ECKERT SEAMANS
ATTORNEYS AT LAW

Eckert Seamans Cherin & Mellott, LLC
213 Market Street
8th Floor
Harrisburg, PA 17101

TEL 717 237 6000
FAX 717 237 6019
www.eckertseamans.com

Karen O. Moury
717.237.6036
kmoury@eckertseamans.com

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Via Hand Delivery
Rosemary Chiavetta, Secretary
PA Public Utility Commission
PO Box 3265
Harrisburg, PA 17105-3265

Re: Application of Laurel Pipeline 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

Dear Secretary Chiavetta:

On behalf of Husky Marketing and Supply Company enclosed for filing please find its Reply Brief with regard to the above referenced matter. Please note the Reply Brief contains Highly Confidential information and should be handled accordingly. I have also provided a Public Version of the Reply Brief. Hard copies to be served in accordance with the attached Certificate of Service.

Sincerely,

Karen O. Moury
KOM/lww

Enclosure

cc: Hon. Eranda Vero w/enc.
Cert. of Service w/enc.

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

REPLY BRIEF OF

HUSKY MARKETING AND SUPPLY COMPANY

PUBLIC VERSION

Karen O. Moury (PA ID #36879)
Carl R. Shultz (PA ID #70328)
Eckert Seamans Cherin & Mellott, LLC
213 Market Street, 8th Floor
Harrisburg, PA 17101
Phone: 717.237.6000
Fax: 717.237.6019
kmoury@eckertseamans.com
cshultz@eckertseamans.com

Dated: December 21, 2017

Attorneys for
Husky Supply and Marketing Company

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I. INTRODUCTION

Husky Marketing and Supply Company ("HMSC") submits this Reply Brief in response to the Main Brief of the Indicated Parties. HMSC's Main Brief, which is incorporated herein by reference, addresses and refutes many of the points made by the Main Brief of the Indicated Parties. This Reply Brief focuses on a narrow subset of issues raised by the Indicated Parties so that HMSC may correct certain misstatements and further explain how the evidence in this proceeding demonstrates that the proposed reversal ("Broadway II") is responsive to market forces and would enable the movement of higher volumes of competitively-priced refined petroleum products from refineries in the Midwestern United States ("Midwest") into Pennsylvania, ultimately benefitting consumers in Western and Central Pennsylvania.

Specifically, this Reply Brief addresses the following issues and facts: (i) it is indisputable that refineries in the Midwest have recently gained access to abundant, cost advantaged crude supply, which will be made available to consumers in Western and Central Pennsylvania through the Laurel reversal, putting downward pressure on retail prices; (ii) HMSC, which is a consistent low poster of rack prices for substantial volumes of gasoline shipped from the Midwest into Pittsburgh, has made significant commitments and investments to enhance its ability to compete in Western Pennsylvania and to enable it to compete in Central Pennsylvania, delivering competitively-priced petroleum products to those areas; (iii) HMSC did not rely on any price projections in the disputed study[1] in deciding whether to make commitments to the Laurel reversal through a transportation service agreement ("TSA"), and, in fact, could not have relied on any such price projections due to the release of the disputed study after HMSC made this commitment; (iv) Midwest refineries are capable of supplying the Pittsburgh area with sufficient quantities of low

[1] Tr. 1169-1170, 1290.

RVP gasoline; and (v) product exchanges in the Pittsburgh area are a feasible alternative to pipeline access from the East following the reversal.

In short, the Indicated Parties ignore the clear advantages of allowing greater volumes of Midwest refined products from cheaper crude oils to be delivered into Pennsylvania. Through approval of the Application of Laurel Pipeline Company, L.P. ("Laurel"), the Commission would enable the petroleum products industry to respond to economic conditions and competitive market forces, to the benefit of consumers.

II. STATEMENT OF THE QUESTIONS INVOLVED

HMSC incorporates by reference Section II of its Main Brief, page 2.

III. PROCEDURAL HISTORY

HMSC incorporates by reference Section III of its Main Brief, page 2.

IV. STATEMENT OF FACTS

In presenting their Statement of the Case, the Indicated Parties have taken unusual liberties with the purported "facts," in an apparent attempt to mislead the Commission into believing that hearsay evidence properly excluded from the record by the Administrative Law Judge ("ALJ") would somehow support their claim that the Laurel reversal would result in increased consumer prices. Specifically, the Indicated Parties rely on an unsubstantiated hearsay statement made on November 8, 2017 by their witness, Daniel Arthur, (about a third-party study that the ALJ later excluded from the record as hearsay evidence) to support the assertion that "Husky did a study before entering into the open season contracts and concluded that prices were going to increase in Pittsburgh."[2] The Indicated Parties propose this finding of "fact" despite the unrefuted testimony

[2] Indicated Parties' Main Brief at 20, 160-166; Indicated Parties' Proposed FF at ¶¶ 168, 171, 360, 361, 367, 368, 369, 370, 371. The disputed study was produced by HMSC in discovery, was offered into the record by the Indicated Parties during cross examination of HMSC's witness and was excluded from the record by the ALJ as inadmissible hearsay on November 13, 2017. Tr. 784-786, 1235.

of HMSC witness, Jerome P. Miller, on November 13, 2017 demonstrating that it would have been impossible for HMSC to rely on the disputed study since HMSC committed to the Laurel reversal on October 18, 2016, before the disputed study was presented to HMSC in November 2016. Tr. 1238. Indeed, the ALJ appropriately recognized during the hearing that since HMSC's commitment to Broadway II was made prior to release of the disputed study, HMSC could not have and did not rely on the study in making shipping commitments in the TSA. Tr. 1288.

Blatantly ignoring this undisputed timeline of events, the Indicated Parties cling in their Main Brief to the refuted double hearsay testimony of their witness about a study that was later excluded from the record to claim that Husky entered into the TSA because prices were going to increase in Pittsburgh. The Indicated Parties then link their erroneous claim to their arguments regarding the effect of the Laurel reversal on prices that Pittsburgh consumers will pay.[3] Yet, this very conclusion for which they seek to rely on the excluded study was contradicted by one of their own witnesses when Monroe Energy, LLC ("Monroe Energy") witness, Tracy Sadowksi, predicted that the reversal would cause prices to fall. Tr. 1129-1130. Moreover, nothing in the record suggests that the disputed study even examined the effect of the Laurel reversal on consumer prices. In fact, as Mr. Miller explained, the disputed study was not related to the Laurel reversal at all but rather was commissioned by HMSC to generally review markets in conjunction with HMSC planning to take ***BEGIN CONFIDENTIAL*** [redacted] ***END CONFIDENTIAL*** of product out of its Joint Venture Toledo Refinery three months later. Tr. 1260-1261. In fact, the study itself referenced its purpose as the Joint Venture Toledo Refinery. Tr. 1282.

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[3] Indicated Parties' Main Brief at 20, 160-166; Indicated Parties' Proposed FF at ¶¶ 168, 171, 360, 361, 367, 368, 369, 370, 371.

Also, during his deposition, Mr. Miller did not suggest that the disputed study led to any HMSC decision but rather generally referred to four different studies that he had drawn from to support the points he made in his rebuttal testimony. These points included the cheaper crude oil input costs for Midwest refineries; the expectation that volumes from the Midwest to the East will continue to be price-advantaged and competitive; and refinery capacity in the Midwest. Indicated Parties' Cross Ex. 16 at 25, 27-28, 34, 49. Indeed, Mr. Miller explained during the hearing that he did not agree with certain findings in the disputed study while noting that he in fact did agree with other conclusions including those relating to declining demand in PADD 2 and supply demand dynamics. Tr. 1261, 1284-1285.

Clearly, the record in this proceeding does not support the "fact" alleged by the Indicated Parties that based upon findings of a study commissioned by HMSC, it decided to commit to the reversal and support Laurel's application. Indeed, for the Indicated Parties to make this assertion in their Statement of the Case, which is directly contrary to the undisputed timeline of events in the record, demonstrates the depths to which they will go in their advocacy to urge the Commission to insulate them from the natural effects of economic conditions and market forces.

V. BURDEN OF PROOF

HMSC incorporates by reference Section V of its Main Brief, page 4.

VI. SUMMARY OF REPLY ARGUMENT

The Commission should not allow any of the issues raised by the Indicated Parties in their Main Brief to preclude Laurel from responding to market forces and enabling the movement of competitively-priced petroleum products from Midwest refineries to consumers in Western and Central Pennsylvania. Through their Main Brief, the Indicated Parties essentially ignore or discount the reality that Midwest refineries have recently gained access to abundant, cost advantaged crude supply. They also fail to recognize that under widely-accepted economic theories of supply and demand, enhanced access to lower-cost Midwest supplies would cause consumer prices to fall. In short, lower cost crude oil equates to lower cost gasoline. While some of these low-cost supplies are already reaching Pittsburgh, the proposed reversal would expand access by the Midwest refineries to the Pittsburgh area – through the Laurel pipeline and Buckeye terminals – and would allow the Midwest refineries to compete in the Central Pennsylvania area, including Harrisburg.

It is undisputed that HMSC is a significant low poster of rack prices for significant volumes of gasoline shipped from the Midwest into Pittsburgh. It is also undisputed that HMSC has made compelling investments in continuing to serve this market and expand into Central Pennsylvania, delivering competitively-priced products demanded by the public. Due to well-established supply and demand dynamics, industry trends involving the growing movement of supply from the Midwest into Pittsburgh are expected to continue. The Midwest refineries are capable of serving the Pittsburgh area with the low RVP gasoline in the amounts that are needed, and no evidence supports the Indicated Parties' contentions that the prices for such gasoline would be higher than they are today. In addition, product exchanges are a feasible alternative following the reversal. Finally, any loss of arbitrage in Pittsburgh will not cause consumer prices to rise, and such a result is directly contrary to the evidence in the record showing the downward pressure on consumer prices that will result from the reversal, including the testimony of Monroe Energy's own witness.[4]

Deferring to the market to determine the appropriate direction in which products should flow on Laurel's pipeline would be consistent with the Commission's stated policies for the electric, natural gas and transportation industries. The Commission has expressly recognized the importance of facilitating competition and encouraging free markets. Through allowing Laurel's

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[4] HMSC Main Brief at 13-23.

reversal, the Commission can ensure that consumers receive the benefits of the cheap crude oils that are abundantly available to the Midwest refineries.

VII. REPLY ARGUMENT

A. Whether PUC Approval is Required for the Reversal.

HMSC incorporates by reference Section VII.A. of its Main Brief, pages 7-11.

B. If PUC Approval Is Required, What Standard Should Apply In Determining Whether The Reversal Is In The Public Interest?

HMSC incorporates by reference Section VII.A. of its Main Brief, page 12.

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

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

In its Main Brief, HMSC described the benefits of the proposed reversal as allowing for increased utilization of Laurel's pipeline between Eldorado and Pittsburgh. As explained by HMSC, the industry is seeing a continuing trend of large volumes of product movements from the Midwest to the East, with the expectation that they will continue to be price-advantaged and competitive. Characterizing Broadway II as a market-driven solution to the disruptive changes occurring in the market, HMSC pointed to a series of events, including growing access by Midwest refineries to abundant, cost advantaged crude supply; the declining volumes of products being transported from the East, with supply and demand dynamics pushing Midwest products eastward; and the continued investments in Midwest refineries, contrasted with the closure of and lack of investment in East Coast refineries.[5]

[5] HMSC Main Brief at 13-14.

The Indicated Parties attempt to minimize these industry trends that are well-documented by evidence in the record, including studies published by the U.S. Energy Information Administration ("EIA"), by describing the shipper commitments as ***BEGIN HIGHLY CONFIDENTIAL*** [redacted] ***END HIGHLY CONFIDENTIAL.***

The opponents of the Laurel reversal also describe the shippers' commitments as ***BEGIN HIGHLY CONFIDENTIAL*** [redacted]

6 Indicated Parties' Main Brief at 145-146.

7 Indicated Parties' Main Brief at 148.

8 Indicated Parties' Main Brief at 84.

9 *Id.*

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

Additionally, Mr. Miller emphasized the importance of Altoona as a destination, "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." Tr. 1180. He also explained the ability to truck products from Altoona to points east, including Harrisburg. Tr. 1208. Based on these opportunities to expand into Central Pennsylvania, Mr. Miller described the TSA with Laurel as a long-term commitment to this region. HMSC St. 1 at 5; Tr. 1179-1980.

Notwithstanding the doubts of the Indicated Parties about the commitments of shippers to utilize the segment of pipeline between Pittsburgh and Eldorado, the record demonstrates a strong desire of shippers to move generally lower-priced petroleum products from the Midwest into Pennsylvania. Over the last two years, most notably with the opening of Sunoco's Allegheny Access pipeline in late 2015, the movement of Midwest supply into Pittsburgh has increased substantially. HMSC St. 1-RJ at 10. Specifically, recent expansions have allowed consumers in Pittsburgh to access approximately 207,000 barrels per day of Midwestern supply via a combination of Marathon's pipeline which has a capacity of 32,000 barrels per day, Sunoco's Allegheny Access pipeline which has a capacity of 85,000 barrels per day, and Buckeye's pipeline, including the Broadway I expansion, which has a capacity of 90,000 barrels per day. HMSC St. 1-R at 6, 7; Laurel St. No. 5 at 17. Indeed, 18 months after Allegheny Access came on line, 65 percent of the volume of the East Coast refineries shipped into Pittsburgh was replaced with supply from Midwest refineries. Tr. 1249. During that time, East Coast supply has dropped from 100,000 to 40,000 barrels per day. HMSC St. 1-RJ at 10. HMSC witness Miller described these trends as "compelling," noting his expectation they will continue as the market rationalizes. *Id*; Tr. 1254.

Further evidence of these compelling trends and the expectation that they will continue are the significant investments by HMSC. As explained by Mr. Miller, HMSC made a commitment to the Sunoco Allegheny Access pipeline in the amount of ***BEGIN HIGHLY CONFIDENTIAL*** [redacted] ***END HIGHLY CONFIDENTIAL*** in transportation costs over a ten year period. Tr. 1198. On top of that investment is the ***BEGIN HIGHLY CONFIDENTIAL*** [redacted] ***END HIGHLY CONFIDENTIAL*** commitment in transportation costs over a ten year period to the Laurel reversal. Tr. 1198. Further, HMSC recognizes the need to secure its place in the competitive market, which is why Husky is investing hundreds of millions of dollars in the Lima Refinery to make it more modern and more efficient. Tr. 1246, 1248. In contrast to the huge amounts of investments in the refineries in the Midwest, a number of East Coast refineries have closed and continue to struggle. HMSC's witness has not observed any efforts underway by the East Coast refineries to make themselves more efficient or to sustain themselves for the future, despite the fact that refining is a very difficult industry involving high temperatures, high pressures and high volumes, which cause equipment to wear out quickly. Tr. 1249-1250 Mr. Miller also stressed the importance of access to lower price feedstock costs to a refinery's ability to successfully compete in the market. Tr. 1249-1250. *See also* HMSC Ex. JPM-3 at 11; HMSC Ex. JPM-4 at 3-5.

Seeking to undermine the need for the Laurel reversal to get higher volumes of cheap crude from the Midwest into Pennsylvania, the Indicated Parties also contend that Midwest refineries already have access to the Pittsburgh area that is not being fully utilized.[10] However, this assertion overlooks the fact that the trends described above are expected to continue as the market rationalizes. HMSC St. 1-RJ at 10; Tr. 1253. The Indicated Parties' argument likewise fails to recognize the fact that HMSC's ability to sell product in any market includes not only the pipeline, but what can be put through the terminals. Specifically, as explained by HMSC witness Miller, customers may want to go certain terminals and may not wish to use other terminals for various reasons, such as the location and/or size of the terminal. With Broadway II, HMSC would have another pipeline into the Pittsburgh area and would also gain access to larger terminals in a better locations for customers. Indeed, Broadway II would double HMSC's terminal count, enhancing its ability to serve Western Pennsylvania. Tr. 1181-1182.

b. Access to Cost-Advantaged Crude Supply Will Produce Public Benefits.

In its Main Brief, HMSC explained that crude barrels are cheaper in the Midwest as compared to the East. HMSC St. 1-RJ at 11. A key reason for this result is the access by the Midwest to cheap crude slates, as shown by the Wood Mackenzie Study. Laurel Ex. MJW-21. In addition, HMSC pointed to two EIA studies as demonstrating that the overall capacity and utilization of the Midwest refineries are increasing. Specifically, due to the development of

10 Indicated Parties' Main Brief at 81-82, 84.

cheaper sources of Canadian crude and "the emergence of light, tight crude oil in the United States," Midwest refineries have "access to abundant, cost-advantaged crude supply, providing opportunities to optimize crude slates and expand refinery capacity and utilization." HMSC Ex. JPM-4 at 1. As these trends are driven by the proximity of the Midwest to increasing cost-advantaged crude streams from Bakken production and Western Canada, HMSC witness Miller expects that the Midwest refiners will continue to invest to process more cost-advantaged crude and the Midwest region will move from balanced in supply to long in supply. This expectation aligns with the decreasing demands observed by the PADD 2 study. HMSC Ex. JPM-4 at 2-4. Simply stated, the use of lower priced feedstock crudes by the Midwest refineries — even with transportation costs to supply product to Western and Central Pennsylvania — results in lower prices.[11]

The Indicated Parties largely ignore these realities and attendant benefits of the Laurel reversal to Pennsylvania, suggesting that the only winners will be Buckeye and its Midwest refinery allies.[12] Refusing to acknowledge the trends toward lower wholesale gasoline prices in the Midwest compared to the East,[13] the Indicated Parties cling to the hope that the crude oil price advantages that Midwest refiners have enjoyed over Eastern refiners is "in the past."[14]

While the Indicated Parties' own business interests may be better served by ignoring the very real trends that are occurring in the petroleum products industry, the Commission would be better served to recognize that the Midwest refineries enjoy a crude oil price advantage over Eastern refiners, which can flow to more Pennsylvanians through the reversal. To the extent that

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11 HMSC Main Brief at 16-17, 19.

12 Indicated Parties' Main Brief at 120.

13 Indicated Parties' Main Brief at 15.

14 Indicated Parties' Main Brief at 74.

the Eastern refineries would cede market share to Midwest refineries it is not by "regulatory fiat," as suggested by the Indicated Parties,[15] but rather is the result of these real-life market forces at play giving Pennsylvania an opportunity take advantage of the access that Midwest refiners have to lower-cost crude oils.[16] It is an unrefuted fact that the WTI crude sourced by HMSC is cheaper per barrel than Brent crude sourced by the East Coast refineries; around the time of Mr. Miller's testimony, WTI crude was $6.76 cheaper per barrel than Brent crude. Tr. 1254. This differential is a main driver of future economic conditions, as well as HMSC's commitment to the Laurel reversal (Tr. 1254), and should be the main driver of the Commission's decision on whether to allow the proposed reversal to move forward in response to market forces.

2. <u>Laurel's Proposed Reversal Will Not Harm The Public</u>

a. <u>Loss of East Coast Supplier to the Pittsburgh Market</u>

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

In its Main Brief, HMSC explained that Midwest refineries operate more efficiently and less expensively than the East Coast refineries such that access to these refineries would put downward pressure on the prices of petroleum products in Western and Central Pennsylvania. This result is due to access to an abundance of competitively-priced feedstock crudes and their efficient utilization and operation. The additional eastbound pipeline capacity from the Midwest would provide consumers in Western and Central Pennsylvania increased access to generally lower-priced Midwestern gasoline and petroleum products.

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15 Indicated Parties' Main Brief at 79.

16 HMSC Main Brief at 13-17.

The Indicated Parties contend in their Main Brief that the Pittsburgh market will be harmed by the reversal, relying heavily on the loss of arbitrage opportunities.[17] Specifically, the Indicated Parties suggest that "conditions require wholesalers to pass on arbitrage savings, resulting in lower gasoline prices at the pump."[18] Quite to the contrary, however, no evidence was produced by the Indicated Parties to provide a link between arbitrage opportunities and lower gasoline prices at the pump. In fact, HMSC witness Miller made it clear that the mere existence of an arbitrage opportunity does not translate into lower gasoline prices for consumers at the pump. Indeed, the EIA studies explain that prices paid by consumers at the gasoline pump are typically set in comparison to prices at other retail outlets or are set a cost plus the desired margin by large chain stores that are focused on selling large volumes of gasoline at low margins. HMSC Ex. JPM-3 at 24. As Mr. Miller testified, "it is clear that a few wholesalers reap these benefits and therefore the loss of such benefits should not drive a decision on whether the Laurel reversal is completed." HMSC St. 1-RJ at 2.

(ii) *The Reversal Is Expected To Cause Prices to Fall.*

Contrary to the claims of the Indicated Parties that the reversal will have an adverse effect on prices, their own witness Sadowski projected that the reversal would cause prices to fall.[19] With more volumes of lower priced fuel coming into the market due to increased competition, Monroe Energy, as explained by Ms. Sadowski, would reduce throughput "because prices will fall in such a way that it won't be economical" for Monroe Energy to continue to supply product. Tr. 1130.

The pricing benefits of increasing the movement of Midwest supply into Pennsylvania are clearly supported by other evidence in the record of this proceeding. In 2014, prior to

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17 Indicated Parties' Main Brief at 87-91.

18 Indicated Parties' Main Brief at 20.

19 HMSC Main Brief at 18-19.

commissioning of the Allegheny Access pipeline, the Oil Price Information Service ("OPIS") low prices for Pittsburgh gasoline were 2.53 cents per gallon ("cpg") over Chicago. HMSC St. 1-RJ at 11. Then in 2015, after the Allegheny pipeline was commissioned, bringing midcontinent supply in, Pittsburgh gasoline was priced 3.56 cpg under Chicago, which is an over 6 cpg swing in pricing in just one year and benefitted the consumer. HMSC St. 1-RJ at 11. Indeed, HMSC is currently providing the Pittsburgh area with competitively-priced supply. The pricing data presented in this proceeding demonstrates that HMSC consistently posts the lowest prices for spot sales of gasoline at the Pittsburgh rack terminals. By contrast, the eastern suppliers posted the OPIS-low price less frequently for spot gasoline sales over the same period.[20]

Additionally, Laurel witness Scott T. Jones explained that bringing additional sources of lower cost Midwest supplies to Pittsburgh is the underlying economic motivation of the project and the reason why Pittsburgh consumers are likely to benefit. Laurel St. 7-RJ at 3. As he observed, when "wholesalers of refined products compete with each other for market share, in part by seeking to introduce new, lower cost sources of supply," the outcome "is to the benefit of retail consumers as competition drives toward marginal costs." Laurel St. 7-RJ at 4. He went on to explain as follows:

> For example, when competition among suppliers leads to the removal of a transportation bottleneck, it benefits suppliers who now have access to the market, but it may harm those suppliers who previously enjoyed preferential access and the resulting higher prices. Consumers benefit when market prices come down.

Laurel St. 7-RJ at 4. Indeed, based on information presented by the Indicated Parties, Laurel witness Jones estimates that consumer prices in Pittsburgh will fall by at least give cents per gallon post-reversal. Tr. 688.

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20 HMSC Main Brief at 20.

(iii) Adequate Supplies Of Low-RVP Gasoline Will Continue To Reach Pittsburgh If Laurel's Reversal Is Approved

In its Main Brief, HMSC addressed the concerns raised by the Indicated Parties in testimony about the availability of low-RVP gasoline from the Midwest refineries, explaining that a significant amount of HMSC-marketed gasoline is already sold in the Pittsburgh area, complying with its low-RVP requirements in the summer. Further, HMSC intends to continue supplying the area. Specifically, as a fuel marketer in Western Pennsylvania, HMSC supplies the current summer product specification of 7.8 psi RVP gasoline for the seven counties in the Pittsburgh area (Allegheny, Armstrong, Beaver, Butler, Fayette, Washington, and Westmoreland).[21]

Comparing the volumes of low RVP gasoline that HMSC shipped to Pittsburgh in 2017 to Pittsburgh's total average gasoline demand, the Indicated Parties raise doubts about Midwest refineries meeting the full demand.[22] Notably, HMSC never claimed to have shipped any particular percentage of Pittsburgh's total average gasoline demand. Rather, Mr. Miller explained during his deposition that the volumes being shipped by HMSC represent its current market share. Indicated Parties' Cross Ex. 16 at 36. In no way, however, do those volumes represent the total capability HMSC has to ship low RVP gasoline to Pittsburgh. Indeed, Mr. Miller added that the Refineries are capable of producing more or less. *Id.* Because similar low-RVP requirements have existed in Detroit, Cincinnati and Dayton metropolitan areas, the Refineries have produced fuel meeting these specifications in prior years. HMSC St. 1-R at 10. The Refineries are capable of producing gasoline that meets the low-RVP specification for Western Pennsylvania and other remaining low-RVP areas. HMSC St. 1-R at 10. In short, low-RVP conventional gasoline is sourced from the Midwest, and is produced and available in the Midwest. HMSC St. 1-R at 10.

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21 HMSC Main Brief at 18.

22 Indicated Parties' Main Brief at 100-108; FF ¶ 217.

D. Analysis Under the Multi-Factor Abandonment Test.

One of the factors that is considered under the multi-factor abandonment test is the availability and adequacy of the service that would replace Laurel's existing east to west service.[23] An option that has been offered in this proceeding as possible substitute for Laurel's pipeline service from Altoona to Pittsburgh is a product exchange. In its Main Brief, HMSC highlighted the availability of product exchanges in the event of the reversal of the pipeline, explaining their effectiveness in the petroleum products industry in permitting shippers to access markets without physical pipeline connectivity. For example, HMSC witness Miller explained that HMSC uses product exchanges when it has physical connectivity to Location A but not Location B, and HMSC's counterparty has connectivity to Location B, but not Location A. In this situation, an exchange takes place with offsetting volume plus a differential to account for differences in market value at the respective locations.[24]

The Indicated Parties contend that the Commission should disregard the fact that product exchanges are a feasible alternative to shipping products on the Laurel pipeline to Pittsburgh. This contention is based on their assertion that neither Laurel nor HMSC was able to establish that product exchanges are a viable or practical option for marketers in the Pittsburgh area. Specifically, the Indicated Parties claim that product exchanges are useful only when geographical differences exist, but do not work when price and product differences exist. Arguing that the "experience of the actual marketers participating in this proceeding confirms the unavailability of product exchanges within the Pittsburgh market," the Indicated Parties point to HMSC witness Miller's testimony that he has not personally completed a product exchange in the Pittsburgh

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23 Laurel Main Brief at 176.

24 HMSC Main Brief at 24.

market within the last ten years. Similarly, they refer to testimony of Sheetz, Inc. ("Sheetz") witness Lorenz and Gulf Operating, LLC ("Gulf") witness Johnston who testified that they have never completed a product exchange in Pittsburgh.[25]

With twenty years of experience in the petroleum products industry, HMSC witness Miller emphasized that no obstacles exist to doing an exchange in the Pittsburgh area. Tr. 1195. Testifying that product exchanges are common in the petroleum industry, Mr. Miller explained 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," and noted that this adjustment is referred to in the industry as a "location differential." HMSC St. 1-R at 13. Clearly, in equalizing the value difference, this product exchange is feasible despite differences in prices and products.

Further, HMSC witness Miller has personally handled product exchanges in the Pittsburgh area with multiple counterparties. HMSC St. 1-R at 12. The fact that he has not personally handled such matters during the last ten years is the result of changes in his specific job responsibilities. HMSC St. 1 at 1-2; HMSC Ex. JPM-1; Indicated Parties' Cross Ex. 16 at 42-43. Moreover, Mr. Miller pointed out that HMSC typically does exchanges with parties who have refineries, not parties like Gulf or Sheetz who would need to buy from a refiner. HMSC St. 1-RJ at 15. In short, the record supports a finding that product exchanges are a feasible alternative in the Pittsburgh area and that the Indicated Parties' claims to the contrary are based on nothing more than the speculation of a couple of their witnesses who would have no reason to engage in product exchanges with refiners.

E. Is the Capacity Use Agreement Reasonable And In The Public Interest?

HMSC incorporates by reference Section VII(E) of its Main Brief, page 24.

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25 Indicated Parties' Main Brief at 136-139; Indicated Parties FF at ¶ 354.

F. Does the Proposed Reversal Raise Any Pipeline Safety Issues to be Addressed by the Commission?

HMSC incorporates by reference Section VII(F) of its Main Brief, page 24.

G. Other Issues

The Indicated Parties argue that their offer of proof, the disputed study, should be admitted into the record.[26] However, the ALJ properly excluded this evidence on the basis that it is hearsay since the Indicated Parties seek to rely on the disputed study to argue that HMSC decided to support the Laurel reversal due to price projections contained in the study. Tr. 1235. Astoundingly, the Indicated Parties seek to advance this argument despite, as explained in Section IV of this Reply Brief, the study was released after HMSC committed to Broadway II and therefore it would have been impossible for HMSC to rely on any findings in the study before making that commitment.

Arguing that the disputed study is not hearsay because it is not being offered for the truth of the matter asserted, the Indicated Parties contend that the disputed study should be admitted into the record "as evidence of the intentions and motivation" driving HMSC's support for Laurel's Application.[27] However, Mr. Miller left no room for doubt as to the intentions and motivation driving HMSC's support for the Laurel reversal. He unequivocally stated, "We want to compete." Tr. 1255. HMSC has never hidden the reasons behind its support of Laurel's Application. As a marketer, HMSC is in the business of selling petroleum products. Mr. Miller explained that HMSC

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26 Indicated Parties; Main Brief at 20, 160-166; Indicated Parties' FF at ¶¶ 168, 171, 360, 361, 367, 368, 369, 370, 371.

27 Indicated Parties' Main Brief at 162. The Indicated Parties appear to invoke the "state of mind" exception to the hearsay rule. Traditionally, that exception applies to a **declarant's** state of mind, emotion, sensation or physical condition such as intent, plan, motive, design, mental feeling, pain, and bodily health. Pa. R. Evid. 803(3). Under the common application of this hearsay exception, a **declarant's** writings can be used to establish his own state of mind, but the state of mind of another. Since a third party was the author (declarant) of the report, the report cannot be used to the show the "state of mind" of HSMC.

wants a fair opportunity to expand its presence in the Pittsburgh area and to provide products in Central Pennsylvania that the market is demanding. HMSC St. 1-R at 9-10; HMSC St. 1-RJ at 14; Tr. 1249, 1255. Gaining an ability to compete, to expand its presence and to transport additional products into Pennsylvania naturally translate into earning more profits. For the reasons noted by Laurel witness Jones, a shipper would only make a commitment to the project if it expected to earn money. Laurel St. 7-RJ at 7. In the case of Midwest refineries with access to an abundance of low-cost supply, those lower costs will enable them to make money in Western and Central Pennsylvania. Obviously, as evidenced by HMSC's commitment in October 2016, prior to the release of the disputed study in November 2016, HMSC did not need the disputed study to conclude that it would be profitable for it, due to the access by its Refineries to an abundance of low-cost crude, to expand its presence in the Pittsburgh area and move products into Central Pennsylvania.

Despite their claims to the contrary, the Indicated Parties are seeking to rely on the disputed study for the truth of the matter asserted, i.e. that the reversal will result in increased prices. This intent is evidenced by the Indicated Parties' proposed findings of fact related to the disputed study.[28] Importantly, however, to the extent that the disputed study references prices, it does not make any predictions about consumer prices. As Mr. Miller explained during the hearing, netbacks are the profits earned by the refineries, after subtracting their costs from the selling price. Tr. 1256. Given the lower cost of crude oil available to the Midwest refineries, and the significance of that cost component, shippers committing to the project naturally expect to be able to deliver products to Pittsburgh at below market prices. Tr. 1254; Laurel St. 7-RJ at 7. A refinery's netback is not

[28] Indicated Parties FF ¶¶ 168, 171, 360, 361, 367, 368, 369, 370, 371.

indicative of retail prices, which are generally set in comparison to other retail outlets. HMSC Ex. JPM-3 at 24.

Even if the disputed study were admitted into the record, any conclusions therein regarding the impact of the reversal on prices could not be relied upon by the Commission in making findings of fact. It is well-settled that even when hearsay evidence is admitted, it is given its natural probative effect and may support a finding of the agency <u>only if it is corroborated by competent evidence in the record</u>.[29] A finding of fact based solely on hearsay will not stand.[30] Here, not only was this hearsay evidence uncorroborated, it was directly refuted by evidence presented by both Laurel and the Indicated Parties' witnesses. As predicted by Monroe witness Sadowski, and corroborated by Laurel witnesses, the Laurel reversal will result in lower prices at the pumps. Tr. 588, 1129-1130; Laurel St. 7-RJ at 3-4; Laurel Ex. MGW-23.

VIII. CONCLUSION

HMSC respectfully requests that the ALJ and the Commission (1) permit Laurel — either by declaring that no certificate of public convenience is required by Laurel or by granting a certificate of public convenience to Laurel — to (a) reverse flow on part of the Western Pennsylvania portion of its pipeline system to allow petroleum products to move in an eastbound direction to the Altoona destination point known as "Eldorado" and (b) to file tariff supplements in the form set forth in Attachment C to the Application, to become effective upon at least one day's notice; and (2) approve the subject Affiliated Interest Capacity Agreement.

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29 *Pa. Pub. Util. Comm'n., Bureau of Investigation & Enforcement v. Yellow Cab Co. of Pittsburgh*, Docket No. 2012-2249031, 2013 WL 5912555 (Initial Decision served October 24, 2013 at 3; adopted in relevant part by Commission Order entered February 6, 2014).

30 *Walker v. Unemployment Compensation Board of Review*, 367 A.2d 366, 370 (Pa. Cmwlth. 1976). *See also Anderson v. Pa. Dep't. of Pub. Welfare*, 79 Pa. Cmwlth. Ct. 182, 468 A.2d 1167 (1983); *Jackson v. PECO Energy Co.*, Docket No. F-2013-2351046 (July 5, 2013).

Respectfully submitted,

Karen O. Moury (PA ID #36879)
Carl R. Shultz (PA ID #70328)
Eckert Seamans Cherin & Mellott, LLC
213 Market Street, 8th Floor
Harrisburg, PA 17101
Phone: 717.237.6000
Fax: 717.237.6019

Dated: December 21, 2017

Counsel for Husky Supply and Marketing Company

CERTIFICATE OF SERVICE

I hereby certify that this day I served a copy of Husky Marketing and Supply Company's Reply Brief upon the persons listed below in the manner indicated in accordance with the requirements of 52 Pa. Code Section 1.54. Because the Main Brief contains highly confidential information, a redacted copy is being served on those persons who have not signed the stipulated protective agreement.

Via Email and First Class Mail:

David B. MacGregor, Esq.
Anthony D. Kanagy, Esq.
Garrett P. Lent, Esq.
Post & Schell, P.C.
17 North Second Street, 12th Floor
Harrisburg, PA 17101-1601
dmacgregor@postschell.com
akanagy@postschell.com
glent@postschell.com

Jonathan D. Marcus, Esq.
Daniel J. Stuart, Esq.
Marcus & Shapira LLP
One Oxford Centre, 35th Fl.
301 Grant Street
Pittsburgh, PA 15219-6401
jmarcus@marcus-shapira.com
stuart@marcus-shapira.com

Robert A. Weishaar, Jr., Esq.
McNees Wallace & Nurick LLC
1200 G Street, NW, Suite 800
Washington, DC 20005
bweishaar@mcneeslaw.com

Andrew Levine, Esq.
Stradley Ronon Stevens & Young, LP
2600 One Commerce Square
Philadelphia PA 19103
alevine@stradley.com

Alan M. Seltzer, Esq.
John F. Povilaitis, Esq.
Buchanan Ingersoll & Rooney, PC
409 N. Second St., Suite 500
Harrisburg, PA 17101-1357
alan.seltzer@bipc.com
john.povilaitis@bipc.com

Christopher J. Barr, Esq.
Jessica R. Rogers, Esq.
Post & Schell, P.C.
607 14th St., N.W., Suite 600
Washington DC 20005-2000
cbarr@postschell.com
jrogers@postschell.com

Michael Swindler, Esq.
Heidi L. Wushinske, Esq.
Bureau of Investigation & Enforcement
Commonwealth Keystone Building
400 North Street, 2nd Floor West
P.O. Box 3265
Harrisburg, PA 17105-3265
mswindler@pa.gov
hwushinske@pa.gov

Susan E. Bruce, Esq.
Adeolu A. Bakare, Esq.
Kenneth R. Stark, Esq.
McNees Wallace & Nurick LLC
100 Pine Street
P.O. Box 1166
Harrisburg, PA 17108-1166
sbruce@mcneeslaw.com
abakare@mcneeslaw.com
kstark@mcneeslaw.com

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SECRETARY'S BUREAU

Kevin J. McKeon, Esq.
Todd S. Stewart, Esq.
Whitney E. Snyder, Esq.
Hawke McKeon & Sniscak LLP
100 North Tenth Street
Harrisburg, PA 17101
kjmckeon@hmslegal.com
tsstewart@hmslegal.com
wesnyder@hmslegal.com

Richard E. Powers, Jr., Esq.
Joseph R. Hicks, Esq.
Venable LLP
575 7th Street, NW
Washington DC 20004
repowers@venable.com
jrhicks@venable.com

Via Email Only:

Joseph Otis Minott, Esq.
E. Logan Welde, Esq.
Clean Air Council
135 S. 19th St., Suite 300
Philadelphia, PA 19103
Joe_minott@cleanair.org
lwelde@cleanair.org

NO CONFIDENTIAL MATERIALS

Dated: December 21, 2017

Karen O. Moury, Esq.