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April 18, 2018

Via Electronic Filing
Rosemary Chiavetta, Secretary
PA Public Utility Commission
PO Box 3265
Harrisburg, PA 17105-3265

Re: Application of Laurel Pipeline Company, L.P. for All Necessary Authority, Approvals, and Certificates of Public Convenience to Change the Direction of Petroleum Products Transportation Service to Delivery Points West of Eldorado, Pennsylvania, Docket No. A-2016-2575829

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

Dear Secretary Chiavetta:

On behalf of Husky Marketing and Supply Company enclosed for filing please find its Exceptions with regard to the above referenced matter. Hard copies to be served in accordance with the attached Certificate of Service.

Sincerely,

Karen O. Moury
KOM/lww

Enclosure

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

CERTIFICATE OF SERVICE

I hereby certify that this day I served a copy of Husky Marketing and Supply Company's Exceptions upon the persons listed below in the manner indicated in accordance with the requirements of 52 Pa. Code Section 1.54.

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Dated: April 18, 2018

Karen O. Moury, Esq.

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

EXCEPTIONS OF

HUSKY MARKETING AND SUPPLY COMPANY

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Dated: April 18, 2018

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I. INTRODUCTION AND SUMMARY OF EXCEPTIONS

Husky Marketing and Supply Company ("HMSC") files these Exceptions to the Recommended Decision ("RD") of Administrative Law Judge Eranda Vero served by the Pennsylvania Public Utility Commission ("Commission" or "PUC") on March 29, 2018.[1] In recommending dismissal of the Application of Laurel Pipeline Company, L.P. ("Laurel"), the RD rejects a market-driven solution to disruptive changes taking place in the petroleum products industry. These events include growing access by refineries in the Midwestern United States ("Midwest") to abundant, cost-advantaged crude supply; the declining volumes of products being transported from the East, with supply and demand dynamics pushing Midwest products eastward; and the continued investments in Midwest refineries, contrasted with the closure of and lack of investment in East Coast refineries.

Discounting the clear advantages of enabling the movement of competitively-priced refined petroleum products from Midwest refineries to consumers in Western and Central Pennsylvania, the RD fails to consider the market forces that are demanding the proposed pipeline reversal. Rather than allowing the businesses in this industry to openly compete in the market, the RD would insulate the East Coast refineries from the natural effects of economic conditions and market forces. If the Commission adopts the RD, it will be deciding winners and losers rather than deferring to the market to determine the appropriate direction in which petroleum products should flow on Laurel's pipeline. Through rejection of the RD and approval of Laurel's Application, the Commission would enable the petroleum products industry to respond to economic conditions and competitive market forces in a manner that provides an opportunity for Pennsylvania consumers

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1 HMSC incorporates by reference its Main Brief and Reply Brief in these Exceptions.

to benefit at the gasoline pumps from competitively-priced crude oil that is increasingly available to Midwest refineries.

HMSC is the ultimate subsidiary of Husky Energy, Inc. ("Husky"), which is one of Canada's largest integrated energy companies and is headquartered in Calgary, Alberta. HMSC St. 1-R at 3. Husky operates in Canada, the United States and the Asia Pacific Region with Upstream and Downstream business segments. As a leading integrated refiner and marketer of petroleum products, Husky has the largest refining capacity in the state of Ohio with its 100 percent ownership of the Lima Refinery, located in Lima, Ohio (the "Lima Refinery") and its 50 percent ownership interest in the Husky-BP Toledo Refinery (a 50:50 joint venture with partner BP Products North America), located in Toledo, Ohio (the "Toledo Refinery") (the Lima Refinery and the Toledo Refinery collectively referred to as the "Refineries"). More recently, Husky also acquired a refinery in Superior, Wisconsin. Husky sources the crude oil that supplies the Refineries from Canadian and domestic United States sources, with approximately 70 percent being domestic supply. While Husky also has the capability to source foreign supply, the price difference between West Texas Intermediate ("WTI") and Brent crude oils make it uneconomical for Husky to source the foreign-based Brent Crude.[2]

Headquartered in the United States, HMSC sells refined products from the Refineries across the Midwest with distribution outlets in Ohio, Indiana, Michigan and Pennsylvania. As a fuel marketer in Western Pennsylvania, HMSC supplies significant volumes of gasoline to Pittsburgh, including the current summer product specification of 7.8 psi Reid Vapor Pressure ("RVP") gasoline for the seven counties in the Pittsburgh area (Allegheny, Armstrong, Beaver, Butler, Fayette, Washington, and Westmoreland). Because similar low-RVP requirements have

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2 HMSC Main Brief at 2-3.

existed in Detroit, Cincinnati and Dayton metropolitan areas, the Refineries have produced fuel meeting these specifications in prior years. The Refineries are capable of producing gasoline that meets the low-RVP specification for Western Pennsylvania and other remaining low-RVP areas.[3]

Long-developing changes in crude petroleum supplies for refineries and the petroleum products market have generally increased the volumes and decreased the relative price of Midwest product supplies. Through its proposal (known as "Broadway II" or the "Laurel reversal") to reverse flow on part of the Western Pennsylvania portion of its pipeline system, Laurel would allow petroleum products to move in an eastbound direction from Pittsburgh to the Altoona destination point known as "Eldorado," which would have service from both the east and west. However, that destination is also important for areas in Central Pennsylvania. HMSC would be able to supply product by truck to points east of Altoona, including Harrisburg. Also, because of geography and mountains, a corridor exists that allows product to move by truck from Eldorado north to Williamsport, Pennsylvania, and south into West Virginia and Frederick, Maryland.[4]

It is undisputed that the East Coast refineries are shipping declining volumes on this portion of the pipeline, while Midwest refineries have been moving higher volumes of products into Pittsburgh and have expressed a strong desire to expand into Central Pennsylvania. HMSC is among the shippers who made a binding commitment for the reversal of a portion of the Laurel pipeline to facilitate the transportation of refined petroleum products from Pittsburgh to Central Pennsylvania, in response to the open season hosted by Buckeye Partners, L.P. in October 2016. Specifically, HMSC is committed under a ten-year transportation services agreement ("TSA") with Laurel to move refined products on the segment of pipeline that is the subject of the

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3 HMSC Main Brief at 3.

4 HMSC Main Brief at 3-4.

Application. Through this investment, HMSC has demonstrated a long-term commitment to the region that is impacted by the Application. As stated by HMSC witness Jerome P. Miller: "We want to compete." Tr. 1255.[5]

Importantly, the market-based solution proposed by Laurel provides an opportunity for Pennsylvania consumers to benefit at the gasoline pumps from lower-priced crude oil that is available to Midwest refineries. As a marketer, HMSC is a consistent low poster of rack prices for significant volumes of gasoline shipped from the Midwest into Pittsburgh and has made long-term commitments to shipping cost-advantaged petroleum products from the Midwest refineries into Western and Central Pennsylvania. Under widely-accepted economic theories of supply and demand, enhanced access to lower-cost Midwest supplies by the Pittsburgh area would cause consumer prices to fall.[6]

Specifically, these Exceptions raise the following errors: (1) the RD incorrectly determines that Commission approval for the pipeline reversal is required and ignores the arguments regarding the importance of allowing Laurel to use its asset in a way that responds to market forces and current economic conditions; (2) to the extent Commission approval is required, the RD applies an abandonment test, which is not applicable to a common carrier facing competition and should be replaced by a general public benefits standard; (3) the RD ignores evidence of the public benefits of the proposed by inappropriately discounting the growing access by the Midwest refineries to abundant, cost advantaged crude supply, which the proposed pipeline reversal would make available to consumers in Western and Central Pennsylvania, putting downward pressure on retail prices; and (4) the RD errs by failing to recognize the availability of product exchanges as

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5 HMSC Main Brief at 4.

6 HMSC Main Brief at 18-22.

an adequate alternative if the pipeline is reversed and the ability of the Midwest refineries to supply the Pittsburgh area with low-RVP gasoline.

HMSC respectfully requests that the Commission reject the RD and permit Laurel — either by declaring that no certificate of public convenience is required by Laurel or by granting a certificate of public convenience to Laurel — to reverse flow on part its pipeline system in response to market forces and current economic conditions. In doing so, the Commission would be allowing the petroleum products market to function in a manner that is consistent with this Commission's efforts to facilitate the development of robust competition in the energy and transportation industries. As stated by HMSC witness Miller, HMSC is not trying to use legal maneuvers to block competitors from participating in the market or seeking a political solution to protect its business interests. To the contrary, HMSC simply wants to compete in the market on its merits and is investing millions of dollars in the market to enable it to do so.[7]

II. EXCEPTIONS

A. Exception No. 1: The Recommended Decision Wrongfully Concludes that Commission Approval is Necessary for the Proposed Reversal.[8]

Laurel's proposal to reverse the direction in which petroleum products flow on a segment of its Pennsylvania pipeline in order to respond to market forces and current economic conditions does not require Commission approval. As nothing in Laurel's certificate of public convenience requires it to provide transportation services in a particular direction, and Laurel's proposal will not result in any abandonment of service to any end users of petroleum products, market forces and current economic conditions, rather than regulatory approval, should govern Laurel's business decision for how to best use its asset.

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7 HMSC Main Brief at 14; HMSC Reply Brief at 8-10.

8 RD at 76-78.

The RD wrongfully concludes that Commission approval is required for Laurel's proposal to reverse the direction in which products flow on a portion of the pipeline in Pennsylvania between Altoona and Pittsburgh. While recognizing that Laurel's certificate of public convenience does not contain language describing the direction of transportation service, the RD inappropriately relies on other extraneous and irrelevant factors to conclude that Laurel may not reverse the direction in which transportation services are provided without Commission approval. Yet, in reaching this conclusion, the RD wholly overlooks market forces and current economic conditions.[9]

Regulatory approval and the attendant protracted litigation for pipeline reversals would unnecessarily constrain Pennsylvania's energy infrastructure. Deferring to the market to determine the appropriate direction in which products should flow on Laurel's pipeline would be consistent with the Commission's stated policies for the electric, natural gas and transportation industries. The Commission has expressly recognized the importance of facilitating competition and free markets, which ultimately benefit consumers.

1. <u>Nothing in the certificate of public convenience specifies the direction in which products must flow.</u>

Importantly, nothing in Laurel's certificate of public convenience issued in 1957 specifies the direction in which petroleum products must flow or limits Laurel from using its asset in a way that is consistent with current economic conditions. Under the express terms of the certificate, Laurel is authorized to provide petroleum products transportation service "in and across" Pennsylvania and is certificated to operate in either direction. Although the Commission may impose conditions on certificates that limit the scope of the service, Laurel's certificate does not contain a condition requiring Laurel to provide transportation services solely from east to west.

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9 RD at 76-78.

Had the Commission desired to limit Laurel to providing transportation services in only one direction, it could have done so by imposing this condition.[10] However, it did not do so. Therefore, the RD's reliance on extraneous and irrelevant factors to imply a condition in Laurel's 1957 certificate that is not explicitly imposed by the certificate is incorrect and should be rejected.

If the Commission accepts the RD's findings concerning implied limitations on the ability of Laurel to change the direction in which products flow on its pipeline, the result is that the public would not be able to readily determine the scope of a utility's certificated authority by examining the certificate of public convenience. It should not be necessary for the public to review the utility's application and the entire record in the proceeding in order to determine if any limitations or conditions on service exist. Rather, any interested party should be able to review the utility's certificate to determine if the Commission has imposed any limits or conditions on service. Here, a review of the plain language of Laurel's certificate supports the conclusion that no restrictions or conditions were imposed concerning the direction in which products must flow, and Commission approval to reverse that direction is therefore not necessary.[11] Further, Laurel's historical use of the pipeline is irrelevant to the question of whether Laurel's certificate permits it to change the direction of the transportation services without Commission approval.

2. <u>Laurel is not proposing to stop any product delivery service.</u>

Contrary to the RD's conclusion that the proposed reversal is a partial abandonment of service, Laurel is not proposing to stop any product delivery service on the pipeline. Customers will still be able to ship product on the pipeline under tariffed rates and no delivery points will be eliminated. Laurel, like most other oil pipelines, does not provide service to end use customers.

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[10] *See Application of Interstate Energy Company*, Docket No. 97032, 1973 Pa. PUC LEXIS 74 (Order entered February 6, 1973) (Commission imposed condition limiting the use of the public utility's certificated service).

[11] HMSC Main Brief at 6-7.

Petroleum products are delivered to terminal facilities and then transported to end users by truck. As a result, Laurel's proposed change in direction of service will not result in any change or abandonment of service to any end users of petroleum products. Nor will it result in any abandonment of service to any terminal facility or to any origin point. An electric or gas utility that changes the direction that a commodity flows over its facilities would not be required to seek abandonment approval. An oil pipeline should be treated no differently.[12]

3. The reversal is responsive to market conditions, which should drive the business decision concerning the use of Laurel's asset.

The RD wholly overlooks the arguments advanced by HMSC regarding the need for market conditions to drive the business decision concerning the use of Laurel's asset. Indeed, the RD contains no discussion of HMSC's views concerning the importance of facilitating competition and free markets. As HMSC argued in its Main Brief, the notion of allowing the competitive market to drive business decisions made by entities subject to Commission oversight is consistent with the Commission's stated policies for the electric, natural gas and transportation industries.[13] In all of those industries, the Commission has expressly recognized the importance of facilitating competition and free markets, which ultimately benefit consumers. Aligned with the Commission's views regarding reliance on competitive markets to deliver benefits to consumers, HMSC witness Miller emphasized a desire to compete. He explained that HMSC is not seeking a legal maneuver to avoid competition or requesting a political solution to preserve its ability to cost-effectively supply petroleum products. He said simply: "We want to compete on our merits, and we're investing to do that." Tr. 1255.

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12 HMSC Main Brief at 7-8.

13 HMSC Main Brief at 8-11.

Notably, if the Commission finds that its approval is unnecessary for pipeline flow reversals, Laurel would be able to change the direction of this segment of the pipeline again in the future, thereby removing the opportunity for HMSC to utilize the pipeline to Altoona for delivering products to Western and Central Pennsylvania. Notwithstanding the possible adverse effect of such a future reversal on HMSC's business interests, HMSC witness Miller stressed the importance of competition in this industry. Specifically, he described the reversal as being responsive to evolving market conditions and demand across the region, particularly with large price differentials between WTI crude and Brent crudes. He further explained that "the Laurel reversal provides a market solution to the fact that Midwest refineries have lower price feedstock costs, which represent our largest cost to operate," and the huge investments in refineries in the Midwest compared to the closures that have occurred on the East Coast. Tr. 1249-1250.[14]

Under existing economic conditions, the volumes shipped from the East Coast refineries to Pittsburgh on the Laurel pipeline exhibit a clear downward trend consistent with broad market forces. This decline is not surprising since Midwestern refiners produce product at a lower cost, which will necessarily reduce the desire to transport refined product from the East. As these lower cost suppliers push out higher cost suppliers, this will bring lower prices to the consumers of Pennsylvania. The commercial basis for the Broadway II project that comprises the proposed reversal is that these supply and demand dynamics are pushing Midwest production eastward, displacing East Coast production in Western and Central Pennsylvania. Rather than succumbing to the pleas of special interests to pick winners, the Commission should seek to facilitate the flow of petroleum products in a manner that complements and coordinates market forces.[15]

[14] HMSC Main Brief at 9.

[15] HMSC Main Brief at 9.

In addition, the RD fails to address HMSC's arguments concerning the key fundamental differences between Laurel and traditional fixed utilities. Whereas traditional fixed utilities are granted a monopoly service territory, Laurel does not enjoy any monopoly status. Further, while traditional fixed utilities provide service directly to end-use customers, Laurel does not. Additionally, contrasted with Laurel that faces significant competition for alternative petroleum products transportation methods, traditional fixed utilities are insulated from competition (at least for distribution services). All of these differences, particularly the fact that Laurel is not insulated from competitive forces by virtue of holding a certificate of public convenience, weigh in favor of Laurel having the flexibility to use its asset in a way that is consistent with its certificate and is responsive to market conditions.[16]

Indeed, the Commission has recognized that when differences exist between fixed utilities, different regulatory outcomes are warranted. For instance, the Commission has relied on these differences in establishing main extension policies.[17] Similarly, the Commission has distinguished between natural gas and water services in setting rates for gas customers who have readily available competitive alternatives, as compared to water service being a basic human need without alternatives.[18]

The Commission should follow the precedent that it has established in the transportation and energy industries and rely on market forces to determine the direction in which petroleum products flow on a pipeline. Particularly since Laurel's certificate of public convenience does not

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16 HMSC Main Brief at 10-11.

17 *See, e.g., Re Line Extensions*, Docket No. L-930089, 1996 Pa. PUC LEXIS 162, at *8-11 (Order entered October 7, 1996); *Investigation into the Bypass of Gas Utilities by Gas Suppliers*, Docket No. I-880078, 1988 Pa. PUC LEXIS 139, at *3 (Order entered February 25, 1988).

18 *See, e.g., Pa. PUC, Office of Consumer Advocate, Office of Small Business Advocate v. Columbia Gas of Pennsylvania, Inc.*, Docket Nos. R-2014-2407345, C-2014-2410197, C-2014-2415136, 2014 Pa. PUC LEXIS 691, at *28-32 (Order entered October 23, 2014).

specify a particular direction in which products must flow and no end users of petroleum products would lose access to those products, it is appropriate to defer to the competitive market in matters involving the use of this Laurel asset. Notably, the repurposing of pipeline is common in the industry to respond to underutilization or other market forces.[19]

Similarly, the RD does not address arguments concerning the need for flexibility in the pipeline infrastructure.[20] As Laurel witness Glen R. Thomas explained, "Laurel is seeking approval to allow flows in either direction without Commission approval every time economic conditions dictate a change in flow...this flexibility in the pipeline infrastructure represents an important energy policy for Pennsylvania that the Commission should embrace."[21] He added that "[c]onstraining Pennsylvania's energy infrastructure with regulatory approvals that are not legally required is the antithesis of the policy that the Commission should be promoting right now."[22] To interpret Laurel's certificate as requiring Commission approval and all the attendant litigation in order to change the flow of a pipeline "is exactly the wrong message and the wrong policy."[23] To the contrary, "[t]he Commission should be building a rock solid foundation for a world class energy industry. Flexible pipeline infrastructure is indeed the keystone to that foundation."[24]

B. Exception No. 2: The Recommended Decision Inappropriately Applies the Abandonment Test to Laurel's Application.[25]

If the Commission determines that its approval is necessary for the proposed pipeline reversal, the proper standard to apply is the "general public benefits" test. However, the RD errs

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19 HMSC Main Brief at 11.

20 HMSC Main Brief at 8.

21 Laurel St. 9-R at 5.

22 Laurel St. 9-R at 10.

23 Laurel St. 9-R at 10.

24 Laurel St. 9-R at 10.

25 RD at 83-84.

in recommending that the Commission undergo a traditional abandonment analysis if it determines that approval is required. In doing so, the RD fails to address the arguments raised by HMSC concerning the differences between common carriers, who are subject to competitive conditions, and natural gas, electric and water utilities with exclusive service territories. Because of these differences, to the extent that the Commission determines that its approval is required for Laurel to change the direction of product flow on its asset in response to changing market conditions and the current economic environment, the appropriate standard to apply is a general public benefits test rather than a traditional abandonment analysis.[26]

Notably, even though the *Sunoco* case involved an actual abandonment as the transportation of petroleum products was ending, unlike Laurel's application in this case, the Commission did not apply the traditional abandonment analysis that is used in natural gas, electric and water utility proceedings. When certificates are granted to natural gas, electric and water utilities, they specify well-defined geographic service territories. In exchange for obtaining an exclusive service territory, the utility agrees to provide service to all who can economically be provided service (and correspondingly not to abandon that service without prior Commission approval) and to charge for service under tariff rates.[27]

By contrast, common carriers like Laurel are subject to competition from alternative means of transportation and are not required to provide service to specific customers. Consumers may choose among competing common carriers. As explained by Laurel witness Thomas, customers are not assigned to a specific common carrier and no customer is entitled to service from a specific common carrier. Laurel has no certificated monopoly service territory and is open to competing

26 *See Application of Sunoco Pipeline, L.P.*, Docket Nos. A-2013-2371789, P-2013-2371775 (Order entered August 29, 2013).

27 HMSC Main Brief at 12.

means of moving petroleum. Indeed, Buckeye or another carrier could build a new pipeline to feed into Pittsburgh from the East, North and/or South. Therefore, the appropriate standard of review is one that recognizes the nature of common carrier service and applies a general public benefits test as the Commission did in the *Sunoco* decision. [28]

C. Exception No. 3: The Recommended Decision Ignores Evidence of the Public Benefits of the Proposed Reversal.[29]

The evidence in the record establishes that the reversal would increase utilization of the pipeline between Altoona and Pittsburgh, due to: (i) the growing access to abundant, cost-advantaged crude supply by the Midwest refineries; (ii) the declining volumes of products that are being transported from the East; and (iii) the continuing investments by Midwest refineries in their facilities and operations, while East Coast refineries are closing and not making any investments. The evidence further demonstrated the expectation of an increased supply of cost-advantaged refined products from the Midwest into Pennsylvania, and the downward pressure that such access to competitively-priced supply would put on gasoline prices at the pumps in Western and Central Pennsylvania. Ignoring these public benefits of the proposed reversal, the RD concludes that the public benefits of the proposal are outweighed by the alleged harm to the Philadelphia refineries. The RD also wholly overlooks the input provided by HMSC in this proceeding of its desire to move more competitively-priced products from the Midwest into Western Pennsylvania and to gain access to the Central Pennsylvania market for these products, which will benefit consumers.[30]

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28 HMSC Main Brief at 12.

29 RD at 115-118, 160-171.

30 HMSC Main Brief at 12-22; HMSC Reply Brief at 6-12.

1. <u>The reversal would increase utilization of the pipeline between Altoona and Pittsburgh.</u>

The industry is seeing a continuing trend of large volumes of product movements from the Midwest to the East, with the expectation that they will continue to be price-advantaged and competitive. Broadway II is a market-driven solution to the disruptive changes taking place in market. These events include growing access by Midwest refineries to abundant, cost advantaged crude supply; the declining volumes of products being transported from the East, with supply and demand dynamics pushing Midwest products eastward; and the continued investments in Midwest refineries, contrasted with the closure of and lack of investment in East Coast refineries.[31]

Shippers have expressed a strong desire to move what are projected to be generally lower-priced petroleum products from the Midwest into Pennsylvania. In fact, Buckeye received sufficient binding commitments from several shippers, which includes the commitment made by HMSC, to move forward with Broadway II. 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. Specifically, recent expansions have allowed consumers in Pittsburgh to access approximately 207,000 barrels per day of Midwestern supply via a combination of Marathon's pipeline which has a capacity of 32,000 barrels per day, Sunoco's Allegheny Access pipeline which has a capacity of 85,000 barrels per day, and Buckeye's pipeline, including the Broadway I expansion, which has a capacity of 90,000 barrels per day. Indeed, 18 months after Allegheny Access came on line, 65 percent of the volume of the East Coast refineries shipped into Pittsburgh was replaced with supply from Midwest refineries. During that time, East Coast supply has dropped from 100,000 to 40,000 barrels per day. HMSC witness Miller described

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31 HMSC Main Brief at 13-17; HMSC Reply Brief at 10-12.

these trends as "compelling," noting his expectation they will continue as the market rationalizes. Tr. 1254.[32]

Those trends and HMSC's expectation are being backed by significant investment by HMSC so that it can compete. As explained by Mr. Miller, HMSC has made long-term multi-million commitments to the Sunoco Allegheny Access pipeline and to the Laurel reversal. Further, HMSC recognizes the need to secure its place in the competitive market, which is why Husky is investing hundreds of millions of dollars in the Lima Refinery to make it more modern and more efficient. In short, HMSC witness Miller testified that with these commitments, HMSC is "putting our money where our mouth is." Tr. 1254.[33]

It is noteworthy that contrary to the huge amounts of investments in the refineries in the Midwest, a number of East Coast refineries have closed and continue to struggle. HMSC's witness has not observed any efforts underway by the East Coast refineries to make themselves more efficient or to sustain themselves for the future. Explaining that refining is a very difficult industry involving high temperatures, high pressures and high volumes, which cause equipment to wear out quickly, Mr. Miller stressed the importance of access to lower price feedstock costs to a refinery's ability to successfully compete in the market.[34]

Beyond Broadway II, those trends are expected to continue. For example, in March 2017, Wolverine Pipe Line Company ("Wolverine") announced that the new Detroit Metro Access Pipeline ("DMAP") is in service. That pipeline originates near Chicago and travels across the state of Michigan to Detroit, and allows refineries in Illinois, Indiana and Michigan with 828,040 barrels per day of crude refining capacity to connect to a source point of the Broadway II Pipeline

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32 HMSC Main Brief at 13-14.

33 HMSC Main Brief at 14.

34 HMSC Main Brief at 14-15; HMSC Reply Brief at 10-11.

project. This enhanced access to products produced by these refineries will increase the flow capabilities from the Midwest to Western and Central Pennsylvania. Midwest refiners are in the Pittsburgh market now, and HMSC simply wants a fair opportunity to expand its presence in this market and into Central Pennsylvania to provide products the market is demanding.[35]

With scant analysis, the RD simply discounts this overwhelming evidence of the continuing decline of volumes of eastern refined products delivered to the Pittsburgh market and of the Midwest refineries' access to cost-advantaged supply. Instead, the RD questions why the Pittsburgh market continues to avail itself of the eastern product to supply a substantial portion of the demand when by all accounts it could rely completely on Midwest product. Specifically, the RD notes that the Pittsburgh market has been positioned to enjoy the financial advantage of the Midwestern refineries' product since March 2016 when capacity expansions increased total capacity from the Midwest into the Pittsburgh area to 297.2 million barrels per day.[36]

In this discussion, the RD makes no mention of the fact that 18 months after Allegheny Access came on line, 65 percent of the volume of the East Coast refineries shipped into Pittsburgh was replaced with supply from Midwest refineries. The RD also ignores the evidence showing that during the same time, the East Coast supply dropped from 100,000 to 40,000 barrels per day. Notably, the RD does not discuss the testimony of HMSC witness Miller describing these trends as compelling and noting his expectation that they will continue as the market rationalizes.[37] As Mr. Miller explained, with the capacity expansions having been completed in 2016, it is unreasonable to expect that the Pittsburgh market would already be relying on the Midwest refineries to supply all of its demand, particularly when shippers' have long-term contracts in

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35 HMSC Main Brief at 15-16.

36 RD at 117.

37 HMSC Main Brief at 14.

place.[38] Rather than speculating as to why the Pittsburgh market is still receiving product from the East Coast, the Commission should rely on the evidence of compelling trends showing an influx of competitively-priced product from the Midwest into Pennsylvania to conclude that the market forces and current economic conditions support the reversal of the pipeline between Altoona and Pittsburgh.

Also, the RD summarily dismisses Laurel's contention that downstream constraints, like terminal capacity, are limiting the entry of Midwest products fully into the Pittsburgh market, because Laurel failed to submit evidence to substantiate this claim. However, HMSC presented evidence to substantiate that claim, which was wholly disregarded by the RD. Specifically, HMSC's witness stressed that its ability to sell product in any market includes not only the pipeline, but what can be put through the terminals. Customers may want to go to certain terminals, and may not want to go to other terminals for various reasons, such as the location and/or size of the terminal. With Broadway II, HMSC would have another pipeline into the Pittsburgh market, and it would also have a much better terminal set where the terminals are larger and in a better location for customers to access. Since Broadway II would double HMSC's terminal count, it would enhance its ability to service Western Pennsylvania. Further, whether HMSC currently trucks volumes into Pittsburgh is irrelevant to its future use of the system between Pittsburgh and Altoona. Indeed, HMSC's witness explained that by affording pipeline access to Altoona, Broadway II would enable HMSC to sell product in other points of Central Pennsylvania, including by truck from Altoona to Harrisburg.[39]

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[38] Tr. 1250.

[39] HMSC Main Brief at 15; HMSC Reply Brief at 18-19.

2. Increased Supply of Refined Products from the Midwest to Pennsylvania

Other evidence ignored by the RD in evaluating the public benefits is the evidence showing that Midwest refineries would be a reliable and adequate source of petroleum products for Western and Central Pennsylvania. The overall capacity and utilization of the Midwest refineries are increasing. In fact, two studies prepared for the U.S. Energy Information Administration demonstrate that from 2005 to 2015, Midwest refinery and capacity production, coupled with stagnant to declining demand, have made the region more self-sufficient and less reliant on supply from the Gulf Coast, while the East Coast is largely dependent on supply from the Gulf Coast. The first study is entitled "East Coast and Gulf Coast Transportation Fuels Markets" and reviews Petroleum Administration for Defense District 1 ("PADD 1 Study").[40] The second study is entitled "Midwest and Rocky Mountain Transportation Fuels Markets" and reviews PADD 2 ("PADD 2 Study").[41] Notably, according to these studies, East Coast production decreased from 1.7 barrels per day to 1.3 million barrels per day from 2005 to 2015 while refining capacity in the Midwest increased by 320,000 barrels per day.[42]

In explaining these trends, the PADD 2 Study notes that "the development of Canadian oil sands crude and the emergence of light, tight crude oil in the United States have provided" Midwest refineries "with access to abundant, cost-advantaged crude supply, providing opportunities to optimize crude slates and expand refinery capacity and utilization."[43] As further concluded by the PADD 2 Study, "[r]efining capacity and transportation fuels production in the Midwest...have expanded significantly over the past decade, driven by access to cost-advantaged North American

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40 HMSC Exhibit JPM-3.

41 HMSC Exhibit JPM-4.

42 HMSC Main Brief at 16-17.

43 HMSC Ex. JPM-4 at 1.

crude streams."[44] The PADD 2 Study specifically shows that from 2005 to 2015, refining capacity in the Midwest increased by 323,000 barrels per day, or 9%, and in-region supply has accounted for 84% of the demand, which is an increase of 15%. As these trends are driven by the proximity of the Midwest to increasing cost-advantaged crude streams from Bakken production and Western Canada, HMSC witness Miller expects that they will continue over the years and the Midwest region will become balanced to long.[45]

Despite this clear evidence in the PADD 2 Study confirming access by Midwest refineries to cheaper crude oil, the RD refuses to recognize the public benefits flowing from this access because no Laurel witness provided a study supporting the claim that Midwest supply is the lowest supply source.[46] Whether a Laurel witness provided a study supporting this claim or not, the fact remains that the PADD 2 Study is evidence in the record unequivocally showing that the Midwest has access to cost-advantaged crude. Indeed, Laurel witness Michael J. Webb sponsored the Wood Mackenzie Study, which specifically credits the access by Midwest refineries to cheap crude slates to explain the cheaper crude barrels in the Midwest as compared to the East.[47]

The RD further suggests that Midwest refiners' crude acquisition advantage over East Coast refiners "is getting significantly reduced as the Bakken and Canadian crude prices are approaching the Brent crude prices."[48] In reaching this conclusion, the RD fails to consider the testimony of HMSC witness who pointed to the lower cost of WTI crude, which at the time of his testimony in November 2017 was $6.76 cheaper per barrel than Brent crude sourced by the East

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[44] HMSC Ex. JPM-4 at xv.

[45] HMSC Main Brief at 16-18.

[46] RD at 161.

[47] HMSC Main Brief at 19; Laurel Exhibit MJW-21.

[48] RD at 162.

Coast refineries. Tr. 1254. This differential is a main driver of future economic conditions, we well as HMSC's commitment to the Laurel reversal, and should be the main driver of the Commission's decision on whether to allow the proposed reversal to move forward.[49] HMSC witness Miller also testified that the use of lower priced feedstock crudes by the Midwest refineries – even with transportation costs to supply product to Western and Central Pennsylvania – results in lower prices.[50]

3. Impact on Gasoline Prices in Pennsylvania.

Midwestern refineries operate more efficiently and less expensively than the East Coast refineries such that access to these refineries would put downward pressure on petroleum products prices in Western and Central Pennsylvania. This result is due to the more efficient and less expensive access to an abundance of competitively priced feedstock crudes and in their utilization and operation. The use of lower priced feedstock crudes by the Midwest refineries — even with transportation costs to supply product to Western and Central Pennsylvania — results in lower prices. Crude barrels are cheaper in the Midwest as compared to the East. A key reason for this result is the access by the Midwest to cheap crude slates, as shown by the Wood Mackenzie Study.[51] The additional eastbound pipeline capacity from the Midwest would provide consumers in Western and Central Pennsylvania increased access to generally lower-priced Midwestern gasoline and petroleum products. Indeed, Monroe Energy, LLC ("Monroe") witness Tracy Sadowski projected that the reversal would cause prices to fall.[52]

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49 HMSC Reply Brief at 12.

50 HMSC Reply Brief at 11-12.

51 HMSC Main Brief at 19.

52 HMSC Main Brief at 18-19.

Yet, the RD fails to recognize the link between the increasing movement of cost-advantaged Midwest products into Pennsylvania and lower prices for consumers. Rather, without any analysis or support in the record, the RD summarily concludes that the delivered price of gasoline is more closely related to the price at the pump than the price of crude oil.[53] In reaching this conclusion, the RD ignores significant evidence in the record concerning recent price trends and specifically concerning HMSC prices. Specifically, Midwest pricing (based on the Chicago Index) trends towards lower prices than does East Coast pricing (based on the New York Harbor Index). On average, Chicago has historically been and is currently priced lower than New York Harbor on gasoline. HMSC expects the difference between Chicago and New York Harbor prices to continue as the Midwest region becomes more self-sufficient, ultimately providing a cheaper barrel into Pittsburgh, as compared to New York.[54]

In fact, as a result of the increase of Midwest supply into Pittsburgh discussed above, Midwest pricing (Chicago Index) now has a stronger influence on Pittsburgh pricing than does East Coast pricing (New York Harbor Index). In 2014, prior to commissioning of the Allegheny Access pipeline, the Oil Price Information Service ("OPIS") low prices for Pittsburgh gasoline were 2.53 cents per gallon ("cpg") over Chicago. Then in 2015, after the Allegheny pipeline was commissioned, bringing midcontinent supply in, Pittsburgh gasoline was priced 3.56 cpg under Chicago, which is an over 6 cpg swing in pricing in just one year and benefitted the consumer.[55]

None of this pricing data is considered by the RD. Likewise, the RD contains no discussion of the fact that HMSC is currently providing the Pittsburgh area with competitively-priced supply. The data produced in this proceeding demonstrates that HMSC consistently posts the lowest prices

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53 RD at 166.

54 HMSC Main Brief at 19.

55 HMSC Main Brief at 19-20.

for spot sales of gasoline at the Pittsburgh rack terminals. By contrast, the eastern suppliers posted the OPIS-low price less frequently for spot gasoline sales over the same period.[56] Specifically, looking at the 2017 YTD (Aug. 2017), the chart demonstrates that HMSC provided the most-competitively priced gasoline product 27% of the time, which is more often than any other single marketer. The sheer volumes sold by HMSC demonstrate the significance of that pricing data.[57]

Despite this extensive evidence showing the price advantages for Pennsylvania of gaining greater access to Midwest supply, the RD finds that public benefits are lacking because Laurel has not guaranteed that the proposed reversal will decrease prices that consumers pay for gasoline at the pump.[58] In reaching this conclusion, the RD fails to recognize that it is difficult, if not impossible, to make a direct correlation between lower wholesale prices that would be available due to an increase of lower-cost Midwest supplies and the price that retailers would charge end users. As the PADD 1 Study observes, prices paid by consumers at the gasoline pump are typically set in comparison to prices at other retail outlets or are set a cost plus the desired margin by large chain stores that are focused on selling large volumes of gasoline at low margins.[59]

Nonetheless, under widely accepted economic theories of supply and demand – again ignored by the RD – enhanced access to lower-cost Midwest supplies by the Pittsburgh area would cause consumer prices to fall. Laurel witness Scott T. Jones explained that bringing additional sources of lower cost Midwest supplies to Pittsburgh is the underlying economic motivation of the project and the reason why Pittsburgh consumers are likely to benefit. As he observed, when "wholesalers of refined products compete with each other for market share, in part by seeking to

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56 HMSC Main Brief at 20.

57 HMSC Main Brief at 20; *Highly Confidential* HMSC Exhibit JPM-5.

58 RD at 167.

59 HMSC Main Brief at 20-21.

introduce new, lower cost sources of supply," the outcome "is to the benefit of retail consumers as competition drives toward marginal costs."[60] He went on to explain as follows:

> For example, when competition among suppliers leads to the removal of a transportation bottleneck, it benefits suppliers who now have access to the market, but it may harm those suppliers who previously enjoyed preferential access and the resulting higher prices. Consumers benefit when market prices come down.[61]

He added that the reversal will make it economic for additional sources of supply to reach Pittsburgh and that the addition of new supplies will cause prices to fall.[62]

Laurel witness Jones also explained that the best evidence that Laurel's project will increase Pittsburgh's access to low cost supplies is the commitment of shippers who have signed up for the project. He noted that shippers expect to be able to deliver products to Pittsburgh at costs that are below market prices, as evidenced by the fact that 65 percent of the volume of East Coast refineries was replaced with supply from Midwest refineries 18 months after the Allegheny Access came on line. If shippers cannot deliver products at costs below expected Pittsburgh market prices, they will lose money; these are the same economics that motivated shippers to commit to the Allegheny Access project. Indeed, following a review of information presented by the Indicated Parties, Laurel witness Jones estimated that consumer prices will fall by at least five cents per gallon post-reversal. This projected reduction in prices was corroborated by Monroe witness Sadowski. In summary, Laurel witness Jones concluded that "[a]ll else equal, the lower the cost of the crude oil and the more efficient the transportation and marketing infrastructure, the lower the price of refined products in any given area at any given point in time."[63]

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60 Laurel St. 7-RJ at 4.

61 Laurel St. 7-RJ at 4.

62 HMSC Main Brief at 20-21.

63 Laurel St. 7-RJ at 17-18; HMSC Main Brief at 21-22.

D. Exception No. 4: The Recommended Decision Errs in Finding that Adequate Alternatives Do Not Exist.[64]

In finding that the proposed reversal would leave East Coast refineries without adequate alternatives to replace displaced sales, the RD dismisses the availability of product exchanges because a couple of market participants have not successfully entered into a product exchange for supply in the Pittsburgh area.[65] This conclusion ignores the evidence presented in this proceeding by HMSC. As HMSC witness Miller explained, product exchanges are common in the petroleum products industry and are effective in permitting shippers to access markets without physical pipeline connectivity.[66] He further noted, however, that HMSC would typically do exchanges with parties who have refineries, not like parties like Gulf Operating LLC ("Gulf") and Sheetz, Inc. ("Sheetz") who do not produce their own products and therefore do not have barrels to exchange.[67] Yet, it was testimony of Gulf and Sheetz witnesses that the RD relied upon in addressing the adequacy of product exchanges.[68]

By contrast, with twenty years of experience in the petroleum products industry and having handled product exchanges in the Pittsburgh area with multiple counterparties, HMSC witness Miller emphasized that no obstacles exist to doing an exchange in the Pittsburgh area. Specifically, he referred to product exchanges being used when HMSC has physical connectivity to Location A but not Location B, and HMSC's counterparty has connectivity to Location B, but not Location A. In this situation, an exchange takes place with offsetting volume plus a differential to account for differences in market value at the respective locations. Mr. Miller added that the way in which

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64 RD at 197-198.

65 RD at 197-198.

66 HMSC Main Brief at 24.

67 HMSC St. 1-RJ at 15.

68 RD at 197-198.

an exchange would work between a refiner in Philadelphia and a refiner in Ohio is that the two entities would agree to compensation that would equalize the value difference between the two locations; this is known as a location differential. Clearly, in equalizing the value difference, this product exchange is feasible despite differences in prices and products.[69]

Again disregarding evidence in the record, the RD finds that the proposed reversal would leave the Pittsburgh area without any reasonable alternatives to the low-RVP gasoline that is produced by the East Coast refineries. In reaching this conclusion, the RD refers to the amount of low-RVP gasoline that was sold by HMSC to the Pittsburgh area in 2017, as compared to total demand, and speculates that Midwest refiners are not producing all of the low-RVP gasoline to Pittsburgh because they do not believe they can currently earn a sufficient netback when faced with competition.[70]

By contrast, HMSC presented evidence showing that a significant amount of HMSC-marketed gasoline is already sold in the Pittsburgh area, complying with its low-RVP requirements in the summer, and HMSC intends to continue supplying the area. Specifically, as a fuel marketer in Western Pennsylvania, HMSC supplies the current summer product specification of 7.8 psi RVP gasoline for the seven counties in the Pittsburgh area (Allegheny, Armstrong, Beaver, Butler, Fayette, Washington, and Westmoreland). As to the volumes that HMSC has sold into the Pittsburgh area, HMSC witness Miller testified that the Refineries are capable of producing more or less. Moreover, no basis in the record exists for the conjecture in the RD as to why Midwest refiners are not currently producing all of the low-RVP gasoline that is needed by the Pittsburgh. In fact, Mr. Miller explained that the volumes currently being shipped simply represent HMSC's

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69 HMSC Main Brief at 24; HMSC Reply Brief at 16-17.

70 RD at 194.

current market share. The record is clear that the Refineries are capable of producing gasoline that meets the low-RVP specification for Western Pennsylvania and other remaining low-RVP areas.[71]

The RD further suggests that the price of low-RVP gasoline in the Pittsburgh may increase post-reversal in order to provide an incentive for the Midwest refiners to produce higher volumes of low-RVP gasoline to meet the demands of the Pittsburgh market.[72] This speculation about the direction in which prices for low-RVP gasoline might go following the reversal is not substantiated by any evidence produced in this proceeding. Indeed, HMSC witness Miller noted that the Gulf witness offered no basis for his cost concerns and testified that he saw no reason why prices would increase.[73]

III. CONCLUSION

In summary, as demonstrated above, the RD incorrectly determines that Commission approval for the pipeline reversal is required and ignores the arguments regarding the importance of allowing Laurel to use its asset in a way that responds to market forces and current economic conditions. Further, to the extent Commission approval is required, the RD applies an abandonment test, which is not applicable to a common carrier facing competition and should be replaced by a general public benefits standard. In recommending a rejection of Laurel's market-driven solution, the RD ignores evidence of the public benefits of the proposal by inappropriately discounting the growing access by the Midwest refineries to abundant, cost advantaged crude supply, which would put downward pressure on retail prices. Finally, the RD fails to recognize

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71 HMSC Main Brief at 24; HMSC Reply Brief at 15.

72 RD at 194.

73 HMSC St. 1-RJ at 13.

the availability of product exchanges as an adequate alternative if the pipeline is reversed and the ability of the Midwest refineries to supply the Pittsburgh area with low-RVP gasoline.

HMSC respectfully requests that the Commission reject the RD and permit Laurel — either by declaring that no certificate of public convenience is required by Laurel or by granting a certificate of public convenience to Laurel — to reverse flow on part its pipeline system in response to market forces and current economic conditions. In doing so, the Commission would be allowing the petroleum products market to function in a manner that is consistent with this Commission's efforts to facilitate the development of robust competition in the energy and transportation industries. As stated by HMSC witness Miller, HMSC is not trying to use legal maneuvers to block competitors from participating in the market or seeking a political solution to protect its business interests. To the contrary, HMSC simply wants to compete in the market on its merits and is investing millions of dollars in the market to enable it to do so.

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

Respectfully submitted,

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