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February 13, 2017

VIA E-FILING

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

Re: Application of Laurel Pipe Line Company L.P for All Necessary Authority, Approvals, and Certificates of Public Convenience to Change the Direction of Petroleum Products Transportation Service to Delivery Points West of Eldorado, Pennsylvania, Docket No. A-2016-2575829

Dear Secretary Chiavetta:

Enclosed for electronic filing please find the Prehearing Conference Memorandum of Philadelphia Energy Solutions Refining and Marketing LLC in the above-captioned proceeding.

Copies have been served as indicated in the attached Certificate of Service.

Very truly yours,



Alan M. Seltzer

AMS/tlg

cc: Certificate of Service

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Application of Laurel Pipe Line Company,	:	
L.P. for All Necessary Authority, Approvals,	:	
and Certificates of Public Convenience to	:	Docket No. A-2016-2575829
Change the Direction of Petroleum Products	:	
Transportation Service to Delivery Points	:	
West of Eldorado, Pennsylvania	:	

**PREHEARING CONFERENCE MEMORANDUM OF
PHILADELPHIA ENERGY SOLUTIONS REFINING AND MARKETING LLC**

TO ADMINISTRATIVE LAW JUDGE ERANDA VERO:

By Order of Administrative Law Judge (“ALJ” or “Presiding Officer”) Eranda Vero dated February 7, 2016 [sic], the parties to this proceeding were directed to file a Prehearing Conference Memorandum no later than February 13, 2017. Philadelphia Energy Solutions Refining and Marketing LLC (“PESRM”) hereby submits this Prehearing Conference Memorandum in accordance with the Pennsylvania Public Utility Commission (“Commission”) regulations at 52 Pa. Code Section 5.222 for use at the February 14, 2017 Prehearing Conference and as directed by the Presiding Officer.

I. SERVICE OF DOCUMENTS

PESRM requests that all documents be served on:

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PESRM agrees to receive service of documents electronically in this proceeding provided to counsel at the email addresses specified above.

II. PROCEDURAL HISTORY

On November 14, 2016, Laurel Pipe Line Company, L.P. (“Laurel”) filed with the Commission an Application for All Necessary Authority, Approvals, and Certificates of the Public Convenience to Change the Direction of Petroleum Products Transportation Service to Delivery Points West of Eldorado, Pennsylvania pursuant to various provisions of the Pennsylvania Public Utility Code (“Application”). 66 Pa. C. S. §§ 101, *et seq.*

On November 16, 2016, the Commission issued a Secretarial Letter directing Laurel to publish notice of the Application in a newspaper having general circulation in the area involved and file proof of publication with the Commission by December 19, 2016. The Secretarial Letter also confirmed the Commission would publish notice of the Application in the *Pennsylvania Bulletin* on December 3, 2016, with protests and petitions to intervene due to the Commission by December 19, 2016.

On November 22, 2016, Gulf Operating LLC (“Gulf”) filed both a Petition to Intervene and a Motion to Extend Deadline for Protests (“Motion to Extend”). Laurel filed an Answer to the Motion to Extend on November 28, 2016.

On December 5, 2016, PESRM filed a Petition to Intervene in this proceeding in opposition to Laurel’s request to change the direction of the flow of product moving along a portion of the Laurel pipeline and an Answer in Support of Gulf’s Motion to Extend.

On December 6, 2016, the Commission’s Secretary issued a further letter to counsel for Laurel supplementing the Commission’s November 16, 2016 Secretarial Letter which, among other things, (i) granted Gulf’s Petition to Intervene; (ii) granted Gulf’s Motion to Extend the deadline for filing formal protests and petitions to intervene from December 19, 2016 to

February 1, 2017; and (iii) directed Laurel to serve a copy of the Application on (a) current customers using the Laurel Pipeline; (b) former customers who used the pipeline from January 1, 2015 to the date the Application was filed; and (c) prospective or committed customers Laurel expects to use the pipeline if the flow direction of the line is changed.

On December 20, 2016, the Commission's Bureau of Investigation and Enforcement ("I&E") filed a Notice of Intervention in this proceeding.

On December 27, 2016, Laurel filed an Answer to PESRM's Petition to Intervene and Answer in Support of Gulf's Motion to Extend.

Monroe Energy, LLC ("Monroe") filed a Petition to Intervene in this proceedings on January 3, 2017 in opposition to the relief sought by Laurel, to which Laurel filed an Answer on January 23, 2017.

On January 31, 2017, Husky Marketing and Supply Company filed a Petition to Intervene in support of the Laurel's Application and Sunoco LLC filed a Petition to Intervene generally in opposition to Laurel's Application

Protests of the Application were filed by the following parties on February 1, 2017: (i) PESRM; (ii) Monroe; (iii) I&E; (iv) Gulf; and (v) Sheetz, Inc. ("Sheetz"). Petitions to Intervene were also filed on February 1, 2017 by Sheetz, Giant Eagle, Inc. and the Clean Air Council.

Prior to the appointment of an ALJ and the issuance of a Hearing Notice, certain parties had commenced active discovery in this proceeding. On February 3, 2017, Gulf propounded its first set of Data Requests and Request for Production of Documents upon Laurel, which were followed by PESRM's initial Data Requests and Request for Production of Documents, which were served on Laurel on February 6, 2017. Responses to the Data Requests are not yet due and none have been provided to date.

Laurel filed and served the prepared written direct testimony and exhibits of six witnesses on February 7, 2017. On the same date it also filed a Motion to Consolidate this proceeding with an affiliated interest agreement between Laurel and Buckeye Pipe Line Company, L.P. filed with the Commission at Docket No. G-2017-2587567 (“Motion to Consolidate”).

III. ISSUES

Recognizing that active discovery is ongoing, PESRM has thus far identified the following potential issues to be addressed in this proceeding:

- Whether the proposed reversal of flow on a portion of the Laurel pipeline constitutes an abandonment of public utility service in the Commonwealth requiring Commission approval?
- Whether the proposed reversal of flow on a portion of the Laurel pipeline is in the public interest?
- Whether and to what extent the proposed reversal of flow on a portion of the Laurel pipeline has positive, negative or no impacts on potential stakeholders including but not limited to, consumers, refiners, shippers, various municipalities (such as Altoona, Pittsburgh and Philadelphia, among others), Laurel and its affiliates?
- Whether the proposed reversal of flow on a portion of the Laurel pipeline will generally reduce wholesale commodity prices for petroleum products, decrease gasoline and diesel prices at the pump, improve or adversely impact supply reliability, adversely impact the air and environment in Pennsylvania, adversely impact the Commonwealth’s roads and highway infrastructure, cause increased truck traffic and pollution, etc.?
- Whether Laurel has now or should be given the authority and sole and exclusive discretion to modify the flow in the future along the Laurel pipeline without any further Commission review and approval?
- Whether reversing the flow along a portion of the Laurel pipeline is inconsistent with the engineering and actual operations of that pipeline over the last fifty years?
- Whether the proposed reversal of flow along a portion of the Laurel pipeline is in essence the first step to reverse the flow of that pipeline to further points east of Eldorado/Altoona, further harming consumers, shippers, refiners, among others?

- Whether Laurel is required to obtain explicit Commission approval to reverse the flow on the Laurel pipeline as proposed in the Application?
- Whether the proposed reversal of flow on a portion of the Laurel pipeline, a certified Pennsylvania public utility, will effectively eliminate cost-effective options for eastern Pennsylvania shippers, refiners, etc. to deliver petroleum and other similar products into the Pittsburgh market as they have done since the mid to late 1950's in order to benefit non-Pennsylvania interests?
- Whether reversing the flow along a portion of the Laurel Pipe Line could also cause a portion of that pipeline to lose its intrastate status and result in different – and likely higher – transportation rates to shippers and refiners seeking transportation services on those facilities?

IV. WITNESSES

PESRM is continuing to evaluate the witnesses it intends to call in its case. Subject to any additions or deletions of witnesses, which will be promptly relayed to the ALJ and all parties, at this time Laurel intends to call the following witness in this proceeding:

A. Michael Schaal – Mr. Schaal is a Principal at Energy Venture Analysis, Inc. of Arlington, VA. Mr. Schaal currently plans to address issues raised in the Application and respond to certain positions taken by Laurel's witnesses in their pre-filed direct testimony.

PESRM reserves the right to call additional witnesses that may be necessary in light of discovery which has not yet been completed and/or to address any other issues that may arise relative to Laurel or other parties during the course of the proceeding.

V. DISCOVERY

PESRM does not propose any special orders regarding discovery. A twenty day interrogatory response period, as required by Commission regulations, is appropriate for this proceeding. As noted in the procedural history above, the parties – including PESRM -- have commenced discovery through the issuance of preliminary written data requests and requests for production of documents. As noted in later in this memorandum, PESRM intends to conduct additional written discovery on Laurel and currently believes it will be conducting depositions or

various Laurel witnesses and/or employees. If any discovery disputes cannot be resolved by the parties, such issue(s) will be brought to the ALJ for disposition in accordance with the Commission's regulations governing practice and procedure. Modification of discovery rules may be appropriate at later points of this litigation.

VI. LITIGATION SCHEDULE

Given the number of parties that have filed protests/petitions to intervene and the scope and novelty of the issues, PESRM believes care should be taken to ensure that all parties have a full and fair opportunity to investigate and, if necessary, challenge the reversal of flow along the Laurel pipeline as proposed in the Application. PESRM currently intends to depose several of Laurel's witnesses and/or employees, subject to the evaluation of timely answers to pending and future written discovery. Since the scheduling of depositions – in addition to taking them – can require time and be difficult to coordinate among multiple parties and counsel, PESRM believes that the discovery period should reflect the practical realities of taking depositions. Therefore, PESRM respectfully requests that a complete litigation schedule not be established until the number and timing of depositions are known and the depositions of Laurel's representatives have been completed. Although Laurel's direct testimony was submitted after Protests in this case were filed and available to the Applicant, Laurel's testimony has not addressed the full scope of impacts presented by the Application. With these principles in mind, PESRM proposes a two-step process for the litigation schedule, consisting of a discovery period, to be followed by a second prehearing conference at which the balance of the litigation and briefing schedule would be completed.

Consistent with the foregoing, PESRM proposes the following discovery schedule:

February 7, 2017	Laurel files Direct Testimony ¹
February 14, 2017	Prehearing Conference
March 15, 2017	Settlement Conference
March 22, 2017	Intervenors and Public Advocates must serve their initial set of interrogatories/data requests by this date
March 23, 2017	Intervenors and Public Advocate to Notify Parties of any Need for Depositions
March 24 – May 12, 2017	Complete Depositions of Laurel Representatives if Requested
Week of May 15, 2017	Second Prehearing Conference to Complete Procedural Schedule (convene week of March 27, 2017 if no depositions)

Laurel, PESRM and other parties have discussed the above discovery schedule, in concert with the broader litigation schedule for this proceeding. No agreement has emerged, but PESRM is prepared to further discuss the proposed litigation schedule with all parties and the ALJ at the Prehearing Conference.

VII. PUBLIC INPUT HEARINGS

Should there be interest in public input hearings, PESRM would support incorporating one or more of such hearings into the litigation schedule.

VIII. PROTECTION OF CONFIDENTIAL INFORMATION

PESRM contemplates the parties will successfully negotiate and execute timely a Stipulated Protective Agreement for the confidential and proprietary materials produced in this matter. Confidential and proprietary information will then be provided in accordance with the terms of the executed Stipulated Protective Agreement. If necessary, and should the case proceed to hearing, PESRM anticipates the parties will timely submit an appropriate Motion for Protective Order for the ALJ's consideration.

¹ Written interrogatories and requests for production of documents may be served and answered throughout the schedule until the ALJ closes the evidentiary record.

IX. SETTLEMENT

PESRM remains open and available for settlement discussions with Laurel in accordance with 52 Pa. Code Section 5.231(a).

X. MOTION TO CONSOLIDATE

Attached to this Prehearing Conference Memorandum as Appendix A is an Answer to Laurel's Motion to Consolidate which has been filed with the Commission. At this time PESRM opposes consolidation because the 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.

Respectfully submitted,

Date: February 13, 2017



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February 13, 2017

VIA ELECTRONIC FILING

Rosemary Chiavetta, Secretary
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RE: Application of Laurel Pipe Line Company, L.P.; Docket No. A-2016-2575829
**ANSWER OF INDICATED PARTIES OPPOSING LAUREL'S MOTION
TO CONSOLIDATE**

Dear Secretary Chiavetta:

Enclosed for electronic filing with the Pennsylvania Public Utility Commission ("Commission") is the Answer of Indicated Parties¹ Opposing Laurel's Motion to Consolidate in the above-captioned proceeding. Hard copies will follow in accordance with the attached Certificate of Service.

Thank you for your attention to this matter. Please contact me with any questions concerning this filing.

Very truly yours,

Kevin J. McKeon
Todd S. Stewart
Whitney E. Snyder

Counsel for Monroe Energy, LLC

Enclosure

cc: Per Certificate of Service

¹ The Indicated Parties is an *ad hoc* group of parties united in their opposition to the flow reversal/abandonment proposed by Laurel. For purposes of this Answer, the Parties include: Gulf Operating, LLC; Philadelphia Energy Solutions Refining and Marketing LLC; Monroe Energy, LLC; Giant Eagle, Inc.; and Sheetz, Inc.

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Application of Laurel Pipe Line Company, L.P. for All Necessary Authority, Approvals, and Certificates of Public Convenience To Change the Direction of Petroleum Products Transportation Service to Delivery Points West of Eldorado, Pennsylvania	:	
	:	Docket No. A-2016-2575829
	:	
	:	
Laurel Pipe Line Company, L.P. – Pipeline Capacity Agreement with Buckeye Pipe Line Company, L.P.	:	
	:	Docket No. G-2017-2587567
	:	

**ANSWER OF INDICATED PARTIES OPPOSING
LAUREL'S MOTION TO CONSOLIDATE**

TO THE PENNSYLVANIA PUBLIC UTILITY COMMISSION:

Pursuant to 52 Pa. Code §§ 5.61(a)(1) and 5.81, the Indicated Parties¹ hereby answer and oppose Laurel Pipe Line Company, L.P.'s ("Laurel") Motion to Consolidate filed in the above-captioned matters on February 7, 2017 ("Motion").

1. On November 14, 2016, in Docket No. A-2016-2575829, Laurel filed an application seeking a certificate of public convenience to reverse the flow on a portion of its petroleum pipeline that traverses the Commonwealth of Pennsylvania ("Application"). On February 6, 2017, in Docket No. G-2017-2587567, Laurel filed and sought approval of an affiliated interest agreement ("AIA") with Buckeye Pipe Line Company ("Buckeye"). Laurel's Motion seeks to consolidate these two proceedings.

2. However, a critical threshold question is the appropriate entity – the presiding Administrative Law Judge ("ALJ") or the Pennsylvania Public Utility Commission

¹ The Indicated Parties is an *ad hoc* group of parties united in their opposition to the flow reversal/abandonment proposed by Laurel. For purposes of this Answer, the Parties include: Gulf Operating, LLC; Philadelphia Energy Solutions Refining and Marketing LLC; Monroe Energy, LLC; Giant Eagle, Inc.; and Sheetz, Inc.

("Commission") itself – to decide the Motion. The Indicated Parties believe it would be premature and inconsistent with the Commission's regulations on consolidation for the ALJ to decide whether the Application and AIA proceedings should be consolidated as Laurel requested. Laurel filed the two matters separately with the Commission, the proceedings seek different relief and, as noted further below, the AIA proceeding could easily be mooted or obviated by a final Commission decision denying the relief sought in the Application. It is therefore important for the Commission – and with all due respect to the Presiding ALJ – to decide initially the Motion given the procedural posture of the two separate and distinct proceedings that are the subject to the Motion. That the Commission and not the ALJ should decide the Motion is clear based on the Commission's regulations at 52 Pa. Code § 5.81(a) that note that the Commission or the presiding officer may grant consolidation. However, since no presiding officer (including the ALJ) has been assigned to the AIA proceeding, the only entity that can and should decide the Motion is the Commission itself.²

3. Even if the ALJ elects to decide the Motion despite the Indicated Parties' position to the contrary, the Commission's regulations support the denial of consolidation. The Commission's regulations at 52 Pa. Code § 5.81 only allow for consolidation of proceedings "involving a common question of law or fact." *Id.* Laurel concedes there are no common issues

² In addition, interjecting the AIA into the Application proceeding is inconsistent with the Commission's historic treatment of affiliated interest agreements, which typically are handled administratively by Commission staff and not by the Office of Administrative Law Judge. *See, e.g., Securities certificate of Columbia Gas of Pennsylvania, Inc. for the issuance of promissory notes in an aggregate principal amount not to exceed \$130 million. Affiliated interest agreement concerning the issuance of promissory notes between Columbia Gas of Pennsylvania, Inc. and NiSource Finance Corporation*; Docket Nos. S-2015-2515414, and G-2015-2515982, 2016 WL 406524 (Pa. PUC 2016); *Affiliated Interest Agreement between UGI Utilities, Inc. and UGI Central Penn Gas, Inc. et al.*, Docket Nos. G-2015-2489752 *et al.*, 2015 WL 5011607 (Pa. PUC 2015); *Securities certificate and affiliated interest agreement of Peoples Natural Gas Company LLC for the issuance of an intercompany promissory note to its parent, PNG Companies LLC, in an aggregate principal amount not to exceed \$118,125,000*, Docket Nos. S-2015-2465675, and G-2015-2465691, 2015 WL 965767 (Pa. PUC 2015); *Affiliated Interest Agreement between D&E Communications, Inc. and D&E Telephone Company, et al.*, Docket No. G-00010865, 2001 WL 36258619 (Pa. PUC 2001).

of law. Motion at P 9. Laurel's assertion that there are common issues of fact (Motion at P 9) is unsupported and unsupportable.

3. The Application proceeding will determine whether it is in the public interest for Laurel to reverse the flow of its half of its pipeline under 66 Pa. C.S. § 1103(a)-(b). Material considerations of fact included in that determination are:

- (a) whether the proposed reversal will in fact abandon intrastate service to Pittsburgh;
- (b) whether the proposed reversal will in fact conflict with Laurel's current certificate of public convenience;
- (c) the extent of the loss to Laurel of its current pipeline service;
- (d) the current and ongoing high demand for Laurel's pipeline service;
- (e) the extensive harm to the public, including, shippers, refiners, consumers, and Pennsylvania's infrastructure and environment in the event of abandonment;
- (f) the lack of harm to Laurel if the abandonment is not approved; and
- (g) lack of available alternatives to replace Laurel's current pipeline service.

4. In contrast, the AIA proceeding will determine whether the agreement between two affiliates (*i.e.*, Laurel and Buckeye) is reasonable under Chapter 21 of the Public Utility Code. 66 Pa. C.S. § 2101, et seq. Material considerations of fact in that proceeding will include the payments between the parties and market prices for similar goods and/or services provided under the agreement, which allows for Buckeye to use a portion of Laurel's pipeline capacity if the flow of the pipeline is reversed pursuant to Commission approval of the Application. Thus, if Laurel prevails in the Application proceeding, review of the AIA will be required, but will involve different factual and legal issues that are not relevant to the relief sought in the Application and indeed do not need be addressed at all if the Application is denied. This is the only common thread between the proceedings.

5. 52 Pa. Code § 5.81 also allows the Commission or ALJ to "make orders concerning the conduct of the proceeding as may avoid unnecessary costs or delay." *Id.* Contrary to Laurel's assertions, consolidation here will not avoid unnecessary costs or delay. Regarding delay, filing

the AIA almost three months after the Application was Laurel's choice. Regarding costs, the only party that will avoid additional costs is Laurel, and only if its Application is approved. Given that Laurel had control over when it filed the Application and AIA, it should not be allowed to unduly burden other parties by essentially requiring them to protest and litigate an AIA that may be moot or that the parties may choose not to challenge at all if the Application were approved.

6. Should the Commission approve Laurel's Application, it would be appropriate for it to also order *at that time* the filing of any affiliated agreements with the Commission that are necessary given the approval. This would make eminent sense because the AIA Laurel has already filed is based on the Application *as filed*. However, if the Application were to be approved (over the objections of numerous opposing parties), Laurel may be required to modify the AIA based on conditions the Commission may place on any Application approval. It would be a waste of time and resources to adjudicate in this proceeding an AIA that has become moot because it must be revised in some manner based on the outcome of the Application proceeding.

7. Because there are no common issues of law or fact between the Application and AIA proceedings, the express requirement for consolidation under the Commission's regulations, Laurel's citation to and application of the factors ALJ Buckley discussed in *Pa. Pub. Util. Comm'n v. City of Lancaster Sewer Fund*, Docket No. R-2012-2310366 (Second Prehearing Order Nov. 26, 2012) are not relevant to consolidation here. Moreover, these factors, even if considered, counsel against consolidation:

- (1) whether additional issues exist that could cloud the determination of common issues;
 - here, there are no common legal or factual issues, so every issue the AIA adds will be an additional issue to decide;
- (2) whether consolidation will reduce litigation costs and decision-making for the parties and the Commission;

- here, consolidation will increase litigation costs and increase the parties', Your Honor's and the Commission's decision making efforts by requiring unnecessary litigation and consideration of an AIA that is moot if the Application is denied;
- (3) whether the issues in one proceeding go to the heart of an issue in the other proceeding;
- here, again, there are no common questions of law or fact;
- (4) whether consolidation will unduly protract a hearing or produce a disorderly or unwieldy record;
- here, consolidation will both protract the hearing and create an unwieldy record given the myriad, distinct, and complex issues involved in each proceeding;
- (5) whether different statutory and legal issues are involved;
- here, the statutory and legal issues are different because the AIA proceeding involves 66 Pa. C.S. § 2101, et seq, and the Application proceeding involves 66 Pa. C.S. § 1103(a)-(b);
- (6) whether the party with the burden of proof differs in the proceedings;
- here, while Laurel bears the burden of proof in both proceedings, the factual proof to meet that burden in each proceeding is different;
- (7) whether consolidation will unduly delay the resolution of one of the proceedings;
- here, consolidation may delay resolution of both proceedings because new AIA issues will be added to the Application proceeding, and because the AIA filing could otherwise be handled on an entirely different non-litigation track, and could be avoided altogether in the event the Commission denies the Application; and
- (8) whether supporting data in both proceedings will be repetitive;
- here, repetitive supporting data is unlikely because there are no common questions of law or fact.

8. It is evident from the number of protests and petitions to intervene that numerous parties oppose the relief Laurel seeks in the Application. Those pleadings further underscore the complexity of the issues and the many and varied stakeholders who will be adversely affected if Laurel's proposal to reverse the flow on a portion of the Laurel pipeline is approved. Because the issues in the Application proceeding are complex and involve a large and diverse group of potentially impacted parties, there are compelling reasons to avoid adding another set of issues for

the parties to address and the ALJ to adjudicate that are clearly marginal and unrelated to the Application. The Indicated Parties anticipate substantial discovery on the issues in the Application proceeding and believe no useful purpose would be served by adding AIA issues into the matters to be addressed, especially if – as the Indicated Parties will argue – the relief sought in the Application should be denied in its entirety.

WHEREFORE, the Indicated Parties respectfully request that Your Honor deny Laurel's Motion to Consolidate.

Respectfully submitted,

/s/ Robert A. Weishaar, Jr.

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Dated: February 13, 2017

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing document upon the parties, listed below, in the manner indicated below, and in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a party).

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Dated: February 13, 2017

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Application of Laurel Pipe Line Company, :
L.P. for All Necessary Authority, Approvals, :
and Certificates of Public Convenience to : Docket No. A-2016-2575829
Change the Direction of Petroleum Products :
Transportation Service to Delivery Points :
West of Eldorado, Pennsylvania :

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true and correct copy of the Prehearing Conference Memorandum of Philadelphia Energy Solutions Refining and Marketing LLC upon the parties and in the manner listed below:

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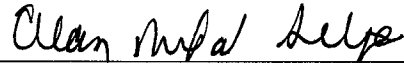
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