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VIA HAND DELIVERY

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor
Harrisburg, PA 17120rr

Re: Application of Laurel Pipe Line Company, L.P. for Approval to Change Direction of Petroleum Products Transportation Service to Delivery Points West of Eldorado, Pennsylvania, Docket No. A-2016-2575829

Affiliated Interest Agreement between Laurel Pipe Line Company, L.P. and Buckeye Pipe Line Company, L.P., Docket No. G-2017-2587567

Dear Secretary Chiavetta:

Enclosed for filing with the Pennsylvania Public Utility Commission are the both HIGHLY CONFIDENTIAL and PUBLIC Versions of the Reply Brief of the Indicated Parties on behalf of Gulf Operating, LLC, Philadelphia Energy Solutions Refining & Marketing, LLC, Sheetz, Inc., Monroe Energy, Inc., and Giant Eagle, Inc., in the above-reference proceeding.

As shown by the attached Certificate of Service, all parties to this proceeding are being duly served. Thank you. .

Very truly yours,

Alan M. Seltzer

Alan M. Seltzer

AMS/tlg
Enclosure
cc: Administrative Law Judge Eranda Vero (via E-Mail and First-Class Mail)
Certificate of Service

PUBLIC

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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December 21, 2017

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I. INTRODUCTION

Gulf Operating, LLC ("Gulf"), Sheetz, Inc. ("Sheetz"), Philadelphia Energy Solutions Refining & Marketing LLC ("PESRM"), Monroe Energy, LLC ("Monroe Energy"), and Giant Eagle, Inc. ("Giant Eagle") (collectively, the "Indicated Parties") hereby submit this Reply Brief to the Pennsylvania Public Utility Commission ("PUC" or "Commission") in opposition to the Application of Laurel Pipe Line Company, L.P. ("Laurel") filed at the above-captioned docket on November 14, 2016 ("Application").

Laurel currently transports petroleum products from points of origin near Philadelphia, Pennsylvania, westerly to destination points across the Commonwealth, terminating west of Pittsburgh, Pennsylvania.[1] In addition to the intrastate shipments, Laurel assigns a portion of its pipeline capacity to Buckeye Pipe Line Company, L.P. ("Buckeye") for interstate transportation service from origin points in New Jersey and Delaware to destination points in Pennsylvania.[2]

In its Application, Laurel claimed it has authority without Commission approval to change the direction of its petroleum products transportation service over the portion of its system extending westward from Eldorado[3], Pennsylvania, to the western boundary of Pennsylvania.[4] Alternatively, Laurel requested all necessary Commission approvals authorizing its proposed change in direction.[5] In its Main Brief, Laurel now for the first time argues that the Commission is preempted by law from reviewing the Application and the associated Capacity Use Agreement that would allow Buckeye to use the Eldorado to Midland portion of the Laurel pipeline.

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[1] Laurel Exhibit No. 1 (Application) at 2. Technically, and under the current Laurel tariff, the westernmost delivery point on the Laurel system is Midland. The proposed reversal would apply to the service that is currently being provided from points east of Eldorado to all current delivery points west of Eldorado, to and including Midland.
[2] Laurel Exhibit No. 1 (Application) at 2.
[3] The Indicated Parties use Eldorado and Altoona interchangeably in this Reply Brief.
[4] Laurel Exhibit No. 1 (Application) at 2.
[5] *Id.*

The Application proposes to dramatically modify the jurisdictional pipeline transportation service currently provided by Laurel by eliminating service to all points west of Eldorado (near Altoona) from the east.[6] Laurel proposes that Buckeye will use the pipeline facilities west of Eldorado to receive interstate deliveries originating from origin points in the Midwest and in the Pittsburgh area to Eldorado.[7] Importantly, the Application claims that these deliveries would be "on Laurel's pipeline at Federally-approved interstate rates," rather than PUC-regulated rates.[8]

II. BURDEN OF PROOF

The Burden of Proof Section of Laurel's Main Brief recites the cases that typically are cited in ALJ and Commission decisions. However, beginning at the bottom of page 9, Laurel goes seriously astray in suggesting that the "burden" it must "prove" is to satisfy the "substantial public interest test." This is incorrect for all the reasons stated in the Indicated Parties' Main Brief.[9] To the contrary, the appropriate legal test for the abandonment of service proposed here is the test for the utility abandonment of service.[10]

Laurel then cites *Pa. P.U.C. v. Metropolitan Edison Co.*, Docket No. R-00061366 (Order entered January 11, 2007), for the proposition that any party offering a proposal that is not in the utilities' filing bears the burden of proof regarding such new proposal. While Laurel makes no further reference to this case law in its Reply Brief, it appears that Laurel is preparing to once again "sandbag" the Indicated Parties and accuse them of having made a new proposal and failing to meet the burden of proof for such proposal. There is nothing in the Indicated Parties case that constitutes a proposal that is new or outside their responses to Laurel's minimalistic

[6] Laurel Exhibit No. 1 (Application) at 9.
[7] *Id.*
[8] *Id.*
[9] Indicated Parties Main Brief at 39-49; *see also infra* Section IV.B.
[10] *Id.* at 39; *see also infra* Section IV.D.

direct case. The Indicated Parties argue only that Laurel has failed to meet all statutory and regulatory standards for its requested relief. Laurel failed to address all of the categories of issues that are required to show that its abandonment of service is in the public interest, such as the plethora of harm that will result if the reversal were to be approved. These are not new proposals, as Laurel's burden of proof section would suggest, but instead factors of the service abandonment test for which Laurel bears the burden of proof. To the extent Laurel alleges the Indicated Parties bear the burden of proof on any topic in this proceeding, it is wrong.

III. SUMMARY OF REPLY ARGUMENT

After more than a year of litigation, thousands of pages of discovery, five rounds of testimony, and a week-long evidentiary hearing, Laurel's Main Brief unveils a new argument that it apparently believes will deliver a knock-out punch to both this Commission and the Indicated Parties, i.e., that any action by this Commission to reject Laurel's Application and related Capacity Use Agreement would run afoul of the Supremacy Clause and Commerce Clause of the U.S. Constitution. Laurel's last minute invocation of meritless constitutional arguments reeks of desperation. Neither the Supremacy Clause nor the Commerce Clause prohibits the Commission from entering an order rejecting Laurel's proposed reversal.

It has been settled law for over a century that the Interstate Commerce Act *does not* preempt state regulation of *intra*state oil pipelines like the one at issue here. Indeed, that is why this Commission has been properly exercising its jurisdiction to regulate the Laurel pipeline since 1957. Congress only granted the Federal Energy Regulatory Commission ("FERC") authority over *interstate* oil pipeline tariffs and rates. By design, Congress left regulation of *intra*state pipelines, including certification and service abandonment, to the states. An order from this Commission denying Laurel's Application to abandon its east-to-west *intrastate* pipeline service between Altoona and Pittsburgh would not conflict with FERC approved tariffs and rates and, therefore, would not violate the Supremacy Clause. Laurel's preemption argument runs counter to the overwhelming weight of authority.

Laurel's dormant Commerce Clause argument is similarly hollow. It begins with a demonstrably wrong factual premise—namely, that an order rejecting the reversal will "block" the flow of interstate petroleum products at the Pennsylvania border. But no conceivable forthcoming order from this Commission would prevent interstate petroleum products from entering Pennsylvania via interstate pipelines in the exact same fashion they can today. Laurel's Main Brief also ignores overwhelming precedent establishing that state regulation of intrastate oil pipeline transportation services does not implicate dormant Commerce Clause concerns. Instead, Laurel recycles ill-conceived arguments that have been resoundingly rejected by numerous courts.

Perhaps even more troubling, Laurel's last-minute invocation of these two constitutional doctrines directly contradicts Laurel's position in this case for the past year. Laurel is now arguing that *even if* the reversal is an abandonment of service, the Commission *still* does not have jurisdiction to reject the Application. However, by having invoked the Commission's authority to consider the Application without any reference to the potential lack of Commission jurisdiction because of the new Supremacy or Commerce Clause arguments,[11] Laurel itself has *necessarily admitted* that there is no Supremacy or Commerce Clause problem; after all, if the Commission were constitutionally prohibited from rejecting the Application, then it would not matter whether the reversal is an abandonment—the Commission would have no authority regardless. This is probably why Laurel's legal and regulatory experts (including a lawyer and former Commission Chairman) did not testify that the Commission lacked authority to stop the

[11] At best, the Application implies only that the Commission should not exercise any authority over the proposed reversal due to Laurel's characterization of the scope of its 1957 vintage CPC, not that the Commission lacks all jurisdiction under Supremacy or Commerce Clause.

reversal if it constituted an abandonment of service. Quite to the contrary, Laurel's witnesses testified at length about the legal standards they think the Commission should apply in exercising jurisdiction to rule on the service abandonment issue.

If Laurel's preemption and Commerce Clause arguments were correct (and they are not), it will have caused one of the largest misallocations of resources ever seen by the Commission. Laurel could have sought a declaratory order on these threshold constitutional issues before initiating litigation, or it could have moved for summary judgment at the close of testimony. Or, if Laurel really believed it was on firm constitutional ground, it could have decided to just go ahead and reverse the pipeline upon mere notification to the Commission. Of course, Laurel did none of these things, opting instead to invoke the Commission's jurisdiction, engage in contentious and sprawling litigation for over a year, and then reveal threshold constitutional arguments for the first time *after* the record was closed. Laurel's conduct does not just toe the line of bad faith. It also betrays a manifest lack of confidence in its evidence and witnesses. Laurel has thrown two brand new constitutional arguments against the metaphorical wall hoping they will stick. They do not.

The critical fact the Commission should not overlook is that the Laurel pipeline is owned by Laurel, a state regulated public utility that has been providing nothing other than *intrastate* petroleum pipeline service from east to west across Pennsylvania since 1957. Laurel's original Application sought and received authorization from the Commission in Pennsylvania to provide intrastate pipeline transportation service. That is all the Commission could ever authorize. It is Laurel's corporate parent/affiliate, Buckeye, that has provided (and now apparently wants to expand) interstate service via the Laurel pipeline. Importantly, that interstate service is permitted and continues solely at the behest of supposedly arms-length capacity agreements between

Laurel and its Buckeye affiliate. Laurel – as a Pennsylvania regulated public utility --- is in complete control over whether and on what terms any entity is permitted to use Laurel's pipeline to provide *interstate* transportation service of petroleum products. As discussed further, *infra* at Section IV. E., the proposed new Capacity Use Agreement is the critical gateway for allowing Buckeye to provide expanded *interstate* services along Laurel's clearly certificated *intrastate* pipeline. Buckeye can only provide those interstate services because Laurel, as a state regulated public utility, has no FERC tariff or other authorization to provide any interstate services.

The ALJ and Commission should note that Laurel and the Indicated Parties have proposed very different frameworks for evaluating the pending Application. To arrive at Laurel's ultimate conclusion that the Laurel pipeline reversal should be approved, the significant historical and current volumes shipped on the Laurel pipeline from the East coast origins to Pittsburgh must be ignored *and* the ALJ and Commission must agree with Laurel that future volumes of service on the portion of the pipeline proposed for reversal several years into the future can be predicted with sufficient accuracy to make a finding that they will definitely go to zero. Then, under Laurel's decisional framework, the ALJ and Commission must also make esoteric and far reaching findings regarding the relative costs of producing petroleum products between Midwest refineries and Eastern refiners, future levels of crude oil costs and predictions on how cost savings will manifest in wholesale product prices, whether the Midwest refiners will have sufficient product to supply the Pittsburgh market, what the reversal will do to Pittsburgh and Central Pennsylvania fuel prices, and whether the Eastern refineries' profitability or survival will be affected by the reversal. The Indicated Parties have responded to all of Laurel's contentions on these issues and shown how many of Laurel's proposed findings lack a credible and substantial basis.

However, the Indicated Parties framework for deciding this proceeding is different from Laurel's and does not require the ALJ and Commission to be clairvoyant about a host of issues that amount to predicting the entire future of the petroleum products industry in the United States in order to adjudicate this proceeding.

In contrast to Laurel, the decisional framework for this case advocated by the Indicated Parties is rooted in the Commission's traditional abandonment of service standard that calls for application of its customary expertise. The Commission does not have to make findings, as Laurel proposes, such as determining whether Brent crude costs will be higher or lower than West Texas Intermediate crude costs in the future. The Indicated Parties respectfully suggest that what the Commission actually needs to decide in this case is (i) whether Laurel's customers are using the pipeline transportation service Laurel is currently providing, (ii) whether customers intend to continue using the service, (iii) whether Laurel has shown the reversal is necessary to avoid economic loss to a public utility, (iv) whether current customers have adequate alternatives to Laurel's service and (v) whether Laurel's proposed abandonment of service is more likely to harm or benefit existing customers and the public interest. To resolve these issues, it is not necessary for the Commission to decide which part of the world has cheaper crude, how much it costs Midwest refiners to produce low RVP gasoline, what PADD 3 suppliers will do if there is a PADD 2 supply shortage or guess how much gasoline Midwest refiners will decide to send to Pittsburgh post reversal. The Indicated Parties' experts have responded to all of Laurel's assumptions on these points; however, the ALJ and Commission should not take the "bait" Laurel has dangled and decide extraneous issues that Laurel has presented in its effort to rationalize a proposal that is all about increasing Buckeye's (not Laurel's) revenues, and not at all about what is in the public interest.

IV. REPLY ARGUMENT

A. The Commission Has Jurisdiction Over The Application And The Proposed Capacity Use Agreement.

1. Federal Law Does Not Preclude Commission Jurisdiction.

Laurel invoked this Commission's authority to decide its Application more than a year ago, and since then the parties have vigorously litigated the legal issues raised therein, exchanged five rounds of testimony and thousands of pages of discovery, and conducted a week-long evidentiary hearing. Laurel even employed two legal and regulatory experts to opine on the appropriate scope of the Commission's authority. Yet neither Laurel nor its hired experts raised or even mentioned the Supremacy Clause or the Commerce Clause until its Main Brief on December 4, 2017, when Laurel, for some reason, decided to make these constitutional claims the centerpiece of its case.

As explained in detail below, neither the Supremacy Clause nor the Commerce Clause prohibits the Commission from entering an order rejecting Laurel's proposed reversal. Though these arguments are meritless and can be readily rejected; Laurel's tactic in waiting more than a year to raise them straddles the line of bad faith and directly contradicts Laurel's position for the past year. Laurel argued in its Application and throughout this entire proceeding that the Commission lacked authority to prohibit the reversal because (according to Laurel), the proposed reversal is not an "abandonment of service" requiring any changes to Laurel's Certificate of Public Convenience ("CPC").[12] Now, however, Laurel is arguing for the first time that the Supremacy and Commerce Clause prohibit the Commission from acting on the Application *even*

[12] Laurel Main Brief at 34-52 (Section VII.A.2); Exhibit No. 1 (Application), at 13. Laurel's Application was admitted into the record and, therefore, it can be considered "evidence" of the "fact" that even Laurel does not believe that this Commission's authority is preempted by Congress or that Commission action would run afoul of the dormant Commerce Clause. 52 Pa. Code § 5.405(b) ("Except as provided in subsection (c) and in the case of a non-contested proceeding, a pleading, or any part thereof may not be considered as evidence of a fact other than that of filing thereof *unless offered and received into evidence*.").

if the reversal is an abandonment of service (and it is). But by having invoked the Commission's authority to consider the abandonment question (and the application of related legal tests), Laurel itself has *necessarily admitted* that there is no Supremacy or Commerce Clause problem; after all, if the Commission is legally prohibited from rejecting the Application, then it would not matter whether the reversal is an abandonment of service—the Commission would have no authority regardless.[13]

Laurel's legal and regulatory experts evidently agree that these newly raised constitutional questions are not in play. Laurel witness Thomas, a lawyer and former Commission Chairman, testified that the "appropriate standard of review" for the Commission should be the "general public benefits test."[14] If Mr. Thomas believed that *any* denial of the reversal would run afoul of the constitution, he surely would have testified that there should be *no standard of review* by the Commission.[15]

If Laurel truly believed the Commission has no legal authority whatsoever to prohibit its proposed reversal, why did Laurel not file a complaint for a declaratory order with the Commission over a year ago asking the Commission to rule on these threshold legal issues? Why did Laurel not file a Motion for Summary Judgment after the pleadings were closed in this proceeding and *before* the start of lengthy and contentious evidentiary hearings during which the ALJ and the parties spent untold hours and resources in litigation? Or better yet, if Laurel is so confident in its constitutional footing, why did Laurel not just reverse the pipeline and start

[13] Laurel also now argues that the Commission has no jurisdiction to review its proposed Capacity Use Agreement with Buckeye despite the fact that it submitted testimony defending the terms of that agreement. Laurel Main Brief, at 181.

[14] Laurel Statement No. 9-R at 7:5-8.

[15] Similarly Laurel witness Dr. Kleit testified that "the Commission's duty to protect the public interest in this instance would involve maintaining competition in the petroleum products transportation market and protecting stakeholders against anticompetitive behavior." If Dr. Kleit believed the Commission was constitutionally precluded from stopping the reversal under the Supremacy or Commerce Clause, he certainly would have testified that the Commission's only "duty" was to step aside or risk violating the Constitution. Laurel St. No. 10-R at 20:10-12.

providing interstate service from west-to-east between Pittsburgh and Eldorado with just a notification to the Commission? The answer to these rhetorical questions is quite easy. Laurel knows these are meritless arguments.

Laurel's constitutional arguments are a thinly veiled threat meant to distract the Commission from vigorously examining the evidence presented in this proceeding.[16] The Commission should not be so intimidated.

a. Federal law does not preempt the Commission from asserting jurisdiction over, and denying, Laurel's Application to reverse its intrastate petroleum pipeline.

Laurel first claims that federal law preempts the Commission from regulating Laurel's current intrastate pipeline because of its desire to create an interstate pipeline in the future with its parent company, Buckeye.[17] Laurel is asking this Commission to disregard the historical "presumption against preemption" in favor of a finding that Congress' deliberate decision *not* to regulate certification and/or abandonment of *intra*state oil pipelines is actually clear evidence that Congress intended to leave *intra*state oil pipelines wholly unregulated by any government authority (notwithstanding the fact that states have exercised regulatory authority over intrastate oil pipelines for more than a century).[18] In so arguing, Laurel ignores substantial legal authority showing that the Commission's exercise of jurisdiction over Laurel's Application—and its potential denial of that Application—is firmly within its power.

[16] Laurel has also waived any Supremacy or Commerce Clause arguments because they exceed the scope of its Application and are not related to any testimony (party or expert) that was provided in this proceeding. 52 Pa. Code § 5.501(a)(2) ("Briefs must contain … [r]eference to the pages of the record or exhibits where the evidence relied upon by the filing party appears."). Laurel does not, and cannot, cite to any place in the record where it even made arguments about the Supremacy or Commerce Clause, let alone provided "evidence" to the Commission sufficient to evaluate such arguments

[17] Laurel Main Brief at 24-29.

[18] *Medtronic Inc. v. Lohr*, 518 U.S. 470, 486 (1996) ("because the States are independent sovereigns in our federal system, we have long presumed that Congress does not cavalierly pre-empt state-law causes of action. … In all pre-emption cases, and particularly in those in which Congress has legislated . . . in a field which the States have traditionally occupied, … we start with the assumption that the historic police powers of the States were not to be superseded by the Federal Act unless that was the clear and manifest purpose of Congress").

It is undisputed that "[t]he Interstate Commerce Act ["ICA"] does not contain explicit preemptive language."[19] However, by its own terms, the ICA does *not* apply to oil pipeline transportation "wholly within one State and not shipped to or from a foreign country."[20] When the Supreme Court in 1913 first considered whether the ICA preempted state regulation, it clearly held and understood that Congress expressly excluded "purely intrastate traffic" from the ICA's reach.[21] Thus, it is now axiomatic that "the ICA was not intended to intrude on the power of the states to regulate intrastate commerce."[22] Laurel's failure to even identify a single provision of the ICA that allegedly preempts the Commission from regulating the direction of flow of this pipeline is a fatal error that, in and of itself, requires rejection of Laurel's argument.

FERC—the agency Congress charged with regulating interstate oil pipeline tariffs and rates—unambiguously concurs and recognizes that federal policy toward interstate oil pipelines does not preempt state regulations concerning certification and abandonment of *intra*state

[19] *National Steel Corp. v. Long*, 718 F. Supp. 622, 625 (W.D. Mich. 1989) *aff'd*, *Ntl. Steel Corp. v. Mich. Pub. Serv. Comm'n*, 919 F.2d 38 (6th Cir. 1990) ("*National Steel Appeal*").

[20] 49 U.S.C. §1(2). *See also Simpson v. Shepard*, 230 U.S. 352, 418-19 (1913) (holding that the ICA does *not* preempt state regulation of intrastate carriers in part because the ICA "*excluded from the provisions of the act that transportation which was 'wholly within one State*,'"); *id.* at 418 ("When in the year 1906 ... Congress amended the act so as to confer upon the Federal commission power to prescribe maximum interstate rates, the proviso in section one was reenacted."). As Laurel's Brief points out, the ICA was applied to oil pipelines in 1906. Laurel Main Br. at 25-6.

[21] *Simpson*, 230 U.S. at 418. *See also Texas v. Eastern T. R. Co.*, 258 U.S. 204, 217-218 (1922) (The ICA "is intended ... to regulate interstate and foreign commerce and to affect intrastate commerce only as that may be incidental to the effective regulation and protection of commerce of the other class. [The ICA] contain[s] many manifestations of a continuing purpose to refrain from any regulation of intrastate commerce, save such as is involved in the rightful exertion of the power of Congress over interstate and foreign commerce. ... And had there been a purpose here to depart from the accustomed path and to deal with intrastate commerce as such independently of any effect on interstate and foreign commerce, it is but reasonable to believe that that purpose would have been very plainly declared. This was not done.").

[22] *Cook Inlet Pipe Line Co. v. Alaska Pub. Utilities Comm'n*, 836 P.2d 343, 350 (Alaska 1992) (citing *Simpson v. Shepard*, 230 U.S. at 418). In *Cook Inlet*, the Alaska Supreme Court rejected an argument by a state-regulated oil pipeline company that the ICA preempted state regulation of the oil pipeline. *Id.* The Alaska Supreme Court also rejected the utility's argument that the "dormant commerce clause" prohibited state regulation (discussed *infra*).

pipelines. In *In re Trans Alaska Pipeline System*, FERC stated that "[i]t is clear that the States have primary jurisdiction over intrastate transportation under the [ICA]".[23]

State regulatory authority over oil pipelines is not even limited to wholly *intrastate* pipelines; rather, where a single pipeline handles both interstate *and* intrastate petroleum products shipments, FERC has long held that it regulates only *inter*state aspects, while state utility commissions are free to regulate *intra*state operations.[24] The Commonwealth Court of Pennsylvania reaffirmed this non-controversial proposition recently in a *Sunoco* proceeding concerning the Mariner East 2 pipeline, holding that "jurisdiction is not mutually exclusive" where a pipeline implicates interstate and intrastate movements.[25] On a subsequent appeal, the Commonwealth Court did not disturb the trial court's holding that "the regulation of Sunoco Pipeline, L.P. by the Pennsylvania Public Utility Commission is not preempted by federal law."[26] Thus, Laurel's desire to eventually operate the segment of the Laurel pipeline between Pittsburgh and Eldorado in interstate commerce, and potential future concurrent jurisdiction with the PUC over that interstate pipeline, does not preempt the Commission from exercising its authority over the pipeline's current intrastate operations.

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[23] 23 F.E.R.C. ¶ 61,352, *10, n.17 (June 2, 1983). *In re Amoco Pipeline Co.*, 67 F.E.R.C. ¶ 61,378, *15 (June 23, 1994) (stating that the ICA "is not intended to deprive states of their primary authority to regulate intrastate rates .... Congress anticipated state regulation of intrastate transportation unfettered by Federal interference."). In a March 14, 2001 Order titled "Removing Obstacles To Increased Electric Generation And Natural Gas Supply In The Western United States," FERC's Commissioner wrote the following concerning the scope of FERC's authority over oil pipelines under the ICA:

> The Commission has no authority under the ICA to require certificates of public convenience and necessity as a basis for starting operations. ***That authority rests with local jurisdictions***. ... The Commission also has no authority over abandonments of service or authority to order extension of lines.

94 F.E.R.C. 61,272, 61,977 (Mar. 14, 2001) (emphasis added).

[24] *In re Amoco Pipeline Co.*, 62 F.E.R.C. ¶ 61,119 (Feb. 8, 1993) (some interstate oil shipments did "not alter the jurisdictional nature" of the line because "[t]ransportation over Amoco's facilities of that portion of the crude oil that is both produced and refined in Wyoming is subject to the regulation of the Wyoming PSC").

[25] *In re Condemnation by Sunoco Pipeline, LP*, 143 A.3d 1000, 1004 (Pa. Commw. Ct. July 14, 2016).

[26] *In re Condemnation by Sunoco Pipeline L.P.*, 2017 Pa. Commw. Unpub. LEXIS 335, *8, 167 A.3d 307 (Pa. Commw. Ct. May 15, 2017) (unpublished) (noting the trial court's holding that "there is no preemption by federal law of PUC's regulatory authority.")

Given that the ICA's lack of a preemptive effect on *intra*state regulation has been settled for more than a century, it should not be surprising that the few courts that have litigated Laurel's ill-conceived preemption argument have rejected it resoundingly. *National Steel Corp. v. Long*—which Laurel conspicuously failed to cite in its Brief—is directly on point.[27] There, a steel mill sought to construct an intrastate lateral ethane pipeline without first obtaining a certificate of public convenience from the Michigan Public Service Commission ("MPSC").[28] The steel mill challenged the MPSC's *prospective* exercise of regulatory authority on the grounds that it would conflict with federal policy not to regulate certain aspects of oil pipelines.

The court in *National Steel* held that federal law did not preempt a state regulatory body from exercising its traditional authority to grant (or deny) certificates of public convenience to oil pipelines.[29] The district court opinion (affirmed by the Sixth Circuit) noted that the ICA's grant of interstate tariff and ratemaking authority to FERC "says nothing about other aspects of the transportation and delivery potentially regulated by the FERC under the ICA or by the MPSC .... *Clearly, the MPSC can undertake and complete evaluation of public convenience and necessity in a local community without interfering with FERC-approved transportation rates*."[30] Ultimately, the court reasoned there is no preemption "unless state action conflicts with or interferes with *FERC-approved rates*."[31]

[27] *National Steel Corp. v. Long*, 718 F. Supp. 622 (W.D. Mich. 1989), *aff'd National Steel Corp. v. Michigan Public Service Com.*, 919 F. 2d 38 (6th Cir. 1990) ("*National Steel Appeal*"). The Commonwealth Court of Pennsylvania cited *National Steel Corp. v. Long* favorably in the *Sunoco* condemnation matter just last year for the proposition that "PUC, and not FERC, has authority to regulate intrastate shipments."). *In re Condemnation by Sunoco Pipeline, LP*, 143 A.3d at 1005 (Pa. Commonwealth Ct. July 14, 2016); *see also In re Condemnation by Sunoco Pipeline L.P.*, 2017 Pa. Commw. Unpub. LEXIS 335, *14, n.10, 167 A.3d 307 (Pa. Commw. Ct. May 15, 2017) (citing *National Steel*).
[28] *National Steel*, 718 F. Supp. at 623.
[29] *Id.* at 625-26, *aff'd* by *National Steel Appeal*, 919 F.2d at 42.
[30] *Id.*
[31] *Id.*

The *National Steel* court also held that Congress' deliberate decision *not* to regulate *intra*state pipelines was not a suggestion that "certain activities of oil pipelines be left unregulated, by federal *and* state authorities."[32] Noting that there was "little evidence" of any such "authoritative determination" by Congress, the court held that "it appears just as likely that federal silence concerning the interests the MPSC seeks to address reflects recognition that such interests are peculiarly local in nature and are best left to regulation by the states."[33] The *National Steel* court was clear that "[i]nstead of posing an imminent possibility of collision, these two regulatory schemes appear to be complementary, addressing different concerns, occupying different fields."[34] The Court ultimately denied the steel mill's challenge to the MPSC's regulatory authority, holding that the MPSC was merely asserting jurisdiction to evaluate public convenience and necessity, and was not "threatening any action which poses a direct conflict with FERC regulatory authority."[35]

The application of the above precedent is straightforward and dispositive of this proceeding. The Commission's assertion of jurisdiction to decide and potentially reject Laurel's Application does *not* conflict with federal law. It is a proper exercise of state regulatory

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[32] *Id.* (emphasis added); This is the same argument advanced by Laurel. *See* Laurel Main Brief, at 25-26.

[33] *Id. National Steel Appeal*, 919 F.2d at 41 ("the Interstate Commerce Act regulates the transportation rates charged to shippers of oil; it does not confront the problems which arise from the multiplication of oil utilities serving consumers."). The notion that Congressional silence does not necessarily imply preemption is well-recognized. *See Sears, Roebuck & Co. v. Brown*, 806 F.2d 399, 410 (2d Cir. 1986) (While congressional silence may displace some state regulation, it "can just as easily be interpreted as implicit approval of state regulation."); *Graham v. R.J. Reynolds Tobacco Co.*, 857 F.3d 1169, 1189-1190 (11th Cir. 2017) (It is "settled law that inaction by Congress cannot serve as justification for finding federal preemption of state law. ... Otherwise, deliberate federal inaction could always imply pre-emption, which cannot be. There is no federal pre-emption *in vacuo*, without a constitutional text or a federal statute to assert it.") (citations, quotations, and alterations omitted).

[34] *National Steel*, 718 F. Supp. at 626. The *National Steel* court also held that "the obligations imposed on oil pipelines ... *are not so comprehensive, however, as to justify the inference that Congress intended to completely occupy the field of regulation.*"). *Id.* at 625. *See also National Steel Appeal*, 919 F. 2d at 41.

[35] *Id.* (citations omitted); *National Steel Appeal*, 919 F.2d at 41 ("Although the possibility of collusion may suggest comprehensive regulation, such an inference is not required and, in this case, would be imprudent; to do so would be to leave the enormous industry of retail oil sales unregulated."); *See Ark. Elec. Coop. Corp. v. Ark. Public Serv. Comm'n*, 461 U.S. 375, 388-389 (1983) (noting that until Congress or the relevant executive agencies made it clear that federal policy preempted state jurisdiction, or until a regulation so "seriously compromised important federal interests," "[w]e will not ... in this facial challenge to the [state agency's] mere assertion of jurisdiction assume that such a hypothetical event is so likely to occur as to preclude the setting of any rates at all.").

authority over *intra*state pipelines. No order from the Commission in this proceeding would interfere with FERC's *inter*state tariffs or rates, which are the only subjects over which federal law is supreme. Laurel's conjecture that there is risk of imminent conflict between federal law and a forthcoming Commission order is completely speculative.[36]

Finding no support in the ICA, relevant case law, or from FERC, Laurel resorts to irrelevant and easily distinguishable cases.[37] *Transcontinental Gas Pipe Line Corp. v. State Oil & Gas Board* is not an oil pipeline case.[38] *Transcontinental* involved the preemptive effect of the Natural Gas Act ("NGA") and Natural Gas Policy Act ("NGPA") on state regulation of natural gas sales.[39] The Supreme Court held that the NGA was a "comprehensive regulatory scheme" and that when Congress amended it with the passage of the NGPA forty years later, Congress acted to give certain power back to the market, not to the states.[40] In other words, the NGPA's revocation of certain powers previously given to FERC did not change the fact that Congress had occupied the field of natural gas pipeline regulation.[41]

These natural gas statutes are separate and distinct from the ICA governing *oil pipelines*, and the statutory regimes are, by design, entirely different.[42] Unlike the NGA and NGPA, which purposefully and expressly preempted certain state regulation of *natural gas pipelines*, Congress never occupied the field of *oil pipeline* regulation. Instead, the ICA *left power over intrastate oil*

[36] *National Steel*, 718 F. Supp. at 626 ("At this stage, upon assertion of jurisdiction over matters left unregulated under the federal scheme, the possibility of conflict is not imminent, but remote and speculative -- too speculative to trigger pre-emption.").
[37] Laurel Main Brief at 28-29.
[38] 474 U.S. 409 (1986).
[39] *Id.*
[40] *Id.* at 422.
[41] *Id.* at 423 ("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.").
[42] *See* Klass, Alexandra B., Transporting Oil and Gas: U.S. Infrastructure Challenges, 100 Iowa L. Rev. 947, 951 (March, 2015) (noting that the different treatment of natural gas and oil under federal law is due to the difference in physical properties between the two products, and because of those physical differences, the "federal system is critical to transporting natural gas effectively even *while the lack of such a system for transporting oil does not appear to present problems for pipeline companies.*").

pipelines to the states.[43] FERC concurs, and is definitive in its understanding that the NGA cases "do not control" oil pipeline cases.[44] These fundamental and critical differences between federal regulation of natural gas pipelines and oil pipelines should not come as a surprise to Laurel, as its outside counsel wrote the following in a 2011 article for the Energy Law Journal:

> The limited scope of the FERC's regulation of oil pipelines stands in *stark contrast* to its pervasive role in pipeline infrastructure under the Natural Gas Act (NGA), which even prohibits a would-be pipeline sponsor from putting a shovel in the ground until a certificate of public convenience and necessity is issued.[45]

Nor is this "stark contrast" between interstate gas pipelines and intrastate oil pipelines foreign to Laurel's experts,[46] the Congressional Research Service,[47] or other industry publications.[48]

Laurel futilely directs the Commission to dicta from two D.C. Circuit cases (i.e. *Farmers Union I* and *Farmers Union II*) that have absolutely nothing to do with preemption or the

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[43] *See* 49 U.S.C. §1(2); *Simpson* 230 U.S. at 417; *Texas v. Eastern T. R. Co.*, 258 U.S. 204, 217-218 (1922); *Cook Inlet*, 836 P.2d at 350-51; *National Steel Appeal*, 919 F.2d at 41 ("Unlike the regulation set forth by Congress in the Natural Gas Act, the Interstate Commerce Act is far from extensive in scope").

[44] *In re Amoco Pipeline Co.*, 62 F.E.R.C. ¶ 61,119, 61,803-804 (Feb. 8, 1993); *see also In re Amoco Pipeline Co.*, 67 F.E.R.C. ¶ 61,378 (June 23, 1994) ("while the ICA and the NGA both apply to the movement of hydrocarbons through underground pipeline systems, the two acts differ considerably in purpose and scope").

[45] Barr, Christopher J., Unfinished Business: FERC's Evolving Standard For Capacity Rights On Oil Pipelines, 32 Energy L. J. 563, 565 (2011) (emphasis added).

[46] Laurel St. No. 9-R, at 9:9-14 ("There are obvious differences between Laurel application and the Rockies Express pipeline system. Rockies Express is an interstate natural gas pipeline. Laurel is an intrastate petroleum pipeline.").

[47] Congressional Research Service, Pipeline Transportation of Natural Gas and Crude Oil: Federal and State Regulatory Authority, Brandon J. Murrill (March 28, 2016), *available at* https://fas.org/sgp/crs/misc/R44432.pdf ("In contrast to siting review of proposed interstate natural gas pipelines, interstate crude oil pipelines undergo a state-by-state siting approval process. No federal law broadly preempts state and local siting requirements for these pipelines. Construction or operation of any oil or gas pipeline, whether interstate or intrastate, may require additional federal or state authorizations or consultations, depending on the proposed route of the pipeline and its potential to discharge pollutants or affect natural, cultural, or historical resources.").

[48] Lewis, Mark K. and Morgan II, D. Kirk, An uneven playing field exists in oil vs gas pipeline development, Oil & Gas Financial Journal, Oct. 1, 2011, *available at* http://www.ogfj.com/articles/print/volume-8/issue-10/features/an-uneven-playing-field-exists.html ("In contrast with the development of an interstate natural gas pipeline, FERC has no jurisdiction over the construction or abandonment of an oil pipeline. This is not a policy decision by FERC. Rather, it is dictated by the terms of the ICA, the statute that provides FERC with the authority to regulate the transportation of oil. The ICA provides FERC with the authority to regulate the rates and terms and conditions of service offered by an interstate oil pipeline, but the ICA does not provide FERC with the ability to regulate an oil pipeline's entry into or exit from the market.").

exercise of state regulatory authority over abandonment of an intrastate oil pipeline.[49] These two cases addressed the proper FERC methodology to determine the reasonableness of *inter*state pipeline shipping rates. Those cases do not discuss, or even mention, federal preemption. Notably, the plaintiff in *National Steel* cited these exact same D.C. Circuit cases and its arguments were resoundingly rejected. As the court said: "*Both statements are clearly dicta, were made in the context of establishing ratemaking standards, and have no direct bearing on the pre-emption issue before this Court.*"[50]

The two FERC matters cited by Laurel are also irrelevant. The FERC Opinion *Revisions to Oil Pipeline Regulations Pursuant to the Energy Policy Act of 1992* merely contains a citation back to the *Farmers Union I* and *Farmers Union II* cases in a discussion about ratemaking methods for interstate pipelines.[51] The *Plantation Pipe Line Co v. Colonial Pipeline Co.* case contains a similar circular citation to the *Farmers Union* cases, before clarifying that the *Farmers Union* cases "are applicable to ratemaking."[52]

It speaks volumes that the only authority Laurel cited from the 130-year history of the ICA (and its predecessors) is two irrelevant FERC opinions and 30-plus year-old dicta from two cases having nothing to do with federal preemption. Perhaps this is why even Laurel's own legal and regulatory experts did not testify that federal law preempts the Commission's authority to reject Laurel's Application.

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[49] Laurel Main Brief, at 26-27 (citing *Farmers Union Central Exchange v. Federal Energy Regulatory Comm'n*, 584 F.2d 408, 413 (D.C.Cir. 1978) ("*Farmers Union I*") and *Farmers Union Central Exchange, Inc v. Federal Energy Regulatory Comm'n*, 734 F.2d 1486, 1509 n. 51 (D.C.Cir. 1984) ("*Farmers Union II*")).

[50] *National Steel*, 718 F. Supp. at 627, n.5.

[51] 65 F.E.R.C. ¶ 61,109 (Oct. 22, 1993).

[52] 104 F.E.R.C. ¶ 61,271, at ¶ 27 (Sept. 11, 2003).

Rather than belatedly making the federal preemption argument the centerpiece of its case, Laurel should have heeded the work of its outside counsel, who squarely addressed the preemption issue in a 2007 Energy Law Journal article:

> Unlike gas pipelines, *oil pipelines lack the* federal eminent domain authority and *federal preemptive rights that accompany the FERC natural gas certificate process ... To the extent that oil pipelines transport petroleum in intrastate commerce, state commissions may regulate their rates and services and may indeed go further than the FERC's reach to regulate changes to facilities, leases, and changes in ownership.* These and similar environmental and permitting issues loom large but are outside FERC's jurisdiction.[53]

In short, Laurel's desire to someday provide interstate transportation service from the Midwest on a portion of its existing intrastate Laurel pipeline cannot defeat the Commission's jurisdiction over Laurel as a state regulated public utility and its present and ongoing intrastate operations. Laurel's conflict preemption argument should be completely rejected.

b. A Commission order rejecting Laurel's Application would not violate the Commerce Clause of the United States Constitution.

Laurel's dormant Commerce Clause argument is similarly unavailing. Laurel's position appears to be that any time a particular subset of out-of-state businesses expresses a desire to capture a market within the Commonwealth, the Commission must yield its regulatory authority and grant the regulated public utility *carte blanche* to reconfigure its *intra*state service without any regard for the public interest or existing state laws governing the conduct, operation and abandonment of state certificated public utility service. Taken to its logical conclusion, this approach would allow any state regulated pipeline utility to avoid any state utility regulation at will by simply declaring an intention to start providing interstate pipeline service. In Laurel's case, it obviously opens the door to it pursuing, at its sole and unfettered discretion, further

[53] Barr, Christopher J., Growing Pains: FERC's Responses to Challenges to the Development of Oil Pipeline Infrastructure, 28 Energy L.J. 43, 49-50 (2007) (emphasis added) (also noting that "[t]he FERC does not regulate oil pipeline entry, construction, commencement of new services, or abandonment.").

reversals of its pipeline all the way to Philadelphia or whatever other reconfiguration may serve Buckeye's bottom line. Thus, what Laurel is really arguing is that *any* state regulation of an intrastate oil pipeline discriminates against interstate commerce and is impermissible. For good reason, there is no authority for such a proposition.

Laurel's dormant Commerce Clause argument begins with the incorrect factual premise that a Commission order denying the reversal would "clos[e] Pennsylvania's borders to out-of-state products" and "block the interstate flow of petroleum products at the Pennsylvania border."[54] These assertions are demonstrably wrong. Nothing in any order rejecting the relief requested in Laurel's Application would block an out-of-state entity from continuing to ship interstate petroleum products into Pennsylvania, either through an existing pipeline (originating from the Midwest, the East Coast, or the Gulf Coast), a newly constructed pipeline, or some other shipping method.[55] Laurel's parent company Buckeye will still be able to ship interstate petroleum products into Pennsylvania on its Midwest line regardless of what the Commission decides with respect to Laurel's proposed reversal.[56] Laurel's suggestion that interstate petroleum products are blocked at the Pennsylvania border because they cannot reach Altoona via pipeline (even though they can reach Pittsburgh) makes no logical or geographic sense.[57]

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[54] Laurel Main Brief at 31 (emphasis added)

[55] Laurel has argued throughout this proceeding that out-of-state non-resident refiners and other entities can truck or ship petroleum products into Pennsylvania without using the Laurel pipeline. These entities will retain whatever rights they have to do so irrespective of the Commission's decision.

[56] In fact, three pipelines *already* transport Midwestern petroleum products into Pennsylvania (i.e. Buckeye, Marathon, and Sunoco/ETP), and the capacity and rights of those pipelines would be completely unaffected by any Commission order denying Laurel's Application.

[57] It also runs counter to the testimony of Laurel's own witnesses. None of the product that Midwest refiners have pledged to ship into Pennsylvania if the Laurel pipeline is reversed are **[BEGIN HIGHLY CONFIDENTIAL]** [redacted] **[END HIGHLY CONFIDENTIAL]** *See, e.g., infra*, Section C.1.c. Thus, even if the Commission were to accept the nonsensical argument that the present configuration of the Laurel pipeline is "blocking" product at the border, Laurel has made no factual showing that this "blocked" product, if freed by the reversal, would actually penetrate any further into Pennsylvania than it already does today.

Putting aside Laurel's inaccurate description of the effect of any hypothetical Commission action on the Commonwealth's borders, Laurel's dormant Commerce Clause arguments are contrary to law and should therefore be readily rejected. The Supreme Court has consistently reaffirmed the legitimacy and importance of state regulation of public utilities, and has made it clear that the Commerce Clause was "'never intended to cut the States off from legislating on all subjects relating to the health, life, and safety of their citizens, though the legislation might indirectly affect the commerce of the country.'"[58] As the Supreme Court established in *Simpson v. Shepard*, limitations on traditional state authority "may not be implied because of a dormant Federal power, that is, one which has not been exerted, but can only be found in the actual exercise of Federal control in such measure as to exclude this action by the State which otherwise would clearly be within its province."[59]

The Congressional Research Service recently studied state authority over the siting of interstate oil pipelines and did not find any instance in which a court overturned a state action on dormant Commerce Clause grounds.[60] Thus, it is not surprising that Laurel did not cite any case in which a court held that a state's regulation of an *intra*state service violated the Commerce Clause because the regulation interfered with non-existent interstate service.

Just as with its preemption arguments, Laurel conspicuously ignores cases that have considered (and rejected) Laurel's ill-advised dormant Commerce Clause argument. In *Arkansas Electric*, the Arkansas Public Service Commission ("PSC") "asserted regulatory jurisdiction over the wholesale rates charged by the Arkansas Electric Cooperative Corporation ("AECC") to its

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[58] *GMC v. Tracy*, 519 U.S. 278, 306-07 (1997) (citations and quotations omitted) (rejecting dormant Commerce Clause challenge to state tax that distinguished between regulated public utilities and independent marketers).
[59] *Simpson*, 230 U.S. at 417.
[60] See Congressional Research Service, Proposed Keystone XL Pipeline: Legal Issues, Report No. R42124 (2012) at 12 n. 98, *available at* www.hsdl.org/?abstract&did=698856.

member retail distributors, all of whom are located within the state."[61] The AECC challenged the PSC's assertion of jurisdiction as violating the dormant Commerce Clause. The Supreme Court rejected the utility's challenge to regulation of its *intrastate* activities:

> [S]tate regulation of the wholesale rates charged by AECC to its members is well within the scope of "legitimate local public interests," particularly considering that *although AECC is tied into an interstate grid, its basic operation consists of supplying power from generating facilities located within the State to member cooperatives, all of which are located within the State.* [62]

The court affirmed the PSC's jurisdiction despite the "incidental effect on interstate commerce" stemming from AECC's connection to the interstate grid.[63] And in *National Steel*, the court rejected the steel mill's dormant Commerce Clause challenge, holding that "[t]he state has a legitimate and substantial interest in protecting the capital investment of utilities already serving the public and in protecting existing utility rate structures. *These interests certainly justify the incidental and relatively light burden of requiring application for a certificate of public convenience and necessity.* In the absence of federal regulation, such state regulation is not only reasonable and appropriate, but required in the public interest."[64]

These precedents are directly on point and dispositive. No hypothetical Commission action in this proceeding would prevent interstate products from entering or exiting Pennsylvania via interstate pipelines, nor would any interstate pipelines be treated any differently than they are today. Laurel cannot manufacture a claim of unconstitutional discrimination against interstate commerce merely by invoking a hypothetical possibility that a forthcoming Commission order

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[61] *Ark. Elec. Coop. Corp. v. Ark. Public Serv. Comm'n*, 461 U.S. 375 (1983).
[62] *Id.* at 394-95 (1983).
[63] *Id.* at 395. The Supreme Court noted that "*the national fabric does not seem to have been seriously disturbed by leaving regulation of utility rates largely to the states.*" The same principle applies here to Laurel's proposed reversal—*intra*state pipelines all over the country receive petroleum products that at some point travel through interstate commerce; state regulation of these *intra*state pipelines does not seem to have "seriously disturbed" the national fabric.
[64] *Id.* at 628 (citations and quotations omitted). *See also Cook Inlet*, 836 P.2d at 351-52 (rejecting dormant Commerce Clause challenge by oil pipeline under the precedent set by *Simpson v. Shepard*).

may incidentally impact how much petroleum product out-of-state entities choose to ship into Pennsylvania.[65] As the Supreme Court has held, state regulation "controls the carrier and is not controlled by it."[66]

The two cases Laurel relies upon are readily distinguishable and actually highlight why courts have not applied the dormant Commerce Clause on facts similar to those operating here. In *Philadelphia v. New Jersey*, the Supreme Court struck down a New Jersey statute that prohibited the importation of solid or liquid waste originating in other states for disposal in New Jersey landfills.[67] The statute was a clear import ban that "overtly block[ed] the flow of interstate commerce" at New Jersey's border.[68] Pennsylvania's existing petroleum products importation market is not remotely similar.[69] A Commission order denying Laurel's Application would not "block" interstate commerce at the border—petroleum products that currently enter

[65] *See Shell Oil Co. v. Santa Monica*, 830 F.2d 1052, 1058-1059 (9th Cir. 1987) ("Shell has not presented any evidence that Santa Monica has treated any local oil pipeline operators preferentially. The record shows that Shell is the only company operating an oil pipeline in Santa Monica. The fact that the practical burden of Santa Monica's actions with respect to oil pipeline operators may fall on nonlocal companies because of the absence of local oil pipeline operators does not establish discrimination against interstate commerce."); *Simpson*, 230 U.S. at 416-17 (no dormant Commerce Clause problem even where state regulation of *intra*state carriers "might indeed alter relative advantages in competition, and, by virtue of economic forces, those engaged in interstate trade and transportation might find it necessary to make readjustments extending from market to market through a wide sphere of influence.").

[66] *Simpson*, 230 U.S. at 417 ("the idea that the power of the State to fix reasonable rates for its internal traffic is limited by the mere action of the carrier in laying an interstate rate to places across the State's border, is foreign to our jurisprudence"). The Supreme Court even noted that the "seldom raised" argument that state regulation interfered with the ICA "attests the common conception of the scope of state authority." *Id.* at 423.

[67] 437 U.S. 617, 618 (1978). Notably, the Supreme Court found that the New Jersey law was not preempted by federal law. *Id.* at 620, n.4 (holding that the statute "not pre-empted because of a square conflict with particular provisions of federal law or because of general incompatibility with basic federal objectives."). *See also Cook Inlet*, 836 P.2d at 351 (dormant Commerce Clause analysis was appropriate in *Philadelphia v. New Jersey* because of the "absence of federal legislation" pertaining to waste disposal, but was "unnecessary" where Congress had legislated via the ICA.).

[68] *Id.* at 624.

[69] The *Philadelphia v. New Jersey* case would be analogous if New Jersey allowed importation of as much interstate waste as entities wanted to bring in, *but then regulated* the movement of such waste on public utilities providing transportation services within the borders of New Jersey.

Pennsylvania via interstate pipelines or other means, from both the West and the East, including on Buckeye's interstate pipelines, will still be able to enter the Commonwealth.[70]

New England Power is similarly irrelevant.[71] There, the Supreme Court considered whether an order from the New Hampshire Public Utilities Commission *prohibiting* a New Hampshire power company from exporting hydroelectric power *outside* of New Hampshire violated the dormant Commerce Clause.[72] The Supreme Court held that the order unconstitutionally burdened interstate commerce by establishing an "export ban" on electricity produced in the state. This is not relevant here, as Laurel is certificated to, and does, provide a regulated east-to-west oil transportation service within the borders of Pennsylvania—it does not export anything. Laurel's argument that prohibiting the reversal would be an "export ban" akin to *New England Power* strains both logic and credibility.[73]

But Laurel's stretch to make the facts of this case similar to an import or export ban may not even be the most confusing or illogical part of its argument. If one accepts Laurel's argument that Midwest refiners will be unconstitutionally discriminated against by not being able to ship all the way to Altoona, it follows that East coast entities (including Buckeye-owned assets that supply Laurel from the East) would be victims of discrimination if the reversal were

[70] To the extent a Commission order would have some "incidental" impact on interstate commerce by affecting the decision-making of out-of-state refiners, it would not be constitutionally problematic. In *Simpson*, the Supreme Court acknowledged the reality that state regulation of *intra*state carriers "might indeed alter relative advantages in competition, and, by virtue of economic forces, those engaged in interstate trade and transportation might find it necessary to make readjustments extending from market to market through a wide sphere of influence." 230 U.S. at 416. *However*, the Court held that "such action of the State would not for that reason be regarded as creating a direct restraint upon interstate commerce and as thus transcending the state power." *Id.* at 416-17.

[71] *New England Power Co. v. New Hampshire*, 455 U.S. 331 (1982).

[72] *Id.* at 338-39. Unlike here, where the Commission has not decided anything yet, the NHPUC "made clear that its order [was] designed to gain an economic advantage for New Hampshire citizens at the expense of . . . customers in neighboring states." *Id.* at 339.

[73] To the extent Laurel "exports" its services to interstate petroleum products, Laurel is and will continue to be able to provide such interstate transportation services to petroleum products originating from out-of-state sources, such as those transported from the Gulf Coast via Colonial Pipeline.

approved and they were no longer able to ship all the way to Pittsburgh.[74] Laurel thus appears to be arguing that in order to prevent discrimination against Buckeye's Midwest movements, the Commission must discriminate against Buckeye's East coast movements. This, of course, makes no sense. The reality is that the Laurel pipeline is the only east-to-west *intra*state oil pipeline in Pennsylvania and *whatever* direction the Laurel pipeline flows will necessarily have some incidental impact on the decisions that interstate refiners, marketers, and shippers will make. This is not constitutionally problematic and Laurel's wholly unsupported dormant Commerce Clause argument must be summarily rejected.

Another gaping hole in Laurel's logic is that in every case cited by Laurel, a law, regulation, or state action *already existed* at the time the parties were litigating dormant Commerce Clause issues. Here, by contrast, the Commission has not taken *any* action (other than devoting enormous time and resources to this matter, which Laurel now argues were never needed in the first place). Nevertheless, Laurel is assuming (based on nothing) that the Commission's denial of Laurel's Application will be motivated by "blatant ... local economic protectionism."[75] This inflammatory accusation is nothing more than speculation. If the Commission denies Laurel's Application, it will be because Laurel has failed to meet the relevant tests for service abandonment (including, potentially, the tests encouraged by Laurel's own legal experts), and not because of some illicit agenda.[76] The Commission can and should ignore Laurel's unfounded attacks on the Commission's motives and competency.[77]

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[74] Laurel Statement No. 1 at 13:6-19 (discussing interstate products shipped from the east coast westward on the Laurel pipeline).

[75] Laurel Main Brief at 34.

[76] The Indicated Parties have never sought a decision based on "economic protectionism." rather, they have consistently argued that the proposed reversal is not in the public interest under the relevant service abandonment test.

[77] *See GMC v. Tracy*, 519 U.S. at 308-309 (rejecting Commerce Clause challenge and noting that "[t]he degree to which these very general suggestions might prove right or wrong, however, is not really significant; the point is simply that all of them are nothing more than suggestions, pointedly couched in terms of assumption or supposition.

In any event, even if Laurel could conjure some conceivable Commission order that would unconstitutionally burden interstate commerce, Laurel's dormant Commerce Clause argument still fails. The hypothetical possibility of a dormant Commerce Clause problem does not rob the Commission of jurisdiction to rule on Laurel's Application. In *Arkansas Electric*, the Supreme Court noted that while it was "not inconceivable" that a state regulation could be "so unreasonable as to disturb appreciably the interstate market ... *we are not willing to allow such a hypothetical possibility to control this facial challenge to the PSC's mere assertion of regulatory jurisdiction*."[78] Similarly, the *National Steel* court held that invocation of dormant Commerce Clause concerns could not stop the regulatory body from asserting jurisdiction:

> Until the MPSC rules on the certificate application, it is impossible to determine any more definitely whether the burden imposed is excessive in relation to the putative local benefits. At this point, the Court cannot permit the hypothetical possibility that certification will be denied to control evaluation of this facial challenge to the mere assertion of regulatory jurisdiction.[79]

The same applies here. Though it is theoretically possible (albeit highly unlikely) that the Commission could seek to impose unconstitutionally onerous burdens on interstate commerce, such a "hypothetical possibility" does not control Laurel's facial attack on the Commission's authority to exercise *any* jurisdiction over Laurel's proposed reversal of its *intra*state pipeline.[80]

... We are consequently ill qualified to develop Commerce Clause doctrine dependent on any such predictive judgments, and it behooves us to be as reticent about projecting the effect of applying the Commerce Clause here, as we customarily are in declining to engage in elaborate analysis of real-world economic effects.").

[78] *Ark. Elec.*, 461 U.S. at 395.

[79] *National Steel*, 718 F. Supp. at 629.

[80] Though the Commission can and should reject Laurel's dormant Commerce Clause argument on its face, to the extent the Commission attempts to apply a balancing test, Laurel has created an evidentiary and procedural problem. In deciding whether a state action "directly regulates or discriminates against interstate commerce, or when its effect is to favor in-state economic interests over out-of-state interests ... *the critical question in this test is the overall effect of the statute on both local and interstate activity.*" *National Steel*, 718 F. Supp. at 628 (citations omitted) (noting that the *Pike v. Bruce Church*, 397 U.S. 137, 142 (1970) balancing tests requires a comparison of the burden on interstate commerce to the putative local benefits.). Because Laurel waited until *after* the record was closed to unveil its Commerce Clause argument, no parties have been afforded the opportunity to engage in fact-finding (including discovery) on Commerce Clause issues or to present any evidence weighing the "overall effect" on interstate commerce against the alleged putative benefits. Laurel's Main Brief portrays a world in which interstate

In evaluating Laurel's Supremacy and Commerce Clause arguments—which Laurel has now made the centerpiece of its case—the Commission should consider the full weight of what Laurel is arguing. Since 1957, the Laurel pipeline has enjoyed the benefits of being a state-regulated utility, including the power of eminent domain.[81] Now that Laurel's parent company has identified a more profitable pipeline configuration, Laurel is attempting to shed all Commission oversight of this *intra*state pipeline without giving up the actual line itself. This is because, as Laurel's own experts have stated, it is "more expedient" to repurpose the current line than it is to obtain the financing, approvals, and land necessary to construct an interstate pipeline.[82] Neither the Constitution nor the principles of federalism should yield for Buckeye's convenience.

Although Laurel's meritless Supremacy and Commerce Clause arguments fail as a matter of law, Laurel's decision to make these arguments the cornerstone of its case has served the useful purpose of further highlighting Laurel's outright disdain for this Commission's regulatory oversight. Having achieved that minimal benefit, Laurel's arguments can now be rejected.

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commerce apparently occurs only within the physical confines of Buckeye's interstate oil pipeline in Ohio. Laurel Main Brief, at 31 (only discussing impact of hypothetical Commission order on Midwest refiners who intend to ship products to Pittsburgh on Buckeye's pipeline through Ohio). But Pennsylvania is bordered by six states and interstate petroleum products can and do come into the Commonwealth through other sources. Beyond complaining about the effect a hypothetical order may have on its parent company's bottom line, Laurel fails to cite any evidence explaining the "overall effect" a hypothetical Commission order will have on interstate commerce. There is no evidentiary record to support the relief Laurel is requesting on this patently unsound dormant Commerce clause argument.

[81] Indicated Parties Main Brief at 32 *citing Jerome v. Laurel Pipe Line Co.*, 177 A.2d 150 (Pa. Super. Ct. 1962) (noting Laurel's use of eminent domain power to condemn a 30-foot right of way in Allegheny County, PA).

[82] Laurel Statement No. 9-R at 9:15-22. Unlike Pennsylvania law, federal law does not grant oil pipelines the power of eminent domain in construction of interstate pipelines. Barr, Christopher J., Growing Pains: FERC's Responses to Challenges to the Development of Oil Pipeline Infrastructure, 28 Energy L.J. 43, 49-50 (2007).

2. Assuming the Commission Has Jurisdiction Over Laurel's Proposed Change In Direction Of Service, A Certificate Of Public Convenience Is Required to Terminate the Existing East to West Service Between Eldorado and Pittsburgh.

Laurel and the Indicated Parties have a profound and fundamental disagreement on whether Laurel can simply terminate all east to west service from Eldorado to Pittsburgh along the Laurel pipeline without any Commission review and approval. Simply stated, Laurel is a Commission-regulated public utility subject to the requirement that service cannot be abandoned without first obtaining a CPC under Code Chapter 11. In its zeal to compel its desired and erroneous result, Laurel has departed from the fundamental principles of Pennsylvania utility regulation and the clear provisions of the Code.

Intrastate oil and petroleum product pipelines, while often at times referenced as common carriers, are regulated as fixed public utilities under the Code. The definition of "public utility" under Code Section 102 is broad and includes both fixed and common carrier utilities.[83] Importantly, there are *separate* definitions in Code Section 102 for common carriers transporting passengers and property and public utilities engaged in the transportation of petroleum products by pipeline, evidencing a clear legislative intent to regulate petroleum product pipelines under a different regulatory structure than that applicable to the property or passenger common carriers. Therefore, for purposes of Commission jurisdiction and regulation, petroleum products pipelines are distinct from motor vehicle common carriers and do not share either identical characteristics or legal treatment.[84] Although some Commission orders have at times referred to oil and petroleum product pipelines as common carrier public utilities, the Commission subjects oil and

[83] 66 Pa. C.S. § 102.

[84] *Compare* 66 Pa. C. S. § 102(iii) ("transporting passengers or property as a common carrier") *with* 66 Pa. C. S. § 102(v) ("transporting or conveying natural or artificial gas, crude oil, gasoline, or petroleum product, materials for refrigeration, or oxygen or nitrogen, or other fluid substance, by pipeline or conduit, for the public for compensation."). *See also* 52 Pa. Code § 21.1. Section 21.1 of the Commission's regulations defines the various common carriers regulated by the Commission with no reference to pipeline common carriers. *See id.*

petroleum product pipelines to regulatory requirements applicable to fixed utilities, including a 60-day notice period for new rates instead of the 30-day period required for common carriers.[85] Common carriers like taxicabs and pipeline companies like Laurel are public utilities, but nonetheless are separate and distinct entities with different operating and other characteristics. These differences can and do support differences in the way "service" is both provided and abandoned.

Second, Laurel clearly recognizes and admits that it is seeking in this proceeding a change in its service. As it noted in its Main Brief, for example:

> Laurel's Application seeks approval, to the extent required, to *change the direction* and jurisdiction *of service* between Pittsburgh and Altoona.[86]

Given the breadth of the term "service" contained in Code Section 102, there is little doubt that the proposed change in direction of flow between Eldorado and Pittsburgh is a *change* in service constituting an *abandonment* of service contemplated by the requirements of Code Chapter 1102, *which contains no exception or carve out for common carriers of any type*:

> **§ 1102. Enumeration of acts requiring certificate.**
> **(a) General rule.**--*Upon the application of any public utility and the approval of such application by the commission, evidenced by its certificate of public convenience first had and obtained,* and upon compliance with existing laws, it shall be lawful:
> (1) For any public utility to begin to offer, render, furnish or supply within this Commonwealth service of a different nature or to a different territory than that authorized by:
> (i) A certificate of public convenience granted under this part or under the former provisions of the act of July 26, 1913

[85] *Application of Sunoco Pipeline L.P. for Special Permission to Decrease Rates on Less Than Statutory Notice*, 2013 Pa. PUC LEXIS 164, *1 (Pa. P.U.C. Mar. 28, 2013) (Sunoco requested a rate change on 30 days notice and Commission required a 60 day notice period pursuant to Section 53.202 of the Commission's Regulations setting forth notice requirement for public utilities rather than the 30-day provision for common carriers); *see also Pennsylvania Public Utility Commission v. Laurel Pipe Line Company*, 1975 Pa. PUC LEXIS 9 (Pa. P.U.C. Nov. 25, 1975) (stating that "respondent [Laurel] has only seven customers being served by intrastate service in Pennsylvania, under our Pennsylvania law, respondent is considered a public utility.").
[86] Laurel Main Brief at 35 (emphasis added).

> (P.L.1374, No.854), known as "The Public Service Company Law," or the act of May 28, 1937 (P.L.1053, No.286), known as the "Public Utility Law."
> (ii) An unregistered right, power or privilege preserved by section 103 (relating to prior rights preserved).
> (2) *For any public utility to abandon or surrender, in whole or in part, any service*, except that this provision is not applicable to discontinuance of service to a patron for nonpayment of a bill, or upon request of a patron.[87]

As noted in the Indicated Parties Main Brief, there is no reasonable way for Laurel to dispute that the movement of petroleum products from points east of Eldorado to Pittsburgh along the Laurel pipeline is an existing *service* Laurel provides under Commission authority to a variety of shippers, refiners and other customers. If the Application is granted, this east to west shipping on the pipeline will no longer be available. As Indicated Parties' witness Rosenthal testified, "[i]t is reasonable to conclude based on these facts that (i) the movement of petroleum products along the Laurel pipeline from Eldorado westerly into Pittsburgh is a utility "service" that is available to and used by various shippers and (ii) if the Commission approves and Laurel implements the proposed flow reversal, this 'service' will no longer be available."[88]

Laurel has attempted to undermine this straightforward and compelling position, which is based on credible testimony, by suggesting that the Indicated Parties' position is that *any change* in service identified in Code Section 102 would constitute an abandonment of service necessitating a CPC.[89] This is an obvious distortion and exaggeration of the Indicated Parties position and indeed, is not the Indicated Parties' position. The Indicated Parties position on the issue of service change/abandonment was based on the actual facts in this case relating to the change in flow of petroleum products between Eldorado and Pittsburgh. And, on this point, the

[87] 66 Pa. C.S. § 1102 (emphasis added). Indicated Parties Main Brief at 28.
[88] Indicated Parties Statement No. 3 at 13:12-16. Indicated Parties Main Brief at 36.
[89] Laurel Main Brief at 35.

Indicated Parties relied in part on guidance from the FERC that clearly sees the issue in a similar manner:

> The Commission [FERC] does not have jurisdiction over the commencement and abandonment of service on an oil pipeline, and *service in one direction is a distinct service from service in the other direction. Therefore, a reversal is the abandonment of service on one direction and the commencement of an entirely new service in the other direction.*[90]

The ALJ and the Commission should not accept Laurel's mischaracterization of the Indicated Parties' position on the fundamental issue of the abandonment of pipeline transportation service from Eldorado to Pittsburgh.

a. Laurel Is Not Fundamentally Different From A Traditional Fixed Public Utility with Respect to the Abandonment of Utility Service.

Laurel strains to conclude there are broad similarities between taxicabs as common carriers and Laurel as a petroleum product pipeline.[91] This attempt utterly fails. While there are some similarities between the two entities (i e., both are "public utilities"), the problem for Laurel is that the differences between these types of utilities overwhelm the similarities.

First, even utilizing Laurel's flawed assumption that "Laurel is better described as a common carrier, such as a taxi cab . . .", Laurel has failed to satisfy a basic requirement imposed by the Commission when taxi cabs are seeking to abandon service. As Indicated Parties witness Lloyd noted, in taxi cab abandonment cases, the Commission requires the submission of revenue and expense data that would enable a Commission evaluation of the economic justification for a requested abandonment.[92] As noted throughout this proceeding, Laurel has

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[90] *Re: Rocky Mountain Pipeline System LLC*, Docket No. IS09-157-000, 126 FERC ¶ 61,301 (2009) (March 31, 2009) (emphasis added); Indicated Parties St. No. 3-S, at 6:17-25; Indicated Parties Main Brief at 37.
[91] Laurel Main Brief at 36-38.
[92] *See* the Commission's Application for Approval of Abandonment or Discontinuance of Service, In Whole or In Part, which is available on the Commission's website at www.puc.pa.gov/general/onlineforms/pdf/App_for_Abandonment.pdf; Indicated Parties Statement No. 5-S at 7.

provided no evidentiary support for any loss that it has allegedly incurred.[93] Thus, Laurel has failed to satisfy a clear Commission requirement imposed on taxi cabs seeking to abandon service. So, to the extent Laurel claims that a public utility pipeline should be judged by the same standards as transportation common carriers (i.e., taxi cabs), it has even failed that test.

With respect to Laurel's claim that its pipeline is similar to taxi cabs, Indicated Parties' witness Rosenthal credibly opined that the Laurel pipeline is far more like a traditional "fixed" utility than a motor vehicle common carrier.[94] First, he noted that customers of the pipeline must invest in assets to interconnect with the pipeline, such as storage facilities, racks, trucks, and refinery production facilities. This is more like manufacturing facilities making investments in their operations and taking service from a fixed utility than a person hailing a cab on a random street corner.[95] Taxicab customers have no sunk investment to take service from a cab. Second, while it is possible to walk on to a street in a large city and find cabs everywhere, there are no petroleum pipelines other than the Laurel pipeline providing east to west transportation service into Pittsburgh. In this sense, the Laurel pipeline is an essential fixed utility asset, the loss of which forecloses pipeline options for refiners, shippers, retailers and other customers looking to move petroleum products west of Eldorado into Pittsburgh. The other potential transportation modes into Pittsburgh are more costly and less efficient than the Laurel pipeline, confirming that these modalities are neither comparable nor cost-effective alternatives to the Laurel pipeline.[96]

Laurel implies that as a petroleum pipeline company it must compete with other common carriers (allegedly like taxicabs),[97] but fails to acknowledge that the Laurel pipeline is the *only* petroleum products pipeline providing east to west service across Pennsylvania all the way to

[93] Indicated Parties Main Brief at 49-51.
[94] Indicated Parties Statement 3-S at 9.
[95] *Id.*
[96] *Id.*
[97] Laurel Main Brief at 38.

Pittsburgh. Consequently, Laurel has no east to west pipeline competition in the Commonwealth, which makes it look more like a fixed utility with the equivalent of a dedicated service territory than a taxi company. Laurel also fails to acknowledge that the Code affords it a great deal of protection from competition because any pipeline operators interested in competing with Laurel would be required to demonstrate a need for the service in order to obtain a Certificate of Public Convenience to commence service.[98]

While attempting to distinguish common carriers from non-common carrier public utilities on the service abandonments and competitive markets, Laurel truly tips its hand when it concludes "[t]herefore, a non-common carrier public utility's own regulated actions are primarily responsible for the conditions of the market in which it operates."[99] Laurel is much more akin to a non-common carrier/fixed utility than a common carrier precisely because it operates an essential pipeline facility (i.e., the Laurel pipeline), it operates the only such pipeline facility providing east to west pipeline transportation service for petroleum products into Pittsburgh, and it is responsible for the conditions of the marketplace in which it is operating. As noted throughout this proceeding, Laurel has taken no action whatsoever in decades to employ any ratemaking tools at its disposal to address its allegations of declining volumes and revenues associated with the portion of the Laurel pipeline between Eldorado and Pittsburgh.[100] It has not even talked to its customers – including the Indicated Parties – so they might collaboratively address Laurel's claims. Laurel – as noted in its Main Brief – is directly responsible for the conditions in the marketplace it is facing today (assuming they are true), just like traditional non-common carrier public utilities.

[98] 66 Pa. C.S. § 1101.
[99] Laurel Main Brief at 39.
[100] Indicated Parties Main Brief at 50-51.

Laurel's primary support for its assertion that pipeline public utilities are free to change/abandon service without any Commission approval (i.e., a CPC) because of competitive market conditions is *Susquehanna Area Regional Airport Authority v. Pennsylvania Public Utility Commission* ("*Susquehanna*").[101] Laurel's reliance on Susquehanna is completely misplaced. *Susquehanna* involved a clash of jurisdiction between the Commission and the Susquehanna Regional Airport Authority ("Authority"), a joint municipal authority established under the Pennsylvania Municipal Authorities Act, 53 Pa. C. S. §§ 5601-5623. After having issued a CPC to Capital City Cab Company, which included minimum insurance requirements, the Authority, pursuant to the airport authority provisions in the Pennsylvania Municipal Authorities Act, enacted new regulations addressing, among other things, (i) increased insurance requirements for cab companies operating at the Harrisburg International Airport and (ii) prohibiting taxi cabs from queuing up at the curb to pick up passengers. The Authority also granted American Taxi (i.e., a competing company to Capital City Cab Company) a "Single Taxi Cab License Agreement" that gave it broad rights to perform outbound taxi cab service from the Harrisburg International Airport.

The Commonwealth Court in *Susquehanna* rejected the Commission's claims that the Authority's actions with respect to taxi cabs operating at the Harrisburg International Airport violated Capital City Cab Company's previously issued CPC from the Commission, including the Authority's increased insurance demands in order to provide cab service at the airport. The Commission's claim that the Authority's license agreement with American Taxi was unlawful was similarly rejected. In recognizing that the Commission is the entity with the "exclusive authority to license taxicab companies,"[102] the *Susquehanna* Court held that "a reduction in a

[101] 911 A. 2d 612 (Pa. Cmwlth. 2006), *pet. for allowance of appeal denied by* 923 A. 2d 412 (Pa. 2006).
[102] *Id.* At 619

common carrier's service does not require PUC approval unless it is the design of the common carrier."[103] The Court's further statement – relied upon by Laurel – that a common carrier's ability to provide service successfully is largely a function of the marketplace, was clearly in the context of the Authority's lawful exercise of jurisdiction over taxicabs that are initially authorized to conduct business by the Commission. The "marketplace" being addressed in *Susquehanna* is the Authority's jurisdiction over taxicabs operating at the Harrisburg International Airport – nothing more.

It is clear that *Susquehanna* is completely inapposite to this proceeding. First, it involved taxicabs and not petroleum pipelines. Second, it dealt with competing jurisdiction of separate state agencies both of which were responsible for aspects of taxicab regulation. Third, the marketplace referenced was not to other competing taxicabs or other transportation modalities, but to impacts to Capital City Cab Company by the lawful exercise of the Authority's statutory jurisdiction.

Laurel's citations to and reliance on *Yellow Cab Company of Pittsburgh* v. *Pennsylvania Public Utility Commission* ("*Yellow Cab*")[104] is similarly misplaced. *Yellow Cab* involved a taxi cab company whose revenues declined, employees resigned and service declined when its manager became ill and was hospitalized on several occasions. When the taxi cab company could not find a suitable new replacement manager it filed a Code Chapter 11 application to discontinue service *with the hope that an offer to purchase the cab company would result from the notification to the public of the proposed discontinuance of service.* When that situation occurred, Yellow Cab objected to the proposed transfer claiming there had been an abandonment of service. The Commission and later the Commonwealth Court rejected that argument, noting

[103] *Id.*
[104] 431 A.2d 1106 (Pa. Cmwlth 1981).

there is no abandonment when service curtailment or even non-use are compelled by events and circumstances beyond the carrier's control. In *Yellow Cab,* the hospitalization and later difficulty in finding a manager were the events that were outside of the taxi cab company's control and, notwithstanding such events, there was no abandonment where the utility continued to maintain tariffs and insurance, filed all annual reports and paid on Commission assessments. In this case, Laurel is making a conscious decision to change and abandon the east to west petroleum pipeline service from Eldorado to Pittsburgh on a portion of the Laurel pipeline – events and conditions that are totally within its control. *Yellow Cab*, which involved the *entirety of service* provided by the regulated utility, provides no support for Laurel's claimed right to abandon a *portion* of its public utility service without Commission authorization.

Finally, Laurel asserts that it is different than a traditional fixed utility because it does not serve end-use customers.[105] Laurel never defines what it means by "end-use customers" but regardless it is a distinction without a difference. As discussed in the Indicated Parties Main Brief, public utility service is not limited to service to end-users.[106] Laurel's provision of pipeline service to all kinds of customers, shippers, refiners, wholesalers and retailers – including the Indicated Parties – is subject to the Code's regulatory requirements, including the service abandonment standards.[107] As demonstrated repeatedly on this record, (i) these "customers" need service on the Laurel pipeline all the way to Pittsburgh from the east; (ii) these "customers" use the east-to-west service on the Laurel pipeline between Eldorado and Pittsburgh now and will continue to do so prospectively; (iii) substantial portions of Pittsburgh's Summer gasoline demand is satisfied by pipeline deliveries along the Laurel pipeline from eastern Pennsylvania

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[105] Laurel Main Brief at 40.
[106] Indicated Parties Main Brief at 50, n 186.
[107] *Id.*

sources; and (iv) PESRM, one of the Indicated Parties, delivers a substantial portion of its daily production into the Laurel pipeline and would deliver *more* if permitted to do so.

The Indicated Parties have also demonstrated the fallaciousness of Laurel's continued assertion that all buyers of refined petroleum products will be able to buy the same products at all the same locations after the proposed reversal[108] since such claim fails to acknowledge that the ability to supply petroleum products by the existing suppliers to those locations from the east will undeniably be changed and terminated. Therefore, neither the "products" will be the same nor will they be from the same set of suppliers as today.

To suggest that Laurel as a regulated public utility can and should be analogized to common carriers of passengers or property (in contrast to a fixed utility providing an essential service and facility) is neither consistent with the law nor the facts.

b. Laurel's Certificate Of Public Convenience Does Not Reflect a Right to Provide Service West to East As A Common Carrier Public Utility.

Laurel's primary thesis is that both its 1957 incorporation and CPC applications are consistent with unlimited service along the Laurel pipeline in either direction.[109] The Indicated Parties' addressed all issues relating to Laurel's CPC and related authorizations in their Main Brief.[110] The Indicated Parties disagree with Laurel's fundamental position that Laurel's CPC does not specify the direction of service.[111] After reviewing the 1957 Application, the CPC and related documents, Indicated Parties witness Rosenthal found no indication that the Commission intended to leave the issue of directional flow to Laurel's discretion.[112] On the contrary, all

[108] Laurel Main Brief at 40.
[109] Laurel Main Brief at 41.
[110] Indicated Parties Main Brief at 29-34.
[111] Laurel Main Brief at 41.
[112] Indicated Parties Statement No. 3 at 7:8-9. Mr. Rosenthal worked for the PUC for 30 years in a variety of roles, including from 1999-2007 as Director of the Bureau of Fixed Utility Services that handled informal tariffs, matters,

indicia are that the nature of the "service" that is the subject of Laurel's 1957 Application and CPC is petroleum pipeline transportation service in a *westerly direction into Pittsburgh.*

That 1957 Application also represented that the proposed new services would create competitive conditions 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."[113] Indicated Parties witness Rosenthal specifically testified that the 1957 Application confirms that the service the Laurel pipeline intended to provide was to move petroleum products *westerly from* Philadelphia to Pittsburgh. Laurel requested and received authority to transport petroleum products from east to west across Pennsylvania. The 1957 Application also deemed relevant the fact that seven other oil pipelines also carried oil products in a *westerly* direction.

Laurel seeks to refocus the scope of its 1957 CPC application by claiming it provided a description of the nature and character and service to be rendered as being "in and across the Commonwealth of Pennsylvania and other states of the United States."[114] What Laurel conveniently ignores is that the very next line of the referenced application indicates the direction of the flow when it states that "[t]he 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 northwesterly to the western boundary of the Commonwealth is indicated on the attached map designated as 'Exhibit A' and made a part of this application."[115] Additionally, the language emphasized by Laurel could not have been intended to describe the scope of the certificated service because the Commission lacks jurisdiction to approve Laurel's service in

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compliance, utility finances and reporting for all jurisdictional types of public utilities. Indicted Parties Statemetn No. 3 at 5-9.

[113] Indicated Parties Exhibit No. RAR-1 at 3.

[114] Laurel Main Brief at 43.

[115] Indicated Parties Exhibit No. RAR-1 at 1. (Emphasis added).

"other states of the United States."[116] Accordingly, the subsequent language describing the point-to-point direction of the pipeline specifies the nature of the intrastate service, which is consistent with the fact that the Commission defines "service" to include both acts and facilities.[117]

While Laurel chastises Indicated Parties' witness Lloyd for not distinguishing the direction of service from the direction of the facilities, the fact is that when considered in their totality, the incorporation and CPC applications, together with the CPC itself, contain a much clearer statement of the intention to construct facilities for petroleum products transportation service east to west across Pennsylvania in 1957 than Laurel's inference that the absence of any specific direction necessarily implies that service can be provided at will, unilaterally in either direction. It is questionable and hard to imagine – given the plethora of specific facts and information provided to the Commission in 1957 – that Laurel or anyone foresaw the possibility of Laurel changing the direction of petroleum supplies so that they flow from west to east across Pennsylvania as now proposed in this proceeding.[118]

c. Laurel's Proposed Reversal Constitutes an Abandonment Of Service.

Laurel asserts the incredible position that a CPC is only required when a service is *abandoned* and not when it is *changed.*[119] The Indicated Parties have addressed this issue

[116] Laurel Main Brief at 43; *but see* 1975 Pa. PUC LEXIS 9, *2-*3 (Pa. P.U.C. Nov. 25, 1975) (clarifying that Laurel provides service in New Jersey, Pennsylvania, and Ohio, but only the intrastate service within Pennsylvania falls under the PUC's jurisdiction.

[117] *See* 66 Pa. C.S. § 102 (describing "service" to include both "acts done, rendered, or performed" and "facilities.").

[118] As noted previously, the record in the 1957 Commission proceedings leading to Laurel's CPC clearly shows that what Laurel actually intended and what the Commission understood to be Laurel's requested authority was east to west service. For example, the pipeline segments were numbered from east to west (starting in the Philadelphia area), the microwave communication system was proposed to run from Birney Station (in the Philadelphia area) to the vicinity of Pittsburgh, and the control equipment was to be sequenced westward from Birney Station. Similarly, Laurel intended to construct the pipeline from east to west, in that the delivery points for construction began in the east and ended in the west and that the pipe diameters decreased from east to west. Indicated Parties Main Brief at 33-34.

[119] Laurel Main Brief at 52.

previously.[120] The "service" that is currently being provided by Laurel along the Laurel pipeline is the transportation of petroleum products in a westerly direction from Eldorado to Pittsburgh, Pennsylvania. If the Application is granted, this east to west shipping on the Laurel pipeline between Eldorado and Pittsburgh will no longer be available. Under any reasonable interpretation of these undisputed facts, Laurel is proposing to change the service between these two end points (i.e., the flow of petroleum of products will be reversed), the effect of which is to abandon the existing east to west service and replace it with a west to east service that will no longer be Pennsylvania jurisdictional. Under these circumstances, Indicated Parties' witness Rosenthal testified, "[i]t is reasonable to conclude based on these facts that (i) the movement of petroleum products along the Laurel pipeline from Eldorado westerly into Pittsburgh is a utility "service" that is available to and used by various shippers and (ii) if the Commission approves and Laurel implements the proposed flow reversal, this 'service' will no longer be available."[121]

B. Laurel Incorrectly Relies On The General Public Benefits Standard Used In The City of York Case To Avoid The Commission's Standard Applicable To Abandonments Of Service

As was anticipated by the Indicated Parties in their Main Brief, Laurel argues that the Commission standard applicable to its Application is the "public benefits standard" used in the *City of York* case.[122] According to Laurel, to gain Commission approval of its Application, it must only show "need" (not absolute necessity), future need and future benefits, and it notes that "there is no requirement to quantify the benefits of a project."[123]

As noted in the Indicated Parties' Main Brief, Laurel urges the use of the *City of York* standard because, under that standard, Laurel has no obligation to specifically address alternative service options for customers, the alleged benefits of the proposed reversal are not binding and it

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[120] Indicated Parties Main Brief at 36.
[121] Indicated Parties Statement No. 3 at 13:12-16; Indicated Parties Main Brief at 36.
[122] Laurel Main Brief at 53-58.
[123] *Id.* at 55.

does not have to quantify the claimed public benefits.[124] However, Laurel should not be permitted to "shop" for a more lenient standard than the multi-part abandonment of service standard the Commission has developed for evaluating abandonment of service proposals, including the specific type of service abandonment at issue in this proceeding.

Laurel raises two primary points to justify its selection of the public benefits standard typically used in fixed utility merger or acquisition cases. First, it argues that the Commission used this standard in another petroleum pipeline abandonment case, the *Sunoco 2013 Application Order*.[125] Second, Laurel argues that the multi-part test the Commission uses for service abandonment cases should not be applied to oil pipeline abandonments because "the pipeline operates in a competitive market and shippers have clear alternatives that are currently being used."[126] Neither of Laurel's points is persuasive.

The Indicated Parties' Main Brief pointed out that while the Commission mentioned the *City of York* case in the *Sunoco 2013 Application* order, it actually applied important elements of the abandonment of service standard, including evaluation of potential harm to customers. The Commission also noted in the *Sunoco 2013 Application* decision that users of the to-be-abandoned facilities did not oppose the cessation of service and it recognized that if the abandonment was approved, the Laurel pipeline would still be available to provide alternative service to Sunoco customers.[127] In practice, the Commission applied the multi-part abandonment of service standard in the *Sunoco 2013 Application* order case, and did not merely confine its review to whether the proposal was in the public interest as suggested by Laurel. In addition, unlike the reversal proposal in this case, the abandonment authority requested in the

[124] Indicated Parties Main Brief at 46-47.
[125] *Application of Sunoco Pipeline, L.P.*, Docket No. A-2013-2371775 (August 29, 2013)("*Sunoco 2013 Application Order*"). Laurel Main Brief at 54-55.
[126] Laurel Main Brief at 58.
[127] Indicated Parties Main Brief at 47.

Sunoco 2013 Application order case was necessary to allow the applicant to construct new facilities that would promote established state policy interests and provide additional service from a public utility to the public in the form of the Mariner East project.[128] This factor is not present in this proceeding.

Laurel also attempts to justify its preference for the general public benefits test by asserting that the abandonment of service test may be appropriate for an entity, such as a natural gas utility, but is inappropriate for a petroleum pipeline.[129] Laurel contends that a customer of a natural gas utility cannot buy gas from the utility after the abandonment, but "buyers of petroleum products will be able to buy all of the same products at all of the same locations after the reversal."[130] Besides being another example of Laurel seeking public utility treatment when it works to its advantage and distinguishing itself from other public utilities when it does not, this argument overlooks the fact that the customers of Laurel's utility service will *not* have the same service at the same locations as before the abandonment. Pipeline service to Pittsburgh *from eastern locations* for customers such as the Indicated Parties will end if the Application is approved.

As far as service alternatives are concerned, unlike the facts in the *Sunoco 2013 Application,* order case, there is no alternative east to west pipeline still available to customers if the Application is granted. And the Indicated Parties have demonstrated that transportation alternatives, such as trucks, are neither feasible nor in the public interest from a safety standpoint. Thus, neither of Laurel's arguments supporting its use of the general public benefits test is persuasive in the least.

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[128] *Id.* at 47-48.
[129] Laurel Main Brief at 58-59.
[130] *Id.* at 59.

The abandonment of service standard requires a public utility to show how it is financially harmed if the abandonment of service is not approved. Laurel is clearly "standard shopping" in this case in order to circumvent its complete failure to provide any evidence on how its rate of return is impacted if the proposed reversal is not granted.[131] It also prefers the general public benefits standard because it allows Laurel to "balance" out of existence whether Laurel's existing customers (like the Indicated Parties) have adequate service alternatives to deliver petroleum products to the Pittsburgh market. The ALJ and Commission should not be swayed by Laurel's insubstantial and make-weight arguments and should apply the multi-part abandonment of service test it appropriately uses when a public utility proposes to withdraw service from customers.

C. The Proposed Reversal Is Not In The Public Interest

1. The Proposed Reversal Will Not Provide Substantial Public Benefits.

a. Laurel Has Not Shown The Proposed Reversal Will Result In Better Use Of The Pipeline Or That The Pipeline Is A "Wasting Asset."

Moving away from its initial, unsubstantiated position that the segment of its pipeline from Eldorado to Pittsburgh is a "stranded asset,"[132] Laurel now argues that it is a "wasting asset" and that a substantial public benefit of the proposed reversal will be to "allow Laurel to repurpose and make better use of" it.[133] Laurel's new argument fails because it has shown neither (1) that the proposed pipeline reversal will make better use of the segment of the pipeline from Eldorado to Pittsburgh, nor (2) that this segment of the pipeline is "wasting." Moreover, since the only portion of the public to which this benefit stems are Buckeye and Midwestern

[131] Similarly Laurel provides no cost information to justify its proposed charges to Buckeye under the Capacity Use Agreement that is also being reviewed in this case.
[132] Indicated Parties Main Brief at 143-146.
[133] Laurel Main Brief at 61-72.

refiners (not Laurel, not consumers, and not Laurel's customers) any alleged benefit, even if demonstrated, is not substantial.

First, Laurel has presented no evidence or persuasive argument about how the reversal will make better use of the portion of its pipeline from Eldorado to Pittsburgh. Laurel has not shown how volumes on this segment of the pipeline will increase if it is reversed. In fact, the record shows they will not. This portion of the Laurel pipeline will not be used more post-reversal because volumes from the Midwest will be lower than current volumes from the East, and could cause the same operational issues that Laurel belatedly argues could occur if the pipeline is not reversed.

Volumes post-reversal on the portion of the pipeline from Pittsburgh to Eldorado will be less than under current operations.[134] *Based on Laurel's own numbers*, volumes from the East to Pittsburgh of 48,600 BPD for the 12-months ending July 2017[135] are currently significantly greater than the shipper commitments of **[BEGIN HIGHLY CONFIDENTIAL]** [redacted][137] **[END HIGHLY CONFIDENTIAL]** In fact, Laurel witness Jones admitted that it is "highly unlikely" products from the Midwest will flow past Pittsburgh to Eldorado:

> And so the fact that you've got a river of refined product coming through Pittsburgh, it's going to have an impact. Taking it every

[134] Indicated Parties Main Brief at 145-146.
[135] Laurel Statement No. 5 at 28:12-13.
[136] Tr. 307:1-9 (referring to DWA-11 at page 3 of 17, which provides total Midwestern shipper commitments).
[137] Tr. 1203:25-1204:5 **[BEGIN HIGHLY CONFIDENTIAL]** [redacted] **[END HIGHLY CONFIDENTIAL]** *See also* Tr. 1205:23-1206:2; Tr. 303:8-19.

> day all way to the Eldorado terminal and distributing to the Greater Altoona area is highly unlikely since that area itself will see competition from the east.[138]

Likewise, Buckeye's own analysis shows projected volumes flowing east to Altoona of merely **[BEGIN HIGHLY CONFIDENTIAL]** [redacted] **[END HIGHLY CONFIDENTIAL]**, much less than the volumes of 48,600 BPD for the 12-months ending July 2017 currently flowing from Eldorado to Pittsburgh.[139] Accordingly, even if the portion of the Laurel pipeline from Eldorado to Pittsburgh was a "wasting asset" (which it is not, as shown infra sections i.-vi.), the fact that Laurel has not shown reversing this segment of the pipeline will put it to a better use demonstrates that the reversal will not provide a public benefit.

Second, Laurel's assertion that this portion of the pipeline is "wasting" is based on its incorrect and unreliable hypothetical evidence that volumes from Eldorado to Pittsburgh have substantially declined and will continue to decline to zero in the future. At the outset, the proposition that an asset currently providing 50% of the Pittsburgh market supply[140] is "wasting" is absurd. In sections i.-v. infra, the Indicated Parties detail how Laurel has not proven that claim.

Third, *assuming arguendo* Laurel could show the proposed reversal will allow it to repurpose a wasting asset, this benefit only flows to Buckeye and Midwestern refiners. The benefit flows to Buckeye, not Laurel, because the shipments post-reversal from West to East will only be under Buckeye's higher priced interstate tariff, not Laurel's lower priced intra-state tariff.[141] **[BEGIN HIGHLY CONFIDENTIAL]** [redacted]

[138] Tr. 704:2-7.

[139] Indicated Parties Statement No. 1-S at 27, Table 1; *see also* Indicated Parties Exhibit DSA-7 at 9.

[140] Tr. 740:21-741:3.

[141] Indicated Parties St. No. 1 at 11:21-23 ("A reversal of the Laurel pipeline would increase the revenues of Laurel's affiliate Buckeye through increased tariff rates Buckeye collects on the volumes delivered to Pittsburgh.").

[redacted][142] **[END HIGHLY CONFIDENTIAL]** When exercising its legitimate authority to assess the impact of Laurel's proposal on the Commonwealth, the Commission should not favor these narrow interests over the broader public interests, including those of consumers, Laurel's customers, and Laurel itself. If the Commission fails to properly weigh the public interest, Midwestern refiners will benefit from a captive Pittsburgh market without competition from lower-cost Eastern supplies, not from the ability to ship product to the Altoona market, which Dr. Jones admitted is "highly unlikely."[143]

i) Volume Trends from Eldorado to Pittsburgh.

Laurel argues its pipeline is a wasting asset because current volumes from Eldorado to Pittsburgh are less than 2006 levels.[144] However, Laurel makes no attempt to show that this decline in volumes negatively effects Laurel or its utility assets.[145] Laurel presents current volumes out of context, refusing to acknowledge what its own witness Dr. Webb's data undeniably shows, i.e., that, the current east to west service on the Laurel pipeline comprises approximately 50% of the Pittsburgh area's consumption,[146] and thus does not explain how the delivery of substantial volumes into Pittsburgh is consistent with its claim of a wasting asset. As the Indicated Parties explained in detail in their Main Brief, both Dr. Arthur and Mr. Schaal have analyzed and shown the reasons for fluctuating volumes, factored in fluctuating demand for refined products in the Pittsburgh market, and found that volumes are still significant from Eldorado to Pittsburgh.[147]

Assuming Laurel is attempting to argue current volumes indicate insufficient demand for transportation from the East, the facts do not support such claim. Laurel asserts on one hand that

[142] *Id.* at 14:12-23.
[143] Tr. 704:2-7.
[144] Laurel Main Brief at 62.
[145] *Id.* at 62-67.
[146] Indicated Parties Statement No. 1-S at 28:20-23.
[147] Indicated Parties Main Brief at 53-56.

volumes from Eldorado west to Pittsburgh have decreased to a level showing demand from the East is not sufficient.[148] Laurel claims that "insufficient" volume level is 46,000 BPD as of 2015-2016.[149] Yet, when considering what shipper commitments would be "sufficient" to reverse the pipe line, Laurel had no specific number in mind,[150] but inconsistently considers shipper commitments from the Midwest of **[BEGIN HIGHLY CONFIDENTIAL]** [redacted] **[END HIGHLY CONFIDENTIAL]** to be sufficient[151] even though they are *lower* than the shipments currently coming from the East. Even the maximum capacity on the post-reversal pipeline from Pittsburgh to Altoona stands at 40,000 BPD, still lower than volumes inexplicably described by Laurel as "insufficient" for continued service from Altoona to Pittsburgh on the currently configured Laurel pipeline.[152] Laurel has not shown that current volumes and their decrease from 2006 levels demonstrate a wasting asset. In fact, Laurel's internal documents show that prior to this proceeding, Laurel did not believe that capacity utilization justified reversing the pipeline. As Dr. Arthur noted, **[BEGIN HIGHLY CONFIDENTIAL]** [redacted][153] **[END HIGHLY CONFIDENTIAL]**

Next, Laurel relies on a skewed view of history and Dr. Webb's incorrect and unreliable trend testimony to argue that its asset is wasting (or will be in the future) because volumes are projected to decline.[154] Instead of presenting thorough analysis and argument on this issue,

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148 Tr. 290:10-15.
149 Laurel Statement No. 5 at 28:12-13.
150 Tr. 306:8-307:9.
151 Tr. 307:1-9 (referring to DWA-11 at page 3 of 17, which provides total Midwestern shipper commitments).
152 *See* Indicated Parties Main Brief, at 80. Although the post-reversal pipeline would have 40,000 BPD of capacity to ship product from the Midwest into Altoona, it is highly improbable that shippers would uitilize 100% of the available capacity to Altoona and very likely that they will use none of it, *See* Indicated Parties Main Brief, at 82-86.
153 Indicated Parties Statement No. 1 at 11:7-18.
154 Laurel Main Brief at 63-64.

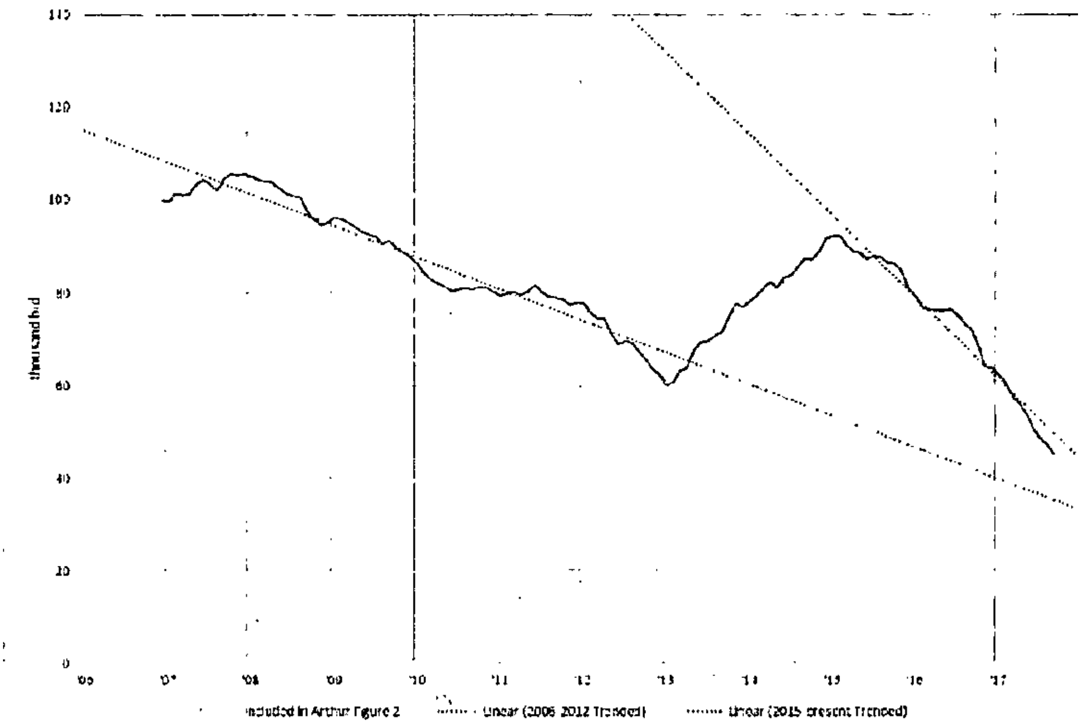
Laurel's Main Brief cherry picks facts and mischaracterizes evidence, relying on arguments that have already been fully rebutted. In contrast, the Indicated Parties explained in detail in their Main Brief that Laurel's analysis is totally unreliable, and then presented expert, data-based, credible and realistic analysis showing that volumes on this portion of the Laurel pipeline, while fluctuating over time for identifiable reasons, are still robust, are likely to stay robust, and may possibly increase in the future.[155]

As the Indicated Parties explained in their Main Brief, Dr. Arthur and Mr. Schaal have fully rebutted Dr. Webb's assertions regarding declining volumes and trends, showed that his method was overly simplistic, and confirmed that his method is unreliable because it did not consider external market factors and uncertainties.[156]

Nonetheless, Laurel relies on Dr. Webb's Figure 8-RJ as showing a linear trend line using rolling averages to predict that volumes will decline in the future: [157]

[155] Indicated Parties Main Brief at 51-77.
[156] Indicated Parties Main Brief at 52-75.
[157] Laurel Main Brief at 63-64.

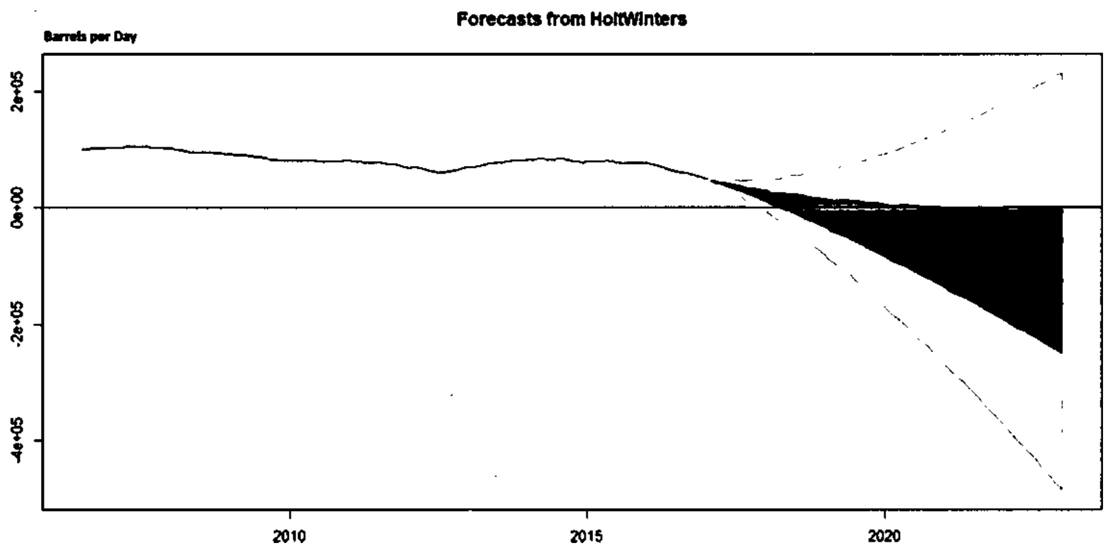
Figure 8-RJ: Laurel Volume from Eastern Origins to Pittsburgh Destinations
12-Month Moving Average with Trend Lines



However, these so-called "trend" lines suffer from significant flaws and are unreliable in predicting future volume trends. As Mr. Schaal explained, the rolling average and linear trend lines that Laurel relies on are overly simplistic and do not consider the associated margins of error or external factors that will influence flows along the pipeline.[158] To demonstrate the error in relying on Dr. Webb's linear trend analysis, Mr. Schaal presented a full analysis of the uncertainty associated with the Laurel pipeline volume flows. This analysis, called a "cone of uncertainty," shows that, contrary to Dr. Webb's results, there is no *certainty* that volumes will decrease in the future and the potential for an increase in the flow of products along the Laurel pipeline cannot be discounted.[159]

[158] Indicated Parties Statement No. 2-S at 9:7-15:2.
[159] *Id.*

Figure 3 "Cone of Uncertainty" for a trend forecast[160]



In its Main Brief, Laurel mischaracterizes Mr. Schaal's cone of uncertainty analysis, claiming it shows that a future decline in volumes is certain.[161] Laurel is wrong. As Mr. Schaal explained:

> I have defined the "cone of uncertainty" to mean a 50% and 95% probability of future flows. The result shows that an increase of flows along the Laurel pipeline is well within this "cone of uncertainty," <u>thus an increase in the flow of products along the Laurel pipeline cannot be discounted</u>.[162]

Mr. Schaal further clarified that his cone of uncertainty shows "that at future points in time, the area that includes the gray area includes the full range of possibilities that occur in that future time, and that cone, that range, is indicative of the several factors and complex factors and market dynamics that are reflected within the monthly flow data along the Laurel pipeline."[163] Thus, Mr. Schaal's analysis shows not that a future decline in volumes is certain, but that there is

[160] *Id.* at 10:5-6.
[161] Laurel Main Brief at 66. (emphasis added)
[162] Indicated Parties Statement No. 2-S at 11:1-4.
[163] Tr. 884:19-885:7.

a great degree of uncertainty surrounding the prediction of future flows, and such uncertainty includes the potential for flow *increases*.

Mr. Schaal also testified that several external factors will contribute to a potential future increase in the Laurel pipeline flow volumes.

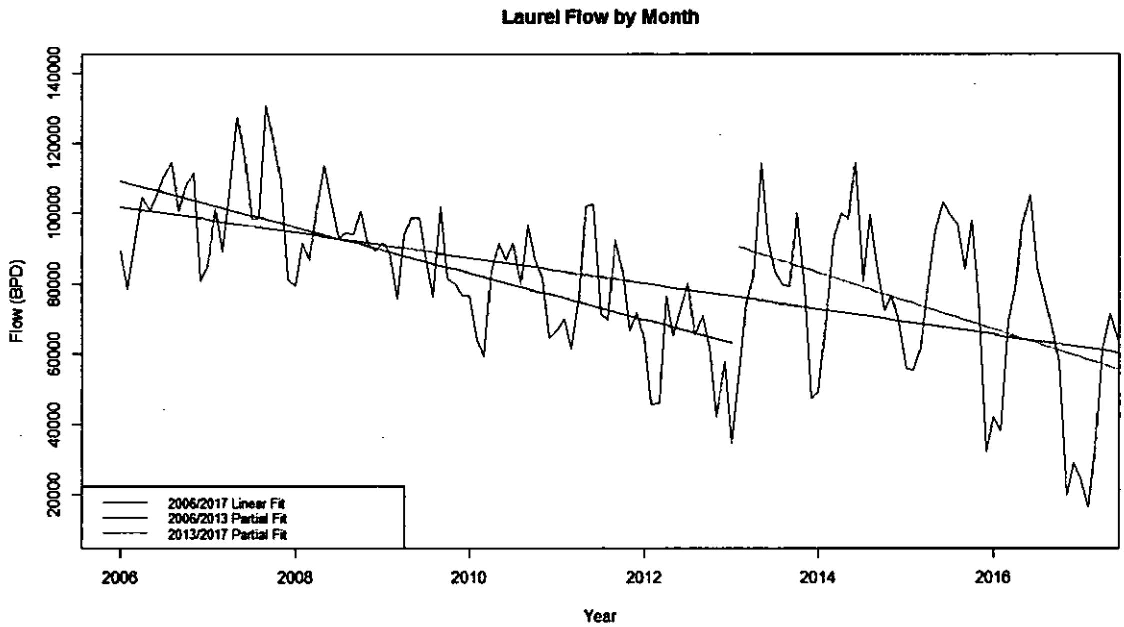
> Specifically, petroleum markets will continue to evolve in a way that will result in increases in east to west movements along the Laurel pipeline. I see this occurring because (i) midcontinent crude oils which supply Midwest refiners will become increasingly connected to global crude prices, (ii) the diffusion of crude oil production technology to other U.S. and international crudes will keep crude prices low for all U.S. refineries, (iii) there will be continued erosion of the price advantage for Eastern Midwest region refiners, and (iv) Central Atlantic refiners will increasingly capitalize on their already existing advantage of waterborne access to a large number of crudes.[164]

Mr. Schaal also explained that Dr. Webb skewed his analysis by conveniently breaking the flows into two parts to deliberately negate the rebound (i.e., increase) in volumes shown by the data:

> This trend analysis is broken when an event on the market, such as the Sunoco 2013 outage, has a positive effect on the level of flows in the pipeline. Dr. Webb's methodology uses this event to skew the trend of the historical pipeline flows in favor of his argument. To test this view, I prepared Figure 1, which presents a simple time trend taking into consideration the entire time period of flows from 2006 to 2017 as provided by Laurel versus Dr. Webb's arbitrary 2013 split of two time periods that were selected to negate the rebound in Laurel flows.

[164] Indicated Parties Statement No. 2-S at 5-6.

Figure 1 Laurel pipeline monthly movements into Pittsburgh showing multiple trend lines



> It is evident from Figure 1 that the selective exclusion of the 2013 Sunoco event has skewed the time series analysis to show a more aggressive slope than what would be if the whole time period of flows as provide by Laurel from 2006 to July 2017 is taken into consideration.[165]

Laurel also argues that the closure of the Sunoco pipeline to Pittsburgh should have caused a continuous increase in the Laurel pipeline volumes to Pittsburgh from 2013-2017 because the Laurel pipeline was the only remaining transportation option, and since that did not occur, entities are no longer seeking to move product to Pittsburgh from the East.[166] However, this incomplete, skewed view of history does not take into account the reasons for the fluctuations in volumes that show these fluctuations are not likely to result in a continual declining trend. As Dr. Arthur explained, volumes on the Laurel pipeline are not random. Volumes declined in 2006-2011 because of refinery shutdowns in Philadelphia, then increased in 2012-2015 because Sunoco pipelines to Pittsburgh and Harrisburg shut down while capacity was

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[165] Indicated Parties Statement No. 2-S at 7.
[166] Laurel Main Brief at 65.

constrained from the Midwest to Pittsburgh, then decreased in 2016 to current levels because of the Sunoco and Buckeye expansions of capacity from the Midwest to Pittsburgh.[167] Importantly, even with the recent capacity additions and removal of constraints from the Midwest to Pittsburgh, resulting in excess capacity from the Midwest to Pittsburgh,[168] the Laurel pipeline continues to supply approximately 50% of Pittsburgh consumption.[169] As Dr. Arthur explained, the fact that Pittsburgh does not currently acquire more volumes from the Midwest when it has the option to do so shows that the Pittsburgh market values Eastern supplies and will continue to take them in the future.

> Available unused capacity from Midwest origins to Pittsburgh indicates that the market has not demanded more product from the Midwest or else more would have been shipped from the Midwest to Pittsburgh. The Pittsburgh market clearly is benefitting from having the ability to source supply from both the East Coast and the Midwest. Dr. Webb asserts that "[i]f Midwest supply were more expensive...it should not be flowing into Pittsburgh as pipeline constraints are eliminated." Pipeline constraints on the Buckeye system to Pittsburgh have been eliminated since March 2016 and the market has only increased its supply from the Midwest by a portion of the total capacity available. If Midwest supply to Pittsburgh were as cost-competitive and as much in demand as Laurel has asserted, then the Buckeye pipeline from the Midwest to Pittsburgh should be fully utilized.[170]

Given that Laurel has not shown volumes flowing from Eldorado to Pittsburgh are expected to decrease with any degree of certainty, it has therefore not shown volume levels or future trends that prove Laurel represents a "wasting asset."

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[167] Indicated Parties Statement No. 1-S at 23-28.
[168] Tr. 481:5-9; 339:18-22; Laurel Statement No. 5 at 17:2-5.
[169] Indicated Parties Statement No. 1-S at 28:20-23.
[170] *Id.* at 30:15-31:14.

ii) Seasonality.

Laurel incorrectly concludes that Eastern supply is not necessary in the Summer because volumes during each season have declined from 2006 to 2017.[171] However, as explained above, Eastern supplies continue to meet approximately 50% of Pittsburgh annual demand, with peak Summer demand being supplied by approximately 66% or more by Eastern supplies,[172] even after the Allegheny Access pipeline became operational and allowed shippers to move more products into Pittsburgh from the Midwest.[173] Moreover, the fact that this excess capacity exists and Eastern supplies are still being purchased shows that the market does not want to acquire all of its supply from the Midwest.[174] Recognizing this fallacy in its wasting asset argument, Laurel now claims that volumes are not shifting to purely Midwest supplies because shippers have long-term contracts with refineries that require time to shift to other supply sources. This "new" view is based solely on the unsupported conjecture of Husky witness Miller at hearing. This approach reflects Laurel's consistent pattern of attempting to fashion arguments without any factual support. Mr. Miller in fact said long-term contracts *could* be a factor and *could* unwind, but this was mere conjecture because he did not know specific volumes going to Pittsburgh that are subject to long-term contracts:

> Q. And yet, there are still volumes from the East Coast refineries that are currently today supplying the Pittsburgh area?
> A. Yes, there are. Some of that could be tied to long-term contracts which will take a while to unwind, and as time goes on, those could unwind and those volumes could even drop further.
> Q. Have you investigated the volumes going to Pittsburgh that are subject to long-term contracts?
> A. I don't know the specifics of that. I'm just talking the general nature after being in marketing for a number of years.[175]

[171] Laurel Main Brief at 67-68.
[172] Indicated Parties Main Brief, at 56; See also Laurel Statement No. 5-RJ (Webb) at 20, Figure 5 (showing Laurel Q2 2017 deliveries to Pittsburgh of an average of 66 MBD).
[173] Indicated Parties Statement No. 1-S at 28:20-23.
[174] *Id.* at 30:15-31:14.
[175] Tr. 1250:7-18.

There is absolutely no evidence other than Mr. Miller's unsupported guess that volumes could be under long-term contract with Eastern refiners and might shift to Midwestern refiners once those long-term contracts expired. Therefore, the Commission should ascribe no weight to Laurel's attempt to portray Mr. Miller's speculation as evidence.

iii) Volumes to Other Markets Demonstrate that Pittsburgh and Altoona are Receiving Midwestern Supplies.

While it is unclear exactly how this portion of Laurel's Main Brief supports its argument that the Laurel pipeline is a "wasting asset," it confirms Laurel's admission that Pittsburgh and Altoona can already receive Midwestern supply, undercutting its arguments that (1) the proposed reversal of the Laurel pipeline is necessary to give these markets access to Midwestern supplies and (2) if the Commission rejects Laurel's Application it will close Pennsylvania borders to out of state supply in violation of the Dormant Commerce Clause.

iv) Gulf Study.

Laurel, lacking its own credible analysis that volumes will decline in the future, relies on a Gulf study it obtained in discovery that is a preliminary and incomplete snapshot that did not consider market conditions that would have changed its conclusion. As Gulf witness Johnston explained: **[BEGIN HIGHLY CONFIDENTIAL]**

[redacted]

[redacted][176]

[redacted][178] **[END HIGHLY CONFIDENTIAL]**

While East to West volumes on the Laurel pipeline have decreased from recent high volumes in 2014-2015 when Sunoco pipelines to Pittsburgh were shut-down, excess, unused pipeline capacity from the Midwest to Pittsburgh has been available the last 18-months. The fact that Midwest supplies are not currently displacing East coast supplies in Pittsburgh, when the means to do so exists, shows that the East coast is providing low-cost supplies to Pittsburgh and volumes on the Laurel pipeline will not continue the decline Laurel predicts.

v) Operational Issues.

Laurel's operational arguments, which Dr. Webb belatedly explained for the first time in his Rejoinder testimony, are unsupported and clearly an assertion created for litigation. Laurel essentially argues that at some point in the future, assuming volumes from Eldorado to Pittsburgh decline (which is not a reliable conclusion or assumption), pipeline transit times will increase or the pipeline may not be able to deliver products at all, and shippers will no longer want to use the pipeline, resulting in operational and reliability issues.[179] Laurel gives no actual or estimate of the volume level at which these operational issues would occur. Mysteriously, Laurel presented this testimony through witness Dr. Webb, who is not an expert in pipeline

[176] Gulf Statement No. 1-S at 10:9-17.
[177] Laurel Main Brief at 70 (citing HC Laurel Exhibit MJW-11, at 22 of 46).
[178] *See e.g.*, Laurel Main Brief at 64, Figure 8-RJ.
[179] Laurel Main Brief at 70-71.

operations, instead of its pipeline operations witness, Mr. Kelly. Mr. Kelly specifically confirmed that the operational issues presented as "important" in Laurel's Main Brief were not even discussed until the month or two before the November 2017 evidentiary hearings.[180] Given that Dr. Webb did not raise these operational issues until his Rejoinder testimony, the Indicated Parties did not have the opportunity to rebut them earlier.

This argument is inconsistent and absurd because Laurel is more likely to face the operational issues it belatedly raises if the reversal is actually approved and implemented. Laurel essentially has a zero volume commitment from the Midwest on the proposed reversed segment of the pipeline from Pittsburgh to Eldorado because, under the TSAs, **[BEGIN HIGHLY CONFIDENTIAL]** [redacted][181] **[END HIGHLY CONFIDENTIAL]** Laurel does not explain how the operational issues it claims would surface with respect to east-to-west flows would not surface, in greater magnitude, with respect to west-to-east flows. This fundamental conflict in Laurel's contention undermines its credibility. Moreover, its own witness stated it is "highly unlikely" Midwest shippers would utilize the Laurel pipeline on the Pittsburgh to Altoona segment.[182] Laurel neither offers any explanation as to how it would deal with these operational issues post-reversal, nor does it attempt to argue it would not face these operational issues post-reversal. Laurel's operational issues argument is a red-herring that should be dismissed out of hand.

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[180] *Id.*, *but see* Tr. at 384:14-25.
[181] Tr. 1203:25-1204:5 **[BEGIN HIGHLY CONFIDENTIAL]** [redacted] **[END HIGHLY CONFIDENTIAL]** *See also* Tr. 1205:23-1206:2; Tr. 303:8-19.
[182] Tr. 704:2-7.

vi) The Commission should not allow Laurel to Reverse the Pipeline Now.

Laurel argues that the proposed reversal should "be approved now as opposed to waiting until Laurel's volumes decline further" for three reasons: the time necessary for regulatory approvals and construction; the alleged inability to find committed shippers in the future to offset constructions costs; and the risk of having an "empty pipe."[183] Laurel's argument fails because it relies on the fallacious assumption that volumes on the Laurel pipeline will definitely decrease in the future, which as discussed above, Laurel has not proven.[184] Laurel has not shown that it has been harmed in any way from the current volume levels, which supply approximately 50% of Pittsburgh demand.[185]

The lead time for regulatory approvals, should not weigh in favor of reversing the pipeline based on Laurel's speculation about future decreasing volumes. Laurel is a regulated utility that must deal with the timing inherent in the regulatory process, just like every other utility. Construction timing is likewise a non-factor. Because Laurel has not shown volumes on the Laurel pipeline will decrease in the future, it cannot demonstrate that the time it will take to implement the reversal weighs in favor of approving its reversal when it is not clear the project will create substantial public benefits, such as lower gasoline prices.

Laurel's argument that those shippers who have already committed to the proposed Laurel pipeline reversal "will find new alternatives" and "may be unwilling to commit to shipping volumes to Pittsburgh" in the future is pure speculation. Laurel cites absolutely nothing in support of this supposed chain of events. Moreover, Laurel secured commitments to reverse its pipeline without acknowledging that the proposed reversal was subject to this Commission's

[183] Laurel Main Brief at 71-72.
[184] *Supra* Section IV.C.2.b.
[185] *Supra* At 128.

jurisdiction. **[BEGIN HIGHLY CONFIDENTIAL]** [redacted][186] **[END HIGHLY CONFIDENTIAL]** The alleged loss of shipper commitments that have always depended on this Commission approving the reversal does not weigh in favor of approving the Application now.

Finally, the risk of an "empty pipe" is based on Laurel's faulty, unreliable assumption and unproven fact that volumes on the Laurel pipeline between Eldorado and Pittsburgh will decrease to zero in the future.[187] The Commission should not prematurely approve the proposed pipeline reversal where Laurel has not shown any substantial benefits or that the project will avoid future harm to Laurel.

b. The Proposed Reversal Will Increase Gasoline Prices For Consumers.

i) The Proposed Reversal Will Eliminate Low Cost Supply From the East Coast.

Laurel's Main Brief continues its errant rhetoric espousing the existence of "clearly" lower cost supply from the Midwest despite overwhelming evidence to the contrary. Laurel would have the Commission believe that East coast suppliers are uncompetitive in Pittsburgh and the proposed reversal would improve competition of supply into Pittsburgh.[188] This is clearly not true. The record in this proceeding demonstrates that Midwest and East Coast suppliers currently compete vigorously for market share in the Pittsburgh area through available pipeline supply from *both directions*, and that the East coast suppliers are competitive, delivering

[186] Indicated Parties Exhibit DSA-8, at 82, 137, 200 (making Buckeye's obligations under the TSAs contingent upon receipt of applicable governmental and other applicable approvals).
[187] *Supra* Section IV. C. 2. b.
[188] Laurel Main Brief at 22-23.

approximately 50% of Pittsburgh's demand for refined petroleum products. Despite Laurel's attempt to obfuscate a clear factual issue, there are no capacity constraints impeding supply from the Midwest to Pittsburgh. The proposed reversal would shut out the competitive sources of supply from the East coast and insulate the Midwest suppliers from competition to the detriment of Pittsburgh consumers.

Moreover, Laurel has not presented any evidence indicating that Midwest supply would be price competitive in the Altoona or Harrisburg markets, even if the reversal were approved. Laurel's claims of Midwest supply for Central Pennsylvania should be entirely disregarded as unsupported subterfuge for a takeover of the Pittsburgh petroleum products market through the elimination of Eastern pipeline competition. The only impact of the approved reversal would be to increase petroleum product prices in the Pittsburgh area by eliminating competitive supply from the East coast.

As discussed in other sections of this Reply Brief, the Commission should maintain a cautious approach to the many generalized, conclusory, unsupported, and flatly incorrect statements repeated throughout Laurel's Main Brief. To facilitate a factually accurate consideration of the critical market dynamics affecting the pricing impacts of the proposed reversal, the Commission should focus on the following unassailable facts:

1. The crude oil price advantage enjoyed by Midwest refineries has been dramatically eroded since 2012 peaks, falling from a peak spread between Brent and Bakken pricing of $23 per barrel in 2012 to a spread of approximately $4 per barrel in 2016.[189]
2. Dr. Arthur's delivered price analysis incorporates wholesale prices for Midwestern supplies posted after the Energy Transfer Partners' (i.e., Sunoco) and Buckeye capacity expansions into Pittsburgh, despite Laurel's claims that the delivered price analysis omits consideration of recent trends.[190]

[189] Indicated Parties Main Brief at 76.
[190] *Id.* at 89.

3. Buckeye's pipelines from the Midwest into Pittsburgh are currently operating below full capacity.[191]
4. East Coast supply sources continue to meet approximately 50% of petroleum products demand in the Pittsburgh area even with the availability of excess pipeline capacity from the Midwest to Pittsburgh.[192]
5. There is no evidence that the proposed reversal will bring Midwest supply to Altoona or Central Pennsylvania and the **[BEGIN HIGHLY CONFIDENTIAL]** [redacted] **[END HIGHLY CONFIDENTIAL]** [193]

Notwithstanding the above undeniable record facts, Laurel's Main Brief persistently relies on conclusory, unsupported statements conflicting with these facts. Only unverified statements underlie Laurel's arguments that Midwest refineries are lower cost producers and that the proposed reversal will reduce gasoline and diesel prices in Pennsylvania. The Commission must reject Laurel's attempt to support its Application with mere supposition and conjecture.

(1) Midwest refiners are not lower cost producers.

Laurel's Main Brief relies heavily on a dogmatic belief that crude oil price advantages experienced by Midwest refiners will preclude East coast refiners from effectively competing with Midwest refiners in the Pittsburgh market. The record data tells a different story, that Midwest refiners enjoyed a crude oil price advantage versus East coast refiners from 2011 – 2012, but that spread has dramatically narrowed following market corrections. If one used Dr. Webb's oversimplified regression line analysis of volumes and applied it to crude costs, a flawed analytical approach the Indicated Parties do not recommend, it would likely show that the narrowing of the Midwest refiner crude cost advantage would completely disappear in year 2025. Unlike Laurel's expert witnesses who claimed to see a single inevitable future on costs, prices

[191] *Id.* at 81.
[192] *Id.* at 81, note 257.
[193] *Id.* at 84.

and supply, the Indicted Parties' experts analyzed actual data and recognized that industry factors can change.

Many of Laurel's arguments are not relevant to whether Midwest refineries are the lower cost producers in the Pittsburgh market. Laurel claims that Midwest refineries can obtain crude oil at a lower cost than East coast refineries, have increased gasoline production, and have invested in infrastructure upgrades.[194] Laurel then inexplicably claims that "[f]or 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."[195] This sort of conclusory reasoning lacks empirical analysis or reliability.

Even assuming each statement to be true, that Midwest refineries have a crude oil cost advantage, Midwest refineries have increased production capacity, and Midwest refineries have invested in infrastructural upgrades, these facts still would not prove that Midwest refineries are the lowest cost source of supply for the Pittsburgh area when wholesale prices and pipeline transportation rates are factored into the analysis. This is because sales of pipeline supplies to the Pittsburgh market from the East on the Laurel pipeline continue to be robust. Yet, Laurel unabashedly draws such conclusions without any supporting analysis. Such statements should be afforded no weight.

Having provided no evidence that Midwest refineries are lower cost producers than Eastern refineries, Laurel then cherry picks statements from various reports and attempts to support its false narrative with misrepresentative sound-bites. When viewed in proper context, none of these statements in its Main Brief support Laurel's claim.

[194] Laurel Main Brief at 73-75.
[195] *Id.* at 76.

First, Laurel cites to conclusions from a **[BEGIN HIGHLY CONFIDENTIAL]** [redacted]

[redacted]

[196] Laurel Main Brief at 76.
[197] Laurel Exhibit MJW-23 at 108.
[198] *Id.*
[199] Indicated Parties Statement No. 1, at 41 (noting loss of East Coast supply as a result of the proposed reversal); *see also* Indicated Parties Statement No. 2 at 38:5-8 (anticipating reduced production from East Coast refineries upon approval of the proposed reversal).
[200] Laurel Brief at 77.
[201] Tr. 491:11-12, 23-24.

[redacted] **[END HIGHLY CONFIDENTIAL]** As confirmed by various witnesses and most clearly observed in Dr. Arthur's workpapers showing the lowest cost supply into Pittsburgh on a monthly basis by type of gasoline, *RBOB* gasoline from East coast origins is the lowest cost product delivered to Pittsburgh in the Summer months, virtually all of which is supplied to Pittsburgh by the East coast refineries.[202]

Similarly, Laurel relies on a statement from a study completed by **[BEGIN HIGHLY CONFIDENTIAL]** [redacted]

[redacted]

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[202] Indicated Parties Exhibit DSA-11, at 21-23.; Tr. 1119:15 (Monroe witness Ms. Sadowski confirming "Pittsburgh is an RBOB market").
[203] Laurel Brief at 77.
[204] *Id.*
[205] Laurel Exhibit MJW-24 at 63. In assessing the competitiveness of Monroe's Trainer refinery the Muse study found that "[g]eography limits access to low cost extra heavy Canadian and S. American grades vs. *Gulf Coast refiners.*" *Id.* (Emphasis added).

[redacted] **[END HIGHLY CONFIDENTIAL]** As explained by Sheetz witness Lorenz, a "crack spread measures the difference between the cost of crude oil and the selling price of finished products, such as gasoline and diesel."[207] Notwithstanding the decline in the crude oil price advantage once enjoyed by Midwest refineries (which will be discussed later in this Reply Brief), crude oil costs are not the only component of wholesale and retail petroleum product pricing,[208] particularly when the Eastern Refineries continue to supply at least half the Pittsburgh market without pipeline constraints from the Midwest. Contrary to Laurel's representation, lower crude costs does not mean "the evidence is clear that the Midwest Refineries are lower cost producers than the Eastern Refineries."[209] In fact, in the segment of the **[BEGIN HIGHLY CONFIDENTIAL]** [redacted] **[END HIGHLY CONFIDENTIAL]** which is consistent with the Indicated Parties' testimony.[210]

Moreover, Gulf witness Johnston offered important background concerning the Business Development Playbook that Laurel has deliberately ignored. This document does not constitute a formal study supported by external consultants or subjected to outside review. As clarified by Mr. Johnston:

206 Laurel Main Brief at 77.
207 Sheetz Statement No. 1 at 6, note 2.
208 Indicated Parties Cross Exhibit No. 7.
209 Laurel Main Brief at 78.
210 Indicated Parties Main Brief at 88, 91.

> It was prepared for business development. That's the whole thing. It was an internal working document. A lower level person just put it together. Nothing was acted on.[211]

Mr. Johnston made a similar clarifying statement in his Surrebuttal testimony, describing the Business Development Playbook and other analyses referenced by Laurel in the following manner:

> The referenced analyses were conducted as part of a preliminary marketing exercise in 2016 and were intended to provide a foundation for assessing business developments. These analyses omitted a number of inputs that would be necessary to thoroughly analyze the relevant data in the context of Laurel's proposed pipeline reversal.[212]

Consistent with Mr. Johnston's testimony, the statements in the Business Development Playbook must be viewed within their proper context and treated the same as a formal study. The limited excerpts from Gulf's materials on which Laurel tries to find some evidentiary footing are immaterial to Gulf's position in this proceeding, and its overarching and steadfast position is that Laurel's Application must be denied. Laurel's reliance on the Gulf Business Development Study to support its contention that Midwest refineries are lower cost producers than East coast refineries is wholly misguided and subterfuge for Laurel's lack of empirical data and analysis supporting its claims.

(2) Midwest Crude Oil Cost Advantage Will Erode Further.

Continuing its pattern of ignoring inconvenient data that conflicts with its positions, Laurel's Main Brief omits any mention of the decline of Midwest refineries' crude oil cost advantage and attempts to obfuscate Indicated Parties witness Schaal's clearly factual confirmation of the eroded cost advantage. Laurel's Main Brief continually fails to provide the context underlying the relevant data. Laurel recounts Mr. Schaal's testimony that the

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[211] Tr. at 1051:17-20.
[212] Gulf Statement No. 1-SR at 10:6-17.

midcontinent crude oils supplying the Midwest will become increasingly connected to global crude prices and that exposure to global pricing will continually and further erode the price advantage that was held by Midwest refiners.[213] Laurel then seeks to impeach Mr. Schaal by highlighting a report prepared by Mr. Schaal's consulting organization under his supervision in which Mr. Schaal and his colleagues projected a \$5-\$7 per barrel cost advantage for midcontinent. According to Laurel, the \$5-\$7 per barrel projected price advantage for Midwest refineries must mean that the crude oil advantage has not eroded. However, Mr. Schaal has consistently explained the context of this statement, including the following clarification provided to Laurel's counsel at the evidentiary hearing:

> So, when I'm referring to cost advantage of other Eastern Midwest refiners or Midwest refiners generally, it has to do specifically with the refinery acquisition costs of the crude at those refineries as compared to East Coast refineries. On that measure, the acquisitions costs of those refineries between those two sets of refineries *has been reduced to levels that existed in 2007.*[214]

Unlike Laurel's Main Brief, the Indicated Parties' Main Brief provided a comprehensive and contextual account of the crude oil cost spread between Midwest and East coast refineries, showing that the Midwest refineries at one time enjoyed a crude oil cost advantage exceeding \$20 per bbl.[215] Viewed in the proper context, with complete data, it becomes eminently clear that Mr. Schaal's description of the eroded crude oil cost advantage held by Midwest refineries is perfectly consistent with the current \$5-\$7 per barrel cost advantage. Laurel's representation that Mr. Schaal seeks to "minimize his forecast," is incorrect.[216] Rather, Mr. Schaal provided the context showing why the forecast represents an eroded crude oil cost advantage that is not expected to return to prior levels.

[213] Laurel Main Brief at 78.
[214] Tr. 843:3-10.
[215] Indicated Parties Main Brief at 76.
[216] Laurel Main Brief at 79.

Mr. Schaal also noted that benchmark crude prices, while informative, do not represent the actual costs incurred by a refiner to obtain crude oil. As stated by Mr. Schaal, **[BEGIN HIGHLY CONFIDENTIAL]** [redacted][217] **[END HIGHLY CONFIDENTIAL]**. For example, the wholesale marker (*i.e.*, benchmark) prices do not include transportation costs. Particularly where the cost advantage between the Midwest and East coast benchmark crude prices has eroded from $20+ to just $5-$7 per barrel, the other costs incurred to deliver crude to the refinery gate become significant in assessing the overall cost advantage. Therefore, Laurel's assumption that a comparison of crude benchmark prices confirms an actual crude oil cost advantage is incomplete and therefore unpersuasive. As discussed later, Dr. Arthur's analysis of actual delivered costs to market offers a more complete assessment of each supplier's total costs and market advantages. When considering the respective cost differences between Midwest and East coast refiners, it is important to note that the transportation costs of bringing product into Pennsylvania need to be considered. Bringing product into Pittsburgh from the West through Buckeye will cost more than moving similar product into Pittsburgh from the East through Laurel pipeline because of the higher interstate transportation tariffs and charges that would be applicable to similar product moving along the Laurel pipeline from the East into Pittsburgh.[218]

Without explanation, Laurel's Main Brief also suggests that higher volumes of crude oil produced from Midwest sources translates into additional cost advantages for Midwest refineries. Laurel references testimony, noting that **[BEGIN HIGHLY CONFIDENTIAL]** [redacted]

[217] Tr. 845:5-6.
[218] Indicated Parties Statement No. 1 at 12:13-21.

[redacted] **[END HIGHLY CONFIDENTIAL]** From this statement alone, Laurel concludes "[t]he 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 in the future.[219]

Laurel offers no explanation or support underlying its interjection of volume into the discussion of crude oil costs. However, Mr. Schaal confirmed no such relationship exists between volumes and price in the context of globally connected crude oil production.[220] Specific to the Midwest crude volumes, Mr. Schaal declared **[BEGIN HIGHLY CONFIDENTIAL]** [redacted] **[END HIGHLY CONFIDENTIAL]**.

(3) The number of Midwest Refineries is Not Relevant to Consideration of Laurel's Application.

In an apparent attempt to establish some competitive benefit from the proposed reversal, Laurel argues that the reversal will preserve competition in the Pittsburgh area because many Midwest refiners will compete to supply the Pittsburgh and Altoona markets. The Indicated Parties Main Brief addressed Laurel's false claims of benefits to Altoona and Central Pennsylvania.[221] The number of Midwest refiners available to serve Pittsburgh upon implementation of the proposed reversal would be the same number of refiners available to serve

[219] Laurel Main Brief at 79.
[220] Tr. 849:18-22.
[221] Laurel Main Brief, at 81-86 (noting both the lack of evidence that volumes would reach Altoona and alternatively, the comparatively small demand in the 10 County region comprising the Altoona area).

Pittsburgh today.[222] The only difference would be the loss of access to Pittsburgh by East coast refineries.[223] Therefore, the reversal results in a net loss of competition in the Pittsburgh market, regardless of the fact that there would still be some measure of competition among Midwest refiners. However, competition *among* Midwest suppliers accessing similar crude oil and cost structures is different in nature and kind than competition *between* East Coast and Midwest refiners in Pittsburgh.

Considering recent findings at the FERC, the Commission should not approve an Application that lacks any demonstrable countervailing benefit for Pittsburgh or any other region in Pennsylvania, and would reduce competition and raise gasoline and diesel prices in the Pittsburgh area. In a FERC proceeding where a presiding Administrative Law Judge initially upheld Buckeye's authority to charge market-based rates based on a finding that the Pittsburgh delivery market is competitive,[224] the FERC recently reversed that Initial Decision as follows:

> These findings support *reversing* the Initial Decision's determination that the Complainants have not met their burden of proof to show that Buckeye possesses market power in the Pittsburgh destination market. Accordingly, the Commission finds that Buckeye's market-based rate authority for the Pittsburgh destination market should be revoked.[225]

Because FERC recently found the pipeline transportation market to Pittsburgh to be concentrated (i.e., not competitive), and that Laurel's affiliate Buckeye possesses market power, the Commission should reject outright Laurel's proposal to reduce transportation alternatives and capacity to Pittsburgh by reducing access for East coast suppliers when Midwest refiners already have excess pipeline capacity into the Pittsburgh area.

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[222] Indicated Parties Main Brief at 133-134.
[223] *Id.* at 134.
[224] Laurel Exhibit No. 1 (Application), at 8 citing *Guttman Energy, Inc. d/b/a Guttman Oil Company, and PBF Holding Company, LLC v. Buckeye Pipe Line Company, L.P. and Laurel Pipe Line Company L.P.*, 155 FERC ¶ 63,008 (2016) ("Buckeye 2016 ID").
[225] *Guttman Energy, Inc. d/b/a Guttman Oil Company, and PBF Holding Company, LLC v. Buckeye Pipe Line Company, L.P. and Laurel Pipe Line Company L.P.*, Docket Nos. OR14-4-000 and OR14-4-001 (November 16, 2017), at 135.

(4) The Availability of Pipeline Capacity into Pittsburgh is Not Disputed.

Laurel's Main Brief attempts to confuse the undisputed fact that currently available pipeline capacity from the Midwest into the Pittsburgh area remains underutilized. Despite plain evidence that existing pipeline capacity remains available, Laurel attempts to create a fiction of congestion constraints preventing Midwest supply from reaching the Pittsburgh area. These claims are based on irrelevant and unreliable testimony from Husky witness Miller and gross mischaracterizations of statements from Gulf witness Johnston, and must be rejected.

At the evidentiary hearing, Husky witness Miller testified that available capacity on Sunoco's Allegheny Access pipeline would not forestall the need for additional pipelines because the terminals connected to Sunoco's pipeline are "smaller in size" and "not in advantaged locations."[226] As further discussed in Section IV.C.2.a.iii.1-4, *infra*, the credibility of Mr. Miller's testimony characterizing Sunoco's Allegheny Access pipeline as limited due to alleged terminal size and location issues must be seriously questioned, because he previously discussed the benefits of capacity of Sunoco's pipeline without any mention of such limitations. The following question and answer from Mr. Miller's Rejoinder testimony contradicts his later testimony at the evidentiary hearing:

> Q. IS HE [GULF WITNESS MR. JOHNSTON] CORRECT THAT CAPACITY LIMITATIONS MAKE IT ALL BUT IMPOSSIBLE TO MOVE PRODUCT FROM CHICAGO-AREA REFINERIES TO PITTSBURGH?
>
> A. No. Contrary to Mr. Johnston's claim, I testified that the reversal would not test the capacity limits of Midwestern pipeline supply from Midwest refineries. I specifically explained that the Broadway II Project is designed to increase the capacity of Buckeye's pipeline system from source points in Michigan and Ohio to delivery points in Western and Central Pennsylvania. Further, I pointed to the

[226] Laurel Main Brief at 81-82.

> additional pipeline capacity provided by Sunoco Logistics' Allegheny Access and Buckeye's Michigan/Ohio Pipeline Expansion.[227]

As indicated above, Mr. Miller made no mention of any inadequacies or operational constraints when rebutting Mr. Johnston's statements regarding challenges moving Chicago-area product into the Pittsburgh area. Even more telling is the fact that any operational or geographical shortcomings on Sunoco's Allegheny Access pipeline would not explain why *Buckeye's pipeline* into Pittsburgh has had excess capacity since March 2016.[228] Mr. Miller has not pointed to any constraints on Buckeye's pipeline system, which alone can supply almost all of the Pittsburgh area demand without the additional capacity from the reversal.

Laurel's attempt to misrepresent the testimony of Gulf witness Johnston also cannot change the plain fact that capacity constraints do not presently inhibit shipments of Midwest supply into the Pittsburgh area. Laurel alleges that Mr. Johnston changed position throughout this proceeding by testifying as to pipeline capacity limitations on the movement of petroleum products from Chicago-area refineries to Pittsburgh in his Direct and Surrebuttal testimony and then later testifying at the evidentiary hearing that capacity into Pittsburgh is not constrained.[229] As with many of Laurel's arguments, this claim is easily disproven by the record evidence.

Laurel's characterization of Mr. Johnston's testimony at the evidentiary hearing ignores clarifying testimony in Mr. Johnston's Surrebuttal testimony. After testifying in his Direct testimony that Buckeye pipelines from the Midwest are heavily allocated, such that shipments would be limited by existing capacity allocations, Mr. Johnston submitted Surrebuttal testimony noting that "Laurel witness David Arnold confirms that Buckeye's pipeline is not currently prorationed, which means the existing pipeline is not being used to full capacity such that Laurel

[227] Husky Statement No. 1-RJ at 4:7-16.
[228] Indicated Parties Main Brief at 80.
[229] Laurel Main Brief at 83, note 63.

would need to set capacity limits for shippers."[230] As discussed in Section IV.C.1.a.iv., *supra*, Mr. Johnston also testified to transit time issues related to the distance of pipeline shipments from Chicago, which are distinct from capacity limitations.

Mr. Johnston's testimony must be considered in the context of record evidence showing Buckeye's pipeline has been operating below full capacity since the pipeline capacity expansions completed by Sunoco and Buckeye in 2015 and 2016, respectively.[231] Therefore, it is clear that current pipeline capacity into Pittsburgh from the Midwest is not constrained and has not been constrained since March 2016. As discussed in the Indicated Parties Main Brief, the true intent and effect of the proposed reversal would be to eliminate competition from the East coast refineries to the benefit of Midwest refineries, and swap lower Commission-regulated tariffs for higher FERC-regulated tariffs for the benefit of Buckeye.[232] Unfortunately, there are no similar benefits for Pennsylvania wholesalers, retailers or consumers from the proposed reversal.

(5) Projected Future Demand Declines Are Irrelevant to the Commission's Consideration of Laurel's Application.

Laurel claims that decreased gasoline consumption will drive many Midwest refineries to "further compete" to serve all markets, including Philadelphia and Central Pennsylvania and will result in lower prices for consumers.[233] As the declining demand projections Laurel cites all pertain to broad regional demand in the Midwest, Mid-Atlantic, or PADD 1, it is not clear how the economic effects of these projections are any more relevant to Midwest refineries than the East coast refineries. As demonstrated by Dr. Arthur, the central issue affecting the Pittsburgh petroleum products market is the persistent seasonal pattern where supply from East coast is less expensive than Midwest supply for 7-9 months of the year, while Midwest supply is less

[230] Gulf St. No. 1-SR at 18, note 47.
[231] Indicated Parties Statement No. 1 at 9
[232] Indicated Parties Main Brief at 57.
[233] Laurel Main Brief at 86.

expensive to deliver to Pittsburgh during the 3-5 Winter months.[234] Laurel presents no evidence, and there is no basis to conclude, that downward pressure on prices affecting both supply sources would change this persistent seasonal pattern. Therefore, the potential for future demand declines in both the Midwest and the East coast has no impact on the competitive position of Midwest and East coast supply in the Pittsburgh market.

ii) Impact on Gasoline Prices in Pennsylvania.

(1) Laurel's Claim that All Parties Agree that the Reversal Will Lower Gasoline Prices In Central and Eastern Pennsylvania is False.

Laurel's claim that any dispute as to the price impact of the proposed reversal is limited to the Pittsburgh area misrepresents the arguments advanced by the Indicated Parties and further evidences Laurel's disregard for context. For example, Laurel quotes extensively from PESRM witness Sadlowski to support its narrative that the Indicated Parties agree with Laurel that the proposed reversal will decrease prices in Central and Eastern Pennsylvania, but Laurel omitted the final portion of the testimony that is quite different than the doctored version set forth in Laurel's Main Brief:

[BEGIN HIGHLY CONFIDENTIAL]

[redacted]

[234] Indicated Parties Main Brief at 89.

[redacted]

[END HIGHLY CONFIDENTIAL]

Although Laurel's Main Brief presented the above quote without the final question and answer, a review of the full discussion clearly shows Mr. Sadlowski mentioned priced reductions in *out of state markets* that would receive product displaced by the reversal, but disagreed with the proposition that the proposed reversal would reduce wholesale prices in Philadelphia.[236] Laurel's suggestion that Mr. Sadlowski agreed the reversal would decrease prices in Eastern Pennsylvania is a distortion of his testimony.

With regard to other Indicated Parties witnesses that commented on price impacts in Philadelphia, Laurel's representations of their testimony fail to reflect the full implications arising from displacing volumes currently shipped to the Pittsburgh area from the East coast refineries. While Indicated Parties witnesses recognized that the proposed reversal could reduce prices in the Philadelphia area in the short-term, Laurel ignores additional statements clarifying this effect would revert back to *increased prices* following a reduction of refinery capacity. Indicated Parties witness Michael Schaal described the likely development as follows:

> Q. What are the consequences to east coast consumers of the proposed reversal of the Laurel Pipeline?
>
> A. In my opinion, the direct result of the proposed reversal to Altoona would be the loss of 132,000 barrels per day of refinery capacity during part of the year. This reduction would result in the shutdown of that amount of refinery capacity, which would then eventually lead to increased prices and increased susceptibility to price spikes for consumers of gasoline.[237]

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[235] Tr. 979:22-980:23 (Emphasis added).
[236] Tr. 979:22-980:23.
[237] Indicated Parties Statement No. 2 at 38:14-20.

Mr. Schaal's testimony unequivocally confirms that the Indicated Parties dispute Laurel's claim that the proposed reversal would reduce prices in Philadelphia.[238]

The Indicated Parties' Main Brief also clarified that alleged benefits to Altoona from the proposed reversal are similarly not going to occur. While Indicated Parties witness Dan Arthur testified that Altoona and Harrisburg may benefit from some arbitrage opportunities if Midwest volumes reach these locations, the record also demonstrates that such arbitrage opportunities may never materialize because shippers are not expected **[BEGIN HIGHLY CONFIDENTIAL]** [redacted] **[END HIGHLY CONFIDENTIAL]** to ship barrels to Altoona under the TSA's for use of the post-reversal line.[239] Dr. Arthur also clarified that any benefits to Altoona and Harrisburg would pale in comparison to the harm inflicted on the larger Pittsburgh market.[240]

(2) The Proposed Reversal Will Not Reduce Gasoline Prices in Pittsburgh.

In arguing that the reversal will reduce prices in Pittsburgh, Laurel again presents unsupported and conclusory statements and omits actual empirical analysis. Laurel presents a litany of testimony quotes in its Main Brief restating its mantra that Midwest refineries are lower cost producers than Eastern refiners. The only numerical analysis presented throughout this argument is a claim that the proposed reversal will reduce retail prices by approximately a nickel per gallon or $80,000 per day for the Pittsburgh market. As discussed below, Laurel has no credible support for this conclusion. The Commission should instead rely on the more thorough pricing analysis conducted by Dr. Arthur and Mr. Schaal.

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[238] Ms. Sadowski agreed that the Laurel reversal would cause Monroe to "cut runs" or decrease their production. Tr. 1129: 18-24.
[239] Indicated Parties Main Brief at 82-82; *see also* Indicated Parties Statement No. 1-S at 5:3-7.
[240] Indicated Parties Main Brief at 86 note 273.

The record is clear that Laurel performed no quantitative analysis of price impacts in the Pittsburgh area. In response to questioning at the evidentiary hearing, Laurel's witnesses claimed to have reviewed documents from the Indicated Parties showing the reversal would reduce retail prices in the Pittsburgh area by $0.05 per gallon or $80,000 per day. Laurel identifies an illustration on the lower left part of page 110 of the **[BEGIN HIGHLY CONFIDENTIAL]** [redacted] **[END HIGHLY CONFIDENTIAL]** as the source data underlying Laurel's professed nickel per gallon reduction in retail prices in the Pittsburgh area. **[BEGIN HIGHLY CONFIDENTIAL]** [redacted][241] **[END HIGHLY CONFIDENTIAL]** In addition, Laurel's conclusory claims of price reductions to Pittsburgh as a result of a Laurel reversal simply do not make sense given the presence of excess capacity from Midwest refineries to Pittsburgh that has prevailed for the last 18 months.[242] If Midwest producers are lower cost, they currently have the opportunity to displace East coast suppliers given that pipeline capacity from the Midwest to

[241] Indicated Parties Main Brief at 105; *see also* Indicated Parties Statement No. 2, at 19:8-9 (showing approximately 5 MBPD of low-RVP gasoline shipments into Pittsburgh from the Midwest in 2015 compared to over 80 MBPD from the East Coast); *see also* Indicated Parties Main Brief at 76 (showing that the crude oil cost advantage for Midwest refineries decreased by approximately 50% between 2015 and 2017).
[242] Indicated Parties Statement No. 1-S at 29:1-30:18.

Pittsburgh is not constrained, However, the market is revealing that supply from East coast is clearly valued and Midwest supply must be higher cost than the East coast volumes on the Laurel pipeline, otherwise Midwest supply would be expected to have expanded and displaced more than it is currently doing.[243]

To the contrary, Dr. Arthur and Mr. Schaal performed rigorous and comprehensive quantitative analyses to assess the pricing impact of the proposed reversal in the Pittsburgh market. These analyses, discussed in the Indicated Parties Main Brief and in Section IV.C.1.b.i.-ii.2, *supra,* present data showing the obvious, i.e., that removing supply sources meeting half of the demand in a market with unconstrained entry will inevitably increase prices.[244]

(3) Laurel Has Provided No Evidence that the Reversal will Bring Midwest Product to Central Pennsylvania.

Laurel argues that the proposed reversal will benefit Central Pennsylvania by extending pipeline service to Altoona, but offers no credible evidence to support this claim. Laurel first argues that Altoona and Pittsburgh are similar in size. Of course, this false argument relies on an "apples to oranges" comparison, as Laurel compares average volumes to Altoona on the Laurel pipeline over 3 years to average volumes to Pittsburgh on the Laurel pipeline over just the most recent 12-months.[245] First, while Laurel delivers all volumes to Altoona (as there are currently no other pipeline alternatives), Laurel's analysis omits deliveries on other pipelines to Pittsburgh. The comparison also fails to account for the seasonality of Pittsburgh volumes, which in 2016 peaked at 98 MBPD in June. By comparison, shipments on the Laurel pipeline into Altoona also peaked in June 2016, but at 46 MBPD. As evidenced by the wildly disparate peaks and higher average consumption in the Pittsburgh market, the two markets are not similar.

[243] *Id.* at 30:1-31:14; Tr. 747:7-748:23.
[244] Indicated Parties Main Brief at 80-81, 90.
[245] Laurel Main Brief at 95.

Further, as addressed at length in the Indicated Parties' Main Brief, Laurel's claims that Midwest product will reach Altoona due to the reversal are unfounded. Despite Laurel's bald proclamations that "low-cost" Midwest supply will flood Central Pennsylvania, Laurel's own witness testified at that deliveries to Altoona on the post-reversal line are unlikely because of competition from the East coast refiners.[246] This is consistent with the TSAs signed by shippers on the post-reversal line, which **[BEGIN HIGHLY CONFIDENTIAL]** [redacted][247] **[END HIGHLY CONFIDENTIAL]**

Finally, in yet another example of unfounded averments, Laurel attempts to show an existing demand for Midwest product in Altoona by attributing minor volume declines over the two-year period 2014-2016 to allegedly increased trucking from the Midwest, with no supportive testimony or other analysis. Laurel claims:

> [t]he declining volumes to Altoona from 2014 to 2016 suggest that the Altoona market is currently supplied by truck in addition to receiving pipeline deliveries from the East. The 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.[248]

As support for this statement, Laurel cites the following conjecture from Laurel witness Mr. Arnold:

> I think the big risk is having a lot of trucks move from the Pittsburgh area all the way into central Pennsylvania. That's where you see a large increase in truck traffic, in my opinion.[249]

Mr. Arnold offered no empirical basis for his opinion on the likelihood of large volumes being trucked from Pittsburgh to Altoona, so Laurel attempts to create one by assuming a minor dip in

[246] Indicated Parties Main Brief at 82.
[247] *Id.* 83-84.
[248] Laurel Main Brief at 95.
[249] Tr. at 352:4-8.

volumes shipped on the Laurel pipeline from Philadelphia to Altoona means that displaced volumes are "almost certainly" coming from the Midwest.[250] It is not at all clear whether the decline observed from 2014-2016 is attributable to displaced volumes supplied to Altoona via other means or simply a correction from unusually high volumes observed in 2014. Laurel only emphasizes that volumes on the Laurel pipeline declined from 40 MBPD in 2014 to 33 MBPD in 2016.[251] Laurel ignores that volumes on its pipeline from 2011-2013 averaged 34.5 MBPD, 31.75 MBPD, and 34 MBPD, respectively.[252] This analysis of the volumes from Pittsburgh to Altoona, presented for the first time in Laurel's Main Brief without testimonial support, must be given no weight.

c. The Proposed Reversal Will Not Improve Supply Reliability for Pittsburgh or Central Pennsylvania.

i) Laurel's Claims of Increased Supply Reliability for Central Pennsylvania are Disingenuous and Should be Afforded No Weight.

Laurel's claims of supply reliability to Central Pennsylvania post-reversal are disingenuous misrepresentations of its true intentions. Laurel posits the possibility of a post-reversal pipeline converging from the East and West at Altoona as a "very important supply reliability benefit for Central Pennsylvania."[253] As fully discussed in Section IV.C.2.c.ii of this Reply Brief, Laurel clearly views the proposed reversal to Altoona as a temporary solution, leading up to a further reversal towards Philadelphia and eventually New York, which undermines the purported importance of establishing Altoona as an arbitrage point with bidirectional pipeline service.[254]

[250] Laurel Main Brief at 95, note 66.
[251] *Id.* at 95.
[252] Laurel Statement No. 5-RJ at 20:1 – 21:4.
[253] Laurel Main Brief at 96.
[254] Indicated Parties St. No. 3 at 23:16 – 25:5.

Additionally, as discussed above, Laurel has provided no evidence of anticipated shipments to Altoona on the reversed pipeline.[255] With the reversed volumes expected to be fully or substantially all delivered within the Pittsburgh area, the reversed pipeline provides no guarantee of reliability benefits for Central Pennsylvania.

ii) Laurel's Argument that the Proposed Reversal Will Improve Supply Reliability in Pittsburgh Lacks a Logical Foundation.

Laurel argues that the proposed reversal will improve supply reliability in the Pittsburgh area because PADD 1 refineries are more vulnerable to outages than PADD 2 refineries. This argument misses the point. Laurel refuses to recognize that the Pittsburgh area already benefits from a supply security standpoint through its connection to both the Midwest and the East coast. The result of the proposed reversal would be to isolate the Pittsburgh area from the East coast, i.e., PADD 1, refineries. Therefore, the question of whether PADD 1 or PADD 2 offers greater supply security is irrelevant in the context of assessing the overall impact of the proposed reversal on supply security. Removing connectivity to either source of supply would reduce and threaten Pittsburgh's supply security. With regard to impacts on price volatility, removing access to PADD 1 poses significant adverse effects for the Pittsburgh area, which are discussed in Section IV.C.2.a.ii.1-3, *infra*.

d. Impact On National And State Energy Policy.

i) The Policy Laurel Argues for Is Moot and Not Within the Commission's Jurisdiction.

Regarding the alleged current national policy to reduce reliance on foreign crudes, Laurel relies on a Fifth Circuit case from 2000 to argue U.S. energy policy to reduce overseas imports of oil is as important now as it was in 1978, without presenting any evidence or authority to

[255] Section IV.C.1.b.i and IV.C.1.b.ii.1, *supra.*

support this proposition.[256] In fact, the alleged policy for which Laurel argues is largely moot. Laurel mentions the "significant legislation and policy measures" implemented to promote energy independence after the 1973-74 Arab oil embargo, but conveniently fails to discuss that one of those policies was legislation that banned the export of domestic crude oil, parts of The Energy Policy and Conservation Act of 1975, which have now been repealed.[257]

As. Mr. Schaal explained, in 2015, Congress passed legislation lifting the ban on U.S. exports of crude[258] by repealing section 103 of the Energy Policy and Conservation Act of 1975,[259] and thus reversing this policy aimed at reducing reliance on foreign crude. The fact that the U.S. Congress allowed exports of domestic crude while the U.S. remained a net importer of crude shows that U.S. policy has significantly shifted away from attempting to obtain full energy independence in further reducing reliance on foreign crude. Congress clearly shifted the policy: U.S. refineries import and export crudes based on their locations and configurations to optimize refinery utilization and profit margins; because crudes are of different quality specifications, there will always be imports and exports as the U.S. imports crudes that are suitable for the configurations of its refineries and exports crudes that are not.[260] Import and export decisions are now an economic decision left to the market, as Congress recognized in repealing the 1975 ban on domestic crude exports.

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[256] Laurel Main Brief at 100-101.

[257] *See* PL 94–163 (S 622), PL 94–163, December 22, 1975, 89 Stat 871 (Energy Policy and Conservation Act of 1975) (codified at 42 U.S.C. Ch. 77), at § 2 (discussing one purpose of act is to "to provide for the creation of a Strategic Petroleum Reserve capable of reducing the impact of severe energy supply interruptions"), § 103 (allowing President to restrict exports).

[258] Tr. 500:5-7.

[259] Pub.L. 114-113, Div. O, Title I, § 101(a), Dec. 18, 2015, 129 Stat. 2987.

[260] Indicated Parties St. No. 2 n.2 (U.S. Energy Information Administration, *Effects of Removing Restrictions on U.S. Crude Oil Exports*, September 2015. https://www.eia.gov/analysis/requests/crude-exports/pdf/fullreport.pdf.) at pp. x (explaining that refiners unlikely to fully back out heavy crude imports needed to keep coking units fully charged), ix ("Looking at the composition of trade, crude oil exports tend to represent a larger share of combined crude and product exports in cases where crude oil exports are unrestricted. Also, in cases where the level of domestic crude production increases with the removal of crude oil export restrictions, total combined crude and product exports are higher than in parallel cases with current crude export restrictions in place.").

The policy for which Laurel argues is moot and the Commission should not consider it. Moreover, Laurel's argument that this Commission should adopt regulatory policy interfering with the free market of crude exports and imports (where it has no jurisdiction to do so) is the height of irony considering Laurel's new and incorrect arguments opposing the Commission exercising jurisdiction over the proposed reversal. The Commission is not tasked with setting (or following) alleged policies concerning use of foreign crude, and should not find a benefit in promoting moot policies over which it has no statutory authority.

ii) The "Shale Revolution."

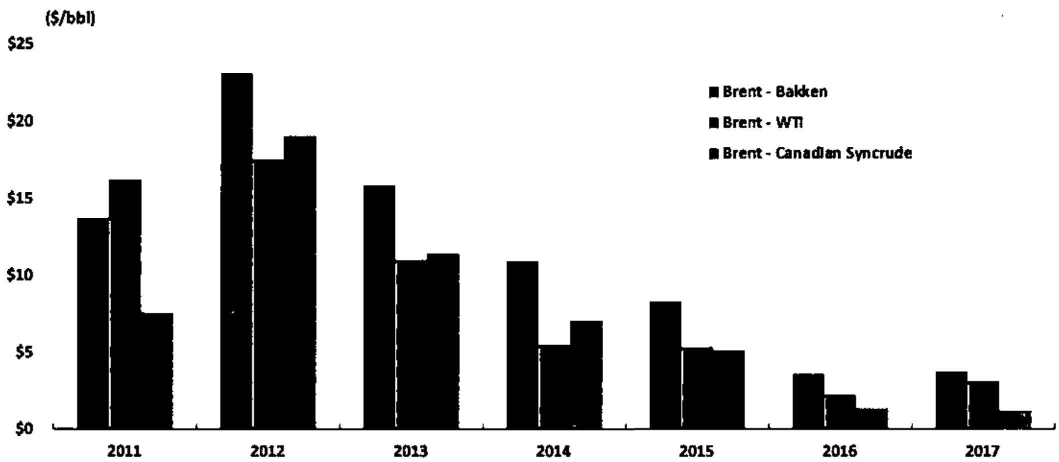
Laurel argues that "Pennsylvania should not delay in receiving the benefits of the Shale Revolution," which Laurel describes as the alleged low-cost crude available to Midwest refiners that purportedly results in lower costs of production. However, there is absolutely nothing stopping Pennsylvania from receiving any such benefits now – there is pipeline capacity from the Midwest to Pittsburgh going unused.[261] That the Pittsburgh market is not fully utilizing Midwestern supplies shows that Laurel's allegations that Midwest refiners are lower cost is false.[262] While Midwestern refiners enjoyed an advantage in the price of crude in the past, as Mr. Schaal explained, there has been and continue to be a continued erosion of this crude price advantage, which removes the main advantage those refiners had over Eastern refiners to more cheaply produce refined petroleum products and economically move those products to Eastern markets. [263]

Figure 15 in Mr. Schaal's Direct testimony[264] illustrates the decline in the Midwest refiner crude oil price advantage that occurred as refineries in the Gulf Coast began to increasingly

[261] Indicated Parties Statement No. 1-S at 29:22-31:14; Tr. 481:5-9; 339:18-22; Laurel Statement No. 5 at 17:2-5.
[262] Indicated Parties Statement No. 1-S at 30:15-31:14.
[263] Indicated Parties Statement No. 2-S at 48:3-51:2.
[264] Indicated Parties Statement No. 2 at 48:11-15.

access the same crude oils. Unlike Midwest refineries, Eastern refineries pay Brent crude oil prices. Figure 15 shows how Canadian and Bakken crudes have lost their price advantage when compared with Brent prices, thus significantly reducing the Midwest refiners' crude acquisition advantage over Eastern refiners. As Dr. Webb lamented, the increase in production from the Bakken formation of North Dakota originally could only be brought to refineries through expensive crude oil transportation options.[265] However, Mr. Schaal noted that the continued build out of crude oil pipelines is increasingly connecting those crudes to the Gulf Coast[266] which, combined with the increase in crude oil production in Texas through the evolution of the "Shale Revolution"[267] and the lifting of the ban on crude oil exports,[268] has now more closely connected those crudes to global crude oil markets.[269]

Figure 15 Monthly Brent Crude differentials to Bakken and WTI Crude prices, January 2010-April 2017[270]



Given the eroding price advantage of crude for Midwestern refiners and the fact that Pennsylvania can already access Midwestern supplies, Laurel has not shown that Pennsylvania is

[265] Laurel Statement No. 5 at 5:3-9.
[266] Indicated Parties Statement No. 2 at 48:3 to 49:7.
[267] *Id.* at 49:19-22; and Indicated Parties Statement No. 2-S at 15:19 to 16-2.
[268] *Id.* 2 at 50:8-51:2.
[269] Indicated Parties Statement No. 2-S at 16:3-5.
[270] Indicated Parties Statement No. 2 at 48:11-15.

not already enjoying benefits of the Shale Revolution or that those benefits will continue in the future.

Laurel also continues to misconstrue Governor Wolf's energy policy,[271] which is aimed at increasing availability of natural gas from Pennsylvania wells,[272] not access to Midwest refined products. Laurel has provided no evidence that its proposed reversal will facilitate transportation of natural gas or natural gas products from Pennsylvania wells.

iii) The Oil Shale Revolution Is Not Analogous to the Marcellus Shale Gas Revolution for Pennsylvania.

Laurel first makes the well-known and undisputed point that Pennsylvania consumers have benefitted from the abundance of Marcellus Shale natural gas as regulatory policies have been put in place to help that natural gas to reach consumers.[273] Laurel then, in one conclusory sentence, makes the unsupported inference that increasing access to products made from Shale Revolution crude will likewise benefit Pennsylvania consumers. Laurel's argument suffers from two fatal flaws. First, there is absolutely no evidence that Midwestern supplies cannot already reach Pennsylvania. To the contrary, there is excess capacity for these products into Pittsburgh that is not being utilized. Second, Laurel has not shown that its proposed reversal will decrease prices that consumers pay for gasoline, as detailed in *supra* Section IV.C.1.b.[274] To the contrary, the Indicated Parties have presented robust analysis showing that prices will actually increase as a result of the proposed reversal.[275]

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[271] Laurel Main Brief at 103.
[272] Indicated Parties Statement No. 5-S at 9:1-8 ("the goal of the Task Force actually was to promote collaboration in developing pipelines to transport natural gas from Pennsylvania wells.") (citing Department of Environmental Protection, Pennsylvania Pipeline Portal, "Pennsylvania Infrastructure Task Force Report," at files.dep.state.pa.us/ProgramIntegration/PITF/PITF%20Report%20Final.pdf).
[273] Laurel Main Brief at 103-104.
[274] Indicated Parties Main Brief at 79-108.
[275] Indicated Parties Main Brief at 79-108.

Laurel does not even attempt to explain how the natural gas and petroleum products markets and supply chains are similar to support its analogy. That is because they are not. This Commission should not be deceived by Laurel's attempt to inappropriately compare these markets.

2. The Proposed Reversal Will Harm The Public.

a. Loss Of East Coast Supplies To The Pittsburgh Market.

i) Laurel's Proposed Reversal will Increase Prices for Wholesalers, Retailers, and Consumers in the Pittsburgh Market.

Laurel persists in attempting to discredit the delivered price analysis conducted by Dr. Arthur while offering no independent analysis to support its claim that the proposed reversal will reduce prices in the Pittsburgh market. The Commission should give weight to Dr. Arthur's testimony and reject Laurel's unfounded criticisms of his delivered price analysis.

(1) Dr. Arthur's Delivered Price Analysis Appropriately Reflects Market Trends and Behaviors.

Laurel argues that Dr. Arthur's delivered price analysis fails to incorporate either recent or projected market changes that drive petroleum product costs.[276] Both claims lack merit.

Dr. Arthur's delivered price analysis includes data from calendar year 2016, which importantly reflects volumes and prices for product shipped *after* the recent Buckeye and Sunoco pipeline capacity additions and expansions.[277] As for the alleged failure to consider future projected market changes, this criticism is irrelevant. Laurel purports to support its proposed reversal in large part by claiming Midwest refineries *are* the lowest cost supplier.[278] Dr. Arthur's

[276] Laurel Main Brief at 110.
[277] Indicated Parties Main Brief at 89.
[278] Laurel Statement No. 5 at 14 (suggesting Midwest supply already puts downward pressure on petroleum product prices); *see* also, Laurel St. No. 7-R, at 12 (stating "Midwest refineries *now* have a comparative advantage over the refiners that traditionally served Western Pennsylvania") (Emphasis added).

delivered price analysis presents recent data proving otherwise, and therefore successfully rebuts the foundation of Laurel's argument.

(2) Dr. Arthur Established that Changes to Delivered Prices in The Pittsburgh Market Would Impact Marginal Cost Suppliers.

Laurel next criticizes the alleged omission of marginal cost in Dr. Arthur's delivered cost analysis. Laurel argues that Dr. Arthur's delivered price analysis fails to investigate whether the price impacts of the proposed reversal would affect the marginal cost supplier in the Pittsburgh area.[279] Laurel claims that only a single marginal supplier sets the price for a market and that changes to delivered costs for suppliers other than the marginal cost supplier would not impact market prices because the non-marginal (i.e., infra-marginal) suppliers would still set prices based on the marginal cost supplier.[280]

The Indicated Parties' Main Brief addressed Laurel's argument by acknowledging the principle of marginal cost supply and explaining why changes to delivered costs in the Pittsburgh market would affect marginal cost supply in the region.[281] As clarified by Dr. Arthur, the Pittsburgh petroleum products market is not constrained by barriers to entry because participants can enter the market through pipeline networks from the East and the West. Under these circumstances, lower cost suppliers participating in the market are incentivized to ship product to Pittsburgh until their marginal cost rises to the marginal cost of the next highest cost supplier.[282] As a result, the last barrel coming in from any supplier active in the Pittsburgh market "would be expected to have a similar marginal cost to the supply coming in from another source."[283] Laurel is incorrect in assuming that a single marginal cost supplier exists in Pittsburgh and is further

[279] Laurel Main Brief at 113.
[280] *Id.*
[281] Indicated Parties Main Brief at 92-94.
[282] *Id.* at 92-93.
[283] *Id.* at 93.

mistaken in alleging that Dr. Arthur's delivered price analysis does not acknowledge price impacts on marginal cost suppliers.

(3) Dr. Arthur's Delivered Price Analysis Correctly Incorporates Midwest Benchmark Pricing and Locational Transportation Costs.

Laurel next argues that Dr. Arthur erroneously calculated delivered costs using only Chicago as an origin for Midwest product. This argument misunderstands and/or misrepresents Dr. Arthur's methodology. Laurel argues that Dr. Arthur's delivered price analysis assumes Chicago is the only source for Midwest supply and then bases the calculated transportation costs on those observed from Chicago to Coraopolis, PA (in the Pittsburgh area).[284]

To the contrary, Dr. Arthur appropriately relied on Chicago as the only Midwest location with publicly reported prices, that act as a benchmark for Midwest pricing, with locational adjustments as warranted. Like New York Harbor in the East Coast, Chicago prices are widely used for all Midwest pricing.[285] Consequently, Dr. Arthur's analysis relies on the wholesale refined petroleum product prices in Chicago to be representative of the delivered prices to Pennsylvania markets when sourced from the Midwest. All potential supply sources in the Midwest that have the potential to transport product to Pittsburgh are encompassed in Dr. Arthur's analysis.

[284] Laurel Main Brief at 114.

[285] Laurel Statement No. 8-R, at 38:17-19. Laurel witness Stern defined major market hubs in the United States to include New York Harbor, the Gulf Coast, Chicago, and Los Angeles. *See id.* Mr. Stern also agreed with the underlying premise of Dr. Arthur's model, that "[t]he differences between prices at different hubs reflect transportation costs between the regions, differences in gasoline quality (e.g. octane rating), and regional supply/demand balances. *See id* at 38:23-39:1. Dr. Arthur reflected the transportation costs by using actual tariffed rates for East Coast and Midwest origins. *See* Indicated Parties St. No. 1, Exhibit DSA-11, at 11. While Laurel argues that Dr. Arthur used only the Chicago delivery point to calculate transportation costs to Pittsburgh, Dr. Arthur also used only the Pittsburgh delivery point to calculate transportation costs for the Pittsburgh area and did not discount that input by using more eastern delivery points within the Pittsburgh area, such as Delmont. *See id.* As a result, Dr. Arthur's delivered price model accurately reflects delivered prices between the major Midwest and East Coast hubs and the Pittsburgh delivery point on Laurel's pipeline. *See also* Husky Main Brief at 19.

By using Chicago benchmark pricing and incorporating transportation costs from numerous origins, Dr. Arthur reasonably and accurately calculated delivered prices to Pittsburgh from the Midwest.

(4) While Wholesale Pricing Impacts Must Be Considered by the Commission as Part of the Commission's Public Interest Assessment, the Delivered Prices Calculated by Dr. Arthur Also Influence Consumer Prices.

Laurel alleges that Dr. Arthur's delivered price analysis bears no relevance to retail (i.e., consumer) price impacts.[286] Laurel bases its argument on testimony from Gulf witness Johnston and Sheetz witness Lorenz allegedly confirming that **[BEGIN HIGHLY CONFIDENTIAL]** [redacted] **[END HIGHLY CONFIDENTIAL]**.[287] As explained in the Indicated Parties' Main Brief, *both* wholesale and consumer price impacts are relevant to the Commission's consideration of Laurel's Application.[288] Laurel's suggestion that only consumer price impacts matter should be rejected.

Notwithstanding the relevance of wholesale rate effects, Dr. Arthur's delivered price analysis reflects consumer price impacts because delivered prices influence retail prices. Laurel's position ignores the fact that the replacement price of a barrel of product is the rack price, which represents the spot price for product on any particular day.[289] Like any commodity spot price, rack prices reflect publicly available information in the marketplace, including the fact that wholesalers in the Pittsburgh market can obtain supply from the Midwest or the East Coast.[290] Therefore, as confirmed by Sheetz witness Lorenz, replacement costs setting retail

[286] Laurel Main Brief at 118.
[287] *Id.* at 116-117.
[288] Indicated Parties Main Brief at 94.
[289] *Id.* at 95.
[290] *Id.*

prices are influenced by the arbitrage opportunities observed in the delivered costs from the East and the West into the Pittsburgh area.[291] The retailers are aware of these arbitrage opportunities, which forces the wholesalers to pass on arbitrage savings in order to attract sales.[292] Moreover, as Dr. Arthur discussed, increasing the wholesale cost to supply Pittsburgh will undoubtedly cause consumer prices to rise.[293]

The Commission should also consider the inherent conflict in Laurel's suggestion that delivered costs into Pittsburgh have no impact on retail pricing. Laurel bases its proposed reversal on the premise that lower crude oil costs in the Midwest allow Midwest refineries to produce lower cost refined products that can replace volumes from the East coast in Pennsylvania and purportedly lower prices *for consumers.* It makes little sense for Laurel to argue that lower crude costs, which are incorporated into the delivered price to a market, will reduce retail prices, but then also argue that Dr. Arthur's analysis of delivered price has *no* impact on retail prices. Once again, Laurel presents positions bereft of logic as part of its agenda to preserve its preferred narrative *regardless of the underlying facts*.

(5) Laurel's Additional Criticisms of Dr. Arthur's Analysis Should be Rejected.

Laurel lobs several additional arguments at the Indicated Parties to support an errant claim that Dr. Arthur's delivered price analysis fails to reflect reality. Considering the transparency of Dr. Arthur's methodology, the Commission should dismiss out of hand Laurel's general claim that Dr. Arthur's analysis fails to reflect reality.

Laurel argues that Dr. Arthur's study conflicts with economic principles because the data indicates wholesalers do not capitalize on every available arbitrage opportunity. Although Dr.

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[291] *Id.* at 95-96.
[292] *Id.*
[293] *Id.* at 92-96; Tr. 747:7-748:23, 782:2-783:11.

Arthur confirmed that, in general, wholesalers increase shipment volumes from the Midwest or the East based on the favorable arbitrage, Laurel focuses on occasions where supply would be cheaper from the East coast and wholesalers still ship volumes from the Midwest and vice versa. Laurel suggests wholesalers are "leaving money on the table" in contravention of economic principles encouraging all marketers to maximize profits by sourcing the cheapest supply all of the time.[294] Dr. Arthur addressed this point in his Surrebuttal testimony, affirming that some occasions where suppliers decline or are unable to act on arbitrage opportunities do not invalidate the general pattern of volumes shifting in response to arbitrage opportunities.[295]

Laurel also claims that Dr. Arthur's analysis conflicts with various analyses from the Indicated Parties, but fails to cite to any such conflicting analysis. It is important to remember that Dr. Arthur's delivered price analysis shows Midwest and East coast supply to be seasonally competitive, with Midwest supply offering favorable pricing in the winter months and East coast supply offering favorable pricing for the remaining 7-8 months. As detailed below, none of the studies referenced by Laurel conflict with these findings from Dr. Arthur's delivered price analysis.

Laurel references the **[BEGIN HIGHLY CONFIDENTIAL]** [redacted]

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[294] Laurel Main Brief at 118.

[295] Indicated Parties Statement No. 1 at 27:8-10; *see also* Indicated Parties St. No. 1-S at 13:4-11.

[296] Laurel Main Brief at 119.

[redacted][298] **[END HIGHY CONFIDENTIAL]**

With the understanding that the **[BEGIN HIGHLY CONFIDENTIAL]** [redacted] **[END HIGHLY CONFIDENTIAL]** This does not contradict Dr. Arthur's findings that, *with pipeline connectivity from the East intact*, East coast refiners are competitive with Midwest refiners, particularly in the Summer months.

Laurel next cites to an article provided by Gulf in response to discovery, which notes that Buckeye's completion of Phase 1 of the Michigan/Ohio expansion project expanded capacity from the Midwest into Pennsylvania by approximately 50 MBPD and projects that Phase 2 (including the proposed reversal) will add another 40 MBPD in 2018.[299] The article indicates that the Michigan/Ohio expansion project offers refineries a pipeline to move lower-cost fuels to meet rising demand in the Eastern U.S.[300] Again, this is not inconsistent with Dr. Arthur's finding that supply from the Midwest is lower-cost than supplies from the East on a seasonal basis, and that arbitrage benefits occur when wholesalers and consumers can obtain the lowest price from the Midwest or the East coast.

[297] Laurel Exhibit No. MJW-23 at 16.
[298] *Id.* at 108.
[299] Laurel Main Brief at 119 *citing* Laurel Exhibit STJ-6 at 6.
[300] *Id.*

Laurel also references findings from Gulf's **[BEGIN HIGHLY CONFIDENTIAL]** [redacted] **[END HIGHLY CONFIDENTIAL]**

Finally, Laurel presents a comparison of Pittsburgh delivered prices calculated by Laurel witness Webb. Dr. Webb assumes that if Dr. Arthur's arbitrage analysis is correct, the rack or spot price in Pittsburgh should fall between the delivered price at the favorable arbitrage point and the unfavorable arbitrage point.[304] Under Dr. Webb's theory, Summer rack prices in Pittsburgh should be above the delivered price for supply from New York Harbor, but below the delivered price for supply from Chicago. The converse would apply for Winter months. Because Dr. Webb's analysis shows that the rack price falls within the expected bandwidth less

[301] *See supra* at C.1.b.i.1.
[302] *Id.*
[303] Indicated Parties Main Brief at 80 *citing* Indicated Parties Exhibit DSA-[5] (allocation schedule for Buckeye's pipeline into Pittsburgh indicating the pipeline ran at capacity consistently until March 2016 and has operated with excess capacity in each month thereafter).
[304] Laurel Main Brief at 119-120.

than 50% of the time, he deems Dr. Arthur's delivered price analysis to be incorrect. However, as addressed in Dr. Arthur's Surrebuttal testimony, Dr. Webb's model is fundamentally flawed because it fails to develop an accurate delivered price and further inappropriately compares rack prices to delivered prices.

Similar to the FERC ALJ that recently found Dr. Webb's calculations to lack even "a cursory check of the data,"[305] Dr. Arthur finds Dr. Webb "makes several assumptions regarding ethanol costs, the value of gasoline quality differences, and various fees, indicating his estimated delivered costs are not representative of actual delivered costs for Pittsburgh market participants."[306] However, regardless of the accuracy of Dr. Webb's calculations, Dr. Arthur identified a fatal flaw in Dr. Webb's comparison of rack prices to delivered prices. As stated by Dr. Arthur, a wholesaler seeking to arbitrage will examine existing delivered prices from each location in order to decide where to purchase supply from in the future.[307] Rack prices, while reflecting general trends in delivered costs over time, would not align perfectly with delivered costs because of other impacts on spot prices, including recent periods of oversupply or undersupply.[308]

(6) The Indicated Parties Have Proven that Consumers Benefit from Arbitrage Opportunities.

Laurel's Main Brief argues that the record contains no evidence that any arbitrage profits realized by gasoline and diesel wholesalers in the Pittsburgh market are passed on as savings to retail customers. As discussed below, Laurel's claims are demonstrably false. Although the

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[305] *Guttman Energy, Inc. d/b/a Guttman Oil Company, and PBF Holding Company, LLC v. Buckeye Pipe Line Company, L.P. and Laurel Pipe Line Company*; Docket Nos. OR14-4-000 and OR14-4-001(November 16, 2017), at 73-79.
[306] Indicated Parties Statement No. 1-S at 14.
[307] *Id.* at 14:18-21.
[308] *Id.* at 15:3-6.

Indicated Parties have not quantified this data point, the record in this proceeding confirms that wholesalers pass on some arbitrage benefit to consumers.

It is important to fully understand each parties' position on this critical issue. Laurel argues that the Indicated Parties have not proven that any arbitrage benefit is passed on to consumers.[309] The Indicated Parties presented unrebutted testimony that East coast and Midwest suppliers compete in Pittsburgh, whereby competing wholesalers in Pittsburgh have a have a choice between East coast and Midwest supply. Consequently, in order for wholesalers to compete with other wholesalers to sell product to retail stations, they are required to pass on some portion of their arbitrage savings to remain competitive. Retailers, who have a choice between wholesalers and are themselves competing for the business of the ultimate consumer, are required to pass on some portion of reduced wholesale prices, as other retailers would also have access to the reduced wholesale price. Laurel misleads the Commission in stating that "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."[310] To the contrary, the Indicated Parties ask the Commission to understand that both the wholesaler and the retailer reduce their margin because the competitive market precludes them from retaining all of the arbitrage profits. Competing market participants reduce the price for the product they are selling when costs fall, because if they do not, they will cede business and market share to a competing entity that does reduce price in order to attract additional sales while still earning a reasonable margin.

[309] Laurel Main Brief at 121.
[310] *Id.* at 122.

Again, Laurel's position on the relationship between arbitrage savings and crude oil savings exposes the illogical basis for suggesting that wholesalers can retain all of their arbitrage profits. As discussed above, Laurel rests its entire proposal on the grounds that lower crude oil costs will translate to lower retail prices. This would require wholesalers to pass on savings from lower supply costs to consumers. Laurel has not and cannot reconcile its assurances that crude oil cost savings would reduce consumer prices, but arbitrage savings would not be passed along to consumers.

There can be no doubt, for the reasons stated above, the Commission must disregard Laurel's contentions that the record contains no evidence of arbitrage savings benefitting consumers—such claims are not accurate. While the record does not contain a quantification of the benefits, the Indicated Parties provided more convincing testimony establishing by a preponderance of evidence that arbitrage savings (which would be lost to Pittsburgh after the reversal) are passed on to consumers.

ii) Laurel's Proposed Reversal will Increase Price Volatility in Pittsburgh.

Laurel asserts that the analyses and observations from Indicated Parties witness Schaal, Gulf witness Johnston, and Sheetz witness Lorenz about increased volatility in Pittsburgh resulting from the proposed reversal fail to reflect recent market trends. Laurel further disputes Mr. Schaal's conclusions that the proposed reversal would increase both the frequency and severity of price spikes. Laurel's arguments again consist of mostly narrative statements with little connection to the analysis advanced by the Indicated Parties' witnesses. Contrary to Laurel's representation, Mr. Schaal conducted a comprehensive analysis of the most current market data. The Commission should accept the analysis of the Indicated Parties witnesses and reject Laurel's unpersuasive arguments.

(1) Mr. Schaal's Analysis Comprehensively Reflects Market Trends In the Pittsburgh Market.

Laurel appears to criticize Mr. Schaal's Regional Retail Petroleum Product Price ("PPP") Analyses solely on the grounds that Mr. Schaal engages in an analysis instead of speculation. Laurel argues that Mr. Schaal's analysis ignores "significant changes in the relationships between PADD 1, PADD 2, and PADD 3 refineries... ."[311] Laurel then proceeds to list a variety of market developments it alleges are ignored by Mr. Schaal's analysis.

Laurel's offers no basis for its belief that Mr. Schaal ignored these market trends other than a naked assertion. To the contrary, Mr. Schaal's PPP Analyses reviewed daily retail gasoline prices for multiple markets across the Midwest, Central Atlantic, Lower Atlantic, and Gulf Coast for the period 2007 – 2016.[312] Any effects from the cited market trends are observed through the actual price data. Particularly in view of Mr. Schaal's experience as the former Director of the Office of Petroleum, Natural Gas, and Biofuels at the U.S. Energy Information Administration, it belies common sense for Laurel to claim his analysis of gasoline prices in multiple cities over the most recent 10-year period somehow fails to reflect market trends.

(2) Mr. Schaal's PPP Analyses are Credible.

In an attempt to discredit Mr. Schaal's PPP Analyses showing higher volatility over time in the Midwest than in the East Coast, Laurel's witnesses trot out several strawman arguments, many of which respond to claims that Mr. Schaal never even made. For the reasons detailed below, Laurel's attempts to discredit Mr. Schaal's comprehensive PPP Analyses should be rejected.

Several of Laurel's arguments reflect a misunderstanding of Mr. Schaal's testimony on the likelihood of price spikes in the Pittsburgh area upon implementation of the proposed reversal.

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311 *Id.* at 24.

312 Indicated Parties Statement No. 2 at 28:12-14.

Laurel asserts 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.[313] This statement oversimplifies Mr. Schaal's concerns. Mr. Schaal did not generally state that the Midwest lacks capacity to supply the Pittsburgh area market, but specifically opined that the Midwest cannot adequately supply the Pittsburgh area in the Summer months and particularly during unplanned refinery outages.[314] For example, Mr. Schaal's testimony recounts an unplanned 2015 refinery outage in the Midwest that resulted in the loss of approximately 200,000 BPD of production.[315] Considering that a recent October 2017 outage at a Midwest Refinery spiked Chicago gasoline prices up to approximately $0.35 per gallon above New York Harbor prices, the Commission should carefully consider the prospect of similar price spikes in the Pittsburgh area.[316]

The weakness of Laurel's arguments is once again made apparent by the lack of context underlying its efforts to rebut Mr. Schaal's findings of volatility and reliability concerns with Midwest supply. Laurel cites to testimony from Gulf witness Johnston to support its claim that Midwest refinery capacity produces abundant supply, without clarifying that Gulf included imports from the Gulf coast in that assessment.[317] Similarly, Laurel cherry picks one section of Mr. Schaal's summary of an EIA report in a manner that completely distorts the findings in the report. Laurel includes the following excerpt in its Main Brief as representative of a finding from Mr. Schaal's Direct Testimony:

[313] Laurel Main Brief at 125.
[314] Indicated Parties Statement No. 2-S at 32:8-11; *see also* Sheetz Statement No. 1 at 20-23 (stating that Midwest refineries generally produce a surplus of product in the winter, but must import product in the summer months.)
[315] Indicated Parties Statement No. 2 at 32.
[316] Indicated Parties Cross Exh. No. 13, paragraph 2; Exhibit DWA-17.
[317] Laurel Main Brief at 126.

> "*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.*" 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.[318]

Laurel quotes only the above excerpt and alleges that Mr. Schaal's findings from the EIA report contradict the results of his PPP Analyses. However, a review of the remaining segment of Mr. Schaal's testimony, which continues precisely where Laurel cut off its selective quote, tells quite a different story:

> "*Nevertheless, supply chains in PADDs 2 and 4 cover long distances, and shifting supply to relatively isolated markets can often take considerable time.*"
> In addition, the EIA notes that pipeline transportation capacity from the Gulf Coast can be difficult to obtain due to changing market conditions.
>
> *Historically, the Pittsburgh, Pennsylvania, market in PADD 1 has acted as a balancing point[319] for product supply between PADD 2 and PADD 1 supply sources.*" The EIA notes that the capability of Pittsburgh market consumers to be largely supplied by eastern refineries has provided Ohio refiners the flexibility to quickly shift supply from that market, while also seeking supply from other sources from within and beyond the Eastern Midwest region. Such flexibility of supply occurs through "displacement" of petroleum products, allowing for the substitution of supply in one market to have a more immediate effect on other markets.[320]
>
> The EIA has noted that the proposed Laurel pipeline reversal would result in, "*...potentially reducing Pittsburgh's role as a balancing point between PADD 2 and PADD 1.*"

The language omitted from Laurel's quote unmistakably shows that the EIA report also raised concerns regarding inter-PADD shipments and the importance of Pittsburgh's connection to both

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[318] Indicated Parties Statement No. 2 at 8:7-12.
[319] A balancing point is a location that allows for displacement of flows within hours to a few days in response to outage events and sudden shifts in supply and demand.
[320] Displacement is like putting a tennis ball in one end of a tube filled with tennis balls, which has the immediate effect of moving all the tennis balls along the tube and discharging one tennis ball at the other end of the tube.

PADD 2 and PADD 1. No inconsistency exists between these findings and the results of Mr. Schaal's PPP Analyses.

(3) Laurel's Allegation that Midwest Price Volatility Arises Solely from Retail Market Activity Is Unfounded.

To cope with the undeniable reality that the reversal will introduce Midwest price volatility to Pittsburgh, Laurel argues that any price volatility observed in the Midwest should be attributed to a retail market phenomenon known as "price cycling." Interestingly, Laurel argues that price volatility could benefit the Pittsburgh market by potentially reducing prices. Both arguments are patently unreasonable and must be rejected.

Laurel alleges that price cycling is a retail market practice common in the Midwest, but is completely independent from wholesale market conditions, including the source of wholesale supply.[321] The Indicated Parties Main Brief confirmed that Laurel had provided no reliable evidence showing that price cycling accounts for all of the volatility observed in the Midwest market, especially in light of Mr. Schaal's review of Midwest refinery outages and price spikes that showed retail prices spiked by up to $0.70 per gallon after each refinery outage.[322] This pattern provides strong evidence that price volatility in the Midwest is not solely attributable to retail price cycling.

Laurel's suggestion that the volatility resulting from price cycling could benefit the Pittsburgh market by reducing retail gasoline prices should be given no weight. Laurel points to Figure 18 in the Rebuttal testimony of Laurel witness Dr. Jones. The referenced figure shows highly volatile retail gasoline prices for Ohio and more stable, but slightly higher retail gasoline

[321] Laurel Main Brief at 129.
[322] Indicated Parties Main Brief at 99.

prices in Pennsylvania.[323] In its Main Brief, with no testimonial support from any witness, Laurel suggests that the Pittsburgh area would actually benefit if prices tracked the more volatile Ohio prices, because the Ohio prices are lower than the Pennsylvania prices by the order of approximately $0.01 per gallon.[324] Laurel made no effort to correct its assessment for retail components, such as taxes. As a result, the unsupported comparison of Ohio retail rates to Pennsylvania retail rates must be entirely set aside and disregarded.

(4) The Pittsburgh Market Will Not Have Adequate Supply Options Available to Minimize the Impact of Refinery Outages Post-Reversal.

Laurel argues that the multiple supply alternatives that would remain available to the Pittsburgh market upon approval of a proposed reversal would be adequate to meet the region's needs in case of an unplanned refinery outage. As discussed in Section IV.C.1.a-c., *supra,* this argument ignores the basic fact that Pittsburgh would be connected to fewer supply sources upon approval of the proposed reversal than it can access currently. In addition, supply sources from the Midwest, regardless of number, cannot adequately replace the security provided by the current Laurel pipeline because the Midwest refineries are connected to the same pipeline systems and are therefore subject to concurrent outages and price spikes.[325] The Pittsburgh market will not have adequate supply options to mitigate impacts of refinery outages if the reversal is approved.

iii) Laurel's Proposed Reversal Will Reduce Supply Reliability and Optionality in the Pittsburgh Market.

Notwithstanding Laurel's assertions that Pittsburgh could be supplied by trucks from the East upon approval of the proposed reversal, the record firmly establishes that the Pittsburgh market would no longer have *pipeline* access to East coast refineries if the Commission approves

[323] Laurel Main Brief at 130 *citing* Laurel Statement No. 8-R at 43, Figure 18.
[324] *Id.*
[325] Gulf Statement No. 1 at 9:9-11.

the proposed reversal. Yet Laurel obstinately maintains its position that the proposed reversal will not reduce supply reliability or even optionality for the Pittsburgh area. This position conflicts with record evidence and basic reason. The Commission should reject Laurel's attempts to sow confusion and accept the Indicated Parties' position that approval of the proposed reversal would reduce supply reliability and optionality in the Pittsburgh market.

(1) Gulfs Claims Regarding Upstream Pipeline Constraints Do Not Establish Any Benefits from the Proposed Reversal.

Laurel again distorts statements from the Indicated Parties' witnesses for purposes of manufacturing support for the Application. Laurel cites statements from Gulf witness Johnston and incorrectly extrapolates from his comments on limited constraints from Chicago to Pittsburgh a new narrative of constraints affecting *all* Midwest shippers. As clarified below, Laurel's arguments have no evidentiary foundation and therefore must be disregarded.

Laurel mischaracterizes the constraints referenced in Mr. Johnston's testimony. For example, Laurel cites to Mr. Johnston's deposition in which he referenced constraints on pipelines from the Midwest into Pittsburgh. It further cites to his Surrebuttal testimony where Mr. Johnston noted constraints from "Chicago-area refineries to Pittsburgh on Buckeye's existing line."[326] Laurel next claims that shippers committed to the Laurel pipeline reversal because it will address "downstream constraints."[327] Importantly, Laurel is never clear about what it means by its repeated references to unspecified downstream constraints. To the contrary, Mr. Johnston identified specific logistical constraints impacting only shipping logistics for Chicago-area refineries, such as higher tariff costs and transit time required to ship product from Chicago to

[326] Laurel Main Brief at 132.
[327] *Id.*

Pittsburgh.[328] Mr. Johnston also acknowledged that Buckeye's pipeline from the Midwest into Pittsburgh has operated with excess capacity since March 2016.[329] Similar to Mr. Johnston's testimony, Laurel witness Webb testified about prior constraints that have now been resolved by recent pipeline expansion as follows:

> Q. Do consumers in Pittsburgh currently have access to Midwestern supply?
>
> A. Yes. Historically this supply was limited. However, with recent expansions, consumers in Pittsburgh can access Midwestern supply via Marathon's pipeline which as a capacity of 32 MBD, Sunoco's Allegheny Access pipeline which has a capacity of 85 MBD, and Buckeye's pipeline, including the Broadway I expansion, which has a capacity of 90 MBD.[330]

Additionally, witness Miller, testifying for Husky--the only shipper that committed to the Broadway II project and is participating in this proceeding--submitted Rebuttal and Rejoinder testimony with no mention of capacity constraints. To the contrary, Mr. Miller emphasized the additional capacity made available through the recent Sunoco and Broadway capacity expansions to refute Mr. Johnston's comments regarding pipeline constraints.[331] However, Husky, in its Main Brief, also acknowledged that the Wolverine pipeline, running from the Chicago area and delivering into Buckeye's system near Detroit, recently completed an expansion in March 2017 that "enhanced access" and "increased the flow capabilities" from the Chicago area refineries to be able to serve Pittsburgh.[332] This expansion by Wolverine as noted by Husky is consistent with Mr. Johnston's statements that there were difficulties for Chicago-area supply to reach the Pittsburgh market.

[328] Gulf Statement No. 1 at 9:20-21.
[329] Section IV.C.I.b.i.4, *supra*.
[330] Laurel Statement No. 5 at 17:1-5.
[331] HMSC Statement No. 1-RJ at 4:14-16. Mr. Miller later testified at the evidentiary hearings to constraints related to terminal size and location specific to Sunoco's Allegheny Access line. *See* Section IV.C.1.b.i.4, *supra*. However, for reasons explained above, Mr. Miller's testimony on this matter should be disregarded for lack of credibility.
[332] Husky Main Brief at 15.

The only evidence cited by Laurel to support its claim that shippers signed on to the Broadway II project to alleviate pipeline constraints consists of the following question and answer from Laurel witness Arnold on redirect:

> Q. Do you believe that the shippers on the Buckeye system from the Midwest believe that capacity is constrained from the Midwest?
>
> A. I think, by virtue of the fact that they've stepped up to support the project, it would indicate that they believe there are investments that would reduce constraints or alleviate constraints, by virtue of their actions.[333]

Laurel expects the Commission to accept that a key driver of the proposed reversal is unspecified pipeline constraints that Laurel *believes* the committed shippers *believe* exist. In view of the fact that neither Laurel's Application nor any of its Direct testimony refer in any way to ongoing pipeline capacity constraints, this position strains reason and credibility and should be rejected.

(2) Laurel's Criticisms of Sheetz's Testimony are Without Merit.

Laurel unsuccessfully attempts to identify flaws in the testimony of Sheetz witness Lorenz attesting to adverse supply reliability and price volatility impacts for the Pittsburgh area upon approval of the reversal. Neither of these challenges to Mr. Lorenz's observations withstand scrutiny.

First, Laurel disputes Mr. Lorenz's claims that Midwest refinery capacity is fixed.[334] Ironically, Laurel rebuts Mr. Lorenz's claims by referencing Husky witness Miller's review of recent refinery expansion projects completed in the Midwest in his Rejoinder testimony. Interestingly, Husky witness Miller initially testified in his Rebuttal testimony that "refinery capacity, *particularly in the Midwest*, is expected to remain constant."[335] Mr. Miller also testified at his deposition that he has no knowledge of any planned refinery capacity additions in

[333] Tr. 363:5-12 (Arnold).
[334] Laurel Main Brief at 133.
[335] HMSC Statement No. 1-R at 7:11-13 (Emphasis added).

the Midwest.[336] Without explanation of the inconsistency, Mr. Miller testified in his Rejoinder testimony that refinery capacity additions observed in the Midwest from 2005-2015 would be expected to continue. However, this testimony only establishes that Midwest refinery capacity could potentially be expanded in the future. Regardless, Midwest refinery capacity is fixed today, which is why Midwest supply must be supplemented with Gulf Coast barrels in the Summer when local demand peaks.[337] Therefore, as Mr. Lorenz observed, the reversal will reduce optionality for the Pittsburgh market because instead of arbitraging East coast supply against Midwest supply in the Summer, the Pittsburgh market will be held hostage to Midwest supply and supplemental barrels from the Gulf Coast.

Second, Laurel argues that Mr. Lorenz speculates about the timing and length of unplanned outages, fails to consider that refineries are incentivized to resolve unplanned outages as quickly as possible, and ignores the flexibility of the Midwest and Gulf Coast delivery systems in compensating for such outages.[338] Laurel errs in characterizing Mr. Lorenz's comments on the timing and length of unplanned outages as "speculation," as Mr. Lorenz discussed the actual aftermath of the 2015 outage at BP's refinery in Whiting, Indiana.[339] Additionally, each of Laurel's claims overlooks the central focus of Mr. Lorenz's concern, i.e., because the Pittsburgh area already has numerous pipeline connections to both the Midwest and the Gulf Coast, the relative impact on supply reliability of eliminating pipeline supply from the East coast would be to forfeit one supply option without any countervailing reliability gains.[340]

Third, Laurel criticizes Mr. Lorenz's characterization of the Chicago market as illiquid and volatile in comparison with the East coast. Laurel alleges that Mr. Lorenz failed to provide

[336] Indicated Parties Cross Exhibit No. 16, Miller Deposition at 26:17-19.
[337] Sheetz Statement No. 1-S at 7:16-20.
[338] Laurel Main Brief at 134.
[339] Sheetz Statement No. 1 at 13:8-14:9.
[340] *Id.* at 10:9-11.

data supporting his claim, which indicates Laurel overlooked or ignored Mr. Lorenz's Surrebuttal Testimony in which he expressly relied on the analysis prepared by Indicated Parties witness Schaal.[341]

(3) Husky's Testimony about a Need for "Larger" and "Better" Terminals Must be Given No Evidentiary Weight.

Laurel argues that Husky witness Miller confirmed that the proposed reversal will increase the optionality and liquidity of supply into Pittsburgh, but it fails to account for the suspicious nature of Mr. Miller's 11th hour revelation. Simply put, Mr. Miller's testimony lacks credibility and should be given no weight.

Mr. Miller submitted two rounds of pre-served written testimony in this proceeding. In both his Rebuttal and Rejoinder testimonies, Mr. Miller responded to allegations of capacity constraints on shipments from the Midwest into Pittsburgh with no mention of any constraints related to the location or size of terminals. In fact, Mr. Miller cited available capacity on Sunoco's Allegheny Access pipeline, stating that:

> In addition, 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.[342]

Once again, in his Rejoinder testimony, Mr. Miller continued to extoll the virtues of Sunoco's Allegheny Access Pipeline, identifying the pipeline as the major mover of Midwest supply in Pittsburgh:

[341] Sheetz Statement No. 1-S at 8:1-4.
[342] HMSC Statement No. 1-R at 5-9.

> 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.[343]

Further, at his deposition, Mr. Miller responded to questioning concerning the access available to Midwest shippers to supply product to the Pittsburgh market as follows:

> Q. And would you agree that the Pittsburgh market currently – without the reversal, currently has access to Midwest petroleum products?
>
> A. Yes, it does.

Throughout his pre-served written testimony and deposition, Mr. Miller repeatedly affirmed the availability of capacity to move product into Pittsburgh from the Midwest on Sunoco's Allegheny Access pipeline without mention of constraints related to terminal size or location. Moreover, the generality of Mr. Miller's later statement about terminal limitations consists of only vague characterizations of the alleged inadequacies, such as "smaller in size" and "not in advantaged locations."[344] These broad generalizations should not be relied upon by the Commission.

Additionally, Mr. Miller provided wholly inconsistent testimony on the number of terminals available to Husky. In his effort to suggest a lack of terminal access, Mr. Miller stated that the proposed reversal would double Husky's terminal access in the Pittsburgh region by allowing Husky to ship to three terminals on Sunoco's Allegheny Access line and an additional three terminals on the post-reversal line.[345] However, at the same hearing, Mr. Miller offered the following response, affirming that Husky currently has access to far more than three terminals:

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[343] *Id.* at 10:11-12.
[344] Laurel Main Brief at 135.
[345] *Id.* at 135.

[BEGIN HIGHLY CONFIDENTIAL]

[redacted]

[END HIGHLY CONFIDENTIAL]

The above excerpt confirms Husky already ships product to the Allegheny Access terminals and the Buckeye terminals, which contradicts Mr. Miller's statement that Husky currently has access to just three terminals such that the proposed reversal would double its terminal access.

Taken as a whole, Mr. Miller's vague testimony on the size and geographic constraints on Sunoco's Allegheny Access pipeline is rife with inconsistency compared to his prior record statements and should be afforded no evidentiary weight in this proceeding.

(4) Laurel Has Not Demonstrated the Availability and Adequacy of Any Substituted Service.

In its Main Brief, Laurel argues that, post-reversal, Pittsburgh market participants can still access petroleum products from a variety of alternative transportation sources, including other pipelines, trucks, and barges.[347] Meanwhile, the Indicated Parties have consistently demonstrated that alternative service methods suggested by Laurel fail to replicate the benefits of service currently provided to the public via the Laurel pipeline. Despite substantial evidence supporting the Indicated Parties' position, Laurel alleges the following flaws with the Indicated Parties' position: (1) Dr. Arthur does not consider the adequacy of the alternatives in his analysis, 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; (2) the Indicated

[346] Indicated Parties Cross Exhibit No. 16, Miller deposition at 41:10-19.

[347] Laurel Main Brief at 136-143. Laurel's Main Brief did not address the feasibility of rail as an alternative mode of transporting product. As such, the Indicated Parties do not address rail transportation in this Reply Brief. Nonetheless, the Indicated Parties stand by the assertions regarding rail transportation outlined in their Main Brief.

Parties fail to consider the dynamic nature of the marketplace in their analysis of these alternative modes of service; and (3) the Indicated Parties fail to consider that all available alternatives together constitute an adequate substitute to the Laurel pipeline.[348]

The Indicated Parties address the specific inadequacies of Laurel's proposed alternative modes of service (*e.g.*, barges, trucking, alternative pipelines, and product exchanges) in Section IV.C.2.a.iii.4.A-D below. As an initial matter, however, there are overarching flaws to those Laurel alternatives.

First, contrary to Laurel's assertion, Dr. Arthur has addressed the inadequacy of several alternative transportation services in addition to what was included in Figure 4 of his Direct testimony. For example, in his Surrebuttal testimony, Dr. Arthur discusses the operational difficulties that make deliveries by barges and trucks unsuitable substitutes for the Laurel pipeline.[349] Moreover, Dr. Arthur cites to other witnesses, such as Sheetz witness Lorenz, and Gulf witness Johnston, for further explanation as to why many of Laurel's proposed alternative services are inadequate, both in whole and in part.[350] Several other witnesses for the Indicated Parties also spoke to the inadequacies of the alleged alternate modes of service.[351] As a result, Dr. Arthur's testimony reflects a full analysis of the inadequacy of alternative transportation modes and Laurel's argument should be disregarded. In addition, as noted above, Dr. Arthur's

[348] Laurel Main Brief at 136-137.

[349] Indicated Parties Statement No. 1-S at 31:18-33:13 (explaining that barges are unsuitable substitutes for the Laurel pipeline because they are more expensive and are subject to additional operational hazards that are outside of anyone's control) and at 33:16-34:12 (noting that logistical constraints make trucking product in a post-reversal environment unrealistic).

[350] Indicated Parties Statement No. 1-S at 34:7-12 and n. 101 (citing to portions of Mr. Johnston's and Mr. Lorenz's testimony that highlight the inadequacies of trucking product in the absence of being able to utilize the Laurel pipeline).

[351] Indicated Parties Statement No. 4 at 4:10-23:3 and Indicated Parties Statement No. 4-S at 3:7-21 (collectively explaining how safety concerns regarding transportation of hazardous materials make transporting petroleum product by truck entirely unrealistic); Gulf Statement No. 1 at 4:11-12:11 and Gulf Statement No. 1-S at 13:4-17:19 (collectively explaining that various operational and economic constraints make rail, barge, truck, other pipelines, and product exchanges unsuitable alternate modes of transportation); and Sheetz Statement No. 1 at 5:6-12:10 and Sheetz Statement No. 1-S at 7:6-13:14 (collectively explaining why trucks, alternative pipeline networks, product exchanges, and barges are inadequate alternatives to receiving supply from the Laurel pipeline).

testimony is consistent with FERC's recent finding that there are no adequate competitive alternatives to Buckeye/Laurel in the pipeline transportation market to Pittsburgh and that Laurel's affiliate Buckeye possesses market power.[352]

Second, the Indicated Parties reject Dr. Webb's assertion that their analyses "ignore the dynamic nature of the market."[353] The Indicated Parties addressed market dynamics in their analysis of future volumes on the Laurel pipeline and the ability of alternative means to transport those volumes.[354] Of course, Laurel would prefer that historical data be ignored because the Indicated Parties have presented "expert, data-based, credible and realistic analysis showing that volumes on this portion of the Laurel pipeline, while fluctuating over time for observable reasons, are still robust, are likely to stay robust, and may possibly increase in the future."[355] Any attempt by Laurel to allege otherwise is disingenuous and inconsistent with the record evidence.

Finally, the Indicated Parties' analyses of the proposed alternative modes of service concluded that none of the alternative modes would be economically and practically feasible – whether on their own or in conjunction with one another. Barging, alternative pipelines, and product exchanges are entirely inadequate because none of these proposed alternatives can be applied to transport East coast product to the Pittsburgh area. Rail and trucking are physically possible alternatives, but economically and logistically impractical, as well as undesirable from a public safety standpoint in the case of trucking. As a result, Laurel's allegation that the Indicated Parties failed to consider the ability of these alternatives in the aggregate to replace service

[352] *Guttman Energy, Inc. d/b/a Guttman Oil Company, and PBF Holding Company, LLC v. Buckeye Pipe Line Company, L.P. and Laurel Pipe Line Company L.P.*, Docket Nos. OR14-4-000 and OR14-4-001(November 16, 2017), at 135.

[353] Laurel Main Brief at 137.

[354] Indicated Parties Main Brief at 111-119, 129-139; *see also* Sections IV.C.1.a-b, *supra.*

[355] Indicated Parties Main Brief at 52.

provided via the Laurel pipeline is an irrelevant argument. Each of Laurel's suggested alternatives is addressed in greater detail below.

A. Barges

Husky erroneously believes that the reversal will not necessarily result in a loss of Eastern supplies to the Pittsburgh market because of supposed opportunities to move product by other means, including barges.[356] Meanwhile, Laurel claims that Gulf and Sheetz incorrectly assume that barges must completely replace all volumes currently delivered on the Laurel pipeline in order to be considered an adequate alternative service.[357] In addition, Laurel alleges that barges have consistently delivered significant quantities of gasoline to Pittsburgh.[358] As such, although Laurel concedes that barges may be "more expensive," Laurel believes that the "revealed preferences of Pittsburgh area market participants strongly indicate [barging] represents a viable, adequate alternative."[359]

Contrary to Laurel's and Husky's averments, barging is not an adequate alternative to the service currently provided via the Laurel pipeline. The Indicated Parties addressed the multiple reasons why barges are an inadequate alternative transportation service in their Main Brief.[360] Importantly, the Indicated Parties never stated that they assumed barges must completely replace all volumes currently delivered on the Laurel pipeline to be considered an adequate alternative service.[361] To the contrary, the Indicated Parties argued that barging cannot adequately replace the current east-to-west service on the Laurel pipeline because East coast supply cannot reach

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[356] Husky Main Brief at 23.
[357] Laurel Main Brief at 138.
[358] *Id.*
[359] Laurel Main Brief at 138.
[360] Indicated Parties Main Brief at 135-136.
[361] Gulf Statement No. 1 at 4:11-5:3; Gulf Statement No. 1-S at 15:12-16:12; Sheetz Statement No. 1 at 5:15-6:2; Sheetz Statement No. 1-S at 12:9-13:14.

Pittsburgh by barge.[362] Additionally barging is an inadequate alternative because of various economic and logistical constraints, many of which are external variables outside of anyone's control (*e.g.*, weather emergencies and geographic challenges). These constraints make barging expensive and unpredictable, and therefore it is simply wrong for Laurel to assert that the "revealed preferences of [the] Pittsburgh area market participants strongly indicate that this transportation method represents a viable, adequate alternative."[363] Tellingly, Laurel cites to no authorities in its Main Brief in support of its averment that the market views barges as a viable and adequate alternative to the Laurel Pipeline.[364]

B. Trucking

Laurel and Husky persist in alleging that trucking petroleum products from Altoona to points throughout Central Pennsylvania would be a viable option if the reversal were to be granted. This assertion is simply untrue.

First, Laurel alleges that the Marathon Petroleum Corporation Canton, Ohio refinery and the United Refining Company's Warren, Pennsylvania refinery are not the "base or sole" supply for their specific local regions and can provide trucking shipments as an alternative to Laurel's pipeline service into the Pittsburgh area.[365] However, Laurel offers no analyses or other evidence in support of that belief. Laurel only cites to testimony from its witness, Dr. Webb, who claims that such statement "has no basis in economics or in the actual operation of the market," suggests that "one cannot trace a specific component of supply," and indicates that while "these refineries could not increase their supply to completely replace deliveries currently made on Laurel," they provide an "option" to shippers (who may elect to exercise that option and

[362] Indicated Parties Main Brief at 136.
[363] Laurel Main Brief at 138.
[364] *Id.*
[365] Laurel Main Brief at 138.

purchase the Canton and Warren refineries' products).[366] But these mere hypotheses cannot overcome the unrebutted observation of Sheetz witness Lorenz, who has "boots on the ground" and regularly coordinates petroleum products supply throughout Western Pennsylvania, that these refineries currently enjoy positive 3:2:1 crack spreads, which encourages them to run at capacity.[367] Because they are currently at capacity, they are not in a position to increase output in order to fill the gap that would result if Pittsburgh were to be cut off completely from East Coast supplies. Mr. Lorenz also clarified at his deposition that these refineries already provide some supply to the Pittsburgh area and, thus, would not be available alternatives to replace volumes lost from the Laurel reversal.[368] As a result, these refineries have little to no ability to produce additional product or shift volumes to be trucked to Pittsburgh.[369] They are not viable or realistic alternatives to the Laurel pipeline.

Second, Laurel misleadingly suggests that Gulf's and Sheetz's concerns about a lack of terminal and truck loading infrastructure and capital costs are irrelevant.[370] Laurel avers that trucks will "continue to play no greater role in the supply of petroleum products to Pennsylvania markets post-reversal than they do today" and suggests that "both today and post-reversal trucks will remain an available and adequate alternative."[371] In support of these notions, Laurel emphasizes Dr. Webb's supposition that "when deliveries to Pittsburgh on Laurel from the East

[366] Laurel Statement No. 5-R at 88:8-19.
[367] A "crack spread" measures the difference between the cost of crude oil and the selling price of finished products, such as gasoline and diesel. The 3:2:1 crack spread approximates the product yield at a typical U.S. refinery: for every three barrels of crude oil the refinery processes, it produces two barrels of gasoline and one barrel of diesel fuel. Sheetz Statement No. 1 at 6: n. 2.
[368] Laurel Exhibit MJW-6, at 31-32; *see also* Lorenz Deposition Tr. at 121:19-122:25.
[369] Sheetz Statement No. 1 at 6:3-17 *see also* Laurel Exhibit MJW11 at 29. In the **[BEGIN HIGHLY CONFIDENTIAL]** [redacted] **[END HIGHLY CONFIDENTIAL]**
[370] Laurel Main Brief at 139.
[371] *Id.*

cease, the vast majority of shippers will obtain product from the Midwest. They will not truck it from Eldorado to Pittsburgh."[372] However, these arguments miss the point. Regardless of whether Laurel projects a demand for post-reversal trucking shipments or not, Laurel has alleged that trucking would be an adequate alternative, but has not provided support for this claim. To the contrary, the Indicated Parties have identified numerous public safety concerns and logistical impediments to replacing shipments on the Laurel pipeline with additional use of trucking services.[373]

As noted in the Indicated Parties' Main Brief, there are limited alternative potential routes for trucks to transport petroleum products from Eldorado (Altoona) across the Commonwealth, and each of those options presents safety and traffic concerns.[374] Dr. Arthur calculates that the proposed reversal could require "an additional 40 MBPD of petroleum products to be trucked from Altoona to Pittsburgh on average, with up to 88 MBPD trucked during peak summer months."[375] Based upon those volumes, "the Altoona-Pittsburgh shipments would require an additional 202 tanker truck trips per day, with up to 447 tanker truck trips per day during peak summer months."[376] Depending upon the route, this means that "each trip would result in round-trip highway travel of 268-430 miles traveled, per tanker truck."[377] Neither Laurel nor Husky has any answer to this analysis or these conclusions.

Furthermore, as noted above, Dr. Webb errantly alleges that the Indicated Parties' concerns are irrelevant, and suggests that trucks will play "no greater role" in the petroleum product supply chain post-reversal than they already do today.[378] Dr. Webb's assertion directly

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[372] *Id.*
[373] Indicated Parties Main Brief at 122-128.
[374] *Id.* at 121-129.
[375] *Id.* at 125.
[376] *Id.*
[377] *Id.*
[378] Laurel Main Brief at 139.

undercuts one of the key post-reversal benefits touted by Laurel – i.e., product can be shipped by pipeline to Altoona and then trucked to other points in Central Pennsylvania. If trucking volumes and logistics will be the same post-reversal as they are pre-reversal, then Laurel's claims that product will be trucked to Harrisburg, instead of being delivered via the Laurel pipeline, is a complete farce. Laurel cannot have it both ways.

Moreover, as noted above and discussed in the Indicated Parties' Main Brief, if the reversal were implemented, trucks would have to travel distances beyond even what Laurel admits is the outer limit for tanker truck trips.[379] Also, no party disputes that nearly all petroleum products reach their final destinations by truck. The crux of the matter– and what the Indicated Parties have demonstrated – is that if the reversal were implemented, more trucks would be required to travel additional routes in order to deliver additional volumes that would have otherwise been carried via the Laurel pipeline.[380] The mere fact that trucks are occasionally used to deliver product over longer distances does not alter the fact that trucks are generally utilized only for shorter trips, not as a replacement for high-volume pipeline transportation.[381] Trucks simply cannot constitute a reliable and adequate replacement for critical supply sources such as the eastern-sourced products shipped on the Laurel pipeline.[382]

Laurel has loosely, inconsistently, and sporadically offered "trucking" as a post-reversal alternative for Eastern product to reach Pittsburgh. But, as noted above, Laurel has proffered no analysis that trucking is actually a reasonable, economic, practicable and secure alternative.

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[379] Indicated Parties Main Brief at 127.
[380] *Id.*
[381] *Id.* at 127-128; see also Gulf Statement No. 1-S at 17:15-19.
[382] *Id.*

C. Midwestern supplies via pipeline

Laurel alleges that the Indicated Parties incorrectly assert that Midwestern supplies via pipeline cannot adequately serve as alternatives to the Laurel pipeline because of capacity constraints between the Midwest and Pittsburgh.[383] In addition, Laurel alleges that the Indicated Parties ignore record evidence of fundamental changes in Midwestern refining capacity and connectivity suggesting that Midwestern refineries would have sufficient capacity to supply Pittsburgh.[384]

Similarly, Husky alleges that a "significant number of complex refineries are located in the Midwest, which are connected to a large number of crude oil sources through various pipeline systems."[385] Husky suggests that refinery capacity in the Midwest is "anticipated to remain constant or increase" and that they are "not at risk for supply disruptions due to two large diameter pipelines that transport petroleum products from the United States Gulf Coast to the Midwest."[386] Husky assumes that "[o]nce Broadway II is complete, all of the Midwest refineries – including [Husky's] Refineries – can supply petroleum products to the Western and Central Pennsylvanian regions."[387] Husky asserts that in contrast to the Midwest, Eastern refinery production has decreased, accounts for 20% of demand in the region, and is vulnerable to supply outages due to reliance on the Colonial pipeline.[388] Husky also remarks that PADD 1 is largely dependent upon supply from Gulf Coast refineries and foreign waterborne imports, and more recently upon supply from Midwest refineries.[389]

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383 Laurel Main Brief at 140.
384 *Id.*
385 Husky Main Brief, at 17.
386 *Id.*
387 *Id.*
388 *Id.*
389 *Id.*

As an initial matter, Laurel and Husky miss the central issue. The crux of the issue is not whether Midwestern pipelines have the capacity to supply Pittsburgh, but rather the fact that loss of supply from Eastern refineries due to the reversal would result in a loss of arbitrage opportunities for Pittsburgh-area customers that ultimately translates into higher, more volatile prices.

The Laurel pipeline is the only pipeline source of product connecting the East coast to the Pittsburgh region.[390] Post-reversal, the Pittsburgh market will have no pipeline alternatives to access East coast supply sources and Philadelphia-area refiners will similarly have no pipeline access to continue competing with Midwest refiners in the Pittsburgh market.[391] As discussed more fully in Sections IV.C.1.a-c and IV.C.2.a, the opportunity to obtain petroleum products from the Eastern market via the Laurel pipeline is critical to ensuring reliable and cost-effective supply for the Pittsburgh area.[392] In addition, as confirmed by FERC's recent finding that the pipeline transportation market to Pittsburgh is not competitive, a reversal of the Laurel pipeline further decreases the alternatives available to supply Pittsburgh, which will be further subject to exercises of market power by pipelines seeking to benefit from the restriction of capacity and increased prices in the Pittsburgh area.[393] The proposed reversal would isolate Eastern refineries from the Pittsburgh market, removing arbitrage opportunities and converting the Pittsburgh area into a captive market that only Midwest pipelines supply.[394] Supply from those Midwestern pipelines cannot insulate the Pittsburgh region from increased and more unstable prices as a

[390] Indicated Parties Main Brief at 133.
[391] *Id.* at 133.
[392] *Id.*
[393] *Guttman Energy, Inc. d/b/a Guttman Oil Company, and PBF Holding Company, LLC v. Buckeye Pipe Line Company, L.P. and Laurel Pipe Line Company L.P.*, Docket Nos. OR14-4-000 and OR14-4-001(November 16, 2017) at 135; *see also* Indicated Parties Statement No. 1-S at 21:1-22:13.
[394] Indicated Parties Main Brief at 133-134.

result of the loss of pipeline supply from the east coast.[395] Likewise, just as Midwestern supply cannot replace the loss of East coast supply for Pittsburgh area wholesalers, retailers, and consumers, the pipeline connections to northern markets cannot replace the loss of the Pittsburgh-area destination market for Philadelphia-area refiners.[396]

In addition, Husky understates the current and future ability of Eastern refineries to adequately supply the Pittsburgh region with petroleum products. As noted in Section IV.C.2.b *infra*, unrebutted evidence shows that the Philadelphia area Refineries currently supply half the Pittsburgh market on average and there is continued interest among Eastern refineries in delivering more product to the Pittsburgh region.

D. Product exchanges and Virtual Tariffs

Laurel avers that product exchanges are "one of the numerous alternatives available to Pittsburgh market participants and provide incremental optionality to the other alternatives available to market participants."[397] Laurel erroneously attributes to the Indicated Parties the position that exchanges can only be done, or work best, when products are priced off of the same market.[398] These allegations, which Husky also supports, are based upon a failure to distinguish between the theoretical availability of product exchanges and the actual viability of product exchanges in the Pittsburgh market. Husky's arguments supporting virtual tariffs are similarly flawed. As discussed in the Indicated Parties' Main Brief, and as noted below, Laurel and Husky failed to rebut record evidence that product exchanges are infeasible in the Pittsburgh market.[399]

Laurel attempts to diminish the Indicated Parties' position on product exchanges by citing to various agreements between **[BEGIN HIGHLY CONFIDENTIAL]** [redacted]

395 *Id.*
396 *Id.*
397 Laurel Main Brief, at 141.
398 *Id.*
399 Indicated Parties Main Brief at 137.

[redacted] **[END HIGHLY CONFIDENTIAL]**. Laurel's own witness, Mr. Arnold, agreed that a product exchange would not "move physical barrels," and thus the aforementioned agreement cannot be considered a product exchange.[403] **[BEGIN HIGHLY CONFIDENTIAL** [redacted][405] **[END HIGHLY CONFIDENTIAL]**. As a result, Dr. Webb fails to refute the Indicated Parties' position that product exchanges are not available to the Pittsburgh market.

In addition, Laurel and Husky miss the point when they suggest that product exchanges can work because they include a "location differential" to account for pricing disparities between

[400] Laurel Main Brief at 141-142.
[401] Monroe Statement No. 1-S at 13.
[402] Laurel Main Brief at 141. *See also* Monroe Statement No. 1-SR at 13:33-14:12.
[403] Tr. at 327:16.
[404] Laurel Main Brief at 141-142.
[405] Monroe Statement No. 1-SR at 14:6-12.

two markets.[406] However, as extensively addressed by both Mr. Lorenz and Mr. Johnston, a functional product exchange market depends on the ability to limit the volatility of the locational differential.[407] In a market such as Pittsburgh, where supply prices reflect both Chicago and East coast benchmarks, product exchanges become unworkable.[408] This is clearly evidenced by the testimony from Laurel claiming product exchanges are common in the industry and the record evidence confirming that none of the marketers participating in this proceeding have any knowledge of or experience with product exchanges in the Pittsburgh market.[409]

Moreover, no credit can be given to the arguments provided by Laurel witness Stern and Husky witness Miller regarding product exchanges in the Pittsburgh market.[410] Mr. Stern merely restates general practices and theories regarding product exchanges in the petroleum industry.[411] He does not address the Pittsburgh market specifically. Likewise, the experience of actual marketers participating in this proceeding confirms the unavailability of product exchanges within the Pittsburgh market. Husky witness Miller confirmed that he has not completed a product exchange in the Pittsburgh market within at least the last decade.[412] And, Mr. Miller has never even managed a product exchange option with Chicago- and New York-priced barrels.[413] It is wrong for Laurel to assert that Mr. Miller has "personally managed product exchange options in Pittsburgh with multiple counterparties" or that he has any background from which to make any conclusions about the viability of these exchanges in the Pittsburgh market.[414]

[406] Laurel Main Brief at 142; *see also* Husky Main Brief at 24.
[407] Indicated Parties Main Brief at 138.
[408] *Id.*
[409] *Id.* at 137-138.
[410] Laurel Main Brief at 143.
[411] *Id.*
[412] Tr. at 1195:11-12.
[413] Sheetz Statement No. 1-S at 11:16-18; Gulf Statement No. 1-S at 14:17-19.
[414] Laurel Main Brief at 143.

Husky's arguments regarding virtual tariffs are inapplicable for the reasons set forth in Section IV.C.2.b.iii.4.B, *supra.*

For the reasons set forth above, Laurel and Husky's attempt to theorize on how product exchanges could work in general, without addressing whether they practically work in the Pittsburgh market, cannot serve as any evidence let alone substantial evidence to support considering product exchanges as viable alternatives to service currently provided on the Laurel pipeline.

iv) Post-Reversal, Supplies of Low-RVP Gasoline Will Not Efficiently or Economically Continue to Reach Pittsburgh.

Laurel believes that the Indicated Parties' concerns regarding availability of low-RVP gasoline to the Pittsburgh market in a post-reversal context are misguided. Laurel suggests that the Indicated Parties are "not credible" because 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."[415] Based upon that assumption, Laurel incorrectly claims that (1) "Midwestern refineries are capable of producing sufficient quantities of low-RVP gasoline to supply the Pittsburgh area during the summer," and (2) "East Coast low-RVP supplies need not be trucked from Altoona to Pittsburgh to supply the Pittsburgh market."[416] As discussed below, these arguments lack merit and must be rejected.[417]

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[415] Laurel Main Brief at 144.
[416] *Id.* at 144-146.
[417] In a footnote in its Main Brief, Laurel suggests that "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 the benefits of the low RVP gasoline because of newer, less-polluting vehicles, as well as a federal push for gas containing less sulfur." Laurel Main Brief, at 144, n. 83. The Indicated Parties wish to stress that while the Pennsylvania Department of Environmental Protection ("DEP") has engaged in proceedings to assess whether Pittsburgh's low-RVP mandate should be continued to be retracted, such proceedings remain ongoing at the time of the evidentiary hearings in this case. Indicated Parties Main Brief, at 107. As such, the Commission must review Laurel's Application based upon the current regulatory environment. Indicated Parties Main Brief, at 107. Even if the DEP waived the low-RVP mandate, it could always reinstate that mandate at a later time. As such, the Pittsburgh region still benefits from retaining pipeline connections to Eastern refineries that have consistently

(1) Midwestern refineries are not capable of producing sufficient quantities of low-RVP gasoline to supply the Pittsburgh area during the Summer.

Laurel argues that refineries "can easily produce low-RVP gasoline by including less butane in the blend of gasoline being produced," and suggests that backing "butane out of a gasoline blend, to produce lower-RVP gasoline, does not require significant capital investment."[418] As such, Laurel suggests that Midwestern refineries "can, and already do, produce low-RVP gasoline for cities throughout the Midwest" and that "Midwestern refineries (including Husky) have previously transported low-RVP volumes from the Midwest to Pittsburgh over existing pipeline infrastructure."[419] Husky makes similar allegations in its Main Brief, suggesting that a "significant amount" of its "gasoline is already sold in the Pittsburgh area, complying with its low-RVP requirements in the summer, and [Husky] intends to continue supplying the area."[420] Furthermore, Laurel claims "Pittsburgh market participants have confirmed the ability of Midwestern refineries to produce low-RVP volumes from the Midwest to Pittsburgh over existing pipeline infrastructure."[421] Laurel also presupposes that "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."[422]

Once again, Laurel's and Husky's arguments fail to address the heart of the issue. No one disputes that some Midwestern refineries may possess the capability to produce and transport low-RVP gasoline. However, the issue is whether those refiners have the capability to produce

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produced and shipped significant quantities of low-RVP gasoline to the Pittsburgh region. Indicated Parties Main Brief, at 107-108.

[418] Laurel Main Brief at 144.

[419] *Id.* at 144-145.

[420] Husky Main Brief at 3, 5, and 18.

[421] Laurel Main Brief at 145.

[422] *Id.*

sufficient volumes of low-RVP gasoline at affordable prices to serve customers in the Pittsburgh market during the Summer.

Historical data from 2012-2016 demonstrates pronounced and consistent increases in volumes shipped to Pittsburgh on the Laurel pipeline *from the East coast* during the Summer.[423] In fact, East coast refineries supply almost all of the gasoline to the Pittsburgh area during the low-RVP Summer months.[424] If the Commission approved the proposed reversal, the Pittsburgh region will no longer have access to low-RVP gasoline produced by Eastern refineries. Laurel has not proven how or whether those Midwestern refineries can *efficiently and economically* generate sufficient quantities of low-RVP gasoline to supply the entirety of the Pittsburgh area with low-RVP gasoline during the Summer period.[425] It is clear from the recent historical data that East Coast refineries have supplied the vast majority of low-RVP gasoline to the Pittsburgh market while capacity was available for Midwest refineries to supply more if the Midwest refineries were economical supply sources.[426] This evidence demonstrates that Midwest refineries are not an economical supply source of low-RVP gasoline to Pittsburgh. Further, Laurel has overgeneralized the means by which low-RVP gasoline is produced and unreasonably relies on commitments of Midwest refiners.[427] Laurel has not provided any concrete assurances that the Pittsburgh region will have guaranteed access to sufficient volumes of low-RVP gasoline at reasonable prices.

Moreover, Laurel's allegation that production of low-RVP gasoline is fairly easy because it merely involves "including less butane in the blend of gasoline being produced" is patently

[423] Indicated Parties Main Brief at 102; *see also* Indicated Parties Exhibit DSA-11 at 15.
[424] *Id.* at 102.
[425] *Id.* 102-103.
[426] Indicated Parties Main Brief at 102.
[427] *Id.* at 103.

untrue, as it pertains to Pittsburgh.[428] Monroe witness Sadowski indicated that backing butane out of a gasoline blend is more appropriate for cities with ethanol waivers, but as noted in the Indicated Parties' Main Brief, Pittsburgh's low-RVP mandate must be met without waiver of the 1 psi that is added by incorporating ethanol into gasoline.[429] As explained earlier in this proceeding, "to meet Pittsburgh's 7.8 psi low-RVP standard, the refiner must produce gasoline with a 6.8 psi to leave sufficient headroom to comply with the 7.8 standard after blending ethanol with the gasoline. The Achilles heel in Mr. Stern's and Laurel's positions is that no more butane can be removed from 7.8 psi gasoline to reach 6.8 psi because, quite simply, no more butane exists once the gasoline reaches 7.8 psi."[430] As a result, contrary to Laurel's averment, generating low-RVP product that meets Pittsburgh's requirements involves more than simply "backing out the butanes." For example, pentanes must be removed (which lowers the refiners' total gasoline yields and increases the yields of less valuable products), and the refiners must incur additional expenses to separate butanes and pentanes from the gasoline products.[431] Ultimately, these additional steps translate into increased costs, which the refiner passes onto customers in the form of higher priced low-RVP gasoline.[432]

The Commission must consider the additional expense of producing low-RVP product when reviewing Laurel's presumptions that Midwest refineries can sufficiently fulfill Pittsburgh's low-RVP requirements in a post-reversal context. Laurel claims that BP Products North America, ExxonMobil Oil Corporation, and Husky have confirmed their ability to produce low-RVP product and transport it to Pittsburgh after the reversal, but that hearsay statement fails to address the issue of whether those refineries can provide that low-RVP product without imposing

[428] Laurel Main Brief at 144.
[429] Indicated Parties Main Brief at 103-104.
[430] *Id.* at 104.
[431] *Id.* at 104.
[432] *Id.* at 104-105.

exorbitant prices upon customers.[433] How can Laurel assert that these Midwestern refineries are capable of meeting Pittsburgh's low-RVP needs if they currently have the resources to supply such product – without major price increases --but are not currently transporting that product to the Pittsburgh market? If these refineries are so anxious to access the Pittsburgh region, why are they not doing it already? Why are they waiting until the reversal is approved? The answer was succinctly captured in the Indicated Parties Main Brief:

> Ironically, Mr. Arnold indirectly provided the answer when he correctly testified that "[r]efineries will sell product into markets that yield the highest netback (i.e. sales price net of transportation costs)...." Thus, the observation that Midwest refiners are not producing sufficient volumes of low-RVP gasoline to serve the Pittsburgh market leads to the inescapable conclusion that Midwest refiners, when faced with competition from East Coast suppliers, do not believe they can currently earn a sufficient netback by producing higher volumes of low-RVP gasoline for sale in the Pittsburgh market. In order to provide any incentive for the Midwest refiners to produce higher volumes of low-RVP gasoline for the Pittsburgh market, the price in Pittsburgh would have to increase, which, as discussed above, would occur if the proposed Laurel reversal were to cut off the lower-cost East Coast supply currently supplying virtually all of the low-RVP gasoline market in Pittsburgh. And Laurel has no answer to the fundamental principles of chemistry (and common sense) that preclude removing a product (i.e., butane) that is not present. This overwhelming evidence confirms that, even if Midwest refiners were physically and operationally able to produce the low-RVP gasoline, Pittsburgh wholesalers, retailers, and consumers can expect to pay more for low-RVP gasoline supply from the Midwest if the Commission approves the proposed reversal.[434]

Based upon the evidence presented in this case, Laurel's position that Midwestern refineries are capable of producing sufficient quantities of low-RVP gasoline to supply the Pittsburgh area during the Summer is simply untrue and should be rejected.

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[433] *Id.* at 105.
[434] *Id.* at 107 (internal citation omitted).

(2) Assuming *arguendo* that the reversal was approved, East Coast low-RVP supplies would have to be trucked from Altoona to Pittsburgh to supply the Pittsburgh market.

Laurel avers that 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."[435] Laurel makes this conclusory argument by assuming that "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."[436] As discussed in Section IV.C.2.a.iv.1, *supra*, the fact is that Midwestern refineries *are not* in a position to efficiently and economically supply low-RVP gasoline to the Pittsburgh region. As noted in Section IV.C.2.a.iii.4.B, *supra*, there are several reasons why trucking is not an adequate alternative means by which to transport petroleum product in the Commonwealth. However, assuming *arguendo* that the reversal was approved and that all necessary infrastructure and workforce investments were made, trucks would be the only way by which Eastern refiners' low-RVP product could reach the Pittsburgh region.

b. Loss Of Pittsburgh Market For East Coast Refineries.

One of the fundamental, incorrect premises upon which Laurel's entire argument rests is that the volume of products moving on the Laurel pipeline from the East, to destinations past Eldorado to the West, are in a steep decline and will reach zero sometime very soon. The record evidence does not support such a conclusion. To the contrary, unrefuted evidence shows that the Philadelphia-area refineries ("Refineries") currently supply half the Pittsburgh market on average

[435] Laurel Main Brief at 146.
[436] *Id.*

and more during the Summer.[437] Moreover, PESRM testified that it has been increasing deliveries into the Laurel pipeline[438] and wants to continue doing so, while Monroe has testified that its deliveries into the Laurel pipeline have been stable over time.[439] In an effort to prove that the Refineries' deliveries to destinations west of Eldorado are declining and will soon decline to zero, Laurel's witness Webb contrived a horribly flawed model that assumes all years in which deliveries were steady to increasing should not be considered, creating a model that fails to predict anything and which is not based in reality or reliable methods.[440] In short, the volumes are what they are -- steady to increasing -- and Laurel's misguided efforts to show otherwise simply cannot alter that reality.

Laurel claims that the Refineries have multiple alternative transportation options for delivering product to multiple locations other than the Pittsburgh market using the Laurel pipeline (approximately 50,000 plus barrels per day on average),[441] if the proposed reversal were completed. Laurel bears the burden of proving adequate alternatives exist,[442] and it has failed to do so for multiple reasons. Primary among these is that Laurel has not refuted the obvious fact

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[437] Indicated Parties Main Brief at A-20, FOF 107.
[438] Tr. 952:1-7.
[439] Monroe Energy Statement No. 1 at 6:1.
[440] Indicated Parties Main Brief at 67-72.
[441] Tr. 749:10-12; *see also* Indicated Parties Exhibit DSA-11, at 15 (showing peak 2016 flows on Laurel pipeline to the Pittsburgh area of 75,000 BPD).
[442] *Warwick Water Works, Inc. v. Pennsylvania Pub. Util. Comm'n.*, 699 A.2d 770, 775 (Pa. Cmwlth. 1997)

> Finally, as to the availability of an alternative supply, we find Warwick's argument that the Association has done nothing to avail itself of other sources misplaced. It is Warwick's burden to show available alternative sources of supply. *See Monessen Southwestern Railway Co. v. Pennsylvania Public Utility Commission,* 82 Pa.Cmwlth. 13, 474 A.2d 1203 (1984) (applicant for abandonment has the burden, not the customer). We agree with the PUC that the evidence on alternative sources produced by both parties was not particularly compelling and was to no small degree speculative. However, we can say, having reviewed the testimony and other evidence in its entirety, that Warwick did not show that existing wells on the each of the Association members' properties could be easily and inexpensively re-opened, as Warwick alleged, or that other sources were available. Testimony that the customer did not investigate the possibility of other sources is not the same as testimony that an alternative source is ready and sufficient for immediate use.

that even if the sometimes-hypothetical connections did exist, or could be completed (ignoring, for a moment, the capital expense of doing so), the purported array of markets to which these connections flow are not new[443] and are not viable outlets for so much additional product.[444] Laurel also fails to understand or acknowledge that refinery products are not fungible and refinery production slates are not easily changed.[445] Moreover, Laurel ignores that any sales to any different markets than are made now will result in less revenue, may involve the expenditure of substantial capital dollars before a single sale could be made, and will almost certainly involve higher transportation costs.[446] Because these increased transportation costs, decreased revenues, and capital expenditures dollars would not be incurred but for the reversal and may never produce a return, they constitute actual harm to the Refineries. Simply put, the suggestion that there are economic and adequate substitutes for the Pittsburgh market (where the Refineries send 50,000 barrels a day or more and where those products now flow in response to market demand) that allow Refineries to avoid economic harm, is pure conjecture and in no way satisfies Laurel's burden of proof.

i) Volumes moving from the East past Eldorado are steady and possibly increasing.

Laurel's argument that Pittsburgh is an unimportant market to Philadelphia refineries completely relies on the incorrect assumption that product volumes on the Laurel pipeline from the Refineries are rapidly diminishing and soon will reach zero.[447] While this assertion has been successfully rebutted on the record,[448] it is important to understand why Laurel keeps repeating it. The Refineries continue to produce a substantial amount of petroleum products and deliver

443 Tr. 482:5-9.
444 PESRM Statement No. 1 at 6:11-7:17.
445 Monroe Energy Statement No. 1-SR at 18:4-14; PESRM Statement No. 1 at 8:14-15; Tr. 111:10-14.
446 Monroe Energy St. No. 1-SR at 7:14-8:10
447 Laurel Main Brief at 147-148.
448 Indicated Parties Main Brief at 53-77.

those products into the Laurel pipeline for shipment west of Eldorado. Those volumes do fluctuate seasonally, and events in the market, such as the closure of the Sunoco pipeline that also carried products westward across Pennsylvania or the closing of Philadelphia-area refineries, have had impacts on the volume levels. But, as Dr. Arthur has testified, the refineries continue to supply on average, approximately half of the market west of Eldorado, more than eighteen months after the delivery constraints from the Midwest have been rectified.[449] This means that if the Refineries continue to supply over half the market after this much time has passed, it is reasonable to conclude that the Pittsburgh market continues to desire East coast products and volumes should not be expected to decline further.[450] Laurel completely ignores this fact, and continues to erroneous claim that Pittsburgh is not an important market based on volume levels and trends.

Laurel next takes the Refineries' volumes out of context in an attempt to diminish their significance.[451] Laurel compares Monroe's average volume delivered on the Laurel pipeline west of Eldorado, **[BEGIN HIGHLY CONFIDENTIAL]** [redacted] **[END HIGHLY CONFIDENTIAL]** in an effort to suggest that Monroe's deliveries west of Eldorado are less than reality.[452] Ms. Sadowski's estimate puts the percentage of refinery output going west of Eldorado at over 10% of total refinery production during peak production and even more during other times.[453] It is disingenuous for Laurel to argue on one hand that the Refineries' volumes moving west of Eldorado on the Laurel pipeline are "small", and on the other hand to seek to cut off this flow in exchange for commitments that

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[449] Tr. 740:7-741:3.
[450] *Id.*
[451] Laurel Main Brief at 147-148.
[452] *Id.* at 148.
[453] Monroe St. No. 1 at 8:2-7 **[BEGIN HIGHLY CONFIDENTIAL]** [redacted] **[END HIGHLY CONFIDENTIAL]**.

total less than half of the volumes that currently flow west of Eldorado.[454] One has to wonder if that would make the Midwest shippers commitments "microscopic"?

Witnesses for the Refineries have testified that they currently move substantial volumes west of Eldorado on the Laurel pipeline and desire to continue doing so.[455] These witnesses are not merely projecting an interest in reaching the Pittsburgh market: they are representing their employers' position as parties to this proceeding. Customers and shippers who move products on the Laurel pipeline westward past Eldorado have made the same point.[456]

In the face of these facts, Laurel claims that the Refineries do not know where the products go when they enter the Laurel pipeline and, because they are sold at an index price, the Refineries are indifferent as to where the products go.[457] This argument is false, as Ms. Sadowski explained.[458] First, while it may be true that some product is sold at an index price, that price is reflective of the demand across the entire Laurel pipeline. If the segment of that market west of Eldorado is removed, the value of the market and prices, as a whole, decline because of the substantial reduction of demand.[459] Second, as Ms. Sadowski pointed out in her Surrebuttal testimony, Monroe ships conventional gasoline west of Eldorado that it will not be able to sell elsewhere.[460] The consequence is that Monroe would need to produce more reformulated gasoline to sell into the other markets, which is more costly.[461] Both Refineries put substantial percentages of their production into the Laurel pipeline. Both Refineries ship substantial volumes west of Eldorado, and both will suffer substantial economic harm if Laurel removes that option as proposed in this proceeding.

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[454] Tr. 1204:6-24.
[455] Indicated Parties Main Brief at 111.
[456] *Id.* at 91.
[457] Laurel Main Brief at 148-153.
[458] Tr. 1081-1082.
[459] *Id.*
[460] Indicated Parties Main Brief at 115.
[461] *Id.*

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

In an effort to address the overwhelming evidence that volumes travelling west of Eldorado on the Laurel pipeline are stable, Laurel presented a highly skewed "analysis" purporting to present a scenario of doom-and-gloom for the Laurel pipeline, but one that does not consider external market factors and uncertainties.[462] In contrast, the Indicated Parties have shown through Dr. Arthur and Mr. Schaal's data driven analysis that volumes on the Laurel pipeline are and will remain significant.[463]

Despite their persistent (and false) claim that volumes on the Laurel pipeline flowing west of Eldorado are going to begin a terminal decline, Laurel has shown no interest in addressing this alleged problem. As Mr. Sadlowski explained:

> My expectation frankly, as a customer of Buckeye and a customer of Laurel is that if there were issues that should have been addressed with regards to I know they said their declining profitability or they've been financially harmed or the volumes are down, they never came to us as a customer and said, 'Hey, we have a commercial arrangement here that's been in place for decades. Let's have a conversation about increasing the volumes or increasing your commitment to Laurel or what can we do different?' And I probably would have offered up, 'Hey, a five-day cycle time. I could ship more into Laurel.[464]

In short, there is no credible evidence that volumes moving west of Eldorado on the Laurel pipeline are in a systematic decline. Indeed, the evidence shows that demand and deliveries are

[462] *Id.* 53-77; *supra* Section IV.C.2.b.
[463] *Id.*
[464] Tr. 991:6–16.

steady after a decline caused by the opening of the Allegheny Access Pipeline. The record shows that on average, the Refineries continue to service approximately half of the Pittsburgh market and they intend to continue doing so. The Pittsburgh market remains important for the Refineries' output, and Laurel has not proven otherwise.

ii) High Margin Market.

Laurel incorrectly suggests that the witnesses for the Refineries assert that Pittsburgh is a high margin market, that this assertion is not proven in this record, and therefore any reliance on that assertion is misplaced.[465] As Ms. Sadowski explained, the elimination of delivery points west of Eldorado from the East will make the Laurel pipeline, as a whole, less attractive: "if we are blocked out from Altoona to Pittsburgh, th[en] we would have hopefully the same amount of supply, but demand would be less, so prices would fall and there would be harm."[466] Stated differently, the Laurel pipeline is far less viable post reversal with the elimination of the Altoona to Pittsburgh section because moving the same amount of supply into a now smaller (i.e., Altoona) market with flat to declining demand means prices will fall. With the Refineries shipping **[BEGIN HIGHLY CONFIDENTIAL]** [redacted] **[END HIGHLY CONFIDENTIAL]** of their products into the Laurel pipeline, much of it at an index price based on Laurel, they will undeniably suffer harm.[467] As Ms. Sadowski made clear, if prices fall, the Refineries' income will falls and their viability will undoubtedly come into question—in short, lower margins mean financial losses and closures.[468]

[465] Laurel Main Brief at 149-151.
[466] Tr. 1077:14-19.
[467] Monroe Energy St. No. 1, at 5:4-7; PESRM St. No. 1, at 3:17-4:7
[468] Tr. 1130:1-16.

iii) There are no viable alternatives to the Pittsburgh Market on the Buckeye/Laurel system.

Laurel claims that post-reversal PESRM and Monroe will still be connected to the Laurel pipeline, and this connection provides them access to multiple markets. These alternatives include northern Pennsylvania and upstate New York. However, even Dr. Webb admits that these are not new markets, and Mr. Sadlowski made it clear that PESRM was already selling all the product it could into those markets.[469] As the Refineries' witnesses made clear, the fact that one or both of them may be connected to these other markets does not mean those markets are viable or could in any way replace Pittsburgh. Laurel repeatedly tries to turn PESRM's acknowledgement that it has multiple logistic channels to deliver product into a finding that it will not suffer harm if one of those channels is cut off. However, Laurel has not shown there is an actual and economically viable alternative market for the Refineries that is the equivalent of moving product to Pittsburgh on a pipeline post-reversal. And, as the Refineries' witnesses have testified, any other scenario than the product mix and locations utilized now, inflicts real and demonstrative harm.

Laurel argues that Dr. Webb's testimony shows that PESRM in particular has experienced variations in its deliveries on the Laurel pipeline over the past two years between Pittsburgh terminals and destinations east of Eldorado.[470] What his data shows is that in two disconnected three-month periods, PESRM increased its shipments to a different market.[471] Based upon this single example, from a single refinery, Dr. Webb concludes that the Refineries will be able to easily remarket product currently going to Pittsburgh.[472] Likewise, Dr. Webb contends that there are markets other than Pittsburgh where the Refineries can sell their products,

[469] Tr. 482:5-9; Indicated Parties Main Brief at 26.
[470] Laurel Main Brief at 150-151.
[471] Laurel Statement No. 5-RJ at 52.
[472] *Id.*

and based upon no analysis other than the current consumption of those markets, he concludes that the Refineries could sell product there.[473] Dr. Webb performed no analysis of the price impacts of adding additional supply into those markets or what prices predominate in those markets compared to what the Refineries currently realize from sales to Pittsburgh. In fact, Dr. Webb has made it clear that he does not view lower prices forced on the Refineries as a harm at all, rather, it is just a "transition cost".[474]

Laurel goes on to incorrectly contend that the parties agree that the marginal barrel that will be displaced will not be a barrel produced at a Philadelphia area refinery.[475] This statement is simply false. Mr. Schaal, Ms. Sadowski, and Mr. Sadlowski have each stated that the marginal barrel, based upon history, will not be an imported barrel but rather a Philadelphia refinery barrel.[476]

Laurel also argues that because the Refineries currently sell at index prices at the refinery gate, in the future, without access to Pittsburgh, the Refineries will still achieve those prices.[477] In nearly the same breath, however, Laurel admits that the prices will fall, but claims that is a benefit to consumers and not a harm to the Refineries. As Ms. Sadowski testified, these types of price reductions in the longer term could spell the demise of the Refineries, which ultimately harms consumers due to job losses and indirect economic effects on local communities.[478] Although the Refineries have various interconnection options to clear their plant production, it does not – despite Laurel's erroneous suggestion to the contrary – necessarily follow that those interconnections lead to economically viable markets for expansion. Laurel never once

[473] Laurel Statement No. 5-RJ at 52
[474] Indicated Parties Main Brief at 110.
[475] Laurel Main Brief at 153.
[476] *Id.*
[477] *Id.* at 154
[478] Monroe Energy St. No. 1-SR at 6:19-7:9

addresses the viability of these markets and the fact that the Refineries could sell there now, but do not do so because these markets produce lower margins than are available by selling to the Pittsburgh market.

iv) The non-Laurel transportation options post-reversal are not viable.

Laurel completely distorts the evidence by arguing that Monroe has adequate options outside of the Laurel pipeline for its production. Of the so-called alternatives on page 156 of its Main Brief, only one is plainly a non-Buckeye/Laurel route. Ms. Sadowski described Monroe's pipeline options in her Surrebuttal testimony.[479] Monroe is currently connected to Sunoco's East Line, but only ships jet fuel on that line. It also is connected to the Harbor Line, which is full and often constrained, and clearly does not have the excess capacity to absorb all of the barrels that will be displaced by the proposed reversal.[480] She also testified that apart from the Laurel pipeline, which currently moves approximately 46% of the output of Monroe's refinery, the Marcus Hook connection for jet fuel and the barge dock, all other transportation options flow through an eight-inch line operated by MIPC, which is a Monroe subsidiary.[481] Ms. Sadowski testified that this line often operates near capacity and, except for the Laurel pipeline, all these other "options" must flow through this same eight-inch line. Ms Sadowski's testimony contradicts and stands in stark contrast to Laurel witness Van Hoecke's unsupported speculation about the capacity of that line.[482] Ms. Sadowski also clarified that Monroe is not connected to

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[479] Monroe Energy Statement No. 2-SR at 5:15-24.
[480] Monroe Energy Statement No. 1-SR at 9:18-10:4. Mr. Van Hoecke admits that Harbor is constrained and suggests the unavailability of the Sunoco line is the culprit without citing any information source as the basis of that speculation.
[481] Monroe Energy Statement No. 1-SR at 7:10-11:10
[482] *Id.*

any Colonial Pipeline that reaches New York Harbor.[483] Laurel has offered no, non-hearsay evidence to refute Monroe's testimony on this issue.

Laurel also claims the Sunoco Pipeline into northern Pennsylvania is an alternative, even though it acknowledges that the line has been shut down for maintenance for some time[484]. In short, much like the "Laurel/Buckeye" options, the other options are all inferior to transporting product to Pittsburgh today on the Laurel pipeline.

Laurel speculates that Monroe could simply shift to transporting product on Sunoco's East line, or increasing barge shipments.[485] What Laurel's speculation ignores is the substantially increased transportation costs associated with each option. As Ms. Sadowski testified, while the East line would be available to ship non-jet fuel products, there would be substantial costs associated with that option because of the unique agreement between Delta and Sunoco regarding transmix costs.[486] **[BEGIN HIGHLY CONFIDENTIAL]** [redacted]

[END HIGHLY CONFIDENTIAL] Ms. Sadowski also testified that barging costs would be 3.5 cents per gallon, or $1.47 per barrel more than shipping via pipeline. It was this per barrel transportation cost estimate, coupled with the volumes that Monroe currently ships west of

[483] *Id.*
[484] Laurel Main Brief at 159.
[485] *Id.* at 160-165.
[486] Monroe Energy Statement No. 1-SR at 11:1-10.
[487] Tr. 1100:19-21.

Eldorado on the Laurel pipeline, that Ms. Sadowski relied on to conclude that Monroe would suffer a direct loss of $12 million per year as a result of the proposed reversal.

Laurel also disputes Ms. Sadowski's testimony evidencing that certain alternate pathways to New York Harbor are constrained.[488] The argument falls short. Laurel presented no evidence other than Mr. Van Hoecke's reliance on hearsay to conclude there are no constraints. Even then, Mr. Van Hoecke admitted that the Harbor line is currently constrained, and that the Sunoco line is currently out of service.[489] Mr. Van Hoecke's testimony on the issue is not credible. His testimony regarding the capacity on the MIPC system is likewise flawed because he did not appear to recognize that the same single 8" line fed all of the terminals and junctions. In contrast, Ms. Sadowski, a Monroe witness with first-hand knowledge of the refinery, testified that there are constraints prohibiting Monroe from moving all of its barrels that would be displaced from the Laurel pipeline onto other pipelines.[490] Moreover, Laurel's argument is another attempt at misdirection. The issue is not only whether alternate pipelines have capacity, but also whether they connect to a new market with new demand; otherwise, they are not adequate substitutes for the segment of the Laurel pipeline proposed to be reversed.

The facts Monroe presented on the issue of alternatives are uncontestable, despite Laurel's attempt at misdirection. There are no "new" pipeline alternatives for Monroe to move products to markets that it does not serve today or that could act as a true substitute for the Pittsburgh market.[491] If these options were true alternatives, Monroe would have no good business reason not to already be using them, or using them to a greater extent, and the evidence shows that they are not using them. The reality is that there is no viable or economic substitute

[488] Laurel Main Brief at 159.
[489] *Id.*
[490] Monroe Energy Statement No. 1-SR at 9:15-10:5.
[491] Monroe Energy Statement No. 1-SR at 12.

for shipments on the Laurel pipeline. All other options are less viable, and Ms. Sadowski is sadly confident that, if the Commission approves the proposed reversal, the refinery would likely cut production in the face of declining market access and lower margins.[492] There simply is no adequate alternative for the current service on the Laurel pipeline to transport petroleum products from Altoona west into the Pittsburgh market.

Whether Monroe could spend capital dollars to connect to the Colonial pipeline to ship product to New York Harbor via pipeline is not the point; the fact is, due to the market conditions and product mix, there is no reasonable likelihood of a market return on those dollars. Monroe's East Line project was unique in that it simply moved an existing sale from one mode of transportation to another less expensive mode. The investment in that project had a predictable outcome because there was existing demand for the product. Laurel suggests that investing capital to create new paths to existing markets where Monroe (and PESRM for that matter) already sell product, is a viable alternative to selling into Pittsburgh via the Laurel pipeline. It is not. Laurel has presented no evidence of any new *demand* to absorb the volumes that now flow on the Laurel pipeline west of Eldorado, and any such venture is real loser.

Under Laurel's analysis, if there were a pipeline to the moon, it would be an adequate alternative because it could take product to a geographic destination other than west of Eldorado. Laurel has not shown that real, economically viable, and adequate alternatives exist.

v) Monroe's Estimates of increased transportation costs are accurate.

Laurel challenges Monroe witness Sadowski's position that barging or using the Sunoco East Line are more expensive options than the Laurel pipeline because of increased

[492] Tr. 1130:1016.

transportation costs that Monroe would incur.[493] Ms. Sadowski presented an analysis based on past barging and transmix costs that estimated the costs of using these transportation methods for barrels the proposed reversal would displace. She concluded that these costs would be significant to Monroe and cause harm.[494]

(1) Ms. Sadowski's Barge Cost Analysis is Credible.

Ms. Sadowski testified that barging is approximately 3.5 cents per gallon more expensive than pipeline transportation. As a result, she quantified the harm to Monroe due solely to barging costs at approximately $12 million.[495] Laurel does not contest her per gallon cost estimate, but rather contends that Ms. Sadowski did not consider the possibility that the product would go to another market, and that her volume estimate is incorrect. Both of these arguments are false. First, Ms. Sadowski did consider the possibility that the product would go to other markets, but based upon recent market history and her significant experience, she concluded that Monroe's optimization system would direct the barrels to New York Harbor as the best option.[496] Second, Ms. Sadowski made it clear that while she does not know the exact volumes of product that move west of Eldorado on the Laurel pipeline, she is able to estimate the number at 22 MBD. **[BEGIN HIGHLY CONFIDENTIAL]** [redacted] **[END HIGHLY CONFIDENTIAL]** MBD produce harm of $9.3 to $9.8 million per year, which is in the same order of magnitude. In short, Laurel cannot reasonably dispute that barging the volumes displaced by the proposed Laurel pipeline reversal would cause substantial harm to Monroe.

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493 Monroe Energy Statement No. 1-SR, at 6:19-7:9.
494 Monroe Energy St. No. 1, at 8:18-9:20.
495 Monroe Energy Statement No. 1 at 8:12-9:17.
496 Indicated Parties Main Brief at 118.

Laurel also raises the *non-sequitur* argument that because Monroe used to barge jet fuel to New York Harbor, and the costs of barging did not cause it financial harm, barging gasoline to the same place should likewise not cause any harm. This argument is ridiculous. As noted above, the barge cost was so unacceptable that Monroe was willing to spend over **[BEGIN HIGHLY CONFIDENTIAL]** [redacted] **[END HIGHLY CONFIDENTIAL]** in capital to avoid the barge cost for delivering a product with a known buyer. In this case it would have to bear the barge costs because it would be competing for business against sellers already supplying the market, so Monroe would need to lower its price or its margin. In either event, it loses money. Laurel's argument ignores reality.

(2) Ms. Sadowski's Transmix Cost Estimate is Credible.

Laurel's argument regarding transmix costs for shipping on the East Line is similarly specious and must be rejected. Laurel relies entirely on the conjecture of Mr. Van Hoecke that Monroe should be able to avoid transmix costs based upon his experience, but he never acknowledges **[BEGIN HIGHLY CONFIDENTIAL]** [redacted][499] **[END HIGHLY CONFIDENTIAL]** Laurel provides no evidence, except Mr. Van Hoecke's pure speculation, that parties other than Delta are actually shipping on the SXL East Line. Because no other shippers are on the line, transmix costs are unknown, so Ms. Sadowski used as a proxy the transmix costs that Delta incurred to ship the same amount of jet fuel on a similar pipeline over a

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[497] 519:22-521:18.
[498] Tr. 1102:10-14.
[499] Indicated Parties Cross Exh. No. 7 (Response to LAU-ME-IV-7)

similar route. If other shippers to whom Monroe would sell product shipped on the East Line, they would incur not only the transmix costs related to their own product movements, but also a share of those transmix costs that Delta otherwise would have incurred but for the contract prohibiting it from being charged. In short, Laurel's argument is a distortion at best. The fact that Ms. Sadowski had not memorized the East Line tariff is not material. The key fact is that moving additional not-jet fuel volumes on that line will bear higher transmix costs than otherwise would be charged on other lines, Monroe will have to absorb those costs to compete in the market, and that constitutes harm.

vi) PESRM's non-Laurel Transportation Options, Post Reversal, are Not Viable.

Similar to its attacks on Monroe, Laurel contends that PESRM has multiple transportation options post reversal for delivering its product.[500] Like its argument above, however, Laurel fails to assert that any of these "connections" leads to an economically viable market and is thus an adequate alternative. PESRM witness John Sadlowski made it clear that access to the Laurel pipeline in its present configuration is necessary for PESRM to clear its refinery.[501] He also made it clear that PESRM, like Monroe, has optimized its production slate and while it currently delivers into these alleged "alternative" markets – the issue is not the physical connection, but the demand in those markets, which is not increasing.[502] Laurel intentionally mixes the concept of the physical connection and the viability of the destination market in an effort to confuse the issue. Mr. Sadlowski made it clear that PESRM already delivers product to all the places referenced in Laurel's Main Brief, but that those markets cannot absorb the volumes PESRM currently delivers west of Eldorado on the Laurel pipeline.[503] In

500 Laurel Main Brief at 165.
501 Indicated Parties Main Brief at 7-9.
502 Tr. 955:10-15.
503 *Id.*

short, much like the discussion with regard to these alternative markets for Monroe, there is no substitute for the Laurel pipeline west of Eldorado because none of these new markets can replace the demand for product. Without demand the physical connection means nothing.

(1) Laurel-Buckeye to Upstate New York.

While Laurel argues that PESRM will have increased capacity to upstate New York, Laurel has not and cannot show that this is an adequate, viable and economic alternative to the Pittsburgh market. Mr. Sadlowski clearly testified that the Upstate New York market cannot absorb the volumes PESRM currently delivers west of Eldorado on the Laurel pipeline.[504] Moreover, Laurel continues to misconstrue PESRM's product volumes flow on the Laurel pipeline. **[BEGIN HIGHLY CONFIDENTIAL]** [redacted] **[END HIGHLY CONFIDENTIAL]** but also the PESRM products its customers ship to Pittsburgh that will need to find an alternative market if the Laurel pipeline is reversed.

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

(2) Virtual deliveries to markets without demand are no better than physical connections.

Laurel argues that in lieu of making physical deliveries into markets, such as New York Harbor or Upstate New York, PESRM could take advantage of Buckeye's "virtual" tariff, which is nothing more than an exchange. What Laurel fails to recognize is that such transactions

[504] *Id.*

require two willing shippers, each with products in the opposite markets willing to exchange product with each other at the same price in order to avoid the mutual transportation costs.[505] First and foremost, there is no ability to engage in such virtual transactions between Philadelphia and Pittsburgh,[506] and such transactions are not an alternative to using the Laurel pipeline to make deliveries west of Eldorado. Second, for these virtual transactions to work, there must be a willing party with excess supply in a destination market who wants to trade for supply in Philadelphia. Laurel could find only one contract that any party had entered using this method, which shows the futility of suggesting that such a novelty is a realistic means of replacing the demand west of Eldorado.[507] As Mr. Sadlowski made clear, the only way to sell into these alleged alternative markets, whether by physical or virtual connection, is to lower one's price, which leads to financial disaster for the Refineries in the long run.

vii) The Harms inflicted on the Refineries by a Reversal Would be Severe.

Based upon its flawed premises of declining and/or low volumes moving West, and the alleged existence of various real or virtual pipeline connections (all lacking new demand), Laurel conjectures that the harm the Refineries would suffer from the proposed reversal would "not be that bad." This is notable, largely for Laurel's admission that the proposed reversal will indeed cause harm to the Refineries. Laurel suggests that the displaced volumes could easily be sold elsewhere, yet it presents no analysis of the economics of doing so. There is also no analysis of whether there is any unmet demand in any of those markets. Laurel appears to believe that if one is physically capable of getting a product, any product, to a geographic destination, that one should be able to sell that product at that spot at a good price. This simplistic and incorrect

[505] Sheetz Statement No. 1 at 11:15-12:10
[506] *Id.*
[507] Monroe Energy St. No. 1-S, at 13:33-14:12.

assumption ignores that refineries run a product slate based upon available crudes, the prices for the crude, their production abilities and the market prices they it can obtain from the products they can make.[508] Those production slates cannot be easily changed, for example, to simply make more jet fuel or more diesel, as Ms. Sadowski explained.[509] Laurel's suggestion that Monroe, for instance, could ship conventional gasoline to any market defies the reality that those other markets mostly cannot use conventional gasoline.[510] Laurel's argument on the alleged ease of remarketing, also ignores plain economics.

If there is no increase in demand, the only way to induce increased purchases is to lower the price. A lower price than what can be obtained today harms the Refineries. Laurel suggests this harm is just a discount and it will not matter to the Refineries, but offers no evidence to support the claim and glosses over the increases in transportation costs that clearly will attach to the Refineries' deliveries if the proposed reversal is approved. The Refineries' witnesses have been clear that they will be severely harmed by the loss of the market west of Eldorado, which is compromised of the combined demand of all the customers supplied by the Refineries about 50 MBD or about half of the market on an average basis. This lost market, combined with the uncontested fact that there are no new markets, i.e., markets with unmet demand accessible by the Refineries, will demonstratively harm the Refineries. There is only one probable outcome - - reduced production which leads to partial or total refineries closure. This scenario begins with suppliers either selling less product or selling that product at a loss over what they gain today.

In the face of this scenario, Laurel suggests that the Refineries' financial positions are not so bad, and for proof points to the 2015 PESRM registration statement for a securities issue that was never made, and Monroe's corporate parent's, Delta Airline's 10-K, neither of which offer

[508] Monroe Energy Statement No. 1-SR, at 17:1-18:4.
[509] Tr. 1111:5-24.
[510] Monroe Energy Statement No. 1-SR at 15:8-16:2.

analysis of the impact of the reversal. Dr. Webb also incorrectly contends that Delta inappropriately uses Monroe to influence the price of jet fuel; a notion which was soundly rejected by Ms. Sadowski.

The facts speak for themselves. The Refineries ship on average 50 MBD to destinations on the Laurel pipeline and desire to continue doing so. That volume shows no sign of future decline. The proposed reversal will effectively eliminate access from Philadelphia to any delivery point west of Eldorado, including Pittsburgh, effectively handing that 50 MBD of demand to the Midwest refineries, including Husky, that are not effectively competing to serve that demand today. There is no economic or viable substitute for th Refineries to access that demand. In the face of this, the Refineries will either need to: 1) continue to sell the same amount of production into different locations at reduced prices and with potential serious increases in transportation costs, and hope they can limp along; 2) cut back production; and, 3) eventually partially or fully shut down. Contrary to Laurel's assertion, reduced gas prices may appear to be a public benefit, but when those prices are not sustainable, they lead to refinery closures and attendant job losses. Such harm dwarfs any perceived benefit from temporarily decreased prices.

c. Other Harms.

Laurel also alleges that the Indicated Parties' concerns about future harm regarding (i) increased truck traffic between Altoona and Pittsburgh and/or Altoona and Harrisburg, and (ii) whether this instant reversal is a prelude to future reversals on the Laurel pipeline to points further East of Eldorado are unfounded. As discussed further below, these concerns are legitimate and the Commission should disregard Laurel's averments to the contrary.

i) The Indicated Parties' Concerns Regarding Harm Due to Increased Truck Traffic Are Legitimate.

Despite having made no effort to proffer evidence or analyses on the impact of the proposed reversal on truck traffic in the Commonwealth, Laurel assumes that the Indicated Parties' concerns regarding increased truck traffic in the Commonwealth are unfounded.[511] Ironically, Laurel suggests that the Indicated Parties "ignor[e] economic realities" despite the fact that Laurel failed to proffer any evidence or analysis on the feasibility of trucking product, including failing to analyze (1) the capacity of truck racks to accommodate any increased truck traffic that would occur post-reversal; (2) who would need to make such investments; or (3) how much it would cost to make these investments.[512]

First, Laurel errantly attempts to allege that the reversal would "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"[513] even though it has not provided any studies in support of that prediction. Laurel mistakenly alleges that the Indicated Parties' estimates of additional truck trips per day is incorrect because they presume "the entire historic quantity of deliveries on Laurel to Pittsburgh will be replaced by trucks" when "volumes to Pittsburgh have been continuously declining because Pittsburgh is receiving low-cost product from the Midwest."[514] Based upon that misguided assumption, Laurel believes that "[p]roduct from the East Coast will not be trucked from Altoona to Pittsburgh because it will be the higher cost product." And Laurel suggests that, for those reasons, Gulf's and Sheetz's claims regarding "lack of terminal capacity and the capital costs associated with expanding this

[511] Laurel Main Brief at 171-173.
[512] Indicated Parties Main Brief at 84-85.
[513] Laurel Main Brief at 171.
[514] *Id.* at 172.

capacity in Eldorado are irrelevant."[515] Laurel also claims that even if trucking were the only option to transporting Eastern petroleum products into Pittsburgh, one could not conclude 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."[516] As such, Laurel avers that the Indicated Parties' analysis "fails to consider, and offset, the impact of truck traffic from Pittsburgh to Altoona and Harrisburg if the reversal is not approved."[517]

As noted in Section IV.C.2.a.iii.4.B, *supra*, these allegations are patently false and unsupported by any evidence. Laurel has not provided any evidence or studies on the feasibility of transporting product by truck, or the impact on the roads and public safety associated with such trucking. In making these presumptions, Laurel relies principally upon testimony from Dr. Webb, whose statement completely disregards concerns associated with increased trucking from Eldorado eastward into Harrisburg.[518] In addition, as noted earlier in Section IV.C.2.a.iii.4.B, *supra*, Dr. Webb's claim that trucks will play no greater role in the supply chain post-reversal directly undercuts one of the key post-reversal benefits proffered by Laurel – *i.e.*, that product can be shipped by pipeline to Altoona and then trucked to other points in Central Pennsylvania. If trucking volumes and logistics will be the same post-reversal as they are pre-reversal, then Laurel's claims that product will be trucked to Harrisburg, instead of being delivered via the Laurel pipeline, is absurd.

Further, Laurel alleges that the Indicated Parties' analysis "ignores the fact that all gasoline, diesel and heating oil currently shipped on Laurel is ultimately delivered via truck to

[515] *Id.*
[516] *Id.*
[517] *Id.*
[518] Indicated Parties Main Brief at 128 (citing Dr. Webb's testimony in Laurel St. No. 5-R at 86:6-88:4 which purports to rebut Indicated Parties' allegations of public safety concerns associated with trucking product westward from Altoona into Pittsburgh, but fails to address the Indicated Parties' testimony regarding trucking obstacles and public safety concerns associated with trucking product eastward from Altoona to Harrisburg).

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."[519] Based upon that assumption, Laurel claims Mr. Rickard's testimony is irrelevant because it does not inform the Commission about "potential truck routes from Eldorado to final retail destinations in the Pittsburgh market."[520]

Once again, Laurel's argument fails to address the real issue. As noted in Section IV.C.2.a.iii.4.B, *supra,* implementation of the pipeline reversal would result in trucks traveling *greater* distances than what Laurel's own witnesses acknowledge is the limit for tanker truck trips.[521] No party disagrees that virtually all gasoline reaches its final destination by truck. Rather, the problem is that if the reversal is implemented, *additional* trucks will have to transport *additional* volumes over *additional* routes because those volumes would no longer be carried by the Laurel pipeline.[522] Just because trucks sometimes travel longer distances does not negate the fact that trucks are generally used for shorter haul trips and cannot be considered a reliable and economic substitute for transporting petroleum products on the Laurel pipeline.[523]

Finally, Laurel avers that its reversal will likely reduce truck traffic between Pittsburgh and Altoona by moving lower-cost Midwestern supply to Altoona by pipeline that may otherwise be trucked to that destination.[524] In support of this assumption, Laurel posits that the Indicated Parties ignore the fact that without the reversal, presumably lower-cost Midwestern supplies will actually be trucked eastward from Pittsburgh.[525] In a failed attempt to provide additional support, Laurel also cites to an internal Gulf study **[BEGIN HIGHLY CONFIDENTIAL]**

[519] Laurel Main Brief at 172.
[520] *Id.* at 172-173.
[521] Indicated Parties Main Brief at 127.
[522] *Id.*
[523] *Id.*
[524] Laurel Main Brief at 173.
[525] *Id.*

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

For these reasons, the Commission should find that trucking cannot adequately replace the east to west service currently provided by Laurel's pipeline.

ii) The Indicated Parties' Concerns Regarding Potential Future Reversals of Laurel's Pipeline to Points East of Eldorado Are Relevant.

Despite considerable evidence to the contrary, Laurel urges the Commission and all parties to accept an alternate reality in which the proposed reversal is not part of a larger project. [529] This is similar to statements made at the outset of this proceeding where Laurel advised the Commission in its Application that "[s]hipments will continue to occur from all current origin points and deliveries will continue to occur at all current destination points."[530] To the contrary, the impacts of future phases of Laurel's planned reversal are highly relevant to the issues in this proceeding.

[526] *Id.*
[527] Tr. at 1051:16-20.
[528] Tr. at 1205:2-5.
[529] Laurel Main Brief at 174-175 (claiming future reversals are irrelevant to the instant Application).
[530] Laurel Exhibit No. 1 (Application) at 11.

Many customers, such as PESRM, have expressed concerns that this "proposed flow reversal may be the first phase of additional flow reversals in the future that reverse flows further east on the Laurel pipeline, completely abandoning the service that the Commission authorized in 1957, and further limiting the ability of PESRM and others to access the Pittsburgh market or markets west of Philadelphia with their petroleum products."[531] Indicated Parties witness Michael Schaal testified that a full reversal of the Laurel pipeline to Philadelphia would increase reliability risks for East coast consumers and lead to reduced production or shutdowns at Philadelphia area refineries.[532] As discussed below, the Indicated Parties' investigation into this matter has corroborated such concern and confirmed that Laurel views its Application as an initial step of successive reversals. Such concerns have been enhanced by Laurel's federal preemption argument that effectively asserts the Commission cannot prevent any reversal, including a full reversal of the Laurel pipeline to Philadelphia.

The additional reversals are wholly relevant to this proceeding. While the current proposal in Laurel's Application only seeks Commission approval to reverse flow on the Laurel pipeline east from Pittsburgh to Eldorado, **<u>[BEGIN HIGHLY CONFIDENTIAL]</u>** [redacted]

[531] Indicated Parties Main Brief at 17.
[532] Indicated Parties Statement No. 2 at 43:20-23.
[533] Indicated Parties Statement No. 3 at 23:19-21.

[redacted][538] **[END HIGHLY CONFIDENTIAL]** As such, Laurel's suggestion that the Commission not consider in this proceeding the potential for future reversals of flows at further points on the Laurel pipeline would be imprudent and unsound.

In addition, the Commission should consider the potential for future reversals as a reflection on Laurel's candor. Knowledge of the additional reversals is not limited to Laurel and Buckeye's internal documents, but has become a matter of public knowledge. Additional reversals of the pipeline to Harrisburg and Philadelphia are well understood within the industry to be a part and parcel of the proposed reversal to Altoona. The **[BEGIN HIGHLY CONFIDENTIAL]** [redacted][540] **[END HIGHLY CONFIDENTIAL]**. An Oil Price Information Service report recognizes that plans are not "set in stone," but references Buckeye's near term goal of

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[534] *Id.* at 23:21-24:3.
[535] *Id.* at 24:4-6.
[536] *Id.* at 24:6-9.
[537] Indicated Parties Statement No. 3 at 24:9-12.
[538] *Id.* at 24:12-25:1.
[539] Laurel Exhibit MJW-23 at 108.
[540] Tr. 1255:5.

reversing the pipeline to Harrisburg.[541] It is unreasonable for Laurel and Buckeye to freely publicize the planned reversals while characterizing the instant Application as a standalone project before the Commission.

As noted by Indicated Parties witness Rosenthal, **[BEGIN HIGHLY CONFIDENTIAL]** [redacted] **[END HIGHLY CONFIDENTIAL]** it is essential that the Commission consider all the facts related to potential plans for the Laurel pipeline now in this proceeding in order to evaluate the broad 'public interest' standards necessary for the granting of a CPC under Code Chapter 11 to abandon existing public utility service."[542]

The fact that Buckeye has not proposed future further reversals does not preclude the Commission from considering the full scope of the evidentiary record, including the public interest implications arising from the total project. As Mr. Rosenthal succinctly states, "[a]s an essential public utility resource that provides the only way via pipeline to deliver petroleum products into the Pittsburgh area from southeastern Pennsylvania, the Commission must consider and evaluate all aspects of the current and potential further eastward flow reversals of the Laurel pipeline in this proceeding."[543]

D. Laurel Has Not Met The Multi-Factor Abandonment Test

Contrary to Laurel's assertions, and as explained in the Indicated Parties Main Brief at Section V.B.1., the Abandonment of Service test is the standard that governs Laurel's

[541] Indicated Parties Cross Exhibit No. 13.
[542] Indicated Parties Statement No. 3 at 25:18-23.
[543] *Id.* at 26:2-6.

application.[544] Laurel has not shown a single one of these factors weighs in favor of approving its Application.

1. Overview Of The Multi-Factor Abandonment Test.

The Indicated Parties agree that the Commission must weigh the factors of the abandonment of service test to determine whether the proposed abandonment is in the public interest and that the Commission may consider additional factors, such as the ALJ did in the *Sunoco 2005 Application Order*.[545] Despite arguing additional factors may apply, however, Laurel makes no argument that any such factors do apply or that it has met any of them.

The standard applicable here is not a general public benefits standard, but instead the outcome of the abandonment factors shows whether the proposed abandonment is in the public interest. Laurel has not shown a single factor weighs in favor of abandonment, and thus its proposal to abandon service is not in the public interest and must be denied.

2. Laurel Has Not Shown Any Loss To The Utility.

Laurel's entire argument that it has suffered a loss rests on its allegation that revenues have decreased since 2006 due to volumes in 2016 being less than volumes in 2006 on the portion of its pipeline between Eldorado and Pittsburgh.[546] However, obviously a decrease in revenues alone does not demonstrate a net loss to the utility - even if Laurel's revenues have decreased, no net loss has occurred if Laurel's costs have proportionately decreased. Mere allegations that a utility has suffered a loss do not satisfy to meet the burden of proof to show this

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[544] *Supra* Section IV.A.2.c.
[545] *Application for Approval of Abandonment of a Portion of Sunoco Pipeline, LP 's Petroleum Products Pipeline Transportation Service,* 2004 WL 5854823, (Jan. 25, 2005) ("*Sunoco 2005 Application Order*") (considering: "the extent of the loss to the utility; whether or not a reasonable rate increase would cure such loss; the economics of maintaining the system; the public's use of such system; the number of customers affected; the prospects of the system being used in the future; balancing the utility's loss with the hardship to the public; the availability and adequacy of alternative service; the cost of conversion; and, the allocation of such costs.")
[546] Laurel Main Brief at 176-177.

factor weighs in favor of abandonment.[547] Moreover, a loss in revenues on a single portion of the Laurel pipeline likewise cannot show a loss justifying abandonment.[548]

> In arriving at an ultimate conclusion as to partial discontinuance of service, the entire system of the utility or carrier should be viewed as a unit. The mere fact that a branch line fails to earn its estimated proportionate share is not sufficient to justify its abandonment.[549]

To show a loss weighing in favor of abandonment of service, Laurel must show the operation of the portion of the line from Eldorado to Pittsburgh would cause such a loss that it would result in the loss or inadequate maintenance of the entire pipeline.[550]

Thus, to determine whether Laurel has suffered a net loss weighing in favor of abandonment, it would at the very least have to know: (1) Laurel's costs for operating the segment of the pipeline to be abandoned, (2) Laurel's costs for operating the entire pipeline; (3) Laurel's revenues from the segment of the pipeline to be abandoned; and (3) Laurel's revenues from operating the rest of the pipeline. Laurel expressly admits in its Main Brief that it did not present any cost or revenue analysis.[551] Laurel does not even argue that on net it has suffered a loss, just that volumes and revenues have decreased on a single portion of the pipeline. Laurel bears the burden of showing that it has suffered a loss, yet has presented neither evidence nor analysis to do so.

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[547] *Warwick Water Works, Inc. v. Pennsylvania Pub. Util. Comm'n*, 699 A.2d 770, 774-75 (Pa. Cmwlth. 1997).
[548] *Commuters' Comm. v. Pennsylvania Pub. Util. Comm'n.*, 170 Pa. Super. 596, 605 (Pa. Super. 1952).
[549] *Id.*
[550] *Borough of Carlisle v. Pub. Serv. Commn.*, 81 Pa. Super. 475, 481–82 (Pa. Super. 1923) ("We are not to be understood as holding that the mere fact that a branch or line or department of traffic fails to earn enough to pay the proportionate share of expenses properly chargeable against it is sufficient to establish the right of the company to discontinue or abandon its operation; the test,--where the corporate franchise is limited to a single power,--is, ordinarily, whether the drain from the operation of the unprofitable branch, etc., is likely to result in the loss or inadequate maintenance of the entire service; there being no reasonable prospect of profitable operation in the future.").
[551] Laurel Main Brief, at 177 ("Laurel did not present a cost and revenue analysis in this proceeding for several reasons.").

Instead, Laurel argues that because it projects volumes from the East will decline to zero on this segment of the pipeline, the pipeline will be a useless asset, and it would be meaningless to do a cost and revenue comparison if revenues are projected to go to zero. Considering Laurel has not shown volumes will decline to zero while the Indicated Parties demonstrated volumes could increase, *supra* Section IV.C.2.b., this argument is meritless. This argument similarly fails because even if volumes and revenues decrease in the future, Laurel has not shown revenue and cost data for the rest of the pipeline. Since under applicable precedent the loss to the pipeline must be considered as a whole,[552] Laurel has failed to meet its burden of proof.

Laurel also has not presented evidence as to whether a reasonable rate increase would cure its alleged loss. This is a factor related to loss to the utility that the ALJ considered in the 2005 Sunoco Application Order and a factor that has led the Commission to deny a request for abandonment where the utility did not show that a reasonable rate increase could not cure a loss, which the Commonwealth Court upheld.[553] Again, instead of presenting any evidence on the issue, Laurel makes excuses and unsupported allegations, contending that a rate increase is "without merit" because increasing shipping costs will cause customers to utilize the line less and thus would not increase revenues.[554] Laurel cites absolutely nothing in support of its proposition that shipments would decrease if Laurel's rates increased. Laurel essentially has a monopoly on shipments of petroleum products from Philadelphia to Pittsburgh. Eastern refiners have no other choice than the Laurel pipeline to move product to Pittsburgh. There is no basis to conclude that a rate increase would decrease shipments where Laurel is the only choice for refined products to reach Pittsburgh from Eastern refiners.

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[552] *Commuters' Comm. v. Pennsylvania Pub. Util. Comm'n.*, 170 Pa. Super. 596, 605 (Pa. Super. 1952); *Borough of Carlisle v. Pub. Serv. Commn.*, 81 Pa. Super. 475, 481–82 (Pa. Super. 1923).
[553] *Warwick Water Works, Inc. v. Pennsylvania Pub. Util. Comm'n*, 699 A.2d 770, 774-75 (Pa. Cmwlth. 1997).
[554] Laurel Main Brief at 177.

Given that Laurel has not presented any of the evidence necessary to show a loss to the utility, it has completely failed to meet its burden of proof and this factor does not weigh in favor of allowing Laurel to abandon service.

3. Laurel has Not Shown the Public Will Not Use the Service in the Future.

Laurel's entire argument that the public will not use the segment of the pipeline from Eldorado to Pittsburgh in the future rests on its unsubstantiated claim that volumes will decline to zero in the future.[555] Laurel has completely failed to prove this assertion, while the Indicated Parties have shown that it is unlikely volumes will further decrease and possible that volumes will increase. Moreover, Laurel fails to address other evidence that the public will use the service in the future - customer interest in continuing to have the service available for shipments from the East to points west of Eldorado. Several witnesses in this case have presented testimony that removes any doubt as to whether customers of Laurel value its services and wish to maintain their availability west of Eldorado. Mr. Sadlowski explained that "[t]here are no growing markets into which PESRM currently sells product, [and] there are no alternative markets into which PESRM can place product. That is why (i) the Laurel pipeline is such a critical asset for delivering product out of PESRM's refinery and (ii) PESRM seeks to ship as much product as possible on the Laurel pipeline."[556]

Monroe Energy witness Ms. Sadowski explained Monroe Energy's deliveries into the Laurel pipeline at Chelsea have remained fairly consistent over time, and because alternative means of transporting product will be more costly, Ms. Sadowski still estimates there would be significant financial harm to Monroe Energy if Laurel can no longer deliver Monroe Energy's

[555] *Id.* at 177-78.
[556] PESRM Statement No. 1-S at 5:1-5.

product to the Pittsburgh market.[557] Laurel has failed to meet its burden of proof to show that the prospects of future use of the Laurel pipeline for deliveries west of Eldorado are so small that the Commission should permit abandonment of that service.

Laurel also fails to factor in that current use of the pipeline is still very significant, supplying approximately 50% of Pittsburgh consumption while there exists excess pipeline capacity from the Midwest to supply additional volumes to Pittsburgh.[558] Consequently, the Pittsburgh market is clearly valuing East coast supply and East coast supply is clearly outcompeting other supply sources, such as the Midwest, for approximately half of Pittsburgh consumption.[559]

The record shows that current use of this portion of the Laurel pipeline is significant, there is potential for increases in volumes, and customers clearly value the service and expect to use it in the future. Laurel has failed to meet this critical portion of the Commission's standard for permitting abandonment of service.

4. Loss To The Utility Balanced With The Convenience And Hardship To The Public.

As demonstrated above, Laurel has not demonstrated that it will suffer any loss upon denial of the Application.[560] Laurel's has not demonstrated any inability to earn a reasonable return from operation of the Laurel pipeline.[561] Similarly, Laurel's customers continue to use the pipeline and would suffer harm upon discontinuance of the service.[562] Meanwhile, as extensively discussed in the foregoing Section IV.C of this Reply Brief, approval of the Application would not provide any public benefits for Laurel, its customers, or the

[557] Monroe Energy Statement No. 1-SR at 5:4 to 8:8.
[558] Indicated Parties Statement No. 1-S at 28:20-23.
[559] Indicated Parties Statement No. 1-S at 28:20-23.
[560] Section IV.D.2, *supra.*
[561] *Id.*
[562] Section IV.D.3, *supra.*

Commonwealth.[563] Only Laurel's parent company and Midwest refiners would benefit from approval of the Application. Therefore, assessment of this factor favors denial of Laurel's Application.

5. Availability And Adequacy Of Alternative Service: Shippers Will Not Have Adequate Alternatives After The Reversal.

As demonstrated in Section IV.C.2.a.iii.4, *supra*, there are no suitable alternative services for shippers to utilize if the Laurel pipeline reversal were approved. Alternative modes of transportation, including other pipelines, trucking, and barges, fail to provide the same benefits of service currently provided by the Laurel pipeline.

Furthermore, as noted in Section IV.C.1 and 2, *supra*, the Midwest cannot provide cost-effective and reliable supply to the Pittsburgh region.

Likewise, Laurel fails to address the fact that East coast refineries do not have "many other markets besides Pittsburgh to sell their products," as noted in Section IV.C.2.b.iii, *supra*. The mere fact that the Refineries may be connected to other markets does not mean those markets are viable or could in anyway replace Pittsburgh. In fact, Laurel does not even recommend an actual and viable alternative for the Refineries to move product to Pittsburgh post reversal. Forcing other refineries, and their customers, to move their products into other markets (if even possible) would inflict lasting and substantial economic harm.[564]

6. Laurel Has Completely Failed to Show the Proposed Reversal is in the Public Interest under the Abandonment of Service Test.

Laurel concludes that: "In weighing the multi-factors under the abandonment test, the benefits are overwhelming and the public harms are non-existent." To the contrary, as explained above, Laurel has failed to meet its burden of proof to show that even one of these factors weighs in favor of abandonment. The relevant segment of the Laurel pipeline is not wasting and will not

[563] Section IV.C, *supra*.
[564] Indicated Parties Main Brief at 109-120.

be put to a better use by reversing. Laurel does not even mention in this subsection its alleged loss, confirming its complete failure to present any competent evidence to tell whether it has in fact suffered a loss or will suffer a loss in the future. Section IV.C of this Reply Brief shows that approval of the Application would not provide any public benefits for Laurel, its customers, or the Commonwealth.[565] Further, even if the reversal will reduce reliance on foreign imports – this is not a policy that holds relevance today and certainly not one within the Commission's jurisdiction to consider. Laurel's application must be denied.

E. The Proposed Capacity Use Agreement Between Laurel And Buckeye Is Unreasonable And Is Not In The Public Interest

Consistent with its position that the Commission has no authority to decide if the proposed reversal should be approved, Laurel also asserts that "Commission approvals of the Capacity Use Agreement and any change to Laurel's tariff are pre-empted under federal law."[566] Laurel makes this claim despite having filed for Commission review of various versions of capacity use agreements between Laurel and Buckeye several times in the past. At no time in these previous Commission filings did Laurel take the position or advise the Commission that it was preempted from exercising any authority over the affiliated interest agreement between Laurel and Buckeye.

Now, in this proceeding, Laurel has cast aside any semblance of Commission jurisdiction and fully revealed its position for the charade it is. So long as the Commission agrees with the terms of any affiliated interest agreement between Laurel and Buckeye as being reasonable and in the public interest, the Commission apparently has the "jurisdiction" to review it. However, if the Commission finds that the affiliated interest arrangement (here the Capacity Use Agreement) is unreasonable, all bets are off. In other words, in Laurel's view, the Commission is free to

565 Section IV.C, *supra*.
566 Laurel Main Brief at 181.

review affiliated interest agreements between Laurel and Buckeye, so long as it rubberstamps the terms. As noted previously, the Capacity Use Agreement should not be approved for two separate reasons. First, the underlying Laurel pipeline reversal fails to satisfy the Commission's clear standards for service abandonment so the underlying agreement is essentially moot. And, even if the proposed reversal is authorized, the Capacity Use Agreement fails to satisfy the requirements for affiliated interest agreements under Code Chapter 21.

Regardless of Laurel's motive or attitude toward the Commission's authority, the Capacity Use Agreement it has submitted in this proceeding lacks any cost justification whatsoever and on its face surrenders capacity on the Laurel pipeline to Buckeye -- for rates much lower than what it could charge customers for use of the pipeline. Rather than present evidence showing the proposed charges to its affiliate Buckeye are reasonable given Laurel's costs, Laurel merely contends that because the Commission has "approved" the rate terms in previously submitted agreements, it does not have to do anything more than submit the Capacity Use Agreement in this proceeding. Assuming it would be relevant to this new agreement, Laurel has not requested incorporation of any previous Commission findings or presented any analysis showing the Capacity Use Agreement is reasonable, based on prior Commission review and approval. Laurel has not submitted satisfactory proof of costs of these services; therefore, the proposed agreement is not reasonable and consistent with the public interest under Code Chapter 21.

1. Legal Standards Applicable To Affiliated Interest Agreements.

Laurel acknowledges that it is an affiliate of Buckeye. Therefore the proposed Capacity Use Agreement between Laurel and Buckeye is subject to Code Chapter 21. Code Section 2102 obligates the Commission to approve such contracts "only if it shall clearly appear and be established upon investigation that it is reasonable and consistent with the public interest."[567] And no affiliated interest agreement may receive commission 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..."[568] The main issue, therefore, is whether Laurel has met its burden of showing that Laurel is being fairly compensated, given its costs, for surrendering its right to use the portion of the Laurel pipeline between Pittsburgh and Eldorado exclusively by Buckeye for interstate service. The simple answer is no. On the contrary, the Indicated Parties have shown that: (i) the Capacity Use Agreement with Buckeye is jurisdictional to the Commission and subject to the requirements of Code Chapter 21, (ii) Laurel has not submitted evidence showing the proposed charges to Buckeye under the proposed agreement (which are lower rate than what Laurel would charge for service over the same pipeline segment) are reasonable and comply with the standard of proof required under Code Chapter 21's and (iii) the Commission should deny approval of the Capacity Use Agreement.

2. The Proposed Capacity Agreement Between Laurel and Buckeye Is Neither Reasonable Nor In The Public Interest.

Indicated Parties' witness Rosenthal pointed out the fundamental fact that under the proposed Capacity Use Agreement, Laurel is (i) surrendering use of a pipeline facility for which it is paid by shippers in excess of $0.50 a barrel up to $0.784 per barrel for shipments west of Eldorado, and (ii) proposing to turn this essential facility over to Buckeye for just $0.17 a barrel.[569] Laurel has not presented any cost justification relating to its cost of service to support this proposed rate. Nor has it presented any volumes analysis demonstrating that the proposed

[567] 66 Pa. C.S. § 2102(b), (c).
[568] *Id.*
[569] Indicated Parties Statement No. 3 at 32:4-16.

rate would be compensatory to Laurel under current volumes of business versus projected volumes through Buckeye. If burden of proof is to have any meaning in a Commission proceeding, analysis of the issue should end here and the Commission should find that Laurel has not shown that the proposed Capacity Use Agreement is reasonable. And, even if Capacity Use Agreements submitted to the Commission in the past were reasonable, the issue in this case is whether, given Laurel pipeline's *current* costs, the proposed agreement is fair to the public utility. Laurel has made no such showing.

Laurel's case in chief to support the reasonableness of the Capacity Use Agreement price terms relative to Laurel's costs consists of three pages of Mr. Arnold's Direct testimony.[570] The "evidence" supporting the proposed Capacity Use Agreement is nothing more than an assertion that the proposed charges are the same as those found in agreements previously submitted to the Commission. Under the Code, affiliated interest agreements are deemed legally approved by the Commission if no order of rejection is entered. However, in this proceeding, the Indicated Parties have presented expert testimony pointing out that Laurel is proposing to charge its affiliate Buckeye rates that are much lower than the rates it would charge customers for service over the same portion of the Laurel pipeline it is turning over to Buckeye. This is a classic example of a "sweetheart" arrangement between affiliates that inures to the *detriment* of the utility – Laurel pipeline. Indicated Parties witness Rosenthal has made the simple and compelling point that Laurel has presented no "satisfactory proof" that Laurel will be made whole for surrendering the use of the reversed portion of the pipeline to Buckeye, and forgoing the revenues it could have earned by providing public utility service on this portion of its facility.

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[570] Laurel Statement No. 1 at 23:14-25:18.

Instead of cost information, Laurel simply claims that its retail revenues on the reversed portion of the pipeline are expected to decline.[571] Even assuming volumes on the proposed reversed segment are declining (a fact hotly disputed and vigorously contested by the Indicated Parties), Laurel has produced no evidence that declining volumes translate into declining revenue. Since Laurel has not provided any evidence regarding the current book value of the Laurel pipeline or any portion of it, the pipeline's depreciation status, earnings rates, and revenues actually being earned from sales along the portion of the pipeline between Pittsburgh and Eldorado to be reversed, there is no way anyone could leap to the conclusion about the financial impact of alleged declining volumes Laurel asks the ALJ and the Commission to make here. Laurel's entire argument is premised on its claim that it has satisfied its burden of proof that it is being compensated fairly solely on its speculation that volumes for service over this portion of the pipeline will be declining. This is not proof of the reasonableness of a charge, but only an unfounded rationalization of why Laurel erroneously believes it has no obligation to present substantial, credible and compelling evidence to satisfy its burden of proof under Code Chapter 21.

Laurel's response to Mr. Rosenthal's observations that the new agreement exposes Laurel to additional risk and that it will have fewer options to receive revenue is nonsensical rationalization.[572] For example, Mr. Rosenthal pointed out that Buckeye is "swapping" capacity it currently has on the Laurel pipeline from the east to Eldorado for exclusive use of the reversed portion of the pipeline from the west to Eldorado. Under the current agreement, if Buckeye does not use all of its capacity east to west, Laurel can fill the line with product movements from other shippers to limit its risk. However, under the new agreement, Buckeye has the exclusive use of

[571] Laurel Main Brief at 184.
[572] Laurel Main Brief at 184-187.

the pipeline from Midland to Eldorado so no other shippers can make up for low Buckeye volumes.[573] Laurel's "rebuttal" of this point is nothing more than acknowledging Mr. Rosenthal's point – that currently Buckeye or other shipper movements can produce revenues for Laurel, while under the proposed Capacity Use Agreement, all movements depend on Buckeye alone.[574]

Mr. Rosenthal also noted that Buckeye gets a credit if its shipments do not reach 40,000 barrels per day but if its shipments exceed that amount, it still pays only $0.15 a barrel updated by the Consumer Price Index. And to make the revenues Laurel currently receives on the reversed portion of the pipeline from shippers, Buckeye would have to have 19,777,000 excess barrels![575] Incredibly, Laurel argues that these terms are commercially reasonable, equate risk between the parties and demonstrate an arms' length arrangement merely because it calls for Buckeye to pay something for excess volumes.[576] This argument provides no counter to the fundamental point that Laurel is voluntarily cannibalizing its Commission-tariffed revenues for a much lower per barrel rate from Buckeye.

Finally, Laurel contends that Dr. Webb has shown that the "effective" rate Laurel receives under the Capacity Use Agreement is not the $0.17 per barrel rate the agreement seems to specify, but a higher rate of $0.828 per barrel.[577] Mr. Rosenthal pointed out in his Rebuttal testimony that Dr. Webb's rate did not cure the structural problems that are present in the proposed agreement and that his calculation was based on a snapshot of 2016 volumes moving east to west (which represented less than half the volumes Buckeye could have moved on the

[573] Indicated Parties Main Brief at 169.
[574] Laurel Main Brief at 186.
[575] Indicated Parties Main Brief at 170.
[576] Laurel Main Brief at 185.
[577] *Id.* at 186.

Laurel pipeline).[578] Dr. Webb's analysis is therefore irrelevant to the rates Laurel would receive under the entirely different scenario of Buckeye having exclusive use of the Laurel pipeline on the portion proposed for reversal.

As Mr. Rosenthal pointed out, the Secretarial Letter that conveyed the Commission's approval of prior Capacity Use Agreements clearly stated that "approval of this filing does not constitute a determination that the associated costs or expenses are reasonable or prudent for the purposes of determining just and reasonable rates."[579] Laurel is providing capacity on its pipeline to an affiliate at significantly lower rates than it can charge for service on the same facility. It has presented no evidence showing this new lower rate is reasonable. The proposed Capacity Use Agreement, which appears to have been challenged for the first time, should be disapproved, either because the proposed reversal is disapproved as requested herein or the agreement fails to meet the standards for approval under Code Chapter 21.

V. CONCLUSION

WHEREFORE, Gulf Operating, LLC ("Gulf"), Sheetz Inc. ("Sheetz"), Philadelphia Energy Solutions Refining & Marketing LLC ("PESRM"), Monroe Energy, Inc. ("Monroe"), and Giant Eagle, Inc. ("Giant Eagle") (collectively the "Indicated Parties") respectfully request that the Commission:

1. Deny the Application of Laurel Pipe Line Company, L.P. to change the direction of petroleum products transportation service to delivery points west of Eldorado;

2. Reject the Laurel Pipe Line Company, L.P. Capacity Agreement with Buckeye Pipe Line Company, L.P.

[578] Indicated Parties Statement No. 3 at 20:5-22.
[579] Indicated Parties Statement No. 3-S at 19:17-23–20:1-3.

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Application of Laurel Pipe Line Company, L.P. for Approval to Change Direction of Petroleum Products Transportation Service to Delivery Points West of Eldorado, Pennsylvania	:	Docket No. A-2016-2575829
Affiliated Interest Agreement between Laurel Pipe Line Company, L.P. and Buckeye Pipe Line Company, L.P.	:	Docket No. G-2017-2587567

CERTIFICATE OF SERVICE

I hereby certify that I am this day serving a true and correct copy of the foregoing document upon the participants listed below in accordance with the requirements of Section 1.54 (relating to service by a participant):

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