**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 LAUREL’S MOTION TO COMPEL GULF TO PROVIDE

RESPONSES TO LAUREL SET I DISCOVERY REQUEST

On November 14, 2016, Laurel Pipe Line Company, L.P. (Laurel or Applicant) filed with the Commission the above-captioned Application. On February 1, 2017, Gulf Operating, LLC (Gulf) filed a formal Protest against the Application. On March 2, 2017, Laurel served Set I Discovery on Gulf. Gulf objected to Laurel’s Set I Discovery on March 13, 2017. Gulf objected to Laurel Set I Request Nos. 1, 2, 3, 4(b)-(e), 9, 12(b), 13, 14, and 16(b)-(e).

On March 23, 2017, Laurel filed a Motion to Compel (Motion to Compel) responses to Laurel Set I, Request Nos. 1, 2, 3, 4(b)-(e), 9, 12(b), 13, 14, and 16(b)-(e). On March 28, 2017, Gulf filed its Answer to Laurel’s Motion to Compel.

On April 27, 2017, counsel for Gulf and Laurel requested a continuance of any decision on Laurel’s pending Motion to Compel Responses from Gulf in order to allow the two parties to resolve the discovery issues informally.  The continuance was granted, and on May 9, 2017, counsel for Laurel and Gulf informed me that the parties had reached an agreement on all of Laurel – Set I questions to Gulf except for questions 4(b) – (e) and 12(b).

Laurel’s Motion to Compel responses to its discovery requests to Gulf is ripe for ruling with regard to Laurel – Set I, Request Nos. 4(b)-(e) and 12(b).

The Commission’s Rules of Administrative Practice and Procedure at 52 Pa.Code §5.321 permit a broad scope of discovery:

(c) Scope. Subject to this subchapter, a party may obtain discovery regarding any mater, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of another party, including the existence, description, nature, content, custody, condition and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of a discoverable matter It is not ground for objection that the information sought will be inadmissible at hearing if the information sought is reasonably calculated to lead to the discovery of admissible evidence.

1. Pa.Code § 5.321(c).

**Laurel Set I, Request No. 4** provides as follows:

4. With reference to Gulf’s discussion of Laurel’s alleged return on its current operations

a. Please identify the reports to which Gulf refers and provide all workpapers showing the calculation that causes Gulf to believe this return is reasonable.

b. Please provide all documents showing the return Gulf believes it is earning on its terminal at Coraopolis, PA.

c. Please provide all documents showing the return Gulf believes it is earning on its terminal at Pittsburgh, PA.

d. Please provide all documents showing the return Gulf believes it is earning on its terminal at Delmont, PA.

e. Please provide all documents showing the return Gulf believes it is earning on its terminal at Altoona, PA.

Gulf objected to Laurel – Set I, Request No. 4(b)-(e) on the grounds that the information sought is not relevant to the subject matter and issues in this proceeding, and is not reasonably calculated to lead to the discovery of admissible evidence. Objections at 15.

In its Motion to Compel, Laurel recognizes that Gulf is not a PUC-regulated entity subject to public interest determinations on its allowed rate of return under Section 13 of the Public Utility Code, yet, it argues that the return Gulf earns on its terminals is relevant to the quantification of any harm Gulf alleges it will suffer if Laurel’s Application is approved. Information regarding Gulf’s returns on terminals that would be affected by the reversal is directly relevant to the evaluation of Gulf’s allegations of harms that would result from the reversal. Motion to Compel, ¶ 29. Laurel argues that, if Gulf is currently earning a large return on its operations, then that indicates that the consumers of Pennsylvania could be directly benefitted by Gulf earning a slimmer margin by facing competition from other sources of product. Further, it indicates that while other potential outlets for the product are not as profitable, Gulf could continue to operate if the Laurel Application is approved. Gulf’s harm could be mitigated, and would be offset by direct benefits to Pennsylvania citizens. *See id.*

In its Answer, Gulf argues that the return that it earns includes many variables entirely irrelevant to the regulatory issues before the Commission, including Gulf's internal overhead costs, capital investments, and operating efficiencies. According to Gulf, the information sought by Laurel in this request seeks information related to Gulf's internal business operations with no relation to the issue presented by Laurel's Application or raised in Gulf's Protest. Answer at 12.

I agree with Gulf that connection of Gulf's margins and Gulf's overall return to the subject matter of this proceeding is too attenuated to bring the information sought in Laurel – Set I, Request No. 4(b)-(e) within the scope of this discovery proceedings. The impact of the approval of Laurel’s Application on Gulf's margins and Gulf's overall return is neither relevant, nor reasonably calculated to lead to the discovery of admissible evidence, and is therefore beyond the scope of the issues raised in this proceeding. Laurel’s Motion to Compel a response to Laurel – Set I, Request No. 4(b)-(e) is denied.

**Laurel – Set I, Request No. 12(b)** provides as follows:

12. With reference to Gulf’s claim in Paragraph 43 that the reversal could increase delivery costs to Pittsburgh consumers by $68 million annually

b. Please provide all documents relied upon by management showing the margin or any other measure of profit Gulf has earned from refined products delivered to the Pittsburgh market from January 1, 2012 to the present.

Gulf objected to Laurel – Set I, Request No. 12(b) on the grounds that the information sought is not relevant to the subject matter and issues in this proceeding, and is not reasonably calculated to lead to the discovery of admissible evidence. Objections at 17.

In its Motion to Compel, Laurel argues that the information sought in Laurel – Set I, Request No. 12(b) is related to Gulf’s claims in this proceeding. According to Laurel, since Gulf has specifically quantified an allegation of harm to Pittsburgh consumers in its pleading challenging Laurel’s prima facie case, Gulf must support its claim with documentation. Motion to Compel, ¶ 38. Laurel maintains that, at a minimum, Gulf should provide documentation regarding its own specific costs and margins associated with the same movement, if it cannot support its broader allegation. *See id.*

In its Answer, Gulf adopts the reasons and objections stated in Gulf's Answer to Laurel's Motion to Compel Gulf's response to Laurel Set I, Request No. 4. Answer at 14.

For the same reasons stated in my ruling on Laurel’s Motion to Compel a response to Laurel – Set I, Request No. 4(b)-(e), *see supra*, at 3, Laurel’s Motion to Compel a response to Laurel – Set I, Request No. 12(b) is denied. Gulf's current returns on its terminal investments have no bearing on the issues raised in this proceeding.

THEREFORE,

IT IS ORDERED:

1. That Laurel’s Motion to Compel responses to Laurel – Set I, Request Nos. 4(b)-(e) and 12(b) is denied.

|  |  |  |  |
| --- | --- | --- | --- |
| Date: | May 10, 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***