

**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.	:	

**RECOMMENDED DECISION**

**NON-PROPRIETARY VERSION**

Before  
Eranda Vero  
Administrative Law Judge

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## I. INTRODUCTION

This Recommended Decision recommends denial of Laurel Pipe Line Company, L.P.'s (Laurel, or Applicant, or Company) Application because Laurel failed to prove by a preponderance of the evidence that it is entitled to the relief sought. This Recommended Decision also recommends that the Affiliated Interest Agreement between Laurel and Buckeye Pipe Line Company, L.P., be denied because Laurel failed to satisfy the Commission's standard of review for abandonment of utility service.

## II. HISTORY OF THE PROCEEDING

On November 14, 2016, Laurel Pipe Line Company, L.P. filed with the Pennsylvania Public Utility Commission (PUC or Commission) an Application requesting all necessary authority, approvals and Certificates of Public Convenience from the Commission to the extent required, authorizing Laurel to change the direction of its petroleum products transportation service over a portion of its system west of Eldorado, Pennsylvania.

By Secretarial letter dated November 16, 2016, the Commission acknowledged receipt of the Application and directed Laurel to publish notice of the Application in a newspaper of general circulation in the area involved and file proof of publication with the Commission by December 19, 2016. The Secretarial letter also confirmed that the Commission would publish notice of the Application in the Pennsylvania Bulletin on December 3, 2016 with formal protests and petitions to intervene due to the Commission by December 19, 2016.

On November 22, 2016, Gulf Operating, LLC filed a Petition to Intervene and a Motion to Extend the Deadline for filing Protests in this matter.

On December 6, 2016, the Commission issued a second Secretarial letter extending the deadline for filing formal protests and petitions to intervene in this proceedings to February 1, 2017.

Notice of Laurel's Application was published in the Pennsylvania Bulletin on December 17, 2016, with formal protests and petitions to intervene due no later than February 1, 2017.

By the February 1, 2017 deadline the following Petitions to Intervene were filed in this matter: (1) Gulf Operating LLC (Gulf), (2) Philadelphia Energy Solution Refining and Marketing LLC (PESRM), (3) the Commission's Bureau of Investigation and Enforcement (I&E), (4) Monroe Energy LLC (Monroe), (5) Giant Eagle, Inc. (Giant Eagle or Giant), (6) Sheetz, Inc. (Sheetz), (7) Husky Marketing and Supply Company (Husky), (8) Sunoco LLC, and (9) Clean Air Council. In addition, (1) Monroe, (2) PESRM, (3) I&E, (4) Gulf, (5) Sheetz, and (6) Giant filed timely Protests against the Application.

On February 6, 2017, Laurel and Buckeye Pipe Line Company, L.P. (Buckeye) filed a Capacity Agreement at Docket No. G-2017-2587567.

On February 7, 2017, Laurel filed a Motion to Consolidate the Commission's consideration of the Capacity Agreement with the above-captioned Application proceeding.

Also on February 7, 2017, Laurel submitted the direct testimony and exhibits of David W. Arnold, William J. Hollis, Michael J. Kelly, Thomas S. Collier, Michael J. Webb, and Robert G. Van Hoecke.

By Notice dated February 6, 2017, the Commission informed the parties that a prehearing conference was scheduled for Tuesday, February 14, 2017, to discuss, among other things: scheduling of public input hearings and corresponding locations, identification of issues raised in the Application, discovery matters, and scheduling of evidentiary hearings.

By Prehearing Conference Order dated February 7, 2017, I directed the parties to submit prehearing memoranda, to prepare to discuss procedural issues, to take affirmative steps if the status of an active participant was desired, and to develop a procedural schedule for this proceeding.

The prehearing conference was held as scheduled on February 14, 2017. Present through counsel were Laurel, Monroe, PESRM, I&E, Gulf, Sheetz, Giant, Husky, Sunoco LLC, and Clean Air Council. Public input hearings were discussed, and a schedule was set for hearings and formal testimony by the parties. The schedule included two in-person public input sessions to be held on May 16, 2017, in Harrisburg, PA at 1:00 p.m. and 6:00 p.m.

On March 2, 2017, I issued a Second Prehearing Order, which granted Laurel's Motion to Consolidate the Application and Capacity Agreement and set forth a litigation schedule for the proceeding.

On April 26, 2017, I issued a Protective Order.

Two public input hearings were conducted on May 16, 2017, in Harrisburg, PA. The two hearings were "smart hearings" and live-streamed via the Commission's website. In total 22 individuals appeared and testified at the public input hearings. Among them Abe Amoros, Douglas Woosnam, Thomas C. Martin, Mathew G. Wilson, Steven Ohl, Kevin Steele, Ed Coker, Charlie Garrett, and Barrett Arnold testified in support of the Application. In addition, Patrick Grill, Denis Derr, Jeffrey Varner, Jeffrey Smith, Matthew Krupp, Robert Eugene Ridic, III, State Representative Thomas Mahaffie, III, Anthony Gallagher, Sharon Neumann, Trish McFarland, Joseph Lahr, Christopher B. Farabaugh, and Mathew John Haskins testified in opposition to the Application. Further, a letter dated May 11, 2017 from State Senator Anthony H. Williams was admitted as an exhibit in the public input hearing record.

On June 1, 2017, Gulf, Sheetz, PESRM, Monroe, and Giant (collectively, the Indicated Parties) filed a Motion for Modification and Extension of the Procedural Schedule. Laurel filed its Answer on June 8, 2017.

On June 20, 2017, I issued an Order Regarding the Motion for Modification and Extension of the Procedural Schedule and modified the litigation schedule by thirty (30) days.

Subsequent modification of the briefing schedule occurred, and the litigation schedule proceeded as follows:

Non-Company Direct Testimony	July 14, 2017
Rebuttal Testimony	August 31, 2017
Surrebuttal Testimony	October 6, 2017
Written Rejoinder	October 20, 2017
Evidentiary Hearings (in Harrisburg)	November 6-13, 2017
Main Briefs	December 4, 2017
Reply Briefs	December 21, 2017

On July 14, 2017, the Indicated Parties served the following joint Direct Testimony: Indicated Parties Statement No. 1, Direct Testimony of Daniel S. Arthur (and related exhibits); Indicated Parties Statement No. 2, Direct Testimony of A. Michael Schaal (and related exhibits); Indicated Parties Statement No. 3, Direct Testimony of Robert A. Rosenthal (and related exhibits); Indicated Parties Statement No. 4, Direct Testimony of Steven W. Rickard (and related exhibits).

PESRM, Monroe, Gulf, Sheetz, and Giant Eagle also individually served the following Direct Testimony: PESRM Statement No. 1, Direct Testimony of John J. Sadlowski; Monroe Energy Statement No. 1, Direct Testimony of Tracy Sadowski (and related exhibits); Gulf Statement No. 1, Direct Testimony of Todd O'Malley; Sheetz Statement No. 1, Direct Testimony of Michael E. Lorenz; Giant Eagle Statement No. 1, Direct Testimony of Richard Tomnay.

I&E served its Direct Testimony: I&E Statement No. 1, Direct Testimony of Sunil R. Patel (and related appendices). Sunoco served its Direct Testimony: Sunoco Statement No. 1, Direct Testimony of David J. Kistler (and related exhibit).<sup>1</sup>

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<sup>1</sup> Laurel advised the Commission on September 7, 2017, that Sunoco agreed to withdraw its Direct Testimony and not submit any additional testimony in this proceeding.

On August 31, 2017, Laurel served the following Rebuttal Testimony: (1) Laurel Statement No. 1-R, Rebuttal Testimony of David W. Arnold (and related exhibits); (2) Laurel Statement No. 2-R, Rebuttal Testimony of William J. Hollis; (3) Laurel Statement No. 4-R, Rebuttal Testimony of T. Scott Collier (and related exhibit); (4) Laurel Statement No. 5-R, Rebuttal Testimony of Michael J. Webb (and related exhibits); (5) Laurel Statement No. 7-R, Rebuttal Testimony of Scott T. Jones (and related exhibits); (6) Laurel Statement No. 8-R, Rebuttal Testimony of Kenneth M. Stern (and related exhibits); (7) Laurel Statement No. 9-R, Rebuttal Testimony of Glen R. Thomas; (8) Laurel Statement No. 10-R, Rebuttal Testimony of Andrew N. Kleit (and related exhibit); and (9) Laurel Statement No. 11-R, Rebuttal Testimony of Mark L. Hereth (and related exhibits).

Also on August 31, 2017, Husky served its Rebuttal Testimony: HMSC Statement No. 1-R, Rebuttal Testimony of Jerome P. Miller (and related exhibits).

On October 6, 2017, the Indicated Parties served their joint Surrebuttal Testimony: Indicated Parties Statement Nos. 1-SR, Surrebuttal Testimony of Daniel S. Arthur (and related exhibits); Indicated Parties Statement Nos. 2-SR, Surrebuttal Testimony of A. Michael Schaal; Indicated Parties Statement Nos. 3-SR, Surrebuttal Testimony of Robert A. Rosenthal; Indicated Parties Statement Nos. 4-SR, Surrebuttal Testimony of Steven W. Rickard; and Indicated Parties Statement Nos. 5-SR, Surrebuttal Testimony of William R. Lloyd, Jr.

Monroe, Gulf, Sheetz and Giant Eagle also individually served Surrebuttal Testimony: Monroe Energy Statement No. 1-SR, Surrebuttal Testimony of Tracy Sadowski; Gulf Statement No. 1-SR (and related exhibits); Sheetz Statement No. 1-SR, Surrebuttal Testimony of Michael E. Lorenz (and related exhibits), and Giant Eagle Statement No. 1-SR. Surrebuttal Testimony of Richard Tomnay. PESRM served both PESRM Statement No. 1-SR, Surrebuttal Testimony of John J. Sadlowski; and Statement No. 2-SR, Surrebuttal Testimony of James T. Rens (and related appendix). I&E served its Surrebuttal Testimony, I&E Statement No. 1-SR, Surrebuttal Testimony of Sunil R. Patel (and related exhibit). On October 20, 2017, Laurel served the following Rejoinder Testimony: (1) Laurel Statement No. 4-RJ, Rejoinder Testimony of T. Scott Collier; (2) Laurel Statement No. 5-RJ, Rejoinder Testimony of Michael J.

Webb (and related exhibits); (3) Laurel Statement No. 6-RJ, Rejoinder Testimony of Robert G. Van Hoecke (and related exhibits); (4) Laurel Statement No. 7-RJ, Rejoinder Testimony of Scott T. Jones; (5) Laurel Statement No. 8-RJ, Rejoinder Testimony of Kenneth M. Stern; and (6) Laurel Statement No. 9-RJ, Rejoinder Testimony of Glen R. Thomas.

Also on October 20, 2017, Husky served its Rejoinder Testimony: HMSC Statement No. 1-RJ, Rejoinder Testimony of Jerome P. Miller (and related exhibits).

On November 1, 2017, Laurel served Laurel Statement No. 5-SRJ, Supplemental Rejoinder Testimony of Michael J. Webb, which addressed certain untimely produced documents by Monroe.

On November 3, 2017, Laurel filed a Stipulation in Settlement between Laurel and I&E, resolving all issues as between these parties.

Evidentiary hearings were held as scheduled on November 6-13, 2017. During the evidentiary hearings, 13 witnesses were subject to cross-examination. Cross-examination of all other witnesses was waived and the pre-served Direct, Rebuttal, Surrebuttal, Rejoinder and Supplemental Rejoinder Testimony of the parties were admitted into the record.

At the November 13, 2017 evidentiary hearing, I granted Laurel's Motion to Submit a Supplemental Affidavit or, Alternatively Exclude Certain Cross Examination Exhibits and Testimony. The Motion sought to: (1) exclude from the record a Greater Ohio Valley Market Study prepared on behalf of Husky (Disputed Study) and served on all parties by Husky witness Mr. Miller in response to a discovery request from Gulf and Sheetz; or (2) admit an affidavit prepared by Laurel witness Dr. Webb and attached to the Motion. I excluded the Disputed Study from evidence deeming it to be hearsay and untimely offered into evidence. Hearing Tr. 1233-45. However, I permitted the Indicated Parties to submit the study into the record as an offer of proof pursuant to Section 5.414 of the Commission's regulations. 52 Pa. Code § 5.414.

On December 4, 2017, Laurel, Husky, and the Indicated Parties filed Main Briefs. On December 21, 2017, Laurel, Husky, the Indicated Parties, and I&E filed Reply Briefs.

The record closed on December 21, 2017. This matter is now ripe for recommendation.

### III. FINDINGS OF FACT

#### Laurel Pipe Line Company, L.P.

1. The Applicant is Laurel Pipe Line Company, L.P., which is a Delaware Limited Partnership formed for the purpose of transporting petroleum and petroleum products through pipelines. Laurel St. No. 1, at 3.
2. Buckeye is a Delaware Limited Partnership formed for the purpose of providing interstate petroleum products transportation services, in and across states in the Midwest, and Northeast, including Michigan, Ohio, Pennsylvania, Connecticut, Massachusetts, New York and New Jersey, as well as intrastate petroleum products services in Ohio, Michigan and Indiana. Buckeye is an affiliate of Laurel and currently provides interstate petroleum products transportation over a portion of Laurel's pipeline facilities pursuant to a capacity agreement approved by the Commission at Docket No. G-00940417. Laurel St. No. 1, at 4.
3. Buckeye Partners, L.P. (BPL) is a publicly traded Delaware master limited partnership with limited partnership units (representing limited partner interests) that are listed on the New York Stock Exchange under the symbol "BPL." Laurel St. No. 1, at 4.
4. Buckeye GP LLC is the general partner of BPL. Laurel St. No. 1, at 4.
5. Among other things, BPL owns, directly or indirectly, several operating subsidiaries that own and operate, in the aggregate, approximately 6,000 miles of pipeline that transport liquid petroleum products in the United States. Laurel St. No. 1, at 4.

6. Both Laurel and Buckeye are operating subsidiaries of BPL. Laurel St. No. 1, at 4.

7. Laurel is currently authorized to transport, store and distribute petroleum and other petroleum products by means of pipeline and appurtenances for the public, in and across Pennsylvania. Laurel St. No. 1, at 5.

8. The term "other petroleum products" includes, but is not limited to, gasoline, diesel fuel, heating oil, propane, butane, and jet fuel. Laurel St. No. 1, at 5.

9. In 1957, the Commission issued a Certificate of Public Convenience broadly authorizing Laurel Pipe Line Company, the predecessor in interest to Laurel, to transport, store and distribute petroleum and petroleum products by means of pipeline and appurtenances for the public, in and across the Commonwealth of Pennsylvania. Laurel St. No. 1, at 6; Laurel Exhibit DWA-5; See *In re Application of Laurel Pipe Line Company*, Docket No. 84093, Folder 2 (Report and Order entered 6 March 18, 1957). Laurel St. No. 1, at 6.

10. Laurel's Certificate of Public Convenience specifically states:

[T]he Pennsylvania Public Utility Commission upon application of LAUREL PIPE LINE COMPANY, filed January 31, 1957, for approval of the beginning of the exercise of the right, power or privilege of transporting, storing and distributing petroleum and petroleum products by means of pipelines and appurtenances, for the public, such facilities extending generally westwardly from a point near the City of Philadelphia to a point in the vicinity of the City of Pittsburgh, thence in a northwestwardly direction to the Pennsylvania-Ohio boundary line, as more fully described in said application, and having been duly presented in accordance with the rules of the Commission, and full investigation of the matters and things involved having been had, the Commission finds and determines that the granting of said application is necessary or proper for the service, accommodation, convenience or safety of the public, and that a Certificate of Public Convenience issue evidencing the Commission's approval thereof.

Laurel St. No. 1, at 6-7.

11. Pursuant to the authority granted under its Certificate of Public Convenience and under currently effective tariffs on file with the Commission, Laurel currently transports petroleum products from east to west from points of origin near Philadelphia, Pennsylvania, to destination points across the Commonwealth, terminating west of Pittsburgh, Pennsylvania, at destinations that are also connected to pipelines originating from a number of Midwest refineries. Laurel St. No. 1, at 8.

12. Laurel exclusively provides transportation services; it does not own or sell petroleum and petroleum products. Laurel St. No. 1, at 8.

13. Laurel's pipeline system is not limited to Pennsylvania. Laurel St. No. 1, at 9.

14. Laurel owns and operates pipelines in Pennsylvania and New Jersey that form a single pipeline system extending from Eagle Point, New Jersey to Midland, Pennsylvania. Laurel St. No. 1, at 9.

15. Laurel's current Pennsylvania operations consist of owning and operating approximately 330 miles of 8-inch to 24-inch pipeline and related facilities for the transportation of petroleum products to 25 customers at 14 delivery points. Laurel St. No. 1, at 12.

16. Laurel's pipeline system is used by its affiliate, Buckeye, to transport petroleum products in interstate commerce to locations throughout Pennsylvania. This transportation service is provided by Buckeye, pursuant to FERC<sup>2</sup>-approved tariffs and a Commission-approved pipeline capacity agreement under which Laurel provides capacity to Buckeye for its interstate service. See Laurel Pipe Line Company, L.P. — Pipeline Capacity Agreement with Buckeye Pipeline Company, L.P., Docket No. G-00940417 (Final Order entered Dec. 15, 1994), as amended by, Laurel Pipe Line Company, L.P. — Amendment to Pipeline Capacity Agreement with Buckeye Pipeline Company, L.P., Docket No G-00940417 (Final

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<sup>2</sup> Federal Energy Regulatory Commission.

Order entered May 4, 2015) (Prior Laurel-Buckeye Capacity Agreement). Laurel St. No. 1, at 9-10.

17. Currently, Laurel provides transportation from points of origin in Eastern Pennsylvania to points of delivery in Eastern, Central and Western Pennsylvania. Laurel St. No. 1, at 12.

18. Laurel's destination points generally are tank farms with truck racks where distributors pick up product and deliver it to end users, which are primarily service stations and some bulk fuel oil terminals. Laurel St. No. 1, at 13.

19. Nearly all of the products Laurel transports via pipeline are ultimately delivered by truck. Laurel St. No. 1, at 13.

20. Products shipped intrastate on Laurel's system currently originate from PESRM's Philadelphia Refining Complex and the Monroe Energy Trainer Refinery and are shipped under Laurel's PUC tariff. Laurel St. No. 1, at 13.

21. Products shipped interstate on Laurel's system currently originate from the PBF Refinery in Delaware City, Delaware, the Phillips 66 Bayway Refinery in Linden, New Jersey, the Sunoco Logistics Eagle Point Terminal in Eagle Point, New Jersey, several import and blending facilities in the New York Harbor, and multiple pipelines that deliver to Linden, New Jersey, and are shipped under Buckeye's FERC tariffs. Laurel St. No. 1, at 13.

22. Among the blending facilities in New York Harbor that supply Laurel are Motiva Sewaren, Buckeye Perth Amboy, Buckeye Port Reading, Kinder Morgan Perth Amboy, Kinder Morgan Carteret, Citgo Linden, NuStar Linden, Phillips 66 Tremley Point and 1MTT Bayonne. Laurel St. No. 1, at 13.

23. Pipelines supplying Laurel include Colonial Pipeline, Harbor Pipeline, Delaware Pipeline Company, LLC, and Sunoco Logistics' Twin Oaks/Newark segment (East Line). Laurel St. No. 1, at 13.

24. Laurel delivers petroleum products to a number of product terminals, the majority of which are owned and operated by independent third parties and the remainder of which are owned and operated by Laurel's affiliates, Buckeye Terminals, LLC and Buckeye Tank Terminals Company L.P. Laurel St. No. 1, at 14.

25. These terminals are facilities consisting of product tanks and typically include truck racks where customers' trucks are loaded with product for distribution to service stations, truck stops, etc. Laurel also connects with Tioga Junction, near Pittsburgh, from which Buckeye's pipeline supplies jet fuel to the Pittsburgh airport. Laurel St. No. 1, at 14.

26. Laurel is not engaged in the business of providing transportation services directly to households and other end users. Laurel St. No. 1, at 14.

27. Laurel's customers are primarily major integrated oil companies, large refined products marketing companies, and major end users of petroleum products. Laurel St. No. 1, at 14.

28. In calendar year 2016, Laurel transported a total of 76,156,320 barrels of petroleum products, inclusive of all intrastate and interstate volumes, over its pipeline system. Laurel St. No. 1, at 14-15; Laurel Exhibit DWA-2.

29. In calendar year 2016, Laurel transported 11,075,499 barrels under Pa. PUC rates from Philadelphia origin points to delivery points west of Eldorado. Laurel St. No. 1, at 15; Laurel Exhibit DWA-2.

30. Under the Broadway II Project, Buckeye will increase the capacity of its pipeline system from source points in Michigan and Ohio to delivery points in Western and Central Pennsylvania. Laurel St. No. 1, at 16.

31. Buckeye sought long-term support from its shippers for a major connection and expansion project to move these products east, and conducted an open season from August 31, 2016 through October 18, 2016, in accordance with FERC guidance, and received sufficient commitments from shippers to move forward with the Broadway II project. Laurel St. No. 1, at 16.

32. Additional pipeline capacity to Pittsburgh is provided by Sunoco Logistics' Allegheny Access project (which began serving four Pittsburgh area terminals from western Ohio sources in 2015) and Buckeye's Michigan/Ohio Pipeline Expansion (Project Broadway). Laurel St. No. 1, at 17.

33. The requirements of the Pennsylvania Department of Environmental Protection ("DEP") and the Pennsylvania State Implementation Plan ("SIP") for gasoline in the seven-county Pittsburgh area (including Allegheny, Armstrong, Beaver, Butler, Fayette, Washington, and Westmoreland counties) during the summer period (May 1 through September 15) can be met by either reformulated gasoline ("RFG") or conventional gasoline that is below 7.8 psi in Reid Vapor Pressure ("RVP"), which is a measure of gasoline's volatility. Laurel St. No. 1, at 17.

34. Low RVP RFG is currently sourced from the east. Laurel St. No. 1, at 17.

35. Low RVP conventional gasoline is sourced from the Midwest; it is produced and available in the Midwest, as the metropolitan areas around Detroit and Cincinnati are subject to restrictions similar to Pittsburgh. Laurel St. No. 1, at 17.

36. Broadway II consists of two primary elements: (1) an increase of capacity from Michigan and western Ohio to Pittsburgh on Buckeye's pipeline system; and (2) changing

the direction of flow on Laurel's pipeline system from Coraopolis, Pennsylvania to Eldorado, Pennsylvania. Laurel St. No. 1, at 18.

37. During the first phase of the Broadway II project, Buckeye will undertake several actions to increase the capacity of its pipeline system from Western Ohio to Pittsburgh, including: (1) returning out-of-service tanks to service in Toledo, Ohio and Midland, Pennsylvania; (2) constructing new tanks in Mantua, Ohio; and (3) replacing mainline pumps and upgrading electrical systems at facilities in Toledo, Lima, Cygnet, Wakeman, Mantua and Columbiana, Ohio, as well as various related appurtenances. Laurel St. No. 1, at 18.

38. During the second phase of the Broadway II project, Laurel will change the direction of flow on the western portion of its pipeline system from Coraopolis, Pennsylvania to Eldorado, Pennsylvania. Additionally, Laurel will install new mainline pump facilities and associated metering, piping, and valves, and a new relief tank and transmix tank in or near Eldorado. Laurel St. No. 1, at 18-19.

39. To facilitate eastbound deliveries from Coraopolis to the Eldorado delivery location, existing pipeline will be utilized with the addition of mainline pumps at the Midland and Delmont facilities. Laurel St. No. 3, at 5.

40. Laurel's current pumps at the Duncansville Station will be idled, as it will become the new "end point" of the system where both westbound and eastbound deliveries terminate. Laurel St. No. 3, at 5.

41. In addition to the new mainline pumps, the existing pipelines will be reviewed and modified for reverse flow (i.e. flow check valves, manifold connections to metering, block valve locations, etc.). Laurel St. No. 3, at 5.

42. In order to reverse flow on the western portion of Laurel's system, Laurel will cease providing physical deliveries from origin points in Philadelphia to destination points west of Eldorado. Laurel St. No. 3, at 5.

43. No new pipeline construction by Laurel is necessary to complete the project. Laurel St. No. 3, at 7-8.

44. As the proposed eastbound service will be provided over repurposed, existing infrastructure, the new service can be provided without the environmental costs and impacts that may be associated with constructing a new pipeline. Laurel St. No. 3, at 7-8.

45. Broadway II will lead to a design capacity increase of 40,000 barrels per day (BPD) from the west of Pittsburgh and on to Eldorado. Laurel St. No. 1, at 19.

46. Under the proposed change in direction of service, the western portion of Laurel's system (i.e., from points west of and near Pittsburgh to Eldorado) would be utilized by Buckeye to transport and deliver Midwestern petroleum products to the public in Western and Central Pennsylvania. Buckeye would use the capacity of that portion of Laurel's system and provide transportation service at rates approved by FERC. These shipments will originate in the Midwest and be transported to Pittsburgh, then proceed from Pittsburgh on to points east, all the way to and including Eldorado, on Laurel's pipeline system. Laurel St. No. 1, at 23.

47. Market participants in the Pittsburgh area seeking to acquire petroleum products currently have access to deliveries by: (1) Sunoco Pipeline, L.P., from the Midwest; (2) Marathon Pipeline LLC, from the Midwest; (3) Buckeye from the Midwest; (4) Buckeye and Laurel, collectively delivering from the East Coast; (5) trucks delivering from the Ergon refinery in Newell, West Virginia; (6) trucks delivering from the United Refining refinery in Warren, Pennsylvania; (7) barges delivering petroleum products to terminals on the Ohio, Allegheny and Monongahela Rivers from refineries and pipeline terminals in the Midwest and potentially Gulf Coast; and (8) trucks delivering petroleum products from pipeline terminals in Ohio. Laurel St. No. 2, at 6.

48. Market participants in the Philadelphia area seeking to deliver petroleum products to destinations within or outside the Philadelphia area currently have access to: (1) the Laurel/Buckeye system from Philadelphia to Altoona; (2) the Buckeye Pipe Line Transportation

LLC system to points in Pennsylvania and Upstate New York; (3) the Sunoco system to destinations in Pennsylvania and Upstate New York; (4) the Sunoco system (Harbor Pipeline) to the New Jersey and New York City markets; (5) the Colonial Pipeline Company ("Colonial") to New Jersey and New York City markets; (6) barge facilities from which product can be transported by water carrier to markets on the entire East Coast; and (7) truck racks at local Philadelphia refineries or local pipeline terminals for distribution by truck to end users within a broad area of Pennsylvania, New Jersey, Delaware and Maryland. Laurel St. No. 2, at 7.

*The Capacity Agreement, Docket No. G-2017-2587567*

49. The Capacity Agreement filed at Docket No. G-2017-2587567 supersedes and replaces the terms of a prior capacity agreement between Laurel and Buckeye, which was approved by the Commission in 1994 ("1994 Agreement"), and the terms of an amendment to the 1994 Agreement, which was approved by the Commission in 2015 ("2015 Amendment"). See Docket No. G-00940417. Laurel St. No. 1, at 24.

50. Pursuant to the Capacity Agreement, Buckeye will obtain from Laurel throughput capacity sufficient to transport up to 40,000 BPD of refined petroleum products between Eldorado, Pennsylvania and will reduce its capacity rights between Sinking Springs and Coraopolis, Pennsylvania by the same quantity. Laurel St. No. 1, at 24.

51. The capacity between Midland and Eldorado represents the capacity on the western portion of Laurel's pipeline that Buckeye will use to provide petroleum products transportation service after the proposed partial change in direction of flow is completed. Laurel St. No. 1, at 24.

52. The revised agreement is for a 10-year term, subject to renewal right and includes an adjustment to the escalation provisions for payments due from Buckeye. Laurel St. No. 1, at 24; Laurel Exhibit DWA-6.

Gulf Operating, LLC

53. Gulf is a distributor, wholesaler, and retailer of gasoline and diesel for branded outlets (i.e., Gulf brand gas stations) and a distributor and wholesaler of private label retail outlets (i.e., non-Gulf gas stations), as well as a supplier of heating oil, lubricants, and biofuels. Gulf St. No. 1, at 1:9-11.

54. As a distributor and wholesaler, Gulf operates Pittsburgh area terminals in Coraopolis, North Neville Island, South Neville Island, and Delmont. Gulf operates additional Pennsylvania terminals in Altoona, Mechanicsburg, Highspire, Northumberland, Allentown, Dupont, Sinking Spring, and Fullerton. Hearing Tr. 1047:24 - 1048:2.

55. Gulf also supplies both its branded retail gas operations and various unbranded retail gas outlets with petroleum products. Laurel Exhibit MJW-11, at 28.

56. The Laurel pipeline is the only pipeline connecting Gulf's Pittsburgh area terminals to East Coast refineries. Gulf St. No. 1, at 3:7-8.

57. Gulf is a high-volume shipper of petroleum products on the Laurel pipeline. Indicated Parties Exhibit MS-8, at 7.

Sheetz, Inc.

58. Sheetz is a family-owned business with more than 17,000 employees in six states, the majority of whom work in Pennsylvania. Sheetz St. No. 1, at 2:8-9.

59. Sheetz owns and operates over 250 stores in Pennsylvania and over 550 total stores nationwide. Sheetz St. No. 1, at 2:9-10.

60. Sheetz sells gasoline and diesel products at substantially all of its 250 retail locations throughout Pennsylvania, more than half of which are located west of Altoona. Sheetz St. No. 1, at 2:11-12.

61. Sheetz is a high-volume shipper of petroleum products on the Laurel pipeline. Sheetz St. No. 1, at 2:12-13; Indicated Parties Exhibit MS-8, at 7.

62. Sheetz sources petroleum products from the east on the Laurel pipeline and from the Midwest on Buckeye and ETP/Sunoco-owned pipeline systems. Sheetz St. No. 1, at 10:21-2.

63. Sheetz benefits from the opportunity to supply its stores in the Pittsburgh area with gasoline and diesel from the Midwest and the East Coast in accordance with seasonal pricing dynamics generally favoring East Coast products in the summer months and Midwest products in the winter months. Sheetz St. No. 1, at 11: 1-2.

64. Sheetz strives to supply its retail outlets with the most economical fuel supply. Laurel Exhibit No. MJW-6, at 4.

Giant Eagle, Inc.

65. Giant Eagle is a privately-held corporation headquartered in Pittsburgh, Pennsylvania that owns and operates a chain of corporate-owned and independently-owned retail supermarkets, food distribution facilities, and fuel and convenience stores in the Western Pennsylvania, Ohio, north central West Virginia, Indiana, and Maryland region. The majority of its stores are located in Pennsylvania and Ohio. Giant Eagle St. No. 1, at 2:8-13.

66. Giant Eagle's fuel and convenience stores are operated under the trade name "GetGo". Giant Eagle St. No. 1, at 2:13-14.

67. GetGo is one of the largest fuel retailers in Western Pennsylvania with approximately 20% of the market share in the Pittsburgh area. Giant Eagle St. No. 1, at 2-3.

68. Giant Eagle, through its GetGo stations, supplies gasoline and diesel to retail consumers in Pennsylvania. Giant Eagle St. No. 1, at 2:15-16.

69. Giant Eagle purchases fuel that travels through the Laurel Pipeline in Pennsylvania as well as fuel that originates in the Midwest. Giant Eagle St. No. 1, at 2:16-18.

70. A majority of the fuel sold at Pittsburgh-area GetGo stations originates from East Coast sources and is shipped westward via the Laurel Pipeline. Giant Eagle St. No. 1, at 3:20-22.

*Philadelphia Energy Solutions Refining and Marketing (PESRM)*

71. PESRM's refinery in Philadelphia has a 335,000 barrel per day capacity. PESRM St. No. 1, at 3:6-8.

72. PESRM is the largest refining complex in PADD 1<sup>3</sup> and the 10th largest in the United States. PESRM St. No. 1, at 3:6-8.

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<sup>3</sup> The United States is divided into five Petroleum Administration for Defense Districts, or PADDs, that were created during World War II to help organize the allocation of fuels derived from petroleum products, including gasoline and diesel fuel. These regions are still used for data collection purposes. The PADD groupings are as follows:

PADD 1 (East Coast) is composed of the following three subdistricts:

- o Subdistrict A (New England): Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont.
- o Subdistrict B (Central Atlantic): Delaware, District of Columbia, Maryland, New Jersey, New York, and Pennsylvania.
- o Subdistrict C (Lower Atlantic): Florida, Georgia, North Carolina, South Carolina, Virginia, and West Virginia.

PADD 2 (Midwest) can also be grouped as follows:

- o Eastern Midwest: Illinois, Indiana, Kentucky, Michigan, Ohio, and Tennessee.
- o Southern Midwest: Iowa, Kansas, Missouri, Nebraska, and Oklahoma.
- o Northern Midwest: Minnesota, North Dakota, South Dakota, and Wisconsin.

PADD 3 (Gulf Coast): Alabama, Arkansas, Louisiana, Mississippi, New Mexico, and Texas.

73. PESRM is connected to the eastern portion of the Laurel pipeline and relies upon its transportation services to deliver petroleum products from the Philadelphia area west to the Pittsburgh area via a pipeline. PESRM St. No. 1, at 3:12-15.

74. **[BEGIN HIGHLY CONFIDENTIAL]**

75.

**[END HIGHLY CONFIDENTIAL]**

76. PESRM has nearly 1,100 employees and an additional 500 contractors. PESRM St. No. 1, at 4:11-12.

77. The proposed pipeline reversal to Altoona will deprive PESRM of access to the Pittsburgh market to which it has been delivering products and desires to continue to deliver products. PESRM St. No. 1, at 5-6.

78. PESRM optimizes its product slate to capture economic opportunities offered by prevailing market conditions. PESRM St. No. 2-S, at 3:14-16.

79. The key markets PESRM currently accesses include (i) a large local market, (ii) a wholesale rack business in central and western Pennsylvania and upstate New York which PESRM accesses through third-party pipelines, storage terminals and truck loading racks,

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PADD 4 (Rocky Mountain): Colorado, Idaho, Montana, Utah, and Wyoming.

PADD 5 (West Coast): Alaska, Arizona, California, Hawaii, Nevada, Oregon, and Washington.

(iii) New York Harbor, which PESRM accesses through pipeline connections, including a connection to the Colonial Pipeline, (iv) other PADD 1 markets, which PESRM accesses by barge, and (v) international markets which PESRM accesses via exports from a third-party terminal on the Delaware River. PESRM St. No. 2-S, at 3:18-24.

80. PESRM uses and plans to continue to use the necessary and valuable transportation service currently available on the Laurel pipeline to bring its refined petroleum products to Pittsburgh from the east either as a shipper or as a seller to its customers that ship PESRM's products along the Laurel pipeline to all points west of the Philadelphia area. PESRM St. No. 1, at 2:19-23.

81. PESRM primarily sells products to wholesalers and retailers of transportation fuels, commodities trading companies and other refiners, as well as marketers and distributors of home heating oil. PESRM St. No. 1, at 4:15-17.

82. The Pittsburgh market continues to be an important historic and future market for PESRM that it can only access through the Laurel pipeline. PESRM St. No. 1, at 7.

83. PESRM has continued to vigorously compete in the Pittsburgh market despite multiple pipelines moving product from the Midwest into Pittsburgh. PESRM St. No. 1, at 7.

84. PESRM seeks the highest margin within which to sell its products and therefore ensure its viability. PESRM St. No. 1, at 9:14-16.

85. PESRM and previous owners of the refinery have utilized the Laurel pipeline since the Commission authorized service in 1957. PESRM St. No. 1, at 9:16-17.

86. The Laurel pipeline has, and continues to be, a necessary transportation source for PESRM to enable it to supply and compete in various markets west of Eldorado, including Pittsburgh. PESRM St. No. 1 at 9:17-19.

87. PESRM does not currently have the logistical infrastructure to clear/sell all the production from its refineries without access to the Laurel pipeline, and using that pipeline provides PESRM its best netback market. PESRM St. No. I-S, at 4:3-5.

Monroe Energy LLC

88. Monroe Energy has been the owner and operator of the Trainer refinery near Philadelphia, PA, since 2012 when it purchased the refinery, which was closed at the time, from Phillips 66. Monroe Energy St. No. 1, at 3:2-12.

89. At its Trainer refinery, Monroe Energy refines various crude and other feedstocks into a variety of refined petroleum products, including: gasoline (50%), diesel fuel (24%), jet fuel (19%), and other products such as residual fuel, and liquefied petroleum gas (7%). Monroe Energy St. No. 1, at 3:2-12.

90. Monroe's refined products are then sold into bulk wholesale markets throughout Pennsylvania, Delaware, New York, New Jersey, Connecticut, Rhode Island, and Massachusetts. Monroe Energy St. No. 1, at 3:2-12.

91. The vast majority of products (84%) leave the Trainer facility via Monroe Energy's wholly-owned 55-mile pipeline system ("MIPC"). Monroe Energy St. No. 1, at 3-4.

92. Most of Monroe Energy's products are delivered out of the refinery via pipeline. Monroe Energy St. No. 1, at 3-4.

93. Increases in transportation costs are reflected in revenue that Monroe Energy receives from its customers. Monroe Energy St. No. 1, at 3-4.

94. **[BEGIN HIGHLY CONFIDENTIAL]**

**[END HIGHLY**

**CONFIDENTIAL]**

95. For most of the pipeline shipments, Monroe Energy transfers title to the buyer at the point where the product enters the non-MIPC pipe, and so it is not the shipper. Monroe Energy St. No. 1, at 3-4.

96. Monroe Energy transports approximately 15% of its product via barge and a limited amount (approximately 1%) via rail. Monroe Energy St. No. 1 at 4:15-20.

97. Monroe Energy is a vital citizen of the Philadelphia area and Delaware County community, and directly employs approximately 500 people at the Trainer facility, which indirectly supports approximately 9,000 jobs in southeast Pennsylvania and approximately 11,000 jobs across the Commonwealth of Pennsylvania in the form of contractors and suppliers providing goods and services to the Trainer facility. Monroe Energy St. No. 1, at 4, 10.

98. Monroe Energy's operating income has averaged \$36 million per year since 2013. Monroe Energy St. No. I-SR, at 19:9-19.

HMSC

99. HMSC is the ultimate subsidiary of Husky Energy, Inc., which is one of Canada's largest integrated energy companies and is headquartered in Calgary, Alberta. HMSC St. 1-R at 3.

100. Husky operates in Canada, the United States and the Asia Pacific Region with Upstream and Downstream business segments. HMSC St. 1-R at 3.

101. In Canada, Husky's retail distribution network includes the wholesale, commercial and retail marketing of refined petroleum products. HMSC St. 1-R at 3.

102. Husky is a leading integrated refiner and marketer of petroleum products. HMSC St. 1-R at 4.

103. Husky has the largest refining capacity in the state of Ohio with its 100 percent ownership of the Lima Refinery, located in Lima, Ohio (the “Lima Refinery”) and its 50 percent ownership interest in the Husky-BP Toledo Refinery (a 50:50 joint venture with partner BP Products North America), located in Toledo, Ohio (the “Toledo Refinery”) (the Lima Refinery and the Toledo Refinery collectively referred to as the “Refineries”). HMSC St. 1-R at 3-4.

104. More recently, Husky also acquired a refinery in Superior, Wisconsin. Hearing Tr. 1176.

105. Husky sources the crude oil that supplies these refineries from Canadian and domestic United States sources, with approximately 70 percent being domestic supply. Hearing Tr. 1176-1177.

106. While Husky also has the capability to source foreign supply, the price difference between West Texas Intermediate (“WTI”) and Brent crude oils make it non-economic for Husky to source the foreign-based Brent Crude. Hearing Tr. 1176-1177.

107. Headquartered in the United States, HMSC sells refined products from the refineries across the Midwest with distribution outlets in Ohio, Indiana, Michigan and Pennsylvania. HMSC St. 1-R at 4, 5.

108. As a fuel marketer in Western Pennsylvania, HMSC supplies significant volumes of gasoline to Pittsburgh, including the current summer product specification of 7.8 psi RVP gasoline for the seven counties in the Pittsburgh area (Allegheny, Armstrong, Beaver, Butler, Fayette, Washington, and Westmoreland). HMSC St. 1-R at 4.

109. Because similar low-RVP requirements have existed in Detroit, Cincinnati and Dayton metropolitan areas, HMSC's Lima and Toledo refineries produced fuel meeting these specifications in prior years. HMSC St. 1-R at 4.

110. The Lima and Toledo refineries are capable of producing gasoline that meets the low-RVP specification for Western Pennsylvania and other remaining low-RVP areas. HMSC St. 1-R at 4.

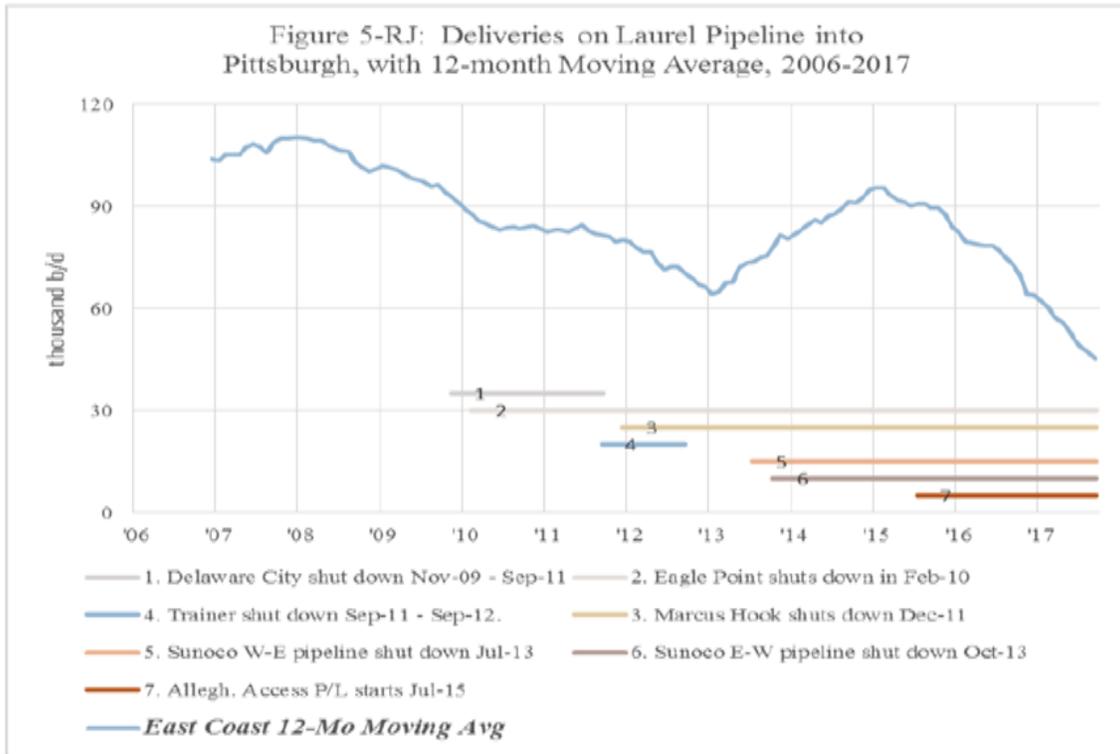
111. HMSC has entered into a ten-year transportation services agreement ("TSA") with Laurel to move refined products on the segment of pipeline that is the subject of the Application. HMSC St. 1-R at 5.

I&E

112. I&E is the Commission's prosecutory bureau for the purposes of representing the public interest in ratemaking and service matters, and enforcing compliance with the Public Utility Code, 66 Pa.C.S. §§ 101 *et seq.*

Deliveries on Laurel from Eldorado to Pittsburgh

113. Deliveries on Laurel pipeline into Pittsburgh from 2006 to 2017 have been as follows:



Laurel Main Brief, at 63, Laurel Exhibit MJW-33, p. 2.

114. The combined BPD delivered by PESRM and Monroe Energy into Pittsburgh continue to be substantial as illustrated by the following: **[BEGIN HIGHLY CONFIDENTIAL]**

115. Total volumes to Pittsburgh destinations from the east have fluctuated seasonally over the five-year period 2012-2016 with volumes in the summer months being in the 65,000 BPD to 119,000 BPD range, decreasing in the winter months to a range of 20,000 BPD to 100,000 BPD. IP St. No. 1, at 2:16-20, 3:1-10.

**Figure 1--Volumes on the Laurel System from Eastern Origins to Pittsburgh Destinations (MBPD)<sup>4</sup>**



IP St. No. 1, at 6: Figure 1.

<sup>4</sup> Thousand Barrels Per Day (MBPD)

116. Average summer deliveries to Pittsburgh destinations from the east from January 2012 through late 2016 have been as follows:

**Figure 3 – Volumes on the Laurel System from Eastern Origins to Pittsburgh Destinations – Annual Summer Average (MBPD)**

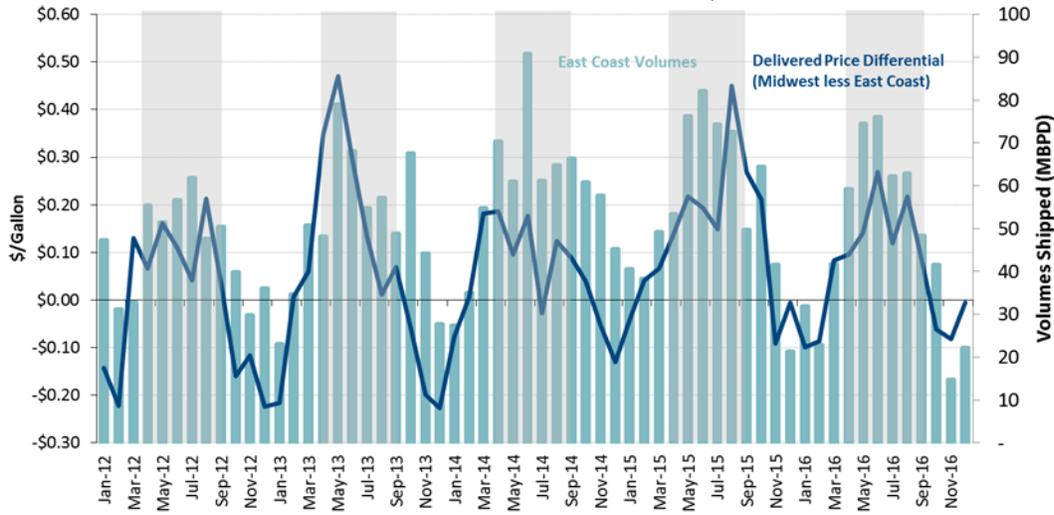


Sources/Notes:  
Responses to data requests GLF-LAU-I-32 and GLF-LAU-I-33.  
Summer months are May 1st through September 30th.

IP St. No. 1, at 10: Figure 3.

117. For seven to nine months of the year, volumes of gasoline sourced from the east to Pittsburgh increase when east coast supply is less expensive than Midwest supply. IP St. No. 1, at 25:1-7; and IP St. No. 1, at 25: Figure 5.

**Figure 5 – Gasoline Volumes to Pittsburgh Sourced from the East Increase When East Coast Supply is Less Expensive than Midwest Supply Total Volumes of Gasoline Delivered to Pittsburgh from the East Compared to Differential in Delivered Prices (With Summer RVP Standard)**

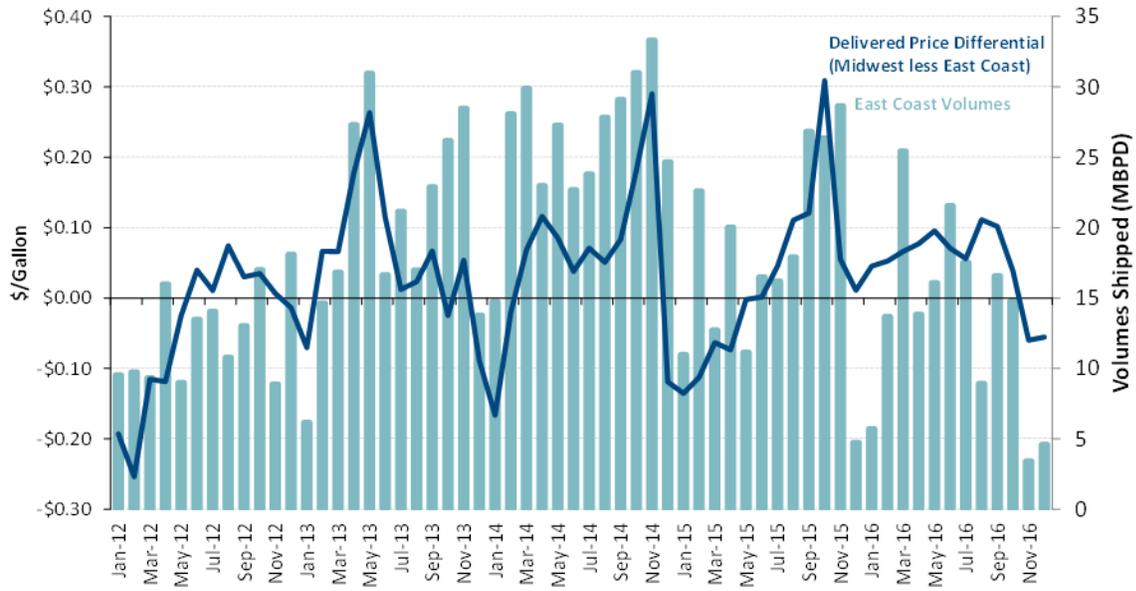


Sources/Notes:  
 Delivered prices calculated using Argus gasoline prices.  
 Shaded areas represent months when the Summer RVP Standard is in effect (Apr. 1st - Sept. 15).

IP St. No. 1, at 25:1-7; and IP St. No. 1, at 25: Figure 5.

118. A similar pattern is shown in the Figure below for diesel volumes sourced from the east to the Pittsburgh market.

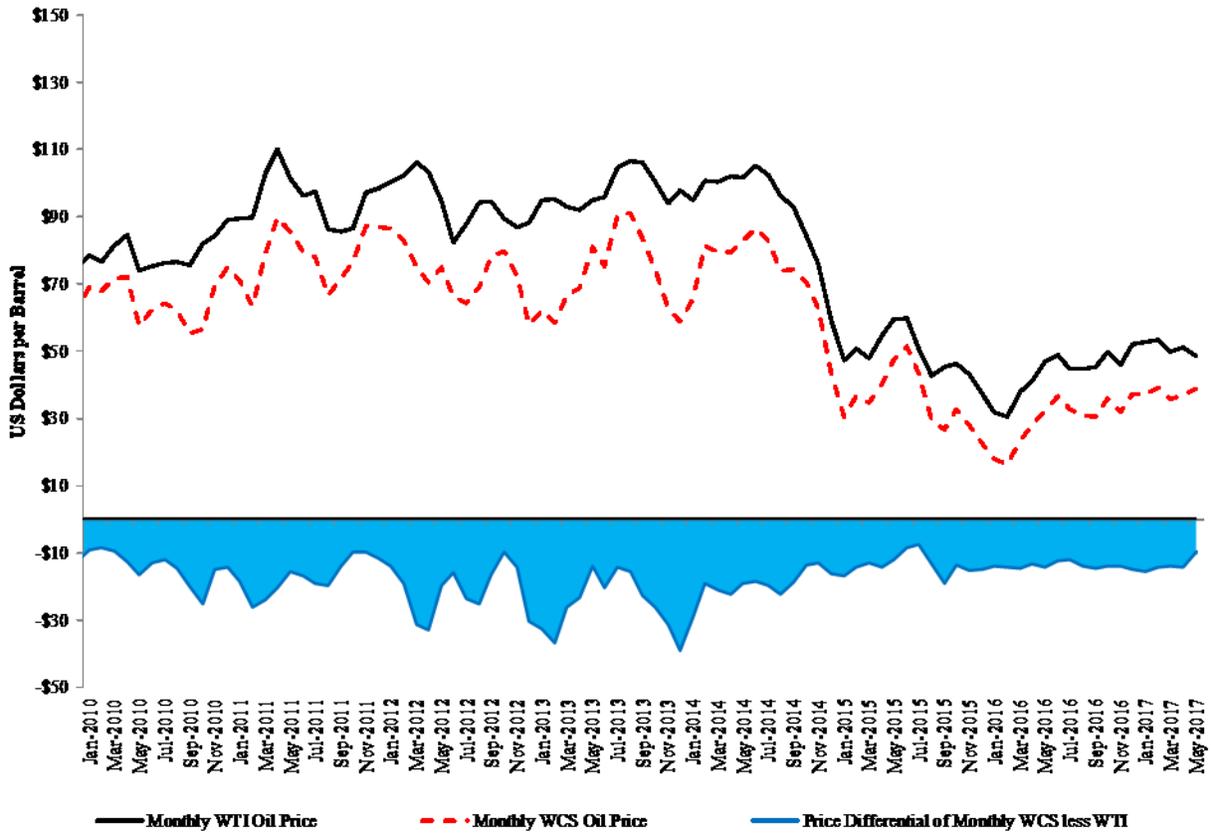
**Figure 8 - Diesel Volumes to Pittsburgh Sourced from Eastern Origins Increase When East Coast Supply is Less Expensive than Midwest Supply  
Total Volumes of Diesel Delivered to Pittsburgh from the East Compared to Differential in Delivered Prices**



Sources/Notes:  
Delivered prices calculated using Argus diesel prices.

IP St. No. 1, at 30: Figure 8.

119. Currently, Western Canadian Select has cost advantages as compared to WTI and Brent crudes as shown in the chart below:



Laurel Main Brief, at 74; Laurel St. No. 7-R, p. 15.

120. **[BEGIN HIGHLY CONFIDENTIAL]** The chart below shows the

**[END HIGHLY CONFIDENTIAL]**

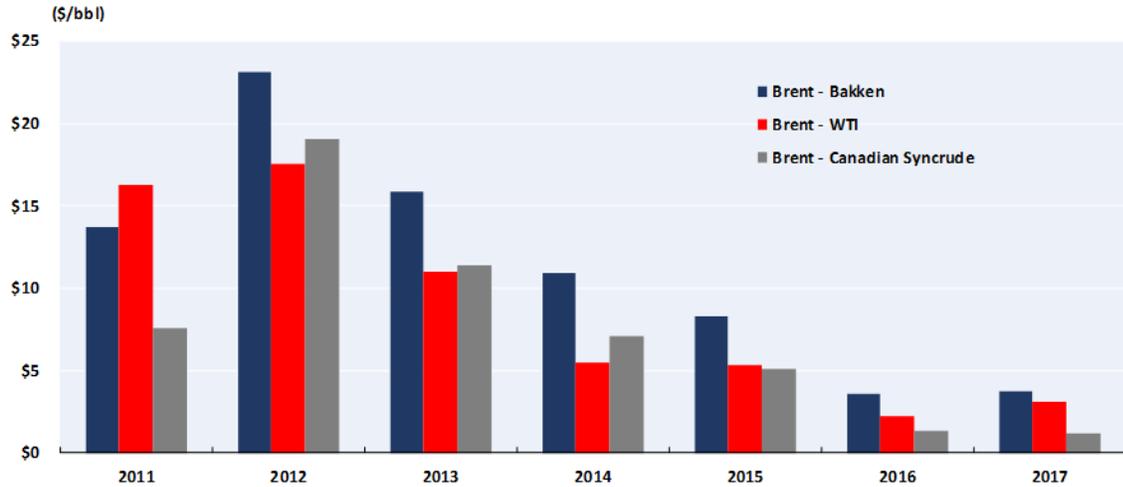
121. The differential between Midwest delivered prices into Pittsburgh and the intrastate Philadelphia-area origin delivered prices into Pittsburgh is shown below:

<b>Year</b>	<b>Midwest less Pre-Reversal East Coast Delivered Prices Philadelphia (Intrastate) With Summer RVP Standard (\$/gallon)</b>	<b>Midwest less Pre-Reversal East Coast Delivered Prices Philadelphia (Intrastate) Without Summer RVP Standard (\$/gallon)</b>
<b>2012</b>	\$-0.02	\$-0.02
<b>2013</b>	\$0.05	\$0.02
<b>2014</b>	\$0.04	\$0.01
<b>2015</b>	\$0.13	\$0.9
<b>2016</b>	\$0.06	\$0.03

IP St. No. 1, at 28: Tables 6a and 6b.

122. The monthly Brent crude differentials to Bakken and WTI Crude prices during the period January 2010 to April 2017 has been as follows:

**Figure 15 -- Monthly Brent Crude differentials to Bakken and WTI Crude prices, January 2010-April 2017**



IP St. No. 2, at 48:11-15.

123. Laurel deliveries to Altoona were 40,000 bpd in 2014, 37,000 bpd in 2015 and 33,000 bpd in 2016. Laurel St. No. 5-R, p. 49.

124. The total Pittsburgh area demand ranges between 103-113 MBPD. IP St. No. 1, at 20:20-21.

125. Including the ETP (Sunoco) Allegheny Access line and Buckeye's recent capacity expansions on its interstate lines from the Midwest, total pipeline capacity to deliver Midwest supply into the Pittsburgh area is about 279.2 MBPD. IP St. No. 1, at 19: Figure 4.

126. Pipeline rates typically constitute a tiny fraction of the price at the pump. Laurel St. No. 5, at 7.

127. Wholesale or rack prices for petroleum products do not directly correlate with retail prices. Laurel St. No. 5-R, pp. 93-97.

128. The rate for service on Buckeye's interstate pipeline is \$2.9168/barrel, compared to Laurel's Pennsylvania rates of approximately \$0.60/barrel. IP St. No. 1, at 12:13, 16.

129. Transporting petroleum products via trucks is costlier than transporting through the Laurel pipeline, e.g., Laurel's incremental rate from Altoona (Eldorado) to Pittsburgh terminals is 0.30 cents/gallon, while the incremental cost of trucking the same distance is 4.93 cents per gallon. IP St. No. 1, at 35.

130. A typical tanker truck is five axles and can transport approximately 8,500 gallons of gasoline or approximately 7,500 gallons of diesel fuel. IP St. No. 4, at 11, 14.

131. In 2016, there were approximately 6,740 accidents involving heavy vehicles in Pennsylvania, including 139 fatal accidents and 2,831 serious injury accidents. IP St. No. 4, at 16.

132. Loading gasoline rail cars requires a rail yard that is connected to a vapor recovery unit ("VRU"). Gulf St. No. 1, at 5.

133. A VRU is an expensive system that captures the vapors that are displaced when product is pumped into a tank or other storage or transport apparatus. Gulf St. No. 1, at 5.

134. The Laurel pipeline is the only pipeline source of product connecting the East Coast to the Pittsburgh area. Gulf St. No. 1, at 3.

135. Barges are not an adequate replacement for the loss of East Coast supply sources to the Pittsburgh market because barges cannot reach Pittsburgh from Philadelphia. IP Main Brief, at 135.

136. Transporting petroleum products via barges from Philadelphia to New York Harbor is approximately 3.5 cents per gallon more expensive than pipeline transportation. Hearing Tr. 1100.

137. A “product exchange” is a transaction between two wholesalers where both parties agree to supply each other's obligations in two different geographical markets rather than having each party ship product to the other party's location. Sheetz St. No. 1, at 11.

138. Current market participants have not successfully entered into a product exchange for supply in the Pittsburgh area. Sheetz St. No. 1, at 12; Gulf St. No. 1, at 10.

139. Monroe is currently connected to Sunoco’s East Line, but only ships jet fuel on that line. Monroe Statement No. 1-SR at 11:1-10.

140. Monroe is also connected to the Harbor Line, which is full and often constrained, and does not have the excess capacity to absorb all of the barrels that will be displaced by the proposed reversal. See Monroe Statement No. 1-SR at 9:18-10:4.

141. Monroe is not currently connected to any portion of the Colonial Pipeline that reaches New York Harbor. IP Reply Brief, at 135.

*Laurel’s Compliance with Safety Requirements*

142. Laurel is subject to safety inspections and regulation by the Pipeline and Hazardous Materials Safety Administration (“PHMSA”). Laurel St. No. 11-R, at 4.

143. Regulations promulgated by the US Department of Transportation govern the design, construction, testing, operation and maintenance of pipelines, including integrity management of hazardous liquids pipelines. Laurel St. No. 11-R, at 4.

144. In 2014, PHMSA issued its Guidance for Pipeline Flow Reversals, Product Changes, and Conversion to Service (“2014 Guidance”), which provided, in part, safety guidelines and requirements for pipelines that intended to reverse the flow of product. Laurel St. No. 11-R, at 6-9.

145. The 2014 Guidance includes numerous specific safety elements that should be addressed as part of the reversal process. Laurel St. No. 11-R, at 6-9.

146. In order to address these elements, Laurel prepared and submitted its “Broadway Project-2 Integrity Impact Review Line 718, Duncansville to Coraopolis” (“IRR”). Laurel St. No. 4-RJ, at 5, Figure 1; I&E St. No. 1-SR, at 9.

147. The 2014 Guidance also requires pipelines to give notice no later than 60 days before reversal of product flow that will last more than 30 days. 49 CFR 195.64(c)(1)(iii).

148. Laurel made the reversal notification on June 23, 2017. Laurel St. No. 11-R, at 5.

149. When the cost of any changes on a pipeline exceed \$10 million, including reversal of flow, PHMSA requires notification no later than 60 days before “construction or any planned rehabilitation, replacement, modification, upgrade or update of a facility other than a section of line pipe.” 49 CFR 195.64(c)(1)(i).

150. While the costs for Laurel do not exceed the \$10 million threshold, the larger Broadway project does exceed the threshold. Laurel St. No. 11-R, at 5.

151. Laurel has notified PHMSA in accordance with the provisions of 49 CFR 195.64(c)(1)(i). Laurel St. No. 11-R, at 5.

Stipulation in Settlement between Laurel and I&E

152. Laurel and I&E agree that any Commission approval of Laurel’s Application will be conditioned upon Laurel taking all safety actions identified in the Company’s IRR by agreed upon estimated dates. Figure 1 of the Stipulation detailing these safety actions is reproduced below.

**Figure 1: Laurel Line - Integrity Impact Review Actions Summary and Schedule**

<b>Pre-Reversal Actions</b>	<b>Estimated Date</b>
Perform Hydrostatic Pressure Test	6/15/18
Updated Surge Analysis	3/31/18
Updated Emergency Flow Restricting Device (EFRD) analysis	Completed
Update to Computational Pipeline Monitoring System (LeakWarn)	8/24/18
Review and Update Procedure Manuals (Operations, Maintenance & Emergency Response)	8/1/18
Update to Work Management System for new Equipment	8/1/18
Revise Startup and Shutdown Procedures and Train Controllers	8/1/18
Review and Update Supervisory Control and Data Acquisition (SCADA) System	8/1/18
Update Oil Spill Response Plan	8/1/18
Preventative & Mitigative Actions Review	8/1/18
<b>Post-Reversal Actions</b>	<b>Estimated Date</b>
As Built Drawings and Compile Project Records	12/31/18
Inspect Mainline Isolations Valves	9/1/2018, 9/8/2018, and 10/1/2018
Perform Visual Surveys of Aboveground Equipment	10/1/18
Determine and Evaluate actual Pressure Cycling of Pipeline	10/1/2018 and 3/1/2019

153. Laurel agreed that the Commission's safety inspectors may inspect the Laurel pipeline, including review of the Company's compliance with the above-identified pre- and post-reversal actions.

#### IV. DISCUSSION

##### A. Burden of Proof

The proponent of a Commission rule or order has the burden of proof. 66 Pa.C.S. § 332(a). As the applicant in these proceedings, Laurel has the burden of proof to establish that it is entitled to the relief it is seeking. Laurel must establish its case by a preponderance of the evidence. *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n*, 578 A.2d 600 (Pa. Cmwlth. 1990), *alloc. den.*, 602 A.2d 863 (Pa. 1992). To meet its burden of proof, Laurel must present evidence more convincing, by even the smallest amount, than that presented by any opposing party. *Se-Ling Hosiery v. Margulies*, 70 A.2d 854 (Pa. 1950).

##### B. Federal Preclusion of Commission Jurisdiction

In its Main Brief, Laurel argued for the first time that Commission approval of the proposed reversal is not required because federal law precludes the Commission from impeding Laurel's interstate transportation of petroleum products. Laurel Main Brief, at 23-34.

According to Laurel, two aspects of federal law preclude the Commission from impeding Laurel's attempt to provide interstate service. First, Laurel argues that the Commission's authority to approve or deny the reversal is preempted by Congress' clear intent that entry into and exit from the interstate transportation business be determined by market forces, as in this case, and not by public utility-type regulation. Laurel Main Brief, at 23-29. Second, Laurel points out that the dormant Commerce Clause of the United States Constitution would be violated by a Commission order preventing Laurel from providing interstate service and, instead, requiring that service be reserved for in-state refineries. Laurel Main Brief, at 29-34. Laurel further avers that any action taken by the Commission in the present matter that

denies or imposes unreasonable conditions upon granting Laurel's Application, fails to approve the proposed capacity agreement between Laurel and Buckeye Pipe Line Company, L.P., or fails to approve Laurel's proposed tariff cancelling westbound service to points west of Eldorado constitutes an improper impedance of interstate service. Laurel Main Brief, at 24, footnote # 41.

## 1) Federal Preemption

### Laurel's Position

In support of its argument that federal law preempts the Commission's authority to deny the reversal of the pipeline, Laurel argues that the federal law governing oil pipelines indicates a clear congressional intent to permit free entry into and exit from the interstate transportation business, as market forces dictates, and that public utility regulation should not govern this decision. More specifically, Laurel reasons that the Supremacy Clause of the United States Constitution, U.S. Const. art. VI, cl. 2, invalidates state law that interferes with or is contrary to federal law. Laurel Main Brief, at 24, citing *Farina v. Nokia, Inc.*, 625 F.3d 97, 115 (3d Cir. 2010). Preemption can apply to all forms of state law, including state agency rulings, and can take various forms, including conflict preemption, which nullifies state law that "stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress." Laurel Main Brief, at 24, citing *Farina v. Nokia, Inc.*, 625 F.3d at 115, and *Crosby v. Nat'l Foreign Trade Council*, 530 U.S. 363, 373 (2000).

In determining whether state law is preempted, "the purpose of Congress is the ultimate touch-stone." Laurel Main Brief, at 24, citing *Medtronic, Inc. v. Lohr*, 518 U.S. 470, 485 (1996). Laurel argues that the Supreme Court has made it clear that "a federal decision to forgo regulation in a given area may imply an authoritative federal determination that the area is best left unregulated, and in that event would have as much pre-emptive force as a decision to regulate." Laurel Main Brief, at 25, citing *Transcontinental Gas Pipe Line Corp. v. State Oil & Gas Bd.*, 474 U.S. 409, 422 (1986) (emphasis in original).

According to Laurel, the federal law governing oil pipelines indicates a clear congressional intent to permit free entry into and exit from the interstate transportation business as market forces dictate, and that public utility regulation should not govern this decision. Laurel Main Brief, at 25. Laurel explains that the federal government has had strong regulatory interests in oil pipelines since soon after they came to prevalence in the late 19th Century. *Id.* The 1906 Hepburn Act applied the federal Interstate Commerce Act (“ICA”) to oil pipelines and gave the Interstate Commerce Commission jurisdiction over pipelines. Laurel Main Brief, at 25, referring to Pub. L. No. 59-337, § 1, 34 Stat. 584, 584. In 1977, the Department of Energy Reorganization Act transferred responsibility for oil pipeline regulation to the newly created FERC. Laurel Main Brief, at 25-26, referring to Pub. L. No. 95-91, § 402(b), 91 Stat. 565, 584. The following year, Congress comprehensively revised and recodified the ICA, but provided that its 1977 provisions would continue to govern FERC’s regulation of oil pipelines. Laurel Main Brief, at 25-26, referring to Pub L. No. 95-473, § 4(c), 92 Stat. 1337, 1470.

Laurel points out that the ICA declares oil pipelines to be common carriers, 49 U.S.C. § 1(3), and imposes on pipelines many of the same obligations as other common carriers, including the duties to: provide and furnish transportation service upon reasonable request, *id.* § 1(4); establish, file, and publish just, reasonable and nondiscriminatory rates subject to federal approval, *id.* §§ 1(5), 3(1), 6, 15(1), 15(7); avoid certain pooling relationships, *id.* § 5(1); and file certain financial reports and use certain accounting procedures subject to federal specifications, *id.* §§ 20(1), (2), (4), (5). However, Congress did not impose on oil pipelines the ICA’s restrictions on common carriers’ entry into a market, acquisitions, or commencement and abandonment of service. Laurel Main Brief, at 26, referring to *Farmers Union Cent. Exch. v. FERC*, 584 F.2d 408, 413 (D.C. Cir. 1978) (“*Farmers Union I*”). Laurel argues that federal courts have found this omission to be indicative of the congressional intent that entry and exit of oil pipelines should be free from the typical regulation imposed on public utilities and, instead, be determined by market forces, and that FERC concurs with the federal courts’ assessment. Laurel Main Brief, at 25-26, referring to *Revisions to Oil Pipeline Regulations Pursuant to the Energy Policy Act of 1992*, 65 F.E.R.C. ¶ 61,109 (Oct. 22, 1993); *Plantation Pipe Line Co. v. Colonial Pipeline Co.*, 104 F.E.R.C. ¶ 61,271 (Sept. 11, 2003).

Per Laurel, federal courts have specified that conduct like that at issue in the present matter is precisely where Congress intended for market forces to have “freer play,” without the restrictions of typical public utility regulation:

Competitive forces are given freer play by permitting companies to decide for themselves whether to enter a geographic territory already served by another pipeline company (which would be unlawful without regulatory consent in a utility industry having exclusive service territories). Similarly, pipeline companies may abandon service at will (which would be unlawful for many other utilities).

Laurel Main Brief, at 27, quoting *Farmers Union Cent. Exch. v. FERC*, 734 F.2d 1486, 1509 n.51 (D.C. Cir. 1984) (*Farmers Union II*). (emphasis in Laurel Main Brief).

Accordingly, Laurel argues that any purported requirement of Commission approval for the reversal would stand as an impassable obstacle to the realization of this congressional purpose and, therefore, must be preempted. “Simply stated: the clear congressional intent that pipeline companies enter and exit markets based on competitive forces precludes the Commission from imposing a *de facto* certificate requirement on Laurel’s entry into the interstate market.” Laurel Main Brief, at 28.

Laurel bases its conclusion on the United States Supreme Court’s decision in *Transcontinental Gas Pipe Line Corp. v. State Oil & Gas Board*, 474 U.S. 409 (1986). There, the State Oil and Gas Board of Mississippi (“Gas Board”) ordered a pipeline to purchase gas from all parties owning interests in a common gas pool in proportion to the owners’ respective interests, even though the pipeline had preexisting contracts with less than all the owners. The pipeline argued that the order was preempted by federal law, whereas the Gas Board contended that the order was not preempted because the Natural Gas Policy Act of 1978 (“NGPA”) had stripped FERC of jurisdiction over the wellhead sale of gas.

Laurel points out that the Supreme Court disagreed with the Gas Board and noted that the intent of the NGPA was to replace the “artificial pricing scheme” of the NGA with a market-based regulatory scheme. *Id.* at 420-21. The Court held that the removal of FERC’s

jurisdiction over wellhead sales simply reflected this new federal policy and that the new market-based federal scheme still preempted the Gas Board's order:

The proper question in this case is not whether FERC has affirmative regulatory power over wellhead sales of ... gas, but whether Congress, in revising a comprehensive federal regulatory scheme to give market forces a more significant role in determining the supply, the demand, and the price of natural gas, intended to give the States the power it had denied FERC. The answer to the latter question must be in the negative. ... In light of Congress' intent to move toward a less regulated national natural gas market, its decision to remove jurisdiction from FERC cannot be interpreted as an invitation to the States to impose additional regulations.

Laurel Main Brief, at 28-29; citing *Transcontinental Gas Pipe Line Corp. v. State Oil & Gas Board*, 474 U.S. 422.

Laurel likens Congress' decision to withhold from FERC the regulatory power over wellhead sales of gas to Congress' decision to withhold from FERC the power to review pipeline entry, commencement of service, or abandonment, and argues that Congress' denial of FERC power is not an invitation for state regulation of the type that the Indicated Parties contend is required here. Laurel Main Brief, at 29. Rather, Laurel maintains that it reflects Congress' intent that these decisions be made by pipelines in response to market forces. Laurel Main Brief, at 29, referring to *Farmers Union I*, 584 F.2d at 413; *Farmers Union II*, 734 F.2d at 1509 n.51. Laurel asserts that it is this congressional intent that preempts the Commission from requiring approval for Laurel's reversal. Laurel Main Brief, at 29.

#### The Indicated Parties' Position

In their Reply Brief, the Indicated Parties took issue with Laurel's late-hour invocation of the constitutional doctrines of federal preemption and Commerce Clause. The Indicated Parties interpreted the timing of Laurel's raising what are essentially, legal issues as a sign of Laurel's lack of faith in the strength of its own arguments. IP Reply Brief, at 5, see also IP Reply Brief, at 8-9. It is the Indicated Parties' position that Laurel is an intrastate pipeline and

federal law does not preempt the Commission from asserting jurisdiction over, and denying, Laurel’s Application to reverse its intrastate petroleum pipeline, nor would a Commission order rejecting Laurel’s Application violate the Commerce Clause of the United States Constitution.

In the Indicated Parties’ view, Laurel’s argument of federal preemption is asking this Commission to disregard the historical “presumption against preemption” in favor of a finding that Congress’ deliberate decision *not* to regulate certification and/or abandonment of *intrastate* oil pipelines is actually clear evidence that Congress intended to leave *intrastate* oil pipelines wholly unregulated by any government authority, notwithstanding the fact that states have exercised regulatory authority over intrastate oil pipelines for more than a century. IP Reply Brief, at 10, referring to *Medtronic Inc. v. Lohr*, 518 U.S. 470, 486 (1996).<sup>5</sup>

The Indicated Parties hold undisputed that “[t]he Interstate Commerce Act [“ICA”] does not contain explicit preemptive language.” IP Reply Brief, at 11, citing *National Steel Corp. v. Long*, 718 F. Supp. 622, 625 (W.D. Mich. 1989) *aff’d*, *Ntl. Steel Corp. v. Mich. Pub. Serv. Comm’n*, 919 F.2d 38 (6th Cir. 1990). However, they explain that by its own terms, the ICA does not apply to oil pipeline transportation “wholly within one State and not shipped to or from a foreign country.” IP Reply Brief, at 11, citing 49 U.S.C. §1(2); *see also Simpson v. Shepard*, 230 U.S. 352, 418-19 (1913).<sup>6</sup> They assert that when the Supreme Court in 1913 first considered whether the ICA preempted state regulation, it held and understood that Congress expressly excluded “purely intrastate traffic” from the ICA’s reach.<sup>7</sup> IP Reply Brief, at 11, citing

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<sup>5</sup> *Medtronic Inc. v. Lohr*, 518 U.S. 470, 486 (1996) (“because the States are independent sovereigns in our federal system, we have long presumed that Congress does not cavalierly pre-empt state-law causes of action... In all pre-emption cases, and particularly in those in which Congress has legislated . . . in a field which the States have traditionally occupied, . . . we start with the assumption that the historic police powers of the States were not to be superseded by the Federal Act unless that was the clear and manifest purpose of Congress”). IP Reply Brief, at 10, footnote # 18.

<sup>6</sup> *Simpson v. Shepard*, 230 U.S. 352, 418-19 (1913) (holding that the ICA does *not* preempt state regulation of intrastate carriers in part because the ICA “*excluded from the provisions of the act that transportation which was ‘wholly within one State,’*”); *id.* at 418 (“When in the year 1906 . . . Congress amended the act so as to confer upon the Federal commission power to prescribe maximum interstate rates, the proviso in section one was reenacted.”). IP Reply Brief, at 11, footnote # 19. (emphasis in IP Reply Brief).

<sup>7</sup> *Texas v. Eastern T. R. Co.*, 258 U.S. 204, 217-218 (1922) (The ICA “is intended . . . to regulate interstate and foreign commerce and to affect intrastate commerce only as that may be incidental to the effective regulation and protection of commerce of the other class. [The ICA] contain[s] many manifestations of a continuing purpose to refrain from any regulation of intrastate commerce, save such as is involved in the rightful exertion of the power of

*Simpson*, 230 U.S. at 418; see also *Texas v. Eastern T. R. Co.*, 258 U.S. 204, 217-218 (1922). Thus, they believe that it is now axiomatic that “the ICA was not intended to intrude on the power of the states to regulate intrastate commerce.” IP Reply Brief, at 11, citing *Texas v. Eastern T. R. Co.*, 258 U.S. 204, 217-218 (1922).<sup>8</sup>

The Indicated Parties point out that FERC—the agency Congress charged with regulating interstate oil pipeline tariffs and rates—concur and recognizes that federal policy toward interstate oil pipelines does not preempt state regulations concerning certification and abandonment of *intrastate* pipelines. *In re Trans Alaska Pipeline System*, FERC stated that “[i]t is clear that the States have primary jurisdiction over intrastate transportation under the [ICA]”. IP Reply Brief, at 12, referring to 23 F.E.R.C. ¶ 61,352, \*10, n.17 (June 2, 1983), see also *In re Amoco Pipeline Co.*, 67 F.E.R.C. ¶ 61,378, \*15 (June 23, 1994).<sup>9</sup>

The Indicated Parties further argue that state regulatory authority over oil pipelines is not even limited to wholly *intrastate* pipelines; rather, where a single pipeline handles both interstate *and* intrastate petroleum products shipments, FERC has long held that it regulates only *interstate* aspects, while state utility commissions are free to regulate *intrastate*

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Congress over interstate and foreign commerce. ... And had there been a purpose here to depart from the accustomed path and to deal with intrastate commerce as such independently of any effect on interstate and foreign commerce, it is but reasonable to believe that that purpose would have been very plainly declared. This was not done.”). IP Reply Brief, at 11, footnote # 20.

<sup>8</sup> *Cook Inlet Pipe Line Co. v. Alaska Pub. Utilities Comm’n*, 836 P.2d 343, 350 (Alaska 1992) (citing *Simpson v. Shepard*, 230 U.S. at 418). In *Cook Inlet*, the Alaska Supreme Court rejected an argument by a state-regulated oil pipeline company that the ICA preempted state regulation of the oil pipeline. *Id.* The Alaska Supreme Court also rejected the utility’s argument that the “dormant commerce clause” prohibited state regulation (discussed *infra*). IP Reply Brief, at 11, footnote # 21.

<sup>9</sup> *In re Amoco Pipeline Co.*, 67 F.E.R.C. ¶ 61,378, \*15 (June 23, 1994) (stating that the ICA “is not intended to deprive states of their primary authority to regulate intrastate rates .... Congress anticipated state regulation of intrastate transportation unfettered by Federal interference.”). In a March 14, 2001 Order titled “Removing Obstacles To Increased Electric Generation And Natural Gas Supply In The Western United States,” FERC’s Commissioner wrote the following concerning the scope of FERC’s authority over oil pipelines under the ICA:

The Commission has no authority under the ICA to require certificates of public convenience and necessity as a basis for starting operations. ***That authority rests with local jurisdictions.*** ... The Commission also has no authority over abandonments of service or authority to order extension of lines.

94 F.E.R.C. 61,272, 61,977 (Mar. 14, 2001) (emphasis in IP Reply Brief). Reply Brief, at 11, footnote # 22.

operations. IP Reply Brief, at 12, referring to *In re Amoco Pipeline Co.*, 67 F.E.R.C. ¶ 61,378, \*15 (June 23, 1994).<sup>10</sup> The Commonwealth Court of Pennsylvania reaffirmed this non-controversial proposition recently in a *Sunoco* proceeding concerning the Mariner East 2 pipeline, holding that “jurisdiction is not mutually exclusive” where a pipeline implicates interstate and intrastate movements. IP Reply Brief, at 12, citing *In re Condemnation by Sunoco Pipeline, LP*, 143 A.3d 1000, 1004 (Pa.Cmwlth. 2016). On a subsequent appeal, the Commonwealth Court did not disturb the trial court’s holding that “the regulation of Sunoco Pipeline, L.P. by the Pennsylvania Public Utility Commission is not preempted by federal law.” IP Reply Brief, at 12, citing *In re Condemnation by Sunoco Pipeline L.P.*, 2017 Pa. Cmwlth. Unpub. LEXIS 335, \*8, 167 A.3d 307 (Pa.Cmwlth. 2017).<sup>11</sup> Thus, the Indicated Parties reason that Laurel’s desire to eventually operate the segment of the Laurel pipeline between Pittsburgh and Eldorado in interstate commerce, and potential future concurrent jurisdiction with the PUC over that interstate pipeline, does not preempt the Commission from exercising its authority over the pipeline’s current intrastate operations. IP Reply Brief, at 13.

The Indicated Parties assert that the ICA’s lack of a preemptive effect on intrastate regulation has been settled for more than a century and the few courts that have litigated Laurel’s preemption argument have rejected it resoundingly. *National Steel Corp. v. Long*, 718 F. Supp. 622 (W.D. Mich. 1989).<sup>12</sup> There, a steel mill sought to construct an intrastate lateral ethane pipeline without first obtaining a certificate of public convenience from the Michigan Public Service Commission (“MPSC”). IP Reply Brief, at 13, *National Steel*, 718

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<sup>10</sup> *In re Amoco Pipeline Co.*, 62 F.E.R.C. ¶ 61,119 (Feb. 8, 1993) (some interstate oil shipments did “not alter the jurisdictional nature” of the line because “[t]ransportation over Amoco’s facilities of that portion of the crude oil that is both produced and refined in Wyoming is subject to the regulation of the Wyoming PSC”). IP Reply Brief, at 12, footnote # 23.

<sup>11</sup> *In re Condemnation by Sunoco Pipeline L.P.*, 2017 Pa. Cmwlth. Unpub. LEXIS 335, \*8, 167 A.3d 307 (Pa. Cmwlth. May 15, 2017) (unpublished) (noting the trial court’s holding that “there is no preemption by federal law of PUC’s regulatory authority.”) IP Reply Brief, at 12, footnote # 25.

<sup>12</sup> *National Steel Corp. v. Long*, 718 F. Supp. 622 (W.D. Mich. 1989), *aff’d* *National Steel Corp. v. Michigan Public Service Com.*, 919 F.2d 38 (6th Cir. 1990) (“*National Steel Appeal*”). The Commonwealth Court of Pennsylvania cited *National Steel Corp. v. Long* favorably in the *Sunoco* condemnation matter just last year for the proposition that “PUC, and not FERC, has authority to regulate intrastate shipments.”) *In re Condemnation by Sunoco Pipeline, LP*, 143 A.3d at 1005 (Pa. Cmwlth. 2016); *see also* *In re Condemnation by Sunoco Pipeline L.P.*, 2017 Pa. Cmwlth. Unpub. LEXIS 335, \*14, n.10, 167 A.3d 307 (Pa. Cmwlth. 2017) (citing *National Steel*). IP Reply Brief, at 13, footnote # 26.

F. Supp. at 623. The steel mill challenged the MPSC’s *prospective* exercise of regulatory authority on the grounds that it would conflict with federal policy not to regulate certain aspects of oil pipelines. IP Reply Brief, at 13.

The court in *National Steel* held that federal law did not preempt a state regulatory body from exercising its traditional authority to grant (or deny) certificates of public convenience to oil pipelines. *National Steel*, 718 F. Supp. at 623 at 625-26, *aff’d* by *National Steel Appeal*, 919 F.2d at 42. The district court opinion (affirmed by the Sixth Circuit) noted that the ICA’s grant of interstate tariff and ratemaking authority to FERC “says nothing about other aspects of the transportation and delivery potentially regulated by the FERC under the ICA or by the MPSC ... Clearly, the MPSC can undertake and complete evaluation of public convenience and necessity in a local community without interfering with FERC-approved transportation rates.” *Id.* (emphasis in IP Reply Brief). Ultimately, the court reasoned there is no preemption “unless state action conflicts with or interferes with FERC-approved rates.” *Id.*

The Indicated Parties explain that the *National Steel* court also held that Congress’ deliberate decision *not* to regulate *intrastate* pipelines was not a suggestion that “certain activities of oil pipelines be left unregulated, by federal *and* state authorities.” IP Reply Brief, at 14, citing *National Steel*, 718 F. Supp. at 623 at 625-26. (emphasis added in IP Reply Brief). Noting that there was “little evidence” of any such “authoritative determination” by Congress, the court held that “it appears just as likely that federal silence concerning the interests the MPSC seeks to address reflects recognition that such interests are peculiarly local in nature and are best left to regulation by the states.” IP Reply Brief, at 14, citing *National Steel*, 718 F. Supp. at 623 at 625-26; see also *National Steel Appeal*, 919 F.2d at 41.<sup>13</sup> The *National Steel*

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<sup>13</sup> *National Steel Appeal*, 919 F.2d at 41 (“the Interstate Commerce Act regulates the transportation rates charged to shippers of oil; it does not confront the problems which arise from the multiplication of oil utilities serving consumers.”). The notion that Congressional silence does not necessarily imply preemption is well-recognized. See *Sears, Roebuck & Co. v. Brown*, 806 F.2d 399, 410 (2d Cir. 1986) (While congressional silence may displace some state regulation, it “can just as easily be interpreted as implicit approval of state regulation.”); *Graham v. R.J. Reynolds Tobacco Co.*, 857 F.3d 1169, 1189-1190 (11th Cir. 2017) (It is “settled law that inaction by Congress cannot serve as justification for finding federal preemption of state law. ... Otherwise, deliberate federal inaction could always imply pre-emption, which cannot be. There is no federal pre-emption *in vacuo*, without a constitutional text or a federal statute to assert it.”) (citations, quotations, and alterations omitted). IP Reply Brief, at 14, footnote # 32.

court was clear that “[i]nstead of posing an imminent possibility of collision, these two regulatory schemes appear to be complementary, addressing different concerns, occupying different fields.” *Id.*<sup>14</sup> The Court ultimately denied the steel mill’s challenge to the MPSC’s regulatory authority, holding that the MPSC was merely asserting jurisdiction to evaluate public convenience and necessity, and was not “threatening any action which poses a direct conflict with FERC regulatory authority.” IP Reply Brief, at 14-15; *National Steel*, 718 F. Supp. at 626.<sup>15</sup>

Next, the Indicated Parties dismiss the cases relied upon by Laurel as irrelevant and easily distinguishable from the present matter. IP Reply Brief, at 15. With regard to *Transcontinental Gas Pipe Line Corp. v. State Oil & Gas Board*, the Indicated Parties point out that it is not an oil pipeline case. IP Reply Brief, at 15. According to them, *Transcontinental* involved the preemptive effect of the Natural Gas Act (“NGA”) and Natural Gas Policy Act (“NGPA”) on state regulation of natural gas sales. IP Reply Brief, at 15; *Transcontinental Gas Pipe Line Corp. v. State Oil & Gas Board*, 474 U.S. 409 (1986). The Supreme Court held that the NGA was a “comprehensive regulatory scheme” and that when Congress amended it with the passage of the NGPA forty years later, Congress acted to give certain power back to the market, not to the states. IP Reply Brief, at 15; 474 U.S. 422. In other words, the NGPA’s revocation of certain powers previously given to FERC did not change the fact that Congress had occupied the field of natural gas pipeline regulation. IP Reply Brief, at 15-16; 474 U.S. 423.

The Indicated Parties reason that these natural gas statutes are separate and distinct from the ICA governing *oil pipelines*, and the statutory regimes are, by design, entirely

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<sup>14</sup> *National Steel*, 718 F. Supp. at 626. The *National Steel* court also held that “the obligations imposed on oil pipelines ... are not so comprehensive, however, as to justify the inference that Congress intended to completely occupy the field of regulation.” *Id.* at 625. See also *National Steel Appeal*, 919 F.2d at 41. IP Reply Brief, at 14, footnote # 33. (emphasis in IP Reply Brief).

<sup>15</sup> *National Steel Appeal*, 919 F.2d at 41 (“Although the possibility of collusion may suggest comprehensive regulation, such an inference is not required and, in this case, would be imprudent; to do so would be to leave the enormous industry of retail oil sales unregulated.”); See *Ark. Elec. Coop. Corp. v. Ark. Public Serv. Comm’n*, 461 U.S. 375, 388-389 (1983) (noting that until Congress or the relevant executive agencies made it clear that federal policy preempted state jurisdiction, or until a regulation so “seriously compromised important federal interests,” “[w]e will not ... in this facial challenge to the [state agency’s] mere assertion of jurisdiction assume that such a hypothetical event is so likely to occur as to preclude the setting of any rates at all.”). IP Reply Brief, at 14, footnote # 34.

different. IP Reply Brief, at 16. Unlike the NGA and NGPA, which purposefully and expressly preempted certain state regulation of natural gas pipelines, Congress never occupied the field of oil pipeline regulation. *Id.* Instead, the ICA left power over intrastate oil pipelines to the states. IP Reply Brief, at 16; 49 U.S.C. §1(2); *Simpson* 230 U.S. at 417; *Texas v. Eastern T. R. Co.*, 258 U.S. 204, 217-218 (1922); *Cook Inlet*, 836 P.2d at 350-51; *National Steel Appeal*, 919 F.2d at 41. FERC concurs, and is definitive in its understanding that the NGA cases “do not control” oil pipeline cases. IP Reply Brief, at 16; *In re Amoco Pipeline Co.*, 62 F.E.R.C. ¶ 61,119, 61,803-804 (Feb. 8, 1993); *see also In re Amoco Pipeline Co.*, 67 F.E.R.C. ¶ 61,378 (June 23, 1994) (“while the ICA and the NGA both apply to the movement of hydrocarbons through underground pipeline systems, the two acts differ considerably in purpose and scope”). The Indicated Parties maintain that these fundamental and critical differences between federal regulation of natural gas pipelines and oil pipelines should not be foreign to Laurel counsel, Laurel’s experts, the Congressional Research Service, or other industry publications. IP Reply Brief, at 16-17, referring to Barr, Christopher J., Unfinished Business: FERC’s Evolving Standard For Capacity Rights On Oil Pipelines, 32 Energy L. J. 563, 565 (2011)<sup>16</sup>; Laurel St. No. 9-R, at 9<sup>17</sup>; Congressional Research Service, Pipeline Transportation of Natural Gas and Crude Oil: Federal and State Regulatory Authority, Brandon J. Murrill (March 28, 2016)<sup>18</sup>; and Lewis, Mark K. and

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<sup>16</sup> Laurel’s outside counsel in the present matter, Christopher J. Barr, Esq., wrote the following in a 2011 article for the Energy Law Journal:

The limited scope of the FERC’s regulation of oil pipelines stands in *stark contrast* to its pervasive role in pipeline infrastructure under the Natural Gas Act (NGA), which even prohibits a would-be pipeline sponsor from putting a shovel in the ground until a certificate of public convenience and necessity is issued.

Barr, Christopher J., Unfinished Business: FERC’s Evolving Standard For Capacity Rights On Oil Pipelines, 32 Energy L. J. 563, 565 (2011). IP Reply Brief, at 16. (emphasis in IP Reply Brief).

<sup>17</sup> Laurel St. No. 9-R, at 9:9-14 (“There are obvious differences between Laurel application and the Rockies Express pipeline system. Rockies Express is an interstate natural gas pipeline. Laurel is an intrastate petroleum pipeline.”). IP Reply Brief, at 17, footnote # 45.

<sup>18</sup> Congressional Research Service, Pipeline Transportation of Natural Gas and Crude Oil: Federal and State Regulatory Authority, Brandon J. Murrill (March 28, 2016), available at <https://fas.org/sgp/crs/misc/R44432.pdf> (“In contrast to siting review of proposed interstate natural gas pipelines, interstate crude oil pipelines undergo a state-by-state siting approval process. No federal law broadly preempts state and local siting requirements for these pipelines. Construction or operation of any oil or gas pipeline, whether interstate or intrastate, may require additional federal or state authorizations or consultations, depending on the proposed route of the pipeline and its potential to discharge pollutants or affect natural, cultural, or historical resources.”). IP Reply Brief, at 17, footnote # 46.

Morgan II, D. Kirk, An uneven playing field exists in oil vs gas pipeline development, Oil & Gas Financial Journal, Oct. 1, 2011.<sup>19</sup>

The Indicated Parties further reject Laurel’s reliance on *Farmers Union I* and *Farmers Union II* as reliance on dicta which have nothing to do with preemption or the exercise of state regulatory authority over abandonment of an intrastate oil pipeline. IP Reply Brief, at 17. They argue that these two cases addressed the proper FERC methodology to determine the reasonableness of interstate pipeline shipping rates. However, those cases do not discuss, or even mention, federal preemption. *Id.* They note that the plaintiff in *National Steel* cited these exact same D.C. Circuit cases and its arguments were resoundingly rejected. They explain that the court in *National Steel* said: “Both statements are clearly dicta, were made in the context of establishing ratemaking standards, and have no direct bearing on the pre-emption issue before this Court.” IP Reply Brief, at 17; *National Steel*, 718 F. Supp. at 627, n.5. (emphasis in IP Reply Brief).

The Indicated Parties further add that the two FERC matters cited by Laurel are also irrelevant. They maintain that the FERC Opinion *Revisions to Oil Pipeline Regulations Pursuant to the Energy Policy Act of 1992* merely contains a citation back to the *Farmers Union I* and *Farmers Union II* cases in a discussion about ratemaking methods for interstate pipelines. IP Reply Brief, at 18; 65 F.E.R.C. ¶ 61,109 (Oct. 22, 1993). Additionally, *The Plantation Pipe Line Co v. Colonial Pipeline Co.* case contains a similar circular citation to the *Farmers Union* cases, before clarifying that the *Farmers Union* cases “are applicable to ratemaking.” IP Reply Brief, at 18; 104 F.E.R.C. ¶ 61,271, at ¶ 27 (Sept. 11, 2003).

In short, the Indicated Parties argued that Laurel’s desire to someday provide interstate transportation service from the Midwest on a portion of its existing intrastate Laurel

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<sup>19</sup> Lewis, Mark K. and Morgan II, D. Kirk, An uneven playing field exists in oil vs gas pipeline development, Oil & Gas Financial Journal, Oct. 1, 2011, available at <http://www.ogfj.com/articles/print/volume-8/issue-10/features/an-uneven-playing-field-exists.html> (“In contrast with the development of an interstate natural gas pipeline, FERC has no jurisdiction over the construction or abandonment of an oil pipeline. This is not a policy decision by FERC. Rather, it is dictated by the terms of the ICA, the statute that provides FERC with the authority to regulate the transportation of oil. The ICA provides FERC with the authority to regulate the rates and terms and conditions of service offered by an interstate oil pipeline, but the ICA does not provide FERC with the ability to regulate an oil pipeline’s entry into or exit from the market.”). IP Reply Brief, at 17, footnote # 47.

pipeline cannot defeat the Commission's jurisdiction over Laurel as a state regulated public utility and its present and ongoing intrastate operations. Laurel's conflict preemption argument should be completely rejected.

### Disposition

It is clear from the parties' respective Briefs that Laurel treats the present proceeding as the application of a pipeline that plans to enter interstate service, while the Indicated Parties view the case as the application of an intrastate pipeline planning to abandon a portion of its intrastate service to enter interstate service. In simplified terms, the former is a one-step process, whereas the latter is a two-step one. Stated differently, Laurel describes the content of the Application as essentially a change in service (from intrastate to interstate, from westward to eastward) whereas, the Indicated Parties see the application first and foremost as an abandonment of intrastate service for the prospect of offering interstate service. I find that the disposition of the federal preemption issue, as well as of other aspects of the present Application, relies on this distinction.

Laurel pipeline is at present an intrastate pipeline located and operating within the borders of the Commonwealth. Under its current layout, before Laurel can provide service in interstate commerce, it must reverse the flow of product over a portion of the pipeline located between Eldorado, PA and Pittsburgh, PA. This logistics or operational sequence can guide the Commission in the disposition of the federal preemption issue as well as of other aspects of the present Application.

After carefully considering the parties' respective arguments, I disagree with Laurel's reliance on the NGA and NGPA for support of its argument on federal preemption. NGA and NGPA are natural gas statutes which expressly preempted certain state regulation of natural gas pipelines. They are separate and distinct from ICA and the statutory regime that governs interstate oil pipelines.

I also disagree with Laurel’s contention that the absence of explicit preemptive language in ICA echoes Congress’ intent that entry into and exit from the interstate transportation business, for a currently interstate pipeline like Laurel, be determined strictly and exclusively by market forces. By its own terms, ICA does not apply to oil pipeline transportation wholly within one State and not shipped to or from a foreign country. 49 U.S.C. § 1(2)(a). In addition, the absence of explicit preemptive language in ICA has been repeatedly interpreted by the courts as allowing States to maintain primary jurisdiction over intrastate transportation. In *Simpson v. Shepard*, 230 U.S. 352, 418-19 (1913) the United States Supreme Court held that the ICA does not preempt state regulation of intrastate carriers in part because the ICA “excluded from the provisions of the act that transportation which was ‘wholly within one State.’” Also, in *Texas v. Eastern T. R. Co.*, 258 U.S. 204 (1922) the Court held that:

[The ICA] contain[s] many manifestations of a continuing purpose to refrain from any regulation of intrastate commerce, save such as is involved in the rightful exertion of the power of Congress over interstate and foreign commerce. ... And had there been a purpose here to depart from the accustomed path and to deal with intrastate commerce as such independently of any effect on interstate and foreign commerce, it is but reasonable to believe that that purpose would have been very plainly declared. This was not done.

258 U.S. 217-218 (1922).

In view of the above, I find that the Commission’s exercise of jurisdiction over Laurel’s Application is firmly within its power. Laurel’s desire to operate the segment of the Laurel pipeline between Pittsburgh and Eldorado in interstate commerce in the near future, does not preempt the Commission from exercising its authority over the pipeline’s current intrastate operations.

## 2) The Dormant Commerce Clause

### Laurel's Position

In its Main Brief, Laurel argues that a Commission order prohibiting reversal of the pipeline would also run afoul of the Commerce Clause of the United States Constitution, U.S. Const. art. I, § 8, cl. 3. Laurel Main Brief, at 29. Laurel avers that the Commerce Clause “not only grants Congress the authority to regulate commerce among the States, but also directly limits the power of the States to discriminate against interstate commerce.” Laurel Main Brief, at 29, citing *New Energy Co. v. Limbach*, 486 U.S. 269, 273 (1988). It explains that this “dormant” or “negative” aspect of the Commerce Clause “prohibits economic protectionism -- that is, regulatory measures designed to benefit in-state economic interests by burdening out-of-state competitors.” *Id.* The strictures of the Commerce Clause apply with equal weight to state regulation of utilities. Laurel Main Brief, at 30, referring to *Ark. Elec. Coop. Corp. v. Ark. Pub. Serv. Comm'n*, 461 U.S. 375, 391 (1983) (“Our constitutional review of state utility regulation in related contexts has not treated it as a special province insulated from our general Commerce Clause jurisprudence.”).

Laurel clarifies that under the dormant Commerce Clause, state action that discriminates against interstate commerce in its purpose or effect is “virtually per se invalid.” Laurel Main Brief, at 30, citing *Dep't of Revenue v. Davis*, 553 U.S. 328, 338 (2008); *see also Brown-Forman Distillers Corp. v. N.Y. State Liquor Auth.*, 476 U.S. 573, 579 (1986)<sup>20</sup>. However, Laurel acknowledges that, if the state action is not discriminatory, but, rather, “regulates even-handedly to effectuate a legitimate local public interest, and its effects on interstate commerce are only incidental,” then it must be determined whether “the burden imposed on such commerce is clearly excessive in relation to the putative local benefits” under the balancing test set forth in *Pike v. Bruce Church, Inc.*, 397 U.S. 137, 142 (1970). Laurel Main Brief, at 30, footnote, 43. Laurel maintains that in the present case a Commission order

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<sup>20</sup>*Brown-Forman Distillers Corp. v. N.Y. State Liquor Auth.*, 476 U.S. 573, 579 (1986) (“When a state statute directly regulates or discriminates against interstate commerce, or when its effect is to favor in-state economic interests over out-of-state interests, we have generally struck down the statute without further inquiry.”). Laurel Main Brief, at 30.

prohibiting reversal would undoubtedly discriminate against interstate commerce. *Id.* Yet, if *Pike* balancing were necessary, Laurel argues that the burden imposed on interstate commerce in petroleum products by an order impeding pipeline reversal heavily outweighs the purported local benefits, as demonstrated by the discussion below of the substantial public benefits derived from reversal and the essentially non-existent harm. *Id.*

Citing *Cloverland-Green Spring Dairies, Inc. v. Pa. Milk Mktg. Bd.*, Laurel asserts that there are two general types of discrimination that trigger the heightened scrutiny of the dormant Commerce Clause: (1) where the state action “has extraterritorial effects that adversely affect economic production (and hence interstate commerce) in other states, thereby forcing producers or consumers in other States to surrender whatever competitive advantages they may possess to give local consumers an advantage over consumers in other states” or (2) where the object of the state action “is local economic protectionism, in that it disadvantages out-of-state businesses to benefit in-state ones.” Laurel Main Brief, at 30, citing *Cloverland-Green Spring Dairies, Inc. v. Pa. Milk Mktg. Bd.*, 462 F.3d 249, 261-62 (3d Cir. 2006).

Laurel argues that in the present case a decision by the Commission impeding Laurel from reversing the flow of the pipeline so as to engage in interstate service “would violate the dormant Commerce Clause by closing Pennsylvania’s borders to out-of-state products, reserving transportation service for in-state interests and removing the economic advantage of out-of-state refiners to the benefit of in-state refiners.” Laurel Main Brief, at 31. Per Laurel, any one of these discriminatory actions would subject the Commission’s order to the rule of virtual *per se* invalidity. *Id.*

Laurel notes that the United States Supreme Court has remarked that the “clearest example” of invalid economic protectionism is state action “that overtly blocks the flow of interstate commerce at a State’s border.” Laurel Main Brief, at 31, citing *Philadelphia v. New Jersey*, 437 U.S. 617, 624 (1978). According to Laurel, a Commission order prohibiting reversal would block the interstate flow of petroleum products at the Pennsylvania border by making Laurel’s pipeline to Altoona unavailable to Midwest refiners, and instead require Laurel to continue serving primarily in-state refiners. Laurel Main Brief, at 31. Per Laurel, such an order

is discriminatory against interstate commerce and closely analogous to the state action invalidated in *Philadelphia v. New Jersey*, 437 U.S. 617 (1978) and *New England Power Co. v. New Hampshire*, 455 U.S. 331 (1982). *Id.*

Laurel explained that the central issue of *Philadelphia v. New Jersey* was a New Jersey statute that prohibited the importation of most solid or liquid waste which originated outside the state. *Id.* Operators of private landfills in New Jersey and cities in other states that had contracts with the landfills for waste disposal brought suit, alleging that the statute violated the Commerce Clause. The parties disputed whether the purpose of the statute was to address the environmental crisis in New Jersey landfills or to suppress competition and stabilize the cost of waste disposal for New Jersey residents. The Supreme Court held that regardless of its purpose, New Jersey could not require in-state landfills to accept only in-state waste. The Court noted its precedent establishing that “a State may not accord its own inhabitants a preferred right of access over consumers in other States to natural resources located within its borders” and concluded that “a State is without power to prevent privately owned articles of trade from being shipped and sold in interstate commerce on the ground that they are required to satisfy local demands or because they are needed by the people of the State.” Laurel Main Brief, at 32, *citing* 437 U.S. at 627. The Court held that the New Jersey statute violated these principles:

On its face, it imposes on out-of-state commercial interests the full burden of conserving the State’s remaining landfill space. It is true that in our previous cases the scarce natural resource was itself the article of commerce, whereas here the scarce resource and the article of commerce are distinct. But that difference is without consequence. In both instances, the State has overtly moved to slow or freeze the flow of commerce for protectionist reasons. It does not matter that the State has shut the article of commerce inside the State in one case and outside the State in the other. What is crucial is the attempt by one State to isolate itself from a problem common to many by erecting a barrier against the movement of interstate trade.

Laurel Main Brief, at 32, *citing* 437 U.S. at 628.

According to Laurel, the dormant Commerce Clause prohibits the Commission from according Pennsylvania refiners a preferred right of access over refiners in other states to Laurel's pipeline in Pennsylvania, on the ground that the pipeline is required to satisfy local demand. Laurel Main Brief, at 32. In Laurel's view, the "scarce resource" in the present proceeding is Laurel's pipeline and the Commission may not shut that instrumentality of interstate commerce inside the state. *Id.*

Similarly, Laurel noted that in *New England Power Co. v. New Hampshire*, the Court struck down an order of the New Hampshire Public Utilities Commission requiring a hydroelectric power generator to sell its power in-state. *Id.* at 32. A New Hampshire statute required hydroelectric power generators to obtain approval from the New Hampshire commission before exporting power outside the state and empowered the commission to prohibit the exportation when it determined that the energy "is reasonably required for use within this state and that the public good requires that it be delivered for such use." Laurel Main Brief, at 32, citing 455 U.S. 335. For years, the New England Power Co. had applied for and obtained approval to export power, but in 1980, after an investigation and hearings, the commission withdrew this approval and ordered New England Power to sell its power in state. The commission found that the power was required for use within the state and that its order served the public good on the grounds that New Hampshire's population and energy needs were increasing rapidly and that the in-state sale of the power, which was produced at a lower cost than other electric utilities serving the state, would save New Hampshire customers \$25 million a year. New England Power and the states of Massachusetts and Rhode Island brought suit. *Id.*

The Supreme Court held that the order violated the Commerce Clause. After reviewing its decision in *Philadelphia v. New Jersey*, the Court concluded:

The order of the New Hampshire Commission, prohibiting New England Power from selling its hydroelectric energy outside the State of New Hampshire, is precisely the sort of protectionist regulation that the Commerce Clause declares off-limits to the states. The Commission has made clear that its order is designed to gain an economic advantage for New Hampshire citizens at the expense of New England Power's customers in neighboring states.

Moreover, it cannot be disputed that the Commission’s “exportation ban” places direct and substantial burdens on transactions in interstate commerce. *See Public Utilities Comm’n v. Attleboro Steam & Electric Co.*, 273 U.S. 83 (1927).

*Id.* at 33-34, citing *New England Power*, 455 U.S. at 339.

Likening the reversal of the pipeline to New England Power’s efforts to sell hydroelectric energy outside the State of New Hampshire, Laurel reasons that a Commission order prohibiting reversal of its pipeline is effectively an “exportation ban” that violates the Commerce Clause by preventing Laurel from providing service to out-of-state customers and mandating that Pennsylvania “residents be given a preferred right of access” to the pipeline. *Id.* at 33-34, citing *New England Power*, 455 U.S. at 338.

Finally, Laurel argues that a Commission order prohibiting reversal would violate the Commerce Clause by “forcing producers or consumers in other States to surrender whatever competitive advantages they may possess.” Laurel Main Brief, at 34, citing *Cloverland*, 462 F.3d at 261. Laurel avers that Midwestern refineries are producing lower-cost refined petroleum products because of their access to lower-cost shale crude oils in the North Central United States and South-Central Canada. Laurel Main Brief, at 34. These refineries seek to introduce their more competitive products into Pennsylvania. *Id.* According to Laurel, a Commission order prohibiting reversal would serve to prevent this competition in Pennsylvania markets by preventing the flow of competing products into Altoona and would be a blatant example of local economic protectionism, the effect of which would be to disadvantage out-of-state businesses and benefit in-state ones. *Id.*

#### The Indicated Parties’ Position

The Indicated Parties decry Laurel’s dormant Commerce Clause argument as grounded on the incorrect factual premise that a Commission order denying the reversal would “clos[e] Pennsylvania’s borders to out-of-state products” and “block the interstate flow of petroleum products at the Pennsylvania border.” IP Reply Brief, at 19, quoting Laurel’s Main

Brief, at 31. The Indicated Parties counter Laurel’s argument by pointing out that a Commission order rejecting the relief requested in Laurel’s Application would not block an out-of-state entity from continuing to ship interstate petroleum products into Pennsylvania, either through an existing pipeline (originating from the Midwest, the East Coast, or the Gulf Coast), a newly constructed pipeline, or some other shipping method. They explain that Laurel’s parent company Buckeye will still be able to ship interstate petroleum products into Pennsylvania on its Midwest line regardless of what the Commission decides with respect to Laurel’s proposed reversal. IP Reply Brief, at 19. They point out that three pipelines already transport Midwestern petroleum products into Pennsylvania –Buckeye, Marathon, and Sunoco/ETP—and the capacity and rights of those pipelines would be completely unaffected by any Commission order denying Laurel’s Application. IP Reply Brief, at 19, footnote # 56.

In addition, the Indicated Parties argue that Laurel’s dormant Commerce Clause arguments are contrary to law. IP Reply Brief, at 20. They explain that the Supreme Court has consistently reaffirmed the legitimacy and importance of state regulation of public utilities, and has made it clear that the Commerce Clause was “never intended to cut the States off from legislating on all subjects relating to the health, life, and safety of their citizens, though the legislation might indirectly affect the commerce of the country.” IP Reply Brief, at 20, citing *GMC v. Tracy*, 519 U.S. 278, 306-07 (1997). As the Supreme Court established in *Simpson v. Shepard*, limitations on traditional state authority “may not be implied because of a dormant Federal power, that is, one which has not been exerted, but can only be found in the actual exercise of Federal control in such measure as to exclude this action by the State which otherwise would clearly be within its province.” IP Reply Brief, at 20, citing *Simpson*, 230 U.S. at 417.

The Indicated Parties reproach Laurel for ignoring cases that have considered and rejected Laurel’s dormant Commerce Clause argument. IP Reply Brief, at 20. In particular, the Indicated Parties find support for their position in *Ark. Elec. Coop. Corp. v. Ark. Public Serv. Comm’n*, 461 U.S. 375 (1983). They note that in *Arkansas Electric*, the Arkansas Public Service Commission (“PSC”) “asserted regulatory jurisdiction over the wholesale rates charged by the Arkansas Electric Cooperative Corporation (“AECC”) to its member retail distributors, all of

whom are located within the state.” IP Reply Brief, at 20-21. The AECC challenged the PSC’s assertion of jurisdiction as violating the dormant Commerce Clause. The Supreme Court rejected the utility’s challenge to regulation *of its intrastate activities*:

[S]tate regulation of the wholesale rates charged by AECC to its members is well within the scope of "legitimate local public interests," particularly considering that *although AECC is tied into an interstate grid, its basic operation consists of supplying power from generating facilities located within the State to member cooperatives, all of which are located within the State.*

IP Reply Brief, at 21, citing *Arkansas Electric*, at 394-95. (emphasis in IP Reply Brief).

The Supreme Court affirmed the PSC’s jurisdiction despite the “incidental effect on interstate commerce” stemming from AECC’s connection to the interstate grid. Additionally, in *National Steel*, the court rejected the steel mill’s dormant Commerce Clause challenge, holding that

“[t]he state has a legitimate and substantial interest in protecting the capital investment of utilities already serving the public and in protecting existing utility rate structures. *These interests certainly justify the incidental and relatively light burden of requiring application for a certificate of public convenience and necessity.* In the absence of federal regulation, such state regulation is not only reasonable and appropriate, but required in the public interest.”

IP Reply Brief, at 21, citing *National Steel*, at 628. (emphasis in IP Reply Brief).

According to the Indicated Parties, *National Steel* and *Arkansas Electric* serve as precedents directly on point and dispositive of the dormant Commerce Clause challenge raised by Laurel in the present Proceeding. IP Reply Brief, at 21. They reason that no hypothetical Commission action in this proceeding would prevent interstate products from entering or exiting Pennsylvania via interstate pipelines, nor would any interstate pipelines be treated any differently than they are today.

Next, the Indicated Parties distinguish the present Application from the two cases (*Philadelphia v. New Jersey*, and *New England Power Co. v. New Hampshire*) Laurel invokes in support of its argument and highlight why courts have not applied the dormant Commerce Clause on facts similar to those operating here. IP Reply Brief, at 22-23. In their Reply Brief, the Indicated Parties point out that in *Philadelphia v. New Jersey*, 437 U.S. 617, 618 (1978), the Supreme Court struck down a New Jersey statute that prohibited the importation of solid or liquid waste originating in other states for disposal in New Jersey landfills. IP Reply Brief, at 22. They argue that Pennsylvania’s existing petroleum products importation market is not remotely similar to the statute at issue in *Philadelphia v. New Jersey*, which was found to be a clear import ban that “overtly block[ed] the flow of interstate commerce” at New Jersey’s border. IP Reply Brief, at 22. According to the Indicated Parties, a Commission order denying Laurel’s Application would not “block” interstate commerce at the border as petroleum products that currently enter Pennsylvania via interstate pipelines or other means, from both the West and the East, including on Buckeye’s interstate pipelines, will still be able to enter the Commonwealth. IP Reply Brief, at 22-23. They add that, to the extent a Commission order would have some “incidental” impact on interstate commerce by affecting the decision-making of out-of-state refiners, it would not be constitutionally problematic. They rely on *Simpson*, where the Supreme Court acknowledged the reality that state regulation of *intrastate* carriers “might indeed alter relative advantages in competition, and, by virtue of economic forces, those engaged in interstate trade and transportation might find it necessary to make readjustments extending from market to market through a wide sphere of influence,” but held that “such action of the State would not for that reason be regarded as creating a direct restraint upon interstate commerce and as thus transcending the state power.” IP Reply Brief, at 23, footnote # 70, citing *Simpson*, 230 U.S. at 416-17.

The Indicated Parties’ next step is to distinguish *New England Power Co. v. New Hampshire*, 455 U.S. 331 (1982) from the present proceeding. IP Reply Brief, at 23. They aver that in *New England Power Co. v. New Hampshire*, the Supreme Court considered whether an order from the New Hampshire Public Utilities Commission (NHPUC) prohibiting a New Hampshire power company from exporting hydroelectric power outside of New Hampshire violated the dormant Commerce Clause. They first distinguish the actions of the NHPUC from

the present proceeding by pointing out that the NHPUC “made clear that its order [was] designed to gain an economic advantage for New Hampshire citizens at the expense of . . . customers in neighboring states,” whereas the Commission has not decided anything yet. IP Reply Brief, at 23, citing 455 U.S. at 339. Then they argue that the Supreme Court’s holding in *New England Power Co. v. New Hampshire* that the NHPUC’s order unconstitutionally burdened interstate commerce by establishing an “export ban” on electricity produced in the state is not relevant in the present proceeding, as Laurel is certificated to, and does, provide a regulated east-to-west oil transportation service within the borders of Pennsylvania—it does not export anything. However, to the extent Laurel “exports” its services to interstate petroleum products, the Indicated Parties note that Laurel is and will continue to be able to provide such interstate transportation services to petroleum products originating from out-of-state sources, such as those transported from the Gulf Coast via Colonial Pipeline. IP Reply Brief, at 23, footnote # 73.

The Indicated Parties reasoned that if one accepts Laurel’s argument that Midwest refiners will be unconstitutionally discriminated against by not being able to ship all the way to Altoona, it follows that East coast entities (including Buckeye-owned assets that supply Laurel from the East) would be victims of discrimination if the reversal were approved and they were no longer able to ship all the way to Pittsburgh. IP Reply Brief, at 23-24. Laurel appears to be arguing that in order to prevent discrimination against Buckeye’s Midwest movements, the Commission must discriminate against Buckeye’s East coast movements. This, in the Indicated Parties’ view, is illogical. IP Reply Brief, at 24. They maintain that, with the Laurel pipeline being the only east-to-west *intrastate* oil pipeline in Pennsylvania, whatever direction the Laurel pipeline flows will necessarily have some incidental impact on the decisions that interstate refiners, marketers, and shippers will make. *Id.* This reality, they argue, is not constitutionally problematic as Laurel would like the Commission to believe. *Id.*

Lastly, the Indicated Parties argue that, the hypothetical possibility of a dormant Commerce Clause problem does not rob the Commission of jurisdiction to rule on Laurel’s Application. *Id.* at 25. In *Arkansas Electric*, the Supreme Court noted that while it was “not inconceivable” that a state regulation could be “so unreasonable as to disturb appreciably the interstate market . . . we are not willing to allow such a hypothetical possibility to control this

*facial challenge to the PSC’s mere assertion of regulatory jurisdiction.”* IP Reply Brief, at 25, citing *Ark. Elec.*, 461 U.S. at 395. (emphasis in IP Reply Brief). Similarly, the *National Steel* court held that invocation of dormant Commerce Clause concerns could not stop the regulatory body from asserting jurisdiction:

Until the MPSC rules on the certificate application, it is impossible to determine any more definitely whether the burden imposed is excessive in relation to the putative local benefits. At this point, the Court cannot permit the hypothetical possibility that certification will be denied to control evaluation of this facial challenge to the mere assertion of regulatory jurisdiction.

*National Steel*, 718 F. Supp. at 629.

According to the Indicated Parties, the same applies to the present case. They argue that, although it is theoretically possible that the Commission could seek to impose unconstitutionally onerous burdens on interstate commerce, such a “hypothetical possibility” does not control Laurel’s facial attack on the Commission’s authority to exercise *any* jurisdiction over Laurel’s proposed reversal of its *intrastate* pipeline.

Before concluding, the Indicated Parties address the *Pike v. Bruce Church*, 397 U.S. 137, 142 (1970) balancing test first mentioned in Laurel’s Main Brief. IP Reply Brief, at 25, footnote # 80; see also Laurel’s Main Brief, at 30, footnote # 43. Unlike Laurel who reasoned that the public benefits derived from reversal along with the absence of harm make it clear that the burden imposed on interstate commerce in petroleum products by an order impeding pipeline reversal heavily outweighs the local benefits, the Indicated Parties argue that, to the extent the Commission attempts to apply a balancing test, Laurel has created an evidentiary and procedural problem. *Id.* Referring to *National Steel*, 718 F. Supp. at 628, applying the *Pike v. Bruce Church* balancing test, the Indicated Parties argue that, in deciding whether a state action “directly regulates or discriminates against interstate commerce, or when its effect is to favor in-state economic interests over out-of-state interests ... the critical question in this test is the overall effect of the statute on both local and interstate activity.” They point out that because Laurel waited until *after* the record was closed to present its Commerce Clause

argument, the parties had no opportunity to engage in fact-finding (including discovery) on Commerce Clause issues or to present any evidence weighing the “overall effect” on interstate commerce against the alleged putative benefits. IP Reply Brief, at 25, footnote # 80. They aver that Laurel’s Main Brief only discusses the impact of a hypothetical Commission order on Midwest refiners who intend to ship products to Pittsburgh on Buckeye’s pipeline through Ohio, without considering the fact that Pennsylvania is bordered by six states and interstate petroleum products can and do come into the Commonwealth through other sources. IP Reply Brief, at 25-26, footnote # 80. They point out that Laurel fails to cite any evidence explaining the “overall effect” a hypothetical Commission order will have on interstate commerce and state that there is no evidentiary record to support the relief Laurel is requesting on its dormant Commerce clause argument. IP Reply Brief, at 26, footnote # 80.

### Disposition

Laurel’s challenge to the Commission’s mere assertion of regulatory jurisdiction over the present Application is grounded on the hypothetical possibility of a dormant Commerce Clause problem. See *Ark. Elec.*, 461 U.S. at 395. After carefully considering the arguments propounded by Laurel and the Indicated Parties, I find that the Commission has jurisdiction over the present Application by an intrastate pipeline. The mere invocation of dormant Commerce Clause concerns should not stop this Commission from asserting that jurisdiction.

I disagree with Laurel’s position that any decision of the Commission impeding Laurel from reversing the flow of the pipeline to engage in interstate service would violate the dormant Commerce Clause by closing Pennsylvania’s borders to out-of-state products, reserving transportation service for in-state interests and removing the economic advantage of out-of-state refiners to the benefit of in-state refiners. None of the standards of review available to the Commission, developed by it, or propounded by the various parties in this matter for disposing of the various issues raised in the present Application, is grounded on local economic protectionism or discrimination against out of state interests. Rather, they are designed to allow the Commission to regulate even-handedly to effectuate a legitimate local public interest.

To the extent a Commission order in the present matter could have some “incidental” impact on interstate commerce by affecting the decision-making of out-of-state refiners, the Supreme Court held in *Simpson* that such an action by the State would not inevitably create a direct restraint upon interstate commerce or transcend the state’s power. Applying the *Pike v. Bruce Church* balancing test in deciding whether a state action directly regulates or discriminates against interstate commerce, the critical question in this test is the overall effect of the statute on both local and interstate activity. I agree with the Indicated Parties that because Laurel waited until after the evidentiary record was closed to present its Commerce Clause argument, the parties had no opportunity to present any evidence weighing the “overall effect” on interstate commerce against the alleged benefits. However, the evidence collected clearly indicates that a Commission order denying Laurel’s Application would not constitute a ban of either import or export of products in interstate commerce. Three pipelines *already* transport Midwestern petroleum products into Pennsylvania –Buckeye, Marathon, and Sunoco/ETP—and the capacity and rights of those pipelines would be completely unaffected by any Commission order denying Laurel’s Application. Regardless of what the Commission decides with respect to Laurel’s proposed reversal, these three pipelines will still be able to ship interstate petroleum products into Pennsylvania. In addition, any out-of-state entity planning to ship interstate petroleum products into Pennsylvania, can still do so either through an existing pipeline, a newly constructed pipeline, or some other shipping method.

Ultimately, I agree with the Indicated Parties’ remark that if one accepts Laurel’s argument that Midwest refiners will be unconstitutionally discriminated against by not being able to ship all the way to Altoona, one must also concede that East coast entities (including Buckeye-owned assets that supply Laurel from the East) would be victims of discrimination if the reversal were approved and they were no longer able to ship all the way to Pittsburgh. This argument is logically flawed, yet it rests at the heart of Laurel’s dormant Commerce Clause argument in this case.

## C. Certificate of Public Convenience

### Laurel's Position

Laurel argues that, in light of Laurel's status and operation as a common carrier under the Pennsylvania Public Utility Code (Code), a certificate of public convenience (CPC) is not required in connection with the proposed reversal. Laurel Main Brief, at 35.

Laurel explains that it is a "public utility" under Section 102 of the Code under two separate provisions. It falls within the definition of a "common carrier" under Section 102 of the Code, because it is a corporation "holding out, offering, or undertaking...service for compensation to the public for the transportation of...property...between points within this Commonwealth by, through, over, above, or under land." Laurel Main Brief, at 36, citing 66 Pa. C.S. § 102 (defining "common carrier"). Laurel also falls within the definition of a "public utility" under Section 102 of the Code, because it is a corporation owning or operating equipment or facilities for "[t]ransporting or conveying natural or artificial gas, crude oil, gasoline, or petroleum products...by pipeline or conduit, for the public for compensation." 66 Pa. C.S. § 102 (defining "public utility"). Laurel Main Brief, at 36. Because of their dual status, Laurel argues that oil pipelines have been regulated quite differently than traditional fixed public utilities. *Id.*

Laurel argues that unlike traditional public utilities, whose certificates of public convenience grant them a monopoly in an exclusive geographic service territory, a common carrier's certificate provides it with entry into a "discrete territory or marketplace," but it does not grant the common carrier an exclusive monopoly service territory. Laurel Main Brief, at 36; see *Painter v. Pa. Pub. Util. Comm'n*, 169 A.2d 113, 115 (Pa. Super. 1961); *Re Lukens Steel Company*, 58 Pa. PUC 256, 1984 Pa. PUC LEXIS 62, at \*12-13 (Order Entered Jan. 13, 1984); see *Susquehanna Area Reg'l Airport Auth. v. Pa. Pub. Util. Comm'n*, 911 A.2d 612, 619 (Pa. Cmwlth. 2006), *pet. for allowance of appeal denied by* 923 A.2d 412 (Pa. 2006). According to Laurel, Pennsylvania law recognizes that "a common carrier's ability to provide service successfully is largely a function of the marketplace" and grants a common carrier a non-

exclusive privilege to compete and provide service within a discrete territory or marketplace. Laurel Main Brief, at 37; see also *Yellow Cab Co.*, 431 A.2d at 1107-1108. Per Laurel, this stands in stark contrast with the intent of the legislature and policy of the Commission to grant traditional public utilities the exclusive privilege to provide a certificated service in a geographic service territory, except in rare circumstances. Laurel Main Brief, at 37, citing *Painter v. Pa. Pub. Util. Comm'n*, 169 A.2d 113, 115 (Pa. Super. 1961); and *Re Lukens Steel Company*, 58 Pa. PUC 256, 1984 Pa. PUC LEXIS 62, at \*12-13 (Order Entered Jan. 13, 1984). In this regard, Laurel argues that it has much in common with a common carrier, such as a taxi cab, which must compete with other taxi cabs and other available, alternative transportation services. Laurel Main Brief, at 38; Laurel St. No. 9-R, p. 6; see also Laurel St. No. 5, p. 5; Laurel St. No. 5-R, pp. 7-9.

Laurel expands on its arguments that a common carrier's ability to provide service successfully is largely a function of the marketplace by analyzing the Commonwealth Court's ruling in *Susquehanna Area Reg'l Airport Auth.*, 911 A.2d 612. Laurel Main Brief, at 38. According to Laurel, the case stands for the position that the Commission may not regulate competition among common carriers and may not prohibit a common carrier from doing lawful acts that the Commission believes to be harmful, unless such acts are directly addressed in the Public Utility Code. Laurel Main Brief, at 38; *Susquehanna Area Reg'l Airport Auth.*, 911 A.2d at 620, 623. Laurel reasons that the pending Application proceeding involves competition among customers of a common carrier, which is one step further removed from the Commonwealth Court's holding in *Susquehanna* that the Commission may not regulate competition between common carriers. Laurel Main Brief, at 39. In Laurel's view, the *Susquehanna* case is important because it holds that the Commission does not have the authority to regulate the marketplace conditions of common carriers. *Id.* Laurel reasons that a common carrier can and should respond to changing market conditions and this is especially true in the present case where the common carrier seeks to change the direction of its service to avoid a substantial, continuous decline in the use of its asset. Laurel Main Brief, at 39; Laurel St. No. 1, p. 15; Laurel St. No. 5-R, Section IV, Figures 5, 6 and 7.

Laurel distinguishes itself from non-common carrier public utilities further by pointing out that it does not provide transportation service to end-users of refined petroleum products. Laurel Main Brief, at 40; Laurel Exhibit No. 1 (Application ¶¶ 7, 10); Laurel St. No. 1, p. 14; Laurel St. No. 5, pp. 6-7; Laurel St. No. 6, p. 3; Laurel St. No. 5-R, p. 11 and Appendix A. Laurel transports petroleum products to terminals at destination points along its pipeline, where its shippers or other entities “lift” product to transport to a point of sale. Laurel Main Brief, at 40, Laurel St. No. 1, p. 14; Laurel St. No. 6, p. 3. However, non-common carrier public utilities provide a distribution service and deliver a commodity to the ultimate consumer; their facilities directly connect to a consumer’s point of consumption. Laurel Main Brief, at 40. Laurel notes that under its proposal, all buyers of refined petroleum products will be able to buy all of the same products at all of the same locations after the proposed reversal. *Id.*

Laurel further argues that, while the vast majority of a traditional fixed public utility’s customers have no alternative to that utility’s service because the utility is the exclusive provider of the service in the area where its customer is located, Laurel’s existing shippers are sophisticated corporate entities that have access to multiple transportation options and are under no obligation to use Laurel’s pipeline to transport petroleum products. Laurel Main Brief, at 40. Laurel points out that its shippers possess and readily use various alternatives with at least one intrastate shipper already electing to re-activate an entire competing pipeline to transport its product to markets other than Pittsburgh. Laurel Main Brief, at 40-41, referring to (HC) Laurel Cross Examination Exhibit No. 18. Laurel maintains that its existing shippers have continuously elected to transport less and less product over Laurel’s pipeline system and Laurel should be allowed to respond to these changing market conditions. Laurel Main Brief, at 40.

Next, Laurel argues that its certificate of public convenience is a testament of this Commission’s recognition of Laurel’s common carrier status. According to Laurel, its certificate does not specify the direction of service, nor does it prescribe specific origin or destination points. Laurel believes that this lack of specificity is proper and necessary since Laurel was not granted, and does not possess, a geographic monopoly service territory and Laurel was, and continues to be, subject to competition by alternative methods of petroleum products transportation. Laurel Main Brief, at 41.

Laurel explains that in 1957, Laurel Pipe Line Company—the predecessor in interest to Laurel—filed two applications with the Commission, which collectively sought Commission approval (1) of the incorporation, organization and creation of Laurel as a public service corporation (the “Incorporation Application”) and (2) to begin to exercise the right, power or privilege to transport, store and distribute petroleum products to the public (the “Service Application”).<sup>21</sup> Laurel Main Brief, at 42-43. Therein, Laurel sought Commission authorization, *inter alia*, to transport, store and distribute petroleum products by means of pipe lines, pumps, tanks and other equipment and appurtenances for the public, in and across the Commonwealth of Pennsylvania and other states of the United States. Laurel Main Brief, at 43, referring to Incorporation Application ¶ 7; *see also* Service Application ¶ 3. In the Service Application Laurel specifically stated that:

The nature and character of the service to be rendered is the transportation, storage and distribution of petroleum and petroleum products by means of pipe lines, pumps, tanks and other equipment and appurtenances for the public in and across the Commonwealth of Pennsylvania and other states of the United States.

Laurel Main Brief, at 43, citing Indicated Parties Exhibit RAR-1, pp. 12-20 (Service Application) (emphasis in Laurel Main Brief).

The Commission approved both the Incorporation Application and the Service Application by separate orders and issued certificates of public convenience to Laurel.<sup>22</sup> More specifically, the Commission approved Laurel’s Service Application and stated:

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<sup>21</sup> See *In re Application of Laurel Pipe Line Company for approval of its incorporation, organization and creation*, Docket No. 84093, Folder 1 (Application Docketed Feb. 5, 1957); *see also In re Application of Laurel Pipe Line Company for approval of the beginning of the exercise of the right, power or privilege of transporting, storing and distributing petroleum products by means of pipe lines, pumps, tanks and other equipment and appurtenances for the public*, Docket No. 84093, Folder 2 (Application Docketed Feb. 5, 1957). The Incorporation Application is provided in Indicated Parties Exhibit RAR-1, pp. 3-10. The Service Application is provided in Indicated Parties Exhibit RAR-1, pp. 12-20.

<sup>22</sup> See *In re Application of Laurel Pipe Line Company for approval of its incorporation, organization and creation*, Docket No. 84093, Folder 1 (Report and Order entered Feb. 5, 1957) (“Incorporation CPC Order”); *see also In re Application of Laurel Pipe Line Company for approval of the beginning of the exercise of the right, power or privilege of transporting, storing and distributing petroleum products by means of pipe lines, pumps, tanks and other equipment and appurtenances for the public*, Docket No. 84093, Folder 2 (Report and Order entered Feb. 5, 1957) (“Service CPC Order”). The Incorporation CPC Order is provided in Indicated Parties Exhibit RAR-1, p. 1.

[T]he Pennsylvania Public Utility Commission upon application of LAUREL PIPE LINE COMPANY, filed January 31, 1957, for - 130-131-264-100-306130-approval of the beginning of the exercise of the right, power or privilege of transporting, storing and distributing petroleum and petroleum products by means of pipelines and appurtenances, for the public, such facilities extending generally westwardly from a point near the City of Philadelphia to a point in the vicinity of the City of Pittsburgh, thence in a northwestwardly direction to the Pennsylvania-Ohio boundary line, as more fully described in said application, and having been duly presented in accordance with the rules of the Commission, and full investigation of the matters and things involved having been had, the Commission finds and determines that the granting of said application is necessary or proper for the service, accommodation, convenience or safety of the public, and that a certificate of public convenience issue evidencing the Commission's approval thereof.

Laurel Main Brief at 43-44; see Service CPC Order in Laurel Exhibit DWA-5, p. 1; IP Exhibit RAR-1, p. 11.

Laurel points out that it did not limit its request to east/west service in either application and nowhere in either order did the Commission describe the “nature and character” of petroleum products transportation service as limited to east/west service. Laurel Main Brief, at 44; *see* Laurel St. No. 9-R, p. 4; Laurel St. No. 9-RJ, pp. 2-4. Moreover, nowhere in either application did Laurel limit its request to serve specific origin and destination points and/or pairs; and nowhere in either order did the Commission describe the “nature and character” of petroleum products transportation service as being limited to specific origin and destination points and/or pairs. Laurel Main Brief, at 44; *see* Laurel St. No. 9-R, p. 4; Laurel St. No. 9-RJ, pp. 2-4.

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The Service CPC Order is provided in Indicated Parties Exhibit RAR-1, pp. 11. The Service CPC Order and related certificate are also provided in Laurel Exhibit DWA-5, pp. 1-2.

According to Laurel, its interpretation of its CPC is consistent with the Commission's issuance of certificates for other common carriers.<sup>23</sup> Laurel Main Brief, at 44. Laurel points out that common carriers are not required to seek a separate certificate that demonstrates need for its service at each pick-up (origin) and drop-off (destination) point that they intend to provide service to. Only a general certificate is needed to provide service in and across a specific region. Laurel Main Brief, at 44. Nor are common carriers required to obtain a certificate of public convenience to change their pick-up or drop-off locations in response to shifting competitive demands, so long as those changes are consistent with their certificate. Laurel Main Brief, at 44, footnote # 52, referring to *Susquehanna Area Reg'l Airport Auth.*, 911 A.2d at 619; *Yellow Cab Co.*, 431 A.2d at 1107-1108. As a common carrier, Laurel demands similar flexibility in its decision to alter the direction it provides service or the points it provides service in response to competitive market demands, consistent with its certificate of public convenience.

Because the proposed reversal is consistent with the nature and character of the service that it was authorized to provide in its 1957 Certificate of Public Convenience, Laurel reasons that the reversal does not constitute an abandonment of service or provision of new service that requires a certificate of public convenience.

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<sup>23</sup> For example, common carrier certificates for taxi cabs generally prescribe a boundary of operations within which the carrier is free to provide transportation service between *any* pick-up (origin) and *any* (drop-off) points, without reference to direction. *See, e.g., Application of Willow Grove Yellow Cab. Co., Inc.*, Docket No. A-00087075F007 (Order Entered Dec. 26, 2002) (granting the right to provide carrier service (“between points in the counties of Bucks and Montgomery, and from points in said counties, to points in Pennsylvania, and return.”); *Application of Red Top Cabs, Inc.*, docket No. A-00106043F003 (Order Entered June 9, 1994) (granting the right to provide carrier service “between points in the city of Scranton...and within an airline distance of three (3) statute miles of the limits of the borough of Olyphant...and from points in said area to points in Pennsylvania, and vice versa.”); *Application of Homestead Cab Company, Inc.*, Docket No. A-00106315F002 (Order Entered Oct. 7, 1987) (granting the right to provide carrier service “between points in the borough of Sellersville, Bucks County, and within an airline distance of two (2) statute miles of the limits of said borough.”). Moreover, to the extent that the Commission seeks to limit the carrier's service, the Commission will *explicitly* impose conditions on origin and destination points. *See, e.g., Application of Willow Grove Yellow Cab. Co., Inc.*, Docket No. A-00087075F007 (Order Entered Dec. 26, 2002) (explicitly imposing limiting conditions on pick-up (origin) points). Laurel Main Brief, at 44, footnote # 51.

### The Indicated Parties' Position

The Indicated Parties aver that a jurisdictional utility's obligation to obtain Commission authorization before it withdraws "service" from a customer is a fundamental element of public utility regulation. IP Main Brief, at 27. Before granting a CPC allowing a utility to abandon service to some or all of its customers, the Commission must determine that "the granting of such certificate is necessary or proper for the service, accommodation, convenience or safety of the public." IP Main Brief, at 27-28, citing 66 Pa.C.S. § 1103(a). Quoting the provisions of 66 Pa.C.S. § 1102 (a)(2), the Indicated Parties argue that the Code requires a public utility like Laurel to file an application and obtain Commission authorization before it abandons service. IP Main Brief, at 28.

The Indicated Parties aver that their review of Laurel's 1957 Application, the CPC, and related documents found no indication that the Commission intended to leave the issue of directional flow to Laurel's discretion. IP Main Brief, at 29. On the contrary, all indicia are that the nature of the "service" that is the subject of Laurel's 1957 Application and CPC is petroleum pipeline transportation service in a westerly direction into Pittsburgh. *Id.*

It is the Indicated Parties' position that Laurel's 1957 Application sought approval for service from Philadelphia to Pittsburgh. *Id.* According to them, the 1957 Application describes the proposed service as follows:

The nature and character of the *service to be rendered* is the transportation, storage, and distribution of petroleum and petroleum products *by means of pipe lines, pumps, tanks and other equipment* and appurtenances for the public in and across the Commonwealth of Pennsylvania and other states of the United States. The approximate route to be followed by *the proposed pipe line in this Commonwealth from the vicinity of Philadelphia to the vicinity of Pittsburgh* and thence northwesterly to the western boundary of the Commonwealth is indicated on the attached map designated "Exhibit A" and made a part of this application.

IP Main Brief, at 29, citing IP Exhibit No. RAR-1, at 1. (emphasis in IP Main Brief).

According to the Indicated Parties, the 1957 Application also represented that the proposed new services would create competitive conditions with respect to companies "which carry petroleum products in a westerly direction across the southern half of the Commonwealth of Pennsylvania from the vicinity of Philadelphia to the vicinity of Pittsburgh and beyond." IP Main Brief, at 29-30, citing to IP Exhibit No. RAR-1, at 3. Additionally, the 1957 Application deemed relevant the fact that seven other oil pipelines also carried oil products in a *westerly* direction. *Id.* In view of the above, the Indicated Parties conclude that the 1957 Application confirms that the service the Laurel pipeline intended to provide was to move petroleum products *westerly* from Philadelphia to Pittsburgh. *Id.*

Next, the Indicated Parties disagree with Laurel's claims that, since Laurel's CPC has no limitation or condition on the direction of transportation service, the inquiry should end there. Instead, they argue that Laurel's CPC expressly refers to "approval of the said application as set forth in said report and order." In turn, the Commission's Report and Order describes the Laurel pipeline as "extending generally westwardly . . . as more fully described in said application." Thus, the Commission relied on the 1957 Application and exhibits Laurel submitted in determining what authority was provided. IP Main Brief, at 23.

Furthermore, the Indicated Parties draw attention to the fact that, in both its 1957 Application for incorporation, organization, and creation and in the 1957 Application for its CPC, Laurel stated that its proposed pipeline would create "competitive conditions," i.e., create competition, only for a list of pipelines that, according to the applications, "carry petroleum products in a *westerly* direction across the southern half of the Commonwealth of Pennsylvania from the vicinity of Philadelphia to the vicinity of Pittsburgh and beyond." IP Main Brief, at 33, citing IP St. 5-S, at 3:17-23. (emphasis in IP Main Brief). The Indicate Parties argue that if Laurel in 1957 wanted to preserve the right to reverse the directional flow from the west to the east, it is reasonable to assume that the 1957 Applications would have stated that intention in order to alert the Commission of the need to evaluate all aspects and impacts of the service that Laurel was actually proposing to offer. IP Main Brief, at 33.

The Indicated Parties insist that the record in the 1957 Commission proceedings leading to Laurel's CPC clearly shows that what Laurel intended and what the Commission understood to be Laurel's requested authority was east to west service. To emphasize their point, they point out that the pipeline segments were numbered from east to west (starting in the Philadelphia area), the microwave communication system was proposed to run from Birney Station (in the Philadelphia area) to the vicinity of Pittsburgh, and the control equipment was to be sequenced westward from Birney Station. IP Main Brief, at 34. Similarly, Laurel intended to construct the pipeline from east to west, in that the delivery points for construction began in the east and ended in the west and that the pipe diameters decreased from east to west. *Id.*

The Indicated Parties find it telling not only that historically the flow of petroleum products on the Laurel pipeline has been consistently and uniformly in a *westerly* direction originating in Eastern Pennsylvania with points of delivery in Central and Western Pennsylvania, but also that when Pennsylvania courts have considered Laurel pipeline's flow of petroleum products, they have viewed the Laurel pipeline as providing *westerly* service. IP Main Brief, at 30, referring to *Appeal of Independence Twp. Sch. Dist*, 194 A.2d 437, 438 (Pa. 1963), see also Laurel Exhibit No. 1 (Application), at 8.

According to the Indicated Parties, Laurel's existing tariff structure is consistent only with westerly flows along the Laurel pipeline, and point out that Laurel's current Commission tariff contains a specific table of rates for delivery service from two origin points in Philadelphia to 14 destinations in Pennsylvania, while a second schedule identified as Table 2 of that tariff provides volume-based discounts for spur delivery service from Tioga Junction to the Pittsburgh International Airport. *Id.* Based on their review, the Indicated Parties maintain that the provisions in Laurel's existing tariff align with the east-to-west service authorized in its CPC and nothing more. IP Main Brief, at 31, referring to IP St. No. 3, at 7:16-23. Nothing in Laurel's current Commission tariff provides for, or contemplates, service in a west to east direction. IP Main Brief, at 31; see Tr. at 252:18-21. There is no reservation of rights in Laurel's existing tariff giving it any discretion to flow petroleum products eastward on any segment of the pipeline as requested in this proceeding. *Id.*

Per the Indicated Parties, two elements of a utility's CPC are particularly relevant to this proceeding. First, a CPC is *prima facie* evidence that the Commission has determined there is a public need for the proposed service. IP Main Brief, at 31; see also *In re Condemnation by Sunoco Pipeline, L.P.*, 143 A. 3d 1000 (Pa.Cmwlt. 2016) (*en banc*), *appeal denied*, 164 A.3d 485 (Pa. 2016). According to the Indicated Parties, this pre-existing and longstanding "need" for Laurel pipeline service *to Pittsburgh* cannot and should not be overturned absent evidence to the contrary, particularly as Laurel has historically benefitted from the powers derived from its status as a certificated public utility by exercising eminent domain authority and obtaining exemption from local authority over its operations. IP Main Brief, at 31; see *Jerome v. Laurel Pipe Line Co.*, 177 A.2d 150 (Pa. Super. Ct. 1962) *Appeal of Independence Twp. Sch. Dist.*, 194 A.2d 437, 438 (Pa. 1963).

Second, according to the Indicated Parties the courts and the Commission have expressly acknowledged when granting CPCs that "enhancing delivery options" is a relevant and material factor in assessing whether a CPC application satisfies the standard of being "necessary and proper for the service, accommodation, and convenience of the public." IP Main Brief, at 31-32. The Indicated Parties maintain that the proposed Laurel pipeline reversal would not enhance, but rather eliminate delivery options into the Pittsburgh area for petroleum products via pipeline from the east. IP Main Brief, at 32.

The Indicated Parties proceed to argue that the proposed reversal of flow in the Laurel Pipeline amounts to the termination or abandonment of an actual service provided by Laurel as all the delivery points west of the Eldorado location would no longer be accessible from the eastern origins. IP Main Brief, at 34. In the Indicated Parties' view, this elimination of destination points west of Eldorado along the Laurel pipeline from eastern Pennsylvania locations, like Philadelphia, is a material change and abandonment of westerly petroleum products transportation *service* on the Laurel pipeline. *Id.*

They support their argument by comparing Laurel's current Commission tariff to its proposed tariff, noting that the latter removes the availability and pricing of service from the two origin points of the tariff to the service delivery points west of Eldorado. Furthermore, they

point out that “if the Laurel pipeline is reversed, the western portion of the current Laurel system will be restricted to eastward operations through Buckeye (and not Laurel) and will not be accessible to shippers attempting to move petroleum products from the east to points west of Eldorado.” IP Main Brief, at 35. Based on this, the Indicated Parties conclude that the proposed reversal of the Laurel pipeline between Eldorado and Pittsburgh, Pennsylvania is a "service" to the public that Laurel is proposing to abandon. *Id.*

Next, the Indicated Parties argue that the broad definition of the term "service" in the Code also shows Laurel's proposed reversal is an abandonment of service:

**"Service."** Used in its broadest and most inclusive sense, includes any and all acts done, rendered, or performed, *and any and all things furnished or supplied, and any and all facilities used, furnished, or supplied by public utilities, or contract carriers by motor vehicle, in the performance of their duties under this part to their patrons, employees, other public utilities, and the public, as well as the interchange of facilities between two or more of them, but shall not include any acts done, rendered or performed, or anything furnished or supplied, or any facility used, furnished or supplied by public utilities or contract carriers by motor vehicle in the transportation of voting machines to and from polling places for or on behalf of any political subdivision of this Commonwealth for use in any primary, general or special election, or in the transportation of any injured, ill or dead person, or in the transportation by towing of wrecked or disabled motor vehicles, or in the transportation of pulpwood or chemical wood from woodlots.*

IP Main Brief, at 36, citing 66 Pa.Code § 102. (Emphasis in IP Main Brief).

They maintain that given the broad definition of "service", the movement of petroleum products from points east of Eldorado to Pittsburgh along the Laurel pipeline is an existing *service* Laurel provides to a number of shippers, refiners and other customers, and argue that if the Application is granted, this east to west shipping on the pipeline will no longer be available. *Id.* Taking their argument further, the Indicated Parties conclude that, because the lack of availability of pipeline service into Pittsburgh from Eldorado would be directly the result of Laurel's proposed conduct, then Laurel's reversal would be an "abandonment" of an existing

service that is the subject of an existing Commission-issued CPC intended to benefit the public. IP Main Brief, at 36-37.

The Indicated Parties find additional support for their conclusion that the cessation of a previously provided service (i.e., flows in a particular direction) constitutes an abandonment of service in FERC's ruling in *Re: Rocky Mountain Pipeline System LLC*, Docket No. IS09-157-000, 126 FERC ¶ 61,301 (2009) (March 31, 2009):

The Commission [FERC] does not have jurisdiction over the commencement and abandonment of service on an oil pipeline, and *service in one direction is a distinct service from service in the other direction. Therefore, a reversal is the abandonment of service on one direction and the commencement of an entirely new service in the other direction.*

(Emphasis in IP Main Brief, at 37). While acknowledging that FERC administers a different regulatory regime than this Commission, the Indicated Parties maintain that FERC's ruling provides instructive guidance to the Commission in this proceeding. *Id.*

The Indicated Parties also reject Laurel's claim that the flow reversal might be "temporary" depending on the dictates of market forces at a particular time. According to them, the claimed temporary nature of the reversal is put forth by Laurel to suggest that even if the reversal was a service, less or no Commission regulatory scrutiny of its proposal is appropriate. IP Main Brief, at 37. However, they maintain that this particular claim is contradicted by Laurel's proposed and existing tariff. The Indicated Parties noted that if the proposed reversal was intended to be truly temporary, one would expect to see rates provided for service to the delivery points between Coraopolis and Eldorado listed in Laurel's proposed post-reversal tariff. IP Main Brief, at 37-38. Yet, those delivery points do not appear in Laurel's proposed tariff. Not only has Laurel removed various western Pennsylvania delivery points from its proposed tariff (which contradicts its position that no delivery points are being changed), it has not proposed tariff language designed to indicate to any existing or potential shipper that Commission jurisdictional service could be reinstated to delivery points west of Eldorado. IP Main Brief, at 38.

Finally, the Indicated Parties disagree with Laurel's position that the proposed pipeline reversal would not constitute a service abandonment because the pipeline would continue to be utilized for the transportation of petroleum products. IP Main Brief, at 38; see Laurel St. 9-R, at 3:9-15. According to them, this argument is simplistic and "misses the fundamental point that the "service" absolutely changes if the direction of flow through the facilities changes, the entity responsible for providing service changes (here, from Laurel to Buckeye), and jurisdiction over the service changes." *Id.* Relying on the language of 66 Pa. C.S. § 102, they argue that "service" includes facilities through which service is provided, such as the Laurel pipeline. In the Indicated Parties' view, although the physical pipeline will continue to be used for the transportation of petroleum products, a specific service that Laurel currently provides (i.e., from points in the Philadelphia area and delivered to Eldorado and points west to the Pittsburgh area) would no longer be available. Therefore, they conclude that Laurel must obtain a CPC from this Commission before it may implement a change or reduction in service as the change in directional flow would constitute an abandonment of a "service" at least in part. IP Main Brief, at 38-39.

### Disposition

Upon review of the arguments propounded by Laurel and the Indicated Parties, I agree with the Indicated Parties' reading and interpretation of Laurel's 1957 CPC. While Laurel is correct that the 1957 CPC and the Commission's CPC Order does not contain language specifically describing the direction of transportation service or limiting said direction, such a description can be reasonably inferred from other portions of Laurel's 1957 Application, CPC and CPC Order. Laurel's expansive arguments on the "nature and character" of its 1957 CPC offer no explanation as to why its Application and the CPC contains language describing with specificity the direction of the pipe line's route ("The approximate route to be followed by *the proposed pipe line in this Commonwealth from the vicinity of Philadelphia to the vicinity of Pittsburgh* and thence northwesterly to the western boundary of the Commonwealth ... with facilities generally extending westwardly") if not for the purpose of also indicating the direction of its transportation service. Nor can Laurel squarely describe its CPC as a general certificate for service "in and across" a specific region, when the phrase "in and across the Commonwealth of

Pennsylvania” is altogether absent from the text of the CPC and when the single instance the phrase is used in Laurel’s Service Application also mentions “the other states of the United States” in the same line. See Indicated Parties Exhibit RAR-1, pp. 12-20 (Service Application).

Next, Laurel is not able to explain successfully why in both its 1957 application for incorporation, organization, and creation and in the 1957 Application for its CPC, Laurel addressed only the competitive conditions that the proposed pipeline would create for a list of pipelines that "carry petroleum products in a *westerly* direction across the southern half of the Commonwealth of Pennsylvania from the vicinity of Philadelphia to the vicinity of Pittsburgh and beyond" without consideration towards existing pipelines carrying products in an easterly direction. Additionally, Laurel provides no explanation why its pipeline was designed with decreasing diameters from east to west, if it was originally intended to have points of origin both in the east and the west of Pennsylvania.

Finally, Laurel fails to explain why its existing tariff does not reflect the discretion that Laurel claims to have on the flow of petroleum products. In fact, Laurel’s existing tariff contains no reservation of rights giving it any discretion to flow petroleum products eastward on any segment of the pipeline as requested in this proceeding. I agree with the Indicated Parties that if Laurel in 1957 wanted to preserve the right to reverse the directional flow from the west to the east, then the 1957 Applications would have stated that intention in order to alert the Commission of the need to evaluate all aspects and impacts of the service that Laurel was actually proposing to offer.

For close to 60 years since its inception, Laurel pipeline has transported petroleum products in one direction and one direction alone, westwardly from the vicinity of Philadelphia to the vicinity of Pittsburgh. If the historical direction of the flow of the product in the Laurel pipeline is not sufficient to dispel any ambiguity in regard to the terms of Laurel’s 1957 CPC, then Laurel’s physical design, as well as its existing tariff favor the conclusion that the west-to east direction of its transportation service was not contemplated by Laurel in its 1957 Application, nor granted by the Commission in its 1957 CPC to Laurel.

Given the broad definition of "service" under 66 Pa.Code § 102, in the context of an oil pipeline public utility, I agree with FERC's sensible conclusion that service in one direction is a distinct service from service in the other direction and that a reversal is the abandonment of service on one direction followed the commencement of an entirely new service in the other direction. I concur with the Indicated Parties that, if the proposed reversal is approved, a specific service that Laurel currently provides (i.e., from points in the Philadelphia area and delivered to Eldorado and points west to the Pittsburgh area) would no longer be available although all buyers of refined petroleum products will be able to buy all of the same products at all of the same locations after the reversal.

In view of the above, I find that the proposed reversal is essentially a partial abandonment by Laurel of the service it currently provides in Pennsylvania. Consequently, Laurel must obtain a CPC from this Commission before it may implement its proposed reversal.

#### **D. Standard of Review**

##### Laurel's Position

In its Main Brief, Laurel argues that, if the Commission determines it has jurisdiction over this matter and that the proposed change in service constitutes an abandonment of service for which a certificate of public convenience is required, the standard of review is set forth in Section 1103 of the Code: "A certificate of public convenience shall be granted by order of the commission, only if the commission shall find or determine that the granting of such certificate is necessary or proper for the service, accommodation, convenience, or safety of the public." Laurel Main Brief, at 53, citing 66 Pa. C.S. § 1103(a).

To the extent the Commission adopts a specific formulation of the public interest for this case, Laurel contends that the Commission should follow its own precedent in other oil pipeline abandonment proceedings and adopt an "affirmative public benefits" test. Laurel Main Brief, at 53-55, referring to *Application of Sunoco Pipeline, L.P.*, Docket Nos. A-2013-2371789, P-2013-2371775, at 7 (Order entered Aug. 29, 2013) ("[W]e conclude that the record provides

substantial evidence of affirmative public benefit sufficient to warrant approval of the proposed Application...”); *Application of Buckeye Pipe Line Company, L.P.*, Docket No. A-140110F2000, at 3 (Order Entered March 7, 2005) (“Upon full consideration of these factors, we conclude that the record provides substantial evidence of affirmative public benefit sufficient to warrant approval of the proposed Application.”).

Additionally, Laurel states that the Commission and the courts have held that a project need not be “absolutely necessary” to be in the public interest. Laurel Main Brief, at 55, citing *Hess v. Pa. Pub. Util. Comm’n*, 107 A.3d 246, 262 (Pa.Cmwlth. 2014). Laurel explains that in *Hess*, the Commonwealth Court upheld a Commission decision rejecting the “absolute necessity standard” as improperly requiring utilities to wait until the need for a proposed project was “looming.” Laurel Main Brief, at 56-57, citing *Hess*, at 258-59. The court further reasoned that, “Utilities would essentially have to *wait until an existing system fails before seeking approval of a project*. Not only would this approach be impractical and unrealistic, it would actually pose a danger to the ... welfare of the public.” *Id.* (emphasis in Laurel’s Main Brief, at 57).

Next, Laurel argues that the assessment of the need and benefits of a project must be based on future projections as opposed to an evaluation of present circumstances. Laurel Main Brief, at 57. Laurel supports its arguments by citing to *Hess v. Pa. Pub. Util. Comm’n*, 107 A.3d 246, 262 (Pa.Cmwlth. 2014) for the proposition that determination of necessity can be met by demonstrating a project will address future reliability issues, and to *Popowsky v. Pa. Pub. Util. Comm’n*, 937 A.2d at 1056, for holding that Commission may properly make predictive determinations in assessing whether an application will affirmatively benefit the public. Laurel reasons further that even under the traditional, multi-factor abandonment standard advocated by the Indicated Parties, the Commission may inquire as to whether the service to be abandoned will be used in the future. Laurel Main Brief, at 57, citing *In re: Glendale Yearound Water Company, 2008 Pa. PUC LEXIS 1077*, 6-7 (Opinion and Order entered Aug. 7, 2008).

Lastly, Laurel relies on *Popowsky*, 937 A.2d at 1055-57 for support of its position that the standard of review in the matter at hand includes no requirement to precisely quantify

benefits or savings from a project or proposal. Laurel Main Brief, at 57. Laurel notes that in *Popowsky*, the Pennsylvania Supreme Court unequivocally explained that:

[W]e agree with Appellants that *City of York* does not hold that a merger benefits the public only if the PUC can demonstrate that the merger savings will lower prices to consumers. For similar reasons, the Commission is also correct in its prevailing interpretation rejecting the contention that “that the *City of York* test cannot be met without quantifying the specific effects of alleged savings.”

\* \* \*

In conducting the underlying inquiry, the Commission is not required to secure legally binding commitments or to quantify benefits where this may be impractical, burdensome, or impossible; rather, the PUC properly applies a preponderance of the evidence standard to make factually-based determinations (including predictive ones informed by expert judgment) concerning certification matters.

Laurel Main Brief, at 57-58, citing *Popowsky*, 937 A.2d at 1055-57. (emphasis in Laurel Main Brief, at 58).

#### The Indicated Parties’ Position

In their Main Brief, the Indicated Parties argue that the standard of review for Laurel’s Application should be the test for abandonment of service. IP Main Brief, at 39. They explain that in the context of common carriers subject to public utility regulation under the Code, the Commission has developed a multi-factor test to assess the merits of a proposed abandonment of public utility service. IP Main Brief, at 39, citing *Borough of Duncannon v. Pa. Pub. Util. Comm’n*, 713 A.2d 737, 740 (Pa. Cmwlth. 1998). According to them, in determining whether a proposed abandonment is in the public interest, the Commission considers the following:

1. The extent of loss to the utility;
2. The prospect of the system being used in the future;

3. The loss to the utility balanced with the convenience and hardship to the public upon discontinuance of such service; and
4. The availability and adequacy of the service to be substituted.

*Id.* citing *Commuters' Comm. v. Pa. Pub. Util. Comm'n*, 88 A.2d 420, 422 (Pa. Super. 1952) (abandonment of segment of rail line); *West Penn Rys. Co. v. Pa. Pub. Util. Comm'n*, 15 A.2d 539, 544 (Pa. Super. 1940) (abandonment of rail line); *Re Avery Transp., Inc.*, 64 Pa. PUC 420 (Aug. 20, 1987) (abandonment of a bus route).

The Indicated Parties note that this standard has also been applied to the abandonment of fixed utilities, such as water and natural gas. *Id.* citing *Borough of Duncannon v. Pa. Pub. Util. Comm'n*, 713 A.2d 737 (Pa.Cmwlth. 1998) (water service pipeline); *In re National Fuel Gas Distribution Corp.*, 99 Pa. PUC 181 (June 1, 2004) (natural gas pipeline); *See e.g., In Re PPL Gas Utilities Corp.*, 2007 WL 542199 (Jan. 26, 2007) (propane pipeline).

The Indicated Parties add that the Commission's most recent review of intrastate petroleum pipeline abandonments has occurred via a series of cases involving Sunoco Pipeline, L.P. ("Sunoco Pipeline"). *Id.* citing *Application for Approval of Abandonment of a Portion of Sunoco Pipeline, LP 's Petroleum Products Pipeline Transportation Service*, 2004 WL 5854823, (Jan. 25, 2005) ("Sunoco 2005 Application Order"); *Application of Sunoco Pipeline L.P. for a Certificate of Public Convenience to Abandon a Portion of Its Petroleum Products Pipeline Transportation Service in Pennsylvania*, A-2013-2371789, 2013 WL 4761154 (Aug. 29, 2013) ("Sunoco 2013 Application Order"); and a series of Petitions filed by Sunoco Pipeline, L.P seeking a Commission determination that certain buildings for a pipeline were reasonably necessary for the convenience and welfare of the public. Commission Docket Nos. P-2014-2411941-24111954, P-2014-2411956-2411958, P-2014-2411960-2411961, P-2014-2411963-2411968, P-2014-2411971-2411972, P-2014-2411974-2411977, and P-2014-2411979-2411980 ("Sunoco 2014 Petitions Order").

They explain that in the *Sunoco 2005 Application order*, Sunoco Pipeline sought to discontinue one of two roughly parallel segments of intrastate petroleum product pipeline. IP

Main Brief, at 40. While no shipper customers objected to the Application, one petroleum terminal facility owner ("Artex") objected because the segment proposed for abandonment provided 100% of the petroleum products it received. The Indicated Parties note that the ALJ's recommended decision<sup>24</sup> in the *Sunoco 2005 Application order* set forth at length the relevant considerations for approval of the abandonment of an intrastate petroleum pipeline:

When considering an abandonment application, the Commission has considered *the extent of the loss to the utility; whether or not a reasonable rate increase would cure such loss; the economics of maintaining the system; the public's use of such system; the number of customers affected; the prospects of the system being used in the future; balancing the utility's loss with the hardship to the public; the availability and adequacy of alternative service; the cost of conversion; and, the allocation of such costs.* The Commission has permitted abandonment of a line serving only four (4) seasonal customers where the line was clearly unsafe and not cost effective to repair, and two of the customers could be easily converted to an alternative fuel. The Commission has conditioned permission to a utility to abandon service on: all customers having converted to an alternative source; payment by the utility of all or a portion of conversion costs or transfer costs or a lump sum; and, abandonment and deactivation of its facilities in accordance with federal and state statutes (internal citations omitted).

IP Main Brief, at 40-41, citing *Application for Approval of Abandonment of a Portion of Sunoco Pipeline, LP 's Petroleum Products Pipeline Transportation Service*, 2004 Pa. PUC LEXIS 695, (July 9, 2004), at \*49-\*50 (Recommended Decision) ("*Sunoco 2004 Application R.D.*") (emphasis in IP Main Brief).

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<sup>24</sup> The Commission reversed the recommended decision only to the extent it required Sunoco to provide Artex with free petroleum product as a condition of abandonment. *Sunoco 2005 Application Order*, at 5-6.

## Disposition

The Commission has jurisdiction over Laurel and its Application under Sections 102, 1102 and 1103 of the Public Utility Code, 66 Pa.C.S. §§102, 1102, 1103 (defining public utilities, requiring certificates and establishing procedures to obtain them). Section 1102(a)(2) of the Public Utility Code, 66 Pa. C.S. §1102(a)(2), requires a public utility to obtain a certificate of public convenience before abandoning or surrendering any service in whole or in part. Section 1102(a)(2) states, in pertinent part, as follows:

(a) General rule. - Upon the application of any public utility and the approval of such application by the commission, evidenced by its certificate of public convenience first had and obtained, and upon compliance with existing laws, it shall be lawful:

\*...\*...\*

(2) For any public utility to abandon or surrender, in whole or in part, any service ...

66 Pa. C.S. §1102(a)(2).

Section 1103 of the Public Utility Code, 66 Pa. C.S. §1103, identifies the procedure for obtaining a certificate of public convenience and provides that a certificate of public convenience shall be granted by order of the Commission only if the Commission “shall find and determine that the granting of such certificate is necessary or proper for the service, accommodation, convenience, or safety of the public.” 66 Pa. C.S. §1103.

Thus, the Commission must determine whether the abandonment of the utility's service is necessary or proper for the service, accommodation, convenience or safety of the public. *See Monessen Southwestern Railroad Company v. Pa. Pub. Util. Comm'n*, 82 Pa. Cmwlth. 13, 474 A. 2d 1203, (1984), *aff'd* and remanded; *New York Central Railroad v. Pa. Pub. Util. Comm'n*, 188 Pa. Super. 647, 149 A.2d 562 (1959). The standard for abandonment requires a balancing of the interests of the utility's loss and the hardship on the public. *Fisher v. Columbia Gas of Pa. Inc.*, 78 Pa. PUC 432 (1993).

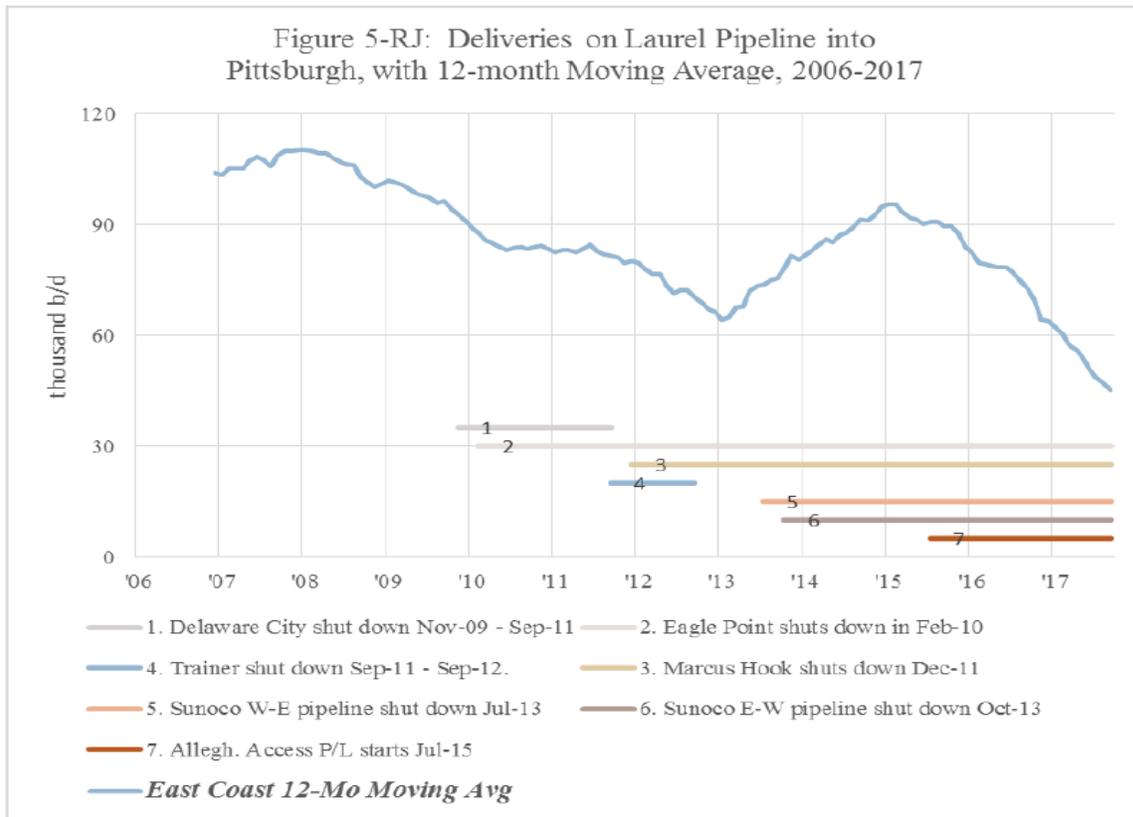
In adjudicating applications for abandonment of service, the Commission considers multiple factors, the most prevalent of which are: (a) the extent of the loss to the utility; (b) the prospects of the system being used in the future; (c) the balancing of the utility's loss with the hardship on the public; and, (d) the availability of alternative service. See *Commuters Comm. v. Pa. Pub. Util. Comm 'n*, 88 A.2d 420 (Pa. Super. 1952). The public utility must also demonstrate that its losses could not be cured by the granting of a reasonable rate increase. See *Application of NRG Energy Center Harrisburg LLC*, A-2011-2239521 (Opinion and Order entered October 2, 2012); *Application for Approval of Abandonment of a Portion of Sunoco Pipeline, LP 's Petroleum Products Pipeline Transportation Service*, 2004 WL 5854823, (Jan. 25, 2005); *Re: Ridgville Water Co.*, 51 Pa. PUC. 58 (1977); *Re: Valley View Water Co.*, 55 Pa. PUC 466 (1982); see also *Re Leechburg Gas Company*, 66 Pa. PUC 29 (1988); *Re Pennsylvania Electric Company*, 70 Pa. PUC 133 (1989); *Groff v North Penn Gas Co.*, 77 Pa. PUC 203 (1992); see also *Monessen*, 474 A. 2d 1205-1206, citing *Re Valley View Water Company*, 55 Pa. PUC 466 1982; *Commuters' Committee v. Pa. Pub. Util. Comm 'n*, 170 Pa. Super. 596, 604-605, 88 A.2d 420, 424 (1952).

#### **E. Whether the Abandonment of Service Standard Has Been Met**

##### a) The extent of the loss to the utility

##### Laurel's Position

Laurel maintains that volumes from Eldorado to Pittsburgh have been declining since 2006. Laurel Main Brief, at 61. It points out that in 2006, Laurel pipeline supplied approximately 104,000 bpd of Pittsburgh's total demand for refined petroleum products, whereas for the last 12 months, Laurel has supplied approximately 45,000 bpd of Pittsburgh's total demand for refined petroleum products. The difference constitutes a decline in supply of over 55%. *Id.*, at 62, Laurel St. No. 5-RJ, p. 3.



Laurel Main Brief, at 63, Laurel Exhibit MJW-33, p. 2.

Laurel explains that the volumes on Laurel to Pittsburgh increased in 2013 and 2014 because the Sunoco West-East pipeline was shut down in July 2013 and the Sunoco East-West pipeline was shut down in October 2013. *Id.* However, Laurel avers that when the Allegheny Access pipeline began providing service to Pittsburgh from the Midwest in July 2015, volumes on Laurel from Eldorado to Pittsburgh declined again and have continued to decline. *Id.* As its pipeline volumes to Pittsburgh have declined significantly in the period of 2013 through 2017, Laurel argues that “if entities were seeking to move product to Pittsburgh from the east, the closure of the Sunoco line to Pittsburgh should have caused a continuous increase in Laurel volumes to Pittsburgh, during the same period, because Laurel was the only remaining east-to-west pipeline option.” Laurel Main Brief, at 65.

Next, Laurel rejects the Indicated Parties’ argument that East Coast products are cheaper in the summer and that the Laurel pipeline is necessary to move summer volumes to

Pittsburgh. Laurel Main Brief, at 67, referring to IP St. No. 1, at 24. Contrary to their assertions, Laurel maintains that Pittsburgh is receiving more supply from the Midwest throughout the entire year and that Laurel volumes have declined in all four quarters of the year. *Id.*, referring to Laurel St. No. 5-RJ, pp. 20-21. Laurel asserts that:

- For the first quarter, January through April, volumes have fallen by approximately 73% from 92,000 bpd in 2006 to 25,000 bpd in 2017. The decline was particularly steep from 2016 to 2017 where volumes fell by half from 51,000 bpd to 25,000 bpd. Laurel Main Brief, at 67.
- For the second quarter of April – June, Laurel volumes to Pittsburgh have declined by approximately 39% from 108,000 bpd in 2006 to 66,000 bpd in 2017. Again, the decline was particularly steep from 2016 to 2017 where volumes fell by approximately 30% from 94,000 bpd to 66,000 bpd. *Id.*
- For the third quarter of July – September, which is primarily the summer months, Laurel volumes to Pittsburgh declined by approximately 52% from 113,000 bpd in 2006 to 54,000 bpd in 2017. The decline from 2016 to 2017 was also dramatic for the third quarter, falling by approximately 29% from 76,000 bpd in 2016 to 54,000 bpd in 2017. *Id.*, at 67.
- At the time of the filing of the Main Brief, Laurel did not have volumes for the fourth quarter of 2017, October – December. However, Laurel volumes to Pittsburgh from 2006 to 2016 have significantly declined by approximately 65% from 103,000 bpd to 36,000 bpd. The 2015 to 2016 fourth quarter volumes also declined significantly (in half) from 72,000 bpd in 2015 to 36,000 bpd in 2016. *Id.*, at 67-68.

Based on these figures, Laurel maintains that its volumes to Pittsburgh have significantly declined over the entire period from 2006 to 2017. *Id.*, at 68. Additionally, Laurel draws attention to the fact that the steep declines from 2016 to 2017 occurred shortly after the Allegheny Access pipeline became operational. *Id.*

Laurel maintains that it will experience operational issues if volumes continue to decline, even if they do not decline all the way to zero. Laurel explains that operational issues occur as pipeline volumes decrease. These operational issues include increased transit times, which can create a death spiral, causing shippers to further decrease shipments to Pittsburgh. Laurel Main Brief, at 70-71; Laurel St. No. 5-R, p. 45; Laurel St. No. 5-RJ, pp. 22-23.

Laurel contends that it should not have to wait until volumes to Pittsburgh further decline to reverse the line. Laurel argues that the present Application was prompted by Laurel's recognition of the seismic shift in supply fundamentals that underlie the increase in Midwestern supply to Pittsburgh and the resulting decline in Laurel volumes to Pittsburgh. It sees the present Application as its attempt to proactively address this fundamental market change and argues that it is in the public interest for Laurel's Application to be approved now as opposed to waiting until Laurel's volumes decline further. Laurel Main Brief, at 71.

In support of its case for prompt approval of the Application, Laurel argues that the reversal requires a significant lead time for regulatory approvals and construction. *Id.*, at 72. It reasons that if Laurel is forced to wait to implement the reversal, it will increase the under-utilization of the pipeline and almost certainly create operational issues that could make the pipeline unfavorable for shippers due to increased transit times and additional transmix issues and costs. Laurel Main Brief, at 72; *see* Laurel St. No. 3, pp. 5-6, *see also* Laurel St. No. 5-RJ, pp. 21-23.)

In addition, Laurel points out that it has secured commitments from shippers which offset the construction costs. Laurel Main Brief, at 72; *see* Hearing Tr. 282:7-18; *see also* (HC) Laurel Exhibit DWA-11, p. 3 of 11. If Laurel's reversal is denied and Laurel must conduct a new open-season in the future, it is likely that the committed shippers will find new alternatives to bring their products to Pittsburgh. Laurel Main Brief, at 72.

Furthermore, if Laurel's volumes to Pittsburgh continue to decline, Laurel's risk of having an empty pipe, especially in the winter months, increases significantly. Laurel avers that it is poor public policy to allow its pipeline to be under-utilized when it could be shipping lower cost Midwestern supplies to Western and Central Pennsylvania. *Id.*

Having argued that shipper volumes between Altoona and Harrisburg have substantially declined over the past 10 years and the decline from 2016 to 2017 has been precipitous, Laurel explains that it is paid for shipments on a volume basis for each barrel it

ships. Therefore, Laurel has been receiving substantially lower revenues as its volumes have declined. Laurel Main Brief, at 176-77.

Laurel acknowledges that it did not prepare or present a cost and revenue analysis in this proceeding. Laurel Main Brief, at 177. Laurel explains this decision on the grounds that there will be no abandonment of service as all shippers will be able to ship all products to all locations after the reversal. *Id.* Second, Laurel explains that, since the volumes between Altoona and Laurel are projected to go to zero, or so low in the future that absent the reversal, the pipeline will be a useless or wasted asset, “It is meaningless to do a cost and revenue comparison if revenues are projected to go to zero.” *Id.*

Laurel rejects the Indicated Parties’ argument that Laurel should have proposed a rate increase. According to Laurel, this argument is without merit. Laurel Main Brief, at 177. Laurel explains that shippers are moving less and less product to destination points east of Altoona because it is uneconomic to do so. *Id.* “Adding costs to their shipments through a rate increase will simply cause them to ship even less product to Pittsburgh.” *Id.*

#### The Indicated Parties’ Position

First, the Indicated Parties argue that Laurel has failed to demonstrate any loss to the utility. IP Main Brief, at 49. According to the Indicated Parties, the totality of Laurel's "evidence" of demonstrated "loss" rests in its disputed claim that there are declining petroleum product shipments on the Laurel pipeline west of Eldorado, Pennsylvania and therefore that Laurel is receiving less revenue. *Id.*, at 49, see also Hearing Tr. at 239:20-25 and 240:10-13. They point out that, unlike the Sunoco Pipeline in the *2004 Sunoco Application* proceeding, Laurel made no showing of any quantitative projections of losses or that it would be unable to collect rates from shippers to cover its costs to maintain the proposed segment of the Laurel pipeline to be reversed. *Id.* at 49. Among other things:

- Laurel did not present and does not calculate Laurel's return on investment for the Laurel pipeline. See Tr. at 240:17-18.

- Laurel has not filed a rate case before the Commission since at least the mid-1980s and nothing has prevented Laurel from doing so. See Tr. at 240:19-25 and 241:1.
- Prior to this proceeding, neither Laurel nor Buckeye has ever advised the Commission of its claim of declining petroleum product volumes moving along the Laurel pipeline between Eldorado and Pittsburgh and the claimed impacts on Laurel. See Tr. at 241:2-7.
- At no time prior to this proceeding did Laurel meet with the Indicated Parties to ask for their assistance and cooperation in dealing with alleged adverse impacts on Laurel as a result of alleged declining petroleum product volumes moving along the Laurel pipeline between Eldorado and Pittsburgh. See Tr. at 242:11-14 and 257:23-24 to 258:1-6.
- Laurel never even evaluated the proposed Laurel pipeline reversal in terms of potential revenues, costs and benefits solely on Laurel, the Pennsylvania regulated utility, independent of any other Buckeye affiliate. See Tr. at 247:12-17.
- There is a substantial difference in the rates for service on Buckeye's interstate pipeline compared to Laurel's Pennsylvania rates, in an order of magnitude of three dollars per barrel (\$2.9168/barrel) (interstate) versus sixty cents per barrel (\$0.60/barrel) under Laurel's tariff. See IP St. No. 1, at 12:13, 16.

IP Main Brief, at 49-50.

Based on the above, the Indicated Parties conclude that Laurel is not entitled to abandon the petroleum products pipeline transportation service west of Eldorado along the Laurel pipeline, having failed to satisfy the requirement of losses associated with the service it now seeks to abandon. *Id.*, at 50.

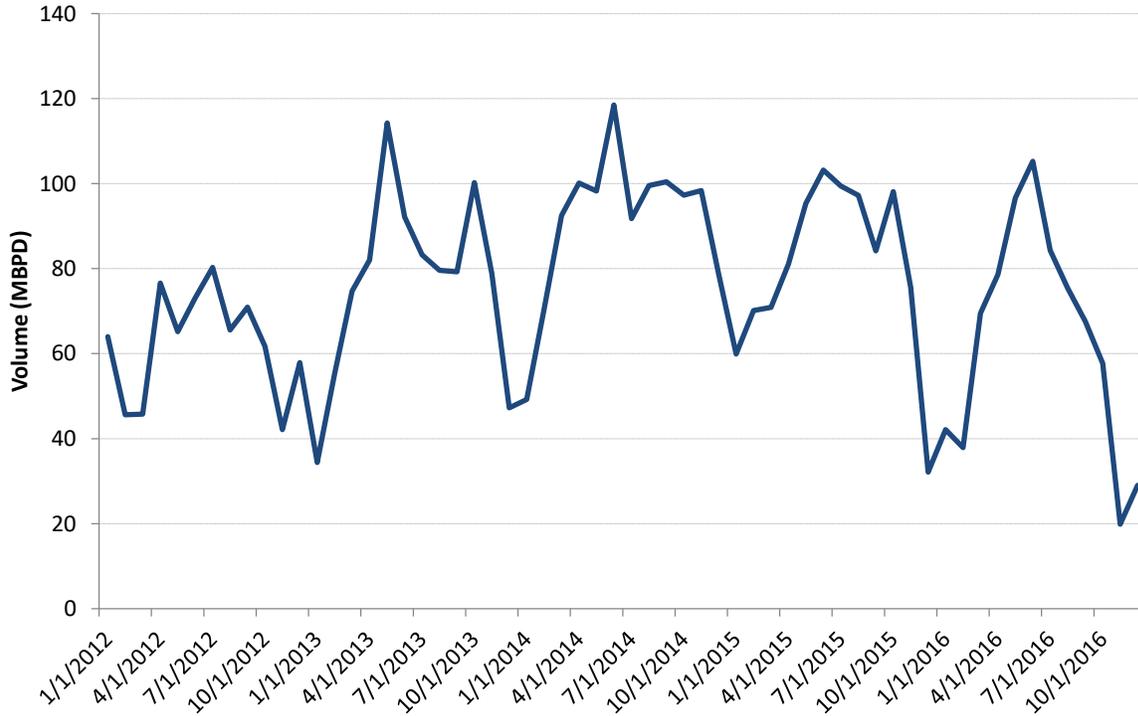
Next, the Indicated Parties provide their own analysis of the customer interest in continuing to have the service available for shipments from the East to points west of Eldorado, and the historic data that shows the extent to which volumes travel west of Eldorado.

The Indicated Parties assert that refiners such as PESRM and Monroe Energy consider continuation of east to west service to the Pittsburgh market extremely important to their operations. Additionally, shippers and marketers such as Gulf, Sheetz and Giant Eagle also strongly oppose the proposal that would reverse flow on the Laurel pipeline and eliminate the opportunity for Pittsburgh to access supplies coming from eastern refiners. IP Main Brief, at 51.

According to the Indicated Parties, customer interest in continuing to use the service remains strong. *Id.*

In their analysis of the historic and present shipment data, the Indicated Parties point out that volumes on the Laurel pipeline from Eastern origins to Pittsburgh destinations in 2016 were at a level similar to early 2013, which was an increase from 2012 levels when the Trainer refinery was shut down. IP Main Brief, at 51; IP St. No. 1, at 2:16-20, 3:1-10. Volumes to the Pittsburgh area in 2014 and 2015 were temporarily increased because of the shutdown of ETP's (Sunoco) pipelines from Philadelphia and the Midwest. *Id.*, at 53; IP St. No. 1, at 2:16-20, 3:1-10. Total volumes to Pittsburgh destinations from the east have fluctuated seasonally over the five-year period 2012-2016 with volumes in the summer months being in the 65,000 BPD to 119,000 BPD range, decreasing in the winter months to a range of 20,000 BPD to 100,000 BPD. *Id.*, at 54; IP St. No. 1, at 2:16-20, 3:1-10. Moreover, they emphasize that volumes since 2006 were impacted by refinery shutdowns that subsequently restarted, and that volumes have rebounded from 2012 levels with 2016 being consistent with 2013 levels as shown in the following figure, which relies on volume numbers provided by Laurel during discovery:

**Figure 1--Volumes on the Laurel System from Eastern Origins to Pittsburgh Destinations (MBPD)**

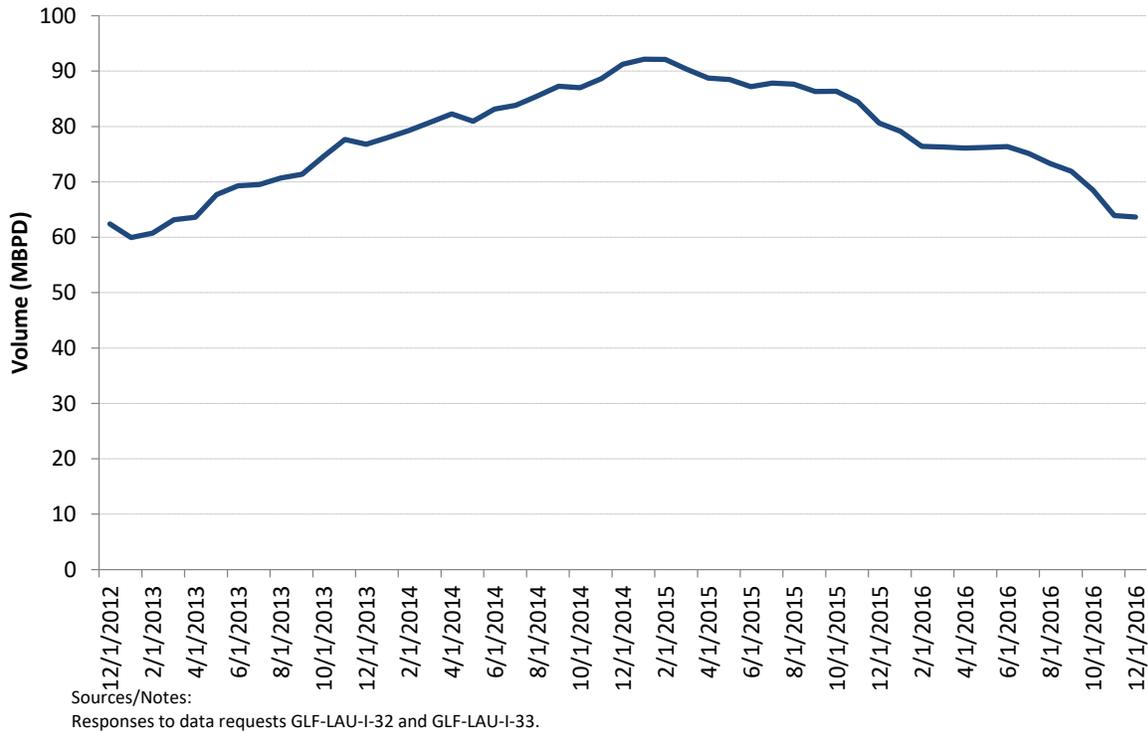


Sources/Notes:  
Responses to data requests GLF-LAU-I-32 and GLF-LAU-I-33.

*Id.*, at 54; IP St. No. 1, at 6: Figure 1.

Per the Indicated Parties, the fluctuations in volumes from the east to Pittsburgh since 2012 are illustrated by the following figure:

**Figure 2 –Volumes on the Laurel System from Eastern Origins to Pittsburgh Destinations -  
-12-month Rolling Average (MBPD)**

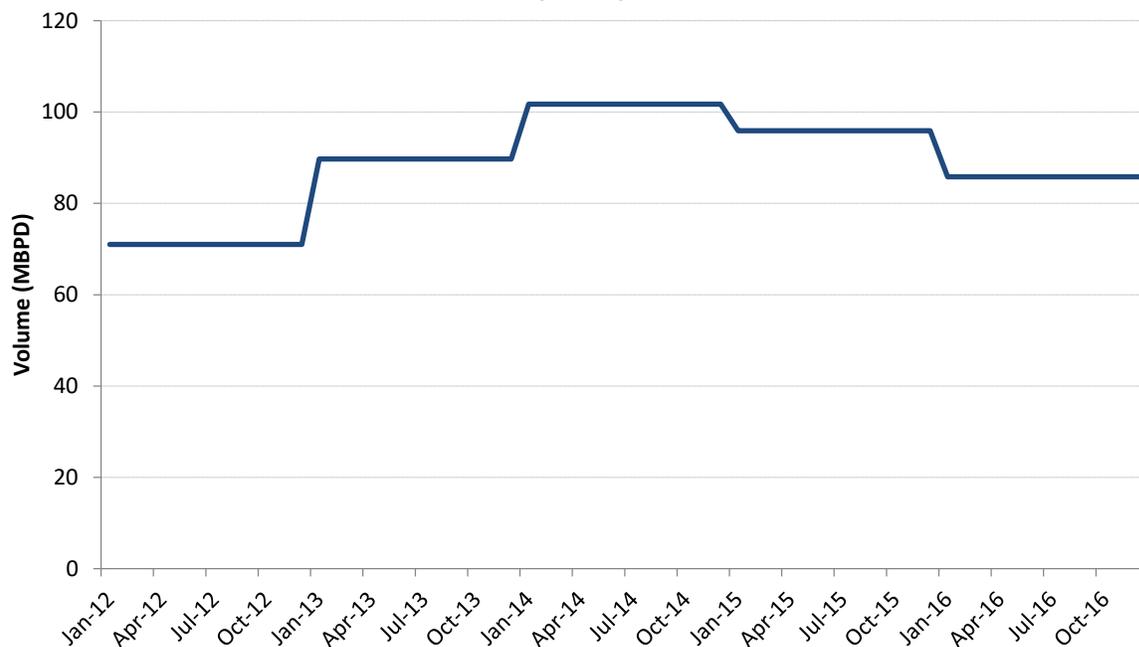


*Id.*, at 55; IP St. No. 1, at 7: Figure 2.

The Indicated Parties explain that there was an increase over 2012 levels through early 2015 and a decrease by the end of 2016 to a level similar to early 2013 with an average annual volume of over 60,000 BPD. They aver that these fluctuations were driven by various factors, such as the shutdown of the Trainer refinery near Philadelphia in September 2011, the 2010-2011 shutdown of the Eagle Point and Marcus Hook refineries near Philadelphia by Sunoco, Inc., and the 2009-2011 shutdown of the Delaware City refinery now owned by PBF Holding Company LLC. *Id.*, at 55; IP St. No. 1, at 7-8.

In addition, they maintain that Figure 3 below demonstrates that average summer deliveries to Pittsburgh destinations from the east have been significant and relatively consistent from January 2012 through late 2016.

**Figure 3 – Volumes on the Laurel System from Eastern Origins to Pittsburgh Destinations – Annual Summer Average (MBPD)**



Sources/Notes:  
 Responses to data requests GLF-LAU-I-32 and GLF-LAU-I-33.  
 Summer months are May 1st through September 30th.

*Id.*, at 56; IP St. No. 1, at 10; Figure 3.

According to the Indicated Parties, the volumes shown in Figure 3 are especially significant when one considers that the Pittsburgh market for refined petroleum products ranges from 103 MBPD to 113 MBPD. *Id.*, at 56; IP St. No. 1, at 20:9-21. They estimate western Pennsylvania petroleum product demand to be 144 MBPD from June to August and 108.6 MBPD during September to May (IP St. No. 2, at 13:9-11).

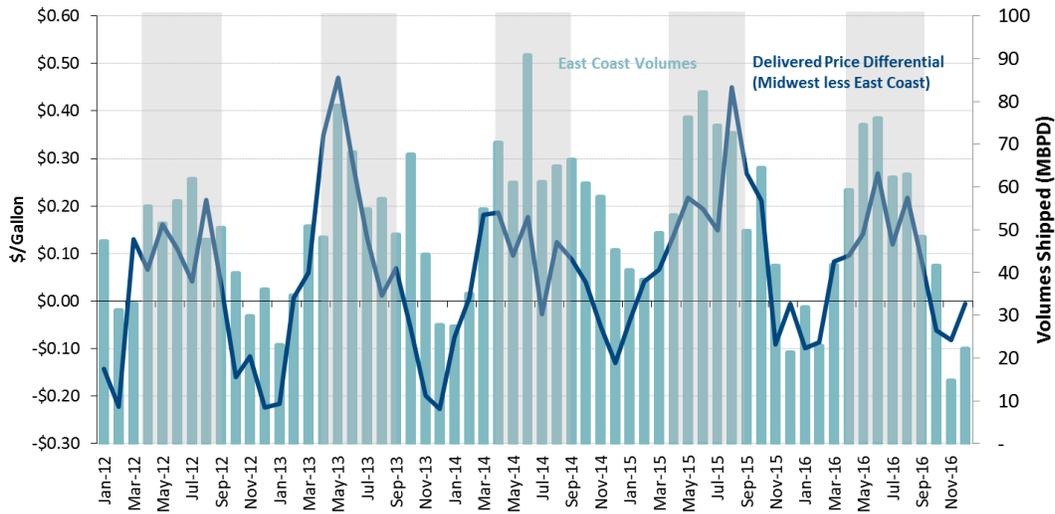
The Indicated Parties aver that Laurel-Buckeye's internal documents acknowledge that shipment data does not make a strong case for authorizing the abandonment. **[BEGIN HIGHLY CONFIDENTIAL]**

**[END HIGHLY CONFIDENTIAL]** It is the Indicated Parties' position that Laurel's motive for pursuing the reversal is to increase the revenues of Laurel's parent Buckeye through

the higher FERC tariff rates Buckeye stands to collect on the volumes delivered to Pittsburgh from Ohio and west. IP Main Brief, at 56-57; IP St. No. 1, at 11:19-23.

The Indicated Parties observe that for seven to nine months of the year, volumes of gasoline sourced from the east to Pittsburgh increase when east coast supply is less expensive than Midwest supply. Pittsburgh area consumers would lose this benefit if the reversal is approved. IP Main Brief, at 57; IP St. No. 1, at 25:1-7; and IP St. No. 1, at 25: Figure 5.

**Figure 5 – Gasoline Volumes to Pittsburgh Sourced from the East Increase When East Coast Supply is Less Expensive than Midwest Supply Total Volumes of Gasoline Delivered to Pittsburgh from the East Compared to Differential in Delivered Prices (With Summer RVP Standard)**



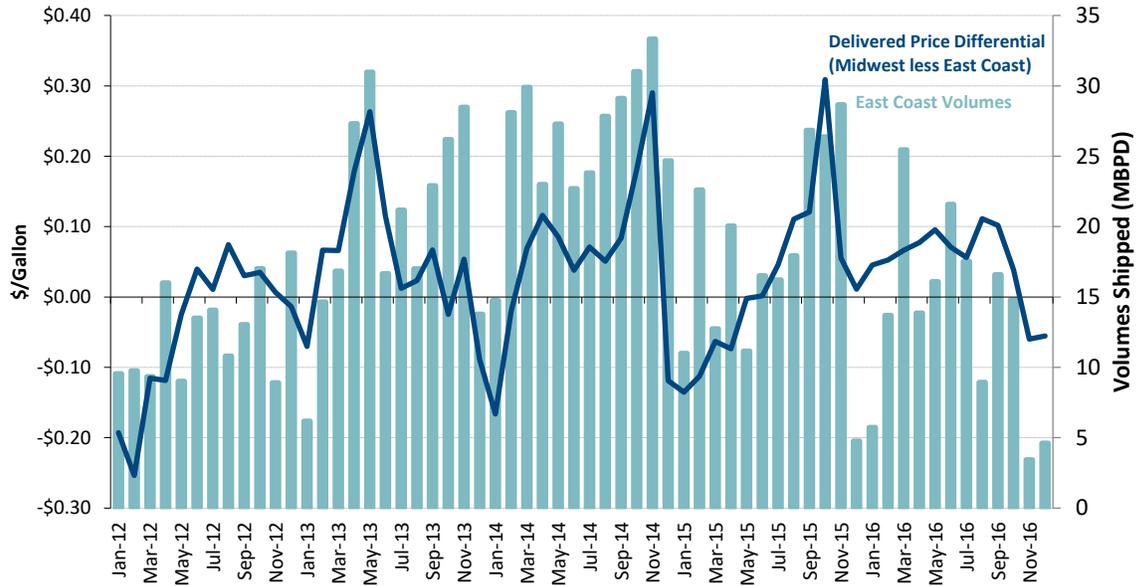
Sources/Notes:  
 Delivered prices calculated using Argus gasoline prices.  
 Shaded areas represent months when the Summer RVP Standard is in effect (Apr. 1st - Sept. 15).

IP Main Brief, at 57; IP St. No. 1, at 25:1-7; and IP St. No. 1, at 25: Figure 5.

A similar pattern is shown in the Figure below for diesel volumes sourced from the east to the Pittsburgh market.

**Figure 8 -- Diesel Volumes to Pittsburgh Sourced from Eastern Origins Increase When East Coast Supply is Less Expensive than Midwest Supply**

**Total Volumes of Diesel Delivered to Pittsburgh from the East Compared to Differential in Delivered Prices**

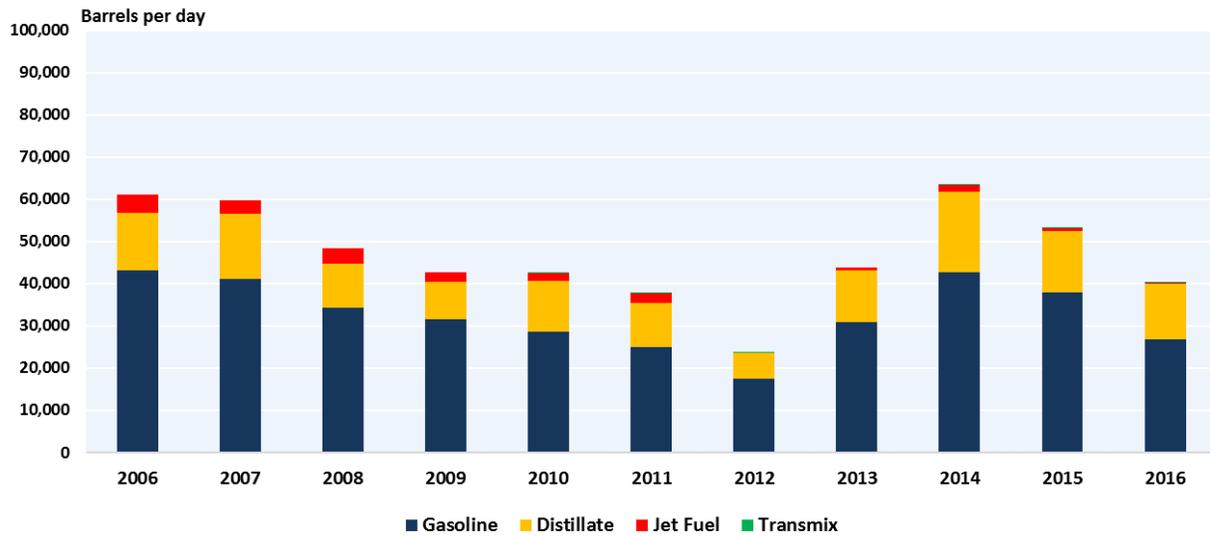


Sources/Notes:  
Delivered prices calculated using Argus diesel prices.

IP Main Brief, at 58; IP St. No. 1, at 30: Figure 8.

The Indicated Parties aver that Laurel has overstated the decline in the utilization of the Laurel pipeline and mischaracterized non-material year-to-year variations in shipments from Philadelphia area origins into Pittsburgh from 2006-2016. *Id.* According to them, the Figure below shows that there have been no material and consistent declines in the flow of petroleum products to Pittsburgh from the three locations near Philadelphia refiners.

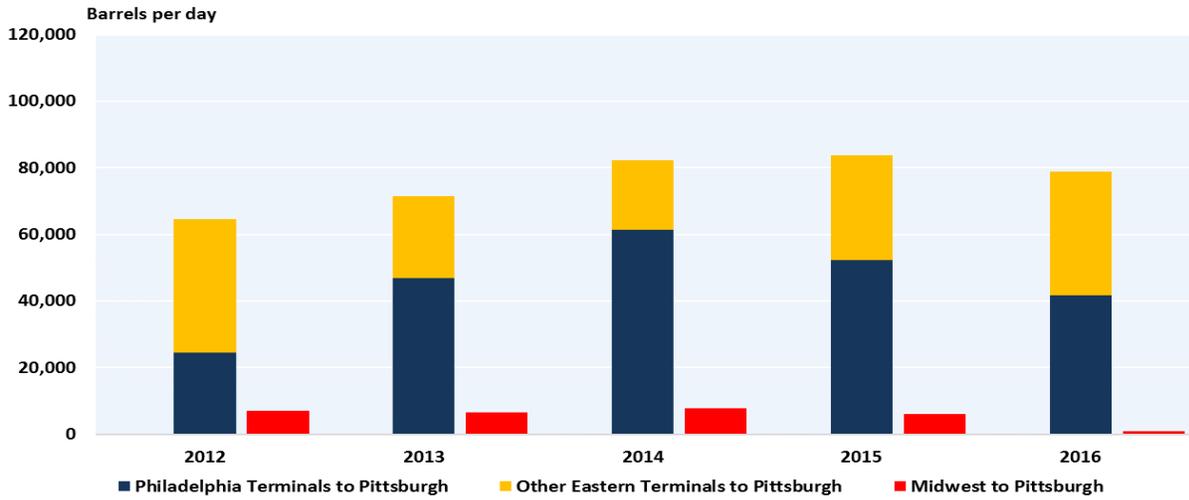
**Figure 8 – Movements along Laurel originating from three Philadelphia area terminals into Pittsburgh, 2006-2016**



IP Main Brief, at 59-60; IP St. No. 2, at 19:8-9.

In addition, the Indicated Parties observe that the 2012-2016 data seen in Figure 9 below show there has been no significant decline in low Reid Vapor Pressure ("RVP") gasoline, the type of gasoline required by the Pittsburgh region during summer months, delivered to the Pittsburgh area despite assertions that Eastern Midwest refiners have the ability to produce the same type of gasoline. They argue that Figure 9 shows that summer movements from Midwestern refiners along the Buckeye Pipeline are not only extremely modest, but actually declined from 2014-2016. IP Main Brief, at 60; IP St. No. 2, at 18:13-15.

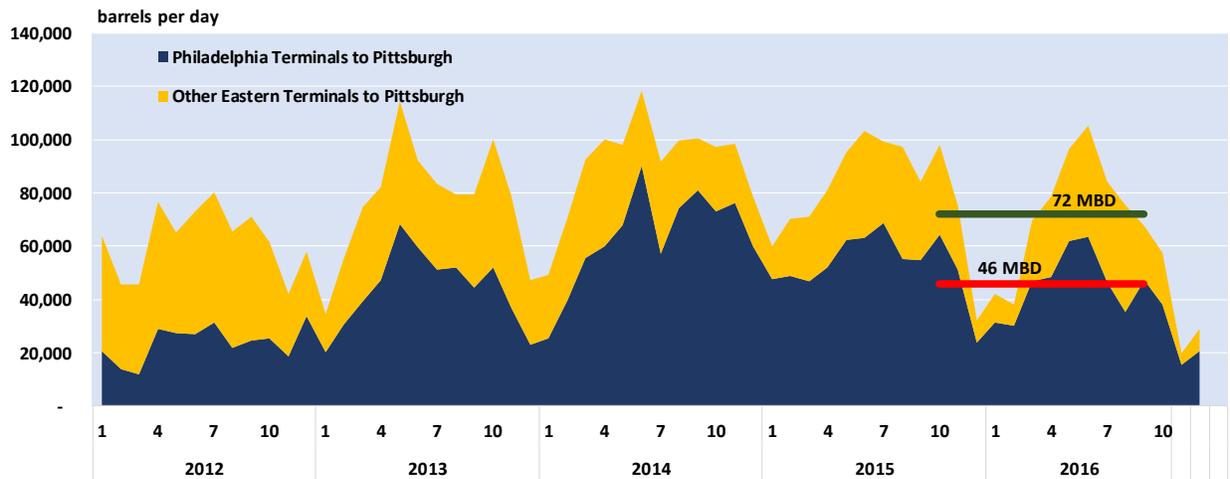
**Figure 9 – Annual Summer blend gasoline movements along Laurel into Pittsburgh, 2012-2016**



*Id.*

The Indicated Parties assert that 71,999 BPD of petroleum products were delivered into Pittsburgh from October 2015 to September 2016. IP Main Brief, at 61; IP St. No. 2, at 20:5-16. And for November 2015 to October 2016, the volume of petroleum products that were delivered into the Pittsburgh market along the Laurel pipeline was 68,573 BPD. *Id.*

**Figure 10 – Total monthly volume of movements along Laurel into Pittsburgh, 2012-2016**



IP St. No. 2, at 20:2-3. These are material volumes that show customers significantly utilized the Laurel pipeline in the last few years. IP Main Brief, at 62.

### Conclusion<sup>25</sup>

As noted above, Laurel did not present a cost and revenue analysis in this proceeding to show the extent of loss to the utility. In support of this decision, Laurel argued that: 1) it is not abandoning service because all shippers will be able to ship all products to all locations after the reversal; and 2) the volumes between Altoona and Pittsburgh are projected to go to zero, so it was meaningless to do a cost and revenue comparison. See Laurel Main Brief, at 177.

Laurel's first argument ignores the fact that shippers of petroleum products on Laurel are not its only customers. The two Philadelphia refineries are its customers, too – they currently count Pittsburgh as a market for their product and will not be able to do so if the reversal is approved. Stated differently, the reversal will allow the product transported over the Altoona – Pittsburgh section of the Laurel pipeline and its delivery points to remain the same but will force the origin points for the product to change. I have rejected this argument, *supra*, and concluded that the proposed reversal is essentially a partial abandonment by Laurel of the service it currently provides in Pennsylvania.

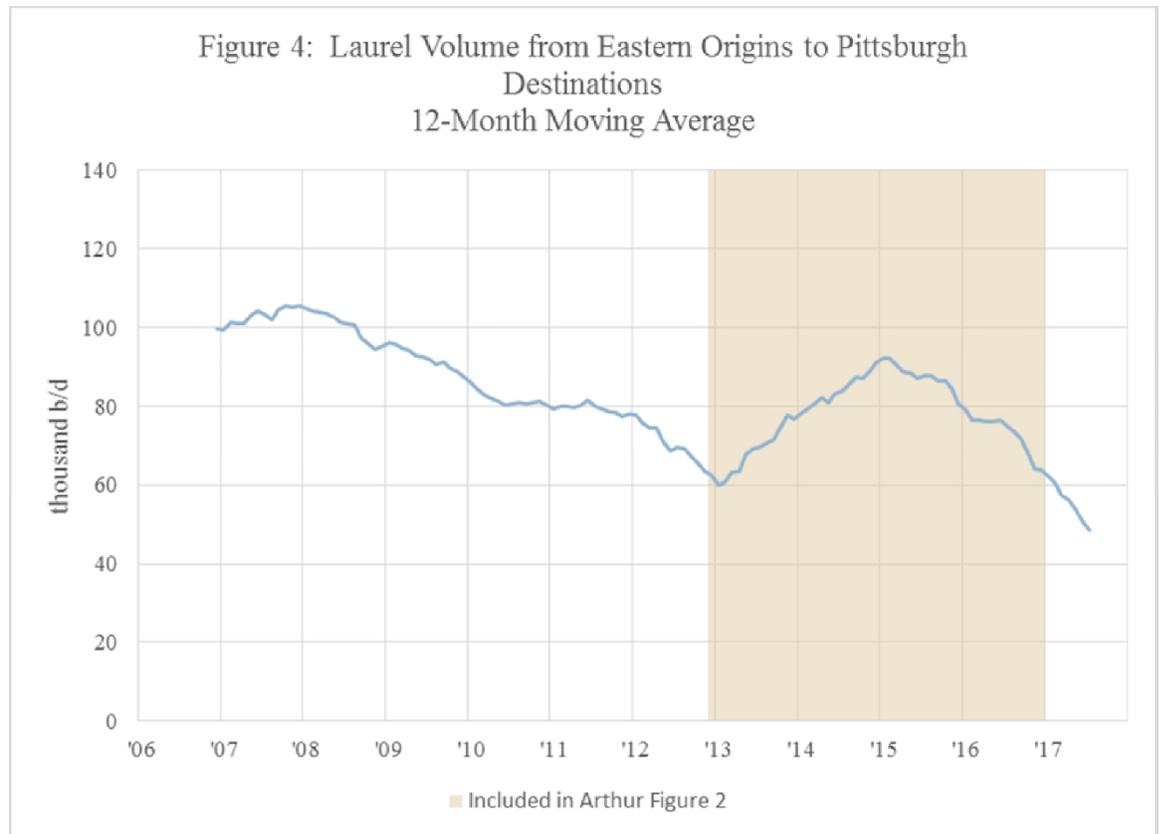
In lieu of a cost and revenue analysis, Laurel did provide information on the historic and current use of the pipeline between Altoona and Pittsburgh by the public. This information highlights the fact that while in 2006, Laurel supplied approximately 104,000 BPD of Pittsburgh's total demand for refined petroleum products, for the last 12 months ending September 2017, Laurel has supplied approximately 45,000 bpd of Pittsburgh's total demand for refined petroleum products. Laurel Main Brief, at 62; Laurel St. No. 5-RJ, p. 3. It is this 56.7%

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<sup>25</sup> In this Recommended Decision, I have used "Disposition" to mark my ruling on a specific issue, and "Conclusion" to mark my findings on a specific element or factor of the abandonment standard.

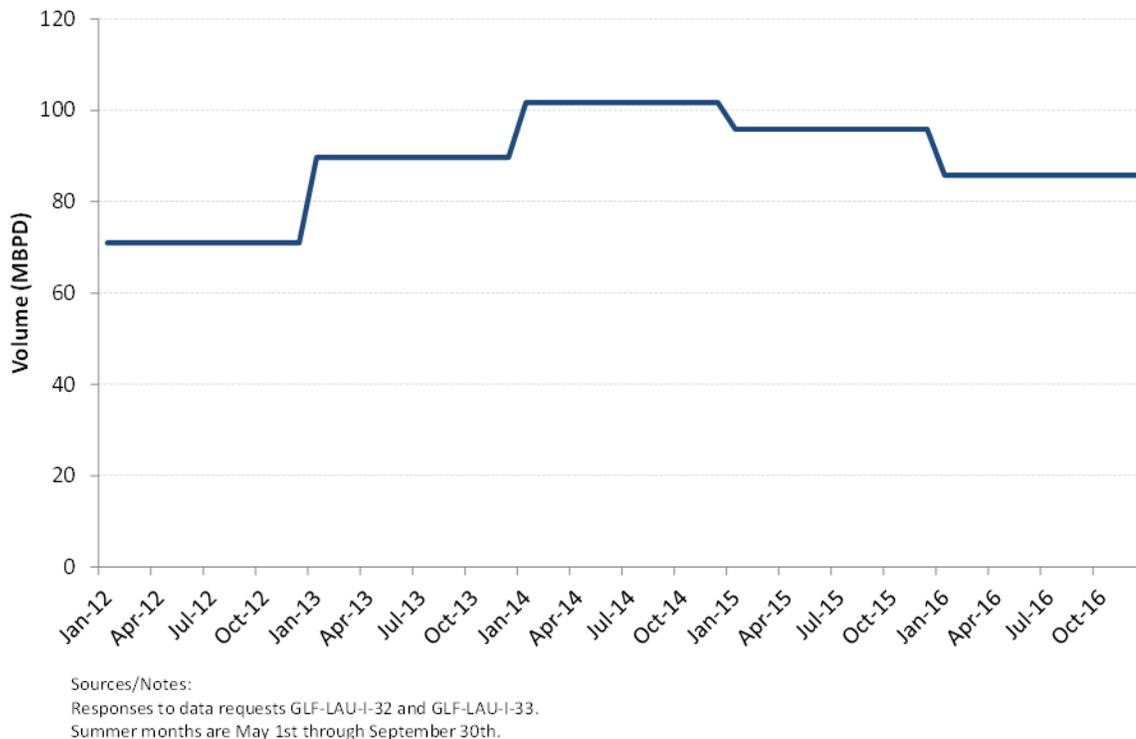
difference between the volume of petroleum products transported to Pittsburgh over the Laurel pipeline in 2006 and 2017 that forms the basis of Laurel’s present Application.

However, deliveries on the Laurel pipeline from the east to the Pittsburgh market during the period 2006-2017 do not show a consistent decline in volumes. Rather, they show both downward upward movements in volumes:



In addition, figures of annual volumes on the Laurel pipeline from eastern origins to Pittsburgh (62.5 MBPD in 2012; 76.9 MBPD in 2013; 91.3 MBPD in 2014, 80.6 MBPD in 2015; 63.8 MBPD in 2016; and 48.6 MBPD for the 12 months ending July 2017) indicate that the Laurel pipeline still delivers meaningful annual volumes to the Pittsburgh area from the east. See IP St. No. 1-S, at 27: Table 1. Also, the average summer deliveries to Pittsburgh destinations from the east have been significant and relatively consistent from January 2012 through late 2016.

**Volumes on the Laurel System from Eastern Origins to Pittsburgh Destinations  
Annual Summer Average  
(MBPD)**



IP St. No. 1, at 10: Figure 3.

The annual volumes and the summer volumes that have reached the Pittsburgh market from the east during the period 2012 to July 2017 are particularly significant when one considers that the Pittsburgh market for refined petroleum products ranges from 103 MBPD to 113 MBPD:

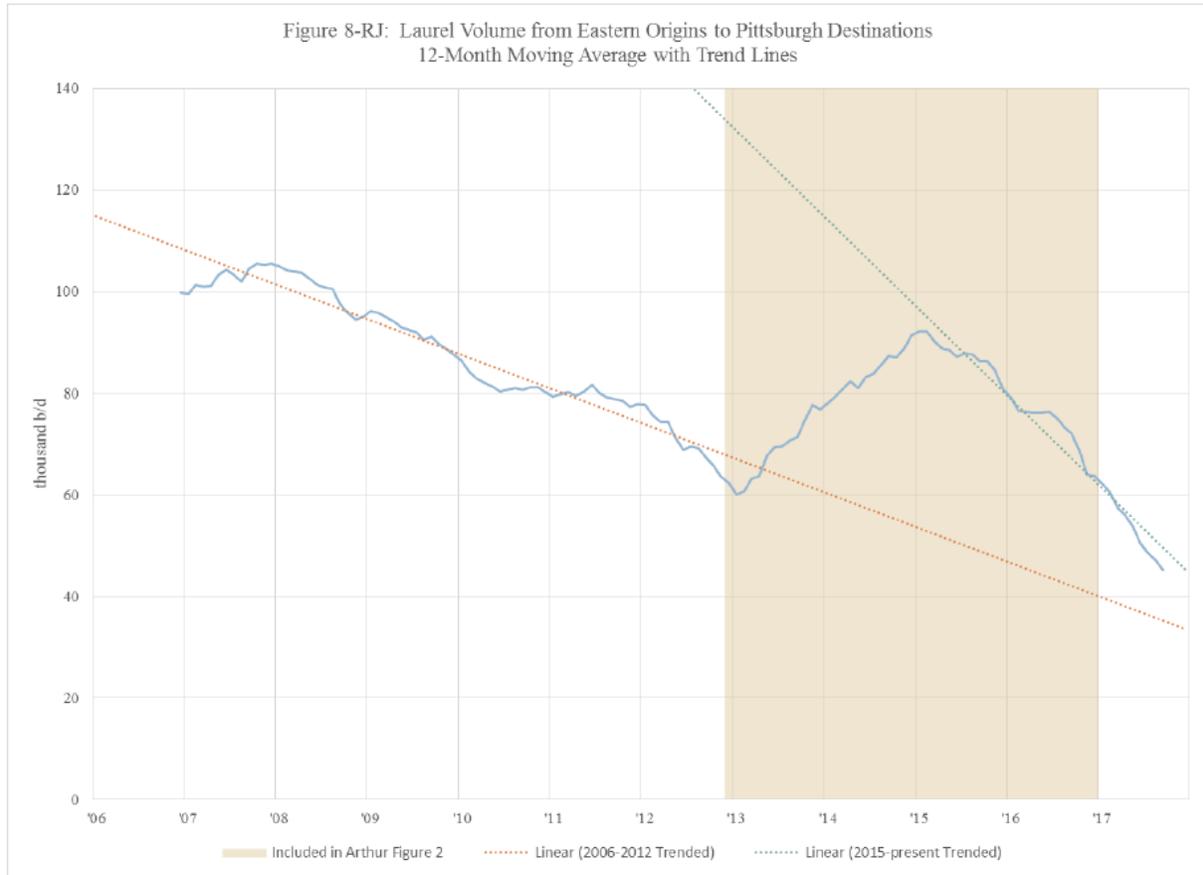
In view of the above, I find that customers have significantly utilized the Altoona-Pittsburgh section of the Laurel pipeline in recent years. While it is undisputed that volumes transported on Laurel from the east to the Pittsburgh market have declined during the period 2006 to 2017, Laurel has overstated the overall impact of the decrease on the use of the pipeline section in question. In addition, because Laurel did not proffer an assessment of the impact of the volume decrease in the Altoona-Pittsburgh section on the pipeline, it is difficult to evaluate the extent of the loss for Laurel *as a utility*.

b) The prospect of the system being used in the future

Laurel's Position

According to Laurel, pipeline volumes to Pittsburgh are projected to continue to decline to zero in the future, or to decline so substantially that operational constraints prevent or substantially delay shipments. Laurel Main Brief, at 177. Laurel contends that the prospects for substantial future use of the Laurel pipeline to points west of Altoona are non-existent because lower-cost refined products are being supplied to Pittsburgh from the Midwest. *Id.* As pipeline constraints from the Midwest continue to ease, and more low-cost products from the Midwest are able to supply Pittsburgh, Laurel volumes to destination points west of Eldorado will continue to fall. Laurel Main Brief, at 177-78.

According to Laurel, its pipeline volumes to Pittsburgh have declined from approximately 104,000 bpd in 2006 to 45,000 bpd for the most recent 12 months ending September 2017. Laurel Main Brief, at 66. This is a 56.7% decrease. Laurel Main Brief, at 66-67. Laurel argues that this decrease is a clear indication of an ongoing trend that is projected to continue due to the overwhelming cost advantage that Midwest refineries have as compared to East coast refineries. Laurel Main Brief, at 67. Laurel's analysis of the trend lines is shown in the figure below:

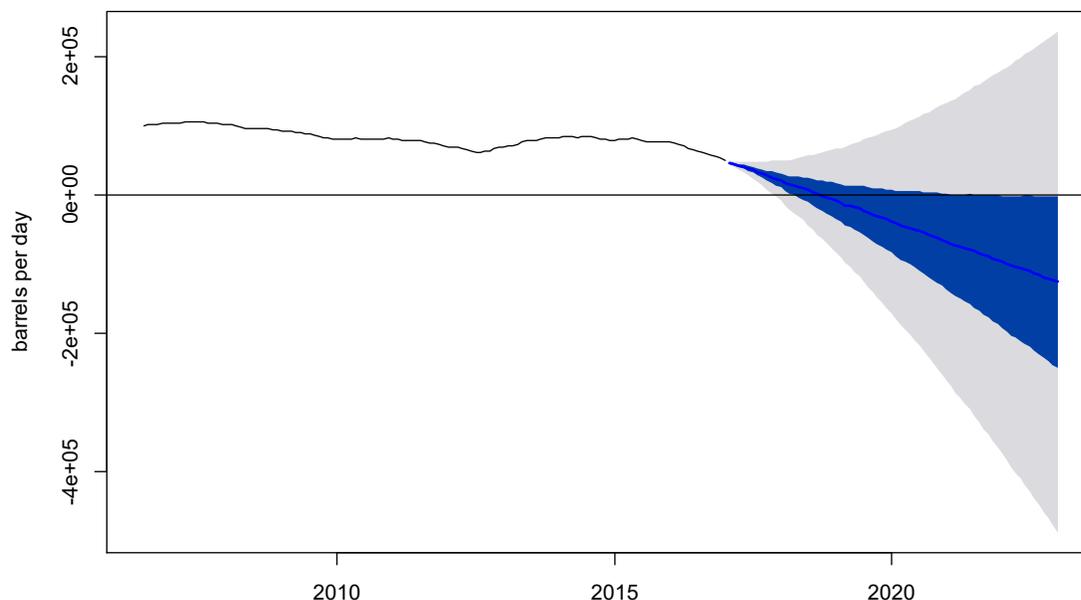


Laurel Main Brief, at 64; see also Laurel Exhibit MJW-33, p. 5; Laurel St. No. 5-R, p. 44, Figure 7.

Laurel maintains that its existing shippers have continuously elected to transport less and less product over Laurel’s pipeline system. Based on a linear projection of recent volume changes, Laurel estimates that volumes from eastern origins to points west of Eldorado on Laurel are projected to reach zero before 2025. Laurel Main Brief, at 40, 84, 106-107. Furthermore, Laurel views this fact as validation for its position that Midwestern supplies have been overtaking Eastern supplies to Pittsburgh in recent years and rejects the Indicated Parties’ position to the contrary. Laurel Main Brief, at 65, referring to IP St. No. 2, p. 18.

Laurel points out that the Indicated Parties’ forecast of Laurel volumes as presented in the “cone of uncertainty” developed by their witness, Mr. Schaal, and corrected by Laurel’s witness, Dr. Webb, shows that Laurel volumes will continue to fall in the future:

**Figure 4: Forecast of Volume Trend Generated by Mr. Schaal’s Workpapers**



Laurel St. No. 5-RJ, pp. 13-16. Based on its analysis of the “cone of uncertainty,” Laurel maintains that the pipeline volumes to Pittsburgh can be expected to cease or reach such a low level that operations will be unfeasible in the relatively near future. Laurel Main Brief, at 66, referring to Laurel St. No. 5-RJ, pp. 13-16, and IP St. No. 2-S, pp. 11-12.

Finally, Laurel asserts that there is currently sufficient pipeline capacity for Midwestern refineries to supply all of Pittsburgh’s demand. Laurel Main Brief, at 81; *see, e.g.* Laurel St. No. 8-R, pp. 14-16; IP St. No. 1, pp. 18-21. However, overall rated capacity does not mean that that amount of product is available to supply Pittsburgh. Laurel Main Brief, at 81. Laurel points out that Husky’s witness, Mr. Miller, explained that there are operational constraints in getting to Pittsburgh. At the hearing, Mr. Miller stated:

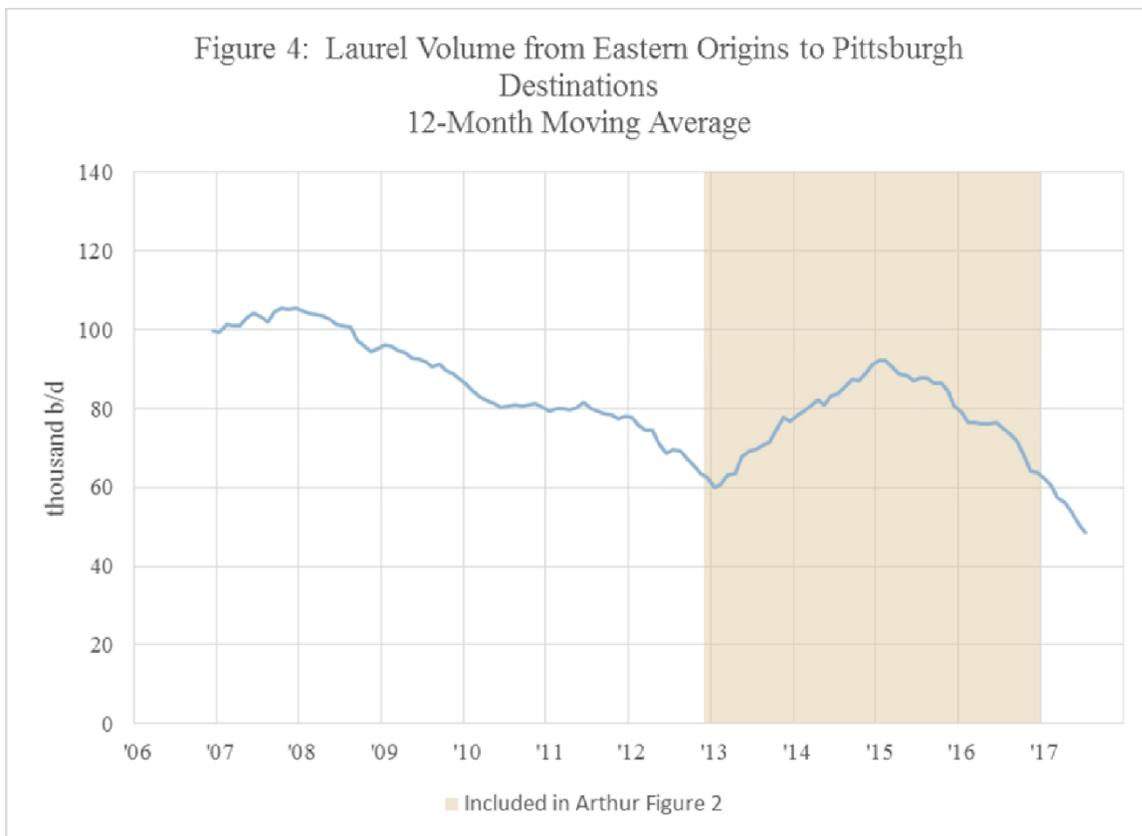
The pipelines are not just representative of the pipelines. They also include the terminal set....[O]ur ability to sell product includes not only the pipeline, but what we can put through the terminals and what terminals customers will want to go to.

Laurel Main Brief, at 81-82; Hearing Tr. 1181-1182.

Laurel opines that Buckeye's increase of its pipeline capacity from the Midwest to Pittsburgh by 40,000 bpd in conjunction with the reversal will alleviate congestion constraints and allow more low-cost Midwestern supply to reach Pittsburgh and also reach central Pennsylvania. Laurel Main Brief, at 83.

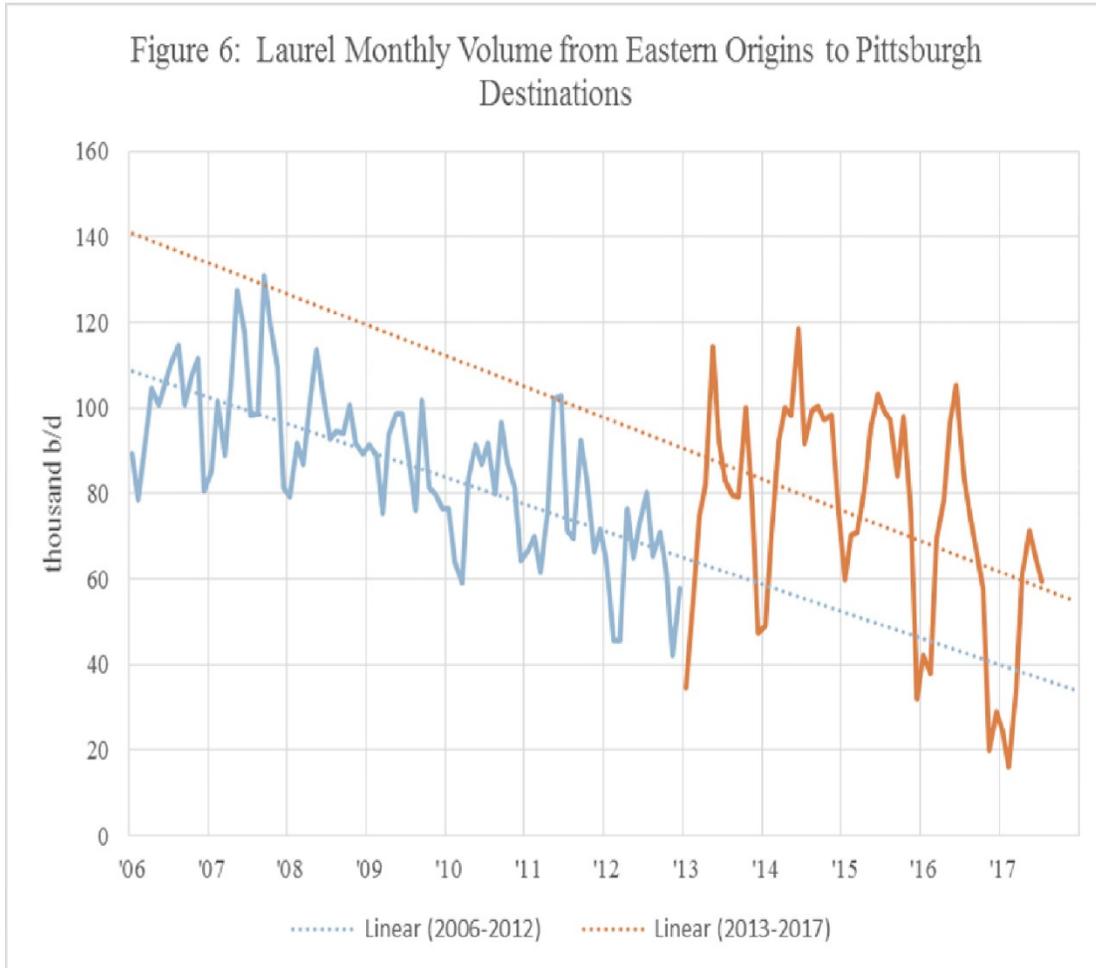
#### The Indicated Parties' Position

The Indicated Parties reject Laurel's theory that one could statistically project the point in time when shipper interest in the service would wane to the point that deliveries on the Laurel pipeline from the east to the Pittsburgh market would go to zero. They take issue with Laurel's interpretation of the Figure below as showing that "deliveries have been falling for approximately 10 years." IP Main Brief, at 62, referring to Laurel St. No. 5-R, at 33:13-15.



Rather than showing 10 years of consistent declines, the Indicated Parties observe that the Figure shows both downward and upward movements in volumes. IP Main Brief, at 63, referring to Laurel St. 5-R, at 35:3-16.

Next, the Indicated Parties challenge the data in Figure 6 below, which presents Laurel's regression analysis of deliveries to Pittsburgh originating from the east. IP Main Brief, at 63-64.



IP Main Brief, at 64.

In their Main Brief, the Indicated Parties explain why Laurel's portrayal of a single inevitable path for the future amounts of east to west volume flows on the Laurel pipeline is unrealistic and erroneous:

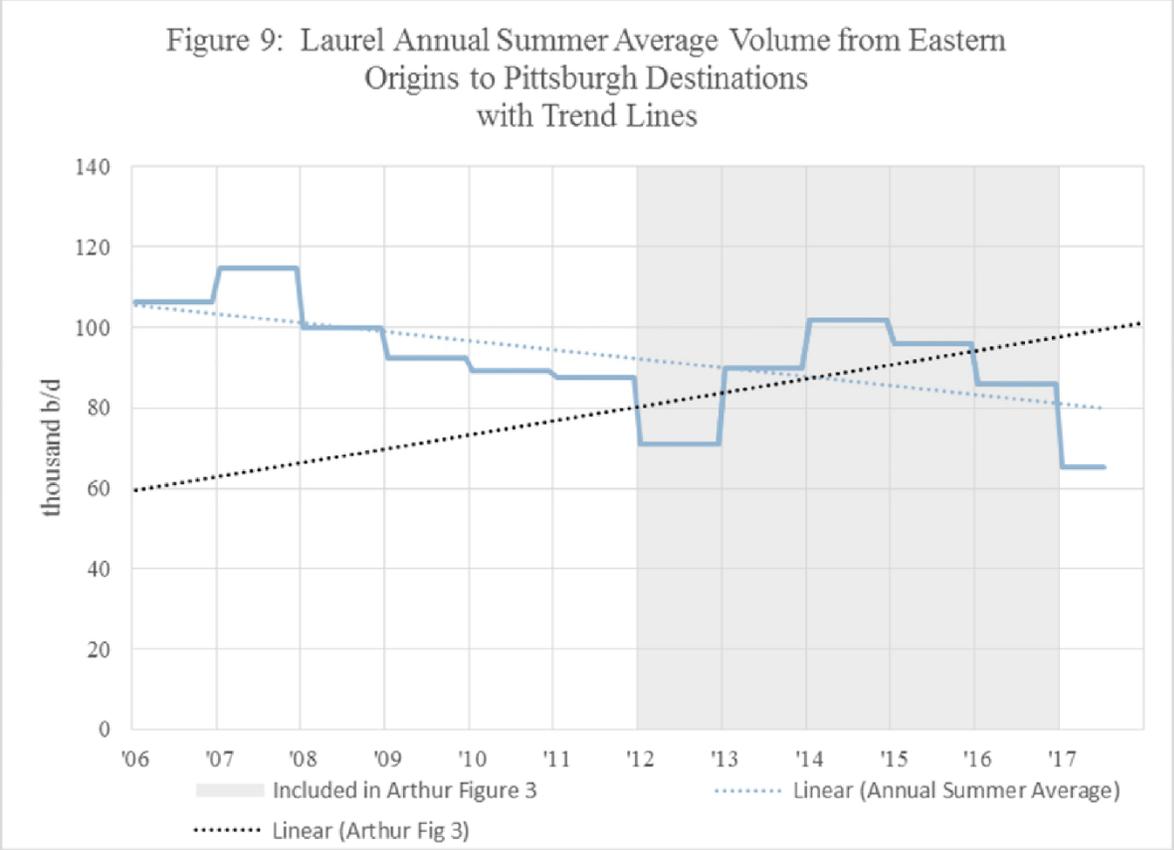
Dr. Webb has performed an overly simplified and fundamentally flawed analysis that has no credibility in predicting volumes declining to zero on the Laurel pipeline. His "linear trend" is a form of regression analysis, a statistical technique used to measure

the relationship between data observations. In this instance, Dr. Webb has used regression analysis on subsets of the data to measure how volumes delivered to Pittsburgh (what is known as the dependent variable in the regression equation) are related to the date (the independent variable). Dr. Webb suggests that the analysis proves volumes on the Laurel pipeline are declining to zero, yet he provides no evidence to support the accuracy or reliability of his regression model. In truth, Dr. Webb has not considered the underlying causes or drivers of historical volume trends along the Laurel pipeline, ignoring any underlying causes or drivers to instead rely just on the relationship of volume and date. This error has led to Dr. Webb's mistaken belief that he can accurately predict future volumes on the Laurel pipeline by simply plugging in a future date into his regression equation. Dr. Webb's regression analysis is inappropriate, and he offers no reliable support to his claims that volumes on Laurel pipeline will decline to zero. In other words, he unrealistically assumes based on too limited a number of variables that there is only one inevitable path for the amount of east to west volume flows on the Laurel pipeline to Pittsburgh.

In truth, Dr. Webb has not identified the underlying causes or drivers of historical volume trends along the Laurel pipeline. He therefore offers no reliable support to his claims that volumes on Laurel pipeline will decline to zero.

IP Main Brief, at 64-65; IP St. No. 1-S, at 25:3-25.

The Indicated Parties challenge another consistently downward sloping trend line prepared by Laurel to show that summer deliveries to Pittsburgh on the Laurel pipeline are inevitably declining. IP Main Brief, at 65-66; Laurel St. No. 5-R, at 47: Figure 9.



*Id.*

Again, the Indicated Parties explain how Laurel’s own Figure 9 shows that Laurel has transported significant amounts of product to the Pittsburgh area during summer months and that there is no indication these volumes will decline to zero by 2025.

Dr. Webb himself in Figure 9 makes it clear that the Laurel pipeline has transported significant volumes of refined petroleum products to Pittsburgh during summer months and that these volumes are not declining to zero by 2025. Dr. Webb's Figure 9 shows that peak deliveries to Pittsburgh via the Laurel pipeline—during the summer months, when my delivered price analysis showed that supply from the East Coast had a significant cost advantage over supply from the Midwest—have averaged approximately 85 MBPD since 2012. Based on the concept of "revealed preferences" as referenced by Dr. Webb, Pittsburgh market participants must have received "economic benefit" from being able to source these volumes from the east via the Laurel pipeline. Notably, Dr. Webb makes no argument that these peak summer volumes are declining to zero in the near future, which

suggests that Pittsburgh market participants would continue to receive benefits by sourcing products from the east via the Laurel pipeline. Removing this option by reversing the Laurel pipeline would therefore harm the Pittsburgh market participants.

IP Main Brief, at 66-67; IP St. No. 1-S, at 28:1-14.

The Indicated Parties maintain that their Table 1 below puts to rest the issue of whether the data shows that the Laurel pipeline still delivers meaningful volumes to the Pittsburgh area from the east, despite increased pipeline delivery capacity to Pittsburgh from the west. IP Main Brief, at 67; IP St. No. 1-S, at 27: Table 1.

**Table 1**  
**Volumes on Laurel from Eastern Origins to Pittsburgh**

<b>Year</b>	<b>Volume Shipped to Pittsburgh (MBPD)</b>
2012	62.5
2013	76.9
2014	91.3
2015	80.6
2016	63.8
12 Months Ending July 2017	48.6

Source:

Data from EXCEL File 'Laurel Workpapers MJW-B (HC) (Opposition Volume Analysis).xlsx'

*Id.* Table 1 presents data up through July 2017.

The Indicated Parties assert that the data in Table 1 does not show an inevitable decline in volumes to zero as predicted by Laurel, but that deliveries to Pittsburgh are returning to prior levels (approximating 2012 levels) after being affected in an upward direction by (i) the 2013 Sunoco pipeline shutdowns and (ii) capacity constraints on Buckeye's line from the Midwest to Pittsburgh from 2013 to 2015. IP Main Brief, at 67. As new capacity from the Midwest became available with ETP's (Sunoco) Allegheny Access in late 2015 and Buckeye's

Broadway I expansion in late 2016, volumes on the Laurel pipeline have declined to prior levels.  
*Id.*

The Indicated Parties argue that, even with the additional capacity from the Midwest, the most recent data through July 2017, as shown in Table 1 above, shows that the Laurel pipeline is still delivering significant volumes of refined petroleum product to Pittsburgh. IP Main Brief, at 68; IP St. No. 1-S, at 26:1-19. They reason that these recent volumes on the Laurel pipeline provide a strong indication that Pittsburgh market participants continue to receive significant benefits by having access to refined petroleum products from Eastern origins via the Laurel pipeline. IP Main Brief, at 68.

Per the Indicated Parties, Laurel's own numbers support substantial and continuous FOB deliveries into Pittsburgh. They aver that the combined BPD delivered by PESRM and Monroe Energy into Pittsburgh continue to be substantial as illustrated by the following: **[BEGIN HIGHLY CONFIDENTIAL]**

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The Indicated Parties reason that the volumes of eastern deliveries into Pittsburgh demonstrate two important points: (1) that volumes from eastern refineries into Pittsburgh along the Laurel pipeline fluctuate; and (2) that despite fluctuations, these volumes through 2017 remain substantial and robust, demonstrating a clear need for this service. IP Main Brief, at 69.

They observe that despite Laurel arbitrarily selecting historical data and using a trend model to forecast declining volumes west of Eldorado, Laurel still could not get a graph

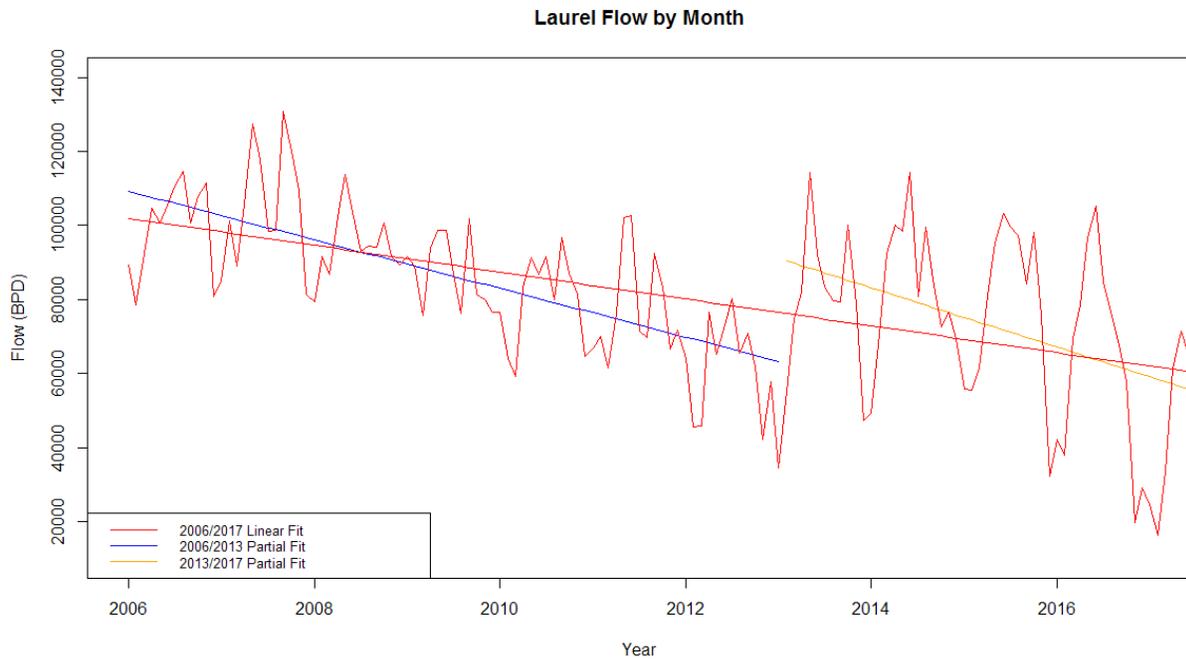
line that showed zero deliveries until 2023 to 2025. IP Main Brief, at 69; IP St. No. 2-S, at 3:4-10. In their opinion, market conditions will continue to evolve in a way that will reverse the trend that Laurel insists will remain uninterrupted into the future. IP Main Brief, at 69; IP St. No. 2-S, at 3:10-12. Specifically, the Indicated Parties note that Laurel has failed to acknowledge important market conditions that have a high likelihood of increasing east to west movements along the Laurel pipeline, such as:

- Midcontinent crude oils that supply Midwest refiners will become increasingly connected to global crude prices, eliminating any cost advantage.
- The diffusion of crude oil production technology to other U.S. and international crudes will keep crude prices low for all U.S. refineries.
- There will be continued erosion of price advantage for Eastern Midwest refiners.
- Central Atlantic [eastern] refiners will increasingly capitalize on their already existing waterborne access to a large number of crudes. IP St. No. 2-S, at 5:17-22, 6:1-5.

IP Main Brief, at 69.

Next, the Indicated Parties undertake a review of Laurel's linear trend analysis. According to them, Laurel used two separate time periods, which breaks the trend analysis, in order to eliminate the ETP (Sunoco) 2013 outage, which had a positive impact on Laurel pipeline flows. IP Main Brief, at 69-70. The use of two time periods gives Laurel's trend analysis a sharper decline projection, a more aggressive slope, and moves its projection of zero flows closer to the present by around ten years as Figure 1 below illustrates. *Id.*

**Figure 1 Laurel pipeline monthly movements into Pittsburgh showing multiple trend lines**



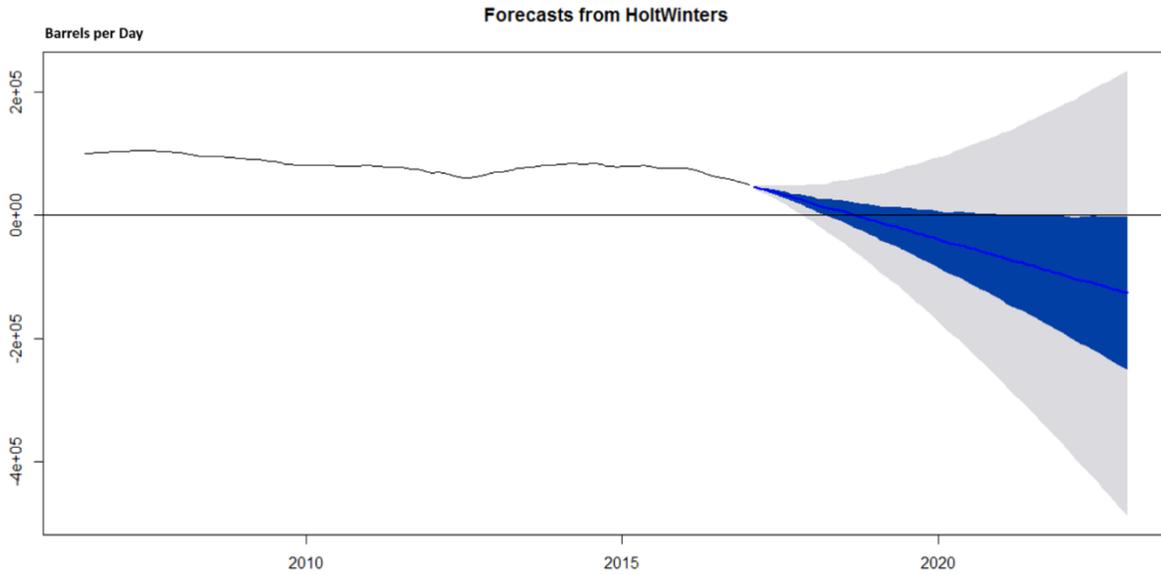
IP St. No. 2-S, at 8:1-2.

The Indicated Parties note that, unlike Laurel, they have not presented a definitive forecast of future Laurel deliveries west of Eldorado, arguing that to do so would mislead the Commission. IP Main Brief, at 70.

The Indicated Parties believe that, for purposes of deciding the issue of whether there is a prospect of the service being used in the future, it is sufficient to examine the historical data and then analyze whether there is a likelihood that customers will continue to desire and use the service. *Id.* They find Laurel's trend analysis showing a certain and inevitable decline in Laurel's volumes to zero to be incorrect because it assumes a single, precisely quantifiable future scenario for flows on the Laurel pipeline. *Id.* To test whether there is any validity to Laurel's simple trend projection, they applied the Holt-Winters analysis, which involves an estimation of probability parameters for a forecast. IP Main Brief, at 71; IP St. No. 2-S, at 9:5-21. Similar to a "cone of certainty" used in hurricane tracking, the Holt-Winters analysis determines the probability of different future outcomes. In the Indicated Parties' view the results of the analysis

show that, contrary to Laurel's position, an increase in the flow of products along the Laurel pipeline cannot be discounted.

**Figure 3 "Cone of Uncertainty" for a trend forecast**



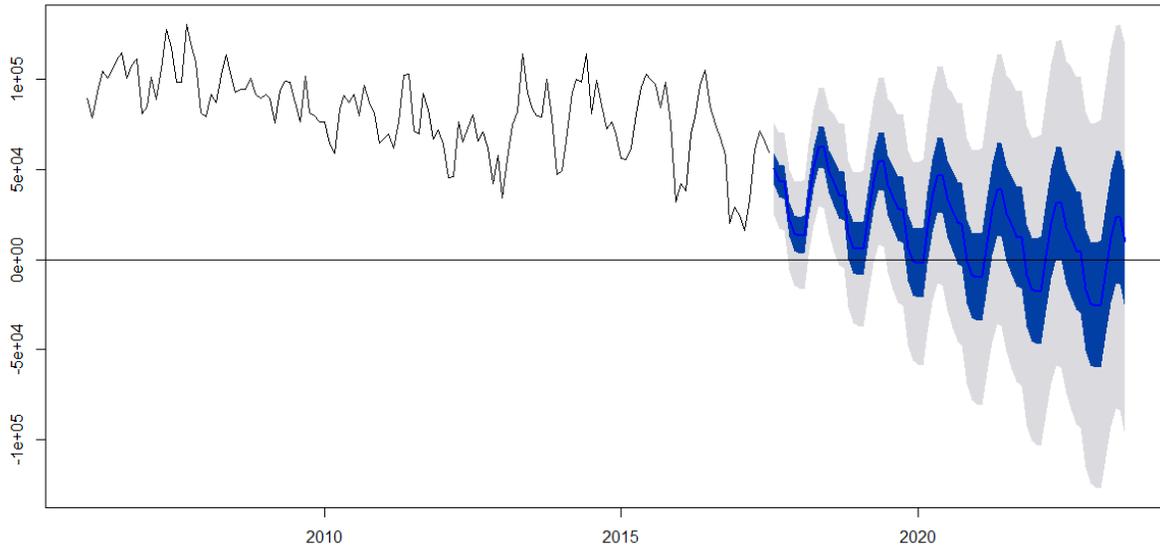
IP Main Brief, at 71; IP St. No. 2-S, at 10:5-6; see also Laurel St. No. 5-RJ, pp. 13-16.

In addition, the Indicated Parties added seasonal data into the model so that seasonality and longer-term trends could be evaluated together and took into account probability bounds associated with their forecast. IP Main Brief, at 71; IP St. No. 2-S, at 13:15-23. Figure 5 below shows that an increase in product shipments along the Laurel pipeline is a reasonable future outcome even when considering only historical data.<sup>26</sup>

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<sup>26</sup> Indicated Parties St. No. 2-S, at 11:1-18 and 12:1-7.

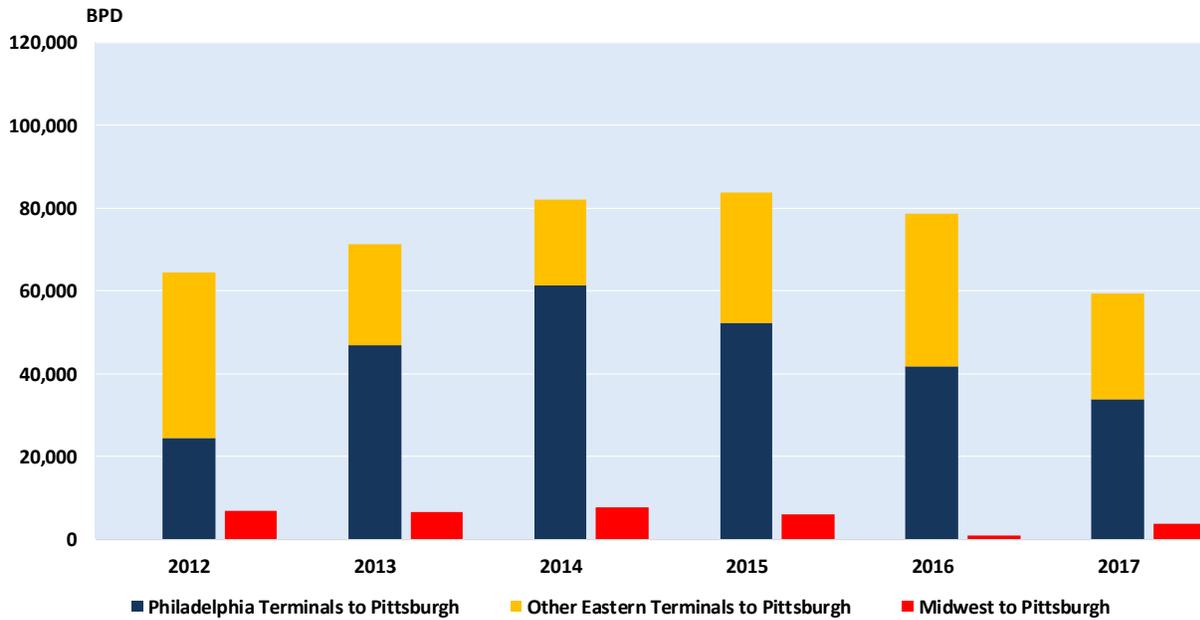
**Figure 5 Holt-Winters forecast of Laurel pipeline flows  
with 50% and 95% probability confidence bounds**



IP Main Brief, at 71-72; IP St. No. 2-S, at 11:1-18 and 12:1-7; IP St. No. 2-S, at 12:4-6.

The Indicated Parties note that the most recent data available corroborates their conclusions regarding volume flows on the Laurel pipeline. In Figure 6 below, updated data on flows on the Laurel pipeline into Pittsburgh through August 2017 shows that while movements of summer blend gasoline have declined from prior year levels, they remain at a level approaching 60,000 BPD. IP Main Brief, at 72. Moreover, movements from Philadelphia refineries are making up a larger proportion of movements, reaching 57% of movements in 2017 compared to 53% for 2016. They point out that the increase in volume is occurring despite the completion of Midwest region infrastructure additions. *Id.*

**Figure 6 Annual Summer Blend gasoline movements along Laurel pipeline into Pittsburgh, 2012 through August 2017**



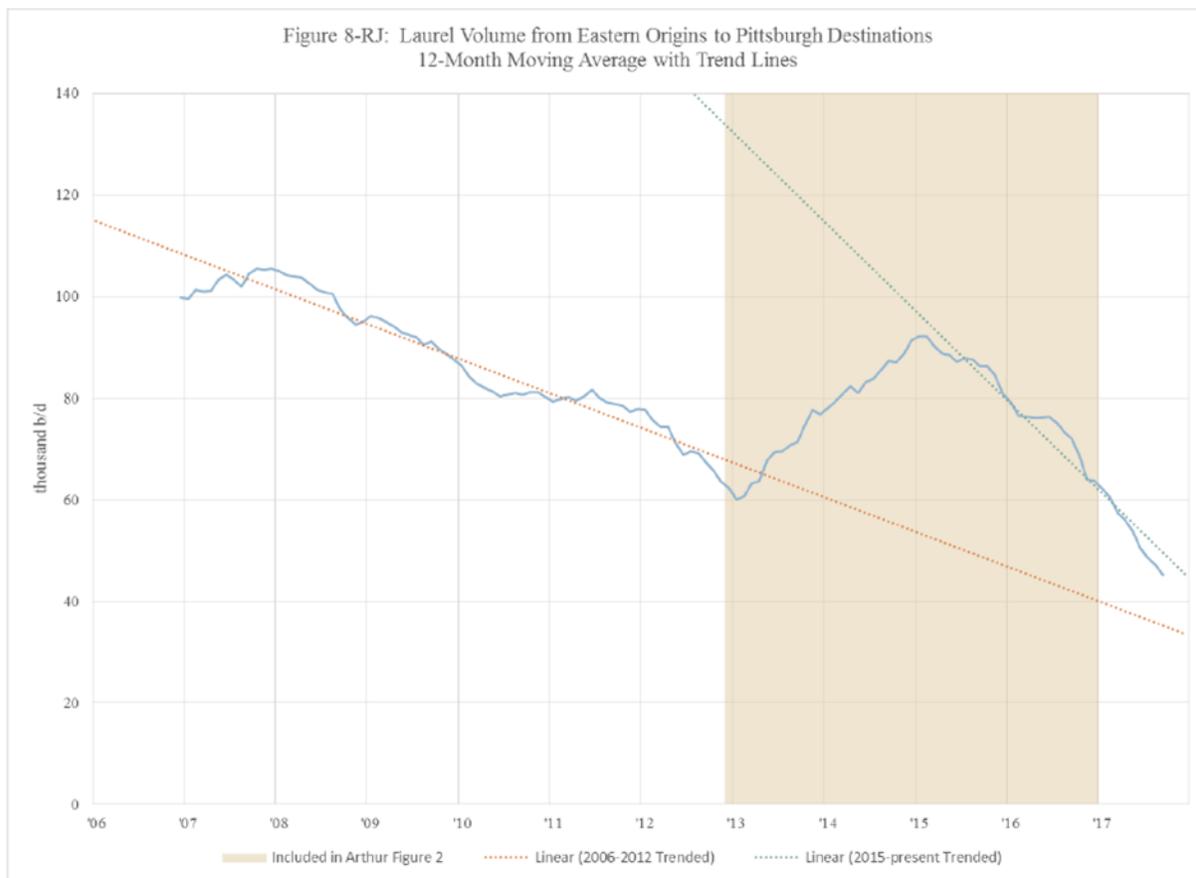
Source: Laurel data in response to PESRM-LAU-VII-1 and PESRM-LAU-VII-2.  
 Note: 2017 data is annualized to provide comparability.

IP Main Brief, at 73; IP St. No. 2-S, at 13:1-13; IP St. No. 2-S, at 14:1-3.

The Indicated Parties acknowledge that multiple factors, including uncertainty, can drive volumes on the Laurel pipeline. They draw attention to the 2017 increase in Laurel pipeline deliveries to Pittsburgh area delivery points over 2016, during the winter period when Midwest refiners are expected to "beat" Eastern refiners in the Pittsburgh market. They explain that the Indicated Parties' Supplemental Exhibit DWA-15 shows that for four Pittsburgh area delivery points in October 2017 (i.e., Coraopolis, Delmont, Greensburg and Neville Island), deliveries from the east to Pittsburgh under Laurel's Commission tariff increased over 2016 levels. IP Main Brief, at 74. In their opinion, this data flatly contradicts Laurel's inevitable decline to zero prediction and shows its fundamental lack of soundness. *Id.*

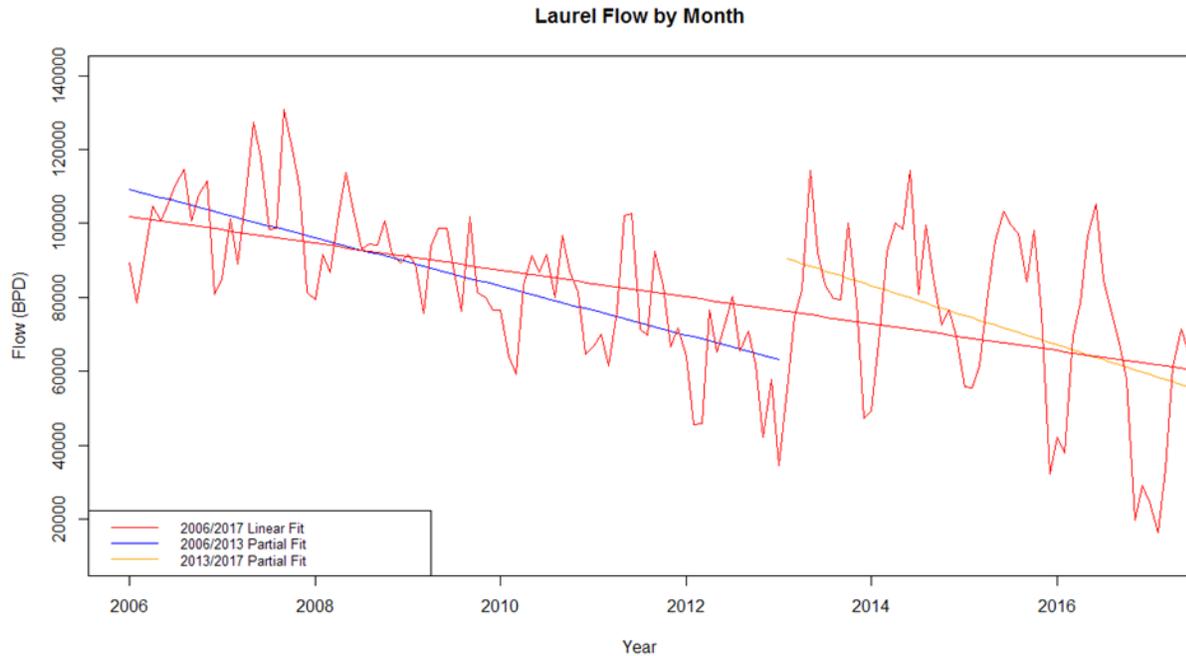
## Conclusion

Based on a linear projection of recent volume changes, Laurel estimates that volumes from eastern origins to points west of Eldorado on the Laurel pipeline are projected to reach zero before 2025. See Laurel Main Brief, at 40, 84, 106-107. Laurel's analysis of the trend lines are shown in the figure below:



The use of the two separate time periods, which breaks the trend analysis and leads to two separate trend lines, is done by Laurel in order to eliminate the ETP (Sunoco) 2013 outage from the analysis. The use of two-time periods gives Laurel's trend analysis a sharper decline projection, a more aggressive slope, and moves its projection of zero flows closer to the present by around ten years. Interestingly, the ETP (Sunoco) 2013 outage had a positive impact on Laurel pipeline flows. IP Main Brief, at 69-70. In order to make its trend analysis unbiased

and correct, Laurel should either include the 2013 ETS (Sunoco) event in its representation or remove from the analysis the impact of the Allegheny Access Pipeline becoming operational in July of 2015. See Laurel St. No. 5-RJ, p. 3. While the latter approach could lead to projections that Laurel has not assessed nor foreseen, the former lends itself to a gentler slope and moves the



projection of zero flows further into the future as seen in the figure below:

The seesaw shape of Laurel’s Flow by Month chart above indicates that multiple factors, including uncertainty, drive volumes on the Laurel pipeline. Both Laurel and the Indicated Parties agree that the petroleum industry is highly dynamic where “things are changing virtually all the time, ... sometimes on a daily basis and sometimes with other temporal characteristics.” Hearing Tr. at 607:16-20; see also IP Main Brief at 74.

External effects and uncertainty are what appear to have driven the 2017 increase in Laurel pipeline deliveries to Pittsburgh area delivery points during the winter period. Historically, the Midwest refiners have had the upper hand over the Eastern refiners in the Pittsburgh market during the winter period. However, Laurel’s supplemental Exhibit DWA-15 shows that for four Pittsburgh area delivery points in October 2017 (i.e., Coraopolis, Delmont, Greensburg and Neville Island), deliveries from the east to Pittsburgh on the Laurel pipeline

increased compared to the prior year. This data defies Laurel's linear trend analysis and undermines its prediction of an inevitable decline to zero by 2025 or sooner.

I note that one of the driving forces behind Laurel's position that volumes of eastern refined petroleum products delivered to the Pittsburgh market will continue to decline is Laurel's contention that Midwestern refineries' product is cheaper and therefore more desirable to the market participants in Pittsburgh. The evidence collected in this matter indicates that the Pittsburgh market has been positioned to enjoy the financial advantage of the Midwestern refineries' product since March of 2016. Buckeye and ETP (Sunoco) have already completed recent expansions of pipeline capacity into the Midwest that increased total capacity from the Midwest into the Pittsburgh area to 297.2 MBPD, far in excess of demand in the Pittsburgh area of 103-113 MBPD. See IP St. No. 1, at 19: Figure 4; IP St. No. 1, at 20:20 through 21:2. Yet, the evidence collected as of the day of the hearing shows that the Pittsburgh market continues to avail itself of the eastern product to supply a substantial portion of its demand, even though by all accounts it could rely 100% on the Midwestern product. Laurel maintains that the current state of the Pittsburgh market is still reflecting the shippers' long-term contracts already in place. While that may very well be the case, the current Pittsburgh market does not support Laurel's prediction of an inevitable decline to zero of the eastern product that enters Pittsburgh via the Laurel pipeline.

As for Laurel's contention that downstream constraints, like terminal capacity, are limiting the entry of Midwestern products fully into the Pittsburgh market, I note that Laurel failed to submit evidence that substantiates this claim. Without knowing what the capacity of the terminals bringing western products into Pittsburgh is, one cannot assess the degree of constraint they represent to the 297.2 MBPD pipeline capacity from Midwest. It is also telling that  
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It is noteworthy in this matter that the Indicated Parties (except Giant Eagle) represent four of Laurel's 25 customers and they all oppose the abandonment. See Hearing Tr. 241:18-23. Their testimony in this matter strongly indicates that they value Laurel's services and wish to maintain availability west of Eldorado. In particular, the Philadelphia refiners PESRM and Monroe Energy consider continuation of east to west service to the Pittsburgh market important and irreplaceable to their operations. As shippers and marketers Gulf, Sheetz and Giant Eagle also strongly oppose the proposal because it will eliminate the opportunity for Pittsburgh to access supplies coming from eastern refiners.

In view of the above, I find that although volumes from eastern refineries into Pittsburgh along the Laurel pipeline fluctuate, these volumes remained substantial through 2017, demonstrating a clear need for this service. Consequently, Laurel has failed to show by a preponderance of the evidence that its customers do not plan to make extensive use of the Altoona-Pittsburgh section of the pipeline in the future.

- c) The loss to the utility balanced with the convenience and hardship to the public upon discontinuance of such service

#### Laurel's Position

#### Pennsylvania Consumers

It is Laurel's position in this proceeding that the reversal will reduce gasoline prices for Pennsylvania consumers. Laurel asserts that Midwestern refineries have access to lower cost crude oil supplies than the Eastern refineries and explains that:

The cost of crude oil is the major determinant of the retail price of gasoline, these crude oil cost advantages have increasingly provided access to lower-cost gasoline and fuel oil in our neighboring states to the west, producing major benefits for their consumers and local economies.

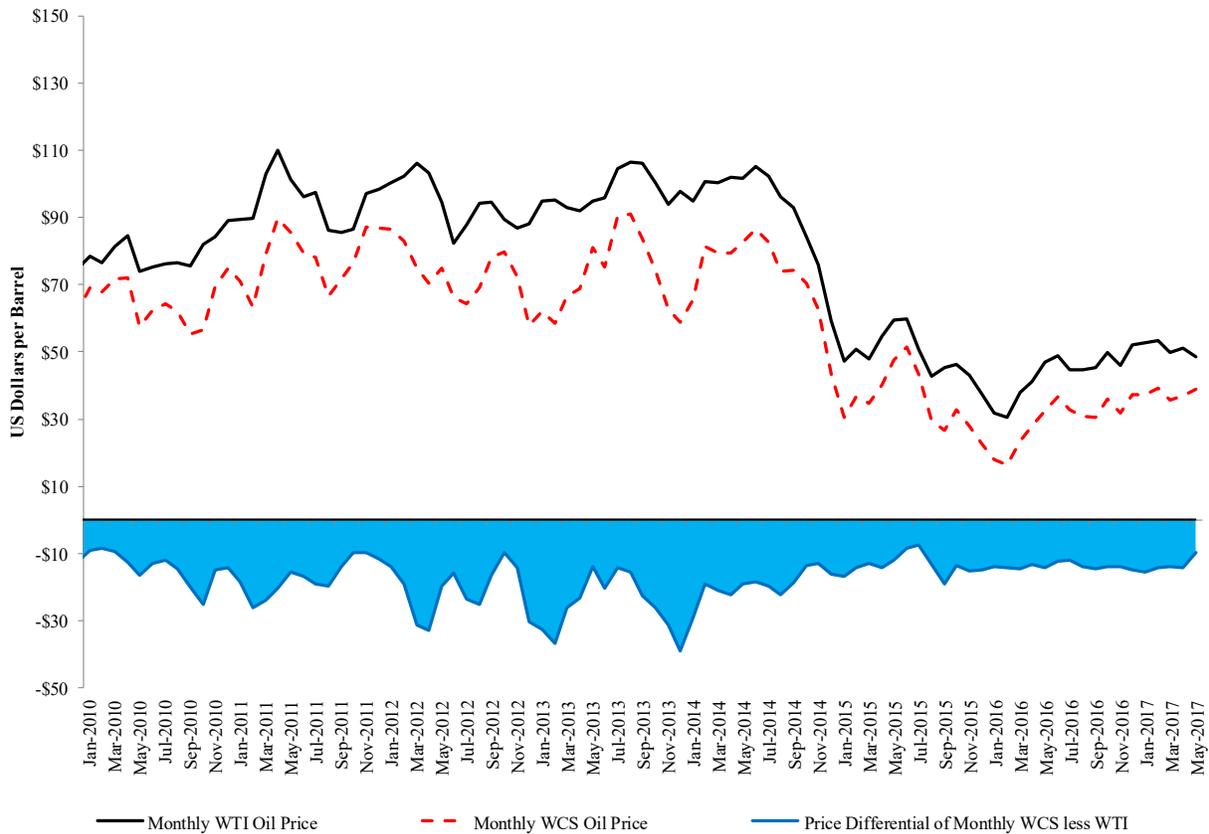
Laurel Main Brief, at 73, citing Laurel St. No. 2-R, pp. 3-4; see also Laurel St. No. 8-R, p. 11; Laurel C.E. Exh. No. 14, p. 2.

Laurel further explains that the Midwestern refineries source the majority of their crude supplies from the Bakken oil fields in northwestern North Dakota, northeastern Montana and southern Alberta as well as from the oil sands of central Alberta. Laurel Main Brief, at 73, referring to Laurel St. No. 7-R, pp. 9-10. These refineries benefit from the Bakken and Canadian crude for two primary reasons. First, they are relatively close to these crude oil sources which lowers the delivered cost of getting crude to the Midwest refineries. Laurel Main Brief, at 73; see also Laurel St. No. 7-R, p. 13. Second, the Bakken and Canadian crude (“Western Canadian Select”) is cheaper than the other two primary sources of crude oil which are West Texas Intermediate (“WTI”) and Brent crude. WTI is a domestic crude source that is primarily produced in Texas and surrounding states in PADD 3. Laurel Main Brief, at 73; Laurel St. No. 7-R, p. 14; Hearing Tr. 602:1:21. Brent crude is the global price for crude that is produced from sources across the world, including from the North Sea and Africa. Laurel Main Brief, at 74; Laurel St. No. 7-R, p. 17.<sup>27</sup>

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<sup>27</sup> The Eastern refineries obtain most of their crude supplies from foreign sources, which is primarily supplied by marine vessel.

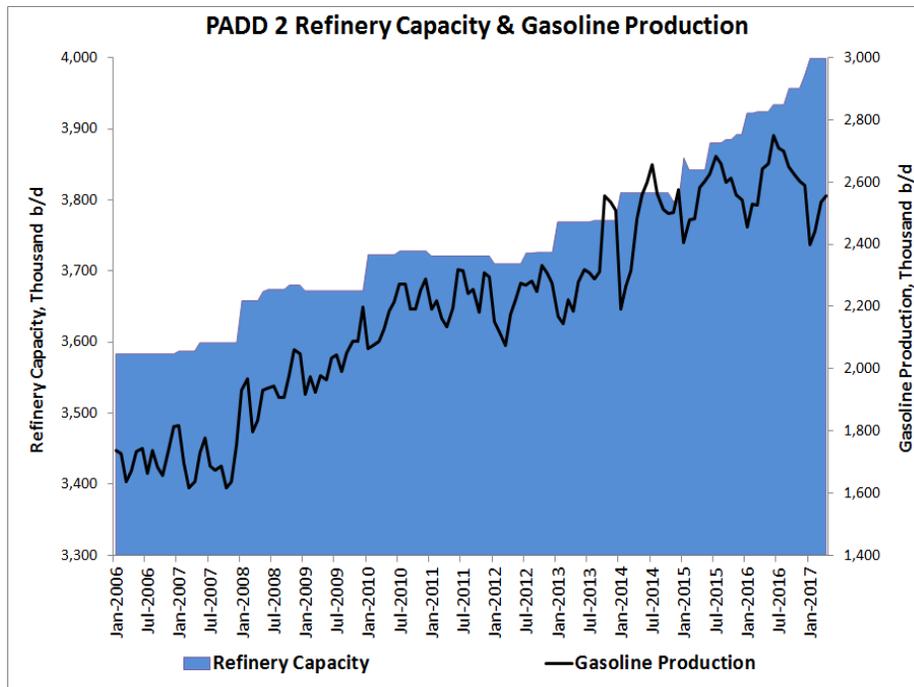
Laurel asserts that Western Canadian Select has significant cost advantages as compared to WTI and Brent crudes and provides a chart illustrating the cost advantage:



Laurel Main Brief, at 74; Laurel St. No. 7-R, p. 15.

Laurel maintains that Western Canadian Select is also cheaper than Brent crude, which must be transported by ship to the Eastern refineries. Laurel Main Brief, at 74; Hearing Tr. 602:1:21. Additionally, both Bakken and Canadian crude production has increased significantly over the past 10 years. Laurel Main Brief, at 74. Laurel produced EIA and Canadian Natural Energy Board charts that show Bakken crude production increasing six-fold between 2008 – 2014, peaking at 1.2 million barrels per day and Canadian crude increasing by approximately 1.4 million barrels per day between 2005 and 2017, to approximately 4 million barrels per day. Laurel Main Brief, at 74-75; Laurel St. No. 7-R, pp. 10-11.

Laurel argues that the Midwest Refineries are among the most advanced refineries in the United States because they have made significant investments to upgrade technology and refining capacity. Laurel explains that from 2005 through December 2015, refining capacity increased by 323,000 barrels per day, or approximately 9%. Laurel Main Brief, at 75; Laurel St. No. 8-R, p. 7. The chart below illustrates this point.



Laurel Main Brief, at 75; Laurel St. No. 8-R, p. 8.

Laurel also explains that Midwestern refineries have invested billions of dollars to modernize their refineries. Among those investments are those listed below:

- BP completed a \$4.2 billion modernization of its Whiting refinery in 2013.
- Wood River refinery completed a \$3.8 billion modernization in 2011.
- Husky spent \$340 million at its facility in Lima and \$238 million at its jointly owned facility with BP in Toledo to modernize these facilities.

Laurel Main Brief, at 76; Laurel St. No. 8-R, pp. 10-11.

According to Laurel, access to lower cost crude and more-efficient, modern facilities allow Midwestern refineries to refine cheaper and different types of crude more efficiently than Eastern refineries which have not made comparable investments in recent years. Laurel Main Brief, at 76.

In particular, Laurel points out that the Baker & O'Brien study conducted for Monroe (or Monroe's parent Delta Air Lines, Inc.) **[BEGIN HIGHLY CONFIDENTIAL]**

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Per Laurel, the fact that the Midwestern refineries have made significant capital investments incentivizes them to refine additional crude oil and push their refined products to as many markets as possible, thereby putting downward pressure on prices. Laurel Main Brief, at 79-80; Laurel St. No. 7-RJ, p. 20. In addition, Laurel argues that the Midwest has many low-cost refineries that will compete to supply the Pittsburgh, Altoona and the surrounding areas.<sup>28</sup> Laurel Main Brief, at 80; Laurel St. No. 8-R, pp. 8-12. Laurel explains that as domestic demand for gasoline will decline significantly in the next decade – largely as a result of the adoption of more energy-efficient technologies and existing policies that promote increased energy efficiency – this decline will create more competitive pressure to lower prices. Laurel Main Brief, at 83-86.

With regard to the impact of the reversal on the gasoline prices in Pennsylvania, Laurel believes that it should not be required to quantify the benefits of the reversal for it to be approved by the Commission. Laurel Main Brief, at 86, referring to *Popowsky*, 937 A.2d at 1055-57 (Pa. 2007). Laurel explains that in the present case,

[I]t is simply impossible to precisely quantify the effect of the reversal on gasoline prices at the pump because wholesale or rack prices do not directly correlate with retail prices. Retailers attempt to make as much profit as possible, so the price they charge at the pump reflects competition from other retailers, among other factors.

Laurel Main Brief, at 86; Laurel St. No. 5-R, pp. 93-97. In fact, Laurel’s witness, Dr. Jones, stated at the hearing that it is extraordinarily difficult to know what the price of gasoline will be in the future. Laurel Main Brief, at 86, referring to Hearing Tr. 686:24-687:17.

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<sup>28</sup> There are 14 refineries in the Eastern Midwest alone, with operating capacity of approximately 2.6 million bpd that are able to readily supply Pittsburgh, as well as other markets in the Midwest. Laurel Main Brief, at 80; Laurel St. No. 8-R, pp. 8-12. These are only the Eastern Midwest refineries and does not include the other refineries in both the Midwest and Gulf Coast that are able to supply Pittsburgh. Laurel points out that the number of Eastern Midwest refineries (14) alone is more than the number of East Coast refineries that currently serve the Pittsburgh markets. Laurel Main Brief, at 80; *see* Laurel St. No. 8-R, p. 9, Figure 2 (Eastern Midwest refineries); Laurel St. No. 7-R, p. 53, Figure 15 (East Coast refineries).

Instead, Laurel explains that the increase of low-cost products coming from the Midwest will inevitably put downward pressure on prices and, to the extent that these low-cost Midwestern supplies back out the marginal supplier, retail prices will fall under well-established economic principles. Laurel Main Brief, at 86. Laurel witness, Dr. Jones, stated as follows:

Accepting for the sake of argument, however, that the proposed project had a marginal effect on the quantities of products that flow from the east to points west of Altoona, this would have the economic impact of increasing the supply available to serve Philadelphia and other eastern seaboard locations, which would, all else equal, serve to benefit consumers in those areas – at the expense of Intervenor who would, within Mr. Schaal’s framework, realize lower prices for their supply. In short, while Mr. Schaal and other Intervenor witnesses lament that Laurel’s proposal may result in increasing competition faced by eastern refiners, basic economics tells us competition amongst sellers is beneficial to consumers.

Laurel St. No. 7-R, p. 71.

Laurel takes this conclusion further with regard to the impact of the reversal on the gasoline prices in Pittsburgh. Relying on the testimony of Laurel’s witness, Dr. Jones, Laurel asserts that backing out the marginal supplier in Pittsburgh, which is likely trucks or barges, should, all else equal, reduce gasoline prices by about 5¢ per gallon. Laurel Main Brief at 86-87; Tr. 686:24-690:12. This equates to \$80,000 per day or approximately \$30 million per year. Laurel Main Brief at 87, 89-92.

At the hearing, Dr. Jones testified as follows:

Q. Have you conducted your own analysis of the impact of the reversal on consumer prices in the Pittsburgh market?

A. The – well, I haven’t done an exhaustive quantitative study; and the reason is that which you’ve heard other witnesses say it’s extraordinarily difficult, if not impossible, to know what the price of gas will be, will likely be in the future in any city at any point in time. I speak of personal experience having run, help run a giant

forecasting firm where that was exactly asked of us on a number of occasions by clients.

More to the point, I did do an analysis – or I did discovery, I should say, estimates of what the retail price impact is likely to be post-reversal by looking at Intervenors’ testimony and the attachments to their exhibits, plus the EPA gives you an opportunity to do it if you approach it from the crude oil side. It’s – anyway for your own information it works out to about a nickel a gallon which is \$80,000 a day.

Q. And what’s the basis for your nickel a gallon, the combination of all the things you just mentioned?

A. Well, yeah. Remember, you’re looking – I know of no way they can model gas in any particular city on any particular day, but you have indications – this is page 110 (indicating) from Exhibit MJW-23 that was Mr. Webb’s –

\* \* \*

THE WITNESS: So citation number one is MJW-23. The illustration in the lower left part of that page suggests somewhere between five and eight cents a gallon....

\* \* \*

THE WITNESS: And then the federal government periodically produces illustrations that show how a barrel of crude oil translates into gasoline prices.

And, if you back out the eastern supplies from the Pittsburgh market, you’re backing out international crude oil price imports; and that’s been recently historically about \$5 a barrel. That \$5 a barrel, all those things equal and adding back in the transportation of the product out of Chicago still results in about a nickel a gallon of savings.

So we’re talking tens of thousands of dollars a day to the Pennsylvania consumers, not to mention the impact of the fact that Philadelphia refinery product out of Pittsburgh, it’s got to go somewhere. Chances are it will lower the prices in Philadelphia. So both sides benefit.

Laurel Main Brief, at 89-92, citing Hearing Tr. 686-690; see also Hearing Tr. 720:2-721:8.

Laurel explains that the federal government publication referenced by Dr. Jones was subsequently admitted into the record as Laurel Cross-Examination Exhibit No. 14. This Exhibit shows the cost of crude oil as a percentage of the retail price of gasoline. Page 2 of this Exhibit shows that over the past ten years the cost of crude oil has comprised 62% of total cost of a gasoline of regular grade gasoline. Laurel Main Brief, at 92.

At the hearing, Laurel's witness, Mr. Hollis, also provided further detail about the Midwest price advantage.

The hypothesis has always been in the past that it's advantageous to supply from the East in the summer. In looking at the market that is most easily quoted and comparable, which is the CBOB markets for New York Harbor and Chicago, for the first time this summer, if you had shipped ratably from the Midwest, the overall price was in favor of the Midwest.

So two years ago, it was about eight cents in favor of the East Coast, six cents in favor of the East Coast in 2016. It was nearly a penny in favor of the Midwest. And we've said repeatedly that as these investments are made, as the refinery investments are made and as these pipeline logistics projects are completed, that that will be the case, that the arbitrage that some have described will become much more infrequent and smaller, and that is certainly the experience that occurred this summer.

Laurel Main Brief, at 94, citing Hearing Tr. 364:14-365:4.

In view of the above, Laurel concludes that the addition of more lower cost supplies into Pittsburgh through the reversal will lower prices for Pittsburgh's consumers and provide substantial economic benefits to the Commonwealth of Pennsylvania. Laurel Main Brief, at 94.

### Altoona/Central Pennsylvania Market

Next, Laurel argues that its reversal will allow Central Pennsylvania to receive lower-cost Midwest supplies by pipeline. Laurel Main Brief, at 95. Laurel explains that currently, the Altoona market is a significant market on Laurel's system. Laurel deliveries to Altoona were 40,000 bpd in 2014, 37,000 bpd in 2015 and 33,000 bpd in 2016. Laurel Main Brief, at 95; Laurel St. No. 5-R, p. 49. This is similar to the overall amount of volumes of 45,000 bpd that Laurel has shipped to Pittsburgh for the most recent 12 months. Laurel Main Brief, at 95; Laurel St. No. 5-RJ, p. 3.

Husky's witness, Mr. Miller, explained the importance of the Altoona market as follows:

Altoona as a destination market is important, not just for the size of Altoona, but because the way the geography runs and the mountains, it's the corridor that allows us to go up to one of my home towns of Williamsport, Pennsylvania, all the way down through into West Virginia and Frederick, Maryland.

So, yes, it includes central Pennsylvania in addition to our previous commitments that we had made, which goes to Pittsburgh through the Allegheny Access pipeline.

Laurel Main Brief, at 95, citing Hearing Tr. 1179:25-1180:10.

In addition, Laurel's witness, Mr. Arnold, explained as follows:

Q. Do you agree with the intervenors' characterization of Eldorado, and Altoona generally, as a small market?

A. No. While Altoona itself is a relatively small city, the area supplied by the terminals in Altoona is material. Product volumes delivered into those terminals have averaged around 35,000-40,000 barrels per day, which is a very substantial proportion of the estimated Pittsburgh market demand of just over 100,000 barrels per day. Moreover, Laurel's management believes that Eldorado is likely well-positioned to meet refined products needs in a large

swathe of Central Pennsylvania, including areas such as State College, and that with more competitive product being delivered at Eldorado, it is possible that deliveries will expand into geographic markets that have been served from other sources.

Laurel Main Brief, at 95-96, citing Laurel St. No. 1-R, p. 24.

Laurel reasons that the proposed reversal will improve supply reliability for Central Pennsylvania. In its Main Brief, Laurel notes that, unlike Pittsburgh, which is served by multiple transportation options today, Central Pennsylvania is currently being served by only one pipeline and cannot be served by barges. Laurel Main Brief, at 96; *see*, Laurel St. No. 2, p. 8. After the reversal, Altoona will continue to be served by Laurel pipeline from the east but will also be served with Midwest supplies by Laurel from the west. Laurel Main Brief, at 96; Laurel St. No. 1, pp. 22-23. Midwest product also will be able to be trucked to points further east, such as Harrisburg. Laurel Main Brief, at 96; *see e.g.*, Laurel St. No. 5, pp. 16-17. Laurel lauds the proposed reversal for effectively doubling the sources of supply to Central Pennsylvania – from one pipeline to two pipelines. Laurel Main Brief, at 96. In Laurel’s view, this is a very important supply reliability benefit for Central Pennsylvania. *Id.*

### Pittsburgh Market

As for Pittsburgh, which will lose the dual sources of supply (East and West) if the reversal is approved, Laurel notes that it will continue to be served by multiple sources even after the reversal. *Id.*, at 96-97.<sup>29</sup> Consequently, Laurel reasons that the alleged harm to Pittsburgh of losing Laurel pipeline from the east is far outweighed by the increased reliability to Central Pennsylvania that will occur from the reversal. *Id.*, at 97.

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<sup>29</sup> Pittsburgh will still be able to access petroleum products from a variety of alternative transportation sources, including: (1) Sunoco Pipeline, L.P. (“Sunoco”), from the Midwest; (2) Marathon Pipeline LLC, from the Midwest; (3) Buckeye from the Midwest; (4) Buckeye and Laurel, collectively delivering from the East Coast to Altoona, from which product can be trucked west post-reversal; (5) trucks delivering from the Ergon refinery in Newell, West Virginia; (6) trucks delivering from the United Refining refinery in Warren, Pennsylvania; (7) barges delivering petroleum products to terminals on the Ohio, Allegheny and Monongahela Rivers from refineries and pipeline terminals in the Midwest and potentially Gulf Coast; and (8) trucks delivering petroleum products from pipeline terminals in Ohio. Laurel Main Brief, footnote # 67; Laurel St. No. 2, p. 6; *see also* Laurel St. No. 5, pp. 22-25.

Laurel points out that the proposed reversal will improve supply reliability in Pittsburgh by increasing Pittsburgh access to PADD 2. *Id.* It notes that PADD 2 relies less on imports and inter-PADD movements to satisfy its own demand, *i.e.* its local production satisfies a greater portion of local demand, than does PADD 1. *Id.* As such, Laurel asserts that PADD 1 supplies are particularly susceptible to disruptions. Laurel Main Brief, at 97; HMSC Exhibit JPM-3, p. 38.

Moreover, PADD 2 supply versus demand is much more in balance than PADD 1 supply versus demand. The EIA report dated March 2017 stated as follows with respect to the Eastern Midwest section of PADD 1:

Midwest (PADD 2)

*Eastern Midwest*

Eastern Midwest refinery production of transportation fuels averaged 2.0 million b/d in 2015, enough to meet 90% of consumption (net of ethanol and biodiesel inputs). Supply patterns in the Eastern Midwest are diverse. The region's supply networks originate from the Chicago supply hub, which draws products from regional refineries and from long-distance pipelines originating on the Gulf Coast (PADD 3), and from the Detroit, Michigan-to-Lima, Ohio, refining hub. Pipelines extend from these supply hubs primarily to population centers in Illinois, Indiana, Michigan, Ohio, and Kentucky. Significant volumes of transportation fuels also move along the Ohio River system from refineries in southern Illinois and Indiana, and northern Kentucky, primarily to other markets along the river system, including Cincinnati, Ohio, and Louisville, Kentucky. Meanwhile, refineries along the Mississippi River primarily serve Memphis, Tennessee, and the St. Louis, Missouri, metropolitan area, which includes portions of Illinois. Central and eastern Tennessee receive nearly all of their fuel supply from stub lines off the Colonial and Plantation pipeline systems, which run from Gulf Coast supply centers to markets along the Eastern Seaboard.

Laurel Main Brief, at 98, citing HMSC Exhibit JPM-4, p. xiv (emphasis in Laurel Main Brief).

In contrast to PADD 2, PADD 1 is much shorter in supply to meet its own demand. Laurel Main Brief, at 99. The EIA study dated February 2016 states as follows with respect to the Central Atlantic region of PADD 1 supply versus demand:

The Central Atlantic region consists of five states in PADD 1 – Delaware, Maryland, New Jersey, New York, and Pennsylvania – as well as the District of Columbia. . . Estimated total consumption of motor gasoline, distillate fuel oil, and commercial jet fuel in the Central Atlantic region was nearly 1.9 million b/d in 2014, or roughly 13% of total U.S. consumption. Figure 15 presents the region’s 2014 annual supply and demand balances for motor gasoline, distillate, and jet fuel.

\* \* \*

The Central Atlantic region’s refinery production of transportation fuels averaged nearly 1.0 million b/d in 2014, enough to meet more than half of in-region consumption. In addition to in-region refinery production, the central Atlantic region receives approximately 823,000 b/d of pipeline shipments and 336,000 b/d of foreign imports. Total supply from all sources, including ethanol and biodiesel, averaged 1.93 million b/d in 2014.

Laurel Main Brief, at 99, citing HMSC Exhibit JPM-3, p. 38 (emphasis in Laurel Main Brief).

The EIA study also noted that the Central Atlantic region is particularly susceptible to disruptions, stating as follows:

[T]he concentration of supply infrastructure in the Greater Philadelphia and New York Harbor areas, and the multiple interconnections between the region’s pipeline systems, make the Central Atlantic region vulnerable to disruptions impacting these hubs and pipelines. This vulnerability was exposed in 2011 and 2012 when hurricanes Irene and Sandy made landfall in the Central Atlantic region, disrupting operations at in-region refineries, pipelines, ports, and terminals in both supply centers. The disruptions occurred due to direct damage to infrastructure - from wind and storm surge – as well as interruptions to essential utility power supply.

The region’s supply infrastructure can also be challenged by winter weather. The winters of 2013-2014 and 2014-2015 brought extreme cold temperatures and record precipitation to Central Atlantic markets, increasing consumption for heating oil (distillate fuel oil), impacting refinery production, and inhibiting marine transportation logistics. In February 2014, cold-weather-related

shutdowns and operational issues at East Coast refineries resulted in a nearly 25% drop in refinery production. In addition to refinery curtailments, the extreme cold in both early 2014 and early 2015 caused unprecedented thick ice and freezing in Central Atlantic ports and waterways, delaying marine deliveries to terminals along the Hudson River and on Long Island. To meet high heating oil consumption, swing supply to the Central Atlantic region, for the most part, was imported from Global suppliers.

Laurel Main Brief, at 100, citing HMSC Exhibit JPM-3, pp. 54-55. In view of the above, Laurel reasons that approving the reversal will allow additional Midwest supply to reach the Central Atlantic region, thereby helping to alleviate the supply versus demand imbalance as well as improving supply reliability and security in the event of hurricanes.

Next, Laurel argues that its proposed reversal, which will reduce reliance on overseas imports, is consistent with longstanding national policy. Laurel Main Brief, 100-101. Laurel explains that, lacking indigenous crude production in the Northeast region and absent pipeline access to North American crude producing regions, such as the Gulf Coast or the Midwest, East Coast refiners have historically been and remain dependent on importing lighter, widely-traded foreign-sourced crude oil from the North Sea and Africa. Laurel Main Brief, at 101, referring to Laurel St. No. 7-R, p. 17. In contrast, the Midwest refiners receive the majority of their crude oil from the Bakken region and Central Canada. Laurel Main Brief, at 101; Laurel St. No. 7-R, p. 13.

According to Laurel, approving the reversal will allow more low-cost Midwestern supply produced from U.S. and Canadian oil fields to push out oil produced from overseas markets. This will reduce the reliance of both Pennsylvania and the United States on oil produced overseas and will promote energy independence. Laurel Main Brief, at 101.

Laurel explains that the increase in Bakken and Canadian crude oil production has created the Shale Revolution and has fundamentally changed the crude oil and refined product markets in the United States. Laurel Main Brief, at 102; Laurel St. No. 7-R, p. 9. In Laurel's view, Pennsylvania should not delay in receiving the benefits of the Shale Revolution, especially

since the reversal is aligned with Pennsylvania policy regarding its energy economy and to be an international energy leader. Laurel Main Brief, at 102. Laurel avers that,

Upon assuming office, Governor Wolf quickly realized the link between Pennsylvania's energy industry and the need for pipeline infrastructure to support it. With bi-partisan support, he formed the Governor's Pipeline Infrastructure Task Force, to among other things, promote the "responsible development of a world-class pipeline infrastructure system in the Commonwealth."

Laurel Main Brief, at 102, citing Laurel St. No. 9-R, p. 8. Laurel likens the Oil Shale Revolution to the Marcellus Shale Gas Revolution, in that abundant low-cost crude resulting from the Shale Revolution will decrease prices consumers pay for gasoline similar to the effect that Marcellus Shale gas had on gas prices. Laurel Main Brief, at 103-105.

After listing the benefits that Pennsylvania will derive from the proposal, Laurel proceeds to explain that the proposed reversal will not harm the public. In its Main Brief, Laurel disagrees with the Indicated Parties' argument that, absent Laurel deliveries from the east, "consumers, wholesalers and retailers" will be forced to turn to higher cost alternatives, and those higher costs will increase prices in the Pittsburgh area. Laurel St. No. 7-R, p. 48, n. 105 (citing responses to interrogatories attached as Laurel Exhibits STJ-3, STJ-7, STJ-13, and STJ-17). In particular, Laurel takes issue with Dr. Arthur's "delivered price" model that purports to show that some of the gasoline needed to meet the Pittsburgh area's demand will be more costly to supply after Laurel's proposed reversal and that these cost increases will lead to higher prices to retail consumers. Indicated Parties St. No. 1, p. 64, Figure 18.

According to Laurel, Dr. Arthur's analysis contains numerous flaws and should be rejected. Laurel Main Brief, at 109. First, Laurel argues that Dr. Arthur's analysis is not credible because he analyzes "historic rack prices" without considering the recent and projected market changes that drive the current and future cost of petroleum products supplies. Laurel Main Brief, at 109-10.

Second, Laurel maintains that Dr. Arthur mistakenly analyzes *average* costs to predict market prices. Laurel Main Brief, at 110. Laurel explains that market prices are not set by average costs, but rather are, for a given level of demand, set by the *marginal cost* (*i.e.* highest cost) of that source of product that allows supply to meet demand, not average costs. Laurel Main Brief, 110; Laurel St. No. 7-R, p. 47. According to Laurel, “Because [Dr. Arthur] fails to investigate whether Laurel’s proposal is likely to have any effect on the marginal source of supply to Pittsburgh, he has told us nothing about how market prices will change as a consequence of the project.” Laurel Main Brief, at 113, citing Laurel St. No. 7-R, p. 50. Moreover, Laurel explains that wholesalers and retailers do not price petroleum products as a function of delivered cost. Rather, Laurel points out that Gulf and Sheetz **[BEGIN HIGHLY CONFIDENTIAL]**

. **[END HIGHLY CONFIDENTIAL]** In Laurel’s opinion, the rack price of petroleum products in Pittsburgh have been a function of something other than supply costs of East Coast-sourced refined products. Laurel Main Brief, at 113.

Next, Laurel argues that Dr. Arthur’s “delivered price” analysis incorrectly assumes that Chicago is the only Midwest origin capable of supplying Pittsburgh and calculates his “delivered prices” based on the “transportation rate on Buckeye pipeline to transport product from Chicago, IL to Coraopolis, PA,” disregards both the publicly available Buckeye transportation rates to Pittsburgh from origins reflecting the actual locations of multiple Midwestern refineries and the highly confidential committed rates agreed to by the Broadway II shippers. Laurel Main Brief, at 113-15, referring to IP St. No. 1, p. 24, fn. 53.

Fourth, Laurel maintains that Dr. Arthur incorrectly analyzes price impacts on consumers, retailers and wholesalers as a whole. Laurel Main Brief, at 115. Laurel explains that, in competitive gasoline markets, “wholesalers and retailers base their prices on their expectations as to what the market will bear, not on their average costs.” Laurel Main Brief, at 115, citing Laurel St. No. 7-R, p. 55. Laurel further explains this economic principle, stating:

[Dr. Arthur] conflates consumers, wholesalers, and retailers. For example, on page 22 of his testimony, he asserts that the proposed reversal would “increase costs to consumers, wholesalers and

retailers in the Pittsburgh area.” (Indicated Parties Statement 1, p. 22). As a matter of common sense, the interests of consumers, retailers and wholesalers are not identical, of course—one would expect wholesalers to charge the maximum market-clearing price to retailers, who in turn may be expected to charge the highest price that the market at the pump will bear. In other words, for the portion of the time when his model is not wrong, he still has provided no evidence that the benefit actually passes through to the consumers. In fact, microeconomic theory suggests that wholesalers and retailers would seek to retain as much of the margin from arbitraging as possible.

Laurel Main Brief, at 115, citing Laurel St. No. 5-R, p. 21.

Moreover, wholesalers cannot pass cost increases through to retailers unless market prices allow it. Laurel Main Brief, at 116-117; Laurel St. No. 7-R, p. 56. Laurel finds additional support for its position in the testimony of Gulf and Sheetz witnesses on how they determine the replacement gallon price. In particular, **[BEGIN HIGHLY CONFIDENTIAL]**

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Fifth, Laurel argues that Dr. Arthur’s arbitrage analysis based on “delivered prices” is disconnected from reality and not credible. Laurel Main Brief, at 118. In particular, Laurel takes issue with what it perceives to be Dr. Arthur’s arbitrage analysis’ concession that wholesalers and retailers are “leaving money on the table” during periods where the “delivered price” from East Coast origins is lower than the “delivered price” from Midwest origins. Laurel Main Brief, at 118, citing Laurel St. No. 7-R, pp. 59-60.

Laurel explains that Dr. Arthur’s arbitrage analysis cannot demonstrate that arbitrage opportunities have resulted in lower prices in Pittsburgh. Laurel Main Brief, at 119; Laurel St. No. 5-R, pp. 15-20. If Dr. Arthur’s “delivered price” analysis were a valid

representation of the petroleum products market in Pittsburgh, the rack prices in Pittsburgh should be above the finished delivered cost of the low-price location but below the finished delivered cost of the high-price location. Laurel Main Brief, at 120; Laurel St. No. 5-R, pp. 18-20.) This, however, is not the case. As shown in Figures 1, 2 and 3 below, more than half of the time the Pittsburgh price is either lower than both locations or higher than both locations.

Figure 1: Pittsburgh Price Comparison to Chicago and New York Harbor, (Jun 2006-Nov 2016), CBOB, Delivered Price Basis

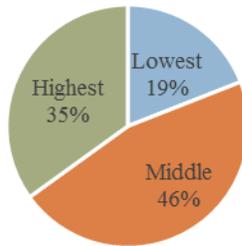


Figure 2: Pittsburgh Price Comparison to Chicago and New York Harbor, (Aug 2011-Nov 2016), RBOB, Delivered Price Basis

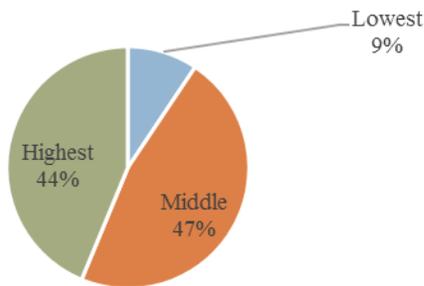
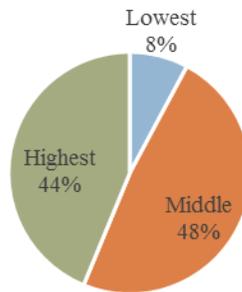


Figure 3: Pittsburgh Price Comparison to Chicago and New York Harbor, (Aug 2011-Nov 2016), Summer Standard, Delivered Price Basis



Laurel Main Brief, at 120-21; Laurel St. No. 5-R, at pp. 18-21.

In other words, Laurel contends that applying Dr. Arthur's assumptions about prices to actual historical data, Dr. Arthur is wrong more than 50 percent of the time. Laurel Main Brief, at 121; Laurel St. No. 5-R, at 21. Based on the reasons stated above, Laurel avers that Dr. Arthur's conclusions regarding the benefits' of alleged arbitrage opportunities presented by Laurel's current configuration are incorrect. Laurel Main Brief, at 121.

Next, Laurel avers that the consumers in Pittsburgh will not be harmed by the proposed reversal because contrary to the Indicated Parties' claims, those consumers did not benefit from arbitrage opportunities in the first place. Laurel Main Brief, at 121. Laurel explains that there is no evidence of record that retailers and wholesalers pass-through the benefits of any present arbitrage opportunities to consumers. Laurel Main Brief, at 121; Laurel St. No. 7-R, p. 72. According to Laurel, the Indicated Parties ask the Commission to believe that the wholesaler willingly reduces the margin it could otherwise earn by charging the retailer less than market price for the product and the retailer willingly reduces the margin it could earn by charging the consumer less than it would otherwise. *Id.* Yet, per Laurel, none of the Indicated Parties' witnesses offers any evidence to this chain of events or any explanation of how these wholesalers and/or retailers share their arbitrage profits with consumers. Laurel Main Brief, at 121. Laurel contends that the failure of Gulf and Sheetz to produce any evidence supporting this fact is particularly telling as they are the only parties in this proceeding that would possess any such evidence. Laurel explains that:

They could have presented company policies on prices that showed how they pass cost savings from arbitrage through to consumers. They could have presented analysis showing that as their costs fell, they reduced their prices. Instead, they simply assume that because the market is competitive prices will pass straight through to consumers. This is particularly true in the case of the testimony of Mr. Lorenz who states that competition will force prices down. He also states that consumers will switch for as little as 3 cents per gallon. However, he provides no data to support this claim.

Laurel Main Brief, at 122-23; Laurel St. No. 5-R, p. 38.

In addition, Laurel contends that contrary to the Indicated Parties' assertions, Laurel's proposed reversal will not increase price volatility in the Pittsburgh market. Laurel Main Brief, at 123. According to Laurel, the principal flaw in the volatility analyses and conclusions advanced by the Indicated Parties, is that their analyses are static and backward looking. Laurel Main Brief, at 123-25; *see* Indicated Parties St. No. 2, pp. 23-24. Laurel Main Brief, at 123 *see, e.g.*, Laurel St. No. 8-R, p. 7. Laurel charges the Indicated Parties' analyses with ignoring significant recent and projected changes in the dynamics of the Midwest, East Coast and Gulf Coast petroleum products markets that directly refute their opinions.

In addition, Laurel contends that Mr. Schaal's "Regional retail petroleum product price analyses" ("PPP Analyses") do not support his conclusion that Pittsburgh consumers benefit from the current Laurel configuration because it provides stable petroleum products prices as compared to consumers in the Midwest. Laurel Main Brief, at 123, 125-29; *see, e.g.* Laurel St. No. 7-R, pp. 42-43; Laurel St. No. 8-R, pp. 42-44. In particular, Laurel rejects Mr. Schaal's conclusion that Laurel's proposed reversal would result in "retail gasoline prices in the Pittsburgh area that are more volatile and prone to price spikes than would be the case absent the proposed reversal." *See* IP St. No. 2, p. 22. Laurel argues that these conclusions are based on the insinuation that the Midwest marketplace somehow lacks the ability and/or physical capacity to serve western Pennsylvania. Laurel Main Brief, at 125; Laurel St. No. 7-R, pp. 42-43. Laurel rejects them as based on a flawed methodology that "compare[s] indigenous production within the eastern Midwest subgroup of states in PADD 2 ... against those states' indigenous

consumption. Because consumption exceeds production, he asserts that the eastern Midwest cannot be a source of products to other regions.” Laurel St. No. 7-R, p. 43. Laurel reasons that Mr. Schaal’s analysis ignores the geography and import/export reality in which the petroleum products marketplace operates. Laurel Main Brief, at 126.

Laurel also downplays Mr. Schaal’s conclusions regarding the effects of price spikes due to outages by pointing out that price spikes are not unusual in the refining industry. Laurel Main Brief, at 128; Laurel St. No. 8-R, p. 41.) Indeed, Laurel maintains that “price spikes can occur anywhere at any time, but they quickly resolve because they present an arbitrage opportunity to producers to supply additional material if the infrastructure to move product exists.” Laurel Main Brief, at 128; Laurel Main Brief Laurel St. No. 8-R, p. 42 (emphasis in Laurel Main Brief). Laurel proposed reversal, as a part of the Broadway II project, provides the infrastructure necessary for price spikes to quickly resolve themselves by alleviating pipeline constraints between Midwestern refineries and Pittsburgh. Laurel Main Brief, at 128.

Next, Laurel attacks Mr. Schaal’s claims that Laurel’s proposed reversal will result in higher prices for Pennsylvania consumers because it will increase price volatility in Pennsylvania. *See* IP St. No. 2, pp. 29-30. Specifically, Mr. Schaal concludes that:

[I]f the partial reversal were to be approved and implemented Pittsburgh and Altoona gasoline prices would more closely track the more volatile gasoline prices of the Eastern Midwest cities with very little potential benefit with respect to the average prices that those consumers would end up paying. In addition, Pittsburgh and Altoona customers would be subject to spikes in gasoline prices to a degree that they have not previously experienced.

IP St. No. 2, pp. 29-30.

Laurel rejects this conclusion by explaining that Midwestern gasoline prices can be volatile due to unique competitive factors in the Midwestern retail markets, not the source of the gasoline supplies. Laurel Main Brief, at 129; Laurel St. No. 8-R, pp. 42-43. According to

Laurel, Midwestern retailers engage in a pattern known as “price cycling.”<sup>30</sup> *Id.* Mr. Stern explained that price cycling is caused, at least in part, by the nature of competition between superstores and convenience chains at the retail level. *Id.* Price cycling is not, however, caused by the *source* of gasoline. *Id.* Laurel points out that no witness in this proceeding has suggested that Pennsylvania retailers engage in price cycling, or that the competitive nature of Pennsylvania’s retail gasoline markets exhibits the same characteristics as those markets in the Midwest. Laurel Main Brief, at 130. Moreover, even if price cycling were to occur in Pennsylvania, Laurel notes that the United States Federal Trade Commission has concluded that price cycling “actually results in an average gas price that is roughly one cent per gallon cheaper than in states where price cycling is uncommon.” Laurel Main Brief, at 130; Laurel St. No. 8-R, at 44; *see also* Hearing Tr. 628:19-629:2.

Next, Laurel reiterates its position that the proposed reversal will not reduce supply reliability and optionality in the Pittsburgh market as numerous supply alternatives will be available to Pittsburgh-area market participants post-reversal. Laurel Main Brief, at 131. As such, Laurel reasons that supply reliability and optionality in the Pittsburgh market will not be negatively impacted by the reversal. Laurel Main Brief, at 131.

Laurel asserts that a key benefit of its proposed reversal is that, as a part of Broadway II, it will alleviate certain downstream constraints between Midwest refineries and Pittsburgh thereby allowing increased access to lower-cost Midwestern petroleum products. Laurel Main Brief, at 132; *see also* Laurel C.E. Exhibit No. 17 (Tr. 81:15-82:4). While it is possible for lower-cost Midwestern petroleum products to reach Pittsburgh through existing pipeline options, Laurel argues that shippers’ commitments to the Laurel reversal as a part of the Broadway II project demonstrate there are downstream constraints that prevent Midwestern volumes from reaching Pittsburgh. Laurel Main Brief, at 132; Hearing Tr. 363:5-12. According to Laurel, these downstream constraints are part of the reason that, despite the robust existing

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<sup>30</sup> Price cycling has been described by the FTC as a “recurring ‘saw tooth’ pattern of retail price movements characterized by periods of a relatively small number of large price increases, followed by a period of more numerous, but smaller price decreases.” Laurel Main Brief, at 129, footnote # 78, referring to Laurel St. No. 8-R, p. 42 and fn. 95 (quoting “Gasoline Price Changes and the Petroleum Industry: An Update,” Federal Trade Commission, Bureau of Economics, September 2011, pp. 40-41).

pipeline infrastructure in the Midwest, Midwestern shippers continue to demand additional eastward transportation solutions into Pittsburgh via pipeline. Laurel Main Brief, at 132; *see* Laurel St. No. 1-R, p. 12. Laurel points out that the proposed reversal will provide not only an additional, necessary pipeline option to transport lower-cost Midwestern products to the Pittsburgh area, but it will also expand the terminal options available for lower-cost Midwestern products to reach. Laurel Main Brief, at 134-35; Hearing Tr. 1181:7-1182:9.

### The Indicated Parties' Position

#### Harm to the Pittsburgh Market

The Indicated Parties argue that, from a supply standpoint, the only guaranteed effect of the proposed reversal will be to eliminate pipeline access to the Pittsburgh market from Eastern supply sources, including Philadelphia-area refineries. IP Main Brief, at 80. They point out that currently, Pittsburgh has excess pipeline capacity from both the Midwest and the East Coast. IP Main Brief, at 80; IP Exhibit DSA-5. Including the ETP (Sunoco) Allegheny Access line and Buckeye's recent capacity expansions on its interstate lines from the Midwest, total pipeline capacity to deliver Midwest supply into the Pittsburgh area is about 279.2 MBPD (IP St. No. 1, at 19: Figure 4), more than double the total Pittsburgh area demand of 103-113 MBPD. IP St. No. 1, at 20:20-21. Meanwhile, the Laurel pipeline has capacity to deliver 180 MBPD to the Pittsburgh area from eastern supply sources. Hearing Tr. at. 425:1-9. There has been available capacity to flow additional volumes into Pittsburgh both from Midwest origins as well as East Coast origins since March 2016. IP Exhibit DSA-5 attached to IP St. No. 1; IP St. 1-S, at 29:22-24; *see also* Laurel St. No. 1-R, at 39:1-23. The Indicated Parties calculate that the proposed reversal would unnecessarily add 40 MBPD of capacity from the Midwest into Pittsburgh and then further to Altoona, but at the cost of eliminating the 180 MBPD capacity into Pittsburgh from the East, for a net loss of 140 MBPD of total supply capability into Pittsburgh. IP Main Brief, at. 80; Hearing Tr. at 392:14; 396:1; 426:10-13. They argue that, with 2017 shipments from the East Coast to Pittsburgh averaging approximately 50 MBPD, this exchange, even without accounting for the adverse supply security and pricing impacts discussed below,

amounts to a net loss for the Pittsburgh area. IP Main Brief, at 80; see also IP St. No. 1-S, at 27: Table 1; Hearing Tr. at 749:10 and 789:7-10.

In the Indicated Parties' opinion, Laurel has failed to show that the reduction in available supply to the Pittsburgh area will be offset by any alleged corresponding benefit elsewhere in the Commonwealth. They draw attention to the specific analysis of the anticipated outcome offered by Laurel witness Dr. Jones, who stated:

And so the fact that you've got a river of refined product coming through Pittsburgh, it's going to have an impact. Taking it every day all way to the Eldorado terminal and distributing to the Greater Altoona area is highly unlikely since that area itself will see competition from the east.

IP Main Brief, at 82, citing Hearing Tr. at 1205:4-5. From this statement they deduce that the proposed reversal will not impact Altoona (or, by logical extension, Central Pennsylvania) at all, because available capacity on the post-reversal line would be consumed at the Pittsburgh area destination points given the competition posed by eastern suppliers in Altoona. *Id.*

The Indicated Parties note that competition and price levels in Pittsburgh are clearly not providing the incentive for additional supply from the Midwest to flow to Pittsburgh currently, as demonstrated by the incoming volumes from the East Coast pushing prices down. IP Main Brief, at 83. "This is evident from the fact that capacity is and has been available to deliver more volumes from the Midwest to Pittsburgh for the last 18-months, yet the market continues to source significant volumes from the east." *Id.* However, they point out that, if the Laurel pipeline were to reverse and eliminate Eastern supply to Pittsburgh, one would expect pipelines from the Midwest to Pittsburgh to experience increased utilization as Laurel's regulatory fiat knocks competitors out of the Pittsburgh market and prices begin to rise. *Id.*

The Indicated Parties find support for their extrapolation in the structure of Laurel's transportation service agreements (TSAs) executed with each of the shippers committing to the Broadway II project. **[BEGIN HIGHLY CONFIDENTIAL]**

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The Indicated Parties find it telling that Laurel made no effort to assess how many additional trucks would be necessary to move product arriving at Eldorado from the Midwest (post-reversal) to the rest of Central Pennsylvania. They point to the testimony of Dr. Jones as indicative of Laurel's failure to quantify, study, or learn the capacity of the terminals and truck

racks in Eldorado that would need to be used for delivery by truck to "Central Pennsylvania" and/or the "Harrisburg area." IP Main Brief, at 85, referring to Hearing Tr. 685:13-21. Laurel has provided no evidence or analysis of: 1) the capacity of these truck racks to accommodate any increased truck traffic that would result from the Laurel pipeline proposal; 2) who would need to make such investments; or, 3) how much it would cost. IP Main Brief, at 85. In addition, Laurel has not studied the distance required to transport product by truck to various destinations from Altoona, nor the factors unique to particular routes, such as mountains, road capacity, or Turnpike tunnel restrictions. *Id.* The Indicated Parties conclude that, at best, Laurel has put forth unsupported testimony that undetermined regions in the Commonwealth may possibly benefit in an undetermined amount by virtue of an undetermined volume of gasoline reaching undetermined destinations in Central Pennsylvania at undetermined prices via an undetermined number of tanker trucks traveling on undetermined routes. *Id.*, at 85-86.

Describing the pricing advantages that the current availability of both Midwest and East Coast-sourced petroleum products supply provides in the Pittsburgh area, the Indicated Parties explain that "Pittsburgh area consumers, wholesalers, and retailers currently have access via pipeline to obtain refined petroleum products from two major supply regions: the Midwest (via the Buckeye, ETP (Sunoco), and Marathon pipelines) and the East Coast (via Laurel)." IP Main Brief, at 86-87, citing to IP St. No. 1, at 22:25-27. As a result, Pittsburgh wholesalers and retailers can compare the costs of petroleum products supply from each source and purchase the lowest delivered cost supply, which is the refined product commodity price at the respective location plus transportation costs to deliver product to the Pittsburgh area. IP Main Brief, at 87; see also IP St. No. 1, at 24, n. 53. The ability of Pittsburgh area wholesalers and retailers to obtain lowest cost supply from Midwest or East Coast sources, referred to as "arbitrage" creates benefits for Pittsburgh area consumers, wholesalers, and retailers. IP Main Brief, at 87; IP St. No. 1, at 23:1-22.

The Indicated Parties reject Laurel's claim that East Coast refineries cannot effectively compete with Midwest refineries by arguing that their own analysis of delivered prices into the Pittsburgh market provides consistent data showing East Coast sources, on average, post lower delivered prices for the Pittsburgh market than their Midwest counterparts.

IP Main Brief, at 87. Figures 6a and 6b below compare delivered costs to Pittsburgh-area destinations on the Laurel pipeline for both East Coast intrastate volumes (originating from Philadelphia) and East Coast interstate volumes (originating in Philadelphia and New York Harbor) to the delivered costs for Midwest volumes to Pittsburgh area destinations. IP Main Brief, at 87; IP St. No. 1, at 28: Tables 6a and 6b. Figure 6a presents the data for parts of the Pittsburgh area subject to low-RVP<sup>31</sup> regulations and Figure 6b includes the data for the areas outside of the Pittsburgh metro that are not subject to low-RVP regulations. The results are similar for the East Coast intrastate and interstate volumes, but for illustrative purposes, the differential between Midwest delivered prices into Pittsburgh and the intrastate Philadelphia-area origin delivered prices into Pittsburgh is shown below:

**Excerpt from Figures 6a and 6b**

<b>Year</b>	<b>Midwest less Pre-Reversal East Coast Delivered Prices Philadelphia (Intrastate) With Summer RVP Standard (\$/gallon)</b>	<b>Midwest less Pre-Reversal East Coast Delivered Prices Philadelphia (Intrastate) Without Summer RVP Standard (\$/gallon)</b>
<b>2012</b>	\$-0.02	\$-0.02
<b>2013</b>	\$0.05	\$0.02
<b>2014</b>	\$0.04	\$0.01
<b>2015</b>	\$0.13	\$0.9
<b>2016</b>	\$0.06	\$0.03

IP Main Brief, at 88; IP St. No. 1, at 28: Tables 6a and 6b. Per the Indicated Parties, this data demonstrates that East Coast supply sources offer lower annual costs for supply of petroleum

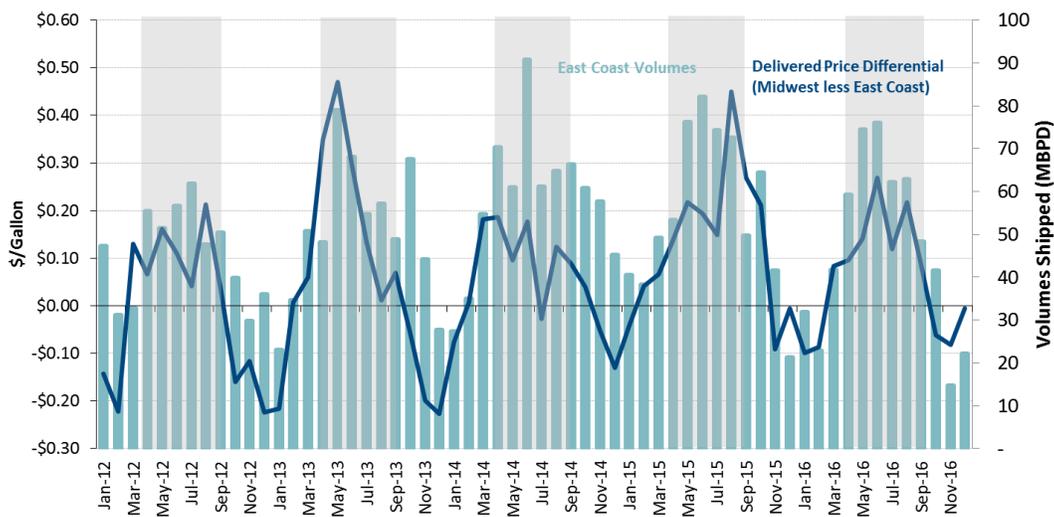
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<sup>31</sup> Reid Vapor Pressure (“RVP”) is the vapor pressure of the gasoline blend when the temperature is 100°F. Normal atmospheric pressure varies, but is usually around 14.7 psi. If a liquid has a vapor pressure of greater than local atmospheric pressure, that liquid boils. In the summer, when temperatures can exceed 100°F in many locations, it is important that the RVP of gasoline is well below 14.7 psi; otherwise, it can pressure up gas tanks and gas cans, and it can boil in open containers. Gas that is boiled off ends up in the atmosphere, and contributes to air pollution. Therefore, the EPA has declared that summer gasoline blends may not exceed 7.8 psi in some locations, and 9.0 psi in others. In contrast, during the winter months, conventional gasoline RVP is allowed to be as high as 15 psi in some areas. Pennsylvania’s Environmental Quality Board, which is proposing the rule change to eliminate the 7.8 RVP requirement for Pittsburgh, indicated that there has been a decline in benefits of the low-RVP gasoline because of newer, less-polluting vehicles, as well as a federal push for gas containing less sulfur. Laurel Main Brief, at 144, footnote # 83, referring to Laurel St. No. 8-R, p. 45.

products into Pittsburgh, with East Coast gasoline supply being, on average, 3 to 6 cents per gallon less expensive than Midwest supply for 2016.<sup>32</sup> IP Main Brief, at 88.

Next, the Indicated Parties aver that a delivered price analysis (reproduced in Figure 5 below), which tracked the monthly differential between delivered prices from the Midwest and East Coast on the Pittsburgh market over a five-year period from 2012 – 2016, shows that gasoline supply from the East Coast to Pittsburgh is historically less expensive than Midwest gasoline supply for 7-9 months out of the year, with Midwest gasoline supply generally providing lower delivered prices to Pittsburgh in the winter months. IP Main Brief, at 90; IP St. No. 1, at 25:1-7.

**Figure 5**  
**Total Volumes of Gasoline Delivered to Pittsburgh from the East**  
**Compared to Differential in Delivered Prices**  
**(With Summer RVP Standard)**



Sources/Notes:  
 Delivered prices calculated using Argus gasoline prices.  
 Shaded areas represent months when the Summer RVP Standard is in effect (Apr. 1st - Sept. 15).

IP St. No. 1, at 25: Figure 5.

The Indicated Parties’ delivered price analysis also establishes the relationship between the price differentials and actual volumes shipped from East Coast sources with the

<sup>32</sup> Similar analyses are presented for diesel in Figure 9 of Dr. Arthur's Direct Testimony. IP Main Brief, at 88.

vertical bars in Figure 5 showing that volumes shipped from the East Coast increase during the non-winter periods where the price differential between Midwest and East Coast delivered prices favors the East Coast. IP Main Brief, at 90-91. The Indicated Parties observe that this pattern remains noticeable even for 2016, after ETP (Sunoco) and Buckeye completed projects expanding the capacity for pipeline shipments of Midwest-sourced petroleum products into the Pittsburgh area. *Id.*, at 91. They interpret the pattern to indicate that, with access to both Midwest and East Coast petroleum products markets, Pittsburgh area wholesalers and retailers take advantage of the competitive arbitrage opportunities and shift volumes toward East Coast supply when the arbitrage favors the east, and shift volumes toward Midwest supply when the arbitrage favors the Midwest suppliers. *Id.* However, if Pittsburgh were forced to meet its total petroleum products demand of 103-113 MBPD solely with supply from the Midwest, the Indicated Parties calculate that the annual supply costs for the Pittsburgh area would increase by \$75 million.<sup>33</sup> IP Main Brief, at 91; IP St. No. 1, at 40:25.

In addition, the Indicated Parties aver that a comparison of historical wholesale gasoline prices for both New York Harbor (East Coast) and Chicago (Midwest) found only a \$0.01 per gallon difference for the year 2016. Contrary to Laurel's representations that Midwest products are the lower cost fuel source, they found "no discernable trend toward lower wholesale gasoline prices in the Midwest as claimed by Laurel." IP Main Brief, at 91-92; IP St. No. 2, at 32:2-3.

In their Main Brief, the Indicated Parties maintain that the proposed reversal would also expose Pittsburgh area wholesalers, retailers, and consumers to increased price volatility due to greater exposure to more volatile prices in the Midwest. They conducted Regional Petroleum Product Price analyses ("PPP Analyses"), comparing Midwest petroleum products markets and Central Atlantic petroleum products markets and calculating the

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<sup>33</sup> Dr. Arthur also calculates potential benefits for the Altoona and Harrisburg areas based on the potential, however unlikely, for wholesalers and retailers in the Altoona area to arbitrage between Midwest and East Coast supply sources. IP Main Brief, at 91; IP St. No. 1, at 56:3-6, 62:6-9. Assuming volumes on the post-reversal pipeline reach Altoona, Dr. Arthur calculates that potential arbitrage benefits of approximately \$7.4 million for the Altoona area. IP St. No. 1, at 56:3-6. Assuming volumes from Altoona would be trucked to Harrisburg, Dr. Arthur calculates potential arbitrage benefits of approximately \$900,000 for the Harrisburg area. *Id.* at 62:6-9.

differentials in daily retail gasoline prices between Pittsburgh and other cities from 2015 to 2016. IP Main Brief, at 98; IP St. No. 2, at 25: Figure 11. They argue that their PPP Analyses clearly show that retail price spikes were due to specific outage events that affected the supply chains in the Eastern United States, whereas Pittsburgh's connectivity to Philadelphia area refineries via the Laurel pipeline shielded Pittsburgh consumers from these spikes arising from supply-related events that would have otherwise occurred if they sourced their petroleum products solely from the Midwest. IP Main Brief, at 98. For example,

[A] comparison of Pittsburgh area daily retail gasoline prices to pricing in Midwest cities such as Detroit, Chicago, Columbus, and Cleveland shows significant variance, with prices spiking by as much as \$0.70 per gallon due to unplanned refinery outages in the Midwest (see the third chart in Figure 11).<sup>34</sup> Likewise, the second chart of Figure 11 shows the effect of the Colonial Pipeline explosion in September 2016, which triggered the price spikes in South Atlantic cities, including Atlanta, Raleigh, and Nashville—but did not negatively impact prices for Pittsburgh consumers. The Indicated Parties observe that Pennsylvania consumers enjoyed relatively consistent retail gasoline prices during that same time period, as Pittsburgh daily retail gasoline prices never varied more than \$0.20 per gallon from pricing in cities such as Philadelphia, Altoona, Albany, and Buffalo (See to the first chart in Figure 11).<sup>35</sup>

*Id.*, at 98-99.

In addition to the differentials from Pittsburgh area prices, the Indicated Parties also reviewed the daily retail gasoline prices in several cities to quantify the volatility of the Midwest petroleum products market or the standard deviation of the daily price movements on an annual basis. IP Main Brief, at 99. Using 2016 as an example, the analysis showed that consumers in Pittsburgh and Philadelphia paid retail gas prices within a bandwidth of 6.5% and 7.5% respectively by this measure of price risk. IP Main Brief, at 99; IP St. No. 2, at 28:12-16. By comparison, consumers in Chicago, Indianapolis, and Cleveland saw their retail gasoline price risk range from 10%, 47.5%, and 22.1%, respectively. *Id.*

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<sup>34</sup> Indicated Parties St. No. 2, at 25:1-9, 26:12.

<sup>35</sup> Indicated Parties St. No. 2, at 23:17-24:1.

The Indicated Parties point out that recent events corroborate the value of pipeline supply from both the east and the west in the Pittsburgh market, both from a price volatility and reliability of supply perspective. IP Main Brief, at 99. More specifically, an October 2017 price spike in the Chicago market had the effect of keeping supplies in the Midwest rather than using them for deliveries into western Pennsylvania. IP Cross Exhibit. 13; Hearing Tr. at 610-612:1-25; Hearing Tr. at 604:1-5. The price spike prompted ExxonMobil to supply gasoline to Pittsburgh via the Laurel pipeline rather than drawing supply from its Joliet refinery in Illinois. In this instance, the availability of dual pipeline access into Pittsburgh allowed market participants to use the most cost-effective supply to meet Pittsburgh's needs in the wake of severe price spikes in the Midwest, an option that would not be available if the reversal were approved. IP Main Brief, at 99.

In view of the above, the Indicated Parties contend that, if Pittsburgh is completely delinked from Eastern supply sources, Pittsburgh consumers will become completely exposed to the gasoline price volatility that dominates Midwest markets. They see exposure to such price volatility as one of several harms that would befall Pennsylvania consumers if the proposed reversal were to be approved. IP Main Brief, at 99-100.

In their Main Brief, the Indicated Parties aver that Pittsburgh must comply with environmental regulations restricting gasoline sales to low-RVP blends during summer months. East Coast supply sources historically and presently account for most of the low-RVP gasoline supplied to the Pittsburgh area. The Indicated Parties summarize the intent of low-RVP regulations as follows:

The RVP is a measure of the volatility of the gasoline that defines its evaporation qualities. A higher RVP, measured in pounds per square inch or psi, means that the gasoline is more volatile. In order to reduce evaporative emissions that lead to ground-level ozone, the United States Environmental Protection Agency restricts the sale of higher-RVP gasolines during the summer ozone season (June 1 through September 15, with standards taking effect on May 1) in certain locations. The Pittsburgh area is required to sell gasoline with an RVP of 7.8 psi [pounds per square

inch] or lower from May 1 through September 15, which is a very specific grade of gasoline.

IP Main Brief, at 102, citing IP St. No. 1, at 25:10 – 26:4.

Pittsburgh is subject to a particularly onerous low-RVP mandate that limits gasoline sold from May through mid-September to 7.8 psi. IP Main Brief, at 102; IP St. No. 1, at 26:2-4. Moreover, Pittsburgh's low-RVP mandate must be met without the benefit of an ethanol waiver. Hearing Tr. at 1126-7. An ethanol waiver would exclude the psi impact of ethanol blended with the gasoline from the low-RVP threshold for compliance purposes. *Id.* As ethanol blending adds approximately 1 psi to gasoline, the lack of an ethanol waiver for Pittsburgh means suppliers must provide gasoline to Pittsburgh no higher than 6.8 psi in order for the final product, after mandatory ethanol blending occurs, to meet the 7.8 psi low-RVP mandate. Hearing Tr. at 1126.

The Indicated Parties maintain that East Coast supply sources have historically met most of the Pittsburgh area's demand for low-RVP gasoline and continue to do so. IP Main Brief, at 103; IP St. No. 1, at 26:4-6; Sheetz St. No. 1, at 9:5-6. Similarly, monthly gasoline shipments from East Coast origins shipped on Laurel's pipeline consistently increase in volume during the Summer months. IP Main Brief, at 103. For 2016, Summer gasoline volumes shipped to Pittsburgh were as follows:

**2016 Summer Shipments to Pittsburgh Area on Laurel Pipeline**

<b>Month</b>	<b>Gasoline Shipped to Western PA from East Coast (MBPD)</b>
May	75
June	76
July	62
August	63

IP Exhibit DSA-11, at 15.

In addition, historical data from 2012-2016 shows consistent increases in volumes shipped on the Laurel pipeline from the East Coast during the Summer months. IP Exhibit DSA-11, at 13-15. With total demand for gasoline (excluding diesel, jet fuel, and other products) in Pittsburgh averaging approximately 67 MBPD, data indicates that East Coast refineries supply almost all of the gasoline to the Pittsburgh area during the low-RVP summer months. IP Main Brief, at 103, Laurel Exhibit MJW-11, at 5.

The Indicated Parties observe that the proposed reversal would leave the Pittsburgh area without pipeline access to low-RVP gasoline that East Coast refineries produce. IP Main Brief, at 103-104. They argue that Laurel has not established how or whether Midwest refineries can efficiently and economically produce sufficient volumes of low-RVP gasoline to supply the entirety of the Pittsburgh market demand for low-RVP gasoline during the Summer months. Instead, they believe that Laurel resorted to oversimplifying the process of producing low-RVP gasoline and to relying on the commitments of Midwest refiners through its Open Season for the Broadway II project as evidence that Midwest refiners will figure out a way to supply Pittsburgh with low-RVP gasoline. The Indicated Parties believe that neither response adequately assures that low-RVP gasoline would remain available to the Pittsburgh market in sufficient volumes or at reasonable prices. IP Main Brief, at 104.

According to the Indicated Parties, Laurel understates the complexity and expense of producing low-RVP gasoline in order to lull the Commission into a false sense of security concerning the availability of this federally mandated gasoline blend. *Id.* They take issue with Laurel's representation that "... production of low-RVP gasoline merely requires refiners to reduce the butane levels in gasoline by replacing the butane with other blending components." IP Main Brief, at 104, citing Laurel St. No. 8-R, at 72:7-9. They reject this explanation as it applies to Pittsburgh, pointing out that Laurel's representation would be more appropriate for cities with ethanol waivers, which Pittsburgh does not have. IP Main Brief, at 104-105; Hearing Tr. 1126:3 – 1127:17. As Monroe Energy witness, Ms. Sadowski testified, to meet Pittsburgh's 7.8 psi low-RVP standard, the refiner must produce gasoline with a 6.8 psi to leave sufficient headroom to comply with the 7.8 standard after blending ethanol with the gasoline. IP Main Brief, at 105; Hearing Tr. 1127. "The Achilles heel in Laurel's positions is that no more butane

can be removed from 7.8 psi gasoline to reach 6.8 psi because, quite simply, no more butane exists once the gasoline reaches 7.8 psi.” IP Main Brief, at 105; IP St. No. 2-S, at 44:9-10.

Relying on Ms. Sadowski’s testimony, the Indicated Parties aver that producing low-RVP gasoline compliant with Pittsburgh mandates requires more than reducing the level of butanes in the gasoline blend. Other components such as pentane must be removed, which would reduce the refiner’s total gasoline yields and increase yields of less valuable products, such as pentane. IP Main Brief, at 105; Hearing Tr. 1127. The refiner must also incur operational costs to keep butanes and pentanes separated from the gasoline streams. *Id.* They reason that, as a result of the increased costs, the refiner must charge a higher price per barrel of low-RVP gasoline to earn a margin equivalent to that from a barrel of standard-RVP gasoline. IP Main Brief, at 105-106. They conservatively estimate that the Midwest refineries would require an additional 3.7 MBPD of crude oil and experience increased production costs of 2.60 cents per gallon to produce even low-RVP gasoline at 7.8 psi. IP St. No. 2-S, at 44-45. Producing the 6.8 psi required for the Pittsburgh area would prove to be even more costly. IP Main Brief, at 106.

The Indicated Parties observe that Laurel has failed to directly answer the question why the Midwest refiners are not producing low-RVP gasoline and more effectively competing with East Coast low-RVP gasoline now. They note that in 2017, Husky, the largest refiner in Ohio, sold over the 138-day low-RVP compliance period from May 1 – September 15, only **[BEGIN HIGHLY CONFIDENTIAL]** **[END HIGHLY CONFIDENTIAL]** far short of Pittsburgh’s total average gasoline demand of approximately 67 BPD. IP Main Brief, at 107; *see* IP Cross Exhibit No. 17; *cf.* Laurel Exhibit No. MJW-11, at 5. They point to Laurel’s witness testimony that “[r]efineries will sell product into markets that yield the highest netback (i.e. sales price net of transportation costs)...,” Laurel St. No. 1-R, at 38, for support of their observation that Midwest refiners are not producing sufficient volumes of low-RVP gasoline to serve the Pittsburgh market because Midwest refiners do not believe they can currently earn a sufficient netback when faced with competition from East Coast suppliers. IP Main Brief, at 108.

The Indicated Parties extrapolate that, in order to provide any incentive for the Midwest refiners to produce higher volumes of low-RVP gasoline for the Pittsburgh market, the price in Pittsburgh would have to increase. *Id.* In view of the above, the Indicated Parties reason that even if Midwest refiners were physically and operationally able to produce the low-RVP gasoline, Pittsburgh wholesalers, retailers, and consumers can expect to pay more for low-RVP gasoline supply from the Midwest if the Commission approves the proposed reversal. *Id.*

#### Harm to Eastern Pennsylvania Refineries

The Indicated Parties observe that Pittsburgh is a critically important market for both PESRM and Monroe Energy and that new alternative markets/connections are few. IP Main Brief, at 114; Monroe Energy St. No. 1, at 8:18; Monroe Energy St. No. 1-SR, at 6:8-17; PESRM St. No. 1, at 8:14-16. They assert that, if the Laurel pipeline reverses at Eldorado and they can no longer move petroleum products into the Pittsburgh area on the Laurel pipeline, they would suffer material financial losses, which may ultimately lead one or both to close. IP Main Brief, at 109; PESRM St. No. 1, at 8:14-19; Monroe Energy St. No. 1, at 10:8-21; Monroe Energy Exhibit TS-2.

The Indicated Parties maintain that PESRM and Monroe Energy's current refinery operations are optimized today based upon the availability of crudes, market prices and transportation alternatives, among other factors, and therefore selling into any other markets will not be optimal and thus will produce less margin. IP Main Brief, at 114; Monroe Energy St. No. 1, at 18:4-14; PESRM St. No. 1, at 8:14-15. They note that reversal of the Laurel Pipeline will diminish substantially PESRM's and Monroe Energy's ability to move product out of their respective refineries. IP Main Brief, at 114; Monroe Energy St. No. 1, at 5. For Monroe Energy, the Laurel pipeline currently moves **[BEGIN HIGHLY CONFIDENTIAL]**

**[END HIGHLY CONFIDENTIAL]** IP Main Brief, at 114; Monroe Energy St. No. 1-SR, at 12. PESRM St. No. 1, at 4:3-7.

The Indicated Parties argue that, if PESRM and Monroe were to continue to sell barrels on the Laurel pipeline, that over-supply would push prices and revenue down. IP Main Brief, at 115; Monroe Energy St. No. 1-SR, at 12:18-23. Similarly, if the Refineries, or their customers sought to move the barrels currently moved on the Laurel pipeline to other destinations, the combination of lower margins and higher transportation costs would push down margins directly. In the Indicated Parties' opinion, "It is a classic lose/lose for the Refineries." IP Main Brief, at 115; Monroe Energy St. No. 1-SR, at 6:21-7:8.

The Indicated Parties assert that pipelines provide the most economic transportation option for moving refined products out of a refinery. IP Main Brief, at 116; PESRM St. No. 1, at 4:5-7. PESRM and Monroe Energy are connected to the Laurel pipeline, which moves a significant amount of their products to markets that demand the product today, including Pittsburgh where half the market, on average, is supplied via the Laurel pipeline with products from the Refineries. Hearing Tr. 722:2-23. The Indicated Parties argue that taking away the ability to get product to Pittsburgh will be a severe blow to the Refineries, because the rest of the Laurel pipeline simply cannot absorb the displaced product. IP Main Brief, at 116; PESRM St. No. 1-S, at 15:3-15. The Refinery witnesses both testified that such changes would be structural and that such a structural change would create the potential for dire economic consequences for the refineries, including reduced production, lower employment, and other negative impacts to the eastern Pennsylvania region. IP Main Brief, at 116; Monroe Energy St. No. 1-SR, at 19:13-19.

In their Main Brief, the Indicated Parties assert that if the Refineries were cut off from a critically important market like Pittsburgh "those sales could only be replaced by sales at lower margins or they would not be made at all, leading to revenue reductions and cuts in production, which could lead to workforce reductions." IP Main Brief, at 116; PESRM St. No 1, at 8:16-19. As illustrated by PESRM witness James T. Rens, a one cent reduction in the price of a gallon of gasoline translates into a **[BEGIN HIGHLY CONFIDENTIAL]** **[END HIGHLY CONFIDENTIAL]** loss in profit to PESRM. IP Main Brief, at 116-17; Hearing Tr. 1148. Additional financial pressure on PESRM due to the proposed reversal could have severe economic consequences for PESRM. **[BEGIN HIGHLY CONFIDENTIAL]**

**[END**

**HIGHLY CONFIDENTIAL]** PESRM St. No. 2-S, at 5:8-6:8. The Indicated Parties maintain that the Refineries are currently moving product into markets that are physically available to them and that are *viable*. IP Main Brief, at 117; Monroe Energy St. No. 1-SR, at 6:3-17. They define a market as viable if it is able to absorb additional supply at a sustainable margin for those in the market. Nonetheless, Laurel contends that there are actual or potential pipeline connections to other markets, failing to acknowledge that such connections (i) do not exist today, (ii) are uneconomic today, or, (iii) relate only to markets that are not viable today. IP Main Brief, at 117.

The Indicated Parties argue that there is no simple solution for Monroe Energy to ship volumes displaced by the proposed reversal that would not involve significant capital outlay to reach highly saturated markets with flat demand. IP Main Brief, 117. The best alternative for Monroe Energy, after putting as much additional supply into the pipelines as it can, would be to put product on barges to New York Harbor. Monroe Energy St. No. 1-SR, at 3:10-21. However, barging increases transportation costs by 3.5 cents per gallon, which directly and adversely impacts Monroe Energy's bottom line. Monroe Energy St. No. 1, at 8:20-9:4. Based on Ms. Sadowski's estimate of Monroe Energy's movements west past Eldorado along the Laurel pipeline, that would result in \$12 million per year less operating income for Monroe Energy, which is a 33% reduction. IP Main Brief, at 118; Monroe Energy St. No. 1-SR, at 14:8-15:6.

Next, the Indicated Parties note that PESRM already ships to the alternative markets that Laurel suggests, and the demand in those markets, like upstate New York, is not growing. As PESRM witness Mr. Sadlowski noted:

The markets that have been offered up [i.e., suggested by Laurel as alternatives] are markets that we're already in. So, assuming we

could get there, I mean, how do you convince a guy to buy two umbrellas from [you] in a rainstorm? I don't know.

Hearing Tr. 980:2-5.

Mr. Sadlowski also made it clear that absorbing the combined excess production from Monroe Energy and PESRM post reversal would push down prices in the New York Harbor market, which could lead to refinery closures, as it did in 2008. IP Main Brief, at 118; Tr. 960:18-961:15. According to the Indicated Parties, history has shown that while lower prices at the pump may seem attractive for consumers at the outset, if the Refineries cannot weather the reductions, over the longer period, they will be forced to close. *Id.*

#### Harm to Philadelphia

The Indicated Parties argued that the elimination of access to this market harms the economy of Philadelphia in the form of lost refinery revenue which leads to reduced production and loss of jobs. IP Main Brief, at 119. The Indicated Parties note that based on prior economic studies, if PESRM were to close, approximately 1,100 refinery jobs would be immediately lost and another approximately 12,000-21,600 jobs would be at risk. IP Main Brief, at 119; PESRM St. No. 1, at 10:7-9. They also aver that the approval of the pipeline reversal would materially impact the Philadelphia community as well. For example, during a period of extreme cold weather, PESRM's residual fuel supplies were utilized to avoid closure of several Philadelphia area hospitals, including Children's Hospital of Pennsylvania, which avoided the evacuation and relocation of critical patients. PESRM supplies were also crucial in supplying petroleum products in the wake of Superstorm Sandy when other East coast refiners were forced to halt operations. PESRM supplies kept the American Red Cross Disaster Relief trucks powered so they could assist victims of the hurricane disaster. IP Main Brief, at 119; PESRM St. No. 1, at 11-12.

## Other Harms

The Indicated Parties disagree with Laurel's assertions that Midwestern product shipped to Eldorado can be trucked further east, bringing the alleged benefits of the reversal even deeper into Pennsylvania, or further west into the Pittsburgh market. IP Main Brief at 120; *see* Laurel Hearing Ex. 1 (Application) at p. 11, ¶ 22, ¶ 43. They aver that despite these statements, Laurel has submitted no analysis regarding the feasibility of either of these trucking options, nor has it estimated volumes to be transported by truck, or the impact on the roads and public safety associated with such trucking. IP Main Brief, at 120.

According to the Indicated Parties, the starting point for any analysis of truck routes from Eldorado is the Pennsylvania Turnpike ("Turnpike"). IP Main Brief, at 121; IP St. No. 4, at 4. Trucks carrying hazardous materials must be "placarded" and placarded trucks are prohibited from passing through the numerous tunnels on the Turnpike. *Id.* In the Indicated Parties' view, these restrictions render the Turnpike an inadequate and impractical supply route for tanker trucks to deliver petroleum across Pennsylvania from Eldorado. IP Main Brief, at 121.

The Indicated Parties argue that there are limited alternative potential routes for trucks to transport petroleum products from Eldorado (Altoona) across Pennsylvania, and each of those options comes with its own significant safety and traffic concerns. *Id.* They analyze the following routes, which are the most practical potential routes for transporting petroleum products from Altoona into Pittsburgh and from Altoona into Harrisburg given the above-referenced Turnpike restrictions: IP Main Brief, at 121; IP St. No. 4, at 5:9-8:2.

1. **Altoona to Pittsburgh: The Northern Route.** The Northern Route from Altoona to Pittsburgh is via Interstate 99 to US Route 22 West to Interstate 76 to Interstate 279. This is a 134-mile route.<sup>36</sup>
2. **Altoona to Pittsburgh: The Southern Route.** The Southern Route for trucking petroleum products from Altoona to Pittsburgh would require 215 miles of one-

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<sup>36</sup> Indicated Parties St. No. 4, at 5:9-16. This route requires a truck to exit Route 22 before reaching Monroeville, Pennsylvania (a suburb east of Pittsburgh) due to the prohibition on petroleum products in the Squirrel Hill Tunnel located on Interstate 376.

way travel and would pass through three states (Pennsylvania, Maryland, and West Virginia).<sup>37</sup>

3. **Altoona to Harrisburg: The Northern Route.** The Northern Route from Altoona to Harrisburg would require 132 miles of one-way travel via Interstate 99 to US 322.<sup>38</sup>
4. **Altoona to Harrisburg: The Southern Route.** The Southern Route from Altoona to Harrisburg would require 216 miles of one-way highway travel from Altoona to Harrisburg via Interstate 99 to US 220 to Interstates 68 and 70, to Interstate 81 (passing through Pennsylvania and Maryland).<sup>39</sup>

IP Main Brief, at 122. The Indicated Parties maintain that there are significant safety concerns associated with the transportation of petroleum products on any of the above-described routes. In their view, Laurel has failed to address these safety concerns or even acknowledge them throughout this proceeding. *Id.*

The **Altoona to Pittsburgh Northern Route** has many hills with steep inclines and declines, making truck travel difficult year-round. IP Main Brief, at 123; IP St. No. 4, at 14. Winter driving along this route is particularly dangerous due to whiteouts and snow-covered or icy hills. *Id.* On the **Altoona to Pittsburgh Southern Route**, which travels through *three* states, winter driving is also particularly dangerous due to snow covered and icy roadways. *Id.* Whiteouts are also common on this route (particularly in the West Virginia mountains). *Id.* Even without winter weather, the West Virginia mountains cause the highway to be dangerously steep in some areas with inclines and declines that are challenging to heavy vehicles. *Id.*

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<sup>37</sup> The Southern Route from Altoona to Pittsburgh is via Interstate 99 to US 220 to Interstate 68 to Interstate 79. IP St. No. 4, at 6:2-7:1. There is no practical alternate southern route from Altoona to Pittsburgh due to prohibitions on trucks hauling placarded loads on US 30 west of US 219. IP St. No. 4, at 7:2-9:1.

<sup>38</sup> IP St. No. 4, at 9:2-10:1. Laurel argues that if the Commission approves its Application, "Midwestern barrels would be delivered to Altoona, which is within 100 miles of Harrisburg, meaning the Midwestern barrels would be able to access this market." Laurel St. No. 5, at 17:15-17. Laurel barrels would be able to access this market. Laurel St. No. 5, at 17:15-17. Laurel proffered no evidence in support of this statement, and likely for good reason: the routes for transporting petroleum products from Altoona to Harrisburg are longer than 100 miles and, as explained herein, contain significant obstacles to increased truck traffic. IP St. No. 4, at 9:2-6.

<sup>39</sup> IP St. No. 4, at 10:3-6. Although it is technically possible for truck traffic to reach Harrisburg from Altoona by traveling south on Interstate 99, then east on Route 30, then north on Interstate 81, the Pennsylvania Department of Transportation advises that tanker trucks should avoid the mountainous terrain on US 30 near Bedford, Pennsylvania. IP St. No. 4, at 15:14-19. Moreover, this route would require tanker trucks to pass through the middle of Chambersburg, Pennsylvania, which is generally congested (IP St. No. 4, at 11:1-6) and has a number of traffic lights, overpasses, and at least one railroad crossing. IP St. No. 4, at 15:14-19.

The potential routes eastward from Altoona to Harrisburg are also problematic. Truck travel is not advised on the **Altoona to Harrisburg Northern Route** due to (1) a very steep decline on US 322 heading south into Lewistown (making travel for heavy vehicles particularly hazardous in winter); and (2) the Potters Mills Gap Transportation Project along the section of Route 322 from the Centre County/Mifflin County line to west of the Route 322/Route 144 intersection at Potters Mills. *Id.* This project is not scheduled for completion until 2020. *Id.*

There are also significant safety concerns associated with travel eastward on the **Altoona to Harrisburg Southern Route** (which passes through *two* states). The area south of Bedford, Pennsylvania, is mountainous with significant downgrades on these sections of roadway. *Id.* Additionally, Interstate 81 between Hagerstown, Maryland and Harrisburg—a major route leading to popular and well-populated destinations – has a significant amount of vehicular traffic, particularly truck traffic, which has led to a higher-than-normal number of accidents involving heavy trucks. *Id.* The amount of traffic and the number of accidents on Interstate 81 have increased dramatically over the past several decades and many of those accidents involve commercial tanker trucks. *Id.*

The Indicated Parties further add that a typical tanker truck is five axles and can transport approximately 8,500 gallons of gasoline or approximately 7,500 gallons of diesel fuel. IP Main Brief, at 124; IP St. No. 4, at 11, 14. In 2016, there were approximately 6,740 accidents involving heavy vehicles in Pennsylvania, including 139 fatal accidents and 2,831 serious injury accidents. IP St. No. 4, at 16.

They reason that, if the proposed Laurel pipeline reversal is approved and tanker truck traffic increases, the number of heavy truck accidents is likely to increase as well. IP Main Brief, at 124; IP St. No. 4, at 17. Given the particularly dangerous nature of transporting hazardous materials, the percentage of such crashes involving serious injuries and/or death is also likely to increase, especially when the tanker trucks must travel through populated areas because they are unable to use the Turnpike. IP Main Brief, at 124; IP St. No. 4, at 17, 22. In addition, accidents involving tanker trucks transporting hazardous materials in bulk can result in spills—cleanup and hazardous waste disposal from a single spill can cost hundreds of thousands

of dollars, and can cause significant inconvenience or danger to motorists and/or residents when highways are closed and/or residents are forced to evacuate. *Id.*

The Indicated Parties estimate that the proposed reversal could require an additional 40 MBPD of petroleum products to be trucked from Altoona to Pittsburgh on average, with up to 88 MBPD trucked during peak summer months. IP Main Brief, at 125; IP St. No. 4, at 12. Based on these volumes, the Altoona-Pittsburgh shipments would require an additional 202 tanker truck trips per day, with up to 447 tanker trucks trips per day during peak summer months. *Id.* Depending on the selected route, each trip would result in round-trip highway travel of 268-430 miles traveled, per tanker truck. *Id.* They further estimate that, assuming some volumes shipped on the post-reversal pipeline reach Altoona, the reversal could result in an additional 3.3 MBPD of petroleum products being trucked from Altoona to Harrisburg on average, with up to 18 MBPD trucked during peak winter months. IP Main Brief, at 126; IP St. No. 4, at 12. These volumes would require 17 tanker truck trips per day on average on the Altoona to Harrisburg routes, with up to 90 tanker truck trips during peak winter months. IP Main Brief, at 126; IP St. No. 4, at 13. Depending on the selected route, each trip would result in round-trip highway travel of 264-432 miles traveled, per tanker truck. *Id.*

The increased trucking that could occur if the Laurel pipeline is reversed requires an abundant and sophisticated workforce, which includes having properly trained and certified drivers available to drive the required routes as the market dictates. In order to operate a tanker truck in intrastate or interstate commerce, a truck driver must have a valid commercial driver's license ("CDL") with extensive endorsements and testing. IP Main Brief, at 126; IP St. No. 4, at 17. However, there is currently a shortage in both Pennsylvania and nationwide for CDL drivers with the proper qualifications and endorsements to operate a tanker truck transporting hazardous materials in bulk. IP Main Brief, at 126-27; IP St. No. 4, at 21.

The Indicated Parties argue that the proposed reversal will replace pipeline transportation with additional truck movements over routes that are not currently being used today. For example, trucking product from Eldorado to Harrisburg (Highspire-area) would require bypassing *three* current pipeline terminals, which necessarily means longer truck trips

than those occurring today. IP Main Brief, at 127; *see* Laurel St. No. 1, Exhibit DWA-3. While trucks at times can be employed to travel longer distances, they more frequently utilized for shorter haul trips and should not be considered a reliable replacement for crucial supply sources such as the East Coast products shipped on the Laurel pipeline. IP Main Brief, at 127-28; Gulf St. No. 1-S, at 17.

Finally, the Indicated Parties include the Laurel pipeline as one of the entities that would be harmed by the proposal. IP Main Brief, at 129. **[BEGIN HIGHLY CONFIDENTIAL]**

**[END HIGHLY CONFIDENTIAL]** IP Main Brief at 129; IP St. No. 3, Exhibit No. 2 at 145 – 146.

### Conclusion

#### Pennsylvania Consumers

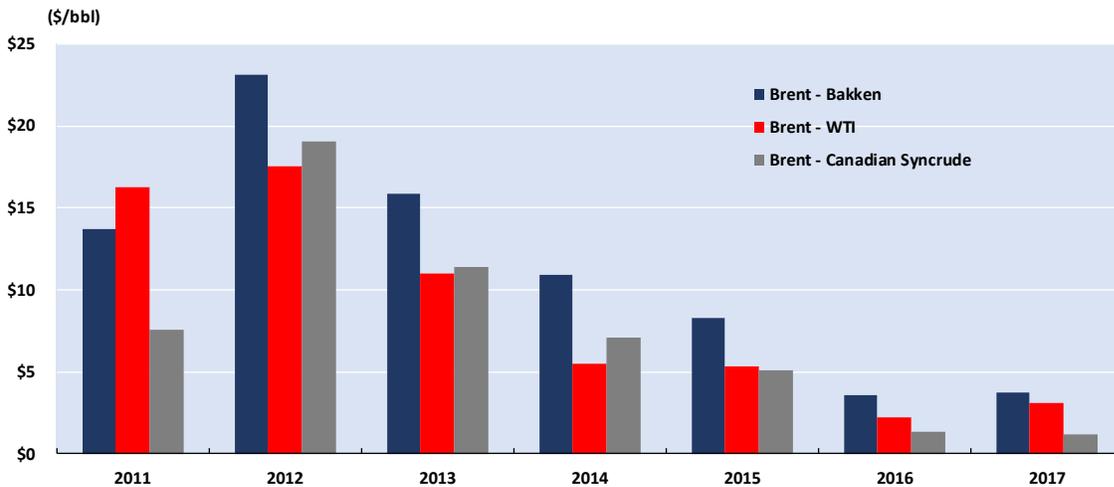
First, Laurel argues that the reversal will have the opposite effect of harm for Pennsylvania consumers. The reversal will be beneficial for the Pennsylvania public because it will allow for an increased supply of refined petroleum products to flow from the Midwest to Pennsylvania. Because the Midwestern refineries have access to cheaper crude oil from domestic and Canadian sources and have invested heavily to improve their efficiency, they are producing a lower cost product than their East Coast counterparts. In turn, “the increase of low-cost products coming from the Midwest will put downward pressure on prices and, to the extent that these low-cost Midwestern supplies back out the marginal supplier, retail prices will fall

under well-established economic principles.” Laurel Main Brief, at 86. Therein lies the benefit that the Pennsylvania consumers will derive from the approval of the proposed reversal.

The crucial premise on which Laurel builds its “public benefit” argument is that the Midwestern refineries have access to crude oil from domestic and Canadian sources (Bakken and Western Canadian Select), which are cheaper and will continue to be cheaper than the global-Brent crude oil the Eastern refineries rely on for production. Yet, it must be noted that despite bearing the burden of proof, no Laurel witness provided a study supporting their claims that Midwest supply is the lowest cost supply source.

However, the record in this matter shows that, although initially Bakken crude oil could only be brought to refineries through expensive crude oil transportation options, the continued build out of crude oil pipelines is increasingly connecting those crudes to the Gulf Coast, which combined with the increase in crude oil production in Texas through the evolution of the "Shale Revolution" and the lifting of the ban on crude oil exports, has now more closely connected those crudes to global crude oil markets and Brent crude prices. IP St. No. 2, at 48:3 to 49:7; IP St. No. 2, at 49:19-22; IP St. No. 2-S, at 15:19 to 16-2; IP St. No. 2-S, at 16:3-5; and IP St. No. 2-S, at 16:3-5.

**Figure 15 Monthly Brent Crude differentials to Bakken and WTI Crude prices, January 2010-April 2017**



IP St. No. 2, at 48:11-15.

Due to this phenomenon, Eastern refineries now enjoy an increase in competitively-priced crude supply options. PESRM St. No. 1-S, at 13:5-15. Considering the transportation costs of those clean products, the overall effect is to eliminate the cost advantage of Midwestern product supplied through much of Pennsylvania. The Pittsburgh market currently reflects these changing dynamics as it is being supplied from either the East or West on a seasonal basis.

In view of the above, I find that the Midwest refiners' crude acquisition advantage over Eastern refiners is getting significantly reduced as the Bakken and Canadian crude prices are approaching the Brent crude prices.

Importantly, Laurel also refuses to quantify the effect of the reversal on gasoline prices at the pump. It maintains both that it should not be required to quantify the benefit that it claims the proposal will bring, and that it is "simply impossible" to quantify the effect in question. Laurel Main Brief, at 86, referring to *Popowsky*, 937 A.2d at 1055-57 (Pa. 2007); and Laurel St. No. 5-R, pp. 93-97. More specifically, Laurel explains the extreme difficulties of quantifying the effect of the reversal on gasoline prices at the pump as follows: "...wholesale or rack prices do not directly correlate with retail prices. Retailers attempt to make as much profit as possible, so the price they charge at the pump reflects competition from other retailers, among other factors." Laurel St. No. 5-R, pp. 93-97.

So firm is Laurel's belief that middlemen (shippers, wholesalers, and retailers of gasoline products) keep the profits achieved from low-cost supply for themselves without passing them along to the end-user at the pump, that it uses it as a premise for its conclusion that the Pittsburgh consumer will not be harmed by the absence of arbitrage opportunities in the Pittsburgh market after the reversal. Laurel believes that those consumers did not benefit from arbitrage opportunities in the first place, as middlemen did not pass along the arbitrage benefits that they earned. Laurel Main Brief, at 121.

Laurel relies on the same premise, or a very similar one, when it criticizes Dr. Arthur's analysis of price impacts on consumers, retailers and wholesalers. Laurel explains that, in competitive gasoline markets, "wholesalers and retailers base their prices on their expectations as to what the market will bear, not on their average costs." Laurel St. No. 7-R, p. 55. Laurel further explains this economic principle, stating:

...one would expect wholesalers to charge the maximum market-clearing price to retailers, who in turn may be expected to charge the highest price that the market at the pump will bear. In other words, [there is] no evidence that the benefit actually passes through to the consumers. In fact, microeconomic theory suggests that wholesalers and retailers would seek to retain as much of the margin from arbitraging as possible.

Laurel St. No. 5-R, p. 21.

In describing how wholesalers determine the replacement gallon price, Laurel brings forth Gulf and Sheetz' witnesses' explanations: **[BEGIN HIGHLY CONFIDENTIAL]**

**[END HIGHLY CONFIDENTIAL]**

Unfortunately for Laurel, its attack on the arbitrage benefits that the Pittsburgh market currently enjoys undercuts its argument that the increased flow of lower-cost Western supply into Pennsylvania will benefit Pennsylvania consumers. If it is true that middlemen in the Pittsburgh market do not pass along to the retail consumer any of the arbitrage benefits that Laurel's current configuration creates, then there is no reason to expect that these same middlemen (or others) will relinquish any part of the added profits to the retail consumer at the pump if the reversal is approved.

Despite its claims of extreme hardship and near impossibility, at the evidentiary hearings Laurel did venture an estimate of the impact of the reversal on gasoline prices at the pump. Focusing on the Pittsburgh market, Laurel's witness, Dr. Jones, testified that backing out the marginal supplier in Pittsburgh, which is likely trucks or barges, should, all else equal, reduce gasoline prices by about 5¢ per gallon. Hearing Tr. 686:24-690:12. This equates to \$80,000 per day or approximately \$30 million per year<sup>40</sup>. Laurel Main Brief at 87, 89-92.

As evidenced from the Hearing Transcript, Dr. Jones reached this conclusion after reviewing an illustration on the lower left part of page 110 of Laurel Exhibits MJW-23 and Laurel Cross-Examination Exhibit No. 14 **[BEGIN HIGHLY CONFIDENTIAL]**

**[END HIGHLY CONFIDENTIAL]**. As for the Laurel Cross-Examination Exhibit No. 14, it shows simply the cost of crude oil as a percentage of the retail price of gasoline. It is unclear how Laurel derived the \$0.05/gallon data point from the information above without seeing how the wholesale prices and pipeline transportation rates are factored into the estimate. See IP Reply Brief, at 75. Because the Indicated Parties have calculated that the annual supply costs for the Pittsburgh area would increase by \$75 million if Pittsburgh were forced to meet its total petroleum products demand of 103-113 MBPD solely with supply from the Midwest, (IP St. No. 1, at 40:25), I find that more information is needed to determine the reliability of Dr. Jones' calculations.

Laurel's claim that the increase of low-cost products coming from the Midwest will lower retail prices in Pennsylvania is even more suspect, if one considers that the Indicated Parties' comparison of historical wholesale gasoline prices for both New York Harbor (East Coast) and Chicago (Midwest) found only a \$0.01 per gallon difference for the year 2016 (IP Main Brief, at 91-92; IP St. No. 2, at 32:2-3), and that their analysis of delivered prices into the Pittsburgh market shows that East Coast sources, on average, post lower delivered prices for the Pittsburgh market than their Midwest counterparts. IP Main Brief, at 87; IP St. No. 1, at 28: Tables 6a and 6b.

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<sup>40</sup> \$80,000 per day x 365 days per year = \$29,200,000 per year.

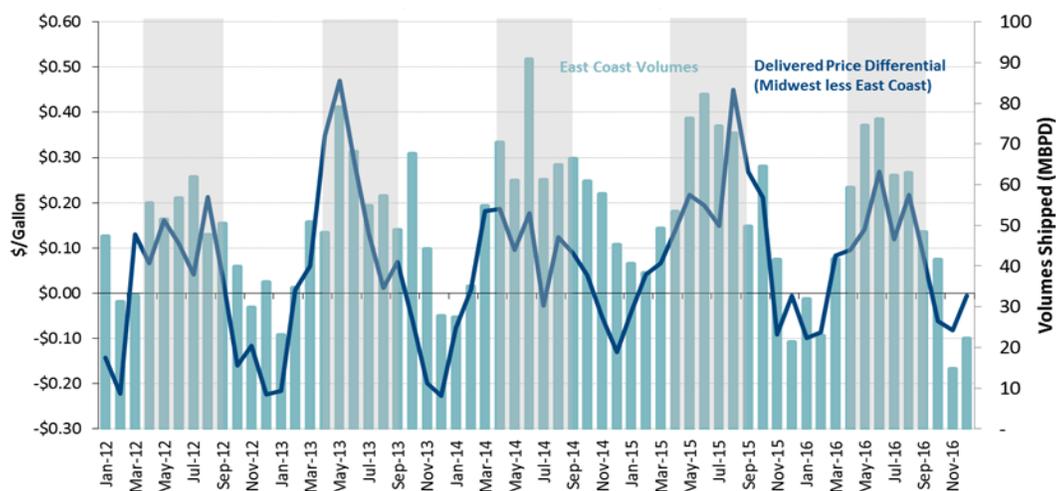
**Excerpt from Figures 6a and 6b**

<b>Year</b>	<b>Midwest less Pre-Reversal East Coast Delivered Prices Philadelphia (Intrastate) With Summer RVP Standard (\$/gallon)</b>	<b>Midwest less Pre-Reversal East Coast Delivered Prices Philadelphia (Intrastate) Without Summer RVP Standard (\$/gallon)</b>
<b>2012</b>	\$-0.02	\$-0.02
<b>2013</b>	\$0.05	\$0.02
<b>2014</b>	\$0.04	\$0.01
<b>2015</b>	\$0.13	\$0.9
<b>2016</b>	\$0.06	\$0.03

IP Main Brief, at 88; IP St. No. 1, at 28: Tables 6a and 6b.

Additionally, the Indicated Parties’ delivered price analysis (reproduced in Figure 5 below), which tracked the monthly differential between delivered prices from the Midwest and East Coast on the Pittsburgh market over a five-year period from 2012 – 2016, shows that gasoline supply from the East Coast to Pittsburgh is historically less expensive than Midwest gasoline supply for seven to nine months out of the year. IP Main Brief, at 90; IP St. No. 1, at 25:1-7. The Indicated Parties observe that this pattern remains noticeable even for 2016, after ETP (Sunoco) and Buckeye completed projects expanding the capacity for pipeline shipments of Midwest-sourced petroleum products into the Pittsburgh area.

**Figure 5**  
**Total Volumes of Gasoline Delivered to Pittsburgh from the East**  
**Compared to Differential in Delivered Prices**  
**(With Summer RVP Standard)**



Sources/Notes:  
 Delivered prices calculated using Argus gasoline prices.  
 Shaded areas represent months when the Summer RVP Standard is in effect (Apr. 1st - Sept. 15).

IP St. No. 1, at 25: Figure 5.

Although the delivered price of gasoline is not the same as its retail price, I find that it is more closely related to the price at the pump than the price of crude oil. And, as I noted above, Laurel did not support its claims that Midwest supply is the lowest cost supply source with data or studies.

As for Laurel’s claim that the proposed reversal will benefit the public by improving the supply reliability for Pittsburgh and Central Pennsylvania, I find the claim to be without merit. While Laurel lauds the proposed reversal for effectively doubling the sources of supply to Central Pennsylvania – from one pipeline to two pipelines, its proposal is in fact removing the same dual source supply (East and West) from Pittsburgh, a market more than twice the size of Altoona. Laurel hurries to note that Pittsburgh will continue to be served by

multiple sources after the reversal, but these are all sources Pittsburgh already has access to. Taking away one of the existing sources – one that has supplied between 90% and 45% of the Pittsburgh market in recent years – can hardly be seen as improving the supply reliability in Pittsburgh. It is also important to note that despite its claims that PADD 1 is plagued by supply interruptions, Laurel does not quantify how those interruptions have affected the market participants and the end consumer at the pump. In addition, Laurel downplays Mr. Schaal’s conclusions regarding the effects of price spikes in the Midwest markets due to outages by pointing out that price spikes are not unusual in the refining industry. Laurel Main Brief, at 128; Laurel St. No. 8-R, p. 41. While that may be the case, it does nothing to disprove the Indicated Parties’ PPA Analyses which show that daily retail gasoline prices in Philadelphia and Pittsburgh in 2016 were more stable than prices in Chicago, Indianapolis, and Cleveland for the same year. IP Main Brief, at 99. Consequently, I do not agree with Laurel’s conclusion that the harm to Pittsburgh of losing Laurel pipeline from the east is far outweighed by the increased reliability to Central Pennsylvania that will occur from the reversal.

Laurel’s proposition that the approval of the proposed reversal will benefit the Pennsylvania public by increasing its access to the products made from the Shale Revolution crude fails for the same reasons that Laurel’s broader argument that the public will benefit from greater access to Midwestern petroleum products fails. First, Bakken crude oil is gradually approaching Brent global prices. Second, Laurel has not shown that its proposed reversal will decrease prices that consumers pay for gasoline at the pump. And third, Midwestern supplies are already reaching Pennsylvania, yet excess capacity for these products into Pittsburgh is not being fully utilized.

### Pittsburgh Market

Next, Laurel argues that Pennsylvania public will not be harmed by the reversal. Laurel explores this issue in terms of: 1) the Pittsburgh market, 2) the Eastern refineries, and 3) other concerns.

With regard to the Pittsburgh market, Laurel's position is that, while the reversal will remove Pittsburgh's access to the Eastern petroleum products, it will increase access to lower cost Western products. In addition, while the reversal will remove any chance for price arbitrage in the Pittsburgh market, the end consumers never enjoyed the benefits of that arbitrage in the first place. And finally, while the reversal will remove Pittsburgh's access to the Eastern products, it will increase Pittsburgh's supply reliability.

I have addressed all of these claims in my discussion of Laurel's proposition that the reversal will benefit the Pennsylvania public. My finding with regard to these claims is that Laurel has failed to show that the proposed reversal will not harm the Pittsburgh market.

#### Eastern Refineries

With regard to the two Eastern refineries, PESRM and Monroe, Laurel acknowledges that its proposal will result in a complete loss of the Pittsburgh market to these two refineries yet argues that the reversal will have little effect on them. According to Laurel, outside 2014-15, **[BEGIN HIGHLY CONFIDENTIAL]**

**[END HIGHLY CONFIDENTIAL]** Similarly, data shows that the volumes from Monroe's Trainer refinery to points west of Altoona amount to only **[BEGIN HIGHLY CONFIDENTIAL]**

**[END HIGHLY CONFIDENTIAL]** Laurel St. No. 5-RJ, p. 45; Hearing Tr. 1088:19-20.

I note that in the present matter, Laurel has not presented a cost and revenue analysis, or any other type of data, to show the extent of loss to the utility. Therefore, I see no clear way of determining the level of impact that the decrease in volume on the Altoona-Pittsburgh portion of the pipeline represents for the entire utility. The standard of review for abandonment of utility service calls for balancing the loss to the utility against the hardship to the public upon discontinuance of such service. In this case, because the loss to the Laurel pipeline

remains unknown, I cannot find that the harm to the Eastern refineries will be *de minimis* by comparison.

However, I do find that the reversal of the Altoona-Pittsburgh portion of the Laurel Pipeline will diminish substantially PESRM's and Monroe's ability to move product out of their respective refineries. Monroe Energy St. No. 1, at 5. For Monroe, the Laurel pipeline currently moves **[BEGIN HIGHLY CONFIDENTIAL]**

**[END HIGHLY CONFIDENTIAL]** Monroe Energy St. No. 1-SR, at 12. PESRM St. No. 1, at 4:3-7.

In addition, the elimination of PESRM's and Monroe's access to the Pittsburgh market harms Philadelphia in the form of lost refinery revenue which leads to reduced production and loss of jobs. Based on prior economic studies, if PESRM were to close, approximately 1,100 refinery jobs would be immediately lost and another approximately 12,000-21,600 jobs would be at risk. PESRM St. No. 1, at 10:7-9. Moreover, essential institutions and relief organizations in Philadelphia would lose their residual fuel supply source if PESRM were to close. PESRM St. No. 1, at 11-12.

#### Other

In its Application, Laurel avers that Midwestern product shipped to Eldorado can be trucked further east, bringing benefits of the reversal even deeper into Pennsylvania, or further west into the Pittsburgh market. *See* Laurel Hearing Ex. 1 (Application) at p. 11, ¶ 22, ¶ 43. They discard the idea that increasing truck traffic between Altoona and Pittsburgh is potentially dangerous and harmful to public safety.

Laurel does not provide support for the trucking opportunities averred in the present Application apart from explaining that all gasoline, diesel and heating oil currently shipped on Laurel is ultimately delivered via truck to hundreds of different destinations. Laurel Main Brief, at 172. Instead, it argues that the reversal will likely reduce the current truck traffic, as low-cost refined products from the Midwest would no longer need to be trucked from

Pittsburgh to the Altoona market. Laurel Main Brief, at 171-72. However, Laurel's argument rests on the premise that trucks currently move lower-cost Midwestern product from terminals in western Pennsylvania to locations east. Laurel Main Brief, at 172-73. Laurel's only grounds for this proposition is **[BEGIN HIGHLY CONFIDENTIAL]**

**[END HIGHLY**

**CONFIDENTIAL]** See (HC) Laurel Exhibit MJW-11, pp. 35-36 (GULF\_000073-74). This is a business development study and does not mean that trucks are currently moving Midwestern products east of Pittsburgh. The record contains no other evidence that indicates that trucking of petroleum products is currently occurring between Pittsburgh and Altoona in lieu of pipeline transportation. On the contrary, the record is clear that **[BEGIN HIGHLY CONFIDENTIAL]**

**[END HIGHLY CONFIDENTIAL]** Hearing Tr. at 1205:4-5.

Laurel further argues that because volumes transported from the east over the Altoona-Pittsburgh portion of the pipeline have declined it is unlikely that the Eastern refineries will consider the use of trucks to move their product from Altoona to Pittsburgh as a viable alternative. However, if they did undertake bringing their displaced volume into Pittsburgh via trucks, Laurel is unable to show that the process will not be dangerous and harmful to the Pennsylvania public.

Amongst the harmful effects resulting from the proposed reversal, the Indicated Parties count the impact that the reversal will have on the Laurel pipeline, the very public utility at issue in this proceeding. They point out that **[BEGIN HIGHLY CONFIDENTIAL]**

**[END HIGHLY**

**CONFIDENTIAL]** IP St. No. 3, Exhibit No. 2 at 145 – 146. This however appears to be a calculated risk and business decision that Laurel has agreed to undertake and does not consider it as harmful to its wellbeing.

Weighing each of the above considerations, as well as my assessment of the utility's loss, *supra*, I find that the inconvenience and hardships that arise from the proposed reversal outweigh the loss experienced by Laurel.

d) The Availability And Adequacy Of Any Service To Be Substituted

Laurel's Position

Pittsburgh Market

It is Laurel's position that after the reversal, Pittsburgh market participants will still be able to access petroleum products from a variety of alternative transportation sources, including: (1) Sunoco Pipeline, L.P. ("Sunoco"), from the Midwest; (2) Marathon Pipeline LLC, from the Midwest; (3) Buckeye from the Midwest; (4) Buckeye and Laurel, collectively delivering from the East Coast to Altoona, from which product can be trucked west post-reversal; (5) trucks delivering from the Ergon refinery in Newell, West Virginia; (6) trucks delivering from the United Refining refinery in Warren, Pennsylvania; (7) barges delivering petroleum products to terminals on the Ohio, Allegheny and Monongahela Rivers from refineries and pipeline terminals in the Midwest and potentially Gulf Coast; and (8) trucks delivering petroleum products from pipeline terminals in Ohio. Laurel Main Brief, at 136; Laurel St. No. 2, p. 6; *see also* Laurel St. No. 5, pp. 22-25.

Laurel disagrees with the Indicated Parties' position on the topic of adequate alternatives for the Pittsburgh market and explains:

[W]itnesses for the Indicated Parties consistently claim that each *single alternative alone* is an inadequate substitute to Laurel, but do not—and cannot—claim *all available alternatives together* constitute an inadequate substitute to Laurel. The latter is the relevant inquiry for purposes of this proceeding. Therefore, the Indicated Parties' claims regarding alternatives should be disregarded.

Laurel Main Brief, at 137 (emphasis in Laurel Main Brief).

With regard to barges, Laurel maintains that the Indicated Parties incorrectly assume that barges must completely replace all volumes currently delivered on Laurel, in order to be an adequate alternative. Laurel Main Brief, at 138; Laurel St. No. 5-R, p. 89. It explains that while barges may at times be more expensive, this option has consistently delivered significant quantities of gasoline to Pittsburgh. *Id.* As such, Laurel reasons that the revealed preferences of Pittsburgh area market participants strongly indicate that this transportation method represents a viable, adequate alternative. Laurel Main Brief, at 138.

Regarding the use of trucks as alternatives to the pipeline, Laurel disagrees with Gulf's and Sheetz' claim that practical limitations – like the lack of terminal and truck loading infrastructure – associated with the Altoona based terminals connected to the Laurel pipeline system prevent trucking from being an adequate alternative. Laurel Main Brief, at 138, referring to Gulf St. No. 1, pp. 6-8; Sheetz St. No. 1, pp. 6-10. More specifically, Laurel believes that these claims are irrelevant and explains as follows:

[T]here may be some increase in trucks lifting barrels out of Altoona for a few years, until the downward trend again dominates this increase. For example, it might return to a level similar to the level observed in 2014. In turn, these trucks...would deliver refined product to locations on the Eastern edge of the area currently supplied by the Pittsburgh area terminals. It is also critical to remember that trucks are a necessary component of the supply chain. Nearly all product consumed in the market is ultimately transported by truck. All of the shipper witnesses ignore this fact and instead suggest there will [necessarily] be hundreds of additional trucks on the roads of the Commonwealth...This strawman argument is simply absurd. Even now, when Laurel still delivers to Pittsburgh, Laurel has seen volumes falling dramatically, even in the summer, and even though capacity is available on Laurel. This fact suggests that when deliveries to Pittsburgh on Laurel from the East cease, the vast majority of shippers will obtain product from the Midwest. They will not truck it from Eldorado to Pittsburgh.

Laurel Main Brief, at 139, citing Laurel St. No. 5-R, p. 86. (emphasis added). Laurel, therefore, believes that product will most likely not be trucked from Eldorado to Pittsburgh after the reversal. Laurel Main Brief, at 139. Yet, since trucking orbits regularly exceed one hundred (100) miles, Laurel allows for the possibility that supplies shipped on Laurel from the east to Altoona will be able to supply the Pittsburgh area – depending on local supply and demand conditions. Laurel Main Brief, at 139, referring to Laurel St. No. 7-R, pp. 39-40, Figure 13.

Next, Laurel reiterates its position that Midwestern refineries can serve as an adequate supply alternative for the Pittsburgh-area petroleum products market. Laurel Main Brief, at 140.

It is Laurel's position in this case that Midwestern refineries have significantly increased their refining capacity since 2005. Laurel Main Brief, at 139; Laurel St. No. 8-R, pp. 7-8. In order to clear that capacity, Midwestern refineries have become increasingly connected, and are still seeking additional connectivity, to the Pittsburgh market and points further east. Laurel Main Brief, at 140; Laurel St. No. 8-R, pp. 14-16. Simultaneous to these Midwestern refinery and pipeline capacity expansions, volumes from Midwestern refineries to Pittsburgh, *i.e.* PADD 2 to PADD 1 movements, have substantially increased. Laurel Main Brief, at 141; Laurel St. No. 8-R, pp. 18-19. As such, Laurel maintains that Midwestern refineries have sufficient capacity to supply Pittsburgh. Laurel Main Brief, at 141; Laurel St. No. 8-R, pp. 20-21.

Additionally, Laurel argues that product exchanges represent one of the numerous alternatives available to Pittsburgh market participants and provide incremental optionality to the other alternatives available to market participants. Laurel Main Brief, at 141. Laurel rejects the Indicated Parties' suggestions that exchanges can only be done, or work best, when products are priced off the same market. According to Laurel, these claims are contradicted by documents produced by the Indicated Parties in this case. Laurel Main Brief, at 141; Laurel St. No. 5-R, pp. 90-91; see also (HC) Laurel Exhibit KMS-4; (HC) Laurel Exhibit MJW-36, pp.103-116.

Laurel explains that product exchanges are commonplace in the petroleum products transportation industry and frequently include a “location differential” to account for pricing disparities between two markets.

Sometimes this transaction may take the form of an “exchange,” wherein the producer agrees to provide inventory at its plant in return for the exchange partner agreeing to provide a like value or quantity of inventory at a different location or market where it has available supply, thereby enabling each party to avoid incurring inventory and transportation costs while still obtaining immediate access to petroleum for local delivery or distribution in another market. [FN15]

Petroleum prices are some of the most volatile and unpredictable commodities prices in the world. Maintaining a marketing and distribution presence across several states or regions requires substantial resources and personnel. By wholesaling a large percentage of its production, refiners are able to maintain cash flow and creditworthiness and remain focused on efficiently sourcing feedstocks and producing more products.

FN15 - For example, a refiner in Philadelphia may enter into an exchange with a refiner or inventory owner located in Ohio. Each will provide the other with a like kind and quantity of product over a specified term. To the extent that the delivered price for the commodity is higher in one market than the other, they may also agree to additional compensation to equalize the value difference between the two locations (i.e. “location differential”).

Laurel Main Brief, at 142; Laurel St. No. 6, pp. 15-16. Laurel explained that product exchanges are most frequently done to minimize logistics costs and is a very common commercial arrangement among participants in the petroleum business. Laurel Main Brief, at 143; Laurel St. No. 8-R, p. 52.

Moreover, Husky witness Jerome P. Miller stated that:

The way in which an exchange would work between a refiner in Philadelphia and a refiner in Ohio is that the two entities would agree to compensation that would equalize the value difference between the two locations; this is known as a location differential and is a commonly used provision in an exchange agreement.

Laurel Main Brief, at 143; Husky St. No. 1-R, p.12; see also Hearing Tr. 1194:18-1195:4.

Lastly, Laurel addresses the issue of supplying low-RVP gasoline to the Pittsburgh market. Laurel Main Brief, at 143-44. According to Laurel, refineries can easily produce low-RVP gasoline by including less butane in the blend of gasoline being produced. Laurel Main Brief, at 144; *see* Laurel St. No. 8-R, pp. 45-46. In addition, backing butane out of a gasoline blend, to produce lower-RVP gasoline, does not require significant capital investment. Laurel Main Brief, at 144; Laurel St. No. 8-R, p. 47. Given these economics, Laurel explains that Midwestern refineries can, and already do, produce low-RVP gasoline for cities throughout the Midwest, including Detroit, Louisville, Cincinnati and Dayton (until April 2016) and Nashville and Middle Tennessee (until June 2017). Laurel Main Brief, at 144-45; *see* Laurel St. No. 8-R, pp. 47-48. Additionally, Midwestern refineries have previously transported low-RVP volumes from the Midwest to Pittsburgh over existing pipeline infrastructure. Laurel Main Brief, at 145; Laurel St. No. 8-R, pp. 48-49.

Laurel points out that Husky confirmed its refineries in Lima, Ohio and Toledo, Ohio have previously produce fuel meeting the Pittsburgh-area low-RVP specifications for years and that this capability remains unchanged. Laurel Main Brief, at 145; *see* Husky St. No. 1-R, pp. 4, 9-10. Moreover, other Pittsburgh market participants like BP Products North America and ExxonMobil Oil Corporation also have confirmed that their refineries are fully capable of producing 7.8 psi low-RVP gasoline to satisfy the summertime Pittsburgh requirements. Laurel Main Brief, at 145; *see* Laurel Exhibit KMS-14.

Laurel rejects the Indicated Parties attempt to argue that producing low-RVP gasoline is “costly.” Laurel Main Brief, at 145, referring to IP St. No. 2-SR, pp. 43-44; Sheetz

St. No. 1-SR, pp. 14-15; Gulf St. No. 1-SR, p. 19. According to Laurel, if that were the case, then the Indicated Parties have failed to explain why the cost differential would dissuade Midwest refiners from producing 7.8 RVP gasoline when it has not dissuaded East Coast refiners from producing it. Laurel Main Brief, at 145; Laurel St. No. 8-RJ, pp. 10-11.

#### Eastern Refineries

In its Main Brief, Laurel argues that the proposed reversal and the loss of the Pittsburgh market would have little effect on to the two Philadelphia refineries (*i.e.* PESRM and Monroe). Laurel Main Brief, at 146.

First, Laurel argues that Philadelphia-area refinery volumes that are being marketed to Pittsburgh have declined sharply and are projected to continue to decline. *Id.* As such, Pittsburgh is currently not a major market for either refinery and it is reasonable to conclude it will not become a major market for either refinery in the future. *Id.*

According to Laurel, outside 2014-15 which are not representative of the future because Sunoco was shut down and Allegheny Access was not yet in service, **[BEGIN HIGHLY CONFIDENTIAL]**

**[END HIGHLY CONFIDENTIAL]** Laurel argues that although the pipeline remains an overall important outlet for PESRM output, Pittsburgh is a *de minimis* destination for its output. Laurel Main Brief, at 148.

Similarly, data shows that the volumes from Monroe's Trainer refinery to points west of Altoona amount to only **[BEGIN HIGHLY CONFIDENTIAL]**

**[END HIGHLY CONFIDENTIAL]** (Laurel St. No. 5-RJ, p. 45.) Given that Ms.Sadowski testified that the refinery has been producing **[BEGIN HIGHLY CONFIDENTIAL]** **[END HIGHLY CONFIDENTIAL]**

that would amount to only [BEGIN HIGHLY CONFIDENTIAL] [END  
HIGHLY CONFIDENTIAL] of Monroe's output. Laurel Main Brief, at 148.

In view of the above, Laurel argues that the low volumes that would be displaced by Laurel's proposed reversal could easily be remarketed to other markets connected to: (a) Laurel; (b) the combined Laurel and Buckeye systems; (c) other pipelines; (d) barges; and/or (e) trucks. In addition, any claimed loss of "margin" associated with the Pittsburgh market, would apply to a minor portion of the refineries' output. Laurel Main Brief, at 148-49.

Laurel disagrees with the Philadelphia Refineries' claim that the Pittsburgh market is "high margin" or offers prices superior to other markets accessible via Laurel or other transportation outlets, such as Sunoco Pipeline's East Line. According to Laurel, the testimony of the refineries' own witnesses and Laurel's own analysis demonstrate that both PESRM and Monroe are economically indifferent to the ultimate destination of products sold to counterparties at the refinery gate (*i.e.* the vast majority of their products). *Id.*

For Monroe, Ms. Sadowski stated in her deposition and on cross-examination that Monroe sells its products FOB at [BEGIN HIGHLY CONFIDENTIAL]

[END  
HIGHLY CONFIDENTIAL] Laurel Main Brief, at 149. Moreover, Laurel points out that Monroe did not provide any documents supporting their claim that Pittsburgh is a "high margin" market. *Id.* In addition, Monroe's own contracts show that it does not price its products specific to the Pittsburgh market; rather, Monroe receives [BEGIN HIGHLY CONFIDENTIAL]

[END HIGHLY  
CONFIDENTIAL] Laurel Main Brief, at 149-50.

Regarding PESRM, Mr. Sadowski stated in his deposition that [BEGIN  
HIGHLY CONFIDENTIAL]

**[END HIGHLY**

**CONFIDENTIAL]** Laurel Main Brief, at 150. Laurel further notes that, **[BEGIN HIGHLY**  
**CONFIDENTIAL]**

**[END HIGHLY CONFIDENTIAL]** Laurel Main  
Brief, at 150. According to Laurel, given that PESRM could not produce a single contract, e-mail or other document supporting its allegations on margin, and that its witness could not answer questions regarding the size of this allegedly critical high margin market, this claim should be dismissed. *Id.*, at 150-51.

In its Main Brief, Laurel contends that both Philadelphia refiners have numerous, adequate alternatives to the western portion of Laurel's line, west of Altoona. Laurel Main Brief, at 151-52. According to Laurel, the first and most obvious alternative for the two Philadelphia area refineries for the loss of direct pipeline access to the Pittsburgh market are market outlets accessible via Laurel. *Id.*, at 152. In contrast to the other market outlets (*e.g.*, pipeline, barge, truck) that the Indicated Parties claim are inaccessible or too costly, the two refineries are already connected to Laurel and therefore have undisputed access to those markets. *Id.* Laurel asserts that: (a) such markets are quite large relative to the displaced Monroe/PESRM volumes; (b) the future displaced sales of former Pittsburgh-bound volumes is quite possible because in recent years, the refiners' counterparties have been expanding sales to other markets; and (c) the refiners' ability to market volumes via the Laurel system and Buckeye Pipe Line Company to upstate New York (Binghamton, Syracuse, Rochester and Buffalo) will be greatly expanded as a result of the proposed reversal, due to operational benefits arising from freed-up tankage on Laurel. *Id.*, at 152; *see* Laurel St. No. 5-RJ at pp. 49-53; *see also* Hearing Tr. 482:2-483:5. In addition, Laurel remarks that the markets accessible to shippers originating at Philadelphia and

delivering west to Altoona and north to Buffalo/Rochester dwarf the volumes being currently delivered to Pittsburgh. *Id.*, at 152; Laurel St. No. 5-RJ, pp. 52-53.

Regarding actual evidence of the refiners' ability to shift volumes, Laurel points out that as **[BEGIN HIGHLY CONFIDENTIAL]**

**[END HIGHLY CONFIDENTIAL]** Laurel Main Brief, at 152-53, citing Laurel St. No. 5-RJ, p. 50. Furthermore, Laurel contends that PESRM has not reduced its production in the last year and has maximized its output delivered into Laurel, yet volumes being delivered to Pittsburgh have fallen. Laurel Main Brief, at 153; see Hearing Tr. 928:23-929:1. Per Laurel, only one explanation exists for these volumes shifts: **[BEGIN HIGHLY CONFIDENTIAL]**

**[END HIGHLY CONFIDENTIAL]** Laurel Main Brief, at 153.

Moreover, Laurel notes that when pressed, the witnesses for Monroe and PESRM argued that **[BEGIN HIGHLY CONFIDENTIAL]**

**[END HIGHLY CONFIDENTIAL]** Laurel Main Brief, at 153-54. However, Laurel points out that both PESRM and Monroe would be getting the same type of price currently received today because both refiners sell the vast majority of their products FOB at the refinery gate **[BEGIN HIGHLY CONFIDENTIAL]**

**[END HIGHLY CONFIDENTIAL]** Laurel Main Brief, at 154. If, in fact, prices were to be depressed overall in Eastern Pennsylvania, that would be a benefit to consumers, not a “harm” to the public. *Id.*

Finally, Laurel explains that the operational result of Laurel’s proposed reversal would also free up tanks at Laurel’s Booth station. Laurel Main Brief, at 154; Laurel St. No. 6-RJ, p. 6. Therefore, the volume of product that could be transported from the refineries to upstate New York destinations on Buckeye pipelines would be increased. *Id.* Laurel emphasizes that this is not a small change—the reversal would create approximately **[BEGIN HIGHLY CONFIDENTIAL]**

**[END HIGHLY CONFIDENTIAL]** Laurel Main Brief, at 155. That incremental capacity would be equal to roughly **[BEGIN HIGHLY CONFIDENTIAL]** **[END HIGHLY CONFIDENTIAL]** of the 2017 volumes moved by both Philadelphia refiners to the Pittsburgh market. *Id.*

Next, Laurel disagrees with Monroe’s argument that constraints on capacity and operation concerns over quality limit its ability to use alternative outlets. Laurel Main Brief, at 155; *see* Monroe St. No. 1, pp. 7-8; *see also* Monroe St. No. 1-SR, pp. 9-11. Laurel contends

that Monroe has a number of significant transportation options apart from access to extensive alternative markets on Laurel and Laurel and Buckeye's combined system. Laurel Main Brief, at 155. In particular, Laurel provided a schematic diagram of the pipeline and barge options connected to Monroe's refinery, which shows that now, and even after Laurel's proposed reversal, Monroe has access to many different markets beyond Philadelphia and nearby eastern Pennsylvania, including:

- [A] to PA (Williamsport, Northumberland); upstate NY (Big Flats, Rochester, Buffalo)
- [B] to upstate NY (Rochester, Buffalo, Syracuse)
- [C] to central PA (west to El Dorado)
- [D] to Harrisburg area (Highspire)
- [E] to New York Harbor; upstate NY via connected carriers
- [F] to New York Harbor; upstate NY and eastern PA via connected carriers

Laurel Main Brief, at 155-56, referring to Laurel Exhibit RGV-3.

In addition, Monroe refinery has access to New York Harbor, Philadelphia and New Jersey through its affiliated pipeline, MIPC, Laurel Main Brief, at 156; Laurel St. No. 6-RJ, pp. 14-15; Laurel Exhibit RGV-3. Laurel reasons that these options—in addition to continued transportation on the Laurel/Buckeye system—need to be viewed in light of their ability to absorb the volumes that have been transported from Monroe to Pittsburgh. Laurel Main Brief, at 156. In 2017, volumes originating at Monroe were only **[BEGIN HIGHLY CONFIDENTIAL]**  
**[END HIGHLY CONFIDENTIAL]**. *Id.*, at 156-57.

In Laurel's view, one of Monroe's options, Sunoco Logistics' East Line, is particularly instructive regarding the choices available to Monroe as well as the capability of a large, sophisticated shipper to create new connections and alternatives. *Id.*, at 157. **[BEGIN HIGHLY CONFIDENTIAL]**

[END HIGHLY CONFIDENTIAL] Laurel

Main Brief, at 157.

Laurel rejects Monroe's allegation that the alternative pipelines to Laurel/Buckeye are not practically available due to constraints (Monroe St. No. 1-SR, p. 3.) by arguing that there was no pattern of constraints on the East Line where only one month in the past six showed a constraint. Laurel Main Brief, at 159; Laurel St. No. 6-RJ, pp. 5-6. In particular, Laurel points out that there is no evidence of constraints between the East Line and Harbor based on the Sunoco public bulletins governing constraints. Laurel Main Brief, at 159; *see* Laurel St. No. 6-RJ at p. 15. Moreover, Laurel argues that even if Monroe could have shown such a constraint existed, it would (a) only reduce volumes transported over the meter, not bar them; and (b) would not in any way limit an East Line Shipper from accessing Newark terminals attached to the East Line terminus. Laurel Main Brief, at 159; Hearing Tr. 591:1-593:14.

As to the other options, Laurel asserts as follows:

Harbor. Harbor is generally available except for temporary constraints currently occurring during Sunoco's maintenance work on its 12" line. Laurel St. No. 6-RJ, pp. 6-7.

Buckeye Transportation. There was no evidence of any limits on the capacity available on the Buckeye Transportation line north from Ridley Park.

Sunoco Pipeline. Although Sunoco's 12" line north to Pennsylvania and New York is currently out of service and its service to those market via its 8" line is constrained, that is expected to end next year, prior to the reversal – and shippers could utilize the Sunoco system by bypassing the 12" line between Twin Oaks and Montello by transporting on the Laurel system from Twin Oaks to Montello and then connecting to Sunoco for a set of markets in northern Pennsylvania and upstate New York. *See, e.g.,* Laurel St. No. 6-RJ. p. 15.

Laurel Main Brief, at 159.

Next, Laurel addresses Monroe's statements regarding the unavailability of Colonial as a pipeline outlet to New York. *Id.*, at 160. Laurel notes that the MIPC website shows a connection between Monroe and Colonial and Colonial represented it could access Monroe in an application before FERC in 2000. Laurel Main Brief, at 160; *see* Laurel St. 6-RJ, p. 16. Moreover, **[BEGIN HIGHLY CONFIDENTIAL]**

**[END HIGHLY CONFIDENTIAL]** Laurel Main Brief, at 160. Although Monroe disputes this connection, Laurel points out that, "if in fact Monroe does not have current interconnection to Colonial, the facilities are proximately located and connections can either be built or reactivated." Laurel Main Brief, at 160, citing Laurel St. No. 6-RJ, p. 16. Given that Monroe/Delta successfully negotiated with Sunoco Pipeline to build new connections to the East Line and reactivate an entire, idled interstate pipeline segment, Laurel maintains that arranging a connection to Colonial would be feasible, if Monroe felt any need for more options.

Laurel contends that Monroe's claims of severe monetary harm due to barge and transmix costs are unsupported and incorrect. Laurel Main Brief, at 161. Laurel contends that Monroe significantly overestimates the volume of product being purchased from Monroe's refinery and marketed west of Altoona, using a figure of **[BEGIN HIGHLY CONFIDENTIAL]**

**[END HIGHLY CONFIDENTIAL]**

Laurel Main Brief, at 161.

Laurel points out that Monroe's barge estimate is built upon an unsupported, multi-layered assumption that: (1) no volumes will either be re-marketed elsewhere in Pennsylvania or upstate New York at terminals connected to Monroe via Laurel; and (2) no volumes would be moved by other pipelines, including Sunoco (whose 12" line is scheduled to go back in service prior to the reversal), Buckeye Transportation (which has no constraints on service to Allentown and upstate New York) and either the East Line or the Harbor line. Laurel Main Brief, at 161-62.

Laurel states that **[BEGIN HIGHLY CONFIDENTIAL]**

**[END**

**HIGHLY CONFIDENTIAL]** Laurel Main Brief, at 162.

Next, Laurel rejects Monroe's claims regarding the transmix figure. In particular, Laurel points out that **[BEGIN HIGHLY CONFIDENTIAL]**

**[END HIGHLY CONFIDENTIAL]** Laurel Main Brief, at 163.

In addition, Laurel points out that Monroe relies upon an historical cost incurred by **[BEGIN HIGHLY CONFIDENTIAL]**

**[END HIGHLY CONFIDENTIAL]**

Laurel Main Brief, at 163-164.

In Laurel's view, Monroe had no basis for concluding that any potential transmix costs that would have arisen on the East Line (which may not be the same as those on the Harbor line), would be shifted over to other customers on the East Line as Monroe was ignorant of the governing tariffs and procedures. Laurel Main Brief, at 164. However, Laurel opines that the transmix charges on the East Line are governed by the tariff and referenced posted transmix policy. Laurel Main Brief, at 164; Laurel St. No. 6-RJ, p. 10; see also Laurel Exhibit No. RVG-

9. That schedule provides a standard for assessing the cost of actual transmix attributable to each shipper. Laurel Main Brief, at 164-65.

In view of the above, Laurel reasons that the alleged transmix costs should not be considered by the Commission in evaluating the Application.

Laurel reiterates its position that PESRM has ample alternatives to redirect volumes formerly sold in Pittsburgh to alternative transportation options other than Laurel. Laurel Main Brief, at 166; Laurel Exhibit No. RGV-1.

One such alternative is the expanded capacity to reach upstate New York via the Laurel system and the Buckeye system, across the Buckeye line (Line 714) reversed recently to open up upstate New York markets to Laurel system customers. Laurel Main Brief, at 166. Laurel points out that the capacity on this line will be significantly expanded as a direct result of Laurel's proposed reversal. In addition, **[BEGIN HIGHLY CONFIDENTIAL]**

**[END HIGHLY CONFIDENTIAL]** Laurel Main Brief, at 166. According to Laurel, this development also shows that there is flexibility among markets and that PESRM's customers do not "max out" their PESRM volumes in sales to Pittsburgh. Laurel Main Brief, at 167.

Another alternative option for PESRM is presented in the form of the "virtual tariff" option made available to PESRM in October 2016. Under the virtual tariff, PESRM or its shippers would nominate from the interconnection with the Laurel system to Linden, New Jersey, in the New York Harbor market. Laurel Main Brief, at 167; Laurel St. No. 6-RJ, pp. 18-19; Laurel Ex. No. RGV-4 at 20-21. The transaction provides physical volumes in the shipper's name in Linden, but is effected by a form of exchange operated by the pipeline, in which the volume tendered by PESRM into Laurel would be physically transported to a Pennsylvania or

upstate New York destination, to be delivered for the account of another shipper that nominated to that destination from Linden, while the other shipper's Linden volume physically remains in Linden for transfer to PESRM. Because the transaction allows Laurel/Buckeye to provide two transactions for two tariff charges, while only transporting one shipment, it provides valuable cost savings and system optimization. For shippers such as PESRM, it provides actual deliveries in New York Harbor where they can sell at New York Harbor prices. Laurel Main Brief, at 167. Laurel opines that this type of transaction is so attractive, that **[BEGIN HIGHLY CONFIDENTIAL]**

**[END HIGHLY CONFIDENTIAL]**. Laurel Main Brief, at 167; Laurel St. No. 6-RJ, pp. 18-19.

Laurel notes that PESRM also has access to Colonial for pipeline transportation from its refinery to New York Harbor. Laurel Main Brief, at 167. Colonial's official notices of prorating show that for deliveries into New York Harbor, it has only infrequently been prorated, and thus can ship significant incremental volumes from Philadelphia. Laurel Main Brief, at 167-68; *see* Laurel St. No. 6-RJ, pp. 19-20.

Laurel maintains that Laurel Exhibit RVG-10 illustrates PESRM's access to other pipelines, to local truck racks and to barge facilities. Laurel Main Brief, at 168; *see* Laurel St. No. 6-RJ, p. 20. Laurel acknowledges that PESRM lacks a direct connection to the Sunoco Pipeline system that extends from Philadelphia to many destinations in Pennsylvania and upstate New York but suggests that PESRM and/or its customers can access that system by shipping on Laurel to Montello and then connecting with Sunoco to its destinations. Laurel Main Brief, at 168; Laurel Statement No. 6-RJ, p. 20. Moreover, Laurel notes, that the optionality and real flexibility available to PESRM is shown by the PESRM documents which tracked volumes being moved by multiple alternatives and showed considerable month-to-month variation in the use of the listed alternatives. Laurel Main Brief, at 168; Laurel C.E. Exhibit No. 11; Hearing Tr. 948:6-953:2; *see* Laurel St. No. 5-RJ, p. 48; *see also* (HC) Laurel Exhibit MJW-27, pp. 57.

It is Laurel's position that the proposed reversal will not be the cause of any hypothesized refinery shut downs. According to Laurel, Monroe's and PESRM's concerns in this regard are entirely misplaced, and vastly exaggerate both the scope of the proposed reversal's impacts and its relative significance in the current situation of the two refineries. Laurel Main Brief, at 169.

Laurel opines that there is no reasonable prospect that the refineries will lose the sales currently being made in Pittsburgh causing them to consider retrenching and reducing output and shuttering refining facilities. *Id.* Laurel notes that refineries are high fixed cost facilities and they are not likely to shut in production and idle plant in response to what would certainly be, at most, a reduction in price for some of their volumes. Laurel Main Brief, at 169; Laurel St. No. 8-R, p. 40. In addition, the volumes being potentially displaced to other markets are simply not very large and do not represent lost sales, but potentially somewhat discounted sales. Laurel Main Brief, at 170. Next, Laurel reiterates its position, that there is no credible evidence that sales made to shippers that transport product to Pittsburgh are garnering higher margins for the two refineries than sales that ultimately reach Altoona and points east and north. *Id.* Moreover, the trend lines are pointing in the direction of a near-zero Pittsburgh market for the refiners' output in the next few years, so the reversal itself would not be the cause of the displacement which is occurring in any event. *Id.*

Addressing the Indicated Parties' concerns about trucking safety, Laurel argues that instead of increasing truck traffic between Pittsburgh and Altoona the reversal will likely reduce it, because low-cost refined products from the Midwest would no longer need to be trucked from Pittsburgh to the Altoona market. Laurel Main Brief, at 171-72.

Laurel reiterates its position that its pipeline volumes to Pittsburgh have been continuously declining because Pittsburgh is receiving low-cost product from the Midwest. *Id.*, at 172. Laurel contends that product from the East Coast will not be trucked from Altoona to Pittsburgh because it will be the higher cost product. Laurel Main Brief, at 172; Laurel St. No. 5-R, pp. 86-87. Even if it were reasonable to expect that trucking was the only alternative available to transport East Coast petroleum products into Pittsburgh, Laurel reasons that the

Indicated Parties cannot credibly argue that shippers would elect to transport petroleum products from Eldorado to Pittsburgh by truck, where they have already elected to ship less and less petroleum products by pipeline. Laurel Main Brief, at 172.

Further, Laurel points out that all gasoline, diesel and heating oil currently shipped on Laurel is ultimately delivered via truck to hundreds of different destinations throughout the broader Pittsburgh market, which is substantially all of Western Pennsylvania and parts of neighboring states—not just the Golden Triangle of Pittsburgh. Laurel Main Brief, at 173.

Laurel contends that trucks currently move lower-cost Midwestern product from terminals in western Pennsylvania to locations east and this trend will continue or increase if the reversal is not approved. Laurel Main Brief, at 172-73. According to Laurel, **[BEGIN HIGHLY CONFIDENTIAL]**

**[END HIGHLY CONFIDENTIAL]** Laurel Main Brief, at 173; *see* (HC) Laurel Exhibit MJW-11, pp. 35-36 (GULF\_000073-74). In this regard, Laurel’s proposed reversal will actually *reduce* truck traffic between Pittsburgh and Altoona by moving lower-cost Midwestern products to Altoona by pipeline that may otherwise be trucked there. Laurel Main Brief, at 173.

Lastly, Laurel asserts that any information and issues related to the potential to reverse the flow of Laurel’s pipeline to points east of Eldorado are irrelevant to either of Laurel’s two alternative claims for relief involved in this proceeding.<sup>41</sup> Laurel Main Brief, at 174. First, Laurel maintains that the issue of whether it would possibly at some unspecified point in the future reverse the flow of its pipeline for points east of Eldorado is entirely irrelevant to

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<sup>41</sup> According to Laurel, the proponent of a rule or order is not required to support proposals outside the scope of or differing from its submission. Laurel Main Brief, at 174, footnote, # 95; *see Pennsylvania Pub. Util. Comm’n v. PPL Electric Utilities Corp.*, 2012 Pa. PUC LEXIS 989, at \*13-15 (Order entered June 21, 2012) (explaining that the burden of proving that a utility should implement something other than its own proposal is on the party proposing something else).

determining whether Laurel can reverse the flow of service without Commission approval. Laurel Main Brief, at 175. Second, Laurel argues that any information related to possible plans to reverse other, unidentified segments of the Laurel pipeline east of Eldorado at an unspecified future date is irrelevant to determining whether the proposed reversal to Eldorado and points west, described in the Application, is in the public interest. *Id.*

### Indicated Parties' Position

#### Pittsburgh Market

According to the Indicated Parties, the alternative sources of obtaining supply would fail to replicate the benefits of service currently provided to the public via Laurel's pipeline.

The Indicated Parties argue that trucking is not a feasible alternative to transporting petroleum products to Pittsburgh via the Laurel pipeline. IP Main Brief at 130. The Indicated Parties maintain that there are no local refineries in the Pittsburgh area from which meaningful volumes of petroleum products could be efficiently trucked. They explain that refineries in or around the Pittsburgh area, including the Ergon refinery, in Newell, West Virginia, the Marathon Petroleum Company refinery in Canton, Ohio, and the United Refining Company refinery in Warren, PA, are relatively small and geographically remote, only serving their surrounding markets and forming part of the base or the sole supply for those regions. IP Main Brief, at 130; Sheetz St. No. 1, at 6. They claim that these facilities lack the ability to produce additional petroleum products or transfer volumes to Pittsburgh in any meaningful quantities. IP Main Brief, at 131; Sheetz St. No. 1, at 6. As such, these local refineries could not provide the Pittsburgh area with volumes sufficient to replace volumes lost as a result of the Laurel pipeline reversal and cannot be considered reasonable alternatives to Laurel's current service. *Id.*

The Indicated Parties aver that restrictions on transportation of hazardous materials on the Pennsylvania Turnpike complicate the feasibility of trucking products from

Eldorado to Pittsburgh. IP Main Brief, at 131. Trucking also increases delivered costs in comparison to pipeline shipments. They calculate that trucking product from Altoona to Pittsburgh would increase shipping costs in comparison to shipments on Laurel's pipeline between Altoona and Pittsburgh as follows:

- Trucking is significantly more costly than transporting through the Laurel pipeline. For example, Laurel's incremental rate from Altoona (Eldorado) to Pittsburgh terminals is 0.30 cents/gallon, while the incremental cost of trucking the same distance is 4.93 cents per gallon.

IP St. No. 1, at 35. Additionally, transporting petroleum products via tanker truck in compliance with these restrictions would pose a greater risk to public safety than pipeline shipments.

Next, the Indicated Parties argue that rail transportation is also an impractical alternative to shipping volumes from the East Coast on Laurel's pipeline. They point out that loading gasoline rail cars requires a rail yard that is connected to a vapor recovery unit ("VRU"). IP Main Brief, at 132; Gulf St. No. 1, at 5. A VRU is an expensive system that captures the vapors that are displaced when product is pumped into a tank or other storage or transport apparatus. *Id.* Most existing rail yards were built to offload, and as a result VRUs can be installed only as an additional, substantial equipment expense typically in excess of \$1 million per unit. *Id.* In addition, rail offloading requires the availability of offloading equipment at the destination. IP Main Brief, at 132; Gulf St. No. 1, at 5. While some Pittsburgh locations are equipped with this capability, gasoline offloading must compete for capacity with other inbound receipts of biofuels, which are highly competitive for rail transport services because they are not transported via pipeline in Pennsylvania. *Id.* Additionally, because rail loading and offloading is highly labor intensive and expensive, rail transportation becomes less economically competitive over shorter distances. *Id.* Finally, rail movements, and the labor that supports them, are susceptible to weather events, which in turn impacts punctuality and can prompt rail congestion and scheduling delays. *Id.*

In addition, the Indicated Parties point out that there are no alternative pipeline resources available to replace the service the Laurel pipeline currently provides. The Laurel

pipeline is the only pipeline source of product connecting the East Coast to the Pittsburgh area. IP Main Brief, at 133; Gulf St. No. 1, at 3. They reiterate their position that eliminating the Pittsburgh area destination market for Philadelphia area refineries will reduce the market diversity for refinery output and eliminate markets for gasoline blends currently shipped to destinations west of Eldorado that cannot be sold to other markets such as New York Harbor. While the availability of additional pipelines to other markets would allow Philadelphia markets to deliver some product at increased costs and reduced margin, these alternatives would likely deteriorate the financial viability of the Pennsylvania-based refineries and threaten the jobs of Pennsylvania residents. IP Main Brief, at 134-35.

Likewise, the Indicated Parties reject barging as an adequate shipping option to replace shipments on Laurel's pipeline. IP Main Brief, at 135. They explain that barge movements depend on several variables, including economics, product availability, emission limit restrictions at discharge, river conditions, and weather. Sheetz St. No. 1, at 5, 12-13. These external factors make barge supply sporadic at best and thus an unreliable alternative source of baseline supply for service into the Pittsburgh area. Generally, barge transportation is more expensive and labor intensive than pipeline alternatives. IP Main Brief, at 135. Most importantly for the Indicated Parties, the availability of barge facilities in Pittsburgh, regardless of capacity, would not adequately replace the loss of East Coast supply sources because barges cannot reach Pittsburgh from Philadelphia. *Id.*

The Indicated Parties aver that in 2012, 2014, and 2015, barges delivered approximately 11,300, 8,500, and 10,000 BPD, respectively into the Pittsburgh market, with 15,600 BPD delivered in 2013. IP Main Brief, at 136; Sheetz St. No. 1-S, at 13; Gulf St. No. 1-S, at 16-17. According to the Indicated Parties, these volumes do not indicate significant capacity to economically absorb significant proportions of the 50+ MBPD shipped from East Coast origins to the Pittsburgh area on the Laurel pipeline. IP Main Brief, at 136. Barges have historically played a minor role in supplying the Pittsburgh area with petroleum products and cannot be relied upon for baseline supply. Sheetz St. No. 1, at 5:19-22; Gulf St. No. 1, at 4:17 to 5:2. On these grounds, the Indicated Parties opine that efforts to expand barge capabilities in the Pittsburgh area would require tremendous risk tolerance for uncertainties in product availability

and supply reliability in addition to requiring substantial capital investment to increase barging capacity and meet emission limits. IP Main Brief, at 136; Sheetz St. No. 1, at 5:19-22.

In their Main Brief, the Indicated Parties define “a product exchange” as a transaction between two wholesalers where both parties agree to supply each other's obligations in two different geographical markets rather than having each party ship product to the other party's location. IP Main Brief, at 137; Sheetz St. No. 1, at 11. They explain that “product exchanges are useful when geographical differences exist, but price and product differences do not. As a result, product exchanges work best when both suppliers are subject to the same pricing hub and the product quantities and qualities are identical.” *Id.* Absent these circumstances, agreeing on a product exchange would be difficult and/or ill-advised because the nuisance or financial exposure could outweigh the benefits. IP Main Brief, at 137; Sheetz St. No. 1, at 12. Simply stated, the cost to the parties of accounting for the variances in pricing hubs and product requirements outweighs any benefit of pursuing a product exchange opportunity. *Id.*

The Indicated Parties reject Laurel’s assertions that “... product exchanges are an option available to a product owner in the east as a means to for example to exchange product in Philadelphia for product in Pittsburgh” (Laurel St. No. 1-R, at 46), by pointing out that product exchanges do not work in the Pittsburgh market because the prospect of exchanging Chicago-priced barrels from the Midwest with New York-priced barrels from the East would result in an uneconomic contract due to the potentially extreme differentials between Chicago and New York pricing. IP Main Brief, at 138; Gulf St. No. 1, at 10-11; Sheetz St. No. 1-S, at 11.

In addition, they point out that a product exchange allows marketers to swap product that already exists in that marketplace and does not create or add new/additional product to the marketplace. IP Main Brief, at 138, Hearing Tr. 32. In their view, if product exchanges were such beneficial alternatives to transporting product via the Laurel pipeline, the Midwest refineries would already be using them to access the Pittsburgh market and would have little need for the pipeline reversal. IP Main Brief, at 138; Gulf St. No. 1-S, at 13. However, the

market participants have not successfully entered into a product exchange for supply in the Pittsburgh area.<sup>42</sup> Sheetz St. No. 1, at 12; Gulf St. No. 1, at 10.

### Conclusion

In its Application, Laurel listed numerous options allegedly available to both Pittsburgh area wholesalers, retailers, and consumers seeking East Coast products and Philadelphia area refiners seeking to identify new markets to replace sales displaced by the pipeline reversal.

### Pittsburgh Market

Laurel concedes that while any one single alternative alone may be an inadequate substitute to Laurel, all available alternatives together constitute an acceptable substitute to the pipeline service from the East. See Laurel Main Brief, at 137. Consequently, Laurel maintains that the Pittsburgh market's ability to access petroleum products from the following transportation sources:

- (1) Sunoco Pipeline, L.P. ("Sunoco"), from the Midwest;
- (2) Marathon Pipeline LLC, from the Midwest;
- (3) Buckeye from the Midwest;
- (4) Buckeye and Laurel, collectively delivering from the East Coast to Altoona, from which product can be trucked west post-reversal;
- (5) trucks delivering from the Ergon refinery in Newell, West Virginia;
- (6) trucks delivering from the United Refining refinery in Warren, Pennsylvania;
- (7) barges delivering petroleum products to terminals on the Ohio, Allegheny and Monongahela Rivers from refineries and pipeline terminals in the Midwest and potentially Gulf Coast; and
- (8) trucks delivering petroleum products from pipeline terminals in Ohio

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<sup>42</sup> Sheetz St. No. 1, at 12:6-10; Gulf St. No. 1, at 10:17-18. Laurel witnesses Dr. Webb and Mr. Stern alleged that **[BEGIN HIGHLY CONFIDENTIAL]**

**[END HIGHLY**

**CONFIDENTIAL]** As Laurel witness Mr. Arnold agreed that a product exchange would not "move physical barrels," the above-referenced agreement cannot be characterized as a product exchange. See Tr. 327:16.

presents an adequate substitute to the pipeline service from the East. Laurel Main Brief, at 136; Laurel St. No. 2, p. 6; *see also* Laurel St. No. 5, pp. 22-25.

However, the mere availability of supply sources does not paint the whole picture for a market like Pittsburgh. It is undisputed that East Coast supply sources have historically met most of the demand for summer low-RVP gasoline in the Pittsburgh market, and continue to do so. IP St. No. 1, at 26:4-6; Sheetz St. No. 1, at 9:5-6; *see also* Laurel Exhibit MJW-11, at 5. The proposed reversal would leave the Pittsburgh area without pipeline access to the low-RVP gasoline that the East Coast refineries produce.

Laurel maintains that Midwest refineries are technologically capable to efficiently and economically produce sufficient volumes of low-RVP gasoline to supply the entirety of the Pittsburgh market demand for low-RVP gasoline during the Summer months. However, Laurel has failed to explain why the Midwest refiners are not competing more effectively with the East Coast low-RVP gasoline product in the Pittsburgh market now. For example, in 2017, Husky, the largest refiner in Ohio, sold over the 138-day low-RVP compliance period from May 1 – September 15, only **[BEGIN HIGHLY CONFIDENTIAL]** **[END HIGHLY CONFIDENTIAL]** far short of Pittsburgh's total average gasoline demand of approximately 67 BPD. *See* IP Cross Exhibit No. 17; *cf.* Laurel Exhibit No. MJW-11, at 5. Throughout this proceeding, Laurel has been a staunch supporter of the proposition that "[r]efineries will sell product into markets that yield the highest netback (i.e. sales price net of transportation costs)...." Laurel St. No. 1-R, at 38. The application of this same principle on the issue of low-RVP gasoline leads to the conclusion that Midwest refiners are not producing sufficient volumes of low-RVP gasoline to serve the Pittsburgh market because Midwest refiners do not believe they can currently earn a sufficient netback when faced with competition from East Coast suppliers.

Post-reversal, the price of low-RVP summer gasoline in the Pittsburgh market may increase in order to provide an incentive for the Midwest refiners to produce higher volumes of low-RVP gasoline to meet the demands of the Pittsburgh market. This, I find, undermines

Laurel's position that the Midwestern low-RVP gasoline is an adequate substitute for the Eastern counterpart.

### Eastern Refineries

Laurel explores the available alternatives for PESRM and Monroe as they seek to identify new markets to replace sales displaced by the pipeline reversal. According to Laurel, the first and most obvious alternative for the two Philadelphia area refineries for the loss of direct pipeline access to the Pittsburgh market are market outlets accessible via Laurel. Laurel asserts that: (a) such markets are quite large relative to the displaced Monroe/PESRM volumes; (b) the future displaced sales of former Pittsburgh-bound volumes is quite possible because in recent years, the refiners' counterparties have been expanding sales to other markets; and (c) the refiners' ability to market volumes via the Laurel system and Buckeye Pipe Line Company to upstate New York (Binghamton, Syracuse, Rochester and Buffalo) will be greatly expanded as a result of the proposed reversal, due to operational benefits arising from freed-up tankage on Laurel. In addition, Laurel remarks that the markets accessible to shippers originating at Philadelphia and delivering west to Altoona and north to Buffalo/Rochester dwarf the volumes being currently delivered to Pittsburgh.

If the reversal is approved, the Eastern refineries will still be connected via the Laurel system and Buckeye Pipe Line to market outlets in northern Pennsylvania and upstate New York. During these proceedings, the Indicated Parties have maintained that they are already selling all the product they can into the northern Pennsylvania and upstate New York markets. Hearing Tr. 482:5-9. The fact that one or both of them may be connected to these other markets does not mean those markets are viable or could adequately replace Pittsburgh.

More particularly, PESRM experienced increases in its Laurel deliveries east of Eldorado on two separate instances over the past two years. Laurel Statement No. 5-RJ at 52. However, heartening these occurrences are they do not establish a reliable pattern upon which one can conclude that both refineries, PESRM and Monroe, will be able to easily remarket product currently going to Pittsburgh.

Concerning Laurel's rejection of the Philadelphia Refineries' claim that the Pittsburgh market is "high margin" or offers prices superior to other markets accessible via Laurel or other transportation outlets, such as Sunoco Pipeline's East Line (see Laurel Main Brief, at 153-54), I find that it is on the premise that **[BEGIN HIGHLY CONFIDENTIAL]**

**[END HIGHLY CONFIDENTIAL]** even if the volume that's currently absorbed by Pittsburgh is displaced elsewhere. See Laurel Main Brief, at 153-54. I note, however, that Laurel has not shown that transportation of all the East Coast refineries' displaced product, through these other alternatives and to these other markets, will be **[BEGIN HIGHLY CONFIDENTIAL]**

**[END HIGHLY CONFIDENTIAL]** See Laurel Main Brief, at 154. Without this clarification and assurance, it is difficult to determine whether or not the Philadelphia refineries are losing a "high margin" market if they are delinked from the Pittsburgh market.

Next, Laurel explores alternative market outlets to which Monroe and PESRM are not connected via the Laurel – Buckeye systems. However, Monroe is currently connected to Sunoco's East Line, but only ships jet fuel on that line. While the East Line would be available to ship non-jet fuel products, there would be substantial costs associated with that option because of the unique agreement between Delta and Sunoco regarding transmix costs. See Monroe Energy Statement No. 1-SR at 11:1-10. Monroe is also connected to the Harbor Line, which is full and often constrained, and does not have the excess capacity to absorb all of the barrels that will be displaced by the proposed reversal. See Monroe Energy Statement No. 1-SR at 9:18-10:4.

Apart from the Laurel pipeline, which currently moves approximately 46% of the output of Monroe's refinery, the Marcus Hook connection for jet fuel and the barge dock, all other transportation options flow through an eight-inch line operated by MIPC, which is a Monroe subsidiary. See Monroe Energy Statement No. 1-SR at 7:10-11:10. In turn, this line often operates near capacity. In addition, the Sunoco Pipeline into northern Pennsylvania is not

an appropriate alternative as the line has been shut down for maintenance for some time. See Laurel Main Brief at 159. Moreover, Monroe is not currently connected to any portion of the Colonial Pipeline that reaches New York Harbor and Laurel did not present any evidence that showed the existence of product demand which would justify Monroe's capital investment to achieve such a connection. IP Reply Brief, at 135. As for barging its product up to New York Harbor, Monroe explained that the process is approximately 3.5 cents per gallon more expensive than pipeline transportation. See Hearing Tr. 1100.

As for PESRM's transportation options unconnected to the Laurel-Buckeye system, Laurel fails to show that any of these "connections" leads to an economically viable market and is thus an adequate alternative. PESRM has shown that it already delivers product to all the places referenced in Laurel's Main Brief but insists that those markets cannot absorb the volumes PESRM currently delivers west of Eldorado on the Laurel pipeline. See Hearing Tr. at 955. And without demand the physical connection is meaningless. See IP Reply Brief, at 141.

The issue presented by the alternatives suggested by Laurel as substitutes for the service that Laurel's Altoona-Pittsburgh section provided to the Eastern refineries is not only whether alternate pipelines have capacity, but also whether they connect to a new market with new demand; otherwise, they are not adequate substitutes for the segment of the Laurel pipeline proposed to be reversed. The preponderance of the evidence collected in this matter does not show that the alternatives to the transportation service provided by the Altoona-Pittsburgh section of the Laurel pipeline are connected to new markets with new demands for PESRM and Monroe. Without the accompanying demand, the alternatives identified by Laurel are not adequate substitutes for shipments on the Laurel pipeline.

Lastly, I will address Laurel's suggestion that product exchanges represent an available alternative to Pittsburgh market participants. Laurel maintains that product exchanges are commonplace in the petroleum products transportation industry and frequently include a "location differential" to account for pricing disparities between two markets. However, if product exchanges were such beneficial alternatives to transporting product via the Laurel pipeline, the Midwest refineries would already be using them to access the Pittsburgh market and

would have little need for the pipeline reversal. See Gulf St. No. 1-S, at 13:17-19. Yet, the record shows that market participants have not successfully entered into a product exchange for supply in the Pittsburgh area.<sup>43</sup> See Sheetz St. No. 1, at 12:6-10; Gulf St. No. 1, at 10:17-18.

After carefully considering the parties' respective positions on the availability and adequacy of substitutes to the service that Laurel proposes to abandon, I find that Laurel has not demonstrated by a preponderance of the evidence that there exist adequate alternatives to the pipeline service currently offered by the Altoona-Pittsburgh portion of the Laurel pipeline. The alternative sources of obtaining supply, either separately or together, would fail to replicate satisfactorily the benefits of service currently provided to the public via Laurel's pipeline.

e) Whether a reasonable rate increase can cure the utility's loss

In the past the Commission has denied an applicant's a request for abandonment where the utility did not show that a reasonable rate increase could not cure a loss, and the Commonwealth Court upheld its decision. *Warwick Water Works, Inc. v. Pennsylvania Pub. Util. Comm'n*, 699 A.2d 770, 774-75 (Pa.Cmwlt. 1997).

Laurel's Position

In the present case, Laurel has not presented evidence as to whether a reasonable rate increase would cure its alleged loss. Instead, Laurel contends that a rate increase is "without merit" because increasing shipping costs will cause customers to utilize the line less and thus would not increase revenues. Laurel Main Brief, at 177.

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<sup>43</sup> Laurel witnesses Dr. Webb and Mr. Stern alleged that [BEGIN HIGHLY CONFIDENTIAL]

[END HIGHLY CONFIDENTIAL]. IP Reply Brief, at 19.

### The Indicated Parties' Position

The Indicated Parties disagree with Laurel's proposition that shipments would decrease if Laurel's rates increased. They point out that Laurel essentially has a monopoly on shipments of petroleum products from Philadelphia to Pittsburgh and reason that Eastern refiners have no other choice than the Laurel pipeline to move product to Pittsburgh. IP Reply Brief, at 155.

### Conclusion

In view of the above, I find that Laurel has failed to show that a rate increase would cure the utility's loss where Laurel is the only choice for refined products to reach Pittsburgh from Eastern refiners.

### Disposition

In summary, with regard to the extent of the loss to the utility I find that customers have significantly utilized the Altoona-Pittsburgh section of the Laurel pipeline in recent years. While it is undisputed that volumes transported on the Laurel pipeline from the east to the Pittsburgh market have declined during the period 2006 to 2017, Laurel has overstated the overall impact of the decrease on the use of the pipeline section in question. In addition, because Laurel did not proffer an assessment of the impact of the volume decrease in the Altoona-Pittsburgh section on the pipeline, it is difficult to evaluate the extent of the loss for Laurel *as a utility*.

With regard to the prospect of the system being used in the future, I find that although volumes from eastern refineries into Pittsburgh along the Laurel pipeline fluctuate, these volumes remained robust through 2017, demonstrating a clear need for this service. Consequently, Laurel has failed to show by a preponderance of the evidence that its customers do not plan to make extensive use of the Altoona-Pittsburgh section of the pipeline in the future.

On balancing the utility's loss with the hardship on the public, I find that the inconvenience and hardships that arise from the proposed reversal outweigh the loss experienced by Laurel.

Concerning the availability and adequacy of substitutes to the service that Laurel proposes to abandon, I find that Laurel has not demonstrated by a preponderance of the evidence that there exist adequate alternatives to the pipeline service currently offered by the Altoona-Pittsburgh portion of the Laurel pipeline. The alternative sources of obtaining supply, either separately or together, would fail to replicate satisfactorily the benefits of service currently provided to the public via Laurel pipeline.

Lastly, I find that Laurel has failed to show that a rate increase would not cure the utility's loss where Laurel is the only choice for refined products to reach Pittsburgh from Eastern refiners.

In view of my findings above, I conclude that Laurel has failed to satisfy the applicable standard for the abandonment of utility service, wholly or in part. Consequently, I recommend that the Commission deny Laurel's Application at this time.

#### **F. Capacity Agreement between Laurel and Buckeye**

Under the proposed change in direction of service, the western portion of Laurel's pipeline facilities (*i.e.* points west of Eldorado) would be utilized by Buckeye to transport and deliver Midwestern petroleum products to the public in Western and Central Pennsylvania pursuant to rates under Buckeye's FERC tariff. Laurel St. No. 1, p. 23. The Capacity Agreement filed as a part of this proceeding as Laurel Exhibit No. 2, supersedes and replaces the terms of a prior capacity agreement between Laurel and Buckeye, which was approved by the Commission in 1994, and the terms of an amendment to the 1994 Agreement, which was approved by the Commission in 2015. *Id.*, at 24 (referencing prior affiliated interests agreements filed at Docket No. G-00940417).

Pursuant to the Capacity Agreement, Buckeye will obtain from Laurel throughput capacity sufficient to transport up to 40,000 BPD of refined petroleum products between Eldorado, Pennsylvania and Buckeye's terminal facilities at Midland, Pennsylvania, and will reduce its capacity rights between Sinking Spring and Coraopolis, Pennsylvania, by the same quantity. *Id.* The Capacity Agreement applies the same capacity use charge for the Initial Term that was used in the prior Commission-approved agreements. *Id.*, at 25. In addition, the Capacity Agreement applies the same capacity use charge for the Renewal Term that was used in the prior Commission-approved agreements. *Id.*

Furthermore, the two principal differences between the proposed Capacity Agreement and the existing agreement are undisputed. First, the term of the proposed Capacity Agreement is an initial ten-year term followed by a year-to-year renewal term, which creates an evergreen agreement until a 30-day notice of cancellation. Laurel Exhibit No. 2; IP St. No. 3, p. 30. Second, the existing capacity agreement had an extension term of 19 successive years and the amendment approved by the Commission in December 2015 modified those terms to provide Buckeye the option to extend the agreement annually. *Id.*

#### Laurel's Position

Laurel maintains that the proposed Capacity Agreement between Laurel and Buckeye is just and reasonable and in the public interest. Laurel asserts that the per barrel amount that Laurel received under the existing capacity agreement with Buckeye was approximately \$0.828/barrel. Laurel Main Brief, at 186; Laurel St. No. 5-R, p. 13. This amount was calculated by dividing the total revenue that Laurel had received from Buckeye in 2016 by the total number of barrels Buckeye transported on Laurel in the same year (*ie.* \$17.9 million in revenue divided by 21.6 million barrels moved). *Id.* According to Laurel the existing capacity use charge of \$0.828/barrel adequately compensates Laurel for transportation service its currently renders to Buckeye. And since the terms of the existing charge are continued in the proposed Capacity Agreement, it demonstrates that the proposed capacity use charge is also reasonable. Laurel Main Brief, at 187; Laurel St. No. 5-R, p. 13.

In addition, Laurel explains that the “credit” for non-use is an adjustment for operating expense that was approved in the prior agreement. Laurel Main Brief, at 185; Laurel St. No. 1-R, p. 33. This credit was originally set at \$0.05/barrel, subject to an inflation adjustment, to accurately reflect the variable operating cost of the pipeline. *Id.* Laurel explains that when Buckeye ships below a certain minimum volume, Laurel does not incur pumping costs which are otherwise embedded within the capacity fee. *Id.* As such, Buckeye is “credited” the pumping costs where Laurel does not actually incur those costs.

Laurel draws attention to the provision for “excess” volumes shipped by Buckeye over and above the minimum levels. Laurel Main Brief, at 185; Laurel Exhibit No. 2 (Capacity Agreement § 6); Laurel St. No. 1-R, pp. 34-35. Section 6 of the Capacity Agreement provides that Buckeye will pay Laurel a \$0.17/barrel charge for volumes in excess of the 14,600,000 annual barrels reserved. *Id.* Laurel explains that while Laurel is subject to risk and Buckeye is subject to benefit through the credits for non-use, Laurel is subject to benefit and Buckeye is subject to risk through the charge for excess volumes. *Id.* In this regard, Laurel opines that the Capacity Agreement carries both risks and benefits for both Laurel and Buckeye, just as any other arms-length contract between two sophisticated commercial entities would. *Id.*

Finally, Laurel points out that under the existing agreement, destinations in Western Pennsylvania are served by Laurel and, if interstate barrels are not sent to the market under the Buckeye tariff and via the existing agreement, then the same demand is met by a PUC tariff delivery to the extent the volumes are supplied from the east. *Id.* After the reversal, however, the same terminals will be served on the Laurel system and that any demand at these terminals will be met solely by Buckeye volumes, which will be included in the volumes generating revenues under the proposed Capacity Agreement. *Id.*

#### Indicated Parties’ Position

The Indicated Parties aver that the proposed Capacity Agreement does not appear to be an arms-length arrangement and is biased against the interest of Laurel, the regulated

Pennsylvania utility, and in favor of its corporate affiliate and counterpart, Buckeye. IP Main Brief, at 171.

According to the Indicated Parties, the proposed Capacity Agreement imposes needless financial risk to Laurel resulting from the reduction in Laurel's revenue associated with the flow reversal. IP Main Brief, at 170; Indicated Parties St. No. 3, at 30:20-23. Moreover, the financial risk to Laurel is exacerbated because Laurel has no recourse to recover this lost revenue from other shippers, in part because post-reversal it will lose the ability to serve to destinations between Eldorado and Pittsburgh. IP Main Brief, at 170. In the Indicated Parties' view, the "cannibalization" of Laurel's revenues is not fully offset by this arrangement. Laurel's financial risk is heightened by a provision that is contained in both the existing and proposed Capacity Agreement, but whose adverse impact is magnified under the latest agreement. *Id.*

The Indicated Parties note that, under both the new and existing Capacity Agreements, Buckeye's payment to Laurel is refundable to Buckeye if Buckeye does not actually use the capacity in a segment of the Laurel pipeline. *Id.* The refund is reflected as a credit against a subsequent month's payment. According to them, the problem is that Laurel is obligated to make and keep capacity available to Buckeye, but Buckeye is not obligated to use the capacity and actually obtains a credit if the capacity is unused. IP Main Brief, at 170-71. Laurel's revenue risk is increased under the proposed Capacity Agreement because Laurel will not be able to contract with another shipper to fill in the western segment pipeline should Buckeye not use that capacity. Under the current Capacity Agreement, product from another shipper could fill the underutilized capacity with additional shipments from the eastern origin locations. IP Main Brief, at 171; Indicated Parties St. No. 3, at 31:4-13.

Per the Indicated Parties, Laurel would benefit if Buckeye's capacity use payment to Laurel was not refundable when the capacity on the Laurel pipeline that Buckeye reserved is under-utilized. They argue that this type of payment structure "would convert the payment to a more conventional capacity reservation fee and protect Laurel from upstream problems at refineries or on the Buckeye system that reduce usage of the purchased capacity." IP Main Brief, at 171, citing Indicated Parties St. No. 3, at 31:16-20.

Finally, the Indicated Parties argue that under the proposed Capacity Agreement Laurel is ceasing delivery service at its highest Pennsylvania tariffed rates and substituting service to its affiliate Buckeye at a much reduced rate. They note that 11,075,499 barrels of product were shipped west of Eldorado in 2016. IP Main Brief, at 171; Laurel St. No. 1, at 15:6-8. The current tariff rates for service west of Eldorado are in excess of \$0.50 a barrel and run as high as \$0.784 a barrel. However, under the proposed Capacity Agreement, for service in excess of 40,000 BPD, Buckeye compensates Laurel at \$0.15 a barrel as updated by the Consumer Price Index ("CPI") in the initial period. According to their calculations, at that rate Buckeye must move more than 33,000,000 excess barrels in the western pipeline segment from Midland to Eldorado for Laurel not to lose revenue compared to its current operations. At the index adjusted rate of \$.28, Buckeye must move more than 19,777,000 excess barrels to keep Laurel "even". IP Main Brief, at 171.

#### Disposition

I have recommended that this Commission deny Laurel's requests for relief as stated in the present Application. If the Commission agrees with my recommendation, there is no reason to consider the proposed Capacity Agreement Laurel and Buckeye filed to affect the revised arrangements between these affiliates. However, in the event the Commission approves Laurel's Application and grants Laurel a certificate of public convenience permitting the abandonment of service in its Altoona-Pittsburgh portion, I find and recommend the following.

Laurel's proposed Capacity Agreement is governed by the provisions of Chapter 21 of the Code, which addresses Commission consideration of agreements between public utilities and their "affiliates." 66 Pa. C. S § 2102(a). Under Code Section 2102(a), no contract or arrangement for the provision of various services between "affiliates" shall be valid and effective until the contract or arrangement has been approved by the Commission:

§ 2102. Approval of contracts with affiliated interests.

- (a) General rule.--No contract or arrangement providing for the furnishing of management, supervisory, construction, engineering, accounting, legal, financial, or similar services, and no contract or arrangement for the purchase, sale, lease, or exchange of any property, right, or thing or for the furnishing of any service, property, right or thing other than those above enumerated, made or entered into after the effective date of this section between a public utility and any affiliated interest shall be valid or effective unless and until such contract or arrangement has received the written approval of the commission. If such contract is oral, a complete statement of the terms and conditions thereof shall be filed with the commission and subject to its approval.

Under Code Section 2102(b), "[t]he commission shall approve such contract or arrangement made or entered into after the effective date of this section only if it shall clearly appear and be established upon investigation that it is reasonable and consistent with the public interest."

After carefully reviewing the existing and the proposed Capacity Agreements between Laurel and its affiliate Buckeye, the testimony, exhibits and briefs filed the parties, I find that the proposed Capacity Agreement is reasonable and consistent with the public interest and should be approved by the Commission. I agree with Laurel that the proposed (and the existing) capacity use charge of \$0.828/barrel is comparable if not higher than the current rate on Laurel's PUC tariff<sup>44</sup> and adequately compensates Laurel for transportation services it currently renders to Buckeye. I also agree with Laurel that, while Laurel is subject to risk and Buckeye is subject to benefit through the credits for non-use, Laurel is subject to benefit and Buckeye is subject to risk through the charge for excess volumes. *Id.* Consequently, I find that Laurel and Buckeye alike share the risks and benefits associated with the terms of the proposed Capacity Agreement. The proposed agreement is a reasonable arms-length contract between two sophisticated commercial entities and is consistent with the public interest.

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<sup>44</sup> Indicated Parties St. No. 1, at 12:13, 16 (showing Laurel tariff rate of \$0.614/bbl (from Chelsea to Pittsburgh)).

### **G. Stipulation in Settlement between Laurel and I&E**

As a public utility, Laurel is subject to the Public Utility Code and the Commission's regulations. I&E St. No. 1, p. 3. In addition, as a hazardous liquids pipeline, Laurel is also subject to regulation by the Department of Transportation ("USDOT") under the Hazardous Liquid Pipeline Safety Act of 1979. *See* 49 CFR § 195. More specifically, Laurel is subject to safety inspections and regulation by the Pipeline and Hazardous Materials Safety Administration ("PHMSA"). Laurel St. No. 11-R, p. 4. Regulations promulgated by the US DOT govern the design, construction, testing, operation and maintenance of pipelines, including integrity management of hazardous liquids pipelines. Laurel St. No. 11-R, p. 4.

In 2014, PHMSA issued its Guidance for Pipeline Flow Reversals, Product Changes, and Conversion to Service<sup>45</sup> ("2014 Guidance"), which provided, in part, safety guidelines and requirements for pipelines that intended to reverse the flow of product. The 2014 Guidance includes numerous specific safety elements that should be addressed as part of the reversal process. Laurel St. No. 11-R, pp. 6-9. In order to address these elements, Laurel prepared and submitted its "Broadway Project-2 Integrity Impact Review Line 718, Duncansville to Coraopolis" ("IRR"). The Laurel IRR sufficiently addresses the safety elements associated with the reversal project. I&E St. No. 1-SR, p. 9. The Company provided a timeline for the specific steps identified in the IRR as part of its testimony (Laurel St. No. 4-RJ, p. 5, Figure 1), which was incorporated into the Partial Stipulation submitted in this proceeding on November 3, 2017.

The 2014 Guidance also includes notification requirements, which Laurel has already complied with. Notification must be given no later than 60 days before reversal of product flow that will last more than 30 days at 49 CFR 195.64(c)(1)(iii). Laurel made that notification on June 23, 2017. Laurel St. No. 11-R, p. 5. In addition, when the cost of any changes on a pipeline exceed \$10 million, including reversal of flow, PHMSA requires notification no later than 60 days before "construction or any planned rehabilitation,

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<sup>45</sup> Guidance for Pipeline Flow Reversals, Product Changes and Conversion to Service, US DOT PHMSA, September 2014, DocketHMSA-2014-0040.

replacement, modification, upgrade or update of a facility other than a section of line pipe” at 49 CFR 195.64(c)(1)(i). While the costs for Laurel do not exceed the \$10 million threshold, the larger Broadway project does exceed the threshold. Laurel St. No. 11-R, p. 5. Therefore, the company notified PHMSA consistent with its practice of working cooperatively with stakeholders, including PHMSA. Laurel St. No. 11-R, p. 5.

Laurel was able to reach a Stipulation with I&E satisfying the safety concerns identified by I&E’s witness in his testimony in this proceeding. That Stipulation was submitted on November 3, 2017. No other parties raised any concerns relating to the safety of the physical reversal of flow on the Laurel pipeline. No parties objected to the Stipulation or raised any concerns with the Stipulation during the hearing.

Under the Stipulation, any Commission approval of Laurel’s Application will be conditioned upon Laurel taking all safety actions identified in the Company’s IRR by agreed upon estimated dates.<sup>46</sup> Figure 1 of the Stipulation detailing these safety actions is reproduced below.

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<sup>46</sup> The estimated dates are based on the assumption that the pipeline would be reversed on September 1, 2018.

**Figure 1: Laurel Line - Integrity Impact Review Actions Summary and Schedule**

<b>Pre-Reversal Actions</b>	<b>Estimated Date</b>
Perform Hydrostatic Pressure Test	6/15/18
Updated Surge Analysis	3/31/18
Updated Emergency Flow Restricting Device (EFRD) analysis	Completed
Update to Computational Pipeline Monitoring System (LeakWarn)	8/24/18
Review and Update Procedure Manuals (Operations, Maintenance & Emergency Response)	8/1/18
Update to Work Management System for new Equipment	8/1/18
Revise Startup and Shutdown Procedures and Train Controllers	8/1/18
Review and Update Supervisory Control and Data Acquisition (SCADA) System	8/1/18
Update Oil Spill Response Plan	8/1/18
Preventative & Mitigative Actions Review	8/1/18
<b>Post-Reversal Actions</b>	<b>Estimated Date</b>
As Built Drawings and Compile Project Records	12/31/18
Inspect Mainline Isolations Valves	9/1/2018, 9/8/2018, and 10/1/2018
Perform Visual Surveys of Aboveground Equipment	10/1/18
Determine and Evaluate actual Pressure Cycling of Pipeline	10/1/2018 and 3/1/2019

Additionally, Laurel agreed that the Commission’s safety inspectors may inspect the Laurel pipeline, including review of the Company’s compliance with the above-identified pre- and post-reversal actions.

I have recommended that this Commission deny Laurel’s requests for relief as stated in the present Application. Consequently, I recommend denying the Stipulation for

Settlement between Laurel and BIE. However, in the event the Commission approves Laurel's Application and grants Laurel a certificate of public convenience permitting the abandonment of service in its Altoona-Pittsburgh portion, I find and recommend the following:

I find that Laurel has demonstrated that the proposed reversal will be implemented in compliance with all applicable safety standards. Therefore, I conclude that the approval of the proposed project in this proceeding does not pose any safety considerations that would merit denial of the Application.

## V. CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties and the subject matter of this proceeding. 66 Pa.C.S.A. § 701.

2. As the proponent of a rule or order, the Applicant in this proceeding bears the burden of proof pursuant to Section 332(a) of the Public Utility Code (Code), 66 Pa.C.S.A. § 332(a).

3. The Interstate Commerce Act does not contain explicit preemptive language. *National Steel Corp. v. Long*, 718 F. Supp. 622, 625 (W.D. Mich. 1989) *aff'd*, *Natl. Steel Corp. v. Mich. Pub. Serv. Comm'n*, 919 F.2d 38 (6th Cir. 1990).

4. The Interstate Commerce Act does not apply to oil pipeline transportation wholly within one State and not shipped to or from a foreign country. 49 U.S.C. §1(2); *see also Simpson v. Shepard*, 230 U.S. 352, 418-19 (1913).

5. The Commerce Clause of the United States Constitution not only grants Congress the authority to regulate commerce among the States, but also directly limits the power of the states to discriminate against interstate commerce *New Energy Co. v. Limbach*, 486 U.S. 269, 273 (1988).

6. In deciding whether a state action directly regulates or discriminates against interstate commerce, or when its effect is to favor in-state economic interests over out-of-state interests the critical question is the overall effect of the statute on both local and interstate activity. *Pike v. Bruce Church*, 397 U.S. 137, 142 (1970).

7. A common carrier is defined as “Any and all persons or corporations holding out, offering, or undertaking, directly or indirectly, service for compensation to the public for the transportation of passengers or property, or both, or any class of passengers or property, between points within this Commonwealth by, through, over, above, or under land...” 66 Pa. C.S. § 102.

8. A public utility is defined as “Any person or corporations ... owning or operating equipment or facilities for: ... transporting or conveying natural or artificial gas, crude oil, gasoline, or petroleum products...by pipeline or conduit, for the public for compensation.” 66 Pa. C.S. § 102.

9. Used in its broadest and most inclusive sense the definition of ‘service’ includes any and all acts done, rendered, or performed, and any and all things furnished or supplied, and any and all facilities used, furnished, or supplied by public utilities. 66 Pa. C.S. § 102.

10. The factors to be considered in determining whether a utility may abandon its service are: (a) the extent of loss to the utility; (b) the prospects of the system being used in the future; (c) the balancing of the utility's loss with the hardship on the public; and, (d) the availability of alternative service. See *Commuters Comm. v. Pa. Pub. Util. Comm'n*, 88 A.2d 420 (Pa. Super. 1952). The public utility must also demonstrate that its losses could not be cured by the granting of a reasonable rate increase. See *Re: Ridgeville Water Co.*, 51 Pa. PUC 58 (1977); *Re: Valley View Water Co.*, 55 Pa. PUC 466 (1982).

11. No contract or arrangement providing for the furnishing of management, supervisory, construction, engineering, accounting, legal, financial, or similar services, and no

contract or arrangement for the purchase, sale, lease, or exchange of any property, right, or thing or for the furnishing of any service, property, right or thing other than those above enumerated, made or entered into after the effective date of this section between a public utility and any affiliated interest shall be valid or effective unless and until such contract or arrangement has received the written approval of the Commission. 66 Pa. C.S. § 2102(a).

12. The Commission shall approve a contract or arrangement with affiliated interests under 66 Pa. C.S. § 2102(a) only if it shall clearly appear and be established upon investigation that it is reasonable and consistent with the public interest. 66 Pa. C.S. § 2102(b).

## VI. RECOMMENDED ORDER

THEREFORE,

IT IS RECOMMENDED:

1. That the Application of Laurel Pipe Line Company, L.P for approval to change direction of petroleum products transportation service to delivery points west of Eldorado, Pennsylvania at Docket No. A-2016-2575829 be denied.

2. That the Affiliated Interest Agreement between Laurel Pipe Line Company, L.P. and Buckeye Pipe Line Company, L.P., at Docket No. G-2017-2587567 be denied as moot.

3. That the Stipulation for Settlement filed by Laurel Pipe Line Company, L.P. and the Bureau of Investigation and Enforcement be denied as moot.

