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April 18, 2018

***VIA ELECTRONIC FILING
VIA HAND DELIVERY***

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor North
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**Re: Application of Laurel Pipe Line Company, L.P. for All Necessary Authority,
Approvals, and Certificates of Public Convenience To Change the Direction of
Petroleum Products Transportation Service to Delivery Points West of Eldorado,
Pennsylvania
and
Laurel Pipeline Company, L.P. - Pipeline Capacity Agreement With Buckeye Pipe
Line Company, L.L.P.
Docket Nos. A-2016-2575829 and G-2017-2587567**

Dear Secretary Chiavetta:

Enclosed please find the Exceptions of Laurel Pipe Line Company, L.P. ("Laurel") to be filed in the above-referenced proceeding. A CD containing the Public version of Laurel's Exceptions, and a CD containing the Highly Confidential version of Laurel's Exceptions will be provided by hand delivery. Copies will be provided as indicated on the Certificate of Service, with only those parties who have executed a confidentiality agreement receiving the Highly Confidential version.

Sincerely,

Anthony D. Kanagy

ADK/sme
Enclosures

Rosemary Chiavetta, Secretary
April 18, 2018
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Enclosures

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been served upon the following persons, in the manner indicated, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant).

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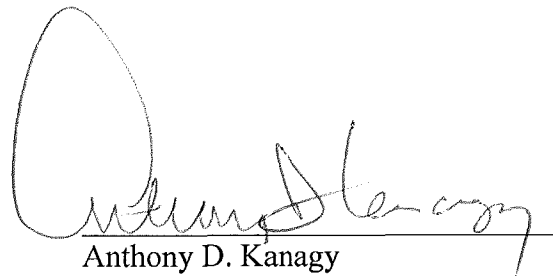
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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Application of Laurel Pipe Line Company, :
L.P. for All Necessary Authority, Approvals, :
and Certificates of Public Convenience To : Docket No. A-2016-2575829
Change the Direction of Petroleum Products :
Transportation Service to Delivery Points West :
of Eldorado, Pennsylvania :
:
:
Laurel Pipe Line Company, L.P. – Pipeline :
Capacity Agreement with Buckeye Pipe Line : Docket No. G-2017-2587567
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I. INTRODUCTION

Laurel Pipe Line Company, L.P. (“Laurel” or the “Company”) filed the above-captioned Application on November 14, 2016, to change the direction of transportation service over a portion of its pipeline system. Therein, Laurel sought the Pennsylvania Public Utility Commission’s (“PUC” or “Commission”) approval, to the extent required and within the Commission’s jurisdiction, to cease the westbound flow of petroleum products over its pipeline system from Eldorado to Coraopolis and to initiate the eastbound flow of petroleum products from origin points in the Midwest to Eldorado. A procedural history of this proceeding is set forth on pages 4-9 of Laurel’s Main Brief. Administrative Law Judge Eranda Vero’s (the “ALJ”) Recommended Decision (“RD”) was issued on March 29, 2018. In the RD, the ALJ recommends that Laurel’s Application be denied and that the related Affiliated Interest Agreement be denied as moot. For the reasons explained below, the RD should be reversed. The RD commits multiple fundamental errors of law and ignores uncontested facts, which when corrected, fully support Commission approval of the proposed reversal.

II. SUMMARY OF EXCEPTIONS

The proposed reversal of the Laurel pipeline will provide substantial benefits to Pennsylvania consumers. The record demonstrates that efficient Midwestern refineries use lower-cost, “Shale Revolution” crude oils to produce lower-cost gasoline and diesel fuel. However, substantial constraints currently prevent these lower-cost products from fully reaching Western Pennsylvania and prevent them from reaching Central Pennsylvania at all. Laurel’s proposed reversal, as a part of the Buckeye Pipe Line Company, L.P. (“Buckeye”) Broadway II Project, will help alleviate these constraints and thereby: (a) decrease gasoline prices throughout Pennsylvania, as market participants engage in increased competition in local markets; (b) bring a second source of supply to Central Pennsylvania; and (c) back out overseas foreign oil imports

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and reduce America's reliance on overseas foreign oil. Finally, these benefits will not result in any public harms; Pittsburgh will remain supplied by an abundance of sources and Philadelphia-area refineries will continue to be able to sell their products in numerous markets across Pennsylvania and other states.

Pennsylvania is no stranger to the benefits associated with increased access to lower-cost energy supplies. The Commission's previous efforts to encourage expanded transport of and access to Marcellus Shale natural gas has aided in a 60% decline in Pennsylvania natural gas prices over the past ten years. As explained above, Pennsylvania consumers will similarly benefit, but only if the Commission does not frustrate interstate infrastructure projects, such as Laurel's proposed reversal as part of the Broadway II Project, which is designed to alleviate pipeline and terminal constraints that prevent Pennsylvanians from reaping these benefits.

Despite clear legal precedent on how to evaluate oil pipeline abandonments and overwhelming record evidence demonstrating the many public benefits from the proposed reversal, the RD, without explanation or citation, simply abandons all relevant precedent and creates a completely new regulatory regime, which on its face, unlawfully discriminates against interstate competition and its many public benefits in favor of protecting the profits of local refineries and shippers.

The applicable law in this case is crystal clear: (1) the Commission is preempted from regulating Laurel's decision to reverse the direction of its existing interstate common carrier service; (2) the plain language of Laurel's certificate of public convenience does not limit or constrain the direction of service or prescribe origin or delivery points; (3) oil pipeline abandonment proceedings should be evaluated under the "substantial public benefits test;" and (4) available alternatives in abandonment cases are not required to make customers whole or

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maintain their existing market share. The RD rejects all of this black letter law and establishes a new standard of regulation that has no foundation in Pennsylvania law, unlawfully discriminates against interstate transportation, cannot withstand judicial review, and must be summarily rejected.

In addition to these fundamental errors of law, the RD fails to conduct a reasoned analysis of the record evidence. While there are a myriad of issues and sub-issues presented, there are seven key issues of fact. Laurel and Husky presented overwhelming and largely un rebutted evidence in support of each of these findings, most of which was simply ignored by the RD; in fact, the RD does not contain a single citation to Laurel's Reply Brief, other than to acknowledge one was filed. Without exception, every finding or conclusion excepted by Laurel is conclusively addressed in Laurel's Reply Brief. Even more troublesome, however, and as shown below, for each of these seven issues, testimony and exhibits of the Indicated Parties also fully support Laurel's position. Again, these inconsistencies were simply ignored by the RD.

Capacity Constraints Currently Prevent Lower Cost Midwestern Gasoline And Diesel Fuel From Fully Reaching Western Pennsylvania And From Reaching Central Pennsylvania At All.

Record Evidence Shows – A “transportation bottleneck” exists on existing pipeline infrastructure between the Midwest and Pennsylvania.¹ Geography and operational constraints limit the Midwestern refineries' ability to get to Pittsburgh.² And, as the Indicated Parties' own witness testified: “[i]t is almost logistically impossible to move petroleum products from Chicago-area refineries to the Pittsburgh area due to pipeline capacity limitations.”³

RD Concludes – Laurel has “failed to submit evidence that substantiates this claim [of capacity constraints].”⁴

Midwestern Refineries Have A Substantial And Sustained Cost Advantage.

Record Evidence Shows – Laurel presented the testimony of three oil industry experts, who relied upon numerous industry publications, exhibits and documents produced by the Indicated Parties to conclude Midwestern refineries have a

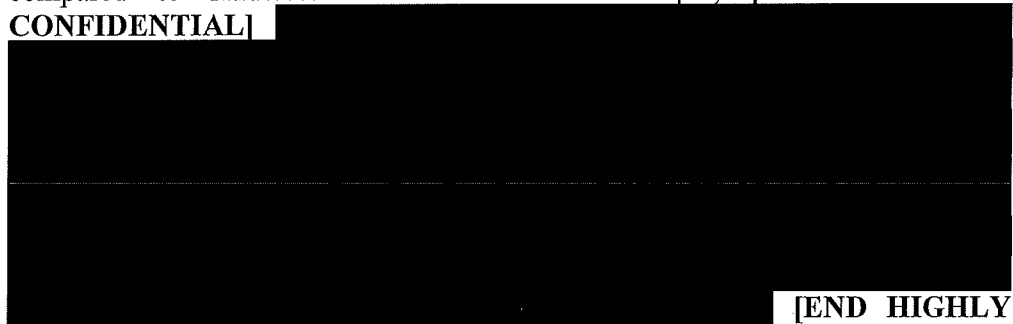
¹ See Laurel Stmt. No. 7-RJ, p. 4:2-6; Hearing Tr. 690:21-691:18.

² See Hearing Tr. 1181-1182.

³ Gulf St. No. 1, p. 9; see also Laurel C.E. Exhibit No. 17 (Tr. 81:15-82:4); Gulf St. No. 1-SR, p. 7.

⁴ See, e.g., RD, p. 117.

substantial crude cost advantage; the cost of crude is the overwhelming factor in determining retail gasoline prices, and, as a result, Midwestern refineries produce lower-cost refined products.⁵ Documents produced by the Indicated Parties demonstrate that East Coast refineries produce higher-cost refined products compared to Midwest refineries.⁶ For example, [BEGIN HIGHLY CONFIDENTIAL]



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RD Concludes – Laurel did not provide “a study supporting their claims that Midwest supply is the lowest cost supply source.”⁷

The Reversal Will Result In Decreased Gasoline Prices.

Record Evidence Shows – The result of the reversal would be substantially lower gasoline prices in Central and Eastern Pennsylvania, due to increased competition.⁸ In fact, PESRM candidly admits that the proposed reversal would result in [BEGIN HIGHLY CONFIDENTIAL] [END HIGHLY CONFIDENTIAL], due to increased competition, where consumers ultimately benefit. In addition, fundamental economic principles demonstrate that, if approved, the proposed reversal will back out the current marginal cost supplier from Pittsburgh and directionally decrease gasoline prices. In addition, using the Indicated Parties’ own documents, it is reasonable to expect a \$0.05/gallon decrease in retail gasoline prices as a result of the proposed reversal. Clearly, the proposed reversal will decrease gasoline prices across Pennsylvania.⁹

RD Concludes – Laurel “refuses to quantify the effect of the reversal on gasoline prices at the pump.”¹⁰

The Reversal Will Produce Other Major Public Benefits.

Record Evidence Shows – Laurel’s proposed reversal would reduce reliance on overseas imports of foreign oil and avoid environmental costs and impacts potentially associated with constructing a new pipeline.¹¹

RD Concludes – The RD simply ignores the non-price related public benefits associated with Laurel’s proposed reversal.

⁵ Laurel MB, pp. 73-80.

⁶ Laurel MB, pp. 76-80; Laurel RB, pp. 54-55.

⁷ RD, p. 161.

⁸ Laurel RB, p. 64 (citing Hearing Tr. 979-980).

⁹ Laurel MB, pp. 72-86, 89-94; Laurel RB, pp. 107-111.

¹⁰ RD, p. 162.

¹¹ Laurel MB, pp. 100-106; RD, Finding of Fact ¶ 44.

There Are Numerous Available And Used Alternatives For Both The Pittsburgh And Philadelphia Markets.

Record Evidence Shows (Pittsburgh) – Pittsburgh market participants have eight (8) post-reversal alternatives, and Midwestern refineries are capable of producing sufficient quantities of low-RVP gasoline; Husky’s testimony further confirms this fact.¹² No single alternative available to Pittsburgh market participants must replace Laurel.¹³

RD Concludes (Pittsburgh) – Laurel’s proposed Pittsburgh alternatives are inadequate, because Pittsburgh will not receive low-RVP gasoline from East Coast refineries.¹⁴

Record Evidence Shows (Philadelphia) – Philadelphia market participants are connected to and use numerous alternatives to reach a number of markets, and are economically indifferent to the destination of their product.¹⁵ In particular, the refineries tout the connectivity of their refineries to numerous transportation options and markets in public financial disclosures. *See, e.g.*, Laurel St. No. 5-R, pp. 30-31 (“PESRM states the refinery is connected to “a vast network of truck loading racks, pipelines, barges, refined product storage terminals and docks located at, or downstream of the Philadelphia refining complex.”).

RD Concludes – Laurel’s proposed Philadelphia alternatives fail to replicate the benefits of the current westbound service, or otherwise fail to provide the refineries with new markets and new demand.¹⁶

The Reversal Will Not Harm Pittsburgh Or Philadelphia Market Participants.

Record Evidence Shows – The reversal’s harms, if any, will be *de minimis*. The proposed reversal will not harm Pittsburgh; rather it will benefit Pittsburgh by decreasing gasoline prices.¹⁷ Moreover, the reversal will not harm Philadelphia refineries because they possess numerous transportation alternatives that connect to numerous alternative markets, are economically indifferent to the destination of their products, and do not ship substantial volumes to Pittsburgh.¹⁸ Moreover, any harm experienced by the Indicated Parties are unquantified lost private profits, which cannot be found to outweigh the substantial public benefits associated with lower gasoline prices.

RD Concludes – Laurel failed to demonstrate that “no harm” would result from the reversal.¹⁹

Volumes.

Record Evidence Shows – Laurel has experienced substantial volumes declines that are projected to continue; last winter, volumes were so low that operational problems

¹² Laurel MB, pp. 136-146; Laurel RB, pp. 81-84, 93-101; *see also* Husky St. No. 1-R, pp. 4, 9-10.

¹³ *See* Laurel RB, p. 93.

¹⁴ RD, pp. 194-195.

¹⁵ Laurel MB, pp. 151-168; Laurel RB, pp. 81-83, 93-101.

¹⁶ RD, pp. 197-198.

¹⁷ Laurel MB, pp. 107-146; Laurel RB, pp. 60-76.

¹⁸ Laurel MB, pp. 146-171; Laurel RB, pp. 76-86; *see also* Section III.10.C. *infra*.

¹⁹ RD, pp. 167-168.

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were imminent, which demonstrate Laurel's pipeline may soon become a wasting asset.²⁰

RD Concludes – Laurel still transports, and will continue to transport, significant volumes to Pittsburgh.²¹

The ultimate result of the RD's legal and factual errors is a complete failure to apply "even-handed" regulation to Laurel's proposed reversal. Rather, the RD recommends that the Commission "put its thumb on the scale" of the competitive petroleum products transportation market by engaging in arbitrary and inconsistent regulation that discriminates against Laurel and interstate transportation of petroleum products, and denies Pennsylvania consumers hundreds of millions of dollars in annual benefits derived from increased access to lower-priced Midwestern gasoline, in order to protect the private profits of intrastate refineries. This is simply not in the public interest. For the reasons explained below and in Laurel's Main Brief and Reply Brief, to the extent the Commission has jurisdiction over the proposed reversal, it is in the public interest and should be approved.

III. EXCEPTIONS

1. THE RD'S DENIAL OF LAUREL'S APPLICATION DISCRIMINATES AGAINST INTERSTATE TRANSPORTATION AND SUPPLY OF PETROLEUM PRODUCTS IN FAVOR OF INTRASTATE TRANSPORTATION AND SUPPLY, AND THEREBY VIOLATES THE DORMANT COMMERCE CLAUSE OF THE UNITED STATES CONSTITUTION.

The RD asserts that Laurel's dormant commerce clause claim is "merely hypothetical." because the available standards of review "are designed to allow the Commission to regulate even-handedly to effectuate a legitimate local public interest." RD, p. 62. In fact, the RD fails to engage in "even handed" regulation and adopts a regulatory scheme that discriminates against interstate commerce and thereby violates the dormant commerce clause of the United States

²⁰ Laurel MB, pp. 61-72; Laurel RB, pp. 39-58.

²¹ RD, pp. 100, 115.

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Constitution. As explained in more detail below, the RD abandons long-standing Commission precedent regarding the regulation of oil pipelines and establishes unprecedented rules that apply to Laurel's proposal to provide interstate service, without any discussion or analysis. For example, the Commission has repeatedly held that the scope of service is to be determined solely by the plain language of a common carrier's certificate and not by external evidence; the RD, however, refuses to rely on the plain language of Laurel's certificate and imposes directional limitations on service based solely on external evidence. *See* Section III.3 *infra*. The Commission also has repeatedly applied a "substantial public benefits" test for oil pipeline abandonment proceedings; the RD, however, rejects this test and instead applies a "four factor" test that has never been applied to oil pipelines. *See* Section III.4 *infra*. The Commission also has repeatedly held that alternatives to common carrier service should be comparable, but not precise equivalents; yet the RD concludes that alternatives must provide the exact same level of service and market share. *See* Section III.9.A. *infra*.

The ultimate effect of this proposed analysis is discriminatory regulation that disadvantages interstate shippers to the advantage of intrastate shippers because it requires Laurel to continue providing east to west intrastate service when competitive market forces, supported by binding financial commitments, seek to move products from west to east. Indeed, the RD effectively recommends that the Commission reserve transportation service for in-state interests and remove the economic advantage of out-of-state refiners to the benefit of in-state refiners. Laurel MB, pp. 31-34. The RD rejects Laurel's position as "logically flawed" stating that "East coast entities (including Buckeye-owned assets that supply Laurel from the East) would be victims of discrimination if the reversal were approved and they were no longer able to ship to Pittsburgh." RD, p. 63. However, this comparison is inapposite and, in fact,

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demonstrates the error of the RD. If Laurel, as a *private entity*, elects to use its *private assets* to provide *interstate service to out-of-state* entities and cease providing service to certain *in-state* entities, Laurel has done nothing more than engage in free (interstate) trade in the free (interstate) market. The dormant commerce clause is neither implicated nor violated by this act. If the Commission, as *an agent of the Pennsylvania government*, attempts to prevent a *private entity* from providing *interstate service to out-of-state entities*, because certain *in-state* entities would no longer be able to use that service, the Commission will have advantaged intrastate commerce and disadvantaged interstate commerce. The dormant commerce clause *is implicated and violated* by this act. As the RD recommends the Commission engage in the latter scenario, it has committed a fundamental error of law that must be rejected.

If the Commission carries forward the RD's legal errors regarding Laurel's certificate and status as a common carrier, the applicable standard of review and the analysis of alternatives available to the Indicated Parties, it will have engaged in the antithesis of even-handed regulation and discriminated against Laurel and its prospective out of state petroleum products shippers. Therefore, the Commission must reject the findings and conclusions of the RD.

2. THE RD'S CONCLUSION THAT LAUREL MAY NOT INITIATE INTERSTATE TRANSPORTATION SERVICE WITHOUT FIRST ABANDONING INTRASTATE SERVICE IS PREEMPTED BY THE INTERSTATE COMMERCE ACT.

The Interstate Commerce Act ("ICA") preempts Commission jurisdiction over Laurel's proposed reversal because Laurel currently operates and provides transportation service in interstate commerce, and the proposed reversal only seeks to change the direction of interstate service over Laurel's facilities. Importantly, the RD recognizes that Laurel's pipeline system is not limited to Pennsylvania, and that interstate petroleum products transportation service is presently provided over Laurel's pipeline system. RD, Finding of Fact ¶¶ 13-14 ("Laurel's

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pipeline system is not limited to Pennsylvania” and “Laurel owns and operates pipelines in Pennsylvania and New Jersey that form a single pipeline system extending from Eagle Point, New Jersey to Midland, Pennsylvania.” (emphasis added); RD, Finding of Fact ¶ 21 (describing the interstate shipments currently taking place over Laurel’s pipeline system).

The RD commits a fundamental error of law by concluding that the ICA does not preempt Commission jurisdiction over Laurel’s proposed reversal. RD, pp. 50-51. The RD reasons that the Commission has jurisdiction because Laurel must cease westbound intrastate service over a portion of its pipeline prior to initiating eastbound interstate service over the same segment,²² and critically relies upon *Texas v. Eastern T. R. Co.*, 258 U.S. 204 (1922) for this conclusion. RD, p. 51. However, this case actually undermines the RD’s conclusions.

In *Texas v. Eastern T. R. Co.*, 258 U.S. 204 (1922), the State of Texas sought to enjoin a railroad company from abandoning interstate and intrastate service over a segment of its railroad.

The Court held that:

[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.

Texas v. Eastern T. R. Co., 258 U.S. at 217-218 (internal citations omitted) (emphasis added).

The Court further explained, however, that the subject railroad:

The road lies entirely within a single State, is owned and operated by a corporation of that State, and is not a part of another line. Its continued operation solely in intrastate commerce cannot be of

²² In addition to incorrectly assuming that Laurel must cease intrastate service before it is able to initiate interstate service, the RD does not preclude a scenario by which Laurel would provide both westbound intrastate service and eastbound interstate service, *i.e.* bidirectional service, because Laurel would not be required to cease any intrastate operations in order to initiate the proposed interstate service.

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more than local concern. Interstate and foreign commerce will not be burdened or affected by any shortage in the earnings, nor will any carrier in such commerce have to bear or make good the shortage. It is not as if the road were a branch or extension whose unremunerative operation would or might burden or cripple the main line and thereby affect its utility or service as an artery of interstate and foreign commerce.

Id. at 216-217. Indeed, the Court recognized that the ICA does not apply where the subject railroad segment is solely used for intrastate commerce. The holding of this case is quite clearly contrary to the RD's interpretation. The ICA does not restrict states from regulating lines that are used solely for intrastate commerce, but like so many other areas of utility regulation, including interstate movements of natural gas and electricity, state regulation cannot interfere with or regulate interstate movements.

Here, the subject segment of Laurel between Midland and Eldorado, PA, currently operates as a "branch or extension" or "part of another line" that is "an artery of interstate and foreign commerce." The RD recognizes that Laurel's system is not limited to Pennsylvania and that products are already shipped over Laurel's system in interstate commerce. RD, Finding of Fact ¶¶ 13-14, 21. Moreover, it is undisputed that, post-reversal, the service to be provided over the segment of Laurel between Midland and Eldorado, PA, will be interstate in nature. Commission regulation of the proposed reversal would, therefore, interfere with the dictates of the ICA that preempt state regulation of intrastate commerce where such regulation "is involved in the rightful exertion of the power of Congress over interstate and foreign commerce." *See Texas v. Eastern T. R. Co.*, 258 U.S. at 217-218. The RD's misapplication of this precedent constitutes a fundamental error of law and, therefore, its conclusion regarding the preemptive effect of the ICA on the Commission's jurisdiction over Laurel's Application should be denied.

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3. THE RD'S DETERMINATION THAT LAUREL IS NOT AUTHORIZED TO PROVIDE EASTBOUND PETROLEUM PRODUCTS TRANSPORTATION SERVICE UNDER ITS CERTIFICATE OF PUBLIC CONVENIENCE IS INCONSISTENT WITH THE PLAIN LANGUAGE OF LAUREL'S CERTIFICATE AND DIRECTLY CONTRARY TO CONTROLLING PUC PRECEDENT.

A. The RD Errs By Inferring A Directional Limitation Of Service Contrary To The Plain Language Of Laurel's Certificate Of Public Convenience.

The "nature and character of service" that Laurel sought to provide is explicitly and unequivocally controlled by paragraph 3 of the 1957 Service Application. *See* Laurel MB, pp. 42-45; *see also* Laurel RB, pp. 15-17. Indeed, paragraph 3 of the 1957 Service Application states:

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

Id. (emphasis added). This explicit enunciation of the service does not contain restrictive language that limits Laurel's service to either east-to-west service, or service between specific origin and destination points and/or pairs. Laurel MB, p. 45. Rather, the broad description of the service Laurel sought to provide necessarily reflects Laurel's undisputed status as a common carrier, and the flexibility that a common carrier's certificate offers to allow the carrier to respond to competitive market conditions. *See* Laurel MB, pp. 36-41 (describing Laurel's common carrier status); *see also* Laurel MB, pp. 45-46 (explaining that Laurel's certificate is consistent with its common carrier status).

The RD commits a clear error of law and ignores controlling precedent by recommending that the Commission may "reasonably infer" a description of Laurel's certificate authority based on the description of the proposed facilities in Laurel's 1957 application (*see* RD, pp. 76-77), the

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description of competing pipelines' services in Laurel's applications, and Laurel's historical service and current tariff (*see* RD, p. 77). The RD concludes that Laurel's 1957 certificate of public convenience only authorizes Laurel to provide east-to-west transportation service. RD, p. 76.

In its Reply Brief, Laurel explained that the above-described legal analysis has been previously and specifically rejected by the Commission. *Sunoco 2014 Petitions Order*²³ clearly rejects the RD's inferential analysis. Laurel RB, pp. 17-20. There, the Commission specifically addressed the issue of whether an oil pipeline is limited to east-to-west transportation. *Sunoco 2014 Petitions Order*, pp. 38-39. An intervenor, West Goshen Township ("WGT"), argued in its Replies to Exceptions that the referenced Sunoco pipeline was limited by its certificate to only provide east-to-west transportation service. *Id.*, p. 38. The Commission rejected WGT's assertion and held:

We also reject the argument, as raised by WGT in its Replies to Exceptions, that the Sunoco pipeline implicated in this proceeding is limited to east-to-west transportation. This argument appears to be based upon two details: (1) the description of the facilities in the original applications and Orders approving those applications, and (2) the original directional flow when other petroleum products were transported from Philadelphia area refineries to product distributors located to the West and North. Importantly, there is no directional restriction contained in any of the controlling Certificates or Commission Orders, nor do we believe it to be good public policy to adopt or interpret any such directional restrictions.

Thus, Sunoco has the authority to provide intrastate petroleum and refined petroleum products bi-directionally through pipeline service to the public between the Ohio and New York borders and Marcus Hook, Delaware County through generally identified points. This authority is not contingent upon a specific directional flow or a specific route within the certificated territory.

²³ *Petition of Sunoco Pipeline, L.P. et al.*, Docket Nos. P-2014-2411941-2411954, P-2014-2411959-2411958, P-2014-2411960-2411961, P-2014-2411963-2411968, P-2014-2411971-2411972, P-2014-2411974-2411977, and P-2014-2411979-2411980 (Order Entered Oct. 29, 2014) ("*Sunoco 2014 Petitions Order*").

Additionally, this authority is not limited to a specific pipe or set of pipes, but rather, includes both the upgrading of current facilities and the expansion of existing capacity as needed for the provision of the authorized service within the certificated territory.

Id., pp. 38-39 (emphasis added). Indeed, the Commission conclusively rejected the very interpretation espoused by the Indicated Parties and the RD in this proceeding.

The Commission further explained why inferring directional limitations in a certificate would be improper. *See Sunoco 2014 Petitions Order*, pp. 38-39. The Commission reasoned:

Importantly, there is no directional restriction contained in any of the controlling Certificates or Commission Orders, nor do we believe it to be good public policy to adopt or interpret any such directional restrictions. To do so would likely result in the construction of new and redundant pipeline facilities, while existing facilities of the exact same nature, capable of providing the exact same services, would sit useless.

Id., p. 39 (emphasis added).

The RD fails to even cite, much less distinguish, this controlling precedent even though it was discussed extensively in Laurel's Reply Brief. The *Sunoco 2014 Petitions Order* is clearly contrary to the RD's attempt to infer a restriction on the nature and character of service an oil pipeline is authorized to provide, where no such restriction explicitly exists. The failure to even mention or attempt to distinguish the *Sunoco 2014 Petitions Order* demonstrates a fundamental error and clear misunderstanding of the law.

B. The RD Commits An Error Of Law By Holding That A Common Carrier Must Receive Commission Approval To Change Its Service In A Manner That Is Consistent With Its Certificate.

In tandem with its flawed analysis of Laurel's certificate and improper attempt to regulate Laurel's initiation of an interstate service, the RD concludes that Laurel must seek Commission authorization to change the direction of service it is providing over its pipeline system. RD, p.

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67.²⁴ This conclusion similarly ignores controlling Commission precedent. Laurel RB, pp. 26, 46. As explained in Laurel's Reply Brief, in *Harris v. Nat'l. Transit Co.*, 1976 Pa. PUC LEXIS 50, at *4-5 (Order Entered Aug. 27, 1976) ("*Harris*"), the Commission held that an oil pipeline can change the method of service from pipeline to trucks without Commission approval. Therein, the Commission explained that "[c]entral to the disposition of the instant case is the question whether a utility may change its method of operation where it appears that the original method has become outdated or uneconomical." *Id.*, at *3. The Commission held:

The decision to change the method of operation from a pipeline trucking operation to a trucking operation is a management decision which must be affirmed by this Commission unless the record supports a finding of a clear abuse of discretion by respondent.

Id., at *4-5 (emphasis added).

If an oil pipeline can cease pipeline transportation service without Commission approval, then surely Laurel can change the direction of pipeline service. Again, the RD fails to even cite, much less attempt to distinguish, this controlling case law. For this reason, the Commission should reject the RD's conclusion that Laurel must obtain Commission approval to effect the proposed reversal and instead find that Laurel's decision to change the method of operation of its pipeline without Commission approval.

C. The RD's Proposed Interpretation Of Laurel's Certificate Of Public Convenience Constitutes Discriminatory Regulation That Disadvantages Laurel's Proposed Interstate Service In Favor Of Intrastate Service.

In addition to contradicting Commission precedent, the RD's proposed interpretation of Laurel's certificate would result in discriminatory regulation that disadvantages Laurel in

²⁴ This recommendation presupposes that Laurel's certificate does not authorize it to provide eastbound petroleum product transportation service; as explained in Section III.3.A. *supra*, the RD's analyses and conclusions are flawed in this regard.

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relation to one of its competitors. The RD effectively recommends that the Commission interpret Laurel's certificate differently than it interpreted the Sunoco certificates in the *Sunoco 2014 Petitions Order*, without any reasoned basis for this differentiation. See Section III.A. *supra*; see also Laurel RB, pp. 17-23. In this instance, the Commission would effectively regulate competition as between Laurel and Sunoco by arbitrarily interpreting certificates containing parallel language in a different manner. Therefore, the Commission should reject the RD's recommended interpretation of Laurel's certificate.

4. THE RD COMMITS AN ERROR OF LAW BY APPLYING A "FOUR FACTOR" STANDARD OF REVIEW THAT, UNDER CONTROLLING COMMISSION PRECEDENT, IS INAPPLICABLE TO THE ABANDONMENT OF SERVICE BY A COMMON CARRIER OIL PIPELINE.

A. Summary.

The RD recommends that the Commission solely consider the following four factors: (a) the extent of the loss to the utility; (b) the prospects of the system being used in the future; (c) the balancing of the utility's loss with the hardship on the public; and (4) the availability of alternative service. RD, p. 84 (citing *Commuters' Comm. v. Pa. Pub. Util. Comm'n*, 88 A.2d 420 (Pa. Super 1952)). The RD goes on to state that the utility must also demonstrate that its losses could not be cured by granting a reasonable rate increase. RD, p. 84. The RD applied this test in its analysis of Laurel's Application, despite controlling precedent that demonstrated that the application of a "four-factor" test was improper, and did not engage in any analysis of this controlling precedent.

B. Commission Precedent Makes Clear That The Correct Standard of Review Is the "Affirmative Public Benefits" Test.

Oil pipeline abandonments are evaluated under the affirmative public benefits test. Laurel MB, pp. 54-58 (citing *Application of Sunoco Pipeline, L.P.*, Docket Nos. A-2013-

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2371789, P-2013-2371775, p. 7 (Order entered Aug. 29, 2013) (“*Sunoco 2013 Application Order*”) (“[W]e conclude that the record provides substantial evidence of affirmative public benefit sufficient to warrant approval of the proposed Application...”); *Application of Buckeye Pipe Line Company, L.P.*, Docket No. A-140110F2000, p. 3 (Order Entered March 7, 2005) (“Upon full consideration of these factors, we conclude that the record provides substantial evidence of affirmative public benefit sufficient to warrant approval of the proposed Application.”)).

The RD, with no real explanation or rationale, rejects this precedent and adopts a four-factor standard, which is not supported by a single oil pipeline abandonment case. *See* RD, p. 84. Indeed, oil pipelines are both common carriers and public utilities under Pennsylvania law and, therefore, must be and always have been evaluated under a different standard than traditional public utilities. *Laurel MB*, pp. 35-46; *Laurel RB*, pp. 23, 26-29.²⁵ Importantly, the only oil pipeline proceeding cited as support for the application of the four factors used in the RD is *Application for Approval of Abandonment of a Portion of Sunoco Pipeline, LP’s Petroleum Products Pipeline Transportation Service*, Docket No. A-140001F2001, 2005 Pa. PUC LEXIS 699, 2004 WL 5854823 (Order Entered Jan. 24, 2005) (“*Sunoco 2005 Application Order*”). RD, p. 84 (citing the *Sunoco 2005 Application Order*). Yet, the *Sunoco 2005 Application Order* contains no reference to a multi-factor analysis.

²⁵ Importantly, *Laurel’s Reply Brief* makes clear that the reality of the impacts of the post-reversal service on *Laurel’s pipeline* requires analysis under a standard other than the traditional multi-factor abandonment test. *Laurel RB*, pp. 28-29. Petroleum products will continue to be able to enter *Laurel’s pipeline* at all existing origin points, and petroleum products will continue to be delivered on *Laurel’s pipeline* at all existing destination points. As such, the public will continue to receive petroleum products at the same locations it does today, just from a different direction. Therefore, an oil pipeline is not required to obtain a certificate before changing the direction of service over its facilities, where the same facilities are used to provide service to the same customers, and the only change in service is a change in the direction the service is provided.

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The two most recent Commission orders evaluating proposed oil pipeline abandonments both applied the *City of York*²⁶ affirmative public benefits test. Laurel MB, pp. 54-58 (citing *Application of Sunoco Pipeline, L.P.*, Docket Nos. A-2013-2371789, P-2013-2371775, p. 7 (Order entered Aug. 29, 2013); *Application of Buckeye Pipe Line Company, L.P.*, Docket No. A-140110F2000, p. 3 (Order Entered March 7, 2005)); *see also* Laurel RB, pp. 35-37. Importantly, the RD does note, and indeed cannot, distinguish the *Sunoco 2013 Application Order*, wherein the Commission evaluated the affirmative public benefits—rather than the four factors advanced by the Indicated Parties—and approved Sunoco’s proposed reversal under the *City of York* standard. Laurel RB, p. 36. Regardless of the information contained in the related application, the Commission analyzed Sunoco’s proposed abandonment under the *City of York* standard and concluded that the significant public benefits outweighed the minimal impacts to the customers; the Commission did not analyze Sunoco’s proposed abandonment under the four factor test applied by the RD. *See* Laurel RB, pp. 33-34

Should the Commission adopt the RD’s proposed standard of review, it would endorse the discriminatory treatment of Laurel by subjecting Laurel to a standard of review that is inconsistent with its prior review of oil pipeline abandonments. Therefore, the Commission should reject the RD’s recommended four-factor analysis and, instead, apply the affirmative public benefits standard that it has determined is applicable to other oil pipeline abandonments.

C. Even If A Multifactor Standard Were Appropriate, The “Four Factor” Standard Applied By The RD Is In Error And Contrary To Controlling Commission Precedent.

The RD compounds its application of the wrong legal standard of review by reciting and applying only four factors. RD, p. 84. It is improper to characterize the “multi-factor” abandonment test as being limited to four factors. Laurel MB, p. 59. Pennsylvania appellate

²⁶ *City of York v. Pa. Pub. Util. Comm’n*, 295 A.2d 825 (Pa. 1972).

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courts have consistently reiterated that the legislature did not define a specific set of criteria that an applicant must satisfy in order to obtain Commission approval of an abandonment. Laurel MB, p. 59 (citing *Seaboard Tank Lines, Inc. v. Pa. Pub. Util. Comm'n*, 502 A.2d 762, 764-65 (Pa. Cmwlth. 1985); *Commuters' Committee*, 88 A.2d at 424); *see also* Laurel RB, pp. 30-33.

The case law relied upon in the RD flatly rejects any suggestion that the Commission's analysis is limited to four factors. In *Commuters' Committee*, the Pennsylvania Superior Court explained that the Code "does not define in detail the circumstances or conditions under which the Commission may permit abandonment by a carrier of a portion of its service" and that the four factors are merely "among the factors to be considered." *Commuters' Committee*, 88 A.2d at 424 (cited in Laurel MB, p. 59, and Laurel RB, p. 31); *see also* Laurel RB, pp. 31-33.

For these reasons, the RD erred by limiting the evaluation of Laurel's proposed reversal under the traditional multi-factor abandonment standard to four, exclusive factors. Therefore, to the extent the Commission adopts a multi-factor standard of review, it Commission should reject the RD's recommendation to limit the standard to the four, exclusive factors contained in the RD.

5. THE RD ERRED BY CONCLUDING THAT TRANSPORTATION OF PETROLEUM PRODUCTS BETWEEN THE MIDWEST AND PITTSBURGH IS NOT CURRENTLY CONSTRAINED.

A. All Parties Agree There Are Logistical, Geographical And Terminal Constraints Between Pittsburgh And The Midwest.

The existence of operational constraints between Midwestern refineries and Pittsburgh is supported by undisputed record evidence. Importantly, Gulf's witness testified repeatedly as to the existence of constraints. Laurel MB, p. 83. In his Direct Testimony, Mr. Johnston stated:

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

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Gulf St. No. 1, p. 9 (emphasis added). Mr. Johnston also cited pipeline constraints from the Midwest as limiting supply options to Pittsburgh at his deposition and in his Surrebuttal Testimony. Laurel C.E. Exhibit No. 17 (Tr. 81:15-82:4); Gulf St. No. 1-SR, p. 7.

Husky's witness Mr. Miller concurred with Mr. Johnston's assessment that operational, geographical and terminal constraints between the Midwest and Pittsburgh exist. Laurel MB, pp. 81-83, 131-33. Laurel's witness Dr. Jones also testified to the existence of these constraints, *i.e.* a transportation bottleneck. *See* Laurel Stmt. No. 7-RJ, p. 4:2-6; Hearing Tr. 690:21-691:18.

The RD's findings regarding constraints are false. *See, e.g.*, RD, pp. 117, 167, 194. Indeed, the RD misrepresents the record by finding "As for Laurel's contention that downstream constraints...are limiting the entry of Midwestern products fully into the Pittsburgh market, I note that Laurel has failed to submit evidence that substantiates this claim." RD, p. 117.

B. The RD's Reliance On Rated Pipeline Capacity Is In Error And Should Be Rejected.

While the existing pipelines that connect Midwestern refineries to Pittsburgh have sufficient overall rated capacity to supply Pittsburgh, the overall rated capacity of these pipelines cannot form a reasoned basis for the conclusion that constraints do not exist where geographical and operational constraints limit the deliverability (*i.e.* effective capacity) of those pipelines. *See* Laurel MB, pp. 81-83. Indeed, it is undisputed that the overall rated capacity of a set of pipelines is different from the pipelines' functional deliverability. Laurel MB, pp. 81-83 (noting the agreement of the Husky and Gulf witnesses at hearing on this issue).

The RD commits a fundamental error by basing its conclusions regarding the non-existence of constraints on the overall rated capacity of existing pipelines connecting the Midwest to Pittsburgh. RD, p. 167 (using rated capacity to find "Midwestern supplies are already reaching Pennsylvania, yet excess capacity for these products into Pittsburgh is not being

fully utilized.”); *see also* RD, Finding of Fact ¶ 125.²⁷ Therefore, the Commission should reject the RD’s recommendations regarding the existence of constraints.

C. The Existence Of Constraints Fundamentally Undermines The Conclusions Of The Recommended Decision.

The significance of the RD’s fundamental error regarding capacity constraints cannot be overstated. Once the undisputed facts regarding the existence of constraints are accepted, the RD’s decision to deny Laurel’s Application collapses like a proverbial “house of cards.”²⁸ Since constraints exist, the RD’s conclusions regarding the cost-advantage of Midwestern refineries must be rejected, because constraints—not competition—are preventing additional low cost Midwestern supplies from reaching Pittsburgh.²⁹ Since constraints exist, the RD’s conclusion that decreasing volumes over Laurel are temporary or cyclical is not credible because as additional lower-cost Midwestern supplies are allowed to reach Pittsburgh, Laurel’s volumes will continue to decline.³⁰ Since constraints exist, the Indicated Parties’ arguments regarding supplies to Pittsburgh from eastern refineries are not credible because the only reason additional lower-cost Midwestern supplies are not backing out greater quantities of East Coast barrels is that it is currently logistically impossible to do so.³¹ Since constraints exist, the Indicated Parties’ claims regarding the capability of Midwestern refineries to produce and supply additional low Reid

²⁷ The RD’s conclusion that constraints do not exist is further contradicted by the fact that prospective shippers have committed substantial capital to the reversal, in the form of long-term contracts on a take-or-pay basis, to acquire firm capacity rights.

²⁸ To the extent that the RD may suggest that additional lower-cost Midwestern supplies will not reach Pittsburgh if the capacity constraints between the Midwest and Pittsburgh are alleviated, because PADD 2 (Midwest) refineries do not have sufficient supply to meet Pittsburgh’s demand, this finding is also completely contrary to the record. Laurel explained in its Main Brief that the supply/demand balance of PADD 2 (the Midwest) less prone to disruption than the supply/demand balance of PADD 1 (the East Coast). Laurel MB, pp. 97-100. In addition, PADD 2 is connected to and able to draw products from refineries in PADD 3 (the Gulf Coast), if necessary. Laurel MB, p. 98. Moreover, demand for gasoline is projected to decrease in the future, meaning lower-cost Midwestern supplies will further compete to serve all markets, including Pittsburgh and Central Pennsylvania and will result in lower prices for consumers. Laurel MB, pp. 83-86.

²⁹ Laurel MB, pp. 81-83, 131-133; *see also, e.g.*, Laurel RB, Sections V.C.1.b.(4) and V.D.1.a.(2).

³⁰ *See* Laurel RB, Section V.C.1.b.(4).

³¹ *See* Laurel RB, Section V.C.1.b.

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Vapor Pressure (“RVP”) volumes to Pittsburgh cannot be accepted.³² And, since constraints exist, the Indicated Parties’ claims that Laurel’s proposed reversal will result in increased truck traffic must be disregarded because existing constraints, left unaddressed, will result in suppliers seeking to transport additional Midwestern supplies from terminals west of Eldorado to points east of Eldorado by truck.³³ In short, nearly the entire RD is premised on the flawed conclusion that excess capacity to transport lower-cost Midwest supplies into Pennsylvania exist; yet, all parties agree there are substantial constraints. The RD cannot be accepted in light of this undisputed record evidence.

6. THE RD ERRED BY CONCLUDING THAT LAUREL DID NOT DEMONSTRATE THAT MIDWESTERN SUPPLIES ARE COST ADVANTAGED RELATIVE TO EAST COAST SUPPLIES.

The cost of crude oil is the overwhelming factor in determining retail gasoline prices. Laurel MB, pp. 73, 92; Laurel RB, pp. 54-55; *see also* IP MB, p. 74. The RD fails to properly account for this undisputed fact, which results in a flawed analysis that disregards the primary determinant of the retail price for gasoline.

Midwestern refineries have access to Bakken and Western Canadian Select crude oil, which are less expensive than Brent crude oils used by East Coast refineries. *See* Laurel MB, pp. 72-74, 78-80, 91-92. The RD is simply incorrect in suggesting that Laurel did not present any data or studies on this point. RD, p. 161.

And, importantly, the Indicated Parties’ own documents confirm that, not only do Bakken and Western Canadian Select crudes possess a *present* cost-advantage over Brent crudes, their documents also confirm that the advantage is *projected to endure into the future*. Laurel RB, p. 54 (summarizing HIGHLY CONFIDENTIAL evidence confirming the enduring cost advantage

³² *See* Laurel RB, Section V.C.1.c.(2)(a)(ii).

³³ *See* Laurel RB, Section V.C.1.c.(2)(c) and V.1.d.(1)

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of Midwestern refineries' crude sources). Reliable documents produced by the Indicated Parties confirm Laurel's evidence. Laurel MB, pp. 76-80; Laurel RB, pp. 54-55. This evidence is summarized below:

- [BEGIN HIGHLY CONFIDENTIAL] [REDACTED]
 - [REDACTED]
 - [REDACTED]
 - [REDACTED]
- [END HIGHLY CONFIDENTIAL]

See Laurel RB, p. 74. Indeed, the RD's conclusion that Laurel did not provide "a study supporting their claims that Midwest supply is the lowest cost supply source" completely disregards and is contrary to extensive and compelling record evidence. RD, p. 161. Not only did Laurel witnesses present credible data to this effect, the Indicated Parties' own documents confirmed that Midwestern refineries are, in fact, lower-cost than East Coast refineries. The RD's failure to recognize this evidence and failure to consider that the Indicated Parties' own documents support Laurel's position is another fundamental error that cannot be accepted.

The RD attempts to sidestep the enduring cost-advantage of Midwestern refineries' crude sources demonstrated by both Laurel's and the Indicated Parties' evidence by finding that these sources are "now more closely connected" to global crude oil markets (*e.g.*, Brent crude prices) such that transportation costs eliminate the cost advantage. This conclusion provides no support for the RD. RD, pp. 161-162. Regardless of whether the cost-advantage has or will narrow in

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the future, the fact remains that Midwestern refineries' crude sources are and will continue to be cost-advantaged over Eastern refineries' crude sources. *See* Laurel MB, pp. 72-74, 78-80, 91-92; Laurel RB, p. 54. No record evidence suggests otherwise.

Finally, the RD's conclusion that "[c]onsidering the transportation costs of those clean products, the overall effect is to eliminate the cost advantage of Midwestern product supplied through much of Pennsylvania" is demonstrably false. RD, p. 162. Given that (a) all parties accept the cost-advantage for Midwestern refineries' crude sources is approximately \$5.00/barrel (*see* Laurel MB, pp. 78-79, 91-92), and (b) the record evidence that Buckeye's current transportation rate from Woodhaven, MI to Coraopolis, PA is \$2.2936 per barrel (*i.e.* the "proxy" for Midwest to Pittsburgh transportation rates used by the Indicated Parties), the RD's conclusion that transportation costs are sufficient to erode the Midwest's crude cost-advantage do not add up. The per barrel transportation rate of \$2.2936 is less than half of the per barrel crude cost \$5.00.

For these reasons, the RD's conclusion that Laurel did not provide "a study supporting their claims that Midwest supply is the lowest cost supply source" is contrary to record evidence and must be rejected by the Commission. As explained in Section III.7 *infra*, the present and projected crude oil cost advantage of Midwestern refineries demonstrates that Laurel's proposed reversal will result in decreased retail gasoline prices.

7. THE RD ERRED BY CONCLUDING THAT LAUREL'S PROPOSED REVERSAL WILL NOT BENEFIT PENNSYLVANIA CONSUMERS BY DECREASING RETAIL GASOLINE PRICES.

A. All Parties Agree That The Proposed Reversal Will Decrease Gasoline Prices In Central and Eastern Pennsylvania.

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Undisputed record evidence confirms that the proposed reversal would decrease retail gasoline prices in Central³⁴ and Eastern Pennsylvania. Laurel MB, pp. 87-89; Laurel RB, pp. 63-65. Importantly, PESRM witness Mr. Sadlowski confirmed that the result of the reversal would be substantially lower gasoline prices in the markets that PESRM products currently reach, ultimately benefitting consumers. Laurel RB, p. 64. Specifically, he testified, that [BEGIN

HIGHLY CONFIDENTIAL] [REDACTED]

[END HIGHLY CONFIDENTIAL]

The RD completely ignores this testimony, and fails to properly credit the significant, undisputed benefits to Central and Eastern Pennsylvania consumers that would result from the proposed reversal. Therefore, any suggestion that Laurel “refuses to quantify the effect of the reversal on gasoline prices at the pump” (*see* RD, p. 162) is a fundamental error, which demonstrates that the RD’s conclusions are contrary to record evidence.

B. Laurel’s Proposed Reversal Will Decrease Gasoline Prices In Pittsburgh.

a. Laurel Presented Substantial Evidence Demonstrating That The Proposed Reversal Will Decrease Gasoline Prices In Pittsburgh.

Contrary to the RD’s findings, Laurel supported its claims that Midwest supply is the lowest cost supply source with data and studies that were confirmed by the Indicated Parties’ own documents. *See* Section III.6. *supra*. Based on this information, Laurel presented analyses that both directionally projected the impact of the reversal on Pittsburgh gasoline prices based on well-accepted economic principles and quantified the benefit, in dollars, that the proposed

³⁴ While the RD correctly found that the proposed reversal would benefit supply reliability in Central Pennsylvania by doubling the sources of supply for the region, she concluded this benefit did not outweigh the claimed harms to Pittsburgh market participants and Philadelphia refineries. RD, p. 167. It is worth noting, however, that Altoona deliveries are not as miniscule as the RD would suggest; annual deliveries to Altoona in 2016 were approximately 33,000 BPD and Pittsburgh’s volumes for the twelve months ending September 2017 were 45,000 BPD. *See* Laurel MB, p. 68.

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reversal would have on Pittsburgh gasoline prices. Laurel MB, pp. 72-86, 89-94; Laurel RB, pp. 107-111.

Specifically, Laurel demonstrated that it Pittsburgh prices can be directionally projected to decrease because (1) the historic and projected future crude-cost acquisition advantage and production efficiencies of Midwestern refineries will continue to increase the volume of Midwestern supplies attempting to reach Pennsylvania, (2) Laurel's proposed reversal, as a part of Buckeye's Broadway II project will alleviate capacity constraints that would otherwise prevent these supplies from reaching Pittsburgh, and (3) these lower-cost supplies would result in lower retail gasoline prices by backing out the current, highest-cost suppliers in Pittsburgh (*i.e.* foreign refined barrels). Laurel MB, pp. 72-86, 89-94. In addition, Laurel quantified this price benefit to consumers using the Indicated Parties' own documentation, which supported the same conclusions advanced by Laurel and rejected by the RD. Laurel MB, pp. 89-94. Therefore, the RD's suggestions that Laurel "refuses to quantify the effect of the reversal on gasoline prices at the pump" or that it was Laurel's position that it is "'simply impossible' to quantify the effect" of the reversal on gasoline prices are blatantly misrepresentative of the record and false. RD, p. 162.

While the RD attempted to diminish the reliability of Dr. Jones' quantification of an approximately nickel per gallon or \$80,000 per day benefit to consumers, the fact remains that Dr. Jones based his calculation on documents produced by the Indicated Parties, which purportedly supported the claims the RD found credible in this proceeding. *See* RD, p. 164 (finding "more information" was needed to support Dr. Jones's analysis using the Indicated Parties' documents). The RD's suggestion that it is unclear how Laurel reached this conclusion without seeing how wholesale prices and pipeline transportation rates affected the estimate

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disregards the content of the documents used by Dr. Jones. RD, p. 164. Indeed, Laurel Cross Examination Exhibit No. 14 includes a breakdown of proportion of retail gasoline costs represented by “distribution and marketing costs,” which would subsume wholesale prices and transportation rates. Laurel MB, p. 92; *see also* Laurel Cross Examination Exhibit No. 14 (graphic on page 2). In addition, Dr. Jones is a pre-eminent economic expert in oil pipeline markets, whose credentials and expertise in this field are uncontested. *See* Laurel St. No. 7-R, p. 1; *see also* Laurel Exhibit STJ-1 (CV of Dr. Scott T. Jones).

Moreover, the RD’s conclusions regarding the effect of the reversal on Pittsburgh gasoline prices are completely contrary to sound economic principles. Laurel RB, pp. 107-109. Given that (a) Midwestern refineries have access to lower-cost crude and are more efficient than East Coast refineries (*see* Section III.6 *supra*) and (b) all parties agree that the reversal will decrease gasoline prices in Eastern and Central Pennsylvania (*see* Section III.7.A. *supra*), it is illogical to conclude Pittsburgh’s prices will increase. Laurel RB, pp. 107-109.

For the reasons explained above, the RD’s findings and conclusions regarding the benefits of Laurel’s proposed reversal to Pittsburgh consumers are misrepresentative of record evidence, and illogical. Therefore, the RD’s conclusion that Laurel failed to demonstrate the proposed reversal will decrease gasoline prices in Pittsburgh represents a fundamental error and must be rejected.

b. The RD’s Conclusion Regarding The Benefits Of The Proposed Reversal Is Based On A Fundamentally Flawed Delivered Price Analysis.

The RD’s conclusion that the delivered price (cost) of gasoline “is more closely related to the price at the pump than the price of crude oil” (*see* RD, p. 166) is undermined by undisputed record evidence. No party disputes the fact that crude oil is the overwhelming determinant of retail gasoline prices. *See* Section III.6. *supra*. The RD instead bases its recommendations

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regarding the benefits of the proposed reversal on a flawed and irrational delivered price (cost) analysis. As such, its recommendations are in error and must be rejected.

Furthermore, there are numerous, fatal flaws associated with the Indicated Parties' delivered price (cost) analysis. Laurel MB, pp. 108-123; Laurel RB, pp. 65-68. In addition to violating fundamental economic principles, the delivered price (cost) analysis adopted in the RD is simply wrong more often than it is right. Laurel MB, pp. 119-121; Laurel RB, p. 67. Moreover, the delivered price (cost) comparison espoused by the Indicated Parties and adopted by the RD is simply economically irrelevant to the evaluation of retail price; the relevant analysis is the effect that the proposed reversal would have on the marginal cost of supply Pittsburgh, which Laurel demonstrated would back out the current marginal supplier and decrease petroleum products prices. *See* Laurel MB, p. 116.

For these reasons, the RD's adopted delivered price (cost) analysis cannot be used to discredit Laurel's evidence of benefits to consumers or as the reasoned basis for a conclusion that Laurel's proposed reversal will harm the Pittsburgh market. Therefore, the RD's conclusions must be rejected.

8. THE RD ERRED BY IGNORING OTHER MAJOR PUBLIC BENEFITS ASSOCIATED WITH THE REVERSAL.

The RD further erred by failing to examine any other benefits of the reversal.³⁵ In addition to decreasing prices for Pennsylvania consumers, the proposed reversal would also benefit national and state energy policy. Laurel MB, p. 100-106. In particular, Laurel's proposed reversal would reduce reliance on overseas imports of foreign oil by backing those

³⁵ While the RD purportedly analyzes the benefit from increased access to Midwestern shale crudes, its analysis is based on the same flawed conclusions discussed in these exceptions. RD, p. 167; *see* Sections III.6. (regarding crude oil costs), III.7. (regarding price benefits for consumers) and III.5. (regarding constraints) *supra*.

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barrels out of Pennsylvania markets, furthering longstanding national energy policy. Laurel MB, pp. 100-101.

9. THE RD ERRED BY CONCLUDING THAT PITTSBURGH AND PHILADELPHIA MARKET PARTICIPANTS HAVE NO ADEQUATE ALTERNATIVES IF THE PROPOSED REVERSAL IS APPROVED.

A. The RD Errs By Requiring Laurel To Demonstrate That Alternatives Will Make The Affected Shippers And Market Participants Whole.

Commission precedent makes clear that an entity that abandons service need not make each affected customer whole in order for the abandonment to be approved. *See Sunoco 2005 Application Order*, 2005 Pa. PUC LEXIS 699 at *12; *Re Pennsylvania Electric Company*, 70 Pa. PUC 148 (1989).³⁶ Furthermore, it is clear that East Coast refineries are connected to numerous alternative transportation markets, which in turn connect these refineries to a variety of markets. Laurel MB, pp. 151-168; Laurel RB, pp. 81-83, 93-101.³⁷

Despite this black letter law, the RD concludes that “[t]he alternative sources of obtaining supply, either separately or together, would fail to replicate satisfactorily the benefits of service currently provided to the public via Laurel’s pipeline.” RD, p. 198. In particular, the RD concludes that Laurel must demonstrate that alternatives available to the Philadelphia refineries (*i.e.* PESRM and Monroe) must connect these refineries to “new markets and new demand.” RD, p. 197.

The attempt by the RD to require Laurel to demonstrate an alternative will provide a shipper with a “new market and new demand,” or otherwise replicate the benefits received by the

³⁶ Laurel further notes that it is a fundamental principle of law that a public utility or common carrier is not required to provide “perfect service” under Section 1501 of the Code. *See Re Metropolitan Edison Company*, 80 Pa. PUC 663, 672 (1993). If a common carrier is not required to provide perfect service in the first instance, it is not logical to require it to also provide perfect substitute service in the context of an abandonment.

³⁷ As explained in Laurel’s briefs, these alternatives include: (1) connections to other major markets on the Laurel and combined Laurel/Buckeye systems in Pennsylvania and upstate New York; (2) other pipelines connecting to the New York Harbor; (3) barges connecting to the New York Harbor; (3) local truck racks for the Philadelphia market; and (4) a virtual tariff. *See* Laurel MB, pp. 151-168; Laurel RB, pp. 81-83, 93-101.

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current service, contradicts Commission precedent and establishes an impossibly high burden. It essentially requires Laurel to guarantee the profitability of its non-regulated, competitive customers by either maintaining uneconomical service or otherwise guaranteeing those entities access to other similarly profitable markets. The RD's attempt to impose this requirement in its analysis is improper and must be rejected

Furthermore, the RD's finding that Laurel has not shown that East Coast refineries' products will be similarly priced is illogical and once again highlights the RD's error. RD, p.

196. As explained in Laurel's Reply Brief Monroe receives [BEGIN HIGHLY CONFIDENTIAL] [REDACTED]

[REDACTED] [END HIGHLY CONFIDENTIAL] and PESRM [BEGIN HIGHLY CONFIDENTIAL] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] [END HIGHLY CONFIDENTIAL]

Laurel RB, p. 83. Evidence of record demonstrates that both PESRM and Monroe price their products across all markets, irrespective of market demand, in this manner. See Laurel MB, pp. 149-151. Moreover, no witness for PESRM or Monroe had access to actual pipeline data showing volumes from their respective refinery that reached Pittsburgh, because they primarily sell their product FOB at the refinery gate and, thus, do not market it themselves. Laurel MB, p. 147, n. 86. As such, even under the RD's improper and overly stringent standard for evaluating these alternatives, Laurel demonstrated that PESRM and Monroe would be able to maintain their existing pricing structure.

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Finally, by recommending that the in-state refineries (*i.e.* PESRM and Monroe) must be provided access to new markets with new demand for Laurel to meet its burden regarding alternatives, the RD violates the dormant commerce clause. Indeed, the alternatives analysis imposed by the RD specifically mandates that any alternative must replicate the economic benefits provided by Laurel's service and ensure the profitability of certain private intrastate entities (*see* RD, p. 197); without such a showing, according to the RD, interstate entities may not engage in interstate commerce on Laurel's pipeline system.

For all of these reasons, the RD's analysis of alternatives constitutes a fundamental error that must be rejected by the Commission.

B. An Unquantified, Speculative Increase In The Price Of Low-RVP Gasoline In Pittsburgh Is An Insufficient Basis To Conclude Pittsburgh Will Not Have Adequate Alternatives.

While the RD credits the existence of eight (8) post-reversal alternatives to Pittsburgh market participants, it reasons that the elimination of low-RVP gasoline produced by East Coast refineries demonstrates all of Laurel's proffered alternatives are inadequate. RD, pp. 193-195. This conclusion is in error for several reasons.

First, the RD's conclusion incorrectly assumes that petroleum products are not fungible and that East Coast low-RVP gasoline alone can meet Pittsburgh's low-RVP requirements, despite the fact that Midwestern refineries produce low-RVP gasoline for other markets that have the same low-RVP requirement as Pittsburgh.

Second, the RD's conclusion is inherently unquantified and speculative. The RD neither quantifies how much the price of low-RVP gasoline would supposedly increase nor provides the timing or probability for such price increases to occur. Indeed, no such quantification exists on the record in this proceeding. Rather, the record demonstrates that Midwestern refineries are ready, willing and able to produce sufficient quantities of low-RVP gasoline if constraints

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between the Midwest and Pittsburgh are alleviated as a part of Laurel's proposed reversal. Laurel MB, pp. 143-145; Laurel RB, pp. 71-76.

Finally, even if one accepts the RD's analysis of the production of low-RVP gasoline by Midwestern refineries, this analysis only deals with pipeline supplies to Pittsburgh from Midwestern refineries. *See* RD, p. 193 (listing eight post-reversal alternatives). It does not otherwise account for any of the other five alternatives that are not tied to Midwestern refineries.

10. THE RD ERRED BY CONCLUDING THAT LAUREL FAILED TO DEMONSTRATE THAT NO HARM TO PITTSBURGH AND PHILADELPHIA MARKET PARTICIPANTS WOULD RESULT FROM THE REVERSAL

Laurel demonstrated that its proposed reversal will not harm Pittsburgh market participants or East Coast refineries. Laurel MB, pp. 107-146 (Pittsburgh), 146-75 (East Coast refineries); Laurel RB, pp. 60-76 (Pittsburgh), 76-86 (East Coast refineries). As an initial matter, it is worth repeating that the proper, affirmative public benefits test does not require that every customer of a utility benefit from the utility's proposal. *Popowsky v. Pa. Pub. Util. Comm'n*, 594 Pa. 583, 617-618, 937 A.2d 1040, 1061 (Pa. 2007). The RD again ignores this precedent and rests on its analysis and conclusions regarding the benefits of the proposed reversal; it concludes that "Laurel has failed to show that the proposed reversal will not harm the Pittsburgh market." RD, pp. 167-168 (emphasis added). Similarly, the RD found that Laurel failed to demonstrate that the harm to East Coast refineries, *i.e.* PESRM and Monroe, would be *de minimis*. RD, pp. 168-169. The findings and conclusions regarding harm constitute fundamental error and must be rejected.

A. The RD Improperly Requires Laurel To Prove A Negative In Its Evaluation Of Harm.

The RD's requirement that Laurel must demonstrate an absence of harm from the proposed reversal is analogous to the insuperable difficulty inherent in proving a negative.

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Essentially, the RD would require Laurel to demonstrate a complete absence of harm to any market participant in order for the reversal to be approved. Pennsylvania law generally concludes that the party with the burden of proof cannot be required to prove a negative in order to prevail.³⁸ In the rare circumstances a party is required to affirmatively prove a negative, a statute or regulation expressly states this burden and defines what the party must prove.³⁹ No provision of the Code applicable to the issuance of a certificate of public convenience requires Laurel, as the applicant, to prove its proposed reversal will not result in any harm in order to be approved. Therefore, the Commission must reject the RD's conclusion regarding the alleged harms of the reversal.

B. The RD Improperly Finds That Pittsburgh Will Be Harmed By The Reversal.

The RD's conclusion that Pittsburgh will be harmed by the proposed reversal is based on its acceptance of the Indicated Parties' flawed delivered price and arbitrage analyses, and its acceptance of the Indicated Parties' claims that the reversal will increase price volatility. RD, pp. 164-167. As explained below, the RD's adoption of these analyses should be rejected.

a. The Arbitrage Analysis Adopted In The RD Was Demonstrated To Be Wrong More Often Than It Was Correct.

Laurel demonstrated that the Indicated Parties' arbitrage analysis of Pittsburgh is simply wrong more than 50% of the time. Laurel MB, pp. 119-121; Laurel RB, p. 67. The RD bases its conclusion that the proposed reversal will harm Pittsburgh on this arbitrage analysis. *See* RD,

³⁸ *Tincher v. Omega Flex*, 104 A.3d 328, 409, 628 Pa. 296, 431 (Pa. 2014) ("proving a negative is generally not desirable as a jurisprudential matter because of fairness concerns related to anticipating and rebutting allegations"); *Fazio v. Pittsburgh Rys. Co.*, 321 Pa. 7, 182 A. 696, 698 (Pa. 1936) ("[i]t is a well-recognized principle of evidence that he who has the positive of any proposition is the party called upon to offer proof of it. It is seldom, if ever, the duty of a litigant to prove a negative until his opponent has come forward to prove the opposing positive").

³⁹ *See, e.g., Commonwealth v. 1997 Chevrolet*, 106 A.3d 836 (Pa. Cmwlth. 2014) (noting that the Pennsylvania Forfeiture Act places the burden on a property owner to prove a negative, *i.e.* a lack of knowledge that is reasonable under the circumstances); *DOT v. Agric. Lands Condemnation Bd.*, 5 A.3d 821, 826 (Pa. Cmwlth. 2010) (noting that the Pennsylvania Agricultural Land Preservation Policy requires an applicant-condemnor to prove a negative, *i.e.* that no reasonable and prudent alternative to condemning lands within an agricultural security area exists under 71 P.S. § 106(b)).

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pp. 162-163, 165-168. The Commission cannot credibly conclude that an arbitrage analysis, which is incorrect more often than it is correct, was sufficiently reliable to rebut Laurel's demonstration that the proposed reversal will benefit Pittsburgh consumers. Therefore, the RD's findings regarding the loss of arbitrage opportunities on the Pittsburgh market should be rejected.

b. The Volatility Analyses Adopted by The RD Are Flawed.

Laurel also demonstrated that the reliability and pricing volatility analyses advanced by the Indicated Parties were without merit. Laurel MB, pp. 123-131 (pricing volatility), 131-143 (reliability); Laurel RB, pp. 68-69 (pricing volatility), 69-70 (reliability). Furthermore, the volatility attributed to Midwestern gasoline prices, which the Indicated Parties argued would occur with respect to Pittsburgh prices if the reversal is approved, disregards the fact that Midwestern price volatility is primarily attributable to the nature of competition between Midwestern retailers and not the source of supply. Laurel MB, pp. 129-130. Finally, the RD's reliance on the Indicated Parties' flawed claims regarding price volatility disregards credible evidence demonstrating that the proposed reversal would benefit reliability and optionality in Pittsburgh. Laurel MB, pp. 131-135. Therefore, the RD's findings regarding price volatility should be rejected.

C. The RD Improperly Finds That Pittsburgh Is An Important And Irreplaceable Market For East Coast Refineries.

The RD also concludes that Eastern refineries, *i.e.* PESRM and Monroe, will be harmed by the reversal, because it will "diminish substantially PESRM's and Monroe's ability to move product out of their respective refineries." RD, p. 169. The RD characterizes the Pittsburgh market as "important and irreplaceable" to the operations of PESRM and Monroe. RD, p. 118. The RD further opines that the loss of the Pittsburgh market would result in refinery closures and lost jobs, as well as the loss of residual fuel supply sources for essential institutions and

organizations in Philadelphia. RD, p. 169. While the RD's findings of harm are specifically related to its analysis of alternatives available to PESRM and Monroe (*see* RD, pp. 195-197), the RD also overstates the potential harms that would be experienced by the refineries. Importantly, the primary harm alleged by the East Coast refineries is that their products may have to be sold at lower prices in Central and Eastern Pennsylvania; this "harm" ultimately results in a corresponding pricing benefit for Central and Eastern Pennsylvania consumers. Laurel MB, p. 154; Laurel RB, p. 86. The RD fails to address or otherwise analyze this fact.

a. The RD's Conclusions Regarding The Harm To East Coast Refineries Are Contrary To The Record.

i. The RD Disregards, Without Basis, Documentary Evidence That Demonstrates East Coast Refineries Are Shipping Less And Less Product To Pittsburgh.

The RD's conclusion that the Pittsburgh market is "important and irreplaceable" has no credibility where both refineries are shipping less and less product to Pittsburgh on an annual basis, and where the pricing by the refineries ensures that they are indifferent as to the destination of their products. As explained in Laurel's Main Brief, the actual volumes transported from these refineries have substantially decreased since 2006, with 2017 volumes constituting less than **[BEGIN HIGHLY CONFIDENTIAL]** [REDACTED] **[END HIGHLY CONFIDENTIAL]** of Monroe's and PESRM's respective outputs. Laurel MB, pp. 147-148; Laurel RB, pp. 50-51. At hearing, the PESRM witness further confirmed the *de minimis* nature of PESRM's current volumes to Pittsburgh and testified that **[BEGIN HIGHLY CONFIDENTIAL]** [REDACTED]

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Laurel MB, pp. 147-148 (citing Hearing Tr. 970: 19-22). Indeed, the only support for the RD's

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assertions regarding the importance of the Pittsburgh markets is the testimony of PESRM and Monroe witnesses who do not even know the destination of the products they sell, which further demonstrate that the testimony relied upon by the RD is simply not credible. *See* Laurel MB, p. 150. Actual volumes speak louder than words.

ii. The RD Disregards, Without Basis, Documentary Evidence That Demonstrates East Coast Refineries Are Unaware Of And Economically Indifferent To The Destination For Their Products.

In addition, the record demonstrates that Monroe and PESRM are economically indifferent to the destination of their products. Laurel MB, pp. 149-151; Laurel RB, pp. 83-86, 97. The testimony of both Monroe and PESRM witnesses confirms that both entities sell their products [BEGIN HIGHLY CONFIDENTIAL] [REDACTED] [END HIGHLY CONFIDENTIAL], which have no basis on the destination of the product. Laurel MB, pp. 149-151; Laurel RB, pp. 83-86, 97. Refinery contracts entered into the record further substantiated this testimony. Laurel MB, pp. 149-150 (describing the HIGHLY CONFIDENTIAL pricing structure of certain contracts produced by the refineries in (HC) Laurel Exhibit MJW-35). If Pittsburgh were an economically important or high-margin market for either refinery, one would expect these refineries' pricing structures to reflect that importance. However, neither refinery produced a single contract, bill of sale, email or other financial document substantiating this claim. Laurel MB, pp. 150-151. As with the record evidence of actual volumes, the actual prices at which Monroe and PESRM sell their products speak louder than words.

iii. The Solvency Of Monroe And PESRM's Refinery Operations Will Not Be Affected By Laurel's Proposed Reversal.

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Moreover, the record confirms that, outside of this proceeding, neither refinery considers Laurel an “important and irreplaceable” or otherwise “high-margin” transportation option, upon which the solvency of each refinery depends. Laurel MB, pp. 149-151.

b. Denial Of Laurel’s Application Is An Improper Method To Ensure The Solvency Of PESRM And Monroe.

To the extent that the RD recommends that Laurel’s proposed reversal be denied to keep financially-troubled refineries in Philadelphia open, that recommendation should also be denied. It is not the Commission’s duty, and also outside its jurisdiction, to regulate or ensure the solvency of the non-regulated, competitive entities that take service from a common carrier pipeline. Laurel, MB, pp. 38-39. If the Commonwealth deems it necessary to keep these refineries in operation, it has a variety of other options available to it to do so, that do not involve insulating the refineries from free market competition by interstate entities and denying Pennsylvanians the benefits associated with lower gasoline prices.

D. The RD’s Conclusion That Laurel Failed To Demonstrate That Trucking Petroleum Products Would Not Result In Harm Defies Logic.

Finally, the RD concludes that Laurel failed to show that trucking products from Altoona “will not be dangerous and harm... the Pennsylvania public.” RD, p. 170. This conclusion glosses over the fact that there is no evidence demonstrating that the post-reversal trucking level will be greater than the present level. Laurel MB, pp. 171-173. In addition, this conclusion supplants the independent judgment of the regulatory bodies tasked with supervising the safety of trucks transporting petroleum products and completely disregards that, irrespective of the proposed reversal, thousands of tanker trucks routinely make deliveries from terminal racks to retail stations as the final, necessary leg in the petroleum products supply chain. Laurel MB, p.

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139. Therefore, the RD's conclusion regarding the alleged harms associated with tanker truck transportation of petroleum products should be rejected.

11. THE RD ERRED BY CONCLUDING LAUREL FAILED TO DEMONSTRATE IT SUSTAINED SUBSTANTIAL LOSSES AS A RESULT OF SUBSTANTIALLY AND CONTINUOUSLY DECLINING VOLUMES.

Laurel has demonstrated that it has experienced considerable losses through substantially declining volumes and that, because volumes are projected to decline to zero, a cost and revenue analysis is rendered meaningless. Laurel RB, pp. 39-40. As noted in the RD, Laurel's volumes have declined by approximately 55% since 2006. RD, p. 99. (finding that volumes declined from 106,000 BPD in 2006 to 45,000 BPD in September 2017).

The RD's conclusion that customers continue to significantly utilize the Altoona-Pittsburgh section of the pipeline should be rejected for multiple reasons. *See* Laurel RB, pp. 39-46. In particular, Laurel has demonstrated that it has experienced considerable losses through substantially declining volumes and that, because volumes are projected to decline to zero, a cost and revenue analysis is rendered meaningless. Laurel RB, pp. 39-40. Laurel has not overstated the impact of the decrease in volumes where volumes have decline more than 55% since 2006. For these reasons, and the reasons more fully explained in Laurel's Main Brief and Reply Brief, Laurel has demonstrated that it has suffered a significant loss through substantial and consistent declines in volumes since 2006.

12. THE RD ERRED BY CONCLUDING THAT LAUREL'S VOLUMES WILL NOT CONTINUE TO UNDERGO SUBSTANTIAL DECLINES IN THE FUTURE.

The RD's analysis of the prospect of future use is improper for several reasons. *See* Laurel RB, pp. 47-58. First, the RD errs by finding that the Indicated Parties' testimony that they desire to continue to use the westbound service is credible evidence; it is a misstatement of

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the law to suggest that a pipeline may not abandon service if there is *any* interest in the continued use of such service. Laurel RB, pp. 47-48.

Second, the RD misconstrues the historic decline in service and omits the explanatory notes associated with Dr. Webb's voluminous analysis that account for non-repetitive historical events. *See* Laurel RB, pp. 48-50.

Third, the RD's projections regarding future use are based off the fatally flawed projections advanced by the Indicated Parties. RD, pp. 115-116. The Indicated Parties' future projections are contradicted by their own evidence and the trend analysis presented by their witness, Mr. Schaal. *See* Laurel RB, pp. 53-57. Moreover, the RD's reliance on Supplemental Laurel Exhibit DWA-15 commits the same illogical misinterpretation and/or misrepresentation committed by the Indicated Parties in their Main Brief. Laurel RB, pp. 56-57.

Fourth, the RD improperly disregards the fact that additional Midwestern supplies will reach Pittsburgh if constraints are lifted. Laurel RB, pp. 57-58. As explained in Section III.5. *supra* and in Laurel's Main Brief (pages 81-83, 131-33) and Reply Brief (pages 57-58, 60-63, 75-76, 104-105) it is undisputed that constraints between the Midwest and Pittsburgh exist. Moreover, Gulf's own internal studies confirmed that [BEGIN HIGHLY CONFIDENTIAL]

[REDACTED]

[REDACTED]

[REDACTED] [END

HIGHLY CONFIDENTIAL] Laurel MB, pp. 69-70. Yet, the RD does not account for this study in its analysis. The RD cannot rationally conclude that Laurel failed to substantiate the existence of constraints, where Laurel bases this claim on the undisputed testimony of a terminal operator that is a member of the Indicated Parties.

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In light of this record evidence, the RD cannot credibly conclude that the testimony of the Indicated Parties “strongly indicates” that customers value the availability of transportation services to points west of Eldorado. RD, p. 118. Therefore, Laurel has demonstrated that it is more likely than not that the use of its pipeline from eastern points of origin to points west of Eldorado will decline to zero in the intermediate future.

13. THE RD ERRED BY RECOMMENDING THAT THE PROPOSED CAPACITY AGREEMENT SHOULD BE DENIED.

The RD recommended that the proposed Capacity Agreement between Laurel and its affiliate, Buckeye, be denied as moot. RD, Ordering Paragraph 2. However, as explained above, the RD has erred in recommending that the Commission deny Laurel’s Application. Therefore, the Commission should approve the proposed Capacity Agreement consistent with the RD’s analysis, which found the proposed Capacity Agreement to be consistent with the public interest.

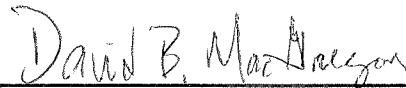
14. THE RD ERRED BY RECOMMENDING THAT THE STIPULATION FOR SETTLEMENT SHOULD BE DENIED.

The RD recommended that the Stipulation for Settlement between Laurel and I&E be denied as moot. RD, Ordering Paragraph 3. However, as explained above, the RD has erred in recommending that the Commission deny Laurel’s Application. Therefore, the Commission should approve the Stipulation for Settlement consistent with the RD’s analysis, which found that the proposed reversal does not pose any safety considerations that would merit denial.

IV. CONCLUSION

WHEREFORE, Laurel Pipe Line Company, L.P. respectfully requests that the Pennsylvania Public Utility Commission (1) reject and/or modify the Recommended Decision of Administrative Law Judge Eranda Vero, and (2) to the extent it has jurisdiction, approve Laurel's Application for All Necessary Authority, Approvals, and Certificates of Public Convenience To Change the Direction of Petroleum Products Transportation Service to Delivery Points West of Eldorado, Pennsylvania, and the related Pipeline Capacity Agreement with Buckeye Pipe Line Company, L.P.

Respectfully submitted,



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