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April 18, 2018

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

VIA HAND DELIVERY

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; Docket No. A-2016-2575829

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

Dear Secretary Chiavetta:

Enclosed please find for filing with the Pennsylvania Public Utility Commission the HIGHLY CONFIDENTIAL Exceptions and PUBLIC Exceptions of the Indicated Parties on behalf of Gulf Operating, LLC, Sheetz, Inc., Philadelphia Energy Solutions Refining & Marketing, LLC, Monroe Energy, LLC, and Giant Eagle, Inc., to the Recommended Decision of Administrative Law Judge Eranda Vero, issued March 29, 2018, in the above-referenced proceeding.

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

Respectfully submitted,

McNEES WALLACE & NURICK LLC

By 
Adeolu A. Bakare

Counsel to Gulf Operating, LLC
and Sheetz, Inc.

Enclosure

- c: Administrative Law Judge Eranda Vero (via E-Mail and First-Class Mail)
Office of Special Assistants (ra-OSA@pa.gov)
Certificate of Service

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CERTIFICATE OF SERVICE

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

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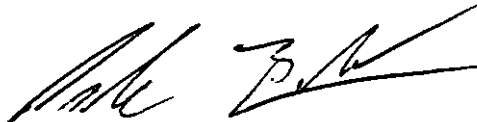
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Dated this 18th day of April, 2018, in Harrisburg, Pennsylvania.

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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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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

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Laurel Pipe Line Company, L.P. - Pipeline :
Capacity Agreement with Buckeye Pipe Line :
Company, L.P. :

Docket No. G-2017-2587567

EXCEPTIONS OF THE INDICATED PARTIES

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PUBLIC VERSION

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I. INTRODUCTION

In a Recommended Decision ("RD") that thoroughly and exhaustively reviewed the evidence and legal arguments presented by the Parties after months of discovery and extensive evidentiary hearings, Administrative Law Judge Eranda Vero (the "ALJ") has properly denied the Application of Laurel Pipe Line Company, L.P. ("Laurel") at Docket No. A-2016-257829 for approval to change the direction of petroleum products transportation service along the Laurel pipeline to delivery points west of Eldorado, Pennsylvania (the "Application"). Gulf Operating, LLC ("Gulf"); Sheetz Inc. ("Sheetz"); Philadelphia Energy Solutions Refining & Marketing LLC ("PESRM"); Monroe Energy, Inc. ("Monroe"); and Giant Eagle, Inc. ("Giant Eagle") (collectively the "Indicated Parties") concur in and fully support the RD.

Consistent with her denial of Laurel's Application, the ALJ has recommended that the proposed Affiliated Interest Agreement (the "Capacity Agreement") between Laurel and Buckeye Pipe Line Company, L.P. at Docket No. G-2017-2587567 be denied as moot. RD at 211. However, mindful that the Commission may engage in a *de novo* review of the RD, the ALJ addressed the merits of Laurel's request for approval of the Capacity Agreement and found that the Capacity Agreement was reasonable, consistent with the public interest and should be approved by the Commission. RD at 205. If the Commission sustains the ALJ's recommendation to deny the Application, the proposed Capacity Agreement issue is moot and need not be decided by the Commission. However, the Indicated Parties respectfully take exception to the ALJ's conclusion, stated in the alternative, that the proposed Capacity Agreement is reasonable and in the public interest, and ask that the Commission consider and grant the Exception that follows in the event it approves Laurel's Application.

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In addition, having already decided at hearing not to admit into evidence the Greater Ohio Valley Market Study prepared by IHS (the "IHS Study") on behalf of Intervenor Husky Marketing and Supply Company ("Husky") as requested by the Indicated Parties, the ALJ did not address in the RD the Indicated Parties' argument for admission of the IHS Study outlined in their Main Brief.¹ [BEGIN HIGHLY CONFIDENTIAL] [REDACTED]

[REDACTED] [END HIGHLY CONFIDENTIAL] In the event that the Commission decides to reverse the ALJ on the merits of the Application, the Indicated Parties respectfully except in the alternative to the exclusion of the IHS Study from the record and request that the Commission admit the IHS Study to the evidentiary record in this proceeding.

Exception No. 1 in the Alternative: If the Commission grants Laurel's Application, the Commission should reverse the ALJ's conclusion that the Capacity Agreement was reasonable and in the public interest because the facts supporting this Conclusion of Law are not supported by the preponderance of evidence. RD at 200-205; ALJ Findings of Fact 49-52, RD at 15; Indicated Parties Main Brief pp. 166-170; Indicated Parties Proposed Findings of Fact 298-300, 305-313; Indicated Parties Proposed Conclusions of Law 65-67; Indicated Parties Proposed Ordering Paragraph 2.

In the event Laurel's Application to reverse the flow on the Laurel pipeline is actually approved, Buckeye could only affect the flow of petroleum products from sources to the west of Pittsburgh into delivery points eastward to Altoona *if* it has the right to do so. Because the subject pipeline is owned by Laurel and not by any other Laurel affiliate, the Capacity Agreement is the mechanism by which Buckeye can lawfully acquire the capacity rights on the Laurel pipeline to implement the planned reversal that the RD soundly and thoroughly rejected.

The ALJ recommended approval of the Laurel-Buckeye Capacity Agreement for two primary reasons. First, she accepted Laurel's evidence, first presented in its rebuttal testimony,

¹ Indicated Parties Main Brief at 160-166.

² Indicated Parties Proposed Finding 171, citing Tr. 748:22-23.

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that the rate Laurel receives for the capacity it sells to Buckeye under the Capacity Agreement is \$0.828 per barrel, and that this rate was previously approved by the Commission.³ She also found that this rate was comparable to or higher than the rate Laurel currently receives for service on the segment of its pipeline proposed to be reversed.⁴ Second, the ALJ found that that the Capacity Agreement equally shares the risks and benefits associated with the terms between Laurel and Buckeye.⁵ The record demonstrates that neither ground cited by the ALJ is correct and that the preponderance of the evidence supports rejection of the proposed Capacity Agreement.

To fully understand the dispute over the merits of the proposed Capacity Agreement, the factual background of the current and proposed Capacity Agreements must be understood. The proposed Capacity Agreement must be reviewed by the Commission under Chapter 21 of the Public Utility Code ("Code") because it is an agreement between a public utility, Laurel, and an affiliate, Buckeye.⁶ The purpose of the current and proposed Capacity Agreements is to authorize and set prices for interstate shipments Buckeye will place on Laurel's intrastate pipeline. Such agreements may be approved by the Commission only if they are reasonable and in the public interest.⁷ The proposed Capacity Agreement is intended to supersede the 1994 Laurel-Buckeye Capacity Agreement and the 2015 amendment to the Capacity Agreement that extended the 1994 agreement and changed pricing terms. The Commission approved the 1994 agreement on or about December 15, 1994, and approved the 2015 amendment on or about May 4, 2015 at Docket No. G-00940417.⁸

³ See RD at 205.

⁴ *Id.*

⁵ *Id.*

⁶ 66 Pa.C.S. § 2102(a)(b).

⁷ 66 Pa.C.S. § 2102(b).

⁸ Indicated Parties St. No. 3 at 29:9-19.

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The proposed Capacity Agreement changes the amount and location of interstate shipments Buckeye can transport on the Laurel pipeline. Currently, Buckeye has reserved 31,025,000 barrels (85,000 BPD) of east to west capacity between Sinking Spring (Berks County) and Coraopolis (Allegheny County). The proposed Capacity Agreement segments this capacity into 16,425,000 barrels of capacity (45,000 BPD) of east to west transportation from Sinking Spring to Eldorado (Blair County) and 14,600,000 barrels of west to east capacity (40,000 BPD) from Midland (Beaver County) to Eldorado. Under the current and proposed Capacity Agreements, Buckeye reserves 21,900,000 barrels (60,000 BPD) for interstate shipments on the Laurel pipeline between Eagle Point, Chelsea Junction or Booth and Sinking Spring.⁹ Before the proposed Capacity Agreement can ever be approved, the Commission must evaluate and compare the rate per barrel Laurel is likely to receive from Buckeye for its west to east interstate shipments from Midland to Eldorado on the Laurel pipeline with the east to west intrastate revenues per barrel Laurel is currently receiving and proposes to surrender on intrastate shipments from Eldorado to Midland.¹⁰

The Indicated Parties urged at the evidentiary hearing, and reaffirm in this limited exception in the alternative, that the proposed Capacity Agreement rate for Midland to Eldorado shipments by Buckeye does not fairly compensate Laurel, rendering the entire proposed Capacity Agreement not in the public interest. This agreement is nothing more than a sweetheart arrangement, rather than the product of arm's length negotiation.

The \$0.828 per barrel rate the ALJ accepted as reflecting the amount Laurel would be compensated by Buckeye for use of the pipeline segment to be reversed is not supported by substantial evidence. This rate was neither presented by Laurel in its direct case nor contained in

⁹ Indicated Parties St. No. 3 at 30:8-16.

¹⁰ There is no evidence that the Commission considered this issue in either its 1994 or 2015 review of the Capacity Agreement.

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Laurel's proposed Capacity Agreement. The rate of \$0.828 per barrel first appeared in Laurel's rebuttal evidence. Laurel's witness Dr. Webb produced this rate by taking Buckeye's 2016 east to west interstate shipments on the Laurel pipeline (approximately 21.6 million barrels) and comparing it to the 2016 revenues Laurel received from Buckeye for use of Laurel's pipeline capacity (approximately \$17.9 million) ($\$17,900,000 \div 21,600,000$ barrels = \$0.828 per barrel).¹¹ This "back of the envelope" rate calculation is not relevant to whether the proposed Capacity Agreement is reasonable and in the public interest under Code Chapter 21 because it uses a backward looking time period (i.e., 2016) that is different from the time the proposed Capacity Agreement would be in effect and is not based on the new Buckeye flows that could occur on the Laurel pipeline if the reversal is approved.

The relevant rates the Commission *should* consider on this issue are **[BEGIN HIGHLY CONFIDENTIAL]** [REDACTED]

[END HIGHLY CONFIDENTIAL] and the \$0.17 per barrel rate Laurel will receive from Buckeye if it uses the 40,000 BPD Midland to Eldorado capacity it is reserving in the proposed Capacity Agreement.¹² As the Indicated Parties see it, Laurel is agreeing to cease deliveries at its highest Pennsylvania tariffed rates and substitute service to its affiliate at a much-reduced rate, making it possible for Buckeye to charge its customers **[BEGIN HIGHLY CONFIDENTIAL]**

¹¹ Dr. Webb's per barrel rate calculation does not make clear whether the Laurel revenues used in the calculation reflect any pumping credit provided to Buckeye for volumes allowed under the current Capacity Agreement, but not used.

¹² Indicated Parties Proposed Finding 299; Indicated Parties Exh. No. RAR-2 at 107:10-13; Indicated Parties St. No. 3 at 22:16-20, 32:1-16.

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██████████ [END HIGHLY CONFIDENTIAL] for service over the reversed pipeline segment and earn a substantial margin at Laurel's expense.¹³

Just as Laurel presented no cost of service information to show it would be financially harmed if it is not allowed to abandon all east to west intrastate service on the Eldorado to Midland segment of the Laurel pipeline, it presented no cost of service information to justify the level of rates it proposes to charge Buckeye under the proposed Capacity Agreement. Rather, it relies on the previous uncontested reviews of the 1994 and 2015 versions of the Capacity Agreement as some form of continuing finding of reasonableness. Moreover, Mr. Arnold, the primary Laurel witness supporting the proposed Capacity Agreement, is satisfied with any level of compensation Laurel receives from Buckeye for use of the segment proposed to be reversed because, absent the flow reversal being approved, he expects a decline in Laurel's intrastate tariff revenues to be inevitable.¹⁴ However, prior Commission reviews of earlier versions of the Capacity Agreement cannot support the reasonableness of the proposed Capacity Agreement. The prior reviews are not even proof that the earlier versions of the Capacity Agreement were reasonable, much less substantiating the justness and reasonableness of the proposed Capacity Agreement. This point is made by the very language of the Commission's "approval" of the prior agreements. The Indicated Parties' testimony pointed out that the Commission's Secretarial Letter approving the 2015 version of the Capacity Agreement stated that "approval of this filing does not constitute a determination that the associated costs or expenses are reasonable or prudent for the purposes of determining just and reasonable rates."¹⁵

The Indicated Parties directly and effectively rebutted Laurel's testimony that the rate for Buckeye's use of the reversed pipeline segment was not \$0.828 per barrel. Indicated Parties

¹³ Indicated Parties Exhibit No. RAR-2 at 107:10-13; Indicated Parties St. No. 3 at 22:16-20, 32:1-22.

¹⁴ Laurel St. No. 1-R at 35:10-19.

¹⁵ Indicated Parties St. No. 3-S at 19:17-23.

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witness Mr. Rosenthal explained that Laurel arrived at this high effective rate by basing its calculation on less than half of the volumes it could have moved under its reserved quantities. The 21.6 million barrels used in Dr. Webb's calculation is less than the 24.66 million barrels Buckeye reserves to ship between Eagle Point, Chelsea Junction or Booth to Sinking Spring, let alone the additional 34.935 million barrels Buckeye reserves to ship between Sinking Spring and Coraopolis. Dr. Webb's snapshot of actual 2016 transactions under the current Capacity Agreement simply does not show how low the effective rate paid by Buckeye could have gone under the Capacity Agreement.¹⁶ Nor does it show what the effective rate would be on the Midland to Eldorado reversed segment under the proposed Capacity Agreement. Dr. Webb's suggestion that the Capacity Agreement be approved now, and the issue could be examined in a future Laurel rate proceeding rings hollow when one considers that there have been no Laurel rate proceedings since the 1994 Capacity Agreement was submitted. Allowing the sweetheart deal to be in effect until some future rate case allows damage to occur to Laurel's revenue levels for an indefinite period, seriously and materially impacting Laurel's customers.¹⁷

The ALJ incorrectly found that the terms and operation of the proposed Capacity Agreement reflected an arm's length negotiation between Laurel and Buckeye. The Indicated Parties' testimony made the following points regarding the fairness and relative risks to Laurel and Buckeye under the likely operation of the proposed Capacity Agreement.

- Under the current Capacity Agreement, if Buckeye does not utilize all of its reserved east to west capacity, Laurel can make service available to other shippers that wish to reach destinations between Eldorado and Pittsburgh. Under the proposed Capacity Agreement, Laurel loses all rights to transport on the Midland to Eldorado segment and cannot replace a Buckeye underutilization of capacity with other shipments.¹⁸

¹⁶ Indicated Parties St. No. 3-S at 20:5-17.

¹⁷ Indicated Parties St. No. 3-S at 20:17-22.

¹⁸ Indicated Parties St. No. 3 at 31:9-13.

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- Under the proposed Capacity Agreement, Laurel is obligated to make capacity available to Buckeye, but Buckeye is not obligated to use the capacity and obtains a credit if the capacity is unused. Laurel in rebuttal asserted that the credit is \$0.05 per barrel and reflects Laurel's lack of pumping costs if Buckeye fails to use reserved capacity. But Indicated Parties witness Mr. Rosenthal properly pointed out that Laurel presented no evidence on what its pumping costs are and no estimates of what the pumping costs would be post reversal. There is a complete lack of evidence on whether the credit level is reasonable.¹⁹
- Buckeye's Capacity Agreement payment would be more reasonable if the payment was nonrefundable and the capacity reserved for Buckeye was underutilized. This would convert the payment to a more conventional capacity reservation fee and protect Laurel from problems at refineries or other upstream pipelines that reduce usage of the purchased capacity.²⁰
- Laurel has not challenged the Indicated Parties testimony that under the proposed Capacity Agreement, capacity on the Laurel pipeline that is currently being sold for shipments west of Eldorado at \$0.50 to \$0.784 per barrel will be replaced by capacity sold to Buckeye for \$0.15 per barrel. The index that increases this price in the Capacity Agreement has increased this charge to merely \$0.17 per barrel under the Consumer Price Indexing that has been in effect since 1994. The record contains no cost of service information that shows this rate is reasonable.²¹
- The proposed Capacity Agreement does provide for Buckeye to pay Laurel at the indexed \$0.15 rate per barrel if its capacity use exceeds 40,000 BPD on the Midland to Eldorado reversed segment. The ALJ seemed to believe that this provision balances the risk Laurel is accepting under the proposed Capacity Agreement for underutilization by Buckeye. But is Buckeye paying this rate, a rate that is significantly lower than the rate Laurel currently charges for transportation west of Eldorado, when it uses more capacity than it contracted for really any type of concession or acceptance of risk by Buckeye? The Indicated Parties submit that it is not. For Laurel not to lose money under the proposed Capacity Agreement compared to the revenues it currently obtains for use of the Eldorado to Midland segment, Buckeye must ship more than 33,000,000 excess barrels in the western segment. For Laurel to obtain even the paltry indexed rate of \$0.28 per barrel, Buckeye must ship more than 19,777,000 excess barrels just to keep Laurel even.²² Given the Indicated Parties' evidence that even the current pipeline capacity into Pittsburgh from the west is not fully utilized, these excess deliveries by Buckeye are completely implausible. These are not contract terms that reflect an arm's length negotiation.

¹⁹ Indicated Parties St. No. 3-S at 18: 1-13.

²⁰ Indicated Parties St. No. 3 at 31: 16-20.

²¹ Indicated Parties St. No. 3 at 32: 1-8.

²² Indicated Parties St. No. 3 at 32: 8-11.

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The record evidence in this proceeding shows that the \$0.828 rate per barrel the ALJ assumed would be provided to Laurel under the proposed Capacity Agreement was not based on facts that assumed the reversal was approved, but was instead calculated using 2016 pre-reversal Buckeye volumes and payments, a period during which Buckeye significantly underutilized its reserved capacity. These facts are not relevant to the future period when the proposed Capacity Agreement would be in effect. Therefore, the ALJ finding that Laurel would receive \$0.828 per barrel for the capacity it proposes to sell to Buckeye is not based on substantial evidence. Moreover, Laurel has presented no cost of service information to support the proposed Capacity Agreement, and it cannot rely on prior Commission reviews of previous Capacity Agreements to support a finding of reasonableness in this proceeding.

A preponderance of the evidence shows that Laurel is likely to recover significantly lower revenues under the proposed Capacity Agreement than it currently receives for deliveries west of Eldorado under its intrastate tariff. Under the proposed Capacity Agreement, Laurel is subordinating its interests to Buckeye's interests by accepting an unreasonable amount of business risk. It is also harming the interests of its other customers who will ultimately be negatively impacted by Laurel's voluntary reduction in revenues. Buckeye stands to benefit from Laurel's failure to protect its interests by being able to charge shippers **[BEGIN HIGHLY CONFIDENTIAL]** [REDACTED] **[END HIGHLY CONFIDENTIAL]** for capacity that it purchases for \$0.17 per barrel.²³ The proposed Capacity Agreement demonstrates why Chapter 21 of the Code is necessary. The proposed Capacity Agreement is a classic sweetheart agreement that is unreasonable and not in the public interest. If Laurel's Application is approved, the Commission is urged to reject the approval of the proposed Capacity Agreement under Code

²³ Indicated Parties Proposed Finding 299; Indicated Parties Exh. No. RAR-2 at 107:10-13; Indicated Parties St. No. 3 at 22:16-20, 32:1-16.

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Chapter 21. If the Commission adopts the RD and rejects Laurel's Application, this Exception becomes moot.

Exception No. 2 in the Alternative: If the Commission grants Laurel's Application, the Commission should reverse the ALJ's conclusion that the IHS Study was properly excluded from evidence on grounds of hearsay and untimely submission to the record. RD at 6; Indicated Parties Main Brief at 160-166; Indicated Parties Proposed Findings of Fact 360-371; Indicated Parties Proposed Conclusions of Law 63-64.

Similar to Exception No. 1, the Indicated Parties' Exception No. 2 consists of an alternative request for relief that should be granted only if the Commission reverses the ALJ's generally thorough and well-reasoned recommendation to deny Laurel's Application. In case of such a reversal of the RD, the Indicated Parties request that the Commission address the ALJ's decision at the November 13, 2017 evidentiary hearing to exclude the IHS Study, which was produced as a discovery response by Husky and served on all parties, from evidence on grounds of hearsay and as being an untimely submission to the record. Because the ALJ allowed the Indicated Parties to submit the IHS Study to the record as an offer of proof, the decision to exclude the study from the evidentiary record is properly before the Commission, subject to the condition set forth below.

As briefly summarized in the RD, at the November 13, 2017 evidentiary hearing the ALJ prevented the Indicated Parties from introducing the IHS Study into the record as a cross-examination exhibit.²⁴ The ALJ excluded the study from evidence after review of Laurel's Motion to Submit a Supplemental Affidavit or, Alternatively Exclude Cross Examination Exhibits and Testimony ("Motion"), which Laurel had filed on the evening prior to the

²⁴ See RD at 6.

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evidentiary hearing.²⁵ Specifically, the ALJ excluded the IHS Study "deeming it to be hearsay and untimely offered into evidence."²⁶

While the RD recited the reasoning from the decision at the November 13, 2017 hearing, the RD omitted further review or consideration of the arguments presented in the Indicated Parties' Main Brief. However, review of the ALJ's decision remains properly before the Commission. While the Commission disfavors Petitions for Interlocutory Review of evidentiary decisions issued by ALJs, the Commission has authority under Section 335(a) of the Public Utility Code ("Code") to review such decisions.²⁷ Further, the Commission has specifically stated that it is appropriate for parties to raise in Exceptions any challenges to an ALJ's exclusion of evidence.²⁸ Accordingly, the Commission has authority to address and reverse the ALJ's exclusion of the IHS Study from the evidentiary record.

Importantly, the Indicated Parties request that the Commission exercise such authority only as an alternative, in the event that the Commission finds cause to approve Laurel's Application. The RD ultimately determined that, based on the record evidence and without reliance on the excluded IHS Study, Laurel's Application must be denied.²⁹ If the Commission concurs with the ALJ and denies the Application, the Commission need not address the admissibility of the IHS Study. However, if the Commission reverses the ALJ's decision, then the Indicated Parties will have suffered a due process violation resulting from the unfounded exclusion of the IHS Study from the evidentiary record. Therefore, if the Commission determines that the evidentiary record merits approval of the Application, any such approval

²⁵ *See id.*

²⁶ *See id.*

²⁷ *See* 66 Pa. C.S. § 335(a); *see also Application of First Class Transportation*, 2017 Pa. PUC LEXIS 59, (August 31, 2017) ("*First Class*"), *39.

²⁸ *See First Class*, *39-*40.

²⁹ *See* RD at 211.

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must be conditioned upon a reversal of the ALJ's exclusion of the IHS Study, admission of the IHS Study to the evidentiary record, and further hearings on Laurel's Application and the IHS Study.

The Indicated Parties' Main Brief extensively addressed the facts distinguishing the IHS Study from hearsay evidence. Pennsylvania courts define hearsay evidence as "in-court evidence of an out-of-court declaration, whether oral or written, which is offered to show the truth of the out-of-court assertion."³⁰ The Indicated Parties' Main Brief clarified that the IHS Study is not evidence of an out-of-court declaration, but rather evidence of the intentions and motivations driving Husky's support for Laurel's Application.³¹ The Indicated Parties pointed to record evidence acknowledging that Husky relied on numerous studies, but adding that the IHS Study is

[BEGIN HIGHLY CONFIDENTIAL] [REDACTED]

[REDACTED] [END HIGHLY CONFIDENTIAL]³² The Indicated Parties further presented in their Main Brief various instances of Husky witness Jerome Miller attesting to Husky's reliance on the IHS Study, as restated below:

In response to questions about Husky's analysis of current petroleum products pricing, Mr. Miller stated as follows:

We've looked at a variety of reports which we make available to you in discovery, including the EIA, or the Energy Administration reporting, some reports sanctioned by Wood Mackenzie, and IHS.³³

In response to questions about Husky's analysis of future pricing and competitiveness of Midwest petroleum products in Pennsylvania, Mr. Miller similarly referenced the same reports, saying:

³⁰ Indicated Parties Main Brief at 162.

³¹ Indicated Parties Main Brief at 162.

³² Hearing Tr. 1245:5

³³ *Id.* at 162-163 *citing* Hearing Tr. 1241:24 – 1242:1, 1242:16-19 (emphasis added).

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The main reports are the same reports I referenced earlier, which will be given to you in discovery, and that's the EIA, the Wood Mackenzie, and the *IHS*.³⁴

Additionally, in explaining that he relied on written studies to support his testimony on refinery capacity in the Midwest, Mr. Miller again affirmed reliance on the IHS Report as follows:

Reports I drew from, which will be given in discovery, include the EIA Report, Wood Mackenzie report, and the *IHS* report.³⁵

With Mr. Miller having provided a firm foundation confirming his and Husky's reliance on the IHS Study, neither Husky nor Laurel can reasonably seek to prevent the Indicated Parties from introducing the IHS Study on the record on the basis that it constitutes hearsay.

Similarly, the allegations that the Indicated Parties offered the IHS study into evidence in an untimely manner have no basis in fact or law. Indeed, at no point does the RD or the ALJ's prior ruling reference a Commission rule or regulation establishing the Indicated Parties' introduction of the IHS Study as a cross-examination exhibit to be untimely.³⁶ The Commission's regulations do not restrict admissible evidence to documents previously appended to pre-served written testimony. Further, while Laurel has argued that the Commission has previously excluded evidence introduced at hearings on due process grounds, all of the cases previously cited by Laurel involve parties' attempts to introduce evidence at hearings not previously made available to other parties.³⁷ These circumstances are not relevant to the present circumstances where the Indicated Parties offered the IHS Study for admission to the record as a

³⁴ *Id.* at 163 *citing* Hearing Tr. 1243:9-11 (emphasis added).

³⁵ Indicated Parties Main Brief at 163 *citing* Hearing Tr. 1244:13-14.

³⁶ *See* RD at 6; *see also* Hearing Tr. 1233-45.

³⁷ *See* Indicated Parties, Main Brief at 164 *citing* Motion at 5 *citing* *Pa. Pub. Util. Comm'n v. Duquesne Light Company*, 1985 Pa. PUC LEXIS 68, *10-11 (1985).

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cross-examination exhibit after Husky previously served the document on all parties as a discovery response.³⁸

Finally, Laurel's attempt to condition introduction of the IHS Study upon introduction of further oral or written testimony from Laurel Witness Dr. Michael Webb must also be rejected. As discussed in the Indicated Parties' Main Brief, Laurel received the IHS Study through discovery on September 28, 2017, and attended the September 26, 2017 deposition where Husky witness Mr. Miller repeatedly cited Husky's reliance on the IHS Study in formulating its position on Laurel's Application.³⁹ To the extent Laurel believed the IHS Study to be relevant or injurious to its case, it could have propounded discovery on Husky or even submitted supplemental testimony, as its witnesses reserved the right to do so as necessary or appropriate, including upon receipt of new *discovery*.⁴⁰ However, while Laurel had every opportunity to review the IHS Study before the November 13, 2017 hearing, the Indicated Parties had no opportunity to review Dr. Webb's proposed affidavit or conduct any discovery on it. Accordingly, Laurel's attempt to bootstrap Dr. Webb's affidavit to any admission into evidence of the IHS Study must be rejected.

For the reasons set forth above, the Indicated Parties request that, if Laurel's Application is approved, such approval be conditioned upon a reversal of the ALJ's exclusion of the IHS Study from the record; admission of the IHS Study to the evidentiary record; and, as necessary, further hearings on the IHS Study. If the Commission adopts the RD and rejects Laurel's Application, this Exception No. 2, like Exception No. 1, becomes moot.

³⁸ See Indicated Parties Main Brief at 164.

³⁹ *Id.* at 162-164.

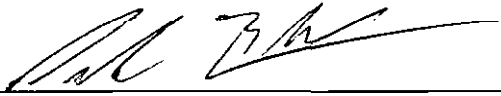
⁴⁰ Indicated Parties Main Brief at 165 *citing* Laurel St. No. 5-R at 102:4-5; *see also* Laurel St. No. 7-R at 73:1-2.

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II. CONCLUSION

WHEREFORE, the Indicated Parties respectfully requests that the Pennsylvania Public Utility Commission grant the Exceptions of the Indicated Parties if the Commission reverses the Recommended Decision and grants Laurel's Application.

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