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September 7, 2018

VIA E-FILING

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

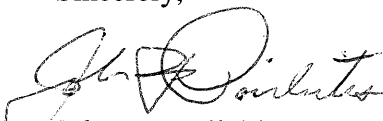
Re: Giant Eagle, Inc.; Guttman Energy, Inc.; Lucknow-Highspire Terminals, LLC;
Monroe Energy, LLC; Philadelphia Energy Solutions Refining and Marketing, LLC;
and Sheetz, Inc. v. Laurel Pipe Line Company, L.P., Docket No. C-2018-3003365

Dear Secretary Chiavetta:

Enclosed for electronic filing please find the Response of Giant Eagle, Inc., Guttman Energy, Inc., Lucknow-Highspire Terminals, LLC, Monroe Energy, LLC, Philadelphia Energy Solutions Refining and Marketing, LLC, and Sheetz, Inc. ("Complainants") to the Preliminary Objections of Laurel Pipe Line Company, LP in the above-captioned proceeding.

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

Sincerely,



John F. Povilaitis

JFP/tlg

Enclosure

cc: Administrative Law Judge Eranda Vero
Certificate of Service

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Giant Eagle, Inc.; Guttman Energy, Inc.;	:	
Lucknow-Highspire Terminals, LLC;	:	
Monroe Energy, LLC; Philadelphia Energy	:	
Solutions Refining and Marketing, LLC;	:	Docket No. C-2018-3003365
and Sheetz, Inc.	:	
	:	
Complainants,	:	
	:	
v.	:	
	:	
Laurel Pipe Line Company, L.P.	:	
	:	
Respondent.	:	

**RESPONSE OF COMPLAINANTS TO THE
PRELIMINARY OBJECTIONS OF LAUREL PIPELINE COMPANY, L. P.**

AND NOW, Giant Eagle, Inc. Guttman Energy, Inc. Lucknow-Highspire Terminals, LLC, Monroe Energy, LLC, Philadelphia Energy Solutions Refining and Marketing, LLC, and Sheetz, Inc. (collectively, the “Complainants”) hereby respond to the Preliminary Objections of Laurel Pipe Line Company, L.P. (“Laurel”), pursuant to Section 5.101(f) of this Commission's regulations, 52 Pa. Code § 5.101(f), as follows:

I. INTRODUCTION

1. On or about August 28, 2018, Laurel filed with the Pennsylvania Public Utility Commission (“Commission”) Preliminary Objections to the Complainants’ Amended Complaint filed on August 8, 2018 (“Amended Complaint”). The Preliminary Objections argue that: (i) the Commission lacks jurisdiction to adjudicate any issues raised in the Amended Complaint over the initiation of interstate gas transportation service that do not involve the abandonment of intrastate service; (ii) the Amended Complaint fails to state a claim against Laurel under the Public Utility Code, 66 Pa.C.S. §§ 101 *et seq.* (“Code”) because the issues raised for adjudication

are not “ripe” for Commission decision; and, (iii) the Amended Complaint fails to state a claim that Laurel’s proposed initiation of bi-directional pipeline transportation service along its historically uni-directional line is inconsistent with Laurel’s existing intrastate tariff on file with the Commission. As will be demonstrated below, these claims are meritless and the Preliminary Objections should be dismissed.

II. BACKGROUND

2. Laurel has been a public utility in Pennsylvania since it received a Certificate of Public Convenience (“CPC”) from the Commission in 1957. Since that time, Laurel has owned and operated the Laurel Pipeline. Laurel has only provided single-direction (*i.e.*, east-to-west) intrastate transportation of petroleum products across Pennsylvania, through a pipeline originating in the Philadelphia, Pennsylvania area and extending westward towards Pittsburgh to Midland, Pennsylvania, which is near the Ohio border. Laurel currently is the only intrastate petroleum products pipeline that provides service from Philadelphia west to Pittsburgh, Pennsylvania. Laurel’s affiliate, Buckeye Pipe Line, L.P. (“Buckeye”), is the only interstate petroleum products pipeline that provides service from the east to Pittsburgh and it does so via an Affiliated Interest Agreement with Laurel that is subject to this Commission’s jurisdiction.

3. The Complainants¹ are a group of interested parties, including major retailers, as well as refiners and shippers that ship products on the Laurel Pipeline, either as the shipper of record or as the entity that injects product into the pipeline.

¹ The Complainants are largely the same companies that challenged Laurel’s application at the Commission seeking authority pursuant to Laurel’s intrastate CPC to abandon east-to-west pipeline service for delivery points west of the Eldorado, Pennsylvania delivery point. See, *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 (Application Filed Nov. 14, 2016) (“Application”). Commission Administrative Law Judge (“ALJ”) Eranda Vero issued a Recommended Decision denying Laurel’s Application. *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, *et al.* (Recommended Decision dated March. 21, 2018) (“Recommended Decision”). On July 12, 2018, the Commission entered an Order largely affirming the

4. The Preliminary Objections relate to the Amended Complaint. The Amended Complaint in turn arises from (i) Laurel's announcement and proposal to operate the Laurel Pipeline bi-directionally, i.e., providing *intrastate* service from east to west along a portion of that pipeline while also proposing to provide *interstate* transportation service from west to east along the same segment of the pipeline between Eldorado and Pittsburgh, Pennsylvania and (ii) Laurel's Preliminary Objections dated August 1, 2018 ("Preliminary Objections") to the Complainants' Formal Complaint filed in this proceeding on July 12, 2018 ("Original Complaint").²

5. The Amended Complaint addresses Laurel's well-documented decision to operate the Eldorado to Pittsburgh segment of the Laurel Pipeline bi-directionally without this Commission's review or approval. Laurel's decision is reflected in pleadings in a proceeding, currently pending before the Federal Energy Regulatory Commission ("FERC"), that was initiated by Laurel and its affiliate interstate pipeline service provider Buckeye *without* any prior filing with or approval of this Commission regarding continued provision of intrastate service in a new bi-directional context. Under a bi-directional regime, there will inevitably be days when the uni-directional (i.e., east to west) intrastate service currently provided by Laurel will not be available to customers because service is being provided from west to east to new customers on the Laurel Pipeline. This change to existing service has not been reviewed or approved by the Commission. Such a proposal is in effect a partial abandonment of east to west petroleum

Recommended Decision in rejecting Laurel's Application on grounds that Laurel failed to meet the requirements to abandon east to west service on the segment of its pipeline between Eldorado and Pittsburgh. ("Final Order"). On August 14, 2018, Laurel filed an appeal of the Final Order with the Commonwealth Court. The appeal challenges the Commission's rejection of Laurel's Application and the multiple grounds for that rejection. On August 24, 2018, several of the parties that are Complainants in this proceeding filed a cross-appeal of the Final Order with the Commonwealth Court. The cross-appeal challenges only the Commission's determination that Laurel's existing CPC provides for both east-to-west and west-to-east intrastate service on the Laurel Pipeline.

² Upon the filing of Preliminary Objections to the Original Complaint, the Complainants exercised their right, under Section 5.91(b) of the Commission's regulations, 52 Pa. Code § 5.91(b), to file the Amended Complaint in lieu of responding to the Preliminary Objections.

products pipeline transportation service that Laurel has been providing *exclusively* on the entire Laurel Pipeline since 1957. The effect of this bi-directional proposal and the filing at FERC is to deprive this Commission of its lawful jurisdiction over a regulated utility and its lawful jurisdiction over a proposed abandonment of a portion of Laurel's existing certificated Pennsylvania intrastate public utility service. The current east to west capacity on the Laurel Pipeline will be diminished by the initiation of west to east service on the same pipeline that currently exclusively flows east to west. This diminution of service constitutes partial abandonment. At a minimum, because Laurel has never provided firm, tariff-based assurances and guarantees to the Complainants and all other users of the Laurel Pipeline that their historic east to west intrastate pipeline *service* will not be diminished under the claimed bi-directional service now being implemented, Laurel is proposing to provide unreasonable and inadequate service to the Complainants that will materially and adversely impact their businesses and operations.

6. Despite Laurel's clear decision to commence bi-directional service on a portion of its pipeline without resort to any review by this Commission, it argues in the Preliminary Objections that the Complainants' concerns are premature (i.e., not ripe), and that the Complainants *only* recourse is to wait and see the effect of Laurel's implementation of its bi-directional plan. Laurel argues that the Complainants must trust and accept Laurel's currently unsubstantiated claims that bi-directional service will not impair or adversely impact the Complainants' ability to deliver petroleum products from the east into the large Pittsburgh market and commence a proceeding after the Complainants actually begin to experience harm. These allegations do not support the granting of the Preliminary Objections.

III. LEGAL STANDARDS OF REVIEW

7. The Commission's Rules of Administrative Practice and Procedure permit the filing of preliminary objections. 52 Pa. Code § 5.101.³

8. The grounds for preliminary objections are set forth in 52 Pa Code § 5.101(a):

(1) Lack of Commission jurisdiction or improper service of the pleading initiating the proceeding.

(2) Failure of a pleading to conform to this chapter or the inclusion of scandalous or impertinent matter.

(3) Insufficient specificity of a pleading.

(4) Legal insufficiency of a pleading.

(5) Lack of capacity to sue, nonjoinder of a necessary party or misjoinder of a cause of action.

(6) Pendency of a prior proceeding or agreement for alternative dispute resolution.

(7) Standing of a party to participate in the proceeding.

9. The Commission's procedure regarding the disposition of preliminary objections is similar to that utilized in Pennsylvania civil practice.⁴

10. A preliminary objection in civil practice seeking dismissal of a pleading will be granted only where relief is clearly warranted and free from doubt.⁵ The Commission has adopted this standard.⁶

11. The Commission may only dismiss a pleading without hearing if, in its opinion, a hearing is not necessary in the public interest.⁷

³ See also *Equitable Small Transportation Interveners v. Equitable Gas Company*, Docket No. C-00935435 (Final Order entered July 18, 1994).

⁴ *Equitable Small Transportation Interveners*, Docket No. C-00935435 (July 18, 1994).

⁵ *Interstate Traveller Services, Inc. v. Pa. Dept. of Environmental Resources*, 406 A.2d 1020 (Pa. 1979); *Rivera v. Philadelphia Theological Seminary of St. Charles Borromeo, Inc.*, 595 A.2d 172 (Pa. Super. 1991).

⁶ *Montague v. Philadelphia Electric Company*, 66 Pa. PUC 24 (1988).

12. Thus, in resolving a preliminary objection, the Commission must assume that:

[a]ll material facts set forth in the complaint as well as all inferences reasonably deducible therefrom are admitted as true. The question presented by the demurrer is whether, on the facts averred, the law says with certainty that no recovery is possible. Where a doubt exists as to whether a demurrer should be sustained, this doubt should be resolved in favor of overruling it.⁸

13. Laurel has a heavy burden to demonstrate any entitlement to relief under its Preliminary Objections. Because there are clear *factual* and *legal* disputes underlying the parties' positions (and in all factual matters the Complainants' well-plead allegations of material facts and all inferences reasonably deducible therefrom must be accepted as true),⁹ summary resolution of the issues raised in the Amended Complaint at this early stage of the proceeding via Preliminary Objections is both inappropriate and ill-advised.

IV. ARGUMENT¹⁰

A. **PRELIMINARY OBJECTION NO. 1 - The Commission Has Jurisdiction over Laurel's Proposed Initiation of Bi-Directional Service on a Portion of the Laurel Pipeline Because The Proposal Will Result in a Partial Abandonment of Intrastate Service Or, At a Minimum, Unreasonable Or Inadequate Service.**

14. The foundation of Laurel's claim that the Commission lacks jurisdiction over the initiation of bi-directional service on the Laurel Pipeline is that such service "does not involve the abandonment of intrastate service." Preliminary Objections, Section III. A. It similarly claims that under its new proposal "intrastate service over the same facilities continues to be available." Preliminary Objections, ¶ 16.

⁷ 52 Pa. Code § 5.21(d); *see also Lydine Dutton v. Cordia Communications Corporation*, Docket No. F-2010-2201413 (Initial Decision entered March 10, 2011; Order entered September 22, 2011) (citing 66 Pa.C.S. § 703(b)).

⁸ *McMahon v. Shea*, 688 A.2d 1179, 1181 (Pa. 1997).

⁹ Preliminary Objections, ¶ 13.

¹⁰ Complainants incorporate into the Argument paragraphs 1-13 as if set forth fully therein.

15. The Amended Complaint confirms that the Complainants have clearly and reasonably pled that the bi-directional service proposal is a different *service* than what Laurel has been providing on the Laurel Pipeline since it was issued its CPC in 1957.¹¹ These well-pled allegations by the Complainants must be accepted as true and, accordingly, this dispute confirms that this Commission cannot, under the applicable standards, grant this Preliminary Objection.

16. This Amended Complaint proceeding highlights the continuing disagreement between the Complainants and Laurel over the nature and extent of Laurel's existing "service" to the public. Laurel has been providing and is only authorized under its tariff to provide petroleum pipeline transportation service in a *westerly* direction between Altoona and Pittsburgh. By now proposing to initiate bi-directional service between Altoona and Pittsburgh, Laurel has admitted there will be times when east to west service on this section of the pipeline will not be available because service will be in the opposite direction (i.e., west to east). This is a different service than what Laurel has been providing since 1957, what it sought when it filed its current tariff, and what the Commission granted in approving that tariff.¹² Accordingly, it is not fair or appropriate to claim – as Laurel does – that its tariffed intrastate service over the same facilities will continue to be available. To the extent such intrastate service is in fact continuing, it will be substantially *different* because there will be times when the flow of product on the Laurel Pipeline will preclude desired product movements in the opposite direction. That fact and the reduction in capacity on the Laurel Pipeline necessary at times to accommodate east to west

¹¹ The Complainants also assert that Laurel's CPC only authorizes east to west intrastate service. While the ALJ agreed with Complainants on this point in the Recommended Decision, the Commission ruled that a direction of service was not addressed in Laurel's 1957 CPC. The Complainants have appealed this issue to Commonwealth Court as a cross appeal to Laurel's appeal of the Final Order. The Complainants continue to believe that Laurel has not been authorized to provide west to east service under its CPC.

¹² As noted above, the Complainants also maintain their position that Laurel's CPC does not permit the bi-directional service that Laurel is proposing. However, reaching the merits of that issue in this proceeding is not necessary to overrule Laurel's Preliminary Objections.

product movement constitutes a change in “service” and a partial abandonment of previously rendered service.¹³

17. The Complainants directly addressed these “service” issues in the Amended Complaint where they said in part:

While Laurel (and its affiliate Buckeye) have claimed in late and non-authorized filings at the FERC in the PDO proceeding that the proposed bi-directional service will have no impact on current tariffed intrastate east to west deliveries along the Laurel Pipeline between Eldorado and Pittsburgh, Laurel has not provided written assurances and guarantees in any tariffs, agreements, shipper manuals or other legally binding documents that the Complainants and other shippers and users of the Laurel Pipeline will be able to move the same amount of petroleum products into the Pittsburgh market from eastern supply sources and over the same time periods as they have been able to do historically under Laurel’s existing tariff and rules or as needed by shippers in the future. Absent such definitive and legally binding assurances, existing east to west intrastate petroleum products transportation service under the bi-directional proposal will be abandoned in part and to an unknown degree. Laurel is required as a matter of law to file an application for a certificate of public convenience before attempting to abandon its current service and implement bi-directional service in its place.

Amended Complaint, ¶ 42.

18. Laurel’s claimed reliance on selected portions of the Recommended Decision and Final Order merely addressing a conceptual framework for evaluating the parties’ different positions (i.e., initiation of FERC service versus abandonment of intrastate service) is *not*

¹³ Under the Code, the term “service” is defined very broadly:

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

dispositive of the (i) the partial abandonment of service alleged by the Complainants in the Amended Complaint as a result of the proposed new bi-directional service or (ii) the required approvals necessary under Pennsylvania law before a certificated public utility can change its “service.”

19. Laurel mischaracterizes the Amended Complaint (Preliminary Objections, ¶ 19) by failing to acknowledge or appreciate that the Complainants are not challenging the *initiation of interstate service*, but are challenging the *abandonment of existing intrastate service*, regardless of the justification.

20. The depth of Laurel’s mischaracterization of the Amended Complaint apparently knows no bounds. What Laurel claims in paragraph 2 of the Preliminary Objections to be an “admission” by Complainants of continued west-bound intrastate service under the bi-directional proposal is nothing more than a restatement of what Laurel itself has stated – not any admission by the Complainants. (See Amended Complaint, ¶ 18).

21. Laurel’s Preliminary Objection on Commission jurisdiction fails under its own weight. Laurel is continuing to claim an entitlement to initiating a new service and abandoning its existing certificated west-bound intrastate service based solely on its self-proclaimed, untested and unproven claim that all of the Complainants’ existing pipeline transportation service will be preserved. Laurel’s conclusory statements do not make them accurate, let alone provide a basis for the Commission not asserting its jurisdiction over a clear change in intrastate pipeline transportation service. The Complainants are entitled to have their “day in court” on the nature and extent of Commission approval needed for a pipeline utility like Laurel to partially abandon existing state-jurisdictional public utility service. As the Commission and the courts have long recognized, petroleum products pipelines can simultaneously provide interstate and intrastate

service, with appropriate regulatory oversight from each jurisdiction.¹⁴ The Amended Complaint asks for nothing less.

B. PRELIMINARY OBJECTION NO. 2 – The Amended Complaint States a Claim Against Laurel Regarding the Proposed Initiation of Bi-directional Pipeline Transportation Service and is Ripe for Adjudication in this Proceeding.

22. The Complainants deny Laurel's implication that the Amended Complaint is not ripe for review under 66 Pa. C.S. § 701.¹⁵ The Complainants also deny Laurel's allegation that the Complainants incorrectly interpreted Commission precedent on the ripeness doctrine. The Commission in *States* determined:

The Complainant has just recently completed construction of his new residence. There is no doubt, based upon his testimony and demeanor during the hearings in this case, of his intention to build a garage, as well. The only hypothetical aspect of this case concerns the location of the garage, which the Complainant forthrightly acknowledges will depend upon which utility will provide him with electric service. Therefore, little danger exists of the Commission rendering an advisory opinion on a hypothetical question, which may never come to pass. Certainly, the ripeness doctrine should not be so stringently construed as to require an individual to risk the expense of building a structure upon a given location with the hope that he or she will ultimately prevail in a legal proceeding to obtain electric service of his/her choice to that site. Clearly, the Complainant here pursued the more prudent course of seeking the Commission's decision before erecting his garage. Accordingly, the rationale for application of the doctrine of ripeness does not exist here. Thus, I will address the merits of his claim.¹⁶

¹⁴ Final Order, at 19; *In re Condemnation of Sunoco Pipeline, L.P.* 143 A.3d 1000, 1004 (Pa. Cmwlth 2016); *Cook Inlet Pipe Line Co. v. Alaska Pub. Utilities Comm'n*, 836 P.2d 343, 350 (Alaska 1992); and *Amoco Pipeline Co.*, 62 F.E.R.C. ¶ 61,119 (1993).

¹⁵ 66 Pa. C.S. § 701.

¹⁶ *Thomas C. States v. Pennsylvania Electric Company and United Electric Cooperative, Inc.*, 1995 Pa. P.U.C. LEXIS 179, *24 (Initial Decision dated Nov. 29, 1995), *adopted without modification*, 1996 Pa. P.U.C. LEXIS 174 (Order dated Jan. 16, 1996) ("*States*").

In *States*, the Commission pragmatically concluded that the ripeness doctrine is designed to ensure that a particular claim is sufficiently known and viable such that addressing the issue would not constitute an advisory review of a hypothetical situation.¹⁷ Here, the Amended Complaint does not address a hypothetical situation or require the rendering of an advisory opinion for several reasons. First, Laurel has been pursuing its bi-directional service objectives in several forums for several months. There is no question that Laurel will be implementing bi-directional service absent regulatory intervention. Second, the Complainants are already experiencing the direct adverse impact of Laurel's bi-directional objectives. Third, Laurel's failure to seek Commission approval of its bi-directional objectives is a failure that has already occurred. Each of these circumstances is explained below. The Commission will not be engaging in an "advisory review" by allowing the Amended Complaint to proceed for a full evidentiary hearing.

23. Laurel has been actively pursuing a bi-directional service objective for several months. In the immediate wake of the Recommend Decision rejecting Laurel's Application, Laurel issued a press release and Buckeye informed its investors that Laurel (and Buckeye) would be pursuing bi-directional service using Laurel's Commission-jurisdictional pipeline.¹⁸ Laurel then joined with its affiliate, Buckeye, to file a Petition for Declaratory Order ("PDO") with the FERC in pursuit of Laurel's and Buckeye's bi-directional service objectives.¹⁹ Laurel has commenced construction of pump stations in pursuit of its bi-directional objectives.²⁰ Laurel has scheduled and cancelled one, and has scheduled another, hydrostatic pressure test

¹⁷ *Id.* at *24.

¹⁸ See <http://www.post-gazette.com/powersource/policy-powersource/2018/04/06/Laurel-pipeline-Buckeye-Partners-bi-directional-fuel-service-PUC-Giant-Eagle-Sheetz/stories/201804060111>.

¹⁹ Preliminary Objections, ¶¶ 17-19.

²⁰ See Answer and New Matter of Laurel Pipe Line Company, L.P. to the Amended Complaint, Appendix B – Buckeye Pipe Line Company, L.P. and Laurel Pipe Line Company, L.P., Docket No. OR18-22-000, Motion for Leave to Answer and Answer to Protest, p. 35.

(“hydrotest”) of the pipeline segment between Eldorado and Pittsburgh in pursuit of its bi-directional objectives.²¹ Laurel has allocated pipeline shipments from eastern supply sources to Pittsburgh during August (until its first hydrotest was rescheduled) and then did so again for September to accommodate the hydrotesting it claims is required to commence bi-directional service. Finally, Laurel has declared its bi-directional service to be contingent on FERC, but not Commission approval.²² These actions, combined with many assertions in Laurel’s pleadings before this Commission and FERC, leave no doubt that the Complainants’ claims are tangible, present, and increasing over time.

24. The Amended Complaint further clarifies how the Complainants are being harmed by Laurel’s bi-directional objectives. Laurel characterizes the Amended Complaint as alleging “that Laurel’s future initiation of bi-directional service, i.e., commencing eastbound interstate service and not abandoning westbound intrastate service, will violate the Code.”²³ In referencing only a prospective possibility of bi-directional service, Laurel ignores that it has already harmed and continues to harm the Complainants by pursuing its bi-directional service objectives.²⁴ The Complainants were harmed beginning in mid-July when they needed to resort to alternative supply arrangements due to a hydrotest that Laurel had scheduled for mid-August. Those alternative supply arrangements were, in large part, “stranded” when the hydrotest was cancelled for August and immediately rescheduled for September. That cycle repeated itself in August, when the Complainants were forced into alternative supply arrangements to accommodate a hydrotest that is now scheduled for mid-September, notwithstanding the absence

²¹ *Id.* at ¶¶ 22-29.

²² *See* Amended Complaint, ¶¶ 24 (showing that Laurel considers only FERC authority relevant to its hydrostatic testing for bi-directional service).

²³ Preliminary Objections, ¶ 29.

²⁴ *See* Preliminary Objections, ¶ 39.

of any regulatory approvals of bi-directional service. In addition, the Amended Complaint provides concrete examples of the harm to shippers, excerpts of which are provided below:

37. Laurel's decision to proceed with bi-directional service without Commission authorization (including the absence of appropriate tariffs on file with and approved by the Commission), will *adversely impact and impair the existing intrastate tariffed pipeline transportation service* provided by Laurel to Complainants and constitutes a violation by Laurel of its obligation under Code Sections 1501, 1302 and 1303 to provide safe, adequate and reasonably continuous service consistent with its current tariff to its customers, including the Complainants.

38. A violation by Laurel of Code Sections 1302, 1303, and 1501 exposes Complainants to *service impairments* such as (i) certain Complainants' *loss of profit and revenue* because of having to sell petroleum products from eastern Pennsylvania origins intended to be delivered to points between Eldorado and Pittsburgh along the Laurel Pipeline in other less profitable markets; (ii) Complainants *defaulting on existing firm petroleum products delivery agreements* to points between Eldorado and Pittsburgh along the Laurel Pipeline that may not be able to be satisfied due to the proposed bi-directional service; and (iii) increased wholesale prices for gasoline and diesel fuel that cause increases in retail prices of those commodities in the Pittsburgh market, and fuel availability constraints because supply from the east may not be able to access that large market at times during the implementation of the proposed bi-directional service, contrary to the nature and level of intrastate pipeline transportation service currently available under Laurel's existing tariff

42. . . . Laurel *has not provided written assurances and guarantees* in any tariffs, agreements, shipper manuals or other legally binding documents *that the Complainants and other shippers and users of the Laurel Pipeline will be able to move the same amount of petroleum products* into the Pittsburgh market from eastern supply sources over the same time periods as they have been able to do historically under Laurel's existing tariff and rules or as needed by shippers in the future. *Absent such definitive and legally binding assurances, existing east to west intrastate*

*petroleum products transportation service under the bi-directional proposal will be abandoned in part and to an unknown degree . . .*²⁵

Laurel's turning a blind eye to the needs of its shippers does not equate to an absence of harm or any lack of ripeness. The adjudication of the Amended Complaint should not be delayed; if anything, it may need to be accelerated to avoid any additional adverse impacts.

25. The prior Commission Orders cited in Laurel's Preliminary Objections on ripeness issues bear little relevance to the present circumstances. The cases cited by Laurel in which the Commission dismissed pleadings on grounds of ripeness do not involve situations where the public utility rejected an obligation to submit to Commission approval.²⁶ In *Hovis*, the Commission dismissed a complaint against an abandonment as not ripe and in *MAPSA*, the Commission dismissed claims of over-collected transition charges for the same reason.²⁷ In both cases, the Commission based its findings on the obligations of each affected public utility to participate in Commission-regulated proceedings concerning the disputed matters.²⁸ Here, as stated in the Amended Complaint, Laurel has already declared that the Commission's review and approval is not required for commencement of Laurel's bi-directional service.²⁹ As a result, the circumstances addressed in the *Hovis* and *MAPSA* decisions lack the controversy presented by Laurel's declaring Commission review to be unnecessary for bi-directional service on its pipeline.³⁰ Accordingly, the Amended Complaint is ripe for Commission adjudication.

²⁵ Amended Complaint, ¶¶ 37-38, and 42 (emphasis added).

²⁶ See Preliminary Objections, ¶¶ 26-28 citing *Hovis v. National Fuel Gas Distribution Corporation*, Docket No. C-2008-2035033, 2008 Pa. PUC 899, at *6 (Initial Decision dated Nov. 10, 2008), *adopted without modification* Docket No. C-2008-2035033 (Order entered Feb. 23, 2009) ("*Hovis*"); *Mid-Atlantic Power Supply Assoc. v. PECO Energy Company*, Docket Nos. P-00981615, *et al.*, 1999 Pa. PUC Lexis 23 (Recommended Decision dated Jan. 11, 1999), *adopted*, 1999 Pa. PUC Lexis 30 (Opinion and Order entered May 19, 1999) ("*MAPSA*").

²⁷ See *Id.*

²⁸ See *Id.*

²⁹ Amended Complaint, ¶¶ 20-29, 37.

³⁰ See *Id.*

26. Finally, although the Complainants have the option to file a Complaint after the actual commencement of bi-directional service, such a course of action is *not* a suitable “remedy” and the Complainants deny any implication that the Amended Complaint cannot be considered ripe for decision at this time. The harms that the Complainants would incur under a bi-directional scheme are clear, as is the unlawfulness of Laurel implementing its bi-directional proposal in the absence of Commission approval. As stated above, Laurel failed to seek and obtain Commission approval to effect bi-directional pipeline transportation service along the Laurel Pipeline segment between Eldorado and Pittsburgh, Pennsylvania. Prior Commission approval is required for such an act because implementing bi-directional service constitutes an abandonment of existing Pennsylvania intrastate public utility service.³¹ As a result, Laurel is now in violation of Section 1102(a)(2) of the Code.³² Alternatively, even if the Commission determines that abandonment had not occurred, changes in Laurel’s intrastate service require changes to Laurel’s Commission-jurisdictional tariff, for which Laurel has failed to seek and obtain Commission approval.³³ As such, the Complainants’ concerns that Laurel’s actions violate the Code are timely.

27. For the reasons explained above, the Complainants sufficiently stated a claim regarding Laurel’s initiation of bi-directional service for which the Complainants’ requested relief can be granted. As a result, the Complaint should not be dismissed.

³¹ See 66 Pa. C.S. § 1102(a)(2).

³² See Amended Complaint ¶¶ 34-44.

³³ *Id.*

C. PRELIMINARY OBJECTION NO. 3– The Amended Complaint States a Claim Against Laurel That the Proposed Initiation of Bi-directional Pipeline Transportation Service is Inconsistent with Its Existing Intrastate Commission Tariff.

28. The Amended Complaint contends that Laurel’s proposed bi-directional service is in fact an abandonment of the current westerly service on the Eldorado to Midland section of the Laurel Pipeline, and the initiation of a new bi-directional service on that same segment. Consequently, the Indicated Parties have argued that Laurel’s existing tariff must be modified.

29. In furtherance of its Preliminary Objection No. 3 relating to the Complainants’ claims that the proposed bi-directional service is inconsistent with its Commission-approved tariff, Laurel asserts three arguments, none of which are controlling or dispositive: (i) the Complainants are bound by Laurel’s current tariff, which it contends has the force and effect of law (Preliminary Objections, ¶¶ 43-44); (ii) bi-directional service is permitted, even in Laurel’s sole discretion, because its s current tariff allows it to “alter pumping sequences.” (Preliminary Objections, ¶ 47); and, (iii) Commission precedent permits a petroleum products transportation provider to “change its method of operation” without Commission approval. (Preliminary Objections, ¶ 48). These arguments are completely lacking in merit.

30. Although tariffs are binding on a utility and its customers until changed,³⁴ it is equally clear that tariffs are not sacrosanct and are binding only where “the words are clear and free from ambiguity.”³⁵ Here, Laurel contends that a solitary phrase “alter pumping sequences and schedules” allows it to change the operation of the Laurel Pipeline from its current uni-directional west to east mode, as it has operated since 1957, to bi-directional along the segment between Eldorado and Coraopolis.

³⁴ 66 Pa. C.S. § 1303; *PPL Elec. Utils. Corp. v. Pa. P.U.C.*, 912 A.2d 386, 402 (Pa. Cmwlth. 2006) (“*PPL*”).

³⁵ *PPL* at 403.

31. While Laurel's tariff may permit changes to sequences and schedules, it nowhere mentions changing the direction of pumping. There is no reasonable construction of the phrase "sequences and schedules" that even remotely suggests bi-directionality, without reading into the tariff a new provision, namely, a provision to allow direction to be changed at will. This argument is beyond specious and contrary to the very precedent cited by Laurel. At the very least, the phrase "alter pumping sequences and schedules" is ambiguous, although the most reasonable interpretation is that pumping sequences and schedules may be changed *within the context of Laurel's existing east to west certificated intrastate transportation service*. Under no circumstances can a change in directionality be implied into these tariff words. Accordingly, Laurel's argument fails because its tariff provision is neither clear nor does it expressly allow directional change with or without Commission approval. Moreover, even if one takes the position that no particular direction of service was certificated by the Commission for Laurel in 1957, Laurel is planning to abandon some east to west intrastate service, not in favor of west to east intrastate service, but rather in favor of new interstate service which in no way is addressed by Laurel's Pennsylvania CPC.

32. Laurel inappropriately relies on a dated 1976 Commission case involving a petroleum gathering line for its claim that petroleum products pipeline operators can change the "method of operation" without Commission approval.³⁶ In *Harris*, the complainant ("Mr. Harris") owned petroleum wells whose production was in steep decline and, through the occurrence of intervening events, was no longer was able to flow oil via gravity to the pipeline operated by National Transit. National Transit proposed several methods to enable the wells to continue functioning that were uniformly disregarded or disputed by Mr. Harris, leaving National Transit with no choice but to truck the product directly from the oil field. In *Harris*, the

³⁶ *John Harris v. National Transit Company*, 50 Pa. P.U.C. 271 (1976) ("*Harris*").

Commission itself identified several extraordinary factual developments that significantly narrowed the scope and applicability of the decision. Overall, the Commission found that “central to this case is the question of whether a utility may change its method of operation where it appears that the original method has become outdated or uneconomical.”³⁷ The Commission found *evidence that both factors (“outdated or uneconomical”) were satisfied*. No such comparable finding can be made in this case with respect to the Laurel Pipeline.

33. First, the Commission noted that the pipelines operated by National Transit no longer had sufficient gravity flow to efficiently move product from complainant’s wells following the Pennsylvania Department of Transportation (“PennDOT”) appropriation of most of National Transit’s gathering line system.³⁸ Additionally, even the sole line left unappropriated by PennDOT later became embroiled in an easement dispute with a landowner and National Transit no longer possessed the necessary right-of-way to continue providing Mr. Harris with pipeline service.³⁹ Due to these extremely improbable developments, National Transit lost all rights and access to facilities capable of providing the pipeline service previously offered to the complainant, thereby rendering the prior service outdated.

34. Second, the Commission observed that National Transit was deeply insolvent, with liabilities exceeding assets by a factor of 2-1.⁴⁰ As a result, the Commission determined that any methodology for moving product from Mr. Harris’ well beyond trucking would have unreasonably required a capital expenditure that could force the carrier into bankruptcy. To avoid such a result, the Commission concluded that National Transit met the burden of

³⁷ *Id.*, p. 273.

³⁸ *Id.*, p. 276.

³⁹ *Id.*

⁴⁰ *Id.*

demonstrating that continued provision of pipeline service under the circumstances would be uneconomic.⁴¹

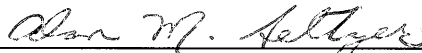
35. There are no similar extreme or extraordinary events forcing Laurel to rely on bi-directional service to continue meeting obligations to its current customers. Accordingly, Laurel's reliance on *Harris* is misplaced. That decision does not support or allow a utility to simply change, at its discretion, the very method of service with all the attendant customer and other consequences, without commission review and approval, including the impact on affected parties. Rather, *Harris* represents the Commission's efforts to resolve a highly unique and narrow situation in a manner consistent with its charge to protect the public interest.

36. For the reasons set forth above, Laurel's Preliminary Objection No. 3 must be denied.

WHEREFORE, the Complainants hereby request that the Preliminary Objections of Laurel Pipeline Company, L.P. be denied in their entirety.

Respectfully submitted,

Dated: September 7, 2018



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⁴¹ *Id.*, pp. 275-276.

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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Giant Eagle, Inc.; Guttman Energy, Inc.;	:	
Lucknow-Highspire Terminals, LLC;	:	
Monroe Energy, LLC; Philadelphia Energy	:	
Solutions Refining and Marketing, LLC;	:	Docket No. C-2018-3003365
and Sheetz, Inc.	:	P-2018-3003368
Complainants,	:	
	:	
v.	:	
	:	
Laurel Pipe Line Company, L.P.	:	
Respondent.	:	

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true and correct copy of the foregoing document upon the parties and in the manner listed below:

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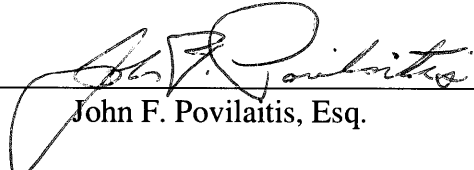
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Dated this 7th day of September, 2018.



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