 422 (citations omitted).

Similarly, Congress' decision to withhold from FERC the power to review pipeline entry, commencement of service, or abandonment is not an invitation for state regulation of the type that the Indicated Parties contend is required here. Rather, it reflects Congress' intent that these decisions be made by pipelines in response to market forces. *Farmers Union I,* 584 F.2d at 413; *Farmers Union II*, 734 F.2d at 1509 n.51. This clear congressional intent preempts the Commission from requiring approval for Laurel's reversal.

b. A Commission order impeding Laurel's interstate transportation of petroleum products would violate the Commerce Clause of the United States Constitution.

A Commission order prohibiting reversal of the pipeline would also run afoul of the Commerce Clause of the United States Constitution, U.S. Const. art. I, § 8, cl. 3. The Commerce Clause "not only grants Congress the authority to regulate commerce among the States, but also directly limits the power of the States to discriminate against interstate commerce." *New Energy Co. v. Limbach*, 486 U.S. 269, 273 (1988). This "dormant" or "negative" aspect of the Commerce Clause "prohibits economic protectionism -- that is, regulatory measures designed to benefit in-state economic interests by burdening out-of-state competitors." *Id.* The strictures of the Commerce Clause apply with equal weight to state regulation of utilities. *Ark. Elec. Coop. Corp. v. Ark. Pub. Serv. Comm'n*, 461 U.S. 375, 391 (1983) ("Our constitutional review of state utility regulation in related contexts has not treated it as a special province insulated from our general Commerce Clause jurisprudence.").

Under the dormant Commerce Clause, state action that discriminates against interstate commerce in its purpose or effect is "virtually per se invalid."[43] *Dep't of Revenue v. Davis*, 553 U.S. 328, 338 (2008). *See also Brown-Forman Distillers Corp. v. N.Y. State Liquor Auth.*, 476 U.S. 573, 579 (1986) ("When a state statute directly regulates or discriminates against interstate commerce, or when its effect is to favor in-state economic interests over out-of-state interests, we have generally struck down the statute without further inquiry."). There are two general types of discrimination that trigger such heightened scrutiny: (1) where the state action "has extraterritorial effects that adversely affect economic production (and hence interstate commerce) in other states, thereby forcing producers or consumers in other States to surrender whatever competitive advantages they may possess to give local consumers an advantage over consumers in other states" or (2) where the object of the state action "is local economic protectionism, in that it disadvantages out-of-state businesses to benefit in-state ones." *Cloverland-Green Spring Dairies, Inc. v. Pa. Milk Mktg. Bd.*, 462 F.3d 249, 261-62 (3d Cir. 2006).

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[43] If the state action is not discriminatory, but, rather, "regulates even-handedly to effectuate a legitimate local public interest, and its effects on interstate commerce are only incidental," then it must be determined whether "the burden imposed on such commerce is clearly excessive in relation to the putative local benefits" under the balancing test set forth in *Pike v. Bruce Church, Inc.*, 397 U.S. 137, 142 (1970). Here, it is clear that a Commission order prohibiting reversal would discriminate against interstate commerce. However, assuming *arguendo* that *Pike* balancing were necessary, it is also clear that the burden imposed on interstate commerce in petroleum products by an order impeding pipeline reversal heavily outweighs the purported local benefits, as demonstrated by the discussion below of the substantial public benefits derived from reversal and the essentially non-existent harm.

Here, a decision by the Commission impeding Laurel from reversing the flow of the pipeline so as to engage in interstate service would violate the dormant Commerce Clause by closing Pennsylvania's borders to out-of-state products, reserving transportation service for in-state interests and removing the economic advantage of out-of-state refiners to the benefit of in-state refiners. Any one of these instances of discrimination would subject the Commission's order to the rule of virtual per se invalidity.

The Commission may not, consistent with the Commerce Clause, prohibit out-of-state refiners from utilizing Laurel's pipeline in Pennsylvania and instead reserve use of the pipeline for in-state refiners. The United States Supreme Court has remarked that the "clearest example" of invalid economic protectionism is state action "that overtly blocks the flow of interstate commerce at a State's border." *Philadelphia v. New Jersey*, 437 U.S. 617, 624 (1978). A Commission order prohibiting reversal would block the interstate flow of petroleum products at the Pennsylvania border by making Laurel's pipeline to Altoona unavailable to Midwest refiners, some of whom have already contracted to transport their products into Pennsylvania, and instead require Laurel to continue serving primarily in-state refiners. Such an order is patently discriminatory against interstate commerce and closely analogous to the state action invalidated in *Philadelphia v. New Jersey*, 437 U.S. 617 (1978) and *New England Power Co. v. New Hampshire*, 455 U.S. 331 (1982).

At issue in *Philadelphia v. New Jersey* was a New Jersey statute that prohibited the importation of most solid or liquid waste which originated outside the state. Operators of private landfills in New Jersey and cities in other states that had contracts with the landfills for waste disposal brought suit, alleging that the statute violated the Commerce Clause. The parties disputed whether the purpose of the statute was to address the environmental crisis in New

Jersey landfills or to suppress competition and stabilize the cost of waste disposal for New Jersey residents. The Supreme Court held that regardless of its purpose, New Jersey could not require in-state landfills to accept only in-state waste. *Id.* at 626-27. The Court noted its precedent establishing that "a State may not accord its own inhabitants a preferred right of access over consumers in other States to natural resources located within its borders" and concluded that "a State is without power to prevent privately owned articles of trade from being shipped and sold in interstate commerce on the ground that they are required to satisfy local demands or because they are needed by the people of the State." *Id.* at 627. The Court held that the New Jersey statute violated these principles:

> On its face, it imposes on out-of-state commercial interests the full burden of conserving the State's remaining landfill space. It is true that in our previous cases the scarce natural resource was itself the article of commerce, whereas here the scarce resource and the article of commerce are distinct. But that difference is without consequence. In both instances, the State has overtly moved to slow or freeze the flow of commerce for protectionist reasons. It does not matter that the State has shut the article of commerce inside the State in one case and outside the State in the other. What is crucial is the attempt by one State to isolate itself from a problem common to many by erecting a barrier against the movement of interstate trade

Id. at 628.

Just as New Jersey could not require landfills to take in-state waste to the detriment of out-of-state customers, so too is the Commission prohibited from requiring Laurel to provide service to in-state refiners to the detriment of out-of-state refiners. Under the dormant Commerce Clause, the Commission may not accord Pennsylvania refiners a preferred right of access over refiners in other states to Laurel's pipeline in Pennsylvania, on the ground that the pipeline is required to satisfy local demand. *Id.* at 627. Here, the "scarce resource" is Laurel's pipeline and the Commission may not shut that instrumentality of interstate commerce inside the state. *Id.* at 628.

Similarly, in *New England Power Co. v. New Hampshire*, the Court struck down an order of the New Hampshire Public Utilities Commission requiring a hydroelectric power generator to sell its power in-state. A New Hampshire statute required hydroelectric power generators to obtain approval from the New Hampshire commission before exporting power outside the state and empowered the commission to prohibit the exportation when it determined that the energy "is reasonably required for use within this state and that the public good requires that it be delivered for such use." 455 U.S. 335. For years, the New England Power Co. had applied for and obtained approval to export power, but in 1980, after an investigation and hearings, the commission withdrew this approval and ordered New England Power to sell its power in state. The commission found that the power was required for use within the state and that its order served the public good on the grounds that New Hampshire's population and energy needs were increasing rapidly and that the in-state sale of the power, which was produced at a lower cost than other electric utilities serving the state, would save New Hampshire customers $25 million a year. New England Power and the states of Massachusetts and Rhode Island brought suit.

The Supreme Court had little difficulty in holding that the order violated the Commerce Clause. After reviewing its decision in *Philadelphia v. New Jersey*, the Court concluded:

> The order of the New Hampshire Commission, prohibiting New England Power from selling its hydroelectric energy outside the State of New Hampshire, is precisely the sort of protectionist regulation that the Commerce Clause declares off-limits to the states. The Commission has made clear that its order is designed to gain an economic advantage for New Hampshire citizens at the expense of New England Power's customers in neighboring states. Moreover, it cannot be disputed that the Commission's "exportation ban" places direct and substantial burdens on

> transactions in interstate commerce. *See Public Utilities Comm'n v. Attleboro Steam & Electric Co.*, 273 U.S. 83 (1927).

New England Power, 455 U.S. at 339.

Similarly, here, a Commission order prohibiting reversal of the pipeline is effectively an "exportation ban" that that violates the Commerce Clause by preventing Laurel from providing service to out-of-state customers and mandating that Pennsylvania "residents be given a preferred right of access" to the pipeline. *Id.* at 338. Just like the New Hampshire commission's order, such a ruling in this matter is "precisely the sort of protectionist regulation that the Commerce Clause declares off-limits." *Id.* at 339.

Finally, a Commission order prohibiting reversal would violate the Commerce Clause by "forcing producers or consumers in other States to surrender whatever competitive advantages they may possess." *Cloverland*, 462 F.3d at 261. Midwestern refineries are producing lower-cost refined petroleum products because of their access to lower-cost shale crude oils in the North Central United States and South Central Canada. *See* Sections VII.C.1.b.i.1-5 *infra*. These refineries seek to introduce their more competitive products into Pennsylvania. The Indicated Parties ask the Commission to prevent this competition in what they describe as their "highly profitable" Pennsylvania markets by literally preventing the flow of competing products into Altoona. A Commission order prohibiting reversal would be a blatant example of local economic protectionism, the effect of which would be to disadvantage out-of-state businesses and benefit in-state ones. The Commerce Clause precludes such a result.

2. Even Assuming That The Commission Has Jurisdiction Over Laurel's Proposed Change In Direction Of Service, No Certificate Of Public Convenience Is Required.

Laurel's Application seeks approval, to the extent required, to change the direction and jurisdiction of service between Pittsburgh and Altoona. As set forth below, no such approval should be required.

Laurel's certificate of public convenience reflects its status and operation as a common carrier. Common carrier certificates, unlike those held by fixed public utilities (*i.e.* electric, natural gas, water and wastewater utilities), do not provide an exclusive geographic service territory and do not protect the certificate holder against competition. Laurel's certificate of public convenience does not prescribe a direction of service and does not set forth specific origin or destination points at which Laurel is required to provide service. Rather, Laurel is certificated to provide service to meet changing market conditions and need not obtain a separate certificate or seek an amendment to its existing certificate each time it changes its service.

The Indicated Parties' assertions that Laurel should be regulated as a fixed public utility and that its proposed change in direction of service constitutes an abandonment of service are incorrect and fail to reflect the fundamental factual and legal differences between a common carriers and traditional public utilities who have an exclusive geographic service territory and a corresponding obligation to serve customers within that service territory. Moreover, under the Indicated Parties' view, essentially *any change* in "service" as defined by Section 102 of the Code would constitute an abandonment of service and a certificate would be required. (*See* IP St. No. 3, pp. 11-16.) There is no precedent for this novel position. The definition of service in Section 102 is extremely broad and applies "in its broadest and most inclusive sense" to any actions taken by a utility, all things furnished or supplied by a utility and all public utilities facilities used in the performance of its obligations under the Code to its customers, employees, other public utilities and the public. If the Indicated Parties position were adopted, virtually any action taken by a utility would require a certificate.

For the reasons set forth below, the Commission should determine that Laurel's proposed change in direction of service does not require a certificate of public convenience.

a. Laurel, As A Common Carrier, Is Fundamentally Different From A Traditional Fixed Public Utility.

Laurel is a "public utility" under Section 102 of the Code under two separate provisions. Laurel falls within the definition of a "common carrier" under Section 102 of the Code, because it is a corporation "holding out, offering, or undertaking…service for compensation to the public for the transportation of…property…between points within this Commonwealth by, through, over, above, or under land." 66 Pa. C.S. § 102 (defining "common carrier"). Laurel also falls within the definition of a "public utility" under Section 102 of the Code, because it is a corporation owning or operating equipment or facilities for "[t]ransporting or conveying natural or artificial gas, crude oil, gasoline, or petroleum products…by pipeline or conduit, for the public for compensation." *Id.* (defining "public utility"). However, as recognized by the Commission, oil pipelines, such as Laurel, are quite different from and have been regulated quite differently than traditional fixed public utilities.

i. Laurel Does Not Possess A Monopoly In An Exclusive Geographic Service Territory.

Traditional public utilities hold certificates which grant them a monopoly in an exclusive geographic service territory. *See Painter v. Pa. Pub. Util. Comm'n*, 169 A.2d 113, 115 (Pa. Super. 1961); *Re Lukens Steel Company*, 58 Pa. PUC 256, 1984 Pa. PUC LEXIS 62, at *12-13 (Order Entered Jan. 13, 1984). In contrast, while a certificate of public convenience provides a common carrier with entry into a "discrete territory or marketplace," *see Susquehanna Area Reg'l Airport Auth. v. Pa. Pub. Util. Comn'n*, 911 A.2d 612, 619 (Pa. Cmwlth. 2006) (citing 66

Pa. C.S. § 1101), *pet. for allowance of appeal denied by* 923 A.2d 412 (Pa. 2006), it does not grant the common carrier an exclusive monopoly service territory. *Susquehanna Area Reg'l Airport Auth.*, 911 A.2d at 619 (citing *Yellow Cab Company of Pittsburgh v. Pa. Pub. Util. Comm'n*, 54 A.2d 301, 306 (Pa. Super. 1947)). Pennsylvania law clearly recognizes that "a common carrier's ability to provide service successfully is largely a function of the marketplace." *Id.*; *see also Yellow Cab Co.*, 431 A.2d at 1107-1108. Pennsylvania law essentially grants a common carrier a *non-exclusive privilege* to compete and provide service within a discrete territory or marketplace.

Conversely, "Competition within the same territory by noncarrier public utilities, such as water companies, is deleterious and not in the public interest save in rare instances." *Painter*, 169 A.2d at 115. As such, the Commission has consistently recognized that "when a [noncarrier] public utility is certificated to serve a particular service area, it undertakes an obligation or duty to serve this certificated area, and <u>from this duty flows a right to serve customers desiring service within the certificated service area</u>." *See, e.g.*, *Re Lukens Steel Company*, 1984 Pa. PUC LEXIS 62, at *12-13 (citing *Bland v. Tipton Water Co.*, 71 A. 101 (Pa. 1908)). It is clearly the intent of the legislature and policy of the Commission to grant traditional public utilities the *exclusive privilege* to provide a certificated service in a geographic service territory, except in rare circumstances.

Unlike a traditional fixed public utility, Laurel was not granted and does not possess a monopoly within an exclusive geographic service territory. (Laurel St. No. 5, p. 5; Laurel St. No. 9-R; p. 6; *see also* IP St. No. 3-SR, p. 9.) It is undisputed that Laurel is subject to competition from other pipelines, trucks, barges and railroad transportation services,[44] and that

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[44] When it issued Laurel its certificate of public convenience, the Commission clearly recognized that Laurel did not seek and was not granted a monopoly within an exclusive geographic service territory. In both the Incorporation

shippers are not mandated to exclusively utilize Laurel's pipeline system to transport petroleum products. (Laurel St. No. 5, p. 4; Laurel St. No. 9-R, p. 6; Laurel St. No. 9-RJ, pp. 7-8.) Indeed, PESRM, Monroe, Gulf and Sheetz have all indicated that Laurel is not the exclusive method by which they transport petroleum products.[45]

In this regard, Laurel is better described as a common carrier, such as a taxi cab, which must compete with other taxi cabs and other available, alternative transportation services. (Laurel St. No. 9-R, p. 6; *see also* Laurel St. No. 5, p. 5; Laurel St. No. 5-R, pp. 7-9.) Laurel witness, former Commissioner Glen R. Thomas, testified that "[b]y their nature, common carriers are subject to competition from alternative means of transportation…Indeed, just like taxi services must compete with Uber and other forms of publicly available…transportation, Laurel has no certificated monopoly service territory and is open to competing means of moving petroleum [products]." (Laurel St. No. 9-R, p. 6.)

ii. Laurel, As A Common Carrier, May Change Its Service In Response To Changing Market Conditions Without Obtaining A Certificate Of Public Convenience.

In further sharp contrast to non-common carrier fixed utilities, common carriers are subject to the dynamic conditions associated with highly competitive markets. (*See* Laurel Exhibit No. 1 (Application ¶ 18 (describing demand shifts that Laurel is responding to); Laurel St. No. 5-R, Appendix A ¶ 8.) It is understood that a common carrier's ability to provide service successfully is largely a function of the marketplace. *See Susquehanna Area Reg'l Airport Auth.*, 911 A.2d at 619. The *Susquehanna Regional Airport Authority* case addressed an issue involving a contract between a common carrier taxi company and an airport authority. This case

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Application and Service Application, Laurel represented that it would be competing with other pipeline companies. Incorporation Application ¶ 8 (Indicated Parties Exhibit RAR-1, pp. 4-5); Service Application ¶ 6 (Indicated Parties Exhibit RAR-1, pp. 13-14). Laurel further discusses these applications in Section VII.A.2.b. *infra*.

[45] *See* Sections VII.C.2.a.iii.4. and VII.C.2.b.iii. *infra*.

explained that the Commission may not prohibit a common carrier from doing lawful acts that the Commission believes to be harmful, unless directly addressed in the Public Utility Code. *Id.*, at 623 (citing *Aetna Casualty and Surety Co. v. Ins. Dep't*, 638 A.2d 194, 200 (Pa. 1994)). The Commonwealth Court in *Susquehanna* held that the Commission may not regulate competition among common carriers. *Susquehanna Area Reg'l Airport Auth.*, 911 A.2d at 620. A primary issue in the pending Laurel Application proceeding involves competition among customers of a common carrier, which is one step further removed from the Commonwealth Court's holding in *Susquehanna* that the Commission may not regulate competition between common carriers. The *Susquehanna* case is important because it holds that the Commission does not have the authority to regulate the marketplace conditions of common carriers. *Id.* For this reason, a common carrier can and should respond to changing market conditions. *Id.* This is especially true where, as in this case, the common carrier seeks to change the direction of its service to avoid a substantial, continuous decline in the use of its asset. (Laurel St. No. 1, p. 15; Laurel St. No. 5-R, Section IV, Figures 5, 6 and 7.)

Conversely, non-common carrier public utilities are insulated from the dynamic conditions of a competitive market because, except in rare circumstances, they are granted an exclusive geographic service territory. *See* Section VII.A.2.a.i. *supra*. A non-common carrier "public utility [has] a duty to provide reasonable service within the certificated area, within reasonable distance of its facilities, and subject to reasonable rules and regulations." *Re Lukens Steel Company*, 1984 Pa. PUC LEXIS 62, at *12. Therefore, a non-common carrier public utility's own regulated actions are primarily responsible for the conditions of the market in which it operates.

iii. Laurel Does Not Provide Service To End-Use Consumers.

Finally, unlike non-common carrier public utilities, Laurel does not provide transportation service to end-users of refined petroleum products. (Laurel Exhibit No. 1 (Application ¶¶ 7, 10); Laurel St. No. 1, p. 14; Laurel St. No. 5, pp. 6-7; Laurel St. No. 6, p. 3; Laurel St. No. 5-R, p. 11 and Appendix A.) Laurel transports petroleum products to terminals at destination points along its pipeline, where its shippers or other entities "lift" product to transport to a point of sale. (Laurel St. No. 1, p. 14; Laurel St. No. 6, p. 3.) Conversely, non-common carrier public utilities provide a distribution service and deliver a commodity to the ultimate consumer; their facilities directly connect to a consumer's point of consumption. Under Laurel's proposal, all buyers of refined petroleum products will be able to buy all of the same products at all of the same locations after the proposed reversal.

Furthermore, Laurel's existing shippers are sophisticated corporate entities that have access to multiple transportation options and are under no obligation to use Laurel's pipeline to transport petroleum products. *See* Sections VII.C.2.a.iii.4. and VII.C.2.b.iii. *infra*. The vast majority of a traditional fixed public utility's customers have no alternative to that utility's service because the utility is the exclusive provider of the service in the area where its customer is located.[46] Indeed, Laurel's existing shippers have continuously elected to transport less and less product over Laurel's pipeline system and volumes from eastern origins to points west of Eldorado on Laurel are projected to reach zero before 2025, based on a linear projection of recent volume changes. *See* Section VII.C.1.a. *infra*. One intrastate shipper elected to re-activate an entire competing pipeline to transport its product to markets other than Pittsburgh.

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[46] This is not the case for certain natural gas customers that have access to other alternatives to gas service. (*See* Laurel St. No. 9-RJ, p. 7.)

See (HC) Laurel Cross Examination Exhibit No. 18.[47] Clearly, Laurel's shippers possess and readily use various alternatives.

b. Laurel's Certificate Of Public Convenience Properly Reflects Its Status As A Common Carrier Public Utility.

The Commission clearly recognized Laurel's common carrier status when it issued Laurel's certificate of public convenience. As explained below, Laurel's certificate does not specify the direction of service, nor does it prescribe specific origin or destination points. This lack of specificity is proper and necessary since Laurel was not granted and does not possess a geographic monopoly service territory and Laurel was, and continues to be, subject to competition by alternative methods of petroleum products transportation. A common carrier operating in a competitive market place must be able to change its service to meet market conditions and demands and the lack of specificity in the certificate confirms that the Commission provided Laurel, as a common carrier, this flexibility in the certificate. Otherwise, a common carrier will inevitably and ultimately fail as unreasonable regulatory constraints prevent it from competing in the marketplace.

i. Chapter 11 Requires A Certificate Of Public Convenience To Describe The "Nature And Character Of Service" A Utility Is Authorized To Provide.

Chapter 11, Subchapter A of the Code sets forth[48] the nature of a certificate of public convenience, enumerates the circumstances under which a certificate of public convenience must

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[47] **[BEGIN HIGHLY CONFIDENTIAL]** [redacted] **[END HIGHLY CONFIDENTIAL] (**Hearing Tr. 1064:23-1065:2.)

[48] The Commission is a creature of statute and, as such, the Commission possesses only those powers which the State Legislature expressly confers upon it, or which may arise as an implied grant from those powers expressly conferred. *See Process Gas Consumers Group v. Pa. Pub. Util. Comm'n*, 511 A.2d 1315, 1319-20 (Pa. 1986); *National Fuel Gas Distribution Corporation v. Pa. Pub. Util. Comm'n*, 464 A.2d 546 (Pa. Cmwlth. 1983). "The power and authority to be exercised by administrative commissions must be conferred by legislative language clear and unmistakable. A doubtful power does not exist. Such tribunals are extra judicial. They should act within the strict and exact limits defined." *Green v. Milk Control Commission*, 16 A.2d 9, 9 (Pa. 1940) *cert. denied* 312 U.S. 708, 61 S.Ct. 826, 85 L.Ed. 1140 (1941).

be obtained and establishes the procedure by which a public utility or common carrier must obtain a certificate of public convenience. *See* 66 Pa. C.S. §§ 1101-1104.

Importantly, Section 1101 of the Code states that "[t]he commission's certificate of public convenience granted under the authority of this section shall include a description of the nature of the service and of the territory in which it may be offered, rendered, furnished or supplied." 66 Pa. C.S. § 1101 (emphasis added). In this regard, Section 1101 of the Code requires the Commission to describe in the certificate any limitations on the type of service that a utility may offer and the locations where the utility may offer that service.

Moreover, Section 1103(a) of the Code states that "The commission, in granting such certificate, may impose such conditions as it may deem to be just and reasonable." 66 Pa. C.S. § 1103(a). Such conditions may also limit the nature and character of the service that a public utility is authorized to provide. *See, e.g.*, *Application of Interstate Energy Company*, Docket No. 97032, 1973 Pa. PUC LEXIS 74, at Ordering Paragraph 1 (Order Entered Feb. 6, 1973) (limiting IEC's certificate service "to the supply of oil for the purpose of electric generation.").

ii. Laurel's Certificate Does Not Specify The Direction Of Service Nor Does It Prescribe Any Origin And Destination Points.

In 1957, Laurel Pipe Line Company—the predecessor in interest to Laurel—filed two applications with the Commission, which collectively sought Commission approval of (1) the incorporation, organization and creation of Laurel as a public service corporation (the "Incorporation Application"); and (2) to begin to exercise the right, power or privilege to transport, store and distribute petroleum products to the public (the "Service Application").[49]

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[49] *See In re Application of Laurel Pipe Line Company for approval of its incorporation, organization and creation*, Docket No. 84093, Folder 1 (Application Docketed Feb. 5, 1957); *see also In re Application of Laurel Pipe Line Company for approval of the beginning of the exercise of the right, power or privilege of transporting, storing and distributing petroleum products by means of pipe lines, pumps, tanks and other equipment and appurtenances for*

Therein, Laurel sought Commission authorization, *inter alia*, to transport, store and distribute petroleum products by means of pipe lines, pumps, tanks and other equipment and appurtenances for the public, in and across the Commonwealth of Pennsylvania and other states of the United States. *See* Incorporation Application ¶ 7; *see also* Service Application ¶ 3. In the Service Application Laurel specifically stated that:

> The nature and character of the service to be rendered is the transportation, storage and distribution of petroleum and petroleum products by means of pipe lines, pumps, tanks and other equipment and appurtenances for the public in and across the Commonwealth of Pennsylvania and other states of the United States.

Id. (emphasis added).

The Commission approved both the Incorporation Application and the Service Application by separate orders and issued certificates of public convenience to Laurel.[50] More specifically, the Commission approved Laurel's Service Application and stated:

> [T]he Pennsylvania Public Utility Commission upon application of LAUREL PIPE LINE COMPANY, filed January 31, 1957, for approval of the beginning of the exercise of the right, power or privilege of transporting, storing and distributing petroleum and petroleum products by means of pipelines and appurtenances, for the public, such facilities extending generally westwardly from a point near the City of Philadelphia to a point in the vicinity of the City of Pittsburgh, thence in a northwestwardly direction to the Pennsylvania-Ohio boundary line, as more fully described in said application, and having been duly presented in accordance with the rules of the Commission, and full investigation of the matters and things involved having been had, the Commission finds and

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the public, Docket No. 84093, Folder 2 (Application Docketed Feb. 5, 1957). The Incorporation Application is provided in Indicated Parties Exhibit RAR-1, pp. 3-10. The Service Application is provided in Indicated Parties Exhibit RAR-1, pp. 12-20.

[50] *See In re Application of Laurel Pipe Line Company for approval of its incorporation, organization and creation*, Docket No. 84093, Folder 1 (Report and Order entered Feb. 5, 1957) ("Incorporation CPC Order"); *see also In re Application of Laurel Pipe Line Company for approval of the beginning of the exercise of the right, power or privilege of transporting, storing and distributing petroleum products by means of pipe lines, pumps, tanks and other equipment and appurtenances for the public*, Docket No. 84093, Folder 2 (Report and Order entered Feb. 5, 1957) ("Service CPC Order"). The Incorporation CPC Order is provided in Indicated Parties Exhibit RAR-1, p. 1. The Service CPC Order is provided in Indicated Parties Exhibit RAR-1, pp. 11. The Service CPC Order and related certificate are also provided in Laurel Exhibit DWA-5, pp. 1-2.

> determines that the granting of said application is necessary or proper for the service, accommodation, convenience or safety of the public, and that a certificate of public convenience issue evidencing the Commission's approval thereof.

See Service CPC Order (Laurel Exhibit DWA-5, p. 1; Indicated Parties Exhibit RAR-1, p. 11).

Nowhere in either application did Laurel limit its request to east/west service; and nowhere in either order did the Commission describe the "nature and character" of petroleum products transportation service as limited to east/west service. (*See* Laurel St. No. 9-R, p. 4; Laurel St. No. 9-RJ, pp. 2-4.) Moreover, nowhere in either application did Laurel limit its request to serve specific origin and destination points and/or pairs; and nowhere in either order did the Commission describe the "nature and character" of petroleum products transportation service as being limited to specific origin and destination points and/or pairs. (*See* Laurel St. No. 9-R, p. 4; Laurel St. No. 9-RJ, pp. 2-4.)

The interpretation of Laurel's certificate of public convenience advanced by Mr. Thomas is consistent with the Commission's issuance of certificates for other common carriers.[51] Indeed, common carriers are not required to seek a separate certificate that demonstrates need for its service at each pick-up (origin) and drop-off (destination) point that they intend to provide

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[51] For example, common carrier certificates for taxi cabs generally prescribe a boundary of operations within which the carrier is free to provide transportation service between *any* pick-up (origin) and *any* (drop-off) points, without reference to direction. *See, e.g.*, *Application of Willow Grove Yellow Cab. Co., Inc.*, Docket No. A-00087075F007 (Order Entered Dec. 26, 2002) (granting the right to provide carrier service ("between points in the counties of Bucks and Montgomery, and from points in said counties, to points in Pennsylvania, and return."); *Application of Red Top Cabs, Inc.*, docket No. A-00106043F003 (Order Entered June 9, 1994) (granting the right to provide carrier service "between points in the city of Scranton…and within an airline distance of three (3) statute miles of the limits of the borough of Olyphant…and from points in said area to points in Pennsylvania, and vice versa."); *Application of Homestead Cab Company, Inc.*, Docket No. A-00106315F002 (Order Entered Oct. 7, 1987) (granting the right to provide carrier service "between points in the borough of Sellersville, Bucks County, and within an airline distance of two (2) statute miles of the limits of said borough."). Moreover, to the extent that the Commission seeks to limit the carrier's service, the Commission will *explicitly* impose conditions on origin and destination points. *See, e.g.*, *Application of Willow Grove Yellow Cab. Co., Inc.*, Docket No. A-00087075F007 (Order Entered Dec. 26, 2002) (explicitly imposing limiting conditions on pick-up (origin) points).

service too; *only a general certificate for service in and across a specific region.*[52] Laurel, as a common carrier, is entitled to similar flexibility in its decision to alter the direction it provides service or the points it provides service in response to competitive market demands, consistent with its certificate of public convenience.[53]

For the reasons more fully explained above, at the time it issued Laurel's certificate of public convenience, the Commission did not require Laurel to provide petroleum products transportation service either in a specific direction, or at or between specific origin and destination points. (*See* Laurel St. No. 9-R, p. 4; *see also* Laurel St. No. 9-RJ, pp. 2-3.) Rather, Laurel was broadly authorized to provide petroleum products transportation service in and across Pennsylvania.

iii. Laurel's Proposed Reversal Is Consistent With The Nature And Character Of Service It Was Authorized To Provide In The 1957 Certificate Of Public Convenience.

By appropriately recognizing Laurel's status as a common carrier and the differences between Laurel and traditional fixed public utilities, the Commission authorized Laurel to provide petroleum products transportation service "in and across" Pennsylvania through the 1957 certificate of public convenience. *See* Section VII.A.2.a.ii. *supra*. Laurel was authorized to provide this service as a common carrier and public utility. Therefore, as a common carrier, Laurel was authorized to change its service in response to competitive changes and shifts in market demand. *Susquehanna Area Reg'l Airport Auth.*, 911 A.2d at 619.

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[52] *See Capital City Cab Serv. v. Pa. Pub. Util. Comm'n*, 138 A.3d 119, 129 (Pa. Cmwlth. 2016) ("[a]n applicant is not required to show demand for its service at every point in the proposed territory; it is sufficient to show that need exists within the area generally served."). Common carriers are not required to obtain a certificate of public convenience to change their pick-up or drop-off locations in response to shifting competitive demands, so long as those changes are consistent with their certificate. *See Susquehanna Area Reg'l Airport Auth.*, 911 A.2d at 619; *Yellow Cab Co.*, 431 A.2d at 1107-1108.

[53] As noted by Dr. Webb, oil pipeline reversals are common and efficient responses to shifting market trends. (*See* Laurel St. No. 5-R, pp. 97-99; Laurel Exhibit MJW-18.)

Laurel's proposal is a change in service in response to specific competitive shifts and changes in market demand. As described in Section VII.C.1.a., substantial changes in the petroleum products market place have resulted in consistently declining utilization of Laurel's pipeline for westbound service to points west of Eldorado. In addition, lower cost Midwestern petroleum products are increasingly seeking transportation options into Western and Central Pennsylvania. Just as a taxi cab may, consistent with its certificate and status as a common carrier, pick up and transport customers from different points when it sees a decline in use due to competition, Laurel may too, consistent with its certificate and status as a common carrier, pick up and transport petroleum products from different points when it sees a decline in use due to competition. *Susquehanna Area Reg'l Airport Auth.*, 911 A.2d at 619. The taxi cab and Laurel, as common carriers, are both acting in a manner that is consistent with the non-exclusive privilege granted by their certificates of public convenience.

For these reasons, Mr. Thomas properly concludes that Laurel's proposed reversal does not constitute an abandonment of service or provision of new service that requires a certificate of public convenience. (Laurel St. No. 9-R, p. 3; Laurel St. No. 9-RJ, p. 5.)

c. The Indicated Parties' Abandonment Of Service Argument Is Incorrect.

The Indicated Parties argue that Laurel's proposed reversal constitutes an abandonment of service from origins in the Philadelphia area, to destination points west of Eldorado, Pennsylvania. (*See, e.g.*, IP St. No. 3, pp. 12-13.)[54] To reach this conclusion, the Indicated Parties advance two primary arguments. First, they claim that Laurel's certificate of public convenience *solely* authorized Laurel to provide westbound petroleum products transportation

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[54] Laurel notes that other joint and individual witnesses for the Indicated Parties and its members also argue that the proposed reversal constitutes an abandonment. These argument rely on the theory advanced by Mr. Rosenthal and, therefore, Laurel specifically cites to Mr. Rosenthal's testimony with respect to this argument.

service. (IP St. No. 3, pp. 5-7.) Second, they argue that the term "service" as used in Chapter 11 of the Code requires a utility to seek a certificate of public convenience for *any* change or abandonment in service as defined in Section 102 of the Code. (IP St. No. 3, p. 12.) As explained below, these arguments disregard key aspects of Laurel's dual status as a common carrier and public utility, Laurel's certificate and the Code and should be disregarded.

i. The Indicated Parties Fail To Properly Reflect Laurel's Dual Status As A Common Carrier And Public Utility.

The Indicated Parties' argument that Laurel should be regulated in the same manner as traditional fixed utilities ignores the fundamental differences between Laurel and traditional public utilities: Laurel has been, and remains, subject to competition from alternative methods of transporting petroleum products in and across Pennsylvania; Laurel, as a common carrier, is permitted to change its service in response to market demands; and Laurel does not provide service to end-use customers. *See* Sections VII.A.2.a.i-iii. *supra*. As the Indicated Parties have admitted Laurel's status as a common carrier (*see* IP St. No. 3, p. 8), they cannot credibly argue that Laurel should be evaluated in the exact same manner as a traditional fixed public utility.

ii. The Indicated Parties' Interpretation Of Laurel's Certificate Of Public Convenience Is Flawed.

The Indicated Parties' attempts to argue that the description of the route of facilities over which Laurel proposed to provide petroleum products transportation service in and across Pennsylvania misrepresent the plain language of both applications and orders. Indicated Parties witness Robert A. Rosenthal contends that Laurel's proposed petroleum products transportation service was limited to movements "from the vicinity of Philadelphia to the vicinity of

Pittsburgh." (IP St. No. 3, p. 5.)[55] Mr. Lloyd advanced the same flawed argument in his Surrebuttal Testimony. (IP St. No. 5-SR, pp 3-4.)

Mr. Rosenthal misattributes language that describes the location and route of proposed pipeline "facilities" to describe the "nature and character of service" that Laurel sought to offer. (*See* Indicated Parties St. No. 3, p. 5 ("The 1957 Application represented to the Commission that the 'route to be followed' was '*from* the vicinity of Philadelphia *to* the vicinity of Pittsburgh.'" (emphasis in original)).)[56] This language only appears in paragraph seven of the Corporation Application and the full quote reads:

> <u>The approximate route to be followed by the proposed pipe line in this Commonwealth</u> from the vicinity of Philadelphia to the vicinity of Pittsburgh and thence in a northwesterly direction to the western boundary of the Commonwealth is indicated on the attached map designated "Exhibit A" and made a part of this application. Present plans call for extensions into New Jersey and Ohio.

Incorporation Application ¶ 7 (emphasis added) (IP Exhibit RAR-1, p. 4 (internal document page 2)).

The Service Application and Service CPC Order further clarify that the language quoted by Mr. Rosenthal refers to Laurel's proposed facilities, not its certificated service. The Service Application states that:

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[55] Laurel first notes that Mr. Rosenthal erroneously relies on the Incorporation Application, which sought Commission approval for the incorporation, organization and creation of Laurel Pipe Line Company, but did not seek the separate approval for the right to initiate petroleum products transportation service that was requested in the Service Application. *See id.* (citing IP Exhibit No. RAR-1, p. 2). Page 2 of Indicated Parties Exhibit RAR-2 is actually a certification from the Office of the Secretary of the Commonwealth to the Commission which represents that the application for Letters Patent for the proposed corporation, Laurel Pipe Line Company, was full, true and correct. In addition, page 2 of the Service Application does not contain the language cited by Mr. Rosenthal, but similar language appears on page 1. *See* Service Application ¶ 3 (IP Exhibit RAR-1, p. 12). For these reasons, Laurel assumes Mr. Rosenthal meant to cite to Indicated Parties Exhibit RAR-1, p. 4, *i.e.* page 2 of the Incorporation Application.

[56] Mr. Lloyd compounds Mr. Rosenthal's error in referencing language that describes pipeline facilities, by referencing other non-pipeline facilities that were proposed to be constructed in the Service Application. (IP St. No. 5-SR, p. 4.) Therefore, Mr. Lloyd's argument that descriptions of non-pipeline facilities somehow describe Laurel's certificated service fails for the same reasons as Mr. Rosenthal's argument.

> The approximate route to be followed by the proposed pipe line in this Commonwealth from the vicinity of Philadelphia to the vicinity of Pittsburgh and thence in a northwesterly direction to the western boundary of the Commonwealth is indicated on the attached map designated "Exhibit A" and made a part of this application. Input and take-off points will be constructed at locations along the route of the line in Pennsylvania. Present plans call for extensions into New Jersey and Ohio.

Service Application ¶ 3 (IP Exhibit RAR-1, p. 12 (internal document page 1)). Moreover, the directional language referenced by Mr. Rosenthal appears in the Service CPC Order immediately following the term "such facilities." Service CPC Order p. 1 IP Exhibit No. RAR-1, p. 11) ("such facilities extending generally westwardly from a point near the City of Philadelphia to a point in the vicinity of the City of Pittsburgh, thence in a northwestwardly direction to the Pennsylvania-Ohio boundary line.") (emphasis added). Therefore, the plain language of Laurel's certificate makes clear that the directional language specifically references proposed facilities, not Laurel's certificated service.

Mr. Rosenthal and Mr. Lloyd also misattribute descriptions of the nature and character of the petroleum products transportation services offered by competing pipelines, which are described in Laurel's applications, to the nature and character of service that Laurel sought to provide. (*See* IP St. No. 3, p. 5; IP St. No. 5-SR, p. 3.) Mr. Rosenthal testifies that the "Application also represented that the proposed new services would not create competitive conditions except with respect to companies 'which carry petroleum products in a westerly direction across the southern half of the Commonwealth of Pennsylvania from the vicinity of Philadelphia to the vicinity of Pittsburgh and beyond.'" (*Id.*) Mr. Lloyd again advances the same argument in Surrebuttal Testimony. (IP St. No. 5-SR, pp. 3-4.)

Whether either application described the services offered by competing pipelines is irrelevant; such descriptions only reflect the nature and character of services *currently offered* by the other pipelines.[57] If a description of competitors' services were relevant, one would have to disregard the unambiguous language in the certificate and instead look to each pipeline's certificate of public convenience, application, the Commission order and the rest of the record to determine the nature and character of services that each pipeline was authorized by the Commission to provide. *See* 66 Pa. C.S. § 1101 (requiring the certificate to describe the nature and character of service the utility is authorized to provide); (Laurel St. No. 9-RJ, pp. 3-4.) Once again, both Mr. Rosenthal and Mr. Lloyd ignore the clear and unambiguous description of the nature and character of the service that Laurel sought, and was authorized, to provide: petroleum products transportation service in and across Pennsylvania. Service Application ¶ 3; Service CPC Order, p. 1 (IP Exhibit RAR-1, p. 11).[58]

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[57] The authorization to provide service contained in a certificate of public convenience may be broader than the service a public utility *currently provides* at any given time under that certificate. *See, e.g., Petition for Sunoco Pipeline, L.P. for Amendment of the Order Entered On August 29, 2013*, Docket No. P-2014-2422583, p. 9 (Opinion and Order Entered July 24, 2014). In this proceeding the Commission explained:

> While Sunoco received authorization in the August 2013 Order to cease the transportation of gasoline and distillates as to the shippers and routes on the schedules identified in the August 2013 Order, it retained its authority under its Certificate to provide petroleum products and refined petroleum products transportation service on its pipelines between Twin Oaks and Delmont, Pennsylvania. As such, Sunoco is certificated to provide intrastate propane service on the abandoned segment of the pipeline. In order to begin providing this service, the Company will be required to file tariff supplements with the Commission providing the terms and conditions and rates for the proposed service to be provided.

Id. (emphasis added). Indeed, it is clear that the Commission contemplates situations where a public utility has been granted the authority under its certificate of public convenience to provide services that are broader than those services it currently provides.

Furthermore, it is understood that a common carrier's ability to provide service successfully is largely a function of the marketplace. *See Susquehanna Area Reg'l Airport Auth.*, 911 A.2d at 619; *Yellow Cab Co. v. Pa. Pub. Util. Comm'n*, 431 A.2d 1106, 1107-1108 (Pa. Cmwlth. 1981).

[58] Finally, Mr. Lloyd also argues that "If Laurel in 1957 wanted to preserve the right to reverse the directional flow from the west to the east…it is reasonable to assume that the 1957 applications would have stated that intention." (IP St. 5-R, pp. 3-4.) Mr. Lloyd's argument ignores the plain language of the Service Application where Laurel stated that:

> The nature and character of the service to be rendered is the transportation, storage and distribution of petroleum and petroleum products by means of pipe

As explained above, both Mr. Rosenthal and Mr. Lloyd attempt to impose a condition or limitation on the nature and character of petroleum products transportation service that Laurel is authorized to provide, which does not explicitly appear in Laurel's certificate of public convenience. In attempting to do so, both witnesses ignore the plain language of Laurel's certificate and the Commission's duty under Section 1101 of the Code to describe with specificity the nature and character of service that a utility is authorized to provide in a certificate of public convenience. Therefore, Indicated Parties' flawed interpretation of Laurel's historical applications and orders should be rejected.

iii. The Indicated Parties' Broad Definition Of Service Under Section 102 Does Not Apply To Section 1102.

The Indicated Parties argue that the "broad definition of 'service'" under the Code makes clear that "the movement of petroleum products from Eldorado to Pittsburgh along the Laurel pipeline is an existing *service* Laurel provides to a variety of shippers and, if the Application is granted, this east to west shipping on the pipeline will no longer be available." (IP St. No. 3, p. 13 (emphasis in original). Mr. Rosenthal further asserts that "since the lack of availability of the service is directly the result of Laurel's action, it is clear that Laurel's action is an 'abandonment' of an existing service that is the subject of an existing Commission-issued CPC." (*Id.*) And, the Indicated Parties compare Laurel's proposed and existing tariffs as support for this point. (*Id.*)

The Indicated Parties' attempt to impute, without modification, the definition of "service" under Section 102 of the Code to the term "service" as it is used in Section 1102 proves too much. Mr. Rosenthal cites the definition of "service" under Section 102 of the Code, 66 Pa. C.S.

> lines, pumps, tanks and other equipment and appurtenances for the public <u>in and across the Commonwealth of Pennsylvania and other states of the United States</u>.

Service Application ¶ 3 (IP Exhibit RAR-1, p. 12). No reservation of the right for west-to-east service is needed where Laurel explicitly stated the nature and character of the service it intended to provide was petroleum products transportation service in and across Pennsylvania without reference to direction of such service.

§ 102, to argue that the movement of petroleum products from eastern origin points to destination points west of Eldorado is an existing service that would be abandoned as a result of Laurel's Application. (IP St. No. 3, p. 13.)

Section 102 of the Code defines "service" as:

> Used in its broadest and most inclusive sense, includes any and all acts done, rendered, or performed, and any and all things furnished or supplied, and <u>any and all facilities used, furnished, or supplied by public utilities</u>, or contract carriers by motor vehicle, <u>in the performance of their duties under this part to their patrons, employees, other public utilities, and the public</u>, as well as the interchange of facilities between two or more of them…

66 Pa. C.S. § 102. However, before providing a definition of the terms enumerated therein, Section 102 states:

> Subject to additional definitions contained in subsequent provisions of this part which are applicable to specific provisions of this part, the following words and phrases when used in this part shall have, <u>unless the context clearly indicates otherwise</u>, the meanings given to them in this section.

66 Pa. C.S. § 102 (emphasis added). The broad reading of "service" advanced by the Indicated Parties ignores the context provided by Chapter 11 of the Code.

Chapter 11 of the Code describes certificates and enumerates the conditions under which a public utility is require to seek a certificate and the term "service" must be interpreted consistent with this context. *See* Section VII.A.2.b.i. *supra*. For instance, Section 1102 does not require a common carrier or public utility to seek a certificate of public convenience for "service" consistent with that authorized by a certificate of public convenience granted under Chapter 11. *See* 66 Pa. C.S. § 1102(a)(1)(i). Similarly, Section 1102(a)(2) only requires a public utility or common carrier to seek a certificate of public convenience when a service is abandoned in whole or in part; not when the service is changed. 66 Pa. C.S. § 1102(a)(2).

B. If A Certificate Of Public Convenience Is Required, The Commission Should Determine Whether The Proposed Change In Direction Of Service Is In The Public Interest.

Assuming the Commission determines it has jurisdiction over this matter and that the proposed change in service constitutes an abandonment of service for which a certificate of public convenience is required, the standard of review is set forth in Section 1103 of Code, as follows: "A certificate of public convenience shall be granted by order of the commission, only if the commission shall find or determine that the granting of such certificate is necessary or proper for the service, accommodation, convenience, or safety of the public." 66 Pa C.S. § 1103(a). As interpreted by the Commission and the courts, the primary consideration in applying this standard is whether granting the application is in the public interest. *See, e.g.*, *Application of Sunoco Pipeline, L.P.*, Docket Nos. A-2013-2371789, P-2013-2371775 (Order entered Aug. 29, 2013); *Phila. Suburban Water Co. v. Pa. Pub. Util. Comm'n*, 229 A.2d 748 (Pa. 1967) (benefits and promotion of public interest is primary); *Pa. R. Co. v. Pa .Pub. Util. Comm'n*, 184 A.2d 111 (Pa. Super. 1962) (public interest is of primary consideration); *Pittston Gas Co. v. Pennsylvania Pub. Util. Comm'n*, 154 A.2d 510 (Pa. Super. 1959) (controlling factor in granting certificate is the public interest, *i.e.*, which utility will best serve the ultimate consumer).

Chapter 11 requires certificates for different activities, including: to provide public utility service; to transfer used or useful property; to acquire more than 5% of the voting stock in another corporation; and for a municipal authority to offer service to the public outside of its municipal boundaries. *See* 66 Pa. C.S. § 1102(a)(1)-(5). As a consequence, the Commission has adopted different formulations and examined different factors in determining whether a particular certificate application is in the public interest. *See, e.g.*, *Popowsky v. Pa. Pub. Util. Comm'n*, 937 A.2d 1040, 1055-57 (Pa. 2007) (interpreting and applying the affirmative public benefits standard to a proposed merger); *Borough of Duncannon v. Pa. Pub. Util. Comm'n*, 713 A.2d 737, 740 (Pa. Commw. 1998) (discussing and applying a multifactor test to a proposed water service abandonment); *Application of Sunoco Pipeline, L.P.*, Docket Nos. A-2013-2371789, P-2013-2371775 (Order entered Aug. 29, 2013) (applying the affirmative public benefits standard to a proposed oil pipeline abandonment); *Application of York Water Company*, 2012 Pa. PUC LEXIS 1146 (Order Entered July 19, 2012) (approving application to serve additional territory as "necessary or proper for the service, accommodation, convenience, or safety of the public.").

Whatever the formulation, however, the ultimate issue is whether the application is in the public interest. 66 Pa. C.S. § 1103; *see also Seaboard Tank Lines, Inc. v. Pa. Pub. Util. Comm'n*, 502 A.2d 762, 764-65 (Pa. Cmwlth. 1985).[59] As a result, it is unnecessary and frankly counterproductive to engage in extensive discussion and analysis of the details and nuances of particular historic formulations of the public interest standard in cases that are clearly distinguishable from the instant Application. As explained below, *see* Section VII.C. *infra*, Laurel's application will provide extensive affirmative public benefits and the only possible "harm" will be potential lost profits for certain refiners and marketers, resulting solely from increased competition and lower gasoline prices, which are substantial public benefits. The proposed reversal therefore is in the public interest and should be approved.

1. The "Affirmative Public Benefits" Test.

To the extent the Commission adopts a specific formulation of the public interest for this case, it should follow its own precedent in other oil pipeline abandonment proceedings and adopt an "affirmative public benefits" test. *See Application of Sunoco Pipeline, L.P.*, Docket Nos. A-

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[59] "Our 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." *Commuters' Committee v. Pa. Pub. Util. Comm'n*, 88 A.2d 420, 424 (Pa. Super. 1982).

2013-2371789, P-2013-2371775, at p. 7 (Order entered Aug. 29, 2013) ("[W]e conclude that the record provides substantial evidence of affirmative public benefit sufficient to warrant approval of the proposed Application…"); *Application of Buckeye Pipe Line Company, L.P.*, Docket No. A-140110F2000, at p. 3 (Order Entered March 7, 2005) ("Upon full consideration of these factors, we conclude that the record provides substantial evidence of affirmative public benefit sufficient to warrant approval of the proposed Application."). This also is the test applied in merger and acquisition proceedings. *City of York v. Pa. Pub. Util. Comm'n*, 295 A.2d 825, 828 (Pa. 1972) ("Section 203 requires that the proponents of a merger demonstrate that the merger will affirmatively promote the 'service, accommodation, convenience, or safety of the public' in some substantial way.") (emphasis added); *see also Popowsky*, 937 A.2d at 1055-57.

Case decisions applying Section 1103 of the Code and the affirmative public benefits test provide important guidance in reviewing Laurel's application in this proceeding. Specifically, there is no requirement for absolute necessity; future need and future benefits are sufficient to demonstrate that a project is in the public interest; and there is no requirement to quantify the benefits of a project. *See Popowsky*, 937 A.2d at 1055-57; *City of York*, 295 A.2d at 828; *Application of Sunoco Pipeline, L.P.*, Docket Nos. A-2013-2371789, P-2013-2371775 (Order entered Aug. 29, 2013); *Application of Buckeye Pipe Line Company, L.P.*, Docket No. A-140110F2000 (Order Entered March 7, 2005). Each of these issues is addressed below.

Need. The statutory standard, by its own terms, states that a certificate shall be issued if the application is "necessary or proper" for the accommodation, convenience or safety of the public. 66 Pa. C.S. § 1103(a) (emphasis added); *see also Elite Indus. v. Pa. Pub. Util. Comm'n*, 832 A.2d 428, 431 (Pa. 2003). The Pennsylvania Supreme Court made clear in *Elite Industries* that the disjunctive "or" in "necessary or proper" reflects the broad authority possessed by the

PUC with respect to granting certificates of public convenience. *Id.* at 431-32. The Pennsylvania Supreme Court explained that the legislature provided "no definition [under Section 1103(a)] of specifically what the criteria were to be in determining the propriety of granting a certificate, leaving the formulation of such criteria to the PUC." *Id.* at 432. Moreover, "past interpretation of a statute, though approved by the judiciary, does not bind the PUC to that particular interpretation." *Id.*

The Commission has also previously explained that the "necessary or proper" showing requires an applicant to demonstrate that approval of the application will serve a useful public purpose, responsive to a public demand or need. *Application of Blue Bird Coach Lines, Inc.*, 72 Pa. PUC 262, 1990 Pa. PUC LEXIS 50 (Order Entered April 27, 1980). "The particular circumstances of a case determine what constitutes sufficient evidence of a public demand/need for the applicant's proposed service." *Id.*, at *29. Indeed, the evidence required to demonstrate public demand or need is directly related to the breadth of service provided by the applicant.

Relatedly, the Commission and the courts have definitively held that a project need not be "absolutely necessary" to be in the public interest. *Hess v. Pa. Pub. Util. Comm'n,* 107 A.3d 246, 262 (Pa. Cmwlth. 2014). In *Hess*, an electric utility demonstrated that a project to add load transfer capability would shorten the duration of future outages in the project area. *Id.* at 261. The project's opponents contended the project was not "absolutely necessary" to provide electric service and, therefore, was not needed. *See id.* at 260. The ALJs agreed, mistakenly applied an absolute necessity standard and rejected the project. *Id.* at 256. The Commission unanimously reversed and rejected the absolute necessity standard. *Id.* at 258-59. On appeal, the Commonwealth Court upheld the Commission's decision, explaining that an "absolute necessity" standard would require utilities to wait until the need for a proposed project was "looming." *Id.* It further reasoned that "Utilities would essentially have to wait until an existing system fails before seeking approval of a project. Not only would this approach be impractical and unrealistic, it would actually pose a danger to the … welfare of the public." *Id.* (emphasis added).

Present vs. Future Need and Benefits. Relatedly, the need and benefits of a project may, and in reality must, be based on future projections. *See, e.g., Hess v. Pa. Pub. Util. Comm'n*, 107 A.3d 246, 262 (Pa. Cmwlth. 2014) (determination of necessity can be met by demonstrating a project will address future reliability issues); *Popowsky v. Pa. Pub. Util. Comm'n*, 937 A.2d at 1056 (holding the Commission may properly make predictive determinations in assessing whether an application will affirmatively benefit the public). Even under the traditional, multi-factor abandonment standard advocated by the Indicated Parties, the Commission may inquire as to whether the service to be abandoned will be used in the future. *See In re: Glendale Yearound Water Company, 2008 Pa. PUC LEXIS 1077*, *6-7 (Opinion and Order entered Aug. 7, 2008) ("The Appellate Courts have held that in determining whether abandonment of service is necessary or proper, the Commission may consider a number of factors including … prospects as to future use by the public....").

Quantification of Benefits. Finally, there is no requirement to precisely quantify benefits or savings from a project or proposal. *Popowsky*, 937 A.2d at 1055-57. In *Popowsky*, the Pennsylvania Supreme Court unequivocally explained that:

> [W]e agree with Appellants that *City of York* does not hold that a merger benefits the public only if the PUC can demonstrate that the merger savings will lower prices to consumers. For similar reasons, the Commission is also correct in its prevailing interpretation rejecting the contention that "that the *City of York* test cannot be met without quantifying the specific effects of alleged savings."
>
> …

> In conducting the underlying inquiry, the Commission is not required to secure legally binding commitments or to quantify benefits where this may be impractical, burdensome, or impossible; rather, the PUC properly applies a preponderance of the evidence standard to make factually-based determinations (<u>including predictive ones informed by expert judgment</u>) concerning certification matters.

Id. at 1056-57 (emphasis added).

To the extent that the Commission determines that it has jurisdiction over this matter and that the proposed change in service constitutes an abandonment of service, it should apply the affirmative public benefits standard announced in the *City of York* case and applied in other petroleum products pipeline abandonment proceedings.

2. The Indicated Parties' Proposed "Four-Part" Standard Should Not Be Applied In This Case.

Opposing parties assert that the Commission has applied a specific "four-part" test in other abandonment proceedings and that this test should be applied in this case. (*See* IP St. No. 3, pp. 11-12.) This test should be rejected for several reasons.

First, as explained above, the Commission has repeatedly applied the affirmative public benefits test in oil pipeline abandonment proceedings and with good reason. The Indicated Parties' four-factor test may make sense when a traditional fixed public utility with a monopoly service territory proposed to abandon service and its customers have no alternatives for service. However, it should have no application in an oil pipeline abandonment proceeding where the pipeline operates in a competitive market and shippers have clear alternatives that are currently being used.

When a natural gas utility abandons service, the end-use customer that is buying the natural gas cannot buy natural gas from the utility after the abandonment. This is in stark contrast to the proposed reversal where all buyers of petroleum products will be able to buy all of the same products at all of the same locations after the reversal.

Second, as explained in more detail in Section VII.D., *infra*, the Indicated Parties misstate and misapply the "traditional" multi-factor standard in several important ways. For example, the Indicated Parties improperly characterize the multi-factor abandonment test as a "four part" test, under which each part must be met before an abandonment can be approved. (IP St. No. 3, pp. 14-16. This is simply not the case. Pennsylvania appellate courts have consistently reiterated that the legislature did not define a specific set of criteria that an applicant must satisfy in order to obtain Commission approval of an abandonment. *See Seaboard Tank Lines, Inc.*, 502 A.2d at 764-65; *Commuters' Committee*, 88 A.2d at 424. The four factors that the Indicated Parties have identified are merely "<u>among the factors to be considered</u> in determining the existence or nonexistence of public convenience and necessity in abandonment of service." *See Commuters' Committee*, 88 A.2d at 424 (emphasis added) (recognizing non-exclusivity of the aforementioned factors and applying additional factors in its analysis). Furthermore, the Commission must balance any factors that it considers. *See Borough of Duncannon v. Pa. Pub. Util. Comm'n*, 713 A.2d 737, 740 (Pa. Commw. 1998) (explaining the Commission "must weigh these factors and not focus on mere cost-benefit criteria."). The primary consideration and ultimate issue, under any formulation of the standard of review, is whether the proposed abandonment is in the public interest. *See* 66 Pa. C.S. § 1103(a). As discussed in Section VII.D. *infra*, Laurel addresses the application of a multi-factor abandonment test and demonstrates that its proposed reversal is in the public interest.

3. Conclusion As To Standard Of Review.

For the reasons more fully explained above, to the extent the Commission determines it has jurisdiction over Laurel's proposed reversal and that its approval is required, the Commission should determine whether Laurel's proposed reversal is necessary or proper for the convenience, accommodation or safety of the public and, therefore, is in the public interest. 66 Pa. C.S. § 1103(a). If a more specific standard of review is to be adopted, it should be the "affirmative benefits test" used by the Commission in prior oil pipeline abandonment proceedings. Regardless of the test applied by the Commission to make this determination, however, the proposed change in direction of service is in the public interest and should be approved.

C. Whether The Proposed Reversal Is Necessary Or Proper For The Convenience, Accommodation Or Safety Of The Public And Therefore Is In The Public Interest.

1. The Proposed Reversal Will Provide Substantial Public Benefits.

Approval of the reversal will provide substantial benefits. These benefits include: (1) allowing Laurel to repurpose and make better use of a wasting asset; (2) lower gasoline prices for consumers across Pennsylvania; (3) improved reliability for Central Pennsylvania; and (4) reduced reliance on oil imported from overseas.

The record evidence is clear that Laurel volumes to Pittsburgh have substantially declined and are projected to continue to decline in the future. Approving the proposed reversal will allow Laurel to make better use of a wasting asset to bring lower-cost supplies to Pittsburgh and Central Pennsylvania.

The reversal will also reduce gasoline prices for all consumers in Pennsylvania. This includes both consumers in Pittsburgh and Altoona that will be able to receive additional low-cost petroleum products from the Midwest and consumers in Eastern Pennsylvania, from Philadelphia to Harrisburg, which will benefit from increased competition among East Coast refineries that will reduce gasoline prices.

The record evidence is clear that the Midwest refineries are supplying more and more of Pittsburgh's demand for petroleum products as pipeline constraints from the Midwest are being lifted. This is evident from the significant decline in Laurel eastbound shipments to Pittsburgh, especially in 2017, as the Allegheny Access Pipelines and Buckeye Broadway I expansion have given Midwest refineries more access to Pittsburgh.

The record evidence is clear that Midwest refineries are lower-cost producers than their Eastern counterparts. The Midwest refineries have access to lower cost crude, which is the most significant cost in producing refined petroleum products. The Midwest refiners also are much more technologically advanced and will continue to be low-cost producers into the future.

As discussed in more detail below, the reversal and associated increase in capacity on Buckeye from the Midwest, will allow Midwest refineries both to provide additional low-cost supplies to Pittsburgh and to access the Central Pennsylvania market through Altoona. This will reduce gasoline prices and will provide substantial benefits to all Pennsylvania consumers.

The reversal will also increase supply reliability for Central Pennsylvania. Pittsburgh is currently served by multiple pipelines from the west, barges on the river and trucks from Eastern Ohio. Reversing the pipeline will not reduce Pittsburgh's supply reliability because Pittsburgh has, and will continue to have, many different sources of supply. The proposed reversal will, however, substantially increase reliability to Central Pennsylvania because this region will now be served by two pipelines—Laurel from the east and Laurel from the west—as opposed to only one pipeline—Laurel from the east.

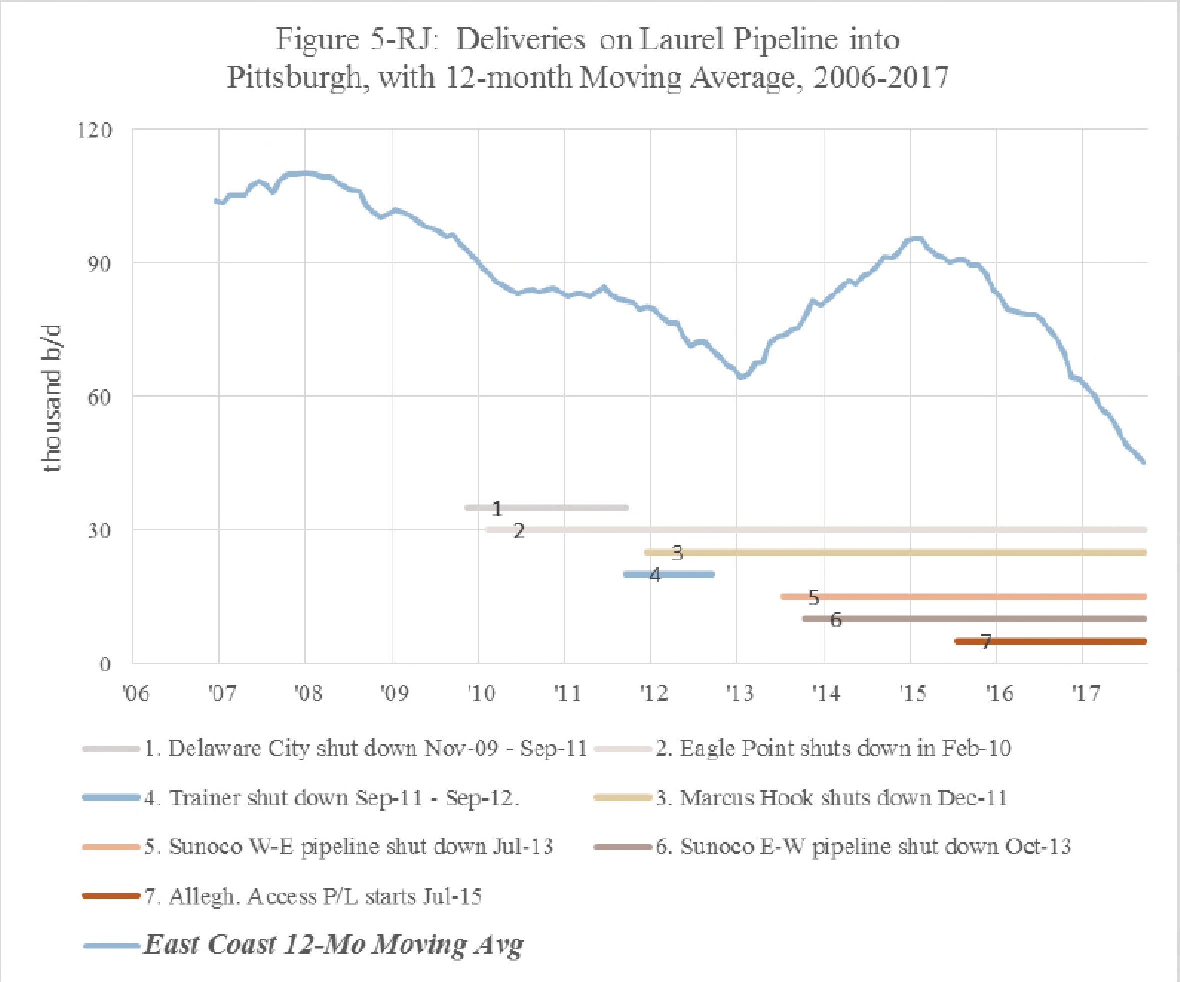
Finally, the reversal will also reduce both the United States' and Pennsylvania's reliance on overseas oil. This is a significant benefit that is consistent with overall state and federal energy policy.

a. The Proposed Reversal Will Allow Laurel To Repurpose And Make Better Use Of A Wasting Asset.

Laurel's volumes to Pittsburgh have declined substantially over the past ten (10) years and especially since pipeline constraints from the Midwest to Pittsburgh have begun to ease. Laurel volumes to Pittsburgh are projected to continue to decline in the future. The proposed reversal will allow Laurel to repurpose and make better use of its wasting asset (*i.e.* the segment of its pipeline west of Eldorado).

i. Volumes From Eldorado To Pittsburgh Have Been Declining Since 2006.

Declining Laurel volumes to Pittsburgh demonstrate that Pittsburgh is receiving more and more of its supply from the Midwest, while regional demand declines. In 2006, Laurel supplied approximately 104,000 bpd of Pittsburgh's total demand for refined petroleum products. For the last 12 months, Laurel has supplied approximately 45,000 bpd of Pittsburgh's total demand for refined petroleum products (Laurel St. No. 5-RJ, p. 3), a decline in supply of over 55%.



(Laurel Exhibit MJW-33, p. 2.) The volumes on Laurel to Pittsburgh increased in 2013 and 2014 because the Sunoco West-East pipeline was shut down in July 2013 and the Sunoco East-West pipeline was shut down in October 2013. (*Id.*) However, when the Allegheny Access pipeline began providing service to Pittsburgh from the Midwest in July 2015, volumes on Laurel from Eldorado to Pittsburgh again declined precipitously and have continued to decline. The trend lines are shown in the figure below:

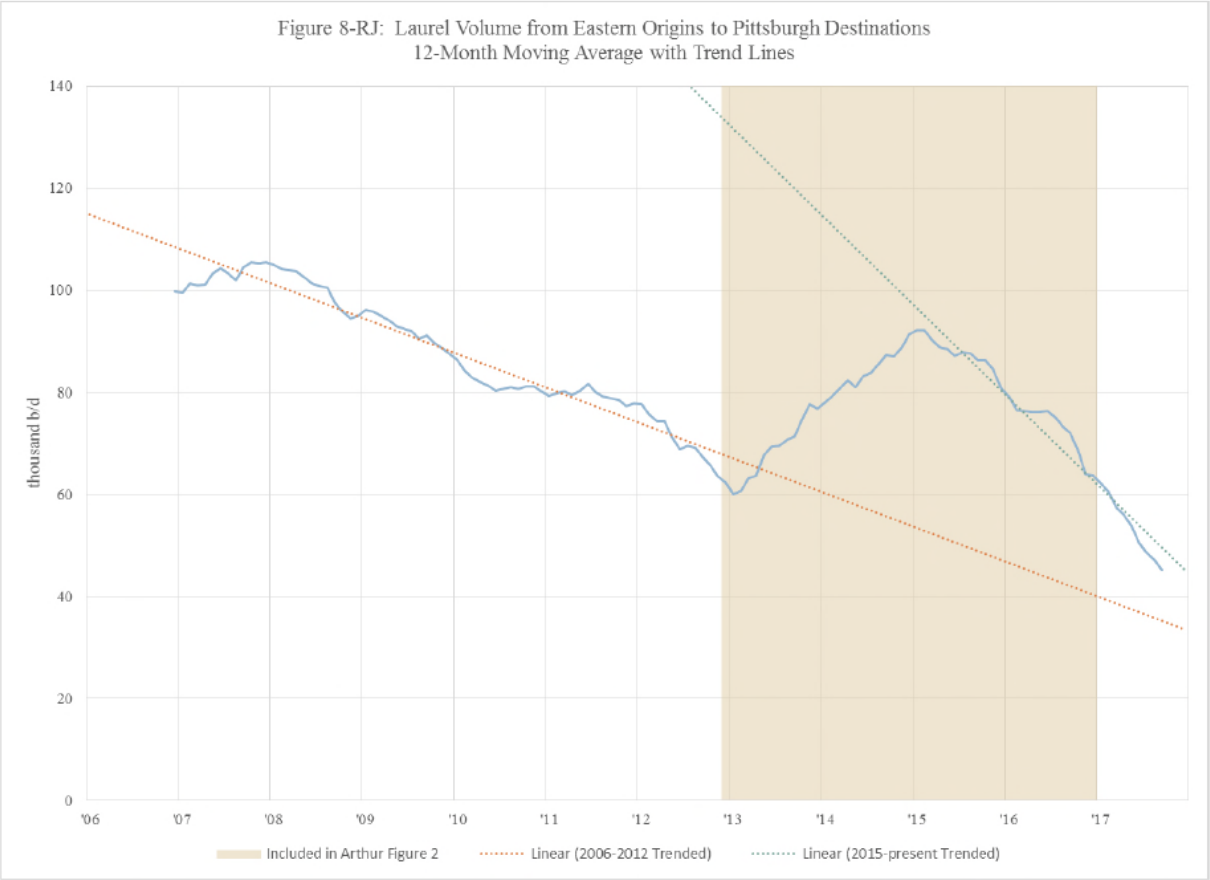


Figure 8-RJ: Laurel Volume from Eastern Origins to Pittsburgh Destinations
12-Month Moving Average with Trend Lines

(Laurel Exhibit MJW-33, p. 5; Laurel St. No. 5-R, p. 44, Figure 7.)

Volumes on Laurel are clearly declining and have continued to substantially decline in 2017. Laurel volumes to Pittsburgh averaged 65,000 bpd in 2016 (Laurel St. No. 5-RJ, p. 19), but were only 45,000 bpd for the 12 months ending September 2017, a decline of approximately 30% in a single year. (*Id.*, p. 6.)

In their Direct Testimony, the Indicated Parties' witnesses argued that Laurel volumes from Eldorado to Pittsburgh had not fallen. Dr. Arthur picked a time period beginning January 1, 2012 and stated that Laurel volumes to Pittsburgh had increased from 2012 to 2016. (IP St. No. 1, p. 6.) Laurel's witness, Dr. Webb, explained that Dr. Arthur's analysis regarding Laurel volumes was flawed because it failed to account for the following factors:

- Sunoco shut down pipeline supply from the Midwest in July 2013 which temporarily increased Laurel volumes to Pittsburgh.
- In October 2013, Sunoco shut down its pipeline transporting products from Philadelphia throughout Pennsylvania, which temporarily increased Laurel volumes to Pittsburgh.
- In mid-2015, Allegheny Access began providing supply into Pittsburgh from the Midwest, which re-started the decline in Laurel volumes to Pittsburgh that started in 2006.

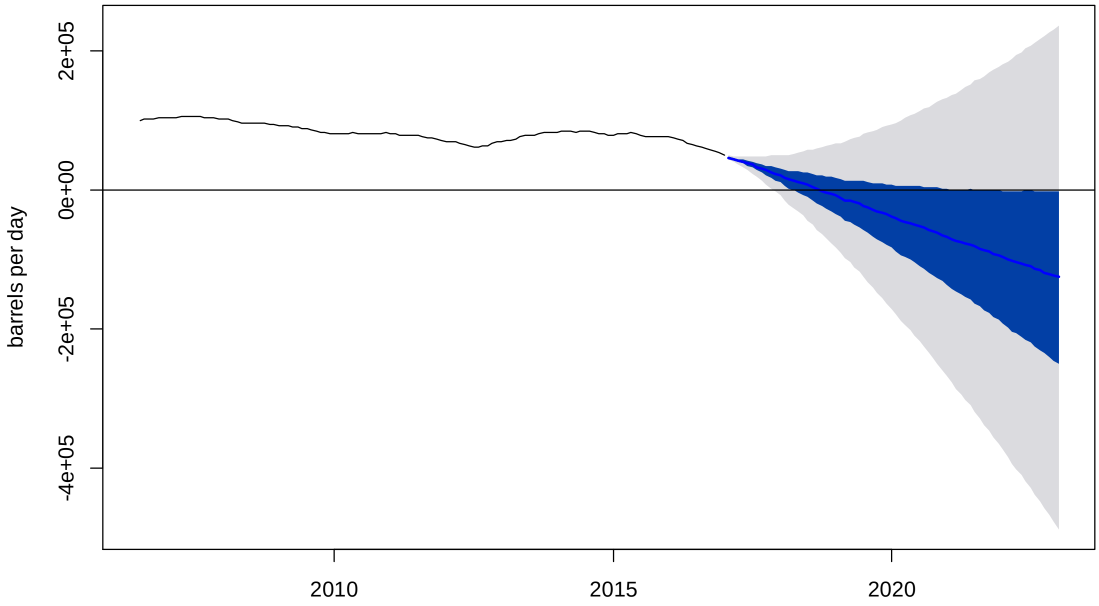
(Laurel St. No. 5-R, p. 35.)

It is important to recognize that Laurel volumes to Pittsburgh have declined significantly in the period of 2013 through 2017. If entities were seeking to move product to Pittsburgh from the east, the closure of the Sunoco line to Pittsburgh should have caused a continuous increase in Laurel volumes to Pittsburgh, during the same period, because Laurel was the only remaining east-to-west pipeline option. This fact further demonstrates that Midwestern supplies have been overtaking Eastern supplies to Pittsburgh in recent years.

In Direct Testimony, the Indicated Parties witness, Mr. Schaal, also argued that Laurel volumes to Pittsburgh did not materially and consistently decline. (IP St. No. 2, p. 18.) Laurel's witness, Dr. Webb, explained that Mr. Schaal's statements were contradicted by charts Mr. Schaal provided in his own Direct Testimony. Specifically, in Mr. Schaal's "Figure 8" year-on-year volume declines from 2006 to 2012 averaged 14 percent. (See IP St. No. 2, p. 18; Laurel St. No. 5-R, p. 37.) While Mr. Schaal showed increased Laurel volumes to Pittsburgh in 2013-2014, again these volumes only increased because Sunoco's pipelines had shut down and Allegheny Access had not started operations.

Perhaps recognizing the error in his Direct Testimony, Mr. Schaal changed course in his Surrebuttal Testimony and argued that it was uncertain Laurel volumes would continue to decline and presented a "cone of uncertainty" that purported to present a forecast of Laurel volumes with 50% and 95% probability bounds. (*See* IP St. No. 2-S, pp. 11-12.) Unfortunately, Mr. Schaal's "cone of uncertainty" chart as originally presented in his Surrebuttal Testimony was in error. (Laurel St. N. 5-RJ, pp. 13-14) Laurel's witness, Dr. Webb, presented a corrected version of Mr. Schaal's "cone of uncertainty" in Rejoinder Testimony and this correction is presented below:

Figure 1: Forecast of Volume Trend Generated By Mr. Schaal's Workpapers



Mr. Schaal's corrected forecast shows with substantial certainty that Laurel volumes will continue to fall in the future. As Dr. Webb explained, Mr. Schaal's own workpapers show that Laurel volumes to Pittsburgh can be expected to cease or reach such a low level that makes operations unfeasible in the relatively near future. (Laurel St. No. 5-RJ, pp. 13-16.)

As explained above, Laurel volumes to Pittsburgh have declined from approximately 104,000 bpd in 2006 to 45,000 bpd for the most recent 12 months ending September 2017. This is a 56.7% decrease. This is a clear ongoing trend that is projected to continue due to the overwhelming cost advantage that Midwest refineries have as compared to East coast refineries that is explained in Section VII.C.1.b.i *infra*.

ii. Laurel Volumes To Pittsburgh Have Declined In All Seasons Of The Year.

The Indicated Parties argue that East Coast products are cheaper in the summer and the Laurel pipeline is necessary to move summer volumes to Pittsburgh. (*See, e.g.*, IP St. No. 1, p. 24.) Contrary to their assertions, Pittsburgh is receiving more supply from the Midwest throughout the entire year. Laurel's witness, Dr. Webb, provided Tables showing that Laurel volumes have declined in all four quarters of the year. (Laurel St. No. 5-RJ, pp. 20-21.) For the first quarter, January through April, volumes have fallen by approximately 73% from 92,000 bpd in 2006 to 25,000 bpd in 2017. The decline was particularly steep from 2016 to 2017 where volumes fell by half from 51,000 bpd to 25,000 bpd.

For the second quarter of April – June, Laurel volumes to Pittsburgh have declined by approximately 39% from 108,000 bpd in 2006 to 66,000 bpd in 2017. Again the decline was particularly steep from 2016 to 2017 where volumes fell by approximately 30% from 94,000 bpd to 66,000 bpd.

For the third quarter of July – September, which is primarily the summer months, Laurel volumes to Pittsburgh declined by approximately 52% from 113,000 bpd in 2006 to 54,000 bpd in 2017. The decline from 2016 to 2017 was also dramatic for the third quarter, falling by approximately 29% from 76,000 bpd in 2016 to 54,000 bpd in 2017.

Laurel does not have volumes for the fourth quarter of 2017, October – December at this time. However, Laurel volumes to Pittsburgh from 2006 to 2016 have significantly declined by approximately 65% from 103,000 bpd to 36,000 bpd. The 2015 to 2016 fourth quarter volumes also declined significantly (in half) from 72,000 bpd in 2015 to 36,000 bpd in 2016.

The evidence is clear that Laurel volumes to Pittsburgh have significantly declined over the entire period from 2006 to 2017. It is also important to note the steep declines from 2016 to 2017 have occurred shortly after the Allegheny Access pipeline became operational, which has allowed shippers to move more products into Pittsburgh from the Midwest. As explained by Mr. Miller, shippers have long-term contracts with refineries and it takes some time for them to shift supply sources. (Hearing Tr. 1250:7-13) The evidence demonstrates that as pipeline constraints are being lifted, shippers are transporting more and more volumes to Pittsburgh from the Midwest.

iii. Laurel Volumes To Other Markets Demonstrate That Pittsburgh And Altoona Are Receiving Midwestern Supplies.

Dr. Webb provided a Table showing Laurel's deliveries to the Philadelphia, Harrisburg and Altoona markets from 2006 to 2016 in his Rebuttal testimony. (Laurel St. No. 5-R, pp. 49-51.) Laurel volumes to the Philadelphia market have increased since 2006 from 23,000 bpd in 2006 to 34,000 bpd in 2016. Harrisburg deliveries have slightly decreased from 83,000 bpd in 2006 to 77 bpd in 2016, approximately a 7% decrease. Altoona volumes have also decreased from 42,000 bpd in 2006 to 33,000 bpd in 2016, approximately a 21% decrease. As explained above, Laurel's volumes to Pittsburgh decreased from 104,000 bpd in 2006 to 64,000 bpd in 2016, or a 38% decrease and further declined to 45,000 bpd for the 12 months ending September 2017.

The significant decline in Laurel volumes to Pittsburgh and Altoona indicates that these markets are receiving more and more supply from the Midwest. In Rejoinder, Dr. Webb stated as follows:

> Q. Why do you say this chart shows that Pittsburgh is clearly obtaining substantial quantities of supply from the Midwest?
>
> A. This conclusion also can be inferred from the fact that throughput on Laurel has declined from approximately 95,000 barrels per day in 2014 to 64,000 barrels per day in 2016 (an approximately 33 percent decrease) at the same time that demand in the other markets stayed flat or increased. It is implausible to assume that demand for refined products in Pittsburgh has declined by 33 percent, particularly when demand in nearby markets has increased. Since there is obviously sufficient supply in Pittsburgh to meet demand—there are no stories of gas lines, home heating oil not being delivered, etc.—the only reasonable conclusion is that more demand is being met by Midwestern supply.

(Laurel St. No. 5-R, pp. 50-51.) Dr. Webb further noted that Laurel's volumes to Pittsburgh have declined even more significantly in 2017 (to 45,000 bpd), which demonstrates that a substantial and increasing portion of the Pittsburgh demand is being met by supply from the Midwest. (Laurel St. No. 5-R, p. 51.)

iv. The Indicated Parties' Own Internal Study Recognized That Lower-cost Midwestern Supply Would Decrease Laurel's Volumes To Pittsburgh.

Gulf is a terminal owner on Laurel's system and a member of the Indicated Parties in this proceeding. As a terminal owner, Gulf has a unique view of how shippers are using Laurel's system to provide supplies to Pittsburgh. Gulf performed several internal studies to evaluate Pittsburgh market dynamics. **[BEGIN HIGHLY CONFIDENTIAL]** [redacted]

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v. Continued Volume Declines Will Cause Operational Issues On Laurel Between Altoona And Pittsburgh.

It is important to note that Laurel will experience operational issues if volumes continue to decline, even if they do not decline all the way to zero. In Rebuttal Testimony, Dr. Webb explained that operational issues occur as pipeline volumes decrease. These operational issues include increased transit times, which can create a death spiral. (Laurel St. No. 5-R, p. 45.) Dr. Webb further explained:

- As volumes fall and transit times in the winter months become higher it will become more difficult for shippers to ship on Laurel in the summer months, even if they had an economic incentive to do so.
- If volumes reach zero in any month, the shippers who place product in the system will not have access to their product until future shippers deliver barrels into the system.

- The possibility that product will become trapped in the system will deter future shippers from delivering barrels into the system only to have those barrels become transmix.

- Moreover, shutting down the line in the winter may cause product trapped in the system to fail to meet quality specifications when it is taken out in the summer. For example, if winter grade gasoline were trapped in the system until summer it would no longer meet the summer specifications.

- Long transit times will make it more complex to take advantage of arbitrage opportunities that the shippers claim generate benefit today.

- As volume falls, Laurel will need to either require larger batches or force shippers to accept substantial increases in transmix. Either of these possibilities will increase the cost of using Laurel.

- Shippers have already voiced complaints about increasing transit times and quality issues.

- These operational realities will also decrease Laurel's viability in the summer months as shippers simply avoid Laurel.

(Laurel St. No. 5-RJ, pp. 22-23; footnotes omitted.)

As Laurel volumes to Pittsburgh continue to decline, Laurel will experience operational, reliability and quality of service issues that will cause shippers to further decrease shipments to Pittsburgh.

vi. Laurel Should Not Have To Wait Until Volumes To Pittsburgh Further Decline To Reverse The Line.

Laurel and other market participants recognize the seismic shift in supply fundamentals that underlie the increase in Midwestern supply to Pittsburgh that are discussed in Section VII.C.1.b.i. below and the resulting decline in Laurel volumes to Pittsburgh. Laurel is proactively addressing this fundamental market change by proposing to reverse its line to Altoona. It is in the public interest for Laurel's Application to be approved now as opposed to waiting until Laurel's volumes decline further.

First, the reversal requires a significant lead time for regulatory approvals and construction. Laurel filed its Application in November 2016 and will not likely receive a Commission order until early to mid-2018. Then, upon receiving a Commission order, Laurel will be required to make the pipeline modifications and perform other construction activities, to complete the reversal. (*See* Laurel St. No. 3, pp. 5-6.) This will take additional time. By the time that the reversal is operational, volumes on Laurel will have further declined. If Laurel is forced to wait to implement the reversal, it will increase the under-utilization of the pipeline and almost certainly create operational issues that could make the pipeline unfavorable for shippers due to increased transit times and additional transmix issues and costs. (Laurel St. No. 5-RJ, pp. 21-23.)

Second, Laurel has secured commitments from shippers which offset the construction costs. (Hearing Tr. 282:7-18; *see also* (HC) Laurel Exhibit DWA-11, p. 3 of 11) If Laurel's reversal is denied and Laurel must conduct a new open-season in the future, it is likely that the committed shippers will find new alternatives to bring their products to Pittsburgh. If this happens, they may be unwilling to commit to shipping volumes to Pittsburgh and Altoona or Buckeye/Laurel, which significantly increases Laurel's risk.

Third, if Laurel's volumes to Pittsburgh continue to decline, Laurel's risk of having an empty pipe, especially in the winter months, increases significantly. It is poor public policy to allow Laurel's pipeline to be continually under-utilized when it could be shipping lower cost Midwestern supplies to Western and Central Pennsylvania.

b. The Reversal Will Reduce Gasoline Prices For Consumers.

i. The Proposed Reversal Will Allow An Increased Supply Of Refined Products To Flow From The Midwest to Pennsylvania.

1. Midwest refineries have access to lower cost crude than East Coast refineries.

The evidence is overwhelmingly clear in this case that Midwestern refineries have access to lower cost crude oil supplies than the Eastern refineries. As explained by Mr. Hollis:

> The cost of crude oil is the major determinant of the retail price of gasoline, these crude oil cost advantages have increasingly provided access to lower-cost gasoline and fuel oil in our neighboring states to the west, producing major benefits for their consumers and local economies.

(Laurel St. No. 2-R, pp. 3-4.)

Laurel's witness, Mr. Stern, stated that "crude costs are the overwhelming factor in determining gasoline prices." (Laurel St. No. 8-R, p. 11.) Likewise the EIA states that "The cost of crude is the largest factor in the retail price of gasoline." (Laurel C.E. Exh. No. 14, p. 2.)

The Midwestern refineries source the majority of their crude supplies from the Bakken oil fields in northwestern North Dakota, northeastern Montana and southern Alberta as well as from the oil sands of central Alberta. (Laurel St. No. 7-R, pp. 9-10.)

Midwest refineries benefit from the Bakken and Canadian crude for two primary reasons. First, they are relatively close to these crude oil sources which lowers the delivered cost of getting crude to the Midwest refineries. (Laurel St. No. 7-R, p. 13.) Second, the Bakken and Canadian crude ("Western Canadian Select") is cheaper than the other two primary sources of crude oil which are West Texas Intermediate ("WTI") and Brent crude. WTI is a domestic crude source that is primarily produced in Texas and surrounding states in PADD III. (Laurel St. No. 7-R, p. 14; Hearing Tr. 602:1:21.) Brent crude is the global price for crude that is produced from sources across the world, including from the North Sea and Africa. (Laurel St. No. 7-R, p. 17.)[61]

Western Canadian Select has significant cost advantages as compared to WTI and Brent

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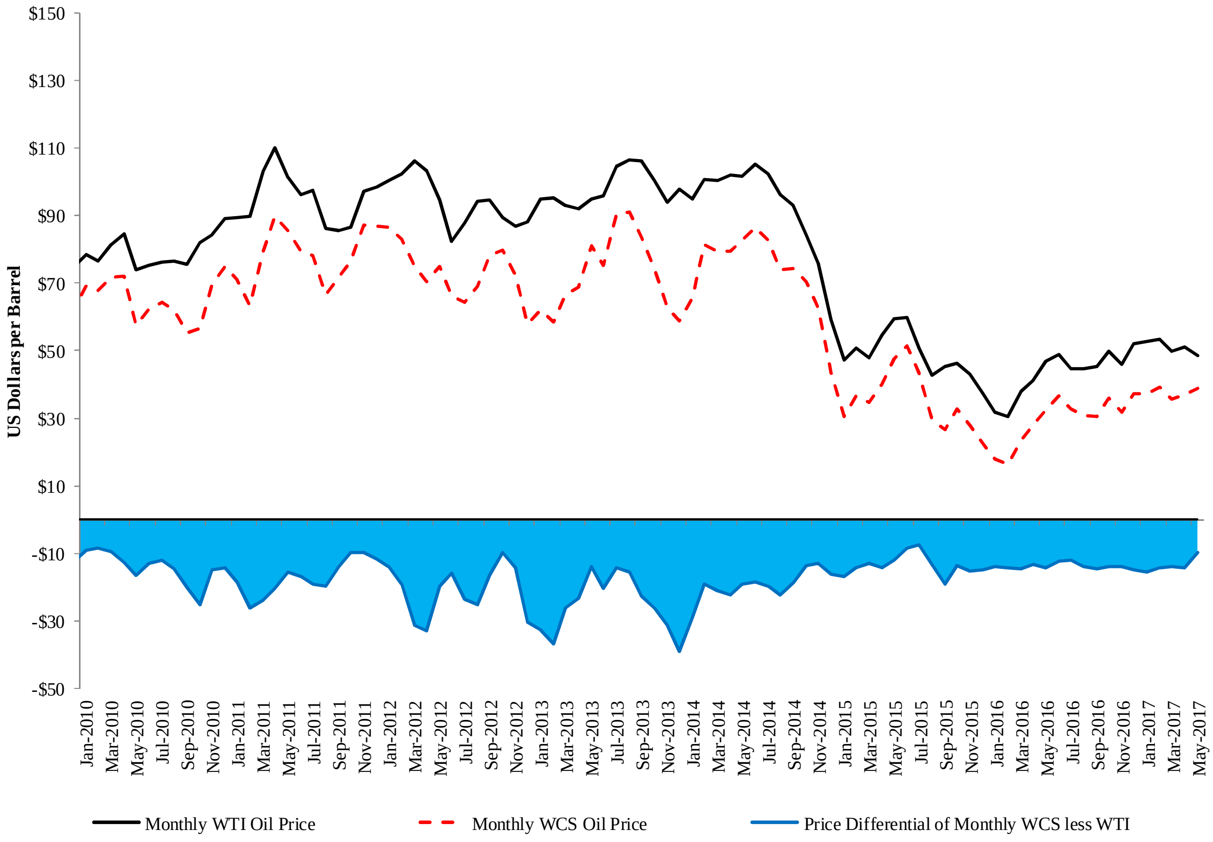
[61] The Eastern refineries obtain most of their crude supplies from foreign sources, which is primarily supplied by marine vessel.

crudes. Laurel’s witness Dr. Jones provided a chart showing the cost advantage of Western Canadian Select in his Rebuttal Testimony.



(Laurel St. No. 7-R, p. 15.)

Western Canadian Select is also cheaper than Brent crude, which must be transported by ship to the Eastern refineries. (Hearing Tr. 602:1:21.)

The access to lower cost crude supplies is one of the reasons why Midwest refineries can produce lower-cost refined petroleum products than Eastern Refineries can produce.

2. Crude production in the Bakken and in Canada has significantly increased over the past 10 years.

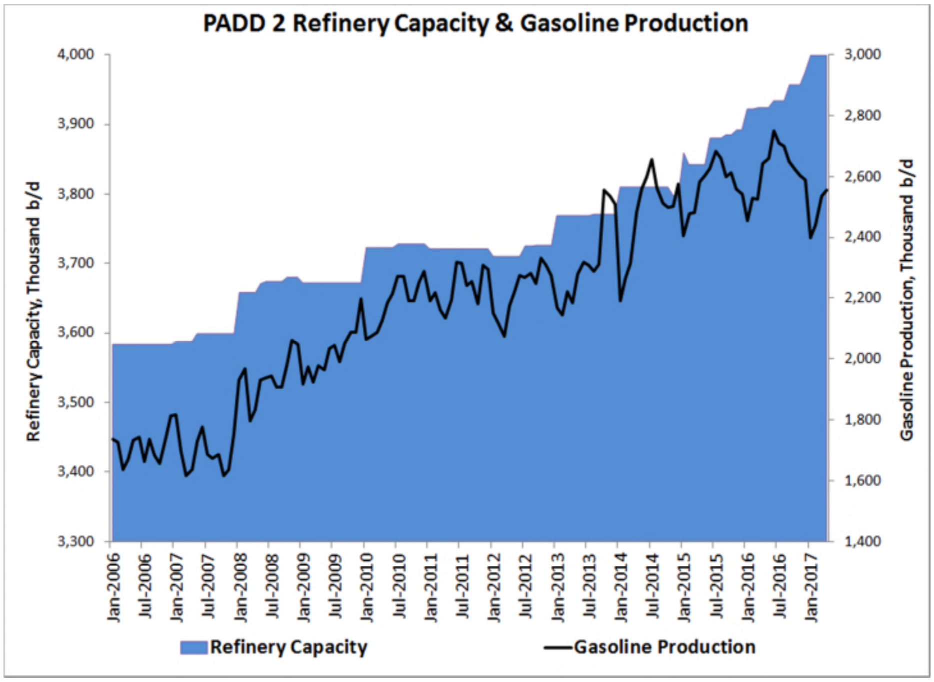
It is undisputed in this proceeding that both Bakken and Canadian crude production has increased significantly over the past 10 years. Dr. Jones produced EIA and Canadian Natural

Energy Board charts that show Bakken crude production increasing six-fold between 2008 – 2014, peaking at 1.2 million barrels per day and Canadian crude increasing by approximately 1.4 million barrels per day between 2005 and 2017, to approximately 4 million barrels per day. (Laurel St. No. 7-R, pp. 10-11.)

3. Midwest refineries have made significant investments to refine different types of crudes.

The Midwest Refineries are among the most advanced refineries in the United States because they have made significant investments to upgrade technology and refining capacity. They are much more technically advanced and able to process many different types of crude at a cheaper cost than their Eastern counter-parts. (*See* Hearing Tr. 445:17-446:5.)

Laurels' witness, Mr. Stern, explained that from 2005 through December 2015, refining capacity increased by 323,000 barrels per day, or approximately 9%. (Laurel St. No. 8-R, p. 7.) Mr. Stern provided the following chart from EIA to illustrate his point.



(Laurel St. No. 8-R, p. 8.)

Mr. Stern also explained that Midwestern refineries have invested billions of dollars to modernize their refineries. Among those investments are those listed below:

- BP completed a $4.2 billion modernization of its Whiting refinery in 2013.
- Wood River refinery completed a $3.8 billion modernization in 2011.
- Husky spent $340 million at its facility in Lima and $238 million at its jointly owned facility with BP in Toledo to modernize these facilities.

(Laurel St. No. 8-R, pp. 10-11.)

These significant investments allow Midwestern refineries to refine cheaper and different types of crude more efficiently than Eastern refineries which have not made comparable investments in recent years. These significant investments also demonstrate the Midwestern refineries' belief that they can out-compete other refineries due to access to lower-cost crude.

4. Midwestern refineries are lower-cost producers than their East Coast counterparts.

For the reasons explained above, including access to lower cost crude and more-efficient, modern facilities, it is clear that Midwestern refineries are lower cost producers than the Eastern refineries. Even the Indicated Parties agree with this.

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The evidence is clear that the Midwest Refineries are lower-cost producers than the Eastern Refineries.

5. The Midwestern refinery cost advantage is projected to continue into the future.

The Midwestern refinery cost advantage is expected to continue into the future due to continued access to low-cost crude supplies and the continued use of modernized facilities as compared to East Coast refineries. Laurel's witness, Mr. Stern, stated as follows:

> Significant changes have occurred in each of those markets in the past few years that have overturned historical relationships and, to the extent that the driving forces of increased shale oil availability and moderate crude oil prices continue to exist, those trends will likely continue into the future.

(Laurel St. No. 8-R, p. 7.)

Despite statements to the contrary on the record, the Indicated Parties' witness, Mr. Schaal, agreed at the hearing and in his private publication to paid subscribers that Bakken and Canadian crude would continue to experience substantial price discounts as compared to WTI and Brent crudes in the future.

In his Surrebuttal Testimony, Mr. Schaal stated that (1) midcontinent crude oils which supply Midwest refiners will become increasingly connected to global crude prices and (2) there will be a continued erosion of the price advantage for Eastern Midwest region refiners. (IP St. No. 2-SR, pp. 5-6, 15.) Initially, at the hearing, Mr. Schaal also testified that the Midwest access to cost advantaged crude had eroded relative to the East Coast refiners. (Hearing Tr. 821:1-4.)

Tellingly, Mr. Schaal's Surrebuttal Testimony and initial testimony are contrary to a **[BEGIN HIGHLY CONFIDENTIAL]** [redacted]

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The record evidence clearly demonstrates that Bakken and Canadian crude production will continue to grow in the future and that this U.S. and Canadian sourced crude will continue to be cost advantaged as compared to Brent and WTI into the future.

The second reason that Midwestern refineries will continue to be cost-advantaged over Eastern Refineries is because the Midwestern Refineries have made substantial investments to modernize their facilities. *See* Section VII.C.1.b.i.3. *infra*. Laurel's witness, Dr. Jones, stated that the fact that these refineries have made significant capital investments incentivizes them to refine additional crude oil and push their refined products to as many markets as possible, thereby putting downward pressure on prices. (Laurel St. No. 7-RJ, p. 20.) The Eastern Refineries have not made similar investments. (Laurel St. No. 8-R, p. 11; Laurel St. No. 5-R, p. 67.) The Midwestern Refineries efficiencies will continue into the future, allowing them to continue to be price-advantaged as to their Eastern counterparts.

6. There are many Midwestern refineries that will compete to serve Pittsburgh and Altoona.

The Midwest has many low-cost refineries that will compete to supply the Pittsburgh, Altoona and the surrounding areas. Laurel's witness, Mr. Stern, listed 14 refineries in the Eastern Midwest alone, with operating capacity of approximately 2.6 million bpd that are able to readily supply Pittsburgh, as well as other markets in the Midwest. (Laurel St. No. 8-R, pp. 8-12.) These are only the Eastern Midwest refineries and does not include the other refineries in both the Midwest and Gulf Coast that are able to supply Pittsburgh.[62] The number of Eastern Midwest refineries (14) alone is more than the number of East Coast refineries that currently serve the Pittsburgh markets. (*See* Laurel St. No. 8-R, p. 9, Figure 2 (Eastern Midwest refineries); Laurel St. No. 7-R, p. 53, Figure 15 (East Coast refineries).)

After the reversal, there will continue to be many low-cost Midwest refineries that will compete to serve the Pittsburgh market.

7. Midwest refineries are supplying more and more of Pittsburgh's demand.

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[62] Mr. Stern explained that the Explorer Pipeline connects Gulf Coast supplies to Chicago, which is in turn connected to Pittsburgh by various pipelines, including Buckeye. (*See* Laurel St. No. 8-R, pp. 12-13 and Figure 3.)

As constraints from the Midwest to Pittsburgh are being lifted, Pittsburgh has received more and more of its supply from the Midwest. Since Allegheny Access began supplying Pittsburgh from the Midwest in July 2015, Laurel's volumes from the East have declined precipitously. In 2014, Laurel volumes to Pittsburgh were 95,000 bpd. (Laurel St. No. 5-R, p. 49.) For the last 12 months ending September 2017, Laurel volumes to Pittsburgh were 45,000 bpd. (Laurel St. No. 5-RJ, p. 3.) This is more than a 50% decline since 2014.

The Laurel reversal, coupled with the increased capacity on Buckeye into Pittsburgh, will alleviate additional constraints into Pittsburgh and make it easier for Midwestern refineries to reach Pittsburgh. *See* Section VII.C.1.b.i.8 *supra*. It will also allow them to reach Altoona by pipeline. This will allow more low-cost Midwestern supply to reach both Pittsburgh and Central Pennsylvania through Altoona.

8. Laurel's proposed reversal will eliminate capacity constraints that are preventing additional Midwest supplies from reaching Pittsburgh and Central Pennsylvania.

There was a dispute in this proceeding about whether there currently is sufficient pipeline capacity for Midwestern refineries to supply all of Pittsburgh's demand. (*See, e.g.*, Hearing Tr. 757:5-23.) The pipelines have sufficient overall rated capacity to supply Pittsburgh. (*See, e.g.* Laurel St. No. 8-R, pp. 14-16; IP St. No. 1, pp. 18-21.) However, overall rated capacity does not mean that amount of product is available to supply Pittsburgh.

Husky's witness, Mr. Miller, explained that there are operational constraints in getting to Pittsburgh. At the hearing, Mr. Miller stated:

> Q. So you mentioned the Allegheny Access pipeline, and I understand that that was put into service, and Buckeye also currently has capacity into Pittsburgh. Notwithstanding those two projects, how would the reversal on its own increase liquidity and optionality into the Pittsburgh area?

> A. The pipelines are not just representative of the pipelines. They also include the terminal set. So the terminal set along the Allegheny Access pipeline are the old Sunoco, Incorporated terminals. Those terminals are known to be smaller in size. Their geographic locations are not in advantaged locations.
>
> So our ability to sell product includes not only the pipeline, but what we can put through the terminals and what terminals customers will want to go to.
>
> What this does is also gives us, the Laurel pipeline gives us another pipeline into this market, but it also gives us a much better terminal set where the terminals are larger and the terminals are in a better location for customers to go pick up.
>
> So the pipeline piece increases optionality and liquidity, but our access to the terminal set also does as well.
>
> We currently operation through about three terminals, three terminals on the Allegheny Access project in Pennsylvania. This will give us an additional, at least three terminals, so we can double out terminal count in our ability to service the region.

(Hearing Tr. 1181-1182.)

As explained by Mr. Miller, geography and operational constraints limit the Midwestern refineries' ability to get to Pittsburgh.

At the hearing, Gulf's witness, Mr. Johnston agreed that the deliverability of a pipeline is different than the overall rated capacity.

> Q. Are you aware that pipelines have an overall rated capacity?
>
> A. Yes. Thank you.
>
> Q. Do you agree that the deliverability on any given day is different than -- may be different than what that overall capacity is?
>
> A. I'm sure down time and issues on the line may be different, yes.
>
> Q. Could congestion constraints impact the availability of the pipeline into Pittsburgh?

> A. Just in the mere term, a constraint would answer that question; so yeah.

(Hearing Tr. 1012:7-18.)[63]

Gulf's witness, Mr. Johnston, also recognized that there are pipeline constraints on getting to Pittsburgh. In his Direct Testimony, Mr. Johnston stated:

> It is almost logistically impossible to move petroleum products from Chicago-area refineries to the Pittsburgh area due to pipeline capacity limitations.

(Gulf St. No. 1, p. 9.) Mr. Johnston also noted that Buckeye pipelines from the west are heavily allocated. (Gulf St. No. 1, p. 12.)

Mr. Johnston also cited pipeline constraints from the Midwest as limiting supply options to Pittsburgh at his deposition and in his Surrebuttal Testimony. (Laurel C.E. Exhibit No. 17 (Tr. 81:15-82:4); Gulf St. No. 1-SR, p. 7.) However, Mr. Johnston was not aware that in conjunction with the reversal, Laurel's affiliate, Buckeye, is increasing its pipeline capacity from the Midwest into Pittsburgh by 40,000 bpd. (Hearing Tr. 1023:1-11.)

The evidence in this proceeding demonstrates that Midwestern refineries currently have congestion constraints that limit their ability to reach Pittsburgh. The increase in capacity of 40,000 bpd that will be constructed in conjunction with the reversal will alleviate congestion constraints and allow more low-cost Midwestern supply to reach Pittsburgh and also reach central Pennsylvania.

9. Future demand declines will increase competition to serve Pittsburgh and Altoona.

As Laurel has stated in this proceeding, the Laurel reversal is not just about serving today's market needs but being best positioned to serve the market's needs in the future. It is

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[63] At the hearing, Mr. Johnston attempted to change his position that capacity into Pittsburgh is not constrained. (Hearing Tr. 1017:13-25.) Mr. Johnston's attempt to change in position was not credible, especially considering that he supported this position in his Direct Testimony, his deposition and his Surrebuttal Testimony. As explained above, Gulf is a terminal owner and is uniquely positioned to know if there are constraints on reaching Pittsburgh.

undisputed in this proceeding that domestic demand for gasoline will decline significantly in the future. Future demand declines will create more competitive pressure to lower prices.

Laurel's witness, Dr. Webb, stated as follows:

> First, demand for pipelineable petroleum products in the Midwest and the East Coast is projected to decline. However, refinery capacity, particularly in the Midwest is anticipated to remain constant. Therefore, Midwestern refiners are seeking additional market for their product. As demand declines, but supply remains constant, prices will decline—all else equal.
>
> * * *
>
> **Q. What is the relevance of reductions in future demand for gasoline?**
>
> A. When Buckeye was planning Broadway II, shippers indicated that they believed demand for gasoline would decrease in the relatively near future (*e.g.*, by 2025). In anticipation of this decrease, Midwestern refiners have determined that increasing supply into Pennsylvania is in their interest. For the reasons presented in my testimony, I believe it is also in the interest of consumers in Pennsylvania.

(Laurel St. No. 5, p. 18.)

Dr. Webb also noted that the EIA projects lower demand for both the Midwest and the Mid-Atlantic regions through 2026. Dr. Webb explained the EIA projections as follows:

> The consumption of gasoline alone will decrease 11 percent nationally, and 15 percent in the Mid-Atlantic and 13 percent in the Midwest. This will translate into a reduction of 140,000 bpd of consumption of pipelineable petroleum products in the Mid-Atlantic and 78,000 bpd of consumption in the Midwest. The decline in the consumption of gasoline will be even more dramatic, with the EIA projecting a reduction of 1,058,000 bpd of consumption of gasoline nationally, 153,000 bpd of consumption of gasoline in the Mid-Atlantic and 171,000 bpd of consumption in the Midwest. These consumption declines far exceed the consumption in Pittsburgh, as well as Pennsylvania markets to the East of Pittsburgh, such as Harrisburg. In short, Midwestern refiners will be seeing erosion of demand and would seek expanded access to markets such as Pennsylvania. This increased competition amongst refiners is likely to generate significant

> benefit to the consumers of Pennsylvania in the form of lower gasoline prices.

(Laurel St. No. 5, pp. 19-20.)

Dr. Webb further noted that this increase in supply relative to demand will put significant downward pressure on prices. (Laurel St. No. 5, p. 20.) **[BEGIN HIGHLY CONFIDENTIAL]** [redacted] **[END HIGHLY CONFIDENTIAL]**

The Indicated Parties' own document likewise confirm these facts. **[BEGIN HIGHLY CONFIDENTIAL]** [redacted]

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> [redacted]

[redacted] **[END HIGHLY CONFIDENTIAL]**

The Indicated Parties agree with Laurel that gasoline consumption will decline over the next 10 years. The decrease in gasoline consumption will cause the many low-cost Midwestern refineries to further compete to serve all markets, including Pittsburgh and Central Pennsylvania and will result in lower prices for consumers.

ii. Impact On Gasoline Prices In Pennsylvania

1. While it is difficult to precisely quantify the decrease in gasoline prices that will result from the proposed reversal, it is clear that prices will decrease.

As noted in Section VII.B.1. *supra*, Laurel is not required to quantify the benefits of the reversal for it to be approved and for good reason. *Popowsky*, 937 A.2d at 1055-57 (Pa. 2007). It is simply impossible to *precisely* quantify the effect of the reversal on gasoline prices at the pump because wholesale or rack prices do not directly correlate with retail prices. (Laurel St. No. 5-R, pp. 93-97.) Retailers attempt to make as much profit as possible, so the price they charge at the pump reflects competition from other retailers, among other factors. Laurel's witness, Dr. Jones, stated at the hearing that it is extraordinarily difficult to know what the price of gasoline will be in the future. (Tr. 686:24-687:17.)

For this reason, Laurel did not attempt to precisely quantify the decrease in gasoline prices that will result from the reversal in its direct case. Laurel explained that the increase of low-cost products coming from the Midwest will inevitably put downward pressure on prices and, to the extent that these low-cost Midwestern supplies back out the marginal supplier, retail prices will fall under well-established economic principles.

However, as explained in more detail below, backing out the marginal supplier in Pittsburgh, which is likely trucks or barges, should, all else equal, reduce gasoline prices by about 5¢ per gallon. (Tr. 686:24-690:12.) This equates to $80,000 per day or approximately $30 million per year.

2. All Parties Agree That The Reversal Will Lower Gasoline Prices In Central And Eastern Pennsylvania.

While the parties do not agree on the impact of the reversal on gasoline prices in Western Pennsylvania, there is no dispute over the impact of the reversal on gasoline prices in Central and Eastern Pennsylvania. Laurel and the Indicated Parties agree that the reversal will lower gasoline prices in Central and Eastern Pennsylvania.

Laurel witness, Dr. Jones, stated as follows:

> Accepting for the sake of argument, however, that the proposed project had a marginal effect on the quantities of products that flow from the east to points west of Altoona, this would have the economic impact of increasing the supply available to serve Philadelphia and other eastern seaboard locations, which would, all else equal, serve to benefit consumers in those areas – at the expense of Intervenors who would, within Mr. Schaal's framework, realize lower prices for their supply. In short, while Mr. Schaal and other Intervenor witnesses lament that Laurel's proposal may result in increasing competition faced by eastern refiners, basic economics tells us competition amongst sellers is beneficial to consumers.

(Laurel St. No. 7-R, p. 71.)

Indicated Parties witness, Mr. Schaal, stated as follows:

> Any reduction in flows from the Laurel pipeline will have a "backing up" displacement effect that will place downward pressure on pricing upstream of the pipeline which in turn will reduce the market clearing price for product at the tailgate of the Philadelphia refineries.

(IP St. No. 2-SR, p. 31.)

Also on page 39 of his Surrebuttal Testimony, Mr. Schaal states that Eastern refineries could accept lower prices in response to the reduction in demand represented by the loss of pipeline service into Pittsburgh. (IP St. No. 2-SR, p. 39.)

Monroe's witness, Ms. Sadowski, stated as follows:

> Second thing is, for all the barrels that still move on pipelines into Laurel, they'll be the same amount of supply but less demand because there's fewer destinations, so the price will likely be lower because of supply and demand.

(Hearing Tr. 1125.)

PESRM's witness, Mr. Sadlowski, stated:

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> [redacted]
>
> [redacted]
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> [redacted]
>
> [redacted]
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> [redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[END HIGHLY CONFIDENTIAL]

The record evidence is clear and undisputed that prices for petroleum products in Eastern and Central Pennsylvania will fall if the reversal is approved. The Indicated Parties are opposed to the reversal because reducing gasoline prices for consumers in Pennsylvania will cause them to earn fewer profits. The Commission should consider the benefit to Pennsylvania consumers over the purely private interests of a few select market participants.

3. The Reversal Will Reduce Gasoline Prices In Pittsburgh.

The record is clear that Midwest refineries are lower-cost producers due to access to lower-cost crude and due to more efficient, more technologically advance refineries. As constraints to Pittsburgh have lifted from the Midwest, Pittsburgh has received more and more supply from the Midwest.

The reversal will allow more Midwest products to reach Pittsburgh. Dr. Jones explained as follows in his Rebuttal Testimony:

> **Q. Please explain how Laurel's proposed reversal of its western-most segment will provide benefits to consumers of gasoline and other products in Pennsylvania.**
>
> A. As described above, Laurel's proposal is a market-based response to the aforementioned changes in the North American petroleum marketplace. The evidence suggests that the marginal barrel of gasoline (or other products) now arrives in Pittsburgh by means other than pipelines – be it barge or truck from regional refineries.[64] Further evidence of this comes from the fact that there is clearly demand for additional pipeline capacity from the west, e.g., Sunoco's Allegheny Access line and the binding commitments on the Laurel pipeline. Thus, Laurel's proposal, like Allegheny Access, contributes to increasing the supply of relatively low-cost transportation alternatives where the market is signaling those projects are needed. This, at the margin, serves to reduce demand (need) for those more expensive and less efficient transportation options. The more pipeline capacity there is to serve Pittsburgh, the less likely in any given month Pittsburgh will need barges and/or long-haul trucking.
>
> ***
>
> As noted by Mr. Stern, recent trends have "overturned historical relationships and, to the extent that the driving forces of increased shale oil availability and moderate crude oil prices continue to exist, those trends will likely continue into the future."[65] So long as the Midwest continues to have a comparative advantage over the East Coast as a source of products, shippers will continue to demand pipeline capacity to move products from the Midwest in order to capture greater margins reflected in the expected locational price differentials. Increasing western Pennsylvania's access to these supplies in turn puts downward pressure on regional prices by lessening the need to rely on relatively more costly sources of supply (e.g., barge deliveries).

(Laurel St. No. 7-R, pp. 31-32.)

Dr. Jones also explained why gasoline prices in Pittsburgh will drop after the reversal at the hearing:

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[64] *See, e.g.*, Gulf Statement No. 1 at 5:2-3; Laurel Exhibit STJ-5, Gulf Response to Interrogatory 2-6(d)(i); Indicated Parties Statement No. 1 at 19: Figure 4; Laurel Statement No. 8-R at 14:11-13.

[65] *See, e.g.*, Laurel Statement No. 8-R at 7:9-15.

Q. Have you conducted your own analysis of the impact of the reversal on consumer prices in the Pittsburgh market?

A. The – well, I haven't done an exhaustive quantitative study; and the reason is that which you've heard other witnesses say it's extraordinarily difficult, if not impossible, to know what the price of gas will be, will likely be in the future in any city at any point in time. I speak of personal experience having run, help run a giant forecasting firm where that was exactly asked of us on a number of occasions by clients.

More to the point, I did do an analysis – or I did discovery, I should say, estimates of what the retail price impact is likely to be post-reversal by looking at Intervenors' testimony and the attachments to their exhibits, plus the EPA gives you an opportunity to do it if you approach it from the crude oil side. It's – anyway for your own information it works out to about a nickel a gallon which is $80,000 a day.

Q. And what's the basis for your nickel a gallon, the combination of all the things you just mentioned?

A. Well, yeah. Remember, you're looking – I know of no way they can model gas in any particular city on any particular day, but you have indications – this is page 110 (indicating) from Exhibit MJW-23 that was Mr. Webb's –

* * *

THE WITNESS: So citation number one is MJW-23. The illustration in the lower left part of that page suggests somewhere between five and eight cents a gallon.

JUDGE VERO: Five to or five eight, and eight?

THE WITNESS: Somewhere between five and eight.

JUDGE VERO: Between five and eight, okay.

THE WITNESS: And then you have an Exhibit MJW-11 which is a Gulf document, and the trucking data supply there suggests a similar nickel a gallon if you back out the high cost supplies out of Pittsburgh using a pipeline as opposed to trucking in from the Canton refinery which this indicates is where you would start.

JUDGE VERO: And you're talking increases?

THE WITNESS: Pardon me?

> JUDGE VERO: You're talking increases, these five cents a gallon?
>
> THE WITNESS: It would be a nickel decline.
>
> JUDGE VERO: Decline. And the MJW shows the increase or decrease?
>
> THE WITNESS: Decrease. Both are decreases, Judge.
>
> JUDGE VERO: Okay.
>
> THE WITNESS: And then the federal government periodically produces illustrations that show how a barrel of crude oil translates into gasoline prices.
>
> And, if you back out the eastern supplies from the Pittsburgh market, you're backing out international crude oil price imports; and that's been recently historically about $5 a barrel. That $5 a barrel, all those things equal and adding back in the transportation of the product out of Chicago still results in about a nickel a gallon of savings.
>
> So we're talking tens of thousands of dollars a day to the Pennsylvania consumers, not to mention the impact of the fact that Philadelphia refinery product out of Pittsburgh, it's got to go somewhere. Chances are it will lower the prices in Philadelphia. So both sides benefit.

(Hearing Tr. 686-690.)

The federal government publication referenced by Dr. Jones was subsequently admitted into the record as Laurel Cross-Examination Exhibit No. 14. This Exhibit shows the cost of crude oil as a percentage of the retail price of gasoline. Page 2 of this Exhibit shows that over the past ten years the cost of crude oil has comprised 62% of total cost of a gasoline of regular grade gasoline.

Dr. Jones also explained that if the reversal is approved, it will back out the current marginal supplies to Pittsburgh.

> Q. Will Pittsburgh consumers and Altoona consumers be impacted the same if this project were to be approved?

> A. Well, I think for certain prices will fall in both areas. I don't know whether it will be identical price changes in both areas, but the direction is easy to determine. It's down. The marginal – once the new supply is backed out from the marginal supplier in those two markets, for example, Pittsburgh, you never know exactly the margin of supply is, but it's bound to be a long-haul truck to someplace or maybe a barge movement or truck movement.
>
> But, once those get displaced and a new marginal supplier is installed as a new lower-cost marginal supplier, prices will decline.

(Hearing Tr. 692:10-23.)

Dr. Jones further testified as follows:

> A. Well, hang on. Again, when we talk about the difference between what you can observe looking at existing prices versus what's going to happen in the future after this reversal takes place, the answer to your second part of your question maybe I would expect it to be lower year-round simply because you're bringing in a new incrementally lower source of supply. So it's going to drop prices like a stone, and they're going to stay there.

(Hearing Tr. 707:25-708:7.)

In response to Judge Vero's question, Dr. Jones also stated:

> JUDGE VERO: But that's the gist of this case. No one can tell me that there is a firm connection between lower wholesale prices and the price at the pump. We're told that this will carry – I mean, it's likely will carry on to the consumer; but nobody can give me a firm – well, you are I guess the first who came as close as possible to that.
>
> It's your testimony that there will be a decrease in the price of gasoline. Everyone else has said that it might not, may or may not. It's uncertain.
>
> THE WITNESS: Well, it may just be from where I sit with my education and my experience in the industry, but to me it's a fairly simple process. I can understand your uncertainty, but oil markets are dynamic. Gasoline markets are extremely dynamic, and competitive is robust particularly right now in the Midwest where they acquire at low cost over here (indicating.) It's what needs to get over here (indicating).

> It wants out because right now there aren't any good markets left, and so they want to get into Western Pennsylvania and ultimately Central Pennsylvania and Altoona. They see that and they've committed millions and millions of dollars. So they've done their homework presumably; and, once they arrive, the existing high-cost supplier who is currently setting the price in Pittsburgh is going to be washed out of the way.
>
> And these new lower-cost suppliers, one of those guys is going to set the price; but it's going to be lower than it is today. And our estimate based on the documents that are in the record is that it will be a nickel a gallon or $80,000 a day or $30 million a year, and that's not chump change.

(Tr. 720:2-721:8.)

At the hearing, Laurel's witness, Mr. Hollis, also provided further detail about the Midwest price advantage.

> The hypothesis has always been in the past that it's advantageous to supply from the East in the summer. In looking at the market that is most easily quoted and comparable, which is the CBOB markets for New York Harbor and Chicago, for the first time this summer, if you had shipped ratably from the Midwest, the overall price was in favor of the Midwest.
>
> So two years ago, it was about eight cents in favor of the East Coast, six cents in favor of the East Coast in 2016. It was nearly a penny in favor of the Midwest. And we've said repeatedly that as these investments are made, as the refinery investments are made and as these pipeline logistics projects are completed, that that will be the case, that the arbitrage that some have described will become much more infrequent and smaller, and that is certainly the experience that occurred this summer.

(Tr. 364:14-365:4.)

The record evidence, from both Laurel and the Indicated Parties, demonstrates that Midwest refineries are lower cost suppliers and the addition of more lower cost supplies into Pittsburgh through the reversal will lower prices for Pittsburgh's consumers and provide substantial economic benefits to the Commonwealth of Pennsylvania.

4. The reversal will allow Central Pennsylvania to receive lower-cost Midwest supplies by pipeline.

It is important to recognize that Laurel's proposed reversal is not just about bringing additional low-cost Midwest supplies to Pittsburgh. It is about bringing low-cost Midwest supplies to Altoona, which will then reach the many markets in Central Pennsylvania (*e.g.*, Altoona, Johnstown, State College and Harrisburg) and even Maryland.

Currently, the Altoona market is a significant market on Laurel's system. Laurel deliveries to Altoona were 40,000 bpd in 2014, 37,000 bpd in 2015 and 33,000 bpd in 2016. (Laurel St. No. 5-R, p. 49.)[66] This is similar to the overall amount of volumes of 45,000 bpd that Laurel has shipped to Pittsburgh for the most recent 12 months. (Laurel St. No. 5-RJ, p. 3.)

Husky's witness, Mr. Miller, explained the importance of the Altoona market. He stated:

> The region with Laurel represents western Pennsylvania and through Altoona, central Pennsylvania. Altoona as a destination market is important, not just for the size of Altoona, but because the way the geography runs and the mountains, it's the corridor that allows us to go up to one of my home towns of Williamsport, Pennsylvania, all the way down through into West Virginia and Frederick, Maryland.
>
> So, yes, it includes central Pennsylvania in addition to our previous commitments that we had made, which goes to Pittsburgh through the Allegheny Access pipeline.

(Tr. 1179:25-1180:10.)

In addition, Laurel's witness, Mr. Arnold, explained as follows:

> Q. Do you agree with the intervenors' characterization of Eldorado, and Altoona generally, as a small market?
>
> A. No. While Altoona itself is a relatively small city, the area supplied by the terminals in Altoona is material. Product volumes delivered into those terminals have averaged around 35,000-40,000

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[66] The declining volumes to Altoona from 2014 to 2016 suggest that the Altoona market is currently being supplied by truck in addition to receiving pipeline deliveries on Laurel from the East. These volumes that are being supplied by truck almost certainly are coming from the Midwest because it would not make sense to supply Altoona by trucks with product from the east, since trucks are more expensive than pipeline. (Hearing Tr. 351:6-352:8.)

> barrels per day, which is a very substantial proportion of the estimated Pittsburgh market demand of just over 100,000 barrels per day. Moreover, Laurel's management believes that Eldorado is likely well-positioned to meet refined products needs in a large swathe of Central Pennsylvania, including areas such as State College, and that with more competitive product being delivered at Eldorado, it is possible that deliveries will expand into geographic markets that have been served from other sources.

(Laurel St. No. 1-R, p. 24.)

Currently, the central Pennsylvania market is only served by East coast supplies by pipeline. The reversal will allow the Central Pennsylvania market to receive supplies from both the Midwest and the East coast. It is likely that the lower-cost Midwest supplies will be trucked to points as far east as Harrisburg. The reversal will not only lower prices for Pittsburgh, but will also lower prices for Central Pennsylvania by allowing low-cost Midwest suppliers to compete to serve this important market.

c. The Proposed Reversal Will Improve Supply Reliability for Pittsburgh and Central Pennsylvania.

i. The Proposed Reversal Will Increase Supply Reliability For Central Pennsylvania.

Unlike Pittsburgh, which is served by multiple transportation options today, Central Pennsylvania is currently being served by only one pipeline and cannot be served by barges. (*See, e.g.*, Laurel St. No. 2, p. 8.) After the reversal, Altoona will continue to be served by Laurel pipeline from the east but will also be served with Midwest supplies by Laurel from the west. (Laurel St. No. 1, pp. 22-23.) Midwest product also will be able to be trucked to points further east, such as Harrisburg. (*See e,g.*, Laurel St. No. 5, pp. 16-17.)

The reversal will effectively double the sources of supply to Central Pennsylvania – from one pipeline to two pipelines. This is a very important supply reliability benefit for Central Pennsylvania. It is important to note that Pittsburgh will continue to be served by multiple sources after the reversal.[67] Therefore, the alleged harm to Pittsburgh of losing Laurel pipeline from the east is far outweighed by the increased reliability to Central Pennsylvania that will occur from the reversal.

ii. PADD II Has A Greater Ability To Supply Its Own Demand Than Does PADD I.

Laurel's proposed reversal will improve supply reliability in Pittsburgh by increasing Pittsburgh access to PADD II. PADD II relies less on imports and inter-PADD movements to satisfy its own demand, *i.e.* its local production satisfies a greater portion of local demand, than does PADD I. As such, PADD I supplies are particularly susceptible to disruptions. (HMSC Exhibit JPM-3, p. 38.) The Indicated Parties, however, have argued that PADD II does not have sufficient supply to meet Pittsburgh's demand. (IP St. No. 2, p. 11.) This argument is incorrect and misstates how refined petroleum products move between PADDs.

Due to the relatively recent expansion of refining capacity in PADD II, shipments from PADD III to PADD II have declined significantly in recent years. (Laurel St. No. 8-R, p. 17.) In addition, PADD II has increased shipments to PADD I. (Laurel St. No. 8-R, p. 18.) Laurel's witness, Mr. Stern, explained as follows:

> Mr. Schaal suggests that simply because the Eastern Midwest produces less than its demand, it cannot supply material to PADD 1. However, refiners that have opportunities to sell products from PADD to PADD ("InterPADD sales") have always done so and will continue to do so, while other refiners will focus on markets in the PADD in which they are located ("IntraPADD sales"). IntraPADD balances (long or short) do not dictate product flows between locations that are logistically close. For example, PADD

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[67] Indeed, Pittsburgh will still be able to access petroleum products from a variety of alternative transportation sources, including: (1) Sunoco Pipeline, L.P. ("Sunoco"), from the Midwest; (2) Marathon Pipeline LLC, from the Midwest; (3) Buckeye from the Midwest; (4) Buckeye and Laurel, collectively delivering from the East Coast to Altoona, from which product can be trucked west post-reversal; (5) trucks delivering from the Ergon refinery in Newell, West Virginia; (6) trucks delivering from the United Refining refinery in Warren, Pennsylvania; (7) barges delivering petroleum products to terminals on the Ohio, Allegheny and Monongahela Rivers from refineries and pipeline terminals in the Midwest and potentially Gulf Coast; and (8) trucks delivering petroleum products from pipeline terminals in Ohio. (Laurel St. No. 2, p. 6; see also Laurel St. No. 5, pp. 22-25.)

> 3 is long capacity but still receives material from PADD 2: "Markets in the Texas inland region [PADD 3] are supplied primarily by in-region refineries and by pipeline from refineries in the Texas Gulf Coast and in PADD 2."[68]

(Laurel St. No. 8-R, p. 20.)

Moreover, PADD II supply v. demand is much more in balance than PADD I supply v. demand. The EIA report dated March 2017 stated as follows with respect to the Eastern Midwest section of PADD I:

> Midwest (PADD 2)
> *Eastern Midwest*
> <u>Eastern Midwest refinery production of transportation fuels averaged 2.0 million b/d in 2015, enough to meet 90% of consumption (net of ethanol and biodiesel inputs).</u> Supply patterns in the Eastern Midwest are diverse. The region's supply networks originate from the Chicago supply hub, which draws products from regional refineries and from long-distance pipelines originating on the Gulf Coast (PADD 3), and from the Detroit, Michigan-to-Lima, Ohio, refining hub. Pipelines extend from these supply hubs primarily to population centers in Illinois, Indiana, Michigan, Ohio, and Kentucky. Significant volumes of transportation fuels also move along the Ohio River system from refineries in southern Illinois and Indiana, and northern Kentucky, primarily to other markets along the river system, including Cincinnati, Ohio, and Louisville, Kentucky. Meanwhile, refineries along the Mississippi River primarily serve Memphis, Tennessee, and the St. Louis, Missouri, metropolitan area, which includes portions of Illinois. Central and eastern Tennessee receive nearly all of their fuel supply from stub lines off the Colonial and Plantation pipeline systems, which run from Gulf Coast supply centers to markets along the Eastern Seaboard.

(HMSC Exhibit JPM-4, p. xiv (emphasis added).)

[BEGIN HIGHLY CONFIDENTIAL] [redacted]

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[68] The Texas Inland region consists of the majority of the state of Texas, representing 225 of the state's 254 counties, excluding only the 29 counties situated along the Gulf of Mexico that constitute the Texas Gulf Coast region. East Coast and Gulf Coast Transportation Fuels Markets, EIA, February 2016, pp. 96, 101, https://www.eia.gov/analysis/transportationfuels/padd1n3/

[redacted] [redacted]

[redacted] [redacted]

[redacted] **[END HIGHLY CONFIDENTIAL]**[69]

In contrast to PADD II, PADD I is much shorter supply to meet its own demand. The EIA study dated February 2016 states as follows with respect to the Central Atlantic region of PADD I supply v. demand:

> The Central Atlantic region consists of five states in PADD 1 – Delaware, Maryland, New Jersey, New York, and Pennsylvania – as well as the District of Columbia…Estimated total consumption of motor gasoline, distillate fuel oil, and commercial jet fuel in the Central Atlantic region was nearly 1.9 million b/d in 2014, or roughly 13% of total U.S. consumption. Figure 15 presents the region's 2014 annual supply and demand balances for motor gasoline, distillate, and jet fuel.
>
> * * *
>
> The Central Atlantic region's refinery production of transportation fuels averaged nearly 1.0 million b/d in 2014, enough to meet more than half of in-region consumption. In addition to in-region refinery production, the central Atlantic region receives approximately 823,000 b/d of pipeline shipments and 336,000 b/d of foreign imports. Total supply from all sources, including ethanol and biodiesel, averaged 1.93 million b/d in 2014.

(HMSC Exhibit JPM-3, p. 38 (emphasis added).)

As noted above, the Central Atlantic region only produces a little over half of the supply needed to meet regional demand. In addition, a significant amount of this supply is shipped to other markets, including exports.

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[69] This does not account for the significant decreases in demand that will occur over the next 10 years as discussed in Section VII.C.1.b.i.9. *supra*.

The EIA study also noted that the Central Atlantic region is particularly susceptible to disruptions, stating as follows:

> [T]he concentration of supply infrastructure in the Greater Philadelphia and New York Harbor areas, and the multiple interconnections between the region's pipeline systems, make the Central Atlantic region vulnerable to disruptions impacting these hubs and pipelines. This vulnerability was exposed in 2011 and 2012 when hurricanes Irene and Sandy made landfall in the Central Atlantic region, disrupting operations at in-region refineries, pipelines, ports, and terminals in both supply centers. The disruptions occurred due to direct damage to infrastructure - from wind and storm surge – as well as interruptions to essential utility power supply.
>
> The region's supply infrastructure can also be challenged by winter weather. The winters of 2013-2014 and 2014-2015 brought extreme cold temperatures and record precipitation to Central Atlantic markets, increasing consumption for heating oil (distillate fuel oil), impacting refinery production, and inhibiting marine transportation logistics. In February 2014, cold-weather-related shutdowns and operational issues at East Coast refineries resulted in a nearly 25% drop in refinery production. In addition to refinery curtailments, the extreme cold in both early 2014 and early 2015 caused unprecedented thick ice and freezing in Central Atlantic ports and waterways, delaying marine deliveries to terminals along the Hudson River and on Long Island. To meet high heating oil consumption, swing supply to the Central Atlantic region, for the most part, was imported from Global suppliers.

(HMSC Exhibit JPM-3, pp. 54-55.)

Approving the reversal will allow additional Midwest supply to reach the Central Atlantic region, thereby helping to alleviate the supply v. demand imbalance as well as improving supply reliability and security in the event of hurricanes.

d. Impact On National And State Energy Policy

i. Approving The Reversal Will Reduce U.S. Reliance On Oil Produced From Overseas.

Since President Jimmy Carter signed the National Energy Act of 1978 into law, it has long been recognized that the United States has considered energy crises due to reliance on overseas imports of oil to be the “moral equivalent of war.” *See Brazos Elec. Power Coop. v. FERC*, 205 F.3d 235, 248 n.2 (5th Cir. 2000). The Arab oil embargo called attention to the serious economic and national security problems associated reliance on foreign energy resources, and significant legislation and policy measures were implemented to address these issues. Laurel’s proposed reversal, which will reduce reliance on overseas imports, is consistent with this longstanding national policy.

The East Coast refiners receive virtually all of their crude oil from overseas markets. Dr. Jones stated as follows:

> Lacking indigenous crude production in the Northeast region and absent pipeline access to North American crude producing regions, such as the Gulf Coast or the Midwest, East Coast refiners have historically been and remain dependent on importing lighter, widely-traded foreign-sourced crude oil – or what Exhibit DSA-2 to Dr. Arthur’s testimony describes as “more expensive crude from the North Sea and Africa.”

(Laurel St. No. 7-R, p. 17.)

In addition, the PADD 1 market imports substantial volumes of refined products from overseas markets. (Laurel St. No. 7-R, p. 17.) May 2017 imports of gasoline into PADD 1, although lower than previous years, still totaled 246,000 bpd. (Laurel St. No. 8-R, p. 34.)

The Midwest refiners receive the majority of their crude oil from the Bakken region and Central Canada. (Laurel St. No. 7-R, p. 13.) In addition, Midwest refiners are not reliant on overseas imports for refined products like PADD 1.

Approving the reversal will allow more low-cost Midwestern supply produced from U.S. and Canadian oil fields to push out oil produced from overseas markets. This will reduce the reliance of both Pennsylvania and the United States on oil produced overseas and will promote energy independence.

ii. Pennsylvania Should Not Delay In Receiving The Benefits Of The Shale Revolution.

The increase in Bakken and Canadian crude oil production has created the Shale Revolution and has fundamentally changed the crude oil and refined product markets in the United States. (Laurel St. No. 7-R, p. 9.) Laurel's witness, Professor Kleit, explained as follows:

> As noted as well by Mr. Jones (Laurel Statement No. 7-R), the production of oil in the middle of the North American continent has changed dramatically since 2008. The reason for the change is the success of new methods of extracting crude oil from previously untapped hydrocarbon sources.
>
> Most of the new drilling in this area is "unconventional," including production of petroleum from oil sands (in Western Canada) and extraction from shale (mostly so far in the U.S.) Unlike "conventional" oil, the oil in shale formations by itself does not flow toward the wellhead when drilled. Instead, to liberate the oil, the extraction company first drills a horizontal well – in the U.S., typically thousands of feet deep. It then puts out a spider web of horizontal lines at that depth. The horizontal lines span out 3,000-5,000 feet across the rock formation. Water is injected into the well at high pressure. The water then frees the oil from the rock, making it possible for the oil to come to the surface and be taken to market. (A similar process in natural gas bearing shale formations results in shale gas production, which has made Pennsylvania a major source of U.S. natural gas production.)

(Laurel St. No. 10-R, p. 5.)

As explained in Sections VII.C.1.b.i.1-2. above, the Shale Revolution has given the Midwest refiners access to low-cost crude and has made them low-cost producers. As constraints to Pennsylvania are being lifted, the Midwest is supplying more and more refined product to Pittsburgh. Midwest refiners are seeking to supply more low-cost product to Pittsburgh and further East into Altoona and surrounding markets in Central Pennsylvania.

Pennsylvania should not delay in receiving the benefits of the Shale Revolution. Laurel's witness, former Chairman of the Commission Glenn Thomas, explained that the reversal is aligned with Pennsylvania policy regarding its energy economy and to be an international energy leader. Mr. Thomas stated:

> Upon assuming office, Governor Wolf quickly realized the link between Pennsylvania's energy industry and the need for pipeline infrastructure to support it. With bi-partisan support, he formed the Governor's Pipeline Infrastructure Task Force, to among other things, promote the "responsible development of a world-class pipeline infrastructure system in the Commonwealth."

(Laurel St. No. 9-R, p. 8.)

As explained above, the reversal will allow more lower-cost Midwest refined petroleum products to reach Pittsburgh and will allow them to reach Central Pennsylvania through the Altoona market. The reversal will lower refined product prices in Pennsylvania and should be approved without delay.

iii. The Oil Shale Revolution Is Similar To The Marcellus Shale Gas Revolution.

Marcellus Shale offers a useful comparison as to the benefits of reversing the Laurel pipeline. By way of background, "Pennsylvania sits on top of one of the largest natural gas reserves in the world," and "[t]he ability to economically extract Marcellus Shale gas has made Pennsylvania the second largest producer of natural gas in the country."[70] The Commission has long recognized the abundant opportunities presented by this dramatic increase in Pennsylvania's natural gas production and natural gas supply,[71] including the reduction of natural gas prices for

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[70] *Peoples Natural Gas Co., LLC, Peoples Natural Gas Co. LLC – Equitable Division, and Peoples TWP LLC,* Docket Nos. R-2014-2429610, *et al.*, p. 1 (Statement of Commissioner Pamela A. Witmer) (Mar. 26, 2015); *see Joint Petition of UGI Utilities, Inc. – Gas Division, UGI Penn Natural Gas, Inc. and UGI Central Penn Gas, Inc.*, Docket No. P-2013-2356232, p. 1 (Statement of Commissioner Pamela A. Witmer) (Feb. 20, 2014) (stating the same); *Pa. PUC v. Columbia Gas of Pa., Inc.*, Docket Nos. R-2014-2407345, p. 1 (Statement of Commissioner Pamela A. Witmer) (Oct. 23, 2014) (stating the same).

[71] *See Jurisdictional and Pipeline Safety Issues Related to the Marcellus Shale,* Docket No. I-2010-2163461, 2010 Pa. PUC LEXIS 729, at *1-2 (Order entered Apr. 1, 2010) (noting that Marcellus Shale development would "unleash billions of dollars of natural gas production" and would "have untold impacts on our economy," citing estimates of "$13.5 billion per year in economic value" and the creation of "175,000 jobs in Pennsylvania alone by 2020.").

consumers.[72] However, those opportunities would be limited if the natural gas cannot get to consumers and entities that need them.

As a result, the Commission has encouraged efforts to expand the transport of and access to natural gas from the Marcellus Shale. For example, the Commission approved several natural gas utilities' programs aimed at reducing the upfront costs of expanding natural gas service to customers in unserved and underserved areas.[73] In other proceedings, the Commission has touted the public benefits from increasing access to Marcellus Shale-produced gas supplies.[74] Furthermore, the Commission has recognized the need for additional pipeline capacity to transport Marcellus Shale natural gas to eastern Pennsylvania and New England to help reduce natural gas prices and deliver supply to the consumers. *See* "Pennsylvania Gas Outlook Report," Pennsylvania Public Utility Commission, p. 6 (October 2016), *available at* http://www.puc.state.pa.us/NaturalGas/pdf/Gas_Outlook_Report-2016.pdf. Specifically, the report states the following:

> Marcellus shale production has risen from 2 Bcfd in January 2010 to over 17 Bcfd in May 2016. Despite this vast increase in production, <u>many portions of eastern Pennsylvania and New England are still subject to higher priced gas, as well as dramatic spikes in price during cold snaps in the winter heating season.</u>

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[72] *Application of UGI Central Penn Gas, Inc. for Approval of the Transfer by Sale of an Approximately 11 Mile Natural Gas Pipeline, Appurtenant Facilities and Rights of Way Located in Tioga Cnty., Pa., to UGI Storage Co., and for Approval of an Associated Reduction in Base Rates*, Docket Nos. A-2012-2289607, *et al.*, 2012 Pa. PUC LEXIS 1803, at *24 (Order entered Dec. 5, 2012) ("[T]he transfer of the TL-96 Line from CPG to UGI Storage may help utilize Marcellus Shale gas supplies in the region, benefitting the local economy and helping to constrain wholesale gas prices ultimately benefitting customers.").

[73] *See Joint Petition of UGI Utilities, Inc. – Gas Division, UGI Penn Natural Gas, Inc. and UGI Central Penn Gas, Inc. for Approval to Implement Growth Extension Tariff Pilot Programs to Facilitate the Extension of Gas Service to Unserved and Underserved Areas Within the Companies' Service Territories*, Docket No. P-2013-2356232 (Jan. 23, 2014) (Recommended Decision), *adopted*, (Order entered Feb. 20, 2014); *Pa. PUC v. Peoples Natural Gas Co. LLC, et al.*, Docket Nos. R-2014-2429610, *et al.* (Feb. 9, 2015) (Recommended Decision), *adopted*, (Order entered Mar. 26, 2015); *Pa. PUC v. Columbia Gas of Pa., Inc.*, Docket Nos. R-2014-2407345 (Order entered Oct. 23, 2014).

[74] *See, e.g., Application of UGI Penn Natural Gas, Inc. for Approval of the Transfer by Sale of a 9.0 Mile Natural Gas Pipeline, Appurtenant Facilities and Right of Way Located in Mehoopany, Pa.*, Docket Nos. A-2010-2213893, *et al.*, 2011 Pa. PUC LEXIS 1521, at *39 (Order entered July 25, 2011) ("*UGI-PNG 2011*") ("We see the promotion of Marcellus Shale development and enhanced access to Marcellus Shale natural gas as one significant public benefit of the proposed transaction . . . .").

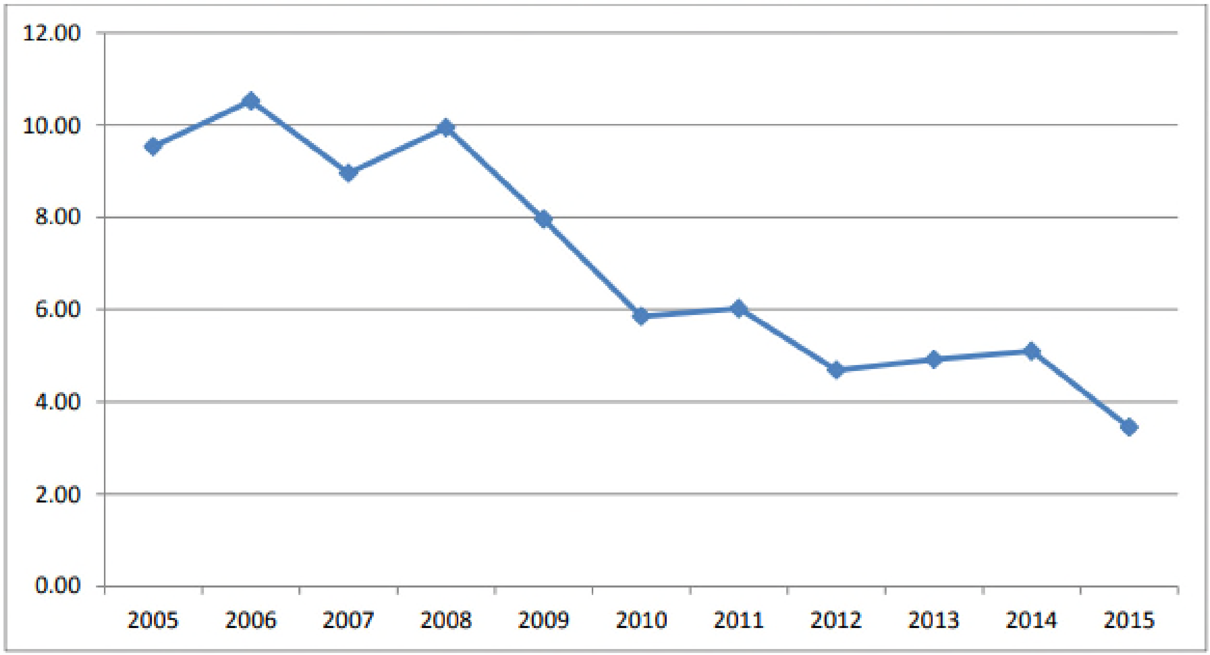
> These price differences are mostly caused by a lack of pipeline capacity to transport the excess of supply to the markets where it is most needed. There are 5.2 Bcfd of pipeline projects slated to come online during the remainder of 2016 in the Northeast region to help move gas to market, and 19.5 Bcfd slated for 2017 as shown in Tables 1 and 2 below, respectively. The additional pipeline will help remove the above-mentioned constraints and assist in stabilizing regional prices, by moving the increased Marcellus Shale gas production to market.

Id. (emphasis added).

All of these examples demonstrate that the Commission encourages efforts to expand the transport of and access to Marcellus Shale-produced natural gas. Doing so capitalizes on the abundant natural gas supply and brings lower cost natural gas supplies to consumers.

Due to the abundant, low-cost Marcellus Gas, natural gas prices have substantially declined by approximately 60% over the past 10 years. The Commission's October 2016 Gas Outlook report shows as follows:

Figure 11: Average Cost of Gas Purchased for All Major NGDCs ($/MCF)



(www.puc.state.pa.us/NaturalGas/pdf/Gas_Outlook_Report_2016.pdf.)

The abundant low-cost crude resulting from the Shale Revolution will also decrease prices consumers pay for gasoline, as explained in Section VII.C.1.b.i-ii. *supra*.

2. Laurel's Proposed Reversal Will Not Harm The Public.

Throughout this proceeding, the Indicated Parties have jointly and individually claimed Laurel's proposed reversal will negatively impact Pennsylvania petroleum products markets and have dire consequences for the operations of two Philadelphia-area refineries. These allegations of harm broadly fit into three categories: (a) harms related to the loss of East Coast refined petroleum products supplies to the Pittsburgh market (Section VII.C.2.a. *infra*); (b) harms related to the East Coast refineries' loss of access to the Pittsburgh market (Section VII.C.2.b. *infra*); and (c) other harms, such as the alleged impacts of increased trucking and potential future reversals (Section VII.C.2.c. *infra*).

Contrary to these assertions, Laurel's proposed reversal will not harm the public. (Laurel St. No. 5, pp. 22-31.) The public will receive lower gasoline prices throughout Pennsylvania, increased reliability and security of supply for Central Pennsylvania and reduced reliance on overseas oil. The only credible "harm" alleged by the Indicated Parties is that the lower gasoline prices will reduce their profits. In this regard, the private "harm" alleged by the Indicated Parties is entirely derivative of the substantial public benefits offered by the proposed reversal. This is not an independent public harm and provides no basis for rejecting Laurel's Application.

The most fundamental flaw in all of the Indicated Parties' alleged harms is their assumption that significant volumes from the East Coast will continue to be transported over Laurel to points west of Eldorado in the future, absent the proposed reversal.[75] However, the record demonstrates that East Coast supplies to Pittsburgh are—and have consistently been—in a

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[75] (*See, e.g.*, Indicated Parties St. No. 1, pp. 10-11; Indicated Parties St. No. 2, p. 18; Indicated Parties St. No. 2-SR, pp. 5-12; Monroe St. No. 1, pp. 5-6; PESRM St. No. 1, pp. 3-4.)

steep decline and are projected to reach zero by 2025. *See* Section VII.1.A.1.a *supra*. Indeed, any benefits associated with these East Coast volumes will disappear due to the increased role lower-cost Midwestern petroleum products are projected to play in the Pennsylvania marketplace.

In addition, the Indicated Parties' allegations ignore widely documented market trends that demonstrate the increasingly advantageous costs of Midwestern refined petroleum products versus East Coast refined petroleum products, are based on fundamentally flawed economic analyses and contradict the information contained in their own documents. Laurel has demonstrated in this proceeding that the allegations of harm advanced by the Indicated Parties are nothing more than unsupported allegations, manufactured by the Indicated Parties to avoid free market competition and to protect their profits and to deny the public the many benefits of the proposed reversal. For the reasons more fully explained below, these alleged harms are not based on credible record evidence and should be disregarded.

a. Loss of East Coast supplies to the Pittsburgh market.

The Indicated Parties advance several arguments regarding harms stemming from the loss of East Coast petroleum products supplies in the Pittsburgh market. First, the Indicated Parties assert that a loss of East Coast supplies will result in increased prices for wholesalers, retailers and consumers, based on the fundamentally flawed analysis of Dr. Daniel S. Arthur. Second, the Indicated Parties argue that a loss of East Coast supplies will decrease supply reliability in the Pittsburgh market. Relatedly, they further argue that this decrease in supply reliability will result in more volatile gasoline prices in the Pittsburgh market. Fourth, the Indicated Parties claim that the proposed reversal will reduce the liquidity of the Pittsburgh market and harm competition by removing the ability of "low cost" East Coast supplies to access the Pittsburgh market via pipeline. Fifth, the Indicated Parties argue that a loss of East Coast supplies will decrease the availability of low Reid Vapor Pressure ("RVP") gasoline supplies in Pittsburgh and increase the prices of these supplies.

None of these claims is supported by the record. As a general matter, the Indicated Parties' assertions are based entirely on retrospective analyses of past events that fail to consider the recent or prospective changes in the petroleum products market described in Section VII.C.1.b.i. *supra* and Section VII.C.2.a.ii.1. *infra*. The Indicated Parties' assertions of harm each also fail for reasons related to the specific assumptions, "facts" and/or analyses upon which the assertions are based. Moreover, their major arguments are completely inconsistent with their own internal documents and studies. As such, these alleged harms related to a loss of East Coast supplies to the Pittsburgh market are unsupported.

i. Laurel's Proposed Reversal Will Not Increase Prices For Wholesalers, Retailers And Consumers In The Pittsburgh Market.

Contrary to the Indicated Parties' assertions, Laurel's proposed reversal will result in lower gasoline prices in Pittsburgh. *See* Section VII.C.1.b.ii.3. *supra*. The record demonstrates that increasing Pittsburgh's access to lower-cost Midwest supplies will decrease gasoline prices in Pittsburgh. Midwestern refineries have a production cost advantage over East Coast refineries due to, among other things, recent changes in crude oil supplies and substantial refinery investments. Analyses produced by Laurel and analyses produced by the Indicated Parties make clear that this production cost advantage is projected to endure in the future and, as a result, Midwestern supplies will continue to be increasingly cost-advantaged relative to East Coast supplies. *See* Section VII.C.1.b.i.5. *supra*. As such, if the reversal is approved, lower-cost Midwestern supplies will back out supplies from the east, resulting in an approximately $0.05/gallon decrease in gasoline prices in Pittsburgh. *See* Section VII.C.1.b.ii.3. *supra*; *see also* (Hearing Tr. 686:24-690:12.)

Dr. Arthur engages in a complex and fundamentally flawed “delivered price” analysis that purports to show the opposite of these well-documented market shifts and trends. The Indicated Parties allege that absent Laurel deliveries from the east, “consumers, wholesalers and retailers” will be forced to turn to higher cost alternatives, and those higher costs will increase prices in the Pittsburgh area. (Laurel St. No. 7-R, p. 48, n. 105 (citing responses to interrogatories attached as Laurel Exhibits STJ-3, STJ-7, STJ-13, and STJ-17)) In particular, Dr. Arthur advances his “delivered price” model that purports to show that some of the gasoline needed to meet the Pittsburgh area’s demand will be more costly to supply after Laurel’s proposed reversal and that these cost increases will lead to higher prices to retail consumers. (Indicated Parties St. No. 1, p. 64, Figure 18).

However, Dr. Arthur’s analysis contains numerous flaws and should be rejected. Fundamentally, Dr. Arthur’s analysis is based on historic rack prices that ignore uncontroverted evidence regarding significant changes in the petroleum products markets. In addition, as discussed below, Dr. Arthur’s analysis: (1) ignores recent and projected market trends; (2) commits a fundamental error in microeconomics; (3) incorrectly assumes that Chicago is the only Midwest origin capable of supplying Pittsburgh; (4) incorrectly analyzes price impacts on consumers, retailers and wholesalers as a whole; and (5) is disconnected from reality and not credible. Moreover, the Indicated Parties’ claims regarding arbitrage opportunities under Laurel’s current configuration, which are based on Dr. Arthur’s flawed “delivered price” analysis, are false.

1. Dr. Arthur’s analysis ignores recent and projected fundamental market trends and market behaviors.

Any complex economic analysis must be tested against reality and, in this regard, Dr. Arthur’s analyses fail. Dr. Arthur’s analyses are also not credible because he fails to consider the above-described recent market changes that drive the current costs of petroleum products supplies and the projected market changes that will drive the future costs of petroleum products supplies. *See* Section VII.C.1.a. *supra*. Rather, Dr. Arthur analyzes "historic rack prices," and goes no further in analyzing the market trends underlying these rack prices. (Laurel St. No. 5-R, p. 15; IP St. No. 1, pp. 16-17.) In this regard, Dr. Arthur's analysis cannot credibly support any conclusions about the future impact of Laurel's proposed reversal on refined petroleum products costs and market prices and should be disregarded.

2. Dr. Arthur's analysis commits a fundamental error in microeconomics.

Dr. Arthur mistakenly conflates average costs and market prices, and therefore commits an error in fundamental microeconomics: Dr. Arthur analyzes *average* costs to predict market prices. Market prices are not set by average costs. Rather, market prices are, for a given level of demand, set by the *marginal* cost (*i.e.* highest cost) of that source of product that allows supply to meet demand, not average costs. (Laurel St. No. 7-R, p. 47.) Dr. Arthur has admitted this fact:

> Q. In your view what would the marginal supplier, what role would that marginal supplier play in the price formation in the Pittsburgh market?
>
> A. The marginal supplier would be setting the – it would be the highest marginal cost supply source coming in the Pittsburgh area, and you would expect the rack prices to cover that highest-cost supply source; otherwise, that supply source would not make sense to enter the market.

(Hearing Tr. 735:2-10.) Yet, because Dr. Arthur's "delivered price" model explicitly selected the lowest cost of three Eastern origin sources of supply as the basis for his analysis of average cost,[76] he has used supply sources that are the least likely to be the highest cost source of supply

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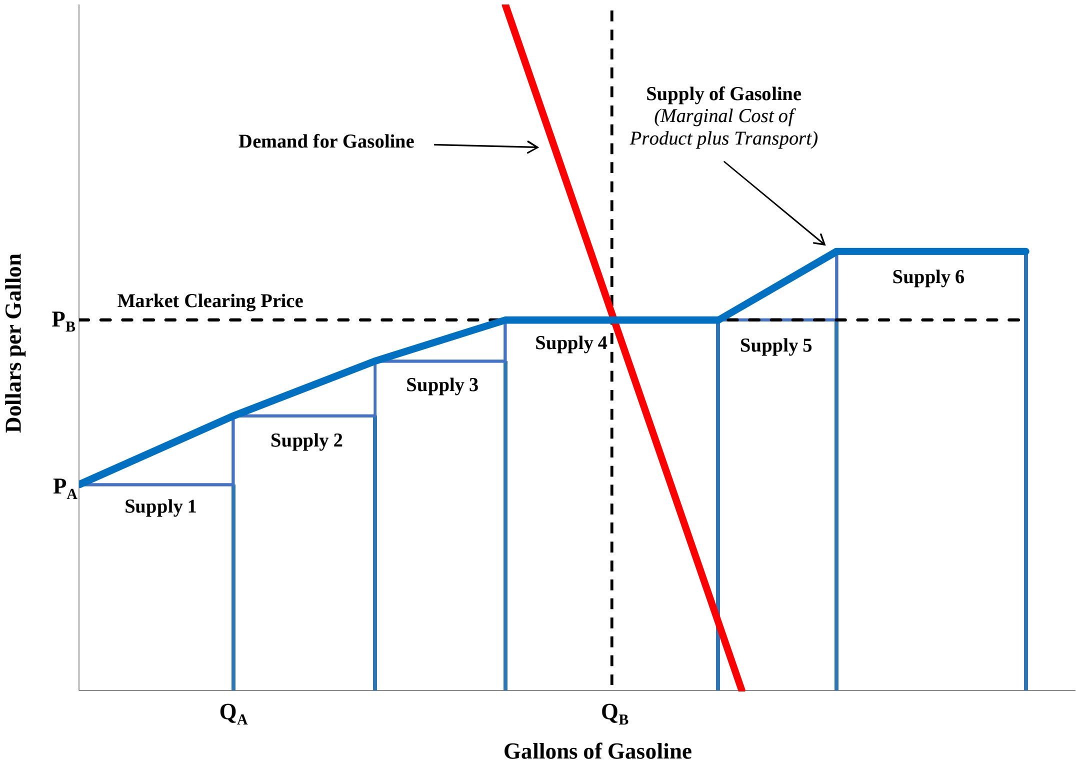
[76] (Laurel St. No. 7-R, p. 51 (citing Indicated Parties St. No. 1, p. 24, n. 53))

and, therefore, are the least likely to set the price of products in Pittsburgh. (Laurel St. No. 7-R, p. 51.)

Laurel witness Dr. Jones explains the effect of Dr. Arthur's fundamental error in microeconomics on his "delivered price" analysis. In particular, Figure 14 in Dr. Jones' Rebuttal Testimony and the accompanying explanation demonstrates the flaws associated with Dr. Arthur's analysis:

> In the figure, the horizontal and vertical axes represent quantity and price of gasoline, respectively. Each rectangle under the heavy blue line represents the cost associated with a separate source of supply. The sources of supply are properly ordered from the least costly (beginning with Supply 1 at the left) to the most costly, reflecting the fact that the marketplace rationally draws first upon the lowest cost supply before turning to the next source of supply and so on until demand is satisfied.
>
> In this example, supply and demand intersect at quantity Q_B and the market clears at a price of P_B, with sources 1 through 4 supplying gasoline at that price. In particular, the market first draws upon source 1 as it represents the lowest cost (and most profitable) source of supply … and so up to source 4. As shown by the figure, it is the supply from source 4 that "clears the market," i.e., sets the market clearing price. Sources 1 through 3 capture the difference between marginal cost to supply product (as noted by each respective blue rectangle) and the market clearing price. They are said to be the inframarginal sources of supply. Sources 5 and 6, having marginal costs in excess of the market clearing price, are not called upon.

Figure 14
Market-Determine Wholesale Gasoline Prices



> The cost of Supply 1 could rise by a great deal in this example (in particular, up to the market clearing price) and still have no impact on the price paid by buyers. Assume, for example, Supply 1's costs increase to just beyond Supply 2's costs. In this case the market would first draw from Supply 2 (it now having the lowest cost) and then from Supply 1. Because the (higher cost) volumes from Supply 4 are still required to meet demand, there is no change in the market clearing price.

(Laurel St. No. 7-R, pp. 48-50.) Dr. Jones further explained that "so long as a supply source is inframarginal[77], cost increases are felt by the supplier in the form of reduced surplus [*i.e.* profit] but do not affect consumers." (Laurel St. No. 7-R, p. 50.) As such, Dr. Jones concluded that:

> [W]ithin Dr. Arthur's own framework, [t]he [Indicated Parties] cannot demonstrate that changes associated with the costs of supply via the Laurel pipeline have any impact on the prices that will be paid by Pittsburgh area consumers. This is due to the fact that his delivered price analysis explicitly focuses on changes in the costs of inframarginal sources of supply. He purports to measure the amount by which the "cost" of that supply increases

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[77] Inframarginal supply sources are sources that cost *less than* the highest cost (marginal) supply source.

> and then treats that increase as if it represents harm to "consumers, retailers, and wholesalers." This reasoning, however, merely assumes the outcome he seeks to find. Because he fails to investigate whether Laurel's proposal is likely to have any effect on the marginal source of supply to Pittsburgh, he has told us nothing about how market prices will change as a consequence of the project.

(Laurel St. No. 7-R, p. 50.)

The flaws in Dr. Arthur's analysis are further highlighted by the Indicated Parties' arguments regarding the cost of East Coast supplies in this proceeding. The Indicated Parties have argued that East Coast supplies on Laurel are historically the "lowest cost" source of supply to Pittsburgh, *i.e.* the costs of East Coast supplies are below the highest cost source of supply in Pittsburgh. (*See, e.g.*, IP St. No. 1, p. 22:20-24.) At best, Dr. Arthur's "delivered price" analysis is a backward-looking measure of the impact on the hypothetical accounting costs of one specific set of supplies that the Indicated Parties admit are not the highest cost (marginal) source of supply. (Laurel St. No. 7-RJ, p. 5.) As such, there is no basis to conclude that prices will rise even if East Coast supplies were to be backed out of Pittsburgh by the reversal.

Moreover, wholesalers and retailers do not price petroleum products as a function of delivered cost. Rather, as explained in Section VII.C.2.i.4. *supra*, Gulf and Sheetz **[BEGIN HIGHLY CONFIDENTIAL]** [redacted] **[END HIGHLY CONFIDENTIAL]** It is clear that the rack price of petroleum products in Pittsburgh have been a function of something other than supply costs of East Coast-sourced refined products.

For the reasons more fully explained above, Dr. Arthur's "delivered price" analysis cannot support a finding that Laurel's reversal will result in an increase in gasoline prices because it is not capable of calculating impacts on market prices.

3. Dr. Arthur's "delivered price" analysis incorrectly assumes that Chicago is the only Midwest origin capable of supplying Pittsburgh.

In addition, Dr. Arthur's assumption that Chicago is the only relevant alternative supply source from the Midwest for Pittsburgh is flatly wrong. To calculate his "delivered price" of supply from Midwest origins, Dr. Arthur used the "refined product commodity price <u>in Chicago, Illinois</u> as reported by Argus plus <u>the transportation rate</u> on Buckeye pipeline to transport product <u>from Chicago, IL to Coraopolis, PA</u>." (IP St. No. 1, p. 24, fn. 53 (emphasis added).)

Of course, Chicago is not the only relevant supply source for Pittsburgh from the west. Gulf witness Mr. Greg Johnston identified three (3) refineries in Ohio alone that are "positioned to supply the Pittsburgh area." (Gulf St. No. 1, p. 10.) In fact, Laurel witness David W. Arnold, identified fourteen (14) Midwestern refineries that can access Pittsburgh via existing transportation options; eight (8) of those refineries are located outside of Chicago and connected to Pittsburgh via pipeline. (*See* Laurel Exhibit DWA-14; *see also* Laurel St. No. 7-R, pp. 52-53, Figure 15.) Dr. Arthur further confirmed during cross-examination that Midwestern refineries, such as Marathon Petroleum Cattlesburg, KY Refinery, could sell to Pittsburgh at a non-Chicago price. (*See* Hearing Tr. 752:23-753:8.) It is simply not credible to assume Chicago is the only Midwestern origin capable of supplying Pittsburgh, as Dr. Arthur suggests. His analysis, therefore, can be given no weight.

Furthermore, Dr. Arthur's flawed assumption that Chicago is the relevant proxy for Midwestern refined products compounds the errors in his analysis, because he also uses the "transportation rate on Buckeye pipeline to transport product from Chicago, IL to Coraopolis, PA" to calculated his "delivered prices." (IP St. No. 1, p. 24, fn. 53.) Dr. Arthur's assumed transportation rate disregards both the publically available Buckeye transportation rates to Pittsburgh from origins reflecting the actual locations of multiple Midwestern refineries and the

HIGHLY CONFIDENTIAL committed rates agreed to by the Broadway II shippers. As explained by Dr. Jones, "Pricing at each of these refinery locations would reflect local supply and demand conditions and delivered costs to Pittsburgh would also reflect differences in transportation costs, but Dr. Arthur does not include any of these alternatives in his model." (Laurel St. No. 7-R, p. 53.) Therefore, the use of an incorrect transportation rate further underscores the fundamental flaw in Dr. Arthur's selection of Chicago as the only Midwest origin capable of supplying Pittsburgh.

4. Dr. Arthur's "delivered price" analysis incorrectly analyzes price impacts on consumers, retailers and wholesalers as a whole.

Dr. Arthur's combined analysis of impact to "consumers, wholesalers and retailers is misleading, and wrong as a matter of basic economics and the well-understood operation of the market." (Laurel St. No. 7-R, p. 55.) Dr. Jones explained that, in competitive gasoline markets, "wholesalers and retailers base their prices on their expectations as to what the market will bear, not on their average costs." (Laurel St. No. 7-R, p. 55.) Dr. Webb agreed with and further explained this economic principle, stating:

> In reviewing Dr. Arthur's testimony, I found that he conflates consumers, wholesalers, and retailers. For example, on page 22 of his testimony, he asserts that the proposed reversal would "increase costs to consumers, wholesalers and retailers in the Pittsburgh area." (Indicated Parties Statement 1, p. 22) As a matter of common sense, the interests of consumers, retailers and wholesalers are not identical, of course—one would expect wholesalers to charge the maximum market-clearing price to retailers, who in turn may be expected to charge the highest price that the market at the pump will bear. In other words, for the portion of the time when his model is not wrong, he still has provided no evidence that the benefit actually passes through to the consumers. In fact, microeconomic theory suggests that wholesalers and retailers would seek to retain as much of the margin from arbitraging as possible.

(Laurel St. No. 5-R, p. 21.)

Laurel's testimony regarding price formation principles are also confirmed by the Indicated Parties' own prior statements and documents. For example, outside of this proceeding, Dr. Arthur has agreed with this principle of price formation. As noted by Dr. Jones, Dr. Arthur and his Brattle colleagues previously acknowledged that: "Retail prices for petroleum products, particularly gasoline and diesel fuel, *are a function of current and expected future supply and demand conditions, not historical costs.*" (*See* Laurel St. No. 7-R, p. 55 (referencing 2014 API piece by the Brattle Group))

Moreover, wholesalers cannot pass cost increases through to retailers unless market prices allow it. (Laurel St. No. 7-R, p. 56.) This economic reality is admitted by certain individual members of the Indicated Parties who actively participate in the wholesale and retail market. (Laurel St. No. 7-R, p. 55.) **[BEGIN HIGHLY CONFIDENTIAL]** [redacted]

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As such, Dr. Arthur's comparison of "delivered prices" from Midwest origins to "delivered prices" from East Coast origins is economically irrelevant as to whether Laurel's proposed reversal will have an effect on prices paid by Pittsburgh consumers. (Laurel St. No. 7-R, p. 56.) The relevant question is whether the proposed reversal will have an impact on the marginal cost of supplying Pittsburgh; and as demonstrated in Section VII.C.1.b.ii.3. *supra* Laurel's proposed reversal will allow lower-cost Midwestern supplies to displace marginal barrels supplying Pittsburgh and, therefore, decrease petroleum products prices.

5. Dr. Arthur's arbitrage analysis, based on "delivered prices" is disconnected from reality and not credible.

The Indicated Parties claim that "removing the ability for Pittsburgh consumers[, wholesalers and retailers] to access the East Coast refineries would typically increase gasoline prices for those consumers, wholesalers, and retailers in most months." (IP St. No. 1, p. 25.) However, Dr. Arthur's arbitrage analysis does not reflect reality in two crucial ways.

First, Dr. Arthur's arbitrage analysis concedes that wholesalers and retailers are "leaving money on the table" during periods where the "delivered price" from East Coast origins is lower than the "delivered price" from Midwest origins. (Laurel St. No. 7-R, pp. 59-60.) Essentially, Dr. Arthur would have the Commission believe that for-profit entities have acted, and will act in the future, irrationally and forego possible arbitrage opportunities. Moreover, as explained by Dr. Jones "Capacity that has economic value is not left idle for extended periods because of contracts. Rather, competition amongst suppliers ensures that industry professionals figure out ways to put it to use." (Laurel St. No. 7-R, p. 60.) Indeed, to the extent that Dr. Arthur's arbitrage analysis indicated market participants "leave money on the table" by forgoing arbitrage opportunities offered by advantaged East Coast supplies, Dr. Arthur has demonstrated that any available westbound capacity between Eldorado and Pittsburgh on Laurel has no economic value.

Second, the Dr. Arthur's inherent assumption that the future "delivered price" from East Coast origins will be lower than the future "delivered price" from Midwest is contradicted by the Indicated Parties' own studies and analyses. (Laurel St. No. 7-R, pp. 63-64.) **[BEGIN HIGHLY CONFIDENTIAL]** [redacted] **[END HIGHLY CONFIDENTIAL]** Similarly, materials offered into the record on the part of Intervenor Gulf, note that the expansion of Buckeye's Midwest pipeline system, of which the Laurel proposal is one part, "gives refineries in the Midwest a pipeline to move lower-cost fuels, to meet rising demand in the Eastern U.S." (*See* Laurel Exhibit STJ-6, p. 6 (GLF_000139).) **[BEGIN HIGHLY CONFIDENTIAL]** [redacted] **[END HIGHLY CONFIDENTIAL]**

Moreover, Dr. Webb explained that Dr. Arthur's arbitrage analysis cannot demonstrate that arbitrage opportunities have resulted in lower prices in Pittsburgh. (Laurel St. No. 5-R, pp.

15-20.) If Dr. Arthur's "delivered price" analysis were a valid representation of the petroleum products market in Pittsburgh, the rack prices in Pittsburgh should be above the finished delivered cost of the low-price location but below the finished delivered cost of the high-price location. (Laurel St. No. 5-R, pp. 18-20.) This, however, is not the case. As shown by Dr. Webb in Figures 1, 2 and 3 of Laurel St. No. 5-R, which are reproduced below, more than half of the time the Pittsburgh price is either lower than both locations or higher than both locations.

Figure 1: Pittsburgh Price Comparison to Chicago and New York Harbor, (Jun 2006-Nov 2016), CBOB, Delivered Price Basis

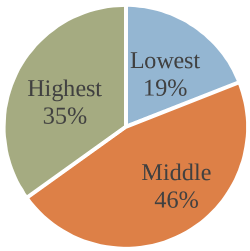
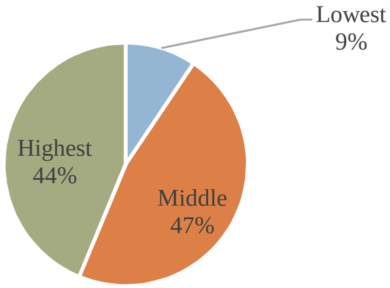
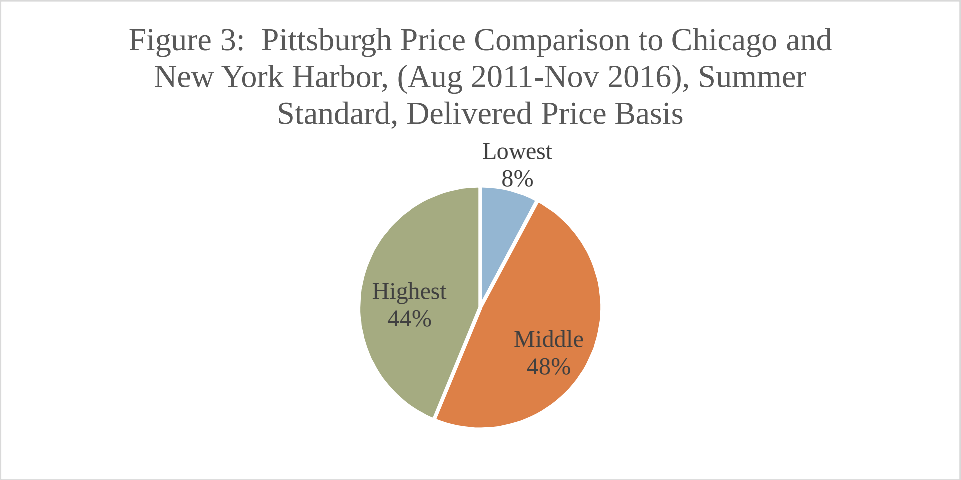


Figure 2: Pittsburgh Price Comparison to Chicago and New York Harbor, (Aug 2011-Nov 2016), RBOB, Delivered Price Basis





(*Id.*, at pp. 18-21.) In other words, applying Dr. Arthur's assumptions about prices to actual historical data, Dr. Arthur is wrong <u>more than 50 percent of the time</u>. (*See id.*, at p. 21.)

For these reasons, Dr. Arthur's conclusions regarding the benefits of alleged arbitrage opportunities presented by Laurel's current configuration are demonstrably false.

6. The Indicated Parties' claims that consumers benefit from arbitrage opportunities under Laurel's current configuration are completely unsupported.

The Indicated Parties also claim that consumers currently benefit from the arbitrage opportunities available to wholesalers and retailers under Laurel's current configuration and that Laurel's proposed reversal would eliminate this benefit. (*See* IP St. No. 1, pp. 22-23; Giant Eagle St. No. 1, p. 5; Sheetz St. No. 1, p. 3; and Gulf St. No. 1, p. 9.) However, their claims that consumers benefit when middlemen earn arbitrage profits are nothing more than unsubstantiated assertions.

As discussed above, Dr. Webb explained that Dr. Arthur's arbitrage analysis cannot demonstrate that arbitrage opportunities have resulted in lower prices in Pittsburgh, because when Dr. Arthur's assumptions about prices are applied to actual historical data, Dr. Arthur is wrong <u>more than 50 percent of the time</u>. *See* Section VII.C.2.a.i.5. *supra* (citing Laurel St. No.

5-R, pp. 18-21 and Figures 1-3). And, as explained by Dr. Jones, there is no evidence of record that retailers and wholesalers pass-through the benefits of any present arbitrage opportunities to consumers. (Laurel St. No. 7-R, p. 72.) The Indicated Parties ask the Commission to believe that both the wholesaler willingly reduces the margin it could otherwise earn by charging the retailer less than market price for the product and the retailer willingly reduces the margin it could earn by charging the consumer less than it would otherwise. (*Id.*) Yet, none of the Indicated Parties' witnesses offers any evidence to this chain of events or any explanation of how these wholesalers and/or retailers share their arbitrage profits with consumers.

There is, however, record evidence that suggests Laurel's shippers do not pass-through arbitrage benefits to consumers. (Laurel St. No. 5-R, pp. 24-25.) As explained above, **[BEGIN HIGHLY CONFIDENTIAL]** [redacted] **[END HIGHLY CONFIDENTIAL]**

Both Gulf and Sheetz attempt to obfuscate the fact that they have presented no evidence that shows wholesalers pass arbitrage benefits to retailers and that retailers pass arbitrage benefits to consumers. Indeed, the failure of the parties to produce any evidence supporting this fact is particularly telling as they are the only parties in this proceeding that would possess any such evidence. Dr. Webb explained that:

> They could have presented company policies on prices that showed how they pass cost savings from arbitrage through to consumers.

> They could have presented analysis showing that as their costs fell, they reduced their prices. Instead, they simply assume that because the market is competitive prices will pass straight through to consumers. This is particularly true in the case of the testimony of Mr. Lorenz who states that competition will force prices down. He also states that consumers will switch for as little as 3 cents per gallon. However, he provides no data to support this claim.

Laurel St. No. 5-R, p. 38.

For the reasons explained above, the record is devoid of credible evidence to support the Indicated Parties' claim that Pennsylvania consumers share in the alleged arbitrage benefits that exist under Laurel's current configuration.

ii. Laurel's Proposed Reversal Will Not Increase Price Volatility In The Pittsburgh Market.

Contrary to the Indicated Parties' assertions, Laurel's proposed reversal will not increase price volatility in the Pittsburgh market. The principle flaw in the volatility analyses and conclusions advanced by Mr. Schaal, Mr. Johnston (Gulf) and Mr. Lorenz (Sheetz), is that the analyses are static and backward looking. (*See, e.g.*, Laurel St. No. 8-R, p. 7.) The Indicated Parties' analyses ignored significant recent and projected changes in the dynamics of the Midwest, East Coast and Gulf Coast petroleum products markets that directly refute their opinions. In addition, Mr. Schaal's "Regional retail petroleum product price analyses" ("PPP Analyses") do not support his conclusion that Pittsburgh consumers benefit from the current Laurel configuration because it provides stable petroleum products prices as compared to consumers in the Midwest. (Laurel St. No. 7-R, pp. 42-43; Laurel St. No. 8-R, pp. 42-44.) Laurel's proposed reversal, like all energy supply projects, is meant to address future market needs and cannot be analyzed by exclusively relying on historical information.

1. Mr. Schaal's analyses fails to reflect changes in, and the flexibility of, the supply and demand of refined products in the Pittsburgh market.

Mr. Schaal bases his predictions regarding the impacts of Laurel's proposed reversal on the Pittsburgh market on a retrospective analysis of supply and demand. *See* Indicated Parties St. No. 2, pp. 23-24. Similar to Dr. Arthur's analysis, Mr. Schaal also fails to account for recent changes in crude oil supplies and refinery investments, which have led Midwestern refineries to have a production cost advantage over East Coast refineries. *See* Section VII.C.1.b.i. *supra*.

As explained by Mr. Stern, Mr. Schaal's analysis also specifically ignores the following significant changes in the relationships between PADD 1, PADD 2 and PADD 3 refineries:

- Midwestern refineries have significantly increased their refining capacity since 2005. (Laurel St. No. 8-R, pp. 7-8.)
- Midwestern refineries have become increasingly connected, and are still seeking additional connectivity, to the Pittsburgh market and points further east. (Laurel St. No. 8-R, pp. 14-16.)
- While volumes from East Coast refineries to Pittsburgh on Laurel have consistently decreased over the past decade, volumes from Midwestern refineries to Pittsburgh, *i.e.* PADD 2 to PADD 1 movements, have substantially increased. (Laurel St. No. 8-R, pp. 18-19.)
- Midwestern refineries have increased refining capacity and have sufficient capacity to supply Pittsburgh. (Laurel St. No. 8-R, pp. 20-21.)
- Gulf Coast shipments to the Midwest have fallen in recent years, but delivery infrastructure remains in place to ship Gulf Coast refined products to the Midwest in response to demand (*e.g.*, in the event of a Midwestern refinery outage). (Laurel St. No. 8-R, p. 24.)
- Gulf Coast refineries have increased exports. (Laurel St. No. 8-R, pp. 25-26.)

- Despite declines in domestic gasoline demand, United States refinery capacity has increased since August 2015. (Laurel St. No. 8-R, pp. 27-30.)
- European refiners historically have been the marginal supplier to the East Coast. (Laurel St. No. 8-R, pp. 33-34.)
- As domestic production continues to increase and demand continues to decline, European barrels will be backed out of markets to the extent that domestically refined products can replace them. (*See* Laurel St. No. 8-R, pp. 36-38.)

Since Mr. Schaal's analyses ignore these well document trends, his analyses cannot credibly project the future inter-PADD relationships that have been documented as a driving force behind Laurel's proposed reversal. (*See* Laurel St. No. 1-R, pp. 6-8; *see also* (HC) Laurel Exhibit DWA-8 (referencing internal Buckeye documentation detailing market trends justifying Laurel's proposed reversal).) Therefore, Mr. Schaal's purely historical analyses should be given no weight.

2. Mr. Schaal's "PPP Analyses" is flawed and not credible.

In his Direct Testimony, Mr. Schaal conducts his PPP Analyses for the East Coast and Midwest. (IP St. No. 2, pp. 28-31.) Therein, Mr. Schaal purports to demonstrate how Laurel's proposed reversal would result in "retail gasoline prices in the Pittsburgh area that are more volatile and prone to price spikes than would be the case absent the proposed reversal." (IP St. No. 2, p. 22.)

Dr. Jones explained that Mr. Schaal's conclusions regarding price volatility are based on the insinuation that the Midwest marketplace somehow lacks the ability and/or physical capacity to serve western Pennsylvania. (Laurel St. No. 7-R, pp. 42-43.) Mr. Schaal's conclusions are based on a flawed methodology that "compare[s] indigenous production within the eastern

Midwest subgroup of states in PADD 2 and compare[s] it against those states' indigenous consumption. Because consumption exceeds production, he asserts that the eastern Midwest cannot be a source of products to other regions." (Laurel St. No. 7-R, p. 43.)

This analysis ignores the reality of how the petroleum products marketplace operates; a reality clearly reflected in the internal analysis of **[BEGIN HIGHLY CONFIDENTIAL]** [redacted] **[END HIGHLY CONFIDENTIAL]** ((HC) Laurel Exhibit STJ-20, p. 38.) Indeed, in reality, the Midwestern refineries produce abundant supplies of petroleum products and, as PADD 2 to PADD 1 movements increase, are actively seeking transportation solutions to move those products into Pennsylvania.

In addition, Dr. Jones explained that Mr. Schaal's methodology is unreliable because it produces an absurd result as applied to the Central Atlantic group of states in PADD 1. (Laurel St. No. 7-R, p. 44.) Under Mr. Schaal's framework, none of the eastern origin sources in Dr. Arthur's delivered price model would ship motor gasoline beyond New Jersey and Delaware because gasoline consumption in those states exceeds production. (Laurel St. No. 7-R, p. 44.) Yet, it is undisputed that products do in fact flow from these eastern origins to points outside of New Jersey and Delaware. (Laurel St. No. 7-R, p. 44.) Mr. Schaal's analysis is simply not credible in this regard.

Moreover, Dr. Jones explains that Mr. Schaal's analysis is flawed because it attempts to represent the Eastern Midwest and Western Pennsylvania regions as separate markets. Laurel St. No. 7-RJ, pp. 22-23. He explained that:

> Holding aside the confusion that Intervenors have injected by conflating wholesale and retail sales of gasoline, the operative

> phrase then becomes, in Mr. Schaal's words "identify and bound geographical areas with a common set of properties." It is the application of these words in which Mr. Schaal commits a fundamental and irreparable error. The economically relevant question in defining the extent of the geographic market is where consumers can turn for supply in the event of a price increase. The economic reality is the Eastern Midwest and western Pennsylvania, including Pittsburgh, are for the purposes of defining the market for wholesale gasoline sales in the same market. How do we know this? Because gasoline produced from "Eastern Midwest" refineries is being sold in western Pennsylvania, in general, and Pittsburgh, specifically. There simply is no evidence more conclusive of two areas being in the same market.
>
> As a consequence, a proper analysis of the geographic market would take into consideration all the firms that can and do supply wholesale gasoline in western Pennsylvania, as well as those who could supply gasoline in the event that prices increased. This would include such refiners, but not be limited to BP, Ergon, Husky, Marathon, PBF Energy, and Monroe as well as any of the Gulf Coast refiners whose refined products are being sold into western Pennsylvania.

Id. Mr. Schaal's attempt to create separate markets appears to be nothing more than an attempt to support his false assertion that Pittsburgh is supplied by fewer options than it is in reality.

Dr. Jones also demonstrated that Mr. Schaal's claims in Surrebuttal Testimony regarding price spikes and consumer behavior should be disregarded. Dr. Jones explained that he disagreed with Mr. Schaal's assertions as to the Laurel project's implications for price spikes in the Pittsburgh area because:

> Mr. Schaal asserts that "[g]asoline shortages and attendant price spikes in retail gasoline and diesel prices that often occur after hurricanes and other major infrastructure events erode consumer confidence in the availability of supplies in the future, promotes hoarding behavior, and reduces the public's trust in the market participants that provide their fuels." The economic implication of this assertion is that prices for refined petroleum products are higher than they would otherwise be as individuals internalize the potential for future scarcity. The economic reality is that there is no manner by which a consumer can effectively "hoard" gasoline. His evidence in this regard is a paper, published in 1975, that references the 1973-1974 oil embargo undertaken over forty-years

> ago by the Organization of the Petroleum Exporting Countries during a period in which the United States petroleum markets operated under a regime of price controls.

(Laurel St. No. 7-RJ, pp. 21-22.) Furthermore, Dr. Jones noted that Mr. Schaal's claims regarding price spikes in his Surrebuttal Testimony, directly contradicted Mr. Schaal's statements in his Direct Testimony:

> The economic relevance of that global event [the 1973-74 oil embargo] to the reversal of the westernmost segment of the Laurel pipeline remains unclear to me. Moreover, these allegations are contradicted by Mr. Schaal's "relevant finding" in his direct testimony:
>
> > "'Pipeline systems in the Midwest (PADD 2) and Rocky Mountain (PADD 4) regions are largely configured as hub-and-spoke networks, with small-diameter (12-inch or less) pipelines moving product from regional refining and logistics hubs to geographically dispersed markets.' <u>The EIA explains that the combination of strong in-region refinery production combined with this delivery infrastructure, albeit often with small diameter pipe, provides flexibility in the event of an unplanned refinery outage</u>."

(Laurel St. No. 7-RJ, p. 22 (emphasis added) (quoting IP St. No. 2, p. 8).) Mr. Schaal's statements regarding price spikes both fail to reflect reality and are inconsistent on their face.

Finally, Mr. Stern also points out that Mr. Schaal's conclusions regarding the effects of price spikes due to outages disregards the fact that price spikes are not unusual in the refining industry. (Laurel St. No. 8-R, p. 41.) Indeed, Mr. Stern explained that "price spikes can occur anywhere at any time, but they quickly resolve because they present an arbitrage opportunity to producers to supply additional material <u>if the infrastructure to move product exists</u>." (Laurel St. No. 8-R, p. 42 (emphasis added).) Laurel proposed reversal, as a part of the Broadway II project, provides the infrastructure necessary for price spikes to quickly resolve themselves by alleviating pipeline constraints between Midwestern refineries and Pittsburgh. And, at any rate, Mr.

Schaal's assertion that Laurel's proposed reversal will increase the risk of price spikes in Pittsburgh due to the historical role of price spikes in the Midwest constitutes a fundamental misunderstanding of each market. *See* Section VII.C.2.a.ii.3. *infra*.

3. Mr. Schaal's conclusions regarding effect of Laurel's proposed reversal on prices is not credible.

In essence, Mr. Schaal claims that Laurel's proposed reversal will result in higher prices for Pennsylvania consumers because it will increase price volatility in Pennsylvania. (*See* IP St. No. 2, pp. 29-30.) Specifically, Mr. Schaal concludes that:

> [I]f the partial reversal were to be approved and implemented <u>Pittsburgh and Altoona gasoline prices would more closely track the more volatile gasoline prices of the Eastern Midwest cities</u> with very little potential benefit with respect to the average prices that those consumers would end up paying. In addition, Pittsburgh and Altoona customers would be subject to spikes in gasoline prices to a degree that they have not previously experienced.

(IP St. No. 2, pp. 29-30 (emphasis added).) Mr. Schaal's conclusions represent a fundamental misunderstanding of Midwestern pricing patterns and should be disregarded.

As explained by Mr. Stern, Midwestern gasoline prices can be volatile due to unique competitive factors in the Midwestern retail markets, not the source of the gasoline supplies. (Laurel St. No. 8-R, pp. 42-43.) Midwestern retailers engage in a pattern known as "price cycling."[78] (Laurel St. No. 8-R, p. 42.) Mr. Stern explained that price cycling is caused, at least in part, by the nature of competition between superstores and convenience chains at the retail level. (*Id.*, at p. 43.) Price cycling is not, however, caused by the *source* of gasoline. (*Id.*) No witness in this proceeding has suggested that Pennsylvania retailers engage in price cycling, or

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[78] Price cycling has been described by the FTC as a "recurring 'saw tooth' pattern of retail price movements characterized by periods of a relatively small number of large price increases, followed by a period of more numerous, but smaller price decreases." (Laurel St. No. 8-R, p. 42 and fn. 95 (quoting "Gasoline Price Changes and the Petroleum Industry: An Update," Federal Trade Commission, Bureau of Economics, September 2011, pp. 40-41).)

that the competitive nature of Pennsylvania's retail gasoline markets exhibits the same characteristics as those markets in the Midwest. Mr. Schaal's attempt to argue that Pennsylvania retail prices will become more volatile due to a pricing phenomenon, which does not occur in Pennsylvania, should be disregarded.

Moreover, even if price cycling were to occur in Pennsylvania, Mr. Stern noted that the United States Federal Trade Commission has concluded that price cycling "actually results in an average gas price that is roughly one cent per gallon cheaper than in states where price cycling is uncommon." (*Id.*, at p. 44; *see also* Hearing Tr. 628:19-629:2.) An external study cited by Mr. Stern in his rebuttal testimony depicts this phenomenon and demonstrates that, even with price-cycling, the average retail price of gasoline in Ohio was lower than the average retail price of gasoline in Pennsylvania. (*See* Laurel St. No. 8-R, p. 43, Figure 18.) As such, if "Pittsburgh and Altoona gasoline prices would more closely track the more volatile gasoline prices of the Eastern Midwest cities," as Mr. Schaal claims, consumers in Pennsylvania will have access to an average gasoline price that is $0.01/gallon cheaper than the current price.

4. The Pittsburgh market will have multiple supply options available to minimize the impact of refinery outages post-reversal.

Finally, Mr. Schaal argues that the proposed reversal will make Western Pennsylvania *and* the Eastern Midwest more susceptible to price spikes during the summer due to unplanned refinery outages or other similar events. Indicated Parties St. No. 2, pp. 32-33. However, this conclusion is based on the flawed assumption that Pittsburgh market participants will not have adequate alternatives to transport petroleum products into Pittsburgh if Laurel's proposed reversal is approved. As discussed in more detail in Section VII.C.2.a.iii.4. *infra* numerous alternatives exist for Pittsburgh market participants. In this discussion of the alternatives available to Pittsburgh market participants, Laurel discusses why Midwestern refineries represent an available, adequate alternative to Pittsburgh market participants and why the Indicated Parties' claims to the contrary are flawed.

iii. Laurel's Proposed Reversal Will Not Reduce Supply Reliability And Optionality In The Pittsburgh Market.

In addition to the PPP Analysis advanced by Mr. Schaal, Gulf and Sheetz witnesses also claim that Laurel's proposed reversal will reduce supply reliability and optionality in Pittsburgh. (*See, e.g.*, Gulf St. No. 1, pp. 4, 9; Sheetz St. No. 1, pp. 15-16.) Due to these impacts, both Gulf and Sheetz incorrectly assert Laurel's proposed reversal will have an adverse effect on Pittsburgh retail gasoline prices.

These claims by Gulf and Sheetz are unsupported and, at times, directly contradict the claims and theories advanced by the Indicated Parties. In addition, numerous supply alternatives will be available to Pittsburgh-area market participants post-reversal. As such, it is reasonable to conclude that supply reliability and optionality in the Pittsburgh market will not be negatively impacted by the reversal.

1. Gulf's claims demonstrate why Laurel's proposal will benefit Pittsburgh.

Gulf's claims that "It is almost logistically impossible to move petroleum products from Chicago-area refineries to the Pittsburgh area due to pipeline capacity limitations." (Gulf St. No. 1, p. 9.) Mr. Johnston confirmed this statement in his deposition:

> A. So, I think I understand the question. And the question is, do I believe that the existing refineries in the Midwest could supply Pittsburgh? Is that your question?
>
> Q. Right.
>
> A. Okay. I believe that there would be a very – it would be very difficult <u>because of the constraints of these Midwest pipelines to supply Pittsburgh.</u>

> Q. Okay. So, in your view, it's because of the constraints on the pipeline grids serving Pittsburgh, and not something about the Midwest refineries themselves.
>
> A. In my opinion, no. Yes. <u>That would be the case, the restrictions in the pipelines.</u>

(Laurel C.E. Exhibit No. 17 (Tr. 81:15-82:4).) Mr. Johnston again confirmed this statement in his Surrebuttal Testimony, stating that Husky witness "Mr. Miller never addresses my testimony confirming that capacity limitations make it all but impossible to move product from Chicago-area refineries to Pittsburgh on Buckeye's existing line." (Gulf St. No. 1-SR, p. 7.) Indeed, throughout this proceeding, Gulf, as a member of the Indicated Parties has claimed that pipeline constraints exist over the current configuration of pipelines connecting Midwestern refineries to Pittsburgh.

In this regard, the Indicated Parties' testimony highlights a key benefit of Laurel's proposed reversal: as a part of Broadway II, it will alleviate certain downstream constraints between Midwest refineries and Pittsburgh thereby allowing increased access to lower-cost Midwestern petroleum products. As noted by Laurel witness Mr. Arnold, Laurel's reversal is the "second element" of Buckeye's Broadway II Project; the first element will increase the capacity of Buckeye's pipeline system from Western Ohio to Pittsburgh (*i.e.* where it interconnects with Laurel). (Laurel St. No. 1, p. 18.) While it is possible for lower-cost Midwestern petroleum products to reach Pittsburgh through existing pipeline options, shippers' commitments to the Laurel reversal as a part of the Broadway II project demonstrate there are downstream constraints that prevent Midwestern volumes from reaching Pittsburgh. (Hearing Tr. 363:5-12.) These downstream constraints are part of the reason that, despite the robust existing pipeline infrastructure in the Midwest, Midwestern shippers continue to demand additional eastward transportation solutions into Pittsburgh via pipeline. (*See* Laurel St. No. 1-R, p. 12.)

It is important to recognize that Gulf's claims regarding capacity constraints from the Midwest to Pittsburgh are consistent with Laurel's description of the market. These limitations demonstrate precisely why Laurel's reversal, as a part of Buckeye's Broadway II project, is needed and why the existing capacity into Pittsburgh is insufficient. Therefore, Gulf's claims of harm regarding Midwest to Pittsburgh pipeline logistics actually confirm one of the many benefits of Laurel's proposed reversal.

2. Sheetz's claims are unsupported.

Sheetz's claim that Laurel's proposed reversal will reduce supply reliability and cause price spikes (Sheetz St. No. 1, p. 16) is also based on three flawed assumptions. (Laurel St. No. 8-R, pp. 70-72.)

First, Mr. Lorenz assumes that Midwest supplies are fixed. (Laurel St. No. 8-R, p. 70.) However, it is undisputed that Midwestern capacity has expanded in recent years,[79] and capacity will continue to increase if demand increases to justify these investments.[80] These projections are corroborated by Husky's testimony in this proceeding. Husky witness Mr. Miller further detailed several recent refinery expansion projects in the Midwest, which provide real-world corroboration to the documented industry trends regarding refinery expansions discussed by Mr. Stern. (Husky Smt. No. 1-R, pp. 7-8.)[81]

In addition, Sheetz witness Mr. Lorenz recognized at his deposition that **[BEGIN HIGHLY CONFIDENTIAL]** [redacted] **[END HIGHLY CONFIDENTIAL]** ((HC) Laurel Exhibit MJW-6 (Tr. 61:2-11).) As such, Mr. Lorenz's assumption that Midwest supplies are fixed, and cannot meet

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[79] (Laurel St. No. 8-R, pp. 7-8 and Figure 1.)

[80] (Laurel St. No. 8-R, p. 9 ("Petroleum refining is a capital intensive business and, as part of their long term commitment to the business, refiners recognize that continued capital investment is required to address changes that periodically occur in the petroleum refining environment.").)

[81] Declines in gasoline demand will also increase available capacity. (Laurel St. No. 8-R, pp. 27-31.)

Pittsburgh demand in the event of disruptions, ignores the fact that Gulf Coast supplies can be transported to the Midwest to address supply disruptions in that region.

Second, Mr. Lorenz speculates regarding the timing and length of unplanned outages and their possible effect on gasoline prices. (Laurel St. No. 8-R, p. 71.) However, due to the costs associated with unexpected curtailments of production, all unplanned outages are resolved as quickly as possible. (Laurel St. No. 8-R, p. 71.) In addition, Mr. Lorenz ignores the flexibility of the Midwest and Gulf Coast delivery systems to compensate for these outages. (Laurel St. No. 8-R, Figure 3; *see also* IP St. No. 2, p. 8:7-12 (discussing the flexibility of Midwestern delivery infrastructure).)

Third, Mr. Lorenz incorrectly characterizes the Chicago market[82] as a relatively illiquid market that is more volatile that the East Coast market. Laurel St. No. 8-R, pp. 71-72. However, Mr. Lorenz provided no data illustrating wild price swings in the Midwest as a result of being supplied by Midwestern refineries. Indeed, he cannot make such a showing because price swings in the Midwest are unrelated to supply issues. *See* Section VII.C.2.a.ii.3. *supra*. Moreover, it is undisputed that there are numerous participants in the Midwestern market. Laurel St. No. 8-R, pp. 71-72. Such market participants include fourteen (14) refineries that can transport petroleum products from the Midwest to Pittsburgh by a variety of transportation options: fourteen (14) Midwestern refineries that can access Pittsburgh via existing transportation options, eleven (11) of which are connected to Pittsburgh via pipeline. *See* Laurel Exhibit DWA-14.

3. Husky demonstrated that Laurel's proposed reversal will increase the optionality and liquidity of supply in Pittsburgh.

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[82] Mr. Lorenz also incorrectly references Chicago as the only applicable origin in the Midwest, despite substantial evidence to the contrary. *See* Section VII.C.2.a.i.3. *supra*.

Contrary to Gulf's and Sheetz's claims, Husky, a refinery that actually operates and does business in the Midwest, demonstrated that Laurel's proposed reversal will actually increase the optionality and liquidity of supply in Pittsburgh, to the benefit of consumers. Husky St. No. 1-R, p. 6. Mr. Miller responded as follows to question regarding the effects of Laurel's proposed reversal on supply optionality and liquidity in Pittsburgh:

> Q. So you mentioned the Allegheny Access pipeline, and I understand that that was put into service, and Buckeye also currently has capacity into Pittsburgh. Notwithstanding those two projects, how would the reversal on its own increase liquidity and optionality into the Pittsburgh area.
>
> A. <u>The pipelines are not just representative of the pipelines. They also include the terminal set.</u> So the terminals set along the Allegheny Access pipeline are the old Sunoco, Incorporated terminals. Those terminals are known to be smaller in size. Their geographic locations are [also] not in advantaged locations.
>
> So our ability to sell product includes not only the pipeline, but what we can put through the terminals and what terminals customers will want to go to.
>
> <u>What this does is also gives us, the Laurel pipeline gives us another pipeline into this market, but it also gives us a much better terminal set where the terminals are larger and the terminals are in a better location for customers to go pick up.</u>
>
> <u>So the pipeline piece increases optionality and liquidity, but our access to the terminal set does as well.</u>
>
> We currently operate through about three terminals, three terminals on the Allegheny Access project in Pennsylvania. <u>This [reversal] will give us an additional, at least three terminals, so we can double our terminal count in our ability to service the region.</u>

(Hearing Tr. 1181:7-1182:9 (emphasis added).) Husky's testimony demonstrates that, not only does Laurel's proposed reversal provide an additional, necessary pipeline option to transport lower-cost Midwestern products to the Pittsburgh area, but it also expands the terminal options available for lower-cost Midwestern products to reach.

4. The Indicated Parties' claims regarding post-reversal alternatives available to Pittsburgh market are not credible.

After the reversal, Pittsburgh market participants will still be able to access petroleum products from a variety of alternative transportation sources, including: (1) Sunoco Pipeline, L.P. ("Sunoco"), from the Midwest; (2) Marathon Pipeline LLC, from the Midwest; (3) Buckeye from the Midwest; (4) Buckeye and Laurel, collectively delivering from the East Coast to Altoona, from which product can be trucked west post-reversal; (5) trucks delivering from the Ergon refinery in Newell, West Virginia; (6) trucks delivering from the United Refining refinery in Warren, Pennsylvania; (7) barges delivering petroleum products to terminals on the Ohio, Allegheny and Monongahela Rivers from refineries and pipeline terminals in the Midwest and potentially Gulf Coast; and (8) trucks delivering petroleum products from pipeline terminals in Ohio. (Laurel St. No. 2, p. 6; *see also* Laurel St. No. 5, pp. 22-25.)

Gulf and Sheetz claim that the available alternatives Laurel identified in its Application and Direct Testimony for Pittsburgh-area market participants are inadequate. (Gulf St. No. 1, pp. 4-12; Sheetz St. No. 1, pp. 5-12.) Mr. Rosenthal similarly opines that Laurel has failed to demonstrate that the proffered post-reversal alternatives are cost effective and adequate substitutes, based on the testimony of other Indicated Parties witnesses. (IP St. No. 3, p. 15.)

In addition, Indicated Parties witness Dr. Arthur identifies several of the alternatives available to supply the Pittsburgh market. (IP St. No. 1, p. 17.) However, Dr. Arthur does not opine on the adequacy of the alternatives he describes, other than to suggest that all of the pipeline capacity identified in Figure 4 of his Direct Testimony would not be available to serve demand in Pittsburgh post-reversal. (*Id.*, pp. 17-18.)

In addition to the flaws associated with the Indicated Parties' arguments regarding transportation alternatives available to Pittsburgh area market participants discussed below, Dr.

Webb summarized the fundamental flaw associated with the parties' claims. (Laurel St. No. 5-R, pp. 85-86, 92.) Dr. Webb explained that:

> These arguments essentially represent strawman arguments. For example, Dr. Arthur argues that it would cost "tens of millions of dollars per year" to transport refined product from Eldorado to Pittsburgh. However, this calculation assumes that the entire historic quantity of deliveries to Pittsburgh would be transported [solely] by truck [or another alternative]. Neither I, nor any Laurel witness argues that the entire throughput on Laurel will be replaced by trucks [or any other single alternative]. Indeed, as noted in the prior section of my testimony, deliveries from the East Coast to Pittsburgh have declined substantially in the past year. In my opinion, this decline will continue such that there will be little if any demand for product transported from the East to Pittsburgh. With regard to all of these alternatives, the Indicated Parties assume that the alternative has to be able to completely replicate and replace Laurel. They ignore the dynamic nature of the market.
>
> …
>
> This point is perhaps best illustrated by comparing deliveries on Laurel at Altoona and Harrisburg discussed extensively above. Between 2012 and 2013 deliveries to both Harrisburg [and] Altoona increased substantially presumably because shippers who previously had shipped on Sunoco ceased such shipments. Deliveries to Harrisburg have continued to increase. However, deliveries to Altoona fell by 15.9 percent between 2014 and 2016. In late 2015, Allegheny Access began delivering refined product into Pittsburgh. Because markets are dynamic, some suppliers who were previously lifting product out of Altoona and trucking 50 or 75 miles west are likely now lifting out of a Pittsburgh terminal supplied by Allegheny Access and trucking 50–75 miles east. In other words, the market is not a binary structure where participants must move either on Laurel or by truck [or any other single alternative].

(Laurel St. No. 5-R, pp. 85-86 (emphasis added).) Indeed, witnesses for the Indicated Parties consistently claim that each *single alternative alone* is an inadequate substitute to Laurel, but do not—and cannot—claim *all available alternatives together* constitute an inadequate substitute to Laurel. The latter is the relevant inquiry for purposes of this proceeding. Therefore, the Indicated Parties' claims regarding alternatives should be disregarded.

A. Barges.

Both Gulf and Sheetz claim that barge movements are an inadequate alternative because economics, product available, emission limit restrictions, river conditions and weather render barge supply unreliable and only suitable for supplemental deliveries. (Gulf St. No. 1, p. 4; Sheetz St. No. 1, p. 5.)

Dr. Webb explains that both Gulf and Sheetz incorrectly assume that barges must completely replace *all volumes* currently delivered on Laurel, in order to be an adequate alternative. (Laurel St. No. 5-R, p. 89.) While barges may at times be more expensive, this option has consistently delivered significant quantities of gasoline to Pittsburgh. (*Id.*) As such, the revealed preferences of Pittsburgh area market participants strongly indicate that this transportation method represents a viable, adequate alternative.

B. Trucking.

Gulf and Sheetz both claim that trucking—either from local refineries, or from Altoona to Pittsburgh—is not an adequate alternative. (Gulf St. No. 1, pp. 6-8; Sheetz St. No. 1, pp. 6-10.)

Both Gulf and Sheetz claim that certain practical limitations associated with the Altoona based terminals connected to the Laurel pipeline system prevent trucking from being an adequate alternative. (Gulf St. No. 1, pp. 6-8; Sheetz St. No. 1, pp. 6-10.) Both entities further claim that the prospects for terminal owners to make the investments necessary to alleviate these practical limitations are dismal. (Gulf St. No. 1, pp. 7-8; Sheetz St. No. 1, pp. 9-10.)

Dr. Webb explains that Mr. Lorenz incorrectly claims that the Marathon Petroleum Corporation Canton, OH refinery and United Refining Company's Warren, PA refinery are the "base or sole" supply for their specific local regions. (Laurel St. No. 5-R, p. 88.)

Dr. Webb also explains that Gulf's and Sheetz's claims regarding a lack of terminal and truck loading infrastructure and capital costs are irrelevant. (Laurel St. No. 5-R, pp. 86-87.) As he explains in his rebuttal testimony:

> **Q. How do you anticipate trucks will impact the market in this case?**
>
> A. I would anticipate there may be some increase in trucks lifting barrels out of Altoona for a few years, until the downward trend again dominates this increase. For example, it might return to a level similar to the level observed in 2014. In turn, these trucks…would deliver refined product to locations on the Eastern edge of the area currently supplied by the Pittsburgh area terminals. It is also critical to remember that trucks are a necessary component of the supply chain. Nearly all product consumed in the market is ultimately transported by truck. All of the shipper witnesses ignore this fact and instead suggest there will [necessarily] be hundreds of additional trucks on the roads of the Commonwealth…This strawman argument is simply absurd. Even now, when Laurel still delivers to Pittsburgh, Laurel has seen volumes falling dramatically, even in the summer, and even though capacity is available on Laurel. <u>This fact suggests that when deliveries to Pittsburgh on Laurel from the East cease, the vast majority of shippers will obtain product from the Midwest. They will not truck it from Eldorado to Pittsburgh.</u>

(Laurel St. No. 5-R, p. 86.) Indeed, trucks will continue to play no greater role in the supply of petroleum products to Pennsylvania markets post-reversal than they do today; both today and post-reversal trucks will remain an available and adequate alternative.

Despite Laurel's belief that product will most likely not be trucked from Eldorado to Pittsburgh after the reversal, it is important to note that trucking will remain a vital aspect of the transportation chain. As noted by Dr. Webb, nearly all product consumed in the market is ultimately transported by truck. (Laurel St. No. 5-R, p. 86.) And, as noted by Dr. Jones, trucking orbits regularly exceed one hundred (100) miles. (Laurel St. No. 7-R, pp. 39-40, Figure 13.) So, supplies shipped on Laurel from the east to Altoona will be able to supply the Pittsburgh area, depending on local supply and demand conditions.

C. Midwestern supplies via pipeline.

In addition, Gulf and Sheetz claim that absent access to East Coast supplies, Midwestern refineries could not serve as an adequate supply alternative for the Pittsburgh-area petroleum products market. (Gulf St. No. 1, pp. 8-10; Sheetz St. No. 1, pp. 10-11.) Gulf and Sheetz suggest if Pittsburgh were to solely rely on Midwestern products supplies, then Pittsburgh market participants would lose seasonal arbitrage opportunities and face substantial logistical hurdles in transporting product from the Midwest to Pittsburgh. (*See* Gulf St. No. 1, pp. 6-8; Sheetz St. No. 1, pp. 6-10.) Gulf also suggests that an increase in the number of available refineries connected to Pittsburgh would not alleviate competitive pricing issues, due to the limited number and connectivity such refineries have to Pittsburgh. (Gulf St. No. 1, pp. 9-10.) And, Gulf further claims that "Buckeye pipelines from the west are heavily allocated…so even shipments from the Ohio refineries located closer to Pittsburgh would be limited by existing capacity allocations." (*Id.*, at p. 12.) These claims are demonstrably flawed or incorrect.

Gulf's claim that Midwestern supplies cannot act as an adequate alternative due to capacity constraints between the Midwest and Pittsburgh is incorrect. As explained above, Gulf's assertions that the existing capacity connecting Midwestern refineries to Pittsburgh is constrained demonstrate that Laurel's proposed reversal, as a part of Buckeye's Broadway II project, is necessary to alleviate these constraints and increased Pittsburgh's access to lower-cost Midwestern supplies. *See* Section VII.C.2.a.iii.1. *supra*.

In addition, both Gulf and Sheetz ignore record evidence of fundamental changes in Midwestern refining capacity and connectivity. Midwestern refineries have significantly increased their refining capacity since 2005. (Laurel St. No. 8-R, pp. 7-8.) In order to clear that capacity, Midwestern refineries have become increasingly connected, and are still seeking additional connectivity, to the Pittsburgh market and points further east. (Laurel St. No. 8-R, pp.

14-16.) Simultaneous to these Midwestern refinery and pipeline capacity expansions, volumes from Midwestern refineries to Pittsburgh, *i.e.* PADD 2 to PADD 1 movements, have substantially increased. (Laurel St. No. 8-R, pp. 18-19.) As such, it is clear that Midwestern refineries have not only increased their refining capacity, but also have sufficient capacity to supply Pittsburgh. (Laurel St. No. 8-R, pp. 20-21.)

D. Product exchanges.

Gulf and Sheetz also claim that wholesalers and retailers in the Pittsburgh-area cannot rely on product exchanges as an alternative. (Gulf St. No. 1, pp. 11-12; Sheetz St. No. 1, pp. 11-12.) Both entities claim that a product exchange works best when both suppliers are subject to the same pricing hub. (Gulf St. No. 1, p. 12; Sheetz St. No. 1, p. 12.) In addition, both Mr. Johnston and Mr. Lorenz claim that, to their knowledge, no market participants have ever entered into a product exchange for supply to Western Pennsylvania. (Gulf St. No. 1, p. 12; Sheetz St. No. 1, p. 12.)

Contrary to these claims, exchanges represent one of the numerous alternatives available to Pittsburgh market participants and provide incremental optionality to the other alternatives available to market participants. Dr. Webb explains that the Indicated Parties' suggestions that exchanges can only be done, or work best, when products are priced off the same market is contradicted by documents produced by the Indicated Parties in this case. (Laurel St. No. 5-R, pp. 90-91.) Specifically, **[BEGIN HIGHLY CONFIDENTIAL]** [redacted]

[redacted] **[END HIGHLY CONFIDENTIAL]** As such, not only can sophisticated entities such as Gulf, Sheetz and other members of the Indicated Parties enter into exchanges where the products exchanged are priced off different markets, they can also enter into exchanges where the products exchanged are entirely different products. The Indicated Parties' arguments to the contrary are simply not credible.

In addition, Mr. Van Hoecke testified that exchanges are commonplace in the petroleum products transportation industry and frequently include a "location differential" to account for pricing disparities between two markets. (Laurel St. No. 6, pp. 15-16.) Mr. Van Hoecke explained:

> Sometimes this transaction may take the form of an "exchange," wherein the producer agrees to provide inventory at its plant in return for the exchange partner agreeing to provide a like value or quantity of inventory at a different location or market where it has available supply, thereby enabling each party to avoid incurring inventory and transportation costs while still obtaining immediate access to petroleum for local delivery or distribution in another market. [FN15]
>
> Petroleum prices are some of the most volatile and unpredictable commodities prices in the world. Maintaining a marketing and distribution presence across several states or regions requires substantial resources and personnel. By wholesaling a large percentage of its production, refiners are able to maintain cash flow and creditworthiness and remain focused on efficiently sourcing feedstocks and producing more products.
>
> FN15 - For example, a refiner in Philadelphia may enter into an exchange with a refiner or inventory owner located in Ohio. Each will provide the other with a like kind and quantity of product over a specified term. To the extent that the delivered price for the commodity is higher in one market than the other, they may also agree to additional compensation to equalize the value difference between the two locations (i.e. "location differential").

(Laurel St. No. 6, pp. 15-16 and fn. 15.)

Mr. Stern further explained the pervasive role that exchanges play in the petroleum products transportation markets. (Laurel St. No. 8-R, p. 52.) He explained that "A product exchange involves trading or 'exchanging' one product at one location for the same or a different product at a different location. This is most frequently done <u>to minimize logistics costs</u> and is a very common commercial arrangement among participants in the petroleum business." (*Id.*) He also details the role that exchanges play in Monroe's own business model. (Laurel St. No. 8-R, pp. 51-52.)

Moreover, Husky witness Jerome P. Miller testified that he has "personally managed product exchange options in Pittsburgh with multiple counterparties." (Husky St. No. 1-R, p. 12.) Mr. Miller confirmed Mr. Van Hoecke's testimony regarding exchanges and stated that:

> The way in which an exchange would work between a refiner in Philadelphia and a refiner in Ohio is that the two entities would agree to compensation that would equalize the value difference between the two locations; this is known as a location differential and is a commonly used provision in an exchange agreement.

(*Id.*) At the hearing, Mr. Miller re-confirmed the availability of exchanges in response to questions on cross-examination. (*See* Hearing Tr. 1194:18-1195:4.)

The testimony and exhibits discussed above conclusively demonstrate that exchanges are a common, pervasive alternative to physical transportation options in the petroleum products market and that exchanges play a key role in certain of the Indicated Parties' existing business models. For these reasons, the Indicated Parties' claim that product exchanges do not constitute available, adequate alternatives to pipeline transportation service over Laurel is false and should be rejected.

iv. Adequate Supplies Of Low-RVP Gasoline Will Continue To Reach Pittsburgh If Laurel's Proposed Reversal Is Approved.

The Indicated Parties also claim Laurel's proposed reversal will reduce the availability of low Reid Vapor Pressure ("RVP") gasoline[83] supplies in the Pittsburgh market. (*See, e.g.*, IP St. No. 2, p. 19; Sheetz St. No. 1, p. 9; Gulf St. No. 1, pp. 12-13.) The Indicated Parties argue that (a) Midwestern refineries are not capable of producing sufficient quantities of low-RVP gasoline to supply the Pittsburgh market post-reversal[84] and (b) trucking low-RVP gasoline from Altoona to Pittsburgh will not occur, due to limitations associated with Altoona-based terminals.[85] The record decisively refutes each of these claims. Indeed, these arguments are not credible given that they presume that Midwestern refiners would irrationally commit substantial sums of money to acquire rights to serve the Pittsburgh market without having the ability to sell the required specifications of gasoline.

1. Midwestern refineries are capable of producing sufficient quantities of low-RVP gasoline to supply the Pittsburgh area during the summer.

The Indicated Parties' claims that Midwestern refineries are incapable of producing low-RVP gasoline that satisfies the Pittsburgh-area requirements are false. Refineries can easily produce low-RVP gasoline by including less butane in the blend of gasoline being produced. (*See* Laurel St. No. 8-R, pp. 45-46.) Backing butane out of a gasoline blend, to produce lower-RVP gasoline, does not require significant capital investment. (Laurel St. No. 8-R, p. 47.) Given these economics, it is not surprising that Midwestern refineries *can, and already do,* produce

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[83] Reid Vapor Pressure ("RVP") is the vapor pressure of the gasoline blend when the temperature is 100ºF. Normal atmospheric pressure varies, but is usually around 14.7 psi. If a liquid has a vapor pressure of greater than local atmospheric pressure, that liquid boils. In the summer, when temperatures can exceed 100ºF in many locations, it is important that the RVP of gasoline is well below 14.7 psi; otherwise, it can pressure up gas tanks and gas cans, and it can boil in open containers. Gas that is boiled off ends up in the atmosphere, and contributes to air pollution. Therefore, the EPA has declared that summer gasoline blends may not exceed 7.8 psi in some locations, and 9.0 psi in others. In contrast, during the winter months, conventional gasoline RVP is allowed to be as high as 15 psi in some areas. Pennsylvania's Environmental Quality Board, which is proposing the rule change to eliminate the 7.8 RVP requirement for Pittsburgh, indicated that there has been a decline in benefits of the low RVP gasoline because of newer, less-polluting vehicles, as well as a federal push for gas containing less sulfur. (Laurel St. No. 8-R, p. 45.)

[84] (*See, e.g.*, Gulf St. No. 1, p. 13; Sheetz St. No. 1, p. 9.)

[85] (*See, e.g.*, Gulf St. No. 1, p. 13; Sheetz St. No. 1, pp. 7-9.)

low-RVP gasoline for cities throughout the Midwest, including Detroit, Louisville, Cincinnati and Dayton (until April 2016) and Nashville and Middle Tennessee (until June 2017). (*See* Laurel St. No. 8-R, pp. 47-48.) And, Midwestern refineries (including Husky) have previously transported low-RVP volumes from the Midwest to Pittsburgh over existing pipeline infrastructure. (Laurel St. No. 8-R, pp. 48-49.)

Pittsburgh market participants have confirmed the ability of Midwestern refineries to produce low-RVP gasoline and have indicated they will seek to transport this gasoline into Pittsburgh after the reversal. Husky confirmed its refineries in Lima, Ohio and Toledo, Ohio have previously produce fuel meeting the Pittsburgh-area low-RVP specifications for years and that this capability remains unchanged. (*See* Husky St. No. 1-R, pp. 4, 9-10.) BP Products North America and ExxonMobil Oil Corporation also both confirmed that their refineries are fully capable of producing 7.8 psi low-RVP gasoline to satisfy the summertime Pittsburgh requirements. (*See* Laurel Exhibit KMS-14.)

Having been presented with information that demonstrates Midwestern refineries are ready, willing and able to produce sufficient quantities of low-RVP gasoline for the Pittsburgh market, the Indicated Parties attempt to argue that producing low-RVP gasoline is “costly.” (*See* IP St. No. 2-SR, pp. 43-44; Sheetz St. No. 1-SR, pp. 14-15; Gulf St. No. 1-SR, p. 19.) Even assuming that the cost calculation presented by Mr. Schaal is correct, the Indicated Parties have not and cannot explain why the cost differential would dissuade Midwest refiners from producing 7.8 RVP gasoline when it has not dissuaded East Coast refiners from producing it. (Laurel St. No. 8-RJ, pp. 10-11.)

For these reasons, the Indicated Parties’ arguments that Midwestern refineries cannot and will not produce low-RVP gasoline for the Pittsburgh market should be disregarded.

2. East Coast low-RVP supplies need not be trucked from Altoona to Pittsburgh to supply the Pittsburgh market.

The Indicated Parties' argument that, post-reversal, Pittsburgh will not receive adequate volumes of low-RVP gasoline because suppliers will not be able to truck East Coast low-RVP gasoline produced from Altoona to Pittsburgh is based entirely on the flawed assumption that Midwestern refineries cannot produce and supply adequate volumes of low-RVP gasoline to Pittsburgh. However, as described above, Midwestern refineries are well-positioned and able to produce and supply adequate volumes of low-RVP gasoline to the Pittsburgh-area during the summer months. Therefore, this argument by the Indicated Parties should be disregarded.

b. Loss Of Pittsburgh Market For East Coast Refineries.

A central claim by the Indicated Parties is that the proposed Laurel reversal would cause significant financial harm to the two Philadelphia refineries (*i.e.* PESRM and Monroe), which are the only source of intrastate East Coast volumes subject to Commission jurisdiction. The Indicated Parties premise this claim on several points: (1) Pittsburgh is an important market for each refinery; (2) the Pittsburgh market is particularly high-margin and thus generates better profits than other markets; (3) the refineries could not re-market product that was being sold to Pittsburgh to other markets connected to Laurel, if the reversal is approved; (4) the refineries lack access to alternative outlets to markets other than Laurel, due to constraints or increased costs; and (5) if their output could be re-marketed at terminals accessible via Laurel, the prices would be lower. Each of these claims is contrary to the record and is demonstrably incorrect. In broad terms, Laurel's proposed reversal would have little effect on the refineries for two principal reasons. First, Philadelphia-area refinery's volumes that are being marketed to Pittsburgh have declined sharply and are projected to continue to decline. As such, Pittsburgh is currently not a major market for either refinery and it is reasonable to conclude it will not become a major market for either refinery in the future. Second, even if Laurel's proposed reversal is approved, product from both refineries can be marketed in other markets connected to Laurel, at either no loss of margin or at a lower price that would benefit consumers in Central and Eastern Pennsylvania or elsewhere.

i. The Indicated Parties' Analysis of Philadelphia Refinery Impacts Fails To Reflect The Decline In Pittsburgh-Bound Volumes And The Decreasing Relevant Of The Market.

The volume picture is stark and completely contradicts the claims of the refineries that Pittsburgh is an important market.[86] Dr. Webb's demonstrated PESRM's deliveries have declined significantly from 2006 to year-to-date 2017.[87] (Laurel St. No. 5-R, p. 50, Figure 10.) Indeed, outside 2014-15 which are not representative of the future because Sunoco was shut down and Allegheny Access was not yet in service, **[BEGIN HIGHLY CONFIDENTIAL]** [redacted] **[END HIGHLY CONFIDENTIAL]** At hearing, the PESRM witness confirmed the de minimis nature of PESRM's current volumes to Pittsburgh and testified that **[BEGIN HIGHLY CONFIDENTIAL]** [redacted]

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[86] Laurel notes that neither refinery witness (Mr. Sadlowski for PESRM and Ms. Sadowski for Monroe) had access to actual pipeline data showing the volumes produced at their respective refinery that were actually transported to destinations west of Altoona. In the vast-majority of cases these products were sold "free on board" (FOB) and, therefore, neither refinery was the shipper of record for these volumes. (Laurel St. No. 5-R, pp. 79-82; Hearing Tr. 1080:2-1081:24; *see also* ((HC) Laurel Exhibit MJW-5 (Tr. 26:13-27:9, 46:3-46:21); Hearing Tr. 955:13-20.) However, the external consultants retained by the refineries, Dr. Arthur and Mr. Schaal, did have access to these volumes and could not dispute declines described by Dr. Webb and discussed herein.

[87] The year-to-date volume information for 2017 does not include October, or November or December, but those are traditionally low-volume months for East Coast volumes moving to Pittsburgh, so it is unlikely that they would, when included, increase average daily deliveries for the year 2017,

[redacted] **[END HIGHLY CONFIDENTIAL]** In short, although Laurel remains an overall important outlet for PESRM output, Pittsburgh is a *de minimis* destination for its output. As noted below, the Indicated Parties frequently conflate the importance of Laurel in aggregate with Laurel's deliveries to Pittsburgh, thereby attempting to confuse a key issue in this proceeding.

Similarly, data shows that the volumes from Monroe's Trainer refinery to points west of Altoona amount to only **[BEGIN HIGHLY CONFIDENTIAL]** [redacted] **[END HIGHLY CONFIDENTIAL]** (Laurel St. No. 5-RJ, p. 45.) Given that Ms. Sadowski testified that the refinery has been producing **[BEGIN HIGHLY CONFIDENTIAL]** [redacted] **[END HIGHLY CONFIDENTIAL]** that would amount to only **[BEGIN HIGHLY CONFIDENTIAL]** [redacted] **[END HIGHLY CONFIDENTIAL]** of Monroe's output.[89]

The relatively small and declining role of Pittsburgh as a destination for Philadelphia area refinery output has several critical implications in analyzing the harms alleged by the Intervenors. First, even assuming *arguendo* that PESRM's and Monroe's allegations of harm were credible, the low volumes transported from their refineries to Pittsburgh demonstrate that none of the alleged harms are as severe as claimed. Second, the demonstrably low volumes that would be displaced by Laurel's proposed reversal could easily be remarketed to other markets connected to: (a) Laurel; (b) the combined Laurel and Buckeye systems; (c) other pipelines; (d) barges; and/or (e) trucks. And third, any claimed loss of "margin" associated with the (falsely

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[88] **[BEGIN HIGHLY CONFIDENTIAL]** [redacted] **[END HIGHLY CONFIDENTIAL]**

[89] Refinery output varies, but it appears that even at 200,000 b/d, approximately the rated capacity of the refinery, the volumes produced by Monroe that were transported to points west of Eldorado would only amount to **[BEGIN HIGHLY CONFIDENTIAL]** [redacted] **[END HIGHLY CONFIDENTIAL MATERIAL]** of refinery output.

described) "high margin" Pittsburgh market, would apply to an exceedingly minor portion of the refineries' output. Therefore, and for the reasons more fully explained below, the Philadelphia-area refineries' claims of harm are not credible and should be rejected.

ii. The Record Decisively Refutes The Claim That Pittsburgh Is A "High-Margin" Market For Philadelphia Refineries.

Throughout this proceeding, PESRM and Monroe have both asserted that the loss of pipeline access to Pittsburgh would harm them because Pittsburgh is a "high margin" market. (*See, e.g.*, PESRM St. No. 1, p. 7; Monroe St. No. 1, p. 9; PESRM St. No. 1-SR, pp. 15-16; Monroe St. No. 1-SR, p. 5.) However, despite having numerous opportunities to prove this claim, neither Monroe nor PESRM has submitted any evidence to support this claim. In contrast, the testimony of the refineries' own witnesses and the analysis provided by Dr. Webb demonstrate that both PESRM and Monroe are economically indifferent to the ultimate destination of products sold to counterparties at the refinery gate (*i.e.* the vast majority of their products).

For Monroe, Ms. Sadowski stated in her deposition and on cross-examination that Monroe sells its products FOB at **[BEGIN HIGHLY CONFIDENTIAL]** [redacted] **[END HIGHLY CONFIDENTIAL]** The manner in which Monroe prices its products contradicts any claim that the Pittsburgh market is "high margin" or offers prices superior to other markets accessible via Laurel or other transportation outlets, such as Sunoco Pipeline's East Line.

Moreover, Monroe did not provide *any* documents supporting their claim that Pittsburgh is a "high margin" market and it is reasonable to conclude they did not do so because this claim is false. As Dr. Webb explained in his Supplemental Rejoinder Testimony, Monroe's own contracts show that it does not price its products specific to the Pittsburgh market; rather, Monroe receives **[BEGIN HIGHLY CONFIDENTIAL]** [redacted] **[END HIGHLY CONFIDENTIAL]**

Regarding PESRM, Mr. Sadlowski stated in his deposition that **[BEGIN HIGHLY CONFIDENTIAL]** [redacted] **[END HIGHLY CONFIDENTIAL]** Although Mr. Sadlowski equivocated in his Surrebuttal Testimony (*see* PESRM St. No.1-SR, pp. 2-3), Dr. Webb demonstrated both in his Rebuttal and Rejoinder Testimony that Mr. Sadlowski's vague statements were not credible, particularly when contrasted with PESRM's statements in public financial disclosures. (*See* Laurel St. No. 5-R, pp. 28-30; Laurel St. No. 5-RJ, pp. 45-48.) Mr. Sadlowski's credibility on this issue further erodes in light of the fact that, **[BEGIN HIGHLY CONFIDENTIAL]** [redacted] **[END HIGHLY CONFIDENTIAL]** Given that PESRM could not produce a single contract, e-mail or other document supporting its allegations on margin, and that its witness could not answer questions regarding the size of this allegedly critical high margin market, this claim should be dismissed.

In sum, neither Monroe nor PESRM have shown that the Pittsburgh market is a particularly valuable market and that aspect of their claims of harm should be rejected.

iii. Philadelphia Refineries Have Numerous, Adequate Alternatives.

Both Philadelphia refiners allege that they lack good alternatives should Laurel reverse the western portion of its line, west of Altoona. (PESRM St. No. 1, pp. 6-7; Monroe St. No. 1, p. 6) They maintain this claim, despite the fact that they would continue to be connected to many major markets on the Laurel and/or combined Laurel/Buckeye system, which include northern Pennsylvania and upstate New York. They maintain this claim despite the fact that they will still have access to other pipelines, including Sunoco Pipeline's East Line, to the New York Harbor ("NYH") via both pipeline and barge and to the local Philadelphia market via truck racks. They maintain this claim despite the fact that, in late 2016, they have acquired new options to reach additional markets via Laurel's connection to upstate New York, which would be increased substantially as a direct result of the reversal, and the fact that they can use the "virtual" service to land physical barrels in New York Harbor. As Dr. Webb and Mr. Van Hoecke demonstrate, none of these claims are credible. In particular, the volumes that the two refineries—or rather their counterparties— would need to remarket either on Laurel or other alternative transportation methods, constitute a very small portion of the PADD I market. Therefore, these claims are manifestly wrong and should be rejected.

1. The record demonstrates that the two refiners and/or their marketer counterparties could sell offsetting volumes of product to other markets accessible via the Laurel system.

The first and most obvious alternative for the two Philadelphia area refineries for the loss of direct pipeline access to the Pittsburgh market are market outlets accessible via Laurel. In contrast to the other market outlets (*e.g.*, pipeline, barge, truck) that the Indicated Parties claim are inaccessible or too costly, the two refineries are already connected to Laurel and therefore have undisputed access to those markets. As Dr. Webb explained, despite the refineries' unfounded assertion that volumes formerly sold in Pittsburgh cannot be sold to other Laurel-accessible markets, the evidence shows that: (a) such markets are quite large relative to the displaced Monroe/PESRM volumes; (b) the record shows that future displaced sales of former Pittsburgh-bound volumes is quite possible because in recent years, the refiners' counterparties have been expanding sales to other markets; (c) the refiners' ability to market volumes via the Laurel system and Buckeye Pipe Line Company to upstate New York (Binghamton, Syracuse, Rochester and Buffalo) will be greatly expanded as a result of the proposed reversal, due to operational benefits arising from freed-up tankage on Laurel. (*See* Laurel St. No. 5-RJ at pp. 49-53; *see also* Hearing Tr. 482:2-483:5.) As Dr. Webb notes, the markets accessible to shippers originating at Philadelphia and delivering west to Altoona and north to Buffalo/Rochester dwarf the volumes being currently delivered to Pittsburgh. (Laurel St. No. 5-RJ, pp. 52-53.)

Regarding actual evidence of the refiners' ability to shift volumes, Dr. Webb shows that as **[BEGIN HIGHLY CONFIDENTIAL]** [redacted]

[redacted]

[redacted]

[END HIGHLY CONFIDENTIAL]

(Laurel St. No. 5-RJ, p. 50.) In fact, there is little need to focus on particular volumes and time periods. As PESRM's witness has testified, PESRM has not reduced its production in the last year (Hearing Tr. 928:23-929:1.) and has maximized its output delivered into Laurel, yet volumes being delivered to Pittsburgh have fallen. Only one explanation exists for these volumes shifts: **[BEGIN HIGHLY CONFIDENTIAL]** [redacted] **[END HIGHLY CONFIDENTIAL]** There is no need to speculate that more shifts can be made; evidence of recent shifts shows it is a feasible and realistic scenario.

Moreover, the record is clear as to what volumes would be displaced by the re-direction of former Pittsburgh-bound refined products to Central and Eastern Pennsylvania (or to upstate New York): refined products from overseas. Nearly all the parties, including **[BEGIN HIGHLY CONFIDENTIAL]** [redacted] **[END HIGHLY CONFIDENTIAL]** conclude that the marginal barrel in the East Coast is the imported barrel.[90] (Laurel St. No. 5-R, pp. 59-61.) Consequently, Monroe and PESRM would not be competing against local PADD I refinery production, or PADD III imports via Colonial. Rather, Monroe and PESRM would compete against higher-cost (marginal) imported volumes from overseas.

When pressed, both the witnesses for Monroe and PESRM argued that **[BEGIN HIGHLY CONFIDENTIAL]** [redacted] **[END HIGHLY CONFIDENTIAL]** However, both PESRM and Monroe would be getting the same type of price currently received today because both refiners sell the vast majority of their products FOB at the refinery gate **[BEGIN HIGHLY CONFIDENTIAL]** [redacted] **[END HIGHLY CONFIDENTIAL]** If, in fact, prices were to be depressed overall in Eastern Pennsylvania, that would be a benefit to consumers, not a "harm" to the public.

Finally, Mr. Van Hoecke explained that the operational result of Laurel's proposed reversal would also free up tanks at Laurel's Booth station. (Laurel St. No. 6-RJ, p. 6.) Therefore, the volume of product that could be transported from the refineries to upstate New York destinations on Buckeye pipelines would be increased. (*Id.*) This is not a small change—

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[90] **[BEGIN HIGHLY CONFIDENTIAL]** [redacted] **[END HIGHLY CONFIDENTIAL**

the reversal would create approximately **[BEGIN HIGHLY CONFIDENTIAL]** [redacted] **[END HIGHLY CONFIDENTIAL]** That incremental capacity would be equal to roughly **[BEGIN HIGHLY CONFIDENTIAL]** [redacted] **[END HIGHLY CONFIDENTIAL]** of the 2017 volumes moved by both Philadelphia refiners to the Pittsburgh market.

2. Monroe has ample alternatives to redirect volumes formerly sold in Pittsburgh to alternative transportation options other than Laurel.

In addition to denying the potential for expanding sales to markets attached to Laurel and Buckeye, Monroe has argued that constraints on capacity and operation concerns over quality limit its ability to use alternative outlets. (*See* Monroe St. No. 1, pp. 7-8; *see also* Monroe St. No. 1-SR, pp. 9-11.) Although Monroe's Ms. Sadowski admits that barges are an alternative and does not suggest a problem with barges handling the volume, she alleges that they would be more expensive than Laurel, an issue addressed below in Section VII.C.2.b.iii.3.A. *infra*.

Regarding Monroe's claims of having no good pipeline alternatives to Laurel, the record overwhelmingly shows that this assertion is incorrect. Even apart from access to extensive alternative markets on Laurel and Laurel and Buckeye's combined system, Monroe has a number of significant transportation options. Dr. Webb generally described these options and responded to Monroe claims in its Direct Testimony. (Laurel St. No. 5-R, pp. 82-84.) In addition, Mr. Van Hoecke highlighted and described these options in detail in his Rejoinder Testimony. In particular, Mr. Van Hoecke provided a schematic diagram of the pipeline and barge options connected to Monroe's refinery. (*See* Laurel Exhibit RGV-3.) The diagram indisputably shows that now, and even after Laurel's proposed reversal, Monroe has access to many different markets beyond Philadelphia and nearby eastern Pennsylvania, including:

[A] to PA (Williamsport, Northumberland); upstate NY (Big Flats, Rochester, Buffalo)
[B] to upstate NY (Rochester, Buffalo, Syracuse)
[C] to central PA (west to El Dorado)
[D] to Harrisburg area (Highspire)
[E] to New York Harbor; upstate NY via connected carriers
[F] to New York Harbor; upstate NY and eastern PA via connected carriers

Mr. Van Hoecke also described the alternative markets that are linked to the Monroe refinery by its affiliated pipeline, MIPC, which further connects to the following numerous pipelines, in addition to the Laurel system: (1) Sunoco Pipeline, connecting to northern Pennsylvania and upstate New York; (2) Buckeye Pipe Line Company Transportation, LP, connecting to northern Pennsylvania (Allentown) and upstate New York; (3) Harbor Pipeline (operated by Sunoco) connecting to New York Harbor; (4) East Line (owned by Sunoco) connecting to New York Harbor; and (5) Colonial Pipeline, connecting to New Jersey terminals and Philadelphia terminals and possibly the New York Harbor. (Laurel St. No. 6-RJ, pp. 14-15; Laurel Exhibit RGV-3.)

In addition, Mr. Van Hoecke noted the so-called "virtual" tariff service available to Monroe on Buckeye, allowing transportation of volumes injected into the Laurel system to New York Harbor, which Mr. Van Hoecke described in detail at the hearing. (*See, e.g.*, Laurel St. No. 6-RJ, p. 5; Laurel Exhibit RGV-4; Hearing Tr. 585:4-586:11.)

As Mr. Van Hoecke concluded, these options—in addition to continued transportation on the Laurel/Buckeye system—need to be viewed in light of their ability to absorb the volumes that have been transported from Monroe to Pittsburgh. In 2017, volumes originating at Monroe were only **[BEGIN HIGHLY CONFIDENTIAL]** [redacted] **[END HIGHLY CONFIDENTIAL]**.[91]

One of the options, Sunoco Logistics' East Line, is particularly instructive regarding the choices available to Monroe as well as the capability of a large, sophisticated shipper to create new connections and alternatives. **[BEGIN HIGHLY CONFIDENTIAL]** [redacted] **[END HIGHLY CONFIDENTIAL]**

Monroe also alleged that the alternative pipelines to Laurel/Buckeye were not practically available due to constraints. (Monroe St. No. 1-SR, p. 3.) Specifically, Ms. Sadowski contended

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[91] During cross-examination, Counsel for the Indicated Parties suggested that Mr. Van Hoecke should have considered capacity for not just the refineries' volumes, but for all volumes being delivered in Pittsburg on the Laurel system, including interstate volumes. (Hearing Tr. 562:21-564:17.) As Mr. Van Hoecke noted, however, the interstate volumes entered the Laurel system from other states and markets, such as New York Harbor and might not even be transported on Laurel after reversal. (Hearing Tr. 575:5-576:21.) Shippers that are not directly connected to Laurel in Pennsylvania clearly have alternatives; for example, shippers on Colonial can simply deliver their products formerly destined fro Pittsburgh to other markets on the East Coast, or elsewhere.

that **[BEGIN HIGHLY CONFIDENTIAL]** [redacted] **[END HIGHLY CONFIDENTIAL]** Neither of these claims proved to have any substance.

First, on the "constraints" issue, it is notable that despite raising this issue in her Direct Testimony (Monroe St. No. 1, pp. 9-11), at deposition and in her Surrebuttal Testimony (Monroe St. No. 1-SR, pp. 9-10), Ms. Sadowski was unable to provide any specifics of any kind regarding the alleged constraints on downstream pipelines. In addition, when she had filed her Direct Testimony, Ms. Sadowski was only vaguely aware of the pipeline facilities connected to Monroe and had no information about their constraints. At deposition, Ms. Sadowski specifically stated that:

> **[BEGIN HIGHLY CONFIDENTIAL]**
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> **[END HIGHLY CONFIDENTIAL]**

((HC) Laurel Exhibit MJW-19 (Tr. 100:21-101:5).) Ms. Sadowski did testify about potential internal constraints on an 8" Monroe line and concerns about contamination on that line, although subsequent data responses showed that Monroe had greater capacity than she originally indicated. (*Compare* Monroe St. No. 1-SR, pp. 9-10 *with* Laurel St. No. 6-RJ, pp. 7-8.)

In contrast, Mr. Van Hoecke provided documentation showing that there was no pattern of constraints on the East Line (only one month in the past six showed a constraint). (Laurel St. No. 6-RJ, pp. 5-6.) Moreover, Mr. Van Hoecke demonstrated that there is no evidence of constraints between the East Line and Harbor based on the Sunoco public bulletins governing constraints. (*See* Laurel St. No. 6-RJ at p. 15.) Moreover, even if Monroe could have shown such a constraint existed, it would (a) only reduce volumes transported over the meter, not bar them; and (b) would not in any way limit an East Line Shipper from accessing Newark terminals attached to the East Line terminus. (Hearing Tr. 591:1-593:14.) As to the other options:

- <u>Harbor</u>. Harbor is generally available except for temporary constraints currently occurring during Sunoco's maintenance work on its 12" line. (Laurel St. No. 6-RJ, pp. 6-7.)
- <u>Buckeye Transportation</u>. There was no evidence of any limits on the capacity available on the Buckeye Transportation line north from Ridley Park.
- <u>Sunoco Pipeline</u>. Although Sunoco's 12" line north to Pennsylvania and New York is currently out of service and its service to those market via its 8" line is constrained, that is expected to end next year, prior to the reversal – and shippers could utilize the Sunoco system by bypassing the 12" line between Twin Oaks and Montello by transporting on the Laurel system from Twin Oaks to Montello and then connecting to Sunoco for a set of markets in northern Pennsylvania and upstate New York. (*See, e.g.,* Laurel St. No. 6-RJ. p. 15.)

The availability of Colonial as a pipeline outlet to New York is contested. The MIPC website shows a connection between Monroe and Colonial and Colonial represented it could access Monroe in an application before FERC in 2000. (*See* Laurel St. 6-RJ, p. 16.) Moreover, **[BEGIN HIGHLY CONFIDENTIAL]** [redacted] **[END HIGHLY CONFIDENTIAL]** Monroe, however, disputes this connection. (*See* Monroe St. No. 1-SR, p. 9 (asserting that Monroe **[BEGIN HIGHLY CONFIDENTIAL]** [redacted] **[END HIGHLY CONFIDENTIAL]**

Yet, as Mr. Van Hoecke noted, "if in fact Monroe does not have current interconnection to Colonial, the facilities are proximately located and connections can either be built or reactivated." (Laurel St. No. 6-RJ, p. 16.) Given that Monroe/Delta successfully negotiated with Sunoco Pipeline to build new connections to the East Line and reactivate an entire, idled interstate pipeline segment, arranging a connection to Colonial would be feasible, if Monroe felt any need for more options.[92]

In sum, Monroe has ample options, both on Laurel, on alternative pipelines and via barge.

3. Monroe's claims of severe monetary harm due to barge costs and transmix are refuted by the record.

Conscious, perhaps, that the record will show adequate outlets to market from its refinery, Monroe's witness also made two different arguments regarding the cost of alternatives. In its Direct Testimony, Monroe argued that given an (assumed and unsupported) lack of pipeline options after reversal, Monroe's customers would need to move the volumes formerly

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[92] The record also reflects that Colonial is and has been unconstrained between Philadelphia and New York and so could accommodate additional Philadelphia barrels to New York Harbor, even though it has been frequently constrained south of Philadelphia. (Hearing Tr. 458:12-459:10; Laurel Exh. No. RGV-4.)

sold in Pittsburgh to the New York Harbor market via barge, which in turn would be $0.035/gallon more costly than the Laurel tariff, which in turn would reduce its operating margin significantly and impose serious harm on Monroe, possibly even requiring partially shutting down production. *See* Monroe St. No. 1, at pp. 8-10. In Surrebuttal Testimony, Monroe additionally argued that the East Line option was not practical because any shipments of non-jet fuel products would incur **[BEGIN HIGHLY CONFIDENTIAL]** [redacted] **[END HIGHLY CONFIDENTIAL]**

Both of these claimed higher cost estimates are unsupported and incorrect. More broadly, Ms. Sadowski fails to show that if there were some additional costs, that they would have the dramatic effect of causing a reduction in output at the refinery—that claim is not correct.

A. The barge cost argument is unsupported.

Regarding the barge costs, Ms. Sadowski significantly overestimates the volume of product being purchased from Monroe's refinery and marketed west of Altoona, using a figure of **[BEGIN HIGHLY CONFIDENTIAL]** [redacted] **[END HIGHLY CONFIDENTIAL]**

However, that mistaken data is the least of the problems with the barge estimate. Monroe's barge estimate is built upon an unsupported, multi-layered assumption that: (1) no volumes will either be re-marketed elsewhere in Pennsylvania or upstate New York at terminals connected to Monroe via Laurel; and (2) no volumes would be moved by other pipelines, including Sunoco (whose 12" line is scheduled to go back in service prior to the reversal), Buckeye Transportation (which has no constraints on service to Allentown and upstate New York) and either the East Line or the Harbor line. Ms. Sadowski's allegations as to the East Line and Harbor Line rest on no solid data and she failed to take into account that even if a pipeline is prorated, much of a shipper's nomination will be accepted, thus the assumption of "no volumes" moving is simply mistaken. (*See* Hearing Tr. 560:7-13.) Furthermore, as Mr. Van Hoecke described, the East Line provides access to Newark area terminals regardless of any constraints via Harbor. (Hearing Tr. 575:5-576:21.)

Furthermore, the barge argument does not withstand even summary analysis. Even assuming, *arguendo*, that all current Monroe-originated volumes bound for Pittsburgh would be barged, Monroe's argument that the added expense of barging this volume would reduce Monroe's operating margins as to cause serious problems, possibly leading to partial shutdown have no connection to reality. **[BEGIN HIGHLY CONFIDENTIAL]** [redacted] **[END HIGHLY CONFIDENTIAL]**

B. The transmix argument is entirely lacking in credibility.

As Mr. Van Hoecke explains in his Rejoinder Testimony and at the hearing, the alleged transmix cost collapses upon inspection. Before reviewing the technical reasons why projected East Line transmix costs have been enormously exaggerated, it is necessary to point out the similarity to the barge cost argument described immediately above. According to Ms. Sadowski, the transmix cost she estimates is **[BEGIN HIGHLY CONFIDENTIAL]** [redacted] **[END HIGHLY CONFIDENTIAL]** Monroe's claims, therefore are inconsistent and illogical on their face and should be rejected even without the need to address their fatal technical flaws.

Moreover, Mr. Van Hoecke points out a number of profound flaws in Monroe's claims regarding the transmix figure:

- **Ignores current transmix costs, tariff transmix costs for the East Line**. Monroe's shippers are already incurring substantial transmix related charges on Laurel for transportation to Pittsburgh. Yet, Monroe treats post-reversal transmix charges from Monroe to New York Harbor as a simple incremental cost, without netting out the current transmix expenses on Laurel. In fact, using the filed tariff and other posted, binding transmix-related charges applicable to Laurel shipments to Pittsburgh and Sunoco East Line shipments to Newark, Mr. Van Hoecke shows that the expected transmix costs on the two lines should not be substantially different. (Laurel St. No. 6-RJ, pp. 10-14.)

- **Wrong pipeline, different time period, different product mix**. Monroe relies upon an historical cost incurred by **[BEGIN HIGHLY CONFIDENTIAL]** [redacted] **[END HIGHLY CONFIDENTIAL]**
- **Failed to know of or read the governing tariffs and procedures**. Monroe's witness, Ms. Sadowski, also had no basis for concluding that any potential transmix costs that would have arisen on the East Line (which may not be the same as those on the Harbor line), would be shifted over to other customers on the East Line. At the hearing, she stated that **[BEGIN HIGHLY CONFIDENTIAL]** [redacted] **[END HIGHLY CONFIDENTIAL]** As Mr. Van Hoecke testified, however, the transmix charges on the East Line are governed by the tariff and referenced posted transmix policy. (Laurel St. No. 6-RJ, p. 10; *see also* Laurel Exhibit No. RVG-9.) That schedule provides a standard for assessing the cost of actual transmix attributable to

each shipper. Ms. Sadowski could not comment on this public document at the hearing because she had never seen it and was unfamiliar with it. (*See* Hearing Tr. 1102:15-1105:6.) Ms. Sadowski's testimony is simply not credible or reliable, in that it necessarily rests upon a regulated pipeline's charges, which are based on the publically available tariff and documents referenced in the tariff, yet was offered without any basis in those tariffs and related documents.

For these reasons, the alleged transmix costs should not be considered by the Commission in evaluating the Application.

4. PESRM has ample alternatives to redirect volumes formerly sold in Pittsburgh to alternative transportation options other than Laurel.

Mr. Sadlowski, on behalf of PESRM, argues that it has no alternatives to Laurel, although his exact argument is somewhat uncertain. Mr. Sadlowski argues that "[a]ny loss of access to markets into which PESRM currently sells product would decrease PESRM sales and marketing options." (PESRM St. No. 1-SR, p. 3.) However, he also refers to PESRM not currently having "the logistical infrastructure to clear/sell all the production from its refineries without access to the Laurel pipeline." (PESRM St. No. 1-SR, p. 4.) Elsewhere, Mr. Sadlowski has stated that **[BEGIN HIGHLY CONFIDENTIAL]** [redacted] **[END HIGHLY CONFIDENTIAL]** In part, Mr. Sadlowski contends that if the proposed reversal is approved PESRM, or its customers, cannot continue to take product from PESRM into Laurel and re-sell it at locations already accessible from Laurel. As is discussed above in Section VII.C.2.b.ii. *supra*, this position is refuted by the record; *i.e.*, substantial volumes that PESRM's customers used to buy and inject into Laurel for delivery to Pittsburgh destinations have over the past few years been shifted successfully to other markets and can continue with the relatively minor volumes still being marketed from PESRM to Pittsburgh. More broadly, however, Mr. Sadlowski suggests that PESRM cannot shift volumes between its various alternative transportation outlets and that contention is addressed, and disproven, below.

Mr. Van Hoecke shows that PESRM can access multiple practical alternatives in addition to its access to the nearby Philadelphia and eastern Pennsylvania market (Laurel St. No. 6-RJ, pp. 16-20.), including the options illustrated in schematic Laurel Exhibit No. RGV-1-:

> [A] to PA (Williamsport, Northumberland); upstate NY (Big Flats, Rochester, Buffalo)
> [B] to upstate NY (Rochester, Buffalo, Syracuse)
> [C] to central PA (west to El Dorado)
> [D] to Harrisburg area (Highspire)
> [E] to New York Harbor; upstate NY via connected carriers
> [F] to New York Harbor; upstate NY and eastern PA via connected carriers.

These options are real and are being used, as the record shows.

A. Laurel-Buckeye to upstate New York.

One such alternative is the expanded capacity to reach upstate New York via the Laurel system and the Buckeye system, across the Buckeye line (Line 714) reversed just last year to open up upstate New York markets to Laurel system customers. The capacity on this line will be significantly expanded as a direct result of the reversal. *See* Section VII.C.2.b.ii.1. *supra*. In addition, **[BEGIN HIGHLY CONFIDENTIAL]** [redacted] **[END HIGHLY CONFIDENTIAL]** This development also shows that there is flexibility among markets and that PESRM's customers do not "max out" their PESRM volumes in sales to Pittsburgh.

B. "Virtual tariff" to New York Harbor.

As Mr. Van Hoecke also described in detail, the "virtual tariff" option made available to PESRM in October 2016 also provides it a new market. Under the virtual tariff, PESRM or its shippers would nominate from the interconnection with the Laurel system to Linden, New Jersey, in the New York Harbor market. (Laurel St. No. 6-RJ, pp. 18-19; Laurel Exh. No. RGV-4 at 20-21.) The transaction provides physical volumes in the shipper's name in Linden, but is effected by a form of exchange operated by the pipeline, in which the volume tendered by PESRM into Laurel would be physically transported to a Pennsylvania or upstate New York destination, to be delivered for the account of another shipper that nominated to that destination from Linden, while the other shipper's Linden volume physically remains in Linden for transfer to PESRM. Because the transaction allows Laurel/Buckeye to provide two transactions for two tariff charges, while only transporting one shipment, it provides valuable cost savings and system optimization. For shippers such as PESRM, it provides actual deliveries in New York Harbor where they can sell at New York Harbor prices. This type of transaction is so attractive, that **[BEGIN HIGHLY CONFIDENTIAL]** [redacted] **[END HIGHLY CONFIDENTIAL]**. (Laurel St. No. 6-RJ, pp. 18-19.)

PESRM also has access to Colonial for pipeline transportation from its refinery to New York Harbor. Colonial's official notices of prorationing show that for deliveries into New York

Harbor, it has only infrequently been prorated, and thus can ship significant incremental volumes from Philadelphia. *See* Laurel St. No. 6-RJ, pp. 19-20.[93]

As shown in Laurel Exhibit RVG-10 PESRM has access to other pipelines, to local truck racks and to barge facilities. (*See* Laurel St. No. 6-RJ, p. 20.) As noted above, although PESRM lacks a direct connection to the Sunoco Pipeline system that extends from Philadelphia to many destinations in Pennsylvania and upstate New York, PESRM and/or its customers can access that system by shipping on Laurel to Montello and then connecting with Sunoco to its destinations. (Laurel Statement No. 6-RJ, p. 20, lns. 12-13.) Moreover, PESRM has in its recent public financial filings touted this network of transportation options as granting it excellent market access. (*See* Laurel St. No. 5-R, pp. 56-57.) Moreover, as Mr. Webb notes, **[BEGIN HIGHLY CONFIDENTIAL]** [redacted] **[END HIGHLY CONFIDENTIAL]** The referenced materials do not represent the PESRM's connections as being dangerously locked in to existing patterns and vulnerable, therefore, to disruption as Mr. Sadlowski has. The optionality and real flexibility available to PESRM is shown by the PESRM document that tracked volumes being moved by multiple alternatives and showed considerable month-to-month variation in the use of the listed alternatives. (Laurel C.E. Exhibit No. 11; Hearing Tr. 948:6-953:2.)

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[93] **[BEGIN HIGHLY CONFIDENTIAL]** [redacted] **[END HIGHLY CONFIDENTIAL]**

iv. Laurel’s Proposed Reversal Will Not Be The Cause Of Any Hypothesized Refinery Shutdowns.

Monroe and PESRM both raise the specter of refinery closings being a potential outcome of allowing the proposed reversal. (*See* Monroe St. No. 1, p. 10; PESRM St. No. 1, pp. 9-10; Monroe St. No. 1-SR, p. 7; PESRM St. No. 1-SR, pp. 9-11.) For a number of reasons, these concerns are entirely misplaced, and vastly exaggerate both the scope of the proposed reversal’s impacts and its relative significance in the current situation of the two refineries.

First, it is important to note that both refiners have issued public and/or investor documents that tout their prospects and overall strong market position. (*See* Laurel St. No. 5-R, pp. 55-63; Laurel Exhibit MJW-9; *see also* Laurel St. No. 5-R, pp. 71-76; Laurel Exhibit MJW-15.) **[BEGIN HIGHLY CONFIDENTIAL]** [redacted] **[END HIGHLY CONFIDENTIAL]** That is their official position, and it does not appear at all consistent with those representations that assert that the minor impacts, summarized below, will have any impact on the continued viability of the refineries.

Second, the discussion above of the alternatives available to the two refineries, including the options of continuing to sell to destinations accessible via their current Laurel connection, shows that there is no reasonable prospect that the refineries will lose the sales currently being made in Pittsburgh causing them to consider retrenching and reducing output and shuttering refining facilities. As Mr. Stern establishes, refineries are high fixed cost facilities and they are not likely to shut in production and idle plant in response to what would certainly be, at most, a reduction in price for some of their volumes. (Laurel St. No. 8-R, p. 40.)

Third, the volumes being potentially displaced to other markets are simply not very large. *See* Section VII.C.2.b.i. *supra*. **[BEGIN HIGHLY CONFIDENTIAL]** [redacted] **[END HIGHLY CONFIDENTIAL]** These volumes are minor at most and do not represent *lost* sales, but *at worst* rather only potentially somewhat *discounted* sales. Further, there is no credible evidence that sales made to shippers that transport product to Pittsburgh are garnering higher margins for the two refineries than sales that ultimately reach Altoona and points east and north. Moreover, the trend lines are pointing in the direction of a near-zero Pittsburgh market for the refiners' output in the next few years, so the reversal itself would not be the cause of the displacement which is occurring in any event. The effects of the proposed reversal are simply not very great, viewed in light of the evidence.

Both Monroe's and PESRM's individual witness(es), and the Indicated Parties' witness Dr. Arthur, also raise the prospect that the reversal might have the effect of generally lowering refined products prices in Eastern and Central Pennsylvania. *See* Section VII.C.1.b.ii.2. *supra*. That may occur, but if so, then it will not be a public harm, but a public benefit, even if reducing refiner profits.

Ultimately, the record does show that broad historical forces are affecting the Philadelphia area refiners, particularly the rise of cost-advantaged North American crude production from shale formations in the U.S. and oil sands in Canada, disadvantaging East Coast refineries dependent on imported crude. Similarly, the Midwestern refineries have invested heavily in upgrading and expanding their refineries while the Philadelphia refiners have not. These historical developments will create an ongoing movement of products from the Midwest to the East Coast in response to the market pressure of lower-cost refined product supplies pushing eastward. That trend will benefit Pennsylvania consumers, to the extent that sufficient infrastructure is in place to allow for these eastward movements to reach them. Therefore, the Commission should not allow the requests of individual market players such as the refiners to tip the scales of the public interest at the expense of the Pennsylvania consumer.

c. Other Harms.

In addition to the specific harms alleged by the Indicated Parties that are described above, the Indicated Parties also advance two additional claims of potential harm that would result from Laurel's proposed reversal. First, the Indicated Parties argue that Laurel's proposed reversal may result in increased truck traffic between Altoona and Pittsburgh and/or Altoona and Harrisburg. (IP St. No. 1, p. 39; IP St. No. 4.) Second, the Indicated Parties argue that Laurel's proposed reversal is a prelude to subsequent reversals to points east of Eldorado and that such further reversals would additionally harm Pennsylvania market participants. (IP St. No. 2, pp. 39-47; IP St. No. 3, pp. 23-26.)

Laurel discusses these additional harms below and, for the reasons explained therein, submits that the Indicated Parties' claims are irrelevant and should be disregarded.

i. The Indicated Parties' Allegations Of Harm Due To Increased Truck Traffic Are Without Merit.

The Indicated Parties' argue that the public will be harmed by increased truck traffic if the reversal is approved. Dr. Arthur suggests that all volumes currently being transported to Pittsburgh by pipeline will be transported to Altoona and then trucked to Pittsburgh. (*See* IP St. No. 1, p. 18, fn. 41.) Then, the Indicated Parties' witness, Mr. Rickard, argues that it is unsafe for trucks to travel either from Altoona to Pittsburgh or from Altoona to Harrisburg. (See IP St. No. 4.) The Indicated Parties' argument that the reversal will cause increased truck traffic ignores economic realities. As explained below, the reversal will likely reduce truck traffic between Pittsburgh and Altoona, because absent the reversal, low-cost refined products from the Midwest would otherwise be trucked from Pittsburgh to the Altoona market.

The Indicated Parties argue that the reversal will cause approximately 24 "additional" truck trips per day in the winter and approximately 447 "additional" truck trips per day in the summer, (*See* IP St. No. 1, p. 38.) This estimate presumes that the entire historic quantity of deliveries on Laurel to Pittsburgh will be replaced by trucks. *See* Laurel St. No. 1, p. 38 (stating that the volumes to be trucked from Eldorado to Pittsburgh would be the historical *daily average* of volumes currently transported to points west of Eldorado). This estimate is in error. Laurel volumes to Pittsburgh have been continuously declining because Pittsburgh is receiving low-cost product from the Midwest. Product from the East Coast will not be trucked from Altoona to Pittsburgh because it will be the higher cost product. (Laurel St. No. 5-R, pp. 86-87.)[94] Even if it were reasonable to expect trucking was the only alternative available to transport East Coast petroleum products into Pittsburgh—which it is not—the Indicated Parties cannot credibly argue that shippers would elect to transport petroleum products from Eldorado to Pittsburgh by truck, where they have already elected to ship less and less petroleum products by pipeline. The analysis also fails to consider, and offset, the impact of truck traffic from Pittsburgh to Altoona and Harrisburg if the reversal is not approved.

Further, the Indicated Parties' simplistic analysis completely ignores the fact that all gasoline, diesel and heating oil currently shipped on Laurel is ultimately delivered via truck to hundreds of different destinations throughout the broader Pittsburgh market, which is substantially all of Western Pennsylvania and parts of neighboring states—not just the Golden Triangle of Pittsburgh. As such, Mr. Rickard's analysis tells the Commission nothing about

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[94] For these reasons, Gulf's (Gulf St. No. 1, p. 7) and Sheetz's claims (Sheetz St. No. 1, p. 10) regarding lack of terminal capacity and the capital costs associated with expanding this capacity in Eldorado are irrelevant. (*See* Laurel St. No. 5-R, p. 87.)

potential truck routes from Eldorado to final retail destinations in the Pittsburgh market and, therefore, should be disregarded as irrelevant.

Finally, Laurel's reversal will likely decrease truck traffic. Mr. Rickard's claims that Laurel's proposed reversal will increase truck traffic between Pittsburgh and Altoona ignores the fact that without the proposed reversal, lower-cost Midwestern supplies will actually be trucked from Pittsburgh to points east. At the evidentiary hearing, Mr. Hollis explained that:

> But again, it's all being delivered by truck today, and I think the big risk is having a lot of move from the Pittsburgh area all the way in to central Pennsylvania. That's where you see a large increase in truck traffic, in my opinion.

(Hearing Tr. 351:6-352:8.)

Mr. Hollis's testimony at the hearing that trucks currently move lower-cost Midwestern product from terminals in western Pennsylvania to locations east is further confirmed by other record evidence. **[BEGIN HIGHLY CONFIDENTIAL]** [redacted]**[END HIGHLY CONFIDENTIAL]**

(*See* (HC) Laurel Exhibit MJW-11, pp. 35-36 (GULF_000073-74).) In this regard, Laurel's proposed reversal will actually *reduce* truck traffic between Pittsburgh and Altoona by moving lower-cost Midwestern products to Altoona by pipeline that may otherwise be trucked there.

ii. The Indicated Parties' Allegations Regarding Potential Future Reversals Of Laurel's Pipeline To Points East Of Eldorado Are Irrelevant.

At a fundamental level, any information and issues related to the potential to reverse the flow of Laurel's pipeline to points east of Eldorado are irrelevant to this proceeding; Laurel's

Application is limited in scope to Eldorado and points west.[95] Therefore, the possibility of extending the reversal past Eldorado is not relevant to either of Laurel's two alternative claims for relief involved in this proceeding.

Despite the Indicated Parties' attempts to misconstrue Laurel's Application and the issues raised therein, there is nothing in the record to support the argument that information related to possible, future reversals of the pipeline is within the scope of either of Laurel's alternative claims for relief in its Application. Laurel's first argument is that Commission approval is not required to reverse the flow of petroleum products to Eldorado. Whether Laurel is authorized to reverse the flow of service without Commission approval is a purely legal determination involving an evaluation of the authorization contained in Laurel's certificate of public convenience and federal law. *See* Section VII.A. *supra*. Under this claim for relief, the proper subject matter to determine relevance is the authority granted to Laurel in its certificate of public convenience and federal law. The issue of whether Laurel would possibly at some unspecified point in the future reverse the flow of its pipeline for points east of Eldorado is entirely irrelevant to determining whether Laurel can reverse the flow of service without Commission approval.

Laurel's second, alternative claim for relief involves an evaluation of facts to determine whether Laurel's proposal is in the public interest, if and only if the Commission determines that approval is required. Under this claim for relief, the proper subject matter to determine relevance is the proposal as stated in Laurel's Application. Clearly, any information related to possible plans to reverse other, unidentified segments of the Laurel pipeline <u>east of Eldorado</u> at

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[95] The proponent of a rule or order is not required to support proposals outside the scope of or differing from its submission. *See Pennsylvania Pub. Util. Comm'n v. PPL Electric Utilities Corp.*, 2012 Pa. PUC LEXIS 989, at *13-15 (Order entered June 21, 2012) (explaining that the burden of proving that a utility should implement something other than its own proposal is on the party proposing something else). As such, Laurel cannot be required in this proceeding to produce information about or support a proposal (*e.g.*, a reversal to points <u>east</u> of Eldorado) that it did not submit to the Commission in its Application.

an unspecified future date is irrelevant to determining whether the proposed reversal to Eldorado and points west, described in the Application, is in the public interest. Such a proposal would necessarily involve delivery points, engineering work, timing, financing and other issues that are irrelevant and entirely outside the scope of Laurel's Application. Moreover, should the Commission determine that Laurel requires authorization to effectuate the reversal to points west of Eldorado, as described in the Application, then other "possible future actions" (*i.e.* reversals) would be subject to review and approval in another proceeding before the Commission. *See Application of Verizon North Inc.*, 2009 Pa. PUC LEXIS 1858, at *10-11 (Order entered Sept. 24, 2009) (explaining that petitioners had sufficient alternative means to pursue their claims with respect to a second, separate transaction).

For these reasons, the Indicated Parties' claims of harm regarding potential future reversals of Laurel's pipeline to points east of Eldorado are irrelevant and should be disregarded.

D. Analysis Under The Multi-Factor Abandonment Test.

As explained in Section VII.A.2, above, the reversal is not an abandonment of service because all of the same refined products will be delivered to all of the same locations after the reversal, and buyers will be able to buy all of the same products that they are currently buying at all of the same locations. In a true abandonment, the customer (for example a retail natural gas customer) is no longer able to take service from the utility after the abandonment.

However, assuming *arguendo*, that the reversal is reviewed as an abandonment of service, the parties disagree about the legal standard that should be considered in evaluating whether the abandonment is in the public interest. Laurel believes that the Commission should follow its own precedent and apply the "affirmative public benefits" test set forth in the *Sunoco* proceeding. The Indicated Parties argue that the Commission should apply a multi-factor abandonment test that is more appropriately used for fixed utilities.

Laurel has explained in Section VII.B. above why the multi-factor abandonment test is not the appropriate standard in this proceeding. However, even if this test is applied, Laurel's proposed reversal meets the legal standards under the test and should be approved.

1. Overview Of The Multi-Factor Abandonment Test.

The Commission typically considers several factors when evaluating a public utility's request to abandon service, including: (a) the extent of the loss to the utility; (b) the prospect of future use by the public; (c) the loss to the utility balanced with the convenience and hardship to the public upon discontinuance of such service; and (d) the availability and adequacy of alternative service. *See Borough of Duncannon v. Pa. Pub. Util. Comm'n*, 713 A.2d 737, 740 (Pa. Commw. 1998) (discussing what are commonly referred to as the "West Penn factors."). The Commission "must weigh these factors and not focus on mere cost-benefit criteria." *Borough of Duncannon*, 713 A.2d at 740 (emphasis added).

However, the primary consideration by the Commission is whether the proposed abandonment is in the public interest. *See* 66 Pa. C.S. § 1103(a). Indeed, the "West Penn factors" are non-exclusive and merely "among the factors to be considered in determining the existence or nonexistence of public convenience and necessity in abandonment of service." *See Commuters' Committee*, 88 A.2d at 424 (emphasis added) (recognizing non-exclusivity of the aforementioned factors, and applying additional factors in its analysis).

When weighing all of the factors, it is clear that Laurel's proposed reversal is in the public interest and should be approved.

2. The Extent Of Loss To The Utility: Laurel Has Experienced Substantial Volume Declines Between Altoona And Pittsburgh.

The first factor under the multi-factor test is the extent of loss to the utility and prospect for future use. Laurel has conclusively demonstrated that shipper volumes between Altoona and

Harrisburg have substantially declined over the past 10 years and the decline from 2016 to 2017 has been precipitous. *See* Section VII.C.1.a. *supra*. Laurel is paid for shipments on a volume basis for each barrel it ships. Therefore, Laurel has been receiving substantially lower revenues as its volumes have declined.

Laurel did not present a cost and revenue analysis in this proceeding for several reasons. First, Laurel is not abandoning service because all shippers will be able to ship all products to all locations after the reversal. Second, the volumes between Altoona and Laurel are projected to go to zero, or so low in the future that absent the reversal, the pipeline will be a useless or wasted asset. It is meaningless to do a cost and revenue comparison if revenues are projected to go to zero.

The Indicated Parties argue that Laurel should have proposed a rate increase. This argument is without merit. Shippers are moving less and less product to destination points east of Altoona because it is uneconomic to do so. Adding costs to their shipments through a rate increase will simply cause them to ship even less product to Pittsburgh.

Laurel has conclusively demonstrated in this proceeding that it have experienced a substantial loss in volumes, and revenues, over the past 10 years.

3. The Prospect Of Future Use By The Public: Laurel Volumes East Of Altoona Are Projected To Further Decline In The Future.

Laurel volumes to Pittsburgh are projected to continue to decline to zero in the future, or to decline so substantially that operational constraints prevent or substantially delay shipments. *See* Section VII.C.1.a. *supra*. The prospects for substantial future use of the Laurel pipeline to points west of Altoona are non-existent because lower-cost refined products are being supplied to Pittsburgh from the Midwest. As pipeline constraints from the Midwest continue to ease, and more low-cost products from the Midwest are able to supply Pittsburgh, Laurel volumes to destination points west of Eldorado will continue to fall.

4. Loss To The Utility Balanced With The Convenience And Hardship To The Public Upon Discontinuance Of The Utility's Service: The Public Will Benefit From The Reversal.

The third factor historically considered by the Commission in its traditional abandonment analysis is the loss to the utility balanced with the convenience and hardship to the public upon discontinuance of the utility's service. The reversal will provide significant public benefits. As described in the prior sections addressing abandonment, Laurel will not be able to continue providing service to Pittsburgh from the east as volumes continue to decline. Both Laurel and the public would be negatively impacted if the reversal is not approved.

Further, as explained in Section VII.C.1. above, the reversal will create substantial benefits for all consumers in Pennsylvania due to lower gasoline prices. The influx of lower-cost gasoline from the Midwest will decrease prices in Pittsburgh and Central Pennsylvania. In addition, East Coast refiners will be forced to compete for additional sales, which will also decrease prices in Philadelphia and Central Pennsylvania. *See* Sections VII.C.1.b.ii.3. and VII.C.2.b.iv. *supra*. The reversal will also increase supply security and reliability in Central Pennsylvania and decrease reliance on foreign oil imports that currently make up a significant portion of Pennsylvania's supplies. *See* Section VII.C.1.d. *supra*.

The refineries in this proceeding, PESRM and Monroe, argue that they will be harmed by the reversal, but these harms are *de minimus* at best. The only potential harm to these refineries is lost profits because they will be forced to lower their prices to compete for product sales. This is not a public harm, but a public benefit because it will reduce prices for consumers. The Commission must regulate in the public interest, not the private interest. Therefore, potential lost profits to the East Coast refiners should not be considered. Moreover, these refiners ship very few volumes to Pittsburgh, and they will be able to sell those few volumes in other markets.

The other Indicated Parties in this proceeding, Gulf, Sheetz and Giant Eagle, will lose the ability to arbitrage the Pittsburgh market. Again, this alleged harm should not be considered. These shippers attempt to maximize their profits, and their ability to make more profit off of arbitrage opportunities in Pittsburgh pales in comparison to providing lower gasoline prices to all Pennsylvania consumers. In addition, these Indicated Parties will not lose out on arbitrage opportunities; these arbitrage opportunities will just be shifted east to the Altoona market.

5. Availability And Adequacy Of Alternative Service: Shippers Will Have Numerous Alternatives After The Reversal.

The final factor under the multi-factor test is the availability and adequacy of the service to be substituted for Laurel's existing east to west service. It is important to recognize that after the reversal, Laurel pipeline is not going out of service. It will be bringing lower-cost refined products to Pittsburgh from the Midwest. *See* Section VII.C.1.b.i. *supra*. All shippers will be able to ship all of the same products they currently ship to all of the same locations. This alone is more than an adequate alternative.

After the reversal, Pittsburgh market participants will still be able to access petroleum products from a variety of alternative transportation sources, including: (1) Sunoco Pipeline, L.P. ("Sunoco"), from the Midwest; (2) Marathon Pipeline LLC, from the Midwest; (3) Buckeye from the Midwest; (4) Buckeye and Laurel, collectively delivering from the East Coast to Altoona, from which product can be trucked west post-reversal; (5) trucks delivering from the Ergon refinery in Newell, West Virginia; (6) trucks delivering from the United Refining refinery in Warren, Pennsylvania; (7) barges delivering petroleum products to terminals on the Ohio, Allegheny and Monongahela Rivers from refineries and pipeline terminals in the Midwest and potentially Gulf Coast; and (8) trucks delivering petroleum products from pipeline terminals in Ohio. (Laurel St. No. 2, p. 6; *see also* Laurel St. No. 5, pp. 22-25.)

Moreover, the East Coast refineries have many other markets besides Pittsburgh to sell their products, including selling more products in PADD I which will back out imports from overseas. *See* Section VII.C.2.b.iii.1. *supra*. They will continue to be connected to many major markets on the Laurel and/or combined Laurel/Buckeye system, which include northern Pennsylvania and upstate New York. They also will still have access to other pipelines, including Sunoco Pipeline's East Line, to the New York Harbor ("NYH") via both pipeline and barge and to the local Philadelphia market via truck racks. In addition, they have acquired in late 2016 new options to reach additional market, via Laurel's connection to upstate New York, which would be increased substantially as a direct result of the reversal, and the fact that they can use the "virtual" service to land physical barrels in New York Harbor. *See* Section VII.C.2.b.iii.4. *supra*.

All of the parties in this proceeding have numerous alternatives to reach many different markets. There are multiple pipelines delivering into Pittsburgh, trucks from multiple locations and barges. Likewise, the Philadelphia refiners have access to many markets to sell additional product on the East Coast, which will back out supplies from overseas. The numerous alternatives are more than sufficient for all market participants.

6. Laurel's Proposed Reversal Is Clearly In The Public Interest Under The Multi-Factor Abandonment Test.

In weighing the multi-factors under the abandonment test, the benefits are overwhelming and the public harms are non-existent. Laurel is re-purposing a wasting asset to bring lower-cost petroleum products to Pittsburgh and Central Pennsylvania. Consumers in Pennsylvania will receive lower priced gasoline, shippers will be able to continue to use the Laurel pipeline to ship products to Pittsburgh, and East Coast refiners will be able to sell their products in other markets, backing out overseas supplies. The reversal also will increase supply security and reliability to Central Pennsylvania and decrease reliance on overseas oil imports. Laurel's proposed reversal clearly is in the public interest under the multi-factor abandonment test.

E. The Proposed Capacity Use Agreement Between Laurel And Buckeye Is Reasonable And In The Public Interest.

1. Legal Standards Applicable To Affiliated Interest Agreements.

As an initial matter, Laurel believes that Commission approvals of the Capacity Use Agreement and any change to Laurel's tariff are pre-empted under federal law. *See* Section VII.A.1. *supra*.

However, to the extent the Commission deems it necessary, Section 2102 of the Code, Commission governs any contract between a public utility and an affiliated interest before it can become effective. 66 Pa. C.S. § 2102(a). Public Utility Code Section 2101(a) defines an "affiliated interest," inter alia, to include the following: "(1) Every corporation and person owning or holding directly or indirectly 5% or more of the voting securities of such public utility"; and "(2) Every corporation and person in any chain of successive ownership of 5% or more of voting securities." 66 Pa. C.S. § 2101(a)(1)-(2).

Under Public Utility Code Section 2103, the Commission has continuing supervision and jurisdiction over affiliated interest contracts, including the "modification[] or amendment" of such contracts or agreements. 66 Pa. C.S. § 2103.

Subsections (b) and (c) of 66 Pa. C.S. § 2102 provide the standard for Commission review of an affiliated interest agreement:

> (b) Filing and action on contract. . . . The commission shall approve such contract or arrangement made or entered into after the effective date of this section only if it shall clearly appear and be established upon investigation that **it is reasonable and**

> **consistent with the public interest**. If at the end of 30 days after the filing of a contract or arrangement, no order of rejection has been entered, such contract or arrangement, whether written or unwritten, shall be deemed, in fact and law, to have been approved. The commission may, by written order, giving reasons therefor, extend the 30-day consideration period. No such contract or arrangement shall receive the commission's approval **unless satisfactory proof is submitted to the commission of the cost to the affiliated interest of rendering the services or of furnishing the property or service described herein to the public utility** . . . .
>
> (c) Disallowances of excessive amounts. If the commission shall determine that the amounts paid or payable under a contract or arrangement filed in accordance with this section are in excess of the reasonable price for furnishing the services provided for in the contract, or that such services are not reasonably necessary and proper, it shall disallow such amounts, insofar as found excessive, in any proceeding involving the rates or practices of the public utility. In any proceeding involving such amounts, the burden of proof to show that such amounts are not in excess of the reasonable price for furnishing such services, and that such services are reasonable and proper, shall be on the public utility.

66 Pa. C.S. § 2102(b)-(c) (emphasis added).

2. The Proposed Capacity Agreement between Laurel and Buckeye is reasonable and in the public interest.

Under the proposed changed in direction of service, the western portion of Laurel's pipeline facilities (*i.e.* points west of Eldorado) would be utilized by Buckeye to transport and deliver lower-priced Midwestern petroleum products to the public in Western and Central Pennsylvania pursuant to rates under Buckeye's FERC tariff. (Laurel St. No. 1, p. 23.) The Capacity agreement filed as a part of this proceeding as Laurel Exhibit No. 2, supersedes and replaces the terms of a prior capacity agreement between Laurel and Buckeye, which was approved by the Commission in 1994, and the terms of an amendment to the 1994 Agreement, which was approved by the Commission in 2015. (*Id.*, p. 24 (referencing prior affiliated interests agreements filed at Docket No. G-00940417).)

Pursuant to the Capacity Agreement, Buckeye will obtain from Laurel throughput capacity sufficient to transport up to 40,000 BPD of refined petroleum products between Eldorado, Pennsylvania and Buckeye's terminal facilities at Midland, Pennsylvania, and will reduce its capacity rights between Sinking Spring and Coraopolis, Pennsylvania, by the same quantity. (*Id.*) The Capacity Agreement applies the same capacity use charge for the Initial Term that was used in the prior Commission-approved agreements. (*Id.*, p. 25.) In addition, the Capacity Agreement applies the same capacity use charge for the Renewal Term that was used in the prior Commission-approved agreements. (*Id.*)

Furthermore, the two principal differences between the proposed Capacity Agreement and the existing agreement are undisputed. First, the term of the proposed Capacity agreement is an initial ten year term followed by a year-to-year renewal term, which creates an evergreen agreement until a 30-day notice of cancellation. (Laurel Exhibit No. 2; IP St. No. 3, p. 30.) The existing capacity agreement had an extension term of 19 successive years and the amendment approved by the Commission in December 2015 modified those terms to provide Buckeye the option to extend the agreement annually. (*Id.*) Despite the obvious similarities between the existing and proposed agreements, the Indicated Parties raise numerous unfounded concerns regarding the agreements.

For the reasons more fully explained below, the proposed Capacity Agreement between Laurel and Buckeye is just and reasonable and in the public interest.

a. The Indicated Parties' Concerns Regarding The Proposed Capacity Agreement Are Unfounded.

Indicated Parties' witness Mr. Rosenthal raises two concerns about the proposed Capacity Agreement. First, he incorrectly argues that it appears to "carry financial risk exposure for Laurel due to a probable reduction in revenue resulting from the flow reversal and operation of the Capacity Agreement." (*Id.*) He further states that this risk is "exacerbated because Laurel has no recourse to recover offsetting revenue from other shippers." (*Id.*) Second, Mr. Rosenthal argues that Laurel will not be made whole by the $0.17/barrel rate to be paid by Buckeye under the proposed Capacity Agreement. (*Id.*, p. 32.) Due to these concerns, Mr. Rosenthal proposes that the Capacity Agreement be amended to increase the per barrel payment to Laurel to equal the minimum rate on Laurel's PUC tariff and that the credit be eliminated.

On the first two concerns, Mr. Arnold testified that, regardless of whether the rates calculated by Mr. Rosenthal were accurate, Mr. Rosenthal's criticism of the Capacity Agreement is based on the flawed assumption that there will continue to be comparable volumes shipped from eastern origins to Pittsburgh in the future. (Laurel St. No. 1-R, p. 35.) Based on the detailed directional projections submitted by Dr. Webb, and the Company's own internal analysis of market trends, Mr. Rosenthal's assumption regarding volumes to Pittsburgh is simply not credible. (*Id.*) Revenues are the product of volumes and the tariff rate; if, as expected, volumes continue to decline toward zero, then the revenues that Laurel would otherwise receive absent the reversal and Capacity Agreement do as well. (*Id.*)

Furthermore, Mr. Arnold explained why Mr. Rosenthal's proposal to increase the per barrel payment under the proposed Capacity Agreement to equal the minimum rate on Laurel's PUC tariff and eliminate the credit is flawed. (Laurel St. No. 1-R, pp. 35-36.) In addition to Mr. Rosenthal's flawed assumptions that Laurel would otherwise collect PUC tariff revenues on volumes from the east to Pittsburgh, Mr. Rosenthal: presented no analysis as to why the minimum Laurel tariff is fair or reasonable in light of the proposed reversal; conducted no inquiry as to why the credit exists; failed to acknowledge that the fee levels are effectively the same as the fees in the prior agreement; and focused on the impact on Laurel's rates, which are not at issue in this proceeding. (*Id.*) Indeed, Mr. Rosenthal's testimony provides no analysis to support this proposed change.

In addition, Mr. Arnold explained that the "credit" for non-use is an adjustment for operating expense that was approved in the prior agreement. (Laurel St. No. 1-R, p. 33.) This credit was original set at $0.05/barrel, subject to an inflation adjustment, to accurately reflect the variable operating cost of the pipeline. (*Id.*) Specifically, when Buckeye ships below a certain minimum volume, Laurel does not incur pumping costs which are otherwise embedded within the capacity fee. (*Id.*) As such, Buckeye is "credited" the pumping costs where Laurel does not actually incur those costs. Contrary to Mr. Rosenthal's testimony, there is nothing unreasonable about such an adjustment.[96]

Finally, Mr. Rosenthal ignores the provision for "excess" volumes shipped by Buckeye over and above the minimum levels. (Laurel Exhibit No. 2 (Capacity Agreement § 6); Laurel St. No. 1-R, pp. 34-35.) Section 6 of the Capacity Agreement provides that Buckeye will pay Laurel a $0.17/barrel charge for volumes in excess of the 14,600,000 annual barrels reserved. (*Id.*) While Laurel is subject to risk and Buckeye is subject to benefit through the credits for non-use, Laurel is subject to benefit and Buckeye is subject to risk through the charge for excess volumes. (*Id.*) In this regard, the Capacity Agreement carries both risks and benefits for both Laurel and Buckeye, just as any other arms-length contract between two sophisticated commercial entities would. Mr. Rosenthal's claim that the reasonableness of the credit level for underutilization is a

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[96] Mr. Rosenthal subsequently argues in his Surrebuttal Testimony that Laurel has provided no evidence on which the Commission can calculate an amount for pumping costs. (IP St. 3-SR, p. 18.) However, Mr. Rosenthal's argument in Surrebuttal is based on his flawed assumption that the approximate $0.05 credit for pumping costs is "almost 30% of the implied rate for the reserved capacity." (*Id.*) Dr. Webb demonstrates why the "implied rate" suggested by Mr. Rosenthal is demonstrably wrong and Mr. Rosenthal has offered no quantitative analysis that suggests otherwise. (Laurel St. No. 5-R, p. 13.)

separate issue from any fees associated with excess volumes[97] completely disregards the fact that the credit and fee establish a reasonable exchange of risks and benefits.

b. The Indicated Parties' Concerns Regarding Both The Existing And Proposed Agreements Are Without Basis.

In addition, Mr. Rosenthal argues that the rent/capacity use payments under both the current and proposed Capacity Agreement put Laurel's revenue at risk because Laurel will not be able to contract with other shippers to fill the western segment of its pipeline if Buckeye does not use that capacity. (IP St. No. 3, p. 31.)

Mr. Arnold made clear that this concern misunderstands the nature of the new and old agreements. (Laurel St. No. 1-R, p. 34.) Under the existing agreement, destinations in Western Pennsylvania are served by Laurel and, if interstate barrels are not set to the market under the Buckeye tariff and via the existing agreement, then the same demand is met by a PUC tariff delivery to the extent the volumes are supplied from the east. (*Id.*) After the reversal, however, Mr. Rosenthal ignores that the same terminals will be served on the Laurel system and that any demand at these terminals will be met solely by Buckeye volumes, which will be included in the volumes generating revenues under the proposed Capacity Agreement. (*Id.*)

c. Dr. Webb Demonstrated That The Capacity Use Fee Under The Existing And Proposed Capacity Agreement Is Reasonable.

Contrary to Mr. Rosenthal's claims that the capacity use fee under the existing and proposed Capacity Agreements is not just and reasonable,[98] Dr. Webb demonstrated in his Rebuttal Testimony that the effective per barrel amount that Laurel received under the existing agreement was approximately $0.828/barrel. (Laurel St. No. 5-R, p. 13.) Unlike Mr. Rosenthal's analysis, Dr. Webb calculated the amount that Laurel had received per barrel in 2016

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[97] (IP St. No. 3-SR, p. 18.)

[98] (IP St. No. 3, pp. 32-33.)

(*i.e.* $17.9 million in revenue divided by 21.6 million barrels moved) and demonstrated that the per barrel rate Laurel received under the agreement was substantially higher than the $0.17/barrel that Mr. Rosenthal claimed Laurel would receive. (*Id.*) Furthermore, Dr. Webb's demonstration that the existing capacity use charge adequately compensates Laurel demonstrates that the proposed capacity use charge is also reasonable; the terms of the existing charge are continued in the proposed Capacity Agreement. (*Id.*) As such, Mr. Rosenthal's claim that Laurel is "agreeing to cease delivery service at its highest Pennsylvania tariff rates and substitute service to its affiliate at a much reduced rate" is false. (IP St. No. 1, p. 32.)

F. The Proposed Project Will Meet All Safety Requirements And No Safety Concerns Exist That Justify Delaying the Project's Approval.

As a public utility, Laurel is subject to the Public Utility Code and the Commission's regulations. (I&E St. No. 1, p. 3.) In addition, as a hazardous liquids pipeline, Laurel is also subject to regulation by the Department of Transportation ("USDOT") under the Hazardous Liquid Pipeline Safety Act of 1979. *See* 49 CFR § 195. More specifically, Laurel is subject to safety inspections and regulation by the Pipeline and Hazardous Materials Safety Administration ("PHMSA"). (Laurel St. No. 11-R, p. 4.) Regulations promulgated by the US DOT govern the design, construction, testing, operation and maintenance of pipelines, including integrity management of hazardous liquids pipelines. (Laurel St. No. 11-R, p. 4.)

In 2014, PHMSA issued its Guidance for Pipeline Flow Reversals, Product Changes, and Conversion to Service[99] ("2014 Guidance"), which provided, in part, safety guidelines and requirements for pipelines that intended to reverse the flow of product. The 2014 Guidance includes numerous specific safety elements that should be addressed as part of the reversal process. (Laurel St. No. 11-R, pp. 6-9). In order to address these elements, Laurel prepared and

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[99] Guidance for Pipeline Flow Reversals, Product Changes and Conversion to Service, US DOT PHMSA, September 2014, Docket PHMSA-2014-0040.

submitted its “Broadway Project-2 Integrity Impact Review Line 718, Duncansville to Coraopolis” (“IRR”). The Laurel IRR sufficiently addresses the safety elements associated with the reversal project. (I&E St. No. 1-SR, p. 9.) The Company provided a timeline for the specific steps identified in the IRR as part of its testimony (Laurel St. No. 4-RJ, p. 5, Figure 1), which was incorporated into the Partial Stipulation submitted in this proceeding on November 3, 2017.

The 2014 Guidance also includes notification requirements, which Laurel has already complied with. Notification must be given no later than 60 days before reversal of product flow that will last more than 30 days at 49 CFR 195.64(c)(1)(iii). Laurel made that notification on June 23, 2017. (Laurel St. No. 11-R, p. 5.) In addition, when the cost of any changes on a pipeline exceed $10 million, including reversal of flow, PHMSA requires notification no later than 60 days before “construction or any planned rehabilitation, replacement, modification, upgrade or update of a facility other than a section of line pipe” at 49 CFR 195.64(c)(1)(i). While the costs for Laurel do not exceed the $10 million threshold, the larger Broadway project does exceed the threshold. (Laurel St. No. 11-R, p. 5.) Therefore, the company notified PHMSA consistent with its practice of working cooperatively with stakeholders, including PHMSA. (Laurel St. No. 11-R, p. 5.)

In light of the sufficiency of the safety precautions the Company has already taken and has committed to taking, Laurel was able to reach a Stipulation with I&E satisfying the safety concerns identified by I&E’s witness in his testimony in this proceeding. As previously discussed, that Stipulation was submitted on November 3, 2017. No other parties raised any concerns relating to the safety of the physical reversal of flow on the Laurel pipeline. No parties objected to the Stipulation, or raised any concerns with the Stipulation during the hearing.

Under the Stipulation, any Commission approval of Laurel's Application will be conditioned upon Laurel taking all safety actions identified in the Company's IRR by agreed upon estimated dates.[100] Figure 1 of the Stipulation detailing these safety actions is reproduced below.

Figure 1: Laurel Line - Integrity Impact Review Actions Summary and Schedule

Pre-Reversal Actions	**Estimated Date**
Perform Hydrostatic Pressure Test	6/15/18
Updated Surge Analysis	3/31/18
Updated Emergency Flow Restricting Device (EFRD) analysis	Completed
Update to Computational Pipeline Monitoring System (LeakWarn)	8/24/18
Review and Update Procedure Manuals (Operations, Maintenance & Emergency Response)	8/1/18
Update to Work Management System for new Equipment	8/1/18
Revise Startup and Shutdown Procedures and Train Controllers	8/1/18
Review and Update Supervisory Control and Data Acquisition (SCADA) System	8/1/18
Update Oil Spill Response Plan	8/1/18
Preventative & Mitigative Actions Review	8/1/18
Post-Reversal Actions	**Estimated Date**
As Built Drawings and Compile Project Records	12/31/18
Inspect Mainline Isolations Valves	9/1/2018, 9/8/2018, and 10/1/2018
Perform Visual Surveys of Aboveground Equipment	10/1/18
Determine and Evaluate actual Pressure Cycling of Pipeline	10/1/2018 and 3/1/2019

Additionally, Laurel agreed that the Commission's safety inspectors may inspect the Laurel pipeline, including review of the Company's compliance with the above-identified pre- and post-reversal actions. As such, Laurel has demonstrated that the proposed reversal will be implemented in compliance with all applicable safety standards.

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[100] The estimated dates are based on the assumption that the pipeline would be reversed on September 1, 2018.

Therefore, it would be appropriate to conclude that approval of the proposed project in this proceeding does not pose any safety considerations that would merit denial of the Application.

VIII. CONCLUSION

WHEREFORE, Laurel Pipe Line Company, L.P. respectfully requests that the Pennsylvania Public Utility Commission, to the extent it has jurisdiction, approve Laurel's Application 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, and the related Pipeline Capacity Agreement with Buckeye Pipe Line Company, L.P.

Respectfully submitted,

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Date: December 4, 2017

Appendix A

(PUBLIC VERSION)

APPENDIX A
PROPOSED FINDINGS OF FACT

1. Laurel is a "public utility," specifically a "common carrier," as defined under Section 102 of the Code. (IP St. No. 3, p. 8)

2. As a public utility, Laurel is subject to the Public Utility Code and the Commission's regulations as to its intrastate transportation of petroleum products. (I&E St. No. 1, p. 3.)

3. In 1957, Laurel Pipe Line Company—the predecessor in interest to Laurel—filed two applications with the Commission, which collectively sought Commission approval of (1) the incorporation, organization and creation of Laurel as a public service corporation (the "Incorporation Application"); and (2) to begin to exercise the right, power or privilege to transport, store and distribute petroleum products to the public (the "Service Application"). *See In re Application of Laurel Pipe Line Company for approval of its incorporation, organization and creation*, Docket No. 84093, Folder 1 (Application Docketed Feb. 5, 1957); *see also In re Application of Laurel Pipe Line Company for approval of the beginning of the exercise of the right, power or privilege of transporting, storing and distributing petroleum products by means of pipe lines, pumps, tanks and other equipment and appurtenances for the public*, Docket No. 84093, Folder 2 (Application Docketed Feb. 5, 1957); (IP Exhibit RAR-1, pp. 3-10; IP Exhibit RAR-1, pp. 12-20.)

4. The Commission approved both the Incorporation Application and the Service Application by separate orders and issued certificates of public convenience to Laurel. *See In re Application of Laurel Pipe Line Company for approval of its incorporation, organization and creation*, Docket No. 84093, Folder 1 (Report and Order entered Feb. 5, 1957); *see also In re Application of Laurel Pipe Line Company for approval of the beginning of the exercise of the*

right, power or privilege of transporting, storing and distributing petroleum products by means of pipe lines, pumps, tanks and other equipment and appurtenances for the public, Docket No. 84093, Folder 2 (Report and Order entered Feb. 5, 1957); (IP Exhibit RAR-1, p. 1; IP Exhibit RAR-1, pp. 11; Laurel Exhibit DWA-5, pp. 1-2.)

5. The Commission approved Laurel's Service Application and stated:

> [T]he Pennsylvania Public Utility Commission upon application of LAUREL PIPE LINE COMPANY, filed January 31, 1957, for approval of the beginning of the exercise of the right, power or privilege of transporting, storing and distributing petroleum and petroleum products by means of pipelines and appurtenances, for the public, such facilities extending generally westwardly from a point near the City of Philadelphia to a point in the vicinity of the City of Pittsburgh, thence in a northwestwardly direction to the Pennsylvania-Ohio boundary line, as more fully described in said application, and having been duly presented in accordance with the rules of the Commission, and full investigation of the matters and things involved having been had, the Commission finds and determines that the granting of said application is necessary or proper for the service, accommodation, convenience or safety of the public, and that a certificate of public convenience issue evidencing the Commission's approval thereof.

(Laurel Exhibit DWA-5, p. 1; Indicated Parties Exhibit RAR-1, p. 11 (emphasis added).)

6. Laurel did not limit its request in its original application to east/west service; and nowhere in either order did the Commission describe the "nature and character" of petroleum products transportation service as limited to east/west service. (*See* Laurel St. No. 9-R, p. 4; Laurel St. No. 9-RJ, pp. 2-4.)

7. Nowhere in either application did Laurel limit its request to serve specific origin and destination points and/or pairs; and nowhere in either order did the Commission describe the "nature and character" of petroleum products transportation service as being limited to specific origin and destination points and/or pairs. (*See* Laurel St. No. 9-R, p. 4; Laurel St. No. 9-RJ, pp. 2-4.)

8. The Commission did not require Laurel to provide petroleum products transportation service either in a specific direction, or at or between specific origin and destination points. (*See* Laurel St. No. 9-R, p. 4; *see also* Laurel St. No. 9-RJ, pp. 2-3.)

9. Unlike a traditional fixed public utility, Laurel was not granted and does not possess a monopoly within an exclusive geographic service territory. (Laurel St. No. 5, p. 5; Laurel St. No. 9-R; p. 6; *see also* IP St. No. 3-SR, p. 9.)

10. In both the Incorporation Application and Service Application, Laurel represented that it would be competing with other pipeline companies. Incorporation Application ¶ 8 (Indicated Parties Exhibit RAR-1, pp. 4-5); Service Application ¶ 6 (Indicated Parties Exhibit RAR-1, pp. 13-14).

11. Laurel is subject to competition from other pipelines, trucks, barges and railroad transportation services, and shippers are not mandated to exclusively utilize Laurel's pipeline system to transport petroleum products. (Laurel St. No. 5, p. 4; Laurel St. No. 9-R, p. 6; Laurel St. No. 9-RJ, pp. 7-8.)

12. Laurel's operations are comparable to that of a taxi cab, which must compete with other taxi cabs and other available, alternative transportation services. (Laurel St. No. 9-R, p. 6; *see also* Laurel St. No. 5, p. 5; Laurel St. No. 5-R, pp. 7-9.)

13. Common carriers are subject to the dynamic conditions associated with highly competitive markets. (*See* Laurel Exhibit No. 1 (Application ¶ 18 (describing demand shifts that Laurel is responding to); Laurel St. No. 5-R, Appendix A ¶ 8.)

14. Laurel seeks to change the direction of its service to avoid a substantial, continuous decline in the use of its asset. (Laurel St. No. 1, p. 15; Laurel St. No. 5-R, Section IV, Figures 5, 6 and 7.)

15. Laurel does not provide transportation service to end-users of refined petroleum products. (Laurel Exhibit No. 1 (Application ¶¶ 7, 10); Laurel St. No. 1, p. 14; Laurel St. No. 5, pp. 6-7; Laurel St. No. 6, p. 3; Laurel St. No. 5-R, p. 11 and Appendix A.)

16. Laurel transports petroleum products to terminals at destination points along its pipeline, where its shippers or other entities "lift" product to transport to a point of sale. (Laurel St. No. 1, p. 14; Laurel St. No. 6, p. 3.)

17. One refiner supplying intrastate shippers elected to re-activate an entire competing interstate pipeline segment to transport its product to markets other than Pittsburgh. (*See* (HC) Laurel Cross Examination Exhibit No. 18; (Tr. 1064:23-1065:2.).

18. Oil pipeline reversals are common and efficient responses to shifting market trends. (*See* Laurel St. No. 5-R, pp. 97-99; Laurel Exhibit MJW-18.)

19. In 2006, Laurel supplied approximately 104,000 bpd of Pittsburgh's total demand for refined petroleum products. For the last 12 months, Laurel has supplied approximately 45,000 bpd of Pittsburgh's total demand for refined petroleum products, a decline in supply of over 55%. (Laurel St. No. 5-RJ, p. 3)

20. The volumes on Laurel to Pittsburgh increased in 2013 and 2014 because the Sunoco West-East pipeline was shut down in July 2013 and the Sunoco East-West pipeline was shut down in October 2013. (Laurel Exhibit MJW-33, p. 2.)

21. When the Allegheny Access pipeline began providing service to Pittsburgh from the Midwest in July 2015, volumes on Laurel from Eldorado to Pittsburgh again declined precipitously and have continued to decline. (Laurel Exhibit MJW-33, p. 5; Laurel St. No. 5-R, p. 44, Figure 7.)

22. Laurel volumes to Pittsburgh averaged 65,000 bpd in 2016 (Laurel St. No. 5-RJ, p. 19), but were only 45,000 bpd for the 12 months ending September 2017, a decline of approximately 30% in a single year. (Laurel St. No. 5-RJ, p. 6.)

23. The Sunoco shut down of pipeline supply from the Midwest in July 2013 temporarily increased Laurel volumes to Pittsburgh. (Laurel St. No. 5-R, p. 35.)

24. In October 2013, Sunoco shut down its pipeline transporting products from Philadelphia throughout Pennsylvania, which temporarily increased Laurel volumes to Pittsburgh. (Laurel St. No. 5-R, p. 35.)

25. In mid-2015, Allegheny Access began providing supply into Pittsburgh from the Midwest, which re-started the decline in Laurel volumes to Pittsburgh that started in 2006. (Laurel St. No. 5-R, p. 35.)

26. Laurel volumes to Pittsburgh have declined significantly in the period of 2013 through 2017.

27. Both Dr. Webb's projections and Mr. Schaal's workpapers show that Laurel volumes to Pittsburgh can be expected to cease or reach such a low level that makes operations unfeasible in the relatively near future. (Laurel St. No. 5-RJ, pp. 13-16.)

28. Laurel volumes to Pittsburgh have declined from approximately 104,000 bpd in 2006 to 45,000 bpd for the most recent 12 months ending September 2017. This is a 56.7% decrease. (Laurel St. No. 5-RJ, pp. 6, 9.)

29. Laurel volumes have declined in all four quarters of the year. (Laurel St. No. 5-RJ, pp. 20-21.)

30. For the first quarter, January through April, volumes have fallen by approximately 73% from 92,000 bpd in 2006 to 25,000 bpd in 2017. (Laurel St. No. 5-RJ, pp. 20-21.)

31. The first quarter volume decline was particularly steep from 2016 to 2017 where volumes fell by half from 51,000 bpd to 25,000 bpd. (Laurel St. No. 5-RJ, pp. 20-21.)

32. For the second quarter of April – June, Laurel volumes to Pittsburgh have declined by approximately 39% from 108,000 bpd in 2006 to 66,000 bpd in 2017. (Laurel St. No. 5-RJ, pp. 20-21.)

33. The second quarter volume decline was particularly steep from 2016 to 2017 where volumes fell by approximately 30% from 94,000 bpd to 66,000 bpd. (Laurel St. No. 5-RJ, pp. 20-21.)

34. For the third quarter of July – September, which is primarily the summer months, Laurel volumes to Pittsburgh declined by approximately 52% from 113,000 bpd in 2006 to 54,000 bpd in 2017. (Laurel St. No. 5-RJ, pp. 20-21.)

35. The decline from 2016 to 2017 was also dramatic for the third quarter, falling by approximately 29% from 76,000 bpd in 2016 to 54,000 bpd in 2017. (Laurel St. No. 5-RJ, pp. 20-21.)

36. Laurel volumes to Pittsburgh from 2006 to 2016 have significantly declined by approximately 65% from 103,000 bpd to 36,000 bpd. (Laurel St. No. 5-RJ, pp. 20-21.)

37. The 2015 to 2016 fourth quarter volumes also declined significantly (in half) from 72,000 bpd in 2015 to 36,000 bpd in 2016. (Laurel St. No. 5-RJ, pp. 20-21.)

38. Shippers have long-term contracts with refineries, and it takes some time for them to shift supply sources. (Hearing Tr. 1250:7-13)

39. Laurel volumes to the Philadelphia market have increased since 2006 from 23,000 bpd in 2006 to 34,000 bpd in 2016. (Laurel St. No. 5-R, pp. 49-51.)

40. Harrisburg deliveries have slightly decreased from 83,000 bpd in 2006 to 77,000 bpd in 2016, approximately a 7% decrease. (Laurel St. No. 5-R, pp. 49-51.)

41. Altoona volumes have decreased from 42,000 bpd in 2006 to 33,000 bpd in 2016, approximately a 21% decrease. (Laurel St. No. 5-R, pp. 49-51.)

42. Laurel's volumes to Pittsburgh decreased from 104,000 bpd in 2006 to 64,000 bpd in 2016, or a 38% decrease and further declined to 45,000 bpd for the 12 months ending September 2017. (Laurel St. No. 5-R, pp. 49-51.)

43. The significant decline in Laurel volumes to Pittsburgh and Altoona indicates that these markets are receiving more and more supply from the Midwest. (Laurel St. No. 5-R, pp. 50-51.)

44. Laurel's volumes to Pittsburgh have declined even more significantly in 2017 (to 45,000 bpd), which demonstrates that a substantial and increasing portion of the Pittsburgh demand is being met by supply from the Midwest. (Laurel St. No. 5-R, p. 51.)

45. Gulf performed several internal studies to evaluate Pittsburgh market dynamics. (*See* (HC) Laurel Exhibit MJW-11, p. 21 of 46.)

46. **[BEGIN HIGHLY CONFIDENTIAL]** [redacted] **[END HIGHLY CONFIDENTIAL]**

47. **[BEGIN HIGHLY CONFIDENTIAL]** [redacted]

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48. **[BEGIN HIGHLY CONFIDENTIAL]** [redacted] **[END HIGHLY CONFIDENTIAL]**

49. Operational issues occur as pipeline volumes decrease. These operational issues include increased transit times, which can create a death spiral. (Laurel St. No. 5-R, p. 45.)

50. As Laurel volumes to Pittsburgh continue to decline, Laurel will experience operational, reliability and quality of service issues that will cause shippers to further decrease shipments to Pittsburgh. (Laurel St. No. 5-RJ, pp. 22-23.)

51. Upon receiving a Commission order, Laurel will be required to make the pipeline modifications and perform other construction activities, to complete the reversal. (*See* Laurel St. No. 3, pp. 5-6.)

52. If Laurel is forced to wait to implement the reversal, it will increase the under-utilization of the pipeline and almost certainly create operational issues that could make the pipeline unfavorable for shippers due to increased transit times and additional transmix issues and costs. (Laurel St. No. 5-RJ, pp. 21-23.)

53. Laurel has secured commitments from shippers which offset the construction costs. (Hearing Tr. 282:7-18; *see also* (HC) Laurel Exhibit DWA-11, p. 3 of 11)

54. The cost of crude oil is the major determinant of the retail price of gasoline, these crude oil cost advantages have increasingly provided access to lower-cost gasoline and fuel oil in our neighboring states to the west, producing major benefits for their consumers and local economies. (Laurel St. No. 2-R, pp. 3-4)

55. Crude costs are the overwhelming factor in determining gasoline prices. (Laurel St. No. 8-R, p. 11.) The EIA states that "The cost of crude is the largest factor in the retail price of gasoline." (Laurel C.E. Exh. No. 14, p. 2.)

56. The Midwestern refineries source the majority of their crude supplies from the Bakken oil fields in northwestern North Dakota, northeastern Montana and southern Alberta as well as from the oil sands of central Alberta. (Laurel St. No. 7-R, pp. 9-10.)

57. Midwest refineries benefit from the Bakken and Canadian crude because they are relatively close to these crude oil sources which lowers the delivered cost of getting crude to the Midwest refineries. (Laurel St. No. 7-R, p. 13.)

58. Midwest refineries benefit from the Bakken and Canadian crude because the Bakken and Canadian crude ("Western Canadian Select") is cheaper than the other two primary sources of crude oil which are West Texas Intermediate ("WTI") and Brent crude. (Hearing Tr. 840:21-841:22.)

59. WTI is a domestic crude source that is primarily produced in Texas and surrounding states in PADD III. (Laurel St. No. 7-R, p. 14; Hearing Tr. 602:1:21.)

60. Brent crude is the global price for crude that is produced from sources across the world, including from the North Sea and Africa. (Laurel St. No. 7-R, p. 17.)

61. The Eastern refineries obtain most of their crude supplies from foreign sources, which is primarily supplied by marine vessel. (Laurel St. No. 7-R, p. 17.)

62. Western Canadian Select has significant cost advantages as compared to WTI and Brent crudes. (Laurel St. No. 7-R, p. 15.)

63. Western Canadian Select is also cheaper than Brent crude, which must be transported by ship to the Eastern refineries. (Hearing Tr. 602:1:21.)

64. Bakken crude production increased six-fold between 2008 – 2014, peaking at 1.2 million barrels per day and Canadian crude increasing by approximately 1.4 million barrels per day between 2005 and 2017, to approximately 4 million barrels per day. (Laurel St. No. 7-R, pp. 10-11.)

65. The Midwest Refineries are among the most advanced refineries in the United States because they have made significant investments to upgrade technology and refining capacity. They are much more technically advanced and able to process many different types of crude at a cheaper cost than their Eastern counter-parts. (*See* Hearing Tr. 445:17-446:5.)

66. From 2005 through December 2015, refining capacity increased by 323,000 barrels per day, or approximately 9%. (Laurel St. No. 8-R, pp. 7-8.)

67. Midwestern refineries have invested billions of dollars to modernize their refineries, including BP's $4.2 billion modernization of its Whiting refinery in 2013, Wood River refinery's $3.8 billion modernization in 2011, and Husky's $340 million modernization at its facility in Lima and $238 million at its jointly owned facility with BP in Toledo. (Laurel St. No. 8-R, pp. 10-11.)

68. The Eastern Refineries have not made similar modernizing investments compared to Midwestern Refineries. (Laurel St. No. 8-R, p. 11; Laurel St. No. 5-R, p. 67.)

69. **[BEGIN HIGHLY CONFIDENTIAL]** [redacted] **[END HIGHLY CONFIDENTIAL]**

70. **[BEGIN HIGHLY CONFIDENTIAL]** [redacted] **[END HIGHLY CONFIDENTIAL]**

71. **[BEGIN HIGHLY CONFIDENTIAL]** [redacted] **[END HIGHLY CONFIDENTIAL]**

72. The Midwestern refinery cost advantage is expected to continue into the future due to continued access to low-cost crude supplies and the continued use of modernized facilities as compared to East Coast refineries. (Laurel St. No. 8-R, p. 7.)

73. Midwest access to cost advantaged crude had eroded relative to the East Coast refiners. (Hearing Tr. 821:1-4.)

74. **[BEGIN HIGHLY CONFIDENTIAL]** [redacted] **[END HIGHLY CONFIDENTIAL]**

75. **[BEGIN HIGHLY CONFIDENTIAL]** [redacted] **[END HIGHLY CONFIDENTIAL]**

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77. **[BEGIN HIGHLY CONFIDENTIAL]** [redacted]

[END HIGHLY CONFIDENTIAL]

78. There are 14 refineries in the Eastern Midwest alone, with operating capacity of approximately 2.6 million bpd that are able to readily supply Pittsburgh, as well as other markets in the Midwest. (Laurel St. No. 8-R, pp. 8-12.)

79. The number of Eastern Midwest refineries alone is significantly more than the number of East Coast refineries that currently serve the Pittsburgh markets. (*See* Laurel St. No. 7-R, p. 53, Figure 15.)

80. In 2014, Laurel volumes to Pittsburgh were 95,000 bpd. (Laurel St. No. 5-R, p. 49.)

81. The pipelines have sufficient overall rated capacity for Midwestern refineries to supply all of Pittsburgh's demand. (*See, e.g.* Laurel St. No. 8-R, pp. 14-16; IP St. No. 1, pp. 18-21.)

82. There are operational constraints in getting Midwestern supplies to Pittsburgh. (Hearing Tr. 1181-1182; Gulf St. No. 1, p. 9.)

83. Pipeline constraints from the Midwest are limiting supply options to Pittsburgh. (Laurel C.E. Exhibit No. 17 (Tr. 81:15-82:4); Gulf St. No. 1-SR, p. 7.)

84. In conjunction with the reversal, Laurel's affiliate, Buckeye, is increasing its pipeline capacity from the Midwest into Pittsburgh by 40,000 bpd. (Hearing Tr. 1023:1-11.) This project will therefore increase the overall refined products supply capacity into the state of Pennsylvania by the same amount.

85. Domestic demand for petroleum products will generally decline significantly in the future. Future demand declines will create more competitive pressure to lower prices. (Laurel St. No. 5, p. 18.)

86. The EIA projects lower demand for both the Midwest and the Mid-Atlantic regions through 2026. (Laurel St. No. 5, pp. 19-20.)

87. Increase in supply relative to demand will put significant downward pressure on prices. (Laurel St. No. 5, p. 20.)

88. **[BEGIN HIGHLY CONFIDENTIAL]** [redacted] **[END HIGHLY CONFIDENTIAL]**

89. **[BEGIN HIGHLY CONFIDENTIAL]** [redacted] **[END HIGHLY CONFIDENTIAL]**

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92. **[BEGIN HIGHLY CONFIDENTIAL]** [redacted] **[END HIGHLY CONFIDENTIAL]**

93. It is impossible to quantify the precise effect of the reversal on gasoline prices at the pump because wholesale or rack prices do not directly correlate with retail prices. (Laurel St. No. 5-R, pp. 93-97.)

94. It is extraordinarily difficult to know what the price of gasoline will be in the future. (Tr. 686:24-687:17.)

95. Backing out the marginal supplier in Pittsburgh, which is likely trucks or barges, should, all else equal, reduce gasoline prices by about 5¢ per gallon. This equates to $80,000 per day or approximately $30 million per year. (Tr. 686:24-690:12.)

96. Laurel and the Indicated Parties agree that the reversal will lower gasoline prices in Central and Eastern Pennsylvania. (IP St. No. 2-SR, p. 31; Tr. 979-980; Tr. 1125; Tr. 1148)

97. The reversal will allow more Midwest products to reach Pittsburgh. (Laurel St. No. 7-R, pp. 31-32.)

98. If the reversal is approved, it will back out the current marginal supplies to Pittsburgh. (Hearing Tr. 692:10-23.)

99. Laurel deliveries to Altoona were 40,000 bpd in 2014, 37,000 bpd in 2015 and 33,000 bpd in 2016. (Laurel St. No. 5-R, p. 49.)

100. Deliveries to Altoona are similar to the overall amount of volumes of 45,000 bpd that Laurel has shipped to Pittsburgh for the most recent 12 months. (Laurel St. No. 5-RJ, p. 3.)

101. Laurel's Altoona market is an important market. (Laurel St. No. 1-R, p. 24; Tr. 1179:25-1180:10.)

102. Central Pennsylvania is currently being served by only one pipeline, from one direction, and cannot be served by barges. (Laurel St. No. 2, p. 8.)

103. After the reversal, Altoona will continue to be served by Laurel pipeline from the east but will also be served with Midwest supplies by Laurel from the west. (Laurel St. No. 1, pp. 22-23.)

104. Midwest product will be able to be trucked to points further east, such as Harrisburg. (*See e,g.*, Laurel St. No. 5, pp. 16-17.)

105. Due to the relatively recent expansion of refining capacity in PADD II, shipments from PADD III to PADD II have declined significantly in recent years. (Laurel St. No. 8-R, p. 17.)

106. PADD I supplies are particularly susceptible to disruptions. (HMSC Exhibit JPM-3, p. 38.)

107. PADD II supply versus demand is much more in balance than PADD I supply versus demand. (HMSC Exhibit JPM-4, p. xiv.)

108. **[BEGIN HIGHLY CONFIDENTIAL]** [redacted] **[END HIGHLY CONFIDENTIAL]**

109. The Central Atlantic region only produces a little over half of the supply needed to meet regional demand. (HMSC Exhibit JPM-3, p. 38.)

110. The East Coast refiners receive virtually all of their crude oil from overseas markets. (Laurel St. No. 7-R, p. 17.)

111. The PADD I market imports substantial volumes of refined products from overseas markets. (Laurel St. No. 7-R, p. 17.)

112. May 2017 imports of gasoline into PADD I, although lower than previous years, still totaled 246,000 bpd. (Laurel St. No. 8-R, p. 34.)

113. The Midwest refiners receive the majority of their crude oil from the Bakken region and Central Canada. (Laurel St. No. 7-R, p. 13.)

114. The increase in Bakken and Canadian crude oil production has created the Shale Revolution and has fundamentally changed the crude oil and refined product markets in the United States. (Laurel St. No. 7-R, p. 9.)

115. Due to the abundant, low-cost Marcellus Gas, natural gas prices have substantially declined by approximately 60% over the past 10 years. (www.puc.state.pa.us/NaturalGas/pdf/Gas_Outlook_Report_2016.pdf.)

116. Laurel's proposed reversal will not harm the public. (Laurel St. No. 5, pp. 22-31.)

117. If the reversal is approved, lower-cost Midwestern supplies will back out supplies from the east, resulting in an approximately $0.05/gallon decrease in gasoline prices in Pittsburgh. (Hearing Tr. 686:24-690:12.)

118. Market prices are not set by average costs. Rather, market prices are, for a given level of demand, set by the *marginal* cost (*i.e.* highest cost) of that source of product that allows supply to meet demand, not average costs. (Laurel St. No. 7-R, p. 47; Tr. 735:2-10.)

119. The refiners in this proceeding do not price their petroleum products solely as a function of delivered cost. (Laurel St. 5-R, pp. 21-24.)

120. **[BEGIN HIGHLY CONFIDENTIAL]** [redacted] **END HIGHLY CONFIDENTIAL]**

121. **[BEGIN HIGHLY CONFIDENTIAL]** [redacted] **END HIGHLY CONFIDENTIAL]**

122. Chicago is not the only relevant supply source for Pittsburgh from the west. (Gulf St. No. 1, p. 10; Laurel Exhibit DWA-14; *see also* Laurel St. No. 7-R, pp. 52-53, Figure 15; Tr. 752:23-753:8.)

123. Wholesalers and retailers base their prices on their expectations as to what the market will bear, not on their average costs. (Laurel St. No. 7-R, p. 55.)

124. Wholesalers cannot pass cost increases through to retailers unless market prices allow it. (Laurel St. No. 7-R, pp. 55-56.)

125. There is no evidence of record that retailers and wholesalers pass-through the benefits of any present arbitrage opportunities to consumers. (Laurel St. No. 7-R, p. 72.)

126. There is record evidence that suggests Laurel's shippers do not pass-through arbitrage benefits to consumers. (Laurel St. No. 5-R, pp. 24-25.)

127. **[BEGIN HIGHLY CONFIDENTIAL]** [redacted] **[END HIGHLY CONFIDENTIAL]**

128. **[BEGIN HIGHLY CONFIDENTIAL]** [redacted] **[END HIGHLY CONFIDENTIAL]**

129. Mr. Schaal's analysis ignores significant changes in the relationships between PADD I, PADD II and PADD III refineries. (*See* Laurel St. No. 8-R, pp. 7-38.)

130. **[BEGIN HIGHLY CONFIDENTIAL]** [redacted] **[END HIGHLY CONFIDENTIAL]** ((HC) Laurel Exhibit STJ-20, p. 38.)

131. Under Mr. Schaal's framework, none of the eastern origin sources in Dr. Arthur's delivered price model would ship motor gasoline beyond New Jersey and Delaware because gasoline consumption in those states exceeds production, however it is undisputed that products do in fact flow from these eastern origins to points outside of New Jersey and Delaware. (Laurel St. No. 7-R, p. 44.)

132. Mr. Schaal's conclusions regarding the effects of price spikes due to outages disregards the fact that price spikes are not unusual in the refining industry. (Laurel St. No. 8-R, p. 41.) Price spikes can occur anywhere at any time, but they quickly resolve because they present an arbitrage opportunity to producers to supply additional material if the infrastructure to move product exists. (Laurel St. No. 8-R, p. 42.)

133. Midwestern gasoline prices can be volatile due to unique competitive factors in the Midwestern retail markets, not the source of the gasoline supplies. (Laurel St. No. 8-R, pp. 42-43.)

134. Midwestern retailers engage in a pattern known as "price cycling." (Laurel St. No. 8-R, p. 42.)

135. Price cycling is caused, at least in part, by the nature of competition between superstores and convenience chains at the retail level. (Laurel St. No. 8-R, at p. 43.) Price cycling is not, however, caused by the *source* of gasoline. (Laurel St. No. 8-R, at p. 43.)

136. The United States Federal Trade Commission has concluded that price cycling "actually results in an average gas price that is roughly one cent per gallon cheaper than in states where price cycling is uncommon." (*Id.*, at p. 44; *see also* Hearing Tr. 628:19-629:2.)

137. Even with price-cycling, the average retail price of gasoline in Ohio was lower than the average retail price of gasoline in Pennsylvania. (*See* Laurel St. No. 8-R, p. 43, Figure 18.)

138. Laurel's reversal is the "second element" of Buckeye's Broadway II Project; the first element will increase the capacity of Buckeye's pipeline system from Western Ohio to Pittsburgh (*i.e.* where it interconnects with Laurel). Laurel St. No. 1, p. 18.

139. Shippers' commitments to the Laurel reversal as a part of the Broadway II project demonstrate there are likely downstream constraints that prevent Midwestern volumes from reaching Pittsburgh. (Hearing Tr. 363:5-12.)

140. Downstream constraints are part of the reason that, despite the robust existing pipeline infrastructure in the Midwest, Midwestern shippers continue to demand additional eastward transportation solutions into Pittsburgh via pipeline. (*See* Laurel St. No. 1-R, p. 12.)

141. **[BEGIN HIGHLY CONFIDENTIAL]** [redacted] **[END HIGHLY CONFIDENTIAL]** ((HC) Laurel Exhibit MJW-6 (Tr. 61:2-11).)

142. Due to the costs associated with unexpected curtailments of production, all unplanned outages are resolved as quickly as possible; there is flexibility of the Midwest and Gulf Coast delivery systems to compensate for these outages. (Laurel St. No. 8-R, p. 71; Laurel St. No. 8-R, Figure 3; *see also* IP St. No. 2, p. 8:7-12 (discussing the flexibility of Midwestern delivery infrastructure).)

143. Laurel's proposed reversal will actually increase the optionality and liquidity of supply in Pittsburgh, to the benefit of consumers. (Husky St. No. 1-R, p. 6.)

144. After the reversal, Pittsburgh market participants will still be able to access petroleum products from a variety of alternative transportation sources, including: (1) Sunoco Pipeline, L.P. ("Sunoco"), from the Midwest; (2) Marathon Pipeline LLC, from the Midwest; (3) Buckeye from the Midwest; (4) Buckeye and Laurel, collectively delivering from the East Coast to Altoona, from which product can be trucked west post-reversal; (5) trucks delivering from the Ergon refinery in Newell, West Virginia; (6) trucks delivering from the United Refining refinery in Warren, Pennsylvania; (7) barges delivering petroleum products to terminals on the Ohio, Allegheny and Monongahela Rivers from refineries and pipeline terminals in the Midwest and potentially Gulf Coast; and (8) trucks delivering petroleum products from pipeline terminals in Ohio. (Laurel St. No. 2, p. 6; *see also* Laurel St. No. 5, pp. 22-25.)

145. While barges may at times be more expensive, this option has consistently delivered significant quantities of gasoline to Pittsburgh. (Laurel St. No. 5-R, p. 89.)

146. Trucks will continue to play no greater role in the supply of petroleum products to Pennsylvania markets post-reversal than they do today; both today and post-reversal trucks will remain an available and adequate alternative. (Laurel St. No. 5-R, p. 86.)

147. Nearly all product consumed in the market is ultimately transported by truck. (Laurel St. No. 5-R, p. 86.)

148. Trucking orbits regularly exceed one hundred (100) miles. (Laurel St. No. 7-R, pp. 39-40, Figure 13.)

149. Midwestern refineries have significantly increased their refining capacity since 2005. (Laurel St. No. 8-R, pp. 7-8.)

150. In order to clear that capacity, Midwestern refineries have become increasingly connected, and are still seeking additional connectivity, to the Pittsburgh market and points further east. (Laurel St. No. 8-R, pp. 14-16.)

151. Simultaneous to these Midwestern refinery and pipeline capacity expansions, volumes from Midwestern refineries to Pittsburgh, *i.e.* PADD II to PADD I movements, have substantially increased. (Laurel St. No. 8-R, pp. 18-19.)

152. Midwestern refineries have not only increased their refining capacity, but also have sufficient capacity to supply Pittsburgh. (Laurel St. No. 8-R, pp. 20-21.)

153. Product exchanges are commonplace in the petroleum products transportation industry and frequently include a "location differential" to account for pricing disparities between two markets. (Laurel St. No. 6, pp. 15-16.)

154. Product exchanges play a pervasive role in the petroleum products transportation markets. (Laurel St. No. 8-R, p. 52.)

155. A product exchange involves trading or 'exchanging' one product at one location for the same or a different product at a different location. This is most frequently done to minimize logistics costs and is a very common commercial arrangement among participants in the petroleum business. (Laurel St. No. 8-R, p. 52.)

156. Exchanges play a role in the business models of Monroe and Husky. (Laurel St. No. 8-R, pp. 51-52; Husky St. No. 1-R, p. 12; (HC) Laurel Exhibit MJW-36, pp. 103-116.)

157. Refineries can easily produce low-RVP gasoline by including less butane in the blend of gasoline being produced. (*See* Laurel St. No. 8-R, pp. 45-46.)

158. Backing butane out of a gasoline blend, to produce lower-RVP gasoline, does not require significant capital investment. (Laurel St. No. 8-R, p. 47.)

159. Midwestern refineries can, and already do, produce low-RVP gasoline for cities throughout the Midwest, including Detroit, Louisville, Cincinnati and Dayton (until April 2016) and Nashville and Middle Tennessee (until June 2017). (*See* Laurel St. No. 8-R, pp. 47-48.)

160. Midwestern refineries (including Husky) have previously transported low-RVP volumes from the Midwest to Pittsburgh over existing pipeline infrastructure. (Laurel St. No. 8-R, pp. 48-49.)

161. Husky's refineries in Lima, Ohio and Toledo, Ohio have previously produced fuel meeting the Pittsburgh-area low-RVP specifications for years and that this capability remains unchanged. (*See* Husky St. No. 1-R, pp. 4, 9-10.)

162. BP Products North America and ExxonMobil Oil Corporation also both confirmed that their refineries are fully capable of producing 7.8 psi low-RVP gasoline to satisfy the summertime Pittsburgh requirements. (*See* Laurel Exhibit KMS-14.)

163. PESRM's deliveries have declined significantly from 2006 to year-to-date 2017. (Laurel St. No. 5-R, p. 50, Figure 10.)

164. Outside the years 2014-15 which are not representative of the future because Sunoco was shut down and Allegheny Access was not yet in service, **[BEGIN HIGHLY CONFIDENTIAL]** [redacted]

[redacted] **[END HIGHLY CONFIDENTIAL]** (Laurel St. No. 5-R, p. 50, Figure 10.)

165. **[BEGIN HIGHLY CONFIDENTIAL]** [redacted] **[END HIGHLY CONFIDENTIAL]**

166. Monroe's Trainer refinery to points west of Altoona amount to only **[BEGIN HIGHLY CONFIDENTIAL]** [redacted] **[END HIGHLY CONFIDENTIAL]** (Laurel St. No. 5-RJ, p. 45.) The refinery has been producing **[BEGIN HIGHLY CONFIDENTIAL]** [redacted] **[END HIGHLY CONFIDENTIAL]** that would amount to only **[BEGIN HIGHLY CONFIDENTIAL]** [redacted] **[END HIGHLY CONFIDENTIAL]** of Monroe's output. (Hearing Tr. 1088:19-20)

167. Monroe sells its products FOB at **[BEGIN HIGHLY CONFIDENTIAL]** [redacted] **[END HIGHLY CONFIDENTIAL]**

168. Monroe's contracts show that it does not price its products specific to the Pittsburgh market; rather, Monroe receives **[BEGIN HIGHLY CONFIDENTIAL]** [redacted] **[END HIGHLY CONFIDENTIAL]**

169. PESRM **[BEGIN HIGHLY CONFIDENTIAL]** [redacted] **[END HIGHLY CONFIDENTIAL**

170. **[BEGIN HIGHLY CONFIDENTIAL]** [redacted] **[END HIGHLY CONFIDENTIAL]**

171. The evidence shows that (a) other markets are quite large relative to the displaced Monroe/PESRM volumes. (*See* Laurel St. No. 5-RJ at pp. 49-53; *see also* Hearing Tr. 482:2-483:5.)

172. The record shows that future displaced sales of former Pittsburgh-bound volumes is quite possible because in recent years, the refiners' counterparties have been expanding sales to other markets. (*See* Laurel St. No. 5-RJ at pp. 49-53; *see also* Hearing Tr. 482:2-483:5.)

173. The refiners' ability to market volumes via the Laurel system and Buckeye Pipe Line Company to upstate New York (Binghamton, Syracuse, Rochester and Buffalo) will be greatly expanded as a result of the proposed reversal, due to operational benefits arising from freed-up tankage on Laurel. (*See* Laurel St. No. 5-RJ at pp. 49-53; *see also* Hearing Tr. 482:2-483:5.)

174. The markets accessible to shippers originating at Philadelphia and delivering west to Altoona and north to Buffalo/Rochester dwarf the volumes being currently delivered to Pittsburgh. (Laurel St. No. 5-RJ, pp. 52-53.)

175. **[BEGIN HIGHLY CONFIDENTIAL]** [redacted] **[END HIGHLY CONFIDENTIAL]** (Laurel St. No. 5-RJ, p. 50.)

176. **[BEGIN HIGHLY CONFIDENTIAL]** [redacted] **[END HIGHLY CONFIDENTIAL]** conclude that the marginal barrel in the East Coast is the imported barrel. (*See also* Laurel St. No. 5-R, pp. 59-61.)

177. The operational result of Laurel's proposed reversal would also free up tanks at Laurel's Booth station. (Laurel St. No. 6-RJ, p. 6.)

178. The volume of product that could be transported from the refineries to upstate New York destinations on Buckeye pipelines would be increased. (Laurel St. No. 6-RJ, p. 6.)

179. The reversal would create approximately **[BEGIN HIGHLY CONFIDENTIAL]** [redacted] **[END HIGHLY CONFIDENTIAL]**

180. The incremental capacity would be equal to roughly **[BEGIN HIGHLY CONFIDENTIAL]** [redacted] **[END HIGHLY CONFIDENTIAL]** of the 2017 volumes moved by both Philadelphia refiners to the Pittsburgh market. (Hearing Tr. 587:20-588:13.)

181. Monroe has a number of significant transportation options, and will have access to many different markets beyond Philadelphia and nearby eastern Pennsylvania after the reversal. (Laurel St. No. 5-R, pp. 82-84; Laurel Exhibit RGV-3)

182. Many alternative markets are linked to the Monroe refinery by its affiliated pipeline, MIPC, which further connects to numerous pipelines, in addition to the Laurel system. (Laurel St. No. 6-RJ, pp. 14-15; Laurel Exhibit RGV-3.)

183. Monroe can transport volumes on Buckeye's "virtual" tariff service, allowing transportation of volumes injected into the Laurel system to New York Harbor. (*See, e.g.*, Laurel St. No. 6-RJ, p. 5; Laurel Exhibit RGV-4; Hearing Tr. 585:4-586:11.)

184. **[BEGIN HIGHLY CONFIDENTIAL]** [redacted] **[END HIGHLY CONFIDENTIAL]**

185. **[BEGIN HIGHLY CONFIDENTIAL]** [redacted] **[END HIGHLY CONFIDENTIAL]**

186. There is no pattern of constraints on the East Line. (Laurel St. No. 6-RJ, pp. 5-6.)

187. There is no evidence of constraints between the East Line and Harbor based on the Sunoco public bulletins governing constraints. (*See* Laurel St. No. 6-RJ at p. 15.)

188. The existence of constraints on the East Line would (a) only reduce volumes transported over the meter, not bar them; and (b) would not in any way limit an East Line Shipper from accessing Newark terminals attached to the East Line terminus. (Hearing Tr. 591:1-593:14.)

189. Harbor is generally available except for temporary constraints currently occurring during Sunoco's maintenance work on its 12" line. (Laurel St. No. 6-RJ, pp. 6-7.)

190. Shippers could utilize the Sunoco system by bypassing the 12” line between Twin Oaks and Montello by transporting on the Laurel system from Twin Oaks to Montello and then connecting to Sunoco for a set of markets in northern Pennsylvania and upstate New York. (*See, e.g.*, Laurel St. No. 6-RJ. p. 15.)

191. The MIPC website shows a connection between Monroe and Colonial and Colonial represented it could access Monroe in an application before FERC in 2000. (*See* Laurel St. 6-RJ, p. 16.)

192. **[BEGIN HIGHLY CONFIDENTIAL]** [redacted] **[END HIGHLY CONFIDENTIAL]**

193. If Monroe does not have current interconnection to Colonial, the facilities are proximately located and connections can either be built or reactivated. (Laurel St. No. 6-RJ, p. 16.)

194. The East Line provides access to Newark area terminals regardless of any constraints via Harbor. (Hearing Tr. 575:5-576:21.)

195. **[BEGIN HIGHLY CONFIDENTIAL]** [redacted] **[END HIGHLY CONFIDENTIAL]**

196. Monroe’s shippers are already incurring substantial transmix related charges on Laurel for transportation to Pittsburgh, and netting out the current transmix expenses with the Harbor projections shows they would not be substantially different. (Laurel St. No. 6-RJ, pp. 10-14.)

197. The transmix charges on the East Line are governed by the tariff and referenced posted transmix policy. (Laurel St. No. 6-RJ, p. 10; *see also* Laurel Exhibit No. RVG-9.)

198. PESRM can access multiple practical alternatives in addition to its access to the nearby Philadelphia and eastern Pennsylvania market (Laurel St. No. 6-RJ, pp. 16-20; Laurel Exh. No.RGV-1.)

199. **[BEGIN HIGHLY CONFIDENTIAL]** [redacted] **[END HIGHLY CONFIDENTIAL]**

200. Under the virtual tariff, PESRM or its shippers can nominate from the interconnection with the Laurel system to Linden, New Jersey, in the New York Harbor market. For shippers such as PESRM, it provides actual deliveries in New York Harbor where they can sell at New York Harbor prices. (Laurel St. No. 6-RJ, pp. 18-19; Laurel Exh. No. RGV-4 at 20-21.)

201. **[BEGIN HIGHLY CONFIDENTIAL]** [redacted] **[END HIGHLY CONFIDENTIAL]**. (Laurel St. No. 6-RJ, pp. 18-19.)

202. PESRM also has access to Colonial for pipeline transportation from its refinery to New York Harbor. (*See* Laurel St. No. 6-RJ, pp. 19-20.)

203. Colonial's official notices of prorationing show that for deliveries into New York Harbor, it has only infrequently been prorated, and thus can ship significant incremental volumes from Philadelphia. (*See* Laurel St. No. 6-RJ, pp. 19-20.)

204. PESRM has access to other pipelines, to local truck racks and to barge facilities. (*See* Laurel St. No. 6-RJ, p. 20; Laurel Exhibit RVG-10.)

205. Although PESRM lacks a direct connection to the Sunoco Pipeline system that extends from Philadelphia to many destinations in Pennsylvania and upstate New York, PESRM and/or its customers can access that system by shipping on Laurel to Montello and then connecting with Sunoco to its destinations. (Laurel Statement No. 6-RJ, p. 20.)

206. PESRM has touted its network of transportation options as granting it excellent market access. (*See* Laurel St. No. 5-R, pp. 56-57; Laurel St. No. 5-RJ, p. 48; *see also* (HC) Laurel Exhibit MJW-27, pp. 57.)

207. PESRM volumes are being moved by multiple alternatives and with considerable month-to-month variation in the use of alternatives. (Laurel C.E. Exhibit No. 11; Hearing Tr. 948:6-953:2.)

208. Monroe and PESRM have issued public and/or investor documents that tout their prospects and overall strong market position. (*See* Laurel St. No. 5-R, pp. 55-63; Laurel Exhibit MJW-9; *see also* Laurel St. No. 5-R, pp. 71-76; Laurel Exhibit MJW-15.)

209. **[BEGIN HIGHLY CONFIDENTIAL]** [redacted] **[END HIGHLY CONFIDENTIAL]**

210. Refineries are high fixed cost facilities and they are not likely to shut in production and idle plant in response to what would certainly be, at most, a reduction in price for some of their volumes. (Laurel St. No. 8-R, p. 40.)

211. **[BEGIN HIGHLY CONFIDENTIAL]** [redacted] **[END HIGHLY CONFIDENTIAL]**

212. Product from the East Coast will not be trucked from Altoona to Pittsburgh because it will be the higher cost product. (Laurel St. No. 5-R, pp. 86-87.)

213. Under the proposed changed in direction of service, the western portion of Laurel's pipeline facilities (*i.e.* points west of Eldorado) would be utilized by Buckeye to transport and deliver lower-priced Midwestern petroleum products to the public in Western and Central Pennsylvania pursuant to rates under Buckeye's FERC tariff. (Laurel St. No. 1, p. 23.)

214. The Capacity agreement filed as a part of this proceeding as Laurel Exhibit No. 2, supersedes and replaces the terms of a prior capacity agreement between Laurel and Buckeye, which was approved by the Commission in 1994, and the terms of an amendment to the 1994 Agreement, which was approved by the Commission in 2015. (Laurel St. No. 1, p. 24 (referencing prior affiliated interests agreements filed at Docket No. G-00940417).)

215. Pursuant to the Capacity Agreement, Buckeye will obtain from Laurel throughput capacity sufficient to transport up to 40,000 BPD of refined petroleum products between Eldorado, Pennsylvania and Buckeye's terminal facilities at Midland, Pennsylvania, and will reduce its capacity rights between Sinking Spring and Coraopolis, Pennsylvania, by the same quantity. (Laurel St. No. 1, p. 24.)

216. The Capacity Agreement applies the same capacity use charge for the Initial Term that was used in the prior Commission-approved agreements. (Laurel St. No. 1, p. 25.)

217. The Capacity Agreement applies the same capacity use charge for the Renewal Term that was used in the prior Commission-approved agreements. (Laurel St. No. 1, p. 25.)

218. The term of the proposed Capacity agreement is an initial ten year term followed by a year-to-year renewal term, which creates an evergreen agreement until a 30-day notice of cancellation. The existing capacity agreement had an extension term of 19 successive years and the amendment approved by the Commission in December 2015 modified those terms to provide Buckeye the option to extend the agreement annually. (Laurel Exhibit No. 2; IP St. No. 3, p. 30.)

219. Revenues are the product of volumes and the tariff rate; if, as expected, volumes continue to decline toward zero, then the revenues that Laurel would otherwise receive absent the reversal and Capacity Agreement do as well. (Laurel St. No. 1-R, pp. 32-35.)

220. The "credit" for non-use is an adjustment for operating expense that was approved in the prior agreement. (Laurel St. No. 1-R, p. 33.)

221. This credit was originally set at $0.05/barrel, subject to an inflation adjustment, to accurately reflect the variable operating cost of the pipeline. (Laurel St. No. 1-R, p. 33.)

222. When Buckeye ships below a certain minimum volume, Laurel does not incur pumping costs which are otherwise embedded within the capacity fee. (Laurel St. No. 1-R, p. 33.)

223. Section 6 of the Capacity Agreement provides that Buckeye will pay Laurel a $0.17/barrel charge for volumes in excess of the 14,600,000 annual barrels reserved. (Laurel Exhibit No. 2 (Capacity Agreement § 6); Laurel St. No. 1-R, pp. 34-35.)

224. While Laurel is subject to risk and Buckeye is subject to benefit through the credits for non-use, Laurel is subject to benefit and Buckeye is subject to risk through the charge for excess volumes. (Laurel Exhibit No. 2 (Capacity Agreement § 6); Laurel St. No. 1-R, pp. 34-35.)

225. Under the existing agreement, destinations in Western Pennsylvania are served by Laurel and, if interstate barrels are not set to the market under the Buckeye tariff and via the existing agreement, then the same demand is met by a PUC tariff delivery to the extent the volumes are supplied from the east. (Laurel St. No. 1-R, p. 34.)

226. After the reversal, the same terminals will be served on the Laurel system and any demand at these terminals will be met solely by Buckeye volumes, which will be included in the volumes generating revenues under the proposed Capacity Agreement. (Laurel St. No. 1-R, p. 34.)

227. The effective per barrel amount that Laurel received under the existing agreement was approximately $0.828/barrel. (Laurel St. No. 5-R, p. 13.)

228. The existing capacity use charge adequately compensates Laurel and demonstrates that the proposed capacity use charge is also reasonable; the terms of the existing charge are continued in the proposed Capacity Agreement. (Laurel St. No. 5-R, p. 13.)

229. Laurel is subject to safety inspections and regulation by the Pipeline and Hazardous Materials Safety Administration ("PHMSA"). (Laurel St. No. 11-R, p. 4.)

230. Regulations promulgated by the United States Department of Transportation ("US DOT") govern the design, construction, testing, operation and maintenance of pipelines, including integrity management of hazardous liquids pipelines. (Laurel St. No. 11-R, p. 4.)

231. In 2014, PHMSA issued its Guidance for Pipeline Flow Reversals, Product Changes, and Conversion to Service, which includes numerous specific safety elements that should be addressed as part of the reversal process. (Laurel St. No. 11-R, pp. 6-9).

232. The Laurel IRR sufficiently addresses the safety elements associated with the reversal project. (I&E St. No. 1-SR, p. 9.)

233. The Company provided a timeline for the specific steps identified in the IRR as part of its testimony (Laurel St. No. 4-RJ, p. 5, Figure 1), which was incorporated into the Partial Stipulation submitted in this proceeding on November 3, 2017. (Stipulation ¶ 10(a).)

234. The 2014 Guidance also includes notification requirements, which Laurel has already complied with. Notification must be given no later than 60 days before reversal of product flow that will last more than 30 days at 49 CFR 195.64(c)(1)(iii). Laurel made that notification on June 23, 2017. (Laurel St. No. 11-R, p. 5.)

235. In addition, when the cost of any changes on a pipeline exceed $10 million, including reversal of flow, PHMSA requires notification no later than 60 days before "construction or any planned rehabilitation, replacement, modification, upgrade or update of a facility other than a section of line pipe" at 49 CFR 195.64(c)(1)(i). While the costs for Laurel do not exceed the $10 million threshold, the larger Broadway project does exceed the threshold. (Laurel St. No. 11-R, p. 5.)

236. The company notified PHMSA consistent with its practice of working cooperatively with stakeholders, including PHMSA. (Laurel St. No. 11-R, p. 5.)

237. Under the Partial Stipulation, any Commission approval of Laurel's Application will be conditioned upon Laurel taking all safety actions identified in the Company's IRR. (Stipulation ¶ 10(a).)

238. Laurel agreed that the Commission's safety inspectors may inspect the Laurel pipeline, including review of the Company's compliance with the pre- and post-reversal actions identified in Figure 1. (Stipulation ¶ 10(b).)

Appendix B

APPENDIX B
PROPOSED CONCLUSIONS OF LAW

Laurel Pipe Line Company, L.P. ("Laurel" or the "Company") proposes the following conclusions of law:

1. The Pennsylvania Public Utility Code ("Code") does not apply, and cannot be construed to apply, to commerce among the several states. 66 Pa.C.S. § 104.

2. The Supremacy Clause of the United States Constitution invalidates state law that is contrary to or interferes with federal law. *Farina v. Nokia, Inc.*, 625 F.3d 97, 115 (3d Cir. 2010).

3. A state law that "stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress" shall be nullified under conflict preemption. *Crosby v. Nat'l Foreign Trade Council*, 530 U.S. 363, 373 (2000).

4. A federal decision to forgo regulation in a given area implies an authoritative federal determination that the area is best left unregulated, and in that event would have as much pre-emptive force as a decision to regulate. *Transcontinental Gas Pipe Line Corp. v. State Oil & Gas Bd.*, 474 U.S. 409, 422 (1986).

5. The 1906 Hepburn Act applied the federal Interstate Commerce Act ("ICA") to oil pipelines and gave the Interstate Commerce Commission jurisdiction over pipelines. Pub. L. No. 59-337, § 1, 34 Stat. 584, 584.

6. The ICA declares oil pipelines to be common carriers, 49 U.S.C. § 1(3) and imposes on pipelines many of the same obligations as other common carriers, including the duties to: provide and furnish transportation service upon reasonable request, id. § 1(4); establish, file, and publish just, reasonable and nondiscriminatory rates subject to federal

approval, id. §§ 1(5), 3(1), 6, 15(1), 15(7); avoid certain pooling relationships, id. § 5(1); and file certain financial reports and use certain accounting procedures subject to federal specifications, id. §§ 20(1), (2), (4), (5).

7. The ICA does not restrict oil pipelines' entry into a market, acquisitions, or commencement and abandonment of service. *Farmers Union Cent. Exch. v. FERC*, 584 F.2d 408, 413 (D.C. Cir. 1978).

8. However Laurel's proposed reversal is characterized – incorrectly, as an abandonment of service or provision of new service or, correctly, as a change in service in response to changing economics – it is clear that Congress intended pipelines to be able to make such decisions in response to market forces, free from public utility-type regulation.

9. The Commission's ability to require approval of reversal of the pipeline is preempted by federal law.

10. The Commerce Clause limits the power of the States to discriminate against interstate commerce. *New Energy Co. v. Limbach*, 486 U.S. 269, 273 (1988).

11. The Commerce Clause applies with equal weight to state regulation of utilities. *Ark. Elec. Coop. Corp. v. Ark. Pub. Serv. Comm'n*, 461 U.S. 375, 391 (1983).

12. State action that overtly blocks the flow of interstate commerce at a State's border constitutes invalid state protectionism. *Philadelphia v. New Jersey*, 437 U.S. 617, 624 (1978).

13. A Commission order prohibiting reversal would block the interstate flow of petroleum products to Altoona by making Laurel's pipeline unavailable to Midwest refiners, some of whom have already contracted to transport their products into Pennsylvania, and instead require Laurel to continue serving primarily in-state refiners.

14. Such an order is patently discriminatory against interstate commerce.

15. A Commission order prohibiting reversal of the pipeline would run afoul of the Commerce Clause of the United States Constitution, U.S. Const. art. I, § 8, cl. 3.

16. The burden of proof, also known as the burden of persuasion, means a duty to establish a fact by a preponderance of the evidence. *Se-Ling Hosiery v. Margulies*, 364 Pa. 45, 70 A.2d 854 (1950); *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n*, 578 A.2d 600, 602 (Pa. Cmwlth. 1990).

17. Laurel, as the Applicant, has the burden of proof with respect to its proposals in this proceeding. 66 Pa.C.S. § 332(a).

18. A party that makes a proposal that is not included in the applicant's case bears the burden of proof as to its proposal. *Pa. P.U.C. v. Metropolitan Edison Company, et al.*, Docket Nos. R-00061366, et al., 2007 Pa. PUC LEXIS 5 (January 11, 2007); *Joint Default Service Plan for Citizens' Electric Company of Lewisburg, PA and Wellsboro Electric Company for the Period of June 1, 2010 through May 31, 2013*, Docket Nos. P-2009-2110798, et al., 2010 WL 1259684 at *2, 19-20 (February 25, 2010).

19. The Indicated Parties have the burden of proof with respect to their proposals in this proceeding. 66 Pa.C.S. § 332(a).

20. If a party presents evidence found to be of greater weight than the other parties, then the party will have carried its burden of proof. *Morrissey v. Commonwealth of Pennsylvania*, 424 Pa. 87, 225 A.2d 895 (1986); *Burleson v. Pa. P.U.C.*, 501 Pa. 433, 436, 641 A.2d 1234, 1236 (1983); *V.J.R. Bar Corp. v. P.L.C.B.*, 480 Pa. 322, 390 A.2d 163 (1978); *Milkie v. Pa. P.U.C.*, 768 A.2d 1217, 1220 (Pa. Cmwlth. 2001).

21. Laurel is a "public utility," specifically a "common carrier," as defined under Section 102 of the Code. 66 Pa. C.S. § 102.

22. Traditional public utilities hold certificates which grant them a monopoly in an exclusive geographic service territory. *See Painter v. Pa. Pub. Util. Comm'n*, 169 A.2d 113, 115 (Pa. Super. 1961); *Re Lukens Steel Company*, 58 Pa. PUC 256, 1984 Pa. PUC LEXIS 62, at *12-13 (Order Entered Jan. 13, 1984).

23. Common carriers do not hold certificates which grant them a monopoly in an exclusive geographic service territory. *Susquehanna Area Reg'l Airport Auth. v. Pa. Pub. Util. Comn'n*, 911 A.2d 612, 619 (Pa. Cmwlth. 2006) (citing 66 Pa. C.S. § 1101), *pet. for allowance of appeal denied by* 923 A.2d 412 (Pa. 2006).

24. Laurel's certificate does not grant it a monopoly in an exclusive geographic service territory.

25. Laurel must be analyzed under the Code as a common carrier, because it competes with alternative means of transporting petroleum products in Pennsylvania.

26. A common carrier's ability to provide service successfully is largely a function of the marketplace. *Susquehanna Area Reg'l Airport Auth.*, 911 A.2d at 619.

27. The Commission may not regulate competition among common carriers. *Susquehanna Area Reg'l Airport Auth.*, 911 A.2d at 620.

28. No Commission approval of Laurel's proposed reversal is required because Laurel is a common carrier that is permitted to repurpose its asset in response to changing market conditions.

29. Section 1101 of the Code states that "[t]he commission's certificate of public convenience granted under the authority of this section shall include a description of the nature of the service and of the territory in which it may be offered, rendered, furnished or supplied." 66 Pa. C.S. § 1101 (emphasis added).

30. Section 1103(a) of the Code states that "The commission, in granting such certificate, may impose such conditions as it may deem to be just and reasonable." 66 Pa. C.S. § 1103(a).

31. Laurel was broadly authorized to provide petroleum products transportation service in and across Pennsylvania.

32. At the time it issued Laurel's certificate of public convenience, the Commission did not require Laurel to provide petroleum products transportation service either in a specific direction, or at or between specific origin and destination points.

33. Laurel's proposed reversal is not an abandonment of service nor a change of service for which a certificate of public convenience is required.

34. The Indicated Parties' interpretation of Laurel's certificate is inconsistent with Laurel's status as a common carrier, and Sections 1101 and 1103(a) of the Code.

35. The term "service" is defined under Section 102 of the Code. 66 Pa. C.S. § 102.

36. Section 102 states:

> Subject to additional definitions contained in subsequent provisions of this part which are applicable to specific provisions of this part, the following words and phrases when used in this part shall have, unless the context clearly indicates otherwise, the meanings given to them in this section.

66 Pa. C.S. § 102.

37. The Indicated Parties' interpretation of service under Sections 102 and 1102 of the Code is incorrect.

38. To the extent the Commission determines that certificate approval of Laurel's proposed reversal is required, a certificate of public convenience shall be granted by order of the commission, only if the commission shall find or determine that the granting of such certificate is

necessary or proper for the service, accommodation, convenience, or safety of the public." 66 Pa C.S. § 1103(a).

39. The primary consideration in applying Section 1103 of the Code is whether granting the application is in the public interest. *See, e.g.*, *Application of Sunoco Pipeline, L.P.*, Docket Nos. A-2013-2371789, P-2013-2371775 (Order entered Aug. 29, 2013); *Phila. Suburban Water Co. v. Pa. Pub. Util. Comm'n*, 229 A.2d 748 (1967); *Pa. R. Co. v. Pa .Pub. Util. Comm'n*, 184 A.2d 111 (Pa. Super. 1962); *Pittston Gas Co. v. Pennsylvania Pub. Util. Comm'n*, 154 A.2d 510 (Pa. Super. 1959).

40. To the extent the Commission adopts a specific formulation of the public interest, the "affirmative public benefits" test is applicable. *See Application of Sunoco Pipeline, L.P.*, Docket Nos. A-2013-2371789, P-2013-2371775, at p. 7 (Order entered Aug. 29, 2013); *Application of Buckeye Pipe Line Company, L.P.*, Docket No. A-140110F2000, at p. 3 (Order Entered March 7, 2005); *see also City of York v. Pa. Pub. Util. Comm'n*, 295 A.2d 825, 828 (Pa. 1972); *see also Popowsky v. Pa. Pub. Util. Comm'n*, 937 A.2d 1040, 1055-57 (Pa. 2007).

41. Under the affirmative public benefits test, a project need not be "absolutely necessary" to be in the public interest. *Hess v. Pa. Pub. Util. Comm'n*, 107 A.3d 246, 262 (Pa. Cmwlth. 2014).

42. Under the affirmative public benefits test, the need and benefits of a project may, and in reality must, be based on future projections. *Hess v. Pa. Pub. Util. Comm'n*, 107 A.3d 246, 262 (Pa. Cmwlth. 2014); *Popowsky v. Pa. Pub. Util. Comm'n*, 937 A.2d 1040, 1056 (Pa. 2007).

43. Under the affirmative public benefits test, an applicant is not required to precisely quantify benefits or savings from a project or proposal. *Popowsky v. Pa. Pub. Util. Comm'n*, 937 A.2d 1040, 1055-57 (Pa. 2007).

44. Laurel's proposed reversal has substantial affirmative public benefits and will not harm the public.

45. Laurel's proposed reversal is necessary or proper for the service, accommodation, convenience, or safety of the public and, therefore, in the public interest.

46. Any information and issues related to the potential to reverse the flow of Laurel's pipeline to points east of Eldorado are irrelevant to this proceeding. *Application of Verizon North Inc.*, 2009 Pa. PUC LEXIS 1858, at *10-11 (Order entered Sept. 24, 2009).

47. To the extent the Commission determines a multi-factor abandonment standard is applicable to Laurel's proposed reversal, the Commission typically considers several factors when evaluating a public utility's request to abandon service, including: (a) the extent of the loss to the utility; (b) the prospect of future use by the public; (c) the loss to the utility balanced with the convenience and hardship to the public upon discontinuance of such service; and (d) the availability and adequacy of alternative service. *See Borough of Duncannon v. Pa. Pub. Util. Comm'n*, 713 A.2d 737, 740 (Pa. Commw. 1998).

48. The Commission "must weigh these factors and not focus on mere cost-benefit criteria." *Borough of Duncannon*, 713 A.2d at 740 (emphasis added).

49. The factors the Commission may consider are non-exclusive and merely "among the factors to be considered in determining the existence or nonexistence of public convenience and necessity in abandonment of service." *Commuters' Committee v. Pa. Pub. Util. Comm'n*, 88 A.2d 420, 424 (Pa. Super. 1982).

50. The primary consideration by the Commission is whether the proposed abandonment is in the public interest. *See* 66 Pa. C.S. § 1103(a).

51. In weighing the multiple factors under the multi-factor abandonment test, the benefits of Laurel's proposed reversal are overwhelming and the public harms of its reversal are non-existent.

52. Laurel has demonstrated that its proposed reversal is in the public interest, and should be approved.

53. To the extent the Commission's review of the proposed affiliated interest agreement is not pre-empted by federal law and does not burden interstate commerce, Commission approval any contract between a public utility and an affiliated interest is governed by Section 2102 of the Code. 66 Pa. C.S. § 2102(a).

54. An affiliated interest agreement must be shown to be reasonable and in the public interest in order to be approved. 66 Pa. C.S. § 2102(b)-(c).

55. The proposed affiliated interest agreement between Laurel and Buckeye Pipe Line Company, L.P. is reasonable and in the public interest.

Appendix C

APPENDIX C
PROPOSED ORDERING PARAGRAPHS

Laurel Pipe Line Company, L.P. ("Laurel" or the "Company") proposes the following ordering paragraphs:

1. The Pennsylvania Public Commission lacks jurisdiction over Laurel's proposed reversal as described in its Application. Therefore, no approvals by the Commission are required.

2. Laurel's proposed reversal, as described in its Application, is not an abandonment of service or change in service for which Laurel is required to obtain a certificate of public convenience. Therefore, no approvals by the Commission are required.

3. Laurel's proposed reversal is necessary or proper for the convenience, accommodation or safety of the public, is in the public interest and, therefore, Laurel's Application is approved without modification.

4. The proposed Affiliated Interest Agreement between Laurel and Buckeye Pipe Line Company, L.P. is reasonable and in the public interest and, therefore, approved without modification.