**PENNSYLVANIA**

**PUBLIC UTILITY COMMISSION**

**Harrisburg, PA 17105-3265**

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|  | Public Meeting held July 12, 2018 |
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| Commissioners Present:  Gladys M. Brown, Chairman, Statement  Andrew G. Place, Vice Chairman  Norman J. Kennard  David W. Sweet  John F. Coleman, Jr. |  |
| 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  Affiliated Interest Agreement Between Laurel Pipe Line Company, L.P. and Buckeye Pipe Line Company, L.P. | A-2016-2575829  G-2017-2587567 |
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**OPINION AND ORDER**

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**BY THE COMMISSION:**

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition are the Exceptions of the following Parties: Laurel Pipe Line Company, L.P. (Laurel, the Applicant, or Company); Gulf Operating, LLC (Gulf), Philadelphia Energy Solutions Refining & Marketing, LLC (PESRM), Sheetz, Inc. (Sheetz), Monroe Energy, Inc. (Monroe or Monroe Energy), and Giant Eagle, Inc. (Giant Eagle) (collectively, the Indicated Parties); Husky Marketing and Supply Company (Husky); and the Commission’s Bureau of Investigation and Enforcement (I&E), all filed on April 18, 2018, to the Recommended Decision (R.D.) of Administrative Law Judge (ALJ) Eranda Vero issued on March 29, 2018, relative to the above-captioned proceeding. Laurel filed Replies to Exceptions and the Indicated Parties filed Replies to Exceptions on April 30, 2018.

As will be addressed in more detail herein, based on our review of the record, the ALJ’s Recommended Decision, the Parties’ respective positions, and the applicable law, we shall: (1) grant, in limited part, and deny, in part, Laurel’s Exceptions; (2) find the Indicated Parties’ Exceptions to be moot; (3) grant, in limited part, and deny, in part, Husky’s Exceptions; (4) deny I&E’s Exceptions; and (5) adopt the Recommended Decision as modified in limited part. We conclude that Laurel’s Application is a request for a partial abandonment of intrastate public utility service along its pipeline under Section 1102(a)(2) of the Code, 66 Pa. C.S. § 1102(a)(2), and find that Laurel has failed to satisfy its burden of proof regarding its abandonment request. We also find that we have jurisdiction to make a determination on Laurel’s abandonment request and that our jurisdiction is not preempted by federal law or prohibited by the dormant Commerce Clause.

I. History of the Proceeding

On November 14, 2016, Laurel filed the above-captioned Application at Docket No. A-2016-2575829. In the Application, Laurel requests all necessary authority, approvals, and Certificates of Public Convenience (Certificates) 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. Laurel also requests confirmation that it may, in its discretion, reinstate the current direction of service in the future without further Commission approval. Application at 1. Laurel avers that Commission approval for this change in service either is not required, or if required, approval of the Application is “necessary or proper for the service, accommodation, convenience, or safety of the public,” consistent with 66 Pa. C.S. § 1103(a). Application at 1-2.

The Application was published in the *Pennsylvania Bulletin* on December 3, 2016, at 46 *Pa*. *B*. 7605. The following Parties filed Petitions to Intervene that were granted by ALJ Vero: Gulf, PESRM, Sheetz, Monroe, Giant Eagle, Husky, Sunoco, LLC (Sunoco), and the Clean Air Council. On December 20, 2016, I&E filed a Notice of Intervention. The following Parties filed Protests to the Application: Gulf, PESRM, Sheetz, Monroe, Giant Eagle, and I&E. Various interested parties filed Comments and letters.

On February 6, 2017, Laurel and Buckeye Pipe Line Company, L.P. (Buckeye) filed an Affiliated Interest Agreement (Capacity Agreement) at Docket No. G‑2017-2587567. The Capacity Agreement supersedes and replaces the terms of a prior capacity agreement between Laurel and Buckeye that the Commission approved in 1994 and the terms of an amendment to the 1994 agreement that the Commission approved in 2015. Under the proposed Capacity Agreement, Buckeye will obtain from Laurel throughput capacity sufficient to transport up to 40,000 barrels per day (BPD) of refined petroleum products between Eldorado, Pennsylvania and will reduce its capacity rights between Sinking Springs and Coraopolis, Pennsylvania by the same quantity. The Capacity Agreement covers a ten-year term, with the right to renew, and includes an adjustment to the escalation provision for payments due from Buckeye. Laurel St. 1 at 24; Laurel Exh. DWA-6.

On February 7, 2017, Laurel filed a Motion to Consolidate the Capacity Agreement with the Application proceeding. By Prehearing Order dated March 2, 2017, the ALJ granted Laurel’s Motion to Consolidate.

Also on February 7, 2017, Laurel submitted its Direct Testimony and accompanying exhibits.

On April 25, 2017, Laurel filed a Motion for a Protective Order. The ALJ granted Laurel’s Motion by Protective Order dated April 26, 2017.

On May 16, 2017, two public input hearings were held at 1:00 p.m. and 6:00 p.m. The public input hearings generated a transcript of 176 pages.

On July 14, 2017, the Indicated Parties served Joint Direct Testimony and related exhibits; PESRM, Monroe, Gulf, Sheetz, and Giant Eagle individually served Direct Testimony and related exhibits; I&E served Direct Testimony and related appendices; and Sunoco served Direct Testimony.[[1]](#footnote-1)

On August 31, 2017, Laurel served Rebuttal Testimony and related exhibits, and Husky served Rebuttal Testimony and related exhibits. On October 6, 2017, the Indicated Parties served joint Surrebuttal Testimony and related exhibits, and Monroe, Gulf, Sheetz, and Giant Eagle individually served Surrebuttal Testimony and related exhibits.

On October 20, 2017, Husky served Rejoinder Testimony. On November 1, 2017, Laurel served Supplemental Rejoinder Testimony that addressed certain Monroe untimely produced documents.

On November 3, 2017, Laurel filed a Stipulation in Settlement (Settlement) between Laurel and I&E to resolve the issues between those two Parties.

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

During the November 13, 2017 evidentiary hearing, the ALJ granted Laurel’s Motion to Submit a Supplemental Affidavit or, Alternatively Exclude Certain Cross Examination Exhibits and Testimony. In the Motion, Laurel sought to exclude from the record a Greater Ohio Valley Market Study prepared by IHS on behalf of Husky (IHS Study) and served on all Parties by Husky witness Mr. Miller in response to a discovery request from Gulf and Sheetz, or to admit an affidavit prepared by Laurel witness Dr. Webb and attached to the Motion. The ALJ excluded the IHS Study from evidence, finding it was hearsay and was untimely offered into evidence. However, the ALJ permitted the Indicated Parties to submit the IHS Study as an offer of proof pursuant to 52 Pa. Code § 5.414. R.D. at 6 (citing Tr. at 1233-1235).

On December 4, 2017, Laurel, the Indicated Parties, and Husky 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.

By Recommended Decision issued March 29, 2018, ALJ Vero denied Laurel’s Application and denied as moot the Capacity Agreement between Laurel and Buckeye and the Settlement between I&E and Laurel. Parties filed Exceptions and Replies to Exceptions as previously indicated.

The ALJ issued both a Non-Proprietary and a Proprietary Version of the Recommended Decision, and the Parties filed both Non-Proprietary and Proprietary versions of their Briefs and their Exceptions and Replies to Exceptions. We have reviewed all aspects of the record and the filings in this proceeding; however, for purposes of this Opinion and Order, we will cite only to the non-proprietary versions and information.

In a proceeding before the Federal Energy Regulatory Commission (FERC), Buckeye and Laurel filed a Petition for a Declaratory Order (FERC Petition) on April 30, 2018, docketed at OR18-22-000. In the FERC Petition, Buckeye and Laurel request approval of the overall tariff and rate structure for service to be provided using new pipeline capacity as well as certain other aspects of the proposed service. As described in detail in the FERC Petition, Buckeye and Laurel state their proposed project will receive certain specified grades of petroleum products at origin points in Michigan, Ohio, and Pennsylvania for transport to a destination point in Pennsylvania, including intermediate destination points in Ohio and Pennsylvania. FERC Petition at 1. Specifically, Buckeye and Laurel request approval of rate structure and tariffs for the transport of petroleum products from origin points at Woodhaven and Detroit, Michigan, Toledo, Lima, and Findlay, Ohio, and Midland, Pennsylvania to the destination point at Eldorado, Pennsylvania, near Altoona, Pennsylvania. *Id*. at 5.

Buckeye and Laurel aver that existing east-to-west intrastate service from two refineries along Laurel’s intrastate system, subject to this Commission’s jurisdiction, will not be reduced but will convert to bi-directional transportation between Eldorado and Coraopolis, Pennsylvania. Buckeye and Laurel explain that the proposed commencement of west-to-east service for new capacity on Laurel will not reduce the capacity available to east-to-west shippers to transport refined products west of Eldorado. They indicate that Laurel will have ample capacity in the segment between Coraopolis and Eldorado to transport additional west-to-east capacity, while continuing to transport historic and expected volumes from east-to-west on facilities at Coraopolis and Delmont capable of transporting up to 40,000 barrels/day from west-to-east to Eldorado. *Id*. at 5-6. FERC has not yet made a determination on the FERC Petition.

II. Background

A. Laurel’s Application

Laurel is a Delaware Limited Partnership formed for the purpose of transporting petroleum and petroleum products through pipelines. Application at 4. 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. *Id*. at 5. Under its Commission Certificate, Laurel is currently authorized to transport, store, and distribute petroleum and other petroleum products by pipeline for the public in

Pennsylvania.[[2]](#footnote-2) *Id*. at 2. Laurel’s Pennsylvania operations include owning and operating 350 miles of 12-inch to 24-inch pipeline and related facilities for the transportation of petroleum products to twenty-four customers at fourteen delivery points. Laurel currently transports petroleum products from east to west, from origin points near Philadelphia, Pennsylvania to destination points across Pennsylvania, terminating west of Pittsburgh, Pennsylvania where the pipeline connects to pipelines originating from Midwest refineries. *Id*. at 2. Laurel’s customers are primarily major integrated oil companies, large refined products marketing companies, and major end-users of petroleum products. Laurel also assigns a portion of its capacity to Buckeye pursuant to a Commission-approved affiliated interest agreement. Buckeye uses this capacity to provide interstate transportation service from origin points in New Jersey and Delaware to destinations in Pennsylvania. *Id*. at 2.

In its Application, Laurel proposes to change the direction of service on its pipeline for delivery points west of Eldorado and, accordingly, to cease providing deliveries from origin points in Philadelphia to destination points west of Eldorado. After the reversal, deliveries to Laurel’s destination points west of Eldorado will be provided by Buckeye from origin points in the Midwest and the Pittsburgh area to Eldorado on Laurel’s pipeline system at FERC-approved interstate rates. Laurel indicates that Buckeye is separately planning to expand its capacity to transport volumes from Midwestern refineries to the Pittsburgh area so that larger volumes of product reach Western and Central Pennsylvania. Laurel explains that it is changing the directional flow on its pipeline in response to the increased availability of generally lower-priced Midwestern product that has generated interest in additional eastbound movements of Midwestern-sourced petroleum products to points east of Pittsburgh. Laurel states that Buckeye received sufficient interest to host an open season to solicit binding commitments from shippers for the reversed flow and received binding commitments from several shippers. *Id*. at 9. Laurel avers that its proposal will result in substantial public benefits, including providing access for consumers in Western and Central Pennsylvania to the same petroleum product at an overall, long-term, expected lower wholesale commodity price. Laurel also cites public benefits associated with increased system reliability and avoidance of the environmental aspects relating to construction of a new pipeline. *Id*. at 14, 15, and 19.

Laurel states that it does not propose to abandon any of the authority under its current Certificate as shipments will continue from all current origin points and deliveries will continue at all current destination points. *Id*. at 11-12. Laurel acknowledges, however, that the proposed change in service direction would change the jurisdictional authority responsible for the service from the Commission to FERC. *Id*. at 14. Laurel also states that it has no defined exclusive geographic service territory and no obligation to serve any specific origin or destination points. As such, Laurel believes that it does not appear that a Certificate or any other Commission approval should be required aside from possible revisions to Laurel’s tariff and the Capacity Agreement. *Id*. at 12. Accordingly, in support of its Application, Laurel requests that the Commission either determine that approval is not required for the proposed change in direction of service, or, in the alternative, grant all necessary approvals for the project, including a Certificate to abandon service, in part, under Sections 1102(a)(2)[[3]](#footnote-3) and 1103(a)[[4]](#footnote-4) of the Public Utility Code (Code), 66 Pa. C.S. §§ 1102(a)(2) and 1103(a). Laurel further requests that the Commission confirm that Laurel may, in its discretion, reinstate the current direction of service in the future without further Commission approval. Application at 3.

B. Laurel’s 1957 Application for Authority and Certificate of Public Convenience**[[5]](#footnote-5)**

On January 31, 1957, Laurel filed with the Commission an Application for authority to transport, store, and distribute petroleum and petroleum products to the public (1957 Application). In the 1957 Application, Laurel stated the following:

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 routes to be followed by the proposed pipeline 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 as “Exhibit A” and made a part of this application.

By Report and Order entered March 18, 1957 (1957 Order),[[6]](#footnote-6) the Commission approved the 1957 Application, referencing the above description. The Commission found that granting the Application was necessary or proper for the service, accomodation, convenience or safety of the public, and issued a Certificate evidencing the Commission’s approval of the Application as described in the 1957 Order.

The Commission issued a Certificate to Laurel dated March 18, 1957. The Certificate contains a heading similar to that in the 1957 Order and reads as follows:

LAUREL PIPE LINE COMPANY, under Section 201(b), Article II, of the Public Utility Law, 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 northwesterly direction to the Pennsylvania-Ohio boundary line.

The Certificate references the investigation the Commission conducted on the 1957 Application as well as the 1957 Order, a copy of which is attached to and made a part of the Certificate.

C. The Indicated Parties

1. Gulf

Gulf is a distributor, wholesaler, and retailer of gasoline and diesel for branded outlets (Gulf brand gas stations) and a distributor and wholesaler of private label retail outlets (non-Gulf gas stations), as well as a supplier of heating oil, lubricants, and bio-fuels. Gulf St. 1 at 1. Gulf relies on Laurel’s pipeline to supply its Pittsburgh area terminals with East Coast product for Gulf’s wholesale and retail operations. *Id*. at 3. Gulf is a shipper of petroleum products on Laurel’s pipeline and has relied on the pipeline’s public utility service for decades. Gulf’s St. 1-S at 2.

2. Sheetz

Sheetz is a family-owned business with more than 17,000 employees in six states. The majority of those employees work in Pennsylvania. Sheetz owns and operates over 250 stores in Pennsylvania and over 550 total stores nationwide. 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 is a shipper of petroleum products on the Laurel pipeline. Sheetz St. 1 at 2. Sheetz has depended on the East Coast market as the most consistent low-cost supply alternative, thereby making the Laurel pipeline Sheetz’s primary or base supply resource for over a decade. Sheetz’s St. 1 at 3.

3. Giant Eagle

Giant Eagle is a privately-held corporation with headquarters and principal offices in Pittsburgh, Pennsylvania. Giant Eagle 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 – with the majority of its stores located in Pennsylvania and Ohio. Giant Eagle’s fuel and convenience stores are operated under the trade name “GetGo”. GetGo is one of the largest fuel retailers in Western Pennsylvania. Giant Eagle, through its GetGo stations, supplies gasoline and diesel to retail consumers in Pennsylvania. Giant Eagle purchases fuel that travels through the Laurel pipeline in Pennsylvania as well as fuel that originates in the Midwest. Giant Eagle’s business objective, through its GetGo retail stations, is to provide its customers with an uninterrupted supply of fuel at a competitive price. Giant Eagle St. 1 at 2.

Giant Eagle has a strong interest in ensuring the competitiveness of the fuel market in Western Pennsylvania and the security and reliability of fuel supply. Giant Eagle’s GetGo stations have approximately 20% of the market share in the Pittsburgh area. A majority of the fuel sold at Pittsburgh-area GetGo stations originates from East Coast sources and is shipped westward on the Laurel pipeline. Giant Eagle St. 1 at 3.

4. PESRM

PESRM is a Delaware limited liability company that owns and operates a merchant refinery in Philadelphia, Pennsylvania. The Philadelphia refining complex is a large-scale facility with a combined distillation capacity of 335,000 BPD, making it the largest refining complex in PADD 1[[7]](#footnote-7) and the tenth largest in the United States. PESRM produces a range of products, including gasoline and ultra-low sulfur diesel fuel, that are marketed primarily in Pennsylvania and in the northeastern United States. Gasoline, including those components that are blended into gasoline, is the primary product of the PESRM refinery complex by volume. PESRM’s St. 1 at 3.

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 connection located at the Philadelphia refining complex. It is a shipper on the Laurel pipeline and also supplies product that other customers ship on the Laurel pipeline system. PESRM’s St. 1 at 3. PESRM relies on the Laurel pipeline to enable the efficient operation of the petroleum products market, which not only increases the value of its own products, but also provides for lower and more reliable prices for the consumer it serves. PESRM currently employs about 1,100 employees and another 500 contractors performing various duties. 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’s St. 1 at 4.

5. Monroe

At its Trainer facility, Monroe refines various crude and other feedstocks in a variety of refined petroleum products. Refining includes processing crude oil and other feedstocks into products such as gasoline, diesel fuel, jet fuel, residual fuel, and liquefied petroleum gas. At the Trainer facility, Monroe produces approximately 50% gasoline, 24% diesel fuel, 19% jet fuel, and 7% other products such as liquefied petroleum gas and residual fuel. Monroe’s St. 1 at 3.

These refined products are then sold into bulk wholesale markets throughout Pennsylvania, Delaware, New York, New Jersey, Connecticut, Rhode Island, and Massachusetts. Monroe mainly sells to large customers such as Phillips 66 and its parent company Delta/Epsilon. The refinery also sells to other counterparties when such opportunity is present. The products leave the Trainer facility either by Monroe’s wholly-owned 55-mile pipeline system (MIPC), or via barge. MIPC transports products to other pipeline systems such as the Laurel Pipeline, Harbor Pipeline or various Sunoco Pipelines. Monroe transports approximately 84% of its products via pipeline, including the Laurel Pipeline, the Harbor pipeline and the Sunoco Logistics East Line. Monroe transports approximately 15% via barge and a limited amount (approximately 1%) via wholesale rack. Monroe’s St. 1 at 3-4.

D. Husky

Husky is an integrated refiner and marketer of petroleum products that operates in Canada, the United States, and the Asia Pacific Region with Upstream and Downstream business segments. Husky has the largest refining capacity in Ohio where it has refineries in Lima and Toledo and recently acquired a refinery in Superior, Wisconsin. Husky’s St. 1-R at 3-4; Tr. at 1176. Husky sells refined products from the refineries across the Midwest with distribution outlets in Ohio, Indiana, Michigan, and Pennsylvania. Husky’s St. 1-R at 4, 5. As a fuel marketer in Western Pennsylvania, Husky supplies significant volumes of gasoline to Pittsburgh. *Id*. at 4. Husky has entered into a ten-year transportation services agreement with Laurel to move refined products on the segment of pipeline that is the subject of the instant Application. *Id*. at 5.

III. Discussion

A. Legal Standards and Commission Jurisdiction

As a preliminary matter, we note that any issue we do not specifically delineate shall be deemed to have been duly considered and denied without further discussion. The Commission is not required to consider expressly or at length each contention or argument raised by the parties. [*Consolidated Rail Corp. v. Pa. PUC,* 625 A.2d 741 (Pa. Cmwlth. 1993);](file://C:\research\buttonTFLink?_m=69761b6202cb4178e2a6e6fe02f5751b&_xfercite=%3ccite%20cc=%22USA%22%3e%3c!%5bCDATA%5b2000%20Pa.%20PUC%20LEXIS%2067%20%5d%5d%3e%3c\cite%3e&_butType=3&_butStat=242&_butNum=5&_butInline=1&_butinfo=%3ccite%20cc=%22USA%22%3e%3c!%5bCDATA%5b625%20A.2d%20741%5d%5d%3e%3c\cite%3e&_fmtstr=FULL&docnum=5&_startdoc=1&_startchk=1&wchp=dGLSzS-lSlbz&_md5=ad2b02d95c2a9216e83b92a3570d4785) *also see, generally,* [*University of Pennsylvania v. Pa. PUC*, 485 A.2d 1217 (Pa. Cmwlth. 1984).](file://C:\research\buttonTFLink?_m=69761b6202cb4178e2a6e6fe02f5751b&_xfercite=%3ccite%20cc=%22USA%22%3e%3c!%5bCDATA%5b2000%20Pa.%20PUC%20LEXIS%2067%20%5d%5d%3e%3c\cite%3e&_butType=3&_butStat=242&_butNum=6&_butInline=1&_butinfo=%3ccite%20cc=%22USA%22%3e%3c!%5bCDATA%5b485%20A.2d%201217%5d%5d%3e%3c\cite%3e&_fmtstr=FULL&docnum=5&_startdoc=1&_startchk=1&wchp=dGLSzS-lSlbz&_md5=9b1cc8319afd12440738bb82d74455ef)

Laurel provides intrastate pipeline transportation of petroleum and petroleum products in Pennsylvania pursuant to its Certificate as described in more detail above. Laurel is a “public utility” under two separate provisions of the Code, as follows:

(1) Any person or corporations now or hereafter owning or operating in this Commonwealth equipment or facilities for:

(i) Producing, generating, transmitting, distributing or furnishing natural or artificial gas, electricity, or steam for the production of light, heat, or power to or for the public for compensation.

\* \* \*

(v) Transporting or conveying natural or artificial gas, crude oil, gasoline, or petroleum products, materials for refrigeration, or oxygen or nitrogen, or other fluid substance, by pipeline or conduit, for the public for compensation.

66 Pa. C.S. § 102(1)(i) and (v).

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

**(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 . . .

Section 1103 of the Code, 66 Pa. C.S. § 1103, explains the procedure for obtaining a Certificate and provides that a Certificate 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.”

As the Applicant, Laurel has the burden of proof to establish that it is entitled to the relief it is seeking. 66 Pa. C.S. § 332(a). Laurel must establish its case by a preponderance of the evidence. *Samuel J. Lansberry, Inc. v. Pa. PUC*, 578 A.2d 600 (Pa. Cmwlth. 1990), *alloc. denied,* 529 Pa. 654, 602 A.2d 863 (1992). That is, Laurel’s evidence must be more convincing, by even the smallest amount, than that presented by any opposing Party. *Se-Ling Hosiery, Inc. v. Margulies*, 364 Pa. 45, 70 A.2d 854 (1950). Additionally, this Commission’s decision must be supported by substantial evidence in the record. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. *Norfolk & Western Ry. Co. v. Pa. PUC,* 489 Pa. 109, 413 A.2d 1037 (1980).

Upon the presentation by Laurel of evidence sufficient to initially satisfy the burden of proof, the burden of going forward with the evidence, sometimes called the burden of persuasion, to rebut Laurel’s evidence shifts to the opposing Parties. If the evidence presented by the opposing Parties is of co-equal value or “weight,” the burden of proof has not been satisfied. Laurel now has to provide some additional evidence to rebut that of the opposing Parties. [*Burleson v. Pa. PUC,* 443 A.2d 1373 (Pa. Cmwlth. 1982), *aff’d,* 501 Pa. 433, 461 A.2d 1234 (1983).](http://www.lexis.com/research/buttonTFLink?_m=0d7e78528297490763e78babd487bc42&_xfercite=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b2006%20Pa.%20PUC%20LEXIS%20102%5d%5d%3e%3c%2fcite%3e&_butType=3&_butStat=2&_butNum=16&_butInline=1&_butinfo=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b66%20Pa.%20Commw.%20282%5d%5d%3e%3c%2fcite%3e&_fmtstr=FULL&docnum=9&_startdoc=1&wchp=dGLzVzz-zSkAz&_md5=44d0f4cf51bc1159652e85695542a09d) While the burden of persuasion may shiftback and forth during a proceeding, the burden of proof never shifts. The burden of proof always remains on the party seeking affirmative relief from the Commission. *Milkie v. Pa. PUC,* 768 A.2d 1217 (Pa. Cmwlth. 2001).

B. Federal Preemption

1. Positions of the Parties

Laurel avers that federal law preempts the Commission’s authority to prevent reversal of the pipeline. Specifically, Laurel believes that conflict preemption, which nullifies state law that acts as an obstacle to the execution of the full objectives of Congress, is at issue in this case. Laurel’s M.B. at 24 (citing *Crosby v. Nat’l Foreign Trade Council*, 530 U.S. 363 (2000)).[[8]](#footnote-8) Laurel states that federal law governing oil pipelines indicates a clear congressional intent to permit free entry into and exit from the interstate transportation business, consistent with the dictates of market forces and that public utility regulation should not control this decision. Laurel continues that a Commission determination prohibiting Laurel from reversing the flow on its pipeline in order to begin providing interstate service in response to market conditions, would present an obstacle to this federal purpose. Laurel’s M.B. at 25. Laurel argues that the Interstate Commerce Act (ICA), 49 U.S.C. §§ 10101-16106, did not impose on oil pipelines any restrictions on common carriers’ entry into a market, acquisitions, or commencement and abandonment of service. Laurel’s M.B. at 26 (citing *Farmers Union Central Exchange v. FERC*, 584 F.2d 408 (D.C. Cir. 1978)). According to Laurel, federal courts and FERC have concluded that this type of conspicuous omission indicates a clear congressional intent that entry and exit of oil pipelines should be free from the typical regulation imposed on public utilities and, instead, be based on market forces. Laurel’s M.B. at 26-27 (citing *Revisions to Oil Pipeline Regulations Pursuant to the Energy Policy Act of 1992*, 65 F.E.R.C. ¶ 61,109 (October 22, 1993)).

In their Reply Brief, the Indicated Parties take issue with Laurel raising federal preclusion claims for the first time in the briefing stage of the proceeding, more than a year after Laurel invoked the Commission’s authority to decide its Application. Indicated Parties’ R.B. at 8-9. As to the merits of Laurel’s argument, the Indicated Parties aver that federal law does not preempt the Commission from asserting jurisdiction over Laurel’s Application. *Id*. at 10. The Indicated Parties state that Laurel is asking the Commission to ignore substantial legal authority and the long-standing “presumption against preemption” in favor of 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 that several states have exercised regulatory authority over intrastate oil pipelines for over a century. *Id*. (citing *Medtronic Inc. v. Lohr*, 518 U.S. 470, 486 (1996)).

The Indicated Parties explain that it is undisputed that the ICA does not contain explicit preemptive language; however, 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.” Indicated Parties’ R.B. at 11 (citing *National Steel*,718 F. Supp. at 625); *Simpson v. Shepard* (*Simpson*), 230 U.S. 352, 418-419 (1913); 49 U.S.C. § 1(2)).[[9]](#footnote-9) The Indicated Parties argue that it is clear that the ICA was not intended to intrude on the states’ powers to regulate intrastate commerce. Indicated Parties’ M.B. at 11 (citing *Cook Inlet Pipe Line Co. v. Alaska Pub. Utilities Comm’n*, 836 P.2d 343, 350 (Alaska 1992) (rejecting an argument by a state-regulated oil pipeline company that the ICA preempted state regulation of the oil pipeline and the argument that the dormant commerce clause prohibited state regulation); *Amoco Pipeline Co*. (*Amoco*), 62 F.E.R.C. ¶ 61,119 (Feb. 8, 1993)). The Indicated Parties continue that state regulatory authority over oil pipelines is not limited to wholly intrastate pipelines. When a single pipeline handles both interstate and intrastate petroleum products transportation, FERC has consistently held that it regulates only interstate aspects, while state utility commissions are free to regulate intrastate operations. The Indicated Parties note that the Commonwealth Court reaffirmed this legal standard in *In re Condemnation of Sunoco Pipeline, L.P. (Sunoco Condemnation*), 143 A.3d 1000, 1004 (Pa. Cmwlth. 2016).

As such, the Indicated Parties aver that Laurel’s future desire to operate the segment of its pipeline between Pittsburgh and Eldorado in interstate commerce, and potential future concurrent jurisdiction with the Commission over that interstate pipeline, does not preempt this Commission from exercising its authority over Laurel’s present intrastate operations. Indicated Parties’ R.B. at 12. The Indicated Parties also cite to *National Steel* for the position that federal law does not preempt a state regulatory body from exercising its traditional authority to grant or deny Certificates to oil pipelines, and there is no preemption unless state action conflicts with FERC-approved rates. Indicated Parties’ R.B. at 13. The Indicated Parties observe that a Commission Order in this proceeding would not interfere with FERC’s interstate tariffs or rates, which they believe are the only subjects that federal law controls. *Id*. at 15. The Indicated Parties assert that the cases Laurel relies on, specifically *Transcontinental Gas Pipe Line Corp. v. State Oil & Gas Board*, 474 U.S. 409 (1986), is not an oil pipeline case and involved the preemptive effect of the Natural Gas Act (NGA), 15 U.S.C. Ch. 15B, and the Natural Gas Policy Act (NGPA), 15 U.S.C. Ch. 60, on state regulation of natural gas sales. The Indicated Parties explain that these statutes are separate and distinct from the ICA governing oil pipelines, and the statutory regimes are, by design, completely different. Indicated Parties’ R.B. at 15. The Indicated Parties also explain that the ICA left power over intrastate oil pipelines to the states and that FERC agrees with their legal position that the NGA cases do not govern oil pipeline cases. *Id*. at 15-16.

2. ALJ’s Recommendation

The ALJ initially stated that Laurel describes the Application as a change in service, from intrastate to interstate, from westward to eastward. On the other hand, the Indicated Parties view the Application as an abandonment of intrastate service to offer interstate service. The ALJ also noted that Laurel is currently an intrastate pipeline operating within Pennsylvania and must reverse the flow of product over a portion of its pipeline located between Eldorado and Pittsburgh, Pennsylvania before it can provide interstate service. The ALJ observed that this operational fact can guide the Commission on the disposition of the federal preemption issue and the overall disposition of Laurel’s Application.

In considering the Parties’ positions, the ALJ disagreed with Laurel’s reliance on the NGA and NGPA for support of its federal preemption arguments. The ALJ found that the NGA and NGPA, which are natural gas statutes that expressly preempted certain state regulation of natural gas pipelines, are separate and distinct from the ICA and the statutes that govern interstate oil pipelines. R.D. at 50. The ALJ also disagreed with Laurel’s position that the absence of express preemptive language in the ICA represented Congress’ intent that entry into and exit from interstate transportation service be governed only by market forces. The ALJ stated that the ICA does not apply to oil pipeline transportation that is wholly within one state and is not shipped to or from a foreign country. R.D. at 51 (citing 49 U.S.C. § 1(2)(a)). The ALJ observed that the Courts have consistently found that the absence of express preemptive language in the ICA permits the states to exercise primary jurisdiction over intrastate transportation. *Id*. (citing *Simpson* at 418-419; *Texas v. Eastern T.R. Co*. (*Texas*), 258 U.S. 204, 217-218 (1922)). The ALJ concluded that the Commission has jurisdiction over the instant Application, and Laurel’s intention to operate the portion of the Laurel pipeline between Pittsburgh and Eldorado in interstate commerce in the near future does not preempt the Commission’s authority over the pipeline’s current intrastate operations. R.D. at 51.

3. Exceptions and Replies

In its Exceptions, Laurel avers that the ALJ’s conclusion that Laurel may not begin interstate transportation service without first abandoning intrastate service is preempted by the ICA. Laurel contends that the ICA preempts Commission jurisdiction over Laurel’s proposed reversal because Laurel currently provides transportation service in interstate commerce, and the proposed reversal only seeks to change the direction of interstate service over Laurel’s facilities. Laurel’s Exc. at 8. Laurel asserts that the ALJ incorrectly reasoned, in reliance on *Texas*, that the Commission has jurisdiction because Laurel must cease westbound intrastate service over a portion of its pipeline before initiating eastbound service over the same segment. Laurel’s Exc. at 9. Laurel continues that the Court in *Texas* recognized that the ICA did not apply when the subject railroad segment was used solely for intrastate commerce and confirmed that state regulation cannot interfere with or regulate interstate movements. Laurel states that the subject segment of its pipeline between Midland and Eldorado, Pennsylvania currently operates as a “branch or extension” or “part of another line” that is “an artery of interstate and foreign commerce.” *Id*. at 10 (citing *Texas* at 216-217). Laurel also states that post-reversal, the service provided over the segment of Laurel’s pipeline between Midland and Eldorado, Pennsylvania will be interstate in nature, and the Commission’s regulation of the proposed reversal would interfere with the ICA’s dictates that preempt state regulation of intrastate commerce where such regulation “is involved in the rightful exertion of the power of Congress over interstate and foreign commerce.” Laurel’s Exc. at 10 (citing *Texas* at 217-218).

In their Replies to Exceptions, the Indicated Parties aver that the ICA does not preempt the Commission from exercising jurisdiction to deny the Application. The Indicated Parties emphasize that Laurel is a public utility providing intrastate transportation within Pennsylvania. Indicated Parties’ R. Exc. at 3. The Indicated Parties cite to *Guttman Energy, Inc. d/b/a Guttman Oil Company, and PBF Holding Company, LLC v. Buckeye Pipe Line Company, L.P. and Laurel Pipe Line Company, L.P.* (*Guttman Energy*), 147 F.E.R.C. ¶ 61,088 (May 2, 2014), and state in that proceeding, FERC concluded that “Buckeye provides interstate services under the ICA and Laurel provides intrastate service subject to regulation by the PUC.” The Indicated Parties submit that FERC’s conclusion was based on Laurel’s position that it is “solely an intrastate common carrier” subject to Commission regulation and not the ICA. *Id*. (citing *Guttman Energy* at 61336). Additionally, the Indicated Parties contend that Laurel’s interpretation of *Texas* is inaccurate. According to the Indicated Parties, *Texas* holds that abandonment of intrastate utilities is subject to state regulation, even though the physical utility – the railroad or the oil pipeline – also services interstate traffic. The Indicated Parties continue that the railroad at issue in *Texas* was not used solely for intrastate commerce, as three-fourths of the traffic over the road was interstate and foreign commerce, while the remainder was intrastate commerce. Indicated Parties’ R. Exc. at 4 (citing *Texas* at 214). The Indicated Parties assert that the cases the ALJ relied on demonstrate that state regulation in not preempted merely because an intrastate utility is connected to a broader interstate system. Indicated Parties’ R. Exc. at 4-5.

4. Disposition

Given the complexity and the length of this proceeding, Laurel should have raised these federal preemption issues at an earlier stage in this proceeding to provide the Indicated Parties with an adequate opportunity to respond and to present evidence on these issues. Nevertheless, because jurisdictional issues are generally legal issues and may properly be raised at any time, we will consider Laurel’s preemption arguments. *See Commonwealth v. Bighum*, 452 Pa. 554, 559 (1973); *Sophia Poole v. Columbia Gas of Pennsylvania, Inc*., 1995 Pa. PUC Lexis 53 at \*24. To the extent we need to resolve any jurisdictional issues based on the facts presented by the Parties, we find that the record before us permits us to do so in a nonprejudicial manner to the Parties for purposes of our resolution of the preemption issues.

As addressed in greater detail below, the Commission has jurisdiction over Laurel’s Application because Laurel is requesting to abandon intrastate service that it currently provides under its Certificate and pursuant to its Commission-approved tariff. Federal law does not preempt the Commission’s authority to consider and make a determination on the Application. In addressing Laurel’s preemption arguments, it is helpful to understand the distinctions between FERC and Commission jurisdiction.

FERC’s jurisdiction comes from the ICA and applies to interstate transportation,[[10]](#footnote-10) whereas the Code and the Commission’s jurisdiction apply to intrastate transportation. *Sunoco Condemnation* at 1004. The ICA provides that the Act does not apply to transportation “wholly within one State and not shipped to or from a foreign country from or to any place in the United States.” 49 U.S.C. § 1(2)(a). The ICA was not intended to intrude on the power of the states to regulate intrastate commerce. *Simpson* at 418 (“Congress carefully defined the scope of its regulation, and expressly provided that it was not to extend to purely intrastate traffic”). The destination of the transportation determines whether the transportation is intrastate subject to the Commission’s jurisdiction or interstate subject to FERC’s jurisdiction. Wholly intrastate transportation cannot be deemed to be transportation “from one State or territory to any other State or Territory envisaged by 49 U.S.C. § 1(1)(b) as a prerequisite for Federal regulation.” *Trans Alaska Pipeline System*, 23 F.E.R.C. ¶ 61,352, at 61763 (June 2, 1983).

The ICA regulation is non-exclusive, and pipeline service operators in Pennsylvania can be, and frequently are, regulated by both FERC and the Commission through a regulatory framework in which FERC jurisdiction is limited to interstate shipments and the Commission’s jurisdiction extends to intrastate shipments. The transportation of natural gas is governed by the NGA, and the NGA does not apply to the instant jurisdictional analysis of petroleum products pipeline transportation, as it is separate and distinct from the ICA and the statutes that govern interstate oil pipelines. *Sunoco Condemnation* at 1004-1005; *Amoco* at 61803-61804.

The Courts have held that the ICA does not govern a state regulatory body’s determination concerning Certificates or requests for the abandonment of authority. In *National Steel*, the Court examined whether the Michigan Public Service Commission (MPSC) was authorized to require ethane sellers in Canada to obtain a state Certificate as a prerequisite to delivering ethane by pipeline to interconnect facilities within Michigan. The Court held that the regulation of gas delivery systems was peculiarly local in nature and were best left to regulation by the states and that the MPSC’s assertion of regulatory jurisdiction did not unduly burden foreign or interstate commerce. *National Steel* at 625-626. *See also Texas* at 217-218 (holding that, in interpreting the ICA, the Interstate Commerce Commission did not have regulatory authority over the discontinuance of the purely intrastate business of a road whose situation and ownership were such that interstate commerce was not burdened or affected by the operation of that business).[[11]](#footnote-11)

Based on our review of a body of law concerning the various manners in which federal preemption could occur in the context of the ICA, we find no legal support for Laurel’s federal preemption argument. The record reflects that Laurel provides pipeline transportation as an intrastate common carrier regulated by this Commission, with fourteen Pennsylvania destination delivery points listed on its current Commission-approved tariff. Laurel Exh. RGV-4. The law is clear that no conflict exists between the federal and state law regarding Laurel’s purely intrastate public utility service. Laurel’s intrastate service is governed by the Code and is within the Commission’s jurisdiction – the ICA does not apply under these circumstances. Based on the decisions in *National Steel* and *Texas*, determinations concerning Certificates of Public Convenience or requests for abandonment of authority are particularly local in nature and best left to the regulation of state utility commissions. Given the applicable preemption law, we also find no merit in Laurel’s argument that post-reversal, the service provided over the segment of Laurel between Midland and Eldorado, Pennsylvania will be interstate in nature, because this does not change the fact that the service Laurel proposes to abandon is currently intrastate service subject to our regulation and authority under Section 1102(a)(2) of the Code. Accordingly, we shall adopt the ALJ’s decision on this issue and deny Laurel’s Exceptions.

C. The Dormant Commerce Clause

1. Positions of the Parties

Laurel argues that a Commission Order impeding Laurel’s interstate transportation of petroleum products would violate the Commerce Clause of the United States Constitution, U.S. Const. art. I, § 8, cl. 3. Specifically, Laurel explains that the “dormant” 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.” Laurel’s M.B. at 29-30 (citing *New Energy Co. v. Limbach*, 486 U.S. 269, 273 (1988)). Laurel states that under the dormant Commerce Clause, state action that discriminates against interstate commerce in its purpose or effect is “virtually per se invalid.” Laurel’s M.B. at 30 (citing *Dep’t of Revenue v. Davis*, 553 U.S. 328, 338 (2008)). Laurel also states that if the state action is not discriminatory but “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 in *Pike v. Bruce Church, Inc*. (*Pike*), 397 U.S. 137, 142 (1970). Laurel’s M.B. at 30, n. 43.

Laurel contends that in this case, a Commission decision impeding Laurel from reversing the flow on its pipeline to engage in interstate commerce 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. *Id*. at 31. Laurel submits that such a Commission decision would result in invalid economic protectionism by blocking the interstate flow of petroleum products at the Pennsylvania border by making Laurel’s pipeline unavailable to Midwest refiners and requiring Laurel to continue serving mainly in-state refiners. *Id*. (citing *Philadelphia v. New Jersey (New Jersey*), 437 U.S. 617, 624 (1978); *New England Power Co. v. New Hampshire*, 455 U.S. 331 (1982)). Additionally, Laurel avers 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’s M.B. at 34 (quoting *Cloverland-Green Spring Dairies, Inc. v. Pa. Milk Mktg. Bd*., 462 F.3d 249, 261 (3rd Cir. 2006)). Laurel opines that in this case, Midwestern refineries are producing lower-cost refined petroleum products due to their access to lower-cost shale crude oils, and these refineries seek to introduce their more competitive products into Pennsylvania. Laurel’s M.B. at 34.

In reply, the Indicated Parties aver that a Commission Order rejecting Laurel’s Application would not violate the Commerce Clause. They contend that Laurel’s position would allow any state regulated pipeline utility to avoid state utility regulation by simply declaring an intention to begin providing interstate pipeline service. Indicated Parties’ R. B. at 18. The Indicated Parties maintain that an Order rejecting Laurel’s Application would not block an out-of-state entity from continuing to ship interstate petroleum products into Pennsylvania through an existing pipeline (originating from the Midwest, the East Coast, or the Gulf Coast), a newly constructed pipeline, or some other shipping method. The Indicated Parties state that the three pipelines that already transport Midwestern petroleum products into Pennsylvania, Buckeye, Marathon Pipeline LLC (Marathon), and Sunoco/ETP, and the capacity and rights of those pipelines would be unaffected by any Commission determination regarding Laurel’s proposed reversal. *Id*. at 19.

The Indicated Parties continue that Laurel’s dormant Commerce Clause arguments are contrary to law. They cite to *Simpson* at 417, for the position that 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.” Indicated Parties’ R.B. at 20. The Indicated Parties also cite to *National Steel* for the proposition that the interests of the state in protecting the capital investment of utilities serving the public and in protecting existing utility rate structures justify the incidental and light burden of requiring an application for a Certificate. Indicated Parties’ R.B. at 21 (citing *National Steel* at 628).

The Indicated Parties state that, contrary to Laurel’s argument, the instant case is distinguishable from *New Jersey*, which involved a statute containing a clear import ban that blocked the flow of interstate commerce at New Jersey’s border. The Indicated Parties aver that a Commission Order denying Laurel’s Application would not block interstate commerce at the border, as petroleum products that currently enter Pennsylvania from interstate pipelines or other means from the West and the East will still be able to enter the Commonwealth. Indicated Parties’ R.B. at 22-23. The Indicated Parties also rely on *Arkansas Electric Cooperative Corp. v. Arkansas Public Service Commission (Arkansas Electric)*, 461 U.S. 375 (1983), and *National Steel* for the position that while the Commission could theoretically seek to impose unconstitutional 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. The Indicated Parties explain that the Commission should reject Laurel’s dormant Commerce Clause argument on its face. However, they continue that to the extent the Commission tries to apply a balancing test to compare the burden on interstate commerce to the putative local benefits, the record lacks information to make such a determination because Laurel did not raise this argument until after the record was closed. Indicated Parties’ R.B. at 25.

2. ALJ’s Recommendation

The ALJ determined that the Commission has jurisdiction over the instant Application of an intrastate pipeline. The ALJ found that none of the standards of review for disposing of the issues in this proceeding are grounded on local economic protectionism or discrimination against out-of-state interests but, rather, they are designed to allow the Commission to regulate even-handedly to effectuate a legitimate local public interest. R.D. at 62. The ALJ stated that the Supreme Court in *Simpson* held that an “incidental” impact on interstate commerce that affected the decision making of out-of-state refiners would not necessarily create a direct restraint on interstate commerce or transcend the state’s power. The ALJ also stated that in applying the *Pike* balancing test to determine if state action directly regulates or discriminates against interstate commerce, the critical inquiry is the overall effect of the statute on both local and interstate commerce. *Id*. at 63.

In evaluating the record, the ALJ concluded that denying Laurel’s Application would not result in a ban on import or export of products in interstate commerce, because three pipelines currently transport interstate petroleum products into Pennsylvania – Buckeye, Marathon, and Sunoco/ETP – and the operations of those pipelines would be unaffected by the Commission’s determination in this proceeding. Further, the ALJ agreed with the Indicated Parties’ averment that if one accepts Laurel’s argument that Midwest refiners will be unconstitutionally discriminated against by not being able to ship to Altoona, one must also concede that east coast entities, including Buckeye-owned assets that supply Laurel from the east, would be subject to discrimination if the reversal were approved and they were no longer able to ship to Pittsburgh. *Id*.

3. Exceptions and Replies

In its Exceptions, Laurel avers that the ALJ’s denial of its Application violates the dormant Commerce Clause by discriminating against interstate transportation and supply of petroleum products in favor of intrastate transportation and supply. Laurel’s Exc. at 6. Laurel states that the ALJ abandoned well-established Commission precedent regarding the regulation of oil pipelines and established unprecedented rules to apply to Laurel’s proposal to provide interstate service, without any analysis or discussion. For example, Laurel indicates that: (1) the ALJ refused to rely on the plain language of Laurel’s Certificate and imposed directional limitations on service based only on external evidence; (2) the ALJ rejected the “substantial public benefits” test the Commission previously applied to oil pipeline abandonment proceedings and, instead, applied a “four-factor” test that has never been applied to oil pipelines; and (3) the ALJ concluded that alternatives must provide the exact same level of service and market share, whereas the Commission previously found that alternatives to common carrier service should be comparable but not precise equivalents.

Laurel argues that the impact of the ALJ’s analysis is discriminatory regulation that disadvantages interstate shippers to the advantage of intrastate shippers by requiring Laurel to continue providing east to west intrastate service when competitive market forces, supported by binding financial commitments, seek to move products from west to east. *Id*. at 7. Laurel opines that if the Commission, as an agent of the Pennsylvania government, attempts to prevent Laurel, as a private entity, from providing interstate service to out-of-state entities because certain in-state entities would no longer be able to use that service, the Commission will have violated the dormant commerce clause. *Id*. at 8.

In response, the Indicated Parties state that the ALJ properly found the Commission has jurisdiction to decide Laurel’s Application, and denial of the Application does not violate the dormant Commerce Clause. Indicated Parties’ R. Exc. at 1. The Indicated Parties aver that the Recommended Decision correctly acknowledges that if one accepts Laurel’s argument that Commission action limiting Midwest entities’ ability to ship further into Pennsylvania would constitute unconstitutional discrimination against interstate commerce, then one must also conclude that Commission action reducing the ability of East Coast shippers to ship into Pennsylvania would similarly constitute unconstitutional discrimination against interstate commerce. *Id*. at 1-2.

In reply to Laurel’s argument that it is an unconstrained private entity that may abandon intrastate public utility service at the request of its parent company, the Indicated Parties assert that Laurel is a state regulated public utility that has been subject to Commission regulation since 1957. *Id*. at 2. In support of their position, the Indicated Parties cite to a Federal Energy Regulatory Commission (FERC) proceeding in which FERC adopted Laurel’s argument that Laurel is not subject to FERC jurisdiction because it is a public utility regulated by the Pennsylvania Public Utility Commission. *Id*. (citing *Guttman Energy* at 61336). The Indicated Parties contend that Laurel ignores the ALJ’s finding that due to Laurel’s eleventh-hour invocation of the dormant commerce clause argument, Laurel could not present any evidence demonstrating the “overall effect” the denial of its Application would have on interstate commerce. Indicated Parties’ R. Exc. at 2-3.

4. Disposition

Based on our review of the applicable law, the Parties’ positions, and the Recommended Decision, we conclude that this Commission’s consideration of, and determination on, Laurel’s Application does not run afoul of the dormant Commerce Clause. The Constitution’s express grant of power to Congress to “regulate commerce … among the several States,” Art. I, § 8, cl. 3 contains a further, negative command known as the dormant Commerce Clause. This negative command prevents a state from “jeopardizing the welfare of the Nation as a whole by placing burdens on the flow of commerce across its borders that commerce wholly within those borders would not bear.” *Oklahoma Tax Comm’n v. Jefferson Lines, Inc*., 514 U.S. 175, 179-180 (1995). The regulation may be struck down as invalid per se if it “directly regulates or discriminates against interstate commerce, or when its effect is to favor in-state economic interests over out-of-state interests,” in other words, if it unjustifiably discriminates on its face against out-of-state entities. *Brown-Forman Distillers Corp. v. New York State Liquor Authority*, 476 U.S. 573, 579 (1986). State regulation that applies even-handedly to effectuate a legitimate local public interest is examined under a different test: “Where the statute regulates evenhandedly to effectuate a legitimate local public interest, and its effects on interstate commerce are only incidental, it will be upheld unless the burden imposed on such commerce is clearly excessive in relation to the putative local benefits.” *Pike* at 142.

Our regulatory action in this case pertains to our authority under Section 1102(a)(2) to make a determination on the proposed abandonment of service provided by a Pennsylvania public utility subject to our regulation. The proposed abandonment before us is distinguishable from the situation in *New Jersey*. In that case, operators of private landfills in New Jersey and cities in other states that had waste disposal agreements with the operators challenged a state statute that prohibited the importation of waste that was collected outside of the state. The Court determined that the state statute discriminated against articles of commerce coming from outside of the state, both on its face and in its plain effect. The Court reasoned that for protectionist reasons, the state overtly moved “to isolate itself from a problem common to many by erecting a barrier against the movement of interstate trade.” *New Jersey* at 628.

Any decision we make under Section 1102(a)(2) in this case will not directly block the flow of interstate commerce at Pennsylvania borders by erecting barriers to interstate trade or burden the interstate market. *See Exxon Corp. v. Governor of Maryland* (*Exxon Corp*.), 437 U.S. 117 (1978) (the purpose of the Commerce Clause is to protect the interstate market, not particular interstate firms, from prohibitive or burdensome regulations). Out-of-state entities will continue to be able to ship interstate products into Pennsylvania from the Midwest, the East Coast, or the Gulf Coast. The following entities currently participate in interstate transportation of petroleum products through Pennsylvania: Sunoco from the Midwest to the Pittsburgh area; Marathon from the Midwest to the Pittsburgh area; Buckeye from the Midwest to the Pittsburgh area; trucks delivering from the Ergon refinery in Newell, West Virginia to the Pittsburgh area; 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 trucks delivering petroleum products from pipeline terminals in Ohio to the Pittsburgh area; Sunoco from the Philadelphia area to destinations in Upstate New York, New Jersey, and New York City; and the Colonial Pipeline Company from the Philadelphia area to New Jersey and New York City. Laurel St. 2 at 6-7. A Commission decision regarding Laurel’s proposed abandonment will not impact any of this current interstate transportation.

Our actions under Section 1102(a)(2) constitute even-handed regulation to effectuate a legitimate local public interest. The regulation of utilities is one of the most important of the functions traditionally associated with the police power of the states. *Arkansas Electric* at 375. In approving Applications for Certificates of Public Convenience, either to abandon service or begin providing intrastate service, our focus is on the public interest and whether granting a Certificate is “necessary or proper for the service, accommodation, convenience, or safety of the public.” 66 Pa. C.S. § 1103(a). For instance, we have granted Certificates permitting abandonment when the public utility service could no longer be safely provided or when customers did not need or use the public utility service. *See Application of Buckeye Pipeline Company*, L.P., Docket No. A-140110F2000 (Order entered March 7, 2005). We have also denied public utilities’ requests to abandon service in instances where customers needed the service and would be harmed by the lack of service unless an adequate service alternative was located. *See Application of Fink Gas Company*, Docket No. A-2015-2466653 (Final Order entered January 15, 2016).

Our regulation in this instance is similar in nature to the regulation in *Arkansas*. In that case, the Court held that state regulation of the wholesale rates a rural power cooperative charged to its member retail distributors was well within the scope of legitimate local public interests, particularly since while the cooperative was tied into an interstate grid, its basic operation consisted of supplying power from generating facilities located within the state to its member cooperatives, all of which were located within the State. *Arkansas* at 394. The Court found that while the state regulation of the rates would have an incidental effect on interstate commerce, “the burden imposed on such commerce [wa]s not clearly excessive in relation to the putative local benefits.” *Id*. at 395. In the instant case, Laurel’s proposed abandonment impacts the public utility service it provides transporting and delivering petroleum products to destination points located wholly within the state of Pennsylvania. If there were any incidental effects on interstate commerce due to our determination on the proposed abandonment, the burden would not be clearly excessive in relation to the local benefits, particularly since the current interstate transportation of petroleum products through Pennsylvania will continue unchanged.

Moreover, we are not persuaded by Laurel’s argument that a Commission Order denying its Application would violate the Commerce Clause by forcing producers or consumers in other States to surrender whatever competitive advantages they may possess. The Courts have held that adverse effects on competition alone cannot be used to invalidate a state statute, or the states’ powers to engage in regulation would be effectively destroyed. *Exxon Corp*. at 133-134. For these reasons, we shall adopt the ALJ’s decision on this issue and deny Laurel’s Exceptions.

D. Certificate of Public Convenience

1. Positions of the Parties

Laurel states that even if the Commission has jurisdiction over its proposed reversal, a Certificate is not required for Laurel to change the direction and jurisdiction of service between Pittsburgh and Altoona. Laurel’s M.B. at 34-35. First, Laurel avers that, as a common carrier, it is fundamentally different than a traditional fixed public utility in several ways. Laurel’s M.B. at 36. Laurel submits that its Certificate reflects its status as a common carrier and, unlike the Certificates held by fixed public utilities, Laurel’s Certificate does not delineate an exclusive geographic service territory and does not protect the certificate holder against competition. Laurel asserts it is undisputed that it is subject to competition from other pipelines, trucks, barges, and railroad transportation services and that shippers are not required to exclusively use Laurel’s pipeline to transport petroleum products. *Id*. at 36-38. Laurel indicates that as a common carrier subject to the dynamic conditions associated with highly competitive markets, it may change its service in response to changing market conditions without obtaining a Certificate. *Id*. at 38. Laurel also distinguishes itself from non-common carrier public utilities by stating that it does not provide service to end-use consumers of refined petroleum products, because it 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 further states that its existing shippers are sophisticated corporate entities with access to multiple transportation options and are not obligated to use Laurel’s pipeline to transport petroleum products. *Id*. at 40.

Second, Laurel argues that its Certificate properly reflects its status as a common carrier public utility. Laurel initially points out that Section 1101 of the Code, 66 Pa. C.S. § 1101, requires the Commission to include in the Certificate a description of any limitations on the type of service a utility may offer and the locations where the utility may offer that service. Laurel also points out that Section 1103(a) of the Code,

66 Pa. C.S. § 1103(a), allows the Commission to impose conditions on a Certificate which may limit the nature and character of the service that a public utility is authorized to provide. Laurel states that its Certificate does not specify the direction of its service or prescribe any origin or destination points. Laurel’s M.B. at 42. Rather, Laurel avers that the Commission broadly authorized it in its 1957 Certificate to provide petroleum products transportation service “in and across” Pennsylvania. Laurel contends that its proposed reversal is consistent with the nature and character of service it was authorized to provide in its 1957 Certificate. *Id*. at 45. Laurel opines that since it was authorized to provide this service as a common carrier, it may change its service in response to competitive changes and shifts in market demand and may pick up and transport petroleum products from different points when it sees a decline is use based on competition. *Id*. at 45-46 (citing *Susquehanna Area Reg’l Airport Auth*., 911 A.2d at 619). According to Laurel, because its proposed reversal is consistent with the nature and character of the service it was authorized to provide in its Certificate, the reversal does not constitute an abandonment of service or the provision of new service that requires a Certificate. Laurel’s M.B. at 46.[[12]](#footnote-12)

The Indicated Parties state that Laurel argues the absence of Commission jurisdiction and authority by relying on changes in the market since it received its Certificate and claims it “has carte blanche to run its ‘public’ utility as a ‘private’ enterprise – not for the benefit of Laurel or the public, but to maximize the profits of its corporate affiliate/parent Buckeye.” Indicated Parties’ M.B. at 27. The Indicated Parties assert that the Code requires a public utility like Laurel to file an application and receive Commission authorization before it abandons service.

First, the Indicated Parties aver that Laurel’s 1957 Application and Certificate permit only east to west flows on Laurel’s pipeline. The Indicated Parties argue that as their witness, Mr. Rosenthal, testified, there is no indication that the Commission intended to leave the issue of directional flow to Laurel’s discretion. *Id*. at 29 (citing Indicated Parties’ St. 3 at 7). The Indicated Parties submit that Pennsylvania courts have considered the Laurel pipeline as providing westerly service. Indicated Parties’ M.B. at 30 (citing *Appeal of Independence Twp. Sch. Dist*., 194 A.2d 437, 438 (Pa. 1963)). The Indicated Parties believe that the Pennsylvania Supreme Court’s recognition of the westerly flow along the Laurel pipeline corroborates Mr. Rosenthal’s interpretation of the 1957 Application and the actual operations of the pipeline and suggests that flow reversal from west to east was not contemplated by the Commission or Laurel’s Certificate. The Indicated Parties also aver that Laurel’s current Commission tariff is consistent with only westerly flows and does not provide for or contemplate service in a west to east direction. Indicated Parties’ M.B. at 31. The Indicated Parties contend that if Laurel wanted to preserve the right to reverse the directional flow, then it would have stated such an intention in its 1957 Application that was before the Commission for evaluation. *Id*. at 32.

Second, the Indicated Parties aver that the proposed flow reversal is a change in “service” and an abandonment of “service” along the Laurel pipeline based on the broad definition of “service” in Section 102 of the Code. The Indicated Parties state that the proposed reversal is a change in service because the origins for some of the existing delivery points on the pipeline would change post-reversal. Specifically, the Indicated Parties argue that the elimination of destination points west of Eldorado along the Laurel pipeline from eastern Pennsylvania locations like Philadelphia constitutes a material change and abandonment of westerly petroleum products transportation service on Laurel’s pipeline. The Indicated Parties explain that Laurel’s proposed tariff removes the availability and pricing of service from the two origin points of the tariff to the service delivery points west of Eldorado. According to the Indicated Parties, if the reversal is approved, the western portion of the current Laurel system will be restricted to eastward operations through Buckeye, not Laurel, and will not be accessible to shippers attempting to move petroleum products from the east to points west of Eldorado. Indicated Parties’ M.B. at 35 (citing Indicated Parties’ St. 3 at 13). The Indicated Parties also cite to a FERC decision finding that the cessation of a previously provided service – a reversal on an oil pipeline – is an abandonment of service. Indicated Parties’ M.B. at 37 (citing *Re: Rocky Mountain Pipeline System LLC (Rocky Mountain)*, 126 F.E.R.C. ¶ 61,301 (March 31, 2009)).

2. ALJ’s Recommendation

The ALJ agreed with the Indicated Parties’ reading and interpretation of Laurel’s 1957 Certificate. The ALJ concluded that while the 1957 Certificate and the 1957 Order do not contain language specifically describing or limiting the direction of transportation service, such a direction can reasonably be inferred from other portions of Laurel’s 1957 Application, Certificate, and 1957 Order. The ALJ stated that Laurel has not explained why its 1957 Application and Certificate contain language specifically describing the direction of the pipeline’s route, from Philadelphia to Pittsburgh with facilities extending westerly, if not to also indicate the direction of its transportation service. R.D. at 76. The ALJ continued that Laurel failed to explain why its pipeline was designed with decreasing diameters from east to west if it was intended to have origin points in the east and the west of Pennsylvania. The ALJ further stated that Laurel failed to explain why its current tariff does not contain a reservation of rights providing it with the discretion to flow petroleum products eastward on the pipeline. The ALJ concurred with the Indicated Parties that if Laurel wanted to preserve the right to reverse the directional flow, then it would have stated such an intention in its 1957 Application so that the Commission could evaluate all aspects of the service Laurel was proposing to offer at that time. *Id*. at 77.

Further, given the broad definition of “service” under Section 102 of the Code, 66 Pa. C.S. § 102, in the context of an oil pipeline proceeding, the ALJ agreed with FERC’s determination that service in one direction is a distinct service from service in another direction, and that a reversal of service in one direction followed by the commencement of a new service in the other direction constitutes an abandonment of service. The ALJ stated that if the proposed reversal is approved, a specific service Laurel currently provides from points in Philadelphia to Eldorado and points west to Pittsburgh would no longer be available, even though buyers will be able to purchase the same refined petroleum products at the same locations after the reversal. Therefore, the ALJ found that the proposed reversal was a partial abandonment of the service Laurel currently provides in Pennsylvania and that Laurel must obtain a Certificate prior to implementing the abandonment. R.D. at 78.

3. Exceptions and Replies

Laurel argues that the ALJ’s determination that Laurel is not authorized to provide eastbound petroleum products transportation service under its Certificate is inconsistent with the plain language of Laurel’s Certificate and contrary to applicable legal precedent. First, Laurel avers that the ALJ erred by inferring a directional limitation of service that is contrary to the plain language of Laurel’s Certificate. Laurel states that paragraph 3 of the 1957 Application expressly delineates the service Laurel is authorized to provide 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.

Laurel indicates that this description of service does not contain restrictive language that limits Laurel’s service to east-to-west service or to service between specific origin and destination points. Laurel explains that the broad description of service Laurel sought to provide demonstrates its undisputed status as a common carrier and the flexibility a common carrier’s certificate provides to allow a carrier to respond to competitive market conditions. Laurel’s Exc. at 11. Laurel contends that the Recommended Decision contains an error of law by ignoring applicable precedent and recommending that the Commission “reasonably infer” a description of Laurel’s authority based on the description of the proposed facilities in Laurel’s 1957 Application, the description of competing pipelines’ services in Laurel’s applications, and Laurel’s historical service and current tariff. Laurel contends that the Commission has previously rejected such an inferential analysis in *Petition of Sunoco Pipeline, L.P., et al*., Docket No. P-2014-2411941 (Order entered October 29, 2014) (*Sunoco 2014 Petition Order*). Laurel’s Exc. at 11-13.

Second, Laurel avers that the ALJ committed an error of law by finding that a common carrier must receive Commission approval to change its service in a manner that is consistent with its Certificate. Laurel’s Exc. at 13. Laurel relies on *Harris v. Nat’l Transit Co*. (*Harris*), 1976 Pa. PUC Lexis 50, stating that in that case, the Commission determined that an oil pipeline could change the method of service from a pipeline to trucks without Commission approval. Laurel indicates that the Commission reasoned in *Harris* that the original method of operation had become outdated or uneconomical and the company used its discretion in making a management decision. Laurel contends that if an oil pipeline can stop providing transportation service without Commission approval, then Laurel can change the direction of pipeline service. Laurel’s Exc. at 14. Third, Laurel avers that the ALJ’s proposed interpretation of Laurel’s Certificate would result in discriminatory regulation that disadvantages Laurel’s proposed interstate service in relation to one of its competitors by interpreting Laurel’s Certificate differently than it interpreted Sunoco’s Certificates in the *Sunoco 2014 Petition Order* without providing any rationale for this distinction. Laurel’s Exc. at 14‑15.

In its Exceptions, Husky states that Commission approval is not necessary for the proposed reversal. Husky argues that market forces and current economic conditions, rather than regulatory approval, should govern Laurel’s business decision, because Laurel’s Certificate does not require it to provide transportation services in a specific direction and Laurel’s proposal will not result in the abandonment of service to end users of petroleum products. Husky’s Exc. at 5. First, Husky avers that Laurel’s Certificate does not specify the direction in which products must flow or limit Laurel from using its pipeline in a manner that is consistent with current economic conditions. Husky submits that Laurel’s Certificate authorizes it to provide petroleum products transportation service “in and across” Pennsylvania and to operate in either direction. *Id*. at 6. Husky opines that if the Commission had intended to place a directional limit on Laurel’s transportation services, it could have done so by imposing such a condition in Laurel’s Certificate. *Id*. at 7 (citing *Application of Interstate Energy Company*, 1973 Pa. PUC Lexis 74). Husky states that if the Commission adopts the ALJ’s findings on this issue, the public would not be able to readily determine the scope of a utility’s certificated authority by examining the Certificate and would need to review the utility’s application and the record in an application proceeding to discern if any service limitations or conditions exist. Husky’s Exc. at 7.

Second, Husky avers that Laurel is not proposing to stop any product delivery service on its pipeline, because customers will still be able to ship product on the pipeline under tariffed rates and no delivery points will be eliminated. *Id*. Husky explains that the petroleum products on Laurel’s pipeline are delivered to terminal facilities and then transported by truck to end users. As a result, Husky believes that Laurel’s change in service direction will not result in a change or abandonment of service to end users or to any terminal facility or origin point. Husky states that an oil pipeline should not be treated differently from an electric or gas utility that is able to change the direction a commodity moves over its facilities without seeking abandonment approval. *Id*. at 8.

Third, Husky asserts that the proposed reversal should be approved because it is responsive to market conditions. Husky states that the concept of allowing the competitive market to drive business decisions made by entities subject to Commission oversight is consistent with the Commission’s policies for the electric, natural gas, and transportation industries that recognize the importance of competition and free markets. *Id*. Husky also asserts that the ALJ failed to acknowledge its arguments regarding the key fundamental differences between Laurel and traditional fixed utilities. Husky notes the following differences: (1) Laurel does not enjoy any monopoly status; (2) Laurel does not provide service directly to end-use customers; and (3) Laurel faces significant competition for alternative petroleum products transportation methods. Husky’s Exc. at 10. Husky notes that the Commission has previously recognized that different regulatory outcomes are warranted to reflect differences between fixed utilities. *Id*. (citing *Re Line Extensions*, 1996 Pa. PUC Lexis 162; *Pa. PUC v. Columbia Gas of Pennsylvania, Inc*., Docket No. R-2014-2407345 (Order entered October 23, 2014)). Similarly, Husky avers that the ALJ did not address arguments concerning the need for flexibility in pipeline infrastructure. Husky cites the testimony of Laurel’s witness, Glen R. Thomas, that Laurel is seeking approval to permit flows in either direction without Commission permission when economic conditions dictate a change in flow and that such flexibility in the pipeline infrastructure is an important energy policy for Pennsylvania which the Commission should embrace. Husky’s Exc. at 11 (citing Laurel’s St. 9-R at 5, 10).

In reply, the Indicated Parties state that the ALJ correctly found a directional limitation on service in Laurel’s 1957 Certificate. Indicated Parties’ R. Exc. at 5. The Indicated Parties aver that Laurel ignores the language in its 1957 Application which states that “[t]he 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 as ‘Exhibit A’ and made a part of this application.” According to the Interested Parties, Laurel’s 1957 Certificate refers to “approval of the said application as set forth in said report and order,” and the Commission’s 1957 Order describes the Laurel pipeline as “extending generally westwardly … as more fully described in said application.” The Indicated Parties, thus, believe that the Commission incorporated into the 1957 Certificate the 1957 Application and related exhibits. Indicated Parties’ R. Exc. at 6.

The Indicated Parties disagree that the *Sunoco 2014* *Petition Order* supports Laurel’s position, as the pipeline utility in that case first obtained Commission approval before abandoning service on the pipeline and repurposing the pipeline for new service. Indicated Parties’ R. Exc. at 6 (citing *Sunoco 2014* *Petition Order* at 9-10). The Indicated Parties point out that in the *Sunoco 2014* *Petition Order*, the Commission observed that failure to grant the requested relief would have rendered the pipeline “useless.” Indicated Parties’ R. Exc. at 6-7. The Indicated Parties assert that the Laurel pipeline would not “sit useless” absent a reversal, because the section of the pipeline between Altoona and Pittsburgh is actively used by its current customers and shippers. *Id*. at 7.

Additionally, the Indicated Parties aver that the ALJ correctly found that Laurel’s proposed change in the direction of service was an abandonment of service, because transportation service westerly from Altoona to Pittsburgh is not the same “service” as transportation service easterly from Pittsburgh to Altoona. The Indicated Parties find that Laurel’s reliance on *Harris* is misplaced, as *Harris* involved a change in the mode of utility service from pipeline to truck. Indicated Parties’ R. Exc. at 7. The Indicated Parties also argue that in contrast to the situation in *Harris*, the record in this proceeding demonstrates that the service westerly from Altoona to Pittsburgh is not outdated or uneconomical but is being used and relied on by Laurel’s customers. Indicated Parties’ R. Exc. at 7-8.

4. Disposition

We have clear authority to require Laurel to obtain a Commission Certificate in this proceeding, because Laurel’s proposed reversal is, in fact, the abandonment of service in one direction and the commencement of new service in the other direction. *See* *Rocky Mountain* at 62672. We agree with the ALJ and the Indicated Parties that service is broadly defined in Section 102 of the Code,

66 Pa. C.S. § 102, as including “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.” The petroleum and petroleum products transportation Laurel provides to the Indicated Parties as shippers, refiners, distributors, wholesalers, and retailers who transport products or have products transported on the Laurel pipeline certainly fits within this definition. In this case, Laurel is not simply asking to reverse the direction of flow on its pipeline, but it is asking to change its current service by eliminating the service availability and pricing in its tariff to the destination points west of Eldorado along the Laurel pipeline from eastern Pennsylvania origins, including the Philadelphia area. Laurel Exh. RGV-4; Indicated Parties’ Cross Exhs. 1, 2. We agree with the Indicated Parties that Laurel’s proposal constitutes a material change and abandonment of westerly petroleum products transportation service on the Laurel pipeline, which, if approved, would result in the western portion of the current Laurel system being restricted to eastward operations through Buckeye under FERC’s jurisdiction and would not be accessible to shippers attempting to move petroleum products from the east to points west of Eldorado. This would be a material change in service and, as the ALJ concluded, would constitute a partial abandonment of Commission-jurisdictional service.

We have consistently regulated the commencement and abandonment of pipeline common carrier service provided by public utilities within Pennsylvania. We have not distinguished between common carriers and traditional public utilities regarding the requirement that they must all obtain a Certificate prior to abandoning service. *See, e.g.,* *Application of Sunoco Pipeline, L.P.* (*Sunoco 2013 Application Order*)*,* Docket Nos. A-2013-2371789, P-2013-2371775 (Order entered August 29, 2013) (requiring a Certificate for Sunoco to abandon intrastate petroleum pipeline service on certain segments of its pipeline and to repurpose the affected facilities for interstate propane and ethane service); *Buckeye* (requiring a Certificate for Buckeye to abandon intrastate petroleum pipeline service). We also have not provided exemptions to regulated pipeline common carriers on the basis that they do not provide service to end-user customers, as Laurel argues we should do in this case. We have consistently found that public utility customers need not be retail end-users and that a retail component is not a requirement for public utility service. *Sunoco 2014 Petition Order* at 37 (citing *Rural Telephone Co. Coalition v. Pa. PUC*, 941 A.2d 751 (Pa. Cmwlth. 2008); *Waltman v. Pa. PUC*, 596 A.2d 1221, 1223-1224 (Pa. Cmwlth. 1991). Shippers have traditionally been considered customers of public utilities providing petroleum products transportation service, and purchasers of petroleum shipped through the pipeline as well as oil producers have standing to maintain complaints against pipeline common carriers. *Application of Sunoco Pipeline, L.P*. (*Sunoco 2005 Order*), Docket No. A-140001F2001 (Order entered January 25, 2005); *Harris* at \*3.

Since we have authority over Laurel’s Application as a proposed abandonment of intrastate service, it is not necessary for us to also find a directional limitation in Laurel’s 1957 Certificate, nor does the record before us support such a limitation. In prior cases, such as the *Sunoco 2013 Application Order* and *Buckeye*, we have focused on requiring a Certificate when pipeline common carriers requested approval to stop providing service to particular segments on the pipeline, from certain origins to certain destinations delineated under their tariffs, that were included in their authorized service territory under their Certificate. Such is the case here. We have not often focused on the issue of directional limitations. We addressed the issue in some detail in the *Sunoco 2014 Petition Order* to address an argument one of the party’s raised that the Sunoco pipeline was limited to east-to-west service. We stated the following:

This argument appears to be based upon two details: (1) the description of the facilities in the original applications and Orders approving those applications, and (2) the original directional flow when other petroleum products were transported from Philadelphia area refineries to product distributors located in the West and North. Importantly, there is no directional restriction contained in any of the controlling Certificates or Commission Orders, nor do we believe it to be good public policy to adopt or interpret any such directional restrictions.

*Sunoco 2014 Petition Order* at 39. In the present case, there are no clear directional restrictions or conditions in the 1957 Certificate or the 1957 Order. While there is a description of facilities extending generally westwardly from Philadelphia to the Pittsburgh area in the Certificate and the 1957 Order, such a description of Laurel’s facilities is not enough to infer a directional restriction in this case. Accordingly, Laurel and Husky’s Exceptions are granted in limited part and the ALJ’s Recommended Decision is modified to the extent that we will not infer a directional limitation in Laurel’s Certificate.

E. Standard of Review

1. Positions of the Parties

Laurel avers that if the Commission determines it has jurisdiction and that the proposed change in service constitutes an abandonment of service for which a Certificate is required, the standard of review is set forth in Section 1103(a) of the Code, 66 Pa. C.S. § 1103(a). Laurel states that the primary consideration is whether granting the application is in the public interest. Laurel’s M.B. at 53 (citing *Sunoco 2013 Application Order*; *Philadelphia Suburban Water Co. v. Pa. PUC*, 229 A.2d 748 (Pa. 1967). Laurel believes that to the degree the Commission adopts a specific formulation of the public interest in this case, it should follow the precedent in other oil pipeline abandonment proceedings and adopt the “affirmative public benefits” test. Laurel’s M.B. at 54 (citing *Sunoco 2013 Application Order*; *Application of Buckeye Pipe Line Company, L.P*. (*Buckeye*), Docket No. A-140110F2000 (Order entered March 7, 2005)). Laurel continues that in applying the affirmative public benefits test, there is no requirement for absolute necessity - future need and benefits are sufficient to demonstrate that a project is in the public interest, and there is no requirement to quantify the benefits of a project. Laurel’s M.B. at 55 (citing *Popowsky*, 937 A.2d at 1055-57; *City of York*, 295 A.2d at 828; *Sunoco 2013 Application Order*; *Buckeye*). Laurel asserts that regardless of the test the Commission applies, the proposed direction reversal is in the public interest and should be approved. Laurel’s M.B. at 60.

The Indicated Parties state that the abandonment of service test applies to Laurel’s Application. They indicate that in determining if 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. Indicated Parties’ M.B. at 39 (citing *Borough of Duncannon v. Pa. PUC* (*Duncannon*), 713 A.2d 737, 740 (Pa. Cmwlth. 1998); *Commuters’ Committee*). The Indicated Parties cite to the Recommended Decision in the *Sunoco 2005 Application Order* to demonstrate that these factors were among the factors considered in a proceeding involving the abandonment of an intrastate petroleum pipeline. Indicated Parties’ M.B. at 40-41.

2. ALJ’s Recommendation

The ALJ found that the Commission has jurisdiction over Laurel and its Application under Sections 102, 1102, and 1103 of the Code, 66 Pa. C.S. §§ 102, 1102, and 1103. The ALJ stated that consistent with Sections 1102(a)(2) and 1103, the Commission must determine whether the abandonment of Laurel’s utility service is necessary or proper for the service, accommodation, convenience or safety of the public. R.D. at 83 (citing *Monessen Southwestern Railroad Co. v. Pa. PUC (Monessen*), 474 A.2d 1203 (Pa. Cmwlth. 1984); *New York Central Railroad v. Pa. PUC*, 188 Pa. Super. 647, 149 A.2d 562 (1959)). The ALJ also stated that the abandonment standard includes a balancing of the interests of the utility’s loss and the hardship to the public. R.D. at 83 (citing *Fisher v. Columbia Gas of Pa. Inc*., 78 Pa. P.U.C. 432 (1993). The ALJ explained,

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.

R.D. at 84. (citing *Commuter’s Committee v. Pa. PUC*, 88 A.2d 420 (Pa. Super. Ct. 1952). The ALJ also explained that a public utility must additionally show that its losses could not be cured by the granting of a reasonable rate increase. R.D. at 84 (citing *Application for Approval of Abandonment of a Portion of Sunoco Pipeline, LP’s Petroleum Products Pipeline Transportation Service*, 2004 WL 5854823; *Monessen* at 1205-1206; *Commuters’ Committee v. Pa. PUC (Commuters’ Committee)*, 88 A.2d 420 (Pa. Super. Ct. 1952)).

3. Exceptions and Replies

In its Exceptions, Laurel argues that the ALJ committed an error of law in applying a “four factor” standard of review that is inapplicable to a common carrier oil pipeline’s abandonment of service under applicable Commission precedent. Laurel’s Exc. at 15. Laurel avers that the affirmative public benefits test is the correct standard for evaluating oil pipeline abandonments. *Id*. at 15-16 (citing *Sunoco 2013 Application Order*; *Buckeye*. Laurel states that the ALJ’s adoption of a four-factor standard is not supported by a single oil pipeline abandonment case and that oil pipelines have always been evaluated under a different standard than traditional public utilities. Laurel’s Exc. at 16. According to Laurel, petroleum products will continue to enter Laurel’s pipeline at all existing origin points and petroleum products will continue to be delivered on Laurel’s pipeline at all existing destination points. Laurel believes that an oil pipeline is not required to receive a Certificate before changing the direction of service over its facilities when the same facilities are used to provide service to the same customers, and the only change in service is a change in the direction the service is provided. *Id*. at 16, n.25. Laurel notes that the Commission analyzed Sunoco’s proposed abandonment under the affirmative public benefits test set forth in the *City of York v. Pa. PUC* (*City of York*), 449 Pa. 136, 295 A.2d 825 (1972), and concluded that the significant public benefits outweighed the minimal impacts to the customers. Laurel contends that it would be discriminatory for the Commission to subject Laurel to a different standard of review than the standard it used in prior review of oil pipeline abandonments. Laurel’s Exc. at 17.

Additionally, Laurel states that even if a multifactor standard were appropriate, the four-factor standard the ALJ applied is contrary to applicable Commission precedent. *Id*. Laurel argues that it is improper to characterize the “multi-factor” abandonment test as limited to four factors, because Pennsylvania appellate courts have held that the legislature did not define a specific set of criteria that an applicant must satisfy to receive Commission approval for an abandonment of service. *Id*. at 17-18 (citing *Seaboard Tank Lines, Inc. v. Pa. PUC*, 502 A.2d 762, 764-765 (Pa. Cmwlth. 1985); *Commuters’ Committee* at 424). Laurel observes that the Court in *Commuters’ Committee* explained that the four factors were merely among the factors to be considered. Accordingly, Laurel asserts that if the Commission adopts a multi-factor standard of review, it should not limit the standard to the four, exclusive factors set forth in the Recommended Decision. Laurel’s Exc. at 18.

Similarly, in its Exceptions, Husky avers that the ALJ erred in applying the abandonment test to Laurel’s Application. Husky states that if the Commission finds its approval is necessary for the proposed pipeline reversal, then the proper standard for review is the “general public benefits” test. Husky’s Exc. at 11. Husky contends that the Commission should apply the general public benefits test due to the differences between Laurel and natural gas, electric, and water utilities and the fact that Laurel’s proposal is a response to the changing market conditions and the current economic environment. *Id*. at 12 (citing *Sunoco 2013 Application Order*). Husky continues that the Certificates for natural gas, electric, and water utilities specify an exclusive territory, and the utility agrees to provide service, and correspondingly not to abandon service without Commission approval, and to charge for service under tariff rates. Husky submits that common carriers like Laurel are subject to competition from alternative forms of transportation and are not required to provide service to specific customers. Husky’s Exc. at 12.

In their Replies to Exceptions, the Indicated Parties aver that the ALJ evaluated the proposed abandonment of service under the correct legal standard by using the factors the Commission traditionally applies to abandonments. The Indicated Parties disagree with Laurel and Husky’s reliance on the *Sunoco 2013 Application Order* and emphasize that the *Sunoco 2013 Application Order* was an uncontested proceeding in which no party challenged Sunoco’s abandonment of service or advocated for the use of a different standard than the *City of York* standard. The Indicated Parties observe that in *City of York*, the Court stated that it was appropriate for the Commission to consider potential harm to ratepayers and that in the *Sunoco 2013 Application Order*, the Commission acknowledged the need to weigh both the potential benefits and harms so that the analysis was not limited to a public benefits test. Indicated Parties’ R. Exc. at 9. The Indicated Parties argue that any potential benefits from the proposed reversal pale in comparison to the significant evidence demonstrating potential adverse impacts on customers, shippers, and other stakeholders. *Id*. at 9-10. The Indicated Parties find it significant that while the Commission cited the *City of York* case in the *Sunoco 2013 Application Order*, the Commission also applied the multi-factor abandonment standard, determining that the users of the facilities did not oppose the proposed suspension of service and that Laurel’s pipeline remained an available alternative for Sunoco’s customers. Indicated Parties’ R. Exc. at 10.

4. Disposition

Based on our review of the applicable law, we find that it was appropriate and consistent with legal precedent for the ALJ to apply the four considerations that she applied in this case: (1) 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. Coupled with these considerations, the ALJ also properly considered whether Laurel had demonstrated that its losses could not be cured by the granting of a reasonable rate increase. We do not view the ALJ as setting forth a strict standard of review by considering these factors, and we are not setting forth a strict standard of review here either. Rather, we are following the various considerations examined in numerous prior decisions addressing public utilities’ abandonment of service and evaluating the record before us with those considerations in mind. As we discussed above, we have not distinguished between pipeline common carriers and traditional public utilities regarding the requirement that they must all obtain a Certificate prior to abandoning service.

The Courts and the Commission have considered the factors the ALJ considered in this case in various contested cases relating to many different types of public utilities. In *Commuters’ Committee*, the Court found that the four factors should be among the factors considered in determining the existence or nonexistence of the public convenience and necessity in the abandonment of passenger service by a railroad company on its branch line. The Court in that case stated that in examining a partial abandonment, “a test is whether the loss to the carrier is unreasonable under all the circumstances, having regard to the interests of the public as well as the utility.” *Id*. at 605. In *Duncannon*, the Court listed the four factors for consideration regarding a public utility’s request to abandon water service to customers connected to a transmission main. In that case, the Court stated that unless the proposed abandonment favorably survives evaluation under these factors, this Commission has the authority to deny, or condition an abandonment request. The Court reasoned that “[a]nything less would improperly limit the Commission’s ability to protect utility customers.” *Duncannon* at 740. The Courts and the Commission have also found that the public utility, as the proponent of the abandonment, must demonstrate that its losses could not be cured by the granting of a reasonable rate increase. *See Monessen* at 1206.

These factors have also been considered in the context of abandonment cases involving pipeline common carriers. In the *Sunoco 2013 Application Order*, the Commission determined that the benefits of the abandonment outweighed the minimal impact to the few customers taking service on the pipeline segment proposed to be abandoned. As part of its request, Sunoco discussed the impact on customers, the loss to Sunoco based on the lack of customer shipments along the pipeline segment, and the existence of available alternatives to meet the future intrastate petroleum transportation needs of each customer. Similarly, in *Buckeye*, the Commission’s Order acknowledged that the pipeline would not be used in the future because no intrastate shipments were being made to Buckeye customers in Pennsylvania and that there were not any origin points in Pennsylvania to which Buckeye could make shipments under its existing certification rights.

Laurel is correct that these cases do not expressly set forth the abandonment factors the ALJ considered in this case; however, because these cases were not contested proceedings like this case, there was not a fully developed record with positions on both sides that could be relied upon to reach more specific findings and conclusions on the abandonment factors. Moreover, we conclude that it would not be logical to use the *City of York* merger standard for this abandonment proceeding. There is a separate line of cases involving mergers that use the *City of York* standard, and these merger cases involve different issues and considerations than those that are present in an abandonment proceeding. For instance, in *Popowsky*, the affirmative public benefits of the merger between Verizon Communications, Inc. and MCI, Inc. included facts demonstrating that the combined companies would have the essential infrastructure to offer innovative, high-speed data and video services via a fiber-optic network and to deploy mobile Internet Protocol (IP) devices; that the combined company would be in a stronger financial position to invest in the existing IP network; and that the combined company would maintain higher levels of overall employment. The merger did not involve an abandonment of customers but, rather, involved the benefits to customers as a result of the merger, including financial and technological advancements viewed as enhancements to the quality of life of customers in different market sectors.

Even if we did apply the *City of York* affirmative benefits standard in this case, Laurel would not likely satisfy that standard based on the record before us. While Laurel has provided some evidence and assertions regarding public benefits, particularly the benefit of providing Pennsylvania with increased access to lower-cost Midwestern petroleum product supplies, the Indicated Parties sufficiently rebutted the evidence Laurel presented. As will be discussed in more detail below, Laurel has failed to satisfy its burden of proof under each of the factors considered by the ALJ and in this Opinion and Order. Accordingly, Laurel and Husky’s Exceptions are denied and the ALJ’s Recommended Decision on this issue is adopted.

F. The Abandonment of Service Standard

1. The Extent of the Loss to the Utility and Whether a Reasonable Rate Increase Can Cure the Utility’s Loss

a. Positions of the Parties

Laurel provided that volumes shipped from Altoona to Pittsburgh have been declining since 2006. Laurel contended that declining volumes to Pittsburgh demonstrate that Pittsburgh is receiving more of its supply from the Midwest, while regional demand declines. Laurel’s M.B. at 62. Laurel stated that volumes are clearly declining and have continued to substantially decline in 2017. Laurel submitted that volumes to Pittsburgh averaged 65,000 BPD in 2016 but were only 45,000 BPD for the 12 months ending September 2017, a decline of approximately 30% in a single year. *Id*. at 64 (citing Laurel’s St. 5-RJ at 6, 19). Laurel maintained that it is paid for shipments on a volume basis for each barrel it ships, and, therefore, Laurel has been receiving substantially lower revenues as its volumes have declined. Laurel’s M.B. at 177.

Responding to the Indicated Parties’ request for a cost and revenue benefit analysis to show the extent of loss, Laurel offered that it did not present a cost and revenue analysis for several reasons: 1) Laurel 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 Eldorado and Philadelphia 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. Laurel alleged that it is meaningless to do a cost and revenue comparison if revenues are projected to go to zero. Laurel’s M.B. at 177.

Laurel stated that the Indicated Parties’ argument that Laurel should propose a rate increase is without merit. Laurel claimed that shippers are moving less and less product to destination points east of Altoona because it is uneconomic to do so. Laurel averred that adding costs to shipments through a rate increase will simply cause less product shipments to Pittsburgh. Laurel’s M.B. at 177.

The Indicated Parties stated that Laurel’s only evidence of loss is its disputed claim that there are declining petroleum product shipments on the Laurel pipeline west of Eldorado and therefore Laurel is receiving less revenue. Indicated Parties’ M.B. at 49. The Indicated Parties averred that Laurel did not present and does not calculate Laurel’s return on investment for the Laurel pipeline. *Id*. at 49 (citing Tr. at 240). The Indicated Parties noted that Laurel has not filed a rate case before the Commission since at least the mid-1980s and nothing has prevented Laurel from doing so. Indicated Parties’ M.B. at 49 (citing Tr. at 240-241). The Indicated Parties noted further that Laurel has not evaluated the proposed Laurel pipeline abandonment in terms of potential revenues, costs and benefits solely on Laurel. Indicated Parties’ M.B. at 50 (citing Tr. at 247). The Indicated Parties contended that there is a substantial difference in the rates for service on Buckeye’s interstate pipeline compared to Laurel’s Pennsylvania rates. Indicated Parties’ St. 1 at 12-13,16.

The Indicated Parties argued that Laurel has done nothing for decades to address what it now claims are material losses that support the abandonment of service for customers that have relied on pipeline transportation service westerly into Pittsburgh for sixty years. The Indicated Parties argued further that Laurel has not filed for rate increases or changes in its tariff design to address alleged loss of revenues or under-earnings on the portion of the Laurel pipeline to be abandoned. Indicated Parties’ M.B. at 50.

b. ALJ’s Recommendation

The ALJ noted that Laurel did not present a cost and revenue analysis to show the extent of loss to the utility. The ALJ noted Laurel’s argument that: (1) Laurel 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. R.D. at 98 (citing Laurel’s M.B. at 177).

The ALJ disagreed with Laurel’s first argument, finding that the shippers of petroleum products on Laurel’s pipeline are not its only customers. The ALJ contended that the two Philadelphia refineries are Laurel’s customers too, as they currently count Pittsburgh as a market for their product and will not be able to do so if the reversal is approved. The ALJ rejected Laurel’s argument, reasoning that the reversal will allow the product transported over the Eldorado – 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. The ALJ concluded that the proposed reversal is a partial abandonment by Laurel of service it currently provides in Pennsylvania. R.D. at 98.

The ALJ acknowledged that in lieu of a cost and revenue analysis, Laurel did provide information on the historic and current use of the pipeline between Eldorado and Pittsburgh. The ALJ stated that in 2006, Laurel supplied approximately 104,000 BPD of Pittsburgh’s total demand for refined petroleum products, but for the last 12 months ending in September 2017, Laurel supplied approximately 45,000 BPD of Pittsburgh’s total demand. R.D. at 98 (citing Laurel’s M.B. at 62, Laurel’s St. 5-RJ at 3). The ALJ set forth that this 56.7% difference between the volume of petroleum products transported to Pittsburgh over the Laurel pipeline in 2006 and 2017 is the basis for Laurel’s Application. The ALJ noted, however, that deliveries on the Laurel pipeline from the east to Pittsburgh during the period 2006-2017 did not show a consistent decline in volumes, rather, they showed both downward and upward movements in volumes. R.D. at 99.

The ALJ reasoned that figures of annual volumes on the Laurel pipeline from eastern origins to Pittsburgh (62.5 thousand barrels per day (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 pipeline still delivers meaningful annual volumes to the Pittsburgh area from the east. R.D. at 99 (citing Indicated Parties’ St. 1-S at 27, Table 1). The ALJ also noted that the average summer deliveries to Pittsburgh destinations from the east have been significant and relatively consistent from January 2013 through late 2016. R.D. at 99.

The ALJ found that customers have significantly utilized the Eldorado-Pittsburgh section of the Laurel pipeline in recent years. The ALJ reasoned that 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. The ALJ stated that because Laurel did not proffer an assessment of the impact of the volume decrease in the Eldorado-Pittsburgh section on the pipeline, it is difficult to evaluate the extent of the loss for Laurel *as a utility*. R.D. at 100.

The ALJ stated that in the past, the Commission has denied an applicant’s request for abandonment where the utility did not show that a reasonable rate increase

could not cure a loss,[[13]](#footnote-13) and the Commonwealth Court upheld its decision. R.D. at 198 (citing *Warwick Water Works, Inc. v. Pa. PUC*, 699 A.2d 770, 774-75 (Pa. Cmwlth. 1997)). The ALJ noted that Laurel has not presented evidence as to whether a reasonable rate increase would cure its alleged loss but, 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. R.D. at 198 (citing Laurel’s M.B. at 177). The ALJ concluded 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 refineries. R.D. at 199.

c. Exceptions and Replies (Laurel’s Exception No. 11 and the Indicated Parties’ Replies)

Laurel disagrees with the ALJ’s conclusion that customers continue to utilize the Altoona-Pittsburgh section of the pipeline and that Laurel failed to demonstrate that it sustained significant losses due to considerable and continuous decline in volume.  Laurel’s Exc. at 37.  Laurel avers that because it has demonstrated in this proceeding that volumes are projected to decline to zero, and it has established that its volumes have declined by approximately 55% since 2006, there is no need for a cost and revenue analysis.[[14]](#footnote-14)  Laurel’s Exc. at 37 (citing R.D. at 99).

In Reply, the Indicated Parties reject Laurel’s Exception.  They agree with the ALJ’s determination that the record evidence does not support Laurel’s financial loss claim and Laurel’s prediction that volumes will inevitably decline to zero.  Indicated Parties’ R. Exc. at 23 (citing R.D. at 99, 101-118).  According to the Indicated Parties, the ALJ correctly determined that Laurel did not present a cost and revenue analysis showing Laurel’s cost for operating the segment of the pipeline to be abandoned, the costs for operating the entire pipeline, the revenues from the abandoned segment and the revenues from operating the rest of the pipeline.  Absent this relevant data, which Laurel failed to present in this proceeding, the Indicated Parties contend Laurel has not demonstrated its burden of proof to show that it suffered financial loss.  Indicated Parties’ R. Exc. at 23-24.

d. Disposition

Based on the record and the Parties’ positions, we find that Laurel did not satisfy its burden of proving that it has suffered a loss to its public utility operations. We agree with the Indicated Parties, that Laurel failed to provide at a minimum: (1) Laurel’s costs for operating the segment of the pipeline to be abandoned, (2) Laurel’s costs for operating the entire pipeline, (3) Laurel’s revenues from the segment of the pipeline to be abandoned, and (4) Laurel’s revenues from operating the rest of the pipeline. Indicated Parties’ R.B. at 153.

The ALJ noted, and we agree, that the flows on the segment to be reversed may not decline to zero. The flows showed both declines and increases over the time period from 2006 to 2017, but Laurel did not demonstrate definitively that the flow would decrease to zero. While Laurel claims that decreases have occurred from 2006 to 2017, Laurel does not provide the context of the market conditions causing increases and decreases. The Indicated Parties provided the market history prior to 2012 and relied on more recent data to characterize the eastward flows on the Laurel pipeline. The Indicated Parties aver that a decline from 2006 levels occurred prior to 2013 as Philadelphia refineries shut down, but refineries have subsequently restarted. The Indicated Parties explain that recent volumes on Laurel’s pipeline from Eastern origins to Pittsburgh have increased from 2012 levels, with the 2016 level being consistent with the 2013 level. Indicated Parties’ St. 1 at 5. The Indicated Parties explain further that volumes on the Laurel system from Eastern origins to the Pittsburgh area have fluctuated seasonally over the recent five-year period of 2012 through 2016, with volumes in the summer months being in the 65 MBPD to 119 MBPD range and in the winter months decreasing to a range of 20 MPBD to 100 MBPD. Indicated Parties’ St. 1 at 3. Shipments on Laurel in 2013 increased from the 2012 level when the Monroe Trainer refinery was shut down. Volumes on the Laurel system to the Pittsburgh area in 2014 and 2015 were temporarily increased due to the shutdown of Sunoco pipelines from Philadelphia and Midwest origins to Pittsburgh. Shipment levels in 2016 reflect a return to levels experienced prior to the shutdown of the Sunoco pipelines. Indicated Parties’ St. 1 at 10-11. Based on the recent shipment levels on Laurel to Pittsburgh from 2012 to 2016, we are persuaded that while the levels have fluctuated with refinery shutdowns and pipeline availability, it would be inaccurate to characterize the overall level of shipments as trending to zero.

We also note that Laurel has not presented evidence regarding whether a rate increase would cure the utility’s loss. Laurel has provided no data on the cost of operating the pipeline, with or without the reversal. Laurel’s pipeline is the sole pipeline resource connecting the Pittsburgh area to refineries in Eastern Pennsylvania and other supply sources on the East Coast. Laurel also has the advantage that on the Laurel pipeline, none of the available capacity is subject to capacity allocations, which makes the Laurel pipeline a more flexible and liquid resource for shippers serving the Pittsburgh market than pipeline supplies coming from the west. Gulf’s St. 1-S at 19. We are not persuaded that a rate increase would decrease shipments where Laurel is the only choice for refined products to reach Pittsburgh from Eastern refineries and other suppliers.

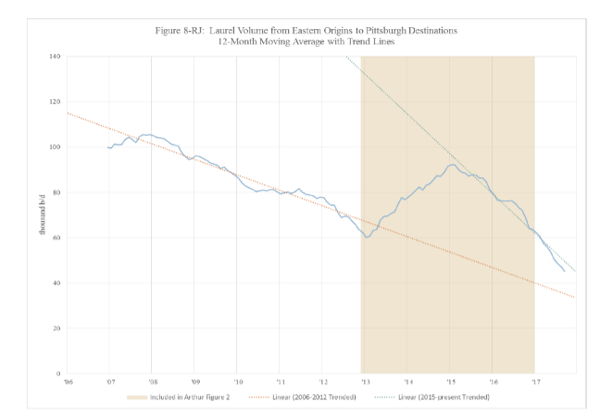
The Indicated Parties state that “when regulated public utilities are not earning market returns on their invested capital, they advise the Commission and file rate cases to address alleged deficiencies in the return on and of their in-service public utility assets.” The Indicated Parties reason that “the Commission should view Laurel’s inaction since the mid-1980s with respect to any form of rate relief as an indication of a healthy utility (*i.e.*, earning market return at or about just and reasonable levels) and not the opposite as Laurel would have us believe in this proceeding without supporting these contentions with any evidence whatsoever.” Indicated Parties’ St. 3-S at 15-16. We find that to remedy an economic shortfall, Laurel has the option of filing a rate case, but has declined to do so.

Laurel did not provide the cost and revenue data analysis to determine if the reversal was merited or if a rate increase would cure the utility’s loss. Laurel did not definitively show that volumes on the Laurel pipeline will fall to zero. Accordingly, Laurel’s Exception No. 11 is denied.

2. Prospect of the System Being Used in the Future

a. Positions of the Parties

Laurel averred that as lower-cost petroleum products continue to make their way from the Midwest to the Pittsburgh market, Laurel’s volumes to Pittsburgh will continue to decline to as low as zero in the future, or the decline will be steep enough to present operational constraints that may significantly delay shipments. Laurel’s M.B. at 177. Laurel believes the supply of lower-cost refined petroleum products from the Midwest to Pittsburgh will potentially eliminate substantial future use of the Laurel pipeline to points west of Eldorado. *Id.* at 177-178. Laurel argued that its pipeline volumes to Pittsburgh have declined from approximately 104,000 BPD in 2006 to 45,000 BPD for the most recent twelve months ending September 2017. This, according to Laurel, is an approximately fifty-seven percent decrease. *Id.* at 66-67. Laurel argued this reflects a trend indicating that the decrease will continue due to the overwhelming low-cost supplies from the Midwest refineries when compared to the East Coast refineries. *Id.* at 67. Laurel’s projection trend analysis is shown in Figure 1 below;



Laurel’s Exh. MJW-33 at 5; Laurel’s St. 5-R at 44.

The Indicated Parties, on the other hand, averred that not only did Laurel fail to support its declining volume projection with any credible analysis or evidence, but contrary to the Commission’s abandonment of service standard, which requires a demonstration that the service to be abandoned lack the prospect of being used by customers in the future, Laurel’s customers maintained they have a need and desire to keep access to the Pittsburgh market that service west of Eldorado provides them and their operations. Indicated Parties’ M.B. at 51. According to the Indicated Parties, an evaluation of three factors relevant to Laurel’s proposal fails the abandonment test. The three factors include: (1) customer interest in continuing to have service available for shipments from the east to points west of Eldorado; (2) historic data that shows the extent to which volumes travel west of Eldorado; and; (3) whether it is reasonable to expect that volumes are about to decline to levels that justify Laurel abandoning service. *Id.*

Regarding the first factor, the Indicated Parties noted that Philadelphia refiners, PESRM and Monroe Energy, consider continuation of the east to west service to the Pittsburgh market extremely important to their operations. They further stated that shippers and marketers, including Gulf, Sheetz and Giant Eagle, are opposed to the abandonment because it would eliminate the opportunity for Pittsburgh to access supplies coming from the Eastern refineries. According to the Indicated Parties, this shows that customer interest regarding Laurel’s pipeline continues and remains strong. *Id.* at 51-52. With regard to the second factor, the Indicated Parties averred that there is relevant data to support the fact that Laurel’s pipeline is significantly utilized for shipments west of Eldorado, especially during the summer months. For instance, according to the Indicated Parties, in 2017, approximately half of the consumption volume in the Pittsburgh market was supplied via Laurel’s pipeline. *Id.* at 52.

Finally, with regard to the third factor, the Indicated Parties argued Laurel has not provided any reliable data or analysis to substantiate its projection that volumes shipped to the west of Eldorado will decline to zero in the near future. The Indicated Parties believe this makes Laurel’s projection unfounded and unreliable. The Indicated Parties averred that contrary to Laurel’s claims, volumes moving west of Eldorado are on the upward trend. According to them, data supplied by their expert witnesses show that although volumes on this portion of Laurel’s pipeline have fluctuated over time, they are still robust, are likely to stay robust, and may possibly increase in the future. *Id.* at 52-76. Based on the above, the Indicated Parties concluded that Laurel’s proposed reversal should be rejected because Laurel failed to show that the prospects of future use of the Laurel pipeline for deliveries to the west of Eldorado are minimal enough to justify an abandonment of the pipeline. *Id.* at 77.

Husky, on the other hand, in support of the reversal, averred that Laurel’s proposed reversal is a market-driven solution to a market-demand problem. Husky argued the declining volumes demonstrate a viability challenge for products to the Pittsburgh market from the East Coast refineries and makes Laurel’s proposed reversal inevitable. Husky’s M.B. at 23. Per Husky, Laurel’s proposal will enable the movement of competitively-priced refined products from the Midwest to Western and Central Pennsylvania. According to Husky, contrary to the views of the Indicated Parties, the reversal will not necessarily eliminate East Coast supplies to the Pittsburgh market because there are several other options available to move the products, including trucks and barges. *Id.* (citing Tr. at 1207).

b. ALJ’s Recommendation

The ALJ noted that Laurel’s projection that volumes from eastern origins to points west of Eldorado on Laurel’s pipeline will reach zero by 2025, are based on a linear projection of recent volume changes. R.D. at 115 (citing Laurel’s M.B. at 40, 84, 106-10). The ALJ agreed with the Indicated Parties’ observation that Laurel’s use of two separate time periods, which breaks the trend analysis and leads to two separate trend lines, was done by Laurel in order to eliminate the Energy Transfer Partners (ETP) (Sunoco) 2013 outage from its analysis. According to the ALJ, 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. R.D. at 115. The ALJ, therefore, disagreed with Laurel’s trend analysis, stating that Laurel conveniently excluded the ETP (Sunoco) 2013 outage because it had a positive impact on Laurel’s pipeline flows. R.D. at 115-116 (citing Indicated Parties’ M.B. at 69-70). The ALJ concluded that for Laurel’s trend analysis to be considered accurate and unbiased, the ETP (Sunoco) 2013 should be included in the analysis or Laurel should exclude its reference to the impact of the Allegheny Access Pipeline becoming operational in July of 2015 from its analysis. Although the ALJ noted that excluding the latter could lead to projections that Laurel has not assessed nor foreseen, she emphasized that including the former could potentially result in a gentler slope than Laurel presented and would move the zero-flow projection beyond the 2025 period specified in Laurel’s trend analysis. R.D. at 116.

Additionally, the ALJ stated that while both Laurel and the Indicated Parties acknowledge the dynamic nature of the petroleum industry, Laurel’s linear trend analysis and prediction of an inevitable decline to zero by 2025, overlooked the impact of these potential changes.[[15]](#footnote-15) Acknowledging Laurel’s argument that its projected continuous decline is based on the fact that the Midwestern refineries’ product is cheaper and therefore more desirable to the Pittsburgh market participants, the ALJ, nonetheless, pointed out that despite recent expansions into the Midwest resulting in over twice the total capacity from the Midwest into Pittsburgh, the record evidence shows that the Pittsburgh market still demands a substantial supply of products from the east.[[16]](#footnote-16) *Id.* at 116-117. Furthermore, although the ALJ acknowledged Laurel’s contention that the current state of the Pittsburgh market still reflects the shippers’ existing long-term contracts, the ALJ disagreed with Laurel’s prediction that products from the east to the Pittsburgh market through Laurel’s pipeline face an inevitable decline to zero. *Id.* at 117.

The ALJ also reasoned that Laurel failed to substantiate its argument that downstream constraints like terminal capacity are limiting entry of Midwestern products fully into the Pittsburgh market. According to the ALJ, “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 the Midwest.”  *Id.* The ALJ pointed out that some of Laurel’s customers, including the Philadelphia refineries, still consider continuation of the east to west service to the Pittsburgh market important and irreplaceable to their operations. *Id.* at 118. The ALJ reasoned that while the volumes from East Coast refineries into Pittsburgh through the Laurel pipeline fluctuates, there is a clear need for the east to west service as these volumes remained substantial through 2017. As such, the ALJ concluded that Laurel 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. *Id.* at 118, 199.

c. Exceptions and Replies

i. Laurel’s Exception No. 5, Husky’s Exception No. 3(1), and the Indicated Parties’ Replies

In its Exceptions, Laurel disagrees with the ALJ’s conclusion that there are currently no constraints in transporting petroleum products between the Midwest and Pittsburgh. Laurel’s Exc. at 18. Referencing the testimonies of Gulf’s and Husky’s witnesses, Mr. Johnston and Mr. Miller, Laurel contends the record evidence supports its argument that “all parties agree there are logistical, geographical, and terminal constraints between Pittsburgh and the Midwest.” *Id.* at 18-19. Specifically, Laurel questions the ALJ’s reliance on the fact that the existing pipelines that connect the Midwestern refineries to Pittsburgh have sufficient overall rated capacity to supply Pittsburgh. Laurel argues the overall rated capacity does not equate to functional deliverability. *Id.* at 19-20. Laurel concludes that if the existence of constraints to supply from the Midwest were accepted, the ALJ would have no grounds to reject its proposed reversal. *Id.* at 20-21.

Husky supports Laurel’s proposal, stating the reversal would help increase utilization of the pipeline between Eldorado and Pittsburgh. According to Husky, the ALJ completely ignored its testimony emphasizing the downstream constraints like terminal capacity and location. Husky believes approval of the reversal will provide a better terminal set where the terminals will be larger and will be in a better location for customer access which, ultimately, would enhance service to Western and Central Pennsylvania. Husky’s Exc. at 13-14, 17. Husky further highlights the importance of moving low-cost petroleum products from the Midwest to Western and Central Pennsylvania and the potential for a substantial increase in the quantity of petroleum products from the Midwest. Husky emphasizes the recent significant investments in the Midwest refineries compared to the continued struggle of the East Coast refineries. Husky believes approval of the reversal will allow the Pittsburgh and Central Pennsylvania markets to take advantage of the enhanced access and the cost-advantaged products the Midwest refineries offer. *Id.* at 14-16.

Furthermore, Husky asserts the ALJ ignored the fact that eighteen months after the Allegheny Access pipeline came online, sixty-five percent of the volume of the East Coast refineries shipped into Pittsburgh was replaced with supplies from the Midwest refineries and that during the same period, the East Coast refineries’ supply dropped from 100,000 to 40,000 bpd. From Husky’s perspective, rather than speculating as to why the Pittsburgh market is still receiving products from the East Coast, the Commission should focus on the compelling data trend showing an influx of competitively-priced petroleum products from the Midwest. *Id.* at 16-17.

In Reply, the Indicated Parties aver the ALJ correctly determined that transportation of petroleum products between the Midwest and Pittsburgh is currently not constrained. Indicated Parties’ R. Exc. at 10. Contrary to Laurel’s averment that constraints prevent Midwest suppliers from maximizing pipeline capacity into Pittsburgh, the Indicated Parties argue that neither Laurel nor Husky presented credible evidence regarding any logistical, geographical or terminal constraints. According to the Indicated Parties, while Gulf’s witness, Greg Johnston, testified about the existence of constraints, he was referring only to Chicago-area refineries and not the entire Midwest. Even the constraints alluded to by Mr. Johnston relate to transit time and transportation prices, neither of which would be alleviated by additional pipeline capacity, the Indicated Parties clarify. *Id.* at 11. The Indicated Parties reiterate their argument that pipeline capacity from the Midwest into Pittsburgh remains available to the Midwest suppliers with no constraints and that Laurel’s own testimony in the instant proceeding contradicts its assertion regarding pipeline constraints. Noting that nothing in the record supports Laurel’s assertion of constraints, the Indicated Parties request that the Commission reject Laurel’s proposed abandonment. *Id.* at 11-13.

ii. Laurel’s Exception No. 12 and the Indicated Parties’ Replies

In its Exception No. 12, Laurel disagrees with the ALJ’s conclusion that Laurel’s volumes will not continue to undergo substantial declines in the future. Laurel’s Exc. at 37-38. Laurel does not believe the Indicated Parties’ expression of their desire to continue to use the westbound service is a sufficient reason to reject its proposal. *Id.* Laurel faults the ALJ’s recommendation on that basis that she relied on the Indicated Parties’ flawed analysis and overlooked Laurel’s testimony regarding the declining volume. *Id.* at 38 (citing R.D. at 115-116; Laurel’s R.B. at 48-50; 53-57). Laurel concludes that because the ALJ ignored, *inter alia,* the undisputed fact that constraints exist between the Midwest and Pittsburgh and the potential of these constraints to contribute to the decline of volumes to zero in the future, the ALJ’s recommendation regarding this matter should be rejected. Laurel’s Exc. at 38-39.

In Reply, the Indicated Parties aver the ALJ properly rejected Laurel’s proposed abandonment because it is based on unfounded projection of substantial decline in the volume of shipments west of Eldorado. Indicated Parties’ R. Exc. at 24. According to the Indicated Parties, the ALJ found persuasive their analysis of historical data which revealed that: (1) customers value Laurel’s services and wish to maintain availability of Laurel’s service west of Eldorado; (2) the data showed substantial volumes still going west of Eldorado; and; (3) it was unreasonable to expect those volumes to soon decline to levels that justify an abandonment of service. *Id.* at 24-25 (citing Indicated Parties’ M.B. at 51-77; Indicated Parties’ R.B. at 155-156). The Indicated Parties argue their analysis not only revealed a possible increase in the flow of products via the Laurel pipeline but also that flows from the Philadelphia refineries make up a significant proportion of flows (fifty-three percent in 2016 and fifty-seven percent in 2017), despite completion of the Midwest region pipeline additions. Indicated Parties’ R. Exc. at 24-25 (citing Indicated Parties’ M.B. at 71-72; Indicated Parties’ St. 2-S at 12, 13).

d. Disposition

Upon review, we will deny Laurel and Husky’s Exceptions regarding the projected decline of volumes to zero supply and the potential operational constraints from the continuous decline. We also are not convinced by Laurel’s argument that constraints in transporting petroleum products from the Midwest to Pittsburgh warrant an abandonment of Laurel’s pipeline. We agree with the ALJ that Laurel has not presented sufficient evidence in this proceeding to satisfy its burden of proof and to warrant an abandonment of its pipeline. As we explained in our earlier disposition, the record does not support Laurel’s projected decline of its volumes from east to west of Eldorado to zero by 2025, or that the decline will be substantial enough to pose operational constraints. Even if there are declines in volumes or constraints as argued by Laurel and Husky, we find such declines or constraints are not significant enough to prevent future use of the pipeline or to justify an abandonment of the pipeline.

We agree with the Indicated Parties that Laurel failed to adequately support the basis of its conclusion that volumes will decline to zero by 2025. Specifically, we note that Laurel failed to take into account the underlying causes or drivers of the historical volume trends along the pipeline in its projection. Indicated Parties’ St.1-S at 25. Uncertain and dynamic conditions in the industry will continue to dictate the volumes of Laurel’s pipeline, making it difficult to categorically conclude that the volume decline will continue in its current trend and lead to zero-supply by 2023 or 2025. Furthermore, as we explained earlier, we consider reasonable the Indicated Parties’ argument that existing data shows that volumes on the Laurel pipeline have varied over time or indicate year-to-year variations, and these periods of average decline have always been offset by marked increases in product shipments. *See* Indicated Parties’ M.B. at 13, 26; Indicated Parties’ St. 2-S at 13; Indicated Parties’ St. 2 at 18.

We note that in its argument disputing the Indicated Parties’ analysis that Laurel’s volumes to Pittsburgh increased from 2012 to 2016, Laurel explained that the analysis of the Indicated Parties was flawed because it failed to consider several factors that contributed to the increase in Laurel’s volumes to Pittsburgh. Among some of the factors Laurel mentioned were that Sunoco shut down pipeline supply from the Midwest in July 2013 and also shut down its pipeline transporting products from Philadelphia throughout Pennsylvania in October 2013, all of which, according to Laurel, temporarily increased its volumes to Pittsburgh. Furthermore, Laurel noted that in mid-2015, Allegheny Access began providing supply into Pittsburgh from the Midwest, prompting a decline in volumes to Pittsburgh. Laurel’s M.B. at 64-65 (citing Indicated Parties’ St. 1 at 6; Laurel’s St. 5-R at 35).

Laurel’s argument above confirms that various unforeseen circumstances, including market conditions, could prevail to impact the trend of the volume of Laurel’s pipeline, making it very difficult to categorically conclude a permanent decline or that the decline would result in zero-supply by 2025. We agree with the ALJ that an inclusion of the ETP (Sunoco) outage in 2013 highlighted above in Laurel’s projection analysis would yield a gentler slope and extend the projection period beyond that presented by Laurel in the instant proceeding. Laurel’s St. 5-RJ at 3. While supplies to Pittsburgh from the Midwest are higher than the Eastern supplies in the winter, the opposite occurs in the summer. We acknowledge Laurel’s argument that when you compare the volumes supplied in 2006 to recent supplies to the Pittsburgh market from the east, there is a reduction in volume. Laurel’s M.B. at 67-68. Nevertheless, the result is different when you consider the trend in recent years. Indicated Parties’ St. 1-S at 28; Indicated Parties’ Exh. DSA-11 at 13-15. For example, contrary to Laurel’s claims, deliveries from the east to Pittsburgh in recent years show the following: 2012 – 62.5 MBPD, 2013 – 76.9 MBPD, 2014 – 91.3 MBPD, 2015 – 80.6 MBPD, 2016 – 63.8 MBPD, and twelve months ending July 2017 – 48.6 MBPD. Indicated Parties’ St. 1-S at 27, Table 1. These are clearly significant supplies to Pittsburgh from the east. The record also indicates that supplies from the east to four delivery points in Pittsburgh (Coraopolis, Delmont, Greensburg and Neville Island) in October 2017, show an increase when compared to supplies from the prior year. Laurel’s Supp. Exh. DWA-15. Hence, we are not convinced by Laurel’s projected decline to zero or that the projected decline justifies an abandonment of the pipeline.

Furthermore, the record evidence shows that since March of 2016, there has been an influx of the so-called lower-cost petroleum product from the Midwest to Pittsburgh due to recent expansions of pipeline capacities by Buckeye and ETP (Sunoco). For example, the record indicates that there has been approximately 297.2 MBPD supplied from the Midwest through these expansions, which far exceeds the demand of 103-113 MBPD for the Pittsburgh market. Indicated Parties’ St.1 at 19, Figure 4; Indicated Parties’ St. 1 at 20-21. Nevertheless, despite this inflow from the Midwest into the Pittsburgh market, there is still a significant flow of supplies from the east into Pittsburgh. The record indicates that movement from the Philadelphia area refineries to Pittsburgh increased from fifty-three percent in 2016 to fifty-seven percent as of August 2017. Indicated Parties’ St. 2-S at 13. While we acknowledge Laurel’s argument that these flows may be due to existing long-term contracts with shippers, there is nothing in the record to indicate that flows from the east through Laurel’s pipeline will decline to zero-supply to the Pittsburgh market as presented by Laurel. Indicated Parties’ St. 1-S at 25. We believe volumes from the east to Pittsburgh have, and will continue to fluctuate along the Laurel pipeline. Laurel’s St. 5-R at 35; Indicated Parties’ St. 1-S at 25-30; Indicated Parties’ St. 1 at 7-8.

Additionally, although the Indicated Parties acknowledge a reduction of summer blend gasoline into Pittsburgh from prior-year levels, they have also pointed out that approximately 60,000 BPD is still being transported to Pittsburgh through Laurel’s pipeline. Indicated Parties’ St. 2-S at 13; Indicated Parties’ St. 2 at 19, Fig. 19. They further noted that over the past year, the East Coast refineries have supplied an average of 50,000 BPD on the Laurel pipeline west of Eldorado. They indicated that sometime in 2016, the supply was at times as high as 75,000 BPD or more than half of the consumption of the Pittsburgh market. Tr. at 749; Indicated Parties’ Exh. DSA-11 at 15; Indicated Parties’ M.B. at 13-14; 52. The Indicated Parties further noted, in reliance on Laurel’s evidence, that nominations on the Laurel pipeline for destinations west of Eldorado for the months of October and November 2017 were over 60,000 BPD. Indicated Parties’ M.B. at 14 (citing Laurel Exh. DWA-16).

Finally, because the Philadelphia refineries consider Laurel’s pipeline extremely important to their operations and plan to continue utilizing the pipeline to transport their products to Pittsburgh and points west of the Philadelphia area, we conclude that Laurel’s zero-supply projection is overly aggressive. PESRM Exh. DWA‑16. Therefore, we are not convinced by Laurel’s projection that deliveries to Pittsburgh will reach zero by 2025. Consequently, we conclude that Laurel has failed to show by a preponderance of the evidence in this proceeding that the Laurel pipeline lacks the prospect of being used by customers in the future or that an approval of the proposed abandonment is warranted.

**3. The Loss to the Utility Balanced with the Convenience and Hardship to the Public Upon Discontinuance of Such Service**

a. Positions of the Parties

Laurel averred the reversal will provide significant public benefits for the following reasons. First, Laurel contended that because it would be impossible for Laurel to provide service to Pittsburgh from the east as volumes continue to decline, both Laurel and the public would be negatively impacted absent the reversal. Laurel’s M.B. at 178. Next, Laurel asserted that lower gasoline prices that would result from the reversal are a substantial benefit for Pennsylvania consumers. According to Laurel, the influx of lower-cost gasoline and the competition from the additional sales in the East Coast refineries will result in a decrease in price for consumers in Philadelphia and Central Pennsylvania.[[17]](#footnote-17) *Id.* Laurel also stated the reversal will increase supply security and reliability for Central Pennsylvania because Central Pennsylvania will be served by two pipelines as opposed to the current single pipeline supply. Laurel contended its proposal will decrease reliance on foreign oil imports that currently make up a significant portion of Pennsylvania’s supplies. *Id.* Laurel explained that the current push for adoption of more energy-efficient technologies and existing policies that promote increased energy efficiency will result in significant reduction in the demand for domestic gasoline and create more competitive pressure to lower gasoline prices. Laurel’s R.B at 83-86. Laurel emphasized that there are currently constraints in moving the low-cost petroleum product from the Midwest to Pittsburgh. According to Laurel, despite the availability of several refineries in the Midwest that are ready and willing to supply Pittsburgh, the existing constraints, including geographical and operational constraints, have deprived these refineries from pushing their products into the Pittsburgh market.[[18]](#footnote-18) Laurel’s M.B. at 81‑82.

Next, responding to the Philadelphia refiners’ contention that they will be harmed by the reversal, Laurel retorted that the harm to these refineries will be *de minimus,* at best. Per Laurel, the only potential harm to these refineries will be the loss of profits due to the lower prices they would be forced to compete with for product sales. Laurel noted that, on the contrary, the perceived harm by the Philadelphia refineries is nothing but a public benefit as it will enhance price reduction for Pennsylvania consumers. Laurel averred that because the Commission has a responsibility to regulate the public interest and not private interests, the potential of lost profits to these refineries should not supplant the potential public benefits that would result from the reversal. Laurel noted that because these refineries ship very low volumes to Pittsburgh and would be able to sell the low volumes in other markets, its proposed reversal is a non-issue. *Id.* at 178-179. Finally, according to Laurel, that the Indicated Parties will lose the ability to arbitrage the Pittsburgh market and make more profit from the arbitrage opportunities pales in comparison to the lower gasoline prices for Pennsylvania consumers that would accompany its proposed reversal. Laurel averred that the Indicated Parties will, as a matter of fact, not even lose out on the arbitrage opportunities, rather, these arbitrage opportunities will only be shifted east to the Eldorado market. *Id.* at 179.

The Indicated Parties, on the other hand, disagreed with Laurel stating that the record indicates that Laurel’s proposed abandonment would harm the public and the shippers and stakeholders that rely on the pipeline, including the general public served indirectly by the pipeline. Indicated Parties’ M.B. at 77. The Indicated Parties believe the abandonment would result in more volatile prices, reduce competition in the Pittsburgh market, result in higher prices in the Pittsburgh region, and result in supply shortages for petroleum products including low-RVP (Reid vapor pressure) gasoline.[[19]](#footnote-19) *Id.* It is also the Indicated Parties’ view that the reversal would trigger adverse consequences for the Philadelphia area refineries and thereby result in reduced production and loss of jobs. In addition, the Indicated Parties pointed out the associated negative impacts from an increase in truck traffic that would arise from the reversal. They highlighted the safety issues and the impact of increased trucking that would be necessary to transport petroleum products from the Midwest to Central Pennsylvania on local roads. From the Indicated Parties’ point of view, increased truck traffic would pose a substantial burden on local communities. *Id.* at 77-78. Finally, the Indicated Parties concluded that because Laurel failed to demonstrate any financial harm or loss to justify the reversal or to present any credible or reliable evidence in this proceeding to overcome the immense and adverse harm that would be caused by its proposed abandonment to the general public, the Commission should reject the proposal. *Id.* at 78-129.

In support of Laurel’s argument, Husky averred that the alleged loss of arbitrage opportunities in Pittsburgh by the Indicated Parties should be disregarded because it is speculative. Husky’s M.B. at 22. Citing to the U.S. Energy Information Administration (EIA) studies it presented in the instant proceeding, [[20]](#footnote-20) Husky stated that while the influx of lower-cost products from the Midwest would result in the availability of competitively-priced product in the Pittsburgh market, contrary to the Indicated Parties’ argument, the mere existence of an arbitrage opportunity does not translate into lower gasoline prices for consumers at the pump. *Id.* at 22-23. From Husky’s perspective, the Indicated Parties have not provided any evidence to support their assertion that the existing arbitrage opportunities in the Pittsburgh market increase the number of competing market participants or provide lower retail consumer prices. Husky argued the reversal and any related loss of East Coast supplies to the Pittsburgh market would not have an adverse effect on the prices in Pittsburgh, and because only a few wholesalers would likely benefit from the arbitrage opportunities, the Indicated Parties’ argument regarding the loss of the arbitrage opportunities should be rejected. Husky’s M.B. at 23 (citing Tr. at 1129-1130; Husky’s St. 1-RJ at 2).

b. ALJ’s Recommendation

The ALJ acknowledged Laurel’s contention that the reversal will be beneficial to the Pennsylvania public because it would result in increased supply of refined petroleum products from cheap domestic and Canadian crude oil sources from the Midwest to Pennsylvania and ultimately result in lower retail prices of the refined petroleum products. However, the ALJ also pointed out that despite having the burden of proof in this case, Laurel failed to provide any study or analysis to support its claim that the Midwest supply is the lowest-cost supply source. R.D. at 160-161. The ALJ stated that the record evidence shows several conditions, including the continued build-out of crude oil pipelines, connection of the crude oil to the Gulf Coast, increase in crude oil production in Texas due to the “Shale Revolution,” and the lifting of the ban on crude oil exports, have created a conducive environment for an increase in competitively-priced supply options for the East Coast refineries. *Id.* at 162.

According to the ALJ, the Pittsburgh market, which is being supplied from either the west or east on a seasonable basis, currently displays market dynamics that could neutralize or eliminate the cost-advantage from the Midwest that is being touted by Laurel. In fact, the ALJ stated, “I find that the Midwest refiners’ crude acquisition advantage over Eastern refiners is getting significantly reduced as Bakken and Canadian crude prices are approaching the Brent crude prices.” *Id.* The ALJ also highlighted Laurel’s refusal to quantify the effect of the abandonment on gasoline prices at the pump. *Id.* The ALJ reasoned that Laurel’s argument that middlemen in the Pittsburgh market do not pass along the arbitrage benefits currently enjoyed in the Pittsburgh market to retailers counteracts Laurel’s argument that the increased flow of lower-cost Western supply into Pennsylvania will benefit Pennsylvania consumers if the abandonment is approved. *Id.*

Additionally, although the ALJ recognized Laurel’s testimony that backing out the marginal supplier in Pittsburgh, which is likely trucks or barges, may reduce gasoline prices by about 5¢ per gallon or $80,000 per day, the ALJ questioned how Laurel arrived at this estimate without considering the wholesale prices and pipeline transportation rates. *Id.* at 163-164 (citing Indicated Parties’ R.B. at 75). Specifically, the ALJ noted that because the Indicated Parties have stated 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, there is a need for Laurel to substantiate its estimates with additional information. R.D. at 164 (citing Indicated Parties’ St. 1 at 40).

Referencing the Indicated Parties’ Table 6a and 6b (see footnote 21 below), the ALJ noted that the Indicated Parties’ delivered price analysis, which tracks the monthly differential between delivered prices from the Midwest and the East Coast on the Pittsburgh market over a 5-year period from 2012 to 2016, shows the gasoline supply from the East Coast to Pittsburgh is historically cheaper than that of the Midwest for seven to nine months out of twelve months in a year.[[21]](#footnote-21) R.D. at 165 (citing Indicated Parties’ M.B. at 90; Indicated Parties’ St. 1 at 25).[[22]](#footnote-22) Although the ALJ acknowledged that the delivered price of gasoline is not the same as its retail price, she, nonetheless, pointed out that because the delivered price is more closely related to the price at the pump than the price of crude oil, there is a need for additional studies or data to back up Laurel’s claim that Midwest supply is the lowest-cost supply source. R.D. at 166.

Next, the ALJ disputed Laurel’s claim that the proposed abandonment will benefit the public by improving the supply reliability to Pittsburgh and Central Pennsylvania. Contrary to Laurel’s assertion, the ALJ concluded the abandonment takes away an existing source of supply that has supplied between ninety-five percent and forty-five percent of the Pittsburgh market in recent years. The ALJ discounted as baseless, Laurel’s claim that PADD 1 is plagued by supply interruptions and that the reversal will benefit the Pennsylvania public by increasing its access to products from the Shale Revolution. Per the ALJ, Laurel failed to support its claim that the benefits from its proposed abandonment far outweigh the harm to Pittsburgh caused by losing the Laurel pipeline supply from the east. *Id.* at 166-167.

Regarding the two Eastern refineries, PESRM and Monroe Energy, the ALJ noted that even though Laurel stated that the complete loss of the Pittsburgh market to these two refineries as a result of the reversal will have minimal impact on the refineries, this argument is not supported with any cost and revenue analysis or any type of data. According to the ALJ, because there is no data to determine the impact of the decrease in volume of the Altoona-Pittsburgh portion of Laurel’s pipeline and the extent of the loss to Laurel, there is no way to ascertain that the benefit to the East Coast refineries from the reversal outweigh the harm. *Id.* at 168-169. On the other hand, the ALJ found the reversal of the Altoona-Pittsburgh portion of the Laurel pipeline will substantially reduce PESRM and Monroe Energy’s ability to move product out of their respective refineries, thereby resulting in reduced production, reduced revenue, and loss of jobs for the refineries. *Id.* at 169. According to the ALJ, prior economic studies indicate that if PESRM were to close, approximately 1,100 refinery jobs would immediately be lost and another approximately 12,000-21,600 jobs would be at risk. *Id.* (citing PESRM St. 1 at 10).

Finally, the ALJ discussed Laurel’s argument that the benefits of its proposed reversal can be brought further into Pennsylvania or further west into the Pittsburgh market because the Midwestern product shipped to Altoona can be trucked further east. The ALJ found that this argument overlooks the potential danger and safety issues from the increase in truck traffic associated with the abandonment. The ALJ disagreed with Laurel’s determination that current truck traffic would be reduced by the abandonment because low-cost refined products from the Midwest would no longer need to be trucked from Pittsburgh to Altoona. The ALJ concluded that trucking of petroleum products was not currently occurring between Pittsburgh and Altoona in lieu of pipeline transportation. R.D. at 169-171.

Based on all of the above, the ALJ concluded that the inconvenience and hardship associated with Laurel’s proposed reversal far outweighs the potential loss Laurel would experience and recommended that the Application be denied. *Id.* at 171, 200.

c. Exceptions, Replies & Dispositions

i. Laurel’s Exception No. 6, Husky’s Exception No. 3(2), and the Indicated Parties’ Replies

Laurel faults the ALJ for relying on the Indicated Parties’ delivered price analysis rather than Laurel’s cost of crude oil analysis as the real determinant of retail gasoline prices. Laurel’s Exc. at 21. Laurel disputes the ALJ’s conclusion that it failed to present any data or studies to support its argument that the Midwestern refineries have access to Bakken and Western Canadian Select crude oil, which are cheaper than the Brent crude used by the East Coast refineries. *Id.* (citing R.D. at 161; Laurel’s M.B. at 72-74, 78-80, 91-92). Laurel argues that not only did its witness establish this fact, but that the Indicated Parties’ witness also testified and provided reliable documents to support this fact. Laurel also disputes the ALJ’s conclusion that the cost-advantaged Midwestern refineries’ crude sources will be neutralized or eliminated by their continued connection to global crude oil markets such as the Brent crude prices and transportation costs. Laurel’s Exc. at 21-23.

Husky agrees with Laurel that the ALJ ignored the overwhelming record evidence supporting Laurel’s public benefit argument, including the fact that the reversal will result in the flow of lower-cost petroleum products from the Midwest to Western and Central Pennsylvania. Husky’s Exc. at 18. Citing to the two EIA studies,[[23]](#footnote-23) which Husky believes the ALJ conveniently chose to overlook, Husky argues that “from 2005 to 2015, Midwest refinery and capacity production, coupled with stagnant to declining demand, have made the region more self-sufficient and less dependent on supply from the Gulf Coast while the East Coast is largely dependent on supply from the Gulf Coast.” *Id.*

Specifically, Husky avers that both studies indicate that East Coast production decreased from 1.7 MBPD to 1.3 MBPD while production in the Midwest increased by 320,000 BPD. Husky’s Exc. at 18 (citing Husky’s M.B. at 16-17). According to Husky, the PADD 2 Study further underscores the access to abundant, cost-advantaged crude oil supply and the expansion opportunities afforded to the Midwest refineries by these various sources of crude oil, including the Canadian oil sands crude. Husky’s Exc. at 18-19 (citing Husky’s M.B. at 16-17; Husky’s Exh. JPM-4 at xv). In addition, Husky asserts that the ALJ also failed to acknowledge the testimony of its witness that as of November 2017, cost of WTI crude was $6.76 cheaper than the Brent crude sourced by the East Coast refineries. According to Husky, the record evidence clearly shows the Midwest refineries’ have access to cheaper crude compared to the East Coast refineries. Husky’s Exc. at 19. From Husky’s perspective, the Commission is doing a disservice to the future economic conditions and outlook of Pennsylvania by rejecting Laurel’s proposed reversal. *Id.* at 19-20.

In Reply, the Indicated Parties argue the ALJ correctly determined that Laurel failed to demonstrate in the instant proceeding that Midwestern supplies are cheaper than East Coast supplies. Indicated Parties’ R. Exc. at 13. The Indicated Parties state that contrary to the evidence Laurel presented, they presented a detailed delivered price analysis which shows the actual costs of Midwest and Eastern supply sources into Pittsburgh to disprove Laurel’s argument that Midwest supply is the lowest-cost supply source. *Id.*

ii. Laurel’s Exception No. 7, Husky’s Exception No. 3 (3) and the Indicated Parties’ Replies

In its Exception No. 7, Laurel argues that despite the overwhelming record evidence, the ALJ failed to recognize the fact that the reversal would decrease retail gasoline prices in Central and Eastern Pennsylvania. Laurel states that the ALJ’s conclusion that Laurel “refuses to quantify the effect of the reversal on gasoline prices at the pump” is simply not accurate. Laurel’s Exc. at 23-24 (citing R.D. at 162). Laurel contends that contrary to the ALJ’s conclusion, it presented sufficient evidence, including data and studies to support its claim that the reversal will decrease gasoline prices. Laurel further avers that documents provided by the Indicated Parties also support its claim. Laurel’s Exc. at 24. According to Laurel, it specifically demonstrated that Pittsburgh prices can be directionally projected to decrease because: 1) the historic and projected future crude-cost acquisition advantage and production efficiencies of Midwestern refineries will continue to increase the volume of Midwestern supplies attempting to reach Pennsylvania; 2) Laurel’s proposed reversal, as a part of Buckeye’s Broadway II project, will alleviate capacity constraints that would otherwise prevent these supplies from reaching Pittsburgh; and; 3) these lower-cost supplies would result in lower retail gasoline prices by backing out the current, highest-cost suppliers in Pittsburgh, *i.e.,* foreign refined barrels. *Id.* (citing Laurel’s M.B. at 72-86, 89-94).

Additionally, Laurel argues that contrary to the ALJ’s determination, not only is its estimated gasoline price of approximately 5¢ per gallon or $80,000 per day, supported by documents provided by the Indicated Parties, but it is also supported by a breakdown of retail gasoline costs represented by “distribution and marketing costs” that it presented. Per Laurel, this breakdown subsumes wholesale prices and transportation rates, which it contends the ALJ erroneously did not consider in her analysis. Laurel’s Exc. at 25-26 (R.D. at 162). Laurel further contends the ALJ’s determination that the delivered price of gasoline “is more closely related to the price at the pump than the price of crude oil” is misplaced and undermines the record evidence. Laurel’s Exc. at 26 (R.D. at 166). According to Laurel, contrary to the ALJ’s determination, crude oil is the overwhelming determinant of retail gasoline prices and the ALJ’s reliance on a flawed delivered price analysis presented by the Indicated Parties discredits her conclusion that the reversal will harm the Pennsylvania market. Laurel’s Exc. at 27.

Husky, in its Exception No. 3(3), supports Laurel’s argument, stating that even with the cost of transportation, the Midwest supplies are still cheaper than supplies from the East Coast refineries because they operate more efficiently, less expensively, and have access to competitively-priced feedstock crudes.[[24]](#footnote-24) Husky’s Exc. at 20. According to Husky, the reversal would provide Western and Central Pennsylvania consumers with access to generally lower-priced Midwestern gasoline and petroleum products. *Id.* Husky argues the ALJ’s conclusion failed to consider the evidence on the record showing lower price trends for the Midwest when compared to the East Coast prices. Specifically, comparing the Chicago Index with the New York Harbor Index, Husky asserts the Chicago Index is currently and has always been lower-priced. Per Husky, this price difference will continue as the Midwest region becomes more self-sufficient and will ultimately result in cheaper supplies into Pittsburgh compared to supplies from New York. *Id.* at 21 (citing Husky’s M.B. at 19). Husky further notes that in 2014, prior to the commissioning of the Allegheny Access pipeline, the Oil Price Information Service (OPIS) low prices for Pittsburgh gasoline were 2.53 cents per gallon (cpg) higher than Chicago’s prices. However, after the Allegheny pipeline was commissioned in 2015, the increase in supply from the Midwest to Pittsburgh resulted in a gasoline price of 3.56 cpg below Chicago’s price. This, according to Husky, was a 6 cpg swing in pricing in just a year and was beneficial to Pittsburgh consumers. Husky’s Exc. at 21 (citing Husky’s M.B. at 19).

Furthermore, Husky points out that while it is not an easy task to make a direct correlation between lower wholesale prices from lower-cost Midwest supplies and the price that retailers would charge their end users, the theory of demand and supply establishes that enhanced access to lower-cost Midwest supplies by the Pittsburgh market would cause the consumer prices to fall. Husky’s Exc. at 21-23. Therefore, Husky avers the ALJ’s conclusion should be rejected because it overlooked several pertinent portions of the record evidence supporting Laurel’s argument that the reversal will be beneficial to Pennsylvania consumers by decreasing retail gasoline prices in Pennsylvania. *Id.* at 23.

In Reply, the Indicated Parties agree with the ALJ’s conclusion that Laurel’s proposed reversal will not decrease retail gasoline prices in Central and Eastern Pennsylvania or benefit Pennsylvania consumers. Indicated Parties’ R. Exc. at 14. Disputing Laurel’s claim that all Parties in the instant proceeding agree that the reversal will decrease gasoline prices in Central and Eastern Pennsylvania, the Indicated Parties clarified that the “price war” referenced by PESRM’s witness, John Sadlowski,relates to prices in the New York Harbor market and not prices in the Pennsylvania markets. *Id.* at 14-15 (citing Indicated Parties’ M.B. at 74). Further, the Indicated Parties aver the approximately 5¢ per gallon or $80,000 per day benefit for Pittsburgh consumers highlighted by Laurel’s witness, Dr. Jones, is not supported by any reliable data. The Indicated Parties also point out several flaws in Husky’s claim that it provides the most “competitively priced gasoline 27% of the time.” Indicated Parties’ R. Exc. at 15 (citing Husky’s M.B. at 22). Contrary to Laurel and Husky’s assertions, the Indicated Parties argue the thorough and comprehensive analysis they provided demonstrates that Pittsburgh market participants benefit from access to low cost supplies from the Eastern refineries. Indicated Parties’ R. Exc. at 15.

iii. Laurel’s Exception No. 8 and the Indicated Parties’ Replies

In its Exception No. 8, Laurel avers that in addition to ignoring the fact that the reversal would result in lower gasoline prices for Pennsylvania consumers, the ALJ also failed to examine other benefits of the reversal. Laurel argues the reversal would be beneficial to national and state energy policies because it would reduce reliance on overseas imports of foreign oil by backing those barrels out of Pennsylvania markets, thereby furthering longstanding national energy policy. Laurel’s Exc. at 27-28 (citing Laurel’s M.B. at 101-106).

In Reply, the Indicated Parties disagree with Laurel, arguing that the ALJ reached her determination after conducting a thorough examination of Laurel’s public benefit claims and found them to be unsubstantiated. Indicated Parties’ R. Exc. at 15-16.

iv. Laurel’s Exception No. 10 and the Indicated Parties’ Replies

In its Exception No. 10, Laurel disagrees with the ALJ’s determination that it failed to demonstrate that *no harm* to Pittsburgh and Philadelphia market participants would result from the proposed reversal. Laurel’s Exc. at 31. Laurel reiterates its argument that “the proper, affirmative public benefits test does not require that every customer of a utility benefit from the utility’s proposal.” *Id.* (citing *Popowsky* 594 Pa. at 617, 618, 937 A.2d at 1061). Laurel argues the ALJ’s conclusion which requires Laurel to demonstrate a complete absence of harm to any market participant should be rejected because Pennsylvania law generally concludes that the party with the burden of proof cannot be required to prove a negative in order to prevail. Laurel’s Exc. at 31-32 (citing *Tincher v. Omega Flex,* 628 Pa. 296, 431, 104 A.3d 328, 409 (2014); *Commonwealth v. 1997 Chevrolet,* 106 A.3d 836 (Pa. Cmwlth. 2014)).

According to Laurel, the ALJ’s recommendation should be rejected because despite Laurel’s demonstration with credible evidence that the reversal would be beneficial to Pittsburgh consumers, the ALJ relied on the Indicated Parties’ inaccurate and flawed arbitrage and price volatility analyses to reach a conclusion that the reversal would harm Pittsburgh consumers. *Id.* at 32-33 (citing R.D. at 162-163, 165-168). Laurel disputes the ALJ’s determination of harmful effects resulting from the reversal, including that the reversal will harm East Coast refineries, *i.e.,* PESRM and Monroe Energy, because it will “substantially diminish PESRM’s and Monroe’s ability to move product out of their respective refineries.” Laurel’s Exc. at 33-34 (citing R.D. at 169). Specifically, Laurel argues that the Philadelphia refineries’ pricing structure for the Pittsburgh market, coupled with the fact that products shipped to the Pittsburgh market by the Philadelphia refineries have continued to decline on an annual basis, makes the ALJ’s qualification that the Pittsburgh market is “important and irreplaceable,” baseless. Laurel’s Exc. at 34-35.

Additionally, Laurel argues that contrary to the ALJ’s conclusion, the Indicated Parties’ “so-called harm” to the East Coast refineries from the reversal would ultimately result in lower cost of petroleum products for Central and Eastern Pennsylvania consumers. Laurel’s Exc. at 34 (citing Laurel’s M.B. at 154; Laurel’s R.B. at 86). Furthermore, Laurel avers that to the extent the ALJ’s recommendation is intended to keep the Philadelphia refineries solvent, it should be denied because it is outside the Commission’s purview to regulate or ensure the solvency of non-regulated, competitive entities that take service from a common carrier pipeline. Laurel’s Exc. at 36 (citing Laurel’s M.B. at 38-39). Finally, Laurel considers unfounded the ALJ’s conclusion that it failed to show that trucking products from Altoona “will not be dangerous and harm…the Pennsylvania public,” because there is no evidence on the record to demonstrate that the post-reversal trucking level will be greater than the present level. Laurel’s Exc. at 36 (citing R.D. at 170; Laurel’s M.B. at 171-173). Laurel argues the ALJ’s conclusion undermines other regulatory agencies’ responsibility for the safety of trucking petroleum products and overlooks the fact that there are already thousands of tanker trucks making routine deliveries as part of the process of transporting petroleum products. Laurel’s Exc. at 36-37 (citing Laurel’s M.B. at 139). Therefore, Laurel requests that the Commission reject the ALJ’s determination of alleged harms associated with tanker truck transportation of petroleum products. Laurel’s Exc. at 37.

In Reply, the Indicated Parties agree with the ALJ’s determination that Laurel has not met its burden of proof regarding this issue. They argue that contrary to Laurel’s position, proving lack of harm, whether *de minimus* or not, does not result in affirmative benefit. The Indicated Parties maintain that irrespective of whether *Popowsky* applies in this case, there is no disputing the fact that approval of Laurel’s proposal requires both affirmative benefits and a showing that those who are supposed to benefit from the reversal are not harmed instead. However, in this case, not only was there a finding that there was no benefit to Laurel’s customers, the ALJ also found that key stakeholders will be harmed by the reversal, argue the Indicated Parties. Indicated Parties’ R. Exc. at 18-19. The Indicated Parties specifically reference the ALJ’s determination that some of the harm from Laurel’s proposal includes customers paying higher prices for gasoline and the fact that the reversal may adversely impact Pennsylvania refineries. *Id.* at 19 (citing R.D. at 169). The Indicated Parties explain that the ALJ was right in relying on their delivered price and volatility analyses in reaching a conclusion that the Midwest price volatility that form the basis of Laurel’s argument for lower consumer prices is wholesale-driven and that the benefits from the existing arbitrage opportunities for Pittsburgh market participants would be lost if the proposal were to be approved. Indicated Parties’ R. Exc. at 19-20.

Additionally, the Indicated Parties agree with the ALJ’s conclusion that Pittsburgh is an important and irreplaceable market for the East Coast refineries. *Id.* at 20 (citing R.D. at 118). The Indicated Parties contend the current volumes flowing from the East Coast Pennsylvania refineries through Laurel’s pipeline and the fact that Laurel’s customers plan to continue to use Laurel’s east to west service to Pittsburgh makes a legitimate case for the rejection of the proposal. The Indicated Parties further dispute Laurel’s argument that customers will benefit if East Coast refineries are forced to sell products formerly moving to Pittsburgh to markets with lower prices. According to the Indicated Parties, while this may be beneficial on a short-term basis, it would be harmful on a long-term basis because such unsustainably lower price levels may force the closure of the refineries. Indicated Parties’ R. Exc. at 20.

Furthermore, while acknowledging that there has been a decline in the volumes transported on the Laurel pipeline from the east to the Pittsburgh market during the 2006 to 2017 period, the Indicated Parties believe Laurel exaggerated the overall impact of this decline because the record evidence shows the East Coast refineries still supply over half of the Pittsburgh market. *Id.* at 21 (citing R.D. at 100, 107-109, 117-118). The Indicated Parties argue Laurel’s proposal, which eliminates the market west of Eldorado, will diminish the index price across the entire Laurel pipeline and further reduce the overall amount of product PESRM and Monroe Energy will pump into the pipeline as there will be no increase in demand to make up for the loss of the Pittsburgh market. The Indicated Parties believe this will be harmful to the Philadelphia refineries, as Monroe Energy uses the Laurel pipeline for half of its production and both refineries will be forced to change product mix to include larger percentages of the very expensive reformulated gasoline. Indicated Parties’ R. Exc. at 21-22.

Next, the Indicated Parties dispute Laurel’s assertion that the ALJ’s recommendation is premised on keeping the Philadelphia refineries solvent. The Indicated Parties contend Laurel failed to acknowledge that not only would the reversal harm the Philadelphia refineries but that there are also several other adverse consequences that would result from the reversal. The Indicated Parties argue Laurel failed to recognize the fact that the ALJ simply balanced any loss to Laurel with the hardship its proposed reversal would cause to the public consistent with Pennsylvania law and found that the potential harm from Laurel’s proposal far outweighs any loss to the utility. *Id.* at 22.

Finally, the Indicated Parties note that contrary to Laurel’s argument in its Exceptions, the ALJ only took issue with Laurel’s contention that the reversal would reduce truck traffic. The Indicated Parties point out that since there are currently no products being trucked from the Midwest into Pennsylvania, there is no logical explanation for the reversal to be safer than the current situation from a truck traffic perspective. According to the Indicated Parties, even if trucking were a more economically viable option for moving product from Altoona into the Pittsburgh market, the record evidence supports a finding that that the potential increase in truck traffic from the reversal would increase the risk of serious accidents, and Laurel has not provided any evidence to the contrary. *Id.* at 23.

d. Disposition

Upon review, we will deny the Exceptions filed by Laurel and Husky regarding the extent of loss to Laurel and balancing the associated public benefits to the harms from Laurel’s proposed reversal. We agree with the ALJ’s conclusion that after a consideration of the current loss to Laurel and the potential benefits from the reversal, we are not convinced that Laurel has provided sufficient evidence in this proceeding to satisfy its burden of proof regarding its proposed reversal. We note that nothing in the record evidence leads us to conclude that the low-cost supplies from the Midwest touted by Laurel and Husky warrant an approval of the instant proposal. We disagree with Laurel’s argument that it has provided sufficient evidence in this proceeding to demonstrate the extent of loss to the utility and to show that the benefits from its proposed reversal outweigh the potential harm to Laurel’s customers and the Pennsylvania public. Rather, we agree with the Indicated Parties that Laurel failed to recognize the fact that the ALJ balanced any loss to Laurel with the potential hardship the proposed reversal would cause the public and found that Laurel failed to demonstrate by a preponderance of the evidence that the benefits outweigh the potential harm that would result from its proposed reversal. Indicated Parties’ R. Exc. at 22.

We note that Laurel’s proposal in the instant proceeding is anchored on the fact that the proposed reversal will not only address a portion of its pipeline that would soon be a wasted asset due to the continuous decline of its westbound volumes, but that the reversal will also produce substantial public benefits by providing Pennsylvania with increased access to lower-cost Midwestern petroleum product supplies that will result in: 1) lower gasoline prices in Western, Central and Eastern Pennsylvania; 2) increased supply security and reliability in Central Pennsylvania; and 3) decreased reliance on foreign oil imports that currently make up a significant portion of Pennsylvania’s supplies. Laurel’s M.B. at 1-2, 60. However, we do not agree that Laurel has provided sufficient evidence to corroborate these assertions, and we are not convinced that the benefits from the proposed reversal outweigh the potential harms to Laurel’s customers and the Pennsylvania public.

Having already addressed Laurel’s claim of continuous decline in its westbound volumes in our earlier disposition, we note that if for the sake of argument, we consider the fact there may be an increase in supply from the Midwest and an associated reduction in the price of gasoline in the Pittsburgh market, Laurel has not convinced us that these benefits outweigh the potential hardship from the reversal. As can be seen from the record evidence, the associated harms from Laurel’s proposed reversal, *inter alia,* include: (1) the potential of the Pittsburgh market to lose access to supply from the east and the accompanying competitive pricing; (2) the potential of the Philadelphia area refineries to lose their major customer (Pittsburgh market) and experience closure of the refineries, which could result in loss of jobs, production, and other adverse economic impacts to the Philadelphia area; and; (3) the potential safety and economic impacts of trucking petroleum products in Pennsylvania, post-reversal.

Regarding the options and price-competitiveness available to the Pittsburgh market, the Indicated Parties provided evidence to show that currently, three pipelines supply the greater Pittsburgh area. On behalf of Sheetz, Michael Lorenz testified that these pipelines include the Allegheny and Buckeye pipelines that supply the Pittsburgh area from the west and the Laurel pipeline that supplies the Pittsburgh market from the east. Mr. Lorenz also testified that as the only pipeline that supplies the Pittsburgh market from the east, the Laurel pipeline supplies over fifty percent of petroleum products from the east to the Pittsburgh region, which makes it a critical source of supply to the Pittsburgh market. He further testified this gives the pipeline a unique price determinant for the Pittsburgh market, since it is the only source of supply from the east. Sheetz’s St. 1 at 3. Mr. Lorenz stated that the East Coast supply is critical to the reliability and cost-effectiveness of the Pittsburgh market. He described the Pittsburgh region as an arbitrage point or a point where supply from the east and the west converge, giving buyers an opportunity to choose the lowest cost supplier. Mr. Lorenz indicated that a reversal will shift the arbitrage point from Pittsburgh to Eldorado, which serves the Altoona, Pennsylvania area, with a population of approximately 0.13 million compared to Pittsburgh, which has a population of 2.6 million people. Sheetz’s St. 1 at 3*.* According to the Indicated Parties, if supply from the Midwest were interrupted, the Laurel pipeline could still supply Pittsburgh from the east. However, if the proposal is approved, Pittsburgh will only get its supply from the west, leaving it vulnerable to supply disruptions that could lead to supply shortages in the Pittsburgh region. Sheetz’s St. 1 at 3-4; PESRM’s St. 1-S at 8-9.

On the other hand, Laurel has argued that Pittsburgh will continue to be served by multiple sources even after the reversal. Laurel’s M.B. at 96-97. According to Laurel, Pittsburgh will still be able to access petroleum products from a variety of alternative transportation sources, including: (1) Sunoco from the Midwest; (2) Marathon 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’s M.B. at 97, 136; Laurel’s St. 2 at 6; Laurel’s St. 5 at 22-25.

A critical look at Laurel’s recommended alternative pipeline supplies to Pittsburgh above shows they are almost all from the west. The recommended supplies from the east by Laurel involve the potential of trucking or barging petroleum products from Altoona to Pittsburgh post-reversal, which we have already identified as inadequate alternatives. It is clear from these identified alternatives that the Pittsburgh market is or could still be sufficiently supplied by various sources from the Midwest, absent the proposed reversal.[[25]](#footnote-25) We acknowledge Laurel’s argument that the harm to Pittsburgh resulting from losing supply from the east is outweighed by the potential increase in reliability to Central Pennsylvania from the reversal. Laurel’s M.B. at 96-97. However, we question Laurel’s proposed reversal, especially because, as we will explain later, we are concerned with the potential increase in truck traffic due to the reversal. Laurel has indicated that lower-cost petroleum products from the Midwest will be trucked from Altoona to Central Pennsylvania. Consequently, we find it troubling that the reversal will take away the only source of pipeline supply from the east to Pittsburgh, which is the second largest petroleum product market in Pennsylvania. We, therefore, agree with the Indicated Parties that the reversal will eliminate price competitiveness from the east and potentially leave the Pittsburgh region to rely solely on supplies from the west. Indicated Parties’ M.B. at 86-87.

We also agree with the Indicated Parties that Pittsburgh consumers currently benefit from the opportunity to buy product from the lowest cost supplier, either from the east or west, and should not be deprived of these advantages. The record evidence demonstrates that there are certain times of the year Pittsburgh sources supply from the Midwest and other times of the year it sources supplies from the east. We do not believe it is appropriate to deprive the Pittsburgh market, which is a major market for the East Coast refineries, the opportunity of having this option at its disposal. We believe this price competition and supply optionality is beneficial to the Pittsburgh consumers, especially as it pertains to their daily retail gasoline prices. PESRM St. 1-S at 10-11. This is even more pertinent, as testified by theIndicated Parties, that the Eastern refineries enjoy an increase in competitively-priced crude oil supply options due to the continued build-out of crude oil pipelines connecting the Midwest supply sources with those of the Gulf Coast, 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, which has now more closely connected those crudes to global crude oil markets. Indicated Parties’ St. 2 at 48-51; Indicated Parties’ St. 2-S at 15-16.

We agree with the Indicated Parties that the reversal could potentially eliminate the supply optionality currently available to the Pittsburgh market from the east. This is because the reversal would result in the elimination of supplies from the East Coast refineries to Western Pennsylvania, which effectively takes away from Western Pennsylvania consumers the pricing from the east and leaves Pittsburgh captive to only Mid-continental pricing and the inability to access alternative supplies in the event of a supply disruption from the west. We find that this potential situation counteracts Laurel’s argument regarding price competition that would arise from its proposed reversal. PESRM’s St. 1-S at 6-7; Gulf’s St. 1 at 4-5, 9, 11; Sheetz’s St. 1-S at 4-8, 10-11. Laurel’s proposed reversal appears to eliminate competition from the East Coast refineries in the Pittsburgh market, leaving Pittsburgh consumers at the mercy of supplies and pricing from the Midwest only.

Consequently, contrary to Laurel’s arguments, we agree with the Indicated Parties that a reversal of the pipeline, will, *inter alia,* potentially result in an increase in retail gasoline prices in the Pittsburgh market and presents certain potential vulnerabilities to the Pittsburgh consumers. Indicated Parties’ M.B. at 25-26. Furthermore, from a Pennsylvania economy standpoint, we acknowledge and are troubled by the fact that the proposed reversal would allow the transportation of petroleum products almost entirely from the Midwest but effectively eliminate any perceived benefits to Pennsylvania petroleum refining or producing entities. Indicated Parties’ St. 3-S at 8, Indicated Parties’ St. 5-S at 8-9.

With regard to the Philadelphia refineries, after a consideration of the potential impact of the reversal on PESRM and Monroe Energy, the Philadelphia area, and the Pennsylvania economy, we do not believe the benefits from the reversal outweigh the potential harm. PESRM averred that it and its previous owners have been using Laurel’s pipeline since the Commission authorized service in 1957. PESRM’s St. 1 at 9. PESRM has indicated that the reversal could potentially affect its bottom-line or even lead to closure of the refinery as PESRM does not have an alternative market to send the current significant volume it sends to Pittsburgh. *Id.* at 8-10. PESRM and Monroe Energy noted that the reversal will result in a combination of lower prices, non-viable markets, poor alternative transportation options and production cutbacks, which may lead to further devastating impacts on the Philadelphia-area economy. Tr. at 979; 1129-1130; PESRM’s St. 1 at 8-10; Monroe Energy’s Exh. TS-2.

PESRM stated the reversal could lead to closure of its operations because PESRM may not have a reasonable replacement market for the Pittsburgh supply and that may result in the immediate loss of approximately 1,100 refinery jobs, including putting another 12,000 to 21,600 jobs at risk. PESRM’s St. 1 at 10-12. According to PESRM, the impact of this occurrence places the Philadelphia regional economy in a very precarious situation, as it may lead to the loss of billions of dollars. PESRM points to recent studies which estimate that the Philadelphia economy could reduce by approximately 10,000 jobs in the first year of closure of the refinery, resulting in the loss of more than $1 billion in labor income, $2.4 billion in value added, $6.4 billion in output, and $175 million in state and local taxes. In other words, the adverse impact of the closure of the Philadelphia refineries on the Pennsylvania economy may be significant. PESRM’s St. 1 at 9-10; PESRM’s St. 1-S at 11-12.

Regarding trucking post-reversal, the Indicated Parties contended that while Laurel anchors the benefits of its proposed reversal on potentially extending low-cost petroleum products from the Midwest to Pittsburgh and Central Pennsylvania consumers in Altoona, Williamsport and Harrisburg, Laurel failed to present any form of cost-benefit study or analysis to ascertain the potential costs or benefits of transporting these low-cost supplies to Central Pennsylvania, including the potential increase in truck traffic.[[26]](#footnote-26) Tr. at 350, 685; Indicated Parties’ M.B. at 79, 85, 120. Laurel, on the other hand, argued the reversal will likely decrease truck traffic between Pittsburgh and Altoona because absent the reversal, low-cost refined products would, otherwise, be trucked from Pittsburgh to the Altoona market. Laurel’s M.B. at 171-172. Notwithstanding Laurel’s contention that the reversal will reduce trucking, the Indicated Parties argued that the reversal will cause approximately twenty-four “additional” truck trips per day in the winter and approximately 447 “additional” truck trips per day in the summer. Laurel’s M.B. at 125-126; Indicated Parties’ St. 1 at 38; Indicated Parties’ St. 4 at 22. Laurel retorted that the Indicated Parties’ estimate is based on an erroneous presumption that the entire historic quantity of deliveries on Laurel’s pipeline to Pittsburgh will be replaced by trucks. Laurel argued the Indicated Parties’ estimate is wrong because it failed to consider the continuous decline of products from the Midwest to Pittsburgh and offset the impact of truck traffic from Pittsburgh to Altoona and Harrisburg absent the reversal. Laurel’s M.B. at 172.

Here, the record evidence is clear that Laurel has not done any cost-benefit analysis regarding the potential increase or reduction of truck traffic associated with the reversal. For instance, Laurel has not provided any evidence or analysis of: (1) how many additional trucks would be needed to transport the Midwest products from Eldorado to the rest of Central Pennsylvania; (2) the capacity of the truck racks to accommodate any increased truck traffic that would result from the proposal; (2) who would need to make such investments; or, (3) how much it would cost. 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 Pennsylvania Turnpike tunnel restrictions. Tr. at 685-686, 673, 679; Gulf’s St. 1 at 6-8; Indicated Parties’ St. 4 at 9-10; Laurel’s St. 5 at 39-40. The Indicated Parties noted that, at best, Laurel has put forth unsubstantiated 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.” Indicated Parties’ M.B. at 85-86.

The Indicated Parties further testified regarding several barriers and safety concerns associated with trucking petroleum products from the Midwest to several areas within Pennsylvania that would result from the reversal. In their testimony, the Indicated Parties highlighted the potential dangers and serious devastating impacts of tanker truck accidents carrying highly volatile and extremely hazardous petroleum products, especially, if they travel through very populated areas. Indicated Parties’ St. 4 at 3--22. Some of the dangers of accidents involving tanker trucks, according to the Indicated Parties, are death, damage from fire and/or explosion, hazardous spills and the enormous costs associated with the clean-up and associated hazardous waste disposal, should there be a spill due to a tanker truck accident carrying petroleum products. *Id.* at 22. While we acknowledge Laurel’s argument that trucking is currently being used to transport petroleum products in Pennsylvania, the fact that the reversal could potentially increase truck traffic, be an additional burden on Pennsylvania roads and communities, and ultimately increase the possibility of trucking accidents in Pennsylvania is troubling, to say the least.

Based on all of the above, we find that Laurel has failed to demonstrate by a preponderance of the evidence that the loss currently experienced by Laurel or the benefits from its proposed reversal outweigh the associated harms. As such, we shall deny Laurel’s and Husky’s Exceptions regarding this matter.

4. Availability and Adequacy of the Service to Be Substituted

a. Positions of the Parties

Laurel argued that after the reversal, the Laurel pipeline is not going out of service, but it will be bringing lower-cost refined products to Pittsburgh from the Midwest. Laurel declared that all shippers will be able to ship all of the same products they currently ship to all of the same locations. Laurel contended that this is more than an adequate alternative. Laurel’s M.B. at 179. Laurel also proposed alternatives regarding the Pittsburgh markets and the Eastern refineries.

Laurel maintained 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 from the Midwest; (2) Marathon 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 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’s M.B. at 136 (citing Laurel’s St. 2 at 6; Laurel’s St. 5 at 22-25).

Additionally, Laurel asserted that the East Coast refineries have many other markets besides Pittsburgh to sell their products, including selling more products in the East Coast area which will back out imports from overseas. Laurel declared that the Eastern Refineries will continue to be connected to many major markets on the Laurel and/or combined Laurel/Buckeye system, which include northern Pennsylvania and upstate New York. Laurel averred that the Eastern Refineries also will still have access to other pipelines, including Sunoco Pipeline’s East Line, the New York Harbor via both pipeline and barge and to the local Philadelphia market via truck racks. Laurel’s M.B. at 180.

The Indicated Parties asserted that whether by truck, barge, rail, pipeline, or product exchange, Laurel has not identified adequate alternatives to replace sixty years of pipeline service connecting East Coast refineries to Pittsburgh-area destination markets. The Indicated Parties claimed that granting the proposed abandonment would eliminate access to East Coast refinery output for Pittsburgh area wholesalers, retailers, and consumers despite the clear evidence that the market currently chooses East Coast supply to meet approximately half of its product demand. The Indicated Parties maintained that with the demonstrated lack of adequate alternatives to continue supplying the Pittsburgh area with East Coast refinery output, the proposed abandonment would harm both the Pittsburgh and Philadelphia economies. Indicated Parties’ M.B. at 139.

Husky supported Laurel’s proposed reversal of the Eldorado-Pittsburgh segment of the Laurel pipeline. Husky provided that the project is responsive to market forces and would enable the movement of competitively-priced refined petroleum products from refineries in the Midwest to consumers in Western and Central Pennsylvania. Husky averred that the proposed reversal is in response to disruptive changes taking place in the petroleum products industry, including growing access by Midwest refineries to abundant, cost-advantaged crude supply; the declining volumes of products being transported from the East; and continued investment in Midwest refineries, contrasted with the closure of and lack of investment in East Coast refineries. Husky’s M.B. at 1.

b. ALJ’s Recommendation

The ALJ discussed the list of options Laurel recommended as available to 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 abandonment. R.D. at 193.

Regarding the Pittsburgh market, the ALJ noted that 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. R.D. at 193 (citing Laurel’s M.B. at 137). According to the ALJ, the mere availability of supply sources does not paint the whole picture for a market like Pittsburgh. The ALJ reasoned 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. R.D. at 194 (citing Indicated Parties’ St. 1 at 26, Sheetz’s St. 1 at 9, and Laurel’s Exh. MJW-11 at 5). The ALJ stated that the proposed reversal would leave the Pittsburgh area without pipeline access to the low-RVP gasoline that the East Coast refineries produce. RD at 194.

The ALJ noted that Laurel maintains that Midwest refineries are technologically capable of efficiently and economically producing sufficient volumes of low-RVP gasoline to supply the entire Pittsburgh market demand during the summer months. The ALJ further noted that 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. *Id*. The ALJ reasoned 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 (sales price net of transportation costs) when faced with competition from East Coast suppliers. *Id*. (citing Laurel’s St. 1-R at 38). The ALJ noted that 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, but this undermines Laurel’s argument that the Midwestern low-RVP gasoline is an adequate substitute for the Eastern counterpart. R.D. at 194.

Concerning the Eastern Refineries, the ALJ noted that Laurel suggested available alternatives for the two Philadelphia refineries, PESRM and Monroe Energy, including connections through the Laurel and Buckeye system to market outlets in northern Pennsylvania and upstate New York and alternative market outlets to which Monroe Energy and PESRM are not connected via Laurel and Buckeye. The ALJ discussed that the Indicated Parties have maintained they are already selling all the product they can into the northern Pennsylvania and upstate New York markets. R.D. at 195 (citing Tr. at 482). The ALJ argued that the fact that one or both of the refineries may be connected to these other markets does not mean those markets are viable or could adequately replace Pittsburgh. R.D. at 195.

For the markets not connected via Laurel and Buckeye, the ALJ noted that Monroe Energy is currently connected to the Harbor Line and Sunoco’s East Line, but these options are often constrained. R.D. at 196 (citing Monroe Energy’s St. 1-SR at 9‑10).

The ALJ stated that Monroe Energy 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 demand to justify Monroe Energy’s capital investment to achieve such a connection. R.D. at 197 (citing Indicated Parties’ R.B. at 135). The ALJ also stated that barging the product to New York Harbor would cost approximately 3.5 cents per gallon more than pipeline transportation. R.D. at 197 (citing Tr. at 1100).

As for PESRM’s transportation options unconnected to the Laurel-Buckeye system, the ALJ noted that Laurel failed to show any of the potential “connections” would lead to an economically viable market. According to the ALJ, PESRM has shown that it already delivers to all the markets referenced in Laurel’s Main Brief and insists that those markets cannot absorb the volumes it currently delivers west of Altoona on the Laurel pipeline. R.D. at 197 (citing Tr. at 955).

The ALJ concluded that the alternatives must not only have capacity available for product from the East Coast refineries, but they must also connect to new markets with new demand; otherwise, they are not adequate substitutes for the segment of Laurel pipeline proposed to be reversed. The ALJ reasoned that without accompanying demand, the alternatives identified by Laurel are not adequate substitutes for shipments on the Laurel pipeline. R.D. at 197.

The ALJ rejected Laurel’s argument that product exchanges represent an available alternative to Pittsburgh market participants. The ALJ noted that 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. The ALJ reasoned that 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. *Id*. at 198 (citing Gulf’s St. 1-S at 13). The ALJ also noted that the record shows that market participants have not successfully entered into a product exchange for supply in the Pittsburgh area. R.D. at 198 (citing Sheetz’s St. 1 at 12; Gulf’s St. 1 at 10).

The ALJ determined 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 ALJ reasoned that 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. R.D. at 198.

c. Exceptions and Replies Laurel’s Exception No. 9, Husky’s Exception No. 4, and Indicated Parties’ Replies

Laurel avers that Commission precedent makes clear that an entity that abandons service need not make each affected customer whole in order for the abandonment to be approved. Laurel’s Exc. at 28 (citing *Sunoco 2005 Application Order* at \*12; *Re Pennsylvania Electric Company*, 70 Pa. P.U.C. 148 (1989)). Laurel states that it is clear that the East Coast refineries are connected to numerous alternative transportation markets, which, in turn, connect these refineries to a variety of markets. Laurel’s Exc. at 28 (citing Laurel’s M.B. at 151-168; Laurel’s R.B. at 81-83, 93-101).

Laurel argues that requiring it to demonstrate an alternative will provide a shipper with a “new market and new demand,” or otherwise replicate the benefits received by the current service, contradicts Commission precedent and establishes an impossibly high burden. Laurel contends that it would be required to guarantee the profitability of its non-regulated, competitive customers by either maintaining uneconomical service or guaranteeing access to other similarly profitable markets. Laurel avers that both PESRM and Monroe Energy price their products across all markets, irrespective of market demand. Laurel asserts that it demonstrated that PESRM and Monroe Energy would be able to maintain their existing pricing structure. Laurel’s Exc. at 29.

Laurel alleges that the ALJ’s Recommended Decision violates the dormant Commerce Clause by recommending that the in-state refineries must be provided access to new markets with new demand. Laurel contends that the ALJ incorrectly concluded that East Coast low-RVP gasoline alone can meet Pittsburgh’s low-RVP requirements, despite the fact that Midwestern refineries produce low-RVP gasoline for other markets that have the same low-RVP requirement as Pittsburgh. Laurel also argues that the ALJ’s conclusion is unquantified and speculative as the ALJ neither quantifies how much the price of low-RVP gasoline would supposedly increase nor provides the timing or probability for such price increases to occur. Laurel’s R. Exc. at 30.

Husky contends that product exchanges are a viable alternative for Eastern refineries. Husky notes that its witness Mr. Miller explained that product exchanges are common in the petroleum products industry and are effective in permitting shippers to access markets without physical pipeline connectivity. Husky’s Exc. at 24 (citing Husky’s M.B. at 24). Husky further argues that it would typically do exchanges with parties who have refineries, not parties like Gulf or Sheetz who do not produce their own products and therefore do not have barrels to exchange. Husky’s Exc. at 24 (citing Husky’s St. 1-RJ at 15). Husky notes that the ALJ relied on testimony of Gulf and Sheetz witnesses regarding the adequacy of product exchanges. Husky’s Exc. at 24.

Regarding the availability of low-RVP gasoline in Pittsburgh, Husky submits that a significant amount of Husky-marketed gasoline is already sold in the Pittsburgh area and Husky intends to continue supplying the area. Husky contends that there is no basis in the record for the ALJ’s conjecture as to why Midwest refiners are not currently producing all of the low-RVP gasoline that is needed in Pittsburgh. Husky argues that the Midwest refineries are capable of producing gasoline that meets the low-RVP specifications for Western Pennsylvania and other low-RVP areas. Husky’s Exc. at 26 (citing Husky’s M.B. at 24; Husky’s R.B. at 15).

Husky contends that the ALJ erred in suggesting that the price of low-RVP gasoline in the Pittsburgh area may increase post-reversal, and this speculation about the direction in which prices for low-RVP gasoline might go following the reversal is not substantiated by any evidence in the proceeding. Husky’s Exc. at 26.

In reply, the Indicated Parties state that the ALJ did not err in finding that Pittsburgh and Philadelphia market participants would lack adequate alternatives if the Commission approves the proposed abandonment. The Indicated Parties disagree with Laurel’s observation that “Commission precedent makes clear that an entity that abandons service need not make each affected customer whole in order for the abandonment to be approved.” Indicated Parties’ R. Exc. at 16 (citing Laurel’s Exc. at 28). The Indicated Parties maintain that the Commission made this finding only after concluding that the standards for abandonment were met – solely in the context of determining whether to impose conditions requiring the utility to compensate an affected customer for conversion costs. Indicated Parties’ R. Exc. at 17 (citing *Sunoco 2005 Application Order*).

The Indicated Parties discuss Laurel’s assertion that PESRM and Monroe Energy would be able to maintain their existing pricing structure, noting that maintaining the same pricing structure does not translate into maintaining comparable prices. Indicated Parties’ R. Exc. at 17 (citing Indicated Parties’ M.B. at 129). The Indicated Parties note that the ALJ never required Laurel to perfectly replace the benefits of its current service, only that it provide adequate or comparable alternatives. Indicated Parties’ R. Exc. at 17.

Regarding low-RVP gasoline supplies in Pittsburgh, the Indicated Parties disagree with Laurel’s claims that the ALJ “assumes” only East Coast low-RVP gasoline can fully supply the Pittsburgh market. The Indicated Parties contend that the ALJ considered the record evidence showing that the Midwest refiners do not produce sufficient quantities of low-RVP gasoline for the Pittsburgh market. The Indicated Parties state that according to the very competitive market principles advanced by Laurel, the hesitance to produce more low-RVP gasoline for Pittsburgh means Midwest refiners cannot do so at prices competitive with the East Coast refiners. *Id*. at 18 (citing R.D. at 194).

The Indicated Parties note that Laurel initially argued that production of low-RVP gasoline does not materially increase the refiners’ expenses, while the Indicated Parties’ witnesses provided evidence that Midwest refiners would incur increased costs of at least 2.6 cents per gallon. Indicated Parties’ R. Exc. at 18 (citing Laurel’s M.B. at 45, Indicated Parties’ M.B. at 103-105). The Indicated Parties assert that the ALJ observed East Coast gasoline supply to be less expensive than Midwest supply, even without consideration of the low-RVP standard. Indicated Parties’ R. Exc. at 18 (citing R.D. at 165). The Indicated Parties maintain that the ALJ affirmed that barging and trucking are inadequate alternatives to pipeline supply. Indicated Parties’ R. Exc. at 18.

d. Disposition

Based on our review of the record and the Parties’ positions, we conclude that Laurel failed to satisfy its burden of proof regarding the availability of adequate service alternatives. We agree with the Indicated Parties that the ALJ did not require perfect alternatives to the current Laurel pipeline configuration, just adequate alternatives. In fact, the ALJ concluded that 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. *See* R.D. at 200.

Laurel states that several options exist for retailers and wholesalers to purchase petroleum products in the Pittsburgh Market and that these sources can replace the East Coast refinery products. Laurel’s M.B. at 136. Laurel and Husky assert that the Midwest refiners have ample product available for the Pittsburgh market, including low-RVP gasoline, yet the East Coast refiners clearly sell into the Pittsburgh market. Laurel’s M.B. at 80 and Husky’s M.B. at 16-18. Laurel and Husky’s arguments are not supported by a preponderance of the evidence.

The total volumes to Pittsburgh destinations from eastern origins have fluctuated seasonally over the five-year period of 2012 through 2016, with volumes in the summer months being in the 65 MBPD to 119 MBPD range and in the winter months decreasing to a range of 20 MBPD to 100 MBPD. Indicated Parties’ St. 1 at 3. These numbers are significant when one considers the estimated market for the Pittsburgh area of 103 MBPD to 113 MBPD. Indicated Parties’ St. 2 at 20.

If the Laurel pipeline segment is abandoned, there will be no petroleum products pipeline linking the Pittsburgh area market to the PADD 1 refineries on the East Coast. The Pittsburgh market will be dependent on Midwest pipelines and the refineries that supply them. Barging and trucking are not adequate alternatives. Barging is weather dependent and there are limited numbers of refineries that can utilize barging and a limited number of available barges. Likewise, rail transportation into the Pittsburgh market is unlikely to increase. Loading gasoline onto railcars requires special air pollution control equipment that is expensive. Trucking is also not a viable option to replace the pipeline supplies from Philadelphia into Pittsburgh. Eldorado does not have the terminal or truck loading capacity to replace the pipeline service from Eldorado to Pittsburgh. Gulf’s St. 1 at 4-6.

Laurel avers that Philadelphia-based market participants will be able to deliver product to Eldorado and then transport it west by truck, or they can continue to access the Pittsburgh market through product exchanges. Laurel’s St. 2 at 12. Yet, Laurel does not believe trucking of product will occur, stating that substantial deliveries from Eldorado back to Pittsburgh are unlikely because the Laurel partial reversal will allow lower-cost Midwest product to reach further into Pennsylvania and provide lower gasoline prices to consumers. Laurel’s St. 2-R at 9.

We agree with the Indicated Parties that the East Coast refineries are the only practical supply of low-RVP gasoline to the Pittsburgh area. The Midwest refineries are limited in their ability to supply the Pittsburgh market with low-RVP gasoline. The Ohio refineries can only supply limited volumes, and the Chicago refineries produce supply for the Detroit area markets. Trucking supplies from Philadelphia would encounter constraints at Eldorado due to limited storage and terminal infrastructure to meet the demand. Gulf’s St. 1 at 12-13. Although the future need for low-RVP gasoline may decline, the regulation requiring low-RVP gasoline remains in place. The Pennsylvania Department of Environmental Protection (PADEP) requires the seven counties surrounding Pittsburgh to use low-RVP gasoline during the summer. Pursuant to 52 Pa. Code §§ 126.301-303, the PADEP requires gasoline with a Reid vapor pressure of 7.8 pounds per square inch (psi) or less per gallon to be sold or transferred into or within the Pittsburgh-Beaver Valley Area between May 1 and September 15 of each year. The Pittsburgh-Beaver Valley Area includes Allegheny, Armstrong, Beaver, Butler, Fayette, Washington and Westmoreland Counties. While Allegheny County has its own air quality regulations, it currently has the same 7.8 psi requirement.[[27]](#footnote-27)

We note that Eastern Midwest refiners may not have the supply to make up the demand after the abandonment. Eastern Midwest refineries are operating at high rates of utilization, with a maximum monthly average utilization during the last three years of 97% and an average annual utilization of 90%. Eastern Midwest refiners cannot supply Central and Western Pennsylvania with petroleum products during the summer months if the abandonment is approved. Indicated Parties’ St. 2 at 12-13.

Additionally, Laurel avers that pipeline alternatives exist on the Laurel Buckeye System. Specifically, Laurel states that the East Coast refineries have options to sell into the northern Pennsylvania and New York markets over the Laurel Buckeye System. The information in the record does not support this as an adequate alternative. PESRM provides that for the period January to May 2017, 23% of PESRM’s total production was delivered into the Laurel Pipeline, a 3% increase thus far over 2016. PESRM’s St. 1 at 4. However, PESRM asserts that it already sells into the highly competitive New Jersey and New York markets, and oversupply to these markets and the Altoona and upstate New York markets would adversely affect PESRM. PESRM’s St. 1 at 6.

Furthermore, we disagree with Laurel regarding product exchanges or virtual movements. This option is not an adequate replacement for pipeline access by the East Coast refiners. The conditions required for a profitable product exchange or virtual movement are more limited than the use of the pipeline. Product exchanges are best for two refiners in unique situations – where one has a product need at a location it is not currently serving, but another refiner does serve that location, and the reverse is also true so that a “match” is made. The same constraint applies to virtual movements where a pipeline is exchanging within the shippers on its system – there must be two shipments that would be suitable for a virtual movement. Laurel’s witness, Mr. Robert Van Hoecke, acknowledged that a virtual movement requires two shippers requesting to ship identical product, when he stated, “[T]he ability for the pipeline to schedule movements is dependent upon the shippers putting nominations in the system.” Tr. at 552. Monroe Energy contends that it does not and has not engaged in product exchanges and that exchanges are not a viable option to move product into Pittsburgh after the proposed Laurel reversal. Monroe Energy agrees with Sheetz witness, Mr. Michael E. Lorenz, who explained in his Direct Testimony that “in the Pittsburgh market, given the pricing volatility of the east/west arbitrage and shifting product imbalances, getting two parties to agree to an exchange is difficult.” Monroe Energy’s St. 1-SR at 13-14 (citing Sheetz’s St. 1 at 11-12).

The Indicated Parties similarly explain the challenges of a virtual market as: (1) a lack of volume for products that have the same specification, (2) the lack of multiple receipt and destination points within a small zone, and (3) the lack of storage for those multiple products. Indicated Parties’ St. 2 at 17. The Indicated Parties’ witness, Mr. Greg Johnston, maintained in his testimony “that if product exchanges and virtual tariffs were such beneficial alternatives, the Midwest refineries would already be using them to access the Pittsburgh market and would have little need for the pipeline reversal.” Gulf’s St. 1-S at 13. As Mr. Johnston stated, we note that Husky witness Mr. Jerome Miller has not processed true product exchanges and had not managed any such transactions within the past ten years. Gulf’s St. 1-S at 13-14.

Each of the pipeline options suggested by Laurel have constraints or other issues. For pipelines that the East Coast refiners are not connected to, Laurel has not demonstrated that a demand exists that would merit the refiners to invest in new connections. We note that the alternatives of barge or trucking as suggested by Laurel are inherently more expensive than the established pipeline access on the Laurel pipeline. Monroe Energy finds that its next best transportation alternative if the Laurel pipeline is reversed west of Eldorado is to barge their product to New York Harbor. Monroe Energy maintains that if they cannot sell product that will flow on Laurel west of Eldorado as they do today, any alternative market/transportation combination will produce less operating income than what Monroe Energy earns today. Regarding the pipeline alternatives Laurel suggested, Monroe Energy is not connected to a Colonial line that would be able to transport products to New York Harbor. Monroe Energy states that the Harbor Line and SXL East Line are often constrained. Monroe Energy’s St. 1-SR at 7‑10.

Based on the record, it is clear that the Pittsburgh market will be affected by the loss of pipeline service flowing from the East Coast. Moreover, Laurel has not established that adequate alternatives exist for pipeline service on the Laurel pipeline for its customers. Accordingly, we will deny Laurel’s Exception No. 9 and Husky’s Exception No. 4.

G. Additional Exceptions

1. I&E’s Exceptions Regarding the Settlement Between I&E

and Laurel

In the Recommended Decision, the ALJ recommended denying the Settlement as moot because she was denying Laurel’s requests for relief in the Application. R.D. at 208-209, 211, Ordering Paragraph No. 3. Additionally, the ALJ stated that if the Commission approved Laurel’s Application and granted Laurel a Certificate to abandon service in the Altoona-Pittsburgh portion of the pipeline, then the following recommendation would apply:

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.

*Id*. at 209.

In its Exceptions, I&E requests that the Commission approve the Settlement between I&E and Laurel if the Commission reverses the ALJ’s Recommended Decision regarding the Application. I&E’s Exc. at 2. I&E points out that the ALJ found that if the Commission approved Laurel’s Application, “Laurel has demonstrated that the proposed reversal will be implemented in compliance with all applicable safety standards.” I&E avers that the ALJ erred in not also recommending that the Settlement be approved in the event the Commission approves the Application. *Id*. at 4. I&E states that it agrees with the ALJ’s finding that the Settlement be denied as moot because Laurel’s Application was denied. However, I&E believes that in the alternative, the ALJ should have found that the Commission approve the Settlement if it approved Laurel’s Application and granted a Certificate to Laurel permitting the abandonment of service in the Altoona-Pittsburgh portion of its pipeline. *Id*. at 5.

In its Exceptions, Laurel briefly addressed this issue, arguing that the ALJ erred by recommending that the Commission deny Laurel’s Application, and that the Commission should approve the Settlement consistent with the ALJ’s analysis finding that the proposed reversal does not pose any safety considerations that would merit denial. Laurel’s Exc. at 39.

We agree with I&E that the ALJ properly determined, in Ordering Paragraph No. 3, that the Settlement was moot based on the ALJ’s recommendation to deny Laurel’s Application. The Settlement provides that any Commission approval in this proceeding would be conditioned on Laurel taking specific safety actions identified in Laurel’s Integrity Impact Review Report to comply with the federal Pipeline and Hazardous Materials Safety Administration safety guidelines. Laurel and I&E also agreed that Laurel would provide certain information to the Commission’s Pipeline Safety Division within thirty days of the approval of Laurel’s Application. The terms of the Settlement apply in the instance of a Commission approval. Because we are denying the Application in this Opinion and Order, we also find that the Settlement is moot. Because the Settlement is moot, it is unnecessary for us to make any other findings on the Settlement. Moreover, we will not adopt the ALJ’s dicta on page 209 of the Recommended Decision, above, discussing the safety considerations involved in Laurel’s proposed project. For this reason, we need not address I&E’s concerns that in the alternative, the ALJ should have found that the Commission approve the Settlement if it approved Laurel’s Application. Accordingly, the Parties’ Exceptions on this issue are denied.

2. The Indicated Parties’ Exceptions and Laurel’s Replies Regarding the Capacity Agreement and the IHS[[28]](#footnote-28) Study

In addressing the Capacity Agreement, the ALJ denied the Agreement as moot given her denial of Laurel’s Application. R.D. at 204, 211, Ordering Paragraph No. 2. Nevertheless, the ALJ included in the Recommended Decision a discussion and legal analysis of the Capacity Agreement in the event the Commission approved Laurel’s Application. In this vein, the ALJ found that the proposed Capacity Agreement was reasonable and consistent with the public interest and should be approved by the Commission. *See* R.D. at 204-205.

The ALJ also briefly addressed the IHS Study. The ALJ stated that during the November 13, 2017 evidentiary hearing, she granted Laurel’s motion that sought to exclude from the record the IHS Study that Husky served on all Parties in response to a discovery request. The ALJ found that the Study was hearsay and untimely offered into evidence but permitted the Indicated Parties to submit the IHS Study as an offer of proof pursuant to 52 Pa. Code § 5.414. R.D. at 6 (citing Tr. at 1233-35).

The Indicated Parties’ Exceptions are intended to address this Commission’s potential decision on the Capacity Agreement and the IHS Study if we decide to grant Laurel’s Application.[[29]](#footnote-29) The Indicated Parties state that their Exceptions become moot and ask that the Commission not address their Exceptions if the Commission adopts the Recommended Decision and rejects Laurel’s Application. Indicated Parties’ Exc. at 10, 14. The Indicated Parties support the ALJ’s decision denying Laurel’s Application and finding that the Capacity Agreement be denied as moot. In their Exceptions, the Indicated Parties request the following:

(1) If the Commission grants Laurel’s Application, the Commission should reverse the ALJ’s conclusion that the Capacity Agreement was reasonable and in the public interest because the facts supporting this Conclusion of Law are not supported by the preponderance of the evidence.

(2) If the Commission grants Laurel’s Application, the Commission should reverse the ALJ’s conclusion that the IHS Study was properly excluded from evidence on grounds of hearsay and untimely submission to the record.

Indicated Parties’ Exc. at 2, 9-10. Laurel, in turn, filed Replies to Exceptions averring that if the Commission grants Laurel’s Application, then: (1) the Commission should adopt the ALJ’s conclusion that the proposed Capacity Agreement is reasonable and in the public interest, and (2) the Commission should not consider the IHS Study because the ALJ properly excluded the Study from evidence as hearsay and untimely submitted.[[30]](#footnote-30)

We do not find it necessary to address these Exceptions in detail. Given our denial of the Application herein based on substantial evidence in the record, we agree with the Indicated Parties that their Exceptions are moot. We also do not find it necessary to reach any conclusions regarding the Capacity Agreement or the IHS Study, other than to agree with the ALJ’s finding that the Capacity Agreement is moot. We will not adopt the ALJ’s dicta on pages 204-206 relating to the Capacity Agreement and stating that the Agreement is consistent with the public interest.

IV. Conclusion

Based on our review of the record, the ALJ’s Recommended Decision, the Parties’ respective positions, and the applicable law, we shall: (1) grant, in limited part, and deny, in part, Laurel’s Exceptions; (2) find the Indicated Parties’ Exceptions to be moot; (3) grant, in limited part, and deny, in part, Husky’s Exceptions; (4) deny I&E’s Exceptions; and (5) adopt the Recommended Decision as modified in limited part, all consistent with this Opinion and Order. We conclude that Laurel’s Application is a request for a partial abandonment of intrastate public utility service along its pipeline under Section 1102(a)(2) of the Code, 66 Pa. C.S. § 1102(a)(2), and find that Laurel has failed to satisfy its burden of proof regarding its abandonment request. We also find that we have jurisdiction to make a determination on Laurel’s abandonment request and that our jurisdiction is not preempted by federal law or prohibited by the dormant Commerce Clause; **THEREFORE,**

**IT IS ORDERED:**

1. That the Exceptions filed by Laurel Pipe Line Company, L.P. on April 18, 2018, are granted, in limited part, and denied, in part.

2. That the Exceptions filed by Gulf Operating, LLC, Philadelphia Energy Solutions Refining & Marketing, LLC, Sheetz, Inc., Monroe Energy, Inc., and Giant Eagle, Inc. on April 18, 2018, are deemed moot.

3. That the Exceptions filed by Husky Marketing and Supply Company on April 18, 2018, are granted, in limited part, and denied, in part.

4. That the Exceptions filed by the Commission’s Bureau of Investigation and Enforcement on April 18, 2018, are denied.

5. That the Recommended Decision of Administrative Law Judge Eranda Vero issued on March 29, 2018, is adopted as modified in limited part.

6. 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, is denied.

7. 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, is moot.

8. That the Stipulation for Settlement filed by Laurel Pipe Line Company, L.P. and the Bureau of Investigation and Enforcement is moot.

9. That the Dockets at A-2016-2575829 and G-2017-2587567 be marked closed.

**BY THE COMMISSION**

Rosemary Chiavetta

Secretary

ORDER ADOPTED: July 12, 2018

ORDER ENTERED: July 12, 2018

(SEAL)

1. On September 7, 2017, Laurel advised the Commission that Sunoco agreed to withdraw its Direct Testimony and not to submit any additional testimony. [↑](#footnote-ref-1)
2. *See* 49 C.F.R. § 195.2 (“Petroleum means crude oil, condensate, natural gasoline, natural gas liquids, and liquefied petroleum gas. Petroleum product means flammable, toxic, or corrosive products obtained from distilling and processing of crude oil, unfinished oils, natural gas liquids, blend stocks and other miscellaneous hydrocarbon compounds.”) [↑](#footnote-ref-2)
3. Section 1102(a)(2) provides that a Certificate is required “[f]or any public utility to abandon or surrender, in whole or in part, any service, except that this provision is not applicable to discontinuance of service to a patron for nonpayment of a bill, or upon request of a patron.” [↑](#footnote-ref-3)
4. Section 1103(a) provides the following, in pertinent part:

   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. The commission, in granting such certificate, may impose such conditions as it may deem to be just and reasonable. [↑](#footnote-ref-4)
5. The Certificate and the Commission’s 1957 Order pertaining to the Application are part of the Indicated Parties’ Exh. RAR-1 and Laurel’s Exh. DWA-5. The Application is part of the Indicated Parties’ Exh. RAR-1. [↑](#footnote-ref-5)
6. *See In re Application of Laurel Pipe Line Company*, Docket No. 84093 (Report and Order entered March 18, 1957). [↑](#footnote-ref-6)
7. PADD 1 is a designation for the East Coast Petroleum Administration for Defense District and includes New England and the Atlantic Coastal region from Maine to Florida. Gulf’s St. 1 at 4. [↑](#footnote-ref-7)
8. Preemption occurs when Congress, in enacting a federal statute, expresses a clear intent to preempt state law, when there is actual conflict between federal and state law, where compliance with both federal and state law is impossible, where there is implicit in federal law a barrier to state regulation, where Congress has legislated comprehensively in a manner that occupies an entire field of regulation, or where the state stands as an obstacle to the execution of the full objectives of Congress. The Interstate Commerce Act does not contain explicit preemptive language. *National Steel Corp. v. Long (National Steel)*, 718 F. Supp. 622, 625-626 (W.D. Mich. 1989). [↑](#footnote-ref-8)
9. The ICA was revised in 1978, and sections of former Title 49 were incorporated into revised Title 49 (49 U.S.C. §§ 10101-16106). The Parties and the ALJ, as well as many of the relevant cases, refer to the former 49 U.S.C. § 1, as it relates to FERC’s originally enacted jurisdiction over pipelines. The revised ICA contains language that is substantially similar to the language in former Section 1(2). *See* 49 U.S.C. § 15301. [↑](#footnote-ref-9)
10. While the obligations imposed on oil pipelines as common carriers under the ICA are stated in broad, general terms, the regulation of oil pipelines by FERC is predominantly focused on the rates common carriers charge for interstate transportation. FERC does not regulate certification for the initiation of service or the abandonment of service. *See, e.g*., *National Steel* at 626. [↑](#footnote-ref-10)
11. In that case, approximately three-fourths of the traffic over the railroad was in interstate and foreign commerce, and the rest of the traffic was in intrastate commerce. *Texas* at 214. [↑](#footnote-ref-11)
12. Husky’s Main Brief also addresses this issue; however, because Husky’s averments in its Brief are similar to its averments in its Exceptions, we have addressed Husky’s averments in detail below. [↑](#footnote-ref-12)
13. Laurel collects a tariff of $0.614/barrel (bbl) on refined petroleum products originating in Chelsea Junction, an origin point in the Philadelphia area, and delivered to Pittsburgh and $0.489/bbl on refined petroleum products originating in Chelsea Junction and delivered to Eldorado. Pa. P.U.C. No. 81, effective Jan. 1, 2012. Laurel’s affiliate Buckeye collects a tariff of $2.9168/bbl on refined petroleum products originating in Chicago Complex, near Chicago, Illinois, and delivered to Pittsburgh, Pennsylvania. This FERC tariff rate to deliver volumes from the Midwest to Pittsburgh is more than four times the Commission’s tariff to deliver volumes from Philadelphia to Pittsburgh. Indicated Parties’ St. 1 at 12. [↑](#footnote-ref-13)
14. Laurel notes that its volumes declined from 106,000 BPD in 2006 to 45,000 BPD in September 2015. Laurel’s Exc. at 37. [↑](#footnote-ref-14)
15. *See* Laurel’s monthly flow chart highlighting these changes on page 116 of the R.D. [↑](#footnote-ref-15)
16. The ALJ acknowledged the record evidence showing that deliveries from the east to four areas in Pittsburgh through Laurel’s pipeline increased prior to the previous year. R.D. at 116-117 (citing Laurel’s Supp. Exh. DWA-5). [↑](#footnote-ref-16)
17. Per Laurel, the Midwestern crude oil sources, Bakken and Canadian crude, which are local and close to the Midwestern refineries, are much cheaper sources compared to the West Texas Intermediate (WTI) and Brent Crude, the sources for the East Coast refineries. According to Laurel, while WTI is local, the Brent crude is produced from sources across the world, including the North Sea and Africa. Laurel’s M.B. at 73-74. Laurel indicated that the Midwestern refineries have made substantial investments to modernize their facilities compared to their East Coast counterparts. Laurel stated that these investments allow the Midwest refineries to refine additional crude oil and push these products to as many markets as possible, thereby putting downward pressure on prices. Laurel’s M.B. at 79-80 (citing Laurel’s St. 7-RJ at 20; Laurel’s St. 8-R at 11; Laurel’s St. 5-R at 67). [↑](#footnote-ref-17)
18. Laurel states the reversal will help provide its customers with larger terminal sets that are more accessible. Laurel’s M.B. at 81-82. [↑](#footnote-ref-18)
19. RVP is a common measure of the volatility of gasoline. It is defined as the absolute vapor pressure exerted by a liquid at 37.8 °C (100 °F) as determined by the test method ASTM-D-323. Indicated Parties’ St. 2 at 19. [↑](#footnote-ref-19)
20. Per Husky, the EIA studies explain that retail prices are generally set by comparison prices at other retail outlets. Husky’s M.B. at 22 (citing Husky’s Exh. JPM-3 at 24). [↑](#footnote-ref-20)
21. The ALJ noted the Indicated Parties’ observation that this pattern remained 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. R.D. at 165. [↑](#footnote-ref-21)
22. |  |  |  |
    | --- | --- | --- |
    | **Year** | **Midwest less Pre-Reversal East Coast Delivered Prices Philadelphia (Intrastate) With Summer RVP Standard**  **($/gallon)** | **Midwest less Pre-Reversal East Coast Delivered Prices Philadelphia (Intrastate) Without Summer RVP Standard**  **($/gallon)** |
    | **2012** | $-0.02 | $-0.02 |
    | **2013** | $0.05 | $0.02 |
    | **2014** | $0.04 | $0.01 |
    | **2015** | $0.13 | $0.9 |
    | **2016** | $0.06 | $0.03 |

    Indicated Parties’ St. 1 at 28: Tables 6a and 6b. [↑](#footnote-ref-22)
23. The first study, which is entitled “East Coast and Gulf Coast Transportation Fuel Markets,” reviews Petroleum Administration for Defense District 1 (PADD 1 Study) while the second study, entitled “Midwest and Rocky Mountain Transportation Fuels Market,” reviews PADD 2 (PADD 2 Study). Husky’s Exc. at 18 (citing Husky’s Exhs. JPM-3 and JPM-4). [↑](#footnote-ref-23)
24. In support of this assertion, Husky referenced a study by Wood Mackenzie. Husky’s Exc. at 20 (citing Husky’s M.B. at 19). [↑](#footnote-ref-24)
25. According to the Indicated Parties, the Laurel pipeline has the capacity to deliver 180 MBPD to Pittsburgh from the east and that the reversal would unnecessarily add 40 MBPD of capacity from the Midwest into Pittsburgh and then further into Altoona, at the expense of eliminating the 180 MBPD capacity into Pittsburgh from the east. Indicated Parties’ M.B. at 80 (citing Tr. at 392, 396 and 426). [↑](#footnote-ref-25)
26. Laurel stated “[t]he reversal will also increase supply reliability for Central Pennsylvania. Pittsburgh is currently served by multiple pipelines from the west, barges on the river and trucks from Eastern Ohio. Reversing the pipeline will not reduce Pittsburgh supply reliability because Pittsburgh has, and will continue to have, many different sources of supply. The proposed reversal will, however, substantially increase reliability to Central Pennsylvania because the region will now be served by two pipelines – Laurel from the east and Laurel from the west – as opposed to one pipeline – Laurel from the east. Laurel’s M.B. at 61. [↑](#footnote-ref-26)
27. The PADEP requirement is currently under review, and PADEP will need United States Environmental Protection Agency (USEPA) approval to roll back the low-RVP requirement. The USEPA has a less restrictive requirement for reformulated gasoline (RFG) for the area that may remain in effect even if the PADEP requirement is removed. The applicable federal regulations provide that gasoline RVP may not exceed 9.0 psi for Pennsylvania year-round or 10 psi for gasoline containing 9 to 10 percent ethanol. 40 C.F.R. § 80.27(a)(2) and (d)(1). [↑](#footnote-ref-27)
28. The IHS Study is a Greater Ohio Valley Market Study that IHS prepared on behalf of Husky. We will not provide further detail on the Study herein, as the Study and information on the Study in the record are designated as highly confidential. [↑](#footnote-ref-28)
29. The Indicated Parties also briefly address the Capacity Agreement in their Replies to Exceptions at 25. [↑](#footnote-ref-29)
30. Laurel briefly addresses this issue in its Exceptions, stating that the ALJ erred in recommending that the Commission deny its Application and that the Commission should approve the Capacity Agreement consistent with the ALJ’s analysis that the Agreement is in the public interest. Laurel’s Exc. at 39. [↑](#footnote-ref-30)