

167 FERC ¶ 61,210  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Neil Chatterjee, Chairman;  
Cheryl A. LaFleur, Richard Glick,  
and Bernard L. McNamee.

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

Docket Nos. IS19-277-000  
IS19-278-000

ORDER REJECTING TARIFFS

(Issued June 6, 2019)

1. On April 8, 2019, Laurel Pipe Line Company, L.P. (Laurel) filed FERC Tariff Nos. 1.0.0 and 2.0.0 in Docket No. IS19-277-000 (Laurel Tariffs),<sup>1</sup> and Buckeye Pipe Line Company, L.P. (Buckeye) filed FERC Tariff Nos. 456.0.0, 457.0.0 and 458.0.0 in Docket No. IS19-278-000 (Buckeye Tariffs)<sup>2</sup> (collectively, Tariffs). As discussed below, we reject the Tariffs.

**I. Background**

**A. Tariff Filings**

2. The Tariffs relate to a petition for declaratory order filed on April 30, 2018 that is pending before the Commission in Docket No. OR18-22-000 (Petition) seeking approval of the rate structure and certain aspects of service for a proposed expansion to transport refined products from Midwest refinery sources to Western and Central Pennsylvania (Expansion). Buckeye/Laurel state that the facilities being constructed to provide the proposed new service on the Expansion are nearly complete and are anticipated to be ready to provide service by June 7, 2019, in conjunction with certain existing, repurposed facilities. Buckeye/Laurel state that they are implementing the Tariffs to provide the

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<sup>1</sup> Laurel Pipe Line Company, L.P., FERC Oil Tariff, Refined Petroleum Products Tariff, ≥, Rules and Regulations, 1.0.0 and Rates, 2.0.0.

<sup>2</sup> Buckeye Pipe Line Company, L.P., FERC Oil Tariff, Buckeye Market-Base Rates Tariff, BW2 Rules and Regulations, FERC No. 456.0.0, 456.0.0, BW2 Local Rates, FERC No. 457.0.0, 457.0.0, and BW2 TSA Rates, FERC No. 458.0.0, 458.0.0.

transportation service described in the Petition with an effective date of June 7, 2019.<sup>3</sup> Laurel states that it will continue to provide its existing east-to-west intrastate service on the segment between Eldorado and Coraopolis, Pennsylvania after commencement of the proposed new west-to-east interstate service, by providing bi-directional service on this portion of its system. Buckeye and Laurel are affiliates.

3. The proposed Buckeye Tariffs would implement new transportation service from six origin points on Buckeye's Midwest Products System in Michigan, Ohio, and Pennsylvania to Eldorado, Pennsylvania, which is a destination on the Laurel pipeline system. Buckeye states that this new service is pursuant to an open season that took place from August 31, 2016 to October 21, 2016 in which Buckeye offered interested shippers the opportunity to execute Transportation Service Agreements (TSAs) in return for specified rates and priority transportation service on the Expansion. Buckeye asserts that it received sufficient support during the open season and constructed the Expansion, consisting of approximately 40,000 barrels per day (bpd) of new capacity from the six origin points on the Midwest Products System to Buckeye's interconnection with the Laurel system at Coraopolis, Pennsylvania. The Buckeye Tariffs include rules and regulations and local rates for the Expansion and a joint rate between Buckeye and Laurel for service from the six origin points on the Midwest Products System to the Eldorado destination.

4. Buckeye states that its proposed rules and regulations in FERC Tariff No. 456.0.0 correspond, subject to minor corrections, to the *pro forma* rules and regulations tariff attached to the TSAs and the Petition in Docket No. OR18-22-000. Buckeye states that the Expansion will be subject to different prorationing rules than the existing capacity on the Midwest Products System. Buckeye states that the allocation rules for the Expansion provide priority rights in prorationing for the committed shippers that executed TSAs. Buckeye states that at least 10 percent of the Expansion capacity is set aside for uncommitted shippers and that apportionment of this capacity is based on shipper histories.

5. Buckeye states that FERC Tariff No. 457.0.0 sets forth the local rates for transportation on the Expansion to Coraopolis, and FERC Tariff No. 458.0.0 sets forth joint committed and uncommitted rates offered by Buckeye and Laurel for transportation on the Expansion from the six origin points on the Midwest Products System to Eldorado and intermediate destinations.

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<sup>3</sup> Buckeye states that a hydrotest must take place before June 1, 2019, or be delayed until the fall. Buckeye/Laurel state that although they expect the new service to commence by June 7, 2019, it is possible that delays may occur due to unforeseen circumstances. Buckeye Transmittal Letter at 2; Laurel Transmittal Letter at 2.

6. Laurel states that since the early 1990s it has been providing intrastate east-to-west service on the segment of its system between Eldorado and Coraopolis under the jurisdiction of the Pennsylvania Public Utilities Commission (PAPUC). Laurel proposes to establish a new west-to-east interstate service to be paired with the expansion on Buckeye's Midwest Products System. The Laurel Tariffs include rules and regulations (FERC Tariff No. 1.0.0) and local rates (FERC Tariff No. 2.0.0) for the new interstate eastbound service on Laurel. Laurel states that the proposed rules and regulations correspond, with minor corrections, to the *pro forma* tariff attached to the TSAs and the Petition and to Buckeye's FERC Tariff No. 456.0.0.

## **B. Interventions and Protest**

7. On April 23, 2019, Giant Eagle, Inc., Guttman Energy, Inc., Lucknow-Highspire Terminals LLC, Monroe Energy, LLC, Philadelphia Energy Solutions Refining & Marketing LLC, and Sheetz, Inc. (collectively, Indicated Parties) filed in Docket Nos. IS19-277-000 and IS19-278-000 a joint motion to intervene, comment, protest, and consolidate.<sup>4</sup> Indicated Parties argue that the Commission should reject the Tariffs. In the alternative, they request that the Commission consolidate Docket Nos. IS19-277-000, IS19-278-000 and OR18-22-000, suspend the Tariffs for the maximum statutory period, and establish hearing procedures and/or a technical conference.

8. Indicated Parties state that the proposed transportation service is the subject of ongoing litigation before the PAPUC and the Pennsylvania Commonwealth Court.<sup>5</sup> According to Indicated Parties, Laurel is a public utility in Pennsylvania providing east-to-west intrastate service, and Buckeye provides interstate east-to-west service from points east of Philadelphia to Pittsburgh over capacity it leases from Laurel under a capacity agreement approved by the PAPUC in 1994. In 2016, Laurel sought approval from the PAPUC to end intrastate service on its L718 segment between Pittsburgh and Altoona (the Eldorado delivery point). Laurel also filed with the PAPUC an agreement between Laurel and Buckeye that would convert the east-to-west intrastate service into west-to-east interstate service. In litigation before the PAPUC, Indicated Parties state that they argued that the reversal was effectively an abandonment of intrastate east-to-west service. On March 21, 2018, the PAPUC administrative law judge recommended

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<sup>4</sup> Indicated Parties state that they are each a major retailer; a past, present, or potential future shipper; and/or supplier of significant volumes of product on Laurel and in some cases Buckeye's system.

<sup>5</sup> Indicated Parties state that they have actively participated in the PAPUC proceedings that addressed Laurel's proposed use of its capacity.

denial of Laurel's application and rejected approval of the capacity agreement.<sup>6</sup> Indicated Parties claim that in response to the recommended decision, Buckeye/Laurel announced their plan to shift operations on L718 to bi-directional service and filed the Petition in Docket No. OR18-22-000 regarding this new bi-directional service. On July 12, 2018, the PAPUC issued an order affirming the administrative law judge's determination that Laurel failed to meet the legal requirements to abandon east-to-west service between Eldorado and Pittsburgh.<sup>7</sup>

9. Indicated Parties assert that they filed a complaint on July 12, 2018 and an amended complaint on August 8, 2018 at the PAPUC, arguing that Buckeye/Laurel's plan to operate the Laurel pipeline bi-directionally constitutes a reduction in existing and certificated intrastate service, and hence a partial abandonment of intrastate service without PAPUC approval, in violation of Laurel's certificate of public convenience and Pennsylvania law.<sup>8</sup> Indicated Parties state that the parties are currently engaged in discovery in preparation for an evidentiary hearing before the PAPUC on whether the bi-directional service is a permissible partial abandonment.

10. Regarding the Tariffs, Indicated Parties argue that Buckeye/Laurel did not provide adequate information regarding how the proposed bi-directional service will operate in order to evaluate whether the proposed interstate service is just and reasonable and not unduly discriminatory or preferential. Indicated Parties state that the transmittal letters included with the Tariffs include one sentence in one footnote that notes that the proposed joint interstate service will be operated on a bi-directional basis in conjunction with intrastate service. Indicated Parties claim that Buckeye/Laurel failed to disclose that the bi-directional service is currently the subject of a complaint before the PAPUC, or that the PAPUC previously denied Laurel's application to abandon intrastate east-to-west service based on the harm posed to existing shippers. They argue that Buckeye/Laurel provided no explanation or evidence to support the assertion that Laurel will continue providing existing east-to-west service between Eldorado and Coraopolis.<sup>9</sup>

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<sup>6</sup> See Protest at Attachment 2 (Mar. 21, 2018 Recommended Decision in PAPUC Docket No. A-2016-2575829).

<sup>7</sup> Protest at 8 (citing *Application of Laurel Pipe Line Co., L.P. for approval to change direction of petroleum products transportation service to delivery points west of Eldorado, Pennsylvania*, PAPUC Docket No. A-2016-2575829 (Opinion and Order issued July 12, 2018)).

<sup>8</sup> Protest at 9 (citing *Giant Eagle, Inc., et al. v. Laurel Pipe Line Co., L.P.*, PAPUC Docket No. C-2018-3003365).

<sup>9</sup> Protest at 21-22.

11. Indicated Parties argue that Buckeye/Laurel are trying to use the Tariffs to circumvent the related PAPUC and Commission proceedings in order to secure relief that they could not secure before the PAPUC or through their petition for declaratory order with the Commission. Indicated Parties claim that the Tariffs, as well as the TSAs offered in the open season that preceded the Petition, did not reference bi-directional service in any meaningful way, but instead indicate that the intrastate segment of Laurel pipeline will be reversed, at least during certain times each month. Inasmuch as the PAPUC has rejected Laurel's application to reverse its pipeline, Indicated Parties argue that Buckeye/Laurel are attempting to secure Commission approval of a service denied by the PAPUC and currently on appeal before the Pennsylvania Commonwealth Court. In addition, Indicated Parties assert that their amended complaint concerning the new bi-directional proposal is currently pending before the PAPUC. They argue that allowing the Tariffs to take effect could impact the ongoing appeal and complaint proceedings, and interfere with the PAPUC's exercise of its jurisdiction over certificated public utilities in Pennsylvania. They contend that the Commission typically declines to take action that would affect the outcome of ongoing state regulatory or court proceedings. Further, Indicated Parties argue that the Tariffs circumvent the Commission's review of the pending Petition in Docket No. OR18-22-000, which sought approval of the committed rates, rate structure, and terms for the bi-directional service included in the Tariffs.<sup>10</sup>

12. Indicated Parties assert that they raised concerns regarding the Petition in their filings in Docket No. OR18-22-000. In particular, they argue that: (1) the open season process in which the committed rates and terms of service were offered was not fair and transparent because Buckeye/Laurel did not indicate during the open season that they planned to operate the project as part of a bi-directional service; (2) the project did not entail infrastructure improvements and creation of new capacity sufficient to justify Commission approval of committed rates; and (3) there is no assurance that current shipper service on the contested Laurel segment will be retained. Indicated Parties state that shippers currently rely on the Laurel pipeline as the sole pipeline system capable of transporting petroleum products from the East Coast to Western Pennsylvania.<sup>11</sup>

### **C. Buckeye/Laurel Response to Indicated Parties**

13. Buckeye/Laurel filed a response on April 29, 2019. Buckeye/Laurel assert that the new service proposed in the Tariffs will expand Pennsylvania consumers' access to competitively-priced refined products from Midwest refineries. Buckeye/Laurel claim that the bi-directional service plan cost more than \$200 million and that it permits both the offering of the new Midwest-sourced service and the historical east-to-west service,

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<sup>10</sup> *Id.* at 23-24.

<sup>11</sup> *Id.* at 24-37.

without any likely impairment.<sup>12</sup> Buckeye/Laurel claim that Indicated Parties are attempting to thwart the introduction of competitive supplies into a market that the Indicated Parties control.<sup>13</sup>

14. Buckeye/Laurel argue that the proposed new service should be permitted to commence. Buckeye/Laurel state that the bi-directional proposal in the Petition followed the PAPUC's decision to deny Laurel permission to completely reverse its east-to-west service and provide service from the west via Buckeye. Buckeye/Laurel claim that the proposed new service anticipated in the Petition would exist in tandem with continued east-to-west intrastate service consistent with the PAPUC's decision disallowing abandonment of that service.<sup>14</sup>

15. Buckeye/Laurel argue that their transmittal letters and Tariffs comply with Commission regulations and that pipelines are not required to explain operational details in tariff filings. Buckeye/Laurel argue that the Commission's jurisdiction is limited to whether the proposed services are reasonable and not unduly discriminatory or unlawful and that the Commission does not need to regulate or know the mechanics of precisely how the services are provided.<sup>15</sup>

16. Buckeye/Laurel argue that the proposed bi-directional service will not impair east-to-west intrastate service, including during peak periods. Buckeye/Laurel state that they continue to hold themselves out to provide the services offered in their current federal and state tariffs. Buckeye/Laurel argue that Laurel has installed facilities to pump the incremental 40,000 bpd of capacity that Buckeye is adding to its Midwest Products System and that this will not reduce east-to-west intrastate service because of substantial unutilized capacity on the segment between Eldorado and Coraopolis. Buckeye/Laurel include the affidavit of Buckeye's Director of Transportation Services to support their argument that the services offered to current shippers will not change after commencement of the new west-to-east service.<sup>16</sup> Buckeye/Laurel assert that Indicated

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<sup>12</sup> Buckeye/Laurel state that they plan to provide service via a mix of offsetting swaps and physical movements between Coraopolis and Eldorado. Response at 11-12; *see also* Attachment 1, Affidavit of Michael J. Kelly.

<sup>13</sup> Response at 1-3.

<sup>14</sup> *Id.* at 3-4.

<sup>15</sup> *Id.* at 4-8.

<sup>16</sup> Buckeye/Laurel also incorporate portions of an affidavit from Buckeye/Laurel's June 26, 2018 Answer in Docket No. OR18-22-000.

Parties can seek redress at the PAPUC if they can show that Laurel is violating Pennsylvania state law.<sup>17</sup>

17. Buckeye/Laurel claim that the Tariffs are not an attempt to circumvent the proceeding in Docket No. OR18-22-000. Buckeye/Laurel assert that pipelines have filed tariffs to initiate service pending the issuance of orders on their petitions for declaratory order. Buckeye/Laurel claim that the passage of time, construction of the facilities, and need for service prompted them to file the Tariffs without having yet received an order granting their Petition.<sup>18</sup>

18. Buckeye/Laurel claim that the Tariffs are not an effort to circumvent the outcome of the PAPUC proceedings or constrain the PAPUC's authority. Buckeye/Laurel note that the PAPUC has not protested the Tariffs and did not contend in Docket No. OR18-22-000 that Commission approval of the proposed service would undermine the PAPUC's jurisdiction. Buckeye/Laurel argue that the PAPUC lacks jurisdiction over the proposed initiation of interstate service by Laurel because Buckeye/Laurel are affirming they will maintain both existing intrastate and interstate east-to-west service.<sup>19</sup>

19. According to Buckeye/Laurel, Indicated Parties appear to contend that the PAPUC can preempt the Commission's ability to authorize interstate transportation. Buckeye/Laurel assert instead that federal law preempts state law under the Supremacy Clause of the United States Constitution. Buckeye/Laurel argue that by claiming the Commission should reject the Tariffs pending the conclusion of the PAPUC proceedings involving intrastate service, Indicated Parties are interjecting the PAPUC into an area that falls outside the scope of the PAPUC's jurisdiction, namely, proposals for initiation of interstate service. Buckeye/Laurel assert that the Indicated Parties' argument would effectively displace the Commission's role in regulating interstate pipeline rates and terms of service. They argue that "where a State's exercise of its power to regulate *intrastate* commerce interferes with 'the rightful exertion of the power of Congress over interstate and foreign commerce,' the State's authority must yield."<sup>20</sup> Buckeye/Laurel further claim that Indicated Parties are driven to avoid competition from the Midwest. Buckeye/Laurel also argue that should the PAPUC issue an order disapproving bi-directional service, this would run afoul of the dormant Commerce Clause.

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<sup>17</sup> Response at 8-12, 14.

<sup>18</sup> *Id.* at 13-15.

<sup>19</sup> *Id.* at 15-16.

<sup>20</sup> *Id.* at 18 (quoting *State of Texas v. Eastern Texas R.R. Co.*, 258 U.S. 204, 217 (1922)).

Buckeye/Laurel argue that the dormant Commerce Clause jurisprudence is intended to prevent economic protectionism such as attempting to obtain a PAPUC order shutting out Midwest products for the benefit of in-state interests.<sup>21</sup>

20. Buckeye/Laurel argue that, contrary to Indicated Parties' Protest, the open season process was fair and transparent. They also claim that Indicated Parties are not affected by the alleged lack of transparency and that it is telling that none of the committed shippers has raised an issue regarding the open season process. Buckeye/Laurel assert that the TSA and open season documents proposed the terms of the new service and did not restrict how that service would be provided.<sup>22</sup>

21. Buckeye/Laurel assert that the committed rates are supported by more than \$200 million in infrastructure investments, including constructing new tanks and pump stations. They claim that prior petitions for liquids pipelines have also sometimes involved creating new capacity through reversals and utilizing under-used existing facilities in conjunction with newly-created capacity.<sup>23</sup>

#### **D. PAPUC Comment**

22. On May 1, 2019, the PAPUC filed a letter response.<sup>24</sup> The PAPUC asserts that it is critical that its position be considered to avoid a potential usurpation of state jurisdiction. The PAPUC states that Buckeye/Laurel mischaracterize the absence of a formal protest from the PAPUC as indicating a lack of concern from the PAPUC about the important jurisdictional considerations implicated by this matter. The PAPUC further states that its filing is driven in part by Buckeye/Laurel's "tendency to 'stretch' the facts regarding the PAPUC's role as well as Buckeye/Laurel's jurisdictional overreach in this matter."<sup>25</sup> Moreover, the PAPUC asserts that the service proposed in the Tariffs "*is the same service* that the Complainants in the PAPUC proceedings allege could impair Laurel's existing intrastate service" and that the complaint case will be set for evidentiary

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<sup>21</sup> *Id.* at 16-19.

<sup>22</sup> *Id.* at 19-22.

<sup>23</sup> *Id.* at 23-24.

<sup>24</sup> The PAPUC filed an intervention on April 8, 2019. The PAPUC states that it recently became aware of the Tariffs and that it is also a party in the Docket No. OR18-22-000 proceeding.

<sup>25</sup> PAPUC Letter at 1 n.1.



hearings at the PAPUC.<sup>26</sup> Finally, the PAPUC notes that it previously determined that Laurel's proposed reversal on L718 was an unwarranted abandonment of service that should not receive authorization. The PAPUC requests that the Commission "not take any action that would allow the [Tariffs] to go into effect until the Complaint proceedings at the PAPUC at Docket No. C-2018-3003365 have been concluded."<sup>27</sup>

#### **E. Buckeye/Laurel Response to PAPUC**

23. On May 9, 2019, Buckeye/Laurel filed a response to the PAPUC's letter. Buckeye/Laurel argue that the PAPUC has no basis for requesting that the Commission indefinitely suspend its proceedings while the PAPUC evaluates the issues within its intrastate jurisdiction. Buckeye/Laurel assert that the PAPUC's request is contrary to the Interstate Commerce Act (ICA)<sup>28</sup> and the Supremacy and Commerce Clauses of the United States Constitution. Buckeye/Laurel assert that the PAPUC "turns preemption and the Commerce Clause on their heads by seeking to bar the Commission from allowing commencement of interstate service on the hypothetical and completely unsupported premise that such service 'might' impair intrastate service and the PAPUC's ability to exercise its jurisdiction over intrastate service."<sup>29</sup> Buckeye/Laurel claim that the PAPUC does not explain how the Tariffs might prejudice the PAPUC's jurisdiction or why the PAPUC lacks authority to protect state interests with respect to intrastate transportation. Buckeye/Laurel assert that the interstate transportation will not adversely affect intrastate service. Buckeye/Laurel argue that the Commission should consider the benefits of interstate competition that the new service will provide and that Congress intended the ICA to promote open competition in the interstate common carrier industry.<sup>30</sup>

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<sup>26</sup> *Id.* at 2 (emphasis in original).

<sup>27</sup> *Id.*

<sup>28</sup> 49 U.S.C. app. § 1 *et seq.* (1988).

<sup>29</sup> Buckeye/Laurel Response to PAPUC Letter at 2-3.

<sup>30</sup> *Id.* at 7-8 (citing *Farmers Union Central Exchange v. FERC*, 584 F.2d 408, 412 (D.C. Cir. 1978)).

## II. Discussion

24. An oil pipeline bears the burden of demonstrating that proposed rates and changes to its tariff are just and reasonable.<sup>31</sup> We find that Buckeye/Laurel have failed to meet that burden, as described below, and reject the Tariffs without prejudice.

25. Under the ICA, an oil pipeline is a common carrier<sup>32</sup> that holds itself out to provide interstate transportation service in its public tariff filings with the Commission.<sup>33</sup> Although “it is the oil pipeline’s choice what services it will offer,”<sup>34</sup> the pipeline must “provide and furnish”<sup>35</sup> the services that it holds itself out as offering to shippers “upon reasonable request therefor.”<sup>36</sup> In filing the subject Tariffs with the Commission, Buckeye/Laurel are holding themselves out to provide the public with the transportation service described in the Petition, effective June 7, 2019. However, the PAPUC and

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<sup>31</sup> See, e.g., *Chaparral Pipeline Co., LLC*, 152 FERC ¶ 61,068, at P 7 (2015); *Colonial Pipeline Co.*, 156 FERC ¶ 61,001, at P 15 (2016); *Mars Oil Pipeline Co.*, 150 FERC ¶ 61,148, at n.7 (2015).

<sup>32</sup> *Magellan Midstream Partners, L.P.*, 161 FERC ¶ 61,219, at P 12 (2017) (“By definition, a pipeline is a common carrier, and is bound by the ICA to ship product as long as a reasonable request for service is made by a shipper....”); see also *Farmers Union Central Exchange, Inc. v. FERC*, 734 F.2d 1486, 1504 (D.C. Cir. 1984).

<sup>33</sup> See *Am. Orient Exp. Ry. Co. LLC v. Surface Transp. Bd.*, 484 F.3d 554, 557 (D.C. Cir. 2007) (a common carrier is “one who holds himself out as engaged in the business of providing a particular service to the public”) (quoting *Fla. Power & Light Co. v. FERC*, 660 F.2d 668, 674 (5th Cir. 1981)); see also Black’s Law Dictionary (10<sup>th</sup> ed. 2014) (“A commercial enterprise that holds itself out to the public as offering to transport freight or passengers for a fee. A common carrier is generally required by law to transport freight or passengers without refusal if the approved fare or charge is paid.”).

<sup>34</sup> *Enterprise TE Products Pipeline Co. LLC*, 143 FERC ¶ 61,191, at P 23 (2013).

<sup>35</sup> 49 U.S.C. app. § 1(4) (“It shall be the duty of every common carrier subject to this chapter to provide and furnish transportation upon reasonable request therefor.”).

<sup>36</sup> *Id.*; see also *CHS Inc. v. Enterprise TE Products Pipeline Co., LLC*, 155 FERC ¶ 61,178, at P 14 (2016) (a pipeline “is only required to provide services that it holds itself out as offering.”); *Potomac Elec. Power Co. v. United States*, 584 F.2d 1058, 1063 (D.C. Cir. 1978) (“a railroad’s obligation to furnish transportation is defined by what it holds out to the public in its tariffs”); *Lakehead Pipe Line Co.*, 75 FERC ¶ 61,181, at 61,601 (1996).

Indicated Parties call into question whether Buckeye/Laurel can legally provide such services at this time due to the ongoing litigation before the PAPUC and Pennsylvania Commonwealth Court involving the Laurel pipeline. Buckeye/Laurel did not mention these pending state proceedings in the transmittal letters associated with the Tariffs.<sup>37</sup> In Buckeye/Laurel's Response, they argue that they have discretion regarding how to operationally provide the new services proposed in the Tariffs and that the proposed bi-directional service will not impair existing intrastate east-to-west service, including during peak periods.<sup>38</sup> Yet the Indicated Parties' and PAPUC's representations in opposition to the Tariffs indicate that there are disputed issues of material fact regarding whether Buckeye/Laurel will be able to provide the proposed bi-directional service without reducing existing intrastate service that are currently being litigated in the ongoing state proceedings.<sup>39</sup> Further, it appears that PAPUC approval to partially abandon intrastate service may be a prerequisite to Buckeye/Laurel's providing the proposed new interstate west-to-east service in the Tariffs.<sup>40</sup> Therefore, we find that Buckeye/Laurel have failed to show that they can hold themselves out to provide the proposed services in the Tariffs at this time.

26. Moreover, so long as the scope of the project appears to be undetermined and it is unclear how much, if any, capacity will be available to provide the proposed service, it is not possible to evaluate whether the rate structure and terms of service proposed in the Tariffs are just, reasonable, and non-discriminatory under the ICA. For example, the Tariffs propose separate prorationing rules for apportionment of the Expansion capacity, which include priority (or firm) service for committed shippers, and provisions for allocating at least 10 percent of the operating capacity of the line segment among

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<sup>37</sup> See *Chaparral Pipeline Co., LLC*, 152 FERC ¶ 61,068, at P 7 (2015) ("The burden of proof to support a rate or tariff change is on the pipeline and the Commission expects pipelines to provide sufficient explanatory information to meet that burden of proof in their transmittal letters rather than in their answers."); *Mars Oil Pipeline Co.*, 150 FERC ¶ 61,148, at n.7 (2015).

<sup>38</sup> Response at 14.

<sup>39</sup> See PAPUC Letter.

<sup>40</sup> The complaint proceeding at the PAPUC involves whether the proposed bi-directional service on the L718 segment of the Laurel pipeline that forms part of the Expansion constitutes a partial abandonment of existing intrastate service in violation of Laurel's state certificate of public convenience and Pennsylvania law. Intrastate movements are beyond the Commission's jurisdiction. See *Enterprise TE Products Pipeline Co. LLC*, 143 FERC 61,191, at P 22 (2013).

uncommitted Regular Shippers and New Shippers.<sup>41</sup> However, the capacity to which these proposed terms will apply is the same capacity that is implicated in the pending state proceedings,<sup>42</sup> which have already resulted in significant changes to the project's scope.<sup>43</sup> Based on the existing record, it is not possible to determine at this time whether Buckeye/Laurel will be able to meet the requirements under the Tariffs and TSAs to provide priority transportation for committed shippers up to their monthly volume commitments, or whether uncommitted and New Shippers will have sufficient access consistent with Buckeye/Laurel's common carrier obligation to provide transportation

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<sup>41</sup> See Tariffs at Item No. 90-A. A "Regular Shipper" is defined as "an Uncommitted Shipper that has shipped Commodities on the 2019 Expansion Capacity during six (6) months of the Base Period." A "New Shipper" is "an Uncommitted Shipper that is not a Regular Shipper on the 2019 Expansion Capacity." Up to 10 percent of the non-priority capacity will be allocated to New Shippers. "Non-Priority Capacity" means "the 2019 Expansion Capacity that is available for allocation to Uncommitted Shippers each Proration Month following the allocation of capacity to Committed Shippers..., which shall always equal at least ten percent (10%) of the operating capacity of the line segment in a Proration Month." *Id.*

<sup>42</sup> See PAPUC Letter at 2 (stating that the service proposed in the Tariffs "*is the same service* that the Complainants in the PAPUC proceedings allege could impair Laurel's existing intrastate service") (emphasis in original).

<sup>43</sup> The proposed bi-directional service "followed a decision by the [PAPUC] concluding that Laurel could not completely reverse its east to west service and provide service from the west via Buckeye." Response at 3.

upon reasonable request.<sup>44</sup> Therefore, Buckeye/Laurel have not shown that the proposed terms are just, reasonable, and non-discriminatory.<sup>45</sup>

27. Accordingly, based on the representations in the record at this time, we reject the Tariffs. We recognize that the circumstances are subject to change, and note that our rejection is without prejudice to Buckeye/Laurel's filing a fully-supported proposal resolving the deficiencies discussed above. Because we are rejecting the Tariffs based on the above discussion, we need not address the other issues raised by the filings.

The Commission orders:

Laurel Pipe Line Company, L.P.'s FERC Tariff Nos. 1.0.0 and 2.0.0 and Buckeye Pipe Line Company, L.P.'s FERC Tariff Nos. 456.0.0, 457.0.0 and 458.0.0 are rejected without prejudice.

By the Commission.

( S E A L )

Kimberly D. Bose,  
Secretary.

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<sup>44</sup> See *Colonial Pipeline*, 156 FERC ¶ 61,001 at P 18 (“[T]he ICA requires that shippers have an opportunity to take service upon reasonable request, and we therefore must evaluate whether [the pipeline’s] proposal preserves that right.”); *CCPS Transportation, LLC*, 122 FERC ¶ 61,123, at P 14 (2008) (“Each proposal presented to the Commission is appraised on its own merits regarding the amount of set-aside capacity planned to be reserved for spot volumes.”); see also *Panola Pipeline Co., LLC*, 151 FERC ¶ 61,140, at P 23 n.16 (2015) (where a pipeline intends to offer intrastate and interstate priority service up to 90 percent of capacity, the Commission policy requires that interstate uncommitted shippers have the first right to service from the 10 percent reservation for uncommitted capacity); *Navigator BSG Transportation & Storage, LLC*, 152 FERC ¶ 61,026, at P 19 (2015) (“[T]he Commission’s existing policy requires that 10 percent of capacity be reserved for uncommitted jurisdictional shippers.”).

<sup>45</sup> *Colonial Pipeline*, 156 FERC ¶ 61,001 at P 26 (“Ultimately, under the ICA, common carriers have an obligation to offer service to all upon reasonable request. How to interpret that obligation rests with the Commission, based on its application of the ICA to the facts and record of a particular case. Although pipelines have reasonable leeway in crafting a proration policy based on history or some other approach, that leeway is not limitless but is bound by this statutory requirement.”).

Document Content(s)

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