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April 30, 2018

VIA ELECTRONIC FILING
VIA HAND DELIVERY

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor North
P.O. Box 3265
Harrisburg, PA 17105-3265

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.P.
Docket Nos. A-2016-2575829 and G-2017-2587567

Dear Secretary Chiavetta:

Enclosed please find the Reply Exceptions of Laurel Pipe Line Company, L.P. ("Laurel") to be filed in the above-referenced proceeding. 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.

Respectfully submitted,

Anthony D. Kanagy, Esquire
ADK/skr
Enclosures
cc: Honorable Eranda Vero
Certificate of Service
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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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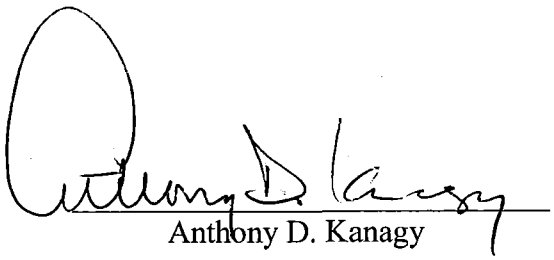

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PUBLIC VERSION - HIGHLY CONFIDENTIAL INFORMATION REDACTED

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

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Date: April 30, 2018

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I. INTRODUCTION

Administrative Law Judge Eranda Vero (the "ALJ") issued a Recommended Decision ("RD") in the above-captioned proceeding on March 29, 2018. In the RD, the ALJ recommends that Laurel Pipe Line Company, L.P.'s ("Laurel" or the "Company") Application be denied, that the related Affiliated Interest Agreement ("Proposed Capacity Agreement") between Laurel and Buckeye Pipe Line Company, L.P. ("Buckeye") be denied as moot, and that the Stipulation in Settlement between Laurel and the Bureau of Investigation and Enforcement ("I&E") be denied as moot. Laurel, the Indicated Parties,[1] Husky Marketing and Supply Company ("Husky"), and I&E filed various exceptions to the RD's recommendations.

Laurel hereby files these Reply Exceptions to the Exceptions of the Indicated Parties. For the reasons explained herein, the Indicated Parties' Exceptions in the Alternative should be denied.

II. REPLIES TO EXCEPTIONS

A. LAUREL'S REPLIES TO INDICATED PARTIES' EXCEPTIONS

1. Reply To Indicated Parties' Exception No. 1 In The Alternative: If The Commission Grants Laurel's Application, The Commission Should Adopt The ALJ's Conclusion That The Proposed Capacity Agreement Is Reasonable And In The Public Interest.

a. Introduction.

The RD properly recommended that, in the event Laurel's Application is approved by the Commission, the Proposed Capacity Agreement should be approved because it is reasonable and in the public interest. RD, p. 200-205. The RD properly recommended that, in the event Laurel's Application is approved by the Commission, the Proposed Capacity Agreement should

[1] Philadelphia Energy Solutions Refining and Marketing, LLC ("PESRM"), Monroe Energy, Inc. ("Monroe"), Gulf Operating, LLC ("Gulf"), Sheetz, Inc. ("Sheetz") and Giant Eagle, Inc. ("Giant Eagle"), collectively, comprise the Indicated Parties.

be approved because it is reasonable and in the public interest. RD, p. 200-205. As explained below, the rates under the agreement consist of two charges: (1) capacity charge of $9.5 million, which has been annually escalated under the existing and Proposed Capacity Agreement, for 85,000 BPD of capacity; and (2) an excess capacity use charge of $0.17/barrel if Buckeye exceeds the reserved capacity of 85,000 BPD. These rates are exactly the same in the existing, Commission-approved agreement and the Proposed Capacity Agreement. *See* Section II.A.1.b. *infra.* In addition, the rate received by Laurel from Buckeye for interstate movements is higher on a per barrel basis than what Laurel would receive for comparable intrastate service. *See* RD, p. 205; *see also* Section II.A.1.c. *infra.* Therefore, there is no factual basis for concluding that the new agreement is unreasonable or that it will harm Laurel and its customers. It is simply a continuation of the old PUC-approved agreement; the Proposed Capacity Agreement is simply revised to reflect the different direction of movements between Eldorado and Midland, PA.

Faced with these undisputed facts, Indicated Parties attempt to mislead the PUC into thinking something has changed. *See* IP Exceptions No. 1. It has not. For example, the Indicated Parties calculate revenue under the excess usage charge and compare it to revenue received under the capacity charge. *See* IP Exceptions, pp. 5-6, 8. Yet, this comparison involves two completely charges, *i.e.* the capacity use charge and the excess capacity charge. *See* Section II.A.2.c. *infra.* This comparison is improper, and simply "apples to oranges". This is not a rational comparison and is irrelevant to the evaluation of the Proposed Capacity Agreement.

The Indicated Parties also attempt to argue that Laurel's failure to provide cost of service data somehow renders the Proposed Capacity Agreement inadequate. *See* IP Exceptions, p. 6. Cost of service data is required in a rate case and the instant proceeding is not a rate case.

Chapter 21 expressly says that the reasonableness of charge can be challenged in a rate case and that PUC approval of affiliated interest agreement provides no rate protection.

Therefore, and for the reasons more fully explained below and in Laurel's briefs, Laurel has demonstrated that the Proposed Capacity Agreement is reasonable and in the public interest. As such, the Indicated Parties' Exception No. 1 must be denied.

b. The Compensation Paid By Buckeye To Laurel Under Both The Existing, Commission-Approved Capacity Agreement And The Proposed Capacity Agreement Is The Same.

First, and most importantly, the compensation Buckeye pays Laurel for the reservation of capacity on Laurel's system is unchanged between the Proposed Capacity Agreement and the existing, Commission-approved agreement. *See* Laurel MB, pp. 182-183 (referencing the Laurel Exhibit No. 2, Proposed Capacity Agreement). The two principal differences between the Proposed Capacity Agreement and the existing, Commission-approved agreement are: (1) the term of the Proposed Capacity Agreement (*i.e.* an initial ten-year term followed by a year-to-year renewal term, which creates an evergreen agreement); and (2) the Proposed Capacity Agreement disaggregates the current shipping capacity reservation between Sinking Springs and Coraopolis of 85,000 BPD into two segments, one 40,000 BPD segment between Eldorado and Midland (*i.e.* the segments affected by the proposed reversal) and one 45,000 BPD segment between Eagle Point, Chelsea Junction or Booth and Sinking Spring. *See* Laurel MB, p. 183; *see also* IP St. No. 3, p. 30. Yet, under both the existing, Commission-approved agreement and the Proposed Capacity Agreement, Laurel receives the same compensation from Buckeye (*i.e.* a flat reservation rate of $9,5000,000, which has been annually escalated since 1994 to now total $17,075,951) and reserves the same capacity on its system for Buckeye's use (*i.e.* 85,000 BPD). As the Commission approved the existing agreement, and the compensation and reservation

terms are unchanged in the Proposed Capacity Agreement, Laurel has demonstrated that the Proposed Capacity Agreement will adequately compensate it.

c. The Indicated Parties' Attempts To Calculate A Per Barrel Rate Fails To Recognize The Benefits Of The Agreements.

The Indicated Parties attempt to argue that the compensation Laurel has received under the existing, Commission-approved agreement and the Proposed Capacity Agreement is inadequate. IP Exceptions, pp. 5-6. They further argue that Laurel has, and will continue to receive, only $0.17/barrel from Buckeye if Buckeye uses the 40,000 BPD of Midland to Eldorado capacity it has reserved under the agreement and that this amount is substantially less than Laurel's existing PUC tariff rates. *Id.*, pp. 5-6, 8. These arguments miss the mark for multiple reasons.

First, the basis for the Indicated Parties' $0.17/barrel rate in the existing, Commission-approved agreement and the Proposed Capacity Agreement is the excess capacity charge contained in both agreements, and not the base compensation Laurel receives from Buckeye. *See* Laurel St. No. 1-R, p. 35 (explaining that the $0.17/barrel rate alleged by the Indicated Parties is inaccurate); *see also* Laurel St. No. 5-R, p. 13 (explaining why the $0.17/barrel rate alleged by the Indicated Parties is misleading). Essentially, the Indicated Parties are attempting to compare the rate per excess barrel Laurel would receive *in addition to* the fixed compensation set forth in the agreements to Laurel's PUC-tariff rate and Buckeye's FERC-tariff rate to argue that Laurel is, or would be, inadequately compensated under either agreement. *See* IP Exceptions, pp. 5-6. This comparison is not only illogical, but it misrepresents how Laurel and Buckeye are compensated for shipments under their respective tariffs versus how Laurel is compensated by Buckeye for its use of Laurel's system; the former depends entirely on the volumes shipped and the latter is based on a fixed amount of compensation irrespective of the volumes shipped.

Second, even if the Indicated Parties' alleged per barrel amount were correct, which it is not, they are attempting to convert a fixed compensation amount into a per barrel rate, which fails to consider that Laurel receives the same compensation regardless of Buckeye's use of the asset (subject to a minor credit for avoided operating expenses for under-use and an excess capacity charge for over-use). *See* Laurel Exhibit No. 2; *see also* Laurel MB, pp. 185-186. Laurel's base compensation is a fixed amount, regardless of the volumes shipped by Buckeye; conversely, Laurel's revenue from PUC-tariff shipments are determined by the volume transported over its system. The Indicated Parties' alleged $0.17/barrel rate is irrelevant to the evaluation of a fixed compensation and, furthermore, comparing the compensation Laurel receives under the existing agreement, or would receive under the Proposed Capacity Agreement, to the compensation Laurel receives for PUC-tariff shipments is an apples to oranges comparison.

Finally, Laurel demonstrated that it is receiving more from Buckeye than it does from comparable intrastate shipments; therefore, even if the Indicated Parties' attempted calculation of a per barrel rate under the existing, Commission-approved agreement and the Proposed Capacity Agreement were correct or relevant, which it is neither, Laurel has demonstrated that the effective per barrel rate it receives is reasonable. Laurel MB, pp. 186-187; Laurel RB, pp. 139-140. Laurel calculated this rate by dividing the $17.6 million in revenue received by Laurel in 2016 by the 21.6 million barrels transported by Buckeye, pursuant to the existing, Commission-approved agreement. Laurel MB, pp. 186-187; Laurel RB, pp. 139-140. The $0.828/barrel received by Laurel under the existing, Commission-approved agreement was substantially higher than Laurel's current PUC tariff rate—which the RD noted was $0.614/barrel—for service over Laurel's pipeline. Laurel MB, pp. 186-187; *see also* RD, p. 205 and fn. 45. As the

compensation term used to calculate this effective rate is unchanged in the Proposed Capacity Agreement, the RD's conclusion that the Proposed Capacity Agreement reasonably compensates Laurel is based on substantial evidence. Therefore, as explained above, the RD correctly and reasonably concluded that, if the Commission approves Laurel's Application, the Proposed Capacity Agreement will adequately compensate Laurel.

d. Laurel Was Not Required To Present A Cost Of Service Study For The Proposed Capacity Agreement.

The Indicated Parties also argue that Laurel presented no cost of service information to justify the level of rates it proposes to charge Buckeye under the Proposed Capacity Agreement. IP Exceptions, p. 6. This assertion misses the point that, before minor credits for underuse and charges for overuse by Buckeye, Laurel receives the same revenues under the current, Commission-approved agreement and the Proposed Capacity Agreement. As the Commission has previously found the existing agreement to be reasonable and the Indicated Parties have failed to rebut its reasonableness, the presentation of cost of service information is unnecessary. Therefore, the Indicated Parties' suggestion that cost of service information is necessary to demonstrate the reasonableness of the Proposed Capacity Agreement should be rejected.

Furthermore, the crux of this argument is the Indicated Parties' unsupported suggestion that allowing Laurel to receive revenues under the proposed Capacity Agreement until a future rate proceeding will "seriously and materially impact[] Laurel's customers." IP Exceptions, p. 7. Importantly, the rates of Laurel's PUC-tariff customers are not at issue in this proceeding, because Laurel's PUC tariff rates are unchanged; any question of imputing additional revenues to the Capacity Agreement would be raised in a later proceeding, not in this one. *See* Laurel St. No. 1, p. 36. In addition, as noted in Laurel's briefs, a cost of service comparison between Laurel's revenues from current westbound intrastate service to revenues from post-reversal

eastbound service under the proposed Capacity Agreement is not necessary where volumes are expected to reach zero.

e. The Indicated Parties' Other Criticisms of The Proposed Capacity Agreement Are Without Merit.

Laurel demonstrated that the Proposed Capacity Agreement represents a reasonable exchange of relative risks and benefits between Laurel and Buckeye. Laurel MB, pp. 183-187; Laurel RB, pp. 137-139. The record in this case demonstrates that each of the bulleted concerns raised by the Indicated Parties in their exceptions is without merit, in particular:

- Laurel demonstrated that the Indicated Parties misunderstand the nature of the agreement, and that after the reversal the same terminals will be served on the Laurel system and that any demand at these terminals will be met solely by Buckeye volumes, which will be included in the volumes generating revenues under the proposed Capacity Agreement. Laurel MB, p. 186. Moreover, as explained above Laurel is compensated in a fixed amount, regardless of whether Buckeye utilizes the capacity it has reserved; as such, the Indicated Parties' attempt to compare westbound PUC-tariff shipments to Buckeye's reservation of capacity over the reversal segment misses the mark. Therefore, the Indicated Parties' suggestion that Laurel is at risk due to underutilization should be rejected.

- The Indicated Parties' proposal[2] to increase the per barrel payment under the proposed Capacity Agreement to equal the minimum rate on Laurel's PUC tariff and eliminate the credit is flawed because, as explained above, it is based on an improper comparison of the rate per excess barrel Laurel would receive *in addition to* the fixed compensation set forth in the agreements to the volume-dependent compensation Laurel receives for shipments under its PUC-tariff. Laurel MB, pp. 184-185. In addition to this flaw, the Indicated Parties have also failed to carry their burden to prove this alternative charge is any way reasonable.

- As explained above, Laurel is compensated by Buckeye on a fixed basis under the Proposed Capacity Agreement, in the same manner set forth in the existing, Commission-approved agreement. Laurel's compensation is only adjusted by either (a) a $0.05/barrel credit to Buckeye for underuse, which represents the avoidance of certain operating expenses Laurel would otherwise incur or (b) a $0.17/barrel charge to Buckeye for overuse. Laurel MB, p. 185; Laurel RB, pp. 138-139. Therefore, the

[2] Laurel further notes that, with respect to this adjustment proposed by the Indicated Parties in their Direct Testimony, the Indicated Parties' bear the burden of proof as the proponent of the adjustment. For the reasons explained in Laurel's Main Brief, the Indicated Parties failed to meet their burden. Laurel MB, pp. 184-185. Therefore, the RD properly rejected this claim and found that, if the Commission approves Laurel's Application, it should also find the Proposed Capacity Agreement is reasonable and in the public interest.

Indicated Parties' suggestion that the payment from Buckeye to Laurel is somehow "refundable" if Buckeye does not use the capacity it has reserved is incorrect.

- The Indicated Parties' attempt to state that "Laurel has not challenged" the $0.17/barrel alleged in their testimony is simply false. IP Exceptions, p. 8. Laurel has repeatedly explained that this alleged rate is incorrect and, moreover, irrelevant to the Commission's consideration of whether the *fixed compensation* that Laurel would receive under the Proposed Capacity Agreement is reasonable. *See* Laurel St. No. 1-R, p. 35 (explaining that the $0.17/barrel rate alleged by the Indicated Parties is inaccurate); *see also* Laurel St. No. 5-R, p. 13 (explaining why the $0.17/barrel rate alleged by the Indicated Parties is misleading). Furthermore, even if a variable, per barrel rate were relevant to this consideration, Laurel has demonstrated that the effective per barrel rate under the existing, Commission-approved agreement (which is continued in the Proposed Capacity Agreement) is substantially higher than Laurel's current PUC-tariff rates.

- The capacity use charge for excess volumes properly balances the risk Laurel is accepting under the Proposed Capacity Agreement for underutilization by Buckeye. Laurel MB, pp. 185-186; Laurel RB, pp. 137-139. Indeed, while Laurel is subject to risk and Buckeye is subject to benefit through the credits for non-use, Laurel is subject to benefit and Buckeye is subject to risk through the charge for excess volumes. Moreover, the adjustment for excess volumes is *in addition to the fixed compensation* that Laurel would receive under the Proposed Capacity Agreement. The Indicated Parties' misleading attempt to assert that Buckeye must ship an unreasonable amount of excess volumes for Laurel not to lose money completely ignores the fact that Laurel receives a fixed compensation for any volumes not in excess of Buckeye's reserved capacity. The Indicated Parties again misunderstand this fundamental concept in the agreements and, therefore, their arguments must be rejected.

For the reasons explained above and in Laurel's briefs, the Proposed Capacity Agreement represents an arms-length agreement between two sophisticated business entities and, therefore, is reasonable and in the public interest. As such, the Indicated Parties Exception No. 1 In The Alternative should be denied.

2. Reply To Indicated Parties' Exception No. 2 In The Alternative: If The Commission Grants Laurel's Application, The Commission Should Not Consider The IHS Study Because The ALJ Properly Excluded The Study From Evidence As Hearsay And As Untimely Submitted.

The Indicated Parties' Exception No. 2 In The Alternative should be rejected because: (1) the Indicated Parties untimely attempted to submit the IHS Study into evidence; and (2) the IHS Study constitutes inadmissible hearsay.

a. The ALJ Properly Excluded the IHS Study From Evidence And The Commission Should Not Consider The Study If It Determines That Laurel's Application Should Be Granted.

i. The IHS Study Was Untimely Submitted.

Laurel provided an overview of the procedural history surrounding the Indicated Parties' offer of proof, *i.e.* the IHS Study, in its Reply Brief. *See* Laurel RB, pp. 123-125. Importantly, the IHS Study was produced in discovery eight (8) days prior to the deadline for the Indicated Parties' Surrebuttal Testimony; yet, the Indicated Parties' Surrebuttal Testimony did not include a copy of, or citation and/or reference to the IHS Study. Laurel RB, p. 124. Laurel and Husky thereafter served Rejoinder Testimony responding to the facts and issued raised in the Indicated Parties' Surrebuttal Testimony. Laurel RB, p. 124. The Indicated Parties did not attempt to introduce, cite or reference the IHS Study until the November 8, 2017 hearing date, after the close of Laurel's case in chief. Laurel RB, p. 124. Additional arguments and motions surrounded the Indicated Parties' attempt to admit the study. Laurel RB, pp. 124-125. The ALJ ultimately excluded the IHS Study from evidence because it was untimely submitted and inadmissible hearsay, permit the Indicated Parties to cross-examine Mr. Miller regarding the study for impeachment purposes, and permit the Indicated Parties to submit the study as an offer of proof. Laurel RB, p. 125.

The record makes clear that the Indicated Parties engaged in a procedurally improper gambit to not reference the IHS Study in their pre-filed testimony or include the IHS Study as an exhibit to their pre-filed testimony. They must now live with the consequences of that decision.

At hearing, the ALJ correctly noted that the Indicated Parties "...did not deem it [the IHS Study] important enough to include it, reference it, cite to it, anything with regard to this study into [*sic*] your [the Indicated Parties'] pre-filed testimony." Hearing Tr. 1211:22-1212:1. Moreover, the ALJ criticized the Indicated Parties' position regarding the timing and the Indicated Parties' suggestion that Laurel should have responded to the study in its Rejoinder Testimony, even though the Indicated Parties had not referenced, let alone included as an exhibit, the Disputed Study in their Surrebuttal Testimony. At hearing the following exchange occurred:

> MR. BAKARE: Your Honor, the only other point that I wanted to make was that the motion also suggested that Laurel had no indication that this study was of importance.
>
> Counsel for Laurel was at the deposition where, at the deposition, Mr. Miller discussed his reliance on this study in formulating his testimony. So I would suggest that, I would disagree with the notion that Laurel had no indicated that this study was part of Mr. Miller's testimony.
>
> And furthermore, of course, Laurel was also served with the document on September 28th, as were all the other parties in this proceeding.
>
> MR KANAGY: Your Honor, he's setting up - - I disagree with him on many counts, but he's setting up an argument that says, we have to respond to evidence before they put it into the record.
>
> JUDGE VERO: All right. Hold on a second. Laurel might have had access to the Husky interrogatory responses, but that doesn't mean that they can assign any sort of importance value. They don't have knowledge that the particular information is deemed important by you [the Indicated Parties].

> Yes, they have access to it. It was produced to them. But they don't know what you're going to put forth in terms of your case.
>
> You [the Indicated Parties] could have let them know that this was coming before November 6th or 7th, that this was coming so they could have dealt with it.

Hearing Tr. 1213:13-1214:15 (emphasis added). Regardless of whether Laurel knew of the existence of the IHS Study, it was not apprised that the Indicated Parties intended to submit the study as evidence until after the close of Laurel's case in chief—*i.e.* at a time when Laurel would be precluded from responding to the study.

In addition, the Indicated Parties' suggestion that they are not required to disclose evidence to be submitted at hearing (whether on direct or cross examination) prior to the commencement of hearings is without merit because non-disclosure of the IHS Study prior to hearing violates Laurel's due process rights. IP Exceptions, p. 13. Fundamental principles of due process require that the parties "must be apprised of the evidence submitted...and to offer evidence in explanation or rebuttal according to well understood rules. In no other way can a party maintain its rights, or make a defense, or test the sufficiency of the facts to support the finding." *In re Shenandoah Suburban Bus Lines*, 46 A.2d 26, 29 (Pa. Super. 1946). Reasonable notice is a basic requirement of due process, enabling parties to present responses and objections accurately. *See ARIPPA v. Pa. Pub. Util. Comm'n*, 792 A.2d 636, 660 n.35 (Pa. Commw. 2002), *appeal denied*, 815 A.2d 634 (Pa. 2003). Generally, claims or evidence that is introduced at such a time when the opposing party would not have an adequate opportunity to respond must be rejected on due process grounds. *See, e.g., Application of PPL Electric Utilities Corp.*, 2009 Pa. PUC LEXIS 2323, *225-227 (Recommended Decision November 12, 2009) (rejecting a claim raised for the first time in reply briefs), *adopted with certain modifications*, 2010 Pa. PUC LEXIS 434 (Order Entered Feb. 12, 2010). Moreover, the Commission has specifically found

that late-submitted exhibits deprive a party of due process. *See Pa. Pub. Util. Comm'n v. Duquesne Light Company*, 1985 Pa. PUC LEXIS 68, *10-11 (Order Entered Jan. 25, 1985) ("based upon the timing here we conclude that the presentation of these exhibits one week prior to the close of the record was insufficient time to constitute the due process to which the OCA was entitled." (emphasis added)).

The Indicated Parties' attempt to reference, cite or admit an expert study through the cross-examination of a non-applicant lay-witness for the first time, on the final day of hearings clearly runs afoul of fundamental due process principles. Admission of the study at that time appears to have been an attempt to improperly eliminate, or minimize, Laurel's opportunity to address the study in its testimony. *See* Laurel RB, pp. 133-134; *see also* Section II.A.2.b. *infra.*

Finally, contrary to the Indicated Parties' argument that exclusion of the study would prejudice their due process rights (*see* IP Exceptions, pp. 11-12), the Commission should find that a party is not denied due process by an adverse ruling, which results from the parties' own voluntary decision. *See Schneider v. Pa. Pub. Util. Comm'n*, 479 A.2d 10, 12-13 (Pa. Commw. 1984) (finding that a party was afforded adequate notice and an opportunity to appear and that the voluntary decision of the complainant's attorneys to exit a hearing after objecting to the Commission's jurisdiction did not result in a due process violation). Counsel for the Indicated Parties stated at hearing:

> The Indicated Parties made a very legitimate strategic decision in terms of what was relevant to them to utilize for purposes of discovery, just as both parties have done throughout this case.
>
> And it seems to me, both of us have to live with those kinds of decisions that have been made.

Hearing Tr. 1229:14-19 (emphasis added). Indeed, the Indicated Parties must, as recognized by their counsel, live with the outcome of their procedurally improper gambit. Therefore, the Indicated Parties' Exception No. 2 In The Alternative should be denied.

ii. The IHS Study From Evidence Is Inadmissible Hearsay.

The Indicated Parties mischaracterize the nature of hearsay evidence and the nature of the IHS Study. Notably, the Indicated Parties do not argue that the IHS Study is hearsay for which there is an exception; they exclusively argue that the IHS Study is not hearsay because it "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." IP MB, p. 162. The Indicated Parties continue this argument in their exceptions. *See* IP Exceptions, pp. 12-13.

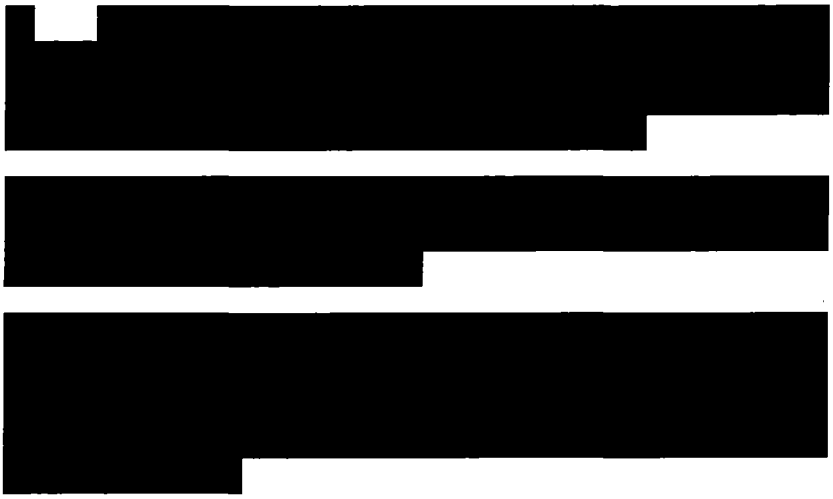
Hearsay is defined as an "out-of-court statement offered to prove the truth of the matter asserted." *Heddings v. Steele*, 514 Pa. 569, 526 A.2d 349 (Pa. 1987); *see also* Pa.R.E. 801(c) (defining hearsay as a statement that (1) the declarant does not make while testifying at the current trial or hearing; and (2) a party offers in evidence to prove the truth of the matter asserted in the statement.). A statement is defined as "a person's oral assertion, written assertion, or nonverbal conduct, if the person intended it as an assertion." Pa.R.E. 801(a) (emphasis added).

The Indicated Parties' unsupported assertion that the IHS Study is not hearsay because it "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" (IP MB, p. 162; IP Exceptions, p. 12), does not transform the IHS Study into non-hearsay. The IHS Study constitutes an out of court statement, specifically a "written assertion." *See* Pa. R.E. 801(a) (defining "statement"). In addition, the Indicated Parties sought to offer this written assertion for the truth of the matter asserted. *See Rissi v. Cappella*, 918 A.2d 131, 138-139 (Pa. Super. 2007) (finding a document offered to enter the statements contained therein into record constituted hearsay).

Indeed, the Indicated Parties' Exceptions make clear that they are attempting to improperly admit the study for the truth of the "out-of-court declaration[s]" contained therein, and not as evidence of Husky's intent and/or motivation. The Indicated Parties attempt to highlight the supposed probative value of the IHS Study in their exceptions, *i.e.* **[BEGIN HIGHLY CONFIDENTIAL]** [redacted] **[END HIGHLY CONFIDENTIAL]** IP Exceptions, p. 2.

Furthermore, as noted in Laurel's Reply Brief, the Indicated Parties first sought to offer the study as a supplemental exhibit for their expert, Dr. Arthur, who attempted to testify that the conclusions in the study proved the conclusions in his testimony. Laurel RB, pp. 129-130 (citing Hearing Tr. 748:16-23). Subsequent questioning by Dr. Arthur revealed that he was attempting to rely on, or act as the conduit for, the IHS Study, which had not yet been entered into evidence. Laurel RB, p. 130. It was not until Laurel's objection and Motion, and the ALJ's decision to exclude the IHS Study from evidence, that the Indicated Parties attempted to argue the study was offered for a reason other than the veracity of its contents. *See* Laurel RB, p. 130.

And finally, the testimony of Husky's witness, Mr. Miller, further demonstrated that the Indicated Parties sought to admit, and could only admit, the IHS Study in evidence for its truth value. **[BEGIN HIGHLY CONFIDENTIAL]** [redacted]



[END HIGHLY CONFIDENTIAL]

Hearing Tr. 1238:8-22 (emphasis added). Indeed, the Indicated Parties' cannot credibly suggest that they have sought to admit this report as evidence of Husky's motivations and intentions regarding the proposed reversal, where **[BEGIN HIGHLY CONFIDENTIAL]** [redacted] **[END HIGHLY CONFIDENTIAL]** *See* Laurel RB, p. 131.

The Indicated Parties' Exceptions, like their briefs and arguments at the hearing, ignore these statements on the record that demonstrate they are attempting to admit the IHS Study for its truth value. Therefore, the Indicated Parties' argument that the IHS Study is not hearsay is incorrect and should be rejected. The ALJ properly excluded the IHS Study as hearsay, for which there is no applicable (or even identified) exception.

b. If The Commission Considers The IHS Study In Its Evaluation Of Laurel's Application At This Stage, It Must Also Consider The Highly Confidential Affidavit of Dr. Michael J. Webb That Was Submitted By Laurel.

Contrary to the Indicated Parties' assertions in their Main Brief and Exceptions, admission of this study to the record, without providing Laurel an opportunity to provide a response to the study, would violate Laurel's due process rights. Laurel RB, pp. 132-136. As

explained in Laurel's Reply Brief, the IHS Study represents data, analyses and conclusions that were not the subject of testimony by any witness until the oral examination of the Indicated Parties' witness Dr. Arthur, and an exhibit that was not offered into evidence until the cross-examination of a non-applicant witness on the final day of hearings. Laurel RB, p. 133. By delaying the introduction of the Disputed Study until oral examination during the hearings, the Indicated Parties appear to have sought to eliminate, or minimize, Laurel's opportunity to address the study in its testimony.

Had the Indicated Parties properly introduced the study in their Surrebuttal Testimony, Laurel could have—and would have—addressed the study in its Rejoinder Testimony, the Indicated Parties would have had the opportunity to conduct additional, abbreviated discovery on Laurel's Rejoinder Testimony regarding the study, and the parties would have had the opportunity to conduct oral examinations of expert witnesses on their conclusions regarding the study. This process would have accommodated the interests of all parties, and afforded all parties the process that they are due. Instead, the Indicated Parties opted for a strategic gambit and waited until the proverbial eleventh hour to make their submission; they must live with the consequences of that decision.

Alternatively, if the Commission accepts and considers the IHS Study in reaching a final decision, Laurel, as the party bearing the burden of proof, must be afford an opportunity to respond to the IHS Study. Laurel RB, pp. 134-136. As such, if the Commission consider the IHS Study, Laurel submits that it must also consider the Highly Confidential Affidavit of Dr. Michael J. Webb, which was attached to Laurel's November 12, 2017 Motion as Appendix A.[3]

[3] The Commission should not, as the Indicated Parties suggest in their Exceptions, condition granting Laurel's Application on "further hearings on Laurel's Application and IHS Study." IP Exceptions, pp. 11-12. Laurel, as the party bearing the burden of proof, has the right to close. Therefore, if the Commission grants Laurel's Application

The Commission must consider Dr. Webb's Highly Confidential Affidavit if it considers the IHS Study because: (1) there are multiple flawed data points and assumptions included in the study; and (2) Husky cannot "stand in Laurel's shoes" to address the study in a manner that vindicates Laurel's due process rights because, among other things, Husky's witness did not have access to HIGHLY CONFIDENTIAL information necessary to address the study and was not presented as an expert witness in this proceeding. Laurel RB, pp. 134-136.

c. Conclusion.

For the reasons more fully explained above and in Laurel's Reply Brief, if the Commission decides to grant Laurel's Application, it should not overturn the ALJ's ruling to exclude the IHS Study from evidence. The Indicated Parties' ill-advised strategic gambit to untimely present the IHS Study is a strategic decision that the Indicated Parties must live with. Furthermore, even if the Commission were to deem the IHS Study as timely admitted, it is inadmissible hearsay for which there is no exception (identified by the Indicated Parties or otherwise). And, finally, the Commission must either reject the Indicated Parties offer of proof and not consider the IHS Study in reaching a final decision or, alternatively, accept and consider the Indicated Parties' offer of proof as well as the Affidavit of Dr. Webb in order to provide Laurel the process it is due as the party bearing the burden of proof. Therefore, the Indicated Parties' arguments regarding their offer of proof should be rejected.

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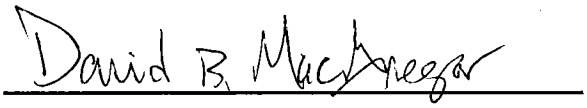
and considers the IHS Study, consideration of Dr. Webb's Highly Confidential Affidavit is the appropriate and expedient method by which the Commission could preserve Laurel's right to close.

III. CONCLUSION

WHEREFORE, Laurel Pipe Line Company, L.P. respectfully requests that the Pennsylvania Public Utility Commission: (1) deny the Indicated Parties' Exceptions In the Alternative; (2) grant the Bureau of Enforcement and Investigation's Exception; and (3) 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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Date: April 30, 2018

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