**BEFORE THE**

**PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Application of Laurel Pipe Line Company, L.P. :

For approval to change direction of petroleum : A-2016-2575829

products transportation service to delivery :

points west of Eldorado, Pennsylvania :

Affiliated Interest Agreement between : G-2017-2587567

Laurel Pipe Line Company, L.P. and :

Buckeye Pipe Line Company, L.P. :

**PREHEARING ORDER # 2**

A prehearing conference was held on February 14, 2017, at 10:00 a.m. Present and participating through counsel were Laurel Pipe Line Company, L.P. (Laurel or Applicant), the Bureau of Investigation and Enforcement (I&E), Philadelphia Energy Solutions Refining and Marketing, LLC (PESRM), Gulf Operating, LLC (Gulf) and Sheetz, Inc. (Sheetz), Monroe Energy, LLC (Monroe), Husky Marketing and Supply Company (Husky), Sunoco, LLC (Sunoco), Giant Eagle, Inc. (Giant), and Clean Air Council (CAC).

In accordance with the Prehearing Conference Order, dated February 7, 2017, I received prehearing memoranda from each of the parties identified above.

This order sets forth the procedural matters addressed at the prehearing conference.

1. **Petitions to Intervene**

On December 20, 2016, the Bureau of Investigation and Enforcement filed its Notice of Intervention in the Application Proceeding. In addition, the following parties filed Petitions to Intervene: Gulf Operating, LLC on November 22, 2016; Philadelphia Energy Solutions Refining and Marketing, LLC on December 5, 2016; Monroe Energy on January 3, 2017; Husky Marketing and Supply Company on January 31, 2017; Sunoco, LLC on January 31, 2017; Giant Eagle, Inc. on February 1, 2017; Sheetz, Inc. on February 1, 2017; and Clean Air Council on February 1, 2017.

On November 28, 2016, the Applicant filed its Answer to Gulf’s Petition to Intervene. On December 27, 2016, the Applicant filed its Answer to PESRM’s Petition to Intervene. In both Answers, the Applicant requested that the Petition to Intervene be denied, in part because, after the Commission granted Gulf’s request to extend the deadlines for protests until February 1, 2017, the appropriate procedural remedy for Gulf and PESRM would be the filing of protests.[[1]](#footnote-1)

On January 23, 2017, the Applicant filed its Answer to Monroe’s Petition to Intervene. On February 21, 2017, the Applicant filed its Answers to Sheetz’, Sunoco’s, Giant’s, and CAC’s Petitions to Intervene. In all these Answers, the Applicant stated that it did not object to the respective Petitions to Intervene. In addition, on February 21, 2017 the Applicant filed a letter indicating that it would not be filing an answer to Husky’s Petition to Intervene.

There have been no objections to the nine Petitions to Intervene filed in this proceeding. Consequently and in accordance with 52 Pa.Code § 5.72, the Petitions to Intervene filed by I&E, Monroe, PESRM, Gulf, Sheetz, Sunoco, Giant, Husky and CAC shall be granted.

1. **Motions for Admission *Pro Hac Vice***

On January 26, 2017, Christopher A. Ruggiero, Esq. (PA Attorney ID # 80775) filed a Motion for Admission *Proc Hac Vice* on behalf of Richard A. Powers, Jr. Esq., for the purpose of representing Monroe Energy, LLC in this proceeding.

On February 10, 2017, David B. McGregor, Esq. (PA Attorney ID # 28804) moved the admission *Pro Hac Vice* of Christopher J. Barr, Esq. for the purpose of representing Laurel Pipe Line Company, LP in this proceeding.

There have been no objections to these motions.

Upon consideration of the Motions for Admission *Proc Hac Vice* of Richard A. Powers, Jr. Esq., on behalf of Monroe Energy, LLC, and of Christopher J. Barr, Esq. on behalf of Laurel Pipe Line Company, LP, and in accordance with Pa. B.A.R. 301(a), said Motions are hereby granted.

1. **Applicant’s Motion to Consolidate**

On February 6, 2017, Laurel and Buckeye Pipe Line Company, L.P. (Buckeye) filed an Affiliated Interest Agreement (Capacity Agreement) at Docket No. G-2017-2587567. [[2]](#footnote-2)

On February 7, 2017, Laurel filed a Motion to Consolidate the Capacity Agreement with the Application proceeding for the Commission’s consideration.

The Prehearing Conference Order of February 7, 2017 instructed the parties to include an answer to Laurel’s Motion to Consolidate in their prehearing conference memoranda and to consider their answer to the Motion in their proposed litigation schedules.

In accordance with the February 7, 2017 Order, Monroe, Gulf, Sheetz, PESRM and Giant stated in their respective prehearing memoranda that they oppose consolidating because the two matters lack common issues of law or fact and consideration of the merits of Laurel’s proposed capacity agreement is only relevant if the Application is approved by the Commission without conditions.

Pursuant to the provisions of 52 Pa.Code § 5.81(a), “The Commission or presiding officer, with or without motion, may order proceedings involving a common question of law or fact to be consolidated. **The Commission or presiding officer may make orders concerning the conduct of the proceeding as may avoid unnecessary costs or delay**.” (Emphasis added). 52 Pa.Code § 5.81(a).

After considering the Applicant’s Motion to Consolidate as well as Monroe’s, Gulf’s, Sheetz’, PESRM’s and Giant’s objections to it, I will grant the Motion to Consolidate the two dockets in order to avoid unnecessary costs or delays to the conduct of either proceeding.

1. **Discovery Rules**

In it Prehearing Conference Memorandum, Laurel requested the implementation of expedited discovery rules after the service of direct testimony from the other parties. In particular, Laurel requested a ten-day response period to written interrogatories. Laurel also proposed the use of electronic service of discovery responses.

None of the other parties requested modification of the discovery rules that are set forth in the Commission’s regulations. See 52 Pa.Code §§ 5.321-5.372. In fact, there was opposition to Laurel’s request for expedited discovery.

After carefully considering the positions and arguments of all parties on this issue, I shall deny Laurel’s request at this time. The Applicant is free, of course, to respond in an expedited manner to any interrogatories it receives after the round of direct testimonies is concluded, and specific requests for expedited responses will be considered and granted if circumstances warrant such an action.

There was no opposition to Laurel’s proposal regarding the use of electronic service for discovery responses.

THEREFORE,

IT IS ORDERED:

1. That the Petitions to Intervene filed by Philadelphia Energy Solutions Refining and Marketing, LLC, Gulf Operating, LLC, Sheetz, Inc., Monroe Energy, LLC, Husky Marketing and Supply Company, Sunoco, LLC, Giant Eagle, Inc., and Clean Air Council are granted.

2. That the parties of record as of this date are Laurel Pipe Line Company, L.P., the Bureau of Investigation and Enforcement, Philadelphia Energy Solutions Refining and Marketing, LLC, Gulf Operating, LLC, Sheetz, Inc., Monroe Energy, LLC, Husky Marketing and Supply Company, Sunoco, LLC, Giant Eagle, Inc., and Clean Air Council.

3. That Richard A. Powers, Jr., Esq. is admitted *Pro Hac Vice* for the purpose of representing Monroe Energy, LLC in this proceeding.

4. That Christopher J. Barr, Esq. is admitted *Pro Hac Vice* for the purpose of representing Laurel Pipe Line Company, L.P. in this proceeding.

5. That Laurel Pipe Line Company L.P.’s Motion to Consolidate the Affiliated Interest Agreement at Docket No. G-2017-2587567 with the Application proceeding at Docket No. A-2016-2575829 is granted.

6. That pursuant to 52 Pa. Code § 1.55, each party shall be limited to one entry on the service list, although there can be more than one name listed. Service on Applicant shall be made on David B. McGregor, Esq., Anthony D. Kanagy, Esq., Garrett P. Lent, Esq., Christopher J. Barr, Esq., and Jessica R. Rogers, Esq.; service on I&E shall be made on Adam D. Young, Esq. and Michael L. Swindler, Esq.; service on Monroe shall be made on Kevin J. McKeon, Esq., Todd S. Stewart, Esq., Whitney E. Snyder, Esq., Joseph R. Hicks, Esq., Richard E. Powers Jr, Esq., Christopher A. Ruggiero, Esq.; service on Gulf and Sheetz shall be made on Robert A. Weishar, Jr., Esq., Susan E. Bruce, Esq., Adeolu A. Bakare, Esq. and Kenneth R. Stark, Esq.; service on PESRM shall be made on Alan M. Seltzer, Esq. and John F. Povilaitis, Esq.; service on Giant shall be made on Daniel J. Stuart, Esq. and Jonathan D. Marcus, Esq.; service on Husky shall be made on Karen O. Moury, Esq. and Carl R. Shultz, Esq.; service on Sunoco shall be made on Andrew S. Levine, Esq.; and service on CAC shall be made on Ernest Logan Welde, Esq. and Joseph Otis Minott, Esq.

7. That parties may arrange service among themselves as they agree. Pursuant to 52 Pa. Code § 5.154(c), the parties are permitted without further order to limit the service of documents to parties who indicate that they do not wish to be served with such documents.

8. That parties may serve documents electronically by 4:30 p.m. to meet any required due date, with hard copy to follow by regular first class mail, with the provision that large documents not able to be transmitted electronically may be hand-delivered to the parties located in Harrisburg on the due date and received the next business day by parties located outside Harrisburg.

9. That service on the presiding officer may be made electronically by 4:30 p.m. on the due date, with the conditions that: (1) **any document must be in Word compatible format (Adobe is not acceptable)**; (2) electronic service must be followed by a hard copy sent through either first class mail or overnight delivery; and (3) if the content is greater than 4 megabytes, the e-mail must be broken up into smaller transmissions.

10. That the informal e-mail distribution list is as follows. Any changes should be communicated to me, via e-mail ([evero@pa.gov](mailto:evero@pa.gov)) as soon as possible. Please include my legal assistant, Pamela McNeal ([pmcneal@pa.gov](mailto:pmcneal@pa.gov)) on anything you send to me.

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| --- | --- | --- |
| **Counsel** | **Party** | **e-mail** |
| David B. McGregor, Esq | Laurel | [dmacgregor@postschell.com](mailto:dmacgregor@postschell.com) |
| Anthony D. Kanagy, Esq. | Laurel | s[akanagy@postschell.com](mailto:akanagy@postschell.com) |
| Garrett P. Lent, Esq. | Laurel | [glent@postchell.com](mailto:glent@postchell.com) |
| Christopher J. Barr, Esq. | Laurel | [cbarr@postschell.com](mailto:cbarr@postchell.com) |
| Jessica R. Rogers, Esq. | Laurel | [jrogers@postschell.com](mailto:jrogers@postchell.com) |
| Adam D. Young, Esq. | I&E | [adyoung@pa.gov](mailto:adyoung@pa.gov) |
| Michael L. Swindler, Esq. | I&E | [mswindler@pa.gov](mailto:mswindler@pa.gov) |
| Alan M. Seltzer, Esq. | PESRM | [alan.seltzer@bipc.com](mailto:alan.seltzer@bipc.com) |
| John F. Povilaitis, Esq. | PESRM | [john.povilaitis@bipc.com](mailto:john.povilaitis@bipc.com) |
| Robert A. Weishar, Jr. Esq. | Gulf & Sheetz | [bweishaar@mcneeslaw.com](mailto:bweishaar@mcneeslaw.com) |
| Susan E. Bruce, Esq. | Gulf & Sheetz | [sbruce@mcneeslaw.com](mailto:sbruce@mcneeslaw.com) |
| Adeolu A. Bakare, Esq | Gulf & Sheetz | [abakare@mcneeslaw.com](mailto:abakare@mcneeslaw.com) |
| Kenneth R. Stark, Esq. | Gulf & Sheetz | [kstark@mcneeslaw.com](mailto:kstark@mcneeslaw.com) |
| Daniel J. Stuart, Esq. | Giant | [stuart@marcus-shapira.com](mailto:stuart@marcus-shapira.com) |
| Jonathan D. Marcus, Esq. | Giant | [jmarcus@marcus-shapira.com](mailto:jmarcus@marcus-shapira.com) |
| Kevin J. McKeon, Esq. | Monroe | [kjmckeon@hmslegal.com](mailto:kjmckeon@hmslegal.com) |
| Todd S. Stewart, Esq. | Monroe | [tsstewart@hmslegal.com](mailto:tsstewart@hmslegal.com) |
| Whitney E. Snyder, Esq. | Monroe | [wesnyder@hmslegal.com](mailto:wesnyder@hmslegal.com) |
| Joseph R. Hicks, Esq. | Monroe | [jrhicks@Venable.com](mailto:jrhicks@Venable.com) |
| Richard E. Powers Jr, Esq. | Monroe | [repowers@Venable.com](mailto:repowers@Venable.com) |
| Christopher A. Ruggiero, Esq. | Monroe | [Christopher.ruggiero@monroe-energy.com](mailto:Christopher.ruggiero@monroe-energy.com) |
| Karen O. Moury, Esq. | Husky | kmoury@eckertseamans.com |
| Carl R. Shultz, Esq. | Husky | cshultz@eckertseamans.com |
| Andrew S. Levine, Esq. | Sunoco | ALevine@stradley.com |
| Ernest Logan Welde, Esq. | CAC | lwelde@cleanair.org |
| Joseph Otis Minott, Esq. | CAC | joe\_minott@cleanair.org |
| *Eranda Vero* | *OALJ* | evero@pa.gov |
| *Pamela McNeal* | *OALJ* | pmcneal@pa.gov |

The parties are reminded that 52 Pa.Code § 1.35(c)(1) provides that a signature on a document filed with the Commission constitutes a certificate by the individual that the document is “well grounded in fact and is warranted by existing law” and is not “interposed for an improper purpose, such as to harass or cause unnecessary delay or needless increase in the cost of litigation,” and that violations are subject to the sanctions listed in 52 Pa. Code § 1.35(c)(2).

The parties are directed to cooperate and exchange information on an informal basis. The parties are expected to resolve discovery issues among themselves; motions to compel should be filed only after such efforts have failed. All motions to compel must contain a certification of counsel of the informal discovery undertaken and their efforts to resolve their discovery disputes informally. If a motion to compel fails to contain such certification, we shall contact the parties and direct them to pursue informal discovery. In addition, the parties are urged to use alternative means of discovery such as discovery conferences or depositions. There are limitations on discovery and sanctions for abuse of the discovery process. 52 Pa. Code

§§ 5.361, 5.371-5.372.

11. That the following schedule is adopted[[3]](#footnote-3):

Company Direct Testimony February 7, 2017

Prehearing Conference February 14, 2017

In-Person Public Input Hearings To be determined

Settlement Conference May 25, 2017

Non-Company Direct Testimony June 14, 2017[[4]](#footnote-4)

Rebuttal Testimony August 1, 2017

Surrebuttal Testimony September 6, 2017

Written Rejoinder September 22, 2017

Evidentiary Hearings (in Harrisburg) October 2-6, 2017

Main Briefs October 30, 2017

Reply Briefs November 20, 2017

12. That the parties shall abide by the discovery rules set forth in the Commission’s regulations, 52 Pa.Code §§ 5.321-5.372, without modifications.

13. That specific requests for expedited responses to discovery requests will be considered and granted if circumstances warrant such an action.

14. That the parties comply with the Commission’s requirements for the preparation and service of written testimony. 52 Pa. Code § 5.412. These include, but are not limited to, the requirement that written testimony must be accompanied by all exhibits to which it relates. Written testimony shall be marked with numerical, sequential statement numbers. Oral direct, rebuttal or surrebuttal testimony or witnesses not identified in a party’s prehearing memorandum shall not be permitted, except by permission for good cause.

15. That any motions with respect to, or objections to, written testimony must be presented in writing no later than three days prior to the day that the witness sponsoring that testimony is scheduled to testify. Answers to such motions or objections may be filed within three days or sooner if circumstances warrant. Oral motions, other than for good cause, shall not be accepted.

16. That the parties shall comply with the provisions of 52 Pa. Code

§ 5.243(e)which prohibit the introduction of evidence during rebuttal which should have been included in the party’s case-in-chief or which substantially varies from the party’s case-in-chief, unless the party is introducing evidence in support of a proposed settlement.

17. That the hearings will be held in Harrisburg. Parties will complete the daily witness listing and cross-examination grid as directed.

18. That the parties shall stipulate to any matters they reasonably can to expedite this proceeding, lessen the burden of time and expenses in litigation on all parties and conserve precious administrative hearing resources. 52 Pa. Code §§ 5.232 and 5.234. All stipulations entered into by the parties shall be reduced to writing, signed by the parties to be bound thereby, and moved into the record during the hearings in this case. An exception to this requirement may occur when circumstances of time and expediency warrant. If so, an oral presentation of a stipulation is permissible, if it is followed by a reduction to writing as herein directed.

19. That the evidentiary hearings in this matter constitute formal legal proceedings and will be conducted in accordance with the Commission’s Rules of Administrative Practice and Procedure, as well as the rules of evidence as applied to administrative hearings.

20. That parties serving pre-served testimony in proceedings pending before the Commission pursuant to 52 Pa. Code § 5.412(f) shall be required, within thirty (30) days after the final hearing in an adjudicatory proceeding to either eFile with or provide to the Secretary’s Bureau a Compact Disc (CD) containing all testimony furnished to the court reporter during the proceeding, consistent with the Commission’s Implementation Order, dated January 10, 2013, at Docket No. M-2012-2331973.

21. That the parties must comply with 52 Pa. Code §§5.501, *et* *seq*., regarding the preparation and filing of briefs. Service can be made electronically by no later than 4:30 p.m. on the dates listed, with a hard-copy received in hand on the next business day. Parties are directed to e-mail us a copy of their as-filed briefs in ADOBE or other compatible PDF format in addition to a WORD-formatted document. The format of the briefs served electronically on the parties may be as requested by the parties.

22.That all briefs shall comply with the requirements of 52 Pa. Code §§ 5.50l and 5.502,and in addition to the mandatory contents set forth in 52 Pa. Code § 5.501(a),all main briefs, regardless of length, must contain:

A. A table of contents;[[5]](#footnote-5)

B. A history of the proceeding;

C. A discussion;

D. Proposed findings of facts (with record citations to transcript pages or exhibits where supporting evidence appears);

E. Proposed conclusions of law (with citations to supporting statutes, regulations or relevant case law); and

F. Proposed ordering paragraphs specifically identifying the relief sought.

52 Pa. Code § 5.501(e) requires that “Briefs shall be as concise as possible.” Page limitations on briefs will be discussed on or before the last day of hearing.

23. That if a party does not file a reply brief, it will be assumed that the party does not dispute the assertions, contentions or arguments made by the other parties in their main briefs. While it is not necessary in a reply brief to repeat a particular argument or discussion contained in the main brief, the reply brief should note where the responsive argument is located in the main brief and how it responds to the other parties’ assertions, contentions or arguments.

24. That any brief not filed and served on or before the date fixed therefore will not be accepted for filing, except by permission for good cause.

25. That the parties are to confer among themselves in an attempt to resolve all or some of the issues associated with these Complaints. The parties are reminded it is the Commission’s policy to encourage settlements. 52 Pa. Code § 5.231(a). The parties are strongly urged to seriously explore this possibility. A joint settlement petition executed by representatives of all parties to be bound thereby, together with statements in support of settlement by all signatory parties, must be filed with the Secretary for the Commission and served on us.

26. That any provision of this prehearing order may be modified upon motion and good cause shown by any party in interest in accordance with 52 Pa. Code § 5.223(a).

Date: March 2, 2017 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Eranda Vero

Administrative Law Judge

**A-2016-2575829 APPLICATION OF LAUREL PIPE LINE COMPANY, L.P**

**SERVICE LIST**

DAVID B. MCGREGOR, ESQUIRE

ANTHONY D. KANAGY, ESQUIRE

GARRETT P. LENT, ESQUIRE

CHRISTOPHER .J BARR, ESQUIRE

JESSICA R. ROGERS, ESQUIRE

POST & SCHELL PC

17 NORTH SECOND STREET

12TH FLOOR

HARRISBURG PA 17101-1601

717.612.6032

***Accepts E-service***

JONATHAN MARCUS ESQUIRE

DANIEL J. STUART, ESQUIRE

ONE OXFORD CENTRE 35TH FLOOR

301 GRANT STREET

PITTSBURGH PA 15219

WHITNEY E. SNYDER, ESQUIRE

TODD S. STEWART, ESQUIRE

KEVIN J. MCKEON, ESQUIRE

JOSEPH R. HICKS, ESQUIRE

RICHARD E. POWERS JR., ESQUIRE

CHRISTOPHER A. RUGGIERO, ESQUIRE

100 NORTH TENTH STREET

HARRISBURG PA 17101

**717-236-1300**

***Accepts E-service***

ADEOLU A. BAKARE ESQUIRE

SUSAN E. BRUCE, ESQUIRE

KENNETH R. STARK, ESQUIRE

ROBERT A. WEISHAR, JR. , ESQUIRE

MCNEES WALLACE & NURICK LLC

100 PINE STREET

PO BOX 1166

HARRISBURG PA 17108-1166

**717-237-5290**

***Accepts E-service***

MICHAEL L. SWINDLER, ESQUIRE

ADAM D. YOUNG, ESQUIRE

BI&E

400 NORTH STREET

PO BOX 3265

HARRISBURG PA 17105-3265

**717-783-6369**

***Accepts E-service***

ALAN MICHAEL SELTZER, ESQUIRE

JOHN F. POVILAITIS, ESQUIRE

BUCHANAN INGERSOLL & ROONEY

409 NORTH SECOND STREET

SUITE 500

HARRISBURG PA 17101-1357

610.372.4761

***Accepts E-service***

CARL SHULTZ, ESQUIRE

Karen O. MOURY, ESQUIRE

ECKERT SEAMANS CHERIN & MELLOTT LLC

213 MARKET STREET 8TH FLOOR

HARRISBURG PA 17101

717-255-3742

***Accepts E-service***

ANDREW LEVINE PARTNER

STRADLEY RONON

2600 ONE COMMERCE SQUARE

PHILADELPHIA PA 19103

215-564-8073

***Accepts E-service***

JOSEPH OTIS MINOTT, ESQUIRE

ERNEST LOGAN WELDE, ESQUIRE

CLEAN AIR COUNCIL

135 S 19TH STREET

SUITE 300

PHILADELPHIA PA 19103

***Accepts E-service***

1. On February 1, 2017, I&E, Monroe, PESRM, Gulf, Sheetz and Giant filed Protests in the Application proceeding. [↑](#footnote-ref-1)
2. By Secretarial Letter dated February 14, 2017, the period for consideration of the Capacity Agreement filed on February 6, 2017 was extended until further order of the Commission. [↑](#footnote-ref-2)
3. Testimony shall not be filed with the Commission at the time of service, but parties may file a certificate of service. [↑](#footnote-ref-3)
4. All Testimony and Briefs due dates are in-hand dates meaning the material must be received no later than 4:30 p.m. on that date. An e-mail can satisfy the in-hand receipt if the receiving party has agreed to accept service by e-mail. [↑](#footnote-ref-4)
5. In addition, each reply brief must contain a table of contents. [↑](#footnote-ref-5)