**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 OPERATING, LLC TO PROVIDE RESPONSES TO LAUREL SET II DISCOVERY REQUESTS

On July 14, 2017, Gulf Operating, LLC (Gulf or the Company) served Gulf Statement No. 1, the Direct Testimony of Todd O’Malley.

On July 25, 2017, Laurel served Set II Discovery on Gulf (Laurel Set II).

On August 3, 2017, Gulf objected to Set II Request Nos. 1(a),(c), 2, 3(a),(f)(iii),(h)(ii), 4(a),(b),(d), 6(a),(d)(iii), 7(a),(b),(d), 8(a)(i)-(iv),(c)(i),(c)(iii), 9(a)(i)-(iv), 10(a), 11(c), and 12(e),(f).

On August 8, 2017, Gulf advised me and the parties by letter that Gulf intended to substitute Mr. Greg Johnston as a witness in place of Mr. O’Malley, and that all discovery responses and testimony submitted by Mr. O’Malley would be adopted, unchanged, by Mr. Johnston.[[1]](#footnote-1)

On August 14, 2017, Laurel filed a Motion to Compel Gulf to respond to Laurel Set II Discovery Request Nos. 1(a),(c), 2, 3(a),(f)(iii),(h)(ii), 4(b),(d), 6(a),(d)(iii), 7(a),(b),(d), 8(a)(i)-(iv),(c)(i),(c)(iii), 9(a)(i)-(iv), 11(c) and 12(e). (Motion to Compel or Motion).

On August 21, 2017, Gulf filed its Answer to Laurel’s Motion to Compel.

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.

52 Pa. Code § 5.321(c). (Emphasis added).

**Gulf’s General Objection**

Gulf generally objected to the Set II discovery on the grounds that the requests seek Documents or Communications for unspecified time periods or for time periods between 2012 and July 2017. Gulf argued that producing documents for such time periods would impose an unreasonable burden, and states that it will respond to the requests with Documents or Communications for the period 2014 to March 2017.[[2]](#footnote-2)

In its Motion, Laurel defends its requested time period as reasonable because it is similar to the time periods that Gulf has requested Laurel to produce information and documents. Motion, ¶14. This is the only argument that Laurel posits in support of its chosen time period.

In its Answer, Gulf argues that the false equivalency between the two time periods does not support Laurel's request to apply the same period for discovery requests to Gulf. *See,* Answer at 7. Gulf points out that Laurel is the party bearing the burden of proof in this proceeding as the regulated pipeline carrier proposing to terminate service between several delivery points, and that Laurel also never alleged that provided documents for a five-year period would prove to be unreasonably burdensome. *See,* Answer at 7-8.

More importantly, Gulf argues that its claims of unreasonable burden arise from specific circumstances. Gulf explained that it has undergone significant internal restructuring in recent years as Gulf's parent company, ArcLight Capital Partners, acquired both Gulf's legacy terminal assets and the Pennsylvania terminal assets previously owned by Pyramid LLC (formerly Petroleum Products Corporation) in 2015, all of which are now operated by Gulf.[[3]](#footnote-3) Since the acquisition, Gulf has worked to integrate its records systems with the Pyramid LLC systems, but providing pre-acquisition shipping data for both Gulf legacy and former Pyramid terminals would still require Gulf to compile data separately maintained on the two systems. Under these circumstances, Gulf submits that limiting the production timeframe to approximately three years reasonably provides Laurel with significant historical data without imposing an unreasonable burden on Gulf. *See,* Answer at 8. Gulf, however, did not explain why it chose March 2017, instead of July 2017, as the end of the discovery time period.

After considering both parties’ positions, I find that Laurel has failed to put forth a valid argument in support of its chosen time period. I also find that Gulf has provided a reasonable explanation as to why the requests for production of documents covering the period January 1, 2012 to July 2017 would prove unreasonably burdensome for the Company. Consequently, I shall deny Laurel’s Motion to strike Gulf’s general objection and shall amend Laurel Set II discovery requests to cover the period January 1, 2014 to July 14, 2017.

**Laurel – Set II, Request No. 1 provides as follows:**

1. *Regarding Mr. O’Malley’s testimony at p. 1, lines 7 through 17, please answer the following questions:*

*a) please identify the witness’ predecessor in his current position (or the equivalent position if the job title changed), the time period for which the predecessor held that position.*

*b) please describe in detail the nature of the witness’ role in the distribution of refined products, including whether he is responsible for directing the use of particular carriers or modes of transportation, and whether he negotiates directly with transportation suppliers;*

*c) please explain in detail Mr. O’Malley’s duties while at PBF Energy, Inc., and the extent to which he had personal responsibility for the use of pipeline, truck, barge, rail or other means of supplying refined petroleum products to the Pittsburgh area from the East Coast PBF refineries.*

Gulf objected to Request No. 1 on the grounds that the information sought is irrelevant to the issues and subject matter of this proceeding, and is not reasonably calculated to lead to the discovery of admissible evidence. [[4]](#footnote-4)

In its Motion, Laurel argues that Request No. 1 seeks information regarding the prior professional experience of the Gulf witness, Todd O’Malley, which is discoverable and relevant to Gulf’s claims in its testimony. Motion ¶ 15. According to Laurel, the testimony of Gulf’s witness is, in part, founded on his knowledge of the Pittsburgh petroleum products market, which in turn is based on the witness’s employment history and prior experiences in the industry, whether or not such employment and experiences were with Gulf. *Id.*

In its Answer, Gulf pointed out that on August 16, 2017, it had filed an Errata substituting Greg Johnston as the sponsoring witness for Gulf Statement No. 1. in place of Mr. O'Malley. According to the Errata, Mr. Johnston’s CV is different from that of Mr. O’Malley. Consequently, Laurel’s Motion to Compel a response to Request No. 1 is denied as the entirety of this discovery request is geared toward collecting information specific to Mr. O’Malley’s knowledge and prior career.

**Laurel – Set II, Request No. 2 provides as follows:**

2. *Regarding Mr. O’Malley’s testimony at p. 1, lines 9 through 12, regarding the nature of Gulf Operating LLC’s (“Gulf’s”) business, please answer the following questions:*

*a) please provide a list of all petroleum products supplied by Gulf to each customer:*

*i) in the Pittsburgh market in Pennsylvania, and for each, for the period 2013 through July 2017, please provide by year the volume of gasoline (specified by regular gasoline, low vapor pressure gasoline and reformulated gasoline), diesel, home heating oil, jet fuel and other major refined petroleum products sold to each such customer, and the geographical location of the point of sale for each such customer, by street address and town or other local entity and ZIP code;*

*ii) in the Altoona/Central Pennsylvania market, and for each, for the period 2012 through July 2017, please provide by year the volume of gasoline (specified by regular gasoline, low vapor pressure gasoline and reformulated gasoline), diesel, home heating oil, jet fuel and other major refined petroleum products sold to each such customer, and the geographical location of the point of sale for each such customer, by street address and town or other local entity and ZIP code;*

*iii) in the Eastern Pennsylvania market, including the Philadelphia area, and for each, for the period 2013 through July 2017, please provide by year the volume of gasoline (specified by regular gasoline, low vapor pressure gasoline and reformulated gasoline), diesel, home heating oil, jet fuel and other major refined petroleum products sold to each such customer, and the geographical location of the point of sale for each such customer, by street address and town or other local entity and ZIP code;*

*b) for each customer identified in response to subpart a. above, please state the source for the refined products supplied to such customer, and by “source” this question means the refinery, or if no refinery can be identified, the wholesale sales point at which Gulf purchased the refined products (e.g., “Booth,” “Linden,” “East Chicago,” etc.), or if FOB at a pipeline or waterborne terminal, the name and location of the terminal.*

Gulf objected to Request No. 2 on the grounds that the information sought is not relevant to any claim or defense in this matter and/or is beyond the scope of the proceeding. Gulf also objects to Request No. 2 on the grounds that a response would impose an unreasonable burden or require an unreasonable investigation.

In its Motion, Laurel argues that information regarding the sources of products sold to customers by Gulf, and their location, is directly relevant to the testimony in Gulf Statement No. 1 regarding the sources of petroleum products that will be available to deliver petroleum products into the Pittsburgh-area and Altoona-area post-reversal. By way of example, Laurel points out that the Gulf witness specifically calls into question the sources of petroleum products sold in these areas when he claims that “If the PUC grants Laurel’s request…the petroleum products market in the Pittsburgh area will be wholly dependent on pipelines from the Midwest and the refineries that supply them. The result would reduce the liquidity and optionality of supply into Pittsburgh…” Gulf Statement No. 1, page 4, lines 8-11. Laurel argues that this claim implicates the volumes and types of products being delivered to these areas which Laurel cannot evaluate without the data requested in Request No. 2. Motion, ¶ 23.

Moreover, Laurel argues that Gulf’s specific objection to Request No. 2(a)(iii) should also be denied, because its witness offers extensive testimony on the adequacy of certain alternatives. *See id.*, pages 8-13. According to Laurel, the evaluation of the nature of Gulf’s business in Philadelphia is important to assessment of the overall impact of the alleged harm to Gulf. Motion, ¶24.

With regard to Gulf’s argument that Request No. 2 would impose an unreasonable burden and require an unreasonable investigation, Laurel avers that Gulf is a sophisticated entity that regularly participants in the petroleum products transportation market. Per Laurel, the data requested in Request No. 2 —volumes and types of petroleum products, and the source(s) of such products, being sold by Gulf—are essential business records for an entity that specializes in sales of petroleum products to consumers. Laurel maintains that the requested information is essential to Laurel’s analysis of Gulf’s claims in its testimony, and its importance to Laurel outweighs any burden associated with its production. Motion, ¶ 26.

In its Answer, Gulf supports its objection to Request Nos. 2(a)(i) and (ii) by pointing out that the Company has already provided Laurel with the total volumes throughput for its Pennsylvania terminals in and to the west of Altoona in response to Laurel-Gulf-I-1. According to Gulf, Laurel has not demonstrated how information about the further downstream sales from Gulf's terminals is relevant to this proceeding. Answer at 11.

With regard to Request No. 2(a)(iii), Gulf counters Laurel’s allegations that information regarding Gulf's sales in Philadelphia are relevant to Gulf's arguments regarding the adequacy of certain alternatives set forth in pages 8-13 of Gulf Statement No. 1 by pointing out that these arguments on the available alternatives concern the availability of Midwest supply alternatives to meet the demand in the Pittsburgh market. *Id.*

As for Request No. 2(b),Gulf points out that it has already provided the volumes and types of products being delivered to each of Gulf's terminals in the Pittsburgh area in response to Laurel-Gulf-I-1. Due to this disclosure, Laurel should already know the sources of all products received at Gulf's terminals west of Altoona. According to Gulf, Laurel has failed to demonstrate how or why a breakdown of these delivered volumes on a downstream per-customer basis is relevant to Gulf's testimony regarding the total volumes delivered to the Pittsburgh area. Answer at 11-12.

Gulf additionally objects to Request Nos. 2(a)(i)-(iii) and 2(b) as the requested granular data production would impose an undue burden on Gulf and require an unreasonable investigation. The request would require Gulf to conduct an extensive document review and compile the customer-specific records. In light of Gulf’s prior provision of the total volumes and product sources for shipments to its terminals at Western PA Destinations, the request for granular data production concerning the shipments to specific customers is unreasonably burdensome. Laurel has failed to demonstrate how the customer-specific information requested in Request No. 2 is essential to Laurel's analysis of Gulf's claims. Answer at 12.

After considering both parties’ positions, I agree with Gulf that its response to Laurel-Gulf-I-1 sufficiently responds to Laurel Set II Request Nos. 2(a)(i) and (ii) and 2(b). In view of Gulf’s response to Laurel-Gulf-I-1, I find that Laurel has failed to demonstrate why the information sought is needed in such granular detail. I also find that Laurel’s Motion fails to provide a plausible explanation as to why the information sought by Request No. 2(a)(iii), is relevant to the subject matter in this case. Instead, I agree with Gulf that Laurel’s attempt to show the relevancy of the information in relation to Gulf's arguments regarding the adequacy of certain alternatives in not a sound one. For these reasons, Laurels Motion to Compel a response to Request No. 2 is denied.

**Laurel – Set II, Request No. 3 provides as follows:**

*3. Regarding Mr. O’Malley’s testimony at p. 3, lines 5 through 12, regarding his understanding of sources of refined petroleum products for the Pittsburgh area, please answer the following questions:*

*a) when Mr. O’Malley refers to “some limited barge shipments to Pittsburgh, please explain in detail the basis for his statement, please list the barge terminals capable of receiving refined petroleum products in Western Pennsylvania known to Mr. O’Malley, and please describe in detail the barge transactions and barge companies and river terminal operators with whom Mr. O’Malley has worked or attempted to work in his supply, trading and distribution duties;*

*b) please define “the Pittsburgh area” as Mr. O’Malley uses it (e.g., specific counties that he means to include in the term);*

*c) please explain in detail why Mr. O’Malley does not include in his list of supply sources for the Pittsburgh area the Marathon Pipeline;*

*d) please explain in detail why Mr. O’Malley does not believe that Gulf Coast refined products cannot be transported to Pittsburgh via Explorer Pipeline and connecting pipelines to the Pittsburgh market; and*

*e) please explain why Mr. O’Malley states that Midwestern supplies via the Sunoco Pipeline are only available by means of a joint FERC tariff with Inland Corporation;*

*f) with respect to the Sunoco Pipeline, please explain:*

*i) whether Gulf transports refined products to the Pittsburgh area via the Sunoco Pipeline;*

*ii) if the answer to sub-part i. immediately above is anything but an unqualified negative, please provide the volumes transported by Gulf on Sunoco Pipeline during the period 2012 through 2016, by month, and by type of refined product;*

*iii) provide a copy of any currently-effective contract between Gulf and Sunoco Pipeline for transportation of refined products;*

*iv) please explain whether Gulf has had any communications with Sunoco Pipeline regarding the potential for expanded or additional transportation of refined products from the Midwest to the Pittsburgh area using Sunoco’s “Allegheny Access” pipeline, and if the answer is anything but in the unqualified negative, please produce all documents and communications, through July 2017, relating to the potential for expanded transportation of refined products on the Allegheny Access system for Gulf;*

*g) please explain in detail why Mr. O’Malley believes that no other sources of refined products can be accessed for the use of retailers or wholesalers in the Pittsburgh area; and*

*h) with regard to the lack of other sources, and with respect to the potential for the Sunoco “Mariner 2” or “Mariner 2X” project:*

*i) please state whether Gulf has had any communications with Sunoco regarding participation in either project to transport refined product from Midwestern refiners to the Pittsburgh area or destinations further east, and if the answer is anything but an unqualified negative, please provide a copy of all Documents relating to such potential transportation, directly or indirectly;*

*ii) please state whether Gulf has since 2012 and through July 2017 considered entering into any contracts with any other alternative pipeline or other transporters or suppliers of refined products to the Pittsburgh area other than those listed in the above-referenced testimony, and if the answer is anything but an unqualified negative, please provide all documents relating to such potential alternative suppliers, either directly or indirectly.*

Initially, Gulf objected to Request No. 3(a), (f)(iii) and (h)(ii). On August 14, 2017 responses, Gulf provided responses to Request No. 3(a). Answer, at 14. Gulf objected to Request No. 3(f)(iii) on the grounds that the information sought is not reasonably calculated to lead to the discovery of admissible evidence. Gulf’s objection to Request No. 3(h)(ii) on the grounds that it would impose an unreasonable burden and require an unreasonable investigation.

In its Motion, Laurel does not specifically address the relevancy of the information sought by Request No. 3(f)(iii). All Laurel states concerning this issue is as follows,

Both Request No. 3(a) and (f)(iii) seek information that is directly relevant to the alternatives available to Gulf, as well as the extent of Gulf’s current use of Midwestern supplies, which it claims are volatile and less economical in its testimony. Specifically, Request No. 3(a) is directly related to a transportation alternative that Gulf claims is inadequate in its testimony. *See* Gulf Statement No. 1, page 5, lines 5-14. The requested information is necessary for Laurel to assess Gulf’s claims regarding the feasibility of using barges to supply Pittsburgh with refined products. In addition, Gulf makes numerous claims about the costs of Midwestern supply, and refining and capacity constraints. *See e.g.*, *id.*, at page 9, lines 11-19. As the Sunoco pipeline is an alternative currently delivering products to Pittsburgh, Laurel is entitled to discover Gulf’s current and projected future use of this pipeline to assess its claims regarding Midwestern supplies. Therefore, Gulf’s objection to Request No. 3(a) and (f)(iii) on relevance grounds should be denied.

Motion, ¶ 31. The Motion focuses of the relevancy of Request No. 3(a) and deals with Request No. 3(f)(iii) as an add-on.

In turn, Gulf uses its Answer to reinstate its position concerning Laurel's Request No. 3(f)(iii) as not reasonably calculated to lead to the discovery of admissible evidence, particularly in light of the lack of timeframe or geographic restrictions attendant to that request. Answer at 14-15. Gulf avers that it has already provided the sources for all volumes delivered to its Pennsylvania terminals west of Altoona in response to Laurel-Gulf-I-1 and further confirmed that it does not ship products to the Pittsburgh area on Sunoco. Answer at 15.

In view of Gulf’s response to Laurel-Gulf-I-1, I find that Laurel has failed to demonstrate why the information sought by Request No. 3(f)(iii) is relevant to the subject matter under review. Consequently, Laurel’s Motion to Compel a response to Request No. 3(f)(iii) is denied.

With regard to Request No. 3(h)(ii), Laurel countered Gulf’s objection of unreasonable burden by pointing out that Gulf is a sophisticated entity that regularly participates in the petroleum products transportation market. According to Laurel, the data requested in Request No. 3(h)(ii) —considerations of other transportation contracts—are essential business records for an entity that specializes in sales of petroleum products to consumers. Laurel argues that the requested information is essential to Laurel’s analysis of Gulf’s claims on these topics in its testimony, and its importance to Laurel outweighs any burden associated with its production. Motion, ¶ 33.

In its Answer, Gulf responded to Laurel’s Motion concerning Request No. 3(h)(ii) by arguing that providing a response to Request No. 3(h)(ii) would unreasonably require Gulf to provide all documents relating to any instance where Gulf "considered" or held discussions concerning the potential for entering into contracts with certain alternative pipeline suppliers. Answer at 15.

After reviewing the Motion and the Answer, I find that Gulf failed to explain why exactly the Request No. 3(h)(ii) is unreasonable or why the production of the documents requested is unreasonably burdensome. Consequently, Gulf’s objection to Request No. 3(h)(ii) is denied and Laurel’s Motion regarding this particular discovery request is granted. In addition, I find that Laurel’s Motion to Compel responses to Request No. 3(a) is moot because Gulf has responded to this particular discovery request.

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

*4. Please produce copies of any Documents at Gulf during the period 2012 through July 2017 that reference or include any discussion of the following topics:*

*a) Laurel;*

*b) the potential reversal of Laurel, whether regarding the reversal proposal being considered in this proceeding or any other potential reversal;*

*c) alternatives to Laurel of transporting product to markets in Pennsylvania (including without limitation, pipeline, truck, barge, exchange or other means of transportation);*

*d) sales or transportation of product to customers or terminals located west of Eldorado, Pennsylvania; and [sic]*

Gulf objected to Request No. 4(a), (b) and (d). In response to Gulf’s objection to Request No. 4(a), Laurel withdrew subpart (a) of Request No. 4. Motion ¶ 38.

Gulf objected to Request No. 4(b), to the extent that it seeks information related to potential pipeline reversals of any pipeline other than Laurel, but did not state the specific grounds for its objection. Gulf objected to Request No. 4(d) on the grounds that it would impose an unreasonable burden and require and unreasonable investigation.

In its Motion, Laurel argues that Request No. 4(b) is reasonably calculated to lead to the discovery of Gulf’s assessments of other pipeline reversals. According to Laurel, this information is directly relevant to the credibility of its claims regarding Laurel’s proposed reversal, and is necessary to determine whether Gulf claims in this proceeding are based on a consistent or inconsistent analysis of pipeline reversals. Motion, ¶ 40.

In its Answer, Gulf responded that Request No. 4(b) seeks documents referencing or discussing Laurel's proposed reversal or "any other potential reversal." Gulf avers that it had already responded to Request No. 4(b) with regard to Laurel's proposed reversal. Per Gulf, the request for any documentation related to discussions on potential reversals of non-Laurel pipelines is plainly irrelevant to the circumstances of this proceeding. Answer at 16.

After carefully considering Laurel’s and Gulf’s arguments, I find that the information requested by Request No. 4(b) is relevant to the subject matter involved in this proceeding. Consequently, Laurel’s Motion will be granted with regard to Request No. 4(b).

Next, I shall turn to Request No. 4(d). In its Motion, Laurel attempts to refute Gulf’s arguments that Request No. 4(d) would require a voluminous document production and/or encompass an unreasonably broad swatch of documents by simply stating that, in this proceeding, Laurel has already engaged in an extensive and voluminous document production in response to discovery requests by Gulf and other parties. Motion, ¶ 42. Thus, Laurel expects Gulf to engage in similar efforts to respond to discovery requests, “where the information sought is directly related to the claims it has made in this proceeding, and where Laurel has already made similar efforts.” *Id.* Laurel does not specify which Gulf claims the information sought is “directly related to.”

In its Answer, Gulf explains that because the Company is a petroleum products wholesaler, distributor, and retailer, this question essentially asks for every business document produced by Gulf in conducting business in Western Pennsylvania over a five-year period. Answer at 17. According to Gulf, Laurel has failed to demonstrate how any interest in the information requested by Request No. 4(d) weighs in favor of unreasonably burdening Gulf to engage in such an extensive investigation and voluminous document production*. Id.*

I agree with Gulf. While the information sought by Request No. 4(d) is relevant to the subject matter of this proceeding, I fail to find in Laurel’s Motion an explanation of its need for the information to be provided in such great and minute detail. I find instead that the language of Request No. 4(d), as written by Laurel, poses an unreasonable burden on Gulf. Consequently, Laurel’s Motion regarding Request No. 4(d) is denied. Laurel may rewrite Request No. 4(d) propounding a more reasonable request for production of documents on Gulf.

**Laurel – Set II, Request No. 6 provides as follows:**

6. *Regarding Mr. O’Malley’s testimony at p. 5, lines 5 through 14, regarding the alleged negative aspects of barge transportation, please provide answers to the following questions:*

*a) regarding the potential for interruption of barge service due to freezing or flooding, please explain in detail Mr. O’Malley’s familiarity with historical interruptions in barge service to Pittsburgh, including the specific times and durations of any interruptions due to freezing, flooding or other causes, during the period 2012 through 2017;*

*b) please explain what refineries Mr. O’Malley references with the statement regarding “the limited number of refineries from which barges could reasonably be barged,” and please explain in detail Mr. O’Malley’s experience of practical difficulty in seeking to barge refined products from other refineries that have the capability of supplying Pittsburgh via the Mississippi and/or Ohio Rivers;*

*c) regarding Mr. O’Malley’s statement that “[o]nly two delivery points in the Pittsburgh area, Neville Island and Coraopolis, are capable of accepting barge shipments,” please explain Mr. O’Malley’s basis for expressing this conclusion, and whether it is his sworn testimony based on his information and belief, that no other refined petroleum product terminals in the Pittsburgh area can receive barge deliveries;*

*d) regarding Mr. O’Malley’s statement that “[i]n the Pittsburgh market, barge service cannot be relied on for baseline supply deliveries and are generally only used to supplement pipeline deliveries,”*

*i) please provide a detailed explanation of Mr. O’Malley’s experience in, or knowledge of, the use of barges to supply Pittsburgh, including all transactions in which he has arranged for, or declined to arrange for, barge transportation;*

*ii) please provide all documents during the period 2012 through July 2017 that discuss the potential or actual use by Gulf of barges to supply the Pittsburgh market;*

*iii) please explain whether Mr. O’Malley regards barge transportation of refined products from the PBF Energy, Inc. refineries at Delaware City, Delaware and Paulsboro, New Jersey to markets on the East Coast as being unreliable for baseline service; and*

*e) regarding Mr. O’Malley’s statement that, “barge transportation is also more expensive and labor intensive than are pipeline alternatives,” please:*

*i) explain in detail Mr. O’Malley’s personal knowledge of barge rates to Pittsburgh, and how he derives such knowledge; and*

*ii) provide all Documents of Mr. O’Malley or Gulf that analyze, reference, discuss or relate to the cost of barge transportation to reach the Pittsburgh market.*

Initially, Gulf objected to Request No. 6(a) and (d)(iii). In its August 14, 2017 responses, Gulf provided responses to all subparts of Request No. 6 except Request No. 6(d)(iii), despite Gulf's August 3, 2017 objections, leaving only Request No. 6(d)(iii) to be addressed in this Order. See, Answer at 19. Gulf’s objection to Request No. 6(d)(iii) was based on relevancy grounds.

In its Motion, Laurel points out that Gulf’s witness specifically testified that “Barging is not a dependable delivery resource. The availability of barge service is subject to many external variables, including weather. If the rivers are frozen or flooded, barge shipments become unavailable.” Gulf Statement No. 1, page 5, lines 5-7. Laurel argues that Request No. 6(d)(iii) simply asks the Gulf witness to explain their familiarity with barge interruptions, and evaluate the bases of that familiarity. Per Laurel, Gulf witness has testified regarding barge interruptions, and Laurel is entitled to inquire as to the bases for that testimony. Motion, ¶ 47.

Gulf further objected to that request because it sought information beyond the scope of its witness’s direct testimony. Gulf explained that shipments from Delaware and New Jersey ports to other East Coast destinations bear no relevance to the testimony concerning barge shipments to the Pittsburgh area. Laurel's Motion offers no explanation as to how barge shipments from Delaware or New Jersey to East Coast ports is relevant to Gulf’s witness’s testimony on barge shipments to the Pittsburgh area. Answer at 19.

I agree with Laurel that the statements made by Gulf’s witness in Gulf Statement No. 1, page 5, lines 5-7 are general in nature and not limited to barge shipments to the Pittsburgh area. Laurel is entitled to inquire and evaluate the basis of the information on which those statements are grounded. Consequently, Laurel’s Motion regarding Request No. 6(d)(iii) is granted. In addition, Laurel’s Motion regarding Request No. 6(a) is moot in view of Gulf’s August 14, 2017 responses to this discovery request.

**Laurel – Set II, Request No. 7 provides as follows:**

7. *Regarding Mr. O’Malley’s testimony at p. 6, line 18 through p. 7, line 11, please answer the following questions:*

*a) please explain in detail the basis for Mr. O’Malley’s testimony regarding the requirements for vapor recovery as to gasoline rail cars, including all personal experience that he has had in investigating the potential for rail car use for refined products, either while with Gulf or in his role at PBF Energy;*

*b) please provide all documents from the period 2012 through July 2017 that analyze, discuss, reference, address or relate to the potential, the cost or the feasibility of using rail cars to transport refined petroleum products;*

*c) please specify which “Pittsburgh locations do have rail offloading capabilities,” and discuss in detail whether they have been used for the transportation of refined products into the Pittsburgh area;*

*d) please explain and quantify the costs of rail transportation and any comparisons to the cost of alternative modes of transportation, prepared during the period 2012 through July 2017; and*

*e) please explain whether Mr. O’Malley is familiar with any specific delays or disruptions due to weather events affecting rail transportation, to support his statements at p. 6, lines 9-11.*

Initially, Gulf objected to Request No. 7(a), (b) and (d). In its August 14, 2017 responses, Gulf provided responses to all subparts of Request No. 7, despite Gulf's August 3, 2017 objections. Answer, at 20. Gulf provided a detailed response to part (a), explaining that the basis for Gulf's witness's testimony regarding the requirements for vapor recovery as to gasoline rail cars. *Id.* Gulf explained in its August 14, 2017 response that it does not have any documents responsive to part (b) of Request No. 7. *Id.* Gulf explained in response to part (d) of Request No. 7 that Gulf has not transported refined petroleum products via rail transportation in the Pittsburgh market in the given time-period. *Id.* Because Gulf has responded to the discovery requests it initially objected to, I find that Laurel’s Motion to Compel responses to Request No. 7(a), (b) and (d) is moot.

**Laurel – Set II, Request No. 8 provides as follows:**

8. *Regarding Mr. O’Malley’s discussion of the potential for trucking refined products from Eldorado to Pittsburgh, at p. 7, line 4 through p. 8, line 20, please answer the following questions:*

*a) regarding the alleged lack of terminal and truck unloading capacity at Eldorado to handle the truck transportation of refined products to Pittsburgh area destinations,*

*i) please state the identity and current total terminal capacity, number and size of truck racks, and the rate of truck loading for each truck rack;*

*ii) please provide all Documents that analyze, reference, relate to or address the capacity of the terminals at Eldorado to handle throughput, including without limitation any such Documents that analyze, reference, relate to or address the nature and potential costs of adding facilities (if necessary) to supply trucks serving Pittsburgh area destinations with all or part of the volumes currently being transported west of Eldorado by the Laurel pipeline system;*

*iii) please discuss in detail the factor discussed of “variable truck arrival rates,” and the alleged potential back-ups on “public highways,” and provide all analyses, studies, projections or other Documents that support or relate to the alleged potential for such “long wait times,” “long queues,” and “back-ups”;*

*iv) please explain in detail whether any of these enumerated problems have arisen at other terminals of Gulf, or used by Gulf to meet its wholesale/retail supply needs, or whether Mr. O’Malley has observed such problems based on his experience with PBF Energy, and if so, please describe the circumstances of such problems and their causes in detail;*

*b) regarding Mr. O’Malley’s discussion of the environmental permitting at p. 7, lines 17 through 23, please*

*i) explain the basis and extent of Mr. O’Malley’s familiarity with the referenced permits, including the requirements for issuing them;*

*ii) provide, list and explain in detail all instances known to Mr. O’Malley or reflected in the records of Gulf during the period 2012 through 2017 that a refined petroleum products terminal operator in Pennsylvania was denied an application for a permit to expand its terminal facilities, and thereafter failed to expand the terminal;*

*iii) explain the length of time, as understood by Mr. O’Malley, that typically elapses between the filing of the necessary application and a decision by the DEP, based on Gulf’s experience as a terminal operator.*

*c) regarding Mr. O’Malley’s testimony at p. 8, lines 4 through 20, regarding his conclusions as to the likelihood of investment in expanded terminal facilities,*

*i) has Gulf, through Mr. O’Malley or others, studied the feasibility and cost of building expanded terminal facilities in response to a reversal of Laurel, and if so, please provide all Documents analyzing, referencing, discussing or addressing such a study or studies;*

*ii) if there is no such study, please explain in detail why Mr. O’Malley concludes that no such investment would be undertaken;*

*iii) please provide a complete explanation for Mr. O’Malley’s conclusion that expansion would take years, and provide all specific examples of expansion efforts by Gulf or by other terminal operators in Pennsylvania that support his conclusion.*

*d) has Mr. O’Malley considered the potential that if the pricing differential between the East Coast and Midwest were sufficiently high, trucks might be supplied by terminals on Laurel further to the east, such as Carlisle, Highspire, Harrisburg, or terminals served by Sunoco, under which circumstances additional facilities might not be required; and if not, please explain why.*

Initially, Gulf objected to Request No. 8(a)(i)-(iv), (c)(i) and (c)(iii). In its August 14, 2017 responses, Gulf provided responses to all subparts of Request No. 8 except Request No. 8(c)(i), despite Gulf's August 3, 2017 objections. Answer, at 22. Further, Gulf has submitted updated responses to Request No. 8(a)(i) and 8(c)(i) clarifying that the information requested by Request No. 8(a)(i) was provided in response to subpart (8)(ii) and answering Request No. 8(c)(i) in the negative. *Id.* Because Gulf has responded to the discovery requests it initially objected to, I find that Laurel’s Motion to Compel responses to Request No. 8(a)(i)-(iv), (c)(i) and (c)(iii) is moot.

**Laurel – Set II, Request No. 9 provides as follows:**

9. *Regarding Mr. O’Malley’s testimony at p. 9, line 3 through 19, as to the alleged inadequacy of Midwest supplies as a sole source for the Pittsburgh area, please answer the following questions:*

*a) provide a list of all points in time, specifying dates, in the period 2012 through July 2017 in which either (i) the price arbitrage described by Mr. O’Malley was favorable to (i.e. cheaper in) East Coast supplies; and (ii)the price arbitrage described by Mr. O’Malley was favorable to (i.e., cheaper in) the Midwest; and*

*i) during each period of favorable arbitrage, quantify the margin that Gulf acquired due to its use of the advantaged supply of refined products to sell in the Pittsburgh market; and*

*ii) during each period of favorable arbitrage, quantify the value of the arbitrage passed through by Gulf to its wholesale or retail customers;*

*iii) provide all Documents during the period 2012 through July 2017 that analyze, relate to, reference or address arbitrage in the Pittsburgh area between East Coast and Midwest prices, and/or the margin derived by Gulf, directly or indirectly; and*

*iv) please explain whether it is the policy of Gulf to pass through to its wholesale and retail customers the potential savings made available due to the Midwest/East Coast arbitrage that he describes, or to retain as much of the arbitrage benefits as possible for the owners, and please provide all documents created by Gulf that discuss, relate to, reference or analyze this policy directly or indirectly.*

Initially, Gulf objected to Request No. 9 on relevancy grounds. Gulf specifically argued that its “margins or measures of profit is not relevant to the issues in this proceeding and thus beyond the scope of discovery.” Objections, p. 16(emphasis added). Gulf further states that it “is not a PUC-regulated entity and its internal pricing decisions are not relevant to the public interest issues before the PUC in this proceeding or the overall market costs of delivered product to Pittsburgh consumers.” *Id.*, at pp. 16-17 (emphasis added). In its August 14, 2017 responses, Gulf provided a study responsive to Request No. 9(a) but continued to object to parts 9(a)(i)-(iv) of this request per its August 3, 2017 objections

With regard to Request No. 9(a)(i)-(iv), Laurel argues in its Motion against an order that would permit Gulf to avoid discovery of information that is relevant to the allegations and claims that Gulf, its company witness, and its experts—retained by Gulf on its own, and as part of a collective group (*i.e.*, the Indicated Parties)—have advanced in this proceeding. Motion, ¶ 70. In particular, Laurel points to claims made by Gulf in its Protest or the direct testimony of its witnesses that the proposed reversal will negatively impact the finances and economics of its operations, and that it will be harmed as a result. See e.g., Protest of Gulf, Docket No. A-2016-2575829, at p. 4 (filed Feb. 1, 2017) (“The loss of access to consumers in Pittsburgh and other areas west of Altoona will adversely impact the Philadelphia-area refinery and petroleum products distribution industries…”); Gulf Statement No. 1, at page 8, lines 18-20 (“No market participant will reasonably take the chance on a substantial capital investment if that capital investment could be rendered uneconomic…”) (emphasis added); Id., at page 12, lines 2-4 (“The volatility in price between these two markets is significant, exposing each contracting party [for an exchange agreement] to excessive financial exposure.”) (emphasis added). *Id.* According to Laurel, these statements are examples of how Gulf has put its margins, profits and pricing decisions at issue in this proceeding through its pleadings and testimony. Motion, ¶ 72. Also per Laurel, it would be difficult to evaluate Gulf’s claims without being provided information regarding the status quo of Gulf’s finances and economics, as no alleged change from the status quo can be evaluated, let alone demonstrated, without first determining what is the status quo. *Id.*

In turn, Gulf points out that Laurel’s Motion concerning Request No. 9(a)(i)-(iv) sets forth numerous arguments regarding the claims of Indicated Parties' witness Dr. Dan Arthur. According to Gulf, Dr. Arthur and Mr. Johnston are not interchangeable witnesses. Per Gulf, Laurel cannot attempt to show relevance of discovery based on statements made in Mr. Johnston's testimony by citing other statements in Dr. Arthur's testimony. Answer at 23-24.

As for the Mr. Johnston's testimony, Gulf maintains that Gulf's Statement No. 1 at no point discussed the impact of Laurel's proposed reversal upon Gulf's own finances and economics. The entirety of Gulf's Direct Testimony concerns the market impacts of Laurel's proposed reversal, which cannot be proven or disproven by the pricing decisions of a single entity such as Gulf. Even the references cited by Laurel in its own Motion describe market impacts, not individual margins. Answer at 24.

First, I note that in his testimony, Mr. Johnston specifically referred to Dr. Arthur’s testimony concerningarbitrage in the Pittsburgh area between East Coast and Midwest prices. See, Gulf Statement No. 1, at page 9, lines 11-14. Second, I agree with Laurel that its is only through its experience in the Pittsburgh petroleum products market that Gulf can make statements with regard to the market impacts of Laurel's proposed reversal. As such, I find that Gulf has put its profit margins acquired through the arbitrage process in the Pittsburgh market at issue in this proceeding. Consequently, I find that Request Nos. 9(a)(i)-(iv) seek information that is relevant to the subject matter of this proceeding, but I also find that Request No. 9(a)(iii) is unreasonably burdensome on the Company because Gulf’s burden of producing the information sought by Request No. 9(a)(iii) far outweighs Laurel’s necessity for it.

For the reasons stated above, Laurel’s Motion to Compel is granted with regard to Request Nos. 9(a)(i)-(ii) and (iv) but is denied with regard to Request No. 9(a)(iii).

**Laurel – Set II, Request No. 11 provides as follows:**

*11. Regarding Mr. O’Malley’s testimony at p. 11, line 14 through p. 12, line 15 regarding the alleged unavailability of exchanges to Pittsburgh from the Midwest, please answer the following questions:*

*a) please provide the basis for Mr. O’Malley’s statement that “to my knowledge, there have never been any product exchanges available for the Pittsburgh market,” and that “product exchanges are not available to Pittsburgh today,” and provide all Documents supporting this allegation;*

*b) with respect to the statement quoted in subpart a. immediately above, please explain how Mr. O’Malley would know whether “any product exchanges” have taken place, when refined petroleum product exchanges are not publicly disclosed and are considered highly confidential;*

*c) Please provide a copy of all exchange agreements that Gulf has entered into that have been in effect during the period 2012 through July 2017.*

Gulf objects to Request No. 11(c) on relevance and burdensomeness grounds. Gulf continues to object to Request No. 11(c) per its August 3, 2017 objections. Gulf has submitted an updated response to Request No. 11(c) confirming that it has not entered into any product exchanges in the Pittsburgh market that have been in effect during the period 2012 – 2017. Answer at 25.

With regard to Gulf’s objection on the grounds of relevancy, Laurel points out that Gulf’s witness specifically testifies that “to my knowledge, there have never been any product exchanges available for the Pittsburgh market.” Gulf Statement No. 1, page 11, lines 14-15. Therefore, Laurel argues that Request No. 11(c) seeks information that is directly relevant to this testimony; either Gulf has in fact entered into exchanges, which would directly contradict the statements by its witness, or it has not. Motion,¶ 77.

As for Gulf’s objection to Request No. 11(c) on the grounds of burdensomeness, Laurel considers Gulf’s argument to be unfounded, and in contradiction with its witness’s testimony. Laurel argues that,

If, as its witness testifies, no exchange agreements have been entered into in the Pittsburgh market (by Gulf or otherwise), then there is no burden associated with making a statement that the agreements sought by Request No. 11(c) do not exist. If, however, Gulf has entered into exchange agreements, then it is unclear how simply producing those agreements would impose an unreasonable burden on Gulf.

Motion, ¶ 79. (Emphasis added).

In its Answer, Gulf explained that it objected to Request No. 11(c) as unduly burdensome to the extent Laurel requests information related to exchange agreements with no relation to the Pittsburgh market. Answer at 25. According to Gulf, Laurel's Motion ignores the fact that Gulf only testified to the availability of product exchanges in the Pittsburgh market, while Request No. 11(c) seeks copies of any exchange agreements Gulf has entered into, whether related to Pittsburgh or not. *Id.* As a result, Gulf avers that the request is overbroad and responding would impose an unreasonable burden upon Gulf. *Id.*

I find that in its Motion, Laurel has clarified its intentions with regard to the scope of information sought by Request No. 11(c). I find that Request No. 11(c) was intended to seek information concerning any “exchange agreements that Gulf has entered into” in the Pittsburgh market. In turn, Gulf states that it has submitted an updated response to No. 11(c) confirming that it has not entered into any product exchanges in the Pittsburgh market that have been in effect during the period 2012 – 2017. *See,* Answer at 25. Consequently, I find that Laurel’s Motion to Compel a response to Request No. 11(c) is moot.

**Laurel – Set II, Request No. 12 provides as follows:**

*12. Regarding Mr. O’Malley’s testimony at p. 12, line 20 through p. 13, line 2 regarding the allegations that Buckeye’s lines are “heavily allocated” from the Midwest and that “these lines are already under long-term contracts with shippers, so that even shipments from the Ohio refineries located closer to Pittsburgh would be limited by capacity allocations,” please answer the following questions:*

*a) please provide all facts and Documents upon which Mr. O’Malley bases his conclusion that Buckeye’s pipelines from the Midwest to Pittsburgh are “heavily allocated”;*

*b) please provide all facts and Documents upon which Mr. O’Malley bases his conclusion that these “lines are already under long-term contracts with shippers, so that even shipments from the Ohio refineries located closer to Pittsburgh would be limited by capacity allocations”;*

*c) is it Mr. O’Malley’s sworn testimony that Buckeye’s lines from the Midwest to Pittsburgh are currently allocated?*

*d) is Mr. O’Malley aware of the prorationing status of the Marathon or Sunoco Pipeline systems from the Midwest to Pittsburgh?, and if so, please explain his understanding of their allocation status and the basis for his knowledge.*

*e) is Mr. O’Malley’s contention regarding the flexibility of pipeline supplies from the Midwest to Pittsburgh made in light of his own experience in supplying Gulf’s Pittsburgh area markets with refined products, and if so, please provide a detailed explanation of how that experience and how it supports his conclusions; and*

*f) please provide a list of all volumes that Gulf has either transported, or purchased after the transportation by other shippers, by product type, by month, for the period 2012 through July 2017, on the Buckeye Pipe Line Company, L.P., on the Sunoco Pipeline, or on Marathon Pipe Line.*

Initially, Gulf objected to Request No. 12(e)-(f). Despite Gulf's August 3, 2017 objections, on August 14, 2017, Gulf provided responses to all subparts of Request No. 12 except Request No. 12(f). Answer at 26. Gulf had objected to Request No. 12(f) on the grounds of relevance and because the requested granular detail and data could impose an unreasonable burden. *Id.*

In its Motion to Compel Gulf's responses to Request No. 12, Laurel seeks to compel a full response to Request No. 12(e), but fails to address Request No. 12(f). Motion, ¶¶ 82-84. Consequently and pursuant to 52 Pa.Code § 5.342(g), Laurel Set II, Request No. 12(f) is deemed withdrawn.[[5]](#footnote-5)

THEREFORE,

IT IS ORDERED:

1. That Laurel’s Motion to Compel is denied with regard to Gulf’s general objection.
2. Laurel Set II discovery requests shall be amended to cover the period January 1, 2014 to July 14, 2017, instead of “2012 through July 2017”.

3. That Laurel’s Motion to Compel Gulf to respond to Laurel Set II is granted, in part, and denied, in part, in accordance with the discussion, *supra.*

4. That Laurel’s Motion to Compel responses to Laurel Set II is granted with regard Request Nos. 3(h)(ii), 4(b), 6(d)(iii), and 9(a)(i)-(ii) and (iv).

5. That Laurel’s Motion to Compel responses to Laurel Set II is denied with regard Request Nos. 1, 2, 3(f)(iii), 4(d), and 9(a)(iii).

6. That Laurel’s Motion to Compel responses to Laurel Set II is deemed moot with regard Request Nos. 3(a), 4(a), 6(a), 7, 8, and 11(c).

7. That Laurel’s Motion to Compel responses to Laurel Set II is deemed withdrawn with regard Request No. 12(f).

8. That Gulf Operating, LLC shall serve upon Laurel Pipe Line Company, L.P. full and complete responses to Laurel – Set II, Request Nos. 3(h)(ii), 4(b), 6(d)(iii), and 9(a)(i)-(ii) and (iv) by no later than October 13, 2017.

|  |  |  |  |
| --- | --- | --- | --- |
| Date: | September 29, 2017 |  |  |
|  |  |  | Eranda Vero  Administrative Law Judge |

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

**Revised 8/7/2017**

DAVID B MACGREGOR ESQUIRE

ANTHONY D KANAGY ESQUIRE

GARRETT P LENT ESQUIRE

CHRISTOPHER J BARR ESQUIRE

JESSICA R ROGERS ESQUIRE

POST & SCHELL PC

FOUR PENN CENTER

1600 JOHN F KENNEDY BOULEVARD

PHILADELPHIA PA 19103-2808

***Accepts e-Service***

MICHAEL L SWINDLER ESQUIREPA PUBLIC UTILITY COMMISSION

BUREAU OF INVESTIGATION & ENFORCEMENTPO BOX 3265HARRISBURG PA 17105-3265***Accepts E-service***

WHITNEY E SNYDER ESQUIRE

TODD S STEWART ESQUIREKEVIN J MCKEON ESQUIREJOSEPH R HICKS ESQUIRE

RICHARD E POWER JR ESQUIRE

CHRISTOPHER A RUGGIERO ESQUIRE

HAWKE MCKEON AND SNISCAK LLP100 NORTH TENTH STREETHARRISBURG PA 17101***Accepts E-service***

ADEOLU A BAKARE ESQUIRE

SUSAN E BRUCE ESQUIRE

KENNETH STARK ESQUIRE

ROBERTA A WEISHAR JR ESQUIRE

MCNEES WALLACE & NURICK LLC

100 PINE STREET

PO BOX 1166

HARRISBURG PA 17108-1166

Gulf Operating LLC

***Accepts E-Service***

ALAN MICHAEL SELTZER ESQUIREJOHN F POVILAITIS ESQUIREBUCHANAN INGERSOLL & ROONEY409 NORTH SECOND STREET SUITE 500HARRISBURG PA 17101-1357***Accepts E-service***

CARL SHULTZ ESQUIREKAREN O MOURY ESQUIRE

ECKERT SEAMANS CHERIN & MELLOTT

213 MARKET STREET 8TH FLOORHARRISBURG PA 17101***Accepts E-service***

ANDREW LEVINE ESQUIRESTRADLEY RONON2600 ONE COMMERCE SQUAREPHILADELPHIA PA 19103***Accepts E-service***

JOSEPH OTIS MINOTT ESQUIRECLEAN AIR COUNCIL135 S 19TH STREET SUITE 300PHILADELPHIA PA 19103

***Accepts E-service***

JONATHAN MARCUS ESQUIRE

DANIEL J STUART ESQUIRE

ONE OXFORD CENTRE 35TH FLOOR

301 GRANT STREET

PITTSBURGH PA 15219

***Accepts e-Service***

1. As such, any reference to Mr. O’Malley in the Set II Discovery requests applies equally to Mr. Johnston and should be understood as referring to Mr. Johnston. Any reference in discovery requests to Mr. O’Malley’s prior employment should also be understood to refer to Mr. Johnston’s prior employment. [↑](#footnote-ref-1)
2. For all Set II Requests seeking production of Documents or Communications and not otherwise subject to other objection, Gulf explained that it would provide responsive Documents or Communications for the period 2014 – March 2017. See Answer at 7. [↑](#footnote-ref-2)
3. https://islandpumpandtank.com/emergency-spill-response/gulf-oil-to-be-acquired-by-private-equity-roll-up/. [↑](#footnote-ref-3)
4. On July 14, 2017, Gulf served Gulf Statement No. 1, the Direct Testimony of Todd O'Malley. On July 24, 2017, Laurel served Set II Discovery on Gulf. On August 8, 2017, Gulf filed a letter with the Commission's Secretary indicating that Gulf would submit an Errata to its Direct Testimony substituting Greg Johnston as the sponsoring witness in place of Mr. O'Malley. Gulf filed the Errata on August 16, 2017. [↑](#footnote-ref-4)
5. Pursuant to 52 Pa.Code § 5.342(g), “If a motion to compel is not filed within 10 days of service of the objection, the objected to interrogatory will be deemed withdrawn.” [↑](#footnote-ref-5)