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April 30, 2018

VIA HAND DELIVERY

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

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

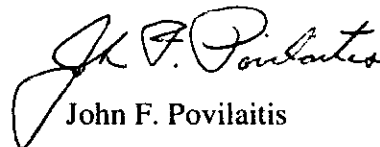
Affiliated Interest Agreement between Laurel Pipe Line Company, L.P. and Buckeye Pipe Line Company, L.P., Docket No. G-2017-2587567

Dear Secretary Chiavetta:

Enclosed please find for filing with the Pennsylvania Public Utility Commission the **HIGHLY CONFIDENTIAL** Replies to Exceptions and **PUBLIC** Replies to Exceptions of the Indicated Parties on behalf of Gulf Operating, LLC, Philadelphia Energy Solutions Refining & Marketing, LLC, Sheetz, Inc., Monroe Energy, LLC, and Giant Eagle, Inc., to the Exceptions of Laurel Pipe Line Company, LP and Husky Marketing and Supply Company, filed on April 18, 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.

Very truly yours,


John F. Povilaitis

JFP/tlg
Enclosure

cc: Administrative Law Judge Eranda Vero (via E-Mail and First-Class Mail)
Office of Special Assistants (ra-OSA@pa.gov)
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April 30, 2018

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I. INTRODUCTION

Laurel Pipe Line Company, L.P. ("Laurel") and Husky Marketing and Supply Company ("Husky") filed timely exceptions to the Recommended Decision of Administrative Law Judge Eranda Vero ("ALJ") issued March 29, 2018 ("RD").¹ The RD sustained the Indicated Parties² position and recommended denial of Laurel's Application seeking to reverse the west bound flow of petroleum products on its intrastate pipeline from Eldorado to Midland. West bound service is the only pipeline transportation service ever provided on this pipeline since Laurel was issued a certificate of public convenience ("CPC") by the Pennsylvania Public Utility Commission ("PUC" or "Commission") in 1957.

Laurel seeks in its Exceptions a final order reversing the RD by providing the Commission an inaccurate picture of this case and the extensive evaluation conducted by the ALJ.

This Commission should neither be swayed by Laurel's mischaracterizations nor concerned that it is unlawful to deny Laurel's Application. The RD should be affirmed and Laurel's and Husky's exceptions denied.

II. REPLIES TO EXCEPTIONS

Reply to Laurel Exception No. 1: **THE RD CORRECTLY CONCLUDED THAT THE COMMISSION HAS JURISDICTION OVER THE APPLICATION AND THE RECOMMENDED DENIAL OF THE APPLICATION DOES NOT VIOLATE THE DORMANT COMMERCE CLAUSE.**

The RD properly finds that the Commission has jurisdiction to decide Laurel's Application, and that denial of the Application would not violate the dormant Commerce Clause.³ Laurel's Exceptions do not reveal any errors by the ALJ.

The RD recognizes that *if* one were to accept Laurel's argument that any Commission action limiting Midwest entities' ability to ship deeper into Pennsylvania than they already do today would necessarily constitute unconstitutional discrimination against interstate commerce, then one must also conclude that any action *reducing* the ability of East Coast shippers to ship into Pennsylvania would

¹ Husky's Exceptions, while apparently timely filed, were not timely served upon parties. Husky's Exceptions align with Laurel's and therefore the Indicated Parties' replies to Laurel's Exceptions are equally applicable to Husky's.

² The Indicated Parties consist of Gulf Operating, LLC ("Gulf"); Sheetz Inc. ("Sheetz"); Philadelphia Energy Solutions Refining & Marketing LLC ("PESRM"); Monroe Energy, LLC ("Monroe"); and Giant Eagle, Inc. ("Giant Eagle").

³ RD at 62-63.

likewise be unconstitutional discrimination.⁴ To the extent Laurel's Exceptions imply that the ALJ made an incorrect legal or factual *finding* that approval of the Application would necessarily discriminate against East Coast entities, the RD does no such thing. The RD simply concludes, correctly, that Laurel's argument is "logically flawed" and, therefore, must be rejected.⁵

Next, using both *italics* and underline to emphasize its disapproval, Laurel attempts to counter the RD by arguing that it is free "as a *private entity* to use its *private assets* to provide *interstate service* to *out-of-state* entities and cease providing service to certain *in-state* entities" and that any Commission action that "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" unconstitutionally discriminates against interstate commerce.⁶ But no amount of emphasis can change the fact that Laurel is not an unconstrained "*private entity*" free to abandon intrastate public utility service at the behest of its parent company. Laurel is a state regulated "public utility" that is and has been subject to Commission regulation since 1957. Laurel knows this and has said this repeatedly, including in this proceeding.⁷

In a 2013 proceeding, the Federal Energy Regulatory Commission ("FERC") *granted* Laurel's Motion to Dismiss on the basis that Laurel is not an interstate common carrier; rather, FERC held that "Laurel provides intrastate service subject to regulation by the PaPUC."⁸ FERC's conclusion was based on Laurel's argument that Laurel is not subject to FERC jurisdiction specifically because Laurel is a Pennsylvania public utility that is regulated by the PA PUC.⁹ Laurel cannot have it both ways.

Laurel's Exceptions ignore the RD's finding that because of Laurel's eleventh-hour invocation of the dormant Commerce Clause, Laurel was unable to point to a single piece of evidence demonstrating

⁴ See Exceptions at 7-8 (discussing RD at 63). See also Indicated Parties Reply Brief at 23-24 (discussing illogic of Laurel's dormant Commerce Clause argument).

⁵ RD at 63.

⁶ Exceptions at 8 (emphasis in original).

⁷ See, e.g. Laurel's Proposed Findings of Fact ¶2, attached as Appendix A to Laurel's Main Brief.

⁸ See *Guttman Energy, Inc. d/b/a Guttman Oil Company, and PBF Holding Company, LLC v. Buckeye Pipe Line Company, L.P. and Laurel Pipe Line Company L.P.*, Docket Nos. OR14-4-000, Order Dismissing Complaint, in part, and Establishing Hearing (May 2, 2014) ("Order"), 147 FERC ¶ 61,088 at ¶¶ 28-30.

⁹ *Id.* at ¶ 27. See also *Guttman Energy, Inc. d/b/a Guttman Oil Company, and PBF Holding Company, LLC v. Buckeye Pipe Line Company, L.P. and Laurel Pipe Line Company L.P.*, Docket Nos. OR14-4-000, Motion to Dismiss and Answer of Laurel Pipe Line Company, L.P. at 6 ("Motion") (filed November 4, 2013) ("Laurel is solely an intrastate common carrier regulated by the PA PUC....") (available at <https://elibrary.ferc.gov>).

the “overall effect” on interstate commerce of a denial of its Application.¹⁰ Without any supporting evidence, the Commission need not, should not, and cannot take Laurel at its word that denial of the Application would result in unconstitutional discrimination against Midwest entities that allegedly want to ship petroleum products deeper into Pennsylvania than they already do today.¹¹

Reply to Laurel Exception No. 2: **COMMISSION JURISDICTION TO DENY THE APPLICATION IS NOT LIMITED BY THE INTERSTATE COMMERCE ACT.**

The RD properly finds that the Interstate Commerce Act (“ICA”) does not preempt the Commission from exercising jurisdiction to deny Laurel’s Application.¹² Perhaps recognizing that the RD is firmly grounded in over a century of legal precedent, Laurel changes the facts and now argues the Commission is preempted by the ICA “because Laurel currently operates and provides transportation service in interstate commerce, and the proposed reversal only seeks to change the direction of interstate commerce over Laurel’s facilities.”¹³ This assertion is inaccurate. As discussed above, Laurel is a public utility providing *intrastate* transportation *within Pennsylvania*.¹⁴ FERC, in the proceeding described above, expressly held that “Buckeye provides interstate services under the ICA and Laurel provides intrastate service subject to regulation by the PUC.”¹⁵ FERC’s conclusion was based upon Laurel’s representation that it is “solely an intrastate common carrier” subject to Commission regulation (and not the ICA).¹⁶ Laurel’s Motion to Dismiss in that FERC proceeding could not be more clear:

[T]he ICA does not apply to transportation wholly within one state, and ICA common carrier status does not apply to pipelines that solely engage in intrastate transportation. ... *Laurel provides no interstate transportation*, therefore, it is excluded from [FERC’s] jurisdiction under Section 1(2)(a) of the ICA.¹⁷

¹⁰ RD at 63.

¹¹ See Indicated Parties Reply Brief at 21-22. As noted in the Indicated Parties Main Brief, evidence suggests the Midwest supply is not likely to reach Altoona even after the reversal. See Indicated Parties Main Brief, at 82.

¹² RD at 50-51.

¹³ Exceptions at 8.

¹⁴ See also Laurel Statement No. 9-R at 9:10-11 (“Laurel is an intrastate petroleum pipeline.”). See, e.g., Laurel Exhibit No. 1 (Application) at pg. 8-9, ¶ 16 (“Laurel provide[s] only intrastate service.”)...

¹⁵ Order, 147 FERC ¶ 61,088 at ¶ 36.

¹⁶ Motion at 6 (available at <https://elibrary.ferc.gov>)

¹⁷ Motion at 8 (emphasis added) (available at <https://elibrary.ferc.gov>); see *id.* (“[FERC] should dismiss the Complaint in its entirety as to Laurel, because it does not provide transportation subject to the ICA and it is not an ICA common carrier.”). In a supporting Affidavit, Laurel’s Vice President, Domestic Pipelines, stated “Laurel does not provide interstate service.” *Id.* (Affidavit at ¶ 7).

The common thread among Laurel's irreconcilable legal positions is that it does not believe it is subject to *any* regulatory oversight—neither by FERC nor the Commission—although Laurel has been happy to reap the benefits of being a public utility, including exercising state eminent domain powers that assisted in the construction of the very pipeline at issue in this proceeding.¹⁸

Laurel's Exceptions also misleadingly portray the RD as “critically rely[ing]” on *Texas v. Eastern T. R. Co.*¹⁹ Laurel overplays the RD's reliance on *Texas v. Eastern* so that Laurel can embark on a lengthy (but futile) attempt to distinguish the case and manufacture a fundamental error of law where none exists.²⁰ Laurel interprets *Texas v. Eastern*—in which the U.S. Supreme Court held that abandonment of an intrastate railroad was subject to state regulation, not the ICA—as only applying to utilities “solely used for intrastate commerce.”²¹ This is not an accurate interpretation of the case—*Texas v. Eastern* holds that abandonment of intrastate utilities is subject to state regulation, even though the physical utility (i.e., the railroad or the oil pipeline) also accommodates interstate traffic.²²

Relying on its erroneous interpretation of *Texas v. Eastern*, Laurel argues that the present matter is distinguishable because, according to Laurel, its pipeline between Midland and Eldorado “currently operates as a ‘branch or extension’ or ‘part of another line’ that is ‘an artery of interstate and foreign commerce.’”²³ To the contrary, the cases cited by the Indicated Parties and relied upon by the ALJ demonstrate that state regulation is not preempted merely because an intrastate utility is connected to a

¹⁸ See Indicated Parties Reply Brief at 26, n. 81.

¹⁹ Exceptions at 9.

²⁰ RD at 51 (citing *Texas v. Eastern T. R. Co.*, 258 U.S. 204, 217-218 (1922)) (“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.”).

²¹ Exceptions at 10 (emphasis therein).

²² Exceptions at 10. Contrary to Laurel's Exceptions, the railroad at issue in *Texas v. Eastern* was not used solely for intrastate commerce—rather, “[a]pproximately three-fourths of the traffic over the road is in interstate and foreign commerce and the rest is in intrastate commerce.” *Texas v. Eastern*, 258 U.S. at 214. See also Indicated Parties Reply Brief at 12 (discussing FERC precedent regarding lines that share interstate and intrastate traffic).

²³ Exceptions at 10; but see See Laurel Exhibit No. 1 (Application) at pg. 9, ¶ 16; Laurel Statement No. 3 at 4:2-9. Notably, FERC has held that the interstate and intrastate services on the pipe line are distinct services subject to different regulatory oversight. This finding was based on Laurel's insistence that regulatory bodies must respect the distinction between Laurel and Buckeye. See Motion at 11 (available at <https://elibrary.ferc.gov>).

broader interstate system.²⁴ Laurel completely fails to address these cases (or any other dispositive precedent).

Reply to Laurel Exception No. 3 and Husky Exception No. 1: **THE RD CORRECTLY DETERMINED THAT LAUREL MUST OBTAIN A CERTIFICATE OF PUBLIC CONVENIENCE TO PROVIDE EASTBOUND SERVICE.**²⁵

A. The RD Was Correct in Finding a Directional Limitation of Service in Laurel's 1957 Certificate of Public Convenience.

The RD thoroughly evaluated Laurel's 1957 certificate of public convenience ("CPC") and properly concluded that the only reasonable finding is that Laurel's certificated transportation service was limited to east to west movements and the proposed reversal constitutes a "partial abandonment by Laurel of the service it currently provides in Pennsylvania."²⁶

Laurel claims that service along the Laurel pipeline is exclusively controlled by one paragraph of its 1957 CPC Application. Paragraph 3 of that Application notes, *among other things*, that the anticipated service will be in and across Pennsylvania and other states of the United States.²⁷

The ALJ was fully aware of Laurel's view of the basis for its expansive claim of service rights in Pennsylvania and, based on substantial opposing analysis and interpretation urged by the Indicated Parties,²⁸ made the following appropriate findings that support rejecting Laurel's position:

- Laurel failed to explain why its 1957 CPC Application and the actual CPC issued by the Commission describe with specificity the east to west (and not west to east) direction of the Laurel pipeline's route in Pennsylvania.²⁹
- Laurel could not successfully explain why both the 1957 CPC Application and its separate application for incorporation and creation only addressed competitive conditions that the then-proposed Laurel pipeline would create for other pipeline carrying petroleum products *westerly* across Pennsylvania.³⁰

²⁴ Indicated Parties Reply Brief at 10-26 (discussing *Ark. Elec. Coop. Corp. v. Ark. Public Serv. Comm'n*, 461 U.S. 375 (1983) and *National Steel Corp. v. Long*, 718 F. Supp. 622, 625 (W.D. Mich. 1989), wherein courts held that states had authority to regulate intrastate utilities even though they were connected to interstate lines).

²⁵ Husky asserts similar arguments in its Exception No. 1 (at 6-7) and these Replies are equally applicable to Husky.

²⁶ RD at 78,

²⁷ Laurel Exceptions, at 11.

²⁸ *See*, Indicated Parties' Main Brief, at 27-33 and Reply Brief, at 36-38.

²⁹ RD at 76.

³⁰ *Id.* at 77.

- Laurel did not explain why the Laurel pipeline was designed with decreasing diameters from east to west if it was intended to have origin points both in the eastern and western portions of Pennsylvania, as it now urges in this proceeding for the first time in sixty (60) years.³¹
- Laurel failed to explain why its existing intrastate Pennsylvania tariff does not reflect the discretion Laurel now claims to have to reverse the flow of transportation service on the pipeline between Altoona and Pittsburgh, and there is no reservation of rights in the tariff giving Laurel the discretion to reverse the product flow anywhere on the pipeline.³²
- For close to 60 years, petroleum products have moved along the Laurel pipeline in only one direction, east to west, and not west to east as Laurel now proposes.³³

Laurel seeks to retroactively change the scope of its 1957 CPC application by claiming it provided a description of the nature and character and service to be rendered as being “in and across the Commonwealth of Pennsylvania and other states of the United States.”³⁴ Laurel ignores that the very next line of the referenced application contradicts its interpretation and indicates the direction of the flow when it states that “[t]he approximate route to be followed by the proposed pipe line in this Commonwealth from the vicinity of Philadelphia to the vicinity of Pittsburgh and thence northwesterly to the western boundary of the Commonwealth is indicated on the attached map designated as ‘Exhibit A’ and made a part of this application.”³⁵ Laurel’s 1957 CPC expressly refers to “approval of the said application as set forth in said report and order.” The Commission’s 1957 Report and Order describes the Laurel pipeline as “extending generally westwardly . . . as more fully described in said application.” It is clear that the Commission incorporated into the 1957 CPC the application and related exhibits.

Laurel’s reliance on the Commission’s decision in *Petition of Sunoco Pipeline, L.P. et al.*, Docket No. P-2014-2411941 et al. (October 29, 2014) (“*Sunoco 2014*”) is similarly misplaced. In *Sunoco 2014*, the applicable pipeline utility first obtained PUC approval to abandon the prior service on the subject pipeline before repurposing the pipeline for new service. *Sunoco 2014*, at 9-10. While the Commission commented in *Sunoco 2014* that it was not good public policy to adopt or interpret such directional limitations in CPCs where none exists, it did so in the context of the specific finding (included in the very

³¹ *Id.*

³² *Id.*

³³ *Id.*

³⁴ Laurel Exceptions, at 11.

³⁵ Indicated Parties Reply Brief, at 37.

language Laurel includes in its Exceptions) that failure to grant the relief requested would have rendered the pipeline in question “useless.”³⁶ Given the overwhelming evidence and RD’s finding that the portion of the Laurel pipeline between Altoona and Pittsburgh is actively being utilized, is desired by its current customers and shippers, that PESRM would use it more if it could do so,³⁷ and there is little likelihood of western volumes going to zero, there is no reasonably anticipated situation that the Laurel pipeline segment at issue in this case would “sit useless” absent any hypothetical reversal. *Sumoco 2014* is clearly limited to its unique facts and not controlling at all in this proceeding.

B. The RD Correctly Discerned That Laurel’s Proposed Change in the Direction of Service was an Abandonment of Service.

This Laurel Exception is predicated on the patently erroneous notion that transportation service westerly from Altoona to Pittsburgh is the same “service” as transportation service *easterly* from Pittsburgh to Altoona. The Indicated Parties and the RD share the same correct view that “service” is broadly defined in Section 102 of the Public Utility Code, 66 Pa. C. S. § 102 and that Laurel’s proposed change of direction of flow between Altoona and Pittsburgh on the Laurel pipeline constitutes an abandonment of that service.³⁸

Laurel’s reliance on a mid-1970’s Commission decision in *Harris v. Nat’l Transit Co.*, 1976 Pa. PUC LEXIS 50 (Order Entered August 27, 1976) (“*Harris*”) merely demonstrates how far Laurel will go to reach an outcome that is neither supported by the law nor the facts. *Harris* involved the proposed change in mode of utility service from pipeline to truck, nothing related to the facts in this proceeding. In addition, as the Commission described it, the issue in *Harris* is not relevant to or controlling in this matter. As reflected in the very quote contained in Laurel’s Exceptions, any change in mode of utility operation may be made only where “the original method has become outdated or uneconomical.”³⁹ Here, as found by the ALJ, there is overwhelming evidence that the existing Laurel pipeline transportation

³⁶ Laurel Exceptions, at 13.

³⁷ Similarly, Monroe’s transportation alternatives are inferior to transporting product to Pittsburgh on the Laurel pipeline. Indicated Parties Reply Brief, at 135.

³⁸ See, RD at 75-78 and Indicated Parties Main Brief, at 34-39.

³⁹ Laurel Exceptions, at 14.

service westerly from Altoona to Pittsburgh is not “outdated or uneconomical.”⁴⁰ On the contrary, that service is being used and relied upon by Laurel’s customers.⁴¹ Finally, the Commission in *Harris* also recognized that any change in utility mode of operation could be an abuse of discretion in appropriate circumstances. That abuse has occurred here.

C. The RD’s Interpretation of Laurel’s Certificate Of Public Convenience Does Not Conflict with the Commission’s Decision in *Sunoco 2014*.

This Exception is predicated on the mistaken proposition that two pipeline cases with vastly different facts are required to have the same outcome. The Commission’s findings in *Sunoco 2014* were discussed in Section II.A., *supra*, where the Indicated Parties note that the pipeline facility at issue would have otherwise sat useless. That is not the case here. Thus, as Laurel itself concedes, there is no issue regarding the difference in outcome between proceedings if there is a “reasoned basis for this differentiation.”⁴²

Reply to Laurel Exception No. 4 and Husky Exception No. 2: **THE RD EVALUATED THE PROPOSED ABANDONMENT OF SERVICE UNDER THE CORRECT LEGAL STANDARD.**

A. The RD Evaluated the Proposed Abandonment of Service According to Factors the Commission Traditionally Utilizes for Abandonments.

Laurel claims the applicable standard in this case is the affirmative benefits test,⁴³ while the RD and the Indicated Parties support the multi-factor abandonment specific test. The RD properly concluded that in adjudicating public utility abandonments of service the Commission considers multiple factors, the most prevalent of which are (i) the extent of loss to the utility; (ii) the prospects of the system being used in the future; (iii) the balancing of the utility’s loss with the hardship on the public and (iv) the availability of alternative service. The ALJ also found that a public utility wishing to abandon service must also show that its losses could not be cured by the granting of a reasonable rate increase.⁴⁴

⁴⁰ See RD at 199-200.

⁴¹ See RD at 199-200.

⁴² Laurel Exceptions, at 15.

⁴³ Husky supports the affirmative benefits test as well and this Reply applies equally to Husky. Husky Exceptions, at 11-12.

⁴⁴ RD at 84.

As the RD recognizes, the Commission must determine whether the abandonment of utility service is necessary or proper for the service, accommodation, convenience of the public.⁴⁵ The multi-factor standard found to be appropriate in the RD has routinely been applied to the abandonment of water, natural gas and propane public utilities.⁴⁶ Both parties point to *Application of Sunoco Pipeline, L.P.*, Docket Nos. A-2013-2371789 and P-2013-2371775 (Order Entered August 29, 2013) (“*Sunoco 2013*”), in which the Commission cited *City of York v. Pennsylvania Public Utility Commission*, 449 Pa. 136, 295 A.2d 825 (Pa. 1972) (“*City of York*”).

Laurel and Husky overlook the fact that *Sunoco 2013* was an uncontested proceeding in which no party challenged the utility’s abandonment of service and advocated use of a different standard than *City of York*. To suggest that *Sunoco 2013* applies under these circumstances is incorrect. In the absence of a fully-developed record to facilitate evaluation under a multi-factor test in *Sunoco 2013*, it is more likely that the Commission cited *City of York* simply to acknowledge that, even in an uncontested proceeding, approval of an application for a CPC requires at least a determination that there is substantial evidence of affirmative public benefits.

Laurel and Husky prefer the *City of York* standard under the belief that it allows the Commission to ignore the harm Laurel’s proposal would impose on customers and shippers in favor of alleged benefits that would be conferred on others. However, in *City of York*, the Pennsylvania Supreme Court acknowledged that it was appropriate for the Commission to consider potential harm to ratepayers. In *Sunoco 2013*, the Commission recognized the need to weigh both the potential benefits and the potential harms. Laurel recognizes as much in its Exceptions, noting the Commission “concluded [in *Sunoco 2013*] that the significant public benefits outweighed the minimal impacts to the customers.”⁴⁷ However, unlike *Sunoco 2013*, and as discussed in greater detail, *infra*, the evidence in this proceeding provided by the Indicated Parties and accepted as credible in the RD, demonstrates that any potential benefits Laurel

⁴⁵ *Id.* at 83.

⁴⁶ *Id.* at 81.

⁴⁷ Laurel Exceptions, at 17.

and Husky claim from the proposed reversal pale in comparison to the overwhelming potential adverse impacts on customers, shippers and other stakeholders.

Importantly, while the Commission mentioned the *City of York* case in *Sunoco 2013*, it first applied the principal elements of the multi-factor abandonment of service standard, noting that users of the to-be-abandoned facilities did not oppose the suspension of service and recognizing that the Laurel Pipeline remained an available alternative for Sunoco customers.⁴⁸ In practice, the Commission applied the multi-part abandonment of service standard in *Sunoco 2013*, and did not merely confine its review to whether the proposal on the whole was in the public interest (i.e., the *City of York* affirmative benefits test).

In a similar vein, Laurel's continued reliance on *Application of Buckeye Pipe Line Company, L.P.*, Docket No. A-140110 F2000 (Order Entered March 7, 2005) to support its claimed applicability of the "affirmative public benefits" test is misguided since, once again, the relief sought in that proceeding was uncontested.

B. The RD's Application of the Multi-factor Standard for Utility Service Abandonments was Reasonable and Appropriate.

As noted in the Reply to Exception No. 4(A), *supra*, neither the Indicated Parties nor the ALJ "limited"⁴⁹ the multi-factor abandonment standard to four factors. Laurel could have suggested other factors in addition to the four most often used to assess utility service abandonments, but it did not. Instead, Laurel advocates for the application of a wholly different and inappropriate standard that was rejected by the ALJ. As noted above, the application of the multi-factor standard was reasonable and appropriate and should not be modified.

Reply to Laurel Exception No. 5 and Husky Exception No. 3(1): **THE RD CORRECTLY FOUND THAT TRANSPORTATION OF PETROLEUM PRODUCTS BETWEEN THE MIDWEST AND PITTSBURGH IS NOT CURRENTLY CONSTRAINED.**

A. Neither Laurel nor Husky Presented Credible Evidence of Logistical, Geographical or Terminal Constraints.

⁴⁸ Indicated Parties Main Brief, at 47.

⁴⁹ Laurel Exceptions, at 17.

Laurel argues that constraints prevent Midwest suppliers from maximizing pipeline capacity into Pittsburgh. This argument mischaracterizes thoroughly rebutted factual assertions as "undisputed record evidence."⁵⁰

Laurel distorts comments from Gulf's witness Greg Johnston.⁵¹ In his Direct Testimony, Mr. Johnston referenced the existence of constraints from only Chicago-area refiners (not the entire Midwest), and later clarified that these constraints relate to transit time and transportation prices, neither of which would be alleviated by additional pipeline capacity.⁵² Mr. Johnston also clarified that he offered the prior comments before reviewing discovery responses demonstrating that Buckeye's pipeline into Pittsburgh has operated below maximum capacity since March 2016.⁵³ Additionally, Laurel's own witnesses submitted Direct Testimony affirming the availability of pipeline capacity into Pittsburgh with no reference of constraints.⁵⁴

Record evidence also discredits the constraint claims advanced by Husky witness Jerome Miller and Laurel witness Scott Jones. Husky witness Mr. Miller, after submitting two rounds of pre-served written testimony making no mention of operational constraints, testified on the final day of evidentiary hearings that capacity on *Sunoco's* Allegheny Access pipeline is limited because the terminals connected to Sunoco's pipeline are "smaller in size" and "not in advantaged locations."⁵⁵ Even if true (which cannot be ascertained by such vague claims), the existence of such constraints on Sunoco's line would not explain why Buckeye's pipeline has operated below capacity since 2016.⁵⁶

Laurel witness Dr. Jones, while discussing constraints, never referenced logistical, geographic, or terminal constraints. His testimony consisted of generalized claims that additional shipments from the Midwest into Pittsburgh would be "uneconomic" until the reversal takes place.⁵⁷ Such generalized

⁵⁰ Laurel Exceptions, at 18.

⁵¹ Laurel Exceptions, at 18-19.

⁵² See Indicated Parties Main Brief, at 101.

⁵³ See Indicated Parties Main Brief, at 101-102.

⁵⁴ See Indicated Parties Main Brief, at 102 *citing* Laurel Statement no. 5, at 17:1-5.

⁵⁵ Indicated Parties Reply Brief, at 105-107.

⁵⁶ Indicated Parties Main Brief, at 102, *but see* Husky Exceptions, at 15 (touting Husky's financial support of and long-term commitment to Sunoco's Allegheny Access pipeline).

⁵⁷ Tr. 691.

assertions cannot serve as the basis for a finding of constraints on deliveries from the Midwest into Pittsburgh. And substantial evidence exists to the contrary.⁵⁸

B. The RD's Reliance on Rated Pipeline Capacity is Consistent with the Evidence Furnished by Laurel Throughout this Proceeding.

Laurel berates the RD for relying on the rated pipeline capacity to assess the capacity available to Midwest shippers seeking pipeline access to the Pittsburgh market.⁵⁹ However, Laurel has no issue relying on rated capacity to argue that Pittsburgh will have available alternatives if the reversal is approved.⁶⁰ Further, even accepting that rated pipeline capacity can differ from operational capacity, the record contains no reliable evidence that operational constraints limit shipments into Pittsburgh. The simple fact that Laurel's Application made no reference to operational constraints on supply into Pittsburgh suggests that its belated attempt to interject these claims into its presentation should be dismissed as an ill-conceived "last gasp."⁶¹

C. Midwest Refineries Have Full Access to the Pittsburgh Market and even the Existence of Some Constraints Would Not Undermine the RD's Conclusions.

The fact that Laurel resorts to arguing that "existing constraints, if left unaddressed, *will result* in suppliers seeking to transport additional Midwestern supplies from terminals west of Eldorado to points east of Eldorado by truck," highlights the fallacy of Laurel's reasoning.⁶² At present Husky, the largest refiner in the Midwest, does not currently truck any product into Pennsylvania, which strongly supports the RD's finding that pipeline capacity from the Midwest into Pittsburgh remains available to Midwest suppliers and is unconstrained.⁶³

Moreover, even if constraints existed, that fact alone would not invalidate the RD's overall decision to deny the Application unless Midwest refiners at least supplied Pittsburgh with volumes of

⁵⁸ See Indicated Parties Main Brief, at 101-102.

⁵⁹ Laurel Exceptions, at 9.

⁶⁰ Laurel Main Brief, at 179; *see also* Laurel Statement No. 5, at 17.

⁶¹ See Application, at 17 (describing pipelines from the Midwest into Pittsburgh as "competitive alternatives").

⁶² Laurel Exceptions, at 21 (Emphasis added).

⁶³ See RD at 170 *citing* Hearing Tr. at 1205:4-5 (Husky Witness Mr. Miller confirming that Husky does not truck any product into Pennsylvania).

low-RVP gasoline equal to the volumes shipped by Midwest refiners during the time when the low-RVP summer standard does not apply, which is not the case.⁶⁴

Finally, Laurel's claims of capacity constraints into Pittsburgh, if true, would undermine the very premise of Laurel's Application. If Midwest suppliers are unable to deliver petroleum products into Pittsburgh without constraint, particularly in light of Buckeye's separate and completed expansion pipeline capacity from the Midwest into Pittsburgh,⁶⁵ they would not be able to fulfill Laurel's promise of increasing supply between Pittsburgh and Eldorado. That logical inconsistency pervades Laurel's arguments.

Reply to Laurel Exception No. 6 and Husky Exception No. 3(2): **THE RD CORRECTLY FOUND THAT LAUREL DID NOT DEMONSTRATE THAT MIDWESTERN SUPPLIES ARE COST-ADVANTAGED RELATIVE TO EAST COAST SUPPLIES.**

The RD correctly observed that "despite bearing the burden of proof, no Laurel witness provided a study supporting their claims that Midwest supply is the lowest cost supply source."⁶⁶ Instead, Laurel cobbles together isolated statements from Indicated Party witnesses and studies.⁶⁷ The Indicated Parties' Reply Brief extensively detailed the context of these statements and explained the flaws in Laurel's arguments that Midwest supply is the lowest cost supply.⁶⁸

Laurel actually claims as "fact" that "Midwestern refineries' crude sources are and will continue to be cost-advantaged over Eastern refineries' crude sources."⁶⁹ Where Laurel relies on projections, which are not "facts," the Indicated Parties present a detailed delivered price analysis analyzing actual costs of Midwest and East Coast supply sources into Pittsburgh.⁷⁰ The Commission should strongly consider that, after reviewing an extensive record, the ALJ found Dr. Arthur's delivered price analysis to be the most credible and compelling perspective on the Pittsburgh petroleum products market.

⁶⁴ See RD at 166, Figure 5.

⁶⁵ See RD at 33, Finding of Fact No. 125.

⁶⁶ RD at 161.

⁶⁷ Laurel Exceptions, at 22.

⁶⁸ Indicated Parties Reply Brief, at 62-65.

⁶⁹ Laurel Exceptions, at 23.

⁷⁰ RD at 162-165; see also Indicated Parties Main Brief, at 86-96.

Reply to Laurel Exception No. 7 and Husky Exception No. 3(3): **THE RD CORRECTLY FOUND THAT LAUREL'S PROPOSED REVERSAL WILL NOT BENEFIT PENNSYLVANIA CONSUMERS BY DECREASING RETAIL GASOLINE PRICES.**

A. Laurel's Assertion that All Parties Agree that the Proposed Reversal Will Decrease Gasoline Prices in Central and Eastern Pennsylvania is False.

Laurel's argument that "*[a]ll parties agree that the proposed reversal will decrease gasoline prices in Central and Eastern Pennsylvania*" willfully distorts the Indicated Parties' position. The Indicated Parties' Reply Brief included a section titled "Laurel's claim that all parties agree that the reversal will lower gasoline prices in Central and Eastern Pennsylvania is false," in which the Indicated Parties demonstrate that the "price war" referenced by PESRM witness John Sadlowski relates to prices in the New York Harbor market.⁷¹ Mr. Sadlowski explicitly clarified on the stand that he was not referring to prices in the Pennsylvania markets.⁷²

B. The Proposed Reversal Will Increase Gasoline Prices in Pittsburgh.

1. Neither Laurel nor Husky Provided Quantifications or Studies Indicating that the Proposed Reversal Will Decrease Gasoline Prices in Pittsburgh

Laurel incredulously argues that it quantified the cost impact of the proposed reversal on the Pittsburgh market. It completed no such exercise. Laurel references a "quantification" from its Witness Dr. Jones, purporting to show a benefit of approximately \$0.05 per gallon or \$80,000 per day for Pittsburgh consumers.⁷³ Dr. Jones presented this information on cross-examination at the evidentiary hearing. However, even a cursory review of the source documents cited by Dr. Jones evinces the lack of rigor underlying his "quantification." His alleged supporting document (i.e., Exhibit MJW-23, at 110), makes no mention of this quantification and offers no guidance as to how Dr. Jones derived the \$0.05 per

⁷¹ Indicated Parties, Main Brief, at 74.

⁷² Indicated Parties Main Brief, at 74; Laurel also argues that the RD improperly found that any benefit to the Altoona region would be outweighed by harm to the larger Pittsburgh region.⁷² In attempting to counter the RD, Laurel tries to downplay the size of the Pittsburgh market. Of course, the total size of the Pittsburgh market is approximately 110,000 BPD, so the RD correctly observed that dual East/West service into Pittsburgh benefits significantly more Pennsylvanians than would dual East/West service to the smaller Altoona market.

⁷³ Laurel Exceptions, at 25.

gallon figure.⁷⁴ That exhibit only shows 2015 delivered costs of CBOB gasoline to Pittsburgh and does not include RBOB prices, making the data both stale and incomplete.⁷⁵

Husky also offers entirely unreliable data alleging Husky provides the most “competitively priced gasoline 27% of the time.”⁷⁶ Although ignored by Husky’s brief, Husky witness Mr. Miller revealed fatal flaws in the referenced chart at hearings, including disclosing that Husky purchases product from both Midwest and East Coast sources.⁷⁷ This renders the data useless for comparing Midwest and East Coast pricing.

2. The Delivered Price Analysis Presented by Indicated Parties' Witness Dan Arthur Provides a Thorough and Comprehensive Analysis Demonstrating that Pittsburgh Market Participants Benefit from Access to Lower Cost East Coast Supply.

The Indicated Parties’ Reply Brief addresses each of the alleged flaws in Dr. Arthur’s analysis.⁷⁸ For example, Laurel claims that Dr. Arthur’s delivered price analysis is “wrong more often than it is right,” but fails to acknowledge the fact that the delivered price data in Laurel’s analysis used different inputs than Dr. Arthur’s.⁷⁹ Laurel witness Dr. Webb modified Dr. Arthur’s delivered price inputs, compared the modified delivered price analysis to market prices, and used these results to argue that Dr. Arthur’s delivered price analysis is invalid.⁸⁰ Dr. Webb has used similar tactics before, including in a FERC proceeding in which the FERC ALJ found Dr. Webb’s calculations to lack even “a cursory check of the data.”⁸¹

Reply to Laurel Exception No. 8: **THE RD DID NOT IGNORE OTHER MAJOR PUBLIC BENEFITS ASSOCIATED WITH THE REVERSAL.**

Laurel speciously complains that the RD failed “to examine any other benefits of the reversal,” other than the myth of lower gasoline prices in Pittsburgh, which the RD dismissed as unsupported.⁸² Laurel ignores the RD’s thorough examination of Laurel’s unproven assertion that lower priced Mid-West

⁷⁴ See Laurel Main Brief, at 91; see also Indicated Parties Main Brief, at 76.

⁷⁵ See Laurel Main Brief, at 91; see also Indicated Parties Main Brief, at 76.

⁷⁶ See Husky Main Brief, at 22.

⁷⁷ Tr. 1189.

⁷⁸ See Laurel Exceptions, at 27 *but see* Indicated Parties Reply Brief, at 85-93.

⁷⁹ See Laurel Exceptions at 27; *but see* Indicated Parties Reply Brief, at 92-93.

⁸⁰ Indicated Parties Reply Brief, at 92-93.

⁸¹ Indicated Parties Reply Brief, at 93

⁸² Laurel Exceptions, p. 27.

and Canadian crudes will translate into lower prices at the pump in Pittsburgh.⁸³ The RD also addressed Laurel's assertions that the reversal would (1) comport with alleged national energy policy of decreasing reliance on "imported" and (2) further a state policy of recognizing the benefits of the "shale revolution." The RD found correctly that apart from Laurel's bald conjecture, not one Laurel witness provided any credible evidence or analysis to suggest that these purported "lower cost crudes," produced from shale or otherwise, would produce any actual savings.⁸⁴ The RD points out that the shale revolution argument fails because (i) any Midwest price advantage over the East is diminishing over time and (ii) East coast refiners have supplied the lower priced product in Pittsburgh the majority of the time despite the alleged Midwestern price advantage. Indeed, this phenomenon explains why there is unused excess delivery capacity from the Midwest into Pittsburgh today.⁸⁵ Laurel also ignores that the proposed reversal will actually reduce capacity into Pittsburgh by eliminating a second source of supply into Pittsburgh, thereby creating future supply uncertainty.⁸⁶ The RD fully considered Laurel's claim of other major benefits, but did not find them credible or compelling.

Reply to Laurel Exception No. 9 and Husky Exception No. 4: **THE RD CORRECTLY FOUND THAT PITTSBURGH AND PHILADELPHIA MARKET PARTICIPANTS WOULD LACK ADEQUATE ALTERNATIVES IF THE COMMISSION APPROVES THE PROPOSED REVERSAL.**

A. The RD Applied the Correct Legal Standard to Determine that Laurel Failed to Furnish Evidence of Adequate Alternatives for its Current Customers.

The RD did not err in finding that Pittsburgh and Philadelphia market participants would lack adequate alternatives if the Commission approves the proposed reversal. Laurel observes that "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."⁸⁷ However, the Commission made this finding after concurring that the standards for abandonment were met -- solely in the context of determining whether to impose conditions requiring the utility to compensate an affected customer for

⁸³ RD at 160-167.

⁸⁴ RD at 161-167.

⁸⁵ RD at 165.

⁸⁶ Indicated Parties' Main Brief at 81.

⁸⁷ Laurel Exceptions, at 28.

conversion costs.⁸⁸ The standard for alternative service remains unchanged from the standard applied by the RD; i.e., whether adequate alternatives exist.⁸⁹

Laurel attacks the RD's findings that PESRM and Monroe lack adequate alternative markets to sell products, but offers no supporting evidence.⁹⁰ Laurel argues only that PESRM and Monroe would be able to maintain their existing pricing structure, meaning that they would continue to [BEGIN HIGHLY CONFIDENTIAL] [REDACTED] [END HIGHLY CONFIDENTIAL]. The Indicated Parties' Reply Brief explains that removing access to the Pittsburgh market impacts the posted prices for FOB products.⁹¹ So maintaining the same *pricing structure* does not translate to maintaining comparable *prices*.

Laurel's claim that the RD's analysis of alternatives violates the dormant commerce clause fails for at least two reasons. First, the RD never required Laurel to perfectly replace the benefits of its current service, only that it provide adequate or comparable alternatives.⁹² Second, as addressed in Reply to Exception No. 1, the dormant commerce clause is not implicated by Laurel's Application.

B. The RD Correctly Determined that Midwest Refiners Lack the Capability to Fully Supply Pittsburgh with Low-RVP Gasoline and Presented Multiple Additional Findings Affirming that Laurel Failed to Present Evidence of Adequate Alternatives for its Current Customers.

Laurel claims that the RD "assumes" only East Coast low-RVP gasoline can fully supply the Pittsburgh market.⁹³ This hardly reflects the RD's consideration of the record evidence showing that Midwest refiners do not produce sufficient quantities of low-RVP gasoline to supply the Pittsburgh market.⁹⁴ According to the very competitive market principles advanced by Laurel, the hesitance to

⁸⁸ *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, at *12, 2004 WL 5854823 (Order Entered Jan. 24, 2005) ("Sunoco 2005 Application Order")

⁸⁹ See RD. at 198. Notably, Laurel also argues that the RD requires it to provide "perfect substitute service." Laurel Exceptions, at 28 note 36. Again, the RD only required Laurel to provide adequate alternatives. See RD. at 198.

⁹⁰ Laurel Exceptions, at 29.

⁹¹ Indicated Parties Main Brief, at 129.

⁹² RD at 198. The RD required Laurel to "replicate *satisfactorily*" the benefits of its current service. RD at 198. Laurel unreasonably interprets this language as requiring a perfect duplication.

⁹³ Laurel Exceptions, at 30.

⁹⁴ RD at 194.

produce more low-RVP gasoline for Pittsburgh means Midwest refiners cannot do so at prices competitive with the East Coast refiners.⁹⁵

Laurel argues that the RD errs in considering evidence of unquantified price increases for low-RVP gasoline in the Pittsburgh market. However, Laurel, the party bearing the burden of proof, initially argued that production of low-RVP gasoline does not materially increase the refiner's expenses.⁹⁶ Witnesses for the Indicated Parties responded with incontrovertible evidence detailing the processes and cost drivers of producing low-RVP gasoline, including calculations showing that Midwest refineries would incur increased production costs of at least 2.6 cents per gallon to produce low-RVP gasoline.⁹⁷

Laurel's claim that the RD fails to address alternatives unrelated to the low-RVP gasoline also fails. The RD affirmed that barging and trucking are inadequate alternatives to pipeline supply for reasons extensively detailed in the Indicated Parties' briefs.⁹⁸ The RD also observed East Coast gasoline supply to be less expensive than Midwest Supply even without consideration of the low-RVP standard.⁹⁹

Reply to Laurel Exception No. 10: THE RD CORRECTLY CONCLUDED THAT LAUREL FAILED TO DEMONSTRATE THAT NO HARM TO PITTSBURGH AND PHILADELPHIA MARKET PARTICIPANTS WOULD RESULT FROM THE REVERSAL

Laurel has failed to prove: 1) that its proposed reversal will not harm customers in Pittsburgh or East Coast refiners; and, 2) that any constituency, with the exception of some Midwest refiners, will benefit from the proposed reversal.¹⁰⁰ Contrary to Laurel's Exception, proving lack of harm, *di minimis* or otherwise, does not show an affirmative benefit.¹⁰¹ Moreover, the RD correctly concludes that the affirmative public benefits standard does not apply here because the Application seeks to abandon service.¹⁰² Accordingly, Laurel's contention that *Popowsky v. Pa. Pub. Util. Comm'n*, 937 A.2d 1040, 1061 (Pa. 2007) ("*Popowsky*"), which applied the *City of York* affirmative benefits test in a merger proceeding, is wrong. However, even if *Popowsky* did apply, it would still require both affirmative

⁹⁵ RD at 194.

⁹⁶ Laurel Main Brief, at 45.

⁹⁷ See RD at 151; see also Indicated Parties Main Brief, at 103-105.

⁹⁸ RD at 34, Findings of Fact 129, 135, and 136.

⁹⁹ RD at 165.

¹⁰⁰ RD at 167-168.

¹⁰¹ *City of York v. Pennsylvania Pub. Util. Comm'n*, 295 A.2d 825, 828 (Pa. 1972).

¹⁰² RD at 83-84.

benefits and a showing that constituencies not uniquely benefited by a transaction were not harmed.¹⁰³ Here, not only did the RD find there was no benefit to customers, it also found that those same groups were harmed. Laurel has not met its burden of proof under its own preferred analysis.

A. The RD Does Not Require Laurel to Prove a Negative in Evaluating Harm.

Laurel erroneously claims that the RD's affirmative statement that "Laurel has failed to show that the proposed reversal will not harm the Pittsburgh market,"¹⁰⁴ has required it to prove a negative, i.e., the absence of all possible harm. The RD thoroughly¹⁰⁵ considered and rejected Laurel's contention that the reversal will result in any benefit. The RD went even further and found the opposite; namely, that the reversal will harm key stakeholders. The identified harms are neither remote nor unsubstantiated. Rather, they included customers paying higher prices for gasoline and adverse impacts from PA refineries potentially going out of business.¹⁰⁶ These findings of harm from the reversal undermine Laurel's claim that it was required to "prove the negative."

B. The RD Correctly Found Pittsburgh Will be Harmed by the Reversal

1. The Delivered Price Analysis Submitted by the Indicated Parties Accurately Demonstrates that the Pittsburgh Market Benefits from Arbitrage Opportunities.

As discussed in the Reply to Laurel Exception No. 7, *supra*, Laurel's claim that Dr. Arthur's delivered price analysis "is wrong more than 50% of the time" derives from a chart compiled by Laurel witness Dr. Webb that materially and improperly modified the source data in Dr. Arthur's analysis. The RD properly relied on Dr. Arthur's study as a close approximation of retail fuel costs and an indication that Pittsburgh market participants benefit from existing arbitrage opportunities that would be lost if the reversal were to be approved.¹⁰⁷

2. The RD Properly adopted the Indicated Parties' Volatility Analyses.

There is no basis to Laurel's claims that it demonstrated the Indicated Parties' volatility analyses to be without merit. The Indicated Parties' Reply Brief meticulously addressed each of Laurel's

¹⁰³ *Id.*, at 937 A.2d 1040, 1061.

¹⁰⁴ RD at 168.

¹⁰⁵ RD at 161-168.

¹⁰⁶ RD at 169.

¹⁰⁷ See RD at 165-166; see also Indicated Parties Main Brief, at 86-96.

responsive arguments and showed that they were rooted in misrepresentations and contextual omissions.¹⁰⁸ In particular, the Indicated Parties analyzed Midwestern price volatility and determined that the significant volatility in Midwest supply prices cannot be entirely attributable to retail price competition because Midwest retail prices exhibited significant price shifts during periods of unplanned refinery outages or other wholesale supply disruptions.¹⁰⁹ The Midwest price volatility that Laurel proposes to import further into Pennsylvania through the reversal is wholesale-driven, a fact that Laurel conveniently ignores.

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

The RD found that “the Philadelphia refiners PESRM and Monroe Energy consider the continuation of east to west service to the Pittsburgh market important and irreplaceable.”¹¹⁰ This finding, coupled with an examination of the volumes flowing from the Eastern Pennsylvania refineries along the Laurel pipeline, support the RD’s conclusion that Laurel’s customers have continuing plans to use the east to west service to Pittsburgh that Laurel seeks to abandon.¹¹¹ Laurel argues that consumers will benefit if East Coast refineries are forced to sell product formerly moving to Pittsburgh into markets with lower prices.¹¹² Laurel ignores record evidence that while such an approach, even if possible, might provide some short-term benefits, in the longer term refineries that are lowering prices to unsustainable levels would be forced to close and consumers would be substantially and materially harmed.¹¹³ This situation is neither sustainable nor in the public interest, and is contrary to those market forces demanding Philadelphia-area petroleum products in Pittsburgh.¹¹⁴ The RD properly concludes that these harms are not *di minimis* but in fact substantial.¹¹⁵

¹⁰⁸ See RD at 167. See Indicated Parties Main Brief, at 95-101 (addressing price volatility and supply reliability).

¹⁰⁹ See Indicated Parties Reply Brief, at 99.

¹¹⁰ RD at 118.

¹¹¹ Indicated Parties Main Brief, at 112.



¹¹² Laurel Exceptions, pp. 33-34.

¹¹³ RD at 152-155; Indicated Parties MB at 114, Monroe St. No. 1 at 18:4-14; PESRM St. No. 1 at 8:14-15.

¹¹⁴ Monroe Energy St. No. 1-SR at 12-16.

¹¹⁵ RD at 169.

1. The RD Properly Found That, If Implemented, the Proposed Reversal Will Harm East Coast Refineries.
 - a. There Is No Factual Basis Supporting A Declining Trend of Petroleum Products Being Shipped to Pittsburgh from East Coast Refineries.

The RD finds “that customers have significantly utilized the Altoona-Pittsburgh section of the Laurel pipeline in recent years.”¹¹⁶ While it is undisputed that volumes transported on Laurel from the east to the Pittsburgh market have declined during the period 2006 to 2017, Laurel has overstated the overall impact of the decrease on the use of the pipeline section in question.”¹¹⁷ Laurel contends that the RD lacks credibility because Laurel’s analysis -- using cherry-picked timeframes -- suggests otherwise. As the RD properly recognized, clear evidence shows that East Coast refineries continue to currently supply over half of the Pittsburgh market.¹¹⁸ Laurel’s numbers are contrary to the record, which shows that Monroe’s volumes west of Eldorado are more than **[BEGIN HIGHLY CONFIDENTIAL]** 
 **[END HIGHLY CONFIDENTIAL]**¹¹⁹

- b. East Coast Refineries Are Aware Of And Not Economically Indifferent To The Destinations Of Their Products.

Laurel claims that because East Coast refineries use index prices when injecting product into the pipeline, they are indifferent to where the product is delivered. However, as Monroe witness Sadowski testified,¹²⁰ eliminating the market west of Eldorado will diminish the index price across the entire Laurel pipeline and will reduce the overall amount of product Monroe and PESRM will be able to inject into the pipeline because there will be no increase in demand to make up for the loss of Pittsburgh.¹²¹ This doubles the harm—loss of substantial volumes and a reduction in prices for all product that can continue to move on the Laurel pipeline. Monroe uses the Laurel pipeline for nearly half of its production.¹²²

¹¹⁶ RD at 199.

¹¹⁷ RD at 100.

¹¹⁸ RD at 107-109, 117-118.

¹¹⁹ Monroe St. No. 1 at 8:2-7 **[BEGIN HIGHLY CONFIDENTIAL]** 

[END HIGHLY CONFIDENTIAL].

¹²⁰ Monroe Energy St. No. 1-SR, at 6:21-7:8.

¹²¹ Monroe Energy St. No. 1-SR, at 15:13-16-2.

¹²² Tr. 1081-1082 (Sadowski).

Monroe and PESRM are harmed by the need to change product mix to include larger percentages of reformulated gasoline, which is more expensive to make.¹²³

c. The Proposed Laurel Pipeline Reversal Is Likely to Affect The Solvency Of Monroe And PESRM's Refinery Operations

The record evidence shows that both Monroe and PESRM consider Pittsburgh to be an important and critical market to their long-term viability. These refineries deliver on average over half the product into the Pittsburgh market every year. Both refinery witnesses testified that Pittsburgh is a critically important market,¹²⁴ and that reversal will dramatically reduce their ability to move product out of their refineries.¹²⁵ Similarly, if the refineries or their customers sought to move the barrels currently moved on the Laurel pipeline to other destinations, the combination of lower margins and higher transportation costs would push down margins directly.¹²⁶ It is a classic lose/lose for the refineries.

2. The Threatened Financial Viability of PESRM and Monroe Was Neither the Sole Nor Primary Basis for Denying Laurel's Proposed Reversal

This Exception is premised on Laurel's erroneous view that in denying the proposed reversal the RD was merely attempting to keep the "financially-troubled" Philadelphia refineries open. Laurel goes on to claim that such a finding is beyond the Commission's jurisdiction and, if this is a legitimate goal, the Commonwealth has other means at its disposal to maintain the solvency of the refineries. What Laurel ignores is that the RD finds numerous adverse consequences that will result from the proposed reversal including, *but not limited to*, harm to the refineries. The RD properly balanced any loss to the utility with the hardship to the public upon discontinuation of the service, consistent with applicable Pennsylvania law.¹²⁷ It is clear, however, that consideration of the potential harms to the refineries was only one of many harms the RD addresses. Laurel's classic straw man argument – inventing an issue that does not exist in order to attack it – should be summarily dispatched.

¹²³ Indicated Parties Main Brief at 115.

¹²⁴ Monroe Energy St. No. 1, at 8:18; Monroe Energy St. No. 1-SR, at 6:8-17; PESRM St. No. 1, at 8:14-16.

¹²⁵ Tr. 1077:14-19 (Sadowski); PESRM St. No. 1, at 8:14-19.

¹²⁶ Monroe Energy St. No. 1-SR, at 6:21-7:8.

¹²⁷ *Commuters' Comm. v. Pennsylvania Pub. Util. Comm'n*, 88 A.2d 420, 422 (Pa. Super. 1952) (abandonment of segment of rail line); *West Penn Rys. Co. v. Pennsylvania Public Util. Comm'n*, 15 A.2d 539, 544 (Pa. Super. 1940) (abandonment of rail line); *Re Avery Transp., Inc.*, 64 Pa. P.U.C. 420 (Aug. 20, 1987) (abandonment of a bus route).

D. The RD Properly Concluded That Laurel Failed To Demonstrate That Trucking Petroleum Products Would Not Result In Harm.

Contrary to Laurel's Exception, the RD does not conclude that Laurel has "failed to show" that trucking will not be dangerous. The RD does, however, take issue with Laurel's unfounded contention that the reversal would reduce truck traffic. Because the RD found no Midwest volumes are currently coming into Pennsylvania via truck, the proposed reversal cannot possibly be safer than the present situation from a truck traffic perspective. And, even if trucking proved to be an economically viable option for moving product from Altoona into the Pittsburgh market, the record shows that trucking would increase the risk of serious accidents,¹²⁸ and Laurel has not shown otherwise.

Reply to Laurel Exception No. 11: **THE RD CORRECTLY CONCLUDED THAT LAUREL FAILED TO DEMONSTRATE EITHER SUBSTANTIAL LOSSES OR THAT VOLUMES WERE DECLINING TO ZERO.**

This Exception is based on the erroneous premise that east to west volumes on the Altoona-Pittsburgh section of the Laurel pipeline are inevitably going to zero. Laurel erroneously concludes it has "demonstrated" it has suffered considerable financial losses and that any cost and revenue analysis is meaningless. The ALJ correctly discerned that the data contradicts Laurel's prediction that volumes will inevitably decline to zero.¹²⁹ The ALJ also correctly observed that deliveries on the Laurel pipeline from the east to Pittsburgh from 2006-2017 do not show a consistent decline, but rather show upward and downward movements in volumes.¹³⁰ Laurel presented no cost and revenue analysis showing any financial loss to it, as a utility must do to support an abandonment of service. The ALJ correctly concluded that Laurel failed to meet the loss to the utility portion of the abandonment standard.¹³¹

A reduction in revenue alone does not demonstrate a net loss to the utility absent a complete examination of Laurel's cost of providing service. As explained in detail in the Indicated Parties' Main and Reply Briefs, to determine if Laurel has suffered a net loss weighing in favor of abandonment, one has to know Laurel's costs for operating the segment to be abandoned, the costs for operating the entire

¹²⁸ Indicated Parties Main Brief, at 120-125.

¹²⁹ RD at 101-118.

¹³⁰ RD at 99.

¹³¹ RD at 84-100.

pipeline, the revenues from the abandoned segment and the revenues from operating the rest of the Laurel pipeline.¹³² Laurel admits it has presented no cost or revenue analysis.¹³³ Laurel bears the burden of showing it has suffered a loss, but has presented no evidence or analysis to meet that burden.

Reply to Laurel Exception No. 12: **THE RD CORRECTLY FOUND THE PREPONDERANCE OF EVIDENCE DID NOT SUPPORT LAUREL'S VOLUMES UNDERGOING SUBSTANTIAL DECLINES IN THE FUTURE.**

Laurel's Exception grossly mischaracterizes the RD and the record by suggesting the ALJ's finding that volumes should not be expected to decline to zero was based on the Indicated Parties' testimony that customers "desire to continue the westbound service."¹³⁴ Laurel further accuses the RD of misconstruing the historic volumetric data, improperly accepting flawed Indicated Party projections and disregarding Laurel's assertion that Midwestern supplies into Pittsburgh will further decrease deliveries from the east.¹³⁵

Laurel argues only its own evidence and falsely claims that the Indicated Parties' evidence supports its position. The ALJ found, after consideration of *all* the evidence, that the preponderance of evidence did not show substantial volume declines in the future, clearly contradicting Laurel's assertion that shipments west of Eldorado justified an abandonment of service.¹³⁶ The ALJ properly found the Indicated Parties' testimony persuasive that: 1) customers value Laurel's services and wish to maintain their availability west of Eldorado, 2) the data showed substantial volumes still going west of Eldorado and 3) it was unreasonable to expect those volumes will soon decline to levels that justify an abandonment of service.¹³⁷

The RD properly rejected Laurel witness Dr. Webb's analysis because it assumed a single, precisely quantifiable future scenario for flows on the Laurel pipeline. In contrast to Dr. Webb, Indicated Parties' witnesses Dr. Arthur and Mr. Schaal not only analyzed the historic data, but analyzed whether

¹³² Indicated Parties Main Brief, at 49-51; Indicated Parties Reply Brief, at 152-155.

¹³³ Laurel Main Brief, at 177 ("Laurel did not present a cost and revenue analysis in this proceeding for several reasons.").

¹³⁴ Laurel Exceptions p. 37.

¹³⁵ Laurel Exceptions p. 38. *See* reply to Laurel Exception No. 5.

¹³⁶ RD at 101-118.

¹³⁷ Indicated Parties Main Brief, at 51-77; Indicated Parties Reply Brief, at 155-156.

there is likelihood customers will continue to desire and use the service.¹³⁸ That evidence showed not only that an increase in the flow of products along the Laurel pipeline was possible, but that the most recent data showed movements from Philadelphia refineries are making up a larger proportion of movements, reaching 57% of movements in 2017 compared to 53% in 2016, despite the completion of Midwest region pipeline additions.¹³⁹

PESRM witness Mr. Sadlowski explained that “[t]here are no growing markets into which PESRM currently sells product, [and] there are no alternative markets into which PESRM can place product. That is why (i) the Laurel pipeline is such a critical asset for delivering product out of PESRM’s refinery and (ii) PESRM seeks to ship as much product as possible on the Laurel pipeline.”¹⁴⁰

The RD properly rejected Laurel’s self-serving conclusion that east to west volumes on the Laurel pipeline between Altoona and Pittsburgh will inevitably decline to zero because the preponderance of evidence persuasively and credibly contradicted Laurel’s position.

Reply to Laurel Exception No. 13: **THE RD ERRED BY RECOMMENDING THAT THE PROPOSED CAPACITY AGREEMENT SHOULD BE APPROVED.**

Laurel’s Exception is based on the assumption that the proposed Capacity Agreement should have been approved because the Application should have been approved. The Indicated Parties have filed their Exception No. 1, in the alternative, demonstrating that if the Application is approved, the proposed Capacity Agreement should be denied on the merits. There is no need for the Commission to reach the issue of the proposed Capacity Agreement if the RD is adopted and the Application denied.

¹³⁸ Indicated Parties Main Brief, at 70-77.

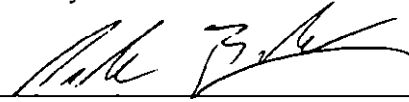
¹³⁹ Indicated Parties Main Brief, at 71-72; Indicated Parties St. No. 2-S, at 12:4-6, 13:1-13

¹⁴⁰ PESRM St. No. 1-S at 5:1-5.

III. CONCLUSION

WHEREFORE, the Indicated Parties respectfully request that the Pennsylvania Public Utility Commission deny the Laurel and Husky Exceptions and adopt the ALJ's Recommended Decision.

Respectfully submitted,


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Dated: April 30, 2018

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

CERTIFICATE OF SERVICE

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

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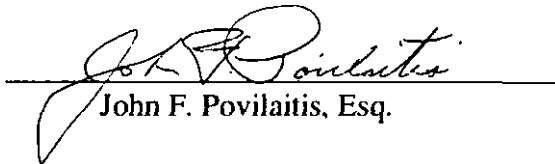
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