**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. :

ORDER REGARDING GIANT EAGLE, INC.’S MOTION TO COMPEL

On November 14, 2016, Laurel Pipe Line Company, L.P. (Laurel or Applicant) filed with the Commission the above-captioned Application.

On March 3, 2017, Giant Eagle, Inc. (Giant) served Giant Set I Interrogatories Requests for Production of Documents (“Giant Set I”). On March 13, 2017, Laurel Pipe Line Company, L.P. (“Laurel” or “Applicant”) submitted Objections (“Objections”) to Giant Set I regarding Giant Set I, Numbers 15 and 26. On March 23, 2017, Giant filed a Motion to Compel (Motion to Compel) responses to Giant Set I, Numbers 15 and 26. On March 28, 2017, Laurel filed its Answer to Giant’s Motion to Compel.

Giant Eagle Set I, Number 15 requested the following:

GE-LAU-I-15.Refer to ¶ 18 of the Application. Identify all entities and/or individuals who have expressed “interest in additional eastbound movements of Midwestern-sourced petroleum products to points east of Pittsburgh.”

* + 1. Describe the nature of any such expressions of interest, including the identities of the person(s) or entity involved, the timing of any expressions of interest, and the nature of any discussions regarding any such expressions of interest.
    2. Provide all Documents relating to any such expressions of interest.

Specifically with respect to Giant Set I, Number 15, Laurel objected to it to the extent it seeks information related to any interest in eastbound movements of Midwestern-sourced petroleum products to point east of Eldorado, PA on the basis that the information is irrelevant to Laurel’s proposed change in direction of flow for point west of Eldorado which is pending before the Commission. Objection at 3-4. In addition Laurel indicated that it would withdraw the objection to Giant Set I, Number 15 to the extent that it “is limited to pertain to shipper interest in eastbound movements of Midwestern-sourced petroleum products to points east of Pittsburgh to Eldorado, Pennsylvania, and the time period January 1, 2012 through the present.” Objection, at 4.

In its Motion to Compel, Giant supported its discovery request at Giant Set I, Number 15 by arguing that it seeks to confirm the veracity of direct statements made by Laurel in its Application and its direct testimony. Motion to Compel, ¶ 8. In particular, Giant stated that in its Application, Laurel has repeatedly stated that part of the rationale for seeking to reverse the pipeline was that additional refining capacity in the Midwest has led many shippers in that region to express their interest in shipping petroleum eastbound into Pennsylvania. Giant, then, proceeded in providing a list of statements included in Laurel’s Application referring to shippers’ interest in increased transportation to additional destination points “east of Pittsburgh,” or to “points in Western and Central Pennsylvania,” “to Philadelphia-based customers,” or simply “into and across Pennsylvania.” Motion to Compel, ¶ 9.

* 1. “Expanding refining capacity in the Midwest, driven by increasing access to lower cost crude oil in that region, has led a number of shippers to indicate their interest in increased transportation options to reach additional destination points in Western and Central Pennsylvania.” Application at 2.
  2. “Increased availability of generally lower-priced Midwestern product has generated interest in additional eastbound movements of Midwestern-sourced petroleum products to points east of Pittsburgh.” Application at 9, ¶ 18.
  3. “[T]he preferences of the Shippers committed to taking eastward post-project service from Buckeye should be afforded significant weight, particularly given the substantial public benefits that will result from the eastward transportation of gasoline and other petroleum products, and the variety of alternatives available to Philadelphia-based Customers.” Application at 11, ¶ 23.
  4. “Several Shippers have approached Laurel to explore the feasibility of transporting lower-priced Midwestern petroleum products into and across Pennsylvania. Given the substantial changes in the petroleum products market, significant weight should be given to these Shippers’ preferences.” Application at 14, ¶ 34.

Motion to Compel, ¶ 9. (Emphasis added). Giant also provided a list of statements included in Laurel’s direct testimony containing similar claims. For example, the testimony states:

1. “Expanding supplies of petroleum products in the Midwest, driven largely by increasing access to lower cost crude oil in that region, has led a number of shippers to indicate their interest in increased transportation options to reach additional destination points in Western and Central Pennsylvania.” Hollis Testimony at pg. 3, lines 9-13.
2. “…increased availability of generally lower-priced Midwestern petroleum products has generated increased interest in additional eastbound movements of Midwestern-sourced petroleum products to points east of Pittsburgh.” Hollis Testimony at pg. 8, lines 20-22.
3. “A number of shippers approached Laurel over the past two years to explore the feasibility of transporting lower-priced Midwestern petroleum products into and across Pennsylvania.” Hollis Testimony at pg. 9, lines 5-7.
4. “When Buckeye was planning Broadway II, shippers indicated that they believed demand for gasoline would decrease in the relatively near future (*e.g.*, by 2025). In anticipation for this decrease, Midwestern refiners have determined that increasing supply into Pennsylvania is in their interest.” Webb Testimony at pg. 18, lines 16-19.

Motion to Compel, ¶ 9. (Emphasis added).

In its Answer to the Motion to Compel, Laurel maintained, *inter alia*, that the information sought by Giant is not relevant to testing the veracity of Laurel’s allegations about shipper interest and that Giant’s assertions about Laurel’s shippers lack context and are misleading. Answer, ¶ 13. According to Laurel, the only expressions of shipper interest that are relevant to the consideration of Laurel’s Application to reverse the direction of flows to Eldorado and points west, are the expressions of shipper interest regarding these affected points, regardless of whether shippers have approached Laurel in the past regarding interest in shipping petroleum “into and across” Pennsylvania or “to points east of Pittsburgh.” *Id.*

After carefully considering Giant’s and Laurel’s arguments in support of their respective positions, I shall grant Giant’s Motion to Compel a response to Giant Set I, Number 15. I find that the Applicant cannot simultaneously rely on these statements regarding shippers’ interest to transport products across Pennsylvania to make the case for its Application, and then claim that they are irrelevant to the same Application. Nor can it qualify their relevancy after the fact. See Motion to Compel, ¶ 13, and Answer, ¶¶ 14, 16. I do not find that Giant’s assertions about Laurel’s shippers lacked context or were misleading. In particular I note that, while the Applicant’s statement listed in Giant’s Motion to Compel, ¶ 10 (b) and (d) were in response to general trend questions, the answers provided by Laurel’s witnesses were specific to Pennsylvania and Laurel.

The Commission’s Rules of Administrative Practice and Procedure provide at 52 Pa. Code §5.321(c) allows for a broad scope of discovery regarding any mater, not privileged, which is relevant to the subject matter involved in the pending action. I find that Giant is entitled to conduct discovery on the very statements made by the Applicant. Regarding the applicable time period of Giant Eagle Set I, Number 15, Giant has agreed to limit its request to the time period of January 1, 2012 through the present. See Motion to Compel, FN 2.

This ruling is distinguishable from my discovery rulings concerning PESRM Set I, Interrogatory No. 1 and Gulf Set I, Interrogatory No. 28 which sought discovery of *“****all internal or external******studies, analyses, reports, etc****. prepared by or for Laurel within the last 5 years addressing in any way* ***the possibility*** *of extending the reversal of flow along the Laurel pipeline to any points further east of those described in the Application.”* (Emphasis added). In the discovery Order dated March 8, 2017, and the March 27, 2017 Order on Joint Petition for Certification of a Material Question, I found that the language of that discovery request, as written by Gulf and PESRM, was both broad and speculative, which ultimately rendered the information sought to be discovered irrelevant to the subject matter of this proceeding. In addition, the Motions to Compel filed by Gulf and PESRM on February 23, 2017, and February 27, 2017, respectively, did not provide convincing explanation as to why the information sought was within the scope of this proceeding beyond insisting that the information is necessary in assessing the credibility of Laurel’s claims to reverse flows only to Eldorado, PA. Unlike PESRM Set I, Interrogatory No. 1 and Gulf Set I, Interrogatory No. 28, I find that Giant Set I, Number 15 is specific in its reference to Applicant’s averments and relevant to the to the subject matter of this proceeding.

I turn now to Giant Set I, Number 26 ,which requested the following:

GE-LAU-I-26. Refer to the Arnold Testimony at the question and answer beginning on page 18, line 8.

1. Identify and describe the work intended to be performed in the first element of the Broadway II project as described on page 18, lines 9-14, including, without limitation, (i) a detailed description of all equipment and facilities to be constructed, installed or modified; (ii) the cost of all such equipment and facilities; (iii) the anticipated start and completion dates for all work that has not yet been started or completed; (iv) the completion date for all work that has been completed; (v) the date when the first element of the Broadway II project is anticipated to be fully completed.
2. Please provide all studies completed or commissioned which calculate the costs of “(1) returning out-of-service tanks to service in Toledo, Ohio and Midland, Pennsylvania.”
3. Please provide all studies completed or commissioned which calculate the costs of “(2) constructing new tanks in Mantua, Ohio.”
4. Please provide all studies completed or commissioned which calculate the costs of “(3) replacing mainline pumps and upgrading electrical systems at facilities in Toledo, Lima, Cygnet, Wakeman, Mantua, and Columbiana, Ohio, as well as various related appurtenances.”

Laurel objected to this discovery request on the grounds that any information related to Buckeye’s interstate assets or facilities is unrelated to any relevant issue in the proceedings pending before the Commission. According to Laurel, its proposal as described in its Application involves a change in direction of flow over Laurel’s facilities, and Buckeye’s use of these facilities pursuant to the Capacity Agreement at Docket No. G-2017-2587567. However, the information sought by Giant Set I, Number 26 is only related to an aspect of the Broadway II project that involves Buckeye’s interstate assets and facilities, which are not the subject of the pending Application or Capacity Agreement. Moreover, Laurel argued that Buckeye is an interstate petroleum products pipeline, whose rates, services and facilities are not subject to the jurisdiction of the Commission. Objection 5-6.

In its Motion to Compel, Giant argues that Laurel itself describes the Broadway II project as “significant” to the public interest analysis and defends the information sought in Giant Set I, Number 26 as merely seeking a greater understanding of the “first element” of the Broadway II project such as the nature and costs of certain equipment and the timing of the projects..

According to Giant, Laurel’s objection to Giant Set I, Number 26 seeks to withhold information that is directly relevant to the allegations made by Laurel and its witnesses. Giant points to the testimony of David W. Arnold, Laurel’s Vice President of Domestic Pipelines, who describes the proposed reversal of the pipeline from Pittsburgh to Eldorado as the second element of a two-step project called “Broadway II.” *See* Arnold Testimony at pg. 18. Mr. Arnold then continues to describe the “first element” of the Broadway II project, which includes actions to increase the capacity of Buckeye’s pipeline system from “Western Ohio **to Pittsburgh**.” *Id.* at lines 9-14 (emphasis added). He argues that this added capacity will increase the amount of Midwest-sourced petroleum it can ship into Pennsylvania and that this increased supply will benefit the public. *See* *id.* at pg. 19, lines 12-16.

Next, Giant points to the testimony of Michael Webb, who devotes an entire section of his testimony titled “The Broader Project,” to describing the said project of which the reversal of the pipeline in Pennsylvania is just a part. Motion to Compel ¶ 21, and Webb Testimony at pg. 14-16. The first question posed in this section is: “*Why is it significant that Laurel’s request is part of a broader project?*”, *see* Webb Testimony at pg. 14, line 13, and Mr. Webb expressly cites the “broader project” as delivering benefits to citizens of the Commonwealth. As Mr. Webb’s testimony states:

Q. Will Laurel’s request create benefit for citizens of the Commonwealth?

A. Yes. … Laurel’s request will create benefit in several ways. First, **it is part of a broader project to expand capacity** from the more efficient and less expensive Midwestern refineries. Access to these refineries will put downward pressure on petroleum prices in Western and Central Pennsylvania.

*See* Webb Testimony at pg. 14, lines 2-8 (emphasis added).

Giant argues that in order to assess the likelihood that the benefits of Laurel’s proposal to the citizens of Pennsylvania will come to fruition, it is critical to understand the steps involved and progress made on the first phase. Motion to Compel ¶ 23. For example, Laurel expects the reversal to be completed in 2018, but Giant points out that, whether the alleged benefits would be delivered to the public at that time depends, at least in part, on whether the first stage of the Broadway II project is operating as alleged in the Application and delivering the promised benefits. *Id.*

In its Answer, Laurel first argues that Giant’s attempts to discover information about the cost of Buckeye’s assets and facilities should be denied because Buckeye is an interstate petroleum products pipeline whose project costs and assets are not subject to the Commission’s jurisdiction. Answer ¶¶ 19, 22. While Laurel recognizes some “relevance that the first phase of the broader project’s construction or timing may have to the Commission’s consideration of Laurel’s proposal,” it maintains that information regarding the costs associated with Buckeye’s interstate facilities is irrelevant to Laurel’s proposal. Answer ¶ 23. Laurel explains that

Cost information for these FERC-jurisdictional assets and related work are irrelevant because (a) Buckeye’s rates to the Pittsburgh market as a general matter are market-based, and are not set or evaluated by FERC on a cost-of-service basis; and (b) the contractual committed rates, set through Buckeye’s open season, for the use of these assets will not be subject to cost-of-service regulation.[[1]](#footnote-1) The contract shippers will be paying rates based on the contract rates, and those contract charges should be the relevant “costs” in assessing the project, not the accounting costs incurred by Buckeye, which will not affect the contract rates. In addition, Laurel already intends to provide information related to Buckeye’s open season as well as the contractually committed rates in response to other interrogatories, once an appropriate Protective Order is in place. As such, any information related to the costs associated with Buckeye’s facilities and work conducted as part of the first phase broader project has no bearing on the evaluation of the benefits to the public that will result from the Application.

*Id.*

After carefully considering Giant’s and Laurel’s arguments in support of their respective positions, I shall grant, in part, and deny, in part, Giant’s Motion to Compel a response to Giant Set I, Number 26. Laurel has argued that the broader project is significant and has made it a focal point to its case before the Commission. Therefore, information concerning the broader project is discoverable under 52 Pa. Code §5.321(c) as long as the information is not privileged, and is relevant to the subject matter involved in the pending action. Consequently, Giant’s Motion to Compel a response to Giant Set I, Number 26 (a) is granted to the extent it seeks information regarding *“the work intended to be performed in the first element of the Broadway II project as described on page 18, lines 9-14, including, without limitation, (i) a detailed description of all equipment and facilities to be constructed, installed or modified; …(iii) the anticipated start and completion dates for all work that has not yet been started or completed; (iv) the completion date for all work that has been completed; (v) the date when the first element of the Broadway II project is anticipated to be fully completed.*

In addition, I agree with Laurel that the cost information for Buckeye’s FERC-jurisdictional assets and related work is irrelevant to the pending action. Therefore, Giant Set I, Number 26 (a)is denied to the extent it seeks information regarding“(ii*) the cost of all such equipment and facilities [to be constructed, installed or modified as part of the first element of the Broadway II project*]. Giant Set I, Number 26 (b), (c) and (d) are denied for the same reason.

THEREFORE,

IT IS ORDERED:

1. That Giant Eagle, Inc.’s Motion to Compel a response to Giant Set I Interrogatory No. 15 is granted with the limited time period of January 1, 2012 through the present.

2. That Giant Eagle, Inc.’s Motion to Compel a response to Giant Set I Interrogatory No. 26 is granted, in part, with regard to the information sought in Giant Set I Interrogatory No. 26 (a) (i), (iii), (iv), and (v).

3. That Giant Eagle, Inc.’s Motion to Compel a response to Giant Set I Interrogatory No. 26 is denied, in part, with regard to the information sought in Giant Set I Interrogatory No. 26 (a)(ii), (b), (c), and (d).

|  |  |  |  |
| --- | --- | --- | --- |
| Date: | April 25, 2017 |  |  |
|  |  |  | Eranda Vero  Administrative Law Judge |

**A-2016-2575829 & G-2017-2587567APPLICATION 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. The Federal Energy Regulatory Commission has recently reaffirmed its policy permitting interstate oil pipelines to set contractual committed rates through an open season process, and that such rates need not be based on the cost of service. *See Seaway Crude Pipeline Company LLC*, Docket No. IS-12-226-002, 154 FERC ¶ 61,070 (Feb. 1, 2016). [↑](#footnote-ref-1)