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October 19, 2018

VIA ELECTRONIC FILING

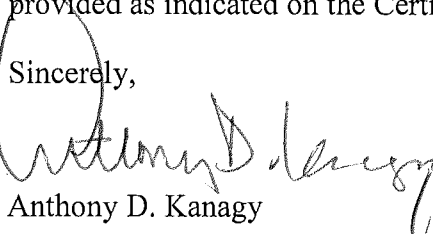
Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor North
P.O. Box 3265
Harrisburg, PA 17105-3265

Re: Giant Eagle, Inc., et al. v. Laurel Pipe Line Company, L.P.
Docket No. C-2018-3003365

Dear Secretary Chiavetta:

Enclosed please find the Answer of Laurel Pipe Line Company, L.P. to the Motion to Compel Responses to Complainants' Set I discovery in the above-referenced proceeding. Copies will be provided as indicated on the Certificate of Service.

Sincerely,


Anthony D. Kanagy

GPL/skr
Enclosure

cc: Certificate of Service
Honorable Eranda Vero

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been served upon the following persons, in the manner indicated, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant).

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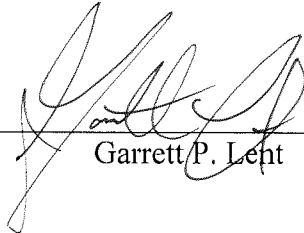
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Date: October 19, 2018


Garrett P. Leht

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**ANSWER OF LAUREL PIPE LINE COMPANY, L.P.
TO THE MOTION TO COMPEL RESPONSES TO COMPLAINANTS' SET I**

TO THE HONORABLE ADMINISTRATIVE LAW JUDGE ERANDA VERO:

Laurel Pipe Line Company, L.P. ("Laurel" or the "Company") hereby files this Answer, pursuant to Section 5.101 of the Pennsylvania Public Utility Commission's ("Commission") regulations, 52 Pa. Code § 5.101, to the Motion to Compel and Request for Shortened Response Period ("Motion") filed by Giant Eagle, Inc., Lucknow-Highspire Terminals, LLC, Monroe Energy, LLC, Philadelphia Energy Solutions Refining and Marketing, LLC, and Sheetz, Inc. ("Complainants") on October 12, 2018.

The Motion seeks to compel disclosure of seven documents that constitute privileged attorney-client communications and/or privileged party representative work product related to the development of Laurel's litigation position set forth in the Affidavit of Michael J. Kelly,

which was incorporated into Laurel's Answer to the Petition for Interim Emergency Relief at Docket No. P-2018-3003368. As explained below, Complainants' Motion should be denied because Laurel has demonstrated that the disputed information is privileged and exempt from discovery. Specifically, Item Nos. 3-5 are entitled to protection as privileged attorney-client communications because those items involve confidential communications from a Laurel representative to Laurel's internal counsel, that were made to develop Laurel's claims that the provision of bidirectional service will not impair existing east-to-west intrastate service before the Federal Energy Regulatory Commission ("FERC") and the Commission. In addition, Item Nos. 1-7 are protected work product because they contain the mental impressions, conclusions and/or opinions of Laurel's party representatives respecting Laurel's claim that it can provide bidirectional service without impairing existing east-to-west intrastate service. Importantly, Laurel has provided and will continue to provide non-privileged documents which contain the underlying facts used to prepare the privileged analyses identified in the disputed privilege logs.

Moreover, Laurel notes that both of the disputed privilege logs conform to the Complainants' written instructions and requests regarding the preparation of privilege logs and also exceed the level of detail provided in prior privilege logs by the Complainants. As such, the Complainants' arguments regarding the level of detail in the privilege logs should be rejected.

In support thereof, Laurel states as follows:

I. INTRODUCTION

1. Laurel is a Delaware Limited Partnership formed for the purpose of transporting petroleum and petroleum products through pipelines. Laurel owns and operates pipelines in Pennsylvania and New Jersey that form a single pipeline system extending from Eagle Point,

New Jersey to Midland, Pennsylvania. Current Pennsylvania operations consist of owning and operating approximately 350 miles of 12-inch to 24-inch pipeline and related facilities for the transportation of petroleum products to 24 customers at 14 delivery points. Under this current configuration, Laurel already provides both intrastate and interstate service on its pipeline in Pennsylvania; Laurel provides intrastate service pursuant to its Commission-approved tariff, and Laurel provides interstate service pursuant to the existing, Commission approved capacity agreement with its affiliate, Buckeye.

2. As stated in the Motion, Complainants are major petroleum products retailers and shippers that are either a shipper of record for petroleum products movements on Laurel's pipeline or the entity that injects product into the pipeline. By way of its participation in the prior Laurel Application proceeding at Docket Nos. A-2016-2575829 and G-2017-2587567 and role as a petroleum products pipeline, Laurel is generally aware of the nature of each of the Complainants' businesses.

3. Laurel and its affiliate, Buckeye Pipe Line Company, L.P. ("Buckeye"), filed a Petition for Declaratory Order at the Federal Energy Regulatory Commission ("FERC") at Docket No. OR18-22-000 seeking certain approvals of the rates, terms and conditions of the eastbound interstate aspect of the bidirectional service that Laurel intends to provide over its facilities. The bidirectional proposal will allow Laurel to efficiently accommodate both the flow of lower-cost Midwestern petroleum products to Pittsburgh and Central Pennsylvania, as well as the flow of East Coast petroleum products to Pittsburgh.

Contrary to Complainants' representations in the Motion, Laurel's proposal to initiate bidirectional service is not an abandonment of westbound intrastate service requiring

authorization by this Commission. Under the bidirectional proposal, both westbound intrastate service and eastbound interstate service will be provided; Laurel will not abandon, *i.e.* permanently cease to provide, westbound intrastate petroleum products service. Indeed, the continued provision of westbound service is inherent in the term “bidirectional.”¹ Plainly, Laurel’s proposal to initiate bidirectional service does not involve a permanent cessation (*i.e.* abandonment) of westbound intrastate service; Laurel will continue to provide westbound intrastate service at volume levels equaling at least the peak use of the system during the past ten years.²

Moreover, bidirectional service will not deprive the Commission of jurisdiction over Laurel’s intrastate service; however, the Commission does not have jurisdiction over interstate service. *See* 66 Pa. C.S. § 104.³ It is also denied that Laurel is required to provide “firm assurances and guarantees” to the Complainants and other intrastate pipeline shippers that

¹ “Bidirectional” is defined in Merriam-Webster’s dictionary as “involving, moving, or taking place in two usually opposite directions,” for example “bidirectional flow.” <https://www.merriam-webster.com/dictionary/bidirectional>. Although it is accurate to describe the affected segment of Laurel as providing a “bi-directional” service under the proposal, from the perspective of the FERC, and under the Public Utility Code, Laurel will be concurrently providing two different services, the west-to-east interstate service, and the east-to-west intrastate (and, separately, interstate) service.

² Complainants also ignore the fact that continuous service is never provided over oil pipelines. Petroleum products are shipped over pipelines in “batches.” This standard procedure results in a shipping “cycle,” where movements are conducted on a periodic, rather than continuous, basis.

³ Pursuant to *England v. Louisiana State Board of Medical Examiners*, 375 U.S. 411 (1964), Laurel reserves its right to seek adjudication of the following federal claims in federal court, should state tribunals hold against Laurel on questions of state law, including: (1) the ICA and PHMSA requirements preempt the Commission’s ability to preclude Laurel from conducting hydrostatic testing for the provision of interstate pipeline service; (2) the ICA preempts the Commission’s ability to preclude Laurel from providing interstate pipeline service; and (3) a decision by the Commission that would effectively preclude Laurel from providing interstate pipeline service violates the dormant Commerce Clause of the United States Constitution and the ICA.

their historic service will not be diminished. Laurel fully explained in the Docket No. OR18-22-000 proceeding before the FERC that Complainants' westbound intrastate service was not being abandoned, and that Laurel could continue to accommodate historical peak volumes for westbound intrastate service, after initiating the provision of eastbound interstate service.

II. BACKGROUND

4. The above-captioned Complaint was filed on July 12, 2018. Laurel filed Preliminary Objections to the Complaint on August 1, 2018. The Complainants filed an Amended Complaint on August 8, 2018 and Laurel filed Preliminary Objections and an Answer and New Matter to the Amended Complaint on August 28, 2018.

5. The Administrative Law Judge Eranda Vero ("ALJ") issued an Order denying Laurel's Preliminary Objections and setting the Complaint for hearings on October 9, 2018.

6. A telephonic Prehearing Conference was held on October 16, 2018. As of the date of filing this Answer, no deadlines for testimony and/or hearings have been established in this proceeding.

7. Complainants filed Set I Interrogatories ("Discovery") on August 17, 2018. A true and correct copy of the Discovery is attached hereto as **Appendix A**.

8. Laurel provided its initial answers to the Discovery on September 12, 2018. In response to Question No. 1, Laurel indicated that it was continuing to review its files and would produce responsive, non-privileged documents, to the extent they become available. In response to Question No. 2, Laurel provided a narrative response describing the analyses performed by Laurel employees at the request and under the direction of counsel, as well as a privilege log identifying such documents ("Privilege Log"). A true and correct copy of Laurel's September

12, 2018 responses and the Privilege Log is attached hereto as **Appendix B**. The Privilege Log complied with the criteria established by the Complainants in the Instructions to the Discovery, and the criteria previously agreed to by the Parties in the prior Laurel Application proceeding at Docket Nos. A-2016-2575829 and G-2017-2587567.

9. Laurel provided a supplemental response to Question No. 1 on September 21, 2018, which provided Complainants with additional responsive, non-privileged documents. Importantly, these non-privileged documents were not prepared at the request or under the supervision of counsel, and do not contain the “mental impressions, conclusions or opinions respecting the value or merit of a claim or defense or respecting strategy or tactics.” As such, the documents that have been and will be provided in response to Question No. 1 are not privileged. Essentially, Laurel’s response and associated non-privileged documents provided in response to Question No. 1 provides the non-privileged facts that helped form the bases of the privileged analyses conducted by Laurel’s party representatives that were claimed as privileged in response to Question No. 2. A true and correct copy of Laurel’s September 21, 2018 supplemental response to Question No. 1 is attached hereto as **Appendix C**.

10. Laurel also supplemented its response to Question No. 2 on October 5, 2018, by providing an updated privilege log that conformed with the format and substance of a privilege log requested by Complainants’ counsel. In addition, the format and level of detail provided in the October 5, 2018 privilege log is consistent with the format and level of detail used by members of the Complainants in the prior Application proceeding. A true and correct copy of Laurel’s October 5, 2018 supplemental privilege log in response to Question No. 2 (“Updated Privilege Log”) is attached hereto as **Appendix D**. A true and correct copy of a privilege log

previously produced by one member of the Complainants, *i.e.* PESRM, in the Laurel Application proceeding at Docket Nos. A-2016-2575829 and G-2017-2587567 is attached hereto as **Appendix F**.

11. The requested documents and analyses were prepared by a party representative at the direction and under the supervision of counsel, and contain the representative's mental impressions, conclusions and opinions respecting the value or merit of the position taken by Laurel in the Docket No. OR18-22-000 proceeding before FERC, as well as the above-captioned proceeding before the Commission. *See Appendix G*, Affidavit of Patrick Monaghan. As explained below, Item Nos. 1-7 contain Laurel's party representatives' mental impressions and opinions (*e.g.* ideas regarding implementation, assumed concerns, and pros and cons) associated with Laurel's litigation position before FERC and the Commission that bidirectional service can be provided without impairing east-to-west intrastate service. In addition, Item Nos. 3-5 are privileged attorney-client communications made to develop these claims before FERC and the Commission.

Moreover, Laurel notes that the Complainants' representations in the Motion that they have received no documents that are responsive to Question No. 2 ignores the fact that Question No. 2 seeks a specific subset of documents responsive to Question No. 1. Both Question No. 1 and Question No. 2 seek certain documents created and used by Laurel to analyze the bidirectional proposal. Question No. 1 broadly seeks documents with respect to the bidirectional proposal that were prepared by or for Laurel and/or any of its affiliates in connection with any bidirectional pipeline transportation service along the Coraopolis-Eldorado segment of the Laurel pipeline (L718) within the last five (5) years. Laurel has provided and will

continue to provide documents in response to Question No. 1, to the extent they become available. In order to provide these documents, Laurel must conduct and is continuing to conduct an extension search of thousands of documents to determine which documents are responsive; Laurel will continue to provide responsive, non-privileged documents to the extent those documents become available. Question No. 2 specifically targets a subset of these documents that were prepared by a party representative in anticipation of litigation and contain this party representative's "mental impressions, conclusions or opinions respecting the value or merit of a claim or defense or respecting strategy or tactics." As explained below, such documents are privileged and exempt from discovery.

By providing and continuing to provide documents responsive to Question No. 1, Laurel is providing non-privileged documents that contain information responsive to Question No. 2. Therefore, and for the reasons more fully explained below, Complainants' Motion should be denied.

III. LEGAL STANDARDS

A. Attorney-Client Privilege

12. The attorney-client privilege "operates in a two-way fashion to protect confidential client-to-attorney or attorney-to-client communications made for the purpose of obtaining or providing professional legal advice." *Gillard v. AIG Ins. Co.*, 15 A.3d 44, 59 (Pa. 2011). Importantly, Pennsylvania courts, like other courts, have declined "to establish a general rule to require the disclosure of communications which likely would not exist...but for the participants' understanding that the interchange was to remain private." *Id.* at 86. Consistent with this reasoning, the Pennsylvania Supreme Court in *Gillard* has recognized the broad

derivative protection of attorney-client privilege described by the United States Supreme Court in *Upjohn v. United States*, 449 U.S. 383 (1981).

13. Under Pennsylvania law, four elements must be satisfied in order to invoke successfully the protections of attorney-client privilege: (1) the asserted holder of the privilege is a client; (2) the person to whom the communication was made is an attorney; (3) the communication relates to a fact of which the attorney was informed by his client, is confidential, for the purpose of securing legal advice; and (4) the privilege has not been waived. See *Customer Designs & Mfg. Co. v. Sherwin-Williams Co.*, 39 A.3d 372, 376 (Pa. Super. Feb. 15, 2012) (citing *Nationwide Mut. Ins. Co. v. Fleming*, 924 A.2d 1259 (Pa. Super. 2007), *aff'd*, 605 Pa. 468, 992 A.2d 65 (Pa. 2010)).

14. Attorney-client privilege may be invoked for communications by a corporate client and its employees to an attorney. See *Maleski v. Corporate Life Insurance Co.*, 641 A.2d 1, 3 (Pa. Cmwlth. 1994) (citing *Upjohn*). Specifically, “communications by corporate employees to corporate counsel may fall within the scope of the attorney-client privilege when they are kept confidential and when they are made at the behest of counsel and with the goal of furthering counsel's provision of legal advice to the client, the corporation.” *Id.* at 379.

15. “[T]he party asserting the privilege has the initial burden to prove that it is properly invoked.” *Joyner v. SEPTA*, 736 A.2d 35, 38 n.3 (Pa. Cmwlth. 1999). The party asserting the privilege can meet this burden by providing “sufficient facts” to show the privilege is properly invoked. See *Customer Designs*, 39 A.3d at 379. Where the party asserting the privilege has produced facts demonstrating that the corporate attorney requested the corporate employee to produce the disputed documents for the purpose of the corporate attorney’s

representation of the corporation, the party asserting the privilege has carried its initial burden. *Id.* (explaining the asserting party did not present any facts to state whether the corporate attorney requested the disputed documents to be produced or for what purpose they were requested); *see also Upjohn*, 449 U.S. at 394.

16. Once the party asserting this privilege demonstrates it has properly been invoked, “the burden shifts to the party seeking disclosure to set forth facts showing that disclosure will not violate the attorney-client privilege, e.g., because the privilege has been waived or because some exception applies.” *Nationwide*, 924 A.2d at 1266.

B. Work Product Privilege

17. The Commission’s regulations applicable to discovery adopt the attorney work product rules contained in Pa. R.C.P. Rule 4003.3. *See* 52 Pa. Code § 5.323(a). Specifically, Section 5.323(a) of the Commission’s regulations states:

Subject to this subchapter and consistent with Pa. R.C.P. 4003.3 (relating to scope of discovery trial preparation material generally), a party may obtain discovery of any matter discoverable under § 5.321(b) (relating to scope) even though prepared in anticipation of litigation or hearing by or for another party or by or for that other party’s representative, including his attorney, consultant, surety, indemnitor, insurer or agent. The discovery may not include disclosure of the mental impressions of a party’s attorney or his conclusions, opinions, memoranda, notes, summaries, legal research or legal theories. With respect to the representative of a party other than the party’s attorney, discovery may not include disclosure of his mental impressions, conclusions or opinions respecting the value or merit of a claim or defense or respecting strategy, tactics or preliminary or draft versions of written testimony or exhibits, whether or not final versions of the testimony or exhibits are offered into evidence.

52 Pa. Code § 5.323(a) (emphasis added).

18. Rule 4003.3 of the Pennsylvania Rules of Civil Procedure likewise states:

Subject to the provisions of Rules 4003.4 and 4003.5, a party may obtain discovery of any matter discoverable under Rule 4003.1 even though prepared in anticipation of litigation or trial by or for another party or by or for that other party's representative, including his or her attorney, consultant, surety, indemnitor, insurer or agent. The discovery shall not include disclosure of the mental impressions of a party's attorney or his or her conclusions, opinions, memoranda, notes or summaries, legal research or legal theories. With respect to the representative of a party other than the party's attorney, discovery shall not include disclosure of his or her mental impressions, conclusions or opinions respecting the value or merit of a claim or defense or respecting strategy or tactics.

Pa. R.C.P. 4003.3 (emphasis added). The plain language of both Section 5.323 of the Commission's regulations and Pa. R.C.P. 4003.3 prohibit discovery of the "mental impressions, conclusions or opinions" of a party representative with respect to the value or merit of a claim or defense, strategy or tactics.

19. Pennsylvania appellate courts have confirmed that, under Pennsylvania law, the work product doctrine protects the mental impressions, conclusions and opinions of a party's non-attorney representative respecting the value or merit of a claim or defense or respecting strategy or tactics, regardless of whether or not it was prepared in anticipation of litigation. *See Clemens v. NCAA (In re Estate of Paterno)*, 168 A.3d 187, 199-200 (Pa. Super. 2017); *Bagwell v. Pa. Dep't of Educ.*, 103 A.3d 409, 416-417 (Pa. Cmwlth. 2014) (holding that application of the work-product privilege is not limited to the litigation context). Indeed, the "broader protections" of the work product doctrine are necessary to enable attorneys to prepare case with the assistance of their agents and other party representatives. *See Am. Int'l Specialty Lines Ins. Co. v. Chubb*

Custom Ins. Co., 2011 Phila. Ct. Com. Pl. LEXIS 265 at *6-9 (Ct. of Com. Pleas of Philadelphia Cnty. Sept. 16, 2011) (Mazer Moss, J.).

C. Privilege Logs

20. While a privilege log must provide a sufficient basis to prove that a privilege is properly invoked, the party asserting privilege is not required to provide exacting details regarding the nature and content of the privileged documents. Rather, “a privilege log, which typically lists the date, record type, author, recipients, and a description of the withheld record, can serve as sufficient evidence to establish an exemption.” *See McGowan v. Pa. Dep’t of Env’tl. Prot.*, 103 A.3d 374, 381 (Pa. Cmwlth. 2014); *see also Heavens v. Pa. Dep’t of Env’tl. Prot.*, 65 A.3d 1069 (Pa. Cmwlth. 2013).⁴ The Motion appears to concede this point, as the Complainants argue that a privilege log need only provide sufficient detail to enable the parties to assess the claim. Motion ¶ 29.

21. Where, as here, the level of detail applicable to a privilege log was set by the requesting party’s discovery instructions and subsequent requests, the party asserting privilege need only provide the requested level of detail. As explained below, the Complainants’ claims regarding the sufficiency of Laurel’s Privilege Log and Update Privilege Log are untenable where each log conforms not only to the standard level of detail accepted by Pennsylvania

⁴ A Pennsylvania trial court has further concluded that, even under the less favorable laws of California, a privilege log containing authors, recipients, preparation dates, and a brief description of the withheld document was sufficient, and denied a party’s motion to compel the production of the withheld documents. *See Am. Int’l Specialty Lines Ins. Co. v. Chubb Custom Ins. Co.*, 2011 Phila. Ct. Com. Pl. LEXIS 265 at *6-9 (Ct. of Com. Pleas of Philadelphia Cnty. Sept. 16, 2011) (Mazer Moss, J.).

courts, but also conforms to the level of detail required by the Complainants' own Instructions and requests. *See* Section IV.C. *infra*.

IV. ANSWER TO THE MOTION TO COMPEL

22. The documents identified in the Privilege Log and the Updated Privilege Log are privileged materials protected by the work-product doctrine and/or attorney-client privilege. Specifically, Item Nos. 3-5 in the privilege logs are protected by attorney-client privilege because they are communications by a corporate employee, to corporate counsel for the purpose of obtaining legal advice related to the development of the corporate entity's litigation position and the development of an affidavit by the corporate employee with respect to that position. As discussed below, the e-mail references a prior call, which included corporate counsel, during which the analyses in the attached documents were requested in order to develop Laurel's litigation position. *See Appendix G*. In addition, Item Nos. 1-7 are protected party representative work product, because each item sets forth the representatives' mental impressions, conclusions or opinions respecting the provision of bidirectional service. Item Nos. 1-7 contain Laurel's party representatives' mental impressions and opinions (*e.g.* ideas regarding implementation, assumed concerns, and pros and cons) associated with Laurel's claim before FERC and the Commission that bidirectional service is possible. *See Appendix G*.

23. Moreover, as explained below, Laurel's Privilege Log and Updated Privilege Log provide a sufficient level of detail under the law, as well as under the Complainants' Discovery Instructions and subsequent requests. Indeed, Laurel's Updated Privilege Log in particular

A. Attorney Client Privilege – Item Nos. 3-5 of the Privilege Log and Updated Privilege Log

24. Laurel has demonstrated that Item Nos. 3-5 of the Privilege Log and Updated Privilege Log are protected by the attorney-client privilege. The information in the privilege log satisfies the requirements to properly invoke attorney-client privilege under Pennsylvania law. *See Customer Designs*, 39 A.3d at 376 ((1) the asserted holder of the privilege is a client; (2) the person to whom the communication was made is an attorney; (3) the communication relates to a fact of which the attorney was informed by his client, is confidential, for the purpose of securing legal advice; and (4) the privilege has not been waived).

25. Laurel has satisfied the first two prongs of this test because Item Nos. 3-5 in the privilege log clearly identify the holder of the privilege is a client of the receiving attorney. Item No. 3 is identified as an email, authored by a Laurel party representative, Thomas R. Zeth, which was sent to corporate counsel, Patrick Monaghan.⁵ **Appendix D.** Item Nos. 4-5 are identified as attachments to this communication, prepared by a Laurel party representative, and submitted to corporate counsel.

26. Laurel has further satisfied the third prong of this test because Item Nos. 3-5 describe confidential work product submitted to counsel, which would not have otherwise been shared except to secure legal advice. For instance, Item No. 3 further describes the subject

⁵ In *Upjohn*, the United States Supreme Court specifically confirmed that communications made by Upjohn Co. employees to counsel for Upjohn Co. acting as such, at the direction of corporate superiors in order to secure legal advice from counsel. *Id.* at 394-395. The Court also noted that subject documents were instructed to be kept confidential and were kept confidential by the company. *Id.* at 395. It further found that “[c]onsistent with the underlying purposes of the attorney-client privilege, these communications must be protected against compelled disclosure.” *Id.*

matter of the email as “Email to counsel regarding work product and analysis prepared at the request of internal counsel.” **Appendix D.** The e-mail identified as Item No. 3 further references a prior call with corporate counsel, during which the attached documents were requested in order to develop Laurel’s litigation position. The corporate employee provided these documents in order to obtain legal advice, *i.e.* in order to develop Laurel’s litigation position before FERC and the Commission that the provision of bidirectional service will not impair existing east-to-west intrastate service.

27. This scenario is analogous to the situation in *Upjohn* where the United States Supreme Court found that questionnaires filled out by corporate employees at the request of counsel were subject to the attorney-client privilege, because the communications were made at the direction of corporate superiors to obtain legal advice.⁶ *See also Appendix G.* Here, Item No. 3 clearly indicates that the communication involves documents prepared by an employee, at the request of corporate counsel, which are being communicated to corporate counsel. Item Nos. 4-5 are identified as the documents communicating that analysis. As such, Item Nos. 3-5 are confidential communications prepared for the purpose of obtaining legal advice.

28. Finally, Laurel has not waived the privilege applicable to these documents. Item Nos. 3-5 were only communicated by a corporate employee to a defined team that including

⁶ *See also Amtrak v. Fowler*, 788 A.2d 1053, 1064 (Pa. Cmwlth. 2001) (relying on *Upjohn* to support the proposition that corporate employees are protected by attorney-client privilege when providing information to corporate counsel); *Gould v. City of Aliquippa*, 750 A.2d 934, 937 (Pa. Cmwlth. 2000) (also relying on *Upjohn*); *Maleski by Chronister v. Corporate Life Ins. Co.*, 163 Pa. Commw. 36, 641 A.2d 1 (Pa. Cmwlth. 1994), *opinion after grant of reh'g*, 165 Pa. Commw. 72, 646 A.2d 1 (Pa. Cmwlth. 1994).

corporate legal counsel. As such, Laurel has maintained the confidential nature of these communications between a corporate client and its counsel.

29. Each of Complainants' arguments that Laurel has not demonstrated its claim of privilege fail to address this criteria and are otherwise flawed. As to their first argument that Laurel does not specify the identity of the "internal counsel," Complainants' argument is incorrect. *See* Motion ¶ 35. Complainants are, by nature of their participation in this proceeding and the prior Laurel Application proceeding at Docket Nos. A-2016-2575829 and G-2017-2587567, aware that Patrick Monaghan is corporate counsel for Laurel and its affiliate. *See also* **Appendix G**. Therefore, corporate counsel is properly identified with respect to Item Nos. 3-5.

30. As to their second argument that the references to Laurel's legal counsel in Item Nos. 3-5 are insufficient to invoke attorney-client privilege, Complainants' ignore the description of each of these items. Motion ¶ 36. As explained above, these documents are clearly identified as communications between a corporate employee and corporate counsel related to work product and analyses prepared by the employee at counsel's request. Moreover, as set forth in the attached Affidavit of Patrick Monaghan, these items were prepared pursuant to his request. *See also* **Appendix G**.

31. And as to their third argument that the fact the documents were prepared based on the suggestion of, or at the direction of, internal legal counsel does not result in privilege attaching and that the "information" was not permanently protected because it was ultimately used in a legal affidavit is incorrect for two reasons. Motion ¶ 37. First, as noted above, the scenario described in the privilege log is analogous to the scenario in *Upjohn* and demonstrates the documents are privileged; corporate counsel requested a corporate employee to prepare

certain documents to obtain legal advice, and the employee later prepared and communicated those documents to corporate counsel. Item No. 3 specifically references a prior telephone call with corporate counsel, during which the attached documents (Item Nos. 4-5) were requested. Second, Complainants attempt to characterize the communication by the corporate employee (*i.e.* Item Nos. 3-5) as having had its confidentiality waived because the *information* contained in the communication was presented in an affidavit incorrectly states the law. While Laurel may have disclosed the non-privileged facts underlying the communication, it did not disclose this particular communication. Laurel further notes that it has continued to provide non-privilege information relative to these underlying facts in its responses to Complainants' discovery request, *e.g.*, its September 21, 2018 supplemental response to Question No. 1. *See Appendix C.* The particular communication at issue in Item Nos. 3-5 of Laurel's privilege logs, however, has been maintained in confidence since it was made. As such, these three items constitute protected attorney-client communications.

32. For the reasons more fully explained above, Item Nos. 3-5 in the Privilege Log and Updated Privilege Log are entitled to protection as privileged attorney-client communications and, therefore, Complainants' Motion to Compel disclosure of these items should be denied.

B. Work Product Privilege – Item Nos. 1-7 of the Privilege Log and Updated Privilege Log

33. Laurel has further demonstrated that Item Nos. 1-7 of the Privilege Log and Updated Privilege Log are protected by the work product privilege. The information provided in the privilege logs demonstrates that the documents constitute the mental impressions and

opinions of a Laurel party representative, *i.e.* an employee, respecting the merit of Laurel's litigation that it is possible to provide bidirectional service without impairing existing east-to-west intrastate service. *See* 52 Pa. Code § 5.323(a); *see also* Pa. R.C.P. 4003.3.

34. Item Nos. 1-7 set forth Laurel's party representatives' mental impressions and opinions respecting Laurel's litigation position before FERC and the Commission that bidirectional service is possible. For example, Item No. 2 contains party representative opinions regarding certain operating assumptions for product movement patterns and the associated risks and benefits. Relatedly, Item No. 7 identifies the pros and cons associated with various hypothetical methods for effecting bidirectional service. Clearly, each of these documents contains protected party representative mental impressions and opinions regarding Laurel's litigation position set forth in the Kelly Affidavit.

35. In addition, the title of each document provided in the Updated Privilege Log identifies each document as "PRIVILEGED AND CONFIDENTIAL" or "CONFIDENTIAL – ATTORNEY CLIENT COMMUNICATION." **Appendix D.** Moreover, each document is described as analysis "prepared at the request of internal counsel." **Appendix D.** Corporate counsel requested that these documents be prepared for purposes of litigation. *See Appendix G.* Based on this information, it is reasonable to conclude that internal counsel is requesting the party representative to prepare these analyses such that the representative may opine on the merit of Laurel's litigation position regarding the provision of bidirectional service and that these documents contain privileged information.

36. Moreover, for reasons similar to those described with respect to Laurel's claims of attorney-client privilege, the Complainants' arguments that Laurel has not demonstrated Item

Nos. 1-7 are privileged work product are also incorrect. Motion ¶¶ 35-37. First, Complainants are aware of the identity and title of the internal counsel that requested that this privileged work product be prepared. Second, while Laurel's internal counsel is identified in some of the documents, Laurel does not rely on this identification for its claim that the documents are privileged work product. Motion ¶ 36. Rather, as described above, Laurel demonstrated these documents contain the mental impressions and opinions of a Laurel party representative with respect to the merit of its litigation position, which were developed at the request of corporate counsel. Third, Laurel has maintained the confidential nature of the identified work product, and properly disclosed non-privileged facts that may underlie the privileged material.

37. The Updated Privilege Log and Laurel's narrative response to Question No. 2 comply with Pennsylvania law, the Instructions accompanying the Discovery and the requested formatting and level of detail requested by the Complainants.

38. For the reasons more fully explained above, Item Nos. 1-7 in the Privilege Log and Updated Privilege Log are entitled to protection as privileged work product, therefore, Complainants' Motion to Compel disclosure of these items should be denied.

C. Both Of Laurel's Privilege Logs Conform With The Law And The Complainants' Own Instructions and Requests.

39. Complainants further argue that Laurel should be compelled to produce otherwise privileged documents because the Privilege Log and Updated Privilege Log do not contain a sufficient level of detail to support Laurel's claims of privilege. *See* Motion ¶ 38.

40. However, Pennsylvania law makes clear that the information contained in the Privilege Log and Updated Privilege log is sufficient to demonstrate the validity of Laurel's

claims of privilege, because the logs provide the date, record type, author, recipients, and a description of the withheld record. *See McGowan*, 103 A.3d at 381. Each column in the disputed privilege logs separately sets forth this information. *See Appendices B and D*. This information is sufficient to satisfy the criteria applicable to each privilege, for the reasons explained above.

41. Moreover, Laurel's Privilege Log and Updated Privilege Log not only set forth sufficient grounds for its claims of privilege under the law, but also conform to the Complainants' own Discovery Instructions and subsequent requests.

42. Complainants Discovery Instruction No. 13 states:

In addition to the requirements of paragraph 20 and 21 below, if any Document covered by any Data Request is withheld for whatever reason, including any privilege, please furnish a list identifying the date, type, and nature all [sic] each withheld Document and the legal basis and rationale for withholding it from production.

See Motion Appendix A, p. 4 (internal document p. 3) (emphasis added). The Privilege Log specifies the document number, the date, document type (in summary column), nature (in summary column) and the legal basis and rationale for the claim of privilege (privilege column) for each withheld document. *See Appendix B*. Contrary to Complainants' misrepresentation, Laurel complied with the Complaints' Discovery Instruction No. 13 in preparing the Privilege Log.

43. With respect to the Updated Privilege Log, Laurel again complied with the request and instruction of the Complainants. Specifically, Complainants' counsel provided a template for the Updated Privilege Log, and any future privilege log submitted by the Parties, as

well as a description of counsel's position with respect to claims of privilege by e-mail on September 21, 2018. A true and correct copy of the template privilege log provided by Complainants is attached hereto as **Appendix E**. Counsel for Laurel agreed to the proposed format and indicated it would provide a conforming log via e-mail on October 2, 2018, and specifically stated that Laurel was not agreeing to the Complainants' legal positions regarding what constitutes privileged documents. The Updated Privilege Log provides the information associated with each column in the template, including the "Type of Privilege Asserted." If, as the Complainants suggest, "[t]here is no way...that any person reviewing it [the Updated Privilege Log] could determine that the privilege claims are valid and consistent with Pennsylvania law," then such inability is the express result of the Complainants' instructions and proposed privilege log template.

44. Finally, Laurel notes that the ALJ should not reject its Privilege Log and Updated Privilege Log or require Laurel to produce the documents identified therein, where both of Laurel's privilege logs provide a level of detail that exceeds the level of detail in privilege logs previously produced by the Complainants in related proceedings, pursuant to identical discovery instructions. A true and correct copy of a privilege log previously produced by one member of the Complainants, *i.e.* PESRM, in the Laurel Application proceeding at Docket Nos. A-2016-2575829 and G-2017-2587567 is attached hereto as **Appendix F**.

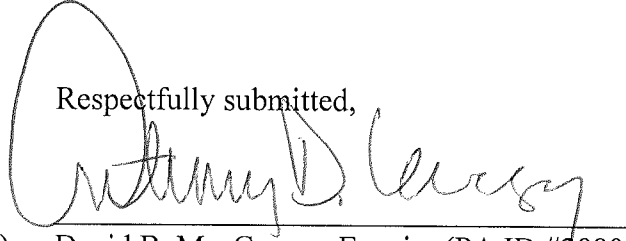
45. While the contents of the log provided as **Appendix F** speak for themselves, Laurel notes that the Updated Privilege Log contains all of the information set forth in **Appendix F**, but also provides a greater level of detail as to the description of the documents. If the Complainants believe that the level of detail provided in the prior PESRM privilege log in

Appendix F was sufficient basis for their own claims of privilege, then fundamental fairness supports the conclusion that a privilege log providing details in excess of the log provided in **Appendix F** sets forth sufficient basis for Laurel's claims of privilege. Should the ALJ consider Laurel's privilege log to be insufficient, Laurel submits that its good-faith reliance on the level detail in privilege logs previously produced by the Complainants warrants an opportunity to amend the Updated Privilege Log to comply with the directive of the ALJ, rather than a wholesale disclosure of privileged documents.

V. CONCLUSION

WHEREFORE, Laurel Pipe Line Company, L.P. respectfully requests that Administrative Law Judge Eranda Vero deny the Motion to Compel of Giant Eagle, Inc., Lucknow-Highspire Terminals, LLC, Monroe Energy, LLC, Philadelphia Energy Solutions Refining and Marketing, LLC, and Sheetz, Inc. dated October 12, 2018.

Respectfully submitted,



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Date: October 19, 2017

Counsel for Laurel Pipe Line Company, L.P.

Appendix A

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August 17, 2018

VIA EMAIL AND FIRST CLASS MAIL

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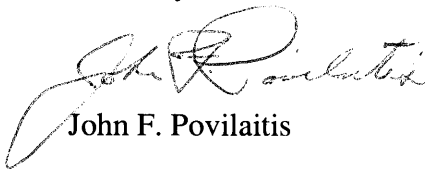
Re: Giant Eagle, Inc.; Guttman Energy, Inc.; Lucknow-Highspire Terminals, LLC;
Monroe Energy, LLC; Philadelphia Energy Solutions Refining and Marketing, LLC;
and Sheetz, Inc. v. Laurel Pipe Line Company, L.P., Docket No. C-2018-3003365

Dear Counsel:

Enclosed please find the Interrogatories and Requests for Production of Documents propounded by Giant Eagle, Inc., Guttman Energy, Inc., Lucknow-Highspire Terminals, LLC, Monroe Energy, LLC, Philadelphia Energy Solutions Refining and Marketing, LLC, and Sheetz, Inc. ("Complainants") on Laurel Pipe Line Company, L.P. – Set I in the above-captioned proceeding.

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

Sincerely,



John F. Povilaitis

JFP/tlg

Enclosure

cc: Secretary Rosemary Chiavetta (letter and Certificate of Service only via efilings)
Certificate of Service

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Giant Eagle, Inc.; Guttman Energy, Inc.;	:	
Lucknow-Highspire Terminals, LLC;	:	
Monroe Energy, LLC; Philadelphia Energy	:	
Solutions Refining and Marketing, LLC;	:	Docket Nos. C-2018-3003365
and Sheetz, Inc.	:	
	:	
Complainants,	:	
	:	
v.	:	
	:	
Laurel Pipe Line Company, L.P.	:	
	:	
Respondent.	:	

**INTERROGATORIES AND REQUESTS FOR
PRODUCTION OF DOCUMENTS PROPOUNDED BY
COMPLAINANTS ON
LAUREL PIPELINE COMPANY, L.P. – SET I**

Pursuant to 66 Pa.C.S. § 333 and 52 Pa. Code §§ 5.341 *et seq.*, Giant Eagle, Inc.; Guttman Energy, Inc.; Lucknow-Highspire Terminals, LLC; Monroe Energy, LLC; Philadelphia Energy Solutions Refining and Marketing, LLC; and Sheetz, Inc. (“Complainants”) propound the following Interrogatories and Requests for Production of Documents on Laurel Pipeline Company, L.P. (“Laurel” or “Responding Party”) – Set I.

Dated: August 17, 2018

INSTRUCTIONS FOR PRODUCTION OF DOCUMENTS AND INTERROGATORIES¹

1. Please begin each response on a separate page. This requirement does not apply to subparts of responses.
2. For each Data Request, please identify the preparer or the person under whose direct supervision the response was prepared.
3. Please designate the Data Request(s) or any subpart(s) in response to which any document or narrative response is provided.
4. In producing Documents in response to these Data Requests, please produce Documents within your possession, custody, or control. Possession, custody, or control includes constructive possession such that you need not have actual physical possession.
5. If any document responsive to any of these Data Requests has been destroyed or is otherwise unavailable, please identify and describe (1) the subject matter and content of the document; (2) all persons involved in the destruction or removal of the document; (3) the date of the document's destruction or removal; and (4) the reasons for the destruction or other unavailability of the document.
6. Subject to instruction 7 below, please produce the Documents in single-page format with a unique Bates number for each page. For all electronic Documents with attachments (such as an e-mail with attachments), please electronically associate the attachment with the e-mail, with the attachment following the e-mail sequentially in the production. If You have any questions regarding form of production, please contact the undersigned so that they do not delay your production.
7. Notwithstanding instruction 6 above, for Documents that are in the form of spreadsheets, audio, database, and video files, and any other files that cannot be imaged, please produce them in native form with unique Bates numbers associated with the native Documents.
8. All produced Documents should be organized and labeled to correspond to these Data Requests or as the Documents are kept in the ordinary course of business.
9. Each of these Data Requests shall be considered to be continuing in nature. If You do not now have data or Documents responsive to a particular Data Request, but later obtain possession, custody, or control of such data or documents, please furnish such data and/or Documents immediately thereafter.
10. If You cannot respond to a Data Request completely, please provide the answer to the extent possible, explain why You cannot respond to the Data Request completely, and provide all information and knowledge in your possession, custody, or control regarding the incomplete response.
11. If any data or Document responsive to any Data Request is unavailable, please identify the data or Document, provide an explanation concerning why the data or Document is unavailable, and state where the data or Document can be obtained.

¹ Capitalized terms not otherwise defined shall have the meanings specified in the Definitions Section of these Instructions.

12. If, in the course of responding to these Data Requests, You determine that any instruction, definition, or Data Request is ambiguous, contact counsel for the Complainants for any necessary clarification. In any such case, the response should set forth the language You feel is ambiguous and the interpretation you are using in responding to the Data Request.
13. In addition to the requirements of paragraphs 20 and 21 below, if any Document covered by any Data Request is withheld for whatever reason, including any privilege, please furnish a list identifying the date, type, and nature all each withheld Document and the legal basis and rationale for withholding it from production.
14. If You object to, or otherwise decline to answer all or any portion of any Data Request, please provide all Documents and information called for in that portion of the Data Request to which You do not object or decline to answer. If You object to any request on the ground that it is too broad (i.e., that it calls for Documents that You contend are not relevant to the subject matter of this proceeding), please provide such Documents as you believe to be within the proper scope of discovery. If You object to any Data Request on the ground that it would constitute an undue burden to provide a response, please provide such requested Documents as can be supplied without undertaking such undue burden.
15. For each Data Request, Identify and provide the names, job title and employer of all individuals responsible for providing the response and provide the certification of the response.
16. All Data Requests shall be construed inclusively, rather than exclusively, e.g., the words "and" or "or" shall be construed conjunctively or disjunctively, whichever makes the request more inclusive. The words "and" and "or" should be construed either conjunctively or disjunctively as necessary to include information within the scope of a Request, rather than to exclude information therefrom.
17. The singular form of a word includes the plural and vice versa.
18. Items referred to in the masculine include those in the feminine, and items referred to in the feminine include those in the masculine.
19. You shall answer each Data Request separately and fully.
20. If you are unable to answer fully any Interrogatory, answer to the extent possible and specify the reasons for your inability to answer in full.
21. In answering these Data Requests, furnish all information that is available to You, including information in the possession of your attorneys, agents, consultants, or investigators, and not merely such information of your own knowledge. If any of the Data Requests cannot be answered in full after exercising due diligence to secure the requested information, please so state and answer to the extent possible, specifying your inability to answer the remainder, and stating whatever information You have concerning the unanswered portions. If your answer is qualified in any particular, please set forth the details of such qualification.
22. For any requests with subparts, please provide a complete separate response to each subpart as if the subpart was propounded separately.

23. If information or documents responsive to any of these Data Requests has previously been provided in this proceeding in response to a discovery request by any participant, please provide a specific cross-reference. There is no need to make a duplicate response.

DEFINITIONS FOR PRODUCTION OF DOCUMENTS AND INTERROGATORIES

1. "Complaint" means the Amended Complaint filed on August 8, 2018 before the Pennsylvania Public Utility Commission at Docket No. C-2018-3003365.
2. "*Commission*" or "*PUC*" means the Pennsylvania Public Utility Commission.
3. "*Communication*" means the conveyance of information or anything else (whether in the form of facts, ideas, comments, inquiries, or otherwise).
4. "*CPC*" means Certificate of Public Convenience.
5. "*Document*" means the original and all drafts of all written and graphic matter, however produced or reproduced, of any kind or description, whether or not sent or received, and all copies thereof which are different in any way from the original (whether by interlineation, date-stamp, notarization, indication of copies sent or received, or otherwise), including without limitation, any emails, paper, book, account, photograph, blueprint, drawing, sketch, schematic, agreement, contract, memorandum, press release, circular, advertising material, correspondence, letter, telegram, telex, object, report, opinion, investigation, record, transcript, hearing, meeting, study, notation, working paper, summary, intra-office communication, diary, chart, minutes, index sheet, computer software, computer-generated records or files, however stored, check, check stub, delivery ticket, bill of lading, invoice, record or recording or summary of any telephone or other conversation, or of any interview or of any conference, or any other written, recorded, transcribed, punched, taped, filmed, or graphic matter of which You have or have had possession, custody or control, or of which You have knowledge.
6. "*Identify*" when used with regard to a Document means to state the type of Document (e.g., letter, email, memorandum, Tariff provision, report, etc.), its date, its author(s), addressee(s) and recipient(s), and any file number or control number or Bates number assigned to the Document.
7. "*Identify*" when used with regard to a corporation or other form of business organization, means to state the full name of such corporation or business organization.
8. "*Identify*" when used with regard to an individual, means to state the individual's name, present or last known employer or place of business, and position or title of the individual during the relevant time.
9. "*Laurel Pipeline*" means, all pipelines and appurtenances owned or operated by Laurel and subject to the jurisdiction of the Pennsylvania Public Utility Commission.
10. "*Person*" means, without limiting the generality of its meaning, every natural person, partnership, association (whether formally organized or *ad hoc*), corporation, joint venture, or other legal business entity, as well as any governmental entity or agency.
11. "*Western PA Destinations*" means Midland, Coraopolis, Pittsburgh, Neville Island, Tioga Tank Farm, Pittsburgh Airport, Indianola, Delmont, Greensburg, and Eldorado.
12. "*Related to*" or "*relating to*" means relating to, referring to, reflecting, discussing, describing, evidencing, supporting, providing a basis for, or constituting.

13. *"You," "Your,"* or *"Laurel"* means Laurel Pipeline Company, L.P., the Respondent in PUC Docket No. C-2018-3003365, pending before the Commission and Buckeye Pipe Line Company L.P., together with their attorneys, consultants, employees, identified witnesses, agents, representatives, officers and directors, and any other person acting on their behalf, including any affiliate, division, department, predecessor, corporation, general partner, or partnership through which they now conduct or have conducted business affairs.

**Interrogatories and Requests for Production of Documents
to Laurel – Set I**

1. Identify, describe and provide all Documents showing each assessment, analysis, study, and/or investigation (and all conclusions thereof) of various operating scenarios conducted by or for Laurel and any affiliate of Laurel in connection with any bi-directional pipeline transportation service along the Coraopolis-Eldorado segment of the Laurel pipeline (Line 718) within the last five (5) years.
2. Re the July 17, 2018 Answer of Laurel Pipe Line Company, L.P. to the Petition for Interim Emergency Relief, Docket No. P-2018-3003368 (“Answer”): provide the active model, including all inputs, the analysis, and the results for the range of scenarios evaluated by Laurel or any affiliate of Laurel which are referenced in the Affidavit of Mr. Michael J. Kelly at paragraph 22 as part of the FERC Answer, Internal Appendix B, attached to the Answer.

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

CERTIFICATE OF SERVICE

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

Via First Class Mail and Email

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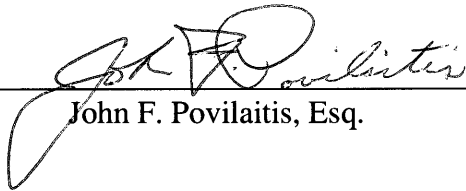
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Dated this 17th day of August, 2018.



John F. Povilaitis, Esq.

Appendix B



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September 12, 2018

VIA E-MAIL & REGULAR MAIL

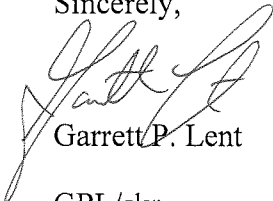
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Buchanan Ingersoll & Rooney PC
409 N. Second Street, Suite 500
Harrisburg, PA 17101-1357

Re: Giant Eagle, Inc., et al. v. Laurel Pipe Line Company, L.P.
Docket No. C-2018-3003365

Dear Counsel:

Enclosed please find the responses of Laurel Pipe Line Company, L.P. to Complainants' Set I discovery in the above-referenced proceeding. A privilege log to Complainants' Set I discovery is also enclosed. Copies will be provided as indicated on the Certificate of Service.

Sincerely,



Garrett P. Lent

GPL/skr
Enclosures

cc: Certificate of Service

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been served upon the following persons, in the manner indicated, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant).

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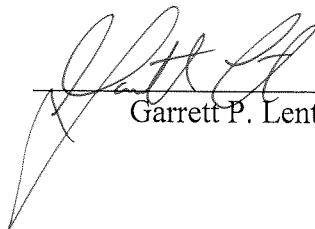
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Date: September 12, 2018



Garrett P. Lent

Laurel Pipe Line Company, L.P.
Response to Complainants' Set I Interrogatories
And Requests for Production of Documents
Dated September 12, 2018
Docket No. C-2018-3003365

D.W. Arnold
Page 1 of 1

- Q. 1. Identify, describe and provide all Documents showing each assessment, analysis, study and/or investigation (and all conclusions thereof) of various operating scenarios conducted by or for Laurel and any affiliate of Laurel in connection with any bi-directional pipeline transportation service along the Coraopolis-Eldorado segment of the Laurel pipeline (Line 718) within the last five (5) years.
- A. 1. Please see Laurel's response to Complainants-LAU-I-2. Laurel is continuing to review its files and will produce additional responsive, non-privileged documents, to the extent they become available.

Laurel Pipe Line Company, L.P.
Response to Complainants' Set I Interrogatories
And Requests for Production of Documents
Dated September 12, 2018
Docket No. C-2018-3003365

M.J. Kelly
Page 1 of 1

- Q. 2. Re the July 17, 2018 Answer of Laurel Pipe Line Company, L.P. to the Petition for Interim Emergency Relief, Docket No. P-2018-3003368 ("Answer"): provide the active model, including all inputs, the analysis, and the results for the range of scenarios evaluated by Laurel or any affiliate of Laurel which are referenced in the Affidavit of Mr. Michael J. Kelly at paragraph 22 as part of the FERC Answer, Internal Appendix B, attached to the Answer.
- A. 2. Paragraph 22 of the Affidavit of Mr. Michael J. Kelly in the FERC Answer, Internal Appendix B attached to the Answer makes no reference to a model. Rather, Mr. Kelly stated that "Buckeye and Laurel have reviewed a range of scenarios, involving high west-to-east deliveries, and high east-to-west deliveries, and have determined that the proposed and existing services can be provided under a wide range of scenarios."

Pursuant to counsel's request and under its direction, Buckeye/Laurel evaluated a range of operating scenarios to determine whether or not bidirectional service could be provided over the segment of the L718 line located between Eldorado, Pennsylvania and Coraopolis, Pennsylvania. These informal evaluations were conducted during in-person meetings and considered the design parameters of existing and new assets. Based off these discussions, Buckeye/Laurel determined that bidirectional service could be provided over the segment of the L718 line located between Eldorado, Pennsylvania and Coraopolis, Pennsylvania.

Please see item numbers 1-7 in the attached privilege log.

Laurel Pipe Line Company, L.P.
Docket Nos. C-2018-3003365
Document Production – Privilege Log
September 12, 2018¹

Doc No.	Date	Summary	Privilege
1.	2/17/2018	Powerpoint prepared under direction of counsel regarding bidirectional.	Work Product
2.	2/17/2018	Powerpoint prepared under direction of counsel regarding bidirectional.	Work Product
3.	2/21/2018	Email and attachments to counsel regarding bidirectional.	Attorney Client Communication Work Product
4.	2/21/2018	Powerpoint attachment to 2/21/2018 email to counsel.	Attorney Client Communication Work Product
5.	2/21/2018	Excel attachment to 2/21/2018 email to counsel.	Attorney Client Communication Work Product
6.	03/2018	Powerpoint prepared under direction of counsel regarding bidirectional.	Work Product
7.	5/24/2017	Power prepared under direction of counsel regarding bidirectional.	Work Product

¹ Laurel is continuing to review the status of the item on this Document Production – Privilege Log. Laurel will supplement and revise this Document Production – Privilege Log as needed.

Appendix C



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File #: 162860

September 21, 2018

VIA E-MAIL & REGULAR MAIL

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409 N. Second Street, Suite 500
Harrisburg, PA 17101-1357

Re: Giant Eagle, Inc., et al. v. Laurel Pipe Line Company, L.P.
Docket No. C-2018-3003365

Dear Counsel:

Enclosed please find the supplemental response of Laurel Pipe Line Company, L.P. to Complainants' Set I, No. 1 discovery in the above-referenced proceeding. The HIGHLY CONFIDENTIAL attachments are provided on a CD that will be mailed to the parties who have executed a non-disclosure agreement.

Sincerely,



Garrett P. Lent

GPL/skr
Enclosures

cc: Certificate of Service

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been served upon the following persons, in the manner indicated, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant).

VIA E-MAIL AND FIRST CLASS MAIL

Timothy K. McHugh, Esquire
Bureau of Investigation & Enforcement
Commonwealth Keystone Building
400 North Street, 2nd Floor West
PO Box 3265
Harrisburg, PA 17105-3265

John R. Evans
Small Business Advocate
Office of Small Business Advocate
300 North Second Street, Suite 202
Harrisburg, PA 17101

Robert A. Weishaar, Jr., Esquire
McNees Wallace & Nurick LLC
1200 G Street, NW, Suite 800
Washington, DC 20005

Alessandra Hylander, Esquire
McNees Wallace & Nurick LLC
100 Pine Street
P.O. Box 1166
Harrisburg, PA 17108-1166

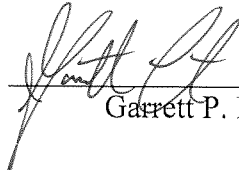
Alan M. Seltzer, Esquire
John F. Povilaitis, Esquire
Buchanan Ingersoll & Rooney, PC
409 N. Second Street, Suite 500
Harrisburg, PA 17101-1357

Jonathan D. Marcus, Esquire
Daniel J. Stuart, Esquire
Scott Livingston, Esquire
Marcus & Shapira LLP
One Oxford Centre, 35th Floor
301 Grant Street
Pittsburgh, PA 15219-6401

Kevin J. McKeon, Esquire
Todd S. Stewart, Esquire
Whitney E. Snyder, Esquire
Hawke McKeon & Sniscak LLP
100 North Tenth Street
Harrisburg, PA 17101

Richard E. Powers, Jr., Esquire
Joseph R. Hicks, Esquire
Venable LLP
575 7th Street, NW
Washington, DC 20004

Date: September 21, 2018



Garrett P. Lent

Laurel Pipe Line Company, L.P.
Supplemental Response to Complaints' Set I Interrogatories
And Requests for Production of Documents
Dated September 21, 2018
Docket No. C-2018-3003365

D.W. Arnold
M.J. Kelly
Page 1 of 1

Q. 1. Identify, describe and provide all Documents showing each assessment, analysis, study and/or investigation (and all conclusions thereof) of various operating scenarios conducted by or for Laurel and any affiliate of Laurel in connection with any bi-directional pipeline transportation service along the Coraopolis-Eldorado segment of the Laurel pipeline (Line 718) within the last five (5) years.

A. 1. Laurel hereby supplements its prior response to Complainants-LAU-I-1. Please see HIGHLY CONFIDENTIAL Attachment Complainants-LAU-I-1. The additional documents listed below were not developed specifically to evaluate the provision of bidirectional service, but were used by Laurel to determine whether or not bidirectional service could be provided over L718. Based upon these documents and a general understanding of the operation of its system, Laurel determined that bidirectional service could be provided.

LAUB000000001 – Native excel model to evaluate possible side-stream injection at Midland.

LAUB000000002 – Native excel hydraulics model for Midland-Eldorado segment.

LAUB000000003 – Native excel hydraulics model for Mantua-Eldorado segment.

LAUB000000004 – Native excel hydraulics model for entirety of Laurel, updated as bidirectional project developed.

LAUB000000005 – Maximum operating pressure (“MOP”) estimate model for reversal.

LAUB000000006 – Elevation profile of Line 718 under reversal scenario using MOP estimate.

LAUB000000007 – Hydraulic gradient estimate Midland-Duncansville.

LAUB000000008 – Hydraulic gradient estimate Midland-Delmont.

LAUB000000009 – Hydraulic profile over the entirety of Laurel.

Laurel is continuing to review its files and will produce additional responsive, non-privileged documents, to the extent they become available.

Appendix D



17 North Second Street
12th Floor
Harrisburg, PA 17101-1601
717-731-1970 Main
717-731-1985 Main Fax
www.postschell.com

Garrett P. Lent

glent@postschell.com
717-612-6032 Direct
717-731-1979 Direct Fax
File #: 162860

October 5, 2018

VIA E-MAIL & REGULAR MAIL

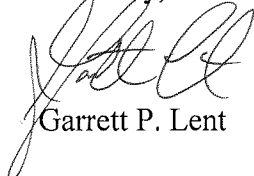
Alan M. Seltzer, Esquire
John F. Povilaitis, Esquire
Buchanan Ingersoll & Rooney PC
409 N. Second Street, Suite 500
Harrisburg, PA 17101-1357

**Re: Giant Eagle, Inc., et al. v. Laurel Pipe Line Company, L.P.
Docket No. C-2018-3003365**

Dear Counsel:

Enclosed please find the supplemental response of Laurel Pipe Line Company, L.P. to Complainants' Set I, No. 2 discovery in the above-referenced proceeding, as well as an updated Privilege Log. Copies will be provided as indicated on the Certificate of Service.

Sincerely,



Garrett P. Lent

GPL/skr
Enclosures

cc: Certificate of Service

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been served upon the following persons, in the manner indicated, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant).

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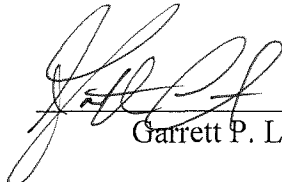
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100 North Tenth Street
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Joseph R. Hicks, Esquire
Venable LLP
575 7th Street, NW
Washington, DC 20004

Date: October 5, 2018


Garrett P. Lent

Laurel Pipe Line Company, L.P.
Supplemental Response to Complainants' Set I Interrogatories
And Requests for Production of Documents
Dated October 5, 2018

M.J. Kelly
Page 1 of 1

Docket No. C-2018-3003365

- Q. 2. Re the July 17, 2018 Answer of Laurel Pipe Line Company, L.P. to the Petition for Interim Emergency Relief, Docket No. P-2018-3003368 ("Answer"); provide the active model, including all inputs, the analysis, and the results for the range of scenarios evaluated by Laurel or any affiliate of Laurel which are referenced in the Affidavit of Mr. Michael J. Kelly at paragraph 22 as part of the FERC Answer, Internal Appendix B, attached to the Answer.
- A. 2. Laurel hereby supplements its September 12, 2018 response to Compl-LAU-I-2 and provides an updated privilege log that conforms to a format agreed upon by the parties. Please see item numbers 1-7 in the attached updated privilege log.

Giant Eagle, Inc.; Guttman Energy, Inc.; Lucknow-Highspire Terminals, LLC; Monroe Energy, LLC; Philadelphia Energy Solutions Refining and Marketing, LLC; and Sheetz, Inc.

v.

Laurel Pipe Line Company, L.P.

Docket No. C-2018-3003365

Complainants' Set I (September 12, 2018)

PRIVILEGE LOG

<u>From/Author</u>	<u>To/Recipients</u>	<u>Document Type</u>	<u>Date</u>	<u>Document Description (Title/Subject, if any, and brief description of the content of the document)</u>	<u>Type of Privilege Asserted</u>
Thomas R. Zeth	David Arnold Michael J. Kelly Mark Johnson Timothy Ernst	Powerpoint	2/17/2018	Title: Laurel Bi-Directional Scheduling Analysis PRIVILEGED AND CONFIDENTIAL Description: Bi-directional scheduling analysis prepared at the request of internal counsel	Work Product
Thomas R. Zeth Michael J. Kelly	David Arnold Mark Johnson Timothy Ernst	Powerpoint	2/17/2018	Title: Laurel Bi-Directional Scheduling Analysis mjk comments PRIVILEGED AND CONFIDENTIAL Description: Bi-directional scheduling analysis prepared at the request of internal counsel	Work Product
Thomas R. Zeth	Patrick Monaghan David Arnold Michael J. Kelly Mark Johnson Timothy Ernst	Email	2/21/2018	Title: Laurel Scheduling Analysis (CONFIDENTIAL - ATTORNEY CLIENT COMMUNICATION) Description: Email to counsel regarding work product and analysis prepared at the request of internal counsel	Attorney Client Communication Work Product
Thomas R. Zeth	Patrick Monaghan David Arnold Michael J. Kelly Mark Johnson Timothy Ernst	Powerpoint	2/21/2018	Title: Laurel Scheduling Analysis (PRIVILEGED AND CONFIDENTIAL) (2018-02) Description: Bi-directional scheduling analysis prepared at the request of internal counsel and attached to communication with internal counsel	Attorney Client Communication Work Product
Thomas R. Zeth	Patrick Monaghan David Arnold Michael J. Kelly Mark Johnson Timothy Ernst	Excel	2/21/2018	Title: Volume Scenarios for Analysis - PRIVILEGED AND CONFIDENTIAL (2018-02-21) Description: Bi-directional volumes analyses prepared at the request of internal counsel and attached to communication with internal counsel	Attorney Client Communication Work Product
Thomas R. Zeth	David Arnold Michael J. Kelly Mark Johnson Timothy Ernst	Powerpoint	3/1/2018	Title: Laurel Scheduling Analysis (PRIVILEGED AND CONFIDENTIAL) (2018-03) Description: Bi-directional scheduling analysis prepared at the request of internal counsel	Work Product

Todd Pyhtila	Michael J. Kelly Mark Johnson Allyson Dodson Dennis Shimer	Powerpoint	5/24/2018	<u>Title:</u> Laurel Bidirectional <u>Description:</u> Bi-directional scheduling anlaysis prepared at the request of internal counsel	Work Product

Appendix E

V.
Laurel Pipe Line Company, L.P.
Docket No. C-2018-3003365

[illegible]

Appendix F

Application of Laurel Pipe Line Company, L.P for Approval to change direction of
Petroleum Products Transportation Service to Delivery Points West of Eldorado, Pennsylvania,
Docket No. A-2016-2575829

Affiliated Interest Agreement between Laurel Pipe Line Company, L.P.
and Buckeye Pipe Line Company, L.P.,
Docket No. G-2017-2587567

PRIVILEGE LOG OF PESRM

<u>Document No.</u>	<u>From</u>	<u>To</u>	<u>Document Type</u>	<u>Date</u>	<u>Description</u>	<u>Privilege Asserted</u>
1	John Sadlowski	Lisa Runyon	Email	3/15/2016	Transmission of Articles	Attorney Client Privilege; Attorney Work Product
2	John McConville	Thomas Scargle; John Sadlowski; Paula Fischer-Gressman; Karen White; John McShane; Lisa Runyon; Anthony Lagreca	Email chain	11/29/2016	Line Reversal	Attorney Client Privilege; Work Product
3	Thomas Scargle	Lisa Runyon; John Sadlowski; (cc) Thomas Scargle	Email chain	12/1/2016	Arguments Against Laurel Pipeline Reversal	Attorney Client Privilege; Work Product
4	John McConville	Thomas Scargle; John Sadlowski; Paula Fischer-Gressman; Lisa Runyon; John McShane	Email	1/3/2017	Transmission of Article	Attorney Client Privilege

5	Laura McAfee	Lisa Runyon; David Friedland; (cc) Robert Brager	Email chain	12/12/2016	Potential Arguments Regarding Pipeline Reversal	Attorney Client Privilege; Work Product
6	John Sadlowski	Lisa Runyon; Thomas Scargle	Email chain	12/1/2016	Reid Vapor Pressure	Attorney Client Privilege; Work Product
7	John McConville	John McShane; Lisa Runyon; Paula Fischer-Gressman; (cc) Thomas Scargle; John Sadlowski	Email chain	1/4/2017	Transmission of Articles	Attorney Client Privilege
8	Kim Pizzingrilli	Philip Rinaldi; John McShane; Lisa Runyon; Cherice Corley; (cc) Alan Seltzer; John Povilaitis; Eric Battisti; Mollie McEnteer	Email	2/3/2017	Transmission of Article	Attorney Client Privilege
9	Paul Fischer-Gressman	Lisa Runyon; Joseph Zajkowski; John McConville (cc - John McShane, Thomas Scargle, John Sadlowski)	Email chain	2/6/2017	Price Information; Reid Vapor Pressure	Attorney Client Privilege; Work Product
10	Kim Pizzingrilli	John McShane; Cherice Corley; Lisa Runyon; Alan Seltzer; John Povilaitis; (cc) Eric Battisti; Mollie McEnteer	Email	2/7/2017	Transmission of Article	Attorney Client Privilege

11	John Sadlowski	John McShane; Lisa Runyon	Email chain	2/23/2017	Transmission of Article	Attorney Client Privilege
12	N/A	N/A	Outline of arguments for PUC against Laurel Pipeline reversal	Undated	Arguments in Opposition to Laurel Pipeline Reversal	Attorney Work Product
13	Laura McAfee	Lisa Runyon; David Friedland; (cc) Robert Brager	Email chain	12/12/2016	Potential Arguments Regarding Pipeline Reversal	Attorney Client Privilege; Attorney Work Product
14	John Sadlowski	John McShane, Lisa Runyon and John McConville	Email chain	2/23/2017	Argument on Laurel Reversal	Attorney Client Privilege; Attorney Work Product
15	Phillip Graeter	Catherine Ward; cc Andrew Levine, Lisa Runyon, John McShane, Michael Schaal, Mengjuin Yu	Email chain	2/17/2017	Supply Demand and Pricing	Attorney Client Privilege; Attorney Work Product
16	Thomas Scargle	John McConville, Lisa Runyon and John Sadlowski	Email chain	2/15/2017	PADD 1 Refining Capacity and Pipeline Accessibility; Gasoline and Diesel Price Spikes Comparison;	Attorney Client Privilege; Attorney Work Product

17	John McConville	Thomas Scargle, John McShane, John Sadlowski, Paula Fischer-Gressman, Anthony Lagreca, Lisa Runyon	Email chain	11/18/2016	Reid Vapor Pressure	Attorney Client Privilege; Attorney Work Product
18	John McConville	Lisa Runyon, John McShane (cc - John Sadlowski, Paul Fisher-Gressman, Thomas Scargle)	Email chain	12/15/2016	Transmission of Article	Attorney Client Privilege; Attorney Work Product
19	Paul Fischer-Gressman	Lisa Runyon (cc - John McConville, John McShane, John Sadlowski, Thomas Scargle)	Email chain	1/18/2017	Shipment Information	Attorney Client Privilege; Attorney Work Product

Appendix G

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

AFFIDAVIT

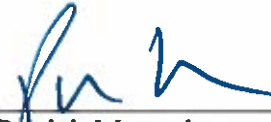
I, Patrick Monaghan, being duly sworn according to law, deposes and states that I am an the Associate General Counsel and Chief Compliance Officer for Buckeye Partners, L.P., and that in this capacity, I am authorized to and do make this affidavit on behalf of Laurel Pipe Line Company, L.P. ("Laurel"), and that the facts set forth herein are true and correct to the best of my knowledge, information and belief:

1. My name is Patrick Monaghan. My business address is One Greenway Plaza, Suite 600, Houston, TX 77046.
2. I am employed by Buckeye Partners, L.P. ("Buckeye") as Associate General Counsel and Chief Compliance Officer and have practiced law in the State of Texas since November 5, 2010. In this role, I regularly provide legal advice and litigation strategy to Buckeye employees, officers and directors.
3. In early February 2018, I requested that certain Buckeye employees analyze whether it would be possible to provide bidirectional service over the segment of the Laurel pipeline system located between Eldorado, Pennsylvania and Coraopolis, Pennsylvania, in order to develop and consider Laurel's litigation

position regarding the provision of bidirectional service over this segment of the pipeline system.

4. The employees involved in the development of this litigation position included: Thomas R. Zeth, David Arnold, Michael J. Kelly, Mark Johnson, Timothy Ernst, Todd Pyhtila, Allyson Dodson and Dennis Shimer.
5. Pursuant to my request for this information, the aforementioned employees prepared the documents identified in Item Nos. 1-7 in the Privilege Log and the Updated Privilege Log, respectively attached as **Appendices B** and **D** to Laurel's Answer to the Complainants' Motion to Compel filed in the above-captioned proceeding.
6. Item Nos. 1-7 contain preliminary analyses that examine whether or not bidirectional service is possible and contain certain of the aforementioned employees' mental impressions and opinions—including potential concepts and scenarios, assumed benefits and concerns, and pros and cons associated with different methods—regarding Laurel's potential litigation position that bidirectional service can be provided on the segment of Laurel's pipeline between Eldorado, PA and Coraopolis, PA.
7. Item Nos. 3-5 constitute a confidential e-mail communication dated February 21, 2018, involving myself and certain of the aforementioned employees that identifies and describes certain documents created pursuant to a prior call. I recall that I was involved in this call, and requested that the attached documents be prepared in order to further develop Laurel's litigation position.

Respectfully,



Patrick Monaghan

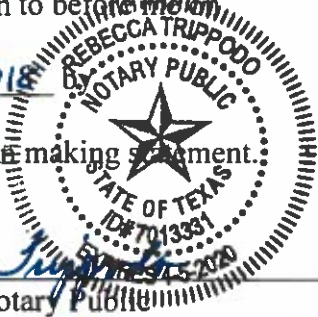
Signed and sworn to before me on

October 19, 2018

Patrick Monaghan making statement.



Notary Public



My commission expires 04/05/2020.

(SEAL)