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; and Sheetz, Inc.	:	Docket No. C-2018-3003365
Complainants,	:	
v.	:	
Laurel Pipe Line Company, L.P.	:	
Respondent.	:	

COMPLAINANTS' REPLY TO THE NEW MATTER
OF LAUREL PIPE LINE COMPANY, L.P.

TO THE HONORABLE ADMINISTRATIVE LAW JUDGE ERANDA VERO:

Giant Eagle, Inc., Guttman Energy, Inc., Lucknow-Highspire Terminals, LLC, Monroe Energy, LLC, Philadelphia Energy Solutions Refining and Marketing, LLC, and Sheetz, Inc. (together, "**Complainants**") hereby file this Reply to the August 28, 2018 New Matter of Laurel Pipe Line Company, L.P. ("**Laurel**") pursuant to Section 5.63 of the Pennsylvania Public Utility Commission's regulations. 52 Pa. Code § 5.63. The Complainants restate Laurel's New Matter and reply to the New Matter as follows.

1. **As noted in the above Answer to the Amended Complaint, Laurel and Buckeye filed the FERC Answer on June 27, 2018. A true and correct copy of the public version of the FERC Answer is attached hereto as Appendix B.**

REPLY TO PARAGRAPH 1: Admitted in part and denied in part. It is admitted that Laurel and Buckeye filed a Motion for Leave to Answer and Answer to the FERC Protest on June 27, 2018 ("**Laurel/Buckeye's FERC Answer**") and it is admitted that Appendix B to the Answer and

New Matter of Laurel Pipe Line Company, L.P. is a true and correct copy of the public version thereof. The Complainants deny any characterization of the referenced documents implied in Paragraph 1. The Complainants' position on Laurel/Buckeye's FERC Answer is set forth in the Joint Answer of Lucknow-Highspire Terminals LLC, Sheetz, Inc., Philadelphia Energy Solutions Refining & Marketing LLC, Monroe Energy, LLC, Guttman Energy, Inc., and Giant Eagle, Inc. To Motion, or in The Alternative, Motion for Leave to File Answer and Answer, filed with FERC on July 12, 2018 (attached hereto as Exhibit A) ("**Complainants' FERC Joint Answer**"), which is incorporated as if set forth fully herein. By way of further response, Laurel/Buckeye's FERC Answer does not demonstrate that Laurel's proposal to initiate bi-directional service will not result in an abandonment of westbound intrastate public utility service.

2. **In the FERC Answer, Laurel explained that the Complainants' allegations regarding the initiation of bidirectional service, and the operational claims regarding this service, in the FERC Protest were false.**

REPLY TO PARAGRAPH 2: Denied. The Complainants' position on Laurel/Buckeye's FERC Answer is set forth in the Complainants' FERC Joint Answer, which is incorporated as if set forth fully herein. *See* Exhibit A.

3. **No reduction in capacity will occur for intrastate background shippers. FERC Answer, p. 21; *see also* FERC Answer, Kelly Affidavit, ¶ 7.**

REPLY TO PARAGRAPH 3: Denied. By way of further response, the current east to west capacity on the Laurel Pipeline will be diminished by the initiation of west to east interstate service on the same pipeline that provides east to west intrastate public utility service. This diminution of service constitutes partial abandonment. At a minimum, because Laurel has never provided firm, tariff-based (*i.e.*, enforceable) assurances and guarantees to the Complainants and

all other users of the Laurel Pipeline that east to west intrastate public utility service will not be diminished under the claimed bi-directional service now being implemented, Laurel is proposing to provide unreasonable and inadequate public utility service to the Complainants that will materially and adversely impact Complainants' businesses and operations. Further, it is denied that the documents cited in Paragraph 3 prove, demonstrate, or otherwise establish as true the averments in Paragraph 3.

4. **To provide bidirectional service, Laurel would receive and review nominations, checking for capacity and determining whether equivalent volumes of the same products are being nominated for transportation from different directions to Coraopolis and Eldorado. FERC Answer, p. 22; *see also* FERC Answer, Kelly Affidavit, ¶ 13.**

REPLY TO PARAGRAPH 4: Denied. After reasonable investigation, the Complainants lack knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph and demand proof thereof, if relevant, at hearing. Furthermore, Laurel has failed to provide sufficient information and enforceable assurances regarding its proposed bi-directional service and, as such, the Complainants are unable to respond as to what Laurel would or would not do with respect to nominations in order to provide bi-directional service. By way of further response, because Laurel has never provided enforceable assurances and guarantees to the Complainants and all other users of the Laurel Pipeline that east to west intrastate public utility *service* will not be diminished under the claimed bi-directional service now being implemented, Laurel is proposing to provide unreasonable and inadequate public utility service to the Complainants that will materially and adversely impact their businesses and operations. It is

further denied that the documents cited in Paragraph 4 prove, demonstrate, or otherwise establish as true the averments in Paragraph 4.

5. **Then schedules would be prepared for the cycles and batches to be pumped through the segment, taking into account the ability to optimize the system by offsetting deliveries being requested that would allow "virtual" transportation by means of swaps, reducing use of the segment. FERC Answer, p. 22; *see also* FERC Answer, Kelly Affidavit, ¶ 14.**

REPLY TO PARAGRAPH 5: Denied. After reasonable investigation, the Complainants lack knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph and demand proof thereof, if relevant, at hearing. Furthermore, Laurel has failed to provide sufficient information and enforceable assurances regarding its proposed bi-directional service and, as such, the Complainants are unable to respond as to what Laurel would or would not do with respect to scheduling in order to provide bi-directional service. By way of further response, because Laurel has never provided enforceable assurances and guarantees to the Complainants and all other users of the Laurel Pipeline that east to west intrastate public utility *service* will not be diminished under the claimed bi-directional service now being implemented, Laurel is proposing to provide unreasonable and inadequate public utility service to the Complainants that will materially and adversely impact their businesses and operations. It is further denied that the documents cited in Paragraph 5 prove, demonstrate, or otherwise establish as true the averments in Paragraph 5.

6. **Although virtual transportation will assist with optimization, Buckeye plans to make physical deliveries from the Midwest to Eldorado every month, and to make physical deliveries from Eldorado to Coraopolis as needed by shipper nominations and the**

available scope of virtual deliveries; if the predominant flow of nominations is from east-to-west, the predominant physical flow is likely to be east-to-west as well. FERC Answer, p. 24; *see also* FERC Answer, Kelly Affidavit, ¶ 17.

REPLY TO PARAGRAPH 6: Denied. After reasonable investigation, the Complainants lack knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph and demand proof thereof, if relevant, at hearing. Furthermore, Laurel has failed to provide sufficient information and enforceable assurances regarding its proposed bi-directional service and, as such, the Complainants are unable to respond as to what Laurel and/or Buckeye "plan" to do or are "likely" to do in order to provide bi-directional service. Laurel also fails to explain what it means by phrases such as "as needed" and "predominant flow" such that the Complainants are unable to fully respond to the allegations in Paragraph 6. By way of further response, because Laurel has never provided enforceable assurances and guarantees to the Complainants and all other users of the Laurel Pipeline that east to west intrastate public utility *service* will not be diminished under the claimed bi-directional service now being implemented, Laurel is proposing to provide unreasonable and inadequate public utility service to the Complainants that will materially and adversely impact their businesses and operations. It is further denied that the documents cited in Paragraph 6 prove, demonstrate, or otherwise establish as true the averments in Paragraph 6.

7. **Scheduling for the bi-directional flows is not particularly different from other types of scheduling, with the exception of the need to schedule batches for a "linefill" role that will allow Buckeye and Laurel to make nearly continuous deliveries at both Coraopolis and Eldorado during reversals. This result is achieved by scheduling as "pre-staged delivery batches" those volumes that will be in the line at the time of reversal, and**

which are in effect transported past their destination, and then delivered into the destination once the line is reversed and those volumes are pushed back. As a result there is essentially no lost operational time due to the need for "linefill." Buckeye currently uses this approach in operating its other bi-directional lines, and would apply the same scheduling techniques in this segment. FERC Answer, p. 24; *see also* FERC Answer, Kelly Affidavit, ¶¶ 19-20.

REPLY TO PARAGRAPH 7: Denied. After reasonable investigation, the Complainants lack knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph and demand proof thereof, if relevant, at hearing. Furthermore, Laurel has failed to provide sufficient information and enforceable assurances regarding its proposed bi-directional service and, as such, the Complainants are unable to respond as to what Laurel and/or Buckeye will or will not do with respect to scheduling, delivery, and/or any of the other matters raised in Paragraph 7. Laurel has also failed to provide information regarding Buckeye's "other bi-directional lines" and the "scheduling techniques" of those lines and, therefore, the Complainants are unable to fully respond to the allegations in Paragraph 7. By way of further response, because Laurel has never provided enforceable assurances and guarantees to the Complainants and all other users of the Laurel Pipeline that east to west intrastate public utility *service* will not be diminished under the claimed bi-directional service now being implemented, Laurel is proposing to provide unreasonable and inadequate public utility service to the Complainants that will materially and adversely impact their businesses and operations. It is further denied that the documents cited in Paragraph 7 prove, demonstrate, or otherwise establish as true the averments in Paragraph 7.

8. **Physical reversal (*i.e.* changing between westbound intrastate service and eastbound interstate service) between Eldorado and Pittsburgh, would take approximately less than one hour. FERC Answer, p. 24; *see also* FERC Answer, Kelly Affidavit, ¶ 21.**

REPLY TO PARAGRAPH 8: Denied. After reasonable investigation, the Complainants lack knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph and demand proof thereof, if relevant, at hearing. Furthermore, Laurel has failed to provide sufficient information and enforceable assurances regarding its proposed bi-directional service and, as such, the Complainants are unable to respond to Laurel's assertion that it "would take approximately less than one hour" to change between westbound intrastate service and eastbound interstate service between Eldorado and Pittsburgh. By way of further response, because Laurel has never provided enforceable assurances and guarantees to the Complainants and all other users of the Laurel Pipeline that east to west intrastate public utility *service* will not be diminished under the claimed bi-directional service now being implemented, Laurel is proposing to provide unreasonable and inadequate public utility service to the Complainants that will materially and adversely impact their businesses and operations. Moreover, the amount of time it may take Laurel to change the direction of the flow of the pipeline does not mean that westbound intrastate service will not be diminished. It is further denied that the documents cited in Paragraph 8 prove, demonstrate, or otherwise establish as true the averments in Paragraph 8.

9. **In addition, if necessary, Buckeye and Laurel are able to physically transport the full 40,000 bbls./day of eastbound interstate shipments (representing the total added capacity subject to the FERC PDO), as well as more than 120,000 bbls./day of westbound intrastate volumes; the highest monthly volume moved on the Coraopolis-Eldorado**

segment in the past ten years is approximately 120,000 bbls./day. FERC Answer, p. 24; *see also* FERC Answer, Kelly Affidavit, ¶ 22.

REPLY TO PARAGRAPH 9: Denied. After reasonable investigation, the Complainants lack knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph and demand proof thereof, if relevant, at hearing. Furthermore, Laurel has failed to provide sufficient information and enforceable assurances regarding its proposed bi-directional service and, as such, the Complainants are unable to respond to respond to Paragraph 9. By way of further response, east to west capacity on the Laurel Pipeline will be diminished by the initiation of west to east interstate service on the same pipeline that provides east to west intrastate service. This diminution of service constitutes partial abandonment. At a minimum, because Laurel has never provided enforceable assurances and guarantees to the Complainants and all other users of the Laurel Pipeline that east to west intrastate public utility service will not be diminished under the claimed bi-directional service now being implemented, Laurel is proposing to provide unreasonable and inadequate public utility service to the Complainants that will materially and adversely impact their businesses and operations. It is further denied that the documents cited in Paragraph 9 prove, demonstrate, or otherwise establish as true the averments in Paragraph 9.

10. **There is no danger that westbound intrastate deliveries will be reduced by eastbound interstate deliveries under the proposed bidirectional configuration.**

REPLY TO PARAGRAPH 10: Denied. By way of further response, east to west capacity on the Laurel Pipeline will be diminished by the initiation of west to east interstate service on the same pipeline that provides east to west intrastate service. This diminution of service constitutes partial abandonment. At a minimum, because Laurel has never provided enforceable assurances

and guarantees to the Complainants and all other users of the Laurel Pipeline that east to west intrastate public utility service will not be diminished under the claimed bi-directional service now being implemented, Laurel is proposing to provide unreasonable and inadequate public utility service to the Complainants that will materially and adversely impact their businesses and operations.

11. **Moreover, the allegations contained in the Complaint related to the initiation of bidirectional service are not ripe. To be ripe, an actual case or controversy must exist. *Treski et al. v. Kemper National Insurance Companies*, 674 A.2d 1106, 1113 (Pa. Super. 1996) (citing *Richard v. Trimbur*, 543 A.2d 116 (Pa. 1998)). "The basic rationale underlying the ripeness doctrine is 'to prevent the courts, through avoidance of premature adjudication, from entangling themselves in abstract disagreements.'" *Philadelphia Entertainment & Development Partners v. City of Philadelphia*, 594 Pa. 468, 480, 937 A.2d 385, 392 (Pa. 2007).**

REPLY TO PARAGRAPH 11: Paragraph 11 sets forth a legal conclusion and legal argument, to which no response is required. To the extent a response is required, the allegations in Paragraph 11 are denied. By way of further response, the controversy is ripe for adjudication as set forth in the Complainants' Response to Preliminary Objection No. 2, which is fully incorporated herein.

12. **Laurel has not yet implemented bidirectional service. As such, no conduct amounting to an alleged violation of the Public Utility Code has occurred. Therefore, the claims set forth in the Complaint are not ripe.**

REPLY TO PARAGRAPH 12: The first sentence of Paragraph 12 is denied. As set forth in the Complainants' Response to Preliminary Objection No. 2, which is fully incorporated herein, Laurel has commenced the implementation process by engaging in numerous activities to

support bi-directional service on the pipeline. Additionally, the second and third sentences of Paragraph 12 contain legal conclusions to which no response is required. To the extent a response is required, the allegations in the second and third sentences of Paragraph 12 are denied.

Respectfully submitted,

Dated: September 17, 2018

/s/ Daniel J. Stuart

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Exhibit A

THE UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Buckeye Pipe Line Company, L.P.	)	Docket No. OR18-22-000
and Laurel Pipe Line Company, L.P.	)	

JOINT ANSWER OF LUCKNOW-HIGHSPIRE TERMINALS LLC; SHEETZ, INC.; PHILADELPHIA ENERGY SOLUTIONS REFINING & MARKETING LLC; MONROE ENERGY, LLC; GUTTMAN ENERGY, INC.; AND GIANT EAGLE, INC. TO MOTION, OR IN THE ALTERNATIVE, MOTION FOR LEAVE TO FILE ANSWER AND ANSWER

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July 12, 2018

THE UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Buckeye Pipe Line Company, L.P.	)	Docket No. OR18-22-000
and Laurel Pipe Line Company, L.P.	)	

JOINT ANSWER OF LUCKNOW-HIGHSPIRE TERMINALS LLC; SHEETZ, INC.; PHILADELPHIA ENERGY SOLUTIONS REFINING & MARKETING LLC; MONROE ENERGY, LLC; GUTTMAN ENERGY, INC.; AND GIANT EAGLE, INC. TO MOTION, OR IN THE ALTERNATIVE, MOTION FOR LEAVE TO FILE ANSWER AND ANSWER

Pursuant to Rules 212 and 213 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission ("FERC" or "Commission"), 18 C.F.R. §§ 385.212 & 385.213, Lucknow-Highspire Terminals LLC ("LHT"); Sheetz, Inc. ("Sheetz"); Philadelphia Energy Solutions Refining & Marketing LLC ("PESRM"); Monroe Energy, LLC ("Monroe"); Guttman Energy, Inc. ("Guttman"); and Giant Eagle, Inc. ("Giant Eagle") (collectively, "Indicated Parties")[1] hereby jointly and individually submit this "Joint Answer to Motion or in the Alternative, Motion for Leave to Answer and Answer" ("Indicated Parties' Answer" or "Joint Answer") to the "Motion for Leave to Answer and Answer of Buckeye Pipe Line Company, L.P. ("Buckeye") and Laurel Pipe Line Company, L.P." ("Laurel") ("Petitioners' Motion" or "Motion") filed on June 27, 2018. Buckeye and Laurel ("Petitioners") filed their Motion in response to the "Joint Motion to Intervene, Comment, and Protest of the Indicated Parties ("Joint Protest") filed on June 12, 2018,

[1]Most of the Indicated Parties (including LHT's affiliate Gulf Operating LLC) are the same companies who challenged Laurel's application at the Pennsylvania Public Utility Commission ("PaPUC"). Laurel's PaPUC application requested authority pursuant to Laurel's intrastate Certificate of Public Convenience to abandon east-to-west pipeline service for delivery points west of the Eldorado delivery point. *See Buckeye Pipe Line Co., L.P. and Laurel Pipe Line Co., L.P.*, Petition for Declaratory Order, Docket No. OR18-22-000 at 8 (April 30, 2018) ("Petition") (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 (Nov. 14, 2016)). A PaPUC administrative law judge ("ALJ") issued a Recommended Decision denying Laurel's application and its request to abandon service. *Recommended Decision*, PaPUC Docket No. A-2016-2575829, *et al.* (Mar. 29, 2018) ("Recommended Decision").

which the Indicated Parties filed in response to the Petition for Declaratory Order ("PDO") filed by Petitioners on April 30, 2018.

I. ANSWER TO PETITIONERS' MOTION

Indicated Parties believe that Petitioners' Motion to file an unauthorized answer is unsupported, inappropriate, and should therefore be denied. Petitioners' Motion argues that Petitioners should be granted the opportunity to file an unauthorized answer to Indicated Party's protest so they can address "incorrect information and misleading claims made in the Joint Protest."[2] Petitioners also argue that the Joint Protest "raised many misleading arguments that could not be anticipated or addressed in the PDO."[3] However, a party's inability to anticipate arguments raised in a protest is not the standard by which the Commission decides whether to accept an unauthorized answer to a protest. Answers to answers are generally prohibited under Rule 213(a)(2), and the Commission will grant motions for leave to file an answer and accept such answers only where consideration of the answer provides a more complete record and assists the Commission in its decision-making.[4] The Commission's decision to grant a motion for leave and accept an otherwise prohibited answer is based on the value the answer provides to the Commission, not the petitioner's interest in reforming its petition to further address arguments it could not anticipate.[5] Particularly in light of the novelty of Petitioners' proposal and the nearly two year-long proceeding currently before the Pennsylvania Public Utility Commission ("PaPUC"), Petitioners had every ability to reach out to shippers and stakeholders in advance of filing the PDO to identify the full scope of shipper and stakeholder concerns. Despite the obvious

[2] Petitioners' Motion at 1.
[3] Petitioners' Motion at 2.
[4] *See Algonquin Gas Transmission, LLC*, 150 FERC ¶ 61,163, at P 13 (2015), *order amended*, 157 FERC ¶ 61,011 (2016).
[5] *See* Rule 213(a)(2), 18 C.F.R. § 385.213(a)(2); *see ITC Holdings Corp.*, 143 FERC ¶ 61,256, at P 41 (2013); *Blue Racer NGL Pipelines, LLC*, 162 FERC ¶ 61,220, at P 26 (2018).

business and relationship value in contacting customers before instituting a major change in service, Petitioners did not take this step. Moreover, Petitioners have been closely involved in highly contentious litigation with most of the Indicated Parties over the last two-years that involved many of the same issues that the PDO raises in this proceeding. Petitioners anticipated, or at least should have reasonably been able to anticipate, shipper or stakeholder concerns regarding the operation of its proposed bi-directional service.[6]

Further, Petitioners' Motion should be denied because the supporting arguments do not provide information that advances the record in this proceeding. As addressed in detail below, the Joint Protest did not raise "misleading" or "incorrect" arguments as posited by Petitioners, but rather identified various information gaps and inappropriate assumptions in Petitioners' PDO. The Commission should deny Petitioners' Motion.

A. Petitioners' Arguments Regarding the Indicated Parties' Motives Should be Dismissed.

In its Motion, Petitioners attempt to malign the Indicated Parties by characterizing the concerns raised in response to the PDO as anti-competitive rent seeking intended to prevent or delay the onset of what is a novel west-to-east service arrangement. The Commission should reject these arguments as flatly contradicted by Petitioners' actions.

The Indicated Parties are all large shippers or stakeholders significantly impacted by the available services on the Laurel and Buckeye pipeline systems. The Indicated Parties do not oppose competition; they oppose only the persistent attempts by Petitioners to understate and ignore the value and importance of the east-to-west services currently used to supply half of the Pittsburgh market's demand for refined petroleum products.[7] By proposing bi-directional service,

[6] Buckeye recognizes in its Motion that the Indicated Parties are comprised of the same companies that opposed Laurel's PaPUC application. Petitioners' Motion at 3.
[7] Joint Protest, Attachment H at 4.

but reserving rights to cancel east-to-west service,[8] Petitioners fail to propose a solution that truly fosters competition and instead reinforce their primary interest in eliminating east-to-west service for Western Pennsylvania destination points. For reasons detailed in the Affidavit of Dr. Daniel Arthur attached to the Joint Protest, the elimination of east-to-west pipeline service on the Laurel Pipeline would have the anti-competitive effect of limiting supply options into Pennsylvania's second largest products market and increasing supply prices.[9] Petitioners, not Indicated Parties, are actively seeking Commission approval of arrangements that would foreclose competition in the Pittsburgh market, by frustrating shippers' ability to move petroleum products from East Coast refineries to market in Pittsburgh. Contrary to Petitioners' unfounded rent-seeking allegations, the Indicated Parties desire to preserve competition between Midwest supply resources and East Coast supply resources by protecting market-driven east-to-west pipeline service to the Pittsburgh area.

B. The PDO Raises Issues of State Jurisdiction.

In its Motion, Petitioners claim their proposed bi-directional operation of the Laurel Pipeline segment between Eldorado and Pittsburgh will have no impact on the PaPUC's state jurisdiction of intrastate petroleum products pipeline east to west transportation service that has been extant since 1957. On the contrary, by filing the PDO, Laurel announced its intention to operate the Eldorado to Pittsburgh segment of the Laurel Pipeline bi-directionally, but neither Laurel nor its affiliate interstate pipeline service provider, Buckeye, made any prior filing with, or obtained the prior approval of, the PaPUC. The bi-directional proposal is in effect a partial abandonment of intrastate east-to-west petroleum products pipeline transportation service Laurel has been providing *exclusively* on the entire Laurel Pipeline since 1957. The effect of this bi-directional proposal and this FERC proceeding is to deprive the PaPUC of its lawful jurisdiction

[8] *E.g.*, Petitioners' Motion at 7, n.4.
[9] Joint Protest, Attachment H at 4.

over its regulated utility and the proposed abandonment of a portion of Laurel's existing certificated Pennsylvania intrastate public utility service.

Indeed, to vindicate their Pennsylvania state law rights to continued intrastate pipeline transportation service from east to west into Pittsburgh, the Indicated Parties have filed at the PaPUC both a complaint (alleging Laurel has failed to provide reasonably continuous and uninterrupted service in violation of state law and failed to obtain PaPUC authorization to abandon service as a result of its proposed bi-directional service) and a petition for emergency relief (seeking a stay of a planned extended outage on the segment of the Laurel pipeline between Eldorado and Pittsburgh, Pennsylvania Laurel and Buckeye have proposed as a prerequisite for commencing their unlawful bidirectional service). These proceedings at the PaPUC should resolve whether Petitioners' planned bi-directional service will impair existing intrastate service. The pendency of these additional state proceedings provides ample justification for FERC to dismiss the PDO as premature.

Petitioners seek to reassure the Commission and the Indicated Parties that the bi-directional service sought via the PDO "does not change the nature of the service to be provided to intrastate shippers, and therefore cannot and should not be seen as an effort to evade the PaPUC's jurisdiction over the intrastate movements."[10] The Petition frames the question as follows: "whether the PaPUC has the authority to preempt FERC's ability to authorize interstate transportation."[11] But that is not the question, and it is not what the Indicated Parties have argued either in this proceeding or at the PaPUC. Further, such a conflict is impossible because there is no federal jurisdiction here upon which PaPUC could intrude. FERC has no mechanism to "authorize interstate

[10] Petitioners' Motion at 12.
[11] *Id.*

transportation" of oil by pipeline because it has no jurisdiction over their "construction, entry [or] abandonment."[12]

The Laurel pipeline is an *intrastate* public utility that provides *intrastate* oil transportation services.[13] The PaPUC—not the Commission—has jurisdiction over that intrastate service, and Laurel's attempts to abandon that service, whether in whole or in part, is the subject of an ongoing PaPUC proceeding and is subject to the ongoing jurisdiction of the PaPUC (not this Commission). The Petition improperly asks the Commission to grant the PDO by making determinations about that intrastate service. Indeed, for the Commission to grant the PDO, it would necessarily require

[12] *Tennessee Gas Pipeline Co., L.L.C.*, 160 FERC ¶ 61,144, at P 18 n.18 (2017) ("While we have jurisdiction under the Interstate Commerce Act to regulate the rates, terms, and conditions for the pipeline transportation of crude oil and petroleum products, including NGLs, *we have no role in authorizing* the construction or operation of new pipeline facilities or repurposing of abandoned gas pipelines facilities to provide anything other than the transportation of natural gas in interstate commerce.") (emphasis added); *W. Ref. SW., Inc. & W. Ref. Pipeline Co.*, 127 FERC ¶ 61,288 at P 25 (2009) ("It is well settled that '[c]onstruction, entry and abandonment of service by oil pipelines are not subject to the Commission's jurisdiction.'") (quoting *SFPP, L.P. Mobil Oil Corp.*, 86 FERC ¶ 61,022, at 61,077 (1999)). *See also N. Dakota Pipeline Co. LLC*, 147 FERC ¶ 61,121, at P 23 (2014) ("the Commission does not regulate the entry or exit into the oil pipeline business as it does with natural gas pipelines"); *Enter. TE Prod. Pipeline Co. LLC*, 143 FERC ¶ 61,191 (2013); *ConocoPhillips Co.*, 134 FERC ¶ 61174, at P 22 (2011); *SFPP, L.P. Mobil Oil Corp.*, 96 FERC ¶ 61,281, at 62,070 (2001), *rev'd on other grounds, BP W. Coast Prod., LLC v. FERC*, 374 F.3d 1263 (D.C. Cir. 2004) ("the Commission has no jurisdiction over whether a pipeline enters or exits a market, in contrast to the efficiency of its ongoing operations."); *Rocky Mountain Pipeline Sys. LLC*, 126 FERC ¶ 61,301, at P 18 (2009) (quoting *SFPP, L.P. Mobil Oil Corp.*, 96 FERC ¶ 61,281, at 62,070 (2001)). *See also* Christopher J. Barr, Esq., *Unfinished Business: FERC's Evolving Standard For Capacity Rights On Oil Pipelines*, 32 ENERGY L. J. 563, 565 (2011) ("FERC has no authority over an interstate oil or liquids pipeline's decision to build a new pipeline, to expand a pipeline, or to abandon service, nor even to interconnect with another pipeline. The FERC has no jurisdiction over the decision by a pipeline to reverse the direction of its service") (quoted in Recommended Decision at 48 n.16); BRANDON J. MURRILL, CONGRESSIONAL RESEARCH SERVICE, PIPELINE TRANSPORTATION OF NATURAL GAS AND CRUDE OIL: FEDERAL AND STATE REGULATORY AUTHORITY 8 (March 28, 2016) ("no federal law broadly preempts state and local siting requirements for these pipelines, and thus pipeline companies must obtain approval of the pipeline route on a state-by-state basis.").

[13] *See generally* Joint Protest at 19-26. It is also worth noting that recently before this Commission counsel for Petitioners have successfully defended Laurel's status as "solely an intrastate common carrier regulated by the PA PUC." Motion to Dismiss and Answer to Complaint of Laurel Pipe Line Docket No. OR14-4 at 6 (Nov. 4, 2013) ("Guttman Motion"); *Guttman*, 147 FERC ¶ 61,088, at P 28 (2014) (Order Dismissing Complaint in Part) (finding Laurel not under Commission's ICA jurisdiction). *See also, e.g.*, Guttman Motion at 4 ("Laurel does not provide interstate transportation of any kind or have any effective tariffs on file with this Commission"), at 8 ("Laurel . . . does not provide transportation subject to the ICA and it is not an ICA common carrier."), at 15 ("The Commission should reject the Complainants' attempt to broaden the scope of the ICA, and should restrict the Complaint to the respondent whose rates are at issue, and not include a non-jurisdictional affiliate, *which is already subject to the jurisdiction of the PA PUC*") (emphasis added), at 16 ("The Commission should reject the Complainants' attempt to broaden the scope of this proceeding and the scope of its jurisdiction under the ICA by attempting to involve Laurel in a proceeding where it is not necessary for it to be involved"), at 28 (signatures of Todd J. Russo and Christopher J. Barr).

a determination that Petitioner's request "does not change the nature of the services to be provided to intrastate shippers," a finding that is unsupported by the record and that, in any event, is not within the Commission's purview. As the Commission considers what weight, if any, to give to Petitioners' assurances that Laurel's east-to-west intrastate service will be unaffected, the Commission should be mindful that Buckeye and Laurel have spent more than 18 months trying (unsuccessfully) to *completely abandon* Laurel's east-to-west service—the Commission cannot and should not simply accept Petitioners' sudden change of heart on faith.

Moreover, the Petition would have the Commission decide whether the proposed bi-directional service is an abandonment of service under Pennsylvania law such that it is subject to PaPUC jurisdiction.[14] Petitioners ask the Commission to interpret and apply Pennsylvania law regarding abandonment of intrastate utility service, but whether the bi-directional service would constitute an abandonment of service (in whole or in part) is a matter for the PaPUC, not the Commission.[15] These questions of Pennsylvania law are currently being decided by Pennsylvania state authorities. As explained throughout the Joint Protest and this Joint Answer, it is not a proper use of the Commission's declaratory order authority to wade into controverted matters of state law that are the subject of ongoing state proceedings and state jurisdiction. [16]

In arguing that state law does not "preempt" federal law, Petitioners ignore that the inverse is also true. It is undisputed that "[t]he Interstate Commerce Act ["ICA"] does not contain explicit preemptive language."[17] By its own terms, the ICA does *not* apply to oil pipeline transportation

[14] Petitioners' Motion at 14-16.
[15] *Id.*
[16] *See* Joint Protest at 22, n. 37-8.
[17] *National Steel Corp. v. Long*, 718 F. Supp. 622, 625 (W.D. Mich. 1989) *aff'd, Ntl. Steel Corp. v. Mich. Pub. Serv. Comm'n*, 919 F.2d 38 (6th Cir. 1990) ("*National Steel Appeal*").

"wholly within one State and not shipped to or from a foreign country."[18] It is now axiomatic that "the ICA was not intended to intrude on the power of the states to regulate intrastate commerce."[19] The Commission unambiguously concurs and recognizes that federal policy toward interstate oil pipelines does not preempt state regulations of *intra*state pipelines. In *In re Trans Alaska Pipeline System*, FERC stated that "[i]t is clear that the States have primary jurisdiction over intrastate transportation under the [ICA]."[20]

Petitioners in their Motion now revive their arguments made before the PaPUC that the ICA preempts Pennsylvania utility law.[21] Their somewhat undisciplined argument can be summarized thus: because Congress chose to regulate oil pipelines less rigorously under the ICA than railroads, state regulation cannot impact a pipeline's decision to leave and enter certain

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[18] 49 U.S.C. §1(2). *See also Simpson v. Shepard*, 230 U.S. 352, 418-19 (1913) ("*Minnesota Rate Cases*") (holding that the ICA does *not* preempt state regulation of intrastate carriers in part because the ICA "excluded from the provisions of the act that transportation which was 'wholly within one State'"); *id.* at 419 ("When in the year 1906 . . . Congress amended the act so as to confer upon the Federal commission power to prescribe maximum interstate rates, the proviso in § 1 was reenacted.").

[19] *Cook Inlet Pipe Line Co. v. Alaska Pub. Utilities Comm'n*, 836 P.2d 343, 350-51 (Alaska 1992) (citing *Minnesota Rate Cases*, 230 U.S. at 418). In *Cook Inlet*, the Alaska Supreme Court rejected an argument by a state-regulated oil pipeline company that the ICA preempted state regulation of the oil pipeline. *Id.* The Alaska Supreme Court also rejected the utility's argument that the "dormant commerce clause" prohibited state regulation (discussed *supra*).

[20] 23 FERC ¶ 61,352 at 61,977 (1983). *See also In re Amoco Pipeline Co.*, 67 FERC ¶ 61,378, at 62,296 (1994) (stating that the ICA "is not intended to deprive states of their primary authority to regulate intrastate rates [because] Congress anticipated state regulation of intrastate transportation unfettered by Federal interference."). In a March 14, 2001 Order titled "Removing Obstacles To Increased Electric Generation And Natural Gas Supply In The Western United States," FERC's Commissioner wrote the following concerning the scope of FERC's authority over oil pipelines under the ICA:

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

94 FERC ¶ 61,272, at 61,977 (2001) (emphasis added). Petitioners also cite dicta from a D.C. Circuit case (*Farmers Union Cent. Exch. v. FERC*, 584 F.2d 408, 413 (D.C. Cir. 1978)) that has absolutely nothing to do with preemption or the exercise of state regulatory authority over an intrastate oil pipeline. *See* Answer at 13, n.15. *Farmers Union* was a rate case that addressed the proper FERC methodology to determine the reasonableness of interstate pipeline shipping rates. It does not discuss, or even mention, federal preemption. Notably, the plaintiff in *National Steel v. Long* cited the same D.C. Circuit case and its arguments were resoundingly rejected. As the court said: "Both statements are clearly dicta, were made in the context of establishing ratemaking standards, and have no direct bearing on the pre-emption issue before this Court." *National Steel*, 718 F. Supp. at 627 n.5.

[21] Petitioners' Motion at 13 and 13 n.15 (reciting the cases raised before the PaPUC to argue this notion) (note the absence of D.C. Circuit precedent and the presence of precedent from the Third Circuit).

markets.[22] There are three fatal obstacles to this argument. First, FERC has no jurisdiction over a liquid pipeline's route, reversal, or abandonment from and *entry into* interstate commerce which could ever conflict with a state restriction over a pipeline's route.[23] Second, the *only* means the ICA provides to invalidate a state law on the grounds it interferes interstate commerce is through a Section 13(4) proceeding requiring a hearing.[24] And finally, the Supreme Court and D.C. Circuit have conclusively ruled that the ICA does not implicitly or broadly preempt state law absent a

[22] *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 at 28 (Petitioners' Main Brief filed Dec. 4, 2017)) ("Petitioners' Main Brief") ("Simply stated: the clear congressional intent that pipeline companies enter and exit markets based on competitive forces precludes the [PaPUC] from imposing a *de facto* certificate requirement on Laurel's entry into the interstate market."); *id.* at 24-29. Laurel began by limiting its arguments to "conflict preemption." Main Brief at 24. But then only argued what is a textbook case of field preemption. *Id.* at 25 ("the Supreme Court has made clear that 'a federal decision to forgo regulation in a given area may imply an authoritative federal determination that the area is best left *un*regulated, and in that event would have as much pre-emptive force as a decision *to* regulate.'") (quoting *Transcontinental Gas Pipe Line Corp. v. State Oil & Gas Bd.*, 474 U.S. 409, 422 (1986) (which describes Congress's decision to occupy the field of interstate natural gas wholesale prices).

[23] *See supra* note 12.

[24] As the Supreme Court, the D.C. Circuit, and FERC have long held, the only appropriate vehicle to preempt a state law under the ICA is through a section 13(4) proceeding. *Alabama Pub. Serv. Comm'n v. S. Ry. Co.*, 341 U.S. 341, 346 n.9 (1951); *State of North Carolina v. United States*, 325 U.S. 507 (1945)*; Carolina, C. & O. Ry. v. ICC*, 593 F.2d 1305 (D.C. Cir. 1979); *Amoco Pipeline Co.*, 67 FERC ¶ 61,378, at 62,296 (1994) ("Simply stated, section 13(4) of the ICA . . . represents the sole basis for the Commission to exercise jurisdiction over intrastate oil transportation."). This hearing requirement may not be bypassed by a routine filing before the Commission. *Carolina, C. & O. Ry. v. I.C.C.*, 593 F.2d 1305 (D.C. Cir. 1979). Nor may it be bypassed by self-help, as Petitioners are apparently commencing. *See supra* pp. 4-5.

conflict with a valid Commission order *even when* state regulation may burden interstate commerce.[25]

Neither can Petitioners find refuge in what they call the "dormant preemptive effect of the Commerce Clause of the United States Constitution."[26] Again, the Indicated Parties are not arguing that the PaPUC has jurisdiction over interstate service; what the Indicated Parties are arguing is the Commission should not grant a PDO because doing so would intrude on the PaPUC's authority over Laurel's intrastate service and would insert the Commission into contested jurisdictional questions that are currently pending at the PaPUC. The Commerce Clause does not prevent states from exercising regulatory authority over intrastate utilities.[27] As further explained in the Joint Protest, the purpose of the PDO is to terminate a controversy or remove uncertainty,

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[25] *Illinois Commerce Commission v. I.C.C.*, 879 F.2d 917, 924 (D.C. Cir. 1989) ("To us it is well-nigh inconceivable that Congress intended to preempt state authority over abandonment . . . as to which the Commission lacks power, leaving it entirely unregulated, the public interest unprotected, and parties affected by the abandonment without recourse."); *id.* at 921 (finding the interpretation fails even under *Chevron* deference); *id.* at 922 n.48 (citing numerous Supreme Court cases generally and in the context of intrastate rail spurs). In *Illinois Commerce Commission*, the I.C.C. used reasoning almost identical to that employed by Petitioners before the PaPUC, that "that state power to regulate local spurs over which traffic moves in interstate commerce was preempted" because of the "'overriding Federal interest in protecting interstate commerce from State-imposed burdens'") (quoting *Chicago & N.W. Transp. Co.—Abandonment Exemption—In McHenry County, Il.*, 3 I.C.C.2d 366, 369 (1987) (I.C.C. decision overturned). *See also Texas v. United States*, 258 U.S. 204 (1922); *Palmer v. Mass.*, 308 U.S. at 84-85 ("Therefore, in construing legislation this court has disfavored in-roads by implication on state authority and resolutely confined restrictions upon the traditional power of states to regulate their local transportation to the plain mandate of Congress." Continuing that if "this old and familiar power of the states [over partial abandonments] was withdrawn when Congress gave district courts bankruptcy powers over railroads, we ought to find language fitting for so drastic a change."); *Yonkers v. United States*, 320 U.S. 685, 692 (1944) (requiring "assurance that the local interests for which Congress expressed its solicitude will be safe-guarded").

[26] *See* Petitioners' Motion at 13.

[27] *See National Steel Corp. v. Long*, 718 F. Supp. 622, 625 (W.D. Mich. 1989), *aff'd*, *Ntl. Steel Corp. v. Mich. Pub. Serv. Comm'n*, 919 F.2d 38 (6th Cir. 1990) (rejecting steel mill's dormant Commerce Clause challenge, holding that "[t]he state has a legitimate and substantial interest in protecting the capital investment of utilities already serving the public and in protecting existing utility rate structures. *These interests certainly justify the incidental and relatively light burden of requiring application for a certificate of public convenience and necessity*. In the absence of federal regulation, such state regulation is not only reasonable and appropriate, but required in the public interest.") (internal quotations omitted). *See also United Fuel Gas Co. v. R.R. Comm'n of Kentucky*, 278 U.S. 300, 308-09 (1929) ("If a state may require a public service company subject to its control to make reasonable extensions of its service in order to satisfy a new or increased demand, present or anticipated, obviously the latter may be compelled to continue to use present facilities to supply an existing need so long as it continues to do business in the state . . . The powers of the state, so far as the Federal Constitution is concerned, were not exceeded by the action of the commission, in compelling appellants to continue their service in the cities named so long as they continued to do business in other parts of the state, and to there avail of the extraordinary privileges extended to public utilities") (internal citations omitted).

not to foster controversy by having the Commission enter an order based on untested assurances about matters subject to state jurisdiction.[28]

Since Laurel has never provided firm assurances and guarantees to the Indicated Parties 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 proposed, Laurel is proposing to provide unreasonable and inadequate intrastate service to the Indicated Parties (among others) that will materially and adversely impact their businesses and operations. It is ultimately for the PaPUC to determine the nature and extent of intrastate pipeline service that has been impaired by the bi-directional proposal requested in the PDO. Petitioners are trying to usurp the PaPUC's right to address the implications on intrastate pipeline transportation service resulting from the bi-directional scheme.

Petitioners' references to Laurel's historical provision of interstate service also cannot absolve the PaPUC of its jurisdiction over Laurel's current operations. Petitioners infer that the proposed bi-directional service can be effected without PaPUC approvals because Laurel has a "long history of interstate operation."[29] Importantly, Laurel's interstate service precedes the current operations under the its current Capacity Lease Agreement approved by the PaPUC

[28] Joint Protest at 26. Petitioners do not apply any dormant Commerce Clause analysis, and none of the cases cited in their footnote on the subject are applicable. Answer at 13, n.16. *See New Energy Co. v. Limbach*, 486 U.S. 269 (1988) (not an oil pipeline case, and Supreme Court held that a state statute making ethanol tax credits available only to in-state producers and to out-of-state producers from a state that granted similar tax advantages was unconstitutional); *Ark. Elec. Coop. Corp. v. Ark. Public Serv. Comm'n*, 461 U.S. 375 (1983) (holding that states have jurisdiction over intrastate service even where such services are tied into an interstate grid); *Dep't of Revenue v. Davis*, 553 U.S. 328 (2008) (Kentucky law exempting the interest on bonds issued by it or its political subdivisions from taxation but not those of other states found *not* to violate Dormant Commerce Clause); *Brown-Forman Distillers Corp. v. New York State Liquor Auth.*, 476 U.S. 573 (1986) (invalidating New York State law that directly regulated the prices that wholesalers could charge for alcohol in other states); *Cloverland-Green Spring Dairies, Inc. v. Pa. Milk Mktg. Bd.*, 462 F.3d 249 (3d Cir. 2006) (making no finding as to the constitutionality of Pennsylvania milk statute).

[29] Petitioners' Motion, at 14 n.19.

effective November 15, 1994 and amended on December 30, 2014.[30] Immediately after entering into the Capacity Lease Agreement, Laurel withdrew its interstate tariffs.[31] Therefore, unless and until the PaPUC allows Laurel to abandon state-jurisdictional intrastate service and determines whether the proposed bi-directional service can be provided without adverse impacts on existing intrastate service or violating Laurel's current PUC-approved Capacity Lease Agreement with Buckeye, the relief requested in the PDO would exceed FERC's jurisdiction.

Notwithstanding pending proceedings before the PaPUC and at FERC for *different* services relating to the Laurel Pipeline segment between Eldorado and Pittsburgh, the absence of any final orders in either proceeding, *and in the face of known and significant opposition to both services by the Indicated Parties*, Laurel and its affiliate Buckeye have nevertheless embarked on a course of conduct intended to implement the bi-directional service through this proceeding. And, in so doing, Laurel has violated its statutory obligation as a Pennsylvania jurisdictional public utility to provide reasonably continuous and uninterrupted pipeline transportation service for its existing transportation service customers, including the Indicated Parties.

Also, by failing to first seek PaPUC approval of the bi-directional proposal, which is a clear partial abandonment of east to west intrastate petroleum products pipeline transportation service between Eldorado and Pittsburgh on the Laurel Pipeline, Laurel has violated the state law provisions of Chapter 11 of the Pennsylvania Public Utility Code ("Code").[32] Code Chapter 11

[30] *Laurel Pipe Line Company, L.P. Affiliated Interest Filing*, Pennsylvania Public Utility Commission Docket No. G-00940417 (Oct. 13, 1994) (Pipeline Capacity Agreement); *see also Laurel Pipe Line Company, L.P. – Amendment to Pipeline Capacity Agreement with Buckeye Pipeline Company, L.P.*, Pennsylvania Public Utility Commission Docket No. G-00940417 (Dec. 30, 2014) (Amendment to Pipeline Capacity Agreement).
[31] *See* Laurel Pipe Line Company L.P. Tariff FERC No. 3 (stating that Laurel "terminated its provision of interstate service on December 31, 1994."); *see also* Laurel Pipe Line Company L.P. Tariff FERC No. 4.
[32] 66 Pa.C.S. § 1101 *et seq*.

requires an existing certificated Pennsylvania public utility like Laurel to obtain a certificate of public convenience from the PaPUC before abandoning any existing public utility service.[33]

C. Petitioners Must Provide Tangible Assurances That the Proposed Project Will Not Impact East-to-West Intrastate Shipments and Thus Violate PaPUC Regulations.

There is a fundamental conflict between Petitioners' Transportation Service Agreement ("TSA") and *pro forma* tariff and PDO, on the one hand, and PaPUC's regulation, on the other. This conflict arises due to the fundamental disconnect between Petitioners' obligation to continue east-to-west intrastate service pursuant to Pennsylvania law, a PDO that makes bald, unsupported promises that Petitioners intend to meet that obligation, and a TSA and *pro forma* tariff that do not include any provisions that afford concrete assurances that Petitioners will continue to meet their obligations under Pennsylvania law after their project is approved by the Commission. The availability of the Laurel Pipeline for east-to-west shipments is mandated by Pennsylvania law, exists beyond FERC's jurisdiction,[34] and is the subject of an ongoing PaPUC proceeding. Nothing in any of the materials Petitioners filed acknowledges, let alone accommodates, their ongoing legal obligations under Pennsylvania law and PaPUC regulations. Rather, Petitioners are seeking to use their PDO as a method to avoid regulation by the PaPUC by trying to offer interstate service that appears to presuppose that Petitioners' intrastate legal obligations do not exist. A PDO is an inappropriate vehicle to seek to preempt or evade Pennsylvania law, which is exactly what the

[33] *See also* Recommended Decision at 78 (holding that "the proposed reversal is essentially a partial abandonment by Laurel of the service it currently provides in Pennsylvania. Consequently, Laurel must obtain a CPC from this Commission before it may implement the proposed reversal."). *See also Ala.Pub. Serv. Comm'n v. Southern Ry. Co.*, 341 U.S. 341, 346 n.7 (1951) (saying that the running of two fewer trains a day was a "partial discontinuance" over which the I.C.C. lacked jurisdiction); 341 U.S. at 347 (calling it an "essentially local problem"); *Palmer v. Mass.*, 308 U.S. 79, 85 (1939) (Federal government does not have jurisdiction over partial discontinuances).

[34] *See supra* note 22 *citing* Petitioners' Main Brief, at 12.

Petitioners are trying to do here.[35] Rather, the terms of the TSA, *pro forma* tariff, and PDO must be consistent with Pennsylvania law and the PaPUC.

Any declaratory order from the Commission allowing Petitioners to harm intrastate shippers' rights would generate significant needless controversy. If it is truly "wholly inaccurate," as Petitioners suggest, that the PDO would enable Petitioners to "evade the rightful jurisdiction of the PaPUC,"[36] then there must be a degree of harmony between the PDO, the supporting contracts and tariff, and Pennsylvania law. No such harmony is present here, and indeed the PDO and its supporting documents directly conflict with one another. The Commission should not issue a declaratory order to endorse a TSA or *pro forma* tariff which, by their terms, interfere with PaPUC's regulation of Laurel's intrastate pipeline service.

In their initial PDO filing, Petitioners directly stated they believe FERC policy requires that the Commission should resolve a conflict between their new interstate shippers and existing intrastate shippers at the expense of existing intrastate shippers.[37] Further, as described above, Laurel has argued at the PaPUC that any favorable action by FERC would preempt all Pennsylvania law restricting its new chosen routes.[38] Therefore, the possibility of Petitioners using

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[35] *See supra*, at 11. Further, the D.C. Circuit rejected, as unworthy of *Chevron* deference, the idea that the ICA preempted a state's limits on abandonment where there is no federal regulation, creating a regulatory gap. *Illinois Commerce Commission v. ICC*, 879 F.2d 917, 924 (D.C. Cir. 1989) (calling it "well-nigh inconceivable that Congress intended" such a rule).

[36] Petitioners' Motion at 10.

[37] PDO at 12 n.22 (claiming that FERC "has expressed the policy that the reservation of 10% must not be subject to reduction as a result of any intrastate volumes being transported.") (citing *Stateline Crude, LLC*, 162 FERC ¶ 61,245 (2018), *Panola Pipeline Co., LLC*, 151 FERC 61,140 (2015), and *Navigator BSG Transp. & Storage*, 152 FERC ¶ 61,026 (2015)). Note however that all these proceedings were uncontested and that the PDOs and TSAs *by their own terms* acknowledged that intrastate shipments would be respected. *See, e.g., Petition for Declaratory Order of Stateline Crude, LLC*, OR18-11, Exh. 4 *Pro Forma* Throughput and Deficiency Agreement, at Section 4.1 (Jan. 16, 2018) ("Transportation will be governed by rules and regulations set forth in Carrier's Tariffs on file with the FERC and the TRRC"); *id.* at Section 10.1 ("Shipper and Carrier acknowledge that the services to be provided by Carrier to Shipper hereunder on the Pipeline are subject to regulation by the TRRC and/or the FERC and such services shall be provided pursuant to, and in accordance with the Tariff filed by Carrier with TRRC and/or the FERC."); *Stateline Crude*, 162 FERC ¶ 61,245 at P 14 n.20.

[38] Petitioners' Main Brief, at 12 ("Service on the reversed segment will be solely and exclusively regulated by the Federal Energy Regulatory Commission ('FERC') under the Interstate Commerce Act. The fact that intrastate service will be supplanted by interstate service as a result of the reversal is immaterial"); *id.* at 23-34.

this PDO to confound the PaPUC proceeding or later evade PaPUC oversight is very real – even likely. Petitioners have failed to provide any concrete evidence that Laurel's east-to-west carrier obligations will continue should the Commission grant this PDO.

If the terms of the PDO conflict with Pennsylvania law, FERC will find itself in a federal-state conflict over the route of petroleum product pipelines – a subject over which it has no jurisdiction.[39] In their Joint Protest, Indicated Parties demonstrated that there are high logistical barriers for Laurel to provide the services described in its PDO and tariff without abrogating its duty to continue intrastate shipments under Pennsylvania law as currently enforced by the PaPUC. Petitioners respond to this concern with two assertions. First, Petitioners contend they do not need to make factual guarantees in a PDO because if Petitioners are misleading the Commission, then Petitioners will no longer be protected from challenge by the terms of the PDO and Indicated Parties may then bring a challenge.[40] And second, Petitioners make new arguments as to how maintaining both services could be possible.[41] These two explanations are inadequate to alleviate confusion as to the PaPUC's jurisdiction in relation to Petitioners' proposed west-to-east interstate service or to protect current intrastate shippers' legal interests under Pennsylvania law in the continuation of intrastate service. Instead, Petitioners must provide in their TSA, *pro forma* tariff, and PDO adequate information and assurances to ensure that Indicated Parties and other intrastate shippers continue to enjoy access to the Laurel Pipeline for use in east-to-west intrastate shipments.

[39] *Supra* note 22.
[40] Petitioners' Motion at 8-9 ("If, contrary to the facts shown by the Petitioners, Buckeye/Laurel were to fail to have the ability to provide service as undertaken in the PDO, then an important premise of the PDO will cease to exist, and the protections provided by the declaratory order may not apply. Those issues can, and should, be raised by parties in the future, in response to a failure by Petitioners to live up to the undertakings that formed the basis for the PDO.") The only legal support Petitioners provide for this proposition is *PNGTS Shipper's Grp. v. FERC*, 592 F.3d 132 (D.C. Cir. 2010), where the D.C. circuit held shippers could not challenge a certification on rate issues.
[41] Petitioners' Motion at 20-28.

i. Under These Circumstances, Petitioners Must Provide Assurances in the Actual PDO Showing Their Plan is Workable and Will Not Evade PaPUC Regulation.

Petitioners claim a PDO requires only "a general account of the facilities involved, the proposed capacity, and the terms of service," and not technical information.[42] However, this is not a normal PDO. As Indicated Parties explained, the PDO is an invention in response to a failing state abandonment proceeding.[43] This distinguishes this PDO from others in two significant ways. First, any final order from this PDO will only be useful in removing uncertainty and resolving conflict if it complies with state law, *i.e.*, if east-to-west shipments are not impaired. Second, as discussed below, this PDO is premised on contracts and tariffs that were written, reviewed, and signed based on the incorrect assumption that the Petitioners would prevail in winning a *complete abandonment* of east-to-west intrastate service at the PaPUC, not the *bi-directional* proposal on the table now. Because the appropriateness of the PDO requires continued and reliable east-to-west intrastate shipments, more information is required to assess whether these required intrastate movements are in fact feasible under the terms of the TSA and tariff that will actually govern them. While PDOs do not require as much information as most proceedings, they do require sufficient information to prove that granting a declaratory order will end uncertainty and resolve possible conflicts that may arise before the Commission related to the subject matter of the petition.[44] The

[42] Petitioners' Motion at 19. Despite their position that no scrutiny is required, Petitioners are also eager that FERC indicate that the new route is in the public interest. Petitioners' Motion at 43.
[43] Joint Protest at 4-11, 19-26.
[44] *See, e.g. Interstate Nat. Gas Ass'n of Am.*, 18 FERC ¶ 61,170, at 61,337 (1982) ("the issuance of a Declaratory Order is discretionary, and will only issue from the Commission if, in its opinion, the order will terminate an actual controversy or remove uncertainty with respect to a specific matter capable of resolution through the declaratory order procedure. Conversely, the Commission has refused to utilize the declaratory order procedure where, as here, the uncertainty is based upon the assumption of hypothetical facts which are not actually extant and therefore, not susceptible of resolution through the issuance of a declaratory order"); *see also Express Pipeline P'ship*, 75 FERC ¶ 61,303, at 61,967 (1996) (requiring more information to approve committed rates).

Commission has regularly rejected such PDOs on the grounds that they do not contain enough information.[45]

For instance, the original Commission ruling allowing committed rates in order to guarantee financing for new capacity was *Express Pipeline Partnership*.[46] However, in that order, the Commission exercised a good deal more scrutiny than Petitioners suggest is required here.[47] In fact, the original filing by Express was found by the Commission to be deficient because it lacked "cost, revenue and throughput data supporting its initial rates" leading the Commission to find it could not "at this time properly evaluate whether the proposal of Express would result in undue discrimination."[48] The Commission did not take Express at its word that their rates and practices were consistent with the ICA.[49] Much more recently, the Commission denied a PDO for a similar priority service arrangement where the petitioner had not adequately "explained how the existing shipper that is currently using the pipeline's capacity for service . . . will be impacted."[50] Similarly, in this case, the Commission should not take Petitioners at their word, unless that word is in the form of binding commitments that are practically realistic. The Motion's rehashing of

[45] *See, e.g.*, *PJM Interconnection, L.L.C.*, 139 FERC ¶ 61,024, at P 16 (2012) ("The Commission has discretion as to whether to issue a declaratory order, and if so, what level of detail to provide. Here, we find that the petition contains insufficient information on which to provide the detailed guidance PJM seeks."); *New York Indep. Sys. Operator, Inc.*, 139 FERC ¶ 61,139, at P 15 (2012) ("The Commission has discretion as to whether to issue a declaratory order, and if so, what guidance to provide. Here, we find that the petition contains insufficient information on which to provide the detailed guidance NYISO seeks."); *Midland Cogeneration Venture L.P.*, 61 FERC ¶ 61,094, at 61,384 (1992) ("In our view, it is no longer necessary to address Midland's petition given these subsequent events. In essence, the reasons why Midland filed the declaratory order have disappeared. Hence, we see no reason to decide the issues presented by Midland at this time. Accordingly, we shall dismiss Midland's petition for a declaratory order."); *Puget Sound Energy, Inc.*, 134 FERC ¶ 61,122 (2011) (deferring on a petition when insufficient information and issuing a Notice of Inquiry to resolve those questions).

[46] 76 FERC ¶ 61,245, *order on reh'g*, 77 FERC ¶ 61,188 (1996).

[47] *Id.* at 62,250-58 (examining the justness and reasonableness of rates in light of supplemental filings).

[48] *Express Pipeline P'ship*, 75 FERC ¶ 61,303, at 61,967 (1996) (continuing that it "will, however, give Express an opportunity to supplement its filing with the required information").

[49] *Id.*

[50] *Blue Racer NGL Pipelines, LLC*, 163 FERC ¶ 61,220, at P 28 (2018).

empty assertions regarding the continuation of east-to-west intrastate shipments does not provide such adequate assurances.

Furthermore, the Motion's assertion that "if in the future Buckeye and Laurel's actions belie the factual premise of the PDO, parties could challenge the continued protections of the declaratory order" is equally hollow.[51] These "commitments" to continue adequate intrastate east-to-west service are not embodied in any substantive portion of the PDO or in the supporting TSA or *pro forma* tariff. Therefore, Indicated Parties will not be able challenge the PDO on those grounds. Additionally, the "commitments" alluded to in Petitioners' Motion are explicitly caveated.[52] The rulings sought in the PDO seeking approval of the TSA and *pro forma* tariff do not in any way require Laurel to maintain east-to-west shipments at levels mandated by the PaPUC. Current intrastate shippers will have no cause of action against Laurel at FERC and will need to bring their complaints to the PaPUC, where Laurel currently maintains that any action by this Commission would preempt all relevant Pennsylvania law.[53] The only way to ensure that Petitioners do not evade Pennsylvania law through this PDO is for the actual terms of the project's supporting documents, including the TSA and *pro forma* tariff, incorporate guarantees of continuing east-to-west intrastate service consistent with Pennsylvania law, be stated in explicit terms.

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[51] Petitioners' Motion at 3.

[52] *See, e.g.*, Petitioners' Motion at 20 ("Buckeye and Laurel have made a commitment in the PDO that they will provide the east-bound services") and 20 n.33 ("The length of time that the westbound services would be provided is dependent on other matters") (footnotes in original).

[53] Petitioners' Main Brief, at 12. ("Service on the reversed segment will be solely and exclusively regulated by the Federal Energy Regulatory Commission ('FERC') under the Interstate Commerce Act. The fact that intrastate service will be supplanted by interstate service as a result of the reversal is immaterial. Interstate service preempts intrastate service under both the Commerce Clause of the United States Constitution and federal preemption under the Supremacy Clause and the Interstate Commerce Act. Any action by the [PaPUC] to forestall the offering of interstate service on the reversed segment would be a direct and unconstitutional interference with interstate commerce."). *See also 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 at 10 (Petitioners Brief on Exceptions filed Apr. 18, 2018)) ("Petitioners' Brief on Exceptions") ("like so many other areas of utility regulation, including interstate movements of natural gas and electricity, state regulation cannot interfere with or regulate interstate movements.").

ii. Petitioners' References to Continued East-to-West Service and Its Feasibility in the PDO and are Not Substantive and Do Not Provide Adequate Assurances.

While careful not to acknowledge that PaPUC regulations remain in force after their project commences,[54] Petitioners have made certain promises in their Motion that they can and will "maintain"[55] and "accommodate"[56] intrastate service in order to assuage concerns it is evading state regulation.[57] Petitioners also claim that east-to-west shipments cannot be impacted by the relief sought in their PDO because Petitioners separately stated in their pleadings that they do not plan to "somehow go back on that word."[58] These empty claims are based on nothing but unsupported and easily forgotten statements made in the first instance in Petitioners' Motion. As discussed above, no binding obligation has been made in the TSA, *pro forma* tariff, or the PDO guaranteeing continued east-to-west intrastate service that conforms to Petitioners' legal obligations under Pennsylvania law. Nor have Petitioners made any substantive effort to address these concerns. They have not, for instance, amended their pleadings, supporting contracts, or caveated their requested relief in any way to ensure continued, uninterrupted intrastate east-to-west pipeline service. Therefore, these "commitments" are illusory and should not be given any weight by the Commission.

Petitioners next provide arguments, newly made in their Motion, that it could be physically possible to serve their east-to-west customers without discrimination as mandated by the PaPUC.

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[54] Laurel still maintains before that body it is totally preempted in requiring Laurel to maintain service due the "clear congressional intent" to deregulate commerce by passing An Act to Regulate Commerce. Petitioners' Main Brief at 29.

[55] PDO at 4, 9, 12.

[56] Petitioners' Motion at 11, 13.

[57] Laurel still maintains, however, that assurances are not necessary in the PDO process.

[58] Petitioners' Motion at 7. Astonishingly, in the same sentence where Petitioners claim a "commit[ment] to continue providing the current service," they include a footnote caveating that they still "might pursue the original plan of providing only eastbound service." *Id.* at 7 n.4 (depending on the outcome of the PaPUC proceeding). *See also* Petitioners' Motion at 20 and n.33 (indignantly referencing their commitment to ship westward and then (in note 33) caveating that it may discontinue shortly depending on "other matters").

The problem here is that Petitioners offered and signed TSAs, which create legal obligations incompatible with continuing east-to-west intrastate shipments without discrimination.[59] As laid out more fully below, the TSAs entered into with the Committed Shippers clearly contemplate a full reversal of the pipeline and have no concrete guarantees, ensuring the continuation of west-to-east intrastate flows at the levels required by the PaPUC. Pointing to allegedly workable methods is meaningless when those methods are not in the agreements governing the project and, as here, exist in inherent tension with a TSA that does not contemplate accommodating any east-to-west flows or providing for any limitations on west-to-east transportation based on the east-to-west intrastate service Laurel is required to continue by the PaPUC.

All of this is the obvious consequence of trying to shoehorn a TSA and *pro forma* tariff designed and ratified based on the assumption of a full reversal of the Laurel Pipeline into an altogether new plan of operating Laurel Pipeline bi-directionally. Whether or not the referenced bi-directional shipment methods would work, the details about those methods are not contained in the TSA, the *pro forma* tariff, or the PDO. There is nothing Petitioners can point to showing that these newly introduced methods will be employed because the documents underlying the PDO do not contemplate them. Discrimination and regulatory evasion are not prevented by a party's promises when that party only referenced those promises for the first time in supplemental, unauthorized pleadings. The very real possibility of undue discrimination against intrastate shippers and encroachment on Pennsylvania law must be accounted for and dealt with in the actual petition for declaratory order and the documents presented to the Commission for approval in that petition.

[59] See *infra* at 28.

In this respect, Petitioners' Motion is completely inadequate to provide these required assurances. It attempts to show it is *possible* to continue intrastate east-to-west shipments, and it makes promises that Petitioners plan to continue these shipments.[60] But no effort has been made to modify the PDO, TSA, or *pro forma* tariff to make any sort of guarantee that Petitioners will continue east-to-west intrastate pipeline service in conformance with the rulings of the PaPUC. Petitioners' inability to meet their commitments under the TSA while simultaneously ensuring that they comply with Pennsylvania law speaks directly to the fact that the true purpose of this petition is to evade the orders of the PaPUC while confusing the delineation between interstate and intrastate jurisdiction. If Petitioners cannot guarantee that the requested declaratory order, TSA, and *pro forma* tariff, by their terms, do not interfere with PaPUC's regulatory jurisdiction and responsibilities, the PDO should be denied.

D. The Joint Protest Justifiably and Accurately Raised Concerns Regarding Preferences Granted to West-to-East Shippers under the terms of the PDO.

Over the course of approximately four pages, Petitioners' embark on a misguided discussion on prorationing preferences derived from a mischaracterization of the Joint Protest. In the Joint Protest, Indicated Parties' expert witness Thomas Miesner provided an accurate assessment of the prorationing provisions in the TSA attached to Petitioners' PDO. Consistent with Mr. Miesner's Affidavit, the Indicated Parties alleged Petitioners provided insufficient information to confirm the degree of impairment to Laurel's current east-to-west service resulting from the proposed bi-directional service.[61]

[60] Until Petitioners decide they no longer have to. PDO at 9 n.18; Petitioners' Motion at 7 n.4, 20 n.33 (saying that under the proposal embodied in the PDO they may cancel east-to-west service soon after approval depending on "other matters").
[61] Joint Protest at 36.

Petitioners misrepresent the concerns raised in the Joint Protest and Mr. Miesner's Affidavit related to the prorationing provisions in the TSA and potential impacts on Laurel's current east-to-west service. Relying on the following excerpt, Petitioners attempt to dismiss the Indicated Parties' prorationing concerns as "entirely baseless."

> The Protest alleges that the proposed service will give "preferential treatment to west-to-east shippers in the event the Laurel Pipeline is over-nominated," relying on the Miesner Affidavit.[62]

However, even the facts as presented by Petitioners in their Motion reinforce Mr. Miesner's observations.

First, the clarifying operational information provided in Petitioners' Motion validates the Indicated Parties' prorationing concerns and conflicts with Petitioners' characterization of Mr. Miesner's concerns. The Commission may recall that the Indicated Parties did not reach any definitive conclusions on the extent of impairment on Buckeye's east-to-west service, but instead concluded that "[t]he extent of the impairment to east-to-west shippers is impossible to quantify because of the lack of information in the PDO."[63] As discussed in Section I.D., *supra,* Petitioners' Motion provided information concerning the operation of the proposed bi-directional service that was omitted from the initial PDO. In their Motion, and for the first time, Petitioners explain the operational procedures that they expect to deploy to implement bi-directional service, purportedly without degrading the existing east-to-west service.[64] While the Indicated Parties continue to assert that serious questions remain concerning the practicality and feasibility of Petitioners' proposed bi-directional service, the very fact that Petitioners sand-bagged in their original PDO filing and attempted to provide a further explanation of their proposed bi-directional operations

[62] Petitioners' Motion at 28.
[63] Joint Protest at 36.
[64] Petitioners' Motion, Appendix B at 9-11.

only in their unauthorized later pleadings justifies Mr. Miesner's criticism and findings concerning the lack of information in the PDO.

Second, Petitioners' Motion inexplicably ignores Mr. Miesner's emphasis on the indirect effects of bi-directional service upon current east-to-west volumes. Petitioners claim Mr. Miesner "completely fails to note that the terms of the tariff, and its application as described in the TSA and the pro forma Tariff apply only to nominations on the expansion capacity – not to preexisting capacity."[65] To the contrary, Mr. Miesner's Affidavit acknowledges that "the PDO gives preferential treatment in prorationing *to west to east Committed Customers*" and further observes that the "Provisions governing prorationing of the new west to east capacity is ITEM No. 90-A-PRORATION OF PIPE LINE CAPACITY – 2016 Expansion in the Buckeye tariff attached to the PDO."[66] Accordingly, *Mr. Miesner never disputes that the prorationing provisions would apply directly only to nominations on the west-to-east capacity*. As indicated above, Mr. Miesner contends that Buckeye's PDO lacked sufficient information to determine whether the prorationing of west-to-east capacity would indirectly impair the existing east-to-west capacity.

Fundamentally, Mr. Miesner's concerns regarding the impact of the TSA's prorationing provisions hinge on Petitioners' ability to provide west-to-east service without impairing existing east-to-west service. Petitioners' Motion rejects this concern as "groundless and based on uninformed speculation."[67] However, while Petitioners' describe procedures for implementing virtual transportation and physical deliveries to accommodate bi-directional service, these procedures are not codified in the TSA or any other operating materials. Petitioners' Motion presumes that affected shippers and stakeholders should rely on myriad assumptions that were not

[65] *Id.*at 29.
[66] Joint Protest, Appendix F at 7 and 7 n.13 (emphasis added).
[67] Petitioners' Motion at 30.

explained in the PDO and to which Petitioners never commit in a binding manner. Unless all operational parameters are fully known, properly implemented, and permanently binding on Petitioners, the preferential prorationing provisions for west-to-east service could be implemented by Petitioners to impair east-to-west shipments.

E. The Commission Should Reject Petitioners' Opaque, Misleading, and Unduly Discriminatory Open Season.

i. Petitioners' Argument Regarding Indicated Parties' Participation in Their Open Season Is Incorrect and Completely Ignores Commission Precedent.

In their Motion, Petitioners attempt to argue that the Commission should reject Indicated Parties' arguments regarding their opaque and misleading Open Season based on the fact that Petitioners "do not suggest that any of their number would have made a commitment had they known about the current proposal to provide services under the TSA as well as east-to-west service."[68] This, according to the Petitioners, means that the Indicated Parties are "unaffected by the alleged lack of transparency" that characterizes their open season.[69] In addition to making unsupported assumptions about the Indicated Parties' intentions, this argument completely misses the point of the Commission's open season requirements by ignoring the fact that open seasons must be open, transparent, and non-discriminatory specifically so that *anyone* who *might* be interested in a proposed project can understand and evaluate the terms of the project before deciding whether to participate. Given that based on the contents of Petitioners' Open Season Notice, TSA, and *pro forma* tariff, no eligible, potentially-interested party – including the Indicated Parties – could have possibly understood that this proposed project might be impacted by the

[68] *Id.* at 31.
[69] *Id.*

Laurel Pipeline offering bi-directional service, the open season violates the Commission's transparency and non-discrimination requirements and should be rejected.

As the Commission has stated, its policy for allowing oil pipelines to set rates by contract requires certain safeguards to ensure that pipelines are treating all similarly-situated shippers the same in conformance with the anti-discrimination provisions of the ICA.[70] One of these safeguards is the requirement to offer "an open, transparent, and widely-publicized open season where no issues of undue discrimination or undue preference, or other obligations under the Interstate Commerce Act are raised."[71] In *Express,* the Commission explains that, in order for contract rates to be consistent with the ICA, "all prospective shippers" must have an "equal, non-discriminatory opportunity to enter into" a contract for service.[72] The Commission further discussed this principle in *Enterprise TE Products Pipeline Company LLC,* , explaining:

> The availability of discount rates to *all* interested shippers is the fundamental requirement upon which rulings approving such rate structures have been based. Contract rates can only satisfy the principle of nondiscrimination when the carrier offering such rates is required to make them available to 'any shipper willing and able to meet the contract's terms.' All prospective shippers must have an equal, non-discriminatory opportunity to review and enter into contracts for committed service. Enterprise TE's open season for the Seymour Project failed to meet his fundamental requirement.[73]

In other words, the foundational principle of the Commission's open season requirement is that all "interested" or "prospective" shippers must be able to know the details of a proposed project so as to have a non-discriminatory opportunity to evaluate a proposed project, regardless of whether that potential shipper ultimately decides to sign a contract. Given the fact that Indicated Parties are currently utilizing the Laurel Pipeline, they are undoubtedly shippers "willing and able

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[70] *Express Pipeline P'ship*, 76 FERC ¶ 61,245, at 62,253-54 (1996) ("*Express*"), *reh'g denied*, 77 FERC ¶ 61,188 (1996).
[71] *NST Express, LLC*, 153 FERC ¶ 61,108, at P 18 (2015) ("*NST Express*").
[72] *Express*, 76 FERC at 62,254.
[73] 144 FERC ¶ 61,092, at P 22 (2013) (quoting *Sea-Land Svc., Inc. v. Interstate Commerce Comm.*, 738 F.2d 1311, 1317 (D.C. Cir. 1984)).

to meet the contract's terms" and therefore have the right to review and consider all the information regarding the proposed project during a properly-conducted open season.

Since Petitioners did not provide any information during their open season or notice in their open season documents that they planned to operate their proposed project as part of a bi-directional service, no parties – including the Indicated Parties – received the necessary information to make an informed decision during the Petitioners' open season and thus were denied their rights to evaluate the project. Based on the Commission's policy and precedent, withholding information from any eligible shipper during an open season amounts to undue discrimination under the ICA.[74] Therefore, through failing to disclose the actual parameters of their project, Petitioners *did* injure the Indicated Parties (in addition to all other potential shippers) by failing to explain or provide transparent access to the terms of the project during the Open Season. This fact alone should be enough to reject the Open Season that underpins the Petitioners' PDO as unduly discriminatory under the ICA.

ii. Petitioners' Open Season Fails the Commission's Open Season Transparency Requirement.

In their Joint Protest, Indicated Parties explain that none of Petitioners' Open Season documents contemplate offering bi-directional service on the Laurel Pipeline and instead are self-evidently structured as effectuating a complete reversal of the Laurel Pipeline and offering service only from west-to-east.[75] As further noted, none of Petitioners' Open Season documents – including the Open Season Notice, TSA, and *pro forma* tariff – include provisions or explanations that would allow an interested potential shipper to understand that the contract service in question

[74] *See, e.g., White Cliffs Pipeline, L.L.C.*, 148 FERC ¶ 61,037, at P 51 (2014) ("All prospective shipper must have an equal, non-discriminatory opportunity to review and enter into contracts for committed service.").
[75] Joint Protest at 47-55.

would operate bi-directionally and thus potentially be limited by operating the pipeline in the opposite direction from the one contemplated by the open season and TSA.[76]

Rather than dispute these facts, Petitioners argue that the Open Season documents did not "preclude" or "address" services other than the contract rate service that Petitioners would offer after converting the pipeline into a bi-directional pipeline as part of the proposed project.[77] In fact, Petitioners essentially admit that they failed to include any information regarding bi-directional service in their open season documents, stating that "[n]either the TSA, nor the Open Season Notice, nor the *pro forma* Tariff attached to the TSA in the Open Season documents, address in any way the services that *Laurel* would or would not provide after commencement of the project."[78] Again, Petitioners completely miss the point of the Commission's policy and precedent regarding contract rate service by ignoring the fact that any open season for contract service must be transparent. Rather, Petitioners flagrantly admit that their open season documents do not offer sufficient information to ensure that their open season was transparent and offered all potential shippers an equal, non-discriminatory opportunity to understand all aspects of the project prior to deciding whether to sign a TSA.

As discussed above, any Open Season conducted for contract rate service must be "transparent."[79] Transparency is defined as "openness; clarity; a lack of guile and attempts to hide damaging information."[80] As discussed in the Joint Protest, Petitioners' Open Season was far from transparent. None of the documents included as part of Petitioners' open season gave any indication that the project was based on offering bi-directional service on Laurel Pipeline.[81] Not

[76] *Id.*
[77] Petitioners' Motion at 32-34.
[78] *Id.*at 32.
[79] *NST Express*, 153 FERC ¶ 61,108 at P 18.
[80] *Transparency*, Black's Law Dictionary (8th ed. 2007).
[81] Joint Protest at 47-55.

only are there no direct statements in any of the open season documents that would provide a potential shipper with reasonable notice that the project utilized bi-directional service, but there are not even any indicia that bi-directional service was contemplated as part of the project. Rather, as noted in the Joint Protest, all indications – including the plain language of the TSA for the proposed project – suggest the opposite.[82]

In addition to the issues discussed in the Joint Protest, there are several other provisions of the Petitioners' Open Season materials that inexplicably omit any reference to the proposed project utilizing bi-directional flow on Laurel Pipeline. There are no provisions in the Open Season documents that discuss how the pipeline will be operated bi-directionally, including how shipments in each direction will be prioritized. None of the provisions of the TSA or *pro forma* tariff discuss how the prorationing rights of contract service shippers under the proposed project will be prioritized in relation to the prorationing rights of current Laurel Pipeline shippers shipping in the opposite direction. Further, none of the documents discuss the relative rights of parties shipping in both directions during a *force majeure* situation.

Any reasonable potential shipper considering Petitioners' proposed project would have seriously considered the fact that Petitioners' proposed project would be operated in conjunction with continuing service in the opposite direction when deciding whether to sign a TSA whose purported rights might be curtailed by the technical and logistical limitations on bi-directional pipeline service. The fact that, during the open season, no potential shippers knew or could have reasonably known that the Laurel Pipeline would be operated bi-directionally means that Petitioners withheld potentially damaging information that may inform whether shippers signed contracts in support of the project. This is the very antithesis of a transparent open season.

[82] *Id.*

In short, as is essentially admitted by the Petitioners, the open season gave potential shippers absolutely no notice or any reason to believe that contract rate service for the proposed project would be operated bi-directionally or potentially impacted in any way by the logistical constraints inherent in offering bi-directional service. Furthermore, given that at the time of the open season Petitioners were seeking a complete reversal of the Laurel Pipeline at the PaPUC, there would be no reason for any interested shipper at the time of the open season to assume that the proposed project would utilize bi-directional service rather than be based on a complete reversal of the Laurel Pipeline.[83] None of the signatories of Petitioners' TSAs or potential shippers evaluating the proposed project during the open season had information about Petitioners' true intentions when deciding whether to accept an offer of contract rate service for the proposed project. Therefore, the open season was not transparent, violated the Commission's contract rate policy and precedents, and should therefore be rejected.

Petitioners note in their Motion that the committed shippers who responded affirmatively to the non-transparent open season have not protested the PDO.[84] However, we do not know whether a lack of protest by committed shippers is due to a lack of concern over the post-open season introduction of bi-directional service or that the committed shippers are content to share the bi-directional pipeline with east to west shippers because Petitioners have provided assurances, contrary to their assurances in their PDO and underlying TSA, that they have and will exercise their discretion to give priority to west to east shipments and abandon intrastate service if necessary to achieve that priority.

[83] *See* PaPUC Docket No. A-2016-2575829 (litigating Laurel's Application requesting a complete reversal of service in order to effectuate the proposed project at issue in Petitioners' PDO).
[84] Petitioners' Motion at 31-32.

It is no answer to the lack of transparency and the unduly discriminatory aspects of the TSA and the alleged open-season process that the Indicated Parties did not suggest conditions to the effectiveness of the PDO addressing these deficiencies.[85] It is not Indicated Parties' job to correct, even if they could, the non-transparent and unduly discriminatory aspects of the entire open-season process. Even now, except for certain unsupported statements in Petitioners' Motion, the terms and conditions of service and the manner in which this newly proposed bi-directional service will operate, are not clearly articulated. Thus, there is still not adequate transparency nor a showing that the proposed bi-directional service will not be unduly discriminatory.

F. Petitioners' Proposed Infrastructural Investments and Purported Capacity Expansions are not Consistent with Prior Circumstances Under which the Commission Has Granted Petitions for Declaratory Orders Establishing Contract Rates.

In response to the Indicated Parties' argument that Petitioners failed to identify infrastructural investments or capacity expansions sufficient to justify contract or committed rates, Petitioners: (1) point to the total costs of their project enhancements, noting that the $200 million of projected infrastructural expenses is sufficient to require supporting committed contracts; and (2) allege that the project would create 40,000 bpd of "new" west-to-east capacity.[86] However, the underlying facts and circumstances presented by Petitioners differ significantly from those addressed in prior Commission decisions granting PDOs and approving contract rates.

Petitioners, in a conclusory manner, allege that the projected investment of $200 million in system improvements is "quite substantial, and clearly is sufficient to require supporting committed contracts and a declaratory order, consistent with past orders on PDOs."[87] Unlike prior situations in which the Commission has granted petitions for declaratory order and approved

[85] *Id.*at 7.
[86] *Id.*at 35-36.
[87] *Id.*at 36.

contract rates, the instant Petition is not premised on the need to obtain financing, nor have Petitioners demonstrated that the proposed service would serve new markets or respond to changing market conditions.

Petitioners argue that the proposed project would repurpose existing capacity in a manner similar to that deemed sufficient for contract rates in *Palmetto,* but selectively ignore critical facts distinguishing the present circumstances from the facts before the Commission in *Palmetto.*[88] Petitioners claim "[t]he facts here are far closer to those in *Palmetto,* in which the Commission found that existing underutilized space that had been unused for over 10 years could be leased to a new pipeline for use with priority TSA transportation."[89] In *Palmetto,* however, the Commission observed that the proposed pipeline project would serve two entirely new markets in Savannah, Georgia and Jacksonville, Florida, both of which were previously served solely by truck or marine transportation of refined petroleum products.[90] The pipeline in *Palmetto* would also provide the Savannah, Jacksonville, and North Augusta, South Carolina markets with their first pipeline source of denatured fuel ethanol, which also was previously supplied by railroad or truck in each market.[91] Most importantly though, the Commission found in *Palmetto* that the capacity at issue "has not been used for ten years and will not affect Plantation's existing shippers."[92]

By way of contrast, Petitioners' proposed infrastructural investments will not create capacity for new markets. Unlike *Palmetto,* all of the destinations to be served by Petitioners' proposed service are already connected to existing Buckeye and/or Laurel petroleum product

[88] *See generally Palmetto Products Pipe Line LLC,* 151 FERC ¶ 61,090 (2015) ("*Palmetto*").
[89] Petitioners' Motion at 38.
[90] *Palmetto*, 151 FERC ¶ 61,090 at P 5. The Commission additionally noted that the pipeline project would benefit the North Augusta market by adding a second pipeline source to alleviate supply constraints. *See id.*
[91] *See id.*
[92] *Id.* at P 33.

pipelines.[93] Although Petitioners reference 180,000 bpd as the capacity on the "current" segment of the pipeline segment between Eldorado and Coraopolis, Petitioners never state that the post-reversal capacity for points between Eldorado and Coraopolis will be increased from 180,000 bpd. Rather, Petitioners claim to create new capacity by accommodating the recent east-to-west peak volumes of 105,000 bpd while additionally allotting 40,000 bpd of new capacity for west-to-east volumes.[94] However, the capacity for volumes into Pittsburgh-area destination points is not new capacity. As discussed by Indicated Parties' witness Dan Arthur in the Affidavit appended to the Joint Protest, Petitioners have not identified any current capacity constraints into Pittsburgh-area destination points and the available data indicates that supply from the Midwest into Pittsburgh has been unconstrained since March 2016.[95] Petitioners further admit that the improvements necessary to increase capacity to Pittsburgh-area destination points from the Midwest have already been placed into service.[96]

While the bi-directional project would create 40,000 bpd of west-to-east capacity for shipments to Eldorado, Eldorado is not a new market and there are no changing market conditions supporting consideration of contract rates for this capacity. While the Commission in *Palmetto* recognized the competitive benefits of providing a second source of pipeline supply to the North Augusta market previously served by a single pipeline resource, the Commission also noted the North Augusta market had experienced supply constraints and that the same pipeline project would also connect the Savannah and Jacksonville markets, both of which lacked any pipeline

[93] *See* PDO at 5 (confirming that Laurel currently transports refined petroleum products between Eldorado and Coraopolis under existing Laurel and Buckeye tariffs).
[94] *Id.*
[95] Joint Protest, Attachment H at 3.
[96] Petitioners' Motion at 36 ("As Mr. Arnold states, *the new improvements have created* approximately 40,000 bbls./day of incremental new capacity from points in the Midwest on Buckeye's system to Coraopolis.") (Emphasis added).

connectivity for refined petroleum products.[97] Here, there is no evidence of any unmet demand or capacity constraints for the Eldorado market.[98] Contrary to *Palmetto,* Petitioners propose to provide a second source of pipeline supply to an unconstrained Eldorado market, without any service expansions to presently underserved or unserved markets.

Finally, as discussed in the Joint Protest, granting the PDO could result in unduly discriminatory service for existing shippers. The Joint Protest raised concerns that Petitioners' PDO failed to provide concrete assurances that current shippers would retain access to east-to-west service sufficient to meet the significant volume requirements for east-to-west shipments.[99] Petitioners' Motion responds to the Indicated Parties' concerns by representing that Laurel can provide bi-directional service on the pipeline segment between Coraopolis and Eldorado without impairing east-to-west capacity.[100] As addressed in Section I.C. of this Indicated Parties' Answer, Petitioners' representations provide only a theoretical framework for bi-directional service.[101] While Buckeye avers that it operates bi-directional pipelines, it also admits that its other bi-directional projects involve pipeline segments no more than half the length of the Coraopolis-Eldorado pipeline segment.[102] Petitioners also decline to confirm whether their proposal to employ virtual transportation in conjunction with physical delivery was ever tested during actual operations on other bi-directional pipelines.[103] Perhaps most significantly, Petitioners confirmed that the provision of bi-directional service is only a stopgap measure included to address the possibility of further adverse decisions from Pennsylvania regulators or courts concerning

[97] *Palmetto* at P 5.
[98] Joint Protest at 59.
[99] Joint Protest at 45.
[100] Petitioners' Motion at 37.
[101] *See supra* Section I.C.
[102] Petitioners' Motion, Appendix B at 16.
[103] *See id.* (noting that Buckeye has ten segments with bi-directional functionality, but omitting specificity as to whether these segments are operated in the specific manner proposed for the Coraopolis-Eldorado segment).

Petitioners' attempts to obtain state approval to abandon their current east-to-west intrastate service.[104] Because Petitioners have expressly reserved all rights to discontinue both intrastate and interstate east-to-west service to destinations between Coraopolis and Eldorado, granting the PDO could impair existing services regardless of how the bi-directional service operates.

II. MOTION FOR LEAVE TO FILE ANSWER

The Indicated Parties note that Petitioners filed a document presented as a Motion for Leave to Answer and Answer and seeking to support the Motion based on the alleged need to clarify and correct statements in the Joint Protest.[105] As a result, the Indicated Parties respond with an Answer to Petitioners' Motion, consistent with Rule 213(a)(3). To the extent the Commission deems the Indicated Parties' Answer a prohibited answer to an answer pursuant to Rule 213(a)(2), the Indicated Parties request leave to respond to Petitioners' Answer and ask for Commission consideration of the arguments advanced in the above Answer to Motion.

While answers to answers are generally prohibited under Rule 213(a)(2), the Commission has reviewed answers where consideration of the filing would provide a more complete record and assist the Commission in its decision-making.[106] Petitioners' Motion for Leave to Answer and Answer contains various allegations and disclosures that, as discussed in detail above, should have been provided in the original PDO filing, including new Affidavits from Buckeye witnesses. The Indicated Parties should be permitted to respond to Petitioners' additional arguments.

[104] Petitioners' Motion, at 7, n.4 *citing* PDO at 9, n.18.
[105] *Id.* at 2.
[106] *See Algonquin Gas Transmission, LLC,* 150 FERC ¶ 61,163, at P 13 (2015).

III. CONCLUSION

The Indicated Parties respectfully request that the Commission consider this Answer to Petitioners' Motion for Leave to Answer and deny Petitioners' Motion or, in the alternative, grant the Indicated Parties' Motion for Leave to Answer and accept the Indicated Parties' Answer.

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Counsel for Giant Eagle, Inc

Dated: July 12, 2018

CERTIFICATE OF SERVICE

Pursuant to Rule 2010 of the Federal Energy Regulatory Commission's Rules of Practice and Procedure, I hereby certify that I have this day served a copy of the foregoing document on all persons designated on the official service list compiled by the Secretary in this proceeding.

Dated at Washington, D.C., this 12th day of July, 2018.

/s/ Robert A. Weishaar, Jr.
Robert A. Weishaar, Jr.

PROOF OF SERVICE

I hereby certify that I am this day serving a true copy of the foregoing upon the persons and in the manner indicated below, in accordance with the requirements of 52 Pa. Code § 1.54:

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Harrisburg, PA 17101

/s/ Daniel J. Stuart
Daniel J. Stuart
Counsel for Giant Eagle, Inc.

Dated: September 17, 2018

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; and Sheetz, Inc.	:	Docket No. C-2018-3003365
Complainants,	:	
v.	:	
Laurel Pipe Line Company, L.P.	:	
Respondent.	:	

VERIFICATION

I, John F. Povilaitis, counsel to Philadelphia Energy Solutions Refining and Marketing, LLC ("PESRM"), hereby state that the facts set forth in the Reply to New Matter above are true and correct to the best of my knowledge, information and belief and that I expect PESRM to be able to prove the same at a hearing held in this matter. I understand that the statements made herein are subject to the penalties of 18 Pa.C.S. § 4904 (relating to the unsworn falsification to authorities).

Dated: September 14, 2018

John F. Povilaitis
Counsel for PESRM

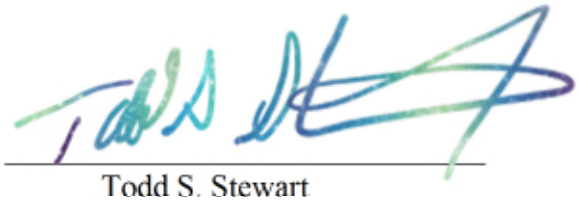
BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

VERIFICATION

I, Todd S. Stewart, counsel to Monroe Energy, LLC, hereby state that the facts set forth in the Reply to New Matter above are true and correct to the best of my knowledge, information and belief and that I expect Monroe Energy, LLC to be able to prove the same at a hearing held in this matter. I understand that the statements made herein are subject to the penalties of 18 Pa.C.S. § 4904 (relating to the unsworn falsification to authorities).

Dated: September 14, 2018



Todd S. Stewart
Counsel for Monroe Energy, LLC

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; and Sheetz, Inc.	:	Docket No. C-2018-3003365
Complainants,	:	
v.	:	
Laurel Pipe Line Company, L.P.	:	
Respondent.	:	

VERIFICATION

I, Adeolu A. Bakare, counsel to Guttman Energy, Inc., hereby state that the facts set forth in the Complainants' Reply to the New Matter of Laurel Pipe Line Company, L.P. above are true and correct to the best of my knowledge, information and belief and that I expect Guttman Energy, Inc. to be able to prove the same at a hearing held in this matter. I understand that the statements made herein are subject to the penalties of 18 Pa.C.S. § 4904 (relating to the unsworn falsification to authorities).

September 17, 2018

Adeolu A. Bakare
Counsel to Guttman Energy, Inc.

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; and Sheetz, Inc.	:	Docket No. C-2018-3003365
Complainants,	:	
v.	:	
Laurel Pipe Line Company, L.P.	:	
Respondent.	:	

VERIFICATION

I, Adeolu A. Bakare, counsel to Lucknow-Highspire Terminals, LLC, hereby state that the facts set forth in the Complainants' Reply to the New Matter of Laurel Pipe Line Company, L.P. above are true and correct to the best of my knowledge, information and belief and that I expect Lucknow-Highspire Terminals, LLC to be able to prove the same at a hearing held in this matter. I understand that the statements made herein are subject to the penalties of 18 Pa.C.S. § 4904 (relating to the unsworn falsification to authorities).

September 17, 2018

Adeolu A. Bakare
Counsel to Lucknow-Highspire Terminals, LLC

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; and Sheetz, Inc.	:	Docket No. C-2018-3003365
Complainants,	:	
v.	:	
Laurel Pipe Line Company, L.P.	:	
Respondent.	:	

VERIFICATION

I, Adeolu A. Bakare, counsel to Sheetz, Inc., hereby state that the facts set forth in the Complainants' Reply to the New Matter of Laurel Pipe Line Company, L.P. above are true and correct to the best of my knowledge, information and belief and that I expect Sheetz, Inc. to be able to prove the same at a hearing held in this matter. I understand that the statements made herein are subject to the penalties of 18 Pa.C.S. § 4904 (relating to the unsworn falsification to authorities).

September 17, 2018

Adeolu A. Bakare
Counsel to Sheetz, Inc.

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; and Sheetz, Inc.	:	Docket No. C-2018-3003365
Complainants,	:	
v.	:	
Laurel Pipe Line Company, L.P.	:	
Respondent.	:	

VERIFICATION

I, Daniel Stuart, counsel to Giant Eagle, Inc., hereby state that the facts set forth in the Reply to New Matter above are true and correct to the best of my knowledge, information and belief and that I expect Giant Eagle to be able to prove the same at a hearing held in this matter. I understand that the statements made herein are subject to the penalties of 18 Pa.C.S. § 4904 (relating to the unsworn falsification to authorities).

Dated: September 17, 2018

Name
Counsel for Giant Eagle, Inc.