



100 Pine Street • PO Box 1166 • Harrisburg, PA 17108-1166
Tel: 717.232.8000 • Fax: 717.237.5300

Adeolu A. Bakare
Direct Dial: 717.237.5290
Direct Fax: 717.260.1712
abakare@mcneeslaw.com

December 7, 2018

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

VIA ELECTRONIC FILING

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

Dear Secretary Chiavetta:

Attached please find for filing the Petition of Giant Eagle, Inc., Guttman Energy, Inc., Lucknow-Highspire Terminals, LLC, Monroe Energy, LLC, Philadelphia Energy Solutions Refining and Marketing, LLC, and Sheetz, Inc. for Certification of a Ruling on a Discovery Matter.

As shown by the attached Certificate of Service, all parties to this proceeding are being duly served. Thank you.

Respectfully submitted,

McNEES WALLACE & NURICK LLC

By

A handwritten signature in black ink, appearing to read 'Adeolu A. Bakare', written over a horizontal line.

Adeolu A. Bakare

Enclosure

c: Administrative Law Judge Eranda Vero (via E-Mail and First-Class Mail)
Certificate of Service

CERTIFICATE OF SERVICE

I hereby certify that I am this day serving a true copy of the foregoing document upon the participants listed below in accordance with the requirements of Section 1.54 (relating to service by a participant).

VIA E-MAIL AND FIRST-CLASS MAIL

John R. Evans
Small Business Advocate
300 North Second Street, Suite 202
Harrisburg, PA 17101
jorevan@pa.gov

Timothy K. McHugh, Esq.
Bureau of Investigation and Enforcement
Pennsylvania Public Utility Commission
P. O. Box 3265
Harrisburg, PA 17105-3265
timchugh@pa.gov

Tanya J. McCloskey, Esq.
Office of Consumer Advocate
555 Walnut Street
Forum Place, 5th Floor
Harrisburg, PA 17101-1923
tmccloskey@paoca.org

Alan M. Seltzer, Esq.
John F. Povilaitis, Esq.
Buchanan Ingersoll & Rooney, PC
409 N. Second Street, Suite 500
Harrisburg, PA 17101-1357
Alan.Seltzer@BIPC.com
John.Povilaitis@BIPC.com
*Counsel for Philadelphia Energy Solutions
Refining and Marketing, LLC*

Jonathan D. Marcus, Esq.
Daniel J. Stuart, Esq.
Scott Livingston, Esq.
Marcus & Shapira LLP
One Oxford Centre, 35th Floor
301 Grant Street
Pittsburgh, PA 15219-6401
jmarcus@marcus-shapira.com
stuart@marcus-shapira.com
Livingston@marcus-shapira.com
Counsel for Giant Eagle, Inc.

Kevin J. McKeon, Esq.
Todd S. Stewart, Esq.
Whitney E. Snyder, Esq.
Hawke McKeon & Sniscak LLP
100 North Tenth Street
Harrisburg, PA 17101
kjmckeon@hmslegal.com
tsstewart@hmslegal.com
wesnyder@hmslegal.com

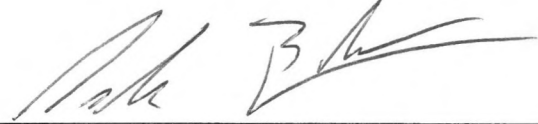
Richard E. Powers, Jr., Esq.
Joseph R. Hicks, Esq.
Venable LLP
575 7th Street, NW
Washington, DC 20004
repowers@venable.com
jrhicks@venable.com
Counsel for Monroe Energy, LLC

David B. MacGregor, Esq.
Anthony D. Kanagy, Esq.
Garrett P. Lent, Esq.
Post & Schell, P.C.
17 North Second Street, 12th Floor
Harrisburg, PA 17101-1601
dmacgregor@postschell.com
akanagy@postschell.com
glent@postschell.com
Laurel Pipe Line Company LP

Christopher J. Barr, Esq.
Jessica R. Rogers, Esq.
Post & Schell, P.C.
607 14th Street NW, Suite 600
Washington, DC 20005-2006
cbarr@postschell.com
jrogers@postschell.com
Laurel Pipe Line Company LP

VIA FIRST-CLASS MAIL

Laurel Pipe Line Company LP
Five TEK Park
9999 Hamilton Boulevard
Breinigsville, PA 18031

A handwritten signature in black ink, appearing to read 'Adeolu A. Bakare', written over a horizontal line.

Adeolu A. Bakare

Dated this 7th day of December, 2018, in Harrisburg, Pennsylvania.

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**PETITION OF GIANT EAGLE, INC., GUTTMAN ENERGY, INC., LUCKNOW-HIGHSPIRE
TERMINALS, LLC, MONROE ENERGY, LLC, PHILADELPHIA ENERGY SOLUTIONS
REFINING AND MARKETING, LLC, AND SHEETZ, INC.
FOR CERTIFICATION OF A RULING ON A DISCOVERY MATTER**

TO ADMINISTRATIVE LAW JUDGE ERANDA VERO:

1. Giant Eagle, Inc., Guttman Energy, Inc., Lucknow-Highspire Terminals, LLC, Monroe Energy, LLC, Philadelphia Energy Solutions Refining and Marketing, LLC, and Sheetz, Inc. (collectively, the "Complainants") respectfully submit this Petition for Certification of a Ruling on a Discovery Matter ("Petition") respectfully requesting that Administrative Law Judge ("ALJ") Eranda Vero certify the below Questions to the Pennsylvania Public Utility Commission ("Commission" or "PUC") for review pursuant to Section 5.304(a)(2) of the Commission's Regulations. 52 Pa. Code § 5.304(a)(2).

2. The proposed Questions for Certification¹ are as follows:

Whether it was appropriate to sustain privilege/doctrine claims under 52 Pa. Code § 5.323(a) of the Commission's regulations for documents that address *factual* matters relating to the operational feasibility of a public utility's bi-directional service on a segment of a petroleum products pipeline and not party representative opinions on a *legal* claim or defense regarding whether the commencement of bi-directional service will impair and thus abandon to some extent that public utility's existing intrastate petroleum products pipeline transportation service.

¹ These Questions involve important issues of law, resolution of which are necessary to timely resolve the above-docketed proceeding and prevent irreparable harm and substantial prejudice to the Complainants that would otherwise result from the presiding ALJ's Order Regarding Complainants' Motion to Compel entered on December 4, 2018 ("December 4 Order") at the above-captioned docket. The Complainants aver that such harm and prejudice cannot be cured during the ordinary course of Commission review at the end of the proceeding.

Proposed Answer: No.

In a proceeding concerning the operational impacts of Laurel's bi-directional service on existing east-to-west service, do Complainants have substantial need for the operational analyses of bi-directional service conducted by Laurel's employees and technical consultants and cannot otherwise obtain the information by other means without undue hardship such that Laurel cannot withhold such analyses under claim of Work Product Privilege/Doctrine?

Proposed Answer: Yes.

3. The central issue in this proceeding is whether Laurel Pipe Line L.P.'s ("Laurel") transition to bi-directional pipeline service on the segment of its existing petroleum products pipeline between Eldorado and Pittsburgh, Pennsylvania – which would convert the existing east to west intrastate service into a combination of service moving in both west to east and east to west directions at various times - constitutes a legal abandonment of any portion of the current east to west unidirectional service.

4. To develop the facts necessary to satisfy their burden of proof, the Complainants issued Set I Interrogatories and Requests for Production of Documents (collectively, "Interrogatories") to Laurel on August 17, 2018 to discover, among other things, the operational facts surrounding the new bi-directional service, limitations of that service, and whether Laurel studied realistic service scenarios and existing conditions to support its claim that the Complainant's existing east to west service will not be impaired.

5. Interrogatory No. 2 requested the support for *a publicly filed affidavit* by Michael Kelly in this proceeding claiming that the commencement of bi-directional service on the identified segment of the Laurel pipeline between Eldorado and Pittsburgh will not impair the Complainants' existing westerly intrastate service.² The ALJ's ruling in the December 4 Order has the effect of allowing Mr. Kelly's opinions to be a matter of record, but not the documents he reviewed/developed to form those opinions.

6. The error warranting immediate certification to the Commission occurred in the December 4 Order in which Your Honor found that redacted items "contain[ing] mental impressions, conclusions or

² Interrogatory No. 2 consists of the following text: "Re the July 17, 2018 Answer of Laurel Pipe Line Company, L.P. to the Petition for Interim Emergency Relief, Docket Nos. P-2018-3003368 ("Answer"): provide the active model, including all inputs, the analysis, and the results for the range of scenarios evaluated by Laurel of 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." Complainants' Motion to Compel at Docket No. C-2018-3003365 (Oct. 12, 2018), Appendix A.

opinions of the preparer with regard to the operational feasibility of the proposed bi-directional service" are protected from discovery.³ The Commission's regulations at 52 Pa. Code § 5.323 provide that only mental impressions, conclusions or opinions of a representative of a party *respecting the value or merit of a claim or defense or respecting strategy, tactics . . .*" are exempt from discovery. The items the Complainants seek, however, are clearly *factual* matters regarding the operational feasibility of the bi-directional service and are necessary for the development of the Complainants' case. The *facts* relating to the operational feasibility of Laurel's bi-directional service bear directly on whether Laurel will be able to continue providing existing east to west service (as claimed in the Kelly affidavit) and whether any diminution of that existing service constitutes an abandonment of service.⁴ The claimed privileged and redacted documents clearly relate to operational facts and not the preparer's view of the *legal* claim or defense of abandonment.

7. Additionally, the December 4 Order erred in finding a lack of "reasonable grounds to conclude that the Complainants have substantial need for the redacted information to prepare their case and cannot, without undue hardship, obtain its substantial equivalent by other means."⁵ This factual information is central to Complainants' case and known only to Laurel and its representatives.

8. Absent certification to the Commission, Laurel will continue to stymie the Complainants' efforts to test and obtain the key facts relating to the operational feasibility of bi-directional service being operated in a way that preserves existing service. Indeed, in yet a further Privilege Log provided recently to the Complainants, Laurel has claimed privilege with respect to another forty-one (41) documents on the same basis as those addressed in the December 4 Order. This cycle of expansive and unjustified claims of privilege on matters relating to the key factual matters in dispute in this proceeding cannot and should not be allowed to continue unabated.

WHEREFORE, the Complainants respectfully request that the ALJ grant certification of the above Questions for review by the Commission.

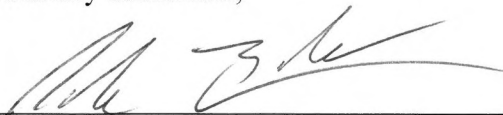
³ December 4 Order at 3 (emphasis added).

⁴ Indeed, in denying Laurel's Preliminary Objections, Your Honor expressly found that "[w]hether or not Respondent's initiation of bi-directional service on the Pittsburgh-Altoona section of the Laurel pipeline amounts to full or partial abandonment of service is a **question of fact** which may not be disposed of through preliminary objections."

⁵ *Sullivan v. Warminster Twp.*, 274 F.R.D 147, 152 (E.D. Pa. 2011) (citing *United States v. Rockwell Int'l*, 897 F.2d 1255, 1266 (3d Cir. 1990)).

December 7, 2018

Respectfully submitted,



Robert A. Weishaar, Jr.
McNEES WALLACE & NURICK LLC
1200 G Street, NW, Suite 800
Washington, DC 2000

Adeolu A. Bakare
McNEES WALLACE & NURICK LLC
100 Pine Street
P. O. Box 1166
Harrisburg, PA 17108-1166
*Counsel to Lucknow-Highspire Terminals
LLC, Sheetz, Inc. and Guttman Energy, Inc.*

Alan M. Seltzer
John F. Povilaitis
Buchanan Ingersoll & Rooney, PC
409 North Second Street, Suite 500
Harrisburg, PA 17101
*Counsel to Philadelphia Energy Solutions
Refining and Marketing LLC*

Richard E. Powers, Jr.
Joseph R. Hicks
Venable LLP
600 Massachusetts Avenue, N.W.
Washington, DC 20001

Kevin J. McKeon
Todd S. Stewart
Whitney E. Snyder
Hawke McKeon & Sniscak LLP
100 North Tenth Street
Harrisburg, PA 17101
Counsel to Monroe Energy, LLC

Jonathan D. Marcus
Daniel J. Stuart
MARCUS & SHAPIRA LLP
One Oxford Centre, 35th Floor
301 Grant Street
Pittsburgh, PA 15219
Counsel to Giant Eagle, Inc.